

**PROTOCOLS FOR ADVOCACY INCORPORATED'S ACCESS
TO _____ COUNTY JUVENILE DETENTION FACILITY, FACILITY
RESIDENTS, STAFF, AND RECORDS**

ADVOCACY, INC. (AI) is the protection and advocacy ("P&A") system authorized under federal law to protect and advocate for the human and legal rights of Individuals with mental illness or developmental and other disabilities, including minors with severe mental illnesses or emotional impairments, pursuant to the Protection and Advocacy for Individuals with Mental Illness ("PAIMI") Act, 42 U.S.C. § 10801, *et seq.*, the Developmental Disabilities Assistance and Bill of Rights ("DD") Act of 2000, 42 U.S.C. § 15001, *et seq.*, and Protection and Advocacy of Individual Rights ("PAIR") Program, 29 U.S.C. § 794e, *et seq.*, and their accompanying regulations (The Acts).

_____ COUNTY JUVENILE BOARD funds, directs, supervises, and operates the _____ County Juvenile Detention Facility (THE FACILITY), which is a secure juvenile pre-adjudication detention and post-adjudication correctional facility operated under the regulatory standards of the Texas Juvenile Probation Commission, in compliance with state law and/or the judicial directives of Texas courts having jurisdiction over juveniles in the care, custody and control of the Facility.

This protocol will be disseminated to all involved staff of both organizations. It shall be used as a guide for Facility Staff and AI staff to streamline AI's access to Facility, Residents, Staff and Records. This agreement will be in force until either party revokes it in writing or as provided by a new agreement of the parties.

The purposes of this protocol are to:

1. Promote the mutual goal of the Facility and AI to protect the human and legal rights of Individuals with mental illness or developmental and other disabilities and to facilitate a constructive working relationship, and
2. Facilitate AI's access to the Facility, its Residents, Staff and records to the fullest extent allowed under federal law.

Therefore, AI and the Facility, in order to fulfill their legal and other responsibilities, and to facilitate a constructive working relationship, hereby agree to and establish the following protocols and procedures for access by AI to the said Facility, to the Residents of the Facility, Facility staff and Records:

I. TERMS

All terms used in these protocols which are defined in the PADD, PAIR or PAIMI Acts and/or their accompanying regulations and related case law will have the meanings given to them in those Acts, regulations and/or case law, unless otherwise stated in this agreement. The following are specialized definitions that shall apply to these protocols.

"ACTIVELY AGGRESSIVE" means that the patient is assaulting others, or is threatening to assault, or the patient is actively harming himself/herself.

“AI STAFF” means any and all AI STAFF and duly authorized AI consultants, contractors, or other duly authorized agent. AI will provide to the Facility Administrator a list of its staff that will or may visit the facility. AI staff must provide the Facility with the sufficient information to allow the Facility to process criminal background checks, which may include TCIC, NCIC and Sex Offender Registration records of the State of Texas. Any person with a criminal record shall, upon request of the facility, execute a general release of liability of the facility for any harm suffered to said person as a result of any actions of a resident of the facility or an Advocacy Client.

“ADVOCACY CLIENT” means any person who resides in the Facility, and who is determined to be suffering from mental illness as that term is defined in 42 CFR § 51.2; a person who has a physical or mental impairment that manifested before the age of 22, is likely to continue indefinitely; and which substantially limits three or more of such person’s major life activities as that term is defined in 42 U.S.C. §15002(8); and/or a person who has a physical or mental impairment which substantially limits one or more of such person’s major life activities or has a record of such an impairment or is regarded as having such an impairment as defined in 29 U.S.C. §706(7)(B). A resident who has been discharged to a community setting within 90 days or who is currently in a community setting, including their own home shall continue for this period to be considered within this definition as being a proper subject for review of records or interview of the individual upon probable cause or complaint.

“COMPLAINTS” OR “REPORTS” of abuse or neglect or other rights violations shall include informed written or oral communications such as telephone calls (including anonymous calls) as well as media reports that, in the judgment of AI, state credible allegations.

“FACILITY” means the _____ County Juvenile Detention Facility.

“GUARDIAN OF THE PERSON” as used in this protocol is the legal parent of a minor, or one who is appointed by the appropriate court of this state to be a legal guardian for a Resident, and who has the authority to consent to physical or mental health care or treatment for the Resident. “Guardian of the Person” as used in this protocol does not include the State or its agencies or those persons acting on behalf of the Resident as guardian of the property of the Resident or an Attorney acting on behalf of the Resident in the criminal matter only.

“PROBABLE CAUSE” to believe that a Resident has been or is in danger of being subject to abuse and neglect exists when AI determines that a reasonable person in a like position, drawing on his or her training and experience, would suspect abuse or neglect.

“RESIDENT” means any person who has been screened by admission procedures and accepted into the Facility. A resident is also a person who has been discharged to a community setting within 90 days or who is currently in a community setting, including their own home shall continue for this period to be considered within this definition as being a proper subject for review of records or interview of the individual upon probable cause or complaint. For purposes of this section, AI shall have access to any records retained by the facility pertaining to individuals presented for admission to the facility but rejected for pre and post detention purposes.

II. CONFIDENTIALITY

AI will not release or disclose to a third party any Resident record or information gathered as a result of an investigation of a complaint or report without the authorization of the Resident's parent, guardian of the person, or attorney, a court order of the juvenile court having jurisdiction of the Resident or in accordance with appropriate regulatory procedures as contained in 42 C.F.R.

AI will maintain the confidentiality of all records to the same extent as is required of the Facility, all provisions of state regulations and law regarding the disclosure of Resident records and in accordance with appropriate laws of the United States, regulatory procedures as contained in 42 C.F.R. §51.45 and §51.46. In any instance of conflict between state law and federal law, federal law will prevail.

AI will not release or disclose records to the Resident or their guardian if the mental health professional responsible for supervising the provision of mental health services to the Resident with mental illness or a developmental disability provides AI, at the same time as access to the records containing the information is granted, a written determination that the disclosure of such information to the Resident would be detrimental to the Resident's health. AI will disclose such information to the Resident only upon the determination of another mental health professional, in accordance with the procedure in 42 C.F.R. §51.46, that the disclosure of the information would not be detrimental to the Resident's health.

III. ACCESS GENERALLY

Investigations

AI may access a facility to investigate incidents of abuse and neglect of individuals with mental illness or developmental and other disabilities if incidents are reported to them, if AI has probable cause to believe that an incident of abuse has occurred or if AI determines that there is or may be imminent danger of serious abuse or neglect of an individual with a mental illness or developmental and other disabilities. This access includes access to all residents of the facility as well as records relating to those residents determined to have a mental illness or developmental disabilities.

Access Not Related to an Investigation

AI may also access a juvenile facility for the following purposes: To provide information, education and training regarding Advocacy Incorporated, services and programs; to monitor compliance with respect to the rights and safety of residents which includes the ability to inspect, view and photograph all areas of the facility that are used by residents or are accessible to residents; and to interview residents and staff. Monitoring facility compliance with respect to the rights and safety of Residents' activities may be of a general nature.

IV. AI ACCESS TO THE FACILITY

Notice of AI's Visit to Facility

No notice to the Facility prior to AI's arrival will be required in order for AI to enter the Facility during regular business hours of 8 a.m. to 5 p.m. AI, in its sole discretion, may provide advance notice of its intent to visit the Facility by contacting the Facility administrator or its designee by telephone. AI will provide 24-hour advance notice of

its intent to enter the Facility at any time outside regular business hours by contacting the Facility administrator or its designee by telephone. However, whenever possible AI will attempt to enter the facility between the hours of 8 am and 5 pm. AI will always announce their arrival on facility grounds.

While on Facility premises, for safety reasons, AI staff shall have access, while accompanied by Facility staff, to any part of the Facility which Residents use including, but not limited to, all areas accessible to Residents.

Identification

AI Staff will identify themselves upon arrival to the Facility to a designated Facility Staff person by showing an AI photo identification card or a driver's license and an AI business card. Facility Staff may then notify any other personnel, as their supervisors have directed them. The Facility may deny access to any person who does not present the proper identification as provided herein. AI will upon arrival and prior to access, sign in a log maintained by the facility for this purpose. The log will, in general terms, identify the AI Staff, disclose the purpose of the visit, and/or the general basis for any investigation.

The Facility Administrator shall ensure that all direct care and other appropriate Facility Staff are aware of the right of AI's access to the Facility.

V. AI ACCESS TO RESIDENTS AND STAFF

AI Access to be Reasonable

AI Staff will abide by all security and safety policies and procedures of the Facility.

While on Facility premises, AI staff shall have access, while accompanied by Facility staff, to any part of the Facility which Residents use including, but not limited to, all areas accessible to Residents. This access shall be provided to the maximum extent possible to permit a free exchange of information between the resident and the AI staff member.

AI Staff shall be permitted to inspect, view, or photograph areas of the Facility, which are used by Residents or accessible to Residents.

Photographs of a resident shall not be taken, unless photographs are taken to document evidence of suspected physical abuse or neglect of a resident.

AI Staff will conduct its investigations, Facility monitoring, and communications as well as all other advocacy activities in a manner that:

- A. minimizes interference with the Facility's programs;
- B. honors the privacy interests of Residents and Facility Staff;
- C. honors a Resident's and facility staff's request to terminate an interview; and

D. does not violate standards or policies of the TJPC or the Facility. These Facility policies will be made available to AI prior to any access. If the Facility and AI have a disagreement as to whether it would violate a standard, the parties may contact TJPC for an interpretation of the standard in question. If in any instance of conflict between state regulations or law and federal regulations or law, federal law will prevail.

In Person Communication with Persons on Facility Premises.

While on Facility premises, AI Staff shall have the authority to speak with Residents, Facility Staff, or other person on Facility property for the purposes of investigation of a complaint or report of abuse and neglect and for general monitoring.

Facility will, pursuant to federal law, permit AI to conduct independent investigations of incidents of abuse and neglect of Residents if the incidents are reported to AI or if there is probable cause to believe that the incidents occurred.

AI Staff and Facility shall make an effort to ensure that the parents and guardians of Residents in the care of the Facility are informed that AI will be monitoring activities at the Facility, and may in the course of such monitoring, have access to the Residents and records. In order to accomplish this the Facility may include a general notice to parents, attorneys and guardians that AI, under the authority given them by federal law, may periodically be monitoring activities at the facility, providing education and training about AI, investigating reports of abuse and neglect and may in the course of such activities have access to the residents or their records.

While engaged in investigation of a complaint or report of abuse and neglect, AI Staff shall be permitted to speak to Residents, Facility Staff or other person on the Facility property reasonably determined to be a witness to the matter under investigation or determined to have relevant information regarding the matter under investigation, and observe the physical environment and review pertinent records.

AI staff will disclose the name of a particular Resident AI reasonably believes to suffer from a mental illness or developmental and other disabilities they wish to visit and the purpose of the visit as necessary to facilitate scheduling or to locate a Resident.

If AI Staff requests an interview with a resident in private, a witness room will be provided for interview purposes at all times and in accordance with A-F below. This means a location that minimizes the possibility of intrusion by other Residents and Staff and affords a reasonable expectation that communications between AI Staff and Residents are confidential.

AI will be provided access to operational manuals detailing disciplinary procedures and provisions that justify the Facility Administrator to lock down the facility.

AI Staff will not be denied access to any Resident they are authorized to access, unless at the time AI Staff seeks access to the Resident:

A. The Resident in question is engaged in a "therapy session" or other scheduled programming. AI Staff will either wait until the session is completed, or reschedule the visit at a time mutually agreeable to the parties, but no later than forty-eight (48) hours.

- B. The resident in question is Actively Aggressive while in seclusion or restraint. In such an instance, AI Staff will be permitted to observe the Resident to verify that the client is actively aggressive. AI Staff wishing to meet with such Residents shall notify Facility Administrator or its designee. The Facility Administrator or his/her designee may advise the AI Staff person of any security or supervision concerns. AI Staff will then either (1) wait until the Resident's aggressive behavior has stopped and be permitted to communicate with the Resident while Facility staff remain in viewing distance, and Facility staff will afford a Resident requiring restraint and/or seclusion with as much privacy as practicable, given the circumstances of each case, (2) wait until the Resident's aggressive behavior has stopped and be permitted to meet with the Resident out of seclusion or restraint while Facility staff remain in viewing distance, or (3) will reschedule the visit at a time mutually agreeable to the parties, but no later than forty-eight (48) hours.
- C. The Resident is placed on "one-to-one" supervision. In such an instance, AI Staff will be permitted to observe the Resident's behavior that requires such supervision. AI Staff wishing to meet with such Resident shall notify the Facility Administrator or his/her designee. The Facility Administrator or his/her designee may advise the AI Staff person of any security or supervision concerns. AI Staff will then either (1) be permitted to meet privately with the client while Facility Staff remains in viewing distance, (2) wait until the Resident has stabilized, or (3) reschedule the visit at a time mutually agreeable to the parties, but no later than forty-eight hours. If AI staff is permitted to meet privately with a client on one-to-one supervision, Facility Staff will afford as much privacy as practicable, given the circumstances of each case. In any event, AI Staff will at least be allowed to observe the Resident
- D. The access to any Resident would involve a substantial risk of physical harm to AI Staff or to the Resident. In this event, Facility Administrator or his/her designee shall so inform the AI Staff and shall explain the circumstances and any security or supervision concerns. AI Staff will be permitted to observe the Resident. AI Staff wishing to meet with such Resident shall notify the Facility Administrator or his/her designee. Should the Facility Administrator reasonably believe that a one-on-one visit might subject the AI Staff person to potential for injury, the AI Staff person may be required to execute a release of liability claim before being permitted an unsupervised visit with the resident. AI Staff will then either (1) be permitted to meet privately with the client while Facility Staff remain in viewing distance, (2) wait until the Resident has stabilized, or (3) reschedule the visit at a time mutually agreeable to the parties, but no later than forty-eight hours. If AI Staff is permitted to meet with the Resident, Facility Staff will afford as much privacy as practicable, given the circumstances of each case. In any event, AI Staff will at least be allowed to observe the Resident. In conformity with 42 C.F.R. §51.43, the Facility under these circumstances will provide a prompt written statement of the basis and grounds for such exclusion from the Facility to AI.
- E. The Resident declines to meet with AI Staff. A Resident who does not wish to talk with AI Staff shall communicate this directly and privately to AI Staff. AI Staff will honor a Resident's request to terminate an interview.
- F. The Facility is experiencing a situation that justifies the Facility Administrator to lock down the Facility. Situations that justify a Facility Administrator to lock down the Facility include situations that create a risk to security such as natural disasters, riot, rebellion, escape, other situations that require assistance from city, county or state law enforcement agencies or situations as described in previously established written policies or procedures. At such time the Facility Administrator in the best

interest of the Facility security will request AI Staff to vacate the Facility and AI Staff will adhere to the request. In conformity with 42 C.F.R. §51.43, the Facility under these circumstances will provide a prompt written statement of the basis and grounds for such exclusion from the Facility to AI.

The Facility shall permit Residents to request an appointment with AI Staff and a meeting shall be set within forty-eight hours of the request which complies with attorney/client communications, facility standards and minimally disrupts scheduled program activities.

In their in-person communications, AI Staff will minimize interference with Facility programs and honor the privacy interests of Residents and Facility Staff, and will honor a Resident or Facility Staff's request to terminate an interview.

AI may take no formal action on behalf of the Resident or initiate a formal attorney-client or advocate-client relationship without appropriate consent as defined in the PAIMI, PADD or PAIR regulations

AI Staff will not give Residents medical, psychiatric or clinical advice.

Communication with Staff

AI Staff may meet privately with the Facility Administrator or his/her designee to advise him or her of the nature of an investigation and to request an interview with a staff member. The Facility shall make every reasonable effort to allow for the availability of its staff for investigation related interviews. Interviews will be arranged at times so as not to interfere with the staff's work responsibilities.

Facility shall permit Staff to talk openly with AI representatives concerning Resident issues, concerns and problems including, but not limited to, investigations of incidents of abuse and neglect of Residents without retaliation. Facility Staff may have the Facility administrator, or a legal representative of the Facility, accompany them in interviews with AI if the Facility Staff so desires.

Phone and Mail

With regard to Residents who wish to contact AI, Facility shall conform to existing standards regarding resident communications applied to attorney/client communications.

Literature prepared by AI intended for dissemination to Facility's Residents shall be made available upon request of the resident.

The Facility or Facility Staff shall not hinder mail or telephone communications between AI and Residents so long as such communications comply with applicable standards and policies of the Facility and/or the Texas Juvenile Probation Commission as applicable to attorney/client communications.

VI. ACCESS TO RECORDS

On-site Review of Records

AI has legal authority to review the records of a Resident when there is written authorization (if required), a complaint has been received, or there is probable cause

to believe that the Resident has been subject to abuse or neglect. AI has no general right of access to a Resident's records absent these criteria.

When these criteria are met, AI Staff will have immediate access to review records which are available at the Facility provided that the requirements of authorization described below, if any, have been met.

AI Staff will have access to review records in conformity with applicable state or federal law or regulatory guidelines. If there is a conflict between federal and state law, the federal law shall apply. Under no circumstances will AI Staff remove the original record or any part thereof from the control of the Facility or add or make changes to the record.

After pulling the requested records, continued oversight on the part of Facility Staff will not be required because AI is designated by the Governor of the State of Texas, operates under federal law, and is fully aware of its obligation to leave Resident and Facility records intact. Any problems with an AI Staff's handling of the records should be reported to the Facility Administrator and AI Coordinator.

A resident shall be identified as an AI Client before resident records are provided. For the purpose of conducting an investigation of abuse and neglect, AI will be provided relevant records upon request.

Copies of Records

Copies will be provided to the AI Staff making the request, promptly. The Facility may charge a reasonable rate, not exceeding the fee permitted under the Texas Open Records Act. Copies will be provided to the AI Staff making the request within 24 hours.

When feasible, the records request should be honored on the day the request is received, but in any event not more than three (3) working days from the date received. When feasible, copies of records should be provided on the same day on which access is provided to the records, but in any event, not more than three (3) working days from the date the request was received.

Parental or Guardian Contact Information.

Upon identification of a resident AI reasonably deems to be an Advocacy client as defined herein, the Facility shall promptly provide AI the name, address and phone number of that Resident's parent or guardian, referring court or jurisdiction, and any attorney of record. The information shall be provided within at least one working day of AI's request.

Form of Written Authorizations for Access to a Resident's File

AI may utilize their own form or the Facility's form, or a written statement of authorization made by the Resident or their legal guardian. It is AI's responsibility to maintain valid authorization for release of records. Objection to the fact that such authorization may not be on a form used by the Facility shall not delay processing the requested information.

VII. DISPUTE RESOLUTION

This operating interim protocol should guide the actions of both AI Staff and the Facility Staff. If at any point problems arise concerning access of AI Staff to Facility, Records or Residents under this protocol, effort shall be made to resolve the problem informally in the following manner:

1. Any complaint concerning access by AI Staff shall be immediately brought to the attention of the Facility administrator or his/her designee. Any complaint concerning AI Staff shall be immediately brought to the attention of the Director of AI or his/her designee. The Facility administrator or his/her designee and the Director of AI or his/her designee shall resolve any complaints as expediently and as informally as possible.
2. If the Facility Administrator or his/her designee and the Director of AI or his/her designee cannot informally resolve the complaints or issues regarding AI Staff access to Facility either party may pursue any legal or enforcement action allowed by state or federal law.
3. This agreement is intended to carry out the provisions of the Acts and, therefore, in the event of any ambiguity in this agreement or any conflict between this agreement and federal law, federal law shall control.

Signed this _____ day of _____, 2004.

Mary S. Faithfull
Executive Director
Advocacy, Incorporated

Judge _____
_____ County Juvenile Board

The Texas Juvenile Probation Commission Legal Division and Advocacy Incorporated Legal Counsel in concert with participating chief juvenile probation officers have prepared this Model Access Protocol Agreement for use by county juvenile boards. Final execution of this protocol should be with the approval of your county attorney. This model protocol agreement is consistent with TJPC standards.