



Standards  
for  
CSCDs

**March 2015**

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE  
COMMUNITY JUSTICE ASSISTANCE DIVISION 2**

**Texas Board of Criminal Justice**

Oliver J. Bell, Chairman  
R. Terrell McCombs, Vice-Chairman  
Leopoldo “Leo” Vasquez, III, Secretary  
Eric Gambrell, Member  
Judge Lawrence “Larry” Gist, Member  
Carmen Villanueva-Hiles, Member  
Janice Harris Lord, Member  
Thomas P. Wingate, Member  
Larry Don Miles, Member

**Judicial Advisory Council**

Honorable Mary Anne Bramblett, Chair  
Honorable Rose Guerra Reyna, Vice-Chair  
Honorable Carroll Wilborn, Secretary  
Ms. Joan Buschor, Member  
Honorable Caprice Cosper, Member  
Honorable John Creuzot, Member  
Honorable Angela Tucker, Member  
David Escamilla, Member  
Honorable George D. “Jody” Gilles, Member  
Daniel K. Hagood, Member  
Leighton Iles, Member  
Honorable Sharon Keller, Member

**Texas Department of Criminal Justice**

Brad Livingston, Executive Director  
Bryan Collier, Deputy Executive Director

**Community Justice Assistance Division**

Carey A. Welebob, Division Director  
Manny Rodriguez, Deputy Division Director  
Texas Department of Criminal Justice  
Community Justice Assistance Division  
209 West 14th Street, Suite 400  
Austin, Texas 78701  
[www.tdcj.texas.gov](http://www.tdcj.texas.gov) 3

**TABLE OF CONTENTS**

**Code of Ethics ..... 4**  
**§161.21 Role of the Judicial Advisory Council ..... 6**  
**§163.3 Objectives ..... 7**  
**§163.5 Waiver to Standards ..... 8**  
**§163.21 Administration ..... 9**  
**§163.25 Community Justice Councils, Task Forces and Plans ..... 14**  
**§163.31 Sanctions, Programs, and Services ..... 15**  
**§163.33 Community Supervision Officers ..... 17**  
**§163.34 Carrying of Weapons ..... 21**  
**§163.35 Supervision ..... 25**  
**§163.36 Mentally Impaired Offender Supervision ..... 28**  
**§163.37 Reports and Records ..... 29**  
**§163.38 Sex Offender Supervision ..... 30**  
**§163.39 Residential Services ..... 32**  
**§163.40 Substance Abuse Treatment ..... 49**  
**§163.41 Medical and Psychological Information ..... 61**  
**§163.42 Substantial Noncompliance ..... 62**  
**§163.43 Funding and Financial Management ..... 63**  
**§163.45 Distribution of Community Corrections Funding ..... 66**  
**§163.46 Allocation Formula for Community Corrections Program ..... 67**  
**§163.47 Contested Matters ..... 68 4**

## **CODE OF ETHICS**

*In order to ensure that all community supervision officers maintain the highest level of professional standards, that the integrity of the criminal justice system is fully preserved, that the mission and goals of every community supervision and corrections department in this State are faithfully accomplished and that the people of this State and in each local community are served with honor and dedication, the Community Justice Assistance Division of the Texas Department of Criminal Justice propounds the following Code of Ethics to be adopted and implemented by every community supervision and corrections department in this State and by its officers and employees.*

### **Community Supervision Employees are Servants of the Court**

*It is the primary duty and responsibility of every community supervision officer and all other employees of the department to faithfully serve the Court.*

*Community supervision officers shall not make any public statement which disparages the dignity of the Court, degrades or belittles any Court officer, or shows contempt or disregard for the criminal justice system. Instead, community supervision officers shall work diligently to preserve the integrity of our judicial system, work to improve the function and efficiency of our legal system and strive toward assuring that equal justice will be provided to all persons.*

*A community supervision officer has the duty and obligation to vigorously carry out the instructions and orders of the Court and to comply with the administrative procedures established by the department. A community supervision officer shall provide the Court and the department with accurate and objective information. As such, a community supervision officer shall exercise care to verify pertinent factual information presented to the Court, formulate an informed and unbiased judgment when making recommendations to the Court, and promptly inform the Court of any violation of or deviation from the Court's instructions and orders as directed by the Court.*

*A community supervision officer has the duty and obligation to endeavor to maintain the integrity and independence of the judiciary. As such a community supervision shall not use his or her official position for the furtherance of partisan political objectives; nor shall an officer, in an official capacity, treat any individual differently on account of personal animosities or biases; nor shall the officer discriminate against any person on the basis of religion, race, sex, creed, national origin, disability, health status, or age. Moreover, a community supervision officer shall not represent to any person that he or she can gain influence or access to anyone because of the officer's position as a community supervision officer or because of the officer's relationship with the Court.*

*A community supervision officer shall conscientiously obey the laws of the land and shall not counsel or encourage any individual to violate any laws of this State, any other State, or any laws of this nation.*

### **A Community Supervision Employee has an Obligation to the Department with which he Serves**

*A community supervision officer or other employee shall not make any public statement that falsely or maliciously ridicules or disparages a fellow employee or the operations, policies, and practices of the department. Instead, all employees shall strive to strengthen the endeavors of the community supervision and corrections department while constantly upholding the interest of the public, shall offer constructive comments aimed at improving the efficiency and effectiveness of the department and shall work toward enhancing the quality of supervision and corrections in the community. Employees are, however, encouraged to report any misconduct by any*

*department employee by using the department's chain of command or reporting the misconduct to the appropriate authorities.*

*A community supervision employee shall not engage in any activity which creates an actual or apparent conflict of interest or has the appearance of a conflict of interest which affects his or her duties as a department employee.*

*A community supervision officer shall accurately and timely document all significant interactions concerning the supervision of offenders and record all significant contacts with other agencies pertaining to the offender. 5*

**A Community Supervision Officer has an Obligation to the Public and to those Individuals whom an Officer Supervises**

*A community supervision officer shall exercise the utmost precaution to ensure that a defendant whom the officer is supervising does not pose a substantial and unjustifiable risk to the community. A community supervision officer should notify any individual or a law enforcement agency, within the proper bounds of the law, whenever a community supervision officer has a good faith belief that the life, safety, or property of any member of the public may be endangered.*

*A community supervision shall supervise defendants with fairness and competency. A community supervision officer shall treat all individuals that the officer is supervising with the dignity and respect to which all human beings are entitled. A community supervision officer shall treat all persons with whom the officer comes in contact in his or her official capacity impartially. The officer shall neither treat some individuals more favorably than others; nor shall the officer treat some individuals more adversely than others.*

*A community supervision officer shall maintain a professional relationship with the individuals the officer is supervising. A community supervision officer shall not use his or her authority as a supervising officer or his or her position to extract any personal gain from a defendant or exert any undue duress or harassment of any defendant.*

*A community supervision employee shall not violate a defendant's civil and legal rights, including any right to the confidentiality of any communication or records. A community supervision officer shall disclose no personal information concerning a defendant other than in his or her official capacity and in accordance with any applicable law and administrative policy.*

**A Community Supervision Officer has the Status of a Professional**

*A community supervision officer shall work toward improving and enhancing the profession. An officer shall maintain a high degree of proficiency in his or her employment. As such, a community supervision officer shall seek every opportunity to become aware of any changes in the law and be apprised of the latest developments in the field of supervision and corrections. A community supervision office should seek to improve his or her skills and competence through training programs, seminars and self-study. In order to improve the profession, develop contacts with community supervision officers in other jurisdictions and parts of the country, and provide a network of resources and ideas, community supervision officers are encouraged to join and actively participate in professional organizations affecting corrections and supervision matters.*

### **§161.21 Role of the Judicial Advisory Council**

(a) Policy. The Texas Board of Criminal Justice (TBCJ or Board) acknowledges the judiciary's statutory responsibility and the valuable and critical role of the judiciary in the growth, development and implementation of community corrections policies and programs in Texas. The Judicial Advisory Council (JAC) is intended to provide a structure for fulfilling that role.

(b) State-level Role of the JAC. In accordance with Texas Government Code, §493.003(b), the function of the JAC is to advise the Board and the Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) director on matters of interest to the judiciary. To accomplish this purpose, the JAC shall:

(1) Act as an information exchange and provide expert advice to the Board and the TDCJ-CJAD director;

(2) Be given an opportunity to report to the Board at each regularly scheduled meeting on matters of interest to the judiciary, including any item related to the operation of the community justice system, as determined by the JAC Chairman to require the Board's consideration; and

(3) Conduct a review of requests for funding of community corrections programs and projects received by the TDCJ-CJAD, and make recommendations to the TDCJ-CJAD director on the funding of reviewed requests, subject to review, ratification and final approval by the Board, if such approval is required by Board policy.

(c) Local-level Role of the JAC. In addition to the duties set out in subsection (b) of this rule, the JAC shall:

(1) Inform and educate, in an appropriate manner, the constituencies that its members represent regarding issues and procedures that affect the corrections system of Texas;

(2) Coordinate its activities with the community justice liaison member of the Board, the TDCJ-CJAD director, the local community supervision and corrections departments (CSCDs), and any other significant entities identified by the TDCJ-CJAD director or the Executive Director of the TDCJ; and

(3) Provide a forum for exchange of information and a dialogue with the network of local CSCDs on matters involving community corrections programs.

(d) Additional Authority of the JAC. The JAC Chairman may appoint committees of council members or advisory groups of non-JAC members to achieve the purposes of this rule. The JAC Chairman shall consult with the TDCJ-CJAD director regarding the scheduling of meetings of the JAC, committees of the JAC or advisory groups to the JAC, to ensure arrangements can be made and sufficient funds exist to allow reimbursement of expenses for attendance, where authorized by law.

**Source Note:** The provisions of this §161.21 adopted to be effective February 12, 1991, 16 TexReg 472; amended to be effective January 2, 1992, 16 TexReg 7539; amended to be effective October 13, 1997, 22 TexReg 9895; amended to be effective April 24, 2002, 27 TexReg 3367; amended to be effective March 10, 2009, 34 TexReg 1715 7

### **§163.3 Objectives**

The objectives of the Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) standards are:

- (1) to make community supervision and corrections available to every judicial district in Texas;
- (2) to continue community supervision and corrections as a viable criminal justice sanction;
- (3) to assist Community Supervision and Corrections Department (CSCDs) in providing protection to the community and rehabilitation services for the offender;
- (4) to provide technical assistance in the establishment, improvement, and expansion of community-based programs;
- (5) to coordinate information and services available from federal, state, and local resources;
- (6) to establish minimum uniform community supervision and corrections administration standards;
- (7) to establish a statewide statistical information service;
- (8) to enhance the professional knowledge and skills of CSCD personnel by providing statewide and regional education and training and by providing assistance for in-service training with the departments;
- (9) to establish an ongoing assessment and evaluation of community supervision and community-based correctional methods and systems; and
- (10) to establish regionally based programs serving two or more jurisdictions where such programs address similar offender profiles.

Source Note: The provisions of this §163.3 adopted to be effective March 1, 1993, 18 TexReg 944; amended to be effective August 16, 1995, 20 TexReg 5799; amended to be effective October 13, 1997, 22 TexReg 9896; amended to be effective June 20, 2002, 27 TexReg 5220 8

### **§163.5 Waiver to Standards**

A Community Supervision and Corrections Department (CSCD) or other state-aid recipient may request a waiver to a standard or standards from the Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) director. The TDCJ-CJAD director may grant a waiver upon receipt, examination and approval of the waiver request. The request for waiver shall include a plan to comply with the standard or standards by a certain date and an explanation why the CSCD is not currently in compliance with the standard or standards. When a determination has been made that the CSCD is not in compliance with a standard, the CSCD director shall immediately submit a written request for a waiver of the standard to the TDCJ-CJAD director. If the waiver is approved by the TDCJ-CJAD director, the waiver shall become part of the audit record for compliance with that standard.

Source Note: The provisions of this §163.5 adopted to be effective March 1, 1993, 18 TexReg 944; amended to be effective August 16, 1995, 20 TexReg 5799; amended to be effective June 20, 2002, 27 TexReg 5220; amended to be effective April 17, 2008, 33 TexReg 2961 9

### **§163.21 Administration**

(a) Appointment and Responsibilities of a Community Supervision and Corrections Department (CSCD or department) Director.

(1) When there is a vacancy in the position of CSCD director, the judge or judges as described by Texas Government Code §76.002 shall:

- (A) Publicly advertise the position;
- (B) Post a job description, the qualifications for the position and the application requirements;
- (C) Conduct a competitive hiring process and adhere to state and federal equal employment opportunity laws; and
- (D) Review applicants who meet the posted qualifications and comply with the application requirements.

(2) The judge or judges as described by Texas Government Code §76.002 shall appoint a CSCD director who shall meet, at a minimum, the eligibility requirements for community supervision officers (CSOs) established under Texas Government Code §76.005 and 37 Texas Administrative Code §163.33 (relating to CSOs).

(3) The CSCD director shall employ a sufficient number of officers and other employees to conduct pre-sentence investigations, supervise and rehabilitate defendants placed on community supervision, enforce the conditions of community supervision and staff community corrections facilities. A person employed under this subsection is an employee of the department and not of the judges or judicial districts.

(4) The Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ-CJAD) director shall be notified by the administrative judge of the appointment of a CSCD director.

(5) The CSCD director shall perform or delegate the responsibility for performing the following duties:

- (A) Overseeing the daily operations of the department;
- (B) Preparing, annually or biennially, a budget for the department;
- (C) Negotiating and entering into contracts on behalf of the department;
- (D) Establishing policies and procedures for all functions of the department;
- (E) Developing personnel policies and procedures, including disciplinary proceedings; and
- (F) Establishing procedures and practices through which the department will address an employment-related grievance.

(b) Administrative Manual. The CSCD director shall be responsible for developing, updating, revising and maintaining an administrative manual that defines the CSCD's general purposes and functional objectives. The CSCD director shall ensure the administrative manual is available to all staff members and provide the TDCJ-CJAD director with a copy of the CSCD's administrative manual for review upon request. The manual shall incorporate all of the written policies and procedures, which shall provide a detailed description of the procedures followed in performing the routine tasks of the department. At a minimum, the policies and procedures in the manual shall include:

(1) Human Resources.

- (A) Recruitment procedures; 10

- (B) Promotion requirements and procedures;
  - (C) Equal Employment Opportunity Commission (EEOC)/affirmative action provisions;
  - (D) Provisions of the *Americans with Disabilities Act*;
  - (E) Provisions of the *Fair Labor Standards Act*;
  - (F) Provisions of the *Family Medical Leave Act*;
  - (G) Sexual harassment policy;
  - (H) Confidentiality of information;
  - (I) Organizational plan/chart;
  - (J) Salary scales;
  - (K) Benefits;
  - (L) Holidays and work schedules;
  - (M) Explanation of amount and limitations of leaves;
  - (N) Personnel records;
  - (O) Employee performance appraisals;
  - (P) Disciplinary procedures;
  - (Q) Grievance procedures;
  - (R) Probationary employment periods;
  - (S) Contract employees;
  - (T) Dress code;
  - (U) Pre-employment criminal record checks;
  - (V) Staff safety;
  - (W) Political participation;
  - (X) Travel/mileage reimbursement policy; and
  - (Y) Immigration Reform and Control Act.
- (2) Medical.
- (A) Medical and psychological records management;
  - (B) Contagious disease policy, including Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS); and
  - (C) Tuberculosis and other communicable diseases. 11

(3) Supervision.

- (A) Supervision description;
- (B) Assessment and remediation of literacy skills for offenders;
- (C) Arrest and firearms policy and procedures; and
- (D) Pre-sentencing investigation and reporting policy and procedures.

(4) Standards.

- (A) Code of ethics;
- (B) Training and staff development;
- (C) Job descriptions, qualifications, and responsibilities;
- (D) Insurance and honesty bonds;
- (E) Intrastate and interstate compact policies and procedures;
- (F) Case classification and case management;
- (G) Supervision of offenders/continuum of sanctions (policy and procedure);
- (H) Internal case management audit procedures; and
- (I) Violation of community supervision order procedures.

(c) Ethics. The CSCD director shall provide each CSCD employee with a copy of the Code of Ethics adopted by the TDCJ-CJAD and a copy of the procedure developed by the CSCD director that shall be used to review and investigate an alleged ethics violation. All employees of the CSCD shall comply with the Code of Ethics developed by the TDCJ-CJAD.

(d) Internal Audits. Each CSCD shall have a designated procedure to monitor the skill levels and training needs of individual staff members and shall develop a plan to meet those needs. Internal audits of direct supervision cases shall be conducted to check for standards compliance, use of case classification and supervision planning.

(e) Records. The CSCD director shall ensure that program records and statistical data consistent with the requirements of the law and TDCJ-CJAD standards are maintained and provided to TDCJ-CJAD as required.

(f) Budget. The CSCD director shall prepare and operate from a budget in a manner consistent with good accounting practices and approved by the judge(s) of their judicial district. The budget shall be submitted to the TDCJ-CJAD director in a format as required and within the provisions as outlined in 37 Texas Administrative Code §163.43 (relating to Funding and Financial Management).

(g) Multi-Department Districts.

(1) Judicial districts composed of more than one (1) county may apply to the TDCJ-CJAD director for authorization to establish more than one (1) CSCD within the judicial district. The application submitted by the judge(s) shall explain how the creation of more than one (1) department will promote:

- (A) Administrative convenience;
- (B) Economy; or
- (C) Improved community supervision and corrections services and other reasons, if any. 12

(2) The application shall indicate the financial impact and the approval of the judges in the judicial district or districts hearing criminal cases affected by the change.

(h) Complaint Notice. Each CSCD shall notify the public, offenders and victims of crimes, that they can direct written complaints to the CSCD and/or TDCJ-CJAD. The notification shall be in the form of a sign posted in a conspicuous public area in each of the CSCD's offices, or shall be in the form of written brochures which are to be displayed in a conspicuous public area in each of the CSCD's offices. Signs and brochures shall be written in both English and Spanish and shall list the address of the CSCD director and TDCJ-CJAD's address and shall inform persons that attempts should first be made to resolve complaints locally; unsatisfactory results may be reported to the TDCJ-CJAD.

(i) Compliance with Statutes and TDCJ-CJAD Policy Statements. The CSCD directors shall ensure that all CSCD operations comply with all applicable local, state and federal laws and the TDCJ-CJAD policy statements and official manuals pertaining to the CSCDs.

(j) Citizen Involvement and Volunteers. If volunteers are used, the CSCD director shall ensure that suitable orientation and supervision is provided in the functions they will be expected to perform. The CSCDs are encouraged to establish and maintain opportunities for effective volunteer participation in CSCD operations. If volunteers are used, the CSCD director shall:

(1) Ensure that written policy, procedure and practice exists for guiding the selection and utilization of citizen involvement; and

(2) Require volunteers to acknowledge and comply with all departmental rules governing the confidentiality of information.

(k) Victim Services. The criminal justice system recognizes the many stakeholders affected by crime and wishes to acknowledge crime victims' interests and right to be informed, heard and protected by the system. With that goal in mind, standards are incorporated to facilitate the participation of crime victims within community supervision.

(1) Training. The CSCD Victim Services Coordinators shall obtain not less than eight (8) documented hours of professional, skill-based training within the first biennium of appointment to the position of victim service coordinator. Training shall be specific to community supervision and should include:

(A) Victims' rights;

(B) Victim sensitivity;

(C) Confidentiality issues; and

(D) Crime victim compensation.

(2) Policy and Procedures. Each CSCD shall adopt written policies and procedures regarding victim notification of offenders placed on community supervision and offender information that may be released to victims.

(A) Notifying the victim of the offender's crime, or if the victim has a guardian or is deceased, notify the guardian of the victim or close relative of the deceased victim, when the offender is released and placed on community supervision. Notification shall include the information specified in Texas Government Code §76.016, which includes:

(i) Notice the offender is being placed on community supervision;

(ii) The conditions of community supervision imposed by the court; and 13

(iii) The date, time and location of any hearing or proceeding at which the conditions of the offender's community supervision may be modified or the offender's placement on community supervision may be revoked or terminated.

(B) Offender information that is public may be released to victims. Such information includes:

(i) Court ordered community supervision identifying the department with jurisdiction;

(ii) A written copy of the conditions of supervision;

(iii) The name of the supervising officer;

(iv) Victim service coordinator contact information;

(v) Motion to revoke supervision being filed and the results of the motion;

(vi) Information regarding the transfer of an offender to another jurisdiction and contact information; and

(vii) Information that the offender has been placed in residential confinement and released from confinement, unless such confinement is in a substance abuse treatment facility.

(3) Other information that may be released includes information that the victim would have knowledge of, such as:

(A) Uncollected/unpaid restitution; and

(B) Sanctions for violating the terms and conditions of supervision.

**Source Note:** The provisions of this §163.21 adopted to be effective January 2, 1992, 16 TexReg 7539; amended to be effective March 1, 1993, 18 TexReg 944; amended to be effective August 16, 1995, 20 TexReg 5799; amended to be effective October 13, 1997, 22 TexReg 9896; amended to be effective June 20, 2002, 27 TexReg 5220; amended to be effective April 17, 2003, 28 TexReg 3065; amended to be effective September 10, 2009, 34 TexReg 6122 14

### **§163.25 Community Justice Councils, Task Forces and Plans**

(a) Purpose. In order for a jurisdiction to receive any state aid, a community justice council, task force, and the community justice plan shall conform to applicable law and Texas Department of Criminal Justice (TDCJ)-Community Justice Assistance Division (CJAD) standards and policy.

(b) Council's role. The local community justice council shall provide guidance and direction, in accordance with law, for the development of community justice plans.

(c) Plan development.

(1) The community justice plan shall include:

(A) a statement of goals and priorities and of commitment by the community justice council, the judges who established the department, and the community supervision and corrections department (CSCD) to achieve a targeted level of alternative sanctions; and

(B) a description of methods for measuring the success of programs provided by the CSCD or provided by an entity served by the CSCD.

(2) All community justice plans shall be approved by the judge(s) who established the CSCD. Unless otherwise specified by the judge(s), the CSCD Director or designee shall serve as the primary manager of the planning process, coordinating council activities, data collection, plan composition, and plan drafting. The community justice council, after judicial approval, shall submit the plan to the CJAD Director.

(d) Community justice plan acceptance and modification.

(1) Final acceptance of a community justice plan, for purposes of state aid eligibility may be conditioned upon review and evaluation by the CJAD staff. Final acceptance of plans, without conditions, shall be received for purposes of CJAD grant funding.

(2) A plan may be amended through an amendment process as defined by CJAD.

Source Note: The provisions of this §163.25 adopted to be effective March 1, 1993, 18 TexReg 944; amended to be effective August 16, 1995, 20 TexReg 5799; amended to be effective October 13, 1997, 22 TexReg 9896; amended to be effective November 16, 2006, 31 TexReg 9331 15

### **§163.31 Sanctions, Programs, and Services**

(a) Core Services. All Community Supervision and Corrections Departments (CSCDs) shall provide the following core services:

(1) Court Services:

- (A) conduct pre/post-sentence investigations as ordered by the court and in accordance with law;
- (B) report violations to the court;
- (C) provide testimony as custodian of the record;
- (D) conduct assessments and complete reports mandated by law;
- (E) make recommendations to the court regarding conditions of supervision; and
- (F) maintain case files.

(2) Basic Supervision:

- (A) enforce conditions of community supervision;
- (B) perform case intake;
- (C) conduct assessments, reassessments, and supervision planning, and implement strategies to address identified offender risks and needs with the resources available to jurisdictions;
- (D) provide contacts to offenders on direct community supervision per Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) standards;
- (E) maintain case files;
- (F) develop and monitor community service restitution programs;
- (G) as ordered by the court, assess and, when needed, provide access to education, substance abuse and mental impairment services;
- (H) monitor employment and provide job and/or vocational services to employable offenders; and
- (I) provide access to assessment and treatment services for sex offenders and violent offenders and maintain appropriate levels of supervision for these offenders.

(3) Administrative Services. Provide adequate management and support service to the CSCD operation, commensurate with available resources, to include but not limited to:

- (A) administrative support staff;
- (B) data processing support;
- (C) data control and evaluation support;
- (D) fiscal services support; and
- (E) training coordinators. 16

(b) Continuum of Sanctions. All CSCD directors shall ensure the development and implementation of a continuum of sanctions that address the risks and needs of offenders as identified in the jurisdiction's community justice plan, subject to available resources and local policy.

(c) Regional Planning. Regional programs and services shall be designed to address regional needs as identified in each jurisdiction's community justice plan and as the more efficient economical response to specific offender issues for each of the participating jurisdictions. CSCD directors participating in regional programs and services shall work with the directors of other CSCDs impacted by those regional efforts in the planning, development, and implementation of regional programs and services to address offender needs.

(d) Community Service Restitution (CSR). CSCD directors shall maintain written agreements with governmental and/or nonprofit agencies and organizations to provide offenders opportunities to comply with court-ordered community service restitution according to the Texas Code of Criminal Procedure article 42.12 §16.

(e) Educational Skill Level. Using a standardized educational screening instrument, the CSCD director shall ensure that all persons placed on community supervision, who are unable to document attainment of a high school diploma or GED shall be screened to determine if the persons possess:

(1) Educational skills equal to or greater than the sixth grade level; or

(2) The intellectual capacity or learning ability to achieve the sixth grade skills level. Programs that assist offenders in attaining the educational skill level of sixth grade and above shall be developed and/or made available to the courts for offender referral. CSCD directors may maintain written agreements with school and volunteer organizations to provide tutoring to teach reading to functionally illiterate offenders.

(f) Methods for Measuring the Success of Community Supervision and Corrections Program.

(1) For purposes of Texas Government Code §509.007(b), the method for measuring program completion is defined as the completion of all required components of the program, and/or an offender's release from the program that is not related to any non-compliant behavior, an inappropriate placement or death.

(2) The method for measuring recidivism is defined as a subsequent arrest for a new separate offense that is punishable by incarceration (i.e., Class B misdemeanors and up). This definition does not include arrests for motions to revoke community supervision and bond forfeitures.

(g) Conflicts of Interest. The CSCD director shall ensure that there is a written policy concerning conflicts of interest. The policy shall address the prohibition of possible conflicts of interest affecting the CSCD, its supervision officers or employees.

(h) Partnerships with Law Enforcement Agencies. CSCDs shall cooperate with and provide assistance to municipal, county and state law enforcement agencies or peace officers in situations relating to offender supervision, absconder apprehension, victim services, and other community-based criminal justice activities.

Source Note: The provisions of this §163.31 adopted to be effective March 1, 1993, 18 TexReg 944; amended to be effective August 16, 1995, 20 TexReg 5799; amended to be effective October 13, 1997, 22 TexReg 9896; amended to be effective June 20, 2002, 27 TexReg 5220; amended to be effective February 12, 2008, 33 TexReg 1120 17

### **§163.33 Community Supervision Officers**

(a) Eligibility. To be eligible for employment as a community supervision officer (CSO) who supervises offenders, a person:

- (1) Must have a bachelor's degree conferred by an institution of higher education accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board; and
- (2) Cannot be employed as a peace officer or work as a reserve or volunteer peace officer; and
- (3) Cannot currently be on community supervision, parole, or serving a sentence for a criminal offense.

(b) Training.

(1) The CSCD directors and assistant directors, community corrections facility (CCF) directors and assistant directors, CSO supervisory staff, CSOs, and residential CSOs with less than four years of experience shall complete not less than 80 documented hours of professional training each biennium.

(A) Up to 40 hours in excess of the 80 required hours may be carried over to the next biennium.

(B) A certified CSO who fails to complete the required 80 hours of training within a biennium shall be ineligible to continue serving as a CSO until the required hours are completed. A CSO who is exempt from certification as defined in subsection (c)(4) of this section and fails to complete the required 80 hours of training within a biennium, shall be ineligible to continue serving as a CSO until the required hours are completed.

(2) CSCD directors and assistant directors, CCF directors and assistant directors, CSO supervisory staff, CSOs, and residential CSOs with four or more years of experience at the close of business on August 31 of any biennium, regardless of when the four years experience is achieved, will qualify for a reduced number of training hours per biennium at the beginning of the next biennium. Eligible, experienced staff shall complete at least 40 documented hours of professional training each biennium.

(A) Up to two of the four years of required experience may have been earned through work in juvenile probation or parole, adult parole, or similar work in other states. At least two of the required four years shall have been earned as a full-time, wage-earning officer in Texas community supervision. The required four years need not be continuous.

(B) Up to 20 hours in excess of the 40 required hours may be carried over to the next biennium.

(C) A certified CSO who fails to complete the required 40 hours of training within a biennium shall be ineligible to serve as a CSO until the required hours are completed. A CSO who is exempt as defined in subsection (c)(4) of this section from certification and fails to complete the required 40 hours of training within a biennium, shall be ineligible to serve as a CSO until the required hours are completed.

(3) A training program that specifies behavioral learning objectives for the participants, as a result of the training program, and the participants learn a skill or gain specific knowledge in actual day-to-day community supervision work shall be considered professional training.

(4) The CSCD director or designee shall ensure that training records for all staff identified in subsections (b)(1) and (2) of this section are maintained and available for Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) auditors. Those records shall reflect the following for each staff member:

(A) The number of training hours accrued and the dates of the training;

(B) The specific training programs attended with supporting documentation; 18

(C) The number of accrued hours and the number of hours approved by the CSCD director as professional training; and

(D) The number of training hours carried over from one biennium to another.

(c) New CSO Certification. A newly hired CSO shall complete the certification course work and achieve a passing grade on the certification examination within one year of the beginning date of employment as a CSO.

(1) A new, uncertified CSO who fails to achieve certification within one year of the CSO's employment date may not continue to be employed as a CSO beyond the specific date by which the CSO is to have achieved certification unless the TDCJ CJAD has granted an extension for the completion of course work and the examination as allowed by law.

(2) A new, uncertified CSO, who completes the certification course work but fails to achieve a passing grade on the certification examination shall be allowed to take the examination a second time. A CSO who fails the examination a second time shall complete the certification course work again before being allowed to take the examination for the third and final time.

(3) CSOs are eligible to pursue certification two years after the last testing date and are ineligible to supervise direct cases until certification is achieved.

(4) A CSO who was employed by any CSCD in Texas on or before September 1, 1989, is exempt from the requirements of the certification program.

(d) Exempt CSO Certification. Certification course work and the certification examination shall be available to those CSOs who were appointed prior to September 2, 1989. An exempt CSO who wishes to be certified shall be given one opportunity to pass the certification examination in order to be certified. If the exempt CSO fails the examination, the CSO shall complete the certification course work before attempting to pass the examination again.

(e) Residential CSO Certification. A residential CSO, who was employed or appointed as such on or after September 2, 1989, shall satisfactorily complete the residential certification course work and examination offered by the TDCJ CJAD not later than the first anniversary of the date on which the CSO began employment with the CSCD residential facility. Provisions of subsections (b) through (g) of this section shall also apply to any residential CSO.

(f) Recertification upon Re-employment.

(1) A CSO who is subject to the certification provisions of subsection (c) of this section and who leaves the employment of a Texas CSCD for more than one year after having been employed as a CSO for one year or longer is required to become recertified. Such recertification shall be accomplished within one year of re-appointment through the CSO taking and achieving a passing grade on the CSO examination. If the CSO fails the examination, the CSO shall complete the CSO certification course work and achieve a passing grade on the examination to be recertified.

(2) A CSO who is subject to the certification provisions of subsection (c) of this section and who leaves the employment of a Texas CSCD for more than one year after having been employed as a CSO for less than one year shall be recertified. Such recertification shall be accomplished within one year of re-appointment through the CSO's completion of the CSO certification course work and achieving a passing grade on the examination.

(g) Certification Status. A CSO who fails to maintain CSO certification or residential certification by not completing the required hours of training in accordance with subsection (b) of this section is immediately ineligible to supervise direct cases until recertification is achieved. Recertification shall be immediately required by achieving a passing grade on the certification examination. An officer who fails the examination shall complete the certification course work for recertification.

(h) Dual Certifications. A residential CSO shall be certified as a CSO and obtain additional certification in residential service. A residential CSO shall complete both certification courses in the time frames specified in subsections (c) through (f) of this section. However, a residential CSO needs only to complete 80 hours, or 40 hours 19

for experienced CSOs and residential CSOs, of professional training related to community supervision and residential programs per biennium as specified in subsection (b) of this section to maintain both certifications.

(i) Residential Personnel Training.

(1) Initial Training Requirements. Within one year from the date of employment with the facility, all direct care staff shall receive initial training in ethics; discrimination and sexual harassment; first-aid procedures; cardiopulmonary resuscitation (CPR) procedures; and HIV/AIDS education. Direct care staff shall continue to receive the training dictated by the guidelines of the granting authority that provided the initial training in first aid and CPR procedures. All direct care staff shall receive residential staff training offered by the TDCJ CJAD within the first anniversary year of their hire date.

(2) All residential direct care staff, including vendor staff, of a residential facility, with less than four years of experience at the close of business on August 31 of any biennium, shall be required to complete a minimum of 40 hours of documented professional training per biennium.

(A) A minimum of 20 training hours per biennium shall be specific to the needs of the offender population served by the facility.

(B) Up to 20 hours in excess of the 40 required hours may be carried over to the next biennium. All direct care staff of a residential facility shall receive case management training offered by the TDCJ CJAD before the first anniversary of their hire date.

(3) Direct care residential staff with four or more years experience at the close of business on August 31 of any biennium, regardless of when the four years experience is achieved, will qualify for a reduced number of training hours per biennium at the beginning to the next biennium. Eligible, experienced staff shall complete at least 20 documented hours of professional training each biennium.

(A) A maximum of two years of prior employment as a correctional officer or direct care staff in a juvenile facility, jail, parole facility, state jail facility, prison, contract (private vendor) residential facility, or similar work in a facility in another state may be counted toward the four year experience requirement. At least two of the required four years shall have been as a full-time, wage earning direct care staff in a CCF funded by the TDCJ CJAD in Texas. The required four years need not be continuous.

(B) The reduced number of hours of required professional training for the direct care residential staff who have at least four years of experience shall not affect or reduce the training requirements regarding CPR, first aid, or defensive driving. A maximum of 10 hours earned in excess of the 20 required hours, may be carried over to the next biennium. Any member of the direct care residential staff who fails to complete the required 20 hours of training within a biennium shall be ineligible to serve as direct care residential staff until the required hours are completed.

(4) Defensive Driving. All direct care staff whose primary duties include transporting offenders shall attend a defensive driving course by the first anniversary of their hire date. Direct care staff shall take defensive driving courses as needed to maintain certification.

(5) The CSCD director shall have a written policy that requires the maintenance of training records for each employee and vendor staff that reflect:

(A) The number of training hours accrued and the dates of the training;

(B) The specific programs attended with supporting documentation;

(C) The number of accrued hours and the number of hours approved by the CSCD director as professional training; and

(D) The number of training hours carried over from one biennium to another. 20

(j) Supervision Officers of Substance Abuse Felony Punishment Facility (SAFPF) Program Participants. CSOs who supervise participants in the SAFPF program shall be required to attend and complete the TDCJ CJAD approved training designed specifically for officers who supervise SAFPF program participants during the course of treatment in a SAFPF and in the continuum of care component of the SAFPF program. The required training shall be completed within 12 months of being assigned supervision of SAFPF program participants, unless the TDCJ CJAD has granted an extension for completion of the course work. CSOs who supervise SAFPF program participants as of the adoption date of this requirement and who have not attended the required training, shall complete the training within 12 months of the adoption date.

**Source Note:** *The provisions of this §163.33 adopted to be effective March 1, 1993, 18 TexReg 944; amended to be effective August 16, 1995, 20 TexReg 5799; amended to be effective October 13, 1997, 22 TexReg 9896; amended to be effective June 20, 2002, 27 TexReg 5220; amended to be effective April 17, 2008, 33 TexReg 2961; amended to be effective April 28, 2013, 38 TexReg 251221*

### **§163.34 Carrying of Weapons**

(a) In accordance with Texas Government Code §76.0051, a community supervision officer (CSO) is authorized to carry a handgun or other firearm while engaged in the actual discharge of the officer's duties if:

- (1) The CSO possesses a current certificate of firearms proficiency issued by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE); and
- (2) The community supervision and corrections department (CSCD) director grants the authorization.

(b) This section does not authorize a CSO to carry a firearm while off-duty.

(c) The carrying of a handgun or other firearm by CSOs shall be done strictly in accordance with Texas Government Code §76.0051 and the authorization, policy, and procedures promulgated by the director as set forth in subsection (e) of this rule.

(d) Prior to undergoing training to carry a firearm, a CSO shall meet the following qualifications.

(1) The CSO shall be examined by a psychologist or psychiatrist licensed in the state of Texas and declared in writing by the psychologist or psychiatrist, using TCLEOSE approved forms, to be in satisfactory psychological and emotional health for the carrying of a weapon in the performance of the CSO's duties for which a certificate of firearms proficiency is sought.

(2) The CSO shall execute an instrument wherein the CSO acknowledges:

(A) It is unlawful for any person to possess any firearm or ammunition who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year; or who has been convicted of any domestic violence crime, misdemeanor, or felony; or who has been discharged from the armed forces under dishonorable conditions;

(B) It is the CSOs' responsibility to immediately inform their supervisor and the CSCD director of any arrest, charges, or conviction related to such crimes; and

(C) The CSO has never been convicted in any court of a crime punishable by imprisonment for a term exceeding one year; has never been convicted of any domestic violence crime, misdemeanor, or felony; or has never been discharged from the armed forces under dishonorable conditions.

(e) Each CSCD that elects to authorize certain, or all, of its CSOs to carry firearms in accordance with the foregoing requirements shall adopt written policies and procedures defining which of its CSOs have authority to carry firearms and the limitations that apply to their carrying and use of firearms. The CSCDs shall submit written policies and procedures for review by the Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) director. The policies and procedures shall specify:

- (1) The firearm training and qualification requirements;
- (2) The handling, use, and storage of firearms;
- (3) The types of firearms authorized; and
- (4) The process for reporting and investigating incidents related to the possession or use of firearms by the CSOs.

(f) Each CSCD that elects to authorize CSOs to carry or use less than lethal weapons, such as aerosol sprays, chemical agents, restraining devices, or stun guns, shall adopt written policies and procedures defining which of its CSOs have authority to carry such weapons and the limitations that apply to their carrying and use. The CSCDs shall submit written policies and procedures for review by the TDCJ CJAD director. The policies and procedures shall specify: 22

- (1) The training, qualification, and certification requirements;
  - (2) The handling, use, and storage of the particular weapons and devices involved;
  - (3) The types and relevant specifications that apply to the less than lethal weapons that are authorized; and
  - (4) The process for reporting and investigating incidents related to the possession or use of less than lethal weapons, such as aerosol sprays, restraining devices, or stun guns.
- (g) CSCDs that elect not to authorize CSOs to carry firearms or use less than lethal weapons in the performance of their duties shall adopt a written policy statement disallowing such practices, as applicable. Each new CSO shall be notified of these policies prior to an offer of employment by the CSCD.

(h) Requirements of the Texas Commission on Law Enforcement Officer Standards and Education.

(1) The CSOs authorized by the CSCD to make application to the TCLEOSE for certification in firearms proficiency in accordance with the above provisions shall use TCLEOSE approved forms and provide copies to the TDCJ CJAD and the CSCD.

(2) CSCDs shall conduct a comprehensive background check on all CSOs seeking firearms certification.

(3) CSCDs shall maintain records of background information obtained on all CSOs seeking firearms certification.

(4) CSCDs shall maintain records of annually required requalification on all CSOs obtaining firearms certification.

(5) CSCDs shall notify the TCLEOSE if a CSO's authority to carry a firearm is rescinded.

(6) CSCDs authorizing CSOs to carry firearms shall notify the TCLEOSE of the name, address, telephone, and fax numbers of the CSCD director.

(7) Each CSCD shall allow the TCLEOSE and other law enforcement agencies access to records pertaining to firearms for auditing and investigation purposes.

(i) Community Supervision Officer Training and Qualification Requirements.

(1) CSOs shall not be granted permission to carry a firearm in the performance of their duties unless that CSO has completed a firearms training program approved by the TCLEOSE and has been issued a certificate of firearms proficiency by the TCLEOSE as provided in subsection (a) of this rule. The firearms training program shall be completed within six months after obtaining the TCLEOSE psychological release as required in subsection (d)(1) of this rule.

(2) Firearms training provided to CSOs shall be designed to prepare the CSOs to carry such weapons while conducting field visits, participating in community based criminal justice initiatives with law enforcement agencies, and in dealing with the safety and self-defense considerations related to such activities.

(3) CSO qualification of weapons usage, a periodic proficiency test, and documentation of training shall be completed in the presence of a TCLEOSE approved instructor on a yearly basis in addition to the required TCLEOSE certificate of firearms proficiency.

(4) Specific firearms and other weapons training course guidelines and recommendations shall be published in the TDCJ CJAD Weapons Procedures Guidebook.

(j) Ownership, Inspection, and Maintenance.

(1) CSOs authorized to carry weapons shall provide their own weapons. 23

(2) CSCDs shall appoint an individual within the department to be responsible for yearly inspection and maintenance programs for firearms used by CSOs.

(k) Types of Firearms Authorized.

(1) CSOs are authorized to carry the following weapons:

(A) Double action revolvers; or

(B) Semi-automatic pistols.

(2) Barrel length of weapon shall be between two and five inches.

(3) Approved cartridges shall be:

(A) 9mm caliber;

(B) .38 Special;

(C) .357 Magnum;

(D) .357 Sig;

(E) .40 caliber;

(F) 10mm caliber;

(G) .45 caliber; or

(H) .380 caliber.

(4) Ammunition. All carried ammunition shall be factory original loads of bullet weight between 85 and 230 grains, per Sporting Arms Ammunition Manufacturer Institute (SAAMI) Guidelines.

(l) Reports to the Texas Department of Criminal Justice Community Justice Assistance Division.

(1) Each CSCD shall have a written Use of Force policy and a written procedure for reporting and investigating each incident where a firearm or less than lethal weapon is discharged, used, or drawn on an individual. The term "to draw" means to unholster a firearm in preparation for use in self-defense against a perceived threat.

(2) Such procedure shall include:

(A) Notification of incidents;

(B) Procedures for interaction with outside entities, such as local law enforcement and media;

(C) Internal investigation procedures; and

(D) Employee support components.

(3) Notification of Incidents to the Texas Department of Criminal Justice Emergency Action Center (EAC). Serious incidents, such as a CSO's drawing of a firearm on an individual or the unauthorized use of a less than lethal weapon by a CSO, shall be promptly reported to the EAC (936) 437-6600 and in all events within 24 hours of the incident. Incidents involving the discharge of a firearm shall be reported to the EAC immediately, if possible, and in all circumstances within three hours of occurrence. A preliminary written report of each of the above-described incidents shall be sent to the TDCJ CJAD within ten days of the occurrence. 24

**Source Note:** The provisions of this §163.34 adopted to be effective February 22, 1998, 23 TexReg 1314; amended to be effective June 20, 2002, 27 TexReg 5220; amended to be effective May 2, 2011, 36 TexReg 2733 25

### **§163.35 Supervision**

(a) Definitions. The following words and terms, when used in this section, shall be defined as follows and apply to both felonies and misdemeanors, unless the context clearly indicates otherwise.

(1) Absconders refers to persons who are known to have left the jurisdiction without authorization or who have not personally contacted their community supervision officer (CSO) within three months or 90 days, and either:

(A) have an active Motion to Revoke (MTR) or Motion to Adjudicate filed and an unserved *capias* for his or her arrest; or

(B) have been arrested on an MTR or Motion to Adjudicate, but have failed to appear for the MTR or the Motion to Adjudicate hearing and a bond forfeiture warrant has been issued by the court.

(2) Case refers to an offender assigned to a CSO for supervision.

(3) Direct Supervision refers to offenders who are legally on community supervision and who work or reside in the jurisdiction in which they are being supervised and receive a minimum of one face-to-face contact with a CSO every three months. Direct supervision begins at the time of initial face-to-face contact with an eligible CSO. Local community supervision and corrections departments (CSCDs) may maintain direct supervision of offenders living or working in adjoining jurisdictions if the CSCD has documented approval from the adjoining jurisdictions.

(4) Face-to-face Contact is when a CSO communicates in person with the offender.

(5) Field Visit is when a CSO communicates in person with the offender at the offender's place of residence or at another location outside the CSCD office.

(6) Indirect Supervision is when an offender meets one of the following criteria:

(A) an offender who neither resides nor works within the jurisdiction of the CSCD and who is supervised in another jurisdiction;

(B) an offender who neither resides nor works within the jurisdiction but continues to submit written reports on a monthly basis because the offender is ineligible or unacceptable for supervision in another jurisdiction;

(C) an offender who has absconded or who has not contacted the CSO in person within three months;

(D) an offender who resides or works in the jurisdiction, but who, while in compliance with the orders of the court, does not meet the criteria for direct supervision; or

(E) an offender who resides and works outside the jurisdiction but reports in person and who does not fall under paragraph (3) of this subsection.

(b) System of Offender Supervision. The CSCD directors shall develop a system of offender supervision that is based upon, but not limited to:

(1) the jurisdiction's profile of revoked offenders;

(2) the jurisdiction's profile of offenders under direct community supervision;

(3) the offender's identified risk and needs;

(4) availability of sanctions, programs, services, and community resources; 26

(5) applicable law and Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) standards and policies; and

(6) policies of the local judiciary.

(c) Supervision Process. CSOs shall provide direct supervision for cases to include, but not be limited to, the following tasks:

(1) Orientation and Intake. An orientation and intake session with the offender shall be conducted after the court has placed the offender under supervision. This session shall include a thorough discussion of the conditions of community supervision and terms of release. The CSO shall ensure that the offender has received a copy of the conditions of community supervision or terms of release ordered by the court as provided by law.

(2) Assessments. An assessment process that gathers relevant and valid information shall be completed on every offender. This process shall specifically address the offender's criminogenic needs. The CSO shall request specialized assessments for offenders when criminogenic needs indicate such an assessment is necessary. Within two months of the date of community supervision placement, acceptance of a transfer case or discharge from any residential facility, jail, or institution, the CSO or Qualified Credentialed Counselor (QCC) who has successfully completed the Texas Risk Assessment training shall determine a level of supervision for each offender based on the offender's criminogenic needs.

(3) Case Supervision or Treatment Plan. Within two months of the date of the most recent community supervision placement, the CSO shall develop a written individualized case supervision or treatment plan based on the offender's criminogenic needs to address specific problem areas and assist the offender to achieve responsible behavior.

(4) Reassessments. CSOs or a QCC shall reevaluate criminogenic needs, factors, and supervision plans at least every 12 months for all direct cases. An approved TDCJ CJAD reassessment shall be completed any time a significant change occurs in the status of the offender. Any necessary modification of the supervision plan shall be indicated in writing in the case file.

(5) Supervision Contacts. CSOs shall make face-to-face, field visit, telephone, and collateral contacts with the offender, family, community resources, or other persons pursuant to and consistent with a supervision plan and the level of supervision on which the offender is being supervised. Each CSCD director shall establish supervision contact and casework standards at a level appropriate for that jurisdiction, but in all cases, offenders at increased levels of supervision because of assessments of greater risk or special needs shall receive a higher level of contacts than offenders at lower levels of supervision. The nature and extent for supervision contacts with offenders shall be specified in the CSCD's written policies and procedures.

(6) Documentation in Supervision Case Files. CSOs shall use a problem oriented record keeping system to document all significant actions, decisions, services rendered, and periodic evaluations in the offender's case file, including, but not limited to, the offender's status regarding the level of supervision, compliance with the conditions of community supervision, progress with the supervision plan, and responses to intervention.

(7) Violations. CSCD directors shall establish written policies and procedures that require CSOs to make recommendations to the courts regarding violations of the conditions of community supervision, as well as when violations may be handled administratively. The availability of progressive interventions and sanctions as alternatives to incarceration and incentives shall be considered by the CSO and recommended to the court in eligible cases as determined appropriate by the jurisdiction.

(8) Intrastate Transfers. The standards strive to ensure public safety by recognizing the need of the sending and receiving jurisdictions to continue control and supervision over these offenders. (A) Except in cases of non-CSCD residential facility placements, supervision shall be transferred if an offender meeting the definition of direct supervision will be in another jurisdiction for more than 30 days, except when the designated representatives of the two CSCDs agree there is good

cause for the original jurisdiction to maintain supervision. Only the court retaining jurisdiction over an offender has the authority to modify or alter a condition of community supervision. The CSCD directors shall ensure that CSOs providing direct supervision to offenders transferred from other Texas jurisdictions shall fully enforce the order of the court that placed an individual on community supervision. It is the responsibility of the offender to comply with the conditions of community supervision as imposed by the court. The CSCD directors shall ensure that CSOs provide the same level of supervision to courtesy cases as they do for the offenders in their jurisdiction. The documents necessary for transfer shall include the transfer form, the court order placing the offender on community supervision citing all conditions of community supervision, the offense report, criminal history, state identification (SID) or personal identifier (PID) number within 90 days of transfer to the receiving jurisdiction, the pre and post-sentence investigation report where legally mandated and any assessments that have been completed. The CSCD directors who decline or cease to provide courtesy supervision to offenders from other jurisdictions shall immediately notify, in writing, the original jurisdiction of the reasons for declining supervision. The CSCDs that cease to provide courtesy supervision to offenders from other jurisdictions for violations other than absconding shall consult with the original jurisdiction before closing supervision. They will then notify the original jurisdiction, in writing, of the reason for closing supervision.

(B) Dual Supervision: The court retaining jurisdiction over an offender may also order the offender to report to the original jurisdiction as well as the jurisdiction where the offender resides or works.

(9) Transporting Offenders. CSOs shall not transport offenders held in a county jail pursuant to an arrest warrant. All other transportation of offenders shall be in accordance with the CSCD's policies or pursuant to a court order.

Source Note: The provisions of this §163.35 adopted to be effective March 1, 1993, 18 TexReg 944; amended to be effective August 16, 1995, 20 TexReg 5799; amended to be effective October 13, 1997, 22 TexReg 9896; amended to be effective June 20, 2002, 27 TexReg 5220; amended to be effective April 17, 2003, 28 TexReg 3065; amended to be effective October 7, 2007, 32 TexReg 6790; amended to be effective April 28, 2013, 38 TexReg 2512; amended to be effective September 14, 2014, 39 TexReg 7179 28

### **§163.36 Mentally Impaired Offender Supervision**

(a) A mentally impaired offender is defined as one with an Axis I or Axis II disorder as identified in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), that inhibits their ability to comply with conditions of supervision, other than solely substance abuse dependence.

(b) Community Supervision and Corrections Department (CSCD) Directors shall develop and implement policies and procedures for the effective supervision of mentally impaired offenders. Policies and procedures shall address at least the following and any other requirements imposed by special grant conditions:

- (1) Contact standards;
- (2) Treatment referral process within and outside of jurisdiction;
- (3) Coordination of services with treatment providers;
- (4) Treatment participation requirements;
- (5) Recommendations for modified conditions of supervision based on offenders progress, risk factors or ability to comply;
- (6) Caseload size; and
- (7) Violation procedures.

(c) Community supervision officers shall collaborate with collateral sources and coordinate services with agencies within and outside the criminal justice system to address the needs of the mentally impaired offender.

(d) Departments closing or transferring out of county supervision of a mentally impaired offender shall complete a supervision summary within 14 days and forward the summary and all other pertinent treatment information to the criminal justice agency that assumes supervision of the offender.

Source Note: The provisions of this §163.36 adopted to be effective April 17, 2003, 28 TexReg 3066; amended to be effective February 12, 2008, 33 TexReg 1120 29

### **§163.37 Reports and Records**

(a) Case Records. Community Supervision and Corrections Department (CSCD) directors shall develop and maintain a case record management system for offenders receiving any type of supervision by the CSCD. Each case record shall contain:

- (1) a court order placing the person on community supervision citing all conditions of community supervision;
- (2) a chronological listing of all significant actions, decisions, services rendered, and assessments;
- (3) a written criminal history record or summary issued by a law enforcement agency;
- (4) periodic evaluations;
- (5) if required, a pre-sentence investigation report (PSIR); and
- (6) other documents or information related to the defendant as deemed appropriate by the community supervision officer or CSCD director.

(b) Case Record Confidentiality. Confidentiality of case records shall be maintained in accordance with federal and state laws. Confidential items relating to medical and psychological information contained in the case record shall be handled in accordance with 37 Texas Administrative Code §163.41, relating to Medical and Psychological Information. Information shall only be released under the circumstances authorized by law or as directed by the court.

(c) Pre- and Post- Sentence Investigation Reports (Reports): Unless waived by the defendant, a PSIR shall be completed before the imposition of a sentence and in accordance with the Texas Code of Criminal Procedure, art. 42.12, §§9 and 9A. If a PSIR was not completed, a post sentence investigation report may be prepared, if directed by the judge, in accordance with Texas Code of Criminal Procedure, art. 42.12, §9(k). The reports and the information obtained in connection with them, are confidential and may be released only to those persons and under those circumstances as authorized by Texas Code of Criminal Procedure, art. 42.12, §§9 or 9A. Information contained in the reports may be disclosed to the Department of Family and Protective Services to the extent that such information discloses that a child's physical or mental health or welfare has been adversely affected by abuse or neglect. Copies of the completed reports shall be maintained in a defendant's case file and made available for periodic audits, reviews, or inspections by the Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) staff.

(d) PSIR Format. The TDCJ CJAD format shall be used for preparing PSIRs. A different format may be used if the content requirements comply with Texas Code of Criminal Procedure, art. 42.12., §§9 and 9A and the format is approved by both the TDCJ CJAD and the court having jurisdiction over the defendant.

(e) Transfer to the TDCJ. Upon the revocation of community supervision or an adjudication of guilt, the CSCD shall forward to the county for inclusion in the defendant's penitentiary packet, a copy of the defendant's community supervision conditions, and if prepared, a copy of the victim's impact statement, and a copy of the pre- or post- sentence investigation report. The CSCD shall also forward any additional information that was prepared for a revocation or other hearing and information updating the PSIR.

(f) Interstate Transfer. CSCD directors shall use uniform transfer procedures as provided by and approved by the TDCJ Interstate Compact Office.

(g) Intrastate Transfer. CSCD directors shall use uniform transfer procedures in accordance with 37 Texas Administrative Code §163.35(10), relating to Supervision.

**Source Note:** The provisions of this §163.37 adopted to be effective March 1, 1993, 18 TexReg 944; amended to be effective August 16, 1995, 20 TexReg 5799; amended to be effective October 13, 1997, 22 TexReg 9896; amended to be effective December 12, 1999, 24 TexReg 10893; amended to be effective June 20, 2002, 27 TexReg 5220; amended to be effective March 15, 2015, 40 TexReg 1095 30

### **§163.38 Sex Offender Supervision**

(a) Definitions.

(1) Jurisdictional Authority is a sentencing court, the Board of Pardons and Paroles (BPP), or a division of the Texas Department of Criminal Justice (TDCJ) as applicable to the offender.

(2) Sex Crime is a reportable offense under Texas Code of Criminal Procedure (TCCP) art. 62.001(5); an offense identified by Texas Penal Code; laws of the United States, another state, or another country; or the Uniform Code of Military Justice as a sexual offense.

(3) Sex Offender is an offender who:

(A) Is convicted of committing or adjudicated to have committed a sex crime;

(B) Is awarded deferred adjudication for a sex crime; or

(C) Has been ordered by the jurisdictional authority to participate in sex offender supervision or treatment.

(b) Community supervision and corrections departments (CSCDs) supervising sex offenders shall ensure consistency in the manner in which sex offenders are supervised throughout the department. Policies and procedures shall be developed that, at a minimum, include the following:

(1) Contact standards as per 37 Texas Administrative Code (TAC) §163.35(c)(7);

(2) Sex offender registration as per TCCP Chapter 62;

(3) DNA collection as per TCCP art. 42.12, Sec. 11(a)(22);

(4) Violation procedures as per 37 TAC §163.35(c)(9);

(5) Victim services as per Texas Government Code §76.016;

(6) Treatment referral process as per TCCP art. 42.12, Sec. 13B(c);

(7) Treatment participation requirements;

(8) Team approach to supervision;

(9) Sharing of information and documentation with the appropriate agencies; and

(10) Specialized caseload size, if applicable.

(c) CSCDs shall develop policies and procedures that address the needs and safety of victims or potential victims. The policies may include collaborating with victims, victim advocates, or sexual assault task forces in the supervision and treatment of sex offenders.

(d) Community supervision officers (CSOs) shall use a record keeping system to document all significant actions, decisions, services rendered, and periodic evaluations in the offender's case file, including the offender's status regarding level of supervision, compliance with the conditions of community supervision, progress with the supervision plan, and responses to intervention.

(e) CSOs shall collaborate with collateral sources. Collateral sources may include treatment providers, polygraph examiners, significant others, sex offender registration personnel, sex offenders' families, local law enforcement, schools, Children's Protective Services (CPS), employers, chaperones, and victim service providers. 31

(f) CSOs shall recommend that conditions be tailored to the sex offender's identified risk.

(g) CSOs shall make face-to-face, field visits and collateral contacts with the offender, family, community resources, or other persons pursuant to and consistent with a supervision plan and the level of supervision on which the offender is being supervised. Each CSCD director shall establish supervision contact and casework standards at a level appropriate for that jurisdiction, but in all cases, offenders at higher levels of supervision shall receive a higher level of contacts than offenders at lower levels of supervision. Supervision contacts shall be specified in the CSCDs written policies and procedures.

(h) CSCD directors shall work in conjunction with the local judiciary to specify written policies and procedures wherein CSOs may make recommendations to the courts regarding violations of conditions of community supervision, as well as when violations may be handled administratively. The availability of the continuum of sanctions or alternatives to incarceration shall be considered by the CSO and recommended to the court in eligible cases as determined appropriate by the jurisdiction.

(i) CSOs shall timely transmit information regarding supervision and treatment at the time supervision is transferred.

(j) In addition to the above, CSCDs may operate specialized caseloads for sex offenders. In this event, CSCDs shall have a written policy that:

(1) Establishes minimum qualifications for CSOs supervising sex offenders;

(2) Determines the minimum training requirements for CSOs supervising sex offenders; and

(3) Specifies the number of staff required for the increased level of supervision essential for the specialized supervision of sex offenders. The recommended CSO to offender ratio is 1 to 45.

**Source Note:** *The provisions of this §163.38 adopted to be effective April 17, 2003, 28 TexReg 3066; amended to be effective April 17, 2008, 33 TexReg 2961; amended to be effective April 28, 2013, 38 TexReg 2513 32*

### **§163.39 Residential Services**

#### **(a) General Administration.**

(1) Purpose. Residential facilities and contract residential beds funded by the Texas Department of Criminal Justice - Community Justice Assistance Division (TDCJ-CJAD) shall provide the courts with a sentencing alternative for the purpose of:

- (A) Confining offenders placed on community supervision and others who are eligible in accordance with statutes;
- (B) Providing sanctions, services, and programs to modify criminal behavior, deter criminal activity, protect the public and restore victims of crime;
- (C) Strengthening and expanding the options that are available to judges to impose alternatives other than imprisonment for offenders who violate court-ordered conditions of community supervision; and
- (D) Reducing the offender's likelihood of a subsequent arrest, recidivism and technical violations.

(2) Feasibility Studies. A judicial district interested in establishing a residential Community Corrections Facility (CCF) shall first conduct and prepare a feasibility study in accordance with the TDCJ-CJAD Feasibility Study Guidelines-Community Corrections Facility. The product and results of such feasibility study shall be submitted to TDCJ-CJAD. After the receipt by TDCJ-CJAD of the initial feasibility study related to a proposed CCF, the Community Supervision and Corrections Department (CSCD) may be required to provide supplemental information or additional materials for further review and consideration.

#### **(3) Notice of Construction or Operation of a CCF.**

(A) If a CSCD or private vendor operating under a contract with a CSCD or judicial district proposes to construct or operate a CCF within 1,000 feet of a residential area, a primary or secondary school, property designated as a public park or public recreation area by the state or a political subdivision of the state, or a church, synagogue, or other place of worship, the CSCD shall prominently post an outdoor sign at the proposed location of the facility. The sign shall be at least 24 by 36 inches in size written in lettering at least two (2) inches in size. The sign shall state that a correctional or rehabilitation facility is intended to be located on the premises, and provide the name and business address of the CSCD. The municipality or county in which the CCF is to be located may require the sign to be both in English and a language other than English, if it is likely that a substantial number of the residents in the area speak a language other than English as their familiar language.

(B) The CSCD shall provide notice of the proposed location of the facility to the commissioners court of the county and/or governing body of the municipality where the facility is intended to be located not later than 60 days before the CSCD begins construction or operation of the facility. The notice shall contain the following:

- (i) A statement of the entity's intent to construct or operate a correctional or rehabilitation facility in an area;
- (ii) A description of the proposed location of the facility; and
- (iii) A statement that Texas Local Government Code, Chapter 244 governs the procedure for notice of and consent to the facility.

(4) Public Meetings. A CSCD or private vendor having a contract with a CSCD or judicial district shall not establish a CCF unless the community justice council serving the CSCD has held a public meeting before the action is taken. In addition, a CSCD may not expend funds provided by the TDCJ-CJAD to lease or 33



purchase real property, construct buildings, or use a facility or real property acquired or improved with state funds for a CCF unless the community justice council serving the CSCD has held a public meeting before the action is taken. The public meeting shall be held at a site as close as practicable to the location at which the proposed action is to be taken. The meeting shall not be held on a Saturday, Sunday or legal holiday. The meeting shall begin after 6:00 p.m. More than 30 days before the date of the meeting, the department that the facility is to serve, or a vendor proposing to operate a facility, at a minimum shall:

(A) Publish by advertisement a notice that is not less than three and a half (3 1/2) inches by five (5) inches of the date, hour, place and subject of the hearing as required in subsection (a)(4) of this rule in three (3) consecutive issues of a newspaper of, or in newspapers that collectively have, general circulation in the county in which the proposed facility is to be located. The notice shall specifically state the address of the facility or property on which a proposed action is to be taken and provide a description of the proposed action.

(B) Mail a copy of the notice to each police chief, sheriff, city council member, mayor, county commissioner, county judge, school board member, state representative and state senator who serves or represents the area, unless the proposed facility has been previously authorized to operate at a particular location by a community justice council.

(5) Maximum Resident Capacity and Facility Utilization. The maximum resident capacity of a CCF shall be defined as the total number of residents who can be housed at the facility at any given time as delineated by the operating agency in the most current community justice plan and approved by the TDCJ-CJAD director. CCFs funded through TDCJ-CJAD shall reach 90 percent capacity within the first six (6) months of operation and maintain a minimum of 90 percent thereafter, using appropriate and eligible placements only. Any revisions to the maximum and minimum resident capacities for the CCF shall be subject to the approval by the TDCJ-CJAD through the community justice plan amendment process.

(6) Contract Residential Services. Business entities, agencies or persons contracting with CSCDs or judicial districts for residential services shall comply with all applicable competitive bidding and other laws and regulations. CSCDs or judicial districts contracting with business entities, agencies or persons for residential services shall comply with any applicable competitive bidding and other laws and regulations. The CSCD director shall monitor, audit and inspect the performance and compliance of the service provider and vendor with the terms and conditions of the contract with the CSCD and with applicable laws and regulations.

(7) Mission Statement. The CSCD director and facility director shall prepare and maintain a mission statement that describes the general purposes and overall goals of the facility's programs.

(b) Personnel.

(1) Screening for Tuberculosis (TB) Infection. The CSCD director or facility director shall ensure that as soon as practicable but not later than seven (7) calendar days of assuming any duties within a CCF, all staff undergo a screening for TB infection. Follow-up screening for TB infection shall be conducted on all staff, at a minimum, once every year from the anniversary date of the initial screening. The results of all screenings shall be maintained on file.

(2) Required Personnel.

(A) Each facility with an employment component shall have a designated employment coordinator whose duties and responsibilities include assisting residents in obtaining/maintaining employment. The employment coordinator shall be responsible for addressing other employment issues for residents such as résumé development, interviewing skills/techniques and appropriate dress for job interviews.

(B) Every facility shall have a designated staff member whose duties and responsibilities include facilitating or ensuring the required cognitive and other facility programs are accomplished. 34

(3) Criminal Histories and Arrest Records. Prior to employment and on at least an annual or more frequent basis thereafter, criminal histories and arrest records shall be obtained from both the Texas Department of Public Safety (DPS) and National Crime Information Center NCIC on each of the CCF's employees, contract vendor staff (if applicable) and volunteers. This requirement shall apply to both vendor contract and the CSCD operated CCFs. Upon verification that no new conviction(s) have occurred, an entry documenting such shall be made in the personnel file. The criminal history document and/or other arrest record documentation shall then be destroyed. Employees who have access to criminal histories must meet the Texas Department of Public Safety (DPS) criteria for accessing the Texas Law Enforcement Telecommunication System (TLETS) operated by the DPS or files containing a copy of an employee's or resident's criminal history.

(4) Residential Officer Certification. Governed by §163.33(f) of this title.

(5) Residential Personnel Training. Initial Training Requirements and Defensive Driving are governed by §163.33(j) of this title. Training Requirements for Monitoring Self-Administration of Medications are set forth in subsection (n)(10) of this rule.

(c) Building, Safety, Sanitation and Health Codes.

(1) Compliance. The CSCD director and facility director shall ensure that the facility's construction, maintenance and operations complies with all applicable state, federal and local laws, building codes and regulations related to safety, sanitation and health. Records of compliance inspections, audits or written reports by internal and external sources shall be kept on file for examination and review by the TDCJ-CJAD and other governmental agencies and authorities from program inception forward. The CSCD director and facility director shall promptly notify the TDCJ-CJAD in writing of any circumstances wherein the facility or its operations do not maintain such compliance.

(2) Water Supply. The CSCD director or designee shall ensure that the facility's potable water source and supply is sanitary and approved by an independent, qualified agency or individual in compliance with the applicable governmental laws and regulations.

(3) Sanitation. The facility shall conform to the applicable sanitation and health regulations and codes.

(4) Waste. The liquid and solid wastes related to the facility shall be collected, stored and disposed of in accordance with a plan approved by the regulatory authority, agency or department.

(5) Physical Plant. The facility's buildings, including the improvements, fixtures, electric and heating and air conditioning, shall conform to all applicable building codes of federal, state and local laws, ordinances, regulations and minimum guidelines established by the TDCJ-CJAD for physical plants and facilities housing residents.

(6) Fires. The facility, its furnishings, fire protection equipment and alarm system shall comply with the regulations of the fire authority having jurisdiction. Fire drills are to be conducted at least quarterly. There shall be a written evacuation plan to be used in the event of a fire. The plan is to be certified by an independent qualified governmental agency or department or individual trained in the application of national and state fire safety codes. Such plan shall be reviewed annually, updated if necessary, and reissued to the local fire jurisdiction. The facility shall conduct fire inspections at least quarterly or at intervals approved by the fire authority having jurisdiction. Fire safety equipment located at the facility shall be tested as specified by the manufacturer or the fire authority, whichever is more frequent. An annual inspection of the facility shall be conducted by the fire authority having jurisdiction or other qualified person(s).

(7) Emergency Plan. There shall be a written emergency plan for the facility and its operations, which includes an evacuation plan, to be used in the event of a major flood, storm or other emergencies. This plan shall be reviewed annually and updated, if necessary. Evacuation drills shall be conducted at least three (3) times yearly. Each shift at least yearly shall conduct an evacuation drill when the majority of residents are present. All facility personnel shall be trained in the implementation of the written emergency plan. The evacuation plan shall specify preferred evacuation routes, subsequent dispositions and temporary housing 35

of residents and provisions for access to medical care or hospital transportation for injured residents and/or staff. The facility's emergency plan shall be distributed to local authorities such as law enforcement, state police, civil defense, etc. to keep them informed of their roles in the event of an emergency. The emergency plan shall include the following:

(A) Location of buildings/room floor plan;

(B) Use of exit signs and directional arrows that are easily seen and read; and

(C) Location(s) of publicly posted plan.

(d) Separate Offender Housing. The CSCD director and facility director shall ensure that a facility that is part of or attached to a detention facility or a correctional institution shall house facility residents separately from the offenders incarcerated in the detention facility. At no time shall the CCF residents/offenders be co-mingled with these incarcerated offenders.

(e) Program and Service Areas.

(1) Space and Furnishings. The facility shall have space and furnishings to accommodate activities such as group meetings, private counseling, classroom activities, visitation and recreation.

(2) Housekeeping and Maintenance. The CSCD director and facility director shall ensure the facility is clean and in good repair, and a housekeeping and maintenance plan is in effect.

(3) Other Physical Environment and Facilities Issues. In each facility:

(A) Space shall be provided for janitor closets which are equipped with cleaning implements;

(B) There shall be storage areas in the facility for clothing, bedding and cleaning supplies;

(C) There shall be clean, usable bedding, linens and towels for new residents with provision for exchange or laundering on at least a weekly basis;

(D) On an emergency or indigent basis, the facility shall provide personal hygiene articles;

(E) There shall be adequate control of vermin and pests;

(F) There shall be timely trash and garbage removal; and

(G) Sanitation and safety inspections of all internal and external areas and equipment shall be performed and documented on a routine basis to protect the health and safety of all residents, staff and visitors.

(f) Supervision.

(1) Operations Manual. An operations manual shall be prepared for and used by each CCF which shall contain information and specify procedures and policies for resident census, contraband, supervision, physical plant inspection and emergency procedures, including detailed implementation instructions. The operations manual shall be accessible to all employees and volunteers. The operations manual shall include, at a minimum, the matters set forth in the Guidelines for the Policies and Procedures of the TDCJ-CJAD Funded Residential Facilities. The operations manual shall be submitted to the TDCJ-CJAD director for review and approval. The manual shall be approved by the TDCJ-CJAD director at least 60 days prior to the acceptance of any residents into the facility. The CSCD director and facility director shall ensure that the operations manual is reviewed at least every two (2) years, and new or revised policies and procedures are made available, including all changes, to designated staff and volunteers prior to implementation. This manual shall be submitted to the TDCJ-CJAD upon request or for auditing purposes. 36

(2) Staffing Availability. The CSCD director and facility director shall ensure that the facility has the staff needed to provide coverage of designated security posts, surveillance of residents and to perform ancillary functions. The facility shall have at least one (1) staff member on duty that is the same gender as the resident population.

(3) Activity Log. The CSCD director and facility director shall ensure that CCF staff maintain an activity log and prepare shift reports that record, at a minimum, emergency situations, unusual situations and incidents and all absences of residents from a facility.

(4) Use of Force. The CSCD director and facility director shall ensure that a CCF has written policies, procedures and practices that restrict the use of physical force to instances of self-protection, protection of residents or others or prevention of property damage. In no event shall the use of physical force against a resident be justifiable as punishment. A written report shall be prepared following all uses of force, and promptly submitted to the CSCD director and facility director for review and follow-up. The application of restraining devices, aerosol sprays, chemical agents, etc. shall only be accomplished by an individual who is properly trained in the use of such devices and only in an emergency situation for self-protection, protection of others or other circumstances as described previously.

(5) Use of Firearms. The CSCD director and facility director shall ensure that the possession of firearms by staff is banned and the use of firearms is prohibited in or on facility property except in the execution of official duties by certified peace officers or other duly licensed law enforcement personnel.

(6) Access to Facility. The facility shall be secured to prevent unrestricted access by the general public or others without proper authorization.

(7) Control of Contraband/Searches. All facilities shall incorporate into the facility operations manual a list of authorized items offenders are allowed to possess while a resident of the facility. All incoming residents shall receive a copy of this list during the intake/orientation process, along with a written explanation of the provisions of Texas Penal Code, Section 38.114, which states that any resident found to possess any item not provided by, or authorized by the facility director, or any item authorized or provided by the facility that has been altered to accommodate a use other than the originally intended use, may be charged with a Class C misdemeanor. Any employee or volunteer who provides contraband to a resident of a CCF may be charged with a Class B misdemeanor. There shall also be policies defining facility shakedowns, strip searches and pat searches of residents to control contraband and provide for its disposal.

(8) Levels of Security. The CSCD director and facility director shall ensure that appropriate levels of security are maintained for the population served by the facility at all times. These levels of security shall create, as a minimum, a monitored and structured environment in which a resident's interior and exterior movements and activities can be supervised by specific destination and time. At the discretion of the facility director or designee, residents may be granted exterior movements. Exterior movements include, but are not limited to employment programs, community service restitution, support/treatment programs and programmatic incentives. The following minimum requirements shall be met for all exterior movements:

(A) The facility director or designee approves the exterior movement;

(B) A staff member orally advises the resident of the conditions and limitations of the exterior movement;

(C) The resident acknowledges in writing an understanding of the conditions and limitations of the exterior movement; and

(D) Exterior movements involving programmatic incentives may only be granted if the following additional requirements are met:

(i) The resident meets all established requirements for the programmatic incentive, as determined by the supervisor of the program, and submits a written request for the exterior movement; 37

- (ii) The requested absence will not exceed 72 hours unless there are unusual circumstances;
  - (iii) The resident provides an itinerary for the absence including method of travel, departure and arrival times and locations during the exterior movement;
  - (iv) The facility director or designee approves the itinerary and establishes the conditions of the exterior movement involving programmatic incentives; and
  - (v) A staff member shall make random announced or unannounced personal or telephone contacts with the resident to verify the location of the resident during the exterior movement.
- (9) Emergency Furloughs. At the discretion of the facility director or designee, a resident may be granted an emergency furlough for the purpose of allowing a resident to attend a funeral, visit a seriously ill person, obtain medical treatment or attend to other exceptional business. Emergency furloughs may only be granted if the following conditions are met:
- (A) The resident submits a written request for the emergency furlough;
  - (B) The facility director or designee verifies through an independent source including, but not limited to a physician, Red Cross representative, minister, rabbi, priest or other spiritual leader that the presence of the resident is appropriate;
  - (C) The resident provides a proposed itinerary including method of travel, departure and arrival times and locations during the emergency furlough;
  - (D) The requested absence shall not exceed 72 hours unless there are unusual circumstances;
  - (E) The court of original jurisdiction approves the travel if the resident will depart the State of Texas;
  - (F) The facility director or designee approves the itinerary and establishes the conditions of the emergency furlough; and
  - (G) The facility director or designee provides by e-mail or fax the approved itinerary to the CSCD director of the court of the original/sending jurisdiction prior to the date that the emergency furlough is approved to begin.
- (10) Supervision Process. Governed by §163.5(c) of this title.
- (11) The CCF shall ensure that Spanish language assistance and the translation of selected documents are provided for Spanish-speaking residents who cannot speak or read English.
- (g) Resident Abuse, Neglect and Exploitation. The facility shall protect the residents from abuse, neglect and exploitation. In accordance with the Prison Rape Elimination Act of 2003 (Public Law 108-79), all CCFs shall establish a zero tolerance standard for the incidence of sexual assault. Each facility shall make prevention of offender sexual assault a top priority. The CCFs shall have policies and procedures in accordance with national standards published by the Attorney General of the United States. These policies and procedures shall include, but not be limited to the following:
- (1) Detection, prevention, reduction and punishment of offender sexual assault;
  - (2) Standardized definitions to record accurate data regarding the incidence of offender sexual assault; and 38

(3) A disciplinary process for facility staff who fail to take appropriate action to detect, prevent and reduce sexual assaults, to punish residents guilty of sexual assault and to protect the Eighth Amendment rights of all facility residents.

(h) Rules and Discipline. There shall be documentation of program rule violations and the disciplinary process.

(1) Rules of Conduct. All incoming residents and staff shall receive written rules of conduct which specify acts prohibited within the facility and penalties that can be imposed for various degrees of violation.

(2) Limitations of Corrective Actions. Specific limits on corrective actions and summary punishment shall be established and strictly adhered to in an effort to reduce the potential of staff participating in abusive behavior towards participants. Limits shall include:

(A) No physical contact by staff shall be made on a resident;

(B) No profanity, sexual or racial comments shall be directed at residents by staff;

(C) Residents shall not be used to impose corrective actions on other residents;

(D) The severity of the corrective action shall be commensurate with the severity of the infraction; and

(E) The duration of corrective action shall be limited to the minimum time necessary to achieve effectiveness.

(3) Grievance Procedure. A grievance procedure shall be available to all residents in a CCF. The grievance procedure shall include at least one (1) level of appeal and shall be evaluated at least annually to determine its efficiency and effectiveness.

(4) Spanish translations of the disciplinary rules and procedures shall be provided for Spanish-speaking residents who cannot speak or read English.

(i) Incident Notification. Within 24 hours of occurrence, the CSCD director and facility director shall notify and report by telephone or fax all serious or unusual events pertaining to the facility's operations and staff to the district judge who sits on the Community Justice Council or, if applicable, the judge designated to perform administrative duties for the district courts trying criminal cases, the TDCJ Emergency Action Center (EAC) in Huntsville, Texas (Phone Number (936) 437-6600; Fax Number (936) 437-8996) and if applicable, the CSCD director of the original/sending jurisdiction if the incident involves a resident from that sending jurisdiction. The TDCJ-EAC shall be responsible for notifying the TDCJ-CJAD director and appropriate CJAD management staff. Such serious and unusual events for this purpose shall include, but are not limited to the following:

(1) The death of a resident or staff member while at the facility;

(2) Any incident which results in life threatening or serious bodily injury to a resident or staff member while at the facility or on assignment (including emergency furloughs or programmatic incentives) away from the facility;

(3) Major disturbance or riot at the facility or in its vicinity; and

(4) Any incident involving serious misconduct by facility staff, which may result in the filing of criminal charges or civil action;

(5) Any incidence of absconding by a resident convicted of an offense as identified in Title 5 of the Texas Penal Code (Title 5) and placed in the facility for such offense; and

(6) Any incidence of absconding by a resident who is suspected of committing a felony offense during the course of absconding from the facility or within 24 hours after leaving the facility. 39

(j) Residents' Rights. Residents shall be granted access to courts and any attorney licensed in the United States or a legal aid society (an organization providing legal services to residents or other persons) contacting the resident in order to provide legal services. Such contacts include, but are not limited to: confidential telephone communications, uncensored correspondence and confidential visits.

(k) Resident Eligibility. A CSCD or other governmental entity that operates a residential facility, contracts for the operation of a residential facility or contracts for beds/services shall define a specific target population of medium to high risk/needs offenders to be served. Placement of offenders in a CCF shall only be by an order of the court, which may include a pre-trial agreement signed by the judge presiding over an established drug court. Applicable screening shall be conducted to include screening for substance abuse, medical and mental health issues and shall meet minimum eligibility criteria as outlined in this rule.

(1) CCFs shall accept only those offenders who meet the target population criteria as defined by the facility and are physically and mentally capable of participating in any program offered at the facility, if participation in the program is required of all residents in the facility. Exceptions to this requirement:

(A) Placement is prohibited by statute;

(B) The offender matches the profile of offenders historically committed to county jail/prison from the jurisdiction; or the offender has high risk/needs, who, if supervised at a lower supervision level would have an increased likelihood of violating the conditions of community supervision; and

(C) The local jurisdiction may house offenders convicted under Title 5 and in accordance with statute, in the CCF if Title 5 offenders are included in the facility's program proposal within the community justice plan that is submitted by the jurisdiction's community justice council and approved by the local judiciary. In currently operating facilities where the jurisdiction desires to add Title 5 offenders to the target population, a public meeting shall be held, in accordance with the law and TDCJ-CJAD standards and policy, to advise the public of the types of offenders/offenses who will potentially be placed in the facility. Public support shall be considered by the TDCJ-CJAD for final approval of the change in offender population to be targeted. If a jurisdiction has documentation that this requirement was previously met, it can provide that documentation to the TDCJ-CJAD for review and possible exemption from having an additional public meeting. If a facility is approved to house Title 5 offenders, the CSCD director and the facility director shall comply with all applicable provisions contained in the Texas Government Code, §76.016, Victim Notification, the Texas Code of Criminal Procedure (TCCP) Chapter 56, Rights of Crime Victims and TCCP art. 42.21, Notice of Release of Family Violence Offenders.

(D) Prior or within ten 10 days after admission to the facility, the offender shall undergo a screening process to include a substance abuse screening instrument to determine the offender's appropriateness for placement. The process shall be documented and maintained in the supervision case file. Should the offender not meet the facility defined eligibility criteria, the offender may be referred back to the court of original jurisdiction.

(2) Courtesy Supervision. CCFs shall, on a space available basis, accept eligible adult offenders needing the residential services on courtesy supervision from other jurisdictions. CSCDs that manage CCFs are responsible for the direct supervision of all residents in the CCF while in the residential placement.

(l) Denying Admission or Continued Placement. If an offender is placed into a CCF as a condition of community supervision and the offender is an inappropriate placement, by statute or standard, or does not meet eligibility criteria of the facility as approved by the TDCJ-CJAD, the CSCD or facility director shall notify, in writing, the court of original jurisdiction of these circumstances. If a CCF facility has reached capacity at the time of the eligible offender's placement to that facility, such offender may be placed on a waiting list for that facility and returned to the court of original jurisdiction for further instructions or an alternative sanction.

(m) Food Service. The food preparation and dining area shall provide space for meal service based on the population size and need. 40

(1) Dietary Allowances. Meals shall be approved and reviewed annually by a registered dietician, licensed nutritionist, registered nurse with a minimum of a Bachelor of Science degree in nursing, physician assistant, or physician to ensure that the meals meet the nationally recommended allowances for basic nutrition.

(2) Special Diets. Each facility shall provide special diets as prescribed by appropriate medical or dental personnel.

(3) Food Service Management. Food service operations shall be supervised by a staff member who is experienced in institutional food preparation or mass food management. Food services staff, including residents assigned to work in the facility kitchen, shall meet all requirements established by the local health authorities.

(4) Exclusion as Discipline. The use of food as a disciplinary measure is prohibited.

(5) Meal Requirements. The CSCD director or facility director shall ensure that at least three (3) meals (including two (2) hot meals) are provided during each 24-hour period. Variations may be allowed based on weekend and holiday food service demands, or in the event of emergency or security situations, provided basic nutritional goals are met.

(n) Health Care.

(1) Access to Care.

(A) Residents shall have unimpeded access to health care and to a system for processing complaints regarding health care.

(B) The facility shall have a designated health authority with responsibility for health care pursuant to a written agreement, contract or job description. The health authority may be a physician, health administrator or health agency. In the event that the designated health authority is a free community health clinic (one which provides services to everyone in the community regardless of ability to pay), then the CCF is not required to enter into a written contract or agreement. A copy of the mission statement of the free community health clinic and a copy of the criteria for admission shall be on file in lieu of a contract between the two (2) agencies.

(C) Each CCF shall have a policy defining the level, if any, of financial responsibility to be incurred by the resident who receives the medical or dental services.

(2) Emergency Health Care.

(A) Twenty-four hour emergency health care shall be provided for residents, to include arrangements for the following:

(i) On site emergency first aid and crisis intervention;

(ii) Emergency evacuation of the resident from the facility;

(iii) Use of an emergency vehicle;

(iv) Use of one (1) or more designated hospital emergency rooms or other appropriate health facilities;

(v) Emergency on-call services from a physician, advanced practice nurse, or physician assistant, a dentist and a mental health professional when the emergency health facility is not located in a nearby community; and

(vi) Security procedures providing for the immediate transfer of residents, when appropriate. 41

(B) A training program for direct care personnel shall be established by a recognized health authority in cooperation with the facility director that includes the following:

- (i) Signs, symptoms and action required in potential emergency situations;
- (ii) Administration of first aid and cardiopulmonary resuscitation (CPR);
- (iii) Methods of obtaining assistance;
- (iv) Signs and symptoms of mental illness, retardation and chemical dependency; and
- (v) Procedures for patient transfers to appropriate medical facilities or health-care providers.

(C) First aid kits shall be available in designated areas of the facility. Contents and locations shall be approved by the health authority.

(3) Health Screening and Medical Examinations. Medical, dental and mental health screening shall be performed by health-trained or qualified health-care personnel on all offenders within ten (10) days prior to or after admission to the facility. The purpose of the screening is to determine if the offender has any disease, illness or condition that precludes admission. The health screening shall include the following:

(A) Questionnaires for health screening shall be established to document inquiries into and observations of the following:

- (i) Current illness and health problems, including venereal diseases and other infectious diseases;
- (ii) Dental problems;
- (iii) Mental health problems, including suicide attempts or ideation;
- (iv) Use of alcohol and other drugs, which includes types of drugs used, mode of use, amounts used, frequency of use, date or time of last use and a history of problems that may have occurred after ceasing use (for example, convulsions);
- (v) Other health problems designated by the responsible health authority;
- (vi) Tuberculosis (TB) screening of residents shall be completed within seven (7) calendar days of admission into the residential facility and repeated annually thereafter. If a resident was confined in a jail or other correctional facility immediately prior to admission to a CCF, a TB screening test that was completed no more than 30 days prior to transfer to a CCF may be accepted, provided that a TB questionnaire is completed and filed with the TB screening test results.

(B) Observation by qualified healthcare personnel of:

- (i) Behavior, which includes state of consciousness, mental status, appearance, conduct, tremor and sweating;
- (ii) Body deformities, ease of movement and so forth; and
- (iii) Conditions of skin, including trauma markings, bruises, lesions, jaundice, rashes and infestations and needle marks or other indications of drug abuse.

(C) Medical Examinations. 42

- (i) A new resident admitted to the facility who was not transferred from a jail or other correctional facility shall have a medical history and physical examination completed within ten (10) days prior to or after admission to the facility.
  - (ii) TB screening of residents shall be completed within seven (7) calendar days of admission into the residential facility and repeated annually thereafter. If a resident was confined in a jail or other correctional facility immediately prior to admission to a CCF, a TB screening test that was completed no more than 30 days prior to transfer to a residential facility may be accepted, provided that a TB questionnaire is completed and filed with the TB screening test results.
  - (iii) Medical examinations shall be conducted for any employee or resident suspected of having a communicable disease.
- (4) Serious and Infectious Diseases.
- (A) The facility shall provide for the management of serious and infectious diseases.
  - (B) The CCFs shall have policies and procedures to direct actions to be taken by employees concerning residents who have been diagnosed with human immunodeficiency virus (HIV), including, at a minimum, the following:
    - (i) When and where residents shall be tested;
    - (ii) Appropriate safeguards for staff and residents;
    - (iii) Staff and resident training;
    - (iv) Issues of confidentiality; and
    - (v) Counseling and support services.
- (5) Dental Care. Access to dental care shall be made available to each resident.
- (6) Medications--General Guidelines.
- (A) Staff who dispense medication shall be properly credentialed and trained. Staff that supervise self-administration of medication shall be appropriately trained to perform the task.
  - (B) Policy and procedure shall direct the possession and use of controlled substances, prescribed medications, supplies and over-the-counter (OTC) drugs. Prescribed medications shall be dispensed according to the directions of the prescribing physician, advanced practice nurse or physician assistant.
  - (C) Each residential facility shall have a written policy in place that sets forth required procedural guidelines for the administration, documentation, storage, management, accountability of all resident medication, inventory, disposal of medications, handling medication errors and adverse reactions.
  - (D) If medications are distributed by facility staff, records shall be maintained and audited monthly and shall include, but not be limited to the date, time, name of the resident receiving the medication and the name of the staff distributing the medication.
  - (E) Each facility shall ensure that the phone number of a pharmacy and a comprehensive drug reference source is readily available to the staff.
- (7) Medication Storage. 43

(A) Prescription and OTC medications shall be kept in locked storage and accessible only to staff who are authorized to provide medication. Syringes, needles and other medical supplies shall also be kept in locked storage.

(B) All controlled/scheduled drugs shall be stored under double lock and key.

(C) Each facility shall ensure that all medications, syringes and needles are stored in the original container.

(D) Medications labeled as internal and external only shall not be stored together in the same medication box or medication drawer.

(E) Sample prescription medications provided by physicians shall be stored with proper labeling information that includes the name of the medication; name of the prescribing physician, advanced practice nurse or physician assistant; date prescribed; and dosage instructions.

(F) Medications that require refrigeration shall be stored in a refrigerator designated for medications only. A thermometer shall be maintained inside the refrigerator with the temperature checked and recorded daily on a temperature log.

(G) Medications that are discontinued, have expired dates or are no longer in use shall be stored in a separate locked container or drawer until destroyed.

(H) Facilities that allow residents to keep medications in the resident's possession shall have written guidelines specific for keep-on-person (KOP) medications. Staff shall ensure that authorized residents keep medication on their person or safely stored and inaccessible to other residents.

(8) Medication Inventory and Disposal.

(A) Facility staff shall conduct an inventory count of all controlled/scheduled prescription medications daily (at a minimum, once per 24 hour period). The count shall be conducted and witnessed by one (1) other staff member. Documentation of inventory counts shall be maintained for a minimum period of three (3) years.

(B) The facility shall conduct a monthly inventory of all prescription and OTC drugs provided to or purchased by the resident. The monthly audit shall be conducted by a staff person who is not responsible for conducting the daily inventory counts.

(C) A monthly audit shall be conducted of all medication administration records to verify the accuracy of recorded information. The monthly audit of medication administration records shall be conducted by a staff person who is not responsible for the documentation of medication administration records.

(D) When a discrepancy is noted between the medication administration record and the monthly inventory count, documentation explaining the reason for the discrepancy and action taken to correct it shall be recorded. In the event an inventory count reveals unaccounted for controlled/scheduled medication, an investigation shall be conducted and a summary report written detailing the steps taken to resolve the matter. Until the discrepancy is resolved, an inventory count shall be conducted three (3) times daily (after each shift). The summary report shall be maintained for a minimum period of three (3) years. If misapplication, misuse or misappropriation of controlled/scheduled medication leads to an investigation by law enforcement, such information shall be reported pursuant to subsection (i) of this rule.

(E) Discontinued and outdated medications shall be removed from the current medication storage, stored in a separate locked container and disposed of within 30 days. The drugs designated for disposal shall be recorded on a drug disposal form. 44

(F) Methods used for drug disposal shall prevent medication from being retrieved, salvaged or used in any way. The disposal of drugs shall be conducted, documented and the process witnessed by one (1) other staff member. The documentation shall include:

- (i) Name of the resident and date of disposal;
- (ii) Name and strength of the medication;
- (iii) Prescription number, sample or OTC lot numbers;
- (iv) Amount disposed, reason for disposal and the method of disposal; and
- (v) Signatures of the two (2) staff members that witnessed the disposal.

(9) Administration of Medication for Non-Medical Model Facilities.

(A) Prescription medications shall be dispensed only by licensed nurses or other staff who are trained and have the appropriate documented medication certification to dispense medications while under the supervision of a physician or registered nurse. Facilities that do not have licensed nurses or other credentialed staff to dispense medications (non-medical model facilities) shall implement the practice of self-administration of medications.

(B) If medications are dispensed through the practice of self-administration in a non-medical model program, staff trained by a qualified health professional to supervise residents in the self-administration of medications shall monitor the residents during the self-administration process.

(C) Each dose of prescription medication received by the resident shall be documented on the prescription medication administration record and maintained in the resident's medical file. The prescription medication record shall include:

- (i) Name of the resident receiving the medication;
- (ii) Drug allergies or the absence of known drug allergies;
- (iii) Name, strength of medication and route of administration;
- (iv) Instructions for taking the medication, the amount taken and the route of administration;
- (v) Date and time the medication was provided;
- (vi) Prescription number (or lot number for sample drugs) and the initial amount of medication received;
- (vii) Prescribing physician, advanced practice nurse or physician assistant and the name of the pharmacy;
- (viii) Signature of the resident receiving the medication and the staff person supervising the self-administration of medication;
- (ix) The remaining amount of medication after each dose dispensed; and
- (x) Comment section for recording a variance, discrepancy or change.

(D) Each dose of OTC medication received by the resident shall be documented on the OTC medication administration record and maintained in the resident's medical file. The OTC drugs purchased by the resident or supplied for the resident in quantities larger than single dose packages shall be recorded on the OTC drug record. The OTC drug record shall include: 45

- (i) The resident's name;
  - (ii) The name and strength of the medication dispensed;
  - (iii) Drug allergies or the absence of known drug allergies;
  - (iv) The dosage instructions and route of administration;
  - (v) The initial amount received, OTC lot number and the expiration date;
  - (vi) The date and time the medication was dispensed;
  - (vii) The amount dispensed and the ending count after each dose;
  - (viii) Comment section for recording reason for OTC drug or other notations; and
  - (ix) The signature of the resident and the employee who supervised each dose dispensed.
- (E) Facility Stock OTC Drugs. Multiple OTC stock drugs supplied in single dose packaging may be recorded on the same form. The medication drug record for facility stock OTC drugs shall include:
- (i) The resident's name;
  - (ii) The name, strength and route of administration;
  - (iii) Drug allergies or the absence of known drug allergies;
  - (iv) The date, time, amount dispensed and the lot number on the container;
  - (v) Comment section to record the reason the OTC drug was requested; and
  - (vi) The signature of the resident and the employee who supervised each dose dispensed.
- (10) Training for Monitoring Self-Administration of Medications. All residential employees responsible for supervising residents in self-administration of medication, who are not credentialed to dispense medication, shall complete required training before performing this task.
- (A) The initial training for new employees shall be four (4) hours in length.
- (B) Employees shall complete a minimum of two (2) hours of review training annually thereafter.
- (C) The training shall be provided by a physician, pharmacist, physician assistant or registered nurse before supervising self-administration of medications. A licensed vocational nurse (LVN) or paramedic (under supervision) may teach the course from an established curriculum. Topics to be covered shall include:
- (i) Prescription labels;
  - (ii) Medical abbreviations;
  - (iii) Routes of administration;
  - (iv) Use of drug reference materials;
  - (v) Monitoring/observing insulin preparation and administration; 46

- (vi) Storage, maintenance, handling and destruction of medication;
  - (vii) Transferring information from prescription labels to the medication administration record and documentation requirements, including sample medications; and
  - (viii) Procedures for medication errors, adverse reactions and side effects.
- (11) Female Residents. If female residents are housed, access to pregnancy management services shall be available.
- (12) Mental Health. Access to mental health services shall be available to residents.
- (13) Suicide Prevention. Each facility shall have a written suicide prevention and intervention program reviewed and approved by a qualified medical or mental health professional. All staff with resident supervision responsibilities shall be trained in the implementation of the suicide prevention program.
- (14) Personnel.
- (A) If treatment is provided to residents by health-care personnel other than a physician, psychiatrist, dentist, psychologist, optometrist, podiatrist or other independent provider, such treatment shall be performed pursuant to written standing or direct orders by personnel authorized by law to give such orders.
- (B) If the facility provides medical treatment, personnel who provide health-care services to residents shall be qualified and appropriately licensed. Verification of current credentials and job descriptions shall be on file in the facility. Appropriate state and federal licensure, certification or registration requirements and restrictions apply.
- (15) Informed Consent. If the facility provides medical treatment, the facility shall ensure residents are provided information to make medical decisions with informed consent. All informed consent standards in the jurisdiction shall be observed and documented for resident care.
- (16) Participation in Research. Residents shall not participate in medical, pharmaceutical or cosmetic experiments. This does not preclude individual treatment of a resident based on resident's need for a specific medical procedure that is not generally available.
- (17) Notification. Individuals designated by the resident shall be notified in case of serious illness or injury.
- (18) Health Records.
- (A) If medical treatment is provided by the facility, accurate health records for residents shall be maintained separately and confidentially.
- (B) If medical treatment is provided by the facility, the method of recording entries in the records, the form and format of the records, and the procedures for maintenance and safekeeping shall be approved by the health authority.
- (C) If medical treatment is provided by the facility, for the residents being transferred to other facilities, summaries or copies of the medical history record shall be forwarded to the receiving facility prior to or at arrival.
- (o) Discharge From Residential Facilities.
- (1) Victim Notification. The CSCD director and facility director shall ensure there are procedures, policies and practices that comply with Texas Government Code §76.016, TCCP art. 42.21(a) and other applicable laws as to the notifications made to certain crime victims of offenders who are residents in its facilities or subject to its programs. 47

(2) Discharge. Discharge from residential facilities shall be based on the following criteria:

(A) The resident has made sufficient progress towards meeting the objectives of the supervision plan and program requirements;

(B) The resident has satisfied a sentence of confinement;

(C) The resident has satisfied a period of placement as a condition of community supervision or satisfied the conditions of a pre-trial agreement signed by a judge presiding over an established drug court;

(D) The resident has demonstrated non-compliance with program criteria or court order;

(E) The resident manifests a non-emergency medical problem that prohibits participation and/or completion of the residential program requirements;

(F) The resident displays symptoms of a psychological disorder that prohibits participation and/or completion of the residential program requirements; or

(G) The resident is identified as inappropriate or ineligible for participation in the residential program as defined by facility eligibility criteria, statute or standard.

(3) Discharge Report. The CSCD director and facility director shall ensure a report is prepared at the termination of program participation that reviews the resident's performance. A copy of the report shall be provided to the receiving CSCD community supervision officer (CSO).

(p) Basic Services and Programs.

(1) Each facility shall, at a minimum, provide programs in the following areas which shall include, but not be limited to:

(A) Education programs;

(B) Rehabilitation programs based on the mission of the facility;

(C) Community service restitution/work detail;

(D) Recreational programs; and

(E) Cognitive based programs.

(2) Facilities serving other jurisdictions shall have a procedure in place designed to assist the resident in obtaining employment in the jurisdiction to which the resident will be released. At a minimum, an aftercare/supervision plan shall be provided to the original jurisdiction and shall outline aftercare/supervision strategies best designed to sustain progress.

(3) Each facility shall have a family support program designed to educate family members in the goals of the facility and resident, as well as to incorporate family assistance during and after residency.

(4) Each facility incorporating an employment component shall provide an initial programming phase of not less than 30 days prior to work release. A longer period of programming shall be provided depending upon documented risk/needs assessment and/or program progress.

(q) Mail, Telephone and Visitation. The CSCD director and facility director shall have written policies which govern the facility's mail, telephone and visitation privileges for residents, including mail inspection, public phone use and routine and special visits. The policies shall address compelling circumstances in which a resident's mail both incoming and outgoing may be opened, but not read, to inspect for contraband. 48

(r) Religious Programs.

(1) The CSCD director and facility director shall have written policies that govern religious programs for residents. The policies shall provide that residents have the opportunity to voluntarily practice the requirements of a resident's religious faith, have access to worship/religious services and the use or contact with community religious resources, when appropriate.

(2) Under Texas Civil Practice & Remedies Code, Chapter 110, a CSCD or CCF may not substantially burden a resident's free exercise of religion except with the least restrictive measures in furtherance of a compelling interest. Pursuant to Texas Government Code §76.018, there is a presumption that a policy or practice that applies to a resident in the custody of a CCF is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. The presumption may be rebutted with evidence provided by the resident. Source Note: The provisions of this §163.39 adopted to be effective April 15, 1997, 22 TexReg 3436; amended to be effective October 4, 1998, 23 TexReg 9775; amended to be effective June 11, 2000, 25 TexReg 5379; amended to be effective June 20, 2002, 27 TexReg 5220; amended to be effective April 17, 2003, 28 TexReg 3065; amended to be effective February 12, 2008, 33 TexReg 1120 49

### **§163.40 Substance Abuse Treatment**

(a) Definitions. These words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Admission" is the administrative process and procedure performed to accept an offender into a treatment program or facility.

(2) "Aftercare" is the counseling and community based support services that are designed to provide continued support for treatment delivered in a residential or outpatient program.

(3) "Aftercare Caseloads" is the supervision of and support services for offenders who have completed a substance abuse treatment program.

(4) "Assessment" is a process conducted by a qualified credentialed counselor or counselor intern trained to administer a structured interview to determine the nature and extent of an offender's chemical abuse, dependency, or addiction, and to assist in making an appropriate referral. Other criminogenic risks and needs will be assessed and incorporated into the individual treatment plan.

(5) "Best Practices" are evidence based substance abuse treatment programs that address concepts such as criminogenic risks and needs, responsivity, and cognitive behavioral treatment, and programs that possess the following hallmarks:

(A) Validated treatment assessments that include criminogenic risks and need factors;

(B) A treatment regimen that focuses on changing criminogenic risks and needs, behaviors, and thinking patterns;

(C) A treatment regimen that includes a specific, cognitive behavioral program that has been recognized in professional criminal justice journals;

(D) Responsivity in addressing offenders' needs and employment of qualified staff; and

(E) Measurable outcomes to reduce substance abuse, dependency, or addiction as well as other criminogenic risks and needs.

(6) "Chemical Dependency" is a substance related disorder as defined in the most recent published edition of the *Diagnostic and Statistical Manual of Mental Disorders*.

(7) "Continuum of Care" is a system that provides for the uninterrupted provision of essential services from initial assessment through completion of treatment.

(8) "Counseling" is face-to-face interaction between offenders and counselors to help offenders identify, understand, and resolve personal issues and problems related to their substance abuse or chemical dependency. Counseling may take place in groups or in individual meetings.

(9) "Counselor" is a graduate or counselor intern working towards licensure that would certify the individual to be a qualified credentialed counselor.

(10) "Counselor Intern" (CI) is a person seeking a license as a chemical dependency counselor who is registered with the Texas Department of State Health Services (DSHS) and pursuing a course of training in chemical dependency counseling at a registered clinical training institute or under the supervision of a certified supervisor.

(11) "Criminogenic Risk and Needs" are dynamic risk factors that are directly related to crime production, such as antisocial peers; antisocial beliefs, values, and attitudes; substance abuse, dependency, or addiction; anger or hostility; poor self-management skills; inadequate social skills; poor attitude toward work or school; and poor family dynamics. 50

- (12) "Detoxification" is chemical dependency treatment designed to systematically reduce the amount of alcohol and other toxic chemicals in an offender's body, manage withdrawal symptoms, and encourage the offender to continue ongoing treatment for chemical dependency.
- (13) "Direct Care Staff" is staff responsible for providing treatment, care, supervision, or other direct client services that involve face-to-face contact with an offender.
- (14) "Discharge" is formal documented termination of services.
- (15) "Discharge Summary" is a written report of the offender's progress and participation while in treatment, including a discharge plan that provides an aftercare or supervision plan designed to sustain progress for offenders successfully completing treatment.
- (16) "Education" is instruction; a planned, structured presentation of information that is related to substance abuse or chemical dependency. Education is not considered counseling.
- (17) "Emergency" is a situation requiring immediate attention and action to treat or prevent physical or emotional harm or illness.
- (18) "Evaluation" is a process conducted by a community supervision officer (CSO) trained to administer the Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) Substance Abuse Evaluation instrument to determine the nature and extent of an offender's chemical abuse, dependency, or addiction to assist in making an appropriate referral. Other criminogenic risks and needs will be assessed and incorporated into the individual treatment plan.
- (19) "Facility" is the physical location of the treatment program operated by, for, or with funding from the TDCJ CJAD. Some locations may be secured facilities for inpatient treatment; other programs may be offered at locations as outpatient treatment.
- (20) "Graduate" is an individual who has successfully completed, or been exempted from, supervised work experience and who is still registered with the DSHS as a CI, as defined by the DSHS.
- (21) "Grievance" is a formal complaint limited to matters affecting the complaining offender personally and limited to matters that the facility or program has the authority to remedy.
- (22) "Intake" is the process of gathering information to determine if an offender is eligible and appropriate for services as well as providing information to the offender about a program's services and rules.
- (23) "Intensive Outpatient Treatment" is an outpatient treatment program that delivers no less than six hours per week of chemical dependency counseling.
- (24) "Life Skills Training" is a structured program of training, based upon a written curriculum and provided by qualified staff designed to help offenders with social competencies, such as communication and social interaction, stress management, problem solving, decision making, and management of daily responsibilities.
- (25) "Primary Counselor" is an individual working directly with and responsible for the treatment of the offender.
- (26) "Qualified Credentialed Counselor (QCC)" is a licensed chemical dependency counselor or one of the practitioners listed below who is licensed and in good standing in the state of Texas as defined by the DSHS:
- (A) Licensed professional counselor;
  - (B) Licensed master social worker; 51

- (C) Licensed marriage and family therapist;
- (D) Licensed psychologist;
- (E) Licensed physician (MD or DO);
- (F) Licensed physician's assistant;
- (G) Certified addictions registered nurse; or
- (H) Licensed psychological associate; and
- (I) Nurse practitioner recognized by the Board of Nursing as a clinical nurse specialist or nurse practitioner with specialty in psyche-mental health.

(27) "Responsivity" is matching the characteristics of the offender with the program modality, and the knowledge, skills, and abilities of the staff. It includes offender's learning style and readiness for treatment; the quality of the treatment relationship; and the staff's therapeutic approach, cultural competency, use of reinforcement, and modeling.

(28) "Screening" is the initial stage of a process when it is determined whether an offender has a chemical dependency problem that may require further assessment or evaluation.

(29) "Senior Counselor, Unit Manager, or Unit Supervisor" is a supervisory staff member who directs, monitors, and oversees the work performance of subordinate staff members.

(30) "Special Needs Populations" are offenders who have significant problems in the areas of mental health, diminished intellectual capacity, or medical needs.

(31) "Structured Activity" is a planned, interactive, scheduled event that is overseen by staff in which participants actively take part in an activity related to recovery, health, life skills, or interpersonal skills.

(32) "Supportive Outpatient Treatment" is an outpatient treatment program that delivers no less than two hours per week of chemical dependency counseling.

(33) "Treatment" is a planned, structured, and organized program, either residential or nonresidential, designed to initiate and promote an offender's chemical free status or to maintain the offender free of illegal drugs. It includes, but is not limited to, the application of planned procedures to identify and change patterns of behavior related to or resulting from chemical dependency that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning lost due to chemical dependency.

(34) "Treatment Team" is the team consisting of at least the offender, the offender's counselor, and a CSO or residential CSO when appropriate.

(b) Compliance. Compliance with TDCJ CJAD substance abuse treatment standards is required of all programs that provide substance abuse treatment and are funded directly or indirectly or managed by the TDCJ CJAD. Programs and facilities providing only substance abuse education are not subject to these standards.

(c) Accreditation of Personnel and Staff Development. The employer shall ensure that employees acquire and maintain any credentials, licensing, certifications, or continuing education required to perform their duties, with copies kept in their personnel files.

(d) Admissions and Removals.

(1) Eligibility. Programs shall have written eligibility criteria specific to the services and mission of the program. Offenders may be admitted into a program only by order of the court and only if they meet the minimum eligibility criteria as outlined in the program policies, licensure, or CJAD approved program 52

design. Offenders found to be ineligible for admission within 10 days of arrival at the program shall not be counted in program admissions.

(2) Specific admission criteria and procedures shall be documented. Offenders are eligible for substance abuse treatment programs if:

(A) There is responsivity between the treatment services provided by the program and the offender's criminogenic risks and needs;

(B) A court orders the offender into the program and the subsequent assessment indicates the need for treatment services; or

(C) The program allows readmissions and the offender meets the admission criteria.

(3) For offenders placed in treatment programs who do not meet admission or eligibility criteria, a mechanism or procedure shall be developed for offender removal. A review and justification explaining the reason the offender does not meet admission criteria shall be required with copies kept in the offender's file. Offenders who do not meet eligibility criteria will be considered ineligible and shall not be counted as discharged.

(e) Intake. There shall be written policies and procedures establishing an intake process to determine eligibility for offenders entering a substance abuse treatment program. The intake process must be completed within 10 working days of an offender's arrival in a program.

(f) Initial Assessment Procedures. Acceptable and recognized assessment tools shall be used in all substance abuse treatment programs within 10 working days from date of admission.

Assessment policies and procedures shall require the use of approved clinical measurements and screening tests. If the screening identifies a potential mental health problem, the facility shall obtain a mental health assessment and seek appropriate mental health services when resources for mental health assessments and services are available internally or through referral at no additional cost to the program. Assessment procedures shall include the following:

(1) Identification of strengths, abilities, needs, and substance preferences of the offender;

(2) Summarization and evaluation of each offender to develop individual treatment plans; and

(3) Assessments completed by a QCC or a CI. If the assessor is a CI, the documentation must be reviewed and signed by a QCC.

(g) Assessments. The assessment shall include:

(1) A summary of the offender's alcohol or drug abuse history including substances used, date of last use, date of first use, patterns and consequences of use, types of and responses to previous treatment, and periods of sobriety;

(2) Family information, including substance use and abuse by family members and supportive or dysfunctional relationships;

(3) Vocational and employment status, including skills or trades learned, work record, and current vocational plans;

(4) Health information, including medical conditions that present a problem or that might interfere with treatment;

(5) Emotional or behavioral problems, including a history of psychiatric treatment;

(6) Educational achievement level;

(7) Intellectual functioning level; 53

- (8) Responsivity analysis; and
- (9) A diagnostic summary signed and dated by a QCC.
- (h) Orientation. Each program shall establish written policies and procedures for the orientation process. Orientation shall be provided at the onset of treatment and in accordance with the level of treatment to be provided. The orientation shall relay information concerning program rules, the grievance procedure, and the steps necessary for offenders to complete treatment successfully.
- (i) Offender Rights. The offender's basic rights shall be respected and protected, free from abuse, neglect, exploitation, and discrimination. Each provider shall have written policies and procedures to ensure protection of the offender's rights according to federal and state guidelines.
- (j) Release of Information. There shall be written policies and procedures for protecting and releasing offender information that conforms to federal and state confidentiality laws. The staff shall follow written policies and procedures for responding to oral and written requests for information that identifies an offender.
- (k) Offender Records. There shall be written policies and procedures regarding the content of offender treatment records. Residential programs shall maintain separate individual treatment records for defendants. Case records, whether residential or outpatient, shall include the following information at a minimum:
  - (1) Court order placing the offender into the program;
  - (2) Initial intake information form;
  - (3) Referral documentation;
  - (4) Case information from referral source, if applicable;
  - (5) Release of information forms;
  - (6) Relevant medical information;
  - (7) Case history and assessment including risk and needs assessment and Strategies for Case Supervision, if required;
  - (8) Individual treatment plan;
  - (9) Evaluation and progress reports; and
  - (10) Discharge summary.
- (l) Offender Records Review Policy. There shall be written policies and procedures to govern the access of offenders to their own substance abuse treatment records in accordance with Texas Health and Safety Code and 42 Code of Federal Regulations Part 2. This access does not apply to criminal justice records. Restrictions on access to treatment records shall be specified and explained to offenders upon request. Exceptions may be made if providing the records to the offender has the potential to harm the offender or others.
- (m) Treatment Planning and Review. Initial individual treatment plans shall be completed by the counselor collaborating with the offender within 10 working days from the date of admission to a community corrections facility (CCF), county correctional center, or any other substance abuse treatment program or through a similar process approved by the community supervision and corrections department (CSCD). Substance abuse treatment shall be based on substance abuse, chemical dependency or addiction, and other criminogenic risks and needs identified through assessments and revised according to the offender's successful resolution of those substance abuse, chemical dependency, addiction, and other criminogenic risks and needs. Treatment plans shall include criteria for discharge that are based on the achievement of treatment plan goals and shall be reviewed at timely 54

intervals with a minimum of once each month or when major changes occur such as a change in stage. The treatment planning and review process shall ensure that:

- (1) The primary counselor meets with the offender as needed to review the treatment plan, evaluating goal progress and revisions;
- (2) All revised treatment plans are signed and dated by the counselor and the offender; and
- (3) Results of the review are documented and placed in the treatment file, with a copy to the CSO.

(n) Treatment Progress Notes. There shall be written policies and procedures to require all programs to record and maintain progress notes on all offender case records, document counseling sessions, and summarize significant events that occur throughout the treatment process. Progress notes shall be documented at a minimum of once each week.

(o) Changes in Treatment Stages. Each treatment program shall develop written criteria based on achievement of treatment plan goals for an offender to advance or regress from a stage of treatment. An offender must meet the criteria for a change in the stage of treatment before such a change or a discharge is implemented. The treatment team shall confer when the offender is subject to a major setback in the program and prior to discharge.

(p) Discharges from Treatment. Discharge from a program shall be according to one of the following criteria:

(1) Completion of Program. The offender has made sufficient progress towards meeting the objectives of the treatment plan, including addressing criminogenic risks and needs and program requirements, or the offender has satisfied a period of placement as a condition of community supervision;

(2) Inappropriate Placement or Unable to Participate. The offender is removed:

(A) By order of the court;

(B) By operation of law for conduct occurring prior to admission into the program; or

(C) Because the program did not address the risk and needs of the offender.

(3) Violation of Program. The offender has demonstrated noncompliance with the program criteria or court order, including absconding from the program; or

(4) Other. The offender manifests a medical or psychological problem, including death, which prohibits participation or completion of the program requirements.

(q) Discharge Plan. The treatment team shall adopt a discharge plan for each offender prior to successful discharge. The discharge plan shall be sent to the offender's CSO within seven days after discharge and provide a summary of:

(1) Clinical problems at the onset of treatment and original diagnosis;

(2) The problems or needs and strengths or weaknesses identified on the master treatment plan;

(3) The goals and objectives established;

(4) The course of treatment;

(5) The outcomes achieved; and

(6) A continuum of care and relapse plan for aftercare treatment, which must be prepared with the offender and a family member or significant other, if appropriate and available.

(r) Discharge Summary. A discharge summary shall be prepared, within 30 days, for all offenders who leave the program successfully. The summary shall include elements (1) - (5) of the discharge plan. 55

(s) General Program Services Provisions. Specific services shall be required of all substance abuse treatment programs. Written policies and procedures shall ensure the following standards are met:

(1) All substance abuse services shall be delivered according to a written treatment plan that has been developed from the offender's assessment.

(2) Group counseling sessions are limited to a maximum of 16 offenders. Group education and life skills training sessions are limited to a maximum of 35 offenders. These limits do not apply to multi family educational groups, seminars, outside speakers, or other events designed for a large audience.

(3) All programs shall employ a QCC.

(4) All counselor interns shall work under the direct supervision of a QCC.

(5) Chemical dependency counseling shall be provided by a QCC, graduate, or counselor who has the specialized education, training, or expertise in that subject matter. Chemical dependency education shall be provided by counselors or individuals who have the specialized education, training, or expertise in that subject matter.

(6) Direct care staff shall be awake and alert on site during all hours of program operation.

(7) Residential programs shall have, at a minimum, one counselor on duty at least eight hours a day, five days a week.

(8) Offenders in residential programs shall have an opportunity for eight continuous hours of sleep each night. Staff shall conduct and document at least three checks while offenders are sleeping.

(9) The program shall include a culturally diverse curriculum applicable to the population served and shall be evidenced through demonstrated, appropriate counseling, and instructional materials.

(10) Members of the offender treatment team shall demonstrate effective communications and coordination, as evidenced in staffing, treatment planning, and case management documentation.

(11) There shall be written policies and procedures regarding the delivery and administration of prescription and nonprescription medication that provide for:

(A) Conformity with state regulations; and

(B) Documentation of the administration of medications, medication errors, and drug reactions.

(12) Chemical dependency education and life skills training shall follow a course outline that identifies lecture topics and major points to be discussed. All educational sessions shall include offender participation and discussion of the material presented.

(13) The program shall provide education about the health risks of tobacco products and nicotine addiction.

(14) The program shall provide human immunodeficiency virus (HIV), Hepatitis B and C, and tuberculosis education based on the Model Workplace Guidelines for Direct Service Providers developed by the DSHS.

(15) Offenders shall have access to HIV counseling and testing services directly or through referral, as follows:

(A) HIV services shall be voluntary, anonymous, and not limited by ability to pay.

(B) Counseling shall be based on the model protocol developed by the DSHS. 56

(C) In all TDCJ CJAD funded facilities, testing, as well as pre- and post-test counseling, shall be provided by the medical department or contracted medical provider.

(16) The program shall make testing and information for tuberculosis and sexually transmitted diseases available to all offenders, unless the program has access to test results obtained during the past year, as follows:

(A) Services may be made available directly or through referral.

(B) If an offender tests positive for tuberculosis or a sexually transmitted disease, the program shall refer the offender to an appropriate health care provider and take appropriate steps to protect offenders and staff.

(C) A CCF shall report to the local health department the release of an offender who is receiving treatment for tuberculosis.

(17) The program shall:

(A) Refer pregnant offenders who are not receiving prenatal care to an appropriate health care provider and verify services were received; and

(B) Refer offenders to ancillary services, such as mental health services, necessary to meet treatment goals.

(18) CSCDs that contract for services shall give preference to available programs that include the following elements of best practices in criminal justice treatment. CSCDs that conduct their own programs are required to incorporate the following elements of best practices in criminal justice treatment:

(A) Validated treatment assessments that include substance abuse, dependency, or addiction, and other criminogenic risks and needs factors;

(B) A treatment regimen that focuses on changing substance abuse, dependency or addiction, and other criminogenic risks and needs, behaviors, and thinking patterns;

(C) A treatment regimen that includes a specific, cognitive behavioral program that has been recognized in professional criminal justice journals; and

(D) Responsivity in addressing offenders' needs and in employment of qualified staff.

(19) CSCDs that place offenders in substance abuse treatment programs shall ensure that offenders are referred to available aftercare services, giving preference to programs that incorporate best practices elements.

(t) Stages of Treatment. All CCFs providing substance abuse treatment shall designate in the current facility's Community Justice Plan program proposal stages of treatment to be provided as described in subsections (v) - (y) of this rule.

(u) Detoxification. Offenders being referred to detoxification services shall be referred to licensed service providers.

(v) Intensive Residential Treatment. Written policies and procedures shall ensure the following:

(1) All offenders admitted to intensive residential treatment shall have written justification to support their admission, be medically stable, and able to participate in treatment.

(2) The program shall provide adequate staff for close supervision and individualized treatment with counselor caseloads not to exceed 10 offenders.

(3) There shall be direct care staff alert and on site during all hours of operation. There shall be an appropriate number of direct care staff to provide all required program services, maintain an environment 57

that is conducive to treatment, and ensure the safety and security of the offenders, according to the design of the facility and with the approval of the funding source.

(4) Program counselors shall complete a comprehensive offender assessment and individual treatment plan within 10 working days of admission.

(5) The facility shall deliver not less than 25 hours of structured activities per week for each offender, including:

(A) Ten hours of chemical dependency counseling using a cognitive behavioral approach with no less than one hour of individual counseling;

(B) Ten hours additional education, counseling, life skills, or rehabilitation activities; and

(C) Five hours of structured social or recreational activities.

(6) Counseling and education schedules shall be submitted to the funding entity for approval.

(7) Each offender shall have an opportunity to participate in physical recreation at least weekly.

(8) Program staff shall offer chemical dependency education or services to identified significant others.

(9) The program shall provide each offender with opportunities to apply knowledge and practice skills in a structured, supportive environment. Cognitive behavioral programs shall have a published curriculum identified by the authors to contain cognitive, social, and behavioral elements. Anyone facilitating a cognitive curriculum shall be trained in that specific curriculum. All direct care staff shall receive training on the principles of a cognitive behavioral model as it relates to their job duties. This curriculum shall be approved by the TDCJ CJAD and implemented as designed. Components of the cognitive program shall include, at a minimum:

(A) Ways to identify thinking patterns; and

(B) A social skills training component.

(w) Supportive Residential Treatment. Written policies and procedures shall ensure the following:

(1) All offenders admitted to supportive residential treatment shall have written justification to support their admission, be medically stable, be able to function with limited supervision and support, and be able to participate in work release or community service and restitution programs.

(2) The program shall have adequate staff to meet treatment needs within the context of the program description, with counselor caseloads not to exceed 20 offenders, unless the program can provide research based evidence in writing to justify a higher caseload size based on the program design, characteristics and needs of the population served, and any other relevant factors.

(3) There shall be direct care staff alert and on site during all hours of operation. There shall be an appropriate number of direct care staff to provide for the safety and security of the offenders, according to the design of the facility and with the approval of the funding source.

(4) Counselors shall complete a comprehensive offender assessment and individualized treatment plan within 10 working days of admission for each offender.

(5) The program shall deliver no less than six hours per week of chemical dependency counseling with a cognitive behavioral approach for each offender, of which one hour per month shall be individual counseling.

(6) Counseling and education schedules shall be submitted to the funding entity for approval. 58

(7) The program design and application shall include increasing levels of responsibility for offenders and frequent opportunities for offenders to apply knowledge and practice skills in structured and unstructured settings. Cognitive behavioral programs shall have a published curriculum identified by the authors to contain cognitive, social, and behavioral elements. This curriculum shall be approved by the TDCJ CJAD and implemented as designed. Anyone facilitating a cognitive curriculum shall be trained in that specific curriculum. All staff shall receive training on the principles of a cognitive behavioral model as it relates to their job duties. Components of the cognitive program shall include, at a minimum:

(A) Ways to identify thinking patterns; and

(B) A social skills training component.

(x) Outpatient Treatment. Written policies and procedures shall ensure the following:

(1) All offenders admitted to outpatient treatment programs shall be medically stable, and have appropriate support systems in the community to live independently with minimal structure.

(2) The program shall have adequate staff to provide offenders support and guidance to ensure effective service delivery, safety, and security. Staffing patterns shall be submitted to the funding entity.

(3) The program shall set limits on counselor caseload size to ensure effective, individualized treatment and rehabilitation. Criteria used to set the caseload size shall be documented and approved by the funding entity.

(4) Didactic groups shall not exceed 35 offenders per group.

(5) Therapeutic groups shall not exceed 16 offenders per group.

(6) For offenders in supportive outpatient programs, counselors shall complete a comprehensive offender assessment within 30 calendar days of admission.

(7) For offenders in intensive outpatient programs, counselors shall complete a comprehensive offender assessment within 10 calendar days of admission.

(8) Intensive outpatient programs shall deliver no less than six hours per week of chemical dependency counseling with a cognitive behavioral approach.

(9) Supportive outpatient programs shall deliver no less than two hours per week of chemical dependency counseling.

(10) Each offender's progress shall be assessed regularly by clinical staff to help determine the length and intensity of the program.

(11) Counseling and education schedules shall be submitted to the funding entity for approval.

(12) The program design and application shall include increasing levels of responsibility for offenders and frequent opportunities for offenders to apply knowledge and practice skills in structured and unstructured settings.

(13) The outpatient treatment stages may be used for residents in the work release phase of any residential substance abuse treatment program.

(y) Special Needs Populations. Written policies and procedures shall ensure the following:

(1) Programs that address the special mental health, intellectual capacity, or medical needs of offenders shall provide appropriate treatment either by program staff or through contracted services.

(2) Admission to a special needs program shall be based on a documented mental health, intellectual capacity, or medical need. 59

- (3) When the assessment process indicates that the offender has coexisting disabilities and disorders, the treatment plan shall specifically address those issues that might impact treatment, recovery, relapse, and recidivism.
- (4) Personnel qualified in the treatment of coexisting disabilities and disorders shall be available as needed.
- (5) Within 96 hours of admission to a special needs residential program, an offender shall be administered a medical and psychological evaluation.
- (6) Within 10 days of admission to a residential program for special needs offenders, the program administrator or designee shall contact the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) regarding the offender's status. As soon as a discharge date is projected, TCOOMMI shall be notified in writing of plans for a continuum of care after discharge, regardless of whether or not the discharge is for successful completion of the program.
- (7) Residential facilities providing services for special needs populations shall have procedures to provide access to health care services, including medical, dental, and mental health services, under the control of a designated health authority. When this authority is other than a physician, final medical judgments shall rest with a single designated responsible physician licensed by the state.
- (A) Services and treatment shall be directed toward maximizing the functioning and reducing the symptoms of offenders.
- (B) There shall be written policies and procedures regarding the delivery and administration of prescription and nonprescription medication that provide for:
- (i) Conformity with state regulations;
  - (ii) Documentation of the rationale for use and goals of service and treatment consistent with the individual treatment plan;
  - (iii) Documentation of the administration of medications, medication errors, and drug reactions; and
  - (iv) Procedures to follow in case of emergencies.
- (8) There shall be procedures for documenting that the offender has been informed of medication management procedures.
- (9) Offenders shall be actively involved in decisions related to their medications.
- (10) Programs for special needs offenders shall follow the same staffing for treatment levels as the levels for other offenders, except all residential programs shall maintain caseloads of no greater than 16 offenders for each counselor.
- (11) Programs operating in residential facilities shall ensure that offenders have no less than 10 days of appropriate medication for use after discharge.
- (z) Use of Force. The CSCD director and facility director shall ensure that a residential treatment program has written policies, procedures, and practices that restrict the use of physical force to instances of self protection, protection of offenders or others, or prevention of property damage. The use of physical force against an offender is never justifiable as punishment. A written report shall be prepared following all uses of force, and all such written reports shall be promptly submitted to the CSCD director and facility director for review and follow-up. Only an individual who is properly trained in the use of such devices may use restraining devices, aerosol sprays, and chemical agents. These devices shall only be used in an emergency by such an individual in self protection, protection of others, or other circumstances as described previously.



**Source Note:** The provisions of this §163.40 adopted to be effective October 4, 1998, 23 TexReg 9775; amended to be effective June 20, 2002, 27 TexReg 5220; amended to be effective April 17, 2003, 28 TexReg 3065; amended to be effective April 21, 2005, 30 TexReg 2234; amended to be effective September 11, 2011, 36 TexReg 5693 61

### **§163.41 Medical and Psychological Information**

(a) Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) Policies. Community Supervision and Corrections Department (CSCD) directors shall develop and implement policies relevant to HIV in accordance with guidelines established by the Texas Department of State Health Services and adopted by the Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD). These policies shall be incorporated in the CSCD's administrative manuals and shall include, at a minimum, the following:

- (1) Education and Training;
- (2) Confidentiality;
- (3) Workplace guidelines; and
- (4) Supervision of individuals with HIV or AIDS infection.

(b) Employee Training. In accordance with Tex. Health & Safety Code §85.143, the HIV-AIDS policy must:

- (1) provide for periodic education of employees and probationers concerning HIV;
- (2) ensure that education programs for employees include information and training relating to the infection control procedures and that employees have infection control supplies and equipment readily available; and
- (3) ensure access to appropriate services and protect the confidentiality of medical records relating to HIV infection. In addition, CSCD residential directors shall ensure that residential staff attend and complete HIV-AIDS classroom training within the first year of employment and each year thereafter. Training shall include, at a minimum, information relating to infection control procedures, information regarding infection control supplies and equipment, and policies regarding the handling, care, and treatment of HIV-AIDS infected persons in their custody.

(c) HIV Confidentiality. Information regarding HIV-AIDS testing and results is confidential and shall be maintained in a safe and secure manner. Access to this confidential information shall be restricted to only those persons who have been authorized to receive this information by law or with a duly executed release and waiver of confidentiality. The CSCD may disclose HIV-AIDS information relating to special offenders in accordance with Tex. Health & Safety Code §§614.001 - 614.021 and other state and federal law.

(d) Medical and Psychological Information. All records and other information concerning an offender's physical or mental state, including all information pertaining to an offender's HIV-AIDS status, are confidential in accordance with the statutes and other state and federal law. Medical and psychological information shall be maintained in a safe and secure manner. Access to this confidential information shall be restricted to only those persons who have been authorized to receive this information by law or with a duly executed release and waiver of confidentiality from the offender. The CSCD may disclose medical and psychological information relating to special needs offenders in accordance with Tex. Health & Safety Code §§614.001 - 614.021 and other state and federal law.

---

Source Note: The provisions of this §163.41 adopted to be effective March 1, 1993, 18 TexReg 944; amended to be effective August 16, 1995, 20 TexReg 5799; amended to be effective October 13, 1997, 22 TexReg 9896; amended to be effective December 12, 1999, 24 TexReg 10894; amended to be effective June 20, 2002, 27 TexReg 5220; amended to be effective April 17, 2008, 33 TexReg 2962; amended to be effective September 14, 2014, 39 TexReg 7179 62

### **§163.42 Substantial Noncompliance**

(a) Definition. Substantial noncompliance with the Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) standards, for purposes of Texas Government Code §509.012, is defined as:

- (1) intentional diversion, theft or misapplication of TDCJ-CJAD funding or grants for purposes other than the state funding award or allocation;
- (2) violations of laws, regulations or official manuals specific to the operations of the Community Supervision and Corrections Departments (CSCDs);
- (3) intentional refusal to implement a TDCJ-CJAD approved action plan that is a result of audits, reviews or inspections;
- (4) for purposes of qualifying for state aid under §163.43(a)(1)(F) of this title (relating to Funding and Financial Management) by failing to hold the meeting to finalize the CSCD budget as required by Texas Local Government Code §140.004 and the Texas Open Meetings Act; and
- (5) interference, obstruction or hindrance with any efforts by the State Comptroller, County Auditor of the county that manages the CSCD's funds, TDCJ-CJAD, TDCJ-Internal Audit Division, Legislative Budget Board, Texas State Auditors Office or Texas Sunset Advisory Commission, to examine or audit the records, transactions and performance of the CSCD or facilities.

(b) Imposing Sanctions. Sanctions imposed for substantial noncompliance shall be in accordance with provisions outlined in §163.47 of this title (relating to Contested Matters).

Source Note: The provisions of this §163.42 adopted to be effective August 16, 1995, 20 TexReg 5799; amended to be effective April 15, 1997, 22 TexReg 3437; amended to be effective June 20, 2002, 27 TexReg 5220; amended to be effective October 7, 2007, 32 TexReg 6791 63

### **§163.43 Funding and Financial Management**

#### **(a) Funding.**

(1) Qualifying for Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) Formula and Grant Funding. Community supervision and corrections departments (CSCDs or departments) qualify for TDCJ CJAD state aid by:

- (A) Being in substantial compliance with TDCJ CJAD standards;
- (B) Having a community justice council that serves the jurisdiction as required by law;
- (C) Having a TDCJ CJAD approved community justice plan with related budgets;
- (D) Having a director, appointed as described in Texas Government Code §76.004, to administer all CSCD funds;

(E) Having a fiscal officer appointed by the district judge(s) manage the CSCD as set forth in subsection (b) of this rule; and

(F) Complying with the Open Meetings Act, Texas Government Code Chapter 551 when meeting to finalize the CSCD budget as required by Texas Local Government Code §140.004.

(2) Other Entities Qualifying for TDCJ CJAD Grant Funding. In addition to CSCDs, counties, municipalities and nonprofit organizations qualify for TDCJ CJAD grant funding by:

- (A) Being in substantial compliance with TDCJ CJAD grant conditions;
- (B) Having budgets related to the program proposal; and
- (C) Designating a chief fiscal officer to account for, protect, disburse, and report on all TDCJ CJAD grant funding, and to prescribe the accounting procedures related thereto.

(3) Allocating State Aid. State aid shall be made available to eligible funding recipients in accordance with the applicable statutory requirements and items set forth in the Financial Management Manual for TDCJ CJAD Funding issued by TDCJ CJAD.

(4) Awarding TDCJ CJAD Grant Funding. CSCDs, counties, municipalities and nonprofit organizations that are eligible to receive grant funding shall meet requirements as set forth in the Financial Management Manual for TDCJ CJAD Funding and be approved by the TDCJ CJAD director to receive such funds. Grant funding shall be made available in accordance with statutory requirements and items as set forth in the Financial Management Manual for TDCJ CJAD Funding.

#### **(b) Financial Procedures.**

(1) Requested Information from CSCDs and Other Potentially Eligible TDCJ CJAD Funding Recipients. Each funding recipient shall present data, documents, and information requested by the TDCJ CJAD as necessary to determine the amount of state financial aid to be allocated to the recipient. A funding recipient receiving TDCJ CJAD funding shall submit such reports, records, and other documentation as required by the TDCJ CJAD.

(2) Deposit of TDCJ CJAD Funding. In accordance with Texas Local Government Code §140.003, each CSCD, county or municipality shall deposit all TDCJ CJAD funding received in the county treasury or municipal treasury, as appropriate, to be used on behalf of the department and as the CSCD directs. Nonprofit organizations shall deposit all TDCJ CJAD funding received in a separate fund, to be used solely for the provision of services, programs, and facilities approved by TDCJ CJAD. 64

(3) Fee Deposit. Community supervision fees and payments by offenders shall be deposited into the same special fund of the county treasury receiving state financial aid, to be used for community supervision and correction services.

(4) Restrictions on CSCD Generated Revenue. CSCD generated revenue shall be used in accordance with statutory requirements and items set forth in the Financial Management Manual for TDCJ CJAD Funding.

(5) Available Records. The funding recipient and the fiscal officer accounting for, disbursing, and reporting on the TDCJ CJAD funding shall make financial, transaction, contract, computer, and other records available to TDCJ CJAD. Funding recipients shall provide financial reports and other records to TDCJ CJAD as set forth in the Financial Management Manual for TDCJ CJAD Funding.

(6) Budgets. Funding recipients shall prepare and operate from a budget(s) developed and approved within the guidelines set forth in the Financial Management Manual for TDCJ CJAD Funding.

(7) Funding Recipient Obligations. Funding recipients shall comply with all funding provisions as set forth in the Financial Management Manual for TDCJ CJAD Funding and any special conditions associated with the respective funding awards.

(8) Honesty Bond. CSCD directors shall ensure that all public monies are protected by requiring that all employees with access to monies are covered by honesty bonds and all funds maintained on CSCD premises are protected by appropriate insurance or bonding.

(9) Travel Reimbursements. Mileage and per diem reimbursements to CSCD employees shall be in accordance with the Financial Management Manual for TDCJ CJAD Funding.

(c) Determination and Recovery of Unexpended Monies. Determination and return by the CSCD of unexpended funds shall be in accordance with the Financial Management Manual for TDCJ CJAD Funding.

(d) Facilities, Utilities, and Equipment.

(1) CSCDs. In accordance with Texas Government Code §76.008, the county or counties served by a CSCD shall provide, at a minimum, facilities, equipment, and utilities for the department as follows:

(A) Minimum Facilities for CSCDs. Each community supervision officer (CSO) shall be provided a private office. Each office shall have the necessary lighting, air conditioning, equipment, privacy, and environment to provide and promote the delivery of professional community corrections services.

(B) Minimum Utilities for CSCDs. Each CSCD office shall be provided adequate utilities necessary to provide efficient and professional community corrections services.

(C) Minimum Equipment for CSCDs. Each CSO shall be furnished adequate furniture, telephone, and other equipment as necessary and consistent with efficient office operations. Adequate insurance, maintenance, and repair of the CSCD's equipment shall be maintained.

(D) Location. Each CSCD office providing direct court services shall be located in the courthouse or as near to the courthouse as practically possible to promote prompt and efficient services to the court.

(E) Satellite Offices. Satellite CSCD offices shall be established in the appropriate areas of the judicial district to provide efficient supervision of and service to offenders as dictated by population, caseload size, or geographical distance.

(2) Inventory. Inventory and disposal of equipment, furniture, and vehicles purchased with program funds shall follow the guidelines in the Financial Management Manual for TDCJ CJAD Funding. In addition: 65

(A) All equipment, furniture, and vehicles purchased with program funds shall be inventoried with TDCJ CJAD in accordance with procedures set forth in the Financial Management Manual for TDCJ CJAD Funding.

(B) Any CSCD or other entity wanting to dispose of equipment, furniture, and vehicles purchased with program funds shall adhere to procedures set forth in the Financial Management Manual for TDCJ CJAD Funding.

(e) Certification of Facilities, Utilities, and Equipment for CSCDS. Certification of facilities, utilities, and equipment for CSCDs shall be in accordance with Texas Government Code §76.009, and as provided in the Financial Management Manual for TDCJ CJAD Funding.

**Source Note:** The provisions of this §163.43 adopted to be effective March 1, 1993, 18 TexReg 944; amended to be effective August 16, 1995, 20 TexReg 5799; amended to be effective July 15, 1996, 21 TexReg 6084; amended to be effective April 15, 1997, 22 TexReg 3437; amended to be effective October 13, 1997, 22 TexReg 9896; amended to be effective June 20, 2002, 27 TexReg 5220; amended to be effective April 17, 2008, 33 TexReg 2962; amended to be effective January 2, 2014 38 TexReg 9604 66

**§163.45 Distribution of Community Corrections Funding**

Community corrections funding shall be distributed in accordance with applicable law and TDCJ rules and policy.

Source Note: The provisions of this §163.45 adopted to be effective September 1, 1993, 18 TexReg 5400; amended to be effective October 12, 1994, 19 TexReg 7711; amended to be effective August 16, 1995, 20 TexReg 5799. 67

### **§163.46 Allocation Formula for Community Corrections Program**

Assuming sufficient appropriations, no community supervision and corrections department (CSCD) may incur a funding decrease of more than 5.0% from the previous fiscal year for community corrections program funding. An upper change limit shall be determined based upon available funding and the size and number of CSCDs that reach the loss limit. If appropriations are insufficient so that the 5.0% loss limit must be increased, all CSCD allocations shall be reduced proportionately from the previous year's allocations.

**Source Note:** The provisions of this §163.46 adopted to be effective October 11, 1995, 20 TexReg 7860; amended to be effective October 13, 1997, 22 TexReg 9896; amended to be effective June 20, 2002, 27 TexReg 5220; amended to be effective May 2, 2011, 36 TexReg 2733 68

### **§163.47 Contested Matters**

#### **(a) Right to Contest Adverse Proposals.**

(1) If TDCJ-CJAD (hereinafter referred to as the division) proposes to deny, revoke, or suspend the certification of a CSO or to reprimand such officer shall be entitled to notice and a hearing before the division or a hearings examiner appointed by the division. Hearings before a hearings examiner shall be conducted pursuant to the procedures set forth in subsection (h) of this section.

(2) If the division proposes the reduction, refusal, or suspension of payment of state aid, not including the refusal to provide or a reduction of discretionary grant funding other than funds suspended or reduced during a funding cycle, or intends to impose budget control over a CSCD (hereinafter referred to as the department), the department shall be provided with a notice and offered a hearing.

#### **(b) Notice of Proposed Action.**

(1) The division shall issue a written notice that:

(A) defines specifically the alleged conduct that constitutes substantial noncompliance with division standards or requirements;

(B) indicates the proposed action to be taken in the matter;

(C) provides a succinct statement of the reasons for the proposed action;

(D) makes reference to the particular sections of the statutes, standards, and rules involved; and,

(E) informs the supervision officer or department of the right to request a hearing.

(2) The notice must be signed by the TDCJ-CJAD director and sent by registered or certified mail, return receipt requested and postage prepaid. If the proposed action is against a CSO, then the notice must be sent to the individual with a copy forwarded to the director of the department.

(c) Request for Further Hearing Before the Judicial Advisory Council. A department or CSO who received written notice of the division's proposed adverse action may after the conclusion and results of the hearing before the Division or Hearings Examiner provided under subsection (a) of this section, request a further hearing to contest the matter before the Judicial Advisory Council (JAC).

(1) Within 15 working days (for purposes of this section, the term days refers to business days other than weekends or holidays) of the receipt of the written notice of the results of the hearing before the Division or Hearings Examiner, the respondent CSO or department must submit in writing a request for a further hearing before the JAC to the division director and the chairperson of the JAC.

(2) The request for further hearing before the JAC must include a succinct statement of the grounds upon which the proposed action is contested and all grounds upon which the effected individual or department refutes the basis of the proposed action and any results from the initial hearing before the Division or Hearings Examiner.

(3) The JAC shall offer the affected CSO or department an opportunity to be heard at the next regularly scheduled meeting of the JAC held immediately after receipt of the request for hearing. If no meeting is scheduled within 60 days of the receipt of the request for further hearing before the JAC, then the chairperson shall schedule a specially-called meeting to be held no later than 60 days from the receipt of the applicable request for further hearing before the JAC.

(4) The chairperson shall cause a written notice to be issued to the affected CSO or department informing the party of:

- (A) the time, date, and location of the hearing;
- (B) the legal authority and jurisdiction under which the hearing is to be held; and
- (C) the manner in which the hearing will be conducted. Notice shall be sent by registered or certified mail, return receipt requested, not less than 10 days prior to the hearing.
- (d) The Division and the Affected Party Shall Each Be Given Thirty Minutes to Present Their Respective Sides. Testimony may be given orally under oath or through a prepared written statement or affidavit as acknowledged before a notary public. No more than three witnesses per side shall testify. However, upon the request of either party made prior to the hearing and at the discretion of the chairperson, the time for making a presentation and the number of witnesses needed to testify may be increased.
- (e) At the Conclusion of the Hearing Before the JAC, the Members of the JAC Shall Vote Whether to Recommend that the Division's Proposed Adverse Action be Withdrawn, Modified, or Affirmed. Within 10 days of the recommended vote of the JAC, the TDCJ-CJAD director shall notify the officer, department director, and/or administrative judge concerning whether or not the director concurs with the recommendation of the JAC. Notice shall be made in writing and sent by registered or certified mail, return receipt requested in accordance with subsection (b)(2) of this section.
- (f) Failure to Request a Hearing Before the JAC Waives any Further Appeal to the Texas Board of Criminal Justice.
- (g) Request for Hearing Before the Texas Board of Criminal Justice. Except as provided in subsection (f) of this section and paragraph (2) of this subsection a department or supervision officer may contest a final proposed action of the division director before the Texas Board of Criminal Justice.
  - (1) Within 15 days of the receipt of the written notice of the final proposed action of the division director, the affected officer or department must submit in writing to the Chairperson of the Texas Board of Criminal Justice with a copy forwarded to the division director a request for hearing before the Board.
  - (2) Failure to submit the request for hearing within the specified time period waives any future appeal before the Board.
  - (3) Within 20 days of receipt of the request for hearing, the general counsel of the Texas Department of Criminal Justice or his designee shall file with the State Office of Administrative Hearings a request for assignment of administrative law judge. Said request shall be accompanied with a complaint containing the same information as required under subsection (b)(1)(A) - (E) of this section and also including a statement of the recommendation of the JAC and the division director's final proposed action. Said request shall also be accompanied with a written statement of applicable rules or policies of the division and agency. The complaint shall designate the parties in this contested matter. The affected officer or department who is appealing the proposed adverse action of the TDCJ-CJAD director shall be designated as the petitioner. The division shall be designated as the respondent. Said request and complaint shall be sent to the officer, department director and/or administrative judge by registered or certified mail, return receipt requested and postage prepaid.
  - (4) Division Representative. The general counsel of the Texas Department of Criminal Justice or his/her designee shall represent the division. The general counsel has authority over the manner and substance of the presentation of the division's case.

(5) Representation for Petitioner. Any petitioner may appear and be represented by an attorney at law authorized to practice law in the State of Texas. The petitioner may appear on his own behalf or appearance may be made by his duly authorized representative.

(6) Within 20 days of the receipt of the complaint the petitioner shall cause a response to be served on the division. The response shall specify which particulars of the complaint that the petitioner contests. In addition, the petitioner shall include any other defense and/or supporting factual statement in his response which was not previously raised by written pleading in the prior hearing. Said response shall be sent by 70

certified mail, return receipt requested to the general counsel or his designee and to the clerk of the administrative law judge in accordance with subsection (h)(8)(A) of this section.

(h) Administrative Hearing Procedures.

(1) Notice of Hearing. The petitioner and other parties shall be given no less than 10 days notice of any scheduled hearing. Notice shall be sent by registered or certified mail, return receipt requested.

(2) Motions for Consideration.

(A) All motions for consideration must be filed with the clerk of the administrative law judge no fewer than five days prior to the date in which the matter is scheduled to be heard.

(B) Any motion relating to a pending proceeding, unless made during a hearing, must be in writing and must specify the desired relief, the reason, and basis for this relief. If based upon matters which do not appear on record, it must be supported by affidavit.

(C) If any party has appeared in the proceeding by attorney or other representative authorized to make an appearance, the attorney or other representative must be served. The willful failure of any party to make such service will be sufficient grounds for the administrative law judge to enter an order striking the pleading from the record.

(3) Prehearing Conference. On the motion of the petitioner or the respondent or on his/her own motion, the administrative law judge may direct the parties and their attorneys or representative to appear before him at a specified time and place for a conference before the hearing for the purpose of formulating issues and considering:

(A) the possibility of making admissions of certain averments of facts or stipulations to avoid the unnecessary introduction of proof;

(B) the simplification of issues;

(C) the procedure at the hearing;

(D) the specification of the number of witnesses;

(E) matters to be officially noted;

(F) the mutual exchange of prepared testimony and exhibits;

(G) the date discovery is to be closed; and

(H) such other matters as may aid in the simplification of the proceedings and the disposition of the matters in controversy.

(4) Discovery and Depositions.

(A) Discovery shall be provided and governed by Texas Government Code, Chapter 2001, Subchapter D, (the Administrative Procedure Act), and where no conflict exists with said Act, with the Texas Rules of Civil Procedure.

(B) Depositions shall be taken in accordance with the requirements of Texas Government Code, Chapter 2001, Subchapter D, (the administrative Procedure Act), and where no conflict exists with said Act, with the Texas rules of Civil Procedure.

(C) On its own motion or on the written request of a party, and on deposit of an amount that will reasonably ensure payment of the amount estimated to accrue under Texas Government Code, §2001.103, the Texas Department of Criminal Justice shall issue a commission, addressed to the officers authorized by statute to take a deposition, requiring that the deposition of a witness be 71

taken. The commission shall also authorize the issuance of any subpoena necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers, or other objects that may be necessary and proper for the purpose of the hearing.

(5) Rules of Evidence.

(A) In hearings under these rules, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in non-jury civil cases in the district courts of the state shall be followed. However, evidence may be admitted if it is necessary to ascertain facts not reasonably susceptible of proof under the rules of evidence applicable to non-jury civil cases in district court, is not precluded by statute, and is of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs. Objections to evidentiary offers may be made and shall be noted in the record.

(B) Documentary evidence may be received by the administrative law judge in the form of a copy or excerpt if the original is not readily available. On request, either party shall be given an opportunity to compare the copy with the original.

(C) If a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form or the parties may stipulate as to facts or circumstances or summarize same.

(D) Either party may conduct cross-examination as required for a full and true disclosure of the facts.

(E) On its own motion or on the written request of a party, the Texas Department of Criminal Justice shall issue a subpoena addressed to the sheriff or to a constable to require the attendance of a witness or the production of books, records, papers, or other objects that may be necessary and proper for the purposes of a proceeding if:

(i) good cause is shown; and

(ii) an amount is deposited that will reasonably ensure payment of the amounts estimated to accrue under Texas Government Code, §2001.103.

(F) Official notice may be taken by the administrative law judge of all facts judicially cognizable and generally recognized facts within the area of the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and afforded an opportunity to contest the material so noticed.

(G) Upon notifying all parties, the administrative law judge may communicate with division or agency employees who have not participated in the hearing, to use the special skills or knowledge of the division and agency and its staff in evaluating the evidence. The administrative law judge may allow all parties to be present during this communication and at his sole discretion, may allow parties to question the employee.

(H) Ex parte consultations. Any information considered by the administrative law judge in deciding the contested case must be shared with all parties. Private (ex parte) consultations, whether oral or written, about the substantive issues of the contested case are allowed only if their substance is shared with all parties.

(I) Formal exceptions to rulings of the administrative law judge during the hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the administrative law judge the action desired. When testimony is excluded by the administrative law judge, the party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed

testimony prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for 72

review. The administrative law judge may ask such questions of the witness as he deems necessary to satisfy himself that the witness would testify as represented in the offer of proof.

(6) Recording of Proceedings.

(A) The proceedings of the hearing shall be electronically recorded. Upon request of any party to the proceedings, a copy of such recording shall be made available to the requesting party at cost.

(B) Any party to the proceedings may request the presence of a court reporter to record the proceedings. Selection and payment for the services of the reporter shall be borne by the requesting party. All costs of transcriptions of any recordings shall be at the expense of the requesting party. A transcription becomes official when certified by the administrative law judge.

(7) Conduct of Hearings.

(A) The administrative law judge is in charge of the proceedings. The administrative law judge has the authority to administer oaths, examine witnesses, direct the issuance of subpoenas, and rule on the admissibility of evidence and amendments to pleadings. He may also establish reasonable time limits for conducting individual hearings, request additional information, and issue intermediate orders. The administrative law judge has the authority to issue any orders necessary to enforce his rulings. These include, but are not limited to:

(i) exclusion of evidence or witnesses;

(ii) exclusion of oral argument;

(iii) summary orders or default judgment on any issues; or

(iv) postponement or dismissal of the hearing with or without prejudice.

(B) The petitioner shall open and present its evidence to establish its position on the matters involved. The respondent shall follow and present its evidence. The petitioner and respondent may thereafter present rebuttal evidence only. The petitioner shall be given the opportunity to offer final argument and the respondent the opportunity to respond in final argument but no additional evidence shall be presented absent leave of the administrative law judge for good cause shown.

(C) Continuances. Continuances may be granted by the administrative law judge hearing the contested case. Motions for continuance shall be governed by §155.33(b) and (c) of this title.

(8) Miscellaneous

(A) Place of Filing. All notices, pleadings, motions, answers, affidavits, and other filings in a contested case shall be filed with the State Office of Administrative Hearings at 300 West 15th Street, Suite 502, Austin, Texas 78701-1649.

(B) Computation of Time. In computing any period of time prescribed or allowed by these rules, by order of the administrative judge, board, or division, or by any applicable statute, the period shall begin on the day after the act, event, or default in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(C) Agreement to be in Writing. No stipulation or agreement between the parties or their representatives regarding any matter involved in any proceeding before the board, division, or administrative law judge may be enforced unless it is in writing and signed by the parties or their representatives or unless it is dictated into the record during the course of a hearing.

(i) Final Decision. 73

(1) The administrative law judge shall draft and recommend to the Texas Board of Criminal Justice a proposed final decision based solely on the record which addresses all matters presented at the hearing. The proposed decision shall include findings of fact and conclusions of law, separately stated. The draft and recommendation shall be forwarded to the Board with a copy sent to each party and referred to the subcommittee for division affairs for review.

(2) After examination of the draft and recommendation and review of the record of the hearing, the subcommittee shall indicate whether it will accept or reject the recommendation of the administrative law judge. A copy of the proposed decision shall be served on all parties and an opportunity shall be afforded to the party adversely affected by the proposed decision to file exceptions and present a brief to the board. Said exceptions and brief shall be filed within 10 days after the date of service of the proposed decision of the subcommittee with a copy served on the opposing party. Replies to such exceptions shall be filed within 10 days after the date for filing of such exceptions with a copy served on the opposing party.

(3) The Board and subcommittee shall base their decision solely on the record. The Board and subcommittee shall not substitute their judgment for that of the division. The Board and subcommittee shall affirm the proposed action of the division unless they find that the proposed action is unlawful, arbitrary, or not supported by substantial evidence in the record.

(4) The Texas Board of Criminal Justice shall render a decision within 60 days after the draft and recommendation of the administrative law judge is served on all parties. The decision must be in writing, and each board member joining in the decision must sign it. A party in a contested case shall be notified of any decision of the Board and a copy of the decision shall be forwarded to all parties by registered or certified mail, return receipt requested within five days after the final signature. A copy of the decision shall also be forwarded to the attorney of record, if any, for the party in a contested case. The agency shall keep a copy of the decision and shall keep an appropriate record of the mailing.

(5) A decision in a contested case is final: on the expiration of the period for filing a motion for rehearing if a motion for rehearing is not filed in time; on the date the order overruling the motion for rehearing is rendered or the motion is overruled by operation of law if a motion for rehearing is filed on time; or on the date the decision is rendered if the agency finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a decision. If a decision becomes final on the date the decision is rendered, the decision must recite a finding that an imminent peril to the public health, safety, and welfare requires immediate effect of the decision and the fact that the decision is final and effective on the date rendered.

(j) Motion for Rehearing.

(1) In order to preserve error for judicial review, the party who is aggrieved by a decision of the Board must file a written motion for rehearing with the Board.

(2) The motion for rehearing must be addressed to the Chairperson of the Board of Criminal Justice and must be filed with the Executive Assistant to the Chairperson of the Board at P.O. Box 13084, Capitol Station, Austin, Texas 78711 within 20 days after the date that the party or the party's attorney of record is notified of the Board's decision. A copy of the motion for rehearing must be served on the opposing party by certified mail, return receipt requested, on the same day that motion is filed with the Board.

(3) A reply to a motion for rehearing must be filed with the Texas Board of Criminal Justice not later than 30 days after the date that the party or the party's attorney of record is notified of the Board's decision. A copy of this reply must be served on the opposing party by certified mail, return receipt requested on the same day that the reply is filed with the Board.

(4) The Board shall either grant or deny the motion for rehearing within 45 days after the date that the decision is rendered. If the Board does not rule on the motion for rehearing, the motion is overruled by operation of law 45 days after the date the party or his attorney is notified of the decision of the Board.

(5) The Board may by written order extend the time for filing a motion or reply or ruling on the motion for rehearing, except that an extension may not extend the period for Board action beyond the 90th day after 74

the date on which the party or the party's attorney of record is notified of the Board's decision. In the event of an extension, a motion for rehearing is overruled by operation of law on the date fixed by the order or, in the absence of a fixed date, 90 days after the date on which the party or the party's attorney of record is notified of the Board's decision.

(k) Record. The record in a hearing under these standards consists of:

- (1) a copy of the division's notice of proposed action that generated the appeal;
- (2) the request for assignment of administrative law judge;
- (3) the notice of hearing;
- (4) all pleadings, motions, and intermediate rulings;
- (5) evidence received or considered;
- (6) a statement of matters officially noticed;
- (7) questions and offers of proof, objections, and rulings on them;
- (8) proposed findings and exceptions;
- (9) any decision, opinion, or report by the administrative law judge presiding at the hearing;
- (10) all staff memoranda or data submitted to or considered by the administrative law judge or members of the agency who are involved in making the decision;
- (11) the recording and transcription, if any, of the proceedings;
- (12) the administrative law judge's draft and recommendation;
- (13) the recommendation of the subcommittee of the board;
- (14) the Board's decision;
- (15) the motion for rehearing and any replies to it; and
- (16) the Board's ruling on the motion for rehearing.

Source Note: The provisions of this §163.47 adopted to be effective August 16, 1995, 20 TexReg 5799; amended to be effective October 13, 1997, 22 TexReg 9896; amended to be effective June 20, 2002, 27 TexReg 5220