

Chapter 350. Investigating Abuse, Neglect, Exploitation, Death and Serious Incidents by the Texas Juvenile Probation Commission

Published Standards Without Commentary

Effective Date 09/01/2009

Title 37 Texas Administrative Code

<*>350.100. Definitions.

(a) The terms used in this chapter apply to the investigations of alleged abuse, neglect, exploitation, death conducted by the Commission and to the Commission's procedures relating to serious incidents.

(b) Terms used in this chapter shall have the following meanings unless otherwise expressly defined within the chapter.

(1) Abuse, Neglect and Exploitation--The definitions of "abuse", "neglect" and "exploitation" shall have the meanings ascribed under Texas Family Code <*>261.001 and <*>261.401. For the purposes of this chapter, "abuse" includes serious physical abuse and sexual as defined in this section.

(2) Administrator--The chief administrative officer of a juvenile probation department, a public or private juvenile justice program or a public or private juvenile justice facility.

(3) Administrative Designee--The role assigned to the administrator, when a preponderance of evidence determines that the proximate cause of the allegation was based on policies and procedures under the direct control of the administrator.

(4) Alleged Perpetrator--A person alleged as being responsible for the abuse, neglect or exploitation of a juvenile through the person's actions or failure to act.

(5) Alleged Victim--A juvenile under the jurisdiction of the juvenile court or participating in a program operated under the authority of the governing board or juvenile board who is alleged to be a victim of abuse, neglect or exploitation.

(6) Attempted Suicide--Any voluntary and intentional action that could reasonably result in taking one's own life.

(7) Call Line-- The toll-free number made available for reporting allegations of abuse, neglect, exploitation, death and serious incidents within the juvenile justice system.

(8) Commission--The Texas Juvenile Probation Commission.

(9) Designated Perpetrator--The individual responsible for the abuse, neglect or exploitation of a juvenile who has not exhausted the right to administrative review or whose right to administrative review has not expired.

(10) Designated Victim--The juvenile who was abused, neglected or exploited.

(11) Escape--

(A) The voluntary, unauthorized departure, or attempt to depart, by an individual who is in custody; or

(B) Failure to return to custody following an authorized temporary leave for a specific purpose or limited period.

(12) Incident Report Form--The required form used to report to the Commission alleged abuse, neglect, exploitation, death and serious incidents.

(13) Internal Investigation Report--The written report submitted to the Commission that summarizes the steps taken and the evidence collected during an internal investigation of alleged abuse, neglect, exploitation or death.

(14) Juvenile--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, or participating in a juvenile justice program.

(15) Juvenile Justice Facility ("facility")--A facility, including its premises and all affiliated sites, whether contiguous or detached, operated wholly or partly by or under the authority of the governing board, juvenile board or by a private vendor under a contract with the governing board, juvenile board or governmental unit that serves juveniles under juvenile court jurisdiction. The term includes, but is not limited to:

(A) A public or private juvenile pre-adjudication secure detention facility, including a short-term detention facility (i.e., holdover) required to be certified in accordance with Texas Family Code <*>51.12;

(B) A public or private juvenile post-adjudication secure correctional facility required to be certified in accordance with Texas Family Code <*>51.125, except for a facility operated solely for children committed to the Texas Youth Commission; and

(C) A public or private non-secure juvenile post-adjudication residential treatment facility housing juveniles under juvenile court jurisdiction.

(16) Juvenile Justice Program ("program")--A program or department operated wholly or partly by the governing board, juvenile board or by a private vendor under a contract with the governing board, or juvenile board that serves juveniles under juvenile court jurisdiction or juvenile board jurisdiction. The term includes a juvenile justice alternative education program and a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court or juvenile board jurisdiction and a juvenile probation department.

(17) Juvenile Probation Department ("department")--All physical offices and premises utilized by a county or district level governmental unit established under the authority of a juvenile board(s) to facilitate the execution of the responsibilities of a juvenile probation department enumerated in Title 3 of Texas Family Code and Chapter 141 of Texas Human Resources Code.

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(18) Peace Officer--A person elected, employed, or appointed as a peace officer under Code of Criminal Procedure, Article 2.12.

(19) Report--Formal notification to the Commission of alleged abuse, neglect, exploitation or death or of a serious incident.

(20) Reportable Injury--Any injury sustained accidentally, intentionally, recklessly or otherwise that:

(A) Requires medical treatment as defined in this section; or

(B) Results from a personal, mechanical or chemical restraint and is a substantial injury as defined in this section.

(21) Serious Incident--Attempted escape, attempted suicide, escape, reportable injury, youth-on-youth physical assault or youth sexual conduct as defined in this section.

(22) Serious Physical Abuse--Bodily harm or condition that resulted directly or indirectly from the conduct that formed the basis of an allegation of abuse, neglect or exploitation, if the bodily harm or condition requires medical treatment as defined in this section.

(23) Sexual Abuse--Conduct committed by any person against a juvenile that includes sexual abuse by contact or sexual abuse by non-contact. A juvenile, regardless of age, may not affirmatively or impliedly consent to the acts as defined in this section under any circumstances.

(24) Sexual Abuse by Contact--Any physical contact with a juvenile that includes: intentional touching of the genitalia, anus, groin, breast, inner thigh or buttocks with the intent to abuse, intimidate, hurt, humiliate or harass, arouse or gratify sexual desire; deviate sexual intercourse; sexual contact; sexual intercourse; or sexual performance as those terms are defined in subparagraphs (A) – (D) of this paragraph.

(A) "Deviate sexual intercourse" means:

(i) any contact between any part of the genitals of one person and the mouth or anus of another person; or

(ii) the penetration of the genitals or the anus of another person with a hand, finger or other object.

(B) "Sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person:

(i) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a person; or

(ii) any touching of any part of the body of a person, including touching through clothing, with the anus, breast, or any part of the genitals of a person.

(C) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

(D) "Sexual performance" means acts of a sexual or suggestive nature performed in front of one or more persons including simulated or actual sexual intercourse, deviate sexual intercourse, bestiality, masturbation, sado-masochistic abuse or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.

(25) Sexual Abuse by Non-Contact--Any sexual behavior, conduct, harassment or actions other than those defined by sexual abuse by contact, which are exhibited, performed or simulated:

(A) in the presence of a juvenile or with reckless disregard for the presence of a juvenile;

(B) with the intent to arouse or gratify the sexual desire of any person;

(C) with the intent to intimidate, hurt, humiliate or harass any person;

(D) including repeated verbal statement or comments of a sexual nature; and

(E) including demeaning references to gender, derogatory comments about body or clothing or profane or obscene language or gestures.

(F) These behaviors, conduct and actions include indecent exposure, voyeurism, distribution or exhibition of pornographic or sexually explicit material or sexual performance as defined in paragraph (24)(D) of this subsection.

(26) Substantial Injury--An injury that is significant in size, degree or severity.

(27) Sustained Perpetrator--A designated perpetrator as defined in this section who has already been offered the right to an administrative review and the designated perpetrator's rights to the administrative review have expired or the disposition was upheld.

(28) TCLEOSE--Texas Commission on Law Enforcement Officer Standards and Education.

(29) Youth-on-Youth Physical Assault--A physical altercation between two or more juveniles that results in any of the involved parties sustaining an injury that requires medical treatment as defined in this section.

(30) Youth Sexual Conduct--Two or more juveniles, regardless of age, who engage in deviate sexual intercourse, sexual contact, sexual intercourse, sexual performance as those terms are defined in paragraph (24) of this subsection or sexual behavior, conduct or actions which are exhibited, performed or simulated as those terms are defined in paragraph (25) of this subsection. A juvenile may not consent to the acts as defined in this section under any

Chapter 350. Investigating Abuse, Neglect, Exploitation, Death and Serious Incidents by the Texas Juvenile Probation Commission

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Title 37 Texas Administrative Code

circumstances. Consent may not be implied regardless of the age of the juvenile.

<*>350.110. Interpretation.

(a) Headings. The headings in this chapter are for convenience only and are not intended as a guide to the interpretation of the standards in this chapter.

(b) Including. The word, "including" when following a general statement or term, is not to be construed as limiting the general statement or term to any specific item or manner set forth or to similar items or matters, but rather as permitting the general statement or term to refer also to all other items or matters that could reasonably fall within its broadest possible scope.

<*>350.120. Applicability. Unless otherwise noted, these standards apply to the investigations of all alleged abuse, neglect and exploitation, death conducted by the Commission and serious incidents involving a juvenile and an employee, intern, volunteer, contractor or service provider.

(1) Texas Family Code <*>261.405(b) gives the Commission the authority to conduct abuse, neglect and exploitation investigations in any juvenile justice department, program or facility. The investigations conducted by the Commission are governed by Texas Family Code Chapter 261.

(2) Investigations conducted by the Commission are governed by Texas Family Code Chapter 261.

<*>350.200. Assessment. An assessment shall be completed on all reports of alleged abuse, neglect, exploitation or death received by the Commission.

(1) Reports of alleged abuse, neglect, exploitation or death within the Commission's investigative jurisdiction shall, regardless of the source, or severity or perceived lack thereof, be assigned for investigation.

(2) Reports of alleged abuse, neglect, exploitation or death not within the Commission's investigative jurisdiction shall be referred to the appropriate division within the Commission or other governmental unit having jurisdiction.

<*>350.210. Prioritization, Activation and Initiation.

(a) Prioritization. All reports of alleged abuse, neglect, exploitation or death shall be assigned a priority level.

(b) Activation. Investigations are activated when the Commission makes the initial notification to law enforcement.

(c) Initiation. Investigations are initiated when the assigned investigator contacts or attempts to contact, via phone, fax, e-mail or in person a representative of the department, program, facility, governing board, juvenile board; law enforcement agency; the reporter; or any person with knowledge of the alleged incident.

<*>350.300. Investigations.

(a) Primary Objective. The primary objective of each Commission investigation is to ensure the health, safety and well being of the alleged victim and other juveniles under the jurisdiction of the juvenile court.

(b) Occurrence. Commission investigations are conducted to determine if the alleged abuse, neglect or exploitation occurred.

(c) Statutory Definitions. Commission investigations determine if the elements of the alleged incident correspond to the statutory definitions in Texas Family Code Chapter 261.

(d) Risk and Compliance. Commission investigations serve to assess risk potential and compliance with applicable administrative standards.

<*>350.400. Notification and Referral.

(a) Notification of Disposition. At the conclusion of an investigation, notification of the disposition shall be forwarded to the appropriate parties in accordance with applicable Commission policies and procedures.

(b) Notice to Prosecutor. Notifications to the district or county attorney's office prosecuting criminal matters in the jurisdiction in which the Commission conducted the investigation, shall be forwarded in accordance with applicable Commission policies and procedures.

(c) Non-Compliance Citation Report. A Non-Compliance Citation Report (NCCR) shall be issued in accordance with applicable Commission policies and procedures.

(d) Notice of Technical Assistance. A "Notice of Technical Assistance" (NTA) shall be issued in accordance with applicable Commission policies and procedures.

<*>350.500. Requests for Disciplinary Action. Requests for disciplinary action shall be submitted in accordance with applicable administrative standards and Commission policies and procedures.

<*>350.600. Retention, Release and Redaction of Commission Records.

(a) Record Development. In accordance with Texas Family Code <*>261.402, the Commission shall develop and maintain a record of each report of alleged abuse, neglect, exploitation or death.

(b) Database. The Commission shall maintain an electronic database containing information regarding all reports of alleged abuse, neglect, exploitation, death and serious incidents.

Chapter 350. Investigating Abuse, Neglect, Exploitation, Death and Serious Incidents by the Texas Juvenile Probation Commission

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(c) Record Retention. The investigation records maintained by the Commission are confidential and shall be retained in accordance with the retention schedule adopted by the Commission or other applicable laws.

<*>350.610. Release of Confidential Information. Confidential information shall be released in accordance with the Commission's policies and procedures and other applicable statutory provisions governing the disclosure of confidential information.

<*>350.620. Redaction of Records. In certain cases, an alleged perpetrator's identifying information may be redacted from the Commission's records.

(1) Automatic Redaction. The Commission shall, in cases in which the disposition is baseless, automatically and permanently redact the alleged perpetrator's identifying information from the Commission's case record.

(2) Request for Redaction. The alleged perpetrator may request that his or her identifying information be redacted from the Commission's records if:

(A) The Commission's final disposition of the case in which the alleged perpetrator was involved is "Ruled Out";

(B) The alleged perpetrator submits the request for redaction in writing to the Commission's Legal Division;

(C) The alleged perpetrator submits the request for redaction within 30 calendar days of the last day of the corresponding limitation period described in paragraph (3) of this section;

(D) The alleged perpetrator has been continuously employed within the Texas juvenile justice system for the time period as specified in this paragraph; and

(E) The alleged perpetrator has not been named as the subject of investigation in a subsequent case of abuse, neglect or exploitation.

(3) Limitation Periods. A request for redaction may only be made if all requirements of paragraph (2) of this section are met and if:

(A) Two years has expired from the date of the Commission's final disposition of "Ruled Out", and if, notwithstanding a violation of the Texas Administrative Code, the investigation of the alleged abuse, neglect or exploitation did not produce evidence of a violation of laws of this state or of the United States;

(B) Three years has expired from the date of the Commission's final disposition of "Ruled Out", if the allegation does not meet the elements of paragraph (1) or (3) of this section; or

(C) Five years has expired from the date of the Commission's final disposition of "Ruled Out", if the allegation involved serious physical abuse as defined in

<*>350.100(b)(22) of this chapter or sexual conduct as defined in <*>350.100(b)(23), (24) or (25) of this chapter.

<*>350.700. Call Line. In accordance with applicable policies and procedures, the Commission shall maintain a toll-free number to facilitate the reporting of alleged abuse, neglect, exploitation, death and serious incidents.

<*>350.800. Serious Incidents. An assessment to determine jurisdiction, classification and if follow-up action is needed, shall be completed on all serious incidents received by the Commission.

<*>350.900. Training and Quality Assurance. Commission investigators shall receive current and relevant training in the discipline of investigating alleged abuse, neglect, exploitation and death. Quality assurance measures shall be implemented to help ensure that Commission investigations are conducted in accordance with the rules contained in this chapter and in accordance with applicable Commission policies and procedures.

<*>350.901. Pre-Service Training. Investigators shall receive pre-service training hours in the laws, statutes, administrative rules and agency policies and procedures governing and relevant to conducting administrative investigations of abuse, neglect, exploitation and death of juveniles within the juvenile justice system.

<*>350.902. Competency Testing. Investigators shall demonstrate a minimum proficiency in select topics received during pre-service training.

<*>350.903. Continuing Education. Continuing education shall include topics relevant to conducting investigations of abuse, neglect, exploitation and death of juveniles within the juvenile justice system and topics relevant to the practices of juvenile justice professionals.

(1) Investigators shall successfully complete a minimum number of hours of continuing education training in accordance with applicable Commission policies and procedures.

(2) In addition to the requirements of paragraph (1) of this section, investigators licensed as peace officer shall adhere to the training requirements in accordance with the administrative rules as established by TCLEOSE in Title 37, Part 7 of the Texas Administrative Code.

<*>350.904. Quality Assurance. During each fiscal year internal quality assurance reviews of active and completed investigations shall be conducted.