

Juvenile Processes & Juvenile Records

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Why we are still here?



Just to suffer?

What's In It For You Today:

1. Who is a Juvenile?
2. Juvenile Processes
3. What's Confidential/Who Can Access?
4. Destroying Records
5. Sealing & Expunction Records

Who is a Juvenile?

Justice System Comparison

ADULT

- Criminal base
- Public records
- Right to counsel
- Beyond a reasonable doubt
- Miranda applies

JUVENILE

- Civil base
- Confidential records
- Right to counsel
- Beyond a reasonable doubt
- Miranda applies + extra protections

Terminology Comparison

ADULT

- Warrant
- In Jail
- Defendant
- Indictment/Information
- Guilty/Not Guilty
- Conviction
- Sentence

JUVENILE

- Directive to Apprehend (DTA)
- Detained
- Respondent
- Petition
- True/Not True
- Adjudication
- Disposition



Who is a Juvenile?

- 10-17 yrs old
- 10–18: For TJJD, includes person not yet 19 who was committed to TJJD.
- 19---for TJJD, if a Determinate Sentence petition is filed

Delinquent Conduct

- **Most jailable misdemeanors**
- **Most felonies**

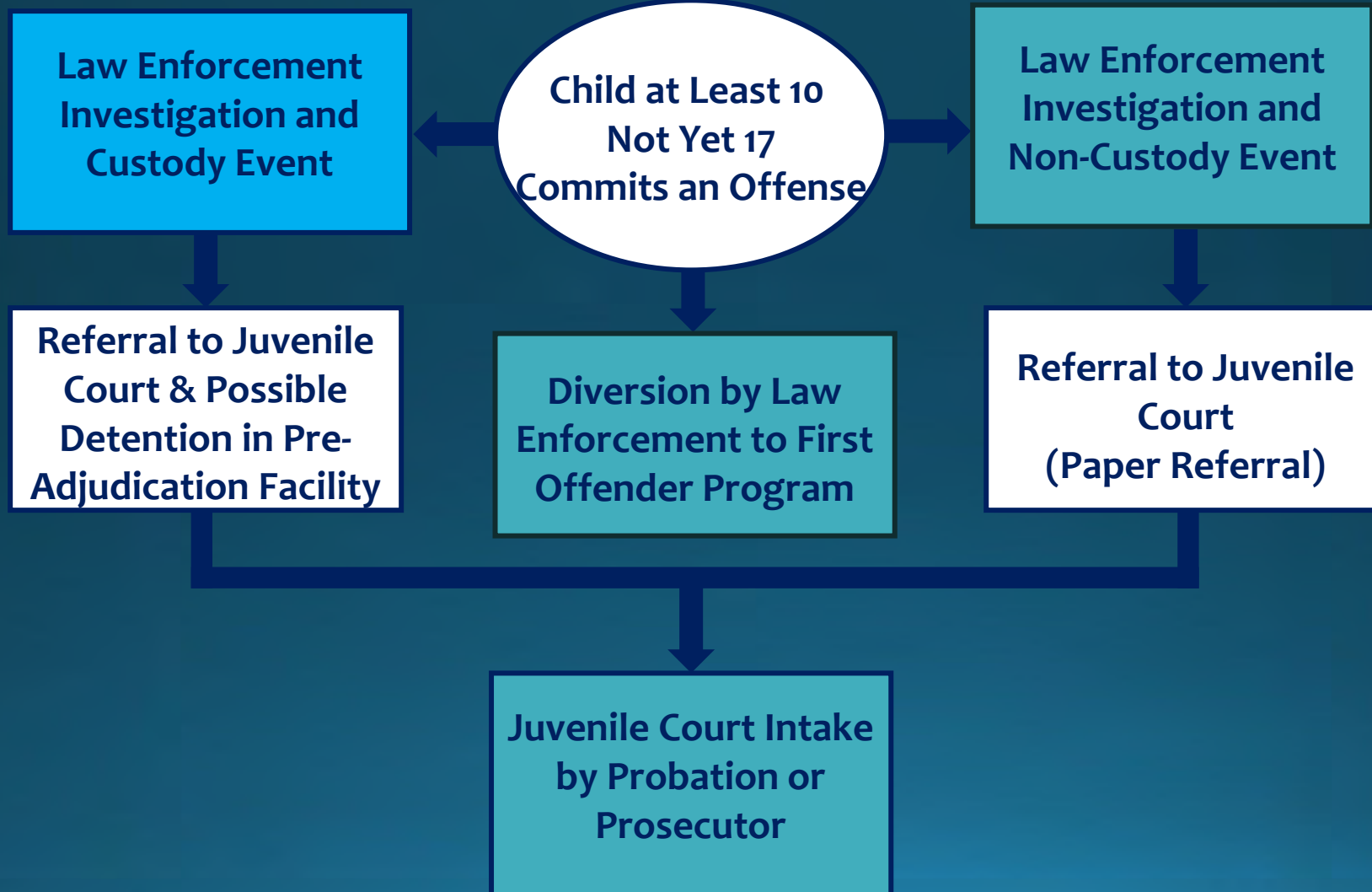
Conduct Indicating A Need For Supervision (CINS)

- Non-traffic fine-only offense (Class C) that has been referred to juvenile court
- Runaway
- Huffing
- School violation that results in expulsion
- “Sexting” (43.261, PC)
- Prostitution
- “Swatting” – unless prior adjudication

Status Offenses

- Conduct that would not be a violation if committed by an adult
 - Runaway
 - MIP alcohol/tobacco

Pre-Adjudication



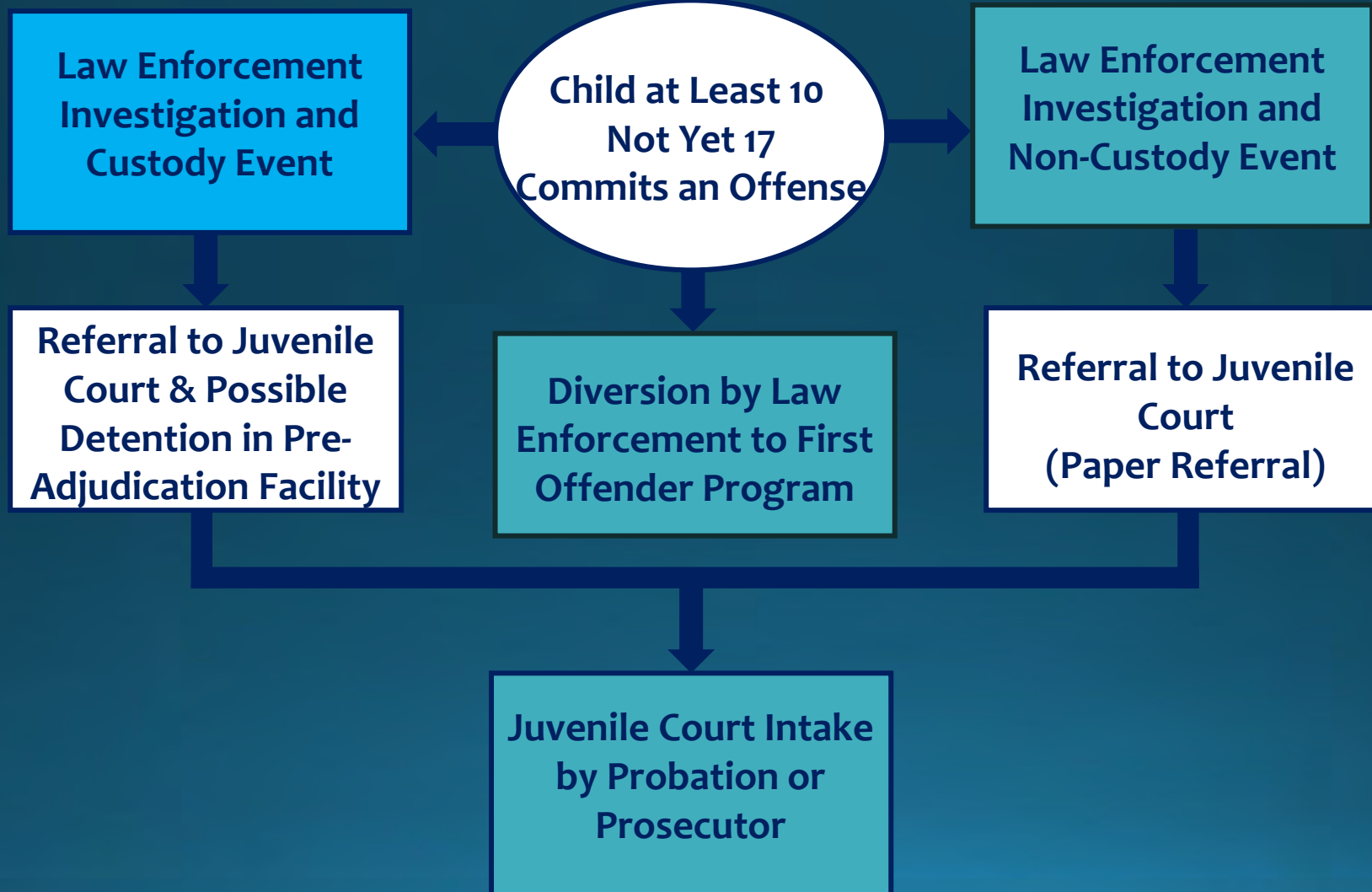
Why Is Juvenile System So Different?



Non-Court Disposition

- Supervisory Caution (Counsel and Release)
 - Can include referral for services
- Deferred Prosecution
 - Includes supervision and services
 - If successful, case dismissed

Pre-Adjudication



Detention Hearings:

- Likely to abscond or be removed;
- Suitable supervision, care or protection not being provided by parent or guardian;
- May be dangerous to self or others if released;
- Previously found to be delinquent and is likely to commit a new offense

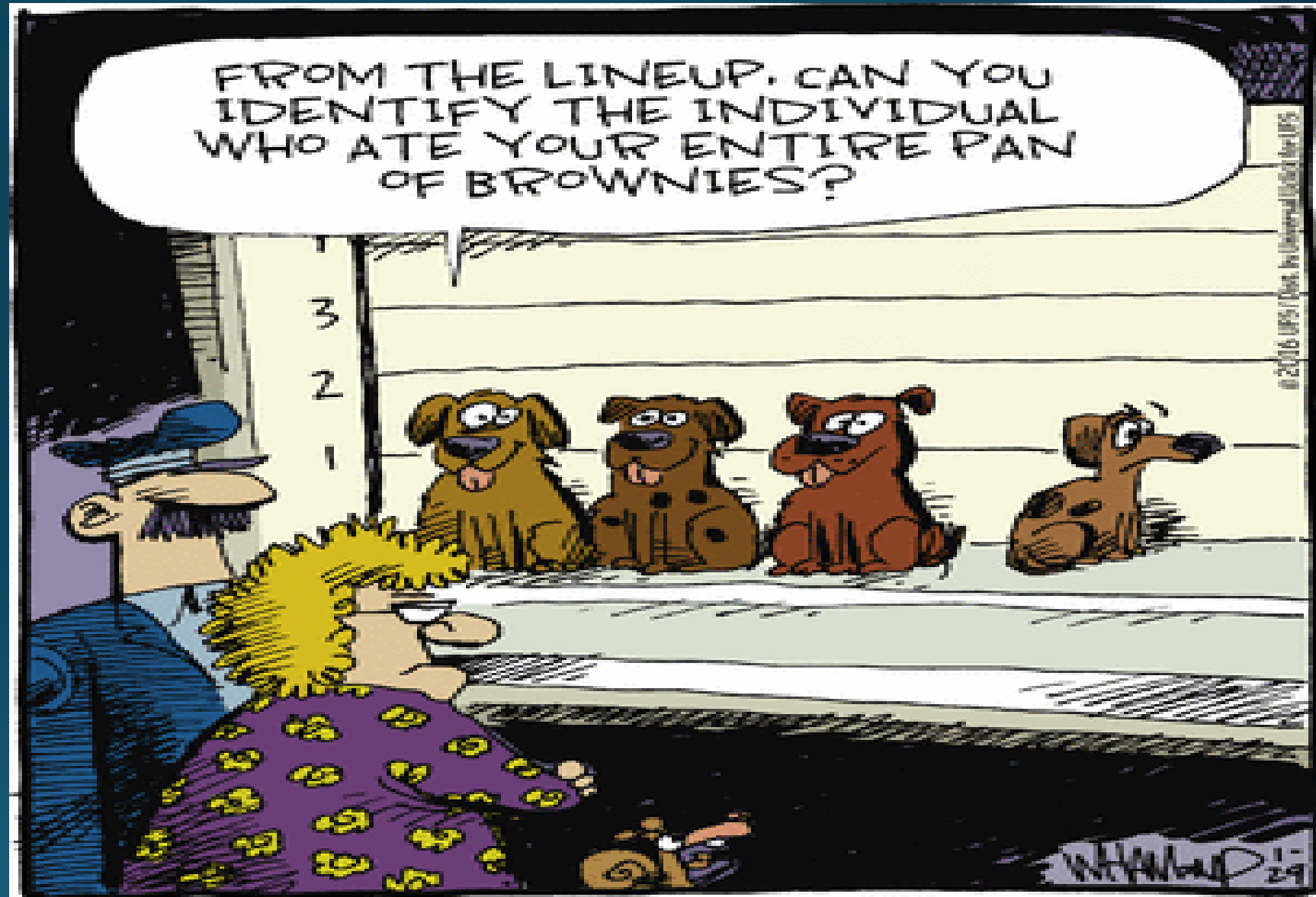
Detention Factors:

- Age + JPO Rec
- Referral + release history
- Drugs + Weapons
- Violence
- Nature of the Offense

Detention: 54.02(o) and (p)

- If a respondent is taken into custody for a possible discretionary transfer under 54.02(j), Court may order respondent detained in county jail.
- Reserved for Adults and those that are not suitable for supervision in the community.

Juvenile Is Detained, Now What?





THE CLOCK
is

TICKING

Detention Hearing

- 2 business days
 - except Friday detention, hearing due Monday
- Subsequent hearings every 10 days

Charging Possibilities

- Indeterminate Sentence Petition
- Determinate Sentence Petition
- Transfer Petition (Certification)
 - Waiver of Jurisdiction
 - Discretionary Transfer to Adult Criminal Court

Indeterminate Sentence

- In Home probation can typically range anywhere from 9 months up until their 18th birthday;
- Placement outside of the home; or
- Juvenile can be committed to TJJD until 18th birthday if underlying conduct is a felony

Determinate Sentence

- In Home Probation or Placement outside of the home

AND/OR

- Commitment to TJJD with a possible transfer to Texas Department of Criminal Justice
- Jurisdiction until 19th birthday

Eligible Offenses for Determinate Sentence

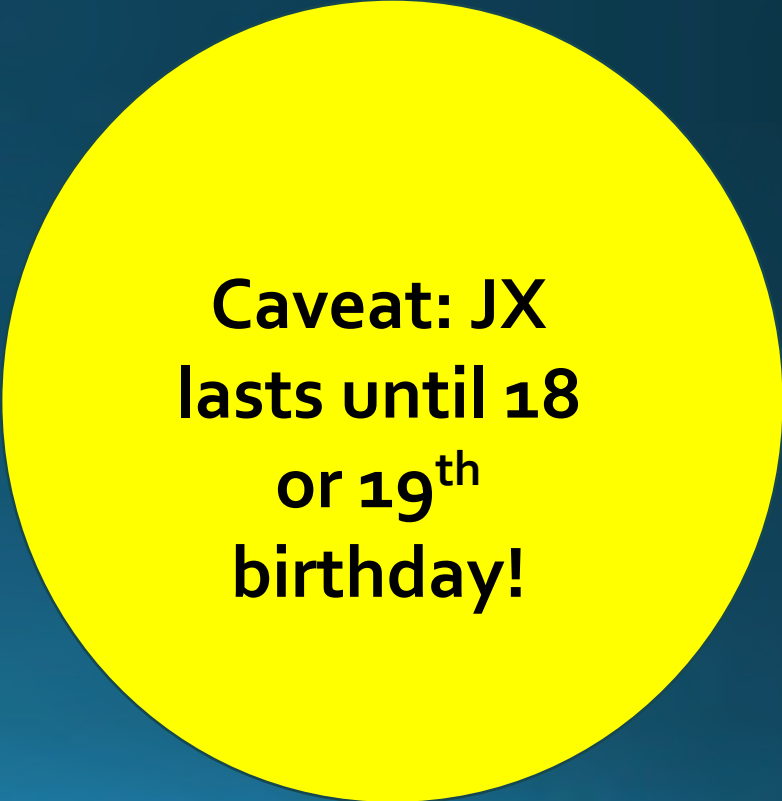
- Murder
- Aggravated kidnapping
- Sexual Assault
- Aggravated Assault
- Aggravated Robbery
- Injury to Child
- Arson if bodily injury or death involved
- Intoxication manslaughter
- Indecency with a Child by contact
- Deadly Conduct involving a firearm

Sex Crimes

- Difficult to assess
- Typically defer Registration per 62.352(c);
- Minimum 2-year probation under 54.04(p);
- I will ask for an Evaluation

Determinate Disposition Range

- 3rd Degree Felony up to 10 years
- 2nd Degree Felony up to 20 years
- 1st Degree Felony up to 40 years
- Capital Offense up to 40 years



**Caveat: JX
lasts until 18
or 19th
birthday!**

Determinate Supervision

Supervision may be transferred to adult probation or Texas Department of Criminal Justice under Determinate Sentence Petition through a FC54.051 or 54.11 Hearing at 19.

TJJD Determinate Sentence

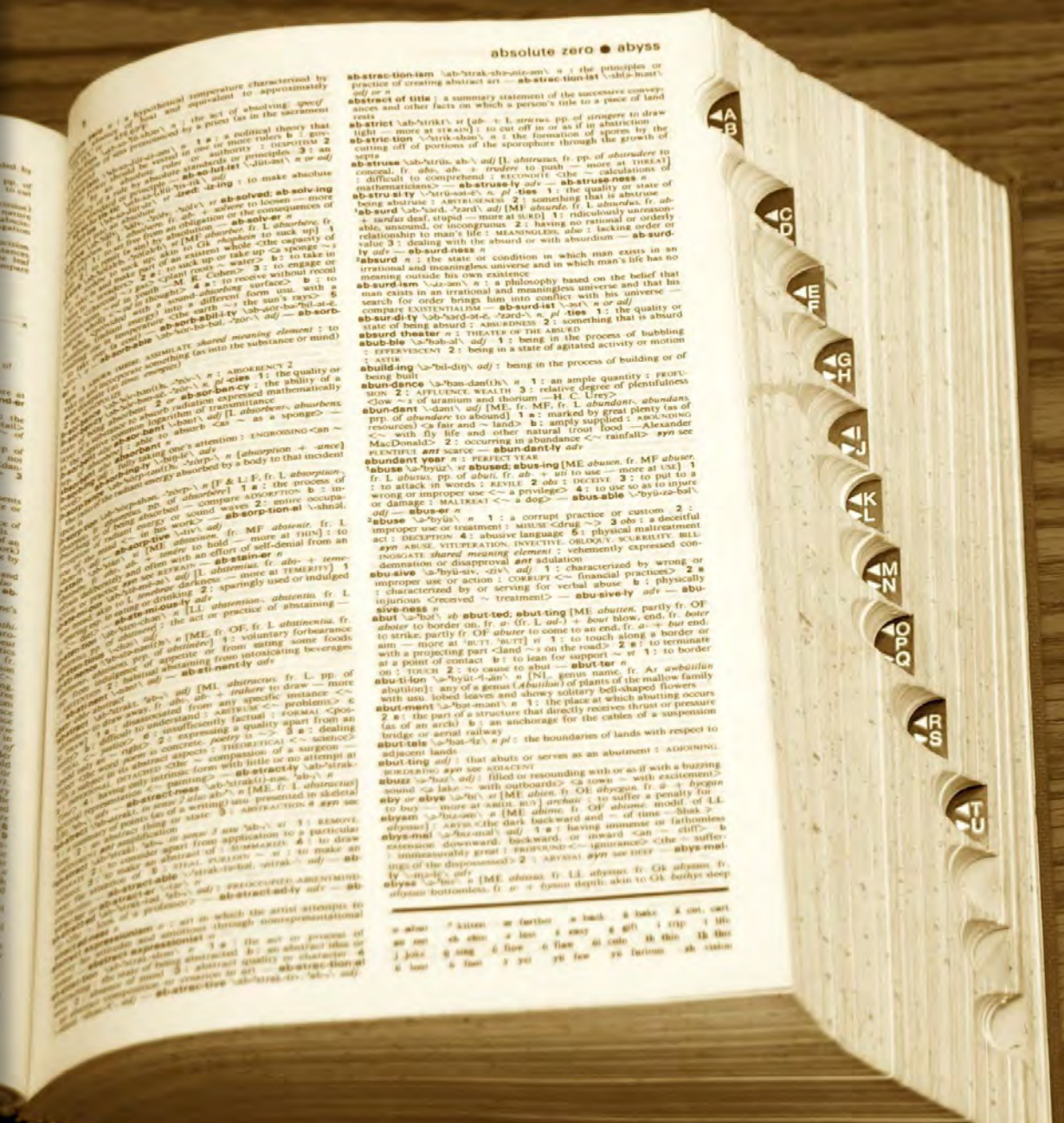
- If sentence ends before age 19, will be discharged
- If sentence ends after age 19, will be transferred to prison or adult parole (maybe...depending on hearing outcome)
- No transfer hearing unless TJJD requests; court has no jurisdiction until hearing requested

**What Is Confidential/Who
Can Access?**

CONFIDENTIAL

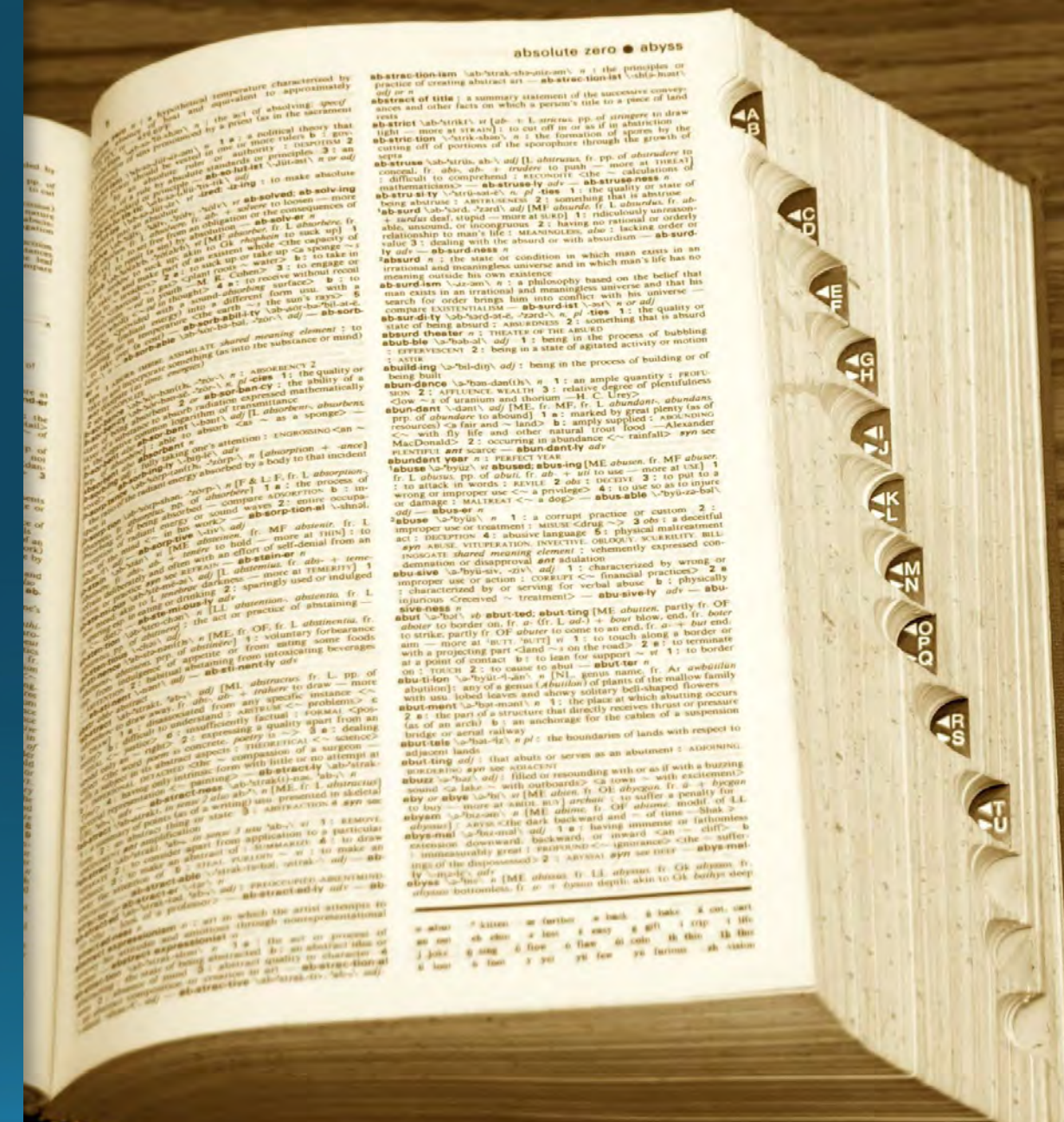
Definitions:

- Juvenile Matter: A referral to juvenile court or juvenile probation department and all related court proceedings and outcomes, if any.
- Record: Any documentation related to a juvenile matter, including information contained in that documentation.
- Physical record: Paper copy of a record.



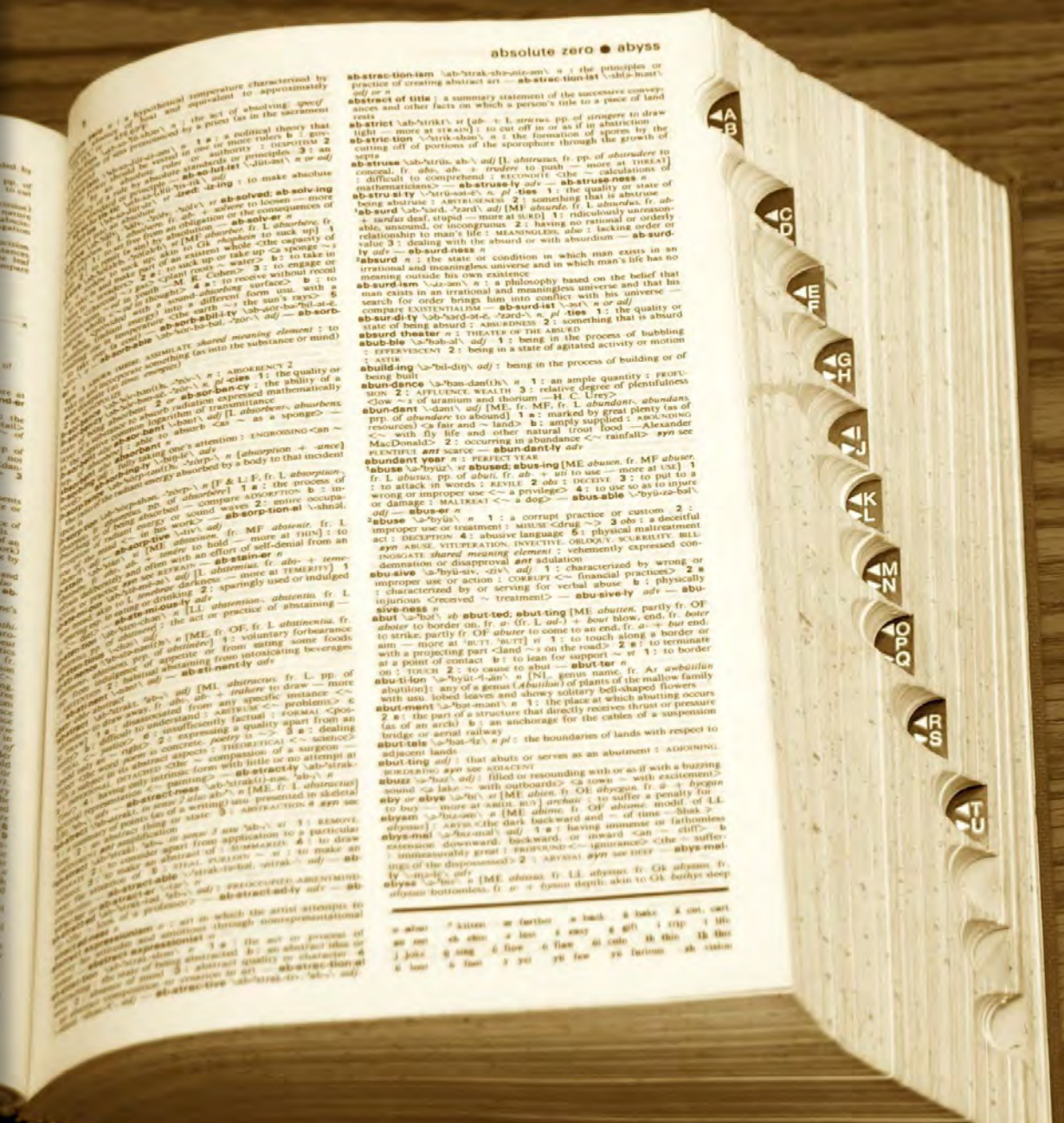
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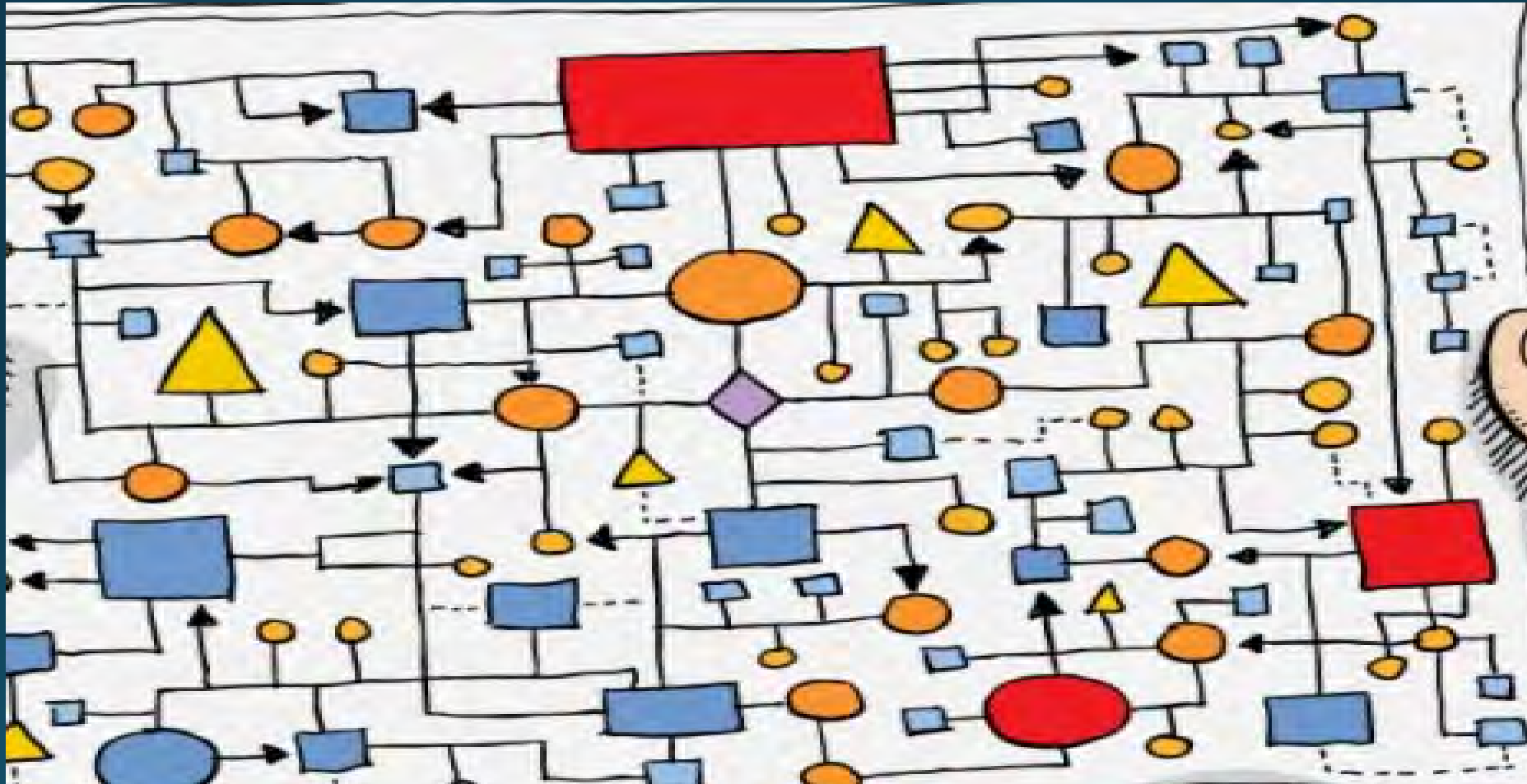


Definitions:

- Electronic record: entry in a computer file or information on microfilm, microfiche, or any other electronic storage media.
- JJIS: Juvenile Justice Information System maintained by DPS.



Creation of a Juvenile Record



Creation
of a
Juvenile
Record

Law Enforcement

Probation

Prosecutor

Court

Facilities



Law Enforcement

- When child is taken into custody and referred to juvenile court, law enforcement must forward information to DPS within 10 days
 - Includes fingerprints
 - Information is stored in JJIS
- If no custodial event, 10-day rule does not apply

Probation Department

- Receives law enforcement records
- Makes initial decisions (probable cause, detention, case disposition)
- Sends additional information to DPS for inclusion in JJIS
- Creates records

Juvenile Service Providers

A governmental entity that provides juvenile justice or prevention, medical, educational, or other support services to a juvenile. The term includes:

DFPS

A local MHMR authority

State or local juvenile justice agency (one with custody or control over juvenile offenders)

DPS

A court with jurisdiction over juveniles

TEA

A district attorney's office

HHSC and health and human services agencies (DADS, DSHS, DARS)

An ISD

A county attorney's office

A JJAEP

A children's advocacy center

Juvenile Service Providers

- At JSP request, another JSP must share personal health information or history of governmental services provided
- Includes: identity records; medical records; assessment or diagnostic test results; special needs; program placements; psychological diagnoses; and other related records or information

Juvenile Service Providers

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

JSP's & Access to School Records

- At the request of JSP, school shall disclose confidential information contained in the student's educational records if the student has been:
 - Taken into custody or
 - Referred to juvenile court for allegedly engaging in delinquent conduct or CINS



JSP's & Access to School Records

School ---must keep record of disclosed information for 7 years

JSP ---must certify in writing that it has agreed not to disclose to a 3rd party, other than another JSP, and may use confidential information only to:

- Verify identify of student involved in JJ system and
- Provide delinquency prevention or treatment services to the student

Prosecutor

- Receives law enforcement records
- Makes initial decisions (probable cause, case disposition)
- Sends additional information to DPS for inclusion in JJIS
- Creates records





Court

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

JP/Muni Records

- Records related to child charged with Class C misdemeanor (non-traffic) confidential and can't be disclosed to public
- Open to inspection only by:
 - Judges or court staff
 - Criminal justice agency for criminal justice purposes
 - DPS
 - Attorney for party to the proceeding
 - Child defendant or parent/guardian/managing conservator

Facilities

- Creates their own records
 - Education
 - Treatment
 - Behavior
 - Medical
- Dates admitted/released

Who Can Access Confidential Records?



Who Can Access Confidential Records:

- DPS
- Courts
- JP/Muni Court
- Prosecutor
- Probation
- Military
- Victims
- Juvenile offender—for sealings
- Determinate Sentence petitions if transferred to adult court
- Juvenile service provider (JSP)
 - non-edu records
 - educational records

Why Do We Keep These Records Confidential?

Keeping Strangers Away



DPS Can Access Confidential Records

- (1) with the permission of the juvenile offender, to military personnel of this state or the United States;**
- (2) to a criminal justice agency as defined by Section 411.082 Gov. Code;**
- (3) to a noncriminal justice agency authorized by federal statute or federal executive order to receive juvenile justice record information;**
- (4) to a juvenile justice agency;**

DPS Can Access Confidential Records

- (1) with the **permission of the juvenile offender, to military** personnel of this state or the United States;
- (2) to a **criminal justice agency** as defined by Section 411.082 Gov. Code;
- (3) to a **noncriminal** justice agency **authorized by federal statute** or federal executive order to receive juvenile justice record information;
- (4) to a **juvenile justice agency**;

DPS Can Access Confidential Records

- (1) with the permission of the juvenile offender, to military personnel of this state or the United States;
- (2) to a criminal justice agency under 11.082 Gov. Code;
- (3) to a noncriminal justice agency under a statute or federal executive order; **Fed/state agency that engages in administration of criminal justice under a statute/exec order & has substantial budget for it.**
- (4) to a juvenile justice agency

DPS Can Access Confidential Records

(5) to the Texas Juvenile Justice Department;

(6) to the office of independent ombudsman of the Texas Juvenile Justice Dept.;

(7) to a district, county, justice, or municipal court exercising jurisdiction over a juvenile; and

(8) to the Department of Family and Protective Services or the Health and Human Services Commission as provided by Section 411.114, Government Code.

DPS Can Access Confidential Records

(5) to the Texas Juvenile Justice Department; **TJJD**

(6) to the office of independent **ombudsman** of the TJJD;

(7) to a district, county, justice, or municipal **court exercising jurisdiction over a juvenile**; and

(8) to the Department of Family and Protective Services (**DFPS**) or the Health and Human Services Commission as provided by Section 411.114, Government Code.

Courts/Prosecutors/Probation Offices Can Access Confidential Records

- (1) the judge, probation officers, and professional staff or consultants of the juvenile court;**
- (2) a juvenile justice agency**
- (3) an attorney representing the child's parent in a proceeding under this title;**

Courts/Prosecutors/Probation Offices Can Access Confidential Records

(4) an attorney representing the child;

(5) a prosecuting attorney;

(6) an individual or entity to whom the child is referred for treatment or services.

Courts/Prosecutors/Probation Offices Can Access Confidential Records

(7) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court; or

(8) with permission from the juvenile court, any other individual, agency, or institution having a legitimate interest in the work of the court.

(b-1) A person who is the subject of the records is entitled to access the records for the purpose of preparing application to seal the records.

Directive to Apprehend/Warrant

- Court may disseminate information if child is subject of DTA or warrant
 - Name, aliases
 - Physical description
 - Photograph
 - Description of alleged conduct



Victim Redaction

- Court must redact information re: victim under 18 before release unless information is:
 - Necessary for agency receiving info to provide services to V
 - Necessary for law enforcement purposes
 - Shared within JCMS (juv case management system)
- Shared with an attorney who is:
 - Representing the child in Title 3 proceedings
 - Representing another person in juvenile or criminal proceeding arising from same incident

Military Access

- May have records of court, probation department, or prosecutor with permission of the court
- May have probation department records under guidelines adopted by the juvenile board



**I sense a theme here, but
what specifically do clerks
need to be on notice of?**

Juveniles Transferred to Adult Court



Wait....What's the difference between
Transfer and Certification?



Used Interchangeably by Some Attys

TRANSFER

- Sentence for X years
- Juvenile is approaching 19th bday. But still has some time left on sentence
- Juv ct “loses” jx. Needs hearing.
- So it “transfers” kid to adult court for remainder of sentence.

CERTIFICATION

- No matter the age of juvenile.
- Crime so bad, court “certifies” him as an adult to be prosecuted as adult.
- Court “waives” juvenile jx and “transfers” juvenile to adult ct.

Juveniles Transferred to Adult Court

Determinate Sentence

DS Petition

54.051

Judgement –DS
Conduct

- If juvenile's determinate sentence probation has been transferred to adult court, clerk's public defender consists of a

Grand Jury
Approval

Transfer Order

Juveniles Transferred to Adult Court

Certification

Petition for
discretionary
transfer

54.02

Order of
transfer

- If juvenile has been certified as an adult, clerk's public record consists of only:

Order of
Commitment (to jail
or juv detention
pending trial)

Destroying Records

10-Day Destruction Rule for LE

- If taken into custody but not referred within 10 days, LE must destroy record
 - LE agency certifies destruction to juvenile board by 12/31
 - If false, person who certified is subject to perjury prosecution
- If in First Offender Program, destruction not until 90 days after successful completion (and can maintain certain info to determine future eligibility)

Mandatory Destruction of Records

If either intake or prosecutor finds no probable cause for conduct for which a child is taken into custody or referred to juvenile court without being taken into custody, court shall order the records destroyed.

Permissible Destruction: “Spring Cleaning”

- Fam Code 58.264
- Optional for probation, law enforcement, prosecutor
- Must have permission of agency head to destroy;
No court order
- Child cannot request destruction
- Must comply with retention guidelines

USE CAUTION



Caution on Destruction:

- Child cannot request destruction
- Court records cannot be destroyed
- Converting paper records to electronic and destroying paper while keeping electronic is NOT destruction
- Must comply with retention guidelines

Sealing Juvenile Records

Records Exempt from Sealing

- Fam code 58.252
- DPS and local law enforcement records:
 - Gang database
 - Sex offender registration
- Records maintained by TJJD for statistical and research purposes

USE CAUTION



Sealing Records

- Sealed = not destroyed!
- Stored in manner that only allows access to custodian of records.
- Fam Code 58.259

Not True Finding = Seal

- Court, on its own motion and without a hearing, shall immediately order sealing if court enters a finding that the allegations are not true
- 58.2551 fam code



The Birthdays That Matter! 18 & 19



Sealing Without Application

- If only ever referred for **CINS** offense, entitled to sealing.



Conduct Indicating A Need For Supervision (CINS)

- Non-traffic fine-only offense (Class C) that has been referred to juvenile court
- Runaway
- Huffing
- School violation that results in expulsion
- “Sexting” (43.261, PC)
- Prostitution
- “Swatting” – unless prior adjudication

Entitled to Sealing Without Application---CINS

1. 18 years old
2. Has records relating to the conduct filed w/ clerk
3. No adult felony conviction or any pending adult charges



Entitled to Sealing Without Application

Delinquent Conduct---Fam Code 58.253

- Misdemeanor adjudications
- No felony adjudications
- Can request sealing
at 19th birthday



Entitled to Sealing Without Application

(1) is at least 19 yrs;

(2) hasn't been adjudicated as having engaged in delinquent conduct or, if adjudicated as having engaged in delinquent conduct, was not adjudicated as having engaged in delinquent conduct violating a grade of felony;

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

No
Felonies



Entitled to Sealing Without Application

(4) has not been transferred by a juvenile court to a criminal court

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

(6) does not have any pending charges as an adult



Certification of Eligibility



Sealing with Application—58.253

- Court may seal if 17 years old OR under 17 but at least 1 year since discharge on all matters AND:
- No pending delinquent conduct or adult charges
- No adult felony conviction
- Never certified; no DS
- Not currently required to register as sex offender
- If committed to TJJD, has been discharged

Sealing with Application—58.253

- Regardless of eligibility for sealing without application, juvenile may apply for sealing
- Application must include information in statute
- Sample application at www.juvenilelaw.org
- No court/filing fee
- No attorney required

Sealing with Application—The Hearing

- Fam Code 58.256
- Court may seal with or without hearing
- Hearing required to deny application to seal
- Hearing must be held within 60 days of application
- Notice to prosecutor, juvenile, entities listed in application, and anyone that prosecutor or juvenile requests be present

Records Are Sealed!! Now What?

Impact of a Sealing Order

- Fam Code 58.528
- All adjudications vacated
- Proceedings dismissed and treated for all purposes as though they never occurred



Unless the juvenile blows their cover and discloses it....



Impact of Sealing Order—58.261

- Not required to state the person was the subject of a juvenile matter:
 - In any proceeding
 - On his or her record
 - On employment
 - On admission to a business
 - On licensing
 - On a contract
- Info in records, fact they existed, or denial of them cannot be used against person in any way
- Person cannot waive protected status of the records

**Gives Juvenile second chance to
turn their life around b/c they
don't have to disclose their past.**

**I have the Sealed Order.
Now What Do I do?**

Clerks Shall Do the Following— 58.258(FC)

- Seals court records, including those in case management system
- Sends copy to all entities listed in order (within 60 days)
- May send copies via any reasonable method, including certified mail, regular mail, or e-mail

TJJD Actions

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



DPS Actions

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



Probation, Prosecutor & LE Actions:

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

Everyone Else's Actions

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



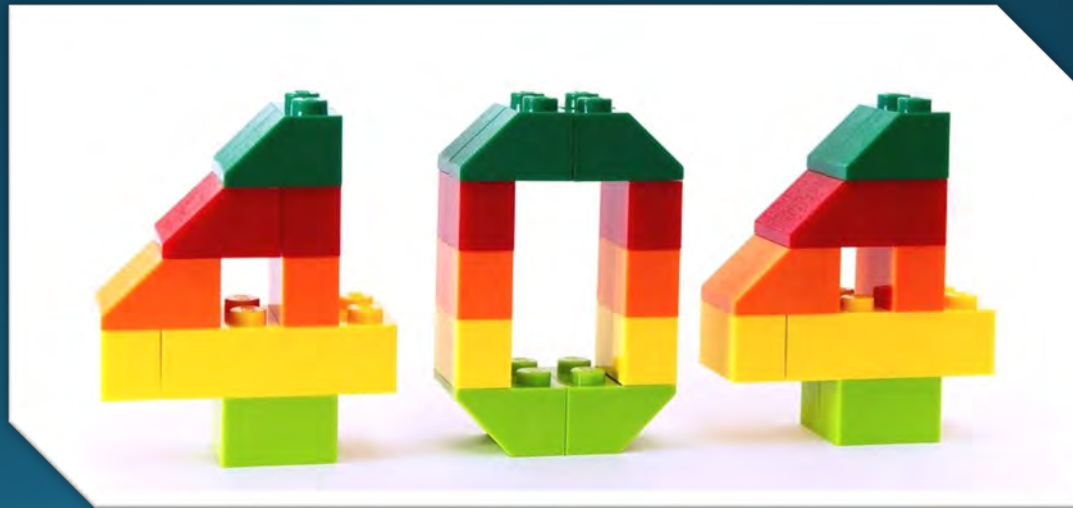
Unable to Comply?

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



Have no Records?

- Provide court written verification of that fact within **30 days**



Receive Inquiry After Sealing?



Motion to Inspect



- Subject of order can ask court to open records to inspect for any reason
- Prosecutor can ask court to open records to review for possible use in capital case/enhancement
- Court, TDJC, TJJD can ask court to open for sex offender screening purposes

Expunction Records

Tex Fam Code 58.265

**Juvenile Records are not subject
to expunction!**

Quick Recap!

When a grand jury referral

- **Keep it confidential, still a juvenile record!**
- **BUT if transferred to adult court, it is public record in adult file.**

do!

**When juvenile ages 18 or
19, what crosses over to
adult file?**

Juveniles Transferred to Adult Court

Determinate Sentence

DS Petition

54.051

**Judgement –DS
Conduct**

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That's all Folks!

Resources and Contact Information

Juvenile Law Section, State Bar of Texas

www.juvenilelaw.org

TJJD Legal Help Desk

legalhelp@tjtd.texas.gov

Kaci Singer

kaci.singer@tjtd.texas.gov