

Texas Administrative Code

Title 37 **Public Safety and Corrections**
Part 11 **Texas Juvenile Justice Department**
Chapter 358 **Identifying, Reporting, and Investigating Abuse, Neglect, Exploitation, Death, and Serious Incidents**

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§358.100. Definitions.

Effective Date: 3/1/16

Terms used in this chapter have the following meanings unless otherwise expressly defined within the chapter.

- (1) **Abuse, Neglect, or Exploitation**--The terms "abuse," "neglect," and "exploitation" have the meanings given in Texas Family Code §261.001 and §261.401. For the purposes of this chapter, "abuse" includes sexual abuse and serious physical abuse as defined in this section.
- (2) **Alleged Victim**--A juvenile who is alleged to be a victim of abuse, neglect, or exploitation.
- (3) **Attempted Escape**--Committing an act that amounts to more than mere planning but that fails to effect an escape.
- (4) **Attempted Suicide**--Any voluntary and intentional action that could likely result in taking one's own life.
- (5) **Chief Administrative Officer**--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department, including a juvenile probation department with multi-county jurisdiction.
- (6) **Escape**--The unauthorized departure of a juvenile who is in custody or the failure of a juvenile to return to custody following an authorized temporary leave.
- (7) **Founded**--The finding assigned to an internal investigation when the evidence indicates that the conduct which formed the basis of an allegation of abuse, neglect, or exploitation occurred.
- (8) **Incident Report Form**--The form used to report to TJJD allegations of abuse, neglect, or exploitation, the death of a juvenile, and serious incidents.
- (9) **Inconclusive**--The finding assigned to an internal investigation when the evidence does not clearly indicate whether or not the conduct that formed the basis of an allegation of abuse, neglect, or exploitation occurred.
- (10) **Internal Investigation**--A formalized and systematic inquiry conducted in response to an allegation of abuse, neglect, or exploitation or the death of a juvenile.
- (11) **Internal Investigation Report**--The written report submitted to TJJD that summarizes the steps taken and the evidence collected during an internal investigation of alleged abuse, neglect, or exploitation or the death of a juvenile.
- (12) **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.

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- (13) **Juvenile Justice Facility ("facility")**--A facility that serves juveniles under juvenile court jurisdiction and that is operated wholly or partly by or under the authority of the governing board or juvenile board or by a private vendor under a contract with the governing board, juvenile board, or governmental unit. The term includes all premises and affiliated sites of the facility, whether contiguous or detached. 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; and
 - (C) a public or private juvenile non-secure correctional facility required to be certified in accordance with Texas Family Code §51.126.
- (14) **Juvenile Justice Program ("program")**--A program or department that:
- (A) serves juveniles under juvenile court or juvenile board jurisdiction;
 - (B) is 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. The term includes:
 - (i) a juvenile justice alternative education program;
 - (ii) a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court or juvenile board; and
 - (iii) a juvenile probation department.
- (15) **Juvenile Probation Department ("department")**--A governmental unit established under the authority of a juvenile board to facilitate the execution of the responsibilities of a juvenile probation department enumerated in Title 3 of the Texas Family Code and Chapter 221 of the Texas Human Resources Code.
- (16) **Medical Treatment**--Medical care, processes, and procedures that are performed by a physician, physician assistant, licensed nurse practitioner, emergency medical technician (EMT), paramedic, or dentist. Diagnostic procedures are excluded from this definition unless intervention beyond basic first aid is required.
- (17) **Private Facility Administrator**--The individual designated by the governing board of the facility who has the ultimate responsibility for on-site management and operation of a facility operated under contract with the juvenile board.
- (18) **Reasonable Belief**--A belief that would be held by an ordinary and prudent person in the same circumstances.
- (19) **Report**--Formal notification to TJJD of alleged abuse, neglect, or exploitation, the death of a juvenile, or a serious incident.
- (20) **Reportable Injury**--Any injury sustained by a juvenile accidentally, intentionally, recklessly, or otherwise that:
- (A) does not result from a personal, mechanical, or chemical restraint and requires medical treatment; or
 - (B) results from a personal, mechanical, or chemical restraint and is a substantial injury.
- (21) **Serious Incident**--Attempted escape, attempted suicide, escape, reportable injury, youth-on-youth physical assault, or youth sexual conduct.
- (22) **Serious Physical Abuse**--Bodily harm or a condition that:
- (A) resulted directly or indirectly from the conduct that formed the basis of an allegation of abuse, neglect, or exploitation; and
 - (B) requires medical treatment.
- (23) **Sexual Abuse**--Conduct committed by an employee, volunteer, or other individual working under the auspices of a facility or program against a juvenile that includes sexual abuse by contact or sexual abuse
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by non-contact. A juvenile, regardless of age, may not consent to the acts as defined in paragraphs (24) and (25) of this section under any circumstances.

- (24) **Sexual Abuse by Contact**--Any physical contact with a juvenile that includes:
- (A) contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
 - (B) contact between the mouth and the penis, vulva, or anus;
 - (C) contact between the mouth and any body part with the intent to abuse, arouse, or gratify sexual desire;
 - (D) penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the actor has the intent to abuse, arouse, or gratify sexual desire;
 - (E) any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the actor has the intent to abuse, arouse, or gratify sexual desire; and
 - (F) any attempt to engage in the activities described in subparagraphs (A) – (E) of this paragraph.
- (25) **Sexual Abuse by Non-Contact**--Any sexual behavior, conduct, harassment, or actions other than those defined as sexual abuse by contact, which are exhibited, performed, or simulated in the presence of a juvenile or with reckless disregard for the presence of a juvenile, including but not limited to:
- (A) any threat or request for a juvenile to engage in the activities described in paragraph (24) of this section;
 - (B) any display of uncovered genitalia, buttocks, or breasts in the presence of a juvenile;
 - (C) voyeurism, which means an invasion of privacy of a juvenile for reasons unrelated to official duties, such as peering at a juvenile who is using a toilet to perform bodily functions; requiring a juvenile to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a juvenile's naked body or of a juvenile performing bodily functions; and
 - (D) sexual harassment, which includes repeated verbal comments or gestures of a sexual nature, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.
- (26) **Subject of Investigation**--A person alleged as being responsible for the abuse, neglect, or exploitation of a juvenile through the person's own actions or failure to act.
- (27) **Substantial Injury**--An injury that is significant in size, degree, or severity.
- (28) **TJJD**--the Texas Juvenile Justice Department.
- (29) **Unfounded**--The finding assigned to an internal investigation when the evidence indicates the conduct that formed the basis of an allegation of abuse, neglect, or exploitation did not occur.
- (30) **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.
- (31) **Youth Sexual Conduct**--Conduct between two or more juveniles, regardless of age, that is conduct described in paragraphs (24) and (25) of this section, regardless of whether the juveniles consented to the conduct.

§358.120. Interpretation.

Effective Date: 3/1/16

The words "include," "includes," and "including" when following a general statement or term are to be understood as introducing a non-exhaustive list, unless the context clearly indicates otherwise.

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§358.140. Applicability.

Effective Date: 3/1/16

- (a) Unless otherwise expressly stated, this chapter applies to:
 - (1) allegations of abuse, neglect, or exploitation involving a juvenile and an employee, volunteer, or other individual working under the auspices of a facility or program, regardless of the physical location of the alleged abuse, neglect, or exploitation;
 - (2) serious incidents involving a juvenile that:
 - (A) occur on the premises of a program or facility; or
 - (B) regardless of the physical location, occur while in the presence of an employee, volunteer, or other individual working under the auspices of a facility or program; and
 - (3) a death of a juvenile that:
 - (A) occurs on the premises of a program or facility;
 - (B) results from an illness, incident, or injury that occurred, was discovered, or was reported on the premises of a program or facility; or
 - (C) regardless of the physical location, occurs while in the presence of an employee, volunteer, or other individual working under the auspices of a facility or program.
- (b) For purposes of this chapter, "working under the auspices of a facility or program" includes providing a service to juveniles when that service is:
 - (1) a condition of probation, deferred prosecution, or release; or
 - (2) a condition otherwise imposed by a juvenile court or juvenile probation department.

§358.200. Policy and Procedure.

Effective Date: 3/1/16

Departments, programs, and facilities must have written policies and procedures that require, in accordance with this chapter:

- (1) reporting allegations of abuse, neglect, or exploitation or the death of a juvenile to local law enforcement, TJJD, and other appropriate governmental units; and
- (2) reporting serious incidents to TJJD.

§358.220. Data Reconciliation.

Effective Date: 3/1/16

- (a) For all allegations of abuse, neglect, or exploitation, the death of a juvenile, and serious incidents occurring within the reporting period, the data listed in subsection (c) of this section must be provided to TJJD in the electronic format requested or supplied by TJJD.
- (b) The chief administrative officer or the private facility administrator ensures the data listed in subsection (c) of this section is provided to TJJD.
- (c) The data must include:
 - (1) name and Personal Identification Number (PID) of each alleged victim;
 - (2) name and date of birth of each subject of investigation;
 - (3) date and time of alleged incident;
 - (4) date the alleged incident was reported to TJJD;
 - (5) type of alleged incident (i.e., abuse, neglect, exploitation, death, or serious incident);
 - (6) type of injury, if applicable;
 - (7) whether the alleged incident was restraint-related and, if so, what type of restraint was involved (i.e., personal, mechanical, or chemical);

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- (8) disposition of internal investigation (i.e., founded, unfounded, or inconclusive); and
 - (9) county-generated case identification number.
- (d) The data must be supplied at least annually or more frequently if required by TJJD. The data must include any additional information not listed in this section if specifically requested by TJJD.

§358.240. Signage.

Effective Date: 3/1/16

- (a) Departments, programs, and facilities must prominently display signage provided by TJJD regarding a zero-tolerance policy concerning abuse of juveniles. The signage must be displayed in each of the following places:
- (1) lobby or visitation areas of the department, program, or facility to which the public has access;
 - (2) juvenile housing and common areas;
 - (3) common medical treatment areas;
 - (4) common educational areas; and
 - (5) other common areas.
- (b) Signage must be posted in English and Spanish.

§358.300. Identifying and Reporting Abuse, Neglect, Exploitation, and Death.

Effective Date: 3/1/16

(a) **Duty to Report.**

An employee, volunteer, or other individual working under the auspices of a facility or program must report the death of a juvenile or an allegation of abuse, neglect, or exploitation to TJJD and local law enforcement if he/she:

- (1) witnesses, learns of, or receives an oral or written statement from an alleged victim or other person with knowledge of the death of a juvenile or an allegation of abuse, neglect, or exploitation; or
- (2) has a reasonable belief that the death of a juvenile or abuse, neglect, or exploitation has occurred.

(b) **Non-Delegation of Duty to Report.**

In accordance with Texas Family Code §261.101, the duty to report cannot be delegated to another person.

(c) **Other than Sexual Abuse or Serious Physical Abuse.**

(1) **Time Frames for Reporting.**

A report of alleged abuse, neglect, or exploitation other than allegations involving sexual abuse or serious physical abuse must be made within 24 hours from the time a person gains knowledge of or has a reasonable belief that alleged abuse, neglect, or exploitation has occurred.

(2) **Methods for Reporting.**

- (A) The report to TJJD may be made by phone or by faxing or e-mailing a completed Incident Report Form.
- (B) If the report to TJJD is made by phone, a completed Incident Report Form must be submitted within 24 hours after the phone report.
- (C) The report to law enforcement must be made by phone.

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(d) **Sexual Abuse or Serious Physical Abuse.**

(1) **Time Frames for Reporting.**

- (A) A report of alleged sexual abuse or serious physical abuse must be made to local law enforcement immediately, but no later than one hour after the time a person gains knowledge of or has a reasonable belief that alleged sexual abuse or serious physical abuse has occurred.
- (B) A report of alleged sexual abuse or serious physical abuse must be made to TJJJ immediately, but no later than four hours after the time a person gains knowledge of or has a reasonable belief that alleged sexual abuse or serious physical abuse has occurred.

(2) **Methods for Reporting.**

- (A) The initial report to TJJJ must be made by phone using the toll-free number as designated by TJJJ.
- (B) Within 24 hours after the initial phone report to TJJJ, the completed Incident Report Form must be submitted to TJJJ by fax or e-mail.
- (C) The initial report to law enforcement must be made by phone.

(e) **Death of a Juvenile.**

(1) **Time Frames for Reporting.**

- (A) A report of a death must be made to local law enforcement immediately, and no later than one hour after the discovery or notification of the death.
- (B) A report of a death must be made to TJJJ immediately, and no later than four hours after the discovery or notification of the death.
- (C) A written report of the cause of death must be submitted to the state Attorney General no later than 30 days after the juvenile's death if required by Texas Code of Criminal Procedure Article 49.18(b).
- (D) A copy of the death investigation report must be submitted to TJJJ within 10 calendar days after completion.

(2) **Methods for Reporting.**

- (A) The initial report to TJJJ must be made by phone using the toll-free number as designated by TJJJ.
- (B) Within 24 hours after the phone report to TJJJ, the completed Incident Report Form must be submitted to TJJJ by fax or e-mail.
- (C) The initial report to law enforcement must be made by phone.

§358.320. Parental Notification.

Effective Date: 3/1/16

(a) **Requirement to Notify.**

Notification, or diligent efforts to notify, must be made to the parent(s), guardian(s), and custodian(s) of a juvenile who has died or who is the alleged victim of abuse, neglect, or exploitation.

(b) **Time of Notification.**

The notice or efforts to notify required by subsection (a) of this section must be made as soon as possible, but no later than 24 hours from the time a person gains knowledge of or has a reasonable belief that the allegation of abuse, neglect, or exploitation or the death of a juvenile occurred.

(c) **Method of Notification.**

The notice or efforts to notify required by subsection (a) of this section may be made by phone, in writing, or in person.

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(d) **Documentation of Notification.**

The notice or efforts to notify required by subsection (a) of this section must be documented on TJJJ's Incident Report Form and in the internal investigation report.

§358.340. Reporting of Allegations by Juveniles.

Effective Date: 3/1/16

(a) **Right to Report.**

Juveniles have the right to report to TJJJ allegations of abuse, neglect, or exploitation and the death of a juvenile. During orientation to a facility or program, juveniles must be advised in writing of:

- (1) their right to report allegations under this subsection; and
- (2) TJJJ's toll-free number available for reporting allegations under this subsection.

(b) **Policy and Procedure.**

Departments, programs, and facilities must have written policies and procedures that provide a juvenile with reasonable, free, and confidential access to TJJJ for reporting allegations.

(c) **Access to TJJJ.**

Upon the request of a juvenile, staff must facilitate the juvenile's unimpeded access to TJJJ to report allegations.

§358.360. Allegations Occurring Outside the Juvenile Justice System.

Effective Date: 3/1/16

Any person who witnesses, learns of, receives an oral or written statement from an alleged victim or other person with knowledge, or has a reasonable belief as to the occurrence of alleged abuse, neglect, or exploitation involving a juvenile that is not alleged to involve an employee, volunteer, or other individual working under the auspices of a facility or program must report the incident to law enforcement or to the appropriate governmental unit as required in Texas Family Code Chapter 261.

§358.400. Internal Investigation.

Effective Date: 3/1/16

(a) **Investigation Requirement.**

In every case in which an allegation of abuse, neglect, or exploitation or the death of a juvenile has occurred, an internal investigation must be conducted. The investigation must be conducted by a person qualified by experience or training to conduct a comprehensive investigation.

(b) **Initiation of Investigation.**

The internal investigation must be initiated immediately upon the chief administrative officer or the private facility administrator or their respective designees gaining knowledge of an allegation of abuse, neglect, or exploitation or the death of a juvenile. However, the initiation of the internal investigation will be postponed if:

- (1) directed by law enforcement;
- (2) requested by TJJJ; or
- (3) the integrity of potential evidence could be compromised.

(c) **Policy and Procedure.**

Departments, programs, and facilities must have written policies and procedures for conducting internal investigations of allegations of abuse, neglect, or exploitation or the death of a juvenile. The internal investigation must be conducted in accordance with the policies and procedures of the department, program, or facility.

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(d) **Juvenile Board Responsibilities.**

If the chief administrative officer or the private facility administrator is the person alleged to have abused, neglected, or exploited a juvenile, the juvenile board chair must:

- (1) conduct the internal investigation; or
- (2) appoint an individual to conduct the internal investigation who is not one of the following:
 - (A) the person alleged to have abused, neglected, or exploited the juvenile(s);
 - (B) a subordinate of the person alleged to have abused, neglected, or exploited the juvenile(s); or
 - (C) a law enforcement officer currently acting in the capacity as a criminal investigator for the alleged abuse, neglect, or exploitation or the death of a juvenile.

(e) **Time Frame for Internal Investigation.**

The internal investigation must be completed within 30 business days after the initial report to TJJD. TJJD may extend this time frame upon request. TJJD may require submission of all information compiled to date or a statement of the status of the investigation when determining whether or not to grant an extension or after granting an extension.

(f) **Written and Electronically Recorded Statements.**

During the internal investigation, diligent efforts must be made to obtain written or electronically recorded oral statements from all persons with direct knowledge of the alleged incident.

§358.420. Reassignment or Administrative Leave During the Internal Investigation.

Effective Date: 3/1/16

- (a) Upon gaining knowledge of an allegation of abuse, neglect, or exploitation, and until the finding of the internal investigation is determined, the person alleged to have abused, neglected, or exploited a juvenile must be placed on administrative leave or reassigned to a position having no contact with the alleged victim, relatives of the alleged victim, or other juveniles.
- (b) If the chief administrative officer or the private facility administrator is the person alleged to have abused, neglected, or exploited a juvenile, the juvenile board chair must immediately place him/her on administrative leave or reassign him/her to a position having no contact with the alleged victim, relatives of the alleged victim, or other juveniles.
- (c) If, during the internal investigation, the subject of investigation resigns or is terminated from employment, TJJD must be notified no later than the second business day after the resignation or termination.
- (d) If a subject of investigation obtains employment in another jurisdiction before the disposition of the internal investigation has been finalized, the person may not be placed in a position having any contact with any juveniles until the disposition of the internal investigation is finalized in the county of previous employment.

§358.440. Cooperation with TJJD Investigation.

Effective Date: 3/1/16

- (a) All persons must fully cooperate with any investigation of an allegation of abuse, neglect, or exploitation or the death of a juvenile.
- (b) A diligent effort must be made to identify and make available for questioning all persons with knowledge of an allegation of abuse, neglect, or exploitation or the death of a juvenile that is the subject of a TJJD investigation.
- (c) Upon request by TJJD, all evidence must be provided to TJJD in the format requested.

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§358.460. Corrective Measures.

Effective Date: 3/1/16

Corrective measures must be taken at the conclusion of the internal investigation, if warranted, that may include:

- (1) a review of the policies and procedures pertinent to the alleged incident;
- (2) revision of any policies or procedures as needed;
- (3) administrative disciplinary action or appropriate personnel actions against all persons found to have abused, neglected, or exploited a juvenile; and
- (4) the provision of additional training for all appropriate persons to ensure the safety of the juveniles, employees, and others.

§358.500. Internal Investigation Report.

Effective Date: 3/1/16

An internal investigation report must be completed at the conclusion of each internal investigation resulting from an allegation of abuse, neglect, or exploitation or the death of a juvenile.

§358.520. Required Components of an Internal Investigation Report.

Effective Date: 3/1/16

The internal investigation report must include:

- (1) the date the internal investigation was initiated;
- (2) the date the internal investigation was completed;
- (3) the date the alleged victim's parent, guardian, or custodian was notified of the allegation, or documentation that diligent efforts to provide the notification were made;
- (4) a summary of the original allegation;
- (5) relevant policies and procedures related to the incident;
- (6) a summary or listing of the steps taken during the internal investigation;
- (7) a written summary of the content of all oral interviews conducted;
- (8) a listing of all evidence collected during the internal investigation, including all audio and/or video recordings, polygraph examinations, etc.;
- (9) relevant findings of the investigation that support the disposition;
- (10) one of the following dispositions:
 - (A) founded;
 - (B) unfounded; or
 - (C) inconclusive;
- (11) the administrative action, disciplinary action, or corrective measures taken to date, if applicable (e.g., termination, suspension, retrained, returned to duty, or none);
- (12) the date the internal investigation report was completed;
- (13) the names of all persons who participated in conducting the internal investigation; and
- (14) the name and signature of the person who submitted the internal investigation report.

§358.540. Submission of Internal Investigation Report.

Effective Date: 3/1/16

- (a) A copy of the internal investigation report must be submitted to TJJD within five calendar days following its completion.

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- (b) The following documentation collected during the internal investigation must be submitted to TJJJ with the internal investigation report:
- (1) written statements;
 - (2) relevant medical documentation;
 - (3) training records, if applicable; and
 - (4) any other documentation used to reach the disposition of the internal investigation.

§358.600. Serious Incidents.

Effective Date: 3/1/16

(a) **Duty to Report.**

An employee, volunteer, or other individual working under the auspices of a facility or program must report a serious incident to TJJJ if he/she:

- (1) witnesses, learns of, or receives an oral or written statement from a juvenile or other person with knowledge of a serious incident; or
- (2) has a reasonable belief that a serious incident has occurred.

(b) **Time Frame for Reporting.**

A report of a serious incident must be made within 24 hours from the time a person gains knowledge of or has a reasonable belief that the serious incident occurred.

(c) **Methods for Reporting Serious Incidents.**

- (1) The report may be made by phone or by faxing or e-mailing a completed Incident Report Form to TJJJ.
- (2) If the report is made by phone, a completed Incident Report Form must be submitted to TJJJ within 24 hours after the phone report.

§358.620. Medical Documentation for Serious Incidents.

Effective Date: 3/1/16

A treatment discharge form or other medical documentation that contains evidence of medical treatment pertinent to the reported incident must be submitted to TJJJ within 24 hours after receipt by the department, program, or facility.