

TEXAS JUVENILE PROBATION COMMISSION VARIANCE COMMITTEE MEETING

**Friday, November 19, 2010
Brown-Heatly Building
Austin, Texas**

COMMISSIONERS PRESENT

Jean Boyd, Chair
Migdalia Lopez
Bob Shults

COMMISSIONERS ABSENT

Rene Ordoñez

TJPC MANAGEMENT STAFF PRESENT

Lisa Capers, Deputy Executive Director and General Counsel
Scott Friedman, Director Compliance Division
Genovia Spencer, Human Resources Manager

TJPC STAFF PRESENT

Paul Anderson
Amy Bailey
Diane Laffoon
Aaron Mills

1. Call to Order - J. Boyd

Commissioner Jean Boyd called the Variance Committee meeting of the Texas Juvenile Probation Commission to order at 8:10 a.m.

2. Excuse Absences - J. Boyd

A **motion** was made by Commissioner Lopez and **seconded** by Commissioner Shults to excuse the absence of Rene Ordoñez. Motion passed unanimously.

3. Approve Minutes from July 16, 2010 Meeting - J. Boyd

A **motion** was made by Commissioner Shults and **seconded** by Commissioner Lopez to approve the minutes from the July 16, 2010 Variance Committee meeting. Motion passed unanimously.

4. Review, Discussion and Possible Action Regarding Harris County Juvenile Probation Department's Application for Permanent Variance from Title 37 Texas Administrative Code Section 343.600(6) Relating to Required Pre-Admission Records (tuberculosis testing) - S. Friedman

This is the first of two variance applications from Harris County. The 343.600 series of post-adjudication standards are specific to pre-admission records for youth entering into a secure post-adjudication facility.

In Harris County's case, this is a situation where they are transferring a youth intra-departmental, and so they're coming straight from their juvenile detention center into what they call the Burnett-Bayland Reception Center's (BBRC) Assessment Unit. It's about a 60-bed unit used to complete diagnostic tests and assessments of youth to make sure they're going to be properly placed either in the community, into a secure residential facility or a non-secure facility. So this is a pre-admission record.

The department is asking that it be allowed to have a variance to deviate from the standard requirement in that a tuberculosis (TB) test, typically the Mantoux skin test can be administered and then read after the child is placed at the post-adjudication facility. The standard is specific that it has to be administered and read prior to the actual transition into post-adjudication.

There are four elements or criteria that the Commission Board must determine in order to grant a variance request. Harris County has responded to the four required variance application criteria and then you have the TJPC staff summary.

A. Health and Safety of Juveniles

Harris County believes that because of their continuum of health care services, the robust screening, their practice of not referring a kid over to a post-adjudication facility with active signs or symptoms of TB (the productive cough, night sweats, fevers) this does not present a health concern to the youth or other residents in the facility.

Commission Staff believes that while there is probably not much of a health and safety issue for the child in question, not knowing 100% if that child has tuberculosis and then transferring him or her to a post-adjudication facility presents a margin of compromise to the health and safety of the post-adjudication facility residents and staff.

B. Purpose and Intent of the Standard(s)

The Harris County Juvenile Board believes it has demonstrated substantial compliance with the intent of Section 343.600(6) of the TAC by pre-screening youth for TB and other contagious illness prior to admission to the Harris County Juvenile Detention Center; by prohibiting the transfer of youth exhibiting TB symptoms to any facility; administering TB tests on the day the youth is ordered by a judge into the custody of the CJPO and reading

the results within 49-72 hours as required by standard medical practice and; providing a continuum of care for youth under the same health authority and administrator in the same jurisdiction.

The TJPC staff concludes that whereas there are general health procedures to prevent the transfer of a youth with active TB symptoms (or self-reports of TB infections), these screening procedures and the companion continuum of health care services do not ensure youth with either active TB disease or infection are not unknowingly transferred to a secure post-adjudication facility without the proper treatment and prevention protocols already in place.

C. Undue Hardship

The applicant has expressed that a hardship would exist because waiting for the results would cause a bottleneck effect on youth housed in the juvenile detention center and create temporary overcrowding of youth (simply by waiting for the TB skin test results) which is prohibited under Section 343.220 of the Texas Administrative Code.

Commission staff countered that hardship concern because by Harris County's own admission kids aren't immediately going to the post-adjudication facility. There is about a 24-hour period where they stay in detention and then they make their trip over to the BBRC, so the delay has already started because of their own processing and the Commission's request that it be delayed another 24 or 48 hours does not seem unreasonable given the potential threat to the post-adjudication facility.

Also, given the historic low average daily population over the past two or more years, it does not appear likely that there would be a significant volume of youth required to stay in detention pending their transfer to another secure facility or that this volume would create a situation in which the detention facility exceeded its rated capacity of 250 residents.

D. Law Violations

The Commission staff is not aware of any known law violations that would result from an authorization of the applicable variance.

The Variance Committee heard two representatives of Harris County Juvenile Probation Department, Melissa DeHoyos-Watson and Musifat Akanji respond to the variance application criteria and questions.

The Commission staff recommends that the request for a permanent variance be denied. This recommendation is based on the review of the aforementioned required authorization criteria.

A **motion** was made by Commissioner Lopez and **seconded** by Commissioner Boyd to recommend to the full board that they deny the permanent variance requested by Harris County related to required pre-admission records (tuberculosis testing). Motion passed unanimously.

5. Review, Discussion and Possible Action Regarding Harris County Juvenile Probation Department's Application for Permanent Variance from Title 37 Texas Administrative Code Section 343.688(a) Relating to Initial Residential Case Plans - S. Friedman

Commission standards require that when a child is placed in a secure post-adjudication facility the facility staff are to develop an initial case plan within the first 30 days of that child's admission. That case plan has nine domains that are specifically supposed to be addressed from education to medical health, family services, etc.

Because of the unique nature of the Assessment Unit at the BBRC, Harris County is asking that the initial case plan requirement be waived. First, this is not the final stop, it's where the

psychological and educational testing is done, and the battery of assessments that lays the groundwork for the initial case plan and where that child stops. That could be community supervision, residential, secure, various types of alternatives after that assessment, and they feel that is counterproductive for their staff to develop an initial case plan when that is not the final stopping point or disposition for that youth. And even if the case plan was developed would be premature and incomplete because the assessment process and testing process have not been finalized.

Included at the end of the application summary Commission staff listed two specific conditions if it is the Committee's decision to go ahead and grant this variance. Harris County was in agreement with the special conditions.

The four elements or criteria that the Commission Board must determine in order to grant variance requests:

A. Health and Safety of Juveniles

TJPC staff does not feel that a health or safety compromise would occur for the youth in question if they did not have a case plan within 30 days;

B. Purpose and Intent of the Standard(s)

Comprehensive assessment, diagnostic testing and evaluations are very similar to the intent of the standard through alternate means;

C. Undue Hardship

TJPC staff does feel that it would be a hardship for them to go through the mechanics of an initial case plan while at the assessment unit;

D. Law Violations

TJPC staff does not think that it would violate or conflicts with any federal or state law if this variance were granted.

The TJPC staff recommends that the request for a permanent variance be granted. The recommendation was based on all required criteria being met and the conditions listed below:

1. This variance is specific just to the Burnett-Bayland Reception Center's (BBRC) Assessment Unit, and not any of the other Harris County post-adjudication programs;
2. That they do attempt to complete these assessment evaluation periods in the quickest possible time, no longer than 6 weeks total. So at the end of the 6 weeks, they would complete that evaluation process or the conditional variance will not apply.

A **motion** was made by Commissioner Shults and **seconded** by Commissioner Lopez to recommend to the full board that they approve the permanent variance requested by Harris County related to initial residential case plans with the above stated conditions. Motion passed unanimously.

6. Review, Discussion and Possible Action Regarding Dallas County Juvenile Probation Department's Application for Permanent Variance from Title 37 Texas Administrative Code Section 343.266(a) Relating to Resident Bedding Substitutions - S. Friedman

After speaking with Robert Randall Wadley, the Chief Juvenile Probation Officer in Dallas County, and after sharing the Commission's concerns about the bedding in question, he has respectfully requested that the application be tabled until a future date. The Commission staff were likely not to approve the request because of the batting material in question, staff did not think it provided the suicide safeguards and the self-harm safeguards that was the intent of the application and Mr.

Wadley has concurred with that. Dallas County is looking to purchase some new bedding materials, and once they get those items the Commission will review it and they will re-adjust their application. So they asked that it be tabled and we as a staff concur.

A **motion** was made by Commissioner Lopez and **seconded** by Commissioner Shults to recommend to the full board that they table the Dallas County application for permanent variance relating to resident bedding substitutions to a future meeting. Motion passed unanimously.

7. Hear Public Comments – J. Boyd

There were no public comments and no action was required for this item.

8. Adjourn – J. Boyd

A **motion** was made by Commissioner Lopez and **seconded** by Commissioner Shults to adjourn. Motion passed unanimously. The meeting adjourned at 8:49 a.m.

The next Texas Juvenile Probation Commission Variance Committee meeting is scheduled for Thursday, January 20, 2011.