Texas Foster Youth Justice Project

www.TexasFosterYouth.org

Sealing Juvenile Court Records in Texas

GENERAL INFORMATION

— 2009 EDITION —

Texas C-BAR

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Introduction

A criminal record is a permanent record accessible to any person, agency, or institution having a "legitimate interest" in the matter. Access to a juvenile record, if not sealed or restricted, can become a major barrier to obtaining financial aid, housing, public benefits, educational and licensing opportunities, and various jobs. The reality of living with a criminal past can make it difficult for a person to get past youthful mistakes.

This manual provides useful information for families and attorneys who are unfamiliar with the procedure for sealing juvenile records pursuant to Section 58.003 of the Family Code. It does not provide information regarding expunction, automatic restricted access, or other available protections for limiting access to juvenile records.

This manual does not provide information about municipal court procedures or orders of nondisclosure under Texas Government Code § 411.081.

These materials are not to be used as a substitute for the advice of an attorney. Persons reviewing this manual should not act upon this information without seeking legal counsel.

This manual would not have been possible without the invaluable assistance of the following people: Tran Dang, Baker Botts L.L.P; Brian Brotman, Rutgers University School of Law; and Rebecca Renfro, Attorney at Law, Spring, Texas.

The Texas Foster Youth Justice Project is sponsored by Texas RioGrande Legal Aid with funding from the the Supreme Court of Texas' Permanent Judicial Commission for Children, Youth and Families, and the Texas Equal Access to Justice Foundation.

We would appreciate your comments. Please contact us at info@texascbar.org.

Frequently Asked Questions

What are Juvenile Records?

If you have ever been involved with the juvenile justice system, any documents about that encounter can become part of your **juvenile record**. This record may include:

- Basic information about you (date of birth, address, etc.)
- Records of your arrest or detention and what you were charged with
- Court documents from your trial
- Your sentencing or disposition, including probation
- What programs you were assigned to (treatment programs, schools, etc.)

What Does "Sealing" Mean and Why Should I Do It?

When a juvenile record is "sealed," it's treated like it doesn't exist. You are allowed to deny that anything described in this record ever happened.[1] If a judge, lawyer, or police officer is asked about you, they are required by law to respond as if anything related to your record never existed. It is also removed from the Criminal History Database, so your name will not come up if someone searches for you on it.[2]

If juvenile records are not sealed, anyone with a "legitimate interest" in accessing your records will be able to see them. This often means that potential employers, college admission offices, or landlords can see your arrest record. Getting your record sealed can be an important step in successfully finding a job, going to college, and finding a place to live.

Aren't My Juvenile Records Sealed Automatically?

No. Texas does have a system called "Automatic Restriction of Access to Records," which automatically makes juvenile records harder to access once you turn 21, if you haven't been convicted of anything else since you turned 17. But this **does not seal your records.** Most criminal justice agencies can still access these records, and use them against you if you are charged with a crime as an adult. Also, if you are con-

1 Tex. Fam. Code § 58.003(j).

2 Id. at § 58.003 (g)(4).

victed of, or placed on deferred adjudication for, a crime that is a Class B Misdemeanor or higher after turning 17, your records can be taken off of restricted access.[3]

Automatic Restriction does not apply to determinate sentence adjudications for certain offenses and habitual felony conduct or certifications to criminal court, sex offender registration records, or gang-related records.[4]

Can Any Juvenile Record be Sealed?

No. Records of certain offenses cannot be sealed. You **cannot** seal your juvenile record if:

- You have received a **determinate sentence** adjudication for any of the following offenses:
  - Murder
  - Attempted Murder
  - Manslaughter
  - Sexual Assault
  - Aggravated Assault
  - Aggravated Robbery
  - Causing Injury to a Child, Elderly Person, or Disabled Person
  - Deadly Conduct with a Firearm
  - Possession and/or selling of large amounts of illegal drugs (generally anything more than 200 grams)
  - Criminal Solicitation
  - Indecency with a Child
  - Arson
  - Conspiracy to commit any of the above [5]
- You committed a felony, and your case started in juvenile court but was moved to adult criminal court.[6]
- You have engaged in "habitual felony conduct"[7] for which you received a determinate sentence.[8]
- You are required to register with and report to the Texas Sex Offender Registration Program.

3 Tex. Fam. Code § 58.211.

4 Tex. Fam. Code § 58.202; § 58.203(2) and (3).

5 Id. at § 53.045.

6 Id. at § 54.02.

7 Id. at § 54.04(d)(3).

8 Id. at § 51.031.

If I Successfully Complete a Drug Court Program, Can My Juvenile Records be Sealed?

Yes. A juvenile court may order the records sealed if a juvenile successfully completes a drug program under Chapter 469 of the Health & Safety Code.

How Do I Know if I Received a Determinate Sentence?

Determinate sentencing is reserved for the most serious offenses listed on the previous page. A determinate sentence is a type of "blended" sentence involving rehabilitation at the Texas Youth Commission (TYC) with the possibility of incarceration in the adult penitentiary if a youth is unsuccessful or uncooperative at TYC. If your offense is on the list, you will need an attorney to review your juvenile court file to determine whether your juvenile records can be sealed.

How Do I Know if I was Convicted of a Felony or a Misdemeanor?

A **felony** is a more serious offense, usually punishable by confinement in a penitentiary for adults.[9] Less serious offenses are called **misdemeanors**.[10]

How Do I Know if I Have Engaged in "Habitual Felony Conduct?"

A person is considered to have engaged in "habitual felony conduct" if he or she has been adjudicated of at least three separate felonies, other than a state jail felony.[11]

How Do I Seal My Juvenile Record?

You first have to file an **Application for Sealing of Files and Records** in a juvenile court in the same county where the original proceedings took place.[12] Every question on the application should be answered completely. If you can't answer a question, you must explain why the information is missing.[13] A sample of the application is included in this manual. You should call the juvenile probation department of the county to see if they have a form they use.

9 Tex. Penal Code § 1.07(23).

10 Id. at § 1.07(31).

11 Id. at § 51.031(a).

12 Tex. Fam. Code § 58.003(p).

13 Id.

After the court receives the application, a judge will decide whether or not your juvenile record should be sealed. The judge does not have to hold a hearing if you waive the right to a hearing in writing and the court and the prosecution consent.[14] If the judge decides to seal your record, they will issue an **Order for Sealing of Files and Records.**

- **If you are found not guilty at your adjudication hearing, or the matter was dismissed, the court should have immediately ordered all files and records sealed.**[15]

- **If you successfully completed a drug court program, the juvenile court may order your records of either a misdemeanor or felony offense sealed immediately.**

- **If your juvenile offense was a misdemeanor, a court MUST seal your record if:**
    * It has been two years since your final discharge from the juvenile system, and
    * During those two years, you have not been convicted or adjudicated of anything else, and no charges are pending against you.[16]

- **If your juvenile offense was a felony, the court does not have to seal your record, but it MAY seal it only if:**
    * You are 21 years of age or older; AND
    * You have not been convicted of another felony after turning 17.

How Long Will it Take to Seal My Juvenile Record?

After a judge orders a juvenile record sealed, any agency or official who has a copy of the record must send it back to the court by the 61st day after the date the order is received.[17]

14 HB No. 2386 eff. September 1, 2009.

15 Id. at § 58.003(d) and 58.001(c).

16 Id. at § 58.003(a).

17 Id. at § 58.003(g).

How Long Do I Have to Seal My Juvenile Record?

There is no time limit on sealing your record. But to get the maximum benefit you should seal it as soon as possible.

Can My Sealed Juvenile File Ever be Unsealed?

Yes. There are three ways your file can be unsealed, after approval from the juvenile court.

1. You can request to inspect your own sealed records.[18]
2. If your sealed record contains a felony, and you are later on trial for another felony, the prosecutor can request that the record be unsealed.[19]
3. The Department of Public Safety can request to inspect sealed files if you apply for a license to carry a concealed handgun.[20]

How Do I Know if My Juvenile File is Sealed?

A person can request records from the agencies that the court ordered to seal the records. This step is useful to determine whether the process worked.

18 Tex. Fam. Code § 58.003(h).

19 Tex. Fam. Code § 58.003(k);
See also Tex. Penal Code § 12.42(a)-(c).

20 Tex. Fam. Code § 58.003(m).

Information Checklist

CONTACT INFORMATION	
Juvenile's Full Name:	
Address:	
Phone Number:	
Parent or Legal Guardian:	
Address (if different):	
Phone Number (if different):	
IDENTIFIERS	
Sex:	
Date of Birth:	
Social Security Number:	
Driver's License (if available):	
Identification Card Number:	
Other (i.e., Juvenile, CJIS):	
INFORMATION RELATED TO OFFENSE	
Description:	
Date:	
County:	
Offense Report Number:	
Agency Involved:	
Arrest (if applicable):	
Date:	
Location:	
Arresting Agency:	
CASE INFORMATION	
Court:	
District/County:	
Petition or Cause Number:	
Charged Offense and Degree:	
Date Juvenile Eligible for Sealing:	
Drug Court Program Completed:	

Sample Forms

Application for Sealing Files and Records (Felony) 14

Application for Sealing Files and Records (Misdemeanor) 19

Order Sealing Files and Records 24

Source: State Bar of Texas, Juvenile Law Section

CAUSE NO. _____

IN THE MATTER OF	**§**	**IN THE DISTRICT COURT**
	§	
	§	**_____ JUDICIAL DISTRICT**
	§	
_____	**§**	**_____ COUNTY, TEXAS**

APPLICATION FOR SEALING FILES AND RECORDS (felony)

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, _____, by and through his attorney of record and files this his Petition for Sealing Files and Records pursuant to Section 58.003 of the Texas Family Code would respectfully show the court as follows:

I.

Applicant has the following identifying information:

Name:
D.O.B.
Sex:
Race:
SSN:
TDL:
Address:
Offense:
Date of Offense:
Location of Offense:
Cause No. of Juvenile File:
Court and County Petition Filed:

II.

(*Facts of the Case)*

Applicant was charged with the felony offense(s) of _____. He was not transferred to a criminal court for prosecution pursuant to Section 54.02 of the Texas Family Code. He was placed on juvenile probation for a period of _____ months on (date). He successfully completed probation on _____. Applicant did not receive a determinate sentence for engaging in delinquent conduct that violated a penal law listed in Section 53.045 of the Texas Family Code or engaging in habitual felony conduct as described by Section 51.031 of the Texas Family Code. Or Applicant successfully completed a drug court program under Chapter 469 of the Texas Health and Safety Code.

III.

(Agencies and officials to serve, notice sent certified mail, return receipt requested by the clerk of the court. Reasonable notice of the hearing is required in Section 58.003(e). Make sure that the addresses are correct and you have the custodian of records identified.)

The Applicant has reason to believe that the files and records relating to the Applicant are held by the following officials and agencies:

1. Police Department
2. Probation Department
3. District or County Attorney (prosecuting attorney)
4. Texas Department of Public Safety
   Crime Records Department (MSC 0234)
   P.O. Box 4143
   Austin, Texas 78765-4143
5. District Clerk's Office
6. School(s) *if applicable*
7. Juvenile Justice Information System
8. Agency granting the discharge if the final discharge was from an institution or from parole
9. Other (State Hospitals, Placements, Treatment Providers, Texas Youth Commission, etc.)

10. Federal Bureau of Investigation NICS
    Attention: Expunction Unit
    P.O. Box 4278
    Clarksburg, West Virginia 26302
11. The local FBI field office, www.fbi.gov/contact/fo/fo.htm

IV.

(Reasons for Sealing Section 58.003(b) and (c))

The Applicant would request this court seal his files and records for the following reasons:

1. Applicant is 21 years of age or older;
2. He was not transferred by a juvenile court under Section 54.02 to a criminal court for prosecution;
3. The records have not been used as evidence in the punishment phase of a criminal proceeding under Article 37.07(3)(a) of the Texas Code of Criminal Procedure; and,
4. Applicant has not been convicted of a felony since becoming 17 years of age.

OR:

1. Applicant has successfully completed a drug court program under Chapter 469 of the Texas Health and Safety Code.

WHEREFORE, Applicant requests that the Court:

1. Set this matter for hearing;
2. Give reasonable notice of the hearing to each agency and official named in Section III of this Application pursuant to Section 58.003(e) of the Texas Family Code;
3. After hearing this matter order each official and agency named as possessing records or files concerning the Applicant to:
    a. send all files and records to the court before the 61st day after receiving the order;
    b. delete all index references to the Applicant and the records ordered sealed;

c. send verification to the court in the manner attached;
d. reply, upon inquiry, that no such record exists with respect to the Applicant;

4. Order the (*charging agency usually the police department*) to contact the Federal Bureau of Investigation's Criminal Justice Center in West Virginia requesting that they remove their records with respect to Applicant;
5. Order the clerk of court to send a copy of the sealing order to each agency named in the order;
6. Order the proceeding dismissed and order it to be treated for all purposes, other than a subsequent capital prosecution, as if it had never occurred.

Respectfully submitted,

_____
Applicant Signature

FIAT

The foregoing Application is set for hearing before the District Judge on the _____ day of _____, 200_ at _____ o'clock ___m. in the courtroom of the _____ District Court, _____.

_____
Judge Presiding

VERIFICATION

COUNTY OF _____

STATE OF TEXAS

BEFORE ME, the undersigned authority, on this day personally appeared, _____, who after being duly sworn stated:
I am the Applicant who is the subject of the foregoing Application for Sealing Files

and Records. I have read the Application and swear that all of the allegations of fact contained therein are true and correct. I am 21 years of age or older. I was not transferred by a juvenile court under Section 54.02 to a criminal court for prosecution. The records have not been used as evidence in the punishment phase of a criminal proceeding under Article 37.07(3)(a) of the Texas Code of Criminal Procedure. I have not been convicted of a felony since becoming 17 years of age. Or, I have successfully completed a drug court program under Chapter 469 of the Texas Health and Safety Code.

_____

Applicant Signature

SUBSCRIBED AND SWORN TO BEFORE ME on the _____ day of _____ 200_.

_____

Notary Public in and for the State of Texas

My Commission Expires:

_____

Printed Name of Notary

CAUSE NO. _____

IN THE MATTER OF	**§**	**IN THE DISTRICT COURT**
	§	
	§	**_____ JUDICIAL DISTRICT**
	§	
_____	**§**	**_____ COUNTY, TEXAS**

APPLICATION FOR SEALING FILES AND RECORDS (misdemeanor)

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, _____, by and through his attorney of record and files this his Petition for Sealing Files and Records pursuant to Section 58.003 of the Texas Family Code would respectfully show the court as follows:

I.

Applicant has the following identifying information:

Name:
D.O.B.
Sex:
Race:
SSN:
TDL:
Address:
Offense:
Date of Offense:
Location of Offense:
Cause No. of Juvenile File:
Court and County Petition Filed:

II.

A. (*Facts of the Case-Adjudication)*

Applicant was placed on probation for the misdemeanor offense(s) of _____ on ___(date)___ for a period of _____ months.

He successfully completed probation on _____. More than two years have elapsed since the final discharge of Applicant from probation. Or, Applicant successfully completed a drug court program under Chapter 469 of the Texas Health and Safety Code.

B. (Facts of the Case-No Adjudication)

The State filed an Original Petition on (date) alleging that Applicant engaged in delinquent conduct, specifically by committing the offense of _____. The State filed a Motion for Non-suit of its Petition and such Non-suit was granted on _____, which was the last official action in this cause. There was no adjudication of delinquent conduct in this cause.

III.

(Agencies and officials to serve, notice sent certified mail, return receipt requested by the clerk of the court. Reasonable notice of the hearing is required in Section 58.003(e). Make sure that the addresses are correct and you have the custodian of records identified).

The Applicant has reason to believe that the files and records relating to the Applicant are held by the following officials and agencies:

1. Police Department
2. Probation Department
3. District or County Attorney (prosecuting attorney)
4. Texas Department of Public Safety
   Crime Records Department (MSC 0234)
   P.O. Box 4143
   Austin, Texas 78765-4143
5. District Clerk's Office
6. School(s)

7. Federal Bureau of Investigation NICS
   Attention: Expunction Unit
   P.O. Box 4278
   Clarksburg, West Virginia 26302
8. The local FBI field office, www.fbi.gov/contact/fo/fo.htm
9. Juvenile Justice Information System
10. Agency granting the discharge if the final discharge was from an institution
11. Other (State Hospitals, Placements, Treatment Providers, etc.)

IV.

(Reasons for Sealing)

A. Adjudication Section 58.003(a)

The Applicant would show he is entitled to have all files and records concerning the case sealed for the following reasons:

1. two years have elapsed since his final discharge from probation; and,
2. since his final discharge, he has not been convicted of a felony or a misdemeanor involving moral turpitude or found to have engaged in delinquent conduct or conduct indicating a need for supervision and no proceeding is pending seeking conviction or adjudication.

OR:

1. applicant has successfully completed a drug court program under Chapter 469 of the Texas Health and Safety Code.

B. No Adjudication Section 58.003(a) and Section 58.003(d)

The Applicant would show he is entitled to have all files and records concerning the case sealed for the following reasons:

1. there was no adjudication before the last official action in the case; and,
2. since the last official action, he has not been convicted of a felony or a misdemeanor involving moral turpitude or found to have engaged in delinquent conduct or conduct indicating a need for supervision and no proceeding is pending seeking conviction or adjudication.

WHEREFORE, Applicant requests that the Court:

1. Set this matter for hearing;
2. Give reasonable notice of the hearing to each agency and official named in Section III of this Application pursuant to Section 58.003(e) of the Texas Family Code;
3. After hearing this matter order each official and agency named as possessing records or files concerning the Applicant to:
   a. send all files and records to the court before the 61st day after receiving the order;
   a. delete all index references to the Applicant and the records ordered sealed;
   a. send verification to the court in the manner attached;
   a. reply, upon inquiry, that no such record exists with respect to the Applicant;
4. Order the (*charging agency usually the police department*) to contact the Federal Bureau of Investigation's Criminal Justice Center in West Virginia requesting that they remove their records with respect to Applicant;
5. Order the clerk of court to send a copy of the sealing order to each agency named in the order;
6. Order the proceeding dismissed and order it to be treated for all purposes, other than a subsequent capital prosecution, as if it had never occurred.

Respectfully submitted,

_____

Applicant Signature

FIAT

The foregoing Application is set for hearing before the District Judge on the _____ day of _____, 200_ at _____ o'clock ___m. in the courtroom of the _____ District Court, _____.

_____

Judge Presiding

VERIFICATION

COUNTY OF _____
STATE OF TEXAS

BEFORE ME, the undersigned authority, on this day personally appeared, _____, who after being duly sworn stated:

I am the Applicant who is the subject of the foregoing Application for Sealing Files and Records. I have read the Application and swear that all of the allegations of fact contained therein are true and correct. Two years have elapsed since (***my final discharge from probation or the last official action in this cause***) and I have not been convicted of a felony or a misdemeanor involving moral turpitude or found to have engaged in delinquent conduct or conduct indicating a need for supervision and no proceeding is pending against me seeking conviction or adjudication. Or, I have successfully completed a drug court program under Chapter 469 of the Texas Health and Safety Code.

_____
Applicant Signature

SUBSCRIBED AND SWORN TO BEFORE ME on the _____ day of _____ 200_.

_____
Notary Public in and for the State of Texas

My Commission Expires:

_____
Printed Name of Notary

CAUSE NO. _____

IN THE MATTER OF	**§**	**IN THE DISTRICT COURT**
	§	
	§	**_____ JUDICIAL DISTRICT**
	§	
_____	**§**	**_____ COUNTY, TEXAS**

ORDER SEALING FILES AND RECORDS

On the ____ day of _____ 200__, came on to be heard the Application for Sealing Files and Records filed in the above numbered and styled cause. The Applicant appeared in person, represented by counsel, _____ *(other parties who appeared).* All parties announced ready for trial.

WHEREUPON, the Court inquired into the merits of said Application and after reviewing the documents filed herein, and after hearing and recording the evidence, and hearing the argument of counsel, the Court is of the opinion that in the best interest and welfare of the Applicant, the Application should be granted.

IT IS ORDERED the files and records regarding the following juvenile be sealed.
Name:
D.O.B.
Sex:
Race:
SSN:
TDL:
Address:
Offense:
Date of Offense:
Location of Offense:
Cause No. of Juvenile File:
Court and County Petition Filed:
Drug Court Program Completed:

IT IS FURTHER ORDERED

1. Each agency listed in Section 9 below, with the exception of _____ *(for example schools or hospitals or any agency you do not want to completely delete all references to your client.)* shall send to this Court all files and records relating to Applicant before the 61st day after receiving this Order.
2. Each agency listed in Section 9 below, with the exception of _____, shall delete all index references to Applicant and send to this Court a completed Agency Verification Form which is attached before the 61st day after receiving this Order.
3. Each agency or official listed in Section 9 below, with the exception of _____, shall reply upon inquiry that "**No record exists**" with respect to Applicant.
4. _____ *(for example schools or hospitals, etc.)* shall send to this Court before the 61st day after receiving this Order all files and records relating to Applicant and any delinquent conduct or conduct indicating a need for supervision as defined in Section 51.03 of the Texas Family Code.
5. _____ shall delete all index references to Applicant and any delinquent conduct or conduct indicating a need for supervision as defined in Section 51.03 of the Texas Family Code and send to this Court a completed Agency Verification Form which is attached before the 61st day after receiving this Order.
6. _____ shall reply upon inquiry that "**No record exists**" with respect to any conduct by Applicant that would be considered delinquent conduct or conduct indicating a need for supervision as defined in Section 51.03 of the Texas Family Code.
7. Any agency or official that cannot send the records or delete index references because there is incorrect or insufficient information in the Order shall notify this Court before the 61st day after receiving this Order. The Court shall notify the Applicant or his attorney before the 61st day after the date this Court receives the notice that the agency or official cannot seal the records or delete index references because there is incorrect or insufficient information in the Order.

8. The (*charging agency usually the police department*) shall contact the Federal Bureau of Investigation's Criminal Justice Center in West Virginia requesting that they remove their records with respect to Applicant;
9. The clerk shall send a certified copy of this Order to the following:
   A. Police Department
   B. Probation Department
   C. District or County Attorney (prosecuting attorney)
   D. Texas Department of Public Safety
   E. District Clerk's Office
   F. School(s)
   G. Federal Bureau of Investigations
   H. Agency granting the discharge if the final discharge was from an institution or from parole
   I. Other (State Hospitals, Placements, Treatment Providers, Texas Youth Commission, etc.)

10. The proceeding of Cause No. JD-_____ is dismissed and it is to be treated for all purposes, other than a subsequent capital prosecution, as if it had never occurred.

Signed the _____ day of _____ 200__.

_____

JUDGE PRESIDING

Useful Contacts

Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765
Phone (512) 424-6130
http://www.tyc.state.tx.us

Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773
Phone (512) 424-2000
http://www.txdps.state.tx.us

Texas Juvenile Probation Commission
P.O. Box 4260
Austin, Texas 78711
Phone (512) 424-6700
http://www.tjpc.state.tx.us

Texas Education Agency
1701 N. Congress Avenue
Austin, Texas, 78701
Phone (512) 463-9734
http://www.tea.state.tx.us

State Bar of Texas, Juvenile Law Section
P.O. Box 12487
Austin, Texas 78711
Phone (512) 424-6710
http://www.juvenilelaw.org

Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711
Phone (512) 206-3333
http://www.tabc.state.tx.us

Office of the Attorney General
P.O. Box 12548
Austin, TX 78711
Phone (512) 463-2100
http://www.oag.state.tx.us

Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714
Phone (512) 458-7111
http://www.dshs.state.tx.us

Notes:

Sealing Juvenile Court Records in Texas

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Texas Foster Youth Justice Project
web: www.texasfosteryouth.org

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