

July 26, 2014

Chelsea Buchholtz  
Texas Juvenile Justice Department  
11209 Metric Boulevard  
Austin, TX 78758

RE: Proposed Rule & Section Changes

Dear Ms. Buchholtz:

We are writing you today to offer public comment on several of the proposed rule changes published in the June 27, 2014, edition of the Texas Register. While we understand that the Department is in the midst of transition, we feel that it is important to provide feedback on these proposed changes, as they all carry significant weight in ensuring the safety and security of youth under your care.

*The sections of rule we wish to comment on are delineated below.*

- **Rule § 343.285:** We greatly appreciate the efforts that the Department is making to ensure that the use of disciplinary seclusion is not being over-utilized or abused. However, we feel strongly that there is additional information that can be collected to not only prevent the overuse of this intervention altogether, but to ensure that it is not being used when simply unwarranted or in a disproportionate manner. Therefore, we recommend that the rule change be expanded to include the collection of the following information:
  - » the infraction for which a youth was secluded for disciplinary reasons, with a distinction as to whether that infraction is categorized by a local department as major or minor;
  - » the race/ethnicity of the youth being secluded;
  - » the gender of the youth being secluded; and
  - » the sexual orientation of the youth being secluded.
- **Rule § 343.414:** The language in section (b), “if readily available,” is inconsistent with the language in section (c), “with a written acknowledgement that the items in subsection (b) of this section were considered.” If section (c) is requiring these factors to be considered, then the language “if readily available” is providing a loophole to this requirement.

We would also like to recommend categorizing which factors are to be taken into consideration for vulnerabilities, and which are to be considered for potential acts of future violence. It would be a disappointment to learn that counties are isolating youth who identify on the LGBTQ spectrum solely because such youth are wrongly perceived to be at a higher risk of acting out sexually.

Furthermore, to the extent possible, the Department should ensure that the factors being taken into consideration for “tendencies of acting out” are in line with research-based factors associated with high risks of violently acting out in a secure juvenile setting (e.g., negative attitudes, risk taking/impulsivity, anger management problems, prosocial involvement, strong social support, resilient personality).<sup>1</sup>

- **Rule § 343.416(5):** If the term “special needs” is being used to identify youth with disabilities, then the language should be amended to accurately and specifically reflect that. The term “special needs” is vague and can include youth without disabilities, including youth with substance abuse issues, young women, etc.
- **Rule § 343.690(a):** Given that the average length of stay in post-adjudication facilities is 125 days,<sup>2</sup> the “no later than 90 calendar days” requirement set forth in this rule makes it difficult to conduct periodic reassessments of a youth’s treatment plan, which is critical in determining its effectiveness.<sup>3</sup> Though the proposed rule change aims to ensure that re-assessment is conducted prior to the 90-day mark, we suggest revisiting the rule and amending the time period to allow for multiple re-assessments as opposed to only one.

*The following comments concern proposed Subchapter E related to restraints:*

- **Section 343.800(10):** We have concerns with the phrase “or to modify the individual’s behavior.” Restraint is not a behavior modification or disciplinary technique, but an intervention in the event of a serious and imminent behavioral emergency. In addition, Section 343.804(1) prohibits the use of restraint for discipline or compliance. In order to reconcile these sections, the behavior modification phrase should be struck.
- **Section 343.802(d):** We appreciate the imminency requirement in subsection (1) and recommend that subsections (2) and (3) be modified to also require an imminent act. Not only is this consistent with the use of restraint as an intervention of last resort for serious and imminent behavioral emergencies, but it is particularly important in light of the proposed revision to subsection (2) to allow for the use of restraint *to prevent* serious property damage.
- **Sections 343.804(4) and (5):** We have significant concerns with language surrounding prone and supine restraints. There is a real risk of asphyxia when prone and supine holds are used. These dangerous practices should therefore be completely eliminated, and not just be prohibited when there is sustained or excessive pressure on the back, chest, or torso, or pressure on the neck or head.

SB 325 by Senator Judith Zaffirini (79<sup>th</sup> legislative session) set forth minimum standards for the use of restraint and seclusion in various settings. Among other limitations, prone and supine holds were limited to transitional holds. Consistent with best practices, the Department of State Health Services has entirely prohibited prone and supine holds during personal restraints in inpatient mental health facilities. If an individual becomes prone or supine during a restraint, they must be immediately be transitioned to lying on their side or placed in another appropriate position (see 40 Tex. Admin. Code §415.255(b)). SB 325 also called for a workgroup to recommend best practices in policy, training, safety, and risk management for the Texas Youth Commission, the Texas Juvenile Probation Commission, and various health and human service agencies. Both legacy agencies participated in the workgroup. We were therefore discouraged that so many years after this initiative, best practices surrounding the use of prone and supine restraints are not reflected in the proposed rule. We suggest looking to 40 Tex. Admin. Code §415.255(b) for possible language that would help minimize the risk to youth associated with prone and supine holds.

- **Section 343.806(3):** We support the addition of this section, which will require a narrative description of the restraint event from each staff member who participated in the restraint. We would, however, suggest that the rule clarify who is responsible for the documentation required if multiple staff are involved.
- **Section 343.806(b):** We support this proposed section, which requires the facility to maintain a restraint log.

Finally, also consistent with best practices, but absent in both the current and proposed rules, are time limitations for personal and mechanical restraints, with the exception of non-ambulatory mechanical restraints. Prolonged use of restraint is dangerous, and time limits protect against the physical harm associated with immobility, particularly as to mechanical restraints. Provisions could be developed to authorize the continued use of the intervention following an evaluation or transition to disciplinary seclusion if the emergency continues, but these circumstances should be the rare exception. The Department should adopt maximum time limits for both personal and mechanical restraints. We again recommend looking to Department of State Health Services regulations as an example of time limits that are consistent with or exceed nationally recognized standards (see 40 Tex. Admin. Code § 415.261).

Again, it is not our intention to further complicate the progression of the Department as it moves forward on its path to fully adhering to best practices. However, we feel strongly that providing feedback on these current rule changes is important to ensure that no additional barriers arise in the Department's efforts to do so. We greatly appreciate your time and consideration of these comments, and we are open to having further discussion of our concerns, at your earliest convenience.

Sincerely,

American Civil Liberties Union, Texas  
Disability Rights Texas  
Hogg Foundation for Mental Health  
Texans Care for Children  
Texas Appleseed  
Texas Criminal Justice Coalition

#### *Citations*

---

<sup>1</sup> Research indicates the most valid predictors of violence within a secure residential setting are a youth's individual and protective factors. These findings carry significant implications for the types of "behavior" that should be assessed when determining residential placement for juveniles. Henry Lodewijks, Theo Doreleijers, Corine Ruiters, and Randy Borum, *Predictive Validity of the Structured Assessment of Violence Risk in Youth (SAVRY) During Residential Treatment*, Volume 31 (Issue 3) *International Journal of Law and Psychiatry* (June 2008).

<sup>2</sup> Open Records Request, Texas Juvenile Justice Department, County Activity Data 2013.

<sup>3</sup> Center for Juvenile Justice Reform, *Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice*, p. 41 (December 2010).