

Sample Cleanup

Sec. 1234. SEALING OF COURT RECORDS CONTAINING CERTAIN MEDICAL INFORMATION. (a) In this section:

(1) "Child" means a person who is younger than 18 years of age.

(2) "Medical records" means any information used or generated by health care providers, including records relating to emergency room treatment, rehabilitation therapy, or counseling.

(b) Except as provided by Subsection (e), on a motion filed by a (person/entity) described by Subsection (c), the court shall seal any records of the court that contain the medical records of a child who is a victim of a sexual assault.

(c) A motion under this section may be filed on the court's own motion or by:

(1) the attorney representing the state;

(2) the defendant; or

(3) the parent or guardian of the victim or, if the victim is no longer a child, the victim.

(d) A motion under this section may be contested (not later than/only before) the seventh day after the date the motion is filed. The court shall hold a hearing on a motion

that is contested under this subsection. The court may hold a hearing on an uncontested motion.

(e) The court is not required to seal medical records under this section on a finding of good cause after a hearing held under Subsection (d).

(f) Except on a showing of bad faith, a clerk of the court is not liable for any failure to seal medical records after (the court grants a motion/a motion is granted) under this section.

EXPLANATION/KEY (run through everything first, questions at end):

(a) **Heading:** adds more words to be helpful. Doesn't add important concepts of "child" or "sexual assault," but headings are a balancing act of providing the overall gist very briefly, and you may very well have made some different choices here.

(b) **Definitions:**

(1) MAY be helpful to break out definition of "child." That's something you typically see as a defined term. But in some ways, "child" does not appear often enough in this particular statute to justify a definition... sometimes a statute is more readable if you just rely on a one-time longer references followed by shorter secondary references.

(2) at any rate, it's definitely necessary to make a choice as to whether to go with either the term "child" or with the term "minor" for consistency in

terminology

(3) "felony" is a clear example of an artificial definition ... logically in the English language, this word is broader than just "sexual assault." Plus it makes the statute more confusing ... simpler just to say what you mean and put "sexual assault" directly in the text, in new Subsection (b).

(4) singular vs. plural comes up here: the singular is usually preferred, but it's okay to use the plural when you're referring to a class or group vs. an individual, or to items more typically thought of in a group. It's okay if you put "medical record" in the singular form here.

(5) first example of getting rid of superfluous words here ("including"); I won't mention all of the examples b/c they probably speak for themselves.

(c) new Subsections (b) and (c):

(1) Some people who tried this exercise kept

the concepts in these two subsections together, and moved the list of who could file a motion to the end, which is perfectly legit and readable. However, one could argue that there is just a lot going on with a long sentence like that, and so it could be clearer to resort to an acceptable use of the passive and parse out the concepts just a bit more. This is more a question of drafter preference.

(2) Also, (person/entity) is in parentheses mainly because in Texas we have a global definition of "person" (which includes entities) that may or may not apply here ... it depends on whether this statute is located in a code or not.

(3) you may have noticed that there is actually an exception to this overall duty that is jammed in later in the statute, so I've added language that warns the reader immediately that there is a limitation on the duty lurking just around the corner.

(d) new Subsection (d): Here is the ambiguity

that I was talking about ... what does the "within" clause modify? As you can see, as the requester I had intended for it to go to the deadline for contesting the motion, but quite plausibly and logically it could go all the way back to the hearing aspect: when must the hearing be held by? This is probably one of those things that would require a phone call to the requestor.

(e) new Subsection (e):

(1) would you believe that all of that initial language can be simply put as "the court is not required to"?

(2) also, note that this exception provision works best here because it comes AFTER the general rule/duty, and also AFTER all the references to a hearing. So by the time this appears, the reader already knows the basics of what this provision is talking about ... he or she doesn't have to read ahead to figure out various bits of this subsection

(f) new Subsection (f):

(1) enforcement provisions should be last ... and this is still a type of enforcement provision in that it addresses the issue of whether there will be any enforcement or not.

(2) Can get rid of words since there is a repetitive reference to "clerk" ... the subjects of both parts of this sentence are the same.

(3) The "except on a showing of bad faith" language COULD stay at the end of the subsection, but in that case it would need a comma.

******What are your Q's? (weirdness that remains in statute):**

a) which are actually being sealed: court records v. medical records. Probably doesn't impair statutory construction though

b) what are examples of good cause? Statute is lacking some substance that might be helpful.