



**What Every  
Texan Should  
Know About  
Juvenile Records**

*Legal Aid of NorthWest Texas  
Youth Rights Handbook Series*

2014 Edition

# Table of Contents

	Definitions	3-4
What Is In My Juvenile Record and Who Has It?		5
	Restriction of Juvenile Records	6-7
	Sealing Juvenile Records	8-9
	Expunctions	10-11
	Orders of Non-Disclosure	12-13
	Other Consequences To Be Aware Of	14
I Have A Juvenile Record, What Should I Do?		14
	Contacts and Notes	15

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**FREE LEGAL SERVICES MAY BE AVAILABLE THROUGH YOUR LOCAL LEGAL AID OFFICE.**

**LANWT'S YOUTH RIGHTS HOTLINE:**

**1-855-846-2193**

# Definitions

## ♦ Adjudication

The juvenile version of an adult criminal trial, but instead of being found guilty or not guilty, the court determines whether the juvenile is a delinquent, in need of supervision, or neither.

## ♦ Conduct in Need of Supervision (CINS)

Conduct engaged in by a juvenile that is either a status offense or would be a Class-C misdemeanor resulting only in a fine if engaged in by an adult.

## ♦ Disposition

This is the juvenile version of a criminal sentence. Possible dispositions include, but are not limited to, probation, a determinate sentence, or an indeterminate sentence.

## ♦ Deferred Adjudication

An agreement where a juvenile pleads guilty to a crime but the court agrees not to adjudicate him or her so long as he or she completes a list of tasks and stays out of trouble for a certain length of time. If the juvenile is successful, the court will dismiss the charge.

## ♦ Delinquent Conduct

Conduct engaged in by a juvenile that, if engaged in by an adult, would be considered a felony or misdemeanor which could result in jail or prison time.

## ♦ Determinate Sentence

A sentence for a juvenile to serve a set number of years in a secure facility and may result in the juvenile being transferred to an adult prison at age 18 to finish his or her sentence.

## ♦ Felony

A serious crime committed by an adult or by a juvenile who has been charged as an adult that can result in a fine, prison time, or both.

# Definitions (Continued)

## ◆ Indeterminate Sentence

A sentence where only the minimum length of stay in a secure facility is determined, but the juvenile must be released by age 19.

## ◆ Juvenile

In Texas, any person who is at least 10 but younger than 17.

## ◆ Juvenile Justice Information System

A state-wide system for creating, accessing, and maintaining juvenile records.

## ◆ Legal Aid Organizations

Organizations that provide free legal assistance to eligible persons.

## ◆ Misdemeanor

Crimes that, although less serious than felonies, can result in a fine, jail time, or both. A misdemeanor can be committed by an adult, a juvenile who has been charged as an adult, or a juvenile being prosecuted in Justice of the Peace or Municipal Court.

## ◆ Status Offense

An act that is only a crime if committed by someone under a certain age. For example, it is a status offense for someone under 21 to drink alcohol.

## ◆ Texas Juvenile Justice Department (TJJD)

This state department is the juvenile version of the Texas Department of Corrections and is responsible for juveniles who are being held in secure custody and sentenced to attend a state school or other residential program. TJJD is also responsible for monitoring juveniles on probation or parole and handling those who have been referred to juvenile court.

## ◆ Youth or Minor

Any person under 18 years old, not including someone who has been married, divorced, widowed, emancipated, or is in the armed forces.

# **What Is In My Juvenile Record And Who Has It?**

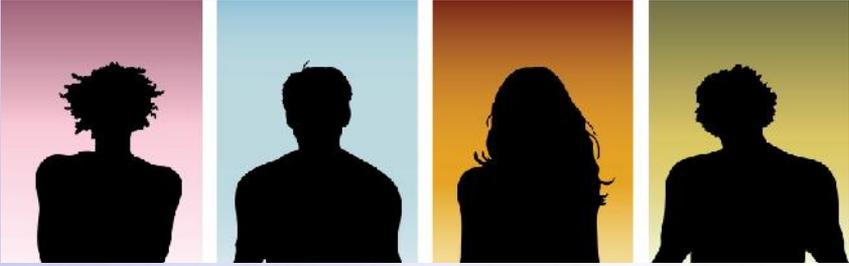


Your juvenile record will have information about why you were taken into custody or referred to juvenile court, how the case was handled, and any dispositions. Before your record is restricted, something discussed in more detail in the following section, your record can be accessed by any criminal justice agency in the state. Criminal justice agencies include law enforcement personnel like the police, prosecutors, probation officers, and other criminal and juvenile justice officials. The majority of your juvenile record is kept online, but records are also kept locally by courts and juvenile probation departments. Depending on the circumstance, your school might even have part of your record.

The online system for keeping juvenile records is called the Juvenile Justice Information System (JJIS) and is maintained by the Texas Department of Public Safety. Everyone mentioned above, except your school, can access this system and see your entire juvenile record or add new information.

If you were ever charged with a Class-C misdemeanor, including a school ticket, there will be a record from your local Municipal Court or Justice of the Peace Court. Records of Class-C offenses are separate from your juvenile record because Class-C cases are not usually heard in juvenile courts. Before September 2013, juvenile Class-C records were treated like adult records and were made public. This means that those records may appear on a background check. Juvenile Class-C records after September 2013 are now confidential and should not be made public, although criminal and juvenile justice agencies can still see them.

# Restriction of Juvenile Records



In general, the majority of juvenile records are restricted when a juvenile turns 17. Once restricted, nearly everyone is barred from access to those records, including law enforcement, and criminal or juvenile justice agencies. Should someone ask about restricted records, without having first received permission from a juvenile court, they will be told that the records do not exist. An adult can legally deny the events in a restricted record, unless they are testifying in court as a defendant.

There are a few types of records that will never be restricted. Records that will not be restricted include sex offender registration records, records related to street gangs, and records where the juvenile was certified as an adult or ordered to serve a determinate sentence.

The restriction of juvenile records is automatic; a person does not need to ask to have his or her record restricted. To be clear, restricted records are not destroyed. A juvenile court can give permission for certain people or agencies to view restricted records including the person to whom the records concern, criminal justice agencies, and the Texas Juvenile Justice Department. The military also can see these records with the written permission of the juvenile.

There are two more things you should know about restricted records. The first is that if a person is ever convicted of or pleads guilty to a crime as an adult, his or her entire juvenile record will be unrestricted and will remain unrestricted forever. Secondly, because these records can be accessed with permission, it is possible for a person's juvenile record to be used against him or her. The following is an example to show how restricted records work.

## Jane Smith's Story With A Restricted Record

Jane Smith was taken into custody when she was 13 for setting fire to a treehouse. Jane was charged with arson, found to be a delinquent, and given probation. At 16, Jane completed probation and when she turned 17 her records were automatically restricted. Jane was never arrested for anything else as a juvenile. When she was 20, Jane applied for a job at the local supermarket. On her job application, Jane marked that she had never been arrested or charged with a crime, as she was legally allowed to do. When the supermarket ran a criminal background check, it came back clear and Jane was hired. After a few years, Jane was promoted to manager.

When Jane was 25, she was arrested for drunk driving. The prosecutor was able to see her juvenile record and discovered the arson. Jane went to trial for the DWI and decided to testify. In her defense, Jane claimed that she did not think she was too drunk to drive and that she was a responsible person. While Jane was testifying the prosecutor asked her about the arson and the jury learned that Jane was not as responsible as she claimed. The jury found Jane guilty of the DWI, sent her to jail, and she lost her job at the supermarket. Since she was convicted of the DWI, her juvenile record also was unrestricted.



# Sealing Juvenile Records



If you read the previous section about restricted records, you know that restricted records can be unrestricted and used against a person. Having a sealed record is much better because sealed records are nearly impossible to access, rarely unsealed, and some can eventually be destroyed. Juveniles can deny the events in a sealed record to anybody, including employers and the police.

To seal juvenile records, a person must submit an application to the juvenile court that handled the case. Once an order to seal records is granted, the juvenile court vacates the adjudication and dismisses the charge. This basically means that the juvenile court gathers all the records, undoes the charge, and locks the records away forever. A record will be unsealed only in the following situations:

- 1) If the juvenile is later charged with capital murder.
- 2) If the juvenile is later charged with habitual felony conduct.
- 3) If the juvenile applies for a concealed handgun license.
- 4) If a prosecutor is considering an offer of community supervision for an adult with a juvenile record that contains a finding of delinquent conduct.

Which records can be sealed is tricky to understand, so, it is best to talk with a lawyer about whether your records qualify. In general, however, juveniles who engaged in conduct indicating a need for supervision must wait two years after completing their sentence to apply. Juveniles who engaged in delinquent conduct must wait until they are 19. Juveniles who were taken into custody but not charged within two years can also apply. During the waiting period, juveniles must stay out of any further trouble.

The only records that cannot be sealed are ones in which the juvenile was given a determinate sentence, ordered to register as a sex offender, found to be a habitual felon, or certified as an adult for trial.

## Jane Smith's Story With A Sealed Record

Jane Smith was taken into custody when she was 13 for setting fire to a treehouse and charged with arson. At her adjudication hearing, the judge found Jane to be a delinquent and gave her three years of probation. Jane completed her probation when she was 16 and her record was automatically restricted when she turned 17.

Since arson is a felony, Jane had to wait until she turned 19 to apply to have her juvenile record sealed. She stayed out of trouble during her three-year waiting period and, with the help of her local legal aid organization, successfully filed an application to have her record sealed. The juvenile judge granted her application and ordered her record sealed.

When Jane was 20, she applied for a job at the local supermarket. On her job application, she marked that she had never been arrested or charged with a crime as she was legally allowed to do. When the supermarket ran a criminal background check, it came back clear and Jane was hired. After a few years of working as a cashier, Jane was promoted to manager.

When Jane was 25, she was arrested for drunk driving. At her trial, Jane testified that she was a responsible person who would not drive while drunk. The jury never heard about the arson Jane had committed when she was 13. They heard only about Jane's good work as manager, how responsible she was at the supermarket, and that she had no other criminal history. The jury found Jane not guilty and she kept her job as manager at the supermarket. Jane went on to study management in college and is now a regional manager in charge of five supermarkets.



# Expunctions

An expunction is like an eraser that removes some criminal records. They can be tricky to understand and require an application to a court, so it is a good idea to talk with an attorney about your situation.

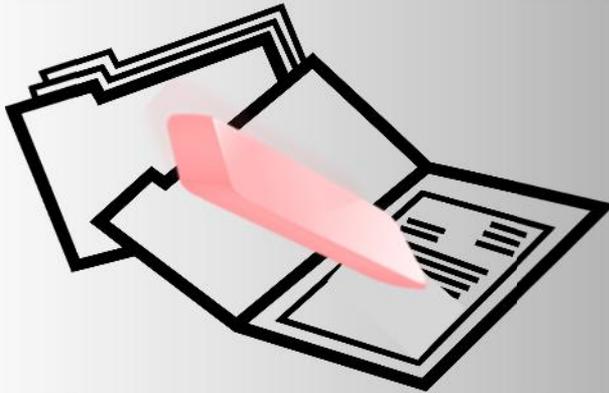
There are a few key facts everyone should know about expunctions. First, both juveniles and adults can apply for an expunction. Second, if an adult was convicted of a crime, the record cannot be expunged. Third, juveniles can have more information expunged than adults can, including some convictions.

There are six main situations in which a juvenile or adult can have a record expunged. The first is when a person was arrested, charged, and found not guilty. The second is when a person was convicted and then pardoned. These first two situations are supposed to result in an automatic expunction, but it is a good idea to visit with an attorney and make sure the record was actually expunged.

The third situation in which a person can ask for an expunction is when he or she was arrested but never charged or placed on community supervision for the alleged crime. In this scenario, a person must wait a set amount of time after the arrest before asking for an expunction. The waiting period for Class-C misdemeanors is 180 days, Class A and B misdemeanors is one year, and all felonies are three years.

The fourth situation is when a person was arrested but can no longer be prosecuted because there were no charges on file when the time to prosecute the crime ran out. For misdemeanors, charges must be filed within two years of when the crime happened. Most felonies must be charged within five, seven or ten years, although, some of the most serious felonies like murder can always be charged.

The fifth situation is when a person was arrested and charged, but the charge was dismissed. The sixth situation is when a person's identify was stolen and the thief was charged or convicted of a crime under the victim's name.



## Juveniles and Status Offenders Only

Beyond those six situations where both juveniles and adults can have records expunged, there are additional situations where a juvenile or status offender can have something expunged but an adult cannot. Juveniles and status offenders can even have some convictions expunged from their records. The following is a list of five situations where a juvenile or status offender can have a record expunged.

1) Juveniles convicted of only one Class-C misdemeanor, including school tickets, can apply for an expunction of that conviction once they turn 17.

2) Status offenders with one alcohol-related conviction—including the purchase, attempted purchase, consumption, or possession of alcohol; misrepresentation of age; and driving a watercraft while intoxicated—can ask for an expunction of that conviction.

3) Minors convicted of a tobacco-related offense, including the sale, purchase, or use of tobacco can have that conviction expunged as long as they complete a tobacco awareness program or perform community service.

4) Juveniles with dismissed Class-C charges who successfully completed a Teen Court program can have those records expunged.

## Orders of Non-Disclosure

An order of non-disclosure is available to both juveniles and adults who have successfully completed deferred adjudication and stayed out of trouble for the required length of time. Deferred adjudication is similar to probation or parole, but it comes before a person is convicted of an offense, whereas probation or parole are sentences that come after a conviction. Deferred adjudication is an agreement between a judge and a defendant where the defendant agrees to stay out of trouble and completes a list of tasks within a certain time. If the defendant holds up his or her end of the agreement, the judge will dismiss the charge and the defendant will not receive a conviction. An order of non-disclosure prevents the records of a deferred adjudicated offense from being shared with the public. This means that a person with an order of non-disclosure can legally deny any non-disclosed records on most job or license applications.

Orders of non-disclosure are not automatic and there is often a waiting period before a person can apply. During the waiting period, a person must not be convicted of, or placed on deferred adjudication for, any charge other than traffic tickets. There are six categories of misdemeanors that require a person to wait two years before applying, while, for all other misdemeanors, a person can seek a non-disclosure as soon as the charge or charges are dismissed. All felonies have a waiting period of five years. There also are some charges that can never be non-disclosed. Again, it is best to speak with an attorney about your records and what may be available to you.

Records that are part of an order of non-disclosure will not be shared with the public and should not appear on most criminal background checks. However, criminal justice agencies can still see the records, as well as certain non-criminal justice agencies. Some of these non-criminal justice agencies include the State Board for Educator Certification, the Texas Board of Nursing, and Texas School Districts. Therefore, even though non-disclosed records should not appear on most criminal background checks, there are some regulated professions with a governing board that will be able to access non-disclosed records.

## Johnny Brown's Story With and Without A Non-Disclosure

Johnny was 25 when he was arrested for stealing several CDs from an electronics store, a misdemeanor. It was the first time he had ever been in trouble, so the judge offered him deferred adjudication. Although Johnny completed his deferred adjudication in one year and stayed out of trouble, he did not apply for an order of non-disclosure. Two years later, Johnny applied for a job at a manufacturing plant, a job that paid a lot of money. Johnny had more experience than the other applicant, but the other applicant was chosen for the job because he had a clean criminal history and Johnny did not.

Johnny could have applied for a non-disclosure as soon as he completed his deferred adjudication because a misdemeanor theft charge does not have waiting period. If he had gotten the non-disclosure, Johnny would have been given the manufacturing job as he had more experience than the other applicant. If Johnny had gotten the manufacturing job, he would have been able to afford his dream car.

~~JOB~~



## **Other Consequences To Be Aware Of**

Many people are not aware of the lasting consequences for getting in trouble as a juvenile. This section talks about a few of these other consequences.

Juveniles who fail to pay a fine or complete community service that is ordered by a judge can be found in contempt of court. Courts can order those found in contempt to pay an additional fine of up to \$500 or suspend driving privileges until all fines are paid.

Juveniles interested in joining the military should know that federal law allows the military to see all criminal records, including restricted, sealed, expunged, and non-disclosed records. It is best to disclose your entire juvenile and criminal history when applying for military service, failure to do so may result in a felony charge for fraudulent enlistment. Having a criminal past often means that a person is morally disqualified from joining the military, however, there are waivers available that will allow a person with a minor juvenile or criminal past to serve. Applicants must ask for a moral disqualification waiver; decisions to grant or deny waivers are typically final and cannot be appealed.

## **I Have a Juvenile Record, What Should I Do?**

Because having a juvenile record is serious, it is a good idea to know your juvenile history and how these records will be treated. For example, evidence of a juvenile record can sometimes be used against you if you get into trouble as an adult.

In many cases, juvenile records can be dealt with so that they don't affect you later in life. You should consider getting advice from an attorney to determine whether your records can be sealed, expunged, or non-disclosed. The stories in this handbook show how these options can make a difference in a person's life. Because sealing, expunging, and non-disclosing your record are civil matters, you would need to hire your own attorney. If you cannot afford to hire an attorney, free civil legal services may be available, such as those offered by Legal Aid of NorthWest Texas.





**Legal Aid of NorthWest Texas**

**Youth Rights Hotline**

**1-855-846-2193**