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DIVISION 800

CRIMINAL HISTORY RECORDS CHECKS FOR OYA APPLICANTS AND EMPLOYEES

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416-800-0010	Scope of Rules
416-800-0020	Definitions
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DIVISION 1

PROCEDURAL RULES

416-001-0000

Notice Rule for Rule Making

Prior to adoption, amendment or repeal of any rule, the Oregon Youth Authority shall give notice of the intended action.

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the intended action;

(2) By mailing a copy of the notice at least 28 days prior to any action to persons on the Oregon Youth Authority mailing list established pursuant to ORS 183.335(7); and

(3) By mailing or furnishing a copy of the notice to the following list at least 28 days prior to any intended action:

- (a) Associated Press;
- (b) The Oregonian, Portland, Oregon;
- (c) East Oregonian, Pendleton, Oregon;
- (d) Statesman Journal, Salem, Oregon;
- (e) Medford Mail Tribune, Medford, Oregon;
- (f) The Register Guard, Eugene, Oregon;
- (g) The Bulletin, Bend, Oregon;
- (h) Oregon State Bar Bulletin;
- (i) American Civil Liberties Union;
- (j) Association of Oregon Counties;
- (k) Crime Victims United;
- (l) Children and Families Commission;
- (m) State Office for Services to Children and Families;
- (n) District Attorneys;
- (o) Juvenile Rights Project;
- (p) Oregon Sheriffs Association;
- (q) Police Chief's Association;
- (r) Adolescent Sex Offender;
- (s) Juvenile Judges;
- (t) Hispanic Advisory Group;
- (u) NE Rescue Plan Action Committee;
- (v) Juvenile Departments.

Stat. Auth.: Chapter 422, Oregon Laws, 1995

Stats. Implemented: Chapter 422, Oregon Laws, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-001-0005

Model Rules of Procedure

The Oregon Youth Authority hereby adopts the September 9, 1995 version of the **Attorney General's Uniform Model Rules of Procedure under the Administrative Procedure Act**.

Stat. Auth.: Ch. 422, Oregon Laws, 1995

Stats. Implemented: Ch. 422, Oregon Laws, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 20

GRIEVANCE REVIEW PROCEDURES FOR YOUTH AND PROVIDERS

416-020-0000

Purpose

These rules prescribe the standards and procedures for reviewing and resolving youth and contract provider grievances. These rules do not apply to matters subject to the Contested Case

Procedures of ORS Chapter 183, or to any of the hearings procedures for Oregon Youth Authority adopted in department OARs 416-410-0000 through 416-410-0020.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-020-0010

Definitions

(1) "Director" means the Director of Oregon Youth Authority.

(2) "Youth" means any person receiving services from the department including parents, legal guardians, or custodians of an unemancipated minor youth.

(3) "Contract Provider" means any person or organization under contract or agreement with the department providing services to a OYA youth.

(4) "Department" means the Oregon Youth Authority.

(5) "Grievance" means a complaint about:

(a) The substance or application of any rule, written or unwritten policy or practice of the department affecting a youth or provider;

(b) Any decision or action directed toward a youth or provider by the department or any of the department's employees or agents.

(6) "Informal Grievance Review" means resolution of a grievance by the procedures described in OAR 416-020-0040.

(7) "Formal Grievance Review" means resolution of a grievance by the procedures described in OARs 416-020-0050 and 416-020-0060

(8) "Representative" means a person who is authorized by a youth or provider to receive confidential information from the department and to act on behalf of the youth with respect to a grievance. A representative includes, but is not limited to an attorney, relative, friend or legal guardian. A representative may participate in any of the steps of the process.

(9) "Citizen Review Committee" means any body composed of public members appointed by the department to assist in the implementation of these rules.

(10) "Timelines" means the procedural timelines outlined in OARs 416-020-0030 through 416-020-0040. OYA will make every effort to meet the procedural timelines outlined in these rules. In the event set timelines cannot be met for good reason, extension of the time frames will be negotiated between the parties and the agency.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-020-0020

Right to a Review

It is the policy of the Oregon Youth Authority that:

(1) Youths have a right to a review of any action or decision affecting them.

(2) Contract providers have the right to a review of any action or decision of the Department which violates a condition or term of the contract or agreement.

(3) Each youth or provider will be informed of OYA's grievance procedure at the time the decision has been made that services will be provided or a contract is signed with a provider.

(4) When a person notifies the agency that he/she has a grievance, he/she will be assisted in setting a meeting with the counselor and that person's supervisor.

(5) No youth or provider shall be subjected to reprisal for seeking review of a grievance.

(6) These grievance procedures shall be administered in such a manner as to protect the confidentiality of youth records.

(7) However, if the youth/provider or any agent of the youth/provider chooses to disclose his or her version of case information to the media or community members who would otherwise not be involved, then the local OYA manager may choose to use those parts of the case record that are not third party to refute the youth/provider's statements. Third party information can be used

only when the youth/provider has signed a release of information, and approval has been given by the party from whom the confidential information was received. See OAR 416-110-0000 through 416-110-0140.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-020-0030

Grievances Not Subject To These Rules

(1) No grievance may be reviewed or resolved through the grievance procedures set forth in these OAR (416-020-0010 through 416-020-0090) if the youth or provider is entitled to a contested case hearing, their case is presently being adjudicated or the youth/provider has initiated court action or filed notice of intent to file tort claim.

(2) No grievance may be reviewed or resolved through the grievance procedures set forth in these OAR (416-020-0005 through 416-020-0090) if the subject matter of the grievance should be or has already been decided by a judge.

(3) No grievance may be reviewed or resolved through the grievance procedures set forth in these OAR (416-020-0010 through 416-020-0090) if the subject matter of a provider's grievance is a term or condition included in a contract or agreement with the department.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-020-0040

Grievance Procedures-Informal Grievance Review

(1) To request an informal grievance review the youth or provider need only inform the supervisor or the OYA employee they have been working with.

(2) Within one week of request for an informal grievance review, the youth/provider will be contacted to schedule a meeting at an agreed-upon time involving the worker, the supervisor, youth or provider. Focus will be on defining the problem, identifying the desired outcome, and establishing a plan for resolution. Every effort will be made to resolve the grievance through this informal discussion.

(3) If the matter cannot be resolved, the manager shall participate in a further discussion with the youth or provider to resolve it. This discussion will be scheduled as soon as possible at a mutually agreed-upon time. If the youth or provider remains dissatisfied following this discussion, the youth or provider shall be informed within five working days in writing of the decision by the manager and of the steps necessary to initiate a formal grievance review, as described in OAR 416-020-0050.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-020-0050

Formal Grievance Review

(1) The request for a formal grievance review must be made, in writing, by the youth, the provider, or their representative. Such a request shall include a statement of the problem and the desired resolution and a consent for the public release of information by the agency if the youth publicly shares information about the case. The request shall be addressed to the administrative staff responsible for supervision of the employee or agents involved in the grievance.

(2) The director or designee shall:

(a) Contact the youth or provider and arrange for an appointment to review the grievance with the youth/provider, their representative, if any, and, if appropriate, the assigned employee and supervisor(s);

(b) Obtain a summary of the issues raised through the informal grievance review and a copy of the youth's written request for a formal grievance review;

(c) Send to the youth or provider written notice stating the date, time, and location of the review at least 10 working days

prior to the scheduled review;

(d) Reschedule the review at the earliest available time if requested by the youth, the provider, or representative or if any of the necessary participants are unable to attend.

(e) Conduct the formal grievance review according to the procedures described in OAR 416-020-060.

(3) The regional manager/superintendent shall make a decision in accordance with the procedures described in OAR 416-020-0060.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-020-0060

Conduct of Formal Grievance Review

(1) The formal grievance review must be scheduled within 10 calendar days of receipt of the written request for formal grievance review.

(2) The formal grievance review must be held within 30 calendar days of receipt of the written request for review, unless the youth or provider requests a delay of the review, or the manager reschedules the review pursuant to OAR 416-020-0050(2)(d).

(3) The formal grievance review shall be held at the OYA office or facility closest to the youth's home or provider's facility or business during normal working hours unless a different time or location is requested by the youth or provider and approved by the director or designee.

(4) The review shall be audio tape recorded and the audio tape recording shall be preserved until the grievance is resolved or for one year, whichever is longer.

(5) The review will be conducted as informally as possible consistent with the need for orderly and complete presentation and resolution of the grievance.

(6) The rules of evidence and civil procedure are not applicable to formal grievance reviews. However, in reviewing and resolving a grievance, the manager shall consider only information that concerns the actual grievance.

(7) The director or designee shall prepare a written decision within 10 working days after the review and send a copy (by certified mail) to the youth/provider, the assigned worker, the supervisor, the manager and the director. The written decision shall be in the following format:

(a) Date of Review;

(b) In The Matter of The Grievance of;

(c) Persons participating in review;

(d) Issue;

(e) Written materials and comments relied upon;

(f) Findings of Fact;

(g) Conclusion;

(h) Decision;

(i) Notification that the matter may be appealed to the director and a statement of the procedures for requesting such appeal.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-020-0070

Appeal To The Director

(1) If the youth/provider is dissatisfied with the director's decision of the grievance, the youth/provider may request the director or designee in the director's absence, to review the Director's decision.

(2) A written request by the youth/provider for review must be presented to the director within 30 calendar days of the youth's/ provider's receipt of the director's decision and must contain a statement of the youth's/provider's reasons for dissatisfaction with the director's action.

(3) The director or designee shall send a written acknowledgment to the youth/provider that the request for review has been received. This will be done within 10 working days of the receipt of the request for review.

(4) A citizen review committee shall be appointed by the director or designee to review the written decision of the director.

They may review the tape recordings of the grievance review, interview interested parties, obtain pertinent portions of youth/provider records, and obtain such additional information as they deem appropriate. The written findings and recommendations of the citizens review committee shall be sent to the director within 20 working days of the appointment to review the appeal.

(5) The director shall review the written decisions of the director and the findings and recommendations of the citizens review committee. The director may also review the tape recordings of the grievance reviews and may take such other action to investigate the matter as the director deems appropriate.

(6) The director shall reach a decision and shall prepare a written report of his/her decision within 10 calendar days of receipt of the findings and recommendations of the citizens review committee. The director shall give copies of the decision to the youth/provider, the director, the citizen review committee, the manager, the service worker and the supervisor.

(7) The decision of the director is final, and is not appealable. The decision of the director is not an order under the Administrative Procedures Act.

(8) The agency shall review the recommendations of the citizens review committee and incorporate suggested changes in policy and practice when feasible and when determined to improve services to youth.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-020-0080

Judicial Review

These rules do not create a contested case subject to judicial review under ORS 183.482. However, nothing in these rules shall affect any rights of a youth/provider under state or federal law to seek independent redress of grievances in the courts.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-020-0090

Cost and Attorney Fees

This process is meant to be set up in a way which precludes the need for an attorney; however, if the youth/provider chooses to use an attorney, then the youth/provider is responsible for any expenses or attorney fees which the youth/provider may incur in presenting or resolving a grievance under these rules.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 30

JUVENILE CORRECTIONS COUNCIL

416-030-0000

Authority

The Legislature, through ORS 183.310-183.550, authorizes the Director of the Oregon Youth Authority to establish, by administrative rule, rules necessary for the administration of the laws that the Oregon Youth Authority is charged with administering.

Stat. Auth.: ORS 422

Stats. Implemented: ORS 183.310 - ORS 183.550

Hist.: OYA 1-1996, f. 6-26-96, cert. ef. 8-1-96

416-030-0010

Definitions

Juvenile Corrections Council: A group of appointed individuals with juvenile justice interest and/or background whose function is to review current statewide juvenile justice issues and to provide the Director of the Oregon Youth Authority with information and recommendations regarding the development and administration of Oregon Youth Authority policies and procedures related to youth corrections programs.

Stat. Auth.: ORS 422

Stats. Implemented: ORS 183.310 - ORS 183.550

Hist.: OYA 1-1996, f. 6-26-96, cert. ef. 8-1-96

416-030-0020

Establishment

The Director of the Oregon Youth Authority establishes the Juvenile Corrections Council.

Stat. Auth.: ORS 422

Stats. Implemented: ORS 183.310 - ORS 183.550

Hist.: OYA 1-1996, f. 6-26-96, cert. ef. 8-1-96

416-030-0030

Purpose and Scope

The Juvenile Corrections Council shall serve as a forum for the exchange of information on juvenile justice-related matters. Furthermore, the Juvenile Corrections Council shall provide advice and recommendations to the Director of the Oregon Youth Authority concerning the development and functions of state programs for youth corrections.

Stat. Auth.: ORS 422

Stats. Implemented: ORS 183.310 - ORS 183.550

Hist.: OYA 1-1996, f. 6-26-96, cert. ef. 8-1-96

416-030-0040

Membership

The membership of the Juvenile Justice Council shall consist of eleven voting members appointed by the Director of the Oregon Youth Authority. The appointments shall be comprised of the following:

- (1) A county commissioner;
- (2) A representative of the Oregon defense bar;
- (3) A representative of a victims' advocacy group;
- (4) A representative of law enforcement with particular knowledge of or expertise in juvenile justice matters;
- (5) A county juvenile department director nominated by the Oregon Juvenile Department Directors' Association;
- (6) A district attorney nominated by the Oregon District Attorneys' Association;
- (7) An Oregon Youth Authority substitute care service provider;
- (8) A representative of the Oregon Department of Education;
- (9) A member of an OYA collective bargaining unit;
- (10) Two members of the public with experience and/or interest in matters related to juvenile justice and juvenile crime prevention.

Stat. Auth.: ORS 422

Stats. Implemented: ORS 183.310 - ORS 183.550

Hist.: OYA 1-1996, f. 6-26-96, cert. ef. 8-1-96

416-030-0050

Appointments

Appointments to the Juvenile Corrections Council shall generally be for terms of one calendar year. The Director of the Oregon Youth Authority may, at his or her discretion, appoint representatives to terms of less or more than one year to ensure Council membership continuity. Council members may be appointed to more than one term of office.

Stat. Auth.: ORS 422

Stats. Implemented: ORS 183.310 - ORS 183.550

Hist.: OYA 1-1996, f. 6-26-96, cert. ef. 8-1-96

416-030-0060

Chairperson

A chairperson shall be elected by members of the Council. The term of office for the chairperson shall not exceed twelve months. The chairperson shall be responsible for directing the Council's meetings and approving Council minutes. In addition, the chairperson shall be responsible for coordinating agenda items with the Director of the Oregon Youth Authority or designee.

Stat. Auth.: ORS 422

Stats. Implemented: ORS 183.310 - ORS 183.550

Hist.: OYA 1-1996, f. 6-26-96, cert. ef. 8-1-96

416-030-0070

Meetings

The Juvenile Corrections Council shall hold scheduled meetings once per month at a location selected by majority agreement of Council members. More frequent meetings may be held upon majority agreement of Council members present at meeting. Scheduled meetings may be canceled by majority agreement of Council members.

Stat. Auth.: ORS 422
Stats. Implemented: ORS 183.310 - ORS 183.550
Hist.: OYA 1-1996, f. 6-26-96, cert. ef. 8-1-96

416-030-0080

Agenda

Members of the Juvenile Corrections Council may submit agenda items for Council consideration and discussion. Items should be sent to the Director of the Oregon Youth Authority or designee at least one week prior to the scheduled meeting time. The Director or designee and the Council chairperson shall determine which agenda topics are most significant to be considered by the Council.

Stat. Auth.: ORS 422
Stats. Implemented: ORS 183.310 - ORS 183.550
Hist.: OYA 1-1996, f. 6-26-96, cert. ef. 8-1-96

416-030-0090

Recommendations to the Director

After a thorough discussion of an issue, the Juvenile Corrections Council may make a recommendation to the Director of the Oregon Youth Authority by a majority voice vote of a quorum of six Council members. The Director or designee shall report back to the Council on the status of each recommendation, specifically whether the recommendation was implemented, revised, or declined.

Stat. Auth.: ORS 422
Stats. Implemented: ORS 183.310 - ORS 183.550
Hist.: OYA 1-1996, f. 6-26-96, cert. ef. 8-1-96

416-030-0100

Community Participation

Individuals with expertise and/or interest in juvenile justice issues may be invited by the Director of the Oregon Youth Authority or the Council chairperson to attend Juvenile Corrections Council meetings. These persons are encouraged to participate in Council discussions but shall not have voting rights on Council recommendations.

Stat. Auth.: ORS 422
Stats. Implemented: ORS 183.310 - ORS 183.550
Hist.: OYA 1-1996, f. 6-26-96, cert. ef. 8-1-96

416-030-0110

Staff Support

The Oregon Youth Authority shall provide staff to support the activities of the Juvenile Corrections Council. This support includes, but is not limited to, carrying out staff assignments recommended by the Council and taking and distributing minutes of Council meetings, after approval of the Council chairperson.

Stat. Auth.: ORS 422
Stats. Implemented: ORS 183.310 - ORS 183.550
Hist.: OYA 1-1996, f. 6-26-96, cert. ef. 8-1-96

DIVISION 50

FUNERAL AND BURIAL EXPENSES

416-050-0000

Purpose

These rules describe the limitations on the payment of funeral and burial expenses for a youth who dies while in the legal custody of OYA.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-050-0010

Eligibility For Payment

Funeral and burial expenses shall only be authorized for a youth who is in OYA's legal custody and placed in substitute care at the time of death. All other resources for payment of burial expenses, including parents or guardians, must be explored before approval is given for the Department to make payments.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-050-0020

Payment Method

Payment by OYA Administrative Expense Voucher. This expenditure will be charged to the Services and Supply allocation. Vendors must submit itemized billings on their letterhead.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-050-0030

Allowable Costs

The maximum amount OYA will pay for the combined expenses of funeral services and the burial or cremation is determined by OYA Central Administration.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 100

SUPPORT ENFORCEMENT DIVISION REFERRALS

416-100-0000

Purpose

These rules explain the mandatory referrals of youth in substitute care and Youth Correctional Facilities to the Support Enforcement Department (SED) of the Department of Justice.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-100-0010

Definitions

(1) Obligor means any person who has a court ordered obligation (or who volunteers) to make payments for the support of a youth or caretaker parent or other dependent person.

(2) Support Enforcement Division (SED) means a Division in the Department of Justice responsible for enforcing the support obligation of parents whose youth are receiving public assistance.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-100-0020

Informing Parents of Financial Obligations

The OYA worker shall inform the legal parents that they will be referred to Support Enforcement Division (SED), who will contact them to determine the amount of support they will be required to pay and will enforce collection of the support obligation. When there is no legal father, a referral so stating will be sent to SED.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-100-0030

Referrals to SED

Unless exempt, the legal parents of all youth in the care and custody of OYA who are in a paid substitute care placement, Youth Correctional Facility or Camp will be referred to SED. Referral information will be reported to SED automatically when substitute care or institutional service is authorized and this infor-

mation is entered on Oregon Youth Authority's Integrated Information System (IIS). When legal parents are exempt from SED Referrals the reason for the exemption must be documented in the case file. Legal parents are exempt from referral when:

(1) The legal parent(s) of the youth are deceased. OYA will, however, make application for survivors benefits and pursue resources for the youth from the parent(s)' estate where appropriate.

(2) The parent(s) have been exempt for good cause as follows:

(a) Temporary exemption for good cause:

(A) Exemption for good cause shall not be approved for more than three (3) months unless after three (3) months the exemption is reestablished and approved by the supervisor.

(b) Permanent exemption of legal parents may be approved when it is in the best interest of a youth and the agency, the Director or designee may approve an exception.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-100-0040

Existing Support Orders

The worker will determine, if possible, whether there is an existing support order. Information obtained about the existing Support Order (case number, amount, county where the order was issued, Social Security numbers, and birth dates of legal parents) shall be entered on OYA Integrated Information System (IIS).

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-100-0050

Notification of Change

SED will be automatically notified when the information is entered on IIS when any of the following occur:

(1) The youth leaves paid placement.

(2) A youth begins receiving federal benefits.

(3) The cost of care changes.

(4) The youth's parent(s) are incarcerated or die.

(5) Corrections or changes to the referral.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 110

CONFIDENTIALITY OF CASE RECORDS

416-110-0000

Purpose

The purpose of these rules is to describe the conditions under which information about clients can be shared and to whom the information can be given without an order of the court. The principle of confidentiality is a good casework practice. A youth is entitled to assurance that the Oregon Youth Authority will do everything possible to hold information given by him/her or other sources in the strictest confidences allowed under the law. Youth are also entitled to know the conditions under which the information may be divulged. The following procedure will be followed by all staff of the Oregon Youth Authority.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-110-0010

Definitions

(1) "Client": means any person receiving services from the department, including parents, legal guardians, or legal custodians of an unemancipated minor client.

(2) "Court Appointed Special Advocate (CASA)": Means a person appointed by the court pursuant to a CASA Volunteer Program to act as special advocate for a child pursuant to ORS 419A.170.

(3) "Legally Emancipated": A person under 18 years of age who is married or has been emancipated by the court in accordance with the requirements of ORS 109.510 to 109.565.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-110-0020

Youth Offender Records

Youth offender records are any official agency records which identify an individual who was committed to the OYA by the court and has received services from the OYA. Youth Offender records include any writing or recording of information including automated records and printouts, handwriting, typewriting, printing, Photostating, photographing, magnetic tapes, video tapes or other documents.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-110-0030

Liabilities

(1) In general, no staff is liable for any act done in the performance of his or her duty, which is within his or her authority.

(2) Due to the limits for reply, it is imperative that the originals of any papers served on a staff member be forwarded at once through the Superintendent's or Manager of Community Service's office to the Assistant Attorney General assigned to deal with Oregon Youth Authority issues.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-110-0040

Judicial Proceedings Guide

(1) Information from confidential records will not be divulged in any judicial proceedings unless it is directly connected with the administration of OYA programs or when the youth has given written and specific authorization for such release or when ordered by the court.

(2) Whenever any OYA staff member is served with a subpoena or any other legal process which might involve the release of confidential information, they will bring to the attention of the presiding judge, the state and federal statute and regulations relating to confidentiality of the records in question and will ask the court's guidance in testifying. The staff will then answer questions at the direction of the judge.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-110-0050

Protection of Information

(1) Youth offender information may be used by the OYA for purposes directly connected with the administration of the OYA's programs. Regulations prohibit other use of offender information, records or reports unless:

(a) Required by federal/state law or regulation;

(b) Ordered by a judge;

(c) Authorized by these rules; or

(d) Requested in writing by the offender or his/her representative.

(2) Access to records shall be supervised by the Superintendent of a correctional facility or designee or the manager of Community Services or designee. OYA may require a reasonable period of time, usually seven calendar days, to prepare a record for review and may require persons requesting access to a file to make appointments.

(3) Individuals, agencies or organizations, who exchange or receive confidential information about clients from OYA, are expected to preserve the confidential nature of the communication. Assurance must be given that the information will only be used for the purpose for which it was made available. Copies of information from client records that are stamped "Confidential" shall

not be copied or shared with others without the prior permission of OYA and meet the following criteria:

(a) The standards of confidentiality of the agency are equal to those of the OYA. If such standards are lower, information will be provided to the agency only upon specific written authorization of the youth:

(A) Information received by the OYA from OASDI, Veteran's Administration or the Workmen's Compensation Board may not be released even with the authorization of the youth;

(B) Alcohol and Drug Treatment information must be released only if criteria in the federal regulation **42 CFR Part 2** are met.

(C) Mental health information complies with Oregon Law Chapter 179.

(b) The confidential character of the information will be preserved;

(c) The information provided will be for the exclusive use of the agency or institution and will be used only for the purpose for which it is made available;

(d) Information, whether recorded or otherwise, pertaining to a youth which was obtained from another social agency, public department, institution, hospital, physician or attorney will be for the exclusive use of the OYA in the administration of the program for which it is responsible. Such information may be disclosed to persons or agencies other than those specifically authorized in writing by the client only if:

(A) Disclosure is deemed to be directly related to the administration of the OYA;

(B) The source of the information gives written authorization for such release.

(4) Copies of youth offender information used for ad hoc consultation (e.g., case staffing) and not needed for the permanent file of the consultant, shall be promptly destroyed.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-110-0060

Access to Client Records

(1) A person having access to OYA records has the freedom to look at, obtain copies, and make use of the information contained in the record, with the exception of the following:

(a) Information from records sealed by a court order of expunction;

(b) Confidential information provided to the OYA in good faith on the basis that the information will not be disclosed. This includes:

(A) Reports from treatment facilities;

(B) Medical;

(C) Drug and/or alcohol;

(D) psychiatric and psychological treatment reports that are provided to OYA and marked confidential;

(E) Information provided in confidence by private citizens. Unless OYA receives permission to release such information, the requester shall be informed that OYA has such information and be advised to contact the source of the information.

(2) Youth offenders have the right to inspect their own records with the following exceptions:

(a) Reports provided to the Oregon Youth Authority in confidence by another agency, institution, hospital, physician or attorney. Because of the Doctor-patient relationship, reports prepared by psychiatrists and psychiatrists employed by the OYA are protected documents;

(b) Oregon Youth Authority reports produced specifically for the juvenile court as juvenile court records are by law considered confidential. Note* This protection is not extended to youth housed in Youth Correctional Facilities that have been waived to adult court;

(c) When the Superintendent or Manager of Community Services or designees deem it contrary to the welfare of the youth.

(3) When the juvenile court confirms that a person is the attorney of record in a juvenile court proceeding, the attorney may have access to the records without the written authorization of the

client.

(4)(a) Parents of youth have the same right as any other member of the public to inspect their child's record. As with other members of the public, they may request that they be allowed to review the records. The OYA may ask the Attorney General to review the request when it appears harmful to the youth. If the agency refuses the request, the parents may seek an Attorney General's review or a court order if they desire to review the case records;

(b) Unless ordered by the court to release the information, the OYA may withhold from a parent or guardian the identity and address of the person caring for the youth if the OYA has reason to believe such action is necessary to protect the safety of the youth or the person caring for the youth.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-110-0070

Expunged Records

When an OYA record or part of a record has been sealed or marked as expunged, no information can be released about the individual from the record or part of the record except to fulfill administrative requirements (such as audits, preparation for legal action, etc.) or upon an order of the court.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-110-0080

Prior Approval for Research Purposes

The Director of the OYA may give prior approval to a person or organization to review records for the purpose of research. The researcher must agree to maintain the confidentiality of individual youth. Copies of OYA records cannot be taken from official files and no identifying information about a specific client may be included in the report(s) of the research.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-110-0090

Reasons for Disclosure

When it is in the best interest of the affected youth; unless specifically forbidden by statutes, these rules, or by court order; the OYA may disclose information in order to administer youth offender programs and provide services. Reasons for disclosure include providing information to:

(1) Juvenile or tribal court proceedings involving the jurisdiction, custody, placement, supervision or provision of services to a youth.

(2) A social service agency, service provider or agent of OYA for the purpose of arranging appropriate services for the affected youth and the youth's family, e.g., intensive family service workers, foster parents, youth care centers, private youth caring agencies, treatment centers, Indian social service or child welfare agencies, physicians and other health care providers, mental health professionals, volunteers, student interns etc.

(3) A member of a legislative body: The request for disclosure must be accompanied by a written release signed by the youth, except that, as an accommodation to the client and if the legislator representing the client can provide assurance that the client has authorized disclosure, the client's record may be briefly discussed with that legislator so long as there is neither physical inspection nor copying of client's records by that representative. Information available to the representative shall be the same as that available to the client. A written release must include:

(a) The identity of the person(s) or organization to whom disclosure is to be made;

(b) The identification of the client record or portion thereof to be disclosed;

(c) Statement of when the authorization for disclosure expires;

(d) Request for disclosure must be authorized by the Director

of the OYA or designee.

(4) The Support Enforcement Division when information is needed in order to locate children or absent parents, and to establish support for youth in substitute care.

(5) Department of Health and Human Services who require information to complete audits or program reviews. Information specific to alcohol and drug treatment must have a Release of Information signed for anyone reviewing records who is not employed by OYA. The release must meet specifications of **42 CFR Part 2**

(6) Divisions of the Department of Human Resources that need information to determine a client's eligibility for services or for administration of their own programs.

(7) A law enforcement officer or a district attorney's office needing information for a child abuse assessment or criminal investigation or civil or criminal proceedings connected with administering the OYA's youth offender's programs.

(8) Citizen Review Boards in connection with official duties of the board.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-110-0100

Investigation of Other Crime

(1) Except as authorized by OYA, employees shall not give law enforcement officers any information on offenders from case records, conversations, or sources obtained because the person is or has been a committed offender with the OYA.

(2) The Superintendent or manager of Community Services or their designee may give a youth's current address to law enforcement officers when all the following are true:

(a) The law enforcement officer provides the name and SSN of the youth; and

(b) The officer satisfactorily demonstrates that the youth is a fugitive (as defined by the state), the location or apprehension of such fugitives is within the law officer's official duties, and the request is made in the proper exercise of those duties.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-110-0110

Public Disclosure

(1) Under certain circumstances information from youth offender records may be released to the public. These circumstances include the following:

(a) If a youth knowingly and voluntarily signs a release authorizing the OYA to disclose information about himself or herself to which the youth has access;

(b) In an offender grievance the findings of a citizen review committee may be disclosed to the public, at the discretion of the OYA when the aggrieved offender has directly or indirectly disclosed information to the public and the offender refuses to authorize the release of the findings, and the public interest warrants a response. The decision to release information for this purpose shall be made by the Director or Deputy Director of OYA or their designee.

(c) If in the professional judgment of the employee, information about a youth indicates that the youth presents a clear and immediate danger to another person or society, information shall be provided to the proper authorities and the person or entity in danger. (The decision to release information in these circumstances will be made in consultation with a supervisor.)

(2) A public announcement may be made when:

(a) A youth in the legal custody of the OYA escapes from a Youth Correctional Facility; or

(b) Where a youth in the OYA's legal custody has been abducted, or is missing and believed to be abducted, in danger of harm or a threat to the welfare of others. In such situations, the information disclosed by the OYA shall be limited to that which is necessary to identify, locate, or apprehend the youth. That information may include the youths name, description, and information

concerning any risks the youth may pose to himself or herself or to the public.

(c) When the OYA determines that providing public recognition is in the best interest of a youth who is in the legal custody of the OYA in order to secure essential services for a youth or for the recognition of a special achievement;

(d) Documents or information in youth's records have already been lawfully disclosed to the public by OYA;

(3) When there is a death or serious injury of a youth in the legal custody of OYA, the name and photograph of the youth may be disclosed.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-110-0120

Use of Youth Offender Information By Service Providers or Agents of the Oregon Youth Authority

(1) Social service agencies, courts, foster parents, service providers (including medical providers), or agents of the OYA providing services to a youth offender at the request of the Department are subject to OYA policy on confidentiality.

(2) Confidential information about OYA youth offenders that is given to a provider or agent by the OYA shall only be used for the purpose for which it was made available. In no instance shall the information be re-disclosed without the specific and written consent of the OYA.

(3) Confidential information about current or former OYA youth obtained while providing services which were authorized by the OYA shall only be used to provide services to the youth. Identifying information about an OYA youth offender shall not be used for publicity, research, nor any other purpose that is not related to the authorized delivery of services to the youth unless specific and written consent is given by OYA with the authority to consent to the release of information.

(4) When copies of confidential information are released the material must be stamped: "Confidential not to be re-disclosed." Disclosure or re-disclosure of OYA youth offender information, alcohol and drug information and mental health treatment information, as discussed in this section must be specifically approved in writing by the appropriate person as follows:

(a) A Superintendent of a correctional facility or the Manager of Community Services or designee if the affected youth is or was at the time served;

(b) A youth for whom the OYA is the legal custodian or guardian or was the legal custodian or guardian at the time the services were authorized by OYA;

(c) A youth served by the OYA in accordance with an Interstate Compact or other interstate agreement.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-110-0130

Verbal Release of Information

Staff members shall not verbally release information about clients except in accordance with this rule. OYA staff must follow ORS 192.502 (2)(3) when releasing information verbally.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-110-0140

Release of Information to Youth or Authorized Representative:

(1) Youth:

(a) Only the staff specifically designated by the Superintendent at a Youth Correctional Facility or in the field may make the youth's record available to them;

(b) The youth may see only his or her record. Material defined as exceptions will be temporarily removed from the record before it is released to the youth;

(c) When it is determined a youth may read his or her record,

it will be read in the office in the presence of the Program Director, the Superintendent or their designee;

(d) Copies of the case record will be given to the youth or his representative, if he requests such copies and upon payment of the actual cost of reproducing the record. Suggested charges are \$.10 per copy page and \$1.00 per page for material that must be retyped. An exception to the copying charge may be made at the discretion of the Program Director, if in his or her opinion, the youth has need for the copies and lacks funds to pay the fee.

(2) Youth's Authorized Representative:

(a) A youth's court appointed attorney may inspect the youth's record subject to the procedures prescribed above;

(b) Authorization for the youth's representative to inspect the case records must be made in writing:

(A) A form has been designed for this purpose. The use of this form is optional. Any clearly stated authorization shall be accepted;

(B) No authorization may be made for a period exceeding two weeks.

(c) Authorization must be retained and filed in the case record. All other procedures are the same as prescribed above.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 120

EXERCISE AND DELEGATION OF LEGAL CUSTODIAN AUTHORITY

416-120-0000

Purpose

(1) Where the department has legal custody of a youth through a Voluntary Custody Agreement, a Court Order or a Release and Surrender Agreement, the OYA will exercise its authority through OYA staff, and through delegation to other persons as follows:

(a) Physical Custodian: The OYA will delegate to the youth's physical custodian its authority to consent to:

(A) The youth's registration in regular curriculum in public school;

(B) Making or changing the youth's schedule of classes in school;

(C) The youth's absence from school;

(D) The youth's participation in school and extracurricular activities;

(E) Purchase of school insurance for the youth;

(F) The youth's participation in school meals program.

(G) Routine medical care and dental care; including vaccinations and immunizations, routine examinations and lab tests;

(H) Application for workers permits or releases. The OYA delegates the forgoing responsibilities to the physical custodian by this Administrative Rule. This delegation shall continue as long as the youth is in the legal custody of the OYA and resides with the physical custodian. Any exceptions to this rule shall be given in writing to the youth's custodian and a copy will be maintained in the youth's case record.

(b) Workers, Supervisors and Camp Director: The youth's worker, supervisor, or the Camp Director where a youth is in camp residence, will exercise the OYA authority to give consent for:

(A) School testing;

(B) Access to academic or school behavioral records;

(C) Participation in outdoor school;

(D) Psychiatric or psychological evaluation, or outpatient psychiatric or psychological treatment for the youth.

(2) In addition, the worker, supervisor or Camp Director may exercise the OYA's consent authority to any actions to which the physical custodian may consent.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-120-0010

Exercise and Delegation of Guardian Authority

Where the OYA has legal custody of the youth through court order or a Release and Surrender Agreement, The OYA will exercise its authority through OYA staff as follows:

(1) Local Manager, Parole Manager, and Camp Manager will exercise the OYA consent authority to the following actions with respect to youth served by that office or facility respectively:

(a) Emergency and routine surgery;

(b) Major medical and surgical procedures that are not extraordinary or controversial;

(c) Admission to a state training center for the retarded, or to any state hospital or private hospital for purpose of psychiatric treatment;

(d) Enlistment of a youth in the Armed Forces or the Job Corps;

(e) Marriage;

(f) Registration in special schools;

(g) Application for driver's training, permits, and license;

(h) Interstate travel and international travel;

(i) Examination by law enforcement agency (e.g. polygraphs, interrogations without a warrant, etc.);

(j) Local Manager, Parole Managers, and the Camps Manager may exercise the OYA's consent authority to any action to which worker, supervisor or Camp Director may consent.

(2) Assistant Directors, Youth Correctional Facility Administrators: The OYA's consent authority to the following actions for a youth in its legal custody will be exercised only by the responsible Assistant Director or Youth Correctional Facility Administrator or in his or her absence another Assistant Director, or the Director:

(a) Abortion, except when a young woman age 15 or older exercised her statutory right to consent to her own abortion;

(b) Extraordinary or controversial medical or surgical procedures, such as organ transplants, kidney dialysis, open heart surgery or any procedure involving substantial life threat;

(c) Any medical or surgical procedure to which a legal parent or guardian of the youth is opposed;

(d) Sterilization under ORS Chapter 436, and only when such procedure is necessary to protect the youth's life;

(e) Assistant Directors, Youth Correctional Facility Administrators and the Director may exercise the OYA's consent authority to any action which other managers may consent.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-120-0020

Actions Not Authorized

(1) No OYA officer or employee will consent to educational planning which is defined as the responsibility of a surrogate parent.

(2) No OYA officer, employee, or agent will exercise the OYA's consent authority to the purchase of or ownership of a motor vehicle by a youth in legal custody of the Oregon Youth Authority. This prohibition does not prevent a youth in the legal custody of the OYA from exercising the right to purchase or own a motor vehicle on his or her own account.

(3) No OYA officer or employee shall co-sign or counter-sign any purchase contract for a youth in the department's custody.

(4) No OYA officer or employee will accept responsibility or serve as conservator of a youth's property or estate.

(5) No OYA officer, employee, or agent shall consent to the sterilization of a youth, except pursuant to ORS Chapter 436 and to save the youth's life.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 130

INSPECTION AND COPYING OF RECORDS

416-130-0000

Definitions

(1) "Public Record" includes any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by a public body regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing and every means of recording including letters, words, pictures, sounds or symbols, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, disks, drums or other documents.

(3) "Custodian" means the OYA manager responsible for the service location at which the record is located. (ORS 192.420)

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-130-0010

Purpose

The purpose of this rule is to establish procedures for viewing and copying public records and describe fees charged by Oregon Youth Authority (OYA) for providing copies of paper and electronic public records to the public. (ORS 192.420)

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-130-0020

Access

Any person has a right to inspect any public record of Oregon Youth Authority (ORS 192.420)

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-130-0030

Access to Electronic Public Records

If the public record is maintained in a machine readable or electronic form, OYA shall provide copies of the public record in the form requested, if available. If the public record is not available in the form requested, it shall be made available in the form in which it is maintained. (ORS 192.440)

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-130-0040

Exemptions From Disclosure

(1) Per ORS 192.496, the following records are exempt from disclosure:

(a) Records less than 75 years old which contain information about the physical or mental health or psychiatric care or treatment of a living individual, if the public disclosure thereof would constitute an unreasonable invasion of privacy. The party seeking disclosure shall have the burden of showing by clear and convincing evidence that the public interest requires disclosure in the particular instance and that public disclosure would not constitute an unreasonable invasion of privacy;

(b) Records less than 75 years old which were sealed in compliance with statute or by court order. Such records may be disclosed upon order of a court of competent jurisdiction or as otherwise provided by law;

(c) Records of a person who is or has been in the custody or under the lawful supervision of a state agency, a court or a unit of local government, are exempt from disclosure for a period of 25 years after termination of such custody or supervision to the extent that disclosure thereof would interfere with the rehabilitation of the person if the public interest in confidentiality clearly outweighs the public interest in disclosure. Nothing in this subsection, however, shall be construed as prohibiting disclosure of the fact that a person is in custody;

(d) Student records required by state or federal law to be

exempt from disclosure.

(2) Per ORS 192.501, the following public records are exempt from disclosure:

(a) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery or disposition statutes to a party to litigation or potential litigation;

(b) Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:

(A) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(B) The offense with which the arrested person is charged;

(C) The conditions of release pursuant to ORS 135.230 to 135.290;

(D) The identity and biographical information concerning both complaining party and victim;

(E) The identity of the investigating and arresting agency and the length of the investigation;

(F) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

(G) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

(c) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected;

(d) Investigatory information relating to any complaint filed under ORS 659.040 or 659.045, until such time as the complaint is resolved under ORS 659.050, or a final administrative determination is made under ORS 659.060;

(e) Investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180;

(f) A personnel discipline action, or materials or documents supporting that action;

(g) Computer programs developed or purchased by or for any public body for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from such computer system, and any associated documentation and source material that explain how to operate the computer program. "Computer program" does not include:

(A) The original data, including but not limited to, numbers, text, voice, graphics and images;

(B) Analyses, compilations and other manipulated forms of the original data produced by use of the program; or

(C) The mathematical and statistical formulas which would be used if the manipulated forms of the original data were to be produced manually.

(h) Data and information provided by participants to mediation under section 5, chapter 967, Oregon Laws 1989;

(i) Investigatory information relating to any complaint or charge filed under ORS chapter 654, until a final administrative determination is made or, if a citation is issued, until an employer receives notice of any citation.

(3) Per ORS 192.502, the following records are exempt from disclosure:

(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure;

(b) Information of a personal nature such as, but not limited to, that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(c) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

(d) Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure;

(e) Any public records or information the disclosure of which is prohibited by federal law or regulations;

(f) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law;

(g) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable;

(h) Employee and retiree address, telephone number and other non-financial membership records and employee financial records maintained by the Public Employees' Retirement System pursuant to ORS 237.001 to 237.320. (ORS 192.496, 192.501, 192.502)

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-130-0050 Supervisory Review

Prior to any person viewing or copying a public record held by OYA, the supervisor shall determine which material in the record is exempt from disclosure. If the supervisor has any doubt as to whether information contained in the record is exempt from disclosure, the supervisor shall consult with designated regional or state office staff in appropriate program or administrative role, depending on type of record in question. (ORS 192.496, 192.501, 192.502)

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-130-0060 Time Frame

OYA provides opportunity for the inspection and copying of records. To protect its records and prevent interference with the regularly scheduled duties of its staff, OYA and the person requesting to inspect the record shall establish a reasonable time at which the records may be inspected. The time frame for inspection shall normally be within 10 working days. When this time frame is not possible, the custodian will discuss the reasons with the requester and establish an expected date for availability. If copies are requested, OYA shall make them within a reasonable time period, not to exceed five working days of the request for the

specific material, and shall mail the material to the requester. (ORS 192.430)

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-130-0070 Viewing and Copying Procedures

(1) When OYA is required or permitted to make records available pursuant to ORS 418.770 (1) or (2), the identities of the abuse reporters and victims will be deleted from the material provided for examination. Prior to allowing examination or copying of the public record, OYA shall separate any material which is exempt from disclosure from non-exempt material, and make the non-exempt material available for examination.

(2) Names, addresses and other identifying information of mandatory abuse reporters, as well as voluntary abuse reporters and persons making complaints who requested confidentiality, must be covered to protect their identity. Names of alleged perpetrators if the perpetrator is a juvenile in OYA custody, and victims included in such complaints must also be covered.

(3) OYA shall provide the person requesting examination a place to review the record. A person designated by OYA shall sit with the person reviewing the record in order to assure it is not altered in any way.

(4) The person viewing the record may designate pages to be copied, or may request copies of specific information contained in the record. Only OYA staff shall copy the designated material. (ORS 418.770)

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-130-0080 Charges

(1) OYA shall charge for the cost of making the record available. Charges for record review and copying are limited to the actual cost of making the record available. "Actual cost" may include a charge for the time spent in locating the requested records, reviewing the records in order to delete exempt material, supervising a person's inspection of original documents, or copying records. When an Attorney General's review of the records is required by OYA, a charge will be made to cover the cost of that service. "Actual cost" includes the cost of search and review time even if the records located are subsequently determined to be exempt from disclosure.

(2) OYA shall inform requester of estimated charges and may require a deposit before acting on the request, or may require prepayment of actual costs before making the record available for inspection.

(3) Estimates of charges for record review and copying are based on current salaries of staff most likely to be given these duties. For example, costs in fiscal year 1993-1994 would be:

(a) Preparing, copying, and refiling the record at a rate of \$14.68 per hour (clerical specialist);

(b) Record review at a rate of \$22.95 per hour (social service specialist);

(c) Record review at a rate of \$24.93 per hour (field supervisor);

(d) Data processing to machine readable form at a rate of \$24.45 per hour (systems analyst); and/or

(e) Cost per page for copies shall be the copy cost established by OYA. Cost in fiscal year 1995-1997 is 10 cents per page. If the actual charges are less than the deposit or prepayment, any overpayment will be promptly refunded; if actual charges exceed the deposit or estimate, the additional charge may be recovered from the requester.

(4) The requester may ask OYA for a waiver of the charges for the cost of making the record available. While it is in the public interest to make the information available, it is also in the public interest to obtain reimbursement for the actual costs of making the record available. OYA shall consider the following when evaluating a request for a fee waiver:

- (a) The requester's commercial interest and ability to pay;
- (b) The extent of time and expense and interference with the business of the agency;
- (c) The extent of the sheer volume of the records;
- (d) The necessity to segregate exempt from non-exempt materials; and
- (e) The extent to which an examination of the record by the requester is insufficient for the public interest or for the particular needs of the requester.

(5) If OYA denies the request for a waiver of all or part of the actual cost of providing the record, the requester may petition the Attorney General for a review of the denial of the waiver. (ORS 192.440)

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-130-0090

Availability of Alternative Print Format

Upon request of a person with a disability for public records otherwise available to the requester under these rules, OYA will consult with that individual about making the requested records available in alternative print format at no additional cost to the requester. (**Americans with Disabilities Act**)

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 140

EXPUNCTION OF RECORDS

416-140-0000

Purpose

(1) Any juvenile court may order record expunction for any ward or former ward per ORS 419.800 through 419.840. This rule describes OYA processes for handling these orders.

(2) OYA files, manual and electronic, are modified so that an inquiry, subsequent to the expunction order, will result in the reply "No record of contacts". "Contacts" has a specific legal definition for purposes of expunction (see ORS 419.800(1)).

(3) OYA complies with expunction orders by sealing or marking "expunged" on the records, not by destroying them. The intent of the expunction is not to erase all traces of OYA's relationship to the individual, but rather to prevent subsequent dissemination of expunged information to third parties.

(4) ORS 419.800 defines "records" and exceptions. Information held at OYA that is not expunged includes: academic transcripts, material related to federal financial participation, records related to support obligations, medical records, remand orders, materials on termination of parental right, and Oregon Court of Appeals and Supreme Court records.

(5) The OYA record is not expunged when the reason for commitment to OYA was commission of child abuse, as defined by ORS 418.740, that would constitute one of the offenses listed in ORS 419.800 if committed by an adult.

Stat. Auth.: OL Ch. 422, 1995
 Stat. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-140-0010

Release of Information

(1) Anyone who inquires about a person whose record has been expunged shall be told "No record of contacts exists" except when the information is required for State or Federal Audits, or when ordered by a court of competent jurisdiction to release the information.

(2) When an expunged record is provided, a copy of the audit identifier or court order will be placed in the record. On the outside of the record, enter the notation: "**Expunged records**" of (client's name) accessed on (Date) in compliance with (court order/audit identifier).

Stat. Auth.: OL Ch. 422, 1995
 Stat. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-140-0020

Responsibilities

(1) The Director of the OYA has authorized the Deputy Director or designee to sign and return the Expunction Order Statement to the Court.

(2) The Department Expunction Coordinator shall be the central contact person in OYA and shall be responsible for assuring the order is carried out within required timelines.

(3) The manager of each Youth Correctional Facility which has responsibility for complying with expunction orders shall appoint an Expunction Coordinator to ensure that the expunction is carried out within required timelines.

Stat. Auth.: OL Ch. 422, 1995
 Stat. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-140-0030

Timelines

(1) Within 21 calendar days of OYA's receipt of the order, the court issuing the expunction order is to receive an OYA Expunction Order Statement certifying the expunction has been completed.

(2) The local expunction coordinator for each OYA organizational unit must process the order, sign, and return the notification to the Department Expunction Coordinator within three (3) working days of receipt. Even if there is no record, the notification must be signed and returned within the three days.

Stat. Auth.: OL Ch. 422, 1995
 Stat. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-140-0040

Procedures

(1) The Department Expunction Coordinator receives and logs incoming orders and distributes notification forms to the Youth Correctional Facility, contracts officer and automated system security officer. The Local Expunction Coordinator shall:

(a) When no record is found, return the signed notification form within three (3) working days of receipt;

(b) When the record has been transferred elsewhere notify the Department Expunction Coordinator by phone within one (1) working day after the notice is received. Process any records remaining at the site as described in section (2) of this rule;

(c) The local Expunction Coordinator shall notify the Department Expunction Coordinator by phone on the same day the notice is received, of the other locations where the case was open.

(2) If a record is found for the person named in the order, the following actions will be taken within 3 working days:

(a) Single-Person Records. Place all individual records, cards, and other information in a sealed envelope. On the front of the envelope, in red ink, write: person's name, case number, person letter, date of expunction (following the same retention rules as other records), date destruction due, and the word "Expunged". Place envelope in file, not accessible to general staff;

(b) Multi-Person Records. Mark all master cards in red ink with word "Expunged" by name of person. Clearly label the case file folder with the name of person whose record was expunged and the date of the order;

(c) Records State Archivist. Expunged Oregon Youth Authority records are stored in a locked, secure area arranged for by the Youth Correctional Facility Manager. They are not kept by the State Archivist;

(d) Foster Home Certification File. If the person named in the order was ever in foster care, record in red ink in each foster home file the person's name, case number, person letter, the word "Expunged" and date of the order;

(e) Department Contracts Office Records. Contract files related to the subject of the expunction order are sealed;

(f) Electronic Records. The Department Expunction Coordi-

nator will forward to the Security Officer any expunction whose subject has an electronic case record. The Security Office seals references to contacts in the electronic file. This is done by changing the security on the case record so access is limited to the Security Officer. Subsequent access to contacts must be authorized by the Security Officer.

Stat. Auth.: OL Ch. 422, 1995

Stat. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 150

INTERROGATION, POLYGRAPH AND ATTORNEY INTERVIEWS

416-150-0000

Purpose

These rules establish guidelines for OYA staff and agents to follow to assure that the rights of youth are maintained.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-150-0010

Interrogation or Polygraph

When a law enforcement agency (LEA) asks to interrogate or conduct a polygraph examination for a youth suspected of violating the law or having knowledge of a law violation, OYA staff and/or the youth's physical custodian will:

(1) Assure the officer has proper identification.

(2) Determine if the officer has a warrant. If there is a warrant, OYA will assist the LEA officer insofar as such assistance does not infringe upon the youth's right to remain silent and to have legal representation present;

(3) Advise the officer that no mechanical or electronic recording may be made of the interview.

(4) If the LEA does not have a warrant, make sure:

(a) The youth's legal guardian consents to the interrogation and/or polygraph.

(b) The youth's attorney, a staff person or the youth's custodian is present during the interview, and ensures that the interview is terminated if there is any indication of improper conduct on the part of the interrogator.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-150-0020

Attorney Interview

When an attorney asks to interview a youth, the following shall apply:

(1) An attorney of record representing the youth may interview the youth privately. However, if the attorney, or the youth requests, a OYA staff member shall be present during the interview.

(2) An adversarial attorney shall not be permitted to interview a youth unless the youth's legal guardian consents to the interview and the youth's own attorney is also present.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-150-0030

Other Interviews

When a request to interview a youth is received from representatives of the Social Security Administration, Veteran's Administration, Department of Revenue, insurance representatives, etc., staff and/or custodians will:

(1) Ensure that the requestor has proper identification.

(2) Determine if the interview is related to pending litigation or the youth may be a party to or a witness to an incident related to a litigation.

(3) Determine whether or not the youth should have legal counsel during the interview.

(4) Set the time and place of the interview.

(5) Inform the interviewers that no mechanical or electronic recording will be made of the interviews.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 160

INDIAN CHILD WELFARE ACT

416-160-0000

Policy Statement and Purpose of Rules

(1) On November 8, 1978, under its power over Indian affairs and its "responsibility for the protection and preservation of Indian tribes and their resources," Congress enacted the **Indian Child Welfare Act** (the Act or ICWA) of 1978. The Act was passed because Congress found that "an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children" by Courts and welfare departments and placed in non-Indian homes and institutions.

(2) The Act sets forth that it is the policy of this nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families. Further, placement of such children will be made in foster or adoptive homes which will reflect the unique values of Indian culture.

(3) This remedial aspect of the **Indian Child Welfare Act** establishes the manner in which the Administrative Rules will guide Oregon Youth Authority in adhering to the letter and spirit of the Act.

Stat. Auth.: OL Ch. 422, 1995

Stat. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-160-0010

Legislative Authority

These rules are promulgated pursuant to the statutory authority granted to the Oregon Youth Authority.

Stat. Auth.: OL Ch. 422, 1995

Stat. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-160-0020

Definitions

To ensure total compliance, it is important to remember that when proceedings involving an Indian child invoke this Act, terms including, but not limited to foster care placement have the meaning stated in the Act, not the meaning as established by Oregon law.

(1) "Act" or "ICWA" means the **Indian Child Welfare Act**.

(2) "Diligent Search" means that, at a minimum, there will be contact with the child's tribal social service program, a search of all county or state listings of available Indian homes, and contact with local, regional, and nationally known Indian programs that have placement resources available for Indian children.

(3) "Department" means the Oregon Youth Authority (OYA).

(4) "Extended Family" is defined by the law or custom of the Indian child's tribe. In the absence of law or custom, it shall be a person 18 or over who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin or stepparent.

(5) "Foster Care Placement" is any action removing or which could result in the removal of a child from his parent or Indian custodian (such as court-ordered supervision in the home) for placement in foster care or institution or with a guardian, where the parents or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated.

(6) "Indian" is any person who is a member of or eligible for membership in an Indian tribe or who is an Alaskan native and a member of a Regional Corporation as defined in **43 USC§1606**.

(7) "Indian Child" is any unmarried person under age eighteen who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8) "Indian Child's Tribe" is the Indian tribe in which an Indian child is a member or eligible for membership. In the case of an Indian child who is a member or eligible for membership in more than one Indian tribe, it is the Indian tribe with which the Indian child has the most significant contacts.

(9) "Indian Custodian" is any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

(10) "Indian Organization" is any group, association, partnership, corporation, or legal entity owned or controlled by Indians or a majority of whose members are Indians, such as an Indian Child Welfare Committee.

(11) "Judicial Hours" means the number of hours a court is available to hold a hearing. Legal holidays and weekends do not count as judicial hours.

(12) "Indian Tribe" is any Indian tribe, band, nation or organized group or community of Indians who are recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska native village as defined in **43 USC§1606**, and any tribe whose federal relationship has been terminated by Congressional action.

(13) "Involuntary Proceeding" is any action removing a child from a parent/Indian custodian and such parent/Indian custodian cannot have the child returned upon demand.

(14) "Parent" is any biological parent or parents of any Indian child or any Indian person who has lawfully adopted an Indian child. This includes adoption by tribal law or custom. It does not include unwed fathers where paternity has not been established or acknowledged.

(15) "Reservation" means Indian country as defined in **18 USC§1151**, and any lands not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

(16) "Secretary" means the Secretary of the Interior.

(17) "Termination of Parental Rights" is action which results in the termination of the parent-child relationship.

(18) "Tribal Court" is the court which holds jurisdiction over Indian child custody proceedings and is either a Court of Indian Offenses, a court established and operated under code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(19) "Voluntary Proceeding" is any action in which a parent/Indian custodian has voluntarily given custody of his/her child to another and such voluntary action does not prohibit the parent/Indian custodian from regaining custody of the child at any time.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-160-0030

Applicability

(1) General:

(a) The **Indian Child Welfare Act** affects all placements of Indian children taking place after May 8, 1979, and also applies to changes or possible changes in placement of Indian children already under OYA authority as a result of a proceeding prior to May 8, 1979;

(b) The Act does not cover the full range of procedures involved in a juvenile court proceeding; where it is silent, the usual state court procedure should be followed. Under constitutional law, the federal Act takes precedence where it conflicts with state

law. When the state law affords a higher standard of protection of the rights of the parents or Indian custodian, it applies.

(2) Exceptions: Child custody proceedings not covered by the Act include a placement based upon an act which, if committed by an adult, would be a crime (unless the juvenile delinquency proceeding results in the termination of a parental relationship).

(3) Although initial placements of an Indian child based upon a law violation may not be covered by the Act, subsequent placements resulting from petitions alleging dependency, or status offenses that can only be committed by a minor (runaway, beyond control, etc.), are covered by the Act.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-160-0040

Department Authority

Once it is found that an Indian child is involved, and the tribe or tribes which have an interest have been determined, the authority of the Department must be established. In some instances, the Department will have no authority to become involved in the case: Tribal Court Ward: The Department has no authority in cases involving an Indian child who is a ward of a tribal court. Department staff shall ask the child's parents/Indian custodian if the child is a ward of the tribal court. If there is reason to believe that the child has previously resided or been domiciled on the reservation, the worker shall contact the tribal court to determine whether the child is a ward of that court. If so the Department has no authority over the child.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-160-0050

Tribal-State Agreement

These rules may be superseded by an agreement signed between the State and a particular tribe. Such agreement shall be available in the Director's Office, Oregon Youth Authority.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-160-0060

Placement of Indian Children

(1) General: Department staff shall make a diligent attempt to find a suitable placement within priorities described below before considering a non-preference placement. A diligent search for an appropriate placement includes, at a minimum, contact with the child's tribal social services department, a search of Oregon State and County listings of available Indian homes, and contact with other Indian tribes and Indian organizations with available placement resources.

(2) Tribal Placement Priorities: In determining the appropriate placement for an Indian child, the worker shall contact the child's tribe to see if the tribe has established by resolution an order of placement preference different from those described below and/or has any placement resources.

(3) Foster Placements:

(a) In any foster care placement of an Indian child, the child shall be placed in reasonable proximity to his or her home, except as provided in subsection (7)(b) of this rule;

(b) In considering foster placement for a child, Department staff shall follow the placement priorities below unless the Indian child's tribe changes the order of preference by resolution; or, in absence of such tribal resolution, the court modifies the order of preference by a showing of good cause:

(A) A member of the Indian child's extended family;

(B) A foster home licensed, approved, or specified by the Indian child's tribe;

(C) An Indian foster home licensed or approved by an authorized non-Indian licensing authority;

(D) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable

to meet the Indian child's needs.

(4) Change of Placement: If an Indian child in a foster placement is to be moved from one placement setting to another; or, if the foster family moves (requiring a change in placement), the placement preferences outlined above must be followed, unless the child is returned to the parent or Indian custodian from whose custody the child was originally removed. The worker shall notify the parent and/or Indian custodian and the child's tribe in writing prior to a change in placement or before the foster family moves.

(5) Records of Placement:

(a) The Department shall maintain a written record of each placement of each Indian child and of efforts to comply with the preferences listed above. This record shall be maintained on forms separate from the court report and shall contain, at a minimum, the petition or complaint, all substantive orders entered during the proceeding, and the complete record of the placement determination;

(b) Where the placement does not meet the preference priorities set out above, the efforts to find suitable placement within those priorities shall be recorded and documented in detail. Documentation shall also be provided showing that the placement chosen is in the least restrictive setting possible, meets the child's special needs, and as much as possible, in cases of foster care placement, is close to the child's own home;

(c) At any time, upon the request of the Indian child's tribe or the Department of the Interior, the Department shall make available records of every foster care placement of each Indian child maintained by the Department

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-160-0070

Full Faith and Credit

The United States, every state, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to Indian tribes.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 250

OYA ACCOUNTING

416-250-0000

State Office for Children and Families Accounting Services

The Oregon Youth Authority adopts, by reference the rules of the State Office for Children and Families, numbers:

(1) OARs 413-300-0000 through 413-300-0090 Audit Services;

(2) OARs 413-300-0100 through 413-300-0120 Internal and External Audits;

(3) OARs 413-310-0000 through 413-310-0095 General Receipting;

(4) OARs 413-310-0100 through 413-310-0130 Miscellaneous Payments;

(5) OARs 413-310-0200 through 413-310-0240 Erroneous Payments in Error or Fraud;

(6) OARs 413-310-0300 through 413-310-0320 Uncollectible Accounts Receivable; and

(7) OARs 413-310-0400 through 413-310-0510 Trust and Agency Accounts.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 300

CONDITIONS FOR PAROLE YOUTH OFFENDER FOSTER CARE AND REVOCATIONS

416-300-0000

Applicability and Purpose of Rules

OARs 416-300-0010 through 416-300-0120 pertain to and govern only parole and youth offender foster care placements (and revocations thereof) of youths from the Youth correctional facilities and related camps. The rule prescribes and describes essential procedures, youth rights, due process, etc.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-300-0010

Definitions

(1) "Administrative Status": The location of a youth within the Oregon Youth Authority (OYA), Youth Correctional Facility, Camp, Parole, Youth offender Foster Care, Youth Care Center, AA (authorized absence from a Youth Correctional Facility, or a Camp), UA (unauthorized absence from any status except termination); and Termination (of the commitment to the OYA).

(2) "OYA": The Oregon Youth Authority or the Director or staff of the department.

(3) "Committing Court" The judicial court that committed a youth to the custody of OYA for placement at a youth correctional facility.

(4) "Youth Offender Foster Care Placement" The conditional release subject to revocation, of a youth to a person or persons who provide care and supervision in a youth offender foster home subject to continued control of the Community Services Unit of the OYA.

(5) "Youth Offender Foster Home": A family home other than the youth's own home, chosen and certified or licensed by OYA to provide youth offender foster care to one or more youth outside a youth correctional facility. Foster parents do not, by virtue of the placement, acquire legal custody or guardianship of the youth. (ORS 419.507(7) and 419.511(3)).

(6) "Hearing Committee": Conducts revocation hearings to consider allegations of violations of conditions of parole or youth offender foster care placement. The committee is composed of three staff persons (not necessarily the same persons for every hearing), none of whom have brought the charge(s) against the youth.

(7) "Hearing Officer": The person designated by the superintendent to conduct a preliminary revocation hearing for a youth correctional facility youth.

(8) "Parole": The conditional release subject to revocation of a youth to a person or persons who thereupon acquire temporary legal custody and provide care and supervision subject to continued control by the Community Services Unit of the Oregon Youth Authority.

(9) "Parole and Probation Officer" The field counselor employed by the Community Services Unit of the Oregon Youth Authority who works with the youth, his/her family and the community.

(10) "Preliminary Hearing": A hearing in which facts are presented and it is determined whether or not there is probable cause to believe a violation of one or more conditions of parole or youth offender foster care placement have occurred. The preliminary hearing may also be used to determine whether or not the youth's health or welfare or the best interest of the community require that the youth return to the youth correctional facility even though the conditions of parole or youth offender foster care have not been violated.

(11) "Superintendent": A manager and director of a youth correctional facility. For purposes of placement and revocation of parole or youth offender foster care, the term also includes the director of OYA.

(12) "Revocation Hearing": A hearing to consider testimony and documentary evidence in order to determine whether one or

more violations of conditions of parole or youth offender foster care placement have occurred, whether the violations require revocation and whether there are substantial reasons which make revocation inappropriate. The revocation hearing may also be used to determine whether or not the youth's health or welfare or the best interest of the community requires the revocation of parole or youth offender foster care even though the conditions of parole or youth offender foster care have not been violated.

(13) "Youth Correctional Facility (YCF)": Close custody programs operated by the Oregon Youth Authority.

(14) "Youth": A person committed by a court to a youth correctional facility regardless of administrative status.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-300-0020

Understandings and Conditions

Upon belief that a youth is ready for temporary release from the YCF, the superintendent of the YCF may, after advising the committing court, conditionally release the youth on parole or conditionally place the youth in a youth offender foster home, subject to the youth's ability and willingness to understand and sign, prior to placement, a written Community Placement Agreement which will include, but is not limited to, the following understandings and conditions:

(1) Understandings:

(a) That community placement is a conditional release from the YCF, which does not restore full freedom;

(b) That if the youth is placed on parole, the persons with whom the youth is placed will have legal custody of the youth during parole; or, that if placement is with youth offender foster parents, the YCF retains the legal custody; and, that in either event the YCF remains legal guardian of the youth's person;

(c) That the conditions are subject to modification at any time during the community placement in order to increase or decrease the degree of supervision and restraint or to change placement;

(d) That parole or youth offender foster care placement may be revoked if any of the written conditions are unmet or violated;

(e) That even though the conditions of parole or youth offender foster care have not been violated or have been met, the youth may be returned to the YCF if in the opinion of the superintendent the youth's health or welfare or the best interest of the community requires the youth's return. Such return may, depending on circumstances, result in a revocation of the parole or the youth offender foster care placement, but shall not be deemed a violation of parole or youth offender foster care. The youth may be replaced in a foster home or reparaoled when in the opinion of the superintendent the youth is ready for release and suitable placement is available. Prior to return of a youth to the YCF for the reasons described in this rule, the youth shall be afforded the same procedural protections as would apply if violation of the conditions of parole were charged.

(2) Conditions: During any form of community placement the youth must:

(a) Remain within the control and care of the persons having custody or the foster parents;

(b) Obtain prior approval from the parole officer before a change of residence or an overnight absence from the residence;

(c) Keep the parole officer advised of any change of the residence address;

(d) Obey all federal and state laws and all county or city ordinances;

(e) Obtain prior approval from the parole officer before leaving the State of Oregon for any reason;

(f) Abide by the requests, decisions, direction and counsel of the parole officer as outlined in the Community Placement Agreement;

(g) Abide by any special conditions written into the placement agreement.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

416-300-0030

Revoking Parole or Youth Offender Foster Care Placement

(1) A revocation of parole or placement shall not proceed if conditions of parole or placement have not been violated, except as provided in OAR 416-340-0030(1)(e).

(2) Not every violation of conditions shall automatically result in revocation of parole or placement. The parole officer and the parole officer's supervisor must believe that the violations are serious enough and/or constant enough to indicate that the youth is not adjusting properly or cannot be counted on to substantially abide by the conditions of parole or placement.

(3) The first step toward revocation must be a parole officer's report and recommendation to revoke, made to the officer's supervisor or the supervisor's administrative substitute. The parole officer's report and recommendation may first be made verbally, but in any event must be confirmed in writing.

(4) In reporting alleged parole or placement violations, the parole officer shall state allegations and verifiable facts, and provide insofar as possible an accurate account of the youth's behavior. The parole officer's supervisor shall review with the parole officer the report of alleged violations and the supporting information and the parole officer's recommendations as well as alternative actions that may be taken.

(5) If the supervisor agrees to the probable need for revocation, a preliminary revocation hearing will be conducted.

(6) Unless the parole officer's supervisor is satisfied that the youth will appear at the preliminary hearing and is not a threat to themselves or the community, the youth shall be detained until hearing is held.

(7) If the youth is to be returned to the YCF for a preliminary hearing, the parole officer's supervisor shall promptly notify the YCF of the alleged violations prior to the youth's return and shall forward to the YCF as promptly as possible all documentary evidence to be used at the preliminary hearing.

(8) A youth may be placed in a work/study camp from a community placement for up to five working days (excluding weekends and holidays) without completing a revocation process. The following procedures must be adhered to in these cases:

(a) A parole supervisor or the supervisor's administrative substitute must authorize the placement;

(b) The youth must have a preliminary revocation hearing within this five working-day period;

(c) The youth must be released from the work/study camp to a placement in the community within five working days. If the youth is not released within five working days, he/she must be granted all of the rights and privileges extended in OAR 416-300-0040 through 416-300-0060, and he/she must be granted a new preliminary revocation hearing;

(d) The administrative status the youth was in prior to entering the work/study camp shall not be changed during the five working days, or less, that the youth resides in a work/study camp or until the youth is placed there under revocation procedures, whichever comes first.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-300-0040

Notice of Preliminary Hearing

(1) Within a reasonable time prior to the preliminary hearing, the hearing officer shall cause the youth to be provided with written notice which shall contain the following information:

(a) A concise statement of each alleged violation and the supporting evidence relevant thereto;

(b) The youth's right to a preliminary hearing and the time and place of the hearing;

(c) The fact that the purpose of the hearing is to determine whether there is probable cause to believe the youth has committed a violation of the conditions of parole or youth offender foster care, and if there is any such violation, whether there are substantial reasons which mitigate or justify such violation or

which would make revocation inappropriate. (If the youth is or might be considered a candidate for revocation of parole or youth offender foster care placement due to his or her health or welfare, the notice should be appropriately so worded);

(d) The names of persons who have given adverse information upon which the alleged violation is based and the right of the youth to have these persons present at the hearing for the purposes of confrontation and cross-examination unless the hearing officer determines that there is good cause for not revealing the names or for not allowing confrontation. (If names of persons or witnesses giving adverse information are omitted from the notice, each such person shall be listed on the notice as "Name Withheld");

(e) The youth's right to admit or deny the allegations and present letters, documents, affidavits or persons with relevant information at the hearing in support of his/her defense or contentions;

(f) The youth's right to be represented by an attorney at his/her own expense or to the assistance of counsel at YCF expense under certain limited circumstances see OAR 416-300-0060(7).

(2) The youth's parents or guardians shall also receive written notice of the preliminary hearing, if practicable.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-300-0050

Preparation for Preliminary Hearing

Prior to the preliminary hearing, the person appointed to conduct the hearing shall assure himself or herself that the youth:

(1) Is informed of and understands the alleged violations.

(2) Is provided copies of all documentary evidence pertaining to the alleged violations which will be used against him/her at the preliminary hearing.

(3) Has a reasonable time within which to prepare for the hearing.

(4) Has all the evidence and witnesses at the hearing which the youth needs to establish his or her defense.

(5) Is capable of effectively speaking for himself or herself.

(6) Has been informed of his or her rights to appear with counsel at his or her own expense or to request counsel at YCF expense under the limited circumstances set forth in section (7) of this rule.

(7) Has been provided counsel at YCF expense where the hearing officer finds that the youth is indigent and that the circumstances suggest that counsel is necessary to protect the rights of the youth. In general, the presence of any of the following circumstances militate in providing counsel:

(a) The youth for whatever reason is unable effectively to speak for himself or herself;

(b) There is a timely and colorable claim that he or she has not committed the alleged violation; or

(c) Even though the alleged violation is uncontested or a matter of public record, there may be substantial reasons which justify or mitigate the violation and make revocation inappropriate and the reasons are complex or otherwise difficult to develop or present.

(8) In every case where the youth has requested the assistance of counsel at YCF expense and such request has been denied by the hearing officer, the reason for the denial shall be set forth in the hearing officer's report.

(9) The preliminary hearing officer shall subpoena any witness for the youth or the state if such witnesses would not otherwise voluntarily appear and the testimony of such witness is essential to the development of the facts upon which to base a fair determination on the merits. The witnesses shall receive the statutorily prescribed fees for attendance and mileage.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-300-0060

The Preliminary Hearing

(1) Whenever the Juvenile Court concerned is agreeable to conducting the preliminary hearing substantially in accordance with the provisions of OARs 416-300-0050 and 416-300-0070, the hearing may be conducted by the Juvenile Court.

(2) The preliminary hearing shall be held at a place determined by the parole officer's supervisor to be in the best interests of the youth, taking into account such matters as location of evidence, travel conditions, security, and welfare of the youth. In making this determination, preference shall be given to holding the hearing as near as practicable to the place of the alleged violation, unless it would be in the youth's interest in defending against or mitigating the consequences of the alleged violation to hold the hearing as near as practicable to the place of the youth's placement at the time of the alleged violation. In the case of multiple violations, the preliminary hearing may be held in one location.

(3) The preliminary hearing shall be held promptly at the time convenient to the youth and the hearing officer.

(4) The hearing shall be conducted by a hearing officer who will be someone other than the person(s) bringing charges of parole or placement violation.

(5) The youth shall be permitted to appear and speak in his or her own behalf, to admit or deny the allegations and to present any relevant evidence. The youth, taking into consideration the youth's ability to make the presentation, shall be allowed full opportunity to present his or her case to the end that the youth's position and evidence in support thereof are fully developed by the hearing officer.

(6) If the youth requests, adverse witnesses may be questioned in the youth's presence unless in the opinion of the hearing officer there is good cause for disallowing confrontation. In the event confrontation is not allowed, the youth's attorney, if any, shall be provided an opportunity to cross examine the witness unless the hearing officer finds that it is necessary to deny such request to preserve the anonymity of the witness.

(7) The hearing officer shall make a written summary of what occurs at the hearing in terms of the response of the youth and the substance of the documents or evidence given in support of parole or placement revocation. A mechanical recording shall be made of all oral testimony and presentations made at the hearing. Tapes shall be kept at least 120 days after the final order of the superintendent is issued.

(8) Based upon the information before him/her, the hearing officer will determine if probable cause exists to believe a violation has occurred.

(9) The hearing officer shall report to the superintendent, his/her designee or the Deputy Administrator of Administration and Juvenile Corrections the hearing officer's determination regarding probable cause, whether or not he or she finds mitigating circumstances, his or her reasons, and his or her recommendations with respect to whether or not there should be a revocation hearing. The hearing officer's report may first be made orally or in writing, but if orally, must be reduced to writing. The superintendent or his/her designee shall consider the report and decide whether or not the youth is an appropriate candidate for a revocation hearing:

(a) If the superintendent determines that neither a revocation hearing nor revocation is appropriate, he/she may, under the same or modified placement conditions, order that the youth be continued in the placement where he or she was at time of the alleged violation, or that the youth be placed into another place of residence.

(b) If the superintendent determines that the youth is an appropriate candidate for a revocation hearing, a revocation hearing shall be held unless the youth voluntarily and understandingly waives his right to a revocation hearing.

(c) If a revocation hearing is to be held, the youth shall be returned to the YCF unless already there.

(10) If the youth waives his or her right to a revocation hearing, and the superintendent's decision is to revoke the youth's parole or youth offender foster care placement, the superintendent

will issue the final order. The committing court and the youth shall be notified and the youth given a copy of the final order.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-300-0070

Waiver of the Revocation Hearing

(1) Each youth is entitled to a revocation hearing.

(2) If a youth chooses, the youth may waive his or her right to the hearing. However, the following procedures shall be strictly complied with before any waiver is accepted:

(a) After returning to the YCF for a revocation hearing, the youth shall be given a form which clearly, in simple language, explains the rights that the youth is entitled to at and proceeding a revocation hearing, and which shows he or she can elect to have or not have such hearing;

(b) These rights shall be verbally explained to the youth, giving him or her opportunity to ask any questions and receive complete answers by a staff member of the Office of Juvenile Corrections who has not brought the parole or placement violation charge against the youth and who will not be on the hearing committee;

(c) The youth has a right to consult with an attorney at the youth's own expense before deciding whether or not to waive the revocation hearing. If the person explaining the waiver form has any doubts that the youth understands the rights he or she has to a revocation hearing or the significance of the waiver, that person shall not accept the waiver;

(d) No staff member of the Office of Juvenile Corrections shall attempt to influence the youth to waive his or her rights to or regarding a revocation hearing;

(e) A tape recording and a written summary of all conversations with each youth about waiver of a revocation hearing shall be kept for 120 days after the final order of the superintendent is issued;

(f) At any time after a waiver has been made, the superintendent may review the waiver and if he/she believes that it would be in the best interests of the youth, the superintendent may cause a revocation hearing to be held.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-300-0080

Notice of Revocation Hearing

(1) Within a reasonable time prior to the revocation hearing, the chairperson of the revocation hearing committee shall cause the youth to be provided with written notice which shall contain the following information:

(a) The youth's right to a hearing and the time and place of the hearing;

(b) A copy of the signed community placement agreement with a concise statement of each alleged violation of such agreement and the supporting evidence relevant thereto;

(c) A statement of the authority under which the hearing is being held (Cite ORS 420.045, 420.810 to 420.825 and this rule);

(d) The fact that the purpose of the hearing is to determine whether parole or youth offender foster care should be revoked for a violation of one or more condition(s) of parole or youth offender foster care, and if there is any such violation, whether there are substantial reasons which mitigate or justify such violation or make revocation inappropriate;

(e) The names of persons who have given adverse information upon which the alleged violation is based and the right of the youth to have these persons present at the hearing for the purposes of confrontation and cross-examination unless the hearing committee determines that there is good cause for not revealing the names or for not allowing confrontation; (If names of persons or witnesses giving adverse information are omitted from the notice, each such person shall be listed on the notice as "Name Withheld"). (If the chairperson has determined that the youth shall not be allowed to confront a particular witness, the youth shall be

notified of that fact and the youth's attorney, if any, shall be permitted to cross-examine that witness unless the chairperson determines that it is necessary to deny cross-examine to preserve the anonymity of the witness). In such case if it appears that the youth will not have an attorney, the chairperson shall, prior to the hearing, designate a competent person within the YCF to consult with the youth prior to and at the hearing, and to be present at the hearing for the purpose of cross-examining the witness on the youth's behalf.

(f) The youth's right to admit or deny the allegations, and to present letters, documents, affidavits or persons with relevant information at the hearing.

(g) The youth's right to be represented by an attorney at his/her own expense or to the assistance of counsel at YCF expense if the youth meets the requirements of section (3) of this rule.

(2) The youth's parents or guardians shall also receive written notice of the formal revocation hearing, if practicable.

(3) If the youth does not have counsel, the chairperson of the revocation hearing committee shall provide the youth with counsel at YCF expense if the same grounds and reasons stipulated in OAR 416-300-0030(7) exist.

(4) In every case where the youth has requested the assistance of counsel at YCF expense and such request has been denied by the chairperson of the revocation hearing committee, the chairperson shall set forth the reasons for the denial in writing, and the writing shall be made a part of the record of proceedings of the revocation hearing.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-300-0090

Subpoena Request

The youth may request the subpoena of witnesses at YCF expense in accordance with the following procedure:

(1) Where the YCF proposes to rely on affidavits or other documentary evidence of a testimonial nature, the YCF shall subpoena any adverse witness responsible for such evidence, at YCF expense, if requested by the youth or his attorney.

(2) If a youth requests the YCF to subpoena a supporting witness for him at YCF expense, the chairperson of the hearing committee or his or her designee shall cause the subpoena to be served and the statutorily prescribed fees and mileage tendered to the witness if:

(a) The youth states that he/she is without funds; and

(b) The youth satisfies the chairperson or designee that the proposed testimony is relevant, material and necessary.

(3) At the discretion of the hearing committee, and under such conditions as will ensure an appropriate record, telephone conversation with a prospective witness may be substituted for actual presence of the witness. The youth shall be permitted to listen to and converse with the witness. The foregoing procedure shall not be followed if the youth objects.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-300-0100

The Revocation Hearing

(1) The hearing shall be held as promptly as convenient to the youth and to the revocation hearing committee, but in any event such hearing shall be held within 60 days from the date the youth is returned to the YCF.

Exception: If the youth has been charged with one or more law violations, that are to be adjudicated in judicial court, revocation hearing procedures shall be suspended pending the outcome of the court hearing. The youth may request a revocation hearing after the court hearing, if he/she so chooses.

(2) Prior to the commencement of the hearing, the chairperson of the committee shall furnish the youth orally or in writing an explanation of the proceedings as required by ORS 183.413(2).

(3) The revocation hearing shall be conducted before a revocation hearing committee composed of three YCF staff persons, none of whom have brought the parole or placement violation

charge against the youth.

(4) At the revocation hearing the youth shall have an opportunity to be heard in person and through his/her attorney, if any.

(5) At the discretion of the chairperson of the revocation committee, the hearing shall be conducted in the following manner:

- (a) Statement and evidence of agency in support of its action;
- (b) Statement and evidence of youth.

(6) The chairperson, youth and YCF shall have the right to question or examine or cross-examine any witness unless in the opinion of the chairperson of the hearing committee there is good cause for disallowing confrontation. In such case the attorney for the youth, if any, shall be permitted to cross-examine the witness, unless the chairperson determines that it is necessary to deny cross-examination to preserve the anonymity of the witness. In such case, if the youth has no attorney, the chairperson of the revocation hearing committee shall, if he/she has not already done so, appoint a competent staff person to cross-examine the witness for the youth as provided in OAR 416-300-0045(1)(c). The hearing may be recessed if necessary for this purpose.

(7) The burden of presenting evidence to support a fact or position rests on the proponent of that fact or position. Quantity of proof required for revocation is a preponderance of evidence.

(8) The hearing may be continued with recesses as determined by the chairperson.

(9) The chairperson may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial matter.

(10) Exhibits shall be marked and the markings shall identify the person offering the exhibit. The exhibits shall be preserved by the agency as part of the record of the proceedings.

(11) Evidentiary rules are as follows:

(a) Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible;

(b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded;

(c) All offered evidence, not objected to, will be received by the chairperson subject to his/her power to exclude irrelevant, immaterial or unduly repetitious matter;

(d) Evidence objected to may be received by the chairperson with rulings on its admissibility or exclusion to be made at the time a final order is issued;

(e) All testimony shall be given under oath.

(12) The chairperson of the revocation committee shall make a written summary of what occurs at the hearing in terms of the response of the youth and the substance of the documents or evidence given in support of revocation.

(13) A mechanical recording of all oral testimony and presentations will be made at the hearing to aid in the event of a judicial review (tapes will be kept at least 120 days after the final order of the superintendent) and to allow the committee an accurate review of all information before making any findings.

(14) The revocation hearing committee shall issue in writing: a proposed order containing:

(a) Rulings on admissibility of offered evidence and other matters;

(b) Findings of fact (each ultimate fact as determined by the hearing committee based on the evidence before them); and

(c) Conclusions of law (e.g., did the youth violate specific rules alleged to have been violated), and recommendations for action by the superintendent (revoke or don't revoke parole or youth offender foster care).

(15) The superintendent shall review the committee's proposed findings of fact, conclusions and recommendations. If the committee's recommendation is to revoke parole or youth offender foster care, the superintendent shall not adopt the committee's recommendation without first furnishing the youth a copy of the proposed order with the committee's findings of fact and conclusions of law. In furnishing the youth with such proposed order, the superintendent shall notify the youth that the youth may file with the superintendent written exceptions or objections to the

proposed order within 10 days of receipt thereof. At the option of the superintendent, the youth may present his or her exceptions or objections orally.

(16) Upon review of the youth's exceptions and objections if any, the superintendent shall issue a final order. Such order shall indicate the action taken by the superintendent and shall either incorporate the recommendations of the revocation hearing committee or set forth its own findings of fact, conclusions of law and rulings on admissibility of evidence and other matters. The superintendent's order shall also set forth the youth's right to petition for reconsideration or rehearing of the superintendent's order, and the statutes under which the order may be appealed.

(17) The committing court shall be immediately notified of the final order. The affected youth shall be furnished a copy of the order.

(18) A youth may file a petition for reconsideration or rehearing of a final order with the superintendent within 30 days after the order is served. The petition shall set forth the specific ground or grounds for requesting the reconsideration or rehearing. The petition may be supported by a written argument. The superintendent may grant a reconsideration petition if sufficient reason therefore is made to appear. If the superintendent concurs that the order should be changed in whole or in part, an amended order shall be entered. The superintendent may grant a petition to rehear the revocation proceeding if sufficient reason therefor is made to appear. The rehearing may be limited by the superintendent to specific matters. If a rehearing is held and a change in the original order becomes necessary, an amended order shall be entered. If the superintendent does not act on the petition within the 60th day following the date the petition was filed, the petition shall be deemed denied.

(19) The superintendent may discontinue the revocation proceedings at any time and may return the youth to conditional release status subject to the same or modified conditions.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-300-0110

Placement After Revocation

A parole revocation to OAR 416-300-0000 to 416-300-0110 may result in a placement in one of the work/study camps, as well as in one of the institutions. If the youth is placed in a work/study camp, all of the rights and privileges extended in OAR 416-300-0000 to 416-300-0110 shall apply. If the youth is returned to the institution from a camp, a youth may contest this placement through the grievance-appeal procedure in OAR 416-440-0060.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-300-0120

Contested Cases

Any case not covered by these rules shall be governed by the Attorney General's Model Rules of Procedure in contested areas. In case of conflict between these rules and the Attorney General's Model Rules of Procedure in contested cases these rules shall control.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 310

USE OF DETENTION FACILITIES FOR PAROLEES

416-310-0000

Purpose

Pursuant to ORS 420.915(3) these rules govern the detention of parolees while in the community. Parolees are to be held in juvenile detention facilities that meet state detention standards. Each detained youth must be granted a preliminary revocation hearing as outlined in OAR 416-300-0000 through 416-300-0080.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-310-0010

Definitions

"Parolee" - A youth who is on conditional release from a Youth Correctional Facility or camp.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-310-0020

Policy

(1) The parole violator may be lodged in juvenile detention per an order from the superintendent or his/her authorized representative, ORS 420.910(1) and the authorization from the appropriate juvenile department authority.

(2) The parolee may be detained no longer than 72 hours excluding Saturdays, Sundays and judicial holidays, except on the order of a hearings officer pursuant to a finding from a preliminary revocation hearing that probable cause exists that the parolee has violated his/her parole and detention is appropriate:

(a) The hearings officer shall consult with the agency responsible for paying the detention bill before ordering detention beyond 72 hours;

(b) The parole violator may be held up to 8 calendar days based on agreement between the appropriate juvenile department authority and the superintendent or his/her authorized representative. The decision will be based on local policy guidelines of the detention facility, good casework practice and available funds to support the stay.

(3) The parole officer involved with the case must communicate the following information to detention staff:

- (a) The charges or reasons why the youth is detained;
- (b) The post-detention plan;
- (c) The visitors who are permitted to see the parolee;
- (d) Any significant medical information;
- (e) Any significant needs of the parolee.

(4) If the parolee is returned to close custody, the full revocation requirements outlined in Oregon Administrative Rules, Chapter 416, Division 300 shall apply. The preliminary revocation hearing granted while in detention shall suffice for this part of the revocation process, but the parolee shall also be eligible for the revocation hearing as outlined in OAR 416-300-0090 through 416-300-0120.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-310-0030

Exceptions

There are no exceptions to these rules.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 320

ARREST ORDERS AND ALL POINTS BULLETINS

416-320-0000

Purpose

The purpose of these rules is to provide procedures for issuing APB's and Arrest Orders and for clearing and canceling APB's and Arrest Orders.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-320-0010

Definitions

(1) All Points Bulletin (APB): A bulletin sent to all Oregon

police agencies advising them that a youth has absconded, and giving them details about the absconder. The bulletin may be narrowed to specific police agencies only, if such practice is desirable.

(2) Arrest Order: An Order, signed by the Superintendent of a youth correctional facility or designee, having the full force and effect of a warrant, granting any police or peace officer in the state authorization to arrest and detain the youth described in the order.

(3) Law Enforcement Data System (LEDS): A telecommunication information system for the use of law enforcement and criminal justice agencies to record and provide information regarding APB's, Arrest Orders, etc.

(4) Youth Correctional Facility (YCF) close custody programs administered by the Oregon Youth Authority.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-320-0020

Policy

(1) As authorized by ORS 420.910, APB's and Arrest Orders shall be issued for any youth who escapes from a Youth Correctional Facility, related Camps, or is absent without authorization from parole supervision or from the custody of any person or agency in whose charge the youth lawfully has been placed.

(2) The Arrest Order number shall be included with the other information transmitted on the APB.

(3) Arrest Orders may be issued on any parolee who has violated one or more conditions of parole, as authorized by Section (1)(b) of ORS 420.910. The requests for such an Order must come from the parole officer's supervisor or that person's designee, and it must specify the condition(s) of parole that were violated.

(4) Arrest Orders shall be sent, as necessary, to any law enforcement person, agency, detention facility, or jail.

(5) Pursuant to the provisions of ORS 420.910(4), the Superintendent or his/her designee may, in lieu of or in addition to issuing an Arrest Order, request of the Committing Juvenile Court that a warrant be issued for the youth's arrest.

(6) Prior to sending Arrest Orders, staff designated by the Superintendent shall assure that reasonable grounds exist for doing so. If the Arrest Order concerns a youth who has absconded from the custody of a person or agency other than the YCF, a phone call shall be made to that person or agency to ascertain that the youth is in fact absent. If the Arrest Order concerns a youth who has violated conditions of parole, the provisions of (3) above shall constitute reasonable grounds.

(7) Whenever an Arrest Order is sent, the name and address of the person or agency to whom it was sent shall be recorded in an alphabetical card file at the YCF switchboard. Upon cancellation of the APB, that person or agency shall be notified.

(8)(a) Every month the superintendent of each youth correctional facility will receive a report of active APB's for OYA youths from the Law Enforcement Data System staff;

(b) A copy of the report shall be sent within two working days to all persons who requested APB's. The validity of the APB's shall be confirmed, and any that are no longer valid shall be canceled immediately.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-320-0030

Exceptions

(1) These rules do not apply to Oregon Youth Authority parolees supervised in Oregon for another state, to juveniles who have been transferred to a Youth Correctional Facility from the Corrections Division, or to juveniles transferred to a Youth Correctional Facility from a county sheriff.

(2) If a juvenile supervised in Oregon for another state absconds, the parole officer responsible shall immediately notify the other state via interstate compact.

(3) If a juvenile who has been transferred to a Youth Correctional Facility from the Corrections Division or from a county

sheriff absconds, the Corrections Division or the county sheriff shall be notified immediately by a person designated by the Superintendent of the YCF that housed the juvenile.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 330

SUBSTITUTE CARE ELIGIBILITY

416-330-0000

Purpose

(1) The Substitute Care Program encompasses all of the care and treatment programs of the Oregon Youth Authority (OYA) providing 24-hour a day care, except youth in OYA youth correctional facilities.

(2) OYA is solely responsible for determining if a youth will be placed or continued in substitute care placement in accordance with statutes, OYA administrative rules, agency procedures and placement practice guidelines. These rules specify the minimum criteria for the substitute care classification and placement under any type of substitute care program. Additional criteria are outlined in rules for specific substitute care programs

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-330-0010

Eligibility Criteria for Substitute Care Placement

To be eligible for initial and continuing substitute care placement the youth must meet all of the following criteria:

(1) Legal Basis. OYA must have a legal custody of the youth through a court order; or

(2) The youth must be under eighteen (18) years of age at the time the youth is placed in OYA's legal custody and placement services are first initiated. (Except for placement of a person who was committed to a YCF after the age of eighteen and youth transferred from the Oregon Department of Corrections.

(3) The youth's behavior is a serious danger to the youth, the youth's family or the community but the youth can, without threat to self or others, be managed in an available and appropriate substitute care resource.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 340

MEDICATION MANAGEMENT

416-340-0000

Purpose

These rules establish procedures for youth offender foster parents and OYA staff to follow when a youth in the custody of the OYA is placed in youth offender foster care, is administered medication. For youth who have been prescribed a psychotropic medication, requirements pursuant to ORS 418.517 are specified.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-340-0010

Definitions

(1) "Behavior Intervention Plan" is a written plan, developed by the medication management team, covering a 12-month period which addresses a youth's special needs, including medication. The medication management team will review the behavior intervention plan at no greater than six month intervals. This is to be filed in the medical section of the youth's case record.

(2) "Medication Management Team" shall be comprised of the youth's service worker and at least two other people, and may

include the youth's youth offender foster parent, medical professionals (pediatrician, physician, registered nurse, pharmacist) service worker, the youth's advocate, the youth's legal guardian, YCF staff or others as appropriate.

(3) "PRN" pro re nata, i.e., as needed.

(4) "Psychotropic Medication" is medication, the prescribed intent of which is to affect or alter thought processes, mood or behavior, including, but not limited to antipsychotic, antidepressant and anxiolytic medication and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed because it may have many different effects.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-340-0020

Policy

Youth who are in the care and custody of Oregon Youth Authority and placed in youth offender foster care by OYA shall have their health care needs attended to. It is the intent of the OYA that such youth be cared for in a safe manner and that, when possible, the youth's parent(s) or guardian be made aware of the youth's medical status. In the event that a youth is prescribed a psychotropic medication, the need for the prescription shall be reviewed by a physician and/or the personal care nurse on an ongoing schedule to be determined by the prescribing physician or, as a part of the personal care assessment process, not to exceed 90 days.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-340-0030

Documentation

The youth offender foster parent shall keep a record of the youth's medical history while in the youth offender foster home. These records shall be kept current and organized in a manner that clearly shows the medical needs of the youth. The youth's medical history belongs to the youth and his/her legal custodian, and therefore shall be sent with the youth to the next care provider upon leaving the youth offender foster home. A copy of the youth's medical history shall be kept in the medical section of the youth's case record.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-340-0040

Requirements for All Prescribed Medications

(1) All prescribed medications, scheduled or PRN (i.e., as needed), shall be:

(a) Properly labeled as specified per the physician's written order;

(b) Kept in a secured, locked container and stored as prescribed (medication requiring refrigeration shall be kept under refrigeration in a locked box); and

(c) Recorded on an "Individual Youth's Medication Log", or other log. The log shall include:

(A) The name of the youth;

(B) The brand and/or generic name of the medication, including the prescribed dosage and prescribed frequency of administration;

(C) Times and dates of administration or monitored self-administration of the medication;

(D) The name or initial of the youth offender foster parent administering the medication or monitoring the self-administration; and

(E) Documentation why a medication has PRN status.

(2) Psychotropic medication may have PRN status only under the following circumstances:

(a) The physician has ordered PRN status; and

(b) The personal care nurse has issued to the youth offender foster parent written parameters specific to a youth's care per

Board of Nursing Administrative Rule 851-047-0010(15).

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-340-0050

Psychotropic Medication Requirements

(1) Psychotropic medications shall be prescribed by a physician through a written order and included in the youth's Behavior Intervention Plan.

(2) Pursuant to ORS 109.675, a youth 14 years of age or older may obtain, without parental knowledge or consent, outpatient diagnosis or treatment of a mental or emotional disorder, or a chemical dependency excluding methadone maintenance by a physician, licensed psychologist, nurse practitioner or licensed clinical social worker. If a youth 14 years of age or older in the custody of the OYA is known by the OYA to be diagnosed or treated for any mental or emotional disorder or chemical dependency within seven working days of receiving notice from the youth offender foster parents the OYA shall:

(a) Ask the youth whether he or she consents to disclosure of information regarding the prescription of a psychotropic medication; and

(b) Ask the youth to whom the disclosure shall be given; and

(c) Document on the OYA 1085, placed in the legal section of the youth's case file, the youth's consent or refusal of consent to disclosure of information regarding the prescription of a psychotropic medication, and to whom such disclosure may or may not be made.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-340-0060

Balancing Test

The use of medication for the control of behavior, thought processes or mood shall be based on a physician's decision that the harmful effects of the behavior outweigh the potentially harmful effects of the medication. The physician must have a full and clear description of the harmful behavior, thought processes or mood to be addressed, as well as any medication side effects observed. To enable the physician to make this decision, members of the Medication Management Team shall make pertinent information available to the physician.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-340-0070

Review and Monitoring

(1) Medications for behavior, thought processes or mood shall be reviewed at a minimum of every 90 days:

(a) By the prescribing physician and/or Medication Management Team for desired responses and adverse consequences; and

(b) To determine the continued need and/or lowest effective dosage in a carefully monitored program.

(2) Every youth who is prescribed psychotropic medication shall be referred to the contracted registered nurse for a personal care evaluation.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-340-0080

Notification Timelines for the Youth Offender Foster Parent

For any youth in the custody of the Oregon Youth Authority, placed in a youth offender foster home, youth offender foster parents shall notify the OYA local office within one working day of any new prescription for psychotropic medication.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-340-0090

Notification Content for the Youth Offender Foster Parent

The notification from the youth offender foster parent to the branch shall contain:

- (1) The name of the prescribing physician;
- (2) The name of the medication;
- (3) The dosage prescribed; and
- (4) The reason the medication was prescribed.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-340-0100

Notification Timelines for the Local OYA Office

The local office, within a timely manner, not to exceed seven working days of notification by the youth offender foster parent, shall provide written notification to:

- (1) The youth's parent or guardian, if whereabouts is known;
- (2) The parent or guardian's attorney, if known;
- (3) The youth's attorney, if known;
- (4) The youth's court-appointed special advocate.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-340-0110

Notification Content for the Local OYA Office

The notification shall contain:

- (1) The name of the prescribed psychotropic medication;
- (2) The prescribed dosage;
- (3) The dosage recommended by the drug's manufacturer or the United States Food and Drug Administration;
- (4) The reason the medication was prescribed;
- (5) The expected benefit of the medication;
- (6) The side-effects of the medication; and
- (7) Notice of the right to petition the juvenile court for a hearing if there is an objection to the use of the prescribed dosage of the medication.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 350

MAINTENANCE AND TREATMENT PAYMENTS

416-350-0000

Purpose

These rules govern the payment for maintenance and treatment services for all OYA substitute care placements with certified/licensed providers of care that are funded by the department.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-350-0010

Payments: General Guidelines

(1) Foster Care:

(a) Payment by OYA to foster parents for a youth's room, food, clothing, incidentals and cash allowance (known as the board rate for youth in foster care) will be made on a monthly basis, or prorated for portions of a month, after the period during which care has been provided. It will include the day the youth enters the home but exclude the day the youth leaves the home. Costs of special care or service in accordance with a written OYA reformation plan may also be provided if essential for the youth's well being and if specifically authorized by OYA;

(b) Standard foster care rates are established by OYA subject to the availability of funds and are uniformly applied throughout the state. The current rates are available at each OYA office upon request.

(2) Group Care: Payment by OYA to purchase of care providers will be made as stipulated in signed contracts.

(3) Payments Prohibited:

(a) Payment will not be made for two simultaneous 24-hour

out-of-home care services, such as foster care, relative care, family group homes, residential treatment, closed custody, at the same time;

(b) Neither payment nor utilization credit will be given for duplicate simultaneous contracted treatment services, such as day treatment and residential treatment;

(c) Any exceptions to the above rules must be approved in writing by the Superintendent of Community Services. Exceptions will be considered only when federal funds will not be claimed.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-350-0020

Payment Prior to Placement

(1) Payment or utilization credit may be made to a purchase of care provider beginning on the agreed upon admission date if the facility is required to reserve a space for the youth. Payment for a reserved space shall be limited to seven consecutive days unless there is further delay due to the actions of OYA. Payments exceeding the seven-day limit must be approved by the responsible OYA program manager.

(2) Purchase of care providers who receive a fixed level monthly payment shall be given utilization credit for services provided under this section.

(3) In the event the youth is currently in care and public funds are being expended for that care, then no payment can be made for the reserved space.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-350-0030

Payment for Temporary Absences

(1) Temporary absences include:

(a) OYA Community Services authorized absences for home visits, vacations, and special activities;

(b) Runaway: When there is agreement between OYA and the provider to return the youth to the placement within seven consecutive days;

(c) Hospitalization: (Hospitalization for medical treatment under Title XIX is not a maintenance or board and room payment.) When 24-hour medical care is required for a short period of time and the provider continues to exercise youth caring responsibilities in anticipation of the youth's return.

(2) Continued payment may be made to a provider during a youth's temporary absence when:

(a) The plan is for the youth to return to the care of the same provider; and

(b) No other provider is receiving a maintenance payment for the youth during the period of the absence.

(3) Program Payment Limitations:

(a) Family Foster Care:

(A) Payment may be authorized by the parole and probation worker for up to seven days after a youth is temporarily absent from the foster home;

(B) Authorization for payment after a youth is absent for more than seven days must be approved by the manager.

(b) Purchase of Care and Family Group Homes:

(A) Routine home visits to parents or foster parents, which do not exceed four days, do not require special authorization;

(B) Absences of five days or more may be approved for payment if:

(i) The provider's contract is fully utilized (family group homes are exempted);

(ii) OYA authorizes the payment no later than the last day of the month in which the absence occurs;

(iii) OYA certifies that payment is necessary to ensure a vacancy will be held open in the provider's facility for the youth's return.

(C) Absences of five days or more may be approved as follows:

(i) Length of Absence - Who Approves;

(ii) 5 to 14 days - Parole and Probation worker;

(iii) Over 14 days - Parole and Probation worker and manager.

(D) Planned Visits to Another Provider. It is the responsibility of the purchase of care provider to reimburse the visiting resource at a reasonable rate agreed upon by both parties. OYA may not make maintenance payment to two providers at the same time;

(E) A purchase of service client invoice must be completed in accordance with OYA/SCF billing procedures.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 360

PLACEMENT OF MINORITY YOUTH

416-360-0000

Purpose

The purpose of this rule is to ensure that the best interests of minority youth are met by requiring consideration of their racial and ethnic heritage when making out-of-home placements.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-360-0010

Definitions

(1) "Extended Family Member" is a person 18 years of age or older who is a brother, sister, aunt, uncle, or grandparent. Any other person whom the youth's family recognizes as a parenting figure to the youth may be recognized, subject to approval by the department, as an extended family member for purposes.

(2) "Minority" means person(s) having origins in any Hispanic, Black, Asian, or Pacific Islander group. American Indians and Alaskan natives are included when these rules provide a higher standard of care or protection than are provided by the **Indian Child Welfare Act** (Public Law 95-068) and Administrative Rules 416-160-0000 through 416-160-0070.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-360-0020

Placement of a Youth in Substitute Care

(1) When a youth is being placed in a single family home the department shall place the youth using the following order of preference:

(a) Legal parent(s);

(b) Extended family members;

(c) Persons with knowledge and appreciation of the ethnic heritage of the youth;

(d) Other persons with knowledge and appreciation of the ethnic heritage of the youth.

(2) A determination not to follow the order of placement preference shall be based on grounds that such placement is inappropriate and inconsistent with the best interests of the youth for one or more of the following reasons:

(a) An informed request of the parents or legal guardian that the order of preference not be followed;

(b) Extreme medical, physical or psychological needs of the youth;

(c) Unavailability of families or persons who meet both the placement standards and preference criteria.

(3) When placement does not meet these placement preferences, the reasons must be documented in the youth's record.

(4) When protection of the community precludes following these placement preferences.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-360-0030

Consulting With Ethnic Community

(1) The department will seek and include advice from persons within the youth's ethnic group when making substitute care placement decisions.

(2) The department may request a person(s) from the youth's ethnic group to act as a representative for purposes of advising the department on matters of racial and ethnic heritage when deciding upon a substitute care placement. The representative will:

(a) Assist in the identification and development of placement resources that meet the requirements of these rules for the placement of minority youth;

(b) Assist the department in deciding upon an appropriate placement for the youth placed under these rules;

(c) Advise the department on placement decisions. Pursuant to ORS 418.770, the department may provide information to the representative from records which is pertinent to the planning of an individual youth;

(d) Be subject to all confidentiality laws, rules and penalties as if they were an employee of the department;

(e) Participate in Department Placement Committee meetings, upon request of the department.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-360-0040

Training

In cooperation with ethnic communities, the department will develop training programs for department employees to assure ethnic sensitivity.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 370

INDEPENDENT LIVING SUBSIDY PROGRAM

416-370-0000

Purpose

(1) These rules specify the requirements of the Independent Living Subsidy Program (ILSP) which are in addition to the expectations for all placements.

(2) The Independent Living Subsidy Program is designed for youth 16 years of age and older who are in OYA's custody and who are working toward social and financial emancipation. It is for those youth who cannot or should not be expected to adjust to a family. The goal is to provide an avenue whereby the older youth can work toward self-sufficiency through carefully planned, graduated steps.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-370-0010

Eligibility Criteria

ILSP placements are limited to young people who meet all of the following conditions:

(1) Are at least 16 years of age;

(2) Are in OYA's custody prior to their 18th birthday;

(3) Have been in at least one other substitute care placement;

(4) Have been determined by OYA that further placement in a substitute care resource or return home is not necessary for the protection of the community and would not be beneficial to the youth;

(5) Have been accepted by the local ILSP Screening Committee for program participation;

(6) Have written permission to participate in the ILSP program from the juvenile court;

(7) Will sign a performance agreement required by the program.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-370-0020

Acceptable ILSP Plans

(1) The participant will be engaged in a program of education or employment, or a combination of both amounting to full-time activity which will have the goal of self-sufficiency.

(2) The plan will be limited to one year or less. Any plan lasting longer than one year must be approved by the local OYA Manager.

(3) The plan shall not extend beyond the youth's eighteenth birthday unless the person is in a high school program full time or actively completing his/her high school through part time classes and employment. These classes may include GED courses or high school courses offered by a community college.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-370-0030

Written Agreement

A written performance agreement shall be developed and signed by both the worker and participant. The agreement shall clearly state responsibilities of the participant and worker and will include:

(1) Identification of potential problems/barriers and solutions in working toward self-sufficiency.

(2) A plan for full-time activity (education and/or employment).

(3) A cooperative financial agreement to:

(a) Pay a portion of housing (including a statement regarding the decision to establish a joint bank account when applicable) and other support costs;

(b) Establish a savings or banking account.

(4) A statement of proposed time span needed to attain the goal of self-sufficiency and review dates to determine progress.

(5) A statement outlining action that will be taken if the participant does not meet the terms of the agreement or program requirements.

(6) A statement indicating the participant's right to appeal a decision to discontinue the ILSP.

(7) A statement that OYA's subsidy will increase or decrease, based on the ability of the participant to meet his/her share of the total living expenses.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-370-0040

Appropriate Living Situations

Appropriate Living residences include, but are not limited to, YMCA, YWCA, boarding house or apartment. The residence shall meet the following minimum standards:

(1) Be located so as to provide reasonably convenient access to schools, places of employment or services necessary for completion of the ILSP plan.

(2) Comply with applicable state and local zoning, fire, sanitary and safety regulations.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-370-0050

Participant's Monthly Budget

(1) An initial monthly budget will be developed with the participant, and will be reviewed monthly and revised as needed. The budget will be used by the participant to learn money management and by OYA to adjust subsidy payments based on participant income.

(2) The following items will be considered in establishing a monthly budget for ILSP participants: rent, food, utilities (including telephone if needed and advisable), electricity and/or gas, laundry, dry cleaning, transportation, tuition and recreation costs.

(3) The participant will contribute to his or her own support in accordance with the performance agreement.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-370-0060

Subsidy Payments

(1) Start-up costs may be provided to a participant entering the program. Items such as rent and utility deposits, and household goods (e.g., sheets, towels, blankets, dishes, glasses, tableware, cutlery, pots and pans, pillows, radios) may be approved.

(2) Start-up costs may be paid only for a documented need that cannot be met from any other resource and must be approved by the Regional Manager or designee.

(3) A monthly subsidy payment up to the total amount of the regular youth offender foster care rate for adolescents (age 13-18) may be made to the participant to supplement the participant's own income or resources. The amount of subsidy will start with the amount of the regular youth offender foster care rate for adolescents and be adjusted downward according to the amount of the participant's available income.

NOTE: The subsidy payment can never exceed the regular youth offender foster care rate for adolescents.

(4) Up to \$400 of available income is allowed before the subsidy must be reduced. If, however, the participant's monthly budget need is less than the total of \$400 plus the current youth offender foster care rate (age 13-18) then income will only be allowed up to the amount of the budget need. Income over the allowed amount will reduce the amount of the subsidy. Income, gifts or grants used to meet tuition expenses will not be counted as available income. The "Independent Living Subsidy Worksheet", OYA 347, is available to help determine the subsidy amount.

(5) The amount of the subsidy payment is to be reviewed and renegotiated monthly based on the current needs of the youth.

(6) At any time a participant's available income exceeds the total cost of the participant's planned budget, the participant shall pay all of the expenses, and the subsidy will end.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-370-0070

ILSP Expectations of Staff

(1) The service worker is expected to ascertain that the minimum requirements of the program are met and documented in the record.

(2) The service worker shall work closely with the participant, meeting at least twice a month to provide counseling, support and supervision.

(3) Participants in this program will be evaluated in relation to their progress in assuming responsibility and self-sufficiency within a reasonable period of time as outlined in the written agreement.

(4) The local manager or designee shall approve or disapprove the applicant's ILSP plan.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-370-0080

Program Termination

(1) Participation in this program shall be concluded when the participant has:

(a) Achieved self-sufficiency to the extent that there is no longer a need for financial support and/or social services from OYA;

(b) Made a voluntary decision to no longer participate in the program;

(c) Demonstrated inability to meet the requirements of the program or the terms of the agreement;

(d) Custody is terminated by the Juvenile Court, parent or legal guardian.

(2) OYA's decision to remove a participant from the program will require:

(a) A written determination of the termination approved by the Branch Manager;

(b) Notification to the participant in writing 30 days in advance of the termination of subsidy. The notification shall include the date the subsidy will terminate and the right to appeal the decision.

(3) The service authorization will be closed effective the same date as the conclusion of the youth's participation in the program.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 380

ONE TIME PAYMENTS

416-380-0000

Purpose

These rules describe how one-time payments may be used to benefit youth in foster care, family and professional shelter care, youth offender foster care, youth in residential group care, and, youth in non-paid placement such as Oregon State Hospital and DePaul Treatment Center.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-380-0010

Definitions

A "One-Time Payment" is a payment for services or supplies described in these rules which are essential to the youth's substitute care and no other resource exists to cover the essential service or supply.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-380-0020

Policy

(1) One-time payments shall be limited to the amounts stated in this rule statewide whenever possible. One-time payments will not be made when the youth has full or half-time paid employment or when there is money in a trust account.

(2) Exceptions to these rules may be made by the manager in individual situations. Exceptions must be made prior to purchase and confirmed in writing in the case file.

(3) Clothing:

(a) It is the responsibility of the Department to make certain that clothing needs of youth going into or placed in out-of-home care are met. Both staff and contracted providers shall use reasonable judgment in making clothing purchases. It is expected that a youth in the custody of OYA will be dressed similar to other youth living in the community, but purchases are dependent upon funds available to the Department. Unless an individual exception has been made by the manager, clothing purchases may be authorized only after:

(A) All clothing available and belonging to the youth is obtained from the parent(s), guardian, or provider at the time of placement or change of placement;

(B) Clothing resources such as foster parent organizations or agency volunteer programs, etc., are to be used prior to any purchase of clothing.

(b) New Placements: One-time payment for clothing may be authorized for a youth going into substitute care if clothing is inadequate or insufficient to allow the youth to commence an out-of-home care placement;

(c) Shelter Care: When all resources have been utilized and it is determined that sufficient clothing is still not available, an emergency wardrobe may be purchased;

(d) Ongoing Care:

(A) The service payment to providers includes a clothing replacement allowance. When a youth is placed in ongoing care, the worker is to review the monthly payment for the youth with the provider and explain that they are expected to use the clothing allowance included in the service payment for replacement of clothing. The agency will not purchase replacement clothing except in extraordinary situations;

(B) When a youth moves from one provider to another provider, all of this youth's wearable clothing including clothing purchased for the youth while in substitute care, is to go with the youth. The youth is not eligible for another initial placement wardrobe;

(C) New wardrobes are not to be purchased for a youth in adoptive placement, except to make certain that the youth is properly clothed for presentation to the adoptive parents at the time of placement;

(D) Youth who are in shelter care or ongoing care generally will not be provided a supplemental wardrobe when they leave care temporarily and later return to out-of-home care. A supplemental wardrobe requires an exception.

(e) Maximum Clothing Allowances: Shall be determined by OYA administration and enforced by local managers.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-380-0030

Transportation

(1) The Department may pay for non-medical transportation based upon current OYA mileage rates paid to staff:

(a) Payment for school transportation only when the youth is in family foster/shelter care and the school district does not provide transportation;

(b) City bus passes in metropolitan areas may be purchased for youth attending school when the schools do not furnish transportation.

(2) In-state transportation by airline for youth may be approved only if the cost of the air fare does not exceed all the actual costs of transporting the youth by car.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-380-0040

Educational Costs

(1) Basic school costs are to be paid by local school districts.

(2) School Costs may be approved by the local manager if sufficient funds are available.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-380-0050

Extraordinary Needs

Extraordinary needs for clothing and specific miscellaneous items may be paid for by one-time payments only if the need is documented in the youth's case record, no other funding sources are available, and payment is authorized as an exception prior to the purchase. Total clothing purchases, including an initial and supplemental wardrobes, may not exceed the amount determined by OYA central administration.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-380-0060

Payment Method

(1) A OYA 598 (Authorization and Vendor Invoice) must be completed in accordance with instructions and presented to the vendor.

(2) The OYA form will authorize a maximum amount; however, the vendor may only bill OYA for the actual amount of purchase.

(3) A business will be reimbursed after submitting a OYA form which certifies goods and/or services were rendered by the business.

(4) A person or party who has purchased goods or services will be reimbursed upon submitting the completed OYA form along with original receipt(s) for each item purchased.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-380-0070

Youth in Non-Paid Placement at Oregon State Hospital and DePaul Treatment Center

(1) OYA has established a procedure to provide personal allowances for youth who are in custody of OYA and are placed in a non-paid placement at Oregon State Hospital (OSH) and DePaul Treatment Center.

(2) Procedure:

(a) Determine if the youth has benefits or resources coming in to his/her account. OYA staff can use the IFDF screen to check and see if the youth has a balance in his/her trust account. If there is money in the trust account, the worker can initiate a OYA Trust Action monthly to receive payment for the youth. Maximum monthly amount is not to exceed the amount defined by OYA Central Administration;

(b) If the youth does not have any benefits or resources coming in, then the allowance payment may be made from "One-Time Payments" using the individual OYA location cost center, and a new object code of 980.092, Personal Care (this is an EAS object code). OYA staff would initiate payment by completing a OYA Administrative Expense Voucher monthly including the youth's case number and person letter.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 390

TITLE IV-E-FC

416-390-0000

Purpose

The purpose of these rules is to set forth the procedures and criteria the department will use to make Title IV-E-FC federal financial participation eligibility determinations for youth in substitute care and in the care and custody of Oregon Youth Authority. (P.L. 96-272)

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-390-0010

Eligibility Requirements

(1) Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980, became effective June 17, 1980. It amended Title IV of the Social Security Act to establish a new Part E, which provides for federal payments to the states for foster care maintenance and adoption assistance payments made on behalf of certain eligible youth. Title IV-E eligible youth are categorically eligible for Medicaid.

(2) The Administration for Children and Families is the federal agency that sets regulations and monitors the Title IV-E foster care and adoption assistance programs. Title IV-E is administered by the State Office for Services to Children and Families (SOSCF) of the Department of Human Resources. Oregon Youth Authority operates Title IV-E under delegated authority from SOSCF. The agency acts as an applicant for the youth and provides Title IV-E foster care payments to providers on behalf of eligible youth within:

(a) The guidelines established by state and/or federal legislation for the program;

(b) The established financial standards of the AFDC program in effect July 16, 1996;

(c) Certain state and/or federal regulations and statutory requirements as defined in AFS rules 461-101-0010 through 461-195-0660 and 461-002-0920 in effect July 16, 1996 for AFDC recipients which also apply to the Title IV-E-FC eligible foster youth who derives his/her eligibility from the AFDC program. (P.L. 96-272)

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 2 1997(T), f. & cert. ef. 7-24-97; OYA 4-1997, f. & cert. ef. 10-13-97

416-390-0020

Definitions

(1) "**ADC No-Adult Standard**": The standard applicable to ADC households that do not have an adult in the grant.

(2) "**AFDC**": Aid to Families with Dependent Children in effect July 16, 1996.

(3) "**AFS**": Adult and Family Services.

(4) "**Amnesty Alien**": Any person with proper INS documentation who, because of a well-founded fear of persecution due to race, religion, or political opinion, fled his or her homeland. The term "refugee" is applied to all refugees and asylees with proper INS documentation served by AFS under the Refugee Resettlement Program.

(5) "**Assistance Unit**": Unit of individuals whose needs, income, and resources are considered in determining eligibility for, and the grant amount.

(6) "**Youth Support**": Any voluntary or court-ordered contribution by an absent parent. Support includes, but is not limited to, money payments, necessary and proper shelter, food, clothing, medical attention and education.

(7) "**Citizen/Alien Status**": A U.S. citizen or alien lawfully admitted under provisions of the Immigration and Nationality Act as a paroled or conditional entrant; or an alien lawfully admitted for permanent residence or who is otherwise permanently and lawfully residing in the United States.

(8) "**Countable Income**": The amount of available income, including earned and unearned not specifically excluded by AFS OAR 461-140-0040 to be used to determine eligibility for public assistance.

(9) "**Countable Income Limit**": This amount is the standard set by AFS as the maximum countable income limit for ADC eligibility. This standard is used as the first step of the income eligibility tests.

(10) "**Court Order Date**": Date of court order or temporary court order giving Oregon Youth Authority responsibility for placement and care, including orders of detention.

(11) "**Earned Income**": Income produced as a result of services which the client performed.

(12) "**Eligibility Month**":

(a) The month court action for placement was initiated resulting in the removal of the youth from the home of his/her caretaker; or

(b) The month a documented request for a judicial review of a youth in OYA's continuous custody is made; or

(c) The month the judicial determination resulting in a court order for OYA custody was made when no documentation of a request for a judicial review is evident or

(d) The month a voluntary agreement is signed; or

(e) The month a voluntary relinquishment is signed.

(13) "**Entitlement**": Any benefit to which an individual has a valid claim, or would have a valid claim upon application, including one related to past employment or service, pension, compensation payment, allotment allowance insurance payment, interest in an estate or fund, or of a similar nature.

(14) "**Family**": For purposes of determining Title IV-E-FC eligibility, family is the parent(s), stepparent(s), or relative(s) from whom the youth is removed.

(15) "**Foster Home**": ORS 418.625(2) defines a foster home as one maintained by a person who has under his care a youth unattended by his parent and not related by blood or marriage.

(16) "**Grant**": Is the actual assistance payment for the pay-

ment month.

(17) "**Home**": The home in which the youth resided at the time of initiation of the court action. Non-related homes will not be considered as the home which exercises day-to-day care.

(18) "**Incapacity**": A condition that causes unemployability or impairs the individual's ability to perform normal functions either on a medical or psychiatric basis.

(19) "**Initiation of Court Action**": Date court was petitioned or legal action was taken which resulted in the removal of the youth from the home of his/her caretaker.

(20) "**Need**": The monetary amount by which the requirements of AFS standards of an individual or family exceed all income and resources available to them.

(21) "**Nunc Pro Tunc Orders**": Under Oregon law, the role of a nunc pro tunc order is to supply an omission in the record of action actually taken, but omitted through inadvertence or mistake. Oregon's trial courts are authorized to correct their record so that it will speak the truth and truly set forth the proceedings as they actually occurred.

(22) "**Parent**": For IV E purposes "parent" means the birth or legal (step or adoptive) mother or father of a person or unborn child:

(a) If the mother lives with a male and either she or the male claims that he is the father of the child/unborn, and no one else claims to be the father, he is treated as the father even if paternity has not been legally established.

(b) A stepparent relationship exists if:

(A) The person is legally married to the youth's birth or adoptive parent; and

(B) The marriage has not been terminated by legal separation, divorce or death.

(c) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the birth parent is also considered a parent if both of the following are true:

(A) The youth lives with the birth parent; and

(B) The legal parent (the adoptive parent) has given up care, control and supervision of the youth.

(23) "**Payment Standard**": This is the amount set by AFS as the ADC net income limit. It is used in the second step of the income eligibility tests. It is also used to determine the actual grant amount.

(24) "**Personal Property**": Everything owned which is not real property.

(25) "**Real Property**": Land, buildings, and generally whatever is erected on or affixed to the land or buildings.

(26) "**Release of Temporary Commitment**": Oregon Youth Authority is relieved of responsibility by the court for placement and care of the youth.

(27) "**Resource**": Any personal or real property which is or can be made available to meet the need of the assistance unit and is not specifically excluded from consideration by AFS:

(a) Personal Property: Any property that is not real property, including liquid assets;

(b) Real Property: Land, buildings, and whatever is erected on or affixed to the land or buildings and taxed as real property.

(28) "**Shelter In-Kind**": Shelter paid by an agency (other than AFS) or someone other than the client pays (or provides payment) for the client's rent and utility bills, totally, and at no cost to the client and the client provides no service in exchange for the payment.

(29) "**Standards of Assistance**": The consolidated standards for payment specified in Adult and Family Service's OAR 461-155-0030. These standards are used to determine income eligibility for ADC.

(30) "**Title IV-E Program**": The Title IV-E program of the Social Security Act provides federal payments for foster care and adoption assistance. The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) was enacted on June 27, 1980, and established the new Title IV-E program, replacing the Title IV-A foster care program in Oregon on June 1, 1981.

(31) "**Unearned Income**": All income which does not direct-

ly result from an individual's employment or self-employment.
(P.L. 96-272)

Stat. Auth.: ORS 420A
Stats. Implemented: ORS 420A
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 2-1997(T), f. & cert. ef. 7-24-97; OYA 4-1997, f. & cert. ef. 10-13-97

416-390-0030

Certification

Youth found eligible for Title IV-E-FC must be placed in a certified or licensed substitute care placement. Documentation in the case record of Licensure or certification is required. The following documentation is required for youth in out-of-state placements:

(1) Verification that the out-of-state foster home or youth caring agency is licensed or approved by the agency in that state which is responsible for licensing or approval of such facilities; or

(2) In states where relative homes are not licensed, a statement in a letter that the home would meet the state's licensing standards for certification or Licensure, including a statement of the period of time for which a formal license would be issued for that home. (P.L. 96-272)

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-390-0040

Certification of Relative Homes

(1) **Relative Payments.** Foster care payments to relatives are restricted by Oregon state law. Youth in relative foster care must be Title IV-E eligible to receive a foster care payment with the exception of Native American Youth. (The Tribal enrollment committee must verify that the youth is enrolled as a member of a federally recognized tribe or eligible for enrollment). State general fund foster care payments may be authorized for these Native American youth in relative foster care but found ineligible for Title IV-E:

(2) **Relative Placements.** With the exception of Native American youth, youth in the following homes must be found Title IV-E eligible for the relative to receive foster care payments:

(a) The home of any blood or half blood relative or adoptive relative, including persons of preceding generations denoted by the prefixes of grand, great, or great-great. Youth with one common birth parent are half-blood relatives;

(b) The home of siblings, aunts, uncles, first cousins, first cousins once removed, nephew, or niece, and grandparents;

(c) The home of a relative, as defined in subsection (a) of this section, of adoptive parents. A valid decree of adoption establishes the adoptive parent(s) as the legal parent(s) and erases all prior legal and blood relationships.

(3) **Relative Foster Care Provider Rights.** The relative foster care provider has a right to:

(a) Information about the Title IV-E foster care program administered by the agency, including the eligibility requirements of the program and the required verification methods for providing verification;

(b) Apply for Title IV-E foster care payments for the financial support of the related youth in their care;

(c) Receive these benefits without discrimination when the related youth in their care meets the eligibility requirement of the Title IV-E foster care program and the home meets Oregon foster care certification requirements.

(4) **Request for Payment.** The relative foster care provider may contact the agency with a request for Title IV-E payments. Their request for Title IV-E payments may be in the form of a phone call, visit or written request by the relative provider or another person acting on the relative provider's behalf. This request starts the application process. The date of request is the day the request for foster care payments is received. That date will be recorded by the eligibility worker on the narrative and used to establish:

(a) The date for starting the application processing time frame; and

(b) The earliest date for which Title IV-E eligibility may be established.

(5) **Eligibility Determination Time Lines.** Eligibility will be determined within 45 days from the date of request for benefits. The limit may be extended for any of the following reasons:

(a) Information needed to determine eligibility is expected to be received after the 45 day limit; or

(b) Other circumstances exist that are not within the control of the client or the office, and this delays the eligibility decision past the 45 day limit.

(6) **Notification of Closing or Denial of Relative Payment.** The eligibility worker will send written notification to the relative foster home at least ten days prior to the effective date of termination of payments when a youth is no longer Title IV-E-FC eligible. Notification of denial will also be sent to relative(s) requesting foster care payments when a youth placed in their home does not meet the requirements of the Title IV-E-FC program.

(7) **Appeal of Closure or Denial.** Should relatives not agree with the closure or denial of Title IV-E foster care payments and medical coverage, a conference with Oregon Youth Authority staff may be requested. The conference will provide relatives the opportunity to:

(a) Discuss the decision;

(b) Get an explanation of the specific reasons for the action; and

(c) Explain why they feel the action should not be taken.

(8) **Administrative Hearings.** Relatives also have the right to ask for an Administrative Hearing before an impartial person designated as an authority on the federal eligibility requirements of the Title IV-E Foster Care and medical programs. The purpose of such a hearing is to determine if the office's Title IV-E foster care eligibility determination decision is in compliance with the guidelines established by state and/or federal legislation for the program. If the hearing decision is that Title IV-E foster care payments and medical coverage have been wrongfully denied or terminated, corrective payment action will be taken.

(9) **Use of Witness Testimony.** Whether relatives request a conference with staff, or an Administrative Hearing, witnesses may testify on their behalf and legal counsel or other representatives may be present. Oregon Youth Authority will not pay the expenses of witnesses attending or of an attorney.

(10) **Hearing Request.** Whenever a client or the client's authorized representative clearly expresses a desire to have a hearing, orally or in writing, the client has requested a hearing. The eligibility worker will narrate the hearing request date on the narrative.

(11) **Timelines for Hearing Request.** Relatives may make a written or oral request for an Administrative Hearing to either their local office or Support Central. Requests for an Administrative Hearing must be made within 45 days of the date of notice of closure or denial of Title IV-E foster care payments and medical coverage. (P.L. 96-272)

Stat. Auth.: ORS 420A
Stats. Implemented: ORS 420A
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 2-1997(T), f. & cert. ef. 7-24-97; OYA 4-1997, f. & cert. ef. 10-13-97

416-390-0050

Certification of Unrelated Homes

(1) **Definition of Unrelated Home.** Certification of the home is required when youth are placed in the home of a person formerly related by blood or marriage. The following homes meet OYA's definition of an unrelated home. General Fund foster care payments may be made to the following certified homes:

(a) The home of a person formerly related to the youth by marriage when:

(A) The relationship by marriage was terminated by death or divorce;

(B) The youth was not adopted by a step-parent prior to the dissolution of the marriage or death of the natural or adoptive parent. A youth's relationship to his/her step-parent ends 30 days after the entry of a divorce decree.

(b) The home of a person no longer related to the youth by blood, with the exception of the birth parent. Blood relationships end when the youth is legally adopted by another family. A valid decree of adoption establishes the adoptive parent(s) as the legal parent(s) and erases all the prior blood relationships of siblings, unless also adopted by the same adoptive parents, and extended family members.

(c) The home of a putative paternal relative. A paternal relationship by blood does not exist when:

(A) There is no court order establishing paternity or no evidence of such an order having been submitted to Vital Statistics; or,

(B) The father's name is not on the birth certificate. (Only the birth certificate issued by Vital Statistics will provide proof of paternity having been established by the court. The hospital certificate giving the father's name is not sufficient evidence of paternity.); or

(C) The putative father signed relinquishment papers without ever having signed a stipulation of paternity. (The Support Enforcement Department does not recognize the signing of a stipulation of paternity without the mother agreeing that the man is indeed the father. The HS 21 form jointly signed by the mother and putative father is a legal document which establishes paternity and allows the father's name to be added to the birth certificate.)

(2) **Definition of Non-substitute Care Placements.** Youth in the following relative homes are not considered to be in substitute care and are ineligible for foster care payments:

(a) The home of a birth parent even after adoption or termination of parental rights;

(b) The home of the designated caretaker relative from whose physical custody the youth was removed;

(c) The home of a relative when the youth's parent resides under the same roof.

(d) The home of a step-parent when the birth parent and step-parent are separated, but not divorced.

(e) The home of a relative when the relative has legal custody;

(f) The home of a relative when his home was the dwelling shared by the parent and the youth at the time of removal. **(P.L. 96-272)**

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 2-1997(T), f. & cert. ef. 7-24-97; OYA 4-1997, f. & cert. ef. 10-13-97

416-390-0060

Reimbursable Placements and Payments

(1) **Reimbursable Placements.** There are five types of out-of-home placements which meet the Title IV-E definition of a reimbursable placement. They are:

(a) An approved foster family home;

(b) A private, non-medical group home or crisis residential center licensed by the state;

(c) A public non-medical group home or youth-care facility which has a licensed capacity of less than 26 beds;

(d) A pre-adoptive placement; or

(e) A relative foster home.

(2) **Reimbursable Payments.** Title IV-E foster care maintenance payments for a youth in foster care may cover:

(a) The cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a youth's personal incidentals, liability insurance with respect to the youth, and reasonable travel to the youth's home for visitation; and,

(b) In the case of institutional care, the reasonable costs of administration and operation of such institution as are necessarily required to provide the items noted above. **(P.L. 96-272)**

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 2-1997(T), f. & cert. ef. 7-24-97; OYA 4-1997, f. & cert. ef. 10-13-97

416-390-0070

Application for Title IV-E-FC

(1) Youth in the care and custody of OYA and in substitute

care will be referred for a Title IV-E-FC eligibility determination.

(2) Under no circumstances is Title IV-E-FC to be authorized on behalf of any youth prior to the establishment of eligibility by OYA's eligibility worker. A youth cannot be eligible for Title IV-E-FC on the basis of presumed eligibility.

(3) Applications will be submitted to eligibility workers under the following timelines:

(a) No later than three working days after a youth's placement with a relative provider, unless the relative declines foster care payments;

(b) No later than 14 working days after a youth's placement in regular paid care. (No application is required when youth leave care on or before the seventh working day.) **(P.L. 96-272)**

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-390-0080

Effective Eligibility Date

Eligibility for Title IV-E can be established when all other eligibility criteria is met: (including the following)

(1) No earlier than the date of placement when the youth is in the agency's legal care and custody; or

(2) The placement date, when custody is awarded (excluding Saturdays, Sundays and holidays) within 24 hours of placement; or,

(3) The day after the last Title IV-A entry claim date; or,

(4) The first of the month the "reasonable efforts" ruling is made when the court delays making such a finding; as long as Best Interest or Contrary to the Welfare was obtained within the first six months of placement or,

(5) The first day of the month following the closure of the AFDC Non-Needy Relative (NNR) grant for the relative provider having received AFDC maintenance payments; or,

(6) The effective certification date of the relative provider's home when an AFDC (NNR) grant has not been received; or the effective date when a non-certified person's home becomes certified; or,

(7) The effective certification date when OYA Financial Services has reimbursed AFS the relative provider's AFDC (NNR) grant retroactive to the certification date; or,

(8) Effective the date the youth is no longer in receipt of SSI (if applicable); or,

(9) The first of the month in which the court makes a judicial determination of "best interests" and "reasonable efforts" when a youth in their parental home under OYA custody is returned to care.

(10) The first of the month in which the voluntary placement agreement is signed, when placement occurs prior to the signing of the agreement.

(11) The date a non-certified person's home becomes certified. **(P.L. 96-272)**

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 2 1997(T), f. & cert. ef. 7-24-97; OYA 4-1997, f. & cert. ef. 10-13-97

416-390-0090

Retroactive Eligibility

(1) A claim for retroactive eligibility may be made on otherwise eligible cases when:

(a) A nunc pro tunc order is issued giving retroactive effect to the judicial findings included in the order and documentation meets the requirements outlined in rule 412-085-0240(6); or

(b) A referral for a Title IV-E FC eligibility determination was not timely.

(2) The effective date of eligibility for cases pended only for judicial determination requirements is:

(a) The first of the month in which the judicial determination is made; or

(b) The first of the month in which an existing order is modified to reflect a ruling previously made, but not reflected in the order. **(P.L. 96-272)**

Stat. Auth.: ORS 420A
 Stats. Implemented: ORS 420A
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 2 1997(T), f. & cert. ef. 7-24-97; OYA 4-1997, f. & cert. ef. 10-13-97

416-390-0100

Pended Cases

Applications with a potential for Title IV-E-FC eligibility with requirements which cannot be met or eligibility factors which cannot be cleared within the month of referral will be pended indefinitely. **(P.L. 96-272)**

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-390-0110

Effective Closure Date

The effective date of termination for cases no longer meeting Title IV-E-FC eligibility criteria is the following:

- (1) The end of the month in which eligibility ceased to exist; or
- (2) Retroactive to the end of the month in which eligibility ceased to exist even though information causing the youth's ineligibility became known to the agency after the fact;
- (3) The day the parent(s), custodial or non-custodial, establishes residency in the home where their youth resides;
- (4) The day the foster home license is terminated;
- (5) On the 180th day of placement for a voluntary placement not approved for continuation by the court within 180 days. The date the youth is placed, not the signature date on the agreement, will begin the count.
- (6) The day OYA ceases having legal care and custody of the youth.
- (7) The end of the month in which an 18-year-old youth graduates or obtains a GED; or the end of the last month they are 17 years of age if they did not or will not graduate by age 19. **(P.L. 96-272)**

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-390-0120

Verification of Eligibility

(1) To establish Title IV-E-FC, eligibility factors must be verified with documentary evidence acceptable for verification. The agency decides which eligibility factors require verification and what the acceptable type of verification are. The agency may:

- (a) Decide that additional eligibility factors must be verified;
- (b) Deny an application or end ongoing benefits when acceptable verification is not provided or available.
- (2) Verification is required for the following:
 - (a) Residency;
 - (b) Alien status;
 - (c) Referral to Support Enforcement Department;
 - (d) Age and school attendance;
 - (e) Removal from the home of the designated relative caretaker;
 - (f) Judicial Language on Court Orders;
 - (g) Countable family/youth income and benefits;
 - (h) Work status;
 - (i) Parental deprivation;
 - (j) Family/youth resources. **(P.L. 96-272)**

Stat. Auth.: ORS 420A
 Stats. Implemented: ORS 420A
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 2-1997(T), f. & cert. ef. 7-24-97; OYA 4-1997, f. & cert. ef. 10-13-97

416-390-0130

Eligibility Determinations

(1) Title IV-E eligibility is determined on a one-time basis when the youth enters substitute care. Youth removed from the home of a parent or other caretaker-relative must meet specific eligibility requirements.

- (2) The agency will reconstruct the case facts in the eligibili-

ty month to determine if the youth was receiving AFDC, or might have been eligible for AFDC had an application been made. The youth must have a relationship to the AFDC program during the eligibility month:

(a) AFDC Relatedness. The youth meets the AFDC relatedness test if one of the following three criteria is met:

(A) The youth was in receipt of AFDC (based on July 16, 1996 eligibility criteria) in the eligibility month, and remains within the resource limits prior to the implementation of the Oregon Option Waiver under Section 1115 of the Social Security Act effective (7-1-96); or

(B) The youth was eligible to receive AFDC in such month if an application had been made; or

(C) The youth did not live with the AFDC specified relative in such month, but did live with such a relative in any of the preceding six months; and would have been eligible to receive AFDC during the eligibility month signed had an application been made.

(b) Circumstances defining AFDC eligibility or hypothetical AFDC eligibility for Title IV-E purposes are:

- (A) Living with a specified relative;
- (B) Deprived of the support of one or both parents;
- (C) Financial need;
- (D) U.S. citizen;
- (E) Age. **(P.L. 96-272)**

Stat. Auth.: ORS 420A
 Stats. Implemented: ORS 420A
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 2-1997(T), f. & cert. ef. 7-24-97; OYA 4-1997, f. & cert. ef. 10-13-97

416-390-0140

Specified Caretaker Relative

(1) **Definition of Specified Caretaker Relative for Removal Purposes.** AFDC relatedness tests require that the youth be physically removed from the home of a specified relative. A specified relative is defined as:

- (a) Birth, adoptive, or stepparent;
- (b) Any blood relative or half-blood relative, including persons of preceding generations denoted by the prefixes of grand, great, or great-great; (Youth with one common birth parent are half-blood relatives.)
- (c) Aunts, uncles, first cousins, first cousins (once removed);
- (d) Persons who legally adopt a youth and any people related to the youth through the adoption who meet the degree of relationship specified in this rule. A valid decree of adoption establishes the adoptive parent(s) as the legal parent(s) and erases all prior legal and blood relationships;
- (e) Stepmother, stepfather, stepbrother, or stepsister, even after marriage is terminated by death or divorce;
- (f) Spouse of anyone listed above, even if the marriage has been terminated by death or divorce.

(2) Not Living With Specified Relative:

- (a) Youth removed from homes not related by blood or marriage will have their eligibility based on the AFDC eligibility of the related home in which the youth last resided. Such youth must have lived with a specified relative within six months of initiation of court action which resulted in the placement into OYA custody;
- (b) Youth hospitalized under parental custody and released into OYA custody for placement purposes will be considered to have lived with the parent regardless of the length of the youth's hospitalization.

(3) **Removal Requirements.** AFDC relatedness tests require that the youth be removed from the home of a specified relative. The removal home is the home from which the youth is removed and where daily supervision and care of the youth is maintained. For Title IV-E purposes, the designation of the home from which removal is based is:

- (a) The home of a relative when the relative exercises day-to-day care and control with the expectation of continuing to do so indefinitely. A home is the family setting maintained, or in the process of being established, as evidenced by assumption and continuation of responsibility for day-to-day care of the youth by a relative with whom the youth is living. The youth will be consid-

ered to be living in the home of the relative when the parent(s) of a youth leave the home in which the youth and relative remain for an indefinite period of time, or place the youth with relatives and do not return;

(b) The home of the parent when the youth in a relative home is considered to be a temporary resident of the home. The designated home for removal purposes will be the custodial parent's home when care and control by the relative or non-custodial parent is expected by all parties to be temporary or of a specific duration;

(c) The relative home where the youth last resided.

(4) The youth is not considered to be removed from the home of a specified relative and Title IV-E eligibility does not exist when:

(a) Court action initiated for purposes of placing a youth in OYA custody results in the removal of the youth from the legal custody of the parent, but does not physically remove the youth from the designated day-to-day relative caretaker's home; or

(b) A youth previously denied Title IV-E due to court action not resulting in the youth's physical removal from the home of the designated day-to-day relative caretaker is moved from the home of that relative foster parent and moved into another placement; or

(c) A parent resides with his/her child in a relative home and the parent leaves the home of the relative for an indefinite period of time leaving the youth in the relative's home. When the youth's home is with the parent and a relative, the youth must be physically removed from that home for eligibility to be considered even when the parent is temporarily absent from or leaves the home.

(d) Court action initiated for purposes of placing a youth in OYA custody results in the removal of the youth from the legal custody of the relative caretaker, but does not physically remove the youth from the relative caretaker's home. **(P.L. 96-272)**

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 2-1997(T), f. & cert. ef. 7-24-97; OYA 4-1997, f. & cert. ef. 10-13-97

416-390-0150

Parental Deprivation

A continued absence of one or both birth or adoptive, or step-parent(s) from the home constitutes the basis for deprivation of parental support or care. Deprivation in relation to the home from which the youth is removed exists when there is:

(1) Death. If either parent is deceased, the youth is deprived of parental support or care.

(2) Continued Absence:

(a) The parent is out of the home and the nature of this absence is such as to either interrupt or terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the youth; or

(b) There is evidence of continued absence of over 30 days duration; or

(c) Predictable absence due to divorce, legal separation, incarceration, and other verified and documented circumstances.

(3) Unemployment or Incapacity. For two-parent families with no absent parent, deprivation must be based on one of the following:

(a) Incapacity. One parent must meet one of the following criteria:

(A) Receives SSI;

(B) Receives SSB based on disability or blindness;

(C) Is unable to work or has a physical or mental condition that is expected to last at least 30 days and substantially reduces the parent's ability to support or care for the youth.

(b) Unemployment or underemployment. Consider two-parent household unemployed or under employed if they meet one of the following criteria:

(A) Is working less than 100 hours per month;

(B) Has a temporary one-month increase to over 100 hours, but:

(i) Worked less than 100 hours in each of the two previous months; and

(ii) Is expected to work less than 100 hours in the following month. **(IV-A)**

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-390-0160

Financial Need

A youth removed from the home of a specified relative and not in receipt of AFDC requires reconstruction of the youth's situation to determine whether AFDC eligibility was possible. A step-by-step process must be followed:

(1) **Youth is removed from a parent's home:**

(a) First consider the income and resources of the parent(s) or stepparent from whom the youth was removed; and:

(A) Determine the countable gross earned and unearned income of all the family members in the assistance unit in the eligibility month; and

(B) Include the youth placed in substitute care in the assistance unit. Exclude the parent or youth receiving SSI or a combination of SSI and other Social Security benefits.

(C) Determine if the total countable gross earned and unearned income of the assistance unit exceeds the ADC Countable Income Limit for the household.

(b) The second consideration in the income eligibility test is to:

(A) Determine the countable gross earned income with disregards and countable unearned income of all the family members in the assistance unit, including the youth who has/have been removed;

(B) An assistance unit is not eligible when all available countable income in the eligibility month, both earned and unearned, exceeds the ADC Countable Income Limit, or the Adjusted Income Payment Standard. (SSI or a combination of SSI and SSA benefits are excluded as countable income. The first \$50 of child support is also excluded). The Adjusted Income Payment Standard is used to determine the actual ADC grant amount;

(C) An assistance unit is not eligible if in the eligibility month all available resources not excluded by AFS Rules as of July 16, 1996 are over the Resource Limit.

(2) **Youth Removed from a Caretaker Relative's Home.** When a youth is removed from a caretaker relative's home the steps of the eligibility test are to:

(a) Disregard the income and resources of the caretaker relative(s);

(b) Determine the countable earned and unearned income and resources available to the youth;

(c) Include the youth placed in substitute care in the Assistance Unit;

(d) Deny Title IV-E eligibility if the youth's income is above the No Adult Standards for the ADC Non-Needy Relative Assistance Unit. **(P.L. 96-272)**

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 2-1997(T), f. & cert. ef. 7-24-97; OYA 4-1997, f. & cert. ef. 10-13-97

416-390-0170

Need and Resources

(1) The resource limit is \$1,000. An assistance unit with resources in excess of \$1,000 is ineligible for AFDC. The most common resources are cash, bank accounts, and motor vehicles.

(2) If an ADC assistance unit has a licensed motor vehicle, only the first \$1,500 of equity value of the vehicle is exempt. Any equity over \$1,500 is counted toward the \$1,000 resource limit. Any vehicle with over \$2,500 equity value, or any second car with more than \$1,000 equity, makes the family ineligible for AFDC. **(P.L. 96-272)**

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 2-1997(T), f. & cert. ef. 7-24-97; OYA 4-1997, f. & cert. ef. 10-13-97

416-390-0180

Earned income of Youth

(1) Youth under age 18 with a GED or high school diploma and employed must have their earnings considered as income to reduce the foster care payment. Otherwise Title IV-E FC payments must be closed.

(2) Earned income is not counted for:

(a) A youth, 18 years old or younger, who is a full-time student in grade 12 or below (or the equivalent level of vocational training or GED courses); or

(b) Youth under 18 years of age and at least part-time students (as defined by the institution) in grade 12 or below (or in the equivalent level of vocational training or GED courses) and not employed full-time. **(P.L. 96-272)**

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 2-1997(T), f. & cert. ef. 7-24-97; OYA 4-1997, f. & cert. ef. 10-13-97

416-390-0190

Unearned Income

(1) For Title IV-E-FC purposes, all unearned income/benefits potentially available to the youth must be counted against his/her foster care need on a dollar-for-dollar basis. Benefits awarded to the youth for which the agency is not yet payee or benefits not readily available to the youth must still be counted.

(2) The following are examples of countable unearned income:

- (a) All Social Security benefits;
- (b) Veteran's benefits;
- (c) Loans;
- (d) Cash contributions from any source;
- (e) State or private accident or disability payments;
- (f) Personal injury settlements;
- (g) Lump sum income (except SOIL and IRS recoveries and lump sum support payment applied in the month of receipt to offset prior months Title IV-E maintenance costs);
- (h) Youth support;
- (i) Railroad Retirement and other pensions;
- (j) Annuities, dividends, interest, royalties. **(P.L. 96-272)**

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-390-0200

Lump Sum Benefits

(1) Lump sum benefits must be used to offset a youth's cost of care. Federal lump sum benefits paid into the agency must be applied retroactively to reimburse the agency from the date paid placement was initiated. The agency must be the representative payee.

(2) Title IV-E-FC eligible youth receiving lump sum benefits are considered eligible, but unreimbursable for Title IV-E during the months the calculated lump sum exceeds their substitute care need. **(P.L. 96-272)**

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-390-0210

Citizenship and Alienage

A youth eligible to receive Title IV-E-FC is:

(1) A United States citizen; or

(2) An alien lawfully admitted under provisions of Section 203(a)(7) (prior to April, 1980), 207(c), 208, 249, 584(a), 101, Section 207(c) (after March 31, 1980) or Section 212(d)(5) of the **Immigration and Nationality Act** as a paroled or conditional entrant, or aliens granted immigrant status according to the **Amerasian Homecoming Act**.

(3) An amnesty alien granted permanent or unexpired temporary resident admitted under Section 245A, 210, 210A, status by the **Immigration and Nationality Act** and otherwise Title IV-E-FC eligible may receive Title IV-E-FC even though the youth

and his/her parents are prohibited from receiving ADC.

(4) Not an illegal alien. **(P.L. 96-272)**

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-390-0220

Residency

There is no minimum residency requirement for Title IV-E-FC eligibility. There need only be the intent for the youth to reside in the State of Oregon under OYA's custody. **(P.L. 96-272)**

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-390-0230

Age Requirements

(1) To qualify for Title IV-E-FC, a youth must be:

(a) Under age 18: Youth under age 18 do not have to attend school to be eligible for Title IV-E-FC;

(b) Age 18, and regularly attending school or training, and expected to complete training or graduate from school by age 19; or

(c) Enrolled in and attending school if age 18, and graduated by age 19. This must be verified prior to establishing eligibility for Title IV-E-FC. During summer vacation, verification of enrollment for the next school year is required.

(2) Regular school attendance means enrolled in and attending any of the following:

(a) A school in grade 12 or below; or

(b) GED classes in lieu of high school; or

(c) A course of vocational or technical training in lieu of high school.

(3) The student's full-time or half-time attendance is defined by the school.

(4) A youth will be considered in regular attendance during a training program, vacation, illness, or family emergency.

(5) Students are considered to be attending for the full month in which they complete or discontinue school or training. **(P.L. 96-272)**

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 2-1997(T), f. & cert. ef. 7-24-97; OYA 4-1997, f. & cert. ef. 10-13-97

416-390-0240

Judicial Determination Requirements

(1) **Best Interest Determination.** The first court order issued in relation to the youth's removal and placement should contain language or words to the effect that:

(a) "Placement is in the best interest (BI) of the youth."; or

(b) "Continuation of residence in the home is contrary to the welfare (CTW) of the youth."

(2) Should the Court fail to make a "Best Interest" or "Contrary to the Welfare" ruling in the first order issued at the time of the removal, the case will be pending awaiting a dispositional hearing. The Contrary to the Welfare or Best Interest requirement may be met through a subsequent order if the judicial determination is made within 6 months of the youth's removal.

(3) **Reasonable Efforts Requirement.** Effective 10-01-83 the court order issued in relation to the removal contains language to the effect that:

(a) "Reasonable efforts in light of the youth's and parent's circumstances were made to prevent or eliminate the need for removal of the youth from the home;" or

(b) "Reasonable efforts, in light of the youth's and parents circumstances have been made to make the return of the youth to the home possible."

(4) **Cases Pending for a Reasonable Efforts Determination.** The judicial determination requirement of "reasonable efforts" may be satisfied without benefit of a hearing, but based on the court's review of current circumstances surrounding the replacement:

(a) Should the first order issued at the time of the youth's

removal contain a "best interest" ruling, but no "reasonable efforts" finding, the case will be ineligible until the first of the month in which the court makes a "reasonable efforts" finding on a subsequent order;

(b) Once the court makes a "reasonable efforts" finding on an otherwise eligible case, Title IV-E can be claimed for the duration of the placement even when the court rules at a later date that "reasonable efforts" have not been made to reunite the youth with the family.

(5) **Orders Reflecting Recommended Placements.** The court order must also:

(a) Recommend, not specify placement with a particular individual; and

(b) Allow the agency to freely make decisions about a change in the youth's placement without further court approval; or

(c) Reflect that the court was advised of, and approved, placement or the agency's intent and case plan to place the youth at a future date.

(6) **Nunc Pro Tunc Orders.** Nunc pro tunc or amended orders are acceptable to correct the omission of a "best interest" or "reasonable efforts" ruling in the original removal order only when documentation such as court transcripts, bench notes, court documents and the caseworker narrative are available to verify that the judicial determination was made at the original removal hearing.

(7) **Replacement Orders.** Each time a youth is removed from the home in the following instances, a new eligibility determination and a judicial review addressing the circumstances of the youth's removal is required regardless of whether the youth is already committed to the agency's custody:

(a) The case plan was for the youth to remain in the parental home; or

(b) New circumstances or issues arose in the parental home causing the youth's replacement; or

(c) The youth was under agency supervision and removed from the legal care, custody, and placement of a relative; or

(d) A juvenile on parole from the state training school is removed from his/her parental home; or

(e) A youth in a legally finalized adoptive placement is returned to care.

(8) **Replacement Order Time Lines.** The court's review of the circumstances surrounding the youth's replacement must:

(a) Be initiated within six months of the date the youth last lived with the parent; and

(b) Take place within 180 days of initiation of court action; and

(c) Include a "best interest" determination that replacement of the youth into care was in the youth's "best interest," or words to that effect, in the first order issued after the youth's replacement. (A reasonable efforts ruling may be obtained at a later date.)

(9) **Exceptions to Replacement Orders.** Some Title IV-E-FC eligible youth, moved while in care or with interruptions or delays in placement, require no new application or new judicial determination for Title IV-E-FC. The eligibility factors of deprivation, limited income and resources available to the youth, and school registration for the 18 year old must still exist, to reopen or continue Title IV-E eligibility. Eligibility may be reopened or established effective the day the youth enters paid care for the following otherwise eligible youth:

(a) Youth moved from a paid or unpaid relative placement into family foster care;

(b) Youth at home awaiting a residential opening and the court has approved placement in a residential facility;

(c) Youth on the run or taken by the parent without OYA's permission are located in the home of the parent and immediately returned to care;

(d) Youth on the run are located in the home of the parent and are allowed to remain there for a reasonable time, with the worker's consent, until a placement becomes available;

(e) Youth with interrupted placement resulting from:

(A) A runaway; or

(B) Placement in a detention facility or a juvenile training

school; or

(C) Hospitalization.

(f) Youth returned to care from the parental home when a trial visit fails. A judicial review is not required for a failed trial visit under the following situations:

(A) OYA custody was continued during the trial visit period; and

(B) At the time the youth was sent home, the case record narration or documentation designated that the youth's return home was on a trial visit basis; and

(C) The duration of the trial visit was no longer than six months.

(g) Youth in continuous placement and returned by court order to the care and custody of OYA from the custody of a private agency or substitute care provider. **(P.L. 96-272)**

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 2-1997(T), f. & cert. ef. 7-24-97; OYA 4-1997, f. & cert. ef. 10-13-97

416-390-0250

Voluntary Placement Agreements

Youth in placement based on the signing of a Voluntary Custody Agreement or Voluntary Youth Placement Agreement, and Title IV-E-FC eligible must:

(1) Within 180 days of placement, have a judicial determination by court order to the effect that such placement is in the best interests of the youth. A finding of reasonable efforts is not required. The judicial determination requirement may be met without a court hearing; or otherwise

(2) Be closed if the court has not made a judicial determination within the first 180 days of the voluntary placement. The effective date of closure is the 180th day. Title IV-E-FC eligibility cannot be continued or reopened during the duration of the youth's placement if this time line is not met. **(P.L. 96-272)**

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-390-0260

Voluntary Relinquishments

(1) Youth in placement based on the signing of a voluntary relinquishment are eligible for Title IV-E if court action is initiated within six months of the month the youth last lived with the parent and there is a judicial determination in the first court order issued that:

(a) Remaining in the home would be "contrary to the welfare" of the youth; and

(b) "Reasonable efforts" have been made in relation to the youth's removal from the home.

(2) Title IV-E eligibility is effective the first of the month of the court order when all other eligibility criteria are met. **(P.L. 96-272)**

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-390-0270

Reviewing Eligibility

(1) Once Title IV-E eligibility is established, the agency shall determine for each month a youth is in care whether the youth's cost of care was reimbursable under Title IV-E. A youth may lose and regain reimbursability on a frequent basis. The loss of reimbursability in any one month does not permanently deprive the youth of reimbursability in future months. For all Title IV-E cases, except relative foster care cases, redeterminations shall occur at least every year to establish whether the reimbursability criteria are met on a month-to-month basis. For relative foster care cases the redeterminations will occur at least every six months. Circumstances defining reimbursability for Title IV-E purposes are:

(a) Resources;

(b) Income;

- (c) Age;
- (d) Parental Deprivation.
- (2) The youth will be found temporarily unreimbursable for Title IV-E when the youth's:
 - (a) Resources exceed \$1,000 in any month;
 - (b) Countable earned and unearned income exceeds the cost of the substitute care maintenance payment;
 - (c) Placement is in a foster home awaiting certification.
- (3) The following factors must be reviewed in determining a youth's continued eligibility for Title IV-E-FC:
 - (a) The youth's resources must not exceed \$1,000 in any month or he/she will be found temporarily unreimbursable for Title IV-E-FC; and
 - (b) The youth's countable earned (per OAR 416-390-0180) and unearned (per OAR 416-390-0190) income, including lump sum benefits (per OAR 412-085-0200) must not exceed the cost of the substitute care maintenance payment or he/she will be found temporarily unreimbursable for Title IV-E-FC; and
 - (c) There must be continued deprivation of parental care and support in the home from which the youth was removed and on which the eligibility determination was based; and
 - (d) The 18-year-old youth must be in school full time or in the equivalent level of vocational or technical training and expected to complete or graduate from such school or training by age 19. If verification cannot be obtained, youth age 18 will not be eligible. Title IV-E must be closed effective:
 - (A) The end of the month in which the 18-year-old youth graduated or obtained a GED; or
 - (B) The end of the last month they are 17 (i.e. the end of the month prior to their 18th birthday) if they did not or will not graduate by age 19. (P.L. 96-272)

Stat. Auth.: ORS 420A
 Stats. Implemented: ORS 420A
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; Suspended by OYA 2-1997(Temp), f. & cert. ef. 7-24-97; OYA 2-1997(Temp), f. & cert. ef. 7-24-97

416-390-0290

Parental Deprivation at Review

- (1) **Existing Deprivation.** To maintain Title IV-E reimbursability the youth must be considered to be continually deprived of the parental support and care of one or both parents as if they were back in the home from which they were removed. However the deprivation need not be the same as at the time of the original application. Deprivation will be:
 - (a) Divorce, marital separation, incarceration, never having been married, or death in single parent households, or absent parents for youth removed from a relative home;
 - (b) Unemployment or incapacity in two-parent households. Because the parents' wages and/or benefits are disregarded at review reimbursability may continue when:
 - (A) Both parents are unemployed or incapacitated; or
 - (B) Both parents are unemployed or each parent is working less than 100 hours per month, or either parent has a temporary one-month increase to over 100 hours, but:
 - (i) Worked less than 100 hours in each of the two previous months; and
 - (ii) Is expected to work less than 100 hours in the upcoming month.
 - (C) One parent is incapacitated and the other is employed.
 - (c) Continued absence when:
 - (A) youth is removed from the home of a relative other than the parent.
- (2) **Deprivation Not Existing:** Youth do not meet the deprivation requirement and reimbursability does not exist when:
 - (a) The parent remarries, if removal was based on that parent, and deprivation based on incapacity or unemployment does not exist in the two parent household; or
 - (b) The parent reconciles with the parent of the youth in care and deprivation based on incapacity or unemployment does not exist in the two parent household; or
 - (c) Both parents return to reside in the home of the caretaker relative from whom the youth was removed, or on whom eligibili-

- ty was based; (unless one or both parents is unemployed, underemployed or incapacitated;) or
 - (d) The youth returns to the home of a relative from whom the youth was removed, and on whom eligibility was based; or
 - (e) A parent visits extensively in the relative caretaker foster home. Parental visits in the youth's home and that of the relative caretaker may not exceed four times per week, or a total of 12 hours per week without a visitation plan outlined or reasonable explanation documented in the eligibility file. Such documentation is needed to ensure that the parent has not assumed the caretaking responsibilities of their youth. (IV-A). (P.L. 96-272)
- Stat. Auth.: ORS 420A
 Stats. Implemented: ORS 420A
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 2-1997(Temp), f. & cert. ef. 7-24-97

416-390-0300

Parental Referral to Support Enforcement Department

- Every Title IV-E-FC eligible youth (unless excepted by policy) must be referred to the Support Enforcement Department of the Oregon Department of Justice. (P.L. 96-272)
- Stat. Auth.: ORS 420A
 Stats. Implemented: ORS 420A
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 2-1997(Temp), f. & cert. ef. 7-24-97

416-390-0310

Title XIX Eligibility

- All youth found eligible for Title IV-E-FC will be automatically eligible for Title XIX as described in OYA's rule OAR 416-610-0030. (P.L. 96-272)
- Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-390-0320

Cobra and Title XIX

- (1) **The Consolidated Omnibus Reconciliation Act of 1985, PL 99-272 (COBRA)** enacted on April 7, 1986, permits Title IV-E-FC eligible youth in paid substitute care or receiving adoption assistance to receive Medicaid (Title XIX coverage) from the state where they reside.
 - (2) The OYA eligibility worker will notify and provide documentation of Title IV-E eligibility to the foster or adoptive parent(s) residing or moving outside of Oregon of the discontinuance of the Oregon Medicaid Card and need to apply for Medicaid under COBRA for their Title IV-E eligible youth in their new state of residence. (P.L. 96-272)
- Stat. Auth.: ORS 420A
 Stats. Implemented: ORS 420A
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 2-1997(Temp), f. & cert. ef. 7-24-97; OYA 4-1997, f. & cert. ef. 10-13-97

416-390-0330

SSI Eligibility

- Youth cannot receive SSI payments and Title IV-E foster care payments concurrently. A determination of which funding source is of most financial benefit to the agency must be made. The following youth will be referred to Support Central OYA for the determination:
 - (1) SSI recipients in residential or group care placement;
 - (2) SSI eligible youth receiving a special rate and standard foster care payment under Title IV-E;
 - (3) SSI eligible youth with a cost of care under the SSI rate for consultation on closure of Title IV-E;
 - (4) SSI eligible youth receiving Title XIX Personal Care and Title IV-E foster care payments for consultation on closure of Title IV-E and application for SSI.
 - (5) SSI eligible youth placed in a Relative Foster Home and potentially eligible for a Special Rate Foster Care payment. (P.L. 96-272)
- Stat. Auth.: ORS 420A
 Stats. Implemented: ORS 420A
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 2-1997(Temp), f. & cert. ef. 7-24-97; OYA 4-1997, f. & cert. ef. 10-13-97

416-390-0340**AFS Notification and Concurrent Federal Payment**

AFS must be notified by the eligibility specialist when youth are receiving AFDC and are placed in foster care. Title IV-E-FC relative payments cannot be authorized for otherwise eligible youth when the relatives are receiving an AFDC/NNR grant for the youth as the relatives would incur an overpayment with AFS. Title IV-E relative foster care payments may begin when the youth is removed from the ADC grant. **(P.L. 96-272)**

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-390-0360**Fraudulent Receipt of AFDC**

If it is a known fact that a family was fraudulently receiving AFDC based on parental absence, Title IV-E must be established on the basis of a two-parent household. However, if there is only suspicion and no documentation of fraud, Title IV-E eligibility based on an absent parent may be considered. **(P.L. 96-272)**

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 400**BASIC PURPOSE AND DEFINITIONS****416-400-0000****Applicability and Purpose of Rules**

(1) These rules apply to all youth incarcerated in Oregon Youth Authority Youth Correctional Facilities.

(2) Purposes of the rules are:

(a) To establish criteria for governing conduct of staff and youth in YCF's, including but not limited to matters of youth confinement, discipline, treatment, education, privileges, etc; and staff discipline, conduct, training, etc; and

(b) To establish criteria and procedures regarding rights of youth and staff, especially to assure timely and equitable processing by staff of youth violations, detention, grievances, appeals, etc.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-400-0010**Definitions**

(1) "Attorney": Any licensed attorney or person acting under the professional control and supervision of a licensed attorney, including but not limited to law clerks, paralegal, investigators, and law students.

(2) "Youth Corrections Facility" (YCF): Secure Regional Youth Facilities, Regional Youth Accountability Camps, Regional Residential Academies established by the Oregon Youth Authority to provide custody for youth committed to the Oregon Youth Authority.

(3) "Close Custody": Close custody refers to youth who are residing in Youth Correctional Facilities.

(4) "Administrative Review Board": Administrative committee or committees which review and are responsible for all major decisions concerning youth who currently reside in Youth Correctional Facilities. These Committees determine initial placement of youth, length of stay, transfers to other levels of custody and initiates placements on parole, foster care, or to the community.

(5) "Oregon Youth Authority" (OYA): The Department of Youth Authority as established in Senate Bill 1 by the 1995 Oregon Legislative Assembly.

(6) "Committing Court": The court that committed a youth to the custody of OYA for placement at a Youth Correctional Facility.

(7) "Conduct Code": Part of a Resident Code. Explains the

behavior and attitudes expected of OYA youth in close custody.

(8) "Contraband": Any substance, thing, device, or article not authorized to be in a youth's possession. A list of examples of contraband items will be posted in each living unit.

(9) "Living Unit": The building within which a youth resides while living at a YCF. This does not include isolation units.

(10) "Living Unit Evaluation System": Refers to the living unit grading system under which youth's overall behavior for the week is evaluated by the review committee to determine whether the youth has earned a "passing" week. Privileges may be raised or lowered within this system, subject to the limitations described in the Incident Code, and youth appeal.

(11) "Security": Staff providing security within the YCF. Security staff assist other staff in the supervision, control and transportation of youth. Security staff may work inside or outside of living units.

(12) "Isolation Unit":

(a) A living unit in the YCF where youth are detained for safety of themselves, others, or for offenses for which such a consequence is described in the incident code. In the Isolation Unit youth receive the program described in Division 460 of these rules;

(b) Youth are also placed in the Isolation Unit temporarily while being evaluated for placement in other living units of for off campus placement. Such temporary placement shall not exceed 72 hours except in extraordinary and unanticipated circumstances. Such youth are placed only in the CORE program in the Isolation Unit unless their behavior poses an imminent physical threat to themselves or others, either before or after they enter the Isolation Unit.

(13) "Disciplinary Action": Consequences applied by the YCF toward youth who do not comply with the Conduct Code. The consequences are described in the Incident Code. Disciplinary Action also refers to sanctions applied to YCF staff for infractions of YCF policy or rules.

(14) "Education Department": Oregon Department of Education program which provides academic and vocational training, essentially to meet the individual and unique educational needs of the youth assigned to the YCF corresponding to the public school education programs.

(15) "Foster Home": A family home other than the youth's own home certified by OYA to provide foster care outside of the YCF to one or more OYA committed youth. Placement into foster care does not transfer legal custody of the youth to the foster parent: Legal custody remains with OYA (See ORS 419.507 (7)).

(16) "Youth Correctional Officer": YCF staff assigned to living units, responsible for care, training and custody of youth while in a living unit.

(17) "Incident Code": Part of Resident Code. Describes types of violations of the Conduct Code, and sanctions which may be imposed upon the youth for each type of violation.

(18) "Juvenile Parole and Probation": Refers to Parole and Probation Officers and their supervisors employed by the Oregon Youth Authority of the State of Oregon. These staff are responsible for supervision of youth on conditional release from close custody programs of the Oregon Youth Authority. If deemed necessary because of a youth's behavior, Juvenile Parole and Probation Officers may initiate revocation proceedings, and return youth to the YCF, subject to limitations described in rules 416-300-0000 through 416-300-0120.

(19) "Lead Shift Supervisor": The staff member responsible for supervising or managing a work shift in a living unit or in security.

(20) "Mail": Any kind of letters, cards, boxes, packages or parcels, regardless of how shipped, carried, or delivered, and whether coming in for or being sent out by or for YCF youth, or being sent between youth in the YCF.

(21) "Medical Clinic": Located at each YCF. Provides medical services for all youth in YCF's.

(22) "Officer of the Day": A person designated by the Superintendent to perform the duties of the superintendent during nights, holidays and weekends.

(23) “Parole”: Conditional release of a youth from close custody subject to potential revocation of parole by the Superintendent of the YCF.

(24) “Probation and Parole Officer”: The case manager who works with the youth and His/her family and the community while the youth is under commitment to the Oregon Youth Authority.

(25) “Searches and Shakedown”: Clothing and skin searches of youth and searches of any building or property of the YCF.

(26) “Youth”: Ordinarily any person committed by a court to the Oregon Youth Authority, including youth of the YCF while away from the YCF on parole, on authorized or unauthorized leave, in a camp, or placed in foster care by OYA staff but also includes any person transferred to the keeping of the YCF from the Oregon Division of Corrections. The Oregon Division of Corrections resumes responsibility for these latter youth after they are released to the community.

(27) “Superintendent”: Manager and director of the YCF. Unless the context of a rule requires otherwise the term “superintendent” includes the officer of the day and the superintendent’s designee.

(28) “Trust Account”: YCF record of the youths’ financial deposits at the YCF.

(29) “Visiting Guidelines”: Written instructions for persons visiting the YCF and or youth at the YCF.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 410

ADMISSION CRITERIA TO YOUTH CORRECTIONAL FACILITIES

416-410-0000

Purpose and Scope

Applies only to accessing close custody beds in Youth Correctional Facilities. The legislature, through ORS 183.310 - 183.550, directed the Director of the Oregon Youth Authority to establish, by administrative rule, rules necessary for the administration of the laws that the Oregon Youth Authority is charged with administering.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-410-0010

Definitions:

(1) “Public Safety Reserve”: The Public Safety Reserve is a category of beds in Youth Correctional Facilities that are reserved for the most serious offenders.

(2) “Juvenile Policy Committee”: An Oregon Youth Authority executive administrative group whose members represent the divisions within the Oregon Youth Authority.

(3) “Gang Member”: A member of an identifiable group whose activity results in criminal acts. Gangs may choose to identify themselves through the use of a name, unique appearance and language, claiming of geographical territory, or espouse a distinctive belief system that results in criminal activity.

(4) “Administrative Review Committee”: The Administrative Review Committee consists of administrative personnel from Youth Correctional Facilities and Community Services who are responsible for the classification and program placement of committed youth within the close custody system. They are to assure that youth are in the most appropriate program to meet their needs and assure community protection. All recommendations for community placement and termination from the Youth Correctional Facilities are considered by this committee.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-410-0020

Admission Criteria

(1) ORS 419.509 limits close-custody placements to youth who require secure custody, are found within the jurisdiction of the court under ORS 419.476, and are at least 12 years of age. ORS 420.11 limits the number of youth who can be placed in the OYA close-custody system on a given day.

(2) Subject to these limitations, the Oregon Youth Authority, establishes the following criteria for admission to Youth Correctional Facilities:

(a) Display serious and persistent criminal behavior.

(b) Display a lack of responsiveness to the expectations of the court.

(c) Cannot be safely served by available community resources and are in need of a close-custody placement.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-410-0030

Public Safety Reserve

(1) The Juvenile Policy Committee will determine the number of beds to be set aside for a “Public Safety Reserve” to insure that close-custody beds can be accessed for the most serious offenders.

(2) All youth entering the YCF who have been committed (per ORS 410.011) for Murder I, Attempted Murder, Aggravated Murder, Manslaughter I, Rape I, Sodomy I, Sexual Penetration with a Foreign Object I, Assault I, Robbery I, Arson I, and Kidnapping I are eligible for a “Public Safety Reserve” (PSR) bed:

(a) The youth will be removed from PSR eligibility upon conditional release from close-custody;

(b) If the youth returns to close-custody, he or she will occupy a county allocated bed unless adjudicated for a new PSR offense.

(3) The Juvenile Policy Committee and a representative from the Juvenile Director’s Association will monitor the use of the Public Safety Reserve and alter the eligibility of the PSR as needed. Any modifications will be communicated by the Directors of Juvenile Departments. (ORS 420.014)

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-410-0040

Classification of “Gang Affiliated” Youth

(1) The Administrative Review Committee will classify committed youth as “gang affiliated” when there is sufficient supporting written information from law enforcement officials, juvenile department staff and other reliable persons who have a personal knowledge of the youth’s activities.

(2) Youth who are classified as “gang-affiliated” associate with a group which identifies itself through the use of a name, unique appearance, or language including hand signs, the claiming of geographical territory, or the espousing of a distinctive belief system that results in criminal activity and meet one of the following conditions:

(a) Has been adjudicated for a crime committed with or against other known gang members;

(b) Has been involved in persistent and escalating criminal gang activity which includes, but is not limited to assaultive conduct, crimes involving weapons and controlled substance, crimes which indicate involvement in the delivery and distribution of controlled substances. Involvement in delivery or distribution includes but is not limited to, the presence of individually packaged amounts of drugs, presence of pagers, police scanners, presence of scales, packaging materials, cutting agents, large amounts of currency and records of drug sales.

(3) The Administrative Review Committee will immediately inform youth when they are designated “gang-affiliated”. The Administrative Review Committee will outline the facts in the youth’s case that apply to specific “gang-affiliated” criteria. The youth may appeal this designation and will have access to established grievance procedures.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-410-0050

Discretionary Beds

The remaining beds will be utilized for youth who do not qualify for PSR beds. These beds are considered “discretionary” and counties are expected to limit their use to beds apportioned to their county.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-410-0060

Standards of Care and Treatment

The OYA ascribes within budget limitations, to the **American Corrections Association Standards for Juvenile Institutions**:

- (1) There will be no more than 25 youth in a living unit. (ACA 2-9119)
- (2) There will be a counselor or treatment manager for every 25 youth. (ACA 2-9373)
- (3) There will be a teacher for every 15 youth. (ACA 2-9338)
- (4) There will be sufficient staff to ensure the appropriate supervision of youth at all times. (ACA 2-9173)
- (5) Facility staff will identify the collective service needs of the juvenile population at least annually. Special programs will be provided to meet the needs of youth with specific types of problems. (ACA 2-9375)

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-410-0070

Maximum Allowable Population Level

The Director of the Oregon Youth Authority shall determine maximum population levels for each YCF as described in ORS 422.014. The maximum population allowable shall not exceed the design capacity for the facility and shall be determined using design capacity and standards of care described in **American Corrections Association Standards for Youth Correctional Facilities**.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 420

POPULATION LIMITS IN YOUTH CORRECTIONAL FACILITIES AND COUNTY BASED DIVERSION

416-420-0000

Purpose

The purpose of rules 416-420-0000 through 416-420-0050 is to describe the methods for controlling admissions to Youth Correctional Facilities, in order to comply with the population limits established by statute in ORS 420.014.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-420-0010

Definitions

- (1) “Youth Correctional Facility” means the Youth Correctional Facilities and Camps in existence on July 1, 1985.
 - (2) “Department” means the Oregon Youth Authority.
- Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-420-0020

Allocation of Population Limits

- (1) The combined legislatively designated population limits of the Youth Correctional Facilities less an administrative reserve

shall be allocated to the counties.

- (2) Each county will be allocated a percentage of the population limit in section (1) of this rule equal to its percentage of the state’s youth population, 0-17 years of age.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-420-0030

Allocation of Budget Appropriation

When the legislature appropriates funds to the Division expressly for distribution to counties in support of programs to divert youth from the training schools, such funds shall be allocated based on each county’s percentage of the state’s child population, 0-17 years of age.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-420-0040

Acceptance of Diversion Funds

- (1) Counties may join in regional plans to combine their population limits and funding.
- (2) A county or region of counties that chooses to accept funds to divert youth from Youth Correctional Facilities shall agree in a contract with Oregon Youth Authority not to exceed its allocated population limit.
- (3) The contract shall be based on the county’s or region’s plan developed in accordance with ORS 420.017 and approved by the CSD Administrator.
- (4) The county’s or region’s plan shall contain:
 - (a) The method for providing evaluation, including education, diagnostic, and placement services;
 - (b) A process for handling the disposition of parole violations;
 - (c) A plan for providing backup to community programs;
 - (d) The type of programs the county or region will use in order not to exceed its training school allocation limit.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-420-0050

Counties Not Accepting Diversion Funds

- (1) Children’s Services Division shall develop a plan so that the population limit will not be exceeded in those counties that choose not to accept diversion funds.
- (2) OYA’s plan(s) shall include the same content as required for the county’s plan, as listed in OAR 416-420-0020.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 430

BASIC PROCEDURES

416-430-0000

Standing Committees

There shall be standing committees, made up of OYA staff to govern designated matters affecting youth as follows:

- (1) “Administrative Review Board”: An administrative committee or committees which review and are responsible for all major decisions concerning youth who currently reside in YCF. These Committees determine initial placement of youth, length of stay, transfers to other levels of custody and initiate placements on parole, foster care, or to the community.
- (2) “Detention Committee”: This committee consists of one or more administrative persons, or their designee, who shall meet in the Isolation Unit each working weekday to make decisions governing youth in this unit who were placed there for assaultive behavior, runaway behavior, or transferred in as parole violators or placements from other YCFs or camps. A member of this committee shall conduct preliminary revocation hearings, if necessary, on any parole violators returned.

(3) "Appeals Committee":

(a) Committee membership: This committee consists of three members designated by the Administrator. They must be administrative staff or their designees who were not involved in the disciplinary action(s) taken toward the youth having hearings.

(b) Committee functions: This committee considers only disciplinary actions taken towards youth. It determines whether or not the discipline imposed was reasonable, considering the behavior and needs of the youth and the circumstances surrounding the actions taken. It insures that the disciplinary action does not exceed the limits of the YCF Incident Code and the disposition of the youth is otherwise in accordance with the rules governing conduct of youth and staff in OYA Youth Correctional Facilities.

(c) Committee Procedure: Each appeal before the committee shall be treated as a contested case under the Administrative Procedure Act (APA), ORS Chapter 183. (See OAR 416-430-0030 Grievance-Appeal Procedures for Youth).

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-430-0010

Initial Placement of Youth

(1) New youth will be oriented at the Youth Correctional Facility. During the first 30 days they shall receive medical, dental and psychological evaluation as needed and educational testing and evaluation.

(2) After gathering information from the sending community, together with youth's reports generated within the YCF, the Administrative Review committee shall assign new youth to a living unit, a Camp or a placement in the community.

(3) The youth shall be informed of his or her right to appeal the decision of the Administrative Review Committee.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-430-0020

Visitation

(1) Visiting is limited to parents, siblings under 18 and legal guardians. All persons wishing to visit a youth must secure permission from the YCF:

(a) Visits shall be allowed according to the particular regulations of the YCF;

(b) The number of visitors will be limited where space, supervision and security require it;

(c) Visitation outside of the YCF may be allowed with the approval of the YCF administration.

(2) Denial of Visitation: Any person may be denied visitation for the following reasons:

(a) The person has abused or may abuse a youth;

(b) The person has encouraged the youth to disobey YCF policy or rules or violate the law;

(c) There is reasonable cause to believe the person intends to aid a youth in escaping from the YCF;

(d) The person has violated YCF policy or rules;

(e) The person has interfered with the good order, security or operation of the YCF and there is reasonable cause to believe he or she will do so again;

(f) If the timing of the person's visits interfere with the youth's education or if, in the opinion of the YCF staff such visits interfere with the Youths reformation. In the later case the YCF staff shall provide the visitor and youth with a written statement of such determination and the reason therefore;

(g) The committing court has ordered that the person not visit;

(h) The youth or his/her parent or legal guardian has requested the person not visit, and this matter has been reviewed and approved by the case review committee. The YCF staff shall consider all such requests and deny or allow visiting on the basis of what would best benefit the youth. The committee's decision shall be subject to review by the Administrator.

(3) The Lead Shift Supervisor of Security or Camp Director

or designee shall be responsible for the supervision of visitors and may refuse visiting if any visitor does not have authority to visit, violates policy or these rules, or appears to be intoxicated or otherwise behaving in an unlawful or inappropriate manner.

(4) Visitors must always check in at the designated reception area. If there are unusual requests or there is a question about permission to visit, the Lead Shift Supervisor of Security or Camp Director or designee shall be responsible for the decision if outside of normal working hours.

(5) Telephone calls to/from persons other than the youth's attorneys may be made or received subject to arrangement by the YCF staff and to reasonable restrictions as to time of calling and number and frequency of calls per youth. YCF staff shall use telephone communication as part of a full reformation plan and never as a basis for disciplinary or punitive measures. Particular consideration will be given to parents who are unable to visit because of transportation difficulties or distance. For calls to/from attorneys, see OARs 416-440-0000 through 416-441-0020.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-430-0030

Grievance and Appeal Procedures for Youth

(1) Any youth who believes he or she has been dealt with unjustly, or who is dissatisfied with the program, staff, conditions at the YCF or otherwise, or who has any other kind of grievance which has not been resolved to the youth's satisfaction, may use the grievance -- appeal procedures in this rule.

(2) A youth may present a grievance in the following manner:

(a) The youth may first seek to resolve the problem by a discussion with the staff member(s) most directly involved. If the youth feel unable to approach the person(s) directly involved, the youth may proceed to subsection (b) of this section;

(b) If the youth is still dissatisfied, or feels unable to approach the person directly involved, the problem shall, upon the request of the youth, be reviewed by the Case Review Committee. Any YCF staff shall, if requested by the youth, assist the youth in preparing his or her written request for appeal. Review by the Case Review Committee shall be as follows: If the matter concerns disciplinary action, the following procedures shall apply:

(A) The Case Review Committee shall conduct a hearing to investigate and determine the facts of the youth's grievance. The hearing shall be conducted at the next case review following the youth's request for review;

(B) Staff shall, at the request of the youth, furnish to the youth such reasonable assistance as is necessary for the youth to prepare for the hearing and to present his or her grievance to the committee;

(C) The staff member(s) who is the subject of the youth's grievance shall not sit on the committee hearing the matter, but may testify at the hearing;

(D) The youth shall have the right to be represented at the hearing by an available staff member agreeable to the youth and the Superintendent or designee;

(E) The youth may present testimony or documentary evidence on his or her behalf at the hearing and shall have the right to call witnesses for this purpose.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-430-0040

Medication

(1) The use of medication shall be solely for the health and welfare of youth. Whether medication is to be used or not used and under what conditions is the sole responsibility of the attending physician, subject to the following:

(a) If a youth is otherwise incapable of giving consent, no psycho tropic stimulant or tranquilizing drugs shall be administered to the youth without the youth's informed consent unless withholding of the drug would seriously endanger the youth's

health. The fact that the youth gave verbal informed consent shall be noted in the physician's record;

(b) Prescription drugs shall be administered by trained living unit personnel under the delegation of licensed medical professionals;

(c) Pharmacy packaging and dispensing will follow OAR governing pharmacy practice and the Nurse Practice Act;

(d) All prescription orders will be authorized by a physician who is licensed in the State of Oregon;

(e) Intra-muscular (IM) injections shall be administered only by a physician, Registered Nurses (RN), or Licensed Practical Nurses (LPN). If the drug may be given either orally or by IM injection, the youth shall have a choice unless otherwise prescribed by the physician;

(f) Except in an emergency as determined by a qualified physician, prescribed medication shall not be administered IM, unless given in a clinical facility equipped to deal with possible adverse effects from the use of said drugs. On YCF grounds "clinical facility" means the YCF Medical Clinic. The youth administered the drug shall be observed during the duration of the drugs effect, by an RN, LPN or MST familiar with the possible adverse and harmful side effects of the drug used. A written record of the observation shall be kept;

(g) No youth shall receive an IM injection of major tranquilizing drugs unless pursuant to a prescription authorizing the use of said major tranquilizing drugs issued by a qualified physician prior to each injection, except when the physician finds a series of IM injections necessary for treatment; in those cases a new prescription will not be required for each shot, provided that:

(A) If a series of shots are given within any 24-hour period, the youth, at the end of that period, shall be evaluated by the physician to determine whether a transfer to a Mental Health Facility would be in his/her best interests;

(B) A new prescription shall be written for any additional series of shots at the end of each 24-hour period.

(h) Oral administration of psychotropic drugs shall be preferred. Prescriptions for oral dosages shall be reviewed and rewritten at least once a month;

(i) The administration of all oral medications will be monitored for adverse or side effects by such a person and in such manner as may be required by the prescribing physician. Isolation Unit and Living unit staff shall be informed of the symptoms of adverse or side effects of oral medications through a written description posted in each living unit and in the isolation unit. This shall be posed in a manual available to all staff administering medications. Staff shall be instructed to promptly refer to any youth on oral medications showing such symptoms to the health clinic for evaluation;

(j) Routine injections may be authorized by a physician and are not subject to requirements of subsection (f) of this section.

(2) Complete records of all use of prescription drugs or medications shall be made on the appropriate forms, to be placed in the youth's medical record.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 440

RIGHTS AND RESPONSIBILITIES OF YOUTH AND STAFF

416-440-0000

Purpose of Rule

The purpose of this division of the rules is to assure that each youth incarcerated in a Youth Correctional Facility has adequate access to courts, attorneys, and adequate mail privileges. Further the rule describes minimum safeguards for the safety and welfare of each youth other persons and property.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-440-0010

Access to Attorneys and Courts

(1) Access to Attorneys:

(a) All youth shall be afforded reasonable opportunities to consult privately with legal counsel, face-to-face or by telephone, as follows:

(A) Attorneys of Record desiring to consult face to face with a youth who is his/her client or who has requested such consultation shall make an appointment in advance with the Youth Correctional Facility staff;

(B) When a youth requests to telephone an attorney, the Youth Correctional Facility staff receiving the request shall notify the designated staff and the request shall be written in the living unit log. The Youth Correctional Facility Staff shall arrange the call as soon as reasonably practicable and in all cases within 24 hours of the youth's request, excluding weekends or holidays. In an emergency the call shall be arranged as soon as reasonably practicable. All calls shall be made within normal business hours, except in emergencies. Staff shall not screen or inquire into the reason for or purpose of the call, except to determine if an emergency exists warranting placing the call after normal business hours or on weekends or holidays;

(C) When an attorney telephones a youth, the Youth Correctional Facility staff receiving the call shall follow the same procedures and time frames as in paragraph (B) of this subsection.

(b) A copy of the current directory of attorneys in Oregon shall be maintained at each Youth Correctional Facility.

(c) Mail from attorneys is outlined in OAR 416-440-0020: Youth Mail.

(2) Access to Courts: All youth have the right to access to the courts, without obstruction or interference by staff, in order to challenge unlawful commitments and to seek redress for violations of their constitutional rights.

(3) Legal Papers and Correspondence: All youth shall be permitted to retain legal papers and correspondence which shall be confidential.

(4) Non-Interference by Staff: No youth shall be harassed, intimidated, punished or retaliated against by staff for presenting complaints to the courts, participating in litigation, or communicating with his or her attorney.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-440-0020

Youth Mail

(1) Outgoing Mail:

(a) Legal or Official Mail: Youth may send mail without limitation to any attorney, court or court official, legal aid bureau or other agency which provides legal services to youth, the Governor of the State, a member of the Legislature of this state, the Director of the Oregon Youth Authority, or the Superintendent. Such mail shall remain sealed and shall not be inspected. Stamps for legal or official mail shall be provided by the Youth Correctional Facility.

(b) Non-Legal Mail:

(A) Youth may send mail to persons other than those mentioned above, up to three stamps per week will be provided by the Youth Correctional Facility except that whenever possible the youth shall provide his/her own postage;

(B) Such mail shall remain sealed and shall not be inspected or read by staff other than the Superintendent or Designee. The Superintendent may inspect or read mail from a youth if the welfare of the youth or the institutions requires it.

(2) Incoming Mail:

(a) Legal Mail: Incoming mail from any attorney, legal aid bureau or other agency which provides legal services to youth or from any court or court official shall remain sealed. Such mail shall not be opened unless there is reasonable cause to believe that the mail contains contraband. Examples constitution "reasonable cause" would be physical appearance of the mail or information believed by the Superintendent or designee to be reliable indicating the presence of contraband. If contraband is present, the mail shall

be readdressed, marked not at this address and returned to sender;

(b) Non-Legal Mail:

(A) Incoming mail addressed to a youth shall not be read by staff other than the Superintendent or designee. Whenever the Superintendent believes the welfare of the youth or the school requires it, the he/she or their designee may open, read or inspect any non-legal mail;

(B) Subject to any provisions of this rule otherwise requiring, all mail shall be delivered to the addressee within 48 hours of the time received at the Youth Correctional Facility, provided the youth is residing in the Youth Correctional Facility that date, except mail received on weekends and holidays. If the youth is not residing in the YCF, the mail shall be handled as provided in paragraph (E) of this subsection;

(C) Incoming Letter to Youth residing in the YCF:

(i) All incoming letters addressed to youth who are in the YCF shall be received, sorted, date-stamped on the envelope, and opened to check for money or contraband. Persons doing this shall not read the mail;

(ii) Two designated staff persons shall be present when incoming letters are opened. Currency, money orders, and checks shall be removed and an Official Receipt issued. One copy of the receipt shall be placed in the envelope with the letter for the youth's information and records. Once copy of the receipt, together with the currency, money order, or check shall be sent directly for crediting to the youth's Trust Account;

(iii) Contraband items in incoming letters shall be removed, placed in an envelope or other suitable container with proper identification (date of receipt, name of youth, living unit, and name and address of the sender) and secured. The envelope addressed to the youth shall be stamped "contraband removed", all other legitimate contents of the envelope shall be sent to the youth. Any envelope opened for the purpose of removing money or contraband shall be sealed shut and then routed to the youth.

(D) Incoming Parcels to Youth: Incoming parcels shall be sorted, date stamped, issued a number and entered in the parcel log. Notice of the parcel shall be placed in the living unit mailbox. Living unit staff shall pick up and sign for the parcel. Youth shall be required to open all parcels received, in the presence of a staff who shall check for and receive contraband. A staff shall list and mark any clothing, and provide appropriate custody of other items over which staff exercise control (e.g. glue, acetone, paints, etc.). Contraband items shall be removed and processed as provided in subsection (a) of this section;

(E) Mail coming to the YCF for youth on parole, in foster homes, or on unauthorized absence shall not be opened by staff, but shall be processed as follows:

(i) For youth on parole or foster care, all mail coming to the YCF shall be readdressed to the current address of the youth and routed as outgoing mail, or shall be forwarded to the Parole and Probation Unit for such handling if the address of the youth is not known by the YCF;

(ii) For youth on unauthorized absence, all mail coming to the YCF shall be marked "Not at this address, return to sender", unless the sender's address is not on the mail, in which case the item shall be returned unopened to the Post Office;

(F) Mail between Youth within the YCF or between other YCF's shall be subject to the provisions of this section;

(3) Prohibited Mail: Prohibited mail is mail other than the legal, court or public official mail that falls within the categories set forth in this section. It includes both incoming and outgoing mail. The following categories constitute prohibited mail:

(a) Contains threats of physical harm to any person or threats of criminal activity;

(b) Threatens blackmail or extortion;

(c) Concerns sending contraband into or out of the YCF;

(d) Concerns plans to escape;

(e) Concerns plans for activities in violation of YCF rules;

(f) Concerns plans for criminal activity.

(g) Mail is in code.

(h) Contains information which if communicated would create a danger of violence and physical harm to a human being or de-

struction of property;

(i) Contains sexually explicit material which in terms of the emotional maturity of the youth is presented in such a manner that the Superintendent or designee finds it would be injurious to the welfare of that particular youth if seen or read by the youth;

(j) Contains contraband material;

(k) The mail is sensational;

(i) Sensational is defined as writing that pose a direct and immediate threat to the security and safety of the YCF;

(ii) Criticism of the operation, programs, or personnel of the YCF, or the OYA, or of any government agency shall not constitute a direct and immediate threat to the security and safety of the YCF unless the mail advocates illegal action. Nothing in this rule permits the passage of the above material or writing between youth within the YCF.

(4) Disposition of Prohibited Mail:

(a) Outgoing mail. The Superintendent or designee may disapprove of mailing outgoing mail of youth only if the content falls into any of the above categories in whole or significant part.

(b) Incoming mail. The Superintendent or designee may disapprove of receipt of mail by a youth any mail whose content falls into any of the above categories in whole or significant part. However, if the only violation is that the mail contains contraband which can be disposed of as provided in previous sections, the mail shall be processed and delivered to the youth as provided in paragraph (2)(b)(C) or (D).

(5) Notice of Disapproval of Mail:

(a) If the Superintendent or designee determines that mail meets criteria for "prohibited mail" he/she shall provide written notice to the youth within seven days for disapproval of the mail. The Superintendent or designee may either return the mail to the youth or retain the mail in the youth's file. The youth may appeal this action within seven days of receiving the notice.

(b) If the Superintendent or designee determines that mail written to a youth violates section (3) of this rule and may not be delivered, the following procedure shall apply: Notice of censor or confiscation of mail shall be provided to the sender within seven (7) days of the action. Such notice shall be in writing and set forth the reason(s) for the action.

(6) A youth may correspond with a youth in another YCF providing that the other youth is a member of the immediate family. Such correspondence may always be inspected and read by the staff at the sending and receiving institutions. Prior to being authorized to correspond, both administrators must approve.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 450

VOLUNTEER SERVICES - YOUTH CORRECTION FACILITIES

416-450-0000

Authority, Purpose, and Policy

(1) Authority for this rule is granted to the Director of the Oregon Youth Authority in accordance with Oregon Laws 1995, chapter 422.

(2) Purpose: The purpose of this rule is to establish guidelines for the recruitment, selection, training, and utilization of volunteers and student interns within the youth correction facilities of the Oregon Youth Authority.

(3) Policy: It is the policy of the Oregon Youth Authority to utilize volunteers and practicum students, with appropriate training and guidance, as a means to enhance programs and introduce new and innovative programs within its youth correction facilities.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-450-0010

Definitions

(1) “Academic Volunteer”: Any individual who donates his or her time to enhance academic programs operated by the Oregon Department of Education within a youth correction facility and directly supervised by employees of the Oregon Department of Education.

(2) “LEDS”: Law Enforcement Data System

(3) “Resident”: Any person committed to incarceration within a youth correction facility.

(4) “Practicum student”: An enrolled student in a college or university who, as part of an approved educational program, provides his or her time and effort to enhance the activities and programs of a youth correction facility.

(5) “Superintendent”: An Oregon Youth Authority employee who reports to either the Director or Regional Administrator and has overall responsibility for the delivery of services and coordination of programs within a youth correction facility.

(6) “Volunteer”: An approved person who donates his or her time and effort to enhance the activities and programs of a youth correction facility.

(7) “Volunteer Coordinator”: An Oregon Youth Authority employee assigned by a superintendent to administer the volunteer services program within a youth correction facility.

(8) “Youth Correction Facility”: Any facility used for the confinement of persons committed to the legal and/or physical custody of the Oregon Youth Authority.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-450-0020

Program Supervision

(1) Each youth correction facility will assign a volunteer coordinator.

(2) The volunteer coordinator shall be responsible for the approval process of volunteers and practicum students, including gaining and maintaining youth correction facility access.

(3) The volunteer coordinator will maintain a system of recording volunteers and student interns, including records indicating name, address, telephone number, application materials, reference and background check information, training, and other related information.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-450-0030

Recruitment

(1) To recruit a volunteer or practicum student, a position description proposal will be written and submitted to the appropriate supervisor for approval.

(2) A position description proposal shall be submitted by the supervisor to the volunteer coordinator, who will secure a decision from the superintendent concerning recruitment approval.

(3) Volunteers and practicum students who best meet program needs will be recruited from all ethnic, cultural, and economic segments of the community.

(4) Academic volunteers will be recruited by designated staff of the Oregon Department of Education.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-450-0040

Selection

(1) All prospective volunteers and practicum students must complete an application form (YA 1401) and be interviewed by the immediate prospective supervisor or designee. Prospective academic volunteers must complete an application form (YA 1401), but will be interviewed by designated staff of the Department of Education.

(2) A criminal offender information check and a personal reference check will be conducted on all prospective volunteers, practicum students, and academic volunteers. All prospective vol-

unteers, practicum students and academic volunteers must complete a criminal offender information check authorization form (YA 1402). The Oregon Youth Authority may request prospective volunteers to consent to the use of their social security number in conducting the criminal offender information check. Criminal offender information is considered confidential and shall not be released to unauthorized persons or agencies. If a prospective volunteer refuses to consent to a criminal offender information check, the individual shall be disqualified from volunteer program consideration.

(3) The Oregon Youth Authority has determined that convictions for sex crimes as listed in ORS 181.517 are fundamentally inconsistent with being a volunteer. Therefore, individuals who have been convicted of offenses for which registration as a sex offender is required under ORS 181.517 through ORS 181.519 will be disqualified for consideration for volunteer service in a youth correction facility.

(4) Prospective volunteers, practicum students, and academic volunteers with a prior felony conviction may be approved when the following criteria have been met:

(a) No incarcerations in a juvenile or adult correction institution in any state within the past five (5) years;

(b) No felony convictions in any state within the past five (5) years;

(c) No unresolved pending criminal charges; and

(d) Written approval of the superintendent of the youth correction facility to be served.

(5) A prospective volunteer who has been disqualified for consideration for volunteer service based solely upon information obtained from a criminal offender information check shall be informed in writing by the superintendent of the youth correction facility or designee where he or she applied. The superintendent or designee shall inform the individual that he or she cannot be considered for volunteer service per OAR 416-450-0020. The individual shall also be informed in writing of his or her right to review the information under Oregon State Police rules OAR 257-010-0035 and appeal under OAR 257-010-0050.

(6) All criminal arrests and unlawful use of alcohol and/or drugs while an individual is a volunteer shall be immediately reported to the volunteer's immediate supervisor, who will notify the volunteer coordinator. The volunteer coordinator will report information to the superintendent of the youth correction facility or designee.

(7) An academic volunteer's immediate supervisor within the Department of Education will immediately notify the volunteer coordinator of criminal arrests and unlawful use of alcohol and/or drugs by an academic volunteer. The coordinator will report information to the superintendent of the youth correction facility or designee.

(8) The superintendent of a youth correction facility or designee may approve an ex-offender for special volunteer status or for special visits to provide special program needs in his or her facility, without approving the ex-offender as an Oregon Youth Authority volunteer.

(9) Volunteers, practicum students, and academic volunteers must meet all Oregon Youth Authority requirements for gaining and maintaining youth correction facility access.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-450-0050

Orientation and Training

(1) All volunteers, practicum students, and academic volunteers are required to complete the Oregon Youth Authority core training program for volunteers.

(2) Facility orientation will be coordinated by the volunteer coordinator. The orientation will include, but not be limited to, the following:

(a) Safety and security procedures;

(b) Fire safety and emergency evacuation plan;

(c) Responsibilities during any emergency;

- (d) Supervisor's name and line of authority (if applicable);
 - (e) List of primary rules and procedures associated with the services provided;
 - (f) Time and place to report for duty and whom to contact when unable to report for duty;
 - (g) Walk through facility for familiarization.
- Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-450-0060

Utilization

(1) The volunteer coordinator or designee shall assure that volunteers and practicum students are reviewed annually and their facility access status is maintained using the following:

- (a) A current LEDS check;
- (b) Evaluation of continuing program need (if applicable);
- (c) Individual performance in assigned duty, based upon immediate supervisor performance evaluation (if applicable);
- (d) Updated Emergency Notification information.

(2) A volunteer, practicum student, or academic volunteer may be terminated at any time for violation of Oregon Youth Authority rules and procedures or when there is no longer a need for the volunteer's or practicum student's services. Department of Education staff will determine when there is no longer a need for an academic volunteer. The volunteer coordinator will ensure the superintendent has been notified of the termination's of all categories of volunteers.

(3) Volunteers or practicum students shall not be placed in positions of authority over employees of the Oregon Youth Authority.

(4) A volunteer or practicum student may present a medical bill for injuries resulting from work-related activities as a claim to the Risk Management Division, Department of Administrative Services. The amount that may be paid for work-related injury claims is bound to the limits, terms and conditions described in the **Oregon Department of Administrative Services' Risk Management Division Policy Manual**, 125-7-204.

(5) Volunteers and practicum students may not perform professional services requiring certification or licensing unless active credentials and or certificates are available and on file in the volunteer or practicum student's record.

(6) If a practicum student is terminated from service, the college or university shall be notified.

(7) Prior to beginning service, a volunteer or practicum student must sign a statement indicating an understanding that there will be no remuneration or compensation for services performed (YA 1403) and that he or she agrees to abide by all Oregon Youth Authority rules and procedures.

(8) Prior to beginning service, volunteers, practicum students, and educational volunteers must sign a statement indicating an understanding of the rules of confidentiality of records and other privileged information (YA 1403) and the consequences of a breach of confidentiality.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 460

JUVENILE SEX OFFENDER ASSESSMENT AND TREATMENT

416-460-0000

Purpose

Youth sexual offenders characteristically begin their offending behaviors in early adolescence or younger. The sooner intervention can occur in this cycle, the better the offender can be taught to control his/her deviant actions. Because the treatment methods may be of an intrusive nature, these guidelines are set forth to help determine the appropriate type of treatment. These rules apply only to those who have been adjudicated for sex

offenses.

Stat. Auth.: OL Ch. 422, 1995
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 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-460-0010

Definitions

(1) "Behavioral Therapy" means therapy that attempts to decrease deviant sexual arousal and gives the offender tools for self-control.

(2) "Cognitive Ownership" means acceptance of responsibility through verbal, signing, written, etc., means.

(3) "Emotional Ownership" means acceptance of responsibility through the understanding and genuine demonstration of empathy

(4) "Covert Positive Reinforcement" means therapy which attempts to pair the chain of events leading to a sexual assault with a self-initiated interruption scene followed by a reward scene.

(5) "Covert Sensitization" means therapy that attempts to reduce deviant arousal by instantly pairing pre-assault behaviors with highly aversive fantasies.

(6) "Polygraph" means an instrument that simultaneously records changes in such physiological processes as heartbeat, blood pressure, and respiration, and is often used as a lie detector.

(7) "Risk" means the potential for reoffending and for resisting or failing in treatment.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-460-0020

Eligibility for Services

Eligibility for Services: Youth under the age of 18 years, in the care, custody, and control of the Oregon Youth Authority, who have been adjudicated for sex offenses.

Stat. Auth.: OL Ch. 422, 1995
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 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-460-0030

Assessment

(1) Preliminary Assessment. Assessment for treatment planning of youth with sexually aggressive behaviors should proceed only after adjudication has occurred:

- (a) The goals of sexual offender specific treatment are:
 - (A) To stop sexually offending behavior;
 - (B) To protect members of society from further sexual victimization;

(C) To prevent other aggressive or abusive behaviors which the offender may manifest; and

(D) To promote healthy sexual development.

(b) When juveniles have sexually assaulted family members within their own home, it is strongly recommended that the offending juvenile be placed outside the home in the least restrictive environment that allows for community safety, or where the assessment indicates. Offenders should not be placed in homes where other youth may be endangered. They should be in settings where their behavior can be adequately monitored and controlled.

(c) For the purposes of treatment of sexually aggressive juveniles, it is essential to first evaluate and thoroughly assess each individual and determine the extent of the offending behavior. An assessment must include the following areas:

- (A) Victim statements;
- (B) Personal and family psycho social history;
- (C) History of sexually aggressive behavior;
- (D) Dynamics/process of victim selection;
- (E) Use of force, violence, weapons;
- (F) Spectrum of injury to victim;
- (G) Fantasy structure and development;
- (H) Obsessive/Compulsive behavior;
- (I) History of assaultive behaviors;
- (J) Chronic/situational factors;

- (K) Mental status with DSM IV diagnosis;
- (L) Attention Deficit Disorder;
- (M) Behavioral warning signs; identifiable triggers;
- (N) Degree of criminal thinking;
- (O) Degree of emotional ownership;
- (P) Denial or minimization by offender and family;
- (Q) Victim empathy, capacity for empathetic thought;
- (R) Substance abuse; juvenile sex offender and family;
- (S) History of sexual victimization;
- (T) Family dysfunction; family strengths;
- (U) Parental separation/loss;
- (V) Masturbatory patterns;
- (W) Impulse control;
- (X) Paraphilias;
- (Y) Mental status/retardation/developmental disability;
- (Z) Organicity/neuropsychological factors;
- (AA) Number of sexual contacts;
- (BB) Number of victims;
- (CC) Measurable outcomes.

(2) Assigning Risk Level. After an assessment has been completed, a determination should be made as to the risk level presented by the juvenile:

(a) Risk is defined as the potential for reoffending and for resisting or failing in treatment. Use Attachment 2, "Risk Assessment Profile", when determining the juvenile's risk level;

(b) The determination of risk for each adolescent offender should be a multidisciplinary decision involving the offender therapist, counselor, OYA supervisor, juvenile department counselor and victim therapist;

(c) If the youth presents low risk according to the "Risk Assessment Profile", treatment should proceed focusing on cognitive restructuring;

(A) Use of the polygraph should be made only with signed, informed consent of the offender and his/her parents/guardians. This informed consent is to be used regardless of whether a court order requiring its usage exists or not;

(B) The polygraph exam shall be administered only by persons licensed or certified by their respective disciplines.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-460-0040

Treatment

(1) Treatment in specialized offense-specific peer groups, with individual session follow-ups are the treatment modality of choice. The family should be a key part of the treatment planning. The treatment is to be geared toward the chronological and developmental needs of the offender. Treatment issues to be addressed for all risk categories include the following:

- (a) Substance abuse intervention;
- (b) Human sexuality education;
- (c) Academic assessment;
- (d) Social skills training;
- (e) Assertiveness training;
- (f) Anger and stress management;
- (g) Victimization/Survivor issues;
- (h) Family therapy;
- (i) Cognitive and emotional ownership (includes disclosure);
- (j) Values clarification;
- (k) Stress management;
- (l) Cycle recognition/self-intervention;
- (m) Criminal thinking patterns;
- (n) Role play.

(2) In addition to the above, if the offender in the medium to high risk category demonstrates assaultive, compulsive, or repetitive acts of sexual offending, then behavioral therapy can be introduced. Also, behavioral therapy can be introduced after cognitive methods have failed.

(3) The decision to utilize aversion therapy should be discussed with the juvenile offender and his/her parent or guardian after other therapies have failed. The rationale for this choice

should be documented in the case record. The Director of the Oregon Youth Authority or designee must then provide written consent to proceed. Should the parent/guardian or client refuse to sign, a review hearing should be requested to determine the course of action.

(4) Relapse prevention is an essential component to the juvenile's treatment plan. Whether he/she is placed in or out of the home, the primary parental figures, parole officer, or other significant figure in the juvenile's life should know and understand his/her assault cycle so as to support the offender in learning to intervene in his/her own cycle.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 470

OREGON YOUTH AUTHORITY YOUTH CONDUCT, INCIDENTS AND PRIVILEGES

416-470-0000

Youth Conduct

OYA shall establish and maintain an overall Youth Conduct Code to include the following written codes for youth:

(1) The Conduct Code, which explains the behavior and attitudes expected of youth.

(2) The Incident Code, which describes types of prohibited behaviors and the maximum consequences which may be imposed upon the youth for each type of violation.

(3) The Codes shall be provided and explained to each new youth entering the Youth Correctional Facility, and copies of the codes shall be retained in each living unit for use by youth.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-470-0010

Conduct Code

Introduction to Conduct Code:

(1) An introduction to the Youth Conduct Code shall be provided to each youth.

(2) Each youth shall be provided a description of basic conduct expected of all youth.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-470-0020

Incident Code

Introduction to Incident Code:

(1) Prohibited behaviors and incidents are defined in the Incident Code, which is divided into three levels: Level I, codes in the 100 series (most severe); Level II codes in the 200 series; and Level III codes in the 300 series (least severe).

(2) The Incident Code includes only behaviors and incidents severe enough at their worst degree that they may, in extreme cases only, warrant the actions shown in the "Maximum Consequences" column. Each behavior or incident is assigned a code number for reference defined, and coordinated with potential maximum consequence.

(3) In deciding which consequences to apply, if any, OYA staff shall, to the best of their ability, consider the youth's intent, his/her understanding of Youth Correctional Facility requirements, and the circumstances surrounding the incident. Maximum consequences shall not be imposed for violation of the Incident Code except in those instances where the circumstances clearly merit that action.

(4) All disciplinary actions may be appealed by the youth as provided in OAR 416-430-0030: Grievance Appeal Procedures for Youth.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-470-0030**Level I Incidents****Introduction and Definitions:**

(1) Youth may immediately be placed in the Isolation Unit, pending a hearing, if so decided by security staff. A report must be used for all cases where the youth is placed in the Isolation Unit.

(2) Upon return from the Isolation Unit and prior to re-entry into the living unit program, youth's privileges may be reduced to a lower level. This level would be pending the Case Review Committee's evaluation of the youth's program unless otherwise indicated by administrative review.

(3) "Re-entry", as used in the list of Maximum Consequences, means beginning at that level of Living Unit Program determined to be appropriate by the Case Review Committee.

(4) "Evaluation System" as used in the Maximum Consequences Column refers to the grading system under which a youth's overall behavior for the week is evaluated by the Case Review Committee to determine whether the youth has earned a "passing" week. Privileges may be raised or lowered within this system, subject to the limitations described in the Incident Code, and subject to appeal.

(5) "Restriction" as used in the Maximum Consequences Column means a youth's living unit and facility movements are restricted.

(6) All disciplinary actions may be appealed by the youth, as provided in OAR 416-430-0030.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-470-0040**Level I Incident Code****(1) Code 100:**

(a) Incident or Behavior: Illicit Possession or Use of Drugs;

(b) Definition: Have in possession, conceal, or use any drug not prescribed by a doctor or medical department. This includes the unauthorized possession or use of dangerous inhalants, toxic substances, or alcohol;

(c) Maximum Consequences: Isolation Unit prior to re-entry into program. Youth involved in Code 100 violations shall have a report sent to the Alcohol and Drug Coordinator for possible intervention and treatment.

(2) Code 101:

(a) Incident or Behavior: Possession of Dangerous Weapon;

(b) Definition: Have on person or in possession, without lawful authority, any instrument, article or substance which under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury, including, but not limited to: blackjack, slingshot, billy club, sand club, metal knuckles, bomb, explosive substances, irk, dagger, knife, pistol, revolver, or other firearm.

NOTE: "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious disfigurement, impairment of health, or loss or impairment of the function of any bodily organ.

(c) Maximum Consequences: Isolation Unit prior to re-entry into program.

(3) 105:

(a) Incident or Behavior: Unauthorized Absence from a Youth Correctional Facility;

(b) The unlawful departure from custody of a correctional facility. This includes the unauthorized departure or absence from this state or failure to return to this state.

(4) Code 106:

(a) Incident or Behavior: Escape from home or community activities;

(b) Definition: Leaving the presence of approved immediate supervisor (guardian, parents, staff members or their designee) without permission;

(c) Maximum Consequences: Isolation Unit prior to re-entry into program: 15 day cottage restriction unless otherwise ordered

by the Superintendent or designee.

(5) Code 107:

(a) Incident or Behavior: Attempted Escape;

(b) Definition: Leaving: Acts which could reasonably be construed as an attempt to escape, including: leaving assigned areas without permission, hiding, running from supervisor, prying locks, breaking windows, making plans to escape;

(c) Maximum Consequences: Isolation Unit prior to re-entry into program.

(6) Code 108:

(a) Incident or Behavior: Jeopardizing Group Safety;

(b) Definition: Behavior endangering the safety of the group or the internal security of the YCF. For example:

(A) Out of bed in dorms without permission;

(B) Bringing combustible material to area specified as hazardous.

(c) Maximum Consequences: Isolation Unit prior to re-entry into program.

(7) Code 109:

(a) Incident or Behavior: Serious Fight;

(b) Definition: A fight between youth in which one or more of the following occurred: a substantial number of blows are exchanged, some degree of injury was incurred by one or both parties, the staff present were unable to stop the fight with verbal warnings.

(c) Maximum Consequences: Isolation Unit prior to re-entry into program.

(8) Code 110:

(a) Incident or Behavior: Assault.

(b) Definition: To inflict, or cause to be inflicted, physical injury upon another person. In determining whether to impose the maximum consequences or some lesser consequences, the Administrative Committee shall, based on medical reports consider whether or not the injury was serious, whether or not the injury was intentionally or carelessly caused, and whether or not a dangerous weapon was used.

NOTE: "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious disfigurement, impairment of health, or loss or impairment of the function of any bodily organ.

(c) Maximum Consequences: Isolation Unit prior to re-entry into program.

(9) Code 111:

(a) Incident or Behavior: Provoked Assault;

(b) Definition: An act, in response to a physical assault, where the amount of physical force used exceeds the amount necessary to defend one's self. Or, aggressive retaliation;

(c) Maximum Consequences: Isolation Unit prior to re-entry into program.

(10) Code 112:

(a) Incident or Behavior: Coercion and intimidation: Threatened Assault: Strong-Arming;

(b) Definition: Threats or actions intended to force someone to do an act not otherwise required: or, to threaten bodily harm for the purpose of intimidation;

(c) Isolation unit prior to re-entry into program.

(11) Code 113:

(a) Incident or Behavior: Harassment;

(b) Definition: To deliberately disturb or irritate another person, to provoke hostility; includes using abusive and obscene language and gestures directed to staff, youth or others;

(c) Maximum Consequences: Isolation Unit and or Evaluation System.

(12) Code 115:

(a) Minor Law Violations;

(b) Definitions: Engaging in any law violation which constitutes a misdemeanor. Includes shoplifting, stealing, unauthorized possession or destruction of property of less than \$200 value, etc.;

(c) Maximum Consequences: Isolation Unit prior to re-entry into program.

(14) Code 120:

(a) Incident or Behavior: Prohibited Sexual Behavior (alone

or among Consenting Parties);

(b) Definition: To perform acts of sexual intercourse, sodomy, public masturbation, or public exposure of genitals. "Sodomy" means sexual contact between the sex organs of one person and the mouth or anus of another;

(c) Maximum Consequences: Isolation Unit prior to re-entry into program. Keep under supervision.

(15) Code 125:

(a) Incident or Behavior: Refusal to Obey a Staff Directive;

(b) Definition: To refuse to obey reasonable requests made by staff members;

(c) Maximum Consequences: Isolation Unit or Evaluation System.

(16) Code 127:

(a) Incident or Behavior: Actual Assistance of Level I Code Violators;

(b) Definition: Encourage, support or render help to another for the purpose of breaking Level I Code(s);

(c) Maximum Consequences: Same as for actual Code(s) violated.

(17) Code 130:

(a) Incident or Behavior: Involvement in gang related activity;

(b) Definition: Sagging pants, throwing signs, writing gang graffiti on folders or paper, verbal or physical gestures to opposing sects;

(c) Maximum Consequences: Isolation Unit or Evaluation System. Youth accused of such behavior will have a report sent to the Minority Youth Coordinator for possible intervention and treatment.

(18) Considerations for use of Level I Incident Code Maximum Consequences:

(a) Final assessment of the defined behavior may include a current psychiatric or psychological evaluation prior to assignment of consequences;

(b) Maximum consequences shall not be imposed for violation of the Incident Code except in those instances where the circumstances clearly merit that action.

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Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-470-0050

Level II Incidents

Introduction and Definition:

(1) Level II Incidents are less severe than Level I Incidents. Reports need not be used for Level II Incidents unless the youth is placed in the Isolation Unit or receives a medical evaluation.

(2) "Emergency placements" in the Isolation Unit for Level II Incidents shall be subject to the provisions of rule relating to Isolation Units.

(3) "Evaluation System" as used in the Maximum Consequences Column refers to the living unit grading system under which a youth's overall behavior for the week is evaluated by the Case Review Committee to determine whether the youth has earned a "passing" week. Privileges may be raised or lowered within this system, subject to the limitation described in the Incident Code, and subject to appeal.

(4) Maximum Consequences shall not be imposed for violation of the Incident Code except in those instances where the circumstances clearly merit that action.

(5) All disciplinary actions may be appealed by the youth, as provided in OAR 416-430-0030: Grievance-Appeal Procedures for Youth.

Stat. Auth.: OL Ch. 422, 1995

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Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-470-0060

Level II Incident Code

(1) Code 201:

(a) Incident or Behavior: Smuggling;

(b) Definition: To bring in or have in possession contraband

not seen as a serious threat to group management. A list of contraband items will be posted in each living unit;

(c) Maximum Consequences: Evaluation System.

(2) Code 206:

(a) Incident or Behavior: Self Detailing;

(b) Definition: Presence in an unauthorized area. To be in an unauthorized area. To be out of predefined bounds; for example, is assigned to go to maintenance but is found playing around school area. Chronic tardiness or unexcused delay in reporting to a designated area or classroom;

(c) Maximum Consequences: Evaluation System.

(3) Code 207:

(a) Incident or Behavior: Violating Condition of Home Visit, Foster Home Trial Visits or Authorized Absence.

(b) YCF staff will define specific conditions or behavior and conduct to each youth prior to home visits, foster home trial visits, or authorized absences.

(c) Maximum Consequences: Evaluation System and Loss of off campus privileges until approved by the Case Review Committee.

(4) Code 208:

(a) Incident or Behavior: Group Management Disturbances;

(b) Definition: To intentionally harass, incite, instigate, or arouse members of a group to the point where there is imminent danger of personal injury, property destruction or violation of rules;

NOTE: If personal injury, unauthorized absence, or damage over \$200 results from this behavior, this offense will be rated as Level I behavior.

(c) Maximum Consequences: Evaluation System.

(5) Code 209:

(a) Incident or Behavior: Actual Assistance of Level II Code Violators;

(b) Definition: Encourage, support or render help to another for the purpose of breaking Level II Code(s);

(c) Maximum Consequences: Same as for actual Codes violated.

(6) Code 210:

(a) Incident or Behavior: Minor Fights;

(b) Definition: Aggressive physical contact stemming from an argument or disagreement between youth. The fight is brief, no apparent attempt to seriously hurt others, and youth cooperates with staff requests to stop;

(c) Maximum Consequences: Evaluation System.

(7) Code 212:

(a) Incident or Behavior: Attempted Suicide or Suicide Gestures;

(b) Definition: To deliberately cause physical harm to one's own person as a suicidal gesture or an attempt to take one's own life. May be characterized by the severity and type of injuries, or by the occurrence of a traumatic event prior to the attempt;

(c) Maximum Consequences: Close supervision in Medical Clinic or Isolation Unit. Youth must receive a medical examination.

(8) Code 213:

(a) Incident or Behavior: Self-Inflicted Marking or Scarring of Body;

(b) Definition: To mark, scar, or cut own body without suicidal intent. Physically destructive game playing;

NOTE: If items such as guns, knives, illicit drugs or other objects of a highly dangerous nature are involved, rate as a Level I incident. Code 100 or 101.

(c) Maximum Consequences: Evaluation System. Youth must receive a medical examination at the medical clinic.

(9) Considerations for use of Level I Incident Code Maximum Consequences:

(a) Final assessment of the defined behavior may include a current psychiatric or psychological evaluation prior to assignment of consequences;

(b) Maximum consequences shall not be imposed for violation of the incident Code except in those instances where the circumstances clearly merit that action.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-470-0070

Level III Incidents

Introductions:

(1) The Level III incidents (least severe violations) are normally handled by temporary loss of the privilege violated, other appropriate activity related to the violation, and within the daily evaluation system of the basic program.

(2) All disciplinary actions may be appealed by the youth, as provided in OAR 416-430-0030: Grievance-Appeal Procedures for Youth.

(3) Evaluation System as used in the maximum consequences column refers to the grading system under which a youth's overall behavior for the week is evaluated by the Case Review Committee to determine whether the youth has earned a "passing" week. Privileges may be raised or lowered within this system, subject to the limitation described in the Incident Code, and subject to appeal.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-470-0080

Level III Incident Code

(1) Code 300:

(a) Incident or Behavior: Tobacco Violation;

(b) Definition: Use of tobacco products;

(c) Maximum Consequences: Evaluation System and/or loss of privileges.

(2) Code 305:

(a) Incident or Behavior: Tardiness;

(b) Definition: Reporting to designated area or classroom after designated time. Chronic Tardiness or unexcused delay exceeding 3 minutes is a Code 206 violation;

(c) Maximum Consequences: Evaluation System and/or one hour study hall and/or study hour on unit.

(3) Code 306:

(a) Incident or Behavior: Clothing Violation;

(b) Definition: To dress in inappropriate attire for any activity. Appropriate attire will be determined facility policy. A dress code will be posted in each living unit;

(c) Maximum Consequences: Evaluation System.

(4) Code 307:

(a) Incident or Behavior: Poor Application;

(b) Definition: Failure to perform assignments or activities;

(c) Maximum Consequences: Evaluation System and/or satisfactory completion of assignment or task.

(5) Code 308:

(a) Incident or Behavior: Poor Sportsmanship;

(b) Definition: To be unfair, discourteous, or unpleasant during recreational activities;

(c) Maximum Consequences: Evaluation System and/or remove immediately from the activity. Suspension from the following event.

(6) Code 310:

(a) Incident or Behavior: Excessive Horseplay;

(b) Definition: Continuous, rough or boisterous play, not resulting in intimidation or harassment;

(c) Maximum Consequences: Evaluation System and/or suspension of the specific recreational activity.

(7) Code 311:

(a) Incident or Behavior: Activity Disruption;

(b) Definition: Actions that disrupt the activities of the group;

(c) Maximum Consequences: Evaluation System.

(8) Code 315:

(a) Incident or Behavior: Dishonesty;

(b) Definition: To lie to another, to con or give false or misleading information: cover for mistakes;

(c) Maximum Consequences: Evaluation System.

(9) Considerations for use of Level I Incident Code Maximum Consequences: Maximum consequences shall not be im-

posed for violation of the Incident Code except in those instances where the circumstances clearly merit that action.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-470-0090

Procedures When a Level I Incident Occurs

Level I Incidents:

(1) As soon as is practicable, but in no case more than 24 hours after a Level I Incident is reported, the youth shall be provided with a written notice of the alleged violation. The notice shall be signed by the staff member making the charge and shall include the name of the complainant(s) if other than the staff member (unless the complainants are other youth, and it is necessary to protect their identity): the part(s) of the code violated: a description of the conduct: Time, place and date of the conduct.

(2) Security Staff or another neutral party shall conduct a preliminary investigation of the alleged violation(s). The youth shall be allowed full opportunity to present his or her side of the case and to refute the allegations, unless behavior is such that to do so would pose a security problem. If after the preliminary investigation the party conducting the investigation determines there is evidence to support the allegations of a Level I offense, and that the rule violations or behavior are of such a serious nature that the welfare of the youth or the good order and security of the Youth Correctional Facility requires immediate removal and placement in the Isolation Unit, the youth may be placed in the Isolation Unit. The staff member reporting the violations shall sign the report, to indicate concurrence that placement in the Isolation Unit is necessary.

(3)(a) Continued placement in or release of the youth from the Isolation unit shall be decided by the designated staff on duty at the time. The decision shall be based upon the persons' assessment of the youth's needs, behavior, and readiness to return to the program.

(b) The designated staffs decisions may be overridden only by the Superintendent, Officer-of-the-Day, or Administrative Committee. A designee serving on the Administrative Committee may not override these decisions unless this person is qualified to serve as Officer-of-the-Day.

(4) Designated administrative staff shall review any youth in the Isolation Unit who does not already have an assigned living unit in the Youth Correctional Facility, or who is being considered for placement in a long term security unit. These staff shall determine the placement of these youth.

(5) Youth confined to a room shall be granted the option of a Due Process Detention Hearing by the Officer-of-the-Day, to be done within 24 hours of their confinement, if they are to be confined for more than 24 hours.

(6) Youth in the Isolation Unit for more than 24 hours will be granted the option of a hearing before administrative staff. Administrative staff shall conduct a paper review on all youth in the Isolation Unit.

(7) Administrative staff shall see each youth confined in the Isolation Unit for five (5) calendar days, to determine whether or not further confinement is warranted. They will see such youth each five day period they are confined. They may override the designated staff decision, and release such youth at any time they deem necessary.

(8) Any youth, after having exhausted the appeal process indicated above, may appeal to the Superintendent.

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Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-470-0100

Basic Living Unit Programs

(1) The Basic Living Unit Program is a system of rights, privileges and responsibilities which apply to the youth while the youth is living in the Youth Correctional Facility.

(2) The Basic Living Unit Program expectations include: completion of school and/or work program goals, compliance with

the Conduct Code: achievement of other program goals set in the Reformation Plan for individual youth by the Youth Correctional Facility.

(3) Each youth must be reviewed regularly within the Evaluation System to determine if the youth is satisfactorily meeting the basic program expectations.

(4) A youth's privileges may be temporarily reduced for a Level I violation of the Incident Code pending review by the Case Review Committee.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 480

YOUTH RELIGIOUS ACTIVITIES

416-480-0000

Purpose of Rule

(1) To establish Department policy and procedures regarding youth religious exercise and activities, and religious programming in Oregon Youth Authority Youth Correction Facilities.

(2) Within the resources and the need for facility security, safety, health and order, the Oregon Youth Authority intends to:

(a) Offer youth incarcerated in OYA facilities the opportunity to practice their religion;

(b) Provide for orderly management of youth religious activities through supervision by chaplains and other staff, and the assistance of approved religious volunteers;

(c) Seek methods to encourage and foster understanding and respect for the diversity of religious beliefs and practices of the Oregon Youth Authority youth and staff; and

(d) Ensure that the Oregon Youth Authority practices with regard to religious programming are consistent with relevant provisions of the state and federal constitutions, statutes and regulations.

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Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-480-0010

Definitions

(1) "Chaplain": A person employed full time or contracted by the OYA to provide religious programming and services to youth in Youth Correctional Facilities.

(2) "Youth Corrections Facility" (YCF): Any institution, facility or staff office, including the grounds, operated by the Oregon Youth Authority.

(3) "Program Director": Any person within the OYA who reports either to the Director, an Assistant Director or administrator and has responsibility for delivery of program services or coordination of program operations.

(4) "Religious Activity": Any rite, ceremony, event or program that is customarily associated with the practices of a religion, including but not limited to, corporate gatherings or adherents of a religion for purposes of worship, prayer, teaching and/or sharing.

(5) "Youth": Any person under the supervision of the OYA who is not on parole, post institution supervision or probation status.

(6) "Religious Representative": A member of the clergy, medicine person, Imam, Rabbi, spiritual advisor, or other religious authority of sufficient rank to provide authoritative information to the Oregon Youth Authority regarding their religion. For purposes of this rule, a religious representative shall not be a youth or on probation, parole or post institution supervision, or otherwise disqualified from acting as a volunteer in a Youth Correction Facility, under OYA rules and procedures.

(7) "Religious Volunteer": member of the clergy, medicine person, Imam Rabbi, spiritual advisor, or other religious authority qualified to direct, lead and or conduct others in the rites, ceremonies or other practices of a religion who has been approved by

the OYA to assist youth in requested religious activities in OYA facilities. This could also be part of a group who come in to provide religious support to youth.

(8) "Facility Administrator or Designee": Administrative staff or his or her designee assigned by the Director as the top administrative staff at a Youth Correctional Facility.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-480-0020

Chaplains and Religious Volunteers

(1) A chaplain or designee in each Youth Correctional Facility shall be responsible for coordination, facilitation and supervision of youth religious activities.

(2) Chaplains or designees shall attend to the religious and spiritual requests of each youth, regardless of the youth's religious belief or affiliation.

(3) When a chaplain or designee is not qualified according to the tenets of a particular religion to conduct an approved religious activity requested by a youth, the chaplain or designee will, with the assistance of the facility administrator or others as needed, seek out and invite a qualified individual from the community to conduct the religious activity as a religious volunteer. Any volunteers recruited by the chaplain or designee must meet OAR 416-450-0000 through 416-450-0060 which governs who is qualified to be an OYA volunteer.

(4) Youth shall not be permitted to direct, lead or conduct other youth in religious activities. If neither the chaplain or designee, nor a qualified religious volunteer, are available to conduct an approved religious activity requested by a youth, the youth's request will be denied until such time as a qualified religious volunteer becomes available to do so.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-480-0030

Religious Activities

(1) Inmates should have the opportunity for reasonable access to religious activities which include, but are not limited to, the following:

(a) Regular religious services and ceremonies;

(b) Special ceremonies, holiday services, and/or sacraments;

(c) Individual and group pastoral counseling (in a native language where possible);

(d) Youth religious or spiritual group meetings; and

(e) Religious moral instruction.

(2) Dietary accommodations will be made within the context of the Food Services cyclical menu to satisfy requirements of a youth's religion.

(3) A youth whose religious expression includes odor or smoke producing substances (e.g. sage, sweet grass, and incense) may be authorized to burn small amounts of these substances as part of an approved religious activity and in a manner consistent with facility security, safety, health and order. A youth assigned to an Isolation Unit shall not be permitted to participate in group religious activities with other youth.

(4) Visual Expression:

(a) An inmate may be authorized to visibly express his/her religious customs and beliefs in appropriate ways consistent with facility security, safety, health and order, including:

(A) Participating in individual and group religious activities;

(B) Observing religious requirements relating to head and or facial hair consistent with the facility rules on hygiene and grooming; and

(C) Wearing or carrying a religious emblem, medal, medallion or other religious item (e.g. medicine pouch, religious medal, rosary, prayer feather).

(b) Youth Assigned to Isolation Units: A youth assigned to an Isolation Unit shall not be permitted to wear a religious emblem, medal, medallion or other religious item around his or her neck.

(5) Each Youth Corrections Facility will post a current schedule of religious activities available in the facility. The schedule will be posted in appropriate areas readily accessible to youth.

(6) Youth Requests to Participate in Religious Activity:

(a) Religious Activity Currently Available in the Facility: A youth desiring to participate in a religious activity that is currently available in the facility where he or she is confined may obtain information on the weekly activity schedule. They may also write to the facility chaplain or designee requesting further information or services;

(b) Religious Activity Not Currently Available in the Facility: A youth desiring to participate in a religious activity not currently available in the facility may request to do so by submitting to the chaplain or designee a completed request with the following information:

- (A) The name of the religion;
- (B) The title of religious activity requested;
- (C) A brief description of the religious activity including:
 - (i) The significance of the activity in the practice of the religion;

- (ii) How often or under what circumstances the religious activity would be held if it were taking place in the community;

- (iii) Minimum time and any physical requirements within which the religious activity may take place, including those of any defined segments of the activity;

- (iv) Any materials which are required for the religious activity and their purpose or use, including a list of any items associated with the religious activity which the youth would retain in his/her personal possession, if any; and

- (v) The title (if any), function, and eligibility requirements for participants in the activity;

(D) The name, address and phone number of a recognized religious representative of the religion who can authoritatively verify the above information.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-480-0040

Religious Activity Areas

(1) Religious Activity Areas: The Program Director of each facility shall designate an area or areas appropriate for the conduct of approved religious activities.

(2) Access to Religious Activity Areas: The use of religious activities areas within the facility will be scheduled by the chaplain or designee. In scheduling designated religious activities areas, the chaplain or designee will seek to accommodate individual religious beliefs, including those that call for particular times, and calendar of lunar dates.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-480-0050

Provision of Religious Items for Conduct of Religious Activities

Items required for the conduct of a religious activity may be purchased and supplied by the OYA, or donated by a religious representative, religious volunteer or other approved source at the discretion of the Department. Items must be approved by the chaplain and are subject to search. Items not approved shall be considered contraband and subject to confiscation.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-480-0060

Restriction of Religious Activity or Items

(1) A youth's participation in approved religious activities and possession of approved religious items may be restricted by the OYA when deemed necessary to maintain facility security, safety, health and or order.

(2) Any restriction of a youth's participation in approved religious activities and or possession of approved religious items should be the least restrictive means necessary in the Program Director's or designee's judgment to protect facility concerns.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-480-0070

Searches of Religious Activity Areas

All designated religious activity areas and religious items shall be subject to search conducted in accordance with the Department's policy on searches and in a manner that reflected an awareness of and sensitivity to individual religious beliefs, practices, and respect for the objects/symbols used in the religious practice.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-480-0080

Religious Request Resolution Process

(1) Issues of a religious nature (e.g. whether a requested religious item or activity is central to the practice of a particular religion, etc.) will be resolved by the facility chaplain or designee, in consultation with the Administration, to ensure consistency of interpretation and application of Department policy and procedures regarding youth religious exercise and religious programming.

(2) Consultation with appropriate religious representatives and/or other authorities as needed to clarify issues of religious doctrine and practice will occur.

(3) Whenever there is a conflict between a legitimate religious exercise request and a facility interest relating to security, safety, health or order, and other administrative concerns, the matter will be resolved in consultation with the Chaplain, Facility Administrator or designee and input from the involved youth offender.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 490

DETENTION, RESTRAINTS AND PHYSICAL FORCE

416-490-0000

Purpose

(1) Isolation Units. A youth may be placed in the Isolation unit pursuant to the procedures set forth in OAR 416-470-0090 and as provided in this division. While in Isolation Units, youth may be placed confinement programs, defined as follows:

(a) Youth are not subject to confinement or restraint at Youth Correctional Facilities except as provided in this division:

(b) Confinement Program: Youth in this program are confined to his or her room, subject to the provisions set forth in this division.

(2) Placement in Isolation Unit:

(a) Emergency Circumstances: A youth may be placed in an Isolation Unit when emergency circumstances arise; that is, a youth's conduct poses a serious and imminent threat to him or her self, or to others. Assignments to the Isolation Unit for emergency circumstances shall be made only if authorized by a Security Staff or the supervisor of the activity area where the conduct occurred;

(b) Non-Emergency Circumstances: Youth entering the Isolation Unit shall be placed in the Isolation Unit only for offenses for which such a consequence is prescribed in the Incident Code. The decision to place a youth who in the Isolation Unit for non-emergency circumstances must be made by a neutral "third party" staff member. This person must consider whether or not less restrictive alternative consequences would be more appropriate in light of the youth's conduct, and the effect his or her behavior has had on the persons in the area where the offensive behavior was

committed;

(c) If possible, the staff person responsible for the decision to place the youth in the Isolation Unit shall interview the youth prior to placement, to get his/her side of the incident. If it is not practicable to do this prior to an Isolation Unit placement, in all cases the designated staff shall grant the youth such an opportunity after placement in the Isolation Unit;

(d) In either emergency or non-emergency circumstances, the staff person who has made the determination to place the youth in the Isolation Unit shall give him/her the opportunity to go voluntarily. If this is practicable. (This is not necessary if the youth is out of control);

(e) If a youth refuses to go voluntarily, he/she may be taken to the Isolation Unit involuntarily. If possible staff shall enlist the aid of other staff persons before using force, and they shall use only the minimum force necessary to move the youth (see OAR 416-490-0010 Physical Force and Restraints);

(f) The staff who requested placement of the youth in the Isolation Unit shall submit, in writing, a report indicating the time, date and reasons for the placement;

(g) If the youth has been placed in the Isolation Unit for emergency reasons, he/she shall be checked every five minutes with observations recorded, if he/she is confined to a room. The designated staff on duty shall determine treatment which may include transfer to a Mental Health facility if necessary;

(h) A youth placed in the Isolation Unit shall not be confined in a room or placed in restraints unless, in the opinion of a designated staff, conduct at that time poses a serious threat to him or herself or to others. A youth shall not be so confined or restrained beyond that time when in the opinion of the designated staff he/she no longer poses such a threat. A youth shall not be confined in a room beyond 24 hours, except in extreme circumstances in which in the judgment of the designated staff the youth remains a serious and imminent threat to him or her self or others in spite of appropriate efforts by a designated staff. The nature of the offense and/or the youth's prior history shall not be the sole criteria for confinement.

(3) The following conditions pertain only to youth confined or restrained:

(a) All youth confined to a room shall be checked every fifteen minutes by staff on duty, who shall record observations of any unusual behaviors or conditions. During the hours of 10 p.m. to 7 a.m. these observations may be reduced to every one-half hour, unless an emergency situation dictates otherwise;

(b) Youth confined to a room shall be informed of their right to a due process hearing if they are to be confined for 24 hours or more. the designated staff on duty shall inform the Superintendent, Superintendent's designee or Officer of the Day as soon as possible to arrange for such a hearing if one is requested. This hearing is to be conducted within the first 24 hours of confinement, by the Superintendent, Superintendent's designee or the Officer of the Day;

(c) Only soft four point restraints shall be used when it is necessary to place a youth in restraints;

(d) Soft restraints are soft leather straps or cloth materials devices;

(e) Soft restraints shall always and only be attached to a bed frame and mattress;

(f) A youth shall be continued in the four point restraint for no longer than necessary to bring behavior under control. He/she shall be monitored continuously, and shall be released within 30 minutes, unless a designated staff determines that the youth continues to pose an imminent physical threat to self or others. If the youth is to continue in restraints, a designated staff must note in writing the determination to continue the restraints, for each 30 minute period. In no case will the youth be continued in restraints for more than two (2) hours, unless, in addition to the determination by the designated staff approval is also obtained from the Superintendent or, in the event the Superintendent cannot be reached by telephone or pager, after an attempt to do so, from the Officer of the Day, the Superintendent's designee or another designated staff;

(g) A staff member shall visually check every youth in restraints every five minutes or continuously if viewed through a TV monitor. If a youth is monitored by television the youth shall be observed in person every fifteen minutes;

(h) Restraints shall be used only to prevent the youth from causing physical harm to self or others. They shall never be used as a punishment;

(i) The decision to place a youth in four point restraints can be made only by a designated staff, the Superintendent, the Superintendent's designee, or by the Officer of the Day. In no case will the same person who initiated the restraint authorize its continuation beyond the two hour limit;

(j) Whenever a youth is placed in a four point restraint, a documented record shall be kept which shall include the youth's name, the time and date of the restraint, notations of the youth's behavior while in restraint, the length of time in restraint, the person who authorized the restraint, and the visual checks made of the youth, or a notation that the youth was monitored visually by the TV monitor. All of this record shall be routed to the youth's master file;

(k) In addition to the documentation described above, a log shall be maintained showing in chronological order the names of youth restrained, the time and date of the restraint, the person authorizing and the time of day the youth was released from restraints. This log shall be maintained in the Isolation Unit.

(4) The following conditions apply to all youth in the Isolation Unit:

(a) Valuables, money, and jewelry shall be properly accounted for by Isolation Unit staff, and the youth shall be given a receipt for it;

(b) Services: Youth in the Isolation Unit shall be afforded the same opportunity to maintain health and dignity as afforded youth in the general population consistent with the requirements for the program in the Isolation Unit;

(b) Services shall include, but are not limited to the following:

(A) Food: Except under special diet prescribed by the Youth Correctional Facility Medical Clinic, each youth in the Isolation unit shall receive food as the same quality, from the same menu, and as nearly as possible on the same schedule, as that provided to all other youth. At no time shall food be withheld as a punishment or disciplinary action;

(B) Clothing:

(i) Each youth in the Isolation Unit shall be provided with clean shirts, undershorts, socks, trousers, and tennis shoes. Clothes shall be of the appropriate size and in good repair;

(ii) A youth in the Isolation Unit may forfeit or be denied an item of clothing which he/she abuses or misuses, or if he or she is considered by the designated staff to be so disturbed to pose a threat to him or herself or others through abuse or misuse of the clothing. However, only under extreme conditions is a youth to be deprived of clothing, and such action is to be reviewed by the appropriate administrative staff, Officer of the Day, or Superintendent.

(C) Bedding:

(i) Each youth in the Isolation Unit shall be provided with mattress, pillow, pillow cases, two sheets, and blankets. Clean sheets and pillow cases shall be provided each youth upon assignment to the Isolation Unit, if they remain there overnight and thereafter for sanitation purposes. Mattresses, pillows, and blankets shall be cleaned as necessary;

(ii) A youth shall be denied an item of bedding only under the following conditions:

(I) He/she abuses or misuses it;

(II) He/she poses a substantial threat of imminent misuse of the bedding;

(III) He/she is considered by the designated staff to be so disturbed to pose a threat to him or herself or others through abuse or misuse of the bedding;

(IV) He/she is isolating himself from his or her established program. In this latter case, bedding will be denied only during the daytime hours, and only if a designated staff authorizes its re-

moval in writing. Staff have a continued obligation to assure basic hygiene and sanitation, despite removal of the items described above.

(c) Medical Services:

(A) Immediately upon assignment of a youth to the Isolation Unit, the Lead Shift Supervisor shall notify the Youth Correctional Facility Medical Clinic to assure prompt, necessary delivery of any prescribed medications or medical services;

(B) Should a youth in the Isolation Unit complain of illness, the Youth Correctional Facility Medical Clinic shall be notified immediately. Medical Clinic staff shall determine what treatment is necessary;

(C) Should the illness of a youth in the Isolation Unit not be treatable there, the youth shall be escorted to the Youth Correctional Facility Medical Clinic, or other appropriate medical facility. Supervision deemed appropriate by the Lead Shift Supervisor of the Isolation Unit shall be maintained through the youth's examination and treatment;

(D) Should a youth in the Isolation Unit be considered by the YCF Medical Clinic staff to be in need of a diagnosis and treatment not available in the Youth Correctional Facility Medical Clinic, the youth shall be transported to such other, non-YCF facility or facilities as the YCF Medical Clinic staff deem advisable.

(d) Personal Hygiene:

(A) Each youth in the Isolation Unit shall be provided the use of a toothbrush, toothpaste, hand towel, comb, toilet paper. Such items may be either the youth's own property or regular YCF issue. These items shall be replenished on an as-needed basis;

(B) A youth in an Isolation Unit shall forfeit or be denied personal hygiene items indicated in the preceding paragraph on the basis of abuse or misuse of any item, or if behavior is such that he/she is considered by the designated staff to be so disturbed as to pose a threat to him or herself or others through abuse or misuse of any item. Any withholding of personal hygiene items shall be subject to continuous by the designated staff and personal hygiene items shall be returned at the earliest possible time;

(C) Each youth in the Isolation Unit shall be offered the opportunity to shower daily;

(D) Room sanitation and neatness standards in the Isolation Unit shall be the same as those required throughout the YCF.

(e) Mail:

(A) Youth in the Isolation Unit shall be allowed to read, receive and retain mail in their rooms unless items of mail are used for destructive purposes. A youth not wishing to keep mail in his/her room may store it in his/her personal property storage in the Isolation Unit. Any incoming non-legal mail shall be inspected by the Isolation Unit Lead Shift Supervisor to check for contraband and drugs.

(f) Personal Visits: Daily visits to youth in the Isolation Unit are permitted, subject to provisions of OAR 416-430-0020;

(g) Reading Materials: Each youth assigned to the Isolation Unit shall be issued reading materials. The privilege of reading material may be forfeited as a result of abuse or misuse of the material. Reading materials shall not be exchanged between youth. The youth to whom an item is issued is responsible for condition of the material while the material is in his possession;

(h) Recreation: Unless a physician orders otherwise, each youth in the Isolation Unit shall be allowed daily opportunity for big muscle exercise outside, in a gym, or in a swimming pool. Youth will not be restricted from this activity unless they pose a danger to themselves or others;

(i) Religious Services:

(A) A YCF Chaplain may visit youth in the Isolation Unit, as time allows, unless visits are declined by the youth;

(B) Each youth in the Isolation Unit shall be allowed to attend religious services conducted in the unit, unless restricted by the designated staff. Such restrictions shall only be imposed when the youth is determined to be a threat to him or her self or others;

(C) A youth shall not be denied the opportunity to practice religion while assigned to the Isolation Unit. However, except while attending religious services as described above, the practice

of the youth's religion is restricted to his or her room and shall not be permitted to disturb other youth.

(j) Education: Youth in the Isolation Unit shall be offered an educational program that is similar to that offered youth in the general YCF population;

(k) Work: Youth in the Isolation Unit for whom a work assignment would be beneficial may be assigned work;

(l) Searches:

(A) Every youth assigned to the Isolation Unit, upon entering the unit shall be subjected to a "skin search", and all items of clothing worn shall be examined for contraband. All contraband shall be turned in to Security;

(B) Every item of material or equipment (books, magazines, etc.) shall be inspected before acceptance into the Isolation Unit;

(C) All Isolation Unit rooms shall be searched upon belief of the Lead Shift Supervisor that search is warranted, and before and after each occupancy; unauthorized items shall be removed;

(m) Compliance Inspection: Each day the Lead Shift Supervisor shall inspect the Isolation Unit to insure compliance with this rule and with related YCF policies.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-490-0010

Physical Force and Restraints

(1) General Policy: Physical force or mechanic devices shall be used to restrain a youth only when no other means are deemed by YCF staff to be practical; to prevent the youth from inflicting immediate and serious harm upon him or her self or others or property; to prevent or terminate escape; or to safely transport the youth. Restraints or physical force shall never be used as a punishment. Only the minimum amount of restraint r force reasonably deemed necessary at the time of their use shall be used to restrain an individual. Chemical restraints shall not be used.

(2) Physical Force:

(a) "Physical Force" means taking hold of or holding a person or causing a person to move, stop, stay or be still, or be under immediate physical control of another person, whether by physical or mechanical means;

(b) YCF staff shall not use physical force against youth except:

(A) As necessary in self-defense or to prevent imminent injury to the youth or another person, or substantial property damage; or

(B) To prevent escape; or

(C) To safely transport a youth; or

(D) When a youth refuses to obey a direct order and refuses to cooperate with staff and refuses to move to another area and it is desirable or necessary to move the youth to another area.

(c) No youth shall be permitted by staff or given staff approval, tacit or open, to use physical force against another youth except as necessary in self defense or to prevent imminent injury to the youth or another person, or substantial property damage. Youth shall not be permitted to apprehend, or attempt to apprehend other escaping youth;

(d) If practicable, before using physical force, YCF staff shall attempt to gain control of the youth by forceful methods. This is not necessary if the youth is physically out of control, and in danger of injuring him or her self, or other persons, or causing substantial property damage;

(e) Whenever possible, the use of physical force by staff shall be delayed until a third party is able to intervene and aid in controlling the situation;

(f) Whenever possible, YCF staff shall prevent or stop fighting between youth, bullying of youth, or the use of force by and between youth, except as provided in this section;

(g) After any use of physical force between YCF staff and youth or between youth, staff shall comply with the following:

(A) Medical Attention: The youth shall be examined by a medically trained person, regardless of whether or not the incident resulted in a visible injury. Medical Clinic personnel shall be par-

ticularly careful to make a complete record of their procedures and results of the examination. The clinic shall immediately provide a written summary of the examination to the Unit Director whenever the examination reveals an injury. The Clinic shall photograph in color any visible injuries;

(B) Report:

(i) A report shall be completed by each YCF staff member using the force. The Report shall include: reasons for the use of force, a description of efforts to gain control without force, if any, any efforts to seek assistance from a third party, and whether a third party did intervene;

(ii) Administrative staff shall review all such reports. If there are any incidents that seem excessive or inappropriate these staff shall conduct an investigation or order that one be done. In all such cases, they shall immediately notify the Superintendent.

(3) Restraints:

(a) Definitions:

(A) Hard restraints include hand cuffs and other metal or chain restrictive devices;

(B) Soft restraints include soft leather straps or other cloth material restrictive devices;

(b) Outside of the Isolation Unit: Hard restraints shall be used if necessary, to control a youth only while transporting;

(c) Within the Isolation Unit: Only soft restraints shall be used. Soft restraints shall not be used outside of the Isolation Unit.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 510

CERTIFICATION STANDARDS FOR PRIVATE YOUTH CARING AGENCIES

416-510-0000

Purpose

(1) OARs 416-510-0000 through 416-510-0090 as printed here, or as they may be amended or added to, set forth Oregon Youth Authority standards to be used for reviewing, and if appropriate, certifying those private agencies offering residential care programs, foster home placement and supervision, or day treatment programs for youth, which are subject to provisions of Chapter 422, Oregon Laws, 1995.

(2) The following rules are intended to define standards of practice for agencies. It is recognized that the highest standards of youth corrections practice are achieved when agencies have skilled professional staff, who have the capacity to determine the individual needs of a youth, and the creativity and flexibility to plan to meet these needs in the best manner.

(3) OYA has the duty and function to attempt to obtain and consider criminal offender information on certain employees and volunteers of private youth-caring agencies in order to protect the best interest of youth.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-510-0010

Definitions

(1) "Youth caring agency" any agency, society, institution, organization or group under private management organized in whole or in part for the temporary or continued care in a residential facility, or placement of youth in foster homes.

(2) "Foster family care" includes care, food, and lodging provided on a 24 hour basis for a youth in an agency approved foster home.

(3) "Interstate Compact on Placement of Youth" is a cooperative agreement between member states for placement of a youth in foster care in accordance with Interstate compact provisions. (Reference: ORS 417.200 - 417.990)

(4) "Employee" an individual applying for a salaried position with a youth caring agency or having a salaried position and being

considered for an assignment within a youth caring agency.

(5) "Volunteer" an individual applying for or requesting to work on assignments for a youth caring agency on an unsalaried basis.

(6) "Criminal offender information" records and related data received and compiled by the Bureau of Criminal Identification of the Oregon State Police or other law enforcement agencies or courts for purposes of identifying criminal offenders and alleged offenders including records of arrests and the nature and disposition of criminal charges, including dismissals, sentencing, confinement, release or probation.

(7) "Oregon Youth Authority (OYA)" The agency created by the 1995 Oregon Legislature to serve adjudicated youth in Oregon.

(8) "State Office for Services to Children and Families (SCF)" A division of the Department of Human Resources authorized by the 1995 Oregon Legislature

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-510-0020

Certificate

(1) No private youth-caring agency or organization shall provide foster care placement services in Oregon without a current, valid certificate of approval issued by OYA or SCF.

(2) After written application by an applicant for a certificate of approval OYA shall, within a reasonable time, issue a certificate of approval after satisfactory investigation of the applicant to determine that the applicant meets the provisions, requirements, standards and conditions of state law and OYA rules. In such investigation OYA may examine the records and files of the agency; inspect and observe the physical premises; interview youth, agency staff, and persons in the community.

(3) The certificate of approval shall specify the type of care and/or service, location of care for which the agency is authorized to provide care and services. All certificates expire on June 30 of each year unless sooner suspended or revoked, except as provided in ORS 183.430.

(4) Certificates shall terminate automatically upon the closure of the agency.

(5) Upon failure to meet standards or correct deficiencies, OYA may deny, revoke, suspend, or refuse to renew the certificate.

(6) The private youth-caring agency or organization has the right to appeal any decision to deny, suspend, or revoke a certificate, subject to the provisions of Chapter 183, Oregon Revised Statutes.

(7) OYA shall terminate all payments to the agency for care given youth after the date of suspension or revocation of the certificate.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-510-0030

Administration

(1) There shall be written policies for the Administrator and staff of the agency, which shall include:

- (a) Board of Directors' functions;
- (b) Agency organizational charts;
- (c) Agency purpose;
- (d) Program details and operational procedures;
- (e) Personnel policies and procedures;
- (f) Position descriptions for all employees.

(2) Youth-caring agency employees or volunteers shall be responsible, mature persons who demonstrate the knowledge and ability to care for youth within the generally accepted professional standards of youth correctional care.

(3) In disciplining youth, employees and volunteers shall not use harsh punishment. Harsh means spanking, belting, physical/mental abuse acts designed to humiliate, degrade, or undermine a youth's self-respect, punishment in the presence of a

group, deprivation of parental visits, or placing the youth in lock-up for punishment.

(4) Private youth care agencies shall utilize employees or volunteers who's presence does not jeopardize the health, safety or welfare of youth.

(5) Employment:

(a) The agency or its board of directors will not deny employment, promotion, assignment, or assignment as a volunteer to a person solely for the reason that person has been convicted of a crime, but will consider the relationship of the facts supporting the conviction to the specific occupational requirements of the job assignment;

(b) In determining a person's suitability for employment, or as a volunteer, the agency or its board of directors will consider facts relating to any crime, particularly convictions of youth abuse, offenses against persons, such as homicide, assault, kidnapping, sexual offenses (rape, sodomy, sexual abuse); offenses against family, such as incest, abandonment of a youth, youth neglect, prostitution, and related offenses; or other offenses against public health and decency, offenses involving narcotics and dangerous drugs, including distribution of controlled substances to minors. The agency will take this information into consideration in judging a person's fitness to work with youth and their inclination to behave in such a way as to endanger the welfare of youth;

(c) If a person has been arrested or charged with one of the above crimes, with final disposition of the arrest and charge not yet reached, the agency or its board of directors may withhold its decision to hire or assign the person pending the outcome of the arrest or charge;

(d) If a person was involved in a crime other than those listed above, or the charge on one of the above crimes was dismissed, all intervening circumstances and other background information will be considered in judging a person's fitness to work with youth and their inclination to behave in such a way as to endanger the welfare of youth;

(e) The agency or its board of director's refusal to hire or assign a person will be based upon records from the court(s) of original record;

(f) Any refusal to hire, or assign a person by the agency and its board of directors under OAR 416-510-0020 will be subject to the same rights and procedures of appeal as otherwise pertain to employees or volunteers.

(6) OYA has the duty and function to obtain and consider criminal information, including state police files; on applicants for position as administrators and on current administrators at the time of annual certification; and on current administrators when OYA believes an arrest has occurred:

(a) Criminal offender information received from the State Police will be available only to the OYA section responsible for certifying private youth-caring agencies, in accordance with the State Police rules and procedures relating to criminal offender information;

(b) OYA will advise the youth-caring agency or its board of directors if applicants or the current administrator have criminal records.

(7) The administrator of the youth-care agency will be responsible for obtaining background information on its employees who have contact with, care for, or oversee youth. OYA will obtain criminal offender information on an employee, applicant, or volunteer at the request of the administrator, its Board of Directors or the Certification Unit of OYA.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-510-0040

General Provisions

(1) No person(s) who is known to physically abuse or sexually molest or exploit a youth will be approved by the agency. (For definition youth abuse law see ORS 418.740)

(2) Foster parents shall be responsible, mature individuals of good moral character, who exercise sound judgment and display

the capacity to provide good care for youth. No person who displays behavior which might have a detrimental effect on youth will be approved by the agency.

(3) Foster parents shall be persons who can provide a stable, harmonious living situation, wholesome models, and a healthy environment conducive to rearing youth.

(4) Foster parents shall have youth-rearing practices and attitudes about behavior that will serve the best interest of foster youth.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-510-0050

Foster Parent Applicants' Requirements in Relation to Foster Youth

Foster parent applicants shall agree to:

(1) Provide one responsible adult (over 18) for direct supervision of youth, or on call at all times.

(2) Provide opportunity for the youth to attend religious services of his choice, if the youth so desires.

(3) Provide the foster youth an ample, well balanced and nutritious diet, as determined by each youth's needs.

(4) If milk other than pasteurized or from a licensed raw milk dairy is used by foster youth (such as milk from family cows or goats), foster parents shall obtain a signed form from a licensed veterinarian and/or animal technician, verifying that TB and brucellosis tests administered within the previous year were negative.

(5) Not require a foster youth to do work which is hazardous to his health, interferes with his education, or places unreasonable limitations upon his recreational opportunities.

(6) Not administer severe or harsh punishment, or otherwise abuse a foster youth.

(7) Not reveal information about the youth or his family except when authorized by the private youth care agency by whom they are approved.

(8) Have sufficient income to meet their family's needs without the maintenance payment made for the foster youth, and agree to use the foster care maintenance payment for the foster youth's needs.

(9) Have the time, competence, stamina, and motivation to meet the needs of the youth placed with them.

(10) Be available and accessible to the agency workers for contacts.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-510-0060

Foster Home Requirements

(1) The foster home shall furnish sleeping facilities which:

(a) Provide the foster youth with a well-ventilated, heated, and well-lighted bedroom with an outside window, and within call of a responsible adult;

(b) Provide sufficient bedroom space to assure that youth of the opposite sex over age 6 do not occupy the same bedroom, except as prior authorized by the private agency staff person, such as when care of handicapped youth may necessitate otherwise;

(c) Provide each foster youth with an individual bed, except as prior authorized by the private agency staff person, when siblings of the same sex may share a double bed temporarily;

(d) Insure that sleeping quarters of youth over age 2 shall not be in the same room with an adult except in case of a youth's illness when special care is necessary, or as prior authorized by the private agency staff person.

(2) Foster homes shall provide:

(a) Individual drawer space and sufficient closet space for the foster youth's clothing and possessions;

(b) Space for study as appropriate to the youth's age or school needs;

(c) A safe area for indoor play appropriate to youth's age or needs;

(d) Adequate screening for fireplaces and open-faced heaters;

- (e) Protection of youth from guns, drugs, poisons, disinfectants, plastic, or other potentially dangerous materials;
- (f) Sleeping and eating facilities for foster youth attached to the main house;
- (g) A telephone unless exception is authorized by the private agency.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-510-0070

Combination of Care

Foster care of youth shall not be combined with boarding, day care, nursing, or convalescent care for adults or day care for youth, except as prior authorized by the agency's administrative staff.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-510-0080

Private Agency Requirements Related to Foster Home Applicants

(1) The agency shall obtain and personally contact references of such number and nature to be satisfied as having enough reference information to make a judgment whether to deny or approve an applicant.

(2) The agency may request reports on any member of the family/household who has received mental health services or for whom the agency requests a mental health evaluation.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-510-0090

Enforcement

(1) In order to ascertain continued compliance with these standards, OYA shall have right of entry, privilege of inspection, and access to staff and all records of the agency.

(2) If serious abuse, dereliction or deficiencies are found in any agency pursuant to ORS 418.260, OYA shall advise said agency in writing of the nature of the complaint; and further, shall specifically set forth the condition(s) which must be remedied or corrected.

(3) Upon failure of the agency to meet standards and correct deficiencies, OYA may revoke, suspend, or refuse to renew the certificate of approval. Any revocation, suspension, or refusal to renew by the Division shall be subject to the provisions of ORS Chapter 183.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 520

STANDARDS FOR PRIVATE RESIDENTIAL SCHOOLS

416-520-0000

Purpose

(1) These rules are the Oregon Youth Authority's standards to be used for reviewing and, if appropriate, certifying those private schools or other organizations offering residential programs for youth which are subject to the provision of ORS 418.327.

(2) OYA has the duty and function to attempt to obtain and consider criminal offender information on certain employees and volunteers of a private residential school in order to protect the best interest of youth

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-520-0010

Definitions

(1) "Criminal Offender Information" Records and related data

received and compiled by the Bureau of Criminal Identification of the Oregon State Police or other law enforcement agencies or courts for purposes of identifying criminal offenders and alleged offenders, including records or arrests and the nature and disposition of criminal charges, including dismissals, sentencing, confinement, release or probation.

(2) "School and Residential School": Private (i.e. non public operated) school which assumes responsibility for the residential care of all or any youth during the non school hours. "Responsibility for" includes providing, administering, or supervising the residential quarters. The terms "School" and "Residential School" include any persons or private or parochial facilities or other entities which offer planned, scheduled academic or vocational course work or practice, for the purposes of educating persons under age 18 in subjects and course work or practice would be generally accepted by the public or private schools, colleges, or universities in this state as resulting in or contributing to the certificates, diplomas, or degrees generally offered by such public or private schools, colleges or universities: but the terms do not include any facility exempted by subsection (8) of ORS 418.327 or any recreational camp affiliated with a national organization including, but not limited to, the Boy Scouts of America, the Girl Scouts of America, the YMCA or the YWCA.

(3) "Staff" an individual applying for a salaried position with a private residential school, or having a salaried position and being considered for an assignment within a private residential school.

(4) "Volunteer" an individual applying for or requesting to work on assignments for a private residential school on an unsalaried basis or practicum students.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-520-0020

Certificate

(1) No person or organization shall operate a residential school without a current, valid Certificate of Approval issued by the Oregon Youth Authority or the State Office for Services to Children and Families.

(2) Upon finding that a residential school meets the Department's standards for the physical health, care, and safety of youth as set forth in OARs 416-520-0020 through 416-520-0060, Oregon Youth Authority or State Office for Services to Children and Families shall issue a Certificate of Approval.

(3) The certificate of approval shall specify the location and type of school authorized to provide residential care. All certificates expire on June 30 of each year unless sooner suspended or revoked, except as provided in ORS 418.327.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-520-0030

Administration

(1) OYA shall review all Articles of Incorporation or other legal materials describing the school and its stated purpose. After review, the Department shall determine when a school shall be classified as a residential school, or some other appropriate category of residential care for youth.

(2) There shall be written policies for the administrator and staff which shall include:

- (a) Personnel policies and procedures;
- (b) Program details and operational procedures; and
- (c) Emergency procedures shall be kept current and be made easily accessible to all staff.

(3)(a) School staff and volunteers shall be responsible, mature persons who demonstrate the knowledge and ability to care for youth within the generally accepted professional standards of youth care;

(b) In disciplining youth, school staff and volunteers shall not use harsh punishment. Harsh means spanking, belting, physical/mental abuse, acts designed to humiliate, degrade, or undermine a youth's self-respect, or punishment in the presence of a group,

deprivation of parental visits, or placing the youth in lock-up for punishment;

(c) School staff shall utilize staff and volunteers whose presence does not jeopardize the health, safety, or welfare of youth;

(d) Board of Directors:

(A) The board of directors or school will not deny employment, promotion, assignment, or assignment as a volunteer, to a person solely for the reason that person has been convicted of a crime, but will consider the relationship of the facts supporting the conviction to the specific occupational requirements of the job assignment;

(B) In determining a person's suitability for employment or a volunteer, the board of school will consider the facts relating to any crime, with particular concern to convictions of youth abuse, offenses against persons, such as homicide, assault, kidnapping, sexual offenses (rape, sodomy, sexual abuse); offenses against family, such as incest, abandonment of a youth, neglect, prostitution, and related offenses, or other offenses against public health and decency, offenses involving narcotics and dangerous drugs including distribution of controlled substance to minors. The board of directors or school will take this information into consideration in judging a person's fitness to work with youth and their inclination to behave in such a way as to endanger the welfare of youth;

(C) If a person has been arrested or charged with one of the above crimes, with final disposition of the arrest and charge not yet reached, the board of directors or school may withhold its decision to hire or assign the person pending the outcome of the arrest or charge;

(D) If a person was involved in a crime other than those listed above, or the charge on one of the above crimes was dismissed, all intervening circumstances and other background information will be considered in judging a person's fitness to work with youth and their inclination to behave in such a way as to endanger the welfare of youth;

(E) The board of directors or schools' refusal to hire or assign a person will be based upon records from the court(s) of original record;

(F) Any refusal to hire, assign a person by the board of directors or school under OAR 416-520-0020 will be subject to the same rights and procedures of appeal as otherwise pertain to employees or volunteers.

(4) Criminal Offender Information:

(a) OYA has the duty and function to obtain and consider criminal information, including police files, on applicants for administrator and current administrator of the school at the time of annual licensing, or when OYA believes an arrest has occurred:

(A) All criminal offender information received from the State Police will be available only to the OYA section responsible for certification of private residential schools, in accordance with applicable State Police rules and procedures relating to criminal offender information;

(B) OYA will advise the board of directors or school of applicants or current administrator that have criminal records.

(b) The administrator will be responsible for obtaining background information on school employees who have contact with, care for, or oversee youth. OYA will obtain criminal information on an employee or applicant at the request of the administrator, its Board of Directors, or the certification unit of OYA.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-520-0040

Social Living

(1) Youth shall be grouped as much as possible according to age.

(2) The youth's religious faith shall be respected.

(3) Residential supervision shall be provided as follows:

(a) Ratio of youth care staff in living units shall be at least one staff member to 20 youth;

(b) During sleeping hours, one staff member must be readily available, if needed, and at least one other person available for

backup in case of emergency.

(4) No staff shall be hired or retained if there is known history or incidence of youth abuse, youth molestation, or unconventional behavior which might have a detrimental effect on a youth.

(5) There shall be no harsh punishment of youth. Harsh means unacceptable punishment that in the determination of OYA exceeds the norms of commonly acceptable discipline that might be used by a family. Harsh punishment includes:

(a) Slapping, spanking, belting, marching, standing rigidly in one spot, or any physical abuse.

(b) Acts designed to humiliate, degrade, or undermine a youth's self-respect (including ridicule, shaming, name calling, or punishment in the present of the group).

(c) Deprivation of parental visits.

(d) Isolation or lock-up.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-520-0050

Health and Safety

(1) Each school shall post written directions for dealing with medical or other emergency problems with emergency phone numbers posted at all phones. All staff shall be familiar with these.

(2) A licensed physician shall be available on reasonable notice for care of residents.

(3) Medical consent forms shall be obtained from parents or guardians for all residents, which are acceptable to physicians and hospitals. Such forms must be readily available to staff.

(4) Youth who become ill and require nursing services shall be provided such service at the school, or transferred without delay to an appropriate facility.

(5) At least one staff shall hold a current advanced American Red Cross First Aid Card or its equivalent.

(6) A standard 24 unit First Aid Kit shall be placed in all living areas, offices, and vocational shops.

(7) Fire drills shall be conducted at irregular times, at a minimum of once a month in all buildings. A written record of drills shall be maintained.

(8) The Oregon Safety Code for Places of Employment shall be complied with.

(9) A staff training safety program shall be conducted on a regular basis.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-520-0060

Living Units

(1) All new construction or major remodeling floor plans of living quarters shall be submitted to OYA Central Office for review and approval of items listed in this rule prior to construction.

(2) Living and dining areas in each unit shall be provided large enough to accommodate all residents at one time. Such room(s) must have mechanical ventilation or a window which can be opened.

(3) There shall be outdoor recreational space for all youth with equipment suitable for the ages and number of youth.

(4) There shall be indoor recreational space, including area(s) for arts and crafts, with a minimum of 100 sq. ft. per youth.

(5) A private or semi-private room shall be provided each youth, or dormitory-type rooms may be used with prior approval of OYA Central Office.

(6) When common sleeping areas are used, it is recommended that not more than 20 youth be together. In no case shall the number exceed 25.

(7) All sleeping rooms for youth shall be outside rooms with adequate sleeping space, ventilation, and lighting as required by public health standards. Each youth shall have a separate bed, with no less than 60 square feet per youth, excluding closet space, with at least three feet between beds. Individual closet and storage for personal belongings shall be provided for each youth in his sleeping room.

NOTE: Exceptions to the 60 square feet per youth space requirement will be reviewed by OYA Central Office and allowed if crowding is not evident and other living space is available which can substitute.

(8) When youth's sleeping rooms are on more than one floor or in more than one building, a proportionate number of toilets, hand washing sinks, and bathing facilities shall be on each floor and in each building.

(9) Bathroom facilities, aside from meeting specific public health requirements, shall provide at least one toilet, bathtub or shower, or wash basin for each seven youth in the unit, with suitable provision for privacy:

(a) There shall be hot water at all shower and hand washing facilities;

(b) Toilet and shower rooms shall have walls and floors of impervious material and shall be adequately ventilated. If toilet room windows can be opened they shall be operational;

(c) Use of wooden racks over shower floors is prohibited. If impervious mats are used they must be cleaned and dried daily;

(d) Bath and toilet rooms shall be properly lighted, measuring no less than ten foot candle power;

(e) In gang-type lavatories, paper towels or air blowers shall be provided. In shower rooms, soap and personal towels shall be provided each youth. Soap shall be provided for each lavatory;

(f) Toilet seats shall be open front or U-shaped and made of non-absorbent materials, with easily cleanable finish. All seats, hinges shall be maintained in good repair.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-520-0070

General Requirements for Buildings

(1) All buildings shall comply with state and local codes, including structural, electrical, plumbing, water, sewage, solid waste, and zoning.

(2) All existing buildings having sleeping areas must be equipped with fire alarm and particles of combustion detection systems as specified in the **National Fire Protection Association (NFPA) Standards No. 72A and 72E, 1974 editions**. The required fire detectors shall be installed in all sleeping areas and paths of exit travel.

(3) Prior to use, all new or remodeled facilities shall be equipped with fire alarm and detection systems, as specified in section (2) of this rule.

(4) Plans and installations of the above required systems shall be approved by the State Fire Marshal or his designated representative.

(5) All buildings having sleeping areas in them shall be equipped with emergency exit lighting. Emergency lighting shall be composed of an electrical circuit(s) used only for exit illumination with two independent electric sources so on failure of one the other will operate automatically. One source shall be a public utility or similar outside power source and the other an approved storage battery, automatically charged. Unit devices with individual batteries providing the same functions as above are acceptable. In the event of utility failure, there shall be emergency lighting available for at least one half hour of one foot-candle measured at the floor of exit systems.

(6) Plans for new or remodeled buildings shall be approved by the State Building Department, State Department of Environmental Quality, and OYA Central Office before contracts are let or construction begun.

(7) Both new and existing buildings shall be of sound and durable construction, well maintained, with special attention to fire-resistant materials, fire prevention systems and protective devices, and with furnishing of comfortable design.

(8) The buildings shall be ventilated by natural or mechanical means and have a heating capacity of maintaining a mean temperature of 68 degrees F. at a point 24 inches above the floor of rooms.

(9) Window screens shall be no less than 16 meshes per linear inch.

(10) All screen doors shall be equipped with self-closing devices which do not restrict exit ways.

(11) There shall be no exposed light bulbs in permanently wired fixtures.

(12) Exposed non-current carrying metal parts of cord-and-plug connected equipment shall be grounded with a grounding conductor in the flexible cord terminating in a grounding plug.

(13) Flexible cord shall not be used as a substitute for fixed wiring of a building.

(14) Each disconnecting means for motor and appliances and each service feeder or branch circuit shall be legibly marked to indicate its purpose.

(15) Floors shall be clean and in good repair, so slipping is minimized at entrances or other areas when wet. All interior surfaces shall be readily cleanable.

(16) Corridors shall be kept unobstructed; storage of supplies in corridors is prohibited.

(17) Stairs shall be in good repair, with handrail. Storage on stairs or stairwells is prohibited.

(18) Storage for combustibles shall be separated from other areas and be free from sources of ignition.

(19) All dangerous cleaning supplies, pesticides, solvents, medicines, shall be stored in well-labeled containers in a locked area, away from food supplies and inaccessible to youth.

(20) There shall be no painting with lead paint in kitchen or food storage areas.

(21) All equipment and furniture shall be clean and in good repair.

(22) All clean linen shall be stored in clean cupboards with soiled linen in a separate area, away from food preparation and storage areas.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-520-0080

Food Services

(1) Requirements of State Sanitary Code for Eating and Drinking Establishments shall be met in the preparation, storage, and service of food.

(2) All resident activities in food preparation areas shall be under the direct supervision of the staff.

(3) A food service plan, including daily menus, shall be written at least one week in advance. Meal records of the previous three weeks shall be kept for OYA inspection.

(4) Meals shall be nutritionally adequate, according to current dietary allowances of Food & Nutrition Board of National Research Council adopted January 11, 1975.

(5) Serving of raw milk is prohibited.

(6) No home-canned vegetables, meats, or fish shall be stored or served by the facility. This does not prohibit freezing of produce nor canning of fruit, jams, and jellies, nor commercial canning other homegrown food.

(7) All utensils, including dishes, glass, and silverware, shall be properly cleaned and sanitized after each use, and protected from dust or other contamination.

(8) All kitchen equipment for food preparation shall be of easily cleanable construction. All surfaces shall be smooth and impervious.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-520-0090

Site and Grounds

(1) Grounds shall be kept free of litter, solid waste, and refuse. Site shall be free of debris, ditches, or other conditions presenting a potential physical hazard.

(2) Barbed wire fencing is prohibited.

(3) Maintenance equipment shall be stored in a secure location.

(4) Bicycle racks shall be in a safe place separate from auto parking areas.

(5) There shall be barriers between the outdoor activity area and traveled roads, drainage channels, or any other existing hazards.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-520-0100

Health

(1) Water:

(a) Maintenance of source, supply, and distribution system shall be in compliance with State Health Department rules on construction, operation, and maintenance of community and public water supply systems;

(b) Water of drinking fountains shall be of sufficient volume that persons using it do not come in direct contact with the orifice guard;

(c) No kitchen or bathroom sink, bathroom tub, or shower shall be used for disposal of cleaning waste water.

(2) Sewage:

(a) All sewage shall be disposed of in accord with the State Department of Environmental Quality rules;

(b) Subsurface sewage disposal systems shall be maintained and operated in accordance with Department of Environmental Quality rules and regulations governing such disposal.

(3) Garbage:

(a) All solid waste shall be disposed of in accord with the State Department of Environmental Quality rules and regulations, and stored in water-tight, non-absorbent, and easily washable containers, with close-fitting lids;

(b) Kitchen waste shall not be saved for eventual use as swine food unless the collector is licensed by the State Department of Agriculture to use cooked kitchen waste.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-520-0110

Education

(1) Residential schools must provide a comprehensive educational program which meets the minimum standards required of public educational institutions, and/or provide an educational program suitable for the individual youth in residence, as determined by the State Department of Education.

(2) School buildings shall be adequate in size and arrangement for the program offered:

(a) Conventional classrooms for elementary schools shall be not less than 30 square feet per student, exclusive of storage space;

(b) For junior high and high schools, not less than 40 square feet per student, exclusive of storage and preparation areas.

(3) Plans for non-traditional classrooms, when submitted for Youth's Services Department Central Office approval, shall include explanation of program for which they are intended.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-520-0120

Enforcement

(1) In order to ascertain continued compliance with these standards, Youth's Services Department shall have right of entry, privilege of inspection, and access to staff and all records of work with youth.

(2) Upon failure to meet standards and correct deficiencies, the Youth's Services Department may revoke, suspend, or refuse to renew the Certificate of Approval. Any revocation, suspension, or refusal to renew by the Department shall be subject to the provisions of ORS Chapter 183.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 530

YOUTH OFFENDER FOSTER CARE CERTIFICATION

416-530-0000

Statement of Purpose

(1) Oregon Youth Authority (OYA) works in partnership with communities to protect the public, hold youth offenders accountable, and provide opportunities for reformation.

(2) Persons certified as youth offender foster parents provide temporary care (supervision, food and lodging) for youth offenders as they progress through their reformation plan.

(3) The rules governing the certification of youth offender foster parents state the requirements and expectations for families seeking to provide temporary care to youth offenders.

(4) The certification process is aimed at building a partnership between the prospective youth offender foster parent and the OYA. The process allows the applicant to ask questions of the OYA, to learn the requirements, and to become better prepared to supervise youth offenders. This is also an opportunity for the OYA to assess the willingness and abilities of the family to work effectively in partnership with the OYA to meet the specific needs of youth offenders needing placement.

(5) These standards establish parameters for the certification of youth offender foster parents. By these rules, OYA seeks to ensure that the safety and best interests of youth offenders, under the custody of the OYA, are served. The privilege of certification is granted based upon the qualifications of the applicants. A family may meet certification requirements, but it is OYA's responsibility to exercise discretion and judgment in the selection of homes for specific youth offenders.

(6) The OYA has a responsibility to Oregonians to manage its resources within available funds. When the Director or designee determines that funding for these resources is jeopardized or otherwise not available, the Director may suspend recruitment of new youth offender foster parent resources in areas where the need for youth offender foster homes exceeds the need for placements.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-530-0010

Authorization

These rules are authorized by Chapter 422, Oregon Laws 1995. The rules set forth requirements for the certification of youth offender foster homes by the OYA.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-530-0020

Indian Child Welfare Act

The **Indian Child Welfare Act** gives federally recognized Indian tribes the authority to select homes for youth offenders protected by the Act. Tribes and Alaskan Native Regional Corporations may license, approve or specify a youth offender foster home for youth offenders protected by the Act. The tribe also decides which process to use when selecting a placement, or whether to request OYA certification of the home. Indian youth offenders placed in relative homes (licensed, certified or selected) by the tribe are eligible for youth offender foster care payments when OYA has legal custody. Preference shall be given for placement with:

(1) A member of the Indian youth offender's extended family;

(2) A youth offender foster home licensed, approved, or specified by the Indian youth offender's tribe.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-530-0030

Selection

The OYA will certify individuals who demonstrate the abilities and commitment to carry out the responsibilities set forth in these rules and who can meet the OYA's specific need for youth offender foster homes. The OYA will determine which applicants will undergo a complete certification study, which applicants will be certified, and which homes are qualified to best meet the needs of a particular youth offender.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-530-0040

Definitions

For the purposes of this rule:

(1) "Agreement" means a written contract stating mutual expectations of the parties providing 24-hour care (food, lodging) and supervision of youth offenders.

(2) "Applicant" means a person who applies for a certificate of approval, issued by the OYA, to operate and maintain a Youth Offender Foster Home.

(3) "Certificate" is a certificate of approval, issued by the OYA, to operate a youth offender foster home.

(4) "Criminal History Checks" refers to the process used by the OYA to conduct criminal offender/criminal records background checks on persons pursuant to OAR 416-540-0000 through 416-540-0070.

(5) "Denial of Certification" is the refusal of the OYA to issue a certificate of approval to operate a youth offender foster home for youth offenders, because the OYA has determined that the home is not in compliance with one or more of these administrative rules.

(6) "Discipline" means an educational process by which youth offender foster parents assist youth offenders to develop the self-control and self-direction necessary to assume responsibilities, make daily living decisions, and learn to live in conformity with accepted levels of social behavior.

(7) "Employee" is any person being paid by youth offender foster parents to assist in the care and supervision of youth offenders placed in the home.

(8) "Home Study" is the assessment process for the purpose of determining the youth offender foster family's strengths to provide temporary care (food, lodging) and supervision to the youth offenders that OYA has available for placement.

(9) "Household Pets" are any of various animals domesticated so as to live and breed in a tame condition. Examples of domestic animals are dogs, cats, and horses.

(10) "Mechanical Restraint" is any apparatus, device or contraption applied or affixed to the person to limit movement.

(11) "Members of Household" are any persons living in the home including any employees or volunteers assisting in the care and supervision provided to youth offenders placed in the home.

(12) "OYA" is the Oregon Youth Authority

(13) "Physical Restraint" is the holding of a person to prevent harm to that individual, others, damage to property, or to remove the person from a scene of danger.

(14) "Provisional Certificate" is a youth offender foster home certificate of approval which may be issued by the OYA effective for a period of up to 90 days and which may be renewed for one additional period of up to 90 days, annually, to allow the home to come into compliance with necessary standards.

(15) "Protective Holding" is the physical restraint by holding a person to prevent harm to the person, others, damage to property, or to remove the person from a scene of danger.

(16) "Psychotropic Medications" are drugs which have an effect upon the mind to modify mental activity. (Refer to Physician's Desk Reference.)

(17) "Punishment" is the intentional infliction of physical or emotional pain.

(18) "Reformation Plan" is the goal-oriented, time-limited, individualized program of reformation for a youth offender.

(19) "Regular Certificate" is a youth offender foster home certificate of approval issued by the OYA, for a period of one year, when all standards set forth in these rules have been met.

(20) "Revocation of a Youth Offender Foster Home Certificate" is the action taken to rescind a youth offender foster home certificate of approval after OYA determines that the youth offender foster home is not in compliance with one or more administrative rules.

(21) "Special Certificate" is a conditional certificate of approval which limits the youth offender foster care home to care and supervision for a specific youth offender, or care for other youth offenders under specific conditions.

(22) "Suspension of a Youth Offender Foster Home Certificate" is a temporary withdrawal of the youth offender foster home certification after the OYA determines that the youth offender foster home is not in compliance with one or more administrative rules.

(23) "Volunteer" is any person assisting in a youth offender foster home without pay to help with the supervision of youth offenders and other activities such as, food preparation, household chores, relief care, etc.

(24) "Youth Offender in Care" refers to a youth offender under the custody and supervision of the OYA, who is placed in a certified youth offender foster home.

(25) "Youth Offender Foster Home" refers to any certified youth offender foster home, shelter home, or youth offender group home, which is maintained and lived in by a person who cares for any youth offender for the purpose of providing OYA youth offenders with supervision, food and lodging.

(26) "Youth Offender Group Home" is a specialized youth offender foster home providing specific services to a group of 4 to 8 youth offenders who have similar serious social and/or behavioral maladaptive characteristics. The atmosphere of the youth offender group home is that of a family setting where at least one youth offender foster parent is employed full-time as a provider.

(27) "Youth Offender Group Home Provider" is a certified youth offender foster care provider with whom OYA has contracted to provide group home services and who has demonstrated special competence to supervise young people with serious social and/or behavioral maladaptive characteristics.

(28) "Youth Offender Foster Care Maintenance Payment" is the monthly payment sent to the youth offender foster parent to pay for the youth offender's room, board, clothing, allowance, personal incidentals, transportation, respite provider, educational supplies, etc.

(29) "Youth Offender Foster Care Provider" is a person who has been issued a certificate of approval, by the OYA, to operate a Youth Offender Foster Home.

(30) "Youth Offender Foster Home" means any home maintained by a person to provide supervision, food and lodging to a youth offender. The youth offender must be unrelated to the person by blood or marriage and unattended by the youth offender's parent or guardian.

(31) "Youth Offender Respite Provider" is an individual approved by OYA who temporarily assists with supervision of youth offenders when the youth offender foster parent is not available.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-530-0050

Qualifications of The Family

(1) General Requirements for Certification and Recertification:

(a) Applicant(s)/youth offender foster parent(s) shall participate in certification and recertification studies as required by the OYA, and in the ongoing monitoring of their homes. Applicants will give all information required by the OYA to verify compliance with all the rules including change of address and change of number of persons in the household such as relatives, employees or volunteers;

(b) Applicants for certification and recertification will complete all necessary OYA application forms;

(c) Information provided by the applicant(s) shall include:

(A) Name(s), sex, address, birth date, social security number, and driver's license number of applicants and all persons residing in the home including the children of the youth offender foster parents;

(B) Names and addresses of at least four persons, three of whom are unrelated, who have known the applicant(s) for two years or more and who can attest to their ability to provide care and supervision to youth offenders. In addition, the OYA may contact schools, employers, and other persons, including adult children, as references;

(C) A statement as to whether the applicant(s) has ever operated or currently is operating a licensed/certified care facility or foster home for youth offenders or adults, and reasons for any termination of such license or certification;

(D) Reports of all criminal or juvenile delinquency charges, the dates of offenses, and the resolution of those charges for all persons living in the home including all employees, volunteers and youth offender foster parents' minor youth;

(E) Reports of all allegations of abuse and neglect, with dates, locations and resolutions of those allegations for all persons living in the home including all employees and volunteers;

(F) Demonstration of income sufficient to meet their needs and to ensure the stability and financial security of the family, independent of the youth offender foster care maintenance payment.

(d) Applicant(s) must be at least 21 years of age. However, an applicant who is an "Indian", as defined in the **Indian Child Welfare Act**, may be 18 years of age or older;

(e) Prospective applicants, youth offender foster parent(s) and members of the household 18 years of age and older shall consent to a criminal records check by the OYA. The OYA may require a criminal records check for any employee, volunteer, or other adult having regular contact with youth offenders placed in the youth offender foster home. The OYA may require a criminal records check on members of the household under 18 if there is reason to believe that member may pose a risk to youth offenders placed in the home. The OYA may require that the applicant(s)/youth offender foster parent(s)/member(s) of the household provide fingerprints and processing fees for the purpose of a criminal records check;

(f) The OYA will use procedures established in OAR 416-540-0000 through 416-540-0070 (Criminal Records Checks for OYA Youth Offender Foster Parents) for determining suitability for certification based on criminal record information regarding the applicant(s)/foster parent(s), or any member of the household. A finding of suitability based on criminal history is only one factor OYA will use to determine whether or not to certify or recertify a youth offender foster home;

(g) If the applicants are OYA employees, the application and supporting study must be reviewed by the Assistant Administrator of Community Programs who will decide if a certificate can be issued;

(h) Upon completion of the application and submission of the supporting documentation to determine compliance with certification rules, a decision will be made by the OYA Regional Supervisor to grant or to deny certification. The application may be denied if the supporting materials are not submitted within 90 days from the date of application. One additional provisional certificate of up to 90 days may be approved by the OYA Regional Supervisor; however, full certification must be approved or denied within a maximum of 180 days;

(i) A person whose application has been denied has the right to appeal under the provisions of Chapter 183, Oregon Revised Statutes, and may request an appeal from the OYA office that issued the denial.

(2) Personal Qualifications:

(a) Youth offender foster parent(s) shall be responsible, stable, emotionally mature adults who exercise sound judgment and have the capacity to meet the mental, physical and emotional

needs of youth offenders placed in youth offender foster care;

(b) Youth offender foster parent(s) shall understand the behaviors of youth offenders in youth offender foster care as well as ensuring the safety of the community;

(c) Youth offender foster parent(s) shall have knowledge and understanding of non-punitive discipline and ways of helping a youth offender build positive personal relationships and self-esteem;

(d) Youth offender foster parent(s) shall be able to respect persons with differing values, lifestyles, philosophies, and cultural identity and heritage;

(e) Youth offender foster parent(s) shall be able to realistically evaluate which youth offenders they can accept, work with, and integrate into their family;

(f) Youth offender foster parent(s) shall have supportive ties with family, friends, neighborhood and community;

(g) Youth offender foster parent(s) shall be able to respect persons with differing values, lifestyles, philosophies, and cultural identity and heritage.

(3) Health Qualifications:

(a) Applicant(s)/youth offender foster parent(s) and employees, volunteers, and other adults in the household supervising youth offenders, shall be physically and mentally able to perform the duties of youth offender foster parents as prescribed in these rules. The OYA may require a medical statement from a physician verifying that no person suffers from a communicable disease, specific illness or disability which would interfere with the person's/family's capability to care for youth offenders in youth offender foster care.

(b) The applicant(s)/youth offender foster parent(s) shall supply psychological, medical or physical, sex-offender, drug and alcohol, and psychiatric reports and evaluations to the OYA when requested either during the application process or while certified. The OYA may require that a release of information be signed. In the case of alcoholism or substance abuse, the applicant(s)/youth offender foster parent(s) and others in the household must be able to demonstrate that they have been substance-free and sober for at least two years prior to making application for certification.

(4) Youth Offender Group Homes. Youth Offender Group Homes are contracted resources and are to be certified youth offender foster homes that comply with the youth offender group home requirements as specified in OAR 416-530-0110, Youth Offender Group Home Requirements.

(5) Disqualifications:

(a) The OYA will not issue or renew a certificate if prospective applicants or youth offender foster parents falsify (including by act of omission) the application or supporting documents. The OYA will act to revoke a certificate if falsification is discovered after certification, or if the youth offender foster parent fails to inform the OYA of any disqualifying condition that arises after certification;

(b) The OYA will not issue or renew a certificate if any fire safety rule is not met.

(c) Criminal History Checks*:

(A) The OYA will not issue or renew a certificate if a member of the household is a perpetrator of sexual abuse, as evidenced by a child protective service complaint, which was determined to be valid even if there was no successful criminal prosecution.

(B) Based on the criminal records check procedures outlined in OAR 416-540-0000 through 416-540-0070, the OYA will determine suitability for certification of persons applying for Youth Offender Foster Care certification or Recertification including other persons, paid or unpaid, in the household.

(d) Appeal: If OYA refuses to issue or renew a certificate, the applicant(s)/foster parent(s) may appeal OYA's decision by requesting a hearing. If the request for a hearing is not received by OYA within 10 calendar days of the mailing or other service of the notice, the applicant(s)/foster parent(s) shall have waived the right to a hearing.

(6) Exceptions. OYA may allow exceptions to some certification requirements.

(a) Generally:

(A) Exceptions will be granted by the Youth Offender Foster Home Certifier, Regional Supervisor, a Community Programs Manager or the Assistant Administrator of Community Programs. Exceptions to rules marked with an asterisk (*) require the approval of the Assistant Administrator of Community Programs or a Community Programs Manager. The Regional Supervisor's approval for an exception is required on those rules where such approval is specified. The Regional Supervisor or Assistant Administrator of Community Programs may grant exceptions on all other rules;

(B) Exceptions shall be in writing, shall state the need for the exception, shall be signed by the required decision maker and filed in the certification file. Exceptions shall be accompanied by a written plan showing how the safety of the Youth in placement will be ensured while the exception is in effect;

(C) Each request for an exception will be evaluated on its own merits. Granting an exception does not set a precedent that must be followed by the OYA when evaluating subsequent requests for exceptions;

(D) An exception is not effective until granted in writing.

(b) The OYA will not issue or renew a certificate if a member of the household has been convicted of or adjudicated delinquent on a misdemeanor without approval of the Assistant Administrator of Community Programs. The OYA will not issue or renew a certificate if a member of the household has been convicted of or adjudicated delinquent on a felony without approval of the OYA Director who shall base the decision on an exception from the following criteria:

(A) The severity and nature of the crime;

(B) The number of offenses;

(C) The time elapsed since the offenses;

(D) The circumstances surrounding the crime as they relate to the probability of reoffending;

(E) Evidence of rehabilitation and behavior change, including participation in activities such as employment, counseling or therapy, and/or education; and/or

(F) The relationship between the offense and the ability to be a youth offender foster parent.

(c) OYA will not issue or renew a certificate if a member of the household has been found to have abused or neglected a person, excluding sexual abuse, without approval of the Assistant Administrator of Community Programs, who shall base the decision on the above factors and on a recommendation from the Regional Supervisor.

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Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-530-0060

Professional Responsibilities of Youth Offender Foster Parents

(1) Training and Development:

(a) Youth offender foster parent(s) shall complete a minimum of 12 hours of pre-service training prior to a regular certification being issued.* (Exceptions may be given for prior equivalent training);

(b) Youth offender foster parent(s) shall participate in training provided or approved by the OYA. Such training shall include educational opportunities designed to enhance the youth offender foster parents' awareness, understanding and skill to meet the special needs of youth offenders placed in their home. Each youth offender foster parent shall participate in a minimum of 10 hours of approved training per year prior to the issuance of an annual, regular certificate;

(c) The home may be closed if no youth offenders are currently in placement and the annual training requirements have not been completed. If there are youth offenders placed in the home and annual training hours have not been completed, the certificate shall be converted to a special certificate for these youth offenders. No additional youth offenders will be placed until the training hours are completed.*

(2) Relationship with the OYA:

(a) Youth offender foster parent(s) shall participate as team members in reviewing and revising the reformation plan and in case reviews for the youth offenders placed in their home;

(b) Whenever possible, youth offender foster parent(s) shall notify the OYA in advance of changes likely to affect the life and circumstances of the youth offender foster family;

(c) Youth offender foster parent(s) shall notify the OYA within 24 hours of an injury, illness, accidents, or any circumstances which may have a serious affect on the health, safety, physical or emotional well being of the youth offender;

(d) Youth offender foster parent(s) shall sign and abide by the responsibilities described in the "Youth Offender Foster Home/Shelter Home Contract" which is to be signed prior to a youth offender being placed by the OYA in the home, and annually thereafter;

(e) Youth offender foster parent(s) shall allow the OYA reasonable access to their home and to the youth offender(s) placed there.

(3) Accepting Youth Offenders for Care:

(a) Youth offender foster parent(s) shall accept no more than five youth offenders in youth offender foster care and shall care for no more than eight youth offenders including their own children.* Any exception will take into consideration the ratio of adult to youth offender, the level of supervision available, the skill level of the youth offender foster parents, and the needs of the other youth offenders in placement;

(b) Youth offender foster parent(s) shall not care for unrelated adults on a commercial basis nor accept children for day care at the same time they are certified as youth offender foster parents;*

(c) Youth offender foster parent(s) providing youth offender foster care services shall not accept any youth for placement from any source other than OYA without prior written approval from the OYA Office responsible for the youth offender foster home certification.*

(4) Relationship with the Youth Offender's Family:

(a) In accordance with the reformation plan:

(A) Youth offender foster parent(s) shall respect and support the youth offender's relationship with his/her family members;

(B) Youth offender foster parent(s) shall assist OYA staff in planning visits with the youth offender and his/her parent(s) and family members;

(C) Youth offender foster parent(s) shall allow youth offenders reasonable opportunities to communicate with their family.

(5) Confidentiality:

(a) The youth offender foster family shall treat personal information about a youth offender and the youth offender's family in a confidential manner. Confidential information may be disclosed only when necessary to provide for the safety and well-being of a youth offender or other youth offenders in the home. The information shared is to be only about the youth offender and only enough information to ensure the youth offender's safety and well-being;

(b) In maintaining youth offender's records:

(A) Youth offender foster parent(s) will maintain records on the youth offender's health, immunizations, and educational and placement progress for the duration of the youth offender's placement.

(B) Youth offender foster parent(s) shall keep such written records for each youth offender foster youth in a manner that ensures their confidentiality.

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Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-530-0070

Reformation and Supervision of Youth Offenders

(1) Youth Offender Foster Home Activities:

(a) Daily Living:

(A) Youth offender foster parent(s) shall provide structure, accountability and supervision designed to promote the physical, social, intellectual, spiritual and emotional development of the

youth offenders in their home, as well as provide for community protection;

(B) Youth offender foster parent(s) shall help the youth offender placed in their home to develop skills and perform tasks that promote independence and self-sufficiency.

(C) In accordance with the reformation plan, the youth offender foster parent shall ask youth offenders placed in their care to assume work responsibilities appropriate to the youth offender's age and ability and commensurate with those expected of their own children;

(D) Youth offender foster parent(s) shall not use mechanical restraints on youth offenders other than car seat belts;*

(E) Each youth offender in placement shall be treated with respect and dignity. The youth offender foster family shall:

(i) Respect the youth offender's family, cultural heritage and ethnic identity;

(ii) Provide reasonable and meaningful opportunities for the youth offender to develop relationships and practices with others of similar cultural and ethnic background;

(iii) Help ensure regular contacts and private visits or phone calls with the supervising parole and probation officer;

(v) Provide the youth offender with reasonable access to a telephone and to writing materials.

(b) Youth Offender Respite Provider:

(A) When the youth offender foster parent(s) are absent overnight, a person of at least 21 years of age, capable of assuming youth offender foster care responsibilities, shall be present. (Youth Offender Respite Providers must be approved by the OYA as having met qualifications set forth for "Youth Offender Foster Parents" as described in these rules);

(B) When youth offender foster parent(s) are absent for 72 hours or longer, the OYA must be given advance notice. This notice shall include dates of absence, telephone number where the youth offender foster parent(s) can be reached, and the name, telephone number, home address and qualifications of the Youth Offender Respite Provider.

(c) Food and Nutrition:

(A) Youth offender foster parent(s) shall provide three (3) well-balanced daily meals, and appropriate snacks;

(B) Youth offender foster parent(s) shall provide for any special and/or cultural dietary needs of the youth offenders placed in their homes, including those ordered by a physician.

(d) Clothing and Personal Belongings:

(A) Youth offender foster parent(s) shall provide each youth offender with his or her own clean clothing which is appropriate for the youth offender's age, sex, and individual needs;

(B) Youth offenders shall be allowed to participate in choosing their own clothing;

(C) Youth offender foster parent(s) shall allow youth offenders to bring and acquire appropriate personal belongings.

(e) Discipline and Guidance. Some youth offenders come into youth offender foster care because they have suffered physical abuse and severe punishment. Youth offender foster parents must use positive discipline and guidance to help youth develop responsible behaviors:

(A) Youth offender foster parent(s) shall train and discipline youth with kindness and understanding holding youth accountable for personal behaviors;

(B) Youth offender foster parent(s) shall set clear expectations, limits and consequences of behavior through use of adequate and appropriate structure and supervision.

(f) No youth offender foster youth or other person(s) in a youth offender foster home shall be subjected to physical abuse, sexual abuse, sexual exploitation, neglect, emotional abuse, mental injury or threats of harm as defined in ORS 418.740. Sexual abuse and sexual exploitation include all sexual acts defined in ORS Chapter 163 and 167;

(g) Youth offender foster parent(s) will provide positive discipline and guidance but shall not punish youth offender foster youth. Punishments include but are not limited to:

(A) Physical force or threat of physical force inflicted in any manner upon the youth offender;

(B) Verbal abuse, including derogatory remarks about the youth offender or his or her family;

(C) Denial of food, clothing, or shelter;

(D) Assignment of unreasonably strenuous exercise or work;

(E) Punishment for bed-wetting;

(F) Delegating or permitting punishment of a youth offender by another youth offender; and

(G) Use of cold shower as punishment.

(h) Health Care:

(A) Medical and Dental:

(i) Youth offender foster parent(s) shall cooperate with the OYA to plan the medical and dental care for the youth offenders in care;

(ii) Youth offender foster parent(s) shall work with the OYA to ensure that all health care needs of a youth offender placed in their home are met, including making and arranging transportation to medical, dental and counseling appointments as needed;

(iii) Youth offender foster parent(s) shall be responsible for keeping immunizations current for youth offenders placed in the home;

(iv) Youth offender foster parent(s) shall report to the OYA any corrective or follow-up medical or dental care the youth offender needs and participate in obtaining necessary care;

(v) Youth offender foster parent(s) shall obtain prior consent from the OYA for medical treatment that is not routine, including surgery;

(vi) Youth offender foster parent(s) shall obtain necessary emergency medical care for Youth placed in their home.

(B) Medication:

(i) Youth offender foster parent(s) shall give youth offenders prescription medications only in accordance with a physician's prescription or authorization. All medications must be stored and kept in a manner which prevents unauthorized access;

(ii) Youth offender foster parent(s) shall dispense and record the exact amount of any medication prescribed for a youth offenders by a physician or dentist;

(iii) Youth offender foster parent(s) shall inform the OYA within one working day of any psychotropic medications prescribed for a youth offender in placement.

(C) Smoking. Youth offender foster parent(s) shall not provide tobacco products in any form to youth offenders placed in their home. (It is unlawful for any person under 18 years of age to possess tobacco products.) Youth offender shall not be exposed to second-hand smoke in the youth offender foster home.

(2) Other Activities:

(a) Religious, Ethnic and Cultural Heritage:

(A) Youth offender foster parent(s) shall recognize, encourage, and support the practice of religious beliefs, ethnic heritage, cultural identity and language of a youth offender and his/her family;

(B) In accordance with the reformation plan youth offender foster parent(s) shall participate with the OYA to arrange transportation to religious services or ethnic events for a youth offender whose beliefs and practices are different from their own;

(C) Youth offender foster parent(s) shall not require a youth offender to participate in religious activities or ethnic events contrary to the youth offender's beliefs.

(b) Education:

(A) Within five (5) days of placement, the youth offender foster parent will enroll the youth offender in an appropriate educational or vocational program as outlined in the youth's reformation plan;

(B) Youth offender foster parent(s) shall be actively involved in educational programs appropriate for the youth offender's age, abilities, and in accordance with the reformation plan;

(C) Youth offender foster parent(s) shall plan with school personnel when there are issues with the youth offender in school, and report to the OYA serious situations which may require OYA involvement.

(c) Recreation/Community:

(A) Youth offender foster parent(s) shall provide opportunities for recreational activities appropriate to the age and abilities

of the youth offender;

(B) Youth offender foster parent(s) shall encourage the youth offender's participation in community activities both with the family and on their own in accordance with the youth offender's reformation plan.

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416-530-0080

Health and Fire Safety

(1) Youth Offender Foster Home Location. The home shall be accessible to schools, recreation, churches, medical care and community facilities.

(2) Exterior Environment:

(a) The home shall be comparable in appearance to other homes and premises of the community in which it is located;

(b) The premises shall be free from objects, materials and conditions which constitute a danger to the occupants;

(c) Recreation Area and Equipment;

(d) Swimming or Wading Pools:

(A) Youth offender foster parent(s) who have swimming pools, hot tubs and wading pools shall maintain them in a safe and clean condition;

(B) Youth offender foster parent(s) shall make swimming, wading pools and hot tubs inaccessible to youth offenders in youth offender foster care except when responsibly supervised.

(3) Interior Environment:

(a) Kitchen:

(A) Youth offender foster parent(s) shall have the necessary equipment for the safe preparation, storage, serving and cleanup of meals;

(B) Youth offender foster parent(s) shall maintain all cooking and refrigeration equipment in working and sanitary condition;

(C) Youth offender foster parent(s) shall prepare and serve meals in a safe and sanitary manner that minimizes the possibility of food poisoning or food infection.

(b) Living or Family Room. The home shall have sufficient living or family room space that is comfortably furnished and accessible to all members of the family;

(c) Bedrooms used by youth offenders in care:

(A) Shall be safe and have adequate space for each youth offender;

(B) Shall have windows which open and provide sufficient natural light and ventilation;

(C) Shall have no more than four youth offenders to a bedroom;* and

(D) Shall have a bed for each youth offender and clean bed linens, blankets (as appropriate to the season) and pillows;

(E) Youth offender foster parent(s) shall not permit youth offenders of different sexes in the same room;

(F) Youth offender foster parent(s) shall provide each youth offender with adequate storage space for personal belongings and a designated space for hanging clothes in or near the bedroom occupied by the youth offenders;

(G) Youth offender foster parent(s) shall allow flexibility in the decoration of sleeping areas for the personal tastes and expressions of the youth offenders in care;

(H) A room used as a bedroom for a youth placed in a youth offender foster home must be finished, attached to the house, and shall be used only as a bedroom.*

(d) Bathrooms:

(A) The home shall have a minimum of one flush toilet, one wash basin with running water, and one bath or shower with hot and cold water;*

(B) Youth offender foster parent(s) shall provide each youth offender individual items necessary for personal hygiene and grooming.

(4) General Safety:

(a) The youth offender foster parents shall protect the youth offenders from safety hazards;

(b) The home shall be well-heated and well-ventilated;

(c) Youth offender foster parent(s) shall have a working telephone and service;*

(d) Youth offender foster parent(s) shall store all medications, poisonous chemicals, and cleaning materials in a way that prevents access by youth offenders;

(e) Youth offender foster parent(s) shall restrict youth offenders' access to potentially dangerous animals. Only domestic animals shall be kept as pets. They shall be properly cared for and supervised. Youth offender foster parents shall ensure that household pets subject to rabies have had all required rabies shots as per local ordinances. Proof of rabies vaccination shall be available to OYA upon request;

(f) Youth offender foster parent(s) shall take measures to keep the house and premises free of rodents and insects;

(g) Youth offender foster parent(s) shall store any ammunition and unloaded and operable firearms in separate locked places. The youth offender foster parent(s) shall notify OYA if firearms are stored at the home and, within one working day, whenever a firearm is brought to the premises for storage;*

(h) Loaded firearms shall not be carried in any vehicle that is transporting a youth offender in youth offender foster care. Ammunition shall be kept in a locked container while transporting such a youth;*

(i) Youth offender foster parent(s) shall have first aid supplies in a place easily accessible to adults;

(j) Bedroom doors for youth in care shall not have locks, and there must be emergency access to any other room which has a lock;

(k) Stairways shall be equipped with handrails;

(l) Youth offender foster homes caring for one or more developmentally disabled, mentally retarded, or physically impaired youth offender shall make all necessary provisions, including changes to the physical structure of the home, as determined by the OYA in consultation with the appropriate building code official, deputy fire marshal or inspector, and/or other relevant professionals.*

(5) Fire Safety:

(a) Youth offender foster parent(s) shall install and maintain working smoke alarms in every room in which a youth offender foster youth sleeps and at least one on each floor of the home;

(b) A youth offender foster home shall have as a minimum at least one class 2-A-10BC rated fire extinguisher in the house;

(c) Youth offender foster parent(s) shall have a written home evacuation plan and shall practice it with each youth offender at the time of placement and at least once a year to make sure all youth offenders understand the procedures. The plan, including evacuation diagram, shall be posted;

(d) Use of space heaters is limited to electric space heaters equipped with tip-over protection that are plugged directly into the wall. No extension cords are to be used with such heaters or in place of permanent wiring. No kerosene space heaters shall be used in the youth offender foster home;

(e) Youth offender foster homes shall have two unrestricted exits in case of fire. A sliding door or window that can be used to evacuate youth offenders can be considered a usable exit. Barred windows used for possible exit in case of fire must be fitted with operable quick release mechanisms;

(f) Bedrooms in basements and above the second floor used by youth offenders in care shall have safe and direct exit to the ground;

(g) A youth offender foster home shall have a safe and properly installed and maintained operational heating system.

(6) Sanitation and Health:

(a) Youth offender foster parent(s) shall keep the home clean and free of hazards to the health and physical well being of the family;

(b) The youth offender foster home shall have a continuous supply of safe, clean drinking water. Private water sources and septic tank systems shall be safe and operable. The youth offender foster parent shall have private water sources tested and approved by an appropriate official upon OYA request;

(c) The youth offender foster parent(s) shall use only pas-

teurized or powdered milk for family consumption;

(d) The youth offender foster parent(s) shall keep all plumbing in working order;

(e) The home shall have an adequate supply of hot water for bathing and dish washing. Hot water heaters shall be equipped with a safety release valve and an overflow pipe that directs water to the floor or to another approved location;

(f) Any garbage/refuse must be stored appropriately, pending weekly removal. There shall be no accumulation of garbage, debris, or rubbish which emits offensive odors.

(7) Transportation Safety:

(a) Youth offender foster parent(s) shall provide or arrange with the OYA safe transportation for youth offenders in placement;

(b) All vehicles used for transporting youth offenders in the custody of OYA, shall have liability insurance coverage;

(c) Youth offender foster parent(s) shall have all motor vehicles owned by them and used for transporting youth offenders insured to include liability;

(d) Only licensed drivers who have a current and valid driver's license shall transport youth offenders in motor vehicles;

(e) When transporting youth offenders in youth offender foster care, the driver shall ensure that all passengers use seat belts or appropriate safety seats. (ORS 418.005 - 418.640)

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-530-0090

Inactive Referral Status; Suspension; Revocation

(1) Inactive Referral Status, Provider Initiated:

(a) Youth offender foster parents may request up to 12 months of inactive referral status. In such cases there can be no outstanding issues relating to non-compliance with certification rules;

(b) Youth offenders will not be placed in the youth offender foster home during a youth offender foster parent's inactive referral status;

(c) Youth offender foster parents shall be in compliance with all certification rules, including training requirements, prior to a return to active status.

(2) Inactive Referral Status, OYA Initiated:

(a) The OYA may require that a youth offender foster parent go on inactive referral status. Inactive referral status could be required because of changes in the family such as death, divorce, relatives moving in with the family and similar circumstances that put additional stress or pressure on the family. This change in status must be in writing, be time limited, and be discussed with the youth offender foster parent prior to the change being made;

(b) There may be no conditions in the home that may compromise the safety of the youth offenders already placed in the home;

(c) OYA initiated inactive status can be for up to 180 days during which time no additional youth offenders will be placed in the home;

(d) A mutually agreed upon plan shall be developed to address the issues which led to the OYA request for inactive status;

(e) Youth offender foster parents shall be in compliance with all certification rules, including training requirements, prior to a return to active status.

(3) Suspension of Certificate:

(a) The OYA may suspend a youth offender foster home certificate because of violations of one or more certification rules or because of conditions in the home that render it uncertifiable. A notice of suspension must be in writing and must list the violations, along with the actions necessary to reach compliance, and OYA services available to assist the youth offender foster parent(s) to reach compliance;

(b) A certificate may be suspended for up to 180 days. Youth offenders in placement will be removed from homes with suspended certifications. No additional placements will be made during the period of suspension;

(c) Within 30 days of the effective date of the suspension, the youth offender foster parent(s) shall submit a written corrective action plan to OYA. This plan must list the steps that will be taken to reach compliance and the services and agencies that will be used. This action plan must be signed and approved by both the youth offender foster parent(s) and OYA. Failure to submit a plan will constitute a withdrawal from certification;

(d) At the end of the suspension period or when the youth offender foster parent complies with the plan to remedy the conditions that led to the suspension, the Assistant Administrator of Community Programs may:

(A) Reinstate the certification for the term of the original certification;

(B) Issue a new certificate;

(C) Deny a reapplication for certification; or

(D) Notify the youth offender foster parent(s) of the intent to revoke the certificate.

(4) Revocation:

(a) The OYA will revoke a youth offender foster home certification only after one or more of the above steps have been attempted or when youth offender or public safety concerns warrant an immediate revocation. A notice of revocation shall be in writing and shall state the reasons for revocation;

(b) Youth offender foster parents whose certificate has been revoked may not reapply for certification for five years after the date of revocation.

(5) Appeal. Youth offender foster parents may appeal the suspension or revocation of their certificate under Chapter 183, Oregon Revised Statutes, by making a written request to the Assistant Administrator of Community Programs. If OYA has not received a request for a hearing within 10 days of the date of mailing or other service of the notice, the youth offender foster parent shall have waived the right to a hearing.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-530-0100

Youth Offender Group Home - Statement of Purpose

The Youth Offender Group Home program was developed to meet the needs of youth offenders in OYA custody who, because of emotional and/or behavioral characteristics, require a group living situation more structured than a youth offender foster home, but less structured than a Youth Correctional Facility. The purpose of the youth offender group home placement is to improve the youth offender's ability to accept responsibility for actions at home and in the community, to improve the youth offender's relationship with his or her family, and to improve the youth offender's ability to successfully solve the problems of daily living. The youth offender group home provider shall be a certified youth offender foster care provider, who contracts with OYA to provide group home services.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-530-0110

Youth Offender Group Home Requirements

(1) Youth Offender Group Homes shall contract for a minimum of four and a maximum of eight of youth offenders. Youth offenders being transitioned to youth offender foster care shall be counted toward the total number of youth offenders in the home.

(2) Youth offender group homes shall not provide emergency or shelter care for youth offenders.

(3) Youth offender group homes shall establish intake procedures for youth offenders being placed. The intake procedure must include consultation between the OYA Parole and Probation worker (placement worker) and the provider to discuss the youth offender being referred.

(4) Reformation Plans:

(a) Within 30 days of placement, the assigned group home liaison, placement worker, and the provider shall review and revise, where needed, the Reformation Plan on each youth offender.

der;

(b) Reformation plans will be goal-oriented and time-limited. Each plan shall identify desired behavior changes and shall estimate when the reformation goals will be achieved. Each treatment shall state and prioritize reformation goals, identify reformation services that will address each goal, and shall include the OYA's recommendations for reformation and after-care placement.

(5) The youth offender group home will establish procedures for reviewing the youth offender's reformation plan and after-care plan.

(a) Each element of each youth offender's reformation plan shall be reviewed by the provider, the assigned group home liaison, and placement worker at least every three months after the development of the plan. The reformation plan shall be revised or modified as necessary;

(b) The after-care plan shall be reviewed by the provider, the assigned group home liaison, and placement worker at the time of each treatment plan review, and the after-care plan shall be revised or modified as necessary.

(6) Terminations:

(a) When a youth offender has completed his or her treatment program, they will be moved to the after-care resource in accordance with the after-care plan;

(b) If the youth offender needs to be moved before they have completed the reformation plan, the provider, the assigned group home liaison and placement worker shall agree when and to where the youth offender shall be moved. If an agreement cannot be reached, OYA shall decide when to move a youth offender and where.

(7) The youth offender group home will establish performance criteria, with input from the youth offender, assigned group home liaison, and placement worker, for evaluating the needs of youth offenders served by the program. The performance criteria will be used to measure the goals set for the youth offender and how well the youth offender was able to meet the expected outcomes.

(8) Staffing:

(a) A youth offender group home will be staffed on a family-based model of care. (See Youth Offender Foster Home Activities under OAR 416-530-0070);

(b) There shall be a minimum of one adult to every five youth offenders in residence. If there are more than five youth offenders in residence, staffing shall be proportional. Example: If there are eight youth offenders in residence, there should be 1.6 adults. The additional .6 full-time equivalent adult shall be in the home during critical hours of youth offender group home operation, usually after school until bed time.

(9) Youth offender group home parents must plan for a minimum of 48 hours per month away from youth offender care responsibilities. Youth offender group home providers shall prepare a written plan for the provision of respite care.

(10) At the beginning of each contract year, youth offender group home providers will prepare a financial plan of expenditures for the coming year.

(11) The OYA will conduct a quality assurance review of every youth offender group home at least every two years in accordance with the established program evaluation outline.

(12) Each youth offender group home provider shall participate in 30 hours of professional training each year. The OYA and the youth offender group home provider will agree upon a written training plan.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-530-0120

Review of Rules

The Administrative Rules for Certification of Youth Offender Foster Homes will be reviewed on an annual basis by the Assistant Administrator of Community Programs.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

CRIMINAL RECORDS CHECKS FOR OYA YOUTH OFFENDER FOSTER PARENTS

416-540-0000

Purpose

(1) The mission of the Oregon Youth Authority (OYA) is to protect the public by holding youth offenders accountable and providing opportunities for reformation. Toward this goal, OYA works in partnership with communities and individuals to develop community placement resources for youth offenders. Youth offender foster care resources are an important part of OYA's community resource partnership. Because these resources provide an invaluable service, it is incumbent upon the OYA to insure that youth offender foster parents meet certain requirements. Therefore, the OYA will conduct criminal offender information background checks as described in these rules.

(2) These rules provide guidelines on the procedures by which OYA obtains criminal offender information on subject individuals seeking to be Youth Offender Foster Parents for OYA, and how OYA applies such information to its determination about the suitability of the subject individuals.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-540-0010

Scope of Rules

(1) Consistent with the purpose of these rules, OYA will determine the suitability for certification for subject individuals applying to be Youth Offender Foster Parents, applying for recertification as Youth Offender Foster Parents, or other persons, paid or unpaid, in the household.

(2) The criminal records check rules in OAR 416-540-0000 through 416-540-0070, shall be construed and implemented consistent with the existing certification requirements in OAR 416-530-0000 through 416-530-0120.

NOTE: If there is an inconsistency between these criminal records check rules and existing certification requirements, the rules in OAR 416-540-0000 to 416-540-0035 will supersede existing certification requirements.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-540-0020

Definitions

(1) "Administration of Criminal Justice" means performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

(2) "Agency Agreement" means a written agreement between the Oregon State Police and a Criminal Justice or designated agency as defined by ORS 181.010 authorized to receive criminal offender information, specifying the terms and conditions of accessing and receiving Oregon Computerized Criminal History information to assure compliance with state and federal regulations.

(3) "Computerized Criminal Records Checks" refers to the access and use of automated or manual files, or associated systems available to the Oregon Youth Authority as a criminal justice agency, through the Law Enforcement Data Systems (LEDS) including on-line information from the Federal Bureau of Investigation's National Crime Information Center (NCIC), and the National Law Enforcement Telecommunications System (NLETS).

(4) "Criminal Justice Agency" (for purposes of these rules) means the Oregon Youth Authority which is a government agency which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

(5) "Criminal Offender Information" means records, including fingerprints and photographs, received, compiled and disseminated by the Oregon State Police, and other state criminal justice

agencies, for purposes of identifying criminal offenders and alleged offenders and maintained as to such persons' records of arrest, the nature and disposition of criminal charges, sentencing, confinement and release, and includes the OSP Computerized Criminal History System.

(6) "Director" means the director of OYA.

(7) "FBI" means the Federal Bureau of Investigation.

(8) "Information Required" means all information requested by the OYA for processing criminal record checks, including fingerprint checks.

(9) "LEDS" is the OSP Law Enforcement Data System which the central State of Oregon criminal justice telecommunications and information system.

(10) "OSP" means the Oregon State Police.

(11) "Other Person in the Household" means a person age 18 or older living in the home or assisting in the home to enrich the care provided to youth placed in the home by tutoring, providing recreation, relief care or other services such as household chores, whether paid or unpaid. It also means a member of the household under 18 years of age if there is reason to believe that member may pose a risk to youth placed in the home.

(12) "NCIC" is the National Crime Information Center which is operated by the FBI.

(13) "NLETS" is the National Law Enforcement Telecommunications Systems, Inc., providing a national message switching network which links local, state, and federal criminal justice agencies together for the purpose of information exchange.

(14) "Recertification of a Certificate of Approval to Maintain a Youth Offender Foster Home" means annual application for renewal of youth offender foster home certification under OARs 416-530-0000 through 416-530-0120.

(15) "Youth Offender" means a person at least 12 years of age and under 18 years of age who has been found to be within the jurisdiction of the juvenile court under ORS 419C.005.

(16) "Youth Offender Foster Parent" refers to a provider certified under OARs 416-530-0000 through 416-530-0120.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-540-0030

Subject Individuals

For purposes of this rule, "Subject Individual" means a person who, as of January 1, 1996, applies to be a Youth Offender Foster Parent as described in OARs 416-530-0000 through 416-530-0060.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-540-0040

Limitations of Inquiries

(1) Only OYA employees who have been fingerprinted and cleared by the Oregon State Police shall access or have access to criminal offender information pursuant to a valid agency agreement. All such information shall be handled in compliance with the agency agreement and rules and procedures of the Oregon State Police relating to the criminal offender information (OARs 257-010-0010 to 257-010-0050). It is the responsibility of OYA to assure strict compliance with federal and state laws, rules and procedures regarding criminal offender information access and dissemination.

(2) Criminal offender information obtained from LEDS, OSP, FBI NCIC, and/or NLETS will not be used for any purpose other than that for which it was obtained, nor given to unauthorized persons or agencies. Any violation may cause immediate suspension of the OYA's authorization to access such information.

(3) Criminal offender information shall be obtained by OYA to ascertain whether a subject individual has been convicted of, or adjudicated delinquent on, a crime which is substantially related to their qualifications, functions, duties or responsibilities as a Youth Offender Foster Parent.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-540-0050

Crimes to Be Considered

(1) Subject to section (3) of this rule, the OYA will not issue or renew a certificate if the subject individual or any member of the household, paid or unpaid, has been convicted of, or adjudicated delinquent on, any of the following:

(a) A sexual offense as defined in ORS 181.517;

(b) Serious felonies and misdemeanors involving violence or unauthorized sexual conduct including, but not limited to, bigamy, incest, abuse, neglect, or abandonment of a child;

(c) Aggravated murder or murder;

(d) Sale or purchase of a child;

(e) Three alcohol and/or drug related offenses within the last five years;

(f) Three felony convictions within the last five years;

(g) And any attempts or solicitations to commit any felony or misdemeanor crime listed in subsections (a) through (f) of this section.

(2) Conviction of crimes or a false statement about a conviction, including by act of omission, may disqualify a subject individual from serving as a youth offender foster parent. Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.

(3) Factors to be considered by the OYA Community Programs Administrative Office in determining suitability to be a Youth Offender Foster Parent based on information available to OYA and information provided by the subject individual include:

(a) Types and number of offenses;

(b) Passage of time since the crime was committed;

(c) Circumstances surrounding the commission of the crime;

(d) Intervening circumstances since the commission of the crime;

(e) Relationship of the facts under subsections (a) through (d) of this section to the specific certification requirements set forth for Youth Offender Foster Parents.

(4) Under no circumstances will OYA bar or refuse to certify an individual because of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 or 419A.262.

(5) Subject individuals who apply for recertification of a certificate issued by the State Office for Services to Children and Families (SOSCF), are subject to a criminal records check when they apply to or seek to renew their certificate with the Oregon Youth Authority.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-540-0060

Procedures

(1) Any subject individual applying for certification as defined in OAR 416-540-0030 and all other persons, paid or unpaid, in the household of the subject individual, shall consent to a criminal offender information records check. All applicants will be notified of this requirement at the time they apply, and criminal record consent forms shall contain a notice that certification is subject to a criminal offender information records check. If the subject individual, or a person in the household of the subject individual, refuses to consent to a criminal record check, or makes a false statement, including by act of omission, about the non-conviction of a crime, OYA shall not certify the subject individual.

(2) Subject individuals shall provide all information required for a criminal offender information records check on forms provided by OYA and according to procedures established by OYA. Information required includes:

(a) A properly completed and signed OYA Consent for Criminal Records Check for OYA Foster Care Certification;

(b) If the subject individual or other person in the household

acknowledges a prior conviction, an explanation of the relationship of the facts which support the conviction and all intervening circumstances and authorization for OYA to verify the information;

(c) As part of the consent to a criminal records check, OYA may request subject individuals or other persons in the household to consent to the use of their social security numbers in conducting the criminal record check.

(3) OYA shall conduct a computerized criminal offender records check of Oregon and other state's records through NCIC and/or NLETS, on all subject individuals.

(4) This rule provides that no applicant for certification as a Youth Offender Foster Parent will be provisionally certified prior to initiation of the criminal records check process for subject individuals or other persons, paid or unpaid, in the household.

(5) OYA will review the criminal offender information for persons seeking certification as a Youth Offender Foster Parent and for other persons in the household. The OYA Youth Offender Foster Home Certifier will review the criminal record information to determine related impact on certification.

(6) A finding of suitability based on criminal history is only one factor OYA will use in deciding whether to certify or recertify a Youth Offender Foster Parent.

(7) As provided in the Youth Offender Foster Care Certification rules OAR 416-530-0050(6), OYA may allow exceptions to some certification requirements:

(a) Exceptions to criminal records check suitability determinations must be made in writing and require the approval of the Assistant Administrator of Community Programs or a Community Programs Manager;

(b) Each request for an exception will be evaluated on its own merits. Granting an exception does not set a precedent that must be followed by the OYA when evaluating subsequent requests for exceptions;

(c) An exception is not effective until granted in writing.

(8) If OYA determines that the subject individual should be denied certification based on their criminal history or the criminal history of another person in the household, OYA shall inform the subject individual, or other person in the household, of their right to inspect and challenge their Oregon criminal offender information through the Oregon State Police procedures as adopted per ORS 181.555(3) and OAR 257-010-0035, and that they may challenge the accuracy or completeness of any entry on their criminal records obtained from the FBI's NCIC files by filing a challenge with the Assistant Director of the FBI Identification Division, Washington, DC 20537-9700.

(9) Criminal offender information received from the OSP or the FBI is confidential and shall not be released to unauthorized persons or agencies.

(10) The OYA is entitled to rely on the computerized criminal offender information supplied by the OSP, the FBI or other states via LEDS and NLETS, until OSP, the FBI or the other state(s) notify the OYA that record information has been changed or corrected.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-540-0070

Rights for Review and Contested Case Hearings

If OYA refuses to issue or renew a certificate, the youth offender foster parent(s) may appeal OYA's decision by requesting a hearing. If the request for a hearing is not received by OYA within 10 calendar days of the mailing or other service of the notice, the youth offender foster parent(s) shall have waived the right to a hearing.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 550

YOUTH OFFENDER TREATMENT FOSTER CARE

416-550-0000

Purpose

Youth Offender Treatment Foster Care is a program for youth and their families whose out-of-home treatment needs can be met through services delivered by youth offender treatment foster parents, and/or professional staff trained, supervised and supported by an agency. These rules set standards for the operation of a Youth Offender Treatment Foster Care Program. All agencies under contract with OYA to provide this service, or proposing to provide this service, must adhere to these rules.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-550-0010

Definitions

(1) "After Care": The plan which outlines the services and resources that will be needed when the youth leaves the Youth Offender Treatment Foster Care program.

(2) "Agency": A public or private organization which contracts with OYA to provide Youth Offender Treatment Foster Care services.

(3) "Agency Staff": A person employed by the Youth Offender Treatment Foster Care program who gives support to the treatment foster parent or the youth/family, (for example, the treatment specialist or clinical supervisor).

(4) "Clinical Supervisor": A person employed by the Youth Offender Treatment Foster Care program who provides support, supervision and consultation to the treatment specialist and/or the YOTFC foster parent.

(5) "Crisis-On-Call": Twenty four hours-a-day, seven days-a-week availability, either by phone or in person, for the provision of emergency and/or back-up services.

(6) "Matching": The process of placing the youth in a home that can specifically meet the individual reformation needs of that particular youth. These needs include, but are not limited to, a foster parent's ability to speak the language of the youth, the home's proximity to the youth's family, and same race, ethnicity and culture.

(7) "Respite Care": A temporary arrangement of 12 hours or more, to allow the treatment foster parent(s) time away from the youth.

(8) "Treatment": The coordinated provision of services designed to produce a planned outcome in a person's behavior, attitude or general condition. Treatment is based on a thorough assessment of factors contributing to the attitude, condition or behavior.

(10) "Youth Offender Treatment Foster Care": The model of treatment in which a youth receives treatment in the foster home from the foster parent who is under the supervision and support of a professional therapist of an identified program.

(11) "Youth Offender Treatment Foster Care Program": A separately identifiable unit of a larger agency or an independent agency itself.

(12) "Youth Offender Treatment Foster Parents": In-home treatment providers of a YOTFC program who implement reformation strategies identified in the reformation plan in addition to carrying out their regular foster care responsibilities.

(13) "Reformation Plan": A course of individualized treatment which considers the youth's needs and is developed by the Youth Offender Treatment Foster Care program in conjunction with the youth offender treatment foster parent(s) and OYA.

(14) "Treatment Specialist": A person employed by the Youth Offender Treatment Foster Care program who provides training, supervision, support and consultation to the YOTFC foster parent.

(15) "Treatment Team": Those people concerned with the care and treatment of the youth. The team may be comprised of, but is not limited to, the youth offender treatment foster parent(s) and the treatment specialist.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-550-0020**Overview**

Youth and youth appropriate for Youth Offender Treatment Foster Care have serious emotional and/or behavioral disorders. The level of supervisory treatment and family intervention needs of these youth is comparable to those served in residential treatment facilities. Youth Offender Treatment Foster Care consists of:

(1) A Youth Offender Treatment Foster Care agency with staff who give support to the treatment foster parent and the youth/family; and

(2) Treatment foster families who implement treatment strategies identified in the reformation plan in addition to carrying out their regular foster care responsibilities.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-550-0030**Youth Offender Treatment Foster Care Program**

A Youth Offender Treatment Foster Care program must be a separately identifiable unit of a larger agency or be an independent agency itself:

(1) Eligibility:

(a) The program must meet OARs 416-530-0100 through 416-530-01280 to be eligible to be a Youth Offender Treatment Foster Care program;

(b) Selection of a Youth Offender Treatment Foster Care program will be made by the Oregon Youth Authority based on current need and ability to fund the program.

(2) Administration. The program must designate an individual who is responsible for the provision and oversight of all essential tasks and services described in these rules.

(3) Staff:

(a) Clinical supervisor's responsibilities/qualifications include:

(A) Clinical Supervision. The supervisor provides regular support, consultation and guidance to the treatment specialist. The supervisor to treatment specialist ratio must not exceed one to five;

(B) Treatment Planning. The supervisor takes ultimate clinical responsibility for the development of a comprehensive treatment plan based on a thorough case assessment for each youth admitted to the program. This plan must be congruent with and supportive of the Reformation Plan developed by the Oregon Youth Authority. She or he supervises ongoing treatment planning and implementation for each youth, evaluating all progress reports and treatment plan updates;

(C) Treatment Team. The supervisor oversees and supports the treatment specialist as leader of the treatment team and shares ultimate responsibility for team plans and decisions;

(D) Crisis On-Call. The program provides coordination and back-up to assure that 24-hour on-call crisis intervention services are available and delivered as needed to treatment parents, youth, youth and families;

(E) Qualifications. The supervisor must have a graduate degree in a human service field plus a minimum of two years' experience in the placement/treatment of youth and families. The supervisor must be familiar with clinical research and practice. If the education and experience of the supervisor are not recognized, additional clinical consultation shall be provided. Clinical consultants must be licensed or otherwise recognized as qualified by the state in the human service field.

(b) Treatment specialist's responsibilities/qualifications include:

(A) Treatment Team. The treatment specialist takes primary day-to-day responsibility for leadership, training, support and consultation to the treatment team. The treatment specialist organizes and manages all team meetings. If the treatment specialist is prevented from participation in a team meeting by a crisis or personal

leave reasons, the supervisor takes over that responsibility. As team leader, the treatment specialist manages team decision-making regarding the care and treatment of the youth and services to the youth's family;

(B) Treatment Planning. Under the supervision of the clinical supervisor, the treatment specialist takes primary responsibility for the preparation of each youth's written comprehensive treatment plan and of quarterly written updates of the plan. The treatment specialist signs off on treatment plans and updates. The treatment specialist seeks to inform and involve other team members in this process including treatment parents, the youth and the youth's family;

(C) Support/Consultation to Treatment Parents. The treatment specialist will provide regular support and technical assistance to treatment parents in their implementation of the treatment plan and with regard to other responsibilities they undertake. The treatment specialist will provide at least weekly contact in person with the treatment parent of each youth on his/her caseload. The treatment specialist will visit the treatment home to meet with at least one treatment parent no less than once monthly;

(D) Caseload. The maximum number of youth that may be assigned to a single individual is ten;

(E) Contact with Youth. The treatment specialist or other program staff shall regularly spend time, outside the presence of the treatment foster family, with youth in care to allow them the opportunity to communicate special concerns, to make a direct assessment of their progress, and to monitor for potential problems in the current placement. Such face-to-face contact must occur at least twice monthly;

(F) Support/Consultation to the Families of Youth. The treatment specialist will arrange for and encourage regular contact and visitation between youth and their parents and other family members and provide for or coordinate treatment or training to the family as specified in the treatment plan. The treatment specialist will seek to involve the youth's parents when appropriate, in treatment team meetings, plans and decisions and to keep them informed of the youth's progress in the program;

(G) Community Liaison and Advocacy. The treatment specialist will determine which community resources are required and how they may be used to meet the objectives of the youth's reformation plan. The treatment specialist will advocate for and coordinate the provision of such services and will provide technical assistance to community service providers as needed to maximize the benefit of these services to the youth;

(H) Crisis On-Call. The treatment specialist or other professional staff, as designated by the agency, will be on-call to treatment parents, youth and their families on an around-the-clock, seven-day-a-week basis;

(I) Qualifications. The treatment specialist shall have at a minimum a B.A. or B.S. degree in a human service field plus two years direct experience working with youth and families, or an A.A. degree with three years experience working with youth and families.

(4) Staff Training and Support: Liability Insurance. Professional staff shall be covered by liability insurance.

Stat. Auth.: OL Ch. 422, 1995
 Stats. Implemented: OL Ch. 422, 1995
 Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-550-0040**Treatment Foster Parents**

Treatment foster parents serve as in-home treatment agents implementing strategies specified in a youth's treatment plan including support of the youth's family relationships:

(1) Qualifications and Selection:

(a) Treatment foster parent(s) must be certified as a OYA foster home as defined in OARs 416-530-0000 through 416-530-0060 (Certification Standards for Foster and Family Group Homes) or be approved as a foster home by the Youth Offender Treatment Foster Care Program; and

(b) Treatment foster parent(s) must be employees of, or have a contract with, a Youth Offender Treatment Foster Care Pro-

gram;

(c) Prospective applicants, foster parent(s) and members of the household 18 years of age and older shall consent to a criminal record check by the agency. OYA may require a criminal record check for any employee, volunteer, or other adult having regular contact with youth placed in the foster home. OYA may require a criminal history on members of the household under 18 years if there is reason to believe that member may pose a risk to youth placed in the home. OYA may require that the applicant(s)/foster parent(s)/member(s) of the household provide fingerprints and processing fees for the purpose of a criminal record check;

(d) Language. At least one treatment parent must demonstrate effective communication in a language of the youth in the treatment family's care, and in a language of the program/treatment team with which they work;

(e) Age. Treatment parents must be at least 21 years of age;

(f) Health. The physical health of treatment parents must be equal to the stress inherent in the care of a special needs youth as evidenced by a physician's statement to that effect;

(g) Transportation. Treatment parents must have access to reliable transportation. If using a car, they must have a valid driver's license and document ownership of liability insurance as required by law;

(h) Physical Discipline. Treatment parents must agree not to use physical discipline with youth placed in their care and to adhere to the agency's policies regarding the use of discipline generally.

(2) Responsibilities:

(a) List of Responsibilities. Prospective treatment parents must be provided with a written list of duties clearly detailing their responsibilities both as treatment parents and as foster parents prior to their approval by the program;

(b) Treatment Responsibilities:

(A) Treatment Planning. The treatment parent shall assist the treatment specialist and other team members in the development of treatment plans for the youth or youth in their care. These treatment plans must be congruent with the Reformation Plan developed by OYA;

(B) Treatment Implementation. The treatment parent shall assume primary responsibility for implementing the in-home treatment strategies specified in the youth's initial and comprehensive treatment plans and revisions thereof;

(C) Treatment Team Meetings. The treatment parent shall work cooperatively with other team members under the leadership of the treatment specialist and attend team meetings, training sessions and other gatherings required by the program or by the youth's treatment plan;

(D) Record Keeping. The treatment parent shall systematically record information and document activities as required by the agency and the standards under which it operates.

(E) Contact with Youth's Family. The treatment parent shall assist the youth in maintaining contact with his/her family and work actively to support and enhance these relationships, unless contraindicated in the youth's treatment plan;

(F) Community Relations. The treatment parent shall develop and maintain positive working relationships with service providers in the community such as schools, departments of recreation, social service agencies, and mental health programs and professionals;

(G) Advocacy. The treatment parent, in concert with the agency treatment specialist and other staff, shall advocate on behalf of the youth to achieve the goals identified in the youth's treatment plan, to obtain educational, vocational, medical and other services needed to implement the plan, and to assure full access to and provision of public services to which the youth is legally entitled.

(H) Notice of Request for Youth Move. Unless a move is required to protect the health or safety of the youth or other treatment family members, the treatment parent shall provide at least 14 day's notice to program staff if requesting a youth's removal from the home so as to allow a planful and minimally disruptive transition. OYA shall be notified of such change.

(c) Foster Parent Responsibilities. Youth offender treatment foster parents must fulfill the responsibilities of foster parents as defined in OARs 416-530-0000 through 416-530-0060.

(3) Youth Offender Treatment Foster Parent Training:

(a) Training of treatment parents shall be a systematic, planned and documented process which includes competency-based skill training and is not limited to the provision of information through didactic instruction;

(b) Preservice Training. Prior to the placement of youth in their homes, all treatment parents must satisfactorily complete 20 preservice hours of primarily skill-based training consistent with the agency's treatment methodology and the service needs of the youth;

(c) Inservice Training. A written, agency approved, professional development plan shall be on record in each agency which describes the content and objectives of inservice training for all agency treatment parents. All treatment parents must satisfactorily complete a minimum of 40 hours of inservice training annually based on the training needs identified in the agency's professional development plan and the specific services treatment parents are required to provide. Inservice training should emphasize skill development, as well as knowledge acquisition, and may include a variety of formats and procedures including in-home training provided by agency casework staff;

(d) Evaluation of Training. All treatment parents must be provided an opportunity to evaluate mandated training.

(4) Treatment Parent Support:

(a) Information Disclosure. All information the YOTFC program receives concerning a youth to be placed with a treatment family shall be shared with and explained to the prospective family prior to placement. Agency staff will discuss with the prospective treatment parents the youth's strengths and assets, potential problems and needs, and initial intervention strategies for addressing these areas. As full treatment team members, treatment parents have access to full disclosure of information concerning the youth. With this access goes the responsibility to maintain agency standards of confidentiality;

(b) Respite. Treatment parents shall have access to both planned and crisis respite care for their treatment foster youth by providers who have been selected and trained by the program in providing respite care. Respite providers must be informed of the youth's treatment plan and supervised in their implementation of the in-home strategies it specifies;

(c) Counseling. Treatment parents and their youth shall have assistance in finding counseling when requested, for personal issues/problems caused or exacerbated by their work as treatment parents. Such issues may include, for example, marital stress, or abuse of their own youth by a youth placed in their care by the YOTFC program;

(d) Support Network. The YOTFC program shall facilitate the creation of formal or informal support networks for its treatment parents as, for example, through the coordination of parent support groups or treatment parent "buddy" systems;

(e) Financial Support. Agency financial support to treatment parents must cover the cost of care as well as payment for the difficulty of care associated with their treatment responsibilities and the special needs of the youth they serve;

(f) Damages and Liability. The program must have a written plan concerning compensation for damages done to a treatment family's property by youth placed in their care. This plan must be given and explained to prospective treatment parents as part of their preservice orientation. The agency must provide or assist treatment parents in obtaining liability coverage. Treatment parents are required to document that they carry home/ apartment, automobile (if they have a motor vehicle), property and liability insurance themselves in addition to any liability and damage coverage provided by or through their YOTFC program.

(5) Treatment Home Capacity. The number of Youth Offender Treatment Foster Care youth placed in one treatment home shall not exceed two. The total number of youth living in a treatment foster home, including the foster parents' own youth, will not exceed five. Exceptions to the total number of youth including

the foster parents' own youth will be granted to foster homes who provided Youth Offender Treatment Foster Care prior to July 1, 1992. Treatment parents have the right to refuse placement of any youth they feel is inappropriate for the home or endangers the safety of youth currently in the home. On a case-by-case basis, a Youth Offender Treatment Foster Care youth may be eligible to remain in the Youth Offender Treatment Foster Care home as an on-going foster care placement upon completion of the Youth Offender Treatment Foster Care program if there is special justification and it is in the best interests of the youth. At no time will there be more than one on-going foster care placement in a Youth Offender Treatment Foster Care home with two Youth Offender Treatment Foster Care youth.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-550-0050

Youth and Their Families

Placement and Support:

(1) Matching. Placement of a youth will be made only after careful consideration of how well the prospective treatment family will meet the youth's needs and preferences and will represent a reasonable "match" for the youth.

(2) Assessment. To achieve sound placement decisions and planning for relevant treatment services to youth, program staff must receive and review the following case material prior to a youth's admission: current case plan(s), legal documents and relevant police records, etc., social history information, previous and current (within a year of referral date) psychological assessments if available, school information, medical information, previous placement history and outcomes, potential problems and information on the youth's/youth's skills, interests, talents and other assets.

(3) Records. For youth admitted to Youth Offender Treatment Foster Care, an individual case record will be kept which includes the above information as well as the following:

- (a) Personal identifying information;
- (b) A pre-admission psychological evaluation;
- (c) A youth social and family history;
- (d) Educational history including school reports and available standardized test results;

(e) Medical information including sight, hearing and dental exam reports, current medications and allergies, youth's physical description, immunization records, medical history and Medicaid/SSI number, if applicable;

(f) Authorizations for routine and emergency medical care, dental care and other medical procedures;

(g) Other required authorizations such as authorization for out-of-state travel, participation in special activities, publicity releases, etc.;

(h) Correspondence with/from agencies involved with the youth, including a copy of the Reformation Plan developed at intake to the OYA as well as any revisions and additions;

- (i) The initial treatment plan;
- (j) The comprehensive treatment plan;
- (k) Progress reports;

(l) Case notes including contacts with the youth's family/extended family;

(m) Incident logs or records on serious behavior problems, police and relevant juvenile court records and reports when possible, illnesses or injuries.

(5) Youth's Access to Agency Staff. Treatment foster youth/youth shall have access to designated program staff at all times to discuss concerns including any problems they are experiencing with their treatment family. Provider staff will provide regular one-to-one contact with each youth on at least a twice monthly basis.

(6) Youth-Family Contact/Relationships. Unless specifically proscribed by court or custodial agency decision, treatment foster youth/youth shall have access to regular contact with their families as described in the treatment plan.

(7) Rights of Youth in Youth Offender Treatment Foster Care. Youth in Youth Offender Treatment Foster Care have the same basic rights as all foster youth including the right to privacy, to humane treatment, to adequate shelter, clothing, nutrition, essential personal care items and allowances, and access to religious worship services of their choice. The program shall explain to each youth what his/her rights are in a manner consistent with the youth's level of understanding, and make this information available to the youth in writing.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-550-0060

Treatment

(1) Initial Treatment Plan. An initial written treatment plan shall be completed by the time of the youth's admission to the program. The plan shall describe specific tasks to be carried out by the treatment team during the first 45 days of placement. It shall describe strategies to ease the youth's adjustment to the treatment home and to directly assess the youth's strengths, skills, interests and needs for treatment within the home. The initial plan should assess short-term goals for the first 45 days of placement, identify potential problems likely to be encountered with the youth and specify how the treatment team is to respond to them.

(2) Comprehensive Treatment Plan. A written comprehensive treatment plan shall be completed for each youth admitted within 45 days of admission addressing the long-term goals of treatment including criteria for discharge, projected length of stay in the program, projected post-YOTFC setting and aftercare services. It shall be congruent with the Reformation Plan developed by the OYA. The plan shall identify and build on the youth's strengths and assets as well as respond to presenting problems. The comprehensive treatment plan shall include proactive short term treatment goals which are measurable and time-limited along with specific strategies for promoting and regularly evaluating progress.

(3) Quarterly Progress Reports/Updates. Each youth's treatment plan shall be specific, reviewed via quarterly reports and revised as necessary. Quarterly reports shall document progress on specific short term treatment goals, describe significant revisions in goals and strategies, and specify any new treatment goals and strategies initiated during the period covered. The quarterly progress report shall summarize progress and note changes regarding long-term placement and treatment goals. The interagency team members will be invited to participate in the process to review and approve the quarterly report.

(4) Aftercare Plan. All planned discharges from Youth Offender Treatment Foster Care will be reviewed and discussed by the treatment team, including the parole and probation worker and youth. An approved aftercare plan shall be ready for implementation prior to the youth's planned departure from the program. The plan shall specify the nature, frequency and duration of aftercare services and designate responsibility for service delivery. The YOTFC program shall provide these aftercare services directly or provide consultation to the person/agency assuming responsibility for working with the youth following discharge from the program. An aftercare plan also shall be developed in a timely fashion for youth whose discharge is not planned, with follow-up services provided or assisted as described here.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-550-0070

Program Statement

All Youth Offender Treatment Foster Care programs shall have a written program statement which describes its mission, organizational structure, services, policies, record-keeping and evaluation procedures. The program statement shall describe:

- (1) The agency's treatment philosophy and the specific treatment modality(ies) it employs.
- (2) The services the program provides.
- (3) The youth it is designed to serve with regard to age, gen-

der, geographic service area and types of special needs the program is prepared to address. Clients served must exhibit an identifiable special need.

(4) A staffing pattern which allows for the intensity of service required in Youth Offender Treatment Foster Care and designates the individual responsible for program administration.

(5) How the services to be provided will reflect the cultural diversity of the community and be responsive to the needs of the community.

(6) A policy assuring that the program staff and treatment parents adhere to practices that respect and promote positive cultural or ethnic identity.

(7) A policy on discipline and physical restraint which includes a description of acceptable methods.

(8) A policy on the use of physical restraint prohibiting the use of mechanical restraint or seclusion (e.g., in a locked room) and stating that passive physical restraint is justified only to protect the youth or others from injury or to prevent serious damage to property. The policy shall further state that if necessary and justified, physical restraint will be used only by persons who have been trained in its use and will not be employed as a punishment.

(9) The plan for crisis intervention procedures.

(10) The protocol for investigating, responding to and reporting allegations of misconduct and/or abuse by treatment parents, program agency staff, or their youth.

(11) The policy advising youth and parents of their rights and the grievance procedures available to them.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-550-0080

Program Evaluation

(1) Documentation of Service Delivery. A Youth Offender Treatment Foster Care program must clearly document delivery of all services described in its program statement as well as compliance with all minimum operating standards described above.

(2) Individual Treatment. Youth Offender Treatment Foster Care programs must document the implementation of all treatment plans and track progress on all long and short-term treatment goals throughout each youth's tenure in care.

(3) Performance Evaluations. Programs will provide to treatment parents and professional staff written performance evaluations at least annually which include descriptive assessments of their performance of specific job responsibilities and goals for improved performance.

(4) Program Evaluation. YOTFC programs shall have a program evaluation plan which describes information to be collected, summarized and analyzed at least annually. The plan will identify who will have access to the evaluation and how it will be used. The evaluation shall include demographics on current youth, youth and their families, treatment families and professional staff; aggregated information describing in-program events such as placement disruptions; and a summary of information collected through follow-up tracking of youth/youth discharged from the program. The plan also will provide for periodic evaluations of program services by treatment parents, youth/youth and their families.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 600

HIV TESTING OF YOUTH IN OREGON YOUTH AUTHORITY CUSTODY

416-600-0000

Purpose and Scope

The purpose of these rules is to set forth procedures and criteria which the Oregon Youth Authority to use when testing youth for HIV. HIV Testing is an intrusive medical procedure which can

have serious social consequences, OYA will subject youth in its custody to this procedure only if it is medically indicated. When a youth in OYA custody is tested for HIV, informed consent procedures shall be followed and the results of the test held in strictest confidence.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-600-0010

Definitions

(1) "HIV" is the acronym for human immunodeficiency virus. This is the current name for the virus which causes AIDS.

(2) "Acquired Immune Deficiency Syndrome (AIDS)" is a disorder in which a person's immune system is severely suppressed. It is caused by the human immunodeficiency virus (HIV). In order for a person to be diagnosed as having AIDS the virus, immune system suppression, and an opportunistic infection or other condition stipulated by the U.S. Centers for Disease Control must all be present.

(3) "HIV Positive" means that a blood test has indicated the presence of antibodies to HIV. This means that the person has been infected by the virus and the immune system has responded by producing antibodies. An exception is infants of HIV-infected mothers. They have been exposed to the mother's antibodies in utero and carry these antibodies in their blood for a number of months after birth. A series of tests is necessary to determine if these infants are themselves infected with HIV.

(4) "HIV Infection". People who have been tested and found to have the antibody are referred to as having HIV infection. At this writing, persons with HIV infection have a very high (greater than 50%) chance of developing AIDS within the next 10 years following the positive test result. These people are capable of transmitting the virus through risk behaviors, as described below.

(5) "High Risk Behaviors/Group" means the following:

(a) Having shared a needle with an intravenous drug abuser since 1977;

(b) For a man, having had sex with another man or men since 1977;

(c) Having been sexually active in an area where heterosexual transmission is believed to be high -- notably central Africa;

(d) Persons with hemophilia;

(e) Having been the sexual partner of a person in one of the previous categories;

(f) Being born to a woman whose history has put her in one of these other categories.

(6) "Counseling" means group and individual counseling, emotional support groups, one-on-one emotional support, AIDS education, and/or information services.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-600-0020

HIV Antibody Testing

(1) For youth in OYA custody, the HIV antibody test is to be done only to facilitate the medical care of the youth if clinically indicated after a thorough medical evaluation by a doctor knowledgeable about HIV infections. The test is not to be used to screen individuals in high risk behavior or any other groups, nor to satisfy the curiosity of OYA staff or contracted providers.

(2) Under the direction of a physician, infants born to OYA youth known to have engaged in high risk behaviors may be tested for the presence of antibodies to HIV. The presence of HIV infection in an infant can be determined only after the mother's antibodies are gone from the child's bloodstream.

(3) OYA shall not license any private child-caring agency whose admission criteria include a mandatory HIV test.

(4) OYA shall not contract with any service provider whose admission criteria include a mandatory HIV test.

(5) OYA shall provide court ordered HIV tests when youth are in custody in any Youth Correctional Facility.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-600-0030

Informed Consent

(1) No person shall submit the blood of an individual to an HIV test without first obtaining informed consent or ascertaining that informed consent is obtained. As legal custodian and guardian of the youth, OYA may grant medical consent and authorize medical treatment. OYA must have a medical statement that the HIV test is necessary for care and treatment before ordering or arranging for a test. If OYA orders or arranges for an HIV test, informed consent procedures must be followed.

(2) A minor of any age may consent to a HIV test; and when the minor's consent is given, the consent of the minor's parents or guardians is not necessary for diagnosis, care or treatment. However such consent must be informed consent.

(3) OYA staff are responsible to assure that informed consent is obtained when youth in OYA custody are to be given an HIV test. If the medical provider does not obtain the informed consent, OYA staff shall do so or arrange for it to be done prior to the test.

(4) Informed consent shall be obtained in the following manner, giving consideration to the youth's age and ability to understand:

(a) Provide the person for his/her retention a copy of the CSD 990, HIV Test Informed Consent;

(b) Orally summarize for the person the substance of the statements in the OYA Informed Consent Form and specify alternatives to the HIV test in the particular instance, and if the test information will be disclosed to others, who those others will be;

(c) Explain the risks from having the HIV test. This shall include a description of Oregon law pertaining to the confidentiality of information about an individual having the test and that individual's test results; a statement that there may be circumstances under which disclosure might be permitted or required without consent; and a statement of the potential consequences in regards to insurability, employment, and social discrimination if the HIV test results become known to others;

(d) Inform the youth that he or she has the right to request additional information from a knowledgeable person before giving consent;

(e) Ask the youth to be tested whether he/she has any further questions, and if so, provide a full and complete opportunity to ask those questions and receive answers from a person who is sufficiently knowledgeable to give accurate and complete answers about AIDS, HIV tests and the consequences of being tested or not tested;

(f) Have the person sign the OYA Informed Consent Form, HIV Test Informed Consent, after having had an opportunity to read it;

(g) Maintain the signed OYA Informed Consent Form for at least seven years.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-600-0040

Counseling

A youth being referred for HIV antibody testing must be referred for pre- and post-test counseling.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-600-0050

Confidentiality

(1) Many of OYA records are exempt from disclosure or strictly confidential under the public records exemptions or confidentiality status. All medical records are privileged information. AIDS and/or HIV test results are specifically designated highly confidential by statute (ORS 433.045) and Health Division Administrative Rule (333-012-0270(1) - (9) and must be held in the most strictly observed confidence possible to avoid conse-

quences of casual or inappropriate disclosure of information.

(2) Before consultation with the physician, the worker shall not inform any party that a youth has AIDS or is HIV positive. The worker shall consult with the physician who recommended the test or the local health department when appropriate, regarding who, beyond those directly involved in case planning, needs to be informed that a youth is HIV positive or diagnosed as having AIDS, and how to adequately meet the needs of that youth. The worker and/or supervisor shall then provide this information to the Administrative Office. Following this consultation, an HIV positive result or diagnosis of AIDS and other necessary medical information shall only be disclosed based on the physician's recommendation or recommendation of county health department or State Health Division when OYA Administration determines that such disclosure is in the best interests of the youth and necessary to administer Oregon Youth Authority services.

(3) Each person who subsequently gains access to this information must keep it in the strictest confidence, (ORS 433.045 (3)). The worker shall advise all persons who have access to the medical information of their duty to safeguard the confidential nature of the information.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 610

TITLE XIX AND GENERAL ASSISTANCE MEDICAL ELIGIBILITY

416-610-0000

Purpose and Scope

The purpose of these rules is to set forth procedures and criteria which the Oregon Youth Authority will use to make Title XIX medical eligibility determinations for youth in substitute care who are in the care and custody of Oregon Youth Authority, and to make such determinations for those youth who do not meet the financial eligibility criteria for Title XIX who would otherwise be eligible for the General Assistance Medical Program. Both of these programs are administered by the Office of Medical Assistance Programs. (ORS 418.005)

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-610-0010

Definitions

As used in this Division, the following definitions apply:

(1) "AFS": Adult and Family Services Division.

(2) "Assistance Standards": Amount of entitlement determined by AFS taking into consideration the need for food, shelter, utilities, clothing, personal incidentals and household supplies. Need is determined for individuals by comparing available income and resources to the ADC assistance standards.

(3) "Custody": Legal custody and guardianship, as defined in ORS 419.519 and 419.521.

(4) "Earned Income": Income received from earnings of the youth who is either working full time or part time.

(5) "Full-Time Employment": 160 hours per month.

(6) "Full-Time School Attendance": Number of hours as defined by each individual school.

(7) "G.A.": General Assistance with no federal match.

(8) "Paid Substitute Care": Oregon Youth Authority is making a payment on behalf of the child.

(9) "Resources": All real and personal property, automobiles, life insurance and trusts, including cash, savings, checking accounts or trust and agency (T&A) accounts.

(10) "OYA": Oregon Youth Authority.

(11) "Unearned Income": Refers to income to the youth in the youth's own right, such as Social Security benefits, Veteran's benefits, child support payments or other entitlements. It does not include the OYA foster care payment.

(12) "OMAP (Office of Medical Assistance Programs)": Refers to the official state Title XIX (Medicaid) agency located in the Office of the Director, DHR. Most DHR - wide Title XIX functions are handled by OMAP, but a few functions are retained by AFS. OMAP was formerly a part of AFS.

(13) "Spend Down": Refers to the use of excess monthly income over the AFS assistance standard that is used to pay for medical expenses which enables a client to be Title XIX eligible. (ORS 418.005)

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-610-0020

Title XIX Policy Determinations Required

(1) Each youth in substitute care whose care is paid by OYA or another public agency must have a determination of Title XIX eligibility before the issuance of a medical care ID card is authorized by OYA. Eligibility will not be presumed. In order to determine this eligibility the form "Individual Eligibility Determination for Title XIX Medical Coverage" must be completed, dated, signed by either a OYA worker or their designee, and filed in the youth's case record. The following youth are potential candidates for Title XIX coverage:

(a) Youth in shelter or foster home placements or, in a licensed child care agency, group home, or residential care placement, or a non-profit public drug and alcohol treatment facility;

(b) Youth in placements listed above when the care is paid by another public agency including county juvenile departments.

(2) Youth admitted to the hospital prior to entering substitute care or newborns released from the hospital into substitute care. Title XIX eligibility is effective the date that OYA obtains custody of the child and the child is determined eligible.

(3) Youth on runaway status who would otherwise be in care. Eligibility for Title XIX resumes at the time they are located as long as OYA retains custody and the youth would continue to be in substitute care and Title XIX eligible if not on runaway status. OYA is not responsible for medical bills incurred while a youth is on the run if the youth is not replaced in care.

(4) Youth in subsidized Independent Living.

(5) Youth receiving SSI. An application for Title XIX must be completed to establish initial eligibility. (ORS 418.005)

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-610-0030

Eligibility Factors Assistance Standard

(1) In order to be eligible for Title XIX coverage while in foster care, a child must meet the income level in one of five ways:

(a) Through the ADC payment standard for one in a household of one, or (AFS Rule 461-004-0915);

(b) Through the Medically Needy standard for one in a household of one;

(c) Through the Medically Needy with spend-down standard;

(d) Eligible for and receiving Title IV-E foster care payments;

(e) Receiving (SSI) Supplemental Security Income.

(2) Unearned Income: All unearned income that the child is entitled to receive must be counted in determining Title XIX eligibility. Income must be used to determine eligibility even if the agency has not begun to receive the benefits as long as that income has been awarded to the child. (ORS 418.005)

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-610-0040

Earned Income

Treatment of earned income in determining eligibility for Title XIX will be handled solely on the basis of the child's student status as follows:

(1) The following youth will have their earnings disregarded:

(a) Full-time students (as defined by the school) attending grade 12 or below, or attending a course of vocational or technical training, or GED classes in lieu of high school or planning to return to school or vocational training; or

(b) Part-time students who are not employed full time and are attending grade 12 or below, or attending an equivalent level of vocational or technical training or GED classes, or planning to return to school or training;

(c) Youth earning income under the Job Training Partnership Act (JTPA) programs (except Job Corps payments).

(2) A youth who is attending school part-time and employed full-time, or not attending school will have his/her earnings partially disregarded. The first \$90 of earned income will be disregarded. The earnings will be computed on an OYA form to determine the youth's eligibility for Title XIX. (ORS 418.005)

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-610-0050

Resources

(1) Total resources for a youth may not exceed \$2,000 in order to be eligible for Title XIX. If a youth has a motor vehicle, the first \$1,500 of equity value of that vehicle is exempt. The equity value over \$1,500 will be counted towards the \$2,000 resource limitation.

(2) Youth receiving SSI are always eligible for Title XIX. If the youth's assets (OYA Trust Account) exceed the limitation for SSI eligibility, it must be reported to the Social Security Administration.

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-610-0060

Citizenship and Alienage

(1) To be eligible for Title XIX the child must be:

(a) A United States citizen; or

(b) An alien lawfully admitted under provisions of Section 203(a) (7) before April 1980, 207(c), 208, 249, 584(a), 101, Section 207(c) (after March 31, 1980) or Section 212(d) (5) of the Immigration and Nationality Act as a paroled or conditional entrant; or aliens granted immigrant status according to the American Homecoming Act;

(c) An amnesty alien with permanent or unexpired temporary status admitted under **Section 245A, 210, or 210A of the Immigration and Nationality Act.**

(2) In order to authorize benefits, there must be proof that a youth is a U.S. citizen, or in the country legally. Birth certificates, or citizenship papers, alien registration cards, permanent visas, Cuban and Refugee registration cards may be used.

(3) To authorize Title XIX benefits, there must be proof that the youth is in the country legally. Individuals completing and signing the OYA application swear that they have reported the youth's citizenship honestly. (ORS 418.005)

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-610-0070

Social Security Number

The youth must have a social security number (SSN) or verification that an application for an SSN has been made. When a youth does not have an SSN, verification of application for the social security number must be documented in the case file. (ORS 418.005)

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-610-0080

Retroactive Eligibility

Children receiving GA medical due solely to the lack of an

SSN are eligible for Title XIX retroactive to the date of placement once verification of an application for an SSN from the Social Security Administration has been obtained. An AFS 148 form titled "Recipient Subsystem, Claims Processing, Addition/Correction" must be completed on each case and sent to the Client Maintenance Section, AFS, P.O. Box 17150, Salem, OR 97305, for retroactive claiming of Title XIX. Title XIX eligibility retroactive to the date of placement must also be entered into the OYA Information System. (ORS 418.005)

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-610-0090

Assignment of Medical Benefits

(1) All known or potential health insurance benefits or resources and all other third-party medical benefits, including casualty insurance available to the child, must be assigned to the Adult and Family Services Division.

(2) The worker, or their designee as guardian of the child, may sign the OYA form assigning these benefits.

(3) An AFS 415-H, "Medical Resource Report Form," must be completed and sent to AFS, Recovery Resource Section, P.O. Box 14023, Salem, OR 97309, for every child with health insurance coverage. If the child is covered by private health insurance such as Kaiser or another Health Maintenance Organization plan or Physician Care Organization (HMO/PCO), and is placed outside of a 30-mile radius, a statement of "accident injury policy only" must be written in the comment section of the AFS 415-H form. This exception statement will allow the foster parents the freedom to obtain medical care for the youth within their local area.

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-610-0100

Lump Sum Benefits

If all or part of a lump sum (any income received as a one-time payment) is spent during the month it is received in OYA, Accounting Services, so that the ending Trust and Agency balance is less than the Medically Needy resource limit of \$2,000, Title XIX medical eligibility may continue. (ORS 418.005)

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-610-0110

Title XIX Coverage

If a youth leaves paid substitute care, Title XIX eligibility exists for the remainder of the calendar month the youth was in care as long as the youth was eligible the day the medical card was issued. (ORS 418.005)

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-610-0120

Reviews

(1) Each youth's eligibility for Title XIX must be reviewed every 12 months unless the youth is receiving SSI. A review is not required for a youth receiving SSI unless the SSI is terminated.

(2) When there is a change in income or resources, the OYA form must be completed in the month the change occurs in order to update the medical eligibility for the following month.

(3) When it has been determined that a youth was incorrectly shown as Title XIX eligible for prior months, an AFS 148 will be completed to retroactively correct the youth's computer file. (ORS 418.005)

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-610-0130

Cooperation with AFS Quality Control

(1) As the State Title XIX agency, DHR is responsible to review cases covered by these rules for compliance with federal law and regulations. AFS performs this function.

(2) All cases to be reviewed will be requested through the OYA Financial Resource Unit. All case material (eligibility and service records) will be forwarded by OYA to AFS upon request. The cases will be selected for review by a systematic random sample each month from a universal listing of Title XIX-eligible cases. Title IV-E cases are not included in cases to be reviewed. (ORS 418.005)

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-610-0140

GA Medical Policy

(1) All youth in paid substitute care who do not meet the eligibility requirements for Title XIX, will be eligible for General Assistance(GA) medical through OMAP.

(2) An OYA form will reflect eligibility for GA medical when it has been determined there is no eligibility for Title XIX. These cases will be reviewed every 12 months in order to determine possible change in income and/or resources which may change the youth's eligibility for Title XIX.

(3) Infrequently a non-relative foster care provider is the designated payee for a foster child's benefits. Until payee status is transferred to the agency and a foster care maintenance payment is made, the youth is eligible for GA medical as long as their income is less than the standard cost of foster care for their age level.

(4) Youth in non-subsidized Independent Living are eligible for GA medical unless their income exceeds the standard cost of foster care for their age level. (ORS 418.005)

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-610-0150

Non-paid Relative Placements

(1) Youth living with relatives in non-paid care and living in the state must be referred to AFS for a cash grant and/or Title XIX coverage. OYA cannot issue a GA medical card to youth in non-paid relative care. The worker will advise the family to pursue medical coverage for the youth through AFS.

(2) A youth placed in a relative's home out-of-state will be referred to the Title XIX agency in that state for a Title XIX determination. If that state determines there is no Title XIX eligibility, OYA may issue a GA medical card only when the youth's income is below the foster care rate. (ORS 418.005)

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-610-0160

Title XIX Eligibility Under COBRA For Out-of-State Placements

(1) The Consolidated Omnibus Reconciliation Act (COBRA) of 1985 provides for Title XIX coverage in the state of residence for youth receiving Title IV-E foster care payments.

(2) All youth receiving Title IV-E foster care payments from other states moving to the State of Oregon must be referred to the AFS office in the county of residence for a Title XIX eligibility determination. Under no circumstances is OYA to authorize the issuance of a Medical Care Identification (MCI) for youth in the custody of another state. In addition, all youth who are Title IV-E eligible in Oregon and move to another state are eligible for Title XIX in the state of residence. The MCI will be issued by the state of residence.

(3) Youth receiving SSI payments and moving outside the State of Oregon are eligible for Title XIX in their state of residence. (ORS 418.005)

Stat. Auth.: OL Ch. 422, 1995
Stats. Implemented: OL Ch. 422, 1995
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-610-0170

Children in Custody of County Juvenile Departments

(1) Youth in the care and custody of the County Juvenile court in a substitute care placement may be eligible for Title XIX coverage from OMAP. County Juvenile Departments will submit applications to the Financial Resource Unit for Title XIX eligibility determinations. Approved applications will be forwarded to AFS. If a youth is not eligible for Title XIX, he/she is not eligible for any medical coverage through OMAP.

(2) To be eligible for Title XIX coverage from AFS, the youth must:

- (a) Be under 21 years of age; and
- (b) Have income less than the ADC Medically Needy (no spend down) payment standard for one person; and
- (c) Be placed in a shelter, foster, group home or residential treatment facility, or in a subsidized Independent Living Program. (ORS 418.005)

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-610-0180

Youth in Close Custody

Youth held in a county or state juvenile detention facility or under arrest and/or in official custody are ineligible for Title XIX or GA medical coverage. Payment for emergency medical services only for youth in close custody and OYA custody may be made from the OYA "Other Medical" budget. (ORS 418.005)

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-610-0190

Youth in Residential Care with Payment by Another Public Agency

(1) Youth in substitute care approved by a public agency of this state, and for whom a public agency of this state is assuming some financial responsibility, may be eligible for medical coverage.

(2) Youth in the care and custody of OYA and placed in residential care paid by another public agency whose income does not exceed the ADC Medically Needy (no spend down) payment standard for one person may be eligible for Title XIX. Others will be eligible for GA medical coverage.

(3) To issue medical care identification to youth in the care and custody of OYA and in non-paid residential care funded by another public agency, the following must be entered on the OYA Information System:

- (a) Medical eligibility after completion of a CSD 190;
- (b) An SRES non-pay service;
- (c) The youth's address (ORS 418.005).

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

416-610-0200

Temporary Medical Card Issuance

The AFS-1086, "Temporary Medical Care Identification Card (MCIC)", may be issued when a youth requires medical care prior to receiving the computer generated MCIC (Medical Care Identification Card, OMAP 1417). The temporary MCIC may also be issued when the youth is placed, moved to a new placement, or when the MCIC is lost and medical care is needed before a new card will be issued. (The eligibility data must be entered into the system at the time of issuance in order for the provider to be paid.) (ORS 418.005)

Stat. Auth.: OL Ch. 422, 1995

Stats. Implemented: OL Ch. 422, 1995

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96

DIVISION 630

ADMINISTRATION AND CONTROL OF MEDICATION

416-630-0000

Purpose and Scope

There are standard medical orders given in the administering of non-prescription and prescription medications. This rule provides for consistent practice of storage, control and administration of medication by non-medical personnel within Youth Correctional Facilities. Training will address all standards needed to ensure state and federal mandatory compliance, specifically OAR 851-045-0011.

Stat. Auth.: ORS 183.10 - ORS 183.550

Stats. Implemented: ORS 422

Hist.: OYA 2-1996, f. 6-26-96, cert. ef. 8-1-96

416-630-0010

Definitions

(1) Primary Staff: The staff permanently assigned to a living unit, having completed prescribed training in the administration of medication.

(2) "Medication Administration Record (MAR)." The record in which all medication administration is recorded.

Stat. Auth.: ORS 183.10 - ORS 183.550

Stats. Implemented: ORS 422

Hist.: OYA 2-1996, f. 6-26-96, cert. ef. 8-1-96

416-630-0020

Storage of Medication

All medication is to be kept in the staff office, in a separate cupboard or drawer, under lock and key.

(2) Oral and injectable medication shall be stored separately from external medications.

(3) A primary staff should be designated per shift to oversee the control and administration of medication.

Stat. Auth.: ORS 183.10 - ORS 183.550

Stats. Implemented: ORS 422

Hist.: OYA 2-1996, f. 6-26-96, cert. ef. 8-1-96

416-630-0030

Administration of Medication

When administering medication staff shall:

(1) Call youth to the designated location for the administration of medication and verify that:

- (a) The right youth is present.
- (b) The right medication is identified for administration.
- (c) The right dose is being administered.
- (d) The right form of the medication is being administered: i.e. tablets, liquid, caplets, etc.
- (e) The medication is being administered at the right time.

(2) Leave the medication in the package until ready to administer to the youth.

(3) Require the youth to do the following:

- (a) Open Mouth.
- (b) Lift tongue.
- (c) Pull cheeks away from teeth.

(4) Check water cup to make sure medication has not been returned to the cup.

(5) If problems persist with a youth, staff should:

- (a) Recheck the youth's mouth.
- (b) Notify medical staff.

Stat. Auth.: ORS 183.10 - ORS 183.550

Stats. Implemented: ORS 422

Hist.: OYA 2-1996, f. 6-26-96, cert. ef. 8-1-96

416-630-0040

Signing for Medication

(1) Staff shall initial the Medication Administration Record before moving to the next youth.

(2) Staff shall not sign the Medication Administration Record before actually administering the medication.

Stat. Auth.: ORS 183.10 - ORS 183.550

Stats. Implemented: ORS 422

Hist.: OYA 2-1996, f. 6-26-96, cert. ef. 8-1-96

416-630-0050

General Guidelines

- (1) Youth are to be called individually for medication.
 - (2) No other business should take place to distract attention from dispensing medication.
 - (3) Prescription medicines that are not consumed shall be returned to the pharmacy at the earliest time frame.
 - (4) Any medical information received from a physician must be entered in each youth's permanent medical record. Medication information is to be forwarded to the medical clinic serving the Youth Correctional Facility.
 - (5) All youth medications must be tracked on the Medication Administration Record (MAR). These records must be forwarded to the appropriate medical facility at the end of each month. This record includes all topical prescription medications ordered.
 - (6) Non-prescription oral medications are tracked via a 30-day medication record log. This log is to be maintained for 30 days past the last entry.
 - (7) Staff should familiarize themselves with the drug information sheet for each medication.
 - (a) The drug information sheet should be located in the RX manual on each living unit.
 - (b) Staff should note any unusual, uncommon, and/or severe side effects and then contact the medical clinic or prescribing physician in the community.
- Stat. Auth.: ORS 183.10 - ORS 183.550
Stats. Implemented: ORS 422
Hist.: OYA 2-1996, f. 6-26-96, cert. ef. 8-1-96

DIVISION 640

ADMINISTRATIVE MEDICAL EXAMINATIONS

416-640-0000

Purpose

The purpose of this rule is to describe the administrative medical examinations and reports authorized by the Oregon Youth Authority for youth in its custody who are or are potentially Medicaid-eligible (see OAR 416-610-000 through OAR 416-610-0200 for discussion of Medicaid eligibility).

Stat. Auth.: ORS 422
Stats. Implemented: ORS 422
Hist.: OYA 3-1996, f. 6-26-96, cert. ef. 8-1-96

416-640-0010

Definitions

As used in this Division, the following definitions apply:

- (1) Administrative Medical Examination: An examination, evaluation, and/or copies of medical records from a OMAP-enrolled medical provider for the purpose of casework planning.
 - (2) Medicaid: A federal and state-funded medical assistance program established by Title XIX of the Social Security Act. The Medicaid program pays for medical and remedial care provided to eligible Oregonians.
 - (3) OMAP: The Office of Medical Assistance Programs of the Oregon Department of Human Resources. OMAP is the state agency responsible for coordinating Oregon's Medicaid program.
 - (4) Substitute Care: An out-of-home placement directly supervised by the Oregon Youth Authority or other agency, including placement in a foster family home, group home, or other youth-caring institution. Substitute care does not include care in a detention facility or an Oregon Youth Authority youth correctional facility, youth accountability camp, work/study camp, or residential academy.
- Stat. Auth.: ORS 422
Stats. Implemented: ORS 422
Hist.: OYA 3-1996, f. 6-26-96, cert. ef. 8-1-96

416-640-0020

Administrative Medical Examination Authorization

- (1) Administrative Medical Examinations must be authorized by the local OYA supervisor or designee prior to the medical service. Authorizations

must done on a Form OMAP 729.

- (2) Authorization for Administrative Medical Examinations will be made only to licensed medical service providers or polygraphers. The provider must be a licensed physician, psychiatrist, psychologist, registered clinical social worker, a licensed medical facility or other medical provider, or a licensed polygrapher enrolled by OMAP for participation in the Medicaid (Title XIX) Program. Providers must have an assigned active provider number from OMAP in order to receive payment for their services.

- (3) Authorized amounts for Administrative Medical Examinations will be at the current OMAP-published rate for the fee code billed.

- (4) Parents and any medical insurance available to the youth are resources for payment of examinations or evaluations.

Stat. Auth.: ORS 422
Stats. Implemented: ORS 422
Hist.: OYA 3-1996, f. 6-26-96, cert. ef. 8-1-96

416-640-0030

Administrative Medical Examination Payments

- (1) Administrative Medical Examinations may be authorized for youth in OYA's care and custody who are eligible or are potentially eligible for Medicaid (Title XIX). Expenditures are federally-matchable and will be paid through OMAP. An Administrative Medical Examination expenditure includes any payment to a medical provider for a physical examination or psychological/psychiatric evaluation, a licensed polygrapher for polygraph testing, or copies of medical records in connection with:

- (2) Casework planning for Medicaid-eligible youth in substitute care;

- (3) Evaluation and/or testing of youth in their own homes to determine if a substitute care placement is the most appropriate case plan. Administrative Medical Examinations payments may be authorized whether or not substitute care placement is made; or

- (4) Copies of hospital or medical records.

Stat. Auth.: ORS 422
Stats. Implemented: ORS 422
Hist.: OYA 3-1996, f. 6-26-96, cert. ef. 8-1-96

DIVISION 650

COUNTY CONTRACT COMPLIANCE

416-650-0000

Purpose and Scope

This division sets out the procedure for counties to follow and the guidelines for action by OYA when a county exceeds its allocation of closed custody beds.

Stat. Auth.: ORS 420A
Stats. Implemented: ORS 420A
Hist.: OYA 3-1997, f. & cert. ef. 9-2-97

416-650-0010

Definitions

- (1) "Area Coordinator" is The Manager for a designated number of counties served by a Regional Youth Correctional Facility, accountable to the Director of the Oregon Youth Authority, and responsible for Staff and OYA out-of-home resources in the Designated Area.

- (2) "County Contract Allocation" is the number of close custody beds available for youth from a specific county as is designated through the annual diversion contract and based on a formula established by the Juvenile Corrections Council and adopted by the Department.

- (3) "Technical Assistance" means services to aid a county to return to its contracted allocation for close custody beds which may include, but are not limited to, case consultation, resource development, and participation in the development of an ongoing community plan for the county to return to compliance.

- (4) "Close Custody" means youth correctional facilities, youth accountability camps, work-study camps, and other contracted facilities designated by the Department.

(5) "County" for purposes of this rule means the individual county or a consortium of counties.

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 3-1997, f. & cert. ef. 9-2-97

416-650-0020

Immediate Action

(1) When a County exceeds its county contract allocation, the OYA Area Coordinator shall notify the County in writing of its non-compliance and request from the county a list of youth to be returned to the community from Closed Custody Programs.

(2) Technical Assistance will be available from the OYA Area Coordinator if requested by the County.

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 3-1997, f. & cert. ef. 9-2-97

416-650-0030

30 Days Over Contracted Allocation

(1) If the county continues to exceed its county contract allocation 30 days after receiving notice, OYA Business Services will notify the Board of County Commissioners of the county in writing of the County's non-compliance and request that the Commissioners review the contract and return to compliance.

(2) Technical Assistance will be available from the OYA Area Coordinator if requested by the County.

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 3-1997, f. & cert. ef. 9-2-97

416-650-0040

60 Days Over Contracted Allocation

(1) If the county continues to exceed its county contract allocation 60 days after receiving notice, the County Commissioners shall notify OYA, in writing on or before the sixtieth day, of its plan to convene a team to review the county's non-compliance; (Suggested participants include representatives of the Oregon Youth Authority, the Commission on Children and Families, the Local Public Safety Coordinating Council, and the County Mental Health program.)

(2) Before the ninetieth day of continued non-compliance, the review team shall: complete its review of any special circumstances which resulted in non-compliance; develop a written plan to return to compliance; and formulate a review and monitoring plan to ensure that the County will remain in compliance.

(3) Technical Assistance will be available through the OYA Area Coordinator if requested by the County.

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 3-1997, f. & cert. ef. 9-2-97

416-650-0050

90 Days Over Contracted Compliance

(1) The County shall send its contract compliance plan to the office of the OYA Director for review by the ninetieth [90th] day of continued non-compliance.

(2) Failure to submit a contract compliance plan or continued non-compliance or repeated non-compliance may result in suspension of any portion of the funding made available to the County under ORS 420.017 and ORS 420.019.

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 3-1997, f. & cert. ef. 9-2-97

DIVISION 700

COMBINED RULE 7/16/98

**CONFIDENTIALITY AND INADMISSIBILITY OF
MEDIATION COMMUNICATIONS**

416-700-0100

Confidentiality and Inadmissibility of Mediation Communications.

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Mediations Excluded.** Sections (6)-(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)-(d), (j)-(l), or (o)-(p) of section (9) of this rule.

(7) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in sections (8)-(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) **Written Agreement.** Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or non-discoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) **Exceptions to confidentiality and inadmissibility.**

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent

proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties in the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Director or Deputy Director or other appropriate persons determine that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use of disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

[ED. NOTE: The form referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.224, ORS 36.228, ORS 36.230 & ORS 36.232

Hist.: OYA 1-1998(Temp), f. 8-13-98, cert. ef. 8-17-98 thru 2-13-99

DIVISION 800

CRIMINAL HISTORY RECORDS CHECKS FOR OYA APPLICANTS AND EMPLOYEES

416-800-0000

Purpose

(1) A major part of the Oregon Youth Authority's mission is to protect the public. In order to achieve this goal, we need to employ, train, support and empower a competent and diverse workforce. Because we also value excellence in public service to the youth committed to the Oregon Youth Authority, local com-

munities and other agencies, the Oregon Youth Authority (OYA) will conduct criminal offender/criminal history information background checks, as described in these rules, for persons who seek to be employed with the OYA as well as potential employers who seek to hire OYA youth in off-facility work programs.

(2) These rules provide the procedures which OYA will use to obtain criminal offender/criminal history information on applicants and subject individuals who apply for a position with OYA, applicable contracted employees and those persons who seek to hire OYA youth in off-facility work programs, and explain how OYA will apply such information to its determination of employability or suitability to hire OYA youth.

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 5-1997, f. & cert. ef. 10-13-97

416-800-0010

Scope of Rules

Consistent with the purpose of these rules, the OYA will issue employability decisions for applicants who apply and are being considered for a position with the OYA, for subject individuals who have been offered a position with OYA, for applicable contracted employees, and will decide whether potential employers may hire OYA youth.

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 5-1997, f. & cert. ef. 10-13-97

416-800-0020

Definitions

(1) "Agency Agreement" means a written agreement between the Oregon State Police and a Criminal Justice or designated agency as defined by ORS 181.010 authorized to receive criminal offender information, specifying the terms and conditions of accessing and receiving Oregon Computerized Criminal History information to assure compliance with state and federal regulations.

(2) "Applicant" means any person who applies to and is being considered for a position of employment with the Oregon Youth Authority.

(3) "Applicable Contracted Employee" means any person performing contracted work on OYA premises where he/she will be operating without close supervision and for an extended period of time.

(4) "Computerized Criminal Records Checks" refers to the access and use of automated or manual files, or associated systems available to the Oregon Youth Authority, as a criminal justice agency, through the Law Enforcement Data Systems (LEDS) including on-line information from the Federal Bureau of Investigation's National Crime Information Center (NCIC), and the National Law Enforcement Telecommunications System (NLETS).

(5) "Criminal Offender Information" means records, including fingerprints and photographs, received, compiled, and disseminated by the Oregon State Police for purposes of identifying criminal offenders and alleged offenders and maintained as to such persons' records of arrest, the nature and disposition of criminal charges, sentencing, confinement and release, and includes the OSP Computerized Criminal History System.

(6) "Director" means the director of OYA.

(7) "Employee" means an individual who holds a paid position with OYA.

(8) "FBI" means the Federal Bureau of Investigation.

(9) "Fingerprint-Based Criminal Offender Information" means criminal offender information compiled and maintained by the Bureau of Criminal Identification regarding persons who have been arrested for crimes where law enforcement agencies have submitted fingerprints and other identifying data as required by ORS 181.515 and/or federal statutes, or as deemed appropriate by the submitting law enforcement agency for the purpose of identification.

(10) "Information Required" means all information requested by the Oregon Youth Authority for processing criminal records checks, including fingerprint checks.

(11) "OSP" means the Oregon State Police.

(12) "Potential employer" means a person who seeks to hire OYA youth for off-facility work programs.

(13) "Subject Individual" means any individual who has been offered employment into a position or a rotational assignment with the Oregon Youth Authority on or after January 1, 1996.

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 5-1997, f. & cert. ef. 10-13-97

416-800-0050

Crimes To Be Considered

(1) The OYA has determined that conviction of serious felonies and misdemeanors which demonstrate jeopardy to the safety of children, youth, or other vulnerable persons, or demonstrate lack of moral fitness, is fundamentally inconsistent with being an employee of the OYA. Subject to section (2) of this rule, conviction of such crimes will disqualify an applicant or subject individual from employment, cause the denial of access to OYA premises to an applicable contracted employee or cause OYA to refuse to allow OYA youth to work for a potential employer.

(2) Factors to be considered by the OYA Employee Services Section in determining employability based on information available to OYA and information provided by the subject individual include:

(a) Types and number of offenses;

(b) Passage of time since the crime was committed;

(c) Circumstances surrounding the commission of the crime;

(d) Intervening circumstances since the commission of the crime;

(e) Relationship of the facts under subsections (a) through (d) of this section to the specific employment requirements of the subject individual.

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 5-1997, f. & cert. ef. 10-13-97

416-800-0060

Procedures

(1) The OYA shall conduct a computerized criminal records check on all applicants who apply directly to and/or are in final consideration for positions of employment with the Oregon Youth Authority. The OYA shall also conduct a computerized criminal records check on all applicable contracted employees or potential employers of youth. All applicants, applicable contracted employees and potential employers will be notified of this requirement at the time they apply. If the applicant, applicable contracted employee or potential employer refuses to consent to a computerized criminal records check, OYA shall not further consider the applicant for employment, may deny access to OYA premises to the applicable contracted employee and may refuse to allow the potential employer to hire OYA youth.

(2) Any subject individual (as defined in OAR 416-800-0020), shall consent to a criminal offender information records check, including fingerprints. All applicants will be notified of this requirement at the time they apply and criminal records check consent forms shall contain a notice that employment, or continued employment, is subject to completion of a fingerprint-based criminal offender information records check. If the subject individual refuses to consent or refuses to be fingerprinted, the OYA shall not employ the subject individual, contract with the individual or allow the individual to hire OYA youth, or if already employed, shall terminate the permanent or probationary employment of the individual.

(3) Applicants, subject individuals, applicable contracted employees and potential employers of OYA youth shall provide all information required for a criminal offender information records check on forms and fingerprint cards provided by OYA

and according to procedures established by OYA. Information required includes:

(a) OYA form #238, "Authorization for Criminal Records Check for OYA Employees" from applicants.

(b) Two properly completed FBI fingerprint cards, #FD 258 from the subject individual;

(c) A properly completed and signed OYA form 239 from the subject individual;

(d) As part of the consent to a criminal records check, OYA may request applicants, subject individuals, applicable contracted employees and potential employers to consent to the use of their social security number for use in conducting the criminal records check.

(4) OYA shall conduct computerized criminal offender records checks on all applicants, applicable contracted employees and potential employers and shall request fingerprint based criminal offender information on all subject individuals from OSP and the FBI.

(5) This rule provides that an applicant, applicable contracted employee or subject individual for employment with OYA may be hired on a probationary basis for a position upon satisfactory completion of the computerized criminal records check, but prior to the return of the fingerprint based criminal offender records check.

(6) The Oregon Youth Authority shall review the criminal offender information, including fingerprint-based criminal offender information for subject individuals offered employment in a position with OYA on or after January 1, 1996.

(7) Subject individuals who have been determined to be not employable pursuant to OAR 416-800-0050, shall be denied employment, or have their current or probationary employment terminated, upon notification from the OYA director or designee.

(8) OYA shall inform the applicant or subject individual that they are not employable, the applicable contracted employee that they will not be allowed access to OYA premises and the potential employer that they will not be allowed to hire OYA youth, per OAR 416-800-0060, inform them of their right to inspect and challenge their Oregon criminal offender information through the Oregon State Police procedures as adopted per ORS 181.555(3) and OAR 257-010-0035, and that they may challenge the accuracy or completeness of any entry on their criminal records obtained from the FBI by filing a challenge with the Assistant Director of the FBI Identification Division, Washington, DC 20537-9700.

(9) Upon OYA's determination that a subject individual is not employable, the OYA Director or his designee shall inform the hiring supervisor/manager.

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 5-1997, f. & cert. ef. 10-13-97

416-800-0070

Moral Fitness Standards for Applicants/Employees

(1) Lack of moral fitness is not restricted only to acts which reflect moral turpitude, but extends to conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or nation.

(2) The following are indicators of a lack of moral fitness:

(a) Illegal conduct involving moral turpitude.

(b) Conduct involving dishonesty, fraud, deceit or misrepresentation.

(c) Intentional deception or fraud in any application, examination, or other document for securing certification of eligibility for certification.

(d) Conduct that is prejudicial to the administration of justice.

(e) Conduct that adversely reflects on the person's fitness to perform as a Youth Correction Officer.

(3) If the Oregon Youth Authority receives reliable evidence that an applicant lacks good moral fitness, a rebuttable presumption will be raised that the applicant does not possess the requisite

moral fitness to be an employee. The burden shall be upon the applicant to prove good moral fitness.

Stat. Auth.: ORS 420A

Stats. Implemented: ORS 420A

Hist.: OYA 5-1997, f. & cert. ef. 10-13-97

