



TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE

NUMBER: BP-03.91 (rev. 2)
DATE: February 11, 2010
PAGE: 1 of 13
SUPERSEDES: BP-03.91 (rev. 1)
July 13, 2007

BOARD POLICY

SUBJECT: UNIFORM OFFENDER CORRESPONDENCE RULES

AUTHORITY: 18 U.S.C. § 1716; Texas Government Code §§ 498.0042, 492.013(a), 499.102(a)(12), and 501.009; Texas Penal Code § 38.111

Reference: American Correctional Association (ACA) Standards 4-4487, 4-4488, 4-4489, 4-4490, 4-4491, 4-4492, 4-4493, 4-4494, 4-4495, and 4-4496; AD-04.82, "Forfeiture of Good Conduct Time for Contacting a Victim without Authorization," AD-03.72, "Offender Property," and AD-07.90, "Correspondence Supplies and Postage for Offenders"

APPLICABILITY: Texas Department of Criminal Justice (TDCJ)

POLICY:

The TDCJ shall facilitate offenders keeping in touch with families and friends. All incoming and outgoing correspondence, except as otherwise provided here, is subject to delivery, inspection, and rejection in accordance with the following rules.

DEFINITIONS:

"Contraband," in relation to correspondence, is any physical item that presents a threat to the safety or security of the staff, offenders, institution, or public, and does not include any written material disapproved for its content.

"Director's Review Committee" (DRC) is the body of appointed TDCJ administrators with the authority to hear all appeals related to rejected correspondence, publications, and placements on negative mailing lists.

"Educational Materials," for the purpose of this policy, are books and literature targeted toward educational purposes.

"E-Message" is an electronic message sent to an offender. These messages shall be treated in the same manner as incoming first class correspondence.

"General Correspondence" is any mail sent to or from a general correspondent or not otherwise

included in the definitions of legal, media, or special correspondence.

“General Correspondent” is any person corresponding with an offender who is not included within the definitions for legal, media, or special correspondents.

“Indigent Status” is when a TDCJ offender: (1) has less than a \$5 balance in their Inmate Trust Fund (ITF) account for 60 days or less; (2) has a damaged or misplaced identification (ID) card; or (3) is on week one of lockdown status for more than seven consecutive days as outlined in AD-03.31, “Procedures Relating to a Unit Lockdowns.”

“Legal Correspondence” is any mail sent to or from a legal correspondent.

“Legal Correspondent” is any attorney licensed in the United States or a legal aid society (an organization providing legal services to offenders or other persons) contacting an offender in order to provide legal services.

“Mail System Coordinators Panel” (MSCP) is the body designated to assist in the maintenance and coordination of the Uniform Offender Mail System. The MSCP serves to bring uniformity to the decisions of the various units by providing technical assistance and rule interpretation; serves as the centralized authority for the review of publications for initial unit acceptance or denial; provides training for mailroom staff; conducts in-depth monitoring of all unit mailrooms; and submits periodic reports pertaining to the offender mail system.

“Media Correspondence” is any mail sent to or from a media correspondent.

“Media Correspondent” is any member of the editorial and reporting staff of any newspaper or magazine listed in the *Gale Directory of Publications* or the *Editor & Publisher Year Book* or the editorial and reporting staff of any radio or television station. Other members of the media, including freelance members, may petition to the DRC to be included within the definition of “media correspondent.”

“Reference Book” is a book (e.g., dictionary or encyclopedia) that can be referred to for authoritative information. The book may contain useful facts or specially organized information (e.g., atlas).

“Sexually Explicit Image” is material that shows the frontal nudity of either gender, including the exposed female breast(s) with nipple(s) or areola(s), or the genitalia or anus of either gender. The chests of infants and pre-pubescent children are not considered breasts.

“Special Correspondence” is any mail sent to or from a special correspondent.

“Special Correspondent” is any member of the Texas Board of Criminal Justice (TBCJ); the executive director; the deputy executive director; any division directors, deputy directors, or wardens of the TDCJ; any court or district or county clerk of the United States or any of the states of the United States; any member of the legislature of the states or the United States; the President of the United States or the governor of any state of the United States; the attorney general of the United States or any attorney in the United States Department of Justice; the

director or any agent of the Federal Bureau of Investigation (FBI) or any official of any federal, state, or local law enforcement agency, including offices of inspector general, the directors of state departments of corrections, the Bureau of Prisons, and parole commissioners from other states; the attorney general or any assistant attorney general of any state; any member or commissioner of the Texas Board of Pardons and Paroles (BPP); any foreign consulate (consul general, vice consul, or honorary consul) of any country of which the offender is a citizen; the Texas State Law Library or any county law library in the State of Texas.

“Stationery” is white, undecorated paper, not to exceed the size of 8½” x 11,” or unstamped white envelopes, including carbon paper and white envelopes with the offender’s commitment name and TDCJ number preprinted in the return address portion of the envelope, but excluding any paper with names, addresses, or letterhead, and excluding tablets or writing pads with stapled binding. (NOTE: Ruled white paper is not considered decorated and is permitted.)

“Watch List” is a TDCJ Mainframe generated list of offenders on special correspondence restriction, negative mailing lists, and names submitted by the Security Threat Group (STG) officer, unit safe prisons coordinator (USPC), the Office of the Inspector General (OIG), or unit administration.

PROCEDURES:

I. General Rules and Instructions Regarding Correspondence

A. Permissible Correspondents

An offender may correspond with as many persons as the offender chooses, except as restricted by this policy.

B. Restricted Correspondents

1. Other Offenders

Offenders may not correspond with other offenders unless:

- a. The offenders are immediate family members (parents, step-parents, grandparents, children, stepchildren, spouses, common law spouses, and siblings);
- b. The offenders have a child together, as proven through a birth certificate and the parental rights have not been terminated;

- c. The offenders are co-parties in a currently active legal matter; or
- d. The offender is providing a relevant witness affidavit in a currently active legal matter.

2. Negative Mailing List

Offenders shall be denied permission to correspond with persons on the offender's negative mailing list. Persons on that list may be:

- a. Minors whose parents or guardians object in writing to the correspondence, except an offender's own child or stepchild (unless the child or stepchild is the offender's victim as described in Section I.B.3);
- b. Individuals who request in writing not to receive further correspondence from the offender; and
- c. Individuals who have attempted to send contraband into the institution or otherwise committed a serious violation of the correspondence rules, as determined by the warden. A person who commits a serious violation of the Uniform Offender Correspondence Rules may be prohibited from any further correspondence with a particular offender and may be placed on a negative mailing list of persons with whom that particular offender may not correspond. Within 72 hours of such addition to a negative mailing list, a notice, accompanied by a statement of the reason therefore, shall be sent to the disallowed person and to the offender. Within the same time period, the disallowed person and the offender shall also be notified of the procedure for appeal.

3. Victims

Pursuant to AD-04.82, "Forfeiture of Good Conduct Time for Contacting a Victim Without Authorization," the TDCJ prohibits unauthorized contact with a victim or a victim's family member by offenders if the following criteria are met:

- a. The offender is currently serving time for committing a crime against that victim;
- b. The victim was younger than 17 years of age at the time of the offense; and

- c. Written authorization for the contact was not obtained prior to the initiation of the contact.

Offenders making unauthorized contact with victims shall be charged with a major disciplinary offense and, if the charge is sustained, may forfeit all or any part of accrued good conduct time credit if the offender is not a state jail offender. A state jail offender shall be assessed a major disciplinary penalty if the charge is sustained. An offender may also be subject to criminal charges for improper contact with a victim.

C. How to Correspond

There is no restriction placed upon the length of incoming or outgoing correspondence. All offender mail shall be sent and received through duly authorized channels. Offenders shall not smuggle letters in or out of the institution.

1. Authorized Channels

Offenders may only send First Class, Certified, or Priority United States mail through the offender mail system.

2. C.O.D. Mail

No Cash on Delivery (C.O.D.) mail shall be accepted for any offender, and no offender shall be authorized to send C.O.D. mail. Unauthorized items arriving by mail shall be returned to the sender at the expense of the offender if ordered by said offender, unless the offender is without funds, in which case the mail shall be returned at the sender's expense. Offenders shall be notified when C.O.D. mail is returned to the sender.

3. Packages

All outgoing packages shall not be sealed for mailing until inspected by TDCJ staff. Packages shall be free of contraband or material that constitutes a threat to security or cannot be lawfully sent through the mail. Inspection of this mail shall be done in the presence of the offender; if cleared for mailing, the item shall be sealed and placed in the mail by the sender in the presence of the inspector. Outgoing packages may be mailed at a "media mail" rate if the contents of the package meet the "media mail" rate guidelines outlined by the U.S. Postal Service (USPS). These rules shall not apply to outgoing packages to special, legal, and media correspondents, which shall be governed by the rules relating to such correspondence.

Packages shall not be sent to offenders by individuals. TDCJ shall permit the delivery of packages of stationery from legitimate stationery vendors (a stationery vendor need not register in advance with the TDCJ in order to be a “legitimate” vendor), subject to its right of inspection. Packages of publications may be sent to offenders by publishers or publication suppliers, including bookstores. An offender may receive reference books and other educational materials from volunteer organizations that operate the following types of programs: literacy and education, life skills, job skills, drug and alcohol rehabilitation, support group, arts and crafts, and any other program designed to aid offenders in the transition between confinement and society and to reduce recidivism, regardless of whether the organization provides those programs to offenders assigned to units operated by the TDCJ. These reference books and educational materials shall comply with content requirements contained in this policy. The TDCJ shall accept delivery of packages from public carriers only (e.g., USPS, UPS, FedEx, DHL). Special provisions are made for packages to be received from suppliers for craft shop operations. All incoming packages shall be subject to inspection. Offenders shall be notified when unauthorized packages are denied.

Any materials received by offenders from volunteer organizations must be stored in accordance with AD-03.72, “Offender Property.” An offender’s request for an additional storage container shall follow the approval process outlined in AD-03.72, “Offender Property.”

4. Return Address and Outgoing Correspondence

Each outgoing envelope or package shall include the sending offender’s commitment name, TDCJ number, unit name, and current address. Offenders having a legal name other than the offender’s commitment name may also place that name in the return address. No other information shall be made part of the return address.

Offenders may not embellish outgoing envelopes with illustrations or written messages other than the return address, the name and address of the intended recipient, and a notation that the envelope contains legal, special, or media mail; photos do not bend; or fragile.

After consultation with the MSCP, mailroom officials shall refuse mailing any outgoing correspondence from an offender that mailroom officials reasonably believe will be deemed nonmailable by the USPS pursuant to 18 U.S.C. § 1716. This includes envelopes or packages having obnoxious odors or containing liquids or powders.

5. Stationery

Any type of stationery, whether bought at the commissary, mailed from approved sources as described in these rules, or stationery authorized for issuance to indigent offenders may be used in correspondence. Offenders may not use homemade envelopes to correspond.

6. Indigent Postage

Postage and stationery for mail from indigent offenders may be secured through the warden's representative. Postage and stationery shall be made available at regular intervals to indigent offenders, including those in administrative segregation. Postage and stationery shall be furnished to an indigent offender for correspondence to any special correspondent listed in these rules and to any attorney or legal aid society. An indigent offender may use indigent postage to send five one-ounce domestic letters per week to general correspondents and five items per week to legal or special correspondents. Upon request to the warden's representative and for good cause shown, an offender may send extra letters to general, legal, or special correspondents using indigent postage.

Funds expended by the TDCJ for postage and stationery within the first 60 days that an offender is indigent shall be recouped by the TDCJ from funds later deposited in the offender's ITF account.

D. Publications

An offender may receive publications in the mail only from the publisher or publication supplier, including bookstores. Offenders ordering publications shall forward payments for subscription to individual publications with the order. Offenders shall not receive publications of any kind on a trial basis with payment postponed. Persons desiring to give publications directly to individual offenders may have the publication mailed directly to the offender only from the publisher or publications supplier, including bookstores. Publications received by offenders may be in languages other than English.

E. Reference Books and Other Educational Materials

An offender may receive reference books and other educational materials from volunteer organizations that operate the following types of programs: literacy and education, life skills, job skills, drug and alcohol rehabilitation, support group, arts and crafts, and any other program designed to aid offenders in the transition between confinement and society and to reduce recidivism, regardless of whether the organization provides those programs to offenders assigned to units operated by the TDCJ.

II. Special and Media Correspondence

A. Permissible Correspondence

Offenders may write sealed and uninspected letters directly to special and media correspondents. All incoming correspondence from any special or media correspondent shall be opened and inspected only for contraband, except under the special circumstances noted in these rules. The inspection shall be in the offender's presence. All incoming special correspondence envelopes shall be prominently stamped as received by the TDCJ or cancelled so that postage-free government envelopes cannot be reused.

B. Exceptions

In individual cases, where reasonable suspicion exists to believe these correspondence rules or the law is being violated, incoming or outgoing special or media correspondence may be opened and inspected for contraband and content upon obtaining written permission of the CID director or designee.

III. Legal Correspondence

A. Permissible Correspondence

In order to facilitate the attorney—client privilege, an offender may write sealed and uninspected letters directly to legal correspondents. No correspondence from an offender to any legal correspondent may be opened or read. All incoming correspondence from any legal correspondent shall be opened and inspected for contraband only. The inspection shall be in the offender's presence. No correspondence to an offender from any legal correspondent may be read.

B. Exceptions

When an offender violates the law or the correspondence rules through legal correspondence, the offender may have legal mail privileges suspended except to the offender's attorney of record, upon obtaining written permission of the CID director or designee. The attorney of record shall submit a written statement naming them as the attorney of record for the offender. The CID director shall approve the restriction of legal correspondence privileges.

IV. Handling Offender Correspondence

A. Content Inspection of General Correspondence

All general correspondence shall be subject to the right of inspection and rejection by unit mailroom staff. All outgoing or incoming letters to and from offenders and enclosures such as clippings, photographs, or the like shall be disapproved for

mailing or receipt only if the content falls as a whole or in significant part into any of the categories listed below:

1. Contains threats of physical harm against any person or place or threats of criminal activity;
2. Threatens blackmail or extortion;
3. Concerns sending contraband in or out of the institutions;
4. Concerns plans to escape or unauthorized entry;
5. Concerns plans for activities in violation of institutional rules;
6. Concerns plans for future criminal activity;
7. Uses code and its contents are not understood by the person inspecting the correspondence;
8. Solicits gifts of goods or money under false pretenses or for payment to other offenders;
9. Contains a graphic presentation of sexual behavior that is in violation of the law;
10. Contains a sexually explicit image;
11. Contains information, which if communicated would create a clear and present danger of violence or physical harm to a human being; or
12. Contains records or documentation held by TDCJ that are not listed in the attachment to the *TDCJ Public Information Act Manual Chapter 2*.

The offender and the sender or addressee shall be provided a written statement of the disapproval and a statement of the reason for disapproval within 72 hours of the receipt of the correspondence. This notice shall be given on Correspondence Denial Forms. The offender shall be given a sufficiently detailed description of the rejected correspondence to permit effective use of the appeal procedures. The offender, sender, or addressee may appeal the mailroom officer's decision through the procedures outlined in these rules.

B. Contraband in General Correspondence

If contraband is found in an incoming letter or publication, the contraband shall be removed from the letter or publication, if possible. If the contraband cannot be removed from the letter or publication, the letter or publication shall not be

delivered to the offender. A rejection as contraband is subject to the appeal procedures outlined in these rules.

C. Contraband in Legal, Media, or Special Correspondence

If an enclosure constituting contraband is found, the contraband shall not be delivered to the offender. A written notice of the rejection and a statement of the reason for rejection shall be sent to the offender and the correspondent within 72 hours of the rejection. The offender shall be given a sufficiently detailed description of the rejected contraband to permit effective use of the appeal procedures. At the same time the correspondent and the offender shall be notified of the procedure for appeal.

D. Record of Legal, Special, and Media Correspondence

The mailroom shall keep a record showing the source and destination of all incoming and outgoing legal, special, and media correspondence.

E. Content Inspection of Publications

All publications are subject to inspection by the MSCP in Huntsville and by unit staff. The MSCP has the authority to accept or reject a publication for content, subject to review by the DRC. Publications shall not be rejected solely because the publication advocates the legitimate use of the Offender Grievance Procedure, urges offenders to contact public representatives about prison conditions, or contains criticism of prison authorities.

1. Rejection Due to Content

A publication may be rejected if:

- a. It contains contraband that cannot be removed;
- b. It contains information regarding the manufacture of explosives, weapons, or drugs;
- c. It contains material that a reasonable person would construe as written solely for the purpose of communicating information designed to achieve the breakdown of prisons through offender disruption such as strikes, riots, or STG activity;
- d. A specific determination has been made that the publication is detrimental to offenders' rehabilitation because it would encourage deviant criminal sexual behavior;
- e. It contains material on the setting up and operation of criminal schemes or how to avoid detection of criminal schemes by lawful

authorities charged with the responsibility for detecting such illegal activity; or

- f. It contains sexually explicit images. Publications shall not be prohibited solely because the publication displays naked or partially covered buttocks. Subject to review by the MSCP and on a case-by-case basis, publications constituting educational, medical/scientific, or artistic materials, including, but not limited to, anatomy medical reference books, general practitioner reference books or guides, *National Geographic*, or artistic reference material depicting historical, modern, or post modern era art, may be permitted.

2. Notice

If a publication is rejected, the offender and sender shall be provided a written notice of the disapproval and a statement of the reason for disapproval within 72 hours of receipt of the publication on a Publication Denial Form. Within the same time period, the offender and sender shall be notified of the procedure for appeal. The offender shall be given a sufficiently detailed description of the rejected publication to permit effective use of the appeal procedures. The offender or sender may appeal the rejection of the publication through procedures provided by these rules.

3. List of Disapproved Publications

A list of publications disapproved for receipt by offenders during the last two months shall be noted on the Law Library Holdings List on each institution. The list shall be updated every month.

F. Processing Incoming and Outgoing Offender Mail

All mail, including delivery, pick-up, or notifications, shall be processed by TDCJ employees or privately-operated facility staff only and during waking hours whenever possible. No offender is to handle another offender's mail, either incoming or outgoing.

All incoming mail, except packages, shall be delivered within 24 hours of receipt, except on weekends or holidays. Incoming packages shall be delivered within 48 hours of receipt, except on weekends or holidays. The hours of weekends and holidays shall not be used in computing the 24 or 48 hour period.

All outgoing mail, except packages, shall be delivered to a USPS employee within 24 hours, except on weekends or holidays. Outgoing packages shall be delivered to a USPS employee within 48 hours, except on weekends or holidays. The hours of weekends and holidays shall not be used in computing the 24 or 48 hour period.

Records shall be maintained to indicate the source and destination of outgoing mail from death row offenders.

Exception: Incoming and outgoing mail for offenders whose mail is being monitored may be processed within 48 hours of receipt, if necessary, to allow unit staff to properly examine the correspondence.

G. Forwarding of Mail

Mail received shall be forwarded to an offender immediately in the event the offender has left the unit and a forwarding address is available. Newspapers shall be forwarded by truck mail for seven days and other subscriptions shall be forwarded by truck mail for 45 days after an offender is transferred between TDCJ institutions if truck mail is available between the two institutions. Should an offender leave the unit of assignment for temporary medical treatment, correspondence, newspapers, and magazines shall be held by the unit mailroom until the offender returns to the unit.

H. Mailrooms

All unit mailrooms shall be open and provide mail service Monday through Friday, except on holidays recognized by the USPS.

I. Treatment Programs

The Substance Abuse Treatment Program (SATP), the Sex Offender Treatment Program (SOTP), and other treatment programs or therapeutic communities, as approved by the CID director and the Rehabilitation Programs Division (RPD) director and maintained by the MSCP, may have more restrictive content-based requirements for general correspondence and publications, as long as those more restrictive requirements are directed at the treatment goals and needs of the treatment program or therapeutic community.

V. Review Procedures for Denied Items

A. Handling of Denied Items

Any incoming or outgoing correspondence or publications that are rejected shall not be destroyed, but shall remain with the mailroom officer subject to examination and review by those involved in the administration of appeal procedures outlined herein. Upon completion of the appeal procedures, if the

correspondence or publication is denied, the offender may request that it continue to be held in the custody of the mailroom officer for use in any legal proceeding contemplated by the offender, or that it be disposed of in one of the following manners unless security concerns mandate the offender not have a choice in the disposition:

1. Mail the publication or correspondence to any person at the offender's expense;
2. Destroy the publication or correspondence, only with the offender's written permission; or
3. Any item (e.g., free gifts) received as a result of a subscription purchase or renewal shall be disposed of in accordance with AD-03.72, "Offender Property."

B. Correspondence Appeal Procedure

Any offender, other correspondent, or sender of a publication may appeal the rejection of any correspondence or publication. An offender or a correspondent may appeal the placement of the correspondent on the offender's negative mailing list. An offender or a correspondent may apply to the DRC for reconsideration of the negative mailing list placement after the passage of six months.

1. How to Appeal

A written notice of appeal shall be sent to the DRC within two weeks of notification of rejection. Upon receipt of notification, the correspondence or publication in question shall be sent to the DRC.

2. Final Decision

The DRC shall render its decision within two weeks after receiving the appeal, and shall issue written notification of the decision to the parties involved within 48 hours.

3. Delegation

The DRC chairman may delegate decisions regarding correspondence and publication denials to the MSCP, which shall be bound to the guidelines applicable to the DRC regarding appeals.

Oliver J. Bell, Chairman *

* Signature on file.

Texas Board of Criminal Justice