



JCAP

Juvenile and Children's Advocacy Project

Sealing Juvenile Records

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ABOUT THE JUVENILE AND CHILDREN'S ADVOCACY PROJECT

The Juvenile and Children's Advocacy Project (JCAP) at the University of Houston Law Center (UHLC) was established in 2014 by David R. Dow, Professor of Law at the University of Houston Law Center and founder of the Texas Innocence Network, and Katya Dow, JCAP Legal Programs Director and Professor of Practice at the University of Houston Law Center. JCAP seeks to reduce juvenile delinquency and improve life outcomes for economically and socially disadvantaged youth through the provision of legal, educational, and social support services.

SERVICES AND PROGRAMS

JCAP provides free legal services to seal the juvenile records of individuals of any age. At the UHLC, JCAP runs the Juvenile Records Sealing clinic to engage law students in this valuable public service. In addition to records sealing, JCAP also helps individuals obtain expunctions and nondisclosure orders, represents dual status youth in juvenile and foster care cases, and represents youth involved in school disciplinary cases. JCAP also provides education and outreach about its juvenile justice services, as well as know-your-rights education for youth.

Juvenile Records Sealing Basics

Aren't Juvenile Records Always Sealed?

No. Juvenile records of delinquent conduct in Texas are a discoverable part of an individual's criminal record unless an application to seal the records was filed by an attorney and granted by the court. Pursuant to recent statutory changes, when a youth turns 19, his or her records are supposed to be "sealed without application," as long as the case was not a felony adjudication and the youth has no adult criminal record. However, this automatic sealing process is experiencing a tremendous backlog and implementation delays, so there is currently no guarantee that automatic sealing is happening as the statute anticipates. In addition, depending on nature of the offense or upon and the individual's subsequent adult criminal history, some offenses are ineligible for automatic sealing (but eligible for discretionary application sealing) or ineligible for sealing altogether.

Juveniles v. Adults

Juvenile delinquency law, which falls under civil law, is different from adult criminal law in a number of ways, including its terminology; for example, juveniles are "detained" rather than arrested and are found to have engaged in "delinquent," as opposed to "criminal," conduct. While adults are "convicted," juveniles are "adjudicated." While a criminal case can be "dismissed," the same procedure in juvenile court is known as being issued a "non-suit." "Expunction" refers to the elimination of certain adult criminal offenses from an individual's record, while "sealing" refers to a similar procedure for eliminating juvenile delinquency records (there is also an adult procedure to obtain a nondisclosure order, which is also referred to as "sealing" but has a different meaning and results).

Why Is Sealing Important?

Without sealing, individuals who have been involved with the juvenile justice system (even if their cases were ultimately non-suited) have a permanent criminal record with the Department of Public Safety and the FBI. Individuals must therefore report these offenses when asked about criminal history on employment, college and any other applications asking about criminal history. As such, having a juvenile record can create major barriers in applying to college, enlisting in the military, obtaining financial aid, securing housing or other public benefits, or obtaining employment. Although juvenile records are not available to the general public the way adult records are, they are still accessible by a variety of entities, including criminal and juvenile justice agencies, school

districts and schools where the individual involved in the offense attends (TX CRIM PRO Art. 15.27), governmental agencies if the disclosure is authorized by law, DFPS, and any person, agency, or institution having a “legitimate interest” in the matter, if they obtain permission from the court. An unsealed juvenile record can make it difficult for young people to get past youthful mistakes and improve their lives.

Juvenile Records Sealing Eligibility & Statutory Requirements

Terminology: Disposition of a Juvenile Case

The juvenile cases we will be handling will have been disposed (i.e., resolved or closed) either through deferred adjudication, deferred prosecution, or formal adjudication, or through the entering of a non-suit.

- **Non-Suit:** the juvenile is charged, but never tried; the case is disposed without a decision on the merits (i.e., dismissed).
- **Deferred Adjudication:** a petition is filed, but adjudication is deferred while the child is placed on a probationary period (usually six months), the successful completion of which will result in a “non-suit” (i.e., dismissal) and prevent the entry of an “adjudication” order (i.e., conviction).
- **Pre-petition diversion programs (DP 90/180, FIRST), referred to as “deferred prosecution”:** diversion programs for certain offenses offered by DA/probation department. If successfully completed, no charge will be filed and no judgment will be entered; the entire process occurs through the probation department, without court involvement.
- **Formal Adjudication:** the juvenile either pled “true” to engaging in delinquent conduct (i.e., pled guilty) or was tried and found to have engaged in delinquent conduct (i.e., conviction).

Eligibility for Application for Discretionary Sealing

Sec. 58.256 of the Texas Family Code: Application for Sealing Records

(a) the juvenile court **may** order the sealing of records related to all matters for which the person was referred to the juvenile probation department if the person:

- (1) is at least 17 years of age, or is younger than 17 years of age and at least one year has elapsed after the date of final discharge in each matter for which the person was referred to the juvenile probation department;
- (2) does not have any delinquent conduct matters pending with any juvenile probation department or juvenile court;
- (3) was not transferred by a juvenile court to a criminal court for prosecution under [Section 54.02](#);
- (4) has not as an adult been convicted of a felony; and
- (5) does not have any pending charges as an adult for a felony or a misdemeanor punishable by confinement in jail.

Ineligible for Any Sealing 58.256 (d)

- Some juvenile cases are ineligible for sealing and must remain a part of the individual's permanent criminal record.
- Ineligible for sealing if:
 - (1) determinate sentence in conduct listed under Sec. 53.045 (below) or habitual felony conduct as described by 51.031 (below);
 - (2) currently required to register as a sex offender;
 - (3) was committed to TJJD or to a post-adjudication secure correctional facility (unless person was discharged from agency to which they were committed.)
- Conviction and Determinate Sentence of the Following Offenses
 - Tex. Fam. Code § 53.045
 - murder; capital murder; manslaughter; aggravated kidnapping; sexual assault, aggravated sexual assault; aggravated assault; aggravated robbery; felony injury to a child/elderly or disabled individual; felony deadly conduct involving discharging a firearm; certain aggravated or first degree felony controlled substance offense under Chapter 481, Subchapter D of the Texas Health and Safety Code; criminal solicitation; indecency with a child; criminal solicitation of a minor; attempted murder or capital murder; arson if bodily injury or death resulted; intoxication manslaughter; criminal conspiracy to commit the above-listed offenses

- a conviction under one of these offenses may still be eligible for sealing if the adjudication did not result in a *determinate sentence* (a type of special prosecutorial designation)
- Engaging in Habitual Felony Conduct
 - Tex. Fam. Code § 51.031
 - two previous felony final adjudications if the second occurred after the first became final and all appeals have been exhausted

Actions Taken on Receipt of Order to Seal Sec. 58.259

(a) An entity receiving an order to seal the records of a person issued under this subchapter shall, not later than the 61st day after the date of receiving the order, take the following actions, as applicable:

(1) the Department of Public Safety shall:

(A) limit access to the records relating to the person in the juvenile justice information system to only the Texas Juvenile Justice Department for the purpose of conducting research and statistical studies;

(B) destroy any other records relating to the person in the department's possession, including DNA records as provided by [Section 411.151, Government Code](#); and

(C) send written verification of the limitation and destruction of the records to the issuing court;

(2) the Texas Juvenile Justice Department shall:

(A) seal all records relating to the person, other than those exempted from sealing under [Section 58.252](#); and

(B) send written verification of the sealing of the records to the issuing court;

(3) a public or private agency or institution that had custody of or provided supervision or services to the person who is the subject of the records, the juvenile probation department, a law enforcement entity, or a prosecuting attorney shall:

(A) seal all records relating to the person; and

(B) send written verification of the sealing of the records to the issuing court; and

(4) any other entity that receives an order to seal a person's records shall:

(A) send any records relating to the person to the issuing court;

(B) delete all index references to the person's records; and

- (C) send written verification of the deletion of the index references to the issuing court.
- (b) Physical or electronic records are considered sealed if the records are not destroyed but are stored in a manner that allows access to the records only by the custodian of records for the entity possessing the records.
- (c) If an entity that received an order to seal records relating to a person later receives an inquiry about a person or the matter contained in the records, the entity must respond that no records relating to the person or the matter exist.
- (d) If an entity receiving an order to seal records under this subchapter is unable to comply with the order because the information in the order is incorrect or insufficient to allow the entity to identify the records that are subject to the order, the entity shall notify the issuing court not later than the 30th day after the date of receipt of the order. The court shall take any actions necessary and possible to provide the needed information to the entity, including contacting the person who is the subject of the order or the person's attorney.
- (e) If an entity receiving a sealing order under this subchapter has no records related to the person who is the subject of the order, the entity shall provide written verification of that fact to the issuing court not later than the 30th day after the date of receipt of the order.

Effect of Sealing Records Sec. 58.261

- (a) A person whose records have been sealed under this subchapter or under [Section 58.003](#), as that law existed before September 1, 2017, is not required to state **in any proceeding or in any application for employment, licensing, admission, housing, or other public or private benefit that the person has been the subject of a juvenile matter.**
- (b) If a person's records have been sealed, the information in the records, the fact that the records once existed, or the person's denial of the existence of the records or of the person's involvement in a juvenile matter **may not be used against the person in any manner**, including in:
- (1) a perjury prosecution or other criminal proceeding;
 - (2) a civil proceeding, including an administrative proceeding involving a governmental entity;
 - (3) an application process for licensing or certification; or
 - (4) an admission, employment, or housing decision.
- (c) A person who is the subject of the sealed records **may not waive the protected status** of the records or the consequences of the protected status.

Juvenile Records Sealing Procedure: Checklist

1. Review the **Harris County Juvenile Probation Department (HCJPD) Record Sealing Request Form** that is in the physical file you have been given.
2. Contact the client by phone to set up the meeting.
3. Using the information from the sealing form, prepare a draft of the **Application and Proposed Order** for Sealing. Some identifying information will have to be left blank until you meet with the client and get the missing information. (In Templates folder)
4. Prepare an **engagement letter/pro bono agreement**. (In Templates folder)
5. Prepare a draft of the **Client Interview Form** to be completed during client meeting. (In Templates folder)
6. Meet with your client (and a parent or guardian, if client is under 18). When making arrangements for the meeting, make sure to tell them to bring a state issued ID and their Social Security card. If they do not have one or either of these documents you will have to state in the application why these numbers are not being provided. **Complete client interview form**. Have them sign engagement letter/pro bono agreement. Explain process, attendance at hearing, effect of sealing and special discussion if military. **Provide client information handout**. (In Resources – Client folder)
7. Complete drafts of the Application and Proposed Order for each offense your client has, using the information you have obtained during the meeting and from the sealing form(s).
8. Schedule the hearing, file the Application and Proposed Order, and *serve all relevant agencies with the filestamped application*. (Tex. Fam. Code § 58.257.)
9. Attend hearing; after order is granted, *serve all relevant agencies with certified order*. If the client did not attend the hearing, call and email client after the hearing to inform them of the result and send them a scanned copy of the order.

Meeting with the Client

During your client meeting, you have six primary goals:

1. **Explain the engagement letter** and have the client (and parent, if client is under 18) sign the engagement letter.
2. **Complete the client interview form** by obtaining the missing identifying information, discussing the offense(s) with your client to get an understanding of the circumstances under which the offense(s) occurred, and discussing the client's current school/work activities and future goals.
3. **Verify** that you have correctly copied the client's Social Security Number and DL or ID number by checking the original documents.
4. Explain what it will mean to have a sealed record; **give the client a copy of the Client Information Handout.**
 - Explain to the client that the application and order, once it is granted, will be sent to all the state and local agencies that keep these records, and they must remove the records. **Confirm that the arresting agency listed on the sealing form is the one that arrested him or her (if he or she can remember). Make sure to ask which school district the client was attending during the time of the offense, as schools are often notified of delinquency involvement.** Also make sure to ask if there are any other agencies or entities that might know about the offense, for example, another school or, if the client is an adult, any state licensing agencies.
5. Ask if military or immigration issue; discuss addressing those prior to sealing.
6. **Explain the sealing process.** You will want to cover these topics:
 - a. After the meeting, you will complete the application and have it filed with the court.
 - b. You will get a hearing date and let the client know.
 - c. Discuss hearing attendance. Inform the client that we may or may not recommend that they attend the hearing, depending on whether the district attorney chooses to

oppose the sealing, and that we will be able to confirm with them a few days before the hearing whether we think they should attend or not. **If it is a felony adjudication case, tell them it is likely the DA will oppose, so they need to be prepared to attend the hearing.**

- d. After the order is signed and the record is sealed, you will serve the agencies that have knowledge of the offense and **they will have 61 days to comply with the order**; at that point, the record will be officially sealed and the **client can legally say the offense never occurred**, unless it is a federal agency.
- e. It is likely agencies will comply with the order and seal the record as soon as they receive it, but there is no guarantee the record is officially sealed until sixty-one days have passed since the hearing, so it is best to wait.

Filing and Serving the Application and Order

Drafting the Application & Order

1. Using the information from the sealing form and the information you learned from the client during your meeting, draft an Application and Order for each of offense (if your client has more than one) by completing each of the grey-shaded fields with the appropriate information.
 - a. Note: the grey-shaded fields are fillable, which means that if you click once on the grey-shaded field, you will be able type over the field.
2. **Be careful to copy the numbers precisely** (e.g., SSN, cause number, juvenile number, AFIS number, offense number). You can copy and paste from the digital copy of the sealing form onto the application to ensure the numbers are correctly copied.
3. **Remember to include arresting agency, of different from HCSO, and school district that client was attending.**

Scheduling a Hearing Date and Filing the Application and Order

** Procedures continually being updated due to court responses to Coronavirus. Will provide updated materials in class.

Serving the Application & Proposed Order

1. Scan your file-stamped copies of the application and order and use these documents to serve all necessary agencies. **It is important that you follow the specified format for naming the application and order files (client name – document – cause number);** HCSO has specifically requested this format:
 - i. “Last First – Application – 2016-0000J”
 - ii. “Last First – Proposed Order – 2016-0000J”
2. Notify your client of the hearing date.
3. Serve all agencies listed on the application with the scanned copy of the application (and order, when serving the District Attorney; only serve the application to all other agencies) and a personalized cover letter.
 - i. Consult the agency service list to see how each agency accepts service. Almost all will be via email, but some require fax or certified mail service.
 1. **There is no need to serve the first agency, the Harris County District Clerk** (you have already served them by filing the application).

Attending Hearings and Serving the Order

Attending Hearings

** Procedures continually being updated due to court responses to Coronavirus. Most hearings now being held via Zoom. Will provide updated materials and instructions in class.

Serving the Order

1. Scan one of the certified copies of the order (making sure to include the certification stamp as one of the pages, which will be on the back of the last page or signature page) and use this document to electronically serve all relevant agencies. **Again, It is important that you follow the specified format for naming the order file (Client Name – Order – Cause Number)**; this has been specifically requested by the HCSO.
 - i. “Last First – Order – 2016-0000J”
2. If your client did not attend the hearing, email your client to notify them of the results of the hearing and include the scanned copy, if you have it.
3. Serve all agencies listed on the order with a copy of the granted certified order.
 - i. Consult the agency service list to see how each agency you need to serve accepts service. Almost all will be via email, but some require fax or certified mail service.
4. Draft an email to the client closing the case, making sure to mark the date you completed service and the date, so that 61 days from that date the client knows they will legally be able to say they have no record. If the client does not already have a copy of the order(s), include with the email the client’s copy of the order(s).