



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

**STANDARDS**  
**for**  
**CSCDs**

**Effective April 18, 2005**

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## **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.*

**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.*

# **CHAPTER 161 COMMUNITY JUSTICE ASSISTANCE DIVISION ADMINISTRATION**

## **§161.21 ROLE OF THE JUDICIAL ADVISORY COUNCIL**

**(a) POLICY.** The Texas Board of Criminal Justice (board) acknowledges 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 (council) is intended to provide a structure for fulfilling that role.

**(b) STATE-LEVEL ROLE OF THE COUNCIL.** In accordance with Texas Government Code, §493.003(b), the function of the Judicial Advisory Council is to advise the board and the director of the Texas Department of Criminal Justice – Community Justice Assistance Division (TDCJ–CJAD) on matters of interest to the judiciary. To accomplish this purpose, the council shall:

- (1)** act as an information exchange and provide expert advise to the board;
- (2)** report to the board annually during the third quarter of the fiscal year on the status and needs of the community corrections component of the criminal justice system, and
- (3)** conduct a review of requests for funding of community corrections programs and projects to TDCJ–CJAD, and make recommendations to the director of TDCJ–CJAD on the funding of reviewed requests, subject to the review, ratification, and final judgment by the board, if such review is determined to be necessary by the executive director of the Department of Criminal Justice (department).

**(c) LOCAL-LEVEL ROLE OF THE COUNCIL.** In addition to the duties set out in subsection (b) of this section, the council shall;

- (1)** inform and educate, in an appropriate manner, the constituencies that their members represent about issues and procedures that are affecting the corrections system of Texas;
- (2)** coordinate its activities with the community justice liaison member of the board, the director of TDCJ–CJAD, the local community supervision and corrections departments, and any other significant entities identified by the director of TDCJ–CJAD or the executive director of the department; and
- (3)** provide a forum for exchange of information and a dialogue with the network of local community supervision and corrections departments on matters involving community corrections programs.

**(d) ADDITIONAL AUTHORITY OF THE COUNCIL.** The chair of the council may appoint committees of council members or advisory groups of noncouncil members to achieve the purposes of this section. The chair of the council shall consult with the director of TDCJ–CJAD regarding the scheduling of meetings of the council, committees of the council, or advisory groups to the council, to ensure that arrangements can be made and that sufficient funds exist to allow reimbursement of expenses for attendance, where authorized by law.

## **CHAPTER 163**

### **COMMUNITY JUSTICE ASSISTANCE DIVISION**

### **STANDARDS**

#### **§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.

#### **§163.5 WAIVER TO STANDARDS**

The TDCJ-CJAD director may grant a waiver to a CSCD, or other state-aid recipient, from a standard or standards upon receipt, examination and approval of a request for waiver by TDCJ-CJAD. The request for waiver must include a plan to comply with said standard or standards by a certain date, and an explanation as to why the CSCD is not currently in compliance with said standard or standards. When out of compliance with any standard, the request for waiver of standards must immediately be submitted by the CSCD director to the TDCJ-CJAD director. If the waiver is approved by the TDCJ-CJAD director, the waiver becomes part of the audit record for compliance with that standard.

#### **§163.21 ADMINISTRATION**

**(a) CSCD Director.** The district judge or judges shall appoint a CSCD director, who shall meet, at a minimum, the same eligibility criteria as a community supervision officer (CSO) as cited in the Texas Government Code §76.005, and §163.33 of this title (relating to CSOs). It is the responsibility of the CSCD director to apply state, local, and other available resources to employ a sufficient number of officers and other employees to perform the professional and clerical work of the department as required by law, TDCJ-CJAD standards, and local community corrections needs as identified in the local community justice plan. The TDCJ-CJAD director is to be notified by the administrative judge of the appointment of a CSCD director.

**(b) Administrative Manual.** CSCD directors shall be responsible for the development of an administrative manual defining general purposes and functional objectives, incorporating all written policies and procedures, assuring that they are made available to all staff members. The operational section should give a detailed description of the procedures followed in performing the routine tasks of the department. The policies and procedures shall be reviewed by the CSCD

director periodically and revised as necessary. The CSCD director shall provide the TDCJ-CJAD director with a copy of the CSCD's administrative manual for review when requested. These policies and procedures shall include, at a minimum:

**(1) Human Resources.**

- |  |  |
|--|--|
| (A) recruitment procedures;                          | (N) personnel records;                       |
| (B) promotional requirement and procedures;          | (O) employee performance appraisals;         |
| (C) EEOC/affirmative action provisions;              | (P) disciplinary procedures;                 |
| (D) provisions of American with Disabilities Act;    | (Q) grievance procedures;                    |
| (E) provisions of Fair Labor Standards Act;          | (R) probationary employment periods;         |
| (F) provisions of Family Medical Leave Act;          | (S) contract/temporary employees;            |
| (G) sexual harassment policy;                        | (T) dress code;                              |
| (H) confidentiality of information;                  | (U) pre-employment criminal record checks;   |
| (I) organizational plan/chart;                       | (V) staff safety;                            |
| (J) salary scales;                                   | (W) political participation;                 |
| (K) benefits;  | (X) travel/mileage reimbursement policy; and |
| (L) holidays and work schedules;                     | (Y) Immigration Reform and Control Act.      |
| (M) explanation of amount and limitations of leaves; |  |

**(2) Medical.**

- (A) medical and psychological records management;
- (B) contagious disease policy including HIV-AIDS; and
- (C) tuberculosis and other communicable diseases.

**(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 probation order procedures.

**(c) Ethics.** CSCD directors 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 to be used in reviewing and investigating any alleged violation. All employees of the CSCD must comply with the Code of Ethics developed by the TDCJ-CJAD.

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

**(e) Records.** CSCD directors 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 §163.43 of this title (relating to Funding and Financial Management).

**(g) Multi-Department Districts.**

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

- (A)** administrative convenience;
- (B)** economy; or
- (C)** improved community supervision and corrections services, and other reasons, if any.

**(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. The signs/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 TDCJ-CJAD.

**(i) Compliance With Statutes and TDCJ-CJAD Policy Statements.** CSCD directors shall ensure that all CSCD operations comply with all applicable local, state, and federal laws and TDCJ-CJAD policy statements and official manuals pertaining to 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. 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.** CSCD Victim Services Coordinators shall obtain not less than 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 victims compensation.

**(2) Policy and Procedures.** Each CSCD shall adopt written policies and procedures regarding:

- (A)** victim notification of offenders placed on community supervision; and
- (B)** offender information that may be released to victims.

(3) Notification to victims would include the information specified in Texas Government Code Annotated, Section §76.016:

(A) the offender being placed on community supervision;

(B) the conditions of community supervision; and

(C) the date, time, and location of any hearing or proceeding that would modify the conditions of supervision or the offenders' placement on community supervision.

(4) Information that is public record may be released to the victim. This would include:

(A) court ordered community supervision identifying the department with jurisdiction;

(B) a written copy of the conditions of supervision;

(C) the name of the supervising officer;

(D) victim service coordinator contact information;

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

(F) information regarding the transfer of offender to another jurisdiction and contact information; and

(G) information that the offender has been placed in residential confinement and release from confinement.

(5) Other information that may be released would include information that the victim would have knowledge of:

(A) restitution not being paid; and

(B) additional sanctions for non-compliance of the defendant.

## **§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 must conform to applicable law and TDCJ-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.** All community justice plans must be approved by the district judge(s) who manage the CSCD. Unless otherwise specified by the district 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 TDCJ-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 TDCJ-CJAD staff. Final acceptance of plans, without conditions, must be received for purposes of TDCJ-CJAD grant funding.

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

## §163.31 SANCTIONS, PROGRAMS, AND SERVICES

(a) **CORE SERVICES.** All 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 risk and needs with the resources made available to jurisdictions;
- (D) provide contacts to offenders on direct community supervision per 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;
- (I) provide access to assessment and access to treatment services for sex offenders and violent offenders and maintain appropriate levels of supervision for both of these types of offenders.

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

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

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

**(c) LOCAL/REGIONAL PLANNING.** 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/services to address offender needs. Regional programs/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.

**(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 art. 42.12 §16, CSR programs and referrals.

**(e) EDUCATIONAL SKILL LEVEL.** Utilizing 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 they:

(1) possess educational skills equal to or greater than the sixth grade level; and

(2) possess the intellectual capacity or learning ability to achieve the sixth grade skills level. Programs which 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.** 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. The method for measuring recidivism is defined as a rearrest 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, ETC.** At the direction of the district judge or judges, CSCDs shall cooperate and provide assistance to municipal, county and state law enforcement agencies or peace officers related to offender supervision, absconder apprehension, victim services, and other community-based criminal justice activities.

## **§163.33 COMMUNITY SUPERVISION OFFICERS**

**(a) ELIGIBILITY.** In accordance with Texas Government Code §76.005, to be eligible for employment as a Community Supervision Officers (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) unless the bachelor's degree is in criminal justice, criminology, corrections, counseling, human services development, law, law enforcement, police science, pre-law, public administration, rehabilitative studies, social work, psychology, or sociology, the person must have:

(A) one year of graduate study in one of those fields; or

(B) one year of experience in full-time casework, counseling, or community or group work; or

(C) other education or experience, documented by letter in the employee's personnel file, which indicates that they were the most qualified applicant at the time of hiring. Such letter shall be signed by the CSCD Director.

(3) cannot be employed as a peace officer or work as a reserve or volunteer peace officer; and

(4) cannot be currently on community supervision or parole or serving a sentence for a criminal offense.

**(b) TRAINING.** CSCD directors, assistant directors, CCF directors, assistant CCF directors, CSO supervisory staff and CSOs shall obtain not less than 80 documented hours of professional skill-based training each biennium. Forty hours are to be approved by the CSCD director and 40 hours to be approved by the TDCJ-CJAD director, or her/his designee. Up to 40 hours, in excess of the 80 hours, may be carried over from one biennium to the next. A certified CSO who fails to obtain the required 80 hours of training within a biennium will be ineligible to serve as a CSO. A CSO, exempt from certification, who fails to obtain the required 80 hours of training within a biennium, will be ineligible to serve as a CSO until the required hours are obtained. The CSCD director or his/her designee shall ensure that training records are maintained and available for TDCJ-CJAD auditors. Those records shall reflect the following:

- (1) the number of training hours accrued;
- (2) the type of training attended with supporting documentation;
- (3) specification of the number of accrued hours that are approved by the CSCD director;
- (4) the number of accrued hours that are approved by the TDCJ-CJAD director; and
- (5) the number of training hours carried over from one biennium to another.

**(c) CERTIFICATION.** Any CSO who is first employed by a CSCD director or judicial district in this state after September 1, 1987, is required to complete the certification course work and obtain a passing grade on the certification examination within one year of the beginning date of employment as a CSO. An officer failing to achieve certification within one year of their employment date may not continue to be employed as a CSO beyond the specific date by which they are to have achieved certification, unless TDCJ-CJAD has granted an extension for completion of course work and examination as allowed by law. A CSO who was employed by any CSCD in this state on or at any time before September 1, 1987, is exempt from the requirements of the certification program.

**(d) CERTIFICATION EXAMINATION.** A new CSO, employed on or after September 2, 1987, who completes the certification course work but fails the examination, will be allowed to take the examination one more time. An officer failing the examination a second time, will be required to complete the certification course work again before being allowed to take the examination a third and final time. CSOs will be eligible to pursue the certification requirements two years after the last testing date, and are ineligible to supervise direct cases until certification is achieved.

**(e) EXEMPT OFFICERS CERTIFICATION.** Certification course work and the certification examination will be available to CSOs appointed prior to September 2, 1987. An exempt officer who wishes to be certified will be given one opportunity to pass the certification examination in order to be certified. If the CSO fails the examination, the officer must complete the certification course work before attempting to pass the examination again.

**(f) RESIDENTIAL OFFICER CERTIFICATION.** A residential CSO, employed or appointed as such on or after September 2, 1989, shall satisfactorily complete the course work and examination for residential certification offered by TDCJ-CJAD not later than the first anniversary of the date on which the officer begins employment with the department's residential facility. Provisions of subsections (c)-(h) of this section shall also apply to residential CSO.

**(g) RECERTIFICATION.** Once an officer is certified, if the CSO fails to maintain certification, recertification will be immediately required by successful completion of the certification examination. An officer who fails the examination must complete the certification course work for recertification. If a CSO, who is subject to the certification provisions of CJAD Standard §163.33(c), and who has been employed as a CSO for one year or longer, leaves the employment of a Texas CSCD for more than one year the CSO is required to become recertified. Such recertification must be accomplished within one year of re-appointment by taking and successfully passing the CSO Certification exam. An officer who fails the exam must complete the CSO certification course and pass the exam to be recertified. A CSO subject to the certification provisions of CJAD Standard §163.33(c), and who has been employed as a CSO for less than one year and leaves the employment of a Texas CSCD for more than one year, is required to become recertified by completing the CSO certification course and successfully passing the exam.

**(h) CERTIFICATION STATUS.** An officer who fails to maintain his/her CSO certification or residential certification by not obtaining 80 hours of training in accordance with subsection (b) of this section, is immediately ineligible to supervise direct cases until recertification is achieved.

**(i) DUAL CERTIFICATIONS.** Residential CSOs are required to be certified as a CSO and to further obtain certification in residential service. They must complete both certification courses as noted by the time frames specified in subsections (c) and (f) above. However, they only need to complete 80 hours of skill-based training related to community supervision and residential programs per biennium as specified in subsection (b) of this section to maintain both certifications.

**(j) RESIDENTIAL PERSONNEL TRAINING.** All CSCD direct care staff of a residential facility shall be provided at least 40 hours of documented professional skill based training per biennium. At least 20 training hours per biennium shall be applicable to the needs of the population served by the facility. All of the hours shall be approved by the CSCD Director. At least 20 of the hours per biennium must be approved by the TDCJ-CJAD director or his/her designee. The CSCD director shall have written policy regarding training records for each employee that are maintained to reflect the following: the number of training hours accrued, the type of training attended with supporting documentation, specification of the number of accrued hours that are approved by the CSCD Director, the number of accrued hours that are approved by the TDCJ-CJAD director, and the number of training hours carried over from one biennium to another. A maximum of 20 hours earned per biennium, which are in excess of the 40 required hours that biennium, may be carried over to the next biennium. All direct care staff of a residential facility shall receive training in the reintegration model training programs offered by the TDCJ-CJAD within the first anniversary of their hire date.

**(1) Initial Training Requirements.** Within one year from the date of employment with the facility, all direct care staff shall receive initial training in the following areas: ethics; discrimination/sexual harassment issues; first aid procedures; cardiopulmonary resuscitation (CPR) procedures; and HIV/AIDS education. Direct care staff shall continue to receive the necessary training as dictated by the guidelines of the granting authority that provided the initial training in first aid and CPR procedures.

**(2) Defensive Driving.** All direct care staff, whose primary duties include transporting offenders, shall attend a defensive driving course within one year from date of employment. Direct care staff shall take defensive driving courses as needed to maintain certification.

**(k) SUPERVISION OFFICERS OF SAFPF PROGRAM PARTICIPANTS.** Supervision officers who supervise participants in the substance abuse felony punishment facility (SAFPF) program shall be required to attend and complete 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 TDCJ-CJAD has granted an extension for completion of the course work. Supervision officers who supervise SAFPF program participants as of the adoption date of this requirement and who have not attended the required training, must complete the training within 12 months of the adoption date.

## **§163.34 CARRYING OF WEAPONS**

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

**(1)** the officer possesses a certificate of firearms proficiency issued by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE); and

**(2)** the CSCD director and the judges participating in the management of the CSCD grant 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 §76.5001 and the authorization, policy and procedures promulgated by the Director and judge(s) participating in the management of the CSCD as set forth in paragraph (e) below.

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

(1) The CSO must be examined by a licensed psychologist or psychiatrist and declared in writing by the psychologist or psychiatrist to be in satisfactory psychological and emotional health for the carrying of a weapon in the performance of their duties for which a certificate of firearms proficiency is sought.

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

(A) it is unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year or any crime, misdemeanor or felony, of domestic violence to possess any firearm or ammunition; and

(B) it is the officer's responsibility to immediately inform his supervisor and the CSCD director of any arrest, charges or conviction related to such crimes.

(e) Each CSCD that elects to authorize certain, or all, of its CSOs to carry firearms in accordance with the foregoing requirements must adopt written policies and procedures defining which of its officers have authority to carry firearms and the limitations that apply to their carrying and use of firearms. Such written policies and procedures shall be submitted by the CSCD to CJAD and 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 investigation of incidents related to the possession or use of firearms by CSOs.

(f) Each CSCD that elects to authorize CSOs to carry or utilize less than lethal weapons (aerosol sprays, chemical agents, restraining devices, stun guns, etc) must adopt written policies and procedures defining which of its officers have authority to carry same and the limitations that apply to their carrying and use. Such written policies and procedures shall be submitted for review and approval by the TDCJ-CJAD director:

(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 investigation of incidents related to the possession or use of less than lethal weapons (aerosol sprays, restraining devices, stun guns, etc).

(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 officer hired 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 (TCLEOSE)**

(1) CSOs authorized by the CSCD to make application to TCLEOSE for certification in firearms proficiency in accordance with the above provisions must utilize TCLEOSE approved forms and provide copies to both 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 TCLEOSE if a CSO's authority to carry a firearm is rescinded.

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

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

**(i) CSOs TRAINING AND QUALIFICATION REQUIREMENTS.**

**(1)** No CSO shall be granted permission to carry a firearm in the performance of their duties unless that officer has completed a firearms training program approved by TCLEOSE and has been issued a certificate of firearms proficiency by TCLEOSE as provided in paragraph (a) above.

**(2)** Firearms training provided to CSOs shall be designed to prepare such CSOs to carry such weapons in the context of 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 done 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 as amended from time to time.

**(j) HANDLING, USE, AND STORAGE OF FIREARMS**

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

**(2)** CSCDs shall appoint an individual within their 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 must be between 2" to 5".

**(3)** Approved cartridges shall be:

**(A)** 9mm Luger (9x19);

**(B)** .38 Special;

**(C)** .357 Magnum;

**(D)** 357 Sig;

**(E)** .40 Smith and Wesson;

**(F)** 10 mm Auto;

**(G)** .45 Auto;

**(H)** .380 Auto

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

## **(I) REPORTS TO TDCJ-CJAD**

**(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, utilized or drawn on an individual. The term "to draw" means to unholster a firearm in preparation for use and/or as self-defense against a perceived threat.

**(2)** Such procedure shall include:

**(A)** notification of incidents;

**(B)** procedures for interaction with outside entities (i.e., local law enforcement, media);

**(C)** internal investigation procedures; and

**(D)** employee support components.

**(3) Notification of Incidents to the Texas Department of Criminal Justice - Emergency Action Center (TDCJ-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 an officer, shall be promptly reported to TDCJ-EAC (936) 437-1448 and in all events within 24 hours of the incident. Incidents involving a CSO's shooting of an individual shall be reported to TDCJ-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 CJAD within ten days of the occurrence.

## **§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) Case--**An offender assigned to a CSO for supervision.

**(2) Direct Supervision--**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 CSCDs may maintain direct supervision of offenders living and/or working in adjoining jurisdictions if the CSCD has documented approval from the adjoining jurisdictions.

**(3) Face-to-face Contact--**A CSO communicates in person with the offender.

**(4) Field Visit--**A CSO communicates in person with the offender at the offender's place of residence or at another location outside the CSCD office.

**(5) Indirect Supervision--**Maintenance of a file and/or record of an offender under supervision who meets one of the following criteria:

**(A)** an offender who neither resides nor works within the jurisdiction of the CSCD and who receives the supervision in other jurisdictions;

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

**(C)** an offender who has absconded or who has not contacted his 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, nevertheless does not meet the criteria for direct supervision; or

**(E)** offenders who reside and work outside the jurisdiction but report in person and who do not fall under paragraph (2) of this subsection.

**(b)** System of Offender Supervision. 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;
- (5)** applicable law and TDCJ-CJAD standards and policy; 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/Intake. An orientation/intake session with the offender shall be conducted after the court has placed the defendant under supervision. This session shall include a thorough discussion of the conditions of community supervision and terms of release. The CSO shall determine 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 risk factors, need areas, obstacles to meeting those needs, offender strengths, and offender resources. The CSO shall request specialized assessments for offenders when it is determined that alcohol or drug abuse contributed to the offense and pursue specialized evaluations when they would significantly assist in the development of appropriate supervision plans for special needs offenders.

**(3)** Case Classification. 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 shall complete an approved TDCJ-CJAD case classification instrument to assist in the evaluation of the degree of supervision needed by each individual based on the offender's risk and/or needs. Within ten working days of the date of an offender's admission to a Community Corrections Facility (CCF), the CSO assigned to supervise the offender in the facility shall complete the TDCJ-CJAD case classification/assessment instrument.

**(4)** Strategies for Case Supervision (SCS) Assessments. 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 shall conduct a SCS assessment on each felony offender classified as maximum on case classification, unless a SCS was previously completed. While the SCS assessment may be a useful case management tool, it is not required for offenders during participation in residential programs.

**(5)** Case Supervision or Treatment Plan. Within two months of the date of the most recent community supervision placement, acceptance of a transfer case, or discharge from any residential facility, the CSO shall develop a written individualized case supervision or treatment plan based on the offender's risk and need factors to address specific problem areas and assist the offender to achieve responsible behavior. The supervision or treatment plan shall be completed within ten working days from the date of an offender's admission to a CCF.

**(6)** Reassessments. CSOs shall reevaluate risk and need 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. Upon discharge from a residential facility, the CSO assigned to supervise the offender in the facility shall complete a discharge plan.

**(7) 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.

**(8) 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.

**(9) Violations.** CSCD directors shall work in conjunction with the local judiciary to specify written policies and procedures under Texas Code of Criminal Procedure, art 42.12, §10 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 alternative to incarceration shall be considered by the CSO and recommended to the court in eligible cases as determined appropriate by the jurisdiction.

**(10) 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 a defendant has the authority to modify or alter a condition of community supervision. CSCD directors shall ensure that community supervision officers 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. CSCD directors shall ensure that community supervision officers 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, only the transfer form, the court order placing the person on community supervision citing all conditions of community supervision, the offense report, criminal history, TRN and SID number (within 90 days of transfer to receiving jurisdiction), the pre/post-sentence investigation report where legally mandated, and any assessments that have been completed. CSCD directors who decline to provide courtesy supervision to offenders from other jurisdictions shall immediately notify, in writing, the original jurisdiction of the reasons for declining or closing supervision.

**(B) Dual Supervision:** The court retaining jurisdiction over a defendant may also order the defendant to report to the original jurisdiction as well as the jurisdiction where defendant resides and/or works.

**(11) 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 and/or pursuant to a court order.

## **§163.36 MENTALLY IMPAIRED OFFENDER SUPERVISION**

**(a)** A mentally impaired offender is defined as one with an Axis I or Axis II disorder as defined by 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)** 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 policies required 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) recommend 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, See TDCJ-CJAD §163.35 (c) 7, 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 report within 14 days and forward the summary and all other pertinent treatment information to the criminal justice agency that assumes supervision of the offender.

## **§163.37 REPORTS AND RECORDS**

**(a) CASE RECORDS.** CSCD directors shall develop and maintain a case record management system on offenders receiving any type of supervision by the CSCD. Confidential items relating to medical and psychological information from any of these documents shall be handled in accordance with §163.41 of this title (relating to HIV-AIDS, Medical and Psychological information). All case records shall contain a written criminal history record or summary issued by a law enforcement agency. Confidentiality of case records shall be maintained in accordance with federal and state laws. Information may only be released under the circumstances as authorized by law or as directed by the court. Documentation of all sex offender registration shall be maintained as required by the Records Retention Act, Chapter 441, Texas Government Code. Each case record shall contain:

- (1) 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, assessments;
- (3) the pre/post-sentence investigation report (PSIR);
- (4) periodic evaluations; and
- (5) other additional documents or information related to the offender as deemed appropriate by the CSO or CSCD Director.

**(b) PSIR CONFIDENTIALITY.** Each PSIR prepared or approved by a CSO, and all information obtained in connection with PSIRs, is 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 as directed by the court having jurisdiction over the defendant.

**(c) PRE/POST-SENTENCE INVESTIGATION REPORTS (PSIR).** Pursuant to Texas Code of Criminal Procedure, art 42.12, §9 the CSCD director shall ensure a CSO prepares, (or approves, if prepared by others) a pre-sentence investigation report on a felony defendant unless the defendant's punishment is to be assessed by a jury, the defendant is convicted of or enters a plea of guilty or nolo contendere to capital murder, the only available punishment is imprisonment, or the judge is informed that a plea bargain agreement exists, under which the defendant agrees to a punishment of imprisonment, and the judge intends to follow the agreement. The CSCD director shall ensure that CSOs prepare (or

review and approve), if prepared by another a post-sentence investigation report if the judge has requested the preparation of such a report in accordance with the provisions of Texas Code of Criminal Procedure, art 42.12 §9(k). A CSO shall prepare (or review and approve, if prepared by another) a PSIR on all misdemeanor defendants unless the defendant requests a report not be made and the court agrees, or if the court finds there is sufficient information in the record to permit the meaningful exercise of sentencing discretion.

**(d) PSIR FORMAT.** CSCD directors shall ensure that CSOs and any other designated individuals who prepare, complete, review or approve PSIRs follow, at a minimum, an approved TDCJ-CJAD PSIR format in preparing felony PSIRs. CSOs may use a format other than the TDCJ-CJAD PSIR format as long as the content requirements outlined in Texas Code of Criminal Procedure, art 42.12, §9(a) and the preceding subsection (c) of this section are met and are in the format as approved both by TDCJ-CJAD and the court having jurisdiction of the defendant.

**(e) STAFFING FOR PSIR.** CSCD directors shall have the necessary trained staff and resources to conduct pre-sentence investigations on all cases and shall provide written reports of the results for the courts for all felony and misdemeanor cases as required by the law and the court.

**(f) FILING.** Copies of the completed PSIRs shall be maintained in the individual offender's case file within the CSCD filing system and made available for periodic audits, reviews, or inspections by TDCJ-CJAD staff.

**(g) TRANSFER TO THE TDCJ.** If a PSIR has been prepared as set forth in paragraphs (c) and (d) above, the CSCD director shall forward to the county that transfers a defendant to the TDCJ that defendant's PSIR, as well as any other information required by law. To the extent it is available, CSOs shall also forward to the county that transfers the defendant any additional information that has been, prepared by a CSO for a revocation or other hearing updating information in the PSIRs.

**(h) INTERSTATE TRANSFER.** CSCD directors shall utilize uniform transfer procedures as provided by and approved by the TDCJ Interstate Compact Unit.

**(i) INTRASTATE TRANSFER.** CSCD directors shall utilize uniform transfer procedures as provided by and approved by the TDCJ-CJAD.

## **§163.38 SEX OFFENDER SUPERVISION**

**(a) Definitions.**

**(1)** "Jurisdictional authority" means a sentencing court, the Board of Pardons and Paroles, or a division of the Texas Department of Criminal Justice as applicable to the offender.

**(2)** "Sex offense" means a reportable offense under Art. 62.01(5), Code of Criminal Procedure.

**(3)** "Sex offender" means an offender who:

**(A)** has a current conviction or deferred adjudication for a sex offense;

**(B)** has a prior conviction or deferred adjudication for a sex offense and has been ordered by the jurisdictional authority to participate in sex offender supervision or treatment; or

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

**(b)** 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 TDCJ-CJAD Standard §163.35 (c) (7);

**(2)** sex offender registration as per TCCP, Chapter 62:

- (3)** DNA collection as per TCCP 42.12, Sec. 11 (a) (22);
- (4)** violation procedures as per TDCJ-CJAD Standards §163.35 (c) (9);
- (5)** victim services as per Texas Government Code Annotated 76.016;
- (6)** treatment referral process as per TCCP 42.12, Sec. 13 B (c);
- (7)** treatment participation requirements;
- (8)** team approach to supervision;
- (9)** sharing of information/documentation with the appropriate agency; 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)** 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, employers, chaperones, and victim service providers.

**(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 alternative to incarceration shall be considered by the community supervision officer 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 one to 45.

## §163.39 RESIDENTIAL SERVICES

### (a) General Administration.

**(1) Purpose.** Residential facilities and contract residential beds funded by 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 ; and

**(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.

**(2) Feasibility studies.** A judicial district interested in establishing a residential Community Corrections Facility (CCF) or County Correctional Center (CCC) shall first conduct and prepare a feasibility study in accordance with the TDCJ-CJAD Feasibility Study Guidelines-Community Corrections Facility (January 2002). 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 CSCD/agency may be required to provide supplemental information or additional materials for further review and consideration.

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

**(A)** If a CSCD or private vendor operating under a contract with a CSCD or judicial district proposes to construct or operate a CCF or other correctional or rehabilitation facility 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 must prominently post an outdoor sign at the proposed location of the facility. The sign must be at least 24 by 36 inches in size written in lettering at least two inches in size. The sign must 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 or other correctional or rehabilitation facility 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 must 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 if the commissioners court or governing body has submitted, by resolution, a written request to receive notice.

**(4) Public Meetings.** A CSCD or private vendor having a contract with a CSCD or judicial district may not establish a CCF or other correctional or rehabilitation facility 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 TDCJ-CJAD to lease or 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 must be held at a site as close as practicable to the location at which the proposed action is to be taken. The meeting must not be held on a Saturday, Sunday, or legal holiday. The meeting must 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 must:

**(A)** publish by advertisement in three 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 a notice that is not less than 3 1/2 inches by 5 inches containing the following information:

**(i)** the date, hour, place, subject of the hearing;

(ii) address of the facility or property on which a proposed action is to be taken; and

(iii) 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 Offender Capacity and Facility Utilization.** The maximum offender capacity of a CCF or CCC shall be defined as the total number of offenders 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 and CCCs funded through TDCJ-CJAD shall reach 90% capacity within the first six months of operation and maintain a minimum of 90% thereafter, utilizing appropriate and eligible placements only. Any revisions to the maximum and minimum offender capacities for the CCF or CCC shall be subject to the approval by 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 their 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 facilities programs.

**(b) Personnel.**

**(1) Screening for Tuberculosis Infection.** The CSCD director or Facility director shall ensure that as soon as practicable but not later than within 7 calendar days of assuming any duties within a CCF or CCC, all staff undergo a screening for tuberculosis infection. Follow-up screening for tuberculosis 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) Employment Coordinator.** Each Restitution Center shall have a designated employment coordinator whose primary duties and responsibilities include assisting offenders in obtaining/maintaining employment. The employment coordinator shall be responsible for addressing other employment issues for offenders such as résumé development, interviewing skills/techniques, and appropriate dress for job interviews.

**(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 and National Crime Information Center on each of the CCF's or CCC's employees, contract vendor staff (if applicable) and volunteers. This requirement shall apply to both vendor contract and CSCD operated CCFs and CCCs. Copies of the criminal history and arrest information and records shall be retained in the individual's personnel file.

**(4) Residential Officer Certification.** See §163.33 Community Supervision Officers (f).

**(5) Residential Personnel Training.** See §163.33 Community Supervision Officers (j); (1) Initial Training Requirements; (2) Defensive Driving.

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

**(1) Compliance.** The CSCD director and Facility director shall ensure that 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 TDCJ-CJAD and other governmental agencies and authorities for all time periods from project or 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 directors or designees shall ensure that the facility's potable water source and supply must be sanitary and be approved by an independent, qualified agency or individual to be in compliance with the applicable governmental laws and regulations.

**(3) Sanitation.** The facility shall conform with 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 an approved plan 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 offenders.

**(6) Fires.** The facility, its furnishings, fire protection equipment and alarm 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 have a qualified person conduct a fire inspection at least quarterly or at other 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 secured from the fire authority having jurisdiction or other qualified person(s).

**(7) Emergency Plans.** There shall be written emergency plans for the facility and its operations, which include an evacuation plan, to be used in the event of a major flood, storm, or other emergencies. This plan is reviewed annually and updated, if necessary. Evacuation drills are to be conducted at least three times yearly. Each shift at least yearly must have conducted an evacuation drill when the majority of offenders are present. All facility personnel must be trained in the implementation of written emergency plans. The evacuation plan should specify preferred evacuation routes, subsequent dispositions and temporary housing of offenders, and provision for access to medical care or hospital transportation for injured offenders and/or staff. The facility's emergency plan(s) 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. Such emergency plan(s) 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 Inmate 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 offenders separately from the inmates. At no time shall CCF or CCC residents/offenders be co-mingled with inmates.

**(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 that the facility is clean and in good repair, and a housekeeping and maintenance plan is in effect.

**(3) Other Physical Environment and Facilities Issues.** There shall be written policy and procedures to ensure the following with respect to the CCF and CCC:

- (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, linen, 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.
- (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 offenders, staff, and visitors.

**(f) Supervision.**

**(1) Operations Manual.** An operations manual shall be prepared for and used by each CCF and CCC which shall contain information and specify procedures and policies for offender census, contraband, supervision, physical plant inspection and emergency procedures, including detailed implementation instructions. Such operation 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 TDCJ-CJAD Funded Residential Facilities, dated October 31, 2001 . The operations manual shall be submitted to the TDCJ-CJAD director for review and approval, and such manual must have been approved by the TDCJ-CJAD director at least 60 days prior to acceptance of offenders into the facility. Offenders cannot be accepted into the facility until approval is granted by the TDCJ-CJAD. The CSCD director and Facility director shall ensure that the operations manual is reviewed at least every two years, and new or revised policies and procedures are made available, including all changes, prior to implementation to designated staff and volunteers. This manual shall be submitted to TDCJ-CJAD upon request or for auditing purposes.

**(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 offenders and to perform ancillary functions. The facility shall have at least one staff member, on duty, who is the same gender as the offender population.

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

**(4) Use of Force.** The CSCD director and Facility director shall ensure that a CCF and CCC 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. In no event is the use of physical force against an offender 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. 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 by any individual in 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 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 thereto by the general public or others without proper authorization.

**(7) Control of Contraband/Searches.** There shall be policies defining facility shakedowns, strip searches, and pat searches of offenders to control contraband and provide for its disposal.

**(8) Levels of Security.** The CSCD director and Facility director must ensure that levels of security appropriate for the population served by the facility are maintained at all times. These levels of security must create, as a minimum, a monitored and structured environment in which a offender's interior and exterior movements and activities can be supervised by specific destination and time. The facility director or designee may, at his or her discretion, grant offenders 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 must be met for all exterior movements:

- (A)** the facility director or designee approves the exterior movement;
- (B)** a staff member orally advises the offender of the conditions and limitations of the exterior movement;
- (C)** the offender acknowledges in writing an understanding of the conditions and limitations of the exterior movement;
- (D)** exterior movements involving programmatic incentives may only be granted if the following additional requirements are met:
  - (i)** the offender 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;
  - (ii)** the requested absence will not exceed 72 hours unless there are unusual circumstances;
  - (iii)** the offender 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 offender to verify the location of the offender during the exterior movement.

**(9) Emergency furloughs.** The facility director or designee may, in his or her discretion, grant an emergency furlough to an offender for the purpose of allowing the offender 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 offender 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 offender is appropriate;
- (C)** the offender provides proposed itinerary including method of travel, departure and arrival times, and locations during the emergency furlough;
- (D)** the requested absence will not exceed 72 hours unless there are unusual circumstances;
- (E)** the court of original jurisdiction approves the travel if the offender 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 shall notify by sending an electronic or fax copy of the approved itinerary to the director of the CSCD of the court of the original/sending jurisdiction prior to the date that the emergency furlough is approved to begin;

**(10) Supervision Process.** See §163.35 (c) Supervision Process; (3) Case Classification; (5) Case Supervision or Treatment Plan; and, (6) Reassessments.

**(g) Client Abuse, Neglect, and Exploitation.** The facility must protect the offenders from abuse, neglect and exploitation.

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

**(1) Rules of Conduct.** All incoming offenders 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 offender;

**(B)** no profanity, sexual, or racial comments shall be directed by staff at offenders;

**(C)** offenders shall not be utilized to impose corrective actions on other offenders;

**(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 offenders in CCFs. Such grievance procedure shall include at least one level of appeal, and shall be evaluated at least annually to determine its efficiency and effectiveness.

**(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 facilities operations, staff, and to: the judge or one of the judges supervising the department and the TDCJ Emergency Action Center (EAC) in Huntsville, Texas. Phone # (936) 437-1448; fax # (936) 437-1912, and if applicable, the CSCD director of the original/sending jurisdiction if the incident involves an offender from that sending jurisdiction. The 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 an offender or staff member while at the facility;

**(2)** any incident which results in life threatening or serious bodily injury to an offender 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.

**(j) Offenders' Rights.** Offenders shall be granted access to courts, counsel, and confidential contact with attorneys and their authorized representatives. Such contacts include, but are not limited to: telephone communications, uncensored correspondence, and visits.

**(k) Offender 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 offenders to be

served. Placement of offenders in a CCF shall only be by an order of the court and shall meet minimum eligibility criteria as outlined in this section.

**(1)** CCFs shall accept only those offenders who are physically and mentally capable of participating in any program offered at the facility that requires strenuous physical activity, if participation in the program is required of all offenders in the facility:

**(A)** unless otherwise prohibited by statute;

**(B)** if 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, Texas Penal Code, and in accordance with statute, in its 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 their target population, a public meeting must 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 will be considered by 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 TDCJ-CJAD for review and possible exemption from having an additional public meeting; and

**(D)** 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, Sec. §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.

**(2)** Offenders are eligible for placement into a Restitution Center:

**(A)** unless otherwise prohibited by statute;

**(B)** the offender must be employable; and

**(C)** prior to or within ten days after admission to the facility, the offender shall undergo a screening process to determine the offender's appropriateness for placement. The process shall be documented and maintained in the supervision case file.

**(3)** Offenders are eligible for placement into County Correctional Centers (CCC):

**(A)** if convicted of a misdemeanor and sentenced to a term of confinement in the county jail;

**(B)** in lieu of jail time as a condition of misdemeanor or felony community supervision;

**(C)** in lieu of jail time as a punishment for violation of conditions of community supervision; or,

**(D)** if required as a condition of community supervision to participate in a work program or counseling program through a CCC.

**(4)** Offenders are eligible for placement into a Boot Camp:

**(A)** if prior to placement, or within ten days after admission, the offender undergoes a physical examination to determine any medical problems that may prevent the offender from satisfactorily participating in the program. The physical examination report shall be maintained in the offender's medical file; and

**(B)** if prior to placement, or within ten days after admission, the offender undergoes a psychological screening to determine any psychological problems that may prevent the offender from satisfactorily participating in the program. The psychological screening report shall be maintained in the offender's medical file.

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

**(m) Denying Admission or Continued Placement.** If an offender is placed into a CCF or a CCC 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 who is responsible for the management of the CCF/CCC shall notify, in writing, the court of original jurisdiction of these circumstances. If a CCF or CCC 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.

**(n) Food Service.** The food preparation and dining area must provide space for meal service based on the population size and need.

**(1) Dietary Allowances Meals.** shall be approved and reviewed annually by a registered dietician, licensed nutritionist, or physician to ensure that they meet the nationally recommended allowances for basic nutrition.

**(2) Special Diets.** Each facility shall provide for 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. All food services staff, including offenders 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.** CSCD directors or Facility director shall ensure that at least three meals (including two 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.

**(o) Health Care.**

**(1) Access To Care.**

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

**(B)** The facility has 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.

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

**(2) Emergency Health Care.**

**(A)** Twenty-four hour emergency health care is provided for offenders, which included arrangements for the following:

**(i)** on site emergency first aid and crisis intervention;

- (ii) emergency evacuation of the offender from the facility;
- (iii) use of an emergency vehicle;
- (iv) use of one or more designated hospital emergency rooms or other appropriate health facilities;
- (v) emergency on-call physician, dentist, and mental health professional services when the emergency health facility is not located in a nearby community; and
- (vi) security procedures providing for the immediate transfer of offenders, when appropriate.

**(B)** A training program for Direct Care personnel is 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 are available in designated areas of the facility. Contents and locations are approved by the health authority.

**(3) Health Screening and Medical Examinations.** Medical, dental and mental health screening exam is performed by health-trained or qualified health-care personnel on all offenders prior to placement or within 10 days of placement. The screening includes the following:

**(A)** Inquiry into:

- (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); and
- (v) other health problems designated by the responsible physician.
- (vi) tuberculosis screening of offenders shall be completed within seven (7) calendar days of admission into the residential facility and repeated annually thereafter.

**(B)** Observation 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 are conducted for any employee or offender suspected of having a communicable disease.

**(4) Serious and Infectious Diseases.**

(A) The facility provides for the management of serious and infectious diseases.

(B) CCF's and CCC's shall have policies and procedures to direct actions to be taken by employees concerning offenders who have been diagnosed with HIV, including, at a minimum, the following:

- (i) when and where offenders are to be tested;
- (ii) appropriate safeguards for staff and offenders;
- (iii) staff and offender training;
- (iv) issues of confidentiality; and
- (v) counseling and support services.

**(5) Dental Care.** Access to dental care is made available to each offender.

**(6) Medications.**

(A) Policy and procedure direct the possession and use of controlled substances, prescribed medications, supplies, and over-the-counter drugs. Prescribed medications are administered according to the directions of the prescribing physician.

(B) If medications are distributed by facility staff, records are maintained and audited monthly, and include the date, time, and name of the offender receiving the medication, and the name of the staff distributing it.

**(7) Female Offenders.** If female offenders are housed, access to pregnancy management services is made available.

**(8) Mental Health.** Access to mental health services is made available to offenders.

**(9) Suicide Prevention.** There is a written suicide prevention and intervention program that is reviewed and approved by a qualified medical or mental health professional. All staff with offender supervision responsibilities are trained in the implementation of the suicide prevention program.

**(10) Personnel.**

(A) If treatment is provided to offenders by health-care personnel other than a physician, dentist, psychologist, optometrist, podiatrist, or other independent provider, such treatment is 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 offenders are qualified and appropriately licensed. Verification of current credentials and job descriptions are on file in the facility. Appropriate state and federal licensure, certification, or registration requirements, and restrictions apply.

**(11) Informed Consent.** If the facility provides medical treatment, offenders make medical decisions with informed consent. All informed consent standards in the jurisdiction are observed and documented for offender care.

**(12) Participation in Research.** Offenders do not participate in medical, pharmaceutical, or cosmetic experiments. This does not preclude individual treatment of an offender based on his or her need for a specific medical procedure that is not generally available.

**(13) Notification.** Individuals designated by the offender are notified in case of serious illness or injury.

**(14) Health Records.**

**(A)** If medical treatment is provided by the facility, accurate health records for offenders are 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 their maintenance and safekeeping are approved by the health authority.

**(C)** If medical treatment is provided by the facility, for the offenders being transferred to other facilities, summaries or copies of the medical history record are forwarded to the receiving facility prior to or at arrival.

**(p) Discharge.**

**(1) Victim Notifications.** The CSCD director and Facility director shall ensure there are procedures, policies, and practices that comply with Texas Government Code §76.016, Texas Code of Criminal Procedure Art. 42.21 (a), and other applicable laws as to the notifications to be made to certain crime victims of offenders who are residents in its facilities or subject to its programs.

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

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

**(B)** the offender has satisfied a sentence of confinement;

**(C)** the offender has satisfied a period of placement as a condition of community supervision;

**(D)** the offender has demonstrated non-compliance with program criteria or court order;

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

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

**(G)** the offender 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 that a report is prepared at the termination of program participation that reviews the offender's performance. A copy of the report shall be provided to the receiving CSCD supervision officer.

**(q) Basic Services and Programs.** Each facility shall, at a minimum, provide programs in the following areas which will include, but not be limited to:

**(1)** education programs;

**(2)** rehabilitation programs based on the mission of the facility;

**(3)** community service restitution/work detail;

(4) recreational programs; and

(5) cognitive based programs.

**(r) 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 offenders, including mail inspection, public phone use, and routine and special visits. The policies shall address compelling circumstances in which an offender's mail both incoming and outgoing may be opened, but not read, to inspect for contraband.

**(s) Religious Programs.**

(1) The CSCD director and Facility director shall have written policies that govern religious programs for offenders. The policies shall provide that offenders have the opportunity to voluntarily practice the requirements of their 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 an offender'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 an offender 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 offender.

## **§163.40 SUBSTANCE ABUSE TREATMENT STANDARDS**

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

(1) **Admission** - The administrative process and procedure performed to accept an offender into a treatment program or facility.

(2) **Aftercare** – 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** – Supervision and support services for offenders who have completed a substance abuse treatment program.

(4) **Assessment** – A process conducted by a qualified credential counselor (QCC) trained to administer a structured interview 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/needs will be assessed and incorporated into the individual treatment plan.

(5) **Best Practices** – In these standards, Best Practices are evidence-based substance abuse treatment programs that address concepts such as criminogenic risks/needs, responsivity and cognitive-behavioral treatment, and programs that possess the following hallmarks.

(A) validated treatment assessments that include criminogenic risks/need factors;

(B) a treatment regimen that focuses on changing criminogenic risks/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 and other criminogenic risks/needs.

**(6) Chemical Dependency** - Substance-related disorders as that term is used in the most recent published edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

**(7) Continuum of Care** - A system that provides for the uninterrupted provision of essential services from initial assessment through completion of treatment

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

**(9) Counselor** - A qualified credentialed counselor, graduate or counselor intern working towards licensure that would qualify them to be a qualified credentialed counselor (QCC).

**(10) Counselor Intern** - An advanced student or graduate in a professional field gaining supervised professional experience.

**(11) Criminogenic Risk/Needs** – 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/hostility; poor self-management skills; inadequate social skills; poor attitude toward work/school; and poor family dynamics.

**(12) Detoxification** - 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** – Staff responsible for providing treatment, care, supervision, or other direct client services that involve face-to-face contact with an offender.

**(14) Discharge** – Formal, documented termination of services.

**(15) Discharge Summary** – A written report of the offender's progress and participation while in treatment, including a discharge plan that provides an aftercare/supervision plan designed to sustain progress for offenders successfully completing treatment.

**(16) Education** - Educational instruction; a planned, structured presentation of information which is related to substance abuse or chemical dependency. Education is not considered counseling.

**(17) Emergency** - A situation requiring immediate attention and action to treat or prevent physical, or emotional, harm, or illness.

**(18) Evaluation** – A process conducted by a CSO trained to administer the TDCJ-CJAD Substance Abuse Evaluation (SAE) instrument to determine the nature and extent of an offenders chemical abuse, dependency or addiction to assist in making an appropriate referral. Other criminogenic risk/needs will be assessed and incorporated into the individual treatment plan.

**(19) Facility** - The physical location of the treatment program operated by, for, or with funding from the TDCJ-CJAD. Some locations may be secured facilities for in-patient treatment; other programs may be offered at locations as outpatient treatment.

**(20) Graduate** – A counselor intern who has successfully completed education and work experience requirements prior to licensure by the Texas Department of State Health Services (formerly Texas Commission on Alcohol and Drug Abuse).

**(21) Grievance** - A formal complaint limited to matters affecting the complaining offender personally and limited to matters that the facility/program has the authority to remedy.

**(22) Intake** – The process of gathering information to determine if an offender is eligible and appropriate for services, and providing information to the offender about a program’s services and rules.

**(23) Life Skills Training** – 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.

**(24) Primary Counselor** - An individual working directly with and being responsible for the treatment of the offender.

**(25) Qualified, Credentialed Counselor (QCC)** - A licensed chemical dependency counselor (LCDC) or one of the following professionals:

- (A) licensed professional counselor (LPC);
- (B) licensed master social worker (LMSW);
- (C) licensed marriage and family therapist (LMFT);
- (D) licensed psychologist;
- (E) licensed physician (MD or DO);
- (F) licensed physician’s assistant;
- (G) certified addictions registered nurse (CARN); or
- (H) licensed psychological associate; and
- (I) nurse practitioner recognized by the Board of Nurse Examiners as a clinical nurse specialist or nurse practitioner with specialty in psycho-mental health (APN-P/MH).

**(26) Responsivity** – 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.

**(27) Screening** – The initial stage of a process in which it is determined if an offender has a chemical dependency problem that may require further assessment or evaluation.

**(28) Senior Counselor/Unit Manager/Unit Supervisor** - A supervisory staff member who directs, monitors, and oversees the work performance of subordinate staff members.

**(29) Special Needs Populations** - Offenders who have significant problems in the areas of mental health, diminished intellectual capacity, or medical needs.

**(30) Structured Activity** – 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.

**(31) Treatment** - A planned, structured, and organized program, either residential or non-residential, 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.

**(32) Treatment Team** – The treatment team shall consist of at least the offender, the offender’s counselor, a CSO and/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 TDCJ-CJAD. **Programs and facilities providing only substance abuse education are not subject to these standards.**

**(c) Personnel & Staff Development/Accreditation.** 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 design. Offenders found to be ineligible for admission within 10 days of arrival at the program shall not be counted in program admissions.

**(2)** There shall be documentation of specific admission criteria and procedures. 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/needs, or
- (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 who are 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 offenders 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 ten 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 ten 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;
- (3)** assessments completed by a QCC, or if the assessor is a Counselor Intern, then 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;
- (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 policy and procedure 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 offender-identifying information.

**(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 & Safety Code and 42 CFR part 2

(Code of Federal Regulations). This access does not apply to criminal justice records. Restrictions to access treatment records shall be specified and explained to offenders upon request. Exceptions must involve the potential for harm to the offender or others.

**(m) Treatment Planning and Review.** Initial individual Treatment Plans will be completed by the counselor collaborating with the offender within ten working days from the date of an offender's admission to a Community Corrections Facility (CCF), County Correctional Center (CCC) 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/needs identified through assessments and revised according to the offender's successful resolution of those substance abuse, chemical dependency or addiction and other criminogenic risks/needs. Treatment plans shall include criteria for discharge that are based on the achievement of treatment plan goals and shall be reviewed at timely intervals with a minimum of once each month or when major changes occur (e.g., 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 be 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 to 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 based on the following criteria:

- (1) Successful Discharge – the offender has made sufficient progress towards meeting the objectives of the Treatment Plan, including addressing criminogenic risk/needs and program requirements;
- (2) Administrative Discharge - the offender has satisfied a period of placement as a condition of community supervision, the offender is removed by order of the court or the offender is removed by operation of law for conduct occurring prior to admission into the program;
- (3) Unsuccessful Discharge - the offender has demonstrated non-compliance with the program criteria or court order, including absconding from the program; or
- (4) Medical Discharge - the offender manifests a medical or psychological problem, including death, that 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 supervision officer within seven days after discharge and provide a summation 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/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 for all offenders who leave the program as an unsuccessful, administrative or medical discharge. The summary shall include elements (1) – (6) of the Discharge Plan.

**(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 sixteen offenders. Group education and life skills training sessions are limited to a maximum of thirty-five 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 must be provided by a QCC, graduate or counselor who has the specialized education, training, or expertise in the subject matter to be delivered. Chemical dependency education shall be provided by counselors or individuals who have the specialized education, training, or expertise in the subject matter to be delivered.

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

(7) Residential programs shall have at least 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 which 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 HIV, Hepatitis B and C and Tuberculosis education based on the Model Workplace Guidelines for Direct Service Providers developed by the Texas Department of State Health Services.

(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 Texas Department of State Health Services.
- (C) in all TDCJ-CJAD funded facilities, testing, as well as pre- and post-test counseling, is to 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 community corrections facility 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 monitor follow-through; 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/needs factors;
- (B) a treatment regimen that focuses on changing substance abuse, dependency or addiction and other criminogenic risks/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 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 Practice" elements.

**(t) Stages of Treatment.** All CCFs providing substance abuse treatment shall designate in the current facility's Community Justice Plan (CJP) program proposal stages of treatment to be provided as described in sections (u) through (y) below.

**(u) Detoxification.** Offenders being referred to detoxification services must be referred to appropriately 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 ten 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 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 ten working days of admission.
- (5) The facility shall deliver not less than twenty-five 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 must be trained in that specific curriculum. All direct care staff must receive training on the principles of a cognitive behavioral model as it relates to their job duties. This curriculum shall be approved by TDCJ-CJAD and implemented as designed. Components of the cognitive program shall at a minimum include:
  - (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, and able to function with limited supervision and support, and be able to participate in work release or community service/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 twenty 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 ten working days of admission for all offenders.
- (5) The program shall deliver no less than six hours per week of chemical dependency counseling with a cognitive-behavioral approach (one hour per month of which shall be individual counseling) for each offender.

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

(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 TDCJ-CJAD and implemented as designed. Anyone facilitating a cognitive curriculum must be trained in that specific curriculum. All staff must receive training on the principles of a cognitive behavioral model as it relates to their job duties. Components of the cognitive program shall at minimum include:

(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 thirty-five offenders in a group.

(5) Therapeutic groups shall not exceed sixteen offenders in a group.

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

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

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

(11) 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.

(12) The outpatient treatment stages may be utilized 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 must provide appropriate treatment either by program staff or through contracted services.

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

**(3)** When the assessment process indicates that the offender has coexisting disabilities / disorders, the Treatment Plan shall specifically address those issues that might impact treatment, recovery, relapse, and/or recidivism.

**(4)** Personnel qualified in the treatment of coexisting disabilities / disorders shall be available.

**(5)** Within ninety-six hours of admission to a special needs residential program, offenders shall be administered a medical and psychological evaluation.

**(6)** Within ten 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 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 must rest with a single designated responsible physician licensed by the state.

**(A)** Services/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 which provide for:

**(i)** conformity with state regulations;

**(ii)** documentation of the rationale for use and goals of service/treatment consistent with the individual plan of treatment;

**(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 must follow the same staffing for treatment levels as the levels for other offenders, except all residential programs shall maintain caseloads of no greater than sixteen offenders for each counselor.

**(11)** Programs operating in residential facilities shall ensure that offenders will have no less than ten 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. In no event is the use of physical force against an offender justifiable as punishment. A written report shall be prepared following all used of force, and all such written reports shall be 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 by any individual in self-protection, protection of others or other circumstances as described previously.

## §163.41 MEDICAL AND PSYCHOLOGICAL INFORMATION

**(a) HUMAN IMMUNODEFICIENCY VIRUS (HIV) AND ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) POLICIES.** CSCD directors shall develop and implement policies relevant to HIV in accordance with guidelines established by the Texas Department of Health and adopted by the TDCJ-CJAD. These policies will be incorporated in the CSCD's administrative manuals and shall include, but not be limited to, the following:

- (1) education/training;
- (2) confidentiality;
- (3) workplace guidelines; and
- (4) supervision of individuals with HIV or AIDS infection.

**(b) EMPLOYEE TRAINING.** In accordance with statute, each employee of the CSCD shall attend an HIV-AIDS training program, within the first year of employment. Education programs for employees shall include information and training relating to infection control procedures.

**(c) HIV CONFIDENTIALITY.** Information regarding HIV-AIDS testing and results is confidential. HIV-AIDS information shall be maintained in a safe and secure manner with access to this confidential information 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 Texas Health and Safety Code, Chapter 614 and the other statutes and authorities set forth in TDCJ-CJAD's Community Supervision and Corrections Department Records manual (October 10, 2000), as amended from time to time.

**(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 authorities set forth in the above-referenced TDCJ-CJAD's Community Supervision and Corrections Department Records manual. Medical and psychological information shall be maintained in a safe and secure manner with access to this confidential information 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 Texas Health and Safety Code, Chapter 614 and the other statutes and authorities identified in the aforementioned TDCJ-CJAD manual.

## §163.42 SUBSTANTIAL NONCOMPLIANCE

**(a) DEFINITION.** Substantial noncompliance with 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 CSCDs;
- (3) intentional refusal to implement TDCJ-CJAD approved Action Plans that are a result of audits, reviews, or inspections;
- (4) for purposes of qualifying for state aid by complying with the Open Meetings Act under §163.43 (a)(1)(F) of this title (relating to Funding and Financial Management), failing to hold the meeting to finalize the CSCD budget as required by Texas Local Government Code §140.004 in compliance with 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, CJAD, or Criminal Justice Policy Council, to examine or audit the records, transactions and performance of the subject 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).

## **§163.43 FUNDING AND FINANCIAL MANAGEMENT**

### **(a) FUNDING**

**(1) Qualifying for TDCJ-CJAD Formula and Grant Funding.** CSCDs 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)** the district judge(s) appointing a director to administer all CSCD funds;
- (E)** having a fiscal officer appointed by the district judge(s) managing the CSCD as set forth in paragraph (b) below; and
- (F)** except for CSCDs that can legally be managed by no more than one judge, the district judges complying with the Open Meetings Act, Chapter 551, Texas Government Code, 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)** the grant funding recipient 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 will 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 who are eligible to receive grant funding must 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 will 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 which the funding recipient is entitled. 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 a special fund of 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.

**(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 with the items set forth in the Financial Management Manual for TDCJ-CJAD Funding (October 1, 1999), as amended from time to time.

**(5) Available Records.** The funding recipient and/or 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 referenced 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 referenced Financial Management Manual for TDCJ-CJAD Funding, as amended from time to time.

**(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 their 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 shall not be less than the state rates and no higher than the county rates if the county rates are higher than the state rates.

**(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, the following facilities, equipment and utilities for the department.

**(A) Minimum Facilities for CSCDs.** Each 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 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 area 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/or vehicles purchased with program funds will follow the guidelines in the Financial Management Manual for TDCJ-CJAD Funding (October 1, 1999) as amended from time to time. In addition:

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

**(B)** Any CSCD or other entity wanting to dispose of equipment, furniture, and/or vehicles purchased with program funds shall adhere to procedures set forth in the referenced 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 §76.010, and as provided for in the referenced Financial Management Manual for TDCJ-CJAD Funding, as amended from time to time.

## **§163.45 DISTRIBUTION OF COMMUNITY CORRECTIONS FUNDING**

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

## **§163.46 ALLOCATION FORMULA FOR COMMUNITY CORRECTIONS PROGRAM**

**(a) PURPOSE.** The Texas Government Code §509.011(f), gives the Texas Board of Criminal Justice (TBCJ) discretion to adopt a policy limiting the percentage of benefit or loss that may be realized by a CSCD as a result of the Community Corrections Program allocation formula.

**(b) LOSS LIMITS.** Assuming adequate appropriations, no CSCD may incur a funding decrease of more than 5.0% from the previous fiscal year. An upper change limit shall be determined by available funding and the size and number of departments that reach the decrease limit. If appropriations are inadequate to maintain the 5.0% decrease limit, all CSCD allocations will be reduced proportionately from the previous year's allocations.

## **§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 paragraph (h) below.

**(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 paragraph (a) above, 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 sixty 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 subsections (f) and (g)(2) of this section 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 §163.47(b)(1)(A)-(E) 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 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 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 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 the Texas Administrative Code §155.33 (b) and (c).

## **(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.**

**(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 ninetieth (90th) day after 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.