TEXAS JUVENILE JUSTICE DEPARTMENT

Significant Rulemaking Actions since 2022

Enclosed please find original materials presented to the Governing Board for rulemaking actions:

Subject	Page
1. 37 TAC §§380.8501(Definitions), 380.8521 (Facility Assignment System), 380.8702 (Rehabilitation Program Overview), 380.8703 (Rehabilitation Program Stage Requirements and Assessment), and 380.8751 (Specialized Treatment)	2
2. 37 TAC §380.9503 (Rules and Consequences for Residential Facilities)	28
3. 37 TAC Chapter 344 (Employment, Certification, and Training); 37 TAC §385.9981 (Sick Leave Pool and Family Leave Pool Administration)	38
4. 37 TAC §344.670 (Training Methods and Limitations)	55
5. 37 TAC §§380.9187 (Suicide Alert Definitions), 380.9188 (Suicide Alert for High-Restriction Facilities), 380.9189 (Suicide Alert for Medium-Restriction Facilities), and 380.9745 (Protective Custody for Youth at Risk of Suicidal and/or Self-Harming Behavior)	59
6. 37 TAC Chapter 344 relating to Employment, Certification, and Training	102
7. Repeals resulting from rule review	109
8. 37 TAC §380.9188 (Suicide Alert for High-Restriction Facilities)	129
9. 37 TAC §380.9510 (Intervention Program)	138
10. Several rulemaking actions related to Sunset findings	145
11. 37 TAC §380.8767 (Crisis Stabilization Unit) and §380.9571 (Procedure for Mental-Health-Status Review Hearing)	164
12. 37 TAC §§380.9503 (Rules and Consequences for Residential Facilities), 380.9504 (Rules and Consequences for Youth on Parole), and 380.9510 (Intervention Program)	171
13. 37 TAC Chapter 344 (Employment, Certification, and Training)	190
14. Several rulemaking actions, May 2024 Governing Board meeting	202
15. 37 TAC §341.304 (Requirement to Apply for Diversion Funds)	254
16. 37 TAC §341.306 (Providing Information to TJJD)	257
17. 37 TAC §380.8703 (Rehabilitation Program Stage Requirements and Assessment)	259
18. 37 TAC §385.8103 (Board Proceedings)	265
19. 37 TAC §380.8701 (Case Planning)	268
20. 37 TAC §§380.9503 (Rules and Consequences for Residential Facilities)	272
21. 37 TAC §343.261 (Resident Supervision)	281
22. 37 TAC Chapters 341, 345, 349, 350, and 358	284
23. 37 TAC §380.9333 (Investigation of Alleged Abuse, Neglect, and Exploitation)	360
24. 37 TAC §343.261 (Resident Supervision)	375
25. 37 TAC §344.804 (Dual Certification)	377
26. 37 TAC §380.8555 (Program Completion for Non-Sentenced Offenders) and 380.8557 (Release Review Panel)	379
27. 37 TAC §380.8501 (Definitions)	390
28. 37 TAC §380.8565 (Discharge of Youth with Determinate Sentences upon Transfer to TDCJ or Expiration of Sentence) and §380.8569 (Transfer of Youth with Determinate Sentences Adjudicated for Capital Murder)	394
29. 37 TAC §380.9742 (Security Unit Admission Pending Program or Facility Transition)	403
30. Repeal of 37 TAC §§380.9520 (Cooling-Off Period for Youth Out of Control) and 380.9739 (Isolation) and their proposed, new replacement 37 TAC §380.9520 31. (Regulation Break for Youth out of Control)	406
32. 37 TAC §344.620 (Mandatory Training Topics for Certification Exam for Juvenile Probation Officers) and §344.622 (Mandatory Training Topics for Certification Exam for Juvenile Supervision Officers)	412
33. 37 TAC §385.1101 (Contract Authority and Responsibilities)	415

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Interim Executive Director

Cameron Taylor, Policy Advisor

Kaci Singer, Deputy General Counsel for County Matters and Policy Supervisor

Subject: Discussion, consideration, and possible approval to publish proposed revisions to the following rules in the *Texas Register* for a public comment period of at least 30 days and possible conditional approval to adopt the final rules: 37 TAC §§380.8501 (Definitions), 380.8521 (Facility Assignment System), 380.8702 (Rehabilitation Program Overview), 380.8703 (Rehabilitation Program Stage Requirements and Assessment), and 380.8751 (Specialized Treatment)

Date: May 4, 2022

The TJJD staff is proposing revisions to the following rules in Title 37 of the Texas Administrative Code:

- §380.8501, concerning definitions;
- §380.8521, concerning facility assignment system;
- §380.8702, concerning rehabilitation program overview;
- §380.8703, concerning rehabilitation program stage requirements and assessment;
- §380.8751, concerning specialized treatment;

The staff requests the board's approval to publish the proposed revisions in the *Texas Register* for a public comment period of at least 30 days.

The staff also requests the board's approval to adopt the final rules after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- a summary of the changes being proposed;
- the text of the rules, with the proposed changes shown as mark-ups; and
- a resolution for board action.

SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapter 380

Rule #	Title of Rule	Summary of Rule	Summary of Key Revisions
380.8501	Definitions	Provides definitions of terms used in the chapter.	• Deleted the following terms: *Indicator, Objective, Program Completion, and Stage.* • Added definitions for the following terms: *Program Completion Criteria* and *Risk Level*. • Modified the definitions of the following terms: *Community Reentry/Transition Plan, Home Placement, Initial Placement, Release under Supervision, Revocation Offense,* and *Transition.* • Made non-substantive revisions to the definitions of the following terms: *Discharge, Final Decision Authority, Most Serious of the Relevant Offenses, Parole Status,* and *Transfer.*
380.8521	Facility Assignment System	Describes the factors used when deciding where to place a youth after commitment or revocation.	• Added a statement that TJJD seeks to place youth in the least restrictive setting possible to address the youth's treatment needs while considering public safety. • Added that this rule applies to placements made *after* initial commitment or recommitment (rather than *upon release from an intake unit*). • Added intellectual impairment as a factor that is considered in determining an appropriate facility assignment. • Added *reduction in risk level* as a reason youth may be assigned to a subsequent placement. • Revised the list of factors that contribute to the risk assessment (i.e., added *age at first offense*, deleted *age at first referral*, and deleted *behavior at the orientation and assessment unit or while on parole*) and added that these are examples, not required factors. • Added that the *executive director or designee* (rather than the division director over residential services or designee) may waive certain facility restriction levels required by this rule.
380.8702	Rehabilitation Program Overview	Describes TJJD's philosophy and approach to rehabilitation of youth in its care.	• Added that the rehabilitation provided by TJJD is for the purpose of reducing future delinquent behavior and increasing *public safety* (rather than *youth accountability*). • Added that TJJD provides a trauma-informed rehabilitative program that is focused on delivering needed treatment, assessing behavioral progress, assessing increases in protective factors and decreases in risk factors, and assessing the ability of youth to use skills learned in treatment and programming (rather than each TJJD facility using an integrated, system-wide rehabilitative program that offers a menu of therapeutic techniques, tools, and program components to help individual youth increase their ability to be productive citizens and to avoid re-offending). • Added that all treatment and programming is delivered in the least restrictive setting appropriate to the youth, consistent with the rules of this chapter. • Removed the requirement for each youth's progress to be reviewed monthly and for each review to address identified risk and protective factors and individual abilities. • Removed the requirement for youth in residential facilities to be reviewed and assessed by a multidisciplinary team and for youth on parole in the community to be reviewed and assessed by the assigned parole officer.

SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapter 380

Rule #	Title of Rule	Summary of Rule	Summary of Key Revisions
			• Removed a reference to another TJJD rule. • Added that TJJD facilities maintain a *structured daily schedule* (rather than a *16-hour day*). • Specified that youth are *given the opportunity* to participate (rather than *must participate*) in regular large-muscle exercise and recreation programs. • Removed the provision stating that TJJD facilities provide and youth are required to participate in skills development groups.
380.8703	Rehabilitation Program Stage Requirements and Assessment	Provides an overview of the requirements and process for earning stage levels in the TJJD rehabilitation program.	***General Themes of the Program*** • Replaced the section relating to the general themes of the rehabilitation program. Added areas such as educational/vocational activities, treatment/intervention activities, therapeutic tools, individual goals, and safe behavior as areas of focus, in addition to risk and protective factors. Removed a reference to engaging the youth's family in the section on general themes. • Added that the objectives for each stage of the program are provided in writing to the youth. ***Stage Assessments*** • Removed a description of specific items that are reviewed and/or discussed during a stage assessment. • Added that, following a stage assessment, the youth is assigned to the most appropriate stage, *which could be more than one stage higher than the current stage.* • Added that each youth's specific needs and responsivity must be considered when assessing a youth's stage. If a youth fails to progress through the stages, staff must conduct a review for responsivity needs and, if appropriate, implement individualized interventions. • Removed a reference to demotion of a youth's stage as a disciplinary consequence, and added that lowering a youth's stage is allowed after a determination that behavior proven in a Level II hearing indicates the youth no longer meets the requirements of the currently assigned stage. • Added that, if a youth loses release eligibility under §380.8555 or §380.8559, the youth is no longer designated as having completed the rehabilitative program and will be assigned to stage 4. • Removed a statement requiring that, if appropriate, an updated case plan is developed following a stage assessment meeting. ***Stage Descriptions*** • Revised the descriptions of each stage and the factors indicating completion of each stage.

SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapter 380

Rule #	Title of Rule	Summary of Rule	Summary of Key Revisions
			Other Changes • Removed statements relating to how long it may take to complete each stage and to complete the entire program with reasonable effort by the youth. • Added that youth will be *reassessed and placed the most appropriate stage based on the youth's current behavior and progress in the program* (rather than automatically placed on a pre-set stage level) when a youth is recommitted to TJJD for a new offense or returned to a TJJD facility for disciplinary reasons. • Removed the requirement to reassess a youth's stage assignment when the youth is returned to a TJJD facility for non-disciplinary reasons. • Removed the section on appeals relating to stage assessments or opportunities to demonstrate completion of requirements.
380.8751	Specialized Treatment	Establishes the process for assessing specialized treatment needs and for assigning youth to appropriate programs. Also establishes a requirement for certain youth to participate in or complete specialized treatment to qualify for transition and to earn release to parole.	***Requirement to Participate in or Complete Specialized Treatment*** • Added that, for youth who have specialized treatment requirement as part of transition or release criteria, a youth may qualify for the transition or release *if a designee of the executive director with appropriate expertise determines that the youth has made sufficient progress toward treatment goals or that the goals can be addressed in a non-high-restriction setting*. This replaces requirements that the youth must: o be scheduled to begin the specialized treatment in a medium-restriction facility or on parole, as documented in the youth's most recent treatment plan, with a requirement to complete treatment included in the youth's conditions of release; or o make sufficient progress in the assigned treatment program with a corresponding reduction in risk to allow for the youth to continue treatment in a non-high-restriction setting, with a requirement to complete treatment included in the youth's conditions of release. ***Other Changes*** • Removed the requirement for intensive treatment programs to be delivered in a setting where all youth in the program reside in a common dormitory and where the milieu is designed to address the specialized need on a continuous basis. Added that treatment in such programs is generally delivered in specialized groups. • Specified that moderate-intensity treatment programs are *generally* delivered in specialized groups. Removed the statement that such programs include individual counseling, and renamed these programs as *moderate-intensity* (rather than *short-term*) treatment programs. • Clarified that TJJD's specialized treatment programs are *designed* (rather than *shown*) to reduce risk to reoffend.

SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapter 380

Rule #	Title of Rule	Summary of Rule	Summary of Key Revisions
			• Clarified that, when a youth cannot be provided the type of specialized program designed in this rule for the youth's assessed need level, the youth will be provided with the most appropriate alternate form of *intervention* (rather than *specialized intervention*). • Removed a provision stating that the orientation and assessment unit is where assessments of specialized treatment needs are conducted. • Removed a provision stating that upon arrival at the initial placement is when the youth's comprehensive plan for specialized treatment is completed. • Added that the mental health needs assessment and intellectual disability diagnosis is provided by *mental health* staff (rather than *psychology or psychiatry* staff). • Specified that youth with a moderate mental health need are placed at a facility offering the necessary clinical *and/or* psychiatric (rather than clinical *and* psychiatric) support. • Modified the descriptions of youth with a low mental health need or no mental health need to be based on whether the youth requires follow-up mental health or psychiatric services, *regardless of whether the youth has a diagnosis*. • Added that a *mental health professional* (rather than only a *psychologist*) may refer a youth for a determination of need for capital and serious violent offender treatment, and that the determination of need is based on a *clinical* (rather than *psychological*) assessment. • Added that the assessment of need for substance use services is conducted by *mental health staff or a chemical dependency counselor* (rather than a *psychologist or mental health professional*). • Added that youth are provided specialized aftercare as needed and as available. This replaces a listing of the programs that, if completed, would qualify the youth for specialized outpatient aftercare as needed, as recommended, and as available.

5/2/22 Draft

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: [~~5/1/22~~]**
Subchapter:	Admission, Placement, Release, and Discharge	Page: 1 of 3
Division:	Definitions	
Rule:	**Definitions**	Replaces: GAP.380.8551, 5/1/22 [~~4/1/14~~]
[~~Statutes:~~	~~N/A~~]	

RULE

As used in this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise.

(1) **Assessment Rating**--a score derived from evidence-based criminogenic factors in a youth's history used to assess the danger a youth poses to the community.

(2) **Committing Offense**--the most serious of the relevant offenses found at the youth's commitment proceeding and any probated offense(s) modified by the commitment order. If a committing offense is a violation of a federal statute, the offense will be treated as a violation of a state statute which prohibits the same conduct as the relevant federal offense.

(3) **Community Reentry/Transition Plan**--an individual case plan that includes conditions of parole or placement for youth who are moving to a less restrictive environment. The community reentry/transition plan summarizes the youth's progress [~~to date~~], identifies risk factors and protective factors, provides referrals to community services and supports, and identifies objectives for the youth to complete at the next placement.

(4) **Conditional Placement**--a trial living arrangement at a lower restriction level without changing the youth's currently assigned placement. Conditional placements may be to medium-restriction facilities or approved home placements. Continued placement at the lower restriction level is dependent on meeting pre-established conditions.

(5) **Determinate Sentence Review**--a review conducted for youth with determinate sentences who have not met program completion criteria in which staff determines the appropriate action (e.g., request a transfer hearing under Section 54.11, Family Code, transfer to TDCJ parole).

(6) **Discharge**--an action that ends the jurisdiction of the Texas Juvenile Justice Department (TJJD) [~~Department's (TJJD's) jurisdiction~~] over a youth.

(7) **Final Decision Authority**--the TJJD executive director or a staff member designated by the executive director in writing (e.g., via operational manual, administrative directive).

(8) **High Restriction and Medium Restriction**--see definitions in §380.8527 of this chapter.

(9) **Home Placement**--a placement in the home of the parent, other relative or individual acting in the role of parent, managing conservator, or guardian, or in an independent living arrangement (excluding contract independent living programs)[~~, for youth who have earned parole status~~].

(10) **Home Substitute Placement**--a program placement in the community that is not high restriction for youth who have earned parole status.

[~~(11) **Indicator**--tasks that clarify and show evidence of completing the stage objective. These tasks are completed by the youth and involve discussion with the youth's case manager, group, multi-disciplinary team, and/or family/adult mentor. To complete an objective, all indicators must be completed.~~]

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(11)[~~(12)~~] **Initial Placement**--a placement to which youth are assigned [~~following a period of assessment at a TJJD orientation and assessment unit~~] upon being committed to TJJD. This definition does not include a youth's placement at the orientation and assessment unit.

(12)[~~(13)~~] **Minimum Length of Stay**--the predetermined minimum period of time established by TJJD that a youth will be assigned to live in a high- or medium-restriction placement before being placed on parole status.

(13)[~~(14)~~] **Minimum Period of Confinement**--the predetermined minimum period of time established by law that a youth committed to TJJD on a determinate sentence must remain confined in a high-restriction placement.

(14)[~~(15)~~] **Most Serious of the Relevant Offenses**--the offense that carries the most severe consequences, which are, from most to least severe:

(A) an offense which carries a determinate sentence;
(B) the offense for which the designated minimum length of stay will produce the longest time in the physical custody of TJJD;
(C) the offense which requires the highest facility restriction level [~~of restriction in placement~~];
(D) the offense which carries the most severe criminal penalty; and
(E) the most recently adjudicated offense.

(15)[~~(16)~~] **Non-Sentenced Offender**--a youth who is committed to TJJD for an indeterminate period of time, not to exceed age 19.

[~~(17) **Objective**--the most important concepts or skills necessary to earn a stage and to progress in the rehabilitation program. Each objective has one or more indicators of completion.~~]

(16)[~~(18)~~] **Offense Severity**--a rating of high, moderate, or low based on the degree of the committing or revocation offense as defined by the Penal Code or relevant federal statute and any of the following applicable aggravating factors:

(A) sex offense as identified in Section 62.001, Code of Criminal Procedure;
(B) felony against a person;
(C) possession or use of a weapon or firearm during the commission of the committing offense.

(17)[~~(19)~~] **Parole Status**--a status assigned to a youth when program completion criteria have been met or the Release Review Panel has ordered [~~orders~~] the youth's release under supervision. Parole status qualifies the youth for placement in the home or a home substitute and ensures that the youth may not be moved to a high-restriction placement without the highest level of due process afforded to TJJD youth.

(18)[~~(20)~~] **Program Completion Criteria**--[~~occurs when a youth has met~~] specific requirements established by rule that entitle a youth to parole when met [~~in order to earn release from a residential program~~].

(19)[~~(21)~~] **Program Completion Review**--a review in which staff determines whether a youth appears to meet program completion criteria.

(20)[~~(22)~~] **Release under [~~Under~~] Supervision (or Release)**--the act of placing a youth on parole status under TJJD supervision. [~~The youth remains under the jurisdiction of TJJD and is subject to the conditions of parole supervision.~~]

(21)[~~(23)~~] **Revocation Offense**--the offense on which a youth's minimum length of stay is based following a parole revocation hearing. It is the most serious of the relevant offenses found at the [~~a parole revocation~~] hearing.

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(22)[~~(24)~~] **Risk and Protective Factors**--risk factors are aspects of a youth's environment, behavior, and mental processes that contribute to potential for further delinquent activity. Protective factors are positive aspects of individual youth situations that keep a youth away from delinquent activity.

(23) **Risk Level**--a level derived from the risk assessment tool used to assess the danger a youth poses to the community.

(24)[~~(25)~~] **Sentenced Offender**--a youth committed to TJJD pursuant to Section 54.04(d)(3) or Section 54.05(f), Family Code, with a fixed sentence assigned by the committing court. Depending on the length of the sentence, a youth may be transferred to the Texas Department of Criminal Justice (TDCJ) to complete the sentence.

[~~(26) **Stage**--measure of progress through TJJD's rehabilitation program. The youth's stage assignment reflects the stage objectives the youth is currently working on.~~]

(25)[~~(27)~~] **Transfer**--a movement of a sentenced offender to the TDCJ - Correctional Institutions [~~Institutional~~] Division or TDCJ - Parole Division.

(26)[~~(28)~~] **Transition**--the act of moving a youth from a high-restriction facility to a medium-restriction facility based on the youth's progress in the rehabilitation program. Transition does not result in the youth being placed [~~without placing the youth~~] on parole status. [~~Transitions are used to facilitate the youth's adjustment to the community.~~]

(27)[~~(29)~~] **Transition Review**--a review in which staff determines whether a youth meets criteria for transition under §380.8545 of this chapter.

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Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: XXXXXX [~~4/1/14~~]**
Subchapter:	Admission, Placement, Release, and Discharge	Page: 1 of 3
Division:	Placement Planning	
Rule:	**Facility Assignment System**	Replaces: GAP.380.8521, 4/1/14
[~~ACA:~~	~~4-JCF-3A-04, 5B-01~~]	
Statutes:	HR Code §243.001	

RULE

(a) **Purpose.**

The purpose of this rule is to establish an objective system of assigning youth to the most appropriate facility considering the Texas Juvenile Justice Department's (TJJD's) responsibilities to provide for public protection and promotion of rehabilitation. TJJD seeks to place youth in the least restrictive setting possible to address the youth's treatment needs while considering public safety.

(b) **General Provisions.**

(1) This rule applies to placement decisions made:

(A) after [~~upon release from an intake unit on~~] initial commitment or recommitment to TJJD; and
(B) following a parole revocation hearing.

(2) Youth may be assigned to subsequent residential placements based on changing treatment needs, reduction in risk level, progress in rehabilitation programming, safety issues, or overpopulation concerns. For more information on transfers between facilities and transitions to less restrictive placements, see §380.8545 of this chapter [~~title~~].

(3) Placements described in this rule are limited to high- or medium-restriction [~~high or medium restriction~~] facilities. For more information on facility restriction levels, see §380.8527 of this chapter [~~title~~].

(c) **Placement System Factors.**

Placement decisions are based on factors including, but not limited to, those listed in paragraphs (1) – (4) of this subsection, with each factor given priority in the order listed.

(1) **Gender**--Youth are generally assigned to male-only or female-only facilities. However, during orientation and assessment or to receive treatment for certain specialized treatment needs, youth may be assigned to co-educational facilities. Youth in co-educational facilities have equal access to agency programs and activities.

(2) **Treatment Needs**--Of the facilities available for the youth's gender, youth are assigned to the facility that is best suited to meet the youth's individual treatment needs. Youth with the highest need for any of the following specialized treatment services will be placed in a facility that provides those services: mental health, intellectual disability, [~~mental retardation,~~] sexual behavior, capital or serious violent [~~capital/violent~~] offender, or substance use services [~~alcohol or other drugs~~]. Whenever possible, youth with co-occurring specialized treatment needs are assigned to placements providing each indicated type of treatment. See §380.8751 of this chapter [~~title~~] for more information on the assessment of specialized treatment needs. Age, [~~and~~] medical needs, and intellectual impairment are also considered in determining an appropriate facility assignment.

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(3) **Risk Assessment**--Of the facilities available for the youth's gender and treatment needs, youth are assigned to a high- or medium-restriction [~~high or medium restriction~~] facility based on an assessment of risk factors, such as [~~that includes~~] offense history, age at first offense [~~referral to juvenile court~~], past facility escapes, [~~behavior while at the orientation and assessment unit or on parole,~~] and other criminogenic factors.

(A) **Placement upon Initial Commitment or Recommitment to TJJD.**

(i) Sentenced offenders are initially assigned to a high-restriction facility.

(ii)[~~(i)~~] Non-sentenced [~~Except as provided in clause (ii) of this subparagraph, non-sentenced~~] offenders with a committing offense of high [~~or moderate~~] severity [~~and all sentenced offenders~~] are initially assigned to a high-restriction [~~high restriction~~] facility.

(iii) Non-sentenced offenders with a committing offense of moderate severity who score in the high or medium category on the risk assessment are initially assigned to a high-restriction facility.

(iv)[~~(ii)~~] Non-sentenced offenders with a committing offense of moderate severity who score in the lowest category on the risk assessment are initially assigned to a high- or medium-restriction [~~high or medium restriction~~] facility, depending on the nature of the committing offense and other factors identified in this rule.

(v)[~~(iii)~~] Non-sentenced offenders with a committing offense of low severity are initially assigned to a high- or medium-restriction [~~high or medium restriction~~] facility, depending on the results of the risk assessment and other factors identified in this rule.

(B) **Placement after Level I Revocation Hearing [~~upon Disciplinary Transfer from Parole to a Residential Facility~~].**

(i) Following revocation as a result of a Level I due process hearing held in accordance with §380.9551 of this chapter [~~title~~], non-sentenced offenders found to have engaged in felony-level conduct while on parole and all sentenced offenders are assigned to high-restriction [~~high restriction~~] facilities.

(ii) Following revocation as a result of a Level I due process hearing held in accordance with §380.9551 of this chapter [~~title~~], non-sentenced offenders found to have violated conditions of parole that are not law violations or engaged in misdemeanor-level conduct are assigned to high- or medium-restriction [~~high or medium restriction~~] facilities, depending on the results of the risk assessment and other factors identified in this rule.

(4) **Proximity to Home**--Of the facilities available for the youth's gender, treatment needs, and risk assessment, youth are assigned to the facility closest to the residence of the youth's parent/guardian. In cases where the closest placement is at or above established population capacity or specialized treatment population capacity, the youth may be assigned to another appropriate placement.

(d) **Waivers.**

Except for non-sentenced offenders with a committing offense of high severity and sentenced offenders, the facility restriction level required under this rule may be waived by the executive director or designee [~~division director over residential services or his/her designee~~]. A designated restriction level may be waived in order to meet a youth's specific treatment needs or when it is determined that a

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youth has a disability or special medical condition that would prevent the youth from functioning in the designated restriction level.

(e) **Parent Notification.**

Parents or guardians of youth are notified of placement assignments in accordance with §380.8705 of this chapter [~~title~~].

(f) **Individual Exceptions.**

The executive director or [~~his/her~~] designee may make exceptions to placement assignments under this rule on a case-by-case basis, taking into consideration a youth's specific treatment needs and public safety.

See CMS.01.25 for procedures relating to assessment of specialized treatment needs.
See CMS.01.70 for procedures relating to facility assignment.

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Chapter: Rules for State-Operated Programs and Facilities Subchapter: Treatment Division: Program Planning **Rule: Rehabilitation Program Overview** [~~ACA: N/A~~] [~~Statutes: N/A~~]	**Effective Date: XXXXXX [~~12/1/14~~]** Page: 1 of 2 Replaces: GAP.380.8702, 12/1/14 [~~9/16/12~~]

RULE

(a) **Purpose.**

The purpose of this rule is to identify the [~~agency's~~] philosophy and approach of the Texas Juvenile Justice Department (TJJD) to the rehabilitation of youth in TJJD's care [~~juvenile delinquents~~] in order to reduce future delinquent behavior and increase public safety [~~youth accountability~~].

(b) **Applicability.**

This rule applies to youth committed to TJJD [~~the Texas Juvenile Justice Department (TJJD)~~].

(c) **Definitions.**

See §380.8501 of this chapter [~~title~~] for definitions of terms used in this rule.

(d) **General Provisions.**

(1) TJJD provides a trauma-informed rehabilitative program that is focused on delivering needed treatment, assessing behavioral progress, assessing increases in protective factors and decreases in risk factors, and assessing the ability of youth to use skills learned in treatment and programming.

(2) All treatment and programming is delivered in the least restrictive setting appropriate to the youth, consistent with the rules of this chapter.

[~~(1) Each TJJD-operated residential facility uses an integrated, system-wide rehabilitative program that offers a menu of therapeutic techniques, tools, and program components to help individual youth increase their ability to be productive citizens and to avoid re-offending.~~]

(3)[~~(2)~~] To the extent possible, TJJD's rehabilitative program offers programs that ensure [~~in an adequate manner so that~~] youth receive appropriate rehabilitation services, including those recommended by the committing court.

(4)[~~(3)~~] All aspects of the TJJD rehabilitation program are individualized and performance-based, with clearly defined expectations as set forth in §380.8703 of this chapter [~~title~~].

(5)[~~(4)~~] Each youth's individual progress is reviewed monthly. The review addresses identified risk and protective factors and individual abilities.

[~~(5) Youth in residential facilities are reviewed and assessed by a multi-disciplinary team. Youth on parole in the community are reviewed and assessed by the assigned parole officer.~~]

(6) As youth progress in the rehabilitation program, there are increased expectations for demonstrating developed skills and social responsibility, a decreased need for staff intervention, and an increase in earned privileges [~~as set forth in §380.9502 of this title~~].

(7) TJJD facilities maintain a structured daily schedule [~~, 16-hour day~~] for all youth. Each [~~During each~~] day, youth work on components of the rehabilitation program.

(8) TJJD facilities provide for and youth are required to participate in a structured, individually appropriate educational program or equivalent, with appropriate supports.

(9) TJJD facilities provide and eligible youth may participate in work experiences.

(10) TJJD facilities must provide and youth are given the opportunity [~~required~~] to participate in regular large-muscle exercise and recreation programs.

[~~(11) TJJD facilities provide and youth are required to participate in skills development groups.~~]

(11)[~~(12)~~] Staff members receive appropriate training and certification related to their role in the rehabilitation program and the types of services they provide.

(12)[~~(13)~~] TJJD may pilot new programs or program components for youth whose needs cannot be met by existing program components.

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4/6/22 Draft

Chapter:	Rules for State-Owned Programs and Facilities	**Effective Date: XXXXXX [5/1/22]**
Subchapter:	Treatment	Page: 1 of 6
Division:	Program Planning	
Rule:	**Rehabilitation Program Stage Requirements and Assessment**	Replaces: GAP.380.8703, 5/1/22 [12/1/14]
[Statutes:	N/A]	
References:	*Morales v. Turman* Settlement Agreement, Section (V)(G)	

RULE

(a) **Purpose.**

Youth [Texas Juvenile Justice Department (TJJD) youth] earn the ability to move to less restrictive placements by progressing through a stage system that measures progress in the rehabilitation program. The purpose of this rule is to provide a general outline of the areas in which a youth must demonstrate progress and to describe the process for assessing progress.

(b) **Applicability.**

This rule applies to all residential facilities operated by the Texas Juvenile Justice Department (TJJD) [TJJD]. This rule does not apply to youth in contract-care [contract care] programs that are not required to provide the TJJD rehabilitation program. This rule does not apply to youth on parole status.

(c) **Definitions.**

See §380.8501 of this chapter for definitions of terms used in this rule.

(d) **General Themes in the Rehabilitation Program.**

(1) TJJD's rehabilitation program is composed of a set of stages with objectives related to each youth's rehabilitative needs. Expectations generally increase as youth progress through the stages.

(2) Progress is measured through an assessment of the youth's demonstration of skills in areas such as:

(A) appropriate participation in education/vocational and treatment/intervention activities;
(B) understanding and use of therapeutic tools;
(C) ability to develop, discuss, and work toward individual goals;
(D) application of regulation tools to maintain safe behavior; and
(E) reducing risk factors and increasing protective factors;

(3) The objectives for each youth shall be in writing and provided to the youth.

(4) Each youth is provided an equal opportunity, as the youth's behavior warrants, to participate in the scheduled activities needed to progress.

[For each stage, a youth completes objectives around the following general themes:]

[(1) demonstrate an understanding of risk and protective factors and show a decrease in risk factors and an increase in protective factors over the course of the rehabilitation program;]

[(2) demonstrate increased understanding of how those personal risk factors relate to success/lack of success in the community and an understanding of how the youth's committing offense was related to risk factors; and]

[(3) engage the youth's family in programming.]

(e) **[~~Process for~~] Stage Assessment.**

(1) A stage assessment shall be conducted when the youth completes the required objectives for the stage or within 90 days from the previous stage assessment, whichever occurs first.

(2) Each stage assessment includes a comprehensive assessment of the youth's progress in the rehabilitation program.

(3)[~~(A)~~] The parent/guardian must be given an opportunity [~~and parole officer are invited to each meeting and allowed~~] to provide input to be considered at each stage assessment.

[~~(B) The youth is responsible for being prepared to discuss information related to the youth's program and preparing any information the youth is required to present for stage progression.~~]

[~~(C) During the stage assessment:~~]

[~~(i) the youth's general progress in the program and on specific case plan objectives is reviewed;~~]

[~~(ii) risk and protective factors are reviewed;~~]

[~~(iii) medical and mental health information is discussed (if applicable);~~]

[~~(iv) feedback is provided to the youth on areas of strength and areas needing improvement;~~]

[~~(v) interventions to assist the youth's progress are discussed and developed; and~~]

[~~(vi) community reentry planning is discussed.~~]

(4)[~~(3)~~] As a result of a stage assessment, the youth is assigned to the most appropriate stage. Youth may be assigned to a stage that is more than one level higher than the current stage, if appropriate. [~~If it is determined that the youth meets the requirements for completing the stage, the youth is promoted to the next stage.~~]

(5) Each youth's specific needs and responsivity must be considered when assessing a youth's stage. If a youth fails to progress through the stages, staff must conduct a review for responsivity needs and, if appropriate, implement individualized interventions.

[~~(4) If it is determined that the youth does not meet the requirements for completing the stage, the youth remains on the current stage.~~]

(6)[~~(5)~~] Youth may not be assigned to a lower [~~demoted in~~] stage, except [~~when~~]:

(A) when it is determined that behavior proven at a Level II due process hearing held in accordance with §380.9555 of this chapter indicates the youth no longer meets the requirements of the current stage assignment; or [~~stage demotion is assigned as a disciplinary consequence following a due process hearing, in accordance with §380.9503 of this chapter; or~~]

(B) [~~a youth is returned to a high- or medium-restriction facility,~~] in accordance with subsection (g) [~~(h)~~] of this section.

(7) If a youth loses release eligibility under §380.8555 or §380.8559 of this chapter, the youth is no longer designated as having completed the rehabilitative program under this rule and is assigned to stage 4.

DRAFT

(8)[~~(6)~~] The youth and the youth's parent/guardian are notified of the results of the stage assessment. [~~If appropriate, an updated individual case plan must be developed following the meeting.~~]

(f) **Requirements for Stage Promotion.**

(1) **Stage 1**--this stage focuses on building a foundation of safety and regulation. During this stage, the youth will gain [~~is completed when TJJD determines that the youth has demonstrated~~] basic knowledge of the TJJD stage objectives and requirements for program completion. The youth attends the foundational skills development groups and participates in individual sessions with the case manager to develop an assessment of risk and protective factors. To determine whether youth have completed this stage, youth are assessed on factors including [~~complete stage 1, the youth must~~]:

[~~(A) complete the following objectives in accordance with the specified indicators for each objective:~~]

(A)[~~(i)~~] reviewing the youth's own unique [~~understand the definition of~~] risk and protective factors with the case manager;

[~~(ii) explore risk factors related to TJJD commitment;~~]

[~~(iii) attempt to involve a family member or an adult mentor, with assistance from the family liaison and case manager; and~~]

[~~(iv) establish a personal goal and identify strategies to achieve that goal;~~]

(B) discussing [~~present and discuss~~] the youth's progress toward goals with [~~the~~] staff [~~as specified in the stage indicators~~];

(C) working on [~~complete~~] case plan objectives with the case manager; and

(D) participating [~~consistently participate~~] in the following other areas of programming:

(i) treatment and intervention activities;
[~~(i) groups and individual counseling sessions;~~]
[~~(ii) specialized treatment programs (if applicable);~~]
(ii)[~~(iii)~~] academic and workforce development programs; and
(iii)[~~(iv)~~] application of learned skills in daily behavior.

(2) **Stage 2**--this stage focuses on healthy connection and the ability to make repairs after relational harm. Youth on this stage are moving beyond the pre-contemplation stage of change to accept that changes are needed to improve their ability to be successful in the future. To determine whether youth have completed this stage, youth are assessed on factors including: [~~is completed when TJJD determines that the youth has identified and discussed personal risk and protective factors; identified patterns in the youth's thoughts, feelings, attitudes, values, and beliefs that relate to TJJD commitment and ongoing behaviors; and participated with staff in targeting specific skills for development based on the youth's risk and protective factors. To complete stage 2, the youth must:~~]

[~~(A) complete the following objectives in accordance with the specified indicators for each objective:~~]

(A)[~~(i)~~] exploring [~~explore~~] personal risk and protective factors, including those related to TJJD commitment;

(B)[~~(ii)~~] sharing plans for community reintegration [~~share identified risk and protective factors~~]with the youth's family, community supports, or adult mentor; [~~and~~]

(C)[(iii)] exploring [identify] patterns in thoughts, feeling, attitudes, beliefs, and values;

(D) making progress towards personalized goals;

(E)[(B)] presenting and discussing [present and discuss] the youth's progress with the youth's treatment team [evaluating staff as specified in the stage indicators];

(F)[(C)] completing [complete] case plan objectives; and

(G)[(D)] participating [consistently participate] in other areas of programming as described in paragraph (1)(D) of this subsection.

(3) **Stage 3**--this stage focuses on taking responsibility and making prosocial decisions. Youth on this stage are preparing to move into the action stage of change through continued acknowledgment of the need to change and planning for their future. To determine whether youth have completed this stage, youth are assessed on factors including: [is completed when TJJD determines that the youth has completed assigned skill lessons designed to reduce risk factors and enhance protective factors. The youth is expected to take responsibility for the committing offense, identify patterns in thinking, and be able to discuss the impact of the offense on direct and indirect victims. The youth is expected to incorporate the new skills learned while in the facility into daily living situations. To complete stage 3, the youth must:]

[(A) complete the following objectives in accordance with the specified indicators for each objective:]

(A)[(i)] demonstrating [show] a reduction in [of] risk factors and an increase in protective factors;

(B)[(ii)] taking [take] responsibility for behaviors leading to commitment [the committing offense]; [and]

[(iii) share progress on reducing risk factors and increasing protective factors with the youth's family member or adult mentor;]

[(B) present and discuss the youth's progress with the evaluating staff as specified in the stage indicators;]

(C) completing [complete] case plan objectives; and

(D) participating [consistently participate] in other areas of programming as described in paragraph (1)(D) of this subsection.

(4) **Stage 4**--this stage focuses on demonstrating and practicing learned skills for youth. The purpose of this stage is demonstrating independence through application of treatment concepts and skills learned in earlier stages. [is completed when TJJD determines that the youth demonstrates and practices skills learned in skills groups through daily application in situations that present increased risk for the youth. Youth are expected to engage in responsible behaviors that are consistent with identified protective factors on a regular basis. Additional skills are learned as assigned.] This stage is considered the second-highest stage for purposes of eligibility for transition under §380.8545 of this chapter. To determine whether youth have completed this stage, youth are assessed on factors including [To complete stage 4, the youth must]:

[(A) complete the following objectives in accordance with the specified indicators for each objective:]

(A)[(i)] demonstrating continued [show a] reduction in [of] risk factors and [an] increase in protective factors; [and]

(B)[(ii)] identifying [identify] new thoughts, feelings, attitudes, beliefs, and values that might increase success in the community;

[(B) present and discuss the youth's progress with the evaluating staff as specified in the stage indicators;]

(C) completing [complete] case plan objectives; and

(D) participating [consistently participate] in other areas of programming as described in paragraph (1)(D) of this subsection.

(5) **Rehabilitative stages completion status [Youth Empowerment Status (YES)]**--this designation indicates that a youth has completed stage 4 and [youth who complete stage 4 and remain in a residential facility are assigned to Youth Empowerment Status. This status requires youth to continue to work in the program to maintain their gains, continue to reduce risk factors and increase protective factors, continue their skills development, and contribute positively to their living environment. If TJJD determines that the youth meets all objectives, the youth is placed on active status. If TJJD determines that the youth does not meet all objectives, the youth is placed on inactive status. Stage YES-Active] is considered the highest stage for purposes of program completion under §380.8555 and §380.8559 of this chapter. Youth are in the maintenance stage of change and will be given the opportunity to demonstrate and apply learned skills. Youth are expected to [The youth's objectives are:]

[(A) show a reduction of risk factors and an increase in protective factors;]

[(B) complete case plan objectives; and]

(C) consistently participate in other areas of programming as described in paragraph (1)(D) of this subsection [subsection (f)(1)(D) of this section].

[(g) **Opportunity to Demonstrate Completion of Requirements.**]

[(1) Some objectives may be completed in a single month. Completion of all stage requirements for promotion is demonstrated primarily through consistent participation in scheduled activities and development of skills to address risk factors, which will generally take longer than one month to achieve. The stage requirements are generally sequential.]

[(2) During each monthly assessment period, the youth is provided an equal opportunity, as the youth's behavior warrants, to participate in the scheduled activities needed to progress. With reasonable effort by the youth, the requirements of the highest stage will be completed within the youth's initial minimum length of stay or minimum period of confinement. For youth whose minimum length of stay or minimum period of confinement exceeds 12 months, the schedule must provide an opportunity for completion of the highest stage within one year.]

(g)[(h)] **Stage Assessment upon Return to a High- or Medium-Restriction Facility or upon New Commitment.**

A youth is reassessed and placed on the most appropriate stage for the youth's current behavior and progress in the rehabilitation program when the youth is:

(1) [If a youth is] returned to a high-restriction facility for disciplinary reasons through a Level II due process hearing; [other than a parole revocation hearing, the youth is placed on stage 3 or retained on the current stage if currently assigned to stage 1 or 2.]

(2) [If a youth is] returned to a high- or medium-restriction [high-restriction] facility for disciplinary reasons through a Level I due process hearing; or [as a result of a parole revocation hearing, the youth is placed on stage 1.]

DRAFT

(3) [~~If a youth is~~] recommitted to TJJD for a new offense [~~committed while in the community, the youth is placed on stage 1~~].

[~~(4) If a youth is recommitted to TJJD for a new offense committed in a TJJD-operated or TJJD-contracted facility, the youth is reassessed by TJJD and placed on the most appropriate stage for the youth's current behavior and progress in the rehabilitation program.~~]

[~~(5) If a youth is returned to a high- or medium-restriction facility for non-disciplinary reasons, the youth is reassessed by TJJD and placed on the most appropriate stage for the youth's current behavior and progress in the rehabilitation program.~~]

[~~(6) A youth whose stage is assigned under paragraphs (1)–(3) of this subsection may be promoted more than one stage at the first stage assessment following the return or recommitment.~~]

[~~(i) **Appeal of Assessment.**~~]

[~~A youth may appeal the results of a stage assessment or of the lack of opportunity to demonstrate completion of requirements by filing a grievance in accordance with §380.9331 of this chapter. The person assigned to respond to the grievance must not be a staff member who was involved in the assessment being grieved.~~]

See Case Management Standards, Chapter 2, for implementation procedures.

DRAFT

Chapter:	Rules for State-Operated Programs	**Effective Date: [12/1/14]**
Subchapter:	Treatment	Page: 1 of 7
Division:	Programming for Youth with Specialized Treatment Needs	
Rule:	**Specialized Treatment**	Replaces: GAP.380.8751, 12/1/14 [11/1/11]
[ACA: 4-JCF-5C-02]		
Statutes [Statute(s)]:	HR Code §244.001	

RULE

(a) **Purpose.**

The purpose of this rule is to establish the process by which youth committed to the Texas Juvenile Justice Department (TJJD) are assessed and treated for specialized treatment needs. The purpose of all provisions in this rule is to promote successful youth reentry and reduce risk to the community by addressing individual specialized treatment needs through programs that are designed [shown] to reduce risk to reoffend.

(b) **Definitions.**

Except as indicated in this subsection, see §380.8501 of this chapter [title] for definitions of terms used in this rule.

(1) **Intensive Treatment Program**--a high-intensity treatment program [, residential program in which all youth receiving treatment reside in a common dormitory. Intensive treatment programs are] designed to address youth with a high need for specialized treatment. Treatment is generally delivered in specialized groups by licensed or appropriately trained staff [in a milieu that is designed to address the specialized need on a continuous basis].

(2) **Psycho-educational Program**--a low-intensity [education] program delivered by appropriately trained staff that is designed to address youth with a low need for specialized treatment.

(3) **Sex Offense**--a reportable adjudication as defined in Article 62.001 of the Texas Code of Criminal Procedure.

(4) **Mental Health Professional**--see definition in §380.9187 of this chapter [title].

(5) **Moderate-Intensity [Short-Term] Treatment Program**--a [moderate-intensity treatment] program designed to address youth with a moderate need for specialized treatment. Treatment is generally [involving specialized groups and individual counseling] delivered in specialized groups by licensed or appropriately trained staff. [Short-term treatment programs are designed to address youth with a moderate need for specialized treatment.]

(c) **General Provisions.**

(1) Youth with one or more specialized needs will have these needs addressed while under TJJD jurisdiction. [Some specialized programs may be provided concurrently and others successively.] Youth may have specialized needs addressed while in a high- or medium-restriction [high or medium restriction] facility or on parole status [based on assessment outcomes, treatment team recommendations, and any necessary administrator approvals].

(2) If a youth cannot be provided the type(s) of specialized program designated in this rule for the youth's [his/her] assessed need level, the youth will be provided with the most appropriate alternate form of [specialized] intervention for that treatment need.

(d) **Treatment Planning.**

(1) Upon admission to TJJD, comprehensive assessments are conducted [~~at the orientation and assessment unit~~] to determine if a youth has any specialized treatment needs and to identify the type of specialized program that is best suited to address those needs. For each youth assessed as having a specialized treatment need, an initial plan documenting all specialized treatment needs and recommended programs is developed as soon as possible [~~before the youth leaves the orientation and assessment unit~~].

(2) In addition to the initial plan, a [~~A~~] comprehensive plan is developed for each youth with specialized treatment needs [~~upon the youth's arrival at his/her initial placement~~]. The comprehensive plan must:

(A) include individually tailored statements regarding treatment goals and objectives;
(B) include the tentative sequence and start dates for each specialized program;
(C) be developed with input from the youth; and
(D) be documented in the youth's individual case plan.

(3) The sequence and start dates for specialized programs are based on individual youth needs, facility schedules, and program openings, with consideration given to the youth's minimum length of stay or minimum period of confinement.

(4) The comprehensive specialized treatment plan is reviewed, reevaluated [~~re-evaluated~~], and modified in accordance with rules for the review and modification of the individual case plan, as set forth in §380.8701 of this chapter [~~title~~]. The plan is also modified following each reassessment of a youth's specialized treatment needs.

(5) Specialized treatment needs may be reassessed at any time during a youth's stay in TJJD.

(e) **Specialized Treatment Needs.**

The areas of specialized treatment need are set forth in paragraphs (1) - (6) of this subsection, with each area given priority for placement and treatment based on urgency of need.

(1) **Medical.**

Each youth is provided comprehensive medical and dental examinations. Based on the results of these examinations, each youth is assigned a need level for medical or dental services. Non-compliance with treatment may cause any youth to be designated as higher need than the underlying condition would typically warrant.

(A) **High Need**--includes youth who require medical, surgical, or dental services of an intense/acute nature. The youth has a serious acute condition, experiences an exacerbation of a chronic medical or dental condition, sustains a serious injury, and/or may require hospitalization. The youth's condition is unstable or unpredictable, and recovery requires 24-hour nursing care or supervision beyond the scope of normal infirmary services. The youth's medical needs, until resolved, take precedence over other therapeutic interventions and temporarily prevent active participation in programming.

(B) **Moderate Need**--includes youth who are diagnosed with a medical or dental condition that is moderate to serious in severity and that may require frequent access to clinical and/or hospital services for symptom exacerbation.

(C) **Low Need**--includes youth who are diagnosed with a condition that is mild to moderate in severity and does not require ongoing treatment or monitoring. The youth may be temporarily restricted from an activity due to an accident, injury, or illness of mild to moderate severity.

(D) **None**--includes youth with no medical or dental diagnosis requiring ongoing attention.

DRAFT

(2) **Mental Health.**

The mental health needs assessment is provided by mental health [~~psychology and psychiatry~~] staff through comprehensive psychological and/or [~~and~~] psychiatric evaluation using the most current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM). Based on this assessment, each youth is assigned a need level for mental health treatment services.

(A) **High Need – Level 1.**

(i) This level of treatment need includes youth who:

(I) are diagnosed with a mental disorder. As a result of the disorder, there is disorganized, bizarre, and/or grossly inappropriate behavior in one or more of the following areas: social or interpersonal interactions, educational or vocational participation, or the ability to manage daily living requirements;

(II) have an assessment of adaptive functioning that is consistent with the level of impairment noted;

(III) cannot meaningfully participate in programming until the underlying disorder is stabilized; and/or

(IV) are an imminent danger to themselves or others as a result of the mental disorder.

(ii) This level of impairment is not the result of a Conduct Disorder, Oppositional Defiant Disorder, or similar impulse control/behavioral [~~behavioral~~] disorders and is not the result of intoxication or withdrawal from drugs.

(iii) Youth with this level of impairment require a protective environment during this phase of the disorder and are treated at an agency-operated crisis stabilization unit or a psychiatric hospital with psychiatric care as the highest priority.

(B) **High Need – Level 2.**

(i) This level of treatment need includes youth who:

(I) are diagnosed with a mental disorder. As a result of the disorder, there is moderate to severe impairment in one or more of the following areas: social or interpersonal interaction, educational or vocational participation, or the ability to manage daily living requirements despite receiving psychiatric care and clinical support services;

(II) have an assessment of adaptive functioning that is consistent with the level of impairment noted; and/or

(III) are having a difficult time maintaining stability and program participation despite receiving psychiatric services and local clinical support.

(ii) This level of impairment is not the result of a Conduct Disorder, Oppositional Defiant Disorder, or similar impulse control/behavioral [~~behavioral~~] disorders and is not the result of intoxication or withdrawal from drugs.

(iii) Youth with this level of treatment need are placed in an intensive mental health treatment program with structured interventions and enhanced clinical support services in addition to regular psychiatric services.

DRAFT

(C) **Moderate Need.**

(i) This level of treatment need includes youth who:

(I) are diagnosed with a mental disorder. As a result of the disorder, behavior is mildly impaired by signs and symptoms of the mental disorder in one or more of the following areas: social or interpersonal interaction, educational or vocational participation, or ability to manage daily living requirements with regular psychiatric care and/or psychological intervention;

(II) have an assessment of adaptive functioning that is consistent with the level of impairment noted; and/or

(III) display symptoms or difficulties with adaptive behavior as a result of abuse or trauma.

(ii) This level of treatment need is not the result of a Conduct Disorder, Oppositional Defiant Disorder, or similar impulse control/behavioral [~~behavioral~~] disorders and is not the result of intoxication or withdrawal from drugs.

(iii) Youth with this level of treatment need are placed in an agency facility offering the necessary clinical and/or psychiatric [~~and clinical~~] support. Youth identified with a history of abuse or trauma are offered interventions specific to the trauma to help maintain their ability to function and participate in programming.

(D) **Low Need**--includes youth who [~~have a psychiatric diagnosis and~~] require only periodic mental health services, regardless of whether the youth have a mental health diagnosis, or regular psychiatric services. For youth with a psychiatric diagnosis, the [~~The~~] assessment of adaptive functioning is consistent with the level of impairment noted.

(E) **None**--includes youth who do not require follow-up services from mental health or psychiatric providers, regardless of whether the youth have a mental health diagnosis. [~~have:~~]

[~~(i) no mental health diagnosis;~~]

[~~(ii) a mental health diagnosis that is made by history but its influence on the youth's functioning is so mild that it is not a focus of any specialized mental health treatment; or~~]

[~~(iii) a diagnosis that is in remission without any current treatment intervention.~~]

(3) **Intellectual Disability.**

The diagnosis of Intellectual Disability is made by mental health [~~a psychology and psychiatry~~] staff based on the results of a culturally validated assessment of cognitive functioning, mental abilities, reasoning, problem solving, abstract thinking, and adaptive behavior as defined in the latest edition of the DSM. Based on this diagnosis, each youth is assigned a need level for intellectual disability services. Youth are assigned to the placement that is best suited to meet the youth's individual treatment needs.

(A) **High Need**--includes youth diagnosed with Moderate or Severe Intellectual Disability who have [~~and~~] corresponding deficits in intellectual and adaptive functioning.

(B) **Moderate**--includes youth diagnosed with mild Intellectual Disability who have [~~and~~] a co-occurring mental health treatment need of moderate or low.

(C) **Low Need**--includes youth diagnosed with [~~for~~] mild Intellectual Disability who have [~~and~~] no co-occurring mental health treatment needs.

(D) **None**--includes youth who have no diagnosis of Intellectual Disability.

DRAFT

(4) **Sexual Behavior.**

The sexual behavior treatment need assessment is provided by a psychologist, mental health professional, or licensed sex offender treatment provider through a clinical interview and an agency-approved juvenile sexual offender assessment instrument. The assessment is provided for youth who have been adjudicated for a sex offense or who have a documented history of sexually inappropriate behavior. Based on this assessment, each youth is assigned a need level for sexual behavior treatment services.

(A) **High Need**--includes youth who receive an assessment rating of high need for sexual behavior treatment, based on the results of the clinical interview and the agency-approved juvenile sexual offender assessment instrument. Youth with this level of treatment need are assigned to participate in an intensive sexual behavior treatment program.

(B) **Moderate Need**--includes youth who receive an assessment rating of moderate need for sexual behavior treatment based on the results of the clinical interview and the agency-approved juvenile sexual offender assessment instrument. Youth with this level of treatment need are assigned to participate in a moderate-intensity [~~short-term~~] sexual behavior treatment program.

(C) **Low Need**--includes youth who receive an assessment rating of low need for sexual behavior treatment based on the results of the clinical interview and the agency-approved juvenile sexual offender assessment instrument. Youth with this level of treatment need are assigned to participate in a psychosexual education curriculum.

(D) **None**--includes youth who have no assessed need for sexual behavior treatment.

(5) **Capital and Serious Violent Offender.**

A psychologist or mental health professional makes a determination of need for capital and serious violent offender treatment for any youth who was found by a court or a Level I due process [~~an administrative parole revocation~~] hearing to have engaged in conduct that resulted in the death of or serious bodily injury to a person[~~, resulted in serious bodily injury to a person,~~] or involved using or exhibiting a deadly weapon[~~,~~] and any youth referred by a mental health professional [~~psychologist~~] based on a reasonable belief the youth is in need of capital and serious violent offender treatment. The determination is based on the youth's offense history and clinical [~~psychological~~] assessment of the youth's need for specialized treatment intervention.

(A) **High Need**--youth are assigned to participate in an intensive capital and serious violent offender program.

(B) **Medium Need**--youth are assigned to participate in a moderate-intensity [~~short-term~~] program designed to address aggression and violent behavior issues.

(C) **Low Need**--youth are assigned to participate in a psycho-educational anger management supplemental curriculum.

(D) **None**--includes youth who are assessed as not having a significant risk related to violent offending or behavior.

(6) **Substance Use Services [~~Alcohol or Other Drug Treatment~~].**

All youth are screened to determine if they should be assessed for a need for substance use services. Those who need further assessment [~~Youth identified through a screening process as needing further alcohol or other drug (AOD) assessment~~] are assessed and diagnosed by mental health staff or a chemical dependency counselor [~~a psychologist or mental health professional~~] using the latest edition of the DSM. Based on a clinical interview and the results of an agency-

approved, comprehensive assessment instrument, each youth is assigned a need level for substance use services [~~AOD programming~~].

(A) **High Need**--includes youth with a diagnosis of Substance Use Disorder and a high-intensity substance-use-services [~~AOD~~] treatment need based on the results of an agency-approved assessment instrument. Youth with this level of treatment need are assigned to participate in an intensive substance-use-services [~~AOD~~] treatment program.

(B) **Moderate Need**--includes youth with a diagnosis of Substance Use Disorder and a moderate-intensity substance-use-services [~~AOD~~] treatment need based on the results of an agency-approved assessment instrument. Youth with this level of treatment need are assigned to participate in a moderate-intensity substance-use-services [~~short-term AOD~~] treatment program.

(C) **Low Need**--includes youth with any identified substance use [~~abuse~~] history or risk that does not rise to the diagnostic level of Substance Use Disorder. Youth with this level of treatment need are assigned to participate in a psycho-educational substance-use-services [~~AOD~~] program.

(D) **None**--includes youth who have no history of substance use [~~abuse~~] or risk of use.

(f) **Requirement to Complete Specialized Treatment.**

(1) This subsection applies only to youth [~~committed to TJJD on or after September 1, 2009,~~] who are assessed as having a high or moderate treatment need in the following treatment areas: sexual behavior, capital and serious violent offender, or substance use services [~~Sexual Behavior; Capital and Serious Violent Offender; or Alcohol or Other Drug Treatment~~]. This subsection does not apply to youth assigned to complete psycho-educational supplemental curricula in these treatment areas.

(2) For purposes of §§380.8545, 380.8555, and 380.8559 of this chapter, participation in or completion of assigned specialized treatment programs means:

(A) the youth has completed assigned specialized treatment programs; or

(B) a designee of the executive director with appropriate expertise determines that the youth has made sufficient progress toward treatment goals or that the goals can be addressed in a non-high-restriction setting.

(3)[~~(2)~~] This subsection does not apply to decisions made by the Release Review Panel under §380.8557 of this chapter [~~title~~].

[~~(3) To qualify for transition to a medium restriction placement under §380.8545 of this title, a youth who has been assessed as having a high or moderate need must:~~]

[~~(A) complete the assigned specialized treatment program(s) while in a high restriction facility; or~~]

[~~(B) be scheduled to begin the assigned specialized treatment program(s) in a medium restriction facility, as documented in the youth's most recent specialized treatment plan. A requirement to complete treatment must be included in the youth's conditions of placement; or~~]

[~~(C) as approved by the final decision authority for transition in consultation with the division director over treatment programming or designee, make sufficient progress in the assigned specialized treatment program with a corresponding reduction in risk to allow for the youth to continue the specialized treatment in a medium restriction facility. A requirement to complete treatment must be included in the youth's conditions of placement.~~]

DRAFT

[(4) To earn release to parole under §§380.8555, 380.8559, or 380.8569 of this title, a youth who has been assessed as having a high or moderate need must:]

[(A) complete the assigned specialized treatment program(s) while placed in the youth's current facility restriction level; or]

[(B) as approved by the division director over treatment programming or designee:]

[(i) be scheduled to begin the assigned specialized treatment program(s) while on parole status, as documented in the youth's most recent specialized treatment plan. A requirement to complete treatment must be included in the youth's conditions of placement or conditions of parole, as appropriate; or]

[(ii) make sufficient progress in the assigned specialized treatment program with a corresponding reduction in risk to allow for the youth to continue the specialized treatment while on parole status. A requirement to complete treatment must be included in the youth's conditions of placement or conditions of parole, as appropriate.]

(g) **Individual Exceptions.**

(1) The requirement to complete specialized treatment as described in subsection (f) of this section may be waived if the division director over specialized treatment [programming] or designee determines that the youth is unable to participate in the assigned specialized treatment program [or curriculum] due to a medical or mental health condition or due to an intellectual disability.

(2) Each youth's individual circumstances are considered when determining the most appropriate type of specialized treatment intervention to assign. A youth may be assigned or reassigned to a specialized program designated for a higher or lower need level than the youth's assessed need level for any reason deemed appropriate by the division director over specialized treatment [programming] or designee.

(3) The executive director or [his/her] designee may make exceptions to provisions of this rule on a case-by-case basis, based on a consideration of the youth's best interests and public safety.

(4) The justification for any individual exceptions granted under this subsection must be documented.

(h) **Specialized Aftercare.**

Youth will be provided specialized aftercare as needed and as available. [Youth who successfully complete one of the following specialized treatment programs, or who otherwise need specialized aftercare as determined by the youth's treatment team, will receive specialized aftercare on an outpatient basis as needed, as recommended by the treatment team, and as available:]

[(1) mental health treatment program;]
[(2) intensive or short-term sexual behavior treatment program;]
[(3) intensive or short-term alcohol or other drug treatment program; or]
[(4) intensive or short-term capital and serious violent offender treatment program.]

See CMS.01.25 and CMS Chapters 7-9 for implementation procedures.

[Refer to GAP.87.51 dated 4/26/04 for requirements to complete specialized treatment for youth admitted prior to September 1, 2009.]

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TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Interim Executive Director

Kaci Singer, Deputy General Counsel for County Matters and Policy Supervisor

Subject: Discussion, consideration, and possible approval for adoption of revisions to 37 TAC §380.9503 (concerning Rules and Consequences for Residential Facilities)

Date: November 30, 2022

At the May 2020 Board meeting, TJJD staff proposed changes to 37 TAC §380.9503 (Rules and Consequences for Residential Facilities).

The Board approved posting the revisions in the *Texas Register* for a 30-day public comment period and granted conditional approval to adopt the final rule text, subject to certain requirements that were specified in the accompanying resolution.

The comment period has ended, and TJJD did not receive any public comments. However, the staff has recommended the following additional changes:

- clarification of the definition of *possession*
- clarification of the type of document that must be prepared before imposing disciplinary consequences for a youth in a high-restriction facility, if a Level II hearing is not required

The staff believes these changes exceed the limitations set by the May 2020 resolution, and as a result, the staff is seeking Board approval to adopt the final rule text, including the additional revisions noted above.

Attached to this memo please find:

- a copy of the final rule text, with markups to show the additional changes described above;
- a summary of the key changes that were initially proposed; and
- a resolution for board action.

Summary of Changes
37 TAC §380.9503

Section #	Title	Summary of Rule	Summary of Proposed Key Changes
Division 1: Behavior Management			
380.9503	Rules and Consequences for Residential Facilities	Lists the rule violations and available consequences for youth in TJJD's residential facilities.	***RULE VIOLATIONS*** • Added that, for disciplinary purposes, directing someone to commit a rule violation is treated the same as committing that violation. Also added a definition for "direct someone to commit" a violation. • Changed the definitions of *Assault of Youth (No Injury)* and *Assault of Staff (No Injury)* to require intent to cause injury and to no longer be limited to making unauthorized physical contact. • Changed the definition of *Escape* to be limited to high-restriction facilities (rather than applying also to medium-restriction facilities). • Added *Unauthorized Absence* as a major rule violation, which means leaving a medium-restriction facility without permission or failing to return from an authorized leave. • Clarified that *Attempted Escape* requires that youth have a specific intent to escape. • Added *Possessing, Selling, or Attempting to Purchase Ammunition* as a major rule violation. • Modified the definition of *Possession of a Weapon* to include selling or attempting to purchase a weapon. • Added *Tampering with Monitoring Equipment* to the list of major rule violations. • Added *Unauthorized Physical Contact with Another Youth (No Injury)* and *Unauthorized Physical Contact with Staff (No Injury)* as minor rule violations. • Added that the violation involving repeated non-compliance with staff applies when a youth fails to comply with a monthly requirement twice in a *60-day period* (rather than a 90-day period.) • Clarified that several rule violations contain the element that the youth intentionally*, knowingly, or recklessly* engaged in the prohibited conduct (rather than doing so only intentionally, or in some cases, intentionally *and* knowingly or recklessly). • Clarified that the violations *Sexual Misconduct* and *Tampering with Monitoring Equipment* contain the element that the youth intentionally *or* knowingly (rather than intentionally *and* knowingly) engaged in the prohibited conduct. ***DISCIPLINARY CONSEQUENCES*** • Removed the list of specific disciplinary consequences and added a list of types of discipline that are prohibited. • Added a list of examples of types of discipline that may be used. • Added a requirement for TJJD to establish each specific disciplinary consequences in writing in its procedural manuals. • Added that a consequence may be imposed only if it is established in writing before the occurrence of the conduct for which the consequence is being issued.

Section #	Title	Summary of Rule	Summary of Proposed Key Changes
			• Specified that a Level II due process hearing is required before imposing a consequence that materially alters a youth's living conditions and that TJJD will specify in its procedural manuals which consequences require this hearing. • Added that consequences requiring a Level II hearing are considered major consequences. • Specified the amount of due process required before issuing a consequence if a Level II hearing is not required. • Specified that *all* disciplinary consequences (rather than just certain minor consequences) must be reviewed for policy compliance and that the reviews must be conducted within three calendar days. • Added that the staff member reviewing discipline for policy compliance shall not be the staff member who issued the discipline. ***OTHER CHANGES*** • Added a definition for the term *Possession*. • Added that the term *Attempt to Commit* requires that youth have *specific intent* to commit a rule violation and engage in conduct that amounts to more than mere planning *that tends but fails to effect the commission of the intended rule violation*. • Clarified that an incident report is not proof that a youth committed a rule violation and that rule violations are considered proven only through a Level I or Level II due process hearing. • Added that an incident report cannot be appealed or grieved; however, discipline that results from an incident report may be appealed or grieved. • Clarified that youth may appeal *any* consequence (rather than major consequences) issued through a Level II hearing. • Specified that youth in high-restriction facilities may grieve *any consequence issued without a Level II hearing* (rather than minor consequences). • Added that youth in medium-restriction facilities may appeal any consequences issued through a Level III hearing, in accordance with 380.9557. • Removed the requirement to begin an investigation into certain alleged rule violations within 24 hours. • Removed a reference to which staff member decides to hold a Level II hearing; however, requests to hold such hearings are addressed in 380.9555. • Added that formal incident reports are written for alleged rule violations as required by internal operational procedures rather than specifying the instances in which they must be written. • Removed the requirement for a youth to be provided a copy of any incident report prepared for an alleged rule violation. • Removed the requirement for rules of conduct to be physically posted in facilities. • Removed a statement about issuing more than one consequence for a violation.

Section #	Title	Summary of Rule	Summary of Proposed Key Changes
			• Removed a provision concerning the multidisciplinary team's authority to reduce, extend, or modify certain privilege suspensions; however, 380.9555 addresses the treatment team's ability to reduce or suspend the imposition of a consequence for violations proven in a Level II hearing. • Removed a provision allowing requirements in this rule to be restated or adapted to accommodate a particular program. • Removed a statement concerning the possibility of repeated violations of the same rule leading to more serious consequences. • Removed a reference to a non-disciplinary placement option (i.e., placement in the Redirect Program). • Removed definitions for terms that are no longer used in the rule and a term for which a definition is unnecessary.

11/3/22 Draft

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date:**
Subchapter:	Behavior Management and Youth Discipline	Page: 1 of 6
Division:	Behavior Management	
Rule:	**Rules and Consequences for Residential Facilities**	Replaces: GAP.380.9503, 10/1/15
Statutes:	Human Resources Code §242.063	

Adopt with changes on pages 1 and 2

RULE

(a) **Purpose.**

This rule establishes the actions that constitute violations of the rules of conduct for residential facilities. Violations of the rules may result in disciplinary consequences that are proportional to the severity and extent of the violation. Appropriate due process, including a consideration of extenuating circumstances, shall be followed before imposing consequences.

(b) **Applicability.**

This rule applies to youth assigned to residential facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) **Definitions.**

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

(1) **Attempt to Commit**--a youth, with specific intent to commit a rule violation, engages in conduct that amounts to more than mere planning that tends but fails to effect the commission of the intended rule violation.

(2) **Bodily Injury**--physical pain, illness, or impairment of physical condition. Fleeting pain or minor discomfort does not constitute bodily injury.

(3) **Direct Someone to Commit**--occurs when:

(A) a youth communicates with another youth;
(B) the communication is intended to cause the other youth to commit a rule violation; and
(C) the other youth commits or attempts to commit a rule violation.

(4) **Possession--**actual care, custody, control, or management. It does not require the item to be on or about the youth's person.

(d) **General Provisions.**

(1) Formal incident reports are completed for alleged rule violations as required by internal operational procedures.

(2) A formal incident report is not proof that a youth committed an alleged rule violation. Only rule violations that are proven through a Level I or Level II due process hearing in accordance with §380.9551 or §380.9555 of this title, respectively, are considered proven and are considered a part of a youth's disciplinary record. A formal incident report is not appealable or grievable; only disciplinary consequences may be appealed or grieved, as provided below.

(3) When a youth is found to be in possession of prohibited money as defined in this rule, a Level II hearing is required to seize the money. Seized money shall be placed in the student benefit fund in accordance with §380.9555 of this title.

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(e) **Disciplinary Consequences.**

(1) Disciplinary consequences shall be established in writing in TJJD's procedural manuals. Appropriate disciplinary consequences may be imposed only if the consequences are established in writing in TJJD's procedural manuals prior to the occurrence of the conduct for which the consequence is issued.

(2) Disciplinary consequences may include, but are not limited to, the following:

(A) suspension of privileges;
(B) restriction from planned activities;
(C) trust-fund restriction; and
(D) disciplinary transfer to a high-restriction facility (available only for youth on institutional status in a medium-restriction facility).

(3) The following are prohibited as disciplinary consequences:

(A) corporal or unusual punishment;
(B) subjecting a youth to humiliation, harassment, or physical or mental abuse;
(C) subjecting a youth to personal injury;
(D) subjecting a youth to property damage or disease;
(E) punitive interference with the daily functions of living, such as eating or sleeping;
(F) purposeless or degrading work, including group exercise as a consequence;
(G) placement in the intervention program under §380.9510 of this title;
(H) disciplinary isolation; and
(I) extending a youth's stay in a TJJD facility.

(4) A Level II hearing is required before imposing a disciplinary consequence that materially alters a youth's living conditions, including disciplinary transfer from a medium-restriction facility to a high-restriction facility. TJJD's procedural manuals will specify which disciplinary consequences require a Level II hearing. Disciplinary consequences requiring a Level II hearing are considered major consequences.

(5) If a Level II hearing is not required, the following must occur before imposing disciplinary consequences for a youth in a high-restriction facility:

(A) a written description of the incident ~~formal incident report~~ must be prepared;

(B) staff must tell the youth which rule violation the youth allegedly committed and describe the information staff has that establishes the youth committed it;

(C) staff must tell the youth what disciplinary consequence(s) staff is considering imposing; and

(D) the youth must be given the opportunity to address the allegation, including providing any extenuating circumstances and information on the appropriateness of the intended consequence(s).

(6) If a Level II hearing is not required, a Level III hearing must occur before imposing disciplinary consequences for a youth in a medium-restriction facility, in accordance with §380.9557 of this title.

(f) **Review and Appeal of Consequences.**

(1) All disciplinary consequences shall be reviewed for policy compliance by the facility administrator or designee within three calendar days after issuance. The reviewing staff shall not be the staff who issued the discipline.

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(2) The reviewing staff may remove or reduce any disciplinary consequence determined to be excessive or not validly related to the nature or seriousness of the conduct.

(3) Youth may appeal disciplinary consequences issued through a Level II hearing by filing an appeal in accordance with §380.9555 of this title.

(4) Youth in medium-restriction facilities may appeal disciplinary consequences issued through a Level III hearing by filing an appeal in accordance with §380.9557 of this title.

(5) Youth in high-restriction facilities may grieve disciplinary consequences issued without a Level II hearing by filing a grievance in accordance with §380.9331 of this title.

(g) **Major Rule Violations.**

It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following:

(1) **Assault of Another Youth (No Injury)**--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to another youth but the conduct does not result in bodily injury.

(2) **Assault of Staff (No Injury)**--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to a staff member, contract employee, or volunteer with the intent to cause injury but the conduct does not result in bodily injury.

(3) **Assault Causing Bodily Injury to Another Youth**--intentionally, knowingly, or recklessly engaging in conduct that causes another youth to suffer bodily injury.

(4) **Assault Causing Bodily Injury to Staff**--intentionally, knowingly, or recklessly engaging in conduct that causes a staff member, contract employee, or volunteer to suffer bodily injury.

(5) **Attempted Escape**--committing an act with specific intent to escape that amounts to more than mere planning that tends but fails to effect an escape.

(6) **Chunking Bodily Fluids**--causing a person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, and/or feces of another with the intent to harass, alarm, or annoy another person.

(7) **Distribution of Prohibited Substances**--distributing or selling any prohibited substances or items.

(8) **Escape**--leaving a high-restriction residential placement without permission or failing to return from an authorized leave.

(9) **Extortion or Blackmail**--demanding or receiving favors, money, actions, or anything of value from another in return for protection against others, to avoid bodily harm, or in exchange for not reporting a violation.

(10) **Fighting Not Resulting in Bodily Injury**--engaging in a mutually instigated physical altercation with another person or persons that does not result in bodily injury.

(11) **Fighting That Results in Bodily Injury**--engaging in a mutually instigated physical altercation with another person or persons that results in bodily injury.

(12) **Fleeing Apprehension**--running from or refusing to come to staff when called and such act results in disruption of facility operations.

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(13) **Misuse of Medication**--using medication provided to the youth by authorized personnel in a manner inconsistent with specific instructions for use, including removing the medication from the dispensing area.

(14) **Participating in a Major Disruption of Facility Operations**--intentionally participating with two or more persons in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs.

(15) **Possessing, Selling, or Attempting to Purchase Ammunition**--possessing, selling, or attempting to purchase ammunition.

(16) **Possession of Prohibited Items**--possessing the following prohibited items:

(A) cellular telephone;
(B) matches or lighters;
(C) jewelry, unless allowed by facility rules;
(D) money in excess of the amount or in a form not permitted by facility rules (see §380.9555 of this title for procedures concerning seizure of such money);
(E) pornography;
(F) items which have been fashioned to produce tattoos or body piercing;
(G) cleaning products when the youth is not using them for a legitimate purpose; or
(H) other items that are being used inappropriately in a way that poses a danger to persons or property or threatens facility security.

(17) **Possessing, Selling, or Attempting to Purchase a Weapon**--possessing, selling, or attempting to purchase a weapon or an item that has been made or adapted for use as a weapon.

(18) **Possession or Use of Prohibited Substances and Paraphernalia**--possessing or using any unauthorized substance, including controlled substances or intoxicants, medications not prescribed for the youth by authorized medical or dental staff, alcohol, tobacco products, or related paraphernalia such as that used to deliver or make any prohibited substance.

(19) **Refusing a Drug Screen**--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen. (Note: If the youth says he/she cannot provide a sample, the youth shall be given water to drink and two hours to provide the sample.)

(20) **Refusing a Search**--refusing to submit to an authorized search of person or area.

(21) **Repeated Non-Compliance with a Written, Reasonable Request of Staff (for Youth in Medium-Restriction Residential Placement)**--failing on two or more occasions to comply with a specific written, reasonable request of staff. If the request requires the youth to do something daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do something monthly, the two failures to comply must be within a 60-day period.

(22) **Sexual Misconduct**--intentionally or knowingly engaging in any of the following:

(A) causing contact, including penetration (however slight), between the penis and the vagina or anus; between the mouth and penis, vagina or anus; or penetration (however slight) of the anal or genital opening of another person by hand, finger, or other object;
(B) touching or fondling, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person;
(C) kissing for sexual stimulation;
(D) exposing the anus, buttocks, breasts, or genitals to another or exposing oneself knowing the act is likely to be observed by another person; or
(E) masturbating in an open and obvious way, whether or not the genitals are exposed.

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(23) **Stealing**--intentionally taking property with an estimated value of $100 or more from another without permission.

(24) **Tampering with Monitoring Equipment**--a youth intentionally or knowingly tampers with monitoring equipment assigned to any youth.

(25) **Tampering with Safety Equipment**--intentionally tampering with, damaging, or blocking any device used for safety or security of the facility. This includes, but is not limited to, any locking device or item that provides security access or clearance, any fire alarm or fire suppression system or device, video camera, radio, telephone (when the tampering prevents it from being used as necessary for safety and/or security), handcuffs, or shackles.

(26) **Tattooing/Body Piercing**--engaging in tattooing or body piercing of self or others. Tattooing is defined as making a mark on the body by inserting pigment into the skin.

(27) **Threatening Another with a Weapon**--intentionally and knowingly threatening another with a weapon. A weapon is something that is capable of inflicting bodily injury in the manner in which it is being used.

(28) **Unauthorized Absence**--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(29) **Vandalism**--intentionally causing $100 or more in damage to state property or personal property of another.

(30) **Violation of Any Law**--violating a Texas or federal law that is not already defined as a major or minor rule violation.

(h) **Minor Rule Violations.**

It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following:

(1) **Breaching Group Confidentiality**--disclosing or discussing information provided in a group session to another person not present in that group session.

(2) **Disruption of Program**--engaging in behavior that requires intervention to the extent that the current program of the youth and/or others is disrupted. This includes, but is not limited to:

(A) disrupting a scheduled activity;
(B) being loud or disruptive without staff permission;
(C) using profanity or engaging in disrespectful behavior toward staff or peers; or
(D) refusing to participate in a scheduled activity or abide by program rules.

(3) **Failure to Abide by Dress Code**--failing to follow the rules of dress and appearance as provided by facility rules.

(4) **Failure to do Proper Housekeeping**--failing to complete the daily chores of cleaning the living environment to the expected standard.

(5) **Gang Activity**--participating in an activity or behavior that promotes the interests of a gang or possessing or exhibiting anything related to or signifying a gang, such as, but not limited to, gang-related literature, symbols, or signs.

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(6) **Gambling or Possession of Gambling Paraphernalia**--engaging in a bet or wager with another person or possessing paraphernalia that may be used for gambling.

(7) **Horseplay**--engaging in wrestling, roughhousing, or playful interaction with another person or persons that does not rise to the level of an assault. Horseplay does not result in any party getting upset or causing injury to another.

(8) **Improper Use of Telephone/Mail/Computer**--using the mail, a computer, or the telephone system for communication that is prohibited by facility rules, at a time prohibited by facility rules, or to inappropriately access information.

(9) **Lending/Borrowing/Trading Items**--lending or giving to another youth, borrowing from another youth, or trading with another youth possessions, including food items, without permission from staff.

(10) **Lying/Falsifying Documentation/Cheating**--lying or withholding information from staff, falsifying a document, and/or cheating on an assignment or test.

(11) **Possession of an Unauthorized Item**--possessing an item the youth is not authorized to have (possession of which is not a major rule violation), including items not listed on the youth's personal property inventory. This does not include personal letters or photographs.

(12) **Refusal to Follow Staff Verbal Instructions**--deliberately failing to comply with a specific reasonable verbal instruction made by a staff member.

(13) **Stealing**--intentionally taking property with an estimated value under $100 from another without permission.

(14) **Threatening Others**--making verbal or physical threats toward another person or persons.

(15) **Unauthorized Physical Contact with Another Youth (No Injury)**--intentionally making unauthorized physical contact with another youth without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, or grabbing.

(16) **Unauthorized Physical Contact with Staff (No Injury)**--intentionally making unauthorized physical contact with a staff member, contract employee, or volunteer without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, and grabbing.

(17) **Undesignated Area**--being in any area without the appropriate permission to be in that area.

(18) **Vandalism**--intentionally causing less than $100 in damage to state or personal property.

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TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Interim Executive Director

Kaci Singer, Deputy General Counsel for County Matters

Lou Serrano, Deputy Executive Director for Probation Services

Subject: Discussion, consideration, and possible approval to publish proposed revisions within 37 TAC Chapter 344, relating to Employment, Certification, and Training, in the *Texas Register* for a public comment period of at least 30 days and possible conditional approval to adopt the final rules

Date: August 17, 2022

The TJJD staff is proposing revisions to 37 TAC Chapter 344 (Employment, Certification, and Training). These changes were prompted by statutory changes to Chapter 53, Occupations Code, which require a review prior to denying or revoking a certification based on criminal history. They were developed by a workgroup including members of the TJJD Advisory Council and TJJD staff members.

The changes require the probation department or facility to contact TJJD for that review prior to hiring a person with a misdemeanor conviction or deferred adjudication that is less than 5 years old or a felony conviction or deferred adjudication that is less than 10 years old into a position requiring certification. Consistent with state law, a conviction or deferred adjudication for certain offenses remains a bar to certification regardless of time. The criteria that will be followed are set out in state law.

The standards also require the juvenile board or designee to conduct the same review before hiring or approving a person with the same criminal history who will not be certified but who may have unsupervised contact with a juvenile at a facility or program. Documentation of the review and outcome must be maintained.

A similar review must be conducted before TJJD seeks to impose discipline on an officer's certification, with certain exceptions for offenses for which revocation is mandated by state law.

The staff is making two requests. The staff is requesting the board's approval to publish the proposed revisions in the *Texas Register* for a public comment period of at least 30 days and to adopt the final rules after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

The staff is also requesting that the board grant approval to adopt the rules on an emergency basis as allowed by Section 2001.034, Government Code. That statute allows a state agency to adopt an emergency rule without prior notice, or with abbreviated notice, if the agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Given that the impetus of these proposed changes is to ensure TJJD complies with state law, staff requests the Board find that a requirement of state law requires the adoption of the rule on fewer than 30 days' notice and approve the emergency rulemaking.

Attached to this memo please find:

- a summary of the changes being proposed;
- the text of the rules, including proposed changes shown as mark-ups; and
- a resolution for board action.

Summary of Changes
37 TAC Chapter 344
Employment, Certification, and Training

Rule #	Title	Summary of Rule	Summary of Proposed Key Changes
Division 1: Behavior Management			
344.200	General Qualifications for Positions Requiring Certification	Establishes the minimum qualifications for certification as a juvenile probation officer, juvenile supervision officer, and community activities officer.	• Added that, to be eligible for certification, juvenile probation officers, juvenile supervision officers, and community activities officers must have no criminal history described in §344.410 unless TJJD has reviewed it and approved certification despite the criminal history.
344.300	Criminal History Checks	Establishes who must have a criminal history check and who may not have direct, unsupervised access to juveniles. Also includes requirements for using Fingerprint Applicant Services of Texas (FAST) and participating in the Fingerprint-Based Applicant Clearinghouse of Texas (FACT).	• Added that department or facility policy must prohibit direct, unsupervised access to juveniles in a juvenile justice program or facility by any person with a criminal history described in §344.410 who has not been reviewed and approved by TJJD or the juvenile board or designee, as appropriate. • Clarified that a criminal history check must be conducted for an individual who: o is in a position eligible for optional certification *and who is seeking certification*; or o may have direct, unsupervised access to juveniles and who provides goods or services under contract *on the premises of a juvenile justice facility or program,* with certain exceptions. • Clarified that, before any individual listed earlier in this section begins employment or service provision, the department must *ensure the criminal history is reviewed and the person is not determined to have a criminal history prohibiting employment or certification* [instead of the department must use the information in Fingerprint-Based Applicant Clearinghouse of Texas (FACT) to determine if the individual has a disqualifying criminal history].
344.320	Criminal History Checks for Position and Departmental Transfers *and for Optional Certification*	Requires a criminal history check when a person transfers into a position requiring certification or when a certified officer accepts simultaneous or subsequent employment in a different department or private facility.	• Modified section title to reflect changes to the text of the section. • Added that the employing department or facility must complete a criminal history check when the department or facility is seeking certification for a person in a position that allows for optional certification.
344.330	Criminal History Checks for Employees of Private Juvenile Justice Facilities	Requires the juvenile probation department serving the county where a private juvenile justice facility is located to conduct criminal history checks on behalf of the	• Included a corresponding language change to describe the offenses that require the probation department to immediately notify the private facility administration in writing if the department receives a FACT alert regarding an arrest, conviction, or deferred adjudication. The current requirement to notify of a disqualifying offense encompasses any offense punishable by confinement or imprisonment. Because the changes to this rule have modified the definition of disqualifying offense to be a small subset of

Rule #	Title	Summary of Rule	Summary of Proposed Key Changes
		private facility. Explains the responsibilities of the department and the private facility.	offenses, this rule has been modified to specify that all offenses punishable by confinement or imprisonment mandate the notification.
344.400	Disqualifying Criminal History	Establishes the disqualifying criminal history for positions requiring certification and for certain noncertified positions.	***OFFENSES THAT CONSTITUTE A DISQUALIFYING CRIMINAL HISTORY*** • Revised, in accordance with Ch. 53, Occupations Code, disqualifying criminal history to include only convictions or deferred adjudications for offenses in Article 42A.054, Code of Criminal Procedure, and sexually violent offenses under Article 62.001, Code of Criminal Procedure, or substantially equivalent violation against the laws of another state or the United States. • Removed other felonies and misdemeanors as well as the general requirement to register as a sex offender from the list of things that are an automatic disqualifier for certification. (This is now addressed in 344.410.) • Clarified that TJJD is the entity that determines whether a federal offense or an offense in another state is substantially equivalent to an offense listed in Article 42A.054 or 62.001, Code of Criminal Procedure. • Deleted references to variances granted under the repealed version of 344.410. ***GENERAL PROVISIONS*** • Added that the newly created disqualification for a sexually violent offense does not apply to: o officers certified before the effective date of this section unless the certification expires; or o to noncertified individuals in a position requiring criminal history checks who began service provision before the effective date of this section with no break in service after that date. • Removed the following provisions: o the date of conviction or order of deferred adjudication is used to determine when applicable time periods expire (addressed in new §344.410); o regardless of the time periods set forth, at least one year must have elapsed since the completion of any period of incarceration, community supervision, or parole (addressed in new §344.410); o if a department receives notification of an arrest for potentially disqualifying criminal conduct of a person hired in the capacity of a certified officer, the department must notify TJJD's certification office in writing of the alleged offense no later than 10 calendar days after receiving notice of the arrest (addressed in new §344.430); o if a department receives notification of a conviction for disqualifying criminal conduct of a person hired in the capacity of a certified officer, the department must notify TJJD's certification office in writing of the offense no later than 10 calendar days after receiving notice of the conviction (addressed in new §344.430); o any conviction occurring before January 1, 2010, will not disqualify a noncertified individual in a position requiring a criminal history check who began employment or service provision before January 1, 2010, with no break in service after that date; and

Rule #	Title	Summary of Rule	Summary of Proposed Key Changes
			○ any felony conviction, felony deferred prosecution, felony deferred adjudication, misdemeanor conviction, misdemeanor deferred prosecution, or misdemeanor deferred adjudication occurring before September 1, 2003, will not disqualify a certified officer who held an active certification on September 1, 2003.
344.410	Exemption or Variance for Qualifying Criminal History	Establishes a way to obtain approval for individuals convicted of Class B misdemeanors to be eligible for certification or to serve in certain noncertified positions.	• **Repeal.** Some content included in the new 344.410.
344.410	Other Criminal History	Establishes which types of criminal history would make an individual ineligible for certification without prior TJJD approval and ineligible for certain noncertified positions without an exemption from the juvenile board.	**New standard** that includes portions of the former 344.410. ***APPLICANTS FOR CERTIFICATION*** • Added the following factors related to criminal history that would make an individual ineligible for certification, employment, or otherwise providing service in a position requiring certification without prior review and approval by TJJD: ○ deferred adjudication or conviction within the past 10 years for a felony other than a disqualifying offense or a substantially equivalent violation against the laws of another state or the United States (as determined by TJJD); ○ deferred adjudication or conviction within the past five years for any Class A or B misdemeanor in Texas or a substantially equivalent violation against the laws of another state or the United States (as determined by TJJD) if the date of deferred adjudication or conviction was less than five years prior to the date the review is requested; ○ any offense described by this section—regardless of the date of conviction or deferred adjudication—if less than one year has elapsed since the completion of any period of incarceration, community supervision, or parole; or ○ a current requirement to register as a sex offender for an offense that is not a disqualifying offense under 344.400. ***NONCERTIFIED POSITIONS THAT REQUIRE A CRIMINAL HISTORY CHECK*** • Added that an individual with a criminal history described above is not eligible to begin serving or continue serving in a noncertified position requiring a criminal history check unless the juvenile board or its documented designee has granted an exemption. • Added that, before granting an exemption, the juvenile board must consider the same factors as TJJD considers, which are listed in §344.420. • Explained that exemptions may be granted only on a case-by-case basis and that the justification for the exemption must be documented.

Rule #	Title	Summary of Rule	Summary of Proposed Key Changes

			• Added that, if the department or facility receives notification of a new conviction or deferred adjudication, the individual may not continue serving in the position unless the juvenile board or its documented designee grants a new exemption. An exemption may not be granted for a conviction or deferred adjudication described in §344.400(a).
			• Explained that the exemption is:
			  ○ valid only for the probation department or facility operated by or under contract with the juvenile board granting the exemption; and
			  ○ not valid if the person moves to a position requiring certification or if the department or facility seeks certification for the person in a position that allows for optional certification. (In such instances, prior review and approval from TJJD is required.).

344.420	Review of Criminal History	Establishes the process TJJD will use to review a person's criminal history.	• **New standard.** • Added that a department or facility must request a review from and obtain approval from TJJD before hiring, contracting with, or otherwise placing in a position an individual with a criminal history described by §344.410 into a position requiring certification and before seeking certification for an individual in a position that allows for optional certification. • Added a list of factors TJJD will use to determine if the offense(s) directly relate to the duties and responsibilities of the position for which the certification is required or sought. • Added that, if TJJD determines the criminal history offense(s) do not directly relate to the duties and responsibilities of the position, TJJD will not deny the certification based on the criminal history. • Added a list of factors TJJD will consider in determining whether to deny certification in cases where the offense(s) directly relate to the duties and responsibilities of the position. • Added that the individual to be certified is responsible for providing TJJD with the information required to make a decision and that a denial of certification may result from failing to provide TJJD with the requested information in a timely manner. • Added that, in making its determination, TJJD will not consider an arrest that did not result in a conviction or placement on deferred adjudication. • Added that, if TJJD determines that the criminal history will not result in a denial of certification, TJJD will inform the individual and the department or facility, which may then proceed with hiring, employing, or otherwise placing the individual • Added that, if TJJD determines that the criminal history should result in a certification being denied, TJJD will provide the individual with written notice of the reason for the intended denial and will give the individual at least 30 days to submit any relevant information for consideration. • Added that TJJD will provide a copy of the written notice to the administrative officer of the hiring entity. • Added that, if an individual provides additional information after receiving notice that TJJD intends to deny certification based on criminal history, TJJD will conduct an additional review and provide the individual and the department/facility with its final decision.

Rule #	Title	Summary of Rule	Summary of Proposed Key Changes

344.430	Arrest or Conviction of Current Employees	Establishes steps to be taken when a person who is certified or is in the process of being certified is arrested or convicted.	• **New standard.**
			• Explained that this section applies to individuals employed by a department or facility who are certified or for whom the department or facility is seeking certification, whether they are employed in a position requiring certification or in a position for which certification is optional.
			• Added that, if a department or facility receives notification that an individual has been arrested for, convicted of, or placed on deferred adjudication for any criminal conduct specified in this chapter, the department or facility must notify TJJD's certification office in writing no later than 10 calendar days after receiving notice.
			• Added that the department or facility must provide information regarding the circumstances of the arrest, conviction, or deferred adjudication and respond to any questions from TJJD about the matter.
			• Added that, in cases of conviction or deferred adjudication, for criminal conduct described in §344.400(a), the department or facility must remove the person from the position requiring certification and from any position allowing the person unsupervised access to juveniles.
			• Added that, in cases of conviction or deferred adjudication, TJJD will take one of the following actions upon receipt of the notification:
			  ○ TJJD will deny certification if the notification pertains to criminal conduct described in §344.400(a) of this title and the person is not yet certified.
			  ○ TJJD will revoke certification if the notification pertains to criminal conduct described in §344.400(a) of this title and the person is certified.
			  ○ If the notification pertains to criminal conduct described in §344.410(a) of this title and the person is not certified, TJJD will conduct the review described in §344.420 to determine if certification should be denied.
			  ○ If the notification pertains to criminal conduct described in §344.410(a) of this title and the person is certified, TJJD will conduct the review described in §344.420 to determine if certification should be revoked or suspended.
			• Added that TJJD will revoke or deny certification if the individual is imprisoned following a felony conviction, revocation or community supervision, revocation of probation, or revocation of mandatory supervision.

344.804	Dual Certification	Establishes circumstances under which a person may hold more than one TJJD certification.	• Made nonsubstantive wording change.

Texas Administrative Code

Title 37 Public Safety and Corrections
Part 11 Texas Juvenile Justice Department
Chapter 344 Employment, Certification, and Training

Selected standards only. Not a complete version of the chapter.

§344.200 General Qualifications for Positions Requiring Certification

Effective Date: ~~2/1/18~~

(a) **Juvenile Probation Officer.**

To be eligible for certification as a juvenile probation officer, supervisor of a juvenile probation officer, or chief administrative officer, an individual must:

(1) be at least 21 years of age;

(2) be of good moral character;

(3) have no disqualifying criminal history as described in this chapter;

(4) have no criminal history as described in §344.410(a) of this chapter unless TJJD has reviewed it and determined the person is not ineligible for certification due to the criminal history;

(5)[~~(4)~~] have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board;

(6)[~~(5)~~] possess the work experience required in §344.210 of this chapter [~~title~~] or graduate study required in §344.204 of this chapter[~~title~~];

(7)[~~(6)~~] never have had any type of certification revoked by TJJD;

(8)[~~(7)~~] complete the training required by this chapter; and

(9)[~~(8)~~] pass the certification exam as required by §344.700 of this chapter[~~title~~].

(b) **Juvenile Supervision Officer.**

To be eligible for certification as a juvenile supervision officer, an individual must:

(1) be at least 21 years of age;

(2) be of good moral character;

(3) have no disqualifying criminal history as described in this chapter;

(4) have no criminal history as described in §344.410(a) of this chapter unless TJJD has reviewed it and determined the person is not ineligible for certification due to the criminal history;

(5)[~~(4)~~] have acquired a high school diploma or its equivalent as specified in §344.204 of this chapter[~~title~~];

(6)[~~(5)~~] never have had any type of certification revoked by TJJD;

(7)[~~(6)~~] complete the training required by this chapter; and

(8)[~~(7)~~] pass the certification exam as required by §344.700 of this chapter[~~title~~].

(c) **Community Activities Officer.**

To be eligible for certification as a community activities officer, an individual must:

(1) be at least 21 years of age;

(2) be of good moral character;

(3) have no disqualifying criminal history as described in this chapter;

(4) have no criminal history as described in §344.410(a) of this chapter unless TJJD has reviewed it and determined the person is not ineligible for certification due to the criminal history;

(5)[~~(4)~~] have acquired a high school diploma or its equivalent as specified in §344.204 of this chapter[~~title~~];

(6)[~~(5)~~] never have had any type of certification revoked by TJJD; and

(7)[~~(6)~~] complete the training required by this chapter.

§344.300 Criminal History Checks

Effective Date: ~~2/1/18~~

(a) Department or facility policy must prohibit direct, unsupervised access to juveniles in a juvenile justice program or facility by the following:

(1) any person with a disqualifying criminal history as described in §344.400 of this chapter[~~title~~]; and

(2) any person with a criminal history described in §344.410(a) of this chapter, unless the person's criminal history has been reviewed by TJJD or the juvenile board or designee, as appropriate, and the review results in a determination that the person is not ineligible for certification, employment, or service in the position.

(b) A criminal history check as described in this section must be conducted for:

(1) an individual who is in a position requiring certification [~~or eligible for optional certification~~];

(2) an individual who is in a position eligible for optional certification who is seeking certification; and

(3)[~~(2)~~] an individual who may have direct, unsupervised access to juveniles in a juvenile justice facility or program and who is:

(A) an employee in a position neither [~~not~~] requiring certification nor [~~and not~~] eligible for optional certification;

(B) an employee in a position eligible for optional certification who is not seeking certification;

(C)[~~(B)~~] a volunteer;

(D)[~~(C)~~] an intern; or

(E)[~~(D)~~] an individual who provides goods or services under contract on the premises of a juvenile justice facility or program, except as provided in subsection (c) of this section.

(c) A criminal history check as specified in this section is not required for employees of a public school district who:

(1) provide services in a juvenile justice facility or program; and

(2) have completed all criminal history checks required by the Texas Education Agency.

(d) Before any individual listed in subsection (b) of this section begins employment or service provision:

(1) the department or facility must ensure the individual has electronically submitted fingerprints using Fingerprint Applicant Services of Texas (FAST) and verify that the department is able to subscribe to the individual's Fingerprint-Based Applicant Clearinghouse of Texas (FACT) record;

(2) the department must subscribe to that individual's record in FACT; and

(3) the department must ensure the criminal history is reviewed [~~use the information in FACT to determine if the individual has a disqualifying criminal history~~] as specified in this chapter and must ensure the reviewing entity has determined the person is not ineligible for certification, employment, or providing services based on the person's criminal history, in accordance with this chapter[~~§344.400 of this title~~].

(e) The department must maintain a FACT subscription for each individual in a position requiring a criminal history check for as long as the individual remains in such a position. This requirement applies regardless of the date employment or service provision began.

(f) The requirements of this section do not apply to the juvenile's attorney, family members, managing conservator, guardians, individuals listed as a juvenile's approved visitors, or any other individual not listed in subsection (b) of this section.

§344.320 Criminal History Checks for Position and Departmental Transfers and for Optional Certification

Effective Date: ~~2/1/18~~

(a) The employing department or facility must complete a criminal history check in accordance with §344.300 and §344.302 of this chapter [~~title~~] when:

(1) an individual who was not previously certified accepts a position requiring certification; [~~or~~]

(2) a certified officer employed by a department or facility accepts simultaneous or subsequent employment at a department or facility operated by or under contract with a different juvenile board; or

(3) the department or facility is seeking certification for a person in a position that allows for optional certification as provided in §344.802 of this chapter.

(b) For individuals with a record in the Fingerprint-Based Applicant Clearinghouse of Texas (FACT), the searches may be conducted using the existing fingerprints.

§344.330 Criminal History Checks for Employees of Private Juvenile Justice Facilities

Effective Date: ~~2/1/18~~

The following provisions apply when a private juvenile justice facility is operating under contract with a governmental entity as required by Sections 51.12, 51.125, and 51.126, Texas Family Code [~~§51.12~~].

(1) The juvenile probation department serving the county where the private facility is located is responsible for performing the checks and subscribing to the Fingerprint-Based Applicant Clearinghouse of Texas (FACT), as required under §344.300 of this chapter, [~~title~~] for the private facility.

(2) The department and the private facility must have a written agreement that:

(A) authorizes the private facility to have access to information resulting from the criminal history checks;

(B) limits the private facility's use of the information to the purpose for which it is given;

(C) requires the private facility to ensure the confidentiality of the information; and

(D) provides for sanctions if the private facility violates a requirement in subparagraphs (B) or (C) of this paragraph.

(3) The private facility must provide the following information to the department in writing:

(A) identifying information necessary for the department to conduct the criminal history checks as required by this chapter; and

(B) notification within 10 calendar days after an individual subject to criminal history checks separates from employment, ceases to provide services, or transfers out of a position that requires criminal history checks.

(4) The chief administrative officer or designee of the juvenile probation department serving the county where the private facility is located must notify the private facility in writing of the results of each initial criminal history check and each check required for renewal of certification.

(5) The department must immediately notify the private facility administrator in writing if the department receives a FACT alert regarding an arrest, conviction, or deferred adjudication for any offense punishable by confinement or imprisonment [~~a disqualifying offense~~] for an individual who is employed by or provides services at the private facility.

§344.400 Disqualifying Criminal History

Effective Date: ~~2/1/18~~

(a) **Applicants for Certification.**

An individual with the following criminal history is not eligible for [~~initial~~] certification or for [~~initial~~] employment in a position requiring certification:

(1) deferred adjudication or conviction for a felony listed in Texas Code of Criminal Procedure Article 42A.054 (formerly known as "3(g) offenses" under former Article 42.12) or a substantially equivalent violation against the laws of another state or the United States (as determined by TJJD), regardless of the date of disposition; or

(2) deferred adjudication or conviction for a sexually violent offense as defined in Article 62.001, Texas Code of Criminal Procedure, or a substantially equivalent violation against the laws of another state or the United States (as determined by TJJD), regardless of the date of disposition.

[~~(2) deferred adjudication or conviction for a felony other than those referenced in paragraph (1) of this subsection or a substantially equivalent violation against the laws of another state or the United States within the past 10 years;~~]

[~~(3) deferred adjudication or conviction for any Class A or B misdemeanor in Texas or a substantially equivalent violation against the laws of another state or the United States within the past five years; or~~]

[~~(4) current requirement to register as a sex offender under Texas Code of Criminal Procedure Chapter 62.~~]

[~~(b) **Individuals Employed in a Position Requiring Certification.**~~

~~An individual with the criminal history described in subsection (a) of this section is not eligible for continued employment in a position requiring certification unless a variance has been granted in accordance with §344.410 of this title.~~]

(b)[~~(c)~~] **Other Individuals Subject to Criminal Background Checks.**

An individual with the criminal history described in subsection (a) of this section is not eligible to serve in a position listed in §344.300(b)(3)[~~(2)~~] of this chapter[~~title unless an exemption has been granted in accordance with §344.410 of this title~~].

(c)[~~(d)~~] **General Provisions.**

[~~(1) The date of conviction or order of deferred adjudication is used to determine when applicable time periods expire.~~]

[~~(2) Regardless of the time periods set forth in subsection (a) of this section, at least one year must have elapsed since the completion of any period of incarceration, community supervision, or parole.~~]

[~~(3) If a department receives notification of an arrest for potentially disqualifying criminal conduct of a person hired in the capacity of a certified officer, the department must notify TJJD's certification office in writing of the alleged offense no later than 10 calendar days after receiving notice of the arrest.~~]

[~~(4) If a department receives notification of a conviction for disqualifying criminal conduct of a person hired in the capacity of a certified officer, the department must notify TJJD's certification office in writing of the offense no later than 10 calendar days after receiving notice of the conviction.~~]

(1)[~~(5)~~] Subsection (a)(1) of this section does not apply to individuals [~~officers~~] certified before February 1, 2018, [~~the effective date of this section~~] unless the certification expires.

(2)[~~(6)~~] Subsection (a)(1) of this section does not apply to individuals in a position listed in §344.300(b)(3)[~~(2)~~] of this chapter[~~title~~] who began service provision before February 1, 2018, [~~the effective date of this section~~] with no break in service after that date.

(3) Subsection (a)(2) of this section does not apply to individuals certified before the most recent effective date of this section unless the certification expires.

(4) Subsection (a)(2) of this section does not apply to individuals in a position listed in §344.300(b)(3) of this chapter who began service provision before the most recent effective date of this section with no break in service after that date.

~~[(7) Any conviction occurring before January 1, 2010, will not disqualify an individual in a position listed in §344.300(b)(2) of this title who began employment or service provision before January 1, 2010, with no break in service after that date.]~~

~~[(8) Any felony conviction, felony deferred prosecution, felony deferred adjudication, misdemeanor conviction, misdemeanor deferred prosecution, or misdemeanor deferred adjudication occurring before September 1, 2003, will not disqualify a certified officer who held an active certification on September 1, 2003.]~~

§344.410 Other Criminal History

Effective Date:

(a) **Applicants for Certification.**

(1) An individual with the following criminal history is not eligible for certification, employment, or otherwise providing service in a position requiring certification without prior review and approval by TJJD as provided in §344.420 of this chapter:

(A) deferred adjudication or conviction for a felony other than those referenced in §344.400(a) of this chapter or a substantially equivalent violation against the laws of another state or the United States (as determined by TJJD) if the date of deferred adjudication or conviction was less than 10 years prior to the date the review is requested; or

(B) deferred adjudication or conviction for any Class A or B misdemeanor in Texas or a substantially equivalent violation against the laws of another state or the United States (as determined by TJJD) if the date of deferred adjudication or conviction was less than five years prior to the date the review is requested.

(2) Regardless of the date of conviction or deferred adjudication, a review is required if an individual was incarcerated or placed on community supervision for an offense described by paragraph (1) of this subsection and less than one year has elapsed since the completion of any period of incarceration, community supervision, or parole.

(3) Regardless of the date of conviction or deferred adjudication, a review is required if an individual has a current requirement to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure, for an offense other than an offense described by §344.400(a) of this chapter.

(b) **Other Individuals Subject to Criminal Background Check.**

(1) An individual with the criminal history described in subsection (a) of this section is not eligible to begin serving or continue serving in a position listed in §344.300(b)(3) of this chapter unless the juvenile board or its documented designee has granted an exemption after considering the factors in §344.420 of this chapter.

(2) Exemptions may be granted only on a case-by-case basis. The justification for the exemption must be documented.

(3) If the department or facility receives notification of a new conviction or deferred adjudication, the individual may not continue serving in the position unless the juvenile board or its documented designee grants a new exemption in accordance with this subsection. An exemption may not be granted for a conviction or deferred adjudication described in §344.400(a) of this chapter.

(4) An exemption granted under this subsection is valid for the individual only at the juvenile probation department or facility operated by or under contract with the juvenile board granting the exemption.

(5) The exemption is not valid if the person moves to a position requiring certification or if the department or facility seeks certification for the person in a position that allows for optional certification as provided in §344.802 of this chapter; in such cases, prior review and approval from TJJD is required as provided by subsection (a) of this section.

~~[§344.410 Exemption or Variance for Disqualifying Criminal History~~ ~~Effective Date: 2/1/18]~~

~~[(a) In accordance with §349.200 of this title, the juvenile board may request a variance to §344.400(b) of this title. Such a variance may not be requested for a felony or Class A misdemeanor conviction or deferred adjudication.]~~

~~[(b) The juvenile board may grant an exemption to §344.400(c) of this title for individuals described in §344.300(b)(2) of this title whose criminal history report reflects a Class B misdemeanor conviction or deferred adjudication. Exemptions may be granted only on a case-by-case basis. The justification for the exemption must be documented.]~~

§344.420 Pre-certification Review Effective Date:

(a) A department or facility must request review from TJJD and receive confirmation from TJJD that approval has been granted before:

(1) hiring, contracting with, or otherwise placing a person with a criminal history described by §344.410(a) of this chapter into a position requiring certification; or

(2) seeking optional certification as provided in §344.802 of this chapter for a person with a criminal history described by §344.410(a) of this chapter.

(b) The purpose of the review by TJJD is to determine whether TJJD will deny a certification for the individual due to ineligibility for certification based on the criminal history. TJJD will conduct the review in accordance with this section.

(c) TJJD will first determine if the criminal history offense(s) directly relate to the duties and responsibilities of the position for which certification is required or sought. In making this determination, TJJD will consider:

(1) the nature and seriousness of the crime(s);

(2) the relationship of the crime(s) to the purposes for requiring a certification to engage in the occupation;

(3) the extent to which a certification might offer an opportunity to engage in further criminal activity of the same type as that in which the person was previously involved;

(4) the relationship of the crime(s) to the ability or capacity required to perform the duties and discharge the responsibilities of the position; and

(5) any correlation between the elements of the crime(s) and the duties and responsibilities of the position.

(d) If TJJD determines the criminal history offense(s) do not directly relate to the duties and responsibilities of the position, TJJD will not deny the certification based on the criminal history.

(e) If TJJD determines the criminal history offense(s) directly relate to the duties and responsibilities of the position, TJJD will consider the following in determining whether to deny certification:

(1) the extent and nature of past criminal activity;

(2) the age of the person when each crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation and rehabilitative effort while incarcerated or after release;

(6) evidence of the person's compliance with any conditions of probation, community supervision, parole, or mandatory supervision; and

(7) any other evidence of the person's fitness to perform the duties of the position requiring certification, including any letters of recommendation.

(f) The individual to be certified is responsible for providing TJJD with the information required by TJJD to make its decision. Failure to timely provide TJJD with requested information may result in a denial of certification.

(g) In making its determinations under this section, TJJD will not consider an arrest that did not result in a conviction or placement on deferred adjudication.

(h) If TJJD determines that the criminal history will not result in a denial of certification, TJJD will inform the individual and the department or facility, which may then proceed, as appropriate, with hiring, contracting with, or otherwise placing the individual into a position requiring certification or with seeking certification for the individual.

(i) If TJJD determines that the criminal history should result in a certification being denied, TJJD will provide the individual with written notice of the reason for the intended denial and will give the individual at least 30 calendar days to submit any relevant information for consideration. The written notice will comport with the requirements in Section 53.0231, Texas Occupations Code. TJJD will provide a copy of the written notice to the administrative officer of the hiring entity.

(j) Upon receipt of additional information as provided in subsection (i) of this section, TJJD will conduct an additional review in accordance with this section and will provide its final decision to the individual and to the department or facility that requested the initial review.

§344.430 Arrest or Conviction of Currently Certified or Employed Individuals Effective Date:

(a) This section applies to individuals employed by, under contract with, or otherwise providing services at a department or facility who are certified or for whom the department or facility is seeking certification, whether they are serving in a position requiring certification or in a position for which certification is optional under §344.802 of this chapter.

(b) If a department or facility receives notification that an individual to whom this section applies has been arrested for criminal conduct described in §344.400(a) or §344.410(a) of this chapter, the department or facility must notify TJJD's certification office in writing no later than 10 calendar days after receiving notice of the arrest. The department or facility must provide information regarding the circumstances of the arrest and respond to any questions from TJJD regarding the arrest.

(c) If a department or facility receives notification that an individual to whom this section applies has been convicted of or placed on deferred adjudication for criminal conduct described in §344.400(a) or §344.410(a) of this chapter, the department or facility must:

(1) remove the person from the position requiring certification and from any position allowing the person unsupervised access to juveniles; and

(2) notify TJJD's certification office in writing no later than 10 calendar days after receiving such notice. The department or facility must provide information regarding the conviction or deferred adjudication and respond to any questions from TJJD regarding the disposition.

(d) Upon receipt of a notification under subsection (c) of this section for criminal conduct described in §344.400(a) of this chapter, TJJD will:

(1) deny certification if the person is not yet certified; or

(2) revoke certification if the person is certified.

(e) Upon receipt of a notification under subsection (c) of this section for criminal conduct described in §344.410(a) of this chapter, TJJD will conduct the review described in §344.420 to determine if certification

should be denied if the person is not yet certified or if certification should be revoked or suspended if the person is certified.

(f) Notwithstanding subsection (d) of this section, TJJD will revoke or deny certification if the individual is imprisoned following a felony conviction, revocation of community supervision, revocation of probation, or revocation of mandatory supervision.

§344.804 Dual Certification

Effective Date: ~~2/1/18~~

(a) Individuals may hold more than one certification by TJJD if they meet all criteria required for each certification and their job duties are consistent with all certifications held, except as noted in subsection (b) of this section.

(b) An individual may not hold an active certification as a juvenile supervision officer and as a community activities officer unless the individual [~~individually~~] is concurrently employed by more than one department or facility.

(c) Training received may be used for credit toward more than one type of TJJD-issued certification if the topic is relevant to each certification sought or held.

Chapter: Agency Management and Operations Subchapter: Miscellaneous **Rule: Sick Leave Pool and Family Leave Pool Administration** [~~ACA: N/A~~] Statute(~~s~~): Texas Government Code, Chapter 661, Subchapters A and A-1 [~~§661.002~~]	**Effective Date: [~~4/1/15~~]** Page: 1 of 2 [~~New~~]Replaces: 4/1/15

RULE

(a) **Purpose.**

The purpose of this rule is to establish a sick leave pool and a family leave pool for Texas Juvenile Justice Department (TJJD) employees as mandated by Sections 661.002 and 661.022, [~~Texas~~] Government Code[~~, §661.002~~].

(b) **General Provisions.**

(1) The director of human resources [~~or designee~~] is the pool administrator.

(2) All contributions to the TJJD [~~sick~~] leave pools [~~pool~~] are voluntary.

(3) The donating employee may not designate a specific employee to receive the donated hours.

[~~(4) An employee is eligible to use time contributed to the sick leave pool if the employee has exhausted his/her sick leave because of:~~]

[~~(A) a catastrophic illness or injury; or~~]
[~~(B) a previous donation of time to the pool.~~]

[~~(5) An employee may withdraw time from the sick leave pool that the employee did not contribute only if the employee or an immediate family member suffers a catastrophic illness or injury.~~]

(4)[~~(6)~~] The following provisions apply to employees who withdraw [~~sick~~] leave pool time that is beyond what they contributed.

(A) The pool administrator determines the number of hours that an employee may withdraw from the pool; however, the amount withdrawn may never exceed the lesser of:

(i) one-third of the total time in the pool; or
(ii) 90 days.

(B) An employee absent on time withdrawn from a [~~the sick~~] leave pool may use the time as sick leave earned by the employee, and the employee is treated for all purposes as if the employee were absent on earned sick leave.

(C) The estate of a deceased employee is not entitled to payment for unused time withdrawn by the employee from a [~~the sick~~] leave pool.

(c) **Sick Leave Pool Provisions.**

(1) The donating employee may donate one or more days of the employee's accrued sick leave to the sick leave pool.

(2) An employee is eligible to use time contributed to the sick leave pool if the employee's sick leave has been exhausted because of:

(A) a catastrophic illness or injury; or
(B) a previous donation of time to the pool.

(3) An employee may withdraw time from the sick leave pool that the employee did not contribute only if the employee or an immediate family member suffers a catastrophic illness or injury.

(d) **Family Leave Pool Provisions.**

(1) The donating employee may donate one or more days of the employee's accrued sick or vacation leave to the sick leave pool.

(2) An employee is eligible to withdraw time from the family leave pool because of:

(A) the birth of a child;
(B) the placement of a foster child or adoption of a child under 18 years of age;
(C) the placement of any person 18 years of age or older requiring guardianship;
(D) a serious illness to an immediate family member or the employee, including a pandemic-related illness;
(E) an extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member; or
(F) a previous donation of time to the pool.

For implementation procedures, see PRS Chapter 28[~~.28.08~~]

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TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Interim Executive Director

Kaci Singer, Deputy General Counsel for County Matters

Subject: Discussion, consideration, and possible approval to publish proposed revisions to the following rule in the *Texas Register* for a public comment period of at least 30 days and possible conditional approval to adopt the final rule: §344.670 (Training Methods and Limitations)

Date: August 17, 2022

Before the Board for consideration are the following changes to Title 37 of the Texas Administrative Code:

- revisions to §344.670 (relating to training methods and limitations for certified officers)

The board's approval to publish changes to the above rule in the *Texas Register* for a 30-day public comment period is requested.

Also requested is the board's approval to adopt the final rule after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- the text of the rule, with the proposed changes shown as mark-ups; and
- a resolution for board action.

SUMMARY OF KEY CHANGES

- Added that credit for a training topic may be granted one additional time beyond what would normally be allowed in a certification period if:
  - the topic is one of the mandatory topics required during each certification period (as listed in §344.640); and
  - hours for the topic have been carried over from the prior certification period.

- Added a definition of live training and specified that there is no limit on the number of creditable hours that may be obtained from this type of training. Online training in which the presenter and attendees can interact would be included in this category and would no longer be subject to a limit.
- Added that there will no longer be a limit on the number of hours obtained from pre-recorded training if the training is provided, sponsored, or co-sponsored by TJJD.
- Added that the 20-hour and 10-hour limits on pre-recorded training (for juvenile supervision/probation officers and community activities officers, respectively) apply only to training that is not provided, sponsored, or co-sponsored by TJJD.

Texas Administrative Code
Title 37, Section 344.670

§344.670 Training Methods and Limitations

Effective Date: [2/1/18]

(a) **Limitations on Topics.**

(1) **Repetitive Training.**

(A) Credit will not be granted more than twice in a certification period for training that is duplicative in nature, except as noted in subparagraphs [~~subparagraph~~] (B) and (C) of this paragraph.

(B) If an officer is concurrently employed by more than one department or facility or has transferred to a new department or facility within a certification period, credit for a training topic may be granted up to four times in a certification period.

(C) For juvenile supervision officers and community activities officers, credit for a training topic may be granted one additional time if:

(i) the topic is one of the topics required during each certification period as listed in §344.640 of this chapter; and

(ii) training hours for the topic have been carried over from the prior certification period as allowed by §344.640 of this chapter.

(2) **Review of Policy and Procedure.**

A review of the policies and procedures of the department or facility is not eligible for credit unless documentation reflects that the review meets the requirements in §344.660(a) of this chapter [~~title~~].

(3) **Meetings [~~Meetings/Staff Meetings~~].**

Meetings, including staff meetings, are not considered a training activity unless supporting documentation indicates that all or part of the meeting meets the requirements in §344.660(a) of this chapter [~~title~~]. If only a portion of the meeting meets the requirements in §344.660(a) of this chapter [~~title~~], credit may be awarded only for that portion of the meeting.

(4) **Review of Employee Benefits.**

A review of employment-related benefits and plans is not eligible for credit unless:

(A) the officer is a supervisor and the review relates to supervisory duties or is being provided as part of a formal leadership development program; and

(B) the review meets the requirements in §344.660(a) of this chapter [~~title~~].

(5) **Firearms Training.**

Training required under §341.808 of this chapter [~~title~~] relating to carrying a firearm in the course of an officer's official duties is not eligible for credit toward continuing education requirements in this chapter.

(b) **Limitations on Training Methods.**

The hour limitations in this section apply to training received within a certification period.

(1) There is no limitation on the number of hours that may be obtained from live training. Live training includes in-person training and online training in which the presenter and the person claiming credit appear at the same time and have the ability to interact, either verbally or in writing.

(2) There is no limitation on the number of hours that may be obtained from watching pre-recorded training if the training is provided by, sponsored by, or co-sponsored by TJJD. Pre-recorded training includes recordings of live interactive trainings as well as recordings of trainings that were not interactive.

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(3) For juvenile probation officers and juvenile supervision officers, a maximum of 20 hours of pre-recorded training other than pre-recorded training described in paragraph (2) of this subsection may be eligible for credit.

(4) For community activities officers, a maximum of 10 hours of pre-recorded training other than pre-recorded training described in paragraph (2) of this subsection may be eligible for credit.

[~~(1) **Video or Web-Based Training for Juvenile Probation Officers and Juvenile Supervision Officers.**~~

~~For juvenile probation officers and juvenile supervision officers, a maximum of 40 hours of any combination of the following types of training may be eligible for credit:~~]

[~~(A) interactive, web-based training, such as live webinars;~~]

[~~(B) video conferencing; and~~]

[~~(C) pre-recorded training, which may account for no more than 20 hours of the total.~~]

[~~(2) **Video or Web-Based Training for Community Activities Officers.**~~

~~For community activities officers, a maximum of 20 hours of any combination of the following types of training may be eligible for credit:~~]

[~~(A) interactive, web-based training, such as live webinars;~~]

[~~(B) video conferencing; and~~]

[~~(C) pre-recorded training, which may account for no more than 10 hours of the total.~~]

(5)[~~(3)~~] **[~~College Courses.~~]**

A maximum of 40 hours may be eligible for credit for successful completion of one or more college courses in topics relevant to the officer's job duties. A course must be provided by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board. TJJD determines on a case-by-case basis whether credit is granted for the course and the number of hours approved for credit.

(c) **Limitations on Credit for Development and Delivery of Training.**

(1) A training provider may claim a maximum of 20 hours in a certification period for the time spent delivering training.

(2) An individual who develops training curriculum may claim a maximum of 20 hours in a certification period for the time spent developing the curriculum.

(3) Credit under this subsection is allowed only for the topics listed in §§344.620, 344.622, 344.624, and 344.626 of this chapter [~~title~~].

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TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Interim Executive Director

Cameron Taylor, Policy Advisor

Subject: Discussion, consideration, and possible approval to publish proposed revisions to the following rules in the *Texas Register* for a public comment period of at least 30 days and possible conditional approval to adopt the final rules: 37 TAC §§380.9187 (Suicide Alert Definitions), 380.9188 (Suicide Alert for High-Restriction Facilities), 380.9189 (Suicide Alert for Medium-Restriction Facilities), and 380.9745 (Protective Custody for Youth at Risk of Suicidal and/or Self-Harming Behavior)

Date: August 18, 2022

Before the Board for consideration are the following changes to Title 37 of the Texas Administrative Code:

- revisions to §380.9187 (relating to suicide alert definitions);
- revisions to §380.9188 (relating to suicide alert for high restriction facilities);
- revisions to §380.9189 (relating to suicide alert for medium restriction facilities); and
- revisions to §380.9745 (relating to protective custody for youth at risk of self-harm)

The board's approval to publish changes to the above rules in the *Texas Register* for a 30-day public comment period is requested.

Also requested is the board's approval to adopt the final rules after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- a summary of changes to the rules;
- the text of the rules, with the proposed changes shown as mark-ups; and
- a resolution for board action.

SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapter 380

Rule #	Title of Rule	Summary of Rule	Summary of Key Revisions

380.9187	Suicide Alert Definitions	Provides definitions of terms used in the suicide prevention rules.	• Added that suicide risk screenings and assessments must be done either in person *or via remote computer service that allows both parties to see and hear one another*.
			• Modified several definitions to:
			  ○ remove the requirement for a suicide risk screening or assessment to be face-to-face;
			  ○ list self-harming behavior separately from suicidal behavior; and
			  ○ require *staggered intervals* for room checks and for documenting certain status checks (rather than a *not-to-exceed* time frame).
			• Increased how often staff must document the status of youth on constant observation during waking hours and youth on one-to-one observation during all hours.
			• Removed the prohibition on using close observation for youth in a crisis stabilization unit or security unit. Such youth will be on maximum 5-minute checks rather than the standard maximum 10-minute checks for close observation.
			• Removed the requirement for staff to conduct an additional type of room check referred to as a constant motion check.
			• Removed the listing of specific staff positions that must be trained to conduct a suicide risk screening.
			• Replaced the term *Self-Injurious Behavior* with *Self-Harming Behavior*.
			• Made changes in addition to those previously mentioned to the definitions of the following terms: *Designated Mental Health Professional, Rescue Kit, Suicidal Behavior, Suicidal Ideation, Suicide Alert, Suicide Observation Folder, One-to-One Observation, Constant Observation, and Suicide Risk Screening.*
			• Added definitions for the following terms: *Completed Suicide, Staggered Intervals, Suicide-Resistant Clothing.*
			• Made non-substantive revisions to the definitions of the following terms: *Suicide Observation Level* and *Suicide-Resistant Room.*

380.9188	Suicide Alert for High-Restriction Facilities	Establishes suicide prevention requirements for high-restriction TJJD facilities.	***GENERAL CHANGES*** • Removed several references to which TJJD staff members are responsible for certain actions, such as family notifications, internal facility notifications, and transferring records. • Removed the requirement for suicide risk assessments to be conducted face-to-face. • Replaced "self-injurious behavior" and "self-injury" with either "self-harming behavior" or "suicidal and/or self-harming behavior," as appropriate. • Specified that certain screenings and assessments must be *initiated* (rather than conducted) within an identified time frame. • Replaced references to *on-duty supervisor* and *duty officer* with *campus shift supervisor*.

SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapter 380

Rule #	Title of Rule	Summary of Rule	Summary of Key Revisions
			INITIAL INTAKE • Added that the designated mental health professional *reviews* (rather than signs) the suicide risk assessments conducted by other mental health professionals upon a youth's admission to TJJD. ***ARRIVAL AT A FACILITY AFTER INITIAL INTAKE*** • Added that, when a youth transfers from one high-restriction facility to another, a suicide risk screening is conducted by trained staff within one hour after arrival, which is separate from the suicide screening completed by nursing staff as part of the intrasystem health screening. • Added that a suicide risk screening is conducted upon a youth's return after spending any amount of time out of TJJD's physical custody due to a significant life event, regardless of whether the absence was at least 48 hours. • Clarified that the requirement for conducting a screening or assessment within one hour after an intrasystem transfer or return from an absence does not apply to youth who are already on suicide alert at the time of arrival. • Added that, following a suicide risk screening performed due to intrasystem transfer or return from an absence: o the level of observation is determined by a mental health professional (rather than specifying that all youth identified as at risk for suicide are placed on at least constant observation); and o the suicide risk assessment is conducted *within an appropriate time frame, as established in agency procedures, based on the youth's assigned observation level and screening result* (rather than specifying within 4 hours for youth who are actively suicidal or engaged in a suicide attempt, 24 hours for youth who engaged in some other type of suicidal behavior or ideation, or seven days for youth not identified as being at risk). ***RESPONDING TO YOUTH ACTIONS*** • Clarified that staff must take the same immediate actions for a youth who has demonstrated self-harming behavior as for a youth who has demonstrated suicidal behavior. • Removed a reference to which form is used to document that a staff member has notified the shift supervisor of a youth's behavior or ideation. • Added that any type of suicidal behavior or ideation or self-harming behavior must be referred for a suicide screening by staff who observe the behavior. Removed a requirement to document suicidal behavior on an incident report. • Added that the screening or assessment initiated within one hour after notification of a youth's suicidal or self-harming behavior or suicidal ideation is not required when deemed inappropriate due to a medical emergency.

SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapter 380

Rule #	Title of Rule	Summary of Rule	Summary of Key Revisions
			• Added that, when a screening is conducted after a youth's suicidal or self-harming behavior or suicidal ideation, the suicide risk assessment is conducted *within an appropriate time frame, as established in agency procedures, based on the youth's assigned observation level and screening result* (rather than specifying within 4 hours for youth who are actively suicidal or engaged in a suicide attempt or 24 hours for youth who engaged in some other type of suicidal behavior). • Added that youth who return to the facility after being taken to the emergency room are placed on *one-to-one observation* (rather than either constant or one-to-one observation) until assessed by a mental health professional. ***AFTER A SUICIDE RISK ASSESSMENT*** • Specified that, the *designated mental health professional* (rather than the mental health professional who assessed a youth) ensures the updated suicide alert list is distributed to staff. • Clarified that the campus shift supervisor *ensures a staff member is assigned* (rather than assigns a staff member) to monitor a youth placed on suicide alert. ***SUPERVISING YOUTH ON SUICIDE ALERT*** • Added that, in addition to maintaining visual observation and documenting status, the staff member assigned to monitor a youth must follow any precautions set by the mental health professional. • Clarified that, for youth on the constant observation level, the requirement to not let the youth out of the monitoring staff member's sight applies only during waking hours (such youth are on maximum five-minute checks during sleeping hours). • Added breasts and buttocks to the list of body parts that staff are prohibited from observing when a youth is in the bathroom or shower and is also on one-to-one or constant observation. • Added that a decision to use force to remove clothing after issuing suicide-resistant clothing requires a recommendation from a mental health professional and approval from the directors over treatment and facility operations or the directors' designees. ***TREATMENT AND REASSESSMENT*** • Clarified that the mental health professional consults with the youth's case manager, *as needed,* to recommend modifications to the youth's individual case plan. • Clarified that mental health professionals review suicide risk assessments from other mental health professionals when assessing a youth currently placed on suicide alert. • Clarified that the mental health professional's assessment does not need to be documented as a progress note.

SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapter 380

Rule #	Title of Rule	Summary of Rule	Summary of Key Revisions
			• Added that, when changes are made to a youth's observation level or other safety precautions, *updated information regarding the youth* (rather than an updated suicide alert list) is distributed to *designated* facility staff. • Specified that, when information about youth on suicide alert is discussed during meetings between the psychology department and the psychiatric provider, *only youth who are on the psychiatric caseload are discussed.* ***OTHER PLACEMENT OPTIONS*** • Removed information regarding criteria and referral for placement in the protective custody program, which is addressed in a separate rule. • Clarified that emergency psychiatric placement may be pursued when it is determined a youth cannot be safely or appropriately managed *within TJJD custody* (rather than in protective custody). ***TRANSFERRING YOUTH ON SUICIDE ALERT TO NEXT PLACEMENT*** • Made the following changes for situations in which a youth on suicide alert will be transferred to another high-restriction facility: o added that *self-harming behavior* (not just suicidal behavior) is also included in the summary that is sent to the receiving facility; o removed requirements for a mental health professional at the sending facility to call the designated mental health professional at the receiving facility and to notify the health services administrator at the receiving facility; o clarified that a mental health professional at the receiving facility *initiates a suicide risk assessment* (rather than *meets with the youth*) within four hours of arrival; o added that a mental health professional at the receiving facility consults with the designated mental health professional *or a designee* regarding the plan for treatment and assessment. • Added that, when a youth on suicide alert is moved to a less restrictive placement, the mental health professional communicates observation level and precautions to facility staff, if applicable. ***REDUCING OBSERVATION LEVEL AND REMOVING YOUTH FROM SUICIDE ALERT*** • Specified that, when a youth's observation level is lowered or a youth is removed from suicide alert, the psychiatric provider is notified *only for youth who are on the psychiatric caseload.* ***TRAINING*** • Specified that staff who have *regular, direct* contact (rather than just *direct* contact) with youth receive initial and annual suicide prevention training. • Added self-harming behavior to several components of the new-hire suicide prevention training.

SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapter 380

Rule #	Title of Rule	Summary of Rule	Summary of Key Revisions
			OTHER CHANGES • Added that using force to remove clothing shall be avoided whenever possible and used only as a last resort when a youth is physically engaging in suicidal and/or self-harming behavior. • Removed a reference to notifying parents/guardians after a completed suicide, which is addressed in a separate TJJD rule.
380.9189	Suicide Alert for Medium-Restriction Facilities	Establishes suicide prevention requirements for medium-restriction TJJD facilities.	***GENERAL CHANGES*** • Removed several references to which TJJD staff members are responsible for certain actions, such as family notifications and internal facility notifications. • Removed the requirement for suicide risk assessments to be face-to-face. • Added the following provisions for medium-restriction facilities that do not have a TJJD-employed mental health professional on staff and during times when a TJJD-employed mental health professional is not on call or on duty: o TJJD uses community resources such as local mental health authorities and psychiatric hospitals for clinical services; o TJJD will attempt to obtain guidance from the mental health professional regarding frequency of follow-up assessments and any enhanced precautions or supervision requirements, consistent with TJJD's observation levels when possible; o TJJD staff follow the guidance of the community mental health professional regarding precautions and supervision even when such differ from requirements of this rule; and o TJJD staff are authorized to seek additional direction from mental health professionals within TJJD or in the community at any time if there are concerns about the appropriateness of precautions or supervision level. ***INTAKE SCREENING*** • Added that youth are placed on *one-to-one observation* (rather than an observation level assigned by the facility administrator or designee) until assessed by a mental health professional if the intake screening identifies the youth as at risk for suicide. • Clarified that the 72-hour time frame for conducting a suicide risk assessment after a youth is identified as at risk during an intake screening applies only when a TJJD-employed mental health professional is contacted to do the assessment. ***RESPONDING TO YOUTH ACTIONS*** • Clarified that staff must take the same immediate actions for a youth who has demonstrated self-harming behavior as for a youth who has demonstrated suicidal behavior.

SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapter 380

Rule #	Title of Rule	Summary of Rule	Summary of Key Revisions
			• Added that staff must begin providing *one-to-one* observation (rather than constant observation unless the facility administrator/designee directs a higher level) when responding to suicidal or self-harming behavior or suicidal ideation. • Added that the staff member who observes the youth's behavior or ideation is responsible for beginning the observation log (rather than the facility administrator or designee being responsible). • Removed a reference to which form is used to document that a staff member has notified the facility administrator or designee of a youth's behavior or ideation. • Clarified that the staff who observes the behavior or ideation refers the youth for a suicide screening. Removed a requirement to document suicidal behavior on an incident report. • Added that a suicide risk screening is not required if a mental health professional initiates a suicide risk assessment within one hour after being notified of a youth's behavior or ideation. • Added that it is the responsibility of the facility administrator or designee to ensure the youth is assessed by a mental health professional. • Added that the screening or assessment within one hour after a youth's behavior or ideation is not required when deemed inappropriate due to a medical emergency. • Removed the provision that directed the facility administrator or designee to assign the observation level following a screening. • Added that, *in cases where a TJJD-employed mental health professional has been contacted*, the *mental health professional* assigns the observation level following a screening. • Added that *one-to-one* observation (rather than *at least constant* observation) is required for a youth who is allowed to leave the facility while waiting for a suicide risk assessment. • Added that youth who had been to the emergency room must be on one-to-one observation upon return to the facility until assessed by a mental health professional. • Removed time frames for when a mental health professional must complete a suicide risk assessment. Added that, in facilities with a TJJD-employed mental health professional who is on call or on duty, the assessment must be conducted within an appropriate time frame, as established in agency procedures, based on the youth's assigned observation level and screening result. • Removed the provision that required, in cases where the time frame to conduct a suicide risk assessment has been exceeded, at least constant observation for the youth until assessed. Removed a reference to the ability of the facility administrator or designee to secure emergency psychiatric care to obtain an evaluation of the youth.

			AFTER A SUICIDE RISK ASSESSMENT • Clarified that the documentation requirements following a suicide risk assessment apply to TJJD-employed mental health professionals. • Added that the facility administrator or designee ensures appropriate facility staff are notified of the results of an assessment. Removed a requirement for the mental health professional to communicate the results to the facility administrator or designee. • Added that the youth's case manager is also notified if the youth was assessed but not placed on suicide alert. ***SUPERVISING YOUTH ON SUICIDE ALERT*** • Added that, in addition to maintaining visual observation and documenting status, the staff member assigned to monitor a youth must follow any precautions set by the mental health professional. • Clarified that, for youth on the constant observation level, the requirement to not let the youth out of the monitoring staff member's sight applies only during waking hours (such youth are on maximum five-minute checks during sleeping hours). • Added breasts and buttocks to the list of body parts that staff are prohibited from observing when a youth is in the bathroom or shower and is also on one-to-one or constant observation. • Removed the provision stating who may approve a youth on suicide alert to have access to off-site activities and added that such decisions must be approved on a case-by-case basis. Added that youth must be supervised on *one-to-one* observation (rather than at least constant observation) during any such off-site activities. ***TREATMENT AND REASSESSMENT*** • Specified that the responsibilities concerning a treatment plan, modifications to the case plan, schedule for reassessment, and required components of each assessment apply only to TJJD-employed mental health professionals. • Specified that the requirement to notify a youth's psychiatric provider of the youth's placement on suicide alert and other related information applies only when the youth is receiving *routine* psychiatric services. ***OTHER PLACEMENT OPTIONS*** • Added that emergency psychiatric placement may be obtained at a TJJD crisis stabilization unit or in a private psychiatric hospital; removed the provision stating that obtaining such placement must be in accordance with §380.8771. • Added the facility administrator *or designee* (rather than just the administrator) may seek temporary admission to the protective custody program in a high-restriction TJJD facility in certain circumstances. • Removed the requirement for the facility administrator to initiate alternate placement in a more secure facility if the emergency psychiatric placement exceeds five days.

SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapter 380

Rule #	Title of Rule	Summary of Rule	Summary of Key Revisions
			REDUCING OBSERVATION LEVEL AND REMOVING FROM SUICIDE ALERT • Added that the suicide observation level may be lowered by no more than one level every 24 hours. • Added that only youth on the lowest observation level may be removed from suicide alert. • Removed the requirement for the facility staff to notify the psychiatric provider when a youth's observation level is lowered or when a youth is removed from suicide alert. • Added that TJJD-employed mental health professionals must identify in the treatment plan any needed follow-up mental health services when a youth is removed from suicide alert. ***RELEASE OR DISCHARGE OF YOUTH WHILE ON SUICIDE ALERT*** • Removed a listing of which specific steps are taken by the mental health professional when a youth on suicide alert will be released or discharged. Added that the facility administrator or designee is responsible for ensuring a mental health professional has arranged for appropriate continuity of care in these situations, when possible. ***TRAINING*** • Specified that *staff who have regular, direct contact with youth* (rather than direct care staff) receive initial and annual suicide prevention training. • Added self-harming behavior to several components of the new-hire suicide prevention training. • Moved the reference to annual training to a separate item from the new-hire training, which clarifies that the listing of topics for new-hire training does not apply to the annual training. ***OTHER CHANGES*** • Removed wording that allowed only mental health professionals to make decisions about exceptions to regular programming, community access, housing, or clothing for youth determined to be at risk for suicide. • Specified that *at least one* rescue kit (rather than multiple rescue kits) must be present in the facility. • Removed a reference to notifying parents/guardians after a completed suicide, which is addressed in a separate TJJD rule.
380.9745	Protective Custody for Youth at Risk of Suicidal and/or Self-Harming Behavior	Establishes a program within high-restriction facilities for the temporary placement of youth at risk of serious harm to themselves.	• Removed the requirement for the suicide risk assessments required by this rule to be conducted face-to-face. • Clarified that one of the admission criteria is based on protection from *suicidal and/or self-harming behavior* (rather than solely *self-harm*). • Clarified that the maximum stay in the protective custody program without director-level approval is *120 hours* (rather than 5 calendar days).

SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapter 380

Rule #	Title of Rule	Summary of Rule	Summary of Key Revisions
			• Added that the director over facility operations or designee may approve an extension in the protective custody program beyond 120 hours *only after consultation with and agreement of the director over treatment or designee*. • Added that, if it is determined that a youth is being held in this program in violation of policy, the *facility administrator and the designated mental health professional* (rather than the facility administrator or duty officer) must be immediately notified. • Specified that, if the security dorm supervisor or designee determines that a youth is being held in the protective custody program in violation of policy, the youth must be *released from the program* (rather than returned to the general population) unless the *facility administrator finds that there was no violation* (rather than *unless the facility administrator or duty officer instructs otherwise*). • Added that youth may challenge being placed in the program by filing a *grievance* (rather than an appeal) in accordance with the rule on grievances. • Removed the requirement for the director of treatment or designee to consult with the designated mental health professional when reviewing the youth's appeal.

Draft 8/15/22

Chapter: Rules for State-Operated Programs and Facilities Subchapter: Program Services Division: Health Care Services **Rule: Suicide Alert Definitions** ~~[ACA: 4-JCF-4D-07 3-JCRF-4C-06]~~ ~~[Statutes: N/A]~~	**Effective Date: ~~[4/15/15]~~** Page: 1 of 4 Replaces: GAP.380.9187, 4/15/15 ~~[12/1/09]~~

(a) **Purpose.**

This rule establishes definitions of terms used in the Texas Juvenile Justice Department's (TJJD's) suicide prevention policies as set forth in §§380.9188, 380.9189, ~~[and]~~ 380.9190, and 380.9745 of this chapter ~~[title]~~.

(b) **Definitions.**

(1) **Completed Suicide**--a death resulting from deliberate actions to harm oneself.

~~[(1) **Constant Motion Check**--a type of room check in which a staff member walks through the housing unit in an irregular pattern at random intervals to prevent youth from "timing" room checks. Constant motion checks are performed in addition to regular room checks and documented on the regular room check log.]~~

(2) **Critical Incident Review**--a review conducted by a multi-disciplinary team designed to critically review the circumstances surrounding a death or serious incident and to recommend corrective action where necessary. The critical incident review may consider information such as incident reports, training/personnel records, policies/procedures, other relevant documents, facility practices, any non-confidential information resulting from a morbidity and mortality review, and any other information the review team determines is necessary for a comprehensive review.

(3) **Critical Incident Support Team**--a team used to provide support to youth, employees, and families involved in or adversely affected by the death of a TJJD youth or staff member.

(4) **Designated Mental Health Professional** ~~[(DMHP)]~~--a doctoral-level psychologist who has primary responsibility and accountability for the evaluation, monitoring, and treatment of youth referred for suicide risk in high-restriction ~~[high restriction]~~ facilities. In the absence of a doctoral-level psychologist, a licensed mental health professional ~~[an MHP]~~ may be appointed to serve as the designated mental health professional ~~[acting DMHP]~~ with the approval of the Central Office ~~[central office]~~ director over treatment services.

(5) **Life-Threatening Suicide Attempt**--a suicide attempt that a health care professional determines would have resulted in death except for circumstances beyond the youth's control.

(6)~~[(5)]~~ **Mental Health Professional** ~~[(MHP)]~~--a doctoral-level psychologist, masters-level mental health specialist, licensed professional counselor, licensed psychological associate, or licensed clinical social worker.

(7)~~[(6)]~~ **Morbidity and Mortality Review**--an assessment of the overall clinical care provided and the circumstances leading up to a death or certain serious medical incidents. Its purpose is to identify program strengths and opportunities for improvement in clinical care.

(8)~~[(7)]~~ **Protective Custody**--a temporary program in high-restriction ~~[high restriction]~~ facilities designed for the placement of youth who cannot be safely managed in the current dorm or living ~~[dorm/living]~~ unit due to risk of suicidal and/or self-harming behavior ~~[self-harm]~~, as determined by a mental health professional ~~[an MHP after a face-to-face assessment]~~.

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(9)[~~(8)~~] **Psychiatric Provider**--a:

(A) Texas-licensed psychiatrist; or
(B) Texas-licensed physician assistant or psychiatric nurse practitioner acting under the authorization of a psychiatrist.

(10)[~~(9)~~] **Rescue Kit**—[~~an~~] emergency medical items [~~treatment kit carried by designated employees or placed in designated secure locations that contains items~~] such as a CPR pocket mask, disposable [~~latex~~] gloves, and a tool capable of cutting ligatures.

(11) **Self-Harming Behavior**--behavior that causes harm, such as self-laceration, self-battering, taking overdoses, or exhibiting deliberate recklessness. Self-harming behavior is not considered a type of suicidal behavior, unless designated as such by a mental health professional.

(12) **Staggered Intervals**--periods of time that are irregular and unpredictable.

(13)[~~(10)~~] **Suicidal Behavior**--includes suicide attempts [~~, suicidal gestures, intentional self-injurious behavior,~~] or taking deliberate action toward carrying out [~~development of a plan or strategy for committing suicide. Suicidal behavior generally involves some overt action or clear indication of the development of~~] a specific plan or strategy to injure oneself or to cause one's own death [~~or kill oneself~~].

[~~(A) **Life-Threatening Suicide Attempt**--a suicide attempt that a health care professional determines would have resulted in death except for circumstances beyond the youth's control.~~]

[~~(B) **Suicide Attempt**--an act apparently intended to end one's life. A suicide attempt is a type of suicidal behavior.~~]

[~~(C) **Self-Injurious Behavior**--behavior that causes harm, such as self-laceration, self-battering, taking overdoses, or exhibiting deliberate recklessness. Self-injurious behavior is considered a type of suicidal behavior for reporting purposes.~~]

(14)[~~(11)~~] **Suicidal Ideation**--thoughts of engaging in suicide-related behavior. This means a youth expresses thoughts or fantasies about committing suicide or expresses a desire to commit suicide [~~kill himself/herself, but lacks a specific plan or strategy to carry it out. Suicidal ideation is not considered a type of suicidal behavior for reporting purposes~~].

(15)[~~(12)~~] **Suicide Alert**--a status that begins following a [~~face-to-face~~] suicide risk assessment by a mental health professional [~~an MHP~~], indicating that a youth is at risk to attempt suicide or self-harming behavior [~~self-injury~~] and requires [~~is in need of~~] increased supervision and/or precautions designed to limit the risk.

(16) **Suicide Attempt**--an act apparently intended to end one's life. A suicide attempt is a type of suicidal behavior.

(17)[~~(13~~] **Suicide Observation Folder**--a folder containing completed and/or active suicide observation logs/check sheets and any other pertinent information as determined by a mental health professional [~~an MHP. The staff directly responsible for monitoring the youth will possess the folder at all times while the youth is on suicide alert~~].

(18)[~~(14)~~] **Suicide Observation Level**--levels of observation determined by a mental health professional [~~an MHP~~] to provide enhanced supervision for youth who are awaiting a suicide risk assessment or who have been placed on suicide alert. General criteria for determining the appropriate level of observation are provided in subparagraphs (A) – (C) of this paragraph, however the mental health professional [~~MHP~~] may assign any level of observation deemed appropriate under the circumstances based on the professional's [~~his/her~~] clinical judgment.

DRAFT

(A) **One-to-One Observation** -- [is] generally considered appropriate for a youth who is actively suicidal, either by threatening or engaging in suicidal and/or self-harming behavior [self-injury], and who may require emergency psychiatric placement. One-to-one observation includes the following:

(i) Assigned staff may not have any other concurrent duties.

(ii) Assigned staff remains within six feet of the youth and maintains continuous, direct visual observation of the youth at all times, including while the youth is in the youth's [his/her] room or while the youth is sleeping.

(iii) Assigned staff documents the youth's status at least once every five [ten] minutes.

(iv) Assigned staff must be formally relieved by another staff or by the discontinuation of the one-to-one status.

(v) Doors to individual rooms remain unlocked, except when a youth presents an imminent danger to staff due to aggressive behavior. [Procedures for obtaining approval to lock the door for such behavior are set forth in §380.9745 of this title.]

(B) **Constant Observation** -- [is] generally considered the appropriate level of observation for a youth who is actively suicidal, either by threatening or engaging in suicidal and/or self-harming behavior [self-injury], but does not appear to require emergency psychiatric placement. Constant observation includes the following:

(i) During waking hours, the youth is within 12 feet and within sight of assigned staff at all times. Staff may have concurrent duties if the duties do not interfere with observation of the youth. The assigned staff documents the youth's status at staggered intervals not to exceed every five minutes [at least once every ten minutes (or every five minutes if the youth is placed in a security unit or a crisis stabilization unit)].

(ii) During sleeping hours, assigned staff observes and documents the youth's status at staggered intervals not to exceed [at least once] every five minutes [and performs constant motion checks at least once every hour].

(iii) For youth in a security unit or crisis stabilization unit, doors to individual rooms remain locked.

(C) **Close Observation** -- [is] generally considered the appropriate level of observation for a youth who is not actively suicidal and would be considered a lower risk for suicide but expresses suicidal ideation and/or has a recent history of suicidal and/or self-harming [self-injurious] behavior. In addition, close observation would be appropriate for a youth who denies suicidal ideation or does not threaten suicide [,] but demonstrates other concerning behavior (through actions, current circumstances, or recent history) indicating the potential for self-harm [self-injury]. With close [Close] observation, the assigned staff is generally involved in concurrent duties that do not interfere with required observation of the youth. The frequency of checks for youth on close observation is as follows [includes the following]:

(i) for youth in a security unit or crisis stabilization unit, assigned staff observes and documents the youth's status at staggered intervals not to exceed every five minutes; and

(ii)[(i)] for all other youth, assigned [Assigned] staff observes and documents the youth's status at staggered intervals not to exceed 10 minutes [at least once every ten minutes and performs constant motion checks at least once every hour]. [The staff is generally involved in concurrent duties that do not interfere with required observation of the youth.]

[(ii) This level of observation may not be applied to youth who are placed in a security unit or a crisis stabilization unit.]

DRAFT

(19) **Suicide-Resistant Clothing**--tear-resistant, single-piece attire designed to promote a youth's safety while still providing warmth and coverage.

(20)[~~(15)~~] **Suicide-Resistant Room**--a room that provides a safe environment and has no obvious materials or possessions [~~materials/possessions~~] that can be used in suicidal and/or self-harming [~~self-injurious~~] behavior or any item that can [~~may~~] be used for hanging. The room is free of all obvious protrusions and any items that provide an easy anchoring device for hanging. Lighting is tamper-proof, and there are no switches or electrical outlets in the room. The door of the room has a heavy-gauge, clear panel that provides staff an unobstructed view of the room.

(21)[~~(16)~~] **Suicide Risk Assessment**--a standardized [~~, face-to-face~~] assessment by a mental health professional [~~an MHP~~] that:

(A) is conducted in-person or via remote computer service that allows both parties to see and hear one another; and

(B) contains specific lines of inquiry regarding suicide risk, a mental status examination, and clinical observations and recommendations.

(22)[~~(17)~~] **Suicide Risk Screening**--a standardized [~~, face-to-face~~] interview [~~by an MHP or by a trained designated staff in consultation with an MHP~~] to determine the appropriate suicide observation level until a suicide risk assessment is conducted. The screening is conducted in-person or via remote computer service that allows both parties to see and hear one another.

(23)[~~(18)~~] **Trained Designated Staff**--staff trained to conduct a suicide risk screening. [~~In TJJD programs this will include at least the following staff: superintendent, assistant superintendent, administrative duty officer, dorm supervisor, case manager, on-duty supervisor, placement coordinator, principal, and juvenile correctional officer V or VI.~~]

DRAFT

Draft 8/12/22

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: [~~4/15/15~~]**
Subchapter:	Program Services	Page: 1 of 10
Division:	Health Care Services	Replaces: GAP.380.9188, 4/15/15 [~~12/1/09~~]
Rule:	**Suicide Alert for High-Restriction [~~High Restriction~~] Facilities**	
[~~ACA:~~	~~4-JCF-4B-06, 4D-07~~]	
[~~Statutes:~~	~~N/A~~]	

RULE

(a) **Purpose.**

This rule establishes procedures for identification, assessment, treatment, and protection of youth in high-restriction [~~high restriction~~] facilities who [~~that~~] may be at risk for suicide.

(b) **Applicability.**

This rule applies to all youth currently placed in high-restriction [~~assigned to placement in high restriction~~] facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) **Definitions.**

Definitions pertaining to this rule are under §380.9187 of this chapter [~~title~~].

(d) **General Provisions.**

(1) Treatment for youth determined to be at risk for suicide is provided within the least restrictive environment necessary to ensure safety.

(2) Youth determined to be at risk for suicide participate in regular programming to the extent possible, as determined by a mental health professional [~~(MHP)~~]. Only a mental health professional [~~an MHP~~] may make exceptions to the provision of regular programming, housing placement, or clothing.

(3) Using force to remove clothing shall be avoided whenever possible and used only as a last resort when the youth is physically engaging in suicidal and/or self-harming behavior.

(4)[~~(3)~~] Designated staff carry rescue kits at all times while on duty for use in the event of a medical emergency caused by a suicide attempt. Rescue kits are also placed in designated buildings or areas of the campus that are not accessible to youth.

(5)[~~(4)~~] As soon as possible, but not to exceed two hours, after [~~a suicide or~~] a suicide attempt, [~~the facility administrator or designee notifies~~] the youth's parent or guardian is notified (with the youth's consent if the youth is age 18 or older).

(e) **Intake Screening and Assessment.**

(1) **Upon Initial Admission to TJJD.**

(A) Upon arrival to a TJJD orientation and assessment unit, designated intake staff keep youth within direct line-of-sight supervision until the youth is screened or assessed for suicide risk.

(B) Within one hour after the youth's arrival to a TJJD orientation and assessment unit, a mental health professional initiates [~~an MHP conducts~~] an initial mental health screening and documents the results.

DRAFT

(C) If the mental health professional identifies the youth [is identified by the MHP] as potentially at risk for suicide, the mental health professional [MHP] immediately conducts a suicide risk assessment.

(D) Within 14 days after arrival at the orientation and assessment unit, all youth receive a comprehensive mental health evaluation conducted by a mental health professional [an MHP]. The mental health evaluation will include a suicide risk assessment if one has not already been completed.

(E) The suicide risk assessment completed upon initial admission includes, at a minimum:

(i) a mental status exam;

(ii) a review of all mental health and medical records submitted from the courts, county juvenile detention facilities, or any other medical or mental health provider, to include any assessments by mental health professionals [MHPs] relating to prior suicide alerts during confinement;

(iii) a review of all other available screenings and assessments; and

(iv) referrals for follow-up treatment or further assessment, as indicated.

(F) The designated mental health professional reviews [(DMHP) signs] the suicide risk assessment [, acknowledging his/her review].

[(2) **Upon Admission at a Subsequent Placement (Intrasystem Transfers).**]

[(A) Upon arrival of a youth who is not currently on suicide alert, a nurse completes an intrasystem health screening, including questions relating to suicidal ideation and behavior.]

[(B) If the youth is identified by the screening as potentially at risk for suicide:]

[(i) the nurse immediately refers the youth to an MHP for completion of a suicide risk assessment; and]

[(ii) the youth is immediately placed on constant observation unless the MHP directs a higher observation level.]

[(C) An MHP conducts a suicide risk assessment within:]

[(i) four hours after the screening if the MHP determines the youth engaged in a suicide attempt or is actively suicidal;]

[(ii) 24 hours after the screening if the MHP determines the youth does not appear to be actively suicidal but engaged in some other type of suicidal behavior or ideation; or]

[(iii) seven calendar days after the screening if the MHP determines the youth does not appear to be at risk for suicide.]

[(D) The suicide risk assessment conducted upon a youth's intrasystem transfer includes:]

[(i) a mental status exam;]

[(ii) a review of the youth's masterfile and medical record, as indicated;]

DRAFT

[(iii) referrals for follow-up treatment or further assessment, as indicated;]

[(iv) a determination of whether to place the youth on suicide alert, assignment of an observation level, and designation of appropriate precautions; and]

[(v) a review by the designated mental health professional DMHP of the assessment.]

(2)[(3)] **Upon Arrival at a TJJD Facility after Intake [Return to TJJD].**

(A) Except for youth who are on suicide alert at the time of arrival, the following actions must occur within [Within] one hour after a youth's arrival at a high-restriction [high restriction] facility following an intrasystem transfer, any period of time spent out of TJJD's physical custody due to a significant life event, or a period of at least 48 hours spent out of TJJD's physical custody for any reason [(e.g., revocation of parole, return from bench warrant)]:

(i) a trained designated staff member initiates a suicide risk screening; or
(ii) a mental health professional [an MHP] initiates a suicide risk assessment.

(B) The youth is kept within direct line-of-sight supervision until the youth is screened or assessed.

(C) If a screening is conducted:

(i) the trained designated staff member immediately contacts a mental health professional [an MHP] to assign an observation level, if appropriate, based on [communicate the] results of the screening; and

[(ii) if the youth is identified by the screening as being at risk for suicide:]

(ii)[(I)] the youth is immediately placed on the observation level directed by the mental health professional [constant observation unless the MHP directs a higher observation level]; and

(iii) the mental health professional conducts a suicide risk assessment within an appropriate time frame, as established in agency procedures. Procedures will assign time frames based on the youth's assigned observation level and screening result.

[(II) an MHP conducts a suicide risk assessment within:]

[(-a-) four hours after the screening if the MHP determines the youth engaged in a suicide attempt or is actively suicidal; or]

[(-b-) 24 hours after the screening if the MHP determines the youth does not appear to be actively suicidal but engaged in some other type of suicidal behavior or ideation; or]

[(iii) if the youth is not identified by the screening as being at risk for suicide, the MHP conducts a suicide risk assessment within seven calendar days after the screening.]

(D) The suicide risk assessment conducted upon a youth's arrival at [return to] a TJJD facility includes, at a minimum:

(i) a mental status exam;
(ii) a review of the youth's masterfile and medical record, as indicated;
(iii) referrals for follow-up treatment or further assessment, as indicated;

DRAFT

(iv) a determination of whether to place the youth on suicide alert, and if placed, designation of the appropriate [assignment of an] observation level[,] and other safety [designation of appropriate] precautions; and

(v) a review by the designated mental health professional [DMHP] of the assessment.

(3) **Additional Screening by Infirmary for Intrasystem Transfers.**

(A) Upon arrival of a youth from another high-restriction TJJD facility, a nurse completes an intrasystem health screening, including questions relating to suicidal ideation and suicidal behavior.

(B) If the youth is identified by the screening as potentially at risk for suicide, the nurse immediately contacts a mental health professional and communicates the results of the screening.

(f) **Responding to Suicidal Ideation, Self-Harming Behavior, or Suicidal Behavior [or Ideation].**

(1) A [If any] staff member who has reason to believe that a youth has verbalized suicidal ideation or demonstrated self-harming or suicidal behavior [or ideation, the employee] must:

(A) immediately use the rescue kit if appropriate and seek medical attention if there is a medical emergency;
(B) verbally engage the youth;
(C) provide constant observation unless a mental health professional [an MHP] directs a higher observation level;
(D) begin a suicide observation log to document [youth] status checks of the youth;
(E) immediately notify the campus shift supervisor and document the notification; and [on-duty supervisor or the duty officer;]
[(F) document in the dorm/shift log that he/she notified the on-duty supervisor or duty officer; and]
(F)[(G)] refer the youth for a suicide screening [complete an incident report if suicidal behavior was involved].

(2) As soon as possible, but no later than one hour after notification, the campus shift supervisor [on-duty supervisor or duty officer] ensures[:]

[(A)] a trained designated staff member initiates a suicide risk screening[;] or
[(B)] a mental health professional initiates [an MHP conducts] a suicide risk assessment. This screening or assessment is not required when deemed inappropriate due to a medical emergency.

(3) If a screening is conducted:

(A) the trained designated staff member immediately contacts a mental health professional to assign an observation level based on results of the screening; and [communicates the results of the screening to the MHP;]

(B) the mental health professional conducts a suicide risk assessment within an appropriate time frame, as established in agency procedures. Procedures will assign time frames based on the youth's assigned observation level and screening result.

[(B) if the youth **is not** transported to the emergency room, an MHP conducts a face-to-face suicide risk assessment within:]

[(i) four hours after the screening if the MHP determines the youth engaged in a suicide attempt or is actively suicidal; or]

DRAFT

[(ii) 24 hours after the screening if the MHP determines the youth did not engage in a suicide attempt and does not appear to be actively suicidal, but engaged in some other type of suicidal behavior or ideation; or]

(4)[(C)] If [if] the youth is transported to the emergency room:

(A)[(i)] upon return to the facility, [the MHP decides, before the youth returns from the emergency room, whether] the youth is [will be] placed on [constant or] one-to-one observation until assessed by a mental health professional [upon his/her return to the facility]; and

(B)[(ii)] a mental health professional initiates [the MHP conducts] a [face-to-face] suicide risk assessment within four hours after the youth's return to the facility.

(5) The suicide risk assessment conducted in response to suicidal behavior or ideation includes:

(A) a mental status exam;
(B) a review of the youth's masterfile and medical record, as indicated;
(C) referrals for follow-up treatment or further assessment, as indicated;
(D) a determination of whether to place the youth on suicide alert, and if placed, designation of the appropriate [assignment of an] observation level[,] and other safety [designation of appropriate] precautions; and
(E) a review by the designated mental health professional [DMHP] of the assessment.

(6) Whenever possible, suicide risk screenings and assessments are conducted in a confidential setting.

(g) **Actions Taken Upon Completion of Suicide Risk Assessment.**

(1) **Documentation Requirements.**

(A) Upon completion of a suicide risk assessment, the mental health professional [MHP] documents the results of the assessment, including any changes in the youth's observation level.

(B) If the youth is placed on suicide alert, the mental health professional [MHP] ensures [that] the youth's name is placed on the facility's suicide alert list. The designated mental health professional ensures [and] the updated list is distributed to facility staff.

(2) **Notification of Assessment Results.**

(A) If the youth is placed on suicide alert:

(i) as soon as possible, [the MHP immediately notifies] infirmary staff, the youth's case manager, staff responsible for supervising the youth, [dorm staff,] and the campus shift supervisor are notified [on-duty supervisor] of the youth's observation level, other safety precautions, and any additional instructions; and

(ii) [the youth's case manager notifies] the youth's parent or guardian is notified as soon as possible after the youth is placed on suicide alert (with the youth's consent if the youth is age 18 or older).

(B) If the youth is not placed on suicide alert, the mental health professional [MHP] notifies the referring staff and the youth's case manager that the youth was assessed but not placed on suicide alert.

DRAFT

(3) **Assignment of Staff to Monitor Youth.**

If the youth is placed on suicide alert, the campus shift [on-duty] supervisor ensures [assigns] a specific staff member is assigned to monitor the youth and carry the suicide observation folder.

(h) **Supervision of Youth on Suicide Alert.**

(1) Unless the youth is already placed in a suicide-resistant room, the campus shift [on-duty] supervisor or trained designated staff coordinates a search of the youth's room or personal area and removes any potentially dangerous items.

(2) The suicide observation folder must be in the possession of the monitoring staff member at all times while the youth is on suicide alert.

(A) At no time may the youth possess the suicide observation folder.

(B) Each time the youth is transferred to the supervision of another staff member, the receiving staff member must take possession of the folder and document the transfer of supervision in the folder.

(3) As required by the [youth's assigned] suicide observation level and other safety precautions assigned to the youth, the monitoring staff member must:

(A) maintain direct visual observation of the youth; [and]
(B) document the youth's status at the required interval; and[.]
(C) follow any precautions set by the mental health professional.

(4) The [For youth assigned to one-to-one or constant observation, the] monitoring staff member must not leave a youth assigned to one-to-one observation [the youth] unattended or let the youth out of the staff member's [his/her] sight.

(5) During waking hours, the monitoring staff must not leave a youth assigned to constant observation unattended or let the youth out of the staff member's sight.

(6)[(A)] Any time a [When the] youth on one-to-one or constant observation is in the bathroom or shower, the monitoring staff must remain within six feet of the youth, and:

(A)[(i)] observe at least a portion of the youth's body (i.e., head, feet, or other observable parts, excluding genitalia, breasts, and buttocks); and/or

(B)[(ii)] maintain verbal contact.

(7)[(B)] When a [the] youth on one-to-one or constant observation is engaged in regular programming (e.g., education, group sessions [counseling], recreation[, etc.]), the monitoring staff will accompany the youth to the activity and remain within the required distance (i.e., 6 [six] or 12 feet). If the youth cannot be maintained within the required distance without disrupting the program, a mental health professional [the MHP] must be consulted to consider possible modifications to the youth's supervision plan or scheduled routine to ensure [that] the youth can be appropriately monitored.

(8)[(5)] Issuing suicide-resistant clothing and removing [Removal of] a youth's clothing [and issuance of suicide-resistant clothing], as well as canceling [cancellation of] programming and routine privileges, will be avoided whenever possible and [only] used only as a last resort for periods during which the youth is physically engaging in suicidal and/or self-harming [self-injurious] behavior.

(A) Decisions regarding issuance of suicide-resistant clothing and restrictions in programming and/or routine privileges may be made only by a mental health professional [the MHP].

DRAFT

(B) A decision to conduct a strip search if criteria in §380.9709 of this chapter [title] are met may be made only in consultation with a mental health professional [the MHP].

(C) A decision to use force in order to remove a youth's regular clothing after a youth has been issued suicide-resistant clothing may occur only upon the recommendation of a mental health professional and with the approval of the directors over treatment and facility operations or the directors' designees.

(9)[(6)] Unless approved by the designated mental health professional [DMHP] in consultation with the facility administrator, youth on suicide alert are not allowed access to off-campus activities or non-medical appointments. Decisions regarding off-campus medical appointments are made by medical staff.

(i) **Treatment and Reassessment of Youth on Suicide Alert.**

(1) A mental health professional [An MHP] develops a written treatment plan (or revises an existing care plan) that includes treatment goals and specific interventions designed to address and reduce suicidal ideation and threats, suicidal and/or self-harming [self-injurious] behavior, and suicidal threats perceived to be based upon attention-seeking or manipulative behavior. The treatment plan describes:

(A) signs, symptoms, and circumstances under which the risk for suicide or other self-harming [self-injurious] behavior is likely to reoccur [recur];
(B) how reoccurrence [recurrence] of suicidal and other self-harming [self-injurious] behavior can be avoided; and
(C) actions the youth and staff can take if the suicidal and other self-harming [self-injurious] behavior does occur.

(2) The mental health professional [MHP] consults with the youth's case manager, as needed, to recommend modifications to the youth's individual case plan based on issues identified in the treatment plan. The mental health professional [MHP] consults with staff responsible for supervising the youth [direct care staff] regarding the youth's progress.

(3) While the youth is on suicide alert, a mental health professional [the MHP] assesses the youth at least once every 48 hours, unless the youth is placed on one-to-one observation, in which case the mental health professional [MHP] assesses the youth at least once every 24 hours.

(4) For each assessment, the mental health professional [MHP]:

(A) reviews the contents of the suicide observation folder, as well as suicide risk assessments and progress notes from other mental health professionals [MHPs] as applicable;

(B) determines whether any changes should be made to the youth's observation level or other safety precautions, in consultation with the designated mental health professional [DMHP];

(C) documents any changes in the observation level or other safety precautions in the suicide observation folder; and

(D) documents the assessment, including [as a progress note that provides] a sufficient description of the youth's emotional status, observed behavior, recommended observation level, justification for decision, and any special instructions for staff.

(5) Each time a change is made to the youth's observation level or other safety precautions, staff responsible for supervising the youth are notified [the MHP notifies direct care staff] and [ensures

DRAFT

an] updated information regarding the youth [suicide alert list] is distributed to designated facility staff, including infirmary staff.

(6) During routine meetings between the psychology department and the psychiatric provider, the designated mental health professional [DMHP] or designee discusses information concerning youth on suicide alert who are on the psychiatric caseload [with the psychiatric provider].

(j) **Protective Custody or Emergency Psychiatric Placement.**

(1) Youth who cannot be safely managed in their assigned living units may be referred for placement in a suicide-resistant room in the protective custody program, in accordance with §380.9745 of this chapter. [If an MHP, in consultation with the DMHP, determines that the youth is a serious and immediate danger to himself/herself and cannot be safely managed in the living unit, the MHP may initiate placement in a suicide-resistant room by referring the youth to the protective custody program in accordance with §380.9745 of this title.] All treatment, reassessment [re-assessment], and observation requirements established in this rule will continue to apply while a [the] youth is assigned to protective custody[,] unless otherwise noted in §380.9745 of this chapter [title].

(2) If the designated mental health professional [DMHP] or psychiatric provider determines that a [the] youth is in serious and imminent risk of suicidal and/or self-harming behavior [self-injury] and cannot be safely or appropriately managed within TJJD [in protective] custody, the designated mental health professional [DMHP] or psychiatric provider may seek emergency psychiatric placement in accordance with §380.8771 of this chapter [title]. The youth will be placed on one-to-one observation until received at the emergency placement.

(k) **Intrasystem Transfer of Youth on Suicide Alert.**

(1) Prior to transferring a youth on suicide alert to another high-restriction TJJD [high restriction] facility:

(A) within 24 hours prior to transfer, a mental health professional [the MHP] at the sending facility[:]

[(i)] sends a summary of the youth's suicidal and/or self-harming behavior, assessments, and treatment to the designated mental health professional [DMHP] and facility administrator or their designees [designee] at the receiving facility and any stopover [transitional] facilities en route to the receiving facility; and

[(ii) calls the DMHP at the receiving and any transitional facilities to communicate the observation level of the youth and any other pertinent information; and]

[(iii) notifies the health services administrator at the sending facility, who will communicate the observation level of the youth and any other pertinent information to the receiving facility's infirmary; and]

(B) staff assigned to monitor the youth [direct care staff] at the sending facility provide the suicide observation folder to the transporting staff.

(2) A mental health professional [An MHP] at the receiving facility:

(A) as soon as possible, but no later than four hours after the youth's arrival, reviews the transfer summary and initiates a suicide risk assessment [meets with the youth];

[(B) notifies direct care and nursing staff of the youth's suicide observation level prior to assignment of the youth to a dorm/living unit;]

(B)[(C)] places the youth on the facility's suicide alert list;

DRAFT

(C)[(D)] ensures the suicide observation log is provided to the staff assigned to monitor the youth; and

(D)[(E)] consults with the designated mental health professional or designee [DMHP] regarding the plan for treatment and assessment.

(3) Before the youth is moved to the assigned dorm or living unit at the receiving facility, staff responsible for supervising the youth and nursing staff are notified of the youth's suicide observation level.

(l) **Moving a [Release or Discharge of] Youth on Suicide Alert to a Less Restrictive Placement.**

(1) Prior to moving [releasing or discharging] a youth on suicide alert to a less restrictive [community] placement (i.e., medium-restriction facility [medium restriction] or home placement), the mental health professional [MHP]:

(A) provides the youth (or parent/guardian if the youth is under age 18) with a referral for follow-up care;
(B) coordinates with appropriate clinical staff to schedule a follow-up appointment;
(C) communicates observation level and precautions to facility staff, if applicable;
(D)[(C)] identifies emergency resources, if needed; and
(E)[(D)] notifies the youth's parole officer, if [as] applicable.

(2) Mental [The MHP sends mental] health records are sent to the receiving mental health provider upon request.

(m) **Reduction of Observation Level and Removal from Suicide Alert.**

(1) The [level of] observation level for a youth on suicide alert may be lowered [modified] or discontinued only after a suicide risk [face-to-face] assessment by a mental health professional [an MHP], in consultation with the designated mental health professional [DMHP].

(2) A mental health professional [The MHP] may lower a [reduce the] youth's suicide observation level by no more than one level every 24 hours[,] unless otherwise approved by the designated mental health professional [DMHP] on a case-by-case basis.

(3) Only a mental health professional [an MHP] or the designated mental health professional [DMHP] may authorize removal of a youth's name from the suicide alert list. Only youth on the lowest available observation level may be removed from suicide alert.

(4) The mental health professional [MHP] notifies appropriate staff when a youth's observation level is lowered [reduced] and when a youth is removed from suicide alert. Infirmary staff notify the psychiatric provider of all such changes for youth on the psychiatric caseload.

(5) The youth's [case manager notifies the youth's] parent or guardian is notified when the youth is removed from suicide alert (with the youth's consent if the youth is age 18 or older).

(6) Upon removal from suicide alert, the mental health professional [MHP] identifies in the treatment plan any needed follow-up mental health services.

(n) **Training.**

(1) All staff who have regular, direct contact with youth (including, but not limited to, security, direct care, nursing, mental health, and education staff) receive initial training in suicide prevention and

DRAFT

response during new-hire [pre-service] training. Training addresses topics including, but not limited to:

(A) identifying the warning signs and symptoms of suicidal and/or self-harming behavior;
(B) high-risk periods for suicidal and/or self-harming behavior [suicide];
(C) juvenile suicide research, to include the demographic and cultural parameters of suicidal behavior, incidence, and precipitating factors;
(D) responding to suicidal youth and [depressed] youth experiencing mental health symptoms;
(E) communication between correctional and health care personnel;
(F) referral procedures;
(G) housing, observation, and suicide alert procedures; and
(H) follow-up monitoring of youth who engage in suicidal behavior, self-harming behavior, and/or suicidal [or] ideation.

(2) All staff [personnel] who have regular, direct contact with youth receive annual suicide prevention training.

(3) Staff designated to conduct suicide screenings receive training from a mental health professional [an MHP] regarding suicide alert policy, suicide indicators, and suicide screening.

(o) **Post-Incident Debriefing and Analysis.**

(1) After a completed suicide or a life-threatening suicide attempt, the facility administrator or designee coordinates a debriefing with appropriate facility staff as soon as possible after the situation has been stabilized, in accordance with agency procedures.

(2) After a completed suicide, the executive director or designee may dispatch a critical incident support team to provide counseling for youth and staff, coordination of facility activities, and assistance with follow-up care.

(3) After a completed suicide, the medical director conducts a morbidity and mortality review in coordination with appropriate clinical staff. The medical director may conduct a morbidity and mortality review after a life-threatening suicide attempt.

(4) After a completed suicide or a life-threatening suicide attempt, a critical incident review is convened to determine if the incident reveals system-wide deficiencies and to recommend improvements to agency policies, operational procedures, the physical plant, and/or training requirements.

(5) In the event of a completed suicide, all actions, notifications, and reports required under §385.9951 of this chapter [title] must be completed.

See CMS.06.71 for implementation procedures.

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8/17/22 Draft

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: [~~4/1/15~~]**
Subchapter:	Program Services	Page: 1 of 7
Division:	Health Care Services	
Rule:	**Suicide Alert for Medium-Restriction [~~Medium Restriction~~] Facilities**	Replaces: GAP.380.9189, 4/1/15 [~~12/1/09~~]
[~~ACA:~~	~~3-JCRF-4C-06, 4C-09~~]	
[~~Statutes:~~	~~N/A~~]	

RULE

(a) **Purpose.**

This rule establishes procedures for identification, assessment, treatment, and protection of youth in medium-restriction [~~medium restriction~~] facilities who may be at risk for suicide.

(b) **Applicability.**

(1) This rule applies to all youth currently placed in medium-restriction [~~assigned to placement in medium restriction~~] facilities operated by the Texas Juvenile Justice Department (TJJD).

(2) Responsibilities assigned to mental health professionals [~~(MHPs)~~] in this rule apply only to mental health professionals [~~MHPs~~] employed by TJJD.

(3) For facilities that do not have a mental health professional employed by TJJD and during periods when a TJJD-employed mental health professional is not on call or on duty:

(A) TJJD uses community resources such as local mental health authorities and psychiatric hospitals for all required clinical services;

(B) TJJD staff will attempt to obtain guidance from the mental health professional regarding any enhanced precautions or supervision requirements (consistent with §380.9187 of this chapter when possible) and frequency of follow-up assessments. TJJD staff follow the guidance and instructions provided by the community mental health professional regarding precautions and supervision for youth even when such differ from this rule; and

(C) TJJD staff are authorized to seek additional instruction, guidance, or assessments from mental health professionals within TJJD or in the community at any time if there are concerns about the appropriateness of precautions or required supervision level.

(c) **Definitions.**

Definitions pertaining to this rule are under §380.9187 of this chapter [~~title~~].

(d) **General Provisions.**

(1) Treatment for youth determined to be at risk for suicide is provided within the least restrictive environment necessary to ensure safety.

(2) Youth determined to be at risk for suicide participate in regular programming to the extent possible. [~~, as determined by an MHP. Only an MHP may make exceptions to the provision of regular programming, community access, housing placement, or clothing.~~]

(3) A rescue kit [~~Rescue kits~~] for use in medical emergencies is [~~are~~] placed in at least one designated location [~~locations~~] within the facility that is [~~are~~] not accessible to youth.

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(4) As soon as possible, but not to exceed two hours, after [a suicide or] a suicide attempt, [the facility administrator or designee notifies] the youth's parent or guardian is notified (with the youth's consent if the youth is age 18 or older).

(e) **Intake Screening.**

(1) Upon a youth's admission to a medium-restriction [medium restriction] facility, a trained staff conducts [administers] a health screening, which includes a review of the youth's file and questions relating to suicidal ideation and behavior. The results of the health screening are documented.

(2) If a youth is identified during the screening as potentially at risk for suicide:

(A) the trained staff immediately notifies the facility administrator or designee;

(B) the facility administrator or designee contacts a mental health professional [an MHP] to conduct a suicide risk assessment; and

(C) the youth is placed on the one-to-one suicide observation level until assessed by a mental health professional. [the facility administrator or designee assigns a suicide observation level. If possible, the administrator consults with an MHP in determining the appropriate level.]

(3) If a TJJD-employed mental health professional is contacted to conduct the suicide risk assessment, the [The suicide risk] assessment must be completed as soon as possible, not to exceed 72 hours.

(f) **Responding to Suicidal Ideation, Self-Harming Behavior, or Suicidal Behavior [or Ideation].**

(1) A [If any] staff member who has reason to believe that a youth has verbalized suicidal ideation or demonstrated suicidal or self-harming behavior [demonstrated suicidal behavior or ideation, the employee] must:

(A) immediately use the rescue kit if appropriate and seek medical attention if there is a medical emergency;

(B) verbally engage the youth;

(C) immediately notify the facility administrator or designee and document the notification;

(D) provide one-to-one [constant] observation [unless the facility administrator or designee directs a higher observation level];

(E) begin a suicide observation log to document status checks of the youth [document in the appropriate shift log that he/she notified the facility administrator or designee]; and

(F) refer the youth for a suicide screening [complete an incident report if suicidal behavior was involved].

[(2) Upon notification by a staff member, the facility administrator or designee begins a suicide observation log to document youth status checks.]

(2)[(3)] As soon as possible but no later than [Within] one hour after notification, a trained designated staff initiates a suicide risk screening or a mental health professional initiates an assessment. If a screening is conducted:

(A) the [The] trained staff immediately communicates the results of the screening to the facility administrator or designee; and[.]

DRAFT

(B) the facility administrator or designee ensures the youth is assessed by a mental health professional.

(3) This screening or assessment is not required when deemed inappropriate due to a medical emergency.

(4) If a TJJD-employed mental health professional is contacted to conduct the suicide risk assessment, the mental health professional [The facility administrator or designee] assigns an observation level based on the results of the suicide screening. [If possible, the administrator consults with an MHP in determining the appropriate level.]

[(A) For youth engaging in suicidal behavior, the administrator ensures the youth remains on one-to-one observation until an MHP conducts a face-to-face suicide risk assessment.]

[(B) For youth engaging in suicidal ideation only, the administrator ensures the youth remains on at least constant observation until an MHP conducts a face-to-face suicide risk assessment.]

(5)[(C)] Youth who are waiting for a suicide risk assessment are not allowed community access (e.g., community service, employment, academic attendance) unless TJJD staff supervise the youth on one-to-one [at least constant] observation.

(6) If the youth is transported to the emergency room, upon return to the medium-restriction facility, the youth is placed on one-to-one observation until assessed by a mental health professional.

(7)[(5)] In facilities with a TJJD-employed mental health professional who is either on call or on duty, the mental health professional conducts a suicide risk assessment within an appropriate time frame, as established in agency procedures. Procedures will assign time frames based on the youth's assigned observation level and screening result. [The facility administrator or designee contacts an MHP to conduct a face-to-face suicide risk assessment. The assessment must be completed within:]

[(A) four hours if the youth engaged in a suicide attempt; or]

[(B) as soon as possible, but not to exceed 72 hours, if the youth engaged in any other type of suicidal behavior or ideation.]

[(6) If the time required for an MHP to conduct a suicide risk assessment is exceeded, the youth will be maintained on at least constant observation until he/she is assessed. If necessary, the facility administrator or designee may secure emergency psychiatric care to obtain an evaluation of the youth.]

(g) **Actions Taken Upon Completion of Suicide Risk Assessment.**

(1) **Documentation Requirements.**

Upon completion of a suicide risk assessment conducted by a TJJD-employed mental health professional, the mental health professional [MHP] documents the results of the assessment, including any changes in the youth's observation level.

(2) **Notification of Assessment Results.**

(A) Upon completion of a suicide risk assessment, the [MHP communicates the results of the assessment to the] facility administrator or designee ensures appropriate facility staff are notified of the results.

(B) If the youth is placed on suicide alert:

DRAFT

(i) the facility administrator or designee immediately notifies facility staff of the youth's enhanced supervision requirements [~~observation level~~] and any additional instructions; and

(ii) [~~the youth's case manager notifies~~] the youth's parent or guardian is notified as soon as possible after the youth is placed on suicide alert (with the youth's consent if the youth is age 18 or older).

(C) If the youth is not placed on suicide alert, the facility administrator or designee notifies the referring staff and the youth's case manager that the youth was assessed and not placed on suicide alert.

(3) **Assignment of Staff to Monitor Youth.**

If the youth is placed on suicide alert, the facility administrator or designee assigns a specific staff member to monitor the youth and document status checks.

(h) **Supervision of Youth on Suicide Alert.**

(1) The facility administrator or designee coordinates a search of the youth's room and removes any potentially dangerous items.

(2) A suicide observation monitoring sheet must be in the possession of the monitoring staff member [~~with direct supervisory responsibility for the youth~~] at all times while the youth is on suicide alert.

(A) At no time may the youth possess the suicide observation sheet.

(B) Each time the youth is transferred to the supervision of another staff member, the receiving staff member must take possession of the observation sheet and document the transfer of supervision.

(3) The [~~As required by the youth's assigned suicide observation level, the~~] monitoring staff member must:

(A) maintain direct visual observation of the youth if required; [~~and~~]
(B) document the youth's status at the required interval; and[~~.~~]
(C) follow any precautions set by the mental health professional.

(4) The [~~For youth assigned to one-to-one or constant observation, the~~] monitoring staff member must not leave a youth assigned to one-to-one observation [~~the youth~~] unattended or let the youth out of the staff member's [~~his/her~~] sight.

(5) During waking hours, the monitoring staff must not leave a youth assigned to constant observation unattended or let the youth out of the staff member's sight.

(6) Any time a [~~When the~~] youth on one-to-one or constant observation is in the bathroom or shower, the monitoring staff must remain within six feet of the youth, and:

(A) observe at least a portion of the youth's body (i.e., head, feet, or other observable parts, excluding genitalia, breasts, and buttocks); and/or

(B) maintain verbal contact.

(7)[~~(5)~~] Youth on suicide alert are not allowed access to off-site activities or appointments unless it is approved on a case-by-case basis [~~by the MHP in consultation with the facility administrator~~]. In such cases, the youth must be supervised on one-to-one [~~at least constant~~] observation.

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(i) **Treatment and Reassessment of Youth on Suicide Alert.**

(1) Subparagraphs (A)-(D) of this paragraph apply to TJJD-employed mental health professionals.

(A)[~~(1)~~] A mental health professional [~~An MHP~~] prepares a written treatment plan for each youth on suicide alert, updating or revising the plan as necessary. The treatment plan includes:

(i)[~~(A)~~] identification of the crisis stabilization issues to be addressed in ongoing assessment sessions;

(ii)[~~(B)~~] a plan of action to address these issues; and

(iii)[~~(C)~~] the degree of community restriction necessary to provide for the youth's safety.

(B)[~~(2)~~] The mental health professional [~~MHP~~] consults with facility staff to recommend modifications to the youth's individual case plan based on issues identified in the treatment plan.

(C)[~~(3)~~] While the youth is on suicide alert, the mental health professional assesses [~~MHP re-assesses~~] the youth as needed, but at least once every two calendar days.

(D)[~~(4)~~] For [~~During~~] each assessment, the mental health professional [~~MHP~~]:

(i)[~~(A)~~] reviews relevant suicide alert documentation and information;

(ii)[~~(B)~~] determines whether any changes should be made to the youth's observation level or other precautions; and

(iii)[~~(C)~~] documents any changes in the observation level, community restrictions, or other safety precautions.

(2)[~~(5)~~] Each time a change is made to the youth's observation level or other safety precautions, the facility administrator or designee ensures the changes are documented and facility staff are notified.

(3)[~~(6)~~] If the youth is receiving routine psychiatric services, the facility administrator or designee ensures the psychiatric provider is notified of the youth's placement on suicide alert and of any relevant information concerning the youth's treatment and supervision while on suicide alert.

(j) **Youth Who Cannot Be Safely Managed in Current Placement.**

(1) If the facility administrator or mental health professional [~~MHP~~] determines that a youth cannot be safely managed within the structure of the current placement due to behavior that indicates imminent risk of suicide or serious self-injury, the facility administrator or designee:

(A) ensures one-to-one observation for the youth until an emergency psychiatric placement is obtained;

(B) obtains emergency psychiatric placement at a TJJD crisis stabilization unit or in a private psychiatric hospital [~~in accordance with §380.8771 of this title~~]. For youth not on parole status, the facility administrator or designee may also seek temporary admission to protective custody in a high-restriction [~~high restriction~~] TJJD facility pending emergency psychiatric placement if no such [~~none of the above~~] placements are immediately available; and

(C) maintains communication with staff at the emergency placement to obtain current mental status information and to assess the length and suitability of the current placement. [~~If the~~

DRAFT

~~emergency placement exceeds five days, the administrator must initiate alternate placement in a more secure facility.]~~

(2) For youth maintained on constant and/or one-to-one observation longer than seven days in a medium-restriction [~~medium-restriction~~] facility, the facility administrator or designee must pursue an alternative placement with longer-term stabilization, clinical resources, and increased supervision.

(k) **Reduction of Observation Level and Removal from Suicide Alert.**

(1) The [~~level of~~] observation level for a youth on suicide alert may be lowered [~~modified~~] or discontinued only after an [~~a face-to-face~~] assessment by a mental health professional [~~an MHP~~].

(A) A youth's suicide observation level may be lowered by no more than one level every 24 hours.

(B) Only youth on the lowest available observation level may be removed from suicide alert.

(2)[~~(3)~~] The facility administrator or designee notifies facility staff when a youth's observation level is reduced and when a youth is removed from suicide alert. [~~The designated facility staff notifies the psychiatric provider of all such changes.~~]

(3)[~~(3)~~] The [~~youth's case manager notifies the~~] youth's parent or guardian is notified when the youth is removed from suicide alert (with the youth's consent if the youth is age 18 or older).

(4) For youth being treated by a TJJD-employed mental health professional, the mental health professional identifies in the treatment plan any needed follow-up mental health services when the youth is removed from suicide alert.

(l) **Release or Discharge of Youth on Suicide Alert.**

Prior to releasing or discharging a youth on suicide alert to a community placement (i.e., another non-secure placement or home placement), the facility administrator or designee ensures a mental health professional has arranged for appropriate continuity of care when possible. [~~youth's case manager contacts the MHP to ensure the following are completed:~~]

[~~(1) provide the youth (or parent/guardian if youth is under age 18) with a referral for follow-up care;~~]
[~~(2) coordinate with appropriate clinical staff to schedule a follow-up appointment;~~]
[~~(3) identify emergency resources, if needed; and~~]
[~~(4) forward mental health records to the receiving mental health provider upon request.~~]

(m) **Training.**

(1) All [~~direct care~~] staff who have regular, direct contact with youth receive initial training in suicide prevention and response during new-hire [~~pre-service~~] training[~~, as well as annual updates during in-service training~~]. Training addresses topics including, but not limited to:

(A) identifying the warning signs and symptoms of suicidal and/or self-harming behavior;
(B) high-risk periods for suicidal and/or self-harming behavior [~~suicide~~];
(C) juvenile suicide research, to include the demographic and cultural parameters of suicidal behavior, incidence, and precipitating factors;
(D) responding to suicidal youth and [~~depressed~~] youth experiencing mental health symptoms;
(E) communication between correctional and health care personnel;
(F) referral procedures;
(G) housing, observation, and suicide alert procedures; and
(H) follow-up monitoring of youth who engage in suicidal behavior, self-harming behavior, and/or suicidal [~~or~~] ideation.

DRAFT

(2) All staff who have regular, direct contact with youth receive annual suicide prevention training.

(3)[(~~2~~)] Staff designated to conduct suicide screenings receive training from a mental health professional [~~an MHP~~] regarding suicide alert policy, suicide indicators, and suicide screening.

(n) **Post-Incident Debriefing and Analysis.**

(1) After a completed suicide or a life-threatening suicide attempt, the facility administrator or designee coordinates a debriefing with appropriate facility staff as soon as possible after the situation has been stabilized, in accordance with agency procedures.

(2) After a completed suicide, the executive director or designee may dispatch a critical incident support team to provide counseling for youth and staff, coordination of facility activities, and assistance with follow-up care.

(3) After a completed suicide, the medical director conducts a morbidity and mortality review in coordination with appropriate clinical staff. The medical director may conduct a morbidity and mortality review after a life-threatening suicide attempt.

(4) After a completed suicide or a life-threatening suicide attempt, a critical incident review is convened to determine if the incident reveals system-wide deficiencies and to recommend improvements to agency policies, operational procedures, the physical plant, and/or training requirements.

(5) In the event of a completed suicide, all actions, notifications, and reports required under §385.9951 of this chapter [~~title~~] must be completed.

See CMS.06.73 for implementation requirements.

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Draft 8/18/22

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: [2/15/16]**
Subchapter:	Security and Control	Page: 1 of 3
Rule:	**Protective Custody for Youth at Risk of Suicidal and/or Self-Harming Behavior [Self-Harm]**	Replaces: GAP.380.9745, 2/15/16 [12/1/09]
[ACA: 4-JCF-3C-01, 3C-03]		
[Statutes: N/A]		

RULE

(a) **Purpose.**

This rule provides for a protective custody program for the temporary placement of youth who are determined to be at risk of serious harm to themselves.

(b) **Applicability.**

This rule applies only to high-restriction facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) **Definitions.**

Definitions pertaining to this rule are in [under] §380.9187 of this chapter [title].

(d) **General Provisions.**

(1) The protective custody program is administered in the security unit. Unless otherwise noted in this rule, all standard service delivery and programming requirements in §380.9740 of this chapter must be followed while the youth is in the security unit.

(2) Protective [Placement of youth in protective] custody is used only as a last resort when a mental health professional [(MHP)] determines that a [the] youth cannot be safely managed in the youth's [his/her] assigned living unit and no appropriate less restrictive [less-restrictive] placements are immediately available. Protective custody is used only as a temporary placement until the youth can be safely returned to the youth's [his/her] assigned living unit or until another appropriate housing or facility assignment can be arranged.

(3) Unless otherwise noted in this rule, youth in protective custody are monitored, assessed, and treated in accordance with requirements in §380.9188 of this chapter [title].

(e) **Referral for Placement in Protective Custody.**

(1) Only a mental health professional [an MHP] may authorize the referral of a youth to the security unit for possible placement in protective custody. The referral may be made only:

(A) after a trained designated staff member completes a suicide risk screening, as described in §380.9188 of this chapter, [title] and the mental health professional [MHP] has consulted with the staff member concerning the results of the screening; and

(B) if the mental health professional [MHP] determines that the youth is in imminent risk of serious self-injury and cannot be safely managed in the youth's [his/her] assigned living unit.

(2) The youth may be held in the security unit on referral for up to four hours, pending the completion of a [face-to-face] suicide risk assessment by a mental health professional [an MHP]. The youth is placed on at least constant observation until the assessment [he/she is assessed by the MHP].

DRAFT

Doors must not be locked while the youth is awaiting the [suicide risk] assessment unless the youth presents an imminent danger to staff due to aggressive behavior. In such cases, doors may be locked in accordance with subsection (g)(2) of this section.

(3) When a youth is referred to a security unit, the youth's suicide observation folder is transferred to the security unit staff, who continues documenting the youth's status at the required interval.

(f) **Admission Criteria.**

Only a mental health professional [an MHP], in consultation with the facility's designated mental health professional [(DMHP)], may admit a youth to protective custody [due to suicide risk]. A youth may be placed in protective custody only if the mental health professional [MHP] has conducted a [face-to-face] suicide risk assessment [as described in §380.9188 of this title] and the mental health professional [MHP] has determined that:

(1) based on the youth's actions, statements, or mental status, the youth is a serious and immediate physical danger to self [himself/herself]; and

(2) confinement in the security unit is necessary to protect the youth from suicidal and/or self-harming behavior [self-harm], and there is no less restrictive setting that provides the necessary level of security and staff supervision.

(g) **Program Requirements.**

(1) Youth are placed in suicide-resistant rooms. Except for youth assigned to one-to-one observation, individual room doors remain locked.

(2) For youth assigned to one-to-one observation, individual room doors must remain unlocked[,] except when a youth presents an imminent danger to staff due to aggressive behavior. In such cases, the youth's room door may be locked if the mental health professional [provided that the MHP] determines (in consultation with the designated mental health professional [DMHP]) that locking the door is necessary to manage the youth's aggressive behavior and still allows adequate supervision to ensure the youth's safety.

(3) In accordance with requirements established in [under] §380.9188 of this chapter [title], the mental health professional [MHP] develops an individualized treatment plan that identifies crisis stabilization issues to be addressed and includes a plan of action to address the issues.

(4) The mental health professional [MHP] conducts an [a face-to-face] assessment of the youth at least once every 24 hours while the youth is admitted to the protective custody program. As part of the assessment, the mental health professional [MHP] must determine whether [if] the youth continues to be a serious and immediate physical danger to self [himself/herself] and whether [if] continued confinement is necessary to prevent self-harm.

(5) At least once every 48 hours following the youth's admission to [into] protective custody, the designated mental health professional [DMHP] reviews the documentation relating to protective custody, including the youth's treatment plan and any other relevant documentation [relating to the youth's stay in protective custody].

(6) A youth may not remain in the protective custody program for more than 120 hours [five calendar days] without written approval from the [division] director over facility operations [residential facilities] or [his/her] designee after consultation with and agreement of the director over treatment or designee. This approval must be obtained for every 24-hour period thereafter.

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(h) **Review of Admission and Extensions.**

The security dorm supervisor or [his/her] designee reviews each admission and 24-hour extension decision within one workday to determine if policies and procedures were followed. If it is determined that a youth is being held in violation of policy, the security dorm supervisor or designee:

(1) immediately notifies the facility administrator and the designated mental health professional [or duty officer];

(2) releases the youth from protective custody unless the facility administrator finds that there was no violation [unless otherwise instructed by the facility administrator or duty officer, returns the youth to the general population]; and

(3) ensures the youth remains on one-to-one observation until a mental health professional [an MHP] conducts a [face-to-face] suicide risk assessment.

(i) **Release Criteria.**

The youth must be released from protective custody when:

(1) a mental health professional [an MHP], in consultation with the designated mental health professional [DMHP], determines that the youth may return to the general population with appropriate supervision and monitoring;

(2) a mental health professional [an MHP], in consultation with the designated mental health professional [DMHP], determines that the youth meets criteria for transfer to a facility providing specialized mental health treatment, a TJJD-operated crisis stabilization unit, or a psychiatric hospital;

(3) [the division director over residential facilities or his/her designee disapproves] an extension request is not approved as provided in subsection (g)(6) of this section; or

(4) a review of the admission or extension in protective custody reveals that the youth is being held in violation of policy.

(j) **Grievances [Appeals].**

The youth may challenge [appeal his/her] placement in protective custody by filing a grievance in accordance with §380.9331 of this chapter. The grievance is assigned to the director over [to the director of] treatment or [his/her] designee. [The director of treatment or his/her designee must consult with the DMHP when reviewing the appeal.]

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SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapter 380

Rule #	Title of Rule	Summary of Rule	Summary of Key Revisions

380.9187	Suicide Alert Definitions	Provides definitions of terms used in the suicide prevention rules.	• Added that suicide risk screenings and assessments must be done either in person *or via remote computer service that allows both parties to see and hear one another*.
			• Modified several definitions to:
			  ○ remove the requirement for a suicide risk screening or assessment to be face-to-face;
			  ○ list self-harming behavior separately from suicidal behavior; and
			  ○ require *staggered intervals* for room checks and for documenting certain status checks (rather than a *not-to-exceed* time frame).
			• Increased how often staff must document the status of youth on constant observation during waking hours and youth on one-to-one observation during all hours.
			• Removed the prohibition on using close observation for youth in a crisis stabilization unit or security unit. Such youth will be on maximum 5-minute checks rather than the standard maximum 10-minute checks for close observation.
			• Removed the requirement for staff to conduct an additional type of room check referred to as a constant motion check.
			• Removed the listing of specific staff positions that must be trained to conduct a suicide risk screening.
			• Replaced the term *Self-Injurious Behavior* with *Self-Harming Behavior*.
			• Clarified that a life-threatening suicide attempt is one that a health care professional determines "would have *likely* resulted" (rather than "would have resulted") in death except for circumstances beyond the youth's control.
			• Made changes in addition to those previously mentioned to the definitions of the following terms: *Designated Mental Health Professional, Rescue Kit, Suicidal Behavior, Suicidal Ideation, Suicide Alert, Suicide Observation Folder, One-to-One Observation, Constant Observation, and Suicide Risk Screening.*
			• Added definitions for the following terms: *Completed Suicide, Staggered Intervals, Suicide-Resistant Clothing.*
			• Made non-substantive revisions to the definitions of the following terms: *Suicide Observation Level* and *Suicide-Resistant Room.*

380.9188	Suicide Alert for High-Restriction Facilities	Establishes suicide prevention requirements for high-restriction TJJD facilities.	***GENERAL CHANGES*** • Removed several references to which TJJD staff members are responsible for certain actions, such as family notifications, internal facility notifications, and transferring records. • Removed the requirement for suicide risk assessments to be conducted face-to-face. • Replaced "self-injurious behavior" and "self-injury" with either "self-harming behavior" or "suicidal and/or self-harming behavior," as appropriate.

SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapter 380

Rule #	Title of Rule	Summary of Rule	Summary of Key Revisions
			• Specified that certain screenings and assessments must be *initiated* (rather than conducted) within an identified time frame. • Replaced references to *on-duty supervisor* and *duty officer* with *campus shift supervisor*. ***INITIAL INTAKE*** • Added that the designated mental health professional *reviews* (rather than signs) the suicide risk assessments conducted by other mental health professionals upon a youth's admission to TJJD. ***ARRIVAL AT A FACILITY AFTER INITIAL INTAKE*** • Added that, when a youth transfers from one high-restriction facility to another, a suicide risk screening is conducted by trained staff within one hour after arrival, which is separate from the suicide screening completed by nursing staff as part of the intrasystem health screening. • Added that a suicide risk screening is conducted upon a youth's return after spending any amount of time out of TJJD's physical custody due to a significant life event, regardless of whether the absence was at least 48 hours. • Clarified that the requirement for conducting a screening or assessment within one hour after an intrasystem transfer or return from an absence does not apply to youth who are already on suicide alert at the time of arrival. • Added that, following a suicide risk screening performed due to intrasystem transfer or return from an absence: o the level of observation is determined by a mental health professional (rather than specifying that all youth identified as at risk for suicide are placed on at least constant observation); and o the suicide risk assessment is conducted *within an appropriate time frame, as established in agency procedures, based on the youth's assigned observation level and screening result* (rather than specifying within 4 hours for youth who are actively suicidal or engaged in a suicide attempt, 24 hours for youth who engaged in some other type of suicidal behavior or ideation, or seven days for youth not identified as being at risk). ***RESPONDING TO YOUTH ACTIONS*** • Clarified that staff must take the same immediate actions for a youth who has demonstrated self-harming behavior as for a youth who has demonstrated suicidal behavior. • Removed a reference to which form is used to document that a staff member has notified the shift supervisor of a youth's behavior or ideation. • Added that any type of suicidal behavior or ideation or self-harming behavior must be referred for a suicide screening by staff who observe the behavior. Removed a requirement to document suicidal behavior on an incident report.

SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapter 380

Rule #	Title of Rule	Summary of Rule	Summary of Key Revisions
			• Added that the screening or assessment initiated within one hour after notification of a youth's suicidal or self-harming behavior or suicidal ideation is not required when deemed inappropriate due to a medical emergency. • Added that, when a screening is conducted after a youth's suicidal or self-harming behavior or suicidal ideation, the suicide risk assessment is conducted *within an appropriate time frame, as established in agency procedures, based on the youth's assigned observation level and screening result* (rather than specifying within 4 hours for youth who are actively suicidal or engaged in a suicide attempt or 24 hours for youth who engaged in some other type of suicidal behavior). • Added that youth who return to the facility after being taken to the emergency room are placed on *one-to-one observation* (rather than either constant or one-to-one observation) until assessed by a mental health professional. ***AFTER A SUICIDE RISK ASSESSMENT*** • Specified that, the *designated mental health professional* (rather than the mental health professional who assessed a youth) ensures the updated suicide alert list is distributed to staff. • Clarified that the campus shift supervisor *ensures a staff member is assigned* (rather than assigns a staff member) to monitor a youth placed on suicide alert. ***SUPERVISING YOUTH ON SUICIDE ALERT*** • Added that, in addition to maintaining visual observation and documenting status, the staff member assigned to monitor a youth must follow any precautions set by the mental health professional. • Clarified that, for youth on the constant observation level, the requirement to not let the youth out of the monitoring staff member's sight applies only during waking hours (such youth are on maximum five-minute checks during sleeping hours). • Added breasts and buttocks to the list of body parts that staff are prohibited from observing when a youth is in the bathroom or shower and is also on one-to-one or constant observation. • Added that a decision to use force to remove clothing after issuing suicide-resistant clothing requires a recommendation from a mental health professional and approval from the directors over treatment and facility operations or the directors' designees. Also added that when force is used to remove clothing, a mental health professional must evaluate the youth's need for trauma symptom care and ensure the care is provided if appropriate. ***TREATMENT AND REASSESSMENT*** • Clarified that the mental health professional consults with the youth's case manager, *as needed,* to recommend modifications to the youth's individual case plan.

SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapter 380

Rule #	Title of Rule	Summary of Rule	Summary of Key Revisions
			• Clarified that mental health professionals review suicide risk assessments from other mental health professionals when assessing a youth currently placed on suicide alert. • Clarified that the mental health professional's assessment does not need to be documented as a progress note. • Added that, when changes are made to a youth's observation level or other safety precautions, *updated information regarding the youth* (rather than an updated suicide alert list) is distributed to *designated* facility staff. • Specified that, when information about youth on suicide alert is discussed during meetings between the psychology department and the psychiatric provider, *only youth who are on the psychiatric caseload are discussed.* ***OTHER PLACEMENT OPTIONS*** • Removed information regarding criteria and referral for placement in the protective custody program, which is addressed in a separate rule. • Clarified that emergency psychiatric placement may be pursued when it is determined a youth cannot be safely or appropriately managed *within TJJD custody* (rather than in protective custody). ***TRANSFERRING YOUTH ON SUICIDE ALERT TO NEXT PLACEMENT*** • Made the following changes for situations in which a youth on suicide alert will be transferred to another high-restriction facility: o added that *self-harming behavior* (not just suicidal behavior) is also included in the summary that is sent to the receiving facility; o removed requirements for a mental health professional at the sending facility to call the designated mental health professional at the receiving facility and to notify the health services administrator at the receiving facility; o clarified that a mental health professional at the receiving facility *initiates a suicide risk assessment* (rather than *meets with the youth*) within four hours of arrival; o added that a mental health professional at the receiving facility consults with the designated mental health professional *or a designee* regarding the plan for treatment and assessment. • Added that, when a youth on suicide alert is moved to a less restrictive placement, the mental health professional communicates observation level and precautions to facility staff, if applicable. ***REDUCING OBSERVATION LEVEL AND REMOVING YOUTH FROM SUICIDE ALERT*** • Specified that, when a youth's observation level is lowered or a youth is removed from suicide alert, the psychiatric provider is notified *only for youth who are on the psychiatric caseload.*

SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapter 380

Rule #	Title of Rule	Summary of Rule	Summary of Key Revisions
			TRAINING • Specified that staff who have *regular, direct* contact (rather than just *direct* contact) with youth receive initial and annual suicide prevention training. • Added self-harming behavior to several components of the new-hire suicide prevention training. • Added that the training received by staff who conduct suicide risk screenings is *annual* training. • Added that all training described under the training heading within this rule shall be accompanied by a test or demonstration to establish competency in the subject matter. ***OTHER CHANGES*** • Added that using force to remove clothing shall be avoided whenever possible and used only as a last resort when a youth is physically engaging in suicidal and/or self-harming behavior. • Removed a reference to notifying parents/guardians after a completed suicide, which is addressed in a separate TJJD rule.
380.9189	Suicide Alert for Medium-Restriction Facilities	Establishes suicide prevention requirements for medium-restriction TJJD facilities.	***GENERAL CHANGES*** • Removed several references to which TJJD staff members are responsible for certain actions, such as family notifications and internal facility notifications. • Removed the requirement for suicide risk assessments to be face-to-face. • Added the following provisions for medium-restriction facilities that do not have a TJJD-employed mental health professional on staff and during times when a TJJD-employed mental health professional is not on call or on duty: o TJJD uses community resources such as local mental health authorities and psychiatric hospitals for clinical services; o TJJD will attempt to obtain guidance from the mental health professional regarding frequency of follow-up assessments and any enhanced precautions or supervision requirements, consistent with TJJD's observation levels when possible; o TJJD staff follow the guidance of the community mental health professional regarding precautions and supervision even when such differ from requirements of this rule; and o TJJD staff are authorized to seek additional direction from mental health professionals within TJJD or in the community at any time if there are concerns about the appropriateness of precautions or supervision level.

			INTAKE SCREENING • Added that youth are placed on *one-to-one observation* (rather than an observation level assigned by the facility administrator or designee) until assessed by a mental health professional if the intake screening identifies the youth as at risk for suicide. • Clarified that the 72-hour time frame for conducting a suicide risk assessment after a youth is identified as at risk during an intake screening applies only when a TJJD-employed mental health professional is contacted to do the assessment. ***RESPONDING TO YOUTH ACTIONS*** • Clarified that staff must take the same immediate actions for a youth who has demonstrated self-harming behavior as for a youth who has demonstrated suicidal behavior. • Added that staff must begin providing *one-to-one* observation (rather than constant observation unless the facility administrator/designee directs a higher level) when responding to suicidal or self-harming behavior or suicidal ideation. • Added that the staff member who observes the youth's behavior or ideation is responsible for beginning the observation log (rather than the facility administrator or designee being responsible). • Removed a reference to which form is used to document that a staff member has notified the facility administrator or designee of a youth's behavior or ideation. • Clarified that the staff who observes the behavior or ideation refers the youth for a suicide screening. Removed a requirement to document suicidal behavior on an incident report. • Added that a suicide risk screening is not required if a mental health professional initiates a suicide risk assessment within one hour after being notified of a youth's behavior or ideation. • Added that it is the responsibility of the facility administrator or designee to ensure the youth is assessed by a mental health professional. • Added that the screening or assessment within one hour after a youth's behavior or ideation is not required when deemed inappropriate due to a medical emergency. • Removed the provision that directed the facility administrator or designee to assign the observation level following a screening. • Added that, *in cases where a TJJD-employed mental health professional has been contacted*, the *mental health professional* assigns the observation level following a screening. • Added that *one-to-one* observation (rather than *at least constant* observation) is required for a youth who is allowed to leave the facility while waiting for a suicide risk assessment. • Added that youth who had been to the emergency room must be on one-to-one observation upon return to the facility until assessed by a mental health professional. • Removed time frames for when a mental health professional must complete a suicide risk assessment. Added that, in facilities with a TJJD-employed mental health professional who is on call

Rule #	Title of Rule	Summary of Rule	Summary of Key Revisions
			or on duty, the assessment must be conducted within an appropriate time frame, as established in agency procedures, based on the youth's assigned observation level and screening result. • Removed the provision that required, in cases where the time frame to conduct a suicide risk assessment has been exceeded, at least constant observation for the youth until assessed. Removed a reference to the ability of the facility administrator or designee to secure emergency psychiatric care to obtain an evaluation of the youth. ***AFTER A SUICIDE RISK ASSESSMENT*** • Clarified that the documentation requirements following a suicide risk assessment apply to TJJD-employed mental health professionals. • Added that the facility administrator or designee ensures appropriate facility staff are notified of the results of an assessment. Removed a requirement for the mental health professional to communicate the results to the facility administrator or designee. • Added that the youth's case manager is also notified if the youth was assessed but not placed on suicide alert. ***SUPERVISING YOUTH ON SUICIDE ALERT*** • Added that, in addition to maintaining visual observation and documenting status, the staff member assigned to monitor a youth must follow any precautions set by the mental health professional. • Clarified that, for youth on the constant observation level, the requirement to not let the youth out of the monitoring staff member's sight applies only during waking hours (such youth are on maximum five-minute checks during sleeping hours). • Added breasts and buttocks to the list of body parts that staff are prohibited from observing when a youth is in the bathroom or shower and is also on one-to-one or constant observation. • Removed the provision stating who may approve a youth on suicide alert to have access to off-site activities and added that such decisions must be approved on a case-by-case basis. Added that youth must be supervised on *one-to-one* observation (rather than at least constant observation) during any such off-site activities. ***TREATMENT AND REASSESSMENT*** • Specified that the responsibilities concerning a treatment plan, modifications to the case plan, schedule for reassessment, and required components of each assessment apply only to TJJD-employed mental health professionals. • Specified that the requirement to notify a youth's psychiatric provider of the youth's placement on suicide alert and other related information applies only when the youth is receiving *routine* psychiatric services.

			OTHER PLACEMENT OPTIONS • Added that emergency psychiatric placement may be obtained at a TJJD crisis stabilization unit or in a private psychiatric hospital; removed the provision stating that obtaining such placement must be in accordance with §380.8771. • Added the facility administrator *or designee* (rather than just the administrator) may seek temporary admission to the protective custody program in a high-restriction TJJD facility in certain circumstances. • Removed the requirement for the facility administrator to initiate alternate placement in a more secure facility if the emergency psychiatric placement exceeds five days. ***REDUCING OBSERVATION LEVEL AND REMOVING FROM SUICIDE ALERT*** • Added that the suicide observation level may be lowered by no more than one level every 24 hours. • Added that only youth on the lowest observation level may be removed from suicide alert. • Removed the requirement for the facility staff to notify the psychiatric provider when a youth's observation level is lowered or when a youth is removed from suicide alert. • Added that TJJD-employed mental health professionals must identify in the treatment plan any needed follow-up mental health services when a youth is removed from suicide alert. ***RELEASE OR DISCHARGE OF YOUTH WHILE ON SUICIDE ALERT*** • Removed a listing of which specific steps are taken by the mental health professional when a youth on suicide alert will be released or discharged. Added that the facility administrator or designee is responsible for ensuring a mental health professional has arranged for appropriate continuity of care in these situations, when possible. ***TRAINING*** • Specified that *staff who have regular, direct contact with youth* (rather than direct care staff) receive initial and annual suicide prevention training. • Added self-harming behavior to several components of the new-hire suicide prevention training. • Moved the reference to annual training to a separate item from the new-hire training, which clarifies that the listing of topics for new-hire training does not apply to the annual training. • Added that the training received by staff who conduct suicide risk screenings is *annual* training. • Added that all training described under the training heading within this rule shall be accompanied by a test or demonstration to establish competency in the subject matter. ***OTHER CHANGES*** • Removed wording that allowed only mental health professionals to make decisions about exceptions to regular programming, community access, housing, or clothing for youth determined to be at risk for suicide.

SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapter 380

Rule #	Title of Rule	Summary of Rule	Summary of Key Revisions
			• Specified that *at least one* rescue kit (rather than multiple rescue kits) must be present in the facility. • Removed a reference to notifying parents/guardians after a completed suicide, which is addressed in a separate TJJD rule.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Lou Serrano, Deputy Executive Director for Probation, Reentry, and Community
Kaci Singer, Deputy General Counsel

Subject: Discussion, consideration, and possible approval to adopt, on an emergency basis, proposed revisions within 37 TAC Chapter 344 relating to Employment, Certification, and Training (Action)

Date: August 25, 2023

Attached is a proposal to adopt revisions to 37 TAC Chapter 344 (Employment, Certification, and Training) on an emergency basis as allowed by Section 2001.034, Government Code. That statute allows a state agency to adopt an emergency rule without prior notice, or with abbreviated notice, if the agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice.

As a result of Sunset legislation, TJJD's enabling legislation was changed, effective September 1, 2023. Changes relevant to the proposed revisions are:

1. a requirement that TJJD, no later than January 1, 2024, repeal references to a certified juvenile probation officer, juvenile supervision officer, or communities activities officer being "of good moral character" and
2. the removal of the statutory requirement that eligibility for a certification as a juvenile probation officer includes having one year of graduate study in a certain field or one year of full-time work experience in a certain field.

Given the delay in finding qualified probation officers that is sometimes caused by the graduate study or work experience requirements, TJJD staff believe public safety warrants the removal of that requirement from TJJD standards on an emergency basis. Given the timing of board meetings, TJJD believes the state law requirement justifies the emergency repeal of the standard related to good moral character in order for TJJD to be in compliance with state law.
Other changes in the Sunset legislation require TJJD, with input from the juvenile probation field, to develop standards for education requirements and work experience for certified officers. TJJD

anticipates this work beginning in the fall so that such requirements can be developed and approval for posting them can be discussed in a future meeting.

Texas Administrative Code

Title 37 Public Safety and Corrections
Part 11 Texas Juvenile Justice Department
Chapter 344 Employment, Certification, and Training

Draft 7/20/23 (pertinent sections only; not the complete chapter)

Subchapter A. Definitions and Applicability

§344.100 Definitions
§344.110 Interpretation and Applicability

Subchapter B. Qualifications for Certification and Employment

§344.200 General Qualifications for Positions Requiring Certification
§344.202 General Qualifications for Facility Administrators
§344.204 Education Requirements
§344.206 Validation Requirements for Foreign Diplomas
§344.208 Persons Not Subject to Minimum Educational Requirements
§344.210 Work Experience
§344.212 Verification of Education Requirements
§344.220 Exemptions from Required Work Experience or Graduate Study
§344.230 Persons Who May Not Act as a Chief Administrative Officer, Facility Administrator, Juvenile Probation Officer, Juvenile Supervision Officer, or Community Activities Officer

Subchapter C. Criminal History and Background Checks

§344.300 Criminal History Checks
§344.302 Military History Checks
§344.312 Criminal History Checks for Employees of Licensed Facilities or Programs
§344.320 Criminal History Checks for Position and Departmental Transfers and for Optional Certification
§344.330 Criminal History Checks for Employees of Private Juvenile Justice Facilities
§344.350 Background Checks

Subchapter D. Disqualifying Criminal History

§344.400 Disqualifying Criminal History
§344.410 Other Criminal History
§344.420 Pre-certification Review
§344.430 Arrest or Conviction of Currently Certified or Employed Individuals

Subchapter E. Training and Continuing Education

§344.600 Training Hours Required for Certification
§344.610 Relevance of Training and Standardized Curriculum
§344.620 Mandatory Training Topics for Certification Exam for Juvenile Probation Officers
§344.622 Mandatory Training Topics for Certification Exam for Juvenile Supervision Officers
§344.624 Additional Training Requirements for Certification as a Juvenile Supervision Officer
§344.626 Required Training Topics for Community Activities Officers
§344.630 On-the-Job Training
§344.640 Continuing Education Requirements for Maintaining Certification
§344.660 Approval and Review of Training and Continuing Education
§344.670 Training Methods and Limitations
§344.680 Documentation

Subchapter F. Certification Exam

§344.700 Certification Exam

Subchapter G. Certification

§344.800 Positions Requiring Certification
§344.802 Positions Eligible for Optional Certification
§344.804 Dual Certification
§344.850 Continued Employment in a Position Eligible for Certification
§344.860 Certification Process
§344.862 Expiration of Certification
§344.864 Certification Renewal Process
§344.866 Certification Status
§344.868 Change from Inactive to Expired Certification
§344.870 Request for Extension of Renewal Deadline
§344.874 Separation from Employment and Transfer from a Certified to a Non-Certified Position
§344.876 Duty to Keep Certified Officers' Addresses Current

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§344.878 Duty to Notify TJJD of Address Changes
§344.880 Reactivation, Restoration, or Transfer of Certification Records
§344.884 Voluntary Relinquishment of Certification

Subchapter B
Qualifications for Certification and Employment

§344.200 General Qualifications for Positions Requiring Certification Effective Date: ~~12/30/22~~

(a) **Juvenile Probation Officer.**

To be eligible for certification as a juvenile probation officer, supervisor of a juvenile probation officer, or chief administrative officer, an individual must:

(1) be at least 21 years of age;

~~[(2) be of good moral character;]~~

(2)[~~(3)~~] have no disqualifying criminal history as described in this chapter;

(3)[~~(4)~~] have no criminal history as described in §344.410(a) of this chapter unless TJJD has reviewed it and determined the person is not ineligible for certification due to the criminal history;

(4)[~~(5)~~] have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board;

~~[(6) possess the work experience required in §344.210 of this chapter or graduate study required in §344.204 of this chapter;]~~

(5)[~~(7)~~] never have had any type of certification revoked by TJJD;

(6)[~~(8)~~] complete the training required by this chapter; and

(7)[~~(9)~~] pass the certification exam as required by §344.700 of this chapter.

(b) **Juvenile Supervision Officer.**

To be eligible for certification as a juvenile supervision officer, an individual must:

(1) be at least 21 years of age;

~~[(2) be of good moral character;]~~

(2)[~~(3)~~] have no disqualifying criminal history as described in this chapter;

(3)[~~(4)~~] have no criminal history as described in §344.410(a) of this chapter unless TJJD has reviewed it and determined the person is not ineligible for certification due to the criminal history;

(4)[~~(5)~~] have acquired a high school diploma or its equivalent as specified in §344.204 of this chapter;

(5)[~~(6)~~] never have had any type of certification revoked by TJJD;

(6)[~~(7)~~] complete the training required by this chapter; and

(7)[~~(8)~~] pass the certification exam as required by §344.700 of this chapter.

(c) **Community Activities Officer.**

To be eligible for certification as a community activities officer, an individual must:

(1) be at least 21 years of age;

~~[(2) be of good moral character;]~~

(2)[~~(3)~~] have no disqualifying criminal history as described in this chapter;

(3)[~~(4)~~] have no criminal history as described in §344.410(a) of this chapter unless TJJD has reviewed it and determined the person is not ineligible for certification due to the criminal history;

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[(4)][(5)] have acquired a high school diploma or its equivalent as specified in §344.204 of this chapter;

[(5)][(6)] never have had any type of certification revoked by TJJD; and

[(6)][(7)] complete the training required by this chapter.

§344.204 Education Requirements

Effective Date: 2/1/18

(a) **Juvenile Probation Officer.**

(1) To be eligible for certification as a juvenile probation officer, an individual must [meet the following educational requirements:]

[(A)] have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board [; and

(B) have either:

(i) one year of graduate study at a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board in criminology, corrections, counseling, law, social work, psychology, sociology, or other field of instruction approved by TJJD; or

(ii) qualifying work experience as specified in §344.210 of this title].

[(2) For purposes of this section, one year of graduate study means successful completion of at least 18 post-graduate credit hours.]

(b) **Juvenile Supervision Officer and Community Activities Officer.**

(1) To be eligible for certification as a juvenile supervision officer or community activities officer, an individual must meet one of the following educational requirements:

(A) a diploma from a high school accredited by a generally recognized accrediting organization or from a high school operated by the United States Department of Defense. TJJD considers the following entities as generally recognized accrediting organizations:

(i) the Texas Education Agency or the equivalent agency in another state;

(ii) an entity approved by the Texas Private School Accreditation Commission; and

(iii) regional accreditation organizations such as:

(I) Middle States Association of Colleges and Schools;

(II) New England Association of Schools and Colleges;

(III) North Central Association of Colleges and Schools;

(IV) Northwest Accreditation Commission;

(V) Southern Association of Colleges and Schools; and

(VI) Western Association of Schools and Colleges;

(B) a high school equivalency certificate (e.g., GED) issued by the Texas Education Agency or equivalent agency in another state;

(C) a diploma or certificate of completion issued in a homeschool setting;

(D) a United States military record that indicates the education level received is equivalent to a United States high school diploma or high school equivalency certificate;

(E) a foreign high school diploma that meets the validation requirements established in §344.206 of this title; or

(F) unconditional acceptance into a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board.

(2) A department or facility may attempt to establish that an entity not listed in paragraph (1)(A) of this subsection is a generally recognized accrediting organization by submitting supporting documentation to the TJJD certification office. Based on the documentation, TJJD will determine whether the entity is a generally recognized accrediting organization.

§344.210 Work Experience

Effective Date: 2/1/18

~~[(a) To be eligible for certification as a juvenile probation officer, an individual who does not meet the graduate study requirement in §344.204 of this title must have one year of experience in full-time paid and/or full-time unpaid case work, counseling, community, or group work:~~

~~(1) in a social service, community, corrections, or juvenile agency that deals with offenders or disadvantaged persons; and~~

~~(2) that provides the kind of experience necessary to meet this requirement, as determined by TJJD.~~

~~(b) To meet the requirement for one year of full-time experience as required by this section, an individual must have worked at least 1,500 hours in one or more positions described by subsection (a) of this section in twelve months, which may or may not be consecutive months. Prior to hiring the individual, the department or facility must conduct and document a reference check to verify the dates of employment or volunteer service, the position held, and the total number of hours worked.]~~

§344.220 Exemptions from Required Work Experience or Graduate Study

Effective Date: 2/1/18

~~[(a) A department or facility may request an exemption from the requirement for one year of graduate study in §344.204 of this title or one year of full-time work experience in §344.210 of this title if the department or facility uses TJJD's certification system to:~~

~~(1) submit the exemption request; and~~

~~(2) document that diligent efforts were made to employ an individual who meets the graduate study or work experience requirement.~~

~~(b) Posting the position in a minimum of two job posting sources for a minimum of 20 calendar days is considered to meet the diligent-effort requirement in subsection (a)(2) of this section.~~

~~(c) The department or facility may not hire the individual as a juvenile probation officer without written verification that TJJD has approved the exemption request.~~

~~(d) The exemption process described in this standard does not apply to appointment as a facility administrator or a chief juvenile probation officer.]~~

Subchapter G
Certification

§344.866 Certification Status

Effective Date: 2/1/18

(a) **Active.**

A status that indicates a certified officer meets the current requirements of certification as set forth in this chapter and is eligible to perform the duties of a juvenile probation officer, juvenile supervision officer, and/or community activities officer, as applicable.

(b) **Inactive.**

A status that indicates an officer's certification has not expired but the officer is ineligible to perform the duties of a certified officer because:

(1) the officer is no longer employed in a position that either requires or is eligible for the certification held;

(2) the officer has been convicted of a disqualifying criminal offense; or

(3) the officer's application for certification or renewal of certification is determined by TJJD to contain deliberately false or misleading information.

(c) **Expired.**

A status that indicates an application to renew or reactivate a certification has not been submitted before the end of the grace period or any applicable extension.

(d) **Suspended.**

A status that indicates an officer's certification is actively suspended and the officer is no longer eligible for employment in a position requiring certification. If the officer's certification is suspended for failure to pay child support under Section 232.003, Texas Family Code, the suspension remains in effect until TJJD receives an order staying or vacating the suspension.

(e) **Revoked.**

A status that indicates an officer's certification has been permanently revoked by TJJD and that the officer is no longer eligible for employment or certification as a juvenile probation officer, juvenile supervision officer, or community activities officer. An individual who has had his/her certification revoked is not eligible for any future certification.

(f) **Voluntarily Relinquished.**

A status that indicates an officer has voluntarily relinquished his/her certification as provided in §344.884 of this title.

(g) **Provisional.**

A status that indicates an individual has been hired into a position requiring certification but has not yet been certified.

(h) **Ineligible.**

(1) A status that indicates an individual who was never certified is ineligible for certification as a result of conduct that occurred:

(A) while the person had a provisional certification;

(B) while the person was employed by or under contract with the Texas Juvenile Justice Department; or

(C) prior to either time described in (i) or (ii) if the conduct was unknown to TJJD.

(2) Prior to being designated as ineligible for certification, the person will be offered the same due process as a person for whom revocation or active or probated suspension of certification is sought.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Cameron Taylor, Senior Strategic Advisor

Subject: Discussion, consideration, and possible approval to publish proposed repeals of the rules listed below in the *Texas* Register for a public comment period of at least 30 days and possible conditional approval to adopt the final repeals

Date: August 18, 2023

Before the Board for consideration are repeals of the following rules:

- §385.8101 (Public Information Requests)
- §385.8117 (Private Real Property Rights Affected by Governmental Action)
- §385.8136 (Notices to Public and Private Schools)
- §385.8137 (Media Access)
- §385.8141 (Confidentiality)
- §385.8153 (Research Projects)
- §385.8161 (Notification of a Facility Opening or Relocating)
- §385.8163 (Decentralization)
- §385.8183 (Advocacy, Support Group, and Social Services Provider Access)
- §385.9959 (Transportation of Youth)
- §385.9967 (Court-Ordered Child Support)
- §385.9993 (Canteen Operations)

The board's approval to publish repeals of the above rules in the *Texas Register* for a 30-day public comment period is requested.

Also requested is the board's approval to adopt the final repeals after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- text of the rules proposed for repeal; and
- a resolution for board action.

Chapter:	Agency Management and Operations	**Effective Date: 10/1/16**
Subchapter:	Interaction with the Public	Page: 1 of 1
Rule:	**Public Information Requests**	Replaces: GAP.385.8101, 7/19/06
ACA:	N/A	
Statutes:	Gov't Code Chapter 552	

RULE

(a) **Purpose.**

This rule provides information about requests submitted to the Texas Juvenile Justice Department (TJJD) for public information consistent with the Public Information Act, Texas Government Code Chapter 552.

(b) **General Provisions.**

(1) Pursuant to Texas Government Code §552.201, the executive director is the officer for public information. The executive director may designate an open records coordinator to respond to requests for public information. Each department head within TJJD is an agent of the executive director for purposes of complying with the Public Information Act.

(2) TJJD must:

(A) make public information available for inspection and copying;

(B) carefully protect public information from deterioration, alteration, mutilation, loss, or unlawful removal; and

(C) repair, renovate, or re-bind public information as necessary to maintain it properly.

(3) Each TJJD facility and office must post a sign in the administrative offices of the facility in the form prescribed by the Office of the Attorney General. The sign must contain the basic rights of a requestor of public information, the responsibilities of TJJD, and the procedures for inspecting or obtaining a copy of public information.

(4) All requests must be in writing and should include the name, address, and telephone number of the requestor. Requests submitted by fax or e-mail are not considered received until submitted to the fax number or email address designated by TJJD on its website.

(5) Except as described in paragraph (6) of this subsection, information that is open for inspection must promptly be made available to the requestor. Promptly means as soon as possible under the circumstances, within a reasonable time, and without delay. If a response to a request cannot be made within 10 business days after receipt of the request, the open records coordinator must notify the requestor in writing of the date on which the records will be made available. TJJD is not entitled to automatically withhold for 10 business days information that is not excepted from public disclosure.

(6) If TJJD determines the request will require an opinion by the Office of the Attorney General as to the releasability of the requested information, the request to the Office of the Attorney General shall be made within 10 business days after receipt of the request for information, with written notice provided to the requestor. Otherwise, the information is open for inspection.

(7) Information requested by a member of the legislature or a member of a legislative body is provided at no charge. If the requested information is confidential, it remains confidential while in the possession of the requestor. The requestor must complete an affidavit regarding confidentiality of the information.

(8) Costs for production of requested documents are based on guidelines provided in 1 TAC Chapter 70.

Chapter:	Agency Management and Operations	**Effective Date: 12/1/16**
Subchapter:	Interaction with the Public	Page: 1 of 2
Rule:	**Private Real Property Rights Affected by Governmental Action**	Replaces: GAP.385.8117, 12/31/96
ACA:	N/A	
Statutes:	Gov't Code Chapter 2007	

RULE

(a) **Purpose.**

This rule establishes procedures for the Texas Juvenile Justice Department (TJJD) to determine if private real property rights are affected by proposed governmental action to be taken by TJJD.

(b) **Responsibility.**

The TJJD staff member proposing a governmental action is responsible for the actions described herein.

(c) **Definitions.**

Definitions pertaining to this rule are in the Private Real Property Rights Preservation Act (the Act), Chapter 2007 of the Texas Government Code.

(d) **Categorical Determination.**

(1) Activities related to the following, and the programs, policies, rules, or regulations promulgated to implement them, do not affect private real property rights:

(A) youth care and treatment;
(B) facility operations, maintenance, and construction;
(C) personnel management; and
(D) purchase of goods and services.

(2) If the proposed governmental action falls within one of the above categories, further compliance with the Act is not required and a Takings Impact Assessment (TIA) must not be initiated.

(3) If the proposed governmental action does not fall within one of the above categories, TJJD must make a No Private Real Property Impact Determination to determine if a TIA is required.

(e) **No Private Real Property Impact (No PRPI) Determination.**

(1) A No PRPI Determination is made by finding the proposed governmental action does not result in a burden on private real property according to the procedures in subsection (e)(2) of this section.

(2) A No PRPI Determination is made by answering the following questions.

(A) Will the proposed governmental action involve a physical seizure or occupation of private real property?

(B) Will the proposed governmental action involve a regulation of private real property or of activities occurring on private real property?

(C) Will the proposed governmental action diminish or destroy the right of a private property owner to exclude others from the property, possess it, or dispose of it?

(D) Will the value of private real property that is the subject of the proposed governmental action be reduced by 25% or more as a result of the action?

REPEAL

(3) If the answer to all four questions in subsection (e)(2) of this section is “NO,” there is a No PRPI Determination and no further action is required under the Act. If the answer to any of the four questions in subsection (e)(2) of this section is "YES," a TIA is required by the Act.

(f) **TIA.**

(1) **Initiating a TIA.**

Before a TIA is initiated, the following must be determined to be true pursuant to the procedures in subsections (d) and (e) of this section:

(A) the contemplated governmental action does not fall within the categorical determinations for which no TIA is required; and

(B) there may be an impact on private real property interests.

(2) **Elements of the TIA.**

If the criteria in subsection (f)(1) of this section are met, TJJD must prepare a written TIA that does the following:

(A) describes the specific purpose of the proposed governmental action;

(B) identifies:

(i) whether and how the proposed governmental action substantially advances its stated purpose;

(ii) describes the burdens imposed on private real property; and

(iii) describes the benefits to society resulting from the proposed use of private real property; and

(C) explains whether engaging in the proposed governmental action will constitute a taking under the United States Constitution, the Texas Constitution, or the Act; and

(D) describes reasonable alternative actions that could accomplish the specified purpose and compares, evaluates, and explains:

(i) how an alternative action would further the specified purpose; and
(ii) whether an alternative action would constitute a taking.

Chapter:	Agency Management and Operations	**Effective Date: 10/1/16**
Subchapter:	Interaction with the Public	Page: 1 of 1
Rule:	**Notices to Public and Private Schools**	Replaces: GAP.385.8136, 11/1/11
ACA:	N/A	
Statutes:	Code of Criminal Procedure, Article 15.27	

RULE

(a) **Purpose.**

This rule provides requirements for Texas Juvenile Justice Department (TJJD) staff to notify public and/or private elementary and secondary school officials about offense-related information concerning TJJD youth in a community placement or on parole.

(b) **Definitions.**

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

(1) **Offense**--Any felony or misdemeanor offense listed in Article 15.27, Code of Criminal Procedure.

(2) **Pertinent Details**--The name and date of the offense and a description of the facts of the offense, including details of any assaultive behavior or other violence or weapons used or possessed during the commission of the offense.

(3) **School Officials**--For public schools it is the superintendent or designee of the school/district in which the youth is enrolled; for private schools it is the principal or designee of the school in which the youth is enrolled.

(c) **Notification Requirements.**

(1) For youth in a non-secure placement or on TJJD parole, TJJD staff must provide the following information to school officials:

(A) the pertinent details of any offense that resulted in:

(i) commitment to TJJD;
(ii) an adjudication or conviction subsequent to commitment to TJJD; and
(iii) an arrest or referral to juvenile court that is pending final disposition; and

(B) information concerning whether the youth is required to register as a sex offender.

(2) TJJD staff must provide oral notice within 24 hours after learning of a youth's transfer or re-enrollment in school or before the next school day, whichever is sooner. Within seven calendar days after the oral notice, TJJD staff must provide written notice.

(3) Electronic notice of the information listed in paragraph (1) of this subsection provided to school officials within 24 hours after learning of a youth's transfer or re-enrollment in school satisfies all notice requirements set forth in this rule.

See CMS.12.02 for implementation procedures.

REPEAL

Chapter: Agency Management and Operations Subchapter: Interaction with the Public **Rule: Media Access** ACA: 4-JCF-3A-15	**Effective Date: 10/1/16** Page: 1 of 1 Replaces: GAP.385.8137, 2/25/03

RULE

(a) **Purpose.**

This rule allows for communication between a Texas Juvenile Justice Department (TJJD) youth and the media subject to rules established by TJJD in the interest of order and safety and within limitations of confidentiality rules.

(b) **General Provisions.**

(1) The news media are granted access to TJJD facilities, as is any visitor, consistent with the preservation of a youth's privacy and the maintenance of order and security in the facility. TJJD supports media contact that serves the interest of public awareness and encourages the youth to contribute productively to the community.

(2) Release of records or divulgence of information that identifies individual youth or that is otherwise confidential by law is strictly prohibited.

(3) Parental consent is not required for general news media visits that do not involve any interviewing of youth.

(4) Non-TJJD personnel are not permitted to make audio or visual recordings of any treatment session(s) addressing personal or confidential information.

(5) When the news media requests to interview or to film youth, the facility administrator must consult with TJJD's communications director to review the purpose and to determine parameters for filming and/or interviews.

(6) When the news media requests an interview or to film specific youth, the facility administrator, in consultation with the TJJD communications director or designee, makes a recommendation to the youth, and to the youth's parent or guardian if the youth is under 18 years of age, regarding the advisability of the youth granting the request. When the recommendation is against allowing an interview or filming, the request is denied by the administrator unless the youth, and the youth's parent or guardian if the youth is under 18 years of age, signs a written statement acknowledging the recommendation and electing to go forward with the interview or filming despite the recommendation. If the youth is under 18 years of age, the wishes of the youth's parent or guardian are honored. If the youth is 18 years of age or older, the wishes of the youth are honored.

(7) Prior to each interview or filming:

(A) the TJJD publicity release form must be explained to the youth and to the youth's parent or guardian if the youth is under 18 years of age;

(B) the youth must indicate on the publicity release form whether he/she wants his/her primary therapist or designee to be present during the interview or filming;

(C) the youth, and parent or guardian if the youth is under 18 years of age, must sign the publicity release form; and

(D) the youth must be informed that:

(i) the interview is voluntary;
(ii) he/she may refuse to answer any questions during the interview; and
(iii) he/she may stop the interview at any time.

Chapter:	Agency Management and Operations	**Effective Date: 10/1/16**
Subchapter:	Interaction with the Public	Page: 1 of 1
Rule:	**Confidentiality**	Replaces: GAP.385.8141, 12/18/03
ACA:	4-JCF-6F-01, 6F-05	
Statutes:	Texas Family Code Chapter 58 Texas Human Resources Code §244.003, §244.051 Texas Health and Safety Code Chapter 611 Texas Occupations Code Chapter 159 34 CFR Subtitle A, Part 99 42 CFR Chapter I, Part 2	

RULE

(a) The Texas Juvenile Justice Department (TJJD) ensures that all confidential information or data obtained or created in any medium is kept confidential as required by applicable statutes, rules, policies, and ethical standards.

(b) Employees, agents, consultants, volunteers, and any other persons associated with TJJD will not release or divulge confidential information about TJJD youth or confidential information from personnel or other files except as required or permitted by law.

REPEAL

Chapter:	Agency Management and Operations	**Effective Date: 1/1/17**
Subchapter:	Interaction with the Public	Page: 1 of 4
Rule:	**Research Projects**	Replaces: GAP.385.8153, 8/28/98
ACA:	4-JCF-6F-06	
Statutes:	Human Resources Code §203.007	

RULE

(a) **Purpose.**

This rule addresses:

(1) research related to juvenile delinquency;

(2) the assurance of confidentiality by establishing procedures that comply with state and federal guidelines and laws and accepted professional and scientific ethics; and

(3) the ability of the Texas Juvenile Justice Department (TJJD) to provide sufficient technical assistance for research projects.

(b) **General Provisions.**

(1) TJJD encourages research beneficial to TJJD or the juvenile justice system.

(2) TJJD uses research results to aid decision making regarding agency operations and youth treatment programs.

(3) TJJD collaborates with other agencies whenever possible and shares research information as appropriate and as allowed by law.

(4) Any patentable product, process, or idea that might result from a research project funded by TJJD is the property of TJJD.

(c) **Youth Participation.**

Participation by TJJD youth as research subjects is restricted as follows:

(1) TJJD youth may not be used in experimental projects involving medical, pharmaceutical, or cosmetic research.

(2) TJJD youth may participate in nonmedical, nonpharmaceutical, or noncosmetic research on a voluntary, noncoercive basis.

(3) TJJD youth who choose to participate in research projects are not:

(A) denied basic services available to other youth; or

(B) permitted to participate in research activities that are likely to accrue negative personal results (e.g., negative impact to treatment progress, causing emotional distress or physical harm, etc.).

(d) **Researchers.**

TJJD staff, university faculty or students, or contracted firms or individuals may conduct research if they:

(1) show that the proposed project will provide benefits to TJJD or the juvenile justice profession;

(2) ensure confidentiality of TJJD youth;

REPEAL

(3) do not place an undue burden on TJJD staff, youth, or agency resources;

(4) agree to comply with other agency rules; and

(5) are approved under subsection (h) of this section.

(e) **Oversight of Research Projects.**

The TJJD Research Department is responsible for ensuring research projects are proposed, reviewed, approved, and conducted in accordance with TJJD requirements.

(f) **Research Proposals.**

Project directors other than those employed by the TJJD Research Department must submit a research proposal to the Research Department, not to exceed five pages, excluding attachments. The proposal must include the following information unless otherwise approved by the director of research:

(1) project title;

(2) names and qualifications of all project researchers;

(3) purpose (e.g., thesis, professional paper, dissertation);

(4) executive summary;

(5) research questions and research design;

(6) research methodology, including statistical methods/models if applicable;

(7) comprehensive list of data elements/fields requested and how these relate to the research questions;

(8) statement of why juvenile justice data are needed;

(9) statement of how research will benefit TJJD or the juvenile justice system;

(10) amount of TJJD staff time needed to complete the research project, provide technical assistance, or compile data;

(11) number of research subjects and time required by each study subject, if applicable;

(12) time frame of research;

(13) Institutional Review Board (IRB) approval;

(14) copy of study instruments, surveys, etc.;

(15) copy of consent forms;

(16) completed Research and Analytical Testing System (RATS) questionnaire;

(17) provisions for confidentiality of research subjects;

(18) research supervisor, if any (e.g., chairperson of thesis committee);

(19) amount and source of funding, if any; and

(20) any other information requested by the director of research.

(g) **Research Agreement.**

TJJD and the researcher(s) must enter into a research agreement prior to the commencement of an outside research project. The agreement must contain the following:

(1) a copy of the approved research proposal;

(2) an agreement to maintain the confidentiality of TJJD youth;

(3) a clause providing that any patentable product, process, or idea that results from the performance of the research agreement and for which TJJD has expended appropriated funds becomes the property of TJJD; and

(4) an agreement to furnish TJJD with a copy of the final report prior to its release except as approved by the executive director.

(h) **Approval of Proposals.**

(1) TJJD approves up to eight research proposals each fiscal year. Additional proposals may be approved only if the director of research determines the additional project(s) would require minimal or no TJJD staff time.

(2) The TJJD research review committee reviews all research proposals. The committee includes representation from the TJJD Research Department, the affected program and operational areas, management, and other administrators.

(3) Proposals are reviewed four times per fiscal year as determined by the director of research. Formal notice of the research review committee's decision is provided to the researcher upon completion of the review process.

(4) Proposals involving on-site research are circulated to affected field administrators for their review, comment, and indication of level of support.

(5) Proposals requiring participation of TJJD youth are presented to the appropriate program directors, senior director(s), and other executive management as appropriate prior to a final decision by the research review committee.

(6) Approved non-TJJD-staff proposals involving research projects using TJJD youth as participants in the study, with the exception of surveys, are presented to the TJJD Board for approval. The TJJD Board may delegate to the executive director or designee authority to approve research projects.

(i) **Monitoring Projects.**

The TJJD Research Department staff monitors projects and proposes adjustments when necessary.

(j) **Research Results.**

The Research Department:

(1) reviews research results and evaluates the conclusions;

(2) distributes the final research report to appropriate staff and to other interested parties; and

(3) recommends to the appropriate program directors, senior director(s), and other executive management as appropriate any changes in programs or operations that the research results indicate.

(k) **Demonstration Programs.**

(1) Demonstration (pilot) programs may be implemented as a result of research conducted by TJJD or by an outside researcher.

(2) The executive director or designee must approve all demonstration programs prior to implementation.

Chapter:	Agency Management and Operations	**Effective Date: 10/1/16**
Subchapter:	Interaction with the Public	Page: 1 of 2
Rule:	**Notification of a Facility Opening or Relocating**	Replaces: GAP.385.8161, 12/18/03
ACA:	N/A	
Implements:	Local Government Code §244.002	

RULE

(a) **Purpose.**

This rule provides for notification to the public and certain elected officials of the opening or relocation of certain residential facilities and parole offices operated by the Texas Juvenile Justice Department (TJJD).

(b) **Applicability.**

This rule does not apply to:

(1) facilities that were in operation, under construction, under contract for operation or construction, or planned for operation on land owned or leased for that purpose on September 1, 1997;

(2) facilities that were in operation prior to the establishment of a residential area as described in subsection (e)(1) of this section;

(3) temporary facilities that will operate less than one year at the location;

(4) expansion of existing facilities;

(5) facilities that will not operate primarily for use as a correctional or rehabilitation facility, but will house TJJD youth only for a treatment or educational purpose;

(6) facilities that require, before operation, special or conditional use permits from the municipality in which the facility will operate; and

(7) parole offices located in commercial use areas; and

(8) any other facility described in §244.006 of the Texas Local Government Code.

(c) **Notice.**

Except as provided in subsection (e) of this section, TJJD will provide notice as soon as practical before beginning operation or construction of a TJJD residential facility or parole office. The notice must:

(1) include the proposed address and a general description of the facility or office;

(2) be published in a newspaper of general circulation in the county in which the proposed facility or office is to be located and include where public comment on the proposal may be sent for review; and

(3) be mailed to each city council member, county commissioner, state representative, and state senator who represents the area in which the proposed facility or office is to be located.

(d) **Public Meeting.**

Upon request by one of the elected officials identified in subsection (c)(3) of this section, TJJD will hold a public meeting to inform the public about the proposed residential facility or parole office and to receive public comment.

REPEAL

(e) **Sixty-Day Notice for Sites 1,000 Feet from Designated Places and When Written Notice is Received by a Local Governmental Entity.**

(1) Pursuant to §244.002 of the Local Government Code, 60 days before beginning construction or operation, whichever occurs first, of a TJJD residential facility or parole office within 1,000 feet of a residential area, primary or secondary school, park or public recreation area, or place of worship, TJJD will mail notice of the proposed location to the commissioners court and governing body of the municipality. The notice must:

(A) state TJJD's intent to construct or operate a correctional or rehabilitation facility within the area described in subsection (e)(1) of this section;

(B) describe the proposed location of the facility; and

(C) state that Chapter 244, Subchapter A, of the Texas Local Government Code governs the procedures for the notice of and consent to the operation of the facility.

(2) TJJD must prominently post an outdoor sign at the proposed location of the facility stating that a correctional or rehabilitation facility is intended to be located on the premises and providing the name and business address of the entity. The sign must be at least 24 by 36 inches in size and must be written in lettering at least two inches in size. The sign may be in both English and a language other than English if required by the municipality or county.

(f) **Denial of Consent to Operate.**

A residential facility or parole office operated by TJJD that is subject to the 60-day notice requirement of subsection (e) of this section may not be operated at the proposed location if not later than the 60th day after the date on which notice is received by a commissioners court or governing body as provided for in subsection (e) of this section, the commissioners court or governing body determines by resolution after a public hearing that the operation of the TJJD residential facility or parole office at the proposed location is not in the best interest of the county or municipality.

Chapter:	Agency Management and Operations	**Effective Date: 10/1/16**
Subchapter:	Interaction with the Public	Page: 1 of 1
Rule:	**Decentralization**	Replaces: GAP.385.8163, 12/18/03
ACA:	N/A	
Statutes:	Local Gov't Code §391.0091	

RULE

(a) **Purpose.**

This rule provides for Texas Juvenile Justice Department (TJJD) interaction with regional planning commissions when TJJD decentralizes a service to a multi-county region.

(b) **Use of State Planning Region.**

(1) When a service or program is decentralized to a multi-county region, TJJD must use the services of a state planning region or combination of regions for the decentralization.

(2) In planning for decentralization of a service or program in a region, TJJD must consider using a regional planning commission for the purposes described in Local Government Code §391.0091, related to achieving efficiencies through shared costs, coordinating the location of services, increasing accountability, and improving financial oversight.

(3) The rule, order, or guide relating to decentralization of a service or program must state that TJJD complied with Local Government Code §391.0091 in the issuance of the rule, order, or guide.

(4) This rule does not apply to a service or program that continues to be operated by TJJD through a regional or district office or to a service or program whose location in a single county or adjacent counties of the state is determined more appropriate than decentralization as a matter of law or agency policy.

REPEAL

Chapter:	Agency Management and Operations	**Effective Date: 12/1/16**
Subchapter:	Interaction with the Public	Page: 1 of 3
Rule:	**Advocacy, Support Group, and Social Services Provider Access**	Replaces: GAP.385.8183, 11/1/11
ACA:	N/A	
Statutes:	HR Code §242.056	

RULE

(a) **Purpose.**

This rule establishes a process for allowing advocacy and support groups and social services providers to provide on-site information, support, and other services for youth confined in Texas Juvenile Justice Department (TJJD) residential facilities.

(b) **Applicability.**

(1) This rule applies to residential facilities operated by TJJD.

(2) This rule does not apply to a youth's access to his/her personal attorney or personal clergy member in accordance with §380.9311 of this title and §380.9317 of this title.

(c) **Definitions.**

The following words and terms have the following meanings when used in this rule, unless the context clearly indicates otherwise:

(1) **Advocacy or Support Groups**--organizations whose primary functions are to benefit children, inmates, girls and women, persons with mental illness, or victims of sexual assault.

(2) **Social Services Providers**--organizations whose primary functions are to provide psychological, social, educational, health, and other related services to juveniles and their families.

(3) **Confined**--placement in a residential facility.

(4) **Confidential Setting**--a setting that provides for private conversation but is within the line of sight of a TJJD staff member who is authorized to provide sole supervision of youth.

(d) **Registration Procedures.**

(1) An advocacy or support group or social services provider must register with TJJD prior to providing on-site information, support, or other services to confined youth.

(2) In order to register with TJJD, an advocacy or support group or social services provider must provide the following in a form and manner determined by TJJD:

(A) a copy of the articles of incorporation on file with the secretary of state or other official documentation showing the organization's primary purpose;

(B) contact information for the local program director(s);

(C) names of all persons employed by or otherwise officially representing the organization who would likely seek access to residential facilities under the provisions of this rule; and

(D) if 24-hour access to residential facilities is believed to be necessary to perform the organization's primary function, a written justification of the need for such access and the names of individuals representing the organization who perform the function for which 24-hour access is requested.

(3) The TJJD division director with responsibility over volunteer services or his/her designee determines whether or not an organization qualifies as an advocacy or support group or social services provider as defined in this rule, and whether or not 24-hour access, if requested, is necessary to provide the organization's primary function.

(4) A determination that an organization does not qualify as an advocacy or support group or social services provider under this rule, or a denial of a request for 24-hour access, must be in writing and may be appealed to the TJJD executive director or his/her designee. The appeal must be in writing and clearly state the reason the organization should be considered an advocacy or support group or social services provider under this rule or the reason that denial of 24-hour access would prevent the organization from effectively performing its primary function.

(5) A person representing a registered advocacy or support group or social services provider is not permitted to provide information, support, or other services to youth in a confidential setting unless and until:

(A) TJJD conducts a background check pursuant to §385.8181 of this title and clears the person for such access; and

(B) the person signs appropriate confidentiality agreements concerning youth information and/or records.

(6) A registered advocacy or support group or social services provider must provide immediate written notification to TJJD when a person who is registered with TJJD as a representative of the organization ceases to represent the organization.

(e) **General Provisions.**

(1) A person who has been granted 24-hour access should provide reasonable advance notice of his/her intention to visit a facility to allow for security and confidentiality arrangements to be made. Lack of advance notice does not constitute grounds for denying entry.

(2) A person who has not been granted 24-hour access may access residential facilities during youth waking hours. Such a person must provide at least 24-hour advance notice of his/her visit to the facility in order for security and confidentiality arrangements to be made. Visits with less than 24-hour advance notice will be accommodated when possible.

(3) The security and confidentiality measures arranged by TJJD must not be designed to deny a registered advocacy or support group or social services provider access to youth.

(4) A person who has been cleared for access and who has provided adequate advance notice, if required, will not be denied access to any residential facility unless, in the judgment of the facility administrator or designee, the circumstances existing at the time of the visit create an unacceptable risk to the safety of youth, staff, or visitors. If, upon arrival at a facility, a representative of an advocacy or support group or social services provider is denied entry due to unsafe conditions, the facility administrator or designee must provide written justification to the organization within three workdays. A youth's current placement in a security unit does not constitute an unacceptable safety risk that would prevent access by a registered group or provider, but may be taken into consideration with other factors in making a determination of the safety of the current circumstances.

(5) A person who has been cleared for access must present picture identification at the entry point in order to gain access to the facility.

(6) Members of advocacy or support groups or social services providers are subject to search upon entry to a residential facility in accordance with §380.9710 of this title.

(7) Under state law, any person, including a registered member of an advocacy or support group or social services provider who has cause to believe that a youth has been or may be adversely

affected by abuse, neglect, or exploitation has a legal obligation to report the matter in accordance with §380.9333 of this title. The reporting requirement applies without exception to a person whose personal communications may otherwise be privileged.

(8) Youth have the right to refuse a visit with an advocate or social services provider.

(9) Advocacy and support groups and social services providers may file complaints regarding the security and privacy procedures arranged by a facility in accordance with §385.8111 of this title.

(10) Provisions of this rule may not be used to bypass the provisions of §380.9312 of this title regarding visitation procedures for family members of youth committed to TJJD.

(f) **Revocation of Access.**

(1) TJJD may revoke the access of a representative of a registered advocacy or support group or social services provider, with written notice, when:

(A) the person has endangered the safety of youth or the security of the facility; or

(B) the person has violated a TJJD confidentiality agreement.

(2) Revocation of access may be appealed to the executive director or his/her designee. The appeal must be in writing and clearly state the reason the person's access should not be revoked.

Chapter:	Agency Management and Operations	**Effective Date: 12/1/16**
Subchapter:	Miscellaneous	Page: 1 of 1
Title:	**Transportation of Youth**	Replaces: GAP.385.9959, 6/16/05
ACA:	N/A	
Statutes:	N/A	

RULE

(a) **Purpose.**

This policy establishes a system for Texas Juvenile Justice Department (TJJD) staff to transport youth among assigned placements and settings using the TJJD Statewide Transportation Unit (the Transportation Unit).

(b) **General Provisions.**

(1) The Transportation Unit and individual facility and parole staff may transport or coordinate the transportation of TJJD youth to and from TJJD facilities and community placements and settings.

(2) Requests for transportation must be approved by the sending chief local administrator or designee following completion of any due process required for youth movement.

(3) The Transportation Unit provides transportation among residential facilities operated by TJJD and between facilities operated by TJJD and contract care programs. The Transportation Unit also provides transportation for youth being returned to a TJJD facility from community-based detention, community placements and settings, or jail. Transportation assistance may be required from TJJD staff or contract care staff at times in order to meet the needs of facilities, community-based detention, community placements and settings, or jails.

(4) When youth are transported between residential facilities operated by TJJD, staff also transport the youth's case file, if available.

(5) County personnel are responsible for transporting all newly committed youth to the TJJD assessment unit and for providing all transportation necessary to meet requirements of a bench warrant. However, the Transportation Unit may provide courtesy transportation or may assist in coordinating transportation of newly committed youth and youth being moved via the Interstate Compact for Juveniles.

(6) Use or possession of chemical agents by TJJD staff is prohibited during transportation.

(7) Use of mechanical restraint during transportation must be in accordance with §380.9723 of this title.

(8) If transportation is not provided or coordinated by the Transportation Unit, the sending facility arranges and, if necessary, pays for transportation of a youth to a placement or home.

Chapter:	Agency Management and Operations	**Effective Date: 1/1/17**
Subchapter:	Miscellaneous	Page: 1 of 1
Rule:	**Court-Ordered Child Support**	Replaces: GAP.385.9967, 11/1/11
ACA:	N/A	
Statutes:	Family Code §54.06 Family Code Chapter 61, Subchapter B	

RULE

(a) This rule establishes a system for the Texas Juvenile Justice Department (TJJD) to comply with §54.06 of the Texas Family Code.

(b) As part of TJJD's intake process, intake staff members review commitment documentation for language ordering child support payments. When this documentation exists, intake staff members ensure an entry is made to the Correctional Care System detailing the payment amount and terms of rendition.

(c) The Finance Department maintains documentation of court-ordered child support payments and associated correspondence.

(d) The Finance Department notifies the youth's parents, or other persons responsible, by letter of the address to which court-ordered child support payments are to be sent and that they must:

(1) begin payments;
(2) render missed payments; and
(3) end payments when the youth is discharged or paroled to home.

(e) TJJD may notify the committing court when any court-ordered child support payment is past due.

(f) TJJD may refer a delinquent account to the Child Support Division of the Office of the Attorney General as determined by agreement between TJJD and the Office of the Attorney General.

(g) If TJJD receives court-ordered child support for a Title IV-E certified youth, TJJD will reduce its Title IV-E claim for reimbursement for that youth's cost of care by the amount of child support received.

For procedures relating to court-ordered child support payments, see ACC.17.05.

REPEAL

Chapter:	Agency Management and Operations	**Effective Date: 1/1/17**
Subchapter:	Miscellaneous	Page: 1 of 1
Rule:	**Canteen Operations**	Replaces: GAP.385.9933, 1/30/07
ACA:	4-JCF-6B-11	
Statutes:	Human Resources Code §242.062	

RULE

(a) **Purpose.**

This rule provides for the operation of canteens in Texas Juvenile Justice Department (TJJD) residential facilities or contracting for such operations.

(b) **Definition.**

Canteen--any vending operations accessible to youth.

(c) **General Provisions.**

(1) Residential facilities may operate canteens on campus.

(2) Should the residential facility choose not to operate its own canteen, the facility may contract with its Community Resource Council (council) or another entity to provide canteen services.

(d) **TJJD-Operated Canteens.**

(1) If the residential facility operates its own canteen, merchandise purchases for resale, salaries, and other expenses are paid from appropriated funds (i.e., the Canteen Revolving Fund). The canteen budget must be included in the facility operating budget and approved by the TJJD Board.

(2) Revenues from canteen operations are deposited into the Canteen Revolving Fund. Profits after canteen expenses and sales taxes are deposited into the Student Benefit Fund in accordance with §385.9971 of this title. The sales taxes are deposited into the State Treasury.

(3) TJJD maintains general procedures that address basic internal controls for merchandise inventory handling and cash handling.

(e) **Rules for Contracting for Canteen Services.**

(1) TJJD may contract with a local council or another entity for canteen services. A written contract is required and is to include the specific service to be provided and the consideration to be paid, if applicable, in accordance with §385.1101 of this title.

(2) If TJJD agrees to make any expenditures related to the operation of the canteen, such payments will be made from the Canteen Revolving Fund. Any proceeds paid to TJJD for the canteen operation are deposited into the Canteen Revolving Fund.

(3) The contracted entity is responsible for collection and deposit of all sales taxes to the State Treasury.

(4) TJJD employees may assist in the provision of canteen services while on duty only when doing so does not interfere with regular job duties or the safety and security of TJJD youth and staff.

REPEAL

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Evan Norton, Senior Director of Integrated Treatment and Intervention Services
Cameron Taylor, Senior Strategic Advisor

Subject: Discussion, consideration, and possible approval to publish proposed revisions to the following rule in the *Texas Register* for a public comment period of at least 30 days and possible conditional approval to adopt the final rule: 37 TAC §380.9188 (Suicide Alert for High-Restriction Facilities)

Date: November 3, 2023

Before the Board for consideration are revisions to Title 37 of the Texas Administrative Code, Section 380.9188 (relating to suicide alert for high-restriction facilities).

The board's approval is requested to publish these changes in the *Texas Register* for a 30-day public comment period.

Also requested is the board's approval to adopt the final rule after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Summary of Proposed Changes:

- Changed the requirement for mental health professionals at high-restriction TJJD facilities to consult with the designated mental health professional (i.e., the local clinical director) when determining whether changes will be made to a youth's observation level or suicide precautions *to apply only when: (1) the assessing mental health professional is not licensed to practice independently, and (2) the youth's observation level or precautions would be lowered.*
- Specified that, when a youth on suicide alert is transferred to another high-restriction TJJD facility, the mental health professional at the receiving facility *communicates* (rather than *consults*) with the designated mental health professional or designee regarding the plan for treatment and assessment.

Attached to this memo please find:

- the text of the rule, with the proposed changes shown as mark-ups; and
- a resolution for board action.

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: [~~8/1/23~~]**
Subchapter:	Program Services	Page: 1 of 8
Division:	Health Care Services	
Rule:	**Suicide Alert for High-Restriction Facilities**	Replaces: GAP.380.9188, 8/1/23 [~~4/15/15~~]

RULE

(a) **Purpose.**

This rule establishes procedures for identification, assessment, treatment, and protection of youth in high-restriction facilities who may be at risk for suicide.

(b) **Applicability.**

This rule applies to all youth currently placed in high-restriction facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) **Definitions.**

Definitions pertaining to this rule are under §380.9187 of this chapter.

(d) **General Provisions.**

(1) Treatment for youth determined to be at risk for suicide is provided within the least restrictive environment necessary to ensure safety.

(2) Youth determined to be at risk for suicide participate in regular programming to the extent possible, as determined by a mental health professional. Only a mental health professional may make exceptions to the provision of regular programming, housing placement, or clothing.

(3) Using force to remove clothing shall be avoided whenever possible and used only as a last resort when the youth is physically engaging in suicidal and/or self-harming behavior.

(4) Designated staff carry rescue kits at all times while on duty for use in the event of a medical emergency caused by a suicide attempt. Rescue kits are also placed in designated buildings or areas of the campus that are not accessible to youth.

(5) As soon as possible, but not to exceed two hours, after a suicide attempt, the youth's parent or guardian is notified (with the youth's consent if the youth is age 18 or older).

(e) **Intake Screening and Assessment.**

(1) **Upon Initial Admission to TJJD.**

(A) Upon arrival to a TJJD orientation and assessment unit, designated intake staff keep youth within direct line-of-sight supervision until the youth is screened or assessed for suicide risk.

(B) Within one hour after the youth's arrival to a TJJD orientation and assessment unit, a mental health professional initiates an initial mental health screening and documents the results.

(C) If the mental health professional identifies the youth as potentially at risk for suicide, the mental health professional immediately conducts a suicide risk assessment.

(D) Within 14 days after arrival at the orientation and assessment unit, all youth receive a comprehensive mental health evaluation conducted by a mental health professional. The

mental health evaluation will include a suicide risk assessment if one has not already been completed.

(E) The suicide risk assessment completed upon initial admission includes, at a minimum:

(i) a mental status exam;

(ii) a review of all mental health and medical records submitted from the courts, county juvenile detention facilities, or any other medical or mental health provider, to include any assessments by mental health professionals relating to prior suicide alerts during confinement;

(iii) a review of all other available screenings and assessments; and

(iv) referrals for follow-up treatment or further assessment, as indicated.

(F) The designated mental health professional reviews the suicide risk assessment.

(2) **Upon Arrival at a TJJD Facility after Intake.**

(A) Except for youth who are on suicide alert at the time of arrival, the following actions must occur within one hour after a youth's arrival at a high-restriction facility following an intrasystem transfer, any period of time spent out of TJJD's physical custody due to a significant life event, or a period of at least 48 hours spent out of TJJD's physical custody for any reason:

(i) a trained designated staff member initiates a suicide risk screening; or
(ii) a mental health professional initiates a suicide risk assessment.

(B) The youth is kept within direct line-of-sight supervision until the youth is screened or assessed.

(C) If a screening is conducted:

(i) the trained designated staff member immediately contacts a mental health professional to assign an observation level, if appropriate, based on results of the screening; and

(ii) the youth is immediately placed on the observation level directed by the mental health professional; and

(iii) the mental health professional conducts a suicide risk assessment within an appropriate time frame, as established in agency procedures. Procedures will assign time frames based on the youth's assigned observation level and screening result.

(D) The suicide risk assessment conducted upon a youth's arrival at a TJJD facility includes, at a minimum:

(i) a mental status exam;
(ii) a review of the youth's masterfile and medical record, as indicated;
(iii) referrals for follow-up treatment or further assessment, as indicated;
(iv) a determination of whether to place the youth on suicide alert, and if placed, designation of the appropriate observation level and other safety precautions; and
(v) a review by the designated mental health professional of the assessment.

(3) **Additional Screening by Infirmary for Intrasystem Transfers.**

(A) Upon arrival of a youth from another high-restriction TJJD facility, a nurse completes an intrasystem health screening, including questions relating to suicidal ideation and suicidal behavior.

(B) If the youth is identified by the screening as potentially at risk for suicide, the nurse immediately contacts a mental health professional and communicates the results of the screening.

(f) **Responding to Suicidal Ideation, Self-Harming Behavior, or Suicidal Behavior.**

(1) A staff member who has reason to believe that a youth has verbalized suicidal ideation or demonstrated self-harming or suicidal behavior must:

(A) immediately use the rescue kit if appropriate and seek medical attention if there is a medical emergency;
(B) verbally engage the youth;
(C) provide constant observation unless a mental health professional directs a higher observation level;
(D) begin a suicide observation log to document status checks of the youth;
(E) immediately notify the campus shift supervisor and document the notification; and
(F) refer the youth for a suicide screening.

(2) As soon as possible, but no later than one hour after notification, the campus shift supervisor ensures a trained designated staff member initiates a suicide risk screening or a mental health professional initiates a suicide risk assessment. This screening or assessment is not required when deemed inappropriate due to a medical emergency.

(3) If a screening is conducted:

(A) the trained designated staff member immediately contacts a mental health professional to assign an observation level based on results of the screening; and

(B) the mental health professional conducts a suicide risk assessment within an appropriate time frame, as established in agency procedures. Procedures will assign time frames based on the youth's assigned observation level and screening result.

(4) If the youth is transported to the emergency room:

(A) upon return to the facility, the youth is placed on one-to-one observation until assessed by a mental health professional; and

(B) a mental health professional initiates a suicide risk assessment within four hours after the youth's return to the facility.

(5) The suicide risk assessment conducted in response to suicidal behavior or ideation includes:

(A) a mental status exam;
(B) a review of the youth's masterfile and medical record, as indicated;
(C) referrals for follow-up treatment or further assessment, as indicated;
(D) a determination of whether to place the youth on suicide alert, and if placed, designation of the appropriate observation level and other safety precautions; and
(E) a review by the designated mental health professional of the assessment.

(6) Whenever possible, suicide risk screenings and assessments are conducted in a confidential setting.

(g) **Actions Taken Upon Completion of Suicide Risk Assessment.**

(1) **Documentation Requirements.**

(A) Upon completion of a suicide risk assessment, the mental health professional documents the results of the assessment, including any changes in the youth's observation level.

(B) If the youth is placed on suicide alert, the mental health professional ensures the youth's name is placed on the facility's suicide alert list. The designated mental health professional ensures the updated list is distributed to facility staff.

(2) **Notification of Assessment Results.**

(A) If the youth is placed on suicide alert:

(i) as soon as possible, infirmary staff, the youth's case manager, staff responsible for supervising the youth, and the campus shift supervisor are notified of the youth's observation level, other safety precautions, and any additional instructions; and

(ii) the youth's parent or guardian is notified as soon as possible after the youth is placed on suicide alert (with the youth's consent if the youth is age 18 or older).

(B) If the youth is not placed on suicide alert, the mental health professional notifies the referring staff and the youth's case manager that the youth was assessed but not placed on suicide alert.

(3) **Assignment of Staff to Monitor Youth.**

If the youth is placed on suicide alert, the campus shift supervisor ensures a specific staff member is assigned to monitor the youth and carry the suicide observation folder.

(h) **Supervision of Youth on Suicide Alert.**

(1) Unless the youth is already placed in a suicide-resistant room, the campus shift supervisor or trained designated staff member coordinates a search of the youth's room or personal area and removes any potentially dangerous items.

(2) The suicide observation folder must be in the possession of the monitoring staff member at all times while the youth is on suicide alert.

(A) At no time may the youth possess the suicide observation folder.

(B) Each time the youth is transferred to the supervision of another staff member, the receiving staff member must take possession of the folder and document the transfer of supervision in the folder.

(3) As required by the suicide observation level and other safety precautions assigned to the youth, the monitoring staff member must:

(A) maintain direct visual observation of the youth;
(B) document the youth's status at the required interval; and
(C) follow any precautions set by the mental health professional.

(4) The monitoring staff member must not leave a youth assigned to one-to-one observation unattended or let the youth out of the staff member's sight.

(5) During waking hours, the monitoring staff must not leave a youth assigned to constant observation unattended or let the youth out of the staff member's sight.

(6) Any time a youth on one-to-one or constant observation is in the bathroom or shower, the monitoring staff must remain within six feet of the youth, and:

(A) observe at least a portion of the youth's body (i.e., head, feet, or other observable parts, excluding genitalia, breasts, and buttocks); and/or

(B) maintain verbal contact.

(7) When a youth on one-to-one or constant observation is engaged in regular programming (e.g., education, group sessions, recreation), the monitoring staff will accompany the youth to the activity and remain within the required distance (i.e., 6 or 12 feet). If the youth cannot be maintained within the required distance without disrupting the program, a mental health professional must be consulted to consider possible modifications to the youth's supervision plan or scheduled routine to ensure the youth can be appropriately monitored.

(8) Issuing suicide-resistant clothing and removing a youth's clothing, as well as canceling programming and routine privileges, will be avoided whenever possible and used only as a last resort for periods during which the youth is physically engaging in suicidal and/or self-harming behavior.

(A) Decisions regarding issuance of suicide-resistant clothing and restrictions in programming and/or routine privileges may be made only by a mental health professional.

(B) A decision to conduct a strip search if criteria in §380.9709 of this chapter are met may be made only in consultation with a mental health professional.

(C) A decision to use force in order to remove a youth's regular clothing after a youth has been issued suicide-resistant clothing may occur only upon the recommendation of a mental health professional and with the approval of the directors over treatment and facility operations or the directors' designees.

(D) If force is used to remove a youth's regular clothing as provided by subparagraph (C) of this paragraph, a mental health professional must evaluate the youth's need for trauma symptom care and ensure the care is provided if appropriate.

(9) Unless approved by the designated mental health professional in consultation with the facility administrator, youth on suicide alert are not allowed access to off-campus activities or non-medical appointments. Decisions regarding off-campus medical appointments are made by medical staff.

(i) **Treatment and Reassessment of Youth on Suicide Alert.**

(1) A mental health professional develops a written treatment plan (or revises an existing care plan) that includes treatment goals and specific interventions designed to address and reduce suicidal ideation and threats, suicidal and/or self-harming behavior, and suicidal threats perceived to be based upon attention-seeking or manipulative behavior. The treatment plan describes:

(A) signs, symptoms, and circumstances under which the risk for suicide or other self-harming behavior is likely to reoccur;
(B) how reoccurrence of suicidal and other self-harming behavior can be avoided; and
(C) actions the youth and staff can take if the suicidal and other self-harming behavior does occur.

(2) The mental health professional consults with the youth's case manager, as needed, to recommend modifications to the youth's individual case plan based on issues identified in the treatment plan. The mental health professional consults with staff responsible for supervising the youth regarding the youth's progress.

(3) While the youth is on suicide alert, a mental health professional assesses the youth at least once every 48 hours, unless the youth is placed on one-to-one observation, in which case the mental health professional assesses the youth at least once every 24 hours.

(4) For each assessment, the mental health professional:

(A) reviews the contents of the suicide observation folder, as well as suicide risk assessments and progress notes from other mental health professionals as applicable;

(B) determines whether any changes should be made to the youth's observation level or other safety precautions[,] (in consultation with the designated mental health professional if the assessing mental health professional is not licensed to practice independently and recommends lowering the observation level or precautions);

(C) documents any changes in the observation level or other safety precautions in the suicide observation folder; and

(D) documents the assessment, including a sufficient description of the youth's emotional status, observed behavior, recommended observation level, justification for decision, and any special instructions for staff.

(5) Each time a change is made to the youth's observation level or other safety precautions, staff responsible for supervising the youth are notified and updated information regarding the youth is distributed to designated facility staff, including infirmary staff.

(6) During routine meetings between the psychology department and the psychiatric provider, the designated mental health professional or designee discusses information concerning youth on suicide alert who are on the psychiatric caseload.

(j) **Protective Custody or Emergency Psychiatric Placement.**

(1) Youth who cannot be safely managed in their assigned living units may be referred for placement in a suicide-resistant room in the protective custody program, in accordance with §380.9745 of this chapter. All treatment, reassessment, and observation requirements established in this rule will continue to apply while a youth is assigned to protective custody unless otherwise noted in §380.9745 of this chapter.

(2) If the designated mental health professional or psychiatric provider determines that a youth is in serious and imminent risk of suicidal and/or self-harming behavior and cannot be safely or appropriately managed within TJJD custody, the designated mental health professional or psychiatric provider may seek emergency psychiatric placement in accordance with §380.8771 of this chapter. The youth will be placed on one-to-one observation until received at the emergency placement.

(k) **Intrasystem Transfer of Youth on Suicide Alert.**

(1) Prior to transferring a youth on suicide alert to another high-restriction TJJD facility:

(A) within 24 hours prior to transfer, a mental health professional at the sending facility sends a summary of the youth's suicidal and/or self-harming behavior, assessments, and treatment to the designated mental health professional and facility administrator or their designees at the receiving facility and any stopover facilities en route to the receiving facility; and

(B) staff assigned to monitor the youth at the sending facility provide the suicide observation folder to the transporting staff.

(2) A mental health professional at the receiving facility:

(A) as soon as possible, but no later than four hours after the youth's arrival, reviews the transfer summary and initiates a suicide risk assessment;

(B) places the youth on the facility's suicide alert list;

(C) ensures the suicide observation log is provided to the staff assigned to monitor the youth; and

(D) communicates [~~consults~~] with the designated mental health professional or designee regarding the plan for treatment and assessment.

(3) Before the youth is moved to the assigned dorm or living unit at the receiving facility, staff responsible for supervising the youth and nursing staff are notified of the youth's suicide observation level.

(l) **Moving a Youth on Suicide Alert to a Less Restrictive Placement.**

(1) Prior to moving a youth on suicide alert to a less restrictive placement (i.e., medium-restriction facility or home placement), the mental health professional:

(A) provides the youth (or parent/guardian if the youth is under age 18) with a referral for follow-up care;
(B) coordinates with appropriate clinical staff to schedule a follow-up appointment;
(C) communicates observation level and precautions to facility staff, if applicable;
(D) identifies emergency resources, if needed; and
(E) notifies the youth's parole officer, if applicable.

(2) Mental health records are sent to the receiving mental health provider upon request.

(m) **Reduction of Observation Level and Removal from Suicide Alert.**

(1) The observation level for a youth on suicide alert may be lowered or discontinued only after a suicide risk assessment by a mental health professional.[~~,~~] If the assessing mental health professional is not licensed to practice independently, the decision to lower or discontinue a youth's observation level may be made only in consultation with the designated mental health professional.

(2) A mental health professional may lower a youth's suicide observation level by no more than one level every 24 hours unless otherwise approved by the designated mental health professional on a case-by-case basis.

(3) Only a mental health professional or the designated mental health professional may authorize removal of a youth's name from the suicide alert list. Only youth on the lowest available observation level may be removed from suicide alert.

(4) The mental health professional notifies appropriate staff when a youth's observation level is lowered and when a youth is removed from suicide alert. Infirmary staff notify the psychiatric provider of all such changes for youth on the psychiatric caseload.

(5) The youth's parent or guardian is notified when the youth is removed from suicide alert (with the youth's consent if the youth is age 18 or older).

(6) Upon removal from suicide alert, the mental health professional identifies in the treatment plan any needed follow-up mental health services.

(n) **Training.**

(1) All staff who have regular, direct contact with youth (including, but not limited to, security, direct care, nursing, mental health, and education staff) receive initial training in suicide prevention and response during new-hire training. Training addresses topics including, but not limited to:

(A) identifying the warning signs and symptoms of suicidal and/or self-harming behavior;
(B) high-risk periods for suicidal and/or self-harming behavior;

(C) juvenile suicide research, to include the demographic and cultural parameters of suicidal behavior, incidence, and precipitating factors;
(D) responding to suicidal youth and youth experiencing mental health symptoms;
(E) communication between correctional and health care personnel;
(F) referral procedures;
(G) housing, observation, and suicide alert procedures; and
(H) follow-up monitoring of youth who engage in suicidal behavior, self-harming behavior, and/or suicidal ideation.

(2) All staff who have regular, direct contact with youth receive annual suicide prevention training.

(3) Staff designated to conduct suicide screenings receive annual training from a mental health professional regarding suicide alert policy, suicide indicators, and suicide screening.

(4) All training described by this subsection shall be accompanied by a test or demonstration to establish competency in the subject matter.

(o) **Post-Incident Debriefing and Analysis.**

(1) After a completed suicide or a life-threatening suicide attempt, the facility administrator or designee coordinates a debriefing with appropriate facility staff as soon as possible after the situation has been stabilized, in accordance with agency procedures.

(2) After a completed suicide, the executive director or designee may dispatch a critical incident support team to provide counseling for youth and staff, coordination of facility activities, and assistance with follow-up care.

(3) After a completed suicide, the medical director conducts a morbidity and mortality review in coordination with appropriate clinical staff. The medical director may conduct a morbidity and mortality review after a life-threatening suicide attempt.

(4) After a completed suicide or a life-threatening suicide attempt, a critical incident review is convened to determine if the incident reveals system-wide deficiencies and to recommend improvements to agency policies, operational procedures, the physical plant, and/or training requirements.

(5) In the event of a completed suicide, all actions, notifications, and reports required under §385.9951 of this title [~~chapter~~] must be completed.

See CMS.06.71 for implementation procedures.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Cameron Taylor, Senior Strategic Advisor

Subject: Discussion, consideration, and possible approval to publish proposed revisions to the following rule in the *Texas Register* for a public comment period of at least 30 days and possible conditional approval to adopt the final rule: 37 TAC §380.9510 (Intervention Program)

Date: November 3, 2023

Before the Board for consideration are revisions to Title 37 of the Texas Administrative Code, Section 380.9510 (relating to the intervention program).

The board's approval is requested to publish these changes in the *Texas Register* for a 30-day public comment period.

Also requested is the board's approval to adopt the final rule after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Summary of Proposed Changes:

- Specified that youth in the primary level of the intervention program:
    - may be assigned to another dorm to participate in the program (rather than continuing to sleep at their assigned dorm); and
    - will participate in activities not related to the intervention program, such education and recreation, with the general campus population.

Attached to this memo please find:

- the text of the rule, with the proposed changes shown as mark-ups; and
- a resolution for board action.

Draft 10/19/23

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: [~~5/19/23~~]**
Subchapter:	Behavior Management and Youth Discipline	Page: 1 of 6
Division:	Behavior Management	
Rule:	**Intervention Program**	Replaces: GAP.380.9510, 5/19/23 [~~GAP.380.9517, 10/1/15~~] [~~GAP.380.9535, 3/15/17~~]
Statutes:	20 USC §1400 et al.	
References:	34 CFR §300.530	

RULE

(a) **Purpose.**

The Texas Juvenile Justice Department (TJJD) delivers interventions in a structured environment for youth who have engaged in certain serious conduct. The interventions are designed to promote violence reduction and skill building to increase safety on TJJD campuses and to help the youth regulate their behavior in order to progress in treatment. Placement in an intervention program is not considered a disciplinary consequence. This rule sets forth eligibility criteria, program requirements, and services to be provided to youth.

(b) **Applicability.**

This rule applies only to high-restriction facilities operated by TJJD.

(c) **Definitions.**

(1) **Admission, Review, and Dismissal (ARD) Committee**--a committee that makes decisions on educational matters relating to special-education-eligible youth.

(2) **Individualized Education Program (IEP)**--the program of special education and related services developed by a youth's ARD committee.

(3) **Isolation**--the confinement of a youth in a locked room or cubicle as a tool to manage the behavior of a youth. Rules regarding isolation do not apply:

(A) when doors are routinely locked during normal sleeping hours and isolation has not otherwise been imposed; or
(B) when a youth is placed in the security program.

(4) **Manifestation Determination Review**--a review conducted by a youth's ARD committee when a decision has been made to change a special-education-eligible youth's school placement due to a violation of the code of conduct. The committee determines whether a youth's conduct is a manifestation of the youth's disability and whether the youth's IEP was fully implemented.

(d) **Eligibility.**

(1) At a minimum, a youth must be reviewed to determine appropriateness for placement at any level of the intervention program if the youth engages in one or more of the following rule violations as defined in §380.9503 of this title:

(A) assault of youth (with or without injury);
(B) assault of staff (with or without injury);
(C) fighting (with or without injury);
(D) threatening another with a weapon;
(E) escape;
(F) extortion or blackmail;
(G) possession of a weapon;

(H) sexual misconduct;
(I) threatening others; or
(J) any other rule violation that the executive director or designee establishes in writing as an eligible violation.

(2) A youth may be reviewed to determine appropriateness for placement at any level of the intervention program based on any other rule violation defined in §380.9503 of this title or based on a pattern of rule violations that suggests the youth would benefit from the program.

(e) **Program Intervention Levels.**

(1) **Primary.**

The primary level of the intervention program provides short-term intervention that cannot be provided during regular campus programming.

(A) Youth at this level of intervention in the program may be assigned to another dorm to engage in activities related to the intervention program but will continue to engage in non-program-related activities, such as education and recreation, with the general campus population [~~continue to sleep at their assigned dorm but other activities are conducted at the site of the program~~].

(B) A Level II hearing is not required for placement at this level of intervention. However, designated treatment and direct-care staff must review the youth for appropriateness in the intervention program, including the youth's treatment needs and the severity of the youth's behavior.

(2) **Moderate.**

The moderate level of the intervention program provides short-term intervention in a self-contained unit with a gradual transition back to regular campus programming.

(A) Youth at this level of intervention in the program live on the unit where the program operates.

(B) Youth may be placed at this level of the intervention program only if:

(i) a Level II due process hearing has been held in accordance with §380.9555 of this title;

(ii) there is a finding of *true* that the youth committed a rule violation listed in subsection (d) of this section; and

(iii) the youth and the youth's advocate were given notice before the hearing that a *true* finding on one or more of the allegations would make the youth eligible for placement in the intervention program.

(3) **Intensive.**

The intensive level of the intervention program provides longer-term intervention in a highly structured environment.

(A) Youth at this level of intervention in the program live on the unit where the program operates.

(B) Youth may be placed at this level of the intervention program only if:

(i) a Level II due process hearing has been held in accordance with §380.9555 of this title;

(ii) there is a finding of *true* that the youth committed a rule violation listed in subsection (d) of this section; and

(iii) the youth and the youth's advocate were given notice before the hearing that a *true* finding on one or more of the allegations would make the youth eligible for placement in the intervention program.

(f) **Placement in the Program.**

(1) Each youth being considered for placement in the intervention program is reviewed to determine if placement is appropriate and, if so, which level of the program is appropriate.

(2) If it is determined that the youth should be placed in the intensive level of the program but space is not available, the youth may be temporarily placed in a lower level of the program until space becomes available at the intensive level or the youth otherwise successfully meets the criteria under subsection (j) of this section.

(3) TJJD procedural manuals shall establish a process that allows a youth to be moved from one level of the program to another, if appropriate. A youth may be placed in the moderate or intensive level of the program only if the youth was given notice of the potential placement before the Level II hearing. Once a youth has been removed from the intervention program, new conduct and a new Level II due process hearing, if necessary for the program level, are required to return the youth to the intervention program.

(4) TJJD procedural manuals shall establish the factors to be considered when determining if a youth should be placed in the intervention program and which level of intervention is most appropriate or when determining if a youth should be moved from one level to another. The procedural manuals shall include a requirement that, at a minimum, the following factors be considered:

(A) whether the youth poses a continuing risk to the safety of the facility;

(B) whether less restrictive methods of documented intervention have been attempted when appropriate; and

(C) whether there are any therapeutic contraindications to placing the youth in the intervention program or at a particular level in the intervention program.

(5) A youth shall not be placed at any level in the intervention program if a therapeutic contraindication to placement at that level exists.

(6) TJJD shall make reasonable efforts to provide notice to the parent/guardian that the child is being considered for placement in the intervention program or for moving to a different level of the program.

(g) **Additional Considerations for Youth Receiving Special Education Services.**

(1) If a youth who is receiving special education services engages in a rule violation during school-related activities and that violation is the basis for placement or potential placement in the intervention program, the requirements of the Individuals with Disabilities Education Act, including a manifestation determination review when required, must be met. TJJD's procedural manuals shall include specific instructions for compliance and shall include a routine review to ensure the requirements are met.

(2) All special education services shall be provided in accordance with ARD committee decisions. For youth who are eligible to participate in special education services, an ARD committee meeting to review the IEP is held within ten days after admission to the intervention program. Subsequent ARD committee meetings and evaluations are completed in compliance with state and federal regulations.

(h) **Program Requirements.**

(1) The intervention program is administered in units designated for such purpose. Each level may be administered in a different unit.

(2) A structured daily schedule is maintained and posted to provide a predictable and safe environment.

(3) On scheduled academic days, youth shall be provided with the amount of education services established by the approved master schedule for the regular school program.

(4) Youth with limited English proficiency shall be provided with appropriate adaptations to the educational program as recommended by the Language Proficiency Assessment Committee.

(5) An individual plan shall be developed or modified for each youth. The plan shall be written in a language the youth clearly understands. The plan shall address the reasons for admission to the program, including providing strategies for intervention and prevention of the admitting behavior, include a component that addresses transition to the general campus population, and provide clearly written objectives for completion of the program. The plan shall also take into consideration any recommendations by a mental health specialist to address the motivation for the behavior.

(6) TJJD procedural manuals will set out how the individual plan and youth's progress will be reviewed and evaluated. This review shall occur at least once every seven days.

(7) Youth in the moderate and intensive levels of the intervention program are provided daily contact and weekly individual sessions with the assigned case manager or other designated staff for counseling and case management services.

(8) Staff shall immediately refer a youth to a mental health professional if concerns exist as to the youth's mental health status.

(9) Youth shall be provided with at least one hour of large-muscle exercise seven days per week.

(10) Youth are allowed phone calls and visitation with approved family members and other individuals according to program visitation procedures.

(11) A youth in the moderate level of the program:

(A) earns privileges based on progress through the program;

(B) shall be gradually reintegrated into campus programming as soon as he/she demonstrates comprehension of the goals established in the individual plan; and

(C) shall receive weekly mental health status exams by mental health staff as long as the youth's movement and program activities are restricted to the program unit. If deemed necessary by mental health staff, youth shall receive psychological counseling. Psychological counseling will be at the frequency determined appropriate by the mental health professional providing the counseling.

(12) A youth in the intensive level of the program:

(A) earns privileges based on progress through the program; and

(B) shall receive weekly mental health status exams by mental health staff. If deemed necessary by mental health staff, youth receive psychological counseling. Psychological counseling will be at the frequency determined appropriate by the mental health professional providing the counseling.

(13) For youth assigned to the primary and moderate levels, staff not assigned to the intervention program shall review each youth's progress at least once every 30 days to ensure the individual plan is being implemented appropriately.

(14) For youth assigned to the intensive level, staff not assigned to the intervention program shall review each youth's progress when the youth has been at that level for 60 days and every 30 days thereafter to ensure the individual plan is being implemented appropriately.

(15) A youth may remain in the moderate level of the program for more than 90 days only if approved by the executive director or designee.

(16) A youth may remain in the intensive level of the program for more than 120 days only if approved by the executive director or designee.

(17) In all levels of the program, mechanical restraints may be used in a manner consistent with the use of such restraints as provided by §380.9723 of this title. In the intensive level of the program only, mechanical restraints may also be used in a manner consistent with the use of such restraints in a security unit as provided by §380.9723 of this title.

(i) **Room Isolation and Security Unit.**

(1) Youth may be referred to the security program while assigned to the intervention program if the youth meets criteria in §380.9740 of this title. A security unit and program may be operated at the location of each level of the intervention program.

(2) Room isolation may be used as necessary in accordance with §380.9739 of this title.

(j) **Criteria for Release from the Intervention Program.**

A youth shall be released from the intervention program upon the earliest of the following events:

(1) a determination by the executive director or designee that the youth has:

(A) met the goals in his/her individual plan; and
(B) based on a totality of circumstances, demonstrated an ability to safely transition to campus programming; or

(2) a decision by the executive director or designee to return the youth to the youth's assigned dorm or transfer to an alternative placement based on a recommendation by a mental health professional due to the youth's mental health condition; or

(3) a decision by appropriate staff not to continue the youth in the intervention program after an administrative transfer of the youth to another high-restriction facility while assigned to the intervention program.

(k) **Family Notification.**

The youth's parent/guardian shall be notified of the decision to place the youth in the intervention program no later than the end of the next business day following the day the decision was made. In accordance with §380.8705 of this title, the notification may occur only with the youth's consent if the youth is 18 years of age.

(l) **Program Monitoring and Youth Rights.**

(1) To ensure the intervention program is being implemented according to the provisions of this rule, staff from facility administration shall visit each program unit seven days per week. Staff from psychology administration shall visit each program unit weekly.

(2) Youth rights staff or a designee shall visit each program unit seven days per week to ensure that youth have access to the youth grievance system.

(3) Staff are not required to visit a program unit on days when there are no youth in that unit.

(m) **Grievance Regarding Assessment of Progress.**

A youth in the intervention program may address disagreement with the results of an assessment of progress or may address the lack of opportunity to demonstrate completion of requirements by filing a grievance in accordance with §380.9331 of this title. The person assigned to respond to the youth's grievance may not be a person involved in the subject of the youth's grievance.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Rachel Gandy, Chief of Staff

Subject: Discussion, consideration, and possible approval to publish the following—all from Title 37, Administrative Code—in the *Texas Register* for a public comment period of at least 30 days and possible conditional approval to adopt the final rules: newly proposed §§349.600 (Purpose), 349.650 (Removal of Members), and 349.700 (Access to Data Collected); revisions to §343.206 (Certification and Registration of Facility); revisions to §341.204 (Residential Placement); newly proposed §351.49 (Retrofitted Adult Facilities); revisions to §355.206 (Certification and Registration of Facility); newly proposed §380.9147 (Youth Career and Technical Education Advisory Committee; newly proposed §380.8597 (Certain Actions by the Executive Director); revisions to §385.8183 (Advocacy, Support Group, and Social Services Provider Access); and newly proposed §385.9921 (Legal Sufficiency Review for Administrative Findings of Abuse, Neglect, or Exploitation)

Date: February 5, 2024

Before the Board for consideration are the following newly proposed or revised rules, with abbreviated summaries included and more detailed summaries provided below:

- ***Sections 349.600, 349.650, and 349.700 (relating to the advisory council and regionalization).*** These new rules establish the purpose, goals, and information pertaining to the Advisory Council on Juvenile Services and the removal of members from the council. They also authorize certain juvenile probation departments to access information submitted through the juvenile case management system.
- ***Section 343.206 (relating to certification and registration of facility).*** Changes involve including new information pertaining to housing juveniles in facilities that were constructed or previously used for confining adults. Changes also involve including new information pertaining to housing youth committed to TJJD and awaiting transport to a TJJD facility.

- ***Section 341.204 (relating to residential placement).*** Changes involve including new information pertaining to housing juveniles in a facility that was constructed or previously used for confining adult offenders.
- ***Section 351.49 (relating to retrofitted adult facilities).*** The new rule establishes that short-term detention facilities and facilities that were originally intended to confine adult offenders must be approved by TJJD before housing juveniles.
- ***Section 355.206 (relating to certification and registration of facility).*** Changes involve an explanation of when a correctional facility previously used for adult offenders can be used for juveniles.
- ***Section 380.9147 (relating to the youth career and technical education advisory committee).*** The new rule establishes the Youth Career and Technical Education Advisory Committee and provides information about who is on the committee, how the committee operates, and what the committee is meant to accomplish.
- ***Section 380.8597 (relating to certain actions by the executive director).*** The new rule establishes that TJJD tracks how frequently the executive director takes certain actions and reports the information to the TJJD Governing Board and the Sunset Advisory Committee.
- ***Section 385.8183 (relating to advocacy, support group, and social services provider access).*** Changes involve a new requirement to track the frequency with which the executive director finalizes appeals, compiling the information, and then providing that information to the TJJD Board and the Sunset Advisory Committee.
- ***Section 385.9921 (relating to legal sufficiency review for administrative findings of abuse, neglect, or exploitation).*** The new rule establishes that findings in abuse, neglect, and exploitation investigations are reviewed for legal sufficiency before the appropriate parties are notified of the findings.

The board's approval is requested to publish these new and revised rules in the *Texas Register* for a 30-day public comment period. Also requested is the board's approval to adopt the final rules after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

§349.600, Purpose – NEW

Summary of Key Provisions:

- Includes a list of the overarching subjects on which the Advisory Council on Juvenile Services is meant to advise the Texas Juvenile Justice Board.
- Explains that the goal of the advisory council is to provide actionable, direct, and inclusive feedback from the local perspective to TJJD and its Board.
- Includes the following:
  - a description of the composition of the advisory council, the length of terms, and training received;
  - a description of how vacancies that occur during a member's term are filled;

- an explanation of what constitutues a quorum;
- information pertaining to ex officio members;
- an explanation that the appearance of conflicts of interest should be avoided;
- a description of updates the advisory council's presiding officer provides to the Board; and
- an explantion of the statutes the advisory council is and is not subject to.

§349.650, Removal of Members – NEW

Summary of Key Provision:

- Includes that it is a ground for removal from the advisory council if a member is absent from more than half of the regularly scheduled meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the council.

§349.700, Access to Data Collected – NEW

Summary of Key Provision:

- Includes that, for planning and research purposes, all juvenile probation departments participating in the state's regionalization plan are authorized to access data that any participating departments have submitted through the case management system.

§343.206, Certification and Registration of Facility

Summary of Proposed Key Changes:

- Added that TJJD will not register a facility that was constructed or previously used for the confinement of adult offenders unless TJJD determines the facility has been appropriately retrofitted to comply with related standards.
- Added that a juvenile who has been committed to TJJD and is awaiting transport to a TJJD facility may be housed in a post-adjudication secure facility in a bed that is designated as a pre-adjudication bed or dually-designated as a pre-adjudication bed or a post-adjudication bed.

§341.204, Residential Placement

Summary of Proposed Key Changes:

- Added that: (1) a juvenile board or juvenile probation department may contract with a facility that was constructed or previously used for the confinement of adult offenders only after TJJD has determined the facility has been appropriately retrofitted to comply with related standards; and (2) TJJD will maintain a list of pre-approved facilities.
- Added that, if the facility is not on the list of pre-approved facilities, the juvenile board or juvenile probation department must request approval from TJJD and submit any information TJJD needs in order to make a determination under this provision.
- Noted that this subsection does not apply to facilities registered with TJJD.

§351.49, Retrofitted Adult Facilities – NEW

Summary of Key Provisions:

- Explains that, before a short-term detention facility accepts residents, the juvenile board in the county where the facility is located must ensure the facility has been approved by TJJD.
- Explains that TJJD will not approve a facility that was constructed or previously used for the confinement of adult offenders unless TJJD determines the facility has been appropriately retrofitted to comply with certain standards.

§355.206, Certification and Registration of Facility

Summary of Proposed Key Changes:

- Added that a juvenile board may use or contract with a non-secure correctional facility that was constructed or previously used for confinement of adult offenders if the juvenile board can document and TJJD can verify that the facility is appropriately retrofitted to adhere to applicable standards.

§380.9147 (Youth Career and Technical Education Advisory Committee) – NEW

Summary of Key Provisions:

- Establishes the Youth Career and Technical Education Advisory Committee, which assists TJJD with overseeing and coordinating vocational training for youth in state custody.
- Describes the duties and goals of the committee.
- Descibes the composition of the committee's membership and the appointment of the presiding officer.
- Includes the following:
  - information pertaining to ex officio committee members;
  - an explanation of what constitutues a quorum;
  - term lengths of committee members;
  - an explanation of how to fill vacancies on the committee;
  - an explanation that the appearance of conflicts of interest should be avoided;
  - a description of updates the advisory council's presiding officer provides to the Board; and
  - information about other statutory requirements.

§380.8597, Certain Actions by the Executive Director – NEW

Summary of Key Provisions:

- Establishes that TJJD tracks the frequency with which the executive director takes certain actions and reports the resulting data to the TJJD Board and the Sunset Advisory Committee.

- Includes a list of actions and explains that TJJD must track the frequency the executive director takes those actions.
- Explains that TJJD must complie frequency data and provide that date to the Board and the Sunset Advisory Committee.

§385.8183, Advocacy, Support Group, and Social Services Provider Access

Summary of Proposed Key Changes:

- Added that TJJD tracks the frequency with which the executive director finalizes appeals described elsewhere in the rule.
- Added that TJJD compiles frequency data on a quarterly basis.
- Added that, at the beginning of each quarter, TJJD provides the frequency data from the previous quarter to the TJJD Board and the Sunset Advisory Commission.

§385.9921, Legal Sufficiency Review for Administrative Findings of Abuse, Neglect, or Exploitation – NEW

Summary of Key Provision:

- Establishes that all findings in abuse, neglect, and exploitation investigations shall be reviewed for legal sufficiency before the appropriate parties are notified of the findings.

Attached to this memo please find:

- the text of the rules; and
- a resolution for board action.

Texas Administrative Code

Title 37 Public Safety and Corrections
Part 11 Texas Juvenile Justice Department
Chapter 349 General Administrative Standards

2/13/24 Draft – Pertinent Sections Only, Not the Full Chapter

Subchapter A. Definitions

§349.100 Definitions

Subchapter B. Waiver

§349.200 Waiver or Variance

Subchapter C. Disciplinary Actions and Hearings

§349.300 Requests for Disciplinary Action
§349.305 Commission Initiated Disciplinary Action
§349.307 Disciplinary Sanctions
§349.308 Disciplinary Guidelines
§349.310 Effect of Request for Disciplinary Action
§349.311 Disciplinary Sanctions
§349.315 Computation of Time
§349.320 Notice and Service
§349.325 Representation
§349.330 Preliminary Notice to Certified Officer in Disciplinary Matters
§349.335 Commencement of Disciplinary Proceedings
§349.340 Certified Officer's Answer and Consequence of Failure to File an Answer to Formal Charges (Default)
§349.345 Discovery
§349.355 Subpoenas
§349.360 Informal Proceedings
§349.365 Agreed Dispositions
§349.370 Formal Disciplinary Proceedings
§349.375 Decision of the Board
§349.380 Judicial Review
§349.385 Mandatory Suspension for Failure to Pay Child Support

Subchapter D. Complaints against Juvenile Boards

§349.400 Complaint Process
§349.410 Administrative Review of Investigation Findings

Subchapter E. Confidentiality and Release of Abuse, Exploitation and Neglect Investigation Records

§349.500 Purpose
§349.510 Definitions
§349.520 Access to Confidential Information
§349.530 Redaction of Records Prior to Release
§349.540 Procedures for Requesting Access to Confidential Information
§349.550 Public Information
§349.560 Videotapes, Audiotapes and Photographs
§349.570 Charges for Copies of Records

Subchapter F. Advisory Council on Juvenile Services

§349.600 Purpose
§349.650 Removal of Members

Subchapter G. Data

§349.700 Access to Data Collected

Subchapter F
Advisory Council on Juvenile Services

§349.600 Purpose

Effective Date: XXXXXX

(a) The purpose of the Advisory Council on Juvenile Services is to advise the Texas Juvenile Justice Board and Texas Juvenile Justice Department on:

(1) the needs and problems of juvenile boards and juvenile probation departments;

(2) long-range strategic planning;

(3) reviews and proposed revisions to standards affecting juvenile probation programs, services, and facilities;

(4) the potential cost impact on juvenile probation departments of new standards proposed by the Texas Juvenile Justice Board;

(5) recommendations to improve information sharing between agencies that serve children, including agencies serving children involved in both the juvenile justice and child welfare systems; and

(6) any other matter at the request of the Texas Juvenile Justice Board.

(b) The goal of the advisory council is to provide actionable, direct, and inclusive feedback from the local perspective to the Texas Juvenile Justice Board and Texas Juvenile Justice Department so the unified juvenile justice system can collectively develop and improve the state's comprehensive continuum of care for youth; prioritize evidence-based rehabilitative services; and ensure safety for youth, staff, and the public.

(c) The advisory council is composed of 15 members, as specified in Chapter 203, Human Resources Code. Members, excluding ex officio members, serve staggered two-year terms. Texas Juvenile Justice Board-appointed members shall receive training on the advisory council's purpose, role, and procedures within 30 days of their appointment.

(d) If a vacancy occurs on the council during a member's term, the Texas Juvenile Justice Board must appoint a replacement who meets the qualifications of the vacant position to serve for the remainder of the term.

(e) A majority of advisory council members, excluding ex officio members as defined in Chapter 203, Human Resources Code, constitutes a quorum. A quorum must be present to vote on action items that will be submitted to the Texas Juvenile Justice Board for consideration.

(f) Ex officio members have the same rights and privileges as other members, including the right to vote. These members are not counted when determining the number of members who represent a quorum or in determining whether a quorum is present.

(g) An advisory council member shall avoid the appearance of a conflict of interest by not voting or participating in a decision by the council that solely benefits, solely penalizes, or otherwise solely impacts the county or juvenile probation department over which the member has authority.

(h) The advisory council's presiding officer or designee shall periodically update the board on the council's activities, progress on board directives, and issues impacting juvenile probation programs, services, and facilities.

(i) The advisory council is subject to Chapter 552, Government Code, as the act applies to bodies that are solely advisory in nature.

(j) The advisory council is not subject to Chapter 2110, Government Code. The department shall evaluate the continuing need for and recommendations to improve the council during the rule review process established under Chapter 2001, Government Code.

§349.650 Removal of Members

Effective Date: XXXXXX

It is a ground for removal from the council if a member is absent from more than half of the regularly scheduled meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the council.

Subchapter G

Data

§349.700 Access to Data Collected

Effective Date: XXXXXX

For planning and research purposes, all juvenile probation departments participating in the implementation of the state's regionalization plan developed under Chapter 203, Human Resources Code, are authorized to access data that any participating departments have submitted through the juvenile case management system.

Title 37 Public Safety and Corrections
Part 11 Texas Juvenile Justice Department
Chapter 343 Secure Juvenile Pre-Adjudication Detention and Post-Adjudication Correctional Facilities

01/24/24 Draft – Pertinent Section Only, Not the Full Chapter

Subchapter B
Pre-Adjudication and Post-Adjudication Secure Facility Standards

§343.206 Certification and Registration of Facility

Effective Date: XXXXXX

(a) Before the facility admits residents, the juvenile board in the county where the facility is located, shall ensure:

(1) the facility is certified in compliance with §51.12 or §51.125 of the Texas Family Code;

(2) the number of pre-adjudication and post-adjudication beds is designated in the facility certification;

(3) the facility is registered with TJJD in compliance with §51.12 or §51.125 of the Texas Family Code; and

(4) the current facility certification and TJJD's facility registration are posted within a public area of the facility.

(b) TJJD will not register a facility that was constructed or previously used for the confinement of adult offenders unless TJJD determines the facility has been appropriately retrofitted to comply with TJJD standards related to facilities.

(c) A juvenile who has been committed to TJJD and is awaiting transport to a TJJD facility may be housed in a post-adjudication secure facility in a bed that is designated as a pre-adjudication bed or dually-designated as a pre-adjudication bed or a post-adjudication bed.

Title 37 Public Safety and Corrections
Part 11 Texas Juvenile Justice Department
Chapter 341 General Standards for Juvenile Probation Departments

01/24/24 Draft – Pertinent Section Only, Not the Full Chapter

Subchapter B
Juvenile Board Responsibilities

§341.204 Residential Placement

Effective Date: XXXXXX

(a) **Duty to Certify Juvenile Justice Facilities.**

The juvenile board serving the county where a juvenile justice facility is located must certify and register the facility as required by Texas Family Code §§51.12, 51.125, and 51.126, as applicable.

(b) **Prohibition on Placing Juveniles in Non-licensed Facilities.**

The juvenile board must ensure that juveniles under its jurisdiction are placed only in:

(1) juvenile justice facilities that are certified by a juvenile board in Texas; or

(2) public or private residential facilities or programs licensed by a state governmental entity or exempted from licensure by state law.

(c) **Placement in a Facility Constructed or Previously Used for the Confinement of Adult Offenders.**

(1) A juvenile board or juvenile probation department may contract with a facility that was constructed or previously used for the confinement of adult offenders only after TJJD has determined the facility has been appropriately retrofitted to comply with TJJD standards related to facilities. TJJD will maintain a list of pre-approved facilities.

(2) If the facility is not on the list of pre-approved facilities, the juvenile board or juvenile probation department must request approval from TJJD and submit any information TJJD needs in order to make a determination under this provision.

(3) This subsection does not apply to facilities registered with TJJD.

Texas Administrative Code

Title 37 **Public Safety and Corrections**
Part 11 **Texas Juvenile Justice Department**
Chapter 351 **Standards for Short-Term Detention Facilities**

01/24/24 Draft – Pertinent Section Only, Not the Full Chapter

§351.49 Retrofitted Adult Facilities

Effective Date: XXXXXX

(a) Before a short-term detention facility accepts residents, the juvenile board in the county where the facility is located must ensure the facility has been approved by TJJD.

(b) TJJD will not approve a facility that was constructed or previously used for the confinement of adult offenders unless TJJD determines the facility has been appropriately retrofitted to comply with TJJD standards related to facilities.

Title 37 Public Safety and Corrections
Part 11 Texas Juvenile Justice Department
Chapter 355 Non-Secure Correctional Facilities

01/24/24 Draft – Pertinent Section Only, Not the Full Chapter

§355.206 Certification and Registration of Facility

Effective Date: XXXXXX

(a) **Non-Secure Correctional Facilities.**

Before the facility admits residents, the juvenile board in the county or district where a non-secure correctional facility is located shall ensure:

(1) the facility is certified in compliance with §51.126 of the Texas Family Code;

(2) the number of beds is designated in the facility certification;

(3) the facility is registered with TJJD in compliance with §51.126 of the Texas Family Code; and

(4) the current facility certification and TJJD's facility registration are posted within a public area of the facility.

(b) **Retrofitted Adult Facilities.**

A juvenile board may use or contract with a non-secure correctional facility that was constructed or previously used for confinement of adult offenders if the juvenile board can document and TJJD can verify that the facility is appropriately retrofitted to adhere to applicable rules (i.e., standards) in Chapters 344, 345, 355, and 358 of this title.

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: XXXXXX**
Subchapter:	Program Services	Page: 1 of 2
Division:	Education Programs	
Rule:	**Youth Career and Technical Education Advisory Committee**	New
Statutes:	Human Resources Code §203.0083	

RULE

(a) **Purpose.**

This rule establishes the Youth Career and Technical Education Advisory Committee, which assists the Texas Juvenile Justice Department (TJJD) with overseeing and coordinating vocational training for youth in state custody, including training provided by community colleges and other local entities.

(b) **General Provisions.**

(1) Committee duties include, but are not limited to:

(A) assessing the vocational training needs of youth committed to state custody;

(B) identifying barriers to the success of vocational training programs for youth committed to state custody;

(C) engaging in long-range strategic planning to assist TJJD in establishing goals and actionable plans for expanding the use of vocational training for youth committed to state custody, including opportunities to successfully transition youth from programming in secure facilities to training and employment in the community; and

(D) any other matter at the request of the board.

(2) The goal of the committee is to help TJJD improve its procedures for and outcomes of vocational training to increase youths' success as they reenter Texas communities.

(3) The committee is composed of 11 members appointed by the TJJD's governing board, including:

(A) one representative from the Texas Education Agency;

(B) one representative from the Texas Workforce Commission or a local workforce development board who has experience with programs for youth or young adults;

(C) one representative from the Texas Department of Licensing and Regulation;

(D) one representative from the Texas Department of Family and Protective Services;

(E) two county juvenile probation chiefs;

(F) one certified educator;

(G) two members with professional experience in an occupation relevant to TJJD's vocational training programs, such as agriculture, construction, technology, manufacturing, and business;

(H) one representative from a post-secondary education entity who has experience in the administrative, training, or coordination functions of a career and technical education program; and

(l) one representative from an advocacy group with a primary function to improve education outcomes, safety, or well-being of youth.

(4) The board must appoint a presiding officer for the advisory committee.

(5) Committee members appointed under (c)(1)–(4) serve as ex officio members. Ex officio members have the same rights and privileges as other members, including the right to vote. These members are not counted when determining the number of members who represent a quorum or in determining whether a quorum is present.

(6) A majority of committee members, excluding ex officio members, constitutes a quorum. A quorum must be present to vote on action items that will be submitted to the board for consideration.

(7) Committee members, excluding ex officio members, serve staggered two-year terms with the terms of half of the members expiring on February 1 of each year. Members may serve multiple terms.

(8) If a vacancy occurs on the committee during a committee member's term, the presiding officer of the board, with the board's approval, must appoint a replacement who meets the qualifications of the vacant position to serve for the remainder of the term.

(9) A committee member shall avoid the appearance of a conflict of interest by not voting or participating in a decision by the committee that solely benefits, solely penalizes, or otherwise solely impacts the county or juvenile probation department over which the member has authority or the employer for whom the member works.

(10) The committee's presiding officer or designee shall periodically update the board on the committee's activities, progress on board directives, and issues impacting vocational training for youth committed to state custody.

(11) The committee is subject to Chapter 552, Government Code, as the act applies to bodies that are solely advisory in nature.

(12) In accordance with Chapter 2110, Government Code, the committee is abolished on the fourth anniversary of the date of its creation unless the board amends rules to provide for a different abolishment date.

(13) TJJD shall evaluate the continuing need for and recommendations to improve the committee during the rule review process established under Chapter 2001, Government Code.

Draft 01/24/24

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: XXXXXX**
Subchapter:	Admission, Placement, Release, and Discharge	Page: 1 of 1
Division:	Certain Actions by the Executive Director	
Rule:	**Certain Actions by the Executive Director**	New
Statutes:	Human Resources Code §203.002	

RULE

(a) **Purpose.**

This rule establishes that the Texas Juvenile Justice Department (TJJD) tracks the frequency with which the executive director takes certain actions and reports the resulting data to the TJJD Governing Board and the Sunset Advisory Committee.

(b) **General Provisions.**

(1) The department shall track the frequency with which the executive director takes the following actions:

(A) selecting youth for a conditional placement;

(B) selecting youth for a home placement;

(C) waiving the requirement for a youth with a determinate sentence to spend the youth's entire minimum period of confinement in a high-restriction facility;

(D) waiving the requirement for a youth to be on intensive supervision when initially released on parole; and

(E) authorizing the early discharge of a youth on parole.

(2) The department shall compile frequency data outlined in paragraph (b)(1) on a quarterly basis. The department shall provide the frequency data from the previous quarter to the TJJD Governing Board and Sunset Advisory Commission at the beginning of each quarter.

DRAFT

Chapter:	Agency Management and Operations	**Effective Date: XXXXXX**
Subchapter:	Interaction with the Public	Page: 1 of 3
Rule:	**Advocacy, Support Group, and Social Services Provider Access**	Replaces: GAP.385.8183, 12/1/16
Statutes:	Human Resources Code §203.002	

RULE

(a) **Purpose.**

This rule establishes a process for allowing advocacy and support groups and social services providers to provide on-site information, support, and other services for youth confined in Texas Juvenile Justice Department (TJJD) residential facilities.

(b) **Applicability.**

(1) This rule applies to residential facilities operated by TJJD.

(2) This rule does not apply to a youth's access to his/her personal attorney or personal clergy member in accordance with §380.9311 of this title and §380.9317 of this title.

(c) **Definitions.**

The following words and terms have the following meanings when used in this rule, unless the context clearly indicates otherwise:

(1) **Advocacy or Support Groups**--organizations whose primary functions are to benefit children, inmates, girls and women, persons with mental illness, or victims of sexual assault.

(2) **Social Services Providers**--organizations whose primary functions are to provide psychological, social, educational, health, and other related services to juveniles and their families.

(3) **Confined**--placement in a residential facility.

(4) **Confidential Setting**--a setting that provides for private conversation but is within the line of sight of a TJJD staff member who is authorized to provide sole supervision of youth.

(d) **Registration Procedures.**

(1) An advocacy or support group or social services provider must register with TJJD prior to providing on-site information, support, or other services to confined youth.

(2) In order to register with TJJD, an advocacy or support group or social services provider must provide the following in a form and manner determined by TJJD:

(A) a copy of the articles of incorporation on file with the secretary of state or other official documentation showing the organization's primary purpose;

(B) contact information for the local program director(s);

(C) names of all persons employed by or otherwise officially representing the organization who would likely seek access to residential facilities under the provisions of this rule; and

(D) if 24-hour access to residential facilities is believed to be necessary to perform the organization's primary function, a written justification of the need for such access and the names of individuals representing the organization who perform the function for which 24-hour access is requested.

(3) The TJJD division director with responsibility over volunteer services or his/her designee determines whether or not an organization qualifies as an advocacy or support group or social services provider as defined in this rule[,] and whether or not 24-hour access, if requested, is necessary to provide the organization's primary function.

(4) A determination that an organization does not qualify as an advocacy or support group or social services provider under this rule[,] or a denial of a request for 24-hour access[,] must be in writing and may be appealed to the TJJD executive director or his/her designee. The appeal must be in writing and clearly state the reason the organization should be considered an advocacy or support group or social services provider under this rule or the reason that denial of 24-hour access would prevent the organization from effectively performing its primary function.

(5) A person representing a registered advocacy or support group or social services provider is not permitted to provide information, support, or other services to youth in a confidential setting unless and until:

(A) TJJD conducts a background check pursuant to §385.8181 of this title and clears the person for such access; and

(B) the person signs appropriate confidentiality agreements concerning youth information and/or records.

(6) A registered advocacy or support group or social services provider must provide immediate written notification to TJJD when a person who is registered with TJJD as a representative of the organization ceases to represent the organization.

(e) **General Provisions.**

(1) A person who has been granted 24-hour access should provide reasonable advance notice of his/her intention to visit a facility to allow for security and confidentiality arrangements to be made. Lack of advance notice does not constitute grounds for denying entry.

(2) A person who has not been granted 24-hour access may access residential facilities during youth waking hours. Such a person must provide at least 24-hour advance notice of his/her visit to the facility in order for security and confidentiality arrangements to be made. Visits with less than 24-hour advance notice will be accommodated when possible.

(3) The security and confidentiality measures arranged by TJJD must not be designed to deny a registered advocacy or support group or social services provider access to youth.

(4) A person who has been cleared for access and who has provided adequate advance notice, if required, will not be denied access to any residential facility unless, in the judgment of the facility administrator or designee, the circumstances existing at the time of the visit create an unacceptable risk to the safety of youth, staff, or visitors. If, upon arrival at a facility, a representative of an advocacy or support group or social services provider is denied entry due to unsafe conditions, the facility administrator or designee must provide written justification to the organization within three workdays. A youth's current placement in a security unit does not constitute an unacceptable safety risk that would prevent access by a registered group or provider[,] but may be taken into consideration with other factors in making a determination of the safety of the current circumstances.

(5) A person who has been cleared for access must present picture identification at the entry point in order to gain access to the facility.

(6) Members of advocacy or support groups or social services providers are subject to search upon entry to a residential facility in accordance with §380.9710 of this title.

(7) Under state law, any person, including a registered member of an advocacy or support group or social services provider, who has cause to believe that a youth has been or may be adversely

affected by abuse, neglect, or exploitation has a legal obligation to report the matter in accordance with §380.9333 of this title. The reporting requirement applies without exception to a person whose personal communications may otherwise be privileged.

(8) Youth have the right to refuse a visit with an advocate or social services provider.

(9) Advocacy and support groups and social services providers may file complaints regarding the security and privacy procedures arranged by a facility in accordance with §385.8111 of this title.

(10) Provisions of this rule may not be used to bypass the provisions of §380.9312 of this title regarding visitation procedures for family members of youth committed to TJJD.

(f) **Revocation of Access.**

(1) TJJD may revoke the access of a representative of a registered advocacy or support group or social services provider, with written notice, when:

(A) the person has endangered the safety of youth or the security of the facility; or

(B) the person has violated a TJJD confidentiality agreement.

(2) Revocation of access may be appealed to the executive director or his/her designee. The appeal must be in writing and clearly state the reason the person's access should not be revoked.

(g) **Frequency Data.**

(1) The department shall track the frequency with which the executive director finalizes appeals described in subsections (d) and (f).

(2) The department shall compile frequency data on a quarterly basis.

(3) At the beginning of each quarter, the department shall provide the frequency data from the previous quarter to the governing board of the Texas Juvenile Justice Department and Sunset Advisory Commission.

Draft 01/24/24

Chapter:	Agency Management and Operations	**Effective Date: XXXXXX**
Subchapter:	Miscellaneous	Page: 1 of 1
Rule:	**Legal Sufficiency Review for Administrative Findings of Abuse, Neglect, or Exploitation**	New
Statutes:	Human Resources Code §242.102	

RULE

All findings in abuse, neglect, and exploitation investigations shall be reviewed for legal sufficiency before the appropriate parties are notified of the findings.

DRAFT

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Rachel Gandy, Chief of Staff

Subject: Discussion, consideration, and possible approval to publish revisions to 37 TAC §380.8767 (Crisis Stabilization Unit) and §380.9571 (Procedure for Mental-Health-Status Review Hearing) in the *Texas Register* for a public comment period of at least 30 days and possible conditional approval to adopt the final rules

Date: February 5, 2024

Before the Board for consideration are revisions to the following rules, with abbreviated summaries included and more detailed summaries provided below:

- ***Section 380.8767 (relating to the crisis stabilization unit).*** Changes involve a revision to the number of hours within which each youth must undergo a mental-health-status review hearing after the youth arrives at the stabilization unit.
- ***Section 380.9571 (relating to the procedure for a mental-health-status review hearing).*** Changes involve a revision to the number of hours within which each youth must undergo a mental-health-status review hearing after the youth arrives at the stabilization unit.

The board's approval is requested to publish these revised rules in the *Texas Register* for a 30-day public comment period. Also requested is the board's approval to adopt the final rules after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

§380.8767, Crisis Stabilization Unit

Summary of Proposed Key Change:

- Clarified that a mental-health-status review hearing must be held for each youth within *72* hours (rather than 96 hours) after the youth's arrival at the stabilization unit.

§380.9571, Procedure for Mental-Health-Status Review Hearing

Summary of Proposed Key Changes:

- Clarified that a mental-health-status review hearing must be held for each youth within *72* hours (rather than 96 hours) after the youth's arrival at the stabilization unit.

- Clarified that, if the hearing manager determines an unavoidable absence would prevent a key witness or party from attending the hearing, the hearing may be rescheduled to the earliest possible time but not later than *72* hours (rather than 96 hours) from the original scheduled hearing.

Attached to this memo please find:

- the text of the rules, with the proposed changes shown as mark-ups; and
- a resolution for board action.

Chapter: Rules for State-Operated Programs and Facilities Subchapter: Treatment Division: Programming for Youth with Specialized Treatment Needs **Title: Crisis Stabilization Unit** Statute(s): N/A	**Effective Date: XXXXXX** Page: 1 of 3 Replaces: GAP.380.8767, 12/1/14

RULE

(a) **Purpose.**

The purpose of this rule is to establish criteria and a process for admitting youth who are experiencing a psychiatric crisis into a crisis stabilization unit (CSU) operated by the Texas Juvenile Justice Department (TJJD).

(b) **Definitions.**

(1) **Designated Mental Health Professional**--has the meaning assigned by §380.9187 of this chapter ~~[title]~~.

(2) **Psychiatric Provider**--has the meaning assigned by §380.9187 of this chapter ~~[title]~~.

(c) **References.**

(1) For due process procedures for mental health status reviews, see §380.9571 of this chapter ~~[title]~~.
(2) For emergency mental health placements, see §380.8771 of this chapter ~~[title]~~.

(d) **Admissions.**

(1) **Admission Criteria.**

A youth may be admitted to a CSU only when the following criteria are met:

(A) the youth demonstrates serious dysfunction in behavior, judgment, thinking, or mood; and

(B) the dysfunction is the result of a current neurological deficit, emotional disturbance, and/or psychiatric disorder (e.g., psychosis, major affective disorder, organic disorder, or anxiety disorder) and the dysfunction is not the result of a primary conduct disorder or antisocial personality disorder; and

(C) the youth:

(i) presents a risk of serious harm to self or others; or
(ii) if not treated, will continue to suffer severe and abnormal mental, emotional, or physical distress and will continue to experience deterioration in the youth's ~~[his/her]~~ ability to function independently, as evidenced by the youth's inability to attend to basic needs, such as food, health, personal hygiene, or safety; and

(D) a CSU is the least restrictive intervention that is appropriate and available to safely and effectively meet the treatment needs and to control the dysfunctional behavior.

(2) **Referral Documents.**

The referral must include a current psychiatric evaluation from a psychiatric provider and a psychological evaluation approved by the designated mental health professional, unless the referral is due to an emergency mental health placement under §380.8771 of this chapter ~~[title]~~.

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(3) **72-Hour ~~[96-Hour]~~ Admission Review Process.**

A mental-health-status ~~[mental health status]~~ review hearing must be held for each youth within 72 ~~[96]~~ hours after arrival at the unit. If the 72-hour ~~[96-hour]~~ period ends on a Saturday, Sunday, or official holiday, the hearing must be held on the next workday. The hearing is held to determine whether criteria for unit admission have been met.

(A) If the youth does not meet criteria for admission, the youth ~~[he/she]~~ is not retained in the CSU. Youth who are not admitted are returned to the referring program/location.

(B) If the youth meets criteria for admission, the youth ~~[he/she]~~ is retained and treated in the CSU.

(C) If the youth's treatment needs and appropriateness for admission cannot be determined during the hearing, the youth may be temporarily admitted to the CSU for diagnostic and assessment purposes for up to 45 days from the date of arrival.

(i) A youth may be temporarily admitted for diagnostic and assessment purposes only if the hearing manager determines:

(I) the youth exhibits evidence of psychiatric dysfunction;

(II) the youth has recently engaged in behavior that presents a danger to self or others or has demonstrated a chronic failure to progress in the youth's ~~[his/her]~~ prior programming;

(III) the youth is in need of comprehensive psychiatric and psychological evaluation in a specialized setting; and

(IV) the CSU is the least restrictive setting in which to effectively accomplish this evaluation.

(ii) Before the end of the 45-day diagnostic and assessment period, the CSU staff must:

(I) hold a mental-health-status ~~[mental health status]~~ review hearing to seek admission to CSU; or

(II) transfer the youth out of CSU if a hearing is not held or if the youth is not admitted to CSU.

(e) **Program Requirements.**

(1) The program focus is on stabilization of the psychiatric dysfunction.

(2) Services are provided in a self-contained unit.

(3) An individualized treatment program, including treatment goals and objectives, is developed for and with each youth.

(4) The treatment team reviews the youth's progress weekly.

(5) The youth must be transferred out of the CSU within 90 days after the admission hearing unless an extension is granted.

(f) **Extensions.**

(1) **Extension Criteria.**

An extension may be granted beyond 90 days only if:

(A) the youth continues to meet admission criteria and the youth's treatment plan has been implemented appropriately; or

(B) the youth has symptoms of mental illness and continued treatment in the CSU is deemed to be in the youth's best interest.

(2) **Due Process Requirements for Extensions.**

(A) The due process required to determine whether extension criteria have been met is a mental-health-status ~~[mental health status]~~ review hearing. A youth on parole status, as defined in §380.9550 of this chapter ~~[title]~~, will remain on parole status.

(B) If an extension is recommended, the mental-health-status ~~[mental health status]~~ review hearing must be held:

(i) approximately 75 days but no later than 90 days after the last mental-health-status ~~[mental health status]~~ review hearing; or

(ii) within two workdays after the youth returns to the unit if the youth ~~[he/she]~~ is in a state hospital at the time the hearing is required.

(C) Multiple extensions may be granted by following procedures in this subsection.

(3) **Release and Transition Options.**

(A) The extension of time to treat the psychiatric dysfunction must be terminated when placement in a CSU is no longer needed for the primary purpose of treatment of the dysfunction, as determined by a majority vote of the youth's treatment team.

(B) Following termination of the extension, future placement decisions, including the youth's return to ~~[his/her]~~ home parole placement, are made in accordance with other applicable policies and procedures.

(C) No youth may be discharged from TJJD jurisdiction directly from a CSU unless TJJD's jurisdiction ends by statute.

See CMS Chapter 9, Section B for implementation procedures.

Chapter: Rules for State-Operated Programs and Facilities Subchapter: Behavior Management and Youth Discipline Division: Due Process Hearings Procedures **Rule: Procedure for Mental-Health-Status Review Hearing** ~~ACA: N/A~~ Statutes: N/A	**Effective Date: XXXXXX~~10/1/15~~** Page: 1 of 2 Replaces: GAP.380.9571, 10/1/15 ~~11/1/11,~~

RULE

(a) **Purpose.**

This rule establishes the due process required to admit a youth into a Texas Juvenile Justice Department (TJJD) stabilization unit or to extend a youth's stay in a stabilization unit to provide treatment for a psychiatric disorder.

(b) **Applicability.**

(1) For criteria for admission to a TJJD stabilization unit, see §380.8767 of this title.

(2) A mental-health-status review hearing is a Level II due process hearing with several procedural exceptions, as noted in this rule. See §380.9555 of this title for Level II hearing procedures.

(c) **Procedure.**

(1) **Decision Makers.**

(A) The facility administrator of the TJJD stabilization unit at which placement is sought appoints a mental health professional, as defined in §380.9187 of this title, to conduct the review hearing and serve as the hearing manager.

(B) The hearing manager must not have direct or primary responsibility in the youth's current treatment or diagnosis.

(C) The hearing manager has the same authority and responsibility as that assigned to a hearing manager in §380.9555 of this title.

(D) The hearing manager must be trained to conduct the review hearing.

(2) **Single-Function Hearing.**

The single function of a mental-health-status review hearing is to consider the facts presented relative to the criteria for admission or extension established in §380.8767 of this title.

(3) **Location.**

All mental-health-status review hearings must be conducted at a TJJD stabilization unit and are the responsibility of staff at that facility.

(4) **Advocate.**

The youth's advocate is appointed by the facility administrator or designee and must be a mental health professional or a case manager assigned to the stabilization unit.

(5) **Timing of Hearing.**

A mental-health-status review hearing must be held for each youth within 72 [~~96~~] hours after the youth's arrival at the stabilization unit. If the 72-hour [~~96-hour~~] period ends on a Saturday, Sunday, or official holiday, the hearing must be held on the next regular work day. If the hearing manager determines an unavoidable absence would prevent a key witness or party from attending the hearing, the hearing may be rescheduled to the earliest possible time but not later than 72 [~~96~~] hours from the original scheduled hearing.

(6) **Teleconference.**

The hearing may not be conducted by teleconference. However, testimony may be accepted via telephone if the hearing manager determines in-person testimony is impractical or unfeasible. If testimony is accepted via telephone, all persons required to be present at the hearing must be able to simultaneously hear the testimony.

(7) **Exclusion from the Hearing.**

To protect the confidential nature of the hearing, persons other than the youth, the youth's advocate, the staff representative, and the youth's parent(s) may be excluded from the hearing room at the discretion of the hearing manager. However, any person except the youth's advocate or staff representative may be excluded from the hearing room if his/her presence causes undue disruption or delay of the hearing or when matters being discussed are of a very sensitive nature. The reason(s) for the exclusions must be stated on the record.

(8) **Decision.**

(A) Following the presentation of evidence, the hearing manager must announce his/her decision regarding whether criteria for admission or extension have been established.

(B) A hearing manager's decision to admit or extend a youth in the stabilization unit must be supported by expert testimony of a psychiatrist that the youth meets the requisite criteria. The testimony should be given in person when feasible.

(C) The youth must be informed of his/her right to appeal the decision to the executive director in accordance with §380.9353 of this title. The hearing manager's decision will be implemented even if an appeal has been filed and a response is pending.

(9) **Hearing Report.**

(A) A report that includes the hearing manager's findings and the basis for them must be completed within seven work days after the date of the hearing.

(B) The facility administrator or designee must review the report to ensure accurate and consistent application of this rule. The person who conducted the hearing may not be the person who conducts this review. If necessary, the facility administrator or designee may return the report to the hearing manager for clarification or to reopen the hearing for the purpose of obtaining further information.

See CMS Chapter 9, Section B for implementation procedures.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Cameron Taylor, Senior Strategic Advisor

Subject: Discussion, consideration, and possible approval to publish proposed revisions to the following rules—all from Title 37, Administrative Code—in the *Texas Register* for a public comment period of at least 30 days and possible conditional approval to adopt the final rules: §§380.9503 (Rules and Consequences for Residential Facilities), 380.9504 (Rules and Consequences for Youth on Parole), and 380.9510 (Intervention Program)

Date: February 5, 2024

Before the Board for consideration are revisions to the following rules, with abbreviated summaries included and more detailed summaries provided below:

- ***Sections 380.9503 and 380.9504 (relating to rules and consequences for residential facilities and for youth on parole).*** Changes involve new requirements for requesting administrative hearings when youth are accused of first- or second-degree felonies and possibly placing those youth in the most restrictive setting appropriate. Changes also involve revisions to the list of rule violations.
- ***Section 380.9510 (relating to Intervention Program).*** Changes involve reviewing youth for placement in the intervention program for first- or second-degree felonies and when returned to a high-restriction facility. Changes also include revising the description of the primary level of the intervention program.

The board's approval is requested to publish these revised rules in the *Texas Register* for a 30-day public comment period. Also requested is the board's approval to adopt the final rules after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

§380.9503, Rules and Consequences for Residential Facilities

Summary of Proposed Key Changes:

- Added that a Level II hearing will be requested for any youth who allegedly commits a first- or second-degree felony unless TJJD determines, given all circumstances, a hearing would not be appropriate. Such a decision must be documented. Also added that TJJD will review the youth for placement in the most restrictive setting appropriate, including the intervention program in Section 380.9510, if the allegation is proved.

- Added a new rule violation entitled *Failure to Comply with Electronic Monitoring Program Conditions*, which applies only to youth in medium-restriction facilities and includes failing to comply with any of the specific electronic monitoring conditions listed in the rule.
- Changed the definition of the rule violation entitled *Participating in a Major Disruption of Facility Operations* to no longer require that a youth must participate with two or more persons.

§380.9504, Rules and Consequences for Youth on Parole

Summary of Proposed Key Changes:

- Added the following to the list of parole rule violations:
  - *Failure to Comply with Electronic Monitoring Program Conditions,* which includes failing to comply with any of the specific conditions listed in the rule; and
  - *Participating in a Major Disruption of Facility Operations*, which is conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs (only for youth on parole status in medium-restriction facilities).
- Added that a parole revocation hearing will be requested for any youth who allegedly commits a first- or second-degree felony while on parole, although it may not be held if a deferral is requested by local prosecutors or TJJD determines that, given all circumstances, a hearing would not be appropriate. Also added that TJJD shall review the youth for placement in the most restrictive setting appropriate if the youth's parole is revoked.

§380.9510, Intervention Program

Summary of Proposed Key Changes:

- Added first- or second-degree felony to the list of violations that require a youth in a high-restriction facility to be reviewed for possible placement in the intervention program.
- Added that youth whose parole has been revoked and youth who are transferred from a medium-restriction facility to a high-restriction facility may be reviewed for placement in the intervention program. This review is mandatory if the return to a high-restriction facility is due to a first- or second-degree felony.
- Added that youth in the primary level of the intervention program move around campus for non-program-related activities in a manner generally comparable to the general campus population. Removed a provision stating that youth in this level of the program to continue to sleep at their assigned dorm but engage in other activities at the site of the program.
- Removed a reference that stated which staff divisions are involved in reviewing youth for possible placement in the primary level of the intervention program.

Attached to this memo please find:

- the text of the rules, with the proposed changes shown as mark-ups; and
- a resolution for board action.

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: XXXXXX**
Subchapter:	Behavior Management and Youth Discipline	Page: 1 of 7
Division:	Behavior Management	
Rule:	**Rules and Consequences for Residential Facilities**	Replaces: GAP.380.9503, 5/19/23
Statutes:	Human Resources Code §243.001, §242.063	

RULE

(a) **Purpose.**

This rule establishes the actions that constitute violations of the rules of conduct for residential facilities. Violations of the rules may result in disciplinary consequences that are proportional to the severity and extent of the violation. Appropriate due process, including a consideration of extenuating circumstances, shall be followed before imposing consequences.

(b) **Applicability.**

This rule applies to youth assigned to residential facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) **Definitions.**

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

(1) **Attempt to Commit**--a youth, with specific intent to commit a rule violation, engages in conduct that amounts to more than mere planning that tends but fails to effect the commission of the intended rule violation.

(2) **Bodily Injury**--physical pain, illness, or impairment of physical condition. Fleeting pain or minor discomfort does not constitute bodily injury.

(3) **Direct Someone to Commit**--occurs when:

(A) a youth communicates with another youth;
(B) the communication is intended to cause the other youth to commit a rule violation; and
(C) the other youth commits or attempts to commit a rule violation.

(4) **Possession--**actual care, custody, control, or management. It does not require the item to be on or about the youth's person.

(d) **General Provisions.**

(1) Formal incident reports are completed for alleged rule violations as required by internal operational procedures.

(2) A formal incident report is not proof that a youth committed an alleged rule violation. Only rule violations that are proven through a Level I or Level II due process hearing in accordance with §380.9551 or §380.9555 of this chapter ~~[title]~~, respectively, are considered proven and are considered a part of a youth's disciplinary record. A formal incident report is not appealable or grievable; only disciplinary consequences may be appealed or grieved, as provided below.

(3) When a youth is found to be in possession of prohibited money as defined in this rule, a Level II hearing is required to seize the money. Seized money shall be placed in the student benefit fund in accordance with §380.9555 of this chapter ~~[title]~~.

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(4) This paragraph applies only to youth not on parole status who are alleged to have engaged in conduct classified as a first- or second-degree felony while in a residential facility operated by or under contract with TJJD. A Level II hearing shall be requested on these youth unless it is determined that, given all circumstances, a Level II hearing is not appropriate. Such decision shall be documented. If a requested Level II hearing is held and the allegation is proved, the youth shall be reviewed for the most restrictive setting appropriate, including the intervention program described by §380.9510 of this chapter.

(e) **Disciplinary Consequences.**

(1) Disciplinary consequences shall be established in writing in TJJD's procedural manuals. Appropriate disciplinary consequences may be imposed only if the consequences are established in writing in TJJD's procedural manuals prior to the occurrence of the conduct for which the consequence is issued.

(2) Disciplinary consequences may include, but are not limited to, the following:

(A) suspension of privileges;
(B) restriction from planned activities;
(C) trust-fund restriction; and
(D) disciplinary transfer to a high-restriction facility (available only for youth on institutional status in a medium-restriction facility).

(3) The following are prohibited as disciplinary consequences:

(A) corporal or unusual punishment;
(B) subjecting a youth to humiliation, harassment, or physical or mental abuse;
(C) subjecting a youth to personal injury;
(D) subjecting a youth to property damage or disease;
(E) punitive interference with the daily functions of living, such as eating or sleeping;
(F) purposeless or degrading work, including group exercise as a consequence;
(G) placement in the intervention program under §380.9510 of this chapter [~~title~~];
(H) disciplinary isolation; and
(I) extending a youth's stay in a TJJD facility.

(4) A Level II hearing is required before imposing a disciplinary consequence that materially alters a youth's living conditions, including disciplinary transfer from a medium-restriction facility to a high-restriction facility. TJJD's procedural manuals will specify which disciplinary consequences require a Level II hearing. Disciplinary consequences requiring a Level II hearing are considered major consequences.

(5) If a Level II hearing is not required, the following must occur before imposing disciplinary consequences for a youth in a high-restriction facility:

(A) a written description of the incident must be prepared;

(B) staff must tell the youth which rule violation the youth allegedly committed and describe the information staff has that establishes the youth committed it;

(C) staff must tell the youth what disciplinary consequence(s) staff is considering imposing; and

(D) the youth must be given the opportunity to address the allegation, including providing any extenuating circumstances and information on the appropriateness of the intended consequence(s).

(6) If a Level II hearing is not required, a Level III hearing must occur before imposing disciplinary consequences for a youth in a medium-restriction facility, in accordance with §380.9557 of this chapter [~~title~~].

(f) **Review and Appeal of Consequences.**

(1) All disciplinary consequences shall be reviewed for policy compliance by the facility administrator or designee within three calendar days after issuance. The reviewing staff shall not be the staff who issued the discipline.

(2) The reviewing staff may remove or reduce any disciplinary consequence determined to be excessive or not validly related to the nature or seriousness of the conduct.

(3) Youth may appeal disciplinary consequences issued through a Level II hearing by filing an appeal in accordance with §380.9555 of this chapter [~~title~~].

(4) Youth in medium-restriction facilities may appeal disciplinary consequences issued through a Level III hearing by filing an appeal in accordance with §380.9557 of this chapter [~~title~~].

(5) Youth in high-restriction facilities may grieve disciplinary consequences issued without a Level II hearing by filing a grievance in accordance with §380.9331 of this chapter [~~title~~].

(g) **Major Rule Violations.**

It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following:

(1) **Assault of Another Youth (No Injury)**--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to another youth but the conduct does not result in bodily injury.

(2) **Assault of Staff (No Injury)**--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to a staff member, contract employee, or volunteer with the intent to cause injury but the conduct does not result in bodily injury.

(3) **Assault Causing Bodily Injury to Another Youth**--intentionally, knowingly, or recklessly engaging in conduct that causes another youth to suffer bodily injury.

(4) **Assault Causing Bodily Injury to Staff**--intentionally, knowingly, or recklessly engaging in conduct that causes a staff member, contract employee, or volunteer to suffer bodily injury.

(5) **Attempted Escape**--committing an act with specific intent to escape that amounts to more than mere planning that tends but fails to effect an escape.

(6) **Chunking Bodily Fluids**--causing a person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, and/or feces of another with the intent to harass, alarm, or annoy another person.

(7) **Distribution of Prohibited Substances**--distributing or selling any prohibited substances or items.

(8) **Escape**--leaving a high-restriction residential placement without permission or failing to return from an authorized leave.

(9) **Extortion or Blackmail**--demanding or receiving favors, money, actions, or anything of value from another in return for protection against others, to avoid bodily harm, or in exchange for not reporting a violation.

(10) **Failure to Comply with Electronic Monitoring Program Conditions (for Youth in Medium-Restriction Residential Placement)**--failing to comply with one of the following conditions required by the youth's electronic monitoring program conditions:

(A) remain at the address listed at all designated times;

(B) follow curfew restriction as stated in the youth's conditions of placement or conditions of parole;

(C) remain at the approved placement for the first 10 days while on electronic monitoring, going only to school, approved activities, religious functions, and medical/psychological appointments and then return to the approved placement, in accordance with the schedule identified in the conditions of placement or conditions of parole;

(D) wear the electronic monitoring device 24 hours a day;

(E) allow a TJJD staff member to enter the youth's residence to install, maintain, and inspect the device if required;

(F) notify the electronic monitoring officer as soon as possible within 24 hours if the youth experiences any problems with the electronic monitoring system; and

(G) charge the device daily for a minimum of one hour continuously in the morning and one hour continuously in the evening.

(11)[~~(10)~~] **Fighting Not Resulting in Bodily Injury**--engaging in a mutually instigated physical altercation with another person or persons that does not result in bodily injury.

(12)[~~(11)~~] **Fighting That Results in Bodily Injury**--engaging in a mutually instigated physical altercation with another person or persons that results in bodily injury.

(13)[~~(12)~~] **Fleeing Apprehension**--running from or refusing to come to staff when called and such act results in disruption of facility operations.

(14)[~~(13)~~] **Misuse of Medication**--using medication provided to the youth by authorized personnel in a manner inconsistent with specific instructions for use, including removing the medication from the dispensing area.

(15)[~~(14)~~] **Participating in a Major Disruption of Facility Operations**--intentionally engaging [~~participating with two or more persons~~] in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs.

(16)[~~(15)~~] **Possessing, Selling, or Attempting to Purchase Ammunition**--possessing, selling, or attempting to purchase ammunition.

(17)[~~(16)~~] **Possession of Prohibited Items**--possessing the following prohibited items:

(A) cellular telephone;
(B) matches or lighters;
(C) jewelry, unless allowed by facility rules;
(D) money in excess of the amount or in a form not permitted by facility rules (see §380.9555 of this chapter [~~title~~] for procedures concerning seizure of such money);
(E) pornography;
(F) items which have been fashioned to produce tattoos or body piercing;
(G) cleaning products when the youth is not using them for a legitimate purpose; or
(H) other items that are being used inappropriately in a way that poses a danger to persons or property or threatens facility security.

(18)[~~(17)~~] **Possessing, Selling, or Attempting to Purchase a Weapon**--possessing, selling, or attempting to purchase a weapon or an item that has been made or adapted for use as a weapon.

(19)[~~(18)~~] **Possession or Use of Prohibited Substances and Paraphernalia**--possessing or using any unauthorized substance, including controlled substances or intoxicants, medications not prescribed for the youth by authorized medical or dental staff, alcohol, tobacco products, or related paraphernalia such as that used to deliver or make any prohibited substance.

(20)[~~(19)~~] **Refusing a Drug Screen**--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen. (Note: If the youth says he/she cannot provide a sample, the youth shall be given water to drink and two hours to provide the sample.)

(21)[~~(20)~~] **Refusing a Search**--refusing to submit to an authorized search of person or area.

(22)[~~(21)~~] **Repeated Non-Compliance with a Written, Reasonable Request of Staff (for Youth in Medium-Restriction Residential Placement)**--failing on two or more occasions to comply with a specific written, reasonable request of staff. If the request requires the youth to do something daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do something monthly, the two failures to comply must be within a 60-day period.

(23)[~~(22)~~] **Sexual Misconduct**--intentionally or knowingly engaging in any of the following:

(A) causing contact, including penetration (however slight), between the penis and the vagina or anus; between the mouth and penis, vagina or anus; or penetration (however slight) of the anal or genital opening of another person by hand, finger, or other object;
(B) touching or fondling, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person;
(C) kissing for sexual stimulation;
(D) exposing the anus, buttocks, breasts, or genitals to another or exposing oneself knowing the act is likely to be observed by another person; or
(E) masturbating in an open and obvious way, whether or not the genitals are exposed.

(24)[~~(23)~~] **Stealing**--intentionally taking property with an estimated value of $100 or more from another without permission.

(25)[~~(24)~~] **Tampering with Monitoring Equipment**--a youth intentionally or knowingly tampers with monitoring equipment assigned to any youth.

(26)[~~(25)~~] **Tampering with Safety Equipment**--intentionally tampering with, damaging, or blocking any device used for safety or security of the facility. This includes, but is not limited to, any locking device or item that provides security access or clearance, any fire alarm or fire suppression system or device, video camera, radio, telephone (when the tampering prevents it from being used as necessary for safety and/or security), handcuffs, or shackles.

(27)[~~(26)~~] **Tattooing/Body Piercing**--engaging in tattooing or body piercing of self or others. Tattooing is defined as making a mark on the body by inserting pigment into the skin.

(28)[~~(27)~~] **Threatening Another with a Weapon**--intentionally and knowingly threatening another with a weapon. A weapon is something that is capable of inflicting bodily injury in the manner in which it is being used.

(29)[~~(28)~~] **Unauthorized Absence**--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(30)[~~(29)~~] **Vandalism**--intentionally causing $100 or more in damage to state property or personal property of another.

(31)[~~(30)~~] **Violation of Any Law**--violating a Texas or federal law that is not already defined as a major or minor rule violation.

(h) **Minor Rule Violations.**

It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following:

(1) **Breaching Group Confidentiality**--disclosing or discussing information provided in a group session to another person not present in that group session.

(2) **Disruption of Program**--engaging in behavior that requires intervention to the extent that the current program of the youth and/or others is disrupted. This includes, but is not limited to:

(A) disrupting a scheduled activity;
(B) being loud or disruptive without staff permission;
(C) using profanity or engaging in disrespectful behavior toward staff or peers; or
(D) refusing to participate in a scheduled activity or abide by program rules.

(3) **Failure to Abide by Dress Code**--failing to follow the rules of dress and appearance as provided by facility rules.

(4) **Failure to do Proper Housekeeping**--failing to complete the daily chores of cleaning the living environment to the expected standard.

(5) **Gang Activity**--participating in an activity or behavior that promotes the interests of a gang or possessing or exhibiting anything related to or signifying a gang, such as, but not limited to, gang-related literature, symbols, or signs.

(6) **Gambling or Possession of Gambling Paraphernalia**--engaging in a bet or wager with another person or possessing paraphernalia that may be used for gambling.

(7) **Horseplay**--engaging in wrestling, roughhousing, or playful interaction with another person or persons that does not rise to the level of an assault. Horseplay does not result in any party getting upset or causing injury to another.

(8) **Improper Use of Telephone/Mail/Computer**--using the mail, a computer, or the telephone system for communication that is prohibited by facility rules, at a time prohibited by facility rules, or to inappropriately access information.

(9) **Lending/Borrowing/Trading Items**--lending or giving to another youth, borrowing from another youth, or trading with another youth possessions, including food items, without permission from staff.

(10) **Lying/Falsifying Documentation/Cheating**--lying or withholding information from staff, falsifying a document, and/or cheating on an assignment or test.

(11) **Possession of an Unauthorized Item**--possessing an item the youth is not authorized to have (possession of which is not a major rule violation), including items not listed on the youth's personal property inventory. This does not include personal letters or photographs.

(12) **Refusal to Follow Staff Verbal Instructions**--deliberately failing to comply with a specific reasonable verbal instruction made by a staff member.

(13) **Stealing**--intentionally taking property with an estimated value under $100 from another without permission.

(14) **Threatening Others**--making verbal or physical threats toward another person or persons.

(15) **Unauthorized Physical Contact with Another Youth (No Injury)**--intentionally making unauthorized physical contact with another youth without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, or grabbing.

(16) **Unauthorized Physical Contact with Staff (No Injury)**--intentionally making unauthorized physical contact with a staff member, contract employee, or volunteer without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, and grabbing.

(17) **Undesignated Area**--being in any area without the appropriate permission to be in that area.

(18) **Vandalism**--intentionally causing less than $100 in damage to state or personal property.

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: XXXXXX**
Subchapter:	Behavior Management and Youth Discipline	Page: 1 of 4
Division:	Behavior Management	
Rule:	**Rules and Consequences for Youth on Parole**	Replaces: GAP.380.9504, 10/18/22
Statutes:	Human Resources Code §§243.001, 244.005, 245.051	

RULE

(a) **Purpose.**

This rule establishes the actions that constitute violations of the rules of conduct youth are expected to follow while under parole supervision. Violations of the rules may result in disciplinary consequences, including revocation of parole, that are proportional to the severity and extent of the violation. Appropriate due process must be followed before imposing consequences.

(b) **Applicability.**

(1) This rule applies to youth on parole status who are assigned to a home placement.

(2) For parole revocation purposes, this rule also applies to youth on parole status who are assigned to a residential placement as a home substitute. However, this rule does not apply to the daily rules of conduct for these youth. For the daily rules of conduct, see §380.9503 of this chapter.

(c) **General Provisions.**

(1) Conditions of parole are provided to the youth before release on parole.

(2) Conditions of parole, including the rules of conduct, are reviewed with youth when they initially meet with their parole officers and at other times as necessary.

(3) Repeated violations of any rule of conduct may result in more serious disciplinary consequences.

(d) **Definitions.**

Possession--actual care, custody, control, or management. It does not require the item to be on or about the youth's person.

(e) **Parole Rule Violations.**

It is a violation to knowingly commit, attempt to commit, or aid someone else in committing any of the following:

(1) **Abscond**--leaving a home placement or failing to return from an authorized leave when:

(A) the youth's parole officer did not give permission; and
(B) the youth's whereabouts are unknown to the youth's parole officer.

(2) **Failure to Comply with Electronic Monitoring Program Conditions**--failing to comply with one of the following conditions required by the youth's electronic monitoring program conditions:

(A) remain at the address listed at all designated times;

(B) follow curfew restriction as stated in the youth's conditions of placement or conditions of parole;

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(C) remain at the approved placement for the first 10 days while on electronic monitoring, going only to school, approved activities, religious functions, and medical/psychological appointments and then return to the approved placement, in accordance with the schedule identified in the conditions of placement or conditions of parole;

(D) wear the electronic monitoring device 24 hours a day;

(E) allow a TJJD staff member to enter the youth's residence to install, maintain, and inspect the device if required;

(F) notify the electronic monitoring officer as soon as possible within 24 hours if the youth experiences any problems with the electronic monitoring system; and

(G) charge the device daily for a minimum of one hour continuously in the morning and one hour continuously in the evening.

(3)[~~(2)~~] **Failure to Comply with Sex Offender Conditions of Parole**--intentionally or knowingly failing to comply with one of the following conditions present in the youth's sex offender conditions of parole addendum:

(A) do not have unsupervised contact with children under the age specified by the conditions of parole;

(B) do not babysit or participate in any activity where the youth is responsible for supervising or disciplining children under the age specified by the conditions of parole; or

(C) do not initiate physical contact or touching of any kind with a child, victim, or potential victim.

(4)[~~(3)~~] **Failure to Report an Arrest or Citation**--failing to report an arrest or receipt of a citation to the youth's parole officer within 24 hours of arrest or citation.

(5) **Participating in a Major Disruption of Facility Operations**--intentionally engaging in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs. (This parole violation applies only to youth assigned to a residential placement as a substitute for home placement.)

(6)[~~(4)~~] **Possessing, Selling, or Attempting to Purchase Ammunition**--possessing, selling, or attempting to purchase ammunition.

(7)[~~(5)~~] **Possessing, Selling, or Attempting to Purchase a Weapon**--possessing, selling, or attempting to purchase a weapon or an item that has been made or adapted for use as a weapon.

(8)[~~(6)~~] **Refusing a Drug Screen**--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen.

(9)[~~(7)~~] **Repeated Non-Compliance with a Written, Reasonable Request of Staff**--failing on two or more occasions to comply with a specific condition of release under supervision and/or a specific written, reasonable request of staff. If the request requires the youth to do something daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do something monthly, the two failures to comply must be within a 60-day period.

(10)[~~(8)~~] **Photos, Videos, or Social Media Posts with Weapon, Ammunition, or Unauthorized Substance**--appearing in photos, videos, or other images, whether or not posted to social media, with any weapon, ammunition, or unauthorized substance or related paraphernalia, including any object that reasonably resembles a weapon, ammunition, or unauthorized substance or related paraphernalia. The term weapon includes, but is not limited to, guns, explosive devices, knives, blades, and clubs. The term related paraphernalia includes, but is not limited to, items used to make or deliver unauthorized substances.

(11)[~~(9)~~] **Tampering with Monitoring Equipment**--a youth intentionally or knowingly tampers with monitoring equipment assigned to any youth.

(12)[~~(10)~~] **Unauthorized Absence**--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(13)[~~(11)~~] **Possession or Use of Unauthorized Substances**--possessing, ingesting, inhaling, or otherwise consuming any unauthorized substance, including controlled substances or intoxicants, medications not prescribed for the youth by authorized medical or dental staff, alcohol or tobacco products, or related paraphernalia such as that used to deliver or make any unauthorized substance.

(14)[~~(12)~~] **Violation of Any Law**--violating a federal or state law or municipal ordinance.

(f) **Possible Consequences.**

(1) A parole rule violation may result in a Level I hearing or a Level III hearing conducted in accordance with §380.9551 or §380.9557 of this chapter, respectively.

(A) This subparagraph applies only to youth alleged to have engaged in conduct classified as a first- or second-degree felony while on parole. Except as provided by this subparagraph, a Level I hearing shall be requested on these youth. The hearing may be deferred when requested by local prosecutors, as provided in §380.9551 of this chapter. The designated staff person may determine that, given all circumstances, a Level I hearing is not appropriate. Such decision shall be documented. If a Level I hearing is held and the youth's parole is revoked, the youth shall be reviewed for the most restrictive setting appropriate, including the intervention program described by §380.9510 of this chapter.

(B) Parole officers are encouraged to be creative in determining a consequence appropriate to address and correct the youth's behavior. Staff should use evidence-based interventions that relate to the youth's risk, needs, and responsivity when appropriate. All assigned consequences should be related to the misconduct when possible.

(2) Consequences through a Level III hearing for a youth on parole include, but are not limited to:

(A) **Verbal Reprimand**--conference with a youth including a verbal reprimand that draws attention to the misbehavior and serves as a warning that continued misbehavior could result in more severe consequences.

(B) **Curfew Restriction**--an immediate change in existing curfew requirements outlined in the youth's conditions of parole.

(C) **Community Service Hours**--disciplinary assignment of a specific number of hours the youth is to perform community service in addition to the hours assigned when the youth was placed on parole. In no event may more than 20 community service hours be assigned through a Level III hearing.

(D) **Increased Level of Supervision**--an assigned increase in the number of primary contacts between the youth and parole officer in order to increase the youth's accountability.

(E) **Electronic Tracking**--assignment to a system that electronically tracks a youth's movement and location.

(F) **Writing Assignment**--an assignment designed for the youth to address the misbehavior and identify appropriate behavior in similar situations.

(3) Consequences through a Level I hearing for a youth on parole, including youth assigned to a residential placement as a home substitute, include:

(A) parole revocation and placement in any high- or medium-restriction program operated by or under contract with the Texas Juvenile Justice Department; and

(B) assignment of a length of stay consistent with §380.8525 of this chapter.

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date:**
Subchapter:	Behavior Management and Youth Discipline	Page: 1 of 6
Division:	Behavior Management	
Rule:	**Intervention Program**	Replaces: GAP.380.9510, 5/19/23
Statutes:	Human Resources Code §243.001; 20 USC §1400 et al.	
References:	34 CFR §300.530	

RULE

(a) **Purpose.**

The Texas Juvenile Justice Department (TJJD) delivers interventions in a structured environment for youth who have engaged in certain serious conduct. The interventions are designed to promote violence reduction and skill building to increase safety on TJJD campuses and to help the youth regulate their behavior in order to progress in treatment. Placement in an intervention program is not considered a disciplinary consequence. This rule sets forth eligibility criteria, program requirements, and services to be provided to youth.

(b) **Applicability.**

The program described by this rule operates only at [~~This rule applies only to~~] high-restriction facilities operated by TJJD.

(c) **Definitions.**

(1) **Admission, Review, and Dismissal (ARD) Committee**--a committee that makes decisions on educational matters relating to special-education-eligible youth.

(2) **Individualized Education Program (IEP)**--the program of special education and related services developed by a youth's ARD committee.

(3) **Isolation**--the confinement of a youth in a locked room or cubicle as a tool to manage the behavior of a youth. Rules regarding isolation do not apply:

(A) when doors are routinely locked during normal sleeping hours and isolation has not otherwise been imposed; or
(B) when a youth is placed in the security program.

(4) **Manifestation Determination Review**--a review conducted by a youth's ARD committee when a decision has been made to change a special-education-eligible youth's school placement due to a violation of the code of conduct. The committee determines whether a youth's conduct is a manifestation of the youth's disability and whether the youth's IEP was fully implemented.

(d) **Eligibility.**

(1) At a minimum, a youth must be reviewed to determine appropriateness for placement at any level of the intervention program if the youth engages in one or more of the following rule violations as defined in §380.9503 of this chapter [~~title~~]:

(A) assault of youth (with or without injury);
(B) assault of staff (with or without injury);
(C) fighting (with or without injury);
(D) threatening another with a weapon;
(E) escape;
(F) extortion or blackmail;
(G) possession of a weapon;

(H) sexual misconduct;
(I) threatening others; ~~[or]~~
(J) any first- or second-degree felony; or
(K)~~[(J)]~~ any other rule violation that the executive director or designee establishes in writing as an eligible violation.

(2) A youth may be reviewed to determine appropriateness for placement at any level of the intervention program based on any other rule violation defined in §380.9503 of this chapter ~~[title]~~ or based on a pattern of rule violations that suggests the youth would benefit from the program.

(3) Notwithstanding any other provisions in this rule, a youth whose parole has been revoked may be reviewed for possible placement in the intervention program. Review for possible placement in the intervention program is mandatory for a youth whose parole was revoked for conduct classified as a first- or second-degree felony. If the youth is placed in the intervention program:

(A) the youth may be placed at any level of the program, provided there are no therapeutic contraindications to placement at that level; and

(B) the youth may be moved between levels of the program if the youth was given notice of the potential placement in the program before the Level I hearing.

(4) Notwithstanding any other provisions in this rule, a youth who has been disciplinarily transferred from a medium-restriction facility to a high-restriction facility through a Level II due process hearing may be reviewed for possible placement in the intervention program. Review for possible placement in the intervention program is mandatory for a youth who was transferred for conduct classified as a first- or second-degree felony. If the youth is placed in the intervention program:

(A) the youth may be placed at any level of the program, provided there are no therapeutic contraindications to placement at that level; and

(B) the youth may be moved between levels of the program as outlined in this rule.

(e) **Program Intervention Levels.**

(1) **Primary.**

The primary level of the intervention program provides short-term intervention that cannot be provided during regular campus programming.

(A) Youth at this level of intervention in the program will move around campus for non-program-related activities in a manner generally comparable to the general campus population but are provided program-related interventions while admitted to the program. ~~[continue to sleep at their assigned dorm but other activities are conducted at the site of the program.]~~

(B) A Level II hearing is not required for placement at this level of intervention. However, designated ~~[treatment and direct care]~~ staff must review the youth for appropriateness in the intervention program, including the youth's treatment needs and the severity of the youth's behavior.

(2) **Moderate.**

The moderate level of the intervention program provides short-term intervention in a self-contained unit with a gradual transition back to regular campus programming.

(A) Youth at this level of intervention in the program live on the unit where the program operates.

(B) Youth may be placed at this level of the intervention program only if:

(i) a Level II due process hearing has been held in accordance with §380.9555 of this chapter ~~[title]~~;

(ii) there is a finding of *true* that the youth committed a rule violation listed in subsection (d) of this section; and

(iii) the youth and the youth's advocate were given notice before the hearing that a *true* finding on one or more of the allegations would make the youth eligible for placement in the intervention program.

(3) **Intensive.**

The intensive level of the intervention program provides longer-term intervention in a highly structured environment.

(A) Youth at this level of intervention in the program live on the unit where the program operates.

(B) Youth may be placed at this level of the intervention program only if:

(i) a Level II due process hearing has been held in accordance with §380.9555 of this chapter ~~[title]~~;

(ii) there is a finding of *true* that the youth committed a rule violation listed in subsection (d) of this section; and

(iii) the youth and the youth's advocate were given notice before the hearing that a *true* finding on one or more of the allegations would make the youth eligible for placement in the intervention program.

(f) **Placement in the Program.**

(1) Each youth being considered for placement in the intervention program is reviewed to determine if placement is appropriate and, if so, which level of the program is appropriate.

(2) If it is determined that the youth should be placed in the intensive level of the program but space is not available, the youth may be temporarily placed in a lower level of the program until space becomes available at the intensive level or the youth otherwise successfully meets the criteria under subsection (j) of this section.

(3) TJJD procedural manuals shall establish a process that allows a youth to be moved from one level of the program to another, if appropriate. A youth may be placed in the moderate or intensive level of the program only if the youth was given notice of the potential placement before the Level II hearing. Once a youth has been removed from the intervention program, new conduct and a new Level II due process hearing, if necessary for the program level, are required to return the youth to the intervention program.

(4) TJJD procedural manuals shall establish the factors to be considered when determining if a youth should be placed in the intervention program and which level of intervention is most appropriate or when determining if a youth should be moved from one level to another. The procedural manuals shall include a requirement that, at a minimum, the following factors be considered:

(A) whether the youth poses a continuing risk to the safety of the facility;

(B) whether less restrictive methods of documented intervention have been attempted when appropriate; and

(C) whether there are any therapeutic contraindications to placing the youth in the intervention program or at a particular level in the intervention program.

(5) A youth shall not be placed at any level in the intervention program if a therapeutic contraindication to placement at that level exists.

(6) TJJD shall make reasonable efforts to provide notice to the parent/guardian that the child is being considered for placement in the intervention program or for moving to a different level of the program.

(g) **Additional Considerations for Youth Receiving Special Education Services.**

(1) If a youth who is receiving special education services engages in a rule violation during school-related activities and that violation is the basis for placement or potential placement in the intervention program, the requirements of the Individuals with Disabilities Education Act, including a manifestation determination review when required, must be met. TJJD's procedural manuals shall include specific instructions for compliance and shall include a routine review to ensure the requirements are met.

(2) All special education services shall be provided in accordance with ARD committee decisions. For youth who are eligible to participate in special education services, an ARD committee meeting to review the IEP is held within ten days after admission to the intervention program. Subsequent ARD committee meetings and evaluations are completed in compliance with state and federal regulations.

(h) **Program Requirements.**

(1) The intervention program is administered in units designated for such purpose. Each level may be administered in a different unit.

(2) A structured daily schedule is maintained and posted to provide a predictable and safe environment.

(3) On scheduled academic days, youth shall be provided with the amount of education services established by the approved master schedule for the regular school program.

(4) Youth with limited English proficiency shall be provided with appropriate adaptations to the educational program as recommended by the Language Proficiency Assessment Committee.

(5) An individual plan shall be developed or modified for each youth. The plan shall be written in a language the youth clearly understands. The plan shall address the reasons for admission to the program, including providing strategies for intervention and prevention of the admitting behavior, include a component that addresses transition to the general campus population, and provide clearly written objectives for completion of the program. The plan shall also take into consideration any recommendations by a mental health specialist to address the motivation for the behavior.

(6) TJJD procedural manuals will set out how the individual plan and youth's progress will be reviewed and evaluated. This review shall occur at least once every seven days.

(7) Youth in the moderate and intensive levels of the intervention program are provided daily contact and weekly individual sessions with the assigned case manager or other designated staff for counseling and case management services.

(8) Staff shall immediately refer a youth to a mental health professional if concerns exist as to the youth's mental health status.

(9) Youth shall be provided with at least one hour of large-muscle exercise seven days per week.

(10) Youth are allowed phone calls and visitation with approved family members and other individuals according to program visitation procedures.

(11) A youth in the moderate level of the program:

(A) earns privileges based on progress through the program;

(B) shall be gradually reintegrated into campus programming as soon as he/she demonstrates comprehension of the goals established in the individual plan; and

(C) shall receive weekly mental health status exams by mental health staff as long as the youth's movement and program activities are restricted to the program unit. If deemed necessary by mental health staff, youth shall receive psychological counseling. Psychological counseling will be at the frequency determined appropriate by the mental health professional providing the counseling.

(12) A youth in the intensive level of the program:

(A) earns privileges based on progress through the program; and

(B) shall receive weekly mental health status exams by mental health staff. If deemed necessary by mental health staff, youth receive psychological counseling. Psychological counseling will be at the frequency determined appropriate by the mental health professional providing the counseling.

(13) For youth assigned to the primary and moderate levels, staff not assigned to the intervention program shall review each youth's progress at least once every 30 days to ensure the individual plan is being implemented appropriately.

(14) For youth assigned to the intensive level, staff not assigned to the intervention program shall review each youth's progress when the youth has been at that level for 60 days and every 30 days thereafter to ensure the individual plan is being implemented appropriately.

(15) A youth may remain in the moderate level of the program for more than 90 days only if approved by the executive director or designee.

(16) A youth may remain in the intensive level of the program for more than 120 days only if approved by the executive director or designee.

(17) In all levels of the program, mechanical restraints may be used in a manner consistent with the use of such restraints as provided by §380.9723 of this chapter ~~[title]~~. In the intensive level of the program only, mechanical restraints may also be used in a manner consistent with the use of such restraints in a security unit as provided by §380.9723 of this chapter ~~[title]~~.

(i) **Room Isolation and Security Unit.**

(1) Youth may be referred to the security program while assigned to the intervention program if the youth meets criteria in §380.9740 of this chapter ~~[title]~~. A security unit and program may be operated at the location of each level of the intervention program.

(2) Room isolation may be used as necessary in accordance with §380.9739 of this chapter ~~[title]~~.

(j) **Criteria for Release from the Intervention Program.**

A youth shall be released from the intervention program upon the earliest of the following events:

(1) a determination by the executive director or designee that the youth has:

(A) met the goals in his/her individual plan; and
(B) based on a totality of circumstances, demonstrated an ability to safely transition to campus programming; or

(2) a decision by the executive director or designee to return the youth to the youth's assigned dorm or transfer to an alternative placement based on a recommendation by a mental health professional due to the youth's mental health condition; or

(3) a decision by appropriate staff not to continue the youth in the intervention program after an administrative transfer of the youth to another high-restriction facility while assigned to the intervention program.

(k) **Family Notification.**

The youth's parent/guardian shall be notified of the decision to place the youth in the intervention program no later than the end of the next business day following the day the decision was made. In accordance with §380.8705 of this chapter [~~title~~], the notification may occur only with the youth's consent if the youth is 18 years of age.

(l) **Program Monitoring and Youth Rights.**

(1) To ensure the intervention program is being implemented according to the provisions of this rule, staff from facility administration shall visit each program unit seven days per week. Staff from psychology administration shall visit each program unit weekly.

(2) Youth rights staff or a designee shall visit each program unit seven days per week to ensure that youth have access to the youth grievance system.

(3) Staff are not required to visit a program unit on days when there are no youth in that unit.

(m) **Grievance Regarding Assessment of Progress.**

A youth in the intervention program may address disagreement with the results of an assessment of progress or may address the lack of opportunity to demonstrate completion of requirements by filing a grievance in accordance with §380.9331 of this chapter [~~title~~]. The person assigned to respond to the youth's grievance may not be a person involved in the subject of the youth's grievance.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Kaci Singer, Deputy General Counsel

Subject: Discussion, consideration, and possible approval to publish revisions to 37 TAC Chapter 344 (Employment, Certification, and Training) in the *Texas Register* for a public comment period of at least 30 days and possible conditional approval to adopt the final rules

Date: February 5, 2024

Before the Board for consideration are revisions to the following rules within TAC Chapter 344, with abbreviated summaries included and more detailed summaries provided below:

- ***Section 344.110 (relating interpretation and applicability).*** Changes involve a modification to provide that Chapter 344 requirements are not subject to a waiver or variance unless provided for in Chapter 344.
- ***Section 344.200 (relating general qualifications for positions requiring certification).*** Changes involve removing the requirement that a person be of good moral character to be certified as a juvenile probation officer, juvenile supervision officer, or community activities officer. Changes also involve removing the requirement that a person have one year of specific full-time work experience or one year of graduate study in order to be certified as a juvenile probation officer.
- ***Section 344.202 (relating to general qualifications for facility administrators).*** Changes involve removing the requirement that a facility administrator have the work experience or additional educational requirements that were removed from the requirements for a juvenile probation officer
- ***Section 344.204 (relating to education requirements).*** Changes include a new provision that allows for the waiver of the requirement that a person have a high school diploma or equivalent in order to be certified as a juvenile supervision officer or communities activities officer if the person is a military service member or military veteran who holds a current license in another state for a position that is substantially similar and with licensing requirements that are substantially similar.
- ***Sections 344.210 (relating to work experience) and 344.220 (relating to exemptions from required work experiences or graduate study).*** These sections are repealed as corresponding changes to the removal of the requirement that a person have one year

of specific full-time work experience or one year of graduate study in order to be certified as a juvenile probation officer.

- ***Sections 344.360 and 344.370 (relating to disclosure and review of applicant's prior history and relating to review by TJJD regarding eligibility for certification).*** These new sections ensure that applicants for any position disclose all prior relationships with any child-serving entity or entity that serves other vulnerable populations; any terminations of such relationships; any revocations of such licenses; any findings of abuse, neglect, or exploitation; and any placement on a "do not hire" or similar registry.
- ***Section 344.690 (relating to credit for training hours for military service members, spouses, and veterans).*** This new section allows a military service member, military veteran, or military spouse, to obtain credit toward certain training requirements for verified military service, training, or education that is directly relevant to the position.
- ***Section 344.866 (relating to certification status).*** Changes involve adding two new certification statuses: provisional and ineligible.

The board's approval is requested to publish these rules in the *Texas Register* for a 30-day public comment period. Also requested is the board's approval to adopt the final rules after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

§344.110, Interpretation and Applicability

Summary of Proposed Key Change:

- Added that the requirements in this chapter are not subject to a waiver or variance except as provided in this chapter.

§344.200, General Qualifications for Positions Requiring Certification

Summary of Proposed Key Changes:

- Deleted *be of good moral character* from the general requirements for certification as a juvenile probation officer, juvenile supervision officer, and a community activities officer.
- Deleted *possess the work experience or gradute study required elsewhere in this chapter* from the general requirements for certification as a juvenile supervision officer.

§344.202, General Qualifications for Facility Administrators

Summary of Proposed Key Change:

- Deleted *possess the work experience or gradute study required elsewhere in this chapter* from the general requirements for facility administrators.

§344.204, Education Requirements

Summary of Proposed Key Changes:

- Clarified that to be eligible for certification as a juvenile probation officer, an individual must have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board.

- Added that a new subsection ("Waiver of Education Requirement for Military") applies only to a person who is a military service member or military veteran who does not have a high school diploma or equivalent and who holds a current license issued by another jurisdiction for a position that is similar and with licensing requirements that are similar to TJJD's certification requirements for a juvenile supervision officer or community activities officer.
- Added that a department or facility that wishes to hire a military service member or military veteran in a position requiring certification as a juvenile supervision officer or community activities officer may request a waiver of the requirement that the person have a high school diploma or GED.

§344.210, Work Experience – REPEAL

§344.220, Exemptions from Required Work Experiences or Graduate Study – REPEAL

§344.360, Disclosure and Review of Applicant's Prior History – NEW

Summary of Key Provisions:

- Added that a department or facility must require every applicant for any position to complete a TJJD form that requires the applicant to disclose and provide additional information as given in the rule text.
- Added that prior to making an offer to allow an applicant who disclosed additional information in order to begin employment or provide services in a position requiring certification or for which certification is optional and will be sought, the department or facility must perform certain actions as given in the rule text.
- Added that a request for review is required only if the department or facility wants to employ, contract with, or accept the individual as a volunteer.
- Added that prior to making an offer to allow an applicant who disclosed additional information to begin employment or provide services in a position not requiring certification or for which certification is optional but will not be sought, the juvenile board or designee shall review the information received and consider if the person is appropriate to work in the role. If the juvenile board makes a designation under this provision, it must be in writing.
- Added that a written record of the review must be maintained, including the name of the person(s) conducting the review, the date of the review, and the final decision.
- Added that an applicant's failure to disclose the requested information is considered a violation of the Code of Ethics and may result in termination of employment, ineligibility for certification, or revocation of certification.

§344.370, Review by TJJD Regarding Eligibility for Certification – NEW

Summary of Key Provisions:

- Added that upon receipt of the request for review, TJJD will review the submitted information, seek additional information if warranted, and determine if the person should be denied a certification.

- Added that TJJD shall notify the person of its decision and of the opportunity to appeal that decision to the executive director.
- Added that, upon receipt of an appeal, the executive director review the matter and determine if the certification should be denied.

§344.690, Credit for Training Hours for Military Service Members, Spouses, and Veterans – NEW

Summary of Proposed Provisions:

- Added that this subsection applies only to a person who is a military service member, military veteran, or military spouse under certain conditions.
- Added that TJJD may grant credit toward required training hours based on the person's verified military service, training, or education that is directly relevant to the position for which certification is sought.
- Added that no credit will be given for certain topics required elsewhere in the chapter.
- Added that the department or facility that employs a person described earlier may submit an application to TJJD for possible credit.
- Added that an individual to whom this section applies is also eligible to receive credit as otherwise provided by this chapter, as applicable.

§344.866, Certification Status

Summary of Proposed Key Changes:

- Added a subsection for a *provisional* certification status.
- Added a subsection for an *ineligible* certification status.

Attached to this memo please find:

- the text of the rules, with the proposed changes shown as mark-ups;
- a summary of the changes; and
- a resolution for board action.

Texas Administrative Code

Title 37 Public Safety and Corrections
Part 11 Texas Juvenile Justice Department
Chapter 344 Employment, Certification, and Training

Draft – Pertinent Sections Only, Not the Full Chapter

Subchapter A. Definitions and Applicability

§344.100 Definitions
§344.110 Interpretation and Applicability

Subchapter B. Qualifications for Certification and Employment

§344.200 General Qualifications for Positions Requiring Certification
§344.202 General Qualifications for Facility Administrators
§344.204 Education Requirements
§344.206 Validation Requirements for Foreign Diplomas
§344.208 Persons Not Subject to Minimum Educational Requirements
~~[§344.210 Work Experience]~~
§344.212 Verification of Education Requirements
~~[§344.220 Exemptions from Required Work Experience or Graduate Study]~~
§344.230 Persons Who May Not Act as a Chief Administrative Officer, Facility Administrator, Juvenile Probation Officer, Juvenile Supervision Officer, or Community Activities Officer

Subchapter C. Criminal History and Background Checks

§344.300 Criminal History Checks
§344.302 Military History Checks
§344.312 Criminal History Checks for Employees of Licensed Facilities or Programs
§344.320 Criminal History Checks for Position and Departmental Transfers and for Optional Certification
§344.330 Criminal History Checks for Employees of Private Juvenile Justice Facilities
§344.350 Background Checks
§344.360 Disclosure and Review of Applicant's Prior History
§344.370 Review by TJJD Regarding Eligibility for Certification

Subchapter D. Disqualifying Criminal History

§344.400 Disqualifying Criminal History
§344.410 Other Criminal History
§344.420 Pre-certification Review
§344.430 Arrest or Conviction of Currently Certified or Employed Individuals

Subchapter E. Training and Continuing Education

§344.600 Training Hours Required for Certification
§344.610 Relevance of Training and Standardized Curriculum
§344.620 Mandatory Training Topics for Certification Exam for Juvenile Probation Officers
§344.622 Mandatory Training Topics for Certification Exam for Juvenile Supervision Officers
§344.624 Additional Training Requirements for Certification as a Juvenile Supervision Officer
§344.626 Required Training Topics for Community Activities Officers
§344.630 On-the-Job Training
§344.640 Continuing Education Requirements for Maintaining Certification
§344.660 Approval and Review of Training and Continuing Education
§344.670 Training Methods and Limitations
§344.680 Documentation
§344.690 Credit for Training Hours for Military Service Members, Spouses, or Veterans

Subchapter F. Certification Exam

§344.700 Certification Exam

Subchapter G. Certification

§344.800 Positions Requiring Certification
§344.802 Positions Eligible for Optional Certification
§344.804 Dual Certification
§344.850 Continued Employment in a Position Eligible for Certification
§344.860 Certification Process
§344.862 Expiration of Certification
§344.864 Certification Renewal Process
§344.866 Certification Status
§344.868 Change from Inactive to Expired Certification
§344.870 Request for Extension of Renewal Deadline

§344.874 Separation from Employment and Transfer from a Certified to a Non-Certified Position
§344.876 Duty to Keep Certified Officers' Addresses Current
§344.878 Duty to Notify TJJD of Address Changes
§344.880 Reactivation, Restoration, or Transfer of Certification Records
§344.884 Voluntary Relinquishment of Certification

Subchapter A
Definitions and Applicability

§344.110 Interpretation and Applicability

Effective Date: XXXXXX

(a) **Conflicting Standards.**

If a general provision contained in this chapter conflicts with a specific provision contained in another chapter promulgated by TJJD, the specific language controls.

(b) **Use of the Words "Including" and "Includes."**

When used in this chapter, the words "including" and "includes" are to be understood as introducing a non-exhaustive list unless the context clearly indicates otherwise.

(c) **Applicability.**

(1) This chapter applies to all juvenile justice programs and facilities in this state unless expressly stated otherwise.

(2) All provisions of this chapter apply regardless of the date an individual is hired or begins service provision unless expressly stated otherwise.

(3) All employment and education requirements in this chapter must have been completed prior to the date an individual begins employment in the position to which the requirements apply.

(d) **Waiver or Variance.**

The requirements in this chapter are not subject to a waiver or variance except as provided in this chapter.

Subchapter B
Qualifications for Certification and Employment

§344.200 General Qualifications for Positions Requiring Certification

Effective Date: XXXXXX

(a) **Juvenile Probation Officer.**

To be eligible for certification as a juvenile probation officer, supervisor of a juvenile probation officer, or chief administrative officer, an individual must:

(1) be at least 21 years of age;

~~[(2) be of good moral character;]~~

(2)[~~(3)~~] have no disqualifying criminal history as described in this chapter;

(3)[~~(4)~~] have no criminal history as described in §344.410(a) of this chapter unless TJJD has reviewed it and determined the person is not ineligible for certification due to the criminal history;

(4)[~~(5)~~] have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board;

[~~(6) possess the work experience required in §344.210 of this chapter or graduate study required in §344.204 of this chapter;~~]

(5)[~~(7)~~] never have had any type of certification revoked by TJJD;

(6)[~~(8)~~] complete the training required by this chapter; and

(7)[~~(9)~~] pass the certification exam as required by §344.700 of this chapter.

(b) **Juvenile Supervision Officer.**

To be eligible for certification as a juvenile supervision officer, an individual must:

(1) be at least 21 years of age;

[~~(2) be of good moral character;~~]

(2)[~~(3)~~] have no disqualifying criminal history as described in this chapter;

(3)[~~(4)~~] have no criminal history as described in §344.410(a) of this chapter unless TJJD has reviewed it and determined the person is not ineligible for certification due to the criminal history;

(4)[~~(5)~~] have acquired a high school diploma or its equivalent as specified in §344.204 of this chapter;

(5)[~~(6)~~] never have had any type of certification revoked by TJJD;

(6)[~~(7)~~] complete the training required by this chapter; and

(7)[~~(8)~~] pass the certification exam as required by §344.700 of this chapter.

(c) **Community Activities Officer.**

To be eligible for certification as a community activities officer, an individual must:

(1) be at least 21 years of age;

[~~(2) be of good moral character;~~]

(2)[~~(3)~~] have no disqualifying criminal history as described in this chapter;

(3)[~~(4)~~] have no criminal history as described in §344.410(a) of this chapter unless TJJD has reviewed it and determined the person is not ineligible for certification due to the criminal history;

(4)[~~(5)~~] have acquired a high school diploma or its equivalent as specified in §344.204 of this chapter;

(5)[~~(6)~~] never have had any type of certification revoked by TJJD; and

(6)[~~(7)~~] complete the training required by this chapter.

§344.202 General Qualifications for Facility Administrators

Effective Date: XXXXXX

To serve as a facility administrator, an individual must:

(1) obtain and maintain an active certification as a juvenile supervision officer in accordance with requirements of this chapter; and

(2) have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board. [~~; and~~]

[~~(3) possess the work experience required in §344.210 of this title or graduate study required in §344.204(a) of this title.~~]

§344.204 Education Requirements

Effective Date: XXXXXX

(a) **Juvenile Probation Officer.**

To be eligible for certification as a juvenile probation officer, an individual must have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board.

~~[(1) To be eligible for certification as a juvenile probation officer, an individual must meet the following educational requirements:~~

~~(A) have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board; and~~

~~(B) have either:~~

~~(i) one year of graduate study at a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board in criminology, corrections, counseling, law, social work, psychology, sociology, or other field of instruction approved by TJJD; or~~

~~(ii) qualifying work experience as specified in §344.210 of this title.~~

~~(2) For purposes of this section, one year of graduate study means successful completion of at least 18 post-graduate credit hours.]~~

(b) **Juvenile Supervision Officer and Community Activities Officer.**

(1) Except as provided by subsection (c), to ~~[To]~~ be eligible for certification as a juvenile supervision officer or community activities officer, an individual must meet one of the following educational requirements:

(A) a diploma from a high school accredited by a generally recognized accrediting organization or from a high school operated by the United States Department of Defense. TJJD considers the following entities as generally recognized accrediting organizations:

(i) the Texas Education Agency or the equivalent agency in another state;

(ii) an entity approved by the Texas Private School Accreditation Commission; and

(iii) regional accreditation organizations such as:

(I) Middle States Association of Colleges and Schools;

(II) New England Association of Schools and Colleges;

(III) North Central Association of Colleges and Schools;

(IV) Northwest Accreditation Commission;

(V) Southern Association of Colleges and Schools; and

(VI) Western Association of Schools and Colleges;

(B) a high school equivalency certificate (e.g., GED) issued by the Texas Education Agency or equivalent agency in another state;

(C) a diploma or certificate of completion issued in a homeschool setting;

(D) a United States military record that indicates the education level received is equivalent to a United States high school diploma or high school equivalency certificate;

(E) a foreign high school diploma that meets the validation requirements established in §344.206 of this chapter ~~[title]~~; or

(F) unconditional acceptance into a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board.

(2) A department or facility may attempt to establish that an entity not listed in paragraph (1)(A) of this subsection is a generally recognized accrediting organization by submitting supporting documentation to the TJJD certification office. Based on the documentation, TJJD will determine whether the entity is a generally recognized accrediting organization.

(c) **Waiver of Education Requirement for Military.**

(1) This subsection applies only to a person who is a military service member or military veteran as those terms are defined in Chapter 55, Occupations Code who does not have a high school diploma or equivalent and holds a current license issued by another jurisdiction for a position that is substantially similar and with licensing requirements that are substantially similar to TJJD's certification requirements for a juvenile supervision officer or community activities officer, as determined by TJJD.

(2) A department or facility that wishes to hire a person described by paragraph (c)(1) in a position requiring certification as a juvenile supervision officer or community activities officer may request a waiver of the requirement that the person have a high school diploma or GED. The request must be submitted to TJJD's certification office on a form prescribed by TJJD and must include sufficient information regarding the person's credentials and experience to allow TJJD to determine if a waiver of the education requirement should be granted. Incomplete submissions may result in a denial of the waiver.

~~[§344.210 Work Experience]~~ ~~[Effective Date: 2/1/18]~~

~~[(a) To be eligible for certification as a juvenile probation officer, an individual who does not meet the graduate study requirement in §344.204 of this title must have one year of experience in full-time paid and/or full-time unpaid case work, counseling, community, or group work:~~

~~(1) in a social service, community, corrections, or juvenile agency that deals with offenders or disadvantaged persons; and~~

~~(2) that provides the kind of experience necessary to meet this requirement, as determined by TJJD.~~

~~(b) To meet the requirement for one year of full-time experience as required by this section, an individual must have worked at least 1,500 hours in one or more positions described by subsection (a) of this section in twelve months, which may or may not be consecutive months. Prior to hiring the individual, the department or facility must conduct and document a reference check to verify the dates of employment or volunteer service, the position held, and the total number of hours worked.]~~

~~[§344.220 Exemptions from Required Work Experience or Graduate Study]~~ ~~[Effective Date: 2/1/18]~~

~~[(a) A department or facility may request an exemption from the requirement for one year of graduate study in §344.204 of this title or one year of full-time work experience in §344.210 of this title if the department or facility uses TJJD's certification system to:~~

~~(1) submit the exemption request; and~~

~~(2) document that diligent efforts were made to employ an individual who meets the graduate study or work experience requirement.~~

~~(b) Posting the position in a minimum of two job posting sources for a minimum of 20 calendar days is considered to meet the diligent-effort requirement in subsection (a)(2) of this section.~~

~~(c) The department or facility may not hire the individual as a juvenile probation officer without written verification that TJJD has approved the exemption request.~~

~~(d) The exemption process described in this standard does not apply to appointment as a facility administrator or a chief juvenile probation officer.~~]

Subchapter C
Criminal History and Background Checks

§344.360 Disclosure and Review of Applicant's Prior History

Effective Date: XXXXXX

(a) The department or facility must require every applicant for any position, including employee, contractor, or volunteer, to complete a form promulgated by TJJD that requires the applicant to disclose and provide additional information, if applicable, regarding whether the applicant ever:

(1) worked, contracted with, volunteered with, or had an occupational license with a child-serving entity or entity that serves other vulnerable populations, such as elderly persons, persons with disabilities, persons in mental health facilities, or persons who were incarcerated;

(2) had their employment, contract, or volunteer status suspended or terminated or occupational license revoked or suspended;

(3) had a finding of abuse, neglect, or exploitation made against them; or

(4) had their name placed on a "do not hire" or similar registry with an entity that provides services to or regulation of services for children or vulnerable populations.

(b) Prior to making an offer to allow an applicant who disclosed information covered by subparagraphs (a)(2), (a)(3), or (a)(4) of this section to begin employment or provide services in a position requiring certification or for which certification is optional and will be sought, the department or facility must:

(1) obtain additional information from all entities identified by the disclosures;

(2) submit to TJJD's certification office a request for review as provided in Section 344.370 of this chapter; and

(3) receive confirmation from TJJD that the applicant is not prohibited from obtaining a certification.

(c) The request for review described in subsection (b) is required only if the department or facility wants to employ, contract with, or accept the individual as a volunteer.

(d) Prior to making an offer to allow an applicant who disclosed information covered by subparagraphs (a)(2), (a)(3), or (a)(4) of this section to begin employment or provide services in a position not requiring certification or for which certification is optional but will not be sought, the juvenile board or designee shall review the information received and consider if the person is appropriate to work in the role. If the juvenile board makes a designation under this provision, it must be in writing.

(e) A written record of the review conducted in subsection (d) must be maintained, including the name of the person(s) conducting the review, the date of the review, and the final decision.

(f) An applicant's failure to disclose the requested information is considered a violation of the Code of Ethics and may result in termination of employment, ineligibility for certification, or revocation of certification.

§344.370 Review by TJJD Regarding Eligibility for Certification

Effective Date: XXXXXX

(a) Upon receipt of the request for review described in Section 344.360 of this chapter, TJJD will review the submitted information, seek additional information if warranted, and determine if the person should be denied a certification.

(b) TJJD shall notify the person of its decision and of the opportunity to appeal that decision to the executive director. The notification shall be in writing. The person shall have 10 calendar days to appeal the decision. The appeal must be in writing and timely received. TJJD may grant an extension at its discretion.

(c) Upon receipt of an appeal, the executive director review the matter and determine if the certification should be denied. The executive director's response shall be in writing. The executive director's decision is final and not subject to appeal.

Subchapter E
Training and Continuing Education

§344.690 Credit for Training Hours for Military Service Members, Spouses, and Veterans

Effective Date: XXXXXX

(a) This subsection applies only to a person who is a military service member, military veteran, or military spouse as those terms are defined in Chapter 55, Occupations Code, and who:

(1) holds a current license issued by another jurisdiction with licensing requirements that are substantially similar to TJJD's certification requirements for a juvenile supervision officer or community activities officer, as determined by TJJD; or

(2) held a certification from TJJD as a juvenile supervision officer or community activities officer that was active within the five years preceding the person's most recent employment in a position requiring or otherwise eligible for certification.

(b) As provided by this section, TJJD may grant credit toward the training hours required in Section 344.600 to persons described by subsection (a). Any credit granted will be based on the person's verified military service, training, or education that is directly relevant to the position for which certification is sought.

(c) No credit may be given for topics required by Sections 344.620, 344.622, 344.624, or 344.626.

(d) The department or facility that employs a person described by subsection (a) may submit an application to TJJD for possible credit. TJJD will consider the person's experience and training to determine if credit should be granted and, if so, how much.

(e) An individual to whom this section applies is also eligible to receive credit as otherwise provided by this chapter, as applicable.

Subchapter G
Certification

§344.866 Certification Status

Effective Date: XXXXXX

(a) **Active.**

A status that indicates a certified officer meets the current requirements of certification as set forth in this chapter and is eligible to perform the duties of a juvenile probation officer, juvenile supervision officer, and/or community activities officer, as applicable.

(b) **Inactive.**

A status that indicates an officer's certification has not expired but the officer is ineligible to perform the duties of a certified officer because:

(1) the officer is no longer employed in a position that either requires or is eligible for the certification held;

(2) the officer has been convicted of a disqualifying criminal offense; or

(3) the officer's application for certification or renewal of certification is determined by TJJD to contain deliberately false or misleading information.

(c) **Expired.**

A status that indicates an application to renew or reactivate a certification has not been submitted before the end of the grace period or any applicable extension.

(d) **Suspended.**

A status that indicates an officer's certification is actively suspended and the officer is no longer eligible for employment in a position requiring certification. If the officer's certification is suspended for failure to pay child support under Section 232.003, Texas Family Code, the suspension remains in effect until TJJD receives an order staying or vacating the suspension.

(e) **Revoked.**

A status that indicates an officer's certification has been permanently revoked by TJJD and that the officer is no longer eligible for employment or certification as a juvenile probation officer, juvenile supervision officer, or community activities officer. An individual who has had his/her certification revoked is not eligible for any future certification.

(f) **Voluntarily Relinquished.**

A status that indicates an officer has voluntarily relinquished his/her certification as provided in §344.884 of this chapter [~~title~~].

(g) **Provisional.**

A status that indicates an individual has been hired into a position requiring certification but has not yet been certified.

(h) **Ineligible.**

(1) A status that indicates an individual who was never certified is ineligible for certification as a result of conduct that occurred:

(A) while the person had a provisional certification;

(B) while the person was employed by or under contract with the Texas Juvenile Justice Department; or

(C) prior to either time described in subparagraph (A) or (B) of this paragraph if the conduct was unknown to TJJD.

(2) Prior to being designated as ineligible for certification, the person will be offered the same due process as a person for whom revocation or active or probated suspension of certification is sought.

Attachment A: May Rulemaking Actions

This attachment includes the text of rules and proposed revisions considered for these corresponding actionable agenda items:

9. Discussion, consideration, and possible approval to publish the results of rule review for 37 TAC Chapter 380, Subchapter B, in the Texas Register, including possible approval to publish proposed repeal of §380.8789 (concerning use of clinical polygraph in the sexual behavior treatment program)
   Page 2

20. Discussion, consideration, and possible approval to adopt revisions to 37 TAC Chapter 344 (Employment, Certification, and Training), §380.9503 (Rules and Consequences for Residential Facilities), and §380.9504 (Rules and Consequences for Youth on Parole); and to adopt the final rule text for and responses to public comments concerning 37 TAC Chapters 341 (General Standards for Juvenile Probation Departments), 344, and 349 (General Administrative Standards), as well as §§380.8597 (Certain Actions by the Executive Director), 380.9188 (Suicide Alert for High-Restriction Facilities), 380.9503, and 380.9504
    Page 36

21. Discussion, consideration, and possible approval to publish proposed revisions to 37 TAC §380.1101 (Contract Authority and Responsibilities) in the Texas Register for a public comment period of at least 30 days and possible conditional approval to adopt the final rule
    Page 68

22. Discussion, consideration, and possible approval to publish the newly proposed 37 TAC §341.304 (Requirement to Apply for Diversion Funds) in the Texas Register for a public comment period of at least 30 days and possible conditional approval to adopt the final rule
    Page 71

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: 12/1/14**
Subchapter:	Treatment	
Division:	Programming for Youth with Specialized Treatment Needs	Page: 1 of 1
Rule:	**Use of Clinical Polygraph in the Sexual Behavior Treatment Program**	Replaces: GAP.380.8789, 4/26/04
ACA:	N/A	
Statute(s):	N/A	

RULE

(a) **Purpose.**

The purpose of this rule is to provide limitations and clinical oversight for the use of clinical polygraph examinations in the treatment of sex offenders.

(b) **General Provisions.**

(1) The Texas Juvenile Justice Department approves the use of clinical polygraph examinations for certain selected youth admitted to the agency's Sexual Behavior Treatment Program (SBTP). Use of the clinical polygraph is strictly controlled and must be approved in each instance by qualified clinical professionals.

(2) All polygraphs are administered:

(A) by a licensed polygraph examiner in accordance with the state guidelines for clinical polygraph examination of sex offenders; and

(B) in a setting that provides dignity and privacy for the youth to the extent possible.

(3) A youth may be considered for a polygraph if the youth:

(A) has been adjudicated for a sexual offense;
(B) has been admitted to the SBTP and has completed the initial SBTP evaluation; and
(C) is not making progress in the treatment program.

(4) A youth will not be considered for a polygraph if the youth:

(A) is self-abusive;
(B) is suicidal;
(C) has been diagnosed with a major psychiatric disorder such as psychosis, major depression, or bipolar disorder; or
(D) is younger than age 14.

See the *Sexual Behavior Treatment Program Manual* for implementation procedures.

REPEAL

Texas Administrative Code

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Part 11 Texas Juvenile Justice Department
Chapter 344 Employment, Certification, and Training

Draft – Pertinent Sections Only, Not the Full Chapter

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§344.620 Mandatory Training Topics for Certification Exam for Juvenile Probation Officers
§344.622 Mandatory Training Topics for Certification Exam for Juvenile Supervision Officers
§344.624 Additional Training Requirements for Certification as a Juvenile Supervision Officer
§344.626 Required Training Topics for Community Activities Officers
§344.630 On-the-Job Training
§344.640 Continuing Education Requirements for Maintaining Certification
§344.660 Approval and Review of Training and Continuing Education
§344.670 Training Methods and Limitations
§344.680 Documentation
§344.690 Credit for Training Hours for Military Service Members, Spouses, or Veterans

Subchapter F. Certification Exam

§344.700 Certification Exam

Subchapter G. Certification

§344.800 Positions Requiring Certification
§344.802 Positions Eligible for Optional Certification
§344.804 Dual Certification
§344.850 Continued Employment in a Position Eligible for Certification
§344.860 Certification Process
§344.862 Expiration of Certification
§344.864 Certification Renewal Process
§344.866 Certification Status
§344.868 Change from Inactive to Expired Certification
§344.870 Request for Extension of Renewal Deadline

§344.874 Separation from Employment and Transfer from a Certified to a Non-Certified Position
§344.876 Duty to Keep Certified Officers' Addresses Current
§344.878 Duty to Notify TJJD of Address Changes
§344.880 Reactivation, Restoration, or Transfer of Certification Records
§344.884 Voluntary Relinquishment of Certification

Subchapter A
Definitions and Applicability

§344.110 Interpretation and Applicability

Effective Date: XXXXXX

(a) **Conflicting Standards.**

If a general provision contained in this chapter conflicts with a specific provision contained in another chapter promulgated by TJJD, the specific language controls.

(b) **Use of the Words "Including" and "Includes."**

When used in this chapter, the words "including" and "includes" are to be understood as introducing a non-exhaustive list unless the context clearly indicates otherwise.

(c) **Applicability.**

(1) This chapter applies to all juvenile justice programs and facilities in this state unless expressly stated otherwise.

(2) All provisions of this chapter apply regardless of the date an individual is hired or begins service provision unless expressly stated otherwise.

(3) All employment and education requirements in this chapter must have been completed prior to the date an individual begins employment in the position to which the requirements apply.

(d) **Waiver or Variance.**

The requirements in this chapter are not subject to a waiver or variance except as provided in this chapter.

Subchapter B
Qualifications for Certification and Employment

§344.200 General Qualifications for Positions Requiring Certification

Effective Date: XXXXXX

(a) **Juvenile Probation Officer.**

To be eligible for certification as a juvenile probation officer, supervisor of a juvenile probation officer, or chief administrative officer, an individual must:

(1) be at least 21 years of age;

(2) have no disqualifying criminal history as described in this chapter;

(3) have no criminal history as described in §344.410(a) of this chapter unless TJJD has reviewed it and determined the person is not ineligible for certification due to the criminal history;

(4) have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board;

(5) never have had any type of certification revoked by TJJD;

(6) complete the training required by this chapter; and

(7) pass the certification exam as required by §344.700 of this chapter.

(b) **Juvenile Supervision Officer.**

To be eligible for certification as a juvenile supervision officer, an individual must:

(1) be at least 21 years of age;

(2) have no disqualifying criminal history as described in this chapter;

(3) have no criminal history as described in §344.410(a) of this chapter unless TJJD has reviewed it and determined the person is not ineligible for certification due to the criminal history;

(4) have acquired a high school diploma or its equivalent as specified in §344.204 of this chapter;

(5) never have had any type of certification revoked by TJJD;

(6) complete the training required by this chapter; and

(7) pass the certification exam as required by §344.700 of this chapter.

(c) **Community Activities Officer.**

To be eligible for certification as a community activities officer, an individual must:

(1) be at least 21 years of age;

(2) have no disqualifying criminal history as described in this chapter;

(3) have no criminal history as described in §344.410(a) of this chapter unless TJJD has reviewed it and determined the person is not ineligible for certification due to the criminal history;

(4) have acquired a high school diploma or its equivalent as specified in §344.204 of this chapter;

(5) never have had any type of certification revoked by TJJD; and

(6) complete the training required by this chapter.

§344.202 General Qualifications for Facility Administrators

Effective Date: XXXXXX

To serve as a facility administrator, an individual must:

(1) obtain and maintain an active certification as a juvenile supervision officer in accordance with requirements of this chapter; and

(2) have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board.

§344.204 Education Requirements

Effective Date: XXXXXX

(a) **Juvenile Probation Officer.**

To be eligible for certification as a juvenile probation officer, an individual must have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board.

(b) **Juvenile Supervision Officer and Community Activities Officer.**

(1) Except as provided by subsection (c) of this section, to be eligible for certification as a juvenile supervision officer or community activities officer, an individual must meet one of the following educational requirements:

(A) a diploma from a high school accredited by a generally recognized accrediting organization or from a high school operated by the United States Department of Defense. TJJD considers the following entities as generally recognized accrediting organizations:

(i) the Texas Education Agency or the equivalent agency in another state;

(ii) an entity approved by the Texas Private School Accreditation Commission; and

(iii) regional accreditation organizations such as:

(I) Middle States Association of Colleges and Schools;

(II) New England Association of Schools and Colleges;

(III) North Central Association of Colleges and Schools;

(IV) Northwest Accreditation Commission;

(V) Southern Association of Colleges and Schools; and

(VI) Western Association of Schools and Colleges;

(B) a high school equivalency certificate (e.g., GED) issued by the Texas Education Agency or equivalent agency in another state;

(C) a diploma or certificate of completion issued in a homeschool setting;

(D) a United States military record that indicates the education level received is equivalent to a United States high school diploma or high school equivalency certificate;

(E) a foreign high school diploma that meets the validation requirements established in §344.206 of this chapter; or

(F) unconditional acceptance into a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board.

(2) A department or facility may attempt to establish that an entity not listed in paragraph (1)(A) of this subsection is a generally recognized accrediting organization by submitting supporting documentation to the TJJD certification office. Based on the documentation, TJJD will determine whether the entity is a generally recognized accrediting organization.

(3) Notwithstanding subparagraph (1)(E) of this section, a department or facility may submit documentation to establish that a state agency in Texas or licensing entity in Texas has accepted a foreign high school diploma as sufficient to meet an employment or licensing requirement to have a high school diploma. TJJD will determine whether the high school diploma is sufficient to meet the certification criterion related to having a high school diploma.

(c) **Waiver of Education Requirement for Military.**

(1) This subsection applies only to a person who is a military service member or military veteran as those terms are defined in Chapter 55, Occupations Code who does not have a high school diploma or equivalent and holds a current license issued by another jurisdiction for a position that is substantially similar and with licensing requirements that are substantially similar to TJJD's certification requirements for a juvenile supervision officer or community activities officer, as determined by TJJD.

(2) A department or facility that wishes to hire a person described by paragraph (1) of this subsection in a position requiring certification as a juvenile supervision officer or community activities officer may request a waiver of the requirement that the person have a high school diploma or GED. The request must be submitted to TJJD's certification office on a form prescribed by TJJD and must include sufficient information regarding the person's credentials and experience to allow TJJD to determine if a waiver of the education requirement should be granted. Incomplete submissions may result in a denial of the waiver.

Subchapter C
Criminal History and Background Checks

§344.360 Disclosure and Review of Applicant's Prior History

Effective Date: XXXXXX

(a) The department or facility must require every applicant for any position, including employee, contractor, or volunteer, to complete a form promulgated by TJJD that requires the applicant to disclose and provide additional information, if applicable, regarding whether the applicant ever:

(1) worked, contracted with, volunteered with, or had an occupational license with a child-serving entity or entity that serves other vulnerable populations, such as elderly persons, persons with disabilities, persons in mental health facilities, or persons who were incarcerated;

(2) had their employment, contract, or volunteer status suspended or terminated or occupational license revoked or suspended;

(3) had a finding of abuse, neglect, or exploitation made against them; or

(4) had their name placed on a "do not hire" or similar registry with an entity that provides services to or regulation of services for children or vulnerable populations.

(b) Prior to making an offer to allow an applicant who disclosed information covered by subsection (a)(2), (3), or (4) of this section to begin employment or provide services in a position requiring certification or for which certification is optional and will be sought, the department or facility must:

(1) obtain additional information from all entities identified by the disclosures;

(2) submit to TJJD's certification office a request for review as provided in §344.370 of this chapter; and

(3) receive confirmation from TJJD that the applicant is not prohibited from obtaining a certification.

(c) The request for review described in subsection (b) of this section is required only if the department or facility wants to employ, contract with, or accept the individual as a volunteer.

(d) Prior to making an offer to allow an applicant who disclosed information covered by subsection (a)(2), (3), or (4) of this section to begin employment or provide services in a position not requiring certification or for which certification is optional but will not be sought, the juvenile board or designee shall review the information received and consider if the person is appropriate to work in the role. If the juvenile board makes a designation under this provision, it must be in writing.

(e) A written record of the review conducted in subsection (d) of this section must be maintained, including the name of the person(s) conducting the review, the date of the review, and the final decision.

(f) An applicant's failure to disclose the requested information is considered a violation of the Code of Ethics and may result in termination of employment, ineligibility for certification, or revocation of certification.

§344.370 Review by TJJD Regarding Eligibility for Certification

Effective Date: XXXXXX

(a) Upon receipt of the request for review described in §344.360 of this chapter, TJJD will review the submitted information, seek additional information if warranted, and determine if the person should be denied a certification.

(b) TJJD shall notify the person of its decision and of the opportunity to appeal that decision to the executive director. The notification shall be in writing. The person shall have 10 calendar days to appeal the

decision. The appeal must be in writing and timely received. TJJD may grant an extension at its discretion.

(c) Upon receipt of an appeal, the executive director review the matter and determine if the certification should be denied. The executive director's response shall be in writing. The executive director's decision is final and not subject to appeal.

Subchapter E
Training and Continuing Education

§344.690 Credit for Training Hours for Military Service Members, Spouses, and Veterans

Effective Date: XXXXXX

(a) This subsection applies only to a person who is a military service member, military veteran, or military spouse as those terms are defined in Chapter 55, Occupations Code, and who:

(1) holds a current license issued by another jurisdiction with licensing requirements that are substantially similar to TJJD's certification requirements for a juvenile supervision officer or community activities officer, as determined by TJJD; or

(2) held a certification from TJJD as a juvenile supervision officer or community activities officer that was active within the five years preceding the person's most recent employment in a position requiring or otherwise eligible for certification.

(b) As provided by this section, TJJD may grant credit toward the training hours required in §344.600 to persons described by subsection (a) of this section. Any credit granted will be based on the person's verified military service, training, or education that is directly relevant to the position for which certification is sought.

(c) No credit may be given for topics required by Sections 344.620, 344.622, 344.624, or 344.626.

(d) The department or facility that employs a person described by subsection (a) of this section may submit an application to TJJD for possible credit. TJJD will consider the person's experience and training to determine if credit should be granted and, if so, how much.

(e) An individual to whom this section applies is also eligible to receive credit as otherwise provided by this chapter, as applicable.

Subchapter G
Certification

§344.866 Certification Status

Effective Date: XXXXXX

(a) **Active.**

A status that indicates a certified officer meets the current requirements of certification as set forth in this chapter and is eligible to perform the duties of a juvenile probation officer, juvenile supervision officer, and/or community activities officer, as applicable.

(b) **Inactive.**

A status that indicates an officer's certification has not expired but the officer is ineligible to perform the duties of a certified officer because:

(1) the officer is no longer employed in a position that either requires or is eligible for the certification held;

(2) the officer has been convicted of a disqualifying criminal offense; or

(3) the officer's application for certification or renewal of certification is determined by TJJD to contain deliberately false or misleading information.

(c) **Expired.**

A status that indicates an application to renew or reactivate a certification has not been submitted before the end of the grace period or any applicable extension.

(d) **Suspended.**

A status that indicates an officer's certification is actively suspended and the officer is no longer eligible for employment in a position requiring certification. If the officer's certification is suspended for failure to pay child support under Section 232.003, Texas Family Code, the suspension remains in effect until TJJD receives an order staying or vacating the suspension.

(e) **Revoked.**

A status that indicates an officer's certification has been permanently revoked by TJJD and that the officer is no longer eligible for employment or certification as a juvenile probation officer, juvenile supervision officer, or community activities officer. An individual who has had his/her certification revoked is not eligible for any future certification.

(f) **Voluntarily Relinquished.**

A status that indicates an officer has voluntarily relinquished his/her certification as provided in §344.884 of this chapter.

(g) **Provisional.**

A status that indicates an individual has been hired into a position requiring certification but has not yet been certified.

(h) **Ineligible.**

(1) A status that indicates an individual who was never certified is ineligible for certification as a result of conduct that occurred:

(A) while the person had a provisional certification;

(B) while the person was employed by or under contract with the Texas Juvenile Justice Department; or

(C) prior to either time described in subparagraph (A) or (B) of this paragraph if the conduct was unknown to TJJD.

(2) Prior to being designated as ineligible for certification, the person will be offered the same due process as a person for whom revocation or active or probated suspension of certification is sought.

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: XXXXXX**
Subchapter:	Behavior Management and Youth Discipline	Page: 1 of 7
Division:	Behavior Management	
Rule:	**Rules and Consequences for Residential Facilities**	Replaces: GAP.380.9503, 5/19/23
Statutes:	Human Resources Code §243.001, §242.063	

RULE

(a) **Purpose.**

This rule establishes the actions that constitute violations of the rules of conduct for residential facilities. Violations of the rules may result in disciplinary consequences that are proportional to the severity and extent of the violation. Appropriate due process, including a consideration of extenuating circumstances, shall be followed before imposing consequences.

(b) **Applicability.**

This rule applies to youth assigned to residential facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) **Definitions.**

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

(1) **Attempt to Commit**--a youth, with specific intent to commit a rule violation, engages in conduct that amounts to more than mere planning that tends but fails to effect the commission of the intended rule violation.

(2) **Bodily Injury**--physical pain, illness, or impairment of physical condition. Fleeting pain or minor discomfort does not constitute bodily injury.

(3) **Direct Someone to Commit**--occurs when:

(A) a youth communicates with another youth;
(B) the communication is intended to cause the other youth to commit a rule violation; and
(C) the other youth commits or attempts to commit a rule violation.

(4) **Possession--**actual care, custody, control, or management. It does not require the item to be on or about the youth's person.

(d) **General Provisions.**

(1) Formal incident reports are completed for alleged rule violations as required by internal operational procedures.

(2) A formal incident report is not proof that a youth committed an alleged rule violation. Only rule violations that are proven through a Level I or Level II due process hearing in accordance with §380.9551 or §380.9555 of this chapter, respectively, are considered proven and are considered a part of a youth's disciplinary record. A formal incident report is not appealable or grievable; only disciplinary consequences may be appealed or grieved, as provided below.

(3) When a youth is found to be in possession of prohibited money as defined in this rule, a Level II hearing is required to seize the money. Seized money shall be placed in the student benefit fund in accordance with §380.9555 of this chapter.

(4) This paragraph applies only to youth not on parole status who are alleged to have engaged in conduct classified as a first- or second-degree felony while in a residential facility operated by or under contract with TJJD. A Level II hearing shall be requested on these youth unless it is determined that, given all circumstances, a Level II hearing is not appropriate. Such decision shall be documented. If a requested Level II hearing is held and the allegation is proved, the youth shall be reviewed for the most restrictive setting appropriate, including the intervention program described by §380.9510 of this chapter.

(e) **Disciplinary Consequences.**

(1) Disciplinary consequences shall be established in writing in TJJD's procedural manuals. Appropriate disciplinary consequences may be imposed only if the consequences are established in writing in TJJD's procedural manuals prior to the occurrence of the conduct for which the consequence is issued.

(2) Disciplinary consequences may include, but are not limited to, the following:

(A) suspension of privileges;
(B) restriction from planned activities;
(C) trust-fund restriction; and
(D) disciplinary transfer to a high-restriction facility (available only for youth on institutional status in a medium-restriction facility).

(3) The following are prohibited as disciplinary consequences:

(A) corporal or unusual punishment;
(B) subjecting a youth to humiliation, harassment, or physical or mental abuse;
(C) subjecting a youth to personal injury;
(D) subjecting a youth to property damage or disease;
(E) punitive interference with the daily functions of living, such as eating or sleeping;
(F) purposeless or degrading work, including group exercise as a consequence;
(G) placement in the intervention program under §380.9510 of this chapter;
(H) disciplinary isolation; and
(I) extending a youth’s stay in a TJJD facility.

(4) A Level II hearing is required before imposing a disciplinary consequence that materially alters a youth’s living conditions, including disciplinary transfer from a medium-restriction facility to a high-restriction facility. TJJD's procedural manuals will specify which disciplinary consequences require a Level II hearing. Disciplinary consequences requiring a Level II hearing are considered major consequences.

(5) If a Level II hearing is not required, the following must occur before imposing disciplinary consequences for a youth in a high-restriction facility:

(A) a written description of the incident must be prepared;

(B) staff must tell the youth which rule violation the youth allegedly committed and describe the information staff has that establishes the youth committed it;

(C) staff must tell the youth what disciplinary consequence(s) staff is considering imposing; and

(D) the youth must be given the opportunity to address the allegation, including providing any extenuating circumstances and information on the appropriateness of the intended consequence(s).

(6) If a Level II hearing is not required, a Level III hearing must occur before imposing disciplinary consequences for a youth in a medium-restriction facility, in accordance with §380.9557 of this chapter.

(f) **Review and Appeal of Consequences.**

(1) All disciplinary consequences shall be reviewed for policy compliance by the facility administrator or designee within three calendar days after issuance. The reviewing staff shall not be the staff who issued the discipline.

(2) The reviewing staff may remove or reduce any disciplinary consequence determined to be excessive or not validly related to the nature or seriousness of the conduct.

(3) Youth may appeal disciplinary consequences issued through a Level II hearing by filing an appeal in accordance with §380.9555 of this chapter.

(4) Youth in medium-restriction facilities may appeal disciplinary consequences issued through a Level III hearing by filing an appeal in accordance with §380.9557 of this chapter.

(5) Youth in high-restriction facilities may grieve disciplinary consequences issued without a Level II hearing by filing a grievance in accordance with §380.9331 of this chapter.

(g) **Major Rule Violations.**

It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following:

(1) **Assault of Another Youth (No Injury)**--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to another youth but the conduct does not result in bodily injury.

(2) **Assault of Staff (No Injury)**--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to a staff member, contract employee, or volunteer with the intent to cause injury but the conduct does not result in bodily injury.

(3) **Assault Causing Bodily Injury to Another Youth**--intentionally, knowingly, or recklessly engaging in conduct that causes another youth to suffer bodily injury.

(4) **Assault Causing Bodily Injury to Staff**--intentionally, knowingly, or recklessly engaging in conduct that causes a staff member, contract employee, or volunteer to suffer bodily injury.

(5) **Attempted Escape**--committing an act with specific intent to escape that amounts to more than mere planning that tends but fails to effect an escape.

(6) **Chunking Bodily Fluids**--causing a person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, and/or feces of another with the intent to harass, alarm, or annoy another person.

(7) **Distribution of Prohibited Substances**--distributing or selling any prohibited substances or items.

(8) **Escape**--leaving a high-restriction residential placement without permission or failing to return from an authorized leave.

(9) **Extortion or Blackmail**--demanding or receiving favors, money, actions, or anything of value from another in return for protection against others, to avoid bodily harm, or in exchange for not reporting a violation.

(10) **Failure to Comply with Electronic Monitoring Program Conditions (for Youth in Medium-Restriction Residential Placement)**--failing to comply with one of the following conditions required by the youth's electronic monitoring program conditions:

(A) remain at the address listed at all designated times;

(B) follow curfew restriction as stated in the youth's conditions of placement or conditions of parole;

(C) remain at the approved placement ~~[for the first 10 days]~~ while on electronic monitoring, going only to school, approved activities, religious functions, and medical/psychological appointments and then return to the approved placement, in accordance with the schedule identified in the conditions of placement or conditions of parole;

(D) wear the electronic monitoring device 24 hours a day;

(E) allow a TJJD staff member to enter the youth's residence to install, maintain, and inspect the device if required;

(F) notify the electronic monitoring officer as soon as possible within 24 hours if the youth experiences any problems with the electronic monitoring system; and

(G) charge the device daily for a minimum of one hour continuously in the morning and one hour continuously in the evening.

(11) **Fighting Not Resulting in Bodily Injury**--engaging in a mutually instigated physical altercation with another person or persons that does not result in bodily injury.

(12) **Fighting That Results in Bodily Injury**--engaging in a mutually instigated physical altercation with another person or persons that results in bodily injury.

(13) **Fleeing Apprehension**--running from or refusing to come to staff when called and such act results in disruption of facility operations.

(14) **Misuse of Medication**--using medication provided to the youth by authorized personnel in a manner inconsistent with specific instructions for use, including removing the medication from the dispensing area.

(15) **Participating in a Major Disruption of Facility Operations**--intentionally engaging in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs.

(16) **Possessing, Selling, or Attempting to Purchase Ammunition**--possessing, selling, or attempting to purchase ammunition.

(17) **Possession of Prohibited Items**--possessing the following prohibited items:

(A) cellular telephone;

(B) matches or lighters;

(C) jewelry, unless allowed by facility rules;

(D) money in excess of the amount or in a form not permitted by facility rules (see §380.9555 of this chapter for procedures concerning seizure of such money);

(E) pornography;

(F) items which have been fashioned to produce tattoos or body piercing;

(G) cleaning products when the youth is not using them for a legitimate purpose; or

(H) other items that are being used inappropriately in a way that poses a danger to persons or property or threatens facility security.

(18) **Possessing, Selling, or Attempting to Purchase a Weapon**--possessing, selling, or attempting to purchase a weapon or an item that has been made or adapted for use as a weapon.

(19) **Possession or Use of Prohibited Substances and Paraphernalia**--possessing or using any unauthorized substance, including controlled substances or intoxicants, medications not prescribed for the youth by authorized medical or dental staff, alcohol, tobacco products, or related paraphernalia such as that used to deliver or make any prohibited substance.

(20) **Refusing a Drug Screen**--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen. (Note: If the youth says he/she cannot provide a sample, the youth shall be given water to drink and two hours to provide the sample.)

(21) **Refusing a Search**--refusing to submit to an authorized search of person or area.

(22) **Repeated Non-Compliance with a Written, Reasonable Request of Staff (for Youth in Medium-Restriction Residential Placement)**--failing on two or more occasions to comply with a specific written, reasonable request of staff. If the request requires the youth to do something daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do something monthly, the two failures to comply must be within a 60-day period.

(23) **Sexual Misconduct**--intentionally or knowingly engaging in any of the following:

(A) causing contact, including penetration (however slight), between the penis and the vagina or anus; between the mouth and penis, vagina or anus; or penetration (however slight) of the anal or genital opening of another person by hand, finger, or other object;

(B) touching or fondling, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person;

(C) kissing for sexual stimulation;

(D) exposing the anus, buttocks, breasts, or genitals to another or exposing oneself knowing the act is likely to be observed by another person; or

(E) masturbating in an open and obvious way, whether or not the genitals are exposed.

(24) **Stealing**--intentionally taking property with an estimated value of $100 or more from another without permission.

(25) **Tampering with Monitoring Equipment**--a youth intentionally or knowingly tampers with monitoring equipment assigned to any youth.

(26) **Tampering with Safety Equipment**--intentionally tampering with, damaging, or blocking any device used for safety or security of the facility. This includes, but is not limited to, any locking device or item that provides security access or clearance, any fire alarm or fire suppression system or device, video camera, radio, telephone (when the tampering prevents it from being used as necessary for safety and/or security), handcuffs, or shackles.

(27) **Tattooing/Body Piercing**--engaging in tattooing or body piercing of self or others. Tattooing is defined as making a mark on the body by inserting pigment into the skin.

(28) **Threatening Another with a Weapon**--intentionally and knowingly threatening another with a weapon. A weapon is something that is capable of inflicting bodily injury in the manner in which it is being used.

(29) **Unauthorized Absence**--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(30) **Vandalism**--intentionally causing $100 or more in damage to state property or personal property of another.

(31) **Violation of Any Law**--violating a Texas or federal law that is not already defined as a major or minor rule violation.

(h) **Minor Rule Violations.**

It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following:

(1) **Breaching Group Confidentiality**--disclosing or discussing information provided in a group session to another person not present in that group session.

(2) **Disruption of Program**--engaging in behavior that requires intervention to the extent that the current program of the youth and/or others is disrupted. This includes, but is not limited to:

(A) disrupting a scheduled activity;
(B) being loud or disruptive without staff permission;
(C) using profanity or engaging in disrespectful behavior toward staff or peers; or
(D) refusing to participate in a scheduled activity or abide by program rules.

(3) **Failure to Abide by Dress Code**--failing to follow the rules of dress and appearance as provided by facility rules.

(4) **Failure to do Proper Housekeeping**--failing to complete the daily chores of cleaning the living environment to the expected standard.

(5) **Gang Activity**--participating in an activity or behavior that promotes the interests of a gang or possessing or exhibiting anything related to or signifying a gang, such as, but not limited to, gang-related literature, symbols, or signs.

(6) **Gambling or Possession of Gambling Paraphernalia**--engaging in a bet or wager with another person or possessing paraphernalia that may be used for gambling.

(7) **Horseplay**--engaging in wrestling, roughhousing, or playful interaction with another person or persons that does not rise to the level of an assault. Horseplay does not result in any party getting upset or causing injury to another.

(8) **Improper Use of Telephone/Mail/Computer**--using the mail, a computer, or the telephone system for communication that is prohibited by facility rules, at a time prohibited by facility rules, or to inappropriately access information.

(9) **Lending/Borrowing/Trading Items**--lending or giving to another youth, borrowing from another youth, or trading with another youth possessions, including food items, without permission from staff.

(10) **Lying/Falsifying Documentation/Cheating**--lying or withholding information from staff, falsifying a document, and/or cheating on an assignment or test.

(11) **Possession of an Unauthorized Item**--possessing an item the youth is not authorized to have (possession of which is not a major rule violation), including items not listed on the youth's personal property inventory. This does not include personal letters or photographs.

(12) **Refusal to Follow Staff Verbal Instructions**--deliberately failing to comply with a specific reasonable verbal instruction made by a staff member.

(13) **Stealing**--intentionally taking property with an estimated value under $100 from another without permission.

(14) **Threatening Others**--making verbal or physical threats toward another person or persons.

(15) **Unauthorized Physical Contact with Another Youth (No Injury)**--intentionally making unauthorized physical contact with another youth without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, or grabbing.

(16) **Unauthorized Physical Contact with Staff (No Injury)**--intentionally making unauthorized physical contact with a staff member, contract employee, or volunteer without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, and grabbing.

(17) **Undesignated Area**--being in any area without the appropriate permission to be in that area.

(18) **Vandalism**--intentionally causing less than $100 in damage to state or personal property.

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: XXXXXX**
Subchapter:	Behavior Management and Youth Discipline	Page: 1 of 4
Division:	Behavior Management	
Rule:	**Rules and Consequences for Youth on Parole**	Replaces: GAP.380.9504, 10/18/22
Statutes:	Human Resources Code §§243.001, 244.005, 245.051	

RULE

(a) **Purpose.**

This rule establishes the actions that constitute violations of the rules of conduct youth are expected to follow while under parole supervision. Violations of the rules may result in disciplinary consequences, including revocation of parole, that are proportional to the severity and extent of the violation. Appropriate due process must be followed before imposing consequences.

(b) **Applicability.**

(1) This rule applies to youth on parole status who are assigned to a home placement.

(2) For parole revocation purposes, this rule also applies to youth on parole status who are assigned to a residential placement as a home substitute. However, this rule does not apply to the daily rules of conduct for these youth. For the daily rules of conduct, see §380.9503 of this chapter.

(c) **General Provisions.**

(1) Conditions of parole are provided to the youth before release on parole.

(2) Conditions of parole, including the rules of conduct, are reviewed with youth when they initially meet with their parole officers and at other times as necessary.

(3) Repeated violations of any rule of conduct may result in more serious disciplinary consequences.

(d) **Definitions.**

Possession--actual care, custody, control, or management. It does not require the item to be on or about the youth's person.

(e) **Parole Rule Violations.**

It is a violation to knowingly commit, attempt to commit, or aid someone else in committing any of the following:

(1) **Abscond**--leaving a home placement or failing to return from an authorized leave when:

(A) the youth's parole officer did not give permission; and
(B) the youth's whereabouts are unknown to the youth's parole officer.

(2) **Failure to Comply with Electronic Monitoring Program Conditions**--failing to comply with one of the following conditions required by the youth's electronic monitoring program conditions:

(A) remain at the address listed at all designated times;

(B) follow curfew restriction as stated in the youth's conditions of placement or conditions of parole;

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(C) remain at the approved placement [~~for the first 10 days~~] while on electronic monitoring, going only to school, approved activities, religious functions, and medical/psychological appointments and then return to the approved placement, in accordance with the schedule identified in the conditions of placement or conditions of parole;

(D) wear the electronic monitoring device 24 hours a day;

(E) allow a TJJD staff member to enter the youth's residence to install, maintain, and inspect the device if required;

(F) notify the electronic monitoring officer as soon as possible within 24 hours if the youth experiences any problems with the electronic monitoring system; and

(G) charge the device daily for a minimum of one hour continuously in the morning and one hour continuously in the evening.

(3) **Failure to Comply with Sex Offender Conditions of Parole**--intentionally or knowingly failing to comply with one of the following conditions present in the youth's sex offender conditions of parole addendum:

(A) do not have unsupervised contact with children under the age specified by the conditions of parole;

(B) do not babysit or participate in any activity where the youth is responsible for supervising or disciplining children under the age specified by the conditions of parole; or

(C) do not initiate physical contact or touching of any kind with a child, victim, or potential victim.

(4) **Failure to Report an Arrest or Citation**--failing to report an arrest or receipt of a citation to the youth's parole officer within 24 hours of arrest or citation.

(5) **Participating in a Major Disruption of Facility Operations**--intentionally engaging in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs. (This parole violation applies only to youth assigned to a residential placement as a substitute for home placement.)

(6) **Possessing, Selling, or Attempting to Purchase Ammunition**--possessing, selling, or attempting to purchase ammunition.

(7) **Possessing, Selling, or Attempting to Purchase a Weapon**--possessing, selling, or attempting to purchase a weapon or an item that has been made or adapted for use as a weapon.

(8) **Refusing a Drug Screen**--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen.

(9) **Repeated Non-Compliance with a Written, Reasonable Request of Staff**--failing on two or more occasions to comply with a specific condition of release under supervision and/or a specific written, reasonable request of staff. If the request requires the youth to do something daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do something monthly, the two failures to comply must be within a 60-day period.

(10) **Photos, Videos, or Social Media Posts with Weapon, Ammunition, or Unauthorized Substance**--appearing in photos, videos, or other images, whether or not posted to social media, with any weapon, ammunition, or unauthorized substance or related paraphernalia, including any object that reasonably resembles a weapon, ammunition, or unauthorized substance or related paraphernalia. The term weapon includes, but is not limited to, guns, explosive devices, knives, blades, and clubs. The term related paraphernalia includes, but is not limited to, items used to make or deliver unauthorized substances.

(11) **Tampering with Monitoring Equipment**--a youth intentionally or knowingly tampers with monitoring equipment assigned to any youth.

(12) **Unauthorized Absence**--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(13) **Possession or Use of Unauthorized Substances**--possessing, ingesting, inhaling, or otherwise consuming any unauthorized substance, including controlled substances or intoxicants, medications not prescribed for the youth by authorized medical or dental staff, alcohol or tobacco products, or related paraphernalia such as that used to deliver or make any unauthorized substance.

(14) **Violation of Any Law**--violating a federal or state law or municipal ordinance.

(f) **Possible Consequences.**

(1) A parole rule violation may result in a Level I hearing or a Level III hearing conducted in accordance with §380.9551 or §380.9557 of this chapter, respectively.

(A) This subparagraph applies only to youth alleged to have engaged in conduct classified as a first- or second-degree felony while on parole. Except as provided by this subparagraph, a Level I hearing shall be requested on these youth. The hearing may be deferred when requested by local prosecutors, as provided in §380.9551 of this chapter. The designated staff person may determine that, given all circumstances, a Level I hearing is not appropriate. Such decision shall be documented. If a Level I hearing is held and the youth's parole is revoked, the youth shall be reviewed for the most restrictive setting appropriate, including the intervention program described by §380.9510 of this chapter.

(B) Parole officers are encouraged to be creative in determining a consequence appropriate to address and correct the youth's behavior. Staff should use evidence-based interventions that relate to the youth's risk, needs, and responsivity when appropriate. All assigned consequences should be related to the misconduct when possible.

(2) Consequences through a Level III hearing for a youth on parole include, but are not limited to:

(A) **Verbal Reprimand**--conference with a youth including a verbal reprimand that draws attention to the misbehavior and serves as a warning that continued misbehavior could result in more severe consequences.

(B) **Curfew Restriction**--an immediate change in existing curfew requirements outlined in the youth's conditions of parole.

(C) **Community Service Hours**--disciplinary assignment of a specific number of hours the youth is to perform community service in addition to the hours assigned when the youth was placed on parole. In no event may more than 20 community service hours be assigned through a Level III hearing.

(D) **Increased Level of Supervision**--an assigned increase in the number of primary contacts between the youth and parole officer in order to increase the youth's accountability.

(E) **Electronic Tracking**--assignment to a system that electronically tracks a youth's movement and location.

(F) **Writing Assignment**--an assignment designed for the youth to address the misbehavior and identify appropriate behavior in similar situations.

(3) Consequences through a Level I hearing for a youth on parole, including youth assigned to a residential placement as a home substitute, include:

(A) parole revocation and placement in any high- or medium-restriction program operated by or under contract with the Texas Juvenile Justice Department; and

(B) assignment of a length of stay consistent with §380.8525 of this chapter.

5/3/24 Draft – Pertinent Section Only, Not the Full Chapter

Subchapter B
Juvenile Board Responsibilities

§341.204 Residential Placement

Effective Date: XXXXXX

(a) **Duty to Certify Juvenile Justice Facilities.**

The juvenile board serving the county where a juvenile justice facility is located must certify and register the facility as required by Texas Family Code §§51.12, 51.125, and 51.126, as applicable.

(b) **Prohibition on Placing Juveniles in Non-licensed Facilities.**

The juvenile board must ensure that juveniles under its jurisdiction are placed only in:

(1) juvenile justice facilities that are certified by a juvenile board in Texas; or

(2) public or private residential facilities or programs licensed by a state governmental entity or exempted from licensure by state law.

(c) **Placement in a Facility Constructed or Previously Used for the Confinement of Adult Offenders.**

(1) A juvenile board or juvenile probation department may contract with a facility that was constructed or previously used for the confinement of adult offenders only after TJJD has determined the facility has been appropriately retrofitted to comply with TJJD standards related to facilities. TJJD will maintain a list of pre-approved facilities.

(2) If the facility is not on the list of pre-approved facilities, the juvenile board or juvenile probation department must request approval from TJJD and submit any information TJJD needs in order to make a determination under this provision.

(3) This subsection does not apply to facilities registered with TJJD.

Texas Administrative Code

Title 37 Public Safety and Corrections
Part 11 Texas Juvenile Justice Department
Chapter 349 General Administrative Standards

2/13/24 Draft – Pertinent Sections Only, Not the Full Chapter

Subchapter A. Definitions

§349.100 Definitions

Subchapter B. Waiver

§349.200 Waiver or Variance

Subchapter C. Disciplinary Actions and Hearings

§349.300 Requests for Disciplinary Action
§349.305 Commission Initiated Disciplinary Action
§349.307 Disciplinary Sanctions
§349.308 Disciplinary Guidelines
§349.310 Effect of Request for Disciplinary Action
§349.311 Disciplinary Sanctions
§349.315 Computation of Time
§349.320 Notice and Service
§349.325 Representation
§349.330 Preliminary Notice to Certified Officer in Disciplinary Matters
§349.335 Commencement of Disciplinary Proceedings
§349.340 Certified Officer's Answer and Consequence of Failure to File an Answer to Formal Charges (Default)
§349.345 Discovery
§349.355 Subpoenas
§349.360 Informal Proceedings
§349.365 Agreed Dispositions
§349.370 Formal Disciplinary Proceedings
§349.375 Decision of the Board
§349.380 Judicial Review
§349.385 Mandatory Suspension for Failure to Pay Child Support

Subchapter D. Complaints against Juvenile Boards

§349.400 Complaint Process
§349.410 Administrative Review of Investigation Findings

Subchapter E. Confidentiality and Release of Abuse, Exploitation and Neglect Investigation Records

§349.500 Purpose

§349.510 Definitions
§349.520 Access to Confidential Information
§349.530 Redaction of Records Prior to Release
§349.540 Procedures for Requesting Access to Confidential Information
§349.550 Public Information
§349.560 Videotapes, Audiotapes and Photographs
§349.570 Charges for Copies of Records

Subchapter F. Advisory Council on Juvenile Services

§349.600 Purpose
§349.650 Removal of Members

Subchapter G. Data

§349.700 Access to Data Collected

Subchapter F
Advisory Council on Juvenile Services

§349.600 Purpose

Effective Date: XXXXXX

(a) The purpose of the Advisory Council on Juvenile Services is to advise the Texas Juvenile Justice Board and Texas Juvenile Justice Department on:

(1) the needs and problems of juvenile boards and juvenile probation departments;

(2) long-range strategic planning;

(3) reviews and proposed revisions to standards affecting juvenile probation programs, services, and facilities;

(4) the potential cost impact on juvenile probation departments of new standards proposed by the Texas Juvenile Justice Board;

(5) recommendations to improve information sharing between agencies that serve children, including agencies serving children involved in both the juvenile justice and child welfare systems; and

(6) any other matter at the request of the Texas Juvenile Justice Board.

(b) The goal of the advisory council is to provide actionable, direct, and inclusive feedback from the local perspective to the Texas Juvenile Justice Board and Texas Juvenile Justice Department so the unified juvenile justice system can collectively develop and improve the state's comprehensive continuum of care for youth; prioritize evidence-based rehabilitative services; and ensure safety for youth, staff, and the public.

(c) The advisory council is composed of 15 members, as specified in Chapter 203, Human Resources Code. Members, excluding ex officio members, serve staggered two-year terms. Texas Juvenile Justice Board-appointed members shall receive training on the advisory council's purpose, role, and procedures within 30 days of their appointment.

(d) If a vacancy occurs on the council during a member's term, the Texas Juvenile Justice Board must appoint a replacement who meets the qualifications of the vacant position to serve for the remainder of the term.

(e) A majority of advisory council members, excluding ex officio members as defined in Chapter 203, Human Resources Code, constitutes a quorum. A quorum must be present to vote on action items that will be submitted to the Texas Juvenile Justice Board for consideration.

(f) Ex officio members have the same rights and privileges as other members, including the right to vote. These members are not counted when determining the number of members who represent a quorum or in determining whether a quorum is present.

(g) An advisory council member shall avoid the appearance of a conflict of interest by not voting or participating in a decision by the council that solely benefits, solely penalizes, or otherwise solely impacts the county or juvenile probation department over which the member has authority.

(h) The advisory council's presiding officer or designee shall periodically update the board on the council's activities, progress on board directives, and issues impacting juvenile probation programs, services, and facilities.

(i) The advisory council is subject to Chapter 552, Government Code, as the act applies to bodies that are solely advisory in nature.

(j) The advisory council is not subject to Chapter 2110, Government Code. The department shall evaluate the continuing need for and recommendations to improve the council during the rule review process established under Chapter 2001, Government Code.

§349.650 Removal of Members

Effective Date: XXXXXX

It is a ground for removal from the council if a member is absent from more than half of the regularly scheduled meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the council.

Subchapter G

Data

§349.700 Access to Data Collected

Effective Date: XXXXXX

For planning and research purposes, all juvenile probation departments participating in the implementation of the state's regionalization plan developed under Chapter 203, Human Resources Code, are authorized to access data that any participating departments have submitted through the juvenile case management system.

Draft 5/3/24

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: XXXXXX**
Subchapter:	Admission, Placement, Release, and Discharge	Page: 1 of 1
Division:	Certain Actions by the Executive Director	
Rule:	**Certain Actions by the Executive Director**	New
Statutes:	Human Resources Code §203.002	

RULE

(a) **Purpose.**

This rule establishes that the Texas Juvenile Justice Department (TJJD) tracks the frequency with which the executive director takes certain actions and reports the resulting data to the TJJD Governing Board and the Sunset Advisory Committee.

(b) **General Provisions.**

(1) The department shall track the frequency with which the executive director takes the following actions:

(A) selecting youth for a conditional placement;

(B) selecting youth for a home placement;

(C) waiving the requirement for a youth with a determinate sentence to spend the youth's entire minimum period of confinement in a high-restriction facility;

(D) waiving the requirement for a youth to be on intensive supervision when initially released on parole; and

(E) authorizing the early discharge of a youth on parole.

(2) The department shall compile frequency data outlined in paragraph (b)(1) on a quarterly basis. The department shall provide the frequency data from the previous quarter to the TJJD Governing Board and Sunset Advisory Commission at the beginning of each quarter.

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Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: [~~8/1/23~~]**
Subchapter:	Program Services	Page: 1 of 9
Division:	Health Care Services	
Rule:	**Suicide Alert for High-Restriction Facilities**	Replaces: GAP.380.9188, 8/1/23 [~~4/15/15~~]

RULE

(a) **Purpose.**

This rule establishes procedures for identification, assessment, treatment, and protection of youth in high-restriction facilities who may be at risk for suicide.

(b) **Applicability.**

This rule applies to all youth currently placed in high-restriction facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) **Definitions.**

Definitions pertaining to this rule are under §380.9187 of this chapter.

(d) **General Provisions.**

(1) Treatment for youth determined to be at risk for suicide is provided within the least restrictive environment necessary to ensure safety.

(2) Youth determined to be at risk for suicide participate in regular programming to the extent possible, as determined by a mental health professional. Only a mental health professional may make exceptions to the provision of regular programming, housing placement, or clothing.

(3) Using force to remove clothing shall be avoided whenever possible and used only as a last resort when the youth is physically engaging in suicidal and/or self-harming behavior.

(4) Designated staff carry rescue kits at all times while on duty for use in the event of a medical emergency caused by a suicide attempt. Rescue kits are also placed in designated buildings or areas of the campus that are not accessible to youth.

(5) As soon as possible, but not to exceed two hours, after a suicide attempt, the youth's parent or guardian is notified (with the youth's consent if the youth is age 18 or older).

(e) **Intake Screening and Assessment.**

(1) **Upon Initial Admission to TJJD.**

(A) Upon arrival to a TJJD orientation and assessment unit, designated intake staff keep youth within direct line-of-sight supervision until the youth is screened or assessed for suicide risk.

(B) Within one hour after the youth's arrival to a TJJD orientation and assessment unit, a mental health professional initiates an initial mental health screening and documents the results.

(C) If the mental health professional identifies the youth as potentially at risk for suicide, the mental health professional immediately conducts a suicide risk assessment.

(D) Within 14 days after arrival at the orientation and assessment unit, all youth receive a comprehensive mental health evaluation conducted by a mental health professional. The

mental health evaluation will include a suicide risk assessment if one has not already been completed.

(E) The suicide risk assessment completed upon initial admission includes, at a minimum:

(i) a mental status exam;

(ii) a review of all mental health and medical records submitted from the courts, county juvenile detention facilities, or any other medical or mental health provider, to include any assessments by mental health professionals relating to prior suicide alerts during confinement;

(iii) a review of all other available screenings and assessments; and

(iv) referrals for follow-up treatment or further assessment, as indicated.

(F) The designated mental health professional reviews the suicide risk assessment.

(2) **Upon Arrival at a TJJD Facility after Intake.**

(A) Except for youth who are on suicide alert at the time of arrival, the following actions must occur within one hour after a youth's arrival at a high-restriction facility following an intrasystem transfer, any period of time spent out of TJJD's physical custody due to a significant life event, or a period of at least 48 hours spent out of TJJD's physical custody for any reason:

(i) a trained designated staff member initiates a suicide risk screening; or
(ii) a mental health professional initiates a suicide risk assessment.

(B) The youth is kept within direct line-of-sight supervision until the youth is screened or assessed.

(C) If a screening is conducted:

(i) the trained designated staff member immediately contacts a mental health professional to assign an observation level, if appropriate, based on results of the screening; and

(ii) the youth is immediately placed on the observation level directed by the mental health professional; and

(iii) the mental health professional conducts a suicide risk assessment within an appropriate time frame, as established in agency procedures. Procedures will assign time frames based on the youth’s assigned observation level and screening result.

(D) The suicide risk assessment conducted upon a youth's arrival at a TJJD facility includes, at a minimum:

(i) a mental status exam;

(ii) a review of the youth's masterfile and medical record, as indicated;

(iii) referrals for follow-up treatment or further assessment, as indicated;

(iv) a determination of whether to place the youth on suicide alert, and if placed, designation of the appropriate observation level and other safety precautions; and

(v) a review by the designated mental health professional of the assessment.

(3) **Additional Screening by Infirmary for Intrasystem Transfers.**

(A) Upon arrival of a youth from another high-restriction TJJD facility, a nurse completes an intrasystem health screening, including questions relating to suicidal ideation and suicidal behavior.

(B) If the youth is identified by the screening as potentially at risk for suicide, the nurse immediately contacts a mental health professional and communicates the results of the screening.

(f) **Responding to Suicidal Ideation, Self-Harming Behavior, or Suicidal Behavior.**

(1) A staff member who has reason to believe that a youth has verbalized suicidal ideation or demonstrated self-harming or suicidal behavior must:

(A) immediately use the rescue kit if appropriate and seek medical attention if there is a medical emergency;

(B) verbally engage the youth;

(C) provide constant observation unless a mental health professional directs a higher observation level;

(D) begin a suicide observation log to document status checks of the youth;

(E) immediately notify the campus shift supervisor and document the notification; and

(F) refer the youth for a suicide screening.

(2) As soon as possible, but no later than one hour after notification, the campus shift supervisor ensures a trained designated staff member initiates a suicide risk screening or a mental health professional initiates a suicide risk assessment. This screening or assessment is not required when deemed inappropriate due to a medical emergency.

(3) If a screening is conducted:

(A) the trained designated staff member immediately contacts a mental health professional to assign an observation level based on results of the screening; and

(B) the mental health professional conducts a suicide risk assessment within an appropriate time frame, as established in agency procedures. Procedures will assign time frames based on the youth’s assigned observation level and screening result.

(4) If the youth is transported to the emergency room:

(A) upon return to the facility, the youth is placed on one-to-one observation until assessed by a mental health professional; and

(B) a mental health professional initiates a suicide risk assessment within four hours after the youth's return to the facility.

(5) The suicide risk assessment conducted in response to suicidal behavior or ideation includes:

(A) a mental status exam;

(B) a review of the youth's masterfile and medical record, as indicated;

(C) referrals for follow-up treatment or further assessment, as indicated;

(D) a determination of whether to place the youth on suicide alert, and if placed, designation of the appropriate observation level and other safety precautions; and

(E) a review by the designated mental health professional of the assessment.

(6) Whenever possible, suicide risk screenings and assessments are conducted in a confidential setting.

(g) **Actions Taken Upon Completion of Suicide Risk Assessment.**

(1) **Documentation Requirements.**

(A) Upon completion of a suicide risk assessment, the mental health professional documents the results of the assessment, including any changes in the youth's observation level.

(B) If the youth is placed on suicide alert, the mental health professional ensures the youth's name is placed on the facility's suicide alert list. The designated mental health professional ensures the updated list is distributed to facility staff.

(2) **Notification of Assessment Results.**

(A) If the youth is placed on suicide alert:

(i) as soon as possible, infirmary staff, the youth's case manager, staff responsible for supervising the youth, and the campus shift supervisor are notified of the youth's observation level, other safety precautions, and any additional instructions; and

(ii) the youth's parent or guardian is notified as soon as possible after the youth is placed on suicide alert (with the youth's consent if the youth is age 18 or older).

(B) If the youth is not placed on suicide alert, the mental health professional notifies the referring staff and the youth's case manager that the youth was assessed but not placed on suicide alert.

(3) **Assignment of Staff to Monitor Youth.**

If the youth is placed on suicide alert, the campus shift supervisor ensures a specific staff member is assigned to monitor the youth and carry the suicide observation folder.

(h) **Supervision of Youth on Suicide Alert.**

(1) Unless the youth is already placed in a suicide-resistant room, the campus shift supervisor or trained designated staff member coordinates a search of the youth's room or personal area and removes any potentially dangerous items.

(2) The suicide observation folder must be in the possession of the monitoring staff member at all times while the youth is on suicide alert.

(A) At no time may the youth possess the suicide observation folder.

(B) Each time the youth is transferred to the supervision of another staff member, the receiving staff member must take possession of the folder and document the transfer of supervision in the folder.

(3) As required by the suicide observation level and other safety precautions assigned to the youth, the monitoring staff member must:

(A) maintain direct visual observation of the youth;
(B) document the youth's status at the required interval; and
(C) follow any precautions set by the mental health professional.

(4) The monitoring staff member must not leave a youth assigned to one-to-one observation unattended or let the youth out of the staff member's sight.

(5) During waking hours, the monitoring staff must not leave a youth assigned to constant observation unattended or let the youth out of the staff member's sight.

(6) Any time a youth on one-to-one or constant observation is in the bathroom or shower, the monitoring staff must remain within six feet of the youth, and:

(A) observe at least a portion of the youth's body (i.e., head, feet, or other observable parts, excluding genitalia, breasts, and buttocks); and/or

(B) maintain verbal contact.

(7) When a youth on one-to-one or constant observation is engaged in regular programming (e.g., education, group sessions, recreation), the monitoring staff will accompany the youth to the activity and remain within the required distance (i.e., 6 or 12 feet). If the youth cannot be maintained within the required distance without disrupting the program, a mental health professional must be consulted to consider possible modifications to the youth's supervision plan or scheduled routine to ensure the youth can be appropriately monitored.

(8) Issuing suicide-resistant clothing and removing a youth's clothing, as well as canceling programming and routine privileges, will be avoided whenever possible and used only as a last resort for periods during which the youth is physically engaging in suicidal and/or self-harming behavior.

(A) Decisions regarding issuance of suicide-resistant clothing and restrictions in programming and/or routine privileges may be made only by a mental health professional.

(B) A decision to conduct a strip search if criteria in §380.9709 of this chapter are met may be made only in consultation with a mental health professional.

(C) A decision to use force in order to remove a youth's regular clothing after a youth has been issued suicide-resistant clothing may occur only upon the recommendation of a mental health professional and with the approval of the directors over treatment and facility operations or the directors' designees.

(D) If force is used to remove a youth's regular clothing as provided by subparagraph (C) of this paragraph, a mental health professional must evaluate the youth's need for trauma symptom care and ensure the care is provided if appropriate.

(9) Unless approved by the designated mental health professional in consultation with the facility administrator, youth on suicide alert are not allowed access to off-campus activities or non-medical appointments. Decisions regarding off-campus medical appointments are made by medical staff.

(i) **Treatment and Reassessment of Youth on Suicide Alert.**

(1) A mental health professional develops a written treatment plan (or revises an existing care plan) that includes treatment goals and specific interventions designed to address and reduce suicidal ideation and threats, suicidal and/or self-harming behavior, and suicidal threats perceived to be based upon attention-seeking or manipulative behavior. The treatment plan describes:

(A) signs, symptoms, and circumstances under which the risk for suicide or other self-harming behavior is likely to reoccur;

(B) how reoccurrence of suicidal and other self-harming behavior can be avoided; and

(C) actions the youth and staff can take if the suicidal and other self-harming behavior does occur.

(2) The mental health professional consults with the youth's case manager, as needed, to recommend modifications to the youth's individual case plan based on issues identified in the treatment plan. The mental health professional consults with staff responsible for supervising the youth regarding the youth's progress.

(3) While the youth is on suicide alert, a mental health professional assesses the youth at least once every 48 hours, unless the youth is placed on one-to-one observation, in which case the mental health professional assesses the youth at least once every 24 hours.

(4) For each assessment, the mental health professional:

(A) reviews the contents of the suicide observation folder, as well as suicide risk assessments and progress notes from other mental health professionals as applicable;

(B) determines whether any changes should be made to the youth's observation level or other safety precautions (in consultation with the designated mental health professional if the assessing mental health professional is not licensed to practice independently and recommends lowering the observation level or precautions);

(C) documents any changes in the observation level or other safety precautions in the suicide observation folder; and

(D) documents the assessment, including a sufficient description of the youth's emotional status, observed behavior, recommended observation level, justification for decision, and any special instructions for staff.

(5) Each time a change is made to the youth's observation level or other safety precautions, staff responsible for supervising the youth are notified and updated information regarding the youth is distributed to designated facility staff, including infirmary staff.

(6) During routine meetings between the psychology department and the psychiatric provider, the designated mental health professional or designee discusses information concerning youth on suicide alert who are on the psychiatric caseload.

(j) **Protective Custody or Emergency Psychiatric Placement.**

(1) Youth who cannot be safely managed in their assigned living units may be referred for placement in a suicide-resistant room in the protective custody program, in accordance with §380.9745 of this chapter. All treatment, reassessment, and observation requirements established in this rule will continue to apply while a youth is assigned to protective custody unless otherwise noted in §380.9745 of this chapter.

(2) If the designated mental health professional or psychiatric provider determines that a youth is in serious and imminent risk of suicidal and/or self-harming behavior and cannot be safely or appropriately managed within TJJD custody, the designated mental health professional or psychiatric provider may seek emergency psychiatric placement in accordance with §380.8771 of this chapter. The youth will be placed on one-to-one observation until received at the emergency placement.

(k) **Intrasystem Transfer of Youth on Suicide Alert.**

(1) Prior to transferring a youth on suicide alert to another high-restriction TJJD facility:

(A) within 24 hours prior to transfer, a mental health professional at the sending facility sends a summary of the youth's suicidal and/or self-harming behavior, assessments, and treatment to the designated mental health professional and facility administrator or their designees at the receiving facility and any stopover facilities en route to the receiving facility; and

(B) staff assigned to monitor the youth at the sending facility provide the suicide observation folder to the transporting staff.

(2) A mental health professional at the receiving facility:

(A) as soon as possible, but no later than four hours after the youth's arrival, reviews the transfer summary and initiates a suicide risk assessment;

(B) places the youth on the facility's suicide alert list;

(C) ensures the suicide observation log is provided to the staff assigned to monitor the youth; and

(D) communicates with the designated mental health professional or designee regarding the plan for treatment and assessment.

(3) Before the youth is moved to the assigned dorm or living unit at the receiving facility, staff responsible for supervising the youth and nursing staff are notified of the youth's suicide observation level.

(l) **Moving a Youth on Suicide Alert to a Less Restrictive Placement.**

(1) Prior to moving a youth on suicide alert to a less restrictive placement (i.e., medium-restriction facility or home placement), the mental health professional:

(A) provides the youth (or parent/guardian if the youth is under age 18) with a referral for follow-up care;

(B) coordinates with appropriate clinical staff to schedule a follow-up appointment;

(C) communicates observation level and precautions to facility staff, if applicable;

(D) identifies emergency resources, if needed; and

(E) notifies the youth's parole officer, if applicable.

(2) Mental health records are sent to the receiving mental health provider upon request.

(m) **Reduction of Observation Level and Removal from Suicide Alert.**

(1) The observation level for a youth on suicide alert may be lowered or discontinued only after a suicide risk assessment by a mental health professional. If the assessing mental health professional is not licensed to practice independently, the decision to lower or discontinue a youth’s observation level may be made only in consultation with the designated mental health professional.

(2) A mental health professional may lower a youth's suicide observation level by no more than one level every 24 hours unless otherwise approved by the designated mental health professional on a case-by-case basis.

(3) Only a mental health professional or the designated mental health professional may authorize removal of a youth's name from the suicide alert list. Only youth on the lowest available observation level may be removed from suicide alert.

(4) The mental health professional notifies appropriate staff when a youth's observation level is lowered and when a youth is removed from suicide alert. Infirmary staff notify the psychiatric provider of all such changes for youth on the psychiatric caseload.

(5) The youth's parent or guardian is notified when the youth is removed from suicide alert (with the youth's consent if the youth is age 18 or older).

(6) Upon removal from suicide alert, the mental health professional identifies in the treatment plan any needed follow-up mental health services.

(n) **Training.**

(1) All staff who have regular, direct contact with youth (including, but not limited to, security, direct care, nursing, mental health, and education staff) receive initial training in suicide prevention and response during new-hire training. Training addresses topics including, but not limited to:

(A) identifying the warning signs and symptoms of suicidal and/or self-harming behavior;

(B) high-risk periods for suicidal and/or self-harming behavior;

(C) juvenile suicide research, to include the demographic and cultural parameters of suicidal behavior, incidence, and precipitating factors;

(D) responding to suicidal youth and youth experiencing mental health symptoms;

(E) communication between correctional and health care personnel;

(F) referral procedures;

(G) housing, observation, and suicide alert procedures; and

(H) follow-up monitoring of youth who engage in suicidal behavior, self-harming behavior, and/or suicidal ideation.

(2) All staff who have regular, direct contact with youth receive annual suicide prevention training.

(3) Staff designated to conduct suicide screenings receive annual training from a mental health professional regarding suicide alert policy, suicide indicators, and suicide screening.

(4) All training described by this subsection shall be accompanied by a test or demonstration to establish competency in the subject matter.

(o) **Post-Incident Debriefing and Analysis.**

(1) After a completed suicide or a life-threatening suicide attempt, the facility administrator or designee coordinates a debriefing with appropriate facility staff as soon as possible after the situation has been stabilized, in accordance with agency procedures.

(2) After a completed suicide, the executive director or designee may dispatch a critical incident support team to provide counseling for youth and staff, coordination of facility activities, and assistance with follow-up care.

(3) After a completed suicide, the medical director conducts a morbidity and mortality review in coordination with appropriate clinical staff. The medical director may conduct a morbidity and mortality review after a life-threatening suicide attempt.

(4) After a completed suicide or a life-threatening suicide attempt, a critical incident review is convened to determine if the incident reveals system-wide deficiencies and to recommend improvements to agency policies, operational procedures, the physical plant, and/or training requirements.

(5) In the event of a completed suicide, all actions, notifications, and reports required under §385.9951 of this title must be completed.

See CMS.06.71 for implementation procedures.

Draft 05/02/24

Chapter:	Agency Management and Operations	**Effective Date: XXXXXX [~~5/1/19~~]**
Subchapter:	Contracts	Page: 1 of 3
Title:	**Contract Authority and Responsibilities**	
Statutes:	Gov't Code: §2161.003; §2260.052(c); [~~Chapter 2252, Subchapter F;~~] Chapter 2254, Subchapters A and B; and §2270.002	Replaces: GAP.385.1101, 5/1/19 [~~7/15/14~~]

RULE

(a) **Purpose.**

This rule establishes the responsibilities for approving and executing contracts required by the Texas Juvenile Justice Department (TJJD).

(b) **Applicability.**

This rule applies to all contracts entered into by TJJD.

(c) **Definitions.**

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

(1) **Board**--the governing board of TJJD.

(2) **Contract**--a written contract between TJJD and another party, either public or private, for goods or services or for a project as defined by Section 2166.001, Government Code. As used in this chapter, "contract" includes the following: letters of agreement; interagency/interlocal agreements with other government entities; memorandums of understanding; and other agreements in which state funds or services are exchanged for the delivery of goods or performance of services.

(3) **Total Value**--The estimated dollar amount that a state agency may be obligated to pay pursuant to the contract and all executed and proposed amendments, extensions, and renewals of the contract.

(d) **Authority to Approve Contracts.**

(1) **Board Approval.**

TJJD staff must present certain contracts to the board for approval, including but not limited to:

(A) any contract with a total value exceeding $500,000;

(B) any construction contract with a total value exceeding $300,000;

(C) any change order(s) for a construction contract that exceeds [~~order exceeding~~] $150,000 individually or cumulatively, or a dollar amount that causes the total value of the contract to exceed $300,000 [~~for a construction contract~~];

(D) any contract with a total value exceeding $15,000 for consulting [~~consultant~~] services, as defined in Section 2254.021, Government Code;

(E) any contract for architectural or engineering services;

(F) any contract for start-up residential operations; and

(G) any other contract appropriate for board approval as determined by the executive director.

(2) **Agency Approval.**

(A) The board delegates authority to the executive director or designee to approve all contracts not listed in paragraph (1) of this subsection.

(B) The board delegates authority to the executive director or designee to approve a contract listed in paragraph (1) of this subsection that is executed in response to an emergency, as defined in 34 TAC §20.210 [~~§20.32~~].

[~~(3) **Other Approvals.**~~

~~(A) TJJD complies with Section 321.020, Government Code, which requires that all contracts involving the expenditure of funds for outside audit services must be approved by the Texas State Auditor's Office.~~

~~(B) TJJD complies with Section 402.0212, Government Code, which requires that all contracts involving the expenditure of funds for outside legal services must be approved by of the Office of the Attorney General.~~]

(e) **Authority to Execute Contracts.**

The board delegates authority to the executive director to execute all contracts for TJJD. This authority may be delegated by the executive director [~~to another member of the executive management team~~].

(f) **Annual Contract Plan.**

(1) TJJD staff must present to the board for its review an annual plan that outlines TJJD's anticipated contracting actions for the next fiscal year.

(2) As deemed necessary by the executive director or designee, updates to the contract plan may be provided to the board for review periodically throughout the fiscal year.

[~~(g) **Adoptions by Reference and Statutory Citations Relating to Contracting Responsibilities.**~~

~~(1) **Competitive Solicitations.**~~

~~(A) TJJD complies with Chapters 2155 and 2156, Government Code, relating to the competitive bidding process and types of solicitations used and Section 2252.002, Government Code, relating to awards of contracts to nonresident bidders.~~

~~(B) TJJD adopts by reference 34 TAC §20.391, relating to requests for offers.~~]

(g)[~~(2)~~] **Historically Underutilized Businesses.**

TJJD adopts by reference 34 TAC Chapter 20, Subchapter D, Division 1, relating to historically underutilized businesses.

[~~(3) **Consulting Services.**~~

~~(A) TJJD complies with Chapter 2254, Subchapter B, Government Code, relating to consulting services contracts.~~

~~(B) TJJD adopts by reference 34 TAC §5.54, relating to consulting services contracts.~~

~~(4) **Professional Services.**~~

~~TJJD complies with Chapter 2254, Subchapter A, Government Code, relating to professional services contracts.~~

(5) **Construction Services.**

TJJD awards contracts for the construction of buildings and improvements in accordance with Chapter 2166, Government Code.

(6) **Rate Setting.**

TJJD complies with Section 2261.151(a), Government Code, relating to payment and reimbursement methods and rates.

(7) **Exemptions from Competitive Bidding Process for Youth Services.**

In accordance with Chapter 2155, Subchapter C, Government Code, relating to certain exemptions from competitive bidding, TJJD may purchase care and treatment services for youth committed to its care at rates not to exceed any maximum provided by law, based on each provider's qualifications and demonstrated competence.

(8) **Iron and Steel Products.**

TJJD complies with Chapter 2252, Subchapter F, Government Code, relating to the purchase of iron and steel products made in the United States for certain governmental entity projects.

(9) **Contracts with Businesses That Do Not Boycott Israel.**

TJJD complies with Section 2270.002, Government Code, relating to entering into contracts with only those businesses that have verified in writing that they do not boycott Israel and will not do so for the term of a contract.]

Texas Administrative Code

Title 37 Public Safety and Corrections
Part 11 Texas Juvenile Justice Department
Chapter 341 General Standards for Juvenile Probation Departments

Draft 05/02/24, Pertinent Section Only, Not the Complete Chapter

Subchapter A. Definitions and General Provisions

§341.100 Definitions
§341.102 Waiver or Variance to Standards

Subchapter B. Juvenile Board Responsibilities

§341.200 Administration
§341.202 Policies and Procedures
§341.204 Residential Placement

Subchapter C. Chief Administrative Officer Responsibilities

§341.300 Policy and Procedure Manual
§341.302 Participation in Community Resource Coordination Groups
§341.304 Requirement to Apply for Diversion Funds

Subchapter D. Requirements for Juvenile Probation Officers

§341.400 Duties of Certified Juvenile Probation Officers
§341.402 Duties of Certified Community Activities Officers
§341.403 Supervising and Transporting Juveniles

Subchapter E. Case Management

§341.500 Mental Health Screening
§341.502 Risk and Needs Assessment
§341.504 Case Management Policies and Procedures
§341.506 Case Plans

Subchapter F. Data Collection

§341.600 Data Coordinator
§341.602 TJJD EDI Extract
§341.604 Accuracy of Data
§341.606 Security of Data

Subchapter G. Restraints

§341.700 Applicability
§341.702 Requirements
§341.704 Prohibitions
§341.706 Documentation
§341.708 Personal Restraint
§341.710 Mechanical Restraint
§341.712 Transporting

Subchapter H. Carrying of Weapons

§341.800 Applicability and Authorization
§341.802 Documentation Requirements
§341.804 Responsibilities of a Juvenile Probation Officer Authorized to Carry a Firearm
§341.806 Responsibilities of Chief Administrative Officers or Other Supervising Officers
§341.808 Written Policies and Procedures
§341.810 Reporting Use of Force Incidents to TJJD and Law Enforcement
§341.812 Records

§341.304 Requirement to Apply for Diversion Funds

Effective Date: XXXXXX

(a) Prior to a court committing a juvenile to TJJD, the chief administrative officer or designee must submit an application for diversion funds to divert a juvenile from commitment to TJJD.

(b) The requirement in subsection (a) does not apply if:

(1) the juvenile has committed conduct that is eligible for a determinate sentence under §51.031 or §53.045, Family Code, whether or not the petition was approved by the grand jury;

(2) the juvenile has been previously placed and discharged within the last year from a post-adjudication secure juvenile correctional facility;

(3) the juvenile is at least 17 years of age on the date of disposition or modification of disposition; or

(4) a juvenile probation department is not recommending commitment.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Cameron Taylor, Senior Strategic Advisor

Subject: Discussion, consideration, and possible approval to adopt revisions to 37 TAC Chapter 344 (Employment, Certification, and Training), §380.9503 (Rules and Consequences for Residential Facilities), and §380.9504 (Rules and Consequences for Youth on Parole); and to adopt the final rule text for and responses to public comments concerning 37 TAC Chapters 341 (General Standards for Juvenile Probation Departments), 344, and 349 (General Administrative Standards), as well as §§380.8597 (Certain Actions by the Executive Director), 380.9188 (Suicide Alert for High-Restriction Facilities), 380.9503, and 380.9504

Date: May 24, 2024

Before the Board for approval to adopt are additional revisions to Chapter 344 (relating to employment, certification, and training), §380.9503 (relating to rules and consequences for residential facilities), and §380.9504 (rules and consequences for youth on parole).

Also before the Board for approval to adopt is the final rule text for the following items within Title 37 of the Texas Administrative Code:

- Chapter 341 (relating to general standards for juvenile probation departments);
- Chapter 344 (relating to employment, certification, and training);
- Chapter 349 (relating to general administrative standards);
- §380.8597 (relating to certain actions by the executive director);
- §380.9188 (relating to suicide alert for high-restriction facilities);
- §380.9503 (relating to rules and consequences for residential facilities); and
- §380.9504 (relating to rules and consequences for youth on parole).

After the Board approved posting the above items in the *Texas Register* for a public comment period, TJJD received comments regarding each of them. The Board's approval is also requested to publish the attached responses to the public comments.

Attached to this memo please find:

- a summary of public comments received with proposed agency responses;
- the final text of the rules, with the additional revision to Chapter 344 shown as a mark-up (see Attachment A);
- copies of the correspondence containing the full text of the public comments;
- a summary of proposed changes to the rules; and
- a resolution for Board action.

SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapters 341, 344, 349, and 380

Chapter/ Rule #	Title of Chapter/Rule	Summary of Chapter/Rule	Summary of Key Revisions
Chapter 341	General Standards for Juvenile Probation Departments	Provides standards for juvenile probation departments.	• Added that a juvenile board or juvenile probation department may contract with a facility that was constructed or previously used for the confinement of adult offenders only after TJJD has determined the facility has been appropriately retrofitted to comply with related standards and that TJJD will maintain a list of pre-approved facilities. • Added that, if the facility is not on the list of pre-approved facilities, the juvenile board or juvenile probation department must request approval from TJJD and submit any information TJJD needs in order to make a determination under this provision; and noting that a given subsection does not apply to facilities registered with TJJD.
Chapter 344	Employment, Certification, and Training	Provides employment, certification, and training standards for juvenile justice programs.	• Clarified that Chapter 344 requirements are not subject to a waiver or variance unless provided for in Chapter 344. • Removed the requirement that a person be of good moral character to be certified as a juvenile probation officer, juvenile supervision officer, or community activities officer. • Removed the requirement that a person have one year of specific full-time work experience or one year of graduate study in order to be certified as a juvenile probation officer. • Removed the requirement that a facility administrator have the work experience or additional educational requirements that were removed from the requirements for a juvenile probation officer • Added that allows for the waiver of the requirement that a person have a high school diploma or equivalent in order to be certified as a juvenile supervision officer or communities activities officer if the person is a military service member or military veteran who holds a current license in another state for a position that is substantially similar and with licensing requirements that are substantially similar. • Added that a department or facility may submit documentation to establish that a state agency in Texas or licensing entity in Texas has accepted a foreign high school diploma as sufficient to meet an employment or licensing requirement to have a high school diploma. TJJD will determine whether the high school diploma is sufficient to meet the certification criterion related to having a high school diploma. • Repealed Sections 344.210 (relating to work experience) and 344.220 (relating to exemptions from required work experiences or graduate study) as corresponding changes to the removal of the requirement that a person have one year of specific full-time work experience or one year of graduate study in order to be certified as a juvenile probation officer. • Added that applicants for any position disclose all prior relationships with any child-serving entity or entity that serves other vulnerable populations; any terminations of such relationships; any revocations of such licenses; any findings of abuse, neglect, or exploitation; and any placement on a “do not hire” or similar registry.

SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapters 341, 344, 349, and 380

Chapter/ Rule #	Title of Chapter/Rule	Summary of Chapter/Rule	Summary of Key Revisions
			• Added that a military service member, military veteran, or military spouse, to obtain credit toward certain training requirements for verified military service, training, or education that is directly relevant to the position. • Added two new certification statuses: provisional and ineligible.
Chapter 349	General Administrative Standards	Provides general administrative standards for juvenile justice programs.	• Established the purpose, goals, and information pertaining to the Advisory Council on Juvenile Services and the removal of members from the council. • Authorize certain juvenile probation departments to access information submitted through the juvenile case management system.
§380.8597	Certain Actions by the Executive Director	Provides that TJJD tracks how often the executive director takes certain actions	• Established that TJJD tracks how frequently the executive director takes certain actions and reports the information to the TJJD Governing Board and the Sunset Advisory Committee.
§380.9188	Suicide Alert for High-Restriction Facilities	Provides procedures for identification, assessment, treatment, and protection of youth in high-restriction facilities who may be at risk for suicide	• Changed the requirement for mental health professionals at high-restriction TJJD facilities to consult with the designated mental health professional (i.e., the local clinical director) when determining whether changes will be made to a youth's observation level or suicide precautions *to apply only when: (1) the assessing mental health professional is not licensed to practice independently, and (2) the youth's observation level or precautions would be lowered.* • Specified that, when a youth on suicide alert is transferred to another high-restriction TJJD facility, the mental health professional at the receiving facility *communicates* (rather than *consults*) with the designated mental health professional or designee regarding the plan for treatment and assessment.
§380.9503	Rules and Consequences for Residential Facilities	Provides the actions that constitute violations of the rules of conduct for residential facilities.	• Added that a Level II hearing will be requested for any youth who allegedly commits a first- or second-degree felony unless TJJD determines, given all circumstances, a hearing would not be appropriate. Such a decision must be documented. Also added that TJJD will review the youth for placement in the most restrictive setting appropriate, including the intervention program in Section 380.9510, if the allegation is proved. • Added a new rule violation entitled *Failure to Comply with Electronic Monitoring Program Conditions*, which applies only to youth in medium-restriction facilities and includes failing to comply with any of the specific electronic monitoring conditions listed in the rule. • Changed the definition of the rule violation entitled *Participating in a Major Disruption of Facility Operations* to no longer require that a youth must participate with two or more persons. • Deleted *for the first ten days* from the requirement that a youth must remain at the approved placement while on electronic monitoring.

SUMMARY OF PROPOSED CHANGES
Selected Rules within 37 TAC Chapters 341, 344, 349, and 380

Chapter/ Rule #	Title of Chapter/Rule	Summary of Chapter/Rule	Summary of Key Revisions
§380.9504	Rules and Consequences for Youth on Parole	Provides the actions that constitute violations of the rules of conduct youth are expected to follow while under parole supervision.	• Added the following to the list of parole rule violations: o *Failure to Comply with Electronic Monitoring Program Conditions,* which includes failing to comply with any of the specific conditions listed in the rule; and o *Participating in a Major Disruption of Facility Operations*, which is conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs (only for youth on parole status in medium-restriction facilities). • Added that a parole revocation hearing will be requested for any youth who allegedly commits a first- or second-degree felony while on parole, although it may not be held if a deferral is requested by local prosecutors or TJJD determines that, given all circumstances, a hearing would not be appropriate. Also added that TJJD shall review the youth for placement in the most restrictive setting appropriate if the youth's parole is revoked. • Deleted *for the first ten days* from the requirement that a youth must remain at the approved placement while on electronic monitoring.

Summary of Public Comments and Proposed Agency Responses

Regarding Proposed Changes to Certain Rules within 37 TAC Chapters 341, 344, 349, and 380

Public comments received March 28, 2024

§341.204 (Residential Placement)	
Public Comment	**Proposed Agency Response**
Regarding subsection (c) about placement in a facility constructed or previously used for adult offenders, the language should be amended to clearly state that juveniles will not be placed in a retrofitted facility until TJJD has determined that the facility has been appropriately retrofitted to comply with TJJD standards.	The rule text states "A juvenile board or juvenile probation department may contract with a facility that was constructed or previously used [redacted] offenders only after TJJD has determ [redacted] ropriately retrofitted to c [redacted] ted to facilities." TJJD believes t [redacted] nt's intent, as no contract for yo [redacted] ed until TJJD determined co [redacted] No youth would be placed in a faci [redacted] enile probation department ha [redacted] do so.

§344.200 (General Qualifications for Positions Requiring Cer[illegible]) §344.360 (Disclosure and Review of Applicant's Prior History)	
Public Comment	**Proposed Agency Response**
The language in §344.200 and §344.360 does not clearly indicate that TJJD will conduct a criminal history background check or what type of check shall be conducted. Language should be added to mandate a national (NCIS) criminal history background check be conducted prior to employment.	Section 344.300 directly addresses criminal history checks and was not modified as part of this rulemaking action. TJJD requires a fingerprint-based criminal history check through the Fingerprint-Based Applicant Clearinghouse of Texas (FACT), which includes national criminal history information and real-time notification of new criminal activity. TJJD believes Section 344.300 meets the intent of the comment.

§344.866 (Certification Status)	
Public Comment	**Proposed Agency Response**
Language should be added to clarify what provisional status means in terms of the tasks that would be prohibited or conducted with close supervision while on provisional status.	This section defines types of statuses TJJD has, and provisional is a new status allowed by statute. TJJD promulgates standards that require training before a person can provide direct supervision and a time limit to complete training to become certified. The proposed certification status does not alter these requirements, but instead designates the time period that exists before a person completes the requirements and receives certification. This allows the certification to be revoked during the new provisional status, if warranted.

Summary of Public Comments and Proposed Agency Responses

Regarding Proposed Changes to Certain Rules within 37 TAC Chapters 341, 344, 349, and 380

§349.700 (Access to Data Collected)	
Public Comment	**Proposed Agency Response**
Language should be added to clearly delineate what data is available to the public.	This is not a rule intended for public access to data. In accordance with statute, this is a rule adopted for the purpose of allowing probation departments, who are juvenile justice entities, to have access to identifiable juvenile justice information submitted by juvenile probation departments and maintained by TJJD.

§380.8597 (Certain actions by the Executive Director)	
Public Comment	**Proposed Agency Response**
Language should be added stating that the executive director shall track the frequency of notification to the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) of planned discharges to the community.	The proposed rule text is consistent with requirements that TJJD track certain actions to achieve compliance with state statute. To ensure timely compliance with existing statutory directives, TJJD did not make the requested change within this specific rule proposal. However, TJJD welcomes the opportunity discuss this subject further to address potential gaps in information tracking of which the commenters are aware.

§380.9503 (Rules and Consequences for Residential Facilities)	
Public Comment	**Proposed Agency Response**
Language should be added to specify under what circumstances a Level II hearing is deemed inappropriate.	TJJD appreciates the sentiment of this comment, however, believes creating an exhaustive list of circumstances is not possible and would have negative unintended consequences. Namely, enumerating inappropriate circumstances may inadvertently limit instances for which a hearing is deemed to be inappropriate to only those listed in the rule. TJJD currently uses training, legal consultation, and internal procedures to guide staff further in making these determinations.
Regarding actions that are prohibited as disciplinary consequences, language should be added to prohibit inappropriate or excessive use of manual, mechanical or chemical restraints.	Using force in any manner as a disciplinary consequence is already prohibited. Doing so would constitute corporal or unusual punishment or subjecting a youth to humiliation, harassment, or physical or mental abuse, which are expressly prohibited by the rule text. Additionally, TJJD's rule that addresses use of force, 37 TAC 380.9723, contains an exhaustive list of the allowable uses of force. The fact that disciplinary consequences are not listed means that they are prohibited as a means of imposing discipline.

Summary of Public Comments and Proposed Agency Responses

Regarding Proposed Changes to Certain Rules within 37 TAC Chapters 341, 344, 349, and 380

§380.9503 (Rules and Consequences for Residential Facilities)	
Public Comment	**Proposed Agency Response**
Regarding the requirement in subsection (e)(5) for staff to tell the youth which rule violation was allegedly committed, what information staff has that establishes the youth committed it, and disciplinary consequences being considered – this information should be conveyed verbally and in writing and the same information should be conveyed to the legally authorized representative or family.	This section is not describing a Level II hearing or another formal legal process but rather is a procedure detailing an informal process designed to ensure due process requirements are met when imposing a disciplinary consequence that does not substantially alter a youth's living conditions or otherwise require the hearing. Formal notice is provided for due process hearings which may result in dispositions that substantially alter a youth's living conditions.

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Summary of Public Comments and Proposed Agency Responses

Regarding Proposed Changes to Certain Rules within 37 TAC Chapters 341, 344, 349, and 380

Public comments received March 3, 2024

§380.9188 (Suicide Alert for High-Restriction Facilities)	
Proposed Agency Response – General Overview	
TJJD appreciates the collaborative comments received in regard to the rulemaking action on §380.9188 (Suicide Alert for High-Restriction Facilities). TJJD proposed these changes to correct a technical oversight when the rule was most recently revised. The goal of this change is to ensure appropriate utilization of staff time and resources and to eliminate duplicative responsibilities by qualified, licensed individuals. For context in regard to this change, TJJD can allow certain individuals pursuing licensure to work toward the completion of the license requirements while employed with TJJD. "Designated mental health processional" has a specific definition in rule to mean a secure facility's Clinical Director, who oversees all mental health professionals at the facility. Under the proposed rule, individuals who are not fully licensed would need to consult with the clinical director before easing or lowering suicide alert precautions. Due to the specific nature of the rulemaking proposal, TJJD has determined potential changes in accordance with the public comments received would not be germane to the rulemaking action and would be outside the scope of the general limits on how significantly a rule can change on adoption. Consequently, TJJD staff recommends the Governing Board approve final adoption, and consider these comments when §380.9188 (Suicide Alert for High-Restriction Facilities) is considered for more substantive rulemaking actions, which TJJD anticipates making in the nearer future. However, TJJD's policy and legal divisions have analyzed the comments and offers a preliminary analysis of their appropriateness for inclusion in the rule.	
Public Comment	**Proposed Agency Response**
Regarding the requirement in subsection (f)(1) for a staff member to provide constant observation or a higher observation level, language should be added to clarify that the observation be conducted in person rather than remotely.	The rule containing definitions, 37 TAC §380.9187, defines the requirements for providing supervision on each of the different observation levels. TJJD believes these definitions sufficiently address the possibility of remote observation as the assigned staff must be within a pre-defined physical distance during waking hours and document in-room status checks where no cameras are present.
Regarding the requirement in subsection (f)(1) for a staff member to begin a log to document status checks of the youth, language should be added providing the frequency of the documentation of status checks.	The rule containing definitions, 37 TAC §380.9187, defines the frequency of documenting status checks. The time interval for observation levels that would be possible in this context would not exceed five minutes.
Regarding the requirement in subsection (g)(2) to notify a youth's parent or guardian of the youth's placement on suicide alert, we recommend that the notification occur	TJJD agrees that this information should be provided timely to the family or guardian. TJJD's internal procedures require that this notification be made within one workday.

no later than 24 hours after the youth is placed on suicide alert.	
Regarding subsection (h)(1), about searching a youth's room or personal area. To avoid complaints where a search has occurred without the individual present and then questions arising about certain belongings, we recommend that the youth be present when the search occurs, the items removed be documented and the youth asked to sign the document. Any refusal to sign should be documented.	Room searches for contraband are routine within TJJD secure facilities and occur multiple times a week, regardless of whether suicide alert protocols are the reason for the search. Youth are generally not present for searches. There are operational, safety, and security considerations which prevent youth from being present. These include ensuring youth do not have firsthand knowledge of how searches are conducted (which would increase likelihood of new attempted methods of concealing contraband), implications for criminal and administrative investigations, and ensuring timely searches of rooms to mitigate potentially unsafe conditions. All items removed from a youth's room would be required to be documented by the staff member removing them, creating a chain of custody and, limiting the potential for hearsay about personal belongings.
Regarding the requirement in subsection (h)(3) for staff to maintain direct visual observation of the youth, language should be added to clarify that the phrase "*direct visual observation*" indicates that the visual observation be conducted in person rather than remotely.	TJJD believes this rule, in conjunction with 380.9187, sufficiently makes clear that observation is required to be in person. TJJD interprets *direct* to mean in-person. The monitoring duty is a specific assignment given to a direct-care staff member, and that staff member must be physically relieved of duty before discontinuing these monitoring duties. Internal procedures could be developed to explicitly prohibit remote observations of youth on suicide alert, but remote observation is not current practice within TJJD facilities, not a practice TJJD wishes to consider for implementation, nor a practice TJJD would consider in alignment with best practices to ensure youth and facility safety. The only observation level in which a youth may be out of a staff member's sight is during sleeping hours on the constant level, or at any time while on the close level. However, due to the reasons explained above, the documented check would have to be conducted in person.
Regarding subsection (h)(8), about decisions to remove clothing and cancel programming and routine privileges, language should be added to state the frequency of reassessment of the decision.	Subsection (i)(3) requires reassessment for every youth on suicide alert every 48 hours (or 24 hours if on the highest observation level).

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Summary of Public Comments and Proposed Agency Responses

Regarding Proposed Changes to Certain Rules within 37 TAC Chapters 341, 344, 349, and 380

Regarding the requirement in subsection (h)(8) for a mental health professional to evaluate the youth's need for trauma symptom care if force is used to remove a youth's regular clothing, language should be added to specify the timeframes within which such evaluation must occur.	TJJD appreciates the commitment to follow-up care for youth who may be experiencing trauma symptoms as a result of suicide prevention measures. Practically, this type of use of force may only occur with approval of the directors over treatment services and facility operations. According to the rule, the youth would be seen by a mental health professional for a reassessment within 48 hours or 24 hours if on the highest observation level. TJJD believes the first reassessment for youth on suicide alert would be an appropriate time for this trauma assessment, and that internal procedures would be a more appropriate place for such a requirement.
Regarding the requirement in subsection (i)(1)(C) for the treatment plan to include actions that can be taken if suicidal and other self-harming behavior occurs, language should be added to specify that staff will provide the youth with strategies and substitute behaviors to prevent the occurrence of suicidal or self-harming behavior.	Subsection (i)(1)(B) of the rule text requires that the treatment plan address how reoccurrence of suicidal and other self-harming behavior can be avoided. This would include strategies to replace problem or self-harming behavior with skillful behavior through the completion of a behavior chain analysis.
Regarding subsection (j)(1), which refers to youth assigned to the protective custody program under 37 TAC §380.9745, language should be added to indicate the frequency of the suicide risk reassessment.	As noted in subsection (j)(1), all reassessment requirements in this rule continue to apply while a youth is in the protective custody program. The frequency of these reassessments is set out in subjection (i)(3) of the proposed rule text.
Regarding subsection (l), which addresses moving youth on suicide alert to less restrictive placements, language should be added to speak to TCOOMMI's role in such placement.	TJJD has an internal procedure that details specific requirements and timelines for referrals to TCOOMMI, including for youth who are currently receiving care from a mental health professional.
Regarding the requirement in subsection (m)(5) to notify the parent or guardian when a youth is removed from suicide alert, language should be added to specify the timeframe for the notification to occur within 24 hours of the removal from suicide alert.	TJJD agrees that this information should be provided timely to the family or guardian. TJJD's internal procedures require that notification of placement on suicide alert be made within one workday. TJJD will evaluate whether removal from suicide alert status should be added to the requirement for notification within one workday.
Regarding the requirement in subsection (o)(1) for a post-incident debriefing following a completed suicide or life-threatening attempt, language should be added to mandate that debriefing also be conducted with the youth as well as the parent or legally authorized representative.	Debriefing is for the purpose of identifying insufficiencies for internal institutional operation and safety. The purpose of this provision is specific to agency staff, what might have led to the given situation, and how to prevent such situations in the future. It is not intended to be a way of communicating with the family or legally authorized representative.

DRAFT

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Cameron Taylor, Senior Strategic Advisor

Subject: Discussion, consideration, and possible approval to publish proposed revisions to 37 TAC §385.1101 (Contract Authority and Responsibilities) in the *Texas Register* for a public comment period of at least 30 days and possible conditional approval to adopt the final rule

Date: May 24, 2024

Before the Board for consideration are revisions to Title 37 of the Texas Administrative Code, §385.1101 (relating to contract authority and responsibilities).

The board's approval is requested to publish these changes in the *Texas Register* for a 30-day public comment period.

Also requested is the board's approval to adopt the final rule after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Summary of Proposed Changes:

- Added a definition for *total value.*
- Clarified that TJJD staff must present to the board any change order(s) for a construction contract that exceeds $150,000 individually or cumulatively, or a dollar amount that causes the total value of the contract to exceed $300,000.
- Deleted a paragraph pertaining to the approval of contracts involving the expenditure of funds for outside audit services and outside legal services. (Note: This paragraph has been deleted because it is already understood that TJJD is abiding by the statutes referenced.)
- Deleted paragraphs pertaining to competitive solicitations, consulting services, professional services, construction services, rate setting, exemptions from the competitive bidding process for youth services, iron and steel products, and contracts with businesses that do not boycott Israel. (Note: These paragraphs have been deleted because it is already understood that TJJD is abiding by the statutes referenced.)

Attached to this memo please find:

- the text of the rule, with the proposed changes shown as mark-ups (see Attachment A); and
- a resolution for board action.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Ashley Kintzer, Director of Probation
Cameron Taylor, Senior Strategic Advisor

Subject: Discussion, consideration, and possible approval to publish the newly proposed 37 TAC §341.304 (Requirement to Apply for Diversion Funds) in the *Texas Register* for a public comment period of at least 30 days and possible conditional approval to adopt the final rule

Date: May 24, 2024

Before the Board for consideration is the newly proposed §341.304 (relating to the requirement to apply for diversion funds) within Title 37 of the Texas Administrative Code.

The board's approval is requested to publish the new rule in the *Texas Register* for a 30-day public comment period.

Also requested is the board's approval to adopt the final rule after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- the text of the new rule (see Attachment A); and
- a resolution for board action.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Ashley Kintzer, Director of Probation
Cameron Taylor, Senior Strategic Advisor

Subject: Discussion, consideration, and possible approval to adopt the final rule text and response to public comment for new 37 TAC §341.304 (Requirement to Apply for Diversion Funds)

Date: August 9, 2024

Before the Board for approval to adopt is §341.304 (Requirement to Apply for Diversion Funds).

After the Board approved posting the above rule in the *Texas Register* for a public comment period, TJJD received a comment. The Board's approval is requested to publish a response to the public comment.

Approval for an additional change to the rule text is also requested.

Attached to this memo please find:

- the final text of the rule, with the additional change shown as mark-up;
- copy of the correspondence containing the full text of the public comment; and
- a resolution for Board action.

Texas Administrative Code

Title 37 Public Safety and Corrections
Part 11 Texas Juvenile Justice Department
Chapter 341 General Standards for Juvenile Probation Departments

Draft 07/18/24, Pertinent Section Only, Not the Complete Chapter

Subchapter A. Definitions and General Provisions

§341.100 Definitions
§341.102 Waiver or Variance to Standards

Subchapter B. Juvenile Board Responsibilities

§341.200 Administration
§341.202 Policies and Procedures
§341.204 Residential Placement

Subchapter C. Chief Administrative Officer Responsibilities

§341.300 Policy and Procedure Manual
§341.302 Participation in Community Resource Coordination Groups
§341.304 Requirement to Apply for Diversion Funds

Subchapter D. Requirements for Juvenile Probation Officers

§341.400 Duties of Certified Juvenile Probation Officers
§341.402 Duties of Certified Community Activities Officers
§341.403 Supervising and Transporting Juveniles

Subchapter E. Case Management

§341.500 Mental Health Screening
§341.502 Risk and Needs Assessment
§341.504 Case Management Policies and Procedures
§341.506 Case Plans

Subchapter F. Data Collection

§341.600 Data Coordinator
§341.602 TJJD EDI Extract
§341.604 Accuracy of Data
§341.606 Security of Data

Subchapter G. Restraints

§341.700 Applicability
§341.702 Requirements
§341.704 Prohibitions
§341.706 Documentation
§341.708 Personal Restraint
§341.710 Mechanical Restraint
§341.712 Transporting

Subchapter H. Carrying of Weapons

§341.800 Applicability and Authorization
§341.802 Documentation Requirements
§341.804 Responsibilities of a Juvenile Probation Officer Authorized to Carry a Firearm
§341.806 Responsibilities of Chief Administrative Officers or Other Supervising Officers
§341.808 Written Policies and Procedures
§341.810 Reporting Use of Force Incidents to TJJD and Law Enforcement
§341.812 Records

§341.304 Requirement to Apply for Diversion Funds

Effective Date: XXXXXX

(a) Prior to a court committing a juvenile to TJJD, the chief administrative officer or designee must submit an application for diversion funds to divert a juvenile from commitment to TJJD.

(b) The requirement in subsection (a) does not apply if:

(1) the juvenile has committed conduct that is eligible for a determinate sentence under §51.031 or §53.045, Family Code, whether or not the petition was approved by the grand jury;

(2) the juvenile has been previously placed and discharged within the last year from a post-adjudication secure juvenile correctional facility;

(3) the juvenile has been previously committed to TJJD;

(4)[~~(3)~~] the juvenile is at least 17 years of age on the date of disposition or modification of disposition; or

(5)[~~(4)~~] a juvenile probation department is not recommending commitment.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Rachel Gandy, Chief of Staff

Subject: Discussion, consideration, and possible approval to publish new 37 TAC §341.306 (Providing Information to TJJD) in the *Texas Register* for a public comment period of at least 30 days and possible conditional approval to adopt the final rule

Date: August 9, 2024

Before the Board for consideration is §341.306 (relating to providing information to TJJD). This new rule explains that chief administrative officers must provide TJJD with certain information on an annual basis.

The Board's approval is requested to publish the new rule in the *Texas Register* for a 30-day public comment period.

Also requested is the Board's approval to adopt the final rule after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- the text of the rule; and
- a resolution for Board action.

Title 37 Public Safety and Corrections
Part 11 Texas Juvenile Justice Department
Chapter 341 General Standards for Juvenile Probation Departments

7/10/24 Draft – Pertinent Section Only, Not the Full Chapter

Subchapter C
Chief Administrative Officer Responsibilities

§341.306 Providing Information to TJJD

Effective Date: XXXXXX

(a) The chief administrative officer or designee must annually provide TJJD with information on gaps in resources, programs, and services for juveniles served by the juvenile probation department.

(b) The information must include a description of the needs of juveniles committed to TJJD that were not met with community resources and information on the types of resources, programs, and services that, if available in the community, might have allowed the juveniles to remain in the community as an alternative to commitment to TJJD.

(c) The information shall be provided in the format and by the deadline established by TJJD.

DRAFT

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Evan Norton, Senior Director of Integrated Treatment and Intervention Services
Cameron Taylor, Senior Strategic Advisor

Subject: Discussion, consideration, and possible approval to publish proposed amendments to 37 TAC §380.8703 (Rehabilitation Program Stage Requirements and Assessment) in the *Texas Register* for a public comment period of at least 30 days and possible conditional approval to adopt the final rule

Date: August 9, 2024

Before the Board for consideration are revisions to §380.8703 (relating to rehabilitation program stage requirements and assessment). An abbreviated summary follows, and a more detailed summary is provided below:

- Add an additional circumstance that allows for a youth's stage in the rehabilitation program to be lowered.
- Adjust several factors used to determine whether youth have completed individual stages.
- Add that youth who are returned to a facility through a disciplinary hearing or who receive an additional court commitment will be initially be placed on the appropriate stage as specified in written procedure, rather than requiring a stage assessment based on current behavior and progress.

The Board's approval is requested to publish the new rule in the *Texas Register* for a 30-day public comment period.

Also requested is the Board's approval to adopt the final rule after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- the text of the rule, with the proposed changes shown as mark-ups; and
- a resolution for Board action.

Summary of Proposed Changes:

- Added that a youth's stage in the rehabilitation program may be lowered when the youth has been unresponsive to intervention attempts over an extended period of time and the youth's current stage does not reflect the youth's current progress.
- For Stage 1, added that youth are expected to review their own unique vulnerabilities with the case manager.
- For Stage 2, clarified that the goal is for youth to become *interpersonally* successful in the future.
- For Stage 2, added that youth are expected to identify a long-term success plan.
- For Stage 2, clarified that youth are expected to explore patterns in thoughts, feelings, attitudes, beliefs and *vulnerabilities* (rather than values).
- For Stage 2, removed requirements for youth to make progress toward personalized goals, to present and discuss progress with the treatment team, and to complete case plan objectives.
- For Stage 4, added that completing case plan objectives includes the ability to articulate plans for successful community reentry.
- For all stages, clarified that youth are expected to participate *safely*, (rather than just participate) in various areas of programming.
- Removed the requirement for youth to receive a stage assessment that is based on current behavior and progress upon being returned to a high- or medium-restriction facility for disciplinary reasons or upon receiving an additional commitment. Added that such youth will be placed on the most appropriate stage as specified by written procedure manual.
- Clarified that one of the situations in which a youth's stage may be lowered is when the youth *receives an additional commitment* (rather than being recommitted).

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: [~~5/19/23~~]**
Subchapter:	Treatment	Page: 1 of 4
Division:	Program Planning	
Rule:	**Rehabilitation Program Stage Requirements and Assessment**	Replaces: GAP.380.8703, 5/19/23 [~~5/1/22~~]
Statutes:	Human Resources Code §242.003	
References:	*Morales v. Turman* Settlement Agreement, Section (V)(G)	

RULE

(a) **Purpose.**

Youth earn the ability to move to less restrictive placements by progressing through a stage system that measures progress in the rehabilitation program. The purpose of this rule is to provide a general outline of the areas in which a youth must demonstrate progress and to describe the process for assessing progress.

(b) **Applicability.**

This rule applies to all residential facilities operated by the Texas Juvenile Justice Department (TJJD). This rule does not apply to youth in contract-care programs that are not required to provide the TJJD rehabilitation program. This rule does not apply to youth on parole status.

(c) **Definitions.**

See §380.8501 of this chapter for definitions of terms used in this rule.

(d) **General Themes in the Rehabilitation Program.**

(1) TJJD's rehabilitation program is composed of a set of stages with objectives related to each youth's rehabilitative needs. Expectations generally increase as youth progress through the stages.

(2) Progress is measured through an assessment of the youth's demonstration of skills in areas such as:

(A) appropriate participation in education/vocational and treatment/intervention activities;
(B) understanding and use of therapeutic tools;
(C) ability to develop, discuss, and work toward individual goals;
(D) application of regulation tools to maintain safe behavior; and
(E) reducing risk factors and increasing protective factors.

(3) The objectives for each youth shall be in writing and provided to the youth.

(4) Each youth is provided an equal opportunity, as the youth's behavior warrants, to participate in the scheduled activities needed to progress.

(e) **Stage Assessment.**

(1) A stage assessment shall be conducted when the youth completes the required objectives for the stage or within 90 days from the previous stage assessment, whichever occurs first.

(2) Each stage assessment includes a comprehensive assessment of the youth's progress in the rehabilitation program.

(3) The parent/guardian must be given an opportunity to provide input to be considered at each stage assessment.

(4) As a result of a stage assessment, the youth is assigned to the most appropriate stage. Youth may be assigned to a stage that is more than one level higher than the current stage, if appropriate.

(5) Each youth's specific needs and responsivity must be considered when assessing a youth's stage. If a youth fails to progress through the stages, staff must conduct a review for responsivity needs and, if appropriate, implement individualized interventions.

(6) Youth may not be assigned to a lower stage, except:

(A) when it is determined that behavior proven at a Level II due process hearing held in accordance with §380.9555 of this chapter indicates the youth no longer meets the requirements of the current stage assignment; [~~or~~]

(B) when it has been determined that the youth has been unresponsive to intervention attempts for an extended period of time and the youth's current stage does not reflect the youth's current progress; or

(C)[(~~B~~)] in accordance with subsection (g) of this section.

(7) If a youth loses release eligibility under §380.8555 or §380.8559 of this chapter, the youth is no longer designated as having completed the rehabilitative program under this rule and is assigned to stage 4.

(8) The youth and the youth's parent/guardian are notified of the results of the stage assessment.

(f) **Requirements for Stage Promotion.**

(1) **Stage 1**--this stage focuses on building a foundation of safety and regulation. During this stage, the youth will gain basic knowledge of the TJJD stage objectives and requirements for program completion. The youth attends the foundational skills development groups and participates in individual sessions with the case manager to develop an assessment of risk and protective factors. To determine whether youth have completed this stage, youth are assessed on factors including:

(A) reviewing the youth's own unique vulnerabilities and risk and protective factors with the case manager;

(B) discussing the youth's progress toward goals with staff;

(C) working on case plan objectives with the case manager; and

(D) participating safely in the following other areas of programming:

(i) treatment and intervention activities;
(ii) academic and workforce development programs; and
(iii) application of learned skills in daily behavior.

(2) **Stage 2**--this stage focuses on healthy connection and the ability to make repairs after relational harm. Youth on this stage are moving beyond the pre-contemplation stage of change to accept that changes are needed to improve their ability to be interpersonally successful in the future. To determine whether youth have completed this stage, youth are assessed on factors including:

(A) exploring personal risk and protective factors, including those related to TJJD commitment;

(B) identifying a long-term success plan and sharing plans for community reintegration with the youth's family, community supports, or adult mentor;

(C) exploring patterns in thoughts, feelings, attitudes, beliefs, and vulnerabilities[~~values~~]; and

[~~(D) making progress towards personalized goals;~~]

[~~(E) presenting and discussing the youth's progress with the youth's treatment team;~~]

[~~(F) completing case plan objectives; and~~]

(D)[~~(G)~~] safely participating in other areas of programming as described in paragraph (1)(D) of this subsection.

(3) **Stage 3**--this stage focuses on taking responsibility and making prosocial decisions. Youth on this stage are preparing to move into the action stage of change through continued acknowledgment of the need to change and planning for their future. To determine whether youth have completed this stage, youth are assessed on factors including:

(A) demonstrating a reduction in risk factors and an increase in protective factors;

(B) taking responsibility for behaviors leading to commitment;

(C) completing case plan objectives; and

(D) safely participating in other areas of programming as described in paragraph (1)(D) of this subsection.

(4) **Stage 4**--this stage focuses on demonstrating and practicing learned skills for youth. The purpose of this stage is demonstrating independence through application of treatment concepts and skills learned in earlier stages. This stage is considered the second-highest stage for purposes of eligibility for transition under §380.8545 of this chapter. To determine whether youth have completed this stage, youth are assessed on factors including:

(A) demonstrating continued reduction in risk factors and increase in protective factors;

(B) identifying new thoughts, feelings, attitudes, beliefs, and values that might increase success in the community;

(C) completing case plan objectives, including the ability to articulate plans for successful community reentry; and

(D) safely participating in other areas of programming as described in paragraph (1)(D) of this subsection.

(5) **Rehabilitative stages completion status**--this designation indicates that a youth has completed stage 4 and is considered the highest stage for purposes of program completion under §380.8555 and §380.8559 of this chapter. Youth are in the maintenance stage of change and will be given the opportunity to demonstrate and apply learned skills. Youth are expected to safely participate in other areas of programming as described in paragraph (1)(D) of this subsection.

(g) **Stage Assignment [~~Assessment~~] upon Return to a High- or Medium-Restriction Facility or upon Additional [~~New~~] Commitment.**

A youth is [~~reassessed and~~] placed on the most appropriate stage, as specified by written procedure manual, [~~for the youth's current behavior and progress in the rehabilitation program~~] when the youth [~~is~~]:

(1) is returned to a high-restriction facility for disciplinary reasons through a Level II due process hearing;

(2) is returned to a high- or medium-restriction facility for disciplinary reasons through a Level I due process hearing; or

(3) receives an additional commitment [~~recommitted~~] to TJJD for a new offense.

See Case Management Standards, Chapter 2, for implementation procedures.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Rachel Gandy, Chief of Staff

Subject: Discussion, consideration, and possible approval to publish new 37 TAC §385.8103 (Board Proceedings) in the *Texas Register* for a public comment period of at least 30 days and possible conditional approval to adopt the final rule

Date: August 9, 2024

Before the Board for consideration is §385.8103 (relating to board proceedings). This new rule provides information about the TJJD Board and its organization, powers, responsibilities, and meetings.

The Board's approval is requested to publish the new rule in the *Texas Register* for a 30-day public comment period.

Also requested is the Board's approval to adopt the final rule after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- the text of the rule; and
- a resolution for Board action.

Chapter:	Agency Management and Operations	**Effective Date: XX/XX/XX**
Subchapter:	Interaction with the Public	Page: 1 of 2
Rule:	**Board Proceedings**	New
Statutes:	Human Resources Code §202.008	

RULE

(a) **Organization.**

(1) The Texas Juvenile Justice Board (Board) is a nine-member body appointed by the governor to oversee the Texas Juvenile Justice Department. The Board chair is designated by and serves at the pleasure of the governor.

(2) The Board may elect or appoint a vice chair to preside over meetings in the chair's absence.

(3) The Board chair may appoint members of the Board to be chairs or members of standing or limited-purpose committees.

(4) Unless otherwise provided by law, the Board chair, with the Board's approval, shall appoint the members of any advisory committees established under Chapter 203, Human Resources Code.

(b) **Powers and Responsibilities.**

(1) The Board shall have primary responsibility for policymaking activities, including, but not limited to, establishing the department's mission and adopting rules.

(2) The Board shall have the sole responsibility for the adoption of rules proposed by the Board or the department. Unless otherwise provided by law, the Board shall follow the rulemaking procedures established in the Administrative Procedure Act (Chapter 2001, Government Code).

(3) The Board may delegate to the executive director the Board's responsibilities, as the Board determines appropriate. In making such a delegation, the Board shall provide clear direction, performance measures, reporting requirements, and oversight, as appropriate, to ensure the delegated responsibilities are performed.

(4) The Board shall develop and publish on TJJD's website procedures regarding its operations and proceedings in a governance manual.

(c) **Meetings.**

(1) The Board shall meet at least quarterly at a site determined by the chair.

(2) The Board meets at the call of the Board chair.

(3) Every regular and special-called meeting of the Board shall be announced and conducted in accordance with the Open Meetings Act (Chapter 551, Government Code). These meetings shall be open to the public as provided by the Open Meetings Act.

(4) Board meetings shall be conducted according to the current edition of *Robert's Rules of Order Newly Revised* in all instances to which they are applicable as long as they are not inconsistent with the Texas Constitution or the statutes or rules applicable to the Board. Any rule within *Robert's Rules of Order Newly Revised* may be modified as deemed necessary by the Board chair for the proper conduct of the meeting, subject to an objection by a Board member.

(5) The transaction of business before the Board requires a quorum of the Board be present. A quorum of the Board is five members. When a quorum is present, a motion before the Board is carried by an affirmative vote of the majority of the Board members present that are participating in the vote.

(6) As a member of the Board, the Board chair may make motions without the necessity of relinquishing the chair, subject to an objection from a Board member.

(7) The Board chair may limit the number and length of comments provided on any item on the agenda, subject to an objection from a Board member.

(8) The Board shall provide the public with a reasonable opportunity to address the Board on issues under the Board's jurisdiction.

(A) A person who wants to speak during a Board meeting must register in accordance with the Board meeting instructions. The person may speak during the public comment portion of the meeting or, at the discretion of the Board chair, during the discussion of a specific agenda item.

(B) The Board or the department may provide instructions regarding the presentation of public comments during a Board meeting.

(9) The Board shall provide the Office of Independent Ombudsman with a reasonable opportunity to address the Board on issues under the Board's jurisdiction.

(10) Department staff shall ensure Board members are provided the materials necessary to conduct Board business in advance of Board meetings.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Evan Norton, Senior Director of Integrated Treatment and Intervention Services
Cameron Taylor, Senior Manager, Policy Division

Subject: Discussion, consideration, and possible approval to publish proposed amendments to 37 TAC §380.8701 (Case Planning) in the *Texas Register* for a public comment period of at least 30 days and possible conditional approval to adopt the final rule

Date: November 8, 2024

Before the Board for consideration are revisions to §380.8701 (relating to case planning). An abbreviated summary follows, and a more detailed summary is provided below:

- Added that integrated treatment plans may be used as case plans.

The Board's approval is requested to publish the revised rule in the *Texas Register* for a 30-day public comment period.

Also requested is the Board's approval to adopt the final rule after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- the text of the rule, with the proposed changes shown as mark-ups; and
- a resolution for Board action.

Summary of Proposed Changes:

- Added a definition for integrated treatment plan.
- Added that an integrated treatment plan may serve as the youth's case plan.
- Added that references throughout TJJD's rules to case plans may be understood to mean integrated treatment plans for agency departments using integrated treatment plans.
- Removed statements specifying which staff members develop and update the case plan.
- Added that case plan objectives are reviewed and progress is documented monthly, rather than at least once every 30 days.
- Added that objectives in the case plan help the youth to develop *skillful behaviors*, rather than develop *skills to reduce individual risk factors and increase individual protective factors*.

- Replaced a reference to *the orientation and assessment unit* with *an orientation and assessment program*.
- Consolidated some redundant statements.

Chapter: Rules for State-Operated Programs and Facilities Subchapter: Treatment Division: Program Planning **Rule: Case Planning** ~~[ACA: 4-JCF-5C-05, 5C-06, 5C-07]~~ Statutes~~[Statute(s)]~~: Human Resources ~~[Hum. Res.]~~ Code §244.001	**Effective Date: ~~[12/1/14]~~** Page: 1 of 2 Replaces: GAP.380.8701, 12/1/14 ~~[9/6/12]~~

RULE

(a) **Purpose.**

The purpose of this rule is to ensure the case management of each youth is individualized and flexible and is based on the youth's risk and protective factors, abilities, and need for services.

(b) **Applicability.**

This rule applies to youth committed to the Texas Juvenile Justice Department.

(c) **Definitions.**

(1) Except as noted below, definitions ~~[Definitions]~~ for terms used in this rule are in §380.8501 of this chapter~~[title]~~.

(2) **Integrated Treatment Plan**--a collaborative case plan addressing a youth's individualized risk factors, treatment and rehabilitative needs, and plan for community reentry.

(d) **General Provisions.**

(1) An individualized case plan is developed for each youth. ~~[An Individual Case Plan (ICP) is developed with and for each youth by the case manager in consultation with the multi-disciplinary team. The ICP is individualized for each youth and identifies objectives with specific strategies to address development of skills to reduce individual risk factors and increase individual protective factors.]~~

(2) The case plan ~~[ICP]~~ is developed in accordance with an ~~[the]~~ assessment of the youth's risk and protective factors, abilities, and progress in the rehabilitation program and includes objectives with specific strategies to address development of skillful behaviors.

(3) The case plan ~~[ICP]~~ specifies measurable objectives, expected outcomes, and a means to evaluate progress.

(4) Objectives in the case plan ~~[ICP objectives]~~ are reviewed and progress is documented monthly~~[at least once every 30 days]~~.

(5) At least once every 90 days, the youth's case plan is updated ~~[a multi-disciplinary team updates each youth's ICP]~~ following an integrated and comprehensive assessment of the youth's progress in the rehabilitation program. This assessment includes:

(A) re-assessment of the youth's risk and protective factors;
(B) development of objectives and treatment recommendations that reflect the youth's specialized needs and individual abilities; and
(C) when appropriate, development of a plan for transitioning the youth to the community.

~~[(6) The ICP is developed with individualized strategies to facilitate youth progress through the rehabilitation program.]~~

(6)[(~~7~~)] An assessment and treatment summary, which forms the basis of the case plan[~~ICP~~], is developed during the youth's time in an [~~while the youth is at the~~] orientation and assessment program[~~unit~~].

(7)[(~~8~~)] The case plan [~~ICP development includes a review of youth progress and objectives and~~] is developed with the youth and the youth's parent/guardian when possible.

(8) An integrated treatment plan may serve as the case plan. For agency departments using an integrated treatment plan, references in this chapter to the case plan or individual case plan mean the integrated treatment plan.

See Case Management Standards, Chapters [~~Chapter~~] 2 and 12, for implementation procedures.

DRAFT

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Leah O'Leary, Staff Attorney and Due Process Supervisor

Subject: Discussion, consideration, and possible approval to publish proposed amendments to 37 TAC §380.9503 (Rules and Consequences for Residential Facilities) in the *Texas Register* for a public comment period of at least 30 days and possible conditional approval to adopt the final rule

Date: November 8, 2024

Before the Board for consideration are revisions to §380.9503 (relating to rules and consequences for residential TJJD facilities). An abbreviated summary follows, and a more detailed summary is provided below:

- Changed the procedures to be used in secure TJJD facilities to prove an alleged rule violation in situations that do not require a Level II hearing.
- Removed the statement that allowed allegations to be considered proven and part of a youth's disciplinary record only when proven through a Level I or Level II hearing.

The Board's approval is requested to publish the revised rule in the *Texas Register* for a 30-day public comment period.

Also requested is the Board's approval to adopt the final rule after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- the text of the rule, with the proposed changes shown as mark-ups; and
- a resolution for Board action.

Summary of Proposed Changes:

RULE-VIOLATION REVIEWS

- For high-restriction facilities, revised the due process procedure that is required to prove an allegation in cases where a Level II hearing is not required. Specifically:
    - assigned the name *rule-violation review* to this level of due process;
    - added that the standard of proof is a preponderance of evidence;

- added that a rule-violation review may be held even if no disciplinary consequence is sought;
- added that the youth will be notified, rather than told, about which rule was allegedly violated and which consequence staff is considering, if any;
- removed the statement requiring staff to describe the information staff has that establishes the youth committed the alleged violation; and
- added that the youth must be given the opportunity to review relevant evidence considered by staff and to present the youth's own evidence.

- Added that the results of a rule-violation review are not grievable through the youth grievance system, but they may be appealed to the facility administrator or designee on various grounds.

OTHER CHANGES

- Removed the statement that allowed a rule violation to be proven only via a Level I or Level II due process hearing and that limited a youth's disciplinary record to consist only of allegations proven in these types of hearings.
- Clarified that, in addition to an incident report, any other document that describes conduct is also something that cannot be appealed or grieved.
- Added that the *results* of hearings or rule-violation reviews, and not just disciplinary consequences, can be appealed.
- Clarified that the statement requiring appropriate due process before imposing consequences applies to *disciplinary* consequences.

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: [~~7/15/24~~]**
Subchapter:	Behavior Management and Youth Discipline	Page: 1 of 7
Division:	Behavior Management	
Rule:	**Rules and Consequences for Residential Facilities**	Replaces: GAP.380.9503, 7/15/24 [~~5/19/23~~]
Statutes:	Human Resources Code §243.001, §242.063	

RULE

(a) **Purpose.**

This rule establishes the actions that constitute violations of the rules of conduct for residential facilities. Violations of the rules may result in disciplinary consequences that are proportional to the severity and extent of the violation. Appropriate due process, including a consideration of extenuating circumstances, shall be followed before imposing disciplinary consequences.

(b) **Applicability.**

This rule applies to youth assigned to residential facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) **Definitions.**

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

(1) **Attempt to Commit**--a youth, with specific intent to commit a rule violation, engages in conduct that amounts to more than mere planning that tends but fails to effect the commission of the intended rule violation.

(2) **Bodily Injury**--physical pain, illness, or impairment of physical condition. Fleeting pain or minor discomfort does not constitute bodily injury.

(3) **Direct Someone to Commit**--occurs when:

(A) a youth communicates with another youth;
(B) the communication is intended to cause the other youth to commit a rule violation; and
(C) the other youth commits or attempts to commit a rule violation.

(4) **Possession**--actual care, custody, control, or management. It does not require the item to be on or about the youth's person.

(d) **General Provisions.**

(1) Formal incident reports are completed for alleged rule violations as required by internal operational procedures.

(2) A formal incident report is not proof that a youth committed an alleged rule violation. An [~~Only rule violations that are proven through a Level I or Level II due process hearing in accordance with §380.9551 or §380.9555 of this chapter, respectively, are considered proven and are considered a part of a youth's disciplinary record. A formal~~] incident report or other document describing conduct is not something that can be appealed or grieved [~~appealable or grievable~~]; only the results of a hearing or rule-violation review [~~disciplinary consequences~~] may be appealed [~~or grieved~~], as provided below.

(3) When a youth is found to be in possession of prohibited money as defined in this rule, a Level II hearing is required to seize the money. Seized money shall be placed in the student benefit fund in accordance with §380.9555 of this chapter.

(4) This paragraph applies only to youth not on parole status who are alleged to have engaged in conduct classified as a first- or second-degree felony while in a residential facility operated by or under contract with TJJD. A Level II hearing shall be requested on these youth unless it is determined that, given all circumstances, a Level II hearing is not appropriate. Such decision shall be documented. If a requested Level II hearing is held and the allegation is proved, the youth shall be reviewed for the most restrictive setting appropriate, including the intervention program described by §380.9510 of this chapter.

(e) **Disciplinary Consequences.**

(1) Disciplinary consequences shall be established in writing in TJJD's procedural manuals. Appropriate disciplinary consequences may be imposed only if the consequences are established in writing in TJJD's procedural manuals prior to the occurrence of the conduct for which the consequence is issued.

(2) Disciplinary consequences may include, but are not limited to, the following:

(A) suspension of privileges;
(B) restriction from planned activities;
(C) trust-fund restriction; and
(D) disciplinary transfer to a high-restriction facility (available only for youth on institutional status in a medium-restriction facility).

(3) The following are prohibited as disciplinary consequences:

(A) corporal or unusual punishment;
(B) subjecting a youth to humiliation, harassment, or physical or mental abuse;
(C) subjecting a youth to personal injury;
(D) subjecting a youth to property damage or disease;
(E) punitive interference with the daily functions of living, such as eating or sleeping;
(F) purposeless or degrading work, including group exercise as a consequence;
(G) placement in the intervention program under §380.9510 of this chapter;
(H) disciplinary isolation; and
(I) extending a youth's stay in a TJJD facility.

(4) A Level II hearing is required before imposing a disciplinary consequence that materially alters a youth's living conditions, including disciplinary transfer from a medium-restriction facility to a high-restriction facility. TJJD's procedural manuals will specify which disciplinary consequences require a Level II hearing. Disciplinary consequences requiring a Level II hearing are considered major consequences.

(5) This paragraph applies only to youth in high-restriction facilities. To impose a disciplinary consequence that does not require a Level II hearing, a rule-violation review is required. A rule-violation review is a process by which staff review evidence to determine whether a rule violation occurred. A rule-violation review results in a finding that the alleged violation is proven, the alleged violation is not proven, or a different rule was violated than the one alleged. A rule violation is proven if a preponderance of the evidence proves behavior meeting the definition of a rule violation occurred. The following steps are to be taken for every rule-violation review, regardless of whether a consequence is sought: [~~If a Level II hearing is not required, the following must occur before imposing disciplinary consequences for a youth in a high-restriction facility:~~]

(A) a written description of the incident must be prepared;

(B) staff must notify [~~tell~~] the youth which rule violation the youth allegedly committed [~~and describe the information staff has that establishes the youth committed it~~];

(C) staff must notify [~~tell~~] the youth which [~~what~~] disciplinary consequence(s) staff is considering imposing, if any; [~~and~~]

(D) the youth must be given the opportunity to review the relevant evidence considered by staff and to present the youth's own relevant evidence; and

(E)[~~(D)~~] the youth must be given the opportunity to address the allegation, including providing any extenuating circumstances and information on the appropriateness of the intended consequence(s).

(6) If a Level II hearing is not required, a Level III hearing must occur before imposing disciplinary consequences for a youth in a medium-restriction facility, in accordance with §380.9557 of this chapter.

(f) **Review and Appeal of Consequences.**

(1) All disciplinary consequences shall be reviewed for policy compliance by the facility administrator or designee within three calendar days after issuance. The reviewing staff shall not be the staff who issued the discipline.

(2) The reviewing staff may remove or reduce any disciplinary consequence determined to be excessive or not validly related to the nature or seriousness of the conduct.

(3) Youth may appeal disciplinary consequences issued through a Level II hearing by filing an appeal in accordance with §380.9555 of this chapter.

(4) Youth in medium-restriction facilities may appeal disciplinary consequences issued through a Level III hearing by filing an appeal in accordance with §380.9557 of this chapter.

(5) The findings and disposition from a rule-violation review are not grievable, but they may be appealed to the facility administrator or designee on the grounds that the youth did not commit the rule violation found proven during the review, that the consequence is not appropriate, or that the youth was not provided with the requisite notice or opportunity to be heard. If the result of a rule-violation review is overturned, that fact shall be documented appropriately.

[~~(5) Youth in high-restriction facilities may grieve disciplinary consequences issued without a Level II hearing by filing a grievance in accordance with §380.9331 of this chapter.~~]

(g) **Major Rule Violations.**

It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following:

(1) **Assault of Another Youth (No Injury)**--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to another youth but the conduct does not result in bodily injury.

(2) **Assault of Staff (No Injury)**--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to a staff member, contract employee, or volunteer with the intent to cause injury but the conduct does not result in bodily injury.

(3) **Assault Causing Bodily Injury to Another Youth**--intentionally, knowingly, or recklessly engaging in conduct that causes another youth to suffer bodily injury.

(4) **Assault Causing Bodily Injury to Staff**--intentionally, knowingly, or recklessly engaging in conduct that causes a staff member, contract employee, or volunteer to suffer bodily injury.

(5) **Attempted Escape**--committing an act with specific intent to escape that amounts to more than mere planning that tends but fails to effect an escape.

(6) **Chunking Bodily Fluids**--causing a person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, and/or feces of another with the intent to harass, alarm, or annoy another person.

(7) **Distribution of Prohibited Substances**--distributing or selling any prohibited substances or items.

(8) **Escape**--leaving a high-restriction residential placement without permission or failing to return from an authorized leave.

(9) **Extortion or Blackmail**--demanding or receiving favors, money, actions, or anything of value from another in return for protection against others, to avoid bodily harm, or in exchange for not reporting a violation.

(10) **Failure to Comply with Electronic Monitoring Program Conditions (for Youth in Medium-Restriction Residential Placement)**--failing to comply with one of the following conditions required by the youth's electronic monitoring program conditions:

(A) remain at the address listed at all designated times;

(B) follow curfew restriction as stated in the youth's conditions of placement or conditions of parole;

(C) remain at the approved placement while on electronic monitoring, going only to school, approved activities, religious functions, and medical/psychological appointments and then return to the approved placement, in accordance with the schedule identified in the conditions of placement or conditions of parole;

(D) wear the electronic monitoring device 24 hours a day;

(E) allow a TJJD staff member to enter the youth's residence to install, maintain, and inspect the device if required;

(F) notify the electronic monitoring officer as soon as possible within 24 hours if the youth experiences any problems with the electronic monitoring system; and

(G) charge the device daily for a minimum of one hour continuously in the morning and one hour continuously in the evening.

(11) **Fighting Not Resulting in Bodily Injury**--engaging in a mutually instigated physical altercation with another person or persons that does not result in bodily injury.

(12) **Fighting That Results in Bodily Injury**--engaging in a mutually instigated physical altercation with another person or persons that results in bodily injury.

(13) **Fleeing Apprehension**--running from or refusing to come to staff when called and such act results in disruption of facility operations.

(14) **Misuse of Medication**--using medication provided to the youth by authorized personnel in a manner inconsistent with specific instructions for use, including removing the medication from the dispensing area.

(15) **Participating in a Major Disruption of Facility Operations**--intentionally engaging in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs.

(16) **Possessing, Selling, or Attempting to Purchase Ammunition**--possessing, selling, or attempting to purchase ammunition.

(17) **Possession of Prohibited Items**--possessing the following prohibited items:

(A) cellular telephone;

(B) matches or lighters;

(C) jewelry, unless allowed by facility rules;

(D) money in excess of the amount or in a form not permitted by facility rules (see §380.9555 of this chapter for procedures concerning seizure of such money);

(E) pornography;

(F) items which have been fashioned to produce tattoos or body piercing;

(G) cleaning products when the youth is not using them for a legitimate purpose; or

(H) other items that are being used inappropriately in a way that poses a danger to persons or property or threatens facility security.

(18) **Possessing, Selling, or Attempting to Purchase a Weapon**--possessing, selling, or attempting to purchase a weapon or an item that has been made or adapted for use as a weapon.

(19) **Possession or Use of Prohibited Substances and Paraphernalia**--possessing or using any unauthorized substance, including controlled substances or intoxicants, medications not prescribed for the youth by authorized medical or dental staff, alcohol, tobacco products, or related paraphernalia such as that used to deliver or make any prohibited substance.

(20) **Refusing a Drug Screen**--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen. (Note: If the youth says he/she cannot provide a sample, the youth shall be given water to drink and two hours to provide the sample.)

(21) **Refusing a Search**--refusing to submit to an authorized search of person or area.

(22) **Repeated Non-Compliance with a Written, Reasonable Request of Staff (for Youth in Medium-Restriction Residential Placement)**--failing on two or more occasions to comply with a specific written, reasonable request of staff. If the request requires the youth to do something daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do something monthly, the two failures to comply must be within a 60-day period.

(23) **Sexual Misconduct**--intentionally or knowingly engaging in any of the following:

(A) causing contact, including penetration (however slight), between the penis and the vagina or anus; between the mouth and penis, vagina or anus; or penetration (however slight) of the anal or genital opening of another person by hand, finger, or other object;

(B) touching or fondling, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person;

(C) kissing for sexual stimulation;

(D) exposing the anus, buttocks, breasts, or genitals to another or exposing oneself knowing the act is likely to be observed by another person; or

(E) masturbating in an open and obvious way, whether or not the genitals are exposed.

(24) **Stealing**--intentionally taking property with an estimated value of $100 or more from another without permission.

(25) **Tampering with Monitoring Equipment**--a youth intentionally or knowingly tampers with monitoring equipment assigned to any youth.

(26) **Tampering with Safety Equipment**--intentionally tampering with, damaging, or blocking any device used for safety or security of the facility. This includes, but is not limited to, any locking device or item that provides security access or clearance, any fire alarm or fire suppression system or device, video camera, radio, telephone (when the tampering prevents it from being used as necessary for safety and/or security), handcuffs, or shackles.

(27) **Tattooing/Body Piercing**--engaging in tattooing or body piercing of self or others. Tattooing is defined as making a mark on the body by inserting pigment into the skin.

(28) **Threatening Another with a Weapon**--intentionally and knowingly threatening another with a weapon. A weapon is something that is capable of inflicting bodily injury in the manner in which it is being used.

(29) **Unauthorized Absence**--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(30) **Vandalism**--intentionally causing $100 or more in damage to state property or personal property of another.

(31) **Violation of Any Law**--violating a Texas or federal law that is not already defined as a major or minor rule violation.

(h) **Minor Rule Violations.**

It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following:

(1) **Breaching Group Confidentiality**--disclosing or discussing information provided in a group session to another person not present in that group session.

(2) **Disruption of Program**--engaging in behavior that requires intervention to the extent that the current program of the youth and/or others is disrupted. This includes, but is not limited to:

(A) disrupting a scheduled activity;
(B) being loud or disruptive without staff permission;
(C) using profanity or engaging in disrespectful behavior toward staff or peers; or
(D) refusing to participate in a scheduled activity or abide by program rules.

(3) **Failure to Abide by Dress Code**--failing to follow the rules of dress and appearance as provided by facility rules.

(4) **Failure to do Proper Housekeeping**--failing to complete the daily chores of cleaning the living environment to the expected standard.

(5) **Gang Activity**--participating in an activity or behavior that promotes the interests of a gang or possessing or exhibiting anything related to or signifying a gang, such as, but not limited to, gang-related literature, symbols, or signs.

(6) **Gambling or Possession of Gambling Paraphernalia**--engaging in a bet or wager with another person or possessing paraphernalia that may be used for gambling.

(7) **Horseplay**--engaging in wrestling, roughhousing, or playful interaction with another person or persons that does not rise to the level of an assault. Horseplay does not result in any party getting upset or causing injury to another.

(8) **Improper Use of Telephone/Mail/Computer**--using the mail, a computer, or the telephone system for communication that is prohibited by facility rules, at a time prohibited by facility rules, or to inappropriately access information.

(9) **Lending/Borrowing/Trading Items**--lending or giving to another youth, borrowing from another youth, or trading with another youth possessions, including food items, without permission from staff.

(10) **Lying/Falsifying Documentation/Cheating**--lying or withholding information from staff, falsifying a document, and/or cheating on an assignment or test.

(11) **Possession of an Unauthorized Item**--possessing an item the youth is not authorized to have (possession of which is not a major rule violation), including items not listed on the youth's personal property inventory. This does not include personal letters or photographs.

(12) **Refusal to Follow Staff Verbal Instructions**--deliberately failing to comply with a specific reasonable verbal instruction made by a staff member.

(13) **Stealing**--intentionally taking property with an estimated value under $100 from another without permission.

(14) **Threatening Others**--making verbal or physical threats toward another person or persons.

(15) **Unauthorized Physical Contact with Another Youth (No Injury)**--intentionally making unauthorized physical contact with another youth without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, or grabbing.

(16) **Unauthorized Physical Contact with Staff (No Injury)**--intentionally making unauthorized physical contact with a staff member, contract employee, or volunteer without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, and grabbing.

(17) **Undesignated Area**--being in any area without the appropriate permission to be in that area.

(18) **Vandalism**--intentionally causing less than $100 in damage to state or personal property.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Kaci Singer, Deputy General Counsel

Subject: Discussion, consideration, and possible approval to adopt on an emergency basis new 37 TAC §343.261 (Resident Supervision), as well as approval to publish the same new rule in the *Texas Register* for a public-comment period of at least 30 days and possible conditional approval to adopt the final rule

Date: November 8, 2024

Before the Board for consideration is new §343.261 (relating to resident supervision). An abbreviated summary follows, and a more detailed summary is provided below:

- Added a section to address obstructing observation windows in facilities.

The Board's approval is requested to adopt the new rule on an emergency basis as allowed by §2001.034, Government Code. That statute allows an agency to adopt an emergency rule without prior notice, or with abbreviated notice, if the agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Given that the impetus of these proposed changes is to ensure the safety and security of youth within facilities, staff requests the Board find that a requirement of state law requires the adoption of the rule on fewer than 30 days' notice and approve the emergency rulemaking.

The Board's approval is also requested to publish the proposed new rule in the *Texas Register* for the standard public-comment period of at least 30 days and to adopt the final rule after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- the text of the rule; and
- a resolution for board action.

Summary of Proposed New Section:

- Explains that facilities must have a policy prohibiting the blocking of windows used to observe residents and instructing staff of what actions to take when observation windows are blocked.
- Provides that refusal to remove an item blocking a window is considered a serious threat to the safety and/or security of the facility.

Texas Administrative Code

Title 37 Public Safety and Corrections
Part 11 Texas Juvenile Justice Department

Chapter 343 Secure Juvenile Pre-Adjudication Detention and Post-Adjudication Correctional Facilities

DRAFT 10/28/24
PERTINENT SECTION ONLY; NOT THE FULL CHAPTER

Subchapter B

Pre-Adjudication and Post-Adjudication Secure Facility Standards

§343.200 Authority to Operate Secure Juvenile Facility
§343.202 Acceptance of Residents
§343.204 Facility Governing Board
§343.206 Certification and Registration of Facility
§343.208 Policy, Procedure, and Practice
§343.210 Designation of Facility Administrator
§343.212 Duties of Facility Administrator
§343.214 Data Collection
§343.218 Location and Operations
§343.220 Population
§343.222 Heating, Cooling, and Ventilation
§343.224 Alternate Power Source
§343.226 Lighting
§343.228 Dining Area
§343.230 Specialized Housing
§343.232 Housing for Residents with Physical Disabilities
§343.234 Program Areas
§343.236 Secure Storage Areas
§343.238 Hazardous Materials
§343.240 Safety Codes
§343.242 Fire Safety Plan
§343.244 Fire Safety Officer
§343.246 Fire Drills
§343.248 Non-Fire Emergency Preparedness Plan
§343.249 Internal Security
§343.250 External and Perimeter Security
§343.260 Resident Searches
§343.261 Resident Supervision
§343.262 Hygiene Plan
§343.264 Resident Showers
§343.266 Bedding
§343.268 Towels
§343.270 Clothing
§343.272 Facility Maintenance, Cleanliness, and Appearance
§343.274 Resident Discipline Plan
§343.276 Formal Disciplinary Reviews for Major Rule Violations
§343.280 Formal Disciplinary Review Process
§343.282 Resident Appeals
§343.284 Disciplinary Review Log
§343.285 Disciplinary Seclusion
§343.286 Room Restriction
§343.287 Resident-Initiated Separation
§343.288 Safety-Based Seclusion
§343.289 Safety-Based Seclusion Reviews
§343.290 Protective Isolation
§343.294 Separation Status Log
§343.300 Nutritional Requirements
§343.302 Menu Plans
§343.306 Modified Diets
§343.308 Mealtime Prohibitions
§343.310 Staff Meals
§343.312 Daily Meal Schedule
§343.314 On-Site Food Preparation
§343.316 Off-Site Food Preparation
§343.320 Health Service Authority
§343.322 Health Service Plan
§343.324 Health Services Coordinator
§343.326 Medical Referral
§343.328 Consent for Medical Treatment
§343.330 Medical Treatment for Victims of Abuse
§343.332 Behavioral Health Care Services for Sexual Abuse Victims
§343.334 Confidentiality
§343.336 Medication Administration
§343.338 Medical Isolation
§343.340 Suicide Prevention Plan
§343.342 Review and Dissemination of Suicide Prevention Plan
§343.346 Mental Health Referral of High-Risk Suicidal Youth
§343.348 Supervision of High-Risk Suicidal Youth
§343.350 Supervision of Moderate-Risk Suicidal Youth
§343.351 Suicidal Youth Log
§343.352 Visitation
§343.354 Limitations on Visitation
§343.356 Access to Attorney
§343.358 Telephone
§343.360 Mail
§343.362 Limitations on Mail
§343.364 Legal Correspondence
§343.366 Inspection of Mail
§343.368 Illegal Discrimination
§343.370 Prohibited Supervision
§343.372 Work by Residents
§343.374 Experimentation and Research Studies
§343.376 Resident Grievance Process
§343.378 Grievance Appeals
§343.380 Grievance Officer
§343.382 Grievance Documentation
§343.384 Religious Services
§343.386 Volunteers and Interns

Subchapter B

Pre-Adjudication and Post-Adjudication Secure Facility Standards

§343.261 Resident Supervision

Effective Date: XXXXXX

(1) Facility policy must prohibit the blocking of viewing windows that are used to observe residents. The policy must instruct staff of the actions to take if a viewing window is blocked.

(2) The refusal to remove an item obstructing the viewing window is considered a serious threat to facility safety and/or security.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Kaci Singer, Deputy General Counsel

Subject: Discussion, consideration, and possible approval to publish the following in the *Texas Register* for a public comment period of at least 30 days and possible conditional approval to adopt the final rules: proposed amendments to 37 TAC Chapter 341 (Juvenile Probation Department General Standards); proposed amendments to Chapter 345 (Juvenile Justice Professional Code of Ethics for Certified Officers); the proposed repeal of current Chapter 349 (General Administrative Standards) and its proposed, revised replacement; the proposed repeal of Chapter 350 (Investigating Abuse, Neglect, Exploitation, Death, and Serious Incidents); and the proposed repeal of current Chapter 358 (Identifying, Reporting, and Investigating Abuse, Neglect, Exploitation, Death, and Serious Incidents) and its proposed, revised replacement

Date: November 8, 2024

Before the Board for consideration are the following:

- revisions to Chapter 341 (relating to juvenile probation department general standards);
- revisions to Chapter 345 (relating to juvenile justice professional code of ethics for certified officers);
- the repeal of Chapter 349 (relating to general administrative standards) and its proposed replacement with the same chapter number and title;
- the repeal of Chapter 350 (relating to investigating abuse, neglect, exploitation, death, and serious incidents); and
- the repeal of Chapter 358 (relating to identifying, reporting, and investigating abuse, neglect, exploitation, death, and serious incidents) and its proposed replacement with the same chapter number and title.

  (*Note: Sometimes revisions to a chapter are so extensive that tracking the changes would make the document unreadable. In these instances, we are allowed to repeal a chapter and replace it with a new, clean, revised version of itself.*)

An abbreviated summary of the changes for each chapter follows, and more detailed summaries for Chapters 341, 345, 349, and 358 are attached:

- For 341:
  - Added requirements to notify the Office of Independent Ombudsman when juveniles are placed in or removed from non-juvenile justice contract facilities.

- For 345:
  - Expanded the definition of *juvenile justice professional* and made conforming changes to other terms as a result of changes made in other chapters.
- For 349:
  - Updated the procedures regarding waivers and variances, administrative reviews of investigations, and discipline of certified officers.
- For 350:
  - Transferred some of the information from this chapter to the proposed revised version of Chapter 358.
- For 358:
  - Consolidated rules regarding reporting alleged abuse, neglect, exploitation, death, serious incidents to TJJD and conducting local investigations with rules regarding TJJD investigations of such incidents and made updates to each.
  - Added more detail to rules regarding what must be proven in order to make a finding of abuse, neglect, or exploitation in investigations involving juvenile probation departments, juvenile facilities, and non-juvenile justice contract facilities.
  - Created parity in the rules regarding TJJD investigations at the county level and state level.

The Board's approval is requested to publish the amended, repealed, and replacement chapters in the *Texas Register* for a 30-day public comment period.

Also requested is the Board's approval to adopt the final chapters after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- summaries of the revisions to Chapters 341, 345, 349, and 358;
- the text of the amended, repealed, and replacement chapters; and
- a resolution for Board action.

Title 37 Public Safety and Corrections
Part 11 Texas Juvenile Justice Department
Chapter 341 General Standards for Juvenile Probation Departments

Draft 10/09/2024
Pertinent Sections Only; Not the Whole Chapter

Subchapter A. Definitions and General Provisions
- §341.100 Definitions
- §341.102 Waiver or Variance to Standards

Subchapter B. Juvenile Board Responsibilities
- §341.200 Administration
- §341.202 Policies and Procedures
- §341.204 Residential Placement

Subchapter C. Chief Administrative Officer Responsibilities
- §341.300 Policy and Procedure Manual
- §341.302 Participation in Community Resource Coordination Groups
- §341.304 Requirement to Apply for Diversion Funds
- §341.306 Providing Information to TJJD ***pending***
- §341.308 Notification to Office of Independent Ombudsman

Subchapter D. Requirements for Juvenile Probation Officers
- §341.400 Duties of Certified Juvenile Probation Officers
- §341.402 Duties of Certified Community Activities Officers
- §341.403 Supervising and Transporting Juveniles

Subchapter E. Case Management
- §341.500 Mental Health Screening
- §341.502 Risk and Needs Assessment
- §341.504 Case Management Policies and Procedures
- §341.506 Case Plans

Subchapter F. Data Collection
- §341.600 Data Coordinator
- §341.602 TJJD EDI Extract
- §341.604 Accuracy of Data
- §341.606 Security of Data

Subchapter G. Restraints
- §341.700 Applicability
- §341.702 Requirements
- §341.704 Prohibitions
- §341.706 Documentation
- §341.708 Personal Restraint
- §341.710 Mechanical Restraint
- §341.712 Transporting

Subchapter H. Carrying of Weapons
- §341.800 Applicability and Authorization
- §341.802 Documentation Requirements
- §341.804 Responsibilities of a Juvenile Probation Officer Authorized to Carry a Firearm
- §341.806 Responsibilities of Chief Administrative Officers or Other Supervising Officers
- §341.808 Written Policies and Procedures
- §341.810 Reporting Use of Force Incidents to TJJD and Law Enforcement
- §341.812 Records

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Subchapter A
Definitions and General Provisions

§341.100 Definitions

Effective Date: 2/1/18

The following words and terms have the following meanings when used in this chapter unless the context clearly indicates otherwise.

(1) **Alternative Referral Plan**--A procedure that deviates from the requirements of ~~[Texas Family Code]~~ §53.01(d), Family Code, regarding referral of cases to the prosecutor.

(2) **Approved Personal Restraint Technique ("personal restraint")**--A professionally trained, curriculum-based, and competency-based restraint technique that uses a person's physical exertion to completely or partially constrain another person's body movement without the use of mechanical restraints.

(3) **Approved Mechanical Restraint Devices ("mechanical restraint")**--A professionally manufactured and commercially available mechanical device designed to aid in the restriction of a person's bodily movement. The only mechanical restraint devices approved for use are the following:

(A) Ankle Cuffs--Metal band designed to be fastened around the ankle to restrain free movement of the legs.

(B) Handcuffs--Metal devices designed to be fastened around the wrist to restrain free movement of the hands and arms.

(C) Plastic Cuffs--Plastic devices designed to be fastened around the wrists or legs to restrain free movement of hands, arms, or legs. Plastic cuffs must be designed specifically for use in human restraint.

(D) Soft Restraints--Non-metallic wristlets and anklets used as stand-alone restraint devices. These devices are designed to reduce the incidence of skin, nerve, and muscle damage to the subject's extremities.

(E) Waist Belt--A cloth, leather, or metal band designed to be fastened around the waist and used to secure the arms to the sides or front of the body.

(4) **Case Management System**--A computer-based tracking system that provides a systematic method to track and manage juvenile offender caseloads.

(5) **Chief Administrative Officer**--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department, including the juvenile probation department of a multi-county judicial district.

(6) **Comprehensive Folder Edit**--A report generated in the Caseworker or Juvenile Case Management System (JCMS) application that performs an extensive edit of the case file information. This report identifies incorrectly entered data and questionable data that impact the accuracy of the reports and programs.

(7) **Criminogenic Needs**--Issues, risk factors, characteristics, and/or problems that relate to a person's risk of reoffending.

(8) **Data Coordinator**--A person employed by a juvenile probation department who is designated to serve and function as the primary contact with TJJD on all matters relating to data collection and reporting.

(9) **Department**--A juvenile probation department.

(10) **Draw**--To unholster a weapon in preparation for use against a perceived threat.

(11) **EDI Specifications**--A document developed by TJJD outlining the data fields and file structures that each juvenile probation department is required to follow in submitting the TJJD EDI extract.

(12) **Empty-Hand Defense**--Defensive tactics through the use of pressure points, releases from holds, and blocking and striking techniques using natural body weapons such as an open hand, fist, forearm, knee, or leg.

(13) **Field Supervision**--Supervision ordered by a juvenile court in accordance with ~~[Texas Family Code]~~ §54.04(d)(1)(A), Family Code, where the child is placed on probation in the child's home or in the custody of a relative or another fit person.

(14) **Formal Referral**--An event that occurs only when all three of the following conditions exist:

(A) a juvenile has allegedly committed delinquent conduct, conduct indicating a need for supervision, or a violation of probation;

(B) the juvenile probation department has jurisdiction and venue; and

(C) the office or official designated by the juvenile board has:

(i) made face-to-face contact with the juvenile and the alleged offense has been presented as the reason for this contact; or

(ii) given written or verbal authorization to detain the juvenile.

(15) **Initial Disposition**--The disposition of probation issued by a juvenile court after a child is:

(A) formally referred to a juvenile probation department for the first time; or

(B) formally referred to a juvenile probation department after any and all previous periods of supervision by the department have ended.

(16) **Inter-County Transfer**--As described in ~~[Texas Family Code]~~ §51.072, Family Code, a transfer of supervision from one juvenile probation department in Texas to another juvenile probation department in Texas for a juvenile who moves or intends to move to another county and intends to remain in that county for at least 60 days.

(17) **Intermediate Weapons**--Weapons designed to neutralize or temporarily incapacitate an assailant, such as electronic restraint devices, irritants, and impact weapons. This level of self-defense employs the use of tools to neutralize aggressive behavior when deadly force is not justified but when empty-hand defense is not sufficient.

(18) **Intern**--An individual who performs services for a juvenile justice program or facility through a formal internship program that is sponsored by a juvenile justice agency or is part of an approved course of study through an accredited college or university.

(19) **Juvenile**--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, or participating in a juvenile justice program.

(20) **Juvenile Board**--A governing board created under Chapter 152, ~~[of the Texas]~~ Human Resources Code.

(21) **Juvenile Justice Program**--A program or department that:

(A) serves juveniles under juvenile court or juvenile board jurisdiction; and

(B) is operated solely or partly by the governing board, juvenile board, or by a private vendor under a contract with the governing board or juvenile board. The term includes:

(i) juvenile justice alternative education programs;

(ii) non-residential programs that serve juvenile offenders under the jurisdiction of the juvenile court or the juvenile board; and

(iii) juvenile probation departments.

(22) **Non-Juvenile Justice Contract Facility**--a facility in which a juvenile is placed pursuant to a contract with a department, program, facility, or juvenile board, other than a facility registered with TJJD.

(23)[~~(22)~~] **Professional**--a person who meets the definition of professional in §344.100 of this title.

(24)[~~(23)~~] **Resident**--A juvenile or other individual who has been lawfully admitted into a pre-adjudication secure juvenile detention facility, post-adjudication secure juvenile correctional facility, or a non-secure juvenile correctional facility.

(25)[~~(24)~~] **Residential Placement**--Supervision ordered by a juvenile court in which the child is placed on probation outside the child's home in a foster home or a public or private institution or agency.

(26)[~~(25)~~] **Restraints**--Personal or mechanical restraint.

(27)[~~(26)~~] **Responsivity Factors**--Factors that are not necessarily related to criminal activity but are relevant to the way in which the juvenile reacts to different types of interventions (e.g., learning styles and abilities, self-esteem, motivation for treatment, resistance to change, etc.)

(28)[~~(27)~~] **SRSXEdit**--An audit program developed by TJJD to assist juvenile probation departments not using the Caseworker or JCMS application with verifying their data prior to submission to TJJD.

(29)[~~(28)~~] **Supervision**--The case management of a juvenile by the assigned juvenile probation officer or designee through contacts (e.g., face-to-face, telephone, office, home, or collateral contacts) with the juvenile, the juvenile's family, and/or other persons or entities involved with the juvenile.

(30)[~~(29)~~] **TCOLE**--Texas Commission on Law Enforcement.

(31)[~~(30)~~] **Title IV-E Approved Facility**--A facility licensed and/or approved by the Texas Department of Family and Protective Services for Title IV-E participation.

(32)[~~(31)~~] **TJJD**--Texas Juvenile Justice Department.

(33)[~~(32)~~] **TJJD Electronic Data Interchange (EDI) Extract**--An automated process to extract and submit modified case records from the department's case management system to TJJD. The extract must be completed in accordance with this chapter.

(34)[~~(33)~~] **TJJD Mental Health Screening Instrument**--An instrument selected by TJJD to assist in identifying juveniles who may have mental health needs.

(35)[~~(34)~~] **Volunteer**--An individual who performs services for the juvenile probation department without compensation from the department who has:

(A) any unsupervised contact with juveniles in a juvenile justice program or facility; or

(B) regular or periodic supervised contact with juveniles in a juvenile justice program or facility.

Subchapter C
Chief Administrative Officer Responsibilities

§341.308 Notification to Office of Independent Ombudsman Effective Date:XXXXXX

(a) The chief administrative officer or designee must notify the Office of Independent Ombudsman when a juvenile is placed in a non-juvenile justice contract facility. The notification must be made no later than 10 days after the juvenile's placement and must be made via email to the Office of Independent Ombudsman.

(b) The chief administrative officer or designee must notify the Office of Independent Ombudsman when a juvenile who was placed in a non-juvenile justice contract facility has been removed from the facility for any reason. The notification must be made no later than 10 days after the juvenile's removal and must be made via email to the Office of Independent Ombudsman.

Title 37 Public Safety and Corrections
Part 11 Texas Juvenile Justice Department
Chapter 345 Juvenile Justice Professional Code of Ethics for Certified Officers

Draft 10/4/24

Subchapter A. Definitions and Applicability
§345.100 Definitions
§345.110 Applicability

Subchapter B. Policy and Procedure
§345.200 Policy and Procedure

Subchapter C. Code of Ethics
§345.300 Adherence and Reporting Violations
§345.310 Code of Ethics

Subchapter A
Definitions and Applicability

§345.100 Definitions

Effective Date: XXXXXX~~7/15/44~~

The following terms, as used in this chapter, have the following meanings unless otherwise expressly defined within the chapter.

(1) Juvenile--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, or participating in a juvenile justice program, including a prevention and intervention program, regardless of age.

(2) Juvenile Justice Facility ("facility")--a facility that is registered by TJJD pursuant to Sections 51.12, 51.125, or 51.126, Family Code.

~~[(A) A facility, including the facility's premises and all affiliated sites whether contiguous or detached, that:~~

~~(i) serves juveniles under juvenile court jurisdiction; and~~

~~(ii) is operated:~~

~~(I) wholly or partly by or under the authority of the governing board or juvenile board; or~~

~~(II) by a private vendor under a contract with the governing board, juvenile board, or governmental unit.~~

~~(B) The term includes, but is not limited to:~~

~~(i) public or private juvenile pre-adjudication secure detention facilities, as defined in §344.100 of this title, including short-term detention facilities (i.e., holdovers) as defined in §351.1 of this title;~~

~~(ii) public or private juvenile post-adjudication secure correctional facilities as defined in §344.100 of this title; and~~

~~(iii) public or private non-secure correctional facilities as defined in §355.100 of this title.]~~

(3) Juvenile Justice Professional--A person who is:

(A) certified by TJJD as a juvenile probation officer, community activities officer [~~youth activities supervisor~~], or juvenile supervision officer; or

(B) employed by, contracting with, or volunteering with a department, program, or facility or a non-juvenile justice contract facility [~~a juvenile probation department, juvenile justice program, or a juvenile justice facility as a juvenile probation officer, youth activities supervisor, or juvenile supervision officer~~].

(4) Juvenile Justice Program ("program")--Has the meaning assigned by §344.100 of this title.

(5) Juvenile Probation Department ("department")--Has the meaning assigned by §344.100 of this title.

(6) **Non-Juvenile Justice Contract Facility**--a facility in which a juvenile is placed pursuant to a contract with a department, program, facility, or juvenile board, other than a facility registered with TJJD.

(7)[~~(6)~~] TJJD--The Texas Juvenile Justice Department.

§345.110 Applicability

Effective Date: 7/15/14

(a) Unless otherwise noted, this code of ethics applies to all juvenile justice professionals.

(b) The code of ethics is intended to ensure that juvenile justice professionals adhere to the level of professionalism required by TJJD as the licensing agency issuing the certification.

Subchapter B
Policy and Procedure

§345.200 Policy and Procedure

Effective Date: XXXXXX~~7/15/14~~

Department, programs, and facilities [~~Juvenile probation departments, juvenile justice programs, and juvenile justice facilities~~] must adopt and implement written policies and procedures to ensure that all code of ethics violations are reported to:

(1) the administration of the department, program, or facility [~~juvenile probation department, juvenile justice program, or juvenile justice facility~~]; and

(2) TJJD.

Subchapter C
Code of Ethics

§345.300 Adherence and Reporting Violations

Effective Date: XXXXXX~~7/15/14~~

(a) To ensure the safety, protection, and welfare of the juveniles and families served by the juvenile justice system, juvenile justice professionals must adhere to the code of ethics set forth in this chapter.

(b) Juvenile justice professionals must report [~~to the appropriate authorities and/or entities~~] any unethical behavior or violations of the code of ethics to TJJD and the administration of the department, program, facility, or non-juvenile justice contract facility where the juvenile justice professional is an employee, volunteer, or contractor.

§345.310 Code of Ethics

Effective Date: XXXXXX~~7/15/14~~

(a) The people of Texas expect juvenile justice professionals to exhibit honesty and respect for the dignity and individuality of human beings and display a commitment to professional and compassionate service.

(b) In accordance with Chapter 349 of this title [~~As described by §344.810 and §349.307 of this title~~], TJJD may take disciplinary action against a [~~the~~] certification of or deny a certification to [~~of~~] a juvenile justice professional who is found by TJJD to have violated the code of ethics.

(c) Juvenile justice professionals must adhere to the following code of ethics principles:

(1) Juvenile justice professionals must:

(A) abide by all federal laws, federal guidelines and rules, state laws, and TJJD administrative rules;

(B) respect the authority and follow the directives of the juvenile court and governing juvenile board;

(C) respect and protect the legal rights of all juveniles and their parents and/or guardians;

(D) serve each child with concern for the child's welfare and with no expectation of personal gain;

(E) respect the significance of all elements of the justice and human services systems and cultivate professional cooperation with each segment;

(F) respect and consider the right of the public to be safeguarded from the effects of juvenile delinquency;

(G) be diligent in their responsibility to record and make available for review any and all information that could contribute to sound decisions affecting a child or public safety;

(H) report without reservation any corrupt or unethical behavior that could affect a juvenile or the integrity of the juvenile justice system;

(I) maintain the integrity and confidentiality of juvenile information, not seek more information than needed to perform their duties, and not reveal information to any person who does not have authorized access to the information for a proper, professional use; and

(J) treat all juveniles and their families with courtesy, consideration, and dignity.

(2) Juvenile justice professionals must not:

(A) use their official position to secure privileges or advantages;

(B) permit personal interest to impair the impartial and objective exercise of professional responsibilities;

(C) accept gifts, favors, or other advantages that could give the appearance of impropriety or impair the impartial and objective exercise of professional responsibilities;

(D) maintain or give the appearance of maintaining an inappropriate relationship with a juvenile, including, but not limited to, bribery or solicitation or acceptance of gifts, favors, or services from juveniles or their families;

(E) discriminate against any employee, juvenile, parent, or guardian on the basis of race, ethnicity, gender, disability, national origin, religion, sexual orientation, political belief, or socioeconomic status;

(F) misuse government property or resources or use personal property or funds belonging to a juvenile;

(G) engage in conduct constituting abuse, neglect, or exploitation as provided by Chapter 358 of this title and Chapter 261, Family Code ~~[be designated as a perpetrator in an abuse, exploitation, and neglect investigation conducted by TJJD under Chapter 350 of this title and Texas Family Code Chapter 261]~~;

(H) interfere with or hinder any ~~[abuse, exploitation, and neglect]~~ investigation, including a criminal investigation conducted by law enforcement or an investigation conducted under Chapter 350 and Chapter 358 of this title or ~~[Texas Family Code]~~ Chapter 261, Family Code;

(I) deliver into or remove from the grounds of a juvenile facility, program, or department any item of contraband or possess or control any item of contraband beyond the time period required to immediately report and deliver the item to the proper authority within the facility, program, or department;

(J) use violence or unnecessary force and must use only the amount and type of force reasonably necessary and appropriate when justified to ensure the security of juveniles or of the facility, program, or department; or

(K) falsify or make material omissions to governmental records.

Title 37 Public Safety and Corrections
Part 11 Texas Juvenile Justice Department
Chapter 349 General Administrative Standards

Draft 10/07/24

Subchapter A. Definitions and General Requirements

§349.100 Definitions
§349.110 Interpretation
§349.120 Authorized Delegation

Subchapter B. Administrative Provisions

§349.200 Waivers and Variances
§349.210 Code of Ethics Violations
§349.220 Complaints
§349.230 Violation by Juvenile Board
§349.240 Mandatory Suspension for Failure to Pay Child Support
§349.250 Administrative Review of Investigation Findings
§349.260 Representation
§349.270 Temporary Suspension Order

Subchapter C. Certification Actions and Hearings

§349.300 Disciplinary Action
§349.302 Ineligibility for Certification
§349.304 Guidelines
§349.310 Mandatory Revocation
§349.320 Notice and Service
§349.330 Answer
§349.340 Default
§349.350 Agreed Orders
§349.360 State Office of Administrative Hearings
§349.370 Decision of the Board
§349.380 Representation
§349.390 Costs

Subchapter D. Confidentiality and Release of Abuse, Exploitation and Neglect Investigation Records

§349.400 Purpose
§349.410 Definitions
§349.420 Confidentiality of and Access to Information
§349.430 Redaction of Records Prior to Release
§349.440 Procedures for Requesting Access to Confidential Information
§349.450 Public Information
§349.460 Video, Audio Recordings, and Photographs

Subchapter E. Advisory Council on Juvenile Services

§349.500 Purpose
§349.550 Removal of Members

Subchapter F. Data

§349.600 Access to Data Collected

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Subchapter A
Definitions and General Requirements

§349.100 Definitions

Effective Date:XXXXXX

The words and terms used in this chapter shall have the following definitions unless the context clearly indicates otherwise.

(1) **Abuse, Neglect, and Exploitation**--these terms have the definitions provided in Chapter 358 of this title.

(2) **Administrator**--regardless of title, the chief administrative officer of a juvenile probation department, juvenile justice program, juvenile justice facility, or non-juvenile justice contract facility.

(3) **Administrative Designee**--the role assigned to the administrator when a preponderance of evidence determines that the proximate cause of the abuse, neglect, or exploitation was based on policies and procedures under the direct control of the administrator.

(4) **Attorney of Record**--a person licensed to practice law in Texas who has provided TJJD with written notice of representation.

(5) **Authorized Representative**--an attorney authorized to practice law in the State of Texas or, if authorized by applicable law, a person designated by a party to represent the party.

(6) **Board**--the Texas Juvenile Justice Board, the governing board of TJJD.

(7) **Certification Action**--an action taken by TJJD with regard to a certification as a juvenile probation, supervision, or community activities officer, to include disciplinary action, designation of ineligibility, and temporary suspension.

(8) **Certified Officer**--an individual who holds a certification as a juvenile probation, supervision, or community activities officer from TJJD, including a provisional certification.

(9) **Chief Administrative Officer**--regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department, including a juvenile probation department with multi-county jurisdiction.

(10) **Code of Ethics**--the Certified Officer Code of Ethics contained in Chapter 345 of this title.

(11) **De Novo Review**--a review that decides an issue without deference to a conclusion or assumption made by a prior review, finding, or holding; a review that decides the issue as though the decision is being made for the first time.

(12) **Department**--a juvenile probation department.

(13) **Executive Director**--the executive director of TJJD.

(14) **Facility Administrator**--an individual designated by the chief administrative officer or governing board of a juvenile justice facility as the on-site program director or superintendent of a secure facility.

(15) **Juvenile**--a person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, housed in a non-juvenile justice contract facility pursuant to an order of the juvenile court, or participating in a juvenile justice program, including a prevention and intervention program, regardless of age.

(16) **Juvenile Justice Facility ("facility")**--a facility that is registered by TJJD pursuant to Sections 51.12, 51.125, or 51.126, Family Code.

(17) **Juvenile Justice Program ("program")**--a program or department that:

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(A) serves juveniles under juvenile court or juvenile board jurisdiction; or

(B) is operated wholly or partly by the juvenile board or by a private vendor under a contract with the juvenile board. The term includes:

(i) a juvenile justice alternative education program;

(ii) a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court or juvenile board; and

(iii) a juvenile probation department.

(18) **Non-Juvenile Justice Contract Facility**--a facility in which a juvenile is placed pursuant to a contract with a department, program, facility, or juvenile board, other than a facility registered with TJJD.

(19) **Respondent**--a person who is the subject of a certification action under this chapter.

(20) **SOAH**--State Office of Administrative Hearings.

(21) **Subject**--a person alleged or found to be responsible for the abuse, neglect, or exploitation of a juvenile through the person's actions or failure to act.

(22) **TJJD**--the Texas Juvenile Justice Department.

(23) **Victim**--a juvenile who is alleged or found to be a victim of abuse, neglect, or exploitation.

§349.110 Interpretation

Effective Date: XXXXXX

(a) **Headings.**

The headings in this chapter are for convenience only and are not intended as a guide to the interpretation of the standards in this chapter.

(b) **Including.**

Unless the context clearly indicates otherwise, the words "include," "includes," and "including," when following a general statement or term, are to be understood as introducing a non-exhaustive list.

(c) **Time.**

Any period of days set forth in this chapter is computed as set forth in Section 311.014, Government Code. Unless otherwise specified, a period of "days" means "calendar days." When this chapter requires or allows an act by any party other than TJJD to be done at or within a specified time period, the executive director or Board may, for good cause shown, order the period extended or permit the act to be done after the expiration of the specified period.

§349.120 Authorized Delegation

Effective Date: XXXXXX

(a) The executive director may designate another TJJD employee to perform the executive director's duties under this chapter.

(b) The designation must be in writing.

Subchapter B

Administrative Provisions

§349.200 Waivers and Variances

Effective Date: XXXXXX

(a) **Purpose.**

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(1) The purpose of a waiver is to excuse a department or facility from the requirement to comply with a particular TJJD standard for a defined period of time when compliance with the standard is not possible due to an event outside of the department's or facility's control.

(2) The purpose of a variance is to provide a mechanism for a department or facility to comply with the intent of a TJJD standard in a different manner than is set out in the standard when compliance with the standard is not possible.

(b) **Applicability.**

(1) A waiver or variance may be granted for any standard, following this process, unless:

(A) another administrative rule prohibits or provides a different means for a waiver or variance; or

(B) the standard is required by state or federal law and the corresponding law does not expressly permit a waiver or variance.

(2) A waiver or variance may be conditioned on continued compliance with certain terms, as determined by TJJD or the Board, as applicable.

(c) **Request.**

(1) The juvenile board, chief administrative officer, or facility administrator may submit a request for waiver or variance to TJJD. If the chief administrator or facility administrator submits the request, approval from the juvenile board chair or designee must be included.

(2) A request for a waiver must be submitted on a form provided by TJJD, must state the length of time for which the waiver is requested, and must explain:

(A) why compliance with the standard(s) cannot be achieved;

(B) what undue hardship would be experienced by the department or facility if the waiver is not granted;

(C) what impact the waiver would have on compliance with other standards;

(D) how the health and safety of juveniles will be maintained during the duration of the waiver; and

(E) how issuing the waiver would not put TJJD or the juvenile board, department, or facility in violation of any state or federal law.

(3) A request for a variance must be submitted on a form provided by TJJD, must state the length of time for which the variance is requested, and must explain:

(A) why compliance with the standard(s) cannot be achieved;

(B) what undue hardship would be experienced by the department or facility if the variance is not granted;

(C) what impact the variance would have on compliance with other standards;

(D) how substantial compliance with the intent and purpose of the standard for which a variance is requested would be achieved through alternative methods or means;

(E) how the health and safety of juveniles will be maintained if the variance is granted; and

(F) how issuing the variance would not put TJJD or the juvenile board, department, or facility in violation of any state or federal law.

(d) **Incomplete Requests.**

(1) At the sole discretion of TJJD, any request for waiver or variance that does not include all required information will be deemed incomplete and returned to the requestor for completion.

(2) No timelines for response begin until the request is complete. An incomplete request will not be presented to the executive director or the Board.

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(3) TJJD will inform the requestor regarding which parts of the request are incomplete and provide a minimum of 20 days for the requestor to complete the request. If the request is not completed by the date specified by TJJD, the request will be deemed withdrawn.

(4) TJJD will maintain records of incomplete and withdrawn requests.

(e) **Executive Director Authority to Grant a Waiver or Variance.**

(1) The executive director may grant a waiver for a period of up to 180 days, but only if the executive director makes the following affirmative findings:

(A) circumstances outside of the department's or facility's control make it impossible to comply with the standard without undue hardship on the requesting department or facility;

(B) the health and safety of juveniles will be maintained if the waiver is granted; and

(C) the waiver will not put TJJD or the juvenile board, department, or facility in violation of any state or federal law.

(2) The executive director may grant a variance for a period of up to180 days, but only if the executive director makes the following affirmative findings:

(A) the standard cannot be complied with without undue hardship on the requesting department or facility;

(B) the requesting department or facility will comply with the intent and purpose through alternative methods;

(C) the health and safety of juveniles will be maintained if the variance is granted; and

(D) the variance will not put TJJD or the juvenile board, department, or facility in violation of any state or federal law.

(f) **Process.**

(1) The executive director will respond to a completed request for waiver or variance within 30 days. If unable to do so, TJJD will inform the requestor of the reasons for the delay.

(2) If the request for waiver or variance indicates that it is needed for more than 180 days and the executive director grants the request for any period up to 180 days, the requested waiver or variance will also be presented to the Board for review in accordance with subsection (g) of this section.

(3) If the request for waiver or variance, or extension thereof, is denied, the juvenile board, chief administrative officer, or facility administrator may request a review by the Board, in accordance with subsection (g) of this section.

(g) **Board Review of Request for Waiver or Variance.**

(1) Except as provided by paragraph (7) of this subsection, only the Board may grant a waiver or variance for a period in excess of 180 days. When appropriate, the Board may grant a permanent variance, with or without conditions. No permanent waivers will be granted.

(2) If the executive director has granted a waiver or variance for which the request indicated it was needed for more than 180 days, the request will be presented to the Board for review at the next Board meeting where waivers and variances will be considered, provided there is adequate time to place the item on the agenda.

(3) If the executive director denies a request for waiver or variance, the juvenile board, chief administrative officer, or facility administrator may request a review on a form provided by TJJD. If the chief administrative officer or facility administrator submits the request for review, approval from the juvenile board chair or designee must be included. If the approval is from the designee, that designation must be in writing and included with the request for review. The review will occur at the next Board meeting where waivers or variances will be considered, provided there is adequate time to place the item on the agenda.

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(4) The department or facility requesting the waiver or variance is responsible for appearing at the Board meeting to explain the request and answer any questions from the Board.

(5) When appropriate, TJJD staff will make a recommendation to the Board regarding whether or not to grant the waiver or variance.

(6) The Board may grant a waiver or variance only if it makes an affirmative finding that the criteria in subsection (e) exist.

(7) If the executive director grants a waiver or variance that will expire prior to the Board meeting at which the waiver or variance will be considered, the executive director may extend the existing waiver or variance until the Board meeting.

§349.210 Code of Ethics Violations

Effective Date: XXXXXX

(a) **Duty to Report.**

Every person with a certification from TJJD is obligated to report to TJJD when the person has reason to believe that another certified officer has engaged in a violation of the Code of Ethics. Failure to report may result in disciplinary action against the certification.

(b) **Notification to TJJD.**

The chief administrative officer, facility administrator, or juvenile board shall notify TJJD's Office of General Counsel when a Code of Ethics violation has been committed by a certified officer, except when the conduct is the subject of a TJJD investigation into an allegation of abuse, neglect, or exploitation.

(c) **Timelines.**

If the investigation is conducted pursuant to a request by TJJD, the investigation must be provided to TJJD in accordance with the timelines in Section 349.220 of this chapter. Otherwise, the chief administrative officer, facility administrator, or juvenile board shall provide TJJD with a copy of the internal investigation into the Code of Ethics violation no later than 10 days after the investigation is completed. The chief administrative officer or facility administrator must also provide a copy of the internal investigation to the juvenile board.

§349.220 Complaints

Effective Date: XXXXXX

(a) When TJJD receives a complaint about a juvenile board, certified officer, or employee of a department, facility, or non-juvenile justice contract facility, TJJD staff shall review the circumstances surrounding the complaint to determine the most appropriate course of action.

(b) If the complaint involves an allegation of abuse, neglect, or exploitation of a juvenile, the complaint will be addressed in accordance with Chapter 358 of this title.

(c) Except as provided by subsection (d) of this section, if the complaint involves an allegation of conduct that, if true, would constitute a violation of the Code of Ethics, the complaint will be referred to the chief administrative officer or facility administrator, as appropriate, who must ensure that an investigation is completed and a report of the investigation provided to TJJD within 90 days of the referral.

(d) If the complaint involves conduct of the chief administrative officer that, if true, would constitute a violation of the Code of Ethics, the complaint will be referred to the juvenile board chair, who must ensure that an investigation is completed and a report of the investigation provided to TJJD within 90 days of the referral.

(e) If the complaint is about juvenile services within the discretion of the juvenile board and not otherwise addressed by this section, TJJD will forward the complaint to the juvenile board chair and chief administrative officer or facility administrator, as appropriate. The complainant will be notified in writing of this referral.

(f) If the complaint involves an allegation that a juvenile board has violated TJJD rules or standards or the terms of a grant or contract with TJJD, TJJD staff shall investigate the matter and take appropriate action depending on the outcome of the investigation.

(g) If the complaint involves an individual with a license or certification from an entity other than TJJD, the complaint will be forwarded to the licensing entity. If TJJD conducts an investigation related to the complaint, the results of the investigation will be provided to the licensing entity.

§349.230 Violation by Juvenile Board

Effective Date: XXXXXX

(a) If TJJD determines the juvenile board, including the department or facility under the juvenile board's jurisdiction, has violated TJJD rules or standards or the terms of the State Financial Assistance Contract, TJJD shall notify the juvenile board in writing of the violation.

(b) Upon written notice of the violation, the juvenile board shall be given 90 days to achieve compliance or to propose a plan to achieve compliance that is acceptable to TJJD. TJJD may agree to extend this timeline.

(c) If TJJD and the juvenile board cannot reach an agreement, TJJD shall give the juvenile board written notice of its intent to refuse, reduce, or suspend state aid under §223.005, Human Resources Code. Upon receipt of the above notice, the juvenile board shall have 15 days to:

(1) provide written notice to the executive director of the juvenile board's compliance;

(2) propose in writing an alternate solution; or

(3) provide a written appeal of TJJD's action(s) to the executive director.

(d) The juvenile board's appeal must state specifically any difference of opinion with the TJJD staff concerning the facts in dispute and the solution necessary under the standards or rules of TJJD. The appeal shall state whether the juvenile board requests a hearing before the Board.

(e) TJJD will set the appeal on the agenda for its next regularly scheduled meeting, provided there is sufficient time to place the item on the agenda. The juvenile board and TJJD staff may appear and make oral presentations concerning the appeal.

(f) The complainant shall be notified in writing upon receipt of the complaint and upon resolution.

§349.240 Mandatory Suspension for Failure to Pay Child Support

Effective Date: XXXXXX

(a) **Suspension.**

Upon receipt of an order suspending certification for failure to pay child support issued under §232.008 or §232.009, Family Code, TJJD shall suspend the certified officer's certification.

(b) **Notice of Suspension.**

(1) TJJD shall notify the individual subject to a suspension order received under subsection (a) of this section that the agency has formally suspended the individual's certification.

(2) The notice shall also instruct that the individual may not perform the duties of a certified officer while the suspension order is in effect.

(3) TJJD shall also notify the chief administrative officer or facility administrator and the juvenile board of the employing department, facility, or program of the suspension.

(c) **Length of Suspension.**

A certification suspension under this section shall remain in effect until TJJD receives an order issued under §232.013, Family Code, that either vacates or stays the suspension.

(d) **Employment.**

An individual subject to a suspension order issued under subsection (a) of this section may not be employed in a position requiring certification, granted certification, or have the certification renewed while the suspension order remains in effect.

(e) **Appeal.**

An order under this section is not subject to appeal.

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(f) **Waiver or Variance.**

This provision is not subject to a waiver or variance.

§349.250 Administrative Review of Investigation Findings

Effective Date: XXXXXX

(a) Any person confirmed by TJJD to have engaged in conduct meeting the definition of abuse, neglect, or exploitation in an investigation conducted under Chapter 358 of this title, including a person named as an administrative designee as a result of an investigation, may request an administrative review of the investigation findings. An administrator may make the request on behalf of the individual.

(b) The request must be made in writing no later than the 10th day after receiving TJJD's written notice of the investigation findings.

(c) If civil or criminal proceedings related to an allegation that TJJD has investigated are pending when the administrative review is requested, or if such proceedings are initiated before TJJD begins the review, TJJD may postpone the review until the proceedings are completed.

(d) If, as part of the administrative review, TJJD chooses to interview a subject or administrative designee who does not speak English or is hearing impaired, TJJD will provide a certified translator or interpreter unless the subject or administrative designee chooses to provide one, in which case the subject or administrative designee is responsible for all translation or interpretation costs incurred in connection with the review.

(e) The administrative review is conducted by an attorney in the TJJD Office of General Counsel. The attorney may not have advised or otherwise worked on the investigation that is the subject of the administrative review.

(1) The administrative review is a de novo review. The purpose of the review is to determine if there is a preponderance of evidence to establish that the subject or administrative designee engaged in conduct meeting the definition of abuse, neglect, or exploitation, as set out in Chapter 358 of this title.

(2) The attorney may interview witnesses and gather additional evidence at the attorney's discretion. The attorney may request the assistance of the TJJD Office of Inspector General in doing so.

(3) The attorney confirms or revises TJJD's original investigation findings based on TJJD's administrative rules and policies and prepares a written report explaining the decision.

(4) Within 45 days after receiving the request for review, TJJD notifies the subject or administrative designee of the outcome of the review. If necessary, the time period may be extended. If there is an extension, TJJD will notify the subject or administrative designee and provide an estimated completion date.

(f) If the administrative review results in changes to the original findings, TJJD will:

(1) enter the revised findings into the investigation record; and

(2) notify each person who was notified of the original findings that the findings have been revised.

(g) This section does not apply to an investigation conducted under Section 380.9333 of this title.

§349.260 Representation

Effective Date: XXXXXX

(a) A subject or administrative designee may choose to appear with or without an attorney or other authorized representative throughout the administrative review process. The subject or administrative designee is responsible for the costs of representation.

(b) A party's attorney of record shall remain the attorney of record unless the attorney submits a formal request to withdraw to the TJJD attorney involved in the matter except that, if SOAH has acquired jurisdiction, the attorney must comply with SOAH's rules to withdraw.

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§349.270 Temporary Suspension Order

Effective Date: XXXXXX

(a) TJJD may issue an order temporarily suspending the certification, including a provisional certification, of a certified officer or temporarily making a former TJJD employee ineligible for certification in accordance with Sections 222.053 and 222.054, Human Resources Code.

(b) Section 2001.054, Government Code, applies to a suspension under this provision.

Subchapter C
Certification Actions and Hearings

§349.300 Disciplinary Action

Effective Date: XXXXXX

(a) TJJD may impose disciplinary action when a certified officer has committed a violation of the Code of Ethics or has engaged in conduct that meets the definition of abuse, neglect, or exploitation involving a juvenile in a department, program, facility, or non-juvenile justice contract facility.

(b) TJJD may impose any of the following disciplinary actions, including a combination of disciplinary actions:

(1) written reprimand;

(2) revocation of certification;

(3) suspension of certification; or

(4) probated suspension of certification.

(c) A certified officer is entitled to a hearing before SOAH if revocation, suspension, or probated suspension of the certification is the disciplinary action sought.

(d) A majority vote of the Board is required to impose revocation, suspension, or probated suspension as disciplinary action on the certification.

(e) Subject to Board approval, a certified officer may voluntarily surrender the certification in lieu of the imposition of disciplinary action. The acceptance may include a condition that the person is ineligible for future certification.

§349.302 Ineligibility for Certification

Effective Date: XXXXXX

(a) TJJD may make a person who is a former or current employee, volunteer, or contractor with TJJD ineligible for certification if the person engaged in conduct meeting the definition of abuse, neglect, or exploitation or that is a violation of the Code of Ethics in TJJD's personnel policy (PRS.02.03).

(b) TJJD may make a person who is a former or current employee, volunteer, or contractor with a department, program, facility, or non-juvenile justice contract facility ineligible for certification if the person engaged in conduct meeting the definition of abuse, neglect, or exploitation or that is a violation of the Code of the Ethics in Chapter 345 of this title.

(c) Except as provided by Section 349.270 of this chapter, an individual is entitled to a hearing before SOAH before the person may be deemed ineligible for certification.

(d) A majority vote of the Board is required to make a person ineligible for certification.

§349.304 Guidelines

Effective Date: XXXXXX

(a) The purpose of these guidelines is to:

(1) provide a framework for analysis by staff members, administrative law judges, and the Board in making decisions regarding certification and disciplinary matters;

(2) promote consistency in the exercise of sound discretion in certification and disciplinary matters; and

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(3) provide guidance in the resolution of potentially contested matters.

(b) The following factors may be considered in seeking, proposing, or making a decision under this chapter:

(1) the seriousness of the violation, which may include:

(A) whether the conduct was in violation of a law;

(B) the nature and extent of the harm caused; and/or

(C) the frequency of and time period covered by the violation(s);

(2) the nature of the violation, which may include:

(A) the relationship between the respondent and the person harmed;

(B) the vulnerability of the person harmed;

(C) the degree to which the actions showed lack of good judgment; and/or

(D) the culpability of the respondent, such as whether the violation:

(i) was intentional or premeditated;

(ii) was due to blatant disregard or gross neglect;

(iii) resulted from simple error or negligence; and/or

(iv) evidences lack of integrity, trustworthiness, or honesty;

(3) the degree of personal accountability taken by the respondent, which may include:

(A) admission of wrongdoing and acceptance of responsibility;

(B) showing appropriate remorse or concern;

(C) making efforts to ameliorate the harm or make restitution;

(D) cooperation with an investigation or request for information; and

(E) attempts to deny or conceal the misconduct or falsify documents; and

(4) any other relevant factors, which may include:

(A) the respondent's record of training, length of service, position, job responsibilities, and performance history;

(B) the presence or absence of prior or subsequent violations;

(C) any other relevant circumstances, including aggravating or mitigating factors, such as environmental factors that may have contributed to the respondent's actions;

(D) disciplinary action taken in similar incidents; and

(E) disciplinary action taken by the employer and the employer's recommendation to TJJD regarding certification action.

§349.310 Mandatory Revocation

Effective Date: XXXXXX

(a) TJJD staff shall seek to revoke or to deny the certification of any person who:

(1) engaged in or solicited any sexual conduct with a juvenile;

(2) engaged in a sexually related or otherwise inappropriate relationship with a juvenile, whether or not sexual conduct occurred;

(3) possessed or distributed child pornography; or

(4) was convicted of or placed on deferred adjudication for any offense requiring revocation under Chapter 53, Occupations Code.

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(b) Subsection (a) of this section does not limit the Board's authority to revoke or deny certification in accordance with this chapter.

§349.320 Notice and Service

Effective Date: XXXXXX

(a) Notice and service in a contested case must comply with §2001.052, Government Code, and any relevant administrative rules adopted by SOAH.

(b) Preliminary notice of a certification action must be in writing and personally delivered to the respondent or sent via certified mail, return receipt requested, and regular mail to the respondent at the most recent address on file with TJJD.

(c) A document sent by regular or certified mail is presumed received no later than three days after mailing. Service is presumed effected if the wrapper containing the document is not returned to TJJD.

(d) If notice is not effected at the address on record with TJJD, TJJD may use any reasonable resources to locate an accurate address and may effectuate service there, following this section.

(e) Service may be made by publication or any other alternate legal means, if necessary.

(f) If TJJD seeks to take any certification action, other than written reprimand for a certified officer, TJJD shall provide the respondent with written notice that includes:

(1) the name of the respondent;

(2) the certification number if the respondent is a certified officer;

(3) a short, plain statement of the facts or conduct alleged to warrant certification action;

(4) a statement of the legal authority and jurisdiction under which the action is to be taken;

(5) a reference to the particular sections of statute, administrative rule, or policy that the respondent officer is alleged to have violated;

(6) a description of the certification action TJJD is recommending be imposed; and

(7) an invitation for the respondent to show compliance with all requirements of the law for retention of the certification or eligibility for the certification.

(g) The notice shall also include language in 12-point, boldface type that provides the respondent with notice that:

(1) failure to file a written answer to this notification within 20 days may result in the Texas Juvenile Justice Board taking a default order;

(2) the written answer must include an admission or denial of each and every allegation included in the petition and must include any other matter, whether of law or fact, upon which respondent intends to rely for defense;

(3) a failure to admit or deny each allegation will result in the allegation being deemed true and may result in a default order;

(4) a default order means the Board will find the allegations in the attached petition to be true and will grant the action requested in the attached petition.

§349.330 Answer

Effective Date: XXXXXX

(a) The respondent in a certification action matter has until 20 days after the service of the notice in §349.320 of this chapter to file a written response to TJJD and send it to the address provided in the notice.

(b) The answer must admit or deny each of the allegations in the notice. If the respondent intends to deny only a part of an allegation, the certified officer must specify the portion that is not being challenged and deny only the remainder. Failure to deny an allegation will result in the allegation being deemed true.

DRAFT

(c) If the answer fails to admit or deny each of the allegations and instead only challenges the recommended action, the allegations will be deemed true and the action pursued. The answer must also include any other matter, whether of law or fact, upon which the respondent intends to rely for defense.

§349.340 Default

Effective Date: XXXXXX

(a) If the respondent fails to file a response to the notice or the response fails to comply with the requirements in §349.330, the matter will be considered as a default case.

(b) In a case of default, the respondent will be deemed to have:

(1) admitted the factual allegations in the notice that respondent did not deny;

(2) waived the opportunity to show compliance with the law;

(3) waived the opportunity for a hearing on the matter; and

(4) waived objection to the certification action recommended in the notice.

(c) The executive director may recommend that the Board enter a default order based upon the allegations set out in the notice provided in §349.320 of this chapter and impose the certification action recommended in that notice.

(d) Upon consideration of the case, the Board may:

(1) enter a default order and impose the recommended certification action;

(2) enter a default order and impose a certification action that is less than what was recommended;

(3) refuse to enter a default order and instruct staff to reissue the notice with different allegations and/or different recommended certification action;

(4) instruct staff to dismiss the matter and close the file with no certification action; or

(5) order the matter set for hearing before SOAH.

(e) A motion for rehearing that requests the Board vacate its default order under this section shall be granted if the respondent proves by a preponderance of the evidence that the failure to answer the formal charges was not intentional or the result of conscious indifference but instead was due to accident or mistake, provided that the respondent has a meritorious defense to the factual allegations contained in the formal charges and the granting thereof will not cause delay or otherwise create a hardship for the Board.

§349.350 Agreed Orders

Effective Date: XXXXXX

(a) The Board's policy is to encourage the resolution of certification matters through voluntary settlement processes. Any matter within the Board's jurisdiction may be resolved informally by agreed order after the respondent has provided a response in accordance with §349.330.

(b) Communication during the settlement process may be conducted in any manner, including in-person, electronic, telephonic, video, or written communication.

(c) Participation by the respondent and TJJD in any settlement process is voluntary and may be terminated by either party without prejudicing the right to proceed with a contested case.

(d) An agreed order may contain such terms as the executive director deems reasonable and necessary.

(e) An agreed order may be made at any time, even after formal proceedings have been initiated.

(f) An agreed order is not final until the Board approves it in a Board meeting in compliance with Texas Open Meeting laws.

(g) If the respondent fails to comply with the terms of an agreed order, formal disciplinary proceedings may be initiated or resumed.

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§349.360 State Office of Administrative Hearings

Effective Date: XXXXXX

(a) If a respondent provides a written response as required in §349.330 of this chapter and no agreed order is entered as provided in §349.350 of this chapter, the matter will be set for hearing at SOAH.

(b) Chapter 2001, Government Code, and SOAH administrative rules and procedures, as relevant, apply to all parts of the proceeding.

§349.370 Decision of the Board

Effective Date: XXXXXX

(a) The Board issues orders in compliance with relevant statutes, including Sections 2001.058 and 2001.141, Government Code.

(b) TJJD shall provide notice of the Board's decision in accordance with Section 2001.142, Government Code.

(c) Board orders become final in accordance with timelines established in Section 2001.144, Government Code.

(d) A summary of final board orders in which certification action is taken, including the name of the individual, certification number(s), if any, and action taken, are maintained by TJJD and are public.

(e) Motions for rehearing and appeals of final orders are governed by Chapter 2001, Government Code.

§349.380 Representation

Effective Date: XXXXXX

(a) A respondent may choose to appear with or without an attorney or other authorized representative throughout the certification action process. Respondent is responsible for the costs of representation.

(b) A respondent's attorney of record shall remain the attorney of record unless the attorney submits a formal request to withdraw to the TJJD attorney involved in the matter except that, if SOAH has acquired jurisdiction, the attorney must comply with SOAH's rules to withdraw.

(c) TJJD is represented by an attorney from the Office of General Counsel throughout the certification action process.

§349.390 Costs

Effective Date: XXXXXX

(a) A party who appeals a final decision in a contested case shall pay all of the cost of preparing an original or certified copy of the agency proceeding that is required to be sent to the reviewing court. A charge imposed under this provision is a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

(b) A party who requests that any part of the proceedings be transcribed is responsible for paying the cost of the transcription.

Subchapter D

Confidentiality and Release of Abuse, Neglect, and Exploitation Investigation Records

§349.400 Purpose

Effective Date: XXXXXX

The purpose of this subchapter is to clarify to whom and under what circumstances TJJD may disclose information made confidential under §261.201, Family Code.

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§349.410 Definitions

Effective Date: XXXXXX

The words and terms used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) **Investigation Records**--that portion of the records described in §261.201, Family Code, which were generated by TJJD or submitted to TJJD during the course of an abuse, neglect, or exploitation investigation.

(2) **Parent**--biological or adoptive parent, possessory conservator, temporary or permanent managing conservator, legal guardian, or other legal representative of the juvenile, provided that the requestor's parental or other legal relationship to the juvenile has not been terminated at the time the request for information is made.

(3) **Report**--formal notification to TJJD of an alleged incident of abuse, neglect, or exploitation of a juvenile in a juvenile justice program and/or under the jurisdiction of the juvenile court.

(4) **Reporter**--an individual who makes a report to TJJD alleging the abuse, neglect, or exploitation of a juvenile. If more than one individual makes a report alleging abuse, neglect, or exploitation of the same juvenile, all such individuals shall have the designation of reporter.

§349.420 Confidentiality of and Access to Information

Effective Date:XXXXXX

(a) A report of subjected abuse, neglect, or exploitation and the files, reports, records, communications, audio recordings, videos, and working papers used or developed in an investigation or in providing services as a result of an investigation are confidential and may be disclosed only for purposes consistent with Chapter 261, Family Code, applicable federal or state law, and in accordance with this chapter.

(b) The identity of the person making the report of alleged abuse, neglect, or exploitation is confidential and may be disclosed only:

(1) if waived in writing by the person making the report;

(2) to a law enforcement officer for the purposes of conducting a criminal investigation of the report; or

(3) in accordance with Section 261.201, Family Code.

(c) The identity of all juveniles in the investigation report is confidential and will not be released except as authorized by law.

(d) A copy of the investigation report, appropriately redacted in accordance with law and Section 349.430 of this chapter, may be provided to the following upon request:

(1) juvenile board, chief administrative officer, and facility administrator;

(2) the subject in the report;

(3) the juvenile victim and/or the juvenile's parents;

(4) law enforcement officials for the purpose of investigating allegations of abuse, neglect, or exploitation or criminal activity;

(5) a physician who suspects a juvenile may be the victim of abuse, neglect, or exploitation and requires this information for diagnosis, prognosis, or treatment of the juvenile;

(6) a government official when specifically required by law;

(7) a grand jury;

(8) an attorney, attorney ad litem, guardian ad litem, or court-appointed special advocate of a victim;

(9) a court in a criminal or civil case arising in connection with an investigation of abuse, neglect, or exploitation;

(10) SOAH in a case seeking to impose discipline on a certification or make an individual ineligible for certification;

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(11) the attorney general of the state, or a county or district attorney, when such attorney represents the state in a proceeding in connection with an investigation;

(12) a member of the state legislature when necessary to carry out that member's official duties;

(13) pursuant to a Memorandum of Understanding adopted under Section 810.009, Health and Safety Code; and

(14) any other person or entity, including other licensing agencies, other government agencies, and law enforcement and prosecutors, when, in the discretion of TJJD, such information is necessary to aid in the protection of juveniles.

(e) An individual not otherwise entitled to have access to records under this section, but who participated in, cooperated with, or otherwise contributed to an investigation, may have access only to that portion of the investigation records obtained directly from or pertaining directly to that individual.

(f) TJJD shall withhold the release of any investigation records obtained from another source if the release of those records to the requestor is specifically prohibited under state or federal law. Information that may be withheld under this section includes:

(1) all medical records subject to the Medical Practices Act, Chapter 159, Occupations Code, unless release to the requestor is authorized under that Act;

(2) HIV information unless release to the requestor is authorized under Chapter 81, Health and Safety Code;

(3) offense reports, criminal history information, and/or arrest records obtained from a law enforcement entity, unless their release to the requestor is specifically authorized under state or federal law; and

(4) adult or juvenile probation records, as well as records related to the taking into custody of a juvenile, unless release to the requestor is specifically authorized under state or federal law.

(g) Notwithstanding any other provision in this chapter, TJJD may withhold any information in the investigation records if TJJD determines the release of that information would endanger the life or safety of any individual, including the juvenile, the reporter, and any other person who participates in the investigation. TJJD will keep a record of any information so withheld and will document the specific factual basis for its belief that the release of the information would be likely to endanger the life or safety of an individual.

(h) Information withheld from a requestor under this subsection, as well as the documented basis for withholding information under subsection (g) of this section, may be released only upon a court order.

§349.430 Redaction of Records Prior to Release

Effective Date: XXXXXX

(a) Unless otherwise permitted by law, prior to the release of investigation records, TJJD shall redact the name, address, and any other information in the record that tends to reveal the identity of the reporter.

(b) In the event the reporter also provided a witness statement or other evidence, the reporter's identity as a witness and the information provided in the role of witness will be released. Any information that might identify the individual as the reporter shall be redacted from the record prior to its release.

(c) TJJD may, in its discretion, redact personally identifiable information about any person other than the reporter who is referenced in a report. Identifying information includes names, social security numbers, home and work addresses, telephone numbers, and driver's license numbers.

§349.440 Procedures for Requesting Access to Confidential Information

Effective Date: XXXXXX

(a) Subject to the exception in §349.460 of this chapter, upon written request for copies of records and a determination that the requestor is entitled to have access to those records pursuant to either these rules or a court order issued in accordance with the provisions in §261.201, Family Code, the TJJD will provide copies of the requested records.

(b) Notwithstanding any other provision in this chapter, TJJD may not disclose any information that, if released to the requestor, would interfere with a criminal investigation or prosecution.

(c) Records will not be released until the investigation of an allegation of abuse, neglect, and exploitation is complete unless TJJD determines that release prior to completion of the investigation is necessary to aid in the protection of juveniles.

(d) Notwithstanding any other provision in this chapter, if TJJD has been sued and determines that the release of the requested records might interfere with the defense of that litigation, TJJD may require that a requestor seek access to records under the appropriate rules of civil procedure rather than under this chapter.

§349.450 Public Information

Effective Date: XXXXXX

TJJD shall compile statewide statistics on the incidence of abuse, neglect, and exploitation as required by §261.402, Family Code.

(1) The following statistical data, which contains no case-specific identifiers, is available to the public upon written request:

(A) the number of reported allegations of abuse, neglect, and exploitation;

(B) the classifications assigned to reported allegations of abuse, neglect, and exploitation; and

(C) the dispositions assigned to investigations of reported allegations of abuse, neglect, and exploitation.

(2) Upon written request and when necessary to cross-reference statistical data with individual allegations of abuse, neglect, and exploitation reported from an individual county, or for purposes of compliance with §§51.12, 51.125, or 51.126, Family Code, the department, facility, or juvenile board may be entitled to specific case numbers assigned to allegations of abuse, neglect, and exploitation that were reported by the county requesting the data. A county may only request specific case numbers related to allegations of abuse, neglect, and exploitation pertaining to juvenile justice programs and facilities in its own county.

(3) No exceptions to disclosure under the Public Information Act, Chapter 552, Government Code, are waived by the exchange, disclosure, or dissemination of juvenile justice information under this rule.

§349.460 Video, Audio Recordings, and Photographs

Effective Date:XXXXXX

(a) Individuals authorized under §349.420 of this chapter to have access to investigation records may review, in accordance with this section, any video, audio recordings, or photographs that are a part of those records.

(1) Access will be permitted only in areas designated by TJJD and at a time mutually convenient to the requestor and TJJD.

(2) When viewing or listening to these records, the requestor may not be accompanied by any individual who would not otherwise be entitled to have access to these records, unless the participation of this individual is deemed by TJJD to be appropriate under the circumstances surrounding the request.

(b) Copies of video, audio recordings, and photographs may be provided to the individuals or entities identified in §349.420 of this chapter only if TJJD determines that the provision of a copy is essential to the investigation, prosecution, or resolution of a case.

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Subchapter E
Advisory Council on Juvenile Services

§349.500 Purpose

Effective Date: XXXXXX

(a) The purpose of the Advisory Council on Juvenile Services is to advise the Texas Juvenile Justice Board and Texas Juvenile Justice Department on:

(1) the needs and problems of juvenile boards and juvenile probation departments;

(2) long-range strategic planning;

(3) reviews and proposed revisions to standards affecting juvenile probation programs, services, and facilities;

(4) the potential cost impact on juvenile probation departments of new standards proposed by the Texas Juvenile Justice Board;

(5) recommendations to improve information sharing between agencies that serve children, including agencies serving children involved in both the juvenile justice and child welfare systems; and

(6) any other matter at the request of the Texas Juvenile Justice Board.

(b) The goal of the advisory council is to provide actionable, direct, and inclusive feedback from the local perspective to the Texas Juvenile Justice Board and Texas Juvenile Justice Department so the unified juvenile justice system can collectively develop and improve the state's comprehensive continuum of care for youth; prioritize evidence-based rehabilitative services; and ensure safety for youth, staff, and the public.

(c) The advisory council is composed of 15 members, as specified in Chapter 203, Human Resources Code. Members, excluding ex officio members, serve staggered two-year terms. Texas Juvenile Justice Board-appointed members shall receive training on the advisory council's purpose, role, and procedures within 30 days of their appointment.

(d) If a vacancy occurs on the council during a member's term, the Texas Juvenile Justice Board must appoint a replacement who meets the qualifications of the vacant position to serve for the remainder of the term.

(e) A majority of advisory council members, excluding ex officio members as defined in Chapter 203, Human Resources Code, constitutes a quorum. A quorum must be present to vote on action items that will be submitted to the Texas Juvenile Justice Board for consideration.

(f) Ex officio members have the same rights and privileges as other members, including the right to vote. These members are not counted when determining the number of members who represent a quorum or in determining whether a quorum is present.

(g) An advisory council member shall avoid the appearance of a conflict of interest by not voting or participating in a decision by the council that solely benefits, solely penalizes, or otherwise solely impacts the county or juvenile probation department over which the member has authority.

(h) The advisory council's presiding officer or designee shall periodically update the board on the council's activities, progress on board directives, and issues impacting juvenile probation programs, services, and facilities.

(i) The advisory council is subject to Chapter 552, Government Code, as the act applies to bodies that are solely advisory in nature.

(j) The advisory council is not subject to Chapter 2110, Government Code. The department shall evaluate the continuing need for and recommendations to improve the council during the rule review process established under Chapter 2001, Government Code.

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§349.550 Removal of Members

Effective Date: XXXXXX

It is a ground for removal from the council if a member is absent from more than half of the regularly scheduled meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the council.

Subchapter F

Data

§349.600 Access to Data Collected

Effective Date: XXXXXX

For planning and research purposes, all juvenile probation departments participating in the implementation of the state's regionalization plan developed under Chapter 203, Human Resources Code, are authorized to access data that any participating departments have submitted through the juvenile case management system.

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Title 37 Public Safety and Corrections
Part 11 Texas Juvenile Justice Department
Chapter 349 General Administrative Standards

Subchapter A. Definitions

§349.100 Definitions

Subchapter B. Waiver

§349.200 Waiver or Variance

Subchapter C. Disciplinary Actions and Hearings

§349.300 Requests for Disciplinary Action
§349.305 Commission Initiated Disciplinary Action
§349.307 Disciplinary Sanctions
§349.308 Disciplinary Guidelines
§349.310 Effect of Request for Disciplinary Action
§349.311 Disciplinary Sanctions
§349.315 Computation of Time
§349.320 Notice and Service
§349.325 Representation
§349.330 Preliminary Notice to Certified Officer in Disciplinary Matters
§349.335 Commencement of Disciplinary Proceedings
§349.340 Certified Officer's Answer and Consequence of Failure to File an Answer to Formal Charges (Default)
§349.345 Discovery
§349.355 Subpoenas
§349.360 Informal Proceedings
§349.365 Agreed Dispositions
§349.370 Formal Disciplinary Proceedings
§349.375 Decision of the Board
§349.380 Judicial Review
§349.385 Mandatory Suspension for Failure to Pay Child Support

Subchapter D. Complaints against Juvenile Boards

§349.400 Complaint Process
§349.410 Administrative Review of Investigation Findings

Subchapter E. Confidentiality and Release of Abuse, Exploitation and Neglect Investigation Records

§349.500 Purpose
§349.510 Definitions
§349.520 Access to Confidential Information
§349.530 Redaction of Records Prior to Release
§349.540 Procedures for Requesting Access to Confidential Information
§349.550 Public Information
§349.560 Videotapes, Audiotapes and Photographs
§349.570 Charges for Copies of Records

Subchapter F. Advisory Council on Juvenile Services

§349.600 Purpose
§349.650 Removal of Members

Subchapter G. Data

§349.700 Access to Data Collected

PDF

Subchapter A
Definitions

§349.100 Definitions

Effective Date: 5/1/10

The words and terms used in this chapter shall have the following definitions unless the context clearly indicates otherwise.

(1) **Address of record**--A Certified Officer's most recent address of record with the Texas Juvenile Probation Commission.

(2) **Administrative Designee**--The chief administrative officer or facility administrator who was directly responsible for the policies and procedures that resulted in an incident of abuse, neglect or exploitation.

(3) **Administrative review**--A review by a Commission-appointed hearing examiner of the case that formed the basis for assigning the role of Designated Perpetrator or Administrative Designee to a Certified Officer.

(4) **Alleged Victim**--A juvenile under the jurisdiction of the juvenile court or participating in a program operated under the authority of the governing board or juvenile board who is alleged to be a victim of abuse, neglect or exploitation.

(5) **Alleged Perpetrator**--A person alleged as being responsible for the abuse, neglect or exploitation of a juvenile through the person's actions or failure to act.

(6) **APA**--The Texas Administrative Procedure Act, Chapter 2001 of the Texas Government Code Annotated.

(7) **Applicant**--An individual applying for certification or recertification as a juvenile supervision or probation officer.

(8) **Attorney of record**--A person licensed to practice law in Texas who has provided the Commission with written notice of representation.

(9) **Authorized representative**--An attorney authorized to practice law in the State of Texas or, if authorized by applicable law, a person designated by a party to represent the party.

(10) **Board**--The governing board of the Texas Juvenile Probation Commission.

(11) **Certified Officer**--A juvenile supervision or probation officer who has satisfied the minimum certification requirements and is currently certified by the Commission.

(12) **Chief Administrative Officer**--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department, including a juvenile probation department with multi-county jurisdiction.

(13) **Code of Ethics**--The Certified Officer Code of Ethics contained in Chapter 345 of this title.

(14) **Commission**--The Texas Juvenile Probation Commission.

(15) **Default proceeding**--The issuance of a proposal for decision or an order in which the factual allegations against the Certified Officer in a contested case are deemed admitted as true upon the Certified Officer's failure to appear at a properly noticed hearing or failure to file a response to the formal charges.

(16) **Designated Perpetrator**--The individual responsible for the abuse, neglect or exploitation of a juvenile who has not exhausted the right to administrative review or whose right to administrative review has not expired.

(17) **Disciplinary Action**--Commission action that could adversely affect the certification of a Certified Officer.

(18) **Disciplinary Proceedings**--Initiation and pursuit by the Commission of proceedings that could result in disciplinary action.

(19) **Executive Director**--The Executive Director of the Texas Juvenile Probation Commission.

(20) **Facility Administrator**--An individual designated by the chief administrative officer or governing board of a juvenile justice facility as the on-site program director or superintendent of a secure facility.

(21) **Formal Charges**--Formal pleading by the Commission alleging the basis for disciplinary action against a Certified Officer.

(22) **Hearing**--An adjudicative proceeding at the State Office of Administrative Hearings.

(23) **Judge**--A State Office of Administrative Hearings administrative law judge who presides over an administrative hearing held under Chapter 2001 of the Texas Government Code Annotated.

(24) **Juvenile Board**--A county's governing board created under Chapter 152 of the Texas Human Resources Code.

(25) **Juvenile Probation Department** ("department")--A county or district level governmental unit established under the authority of a juvenile board to facilitate the execution of the responsibilities of a juvenile probation department enumerated in Title 3 of the Texas Family Code and Chapter 141 of the Texas Human Resources Code.

(26) **Juvenile Justice Facility** ("facility")--A facility, including its premises and all affiliated sites, whether contiguous or detached, operated wholly or partly by or under the authority of the governing board, juvenile board or by a private vendor under a contract with the governing board, juvenile board or governmental unit that serves juveniles under juvenile court jurisdiction. The term includes:

(A) A public or private juvenile pre-adjudication secure detention facility, including a short-term detention facility (i.e., holdover) required to be certified in accordance with §51.12 of the Texas Family Code;

(B) A public or private juvenile post-adjudication secure correctional facility required to be certified in accordance with §51.125 of the Texas Family Code, except for a facility operated solely for children committed to the Texas Youth Commission; and

(C) A public or private non-secure juvenile post-adjudication residential treatment facility housing juveniles under juvenile court jurisdiction.

(27) **Juvenile Justice Program** ("program")--A program or department operated wholly or partly by the governing board, juvenile board or by a private vendor under a contract with the governing board, or juvenile board that serves juveniles under juvenile court jurisdiction or juvenile board jurisdiction. The term includes a juvenile justice alternative education program and a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court or juvenile board jurisdiction and a juvenile probation department.

(28) **Juvenile Probation Officer**--An individual whose primary responsibility and essential job function is to provide juvenile probation services and supervision duties authorized under statutory and agency administrative law that can only be performed by a person with an active Commission-issued certification.

(29) **Juvenile Supervision Officer**--An individual whose primary responsibility and essential job function is the supervision of juveniles in a juvenile justice program or juvenile justice facility.

(30) **Notice of Disposition**--The Commission's notification of disposition sent to appropriate parties upon conclusion of an abuse, neglect or exploitation investigation.

(31) **SOAH**--The State Office of Administrative Hearings.

(32) **Sustained Perpetrator**--A Designated Perpetrator as defined in paragraph (16) of this section who has already been offered the right to an administrative review and the Designated Perpetrator's right to an administrative review has expired or the disposition was upheld.

Subchapter B
Waiver

§349.200 Waiver or Variance

Effective Date: 5/1/10

(a) **Waiver.**

(1) **Who May Request.**

Unless expressly prohibited by another standard, the juvenile board, chief administrative officer or facility administrator may submit a request for waiver of any standard adopted by the Commission. If the chief administrative officer or facility administrator submits a request for waiver, the chief administrative officer or facility administrator shall notify in writing the juvenile board simultaneous with submission of the request to the Commission.

(2) **Contents of Request.**

The written request for waiver shall be submitted on a form provided by the Commission and shall:

(A) explain why compliance with standards cannot be achieved immediately;

(B) explain the impact the waiver would have on compliance with other standards;

(C) explain how substantial compliance with the intent and purpose of the standard for which a waiver is requested will be achieved through alternative methods or means; and

(D) explain how the health and safety of juveniles will be maintained during the duration of the waiver.

(3) **Length of Waiver.**

Waivers granted by the Commission under this section shall not exceed one year. The juvenile board, chief administrative officer or facility administrator may request one subsequent waiver extension which, if approved, shall not exceed one year.

(4) **Review of Request.**

In the event a request for waiver is denied, the juvenile board or chief administrative officer may request a review by the Board. The review of the waiver request shall occur at the next Board meeting where waivers will be considered, provided that there is adequate time to place the item on the Board's agenda.

(b) **Variance.**

(1) **Who May Request.**

Unless expressly prohibited by another standard, the juvenile board may make an application for a variance of any standard or standards adopted by the Commission.

(2) **Contents of Request.**

The written request for variance shall be submitted on a form provided by the Commission and shall:

(A) explain why compliance with standards cannot be achieved;

(B) explain the impact the variance would have on compliance with other standards;

(C) explain how substantial compliance with the intent and purpose of the standard for which a variance is requested would be achieved through alternative methods or means;

(D) explain how the health and safety of juveniles will be maintained if the variance is granted;

(E) explain how compliance with the standard in question will result in undue hardship on the requesting entity; and

(F) explain how issuing the variance would not put the juvenile board, department, program or facility in violation of any state or federal law.

(3) The Board may grant a variance from a standard if it makes affirmative findings of fact with regard to the factors specified in paragraph (2) of this subsection.

(4) The Board shall grant or deny the variance at the next Board meeting where variances will be considered, provided that there is adequate time to place the item on the Board's agenda.

Subchapter C
Disciplinary Actions and Hearings

§349.300 Requests for Disciplinary Action

Effective Date: 5/1/10

(a) **Department, Facility or Juvenile Board Requests.**

(1) **Code of Ethics Violations.**

The chief administrative officer, facility administrator or juvenile board shall forward a copy of an internal investigation based upon a code of ethics violation to the Commission. The internal investigation shall serve as a request for disciplinary action. At the time the chief administrative officer or facility administrator makes the request for disciplinary action, the chief administrative officer or facility administrator shall simultaneously notify in writing the juvenile board.

(2) **Criminal Conduct.**

The chief administrative officer, facility administrator or the juvenile board shall submit a written request for disciplinary action to the Commission within 10 working days after obtaining notice that a Certified Officer has been convicted of or received deferred adjudication for any offense listed under §344.400 of this title. A request for waiver or variance under §349.200 of this chapter may not be requested for this section unless the certified officer, chief administrative officer or facility administrator received a pardon.

(b) **Public Requests.**

(1) **Code of Ethics Violations.**

In the event the Commission receives notice in any manner from a member of the public that a Certified Officer has violated the code of ethics, the Commission shall notify in writing the local juvenile board and, provided the alleged violation does not involve the chief administrative officer or facility administrator, shall also notify in writing the chief administrative officer or facility administrator. The Commission shall provide this notice to the chief administrative officer or facility

administrator no later than three (3) working days from receipt of the report of an alleged violation. Upon receipt of notification from the Commission, the chief administrative officer, facility administrator or the juvenile board shall conduct an internal investigation, which shall be forwarded to the Commission upon completion.

(2) **Criminal Conduct.**

In the event the Commission receives notice from a member of the public that a Certified Officer has been convicted of or received deferred adjudication for any offense listed under §344.400 of this title, the Commission shall notify in writing the local juvenile board and, provided the alleged violation does not involve the chief administrative officer or facility administrator, shall also notify in writing the chief administrative officer or facility administrator. Upon receiving notice from the Commission, the facility administrator, chief administrative officer or juvenile board shall investigate and, if disqualifying criminal history exists, shall request disciplinary action in accordance with subsection (a)(2) of this section.

§349.305 Commission Initiated Disciplinary Action

Effective Date: 5/1/10

The Commission may initiate disciplinary action when:

(1) the Commission discovers through a monitoring visit, compliance audit or as a result of receiving notice in any other manner that an individual currently certified by the Commission does not meet the requirements under §344.810 of this title;

(2) the Commission confirms that a Certified Officer has committed a Code of Ethics violation; or

(3) the Commission confirms that abuse, neglect or exploitation has occurred in a juvenile justice department, program or facility.

§349.307 Disciplinary Sanctions

Effective Date: 1/1/11

(a) Under the authority of §141.064 of the Texas Human Resources Code, the Commission may, upon a determination that censure is warranted, impose one of the following actions for a violation of law or a Commission administrative rule:

(1) revocation of an officer's certification;

(2) suspension of an officer's certification; or

(3) reprimand of a certified officer.

(b) A person is entitled to a hearing if revocation or suspension of an officer's certification is recommended by the Commission.

§349.308 Disciplinary Guidelines

Effective Date: 1/1/11

(a) The purpose of these guidelines is to:

(1) provide a framework for analysis by staff members, administrative law judges, and the Board in the making of recommendations in disciplinary matters;

(2) promote consistency in the exercise of sound discretion by Board members in certification and disciplinary matters; and

(3) provide guidance in the resolution of potentially contested matters.

(b) The following factors may be considered in seeking, proposing, or making a decision under this chapter:

(1) the seriousness of the violation, which may include:

(A) whether the conduct was in violation of a law;

(B) the nature and extent of the harm caused; and/or

(C) the frequency of and time period covered by the violation(s).

(2) the nature of the violation, which may include:

(A) the relationship between the certified officer and the person harmed;

(B) the vulnerability of the person harmed; and/or

(C) the culpability of the certified officer, such as whether the violation:

(i) was intentional or premeditated;

(ii) due to blatant disregard or gross neglect;

(iii) resulted from simple error or negligence; and/or

(iv) evidences lack of integrity, trustworthiness, or honesty.

(D) the degree to which actions showed lack of good judgment.

(3) the degree of personal accountability taken by the certified officer, which may include:

(A) admission of wrongdoing and acceptance of responsibility;

(B) showing appropriate remorse or concern;

(C) efforts to ameliorate the harm or make restitution;

(D) cooperation with an investigation or request for information; and/or

(E) attempts to deny or conceal the misconduct or falsify documents.

(4) Any other relevant factors, which may include:

(A) the certified officer's record of training, length of service, position, job responsibilities, and performance history;

(B) the presence or absence of prior or subsequent violations;

(C) any other relevant circumstances, including aggravating or mitigating factors, such as environmental factors that may have contributed to the officer's actions;

(D) disciplinary action taken in similar incidents;

(E) disciplinary action taken by the employer and the employer's recommendation to the commission; and/or

(F) any other matter justice may require.

§349.310 Effect of Request for Disciplinary Action

Effective Date: 5/1/10

When the Commission receives a request for disciplinary action under §349.300 of this chapter or when the Commission initiates a disciplinary action under §349.305 of this chapter, the Commission shall give the Certified Officer subject to the disciplinary action preliminary notice in accordance with §349.330 of this chapter.

§349.311 Disciplinary Sanctions

Effective Date: 1/1/11

(a) The Board shall permanently revoke the certification of any officer, or permanently deny the application of a person if, after a contested case hearing, it is determined that the officer or applicant:

(1) engaged in or solicited any sexual contact or a romantic relationship with a juvenile;

(2) possessed or distributed child pornography;

(3) is convicted of, or placed on deferred adjudication for, a felony level offense against a person or an offense that requires registration as a sex offender under Chapter 62 of the Code of Criminal Procedure; or

(4) is convicted of, or placed on deferred adjudication for, a felony level violation of the controlled substances provisions of the Texas Health and Safety Code, committed in the workplace or while on duty as a certified officer.

(b) The rules enumerated above are not intended to be exhaustive criteria. The Board may, at its discretion, recommend revocation of the certification of any officer who violates applicable laws or Commission rules or standards.

§349.315 Computation of Time

Effective Date: 5/1/10

(a) Unless otherwise required by law, in computing any period of time prescribed or allowed by these sections, the date of the act, event or default after which the designated period of time begins to run is not to be included, and the last day of the period is to be included, unless it is a Saturday, Sunday or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.

(b) When this chapter specifies a deadline or set a number of days for filing documents or taking other actions, the computation of time shall be by calendar days rather than business days unless otherwise provided for by this chapter, applicable law, SOAH rules or judge order. However, if the period specified is five days or less, the intervening Saturdays, Sundays and legal holidays are not counted.

(c) When by this chapter, SOAH rules or judge order, an act is required or allowed to be done at or within a specified time period, the Executive Director, Board or judge (if SOAH has acquired jurisdiction) may, for good cause shown, order the period extended if application is made before the expiration of the specified time period. In addition, where good cause is shown for the failure to act within the specified time period, the Executive Director, Board or judge may permit the act to be done after the expiration of the specified period.

§349.320 Notice and Service

Effective Date: 5/1/10

(a) Notice must be in writing and addressed to the Certified Officer. Notice to a Certified Officer is effective and service is complete when sent by certified mail, return receipt requested, to the Certified Officer's most recent address of record with the Commission.

(b) If a document was sent by regular or certified mail, it will be presumed received no later than three days after mailing. Service shall be presumed effected if the wrapper containing the document is not returned to the Commission.

(c) Notice of a hearing in a contested case must comply with §2001.052 (APA) of the Texas Government Code. Service is complete when made pursuant to 1 TAC §155.103 (SOAH Procedural Rules).

§349.325 Representation

Effective Date: 5/1/10

(a) A person may represent himself/herself or may appear by authorized representative.

(b) A party's attorney of record shall remain the attorney of record in the absence of a formal request to withdraw and, if SOAH has acquired jurisdiction, an order of the judge approving the request.

§349.330 Preliminary Notice to Certified Officer in Disciplinary Matters

Effective Date: 5/1/10

(a) Except for proceedings conducted under the authority of §141.064(c) of the Texas Human Resources Code or unless it would jeopardize an investigation, prior to commencing disciplinary proceedings under §349.335 of this chapter, the Commission shall serve the Certified Officer with written notice in accordance with subsection §2001.054(c) of the Texas Government Code.

(b) Such notice shall contain a statement of the facts or conduct alleged to warrant an adverse certification action. The notice shall invite the Certified Officer to show compliance with all requirements of the law for retention of the certification.

(c) The Certified Officer shall file a written response within 20 days after service of the notice specified in subsection (a) of this section. Failure to file a written response may result in a default order, as provided in §349.340 and §349.370 of this chapter.

§349.335 Commencement of Disciplinary Proceedings

Effective Date: 5/1/10

(a) If a disciplinary matter is not resolved informally, the Commission may commence disciplinary proceedings by filing formal charges.

(b) The formal charges shall contain the following information:

(1) the name of the Certified Officer and his or her certification number;

(2) a statement alleging with reasonable certainty the specific act or acts relied upon by the Commission to constitute a violation of a specific statute or Commission rule; and

(3) a reference to the section of the Commission rules that the Certified Officer is alleged to have violated.

(c) When formal charges are filed, the Commission shall serve the Certified Officer with a copy of the formal charges. The notice shall state that the Certified Officer shall file a written answer to the formal charges that meets the requirements of §349.340 and §349.370 of this chapter.

(d) The Commission may amend the formal charges at any time as permitted by the Texas Administrative Procedure Act, Chapter 2001 of the Texas Government Code Annotated. A copy of any formal amended charges shall be served on the Certified Officer.

(e) Formal charges may be resolved by agreement of the parties at any time as provided by the Texas Administrative Procedure Act, Chapter 2001 of the Texas Government Code Annotated.

§349.340 Certified Officer's Answer and Consequence of Failure to File an Answer to Formal Charges (Default)

Effective Date: 5/1/10

(a) The Certified Officer in a disciplinary matter shall file an answer to the formal charges and to every amendment thereof.

(b) The answer shall admit or deny each of the allegations in the formal charges or amendment thereof. If the Certified Officer intends to deny only a part of an allegation, the Certified Officer shall specify the portion that is true and shall deny only the remainder. The answer shall also include any other matter, whether of law or fact, upon which the Certified Officer intends to rely for his or her defense.

(c) If the Certified Officer fails to file a response to the formal charges, the matter will be considered as a default case.

(d) In a case of default, the Certified Officer will be deemed to have:

(1) admitted all of the factual allegations in the formal charges;

(2) waived the opportunity to show compliance with the law;

(3) waived the opportunity for a hearing on the formal charges; and

(4) waived objection to the sanction recommended in the formal charges.

(e) The Executive Director may recommend that the Board enter a default order, based upon the allegations set out in the formal charges, that adopts the sanction recommended in the formal charges.

(f) Upon consideration of the case, the Board may:

(1) enter a default order under §2001.056 of the APA; or

(2) order the matter to be set for a hearing at SOAH.

(g) The Certified Officer may amend his or her answer at any time permitted by the APA or SOAH rules.

(h) The first answer filed shall be entitled "answer," the first amended answer filed shall be entitled "first amended answer," and so forth.

(i) Any default judgment granted under this section will be entered on the basis of the factual allegations in the formal charges contained in the notice, and upon proof of proper notice to the Certified Officer. For purposes of this section, proper notice means notice sufficient to meet the provisions in §2001.054 of the Texas Government Code and §349.320 of this chapter. Such notice shall also include the following language in capital letters in 12 point boldface type: FAILURE TO FILE A WRITTEN ANSWER TO THE FORMAL CHARGES, EITHER PERSONALLY OR BY AUTHORIZED REPRESENTATIVE, MAY RESULT IN THE ALLEGATIONS CONTAINED IN THE FORMAL CHARGES BEING ADMITTED AS TRUE AND THE RELIEF SOUGHT BY THE COMMISSION IN THE NOTICE OF HEARING MAY BE GRANTED BY DEFAULT.

(j) A motion for rehearing that requests the Board vacate its default order under this section shall be granted if the Certified Officer proves by a preponderance of the evidence that the failure to answer the formal charges was not intentional or the result of conscious indifference, but due to accident or mistake, provided that the Certified Officer has a meritorious defense to the factual allegations contained in the formal charges and the granting thereof will not cause delay or otherwise create a hardship for the Board.

§349.345 Discovery

Effective Date: 5/1/10

(a) Parties to administrative proceedings shall have reasonable opportunity and methods of discovery described in the Texas Administrative Procedure Act (APA), Chapter 2001 of the Texas Government Code Annotated, and SOAH rule, 1 TAC §155.251. Matters subject to discovery are limited to those that are relevant and material to issues within the Board's authority. Subject to prior agreement of parties, responses to discovery requests, except for notices of depositions, shall be made within 20 days of receipt of the request.

(b) Parties may obtain discovery by: request for disclosure, as described by rule 194 of the Texas Rule of Civil Procedure; oral or written depositions; written interrogatories to a party; requests of a party for admission of facts and the genuineness of identity of documents and things; requests and motions for production, examination and copying of documents and other tangible materials; motions for mental or physical examinations; and requests and motions for entry upon and examination of personal and/or real property.

(c) Parties are encouraged to make stipulations of evidence where possible and agree to methods and time lines to expedite discovery and conserve time and resources.

§349.355 Subpoenas

Effective Date: 5/1/10

(a) Upon the written request of any party, the Board may issue a subpoena to require the attendance of witnesses or the production of books, records, papers or other objects as may be necessary and proper for the purposes of the proceedings.

(b) If the subpoena is for the attendance of a witness, the written request shall contain the name, address and title, if any, of the witness and the date upon which and the location at which the attendance of the witness is sought. If the subpoena is for the production of books, records, writings or other tangible items, the written request shall contain a description of the item sought; the name, address and title, if any, of

the person or entity who has custody or control over the items, and the date on which and the location at which the items are sought to be produced. Each request, whether for a witness or for production of items, shall contain a statement of the reasons why the subpoena should be issued.

(c) Upon a finding that a party has shown good cause for the issuance of the subpoena, the Board shall issue the subpoena in the form described in §2001.089 of the Texas Government Code.

(d) Notwithstanding any other provisions of this chapter, the Board may issue a subpoena prior to the filing of formal charges under §349.335 of this chapter, if, in the opinion of the Board, such a subpoena is necessary to preserve evidence and testimony to investigate any potential violation or lack of compliance with Commission rules and regulations, or orders of the Board. The subpoena may be to compel the attendance of any person to appear for the purposes of giving sworn testimony and/or to compel the production of books, records, papers or other objects.

§349.360 Informal Proceedings

Effective Date: 5/1/10

(a) The Board's policy is to encourage the resolution and early settlement of internal and external disputes, including contested cases, through voluntary settlement processes such as informal proceedings or alternative dispute resolution. Any matter within the Board's jurisdiction may be resolved informally by stipulation, agreed settlement, agreed order, dismissal or default.

(b) In disciplinary matters, the Commission shall offer the Certified Officer the opportunity to be heard. The offer may be made at any time prior to disposition and may be included on any notice required by statute or this chapter, or otherwise.

(c) Informal proceedings may be conducted in person, by authorized representative, or by electronic, telephonic or written communication.

(d) Informal proceedings shall be conducted pursuant to the following procedural standards:

(1) the Certified Officer shall have a right to be represented by an attorney of record or authorized representative. At any time, should the Certified Officer choose to obtain representation by an attorney or authorized representative and advises staff of such choice, the conference will be discontinued;

(2) the Certified Officer will be expected to answer questions concerning the allegations contained in the preliminary notice or formal charges, but may decline to answer any questions posed during the conference;

(3) participation by the Certified Officer and Commission staff in the conference is voluntary and may be terminated by either party without prejudicing the right to proceed with a contested case. The Certified Officer will be expected to cooperate fully with the Commission staff to ensure that the Commission has all pertinent information relating to the complaint or formal charges against the Certified Officer; and

(4) although, a verbatim transcript is not being kept of the informal conference, party admissions and outline notes may be used at a formal hearing if the matter is ultimately docketed as a formal proceeding at SOAH.

(e) Informal conferences may be conducted at any time by the Executive Director or designee.

(f) The Commission's General Counsel or designee shall participate in informal proceedings.

(g) Disposition of matters considered informally may be made at any time in an agreed order containing such terms as the Executive Director may deem reasonable and necessary. Except as to matters delegated to the Executive Director for ratification, said agreed order shall not be final and effective until the Board votes to accept the proposed disposition.

(h) In the event the Certified Officer fails to comply with the terms of the agreed order, formal disciplinary proceedings will be initiated or resumed.

(i) If disciplinary matters are not resolved informally, formal charges may be filed in accordance with §349.335 of this chapter and the case may be set for a hearing before SOAH in accordance with §349.370 of this chapter.

(j) Pre-docketing conferences may be conducted by the Executive Director or designee prior to SOAH acquiring jurisdiction over a contested case. The Executive Director or designee, unilaterally or at the request of any party, may direct the parties or their attorneys to appear before the Executive Director or designee at a specified time and place for a conference prior to the hearing for the purpose of:

(1) clarifying and simplifying the issues;

(2) considering the making of admissions or stipulations of fact or law;

(3) reviewing the procedure governing the hearing;

(4) limiting the number of witnesses whose testimony will be repetitious or duplicative; and

(5) performing any act that may simplify the proceedings and disposing of the matters in controversy, including settling all or part of the issues in dispute pursuant to this section and §349.365 of this chapter.

§349.365 Agreed Dispositions

Effective Date: 5/1/10

Informal proceedings, complaints and formal charges may be resolved by stipulation, agreed settlement, agreed order or dismissal pursuant to §2001.056 of the Texas Government Code Annotated.

§349.370 Formal Disciplinary Proceedings

Effective Date: 5/1/10

In the event a disciplinary action is not resolved informally, formal disciplinary proceedings may be initiated and pursued by the Commission in accordance with the following provisions.

(1) Formal administrative hearings in contested cases shall be conducted in accordance with the APA and SOAH rules. Jurisdiction over the case is acquired by SOAH when Commission staff or the Certified Officer files a Request to Docket Case Form accompanied by legible copies of all pertinent documents, including but not limited to the complaint, petition, application or other document describing the agency action giving rise to a contested case.

(2) When a case has been docketed before SOAH, the party requesting docketing shall provide a notice of hearing to all parties in accordance with §2001.052 of the Texas Government Code and applicable SOAH rules.

(3) The certified officer shall enter an appearance by filing a written answer or other responsive pleading with SOAH, along with a copy to Commission staff, within 20 days of the date on which the notice of hearing is served on the Certified Officer.

(4) For purposes of this section, an entry of an appearance shall mean the filing of a written answer or other responsive pleading.

(5) The failure of the Certified Officer to timely enter an appearance as provided in this section shall entitle Commission staff to a continuance at the time of the hearing in the contested case for such reasonable period of time as determined by the judge.

(6) The notice of hearing provided to a Certified Officer for a contested case shall include the following language in capital letters in 12-point bold face type: FAILURE TO ENTER AN APPEARANCE BY FILING A WRITTEN ANSWER OR OTHER RESPONSIVE PLEADING TO THE FORMAL CHARGES WITHIN 20 DAYS OF THE DATE THIS NOTICE WAS MAILED, SHALL ENTITLE COMMISSION STAFF TO A CONTINUANCE AT THE TIME OF THE HEARING.

(7) If a Certified Officer fails to appear in person or by authorized representative on the day and at the time set for hearing in a contested case, regardless of whether an appearance has been entered, the judge, pursuant to SOAH's rules, shall, upon adequate proof that proper notice under the APA and SOAH rules was served upon the defaulting party, enter a default judgment in the matter

adverse to the Certified Officer. Such notice shall have included in 12-point, boldface type, the fact that upon failure of the party to appear at the hearing, the factual allegations in the notice may be deemed admitted as true and the relief sought in the proposed recommendation by the staff may be granted by default.

(8) Any default judgment granted under this section will be entered on the basis of the factual allegations in the formal charges contained in the notice of hearing, and upon proof of proper notice to the Certified Officer. For purposes of this section, proper notice means notice sufficient to meet the provisions in §§2001.051, 2001.052 and 2001.054 of the Texas Government Code and §349.320 of this chapter. Such notice of hearing shall also include the following language in capital letters in 12-point boldface type: FAILURE TO APPEAR AT THE HEARING IN PERSON OR BY AUTHORIZED REPRESENTATIVE, REGARDLESS OF WHETHER AN APPEARANCE HAS BEEN ENTERED, MAY RESULT IN THE ALLEGATIONS CONTAINED IN THE FORMAL CHARGES BEING ADMITTED AS TRUE AND THE PROPOSED RECOMMENDATION OF THE COMMISSION MAY BE GRANTED BY DEFAULT.

(9) A party may file a motion no later than 10 days after the hearing to set aside a default and to reopen the record if a proposal for decision or a final decision has not been issued.

(A) The judge may grant the motion, set aside the default and reopen the hearing for good cause shown.

(B) If the motion to set aside the default judgment is granted, it shall be the responsibility of the parties to either settle the matter informally or to request a rehearing on the merits. Whenever possible, the rehearing of the case shall occur with the judge that heard the default matter.

(10) Due to the often voluminous nature of the records properly received into evidence by the judge, the party introducing such documentary evidence may paginate each exhibit or flag pertinent pages in each exhibit in order to expedite the hearing and the decision-making process.

(11) The schedule of disciplinary sanctions set out in §141.064 of the Texas Human Resources Code is adopted by the Board and the judge shall use such sanctions, as well as any sanctions adopted by Board rule.

(12) Within a reasonable time after the conclusion of the hearing, the judge shall prepare and serve on the parties a proposal for decision that includes the judge's findings of fact and conclusions of law and a proposed order recommending a sanction to be imposed, if any.

(13) Each hearing may be recorded by a court reporter in accordance with the APA and SOAH rules. The cost of the transcription of the statement of facts shall be borne by the party requesting the transcript and said request shall be sent directly to the court reporter and the requesting party shall notify the other party in writing of the request.

(14) A party who appeals a final decision of the Board shall pay all costs of preparation of the original and certified copy of the record of the proceeding that is required to be transmitted to the reviewing court.

(A) The record in a contested case shall consist of the following:

(i) all pleadings, motions, intermediate rulings;

(ii) all evidence received or considered by the judge;

(iii) a statement of the matters officially noticed;

(iv) questions and offers of proof, objections and rulings thereon;

(v) proposed findings and exceptions;

(vi) any decision, opinion or report by the judge presiding at the hearing;

(vii) all Commission correspondence submitted to the judge in connection with his or her consideration of the case; and

(viii) the transcribed statement of facts (question and answer testimony) from the hearing unless the parties have stipulated to all or part of the statement of facts.

(B) Calculation of costs for preparation of the record shall be governed by the same procedure utilized by the Commission in preparing documents responsive to open records requests under the Public Information Act. These costs shall include, but not be limited to, the cost of research, document retrieval, copying and labor.

(15) **Notice of Order.**

The Commission shall notify by mail a Certified Officer whose conduct was the subject of a disciplinary hearing of the final order. The notice of order shall include:

(A) the acts or omissions, if any, by the officer that violated the code of ethics;

(B) a statement of the evidence relied upon;

(C) the identification of each section of the code of ethics that was violated by the acts or omissions of the officer;

(D) the Board's disposition concerning the officer's certification; and

(E) notification of the individual's right to rehearing and appeal.

§349.375 Decision of the Board

Effective Date: 5/1/10

(a) Except as to those matters expressly delegated to the Executive Director for ratification, the Board may make final decisions in all matters relating to disciplinary action.

(b) Any party of record who is adversely affected by the proposal for decision of the judge shall have the opportunity to file exceptions and a brief to the proposal for decision within 15 days after the date of service of the proposal for decision. A reply to the exceptions may be filed by the other party within 15 days of the filing of the exceptions. Exceptions and replies shall be filed with the judge and copies served on the opposing party. The proposal for decision may be amended by the judge pursuant to the exceptions, replies or briefs submitted by the parties without again being served on the parties.

(c) The proposal for decision may be acted on by the Board after the expiration of 10 days from the date of filing of replies to exceptions to the proposal for decision or upon the day following the day exceptions or replies to exceptions are due if no such exceptions or replies are filed.

(d) It is the policy of the Board to change a finding of fact or conclusion of law in a proposal for decision or to vacate or modify the proposed order of a judge when the Board determines that:

(1) the judge did not properly apply or interpret applicable law, agency rules, written policies provided by staff or prior administrative decisions;

(2) a prior administrative decision on which the judge relied is incorrect or should be changed; or

(3) a technical error in a finding of fact should be changed.

(e) If the Board modifies, amends or changes the recommended order of the judge, an order shall be prepared reflecting the Board's changes as stated in the record of the meeting and stating the specific reason and legal basis for the changes made under subsection (d) of this section.

(f) An order of the Board shall be in writing and may be signed by the Executive Director on behalf of the Board.

(g) A copy of the order shall be mailed to the Certified Officer at the most recent address of record with the Commission.

(h) The decision of the Board is immediate, final and appealable upon the signing of the written order by the Executive Director on behalf of the Board where:

(1) the Board finds and states in the order that an imminent peril to the public health, safety or welfare requires immediate effect of the order; and

(2) the order states it is final and effective on the date rendered.

(i) A motion for rehearing shall not be a prerequisite for appeal of the decision where the order of the Board contains the finding set forth in subsection (h) of this section.

(j) Motions for rehearing are governed by §2001.145 of the Texas Government Code Annotated.

§349.380 Judicial Review

Effective Date: 5/1/10

A Certified Officer who has exhausted all administrative remedies within the Commission is entitled to judicial review as provided by §2001.171 of the Texas Government Code.

§349.385 Mandatory Suspension for Failure to Pay Child Support

Effective Date: 5/1/10

(a) Upon receipt of an order suspending certification for failure to pay child support issued under §232.008 or §232.009 of the Texas Family Code, the Commission shall suspend the Certified Officer's certification.

(b) **Notice of Suspension.**

(1) The Commission shall notify the Certified Officer subject to a suspension order received under subsection (a) of this section that the agency has formally suspended the individual's certification.

(2) The notice shall also instruct the individual that he or she may not perform the duties of a Certified Officer while the suspension order is in effect.

(3) The Commission shall also notify the chief administrative officer or facility administrator and the juvenile board of the employing department, facility or program of the suspension.

(c) **Length of Suspension.** A certification suspension shall remain in effect until the Commission receives an order issued under §232.013 of the Texas Family Code that either vacates or stays the suspension.

(d) An individual subject to a suspension order issued under subsection (a) of this section may not be hired, certified or recertified while the suspension order remains in effect.

(e) A request for waiver or variance under §349.200 of this chapter may not be requested for this standard.

(f) An individual subject to a suspension order issued under subsection (a) of this section may not appeal the suspension order to the Commission.

Subchapter D

Complaints Against Juvenile Boards

§349.400 Complaint Process

Effective Date: 5/1/10

(a) When the Commission receives a complaint about a juvenile board, the Commission shall review the circumstances surrounding the complaint to determine whether the juvenile board has violated the rules or standards of the Commission.

(b) If the Commission determines the complaint is about juvenile services within the discretion of the juvenile board, the complaint shall be referred to the juvenile board. The complainant shall be notified in writing of the referral by the Commission.

(c) If the Commission determines the juvenile board has violated the Commission's rules or standards, the juvenile board shall be notified in writing of the violation. If, within 90 calendar days of the date on which the juvenile board received written notice of the Commission's determination, the juvenile board does not propose its own plan for achieving compliance or if the plan is not acceptable to the Commission, the Commission will attempt to negotiate a mutually agreeable solution.

(d) Upon written notice of the violation, the juvenile board shall be given 90 calendar days to achieve compliance or propose a plan to achieve compliance acceptable to the Commission.

(e) If the Commission and the juvenile board cannot reach an agreement, the Commission shall give the juvenile board written notice of its intent to refuse, reduce or suspend state aid under §141.085 of the Texas Human Resources Code. Upon receipt of the above notice, the juvenile board shall have 15 calendar days to:

(1) notify in writing the Commission's Executive Director of the juvenile board's compliance;

(2) propose in writing an alternate solution; or

(3) provide a written appeal of the Commission's action(s) to the Executive Director.

(f) The juvenile board's appeal must state specifically any difference of opinion with the Commission's staff concerning the facts in dispute and the solution necessary under the standards or rules of the Commission. The appeal shall state whether the juvenile board requests a hearing before the Commission's board.

(g) The Commission shall set the appeal on the agenda for its next regularly scheduled meeting. If the juvenile board has requested a hearing, the juvenile board and the Commission's staff may appear and make oral presentations concerning the appeal. If the juvenile board does not request a hearing before the Commission, the Board will make its decision based upon the record.

(h) The complainant shall be notified in writing upon receipt of the complaint and upon resolution.

§349.410 Administrative Review of Investigation Findings

Effective Date: 11/15/17

(a) Any person named by the Texas Juvenile Justice Department (TJJD) as a designated perpetrator or administrative designee as a result of an investigation conducted under Chapter 350 of this title may request an administrative review of the investigation findings.

(b) The designated perpetrator or administrative designee must request the review in writing within 20 calendar days after receiving TJJD's written notice of the investigation findings.

(c) If civil or criminal proceedings related to an allegation that TJJD has investigated are pending when a designated perpetrator or administrative designee requests an administrative review, or if such proceedings are initiated before TJJD begins the review, TJJD may postpone the review until the proceedings are completed.

(d) The designated perpetrator or administrative designee has a right to:

(1) represent himself/herself or be represented by an authorized representative; and

(2) submit relevant evidence on his/her behalf.

(e) If TJJD chooses to interview a designated perpetrator or administrative designee who does not speak English or is hearing impaired, TJJD provides a certified translator or interpreter unless the designated perpetrator or administrative designee chooses to provide his/her own certified translator or interpreter. If the designated perpetrator or administrative designee chooses to provide his/her own certified translator or interpreter, the designated perpetrator or administrative designee is responsible for all translation or interpretation costs incurred in connection with the review.

(f) The administrative review is conducted by a staff attorney appointed by the TJJD general counsel. The staff attorney confirms or revises TJJD's original notice of the investigation findings based on the same policies applied by TJJD during the original investigation. Within 45 calendar days after receiving the request for review, TJJD notifies the designated perpetrator or administrative designee of the outcome of the review.

(g) If the administrative review results in changes to the original findings, TJJD must:

(1) enter the revised findings into the investigation record; and

(2) notify each person who was notified of the original findings that the findings have been revised.

Subchapter E

Confidentiality and Release of Abuse, Exploitation and Neglect Investigation Records

§349.500 Purpose

Effective Date: 5/1/10

The purpose of this subchapter is to clarify to whom and under what circumstances the Commission may disclose information made confidential under §261.201 of the Texas Family Code.

§349.510 Definitions

Effective Date: 5/1/10

The words and terms used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) **Investigation Records**--That portion of the records described in §261.201(a) of the Texas Family Code which were generated by the Commission or required to be submitted to the Commission during the course of an abuse, neglect or exploitation investigation.

(2) **Parent**--Biological or adoptive parent, possessory conservator, temporary or permanent managing conservator, legal guardian, or other legal representative of the juvenile, provided that the requestor's parental or other legal relationship to the juvenile has not been terminated at the time the request for information is made.

(3) **Report**--Formal notification to the Commission of an alleged incident of abuse, neglect or exploitation of a juvenile in a juvenile justice program and/or under the jurisdiction of the juvenile court.

(4) **Reporter**--An individual who makes a report to the Commission alleging the abuse, neglect or exploitation of a juvenile. If more than one individual makes a report alleging abuse, neglect or exploitation of the same juvenile, all such individuals shall have the designation of reporter.

§349.520 Access to Confidential Information

Effective Date: 5/1/10

(a) To the extent required by state or federal law, or to the extent deemed necessary by the Commission for the protection and care of juveniles, the Commission may release, as requested, the Commission's Notice of Disposition and/or investigation records made confidential under Texas Family Code §261.201(a) to the following listed persons or entities:

(1) the juvenile board and chief administrative officer that placed the alleged victim, unless the requesting board member, chief administrative officer or facility administrator is the alleged, designated or sustained perpetrator, or administrative designee;

(2) the juvenile board, the chief administrative officer and the facility administrator of the county in which the department, program or facility is located, unless the requesting board member, chief administrative officer or facility administrator is the alleged, designated or sustained perpetrator or administrative designee;

(3) law enforcement officials for the purpose of investigating allegations of abuse, neglect and exploitation or for the purpose of investigating allegations of false or malicious reporting of alleged abuse, neglect and exploitation;

(4) a physician who suspects a juvenile may be the victim of abuse, neglect or exploitation and requires this information for diagnosis, prognosis or treatment of the juvenile;

(5) a government official when specifically required by law;

(6) a grand jury;

(7) an attorney, attorney ad litem, guardian ad litem or court appointed special advocate of an alleged victim;

(8) a court in a criminal or civil case arising in connection with an investigation of abuse, neglect and exploitation;

(9) the attorney general of the state, or a county or district attorney, when such attorney represents the state in a proceeding in connection with an investigation;

(10) a member of the state legislature when necessary to carry out that member's official duties; and

(11) any other person or entity, including other licensing agencies, law enforcement and prosecutors, when, in the discretion of the Commission, such information is necessary to aid in the protection of juveniles.

(b) Upon written request, the Commission shall provide access to investigation records to the parent or other legal guardian of the alleged/designated victim provided that the records are redacted in accordance with §349.530 of this chapter.

(c) The Commission may release investigation records, or information contained therein, to a person, including a minor, who is the subject of those records if the Commission deems the release to be in the best interest of the person.

(d) Upon written request, the Commission shall provide access to investigation records to an alleged, designated or sustained perpetrator or administrative designee in accordance with §349.540 of this chapter.

(e) An individual not otherwise entitled to have access to records under this section, but who participated in, cooperated with or otherwise contributed to an investigation may have access only to that portion of the investigation records obtained directly from or pertaining directly to that individual.

(f) The Commission shall withhold the release of any investigation records obtained from another source, if the release of those records to the requestor is specifically prohibited under state or federal law. Information which may be withheld under this section includes, but is not limited to, the following:

(1) all medical records subject to the Medical Practices Act, Chapter 159 of the Texas Occupations Code, unless release to the requestor is authorized under that Act;

(2) HIV information unless release to the requestor is authorized under Chapter 81 of the Texas Health and Safety Code;

(3) offense reports, criminal history information and/or arrest records obtained from a law enforcement entity, unless their release to the requestor is specifically authorized under state or federal law;

(4) adult or juvenile probation records, as well as juvenile arrest records, unless release to the requestor is specifically authorized under state or federal law; and

(5) polygraph exam reports, unless their release to the requestor is specifically authorized under the Polygraph Examiners Act, Chapter 1703 of the Texas Occupations Code.

(g) Notwithstanding any other provision in this chapter, the Commission may withhold any information in the investigation records if, in the discretion of the Commission, the release of that information would endanger the life or safety of any individual. The Commission shall keep a record of any information so withheld and shall document the specific factual basis for its belief that the release of the information would be likely to endanger the life or safety of an individual.

(h) Information withheld from a requestor under this subsection, as well as the documented basis for withholding information under subsection (g) of this section, may be released only upon a court order.

§349.530 Redaction of Records Prior to Release

Effective Date: 5/1/10

(a) Unless otherwise permitted by law, prior to the release of investigation records, the Commission shall redact the name, address and any other information in the record that tends to reveal the identity of the reporter.

(b) In the event the reporter also provided a witness statement or other evidence, the reporter's identity as a witness and the information provided in the role of witness will be released. Any information that might identify the individual as the reporter shall be redacted from the record prior to its release.

(c) The Commission may, in its discretion, redact personally identifiable information about any person other than the reporter who is referenced in a report. Identifying information includes, but is not limited to, names, social security numbers, home and work addresses, telephone numbers and driver's license numbers.

§349.540 Procedures for Requesting Access to Confidential Information

Effective Date: 5/1/10

(a) Subject to the exception in §349.560 of this chapter, upon written request for copies of records and a determination that the requestor is entitled to have access to those records pursuant to either these rules or a court order issued in accordance with the provisions in §261.201 of the Texas Family Code, the Commission shall provide copies of the requested records.

(b) Notwithstanding any other provision in this subchapter, the Commission shall not disclose any information which if released to the requestor would interfere with a criminal investigation or prosecution.

(c) Records will not be released until the investigation of an allegation of abuse, neglect and exploitation is complete unless, in the discretion of the Commission, release prior to completion of the investigation is necessary to aid in the protection of juveniles.

(d) Notwithstanding any other provision in this subchapter, if the Commission has been sued by any party and the Commission determines that the release of the requested records might interfere with the defense of that litigation, the Commission may require that a requestor seek access to records under the appropriate rules of civil procedure rather than under this chapter.

§349.550 Public Information

Effective Date: 5/1/10

The Commission shall compile statewide statistics on the incidence of abuse, neglect and exploitation as required by §261.402 of the Texas Family Code.

(1) The following statistical data, which contains no case-specific identifiers, is available to the public upon written request:

(A) the number of reported allegations of abuse, neglect and exploitation;

(B) the classifications assigned to reported allegations of abuse, neglect and exploitation; and

(C) the dispositions assigned to investigations of reported allegations of abuse, neglect and exploitation.

(2) Additionally, upon written request and when necessary to cross-reference statistical data with individual allegations of abuse, neglect and exploitation reported from an individual county, or for purposes of compliance with §51.12(c)(4) of the Texas Family Code, the department, facility or juvenile board may be entitled to specific case numbers assigned to allegations of abuse, neglect and exploitation that were reported by the county requesting the data. A county may only request specific case numbers related to allegations of abuse, neglect and exploitation pertaining to juvenile justice programs and facilities in its own county.

(3) Requests from juvenile probation departments, facilities or juvenile boards made pursuant to either paragraph (1) or (2) of this section may be provided to the requestor via inter-governmental transfer. No exceptions to disclosure under the Public Information Act, Chapter 552 of the Texas Government Code, are waived by the exchange, disclosure or dissemination of juvenile justice information under this rule.

§349.560 Videotapes, Audiotapes and Photographs

Effective Date: 5/1/10

(a) Individuals authorized under §349.520 of this chapter have access to investigation records may review any videotapes, audiotapes or photographs that are a part of those records.

(1) Access will be permitted only in areas designated by the Commission and at a time mutually convenient to the requestor and the Commission.

(2) When viewing or listening to these records, the requestor may not be accompanied by any individual who would not otherwise be entitled to have access to these records, unless the participation of this individual is deemed by the Commission to be appropriate under the circumstances surrounding the request.

(b) Copies of videotapes, audiotapes and photographs may be provided to the individuals or entities identified in §349.520(a) of this chapter only if, in the discretion of the Commission, it is determined that the provision of a copy is essential to the investigation, prosecution or resolution of a case.

§349.570 Charges for Copies of Records

Effective Date: 5/1/10

The Commission may charge a fee for records provided under this chapter using the same fee structure as that used by the Commission when assessing charges under Chapter 552 of the Texas Government Code.

Subchapter F

Advisory Council on Juvenile Services

§349.600 Purpose

Effective Date: 9/1/24

(a) The purpose of the Advisory Council on Juvenile Services is to advise the Texas Juvenile Justice Board and Texas Juvenile Justice Department on:

(1) the needs and problems of juvenile boards and juvenile probation departments;

(2) long-range strategic planning;

(3) reviews and proposed revisions to standards affecting juvenile probation programs, services, and facilities;

(4) the potential cost impact on juvenile probation departments of new standards proposed by the Texas Juvenile Justice Board;

(5) recommendations to improve information sharing between agencies that serve children, including agencies serving children involved in both the juvenile justice and child welfare systems; and

(6) any other matter at the request of the Texas Juvenile Justice Board.

(b) The goal of the advisory council is to provide actionable, direct, and inclusive feedback from the local perspective to the Texas Juvenile Justice Board and Texas Juvenile Justice Department so the unified juvenile justice system can collectively develop and improve the state's comprehensive continuum of care for youth; prioritize evidence-based rehabilitative services; and ensure safety for youth, staff, and the public.

(c) The advisory council is composed of 15 members, as specified in Chapter 203, Human Resources Code. Members, excluding ex officio members, serve staggered two-year terms. Texas Juvenile Justice Board-appointed members shall receive training on the advisory council's purpose, role, and procedures within 30 days of their appointment.

(d) If a vacancy occurs on the council during a member's term, the Texas Juvenile Justice Board must appoint a replacement who meets the qualifications of the vacant position to serve for the remainder of the term.

(e) A majority of advisory council members, excluding ex officio members as defined in Chapter 203, Human Resources Code, constitutes a quorum. A quorum must be present to vote on action items that will be submitted to the Texas Juvenile Justice Board for consideration.

(f) Ex officio members have the same rights and privileges as other members, including the right to vote. These members are not counted when determining the number of members who represent a quorum or in determining whether a quorum is present.

(g) An advisory council member shall avoid the appearance of a conflict of interest by not voting or participating in a decision by the council that solely benefits, solely penalizes, or otherwise solely impacts the county or juvenile probation department over which the member has authority.

(h) The advisory council's presiding officer or designee shall periodically update the board on the council's activities, progress on board directives, and issues impacting juvenile probation programs, services, and facilities.

(i) The advisory council is subject to Chapter 552, Government Code, as the act applies to bodies that are solely advisory in nature.

(j) The advisory council is not subject to Chapter 2110, Government Code. The department shall evaluate the continuing need for and recommendations to improve the council during the rule review process established under Chapter 2001, Government Code.

§349.650 Removal of Members

Effective Date: 9/1/24

It is a ground for removal from the council if a member is absent from more than half of the regularly scheduled meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the council.

Subchapter G

Data

§349.700 Access to Data Collected

Effective Date: 9/1/24

For planning and research purposes, all juvenile probation departments participating in the implementation of the state's regionalization plan developed under Chapter 203, Human Resources Code, are authorized to access data that any participating departments have submitted through the juvenile case management system.

Chapter 350. Investigating Abuse, Neglect, Exploitation, Death and Serious Incidents by the Texas Juvenile Probation Commission

Published Standards Without Commentary

Effective Date 09/01/2009 *Title 37 Texas Administrative Code*

<*>350.100. Definitions.

(a) The terms used in this chapter apply to the investigations of alleged abuse, neglect, exploitation, death conducted by the Commission and to the Commission's procedures relating to serious incidents.

(b) Terms used in this chapter shall have the following meanings unless otherwise expressly defined within the chapter.

(1) Abuse, Neglect and Exploitation--The definitions of "abuse", "neglect" and "exploitation" shall have the meanings ascribed under Texas Family Code <*>261.001 and <*>261.401. For the purposes of this chapter, "abuse" includes serious physical abuse and sexual as defined in this section.

(2) Administrator--The chief administrative officer of a juvenile probation department, a public or private juvenile justice program or a public or private juvenile justice facility.

(3) Administrative Designee--The role assigned to the administrator, when a preponderance of evidence determines that the proximate cause of the allegation was based on policies and procedures under the direct control of the administrator.

(4) Alleged Perpetrator--A person alleged as being responsible for the abuse, neglect or exploitation of a juvenile through the person's actions or failure to act.

(5) Alleged Victim--A juvenile under the jurisdiction of the juvenile court or participating in a program operated under the authority of the governing board or juvenile board who is alleged to be a victim of abuse, neglect or exploitation.

(6) Attempted Suicide--Any voluntary and intentional action that could reasonably result in taking one's own life.

(7) Call Line-- The toll-free number made available for reporting allegations of abuse, neglect, exploitation, death and serious incidents within the juvenile justice system.

(8) Commission--The Texas Juvenile Probation Commission.

(9) Designated Perpetrator--The individual responsible for the abuse, neglect or exploitation of a juvenile who has not exhausted the right to administrative review or whose right to administrative review has not expired.

(10) Designated Victim--The juvenile who was abused, neglected or exploited.

(11) Escape--

(A) The voluntary, unauthorized departure, or attempt to depart, by an individual who is in custody; or

(B) Failure to return to custody following an authorized temporary leave for a specific purpose or limited period.

(12) Incident Report Form--The required form used to report to the Commission alleged abuse, neglect, exploitation, death and serious incidents.

(13) Internal Investigation Report--The written report submitted to the Commission that summarizes the steps taken and the evidence collected during an internal investigation of alleged abuse, neglect, exploitation or death.

(14) Juvenile--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, or participating in a juvenile justice program.

(15) Juvenile Justice Facility ("facility")--A facility, including its premises and all affiliated sites, whether contiguous or detached, operated wholly or partly by or under the authority of the governing board, juvenile board or by a private vendor under a contract with the governing board, juvenile board or governmental unit that serves juveniles under juvenile court jurisdiction. The term includes, but is not limited to:

(A) A public or private juvenile pre-adjudication secure detention facility, including a short-term detention facility (i.e., holdover) required to be certified in accordance with Texas Family Code <*>51.12;

(B) A public or private juvenile post-adjudication secure correctional facility required to be certified in accordance with Texas Family Code <*>51.125, except for a facility operated solely for children committed to the Texas Youth Commission; and

(C) A public or private non-secure juvenile post-adjudication residential treatment facility housing juveniles under juvenile court jurisdiction.

(16) Juvenile Justice Program ("program")--A program or department operated wholly or partly by the governing board, juvenile board or by a private vendor under a contract with the governing board, or juvenile board that serves juveniles under juvenile court jurisdiction or juvenile board jurisdiction. The term includes a juvenile justice alternative education program and a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court or juvenile board jurisdiction and a juvenile probation department.

(17) Juvenile Probation Department ("department")– All physical offices and premises utilized by a county or district level governmental unit established under the authority of a juvenile board(s) to facilitate the execution of the responsibilities of a juvenile probation department enumerated in Title 3 of Texas Family Code and Chapter 141 of Texas Human Resources Code.

REPEAL

Chapter 350. Investigating Abuse, Neglect, Exploitation, Death and Serious Incidents by the Texas Juvenile Probation Commission

Published Standards Without Commentary

Effective Date 09/01/2009 *Title 37 Texas Administrative Code*

(18) Peace Officer--A person elected, employed, or appointed as a peace officer under Code of Criminal Procedure, Article 2.12.

(19) Report--Formal notification to the Commission of alleged abuse, neglect, exploitation or death or of a serious incident.

(20) Reportable Injury--Any injury sustained accidentally, intentionally, recklessly or otherwise that:

(A) Requires medical treatment as defined in this section; or

(B) Results from a personal, mechanical or chemical restraint and is a substantial injury as defined in this section.

(21) Serious Incident--Attempted escape, attempted suicide, escape, reportable injury, youth-on-youth physical assault or youth sexual conduct as defined in this section.

(22) Serious Physical Abuse--Bodily harm or condition that resulted directly or indirectly from the conduct that formed the basis of an allegation of abuse, neglect or exploitation, if the bodily harm or condition requires medical treatment as defined in this section.

(23) Sexual Abuse--Conduct committed by any person against a juvenile that includes sexual abuse by contact or sexual abuse by non-contact. A juvenile, regardless of age, may not affirmatively or impliedly consent to the acts as defined in this section under any circumstances.

(24) Sexual Abuse by Contact--Any physical contact with a juvenile that includes: intentional touching of the genitalia, anus, groin, breast, inner thigh or buttocks with the intent to abuse, intimidate, hurt, humiliate or harass, arouse or gratify sexual desire; deviate sexual intercourse; sexual contact; sexual intercourse; or sexual performance as those terms are defined in subparagraphs (A) – (D) of this paragraph.

(A) "Deviate sexual intercourse" means:

(i) any contact between any part of the genitals of one person and the mouth or anus of another person; or

(ii) the penetration of the genitals or the anus of another person with a hand, finger or other object.

(B) "Sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person:

(i) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a person; or

(ii) any touching of any part of the body of a person, including touching through clothing, with the anus, breast, or any part of the genitals of a person.

(C) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

(D) "Sexual performance" means acts of a sexual or suggestive nature performed in front of one or more persons including simulated or actual sexual intercourse, deviate sexual intercourse, bestiality, masturbation, sado-masochistic abuse or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.

(25) Sexual Abuse by Non-Contact--Any sexual behavior, conduct, harassment or actions other than those defined by sexual abuse by contact, which are exhibited, performed or simulated:

(A) in the presence of a juvenile or with reckless disregard for the presence of a juvenile;

(B) with the intent to arouse or gratify the sexual desire of any person;

(C) with the intent to intimidate, hurt, humiliate or harass any person;

(D) including repeated verbal statement or comments of a sexual nature; and

(E) including demeaning references to gender, derogatory comments about body or clothing or profane or obscene language or gestures.

(F) These behaviors, conduct and actions include indecent exposure, voyeurism, distribution or exhibition of pornographic or sexually explicit material or sexual performance as defined in paragraph (24)(D) of this subsection.

(26) Substantial Injury--An injury that is significant in size, degree or severity.

(27) Sustained Perpetrator--A designated perpetrator as defined in this section who has already been offered the right to an administrative review and the designated perpetrator's rights to the administrative review have expired or the disposition was upheld.

(28) TCLEOSE--Texas Commission on Law Enforcement Officer Standards and Education.

(29) Youth-on-Youth Physical Assault--A physical altercation between two or more juveniles that results in any of the involved parties sustaining an injury that requires medical treatment as defined in this section.

(30) Youth Sexual Conduct--Two or more juveniles, regardless of age, who engage in deviate sexual intercourse, sexual contact, sexual intercourse, sexual performance as those terms are defined in paragraph (24) of this subsection or sexual behavior, conduct or actions which are exhibited, performed or simulated as those terms are defined in paragraph (25) of this subsection. A juvenile may not consent to the acts as defined in this section under any

Chapter 350. Investigating Abuse, Neglect, Exploitation, Death and Serious Incidents by the Texas Juvenile Probation Commission

Published Standards Without Commentary

Effective Date 09/01/2009 *Title 37 Texas Administrative Code*

circumstances. Consent may not be implied regardless of the age of the juvenile.

<*>350.110. Interpretation.

(a) Headings. The headings in this chapter are for convenience only and are not intended as a guide to the interpretation of the standards in this chapter.

(b) Including. The word, "including" when following a general statement or term, is not to be construed as limiting the general statement or term to any specific item or manner set forth or to similar items or matters, but rather as permitting the general statement or term to refer also to all other items or matters that could reasonably fall within its broadest possible scope.

<*>350.120. Applicability. Unless otherwise noted, these standards apply to the investigations of all alleged abuse, neglect and exploitation, death conducted by the Commission and serious incidents involving a juvenile and an employee, intern, volunteer, contractor or service provider.

(1) Texas Family Code <*>261.405(b) gives the Commission the authority to conduct abuse, neglect and exploitation investigations in any juvenile justice department, program or facility. The investigations conducted by the Commission are governed by Texas Family Code Chapter 261.

(2) Investigations conducted by the Commission are governed by Texas Family Code Chapter 261.

<*>350.200. Assessment. An assessment shall be completed on all reports of alleged abuse, neglect, exploitation or death received by the Commission.

(1) Reports of alleged abuse, neglect, exploitation or death within the Commission's investigative jurisdiction shall, regardless of the source, or severity or perceived lack thereof, be assigned for investigation.

(2) Reports of alleged abuse, neglect, exploitation or death not within the Commission's investigative jurisdiction shall be referred to the appropriate division within the Commission or other governmental unit having jurisdiction.

<*>350.210. Prioritization, Activation and Initiation.

(a) Prioritization. All reports of alleged abuse, neglect, exploitation or death shall be assigned a priority level.

(b) Activation. Investigations are activated when the Commission makes the initial notification to law enforcement.

(c) Initiation. Investigations are initiated when the assigned investigator contacts or attempts to contact, via phone, fax, e-mail or in person a representative of the department, program, facility, governing board, juvenile board; law enforcement agency; the reporter; or any person with knowledge of the alleged incident.

<*>350.300. Investigations.

(a) Primary Objective. The primary objective of each Commission investigation is to ensure the health, safety and well being of the alleged victim and other juveniles under the jurisdiction of the juvenile court.

(b) Occurrence. Commission investigations are conducted to determine if the alleged abuse, neglect or exploitation occurred.

(c) Statutory Definitions. Commission investigations determine if the elements of the alleged incident correspond to the statutory definitions in Texas Family Code Chapter 261.

(d) Risk and Compliance. Commission investigations serve to assess risk potential and compliance with applicable administrative standards.

<*>350.400. Notification and Referral.

(a) Notification of Disposition. At the conclusion of an investigation, notification of the disposition shall be forwarded to the appropriate parties in accordance with applicable Commission policies and procedures.

(b) Notice to Prosecutor. Notifications to the district or county attorney's office prosecuting criminal matters in the jurisdiction in which the Commission conducted the investigation, shall be forwarded in accordance with applicable Commission policies and procedures.

(c) Non-Compliance Citation Report. A Non-Compliance Citation Report (NCCR) shall be issued in accordance with applicable Commission policies and procedures.

(d) Notice of Technical Assistance. A "Notice of Technical Assistance" (NTA) shall be issued in accordance with applicable Commission policies and procedures.

<*>350.500. Requests for Disciplinary Action. Requests for disciplinary action shall be submitted in accordance with applicable administrative standards and Commission policies and procedures.

<*>350.600. Retention, Release and Redaction of Commission Records.

(a) Record Development. In accordance with Texas Family Code <*>261.402, the Commission shall develop and maintain a record of each report of alleged abuse, neglect, exploitation or death.

(b) Database. The Commission shall maintain an electronic database containing information regarding all reports of alleged abuse, neglect, exploitation, death and serious incidents.

Chapter 350. Investigating Abuse, Neglect, Exploitation, Death and Serious Incidents by the Texas Juvenile Probation Commission

Published Standards Without Commentary

Effective Date 09/01/2009 *Title 37 Texas Administrative Code*

(c) Record Retention. The investigation records maintained by the Commission are confidential and shall be retained in accordance with the retention schedule adopted by the Commission or other applicable laws.

<*>350.610. Release of Confidential Information. Confidential information shall be released in accordance with the Commission's policies and procedures and other applicable statutory provisions governing the disclosure of confidential information.

<*>350.620. Redaction of Records. In certain cases, an alleged perpetrator's identifying information may be redacted from the Commission's records.

(1) Automatic Redaction. The Commission shall, in cases in which the disposition is baseless, automatically and permanently redact the alleged perpetrator's identifying information from the Commission's case record.

(2) Request for Redaction. The alleged perpetrator may request that his or her identifying information be redacted from the Commission's records if:

(A) The Commission's final disposition of the case in which the alleged perpetrator was involved is "Ruled Out";

(B) The alleged perpetrator submits the request for redaction in writing to the Commission's Legal Division;

(C) The alleged perpetrator submits the request for redaction within 30 calendar days of the last day of the corresponding limitation period described in paragraph (3) of this section;

(D) The alleged perpetrator has been continuously employed within the Texas juvenile justice system for the time period as specified in this paragraph; and

(E) The alleged perpetrator has not been named as the subject of investigation in a subsequent case of abuse, neglect or exploitation.

(3) Limitation Periods. A request for redaction may only be made if all requirements of paragraph (2) of this section are met and if:

(A) Two years has expired from the date of the Commission's final disposition of "Ruled Out", and if, notwithstanding a violation of the Texas Administrative Code, the investigation of the alleged abuse, neglect or exploitation did not produce evidence of a violation of laws of this state or of the United States;

(B) Three years has expired from the date of the Commission's final disposition of "Ruled Out", if the allegation does not meet the elements of paragraph (1) or (3) of this section; or

(C) Five years has expired from the date of the Commission's final disposition of "Ruled Out", if the allegation involved serious physical abuse as defined in <*>350.100(b)(22) of this chapter or sexual conduct as defined in <*>350.100(b)(23), (24) or (25) of this chapter.

<*>350.700. Call Line. In accordance with applicable policies and procedures, the Commission shall maintain a toll-free number to facilitate the reporting of alleged abuse, neglect, exploitation, death and serious incidents.

<*>350.800. Serious Incidents. An assessment to determine jurisdiction, classification and if follow-up action is needed, shall be completed on all serious incidents received by the Commission.

<*>350.900. Training and Quality Assurance. Commission investigators shall receive current and relevant training in the discipline of investigating alleged abuse, neglect, exploitation and death. Quality assurance measures shall be implemented to help ensure that Commission investigations are conducted in accordance with the rules contained in this chapter and in accordance with applicable Commission policies and procedures.

<*>350.901. Pre-Service Training. Investigators shall receive pre-service training hours in the laws, statutes, administrative rules and agency policies and procedures governing and relevant to conducting administrative investigations of abuse, neglect, exploitation and death of juveniles within the juvenile justice system.

<*>350.902. Competency Testing. Investigators shall demonstrate a minimum proficiency in select topics received during pre-service training.

<*>350.903. Continuing Education. Continuing education shall include topics relevant to conducting investigations of abuse, neglect, exploitation and death of juveniles within the juvenile justice system and topics relevant to the practices of juvenile justice professionals.

(1) Investigators shall successfully complete a minimum number of hours of continuing education training in accordance with applicable Commission policies and procedures.

(2) In addition to the requirements of paragraph (1) of this section, investigators licensed as peace officer shall adhere to the training requirements in accordance with the administrative rules as established by TCLEOSE in Title 37, Part 7 of the Texas Administrative Code.

<*>350.904. Quality Assurance. During each fiscal year internal quality assurance reviews of active and completed investigations shall be conducted.

Title 37 Public Safety and Corrections
Part 11 Texas Juvenile Justice Department

Chapter 358 Identifying, Reporting, and Investigating Abuse, Neglect, Exploitation, Death, and Serious Incidents

Draft 10/09/24

Subchapter A. Definitions, Applicability, and General Requirements

§358.100 Definitions
§358.110 Interpretation
§358.120 Applicability
§358.130 Toll-Free Call Center

Subchapter B. Responsibilities of Departments, Programs, and Facilities

§358.200 Policy and Procedure
§358.210 Information on Reporting
§358.220 Data Reconciliation
§358.230 Reporting Abuse, Neglect, and Exploitation
§358.240 Reporting Serious Incidents
§358.250 Reporting Deaths
§358.260 Parental Notification
§358.270 Reporting of Allegations by Juveniles
§358.280 Internal Investigation
§358.290 Corrective Measures
§358.300 Internal Investigative Report
§358.310 Submission of Internal Investigative Report
§358.320 Reassignment or Administrative Leave during the Internal Investigation
§358.330 Cooperation with TJJD Investigation
§358.340 Cooperation with Other Agencies

Subchapter C. TJJD Assessment and Investigation

§358.400 TJJD Assessment and Referral
§358.410 TJJD Investigations
§358.420 Findings in Abuse, Neglect, and Exploitation Investigations
§358.430 Abuse, Neglect, and Exploitation Investigative Report
§358.440 Notification of Findings
§358.450 Other Actions by TJJD
§358.460 Maintenance Records and Data

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Subchapter A
Definitions, Applicability, and General Requirements

§358.100. Definitions

Effective Date: XXXXXX

Terms used in this chapter have the following meanings unless otherwise expressly defined within the chapter.

(1) **Abuse**--an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a juvenile served by the juvenile justice facility or program. Abuse also includes the definition in Section 261.001, Family Code.

(2) **Administrator**--the chief administrative officer of a juvenile probation department, juvenile justice program, juvenile justice facility, or non-juvenile justice contract facility.

(3) **Administrative Designee**--the role assigned to the administrator when a preponderance of evidence determines that the proximate cause of the abuse, neglect, or exploitation was based on policies and procedures under the direct control of the administrator.

(4) **Department**--a juvenile probation department.

(5) **Emotional harm**--an impairment in the juvenile'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 between employees, volunteers, or contractors and juveniles is presumed to cause substantial emotional harm.

(6) **Exploitation**--the illegal or improper use of a juvenile or the resources of a juvenile for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program.

(7) **Incident Report Form**--the form used to report to TJJD allegations of abuse, neglect, or exploitation, the death of a juvenile, and serious incidents.

(8) **Internal Investigation**--a formalized and systematic inquiry conducted in response to an allegation of abuse, neglect, or exploitation or the death of a juvenile.

(9) **Internal Investigative Report**--the written report submitted to TJJD that summarizes the steps taken and the evidence collected during an internal investigation of alleged abuse, neglect, or exploitation or the death of a juvenile.

(10) **Investigative Report**--the written report prepared by TJJD detailing its investigation and findings.

(11) **Juvenile**--a person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, housed in a non-juvenile justice contract facility pursuant to an order of the juvenile court, or participating in a juvenile justice program, including a prevention and intervention program, regardless of age.

(12) **Juvenile Justice Facility ("facility")**--a facility that is registered by TJJD pursuant to Sections 51.12, 51.125, or 51.126, Family Code.

(13) **Juvenile Justice Program ("program")**--a program or department that:

(A) serves juveniles under juvenile court or juvenile board jurisdiction; or

(B) is operated wholly or partly by the juvenile board or by a private vendor under a contract with the juvenile board. The term includes:

(i) a juvenile justice alternative education program;

(ii) a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court or juvenile board; and

(iii) a juvenile probation department.

(14) **Medical Treatment**--medical care, processes, and procedures that are performed by a physician, physician assistant, licensed nurse practitioner, emergency medical technician (EMT), paramedic, or dentist. Diagnostic procedures are excluded from this definition unless intervention beyond basic first aid is required.

(15) **Neglect**--a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, 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 juvenile served by the facility or program. Neglect also includes the definition in Section 261.001, Family Code.

(16) **Non-Juvenile Justice Contract Facility**--a facility in which a juvenile is placed pursuant to a contract with a department, program, facility, or juvenile board, other than a facility registered with TJJD.

(17) **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.

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(18) **Preponderance of the Evidence**--a standard of proof meaning the credible and reliable evidence establishes that it is more likely than not that conduct meeting the definition of abuse, neglect, or exploitation occurred.

(19) **Reasonable Cause to Believe**--a reasonable ground to suspect that a juvenile has been or may be abused, neglected, or exploited or that a juvenile's physical or mental health or welfare has been adversely affected by abuse or neglect.

(20) **Report**--formal notification to TJJD of alleged abuse, neglect, or exploitation, the death of a juvenile, or a serious incident.

(21) **Serious Incident**--an incident that meets one of the following definitions:

(A) **escape**--the unauthorized departure of a juvenile who is in custody or the failure of a juvenile to return to custody following an authorized temporary leave for a specific purpose or specific, limited time period;

(B) **attempted escape**--committing an act that amounts to more than mere planning but that fails to effect an escape;

(C) **abscond from a nonsecure facility**--the unauthorized departure of a juvenile who has been placed in a nonsecure facility by the juvenile court or the failure of a juvenile to return to a nonsecure facility following an authorized temporary leave for a specific purpose or specific, limited time period;

(D) **attempted suicide**--any voluntary and intentional action that could likely result in taking one's own life;

(E) **reportable injury**--any physical injury sustained by a juvenile accidentally, intentionally, recklessly, or otherwise that:

(i) does not result from a personal, mechanical, or chemical restraint and requires medical treatment; or

(ii) results from a personal, mechanical, or chemical restraint and is a substantial injury.

(F) **juvenile sexual conduct**--conduct between two or more juveniles, regardless of age, that is conduct described in paragraphs (25) and (28) of this section, regardless of whether the juveniles consented to the conduct; or

(G) **juvenile-on-juvenile physical assault**--a physical altercation involving two or more juveniles that results in any of the involved parties sustaining an injury that requires medical treatment.

(22) **Serious Physical Abuse**--bodily harm or a condition that:

(A) resulted directly or indirectly from the conduct that formed the basis of an allegation of abuse, neglect, or exploitation; and

(B) requires medical treatment.

(23) **Sexual Abuse--**includes sexual abuse (by contact or by non-contact) of a juvenile by an employee, contractor, or volunteer or by another juvenile.

(24) **Sexual Abuse by Contact (employee, volunteer, or contractor)**--any physical contact between an employee, contractor, or volunteer and a juvenile, with or without the consent of the juvenile that includes:

(A) contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) contact between the mouth and the penis, vulva, or anus;

(C) contact between the mouth and any body part where the employee, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(D) penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the employee, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

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(E) any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the actor has the intent to abuse, arouse, or gratify sexual desire; and

(F) any attempt by an employee, contractor, or volunteer to engage in the activities described in subparagraphs (a) – (e) of this paragraph.

(25) **Sexual Abuse by Contact (by another juvenile)**--any of the following acts between juveniles, if the victim does not consent, is coerced into the act by overt or implied threats of violence, or is unable to consent or refuse, either actually or legally:

(A) contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) contact between the mouth and the penis, vulva, or anus;

(C) penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and

(D) any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

(26) **Sexual Abuse by Non-Contact (by employee, volunteer, or contractor)**--any sexual behavior, conduct, harassment, or actions by an employee, contractor, or volunteer, which are exhibited, performed, or simulated in the presence of a juvenile or with reckless disregard for the presence of a juvenile but do not meet the definition of sexual abuse by contact, including but not limited to:

(A) any threat or request for a juvenile to engage in the activities described in paragraph (24) of this section;

(B) any display of uncovered genitalia, buttocks, or breasts in the presence of a juvenile;

(C) voyeurism, which means an invasion of privacy of a juvenile for reasons unrelated to official duties, such as peering at a juvenile who is using a toilet to perform bodily functions; requiring a juvenile to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a juvenile's naked body or of a juvenile performing bodily functions; and

(D) sexual harassment.

(27) **Sexual Harassment (by employee, contractor, or volunteer)**--repeated verbal comments or gestures of a sexual nature to a juvenile, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

(28) **Sexual Harassment (by another juvenile)**--any of the following directed by one juvenile to another juvenile: repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one juvenile directed toward another.

(29) **Substantial Injury**--an injury that is significant in size, degree, or severity.

(30) **Subject**--a person alleged or found to be responsible for the abuse, neglect, or exploitation of a juvenile through the person's actions or failure to act.

(31) **TJJD OIG**--TJJD Office of Inspector General.

(32) **Victim**--a juvenile who is alleged or found to be a victim of abuse, neglect, or exploitation.

§358.110. Interpretation

Effective Date: XXXXXX

(a) **Headings.**

The headings in this chapter are for convenience only and are not intended as a guide to the interpretation of the standards in this chapter.

(b) **Including.**

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Unless the context clearly indicates otherwise, the words “include,” “includes,” and "including," when following a general statement or term, are to be understood as introducing a non-exhaustive list.

(c) **Time.**

Any period of days set forth in this chapter is computed as set forth in Section 311.014, Government Code. Unless otherwise specified, a period of “days” means “calendar days.” When this chapter requires or allows an act by any party other than TJJD to be done at or within a specified time period, the executive director or Board may, for good cause shown, order the period extended or permit the act to be done after the expiration of the specified period.

§358.120. Applicability

Effective Date: XXXXXX

(a) Unless otherwise expressly stated, this chapter applies to:

(1) allegations of abuse, neglect, or exploitation involving a juvenile and an employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility, regardless of the physical location of the alleged abuse, neglect, or exploitation;

(2) serious incidents involving a juvenile that:

(A) occur on the premises of a program, facility, or non-juvenile justice contract facility; or

(B) regardless of the physical location, occur while in the presence of an employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility; and

(3) a death of a juvenile that:

(A) occurs on the premises of a program, facility, or non-juvenile justice contract facility;

(B) results from an illness, incident, or injury that occurred, was discovered, or was reported on the premises of a program, facility, or non-juvenile justice contract facility; or

(C) regardless of the physical location, occurs while in the presence of an employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility.

(b) For purposes of this chapter, “working under the auspices of a facility, program, or non-juvenile justice contract facility” includes providing a service to juveniles when that service is authorized by the juvenile board or pursuant to a contract for placement.

§358.130. Toll-Free Call Center

Effective Date: XXXXXX

TJJD maintains a staffed incident reporting center with a toll-free number to facilitate the reporting of alleged abuse, neglect, exploitation, death, and serious incidents. Additionally, TJJD maintains alternative forms of contact for the continuity of operations, including email and secondary phone numbers.

Subchapter B

Responsibilities of Departments, Programs, and Facilities

§358.200. Policy and Procedure

Effective Date: XXXXXX

(a) Departments, programs, and facilities shall have written policies and procedures that require, in accordance with this chapter:

(1) reporting allegations of abuse, neglect, or exploitation of a juvenile to local law enforcement, TJJD, and other appropriate governmental units when there is reasonable cause to believe that abuse, neglect, or exploitation has occurred;

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(2) reporting death of a juvenile to local law enforcement and TJJD; and

(3) reporting serious incidents to TJJD.

(b) Departments, programs, and facilities shall include the following in all contracts with non-juvenile justice contract facility:

(1) a requirement for the non-juvenile justice contract facility to report allegations of abuse, neglect, exploitation, the death of a juvenile, or a serious incident to the department, program, or facility and to TJJD in accordance with this chapter;

(2) a requirement for the non-juvenile justice contract facility to conduct an internal investigation or allow the department, program, or facility to do so and to cooperate with such investigation; and

(3) a requirement to cooperate with TJJD with any assessment or investigation.

§358.210. Information on Reporting

Effective Date: XXXXXX

(a) As soon as practicable after a child is taken into custody or placed in a facility or program, the facility or program shall provide the child's parents with:

(1) information regarding the reporting of suspected abuse, neglect, or exploitation of a juvenile in a facility or program to TJJD; and

(2) the TJJD toll-free number for this reporting.

(b) Departments, programs, and facilities must prominently display signage provided by TJJD regarding a zero-tolerance policy concerning abuse of juveniles. The signage must be in English and Spanish and be displayed in each of the following places:

(1) lobby or visitation areas of the department, program, or facility to which the public has access;

(2) juvenile housing and common areas;

(3) common medical treatment areas;

(4) common educational areas; and

(5) other common areas.

§358.220. Data Reconciliation

Effective Date: XXXXXX

(a) For all allegations of abuse, neglect, or exploitation, the death of a juvenile, and serious incidents occurring within the reporting period, the department or facility must provide the data listed in subsection (b) to TJJD in the electronic format requested or supplied by TJJD.

(b) The data must include:

(1) name and Personal Identification Number (PID) of each alleged victim;

(2) name and date of birth of each subject of investigation;

(3) date and time of alleged incident;

(4) date the alleged incident was reported to TJJD;

(5) type of alleged incident (i.e., abuse, neglect, exploitation, death, or serious incident);

(6) type of injury, if applicable;

(7) whether the alleged incident was restraint-related and, if so, what type of restraint was involved (i.e., personal, mechanical, or chemical);

(8) disposition of internal investigation (i.e., founded, unfounded, or inconclusive); and

(9) county-generated case identification number.

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(c) The data must be supplied at least annually or more frequently if required by TJJD. The data must include any additional information not listed in this section if specifically requested by TJJD.

§358.230. Reporting Abuse, Neglect, and Exploitation

Effective Date: XXXXXX

(a) **Duty to Report.**

An employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility must report an allegation of abuse, neglect, or exploitation to TJJD and local law enforcement if the person has reasonable cause to believe a juvenile has been or may be abused, neglected, or exploited or that a juvenile's physical or mental health or welfare has been adversely affected by abuse or neglect.

(b) **Non-Delegation of Duty to Report.**

In accordance with Chapter 261, Family Code, the duty to report cannot be delegated to another person.

(c) **Other than Sexual Abuse or Serious Physical Abuse.**

(1) **Time Frames for Reporting.**

A report of alleged abuse, neglect, or exploitation other than allegations involving sexual abuse or serious physical abuse must be made no later than 24 hours after the time the person gains knowledge of or has reasonable cause to believe that abuse, neglect, or exploitation has occurred.

(2) **Methods for Reporting.**

(A) The report to TJJD may be made by phone or by emailing a completed Incident Report Form.

(B) If the report to TJJD is made by phone, a completed Incident Report Form must be submitted by email within 24 hours after the phone report.

(C) The report to law enforcement must be made by phone.

(d) **Sexual Abuse or Serious Physical Abuse.**

(1) **Time Frames for Reporting.**

(A) A report of alleged sexual abuse or serious physical abuse must be made to local law enforcement immediately, but no later than one hour after the time a person gains knowledge of or has a reasonable belief that alleged sexual abuse or serious physical abuse has occurred.

(B) A report of alleged sexual abuse or serious physical abuse must be made to TJJD immediately, but no later than four hours, after the time a person gains knowledge of or has a reasonable belief that alleged sexual abuse or serious physical abuse has occurred.

(2) **Methods for Reporting.**

(A) The initial report to TJJD must be made by phone using the toll-free number as designated by TJJD.

(B) Within 24 hours after the initial phone report to TJJD, the completed Incident Report Form must be submitted to TJJD by email.

(C) The initial report to law enforcement must be made by phone.

§358.240. Reporting Serious Incidents

Effective Date: XXXXXX

(a) **Duty to Report.**

An employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility must report a serious incident to TJJD if the person:

(1) witnesses, learns of, or receives an oral or written statement from a juvenile or other person with knowledge of a serious incident; or

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(2) has reasonable cause to believe that a serious incident has occurred.

(b) **Time Frame for Reporting.**

A report of a serious incident must be made within 24 hours from the time a person gains knowledge of or has reasonable cause to believe that a serious incident occurred.

(c) **Methods for Reporting Serious Incidents.**

(1) The report may be made by phone or by emailing a completed Incident Report Form to TJJD.

(2) If the report is made by phone, a completed Incident Report Form must be submitted to TJJD by email within 24 hours after the phone report.

(d) **Medical Documentation.**

A treatment discharge form or other medical documentation that contains evidence of medical treatment pertinent to the reported incident must be submitted to TJJD within 24 hours after receipt by the department, program, facility, or non-juvenile justice contract facility.

§358.250. Reporting Deaths

Effective Date: XXXXXX

(a) **Duty to Report.**

An employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility must report to local law enforcement and to TJJD OIG if the person has reasonable to cause to believe a juvenile has died and the death:

(1) occurred on the premises of a program, facility, or non-juvenile justice contract facility;

(2) resulted from an illness, incident, or injury that occurred, was discovered, or was reported on the premises of a program, facility, or non-juvenile justice contract facility; or

(3) occurred while in the presence of an employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility, regardless of where the death occurred.

(b) **Time Frames for Reporting.**

(1) A report of a death must be made to local law enforcement immediately upon, and no later than one hour after, the discovery or notification of the death.

(2) A report of a death must be made to TJJD OIG immediately upon, and no later than four hours after, the discovery or notification of the death.

(3) A written report of the cause of death must be submitted to the Office of the Attorney General no later than 30 days after the juvenile's death if required by Article 49.18, Code of Criminal Procedure.

(4) A copy of the death investigative report must be submitted to TJJD no later than 10 days after completion.

(c) **Methods for Reporting.**

(1) The initial report to TJJD must be made by phone using the toll-free number as designated by TJJD.

(2) Within 24 hours after the phone report to TJJD, the completed Incident Report Form must be submitted to TJJD OIG by email.

(3) The initial report to law enforcement must be made by phone.

§358.260. Parental Notification

Effective Date: XXXXXX

(a) **Requirement to Notify.**

Notification, or diligent efforts to notify, must be made to the parent(s), guardian(s), and custodian(s) of a juvenile who has died or who is the alleged victim of abuse, neglect, or exploitation or was involved in a serious incident.

(b) **Time of Notification.**

The notice or efforts to notify required by subsection (a) of this section must be made as soon as possible, but no later than 24 hours, from the time a person gains knowledge of or has a reasonable belief that the allegation of abuse, neglect, or exploitation or the death of a juvenile occurred or that a serious incident has occurred.

(c) **Method of Notification.**

The notice or efforts to notify required by subsection (a) of this section may be made by phone, in writing, or in person.

(d) **Documentation of Notification.**

The notice or efforts to notify required by subsection (a) of this section must be documented on TJJD's Incident Report Form and in the internal investigative report.

§358.270. Reporting of Allegations by Juveniles

Effective Date: XXXXXX

(a) **Right to Report.**

Juveniles have the right to report to TJJD allegations of abuse, neglect, or exploitation and the death of a juvenile. During orientation to a facility or program, juveniles must be advised in writing of:

(1) their right to report allegations under this subsection; and

(2) TJJD's toll-free number available for reporting allegations under this subsection.

(b) **Policy and Procedure.**

Departments, programs, and facilities must have written policies and procedures that provide a juvenile with reasonable, free, and confidential access to telephones for reporting allegations to TJJD.

(c) **Access to TJJD.**

Upon the request of a juvenile, staff must facilitate the juvenile's reasonable, free, and confidential access to a telephone for reporting allegations to TJJD.

§358.280. Internal Investigation

Effective Date: XXXXXX

(a) **Investigation Requirement.**

In every case in which a report of the death of a juvenile or of an allegation of abuse, neglect, or exploitation has occurred, an internal investigation must be conducted. The investigation must be conducted by a person qualified by experience or training to conduct a comprehensive investigation.

(b) **Initiation of Investigation.**

The internal investigation must be initiated immediately upon the chief administrative officer or the private facility administrator or their respective designees gaining knowledge of the death of a juvenile or the allegation of abuse, neglect, or exploitation. However, the initiation of the internal investigation will be postponed if:

(1) directed by local law enforcement;

(2) requested by TJJD OIG; or

(3) after consultation with local law enforcement or TJJD OIG, it is determined that the integrity of potential evidence could be compromised.

(c) **Burden of Proof.**

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The burden of proof in an internal investigation is preponderance of the evidence. A higher or lower burden of proof may not be implemented.

(d) **Policy and Procedure.**

Departments, programs, and facilities must have written policies and procedures for conducting internal investigations under this chapter. The internal investigation must be conducted in accordance with the policies and procedures of the department, program, or facility. The policies and procedures must be provided to TJJD upon request.

(e) **Juvenile Board Responsibilities.**

If the chief administrative officer or the private facility administrator is the person alleged to have abused, neglected, or exploited a juvenile, the juvenile board chair must:

(1) conduct the internal investigation; or

(2) appoint an individual to conduct the internal investigation who is not one of the following:

(A) the person alleged to have abused, neglected, or exploited the juvenile(s);

(B) a subordinate of the person alleged to have abused, neglected, or exploited the juvenile(s); or

(C) a law enforcement officer currently acting in the capacity as a criminal investigator for the alleged abuse, neglect, or exploitation of the juvenile(s).

(f) **Time Frame for Internal Investigation.**

The internal investigation must be completed within 30 business days after the initial report to TJJD. TJJD may extend this time frame upon request. TJJD may require submission of all information compiled to date or a statement of the status of the investigation when determining whether or not to grant an extension or after granting an extension.

(g) **Written and Electronically Recorded Statements.**

During the internal investigation, diligent efforts must be made to obtain written or electronically recorded oral statements from all persons with direct knowledge of the alleged incident.

§358.290. Corrective Measures

Effective Date: XXXXXX

Corrective measures must be taken at the conclusion of the internal investigation, if warranted, that may include:

(1) a review of the policies and procedures pertinent to the alleged incident;

(2) revision of any policies or procedures as needed;

(3) administrative disciplinary action or appropriate personnel actions against all persons found to have abused, neglected, or exploited a juvenile or to have otherwise engaged in misconduct; and

(4) the provision of additional training for all appropriate persons to ensure the safety of the juveniles, employees, and others.

§358.300. Internal Investigative Report

Effective Date: XXXXXX

(a) An internal investigative report must be completed at the conclusion of each internal investigation resulting from an allegation of abuse, neglect, or exploitation or the death of a juvenile.

(b) The internal investigative report must include:

(1) the date the internal investigation was initiated;

(2) the date the internal investigation was completed;

(3) the date the alleged victim's parent, guardian, or custodian was notified of the allegation, or documentation that diligent efforts to provide the notification were made;

(4) a summary of the original allegation;

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(5) relevant policies and procedures related to the incident;

(6) a summary or listing of the steps taken during the internal investigation;

(7) a written summary of the content of all oral interviews conducted;

(8) a listing of all evidence collected during the internal investigation, including all audio and/or video recordings and polygraph examinations;

(9) relevant findings of the investigation that support the disposition;

(10) one of the following dispositions:

(A) founded, which means the evidence indicates that it is more likely than not that the conduct that formed the basis of an allegation of abuse, neglect, or exploitation occurred or that other conduct constituting abuse, neglect, or exploitation occurred;

(B) unfounded, which means the evidence indicates the conduct that formed the basis of an allegation of abuse, neglect, or exploitation did not occur and no other conduct constituting abuse, neglect, or exploitation occurred; or

(C) inconclusive, which means the evidence does not clearly indicate whether or not the conduct that formed the basis of an allegation of abuse, neglect, or exploitation occurred or other conduct constituting abuse, neglect, or exploitation occurred.

(11) the date the internal investigative report was completed;

(12) the names of all persons who participated in conducting the internal investigation;

(13) the name and signature of the person who submitted the internal investigative report; and

(14) the administrative action, disciplinary action, or corrective measures taken to date, if applicable (e.g., terminated, suspended, retrained, returned to duty, or none).

(c) If disciplinary action is imposed after the submission of the internal investigative report, the administrator or designee must notify TJJD of the disciplinary action no later than five calendar days after the disciplinary action is imposed.

§358.310. Submission of Internal Investigative Report

Effective Date: XXXXXX

(a) A copy of the internal investigative report must be submitted to TJJD no later than five calendar days following its completion.

(b) The following documentation collected during the internal investigation must be submitted to TJJD with the internal investigative report:

(1) written statements;

(2) relevant medical documentation;

(3) training records, if applicable; and

(4) any other documentation used to reach the disposition of the internal investigation.

§358.320. Reassignment or Administrative Leave during the Internal Investigation

Effective Date: XXXXXX

(a) Upon gaining knowledge of an allegation of abuse, neglect, or exploitation, and until the finding of the internal investigation is determined, the person alleged to have abused, neglected, or exploited a juvenile must be placed on administrative leave or reassigned to a position having no contact with the alleged victim, relatives of the alleged victim, or other juveniles.

(b) If the chief administrative officer or the private facility administrator is the person alleged to have abused, neglected, or exploited a juvenile, the juvenile board chair must immediately place the chief administrative officer or private facility administrator on administrative leave or reassign that person to a position having no contact with the alleged victim, relatives of the alleged victim, or other juveniles.

(c) If, during the internal investigation, the subject of the investigation resigns or is terminated from employment, the department or facility must notify TJJD no later than the second business day after the resignation or termination.

(d) If a subject of investigation obtains employment in another jurisdiction before the disposition of the internal investigation has been finalized, the person may not be placed in a position having any contact with any juveniles until the disposition of the internal investigation is finalized in the county of previous employment.

§358.330. Cooperation with TJJD Investigation

Effective Date: XXXXXX

(a) All persons must fully cooperate with any investigation of an allegation of abuse, neglect, or exploitation, the death of a juvenile, or a serious incident. A failure to do so may result in an action involving the person's certification or provisional certification pursuant to Chapter 349 of this title.

(b) A diligent effort must be made to identify and make available for questioning all persons with knowledge of an allegation of abuse, neglect, or exploitation, serious incident, or the death of a juvenile that is the subject of a TJJD investigation.

(c) Upon request by TJJD, all evidence must be provided to TJJD in the format requested.

§358.340. Cooperation with Other Agencies

Effective Date: XXXXXX

All persons must fully cooperate with any investigation of alleged abuse, neglect, or exploitation, serious incident, or death of a juvenile by another state agency or licensing entity with authority to investigate, such as an agency that holds the occupational license of a person who is the subject of the investigation.

Subchapter C

TJJD Assessment and Investigation

§358.400. TJJD Assessment and Referral

Effective Date: XXXXXX

(a) TJJD OIG will complete an assessment on all reports of alleged abuse, neglect, or exploitation of a juvenile, the death of a juvenile, or serious incidents. TJJD may conduct an assessment when there is reasonable cause to believe that one is warranted.

(b) The purpose of an assessment is to determine if conduct or alleged conduct falls under:

(1) TJJD's investigative authority and, if so, if an investigation is necessary; or

(2) TJJD's other regulatory authority and, if so, if other action is warranted.

(c) TJJD may request information from the juvenile probation department or facility making the report or where the alleged incident occurred, which may include requests for records, digital media, video, audio, and other related information or items. The entity to which the request is made must provide the requested information or, if it does not exist, an explanation that it does not exist, no later than two business days after the request is made unless a later time is agreed upon between TJJD and the entity.

(d) After assessment, TJJD OIG will conduct an investigation if it determines the matter is within TJJD OIG's jurisdiction to investigate or will refer the matter as appropriate to another TJJD division, the appropriate juvenile probation department or facility, or another governmental entity.

§358.410. TJJD Investigations

Effective Date: XXXXXX

(a) Investigations may be conducted based on a report to TJJD or may be initiated by TJJD when there is reasonable cause to believe that an incident may require investigation, regardless of how TJJD is made aware of the matter.

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(b) Investigations will be conducted by TJJD in accordance with TJJD policies and procedures for investigations.

(c) Investigations must be prompt, thorough, and directed at resolving all relevant issues.

(d) The primary objective of each investigation under this chapter is to ensure the health, safety, and well-being of the alleged victim(s) and other juveniles.

(e) Only a person qualified by experience and training may be assigned to conduct an investigation.

(f) If a subject of a TJJD abuse, neglect, and exploitation investigation obtains employment in another jurisdiction before the disposition of the investigation has been finalized, the person may not be placed in a position having any contact with any juveniles until the disposition of the investigation is finalized by TJJD or TJJD otherwise approves.

§358.420. Findings in Abuse, Neglect, and Exploitation Investigations Effective Date: XXXXXX

(a) In order to find that a person engaged in abuse, neglect, or exploitation, there must be a preponderance of evidence to establish the person engaged in conduct that meets the definition of abuse, neglect, or exploitation, including having done so with the required mental state.

(b) A person acts intentionally, or with intent, with respect to the nature of the person's conduct or the result of the conduct when it is the person's conscious objective or desire to engage in the conduct or to cause the result.

(c) A person acts knowingly, or with knowledge, with respect to the nature of the person's conduct or the result of the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.

(d) A person acts recklessly, or is reckless, with respect to circumstances surrounding the person's conduct or the result of the conduct when the person is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(e) A person acts with negligence when the person does something that an ordinarily prudent person exercising ordinary care would not have done under the same circumstances or fails to do something that an ordinarily prudent person in the exercise of ordinary care would have done.

(f) An investigation of potential abuse requires a finding of whether the subject intentionally, knowingly, or recklessly acted or failed to act and, if so, whether the act caused emotional harm or physical injury to the juvenile or posed a significant and foreseeable risk of emotional harm or physical injury.

(g) An investigation of potential neglect requires a finding of whether the subject engaged in a negligent act or omission and, if so, whether the action or failure to act was a substantial factor in bringing about a substantial emotional harm or physical injury to the juvenile or posed a significant and foreseeable risk of emotional harm or physical injury.

(h) An investigation of potential exploitation requires a finding of whether a juvenile or the resources of a juvenile were used for monetary or personal benefit, profit, or gain of the subject and, if so, whether the use was illegal or improper.

(i) In determining if a person's conduct is the cause of any emotional harm or physical injury, there must be a finding of whether the resulting emotional harm or physical injury would not have occurred but for the person's conduct, either alone or concurrently with another cause.

(j) Investigations may include findings of 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 subject or others as to violations of the code of ethics indicated by the evidence.

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§358.430. Abuse, Neglect, and Exploitation Investigative Report

Effective Date: XXXXXX

(a) Each investigation requires a written investigative report with the investigator's recommendations regarding whether the evidence is sufficient to establish that abuse, neglect, or exploitation occurred. The report must include a summary and analysis of the evidence relied upon in reaching the recommendations. Anything considered in the investigation, including, but not limited to, copies of relevant documents and photographs, must be attached to the investigative report.

(b) Investigations may include recommendations that findings of a violation of the Code of Ethics other than abuse, neglect, or exploitation be made if the conduct is established by the evidence. However, the absence of such findings should not be regarded as exoneration of the subject or other individuals as to violations indicated by the evidence.

(c) An attorney in TJJD's Office of General Counsel shall review the recommendations of each investigative report for legal sufficiency and, based on the evidence, shall make findings as to whether or not abuse, neglect, or exploitation occurred. The attorney may request additional information or investigation by TJJD OIG if necessary to make a finding. The findings must be made before the results of the investigative report are finalized.

§358.440. Notification of Findings

Effective Date: XXXXXX

(a) The following persons are notified of the findings of an investigation:

(1) the juvenile victim and the juvenile's parents or guardian;

(2) the subject; and

(3) the administrator.

(b) If the investigation results in a finding that abuse, neglect, or exploitation occurred, the subject will be provided notice of the opportunity for an administrative review as provided in Chapter 349 of this title.

§358.450. Other Actions by TJJD

Effective Date: XXXXXX

(a) TJJD may provide notification of an investigation to the local prosecutor if warranted.

(b) TJJD may issue a non-compliance citation report (NCCR) for any violation of standards discovered as a result of an investigation.

(c) TJJD may issue a notice of technical assistance (NTA) for any violation of standards discovered as a result of an investigation.

§358.460. Maintenance of Records and Data

Effective Date: XXXXXX

(a) TJJD prepares and keeps on file a complete written report of each investigation conducted by the agency. The report is retained in accordance with the TJJD records retention schedule.

(b) TJJD compiles, maintains, and makes available statistics on the incidence of abuse, neglect, and exploitation investigated by the agency.

(c) TJJD maintains an electronic database containing information regarding all reports of alleged abuse, neglect, exploitation, death, and serious incidents.

(d) Investigation files are confidential and releasable only as provided in Chapter 349 of this title.

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Title 37 Public Safety and Corrections
Part 11 Texas Juvenile Justice Department
Chapter 358 Identifying, Reporting, and Investigating Abuse, Neglect, Exploitation, Death, and Serious Incidents

§358.100 Definitions
§358.120 Interpretation
§358.140 Applicability
§358.200 Policy and Procedure
§358.220 Data Reconciliation
§358.240 Signage
§358.300 Identifying and Reporting Abuse, Neglect, Exploitation, and Death
§358.320 Parental Notification
§358.340 Reporting of Allegations by Juveniles
§358.360 Allegations Occurring Outside the Juvenile Justice System
§358.400 Internal Investigation
§358.420 Reassignment or Administrative Leave During the Internal Investigation
§358.440 Cooperation with TJJD Investigation
§358.460 Corrective Measures
§358.500 Internal Investigation Report
§358.520 Required Components of an Internal Investigation Report
§358.540 Submission of Internal Investigation Report
§358.600 Serious Incidents
§358.620 Medical Documentation for Serious Incidents

§358.100. Definitions. Effective Date: 3/1/16

Terms used in this chapter have the following meanings unless otherwise expressly defined within the chapter.

(1) **Abuse, Neglect, or Exploitation**--The terms "abuse," "neglect," and "exploitation" have the meanings given in Texas Family Code §261.001 and §261.401. For the purposes of this chapter, "abuse" includes sexual abuse and serious physical abuse as defined in this section.

(2) **Alleged Victim**--A juvenile who is alleged to be a victim of abuse, neglect, or exploitation.

(3) **Attempted Escape**--Committing an act that amounts to more than mere planning but that fails to effect an escape.

(4) **Attempted Suicide**--Any voluntary and intentional action that could likely result in taking one's own life.

(5) **Chief Administrative Officer**--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department, including a juvenile probation department with multi-county jurisdiction.

(6) **Escape**--The unauthorized departure of a juvenile who is in custody or the failure of a juvenile to return to custody following an authorized temporary leave.

(7) **Founded**--The finding assigned to an internal investigation when the evidence indicates that the conduct which formed the basis of an allegation of abuse, neglect, or exploitation occurred.

(8) **Incident Report Form**--The form used to report to TJJD allegations of abuse, neglect, or exploitation, the death of a juvenile, and serious incidents.

(9) **Inconclusive**--The finding assigned to an internal investigation when the evidence does not clearly indicate whether or not the conduct that formed the basis of an allegation of abuse, neglect, or exploitation occurred.

(10) **Internal Investigation**--A formalized and systematic inquiry conducted in response to an allegation of abuse, neglect, or exploitation or the death of a juvenile.

(11) **Internal Investigation Report**--The written report submitted to TJJD that summarizes the steps taken and the evidence collected during an internal investigation of alleged abuse, neglect, or exploitation or the death of a juvenile.

(12) **Juvenile**--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, or participating in a juvenile justice program.

(13) **Juvenile Justice Facility ("facility")**--A facility that serves juveniles under juvenile court jurisdiction and that is operated wholly or partly by or under the authority of the governing board or juvenile board or by a private vendor under a contract with the governing board, juvenile board, or governmental unit. The term includes all premises and affiliated sites of the facility, whether contiguous or detached. The term includes, but is not limited to:

(A) a public or private juvenile pre-adjudication secure detention facility, including a short-term detention facility (i.e., holdover), required to be certified in accordance with Texas Family Code §51.12;

(B) a public or private juvenile post-adjudication secure correctional facility required to be certified in accordance with Texas Family Code §51.125; and

(C) a public or private juvenile non-secure correctional facility required to be certified in accordance with Texas Family Code §51.126.

(14) **Juvenile Justice Program ("program")**--A program or department that:

(A) serves juveniles under juvenile court or juvenile board jurisdiction;

(B) is operated wholly or partly by the governing board, juvenile board, or by a private vendor under a contract with the governing board or juvenile board. The term includes:

(i) a juvenile justice alternative education program;

(ii) a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court or juvenile board; and

(iii) a juvenile probation department.

(15) **Juvenile Probation Department ("department")**--A governmental unit established under the authority of a juvenile board to facilitate the execution of the responsibilities of a juvenile probation department enumerated in Title 3 of the Texas Family Code and Chapter 221 of the Texas Human Resources Code.

(16) **Medical Treatment**--Medical care, processes, and procedures that are performed by a physician, physician assistant, licensed nurse practitioner, emergency medical technician (EMT), paramedic, or dentist. Diagnostic procedures are excluded from this definition unless intervention beyond basic first aid is required.

(17) **Private Facility Administrator**--The individual designated by the governing board of the facility who has the ultimate responsibility for on-site management and operation of a facility operated under contract with the juvenile board.

(18) **Reasonable Belief**--A belief that would be held by an ordinary and prudent person in the same circumstances.

(19) **Report**--Formal notification to TJJD of alleged abuse, neglect, or exploitation, the death of a juvenile, or a serious incident.

(20) **Reportable Injury**--Any injury sustained by a juvenile accidentally, intentionally, recklessly, or otherwise that:

(A) does not result from a personal, mechanical, or chemical restraint and requires medical treatment; or

(B) results from a personal, mechanical, or chemical restraint and is a substantial injury.

(21) **Serious Incident**--Attempted escape, attempted suicide, escape, reportable injury, youth-on-youth physical assault, or youth sexual conduct.

(22) **Serious Physical Abuse**--Bodily harm or a condition that:

(A) resulted directly or indirectly from the conduct that formed the basis of an allegation of abuse, neglect, or exploitation; and

(B) requires medical treatment.

(23) **Sexual Abuse**--Conduct committed by an employee, volunteer, or other individual working under the auspices of a facility or program against a juvenile that includes sexual abuse by contact or sexual abuse

by non-contact. A juvenile, regardless of age, may not consent to the acts as defined in paragraphs (24) and (25) of this section under any circumstances.

(24) **Sexual Abuse by Contact**--Any physical contact with a juvenile that includes:

(A) contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) contact between the mouth and the penis, vulva, or anus;

(C) contact between the mouth and any body part with the intent to abuse, arouse, or gratify sexual desire;

(D) penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the actor has the intent to abuse, arouse, or gratify sexual desire;

(E) any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the actor has the intent to abuse, arouse, or gratify sexual desire; and

(F) any attempt to engage in the activities described in subparagraphs (A) – (E) of this paragraph.

(25) **Sexual Abuse by Non-Contact**--Any sexual behavior, conduct, harassment, or actions other than those defined as sexual abuse by contact, which are exhibited, performed, or simulated in the presence of a juvenile or with reckless disregard for the presence of a juvenile, including but not limited to:

(A) any threat or request for a juvenile to engage in the activities described in paragraph (24) of this section;

(B) any display of uncovered genitalia, buttocks, or breasts in the presence of a juvenile;

(C) voyeurism, which means an invasion of privacy of a juvenile for reasons unrelated to official duties, such as peering at a juvenile who is using a toilet to perform bodily functions; requiring a juvenile to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a juvenile's naked body or of a juvenile performing bodily functions; and

(D) sexual harassment, which includes repeated verbal comments or gestures of a sexual nature, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

(26) **Subject of Investigation**--A person alleged as being responsible for the abuse, neglect, or exploitation of a juvenile through the person's own actions or failure to act.

(27) **Substantial Injury**--An injury that is significant in size, degree, or severity.

(28) **TJJD**--the Texas Juvenile Justice Department.

(29) **Unfounded**--The finding assigned to an internal investigation when the evidence indicates the conduct that formed the basis of an allegation of abuse, neglect, or exploitation did not occur.

(30) **Youth-on-Youth Physical Assault**--A physical altercation between two or more juveniles that results in any of the involved parties sustaining an injury that requires medical treatment.

(31) **Youth Sexual Conduct**--Conduct between two or more juveniles, regardless of age, that is conduct described in paragraphs (24) and (25) of this section, regardless of whether the juveniles consented to the conduct.

§358.120. Interpretation. Effective Date: 3/1/16

The words "include," "includes," and "including" when following a general statement or term are to be understood as introducing a non-exhaustive list, unless the context clearly indicates otherwise.

§358.140. Applicability. Effective Date: 3/1/16

(a) Unless otherwise expressly stated, this chapter applies to:

(1) allegations of abuse, neglect, or exploitation involving a juvenile and an employee, volunteer, or other individual working under the auspices of a facility or program, regardless of the physical location of the alleged abuse, neglect, or exploitation;

(2) serious incidents involving a juvenile that:

(A) occur on the premises of a program or facility; or

(B) regardless of the physical location, occur while in the presence of an employee, volunteer, or other individual working under the auspices of a facility or program; and

(3) a death of a juvenile that:

(A) occurs on the premises of a program or facility;

(B) results from an illness, incident, or injury that occurred, was discovered, or was reported on the premises of a program or facility; or

(C) regardless of the physical location, occurs while in the presence of an employee, volunteer, or other individual working under the auspices of a facility or program.

(b) For purposes of this chapter, "working under the auspices of a facility or program" includes providing a service to juveniles when that service is:

(1) a condition of probation, deferred prosecution, or release; or

(2) a condition otherwise imposed by a juvenile court or juvenile probation department.

§358.200. Policy and Procedure. Effective Date: 3/1/16

Departments, programs, and facilities must have written policies and procedures that require, in accordance with this chapter:

(1) reporting allegations of abuse, neglect, or exploitation or the death of a juvenile to local law enforcement, TJJD, and other appropriate governmental units; and

(2) reporting serious incidents to TJJD.

§358.220. Data Reconciliation. Effective Date: 3/1/16

(a) For all allegations of abuse, neglect, or exploitation, the death of a juvenile, and serious incidents occurring within the reporting period, the data listed in subsection (c) of this section must be provided to TJJD in the electronic format requested or supplied by TJJD.

(b) The chief administrative officer or the private facility administrator ensures the data listed in subsection (c) of this section is provided to TJJD.

(c) The data must include:

(1) name and Personal Identification Number (PID) of each alleged victim;

(2) name and date of birth of each subject of investigation;

(3) date and time of alleged incident;

(4) date the alleged incident was reported to TJJD;

(5) type of alleged incident (i.e., abuse, neglect, exploitation, death, or serious incident);

(6) type of injury, if applicable;

(7) whether the alleged incident was restraint-related and, if so, what type of restraint was involved (i.e., personal, mechanical, or chemical);

(8) disposition of internal investigation (i.e., founded, unfounded, or inconclusive); and

(9) county-generated case identification number.

(d) The data must be supplied at least annually or more frequently if required by TJJD. The data must include any additional information not listed in this section if specifically requested by TJJD.

§358.240. Signage.

Effective Date: 3/1/16

(a) Departments, programs, and facilities must prominently display signage provided by TJJD regarding a zero-tolerance policy concerning abuse of juveniles. The signage must be displayed in each of the following places:

(1) lobby or visitation areas of the department, program, or facility to which the public has access;

(2) juvenile housing and common areas;

(3) common medical treatment areas;

(4) common educational areas; and

(5) other common areas.

(b) Signage must be posted in English and Spanish.

§358.300. Identifying and Reporting Abuse, Neglect, Exploitation, and Death.

Effective Date: 3/1/16

(a) **Duty to Report.**

An employee, volunteer, or other individual working under the auspices of a facility or program must report the death of a juvenile or an allegation of abuse, neglect, or exploitation to TJJD and local law enforcement if he/she:

(1) witnesses, learns of, or receives an oral or written statement from an alleged victim or other person with knowledge of the death of a juvenile or an allegation of abuse, neglect, or exploitation; or

(2) has a reasonable belief that the death of a juvenile or abuse, neglect, or exploitation has occurred.

(b) **Non-Delegation of Duty to Report.**

In accordance with Texas Family Code §261.101, the duty to report cannot be delegated to another person.

(c) **Other than Sexual Abuse or Serious Physical Abuse.**

(1) **Time Frames for Reporting.**

A report of alleged abuse, neglect, or exploitation other than allegations involving sexual abuse or serious physical abuse must be made within 24 hours from the time a person gains knowledge of or has a reasonable belief that alleged abuse, neglect, or exploitation has occurred.

(2) **Methods for Reporting.**

(A) The report to TJJD may be made by phone or by faxing or e-mailing a completed Incident Report Form.

(B) If the report to TJJD is made by phone, a completed Incident Report Form must be submitted within 24 hours after the phone report.

(C) The report to law enforcement must be made by phone.

(d) **Sexual Abuse or Serious Physical Abuse.**

(1) **Time Frames for Reporting.**

(A) A report of alleged sexual abuse or serious physical abuse must be made to local law enforcement immediately, but no later than one hour after the time a person gains knowledge of or has a reasonable belief that alleged sexual abuse or serious physical abuse has occurred.

(B) A report of alleged sexual abuse or serious physical abuse must be made to TJJD immediately, but no later than four hours after the time a person gains knowledge of or has a reasonable belief that alleged sexual abuse or serious physical abuse has occurred.

(2) **Methods for Reporting.**

(A) The initial report to TJJD must be made by phone using the toll-free number as designated by TJJD.

(B) Within 24 hours after the initial phone report to TJJD, the completed Incident Report Form must be submitted to TJJD by fax or e-mail.

(C) The initial report to law enforcement must be made by phone.

(e) **Death of a Juvenile.**

(1) **Time Frames for Reporting.**

(A) A report of a death must be made to local law enforcement immediately, and no later than one hour after the discovery or notification of the death.

(B) A report of a death must be made to TJJD immediately, and no later than four hours after the discovery or notification of the death.

(C) A written report of the cause of death must be submitted to the state Attorney General no later than 30 days after the juvenile's death if required by Texas Code of Criminal Procedure Article 49.18(b).

(D) A copy of the death investigation report must be submitted to TJJD within 10 calendar days after completion.

(2) **Methods for Reporting.**

(A) The initial report to TJJD must be made by phone using the toll-free number as designated by TJJD.

(B) Within 24 hours after the phone report to TJJD, the completed Incident Report Form must be submitted to TJJD by fax or e-mail.

(C) The initial report to law enforcement must be made by phone.

§358.320. Parental Notification. Effective Date: 3/1/16

(a) **Requirement to Notify.**

Notification, or diligent efforts to notify, must be made to the parent(s), guardian(s), and custodian(s) of a juvenile who has died or who is the alleged victim of abuse, neglect, or exploitation.

(b) **Time of Notification.**

The notice or efforts to notify required by subsection (a) of this section must be made as soon as possible, but no later than 24 hours from the time a person gains knowledge of or has a reasonable belief that the allegation of abuse, neglect, or exploitation or the death of a juvenile occurred.

(c) **Method of Notification.**

The notice or efforts to notify required by subsection (a) of this section may be made by phone, in writing, or in person.

(d) **Documentation of Notification.**

The notice or efforts to notify required by subsection (a) of this section must be documented on TJJD's Incident Report Form and in the internal investigation report.

§358.340. Reporting of Allegations by Juveniles. Effective Date: 3/1/16

(a) **Right to Report.**

Juveniles have the right to report to TJJD allegations of abuse, neglect, or exploitation and the death of a juvenile. During orientation to a facility or program, juveniles must be advised in writing of:

(1) their right to report allegations under this subsection; and

(2) TJJD's toll-free number available for reporting allegations under this subsection.

(b) **Policy and Procedure.**

Departments, programs, and facilities must have written policies and procedures that provide a juvenile with reasonable, free, and confidential access to TJJD for reporting allegations.

(c) **Access to TJJD.**

Upon the request of a juvenile, staff must facilitate the juvenile's unimpeded access to TJJD to report allegations.

§358.360. Allegations Occurring Outside the Juvenile Justice System. Effective Date: 3/1/16

Any person who witnesses, learns of, receives an oral or written statement from an alleged victim or other person with knowledge, or has a reasonable belief as to the occurrence of alleged abuse, neglect, or exploitation involving a juvenile that is not alleged to involve an employee, volunteer, or other individual working under the auspices of a facility or program must report the incident to law enforcement or to the appropriate governmental unit as required in Texas Family Code Chapter 261.

§358.400. Internal Investigation. Effective Date: 3/1/16

(a) **Investigation Requirement.**

In every case in which an allegation of abuse, neglect, or exploitation or the death of a juvenile has occurred, an internal investigation must be conducted. The investigation must be conducted by a person qualified by experience or training to conduct a comprehensive investigation.

(b) **Initiation of Investigation.**

The internal investigation must be initiated immediately upon the chief administrative officer or the private facility administrator or their respective designees gaining knowledge of an allegation of abuse, neglect, or exploitation or the death of a juvenile. However, the initiation of the internal investigation will be postponed if:

(1) directed by law enforcement;

(2) requested by TJJD; or

(3) the integrity of potential evidence could be compromised.

(c) **Policy and Procedure.**

Departments, programs, and facilities must have written policies and procedures for conducting internal investigations of allegations of abuse, neglect, or exploitation or the death of a juvenile. The internal investigation must be conducted in accordance with the policies and procedures of the department, program, or facility.

(d) **Juvenile Board Responsibilities.**

If the chief administrative officer or the private facility administrator is the person alleged to have abused, neglected, or exploited a juvenile, the juvenile board chair must:

(1) conduct the internal investigation; or

(2) appoint an individual to conduct the internal investigation who is not one of the following:

(A) the person alleged to have abused, neglected, or exploited the juvenile(s);

(B) a subordinate of the person alleged to have abused, neglected, or exploited the juvenile(s); or

(C) a law enforcement officer currently acting in the capacity as a criminal investigator for the alleged abuse, neglect, or exploitation or the death of a juvenile.

(e) **Time Frame for Internal Investigation.**

The internal investigation must be completed within 30 business days after the initial report to TJJD. TJJD may extend this time frame upon request. TJJD may require submission of all information compiled to date or a statement of the status of the investigation when determining whether or not to grant an extension or after granting an extension.

(f) **Written and Electronically Recorded Statements.**

During the internal investigation, diligent efforts must be made to obtain written or electronically recorded oral statements from all persons with direct knowledge of the alleged incident.

§358.420. Reassignment or Administrative Leave During the Internal Investigation.

Effective Date: 3/1/16

(a) Upon gaining knowledge of an allegation of abuse, neglect, or exploitation, and until the finding of the internal investigation is determined, the person alleged to have abused, neglected, or exploited a juvenile must be placed on administrative leave or reassigned to a position having no contact with the alleged victim, relatives of the alleged victim, or other juveniles.

(b) If the chief administrative officer or the private facility administrator is the person alleged to have abused, neglected, or exploited a juvenile, the juvenile board chair must immediately place him/her on administrative leave or reassign him/her to a position having no contact with the alleged victim, relatives of the alleged victim, or other juveniles.

(c) If, during the internal investigation, the subject of investigation resigns or is terminated from employment, TJJD must be notified no later than the second business day after the resignation or termination.

(d) If a subject of investigation obtains employment in another jurisdiction before the disposition of the internal investigation has been finalized, the person may not be placed in a position having any contact with any juveniles until the disposition of the internal investigation is finalized in the county of previous employment.

§358.440. Cooperation with TJJD Investigation.

Effective Date: 3/1/16

(a) All persons must fully cooperate with any investigation of an allegation of abuse, neglect, or exploitation or the death of a juvenile.

(b) A diligent effort must be made to identify and make available for questioning all persons with knowledge of an allegation of abuse, neglect, or exploitation or the death of a juvenile that is the subject of a TJJD investigation.

(c) Upon request by TJJD, all evidence must be provided to TJJD in the format requested.

§358.460. Corrective Measures. Effective Date: 3/1/16

Corrective measures must be taken at the conclusion of the internal investigation, if warranted, that may include:

(1) a review of the policies and procedures pertinent to the alleged incident;

(2) revision of any policies or procedures as needed;

(3) administrative disciplinary action or appropriate personnel actions against all persons found to have abused, neglected, or exploited a juvenile; and

(4) the provision of additional training for all appropriate persons to ensure the safety of the juveniles, employees, and others.

§358.500. Internal Investigation Report. Effective Date: 3/1/16

An internal investigation report must be completed at the conclusion of each internal investigation resulting from an allegation of abuse, neglect, or exploitation or the death of a juvenile.

§358.520. Required Components of an Internal Investigation Report. Effective Date: 3/1/16

The internal investigation report must include:

(1) the date the internal investigation was initiated;

(2) the date the internal investigation was completed;

(3) the date the alleged victim's parent, guardian, or custodian was notified of the allegation, or documentation that diligent efforts to provide the notification were made;

(4) a summary of the original allegation;

(5) relevant policies and procedures related to the incident;

(6) a summary or listing of the steps taken during the internal investigation;

(7) a written summary of the content of all oral interviews conducted;

(8) a listing of all evidence collected during the internal investigation, including all audio and/or video recordings, polygraph examinations, etc.;

(9) relevant findings of the investigation that support the disposition;

(10) one of the following dispositions:

(A) founded;

(B) unfounded; or

(C) inconclusive;

(11) the administrative action, disciplinary action, or corrective measures taken to date, if applicable (e.g., termination, suspension, retrained, returned to duty, or none);

(12) the date the internal investigation report was completed;

(13) the names of all persons who participated in conducting the internal investigation; and

(14) the name and signature of the person who submitted the internal investigation report.

§358.540. Submission of Internal Investigation Report. Effective Date: 3/1/16

(a) A copy of the internal investigation report must be submitted to TJJD within five calendar days following its completion.

(b) The following documentation collected during the internal investigation must be submitted to TJJD with the internal investigation report:

(1) written statements;

(2) relevant medical documentation;

(3) training records, if applicable; and

(4) any other documentation used to reach the disposition of the internal investigation.

§358.600. Serious Incidents. Effective Date: 3/1/16

(a) **Duty to Report.**

An employee, volunteer, or other individual working under the auspices of a facility or program must report a serious incident to TJJD if he/she:

(1) witnesses, learns of, or receives an oral or written statement from a juvenile or other person with knowledge of a serious incident; or

(2) has a reasonable belief that a serious incident has occurred.

(b) **Time Frame for Reporting.**

A report of a serious incident must be made within 24 hours from the time a person gains knowledge of or has a reasonable belief that the serious incident occurred.

(c) **Methods for Reporting Serious Incidents.**

(1) The report may be made by phone or by faxing or e-mailing a completed Incident Report Form to TJJD.

(2) If the report is made by phone, a completed Incident Report Form must be submitted to TJJD within 24 hours after the phone report.

§358.620. Medical Documentation for Serious Incidents. Effective Date: 3/1/16

A treatment discharge form or other medical documentation that contains evidence of medical treatment pertinent to the reported incident must be submitted to TJJD within 24 hours after receipt by the department, program, or facility.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Kaci Singer, Deputy General Counsel

Subject: Discussion, consideration, and possible approval to publish both the proposed repeal of current 37 TAC §380.9333 (Investigation of Alleged Abuse, Neglect, and Exploitation) and its proposed, revised replacement in the Texas Register for a public comment period of at least 30 days and possible conditional approval to adopt the final rule

Date: November 8, 2024

Before the Board for consideration are a repeal of §380.9333 (relating to investigation of alleged abuse, neglect, and exploitation) and its proposed replacement with the same section number and title. (*Note: Sometimes revisions to a rule are so extensive that tracking the changes would make the document unreadable. In these instances, we are allowed to repeal a rule and replace it with a new, clean, revised version of itself.*) An abbreviated summary of the proposed differences between the two drafts follows, and a more detailed summary is provided below:

- Added more detail to rules regarding what must be proven in order to make a finding of abuse, neglect, or exploitation in TJJD investigations.
- Created parity in the rules regarding TJJD investigations at the county level and state level.

The Board's approval is requested to publish the current rule to be repealed and the new, revised rule in the *Texas Register* for a 30-day public comment period.

Also requested is the Board's approval to adopt the final rule after the public comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- the text of the current rule that is being proposed for repeal;
- the text of the proposed replacement rule; and
- a resolution for Board action.

Summary of Proposed Changes:

- Clarified that an investigation may be conducted based on a report or may be initiated by TJJD when there is reasonable cause to believe that an incident may require investigation, regardless of how TJJD was made aware of the matter.
- Removed detailed procedures of how investigations are conducted from administrative rule as they are more appropriately addressed in policies and procedures than a Board-level rule but left that investigation must be conducted in accordance with TJJD policies and procedures; be prompt, thorough, and directed at resolving all relevant issues; and be conducted only be a qualified person.
- Detailed that a finding of ANE requires a preponderance of evidence to establish the person engaged in conduct meeting the definition, including having done so with the required mental state.
- Defined *intentionally, knowingly,* and *recklessly* by using the Penal Code definitions to do so.
- Defined *negligence* using definition in civil law negligence cases.
- Defined the required findings for ANE allegations.
- Provided that the investigator in an ANE report will summarize and analyze the evidence and make a recommendation regarding whether the evidence is sufficient to establish ANE occurred.
- Provided that a TJJD attorney will review the investigation for legal sufficiency and make findings as to whether the evidence stablishes that ANE occurred. The attorney may request additional information or investigation by TJJD OIG if necessary.

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: XXXXXX**
Subchapter:	Youth Rights and Remedies	Page: 1 of 7
Rule:	**Investigation of Alleged Abuse, Neglect, and Exploitation**	Replaces: GAP.380.9333, 7/15/14
Statutes:	Chapter 261, Family Code	

RULE

(a) **Purpose.**

This rule provides for the administrative investigation of allegations of abuse, neglect, or exploitation in programs and facilities operated by Texas Juvenile Justice Department (TJJD) or in which TJJD youth are placed. This rule also provides standards for investigations and for the compilation and sharing 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, and parole services, and in facilities and programs with which TJJD contracts for the provision of services to youth.

(2) Except as specifically noted, this rule does not apply to criminal investigations conducted by the TJJD Office of Inspector General under §242.102, Human Resources Code.

(c) **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 TJJD. Abuse also includes the definition in §261.001, Family Code.

(2) **Board**--the Texas Juvenile Justice Board, the governing board of TJJD.

(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 involving individuals included in subsection (b)(1) of this section and youth 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 TJJD 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 TJJD. Neglect also includes the definition in §261.001, Family Code.

(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.

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(8) **Preponderance of the evidence**--a standard of proof meaning the credible and reliable evidence establishes that it is more likely than not that conduct meeting the definition of 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**—includes sexual-related conduct that is harmful to a child's mental, emotional, or physical welfare, including, but not limited to, conduct that constitutes the offense of continuous sexual abuse of a child or children under §21.02, Penal Code; indecency with a child under §21.11, Penal Code; sexual assault under §22.011, Penal Code; aggravated sexual assault under §22.021, Penal Code; improper sexual activity with person in custody or under supervision under §39.04, Penal Code; indecent exposure under §21.08, Penal Code; sexual performance by a child under §43.25, Penal Code; and trafficking of persons under §20A.02, Penal Code.

(d) **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. The TJJD Office of Inspector General is an appropriate law enforcement agency for reports of suspected abuse, neglect, or exploitation of youth subject to the jurisdiction of TJJD. Any TJJD employee, volunteer, or contractor working in a program or facility operated by or under contract with TJJD who has reasonable cause to believe a youth committed to TJJD has been or may have been the victim of abuse, neglect, or exploitation or receives such a report must immediately report the matter to law enforcement in accordance with the TJJD's reporting policies and procedures.

(2) The person making a report must provide as much detailed information as possible, including the identity of the 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.

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

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

(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 following people of the report:

(i) the youth's parents or guardian;
(ii) the youth, if the report was not made by the youth; and
(iii) the chief juvenile probation officer for the committing court;

(3) determines whether the person accused of wrongdoing must be suspended, temporarily reassigned, or temporarily barred from assignment to TJJD 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.

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(f) **Assignment for Investigation.**

(1) The TJJD Office of the Inspector General (OIG) promptly reviews each report of alleged abuse, neglect, or exploitation. Each report is entered into a centralized database and assigned for investigation if the report alleges conduct that, if true, appears to meet 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) An OIG investigator must provide an initial response within 24 hours after OIG 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.

(g) **Standards for Investigations.**

(1) Investigations may be conducted based on a report to the OIG or may be initiated by the OIG when there is reasonable cause to believe that an incident may require investigation, regardless of how OIG is made aware of the matter.

(2) The investigation must be prompt, thorough, and directed at resolving all the relevant issues raised by the report. The primary objective of each investigation under this section is to ensure the health, safety, and well-being of the alleged victim(s) and other juveniles.

(3) Only a person qualified by experience and training may be assigned to conduct an investigation under this section.

(4) 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.

(5) 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.

(h) **Abuse, Neglect, or Exploitation Findings.**

(1) In order to find that a person engaged in abuse, neglect, or exploitation, there must be a preponderance of evidence to establish the person engaged in conduct that meets the definition of abuse, neglect, or exploitation, including having done so with the required mental state.

(2) A person acts intentionally, or with intent, with respect to the nature of the person's conduct or the result of the conduct when it is the person's conscious objective or desire to engage in the conduct or to cause the result.

(3) A person acts knowingly, or with knowledge, with respect to the nature of the person's conduct or the result of the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with the respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.

(4) A person acts recklessly, or is reckless, with respect to circumstances surrounding the person's conduct or the result of the conduct when the person is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must

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be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(5) A person acts with negligence when the person does something that an ordinarily prudent person exercising ordinary care would not have done under the same circumstances or fails to do something that an ordinarily prudent person in the exercise of ordinary care would have done.

(6) An investigation of potential abuse requires a finding of whether the subject intentionally, knowingly, or recklessly acted or failed to act; and, if so, whether the act caused emotional harm or physical injury to the youth or posed a significant and foreseeable risk of emotional harm or physical injury.

(7) An investigation of potential neglect requires a finding of whether the subject engaged in a negligent act or omission and, if so, whether the action or failure to act was a substantial factor in bringing about substantial emotional harm or physical injury to the youth or posed a significant and foreseeable risk of emotional harm or physical injury.

(8) An investigation of potential exploitation requires a finding of whether a youth or the resources of a youth were used for monetary or personal benefit, profit, or gain of the suspect and, if so, whether the use was illegal or improper.

(i) **Investigative Report.**

(1) Each investigation requires a written investigative report with the investigator's recommendations regarding whether the evidence is sufficient to establish that abuse, neglect, or exploitation occurred. The report must include a summary and analysis of the evidence relied upon in reaching the recommendations. Anything considered in the investigation, including, but not limited to, copies of relevant documents and photographs, must be attached to the investigative report.

(2) Investigations may include recommendations that findings of misconduct other than abuse, neglect, or exploitation be made if the misconduct is established by the evidence. However, the absence of such findings should not be regarded as exoneration of the subject or other employees as to policy violations or other misconduct indicated by the evidence.

(3) An attorney in the Office of General Counsel shall review the recommendations of each investigative report for legal sufficiency and, based on the evidence, shall make findings as to whether or not abuse, neglect, or exploitation occurred. The Office of General Counsel may request additional information or investigation by OIG if necessary to make a finding. The findings must be made before the results of the investigative report are finalized.

(j) **Actions in Response to a Closed Investigative 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; and

(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 chapter.

(2) If the chief local administrator disagrees with the findings, the chief local administrator may appeal in accordance with PRS.35.11.

(3) If the investigative finding confirms abuse, neglect, exploitation, or other wrongdoing occurred, the chief local administrator must take whatever actions are necessary and appropriate to rectify the wrong and prevent future harm under the same or similar circumstances, which may include disciplinary action.

DRAFT

(4) If the investigative findings indicate wrongdoing by a person no longer employed by TJJD, the chief local administrator must contact HR to determine if the person's rehire eligibility status should be changed.

(k) **Standards for Compiling Investigation Information.**

(1) The Office of Inspector General 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 TJJD executive staff and the 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 Board for review. The TJJD executive director or 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) A report of suspected abuse, neglect, or exploitation and the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation or in providing services as a result of an investigation are confidential and may be disclosed only for purposes consistent with Chapter 261, Family Code, applicable federal or state law, and in accordance with this section.

(2) To the extent required by state or federal law, TJJD 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 TJJD during the period that the child is committed to TJJD; and

(B) TJJD is not prohibited by Chapter 552, Government Code, or other law from disclosing the report.

(3) 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 TJJD 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.

(4) Notwithstanding any other provision permitting the release of information, TJJD will not disclose any record or information that, if released to the requestor, would interfere with an ongoing criminal investigation or prosecution.

(5) 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; and

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(B) a parent, guardian, managing conservator, or attorney representing 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.

(6) An investigative report and evidence gathered in the course of an investigation may be provided to appropriate TJJD staff for the determination of corrective actions, to the State Office of Administrative Hearings for the purpose of a certification action pursuant to Chapter 349 of this title, and pursuant to a Memorandum of Understanding adopted under §810.009, Health and Safety Code.

(7) An investigative report and evidence gathered in the course of an investigation may be provided to or made available to the subject of the investigation for use in an appeal of the investigation findings or to defend against a disciplinary action or other action arising from the investigation findings, including a certification action under Chapter 349 of this title.

(A) Investigative reports are confidential under Chapter 261, Family Code, and may be used by the subject of the investigation only for the appeal of investigation findings or to defend against a disciplinary action or certification 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 subject of the investigation.

(8) Copies of videotapes, audiotapes, and photographs may be provided to individuals or entities identified in paragraphs (5)–(7) of this subsection only if TJJD determines that the provision of a copy is essential to the investigation, prosecution, or resolution of a case. Otherwise, the individual will be provided access to review videotapes, audiotapes, and photographs only in areas designated by TJJD and at a time mutually convenient to TJJD and the requestor. When viewing or listening to these records, the requestor may not be accompanied by any individual who would not otherwise be entitled to have access to these records unless the participation of this individual is deemed by TJJD to be appropriate under the circumstances surrounding the request.

(9) TJJD shall withhold the release of any investigation records obtained from another source if the release of those records to the requestor is specifically prohibited under state or federal law. Information that may be withheld under this section includes, but is not limited to:

(A) all medical records subject to the Medical Practices Act, Chapter 159, Occupations Code, unless release to the requestor is authorized under that Act;

(B) HIV information unless release to the requestor is authorized under Chapter 81, Health and Safety Code;

(C) offense reports, criminal history information, and/or arrest records obtained from a law enforcement entity, unless their release to the requestor is specifically authorized under state or federal law; and

(D) adult or juvenile probation records, as well as records related to the taking into custody of a juvenile, unless release to the requestor is specifically authorized under state or federal law.

(m) **Complaints.**

All complaints relating to investigations under this section shall be referred to the Board, as required by §261.403, Family Code.

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

Pursuant to Family Code §261.403, the 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 GAP.380.9337 for additional requirements regarding investigations of alleged sexual abuse.
- See GAP.380.9353 for information on how the youth may appeal to the executive director.
- 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.

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

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.

REPEAL

(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 TJJD 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 TJJD.

(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 TJJD 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 TJJD. Any TJJD employee, volunteer, or contractor working in a program or facility operated by or under contract with TJJD who has cause to believe a youth committed to the care and custody of TJJD 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 TJJD'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, TJJD:

(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 TJJD 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) TJJD 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 TJJD investigator must provide an initial response within 24 hours after TJJD 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) TJJD 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 TJJD executive staff and the TJJD 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 TJJD governing board for review. The TJJD 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, TJJD 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 TJJD during the period that the child is committed to TJJD; and

(B) TJJD 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 TJJD 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, TJJD 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 TJJD 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.

- 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.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Kaci Singer, Deputy General Counsel

Subject: Discussion, consideration, and possible approval to adopt the final rule text for new 37 TAC §343.261 (Resident Supervision)

Date: February 28, 2025

At the November 8, 2024 Board meeting, approval was given to post new §343.261 at the Texas Register for a 30-day public comment period. The rule was published January 10, 2025. To date, no public comments have been received. However, TJJD staff worked with juvenile probation department and facility staff and have proposed modifications to the published language to address some raised concerns with ambiguity and lack of clarity. An abbreviated summary follows, and a more detailed summary is provided below:

- Added a section to address obstructing observation windows in facilities.

The Board's approval is requested to adopt the new rule with the modified language.

Attached to this memo please find:

- the text of the rule; and
- a resolution for board action.

Summary of Proposed New Section

- Provides that, when supervision of juveniles is performed through an architectural barrier, such as a door or window, staff must be able to clearly see the juvenile without having to remove or relocate anything that might be on, covering, or blocking the observation window.
- Explains that facilities must have a policy prohibiting staff or residents from using any covering that prevents staff's ability to clearly see the resident without have to remove or relocate anything that might be on, covering, or blocking the observation window. Requires that the facility policy address the actions to be taken if the policy is violated.
- Provides that refusal to remove an item blocking a window is considered a serious threat to the safety and/or security of the facility.
- Clarifies that nothing in this section requires continuous, uninterrupted visual supervision or constant visual supervision in instances in which such is not required by another section.

Title 37	Public Safety and Corrections
Part 11	Texas Juvenile Justice Department
Chapter 343	**Secure Juvenile Pre-Adjudication Detention and Post-Adjudication Correctional Facilities**

Draft 12/17/24
Pertinent Section Only; Not the Full Chapter

Subchapter B
Pre-Adjudication and Post-Adjudication Secure Facility Standards

§343.261 Resident Supervision

Effective Date: XXXXXX

(1) When supervision under this chapter is performed through an architectural barrier (e.g., door, window), staff must have the ability to clearly see the resident without having to remove or relocate anything that might be on, covering, or blocking the observation window, regardless of how frequently visual observation recordings are required.

(2)[~~(1)~~] Facility policy must prohibit staff and residents from using any covering that prevents staff's ability to clearly see the resident without having to remove or relocate anything that might be on, covering, or blocking the observation window. Facility policy must address the actions to be taken if the prohibition is violated. [~~the blocking of viewing windows that are used to observe residents. The policy must instruct staff of the actions to take if a viewing window is blocked.~~]

(3)[~~(2)~~] The refusal by staff or a resident to remove an item that prevents staff's ability to clearly see the resident [~~obstructing the viewing window~~] is considered a serious threat to facility safety and/or security.

(4) Nothing in this section requires continuous, uninterrupted visual supervision or constant visual supervision in instances in which such supervision is not required by another section.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Kaci Singer, Deputy General Counsel

Subject: Discussion, consideration, and possible approval to publish proposed revisions to 37 TAC §344.804 (Dual Certification) in the *Texas Register* for a public-comment period of at least 30 days and possible conditional approval to adopt the final rule

Date: February 28, 2025

Before the Board for consideration are revisions to 37 TAC §344.804 (Dual Certification). An abbreviated summary follows, and a more detailed summary is provided below:

- Clarify that a currently certified juvenile probation officer or juvenile supervision officer is not required to retake training topics before taking the certification exam for an additional certification but may not count the hours for those topics unless taken within the prior 18 months.

The board's approval is requested to publish the revised rule in the *Texas Register* for a 30-day public-comment period.

Also requested is the board's approval to adopt the final rule after the public-comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- the text of the rule; and
- a resolution for board action.

Summary of Proposed Revisions

- Provides that an individual with an active certification as a juvenile supervision officer or juvenile probation officer who is seeking a dual certification is not required to retake previously completed mandatory training topics before taking the exam for the newly sought certification.
- Provides that the individual may not get credit for the hours of the previously taken topics toward the requirements for the additional certification unless they were taken within the prior 18 months, as is consistent with standards for receiving credit for training hours.

Title 37 Public Safety and Corrections
Part 11 Texas Juvenile Justice Department
Chapter 344 Employment, Certification, and Training

Draft 12/17/24
Pertinent Section Only; Not the Entire Chapter

Subchapter G
Certification

§344.804 Dual Certification

Effective Date: XXXXXX~~12/30/22~~

(a) Individuals may hold more than one certification by TJJD if they meet all criteria required for each certification and their job duties are consistent with all certifications held, except as noted in subsection (b) of this section.

(b) An individual may not hold an active certification as a juvenile supervision officer and as a community activities officer unless the individual is concurrently employed by more than one department or facility.

(c) Training received may be used for credit toward more than one type of TJJD-issued certification if the topic is relevant to each certification sought or held.

(d) An individual who has an active certification as a juvenile supervision officer or juvenile probation officer who has previously completed a mandatory training topic listed in §§344.620 or 344.622, as applicable, is not required to complete training in that topic again in order to receive a dual certification as a juvenile supervision officer or juvenile probation officer. However, the person may not receive credit toward the training hours required for the second certification for training completed more than 18 months prior to the date the application for the second certification is submitted to TJJD.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Kaci Singer, Deputy General Counsel

Subject: Discussion, consideration, and possible approval to publish proposed revisions to 37 TAC §380.8555 (Program Completion for Non-Sentenced Offenders) and 380.8557 (Release Review Panel) in the *Texas Register* for a public-comment period of at least 30 days and possible conditional approval to adopt the final rules

Date: February 28, 2025

Before the Board for consideration are revisions to 37 TAC §380.8555 (Program Completion for Non-Sentenced Offenders) and 380.8557 (Release Review Panel). An abbreviated summary follows, and a more detailed summary is provided below:

- Allow youth who have completed the minimum length of stay to be program complete and therefore potentially eligible for release without having to complete the extension length of stay assigned by the Release Review Panel.
- Remove from Board-level administrative rule the Release Review Panel processes that the Executive Director is required by statute to make and added a provision in rule instructing the Executive Director to do so in accordance with statute.
- Clarify the purpose of the Release Review Panel, the purpose of request for reconsideration of a Release Review Panel decision, and the processing of requests for reconsideration.

The board's approval is requested to publish the revised rules in the *Texas Register* for a 30-day public-comment period.

Also requested is the board's approval to adopt the final rules after the public-comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- the text of the rules, with the proposed changes shown as mark-ups; and
- a resolution for board action.

Summary of Proposed Changes

- Removed the requirement for a youth without a determinate sentence to complete the extension length of stay assigned by the Release Review Panel in order to be meet program completion criteria. (380.8555)
- Established a process to determine when a youth who has completed the minimum length of stay but not the extension length of stay has met program completion criteria. Established that if the youth loses release eligibility within 30 days before completion of the extension length of stay, the youth's case is referred to the Release Review Panel. (380.8555)
- Modified the definition of "clear and convincing evidence" for clarity.
- Modified the definition of "extension length of stay" to be consistent with change that youth is not required to complete it in order meet program completion release criteria.
- Removed the definition of "Release Review Panel" as unnecessary and instead defined the purpose of the panel.
- Removed portions of the rule that restate statute.
- Removed portions of the rule that establish processes that the executive director is responsible for establishing in policy; added a provision requiring the executive director to adopt such policies.
- Clarified that extension lengths of stay may be assigned only as consistent with statute (i.e. if there is clear and convincing evidence that the youth is in need of additional rehabilitation from TJJD and a residential placement will provide the most suitable environment for that rehabilitation).
- Specified that, consistent with statute, if the panel does not extend the youth's stay, the youth shall be released under supervision or discharged from TJJD.
- Added language explaining the purpose of a request for reconsideration.
- Replaced the word "representative" with "designated advocate," with regard to who may request a reconsideration of a panel decision, which is consistent with statutory language.
- Added a provision allowing the executive director to specify additional persons who may request a reconsideration.
- Clarified that the panel's discretion to accept late requests for reconsideration is limited to instances in which good cause is shown for the delay.
- Made non-substantive changes for clarity.

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: ~~[5/1/22]~~**
Subchapter:	Admission, Placement, Release, and Discharge	Page: 1 of 3
Division:	Program Completion and Release	
Rule:	**Program Completion for Non-Sentenced Offenders**	Replaces: GAP.380.8555, 5/1/22 ~~[4/1/14]~~
Statutes:	HR Code §245.051; Education Code §30.106; Family Code §54.0491	

RULE

(a) **Purpose.**

The purpose of this rule is to establish criteria and the approval process for release of youth upon program completion.

(b) **Applicability.**

(1) This rule does not apply to sentenced offenders.

(2) This rule does not apply to decisions by the Release Review Panel. See §380.8557 of this chapter for more information on the Release Review Panel.

(c) **General Provisions.**

A detainer or bench warrant is not an automatic bar to earned release. The Texas Juvenile Justice Department (TJJD) releases youth to authorities pursuant to a warrant.

(d) **Program Completion Criteria.**

Youth in high- or medium-restriction facilities are eligible for release to TJJD parole when the following criteria have been met:

(1) no major rule violations proven at a Level II due process hearing within 30 days before the program completion review or during the approval process; and

(2) completion of the minimum ~~[and/or extension]~~ length of stay; and

(3) participation in or completion of assigned specialized treatment programs or curriculum as required under §380.8751 of this chapter; and

(4) completion of the following rehabilitation program requirements:

(A) for TJJD-operated facilities, assignment to the highest stage in the assigned rehabilitation program as described in §380.8703 of this chapter; or

(B) for facilities operated under contract with TJJD, completion of requirements for release to parole as defined in the TJJD-approved rehabilitation program; and

(5) participation in or completion of any statutorily required rehabilitation programming, including but not limited to:

(A) participation in a reading improvement program for identified youth to the extent required under §380.9155 of this chapter;

(B) participation in a positive behavior support system to the extent required under §380.9155 of this chapter; and

(C) completion of at least 12 hours of a gang intervention education program, if required by court order.

DRAFT

(e) **Review and Approval Process.**

(1) **Program Completion Review.**

(A) Before the expiration of a youth's initial or revocation minimum length of stay and before the expiration of an extension length of stay, a program completion review is conducted to determine whether the youth appears to meet program completion criteria.

(B) If it is determined the youth does not meet program completion criteria, the youth's case is referred to the Release Review Panel. Staff will discuss with the youth the reasons for the decision to refer the youth's case to the panel.

(C) If it is determined the youth appears to meet program completion criteria, the youth's case is referred to the final decision authority.

(2) **Final Decision Authority for Approval of Release.**

(A) The final decision authority shall confirm whether the youth meets all release criteria and ensure the community reentry/transition plan adequately addresses risk factors prior to approving the release.

(B) If the final decision authority approves the release, the youth must be placed on parole or parole status no later than 15 calendar days after the minimum length of stay date.

(C) If the final decision authority does not approve the release, the youth's case is referred to the Release Review Panel.

(3) **Program Completion Prior to Expiration of the Extension Length of Stay.**

(A) This paragraph applies to a youth who is not subject to review under paragraph (1) of this subsection.

(B) A youth with an extension length of stay is not required to complete the extension in order to meet program completion criteria. As soon as a youth with an extension length of stay appears to meet the program completion criteria in subsection (d) of this section, a program completion review is conducted.

(C) If it is determined the youth appears to meet program completion criteria, the youth's case is referred to the final decision authority.

(D) If the final decision authority approves the release, the youth must be placed on parole or parole status no later than 15 calendar days after the extension length of stay date.

(E) If the final decision authority does not approve the release, the youth remains in the facility and is reviewed again under this paragraph or paragraph (1) of this subsection, as appropriate.

(f) **Loss of Release Eligibility.**

(1) Except as provided by paragraph (2) of this subsection, if ~~If~~ a youth loses release eligibility after the program completion review and before release to parole, the youth's case is referred to the Release Review Panel.

(2) If a youth approved for release under subsection (e)(3) of this section loses release eligibility, the youth's case is referred to the Release Review Panel only if the youth has completed the extension length of stay or will do so within 30 days.

(g) **Active Warrants.**

At least ten calendar days before the youth's release, TJJD notifies any entity that has issued an active warrant for the youth.

- See Case Management Standards Manual, Chapter 2, for procedures relating to the release process.
- See CMS.03.11 for procedures relating to the gang intervention education program.
- See EDU.13.51 for procedures relating to participation in the reading program and positive behavior support system.

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: XXXXXX [~~5/1/22~~]**
Subchapter:	Admission, Placement, and Program Completion	Page: 1 of 6
Division:	Program Completion and Release	Replaces: GAP.380.8557, 5/1/22 [~~4/1/14~~]
Rule:	**Release Review Panel**	
Statutes:	HR Code §§245.101 - 245.104	

RULE

(a) **Purpose.**

This rule establishes a Release Review Panel to determine whether a youth who has completed the minimum length of stay should be discharged from the custody of the Texas Juvenile Justice Department (TJJD), released under supervision, or given an extended length of stay. This rule also establishes a process to request reconsideration of an order issued by the Release Review Panel.

(b) **Applicability.**

This rule applies to all youth committed to TJJD without a determinate sentence who have completed the minimum length of stay or extension length of stay and have not been approved for release under §380.8555 of this chapter.

(c) **Definitions.**

Except as specified in this subsection, see §380.8501 of this chapter for definitions of terms used in this rule. The following terms, as used in this rule, have the following meanings unless the context clearly indicates otherwise.

(1) **Clear and Convincing Evidence**--a standard of proof meaning that the thing that must be proven is highly probable or reasonably certain to exist [~~measure or degree which will produce in the mind of the trier of facts a firm belief or conviction as to the position sought to be established~~]; more than a preponderance of the evidence[~~,~~] but less than beyond a reasonable doubt.

(2) **Extension Length of Stay**--a period of time in addition to the minimum length of stay that a youth is assigned [~~required~~] to remain in residential placement [~~placements~~] unless the youth meets release criteria before the time has expired.

(3) **Major Rule Violation**--a violation in the most serious category of rule violations for residential facilities, as listed in §380.9503 of this chapter.

[~~(4) **Release Review Panel (or Panel)** the TJJD Central Office staff members appointed to determine if a youth who has completed the minimum length of stay will be discharged, released, or given an extension length of stay.~~]

(4)[~~(5)~~] **Residential Placement**--a high- or medium-restriction facility, as defined in §380.8527 of this chapter.

(5)[~~(6)~~] **Victim**--any victim who has requested notification of release or discharge proceedings.

(d) **General Provisions.**

(1) **Purpose of the Panel.**

The purpose of the panel is to review youth committed to TJJD without a determinate sentence who have completed the minimum length of stay or extension length of stay but have not been approved for release under TJJD policy.

(2)[~~(1)~~] **Panel Members.**

Panel members are appointed by the executive director in accordance with state law and policies adopted by the executive director.

[~~(A) The panel must consist of an odd number of members appointed by the executive director for terms of at least two years.~~]

[~~(B) Each member of the panel must be a TJJD employee who works at the TJJD Central Office. Panel members may not be involved in any supervisory decisions concerning youth in the custody of TJJD.~~]

[~~(2) **Evidence Used by the Panel.**~~]

[~~(A) The panel may review any information relevant to the youth's progress and rehabilitation, irrespective of the form of the information.~~]

[~~(B) The youth, the parent/guardian of the youth, or victims of the youth may submit information for the panel's consideration. Information and arguments should be submitted to the panel in writing on or before the expiration of the youth's minimum length of stay or, if applicable, the expiration of the extension length of stay. The youth may request assistance from any TJJD staff member or volunteer in communicating with the panel.~~]

[~~(C) The parent/guardian, victim, or person representing the youth, if any, may make a written request for personal communication with a member of the panel before the expiration of the youth's minimum length of stay or, if applicable, the expiration of the extension length of stay. If the panel approves the request, the panel will schedule the communication, which may be in person, via telephone, or via videoconference.~~]

[~~(D) The panel may, at its discretion, interview the youth or any other individual who may have information relevant to the youth's rehabilitation needs. When notified that an attorney or other representative is assisting the youth with the review, the panel must notify the representative of any scheduled interviews with the youth prior to conducting the interview. A youth's refusal to speak to the panel is not held against the youth when making the release decision.~~]

[~~(E) To be considered as a factor in a determination to extend a youth's stay, a violation of the rules of conduct must have been proven via due process that provides advance written notice of the alleged violation, a written statement by the fact finder of the evidence relied upon and the reason for the decision, an opportunity to call witnesses and present evidence, and a neutral decision maker. Documented behaviors that do not result in a rule violation being proven true in a due process hearing may still provide evidence of continuing conduct that the panel may consider in making its decision.~~]

(3) **Executive Director Policies** [~~**Deadline for Release or Discharge**~~].

(A) The executive director shall adopt policies that ensure the transparency, consistency, and objectivity of the panel's composition, procedures, and decisions. [~~If the panel determines that a youth's length of stay should not be extended, TJJD must release or discharge the youth no later than 15 calendar days after the date of the panel decision, except as provided by subparagraph (B) of this paragraph.~~]

(B) The policies must allow the panel to review any information relevant to the youth's progress and rehabilitation, irrespective of the form of the information. [~~A request for reconsideration of a release or discharge order may temporarily delay the release or discharge of the youth until the panel reaches a decision on the request in accordance with timeframes established in subsection (h) of this section.~~]

(C) The policies must ensure the youth, parents/guardians, victims, attorneys for youth, and other relevant individuals are given the opportunity to provide information for the panel's consideration.

(4) **Extension Length of Stay.**

(A) An extension length of stay may be assigned only if the panel determines by majority vote that there is clear and convincing evidence that: [~~by the panel and only in accordance with the provisions of this rule.~~]

(i) the youth is in need of additional rehabilitation from TJJD; and
(ii) a residential placement will provide the most suitable environment for that rehabilitation.

(B) If the panel extends the length of a youth's stay, the panel shall specify the length of the extension length of stay.

(C) If the panel does not extend the length of a youth's stay, the youth must be released under supervision or discharged from TJJD.

[~~(c) **Completion of Minimum Length of Stay.**~~]

[~~(1) **Referral to the Panel.**~~]

[~~Upon receipt of a referral regarding a youth who has not met program completion criteria as set out in §380.8555 of this chapter, the following actions shall occur.~~]

[~~(A) The youth, parent/guardian, and any victims shall be notified that the case has been referred to the panel for review.~~]

[~~(B) Before the date the minimum length of stay expires, staff will make available to the panel any information relevant to the decision on whether the youth is in need of additional rehabilitation in a residential placement.~~]

[~~(2) **Panel Decision.**~~]

[~~(A) No later than 30 calendar days after expiration of the youth's minimum length of stay, the panel shall make a determination as to whether TJJD will discharge the youth, release the youth, or extend the youth's stay in a residential placement.~~]

[~~(B) The panel may extend the youth's stay only if the panel determines by majority vote that there is clear and convincing evidence that:~~]

[~~(i) the youth is in need of additional rehabilitation from TJJD; and~~]
[~~(ii) a residential placement will provide the most suitable environment for that rehabilitation.~~]

[~~(C) The panel's determination may include assessments of factors including, but not limited to, the following:~~]

[(i) the youth's efforts to reduce individual risk factors and increase individual protective factors;]

[(ii) the degree and quality of the youth's participation in available treatment programs, including statutorily required or court-ordered treatment programs;]

[(iii) the youth's behavior while at TJJD; and]

[(iv) whether there are any public safety issues related to releasing or discharging the youth.]

[(D) The youth, parent/guardian, victim, and any attorney or representative of the youth are notified of the panel's determination regarding extension of stay, release, or discharge.]

[(E) If the panel extends the length of a youth's stay, the panel shall:]

[(i) specify the additional period of time that the youth is required to remain in residential placements; and]

[(ii) provide a written report explaining the reason for the extension to the youth, parent/guardian, and any attorney or representative of the youth. The report must be provided no later than ten calendar days after the date of the panel decision.]

[(f) **Completion of Extension Length of Stay.**]

[(1) **Referral to the Panel.**]

[Upon receipt of a referral regarding a youth who has not met program completion criteria as set out in §380.8555 of this chapter, the following actions shall occur.]

[(A) The youth, the youth's parent/guardian, and the attorney or representative of the youth, if any, shall be notified that the youth's case is pending review before the panel.]

[(B) Before the date the extension length of stay expires, staff will make available to the panel any information relevant to the decision on whether the youth is in need of additional rehabilitation in a residential placement.]

[(2) **Panel Decision.**]

[No later than 30 calendar days after expiration of the youth's extension length of stay, the panel will conduct a review and make a determination to discharge the youth, release the youth, or extend the length of stay in a residential placement. The panel shall send notification to the youth, the youth's parent/guardian, any victims, and the attorney or representative of the youth, if any, of the decision within ten calendar days after the date of the decision.]

(e)[(g)] **Request for Reconsideration of an Extension Order.**

(1) The purpose of a request for reconsideration is to request that a decision by the panel be reconsidered and changed.

(2)[(1)] A request for reconsideration of an extension order may be submitted by:

(A) the youth;
(B) the youth's parent/guardian;
(C) an attorney or designated advocate [representative] for the youth;
(D) the youth's victim(s);

(E) a TJJD employee;
(F) an employee of a TJJD contractor;
(G) a person who provides volunteer services at a TJJD facility; [~~or~~]
(H) the TJJD ombudsman; or[.]
(I) any other person designated by the executive director.

(3)[(~~2~~)] The request for reconsideration must be in writing and must be received by the panel no later than 15 calendar days after the date of the written notice explaining the reason for the extension. Requests for reconsideration received after that time may be considered at the discretion of the panel if good cause is shown for the delay.

(4)[(~~3~~)] The youth may request assistance from any TJJD staff member or volunteer in completing a request for reconsideration.

(5)[(~~4~~)] The person submitting the request for reconsideration must state in the request the reason for the request. The request should relate to the reasons given for the extension or be based on relevant information concerning the youth's programming and treatment progress.

(6)[(~~5~~)] Upon receipt of a request for reconsideration that is timely filed or that is accepted late by the panel as provided in paragraph (3) of this subsection, the panel:

(A) shall reconsider an extension order that extends the youth's stay in TJJD custody by six months or more or that, when combined with previous extension orders, results in an extension of the youth's stay in TJJD custody by six months or more; and

(B) may, at its discretion, reconsider extension orders that extend a youth's stay in TJJD custody by a length of time not [~~other than those~~] addressed in subparagraph (A) of this paragraph.

(7)[(~~6~~)] The panel must complete the reconsideration no later than 15 days after receipt of the request. The [~~When the panel conducts a reconsideration, the~~] panel shall provide the youth, the youth's parent/guardian, the attorney or designated advocate [~~representative~~] of the youth, and the person who submitted the request for reconsideration with a written explanation of the panel's decision [~~no later than 15 calendar days after receipt of the request~~]. The explanation [~~reply~~] shall include an indication that the panel has considered the information submitted in the request. If the reconsideration results in a decision to release or discharge the youth, any victims shall be notified.

(8)[(~~7~~)] A reconsideration decision by the panel exhausts all administrative remedies regarding release after expiration of the minimum length of stay.

(h) **Request for Reconsideration of a Release or Discharge Order.**

(1) For youth in a high-restriction facility, a release or discharge order is considered conditional until the youth has been physically released from the facility.

(2) For youth in a medium-restriction facility, including a halfway house:

(A) a release order is considered conditional until the youth's status has been changed from institutional to parole status; and

(B) a discharge order is considered conditional until the youth has been physically released from the facility.

(3) The executive director, the chief inspector general, the general counsel, the deputy executive director for state services, the chief of staff, the facility administrator, appropriate contract-care monitoring staff, staff designated by the executive director, or the TJJD ombudsman may

request a reconsideration of a release or discharge order as long as the release or discharge order is still conditional, as provided by paragraphs (1) and (2) of this subsection.

(4) If, while the release or discharge order is still conditional, the youth is alleged to have committed a major rule violation or new information becomes available that indicates the youth is likely in need of further rehabilitation at a TJJD facility, staff designated by the executive director must request reconsideration of the release or discharge order.

(5) The youth shall be provided a copy of the request for reconsideration before the panel makes its decision regarding the reconsideration. The youth shall be given the opportunity to provide information to the panel concerning the reason(s) for the request. If the youth is represented by an attorney or other representative, that person shall also be provided with a copy of the request for reconsideration and given an opportunity to provide information to the panel.

(6) The panel must complete the reconsideration no later than 15 days after the receipt of the request. The panel shall provide the youth, the youth's parent/guardian, the requestor, and facility staff with a written explanation of the panel's decision [~~no later than 15 calendar days after receipt of the request~~]. The reply shall include an indication that the panel has considered the information submitted in the request. If the reconsideration results in a change in the original panel decision, any victims shall be notified.

(7) If reconsideration of a release or discharge order results in a decision to extend the youth's length of stay, a person listed in subsection (g) of this section may request reconsideration according to the process established in that subsection. That reconsideration decision exhausts all administrative remedies.

See CMS.02.53 for implementation procedures.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Kaci Singer, Deputy General Counsel

Subject: Discussion, consideration, and possible approval to publish proposed revisions to 37 TAC §380.8501 (Definitions) in the *Texas Register* for a public-comment period of at least 30 days and possible conditional approval to adopt the final rule

Date: February 28, 2025

Before the Board for consideration are revisions to 37 TAC §380.8501 (Definitions). An abbreviated summary follows, and a more detailed summary is provided below:

- Clarify that only conduct for which a child is adjudicated may be used as the child's committing offense.

The board's approval is requested to publish the revised rule in the *Texas Register* for a 30-day public-comment period.

Also requested is the board's approval to adopt the final rule after the public-comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- the text of the rules, with the proposed changes shown as mark-ups; and
- a resolution for board action.

Summary of Proposed Changes

- Modified the definition of committing offense to make it clear that only conduct that a child is adjudicated for and committed to TJJD for may be considered the child's committing offense.

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: XXXXXXX [~~5/19/23~~]**
Subchapter:	Admission, Placement, Release, and Discharge	Page: 1 of 3
Division:	Definitions	
Rule:	**Definitions**	Replaces: GAP.380.8501, 5/19/23 [~~5/1/22~~]

RULE

As used in this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise.

(1) **Assessment Rating**--a score derived from evidence-based criminogenic factors in a youth's history used to assess the danger a youth poses to the community.

(2) **Committing Offense**--the most serious of the relevant offenses for which the youth was adjudicated and committed to TJJD, to include offenses for which the youth was committed directly to TJJD and offenses for which the youth was on probation if the probation was modified to commit the youth to TJJD [~~found at the youth's commitment proceeding and any probated offense(s) modified by the commitment order~~]. If a committing offense is a violation of a federal statute, the offense will be treated as a violation of a state statute which prohibits the same conduct as the relevant federal offense.

(3) **Community Reentry/Transition Plan**--an individual case plan that includes conditions of parole or placement for youth who are moving to a less restrictive environment. The community reentry/transition plan summarizes the youth's progress, identifies risk factors and protective factors, provides referrals to community services and supports, and identifies objectives for the youth to complete at the next placement.

(4) **Conditional Placement**--a trial living arrangement at a lower restriction level without changing the youth's currently assigned placement. Conditional placements may be to medium-restriction facilities or approved home placements. Continued placement at the lower restriction level is dependent on meeting pre-established conditions.

(5) **Determinate Sentence Review**--a review conducted for youth with determinate sentences who have not met program completion criteria in which staff determines the appropriate action (e.g., request a transfer hearing under § [~~Section~~] 54.11, Family Code, transfer to TDCJ parole).

(6) **Discharge**--an action that ends the jurisdiction of the Texas Juvenile Justice Department (TJJD) over a youth.

(7) **Final Decision Authority**--the TJJD executive director or a staff member designated by the executive director in writing (e.g., via operational manual, administrative directive).

(8) **High Restriction and Medium Restriction**--see definitions in §380.8527 of this chapter.

(9) **Home Placement**--a placement in the home of the parent, other relative or individual acting in the role of parent, managing conservator, or guardian or in an independent living arrangement (excluding contract independent living programs).

(10) **Home Substitute Placement**--a program placement in the community that is not high restriction for youth who have earned parole status.

(11) **Initial Placement**--a placement to which youth are assigned upon being committed to TJJD. This definition does not include a youth's placement at the orientation and assessment unit.

(12) **Minimum Length of Stay**--the predetermined minimum period of time established by TJJD that a youth will be assigned to live in a high- or medium-restriction placement before being placed on parole status.

(13) **Minimum Period of Confinement**--the predetermined minimum period of time established by law that a youth committed to TJJD on a determinate sentence must remain confined in a high-restriction placement.

(14) **Most Serious of the Relevant Offenses**--the offense that carries the most severe consequences, which are, from most to least severe:

(A) an offense which carries a determinate sentence;
(B) the offense for which the designated minimum length of stay will produce the longest time in the physical custody of TJJD;
(C) the offense which requires the highest facility restriction level;
(D) the offense which carries the most severe criminal penalty; and
(E) the most recently adjudicated offense.

(15) **Non-Sentenced Offender**--a youth who is committed to TJJD for an indeterminate period of time, not to exceed age 19.

(16) **Offense Severity**--a rating of high, moderate, or low based on the degree of the committing or revocation offense as defined by the Penal Code or relevant federal statute and any of the following applicable aggravating factors:

(A) sex offense as identified in § ~~[Section]~~ 62.001, Code of Criminal Procedure;
(B) felony against a person;
(C) possession or use of a weapon or firearm during the commission of the committing offense.

(17) **Parole Status**--a status assigned to a youth when program completion criteria have been met or the Release Review Panel has ordered the youth's release under supervision. Parole status qualifies the youth for placement in the home or a home substitute and ensures that the youth may not be moved to a high-restriction placement without the highest level of due process afforded to TJJD youth.

(18) **Program Completion Criteria**--specific requirements established by rule that entitle a youth to parole when met.

(19) **Program Completion Review**--a review in which staff determines whether a youth appears to meet program completion criteria.

(20) **Release under Supervision (or Release)**--the act of placing a youth on parole status under TJJD supervision.

(21) **Revocation Offense**--the offense on which a youth's minimum length of stay is based following a parole revocation hearing. It is the most serious of the relevant offenses found at the hearing.

(22) **Risk and Protective Factors**--risk factors are aspects of a youth's environment, behavior, and mental processes that contribute to potential for further delinquent activity. Protective factors are positive aspects of individual youth situations that keep a youth away from delinquent activity.

(23) **Risk Level**--a level derived from the risk assessment tool used to assess the danger a youth poses to the community.

(24) **Sentenced Offender**--a youth committed to TJJD pursuant to § ~~[Section]~~ 54.04(d)(3) or § ~~[Section]~~ 54.05(f), Family Code, with a fixed sentence assigned by the committing court. Depending on the length of the sentence, a youth may be transferred to the Texas Department of Criminal Justice (TDCJ) to complete the sentence.

(25) **Transfer**--a movement of a sentenced offender to the TDCJ - Correctional Institutions Division or TDCJ - Parole Division.

(26) **Transition**--the act of moving a youth from a high-restriction facility to a medium-restriction facility based on the youth's progress in the rehabilitation program. Transition does not result in the youth being placed on parole status.

(27) **Transition Review**--a review in which staff determines whether a youth meets criteria for transition under §380.8545 of this chapter.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Kaci Singer, Deputy General Counsel

Subject: Discussion, consideration, and possible approval to publish proposed revisions to 37 TAC §380.8565 (Discharge of Youth with Determinate Sentences upon Transfer to TDCJ or Expiration of Sentence) and §380.8569 (Transfer of Youth with Determinate Sentences Adjudicated for Capital Murder) in the *Texas Register* for a public-comment period of at least 30 days and possible conditional approval to adopt the final rules

Date: February 28, 2025

Before the Board for consideration are revisions to 37 TAC §380.8565 (Discharge of Youth with Determinate Sentences upon Transfer to TDCJ or Expiration of Sentence) and §380.8569 (Transfer of Youth with Determinate Sentences Adjudicated for Capital Murder). An abbreviated summary follows, and a more detailed summary is provided below:

- Allow TJJD to request a TDCJ transfer hearing before a youth has spent six months in high-restriction facilities if the youth assaults a public servant while in TJJD.

The board's approval is requested to publish the revised rules in the *Texas Register* for a 30-day public-comment period.

Also requested is the board's approval to adopt the final rules after the public-comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- the text of the rules, with the proposed changes shown as mark-ups; and
- a resolution for board action.

Summary of Proposed Changes:

- Removed the requirement for a youth with a determinate sentence to have spent at least six months in high-restriction facilities before TJJD may request a hearing to transfer the youth to the Texas Department of Criminal Justice – Correctional Institutions Division (TDCJ-CID) if the youth, while assigned to a residential facility, engaged in conduct that meets the elements of the offense of assault of a public servant.

- Clarified that one of the behavioral criteria for requesting a TDCJ-CID transfer hearing for a youth with a determinate sentence is that the youth *engaged in conduct meeting the elements of* a felony or Class A misdemeanor (rather than *committed* the felony or misdemeanor) while assigned to a residential facility.

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: [~~5/1/22~~]**
Subchapter:	Admission, Placement, Release, and Discharge	Page: 1 of 4
Division:	Program Completion and Release	
Rule:	**Discharge of Youth with Determinate Sentences upon Transfer to TDCJ or Expiration of Sentence**	Replaces: GAP.380.8565, 5/1/22 [~~12/1/16~~]
Statutes:	HR Code §§244.014, §244.015	

RULE

(a) **Purpose.**

This rule establishes criteria and an approval process for:

(1) requesting court approval to transfer sentenced offenders to adult prison; and

(2) discharging sentenced offenders:

(A) whose sentences have expired; or
(B) who did not previously qualify for release or transfer by completing required programming.

(b) **Applicability.**

(1) This rule applies only to the disposition of a youth's determinate sentence(s).

(2) This rule applies only to sentenced offenders.

(3) This rule does not apply to:

(A) sentenced offenders who qualify for release or transfer to parole by completing required programming. See §380.8559 of this chapter; or

(B) sentenced offenders adjudicated for capital murder. See §380.8569 of this chapter.

(c) **General Requirements.**

(1) By law, a sentenced offender is transferred from the custody of the Texas Juvenile Justice Department (TJJD) no later than the youth's 19th birthday.

(2) The youth must serve the entire minimum period of confinement that applies to the committing offense in a high-restriction facility unless:

(A) the youth is transferred by the committing court to the Texas Department of Criminal Justice – Correctional Institutions Division (TDCJ-CID);

(B) the youth is approved by the committing court to attain parole status before completing the minimum period of confinement;

(C) the youth's sentence expires before the minimum period of confinement expires; or

(D) the executive director waives the requirement that the youth be assigned to a high-restriction facility. This subparagraph does not allow a youth to be placed on parole status.

(3) TJJD reviews each youth's progress:

(A) six months after admission to TJJD;

(B) when the minimum period of confinement is complete;

(C) when the youth becomes 16 years of age;

(D) when the youth becomes 18 years of age and again at 18 years and six months of age to determine eligibility or make a recommendation for transfer to TDCJ-CID or to the Texas Department of Criminal Justice – Parole Division (TDCJ-PD);

(E) within 45 days after revocation of parole, if applicable; and

(F) at other times as appropriate, such as after a major rule violation is proven at a Level II hearing.

(4) TJJD jurisdiction is terminated and a youth is discharged when:

(A) the youth is transferred to TDCJ; or

(B) the youth's sentence has expired, except when the youth is committed to TJJD under concurrent determinate and indeterminate commitment orders as described in §380.8525 of this chapter.

(d) **Transfer Criteria.**

(1) **Transfer to TDCJ-CID for Youth Whose Conduct Occurs While on Parole Status.**

TJJD may request a juvenile court hearing to recommend transfer of a youth to TDCJ-CID if all of the following criteria are met:

(A) the youth's parole has been revoked or the youth has been adjudicated or convicted of a felony offense occurring while on parole status;

(B) the youth is at least age 16;

(C) the youth has not completed the sentence; and

(D) the youth's conduct indicates that the welfare of the community requires the transfer.

(2) **Transfer to TDCJ-CID for Youth Whose Conduct Occurs While in a High-Restriction Facility.**

TJJD may request a juvenile court hearing to recommend transfer of a youth in a high-restriction facility to TDCJ-CID if the following criteria are met:

(A) the youth is at least age 16; and

(B) except as provided by subparagraph (D)(i) of this paragraph, the youth has spent at least six months in high-restriction facilities, which is counted as follows:

(i) if the youth received a determinate sentence for conduct that occurred in the community, the six months begins upon admission to TJJD; or

(ii) if the youth received a determinate sentence for conduct that occurred in a TJJD or contract facility, the six months begins upon the youth's initial admission to TJJD, regardless of whether the initial admission resulted from a determinate or indeterminate commitment; and

(C) the youth has not completed the sentence; and

(D) the youth meets at least one of the following behavior criteria:

(i) the youth has engaged in conduct meeting the elements of [~~committed~~] a felony or Class A misdemeanor while assigned to a residential facility; however, if the conduct meets the elements of the offense of assault of a public servant as defined in §22.01, Penal Code, the criterion in subparagraph (B) of this paragraph does not apply; or

(ii) the youth has committed major rule violations as proven at a Level II due process hearing on three or more occasions; or

(iii) the youth has engaged in conduct that has resulted in at least five security program admissions or extensions in one month or ten in three months (see §380.9740 of this chapter for information on the security program); or

(iv) the youth has demonstrated an unwillingness to progress in the rehabilitation program due to persistent non-compliance with objectives; and

(E) alternative interventions have been tried without success; and

(F) the youth's conduct indicates that the welfare of the community requires the transfer.

(3) **Transfer to TDCJ-PD for Youth in Residential Facilities.**

A youth in a residential facility who has not met program completion criteria in §380.8559 of this chapter and who has not received court approval for transfer to TDCJ-CID must be transferred to TDCJ-PD no later than the youth's 19th birthday.

(4) **Transfer to TDCJ-PD for Youth on TJJD Parole.**

A youth on TJJD parole must be transferred to TDCJ-PD no later than the youth's 19th birthday.

(e) **Transfer Recommendation for Youth Who Will Not Complete the Minimum Period of Confinement before Age 19.**

TJJD requests a court hearing for any youth who cannot complete the minimum period of confinement by the 19th birthday. The purpose of the hearing is to determine whether the youth will be transferred to TDCJ-CID or to TDCJ-PD. Notwithstanding the criteria in subsection (d)(2) of this section, TJJD considers the following factors in forming a recommendation for the committing court:

(1) length of stay in TJJD;
(2) youth's progress in the rehabilitation program;
(3) youth's behavior while in TJJD;
(4) youth's offense/delinquent history; and
(5) any other relevant factors, such as:

(A) risk factors and protective factors the youth possesses as identified in the youth's psychological evaluation;

(B) the welfare of the community; and

(C) participation in or completion of statutorily required rehabilitation programming, including but not limited to:

(i) participation in a reading improvement program for identified youth to the extent required under §380.9155 of this chapter;

(ii) participation in a positive behavior support system to the extent required under §380.9155 of this chapter; and

(iii) completion of at least 12 hours of a gang intervention education program, if required by court order.

(f) **Discharge Criteria.**

TJJD discharges youth from its jurisdiction when one of the following occurs:

(1) expiration of the sentence imposed by the juvenile court, unless the youth is under concurrent commitment orders as described in §380.8525 of this chapter; or

(2) the youth has been transferred to TDCJ-CID under court order or transferred to TDCJ-PD.

(g) **Approval Process for Transfer to TDCJ-CID or TDCJ-PD.**

(1) Before staff submit a recommendation for transfer to TDCJ-CID or TDCJ-PD, a determinate sentence review shall be held.

(2) TJJD notifies the youth and the youth's parent/guardian of a pending determinate sentence review. The notification informs the recipients that they have the opportunity to present information in person or to submit written comments to TJJD. The notification also specifies the date by which the comments or the request to present in-person information must be received.

(3) Approval from the final decision authority is required before requesting a hearing with the committing juvenile court or initiating a transfer to TDCJ-PD.

(4) A hearing with the committing juvenile court shall be requested when a youth cannot complete the minimum period of confinement before age 19.

(5) The final decision authority ensures the youth's community reentry/transition plan adequately addresses risk factors before approving the transfer from a high-restriction facility to TDCJ-PD.

(6) A youth may not be transferred to TDCJ-CID unless the committing juvenile court orders the transfer.

(h) **Active Warrants.**

At least ten calendar days before the youth's transfer or release, TJJD notifies any entity that has issued an active warrant for the youth.

See Case Management Standards, Chapter 2, for transfer and discharge procedures.

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: [~~5/1/22~~]**
Subchapter:	Admission, Placement, Release, and Discharge	Page: 1 of 3
Division:	Program Completion and Release	
Rule:	**Transfer of Youth with Determinate Sentences Adjudicated for Capital Murder**	Replaces: GAP.380.8569, 5/1/22 [~~12/1/16~~]
Statutes:	HR Code §244.015; Education Code §30.106; Family Code §54.0491	

RULE

(a) **Purpose.**

This rule establishes criteria and the approval process for transferring sentenced offenders adjudicated for capital murder to the Texas Department of Criminal Justice – Parole Division (TDCJ-PD) or the Texas Department of Criminal Justice – Correctional Institutions Division (TDCJ-CID).

(b) **Applicability.**

This rule applies only to sentenced offenders adjudicated for capital murder.

(c) **General Provisions.**

(1) A detainer or bench warrant is not an automatic bar to earned release. The Texas Juvenile Justice Department (TJJD) releases youth to authorities pursuant to a warrant.

(2) TJJD reviews each youth's progress:

(A) six months after admission to TJJD;

(B) when the youth becomes 16 years of age;

(C) when the youth becomes 18 years of age and again at 18 years and six months of age to determine eligibility or make a recommendation for transfer to TDCJ-CID or TDCJ-PD; and

(D) at other times as appropriate, such as after a major rule violation has been proven at a Level II hearing.

(3) Youth whose committing offense is capital murder must serve the entire minimum period of confinement applicable to the youth's committing offense in high-restriction facilities unless:

(A) the youth is transferred by the committing court to TDCJ-CID;

(B) the youth is approved by the committing court to attain parole status before completion of the minimum period of confinement; or

(C) the youth's sentence expires before the minimum period of confinement expires.

(4) A youth who has not received court approval to transfer to TDCJ-CID must be transferred to TDCJ-PD no later than age 19.

(5) TJJD jurisdiction is terminated and a youth is discharged when:

(A) the youth is transferred to TDCJ; or

(B) the youth's sentence has expired, except when the youth is committed to TJJD under concurrent determinate and indeterminate commitment orders as described in §380.8525 of this chapter.

DRAFT

(d) **Recommendation for Committing Court upon Termination of TJJD's Jurisdiction.**

TJJD makes a recommendation to the committing court for transfer to TDCJ-PD or TDCJ-CID before a youth turns 19. TJJD considers the following factors in forming its recommendation:

(1) length of stay in TJJD;

(2) youth's progress in the rehabilitation program;

(3) youth's behavior while in TJJD;

(4) youth's offense/delinquent history; and

(5) any other relevant factors, such as:

(A) risk factors and protective factors the youth possesses, as identified in the psychological evaluation;

(B) the welfare of the community; and

(C) participation in or completion of statutorily required rehabilitation programming, including but not limited to:

(i) participation in a reading improvement program for identified youth to the extent required under §380.9155 of this chapter;

(ii) participation in a positive behavior support system to the extent required under §380.9155 of this chapter; and

(iii) completion of at least 12 hours of a gang intervention education program, if required by court order.

(e) **Transfer to TDCJ-CID before Termination of TJJD's Jurisdiction.**

TJJD may request a juvenile court hearing to recommend transfer of a youth in a high-restriction facility to TDCJ-CID if the following criteria are met:

(1) the youth is at least age 16; and

(2) except as provided by paragraph (4)(A) of this subsection, the youth has spent at least six months in high-restriction facilities, which is counted as follows:

(A) if the youth received a determinate sentence for conduct that occurred in the community, the six months begins upon admission to TJJD; or

(B) if the youth received a determinate sentence for conduct that occurred in a TJJD or contract facility, the six months begins upon the youth's initial admission to TJJD, regardless of whether the initial admission resulted from a determinate or indeterminate commitment; and

(3) the youth has not completed the sentence; and

(4) the youth meets at least one of the following behavior criteria:

(A) the youth has engaged in conduct meeting the elements of [~~committed~~] a felony or Class A misdemeanor while assigned to a residential facility; however, if the conduct meets the elements of the offense of assault of a public servant as defined in §22.01, Penal Code, the criterion in paragraph (2) of this subsection does not apply; or

(B) the youth has committed major rule violations as proven at a Level II hearing on three or more occasions; or

(C) the youth has engaged in conduct that has resulted in at least five security program admissions or extensions in one month or ten in three months (see §380.9740 of this chapter for information on the security program); or

(D) the youth has demonstrated an unwillingness to progress in the rehabilitation program due to persistent non-compliance with objectives; and

(5) alternative interventions have been tried without success; and

(6) the youth's conduct indicates that the welfare of the community requires the transfer.

(f) **Approval Process for Transfer to TDCJ-CID or TDCJ-PD.**

(1) Before staff submit a recommendation for transfer to TDCJ-CID or TDCJ-PD, a determinate sentence review shall be held.

(2) TJJD notifies the youth and the youth's parent/guardian of a pending determinate sentence review. The notification informs the recipients that they have the opportunity to present information in person or to submit written comments to TJJD. The notification also specifies the date by which the comments or the request to present in-person information must be received.

(3) Approval from the final decision authority is required before requesting a hearing with the committing juvenile court.

(4) The final decision authority ensures the youth's community reentry/transition plan adequately addresses risk factors before approving the transfer from a high-restriction facility to TDCJ-PD.

(5) A youth may not be transferred to TDCJ-CID unless the committing juvenile court orders the transfer.

(g) **Active Warrants.**

At least ten calendar days before the youth's transfer, TJJD notifies any entity that has issued an active warrant for the youth.

See Case Management Standards, Chapter 2, for transfer procedures.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Cameron Taylor, Policy Director

Subject: Discussion, consideration, and possible approval to publish proposed new 37 TAC §380.9742 (Security Unit Admission Pending Program or Facility Transition) in the *Texas Register* for a public-comment period of at least 30 days and possible conditional approval to adopt the final rule

Date: February 28, 2025

Before the Board for consideration is a proposed new rule, 37 TAC §380.9742 (Security Unit Admission Pending Program or Facility Transition), which will allow youth to be admitted to the security unit while awaiting:

- transportation to another high-restriction facility within 48 hours;
- transportation to the Correctional Institutions Division of TDCJ;
- transportation to a court hearing; or
- reassignment to the intervention program within TJJD.

The board's approval is requested to publish the new rule in the *Texas Register* for a 30-day public-comment period.

Also requested is the board's approval to adopt the final rule after the public-comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- the text of the proposed new rule; and
- a resolution for board action.

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: XXXXX**
Subchapter:	Security and Control	Page: 1 of 2
Rule:	**Security Unit Admission Pending Program or Facility Transition**	New

RULE

(a) **Purpose.**

The purpose of this rule is to establish criteria and procedures for temporarily admitting Texas Juvenile Justice Department (TJJD) youth to the security unit if certain criteria are met.

(b) **Applicability.**

This rule applies to youth assigned to a high-restriction facility operated by or under contract with TJJD who are awaiting:

(1) transportation to another TJJD high-restriction facility that is scheduled to occur within the next 48 hours;

(2) transportation to the Texas Department of Criminal Justice – Correctional Institutions Division (TDCJ-CID);

(3) transportation to a court hearing; or

(4) reassignment to the intervention program, as described under §380.9510 of this chapter.

(c) **General Provisions.**

(1) All standard security unit services (e.g., recreation, education) required in §380.9740 of this chapter are provided while the youth is in the security unit under this rule.

(2) The referring staff must make a written request for admission to the director overseeing secure facilities or designee. Such written request is required for admission.

(3) The referring staff is responsible for ensuring that the following items are present at the time of referral:

(A) written statement including the purpose of admission, with supporting documentation (e.g., any incident reports or arrest reports, court orders, routine facility transfer documentation);

(B) medical subfile or copies of pertinent medical records, if electronic records are unavailable;

(C) documentation of any medication the youth is taking;

(D) copy of the written request for a court hearing, if applicable;

(E) Level II hearing finding of true for intervention-program-eligible conduct, if applicable; and

(F) expected length of stay in the security unit.

(4) Security staff are responsible for admitting, processing, and releasing youth from the security unit. Designated staff in the security unit will conduct a review to determine whether admission criteria have been met. A mental health review for contraindications is conducted to determine if placement in the security unit is appropriate.

(5) Youth are released from the security unit upon departing from the sending facility or, if no transportation is involved, upon reassignment to the intervention program.

(6) Youth are released from the security unit if the grounds for holding them in the security unit cease to exist (e.g., court hearing is canceled, youth is not admitted to the intervention program).

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Kaci Singer, Deputy General Counsel

Subject: Discussion, consideration, and possible approval to publish the proposed repeals of current 37 TAC §§380.9520 (Cooling-Off Period for Youth Out of Control) and 380.9739 (Isolation) and their proposed, new replacement—37 TAC §380.9520 (Regulation Break for Youth out of Control)—in the *Texas Register* for a public-comment period of at least 30 days and possible conditional approval to adopt the final rules

Date: February 28, 2025

Before the Board for consideration are repeals of §§380.9520 (Cooling-Off Period for Youth Out of Control) and 380.9739 (Isolation) and their proposed replacement: §380.9520 (Regulation Break for Youth out of Control). (***Note:** Sometimes revisions to a rule are so extensive that tracking the changes would be difficult. In these instances, we are allowed to repeal a rule and replace it with a new version of itself.*) An abbreviated summary of the new §380.9520 follows, and a more detailed summary is provided below:

- Consolidates and updates two rules that currently provide for the temporary removal of youth from planned activities.

The board's approval is requested to publish the repealed rules and the subsequent new rule in the *Texas Register* for a 30-day public-comment period.

Also requested is the board's approval to adopt the final rules after the public-comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- the text of the current rules that are being proposed for repeal;
- the text of the proposed replacement rule; and
- a resolution for board action.

Summary of Proposed Changes

- Added two new designations for the temporary removal of youth from planned activity, as follows:

- Regulation breaks, which are voluntary or staff-directed breaks in an unlocked room; and
- Directed regulation breaks, which are staff-directed breaks in a locked room.

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date:** XXXXXX [~~5/19/23~~]
Subchapter:	Behavior Management and Youth Discipline	Page: 1 of 2
Division:	Behavior Management	
Rule:	**Regulation Break for Youth out of Control**	Replaces: GAP.380.9520, 5/19/23 [~~10/1/15~~], and GAP.380.9739, 2/15/16

RULE

(a) **Purpose.**

This rule provides for the temporary removal of a youth as a regulation break when the youth appears to have temporarily lost control of behavior, including short-term confinement in a locked room if the youth meets certain criteria. The regulation break is intended to allow the youth time to regain self-control, avoid maladaptive or dangerous behaviors, and demonstrate skillful behaviors and commitment to safety. Removal addressed in this rule is not a disciplinary consequence and is generally in a location near the activity in process.

(b) **Definitions.**

(1) **Regulation Break**--the temporary removal of a youth from an activity at the request of either staff or the youth and placement of the youth in an unlocked area.

(2) **Directed Regulation Break**--the confinement of a youth in a locked room when the youth is out of control and the youth's behavior poses a serious and immediate physical danger to others.

(c) **Applicability.**

(1) This rule applies to residential facilities operated by the Texas Juvenile Justice Department.

(2) This rule does not apply to a youth referred to the Security Program. See §380.9740 of this chapter.

(d) **General Provisions.**

(1) **Regulation Break.**

(A) The purpose of a regulation break is to allow a youth who appears to have temporarily lost control of the youth's behavior the ability to be removed from the current program and placed in an unlocked area to allow the youth time to regain self-control.

(B) Either the youth or staff may request that a youth be placed on a regulation break. A youth's group may not request the youth be placed on a regulation break.

(C) If staff request the regulation break, the reason for the request is explained to the youth, and the youth is given the opportunity to explain the maladaptive behavior and demonstrate skillful behavior and commitment to safety. The youth may assist in determining readiness to resume regular activity.

(D) The youth must be joined or visually checked by staff at least every 15 minutes. The youth may require more frequent checks under a different rule or policy.

(2) **Directed Regulation Break**

(A) A youth may be placed on a directed regulation break if the youth is out of control and the youth's behavior poses a serious and immediate physical danger to others.

(B) A directed regulation break occurs in a locked room.

(C) The directed regulation break must be in individual youth sleeping quarters or a room specifically designated for directed regulation breaks. The room must:

(i) be heated, cooled, and ventilated;

(ii) have a minimum ceiling height of 7.5 feet when measured from the floor to the lowest point of the ceiling; and

(iii) be equipped with a viewing window that allows staff to observe the youth.

(D) The reason for the directed regulation break is explained to the youth, and the youth is given the opportunity to explain the maladaptive behavior and demonstrate skillful behavior and commitment to safety.

(E) The youth must be joined or visually checked by staff at least every 15 minutes. The youth may require more frequent checks under a different rule or policy.

(F) The directed regulation break must be terminated as soon as the youth is sufficiently under control as to no longer pose a serious and immediate danger to others. The youth may assist in determining readiness to resume regular activity.

(G) Youth in a directed regulation break must receive room checks and appropriate psychological and medical services.

(H) A directed regulation break may not be used for a youth on suicide alert status.

(I) Youth may not be placed in a directed regulation break if the youth requested the regulation break unless the youth is out of control and the youth's behavior poses a serious and immediate physical danger to others.

(e) **Institutions.**

(1) The total time a youth may be on a regulation break and/or a directed regulation break is 180 minutes, regardless of whether one or both types of breaks are used.

(2) If a youth on a regulation break exhibits an escalation in behavior to the point that the youth is out of control and the behavior poses a serious and immediate physical danger to others and less restrictive interventions have failed, the youth may be placed in a directed regulation break for the remaining portion of the 180 minutes. If the youth is unable to regain control after 180 minutes, staff should take other measures, such as referring the youth to the regulation and safety unit.

(3) Combining regulation breaks to circumvent the intent of the time limit is prohibited.

(f) **Halfway Houses.**

(1) A regulation break is limited to 90 minutes. If the youth is unable to regain control after 90 minutes, staff should take other measures. Directed regulation breaks are not permissible in halfway houses.

(2) Youth may not be placed in a regulation break in their bedrooms.

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: 5/19/23**
Subchapter:	Behavior Management and Youth Discipline	Page: 1 of 1
Division:	Behavior Management	
Rule:	**Cooling-Off Period for Youth Out of Control**	Replaces: GAP.380.9520, 10/1/15

RULE

(a) **Purpose.**

This rule provides for the temporary segregation of a youth as a cooling-off time when he or she appears to have temporarily lost control of behavior. The segregation is intended to allow the youth time to regain self-control. Segregation addressed in this rule is not a disciplinary consequence and is generally in a location near the activity in process.

(b) **General Restrictions.**

(1) Either staff or the youth may request the youth's removal from an activity. The youth's group may not request the youth's removal.

(2) The youth may be removed to any room in the same building away from the regular activity. Doors must not be locked.

(3) The reason for the segregation is explained to the youth and he/she is given the opportunity to explain his/her behavior.

(4) The youth must be joined by staff every 15 minutes for counseling.

(5) The youth may assist in determining his/her readiness to resume regular activity.

(c) **Institutions.**

Segregation is limited to 90 minutes. If the youth is unable to regain control after 90 minutes, staff should take other measures.

(d) **Halfway Houses.**

(1) Segregation is limited to 90 minutes. If the youth is unable to regain control after 90 minutes, staff should take other measures.

(2) Youth may not be segregated to their bedrooms.

REPEAL

Chapter:	Rules for State-Operated Programs and Facilities	**Effective Date: 2/15/16**
Subchapter:	Security and Control	Page: 1 of 1
Rule:	**Isolation**	Replaces: GAP.380.9739, 1/31/01
ACA:	N/A	
References:	*Morales v. Turman* Settlement Agreement, Section (V)(B)	

RULE

(a) **Purpose.**

This rule allows for short-term confinement in a locked room of a youth who meets criteria. Confinement addressed in this rule is not a disciplinary consequence.

(b) **Applicability.**

(1) This rule applies to residential facilities operated by the Texas Juvenile Justice Department.

(2) This rule does not apply to:

(A) a youth being admitted to the Security Program. See §380.9740 of this title; or
(B) segregation in which doors are not locked. See §380.9520 of this title.

(c) **Definitions.**

Isolation--the condition of confinement of a youth in a locked room. If the door is not locked, the confinement is not considered to be isolation. Isolation does not include when doors are routinely locked (e.g., during sleeping hours) and isolation has not otherwise been imposed.

(d) **Criteria.**

(1) A youth may be confined in isolation in cases when less restrictive interventions have failed and the youth is:

(A) out of control; and
(B) a serious and immediate physical danger to others; and
(C) not on suicide alert.

(2) Isolation must be in individual youth sleeping quarters or a room specifically designated for isolation. If the room is not individual sleeping quarters, the room must:

(A) be heated, cooled, and ventilated;

(B) have a minimum ceiling height of 7.5 feet when measured from the floor to the lowest point of the ceiling; and

(C) be equipped with a viewing window that allows staff to observe the youth.

(e) **Release.**

(1) A youth placed in isolation must be released within three hours or be referred to the security program.

(2) Isolation must be terminated as soon as a youth is sufficiently under control so as to no longer pose a serious and immediate danger to himself/herself or others.

(f) **Isolation Requirements.**

(1) Staff must visually check youth in isolation at least once every 15 minutes.
(2) Youth in isolation must receive appropriate psychological and medical services.

REPEAL

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Cameron Taylor, Policy Director

Subject: Discussion, consideration, and possible approval to publish proposed revisions to 37 TAC §344.620 (Mandatory Training Topics for Certification Exam for Juvenile Probation Officers) and §344.622 (Mandatory Training Topics for Certification Exam for Juvenile Supervision Officers) in the *Texas Register* for a public-comment period of at least 30 days and possible conditional approval to adopt the final rules

Date: May 16, 2025

Before the Board for consideration are revisions to 37 TAC §344.620 (Mandatory Training Topics for Certification Exam for Juvenile Probation Officers) and §344.622 (Mandatory Training Topics for Certification Exam for Juvenile Supervision Officers). An abbreviated summary follows, and a more detailed summary is provided below:

- Updated the list of training topics required for the certification exams for juvenile probation officers and juvenile supervision officers.

The board's approval is requested to publish the revised rules in the *Texas Register* for a 30-day public-comment period.

Also requested is the board's approval to adopt the final rules after the public-comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- the text of the rules; and
- a resolution for board action.

Summary of Proposed Revisions

- Removed *cultural competency* from the list of mandatory training topics for the certification exams for both juvenile probation officers (JPOs) and juvenile supervision officers (JSOs).
- Added *human trafficking* and *mental health screening instruments* to the list of topics for both JPOs and JSOs.
- Revised one additional topic for juvenile probation officers to read *risk and needs assessment, responsivity, case planning, and case management.*

Draft 04/29/25
Pertinent Sections Only; Not the Entire Chapter

§344.620 Mandatory Training Topics for Certification Exam for Juvenile Probation Officers

Effective Date: XXXXXX~~2/4/18~~

(a) Successful completion of the certification exam is required prior to performing the duties of a certified juvenile probation officer.

(b) The certification exam for juvenile probation officers is based on the following mandatory training topics:

(1) role of the probation officer;

(2) risk and needs assessment, responsivity, case planning, and case management;

(3) recognizing and supervising youth with mental health issues;

(4) officer safety and mechanical restraints;

(5) Texas Family Code Title 3 (Juvenile Justice Code) and related laws;

(6) legal liabilities;

(7) dispositional recommendations and courtroom proceedings;

(8) TJJD code of ethics and TJJD disciplinary procedures;

(9) preventing, identifying, and reporting abuse, neglect, and exploitation;

(10) purpose and goals of the Prison Rape Elimination Act;

(11) suicide prevention and intervention;

(12) trauma-informed care;

(13) adolescent development and behavior; [~~and~~]

(14) human trafficking; and [~~cultural competency.~~]

(15) mental health screening instrument.

§344.622 Mandatory Training Topics for Certification Exam for Juvenile Supervision Officers

Effective Date: XXXXXX~~2/4/18~~

(a) In addition to the training requirements listed in §344.624 of this title, successful completion of the certification exam is required before a juvenile supervision officer may provide supervision of juveniles and count in any staff-to-juvenile ratio.

(b) The certification exam for juvenile supervision officers is based on the following mandatory training topics:

(1) juvenile rights;

(2) Texas Family Code Title 3 (Juvenile Justice Code) and related laws;

(3) preventing, identifying, and reporting abuse, neglect, and exploitation;

(4) purpose and goals of the Prison Rape Elimination Act;

(5) suicide prevention and intervention;

(6) legal liabilities;

(7) recognizing and supervising youth with mental health issues;

(8) adolescent development and behavior;

(9) HIV/AIDS and other communicable diseases;

(10) TJJD code of ethics and TJJD disciplinary procedures;

(11) trauma-informed care; [~~and~~]

(12) human trafficking; and [~~cultural competency.~~]

(13) mental health screening instrument.

TEXAS JUVENILE JUSTICE DEPARTMENT

Memorandum

To: TJJD Board Members

From: Shandra Carter, Executive Director
Cameron Taylor, Policy Director
Kellie Love, Director of Business Operations & HUB Coordinator

Subject: Discussion, consideration, and possible approval to publish proposed revisions to 37 TAC §385.1101 (Contract Authority and Responsibilities) in the *Texas Register* for a public comment period of at least 30 days and possible conditional approval to adopt the final rule

Date: May 16, 2025

Before the Board for consideration are revisions to 37 TAC §385.1101 (Contract Authority and Responsibilities). An abbreviated summary follows, and a more detailed summary is provided below:

- Clarified the types of contracts that staff must present to the TJJD board for approval.

The board's approval is requested to publish the revised rule in the *Texas Register* for a 30-day public-comment period.

Also requested is the board's approval to adopt the final rule after the public-comment period has ended, but only if the conditions listed in the accompanying resolution are met.

Attached to this memo please find:

- the text of the rule;
- a resolution for board action; and
- the proposed revised purchasing approval matrix.

Summary of Proposed Revisions

- Added the following to the list of contracts that staff must present to the TJJD board for approval:
  - any change order or amendment that extends the length of or postpones the completion of a board-approved contract for six months or more;
  - any change order or amendment to a board-approved contract that increases the total contract amount by at least 10% by substituting certain goods, materials, products, or services; and
  - any change order or amendment with a financial increase that causes the total contract value to meet or exceed the threshold requiring board approval for that contract type.

Finally, approval is requested for the enclosed Purchasing Approval Matrix, which will be implemented after the rule's final adoption.

Summary of Changes to Purchasing Approval Matrix:
The approval matrix for All Purchase Requisitions (CAPPS) has been revamped to align with the new CAPPS workflow. Previously, approvals could include up to 17 people on a requisition. The current range is between two-to-eight, depending on the purchase type and dollar amount.

Contracts for Services Approval Matrix changes include:

- Added that all change orders with a six-month time extension or a 10 percent price increase will require board approval. This would bring the agency into compliance with Texas Government Code 2155.088, relating to material changes of contracts. This applies to contracts that have already met the requirement for board approval. If the price increase is over the threshold for board approval, staff will request board approval.
- Revised the following approvals as follows:
    - "Requesting Department Manager/Director" was revised to "Requesting Department Senior Director";
    - Removed the column for legal review as duplicative;
    - Removed column for Senior Director Requesting Department as duplicative;
    - Removed Construction Department column as unnecessary;
    - Removed Chief Technology Officer as unnecessary;
    - Removed Chief Financial Officer and Chief of Staff. These positions will remain in the CAPPS workflow for obligating funds over $25,000.01.

Chapter:	Agency Management and Operations	**Effective Date: XXXXXX [~~9/1/24~~]**
Subchapter:	Contracts	Page: 1 of 2
Title:	**Contract Authority and Responsibilities**	
Statutes:	Gov't Code: §2155.088; §2161.003; §2260.052(c); Chapter 2254, Subchapters A and B; and §2270.002	Replaces: GAP.385.1101, 9/1/24 [~~5/1/19~~]

RULE

(a) **Purpose.**

This rule establishes the responsibilities for approving and executing contracts required by the Texas Juvenile Justice Department (TJJD).

(b) **Applicability.**

This rule applies to all contracts entered into by TJJD.

(c) **Definitions.**

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

(1) **Board**--the governing board of TJJD.

(2) **Contract**--a written contract between TJJD and another party, either public or private, for goods or services or for a project as defined by § [~~Section~~] 2166.001, Government Code. As used in this chapter, "contract" includes the following: letters of agreement; interagency/interlocal agreements with other government entities; memorandums of understanding; and other agreements in which state funds or services are exchanged for the delivery of goods or performance of services.

(3) **Total Value**--The estimated dollar amount that a state agency may be obligated to pay pursuant to the contract and all executed and proposed amendments, extensions, and renewals of the contract.

(d) **Authority to Approve Contracts.**

(1) **Board Approval.**

TJJD staff must present certain contracts to the board for approval, including but not limited to:

(A) any contract with a total value exceeding $500,000;

(B) any construction contract with a total value exceeding $300,000;

(C) any change order(s) for a construction contract that exceeds $150,000 individually or cumulatively, or a dollar amount that causes the total value of the contract to exceed $300,000;

(D) any change order or amendment that extends the length of or postpones the completion of a board-approved contract for six months or more;

(E) any change order or amendment to a board-approved contract that increases the total contract amount by at least 10% by substituting certain goods, materials, products, or services;

(F) any change order or amendment with a financial increase that causes the total contract value to meet or exceed the threshold requiring board approval for that contract type;

(G)[~~(D)~~] any contract with a total value exceeding $15,000 for consulting services, as defined in § [~~Section~~] 2254.021, Government Code;

(H)[~~(E)~~] any contract for architectural or engineering services;

(I)[~~(F)~~] any contract for start-up residential operations; and

(J)[~~(G)~~] any other contract appropriate for board approval as determined by the executive director.

(2) **Agency Approval.**

(A) The board delegates authority to the executive director or designee to approve all contracts not listed in paragraph (1) of this subsection.

(B) The board delegates authority to the executive director or designee to approve a contract listed in paragraph (1) of this subsection that is executed in response to an emergency, as defined in 34 TAC §20.210.

(e) **Authority to Execute Contracts.**

The board delegates authority to the executive director to execute all contracts for TJJD. This authority may be delegated by the executive director.

(f) **Annual Contract Plan.**

(1) TJJD staff must present to the board for its review an annual plan that outlines TJJD's anticipated contracting actions for the next fiscal year.

(2) As deemed necessary by the executive director or designee, updates to the contract plan may be provided to the board for review periodically throughout the fiscal year.

(g) **Historically Underutilized Businesses.**

TJJD adopts by reference 34 TAC Chapter 20, Subchapter D, Division 1, relating to historically underutilized businesses.