

# Texas Administrative Code Chapter 344 Rule Rewrite

## Frequently Asked Questions

January 2018

These frequently asked questions are being provided as a courtesy to juvenile probation departments and facilities. Individuals should always refer to the final rule as adopted for further clarification.

All responses are related to the new rules adopted and will apply once the rules are effective.

This information will be updated as needed.

### **When are the new rules effective?**

February 1, 2018

### **Where may I find the new rules?**

You may find the new rules on TJJD's Resource page online [here](#).

### **What are the certification types offered by TJJD as of February 1, 2018?**

Depending on the job function of the individual, staff may be certified as a juvenile probation officer, juvenile supervision officer or community activities officer. The youth activities officer was removed.

### **May we hire a juvenile supervision officer before receiving confirmation they received their high school diploma or GED?**

No, all employment and education qualifications required must have been completed before an individual begins employment.

### **How is the one year of graduate study required by statute defined?**

The one year of graduate study means the successful completion of at least 18 post-graduate credit hours are received.

### **How does an individual meet the one year of full-time experience?**

The requirement for one year of full-time experience means an individual must have worked (paid or unpaid) at least 1,500 hours in one or more positions described by §344.210(a) in twelve months, which may or may not be consecutive months. Prior to hiring the individual, the department or facility must conduct and document a reference check to verify the dates of employment or volunteer service, the position held, and the total number of hours worked.

### **When requesting an exemption for the one year graduate study or one year full-time work experience, what constitutes a *diligent effort* when attempting to employ an individual?**

A diligent effort means posting the position in a minimum of two job posting sources for a minimum of 20 calendar days (each). If an exemption request is submitted, the department or facility must notify their juvenile board prior to the submission. A department or facility may not hire an individual as a juvenile probation officer without written verification that TJJD has approved the exemption request.

### **Does a criminal history check have to be completed (rather than initiated) before an individual begins employment or service?**

Yes, a criminal history check must be completed before an individual begins employment or service.

**Who must receive a criminal history check?**

In addition to those employees hired in a position requiring certification, a criminal history check must be conducted on any individual who may have direct, unsupervised access to juveniles in a juvenile justice facility or program and who is:

- an employee in a position not requiring certification;
- a volunteer or intern; or
- an individual who provides goods or services under contract, except for employees of a public school district.

A department must conduct the check for contractors who require a criminal history check, rather than verify that the employer has conducted a check. A juvenile's attorney, family members, managing conservator, guardian, or other approved visitors do not require criminal history checks. Employees of facilities or programs that are licensed in other states by agencies equivalent to the Texas Department of Family and Protective Services or the Texas Health and Human Services Commission are exempt from the background check requirements.

**When determining who needs a criminal history check, can certain services (i.e., psychological testing/evaluation, mental health assessments, counseling services, etc.) be excluded from the scope of the juvenile justice "program" definition found in §344.100?**

No. If an individual provides good or services under contract (written, spoken, or other agreement), except for employees of a public school district, a criminal history check must be conducted. The amount and way that the contract is completed is not relevant.

**Are criminal history checks required for "licensed" and "contractual" mental health professionals who have unsupervised access to juveniles in a juvenile justice program or facility?**

Yes, in most instances. In addition to the exemption noted in §343.300(c), the only other exemption possible would be if the individual meets the criteria in §344.312 which states:

§344.312 Criminal History Checks for Employees of Licensed Facilities or Programs

- (a) Employees of facilities or programs that are licensed by the Texas Department of Family and Protective Services, the Texas Health and Human Services Commission, their successor agencies, or the equivalent agencies in other states are exempt from the requirements of §344.300 and §344.302 of this title. However, the chief administrative officer or designee must obtain documentation confirming that the license of the facility or program is in good standing with the licensing entity.

**May past documented criminal history checks on service providers be sufficient to meet the criminal history requirements found in this chapter?**

No. If the exemption criteria found in §344.300(c) or §344.312 is not applicable, the juvenile probation department must complete a criminal history check and subscribe to the individual's record in the FAST system.

**Whose responsibility is it to pay for the cost of the required criminal history checks?**

Options to pay for the cost associated with the criminal history checks is at the discretion of the local department or facility. If the department chooses to pay for the cost of the criminal history checks, TJJD grant funds may be used to pay for these expenditures, assuming they fall within the guidelines of the funding source.

**Would staff or volunteers from community service restitution sites (CSRs) be required to have a criminal history check?**

No. The CSRs are not "programs" as defined by §344.100 because they are not operated by or under contract with the juvenile board, so the requirement does not apply.

**If an individual is contracting with multiple probation departments to provide services, will the individual have to get fingerprinted by each department.**

No. If the service provider has been fingerprinted, each department can simply subscribe to the individual's record in the FACT system under their ORI number.

**If an individual has been arrested for potentially disqualifying criminal conduct, is the department or facility required to notify TJJD? What about a conviction for disqualifying criminal conduct?**

Yes. A department or facility must notify TJJD Certification Office in writing within 10 calendar days of receiving notification of either an arrest or conviction for disqualifying criminal conduct.

**To be eligible for credit toward a new certification or renewal, how far back can the training be received?**

For *new* certifications, training must be received within 18 months prior to the date the certification application was submitted. For *renewals*, training must be received within the current certification period (2 years), plus may also include any hours that were rolled over from the previous certification period.

**How many hours are required for continuing education for certified officers?**

Juvenile Supervision Officers = 80 Hours

Juvenile Probation Officers = 60 Hours

Community Activities Officers = 40 Hours

**How many times can any training topic be counted in a certification period?**

A training topic may only be counted twice in a certification period. A topic may be counted up to four times in a certification period if an officer is concurrently employed by more than one department or facility or has transferred to a new department or facility within a certification period.

**If a department requires a training annually (i.e., handle with care, CPR, etc.), will an officer be able to count this toward their renewal?**

If training is required annually, an officer may count the respective topic only twice in a certification period. Therefore, TJJD does not recommend rolling any hours over training that is required annually.

**Can meetings, reviews of policy/procedures, or reviews of employment-related benefits be eligible for training credit?**

These topics are not eligible for training credit unless they meet the requirements in §344.660.

**How many attempts are allowed for an individual to pass the certification exam?**

Individuals are allowed three attempts to pass the exam. If an individual has not passed the exam on the third attempt, he or she may not take the exam again until 180 days have elapsed and he or she has repeated training in all mandatory exam topics.

**When can we submit applications to become a community activities officer?**

An application may be submitted in ICIS beginning February 1, 2018.

**Who should be certified as a community activities officer?**

An individual who is employed by a juvenile justice program and whose position may require supervising or transporting juveniles in a non-secure setting within a juvenile justice program must maintain an active certification as a community activities officer unless the individual holds another TJJD certification or is providing professional services. Juvenile probation and supervision officers may perform the duties of a community activities officer.

**If staff performs the duties of a certified officer only intermittently and on a temporary basis, are they required to maintain that applicable certification?**

Yes.

**If our department employs juvenile supervision officers, but we do not have a facility, will they still be able to maintain their juvenile supervision officer certification?** No. On February 1, 2018, any juvenile supervision officer who is not employed by a department with a facility will have their certification automatically expire.

**If a juvenile supervision officer works in a JJAEP, will they still be able to maintain their juvenile supervision officer certification?**

If an individual works in a JJAEP, but the department *does not* also operate a facility, their JSO certification will automatically expire on February 1, 2018 and he or she must be certified as a community activities officer. If an individual works in a JJAEP and the department *does* also operate a facility, he or she may be certified as a juvenile supervision officer as long as they will be performing (temporary or otherwise) the duties of a JSO. If not, then they will need to maintain a certification as a community activities officer.

**What immediate consequences exist if an officer's certification application is not submitted for renewal before the end of the individual's certification period, and any grace period or extension?**

- The individual may not perform the duties of a certified officer;
- The individual may not count toward any staff-to-juvenile ratio; and
- The individual may begin performing the duties of a certified officer and count toward staff-to-juvenile ratios only after a new application for certification has been approved by TJJD.

**How far in advance may an application for renewal be submitted?**

Renewal applications may not be submitted more than 30 days before the end of the individual's certification period.

**When will an individual's certification expire?**

An individual's certification will expire (rather than become inactive) if a renewal application is not submitted before the end of the certification period plus any applicable grace period or extension.

**Do individuals have a grace period before a certification expires?**

Yes. A grace period for renewal applications is one month after the end of an officer's certification period.

**What will happen to all existing inactive certifications if the deadline for submitting a renewal application has passed?**

TJJD will automatically expire those certifications on February 1, 2018.

**Does TJJD still have an *inactive* status?**

Yes. An inactive status means that an officer's certification has not expired, but the officer is ineligible to perform the duties of a certified officer because:

- The officer is no longer employed in a position that either requires or is eligible for certification;
- The officer has been convicted of a disqualifying criminal offense; or
- The officer's application is determined by TJJD to contain deliberately false or misleading information.

**What training is required if a certification expires, but needs to be restored?**

- If the certification was expired for *less than six months*, training received during the entire previous certification period may be used on the application.
- If the certification was expired for *six months or more*, training received within the previous 18 months may be used on the application. Completing the certification exam is required.

**Once an officer separates from the department or facility, who is responsible for notifying TJJD's Certification Office of any address changes until the certification expires?**

The individual certified officer is responsible, not the department or facility.

**Chapter 341 Conforming Changes:**

**Are there any special requirements for officers supervising or transporting a juvenile in a non-security setting within a juvenile justice program?**

Yes. At least one staff member who is supervising or transporting must be certified in CPR and first aid.

**Transport personnel originally fell under the youth activities supervisor certification. Now what should they be certified as?**

Staff who perform transport functions are now covered by the new community activities officer certification and must obtain the associated training requirements for that certification.

**Chapter 343 Conforming Changes:**

**When may a juvenile supervision officer who is not yet certified supervise residents?**

A juvenile supervision officer who is not yet certified may supervise residents only if the individual:

- has not exceeded the deadline for submitting an application for certification;
- has completed all training required by TAC §344.622 and §344.624 (rather than at least 40 hours consisting of the mandatory exam topics, CPR, first aid, and personal restraint technique); and
- has passed the certification exam.

**Can a juvenile supervision officer be included in officer-to-resident ratios and perform any duties of a juvenile supervision officer if they have not yet received the facility-specific required training?**

No.

**What educational resources are available related to the changes to Chapter 344 or related changes to other TAC chapters?**

A webinar series was recorded and is available on TJJJ's Training Academy page [here](#). Training credit is offered for viewing these webinars (as noted on the website).

For more information, please contact:

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