

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
PD-29 (rev. 5), “SEXUAL MISCONDUCT WITH OFFENDERS”
MARCH 1, 2017
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TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE

NUMBER: PD-29 (rev. 5)

DATE: March 1, 2017

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SUPERSEDES: PD-29 (rev. 4)
September 1, 2014

EXECUTIVE DIRECTIVE

SUBJECT: SEXUAL MISCONDUCT WITH OFFENDERS

AUTHORITY: *Prison Rape Elimination Act* (PREA) of 2003, 28 C.F.R. §§ 115.11(a), 115.51(d), 115.61(a), 115.67(a), (e); Tex. Gov't Code §§ 493.001, 493.006(b), 493.007; Tex. Penal Code §§ 21.01, 21.08, 21.15, 21.16, 22.011, 22.021, 39.04, 42.01(a)(10), 43.21; Tex. Fam. Code § 2.401; BP-02.08, "Statement of Internal Controls"

APPLICABILITY: Texas Department of Criminal Justice (TDCJ)

EMPLOYMENT AT WILL CLAUSE:

These guidelines **do not** constitute an employment contract or a guarantee of continued employment. The TDCJ reserves the right to change the provisions of these guidelines at any time.

Nothing in these guidelines and procedures limits the executive director's authority to establish or revise human resources policy. These guidelines and procedures are adopted to guide the internal operations of the TDCJ and **do not** create any legally enforceable interest or limit the executive director's, deputy executive director's, or division directors' authority to terminate an employee at will.

POLICY:

The TDCJ has zero tolerance for sexual misconduct, sexual abuse, and sexual harassment of offenders. An employee is prohibited from subjecting another employee, offender, or other individual to harassment or retaliation for reporting or cooperating with an investigation of alleged sexual misconduct with offenders.

DEFINITIONS:

"Contract Employee," for the purpose of this directive, is an employee or representative of a company under contract or subcontract with the TDCJ or an individual who performs services for the TDCJ on a contractual basis. Also included in this category are professionals, such as special court monitors and authorized consultants.

“Employee,” for the purpose of this directive, is any person employed by the TDCJ on a full-time, part-time, or temporary basis.

“Intern” is an individual who performs work for the TDCJ on a temporary basis without pay, and whose work: (a) provides training or supplements training given in an educational environment; (b) provides experience for the benefit of the individual performing the work; and (c) is performed under the close supervision of TDCJ staff.

“Marriage” includes “ceremonial marriage” and “informal marriage,” which are the two types of marriage recognized by the state of Texas and are defined as follows:

- a. “Ceremonial Marriage” is a marriage documented by: (1) a marriage license recorded with a county clerk; and (2) a marriage certificate issued by the county clerk.
- b. “Informal Marriage,” previously known as common law, is a marriage that is not necessarily documented through a county clerk, but is valid when a couple agree to be married and after that agreement live together in the state of Texas as a married couple and represent to others that they are married.

“Offender,” for the purpose of this directive, is an individual under the supervision or custody of the TDCJ, including a TDCJ offender housed in privately operated, federal, county, or other states’ facilities. These individuals include, but are not limited to, parolees, individuals under mandatory supervision, incarcerated individuals, and individuals housed in county jails that have been sentenced to the TDCJ but are not yet in TDCJ custody.

“Other Individual,” for the purpose of this directive, includes, but is not limited to, a contract employee, employee of a vendor, intern, or volunteer. The definition does not include an individual under the supervision or custody of the TDCJ.

“Sexual Abuse,” for the purpose of this directive, includes any of the following acts, with or without consent of the offender:

- a. Contact between the penis and vulva or the penis and the anus, including penetration, however slight;
- b. Contact between the mouth and penis, vulva, or anus;
- c. Contact between the mouth and any body part where the employee or other individual has the intent to abuse, arouse, or gratify sexual desire;
- d. Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the employee or other individual has the intent to abuse, arouse, or gratify sexual desire;

- e. Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the employee or other individual has the intent to abuse, arouse, or gratify sexual desire.
- f. Any attempt, threat, or request by an employee or other individual to engage in the activities described in paragraphs a-e of this section;
- g. Any display by an employee or other individual of his or her uncovered genitalia, buttocks, or breast in the presence of an offender; and
- h. Voyeurism by an employee or other individual.

“Sexual Harassment,” for the purpose of this directive, is repeated verbal comments or gestures of a sexual nature to an offender by an employee or other individual, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene gestures.

“Sexual Misconduct,” for the purpose of this directive, includes any of the following acts, with or without consent of the offender:

- a. Engaging in sexual abuse of an offender;
- b. Sexual harassment of an offender;
- c. Requiring or intentionally allowing an offender to engage in sexual abuse for any reason;
- d. Influencing, attempting to influence, or communicating intent to influence an offender’s conditions or status, including, but not limited to, an offender’s safety, custody, parole status, privacy, housing, privileges, work assignment, or program status in exchange for sexual favors or because an offender refused to submit to a sexual advance. This includes putting money into or promising to put money into an offender’s Inmate Trust Fund or bringing in or offering to bring in contraband for an offender in exchange for sexual favors; or
- e. Providing written communication or photographic items of a sexual nature to an offender.

“Spouse” means a person to whom a person is legally married.

“Vendor” is any company or individual under contract to provide a service to the TDCJ, other than through a contract or subcontract employee, when providing such service requires the vendor or the vendor’s employee to: (a) have access to premises owned, leased, or contracted by the TDCJ; or (b) provide services to offenders at any location.

“Volunteer” is an individual who has been approved to perform volunteer services for the TDCJ.

“Voyeurism,” for the purpose of this directive, means the intentional viewing of an offender’s intimate body parts or intimate acts by an employee or other individual for reasons unrelated to official duties. This includes, but is not limited to, viewing the intimate body parts or intimate acts of an offender for the purpose of sexual arousal or sexual gratification, amusement, entertainment, profit, or for the purpose of degrading or abusing an offender.

DISCUSSION:

I. General Provisions

- A. Sexual misconduct is not applicable when the offender has been released and is the employee’s or other individual’s spouse. However, the relationship may still be a violation under PD-22, “General Rules of Conduct and Disciplinary Action Guidelines for Employees,” Rule Number 42, Employee-Offender Relationships.
- B. The TDCJ recognizes that employees or other individuals in certain professions, such as chaplains or counselors, may hug offenders as part of the therapeutic or rehabilitative process. Such hugging is acceptable provided it is not done for sexual gratification and is not performed in an isolated area. In addition, verbal communication of a sexual nature, in the context of sex offender programs, is permitted.
- C. Communication of a sexual nature between employees or other individuals while at work shall be reported in accordance with PD-13, “Sexual Harassment and Discourteous Conduct of a Sexual Nature.”

II. Felony Offenses

An employee or other individual commits a felony offense if the person engages in the behavior specified in Texas Penal Code § 39.04.

III. Prohibition on False Reporting

An employee or other individual shall not report false information regarding sexual misconduct with offenders or provide false information in an investigation of sexual misconduct with offenders.

PROCEDURES:

I. Reporting Responsibilities

A. Employee

An employee who becomes aware of alleged sexual misconduct shall immediately report such misconduct to one or more of the following:

1. The employee's immediate supervisor, warden, or department head;
2. The employee's second level supervisor if the person allegedly conducting such misconduct is the employee's immediate supervisor;
3. A unit Office of the Inspector General (OIG) investigator;
4. The Records Management Office, OIG - Investigations Division Headquarters in Huntsville; or
5. The PREA Ombudsman Office.

B. Supervisor or Other Individual

Supervisors who receive notification of alleged sexual misconduct and other individuals who become aware of alleged sexual misconduct shall immediately report such misconduct to one or more of the following:

1. Warden or department head;
2. A unit OIG investigator;
3. Records Management Office, OIG - Investigations Division Headquarters in Huntsville; or
4. PREA ombudsman.

An employee or other individual may privately report alleged sexual misconduct of offenders directly to the PREA ombudsman, a unit OIG investigator, or the OIG Records Management Office without reporting such misconduct through the chain-of-command.

C. Warden, Department Head, or PREA Ombudsman

Upon being notified by an employee, an employee's supervisor, other individual, an offender, or an offender's family member of any alleged sexual misconduct, a warden, department head, or the PREA ombudsman shall contact the OIG in accordance with AD-16.20, "Reporting Incidents/Crimes to the Office of the Inspector General."

D. Office of the Inspector General

Upon being notified of alleged sexual misconduct from an individual, a unit OIG investigator, or the Records Management Office, OIG Investigations Division Headquarters, shall immediately notify the appropriate division director.

The OIG will refer substantiated violations of criminal law to the appropriate district attorney for criminal prosecution.

II. Remedial Actions

A. Employees

An employee who commits an act of sexual misconduct with an offender is subject to disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees."

B. Other Individuals

Other individuals who commit an act of sexual misconduct with an offender will not be allowed to continue to perform services for the TDCJ and will be denied access to TDCJ premises.

III. Training

A. Employees

All employees shall receive training regarding the provisions of this directive when attending an orientation session in accordance with PD-97, "Training and Staff Development."

B. Contract Employees

A contract employee who attends an orientation session in accordance with PD-97, "Training and Staff Development," shall receive training regarding sexual misconduct with offenders while participating in the orientation session. A contract employee who is not required to participate in the orientation program shall be notified of the provisions within this directive by the TDCJ employee serving as the contract employee's supervisor or TDCJ contract liaison.

C. Vendors

The appropriate division director or designee shall provide a vendor with a copy of this directive, obtain the vendor's signature acknowledging receipt of the directive, and instruct the vendor to notify each of the vendor's employees

accessing TDCJ premises or providing services to offenders of the provisions within this directive.

D. Volunteers and Interns

A volunteer or intern shall be notified of the provisions within this directive by the TDCJ employee serving as the volunteer's or intern's supervisor and during the training conducted in accordance with the TDCJ *Volunteer Services Plan*.

Bryan Collier
Executive Director