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**RQ-0576-KP**

January 17, 2025

The Honorable Ken Paxton  
Texas Attorney General  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711

Attention: Opinion Committee

Via email: [opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov)

Lorenzo de Zavala  
State Archives and  
Library Building

1201 Brazos Street  
Austin, Texas  
78701

P.O. Box 12927  
Austin, Texas  
78711-2927

512-463-5437

[www.tsl.texas.gov](http://www.tsl.texas.gov)

Dear General Paxton,

The Texas State Library and Archives Commission (TSLAC) respectfully requests your opinion under section 402.042 of the Government Code regarding the following question:

**Are records related to juvenile criminal cases permanent records, meaning they must never be destroyed, except by court order?**

Background

Under section 441.158 of the Government Code, TSLAC is required to prepare and distribute to records management officers of local governments records retention schedules for each type of local government, including a schedule for records common to all types of local government. The statute requires TSLAC to adopt the schedules by rule. Each schedule must:

- (1) list the various types of records of the applicable local government;
- (2) state the retention period prescribed by a federal or state law, rule of court, or regulation for records for which a period is prescribed; and
- (3) prescribe retention periods for all other records, which periods have the same effect as if prescribed by law after the records retention schedule is adopted as a rule of the commission.

Gov't Code, §441.158(b).

Under this authority, TSLAC adopted 13 Tex. Admin. Code §7.125, which includes Local Schedules GR (Records Common to All Local Governments), PW (Records of Public Works and Other Government Services), CC (Records of County Clerks), DC (Records of District Clerks), PS (Records of Public Safety Agencies), SD (Records of Public School Districts), JC (Records of Public Junior Colleges), LC (Records of Justice and Municipal Courts), TX (Records of Property Taxation), EL (Records of Elections and Voter Registration), HR (Records of Public Health Agencies), and UT (Records of Utility Services).

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Each schedule provides the minimum retention periods for the records listed. Under section 203.041 of the Local Government Code, each local government must prepare a schedule for its records and establish a retention period for each type. The retention period may not be less than a retention period prescribed by a state or federal law, regulation, or rule of court or a retention period for the record established on a records retention schedule issued by TSLAC. Each local government must also file a certification of compliance that it has adopted records control schedules that comply with the minimum requirements established on records retention schedules issued by TSLAC. The schedules are formatted as a chart with columns that include the record number for reference, the record title, a record description to assist local governments in understanding the scope of the series, a total retention period, and a remarks field, which includes clarifying information regarding retention requirements for the specific record series and sometimes a legal citation, either as a direct reference for the specific retention period, or as a reference for context regarding the record series and/or applicable retention period.

Juvenile Records under Family Code, Chapter 58, Subchapter C-1.

Subchapter C-1 of the Family Code addresses the sealing and destruction of juvenile records, defined as “any documentation related to a juvenile matter, including information contained in that documentation.”<sup>1</sup> A “juvenile matter” is defined as “a referral to a juvenile court or juvenile probation department and all related court proceedings and outcomes, if any.”<sup>2</sup> The subchapter authorizes the sealing of records with and without application and actions necessary by entities that receive an order to seal records, including limiting access to the information, destroying records, and sending written verification of the limitation and destruction of the records to the issuing court. Under Fam. Code §58.263, a court shall order destruction of records relating to the conduct for which a child is taken into custody or referred to juvenile court without being taken into custody, including records contained in the juvenile justice information system, if a determination is made that no probable cause exists to believe the child engaged in the conduct and the case is not referred to a prosecutor for review, or a determination that no probable cause exists to believe the child engaged in the conduct is made by the prosecutor.

Most relevant to this opinion request, Fam. Code §58.264, Permissible Destruction of Records, authorizes a juvenile board, a head of a law enforcement agency, and a prosecuting attorney to authorize destruction of records in a closed juvenile matter, regardless of the dates the records were created, based on the age of the person and conduct for which they were referred. Section 58.264(f) states that the section does not authorize the destruction of the records of the juvenile court or clerk of court. Section 58.264(h) provides that the section does not affect the destruction of physical records<sup>3</sup> and files authorized by the Texas State Library Records Retention Schedule.

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<sup>1</sup> Fam. Code §58.251(4).

<sup>2</sup> Fam. Code §58.251(2).

<sup>3</sup> “Physical record” means “a paper copy of a record. Fam. Code §58.251(3).

## Juvenile Cases Papers on TSLAC's Records Retention Schedules.

TSLAC has established retention periods for juvenile case papers on four local government schedules:

- Schedule CC (Retention Schedule for Records of County Clerks): Record Number CC1700-10 (Juvenile Case Papers)
- Schedule DC (Retention Schedule for Records of District Clerks): Record Number DC2100-10 (Juvenile Case Papers)
- Schedule LC (Retention Schedule for Records of Justice and Municipal Courts): Record Number LC2450-05 (Juvenile Case Papers)
- Schedule PS (Records of Public Safety Agencies): Record Number PS4225-06 (Juvenile Case Files)<sup>4</sup>

This opinion request focuses on juvenile case papers maintained by county and district clerks. Prior to the adoption of TSLAC's first local records retention schedules, records retention periods for local governments were published by TSLAC in the Texas County Records Manual. The retention periods for juvenile case papers according to the County Records Manual varied depending on the age of the juvenile, whether the juvenile had been convicted of a felony as an adult, and whether the court had already ordered that the records be destroyed.

TSLAC first adopted Schedules CC and DCs in 1994. The schedules have been amended many times over the years based on changes in state and federal laws and regulations and to simplify and streamline the schedule when possible.

The specific record series at the center of this opinion request are Record Number CC1700-10, Juvenile Case Papers, and Record Number DC2100-10, Juvenile Case Papers. According to both schedules, juvenile case papers are described as documents relating to juvenile detention, transfer, adjudication, or disposition, including all records transferred to the court by law enforcement or other agencies under sealing orders issued by a court. The retention period for the records depends on the offense and the age of the individual. Specifically, if the most serious allegation adjudicated was conduct indicating a need for supervision, or the referral or information did not relate to conduct indicating a need for supervision or delinquent conduct and the juvenile court or the court's staff did not take action of the referral or information for that reason, the records must be retained until the individual is at least 18 years of age. The schedules cite to Family Code, §58.264(b)(1) in the remarks field as context for this retention period.

If the most serious allegation adjudicated was delinquent conduct that violated a penal law of the grade of misdemeanor, or the most serious allegation was delinquent conduct that violated a penal law of the grade of misdemeanor or felony and there was not an adjudication, then the records must be retained until the individual is at least 21

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<sup>4</sup> Note that Record Number PS4225-06 includes a broader range of juvenile-related case file information than the other records series. Only Record Number PS4225-06d refers to Fam. Code §58.264.

years of age. The schedules cite to Family Code, §58.264(b)(2) in the remarks field as context for this retention period.

If the most serious allegation adjudicated was delinquent conduct that violated a penal law of the grade of felony, then the records must be held until the individual is at least 31 years of age. The schedules cite to Family Code, §58.264(b)(3) in the remarks field as context for this retention period.

Finally, if the juvenile was tried as an adult or was adjudged delinquent based on the violation of a penal law of the grade of felony and was sentenced to the Texas Juvenile Justice Department with a transfer to the Texas Department of Criminal Justice under determinate sentencing procedures, then the schedules instructs the clerk to follow the retention periods for Record Number CC1600-04/DC2125-05 (Criminal Case Papers).

Prior versions of Schedules CC and DC authorized destruction of juvenile case papers by court order and in some circumstances, without a court order.

### Discussion

Prior to its repeal in 2017, Family Code, §58.0071, Destruction of Certain Physical Records and Files, identified the following three persons who could authorize the destruction of physical records and files relating to a juvenile case:

- (1) a juvenile board in relation to the records and files in the possession of the juvenile probation department;
- (2) the head of a law enforcement agency in relation to the records and files in the possession of the agency; and
- (3) a prosecuting attorney in relation to the records and files in the possession of the prosecuting attorney's office.

The statute authorized destruction based on the age of the child respondent in the case and the allegation adjudicated. Subsection 58.0071(f) specifically noted that the statute did not affect the destruction of physical records and files, defined in the statute to *include* electronic files, authorized by TSLAC.

In 2017, the Legislature added Family Code, §58.264, Permissible Destruction of Records (SB 1304, 85th Leg., R.S.). This statute is similar to repealed §58.0071; however, there are a few notable differences. Section 58.264 authorizes the same three persons to destroy records in a closed juvenile matter. The statute similarly addresses timing, clarifying when records related to a person referred to a juvenile probation department may be destroyed based on the individual's age and the conduct for which the person was referred. SB 1304 added a new provision – subsection (f), which states that §58.264 “does not authorize the destruction of records of the juvenile court or clerk of court.” Also, while subsection (h) reads the same as former §58.0071, “physical records and files” is defined by Family Code, §58.251 to mean a paper copy of a record, removing the inclusion of electronic files.

As noted above, TSLAC's Schedule DC has authorized the destruction of sealed juvenile records held by district clerks since at least 1978 by seeking court order, and in some circumstances without a court order. TSLAC continually reviews its schedules for consistency and clarity and makes amendments to the schedules to simplify and streamline retention when possible. Following the 2019 legislative changes discussed above, TSLAC proposed updates to record series DC 2100-10 in 2019, noting Fam. Code, §58.264, as context for the retention periods in the schedule (not direct authority for the retention periods). TSLAC did not receive any comments on these proposed changes and the periods were adopted.

### Current Issue

In recent years, TSLAC has received questions and feedback from district clerks regarding the series. The Office of Court Administration's District Clerk Manual notes that juvenile records are controlled by Family Code, Chapter 58, and states:

For juvenile courts and court clerks, the destruction of juvenile records falls into two categories:

- "No Probable Cause" Destruction
  - The court must 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 if a determination is made, either by juvenile intake or by the prosecutor (after referral to the prosecutor by intake), that no probable cause exists to believe that a child engaged in illegal conduct.
- "Spring Cleaning" Destruction of Records
  - Courts and clerks can destroy physical copies of juvenile records, regardless of when created, following the conversion of the physical record into an electronic record. "Electronic record" here means an entry in a computer file, or information on microfilm, microfiche, or any other electronic storage media. Once converted to an electronic record, however, the electronic version must be retained and maintained permanently. NOTE: if the court or the clerk cannot PERMANENTLY retain and maintain the electronic record, the physical record should not be destroyed.

This guidance suggests that juvenile records are permanent records unless a court orders destruction.

The Office of Attorney General previously addressed whether the physical, original paper records of a juvenile case may ever be destroyed and, if so, when and under what conditions in Opinion No. GA-1017 (2013). The opinion was based on analysis of the prior statute, and noted that:

Because the term "physical records and files" encompasses paper-based and electronic records, subsection 58.0071(c) thus contemplates the permanent destruction of a juvenile record in its entirety if certain parameters are met. First, the custodian must be a juvenile board, law enforcement agency, or

prosecuting attorney. Second, the record must pertain to a “closed juvenile case.” Third, the destruction is “subject to Subsections (d) and (e) and any other restriction the person may impose.”

In closing, the opinion noted:

[A] plain reading of the statute authorizes the custodian of physical records and files in a juvenile case to destroy hard-copy, original paper records and files at any time pursuant to subsection 58.0071(b) as long as the custodian electronically duplicates and stores the information in the records and files. To destroy juvenile records and files permanently, such that there remain no copies of the information in any format: (1) the custodian of records must be a juvenile board, law enforcement agency, or prosecuting attorney; (2) the records and files must pertain to a closed juvenile case; and (3) the restrictions of section 58.0071(d) and (e) must be met.

Based on this opinion, a similar conclusion seems reasonable under Family Code, §58.264. However, the two differences between the prior and current statute discussed above cloud the matter. Section 58.264 expressly states in subsection (f) that it does not authorize the destruction of records of a juvenile court or a clerk of court. And, under subsection (h), §58.264 does not affect the destruction of physical records and files – meaning paper copies – authorized by TSLAC. TSLAC’s records retention schedules, however, are format neutral, meaning that the retention periods apply regardless of whether the records are in hard copy or electronic.

Based on all of the above, TSLAC requests an opinion regarding the retention period for juvenile case papers. Thank you for your consideration of this request. If you need any additional information to facilitate your review, please do not hesitate to contact me at [gmeraz@tsl.texas.gov](mailto:gmeraz@tsl.texas.gov).

Sincerely,



Gloria Meraz  
Director and Librarian