

Chapter: Rules for State-Operated Programs and Facilities	Effective Date: 10/1/15
Subchapter: Behavior Management and Youth Discipline	
Division: Due Process Hearings Procedures	Page: 1 of 3
Rule: Detention for Youth with Pending Charges	Replaces: GAP.380.9559, 11/1/11
ACA: N/A	
Statutes: N/A	

RULE

(a) **Purpose.**

This rule establishes criteria and procedures for detaining youth in a Texas Juvenile Justice Department (TJJD) security unit when criminal or delinquent charges are pending or filed or when the youth is awaiting a court hearing or trial.

(b) **Definitions.**

Definitions pertaining to this rule are under [§380.9550](#) of this title.

(c) **Applicability.**

- (1) This rule applies only to TJJD youth on institutional status, regardless of assigned placement.
- (2) This rule does not apply to TJJD youth on parole status, regardless of assigned placement.

(d) **General Provisions.**

- (1) A youth may be held in institution detention if a court hearing or trial has been requested in writing or has been scheduled or criminal or delinquent conduct charges are pending or have been filed and:
 - (A) suitable alternative placement within the facility is unavailable due to ongoing behavior of the youth that creates disruption to the point that other youth are not able to benefit from programming; or
 - (B) the youth is likely to interfere with the judicial process, to include failing to appear; or
 - (C) the youth represents a danger to others; or
 - (D) the youth has escaped or attempted to escape, as defined in [§380.9503](#) of this title, or is likely to attempt to escape.
- (2) Charges are considered to be pending if there is reliable information that the prosecuting attorney intends to request an indictment or to file a petition or other charging instrument with the court.
- (3) Charges are considered to be filed when an indictment has been issued or when a petition or other charging instrument has been filed with the court.
- (4) If a youth with a determinate sentence is awaiting a court hearing for transfer to the Texas Department of Criminal Justice – Institutions Division, the court hearing is considered to be “requested in writing” when TJJD makes a written request to the court for a hearing date.
- (5) Youth may not be placed in detention for the purpose of punishment.
- (6) All standard requirements and services for the security unit as set forth in [§380.9740](#) of this title, unless otherwise noted in this rule, must be observed while the youth is detained in the security unit.

(e) **Procedure.**

(1) **Approval for Detention.**

- (A) The referring staff must obtain approval from the appropriate supervisor before placing a youth in institution detention.
- (B) The youth must be immediately released from detention and returned to the appropriate placement if:
 - (i) approval for detention is not granted;
 - (ii) it is determined that charges will not be filed or will be dropped; or
 - (iii) it is determined that the court hearing or trial will be cancelled.
- (C) If approval is granted to detain a youth who is not assigned to a high-restriction facility, the referring staff must obtain approval to place the youth in institution detention from the facility administrator or designee at the high-restriction facility.

(2) **Admission to 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) documentation that charges are pending or filed or that a court hearing or trial is scheduled or has been requested in writing;
 - (ii) a written statement including the 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 any medication the youth is taking (applies to youth not assigned to the high-restriction facility where he/she is detained).
- (B) The designated admitting staff must review the information presented to determine whether there are reasonable grounds to believe criteria for admission have been met as outlined in [subsection \(d\)\(1\)](#) of this section. As a result of this review, 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 from the security unit.

(3) **Timing of Hearing.**

- (A) If a youth is admitted to detention, a Level IV hearing (detention review hearing) must be held:
 - (i) no later than 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 of the previous Level IV hearing.
- (B) If a Level IV hearing is not timely held or is not properly waived, the youth must be released to his/her assigned location.

(4) **Decision Maker.**

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

(5) **Youth Representation and Waiver Rights.**

- (A) A TJJJ employee, contract employee, or volunteer trained to serve as an advocate must assist the youth.
- (B) The youth may waive the Level IV hearing after speaking with his/her advocate. The waiver must be in writing and be signed by the youth and the advocate.
- (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 advocate, a new waiver form must be completed.

(6) **Hearing Process.**

- (A) The referring staff must show cause to detain the youth pending the hearing. The 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. The burden of proof is on the referring staff requesting detention.
- (C) All credible evidence may be considered, irrespective of its form.
- (D) The hearing must be recorded. 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.

(7) **Appeal.**

- (A) The youth is notified in writing of his/her right to appeal.
 - (i) The appeal of the first Level IV hearing is to the facility administrator.
 - (ii) The appeal of the second Level IV hearing is to the executive director pursuant to [§380.9353](#) of this title.
 - (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).
- (B) A decision to detain a youth will be implemented even if an appeal has been filed and a response is pending.

See [CMS.20.15](#) for implementation procedures.