



TEXAS DEPARTMENT  
OF  
CRIMINAL JUSTICE

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**SUPERSEDES:** ED-02.01 (rev. 4)  
July 18, 2010

## EXECUTIVE DIRECTIVE

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**SUBJECT:** TEXAS DEPARTMENT OF CRIMINAL JUSTICE ETHICS  
POLICY

**AUTHORITY:** Tex. Const. art. III, §§ 50-51; Tex. Gov't Code §§ 493.001, 493.006(b), 493.007, 508.081-.086, 552.001-.353, 556.004, 572.051, 572.054, 572.069, 2113.012, 2203.004, 2252.901; Tex. Elec. Code § 255.0031; Tex. Pen. Code §§ 36.02, 36.07, 36.08, 36.10, 37.10, 39.02, 39.03, 39.06; Texas Ethics Commission Advisory Opinion No. 372 (1997)

Reference: American Correctional Association Standard 4-4069

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

### **POLICY:**

The TDCJ is committed to providing guidance to employees so they can strive to maintain high professional standards of conduct while on duty. In support of this objective, the TDCJ shall establish and publish those standards so every employee is made aware of not only prohibited conduct, but also conduct to which they should aspire. This directive and the Advisory Council on Ethics, with its mandate to provide a written response to employees' ethical conduct questions, are designed to further that commitment.

### **DEFINITIONS:**

"Advisory Council on Ethics" (ACE) is the intra-agency body formed by the executive director, composed of a representative cross-section of TDCJ employees, whose mission is to advocate and foster an ethical environment for the TDCJ.

"Benefit" is anything reasonably regarded as financial gain or financial advantage to the recipient or to any other person in whose welfare the recipient has a direct and substantial interest.

## **DISCUSSION:**

Ethical conduct issues generally relate to conflicts or perceived conflicts between a person's self-interest and external duties. The external duties addressed in this directive are those duties associated with public service and related to working with others, including offenders and crime victims, in an honest and fair environment. Ethical behavior means elevating those external duties above one's self-interest, except in those instances when action based on self-interest is both authorized and appropriate.

This directive describes the promotion of ethical conduct within the TDCJ and provides a resource, ACE, for those employees with questions. The Code of Ethical Conduct (Attachment A) is a list of work behaviors to which employees should aspire. The bulk of this directive restates statutory admonishments and prohibitions concerning ethical conduct, as well as adopts higher standards than those provided by law to guide TDCJ employees in the conduct of TDCJ business. Actions and decisions of employees should be based on core values, which provide the framework for decision making in accordance with TDCJ policies and procedures. The success of TDCJ operations depends on each employee doing their part to uphold these values in their daily work activities.

Although extensive, this is not an exhaustive treatment of all potential areas of conduct or misconduct. While ethics issues are a component of virtually all TDCJ policies, those that closely relate to ethical conduct issues, or should be read in conjunction with this directive, include: ED-02.02, "Fraud Prevention, Detection, and Reporting"; ED-02.04, "TDCJ Fund-Raising"; PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees"; PD-23, "Employee Political Activity and Participation in Employee Organizations"; PD-26, "Nepotism"; PD-32, "Whistleblower Act"; PD-80, "Outside Employment"; AD-07.11, "Use of Offender Labor for Community and Public Work Projects"; and AD-02.50, "Vehicle Policy."

## **PROCEDURES:**

- I. Role of the Advisory Council on Ethics
  - A. The ACE is composed of a cross-section of no more than 12 TDCJ employees who demonstrate ethical behavior and are appointed to a two-year term by the deputy executive director upon recommendation of a division director. The ACE should not be confused with the Texas Ethics Commission, which is a separate state agency charged with issuing opinions that interpret some of the statutes discussed in this directive.
  - B. The ACE meets to increase TDCJ awareness of ethical issues, facilitate the practice of ethical behaviors within the TDCJ, improve TDCJ morale through the practice of ethical behaviors, assist in the development of ethics training materials, and foster the TDCJ's commitment to a fair, respectful, and honest work environment. ACE responds to staff who submit written questions or need written advice about ethical situations they have encountered or may encounter at

work. Responses shall be reviewed by the Office of the General Counsel (OGC) prior to publication. Summaries of these responses shall be published, without identifying the requesting person, on the TDCJ website under "Advisory Council on Ethics." Responses may also be published in the *Connections* newsletter.

- C. The ACE is managed through the office of the deputy executive director and can be reached at P.O. Box 99, Huntsville, Texas 77342-0099, or by Mainframe email at ETHICS\_ACE.
- D. The ACE is not designed or empowered to investigate alleged staff ethical violations and is not intended as a repository for such allegations. The existing chain of command, human resources, and investigatory resources shall be used.

The ACE shall refer the following to the appropriate entity within the TDCJ: issues that require investigation; reports of TDCJ policy violations or of criminal conduct by TDCJ employees or on TDCJ property; and inquiries that do not, in the judgment of the ACE, raise an ethical issue.

## II. Standards of Conduct

### A. An employee shall:

- 1. Perform official duties in a lawful, professional, and ethical manner benefitting the state and the TDCJ;
- 2. Report conduct or activity the employee believes to be a violation of this directive; and
- 3. If involved in procurement or in contract management, disclose any potential conflicts of interest specified by state law or agency policy that are known by the employee with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency (see Attachment B). Tex. Gov't Code § 2261.252(a).

### B. An employee shall not:

- 1. Accept or solicit any gift, favor, or service that might reasonably tend to influence the employee in the discharge of official duties or that the employee knows or should know is being offered with the intent to influence the employee's official conduct;
- 2. Disclose confidential information, information that is excepted from public disclosure under the *Public Information Act*, or information that has been ordered sealed by the court, acquired by reasons of the employee's official position, or accept other employment, including self-employment, or engage in a business, charity, nonprofit organization, or professional

activity the employee might reasonably expect to require or induce the employee to disclose confidential information, information that is excepted from the *Public Information Act*, or information that has been ordered sealed by the court, and acquired by reasons of the employee's official position;

3. Accept other employment, including self-employment, compensation, or engage in a business, charity, nonprofit organization, or professional activity that could reasonably be expected to impair the employee's independence of judgment in the performance of the employee's official duties;
4. Make personal investments or have a personal or financial interest that could reasonably be expected to create a substantial conflict between the employee's private interest and the public interest;
5. Engage in favoritism or cronyism, such as the granting or withholding of conditions or privileges of employment based on excessive reliance on personal relationships as a basis for decisions or actions in the work environment;
6. Knowingly make misleading statements, either oral or written, or provide false information, in the course of official state business; or
7. Engage in any political activity while on state time or use state resources for any political activity.

### III. Acceptance of Certain Benefits Prohibited

- A. An employee shall not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised their official powers or performed their official duties in favor of another.
- B. An employee shall not solicit, accept, or agree to accept an honorarium in consideration for services the employee would not have been requested to provide but for the employee's official position. This subsection does not prohibit an employee from accepting transportation and lodging expenses in connection with a conference or similar event in which the employee renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory, or from accepting meals in connection with such an event. Acceptance of a meal in this context is the only work-related exception to the general prohibition in Subsection C on accepting a meal from certain persons.

- C. An employee shall not solicit or accept, on behalf of any person, a benefit, including a meal, from a person who the employee knows or should know is:
  - 1. Interested in a unit, site, grant, contract, purchase, claim, or other financial transaction that may be substantially affected by the performance or nonperformance of the employee's official duties;
  - 2. Subject to regulation, inspection, audit, or investigation by the TDCJ; or
  - 3. In the custody of the TDCJ.
  
- D. An employee may accept a benefit in a situation described by Subsection C, if the benefit is:
  - 1. A fee or other benefit the employee is legally entitled to receive or which the employee paid for in a non-employee capacity;
  - 2. A gift based on kinship or a relationship independent of the employee's status as an employee;
  - 3. A small token, routinely produced and available to a general population, such as convention attendees, for example, a cap, keychain, or coffee mug received at a correctional convention;
  - 4. A commemorative item with an intrinsic value under \$20, such as a T-shirt or paperweight that is given as a memento of work on a particular TDCJ project;
  - 5. A discount provided to all TDCJ employees by a merchant or vendor, if the acceptance would not violate the Standards of Conduct in Section II; or
  - 6. In essence, a donation to the TDCJ to achieve a purpose that could otherwise be accomplished through expenditure of appropriated funds, such as payment of a conference registration fee for legitimate fact-finding, and which is accepted by the Texas Board of Criminal Justice (TBCJ) as a donation according to established procedure.

#### IV. Use and Misuse of State Property

- A. Generally, state resources are to be used for state purposes, not private purposes. Under some circumstances the misuse of state property is a crime as well as an administrative violation, for example, a misuse for personal gain or to harm someone else. However, there are also circumstances in which the incidental use of state time, property, facilities, or equipment for personal purposes is not a "misuse" for purposes of the criminal law or TDCJ policy. State officers' and employees' personal lives occasionally intersect with their work lives, and the

reasonable and incidental use of state time or state property, facilities, or equipment in crossing such intersections is not a “misuse” of state resources. TDCJ policy allows the activity and the personal use of state property, facilities, equipment, or time when it:

1. Does not result in direct cost to the state or the TDCJ;
  2. Does not impede TDCJ functions;
  3. Is not attributable to private commercial or business purposes; and
  4. Is limited to only incidental amounts of employee time that do not interfere with the normal performance of an employee’s work duties, such as time periods comparable to a reasonable meal or convenience break during the day.
- B. An employee shall not use or authorize the use of an internal mail system for the distribution of political advertising. This prohibition does not apply to the distribution of political advertising that: (1) is delivered to TDCJ premises through the U.S. Postal Service; or (2) is the subject of or related to an investigation, hearing, or other official proceeding of the TDCJ.
- C. Other examples of specifically prohibited behavior, chosen for the likelihood that they otherwise could often occur, include the following, except to the extent specifically allowed in Subsection D or other TDCJ policy:
1. The use of employee or offender labor to accomplish activities of a personal nature with the exception of offender craft activities, as well as career and technology education shop activities, done in accordance with TDCJ policy;
  2. The personal use of state-owned or operated vehicles, specifically including use for personal errands, transporting family members, and transporting alcohol, in accordance with AD-02.50, “Vehicle Policy”;
  3. The appropriation or use of state-owned equipment, tools, supplies, materials, or consumables to include food items for personal consumption or resale;
  4. The use of state-owned or provided services, including computer software, for personal purposes;
  5. The use of state-owned or provided telephones or credit cards for long-distance personal calls;

6. The use of state-owned or provided copiers or fax machines for personal use;
7. The appropriation of any discarded state property;
8. The use of a state contract corporate credit card for personal retail spending;
9. The use of the TDCJ post office for personal correspondence, unless the employee lives in state housing and is unable to send or receive mail through the U.S. Postal Service; and
10. Unauthorized use of state time.

D. Permitted Personal Uses of State Property

1. Subject to the conditions described in Subsection A, and with appropriate reimbursement for any direct costs incurred by the TDCJ, employees are permitted to use state telephones for local calls, use state telephones with a personal credit card for long distance calls, and use state cell phones for any personal calls. However, possession of a TDCJ cell phone or pager is a privilege, and TDCJ policy strictly prohibits any personal use other than calls necessitated by the intersection of work and personal life, as discussed in Subsection A. Use of TDCJ telephones and pagers is separately governed by AD-02.72, "TDCJ Communications Support."
2. State vehicles may be used for personal purposes only when:
  - a. The user is in a state vehicle on a business trip and has no other means for obtaining a meal or other necessities;
  - b. The user is engaged in personal activity but is on call for emergencies that would require immediate transport to the workplace in the state vehicle; or
  - c. The user stops for a personal errand that is unquestionably on the route to or from the user's work destination.
3. An employee may retain and use, for personal purposes, frequent flyer miles or other frequent user benefits, such as hotel stays, accumulated through work.
4. An employee may use a state copier for personal purposes if the copier is equipped to accept payment, or the office maintains a method for reimbursing the cost of copies to the TDCJ.

5. An employee may use state housing and consume state meals in accordance with BP-11.76, "TDCJ Benefit Policy," and ED-11.77, "State-Owned Employee Housing and Mobile Home Spaces."
6. Within reasonable limits that a supervisor may set, an employee may use state equipment to prepare a TDCJ job application, using no more than incidental amounts of state time. State equipment shall not be used to maintain a résumé unless a version of such a document serves a TDCJ purpose, such as for speech introduction purposes, or as a collected list of TDCJ-related training. An employee may use state equipment to prepare an article or report for publication if the topic is related to TDCJ business and the employee is not compensated for the document.
7. An employee may use state provided internet access; however, the amount of time "online" for non-state purposes shall be restricted to incidental use as provided in Section IV.A. or limits set by a supervisor.

V. Abuse of Office

- A. An employee shall not intentionally or knowingly violate a law relating to the employee's office.
- B. An employee acting under color of office, and knowing the conduct is unlawful, shall not intentionally deny or impede another person's exercise or enjoyment of any right, privilege, power, or immunity, or subject another person to sexual harassment.
- C. An employee shall not use non-public information acquired by virtue of employment to speculate or achieve a financial gain, or aid another person in speculating or achieving a financial gain.
- D. An employee shall not disclose or misuse non-public information acquired by virtue of employment, in order to obtain a benefit or harm or defraud another person.
- E. An employee shall not use their official position, or state-issued items, such as a badge, indicating such position for financial gain, obtaining privileges, or avoiding consequences of illegal actions.

VI. Conduct after Employment ("Revolving Door" Prohibitions)

These are statutory prohibitions imposed on former employees. Because of their applicability, they cannot be enforced with TDCJ disciplinary procedures, but Subsections A and B are subject to misdemeanor criminal penalties for a former employee who violates them. In addition, these prohibitions shall be enforced by requiring, by contract, that TDCJ contractors shall not employ former TDCJ staff in

violation of these prohibitions. This provision does not apply to a former employee who represents a nonprofit entity or governmental body, or who renders services on behalf of a nonprofit entity or governmental body. Note that Subsection B of this section is a relatively narrow prohibition, applying only to an employee who “switches sides” with regard to a specific contract, transaction, audit, regulatory decision, or other issue. Employees are not generally prohibited from working for companies that do business with the TDCJ.

- A. A former member of the TBCJ or the TDCJ’s former executive director may not make any communication to or appearance before an officer or employee of the TDCJ before the second anniversary of the date the TBCJ member or executive director ceased serving in that capacity if the communication or appearance is made with the intent to influence and on behalf of any person in connection with any matter on which the person seeks official action.
- B. A former employee shall not:
  - 1. Represent an offender, or receive compensation for services rendered on behalf of any person, including oneself, in a matter before the Board of Pardons and Paroles (BPP) or a panel of the BPP, for a period of two years after terminating employment;
  - 2. Serve as a parole commissioner before the second anniversary of the date the person’s employment with the TDCJ ceases;
  - 3. If the former employee was at or above pay group A17, B17, or C7, represent any person or be paid for aiding another person regarding a particular TDCJ matter in which the former employee personally participated or was responsible for as an employee, at any time; or
  - 4. Provide consulting services to the TDCJ for a period of one year after terminating employment.
- C. In accordance with Texas Government Code § 572.069, a former state officer or employee of the TDCJ, who during the period of state service or employment participated on behalf of the TDCJ in a procurement or contract negotiation involving a business entity, may not accept employment from that business entity before the second anniversary of the date the officer’s or employee’s service or employment with the TDCJ ceased.

## VII. Other Prohibitions

These are additional standards imposed by the *General Appropriations Act*.

- A. Funds appropriated by the *General Appropriations Act*, regardless of the source or character, may not be used:

1. For influencing the outcome of any election, or the passage or defeat of any legislative measure, not including testifying before or providing information to the legislature as an invited resource witness;
  2. For the payment of salaries to any employee who uses alcoholic beverages while on active duty or for the purchase of alcoholic beverages, except for legitimate law enforcement purposes; or
  3. To enter into a contract for consulting or professional services or into an employment contract, with any individual who has been previously employed by the TDCJ within the past 12 months.
- B. An employee shall not, in the course of the employee's official duties, conduct business with an individual or firm with which the employee has either a direct or indirect financial interest.
- C. A state officer or employee may not use a state-owned or state-leased motor vehicle to support the candidacy of a person for office in the legislative, executive, or judicial branch of state government or of the government of the United States.

#### VIII. Sanctions

Violations of this directive shall result in disciplinary action pursuant to TDCJ disciplinary policies, with potential penalties as described in PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees." Former employees found to have violated this directive shall have their file marked as "must review before rehire." An employee who violates any applicable federal or state law or rule may be subject to civil or criminal penalties in addition to an employment-related sanction.

#### IX. Distribution

This directive shall be provided to and read by all TDCJ employees. It shall be made available to any employee upon request, and shall be provided to the TBCJ. It shall also be a required component of all new-hire and in-service ethics training.

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Brad Livingston\*  
Executive Director

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\* Signature on file

## Code of Ethical Conduct

The TDCJ Code of Ethical Conduct is a fundamental element of the TDCJ's mission of providing public safety, promoting positive offender change and reintegration into the society, and assisting victims of crime.

As a reflection of our mission statement, the Code of Ethical Conduct serves as a practical guide for all employees. This code embodies a fundamental respect for the constitutional rights of all people. It is the responsibility of each employee to adhere to the TDCJ Code of Ethical Conduct.

I shall:

Maintain the highest standards of honesty, integrity, and impartiality.

Uphold all federal, state, and local laws, and adhere to TDCJ policies, procedures, rules, and regulations.

Be firm, fair, and consistent in the performance of my duties, without retribution, retaliation, harassment, or abuse toward others.

Provide and support the provision of humane custody, supervision, and care of offenders.

Not discriminate against any person on the basis of race, color, religion, national origin, sex, age, disability, geographic location, or economic status.

Not sexually harass or condone sexual harassment against any person and shall report any violations of this policy to the appropriate authorities.

Maintain confidentiality of information that has been entrusted to me, in my official capacity, unless legally compelled or authorized to release the information.

Not use my official position for unauthorized personal gain or the unauthorized personal gain of my friends or family.

Not conduct myself in any manner which may lead any person or entity to expect official favors.

Recognize that the Code of Ethical conduct is a symbol of the TDCJ's commitment to the public and a direct reflection on the employee as an individual.

## Texas Department of Criminal Justice Disclosure of Potential Conflicts of Interest

In accordance with Texas Government Code § 2261.252(a) and ED-02.01, “Texas Department of Criminal Justice Ethics Policy,” an employee of the Texas Department of Criminal Justice (TDCJ or agency) who is involved in procurement or in contract management shall disclose any potential conflicts of interest specified by state law or agency policy that is known by the employee with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency.

Conflict of interest is a situation in which an employee’s private interest (usually financial or economic in nature) conflicts or raises a reasonable question of conflict with the employee’s public duties and responsibilities. A conflict of interest may also arise when an employee’s objectivity in performing their duties might be impaired because of other activities or relationships with other persons.

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I certify that I have read and understand the above statement. Furthermore, I understand that if a conflict of interest or perceived conflict of interest currently exists or develops, I will immediately notify my supervisor of the fact in writing.

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Signature

Date

Printed Name

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Title

Location (Unit/Parole Office/Department)

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**Instructions:**

- Each division director shall identify staff involved in procurement or in contract management and require the identified individuals to sign a Disclosure of Potential Conflicts of Interest form annually.
- If the supervisor determines there is a conflict of interest, the affected employee shall not participate in any way with a procurement of such a purchase or the contract management of such a contract.
- Each division shall maintain copies of all Disclosure of Potential Conflicts of Interest forms. Original signed forms, as well as any reported potential conflicts and the supervisor’s disposition of the matter shall be forwarded to the Business and Finance Division, Contracts and Procurement Department.
- Any disposition that is not concurred with by the director of Contracts and Procurement shall be forwarded to the chief financial officer for final disposition of the conflict.