

TAC CHAPTER 344
GUIDELINES FOR CONSIDERATION OF CRIMINAL HISTORY
WITH REGARD TO CERTIFICATIONS ISSUED BY THE TEXAS JUVENILE JUSTICE DEPARTMENT

The Texas Juvenile Justice Department (TJJD) grants certification for individuals employed in Texas as juvenile probation officers, juvenile supervision officers, and community activities officers. These guidelines are issued by TJJD as required by Section 53.025(a), Occupations Code. These guidelines describe the process TJJD uses to determine whether a criminal conviction or deferred adjudication renders an individual unsuitable for a certification or whether a criminal conviction or deferred adjudication warrants revocation or suspension of a previously granted certification. These guidelines present the general factors that are taken into consideration as well as the reasons why particular criminal offenses are considered to relate to certifications issued by TJJD. These guidelines are written in accordance with the legislative intent set out in Section 53.003, Occupations Code, which provides that it is “the intent of the legislature to enhance opportunities for a person to obtain gainful employment after the person has been convicted of an offense and discharged the sentence for the offense” and that the statute is to be liberally construed to carry out the intent of the legislature.

CRIMINAL HISTORY RULES, GENERALLY

Certain criminal offenses make an individual ineligible for a certification from TJJD while others must be reviewed and approved by TJJD in order for the person to be certified.

The following criminal history makes a person ineligible for certification by TJJD:

1. conviction or deferred adjudication for an offense listed in Art. 42A.054, Code of Criminal Procedure, or a substantially equivalent violation against the laws of another state or the United States; or
2. conviction or deferred adjudication for a sexually violent offense as defined in Art. 62.001, Code of Criminal Procedure, or a substantially equivalent violation against the laws of another state or the United States.

The following criminal history requires a review and approval from TJJD prior to a person being employed or otherwise engaged in providing service in a position requiring certification from TJJD:

1. misdemeanor conviction or deferred adjudication if less than 5 years has passed since the date of conviction or placement on deferred adjudication; or
2. felony conviction or deferred adjudication (other than those listed in 1 and 2 above) if less than 10 years has passed since the date of conviction or deferred adjudication.

In addition to the timelines above, at least one year must have passed since the completion of any period of incarceration, community supervision, or parole or a review is required. A review is also required for individuals with a current requirement to register as a sex offender for an offense other than a disqualifying offense.

GENERAL FACTORS TO BE CONSIDERED

In making its determination of whether an offense directly relates to the duties and responsibilities of the certification, TJJJ will consider the following factors:

1. the nature and seriousness of the crime;
2. the relationship of the crime to the purposes for requiring the certification to engage in the occupation;
3. the extent to which a certification might offer an opportunity to engage in further criminal activity of the same type as that which the person previously had been involved in;
4. the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of the certified occupation; and
5. any correlation between the elements of the crime and the duties and responsibilities of the certified occupation.

If TJJJ determines the criminal history directly relates to the duties and responsibilities of the certification, TJJJ will consider the following factors in determining whether to deny the certification:

1. the extent and nature of past criminal activity;
2. the age of the person at the time the crime was committed;
3. the amount of time that has elapsed since the most recent criminal activity;
4. the conduct and work activity of the person before and after the criminal activity;
5. evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;
6. evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and
7. evidence of the person's fitness for the occupation that requires the certification, including letters of recommendation.

In making its determination, TJJJ will not consider an arrest that did not result in a conviction or placement on deferred adjudication.

PROCESS FOR NEW CERTIFICATION

Most certifying and licensing entities provide a certification or license to an individual without regard to that individual's employment. The juvenile justice system is different. Individuals are not provided a certification until after they are employed by and trained by a juvenile probation department or juvenile justice facility in Texas. As such, TJJJ's process is designed so that the review of a criminal history by TJJJ is triggered by a request from a hiring entity (juvenile probation department or facility) that wishes to hire a person with a criminal history. TJJJ understands that juvenile probation departments and juvenile facilities must receive confirmation from TJJJ that a person's criminal history will not disqualify

the person from certification before an employment offer is made. This section sets out the steps for processing such a request. This section is also the process that will be followed when a person who is currently employed by the probation department or juvenile justice facility seeks optional certification, as allowed by rule.

1. When a juvenile probation department or juvenile justice facility has completed its initial selection process and determined it wishes to hire a person with a criminal history that is subject to review by TJJJ, the department or facility must, prior to making an employment offer, send a request to TJJJ's certification officer for TJJJ to conduct a review. The purpose of the review is to determine whether TJJJ will deny a certification based on the criminal history.
2. The requested review must include evidence relating to the factors TJJJ will consider in making its determination, including facts of the offense, court results, and the information regarding the individual set out in the "General Factors to Be Considered" section. The individual who is the subject of the review is responsible for providing that information to the hiring entity, which will provide it to TJJJ. The hiring entity is responsible for providing TJJJ with an email address and phone number for the individual. A failure to provide all required information will result in a delay of TJJJ's decision and may result in a denial of the certification.
3. Upon receipt of the request for review, the Certification Officer will immediately refer to the matter to the Office of General Counsel attorneys responsible for discipline of certified officers. The Office of General Counsel treats these matters as a high priority.
4. Within two business days of receipt of the request for review, a group consisting of a TJJJ attorney, a staff person from the TJJJ Probation Services Division, and any other staff persons designated by the executive director will review the information and make a recommendation regarding whether the certification should be denied on the basis of the criminal history.
5. Within one business day of the group's decision, the attorney will prepare a written summary of the group's recommendation and the reasons therefore and provide it to the executive director or designee for a decision on whether TJJJ will deny the certification on the basis of the individual's criminal history.
6. If the decision is that the criminal history will not prevent the individual from being certified, the certification officer will notify the individual and the hiring authority, which may then proceed with the hiring process if it so chooses.
7. If the decision is that the criminal history will prevent the individual from being certified, TJJJ will provide the individual with written notice of the reason for the intended denial and will give the individual at least 30 days to submit any relevant information for consideration. The written notice will comport with the requirements of Section 53.0231, Occupations Code. TJJJ will provide a copy of the written notice to the hiring entity.

PROCESS WHEN A CERTIFIED INDIVIDUAL IS ARRESTED OR CONVICTED

1. If a juvenile probation department or facility receives notification that a certified individual has been arrested for criminal conduct other than a class C misdemeanor, the department or facility must notify TJJJ's certification officer in writing no later than 10 calendar days after receiving notice of the arrest. The department or facility must provide information regarding

the circumstances of the arrest and respond to any questions from TJJJ regarding the arrest. The TJJJ executive director may seek an emergency suspension of the certification as provided by Section 222.053(c), Human Resources Code.

2. If a juvenile department or facility receives notification that a certified individual has been convicted or placed on deferred adjudication for criminal conduct other than a class C misdemeanor, the department or facility must notify TJJJ's certification officer in writing no later than 10 calendar days after receiving such notice. The department or facility must provide information regarding the conviction or deferred adjudication and respond to any questions from TJJJ regarding the disposition. TJJJ will take one of the following actions upon receipt of this notification.
 - a. TJJJ will revoke certification if the person was:
 - i. convicted or placed on deferred adjudication for an offense listed in Art. 42A.054, Code of Criminal Procedure, or a substantially equivalent violation against the laws of another state or the United States;
 - ii. convicted or placed on deferred adjudication for a sexually violent offense as defined in Art. 62.001, Code of Criminal Procedure, or a substantially equivalent violation against the laws of another state or the United States; or
 - iii. imprisoned following a felony conviction, revocation of community supervision, revocation of probation, or revocation of mandatory supervision.
 - b. For all other convictions or deferred adjudications, TJJJ will conduct a review considering the factors set out in the "General Factors to be Considered" section in order to determine if certification should be suspended or revoked. The TJJJ executive director may seek an emergency suspension of the certification as provided by Section 222.053(c), Human Resources Code.

RELATION OF CRIMES TO CERTIFICATION AS A JUVENILE PROBATION OFFICER, JUVENILE SUPERVISION OFFICER, OR COMMUNITY ACTIVITIES OFFICER

The below guidelines reflect the most common categories of criminal offenses and their relation to the certifications TJJJ issues, which are juvenile probation officer, juvenile supervision officer, and community activities officer certifications. The vast majority of criminal convictions reviewed by TJJJ will fit within the categories of crimes described below. However, the guidelines are not an exclusive listing, and they do not prohibit TJJJ from considering crimes not listed. After due consideration of the circumstances of the criminal act and the general factors listed below, TJJJ may find that a conviction not described herein renders a person unfit to hold a certification.

The below guidelines are not intended to address offenses listed in Article 42A.054, Code of Criminal Procedure, or sexually violent offenses as defined by Article 62.001, Code of Criminal Procedure, as such offenses disqualify a person from certification with no requirement for further review.

In addition to the specific crimes listed below, multiple violations of **any** criminal statute will be taken into consideration when making determinations related to issuing, suspending, or revoking certifications

as multiple incidents of criminal behavior may indicate a pattern that makes a person unfit for a certification.

Crimes against the person such as homicide, kidnapping, unlawful restraint, and assault

Reasons:

1. Certified officers interact with children and their families in a supervisory role, sometimes alone with the child.
2. Certified officers work with a vulnerable population, members of which may be particularly at risk for physical abuse and unwilling or unable to report or protect themselves.
3. Certified officers may be required to physically restrain students who have impulse-control difficulties. They must safely perform these restraints without intentionally, knowingly, or recklessly causing injury or pain to a child. They must not react violently or emotionally to sudden changes in or actions of the child.
4. Certified officers who have committed crimes against the person may pose a danger to the children as well as family members.
5. A person who has committed such crimes may have the opportunity to engage in further similar conduct.

Crimes involving illegal weapons

Reasons:

1. Criminal activity of this type may reveal a lack of regard for the safety and welfare of others.
2. Certified officers provide supervision to children due to the children's commission of unlawful conduct. This includes settings that have a potential for confrontation, such as a courtroom, a custodial event, or in a facility, which the certified officer may need to contain or defuse.
3. Individuals who have committed crimes involving illegal weapons may be more likely to bring illegal weapons with them to a location where they are interacting with these children, which could increase the potential danger to the children when there is a confrontation.
4. Persons with a history of these types of offenses may not be appropriate persons to teach proper, safe, and legal conduct, particularly to children who have previously engaged in unlawful conduct.

Crimes involving animal cruelty or neglect

Reasons:

1. Certified officers interact and work with vulnerable populations, members of which may be particularly at risk for physical abuse and unable to report or protect themselves.
2. Certified officers hold a high degree of control over a child's successful completion of a program or probation conditions.
3. Committing crimes involving cruel or neglectful conduct toward animals may indicate that a person lacks empathy or appropriate concern for children under that person's control.
4. Committing crimes involving cruel or neglectful conduct toward animals may indicate that a person will perform similar cruel intentional mistreatment of children.

5. A person who has committed crimes involving cruel or neglectful conduct toward animals may have the opportunity to engage in similar conduct toward children of children.

Crimes involving prohibited sexual conduct

Reasons:

1. Certified officers physically interact with children in a supervisory role. They develop a relationship of trust. They have occasion to meet privately with children. This level of trust can be taken advantage of by someone who has committed this type of crime.
2. Certified officers work with a vulnerable population. Some children may be particularly at risk for sexual exploitation or abuse and unable to report or protect themselves.
3. Individuals who have committed crimes involving prohibited sexual conduct may pose a danger to the children.
4. A person who has committed such crimes may have the opportunity to engage in further similar conduct.

Crimes involving human trafficking

Reasons:

1. Certified officers may work with children who have been victims of human trafficking as well as children who may be vulnerable to becoming victims of human trafficking. They develop a relationship of trust. They have occasion to meet privately with children. This level of trust can be taken advantage of by someone who has committed this type of crime.
2. Certified officers physically interact with children in a supervisory role. They develop a relationship of trust. They have occasion to meet privately. This level of trust can be taken advantage of by someone who has committed this type of crime.
3. Individuals who have committed crimes involving prohibited sexual conduct may pose a danger to the children.
4. A person who has committed such crimes may have the opportunity to engage in further similar conduct.

Crimes involving children as victims, including abandoning/endangering a child or exploitation of/causing injury to a child

Reasons:

1. Certified officers work directly with children, in close, physical proximity. Individuals who have committed crimes involving children as victims pose a potential danger.
2. A person who has committed such crimes may have the opportunity to engage in further similar conduct.

Crimes against property such as theft or burglary with intent to commit theft

Reasons:

1. Certified officers may have access to the protected private information of children and their families, such as dates of birth, social security numbers, etc. They may have access to the personal property of employers.

2. Certified officers may testify in court and may create government records that are relied upon to ensure children are cared for. Persons who commit theft have shown a level of dishonesty that poses a potential danger to children.
3. A person who has committed crimes involving theft may have the opportunity and motivation to engage in further similar conduct.

Crimes involving fraud, forgery, perjury, tampering with a governmental record, or deceptive trade practices

Reasons:

1. Certified officers may testify in court. Certified officers document interactions with children and assess their compliance with program rules and conditions of probation. Certified officers document their own compliance with standards related to supervising children. A person with a history of dishonesty poses a potential danger to children.
2. A person who has committed such crimes may have the opportunity to engage in further similar conduct.

Crimes involving the possession, use, possession with intent to deliver, possession with intent to distribute, delivery, distribution or manufacture of drugs or other dangerous or illegal substances

Reasons:

1. Certified officers are in a position to pressure and/or influence children to purchase, use, possess, deliver, or distribute drugs or other dangerous or illegal substances.
2. Persons with a history of these types of offenses may not be appropriate persons to teach proper, safe, and legal conduct, especially in the context of children who may have engaged in similar unlawful conduct in the past.
3. Children or families who have used or delivered substances in the past are potentially vulnerable to someone who may wish to illegally sell or distribute drugs or to enlist their aid in doing so.
4. These types of criminal offenses may adversely reflect on the tendency or ability of a certified officer to act capably and with integrity and professionalism under the certificate, to uphold the public trust, and/or to protect the health and safety of children.
5. Criminal activity of this type may reveal a lack of regard for the safety and welfare of others.
6. A person with a predisposition for criminal activity of this type may pose a risk to the public.
7. A person who has committed such crimes may have the opportunity to engage in further similar conduct.

Crimes involving the possession or use of alcohol, drugs, or other dangerous or illegal substances in a motor vehicle, or the operation of a motor vehicle, including driving while intoxicated, intoxication assault, intoxication manslaughter, reckless driving, and fleeing or evading a police officer

Reasons:

1. Certified officers interact with children in a supervisory role to teach proper, safe, and legal conduct, which includes with regard to alcohol and/or drugs and other substances, including in

the context of operating a motor vehicle. They also may be called on to operate a vehicle in the course of employment, sometimes transporting a child.

2. Persons with a history of operating a motor vehicle in a dangerous or illegal manner may not be appropriate persons to teach proper, safe, and legal conduct. They also may not be appropriate to operate vehicles for work purposes, especially if transporting a child.
3. Criminal activity of this type reveals a lack of regard for the safety of others.
4. Criminal activity of this type adversely reflects on the tendency or ability of a certified officer to act capably and with integrity and professionalism under the certificate, to uphold the public trust, and/or to protect the health and safety of children under their supervision.
5. A person who has committed such crimes may have the opportunity to engage in further similar conduct.

Crimes against property, such as arson, criminal mischief, and other property damage or destruction

Reasons:

1. Persons who engage in crimes that involve destroying the property of others may lack the empathy and compassion necessary to work as a certified officer in the juvenile justice system.
2. Certified officers may have occasion to be responsible for the property of children in their care or of their employer and would have the opportunity to engage in further similar conduct.

Crimes involving abuse of official capacity

Reasons:

1. Certified officers have a position of authority over the children they work with. A person who has abused that official authority in the past poses a potential danger to the children.
2. A person who has committed such crimes may have the opportunity to engage in further similar conduct.