

- SUBJECT:** Sealing of and access to juvenile records of delinquent conduct
- COMMITTEE:** Corrections — committee substitute recommended
- VOTE:** 9 ayes — McReynolds, Madden, Dutton, England, Hodge, Kolkhorst, Martinez, S. Miller, Ortiz
- 0 nays
- 2 absent — Marquez, Sheffield
- WITNESSES:** For — Jessica Cassidy, American Civil Liberties Union of Texas; Kristin Etter, Texas Criminal Defense Lawyers Association; Isela Gutierrez, Texas Criminal Justice Coalition; David Gwin, Lifeworks; Kameron Johnson; Kennard Lakes; James Pepper; Riley Shaw, Tarrant County Criminal District Attorney’s Office; (*Registered, but did not testify*: Duncan Cormie, Lifeworks Austin; Christine Gendron, Texas Network of Youth Services; Justin Marlin, Texans Care for Children; Cindy Segovia, Bexar County Commissioners Court; Erica Terrazas, Texas Appleseed;
- Against — None
- On — Chris Hubner, Texas Juvenile Probation Commission; (*Registered, but did not testify*: Nydia D. Thomas, Texas Juvenile Probation Commission)
- BACKGROUND:** Under Family Code, ch. 58, when certain children and young adults are released from the juvenile justice system, their records are placed under restricted access by the courts and DPS when they turn 21. Under Family Code, sec. 58.203(a), the records relating to a person’s juvenile case are subject to automatic restriction of access if:
- the person is at least 21 years of age;
 - the juvenile case did not include violent or habitual felony conduct resulting in proceedings in the juvenile court for habitual felony conduct or certain felony offenses under sec. 53.045; and
 - the juvenile case was not certified for trial in a criminal court.

Records under restricted access are accessible only by courts and law enforcement officials. People whose juvenile criminal records are under restricted access are allowed to answer “no” when asked by certain employers and housing and educational groups if they have a criminal record. Courts, prosecutors, and others answer that the records do not exist, unless the request comes from law enforcement. This system is designed to allow youths the opportunity to transition successfully to adulthood once their obligations to the juvenile justice system are completed.

Under Family Code, ch. 58 other records also may be sealed. Sealing is done by motion of the child or young adult and commonly requires the use of an attorney. A court may order the sealing of records concerning a person adjudicated as having engaged in delinquent felony conduct if:

- the person is 21 years of age or older;
- the person was not transferred by a juvenile court to a criminal court for prosecution;
- the records have not been used as evidence in the punishment phase of a criminal proceeding; and
- the person has not been convicted of a felony after reaching the age of 17.

Under a sealing of juvenile criminal records, a court orders all electronic records of a juvenile criminal history destroyed and all physical copies locked away. These physical records remain accessible only to courts under certain circumstances.

DIGEST:

Restricted Access. CSHB 2245 would amend sec. 58.203(a) to require DPS to certify to the juvenile probation department that an eligible person’s records have been placed under restricted access when that person turns 17. CSHB 2245 also would repeal the requirement that DPS only restrict the access when it has not received notice that the person was granted deferred adjudication for or convicted of a felony or misdemeanor punishable by confinement in jail for an offense committed after the person became 17.

CSHB 2245 would amend sec. 58.208 to require that upon final discharge of a child from a juvenile system or on the last official action in the case, if there is no adjudication, an appropriate juvenile justice official would have to provide to a child:

- a written explanation of how automatic restricted access works;
- a copy of applicable law; and
- a statement that if the child wished to receive notification of an action restricting access to the child's records, before the child's 17th birthday, the child would have to provide the juvenile probation department with a current address where the child could receive notification.

CSHB 2245 would amend sec. 58.209(a), to change the age at which children would be informed of their eligibility for and certain information about restricted access from 21 to 17. CSHB 2245 also would remove the requirement that to have the child's juvenile record placed on restricted access at age 21, the child could not:

- commit a felony or jailable misdemeanor; and
- receive deferred adjudication for or be convicted in adult court of a felony or jailable misdemeanor.

Sealing of records. CSHB 2245 would amend Family Code, sec. 58.003(c), to allow a court to order the sealing of records concerning a person adjudicated as having engaged in felonious delinquent conduct of a person 19 years of age or older.

This bill would take effect September 1, 2009. The bill only would apply to sealing of and restricting access to records after the September 1, 2009 regardless of whether the adjudication of the underlying offense(s) occurred before, on, or after September 1, 2009.

**SUPPORTERS
SAY:**

By lowering the age at which a child's juvenile criminal records would automatically be placed into restricted access, CSHB 2245 would allow children and young adults the protections that restricted access was originally intended to give them. When a person applies for housing, jobs, or educational opportunities, a criminal record can result in an automatic denial. Restricted access was designed to overcome this problem and to allow a person a chance to enter adulthood successfully.

The current system does not apply early enough, in that under current law, an eligible person's records only are automatically placed in restricted access once they turn 21. This can be too late to help some youths who need the opportunities that restricted access affords. Most people who apply for college do so when they finish high school at 17 or 18. When

children age out of the foster-care system at around age 18, they need to find jobs and their own housing. People who sign up for the military often do so in their late teens or early twenties. Under the current system, all three of these groups would face severe obstacles if they have juvenile criminal records. CSHB 2245 would give to them the protections of restricted access when they really need it. Allowing restricted access at 17 would help to ensure that the transition to adulthood would be a more successful one for these young people.

While sealing of records is a good option, it is not widely utilized and must be supplemented by restricted access. Less than one percent of people eligible to have their records sealed do so. This is partly due to the fact that having records sealed is a costly process that nearly always involves the hiring of an attorney, at a cost of \$1,000 to \$2,500. Restricted access is a more useful solution because it is automatic, has no cost barrier, yet still allows for appropriate access of the records by courts and law enforcement.

CSHB 2245 would not change the eligibility rules for restricted access. Those who commit violent felonies, certain sexually based felonies, or other serious felonies would not be eligible for restricted access. Restricted access and sealing of records still would occur at the discretion of a judge. It only would make the restrictive access program more useful to those currently eligible for it.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The committee substitute differs from the bill by amending Family Code, sec. 58.208, to lower the age at which a juvenile justice official provides a written explanation of how automatic restricted access works and other information from 21 to 17.