



TEXAS DEPARTMENT  
OF  
CRIMINAL JUSTICE

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## BOARD POLICY

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**SUBJECT:** RULES GOVERNING INMATE 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 inmate has the right of access to state and federal courts, legal counsel, public officials, and agencies. Every foreign national inmate has the right to communicate with an official from the consulate of the inmate's country. Inmates 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. Inmates may confer about legal matters, often subject to regulations of time, place, and manner essential to maintain the safety, security, and order of the institution. Officers, employees, or agents of the TDCJ shall not interfere with, harass, punish, or otherwise penalize any inmate 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 inmate legal mail are contained in BP-03.91, "Uniform Inmate Correspondence Rules," and are not addressed within this policy.

State Counsel for Offenders (SCFO) provides legal services, except those relating to civil rights, TDCJ policy, or fee-generating issues, to indigent inmates in the TDCJ. SCFO policies are not addressed in this policy. Information on how inmates may contact the SCFO is provided in the *Offender Orientation Handbook*.

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

**DEFINITIONS:**

The following terms are defined for the purpose of this policy and are not intended to be applicable to other policies or procedures.

“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 a person, such as a paralegal, legal assistant, clerk, law student, or investigator designated by an attorney and approved by the TDCJ to visit an inmate in the direct provision of legal services pursuant 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 to the suspension or restriction of an attorney’s or attorney representative’s visitation with inmates. 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 physician, psychiatrist, psychologist, or polygrapher, used by an attorney to evaluate an inmate for purposes of a criminal, civil, or habeas proceeding, or parole consideration.

“Unit Access to Courts Supervisor” serves as the administrator of the unit’s law library and provides guidance to law library assigned correctional staff and unit staff about access to courts (ATC) matters.

“Video Conference” is a visual communication session that transmits real time audio and video content between two or more persons regardless of their location. A video conference may be held via telecommunications or computer technology, including videoconferencing software.

**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 inmate's unit of assignment, the inmate 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 inmates permitted to attend the law library at one time.
- 3. Law Library Supplies: Each unit shall make available to inmates, including inmates 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 inmates shall be provided supplies in accordance with BP-03.91, “Uniform Inmate Correspondence Rules.”

B. Direct Access Inmates

Except inmates identified in Section I.C who have indirect access to the law library, inmates may have direct access to the law library, based on custody level or housing assignment.

- 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 inmates’ 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 inmate who demonstrates the need for extra time for law library use shall submit an I-60, Inmate 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 inmate is not involved in programmatic activities.

3. Misconduct During Law Library Periods: An inmate may be denied direct access to the law library per guidelines established in the *Access to Courts Procedures Manual* if the inmate is found guilty of a major disciplinary offense under Code 17.0 or 18.0 of the *TDCJ Disciplinary Rules and Procedures for Offenders* for stealing or damaging law library books or materials. During such period, the inmate shall be provided indirect law library access.
4. An inmate 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 suspicion exists to warrant such a search, and in accordance with AD-03.22, "Offender Searches."

C. Indirect Access Inmates

Inmates 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 inmate from having direct access to the law library.

1. Legal Research Material
  - a. Inmates in a category above 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. Inmates 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 or designee, in accordance with the *Access to Courts Procedures Manual*, may temporarily suspend delivery of legal research materials to any inmate in the above category for stealing, damaging, destroying, or refusing to return legal research materials.

2. Legal Visits: Inmates may request a same-session or legal visit for the purpose of conferring with another inmate on legal matters by sending an I-60 to the unit law library.

## II. Inmates' Legal Material

- A. Storage and Access: Inmates shall have access to legal materials daily and may store their own or other inmates' legal materials in their cells or dormitories in accordance with AD-03.72, "Offender Property," and the *Access to Courts Procedures Manual*.

### B. Searches of Inmate 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 inmate are confidential. Legal materials may not be read by staff during a search; however, they may be physically inspected in accordance with AD-03.72 for physical contraband. During a search, staff members shall not scatter, destroy, or otherwise unduly disrupt the inmate's legal material. Consistent with AD-03.02, "Impermissible Offender Conduct," no inmate shall be allowed to participate in any manner in the search of another inmate's legal material.
2. Search of Written Materials: An inmate's legal materials may be searched for written contraband only if there is a reasonable suspicion the inmate is in possession of written contraband. The reasonable suspicion 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 inmate in accordance with the *Access to Courts Procedures Manual*.
3. Written Notice: If a staff member confiscates written contraband from an inmate's legal material pursuant to a search, the inmate 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 inmate of the property removed, the reason for the removal, and the inmate's right to file a grievance.

## III. Performance of Legal Work

### A. Locations and Times

1. Locations: Inmates may perform legal work in the unit's law library, in their cells, or in other areas designated by the warden. Inmates 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: Inmates may perform legal work in their cells or in other areas designated by the unit during their off-work periods. Inmates may perform legal work in the law library in accordance with the unit's law library schedule.

B. Inmates Assisting Other Inmates on Legal Matters

1. Assistance Permitted: Inmates shall be permitted to assist or advise each other on legal matters in accordance with this policy and other TDCJ rules.
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: Inmates 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. Inmates shall be required to confer quietly so as not to disturb other inmates.
4. Legal Visits: Inmates 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), inmates 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 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 documents are specifically exempted from the laws on unsworn declarations.
- B. Scheduling: Inmates may request notary public service by submitting an I-60 to the unit ATC supervisor. Inmates 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 inmate may visit with 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 compelling circumstances, 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, the warden may permit an attorney to visit an inmate on Death Row on a non-business day if the attorney offers a reasonable explanation for the necessity of a 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 inmate, the attorney shall provide the warden or designee the name and profession of each visitor, the name of each inmate to be visited, and the estimated arrival time. If visiting multiple inmates, the attorney shall propose a time at which the attorney or designated representative would visit each inmate. The warden or designee shall produce the inmate for the scheduled 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.
  2. Upon arrival at the unit, the representative shall present 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 not already provided.
- D. Designated Representative's Application to Visit: A 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 administrative office (ATCAO) at least one week before the first requested visit to the TDCJ as that attorney's representative.

The TDCJ shall maintain the confidentiality of information provided on applications. If the TDCJ reasonably believes that a visit by the representative may pose a legitimate threat to security or orderly operations, 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: Inmates 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, as well as the warden or designee's determination whether the visit would threaten security or orderly operations.

Attorney visits shall be non-contact unless the unit's configuration provides only contact visitation or the activities of an expert require a contact visit. Before a contact visit is granted, the expert and the expert's sponsoring attorney shall provide to the warden or designee a completed I-165S, Attorney Initiated Contact Visit for Specialized Professional, explaining that a contact visit is necessary for the validity of the examination or test and 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 inmate may participate in an attorney-initiated expert contact visit.

- F. Rejection by Inmate of Visitation Request: Immediately after an attorney who has been approved for a visit with an inmate arrives at the inmate'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 inmate of the requested visit. If the inmate objects to the visit, the inmate shall sign an I-167A, TDCJ Offender Refusal to Attend – Legal Visit/Attorney Phone Call. If the inmate refuses to sign, the unit ATC supervisor or designee will have two witnesses sign and swear to a completed copy of the I-167A. Immediately after completion of the I-167A, a copy of the completed and signed form shall be given to the inmate 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 inmate, the warden or designee shall respect the privacy of the visit and maintain a sufficient distance from the visiting inmate 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 inmate and for recording the conversation between the attorney or designated representative and the inmate, 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 crucial 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 Inmate:** Inmates 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 inmate's presence and only for the purpose of detecting contraband.
4. **Exchange of Items:** The area used for the attorney-inmate visit shall have a pass-through slot available for the attorney or designated representative and the inmate 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 inmate 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 inmate 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 inmate. An inmate 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, an attorney may transmit these items to the inmate. After the visit, staff shall return the writing utensils and unused paper to the attorney, but the inmate may retain all paper used during the visit or give it to the attorney.
  8. **Depositions:** Due to the limited availability of secure locations for depositions within a unit, attendees shall be limited to attorneys, designated representatives, court reporters, videographers, and the inmate. Depositions may be non-contact if security consideration requires it, and the unit configuration permits it. Requests to schedule a deposition shall be provided in writing at least one week in advance 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 inmate 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 an inmate or terminate such a visit immediately if that visit would cause a legitimate threat to security or orderly operations, 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 a threat perceived by the warden or designee. If a decision denying an attorney's request to visit an inmate or an attorney's request to have a designated representative visit the inmate 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 inmate of the denial. Within 24 hours after denying an attorney's request to visit with an inmate, a request by an attorney to have a designated representative visit the inmate, or terminating such a visit, the warden or designee shall send the inmate and the attorney a written explanation of all reasons for the 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 further visits or impose appropriate restrictions regarding future visits. 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 inmate being visited at the time of the violation a notice containing the following information:

1. Notification of the visitation prohibition, its duration, restrictions regarding future visits, and the reasons for the prohibition or restrictions; and
  2. Notification that the attorney and the inmate 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: A TDCJ visitation prohibition or restriction may be appealed either by the attorney or affected inmate. Only the sponsoring attorney may appeal a visitation prohibition or restriction imposed on a designated representative. A person wishing to appeal shall send written notice of appeal to the DRC within two weeks after receiving the notice or statement required by the rule that is the basis for the prohibition or restriction.
- 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 a regional director, after considering security concerns, may allow consular officials to meet foreign national inmates in groups. 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 inmate'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. 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 official shall be required to submit an I-166 to the visiting unit. Upon arrival, official identification shall be required.
- VI. Attorney and Inmate Telephone Calls
- A. General Guidelines
1. The rules regarding attorney and inmate telephone calls do not apply to SCFO, OAG, or the Office of Capital and Forensic Writs attorneys.
  2. Attorneys are not permitted to use an attorney and inmate telephone call to provide contact between the inmate and any other person.

3. Attorneys/attorney representatives may not send faxes to, nor receive faxes from, inmates. Email will not be sent to an inmate, except through the official inmate correspondence process, JPay. Email will not be sent on behalf of an inmate.
4. Inmates may place telephone calls to their attorney of record using the Inmate Telephone System (OTS). OTS telephone calls shall be placed in accordance with ED-03.32, "Inmate Access to Telephones." Calls between an inmate and the attorney registered as the attorney of record with the OTS vendor shall not be recorded or monitored.
5. Inmate requests for telephone contact with their attorneys may be granted in critical circumstances, such as the inmate receives correspondence from a court requiring immediate contact with the attorney or when a foreign national needs to call the consulate. In such circumstances, the inmate 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 inmate's attorney using the I-162, Attorney/Inmate 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 inmate telephone conversations shall be decided on a case-by-case basis according to need.
8. The telephone call can be scheduled 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 inmate 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 a letter on the attorney's letterhead 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 inmate first and last name(s); and a statement that the attorney has an attorney-client relationship with the listed inmate(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 inmate 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 inmate;
- 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 inmate;
- 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 inmate and any other person;
- e. The general reason the call is being requested, such as impending court deadline and the attorney-client or attorney-witness business could not be accomplished by a personal visit or correspondence;
- f. Permission for the inmate 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. Upon receiving the request, staff 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 association of the state in which the attorney is licensed to practice shall be contacted to determine if the attorney is in good standing and to verify the telephone number that will be called is that of the requesting attorney. The state bar association website should indicate that the attorney is eligible to practice and in good standing with their bar association. When questions arise, inquiries should be coordinated with the ATCAO.

4. Approvals for attorney and inmate 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 inmate 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.
6. Rejection by Inmate of Attorney Phone Call Request: On the scheduled date and prior to the scheduled time of an attorney phone call, the inmate will be notified of the scheduled phone call. If the inmate objects to the phone call, the unit ATC supervisor or designee will obtain the inmate's signature on the I-167A TDCJ Inmate Refusal to Attend – Legal Visit/Attorney Phone Call. If the inmate refuses to sign the I-167A, the unit ATC supervisor or designee will have the I-167A signed by two witnesses to the refusal.

Immediately after completion of the I-167A, the warden or designee shall inform the attorney of the inmate's refusal. A copy of the completed I-167A shall be given to the inmate refusing the phone call and sent to the attorney whose phone call was refused.

## VII. Court Hearings

- A. A judge may request that a court hearing be conducted via a telephone conference call or video conference rather than bench warrant the inmate to the courtroom. Except as provided in paragraph B, the TDCJ shall require a court order or a letter signed by the judge, on official letterhead, requesting the inmate participate in a telephone or video conference. The court order or signed letter should be sent to the inmate's unit of assignment. The court order or letter shall state the inmate's name, number, date, time, and collect telephone number for a telephone conference or appropriate information to facilitate a video conference.

1. Teleconference for Hearing Requested by Court

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.



2. Video Conference for Hearing Requested by Court
  - a. Except as provided in paragraph B, no video conference shall be permitted without approval of the deputy executive director or designee. All court requests for a video conference hearing involving an inmate must be received no later than 14 business days before the proposed date of the video conference. The deputy executive director or designee shall verify the order or letter from the court and determine whether the TDCJ has the necessary staff, facilities, and technological resources available to hold the video conference hearing requested by the court.
  - b. If the TDCJ determines the necessary staff, facilities, and technological resources are available to hold the video conference hearing requested by the court, the deputy executive director or designee shall work with the TDCJ divisions and personnel involved to coordinate and facilitate the video conference requested by the court.

B. The Special Prosecution Unit (SPU) is not required to obtain a court order or letter signed by a judge to facilitate a telephone or video conference if:

1. The SPU notifies the ATCAO 14 business days in advance of the conference;
2. The unit has the technological capacity to conduct the teleconference or video conference; and
3. The technology is available at the requested date and time.

VIII. Suspension of Policy: The executive director or designee may suspend all or parts of this policy during exigent circumstances, including a natural disaster or pandemic.

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Patrick L. O'Daniel, Chairman\*  
Texas Board of Criminal Justice

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\* Signature on file