



TEXAS DEPARTMENT  
OF  
CRIMINAL JUSTICE

**NUMBER:** BP-03.81 (rev. 4)

**DATE:** August 21, 2019

**PAGE:** 1 of 17

**SUPERSEDES:** BP-03.81 (rev. 3)  
December 15, 2017

## BOARD POLICY

---

**SUBJECT:** RULES GOVERNING OFFENDER ACCESS TO THE COURTS, COUNSEL, AND PUBLIC OFFICIALS

**AUTHORITY:** 28 U.S.C. § 1746; Tex. Civ. Prac. & Rem. Code § 132.001; Tex. Gov't Code §§ 492.001, 492.013(a), 493.001, 494.001, 494.002(a), 499.102(a)(12); Vienna Convention on Consular Relations and Optional Protocols, art. 36, Apr. 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261; *Lewis v. Casey*, 518 U.S. 343 (1996); BP-02.08, "Statement of Internal Controls"

Reference: *Access to Courts Procedures Manual*

**APPLICABILITY:** Texas Department of Criminal Justice (TDCJ)

### **POLICY:**

Every offender has the right of access to state and federal courts, legal counsel, public officials, and agencies. Every foreign national offender has the right to communicate with an official from the consulate of the offender's country. Offenders may present any issue, including challenges to the legality of their confinement, redress for improper conditions of confinement, remedies for civil law problems, claims against correctional officials and other governmental authorities, and any other right protected by constitutional or statutory provisions, or by common law. Offenders may confer about legal matters, subject to regulation of time, place, and manner necessary to maintain the security and order of the institution. Officers, employees, or agents of the TDCJ shall not interfere with, harass, punish, or otherwise penalize any offender as a result of participation in litigation, either as a party or a witness, or for filing or threatening to file a lawsuit, grievance, appeal, or other complaint about prison conditions or official misconduct, or for discussing with others or writing in accordance with TDCJ rules and regulations to others about actual or potential legal action or other forms of grievance and complaint. TDCJ rules and regulations regarding offender legal mail are contained in BP-03.91, "Uniform Offender Correspondence Rules," and are not addressed within this policy.

State Counsel for Offenders (SCFO) provides legal services to indigent offenders in the TDCJ, except those relating to civil rights issues, TDCJ policy and procedure issues, or fee generating

issues. SCFO policies and procedures are not addressed in this policy. Information regarding how offenders may contact the SCFO is contained in the *Offender Orientation Handbook*.

The Rules Governing Offender Access to the Courts, Counsel, and Public Officials were developed for the purpose of assisting offenders in gaining access to the courts. These rules are intended to guide staff and offenders in matters related to offenders' legal work. The rules shall be published on the TDCJ website and in the *Offender Orientation Handbook*. All forms mentioned in this policy requiring submission by an attorney shall be published on the TDCJ website.

### **DEFINITIONS:**

“Attorney” is any attorney licensed by and currently in good standing with any state bar of the United States.

“Business Day” is Monday through Friday, excluding state and national holidays for which the TDCJ’s administrative offices are closed, and days when offices are closed at the direction of the TDCJ executive director, for example, during adverse weather conditions.

“Designated Representative” is any individual, such as a paralegal employee, legal assistant, clerk, student, investigator, expert, or interpreter, visiting with a TDCJ offender for matters related to an attorney-client or attorney-witness relationship, as certified by the attorney, and for no other purpose.

“Director’s Review Committee” (DRC) is the central and final authority for all appeals related to the suspension or restriction of an attorney’s or attorney representative’s visitation of an offender. The operations of the DRC are described in AD-03.93, “Function of the Director’s Review Committee.”

“Expert” is a licensed professional, such as a psychiatrist, psychologist, or polygrapher, used by an attorney to perform an examination of or a test on an offender for purposes of a criminal, civil, or habeas court proceeding or for purposes of parole consideration.

“Unit Access to Courts Supervisor” is responsible for the administration of the unit’s law library and the provision of guidance to correctional staff assigned to the law library and unit staff regarding access to courts (ATC) matters.

### **PROCEDURES:**

#### I. Law Libraries

A law library collection shall be maintained at every unit. If a specific legal research item is not available at an offender’s unit of assignment, the offender may submit a written request to the unit ATC supervisor stating the need for the item as well as justification for

a legal accommodation. The following legal materials shall be available in printed form or through an electronic legal research system.

A. Law Library Collections, Conditions, and Supplies

1. Law Library Collections: Each of the items below or its equivalent shall be made accessible either as part of the unit's law library collection or through the Intra-Law Library Loan Program.
  - a. Federal Reporter 2d
  - b. Federal Reporter 3d
  - c. Federal Supplement
  - d. Federal Supplement 2d
  - e. Federal Supplement 3d
  - f. Supreme Court Reporter
  - g. Southwestern Reporter 2d, Texas Cases
  - h. Southwestern Reporter 3d, Texas Cases
  - i. United States Code Annotated, following volumes only:
    - (1) Constitution (all)
    - (2) Title 8 Aliens and Nationality (all)
    - (3) Title 21 Food and Drugs (all)
    - (4) Title 42 Public Health and Welfare (all)
  - j. Vernon's Texas Annotated Statutes and Codes: The Civil Practices & Remedies Code, Texas Constitution, Family Code, Government Code, Health & Safety Code, Code of Criminal Procedure, and Penal Code
  - k. *Texas Digest*
  - l. Pamphlets:
    - (1) Federal Civil Procedure Code and Rules

- (2) Federal Criminal Code and Rules
- (3) Texas Criminal Procedures Code and Rules
- (4) Texas Rules of Court, State
- (5) Texas Rules of Court, Federal
- m. One Legal Research Guide or Manual
- n. *Black's Law Dictionary*
- o. *United States Constitution*, contained within *Black's Law Dictionary*
- p. State Postconviction Remedies and Relief – Habeas Corpus
- q. Shepard's Citations: Texas and Federal
- r. Texas Criminal and Traffic Law Manual
- s. Texas Legal Directory
- t. *TDCJ Disciplinary Rules and Procedures for Offenders*, English and Spanish
- u. *Offender Orientation Handbook*, English and Spanish
- v. *SCFO Offender Legal Handbook*
- w. Law Libraries Serving Prisoners
- x. Court-provided forms
- y. Rules of the Texas Board of Pardons and Paroles, 37 Texas Administrative Code §§ 141 - 150
- z. *Offender Health Services Plan*
- aa. Correctional Managed Care Formulary
- bb. Consular Notification and Access
- cc. Directory of Foreign Consular Corps

- dd. Texas Session Laws (1989 – current)
- ee. Court Structure of Texas (flow chart)
- ff. Venue list for Texas state and federal courts
- gg. Intra-Law Library Loan Program Holdings List

Published volumes or equivalent of case decisions are maintained by copyright date. Case decisions shall be maintained as follows: Federal Reporters for the previous 25 years; Federal Supplements for the previous 20 years; Supreme Court Reporters for the previous 30 years; and Southwestern Reporters for the previous 20 years.

2. Law Library Conditions: The room designated by the warden as the law library shall be of sufficient size to accommodate the law book collection and to provide adequate workspace for the number of offenders permitted to attend the law library at one time.
3. Law Library Supplies: Each unit shall make available to offenders, including offenders in any form of restrictive housing, writing instruments, paper, carbon paper, postage, and envelopes necessary and appropriate for the processing of legal matters through commissary purchase or the indigent supply program. Indigent offenders shall be provided supplies in accordance with BP-03.91, “Uniform Offender Correspondence Rules.”

#### B. Direct Access Offenders

Offenders may have direct access to the law library, based on custody level or housing assignment. Offenders who do not fall into one of the categories indicated in Section I.C will be considered direct access.

1. Schedule: Each unit shall have a posted schedule for law library access ensuring the opportunity for 10 hours of access per week. The schedule shall take into account offenders’ work assignments and other programmatic activities offered at the unit. The schedule shall assure that at least one law library session is available on the weekend.
2. Extra Time for Law Library Use: Any offender who demonstrates the need for extra time for law library use shall submit an I-60, Offender Request to an Official, to the unit ATC supervisor. Upon justification of need, such requests shall be granted for use of the law library during the period an offender is not involved in programmatic activities.

3. Misconduct During Law Library Periods: An offender who has been found guilty of a major disciplinary offense under Code 17.0 of the *TDCJ Disciplinary Rules and Procedures for Offenders* related to stealing, or Code 18.0 related to damaging law library books or materials, may be denied direct access to the law library per guidelines established in the *Access to Courts Procedures Manual*. During such period, the offender shall be provided indirect law library access.
4. At times it may be necessary to strip-search offenders to ensure staff and offender safety or detect the presence of contraband. However, an offender shall not be strip-searched as a condition of entering or exiting the law library, unless the search is conducted for a specific security purpose. Strip-searches shall only be used when directed by specific unit post orders, unit departmental policy, or when a supervisor believes reasonable cause exists to warrant such a search, and in accordance with AD-03.22, "Offender Searches."

C. Indirect Access Offenders

Offenders may have indirect access based on custody level and/or being assigned to a physical location that prevents them from accessing the law library. These may include: G5/J5/P5; P7; restrictive housing; trusty camp; facilities equipped with a mini law library; or other areas that prevent an offender from having direct access to the law library.

1. Legal Research Material
  - a. Offenders in any of the above categories shall not be afforded direct access to the law library. They shall be allowed to request and receive up to three items of legal research materials per day, delivered on three alternating days per week, such as M-W-F, from the unit's law library collection for in-cell use.
  - b. Offenders who steal, damage, destroy, or refuse to return legal research material may be subject to formal disciplinary action under Code 17.0 or 18.0 of the *TDCJ Disciplinary Rules and Procedures for Offenders*. In addition, the agency's ATC manager, in accordance with the *Access to Courts Procedures Manual*, may temporarily suspend delivery of legal research materials to any offender in the above category for stealing, damaging, destroying, or refusing to return legal research materials.
2. Legal Visits: Offenders may request a same-session or legal visit for the purpose of conferring with another offender on legal matters by sending an I-60 to the unit law library.

## II. Offenders' Legal Material

- A. Storage and Access: Offenders may store their own or other offender's legal materials in their cells or dormitories in accordance with AD-03.72, "Offender Property," and the *Access to Courts Procedures Manual*. Offenders shall have access to their legal materials on a daily basis.
- B. Searches of Offender Legal Materials
  - 1. General Procedures: Legal materials, including pleadings, transcripts, books, notes, drafts, and correspondence to and from attorneys, courts, and public officials, belonging to an offender are confidential. They may not be read by staff as part of a search; however, they may be physically inspected in accordance with AD-03.72 to see that no physical contraband such as weapons or drugs is secreted in them. During the course of any search, staff members shall not scatter, destroy, or otherwise unduly disrupt the offender's legal material. Consistent with AD-03.02, "Impermissible Offender Conduct," no offender shall be allowed to participate in any manner in the search of another offender's legal material.
  - 2. Search of Written Materials: An offender's legal materials may only be searched for written contraband if there is a reasonable suspicion the offender is in possession of written contraband. This shall be documented in writing and approved by the warden or assistant warden prior to search, using the I-186, Authorization to Search Legal Material for Written Contraband. Scanning for written contraband shall be done in the presence of the offender in accordance with the *Access to Courts Procedures Manual*.
  - 3. Written Notice: If any written material is removed from an offender's legal material and confiscated by a staff member during the course of a search, the offender shall receive written notice of the confiscation within 48 hours using the I-185, Notice of Confiscation of Written or Printed Material During Search for Written Contraband, informing the offender of the property removed, the reason for the removal, and the offender's right to file a grievance.

## III. Performance of Legal Work

- A. Locations and Times
  - 1. Locations: Offenders may perform legal work in the unit's law library, in their cells, or in other areas designated by the warden. Offenders may not

perform legal work in the dayroom, but may possess their legal documents in the dayroom while awaiting departure from or upon return to the housing area.

2. Times: Offenders may perform legal work in their cells or in other areas designated by the unit during their off-work periods. Offenders may perform legal work in the law library in accordance with the unit's law library schedule.

B. Offenders Assisting Other Offenders on Legal Matters

1. Assistance Permitted: Offenders shall be permitted to assist or advise each other on legal matters in accordance with this policy and other TDCJ rules and regulations.
2. Misconduct Related to Legal Work: The direct or indirect offer, request, or receipt of a payment, benefit, or reward in exchange for legal assistance shall be a disciplinary violation.
3. Law Library Periods: Offenders who wish to confer with each other in the unit law library shall obtain verbal permission from the officer in charge, unless unit policy permits such assistance without prior permission. Offenders shall be required to confer quietly so as not to disturb other offenders.
4. Legal Visits: Offenders who wish to confer with each other regarding legal matters, but are unable to do so without special arrangements, shall submit an I-60 to the unit ATC supervisor. A desk or table and chairs shall be provided when such legal visits are held. The reason for any denial of a request to confer shall be provided in writing.

IV. Notary Public Services

- A. Documents: Under both federal law (28 U.S.C. § 1746) and state law (Texas Civil Practice and Remedies Code § 132.001), offenders incarcerated in Texas may use an unsworn declaration under penalty of perjury in place of a written declaration, verification, certification, oath, or affidavit sworn before a notary public. Documents will continue to require notary public service if they are destined for another state or country requiring notary public service, notarization is requested by an attorney, or they are specifically exempted from the laws on unsworn declarations.
- B. Scheduling: Offenders may request notary public service by submitting an I-60 to the unit ATC supervisor. Offenders requesting notary public service shall explain why an unsworn declaration will not be legally sufficient. Requests shall be acted

upon, either denied or provided, within three business days of the receipt of the request.

V. Attorney Visitation

- A. **Periods of Visitation:** Except as limited by this policy, an offender may have a visit from an attorney or designated representative on business days for any length of time between 8:00 a.m. and 5:00 p.m., including lunch and dinner hours. In cases where there is a compelling circumstance, the warden or designee may permit the visit to extend past 5:00 p.m. On Saturdays, Sundays, and state and national holidays, attorneys or designated representatives may visit subject to the rules governing non-attorney visits. At the warden's discretion, an attorney seeking to visit an offender on Death Row on a non-business day may be permitted to do so if the attorney offers a reasonable explanation, without violating the attorney-client or work product privileges, for the necessity of a visit before the first business day following the date of the requested visit.
- B. **Notice:** By 3:30 p.m. of the business day immediately preceding the date that an attorney or designated representative wishes to visit an offender, the attorney shall give the name and profession of each visitor, the name of each offender to be visited, and an estimated arrival time to the warden or designee of the offender's unit of assignment. The attorney shall also give the estimated time at which the attorney or designated representative would like to visit each offender in the case of multiple offenders assigned to the same unit. After the attorney or designated representative has arrived at the unit and provided proper identification, the warden or designee shall produce the offender for the visit without unreasonable delay.
- C. **Identification**

This section does not apply to SCFO attorneys or employees of the Office of the Attorney General (OAG).

- 1. **Attorneys:** Attorneys shall satisfactorily identify themselves to the warden or designee and complete and sign a copy of the I-163, Attorney Application to Visit TDCJ Offender. An attorney bar card and either a valid driver license, identification (ID) card issued by a governmental agency that includes a photograph, or valid United States passport are satisfactory ID. Any other individuals accompanying an attorney shall have the attorney complete the I-166, Attorney Authorization for Approved Representative to Visit TDCJ Offender, before the visit is considered and official identification shall be required.
- 2. **Designated Representatives:** Once written authorization to serve as an attorney's designated representative has been filed with and approved by

the TDCJ, upon arrival at the unit and before the visit, the representative shall present satisfactory ID, either a valid driver license, ID card issued by a governmental agency that includes a photograph, or a valid United States passport, to the warden or designee and provide a copy of the I-166. If the attorney has already provided the unit with the I-166, the representative need not provide an additional copy.

- D. Designated Representative's Application to Visit: For TDCJ approval to serve as an attorney's designated representative, the designated representative shall submit a completed and signed copy of the I-164, Application to Visit TDCJ Offender as Attorney's Representative, to the ATC central office at least one week before the first requested visit to TDCJ as that attorney's representative.

The TDCJ shall maintain the confidentiality of all information provided on all completed applications. If the answer to any question leads the TDCJ to reasonably believe that a visit by the representative may pose a legitimate threat to security, the TDCJ may ask additional questions of the representative that are reasonably calculated to lead to the discovery of information that would prove the existence or extent of such security threat. If it is determined that such security threat exists, the application may be denied and a written response detailing the reason for denial shall be provided to the sponsoring attorney.

The I-164 shall be resubmitted every two years and the unit staff shall contact ATC headquarters to verify the representative's eligibility. If the attorney's designated representative has completed the I-164 in the last 24-month period for the same attorney and it was approved, it need not be re-submitted before a visit to a unit.

- E. Limits on Number, Persons, and Type of Visit: Offenders are not limited in the number or length of visits by attorneys or attorney representatives. Requests will be subject to reasonable regulation of the time, place, and number of participants; and subject to the warden or designee's determination whether such a visit would threaten security. The attorney may visit with other offenders on the same day at the same unit, subject to the same considerations listed above.

Attorney visits shall be non-contact, unless the unit's configuration provides only contact visitation or in the case of an expert visiting as a designated representative. Before a contact visit by an expert is granted, the expert and the expert's sponsoring attorney shall provide a completed I-165S, Attorney Initiated Contact Visit for Specialized Professional, to the warden or designee explaining that a contact visit is necessary for the validity of the examination or test and also provide a detailed list of the items the expert will need to conduct the examination or test. Only the expert, each party's attorney, and the offender may participate in an attorney-initiated expert contact visit.

F. Rejection by Offender of Visitation Request: Immediately after an attorney who has been approved for a visit with an offender arrives at the offender's unit of assignment and completes the I-163, or when appropriate, the I-166 or the I-165S, the warden or designee shall notify the offender of the requested visit. If the offender objects to such a visit, the warden or designee shall deny the attorney or the designated representative the right to visit with the offender, provided that immediately after the offender's objection is communicated to the warden or designee, the offender, or two witnesses in case the offender refuses to sign, signs and swears to a completed copy of the I-167, TDCJ Offender Refusal to Visit Attorney or Attorney Representative. Immediately after completion of the I-167, a copy of the completed and signed I-167 shall be given to the offender refusing the visit and to the attorney whose visit was refused.

G. Visitation Procedures

1. Privacy: Unless requested to do otherwise by either the attorney or the offender, the warden or designee shall respect the privacy of the visit and maintain a sufficient distance from the visiting offender and attorney or designated representative to preserve the privacy of communications between them. This rule does not limit the ability of the warden or designee to maintain visual surveillance during the visit or to terminate the visit in case of a threat to security. Attorney visits shall be conducted in the designated attorney visitation area.
2. Items Permitted with Attorney or Designated Representative: Attorneys and designated representatives may bring briefcases, attaché cases, computer laptops, and personal digital assistants into the visiting area. Attorneys or designated representatives may also bring a voice or audio recorder into the visitation area to be used only for taking notes of the interview with the offender and for recording the conversation between the attorney or designated representative and the offender, but for no other purpose.

Cell phones, broadcast or transmission equipment, or wireless communication devices used to communicate with a third party shall never be permitted; however, upon justification of need the warden or designee may permit the use of certain electronic equipment, such as a video camera, stenotype machine, or polygraph equipment. To request such consideration, an attorney shall provide the warden or designee with a justifiable reason for the allowance and attest that the use of the equipment is absolutely essential to facilitate the attorney-client relationship.

The warden or designee may open and inspect any item, such as briefcases, attaché cases, and tape recorders, but only in the attorney's or designated representative's presence and only for the purpose of detecting

contraband. The warden or designee may also search the attorney or designated representative for weapons and contraband.

3. **Items Permitted with Offender:** Offenders may only bring pertinent legal documents, writing paper, and a writing utensil into the visiting area. Those documents may be inspected by the warden or designee, but only in the offender's presence and only for the purpose of detecting contraband.
4. **Exchange of Items:** The area used for the attorney-offender visit shall have a pass-through slot available for the attorney or designated representative and the offender to directly and confidentially exchange documents. The exchange of voluminous legal documents may require the assistance of staff.
5. **Rejection of Contraband Articles:** If an item constituting contraband as defined in AD-03.72 is found in an inspection, the warden or designee shall reject the contraband, immediately give each attorney and offender who participated in the exchange a written statement of the reason for the rejection, and may terminate the visit if such action is reasonable in relation to the seriousness of the violation as determined by the nature of the contraband. The offender or attorney may appeal the rejection through the procedure outlined in this policy.
6. **Removal of Items:** An attorney may remove from the unit any document received from an offender. An offender may remove from the visitation area any document received from an attorney unless the item is deemed contraband.
7. **Writing Utensils:** If writing utensils and paper are not available in the visiting area for use by offenders, an attorney is permitted to transmit these items to the offender. After completion of the visit, staff shall return the writing utensils and unused paper to the attorney, but the offender shall be permitted to choose whether to retain all paper used during the visit or to give it to the attorney.
8. **Depositions:** Due to the limited space and availability of locations within a correctional setting in which depositions can be securely accommodated, attendees shall be limited to attorneys, designated representatives, court reporters, videographers, and the offender. Depositions may be non-contact if security consideration requires it and the unit configuration permits it. Requests shall be provided in writing at least one week in advance of the scheduled event and include a list detailing the equipment that will be used and the name and title of each person expected to attend. Should video equipment be used to conduct a deposition, the video camera shall remain in a fixed place and shall be in operation only during the

deposition. Before, during, and after the deposition, a deposed offender shall adhere to the TDCJ clothing standards as outlined in the *Offender Orientation Handbook*.

- H. Rejection of Visitation Request or Termination of Visit: The warden or designee may deny an attorney or designated representative the right to visit with any offender or terminate such a visit immediately if that visit would cause a legitimate threat to security, but only for as long as such a threat exists and only if no lesser action would alleviate the threat. The attorney or designated representative may not waive any threat perceived by the warden or designee. If a decision denying an attorney's request to visit an offender or an attorney's request to have a designated representative visit the offender is made later than 4:00 p.m. of the day preceding the date of the requested visit, the warden or designee shall immediately attempt to notify the attorney and offender of the denial. Within 24 hours after denying an attorney's request to visit with an offender, a request by an attorney to have a designated representative visit the offender, or terminating such a visit, the warden or designee shall send the offender and the attorney a written explanation of all reasons for said denial or termination, notification of the right to appeal, and an explanation of the procedure for appeal. The warden or designee shall also provide a copy of the denial documentation to the ATC manager.
  
- I. Suspension of Visitation Privileges: A regional director may prohibit any attorney or designated representative who commits a serious violation of visitation regulations from any further visits with any offender or impose restrictive conditions regarding future visits that are reasonably appropriate to the violation. Within 72 hours after an attorney or designated representative is prohibited from or restricted in further visits, the warden or designee shall send the attorney and the offender being visited at the time of the violation a notice containing the following information:
  - 1. Notification of the visitation prohibition, its duration, any restrictions regarding future visits, and the reasons for the prohibition or restriction; and
  - 2. Notification that both the attorney and the offender have the right to appeal and an explanation of the procedure for appeal. Attorney visitation rights shall not be suspended or restricted except as provided by this policy.
  
- J. Attorney Visitation Review Procedure: Any TDCJ visitation prohibition or restriction may be appealed either by an attorney whose visitation privileges have been suspended or restricted or by an offender with whom such an attorney either cannot visit or shall visit under authorized restrictions. If a TDCJ visitation prohibition or restriction has been imposed on a designated representative, the appeal shall be filed by the sponsoring attorney. Any such person wishing to appeal shall send the DRC written notice of appeal within two weeks after

receiving the notice or statement required by the rule pursuant to which the suspension or restriction was imposed. Upon receipt of an appeal notice, the DRC shall obtain all documents and other tangible objects on which the prohibition or restrictions were based. The DRC shall render a decision within one month after receipt of the notice of appeal and issue written notification of the decision to the parties involved within 48 hours of the decision.

- K. Consular Officials: Consular officials, to include the Consul General, Vice Consul, and Honorary Consul, are afforded the same rights and privileges as attorneys, except that consular officials may be permitted to meet with groups of their foreign national offenders with the permission of the appropriate regional director after consideration of security concerns. A consular official requesting a visit shall complete and fax a copy of the I-163C, Consular Official Application to Visit TDCJ Offender, a legible copy of the United States Department of State issued ID card, and their United States Department of State issued driver license to the offender's unit of assignment no later than 3:30 p.m. on the business day before the requested visit. The unit shall verify United States Department of State issued credentials by contacting the U.S. Department of State, Office of Protocol at 202-274-1217. Any other individuals accompanying a consular official shall be submitted for approval as a representative by the ATC central office, which requires that a completed, signed I-164 be filed. Upon being approved as a representative, the consular shall be required to submit an I-166 to the visiting unit. Upon arrival, official identification shall be required.

## VI. Attorney and Offender Telephone Calls

### A. General Guidelines

1. The rules regarding attorney and offender telephone calls do not apply to SCFO or OAG attorneys.
2. Attorneys are not permitted to use an attorney and offender telephone call to provide contact between the offender and any other person.
3. Attorneys/attorney representatives may not send faxes to, nor receive faxes from, offenders.
4. Offenders may place telephone calls to their attorney of record using the Offender Telephone System (OTS). If the attorney is registered as the attorney of record with the OTS vendor, the call shall not be recorded or monitored. OTS telephone calls shall be placed in accordance with ED-03.32, "Offender Access to Telephones."
5. Consideration of requests by offenders for telephone contact with their attorneys should be predicated upon critical circumstances, such as the

offender receives correspondence from the courts with a deadline necessitating immediate contact with the attorney or when a foreign national needs to place a collect telephone call to the general consulate. In such circumstances, the offender shall submit an I-60 to the unit ATC supervisor with an explanation of the critical circumstance. If the scheduled date for the court appearance or hearing precludes a personal visit or correspondence, the request for telephone contact shall be approved. Telephone calls shall be arranged between 8:00 a.m. and 5:00 p.m. during business days unless there are compelling circumstances.

6. All other requests for telephone contact shall be made in writing by the offender's attorney using the I-162, Attorney/Offender Telephone Call Application, and the attorney shall provide the unit with at least 24 hours notice, unless the need is preempted by a legal emergency.
7. Frequency and duration of attorney and offender telephone conversations shall be decided on a case-by-case basis determined by need.
8. A specific time may be arranged for the telephone call either on the same day as the request or on a day that is convenient for all parties.
9. Except as authorized by warrant or court order, telephone calls to attorneys pursuant to this policy shall not be monitored or recorded; however, security staff shall maintain visual surveillance of the offender for the duration of the call.

B. Telephone Call and Attorney of Record Approval

1. Designation of Attorney of Record for OTS Purposes

Attorneys of record shall register with the OTS vendor by submitting, on the attorney's letterhead, a letter stating the attorney's name; phone number, which shall be verified as matching the number registered with the State Bar of Texas; attorney's state bar association number and state of registration; a list of TDCJ number and offender first and last name(s); and a statement that the attorney has an attorney-client relationship with the listed offender(s). If the attorney is not listed with the State Bar of Texas, the phone number of the bar association where the attorney is licensed shall be included.

2. Calls Placed on TDCJ-Owned Unit Telephone Equipment

Attorney requests for telephone contact with an offender shall be directed in writing on the I-162 to the warden. The I-162 shall contain the following:

- a. The name and TDCJ number of the offender;
  - b. The attorney's full name, address, state bar association number, telephone number, fax number, and email;
  - c. An affirmation of an existing attorney-client relationship with the offender;
  - d. An acknowledgment that the telephone call may not be used to accomplish any non-attorney-client communication and may not be used to provide contact between the offender and any other person;
  - e. The general reason, such as impending court deadline, the call could not be precluded by a personal visit or correspondence;
  - f. Permission for the offender to return the call collect; only collect calls shall be authorized;
  - g. A date and time for the return telephone call convenient to the TDCJ unit and the attorney; and
  - h. The attorney's signature.
3. The warden or designee receiving the request shall verify the attorney's identity by requesting a faxed or scanned copy of the attorney's bar card and valid driver license. Upon verification of the attorney's identity, the State Bar of Texas shall be contacted by telephoning 800-204-2222 or checking the State Bar of Texas Internet database at <http://www.texasbar.com> to ensure the attorney is in good standing and to verify that the telephone number that will be called is that of the requesting attorney. The State Bar of Texas website should note that the attorney is "Eligible to Practice in Texas." If an attorney is not licensed in Texas, the other state bar information site should indicate current eligibility to practice. When questions arise, inquiries should be coordinated with the ATC manager.
  4. Approvals for attorney and offender telephone calls shall be made by the warden or a designee, who shall be an employee with the rank of major or higher.
  5. Denial of an attorney and offender telephone call shall be made by a warden. The reasons for denial shall be given to the attorney in writing with a copy sent to the ATC manager and the TDCJ Office of the General Counsel.

VII. Court Conferences

A judge may request that a court hearing be conducted via a telephone conference call or video conference rather than bench warrant the offender to the courtroom. The TDCJ shall require a court order or a letter signed by the judge, on official letterhead, requesting the offender participate in a telephone or video conference. The court order or signed letter should be sent to the offender's unit of assignment. The court order or letter shall state the offender's name, number, date, time, and collect telephone number where the call can be facilitated in the case of a telephone conference call. In the case of a video conference, the court order or letter shall provide appropriate information so that the video conference may be facilitated. No collect telephone number need be provided if the court intends to initiate the telephone conference call. The TDCJ shall verify the order or letter and facilitate the call using a speakerphone or a regular handset phone if a telephone conference has been requested. Attorney-client confidentiality does not apply to court hearings.

---

Hon. Dale Wainwright, Chairman\*  
Texas Board of Criminal Justice

---

\* Signature on file