

Chapter: Agency Management and Operations	<b>Effective Date: 5/1/19</b>  Page: 1 of 3  Replaces: GAP.385.8181, 10/1/16
Subchapter: Interaction with the Public	
<b>Rule: Background Checks</b>	
Statutes: Human Resources Code §242.010 Government Code §411.083	

**RULE**

(a) **Policy.**

The Texas Juvenile Justice Department (TJJD) reviews criminal histories and employment references for certain persons as required under Section 242.010, Human Resources Code.

(b) **Applicability.**

This rule does not apply to:

- (1) youth access to a personal attorney under [§380.9311](#) of this title;
- (2) youth access to a personal clergy member under [§380.9317](#) of this title; or
- (3) youth access to visitors under [§380.9312](#) of this title.

(c) **Definitions.**

The following terms have the following meanings when used in this rule:

- (1) **Advocate**--a person employed by or otherwise officially associated with an organization registered with TJJD as an advocacy or support group under [§385.8183](#) of this title.
- (2) **Background Check**--obtaining certain information, including, at a minimum:
  - (A) **Criminal History Check**--a compilation of the national and state criminal history information maintained by the Federal Bureau of Investigation and the Texas Department of Public Safety; and
  - (B) **Employment Reference Check**--references from previous and current employers.
- (3) **Contractor**--a person under contract with TJJD individually or an employee or subcontractor of an organization under contract with TJJD.
- (4) **Covered Person**--
  - (A) an employee, volunteer, ombudsman, special event visitor, or advocate working for TJJD, in a TJJD facility, or in a facility under contract with TJJD;
  - (B) a contractor who has direct access to youth in TJJD facilities;
  - (C) any person not described in paragraphs (4)(A) or (4)(B) of this subsection who provides direct delivery of services to youth in TJJD custody;
  - (D) any person not described in paragraphs (4)(A) or (4)(B) of this subsection who is authorized to have unsupervised access within TJJD facilities or offices to records of identifiable TJJD youth; or
  - (E) any person who is an applicant for a position as an employee, volunteer, or ombudsman.
- (5) **Employee**--a person employed by TJJD.

- (6) **Ombudsman**--a person employed by the Office of Independent Ombudsman.
- (7) **Special Event Visitor**--a person who:
- (A) is invited by TJJD to participate in a special event for the benefit of youth;
  - (B) does not participate in more than four special events in any 12-month period;
  - (C) does not provide direct delivery of services to youth;
  - (D) does not have access to youth records; and
  - (E) does not meet the definition of advocate, contractor, employee, or ombudsman.
- (8) **Volunteer**--a person who is registered with TJJD and is in a position that renders services for or on behalf of TJJD who does not receive compensation in excess of reimbursement for expenses incurred in that position, or a person who participates in more than four special events in a 12-month period. For purposes of this rule, the term volunteer does not include special event visitors.
- (d) **General Provisions.**
- (1) Except as described in paragraphs (2) and (3) of this subsection, TJJD:
- (A) conducts a background check on each covered person prior to granting the person access to youth, youth records, or any residential facility operated by or under contract with TJJD; and
  - (B) conducts a criminal history check on each covered person at least once per year thereafter.
- (2) A criminal history check is completed before each visit by a special event visitor.
- (3) The TJJD executive director or designee may waive the background check:
- (A) for a contractor when physical or procedural barriers are in place to prevent the contractor from having contact with or access to TJJD youth, and the scope of services to be performed does not involve access to youth records;
  - (B) for a contractor who has an independent legal obligation to protect the confidentiality of youth records, and the scope of services to be performed does not involve access to youth;
  - (C) for a covered person who provides direct delivery of off-site services to youth assigned to residential facilities when the person is required to submit to a background check as a condition of professional licensure or employment (e.g., referrals to a health-care specialist);
  - (D) for a covered person providing necessary services in an emergency situation when no appropriately screened service providers offering the same or similar service are immediately available and a delay in providing the service would risk significant harm to a youth (e.g., emergency room visits or rape crisis counseling); or
  - (E) for a covered person, other than a TJJD employee, providing services in his/her official capacity as an employee of a federal, state, or local governmental entity.
- (4) TJJD does not assess a fee in connection with the administrative costs incurred in conducting a background check as described in this rule.
- (5) As part of the initial criminal history background check, a covered person other than a special event visitor must electronically provide a complete set of fingerprints to TJJD in the manner determined by TJJD. A special event visitor who wishes to participate in a fifth event within a 12-month period must provide a complete set of fingerprints to TJJD and enroll in the volunteer program.
- (6) A covered person other than a special event visitor must provide employment history information in a form and manner determined by TJJD.

- (7) All criminal history information obtained from the National Crime Information Center or any state crime information database is confidential and may be released only in accordance with applicable law.

(e) **Standards for Evaluating Background Information.**

- (1) Background check results for covered persons are evaluated according to standards established in TJJJ's policies addressing eligibility for employment or assignment in effect at the time the background check is conducted.
- (2) When a background check reveals a criminal or employment history that is unacceptable for the position or service to be performed by an employee or volunteer, TJJJ terminates or denies that person's employment or enrollment. TJJJ provides written notice to the person whose employment or enrollment is terminated or denied.
- (3) When a background check reveals a criminal or employment history that is unacceptable for the position or service to be performed by a contractor, advocate, special event visitor, or ombudsman, TJJJ denies the person access to youth, youth information, and/or TJJJ facilities. TJJJ provides written notice to the person whose access is denied.
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