

# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

#### CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES SUBCHAPTER F. SECURITY AND CONTROL

##### 37 TAC §380.9723

The Texas Juvenile Justice Department (TJJD) adopts, on an emergency basis, amendments to 37 TAC, Part 11, §380.9723, Use of Force. The amended section establishes the procedures for staff intervention when youth behavior threatens safety and order.

The section is adopted on an emergency basis to allow for the use of oleoresin capsicum (OC) spray in both high-restriction *and* medium-restriction facilities.

Pursuant to §2001.034, Government Code, TJJD finds that an imminent peril to the public health, safety, or welfare requires adoption of this section on fewer than 30 days' notice.

The amended section is adopted under §242.003, Human Resources Code, which requires the TJJD Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by the emergency adoption.

§380.9723. *Use of Force.*

(a) Purpose. This rule establishes the procedures for staff intervention when youth behavior threatens safety and order.

(b) Applicability.

(1) This rule applies to all facilities, offices, and programs operated by the Texas Juvenile Justice Department (TJJD), unless specifically stated otherwise in this rule.

(2) This rule does not apply to peace officers employed and commissioned by TJJD or by the TJJD Office of Inspector General.

(3) This rule does not apply to the use of four-point mechanical restraints for medical or mental health purposes. See §380.9198 of this title.

(c) General Provisions.

(1) Non-physical interventions are preferred and must be used to the extent practical to manage youth behavior.

(2) TJJD authorizes its staff to use reasonable force as a last resort to maintain safety and order. Only staff who are trained in agency-approved techniques are authorized to use force.

(3) The use of force as punishment or for convenience of staff is strictly prohibited.

(4) Approved use of force techniques are those determined by TJJD to minimize risk of harm to youth and staff.

(5) Staff must release youth from manual or mechanical restraint as soon as the purpose for the restraint has been achieved.

(6) If a staff member observes a use of force in violation of policy, he/she must take action, as practical, to protect the youth from harm.

(7) Staff must report any violations of this policy as soon as possible, but no later than the end of the current shift.

(8) Violations of this policy may result in disciplinary action up to and including termination of employment.

(9) After any manual restraint or use of oleoresin capsicum (OC) spray in a high restriction facility, a youth must be assessed by medical staff as soon as reasonably possible under the totality of the circumstances. After any manual restraint in a medium restriction facility, medical staff must be consulted as soon as reasonably possible. Any injuries must be documented in the medical record along with an explanation from the youth describing how the injuries occurred. Photographs must be taken of all injuries.

(10) Only restraint equipment approved by the executive director or his/her designee may be used in TJJD facilities. All restraint equipment must be used in a manner consistent with its design and intended purpose.

(11) Only the facility administrator, staff having authority to act as the facility administrator, or a higher-level authority in the facility administrator's chain of supervision may declare that a particular situation is a riot, consistent with the definition of a riot.

(d) References.

(1) For procedures and programs designed to allow youth time to regain self-control, see §§380.9520, 380.9739, and 380.9740 of this title.

(2) For criteria and procedures on administering a psychotropic drug in a psychiatric emergency when a youth will not give consent for the administration, see §380.9192 of this title.

(3) For procedures relating to youth searches, see §380.9709 of this title.

(e) Definitions.

(1) Barricade--any of the following, if used by a youth to prevent and/or obstruct staff from gaining access to the youth: a locked, jammed, or blocked door, dorm furniture, boxes, desks, chairs, com-

puters, folding tables, stacked mattresses, or any other similar item that obstructs passage.

(2) Handle With Care®--an agency-trained physical intervention system.

(3) Imminent Harm--a reasonable belief that harm to persons or property is about to occur, unless immediate action is taken.

(4) Medical Provider--has the meaning assigned by §380.9175 of this title.

(5) Positional Asphyxia--the reduction in oxygen in the bloodstream and tissues due to an impairment of a person's respiratory system caused by body positioning or the application of external weight/pressure.

(6) Practical--a reasonable belief that something is capable of being done.

(7) Reasonable Belief--a belief that would be held by a similarly trained staff considering the totality of the circumstances.

(8) Reasonable Force--the least amount of force that a trained staff, in like circumstances, would reasonably believe to be necessary to maintain order and safety as authorized under this rule.

(9) Serious Bodily Injury--an injury that creates a substantial risk of death, serious permanent disfigurement, or extended loss or impairment of the function of any bodily member or organ.

(10) Substantial Property Damage--at least \$500 in damage to state property or another's personal property.

(11) Totality of the Circumstances--facts and circumstances known by the actor at the time of the incident.

(12) Use of Force--physical measures used to direct, compel, or restrain bodily movement of a non-compliant youth.

(13) Riot--a situation in which three or more youths intentionally participate in conduct that threatens imminent harm to persons or property and that substantially obstructs the performance of facility operations or a program therein.

(f) Non-Physical Interventions. Alternatives to force must be used whenever practical to assist a youth in maintaining or regaining self-control. Staff are prohibited from using humiliating punishment, including verbal harassment to manage youth behavior. Staff are trained in the use of the following non-physical intervention techniques:

(1) Staff presence--this includes mere presence of staff to include non-verbal gestures made with eyes, hands, head, or body utilizing proximity, standing, eye contact and/or facial expressions; and/or involving additional staff to intervene.

(2) Verbal de-escalation--this includes verbal prompting, directive statements, and redirecting youth attention and/or behavior.

(3) Use of problem-solving groups.

(g) Physical Interventions. When reasonable force is necessary, staff are authorized to use the following methods:

(1) Physical Escort--touching of the arm, elbow, shoulder, or back for the purpose of directing the youth from one location to another.

(2) Mechanical Restraint--use of a mechanical device applied to a youth as a means of restricting a youth's freedom of action.

(3) Manual Restraint--use of hands-on techniques as a means of restricting a youth's freedom of action.

(4) Planned Team Restraint--restraint of a youth who is in a locked or barricaded room or security vehicle by a pre-assembled team.

(5) OC Spray--oleoresin capsicum spray, also known as pepper spray. Oleoresin capsicum is a mixture of essential oil and resin found in nature and derived from any plant of the genus capsicum, such as jalapeño, cayenne, or habanero.

(h) Criteria for Use of Force. Except as otherwise indicated in this rule, reasonable force is authorized under the following circumstances:

(1) protection of youth from imminent self-harm;

(2) protection of self from imminent harm;

(3) protection of other youth or third parties from imminent harm;

(4) protection of property from imminent, substantial damage;

(5) prevention of escape or fleeing apprehension;

(6) movement of a youth referred to the security unit, other temporary isolation room, or alternative classroom;

(7) movement of a resistant youth within the security unit when the youth's behavior is substantially disruptive and the youth refuses to stop the behavior;

(8) movement of a resistant youth from a dangerous situation;

(9) to conduct a search of a resistant youth reasonably believed to be in possession of a weapon, an item that can be adapted for use as a weapon, a controlled substance, or other item(s) that breach the security of the facility;

(10) to conduct a search of a resistant youth entering the security unit; or

(11) to administer medical treatment to a resistant youth when failure to do so could have serious health implications and a medical provider has ordered a restraint.

(i) Determining the Intervention or the Reasonable Force to be Used. In determining the type of intervention or the reasonable force to be used, staff must consider whether action needs to be taken immediately or can be delayed until additional staff can organize a team response. However, only a medical provider may determine the type of intervention or the reasonable force to be used in administering medical treatment to a resistant youth.

(j) Approved Use of Force Techniques. Use of force techniques that may be used are limited to:

(1) agency-trained:

(A) physical escort;

(B) Handle With Care® methods of manual restraint;

(C) mechanical restraints;

(D) OC spray, under certain limited circumstances; and

(2) other non-prohibited methods of manual restraint that under the totality of circumstances existing at the time:

(A) are more practical than the agency-trained Handle With Care® methods of restraint, taking into account the youth's and staff's particular vulnerability to harm;

(B) involve a use of force that is measured and progressive to a degree no greater than that reasonably believed necessary to achieve the objective; and

(C) do not unduly risk serious harm or needless pain to the youth or staff.

(k) Prohibited Restraint Techniques.

(1) Prohibited restraint techniques include the following:

(A) restricting respiration in any way, such as applying a chokehold or pressure to a youth's back or chest or placing a youth in a position that is capable of causing positional asphyxia;

(B) using any method that is capable of causing loss of consciousness or harm to the neck;

(C) pinning down with knees to the torso, head, and/or neck;

(D) slapping, punching, kicking, or hitting;

(E) using pressure-point, pain-compliance, and joint-manipulation techniques other than an approved Handle With Care® method for release of a chokehold, bite, or hair pull;

(F) modifying restraint equipment;

(G) applying any cuffing technique that connects handcuffs behind the back to ankle restraints;

(H) dragging or lifting of the youth by the hair or ear or by any type of mechanical restraints;

(I) lifting a youth's arms behind the back, while in mechanical restraints, in a manner that is capable of causing injury to the shoulder;

(J) using other youth or untrained staff to assist with the restraint;

(K) securing a youth to another youth or to a fixed object, other than to an agency-approved full-body restraint device; or

(L) administering a drug for controlling acute episodic behavior as a means of physical restraint, except when the youth's behavior is attributable to mental illness and the drug is authorized by a licensed psychiatric provider or physician and administered by a licensed medical professional.

(2) A physical contact that would otherwise be prohibited by subsection (k)(1) of this section, does not include one that is only accidental and momentary.

(l) Requirements for Planned Team Restraint Situations.

(1) Criteria for Use. Planned team restraint is authorized only to:

(A) stop the youth from engaging in self-harm;

(B) prevent substantial property damage; or

(C) recover a weapon or item that has been adapted for use as a weapon and is capable of causing death or serious bodily injury.

(2) Requirements for Use.

(A) Prior to approval of planned team restraint, the facility administrator or administrative duty officer must personally observe the situation. Only the facility administrator or administrative duty officer may authorize a planned team restraint.

(B) All planned team restraints must be videotaped when practical, including a recording of a verbal description of the

youth's conduct and all warnings provided the youth according to the agency-approved script.

(C) Only staff trained in planned team restraint may participate in the team that is assembled for the room entry.

(D) The youth must be warned to discontinue the misconduct at least two times after the team is assembled and before the room entry. The team must provide continuous opportunities for compliance during the room entry.

(E) Use of the riot shield during a planned team restraint is limited to cases in which a youth has a weapon or a youth's behavior indicates there is a significant risk of harm to the staff members involved in the restraint.

(m) Requirements for Use of Mechanical Restraints.

(1) Guidelines for Use.

(A) Mechanical restraint equipment must not be secured so tightly as to interfere with circulation or so loosely as to permit chafing of the skin.

(B) When mechanical restraints are employed on a youth in a prone position, the youth is placed on his/her side as soon as practical in order to help ensure adequate respiration and circulation. The youth must be allowed to sit up as soon as his/her behavior is under control.

(C) A mechanical restraint for other than transportation, riot control, or medical purposes must be terminated as soon as the purpose for which the youth was restrained under subsection (h) of this section has been achieved, but in any event within 30 minutes, unless an extension is granted. Extensions may be granted by the facility administrator or designee for up to two-hour intervals until termination of restraint.

(D) A mechanical restraint for medical purposes must be terminated as soon as the purpose for which the youth was restrained has been achieved or upon expiration of the medical provider's order, whichever occurs first.

(E) When mechanical restraints are applied, staff must:

(i) check the youth for adequate respiration and circulation every 15 minutes;

(ii) provide regularly scheduled meals and drinks;

(iii) provide opportunity for elimination of bodily waste at least once every two hours; and

(iv) provide continuous visual supervision and appropriate assistance until the mechanical restraint is terminated.

(F) Mechanical ankle and wrist restraints attached to a waist belt by a lead chain may be used when transporting a youth to a security unit, within a security unit, and from a security unit in order to prevent harm to the youth or others. These restraints may not be attached in a manner that prevents the youth from being able to stand upright. Mechanical restraints may remain on the youth for the duration of the activity if circumstances warrant such restraints.

(2) Restrictions on Use During or After Childbirth.

(A) TJJ staff may not use mechanical restraints to control the movement of a youth who is in labor, during delivery, or during recovery from delivery unless the executive director or designee determines that the use of restraints is necessary to:

(i) ensure the safety and security of the youth, the infant, a staff member, or a member of the public; or

(ii) prevent a substantial risk that the youth will attempt to escape.

(B) If restraint is approved by the executive director or designee, staff must use the least restrictive type and method of restraint necessary to achieve the purpose of the restraint.

(3) Mechanical Restraint Use by TJJD Transportation Staff. Mechanical ankle and wrist restraints attached to a waist belt by a lead chain must be used during secure transportation by designated TJJD transportation staff. Exceptions may be made for youth being transported following release on parole from a residential facility or when medically necessary.

(4) Mechanical Restraint Use by Other Transporters.

(A) Mechanical ankle and wrist restraints attached to a waist belt by a lead chain must be used during transportation when a youth is being transported to a high restriction facility.

(B) Mechanical ankle and wrist restraints attached to a waist belt by a lead chain may be used when transporting a youth off-campus.

(n) Requirements for Use of OC Spray.

(1) Authorization and Training for Use of OC Spray.

(A) OC spray is permitted only in TJJD-operated high-restriction and medium-restriction [~~high restriction~~] facilities.

(B) Unless reasonably believed necessary to prevent loss of life or serious bodily injury, authorization to use OC spray must be obtained from the facility administrator, assistant superintendent, or administrative duty officer prior to each use.

(C) The only staff authorized to routinely carry OC spray on-person are the facility administrator, assistant superintendent, administrative duty officer, juvenile correctional officer shift supervisor (one per shift), dorm supervisor, and security personnel whose primary responsibility is to patrol the campus and respond to security-related incidents. Any staff positions in addition to those listed must be authorized in writing by the executive director or his/her designee.

(D) Only staff who have been trained by TJJD in the use of OC spray are authorized to use it. TJJD's OC spray training curriculum must include a requirement that each staff member be sprayed with OC if:

(i) the staff member is receiving his/her first OC spray training as a TJJD employee; and

(ii) exposure to OC is not medically contraindicated.

(2) Criteria for Use.

(A) Except as provided in subparagraph (B) of this paragraph, OC spray is authorized for use only when non-physical

interventions and other physical interventions have failed or are not practical, and it is reasonably believed necessary to:

(i) quell a riot or major campus disruption;

(ii) resolve a hostage situation;

(iii) remove youth from behind a barricade in a riot or self-harm situation;

(iv) secure an object that is being used as a weapon and that is capable of causing serious bodily injury;

(v) protect youth, staff, or others from imminent serious bodily injury; or

(vi) prevent escape.

(B) Unless reasonably believed necessary to prevent loss of life or serious bodily injury, OC spray is not authorized for use on a youth when a medical provider has diagnosed the youth with a chronic, serious respiratory problem or other serious health condition identified by TJJD (e.g., significant eye problems, known history of severe allergic reaction to OC, or severe dermatological problems).

(3) Guidelines for Use.

(A) OC spray canisters must be carefully controlled at all times.

(B) Any youth affected by OC spray must be decontaminated with cool water as soon as the purpose of the restraint has been achieved.

(C) Immediately following decontamination from OC spray, medical staff must be contacted to examine and, if necessary, treat and monitor all youth and staff affected by OC spray.

(D) Each individually assigned canister of OC must be weighed at the time it is assigned and after each use.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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