

**Comments to the Texas Juvenile Justice Department
Chapter 380 T.A.C., Subchapter E
Rule § 380.9535
Phoenix Program**



I. Introduction

The Texas Criminal Justice Coalition (TCJC) appreciates the opportunity to respond to the request of the Texas Juvenile Justice Department (TJJD) for comments regarding the proposed adoption of Section 380.9535, which would create the Phoenix program.

TCJC is a non-profit organization committed to identifying and advancing juvenile justice policy solutions that maximize opportunities for youth to become productive, law-abiding adults.

To fully implement the purpose of the Phoenix program, as set forth in section (a) of the proposed rule, TCJC suggests the following changes to the proposed rule:

1. Clarify the applicability criteria in subsection (b)(2) to ensure determinate sentence youth are formally considered for the Phoenix program before any approval for a court hearing to transfer the youth to the Institutions Division of the Texas Department of Criminal Justice.
2. Delete subsection (f)(2) which creates a counterproductive exception to the eligibility requirements.
3. Amend subsection (h)(1) to require a validated assessment of the youth's violence risk.
4. Expand the graduation and reentry provision in subsection (m)(2) to ensure youth are placed in the most appropriate setting following graduation from the Phoenix program, considering both the progress made during the youth's participation in the Phoenix program as well as the environment at receiving facilities.
5. Reduce the number of days a youth may remain in Level I or II of the program before review by a cross-divisional team, as set out in subsection (p)(3).

In addition to these changes to the proposed rule, TCJC also suggests TJJD release regular public reports on the Phoenix program, including the amount of time youth have spent in seclusion, the amount of time youth have spent on each level of the program, and, when such data is available, the youth's assaultive behavior and recidivism after graduation from the program.

II. Discussion of Suggested Changes to Proposed Rule

1. Clarify the applicability criteria in subsection (b)(2) to ensure determinate sentence youth are formally considered for the Phoenix program before any approval for a court hearing to transfer the youth to the Institutions Division of the Texas Department of Criminal Justice.

The purpose of the proposed rule, as set out in section (a), is to “protect staff and youth in TJJD state-operated facilities from highly aggressive youth while providing such youth a highly structured environment to reduce their aggression and to progress in treatment.” Without further clarification of the applicability criteria, however, this purpose will likely be undermined by a recent surge in proposed transfers of youth to adult facilities in the Texas Department of Criminal Justice (TDCJ).

Transfers of youth to TDCJ from TJJD secure facilities have increased enormously this year. Data provided by TJJD lists 208 youth transferred to TDCJ prisons or jails from June 2007 to June 2012, for an average of 41.6 youth per year. By contrast, in the first six months of this year, TJJD recommended transfers to TDCJ prisons or jails for 34 youth. TJJD staff informed TCJC and other advocates that 19 additional youth are in the final stages of agency review for transfer, 18 more youth are under review by field staff, and 75 other youth are likely to meet the criteria for transfer this year. This total – 146 youth transferred or in the process of a transfer review this year – is more than three-and-a-half times higher than average rates of transfer since 2007.

TJJD leadership indicates that youth currently under review for transfer are not being considered for the Phoenix program. This threatens the purpose of the program to “protect staff and youth in TJJD state-operated facilities from highly aggressive youth while providing such youth a highly structured environment to reduce their aggression and to progress in treatment.”

Accordingly, TCJC urges the agency to amend the applicability criteria in subsection (b)(2) to clarify that assaultive determinate sentence youth are eligible for admission to the Phoenix program – and indeed are a direct fit for the purpose of the program – until the final TJJD authority approves them for transfer.

2. Delete subsection (f)(2) which creates a counterproductive exception to the eligibility requirements.

Section (f) of the proposed rule establishes eligibility requirements for placement in the Phoenix program. With the exception of subsection(f)(2), only youth who have committed assaults causing bodily injury or who have chunked bodily fluids are eligible for the program. Subsection (f)(2), however, creates a large exception to the eligibility requirements, allowing the executive director or designee to direct the

placement of a youth “who engages in any other major rule violation when the totality of circumstances justifies the placement in the program.”

The exception in subsection (f)(2) is too large and too vague. There is a high risk that some youth placed in the program under this exception will not fit the program’s design and, more dangerously, will not match the risk level of the other youth in the program. Housing and treatment of youth with different risk levels increases recidivism among the lower-risk youth and creates barriers to rehabilitation.¹

Unless the rule is amended to 1) delineate which major rule violations are applicable, 2) define “totality of circumstances,” and 3) establish how those circumstances – including the specific risk level of the youth – will be objectively evaluated, then subsection (f)(2) should be deleted.

3. Amend subsection (h)(1) to require a validated assessment of the youth’s violence risk.

TJJD currently uses several validated assessment tools to assess the youth in its custody. For example, TJJD uses the Positive Achievement Change Tool (PACT), which identifies risks to recidivate. The PACT, however, does not assess risk of violence.

As the rule sets out, the purpose of the Phoenix program is to address the safety and programming concerns involving “highly aggressive youth.” In order to make an accurate admission decision under section (h), the reviewing committee must have an accurate and objective assessment of the youth’s violence risk.

Accordingly, subsection (h)(1) should require the assessment of the youth’s violence risk through a validated violence risk assessment instrument prior to the youth’s Level II due process hearing.² That assessment will also provide valuable guidance to staff during the case planning in subsection (j)(2) of the proposed rule.

4. Expand the graduation and reentry provision in subsection (m)(2) to ensure youth are placed in the most appropriate setting following graduation from the Phoenix program, considering both the progress made during the youth’s participation in the Phoenix program as well as the environment at receiving facilities.

The proposed rule requires every youth released from the Phoenix program to “be assigned to the Redirect program at the receiving facility.” This reentry process creates two significant problems for the purpose of the Phoenix program:

¹ Christopher Lowenkamp and Edward Latessa, *Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders*, Topics in Community Corrections (2004).

² The Structured Assessment of Violence Risk in Youth (SAVRY), for example, is a validated empirical violence risk assessment designed for intervention and supervision plans for violent youth.

- 1) Problems in the Redirect program and the campus environments have likely contributed to the highly aggressive behavior of the youth ultimately placed in the Phoenix program; returning them to that environment without addressing the systemic problems at those campuses threatens to undo any progress gained from the Phoenix program, putting youth back at square one. Since 2010, independent monitors, advocates, and the agency's own audits have documented system-wide program failures that contribute to assaultive behavior at the TJJD secure facilities.³
- 2) Currently, the average length of stay for youth in TJJD facilities is 16 months,⁴ far longer than is effective according to several studies.⁵ TJJD leadership indicate that they expect that an average Phoenix youth will take approximately six months to master the required skills and graduate from the program. Unless the rule's reentry provisions are tailored to a youth's progress in the Phoenix program and the conditions at the receiving campus – for example, by placing youth in the appropriate CoNEXTions level and adjusting case planning accordingly – the long lengths of stay for youth who graduate from the Phoenix program will add to the existing length-of-stay problems at the TJJD facilities.

For these two reasons, TCJC strongly recommends that TJJD expand the graduation and reentry provision in subsection (m)(2) to ensure youth are placed in the most appropriate setting following graduation from the Phoenix program, considering both the progress made during the youth's participation in the Phoenix program as well as the environment at receiving facilities. In making reentry decisions, staff should consider all options, including specialized programming at a TJJD campus (as well as placing youth in the appropriate CoNEXTions level and adjusting case planning accordingly), placement at a halfway house, or parole if appropriate.

5. Reduce the number of days a youth may remain in Level I or II of the program before review by a cross-divisional team, as set out in subsection (p)(3).

Under the proposed rule, a cross-divisional team in Central Office reviews youth only after they remain in one of the first two program levels for more than 120 days. However, TJJD leadership indicate an average highly-aggressive Phoenix youth (one caught in a 'cycle of denial') should graduate the program in no more than six months, averaging no more than 60 days per level. This suggests a review after 120 days could potentially allow the average Phoenix youth to languish at Level I or II

³ These reports include the 2010 Moss Report, the 2010 Sunset Report, several 2012 reports from the Office of the Independent Ombudsman, and the 2012 TJJD Case Management Audit.

⁴ Legislative Budget Board July 2012 Monthly Tracking Report.

⁵ Edward Mulvey, "Highlights From Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders" (2011); Heather J. Hair, "Outcomes for Children and Adolescents After Residential Treatment: A Review of Research from 1993 to 2003" (2005); Thomas Loughran et al, "Estimating a Dose-Response Relationship Between Length of Stay and Future Recidivism in Serious Juvenile Offenders" (2009); Kristin Parsons Winokur et al., "Juvenile Recidivism and Length of Stay" (2008); and Bruce Frederick, "Factors Contributing To Recidivism Among Youth Placed With The New York State Division For Youth" (1999).

for nearly twice as long as should be expected. TCJC therefore recommends subsection (p)(3) be amended to require a cross-divisional review for youth who remain on a level for more than 60 days in the program

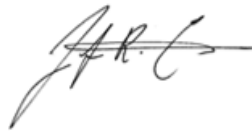
TJJD leadership have expressed support for regular public reports on the Phoenix program, including the amount of time youth have spent in seclusion, the amount of time youth have spent on each level of the program, and, when such data is available, the youth's assaultive behavior and recidivism after graduation from the program. We commend TJJD for this transparency, and we look forward to working with TJJD to provide input for those public reports.

Thank you for your consideration of our comments. If you have any questions concerning these comments, please contact Benet Magnuson (bmagnuson@criminaljusticecoalition.org) or Jennifer Carreon (jcarreon@criminaljusticecoalition.org).

Sincerely,



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