

BILL ANALYSIS

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S.B. 1025
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Per the request of the legislature, the Texas Juvenile Justice Department (TJJD) has created a committee to suggest changes and ideas to the legislature. S.B. 1025 is a result of the committee's proposals. S.B. 1025 changes a few clerical errors in the Family Code and clarifies the process of confidentiality, sharing, sealing, and destruction of juvenile records. These changes were based upon the committee's duties to attempt to find solutions to everyday issues and loopholes within the juvenile justice system.

The first change in Section 1 allows sharing records and information with service providers without a written confidentiality agreement. The change allows a juvenile facility to share the information with a juvenile prosecutor, as may be necessary to comply with the Michael Morton Act. This section also allows a facility, including TJJD, to share information with a non-parent or guardian with whom the child is authorized to be placed upon release from the facility. The person receiving the information is prohibited from sharing it unless authorized by law. This section change allows for the sharing of information in administrative or court hearings (examples: the State Office of Administrative Hearings or worker's compensation); however, Subsection (d) requires that the child's identifiable information be redacted before the information is shared. New Subsection (c) clarifies that an entity receiving information under this provision is prohibited from sharing that information unless authorized by law.

Section 2 of S.B. 1025 adds a small clerical change that was overlooked when new legislation was added to the Family Code last session.

Section 3 of S.B. 1025 adds a section to allow an attorney representing a child in any proceeding to have access to the records. The changes in this section also are amended to allow sharing of information with juvenile service providers without requiring a written confidentiality agreement. The entity receiving the information is not allowed to share that information unless authorized by law.

Section 4 addresses an incorrect citation that was not corrected when provisions were renumbered last session.

Section 5 sets out TJJD's authority to share juvenile justice information that it collects from juvenile probation departments. The change clarifies that, in addition to a person, the information is authorized to also be released to an entity working on research or statistical projects that have been approved by TJJD as long as there is an arrangement between the researcher and TJJD. The change also allows TJJD to share identifiable information with the Department of Family and Protective Services (DFPS).

Section 6 applies to the sealing of records of a child referred to the juvenile court for conduct indicating a need for supervision (CINS) and never for delinquent conduct. CINS offenses are minor in nature and are not recorded in the Juvenile Justice Information System maintained by the Department of Public Safety of the State of Texas or in any other statewide database. The vast majority of CINS cases are handled through information measures, such as supervisory caution or deferred prosecution, and are never referred to the court. The change here provides that only those CINS cases that actually result in a court filing are subject to mandatory sealing. The records of the juvenile probation department, law enforcement entities, and prosecutors remain subject to destruction under Section 58.264 of the Family Code.

Section 7 allows for the sealing of records by application to occur at the earlier of age 17 or one year after discharge. Some individuals have expressed a desire for courts to be able to seal records earlier than age 18 or, if the child is younger, without requiring a two-year waiting period. Until the records are sealed, all juvenile probation departments will continue to have access to information on services provided to each juvenile and his or her risks and needs in order to better ensure matching of appropriate services to provide greater efficiency in meeting the juvenile's needs.

Section 8 restores the provision that records are required to be sealed by the court when there is a finding of not true on all allegations in a matter.

Section 9 makes it clear that orders to seal records are authorized to be delivered in ways other than via certified mail.

Section 10 clarifies that if there is a finding of no probable cause, the court is required to order the records destroyed even if the child was not taken into custody but instead the offense referral was forwarded to the intake entity.

Under Section 11, both TJJD and juvenile probation departments are authorized to provide prevention and intervention services. These programs are for children who have never been referred for delinquent conduct or conduct indicating a need for supervision. As such, records about these children do not meet the definition of juvenile records and are not protected under current law. This new change is designed to make these records confidential and to limit disclosure to a person or entity providing prevention and intervention services. The person or entity receiving the records may not disclose them.

Section 12 repeals Sections 58.003(c-3), 58.0053, and 58.007(j) because these sections were repealed last session. Section 58.007(j) is applicable to law enforcement records and was inadvertently not removed from this section when law enforcement records were moved to new 58.008.

As proposed, S.B. 1025 amends current law relating to the confidentiality, sharing, sealing, and destruction of juvenile records and certain records of at-risk youth.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 58.005, Family Code, by amending Subsection (a-1) and adding Subsection (c), as follows:

(a-1) Authorizes the records and information to which this section (Confidentiality of Facility Records) applies, except as provided by Article 15.27 (Notification to Schools Required), Code of Criminal Procedure, to be disclosed only to:

(1)–(4) makes no changes to these subdivisions;

(5) an individual or entity to whom the child is referred for treatment or services, including assistance in transitioning the child to the community after the child's release or discharge from a juvenile facility, rather than a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;

(6) makes a nonsubstantive change to this subdivision;

(7) a prosecuting attorney;

(8) a parent, guardian, or custodian with whom a child will reside after the child's release or discharge from a juvenile facility;

(9) a governmental agency or court if the record is necessary for an administrative or legal proceeding and the personally identifiable information about the child is redacted before the record is disclosed; or

(10) creates this subdivision from existing text and authorizes the records and information to which this section applies to be disclosed, with permission from the juvenile court, to any other individual, rather than person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(c) Prohibits an individual or entity that receives confidential information under this section from disclosing the information unless otherwise authorized by law.

SECTION 2. Redesignates Subsection (b-1), Section 58.0052, Family Code, as added by Chapter 1021 (H.B. 1521), Acts of the 85th Legislature, Regular Session, 2017, as Subsection (b-3), Section 58.0052, Family Code, and makes no further changes to this subsection.

SECTION 3. Amends Section 58.007, Family Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Authorizes the records, whether physical or electronic, of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title (Juvenile Justice Code), except as provided by Section 54.051(d-1) (relating to providing that only certain documents, after a certain transfer to district court, are a part of the district clerk's public record) and by Article 15.27, Code of Criminal Procedure, to be inspected or copied only by:

(1) and (2) makes no change to these subdivisions;

(3) an attorney representing the child's parent, rather than representing a party, in a proceeding under this title;

(4) an attorney representing the child;

(5) creates this subdivision from existing Subdivision (6), makes a nonsubstantive change, and renumbers subsequent subdivisions accordingly. Authorizes the records to be inspected or copied by an individual or entity to whom the child is referred for treatment or services, including assistance in transitioning the child to the community after the child's release or discharge from a juvenile facility, rather than a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;

(6) makes no further changes to this subdivision; or

(7) with permission from the juvenile court, any other individual, rather than person, agency, or institution having a legitimate interest in the proceeding in the work of the court.

(c) Prohibits an individual or entity that receives confidential information under this section from disclosing the information unless otherwise authorized by law.

SECTION 4. Amends Section 58.008(b), Family Code, as follows:

(b) Prohibits law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated, except as provided by Subsection (c) (relating to authorizing the law enforcement records of certain persons to be transferred to certain depositories under certain circumstances), rather than Subsection (d) (relating to authorizing the law enforcement records concerning a child to be inspected or copied by certain parties), from being disclosed to the public and requires the records to be maintained in a certain manner.

SECTION 5. Amends Sections 58.009(d) and (f), Family Code, as follows:

(d) Authorizes the Texas Juvenile Justice Department (TJJD) to grant the following individuals or entities, rather than the following entities, access to juvenile justice information only for a purpose beneficial to and approved by TJJD to:

(1) an individual or entity, rather than a person, working on a research or statistical project that meets certain requirements; or

(2) an individual or entity, rather than a person working on a research or statistical project, that is working on a research or statistical project that meets the requirements of and is approved by TJJD, rather than meets the requirements of and is approved by TJJD and has a specific agreement with TJJD that meets certain criteria.

(f) Prohibits TJJD from releasing juvenile justice information in identifiable form, except for information released under Subsection (c)(1) (relating to authorizing TJJD to grant certain criminal justice agencies access to juvenile justice information for certain purposes), (2) (relating to authorizing TJJD to grant the Texas Education Agency, under certain conditions, access to juvenile justice information for certain purposes), (3) (relating to authorizing TJJD to grant any agency under the authority of the Health and Human Services Commission access to juvenile justice information for certain purposes), or (4) (relating to authorizing TJJD to grant the Department of Family and Protective Services access to juvenile justice information for certain purposes) or under the terms of an agreement entered into under Subsection (d)(2) (relating to authorizing TJJD to grant a person working on a research or statistical project that meets certain criteria access to juvenile justice information for certain other purposes), rather than under Subsection (c)(1), (2), or (3), or under the terms of an agreement entered into under Subsection (d)(2).

SECTION 6. Amends Section 58.255(a), Family Code, as follows:

(a) Entitles a person who was referred to a juvenile court, rather than a juvenile probation department, for conduct indicating a need for supervision to have all records related to all conduct indicating a need for supervision matters sealed without applying to the juvenile court if the person:

(1) has records relating to the conduct filed with the court clerk;

(2) creates this subdivision from existing Subdivision (1) and renumbers subsequent subdivisions accordingly; and

(3)–(5) makes no further changes to these subdivisions.

SECTION 7. Amends Subchapter C-1, Chapter 58, Family Code, by adding Section 58.2551, as follows:

Sec. 58.2551. SEALING RECORDS WITHOUT APPLICATION: FINDING OF NOT TRUE. Requires a juvenile court, on the court's own motion and without a hearing, to immediately order the sealing of all records related to the alleged conduct if the court enters a finding that the allegations are not true.

SECTION 8. Amends Section 58.256(c), Family Code, as follows:

(c) Authorizes the juvenile court, except as provided by Subsection (d) (relating to prohibiting a court from ordering the sealing of the records of certain persons), to order the sealing of records related to all matters for which the person was referred to the juvenile probation department if the person:

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

(2)–(5) makes no changes to these subdivisions.

SECTION 9. Amends Section 58.258(c), Family Code, to require the clerk of court to send copies of the order sealing records to all entities listed in the order by any reasonable method, including certified mail, regular mail, or e-mail, rather than send copies of the order to all entities listed in the order.

SECTION 10. Amends Section 58.263, Family Code, to require the court to order the destruction of the records relating to the conduct for which a child is taken into custody or referred to juvenile court without being taken into custody, rather than relating to the conduct for which a child is taken into custody, including records contained in the juvenile justice information system, if certain determinations are made.

SECTION 11. Amends Section 203.0065, Human Resources Code, by adding Subsections (g) and (h), as follows:

(g) Provides that the records related to a youth who was provided prevention and intervention services under this section (Prevention and Intervention Services) are confidential and are only authorized to be inspected or copied by an individual or entity to whom the youth is referred for treatment or services.

(h) Prohibits an individual or entity that receives information under this section from disclosing the information unless otherwise authorized by law.

SECTION 12. Repealer: Section 58.003(c-3) (relating to requiring a juvenile court, on the court's own motion and without a hearing, to order the sealing of records concerning a child who meets certain criteria), Family Code.

Repealer: Section 58.0053 (Interagency Sharing of Juvenile Probation Records), Family Code.

Repealer: Section 58.007(j) (relating to requiring the custodian of a record or file concerning a child, before a child or a child's parent or guardian is authorized to inspect or copy a record or file concerning the child, to redact certain information), Family Code.

SECTION 13. Provides that the changes in law made by this Act apply to records created before, on, or after the effective date of this Act.

SECTION 14. Effective date: September 1, 2019.