

I. Criteria for Program Completion and Release under Supervision

Except for the less than 10% of youth who are sentenced to commitment under the violent or habitual offender law [Family Code, §§ 53.045 & 54.04(d)(3)], youth are not given a sentence of a term of years in the Texas Youth Commission (TYC). Regardless of the severity of their committing offense or delinquent history, they are committed to the agency's custody for an indeterminate period of time until they reach age 21. The determination whether they are discharged before age 21 is an administrative one [Human Resources Code, §§ 61.075 & 61.084(e)]. Discharge is based primarily on the success of their rehabilitation and reestablishment in the community as productive and law-abiding citizens.

Youth are not committed to TYC to simply "do time" as is the case with inmates in the adult prison system. There, the award and loss of "good time" is used as an incentive for inmates to behave and participate in training and rehabilitation programs. In TYC on the other hand, all youth are expected to progress in the agency's Resocialization Program in order to be released under supervision on parole and to be finally discharged from their commitment. Since youth are between ages 10 and 18 when they are committed, most are able to gain discharge before reaching age 21.

All youth are placed in TYC-operated or -contracted residential programs for a time before being allowed to return home or to a less restrictive program under parole supervision. The time required for them to meet the program completion criteria (37 TAC 85.55) determines their length of stay in these residential programs. They must attain phase 4 in all areas of the agency's Resocialization Program; complete the minimum length of stay assigned them based on their offense history; and have no recent serious misconduct.

A. Attain Phase 4 in all Areas of Resocialization

The Resocialization Program is phase-progressive and competency-based. This means that a youth will always know how far along the youth is in the program and exactly what remains to be done for the youth to complete it. The program has three functional areas – Academic, Behavior, and Correctional Therapy – with specific performance requirements in each area. The requirements in residential programs are generally sequenced in four phases that become more demanding as the youth acquires more skills and greater maturity and responsibility. Attainment of "A4, B4, C4" is required for program completion and release under parole supervision (where the fifth phase of Resocialization is begun, leading towards discharge). A phase assessment is conducted every 30 days to determine whether a youth has completed the requirements in each of the three functional areas. Based on the results of that assessment, the youth will continue working on the requirements at the youth's current phase, be promoted to begin work on the requirements at the next phase, or be demoted to repeat work on the requirements of the previous phase.

The assessment is conducted by a phase assessment team whose members are familiar with the youth's performance. Team members named by the facility administrator must include a juvenile correctional officer supervisor, an educator, and the youth's caseworker. The youth and the youth's parents are notified in writing of the team's assessment, including any assessment that has the effect of extending the youth's expected release date. A youth or the youth's parents may appeal the assessment through the agency's complaint resolution procedures, with a final appeal to the executive director.

B. Complete Assigned Minimum Length of Stay

In order to establish realistic expectations regarding how long the four phases of the Resocialization Program will take to complete, the agency has established minimum lengths of stay that are proportionate to the severity of the youth's delinquent history. If they reasonably apply themselves to the task to the best of their ability and avoid misconduct, youth can expect to complete the four phases of the Resocialization Program and earn parole release within that

minimum time. The minimum length of stay is 9 months for youth who are committed primarily for property offenses and simple assaults (youth classified as "General Offenders") and 12 months for youth who are committed for more serious offenses against persons or who chronically offend (youth classified as "Type B Violent Offender", "Chronic Serious Offender", "Controlled Substances Dealer", and "Firearms Offender"). A 24-month minimum length of stay is set for youth who are committed for murder and sexual assault (youth classified as "Type A Violent Offender"). The longer minimum stay for these youth is in recognition of the fact that they represent the most serious risk and greater caution will be exercised in their progress assessment. (For a detailed list of offenses that qualify for each classification, see 37 TAC 85.23.)

After their initial commitment, youth usually stay in a residential program longer than their expected minimum lengths of stay. The average is about 17 months for those with a minimum length of stay of 9 months and about 21 months for those with a minimum stay of 12 months. It is about 50 months for those with a 24-month length of stay. For the most part, the longer stays are attributable to the youth's continuing to engage in assaultive and disruptive behavior that evidences failure to progress in rehabilitation. They are notified in advance that their misconduct will extend their expected minimum lengths of stay. Youth who receive extensions in minimum lengths of stay for these reasons are likely not progressing in their resocialization phases as well.

Youth are provided a disciplinary hearing (called a Level II hearing) when they are accused of misconduct that might result in extending their length of stay for longer than 30 days. Depending on the severity of the misconduct, up to six months might be added to a youth's earliest expected release date. An impartial staff member who is trained for the task is assigned by the facility administrator to act as hearing manager. At least 24 hours before the hearing, the youth and the youth's advocate are given notice of the allegation against the youth and of all written material and witnesses expected to appear at the hearing. The youth is notified of his/her right to remain silent, to be assisted by an informed and responsible advocate of the youth's choosing, to confront and cross-examine adverse witnesses who testify at the hearing, to contest adverse evidence admitted at the hearing, to call available witnesses and present evidence, and to appeal the results of the hearing to the executive director. Reasonable efforts are made to notify the youth's parents at least 24 hours prior to the hearing. The standard of proof is preponderance of evidence. The hearing is tape-recorded and a hearing manager's report is prepared.

C. Commit No Serious Misconduct in Last 90 Days

Regardless of the fact that a youth may have attained phase 4 in each area of the Resocialization Program and completed the assigned minimum length of stay, the youth will not be released under parole supervision if the youth commits an assault or other serious misconduct on the way out the door. There must be no "Category I" rule violation (see 37 TAC 95.3) within the previous 90 days in order to qualify for program completion and release.

II. Exceptions for Certain Youth Whose Length of Stay Becomes Disproportionate – Maximum Length of Stay

Agency rules are designed to strike a fair balance between the benefits of youth's achieving completion of all their resocialization objectives and the detrimental effect of their being confined for periods that are disproportionate relative to the severity of their offense and delinquent history (see 37 TAC 85.41). For all youth, other than youth committed for a violent offense who have a 24-month minimum length of stay (Type A Violent Offenders) and youth sentenced to commitment under the violent or habitual offender law, there is a maximum length of stay in residential programs. After that maximum period of time, the youth must be released under parole supervision. Usually, youth are released on parole when they have completed their expected minimum lengths of stay and have achieved all phase 4 goals of their resocialization program. If they have not done that, the maximum length of stay is reached when the youth have completed their minimum length of stay and 4 months have elapsed since they achieved phase 3 in all the areas of the Resocialization Program; 8 months

have elapsed since phase 2; or 12 months since phase 1. The number of months required following achievement of each of the phases is higher for Type B Violent Offenders and other more serious offenders (8, 12 and 18 months respectively). In no event, however, is a youth eligible for release if the youth has committed a serious rule violation within the previous 90 days.

III. Exceptions for Certain Youth with Mental Illness or Mental Retardation

In 1997, the legislature amended the Family Code to require TYC to accept youth with mental illness, just as it had with regard to youth with mental retardation in 1995 (Human Resources Code, Sec. 61.077). The agency's mission is to stabilize these youth sufficiently to enable their participation in the regular Resocialization Program. The high structure of training school programs and use of psychotropic medication, both under psychological and psychiatric oversight, allow most of these youth to be maintained safely there and to progress and earn release under parole supervision. Some youth, however, are unable to progress due to the severity and intractability of their mental disorders. As a result, their length of stay can become disproportionate to the seriousness of their committing offense relative to other youth. That is the reason the 1997 legislation included a provision requiring discharge of youth (other than youth sentenced to commitment under the violent and habitual offender law) who are unable to progress in the regular resocialization program due to their mental illness or mental retardation after they have completed their assigned minimum length of stay [Human Resources Code, Sec. 61.077(b)]. In appropriate cases, application for court-ordered mental health services or referral for mental retardation services is made for these youth prior to their discharge (Human Resources Code, Sec. 61.0772).

IV. Exceptions for Youth Sentenced Under the Violent and Habitual Offender Law (Sentenced Offenders)

In certain cases a juvenile court or jury may order a determinate sentence instead of an indeterminate commitment [Family Code, §§ 53.045 & 54.04(d)(3)]. A sentence of up to 40 years may be imposed for capital or first degree felonies; shorter sentences are imposed when there are repeated adjudications for other felonies. After a minimum period of confinement in a TYC institution (10 years for capital murder; 3 years for aggravated controlled substance felonies and first degree felonies; 2 years for second degree felonies; and 1 year for third degree felonies), TYC is authorized, without court approval, to release the youth under parole supervision [Human Resources Code, Sec. 61.081(f)]. After youth reach the age of 21 (or earlier if they are paroled after age 19), and if there is time remaining on their sentences, the youth are transferred automatically to adult parole to complete their sentences.

Other than the different minimum periods of confinement (instead of the minimum lengths of stay that are applicable to indeterminate commitments), the program completion criteria for sentenced offenders are the same as those for other youth.

V. Exceptions for Population Management

When youth populations in TYC residential facilities reach 3% above budgeted capacity, the facility's superintendent may release certain youth under parole supervision who have attained at least phase 3 in all areas of the Resocialization Program and who have completed their minimum length of stay. When populations reach 5% above budgeted capacity, the facility's superintendent is required to implement this measure. Youth in specialized treatment programs, Type A Violent Offenders, Sentenced Offenders, and youth whose sex offender registration requirement has been deferred are not eligible for release under this exception. [see 37 TAC 85.45(e)]