Juvenile Records

Wednesday, January 30, 2019
1:30-3 p.m.

Ms. Kaci Singer
Attorney
Texas Juvenile Justice Department

This session will cover juvenile records laws, with emphasis on the laws as applicable to court clerks. It will include confidentiality, sharing of records, and sealing.
Kaci Singer is a graduate of Baylor University and the University of Texas School of Law. Singer has an extensive background in juvenile law and the juvenile justice system administration at the state and local levels. She started her career at the former Texas Youth Commission in 2001 and currently works for the Texas Juvenile Justice Department. She also worked as director of the Travis County District Clerk’s Office — Criminal Division and director of the Travis County Juvenile Probation Department — Court Administration Division. She provides training and technical assistance to juvenile justice practitioners throughout the state on juvenile records topics to ensure compliance with statutes and administrative rules. She has been involved with legislative work groups, particularly those related to juvenile records statutes. She is also a contributing editor/author of the state’s foremost juvenile justice treatise, Texas Juvenile Law, 9th Edition (2018), by the late University of Texas professor Robert O. Dawson.
Breakout 3: Juvenile Records

- Juvenile Records
- Confidentiality, Sharing and Sealing

Ms. Kaci Singer
Senior Staff Attorney
Texas Juvenile Justice Department
Topics Covered

- Creation of a Juvenile Record
- Effect of a Juvenile Record
- Access to Juvenile Records
- Sharing Between Juvenile Service Providers
- School Notifications
- Sealing and Destruction

Creation of a Juvenile Record
Law Enforcement

- If child taken into custody and referred to juvenile court, law enforcement must forward information to DPS
  - Includes fingerprints
  - Information is stored in JJIS

Family Code Section 58.001

Fingerprints and Photographs

- Juvenile court consent required unless child
  - taken into custody for delinquent conduct or
  - referred to juvenile court for delinquent conduct without being taken into custody

Family Code Section 58.002

- May take temporary custody to take prints if prints found in investigation and have PC to believe:
  - child engaged in delinquent conduct
  - and prints will match

Family Code Section 58.0021
Fingerprints and Photographs

• May take temporary to take photo if have PC to believe:
  – child engaged in delinquent conduct
  – and photo will be of material assistance to investigation
• May get a photo from juvenile probation without taking into custody

Family Code Section 58.0021

Fingerprints and Photographs

• May print and photograph to establish identity if:
  – PC to believe child is a runaway
  – and unable to determine identify after reasonable effort
• Must destroy once identify or determine cannot identify

Destruction

• If taken into custody but not referred within 10 days, LE must destroy record
  – Agency certifies destruction to juvenile board by 12/31
  – Board may audit to verify
  – If false, person who certified is subject to perjury prosecution
• If in First Offender program, destruction not required until 90 days after successful completion (can maintain info to determine future eligibility)
**Probation Department**
- Receives law enforcement records
- Makes initial decisions (probable cause, detention, disposition)
- Sends additional information to DPS for inclusion in JJIS
- Creates records

**Prosecutor**
- Receives law enforcement and probation intake records
- Makes decisions regarding probable cause and case disposition
- Sends additional information to DPS for inclusion in JJIS

**Court**
- All filings in a case
- Reports outcomes to DPS for inclusion in JJIS
Facilities

- Create own records
  - Education
  - Treatment
  - Behavior
  - Medical
- Dates admitted/released included in JJIS

Effect of a Juvenile Record

Not a Conviction

- Does not impose any civil disability ordinarily resulting from a conviction
- Does not operate to disqualify child in any civil service application or appointment
- Exceptions
  - Commitment to TJJD is considered conviction for future enhancement purposes
  - Sexting adjudication is conviction for enhancement purposes

Family Code Section 51.13
Limited Future Use

- May be used only in subsequent:
  - Title 3 proceedings in which child is party
  - Sentencing proceedings against child to extent allowed by CCP
  - Civil commitment proceedings under Ch. 841, HSC

Family Code Section 51.13

Access to Juvenile Records

DPS – JJIS Records

- Military, with permission of juvenile
- Criminal Justice Agency
- Noncriminal justice agency only if authorized by federal law or executive order
- Juvenile Justice Agency
- TJJD, Ombudsman
- Court exercising jurisdiction over the juvenile as a child
- DFPS for background checks for placement

Family Code Section 58.106
Law Enforcement Records

- Criminal Justice Agency
- Juvenile Justice Agency
- Child or Parent*
- * Must redact any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child and any information excepted from required disclosure under Ch. 552, Government Code or any other law

Family Code Section 58.008

Law Enforcement Records

- Must keep separate from adult records, both on paper and electronically
- Must be kept local only and not sent to state or federal depository except as allowed by Chapter 58
- If transferred from TJJD to TDCJ, records can transfer to central state or federal depository for adult records
- If child reported missing by parent, guardian, or conservator, information may be forwarded to TCIC/NCIC

Family Code Section 58.008

Law Enforcement Records

- 58.008 provisions do not apply to record relating to a child that is:
  - Required or authorized to be maintained under the laws regulating the operation of motor vehicles in this state
  - Maintained by a municipal or justice court
  - Subject to disclosure under Ch. 62, CCP

Family Code Section 58.008
Facility Records

- TJJD or contract facility
- Agency or institution having custody under juvenile court order, including facility operated under contract with juvenile board

Family Code Section 58.008

Facility Records

- Professional staff or consultants of the facility
- Judge, probation officers, staff of juvenile court
- Attorney for child
- Governmental agency if disclosure required by law
- Person or entity to whom child referred for services, if enters into confidentiality agreement
- TDCJ and TJJD for statistical purposes
- With permission from juvenile court, any person with legitimate interest in work of court

Family Code Section 58.005

Probation Department, Prosecutor, Court Records

- Judge, probation officers, staff, consultants of juvenile court
- Juvenile justice agency
- Public or private agency providing supervision/having custody of child under juvenile court order
- Attorney representing a party in the Title 3 proceeding
- Person/entity child referred to for treatment if have written confidentiality agreement
- With permission from juvenile court, any person with legitimate interest in work of court

Family Code Section 58.007
• May disseminate information if subject of DTA or warrant
  – Name, aliases
  – Physical description
  – Photograph
  – Description of alleged conduct

Family Code Section 58.007

• Juvenile can have access to court records to prepare motion for sealing
• If adjudication admissible in adult punishment under 37.07, Section 3(a) CCP, court must provide certified copy to prosecutor (not available if sealed)

Family Code Section 58.007

• Court must redact victim under 18 info before release unless:
  – Necessary for agency to provide victim services
  – Necessary for law enforcement purposes
  – Shared within JCMS
  – Shared with attorney
    • representing child in Title 3 proceedings
    • representing other person in juvenile or criminal proceeding arising from same incident

Family Code Section 58.004
Military

- May have records with permission of the court
- May have records under guidelines adopted by the juvenile board

Family Code Section 58.007

Court

Question:
A reporter requests information related to a determinate sentence or certification case. Can anything be disclosed to the reporter?

Suck, this is math, not the law.
• If juvenile’s DS probation has been transferred to adult court, clerk’s public record consists of only:
  – Petition
  – Grand jury approval
  – Judgment re: DS conduct
  – Transfer order

Family Code Section 54.051

• If juvenile has been certified as an adult, clerk’s public record consists of only:
  – Petition for discretionary transfer
  – Order of transfer
  – Order of commitment (to jail or juvenile detention)

Family Code Section 54.02(s)

• Records related to child charged with Class C misdemeanor (non-traffic) confidential and can’t be disclosed to public

• Open to inspection only by:
  – Judges or court staff
  – Criminal justice agency for criminal justice purposes
  – DPS
  – Attorney for party to the proceeding
  – Child defendant or parent/guardian/managing conservator

Code of Criminal Procedure Article 45.0217
### Sharing Between Juvenile Service Providers

At JSP request, another JSP must share:
- personal health information or
- history of governmental services provided to a multi-system youth

Includes: identity records; medical records; assessment or diagnostic test results; special needs; program placements; psychological diagnoses; and other related records or information

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### Non-Educational Records

- Information may be disclosed only for purposes of:
  - Identifying a multi-system youth
  - Coordinating and monitoring care
  - Improving the quality of juvenile services provided

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Family Code Section 58.0052
CPS and Juvenile Probation

- Upon request, state or local JJ agency and CPS or foster services provider must share information on a youth that is necessary to improve and maintain community safety or that assists in providing or continuing to provide services to a multi-system youth
- Have 14 business days to share

Family Code Section 58.0052

Educational Records

- At JSP request, ISD or charter school must disclose confidential information in educational record if student has been taken into custody under 52.01 or referred to juvenile court for DC or CINS
- School must make record and keep for at least 7 years

Family Code Section 58.0051

Notice to Schools
Applicable Offenses

- All felonies
- Misdemeanor unlawful restraint (20.02 PC)
- Misdemeanor indecent exposure (21.08 PC)
- Misdemeanor assault (22.01 PC)
- Misdemeanor deadly conduct (22.05 PC)
- Misdemeanor terroristic threat (22.07 PC)
- Misdemeanor engaging in organized criminal activity (71.02 PC)
- Unlawful use/sale/possession of a controlled substance, drug paraphernalia, or marijuana (Chapter 481, HSC)
- Unlawful possession of any of the weapons or devices listed in Sections 46.01(1)–(14) or (16), Penal Code, or a weapon listed as a prohibited weapon under Section 46.05, Penal Code

Law Enforcement

- Orally notify superintendent (or designee) of arrest/referral
- Must be within 24 hours or before next school day, whichever is earlier
- Provide sufficient details for superintendent to determine if reasonable belief person committed a felony
- May give electronic notice instead of oral; if so, no written notice required

Prosecutor

- Orally notify superintendent (or designee) of conviction, adjudication, deferred prosecution, or deferred adjudication
- Must be within 24 hours of order or before next school day, whichever is earlier
- May give electronic notice instead of oral; if so, no written notice required
**Parole or Probation Officer**

- Orally notify superintendent (or designee) if student transfers or is removed and later returns to a different school than one attending when arrest or disposition occurred.
- Must be within 24 hours of learning of transfer or re-enrollment or before next school day, whichever is earlier.
- May give electronic notice instead of oral; if so, no written notice required.

Code of Criminal Procedure Art. 15.27(c)

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**Dismissal or No Find**

- Prosecutor or person designated by juvenile board must notify school district if student removed to DAEP and:
  - Prosecution refused for lack of merit or insufficient evidence or
  - Court found not true/not guilty
- Must be within 2 working days.

Code of Criminal Procedure Art. 15.27(g)

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**Failure to Provide Notice**

- Superintendent must report failure of LEA to TCOLE.
- Juvenile court judge or official must report failure of prosecuting attorney to the elected prosecutor.
- Probation or parole supervisor must report failure of officer to the employing entity.

Code of Criminal Procedure Art. 15.27(m) – (o)
Exempted

- DPS or local law enforcement records:
  - Gang database
  - Sex offender registration
- Records maintained by TJJD for statistical and research purposes

Family Code Section 58.252

Without Application Delinquent Conduct

- Misdemeanor adjudication
- Referral for misdemeanor or felony and no adjudication
- Entitled to sealing at age 19 if:
  - 19 years old
  - No pending charges (adult or juvenile)
  - No Class B or higher adult conviction
  - Never certified as an adult

Family Code Section 58.253

Certification of Eligibility

- Sends certification to JPD that submitted info
- Notifies court within 60 days; list of referrals and outcomes
- Shall seal within 60 days

Family Code Section 58.254
**Appears Ineligible**

- JPD contacts DPS within 15 days
  - Not Eligible. JPS Updated.
  - Eligible. JPD gives court referral list within 30 days
    - Court shall seal within 60 days

Family Code Section 58.254

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**Without Application CINS**

- If only ever referred for CINS, entitled to sealing if:
  - 18 years old
  - No adult felony conviction or any pending adult charges

Family Code Section 58.255

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**Without Application CINS**

- TJJD sends list to JPD
  - JPD determines eligibility; gives court notice
  - Court shall seal within 60 days

Family Code Section 58.255
• Regardless of eligibility for sealing without application, juvenile may apply for sealing
• No court/filing fee
• No attorney required
• Application must include information in statute

Family Code Section 58.256

• Court may seal if:
  – 18 years old or under 18 but at least 2 years since discharge on all matters
  – No pending delinquent conduct or adult charges
  – No adult felony conviction
  – Never certified; no DS
  – Not currently required to register as sex offender
  – If committed to TJJD or Travis County, has been discharged

Family Code Section 58.256

• Court may seal with or without hearing
• Hearing required to deny application to seal
• Hearing must be held within 60 days of application
• Notice to prosecutor, juvenile, entities listed in application, and anyone that prosecutor or juvenile requests be present

Family Code Section 58.257
Impact of Sealing Order

• All adjudications vacated
• Proceedings dismissed and treated for all purposes as though they never occurred

Family Code Section 58.258

Impact of Sealing Order

• Person not required to state was subject of juvenile matter:
  – In any proceeding
  – On housing application
  – On employment application
  – On admission application
  – On licensure application
  – On application for other public or private benefit
• Info in records, fact they existed, or denial of them cannot be used against person in any way
• Person cannot waive protected status of the records

Family Code Section 58.261

Clerk Action

• Seals court records, including those in cases management system
• Sends copy to all entities listed in order (within 60 days)

Family Code Section 58.258
**DPS Action**

- Limits access to records to only TJJD for research and statistical purposes
- Destroys other records, including DNA
- Sends written verification to court
- Within 61 days

Family Code Section 58.259

**“Sealed”**

- Not destroyed
- Stored in a manner that allows access only by the custodian of records

Family Code Section 58.259

**TJJD Action**

- Seals all records other than those exempt from sealing (for statistical and research purposes)
- Sends written verification to court
-Within 61 days

Family Code Section 58.259
**Probation, Prosecutor, Law Enforcement Action**

- Seals records
- Sends written verification to court
- Within 61 days

Family Code Section 58.259

**Others’ Actions**

- Send all records to court
- Delete all index references and send written verification of deletion to court
- Within 61 days

Family Code Section 58.259

**Unable to Comply?**

- If information incorrect or insufficient, entity notifies court within 30 days
- Court takes action necessary to correct, including obtaining additional information

Family Code Section 58.259
**No Records?**

- Provide court written verification of that fact within 30 days

Family Code Section 58.259

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**Later Inquiry?**

- If an item does not appear in our records, it does not exist.

Family Code Section 58.259

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**Motion to Inspect**

- Subject of order can ask court to open records to inspect for any reason
- Prosecutor can ask court to open records to review for possible use in:
  - Capital prosecution
  - 12.42, PC enhancement
- Court, TDJC, TJJD can ask court to open for sex offender screening purposes

Family Code Section 58.260
• If either intake or prosecutor finds no probable cause, court shall order the records destroyed

Family Code Section 58.263

• At age 18 if CINS is most serious conduct referred, whether or not adjudicated
• At age 21 if misdemeanor must serious conduct adjudicated or if referred for felony or misdemeanor and not adjudicated
• At age 31 if adjudicated for felony
• Probation, prosecutor, law enforcement, with permission of agency head

Family Code Section 58.264
Expunction

- Juvenile records are not subject to an order of expunction issued by any court

Family Code Section 58.265

Questions?

Juvenile Law Section, State Bar of Texas
www.juvenilelaw.org

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