

Chapter: Rules for State-Operated Programs and Facilities Subchapter: Youth Rights and Remedies Rule: Investigation of Alleged Abuse, Neglect, and Exploitation ACA: 4-JCF-3D-01 Statutes: Fam. Code §§261.401, 261.409	Effective Date: 7/15/14 Page: 1 of 6 Replaces: GAP.380.9333, 8/1/09
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RULE

(a) **Purpose.**

This rule provides for the administrative investigation of allegations of abuse, neglect, or exploitation in programs and facilities under Texas Juvenile Justice Department (TJJD) jurisdiction. This rule also provides standards for investigations and for the compilation of investigation information. The purpose of all provisions in this rule is the protection of youth.

(b) **Applicability.**

- (1) This rule applies to administrative investigations involving abuse, neglect, or exploitation allegedly committed by employees, volunteers, or other individuals working in TJJD programs or facilities including institutions, halfway houses, contracted residential services, parole services, and contract programs.
- (2) Except as specifically noted, this rule does not apply to criminal investigations conducted by the TJJD Office of Inspector General under Human Resources Code §242.102.

(c) **Additional References.**

- (1) See [§380.9337](#) of this title for additional requirements regarding investigations of alleged sexual abuse.
- (2) See [§380.9353](#) of this title for information on appeals to the executive director.

(d) **Definitions.**

As used in this rule, the following terms have the following meanings, unless the context clearly indicates otherwise.

- (1) **Abuse**--an intentional, knowing, or reckless act or omission that causes or may cause emotional harm or physical injury to, or the death of, a youth committed to the care and custody of TJJD.
- (2) **Case Closure Disposition**--the finding made upon official closure of a case of alleged abuse, neglect, or exploitation. The following dispositions are used for all allegations:
 - (A) **Confirmed**--an investigation established that the allegation did occur.
 - (B) **Exonerated**--an investigation established that the alleged incident occurred but was lawful and proper or was justified under existing conditions.
 - (C) **Unable to Determine**--an investigation resulted in insufficient evidence to prove or disprove the allegation(s).
 - (D) **Unfounded**--an investigation established that the allegation is false, not factual.
- (3) **Chief local administrator**--the person employed in a TJJD facility or district office who is responsible for overseeing the operations of a facility, contract program, or parole services.

- (4) **Emotional harm**--an impairment in the youth's growth, development, or psychological functioning that normally requires evaluation or treatment by a trained mental health or health care professional, regardless of whether evaluation or treatment is actually received. Sexual conduct in residential facilities is presumed to cause substantial emotional harm.
- (5) **Exploitation**--the illegal or improper use of a youth or the resources of a youth committed to the care and custody of TJJJ for monetary or personal benefit, profit, or gain.
- (6) **Neglect**--a negligent act or omission, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a youth committed to the care and custody of TJJJ.
- (7) **Physical injury**--an injury that normally requires examination or treatment by a trained health care professional, regardless of whether examination or treatment is actually received.
- (8) **Preponderance of the evidence**--a standard of proof meaning the greater weight and degree of credible evidence; e.g., whether the credible evidence makes it more likely than not that abuse, neglect, or exploitation occurred.
- (9) **Report**--notification that alleged or suspected abuse, neglect, or exploitation of a child has occurred or may occur.
- (10) **Sexual conduct**--conduct that constitutes the offense of continuous sexual abuse of a child or children under Penal Code §21.02, indecency with a child under Penal Code §21.11, sexual assault under Penal Code §22.011, or aggravated sexual assault under Penal Code §22.021.

(e) **Reporting Requirements.**

- (1) Under state law, any person having cause to believe that a youth has been or may be adversely affected by abuse, neglect, or exploitation must report the matter to a law enforcement agency or to the Department of Family and Protective Services (DFPS). The TJJJ Office of Inspector General is an appropriate law enforcement agency for reports of suspected abuse, neglect, or exploitation of youths subject to the jurisdiction of TJJJ. Any TJJJ employee, volunteer, or contractor working in a program or facility operated by or under contract with TJJJ who has cause to believe a youth committed to the care and custody of TJJJ has been or may be adversely affected by abuse, neglect, or exploitation or receives such a report must immediately report the matter to law enforcement in accordance with the TJJJ's reporting policies and procedures.
- (2) The person making a report must provide as much detailed information as possible, including the identity of persons involved, the location and time of relevant events, and the identity of others who may provide further information.
- (3) The requirement to report under this section applies without exception to a person whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, or a mental health professional.
- (4) Except for investigation purposes, the identity of a person making a report is confidential.

(f) **Actions Taken upon Receipt of the Report.**

Upon receipt of a report of alleged abuse, neglect, or exploitation, TJJJ:

- (1) in coordination with the appropriate law enforcement entity, immediately takes any action necessary to protect the youth and to preserve evidence that may be pertinent to an investigation of the matter;
- (2) notifies the youth's parents or guardian of the report and notifies the youth if the report was made by a third party;

- (3) determines whether the person accused of wrongdoing must be suspended, temporarily reassigned, or temporarily barred from assignment to TJJJ facilities pending the outcome of the investigation; and
- (4) takes any action necessary to ensure that the investigation or review is conducted with the full cooperation of staff and youth, that adequate resources are provided, and that the youth and witnesses are protected from retaliation or improper influence.

(g) **Assignment for Investigation.**

- (1) TJJJ promptly reviews each report of alleged abuse, neglect, or exploitation. Each report is entered into a centralized database and assigned for an administrative investigation if the allegation meets the definition of abuse, neglect, or exploitation. The report may also be assigned for criminal investigation.
- (2) Whether to assign a report for criminal investigation by a peace officer from the Office of Inspector General or appropriate law enforcement is determined on a case-by-case basis considering all relevant factors, including the severity and immediacy of potential harm.
- (3) A TJJJ investigator must provide an initial response within 24 hours after TJJJ receives the report if the report presents an immediate risk of physical or sexual abuse of a youth that could result in death or serious harm to the youth.
- (4) If deemed to be warranted by the chief inspector general or the executive director, a report of abuse, neglect, or exploitation may be referred to appropriate outside law enforcement for investigation.

(h) **Standards for Administrative Investigations.**

- (1) The administrative investigation must be prompt, thorough, and directed at resolving all the relevant issues raised by the report.
- (2) Only a person with qualified experience and training may be assigned to conduct an administrative investigation of a report of abuse, neglect, or exploitation.
- (3) All evidence that is relevant and reasonably available must be gathered and preserved, including documents, physical evidence, witness interviews and statements, photographs, and security videos.
- (4) For any report of alleged abuse, neglect, or exploitation, a preliminary investigation may be conducted to determine whether there is any evidence to corroborate the report or to provide cause to believe that any abuse, neglect, or exploitation has occurred.
- (5) For a report of alleged abuse, the investigator must find whether the:
 - (A) alleged act or failure to act occurred;
 - (B) act or failure to act caused emotional harm or physical injury to the youth; and
 - (C) person who took the action or who failed to act did so intentionally, knowingly, or recklessly.
- (6) For a report of alleged neglect, the investigator must find:
 - (A) whether there was substantial emotional harm or physical injury of the youth as alleged;
 - (B) the standard of care or duty expected under the circumstances that are alleged;
 - (C) whether the actions or failure to act under the circumstances violated the standard of care or duty; and
 - (D) whether the actions or failure to act caused the substantial emotional harm or physical injury of the youth.

- (7) For a report of alleged exploitation, the investigator must find whether:
 - (A) a youth or a youth's resources were used by the accused person in the manner alleged;
 - (B) the use was for monetary or personal benefit, profit, or gain; and
 - (C) the use was illegal or improper.
 - (8) The investigator's findings must be based on a preponderance of the evidence.
 - (9) The investigator must prepare a written investigative report of the findings, including a summary and analysis of the evidence relied upon in reaching the findings. Copies of relevant documents and photographs must be attached to the investigative report.
 - (10) The investigator may make findings on misconduct other than abuse, neglect, or exploitation if the misconduct is established by the evidence. However, the absence of such findings should not be regarded as exoneration of the respondent or other employees as to policy violations or other misconduct indicated by the evidence.
- (i) **Administrative Investigation Report - Submission and Closure.**
- (1) The investigator must submit a written investigative report to his/her supervisor upon completion of the investigation.
 - (2) The investigator's supervisor must indicate approval of the investigation findings by closing the investigative report and indicating the final case closure disposition. The supervisor or designee must then ensure the appropriate facility is notified of the findings.
 - (3) All closed investigative reports must contain the signature of the supervisor who was responsible for making the final closure determination and the signature of the investigator who gathered the evidence in the case.
 - (4) In the event the investigator's supervisor disagrees with the investigative report submitted by the investigator upon completion of the investigation, the investigative report must:
 - (A) include a statement by the supervisor that describes the reasons for his/her disagreement;
 - (B) be forwarded to the division director or designee for resolution;
 - (C) include the signature of the division director or designee for official closure of the investigative report.
- (j) **Actions in Response to a Closed Administrative Investigation Report.**
- (1) Upon receipt of a closed investigative report, the chief local administrator must review the investigative report and:
 - (A) notify the youth, the youth's parents or guardian, and the person accused of wrongdoing of the results of the investigation;
 - (B) notify the youth and the youth's parents of the right to appeal the investigation findings or to file a complaint regarding the conduct of the investigation under [§380.9353](#) of this title; and
 - (C) if the report is confirmed, take whatever actions are necessary and appropriate to rectify the wrong and prevent future harm under the same or similar circumstances.
 - (2) If the allegation was reported by a health care professional who provides services to TJJD youth through TJJD's contract health care provider(s), TJJD must, upon request, notify the health care professional in writing of the results of the investigation and the right to appeal the findings under [§380.9353](#) of this title.

(k) Standards for Compiling Investigation Information.

- (1) TJJJ compiles information related to the number and nature of reports filed, case closure dispositions, the dates and locations of reported incidents, the average length of time required for investigations, and any significant trends. This information must be compiled at least twice each year and be available for public inspection.
- (2) Additional information including a summary of the findings and corrective actions taken with regard to all confirmed reports is prepared for periodic review and analysis by the TJJJ executive staff and the TJJJ governing Board.
- (3) Periodic summaries of complaints and appeals regarding investigations conducted under this rule and the final decisions regarding the complaints or appeals are provided to the TJJJ governing board for review. The TJJJ executive director or governing board will take whatever action is determined to be appropriate with regard to the complaint to ensure the investigations are conducted properly.

(l) Confidentiality of Reports and Investigation Information.

- (1) To the extent required by state or federal law, TJJJ will release to the public, upon request, a report of alleged or suspected abuse, neglect, or exploitation if:
 - (A) the report relates to a report of abuse, neglect, or exploitation involving a child committed to TJJJ during the period that the child is committed to TJJJ; and
 - (B) TJJJ is not prohibited by Chapter 552, Government Code, or other law from disclosing the report.
- (2) Any information concerning a report of alleged or suspected abuse, neglect, or exploitation that is disclosed will be edited to protect the identity of:
 - (A) a child who is the subject of the report of alleged or suspected mistreatment;
 - (B) any other youth committed to the care and custody of TJJJ who is named in the report;
 - (C) the person who made the report; and
 - (D) any other person whose life or safety may be endangered by the disclosure.
- (3) Notwithstanding any other provision permitting the release of information, TJJJ will not disclose any record or information that, if released to the requestor, would interfere with an ongoing criminal investigation or prosecution.
- (4) An investigative report regarding an investigation of an allegation of abuse, neglect, or exploitation will be provided to:
 - (A) a law enforcement agency or other criminal justice agency for purposes of investigation and prosecution, upon request;
 - (B) a parent, managing conservator, or other legal representative of a youth, upon request. The information contained in the report will be redacted to protect the identity of the person making the report, other youth, and any other person who may be harmed by the disclosure; and
 - (C) the healthcare provider who reported an allegation. The information contained in the report will be redacted to protect the identity of the person making the report, other youth, and any other person who may be harmed by the disclosure.
- (5) An investigative report and evidence gathered in the course of an investigation may be provided to appropriate TJJJ staff for the determination of corrective actions and to employees or former employees for use in an appeal of the investigation findings or to defend against a disciplinary action arising from the investigation findings.

- (A) Investigative reports are confidential under Texas Family Code Chapter 261 and may be used by the employee only for the appeal of investigation findings or to defend against a disciplinary action arising from an investigation.
- (B) Names of individuals contained in the investigative report or related evidence will be redacted if the names are not necessary for the fair resolution of contested facts. Any information that is confidential by law will be redacted prior to delivery to the respondent.

(m) **Periodic Audit of Investigations.**

Pursuant to Family Code §261.403(b), the TJJD governing board ensures there is a periodic internal audit of procedures related to administrative investigations of alleged abuse, neglect, and exploitation.

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- See [GAP.07.03](#) for procedures on how staff must report alleged or suspected mistreatment.
 - See [GAP.07.33](#) for procedures on what types of notifications are required when a case is opened and closed.
 - See [PRS.35.01](#) for procedures on how discipline may be taken on a confirmed report of mistreatment.
 - See [PRS.35.03](#) for procedures on how TJJD staff, volunteers, or contractors may appeal the findings of an administrative investigation.
 - See [PRS.35.11](#) for procedures on how the decision authority may appeal the findings of an administrative investigation.