

**California Department of Corrections & Rehabilitation
Division of Juvenile Justice**

Title 15, California Code of Regulations

**ACCEPTANCE AND REJECTION CRITERIA FOR
YOUTH WITH MEDICAL AND MENTAL HEALTH CONDITIONS**

Criminal Court Commitment

Sections 4166, 4168, 4168.5., 4168.7, 4169, 4169.5, 4169.9

Juvenile Court Commitment

Sections 4170.5, 4171, 4171.5, 4172, 4173, 4174, 4174.5, 4174.6

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

Section 4166 of the proposed regulations originally noticed to the public reflected the legal requirement for the California Department of Corrections & Rehabilitation (CDCR) Division of Juvenile Justice (DJJ) to implement policies and procedures for Acceptance and Rejection Criteria for Youth with Medical or Mental Health Conditions.

However, in response to written comments from members of the directly affected public, the Division has decided to make some modifications to the proposed regulation text. In other sections, the proposed regulation text will not be modified as a result of public written comment because the language is consistent with the law.

SUMMARY OF WRITTEN COMMENTS AND RESPONSES TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF OCTOBER 2, 2009 THROUGH NOVEMBER 16, 2009.

WRITTEN COMMENT NO. 1: Karen Pank, Executive Director, Chief Probation Officers' of California (CPOC) wrote that in Art.1, Section 4166 - add to subdivision (f) a local representative to be involved in this decision making process as it is reflective of the continuum of care.

Response: The Division of Juvenile Justice (DJJ) disagrees with the commenter. There will be no change to the proposed regulation text. The language in the proposed regulation text is consistent with the law, Welfare & Institutions Code 736(b) as well as existing regulations.

WRITTEN COMMENT NO. 2: Karen Pank, Executive Director, CPOC wrote that in Art.2, Section 4168.5 – clarify who is required to do the mental health assessment – a Psychiatrist or a Marriage, Family and Child Counselor (MFCC).

Final Statement of Reasons – Acceptance & Rejection Criteria for Youth with Medical or Mental Health Conditions

Response: The DJJ agrees with the commenter and the changes have been made in the proposed regulation text to specify that a Licensed Clinical Provider shall be required to complete the Mental Health Information from Outside Agencies Form (DJJ 1.205) (Revised 4/2010).

PLEASE NOTE: The form that was submitted with the proposed regulation text has some additional changes. The title of the form is changed to clarify the fact that the form was not completed by DJJ staff and the revision date was changed to 4/2010. The revised form is attached and will be incorporated by reference.

Also, Form DJJ 1.411 Referral Document (Revised 12/07) is attached and will be incorporated by reference.

WRITTEN COMMENT NO. 3: Karen Pank, Executive Director CPOC wrote that in Art.3, Section 4168.7 – Provides for discretion in rejection criteria that is too expansive. Part of the purpose of DJJ is to provide services for those youth that the local governments do not have the appropriate programmatic and staffing resources to provide services.

Response: The Division has revised the proposed regulation text to clarify that no medical or mental health condition is an absolute barrier to a youth's acceptance to DJJ. Each youth is evaluated on an individual basis.

WRITTEN COMMENT NO. 4: Patricia Stewart, Chief Probation Officer (CPO) of Santa Barbara County wrote that in Section 4168.7 (C), it is clear in Section 4174 Acceptance & Rejection Action that the DJJ will make a decision to either accept or reject a committed youth within 16 work-hours, or as soon thereafter as possible, after receipt of the required documents; however, the time period for the review process as outlined in Section 4168.7 is not specified in the proposed text. It is requested that a reasonable time period be established and that this time period be included, if not in the proposed text, at minimum, in the DJJ's Operational Policies and Procedure Manual and that counties be advised of the time period of said review. This is an important component to the dispositional decision-making process, as the youth in question will be held in custody, pending this final decision by the Chief Deputy Secretary/designee. This will also apply to Section 4171.5.

Response: This section of the proposed regulation text has not been revised by the DJJ. Each youth that raises concerns related to commitment and acceptance may present different medical and/or mental health conditions. This often requires DJJ to secure additional medical records, via court order, for review. Attaching a specific timeframe for completion is too difficult and restrictive as DJJ must make informed decisions on acceptance and rejection of youth. Section 4174, Acceptance or Rejection Action specifically states that DJJ shall make a decision to accept or reject a committed youth within 16 work-hours, or as soon thereafter as possible, after the receipt of the information and documents.

WRITTEN COMMENT NO. 5: Sue Burrell, Youth Law Center (YLC) wrote that with respect to youth who are borderline psychiatric or borderline mentally deficient should be stricken. This is the language that was specifically amended out of Welf. & Inst. Code, Section 734, because it is offensive and archaic. See the legislative history for SB 1742 (Stats. 2006). It is just as offensive to refer to youth by these terms in a regulation as it is in the statute.

WRITTEN COMMENT NO. 5A: Karen Pank, CPOC wrote that Art. 3, Sections 4170.5 and 4171 creates issues of a lack of suitable alternatives to provide for these youth.

Response to 5 AND 5A: The Division looked at the statute as re-written and agreed to change the proposed regulation text to be consistent with language in the law. In regards to lack of suitable alternatives, the Interdisciplinary Team Process has been established to address the issue of alternative placements for youth who may not be acceptable for DJJ.

WRITTEN COMMENT NO. 6: Sue Burrell, YLC wrote that discussion in the proposed regulation text, Section 4171(b)(1)(A) on capacity should more closely track the acceptance criteria delineated in the Temporary Departmental Order. The current draft language is too vague to be useful.

WRITTEN COMMENT NO. 6A: Karen Pank, CPOC wrote that Art 3, Sections 4170.5 and 4171 creates issues of a lack of suitable alternatives to provide for these youth.

Response to 6 and 6A: The Division agreed with the comments and changes have been made to the proposed regulations text to specify the considerations when making the determination of whether or not a youth has the capacity to change/materially benefit from the programs/services offered by DJJ. This will also apply to Section 4168.

WRITTEN COMMENT NO. 7: Sue Burrell, YLC wrote that the proposed regulations need to include the additional agreement in Farrell, reflected at p. 35 of the Mental Health Remedial Plan that DJJ will not accept youth needing long-term inpatient mental health services. This needs to be explicitly stated in the regulations - perhaps in 4171.5 - this is hinted at in relation to material benefit, but since this was an important part of the Farrell negotiations, it needs to be in the regulations.

Response: Changes have been made to the proposed regulation text in Section 4171 (b) (1) (A) to ensure that a youth's need for long-term inpatient care be considered when making a determination of his/her capacity to benefit from a commitment to DJJ. This will also apply to Section 4168.

WRITTEN COMMENT NO. 8 AND 9: Patricia Stewart, CPO Santa Barbara County wrote that since it is stated that the change in proposed legislation will not present any cost to local agencies or school districts, the assumption is that services provided in "alternative programs" is referring to an alternative state programs, otherwise the statement on page 3, relative to the proposal being cost neutral would not be accurate.

Response: The ability to accept or reject youth committed to DJJ is existing law. These regulations define the parameters in which acceptance and rejection decisions are made. Therefore, since it is not a new authority given to DJJ and the ability to reject youth has been in place, there is no new cost to the counties. Services provided in "alternative programs" will vary dependent upon the needs of the youth and there is not an assumption that the alternative is a state program.

WRITTEN COMMENT NO. 10: Karen Pank, CPOC wrote that the proposed regulations allow DJJ to take into consideration, when determining whether to accept or deny a youth, whether or not they have adequate staffing levels. Additionally, the regulations allow the Department to reject youth committed to DJJ for additional reasons than those covered under current policy such as expanded medical, mental health, and educational reasons. These changes will certainly have an impact on county juvenile facility populations and in many cases will result in increased population and supervision of juveniles at the county level. In light of past year budget cuts, current year deficits, and growing projections for future year deficits, it is untenable for probation departments to assume the additional costs associated with these regulations.

Response: The ability to accept or reject youth committed to DJJ, as well as the broad parameters in which to do so, is existing law (W&I Code 736). These regulations better define the parameters in which acceptance and rejection decisions are made. Therefore, since it is not a new authority given to DJJ and the ability to reject youth has been in place, there is no new cost to the counties.

PLEASE NOTE: The footer in the Proposed Regulation Text in both the Criminal Court Commitment and the Juvenile Court Commitment is changed from TEXT: Division of Juvenile Justice to TEXT: Acceptance and Rejection Criteria For Youth With Medical or Mental Health Conditions.

COMMENTS RECEIVED DURING THE PERIOD THE MODIFIED TEXT WAS AVAILABLE TO THE PUBLIC.

The modified text was made available to the affected public from May 3, 2010 through May 18, 2010. The CDCR, DJJ did not receive any comments on the modified text.

ALTERNATIVES DETERMINATION

The DJJ has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

LOCAL MANDATE DETERMINATION

This action imposes no mandates on local agencies or school districts or a mandate which requires reimbursement pursuant to Government Code Sections 17500-17630.

INCORPORATION BY REFERENCE

The forms Referral Document DJJ 1.411 (Revised 12/07) and Mental Health Information from Outside Agencies DJJ 1.205 (Revised 04/10) will be incorporated by reference. Publication of these incorporated documents in full in the CCR would be cumbersome, unduly expensive or otherwise impractical.