

Chapter: Rules for State-Owned Programs and Facilities	<b>Effective Date: 3/1/19</b>  Page: 1 of 3  Replaces: GAP.380.9909, 4/15/16
Subchapter: General Provisions	
Division: Youth Records	
<b>Rule: Access to Youth Information and Records</b>	
Statutes: N/A	

**RULE**

(a) **Purpose.**

This rule establishes controls on access to Texas Juvenile Justice Department (TJJD) youth records and information in compliance with federal and state laws and regulations that limit access to youth records.

(b) **Applicability.**

This rule applies to all youth committed to TJJD.

(c) **General Provisions.**

Records and information concerning youth:

- (1) must be marked "confidential";
- (2) must remain in the custody and control of authorized personnel at all times;
- (3) may not be disclosed except as allowed by law; and
- (4) must be stored and transported in a manner that ensures security and confidentiality.

(d) **Access by a Youth or Parent.**

- (1) In the interest of protecting TJJD youth and the public, TJJD may disclose records and other information concerning a youth to the youth and the youth's parent or guardian only if the disclosure would not:
  - (A) materially harm the treatment and rehabilitation of the youth; or
  - (B) substantially decrease the likelihood of TJJD receiving information from the same or similar sources in the future.
- (2) If TJJD decides it is appropriate to disclose information to the parent or guardian concerning a youth who is at least 18 years old, TJJD may do so only with the youth's written consent.

(e) **Educational Information.**

- (1) Educational information is made available in accordance with Title 20 of the United States Code §1232g and Title 34 of the Code of Federal Regulations (CFR).
- (2) A TJJD youth who is at least 18 years old may access his/her own educational information or grant consent to another individual to access his/her information. If the youth is under the age of 18, the parent or guardian has the right to access the youth's educational information or grant consent to another individual to access the youth's educational information.
- (3) TJJD may disclose educational information of a youth who is at least 18 years old to a parent without the youth's consent if the parent is claiming the youth as a "dependent student" as defined in Section 152 of the Internal Revenue Code.
- (4) No consent is necessary if TJJD is releasing educational information on a youth to school officials within TJJD or to the school district where the youth seeks to attend.

**(f) Alcohol and Drug Treatment Records.**

- (1) Access to youth records that contain certain information identifying the youth as chemically dependent or as a substance abuser may be disclosed only as provided in 42 CFR Part 2. Confidentiality requirements for this type of information are more restrictive than requirements in other regulations.
- (2) Drug and alcohol information that may not be released includes any information that:
  - (A) would identify a youth as an alcohol or drug abuser; or
  - (B) is obtained for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral for that treatment.
- (3) At the time of admission, youth diagnosed as alcohol or drug abusers must:
  - (A) be informed that federal laws protect the confidentiality of their alcohol and drug abuse records; and
  - (B) be given a written summary of the federal law and regulations.
- (4) If a document contains information regarding alcohol and drug abuse but it also contains other information that may appropriately be released, TJJD must redact the alcohol and drug abuse information unless appropriate release forms have been completed.

**(g) Release of Information upon Escape.**

TJJD may disseminate the following information upon an escape of a youth:

- (1) the youth's name, including other names by which the youth is known;
- (2) the youth's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;
- (3) a photograph of the youth; and
- (4) if necessary to protect the welfare of the community, any other information that reveals dangerous tendencies of the youth or expedites the apprehension of the youth.

**(h) Access under Federal Protection and Advocacy Systems.**

Pursuant to Title 42 of the United States Code §10805 and §15043, federal law provides for a federally funded system of mental health advocates and a federally funded system of advocates for the developmentally disabled and grants those advocates access to facilities and TJJD records for the purpose of investigating abuse and neglect of the mentally ill or developmentally disabled.

**(i) Health Insurance Portability and Accountability Act.**

- (1) TJJD is not a covered entity under the Health Insurance Portability and Accountability Act (HIPAA) because it does not engage in covered transactions as defined by 45 CFR §160.103. Records created by an entity covered by HIPAA are subject to TJJD's regular confidentiality rules and procedures.
- (2) Protected health information generated by HIPAA-covered contract providers (e.g., University of Texas Medical Branch) and included in the electronic health record of youth in high-restriction facilities and halfway house programs is the property of TJJD. The status of the source of the information does not impose HIPAA restrictions on the use of that healthcare information.

- (3) To the extent that any healthcare information obtained by TJJD may be covered by HIPAA as it applies to youth at high-restriction facilities and halfway houses, that healthcare information is for the governmental uses and purposes enumerated in 45 CFR §164.512, including but not limited to:
- (A) the provision of healthcare to that youth;
  - (B) the health and safety of that youth or other youths;
  - (C) the health and safety of the officers or employees of or others at a high-restriction facility or halfway house;
  - (D) the health and safety of such individuals and officers or other persons responsible for the transporting of youths or their transfer from one institution, facility, or setting to another;
  - (E) law enforcement on the premises of a high-restriction facility or halfway house; and
  - (F) the administration of the safety, security, and good order of a high-restriction facility or halfway house.
- (4) A contract healthcare provider who is a HIPAA-covered entity and provides services to TJJD youth other than those youth in high-restriction facilities or halfway houses is required as a condition of the contract to secure all necessary consents or authorizations to provide to or obtain from TJJD protected health information.

(j) **Release of Certain Information for a Legitimate Need.**

TJJD may disclose information regarding a youth's location and committing court to a person having a legitimate need for the information (e.g., to provide a location for a bench warrant or service of process to be issued the youth).

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