

By: White

H.B. No. 2863

A BILL TO BE ENTITLED

AN ACT

relating to confidentiality, sharing, sealing, and destruction of juvenile records.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 54.04(h), Family Code, is amended to read as follows:

(h) At the conclusion of the dispositional hearing, the court shall inform the child of:

(1) the child's right to appeal, as required by Section 56.01; and

(2) the procedures for the sealing of the child's records under Subchapter C-1, Chapter 58 [~~Section 58.003~~].

SECTION 2. Section 54.04012(d), Family Code, is amended to read as follows:

(d) Following a child's successful completion of the program, the court may order the sealing of the records of the case in the manner provided by Subchapter C-1, Chapter 58 [~~Sections 58.003(c-7) and (c-8)~~].

SECTION 3. The heading to Subchapter A, Chapter 58, Family Code, is amended to read as follows:

SUBCHAPTER A. CREATION AND CONFIDENTIALITY OF JUVENILE RECORDS

SECTION 4. The heading to Section 58.001, Family Code, is amended to read as follows:

Sec. 58.001. LAW ENFORCEMENT COLLECTION AND TRANSMITTAL OF

1 RECORDS OF CHILDREN.

2 SECTION 5. Sections 58.002(a), (b), and (c), Family Code,
3 are amended to read as follows:

4 (a) Except as provided by Chapter 63, Code of Criminal
5 Procedure, a child may not be photographed or fingerprinted without
6 the consent of the juvenile court unless the child is:

7 (1) taken into custody; or

8 (2) referred to the juvenile court for conduct that
9 constitutes a felony or a misdemeanor punishable by confinement in
10 jail, regardless of whether the child has been taken into custody.

11 (b) On or before December 31 of each year, the head of each
12 municipal or county law enforcement agency located in a county
13 shall certify to the juvenile board for that county that the
14 photographs and fingerprints required to be destroyed under Section
15 58.001 have been destroyed. The juvenile board may [~~shall~~] conduct
16 or cause to be conducted an audit of the records of the law
17 enforcement agency to verify the destruction of the photographs and
18 fingerprints and the law enforcement agency shall make its records
19 available for this purpose. If the audit shows that the
20 certification provided by the head of the law enforcement agency is
21 false, that person is subject to prosecution for perjury under
22 Chapter 37, Penal Code.

23 (c) This section does not prohibit a law enforcement officer
24 from photographing or fingerprinting a child who is not in custody
25 and who has been referred to the juvenile court for conduct other
26 than conduct that constitutes a felony or misdemeanor punishable by
27 confinement in jail if the child's parent or guardian voluntarily

1 consents in writing to the photographing or fingerprinting of the
2 child. Consent of the child's parent or guardian is not required to
3 photograph or fingerprint a child described by Subsection (a)(1) or
4 (2).

5 SECTION 6. Section 58.0021(b), Family Code, is amended to
6 read as follows:

7 (b) A law enforcement officer may take temporary custody of
8 a child to take the child's photograph, or may obtain a photograph
9 of a child from a juvenile probation department in possession of a
10 photograph of the child, if:

11 (1) the officer has probable cause to believe that the
12 child has engaged in delinquent conduct; and

13 (2) the officer has probable cause to believe that the
14 child's photograph will be of material assistance in the
15 investigation of that conduct.

16 SECTION 7. Section 58.004, Family Code, is amended to read
17 as follows:

18 Sec. 58.004. REDACTION OF VICTIM'S PERSONALLY IDENTIFIABLE
19 INFORMATION. (a) Notwithstanding any other law, before disclosing
20 any juvenile court record [~~or file~~] of a child as authorized by this
21 chapter or other law, the custodian of the record [~~or file~~] must
22 redact any personally identifiable information about a victim of
23 the child's delinquent conduct or conduct indicating a need for
24 supervision who was under 18 years of age on the date the conduct
25 occurred.

26 (b) This section does not apply to information that is:

27 (1) necessary for an agency to provide services to the

1 victim;

2 (2) necessary for law enforcement purposes; ~~[or]~~

3 (3) shared within the statewide juvenile information
4 and case management system established under Subchapter E;

5 (4) shared with an attorney representing the child in
6 a proceeding under this title; or

7 (5) shared with an attorney representing any other
8 person in a juvenile or criminal court proceeding arising from the
9 same act or conduct for which the child was referred to juvenile
10 court.

11 SECTION 8. Section 58.005, Family Code, is amended to read
12 as follows:

13 Sec. 58.005. CONFIDENTIALITY OF FACILITY RECORDS. (a)
14 This section applies only to the inspection, copying, and
15 maintenance of a record ~~[Records and files]~~ concerning a child and
16 to the storage of information from which a record could be
17 generated, including personally identifiable information, ~~[and]~~
18 information obtained for the purpose of diagnosis, examination,
19 evaluation, or treatment of the child or for making a referral for
20 treatment of the ~~[a]~~ child, and other records or information,
21 created by or in the possession of:

22 (1) the Texas Juvenile Justice Department;

23 (2) an entity having custody of the child under a
24 contract with the Texas Juvenile Justice Department; or

25 (3) another ~~[by a]~~ public or private agency or
26 institution ~~[providing supervision of a child by arrangement of the~~
27 ~~juvenile court or]~~ having custody of the child under order of the

1 juvenile court, including a facility operated by or under contract
2 with a juvenile board or juvenile probation department.

3 (a-1) Except as provided by Article 15.27, Code of Criminal
4 Procedure, the records and information to which this section
5 applies may be disclosed only to:

6 (1) the professional staff or consultants of the
7 agency or institution;

8 (2) the judge, probation officers, and professional
9 staff or consultants of the juvenile court;

10 (3) an attorney for the child;

11 (4) a governmental agency if the disclosure is
12 required or authorized by law;

13 (5) a person or entity to whom the child is referred
14 for treatment or services if the agency or institution disclosing
15 the information has entered into a written confidentiality
16 agreement with the person or entity regarding the protection of the
17 disclosed information;

18 (6) the Texas Department of Criminal Justice and the
19 Texas Juvenile Justice Department for the purpose of maintaining
20 statistical records of recidivism and for diagnosis and
21 classification; or

22 (7) with permission from ~~[leave of]~~ the juvenile
23 court, any other person, agency, or institution having a legitimate
24 interest in the proceeding or in the work of the court.

25 (b) This section does not affect the collection,
26 dissemination, or maintenance of information as provided by
27 Subchapter B or ~~[apply to information collected under Section~~

1 ~~58.104 or under~~] Subchapter D-1.

2 SECTION 9. Section 58.0052(b), Family Code, is amended to
3 read as follows:

4 (b) Subject to Subsection (c), at ~~At~~ the request of a
5 juvenile service provider, another juvenile service provider shall
6 disclose to that provider a multi-system youth's personal health
7 information or a history of governmental services provided to the
8 multi-system youth, including:

- 9 (1) identity records;
- 10 (2) medical and dental records;
- 11 (3) assessment or diagnostic test results;
- 12 (4) special needs;
- 13 (5) program placements; ~~and~~
- 14 (6) psychological diagnoses; and
- 15 (7) other related records or information.

16 SECTION 10. The heading to Section 58.007, Family Code, is
17 amended to read as follows:

18 Sec. 58.007. CONFIDENTIALITY OF PROBATION DEPARTMENT,
19 PROSECUTOR, AND COURT ~~PHYSICAL~~ RECORDS ~~OR FILES~~.

20 SECTION 11. Section 58.007, Family Code, is amended by
21 amending Subsections (a), (b), (g), and (i) and adding Subsection
22 (b-1) to read as follows:

23 (a) This section applies only to the inspection, copying,
24 and maintenance of a ~~physical~~ record ~~or file~~ concerning a child
25 and the storage of information, by electronic means or otherwise,
26 concerning the child from which a physical record or file could be
27 generated and does not affect the collection, dissemination, or

1 maintenance of information as provided by Subchapter B or
2 Subchapter D-1. This section does not apply to a record [~~or file~~]
3 relating to a child that is:

4 (1) required or authorized to be maintained under the
5 laws regulating the operation of motor vehicles in this state;

6 (2) maintained by a municipal or justice court; or

7 (3) subject to disclosure under Chapter 62, Code of
8 Criminal Procedure.

9 (b) Except as provided by Section 54.051(d-1) and by Article
10 15.27, Code of Criminal Procedure, the records, whether physical or
11 electronic, [~~and files~~] of a juvenile court, a clerk of court, a
12 juvenile probation department, or a prosecuting attorney relating
13 to a child who is a party to a proceeding under this title may be
14 inspected or copied only by:

15 (1) the judge, probation officers, and professional
16 staff or consultants of the juvenile court;

17 (2) a juvenile justice agency as that term is defined
18 by Section 58.101;

19 (3) an attorney representing [~~for~~] a party in a [~~to~~
20 ~~the~~] proceeding under this title;

21 (4) a person or entity to whom the child is referred
22 for treatment or services, if the agency or institution disclosing
23 the information has entered into a written confidentiality
24 agreement with the person or entity regarding the protection of the
25 disclosed information;

26 (5) a public or private agency or institution
27 providing supervision of the child by arrangement of the juvenile

1 court, or having custody of the child under juvenile court order; or
2 (6) [~~(5)~~] with permission from [~~leave of~~] the juvenile
3 court, any other person, agency, or institution having a legitimate
4 interest in the proceeding or in the work of the court.

5 (b-1) A person who is the subject of the records is entitled
6 to access the records for the purpose of preparing and presenting a
7 motion or application to seal the records.

8 (g) For the purpose of offering a record as evidence in the
9 punishment phase of a criminal proceeding, a prosecuting attorney
10 may obtain the record of a defendant's adjudication that is
11 admissible under Section 3(a), Article 37.07, Code of Criminal
12 Procedure, by submitting a request for the record to the juvenile
13 court that made the adjudication. If a court receives a request
14 from a prosecuting attorney under this subsection, the court shall,
15 if the court possesses the requested record of adjudication,
16 certify and provide the prosecuting attorney with a copy of the
17 record. If a record has been sealed under Subchapter C-1, the
18 juvenile court may not provide a copy of the record to a prosecuting
19 attorney under this subsection.

20 (i) In addition to the authority to release information
21 under Subsection (b)(6) [~~(b)(5)~~], a juvenile probation department
22 may release information contained in its records without leave of
23 the juvenile court pursuant to guidelines adopted by the juvenile
24 board.

25 SECTION 12. Subchapter A, Chapter 58, Family Code, is
26 amended by adding Section 58.008 to read as follows:

27 Sec. 58.008. CONFIDENTIALITY OF LAW ENFORCEMENT RECORDS.

1 (a) This section applies only to the inspection, copying, and
2 maintenance of a record concerning a child and to the storage of
3 information, by electronic means or otherwise, concerning the child
4 from which a record could be generated and does not affect the
5 collection, dissemination, or maintenance of information as
6 provided by Subchapter B. This section does not apply to a record
7 or file relating to a child that is:

8 (1) required or authorized to be maintained under the
9 laws regulating the operation of motor vehicles in this state;

10 (2) maintained by a municipal or justice court; or

11 (3) subject to disclosure under Chapter 62, Code of
12 Criminal Procedure.

13 (b) Except as provided by Subsection (d), law enforcement
14 records concerning a child and information concerning a child that
15 are stored by electronic means or otherwise and from which a record
16 could be generated may not be disclosed to the public and shall be:

17 (1) if maintained on paper or microfilm, kept separate
18 from adult records;

19 (2) if maintained electronically in the same computer
20 system as adult records, accessible only under controls that are
21 separate and distinct from the controls to access electronic data
22 concerning adults; and

23 (3) maintained on a local basis only and not sent to a
24 central state or federal depository, except as provided by
25 Subsection (c) or Subchapter B, D, or E.

26 (c) The law enforcement records of a person with a
27 determinate sentence who is transferred to the Texas Department of

1 Criminal Justice may be transferred to a central state or federal
2 depository for adult records after the date of transfer and may be
3 shared in accordance with the laws governing the adult records in
4 the depository.

5 (d) Law enforcement records concerning a child may be
6 inspected or copied by:

7 (1) a juvenile justice agency, as defined by Section
8 58.101;

9 (2) a criminal justice agency, as defined by Section
10 411.082, Government Code;

11 (3) the child; or

12 (4) the child's parent or guardian.

13 (e) Before a child or a child's parent or guardian may
14 inspect or copy a record concerning the child under Subsection (d),
15 the custodian of the record shall redact:

16 (1) any personally identifiable information about a
17 juvenile suspect, offender, victim, or witness who is not the
18 child; and

19 (2) any information that is excepted from required
20 disclosure under Chapter 552, Government Code, or any other law.

21 (f) If a child has been reported missing by a parent,
22 guardian, or conservator of that child, information about the child
23 may be forwarded to and disseminated by the Texas Crime Information
24 Center and the National Crime Information Center.

25 SECTION 13. Section 58.0072, Family Code, is redesignated
26 as Section 58.009, Family Code, and amended to read as follows:

27 Sec. 58.009 [~~58.0072~~]. DISSEMINATION OF JUVENILE JUSTICE

1 INFORMATION BY THE TEXAS JUVENILE JUSTICE DEPARTMENT. (a) Except
2 as provided by this section, juvenile justice information collected
3 and maintained by the Texas Juvenile Justice Department for
4 statistical and research purposes is confidential information for
5 the use of the department and may not be disseminated by the
6 department.

7 (b) Juvenile justice information consists of information of
8 the type described by Section 58.104, including statistical data in
9 any form or medium collected, maintained, or submitted to the Texas
10 Juvenile Justice Department under Section 221.007, Human Resources
11 Code.

12 (c) The Texas Juvenile Justice Department may grant the
13 following entities access to juvenile justice information for
14 research and statistical purposes or for any other purpose approved
15 by the department:

16 (1) criminal justice agencies as defined by Section
17 411.082, Government Code;

18 (2) the Texas Education Agency, as authorized under
19 Section 37.084, Education Code;

20 (3) any agency under the authority of the Health and
21 Human Services Commission; or

22 (4) a public or private university.

23 (d) The Texas Juvenile Justice Department may grant the
24 following entities access to juvenile justice information only for
25 a purpose beneficial to and approved by the department to:

26 (1) a person working on a research or statistical
27 project that:

1 (A) is funded in whole or in part by state or
2 federal funds; and

3 (B) meets the requirements of and is approved by
4 the department; or

5 (2) a person working on a research or statistical
6 project that:

7 (A) meets the requirements of and is approved by
8 the department; and

9 (B) [~~governmental entity that~~] has a specific
10 agreement with the department that [~~, if the agreement~~]:

11 (i) [~~(A)~~] specifically authorizes access
12 to information;

13 (ii) [~~(B)~~] limits the use of information to
14 the purposes for which the information is given;

15 (iii) [~~(C)~~] ensures the security and
16 confidentiality of the information; and

17 (iv) [~~(D)~~] provides for sanctions if a
18 requirement imposed under Subparagraph (i), (ii), or (iii)
19 [~~Paragraph (A), (B), or (C)~~] is violated.

20 (e) The Texas Juvenile Justice Department shall grant
21 access to juvenile justice information for legislative purposes
22 under Section [552.008](#), Government Code.

23 (f) The Texas Juvenile Justice Department may not release
24 juvenile justice information in identifiable form, except for
25 information released under Subsection (c)(1), (2), or (3) or under
26 the terms of an agreement entered into under Subsection (d)(2). For
27 purposes of this subsection, identifiable information means

1 information that contains a juvenile offender's name or other
2 personal identifiers or that can, by virtue of sample size or other
3 factors, be reasonably interpreted as referring to a particular
4 juvenile offender.

5 ~~[(g) The Texas Juvenile Justice Department is not required~~
6 ~~to release or disclose juvenile justice information to any person~~
7 ~~not identified under this section.]~~

8 SECTION 14. Section 58.102(c), Family Code, is amended to
9 read as follows:

10 (c) The department may not collect, ~~[or]~~ retain, or share
11 information relating to a juvenile except as provided by ~~[if]~~ this
12 chapter ~~[prohibits or restricts the collection or retention of the~~
13 ~~information]~~.

14 SECTION 15. Sections 58.104(a), (b), and (f), Family Code,
15 are amended to read as follows:

16 (a) Subject to Subsection (f), the juvenile justice
17 information system shall consist of information relating to
18 delinquent conduct committed or alleged to have been committed by a
19 juvenile offender that, if the conduct had been committed by an
20 adult, would constitute a criminal offense other than an offense
21 punishable by a fine only, including information relating to:

- 22 (1) the juvenile offender;
- 23 (2) the intake or referral of the juvenile offender
24 into the juvenile justice system;
- 25 (3) the detention of the juvenile offender;
- 26 (4) the prosecution of the juvenile offender;
- 27 (5) the disposition of the juvenile offender's case,

1 including the name and description of any program to which the
2 juvenile offender is referred; ~~and~~

3 (6) the probation or commitment of the juvenile
4 offender; and

5 (7) the termination of probation supervision or
6 discharge from commitment of the juvenile offender.

7 (b) To the extent possible and subject to Subsection (a),
8 the department shall include in the juvenile justice information
9 system the following information for each juvenile offender taken
10 into custody, detained, or referred under this title for delinquent
11 conduct:

12 (1) the juvenile offender's name, including other
13 names by which the juvenile offender is known;

14 (2) the juvenile offender's date and place of birth;

15 (3) the juvenile offender's physical description,
16 including sex, weight, height, race, ethnicity, eye color, hair
17 color, scars, marks, and tattoos;

18 (4) the juvenile offender's state identification
19 number, and other identifying information, as determined by the
20 department;

21 (5) the juvenile offender's fingerprints;

22 (6) the juvenile offender's last known residential
23 address, including the census tract number designation for the
24 address;

25 (7) the name and identifying number of the agency that
26 took into custody or detained the juvenile offender;

27 (8) the date of detention or custody;

1 (9) the conduct for which the juvenile offender was
2 taken into custody, detained, or referred, including level and
3 degree of the alleged offense;

4 (10) the name and identifying number of the juvenile
5 intake agency or juvenile probation office;

6 (11) each disposition by the juvenile intake agency or
7 juvenile probation office;

8 (12) the date of disposition by the juvenile intake
9 agency or juvenile probation office;

10 (13) the name and identifying number of the
11 prosecutor's office;

12 (14) each disposition by the prosecutor;

13 (15) the date of disposition by the prosecutor;

14 (16) the name and identifying number of the court;

15 (17) each disposition by the court, including
16 information concerning probation or custody of a juvenile offender
17 by a juvenile justice agency [~~or probation~~];

18 (18) the date of disposition by the court;

19 (19) the date any probation supervision, including
20 deferred prosecution supervision, was terminated;

21 (20) any commitment or release under supervision by
22 the Texas Juvenile Justice Department;

23 (21) [~~(20)~~] the date of any commitment or release
24 under supervision by the Texas Juvenile Justice Department; and

25 (22) [~~(21)~~] a description of each appellate
26 proceeding.

27 (f) Records maintained by the department in the depository

1 are subject to being sealed under Subchapter C-1 [~~Section 58.003~~].

2 SECTION 16. Sections 58.106(a-2) and (b), Family Code, are
3 amended to read as follows:

4 (a-2) Information disseminated under Subsection (a) [~~or~~
5 ~~(a-1)~~] remains confidential after dissemination and may be
6 disclosed by the recipient only as provided by this title.

7 (b) Subsection (a) does [~~Subsections (a) and (a-1) do~~] not
8 apply to a document maintained by a juvenile justice or law
9 enforcement agency that is the source of information collected by
10 the department.

11 SECTION 17. Chapter 58, Family Code, is amended by adding
12 Subchapter C-1 to read as follows:

13 SUBCHAPTER C-1. SEALING AND DESTRUCTION OF JUVENILE RECORDS

14 Sec. 58.251. DEFINITIONS. In this subchapter:

15 (1) "Electronic record" means an entry in a computer
16 file or information on microfilm, microfiche, or any other
17 electronic storage media.

18 (2) "Juvenile matter" means a referral to a juvenile
19 court or juvenile probation department and all related court
20 proceedings and outcomes, if any.

21 (3) "Physical record" means a paper copy of a record.

22 (4) "Record" means any documentation related to a
23 juvenile matter, including information contained in that
24 documentation.

25 Sec. 58.252. EXEMPTED RECORDS. The following records are
26 exempt from this subchapter:

27 (1) records relating to a criminal combination or

1 criminal street gang maintained by the Department of Public Safety
2 or a local law enforcement agency under Chapter 61, Code of Criminal
3 Procedure;

4 (2) sex offender registration records maintained by
5 the Department of Public Safety or a local law enforcement agency
6 under Chapter 62, Code of Criminal Procedure; and

7 (3) records collected or maintained by the Texas
8 Juvenile Justice Department for statistical and research purposes,
9 including data submitted under Section 221.007, Human Resources
10 Code, and personally identifiable information.

11 Sec. 58.253. SEALING RECORDS WITHOUT APPLICATION:
12 DELINQUENT CONDUCT. (a) This section does not apply to the records
13 of a child referred to a juvenile court or juvenile probation
14 department solely for conduct indicating a need for supervision.

15 (b) A person who was referred to a juvenile probation
16 department for delinquent conduct is entitled to have all records
17 related to the person's juvenile matters, including records
18 relating to any matters involving conduct indicating a need for
19 supervision, sealed without applying to the juvenile court if the
20 person:

21 (1) is at least 19 years of age;

22 (2) has not been adjudicated as having engaged in
23 delinquent conduct or, if adjudicated for delinquent conduct, was
24 not adjudicated for delinquent conduct violating a penal law of the
25 grade of felony;

26 (3) does not have any pending delinquent conduct
27 matters;

1 (4) has not been transferred by a juvenile court to a
2 criminal court for prosecution under Section 54.02;

3 (5) has not as an adult been convicted of a felony or a
4 misdemeanor punishable by confinement in jail; and

5 (6) does not have any pending charges as an adult for a
6 felony or a misdemeanor punishable by confinement in jail.

7 (c) A person who was referred to a juvenile probation
8 department for delinquent conduct is entitled to have all records
9 related to the person's juvenile matters, including records
10 relating to any matters involving conduct indicating a need for
11 supervision, sealed without applying to the juvenile court if the
12 person:

13 (1) is at least 25 years of age;

14 (2) was adjudicated as having engaged in delinquent
15 conduct violating a penal law of the grade of felony;

16 (3) did not receive a determinate sentence for
17 engaging in:

18 (A) delinquent conduct that violated a penal law
19 listed under Section 53.045; or

20 (B) habitual felony conduct as described by
21 Section 51.031;

22 (4) has not been required to register as a sex offender
23 under Chapter 62, Code of Criminal Procedure;

24 (5) does not have any pending delinquent conduct
25 matters;

26 (6) has not been transferred by a juvenile court to a
27 criminal court for prosecution under Section 54.02;

1 (7) has not as an adult been convicted of a felony or a
2 misdemeanor punishable by confinement in jail; and

3 (8) does not have any pending charges as an adult for a
4 felony or a misdemeanor punishable by confinement in jail.

5 Sec. 58.254. CERTIFICATION OF ELIGIBILITY FOR SEALING
6 RECORDS WITHOUT APPLICATION FOR DELINQUENT CONDUCT. (a) The
7 Department of Public Safety shall certify to a juvenile probation
8 department that has submitted records to the juvenile justice
9 information system that the records relating to a person referred
10 to the juvenile probation department appear to be eligible for
11 sealing under Section 58.253.

12 (b) The Department of Public Safety may issue the
13 certification described by Subsection (a) by electronic means,
14 including by electronic mail.

15 (c) Except as provided by Subsection (d), not later than the
16 60th day after the date the juvenile probation department receives
17 a certification under Subsection (a), the juvenile probation
18 department shall:

19 (1) give notice of the receipt of the certification to
20 the juvenile court; and

21 (2) provide the court with a list of all referrals
22 received by the department relating to that person and the outcome
23 of each referral.

24 (d) If a juvenile probation department has reason to believe
25 the records of the person for whom the department received a
26 certification under Subsection (a) are not eligible to be sealed,
27 the juvenile probation department shall notify the Department of

1 Public Safety not later than the 15th day after the date the
2 juvenile probation department received the certification. If the
3 juvenile probation department later determines that the person's
4 records are eligible to be sealed, the juvenile probation
5 department shall notify the juvenile court and provide the court
6 the information described by Subsection (c) not later than the 30th
7 day after the date of the determination.

8 (e) If, after receiving a certification under Subsection
9 (a), the juvenile probation department determines that the person's
10 records are not eligible to be sealed, the juvenile probation
11 department and the Department of Public Safety shall update the
12 juvenile justice information system to reflect that determination
13 and no further action related to the records is required.

14 (f) Not later than the 60th day after the date a juvenile
15 court receives notice from a juvenile probation department under
16 Subsection (c), the juvenile court shall issue an order sealing all
17 records relating to the person named in the certification.

18 Sec. 58.255. SEALING RECORDS WITHOUT APPLICATION: CONDUCT
19 INDICATING NEED FOR SUPERVISION. (a) A person who was referred to
20 a juvenile probation department for conduct indicating a need for
21 supervision is entitled to have all records related to all conduct
22 indicating a need for supervision matters sealed without applying
23 to the juvenile court if the person:

- 24 (1) is at least 18 years of age;
25 (2) has not been referred to the juvenile probation
26 department for delinquent conduct;
27 (3) has not as an adult been convicted of a felony; and

1 (4) does not have any pending charges as an adult for a
2 felony or a misdemeanor punishable by confinement in jail.

3 (b) The juvenile probation department shall:

4 (1) give the juvenile court notice that a person's
5 records are eligible for sealing under Subsection (a); and

6 (2) provide the juvenile court with a list of all
7 referrals relating to that person received by the department and
8 the outcome of each referral.

9 (c) Not later than the 60th day after the date the juvenile
10 court receives notice from the juvenile probation department under
11 Subsection (b), the juvenile court shall issue an order sealing all
12 records relating to the person named in the notice.

13 Sec. 58.256. APPLICATION FOR SEALING RECORDS. (a)
14 Notwithstanding Sections 58.253 and 58.255, a person may file an
15 application for the sealing of records related to the person in the
16 juvenile court served by the juvenile probation department to which
17 the person was referred. The court may not charge a fee for filing
18 the application, regardless of the form of the application.

19 (b) An application filed under this section must include
20 either the following information or the reason that one or more of
21 the following is not included in the application:

22 (1) the person's:

23 (A) full name;

24 (B) sex;

25 (C) race or ethnicity;

26 (D) date of birth;

27 (E) driver's license or identification card

1 number; and

2 (F) social security number;

3 (2) the conduct for which the person was referred to
4 the juvenile probation department, including the date on which the
5 conduct was alleged or found to have been committed;

6 (3) the cause number assigned to each petition
7 relating to the person filed in juvenile court, if any, and the
8 court in which the petition was filed; and

9 (4) a list of all entities the person believes have
10 possession of records related to the person, including the
11 applicable entities listed under Section 58.258(b).

12 (c) Except as provided by Subsection (d), the juvenile court
13 may order the sealing of records related to all matters for which
14 the person was referred to the juvenile probation department if the
15 person:

16 (1) is at least 18 years of age, or is younger than 18
17 years of age and at least two years have elapsed after the date of
18 final discharge in each matter for which the person was referred to
19 the juvenile probation department;

20 (2) does not have any delinquent conduct matters
21 pending with any juvenile probation department or juvenile court;

22 (3) was not transferred by a juvenile court to a
23 criminal court for prosecution under Section 54.02;

24 (4) has not as an adult been convicted of a felony; and

25 (5) does not have any pending charges as an adult for a
26 felony or a misdemeanor punishable by confinement in jail.

27 (d) A court may not order the sealing of the records of a

1 person who:

2 (1) received a determinate sentence for engaging in:

3 (A) delinquent conduct that violated a penal law
4 listed under Section 53.045; or

5 (B) habitual felony conduct as described by
6 Section 51.031;

7 (2) is currently required to register as a sex
8 offender under Chapter 62, Code of Criminal Procedure; or

9 (3) was committed to the Texas Juvenile Justice
10 Department or to a post-adjudication secure correctional facility
11 under Section 54.04011, unless the person has been discharged from
12 the agency to which the person was committed.

13 (e) On receipt of an application under this section, the
14 court may:

15 (1) order the sealing of the person's records
16 immediately, without a hearing; or

17 (2) hold a hearing under Section 58.257 at the court's
18 discretion to determine whether to order the sealing of the
19 person's records.

20 Sec. 58.257. HEARING REGARDING SEALING OF RECORDS. (a) A
21 hearing regarding the sealing of a person's records must be held not
22 later than the 60th day after the date the court receives the
23 person's application under Section 58.256.

24 (b) The court shall give reasonable notice of a hearing
25 under this section to:

26 (1) the person who is the subject of the records;

27 (2) the person's attorney who made the application for

1 sealing on behalf of the person, if any;

2 (3) the prosecuting attorney for the juvenile court;

3 (4) all entities named in the application that the
4 person believes possess eligible records related to the person; and

5 (5) any individual or entity whose presence at the
6 hearing is requested by the person or prosecutor.

7 Sec. 58.258. ORDER SEALING RECORDS. (a) An order sealing
8 the records of a person under this subchapter must include either
9 the following information or the reason one or more of the following
10 is not included in the order:

11 (1) the person's:

12 (A) full name;

13 (B) sex;

14 (C) race or ethnicity;

15 (D) date of birth;

16 (E) driver's license or identification card
17 number; and

18 (F) social security number;

19 (2) each instance of conduct indicating a need for
20 supervision or delinquent conduct alleged against the person or for
21 which the person was referred to the juvenile justice system;

22 (3) the date on which and the county in which each
23 instance of conduct was alleged to have occurred;

24 (4) if any petitions relating to the person were filed
25 in juvenile court, the cause number assigned to each petition and
26 the court and county in which each petition was filed; and

27 (5) a list of the entities believed to be in possession

1 of the records that have been ordered sealed, including the
2 entities listed under Subsection (b).

3 (b) Not later than the 60th day after the date of the entry
4 of the order, the court shall provide a copy of the order to:

5 (1) the Department of Public Safety;

6 (2) the Texas Juvenile Justice Department, if the
7 person was committed to the department;

8 (3) the clerk of court;

9 (4) the juvenile probation department serving the
10 court;

11 (5) the prosecutor's office;

12 (6) each law enforcement agency that had contact with
13 the person in relation to the conduct that is the subject of the
14 sealing order;

15 (7) each public or private agency that had custody of
16 or that provided supervision or services to the person in relation
17 to the conduct that is the subject of the sealing order; and

18 (8) each official, agency, or other entity that the
19 court has reason to believe has any record containing information
20 that is related to the conduct that is the subject of the sealing
21 order.

22 (c) On entry of the order, all adjudications relating to the
23 person are vacated and the proceedings are dismissed and treated
24 for all purposes as if the adjudication had never occurred. The
25 clerk of court shall:

26 (1) seal all court records relating to the
27 proceedings, including any records created in the clerk's case

1 management system; and

2 (2) send copies of the order to all entities listed in
3 the order.

4 Sec. 58.259. ACTIONS TAKEN ON RECEIPT OF ORDER TO SEAL
5 RECORDS. (a) An entity receiving an order to seal the records of a
6 person issued under this subchapter shall, not later than the 61st
7 day after the date of receiving the order, take the following
8 actions, as applicable:

9 (1) the Department of Public Safety shall:

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

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

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

19 (2) the Texas Juvenile Justice Department shall:

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

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

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

1 (A) seal all records relating to the person; and
2 (B) send written verification of the sealing of
3 the records to the issuing court; and

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

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

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

10 (C) send written verification of the deletion of
11 the index references to the issuing court.

12 (b) Physical or electronic records are considered sealed,
13 regardless of whether the records are destroyed, if the records are
14 securely stored in a manner that only allows access to the records
15 by the entity's custodian of records.

16 (c) If an entity that received an order to seal records
17 relating to a person later receives an inquiry about a person or the
18 matter contained in the records, the entity must respond that no
19 records relating to the person or the matter exist.

20 (d) If an entity receiving an order to seal records under
21 this subchapter is unable to comply with the order because the
22 information in the order is incorrect or insufficient to allow the
23 entity to identify the records that are subject to the order, the
24 entity shall notify the issuing court not later than the 30th day
25 after the date of receipt of the order. The court shall take any
26 actions necessary and possible to provide the needed information to
27 the entity, including contacting the person who is the subject of

1 the order or the person's attorney.

2 (e) If an entity receiving a sealing order under this
3 subchapter has no records related to the person who is the subject
4 of the order, the entity shall provide written verification of that
5 fact to the issuing court not later than the 30th day after the date
6 of receipt of the order.

7 Sec. 58.260. INSPECTION AND RELEASE OF SEALED RECORDS. (a)
8 A juvenile court may allow, by order, the inspection of records
9 sealed under this subchapter only by:

10 (1) a person named in the order, on the petition of the
11 person who is the subject of the records; or

12 (2) a prosecutor, on the petition of the prosecutor,
13 for the purpose of reviewing the records for possible use:

14 (A) in a capital prosecution; or

15 (B) for the enhancement of punishment under
16 Section 12.42, Penal Code.

17 (b) After a petitioner inspects records under this section,
18 the court may order the release of any or all of the records to the
19 petitioner on the motion of the petitioner.

20 Sec. 58.261. EFFECT OF SEALING RECORDS. (a) A person whose
21 records have been sealed under this subchapter is not required to
22 state in any proceeding or in any application for employment,
23 licensing, admission, housing, or other public or private benefit
24 that the person has been the subject of a juvenile matter.

25 (b) A person's denial of the existence of records sealed
26 under this subchapter or of the person's involvement in a juvenile
27 matter, the information in the records, or the fact that the records

1 once existed may not be used against the person in any manner,
2 including in:

3 (1) a perjury prosecution or other criminal
4 proceeding;

5 (2) a civil proceeding, including an administrative
6 proceeding involving a governmental entity;

7 (3) an application process for licensing or
8 certification; or

9 (4) an admission, employment, or housing decision.

10 (c) A person who is the subject of records sealed under this
11 subchapter may not waive the protected status of the records or the
12 consequences of the protected status.

13 Sec. 58.262. INFORMATION GIVEN TO CHILD REGARDING SEALING
14 OF RECORDS. (a) When a child is referred to the juvenile probation
15 department, an employee of the juvenile probation department shall
16 give the child and the child's parent, guardian, or custodian a
17 written explanation describing the process of sealing records under
18 this subchapter and a copy of this subchapter.

19 (b) On the final discharge of a child, or on the last
20 official action in the matter if there is no adjudication, a
21 probation officer or official at the Texas Juvenile Justice
22 Department, as appropriate, shall give the child and the child's
23 parent, guardian, or custodian a written explanation regarding the
24 eligibility of the child's records for sealing under this
25 subchapter and a copy of this subchapter.

26 (c) The written explanation provided to a child under
27 Subsections (a) and (b) must include the requirements for a record

1 to be eligible for sealing, including an explanation of the records
2 that are exempt from sealing under Section 58.252, and the
3 following information:

4 (1) that, regardless of whether the child's conduct
5 was adjudicated, the child has a juvenile record with the
6 Department of Public Safety and the Federal Bureau of
7 Investigation;

8 (2) the child's juvenile record is a permanent record
9 unless the record is destroyed under this subchapter;

10 (3) except as provided by Section 58.260, the child's
11 juvenile record, other than treatment records made confidential by
12 law, may be accessed by a police officer, sheriff, prosecutor,
13 probation officer, correctional officer, or other criminal or
14 juvenile justice official unless the record is sealed as provided
15 by this subchapter;

16 (4) sealing of the child's records under Section
17 58.253 or Section 58.255, as applicable, does not require any
18 action by the child or the child's family, including the filing of
19 an application or hiring of a lawyer, but occurs automatically at
20 age 18, 19, 25, or 31, as applicable based on the child's referral
21 and adjudication history;

22 (5) the child's juvenile record may be eligible for an
23 earlier sealing date under Section 58.256, but an earlier sealing
24 requires the child or an attorney for the child to file an
25 application with the court;

26 (6) the impact of sealing records on the child; and

27 (7) the circumstances under which a sealed record may

1 be reopened.

2 (d) The Texas Juvenile Justice Department shall adopt rules
3 to implement this section and to facilitate the effective
4 explanation of the information required to be communicated by this
5 section.

6 Sec. 58.263. DESTRUCTION OF RECORDS: NO PROBABLE CAUSE.
7 The court shall order the destruction of the records relating to the
8 conduct for which a child is taken into custody, including records
9 contained in the juvenile justice information system, if:

10 (1) a determination is made under Section 53.01 that
11 no probable cause exists to believe the child engaged in the conduct
12 and the case is not referred to a prosecutor for review under
13 Section 53.012; or

14 (2) a determination that no probable cause exists to
15 believe the child engaged in the conduct is made by a prosecutor
16 under Section 53.012.

17 Sec. 58.264. PERMISSIBLE DESTRUCTION OF RECORDS. (a)
18 Subject to Subsections (b) and (c) of this section, Section
19 202.001, Local Government Code, and any other restrictions imposed
20 by an entity's records retention guidelines, the following persons
21 may authorize the destruction of records in a closed juvenile
22 matter, regardless of the date the records were created:

23 (1) a juvenile board, in relation to the records in the
24 possession of the juvenile probation department;

25 (2) the head of a law enforcement agency, in relation
26 to the records in the possession of the agency; and

27 (3) a prosecuting attorney, in relation to the records

1 in the possession of the prosecuting attorney's office.

2 (b) The records related to a person referred to a juvenile
3 probation department may be destroyed if the person:

4 (1) is at least 18 years of age, and:

5 (A) the most serious conduct for which the person
6 was adjudicated was conduct indicating a need for supervision;

7 (B) the most serious conduct for which the person
8 was referred was conduct indicating a need for supervision and the
9 person was not adjudicated as having engaged in the conduct; or

10 (C) the referral or information did not relate to
11 conduct indicating a need for supervision or delinquent conduct and
12 the juvenile probation department, prosecutor, or juvenile court
13 did not take action on the referral or information for that reason;

14 (2) is at least 21 years of age, and:

15 (A) the most serious conduct for which the person
16 was adjudicated was delinquent conduct that violated a penal law of
17 the grade of misdemeanor; or

18 (B) the most serious conduct for which the person
19 was referred was delinquent conduct and the person was not
20 adjudicated as having engaged in the conduct; or

21 (3) is at least 31 years of age and the most serious
22 conduct for which the person was adjudicated was delinquent conduct
23 that violated a penal law of the grade of felony.

24 (c) If a record contains information relating to more than
25 one person referred to a juvenile probation department, the record
26 may only be destroyed if:

27 (1) the destruction of the record is authorized under

1 this section; and

2 (2) information in the record that may be destroyed
3 under this section can be separated from information that is not
4 authorized to be destroyed.

5 (d) Electronic records are considered to be destroyed if the
6 electronic records, including the index to the records, are
7 deleted.

8 (e) Converting physical records to electronic records and
9 subsequently destroying the physical records while maintaining the
10 electronic records is not considered destruction of a record under
11 this subchapter.

12 (f) This section does not authorize the destruction of the
13 records of the juvenile court or clerk of court.

14 (g) This section does not authorize the destruction of
15 records maintained for statistical and research purposes by the
16 Texas Juvenile Justice Department in a juvenile information and
17 case management system authorized under Section 58.403.

18 (h) This section does not affect the destruction of physical
19 records and files authorized by the Texas State Library Records
20 Retention Schedule.

21 Sec. 58.265. JUVENILE RECORDS NOT SUBJECT TO EXPUNCTION.
22 Records to which this chapter applies are not subject to an order of
23 expunction issued by any court.

24 SECTION 18. Section 58.112, Family Code, is transferred to
25 Chapter 203, Human Resources Code, and redesignated as Section
26 203.019, Human Resources Code, to read as follows:

27 Sec. 203.019 [~~58.112~~]. REPORT TO LEGISLATURE. Not later

1 than August 15 of each year, the Texas Juvenile Justice Department
2 shall submit to the lieutenant governor, the speaker of the house of
3 representatives, and the governor a report that contains the
4 following statistical information relating to children referred to
5 a juvenile court during the preceding year:

6 (1) the ages, races, and counties of residence of the
7 children transferred to a district court or criminal district court
8 for criminal proceedings; and

9 (2) the ages, races, and counties of residence of the
10 children committed to the Texas Juvenile Justice Department, placed
11 on probation, or discharged without any disposition.

12 SECTION 19. Section 411.151(a), Government Code, is amended
13 to read as follows:

14 (a) The director shall expunge a DNA record of an individual
15 from a DNA database if the person:

16 (1) notifies the director in writing that the DNA
17 record has been ordered to be expunged under this section or Chapter
18 55, Code of Criminal Procedure, and provides the director with a
19 certified copy of the court order that expunges the DNA record; or

20 (2) provides the director with a certified copy of a
21 court order issued under Subchapter C-1, Chapter 58 [~~Section~~
22 ~~58.003~~], Family Code, that seals the juvenile record of the
23 adjudication that resulted in the DNA record.

24 SECTION 20. The following provisions of the Family Code are
25 repealed:

26 (1) Section 58.001(b);

27 (2) Section 58.003;

- 1 (3) Section 58.006;
- 2 (4) Sections 58.007(c), (d), (e), and (f);
- 3 (5) Section 58.0071;
- 4 (6) Section 58.00711;
- 5 (7) Section 58.106(a-1); and
- 6 (8) Subchapter C, Chapter 58.

7 SECTION 21. (a) Except as provided by Subsection (b), the
8 changes in law made by this Act apply only to records relating to
9 conduct that occurs on or after the effective date of this Act.
10 Conduct that occurred before the effective date of this Act is
11 governed by the law in effect on the date the conduct occurred, and
12 the former law is continued in effect for that purpose. For
13 purposes of this section, conduct occurred before the effective
14 date of this Act if any element of the conduct occurred before the
15 effective date of this Act.

16 (b) Section 58.264, Family Code, as added by this Act,
17 applies to records relating to conduct that occurred before, on, or
18 after the effective date of this Act.

19 SECTION 22. This Act takes effect September 1, 2017.