



TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE

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PAGE: 1 of 11

SUPERSEDES: BP-01.01 (rev. 17)
April 15, 2016

BOARD POLICY

SUBJECT: TEXAS BOARD OF CRIMINAL JUSTICE RESPONSIBILITIES

AUTHORITY: 37 Tex. Admin. Code §§ 151.3–.71, 151.73, 151.75, 151.77, 152.1–.5, 152.51–.71, 154.1–.12, 155.21–.41, 156.1, 159.1–.21, 161.21, 163.3–.47, 195.41–.51, 195.61, 195.71, 195.81; Tex. Gov’t Code §§ 491.001–509.017, 551.001–.146, 574.001–575.005, 659.301–.302, 659.304–.308, 661.002, 813.506, 815.505, 2001.021, 2110.005, 2155.076, 2161.003, 2171.1045, 2203.005, 2252.202–.203, 2256.005(e), 2260.001–.056, 2261.255, 2263.004, 2269.403; Tex. Code Crim. Proc. art. 26.051, 43.20; Tex. Health & Safety Code §§ 614.013–.016, Tex. Hum. Res. Code § 48.301; Tex. Occ. Code § 1701.257; Tex. Trans. Code § 721.003; *General Appropriations Act*, Acts 2017, 85th Leg., R.S., art. V, Department of Criminal Justice, Riders 11, 15, 20

APPLICABILITY: Texas Board of Criminal Justice (TBCJ) and Texas Department of Criminal Justice (TDCJ)

POLICY:

As the governing body of the TDCJ, the TBCJ employs an executive director, approves the operating budget of the TDCJ and the TDCJ’s request for appropriations, appoints members of advisory committees, adopts rules, develops and implements policies, and applies for and accepts gifts or grants. Texas Gov’t Code §§ 492.001 and 492.013.

PROCEDURES:

I. Appointment and Evaluation of Staff

A. Required Staff Appointments

1. Executive Director of the TDCJ

The TBCJ appoints the executive director to serve as the administrator of the TDCJ. The executive director serves at the pleasure of the TBCJ,

performs such duties as are officially designated, and devotes full-time work to administering the TDCJ. Tex. Gov't Code §§ 492.013 and 493.006.

2. Director of Internal Audit

The TBCJ appoints a director for the Internal Audit Division, who may be terminated only with the approval of the TBCJ. The Internal Audit Division conducts a program of internal auditing in accordance with Chapter 2102 of the Texas Government Code. Tex. Gov't Code § 493.0052.

3. Inspector General

The TBCJ appoints an inspector general, who serves at the pleasure of the TBCJ and who appoints employees who are certified by the Texas Commission on Law Enforcement as qualified to be peace officers. Tex. Gov't Code §§ 493.002 and 493.019.

4. Director of State Counsel for Offenders

The TBCJ appoints an attorney, who serves at the pleasure of the TBCJ, to direct the provision of legal representation for offenders who are indigent and charged with an offense committed while incarcerated in the TDCJ. Tex. Code Crim. Proc. art. 26.051.

5. Prison Rape Elimination Act Ombudsman

The TBCJ appoints an ombudsperson, who serves at the pleasure of the TBCJ, to coordinate the TDCJ's efforts to eliminate the occurrence of sexual abuse and sexual harassment in correctional facilities. Tex. Gov't Code § 501.172.

B. Interim Staff

1. The TBCJ chairman may appoint a person to serve on an interim basis to any one of the positions noted in Section I.A. upon the death, resignation, or inability of the person currently holding the position to fulfill their responsibilities.

2. The interim person will serve until the next regularly scheduled TBCJ meeting, at which time the TBCJ must approve the interim appointment, appoint another person to serve on an interim basis, or appoint a person to fill the position on a permanent basis. This designation does not prevent individuals holding the positions from delegating their responsibilities to someone to serve in their capacity when they are out of state, on annual leave, or otherwise unable to serve for a short period of time upon notification to the TBCJ chairman.

C. Performance Evaluations

The TBCJ must conduct a performance evaluation of the individuals holding the positions identified in Section I.A. The performance evaluations must be conducted annually and become a permanent part of the employee's Master Human Resources File.

II. Open Meetings Business

The authority vested in the TBCJ may be exercised only at a meeting of a quorum of its members. The *Texas Open Meetings Act*, Texas Government Code §§ 551.001–.146, requires meetings of governmental bodies to be open to the public, unless a closed session is expressly authorized. The TBCJ must meet at least once in each quarter of the calendar year and may meet at other times at the call of the chairman or as provided by TBCJ rule. Tex. Gov't Code § 492.006. The following is a list of business routinely conducted at regular TBCJ meetings held in compliance with the *Texas Open Meetings Act*.

A. Operational Items

1. Approval of the TDCJ operating budget and appropriations request. The TBCJ must consider the most recent report summarizing the programs and services provided by the Community Justice Assistance Division in deciding whether to approve an appropriations request. Tex. Gov't Code §§ 492.013 and .017.
2. Approval of the TDCJ annual audit plan. Tex. Gov't Code § 493.0052.
3. Acquisition and sale of real property, lease of real property, agreement to transfer facilities to other state agencies, exercise of eminent domain authority, and grant or lease of easements. Tex. Gov't Code §§ 496.002–.004.
4. Approval of the creation or elimination of a division of the TDCJ. Tex. Gov't Code § 493.0021.
5. Establishment of new industries or industrial facilities.
6. Certification that an emergency overcrowding situation exists and direction to the Texas Board of Pardons and Paroles to conduct reviews. Tex. Gov't Code § 499.025.
7. Appointment of members to advisory committees to the TDCJ. Tex. Gov't Code § 492.013.

B. Rulemaking

1. The TBCJ may adopt rules as necessary for its own procedures and for operation of the TDCJ. Tex. Gov't Code § 492.013(a).
 - a. TBCJ Operating Procedures. The TBCJ adopts by rule standard operating procedures to conduct its business under the *Texas Open Meetings Act*. Tex. Gov't Code § 492.013(a); 37 Tex. Admin. Code § 151.3.
 - b. Facility Site Selection. The TBCJ adopts by rule standards for facility site selection. Tex. Gov't Code §§ 492.013 and 496.007; 37 Tex. Admin. Code § 155.23.
 - c. Naming of Facilities. The TBCJ adopts by rule standards for the naming of correctional facilities. Tex. Gov't Code § 492.013; 37 Tex. Admin. Code § 155.21.
 - d. State Jail Regions. The TBCJ adopts by rule regions for state jails. Tex. Gov't Code § 507.003; 37 Tex. Admin. Code § 152.5.
 - e. Correctional Institutions Division Admissions and Capacity. The TBCJ by rule prescribes the method which the TDCJ uses to admit offenders to the CID and determines the maximum capacity for each unit. Tex. Gov't Code §§ 499.071, .102, .105, .108, .109, .153, and 507.003; Tex. Admin. Code §§ 152.3, 152.21–27.
 - f. Authorized Witnesses to Execution. The TBCJ adopts by rule qualifications of witnesses to the execution of an offender. Tex. Code Crim. Proc. art 43.20; 37 Tex. Admin. Code § 152.51.
 - g. Authorized Assistance to Law Enforcement Agencies. The TBCJ adopts by rule qualifications to authorization for TDCJ resources to be used to assist law enforcement agencies, departments, or non-agent private prisons or jails. Tex. Gov't Code § 494.008; 37 Tex. Admin. Code § 152.61.
 - h. Gifts of Buildings. The TBCJ by rule prescribes the method to be followed when accepting gifts related to buildings for religious and programmatic purposes. Tex. Gov't Code §§ 492.013 and 501.009; 37 Tex. Admin. Code § 152.71.
 - i. Contract Claims and Disputes. The TBCJ by rule prescribes guidelines for the resolution of a breach of contract claim asserted by a contractor against the TDCJ. Tex. Gov't Code § 495.008(e); §§ 2260.001–.056; 37 Tex. Admin. Code § 155.31.

- j. Correctional Institutions Division. The TBCJ by rule establishes the Correctional Institutions Division. Tex. Gov't Code § 493.0021; 37 Tex. Admin. Code § 152.1.
 - k. Sex Offender Supervision. The TBCJ by rule requires the Parole Division to supervise sex offenders in accordance with its rule regarding the supervision of sex offenders under the supervision of a community supervision and corrections department. Tex. Gov't Code § 508.112; 37 Tex. Admin. Code § 195.51.
 - l. Temporary Housing Assistance. The TBCJ by rule describes the requirements of the temporary housing assistance program. Tex. Gov't Code § 508.157; 37 Tex. Admin. Code § 195.81.
 - m. Go KIDS Initiative. The TBCJ by rule describes the Giving Offenders' Kids Incentive and Direction to Succeed (GO KIDS) initiative. 37 Tex. Admin. Code § 159.15.
2. The TBCJ must adopt rules as required by statute.
- a. Memoranda of Understanding. The TBCJ must adopt by rule memoranda of understanding with other agencies when required to do so by statute. Tex. Occ. Code § 1701.257; Tex. Gov't Code § 508.318; Tex. Health & Safety Code §§ 614.013–.016; 37 Tex. Admin. Code §§ 159.9, .13, .19, and .21.
 - b. Community Supervision and Corrections Department (CSCD) Standards. The TBCJ must adopt rules establishing minimum standards for the operation of CSCDs and for substance abuse programs; listing and describing core services provided by CSCDs; establishing performance standards; and establishing a format for community justice plans. Tex. Gov't Code § 509.003; 37 Tex. Admin. Code §§ 163.3–.47.
 - c. Community Residential Facilities. The TBCJ must adopt rules necessary for the management of a community residential facility for releasees. Tex. Gov't Code § 508.119; 37 Tex. Admin. Code § 195.41.
 - d. Private Sector Prison Industries Programs. The TBCJ must adopt rules regarding the approval, certification, and supervision of the Private Sector Prison Industries Program operated by the TDCJ, the Texas Juvenile Justice Department, and in county correctional facilities. Tex. Gov't Code §§ 497.004, .051–.063, and .099; 37 Tex. Admin. Code §§ 154.1–.12.

- e. Transportation of State Jail Defendants. The TBCJ must adopt rules to provide for the safe transfer of defendants from counties to state jail facilities. Tex. Gov't Code § 507.024; 37 Tex. Admin. Code § 152.3.
- f. Public Appearance Before the TBCJ. The TBCJ must adopt rules that provide the public with a reasonable opportunity to appear before the TBCJ and to speak on any issue under the jurisdiction of the TBCJ. Tex. Gov't Code § 492.007; 37 Tex. Admin. Code § 151.4.
- g. Petition for Adoption of a Rule. The TBCJ must adopt a rule prescribing the form for a petition for adoption of a rule. Tex. Gov't Code § 2001.021; 37 Tex. Admin. Code § 151.6.
- h. Advisory Committees. The TBCJ must by rule identify the purpose and task of an advisory committee and describe the manner in which the committee will report to the TBCJ. Tex. Gov't Code § 2110.005; 37 Tex. Admin. Code §§ 151.8 and 161.21.
- i. Tobacco Policy. The TBCJ must by rule regulate the use of tobacco by employees on TDCJ property. Tex. Gov't Code § 494.010; 37 Tex. Admin. Code § 151.25.
- j. Sick Leave Pool. The TBCJ must by rule prescribe procedures relating to the operation of the TDCJ sick leave pool. Tex. Gov't Code § 661.002; 37 Tex. Admin. Code § 151.52.
- k. Surplus Agricultural Goods. The TBCJ must by rule regulate the sale or disposal of surplus agricultural products and personal property. Tex. Gov't Code § 497.113; 37 Tex. Admin. Code § 151.55.
- l. Marking and Assignment of State Vehicles. The TBCJ must by rule regulate the marking and assignment of TDCJ vehicles. Tex. Trans. Code § 721.003; Tex. Gov't Code § 2171.1045; 37 Tex. Admin. Code §§ 151.71 and 151.73.
- m. Financial Advisors. The TBCJ by rule must adopt standards of conduct applicable to financial advisors or service providers who are not employees of the TDCJ. Tex. Gov't Code § 2263.004; 37 Tex. Admin. Code § 151.75.
- n. Historically Underutilized Businesses. The TBCJ must by rule adopt the rules of the Texas Comptroller regarding contracts with historically underutilized businesses. Tex. Gov't Code § 2161.003; 37 Tex. Admin. Code § 151.77.

- o. Vendor Protests. The TBCJ must by rule adopt protest procedures for resolving vendor protests relating to purchasing issues. Tex. Gov't Code § 2155.076; 37 Tex. Admin. Code § 155.41.
- p. Investigations of Abuse. The TBCJ must by rule prescribe the method of investigation of allegations of abuse, neglect, or exploitation of an elderly or disabled offender. Tex. Hum. Res. Code § 48.301; 37 Tex. Admin. Code § 156.1.
- q. Substance Abuse Felony Punishment Facilities. The TBCJ must by rule prescribe requirements for eligibility for participation in treatment provided by a substance abuse felony punishment facility. Tex. Gov't Code § 493.009; 37 Tex. Admin. Code § 159.1.
- r. Parole Supervision and Administrative Fees. The TBCJ must by rule prescribe the method of payment for parole supervision and administrative fees. Tex. Gov't Code § 508.182(d); 37 Tex. Admin. Code § 195.61.
- s. Controlled Substance Testing. The TBCJ must by rule adopt procedures for the administration of a test on a releasee for controlled substances. Tex. Gov't Code § 508.184(b); 37 Tex. Admin. Code §§ 195.71.
- t. Hazardous Duty Pay. The TBCJ must adopt by rule standards for determining eligibility criteria for service credit as a custodial officer and for hazardous duty pay eligibility. Tex. Gov't Code § 813.506; *General Appropriations Act, Acts 2015, 84th Leg., R.S., ch. 1281, art. V, Department of Criminal Justice, Rider 15*; 37 Tex. Admin. Code § 151.51.

C. Contracts, Purchases, and Projects

- 1. Approval of or entering into contracts for privately-operated prisons, transfer facilities, and state jails; acquisition of county facilities or lease of federal facilities; substance abuse treatment services that are expected to meet or exceed \$1,000,000 in value; and parole community residential facilities that operate over 100 beds. Tex. Gov't Code §§ 493.010, 499.151, and 507.001.
- 2. Approval of the purchase of goods and contracts over \$1,000,000 unless required by law or court order or approved through prior TBCJ action.
 - a. If it is determined that a purchase or contract over \$1,000,000, previously approved by the TBCJ, will exceed the approved purchase or contract amount, a request for approval of the increased amount must be made at the next TBCJ meeting.

- b. In the event that such a purchase or contract is required between TBCJ meetings, and the approval of such purchase or contract until the next TBCJ meeting would result in operational hardship for the TDCJ, an out of cycle approval may be obtained via fax or email from both the chairman of the Business and Financial Operations Committee and the TBCJ chairman.
 - c. Any presentation on a contract over \$1,000,000 must include information on potential issues that may arise in the solicitation, purchasing, or contractor selection process. Tex. Gov't Code § 2261.255.
3. Approval of construction, maintenance, renovation, or alteration projects expected to cost \$1,000,000 or more, as authorized by BP-10.05, "Delegation of Authority for Facility Projects." If the TDCJ seeks an exemption from the requirement that a project include only US iron and steel products, the TBCJ must determine whether an exemption applies. Tex. Gov't Code § 2252.203(a).
 4. Approval of each job, task, or purchase order exceeding \$500,000 that relates to construction projects procured by the job order method. Tex. Gov't Code § 2269.403.
 5. Approval of the establishment of contracts between Texas Correctional Industries and a private business to conduct programs on or off property operated by the TDCJ. Tex. Gov't Code § 497.006.

D. Policy Review

Unless another type of review is noted, the TBCJ must review all amendments to the following:

1. ED-03.32, "Offender Access to Telephones"
2. BP-03.46, "Standards for the Use of Force"
3. TDCJ *Use of Force Plan*
4. BP-03.77, "Offender Grievances"
5. BP-03.81, "Rules Governing Offender Access to the Courts, Counsel, and Public Officials"
6. BP-03.85, "Offender Visitation"
7. TDCJ *Offender Visitation Plan*

8. BP-03.91, "Uniform Offender Correspondence Rules"
9. BP-11.76, "Texas Department of Criminal Justice Benefit Policy." *General Appropriations Act*, Acts 2015, 84th Leg., R.S., ch. 1281, art. V, Department of Criminal Justice, Rider 11.
10. BP-14.01, "Investment Policy." The TBCJ must perform an annual review of this policy. Tex. Gov't Code § 2256.005(e).
11. Annual review of policies relating to the manner in which offenders are classified and reclassified and the award of offender good conduct time credit, as listed below. Tex. Gov't Code § 498.005.
 - a. AD-04.80, "Good Conduct Time"
 - b. AD-04.81, "Review Process for Promotion in Time-Earning Class"
12. Personnel directives related to equal employment opportunity, conduct, discipline, and grievances, as listed below. This review may be conducted by the TDCJ Human Resources Committee at the discretion of the TBCJ chairman.
 - a. PD-12, "Equal Employment Opportunity"
 - b. PD-13, "Sexual Harassment and Discourteous Conduct of a Sexual Nature"
 - c. PD-22, "General Rules of Conduct and Disciplinary Guidelines for Employees"
 - d. PD-29, "Sexual Misconduct with Offenders"
 - e. PD-30, "Employee Grievance Procedures"
 - f. PD-31, "Discrimination in the Workplace"
 - g. PD-72, "Employee Salary Administration"
13. TDCJ *Disciplinary Rules and Procedures for Offenders*

E. Consent Items

1. Approval of any minutes of prior meetings of the TBCJ. If a change in the TBCJ's committee structure results in the deletion or the renaming of a committee, the minutes of that committee's last meeting must be approved by the full TBCJ.

2. Approval of excused absences for TBCJ members from regularly scheduled TBCJ meetings. Tex. Gov't Code § 492.003.
 3. Approval of donations and gifts to the TDCJ valued at \$500 or more. Tex. Gov't Code §§ 575.001–.005 and § 492.013; *General Appropriations Act*, Acts 2015, 84th Leg., R.S., ch. 1281, art. V, Department of Criminal Justice, Rider 20.
 - a. The presented information must contain a list of donated money or property, the name of the donor, a description of the gift, and a statement of the purpose of the gift. If the gift is donated to a specific TDCJ division, area, or section, the list must specify the designated division, area, or section.
 - b. Gifts may be accepted subject to TBCJ approval, if the donation is placed as a consent item on the agenda for the TBCJ meeting immediately following such acceptance.
 - c. Gifts must be for use in maintaining and improving correctional programs and services, unless other specific statutory authorization allows the use of gifts by the TDCJ for other purposes.
 - d. Surplus or salvage data processing equipment donated from a state agency or political subdivision for the purpose of repair or refurbishing and for potential resale to a school district, state agency, or political subdivision need not be approved by the TBCJ. Tex. Gov't Code § 497.012(a).
 4. Approval of the installation of vending machines on state property. Tex. Gov't Code § 2203.005.
- F. After TDCJ staff takes action on the following issues, a summary of the actions taken must be submitted for inclusion in the materials provided to the TBCJ for the next TBCJ meeting following such action:
1. Requests for proposals, qualifications, or offers that are issued and expected to exceed \$500,000;
 2. All purchases over \$500,000 and under \$1 million;
 3. Emergency purchases from operating funds in amounts of \$100,000 or more;
 4. Disposition of surplus agricultural goods and agricultural personal property. Tex. Gov't Code § 497.113; 37 Tex. Admin. Code § 151.55.
 5. Changes in personnel policies, except as provided in Section II.D.12;

6. Construction change orders within the amounts approved for contingencies;
7. Out of cycle approvals on purchases and contracts over \$1,000,000, as authorized by Section II.C.2., and out of cycle approvals for facility projects, as authorized by BP-10.05. For the purpose of authorized out of cycle approvals, special called meetings must be included in determining TBCJ review; and
8. The TDCJ bimonthly investment report must be submitted for inclusion in the materials provided to the TBCJ for each TBCJ meeting.

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

* Signature on file