SUBJECT: Lowering age for sealing, restricting access to juvenile criminal records

COMMITTEE: Corrections — favorable, without amendment

VOTE: 7 ayes — Madden, Allen, Cain, Marquez, Parker, White, Workman

0 nays

2 absent — Hunter, Perry

WITNESSES: For — Darrell Davila, Tarrant County District Attorney; Marc Levin, Texas Public Policy Foundation, Center for Effective Justice; (*Registered, but did not testify*: Chris Cunico, Texas Criminal Justice Coalition; Katrina Daniels, Bexar County District Attorney's Office; Rena Pacheco-Theard, American Civil Liberties Union of Texas; Jodie Smith, Texans Care for Children)

Against — None

On — Kameron Johnson, Juvenile Law Section – State Bar of Texas, Texas Criminal Defense Lawyers Association

BACKGROUND: **Restricted access to juvenile records**. Under Family Code, sec. 58.203, when certain children and young adults are released from the juvenile system, their records are placed under restricted access by the courts and DPS when they turn 21. Under 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 old;
- the case did not include violent or habitual felony offenses punished as a determinate sentence;
- the juvenile was not transferred to adult court; and
- DPS has not received a report that, after turning 17, the person was granted deferred adjudication for or convicted of a felony or a misdemeanor that can result in confinement.

Restricted access does not apply to sex offender registration information or to information in a gang database.

Records under restricted access are accessible only by courts and law enforcement officials. Under sec. 58.206, people whose juvenile criminal records are under restricted access are allowed to answer "no" in applications for employment, licensing, and public or private benefits such as housing and education when asked if they have a criminal record. Courts, prosecutors, and others answer that the records do not exist, unless the request comes from law enforcement.

Sealing of juvenile records. Family Code sec. 58.003 governs the sealing of juvenile court records. Upon request of a person with a juvenile record and subject to some restrictions, courts are required to seal records if two years have passed since the discharge of the person or the last action in the case and if the person has not been convicted of or adjudicated delinquent for a felony or a misdemeanor involving moral turpitude or found to have engaged in any new juvenile adjudication and there are no such pending proceedings. Courts are prohibited from sealing the records of persons who received determinate sentences, authorized for certain serious offenses.

Court may order the sealing of records of felony offenses only if:

- the offense was not a determinate sentence;
- the person is at least 21 years old;
- the person was not transferred to adult court for prosecution;
- the records have not been used as evidence of a prior criminal record in a punishment proceeding ; and
- the person was not convicted of a felony after the age of 17.

If there was no adjudication in a case, courts can seal records at any time after a final discharge or after the last official action in a case. If a finding of not delinquent is made, records are immediately sealed. If a child successfully completes a drug court program, the court may immediately seal records, but prosecutors and probation officers can maintain records until a child reaches 17. Juvenile sex offense records cannot be sealed while the person is required to be a registered sex offender.

When a juvenile criminal record is sealed, a court orders all electronic records of a juvenile criminal history destroyed and all physical copies locked away with the court. The physical records remain accessible to only to courts, except that prosecutors and DPS may seek to reopen the records under limited circumstances.

Under sec. 58.003, people whose juvenile criminal records have been sealed are able to deny, in applications for employment, licensing, or other information, such as housing and education, that they have ever been the subject of a juvenile proceeding or that they have ever been adjudicated delinquent. Courts, prosecutors, and others answer that the records do not exist.

DIGEST:

HB 961 would lower from 21 years old to 17 years old the age that qualified a person to have that person's records go under automatic restricted access. The bill would repeal the current requirement that DPS restrict access only when it had not received notice that, after turning 17, the person was granted deferred adjudication for or convicted of a felony or a misdemeanor that can result in confinement

HB 961 would lower from 21 years old to 19 years old the age a person would have to be for a court to order the sealing of a juvenile record involving a felony.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011. It would apply only to sealing and restricting access to records in adjudication of juvenile cases on or after the bill's effective date.

SUPPORTERS SAY:

HB 961would revise the state's policy on the restricted access and sealing of juvenile criminal records to better meet one of the goals of the juvenile justice system – to give children a second chance. Currently, youths must wait until they are 21 years old to have the automatic restricted access rules take effect and to qualify to ask to have a felony record sealed. Many youths who have turned their lives around and recovered from their brush with the law find that as they enter adulthood their juvenile records cause difficulties. HB 961 would address this problem by lowering the ages at which juvenile criminal records automatically would be placed into restricted access and at which youths could ask to have some felony records sealed.

Under the current system, many youths with criminal records can face obstacles when they reach their late teens. Most people who apply for college do so when they finish high school at 17 or 18. Other youths move into their own housing around this age, and people who sign up for the military often do so in their late teens or early twenties. This is an

especially crucial time for children who age out of the foster-care system and need to find jobs and their own housing.

The automatic process of restricted access was designed to overcome these problems and to allow a person the chance to enter adulthood successfully. For this process to work, it should occur at 17 years old when a youth moves into the adult world, not at 21. This would give youths with a juvenile record an incentive to turn their lives around.

Lowering the age at which youths could ask to have their felony juvenile records sealed, if certain conditions were met, also would allow youths the opportunity to transition successfully to adulthood once their obligations to the juvenile justice system were completed. Nineteen is the appropriate age to allow someone to ask for sealing because this the maximum age limit for youths to be committed to the Texas Youth Commission. In 2007, that age was lowered by the Legislature from 21 years old to 19 years old, and HB 961 would reflect that change.

HB 961 would not threaten the public safety because only appropriate records would continue to be restricted or sealed. The bill has been worked on with prosecutors and others to ensure that the public safety would be protected.

The bill would not change the current safeguards and restrictions that keep some records from automatic restricted access and sealing. For example, cases involving certain serious crimes punished with determinate sentences and cases transferred to adult courts currently do not qualify for automatic restricted access, and this policy would continue. The current law that allows for appropriate access to the restricted records by courts and law enforcement officials would continue. The bill would change only the age at which a person could ask a judge for a felony record to be sealed, and all decisions about sealing would continue to be made by a judge. Felony records involving determinate sentences, cases transferred to adult court, and records of registered sex offenders would continue to be ineligible for sealing.

Keeping these requirements for restricted access and sealing in the law would meet the needs of entities such as landlords or employers because restricted access and sealing would occur only in appropriate cases. The youths who would qualify for restricted access and sealing would be those who deserve to move on with their lives at an earlier age, and access to the

records of those with more serious offenses would continue to be available.

OPPONENTS SAY:

In some cases, the public safety might be best served by maintaining the access to juvenile records that current law provides. Lowering the age for restricted access and potential record sealing could restrict the ability of employers, landlords, and others to evaluate persons. Allowing these entities to receive the information they currently get does not mean that they will automatically reject job or housing candidates with juvenile records, but ensures that the entities have more information on which to base their decisions.

NOTES:

During the 2009 regular session, a similar bill, HB 2245 by S. Turner, passed the House by 73–64, then died in the Senate Criminal Justice Committee.