

# CRIMINAL

# BACKGROUND

# STANDARDS

Chapter 344 changes  
Effective 9/1/2022





01

# REASONS FOR CHANGE

Occupations Code Chapter 53

# AUTHORITY TO REVOKE, SUSPEND, OR DENY



## CONVICTION

- Offense that directly relates to duties and responsibilities of occupation (not Class C)
- Offense listed in 42A.054 CCP
- Sexually violent offense as defined in 62.001 CCP

## DEFERRED ADJUDICATION

- Considered as conviction if license authorizes person to provide law enforcement or public health, education, or safety services

## DIRECTLY RELATES

- Nature and seriousness of crime
- Relationship to purposes for requiring license
- Extent to which license might offer opportunity to engage in future similar activity
- Relationship of crime to ability to perform duties
- Correlation between elements of crime and duties

## ADDITIONAL FACTORS

- Extent and nature of past criminal activity
- Age when committed
- Time elapsed since
- Conduct and work activity before and after
- Evidence of rehabilitation
- Evidence of compliance with conditions
- Other evidence of fitness, including letters of recommendation

# INTENDED DENIAL



**30 DAYS**

- Licensing authority cannot deny license based on prior conviction unless licensing authority:
  - Provides written notice of reason for intended denial; and
  - Allows person at least 30 days to submit relevant information to the licensing authority

# JUDICIAL REVIEW



**30 DAYS**

- Person who has license suspended or revoked or denied under these provisions may file action in Travis County district court for review
- Has 30 days after decision is final to file

02

# FORMER CRIMINAL BACKGROUND STANDARDS

Chapter 344



# DISQUALIFYING CRIMINAL HISTORY

- Conviction/deferred adjudication for felony in 42A.054 CCP – ever
- Conviction/deferred adjudication for other felony – 10 years from date of disposition
- Conviction/deferred adjudication for misdemeanor A or B – 5 years from date of disposition
- Current sex offender registration
- Regardless of timelines, at least one year must have passed since discharge from incarceration, probation, or parole



# EXCEPTIONS



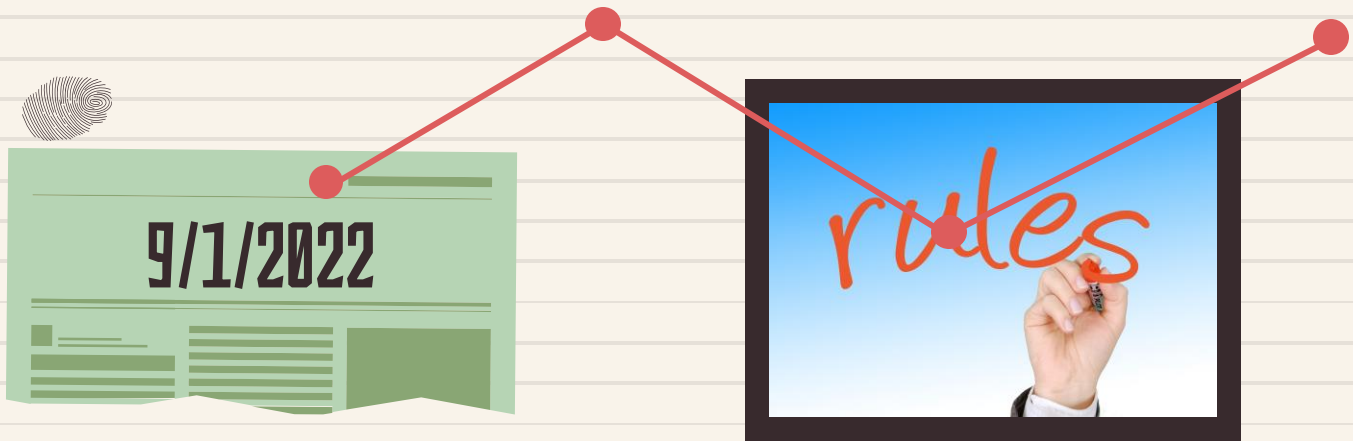
**Certified Officer:** Juvenile board could request variance from TJJD for Class B misdemeanor

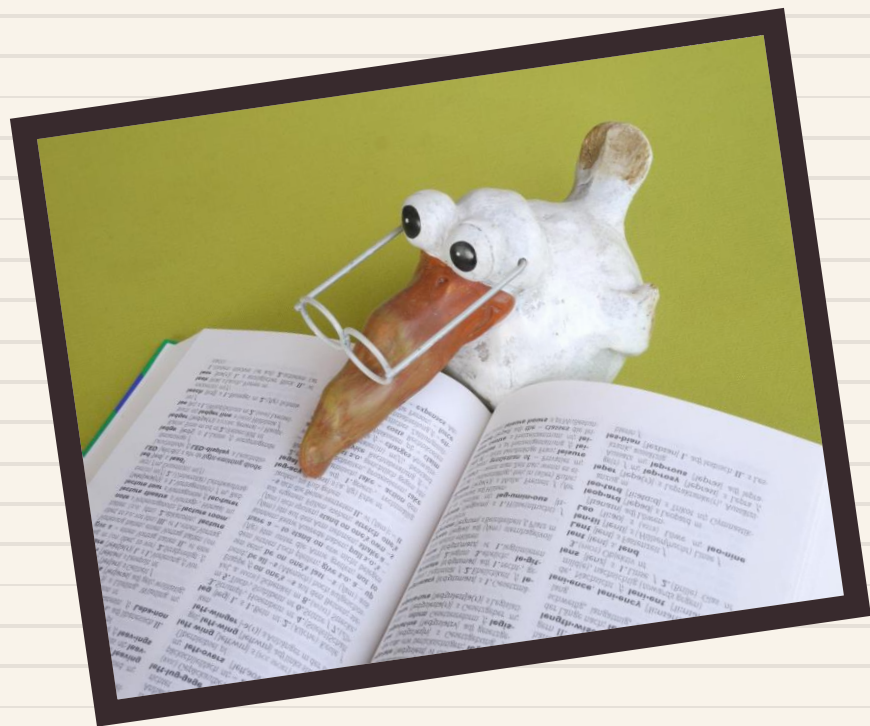
**Non-certified Person with Unsupervised Access:** Juvenile board could grant exception for Class B misdemeanor only



03

# NEW CRIMINAL BACKGROUND STANDARDS





# TERMINOLOGY

# DISQUALIFYING CRIMINAL HISTORY

- Conviction/deferred adjudication for felony in 42A.054 CCP
- Conviction/deferred adjudication for sexually violent offense defined in 62.001 CCP



Any of the following committed by person 17 or older:

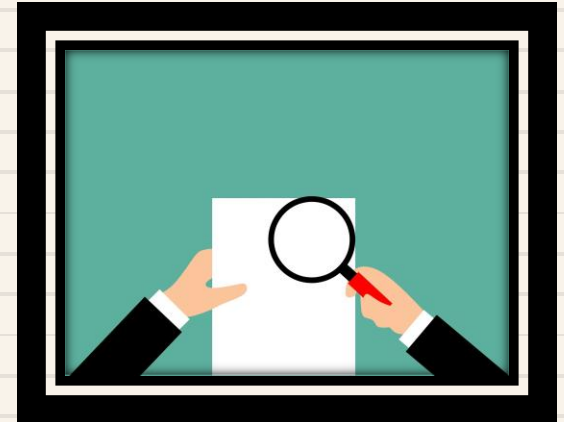
1. Continuous sexual abuse of young child/individual with disability
2. Indecency with a child
3. Sexual assault
4. Aggravated sexual assault
5. Sexual performance by a child
6. Aggravated kidnapping
7. Burglary with intent to commit certain felonies

Note: Not all registerable offenses meet this definition



# REVIEWABLE CRIMINAL HISTORY

- Current requirement to register as sex offender for offense that is not disqualifying offense
- Conviction/deferred adjudication for any other non-disqualifying felony that is less than 10 years old
- Conviction/deferred adjudication for any other misdemeanor that is less than 5 years old
- Conviction/deferred adjudication for felony or misdemeanor more than 10 or 5 years old if less than one year has passed since discharge from probation, incarceration, or parole





# CRIMINAL HISTORY: APPLICABILITY



- Person in position requiring certification
- Person in position eligible for optional certification who is seeking certification
- Person who may have direct, unsupervised access to juveniles in facility or program and who is:
  1. employee not in position requiring certification
  2. employee in position eligible for optional certification who is not seeking certification
  3. volunteer
  4. intern
  5. contractor

# BACKGROUND CHECK RESULTS



## DISQUALIFYING

## REVIEWABLE: WANT TO HIRE

### REVIEWABLE: DON'T WANT TO HIRE

### NOT DISQUALIFYING OR REVIEWABLE

Cannot hire.  
Process ends.

Don't hire.  
Process ends.

Must request  
review from  
TJJD.

Can choose to  
hire or not.  
No TJJD review.

# PRE-HIRE: CERTIFIED POSITIONS



01

## Identify Applicant You Wish to Hire

Probation department or facility conducts interviews and identifies an applicant it wishes to hire that has reviewable criminal history

02

## Send Information to TJJD

Must include information that addresses all factors TJJD must consider.  
Send to Certification Officer

03

## TJJD Conducts Review

Members from Office of General Counsel and Probation Services division make recommendation to Executive Director as to whether or not certification will be denied based on criminal history

04

## TJJD Responds

If indicates will not deny certification based on criminal history, may hire.  
If indicates will deny criminal history, person has 30 days to provide additional information



# TJJD ANALYSIS



## DIRECTLY RELATED

- Nature and seriousness of crime
- Relationship to purposes for requiring certification
- Extent to which certification might offer the person an opportunity to engage in future similar activity
- Relationship of crime to ability to perform duties
- Correlation between elements of crime and duties

## ADDITIONAL FACTORS

- Extent and nature of past criminal activity
- Age when committed
- Time elapsed since
- Conduct and work activity before and after
- Evidence of rehabilitation
- Evidence of compliance with conditions
- Other evidence of fitness, including letters of recommendation





# TJJD PROCESS



**01**

Certification Officer receives request for review and forwards to Office of General Counsel and Probation Services personnel involved in review process

**02**

At least one person from OGC and Probation Services reviews. Memo sent to Executive Director recommending whether or not certification should be denied based on criminal history

**03**

Executive Director decides whether or not certification will be denied based on criminal history

**04**

May hire if TJJD not denying certification based on criminal history.  
May not hire if TJJD is denying certification based on criminal history...but

# INTENDED DENIAL



**30 DAYS**

Person has 30 days from date TJJD provides notice of reason for intended denial to submit relevant information for further consideration.

# ARREST: CERTIFIED POSITIONS



## ARREST NOTIFICATION

- Must notify Certification Officer within 10 calendar days
- Must provide information regarding the circumstances of the arrest and respond to any questions TJJJ has regarding the arrest
- TJJJ can ask for emergency suspension based on facts of allegation but not simply because of an arrest

## CONVICTION NOTIFICATION

- Must notify Certification Officer within 10 calendar days
- Must remove from position requiring certification or having unsupervised access to juveniles until TJJJ makes its decision

## TJJJ ACTIONS

- Revoke/Ineligible: if conviction for disqualifying offense or imprisoned for felony or probation/parole revocation
- Others: consider if directly related and additional factors when deciding whether to revoke or suspend (active or probated) or make person ineligible



# PRE-HIRE: NON-CERTIFIED BUT HAVE UNSUPERVISED ACCESS



01

## Identify Applicant You Wish to Hire

Conducts interviews and identifies an applicant it wishes to hire that has reviewable criminal history

02

## Send Information to Juvenile Board/Designee

Must include information that addresses all factors must consider

03

## Juvenile Board/Designee Conducts Review

Must consider same factors as TJJD (Directly Related and Additional Factors)

04

## Juvenile Board/Designee Responds

Local processes control how this is done and if there is reconsideration opportunity



# ARREST: NON-CERTIFIED WITH UNSUPERVISED ACCESS



**DISQUALIFYING**

**REVIEWABLE – WANT TO KEEP**

**REVIEWABLE – DON'T WANT TO KEEP**

Cannot remain in  
position

Terminate

- Remove from position
- Request Juvenile Board Review
- Juvenile Board does same review as TJJD (directly related and additional factors)
- Can return to position only if Juvenile Board approves



## DO THE STANDARDS HAVE POLICY REQUIREMENTS?

Yes. The standards require that your policies prohibit a person with a disqualifying or reviewable history from having direct, unsupervised access to juveniles unless the review by TJJD or juvenile board, as appropriate, results in a determination that the person is not ineligible. 344.300(a)



## **DOES THE JUVENILE BOARD DESIGNATION OF SOMEONE TO MAKE DECISIONS FOR NON-CERTIFIED STAFF HAVE TO BE IN WRITING?**

Yes. The standards provide that the designee allowed to make exemption decisions must be documented. Additionally, the justification for the exemption must be documented.



**DO THE STANDARDS APPLY TO SOMEONE WHO WAS ALREADY HIRED  
WHO IS BEING MOVED INTO A POSITION REQUIRING CERTIFICATION  
OR TO A PERSON FOR WHOM I AM SEEKING OPTIONAL CERTIFICATION?**

Yes. If they have a disqualifying criminal history, they cannot be certified. If they have a reviewable criminal history, TJJD has to review.





## **AM I REQUIRED TO REQUEST A REVIEW FOR EVERY PERSON WITH A REVIEWABLE CRIMINAL HISTORY?**

No. You only request a review when you actually want to hire a person with a reviewable criminal history.



## **DO I HAVE TO HIRE SOMEONE IF TJJD REVIEWS THEM AND DETERMINES THEY WILL NOT BE INELIGIBLE FOR CERTIFICATION?**

No. The hiring decision is still up to you, even if TJJD conducts a review and says the person will not be ineligible to get a certification.



## **CAN I HAVE A POLICY THAT PROHIBITS HIRING SOMEONE WITH A REVIEWABLE CRIMINAL HISTORY?**

In consultation with local counsel, you can set any legal criminal history hiring parameters you wish, as long as they are inclusive of the required disqualifying criminal history and the reviewable criminal history provisions. That means you can have more stringent criteria than the standards, just not less.



## **IF I TERMINATE A CERTIFIED OFFICER UPON ARREST, CONVICTION, OR DEFERRED ADJUDICATION, DO I STILL HAVE TO NOTIFY TJJD?**

Yes. The notification is so that TJJD can take action on a certification when warranted in order to prevent someone from working in the field if their doing so puts juveniles in danger.



## HOW DO I CONTACT THE CERTIFICATION OFFICER?

[certificationofficer@tjjd.texas.gov](mailto:certificationofficer@tjjd.texas.gov)

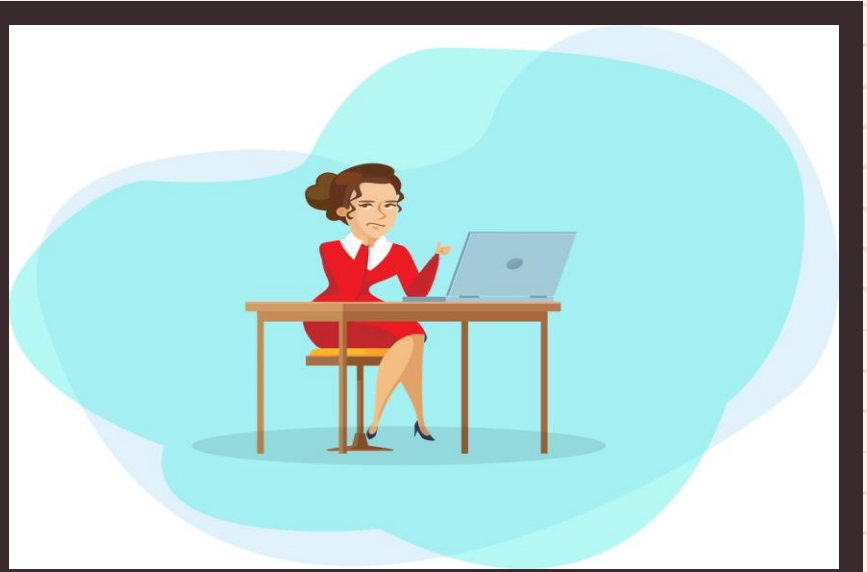


## WHERE CAN I FIND THE GUIDELINES DOCUMENT?

<http://www.tjtd.texas.gov/index.php/doc-library/send/452-tac344-standards/3226-ch344-guidelines-090122>

04

## TRAINING CHANGES



# LIVE TRAINING



Defined to include in-person and online if presenter and person claiming credit appear at the same time and have the ability to interact, either verbally or in writing



No limit on live-training hours





# PRE-RECORDED TRAINING



Includes recordings of live interactive trainings and non-interactive trainings



No limit if training is provided by TJJD or sponsored or co-sponsored by TJJD



JPO/JSO: 20 hours maximum per certification period  
CAO: 10 hours maximum per certification period



# REPETITIVE TRAINING



Generally, credit for the same topic can be given only twice in certification period



For JSO/CAO, if topic is required during each certification period per 344.640 and training hours were carried over for that topic from last certification period, can count 3 times

05

# CRCC CHANGES



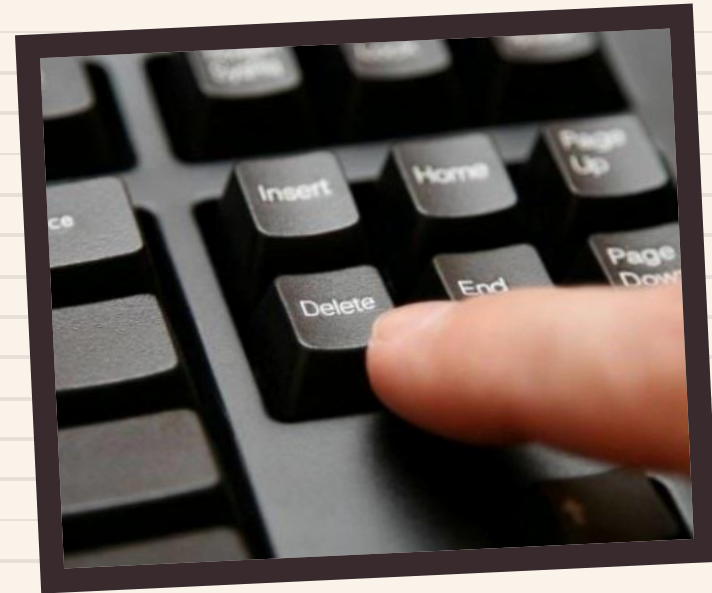
# CRCG DISPUTE RESOLUTION



## Deleted Standard

**341.200(c)(2)**

The chair of the juvenile board or designee must serve as representative to the interagency dispute resolution process required by Section 531.055, Government Code





# QUESTIONS?

[legalhelp@tjtd.texas.gov](mailto:legalhelp@tjtd.texas.gov)

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