

Chapter: Rules for State-Operated Programs and Facilities Subchapter: Behavior Management and Youth Discipline Division: Due Process Hearings Procedures <b>Rule: Detention for Youth Pending Level I or II Hearing</b>  ACA: N/A Statute(s): Human Resources Code §243.051, Family Code §54.01	<b>Effective Date: 7/15/13</b>  Page: 1 of 4  Replaces: GAP.380.9561, 11/1/11
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**RULE**

(a) **Purpose.**

The purpose of this rule is to establish:

- (1) criteria and procedures for detaining certain youth in a community detention facility (juvenile or adult) or in a Texas Juvenile Justice Department (TJJD) security unit prior to a Level I or Level II due process hearing; and
- (2) the expectations for interaction between TJJD staff and community detention staff.

(b) **Definitions.**

Definitions pertaining to this rule are under §380.9550 of this title.

(c) **Applicability.**

- (1) This rule applies to:
  - (A) youth on parole status; and
  - (B) youth on institutional status who are assigned to a facility of less than high restriction.
- (2) This rule does not apply to youth assigned to high-restriction facilities.

(d) **General Provisions.**

- (1) Youth who are age 17 or younger may be referred to a juvenile community detention facility with the consent of local authorities. Youth who are age 17 or older may be referred to detention in an adult jail facility.
- (2) Youth may not be placed in detention for the purpose of punishment.
- (3) A Level I or Level II due process hearing will be scheduled in accordance with time frames set forth in §380.9551 or §380.9555 of this title, as applicable.
- (4) Even if TJJD receives information that additional criminal or delinquent proceedings against the youth are planned, pending, or anticipated by local authorities, TJJD may continue to hold the youth in detention and may schedule and hold a Level I or Level II due process hearing.
- (5) For youth held in community detention, the referring staff or a designated parole officer must visit the youth at least once every ten workdays.
- (6) For youth held in institution detention in a TJJD security unit:
  - (A) the referring staff must contact the youth and the institutional placement coordinator or designated staff at least once every three calendar days; and

- (B) all standard security unit requirements and services as set forth in §380.9740 of this title, unless otherwise noted in this rule, must be observed while the youth is detained in a TJJJ security unit.

(e) **Criteria for Detention.**

A youth in TJJJ custody may be detained when:

- (1) there are reasonable grounds to believe the youth engaged in:
  - (A) criminal behavior, delinquent conduct, or a violation of the conditions of release under supervision that meets criteria for revocation as defined in §380.9504 of this title; or
  - (B) a rule violation that meets criteria for disciplinary transfer as defined in §380.9503 of this title; and
- (2) a Level I or Level II due process hearing has been requested; and
- (3) one or more of the following criteria are present:
  - (A) the youth is likely to abscond and not appear at a disciplinary hearing;
  - (B) suitable supervision, care, or protection for the youth is not being provided by the parent or guardian to ensure protection of the public safety or prevention of youth self-injury and a less restrictive temporary shelter is not available or is inappropriate; or
  - (C) the youth may be dangerous to himself/herself or may threaten the safety of the public or others if released.

(f) **Admission to Detention.**

(1) **Approval for Detention.**

- (A) If the referring staff determines there are reasonable grounds to believe a youth has committed an offense for which a Level I or Level II due process hearing will be requested, the staff must notify an appropriate supervisor to justify and obtain approval for holding the youth in detention.
- (B) If approval for detention is not granted or it is determined that a Level I or Level II hearing will not be sought, arrangements must be made for the immediate release of the youth and return to the appropriate placement, unless the community is detaining the youth for reasons unrelated to TJJJ's detention of the youth.

(2) **Admission Process for Youth Held in Institution Detention.**

- (A) The referring staff is responsible for ensuring the following documentation or information is present at the time of admission to institution detention:
  - (i) a copy of the written request for a Level I or Level II hearing;
  - (ii) a written statement including purpose of admission with supporting documentation (i.e., any incident reports or arrest reports and expected length of stay); and
  - (iii) the medical file, if available, or copies of pertinent medical records, as well as information relating to any medication the youth is taking.
- (B) Based on the information presented, the admitting staff must determine whether there are reasonable grounds to believe criteria for admission have been met as outlined in

subsection (e) of this section. If the criteria are met, the youth may be admitted to institution detention for up to 72 hours.

- (C) The security dorm supervisor or designee (who may not serve as the referring or admitting staff) must review all admission decisions within one workday to determine if admission criteria have been met. If criteria are not met or policy or procedures were not followed, the youth must be released and returned to the appropriate placement.

**(g) Detention Review Hearings.**

**(1) Timing of Hearing.**

**(A) Community Detention.**

- (i) For youth placed in community detention, TJJD must hold a Level IV hearing (detention review hearing) on or before the tenth workday of detention if:
- (I) a detention hearing is not waived or conducted by the community detention staff;
  - (II) the Level I or II hearing cannot be held within ten workdays; and
  - (III) further detention is necessary and appropriate.
- (ii) If a detention hearing is conducted or waived by community detention staff pursuant to the Texas Family Code, TJJD staff will participate as requested by the community and complete all required TJJD documentation and/or data entry.
- (iii) If a Level IV hearing is not timely held or is not properly waived, the youth must be released to his/her assigned location or other appropriate non-secure placement.

**(B) Institution Detention.**

- (i) For youth placed in institution detention, TJJD must hold a Level IV hearing (detention review hearing):
- (I) within 72 hours after admission to institution detention, or the next workday if the 72nd hour falls on a weekend or holiday; and
  - (II) within ten workdays after the previous Level IV Hearing.
- (ii) If a Level IV hearing is not timely held or is not properly waived, the youth must be released to his/her assigned location or other appropriate non-secure placement.

**(2) Decision Maker.**

- (A) The decision maker must be impartial and may not be the person who requested or admitted the youth to institution detention or community detention.
- (B) The decision maker must be knowledgeable of the policies involved in the decision.

**(3) Youth Representation and Waiver of Level IV Hearing.**

- (A) The youth has a right and must be informed of his/her right to be represented at the Level IV hearing:
- (i) by counsel, if the youth is awaiting a Level I hearing. Counsel is an attorney obtained by the youth or appointed to represent the youth; or
  - (ii) by an advocate, if the youth is awaiting a Level II hearing.

- (B) The youth may waive the Level IV hearing after being advised by his/her attorney or advocate. Such waiver must be in writing.
- (C) When a subsequent Level IV hearing is required by policy timelines, the youth must be given the opportunity to have that hearing or to waive it. If the youth chooses to waive the hearing after speaking to his/her attorney or advocate, a new waiver form must be completed.

(4) **Hearing Process.**

- (A) The referring staff must show cause to detain the youth pending the hearing. The attorney or advocate may present evidence as to why the youth should not be detained.
- (B) The standard of proof for all disputed issues is reasonable grounds to believe.
- (C) All credible evidence may be considered, irrespective of its form.
- (D) The hearing must be recorded and the recording is the official record of the hearing. Recordings must be preserved for six months following the hearing.
- (E) The decision maker must base his/her decision on criteria for detention. If criteria are not met, the youth must be released to his/her assigned location.

(5) **Appeal.**

- (A) The youth must be notified in writing of his/her right to appeal.
  - (i) For youth in institution detention:
    - (I) appeal of the first Level IV hearing is to the facility administrator;
    - (II) appeal of the second Level IV hearing is to the executive director under §380.9353 of this title; and
    - (III) an automatic appeal to the executive director must be filed by the referring staff on the third and any subsequent Level IV hearings, even if the youth waives the hearing(s).
  - (ii) For youth in community detention, all Level IV hearing appeals are to the executive director under §380.9353 of this title.
- (B) The pendency of an appeal does not preclude implementation of the decision to detain the youth.

(h) **Detention Following Level I or II Hearing.**

A youth may be held in institution detention without a Level IV hearing when the youth is waiting for transportation to a different placement following a Level I or Level II hearing. Transportation should be arranged immediately to take place within 72 hours. Any delay in transportation beyond 72 hours must be approved by the facility administrator.