

# APPENDIX

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# **APPENDIX A**

Order, *Ex Parte Travis Trevino Runnels, Applicant*, No. WR-46, 226-03, Texas Court of Criminal Appeals, December 2, 2019



## **IN THE COURT OF CRIMINAL APPEALS OF TEXAS**

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**NO. WR-46,226-03**

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**EX PARTE TRAVIS TREVINO RUNNELS, Applicant**

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**ON APPLICATION FOR A WRIT OF HABEAS CORPUS AND MOTION FOR  
STAY OF EXECUTION IN CAUSE NO. 48950-02-D-WR  
IN THE 320<sup>TH</sup> JUDICIAL DISTRICT COURT  
POTTER COUNTY**

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*Per curiam.*

### **ORDER**

We have before us a post conviction application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure article 11.071 and a motion for a stay of execution.

In October 2005, a jury found Applicant guilty of the January 2003 capital murder of a prison employee. The jury answered the special issues submitted pursuant to Article 37.071, and the trial court, accordingly, set Applicant's punishment at death. This Court

affirmed Applicant's conviction and sentence on direct appeal. *Runnels v. State*, No. AP-75,318 (Tex. Crim. App. Sept. 12, 2007) (not designated for publication).

In his initial application for a writ of habeas corpus, Applicant raised eleven claims, including claims that his counsel performed deficiently and claims attacking the constitutionality of Article 37.071 and the death penalty. After reviewing the merits of the claims, this Court denied relief. *Ex parte Runnels*, No. WR-46,226-02 (Tex. Crim. App. March 7, 2012) (not designated for publication).

Applicant filed this his first subsequent writ application in the convicting court on September 13, 2019. Applicant raises a single claim in his application in which he asserts that the State violated his right to due process when it presented the false and misleading testimony of A.P. Merillat.

We have reviewed the application and find that the allegation does not satisfy the requirements of Article 11.071 § 5. Accordingly, we dismiss the application as an abuse of the writ without reviewing the merits of the claim raised, and we deny Applicant's motion to stay his execution. Art.11.071 § 5(c).

IT IS SO ORDERED THIS THE 2<sup>nd</sup> DAY OF DECEMBER, 2019.

Do not publish

# **APPENDIX B**

Warrant of Execution, *State v. Runnels*, No. 48, 950-D,  
320<sup>th</sup> District Court in and for Potter County, Texas, August 7, 2019

NO. 48,950-D

THE STATE OF TEXAS	§	IN THE 320TH DISTRICT COURT
	§	
VS.	§	IN AND FOR
	§	
TRAVIS TREVINO RUNNELS	§	POTTER COUNTY, TEXAS

**WARRANT OF EXECUTION**

THE STATE OF TEXAS TO THE DIRECTOR OF THE INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE, AT HUNTSVILLE, WALKER COUNTY, TEXAS, GREETING:

Offense Convicted of: Capital Murder-Other Felony, Date of Conviction: October 28, 2005

DEGREE OF OFFENSE: CAPITAL FELONY

DATE OFFENSE COMMITTED: January 29, 2003

SENTENCE OF DEATH (INSTITUTIONAL DIVISION): DEATH TDCJ-ID

DATE SENTENCE IMPOSED: October 28, 2005

MANDATE RECEIVED: October 8, 2007

The following fully appears in the Judgment and Sentence of the above styled and numbered cause and entered upon the minutes of said Court:

PAGE 2/8 \* BOND AT 8:00:00 AM \* CONTROL \* SYB:OCAL \* AYBEA:YIS \* DNIS:044

“Whereas the defendant, **TRAVIS TREVINO RUNNELS**, has been adjudged to be guilty of the offense of **Capital Murder** by the jury and the jury having further answered “Yes” to Special Issue No. 1 and “No” to Special Issue No. 2; and the law providing that on such jury finding the Court shall sentence the defendant to death.

It is, therefore, the Order of the Court that the defendant, **TRAVIS TREVINO RUNNELS**, is sentenced to death.”

On Thursday, August 1, 2019, this cause again being called and the Court having received the Mandate of the Texas Court of Criminal Appeals affirming the Judgment thereupon set the time for the execution of Travis Trevino Runnels, on December 11, 2019 at any time after the hour of 6:00 P.M., as fully appears in the Order Setting Date of Execution of said Court attached hereto:

“IT IS HEREBY ORDERED that the Defendant, Travis Trevino Runnels, who has been adjudged to be guilty of capital murder as charged in the indictment and whose punishment has been assessed by the verdict of the jury and judgment of the Court at Death, shall be kept in custody by the Director of the Texas Department of Criminal Justice, Institutional Division, until the 11<sup>th</sup> day of December, 2019, upon which day, at the Texas Department of Criminal Justice, Institutional Division, at some time after the hour of six o'clock p.m., in a room arranged for the purpose of execution, the

said Director, acting by and through the executioner designated by said Director, as provided by law, **IS HEREBY COMMANDED, ORDERED AND DIRECTED TO CARRY OUT THIS SENTENCE OF DEATH BY INTRAVENOUS INJECTION OF A SUBSTANCE OR SUBSTANCES IN A LETHAL QUANTITY SUFFICIENT TO CAUSE THE DEATH OF THE SAID TRAVIS TREVINO RUNNELS UNTIL THE SAID TRAVIS TREVINO RUNNELS IS DEAD.** Such procedure shall be determined and supervised by the said Director of the Texas Department of Criminal Justice, Institutional Division.”

These are, therefore, to command you to execute the aforesaid Judgment and Sentence at any time after the hour of 6:00 P.M. on December 11, 2019, at the Institutional Division of the Texas Department of Criminal Justice, at Huntsville, Texas, by intravenous injection of a substance or substances in a lethal quantity sufficient to cause death and until such convict is dead, utilizing such procedure to be determined and supervised by you, the Director of the Institutional Division of the Texas Department of Criminal Justice, at Huntsville, Texas.

Herein fail not, and due return make hereof in accordance with law.

Witness my signature, and seal of office on this 17<sup>th</sup> day of August, 2019.

  
Carley Snider  
Potter County District Clerk

**COPY**  
FILED  
CARLEY SNIDER  
DISTRICT CLERK

August 7, 2019 9:27 am  
POTTER COUNTY, TEXAS  
BY BC DEPUTY

**NO. 48,950-D**

THE STATE OF TEXAS	§	IN THE 320TH DISTRICT COURT
	§	
VS.	§	IN AND FOR
	§	
TRAVIS TREVINO RUNNELS	§	POTTER COUNTY, TEXAS

**ORDER SETTING EXECUTION DATE**

The Court has reviewed the State's Motion to Set Execution Date and finds that the motion should be granted; and whereas

The Defendant, Travis Trevino Runnels, was previously sentenced to death by the Court in the presence of his attorneys; and

There being no stays of execution in effect in this case, it is the duty of this Court to set an execution date in the above numbered and styled cause, and the Court now enters the following ORDER:

**IT IS HEREBY ORDERED** that the Defendant, Travis Trevino Runnels, who has been adjudged to be guilty of capital murder as charged in the indictment and whose punishment has been assessed by the verdict of the jury and judgment of the Court at Death, shall be kept in custody by the Director of the Texas Department of Criminal Justice, Institutional Division, until the 11<sup>th</sup> day of December, 2019, upon

A CERTIFIED COPY  
Page 1 of 3  
**CARLEY SNIDER**  
District Clerk  
Potter County, Texas  
By BC Deputy



which day, at the Texas Department of Criminal Justice, Institutional Division, at some time after the hour of six o'clock p.m., in a room arranged for the purpose of execution, the said Director, acting by and through the executioner designated by said Director, as provided by law, **IS HEREBY COMMANDED, ORDERED AND DIRECTED TO CARRY OUT THIS SENTENCE OF DEATH BY INTRAVENOUS INJECTION OF A SUBSTANCE OR SUBSTANCES IN A LETHAL QUANTITY SUFFICIENT TO CAUSE THE DEATH OF THE SAID TRAVIS TREVINO RUNNELS UNTIL THE SAID TRAVIS TREVINO RUNNELS IS DEAD.** Such procedure shall be determined and supervised by the said Director of the Texas Department of Criminal Justice, Institutional Division.

Within 10 days of the signing of this Order, the Clerk of this Court shall issue and deliver to the Sheriff of Potter County, Texas, a Warrant of Execution in accordance with this Order, directed to the Director of the Texas of the Texas Department of Criminal Justice, Institutional Division, at Huntsville, Texas, commanding him, the said Director, to put into execution the Judgment of Death against the said Travis Trevino Runnels.

The Sheriff of Potter County, Texas is hereby ordered, upon receipt of said Warrant of Execution, to deliver said Warrant to the Director of the Department of Criminal Justice, Institutional Division, Huntsville, Texas.

A CERTIFIED COPY  
 Page 2 of 3  
 CARLEY SNIDER  
 District Clerk  
 Potter County, Texas  
 By PL Deputy

The Clerk of this Court is ordered to forward a copy of this Order to Defendant's counsel, Mark Pickett The Center for Death Penalty Litigation, 123 West Main Street, Suite 700, Durham, North Carolina 27701, [mpickett@cdpl.org](mailto:mpickett@cdpl.org), and Janet Gilger-VanderZanden, 13785 Research Blvd., Suite 125, Austin, Texas 78701, [janet@jvzlaw.com](mailto:janet@jvzlaw.com), Jay Clendenin, Assistant Attorney General with the Criminal Appeals Division of the Texas Attorney General's Office, counsel for the State at [Jay.Clendenin@oag.texas.gov](mailto:Jay.Clendenin@oag.texas.gov) and to the Director of the Office of Capital and Forensic Writs, Benjamin Wolff, [Benjamin.Wolff@ocfw.texas.gov](mailto:Benjamin.Wolff@ocfw.texas.gov).

Signed this 5<sup>th</sup> day of August, 2019.



Pamela Sirmon  
 Presiding Judge  
 320<sup>th</sup> Judicial District Court  
 Potter County, Texas

I, Carley Snider, Clerk of the District Courts and County Courts at Law, in and for Potter County, Texas, do hereby certify that the foregoing instrument is a correct copy of the original on file in this office.  
 ATTESTED this 7 day of August, 2019  
 By [Signature] Deputy

A CERTIFIED COPY  
 Page 3 of 3  
 CARLEY SNIDER  
 District Clerk  
 Potter County, Texas  
 By [Signature] Deputy

RECEIPT FOR DEATH WARRANT

(This portion to be completed by Texas Department of Criminal Justice Institutional Division personnel.)

THE STATE OF TEXAS

CAUSE NO 48950-D

VS

Travis Trevino Runnels

320<sup>th</sup> DISTRICT COURT  
POTTER COUNTY, TEXAS

I, Bryan Collier by Norma Perdomo, have received the DEATH

WARRANT for **Travis Trevino Runnels**, TDCJID # 999505, on

August 19, 20 19. I will deliver said warrant to :

Bryan Collier, Director of the Texas Department of

Criminal Justice Institutional Division on : August 19, 20 19.

Signature: [Signature]  
Title: Program Supervisor I  
Date: 08-19-19

CERTIFICATE OF DELIVERY OF DEATH WARRANT

(This portion to be completed by Potter County Sheriff personnel. Return to the District Clerk of Potter County.)

I hereby certify that the DEATH WARRANT issued on August 7, 2019 in the above captioned and styled cause was delivered to the Director of the Texas Department of Criminal Justice Institutional Division, at Huntsville, Texas on:

August 19<sup>th</sup>, 20 19, at 9:23 o'clock A.m.

BRIAN THOMAS, SHERIFF  
POTTER COUNTY, TEXAS  
BY [Signature] DEPUTY

(Return entire receipt to District Clerk, Potter County)

BACK 8/19 \* POCVD AT 8/20/2019 11:08:00 AM IC Control Delight Time: 0.0446

# APPENDIX C

First Subsequent Application for Post-Conviction Writ of Habeas Corpus,  
*Ex Parte Travis Trevino Runnels, Applicant*, Trial Court Case No. 48,  
950-D, 320<sup>th</sup> District Court, Potter County, Texas, and  
Texas Court of Criminal Appeals, September 13, 2019

**IN THE 320TH DISTRICT COURT  
POTTER COUNTY, TEXAS**

**AND**

**IN THE COURT OF CRIMINAL APPEALS  
AUSTIN, TEXAS**

EX PARTE TRAVIS TREVINO RUNNELS	)	
	)	
APPLICANT,	)	WRIT NO. _____
	)	TRIAL COURT CASE
	)	No. 48,950-D
	)	
	)	CAPITAL CASE
	)	
	)	
	)	

**FIRST SUBSEQUENT APPLICATION FOR POST-CONVICTION  
WRIT OF HABEAS CORPUS**

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**IN THE 320TH DISTRICT COURT  
POTTER COUNTY, TEXAS**

**AND**

**IN THE COURT OF CRIMINAL APPEALS  
AUSTIN, TEXAS**

EX PARTE TRAVIS TREVINO RUNNELS	)	
	)	
	)	WRIT NO. _____
APPLICANT,	)	TRIAL COURT CASE
	)	No. 48,950-D
	)	
	)	CAPITAL CASE
	)	
	)	
	)	
_____	)	

**FIRST SUBSEQUENT APPLICATION FOR POST-CONVICTION  
WRIT OF HABEAS CORPUS**

**I.**

**INTRODUCTION**

Travis Trevino Runnels was sentenced to death based on the false testimony of a prosecution witness who led the jury to believe that death row was the only place Mr. Runnels could be adequately secured. Immediately prior to the commencement of trial, Mr. Runnels pled guilty to the capital murder of Stanley Wiley, a supervisor at a prison

boot factory. During the penalty phase, defense counsel did not call any witnesses to offer any mitigating evidence. *Runnels v. State*, No. AP-75,318, 2007 WL 2655682, at 1-2, 4-5 (Tex. Crim. App. Sept. 12, 2007) (unpublished).

Mr. Wiley was killed while on duty at the Clements Unit in Amarillo, Texas. At the time of the murder, Mr. Runnels was serving a sentence for aggravated robbery and worked at the factory. Because no mitigating evidence was presented, the penalty phase turned on Mr. Runnels' future likelihood of committing "criminal acts of violence that would constitute a continuing threat to society." Tex. Penal Code § 37.071 sec. 2(b)(1). In order to make this showing, the State relied heavily on false testimony from one of its own witnesses.

To establish proof of Mr. Runnels' future dangerousness, the State presented the testimony of Texas Special Prosecution Unit criminal investigator A.P. Merillat to inform the jury as to how inmates are classified in the state prison system and what Mr. Runnels' life in prison might look like should he be sentenced to life in prison rather than death. As was the case in several other capital trials in which Merillat testified, the purpose of his testimony was to establish that the

state prison system's security for non-death sentenced inmates was so lax that the defendant would be a danger to others in prison if he received a life sentence.<sup>1</sup> In two prior cases where the Texas Court of Criminal Appeals found that Merillat testified falsely, the defendants were granted new capital sentencing hearings. *Estrada v. State*, 313 S.W.3d 274 (Tex. Crim. App. 2010); *Velez v. State*, AP-76051, 2012 WL 2130890 (Tex. Crim. App. June 23, 2012) (unpublished).

Merillat testified that Mr. Runnels would be classified “automatically” as a “G-3” mid-grade offender and would enjoy a variety of freedoms, such as the ability to move about the prison unrestricted; the option to participate in work, visitation, and worship; and the opportunity to have frequent and unconfined access to other inmates and staff. This testimony was false. As Mr. Runnels shows in this application, based on the Texas Department of Criminal Justice's own rules and procedures, he would instead have been placed in administrative segregation, a highly restrictive environment that would require him to be carefully restrained and supervised at all times while

<sup>1</sup> See Craig Kapitan, *Former death row inmate agrees to life without parole*, San Antonio Express, April 22, 2011, [http://www.mysanantonio.com/news/local\\_news/article/Former-death-row-inmate-agrees-to-life-without-1347539.php](http://www.mysanantonio.com/news/local_news/article/Former-death-row-inmate-agrees-to-life-without-1347539.php).

outside his cell.

Texas stands apart from most capital jurisdictions in that it requires jurors to find that “there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society” before they can consider a death sentence. Tex. Penal Code § 37.071 sec. 2(b)(1). Thus, it is critical to the basic integrity of the state’s death penalty scheme that jurors receive accurate information about prison classification, especially information as to what an inmate’s freedom and contact with others will be like. Merillat’s false testimony, bolstered by his authority as a former Texas law enforcement officer, misled jurors into believing that Mr. Runnels would essentially be a free man within the confines of the prison if they sentenced him to life, and the only way to prevent him from causing future violence would be by sending him to death row. Trial counsel failed to call a prison classification witness of their own (or any other witness for that matter), and so no evidence was presented to correct or contradict Merillat’s prejudicial testimony.

In this, his first subsequent application, Mr. Runnels now asserts that his state and federal constitutional rights were violated by a



prosecution that relied on false State testimony, and that accurate testimony would not support a sentence of death. *See* Tex. Code of Crim. Proc. Article 11.071; *Ex Parte Chabot*, 300 S.W.3d 768 (Tex. Crim. App. 2009); *Ex Parte Chavez*, 371 S.W. 3d 200 (Tex. Crim. App. 2012). For this reason, Mr. Runnels is now entitled to habeas corpus relief.

## II.

### PROCEDURAL & FACTUAL BACKGROUND

#### A. Procedural History

On October 25, 2005, immediately before trial, Travis Trevino Runnels pled guilty to the capital murder of Stanley Wiley, a prison boot factory supervisor. (15 RR 8.) At the conclusion of the penalty phase, the jury was instructed on two special issues: 1) whether they found from the evidence beyond a reasonable doubt that there was a probability Mr. Runnels would commit criminal acts of violence that would constitute a continuing threat to society; and 2) whether, considering all the evidence, including the circumstances of the offense, Mr. Runnels' character, background, and his personal moral culpability, the jury found there was a sufficient mitigating circumstance or circumstances to warrant a sentence of life imprisonment rather than

death. (17 RR 7-13.)

On October 28, 2005, the jury answered “yes” to special issue one, and “no” to special issue two. The trial court sentenced Mr. Runnels to death on that same date. (17 RR 41-42.) A Motion for New Trial was denied after a hearing on December 15, 2005. (19 RR 22-25.)

On September 12, 2007, the Texas Court of Criminal Appeals (CCA) affirmed Mr. Runnels’ conviction and sentence of death on direct appeal. *Runnels*, No. AP-75,318. There was no claim raised regarding A.P. Merillat’s false testimony. *Id.*

On September 17, 2007, state post-conviction counsel filed Mr. Runnels’ initial state habeas application and hearing request. Again, there was no claim raised regarding Merillat’s false testimony. Subsequently, the Potter County District Court adopted the State’s proposed findings of fact and conclusions of law on October 8, 2010. *Ex Parte Runnels*, No. 48-950-D, 320th Dist. Ct., Potter Cnty., Tex. On June 8, 2011, CCA remanded Mr. Runnels’ case for an evidentiary hearing on his ineffective assistance of counsel (IAC) claim regarding the deficient mitigation case presented at his sentencing phase. *Ex Parte Runnels*, No. WR-46,226-01 (Tex. Crim. App. June 8, 2011.)

On September 9, 2011, the Potter County District Court held a one-day evidentiary hearing on the IAC claim, and, on October 13, 2011, adopted the State's proposed findings and recommended Mr. Runnels' writ be denied. CCA ultimately denied Mr. Runnels' petition for habeas corpus on March 7, 2012. *Ex Parte Runnels*, No. WR-46,226-01 (Tex. Crim. App. Mar. 7, 2012) (unpublished).

On December 28, 2012, Mr. Runnels filed a petition for writ of habeas corpus in the United States District Court for the Northern District of Texas. At the district court's request, Mr. Runnels filed an additional claim for relief under *Martinez v. Ryan*, 566 U.S. 1 (2012), regarding issues of penalty phase ineffectiveness. After supplemental briefing on March 31, 2016, all claims for relief were denied pursuant to the report and recommendations of the magistrate. *Runnels v. Stephens*, No. 2:12-CV-0074-J, 2016 WL 1275654 (N.D. Tex. Mar. 31, 2016). Mr. Runnels filed a timely Notice of Appeal on April 29, 2016.

Mr. Runnels filed his Request for the Issuance of a Certificate of Appealability (COA) and Supporting Brief with the United States Court of Appeals for the Fifth Circuit on June 30, 2016. On November 3, 2016, the Fifth Circuit panel denied his application for COA. *Runnels v.*

*Davis*, 664 Fed. App'x 371 (5th Cir. 2016) (unpublished). Soon after the request for COA was denied, Mr. Runnels' court-appointed attorney withdrew from the case and resigned from the Texas State Bar, despite an impending deadline to file a petition for rehearing. On November 17, 2016, the Fifth Circuit appointed undersigned counsel. The Fifth Circuit denied rehearing and rehearing en banc on December 11, 2017, and the United States Supreme Court denied certiorari on June 18, 2018. *Runnels v. Davis*, 138 S. Ct. 2653 (2018).

Meanwhile, on June 1, 2017, Mr. Runnels filed a Motion for Relief from Judgment along with a supporting brief, pursuant to Federal Rule of Civil Procedure Rule 60(b), in the federal district court, based on prior federal habeas counsel's abandonment of his client. Following supplemental briefing, the federal magistrate recommended on September 29, 2017, that relief be denied. *Runnels v. Davis*, No. 2:12-CV-0074-J-BB, 2017 WL 5004843 (N.D. Tex. Sept. 29, 2017). The district court adopted the magistrate's report and denied COA on October 31, 2017. *Runnels v. Davis*, No. 2:12-CV-0074-J, 2017 WL 5028243 (N.D. Tex. Oct. 31, 2017). The Fifth Circuit denied COA on August 14, 2018, and denied rehearing on September 18, 2018. *Runnels*

*v. Davis*, 746 Fed. App'x 308 (5th Cir. 2018) (unpublished). The United States Supreme Court denied certiorari on June 24, 2019. *Runnels v. Davis*, 139 S.Ct. 2747 (2019).

After being appointed to represent Mr. Runnels in federal court, undersigned counsel undertook a re-evaluation of Mr. Runnels' case, and conducted a case analysis and mitigation investigation that was never performed by trial or post-conviction counsel, either at the state or federal level. In doing so, counsel discovered that a witness testified falsely for the State at Mr. Runnels' trial.<sup>2</sup>

## **B. Relevant Factual Background**

The relevant facts related to the crime for which Mr. Runnels was sentenced to death are described in the CCA's direct appeal opinion. *Runnels*, No. AP-75,318, 2007 WL 2655682. According to the Court, “[o]n January 29, 2003, while [Mr. Runnels] was serving time in prison

<sup>2</sup> It was not until after June 24, 2019 that a Texas state court could have considered a subsequent writ application in this case. As the Court of Criminal Appeals has stated, “[t]he long time practice of this Court is to automatically dismiss writ applications when the applicant also has a writ pending in federal court that relates to the same conviction.” *Ex parte Soffar*, 120 S.W.3d 344, 345 (Tex. Crim. App. 2003). This is known as the abstention doctrine or the two forums rule and “is based upon important considerations of comity, avoidance of piecemeal litigation or inconsistent results, and judicial economy.” *Id.* The rule thus acts to automatically bar subsequent writ applications for a defendant who still has matters pending in federal court related to the same conviction, as Mr. Runnels did until June 24, 2019, when his petition for writ of certiorari was denied.

for an aggravated robbery, he killed Stanley Wiley, a supervisor at the prison boot factory.” *Id.* at 1. Mr. Runnels, who was twenty-six years old, worked at the boot factory as a janitor at the time. *Id.* Mr. Runnels had three prior felony convictions at the time of the offense. *Id.* at 2.

Had counsel presented mitigating evidence at trial, the jurors would have heard significant evidence about Mr. Runnels’ life and background. Mr. Runnels suffered from frequent head injuries as a child, had difficulty in school, and problems with reading comprehension. *Runnels v. Stephens*, No. 2:12-CV-0074-J-BB, 2016 WL 1274132, at 7 (N.D. Tex. Mar. 15, 2016), *report and recommendation adopted*, No. 2:12-CV-0074-J, 2016 WL 1275654 (N.D. Tex. Mar. 31, 2016). When Mr. Runnels was a child, he and his mother Nancy lived with his mother’s abusive boyfriend Keith, who repeatedly assaulted Mr. Runnels and his mother. In one particularly violent incident, Keith strangled Mr. Runnels and Nancy until Mr. Runnels was able to escape and call police. *Id.*

Nancy herself “liked to party all the time and drank a lot,” leaving Mr. Runnels and his brother Darmonica without any stable presence in their lives. *Id.* at 8. As a result, they were exposed to the violence of

Dallas at a young age without an adult to guide or protect them. Other family members only made the environment worse. Nancy's brother James, who was also an alcoholic, once threatened Mr. Runnels with a loaded rifle. *Id.* Another time, James took Mr. Runnels and Darmonica to a drug house where they witnessed a shooting. *Id.*

### **C. Merillat's Trial Testimony**

The State called A.P. Merillat to testify during its case-in-chief at the penalty phase of trial. After describing his history in law enforcement, personal and professional accolades (including authoring five books and presenting seminars to students, prosecutors, and law enforcement), and experience testifying as an expert witness,<sup>3</sup> Merillat testified that, as a criminal investigator with the Texas Special Prosecution Unit, he specializes in the prosecution of prison crimes and the "situation in prison as far as preparing cases for trial." (16 RR 102-103.) Merillat asserted that he was familiar with how inmates are housed in the Texas Prison system and was also familiar with the

<sup>3</sup> Merillat asserted that he previously testified as an expert witness in Texas and Florida on the "various types of criminal investigations, bloodstain interpretation, fingerprints, and violence, particularly in the penitentiary." (16 RR 102.) In Mr. Runnels' trial, the State laid the foundation to qualify Merillat as an expert, but never formally sought to tender him as such. In reviewing the transcript, it appears likely that this was an oversight. The defense never objected to the State's failure to tender Merillat as an expert at trial. (16 RR 101-104.)

classification process in the Texas system. (*Id.*) According to Merillat, there are “S” classifications and “G” classifications. “S” stands for “State Approved Trusty” but “[Merillat had] no idea what the letter G stands for. It’s just a letter the prison issued for that classification.”<sup>4</sup> (16 RR 105-106.)

Merillat continued by explaining the five levels of G-classified inmates. He described a G-1 as a “minimal-custody type inmate,” a G-2 as someone “to be watched a little closer,” a G-3 as “what we call minimum/medium custody,” a G-4 as a “closed custody inmate,” and a G-5 as a “closed custody or an Ad Segregated type inmate.” (16 RR 106-108.) Merillat went on to testify that an inmate convicted of capital murder and sentenced to life would come into prison with an “automatic classification” as a G-3 and would have to stay at that classification for at least 10 years. (16 RR 107.) Merillat reiterated several times that an inmate convicted of capital murder and sentenced to life is *automatically* classified as a G-3 (16 RR, 107, 108, 110.), and could potentially be housed with a lower classified G-1 or G-2 inmate, including a “DWI offender.” (16 RR 108.)

<sup>4</sup> “G” stands for “General.” Ex. 1, C.P. at 19.



Merillat testified that G-3 inmates are “free to come and go from their cells. They’re not handcuffed when they’re leaving their cells. They can go to work, visitation, church, medical, chow, unescorted” and are not isolated from others. (16 RR 108-109.) Merillat went on to describe the comparatively harsher restrictions a death-sentenced inmate would face, including being handcuffed anytime he is outside of a cell; being escorted by two officers at all times; no recreation with other inmates; no eating outside of a cell; and “very restrictive housing and custody.” (16 RR 111.) Merillat also testified regarding the history of assaultive conduct by Texas prisoners, and claimed that there were 138 prosecutable murders inside Texas prisons between 1984 and the date of his 2005 testimony. (16 RR 119.)

On cross-examination, Merillat reiterated that an inmate convicted of capital murder and sentenced to life would come into prison as a G-3, regardless of previous behaviors or convictions. He stated that, “[The prison is] going to start him with his capital case at G-3, and then his behavior will determine what happens after that situation.” (16 RR 122-123.) Trial counsel did not object to any of Merillat’s testimony regarding how inmates are classified, and the defense presented no

witnesses of any kind, rebuttal or otherwise. The State made no efforts to correct Merillat's inaccurate testimony.

In fact, the State relied on Merillat's testimony in its final closing arguments. The prosecutor argued that Mr. Runnels could not be safely imprisoned under a life sentence, and told the jury "You heard A.P. [Merillat] testify . . . [a]nd he said, 'There are no safe places in prison, nowhere.'" (17 RR 35.)

### III.

#### CLAIM FOR RELIEF

##### **CLAIM 1: Mr. Runnels' Due Process Rights Were Violated When the State Presented the False and Misleading Testimony of A.P. Merillat**

The U.S. Supreme Court has established that a defendant's due process rights are violated when a conviction or death sentence is secured through the use of false or misleading evidence. *See Johnson v. Mississippi*, 486 U.S. 578, 590 (1988) (death sentence reversed because "the jury was allowed to consider evidence that has been revealed to be materially inaccurate"); *Napue v. Illinois*, 360 U.S. 264, 265, 272 (1959) (due process violation existed when a codefendant falsely testified he received no benefit for testifying for the State); *Miller v. Pate*, 386 U.S. 1

(1967) (due process violation existed when State mischaracterized biological evidence).

Beginning in 2009, Texas law abandoned its prior requirement that an applicant on habeas corpus prove that the State *knowingly* presented false evidence. Rather, a due process violation now occurs when false evidence is used to secure a conviction or sentence, regardless of the State's intent. *Ex parte Chabot*, 300 S.W.3d 768 (Tex. Crim. App. 2009). Furthermore, a State's witness need not have been even aware that he committed perjury because "it is sufficient that the testimony was false." *Ex parte Chavez*, 371 S.W. 3d 200, 208 (Tex. Crim. App. 2012); *see Ex parte Ghahremani*, 332 S.W.3d 470, 477-78 (Tex. Crim. App. 2011) (asserting that the offending testimony need not be criminally perjurious but rather, "it is sufficient if the witness's testimony gives the trier of fact a false impression").

**A. Texas inmate classification rules establish that Merillat's testimony was patently false**

Classification of inmates within the Texas Department of Criminal Justice (TDCJ) System is governed by a specific set of rules and regulations set forth within the department's "Classification Plan." *See Ex. 1, TDCJ Classification Plan, dated October 2003 (hereinafter*

“C.P.”). Contrary to Merillat’s proffered testimony during Mr. Runnels’ trial, there is nothing “automatic” about the classification of inmates. There is simply no provision in the Classification Plan that automatically classifies an inmate convicted of a capital crime and sentenced to life as a G-3. *See id.*; Ex. 2, Declaration of Frank Aubuchon, dated September 9, 2019, at para. 10 (hereinafter “Aubuchon Declaration”).<sup>5</sup>

TDCJ does not now and did not at the time of Mr. Runnels’ trial automatically classify inmates at *any* security level. Ex. 2, Aubuchon Declaration at para. 10. Rather, there are multiple factors that go into making an initial custody determination. A classification committee determines an “offender’s appropriate custody designation on the basis of the offender’s total record and the professional judgment of the committee.” Ex. 1, C.P. at 73; *see also* C.P. at 59, 60. Factors such as “prior criminal record, prior institutional adjustment, current offense of record and sentence length shall be considered in making initial

<sup>5</sup> Frank Aubuchon is a prison classifications expert retained by Mr. Runnels in order to evaluate Merillat’s testimony from the penalty phase of Mr. Runnels’ 2005 capital murder trial. Mr. Aubuchon worked in the Texas criminal justice system for 37 years, including 26 years as an employee of TDCJ. Mr. Aubuchon currently serves as a consultant and expert on prison classification issues, and regularly testifies and presents continuing education on these topics.

classification decisions relative to custody.” Ex. 1, C.P. at 73. Additionally, the classification committee can also take into consideration an offender’s age, physical and mental health factors, disciplinary history on prior incarcerations, and gang affiliation. Ex. 2, Aubuchon Declaration at para. 10.

However, there *are* provisions in the directive that establish that an inmate convicted of killing a correctional officer or prison staff member could absolutely *not* be classified as a G-3. Beyond the numbered general or “G” classifications, TDCJ also provides specific designations for offenders with a “security precaution designator” or “SPD.” An SPD includes offenders with a history of escape (ES), staff assault (SA), or taking of a hostage (HS). Custody designations for inmates with an SPD are mandatory and cannot be overridden by the classification committee. An offender with a designation of SA “will not be assigned to a custody less restrictive than G-4.” Ex. 3, Supplement to Classification Plan, dated July 2005 (hereinafter “Supp. C.P.”). That means an inmate, such as Mr. Runnels, with a conviction for capital murder of a correctional officer would never have been eligible for G-3 status. State and federal courts have upheld SPD designations for

inmates who have engaged in far less serious conduct than capital murder of a prison officer.<sup>6</sup>

If Mr. Runnels had been sentenced to life in prison, he would not have been eligible for general population at all. Instead, he would have been assigned to the strictest level of administrative segregation and would remain there for many years. Ex. 2, Aubuchon Declaration at para. 12. Under the TDCJ plan in place at the time of Mr. Runnels' trial, an inmate "shall be assigned to administrative segregation-security detention" if the inmate meets one or more of the following characteristics:

(a) constitutes a threat to the physical safety of other offenders or staff;

(b) constitutes a threat to the order and security of the institution, as evidenced by repeated, serious disciplinary violations;

(c) constitutes a threat to the physical safety of other offenders or staff due to having been identified

<sup>6</sup> See, e.g., *Vaughn v. Zeller*, No. 07-06-0366-CV, 2009 WL 484238 (Tex. App. Feb. 26, 2009) (unpublished) (upholding summary judgment against Texas inmate who sought to remove SPD designation despite fact that the assault did not result in the officer's death or life threatening injuries, the inmate was never criminally charged for the assault, and two other inmates who participated in the assault said this inmate was innocent); *Gonzales v. Gross*, No. CV H-17-3190, 2018 WL 3146721, at 4 (S.D. Tex. June 26, 2018) (unpublished) (denying injunctive relief to Texas inmate who received an SPD and was transferred to administrative segregation for ten years for participating in an assault of a corrections officer that resulted in "an injury that required more than first aid").

as a security threat group member;

(d) is a current escape risk.

Ex. 1, C.P. at 84; Ex. 2, Aubuchon Declaration at para. 12.

The Administrative Segregation Plan in effect at the time of Mr. Runnels' trial similarly *required* administrative segregation-security detention for inmates who are a "[t]hreat to the physical safety of other offenders or staff." Ex. 4, TDCJ Administrative Segregation Plan, Feb. 2005, at 1 (hereinafter "Ad. Seg."); Ex. 2, Aubuchon Declaration at para. 12. "Mr. Runnels would have certainly been designated as a maximum custody/administrative segregation security level by the Administrative Segregation Committee (ASC) based on these criteria" because of the nature of the offense for which he was convicted. Ex. 2, Aubuchon Declaration, at para. 13. This offense "would have [been] taken very seriously in assessing his security level, and as such [ASC] would have found that Mr. Runnels 'constitutes a threat to the physical safety of other offenders or staff.'" *Id.*

Mr. Runnels also would have remained in administrative segregation for many years after his initial placement. An inmate held in administrative segregation is entitled to regular review of his status

by the ASC and the State Classification Committee. However, similar to the initial determination to place an inmate in administrative segregation, that inmate's transfer to general population is conditioned on a finding that he is no longer a "physical threat to staff or other offenders." Ex. 4, Ad. Seg. at 23. Given the extreme nature of Mr. Runnels' crime of conviction, no committee would have found that he met this criteria for a minimum of many years. Ex. 2, Aubuchon Declaration at para. 14. Even then, any change in status would depend on many factors including his disciplinary infractions, medical evaluations, relationships with other inmates and staff, participation in inmate programs, and his own statements to the reviewing committee. Ex. 4, Ad. Seg. at 23-24; Ex. 2, Aubuchon Declaration at para. 14.

The difference between a G-3 and administrative segregation classification is far from negligible. Unlike the G-3 inmates described by Merillat, an administratively segregated inmate is highly restricted within the prison environment. He is housed in a single cell specifically designated for housing security detention offenders. As such, he would be ineligible to be housed with a "DWI offender" in the way Merillat claimed was possible. Among other things, the administratively



segregated inmate is ineligible for contact visits; requires constant and direct armed supervision outside the security perimeter; and an escort to and from activities outside his assigned cell. Ex. 1, C.P. at 84; Ex. 2, Aubuchon Declaration at para. 15. “In short, Mr. Runnels would have spent the vast majority of time alone in his cell, and when outside his cell, he would have been closely supervised by corrections officers.” Ex. 2, Aubuchon Declaration, at para. 15.

There can be no dispute that Merillat’s testimony at Mr. Runnels’ punishment phase trial was false. His assertion that all inmates are automatically classified with the status of G-3 is clearly contradicted by TDCJ’s own classification materials that were in place at that time. *Compare* 16 RR 107-110 *with* Ex. 1, C.P.; Ex. 2, Aubuchon Declaration; Ex. 3, C.P. Supp; Ex. 4, Ad. Seg. Furthermore, the specific classification requirements set forth in the TDCJ regulations establish that Mr. Runnels, based on the circumstances of the instant crime alone, would only be eligible for classification as an administratively segregated inmate—the highest and most severely restricted classification level. He also could never be housed with any general population inmate

while at that level.<sup>7</sup> *See id.*

### **B. Merillat's false testimony was material**

An applicant must demonstrate that false evidence was presented at trial and the false evidence was material to the jury's verdict in order to be entitled to habeas relief. *See Ex parte Weinstein*, 421 S.W.3d 656, 665 (Tex. Crim. App. 2014). The standard for materiality of false testimony is whether there is a reasonable likelihood that the false testimony affected the applicant's conviction or sentence. *Chavez*, 371 S.W.3d at 206-07; *Ghahremani*, 331 S.W.3d at 478. In other words, the applicant must "prove by a preponderance of the evidence that the error contributed to his conviction or punishment." *Chabot*, 300 S.W.3d at 771 (quoting *Ex parte Fierro*, 934 S.W.2d 370, 374-75 (Tex. Crim. App. 1996)). Given that Mr. Runnels' penalty trial focused almost exclusively on the question of his future dangerousness, Merillat's testimony was

<sup>7</sup> Even if, after many years, Mr. Runnels became eligible to be transferred to general population, he would still not be eligible for G-3 classification as Merillat claimed. As discussed above, a prisoner with a history of staff assault such as Mr. Runnels is never eligible for G-3 status, and this rule cannot even be overridden by a prison committee. Ex. 3, Supp. C.P. Instead, he would only be eligible for G-4 or G-5 status, classifications that require significantly higher security. Among other things, inmates classified as G-4 or G-5 are ineligible for contact visits; require direct armed supervision on jobs and assignments outside the security perimeter (and supervision inside of it); receive only limited recreation time; and are severely restricted as to eligibility for jobs. *Id.* at Attachment A. Additionally, a G-4 or G-5 inmate may only be housed with another G-4 or G-5 inmate, respectively. *Id.*

certainly material.

1. Merillat's extensive false testimony was central to the issue before the jury

During penalty deliberations, the jury was asked to determine, as required by Texas statute, whether they found from the evidence beyond a reasonable doubt that there was a probability Mr. Runnels would commit criminal acts of violence that would constitute a continuing threat to society. *See* Tex. Penal Code § 37.071 sec. 2(b)(1). Since Mr. Runnels pleaded guilty to capital murder and his lawyers presented no mitigating evidence on his behalf, the future dangerousness question became *the* central issue in Mr. Runnels' case. *See Runnels*, No. AP-75,318, 2007 WL 2655682, at 4 (noting that trial counsel did not call mitigating witnesses to testify). Merillat was called to testify by the State for the sole purpose of "educating" the jury as to what Mr. Runnels' level of freedom in prison would be should he not be sentenced to death, and the potential risk he posed to others in prison.

Merillat's false testimony "proved" to the jury that Mr. Runnels, who had pleaded guilty to killing a correctional officer, would re-enter the prison system classified as a "minimum/medium" security risk unless the jury sentenced him to death. The jury was led to believe he

would be able to mix freely with inmates and staff, be free to move about the prison unconfined, and go “to work, visitation, church, medical, chow, unescorted.” (16 RR 108-109.) Merillat provided examples of the supposed danger Mr. Runnels would pose to non-violent, low level offenders, telling the jury that Mr. Runnels could potentially be housed with someone classified even lower than a G-3, like a DWI offender. (16 RR 108.)

Additionally, Merillat falsely told the jury that the only way for a capital murder convict to be imprisoned in a high security environment would be to sentence him to death. Merillat described death row to the jury as starkly different from a G-3 status by describing how such a death row inmate would

spend 23 hours a day inside that cell. He can only come out when he’s handcuffed and escorted by two officers. He has to single recreate – recreate by himself. He has to be escorted to a shower once a day, if he choses to. Then he’s back in his cell, he eats inside his cell. Very restrictive custody. (16 RR 111.)

However, this actually describes what Mr. Runnels’ life would look like if he was sentenced to life in prison without the possibility of parole, not just death. *See* Ex. 2, Aubuchon Declaration, para. 11.

Merillat’s message to the jury was clear: the only way to ensure

that Mr. Runnels would be imprisoned in a secure environment would be to impose the death penalty. This false and uncontroverted testimony stands in stark contrast to the truth: Mr. Runnels would have been placed in a highly secure and restrictive prison environment regardless of which sentence the jury decided to impose. *See* Ex. 3, Supp. C.P. The blatant falsehoods regarding matters that were squarely relevant to the question before the jury are not immaterial.

Merillat testified based on his experience as a Texas Peace Officer since 1977, extensive law enforcement training, authorship of five books on law enforcement issues, and specific expertise on Texas prison crimes. (16 RR 101-103). He told the jury that, as part of this expertise, he was “familiar with the classification process in the Texas system.” (16 RR 104.) “Such extensive credentials increased [Merillat’s] credibility as a person knowledgeable about violence in prisons and future dangerousness.” *Velez v. State*, AP-76051, 2012 WL 2130890, at 32 (Tex. Crim. App. June 23, 2012).<sup>8</sup> Moreover, this is not a case where a witness made an isolated false statement amidst otherwise helpful testimony. Nearly everything Merillat testified to at Mr. Runnels’ trial

<sup>8</sup> *Velez* is discussed in greater detail below.

was false, and it led the jury to believe that Mr. Runnels would be free to do as he pleased, posing significant risk to others, within the confines of a prison unless he was sentenced to death.

There is a reasonable likelihood that this highly prejudicial false testimony led the jury to find that Mr. Runnels would be a future danger if housed in the conditions Merillat described, and thus deserving of a death sentence to ensure he was placed in a high security environment. Classification in prison is a fundamental element of the future dangerousness argument—one of only two questions the jury is asked to decide before determining if a defendant is allowed to live or condemned to death. Given that Mr. Runnels was facing sentencing for the murder of a prison factory supervisor, it is especially likely that the prison system's ability to ensure that Mr. Runnels was being held in a secure environment weighed heavily on jurors' minds. *See Runnels*, No. AP-75,318, at 1. The false evidence presented by the State against Mr. Runnels was that he posed an extreme risk of future danger if given a sentence less than death because of the relative freedom he would enjoy in prison, given that he would be "automatically" classified as a G-3 and potentially housed with low-level DWI offenders with even lower

security classifications.

The State's closing arguments in Mr. Runnels' trial further underscore the material nature of Merillat's false testimony. Closing arguments in Mr. Runnels' penalty trial were extraordinarily short: an assistant district attorney addressed the jury for about five transcript pages, then defense counsel spoke for roughly 10 pages, and finally the elected District Attorney spoke for approximately nine pages. (17 RR 14-37.) Thus, the State's strategy in closing arguments was not to offer an exhaustive review of the law and alleged facts, but rather to remind the jury of the most important points that showed Mr. Runnels deserved a death sentence.

Near the end of his final argument, the District Attorney called the jury's attention to Merillat as an authority on prison security: "You heard A.P. [Merillat] testify." (17 RR 35.) The District Attorney then summarized Merillat's conclusion quite aptly: "There are no safe places in prison, nowhere." (17 RR 35.) This conclusion, however, was based on Merillat's false testimony that Mr. Runnels would be placed in an unsecure environment, where he would have unsupervised access to inmates and staff, if sentenced to life. It was one of the last things the

jury heard before deliberating.

The CCA previously found that the State's endorsement of false testimony related to the future dangerousness issue in closing arguments was evidence of materiality justifying a new sentencing hearing, even when the prosecution was not aware the testimony was false. In *Ex parte Espada*, No. WR-78,108-01, 2015 WL 4040778 (Tex. Crim. App. July 1, 2015) (unpublished), a jail guard, Nieto, testified at trial that he had written disciplinary reports against the defendant for assaults and drug possession and overheard the defendant bragging about the murder. In state habeas proceedings, however, it was revealed that the guard had testified falsely regarding his employment and criminal history. *Id.* at 1. These revelations did not directly contradict Nieto's future dangerousness testimony, but merely "cast doubt upon the credibility of Nieto" generally as a witness. *Id.* Nonetheless, the Court granted sentencing relief, noting that "in closing argument, the State endorsed the honesty of the guards (including Nieto) . . . ." *Id.* at 2.

In granting relief, the Court adopted the trial court's finding that "applicant established by a preponderance of the evidence that Nieto's



false testimony was material to the jury's finding of future dangerousness . . . ." *Id.* If this false testimony, which related only to impeachment, was sufficiently material to justify a new sentencing hearing, then certainly Merillat's false testimony, which related directly to the future dangerousness question before the jury, was material as well.

2. The CCA's decisions in two prior cases where Merillat testified falsely are powerful evidence of materiality

The CCA has already found materiality (and subsequently reversible error) in two other death penalty cases based on Merillat's false testimony on prison security classifications, despite the highly aggravated nature of the murders in both cases. A frequent prosecution witness, for many years Merillat routinely testified in capital trials throughout Texas that an inmate sentenced to life without parole could achieve a lower and less restrictive classification status than G-3 after serving 10 years of that sentence.<sup>9</sup>

In *Estrada v. State*, 313 S.W.3d 274, 286-88 (Tex. Crim. App. 2010), the Court reversed the appellant's death sentence as

<sup>9</sup> See Maurice Chammah, *Prison-Crime Witness Now on the Defensive*, N.Y. Times, Sept. 27, 2012, available at <https://www.nytimes.com/2012/09/28/us/in-texas-a-p-merillat-deals-with-false-testimony-ruling.html> (noting that Merillat's testimony "helped send at least 15 murderers to death row").

“constitutionally intolerable” because it was predicated on Merrillat’s false testimony. Merrillat testified, as a rebuttal witness to a defense expert on prison classification, that “a sentenced-to-life-without-parole capital murderer could achieve a lower (and less restrictive) G classification status than a G-3 status” after first serving ten years at G-3. *Id.* at 286. As in the instant case, Merrillat’s testimony in *Estrada* was contradicted by TDCJ regulations in place at the time, which provided that capital murder convicts could never receive a classification less restrictive than G-3 during their incarceration. *Id.* at 287. Merrillat’s testimony was thus deemed “materially inaccurate” by the Court. *Id.*

Despite the gruesome and highly-aggravated nature of the offense—Estrada was a youth pastor convicted of brutally strangling and stabbing to death a sixteen year old girl in his youth group who was pregnant with their child who also died as a result of the murder—Estrada was granted a new sentencing hearing. *Id.* at 279. In fact, the falsehood was so clear and material that even the State agreed that Estrada should be granted resentencing. *Id.* at 287.

Similarly, in the unpublished case, *Velez v. State*, AP-76051, 2012

WL 2130890 (Tex. Crim. App. June 23, 2012), with regard to Merrillat's testimony regarding movement in status for a life without parole inmate, the Court could not find beyond a reasonable doubt that Merrillat's false testimony did not contribute to the conviction or punishment. *Id.* at 33. Merrillat falsely told the jury that, under a life sentence, an inmate such as Velez could "promote up to a better [i.e. less strict] classification [than G-3] if you behave" in prison. *Id.* at 31. Velez's alleged crime was also highly aggravated: a jury sentenced him to death for murdering his girlfriend's one-year-old son by slamming the infant's head against a hard object. *See id.* at 1-5. Nonetheless, the CCA found Merrillat's false testimony infected the case enough to justify a new sentencing hearing.<sup>10</sup> *Id.* at 35.

The Court agreed that Merrillat's false testimony was material in *Estrada* and *Velez* despite the fact that the falsehood in both cases appeared to be limited to an isolated statement about an inmate's theoretical eligibility for a lower security setting after at least 10 years

<sup>10</sup> Velez was later exonerated and freed from prison based on evidence that he was in another state when the murder occurred. However, that evidence was not before the Court at the time of its decision to grant a new sentencing hearing. *See* Alvaro Ortiz, *Ex-death row inmate released on parole in Huntsville*, Houston Chronicle, Oct. 8, 2014, available at <https://www.houstonchronicle.com/news/houston-texas/texas/article/Ex-death-row-inmate-released-on-parole-in-5810554.php>.

in prison. *Estrada*, 313 S.W.3d at 286; *Velez*, 2012 WL 2130890 at 31. By contrast, Merillat's false testimony in Mr. Runnels' case was not confined to a single statement or allegation. Rather, essentially *all* of his relevant testimony was false, as it misled the jurors into believing that Mr. Runnels would "automatically" be placed in an unrestrictive security setting that he would actually never be eligible for under well-established TDCJ rules.<sup>11</sup> Accordingly, the materially false nature of Merillat's testimony in the instant case is even clearer than in *Estrada* or *Velez*.

Merillat told the jury that Mr. Runnels' prison classification would allow him to enjoy a level of freedom that was simply impossible under the relevant rules. Because of this false evidence, jurors could not have accurately assessed the danger Mr. Runnels might pose to others if they had chosen to spare his life and were not given the opportunity to weigh the actual risk of future dangerousness because they were not provided with the restrictions applied specifically to Mr. Runnels. That information was unequivocally material and caused significant prejudice to Mr. Runnels. By a preponderance of the evidence, the

<sup>11</sup> See *supra* Part III, Claim 1, A.

misleading nature of this testimony contributed to Mr. Runnels' death sentence, which must now be reversed. *See Chabot*, 300 S.W.3d at 771; *see also Johnson*, 486 U.S. at 590 (a death sentence based on materially inaccurate evidence violates the Eighth Amendment).

3. This case is readily distinguishable from *Coble* and *Sparks*

The U.S. Court of Appeals for the Fifth Circuit recently denied relief to two Texas death row petitioners who argued that Merillat testified falsely in their cases. *Coble v. Davis*, 728 F. App'x 297, 302 (5th Cir.), *cert. denied*, 139 S. Ct. 338 (2018); *Sparks v. Davis*, 756 F. App'x 397, 400 (5th Cir. 2018). These cases, however, are clearly distinguishable from Mr. Runnels' case.

In *Coble*, the prosecution called Merillat to testify as a penalty phase rebuttal witness to the testimony of the defense's expert, forensic psychologist Dr. Mark Cunningham. *Coble*, 728 F. App'x at 302. Dr. Cunningham testified that multiple factors made Coble a low risk of future dangerousness in prison. *Id.* at 300. In rebuttal, Merillat "testified that many violent acts committed in prison go unreported and that there are abundant opportunities for such violence." *Id.* at 302.

In federal habeas proceedings, Coble alleged that a single

anecdote that Merillat related in his testimony, regarding a general population inmate in Texas who was found “beaten, tortured, and starved to death by his cellmate,” was fabricated. *Id.* at 302. Coble was not involved in this alleged incident; the anecdote only served as an illustrative example of the general dangers supposedly posed by inmates in Texas. *See id.* This fabrication, Coble argued, violated the Eighth Amendment. The Court of Appeals for the Fifth Circuit affirmed the district court’s judgment denying relief. *Id.*<sup>12</sup> The Fifth Circuit noted the district court’s conclusion that Merillat’s false testimony “was only a small portion of the State’s overall case and was used in rebuttal regarding Dr. Cunningham’s statistical analysis.” *Id.*; *Coble v. Stephens*, No. CIV.A. W-12-CV-039, 2015 WL 5737707, at 20 (W.D. Tex. Sept. 30, 2015) (unpublished).

By contrast, Merillat’s false testimony against Mr. Runnels was offered during the State’s case-in-chief, and that false testimony did not concern something as small as a minor anecdote about an event at another prison that was completely unrelated to the defendant. Nearly

<sup>12</sup> Coble also raised this claim in his initial state habeas corpus application. However, because Coble had already raised other claims related to the admissibility of Merillat’s testimony on direct appeal, the claim was dismissed as procedurally barred. *Id.* (citing *Ex parte Coble*, No. WR-39,707-03, 2012 WL 405481, at 1 (Tex. Crim. App. Feb. 8, 2012)).

all of Merillat's testimony in the instant case was either false or served to advance the false narrative that Mr. Runnels himself would have been "automatically" categorized as relatively low security general population inmate if the jury sentenced him to life in prison. In truth, Mr. Runnels would never have been eligible for this low security level, and instead would have been assigned to a high-security administrative segregation cell upon being sentenced to life in prison.<sup>13</sup> Unlike the potentially false testimony in *Coble*, this false testimony regarding classification went to the heart of the central issue before the jury: Mr. Runnels' likelihood of committing dangerous acts in the future.

*Sparks* involved a claim that the petitioner's Eighth Amendment and due process rights were violated when, during the penalty phase of his trial, Merillat "falsely told the jury that Sparks would initially be classified as a G-3 prisoner when arriving to prison [to serve a life sentence], in spite of his past record or any other factors." *Sparks v. Davis*, 756 F. App'x 397, 400 (5th Cir. 2018). However, this error was corrected by trial defense counsel in cross-examination, when "Merillat agreed that an offender receiving a life sentence for capital murder

<sup>13</sup> See *supra* Part III, Claim 1, A.

could be classified at the more restrictive G-4 or G-5 levels.” *Sparks v. Davis*, No. 3:12-CV-469-N, 2018 WL 1509205, at 12 (N.D. Tex. Mar. 27, 2018) (unpublished). In subsequent proceedings, defense expert Frank Aubuchon asserted that Sparks would “at best, be classified to the G-3 level, or, to the more restrictive G-4 or G-5 levels, if required.” *Id.*<sup>14</sup>

Like *Coble*, *Sparks* is easily distinguished from the instant case. Most obviously, trial defense counsel in *Sparks* corrected Merillat’s false testimony before the jury. This mitigated, if not eliminated, any effect his misleading testimony had on the jury’s deliberations. In Mr. Runnels’ case, Merillat’s testimony went completely uncorrected during cross-examination or at any other point in the trial. On cross, Merillat merely reasserted his claim that Mr. Runnels would be automatically classified as a G-3. He went so far as to say, “[the prison is] going to start him with his capital case at G-3, and then his behavior will determine what happens after that situation.” (16 RR 122-123.) This

<sup>14</sup> Sparks first asserted this claim in a subsequent writ application, but the Texas Court of Criminal Appeals dismissed the claim as an abuse of the writ without explanation. *Ex parte Sparks*, No. WR-76,786-02, 2014 WL 2002211, at 1 (Tex. Crim. App. May 14, 2014). As the Fifth Circuit later explained in denying certificate of appealability from the district court’s denial of his habeas petition, however, trial counsel’s effective cross-examination of Merillat put Sparks on notice of the false testimony. Thus, Sparks should have raised the issue earlier in the state process. *Sparks*, 756 F. App’x at 401.



testimony further misled the jury into believing that the prison system would have no choice other than to classify Mr. Runnels as a low security general population inmate if the jury sentenced him to life in prison. As this application has demonstrated, this was simply false according to clear TDCJ regulations.<sup>15</sup>

Moreover, the degree of Merillat's falsehood in *Sparks* is considerably less extreme. Defense expert Aubuchon could only say that while Sparks was eligible for a G-3 classification, he *could* also have been classified as G-4 or G-5. *Sparks*, 2018 WL 1509205, at 12. Here, it is clear from TDCJ regulations (and confirmed by Aubuchon's declaration in this case) that Mr. Runnels could *never* have been eligible for a G-3 classification, and that he, in fact, would not have been eligible for general population at all. Based on his history, Mr. Runnels would instead have been imprisoned in an administratively segregated environment where he would not have had a cellmate and would have been carefully supervised outside of his cell.<sup>16</sup>

<sup>15</sup> See *supra* Part III, Claim 1, A.

<sup>16</sup> <sup>16</sup> See *supra* Part III, Claim 1, A.

**C. This claim should be authorized to proceed under Article 11.071, Section 5(a)(1), because it was not available at the time Mr. Runnels filed his initial state habeas application.**

An applicant may be authorized to proceed on a subsequent state habeas application if he can demonstrate that the current claim was not and could not have been presented in a timely initial application or in a previously considered application because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application. *See* Tex. Code Crim. Proc. Art. 11.071(5)(a)(1).

It was not until 2009 that Texas law changed such that the admission of false testimony could violate an applicant's due process rights, "notwithstanding the absence of the State's knowledge of the perjured testimony at the time of trial." *Chabot*, 300 S.W. 3d at 772. In 2012, the CCA acknowledged in *Chavez*, 371 S.W.3d at 204-205, that "*Chabot* was the first case in which we explicitly recognized an unknowing-use due process claim; therefore, that legal basis was unavailable at the time applicant filed his previous application." *Chavez* addressed a petitioner who sought review of his aggravated robbery conviction in a subsequent state habeas application on the basis that two eyewitnesses had testified falsely against him. *Id.* at 202, 204. The

CCA found the subsequent application fell within the exception outlined in Article 11.071, section 5(a)(1), and thus allowed the claim to be decided on the merits. *Id.* at 207. As the Court explained, prior to *Chabot*, the governing standard required the false testimony to be “attributable to the State.” *Id.* at 206. This was a standard that the petitioner in *Chavez* could not meet when his first state habeas application was filed. *Id.*; see also *Ex parte Castillo*, No. WR-70,510-04, 2017 WL 5783355, at \*1 (Tex. Crim. App. Nov. 28, 2017) (unpublished) (“Because applicant filed his initial (and only other) habeas application in the trial court prior to this Court’s decision in *Chabot*, this decision provides a new legal basis which was not available at the time applicant filed his last habeas application.”)

Mr. Runnels’ case is comparable to *Chavez*. Merillat’s false testimony is not attributable to the State, and there is no evidence that the State actually knew Merillat’s testimony was false at the time of trial. At the time Mr. Runnels’ initial habeas application was filed in September 2007, habeas counsel could not have raised the instant claim, because the legal basis for relief provided by *Chabot* was not yet available. As such, any false testimony claim raised in his first state

habeas application, when pre-*Chabot* jurisprudence governed his case, would have failed. Accordingly, a subsequent writ application should be authorized now.

**D. In the alternative, this claim should be authorized to proceed under Article 11.071, Section 5(a)(3), because, but for Merillat's false and misleading testimony, no rational juror would have answered one or more of the special issues in the State's favor.**

A subsequent application for a writ of habeas corpus is permitted to proceed upon the presentation of "sufficient specific facts establishing that by clear and convincing evidence, but for a violation of the United States Constitution no rational juror would have answered in the state's favor one or more of the special issues that were submitted to the jury in the applicant's trial." Tex. Code Crim. Proc. Art. 11.071(5)(a)(3).

Here, there is a reasonable probability that, but for Merillat's false testimony, the result of Mr. Runnels' sentencing proceeding would have been different. Merillat's uncontroverted testimony was that, if Mr. Runnels was sentenced to life, rather than death, he would enjoy relative freedom within the prison community. The only information about classification that the jury heard was that, after the trial, Mr. Runnels would automatically be classified as a G-3, and as such would

be free to come and go from his cell, would not be handcuffed when moving around the prison, and would be able to go to work, visitation, church, medical appointments, and chow unescorted. (16 RR 108-109.) For someone like Mr. Runnels, an individual convicted of killing someone *in a prison environment*, this relative freedom described by Merillat would give any rational juror great pause. Rational jurors, who might otherwise be inclined to sentence Mr. Runnels to life in prison, would have felt compelled to impose a death sentence in order to spare other inmates from the dangers they believed Mr. Runnels would pose if left in an unrestricted environment.

The classification that Merillat warned of, however, could never have happened. Mr. Runnels was categorically ineligible for G-3 status, and TDCJ rules would have required that he be placed in highly restrictive administrative segregation.<sup>17</sup> As an administratively segregated inmate, he would have been housed in a single cell; required constant and direct armed supervision outside the security perimeter; and required an escort to and from activities outside his assigned cell. Ex. 1, C.P. at 84; Ex. 2, Aubuchon Declaration at para. 15. Had the jury

<sup>17</sup> See *supra* Part III, Claim 1, A.

heard accurate information, there is a reasonable probability that at least one juror would have determined that Mr. Runnels did not in fact present a future danger if sentenced to a term of incarceration, rather than death.

### CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Travis Trevino Runnels prays that this Court:

1. Find that the requirements of Texas Code of Criminal Procedure Article 11.071, Section 5 have been satisfied;
2. Issue an order remanding the case to the convicting court for judgment on the pleadings; and/or in the alternative issue an order remanding the case to the convicting court for an evidentiary hearing for the purpose of examining the merits of this claim; and
3. Grant any other relief that law or justice requires.

Dated: September 13, 2019

Respectfully submitted,

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<sup>18</sup> Mr. Pickett is licensed to practice law in North Carolina. On August 1, 2019, he was admitted pro hac vice and appointed to represent Mr. Runnels in Texas state court by 320th District Court Judge Pamela Sirmon. *See* Ex. 5, Order Appointing Counsel.

VERIFICATION

STATE OF TEXAS

COUNTY OF TRAVIS

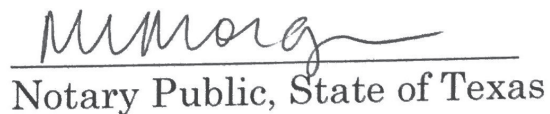
Before me, the undersigned authority, on this day personally appeared Janet Gilger-VanderZanden, who upon being duly sworn by me testified as follows:

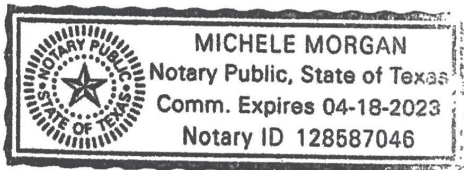
- 1. I am a member of the State Bar of Texas in good standing.
- 2. I am the duly authorized attorney for Travis Runnels, having the authority to prepare and to verify Mr. Runnels' subsequent application for a writ of habeas corpus.
- 3. I have prepared and read the forgoing application and I believe all allegations in it to be true to the best of my knowledge.

Signed under penalty of perjury:

  
 Janet Gilger-VanderZanden

SUBSCRIBED AND SWORN TO BEFORE ME on September 13, 2019.

  
 Notary Public, State of Texas





**CERTIFICATE OF SERVICE**

I hereby certify that on September 13, 2019, I served a copy of the foregoing application upon counsel for the Respondent via first class mail and email at:

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/s/ Janet Gilger-VanderZanden  
Janet Gilger-VanderZanden

# **EXHIBIT 1**

TEXAS DEPARTMENT OF CRIMINAL JUSTICE  
CORRECTIONAL INSTITUTIONS DIVISION



**CLASSIFICATION PLAN**

Revised by Classification and Records  
October 2003

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## Texas Department of Criminal Justice

P.O. Box 99, Huntsville, Texas 77342-0099


Gary Johnson  
Executive DirectorTo: *All Classification Plan Users*

The attached plan has been modified to reflect the recent changes in the Classification of TDCJ offenders. This plan has been staffed through and approved by the following Directors and Administrators.

As each of you are aware, Classification is a dynamic process and inevitably there will be changes or clarifications to the *Classification Plan* in the future. As a user of the plan, you will be provided with any updates as they become available.



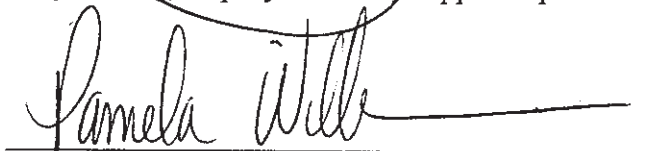
Gary Johnson, Executive Director, TDCJ



Douglas Dretke, Director, Correctional Institutions Division



Gary Gomez, Deputy Director, Support Operations



Pamela Williams, Assistant Director, Classification and Records



Beverly Stewart, Administrator for Unit Classification

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**CHAPTER 1**  
***INTRODUCTION***

## INTRODUCTION

The Texas Department of Criminal Justice, Correctional Institutions Division is required by state law to provide work, treatment opportunity, encouragement, and training to those persons who are convicted and sentenced to prison for violating the law. Classification is the means for meeting these requirements.

Offender Classification is a process which systematically groups offenders according to security and program needs and requirements. In the Texas Department of Criminal Justice this is accomplished through personal interviews, medical and mental health evaluations, educational assessments, life history reviews, and examinations of information relative to criminal history background. The purpose of classification is to provide a comprehensive system which evaluates and accurately groups offenders on the basis of numerous characteristics including age, type of offense, sentence length, prior criminal record, institutional adjustment, medical and mental health care needs, educational, vocational and work-related needs. Moreover, through the process of classification, offenders whose medical, mental health, security, safety and other needs that require special consideration are identified and provided appropriate programs and services.

The classification system operates to ensure the safety of all offenders, staff, the public, and to protect the security and order of each unit. The Classification and Records Department operates under the direction of the Correctional Institutions Division of the Texas Department of Criminal Justice.

Classification strives to achieve the following goals:

1. To gather and record information relevant to each offender's criminal, social, medical, psychological, educational, and vocational histories, as well as other relevant data, and to make the information readily available for use in making classification-related decisions.
2. To provide and maintain procedures for expeditiously identifying offenders who require immediate medical or mental health care or who have other treatment, security or safety needs requiring immediate intervention.
3. To ensure that each offender is placed in an institutional setting where the offender receives supervision in work, education, vocational training, and treatment consistent with the safety needs of the individual offender, the public, the staff, and the total offender population.
4. To provide offenders with opportunity for personal improvement and rehabilitation through the availability of programs and services.
5. To maintain a dynamic classification process which provides incentive for offenders to make a positive institutional adjustment.



6. To provide appropriate agency staff with information about the classification process and to advise staff of any changes in the process.
7. To achieve executive, legislative, judicial, and Texas Board of Criminal Justice objectives concerning prison classification.
8. To maintain a dynamic and flexible classification system so that changes in legislation, the judicial interpretation of legislative mandates, or criminal justice goals, as well as changes in offender population characteristics, can be incorporated smoothly without creating disharmony in prison operations.

Plans for the identification, care and treatment of offenders with medical, mental health, intellectual impairment and other special needs (e.g., physically handicapped offenders) have been developed and implemented, and to the extent that those plans are in conflict with this Classification Plan, those plans shall govern.

In order to ensure that the classification system continues to meet the goals and objectives of classification in the Correctional Institutions Division, an annual review shall be conducted of the guidelines, policies and procedures established in this Classification Plan.

**CHAPTER 2**  
***GLOSSARY***

## GLOSSARY

### Administrative Segregation/Special Management

A non-punitive, maximum custody status involving separation of an offender from the general offender population for the purposes of maintaining safety, security, and order among general population offenders, correctional personnel, the public and within the prison institution.

Administrative Segregation/Special Management is comprised of four (4) separate categories:

- (1) Security Detention - An offender in this category requires isolation from the general population because he has been found to be a current escape risk, a threat to the physical safety of other offenders or staff, the public or a threat to the order and security of the institution as evidenced by repeated, serious disciplinary violations or due to having been identified and confirmed as a member of a security threat group.
- (2) Pre-Hearing Detention - An offender is placed in pre-hearing detention when he is charged with, or suspected of, a disciplinary violation and (a) it is necessary to isolate the offender from the general population in order to maintain the integrity of the investigation, (b) the offender is a current escape risk, or (c) his presence in the population would create a threat to the physical safety of other offenders or staff.
- (3) Protective Custody - A protective custody offender is one who requires maximum custody protection due to threats of harm by others.
- (4) Temporary Detention Between Consecutive Terms of Solitary Confinement - An offender who does not meet the criteria for security detention, pre-hearing detention, or protective custody may be confined in administrative segregation without notice or hearing only under the following conditions and confinement procedures: (a) the offender has been sentenced to two or more consecutive terms in solitary confinement and (b) the warden or his designee determines that the offender's presence in the population would create a threat to the physical safety of offenders or staff.

### Administrative Segregation Committee (ASC)/Special Management Committee (SMC)

Functioning at the unit level, this committee conducts the initial due process hearings for the assignment of offenders to Administrative Segregation/Special Management status, to include identification or confirmation of any special conditions of confinement. This committee also conducts regularly scheduled hearings, dependant upon the offender's Administrative Segregation/Special Management level. All decisions regarding assignment to and release from Administrative Segregation/Special Management require final confirmation by the State Classification Committee.

### Admission Summary (Case Summary)

A sociological document completed on each offender during intake processing at a reception and diagnostic center. The Admission Summary, or Case Summary, includes information in the following areas: criminal history, family history, educational history, employment background, military history, physical health history and mental health history.

### Annual Review

A paper review conducted by unit classification staff, addressing the offender's custody level, time earning status, job and housing assignments, UC00 screens, and other documents in the unit file.

Barrier-Free Facility

A facility which meets the medical needs of physically disabled offenders and maximizes their access to programs, services and activities (e.g., education, recreation, meals, showers, living accommodations).

Bench Warrant

A document issued by a judicial officer directing that a person be brought to court for formal judicial proceedings.

Cell Assignment Form

A form completed on each offender (excluding Transfer and State Jail offenders) which identifies security-related restrictions relative to double-cell housing (i.e. separation from a particular race or races when assigned to a two-person cell).

Chief of Unit Classification

Coordinates the scheduling of offenders' reviews by the Unit Classification Committee. Responsible for ensuring that all matters relative to unit-level classification are conducted in accordance with the Classification Plan.

Classification Committee Docket

The formal written record of classification committee proceedings which documents the reason for an offender's appearance before the committee, the membership of the committee, and the decisions made or actions taken by the committee, including a record of how each member voted.

Classification and Records Office (CRO)

Under the supervision of the Chairperson of the State Classification Committee, the Classification and Records Office (CRO) is responsible for maintaining all permanent offender files and records (excluding medical records), to include the records of all offenders previously incarcerated in the TDCJ, processing all requests for temporary absences, offender good conduct time awards, offenders' affiliation with a security threat group, etc. and preparing offender records requiring review by the State Classification Committee (SCC). Designated CRO staff members are permanently assigned as members of the State Classification Committee.

Commissary

The unit store where certain items not issued by the State can be purchased by offenders through established procedures.

Commitment Papers

Official documents (Standardized Felony Judgment Form) issued by the court which contain the judgment, sentence and offense report of the case for which the offender was convicted.

Committee Card

A card kept on each offender which records the offender's criminal history, prior institutional record, adjustment problems, and any other relevant information necessary to make determinations as to the offender's appropriate custody designation, unit assignment, and other decisions related to offender classification. This card is retained in the files of the Classification and Records Office and is updated as needed. The unit equivalent of the committee card is referred to as the travel card.

Conditional Pardon

A form of executive clemency which serves to release a convicted person from the conditions and disabilities imposed by the sentence of the court, subject to specified conditions.

Contact Visit

A contact visit consists of an embrace between the offender and visitor at the beginning and at the conclusion of the visitation period. Holding hands is permitted during visitation as long as the hands remain on top of the table in full view of staff. The offender is permitted to hold his small children during the course of the visit.

Contraband

Any object, substance, or material forbidden by unit or TDCJ rules or State law from being in an offender's possession or control in a prison unit or facility.

Custody Designation

The category to which an offender is assigned on the basis of the offender's classification characteristics relative to the level of security and supervision he requires both inside and outside the institution (e.g., cell versus dormitory housing; periodic, unarmed supervision versus constant, armed supervision). The principal custody designations are General Population Level I (G1/J1), General Population Level II (G2/J2), General Population Level III (G3), General Population Level IV (G4/J4), General Population, Level V (G5/J5), and Administrative Segregation/Special Management

Death Row

An area on a designated unit for housing offenders who are committed to the Institutional Division under sentence of death.

Death Sentence Status

A custody status reserved for those offenders who are committed to the Institutional Division under sentence of death and housed on Death Row.

Departmental Review Board (DRB)

Functioning at the administrative level, the DRB makes final determinations on all appeals of classification decisions filed by the unit administration and unit classification committees.

Detainer

A notice issued to prison officials by a law enforcement agency which represents outstanding criminal charges against an offender. Felony and misdemeanor detainers can be received from the U.S. Immigration Service, U.S. Marshall's office, Sheriff's Department, District Attorney, or State Department of Correction. The Interstate Detainer Agreement allows for an offender to be returned to another State, at his request or at the request of the detaining State, to stand trial for a previously untried case.

Diagnostic Interviewer

An employee who obtains basic demographic information from offenders during the process of initial classification at a reception and diagnostic center. The principal interviewer during the reception and diagnostic process whose main duties include interviewing all newly-received offenders to gather relevant sociological data which is used in the development of permanent offender records, completing offender Committee/Travel Cards, Consolidated Reports (case summaries), and initiation of the Unit Classification Review (UCR) Form (Part B) for each offender.

Disciplinary Offense

An act of misconduct which is in violation of TDCJ rules and regulations. Disciplinary offenses are categorized according to the level of seriousness and the maximum punishment which may be assessed upon conviction for the offense (ranging from Level 1-most serious, to Level 3-least serious). The seriousness of an offense will determine the type of disciplinary hearing required to hear the charge. The type of disciplinary hearing (major or minor) will determine the type of penalty that can be imposed. Under a major hearing, which is conducted by a Disciplinary Hearing Officer, both major and minor penalties can be assessed. Under a



minor hearing, which is held by a Minor Hearing Officer, only minor penalties can be assessed. Major penalties for Institutional offenders consist of solitary, reduction in time-earning class, loss of good conduct time and retention in Line Class III. Major penalties for State Jail offenders consist of solitary only. For offenders on death row, cell restriction and loss of recreation penalties are regarded as major punishments.

#### Disciplinary Report and Hearing Record

A report filed by an employee on an offender for violating a rule or regulation. The Disciplinary Report and Hearing Record identifies the accused offender by name and TDCJ offender number, describes the circumstances of the rule infraction, and provides a record of the hearing. There are two versions of the report: one is used for major disciplinary hearings; the other, for minor hearings. A copy of the report is provided to the accused offender prior to his appearance before the Disciplinary Hearing Officer (for serious infractions) or the Minor Hearing Officer (for less serious infractions) to notify the offender of the disciplinary charges against him/her. A copy of the report is also provided to the accused after the hearing.

#### Emergency Absence

Temporary release under escort to attend the funeral of an immediate family member, visit a funeral home to view a deceased immediate family member, or visit a critically ill immediate family member. For the purpose of emergency absence consideration an "immediate family member" is defined as the offender's parents, spouse, siblings, half-siblings, and children. Surrogate parents are included if the relationship of the surrogate to the offender is verifiable from established TDCJ files.

#### Enemies List

A computerized record compiled and continually updated for each offender which contains the names and numbers of all known persons incarcerated in the TDCJ who, for various reasons, might feel antagonistic toward that offender.

#### Escape (bona fide)

An escape is the intentional commission of an overt act resulting in the unauthorized departure from custody of a secure adult correctional facility that results, or would result in the successful unauthorized departure from any part of a facility, work assignment, or extended limits of the facility.

#### Forty-Eight (48) Hour Notice

Written policy and procedure require that unless precluded for security or other substantial reasons, all offenders appear at their classification hearings and are given notice 48 hours prior to the hearing. The 48-hour notice is accomplished through the use of the Unit Classification Committee 48-hour Notice Form (SSP-48).

#### Good Conduct Time

State law provides for reduction of the time to be served by Institutional offenders with the establishment of guidelines for awarding good conduct time credits to offenders for good behavior. An offender who is "orderly, industrious, and obedient" can earn additional time credit (i.e. good conduct time) for each day actually served on the offender's maximum sentence. Good conduct time applies only to eligibility for parole or mandatory supervision release. The amount of good conduct time an offender can be awarded and the method for awarding good conduct time is determined by the laws in effect at the time an offender committed his offense(s), unless otherwise indicated by statute. Offenders who are incarcerated for a State Jail felony do not earn good conduct time.

HC00

An on-line computer program designed to track offender housing and capacity information.

Health Summary for Classification Form (HSM-18 Form)

The instrument by which the medical and mental health professional treatment staff communicate information to classification committees and classification and security staff with regard to offenders' current health status, to include any and all health-related restrictions relative to housing assignments, job assignments, disciplinary procedures, etc.

Immediate Family

For the purposes of contact visitation, an offender's immediate family is defined as the offender's parents (natural, adoptive or step), spouse, siblings (natural, adoptive or step), children (natural, adopted or step) grandchildren, grandparents, aunt or uncle and persons related by marriage (father-, mother-, brother- and sister-in-law) if accompanied by an immediate family member. The unit warden may determine that significant others in an offender's life may also be accorded contact visitation privileges. For the purposes of emergency absences, "immediate family" is defined as the offender's parents, spouse, siblings, half siblings and children. Surrogate parents are included if the relationship of the surrogate to the offender is verifiable from established TDCJ files.

Incident Report

A documentary report prepared by unit administration which presents the facts and circumstances surrounding an incident of violence or any other unusual incident(s) within the institution.

Individualized Treatment Plan (ITP)

The plan of treatment developed for an offender by a professional member of the medical, mental health, Sex Offender Treatment, Chaplaincy, or Windham School System staff which identifies and prioritizes the specifics of the offender's treatment or program regimen.

Inmate Commitment Data Form (ICDF)

A form prepared by the Classification and Records Office on each newly-received offender utilizing information from the offender's certified commitment papers (to include the judgment, sentence, and offense report) issued by the county of conviction. The ICDF includes the offender's name, TDCJ number, sentence begin date, sentence length, etc.

Inmate Consolidated Report Form (ICRF)

A document containing sociological background information which is completed on each offender during intake processing at a reception and diagnostic center. This document is used to assist in the completion of the offender's Admission Summary.

Jail Report

A report that may be provided by each county upon admittance to the TDCJ which provides information relative to the offender's behavior while in their custody.

Job Assignment

An occupational task assigned to an offender. Offenders may be assigned a job in one of the following departments: unit support, education, agriculture, construction and maintenance, industry, food service, laundry service, and transportation.

Justification

A written explanation entered and maintained on the computer for the purposes of documenting the specific reasons why an offender has been temporarily housed out of his or her assigned custody. A justification is required whenever an offender's assigned custody and assigned housing do not match. A justification is also required by the Unit Classification Committee whenever an offender with a requirement for cell housing is assigned to a dormitory.

Level 1 Offense

A disciplinary offense committed by an offender which presents an immediate and serious threat to the safety of the public, the staff, other offenders, or to the security and order of the institution.

Level 2 Offense

A disciplinary offense committed by an offender which could present an immediate and serious threat to the safety of the public, the staff, other offenders, or to the security and order of the institution, depending on the circumstances of the offense.

Level 3 Offense

A disciplinary offense committed by an offender which poses no immediate or serious threat to the safety of the public, the staff, other offenders, or to the security and order of the institution.

Major Penalty

Punishment imposed pursuant to a major hearing upon conviction for a disciplinary offense. Major penalties for ID offenders include solitary, loss of good conduct time, reduction in time-earning class, and retention in Line Class III. The major penalty for State Jail offenders is solitary only.

Mandatory Supervision

The release of an offender from prison confinement, but not on parole and not from legal custody of the State, to serve the remaining sentence day for day outside the prison institution under such conditions and provisions of supervision as may be determined by the Board of Pardons and Paroles. Release to mandatory supervision shall not be construed to mean a commutation of sentence or any other form of executive clemency. Offenders whose offenses were committed on or after September 1, 1987, and whose offenses are statutorily defined as being assaultive are not eligible for release to mandatory supervision. Discretionary Mandatory Supervision (DMS) disqualifies an offender from Mandatory Supervision Release by: (1) prior non-Mandatory Supervision or prior offense with affirmative finding of a deadly weapon, that was previously incarcerated within TDCJ, or (2) BPP vote. This does not apply to offenders incarcerated for a State Jail felony.

Medical Status

A status which identifies those offenders (both inpatient and outpatient) who require special consideration with regard to housing, job assignments, etc., due to their medical conditions, as recommended by the attending physician.

Mentally Retarded Offender Program (MROP) Status

A status which identifies those offenders who require special consideration due to their retardation or developmental disabilities. Offenders in this status have a WAIS-R full scale IQ of 73 or below or a social history indicative of mental retardation.

MROP-Sheltered Facility

A facility which provides an inpatient program for mentally retarded offenders.

Minor Penalty

Any punishment imposed pursuant to a major or minor disciplinary hearing which is not defined as a major penalty (see MAJOR PENALTY). Minor penalties include verbal reprimand, extra duty, loss of privileges, etc.



Outside Trusty (OT)

A designator used to identify those General Population Level I (G1) custody offenders who have been approved to live in a trusty camp and work outside the security perimeter with minimal supervision.

Override

Authority given to TDCJ classification committees to overrule computer-recommended custody designations, in the interests of good correctional practice, which would otherwise be dictated by established custody assignment specifications. Overrides are based upon peculiar or unusual circumstances relevant to individual classification issues not otherwise covered by custody assignment specifications.

Parole

The release of an offender from prison confinement, but not from legal custody of the State, to serve the remaining sentence day for day outside the prison institution under such conditions and provisions of supervision as may be determined by the Board of Pardons and Paroles. Release to parole shall not be construed to mean a commutation of sentence or any other form of executive clemency. An offender's initial parole eligibility date (the date on which the offender is first eligible for consideration for parole) is determined by the laws in effect at the time the offender committed his offense. This does not apply to offenders incarcerated for a State Jail felony.

Parole in Absentia (PIA)

Parole in Absentia (PIA) is the process of considering state-ready offenders sentenced to TDCJ for parole from the county jails. This does not apply to offenders incarcerated for a State Jail felony.

Pattern of Free-World Convictions for Offenses of a Violent Nature

Three (3) convictions for offenses of a violent nature shall constitute a pattern.

Physically Disabled Offender Status

A status which identifies those offenders who require special consideration with regard to housing, job assignments, etc., due to a permanent or temporary disability.

Pre-Release Program

A specialized curriculum of courses, activities, etc., provided by the Windham School District or other treatment department(s) for the purpose of preparing an offender for successful integration into the community through instructional development of specific life-coping skills.

Psychiatric Acute Care Inpatient Facility

This type of inpatient facility is designed to provide treatment to offenders who are diagnosed as demonstrating acute psychotic, affective or adjustment disorders.

Psychiatric Intermediate Care Inpatient Facility

This type of facility is designed to treat offender patients referred from an Acute Care Inpatient Facility or outpatient clinical facility.

Psychiatric Status

A status assigned to an offender by a TDCJ staff psychiatric services clinician as the result of any psychiatric diagnosis for which active psychiatric treatment is being delivered. "Active psychiatric treatment" includes receiving psychiatric services on an inpatient or outpatient basis or being under psychiatric observation.

PULHES

PULHES is an acronym for the medical classification system used to classify each offender on the basis of his capabilities or limitations, as determined by medical/mental health professional staff. Under the PULHES system, the body is divided into six categories of body parts and systems: physical capacity or stamina (P); upper extremities (U); lower extremities (L); hearing

and ears (H); eyes and vision (E); and psychiatric (S). The capabilities/limitations of each of the body parts/systems is indicated by a numerical designator and code letter (1A, 2B, 3C, 3D, ... 4P), with a modifier assigned to each to indicate how long the medical condition will exist (i.e. temporary, remedial or permanent). Each offender's PULHES classification is recorded on the Report of Physical Examination form.

Recent Pattern of In-Prison Assaultive Behavior

Three (3) or more separate disciplinary convictions resulting in major punishments within the past 24 months for offender or staff assaults, with or without a weapon.

Reception and Diagnostic Center

A Reception and Diagnostic Center is a TDCJ facility where newly-received offenders are processed for the purposes of determining the offender's needs and requirements relative to security, supervision, and treatment. For purposes of the Classification Plan, this will include State jail facilities who receive offenders directly from the county.

Regional Medical Facility

A facility which provides limited consultative specialty outpatient services, inpatient infirmary services, and skilled nursing services.

Reprieve

A form of executive clemency granting temporary suspension of the execution of sentence.

Safekeeping Status

A status assigned to those offenders who require separate housing from the general population because of threats to their safety due to offender enemies, a history of deviant sexual behavior, a potential for victimization or other similar reasons. Institutional offenders in safekeeping are also assigned a principal custody designation (i.e. Safekeeping Level II-P2, Safekeeping Level III-P3, Safekeeping Level IV-P4, and Safekeeping Level V-P5). State Jail offenders in safekeeping status are assigned to PJ custody.

Secure Adult Correctional Facility

A secure TDCJ-CID unit, transfer facility, State Jail facility, privately contracted or leased prison, pre-parole facility, intermediate sanction facility, federal facility, other state's department of correction facility, county jail, or city jail, which houses adult offenders.

Security Perimeter

The total designated area of a prison unit of which the furthestmost outlying boundary is visibly secured by a fence or by armed supervision.

Security Precaution Designator (SPD)

A code documented in an offender's record that identifies him as a special management risk. The designators shall be used for offenders who have a history of escape (ES), taking hostages (HS), assaulting staff (SA), or defeating security restraint devices (SR).

Security Precaution Designator Card (CL-148)

A card used to document the placement of a security precaution designator (i.e., SA - staff assault, SR - Security Restraint, HS-Hostage, ES- Escape) in the record of an offender. The Security Precaution Designator Card is bright green and must be attached to the inside of the offender travel card.

Security Precaution Designator Review Committee (SPDRC)

Responsible for reviewing offender records for removal of security precaution designator codes. SPDRC reviews are completed when a unit classification committee determines an offender meets the eligibility criteria for removal of a security precaution designator and requests removal by the SPDRC. The SPDRC is comprised of the Unit Warden, Regional Director, State Classification Committee Chairman, and appropriate Division Deputy Director.

Security Threat Group

Any group of offenders which the TDCJ reasonably believes poses a threat to the physical safety of other offenders or staff due to the nature of said security threat group. The Classification and Records Chairman shall designate such a group and said designation shall require approval of the Deputy Director for Prison/Jail Management.

Segregative Class

An identifier which classifies an offender according to age and number of institutional commitments for the purpose of assigning the offender to a prison unit. Each segregative class has a corresponding Unit Designation Code which identifies those units to which offenders in that particular segregative class should be assigned.

Sociologist

The principal interviewer during the reception and diagnostic process whose main duties include interviewing all newly-received offenders to gather relevant sociological data. Data gathered during this process is used in the development of permanent offender records; completing offender committee/travel cards, admission summaries (case summaries), cell assignment forms, case history notations and additional information forms based on information contained in official records and obtained from the offender; creating the Unit Classification Review (UCR) Form (Part B) for each offender; referring offenders for appropriate diagnostic testing/retesting or for other interviews as appropriate to each offender's case.

Solitary

A major disciplinary punishment imposed by a Disciplinary Hearing Officer upon an offender's conviction pursuant to a major disciplinary hearing. Solitary involves placement in solitary confinement, with loss of privileges, for not more than fifteen (15) days per offense.

Spanish-Speaking (Monolingual) Offenders

Offenders who speak Spanish and who are not able to communicate effectively in spoken English, including offenders who speak only Spanish with no speaking ability in English, and Spanish-speaking offenders who are able to speak some English but whose lack of fluency in English precludes them from understanding basic unit activities and proceedings (i.e. limited English-speaking offenders).

Special Alternative Incarceration Program (SAIP)

A 90-day work/education program established and operated by the CID for offenders required to participate in the program as a condition of probation. This program, commonly referred to as the "Boot Camp" program, is designed to deter young, first-time offenders from future crime and imprisonment.

Special Needs Offenders

Those offenders who require special consideration with regard to unit of assignment, housing, discipline or job assignments or who require treatment due to medical or mental health needs or needs relative to an intellectual impairment or physical disability.

Standardized Felony Judgment Form

A standard commitment form contains all of the elements required pursuant to state law relative to a defendant's conviction or acquittal. When transferring defendants to the TDCJ, counties are required to deliver a copy of the judgment or probation revocation order completed on a standardized felony judgment form.

State Classification Committee (SCC)

Responsible for confirming offenders' security threat group membership, and for approving all inter-unit transfers, assignments to Administrative Segregation, G1 custody and safekeeping status, removal from safekeeping status, promotions in time-earning status, emergency

absences, and decisions involving offenders in Administrative Segregation. The SCC is also the final authority in the review process for all major unit disciplinary actions. The SCC also makes initial custody recommendations, determines initial unit assignments, and makes job assignments when appropriate.

State Ready Commitment Data Form (SRCDF)

A form prepared by the State Ready Classification Office on each newly-received offender utilizing information from the offender's certified commitment papers (to include the judgement, sentence, and offense report) issued by the county of conviction. The SRCDF includes the offender's name, State Identification number, sentence begin date, sentence length, etc.

State Ready System

A computer system developed by TDCJ to collect and process data concerning convicted felons still in the county jail, but ready for processing into TDCJ. This does not apply to offenders convicted of a State Jail felony.

Time-Earning Class

A category assigned to each Institutional offender which dictates the amount of good conduct time credits an offender may be awarded each month.

Transfer Facility

A facility within the TDCJ which houses offenders undergoing reception and diagnostic processing and/or pending assignment to a permanent facility. The TDCJ may not confine an offender in a transfer facility longer than two (2) years.

Transient Status

A status reserved for offenders who are assigned to a unit on a temporary basis, offenders whose classification or status is pending review, and offenders for whom bedspace is not available on the unit in the offenders' assigned custodies.

Travel Card

A card kept on each offender which records the offender's criminal history, prior institutional record, adjustment problems, and any other relevant information necessary to make determinations as to the offender's appropriate custody designation, unit assignment, and other decisions related to offender management. This card is retained in unit files, continually updated, and is transferred with the offender from unit to unit.

Trusty Camp

A self-contained, open-style dormitory which is located adjacent to and outside a main prison unit's security perimeter and which houses offenders in outside trusty status.

UC00

An on-line computer information system (also referred to as the Unit Classification Review [UCR] data base) which provides a record of an offender's current and prior offenses, institutional adjustment, housing and job assignment history, custody overrides and housing justifications, and current institutional disciplinary record.

Unit

The physical plant and property of a prison institution operated by the Texas Department of Criminal Justice.

Unit Classification Casemanager

Collects and reports appropriate information to the Unit Classification Committee which is necessary for making classification-related decisions; assists unit administration in maintaining compliance with the Classification Plan.



#### Unit Classification Committee (UCC)

Responsible at the unit level for reviewing newly-assigned offenders, making custody designation assignments not involving Administrative Segregation custody or G1 custody; determining offenders' cell assignment status; and may make recommendations to the State Classification Committee regarding the following: assignment of offenders to G1 custody; decisions involving offenders in Administrative Segregation; promotions in time-earning class; offenders' placement in or removal from safekeeping status. The UCC also has the authority to make housing and job assignments.

#### Unit Classification Committee History Form

A chronological record of an offender's appearances before the various classification committees that is retained in the offender's unit folder and updated as appropriate. This document provides a history of classification committee actions and decisions concerning the offender.

#### Visitors List

The official list of the names and addresses of persons with whom the offender wishes to visit during authorized visiting hours. The first list is prepared by a Diagnostic Interviewer at a reception and diagnostic center. Subsequent modifications to the list are approved or denied at the offender's unit of assignment. Each offender is allowed to have up to ten (10) names on the Visitors List.

#### Windham School District (WSD)

An independent school system established by law specifically for offenders in the TDCJ. The WSD provides a range of services relative to academic and vocational education at the elementary, secondary (GED) and college level, and provides pre-release programming for offenders at each unit.

**CHAPTER 3**  
***OVERVIEW***

## OVERVIEW

Classification of offenders incarcerated in the Texas Department of Criminal Justice is a continuous process which begins the day the offender is committed to the custody of the TDCJ and ends only when the offender is released from such custody. Classification encompasses virtually all decisions which affect an offender's life during the entire period of incarceration. Assignments to custody, housing, programs, jobs, treatment, various other activities, and decisions relevant to good conduct time awards (for Institutional offenders) evolve from classification decisions which are made by TDCJ classification committees. The TDCJ Correctional Institutions Division is comprised of Institutional Facilities, State Jail Facilities, Transfer Facilities, and certain other facilities contracted with private vendors for management.

Each element of the classification process is described in the Classification Plan as presented in this document and is governed by the policies and procedures set forth herein. This overview is intended to provide a brief, sequential explanation of the classification process.

### I. Reception and Diagnostic Processing

#### A. Receiving and Screening

1. All offenders received at TDCJ Reception and Diagnostic Centers (RDC), except offenders under sentence of death, are screened immediately upon arrival. (Note: Hereinafter, the term "RDC" will be used generically in the Classification Plan to refer to reception and diagnostic facilities for both males and females.) Commitment papers are reviewed for accuracy, offenders are searched for contraband, and offender property and money are accounted for and handled in accordance with established RDC procedures. Offenders receive hygienic attention, and are provided immediate medical and mental health care. Offenders are issued an Offender Handbook and are given an opportunity to make commissary purchases.
2. Offenders newly-arrived to the TDCJ are assigned to appropriate housing according to security needs.

#### B. Orientation

Within one week of arrival, all newly-received offenders are given a general orientation relative to TDCJ policies, rules, classification procedures, disciplinary processes, educational services, and other offender activities and programs.

#### C. Medical and Mental Health Evaluation, Testing and Assessment

1. All offenders who are committed to the TDCJ and received at an RDC are given a comprehensive medical examination and medical care commensurate with their medical needs. All offenders undergo appropriate psychological screening and are given mental health care commensurate with their needs. Offenders requiring more extensive psychological testing are referred to the

appropriate mental health care staff for further evaluation, and the indicated treatment is provided. In addition, all offenders are tested and assessed to determine educational needs and requirements.

2. After all appropriate medical and mental health evaluations of an offender have been conducted, a Health Summary for Classification form (also known as the HSM-18 form) is completed for the offender, noting all of the recommendations or restrictions designated by the professional medical and mental health care staff relative to the offender's unit, housing, bunk or row assignment, job assignment, or disciplinary procedures. The Health Summary for Classification form for offenders is forwarded to the SCC, or UCC for State Jail offenders, for use during the initial classification review and assignment.

#### D. Development of Offender Records

1. A comprehensive record of information is compiled at the RDC for each offender. RDC staff obtain all available reports, records and documentary information necessary to make classification decisions, making all reasonable efforts required to obtain such information. Information relevant to an Institutional offender's criminal and institutional history, to include offender photographs, fingerprints, and other documents of identification, is forwarded to the Classification and Records Office (CRO) for placement in the offender's permanent folder. These records are retained on the State Jail for State Jail offenders. During initial processing at the RDC, the offender is interviewed to substantiate and verify all information contained in the offender's records.
2. A sociologist summarizes and enters all information on the offender's travel card and other appropriate documents. For Institutional offenders, the information is forwarded to the SCC and designated CRO staff for use in making initial classification decisions and recommendations. For State Jail offenders these records are forwarded to the UCC.

## II. Initial Classification

- A. The State Classification Committee (SCC) shall review each Institutional offender within thirty (30) days of the offender's arrival, unless exceptional circumstances intervene. When making unit assignments and other classification decisions and recommendations, the SCC attempts to balance the individual offender's needs with those of the Correctional Institutions Division and the public. State Jail offenders are assigned to the State Jail facility based on the county in which they were convicted.
- B. During this initial classification process for Institutional offenders, the SCC and designated CRO staff review all of the information contained in the offender's travel card, Health Summary for Classification form and other classification-related documents. The SCC assigns the offender to a unit with a recommendation as to the



offender's custody designation. Each offender's unit of assignment is determined on the basis of the offender's total record and the professional judgment of the SCC, and as dictated by the offender's medical, mental health, safety and other needs. The SCC may assign the offender to a specific job and may also make recommendations to the Unit Classification Committee (UCC) relative to a housing assignment.

- C. SCC recommendations with regard to unusual or difficult cases are reviewed by the Chairperson or Vice-Chairperson of the Classification and Records Office.
- D. Recommendations and restrictions contained in the offender's Health Summary for Classification form are binding on the SCC.
- E. The intake and initial classification process for State Jail offenders shall be complete within ten (10) working days.

### III. Unit-Level Classification

#### A. Initial Housing Assignment

1. As a general rule, offenders newly-assigned to a unit are classified by the Unit Classification Committee (UCC) and then assigned to permanent housing on the day of arrival. Institutional offenders who are not classified on the day of their arrival are assigned to transient housing until classified by the UCC, which is generally within 48 hours (excluding weekends and holidays). Transfer offenders still undergoing intake processing shall be classified within thirty (30) days, and State Jail offenders undergoing intake processing shall be classified within ten (10) working days.
2. Offenders newly-assigned to a unit receive unit orientation within one week of arrival, unless exceptional circumstances intervene.

#### B. Custody Assignment

1. Each offender is assigned to a custody designation which is commensurate with the offender's needs and requirements throughout his entire period of incarceration. The principal custody designations for Institutional offenders are General Population Level I (G1), General Population Level II (G2), General Population Level III (G3), General Population Level IV (G4), General Population Level V (G5) and Administrative Segregation. The principal custody designations for State Jail offenders are State Jail Level I (J1), State Jail Level II (J2), State Jail Level IV (J4), State Jail Level V (J5), and Special Management.
2. Although most offenders are assigned to one of the principal custody designations, the diversity of characteristics in the offender population requires that special status categories be provided which are consistent with offenders' special requirements. The special status categories to which

offenders may be assigned are death sentence status, medical status, mental health (psychiatric) status, mentally retarded offender (MROP) status, physically handicapped offender status, safekeeping status, and transient status. Assignment to a special status category may preclude the need for assignment to one of the principal custody designations.

#### C. Unit Classification Process

1. The Unit Classification Committee (UCC) is responsible for making classification decisions or recommendations relative to an offender's needs at the unit level. Upon an offender's arrival at a unit of assignment, the offender's recommended or previously assigned custody designation is reviewed, and either confirmed or redesignated, by the UCC. Determination of the offender's appropriate custody designation is facilitated by use of the UC00 computer information system (Unit Classification Review [UCR] database), the information which is initially compiled during processing at an RDC. The UCC may review the offender's Individualized Treatment Plan which serves to outline the offender's treatment and programming needs. The offender may also be given a housing and job assignment by the UCC. Each offender's individual circumstances and unique characteristics are taken into consideration during the entire classification process.
2. Reviews of each offender's custody designation, job assignment, housing assignment and treatment programming are conducted regularly to ensure the proper classification of each offender during his or her entire period of incarceration. Classification reviews may also be conducted as a result of changes in an offender's security or treatment needs.
3. The recommendations and restrictions contained in each offender's Health Summary for Classification form are binding on the UCC and on all classification and security staff.

#### IV. State Classification Committee

- A. The SCC and designated staff of the CRO are responsible for making initial unit/facility assignment of Institutional offenders. The State Classification Committee (SCC) is responsible for reviewing and approving Institutional offenders for all inter-unit transfers, all assignments to Administrative Segregation and G1 custody and safekeeping status, emergency absences, all promotions in time-earning status, and decisions involving offenders in Administrative Segregation. The SCC is also the final authority in the process of confirming offenders' security threat group affiliation, and the process of reviewing major unit disciplinary actions to ensure that the punishments imposed by Disciplinary Hearing Officers are within established limits and are equitable punishments for the offenses committed. In addition, the SCC reviews and approves State Jail offender assignments to Safekeeping and Special Management.

- B. SCC members visit units on a regular basis for the purpose of conducting regularly scheduled reviews of offenders assigned to Administrative Segregation as required in the Administrative Segregation Plan. Special Management regularly scheduled reviews are also conducted by the SCC.
- C. The SCC has the authority to override Unit Classification Committee decisions in the interest of the safety, security and orderly management of offenders and institutions.
- D. The SCC Chairman also serves as a member of the Security Precaution Designator Review Committee. As a SPDRC member, the SCC Chairman reviews offender files to determine eligibility for removal of security precaution designators from offender records, or to retain those for longer than the timeframes allow, if appropriate.
- E. The recommendations and restrictions contained in offenders' Health Summary for Classification forms are binding on the SCC and the State Jail Administrative Office.

V. Appeals of Classification Decisions

- A. The unit administration and the Unit Classification Committee may appeal classification decisions by filing such appeals with the Departmental Review Board (DRB), which has final authority with regard to all staff appeals of decisions relating to offender classification.
- B. Offenders may appeal classification decisions by filing grievances in accordance with the "Offender Grievance Procedures."

**CHAPTER 4**  
***OPERATIONAL COMPONENTS***

## OPERATIONAL COMPONENTS

The offender classification system is comprised of several operational components which have been established or designated to provide uniformity and consistency in both the development and implementation of classification-related policies and procedures. These components consist of the individuals, committees and departments having varying degrees of authority and responsibility relative to the operation and management of the offender classification system.

The following provides a description of the composition, authority and responsibilities of the principal operational components of the classification system in the Texas Department of Criminal Justice. It is intended as an overview and therefore does not provide a comprehensive listing or description of all components or of all responsibilities of the Classification and Records Department.

### A. Classification Committees

#### 1. Unit Classification Committee (UCC)

##### a. Composition (separated into five (5) categories)

- Chairperson: Major, Assistant Warden or Senior Warden. In exceptional circumstances the Security Captain, or Chief of Unit Classification, if written documentation describing the circumstances is attached.
- Member: Security staff member, on a rotating basis (e.g., Lieutenant rank or above, or equivalent rank [B6 or A14] from Industry, Agriculture, Construction, Maintenance, Food Services, Grievance, Law Library, or Counsel Substitute).
- Member: Treatment staff member, on a rotating basis (e.g., Unit Health Administrator, Assistant Health Administrator, Chaplain, Windham School System Principal or designee, Grievance Investigator, or Law Library Supervisor).
- Member: Chief of Unit Classification, Unit Classification Casemanager, or Countroom Supervisor.
- Additional Member(s): Unit Psychologist, Physician, Registered Nurse, Licensed Vocational Nurse, Physician's Assistant - The appropriate health services specialist(s) is a required member of the committee in those cases where the Chairperson has determined that there is a need for more information than is provided on the offender's current Health Summary for Classification form, or HSM-18, and in those cases when a conflict or problem exists in terms of an offender's job or program assignment relative to the health-related restrictions noted on the offender's HSM-18 and the conflict or problem cannot be resolved informally by the Classification staff member.

A Sex Offender Treatment Program (SOTP) member shall be a voting member of the initial Unit Classification Committee (UCC) for offenders who will participate in the unit SOTP. This staff member shall provide the initial UCC with information relating to the offender's treatment needs.

An SOTP staff member shall also participate, as needed, in UCC

meetings that involve program participants when the committee's decisions could, in any way, affect the SOTP's delivery of treatment.

Quorum: Chairperson and two (2) voting members (only one per category of member). Each voting member has one (1) vote, and the majority vote rules.

b. Authority/Responsibility

- (1) Custody designation assignments, excluding G1 or Administrative Segregation/Special Management.
- (2) May make housing assignment decisions within an offender's designated custody. The decision to assign an offender to a housing area which is not in the offender's designated custody must in all cases be a committee decision, and requires a written justification.
- (3) Determinations regarding the single-celling of offenders deemed by the UCC to be too vulnerable to be safely housed with another offender while in the general population.
- (4) Determinations regarding each offender's cell assignment status relative to assignment to a two-person cell, as reflected on the Cell Assignment Form. This does not apply to those offenders assigned to Transfer Facilities or State Jails.
- (5) Major program changes.
- (6) Case reviews of offenders upon conviction of a major disciplinary infraction.
- (7) All major cases for G5/J5 offenders that are assaultive, where serious injuries have occurred.
- (8) Case reviews of offenders who due to in-prison assaultive behavior and other dorm criteria cannot be housed in dormitories, irrespective of custody designation.
- (9) Scheduling offenders for subsequent classification committee reviews.
- (10) Recommendations to the SCC, when appropriate with regard to the following:
  - (a) promotions in time-earning class;
  - (b) demotion, without prejudice, of an offender from SAT II – General Population Level I (G1) custody to SAT III – General Population Level II (G2) custody, when it is determined that the offender can no longer function as an outside trusty (e.g., at the offender's own request);
  - (c) assignment to, or removal from, safekeeping status.
- (11) Approval for Support Service Inmate Status. This does not apply to those offenders assigned to Transfer Facilities or State Jails.
- (12) Recommendation for placement and removal of Security Precaution Designator codes.

Note: The offender's current Health Summary for Classification form, which is presented as part of the case review, is binding on the UCC.



2. Unit Administrative Segregation Committee (ASC) for Institutional offenders

a. Composition

- Chairperson: Warden or designee (Captain or above).
- Member: Administrative Segregation Supervisor (Lieutenant or above).
- Member: Security staff member assigned to administrative segregation.

Quorum: Chairperson and two (2) voting members. Each voting member has one (1) vote, and the majority vote rules.

b. Authority/Responsibility

The Unit Administrative Segregation Committee conducts the ten-day due process hearing to determine whether or not an offender is to be assigned to Administrative Segregation status and regularly scheduled hearings as determined by the offender's level. The committee is also responsible for identifying or confirming any special confinement conditions relative to the offender's assignment to Administrative Segregation. All decisions regarding the assignment of offenders to Administrative Segregation status require final approval by the State Classification Committee.

3. Special Management Committee (SMC) for State Jail offenders

a. Composition

- Chairperson: Warden, Assistant Warden, Major, Security Captain or Chief of Classification
- Member: Lieutenant or above, or Chief of Classification
- Member: Security Representative (Correctional Officer or Sergeant assigned to the Special Management area)
- Representative from Health Services, as needed

b. Authority/Responsibility

The Special Management Committee conducts the ten-day due process hearing to determine if the offender is suitable for Special Management, and regularly scheduled reviews throughout the offender's duration in Special Management. All decisions regarding the assignment of offenders to Special Management status require final approval by the SCC.

4. State Classification Committee (SCC)

a. Composition

- Chairperson: Permanently appointed position.
- Vice-Chairperson: Permanently appointed position.
- Members: Permanently assigned Classification and Records Office staff members.

Quorum: Two (2) committee members. A third committee member will vote in the event that a unanimous decision cannot be reached by the quorum. The Health Services Liaison to the SCC will be consulted when further evaluation

or information is required in cases involving "special needs" offenders. Unusual or difficult cases will be referred to the Chairperson or Vice-Chairperson of Classification and Records.

b. Authority/Responsibility

- (1) Review and approval of: (for Institutional offenders)
  - (a) initial unit assignment
  - (b) assignment to a specific job, when appropriate
  - (c) initial recommendation as to custody designation
  - (d) inter-unit transfers;
  - (e) emergency absences;
  - (f) assignments to Administrative Segregation/Special Management;
  - (g) assignment to, and removal from, safekeeping status;
  - (h) promotions in time-earning class;
  - (i) assignments to General Population Level I (G1) Custody;
  - (j) decisions involving offenders in Administrative Segregation/Special Management, including release from Administrative Segregation/Special Management;
  - (k) all unit disciplinary actions resulting in major penalties (i.e. solitary, loss of good conduct time credits, reduction in time-earning class, retention in Line Class III).
- (2) Regularly scheduled review hearings for offenders in Administrative Segregation status. (as set by the Administrative Segregation Plan)
- (2) Determinations regarding the single-celling of offenders deemed by the SCC to be too vulnerable to be safely housed with another offender while in the general population.
- (3) Final decisions with regard to the security threat group membership of offenders identified as suspected security threat group members by the UCC and initially confirmed by the appropriate Regional Director.
- (4) Decisions regarding the removal of security precaution designator codes from offender records. (Classification and Records Chairman only).
- (6) Authority to override Unit Classification Committee decisions in the interest of the safety, security and orderly management of offenders and institutions.
- (7) The Chairperson of Classification and Records is responsible for the supervision of the Classification and Records Office (CRO).

Note: Authority may be delegated to individual SCC members for the purposes of making routine, case-by-case decisions relative to daily operations. However, decisions regarding difficult or unusual cases will be referred by SCC members to the Chairperson or Vice-Chairperson of Classification and Records. The recommendations and restrictions contained in the offender's current Health Summary for Classification form are binding on the SCC.



5. Departmental Review Board (DRB)a. Composition

- Chairperson: Assistant Director for Classification and Records.
- Member: Regional Director for unit filing appeal.
- Member: Deputy Director.

Quorum: Chairperson and the appropriate Regional Director. The Deputy Director will vote in the event that a unanimous decision cannot be reached by the quorum. In a DRB member's absence, the designated acting official may vote in that member's stead.

b. Authority/Responsibility

Functioning at the central administration level, the Departmental Review Board (DRB) is responsible for reviewing and rendering final decisions on all classification appeals filed by unit administrations and Unit Classification Committees. The DRB will consult the Health Services Representative to the State Classification Committee prior to rendering a final decision in cases involving "special needs" offenders if additional information is required.

6. Security Precaution Designator Review Committee (SPDRC)a. Composition

- Unit Warden
- Regional Director
- Classification and Records Chairman
- Deputy Director

Quorum: Appropriate Regional Director, the Unit Warden and the Classification and Records Chairman. The Deputy Director will vote in the event that a unanimous decision cannot be reached by the quorum.

b. Authority/Responsibility

The SPDRC is responsible for rendering decisions on UCC recommendations for removal (and placement/retention in extreme circumstances) of security precaution designator codes from offender records.

B. Unit Administration

1. The Unit Warden, Assistant Warden, Major, Shift Supervisor, Building Captain and Chief of Unit Classification have individual authority, if so designated by the Unit Warden, to make the following classification decisions, provided that the resultant changes are not inconsistent with the recommendations and restrictions noted on the offender's current Health Summary for Classification form:

- a. changes in housing assignments which do not involve changes in custody designations;
- b. placement into a program indicated on the offender's Individualized

Treatment Plan.

- c. removal from a program indicated on the offender's Individualized Treatment Plan for disciplinary related reasons, in accordance with current TDCJ policy;
  - d. removal from a program indicated on the offender's Individualized Treatment Plan as a result of excessive absences, as determined by the appropriate professional staff;
  - e. changes in job assignments which do not significantly affect other areas of the Individualized Treatment Plan;
  - f. recommend emergency inter-unit transfers for reasons of security or safety, or based on the recommendations of medical or mental health treatment staff;
  - g. recommend inter-unit transfer of offenders to the SCC;
  - h. recommend identification of security threat group members and referring such cases to the Regional Director; and
  - i. recommend removal of offenders from Administrative Segregation/Special Management.
  - j. recommend eligible offenders to the SCC for General Population Level I (G1) custody consideration without UCC review (State Jail offenders will be reviewed and approved at the unit level by the UCC for (J1) custody assignment).
2. The above-named individuals and the Administrative Segregation/Special Management Supervisor, if so designated by the Unit Warden, can individually authorize an offender's immediate placement into Administrative Segregation/Special Management and make initial decisions relative to any special confinement conditions, in accordance with the provisions of the Administrative Segregation Plan. All such placements and decisions require review and confirmation by the Unit Administrative Segregation Committee (ASC or SMC) at the initial due process hearing. Final review and approval of assignments to Administrative Segregation or Special Management status must be obtained from the State Classification Committee.
  3. The offender's current Health Summary for Classification form, or HSM-18, is binding on all classification and security staff. All treatment professionals' housing and program assignment restrictions for offenders with medical, mental health, or intellectual impairment problems or physical handicaps, as indicated on the form, must be followed. Those cases where conflicting security and treatment concerns exist will be referred to the Chief of Unit Classification for informal resolution in consultation with the relevant department(s), or for presentation to the Unit Classification Committee, as required for final resolution consistent with the HSM-18.

C. Central Office Classification Staff

1. The following central office classification staff are responsible for the development, implementation and monitoring of policies and procedures relative to the process and management of the offender classification system, as promulgated by the Correctional Institutions Division Director.
  - a. Assistant Director for Classification and Records
  - b. Chairman of Classification and Records
  - c. Vice-Chairman of Classification and Records
  - d. Administrator for Unit Classification
  - e. Unit Classification and Countroom Coordinators
  - f. Administrator for Intake Processing
  - g. Administrator for Classification Operations
  
2. Unit Classification Administration Department
  - a. The Unit Classification Department's administrative staff are responsible for the monitoring of unit-level classification decisions in order to ascertain the effectiveness of existing procedures, to ensure adherence to TDCJ policy, and to ensure the consistent and objective application of classification-related policies and procedures. The administrative staff is also responsible for the initiation, development and maintenance of all computer programs relating to the Classification Plan.
  - b. The Unit Classification Department's administrative staff provides initial and in-service training related to the implementation of the Classification Plan.
    - (1) Initial training is provided to all newly-hired Chiefs of Unit Classification and Unit Classification Casemanagers. This training emphasizes proper procedures for offender classification, classification committee processes, custody designations and other information relevant to classification matters.
    - (2) In-service classification training is provided to unit classification personnel, and other administrative unit staff, as needed, to ensure continued understanding of all classification processes and procedures.
  - c. The Field Services component of the Classification and Records Department is responsible for coordinating the release process for "high risk" special needs offenders, including the physically handicapped, medically disabled, mentally ill and intellectually impaired, and making special referrals for such groups as aged offenders, substance abusers, chronically unemployed, and sex offenders. The primary goal of this component is to assure continuity of care by referring the offender to community programs and services and by providing an aftercare plan detailing the offender's condition, current treatment, and medication. Upon release, offenders are given a 10-day supply of prescribed medication. Transportation is provided for releasing offenders who are incapable of traveling to their destination unassisted. In addition, the Field Services Department prepares Shock Probation reports, assist in sex offender registration, and responds to requests from the Attorney General's Office for information related to child support investigations.

D. Regional Directors

Functioning at the administrative level, each Regional Director is responsible for overseeing the operations of all units in their region, to include ensuring the proper and successful implementation of the Classification Plan at each unit. In addition, the Regional Directors, as the "second step" in the offender grievance process, are responsible for reviewing and rendering decisions on all offender grievances filed at the regional level, including offenders' appeals of classification decisions. Other classification-related responsibilities of the Regional Directors include membership on the Departmental Review Board (DRB) and the Security Precaution Designator Review Committee (SPDRC), and making determinations with regard to offenders' security threat group membership.

E. Classification and Records Office

The Classification and Records Office is responsible for the maintenance of all permanent offender files and records (excluding medical records), to include the records of all offenders previously incarcerated in the Institutional Division. The Classification and Records Office (CRO) processes all records relating to requests for emergency absences, offender good conduct time awards, and is responsible for preparing offender records in cases requiring review by the State Classification Committee. Designated CRO staff members are permanently assigned as members of the State Classification Committee.

F. Unit-Level Classification Staff

1. Chief of Unit Classification

Specifically, the Chief is responsible for:

- a. coordination of the scheduling of offenders for appearances before Unit Classification Committees and completion of the Committee History Form;
- b. overseeing the transfer of an offender's unit records to the receiving unit upon the offender's transfer;
- c. coordinating and overseeing the computerization of information for the Unit Classification Review (UCR) data base (UC00 computer information system) to reflect changes in each offender's custody designation, job, housing, program assignment status, disciplinary record, etc., and monitoring compliance;
- d. overseeing the screening of offenders for DNA requirements and referrals for DNA testing, and screening offenders for security precaution designators.
- e. overseeing the review of each offender record on an annual basis to include a review of the offender's class and custody, job and housing assignments, UC00 screens and a general review of the unit file.
- f. supervising the Countroom staff;
- g. supervising the Offender Records staff, if so designated by the Unit Warden;
- h. may serve as a voting member or Chairperson of the Unit Classification Committee;
- i. providing assistance, advice, and a point of personal contact for all offenders, as needed;
- j. may assist SCC members in assigning transfer levels and screening transfer

- offenders for assignment to other units.
- k. processing State Jail offenders for release.
- l. preparation and distribution of progress reports for State Jail offenders serving "up front" time.

## 2. Unit Classification Casemanager

Unit Classification Casemanagers are trained in the proper application of classification criterion, the correct entry of data, and the proper procedures for the transmittal of information to the Unit Classification Committee. The Unit Classification Casemanager is responsible for the following:

- a. may act as a representative for the offender at Unit Classification Committee hearings by providing appropriate information, and may serve as a voting member of the committee if so designated;
- b. reviewing housing and job assignments and changes in relation to any medical restrictions noted on offenders' Health Summary for Classification forms, obtaining information or clarification necessary for resolution of any conflicts or problems which are identified as a result of the review, and informally resolving such conflicts or problems whenever possible;
- c. ensuring accuracy of computerized classification information, including results of Unit Classification Committee hearings, disciplinary hearings and any unit action resulting in a change in the offender's assignment or status;
- d. may conduct unit orientation for newly assigned offenders.
- e. assist the unit Chief with their duties.
- f. provide assistance to the diagnostic intake staff, functioning in all capacities associated with that position, as needed. This applies to Transfer Facility and State Jail Casemanagers.

## G. Health Services Liaison to the State Classification Committee

The Health Services Liaison to the State Classification Committee, who is a knowledgeable, credentialed Health Services employee, advises the Classification and Records Office (CRO) staff, the State Classification Committee and the Departmental Review Board, when requested, in those classification matters involving "special needs" offenders. Specifically, the Health Services Liaison is responsible for the following:

- 1. Reviewing all requests for Health Services-sponsored inter-unit transfers in accordance with current Health Services policies and procedures; maintaining a permanent file of all required documents; and developing a final recommendation to the State Classification Committee with the concurrence of the Chief of Professional Services for Health Services;
- 2. Maintaining an up-to-date knowledge of the capabilities of the health services departments at each unit;
- 3. Ensuring that health services documentation provided to the CRO and SCC adequately reflects an offender's current health status and assisting that committee

in determining the appropriate unit of assignment for offenders with special needs;

4. Requesting pertinent classification and health-related information from unit correctional staff, unit classification staff and unit health services staff in order to effect a timely resolution of conflicting concerns.



**CHAPTER 5**  
***POLICIES AND PROCEDURES***

- A. RECEPTION AND DIAGNOSTIC PROCESS**
- B. UNIT-LEVEL CLASSIFICATION AND RECLASSIFICATION**
- C. CUSTODY, HOUSING, AND JOB ASSIGNMENTS**
- E. MONITORING OF THE CLASSIFICATION SYSTEM**



## RECEPTION AND DIAGNOSTIC PROCESS

The reception and diagnostic process consists of a series of phases or steps through which each newly-arrived offender is processed for the purposes of determining the offender's needs and requirements relative to security, supervision, treatment (medical and mental health), education, etc. Although many of the steps in the process occur simultaneously, the reception and diagnostic process can generally be divided into the following phases:

- Receiving and Screening - The initial reception and screening of newly-arrived offenders. The process of initial evaluation (Diagnostic I), identification, testing, interview, etc., begins at this point.
- Orientation - General orientation regarding TDCJ policies, rules, programs, services, etc.
- Diagnostic I - Medical evaluation, and initial mental health and educational testing and assessment.
- Diagnostic II - Additional mental health evaluation and assessment of intellectual functioning for those offenders referred by appropriate treatment professionals. The initial identification of "special needs" offenders occurs as a result of the Diagnostic I and Diagnostic II processes. Offenders identified as acutely ill at the time of reception are immediately transferred to an appropriate unit or outside facility which can provide the needed care.
- Identification Process - Identification documents are compiled on each offender for inclusion in the offender's permanent record, to include photographs, fingerprints, and a record of any identifying characteristics (e.g., tattoos, scars, birth marks).
- Sociological Process - This phase of the diagnostic process is conducted through interviews with the offender. During these interviews, detailed information is obtained from each offender regarding the offender's family, social, criminal, military, institutional, employment, educational (academic and vocational), and alcohol/drug histories, etc. This information is used to generate several documents that become a part of the offender's permanent record for use in making both initial and subsequent classification decisions.
- Initial Classification - Based on the total record, as compiled during the earlier phases of the reception and diagnostic process, the SCC and designated CRO staff will determine each Institutional offender's initial unit of assignment and make recommendations as to the offender's custody designation. The SCC may also designate a specific job assignment for the offender and make housing recommendations, if appropriate. State Jail offenders are assigned and classified to facilities based on their county of conviction.

Specific policies and procedures relative to each of the phases in the reception and diagnostic process are outlined in the following sections.

**A.        *RECEPTION AND DIAGNOSTIC PROCESS***

**A-1    Policies and Procedures**

**A-2    General Orientation**

**A-3    RDC Medical and Mental Health Evaluation,  
         Education Testing and Assessment**

**A-4    Offender Records Development**

**A-5    Initial Classification Review by the State  
         Classification Committee (SCC)**

## TEXAS DEPARTMENT OF CRIMINAL JUSTICE

## CLASSIFICATION PLAN

POLICY NO. A-1

SUBJECT: RECEIVING AND SCREENING

PURPOSE: To establish policy and procedures with regard to the process of receiving and screening offenders newly-arrived at a Reception and Diagnostic Center (RDC), in order to ensure that all offenders who are committed to the Texas Department of Criminal Justice are provided appropriate care and supervision upon arrival.

POLICY: It is the policy of the TDCJ that all newly committed offenders who are received at a Reception and Diagnostic Center (RDC) shall be provided with appropriate care and supervision.

PROCEDURES:

All offenders who arrive at an RDC, except those under sentence of death, shall immediately be processed through the following steps of receiving and screening.

I. Initial Reception

- A. Each offender's commitment papers shall be reviewed by the receiving officer and delivered to an RDC records department for entry into the State Ready System, or SJ00 system, respectively.
- B. The TDCJ will not accept any newly-sentenced offender into custody (first incarceration) unless the Sheriff presents the receiving officer with all of the documents required by state law, including a copy of the Document Checklist completed by the county in a manner indicating that the required documents accompany the offender. Any errors or discrepancies noted in the commitment information shall be corrected by State Ready, Receiving or diagnostic interview staff through interaction with appropriate authorities. Required documents for Institutional offenders may be forwarded to the CRO, State Ready section prior to the offender's admission. For State Jail offenders, required documents must be delivered by the county upon receipt of the offender.
- C. If an offender is currently in the legal custody of the TDCJ and is being returned from bench warrant or its equivalent, the TDCJ will accept custody of the offender. However, if on review of the documents relating to the new conviction the reviewing officer discovers that the documentation does not meet with the above requirements, the TDCJ shall not take any action on the new sentence. The offender will be processed by the SCC (UCC for State Jail offenders) as a "return bench warrant" and be housed at the appropriate facility. Upon receipt of the requested documentation relating to the new conviction, the Institutional offender will be transferred back to an

RDC for reception and diagnostic processing. State Jail offenders will remain on the State Jail Facility, or processed into ID, whichever is appropriate.

- D. Each offender shall be searched for contraband.
  - E. Each offender's property and money shall be handled in accordance with established TDCJ procedures.
  - F. Each offender shall receive hygienic attention (shower, shave, hair cut, etc.) and shall be issued clothing, shoes and toilet articles.
  - G. Each offender shall be given an opportunity to go to the commissary.
  - H. Each offender shall be questioned to determine age and number of prior confinements.
  - I. Each offender shall be photographed for an Identification Card which will be issued at the offender's unit of assignment.
  - J. Each offender receives an initial screening by medical staff for completion of the HSM-18 form and determination of any immediate medical care needs the offender may have (see section III).
  - K. Fingerprints of each offender shall be recorded on appropriate forms and forwarded to the Federal Bureau of Investigation (FBI) and to the Texas Department of Public Safety (DPS) for identification and issuance of FBI and DPS reports.
  - L. A brief, general, personal biography shall be recorded on the Bureau of Record Identification form.
  - M. Each offender shall be inspected by an RDC employee to determine the existence of any identifying physical characteristics (e.g., tattoos, scars, birthmarks, etc.). This information shall be recorded on the Bureau of Record Identification form and on the offender's travel card for the purposes of providing a physical description of the offender.
  - N. Offenders identified during the course of the reception and diagnostic process as Spanish-only or limited English-speaking will be provided Spanish interpreter services. Certified interpreter services will be provided for the hearing impaired in accordance with the Physically Handicapped Offender Plan.
- II. Initial Housing Assignments
- A. Initial housing assignments at an RDC shall be made by the security officer in charge on the basis of the offender's age, physical size, current offense of record, number of prior confinements, and other security-related characteristics, including information received prior to the offender's arrival or from the law enforcement or jail personnel who transported the offender to the RDC.

- B. Housing for offenders undergoing reception and diagnostic processing shall be in dorms/cells specifically designated for housing such offenders.

III. Immediate Care Requirements

Each offender shall be interviewed to determine if he requires immediate medical or mental health care. Offenders who require immediate medical or mental health care shall be referred to the appropriate health services professional staff for evaluation and treatment.

IV. Prescriptions and Medications

Each offender shall be required to present prescriptions and prescribed or over-the-counter medications which the offender obtained prior to arrival. A physician shall review all prescriptions and medications as soon as possible to determine whether they shall be continued or replaced. An offender who arrives with prescribed medication, to include psychotropic medication, will not be deprived of that medication until such time as a licensed physician has examined the offender and made a medical determination regarding the continuation or discontinuation of that medication. (For additional information regarding medical receiving and screening procedures, see the Comprehensive Health Care Plan.)

V. Initial Orientation

Each offender shall be issued an Offender Handbook in either English or Spanish and receive a brief orientation concerning the reception process.

## TEXAS DEPARTMENT OF CRIMINAL JUSTICE

## CLASSIFICATION PLAN

POLICY NO. A-2

SUBJECT: GENERAL ORIENTATIONPURPOSE: To establish guidelines with regard to the general orientation provided to all offenders upon arrival at a Reception and Diagnostic Center (RDC).POLICY: It is the policy of the Texas Department of Criminal Justice that all newly-arrived offenders shall receive a general orientation relative to TDCJ policies and rules, educational services, and other offender activities and programs.PROCEDURES:I. Orientation Topics

- A. Offenders shall receive unit orientation within one (1) week of arrival at an RDC. Offenders identified as Spanish-only or limited English-speaking will be given orientation in Spanish.
- B. A unit staff member designated by the Warden shall be assigned the task of providing orientation to newly-assigned offenders, to include the following duties:

General

- 1. TDCJ policies and rules, to include but not be limited to inter-unit transfer, offender grievance procedures, and good conduct time;
- 2. Unit programs and services; and
- 3. Educational programs and services.

Specific

- 1. Rules, regulations and discipline;
- 2. Classification procedures;
- 3. Food services;
- 4. Offender records;
- 5. Commissary, and offender accounts;
- 6. Mail and visiting rules;
- 7. Recreation and leisure activities;
- 8. Medical and psychological services;
- 9. "Access to Courts, Counsel and Public Officials Rules."
- 10. Spanish interpreter services ( for offenders identified as Spanish-only or limited English-speaking);
- 11. Religious services;

12. Good conduct time, if applicable;
  13. Information relevant to custody designation assignments, and parole laws and how they affect their stay in the TDCJ, if applicable, and
  14. The "Offender Grievance Procedures".
- C. During the process of general orientation, offenders shall view films which explain both unit and TDCJ policies and procedures. Offenders shall also view an educational film on the subject of AIDS in prison.

## II. Assignment of Instructors

There shall be appointed several capable staff members who will be available to present these orientation topics. A Spanish-speaking staff member(s) shall be available to provide the orientation in Spanish to Spanish-speaking and limited English-speaking offenders who cannot communicate in English. Certified interpreter services shall be provided for hearing impaired offenders in accordance with the Physically Handicapped Offender Plan.



## TEXAS DEPARTMENT OF CRIMINAL JUSTICE

## CLASSIFICATION PLAN

POLICY NO. A-3

SUBJECT: RDC OR STATE JAIL FACILITY MEDICAL AND MENTAL HEALTH EVALUATION, EDUCATIONAL TESTING AND ASSESSMENT

PURPOSE: To establish policy and procedures with regard to the medical and mental health evaluation and educational testing of all offenders committed to the Texas Department of Criminal Justice.

POLICY: It is the policy of the TDCJ that all newly-arrived offenders who are received at a Reception and Diagnostic Center (RDC) shall undergo extensive medical and mental health evaluations and educational testing and assessment for the purposes of identifying those offenders with special medical, mental health, or intellectual impairment problems, or physical disabilities; providing necessary medical treatment and mental health care; and obtaining adequate information with regard to offender's security, treatment and educational needs for use by classification committees in making classification decisions.

PROCEDURES:I. Medical EvaluationA. Medical Examination

Medical evaluation (Diagnostic I) shall begin during the receiving and screening phase of the reception and diagnostic process at the RDC. A comprehensive medical examination of each offender, as required by the Comprehensive Health Care Plan and consistent with the procedures and guidelines established therein, shall be conducted by a physician and qualified medical health care staff as soon as practical after admission. This comprehensive examination shall include:

1. a medical history;
2. audiometric examination;
3. physical examination;
4. dental examination;
5. eye examination;
6. appropriate laboratory analysis; and
7. other medical examinations as required by the Comprehensive Health Care Plan, or by the particular needs of an individual offender.

B. Additional medical information shall be requested from outside sources for the purposes of verifying an offender's claims of previous medical treatment.



- C. Offenders with special medical needs shall be referred to the appropriate professional medical staff for further evaluation and treatment.
- D. The results of the medical evaluation shall be recorded on the Report of Physical Examination form and other appropriate forms, which shall be forwarded to the RDC medical records office for inclusion in the offender's medical record.

## II. Mental Health Evaluation

### A. Mental Health Screening (Diagnostic I)

1. Each offender shall be interviewed at the RDC by a mental health screener, in accordance with the Comprehensive Health Care Plan and the Psychiatric Services Plan, ("Mental Health Screening Questionnaire").
2. This structured interview shall serve to identify those offenders with characteristics requiring further evaluation. The results of the interview shall be entered on the "Diagnostic (Mental Health) Screening Result Form."
3. Those offenders who require further mental health evaluation shall be referred to the Psychological Diagnostic and Evaluation (Psychological D & E) professional staff (Diagnostic II).

### B. Psychological D & E (Diagnostic II)

1. The results of the Diagnostic II evaluation shall be recorded in the appropriate format, which shall be forwarded to the RDC medical records office for inclusion in the offender's medical record.
  2. The offender shall be referred to appropriate mental health care staff if further mental health evaluation and treatment is required, as indicated by the psychological report.
  3. The results of all Diagnostic II psychological evaluations shall be summarized on the "Diagnostic II Classification Summary" form which is forwarded to the SCC (UCC for State Jail offenders) for use in the initial classification of the offender.
- C. If at any time during the reception and diagnostic process an offender exhibits unusual behavior which may be indicative of a mental health problem requiring immediate psychological or psychiatric intervention, the RDC employee who observes or is informed of the behavior shall immediately refer that offender to qualified unit mental health care staff for treatment (e.g., health care staff at the Psychiatric Acute Care Inpatient Facility), as required by the Comprehensive Health Care Plan and the Psychiatric Services Plan.

### III. Educational Testing and Assessment

#### A. Initial Testing

1. Testing shall be coordinated and conducted on a regularly scheduled basis by RDC staff.
2. Designated RDC staff shall supervise the administration of academic and vocational tests, explain to offenders the nature of the tests to be administered and how the test results will be used, ensure that tests are administered and scored in an appropriate, professional manner, and ensure that the testing environment maximizes the validity of test results.
3. Offenders received at the RDC shall be administered the following tests. Offenders with prior test scores will not be retested.
  - a. Educational Achievement (EA) Test (California Test of Adult Basic Education [TABE]);
  - b. Intelligence Quotient Test (BETA III).
4. Offenders who fail the BETA III will be given the TONI Intelligence Quotient Test. Those ID offenders who fail the TONI will be transferred to a facility that provides DU II testing. DU II testing for State Jail offenders will be administered at the assigned State Jail facility.
5. Offenders with limited writing and reading skills shall be given the Weschler Adult Intelligence Scale, Revised (WAIS-R).
6. Spanish-speaking offenders shall be given EA and IQ tests in Spanish.

#### B. Test Waiver

1. Offenders shall not be forced to take tests. Offenders who refuse to take tests shall be required to sign a test waiver, and shall be interviewed by a psychologist and educational consultant to determine clinical assessments.
2. Offenders who refuse to take tests and who refuse to sign a test waiver shall have their refusal witnessed by two (2) RDC staff members who will sign the test waiver to verify the offender's refusal.
3. Offenders who refuse to be tested shall be classified without benefit of the test results. The resulting classification shall be non-grievable by the offender. At such time as the offender does participate in the testing process, or an equivalent evaluation process, the offender's classification may change.

C. Educational Assessment

1. Offenders who have IQ scores of 70 or below (group screening test, BETA III) shall be referred to the Psychological D & E professional staff for further testing and assessment with respect to eligibility to participate in the Mentally Retarded Offender Program (see the Mentally Retarded Offender Plan). Offenders referred for further testing and assessment shall be given the Culture Fair Test and the WAIS III, as needed. Offenders who earn a score of 73 or less in this phase shall be referred to the MROP program.
2. Offenders who speak Spanish and who have limited or non-existent English speaking, reading and writing abilities shall be given the opportunity to participate in bilingual education programs (ESL) at the unit of assignment.
3. The results of the educational testing shall be forwarded to an RDC sociologist. The sociologist shall obtain additional educational achievement information from each offender during the second sociological interview. All of the information shall be considered when developing the offender's Individualized Treatment Plan.

IV. Development of the Health Summary for Classification Form

- A. Classification-related recommendations and restrictions shall be noted in each offender's medical record by designated medical and mental health staff at the conclusion of the Diagnostic I and II process (as appropriate to each individual offender's case). All restrictions with regard to unit, housing, bunk or row assignment, job assignment, or disciplinary procedures shall be entered on the offender's Health Summary for Classification form. The Health Summary for Classification form (also referred to as the HSM-18) shall be the instrument by which the medical and mental health professional staff communicate any and all restrictions to the classification committees relative to an offender's medical and mental health status and intellectual functioning, as well as any restrictions related to an offender's physical disability.
- B. It should be noted that the completion of the Health Summary for Classification form is essentially a clerical function. However, all recommendations and restrictions regarding unit assignment, housing assignment, job assignment, and disciplinary procedures must be obtained from the orders of qualified medical and mental health staff, as noted in the offender's medical record. Guidelines for completing the Health Summary for Classification form have been developed to assist those responsible for filling out the form.
- C. The Health Summary for Classification form shall be forwarded to the SCC (UCC for State Jail offenders) for use in making initial classification decisions and recommendations. A copy of the form will be placed in the offender's unit folder. The original form shall be placed in the offender's medical record.

- D. The Health Summary for Classification form shall be modified by appropriate unit health care providers when changes in an offender's condition (medical, mental health, etc.) warrant such modifications, and a copy shall be forwarded to the unit classification office for inclusion in the offender's unit file. Whenever a change in an offender's medical condition occurs such that a new job restriction(s) is placed on the offender by a physician, the procedure as outlined in Administrative Directive 04.18, Offender Job Assignment Criteria and Procedures, shall be followed.
- E. The recommendations and restrictions contained in the Health Summary for Classification form shall be binding on all classification committees and classification and security staff.

## TEXAS DEPARTMENT OF CRIMINAL JUSTICE

## CLASSIFICATION PLAN

POLICY NO. A-4

SUBJECT: OFFENDER RECORDS DEVELOPMENT

PURPOSE: To establish policy and procedures with regard to the development and maintenance of offender records and case-related information, in order to ensure that comprehensive and uniform records and reports are available on all offenders for use in making classification-related decisions.

POLICY: It is the policy of the Texas Department of Criminal Justice that a comprehensive record of information shall be compiled during the reception and diagnostic process for each offender committed. All reasonable efforts required to obtain such information shall be made.

PROCEDURES:

The following procedures shall be used as guidelines in developing offender records to ensure that comprehensive information relevant to each offender's criminal and social history, treatment needs and resources is gathered, consolidated and maintained in a uniform and accessible manner.

I. Initial Records Development

Reception and Diagnostic Center (RDC) staff, in conjunction with the Classification and Records staff, shall be responsible for the initial development of all offender records.

- A. Each offender's commitment papers shall be reviewed and processed by an RDC receiving officer or Intake Interviewer. Each offender shall be issued or re-issued a TDCJ number.
- B. Any errors or discrepancies noted in the commitment information shall be corrected by RDC staff through interaction with appropriate authorities. After commitment information is verified or corrected, RDC staff shall develop a permanent folder for the offender which contains the certified commitment papers (with all corrections) and other documents and records available at that point. The permanent folder for Institutional offenders shall then be forwarded to the Classification and Records Office (hereinafter referred to as the CRO). The permanent folder for State Jail offenders will remain on the State Jail facility.
- C. For Institutional offenders, the CRO shall review the commitment papers and prepare the Inmate Commitment Data Form (ICDF) to reflect the offender's name, TDCJ number, sentence begin date, sentence length, etc. The folder shall then be forwarded to the appropriate RDC for use in the interview conducted by an RDC

sociologist and for use by the Unit Classification Committee (UCC) during the initial classification hearing. Offenders with prior commitments to the TDCJ shall be identified by the CRO through records search. All information relevant to offenders' criminal and institutional histories shall be placed in their permanent folders.

- D. RDC staff shall enter all appropriate information on the computer to establish a central computer record on each offender and to account for changes in the offender population strength.
- E. An RDC Records Officer or Intake Interviewer shall ensure that all documents and information, including the information compiled during the initial receiving and screening process, have been included in each offender's permanent folder prior to forwarding the folder to a sociologist.
- F. After the interview by an RDC sociologist, the permanent folder for Institutional offenders containing all documents received or created shall be forwarded to the CRO, which shall then forward all documents required for initial classification to the SCC. After the offender is classified by the SCC, these documents shall be returned to the CRO, which shall be responsible for forwarding copies of all pertinent records to the offender's initial unit of assignment. For State Jail offenders, the permanent folder is initiated, maintained and retained on the State Jail facility.

## II. Identification Process

Each offender shall be properly identified in the following manner:

- A. Each offender shall be photographed.
- B. Fingerprints of each offender shall be recorded on appropriate forms and forwarded to the Federal Bureau of Investigation (FBI) and to the Texas Department of Public Safety (DPS) for identification and issuance of FBI and DPS reports.
- C. A brief, general, personal biography shall be recorded on the Identification Sheet (CL 2.1).
- D. Each offender shall be inspected by an RDC employee to determine the existence of any identifying physical characteristics (e.g., tattoos, scars, birth marks). This information shall be recorded on the Identification sheet and on the offender's travel card for the purposes of providing a physical description of the offender.
- E. All information and forms compiled during the identification process shall be included in the offender's permanent folder.
- F. Foreign born offenders are identified, and appropriate documentation is forwarded to INS.



### III. Medical/Mental Health Evaluations, Educational Testing and Assessment

All of the results and recommendations of the medical and mental health evaluations and the educational testing and assessment (Diagnostic I and Diagnostic II), as recorded on the appropriate forms, shall be provided to an RDC sociologist. These forms shall be placed in the offender's permanent folder, medical record, or unit folder, as appropriate.

### IV. Sociological Process

This phase of the reception and diagnostic process shall be conducted through the use of two interviews. The time lapse between the two interviews allows for the accumulation of information in the offender's folder relative to medical and mental health evaluations, educational testing and assessment, records development, and additional information requested from outside sources.

#### A. First Interview

1. During the first interview, each offender shall personally be interviewed by an RDC offender interviewer to obtain information about the offender's family, social, criminal, military, institutional, employment, educational, and alcohol/drug histories, as well as any other pertinent information. Spanish-speaking offenders who cannot communicate in English shall be referred to a Spanish-speaking employee. Information obtained during the interview will be recorded on the Offender Consolidated Report Form.
2. The official Visitors List shall be completed for each offender.
3. Several forms shall be completed requesting verification of the offender's social security status, educational status, prior institutional record (jail, federal and other state prisons), treatment in mental institutions or alcohol/drug programs, and other documents needed for the offender's second interview. Releases for selected information shall be signed by each offender when required before verification forms or letters are completed and signed.
4. The Offender Consolidated Report Form and all other forms completed on the offender shall be placed in the offender's folder. The folder shall then be forwarded to the sociologist for use in the second interview.

#### B. Second Interview

1. During the second interview, each offender shall personally be interviewed by an RDC sociologist to obtain more details about the information derived during the first interview. Spanish-speaking offenders who cannot communicate in English shall be referred to a Spanish-speaking employee.
2. The sociologist shall review the forms and information contained in each

offender's folder and correct, or make provisions to correct, any errors.

3. The sociologist shall identify alien offenders, provide them with information regarding the U.S. Treaty Exchange Program, and cause notice to be sent to the U.S. Immigration Service of the alien's prisoner status. Notice shall also be sent to the alien's consulate.
4. The sociologist shall complete processing forms as required and supply additional information to the central offender computer file, as appropriate.
5. The sociologist shall conduct the interview with the completed Offender Consolidated Report Form and the following documents:
  - a. commitment papers;
  - b. photographs;
  - c. current DPS or FBI reports or equivalent information (if an offender has been out of the TDCJ custody for less than six months immediately prior to readmission, prior DPS reports may be used for classification purposes);
  - d. medical and mental health reports;
  - e. educational testing and assessment reports;
  - f. pre-sentence investigation report (if available);
  - g. in the case of recidivists, all available information relevant to the offender's prior confinement(s) in the TDCJ;
  - h. pre-commitment medical and mental health reports (if available);
  - i. any reports or written comments concerning the offender's behavior after arrival at the RDC;
  - j. jail conduct reports (if available at that time);
  - k. official versions of the current offense, including descriptions of the nature and seriousness of the offense;
  - l. verification letters and information requested during the first interview (if available); and
  - m. other relevant information (e.g., newspaper clippings).
6. The sociologist shall interview the offender to obtain the details of the offense(s) resulting in the offender's present conviction and confinement. The information shall become a permanent part of the record as the offender's version of the present offense. The sociologist shall also obtain information about the commission of any offenses, instances of victimization, prior institutional history, security threat group affiliation, sociological background, etc., which may indicate a potential for breach of safety, security, order or control relative to the offender's housing assignment.
7. During the course of the second interview, the offender shall be given the opportunity to ask questions relevant to the incarceration, and to volunteer information concerning unit assignment. Offenders shall be requested to



provide the names of all other offenders who are potential enemies. If the sociologist is unable to answer an offender's questions, the offender shall be referred to an appropriate RDC staff member for assistance.

8. After the second interview, the sociologist shall prepare the following documents as required for each offender's case:
  - a. Admission Summary;
  - b. Travel Card;
  - c. Additional Information form;
  - d. Case History Notation;
  - e. Enemies List;
  - f. Cell Assignment Form; and
  - g. other documents as required.

9. Completion of the Admission Summary and Travel Card

The offender's Admission Summary and travel card shall contain the following information:

- a. Admission Summary
  - (1) arrest history;
  - (2) family history;
  - (3) employment, education and military history;
  - (4) offender's version and the official version of the present offense.
- b. Travel Card
  - (1) pertinent sections of the Admission Summary (e.g., arrest history, family history, current and prior offense history);
  - (2) contents of the Identification sheet (CL 2.1).

10. Cell Assignment Form (Institutional offenders only)

- a. The information gathered during the second sociological interview shall be used by an RDC sociologist to complete those sections of the Cell Assignment Form which deal with current and prior offense history and prior institutional adjustment. This form consists of a series of questions designed to record pertinent information which may affect the offender's assignment to double cell housing.
- b. The Cell Assignment Form will be attached to the offender's travel card and will be transferred with the offender to his initial unit of assignment. The information contained on the form, in conjunction with other relevant information and criteria, will be used by the Unit Classification Committee to determine the offender's cell assignment status.

- c. Transfer and State Jail offenders are exempt from the Cell Assignment Form.

11. Information Distribution

- a. Upon completion of all required documents, the following documents shall be forwarded to the SCC (UCC for State Jail offenders) for use in the initial classification of the offender:
  - (1) Travel Card (original);
  - (2) Health Summary for Classification form;
  - (3) Additional Information form (if applicable);
  - (4) Cell Assignment Form.
- b. Any pertinent documents which arrive after completion of the sociological interview (e.g., the DPS Report) shall be forwarded to the SCC (UCC for State Jail offenders) for use during the initial classification of the offender.
- c. The remaining forms and documents for institutional offenders shall be forwarded directly to the Classification and Records Office for inclusion in the offender's permanent folder. For State Jail offenders, these forms remain in the unit file on the State Jail facility.
- d. After initial classification is completed on institutional offenders, the documents used by the SCC shall be forwarded to the Classification and Records Office for inclusion in the offender's permanent folder. The CRO shall make copies of the appropriate documents and forward these documents to the offender's unit of assignment for placement in the offender's unit folder.
- e. The copy of the offender's travel card is maintained separately in the unit's Records Office.

## TEXAS DEPARTMENT OF CRIMINAL JUSTICE

## CLASSIFICATION PLAN

POLICY NO. A-5

SUBJECT: INITIAL CLASSIFICATION OF INSTITUTIONAL OFFENDERS BY THE STATE CLASSIFICATION COMMITTEE (SCC)

PURPOSE: To establish policy and procedures with regard to the initial classification by the State Classification Committee (SCC) of all Institutional offenders.

POLICY: It is the policy of the Correctional Institutions Division that each Institutional offender committed shall be classified by the SCC on the basis of the offender's total record, as developed and compiled during the reception and diagnostic process. The balancing of each individual offender's needs with those of the TDCJ and the public shall be both the primary function and the primary objective of the SCC.

No offender shall be excluded by the TDCJ from access to programs or services on the basis of disability, race, national origin, religion or political belief. No offender shall be denied access to work, recreation, education, or other programs or opportunities because of health status unless such denial is required for medical or mental health reasons, as determined by a physician or mental health professional.

PROCEDURES:I. Committee Process and Proceedings

- A. All Institutional offenders shall be processed and reviewed by the SCC within thirty (30) days of reception, unless exceptional circumstances render such timely processing impossible. In such cases, the circumstances justifying the delay shall be documented on the offender's committee card (which is retained by the Classification and Records Office in the offender's permanent records) and on the offender's travel card.
- B. Prior to making classification decisions, to include assignment to a unit, the SCC shall assess the potential risk to the public, the TDCJ, and to the individual offender for the purposes of balancing each offender's needs with those of the TDCJ and the public.
- C. In making each classification decision, the SCC shall consider all of the relevant facts, taking into account all available information. No offender shall be classified by the SCC without the following documents:
  - 1. a current Department of Public Safety (DPS) report (prior DPS reports may be used if the offender has been out of the TDCJ custody for less than six months immediately prior to readmission for the current offense);

2. jail conduct report; and
3. official version of the offender's present offense, to include descriptions of the nature and seriousness of the offense.

## II. Classification Decisions and Recommendations

### A. Initial Unit of Assignment

After thorough review and consideration of all available information, the SCC shall determine a unit of assignment based on the offender's total record and as indicated by the following criteria.

#### 1. Special Needs Offenders

The SCC shall follow all health-related recommendations and restrictions which might affect the unit of assignment as noted on each offender's Health Summary for Classification form.

#### 2. Safety Needs

Consideration shall be given to the presence of enemies on a unit when making initial unit assignments. The SCC shall also assess an offender's requirement for assignment to safekeeping or protective custody (administrative segregation) and shall make recommendations to the Unit Classification Committee.

#### 3. Security Requirements

Most units are designed and equipped to accommodate offenders in various custody designations and categories. However, certain units are primarily designated for offenders with specific security characteristics. The objective of the SCC shall be to balance the offender's security needs with the requirements of the TDCJ relative to the management of the total offender population.

#### 4. Other Factors

When making initial unit assignments, the SCC shall take the following factors into consideration:

- a. offender job skills and unit work requirements;
- b. educational and program needs of offenders;
- c. availability of bedspace in the appropriate custody level.

In the absence of any medical, mental health or intellectual impairment needs, physical disabilities or special safety requirements, offenders will routinely be assigned to units in accordance with their segregative class and security level.

B. Other Recommendations

1. The SCC will make recommendations to the Unit Classification Committee regarding the offender's appropriate custody designation. Newly-received Institutional offenders must be incarcerated in TDCJ for at least six (6) months before promotion in time-earning status to SAT IV or above.
2. The SCC's assignment of offenders to specific jobs will be based on the offenders' skills and the requirements of the TDCJ. SCC recommendations with regard to housing assignments (e.g., cell housing only) will be based on the safety and security needs of the offenders.

C. Unusual and Difficult Cases

1. Unusual and difficult cases will be referred by the SCC to the Chairperson or Vice-Chairperson of Classification and Records for review and resolution.
2. SCC recommendations concerning offenders with unusual and difficult cases shall neither become final nor be implemented before review and approval by the Chairperson or Vice-Chairperson of Classification and Records.

III. Distribution of Committee Records

The Classification and Records Chairperson, or designee, shall ensure that all necessary documents are placed in the offender's file and forwarded to the Classification and Records Office for inclusion in the offender's permanent folder.

***B. UNIT-LEVEL CLASSIFICATION AND RECLASSIFICATION***

**B-1 Unit Reception Process and Initial  
Classification Review**

**B-2 Subsequent Classification Reviews and  
Reassignments**

**B-3 Standard Procedures for Unit Classification  
Committee Hearings**

## TEXAS DEPARTMENT OF CRIMINAL JUSTICE

## CLASSIFICATION PLAN

POLICY NO. B-1

SUBJECT: UNIT RECEPTION PROCESS AND INITIAL CLASSIFICATION REVIEW

PURPOSE: To establish policy and procedures with regard to the unit reception process, to include initial classification review, for all offenders upon arrival at a unit of assignment.

POLICY: It is the policy of the Texas Department of Criminal Justice that all offenders, upon arrival at a unit of assignment, shall be provided with an orientation regarding unit policies and procedures, and shall be reviewed by the Unit Classification Committee (UCC) for the purposes of determining custody designation and other assignments (e.g., housing, job) as appropriate to each offender's case. All such assignments shall be made on the basis of an offender's total record. No offender shall be excluded by the TDCJ from access to programs or services on the basis of race, national origin, disability, religion or political belief. No offender shall be denied access to jobs, recreation, education, or other programs or opportunities because of health status unless such denial is required for medical or mental health reasons, as determined by a licensed physician or mental health professional.

Both the primary function and the primary objective of the UCC shall be to classify each offender in such a manner so as to ensure, to the maximum extent possible, that the safety, security and treatment needs of all offenders are being met, and the safety and security of staff, the institution, and the public are maintained.

PROCEDURES:I. Reception of Newly-Assigned OffendersA. Initial Reception and Housing

1. Upon an offender's arrival at the initial unit of assignment, the receiving officer shall ensure that the offender's travel card is placed in the offender's unit folder and that all classification documents are forwarded to the unit classification office. These documents, to include the travel card, shall be used by Unit Classification Committees during initial classification reviews and during all subsequent classification reviews and hearings.
2. Institutional offenders will be classified by the UCC within 48 hours of their arrival at the unit, excluding weekends and holidays. Due to the intake process, transfer offenders are allowed thirty (30) days for initial classification and State Jail offenders are allowed ten (10) calendar days. As a general rule, offenders will be assigned to permanent housing immediately



following their initial classification committee hearings. Offenders will be assigned to transient housing in the event they must be given a housing assignment prior to initial classification by the Unit Classification Committee (UCC).

3. Upon classification by the UCC, if a bed in the offender's assigned custody is not available or the custody designation itself is not available on the unit, the offender will be assigned by the UCC to temporary housing out of the offender's assigned custody (i.e. transient or other designated housing) until such time as a bed in the appropriate custody becomes available or the offender is transferred to a unit with available beds in the appropriate custody. Offenders shall not remain in such temporary housing for more than thirty (30) calendar days.
- B. Upon arrival at a unit of assignment, a unit folder for each offender will be developed. This folder shall contain copies of the offender's Health Summary for Classification (HSM-18) form, UC00 computer screens, Unit Classification Committee History Form, and any other documents as may be required for the offender's initial classification review and for subsequent reviews and classification committee hearings.
  - C. All documents relative to the offender's treatment needs and requirements shall be reviewed, as appropriate, by designated treatment professional staff, for the purposes of developing the offender's Individualized Treatment Plan (ITP). The ITP shall serve to identify the specifics of the offender's treatment or program regimen, and shall be maintained and updated by designated unit staff, as required.

## II. Unit Orientation

- A. Offenders shall receive unit orientation within one (1) week of arrival at the unit of assignment. Offenders identified as Spanish-only or limited English-speaking will be given unit orientation in Spanish.
- B. A staff member shall be assigned the task of providing orientation to newly-assigned offenders, to include the following duties:
  1. Ensure that all newly-assigned offenders receive a unit orientation to include, but not limited to:
    - a. unit rules and regulations;
    - b. educational (academic and vocational) and self-help programs;
    - c. Spanish interpreter services (for offenders identified as Spanish-only or limited English-speaking);
    - d. access to courts, counsel and Public Official's Rules;
    - e. job assignments and their availability;
    - f. good conduct time policies;
    - g. general classification processes and procedures;



- h. medical/dental services;
  - i. mental health services;
  - j. religious services;
  - k. recreational services;
  - l. Safe Prisons Program;
2. Ensure that all newly-assigned offenders are advised of, and have access to, the following information:
    - a. visiting and correspondence rules and regulations; and
    - b. the "Offender Grievance Procedures."

### III. Classification Decisions and Recommendations

#### A. Custody, Housing, and Job Assignment

1. After thorough review and consideration of all available information, the Unit Classification Committee (UCC) shall determine the offender's appropriate custody designation on the basis of the offender's total record and the professional judgment of the committee. The UCC may also determine specific housing and job assignments for the offender if so designated by the Unit Warden. At the Institutional offender's initial unit of assignment, the UCC shall determine the offender's cell assignment status (i.e. the identification of any restrictions relative to double cell housing such as a requirement for separation from a particular race or races). Transfer and State Jail offenders are exempt from a cell assignment status.
2. All custody, housing and job assignments shall be made in accordance with the classification characteristics and boundaries and assignment criteria established in this Classification Plan.
3. All recommendations and restrictions noted on the offender's Health Summary for Classification form shall be binding on the UCC.

#### B. Appeals of Classification Decisions

1. The decisions of the UCC may be appealed by the unit administration to the Departmental Review Board.
2. Offenders may appeal the UCC's decisions through established offender grievance procedures.

## TEXAS DEPARTMENT OF CRIMINAL JUSTICE

## CLASSIFICATION PLAN

POLICY NO. B-2

SUBJECT: SUBSEQUENT CLASSIFICATION REVIEWS AND REASSIGNMENTS

PURPOSE: To establish policy and procedures with regard to the process of reviewing and reclassifying offenders committed to the Texas Department of Criminal Justice.

POLICY: It is the policy of the TDCJ that all offenders shall be reviewed for the purposes of classification on both a routine basis and as required by an individual offender's current needs and circumstances, in order to ensure that each offender receives appropriate and adequate supervision, and housing, job and program assignments which are commensurate with the changing needs and requirements of the offender during his entire period of incarceration. All classification decisions shall be made on the basis of the offender's total record. No offender shall be excluded from access to programs or services on the basis of race, national origin, disability, religion or political belief. No offender shall be denied access to work, recreation, education, or other programs or opportunities because of health status unless such denial is required for medical or mental health reasons, as determined by a physician or mental health professional.

Both the primary function and the primary objective of all classification committees and classification staff (including individuals with authority to make classification-related decisions) shall be to ensure that each individual offender's safety, security and treatment needs are being met, and the safety and security of all offenders, staff, the institution, and the public are maintained.

PROCEDURES:I. Classification Reviews

A. Classification reviews or committee action is required for the following reasons:

1. New Assignment to Unit;
2. Safekeeping Status and Protection reviews;
3. Change in Single-Celling Requirement;
4. Promotion in time earning status or change in custody;
5. Major Disciplinary Report;
6. Job Change reviews;
7. Change in Cell Assignment Status;
8. Major Program Change in Individualized Treatment Plan;
9. Review Request by Chief of Unit Classification, or Classification Casemanager;
10. Review Request by Central or Unit Administration;
11. Review for SSI approval;

12. Review for Security Precaution Designator placement and removal;
13. Other reviews, as appropriate to each offender's case.

B. Offender Requests for Classification Reviews

1. Offenders may request classification reviews by forwarding such requests to the unit Warden or Classification staff. Such reviews may be requested for the following reasons:
  - a. consideration for promotion in time-earning class or custody;
  - b. placement in, or release from, safekeeping status;
  - c. protection from threat of harm from other offenders (AD.04.69);  
and,
  - d. other review requests (e.g., change in cell assignment status)
2. The Warden or Classification staff shall review the offender's unit folder to determine the offender's eligibility for review by the Unit Classification Committee, in accordance with the classification characteristics, boundaries and criteria outlined in this Classification Plan. Requests for reviews may be denied if plainly unreasonable or duplicative of a recent review, or if the offender does not meet minimum eligibility requirements.
3. Upon determining that the offender is eligible for review consideration, the Chief of Unit Classification shall schedule the offender to appear individually before the Unit Classification Committee.

C. Committee Review Hearings for Offenders in Administrative Segregation (Institutional offenders)

1. Offenders assigned to Administrative Segregation shall be accorded classification reviews and processes which are commensurate with the conditions of their confinement as outlined in the Administrative Segregation Plan.
2. Committee action or review shall be initiated for the following reasons:
  - a. Ten (10) day due process hearing conducted by the unit Administrative Segregation Committee (ASC), during which the decision is made to either release the offender from administrative segregation or place the offender in administrative segregation status.
  - b. Thirty (30) day review of the offender's administrative segregation status conducted by the unit ASC. (This review is required for offenders in Administrative Segregation Level 3 status only, and is held every thirty (30) days.)
  - c. Sixty (60) day review of the offender's administrative segregation status conducted within sixty (60) days of the initial ten (10) day

due process hearing by a member of the State Classification Committee (SCC), the Unit Warden or his designee, and other unit officials as deemed appropriate. (NOTE: 60-day review is not required for offenders who are identified as an STG member.)

- d. Ninety (90) day reviews of the offender's administrative segregation status conducted by the unit ASC. (This review is required for offenders in Administrative Segregation Level 1 and 2 status only, and is held every ninety (90) days. Level 1 STG members only need to be reviewed every one hundred eighty (180) days by the ASC.)
- e. One hundred eighty-day (180) reviews by the SCC of the offender's administrative segregation status, which are conducted within one hundred eighty (180) days of the previous SCC hearing by a member of the SCC, the Unit Warden or his designee, and other unit officials as deemed appropriate. (STG members only need to be reviewed annually by the SCC.)
- f. Changes in special conditions relative to the offender's confinement (e.g., property restrictions).
- g. Reviews and recommendations by the ASC for promotion.
- h. Other reviews, as appropriate to each offender's case.

### 3. Promotion Boundaries

Promotion boundaries for offenders confined in Administrative Segregation shall be as follows:

- a. Security Detention: An offender confined in Administrative Segregation Security Detention shall not be promoted above the time-earning status of SAT IV.
- b. Protective Custody: An offender confined in Administrative Segregation Protective Custody shall not be promoted above the time-earning status of SAT III.

4. All decisions with regard to offenders' assignment to and release from administrative segregation status, and promotion in status shall require review and approval by the State Classification Committee.

5. Special security procedures (e.g., mechanical restraints) may be utilized during classification committee hearings if necessary to ensure the safety and security of offenders, staff, and the institution.

### D. Committee Review Hearings for Offenders in Special Management (State Jail offenders)

1. Offenders assigned to Special Management shall be accorded classification reviews and processes which are commensurate with the conditions of their confinement.

2. Committee action or review shall be initiated for the following reasons:
  - a. Initial ten (10) day hearing conducted by the Special Management Committee (SMC) for placement into Special Management.
  - b. Seven (7) day reviews conducted by the SMC for all Special Management offenders for the first sixty (60) days of confinement in Special Management (conducted every seven (7) days).
  - c. Sixty (60) day review of the offender's administrative segregation status conducted within sixty (60) days of the initial ten (10) day due process hearing by a member of the State Classification Committee (SCC), the Unit Warden or his designee, and other unit officials as deemed appropriate.
  - d. Thirty (30) day reviews conducted by the SMC for all special management offenders after the first sixty (60) days of confinement in Special Management (conducted every thirty (30) days).
  - e. One hundred eighty (180) day reviews conducted by the SCC for all Special Management offenders.
  - f. Changes in special conditions relative to the offender's confinement (e.g., property restrictions).
  - g. Other reviews, as appropriate to each offender's case.

Note: All decisions with regard to offenders' assignment or release from Special Management shall require the review and approval of the SCC.

#### E. Transient Status Offenders

1. Offenders assigned to transient status for the following reasons shall not be subject to regular classification reviews and procedures (e.g., reviews for custody change, promotion in time-earning class):
  - a. reception processing;
  - b. medical treatment;
  - c. special purpose transfers such as inter-unit visits between offenders, etc.;
  - d. pending release to parole, mandatory supervision, discharge, or pending departure on bench warrant, Interstate Agreement on Detainers or other authorized release.
  - h. State Jail offenders pending transfer due to being a special needs offender or pending assignment due to a white warrant.
2. Offenders assigned to transient status for the following reasons shall be subject to regular classification reviews and procedures:
  - a. pending initial unit classification (of offenders newly arrived to a unit);
  - b. unavailable custody level or unavailable bed space in the appropriate custody level;



- c. pending subsequent classification reviews.

## II. Unit Classification Staff Responsibilities

- A. It shall be the responsibility of the Chief of Unit Classification and the Unit Classification Casemanager to informally resolve as many classification-related problems and questions as possible at the unit level.
- B. Unit staff shall be responsible for developing and maintaining a unit folder. Each offender's folder shall contain copies of the offender's current Health Summary for Classification (HSM-18) form, Unit Classification Committee History Form, and any other documents and UCR computer screens as may be required for case reviews and unit classification committee hearings. State Jail unit folders will also contain all commitment and judgement paperwork. The unit folder will be transferred with the offender upon unit reassignment.
- C. The Chief of Unit Classification shall be responsible for coordination of the scheduling of offenders for appearances before the Unit Classification Committee, and shall provide supervision and guidance to Unit staff regarding daily activities related to unit-level classification (e.g., the maintenance of a unit folder for each offender). Unit Classification Chiefs and Casemanagers are trained in the proper application of classification criteria, the correct entry of data, and the presentation of information to the Unit Classification Committee.

## III. Individual Authority for Classification Decisions

- A. Housing and Job Assignments and Individualized Treatment Plans
  - 1. The Unit Warden, Assistant Warden, Major, Shift Supervisor, Building Captain and Chief of Unit Classification shall have individual authority, if so designated by the Unit Warden, to make changes in housing assignments which do not involve changes in custody designations, changes in job assignments which do not significantly affect other areas of the offender's Individualized Treatment Plan, and emergency inter-unit transfers for reasons of security or safety, or based on the recommendations of medical or mental health professional treatment staff.
  - 2. Before the Warden or designated staff member initiates any changes in job assignments, housing assignments or Individualized Treatment Plans for "special needs" offenders, to include emergency housing changes for reasons of security and safety, he shall review the information obtained from the offender's current Health Summary for Classification form to determine if the proposed change(s) will create any conflicts or is contraindicated by the offender's medical or mental health needs or needs relative to an intellectual impairment or physical disability. If a conflict or problem exists, the designated staff member shall attempt to informally resolve the problem. In no case will a valid medical restriction be altered in order to resolve a

conflict or problem with an offender's job or program assignment. If informal resolution is not possible, the Classification Chief will schedule the case for review by the Unit Classification Committee (UCC) for appropriate assignment commensurate with the recommendations and restrictions noted on the offender's Health Summary for Classification form. In such cases a member of the health services staff will be a member of the committee. In emergency cases during off-duty hours, the change shall be reported to the appropriate health services professional(s), who shall review the change in light of the recommendations noted in the offender's current Health Summary for Classification form. If the change is in contradiction to the Health Summary for Classification form, the senior medical officer will be notified for resolution.

3. In the event of an emergency inter-unit transfer, the Unit Warden or his designee shall review the offender's classification records to determine if an enemy is present at the proposed unit of transfer or if some other security, health or safety-related reason exists which would preclude the offender from assignment to the proposed unit.
4. With respect to all offenders, the recommendations of health services personnel, as noted on the Health Summary for Classification form, or HSM-18, shall be binding upon and must be followed by classification and security staff. If a proposed change(s) in job assignment, housing assignment or Individualized Treatment Plan clearly conflicts with the HSM-18, the change shall not occur. If it is unclear whether the proposed change creates such a conflict, the unit classification staff shall follow the procedures outlined for special needs offenders in Section III.A.2., above.

**B. Placements in Administrative Segregation/Special Management**

The Unit Warden, Assistant Warden, Major, Shift Supervisor, Building Captain, Administrative Segregation Supervisor and Chief of Unit Classification shall have individual authority, if so designated by the Unit Warden, to place offenders in Administrative Segregation/Special Management and to make initial decisions relative to an offender's assignment status, to include identifying any special conditions of confinement. All such placements and decisions shall require review and confirmation by the Unit Administrative Segregation Committee or Special Management Committee at the ten-day due process hearing, in accordance with the provisions outlined in the Administrative Segregation Plan.

**IV. Reviews for Promotion**

- A. All offenders, to include those convicted of disciplinary offenses, shall be afforded timely reviews for promotional consideration. Offenders who are eligible for review, however, will not automatically be promoted as a result of this review process. Offenders must meet the criteria for promotion based on the criteria established in this Classification Plan and meet the approval of Unit Classification

Committee members based on sound correctional practices.

- B. The Chief of Unit Classification shall be responsible for the maintenance of records and the use of regularly-generated computer printouts in making determinations with regard to offenders' eligibility for promotional consideration.

C. Review Schedule

Review dates for promotional consideration shall be set by the Unit Classification Committee or Chief of Unit Classification, in accordance with the provisions outlined below.

1. Offenders Assessed Minor Penalties

When an offender is found guilty of a disciplinary offense resulting in a minor penalty (any authorized penalty that is not classified as major), that finding of guilt will not preclude the offender from being reviewed or considered for promotion in time-earning class or custody lost as a result of a previous disciplinary conviction in which a major penalty was assessed. However, disciplinary convictions resulting in minor penalties may be considered by the classification committee when making determinations regarding promotion.

2. Offenders Assessed Major Penalties

a. The Unit Classification Committee (UCC) shall be responsible for the timely review for promotional consideration of offenders who have been convicted of disciplinary offenses resulting in major penalties.

b. When an Institutional offender is found guilty of a disciplinary offense resulting in a major penalty, that finding of guilt will preclude the offender from being reviewed or considered for promotion in time earning status for a period of twelve (12) months from the date of the offense.

(1) The offender may be reviewed for custody upgrade upon maintenance of a clear conduct record for six (6) months. (Disciplinary convictions resulting in minor penalties will not preclude the review.)

(2) The offender must be reviewed and considered for promotion in class and custody twelve (12) months from the date of the offender's most recent disciplinary conviction resulting in a major penalty. (Disciplinary convictions resulting in minor penalties will not preclude the review.)

d. When a State Jail offender is found guilty of a disciplinary offense resulting in a major penalty:

(1) The offender may be reviewed for custody upgrade upon maintenance of a clear conduct record for three (3) months. (Disciplinary convictions resulting in minor penalties will



not preclude the review.)

- (2) The offender must be reviewed and considered for promotion in custody six (6) months from the date of the offender's most recent disciplinary conviction resulting in a major penalty. (Disciplinary convictions resulting in minor penalties will not preclude the review.)

- e. If the UCC denies the offender's promotion, the reason(s) for such denial shall be noted on the Classification Committee Docket and Committee History Form.

- D. All promotions in time-earning class shall require review and approval by the State Classification Committee.

V. Appeals of Classification Decisions

- A. Decisions of the Unit Classification Committee (UCC) and the State Classification Committee (SCC) may be appealed by the unit administration to the Departmental Review Board (DRB). The UCC may also file appeals to the Departmental Review Board regarding the decisions of the SCC.

- B. Offenders may appeal classification decisions through established offender grievance procedures.

- VI. All unit classification committees and unit administrations shall be obligated to obey the orders of the central administration, the Regional Directors, the Departmental Review Board (DRB) and the State Classification Committee (SCC) in keeping with all requirements, policies and procedures associated with the Classification Plan. For ID facilities, the unit administration shall notify the SCC of any emergency inter-unit transfer which occurs without that committee's prior knowledge. State Jail facilities will notify the State Jail Regional Office, who in turn will notify the SCC, if appropriate.

## TEXAS DEPARTMENT OF CRIMINAL JUSTICE

## CLASSIFICATION PLAN

POLICY NO. B-3

SUBJECT: STANDARD PROCEDURES FOR UNIT CLASSIFICATION COMMITTEE HEARINGS

PURPOSE: To establish policy and procedures for conducting unit classification committee hearings.

POLICY: It is the policy of the Texas Department of Criminal Justice that all unit classification committee hearings shall be conducted in such a manner so as to ensure that each offender appearing before a committee is properly classified through the consistent and objective application of classification criteria and on the basis of the offender's safety, security and treatment needs. Each offender's individual circumstances and unique characteristics will be taken into consideration throughout the classification process.

PROCEDURES:I. Unit Classification Committee Proceedings

A. The Unit Classification staff shall be responsible for scheduling the committee hearings. Offenders shall be given 48 hours notice prior to classification hearings unless such notice is precluded for security or substantial reasons. Such security or substantial reasons that preclude the 48 hours notice include, but are not limited to:

1. a hearing must be held immediately due to no housing available in an offender's assigned custody;
2. a hearing must be held immediately due to possible custody change related to a major disciplinary offense;
3. a hearing must be held immediately due to a protection risk or emergency housing move issue;
4. an initial hearing for assignment to a facility; and
5. other hearings required by security risk or substantial reason in accordance with good correctional management practice.

Although offenders are to be present for hearings, offenders may decline attendance. They also may waive the 48-hour notice in writing.

B. Committee hearings shall be conducted in an area which provides privacy from other offenders and from staff not involved in the hearings.

C. The Chairperson shall moderate the committee proceedings. Each committee member shall have one (1) vote, and the majority vote shall rule.

- D. Each offender shall appear individually before the committee, and shall be seated during the committee hearing. The reasons for the hearing shall be fully explained to the offender.
- E. A Spanish-speaking interpreter shall be available during the committee hearing if the offender is identified as Spanish-only or limited English-speaking.
- F. The offender shall have the opportunity to ask questions and to present information at the hearing which may affect the committee's decisions.
- G. All information upon which the classification committee bases its decision(s) and committee results shall be documented in the offender's unit folder. Committee results are annotated on the offender's travel card.
- H. The UCC Chairperson, or his designee, shall ensure that all documents required for the initial classification of an offender are available at the hearing for review by committee members.
- I. After thorough review and consideration of all available information, the Unit Classification Committee shall determine the offender's appropriate custody designation on the basis of the offender's total record and the professional judgement of the committee. The UCC may also determine specific housing and job assignments for the offender if so designated by the Unit Warden.
- J. All custody, housing and job assignments shall be made in accordance with the classification characteristics and boundaries and assignment criteria established in this Classification Plan.
- K. All recommendations and restrictions noted on the offender's Health Summary for Classification form shall be binding on the UCC.
- L. Upon classification by the UCC, if a bed in the offender's assigned custody is not available or the custody designation itself is not available on the unit, the offender will be assigned by the UCC to temporary housing out of the offender's assigned custody (i.e. in transient or other designated housing) until such time as a bed in the appropriate custody becomes available or the offender is transferred to a unit with available beds in the appropriate custody. Offenders shall not remain in such temporary housing for more than thirty (30) calendar days.

## II. Exclusion of Offenders from Committee Hearings

- A. Offenders may be excluded from classification committee hearings for the following reasons:
  - 1. when medical, mental health, safety or security concerns arise during the course of the hearing (e.g., the offender exhibits extreme acting out behavior); or

2. when legitimate security issues arise which are relevant to the committee's discussion of confidential information.
- B. If an offender is excluded from a Unit Classification Committee hearing, the Chairperson will provide information to the committee which the offender or the Chairperson believes might affect the committee's decisions.
  - E. The reasons for the offender's exclusion from the hearing shall be noted on the Classification Committee Docket, to include the reasons for determining that any confidential information presented at the hearing was reliable.
  - D. The authority to exclude an offender from that portion of the hearing during which confidential information is discussed shall be limited to those cases where disclosure of the source of information would likely result in the identification and endangerment of an informant, or when it is determined that information discussed is not in the best interests of institutional security and order if discussed with the offender present.
  - E. Offenders shall have the right to grieve the decision of exclusion through established offender grievance procedures.

### III. Offender Notification of Committee Disposition

Each offender shall be advised of the committee's decisions directly by the committee at the conclusion of the hearing. Offenders with language or communication impairments shall be informed of the committee's decisions by a method that is appropriate for the offender. Offenders who refuse to attend the hearing or who are excluded from the hearing shall be informed of the committee's decisions by the Unit Classification staff as soon after the hearing as possible.

### IV. Completion and Maintenance of Committee Docket

The Unit Classification staff shall be responsible for initiating the Classification Committee Docket for each offender who appears before the Unit Classification Committee. The committee will be responsible for completing the docket.

### V. UCR Database and Unit Classification Committee History Form

The UCR data base serves to provide unit classification committees and classification staff with a record of each offender's institutional adjustment history (Screens 6 and 7 of the UC00 computer program) and unit, custody, housing and job assignment histories (Screens 2 and 11 of the UC00 computer program). The Unit Classification Committee History Form serves as a record of both initial and subsequent classification committee reviews. Whenever an offender is reviewed by the UCC, both the purpose and results of the review shall be documented on the Unit Classification Committee History Form. The Unit Classification or Countroom staff shall ensure that the UCR database is updated if any action taken by the UCC

requires such an update.

VI. SJ00 Database for State Jail Offenders

The SJ00 database serves to provide additional information to State Jail staff and State Jail Unit Classification Committees. The information provided includes commitment and sentencing data utilized during intake, detainers and prior offenses, and data addressing the offender's release. SJ00 is maintained and updated, as needed, by intake staff, unit classification staff, and Classification and Records administrative staff.

VII. Appeals of Classification Decisions

Offenders may appeal the UCC's classification decisions through established offender grievance procedures.

***C. CUSTODY, HOUSING AND JOB ASSIGNMENTS***

**C-1 Custody Designations**

**C-2 Offender Housing Assignments**

**C-3 Offender Job Assignments**

## TEXAS DEPARTMENT OF CRIMINAL JUSTICE

## CLASSIFICATION PLAN

POLICY NO. C-1

SUBJECT: CUSTODY DESIGNATIONSPURPOSE: To establish policy, procedures and criteria for making custody designation assignments.POLICY: It is the policy of the Texas Department of Criminal Justice that each offender shall be assigned to a custody designation which provides appropriate and adequate supervision and housing commensurate with the needs and requirements of the offender during his or her entire period of incarceration. Custody designation assignments shall be made on the basis of the offender's total record, but shall be primarily influenced by institutional adjustment factors. No offender shall be assigned to, or be denied assignment to, a custody designation on the basis of race, color, national origin, disability or bed availability.PROCEDURES:I. Overview

The purpose of custody designation assignment shall be to ensure that each offender in the TDCJ receives appropriate and adequate supervision and housing commensurate with the changing needs and requirements of the offender during his entire period of incarceration. Custody assignment shall be primarily influenced by institutional adjustment factors. However, because the TDCJ has minimal opportunity to observe institutional adjustment immediately after an offender's arrival, factors such as prior criminal record, prior institutional adjustment, current offense of record and sentence length shall be considered in making initial classification decisions relative to custody. Custody assignment shall serve to indicate both the type of housing (cell or dormitory) and the level of supervision required by the offender. Each offender's custody/classification status shall be reviewed at a minimum on an annual basis.

II. Principal Custodies and Special Status Categories

The principal custody designations in the Correctional Institutions Division are general Population Level I (G1/J1), General Population Level II (G2/J2), General Population Level III (G3/does not apply to State Jail offenders), General Population Level IV (G4/J4), General Population Level V (G5/J5) and Maximum custody. The diversity of characteristics in the offender population compels that special status categories also be provided which are consistent with special custody or treatment requirements. These special status categories are death sentence status, medical status, mental health (psychiatric) status, mentally retarded offender (MROP) status, physically disabled offender status, safekeeping status, and transient status (see Section IV.B., below). Assignment to a special status category may preclude assignment to a principal custody designation (e.g., death sentence status offenders; MROP



status offenders in an MROP-Sheltered Facility; psychiatric status offenders in an inpatient facility). Offenders with special medical or mental health needs, intellectual impairments or physical handicaps will generally be referred to as "special needs" offenders. "Special needs" offenders shall be assigned to the appropriate special status category upon recommendation by the appropriate treatment professional(s).

### III. Classification Characteristics and Boundaries

The following provides an outline of the classification characteristics and boundaries for offenders in each of the principal custody designations and in each of the special status categories in the Correctional Institutions Division. The classification characteristics of each of the principal custody designations have been computerized (Screen 1, Custody Assignment Worksheet, UC00 computer program) to assist classification committees in making custody designation assignments based on the objective assignment specifications established in this Plan. Classification committees shall be required to follow the computer's custody assignment recommendations unless it is determined that an override is necessary due to unusual or peculiar circumstances relative to individual classification considerations. The provision of custody designation overrides is described in Section IV.C., below.

#### A. Principal Custody Designations

##### 1. General Population Level I Custody (G1/ J1) - SAT II, Line Class I, State Jail Offender

##### a. Classification Characteristics

General Population Level I (G1/J1) custody - shall only be assigned to SAT II, Line Class I time-earning status, or State Jail offenders who have all of the following characteristics:

- (1) no requirement for a more restrictive custody;
- (2) no evidence of current psychological instability, based on the recommendation of mental health professional treatment staff, which would negatively impact the offender's ability to successfully function in General Population Level I (G1/J1) custody;
- (3) no current or prior convictions for capital murder, murder, or voluntary manslaughter; no current or prior convictions of any type where the offender intentionally caused the death of another person;
- (4) no major disciplinary convictions resulting in major penalties within the past twenty-four (24) months for offender and/or staff assaults, with or without a weapon;
- (5) no placement of security precaution designator for escape (ES), staff assault (SA), or hostage (HS);



- (6) no placement of security precaution removal code of escape removal (NE), staff assault removal (NA), hostage removal (NS);
- (7) no unresolved felony or United States Immigration Service detainers, no blue or white warrants for State Jail offenders;
- (8) to be promoted to G1/J1, must have a clear conduct record, with no disciplinary conviction resulting in major penalties, for a minimum period of six (6) months, unless a State Jail offender, then three (3) months (newly-received offenders to TDCJ may be approved for immediate assignment to General Population Level I, G1/J1).
- (9) no pattern of freeworld convictions for offenses of violence, and no freeworld convictions for offenses of sexual misconduct.

Note: An offender with an aggravated or lengthy sentence may be considered for assignment to General Population Level I custody if the offender is within twenty-four (24) months of possible release.

b. Classification Boundaries

General Population Level I custody (G1/J1) - SAT II, Line Class I time-earning status, or State Jail offenders are subject to the following classification boundaries:

- (1) eligible for contact visits with visitors on approved visitation list;
- (2) may be eligible for consideration for an emergency absence;
- (3) eligible for consideration to participate in specialized vocational training programs;
- (4) unarmed periodic supervision required on job assignments or activities inside or outside the security perimeter (sight checked at a minimum of once every two (2) hours).
- (5) may be housed in a cell or dormitory, in accordance with the following guidelines:
  - (a) General Population Level I (G1/J1) - offenders shall be assigned to dormitories on a priority basis.
  - (b) General Population Level I (G1)- SAT II, or Line Class I offenders may be assigned to the trusty camp adjacent to their assigned unit upon approval by the Unit Warden and the medical department. Upon assignment to the trusty camp, the designation of OT will be utilized for custody and housing purposes. (Does not apply to State Jail offenders).
  - (c) General Population Level I (G1/J1) - SAT II, Line Class I time earning status or State Jail offenders shall only be assigned to housing areas which are

specifically designated for General Population Level I (G1/J1) custody offenders. However, General Population Level I (G1/J1) and General Population Level II (G2/J2) offenders may be housed together in exceptional circumstances, upon prior approval of the housing scheme by the Chairperson of the SCC.

- (6) Recreation – Institutional offenders - allowed a minimum of four (4) hours weekdays; seven (7) hours weekends. (Refer to AD 03.40 for specific guidelines).

State Jail offenders - allowed a minimum of four (4) hours weekdays. At least one (1) hour of this recreation time will be in the gym or outdoors (weather permitting). Seven (7) hours will be allowed on the weekends with at least two (2) hours of this recreation time in the gym or outdoors (weather permitting).

- (7) Commissary - allowed to make commissary purchases up to \$75 every two (2) weeks.
- (8) Property - allowed to keep personal property except items restricted through disciplinary actions or under AD-03.72.
- (9) Jobs - may be assigned to any job deemed appropriate by the unit administration.
- (10) Education Programs - eligible for consideration to participate in academic programs if specific program criteria are met.

## 2. General Population Level II Custody- (G2/J2)

### a. Classification Characteristics

General Population Level II (G2/J2) custody shall primarily be assigned to those SAT III, IV, Line Class I time-earning status, or State Jail offenders who have all of the following characteristics:

- (1) no requirement for a more restrictive custody;
- (2) no recent pattern of in-prison assaultive behavior (3 or more separate disciplinary convictions resulting in major punishment within the past twenty-four (24) months for offender and/or staff assaults, with or without a weapon);
- (3) in order to promote to Level II must have a clear conduct record, with no disciplinary convictions resulting in major penalties for a minimum period of six (6) months, unless State Jail offender, then three (3) months (newly-received TDCJ offenders may be approved for immediate assigned to General Population Level II (G2/J2) custody);
- (4) offenders committed to TDCJ with 3G (murder, capital murder, indecency with a child, aggravated kidnapping, aggravated sexual assault, aggravated robbery, Health and

Safety Code, Chapter 481.134 (c), (d), (e), and (f), sexual assault, any offense with affirmative finding—use of deadly weapon) offenses for sentences of fifty (50) years or more must have served ten (10) years flat time to be eligible for General Population Level II (G2) custody;

- (5) offenders committed to TDCJ with non-3G offenses for sentences of fifty (50) years or more must have served five (5) years flat to be eligible for General Population Level II (G2) custody;
- (6) no placement of security precaution designators for escape (ES), staff assault (SA), or hostage (HS);
- (7) no placement of security precaution removal code for escape removal (NE), staff assault removal (NA), hostage removal (NS) (unless State Jail offender).

b. Classification Boundaries

General Population Level II (G2/J2) custody - Primarily SAT III, SAT IV, Line Class I time-earning status, or State Jail offenders shall be subject to the following classification boundaries:

- (1) eligible for contact visits with immediate family members;
- (2) may be eligible for consideration for an emergency absence;
- (3) requires direct armed supervision on job assignments and activities outside the security perimeter, and requires periodic supervision inside the security perimeter;
- (4) may be housed in a cell or dormitory, in accordance with the following guidelines:
  - (a) General Population Level II (G2/J2) custody offenders may be assigned to a dormitory within the security perimeter; however, a General Population Level II (G2/J2) custody offender shall not be assigned to a trusty camp.
  - (b) General Population Level II (G2/J2) custody offenders shall only be assigned to housing areas which are specifically designated for General Population Level II (G2/J2) custody offenders. However, in exceptional circumstances General Population Level II (G2/J2) and General Population Level I (G1/J1) offenders may be housed together upon prior approval of the housing scheme by the Chairperson of the SCC. Additionally, in exceptional circumstances, General Population Level II (G2) custody offenders may be housed with General Population Level III (G3) custody offenders inside the main building of a unit with prior approval of the housing scheme by the Chairperson of the SCC.

- (5) Recreation - Institutional offender - allowed four (4) hours weekdays; seven (7) hours weekends. (Refer to AD 03.40 for specific guidelines).

State Jail offender – allowed four (4) hours of recreation each weekday. At least one (1) hour of this recreation time will be in the gym or outdoors (weather permitting). Seven (7) hours will be allowed on the weekends with at least two (2) hours of this recreation time in the gym or outdoors (weather permitting).

- (6) Commissary - allowed to make commissary purchases up to \$75 every two (2) weeks.
- (7) Property - allowed to keep personal property except items restricted through disciplinary actions or under AD-03.72.
- (8) Jobs - may be assigned to any job deemed appropriate by the unit administration. Unless State Jail offender with a NE, NA, NS code. Offenders in this category may not be assigned to maintenance work, clerk position, dock worker, or any job where the offender would have access to multiple areas of the unit.
- (9) Education Programs - eligible for consideration to participate in academic/vocational programs if specific program criteria are met.

3. General Population Level III Custody – (G3) (Does not apply to State Jail Offenders)

a. Classification Characteristics

General Population Level III (G3) custody shall primarily be assigned to SAT III, SAT IV, Line Class I time-earning status offenders who have one or more of the following characteristics:

- (1) no requirement for a more restrictive custody;
- (2) no recent pattern of in-prison assaultive behavior (3 or more separate disciplinary convictions resulting in major punishment within the past twenty-four (24) months for offender and/or staff assaults with or without a weapon);
- (3) in order to promote to General Population Level III (G3), an offender must have a clear conduct record, with no disciplinary convictions resulting in major penalties for a minimum period of six (6) months, (newly-received TDCJ offenders may be approved for immediate assignment to General Population Level III (G3) custody;
- (4) offenders committed to TDCJ for sentences of fifty (50) years or more for a 3-G offense and have not served ten (10) flat years;

- (5) an offender committed to TDCJ for sentences of fifty (50) years or more for a non-3G offense and have not served five (5) flat years;
- (6) no placement of a security precaution designator for escape (ES), staff assault (SA) or hostage (HS);
- (7) placement of a security precaution removal code for escape removal (NE), staff assault removal (NA), hostage removal (NS) will prevent an offender from being assigned to a custody less restrictive than G3.

The codes for escape (ES) and staff assault (SA) must be removed if the incident which caused the placement of the designator occurred more than ten (10) years ago in accordance with A.D.-04.11, (unless approved by the SPDRC to remain due to extraordinary circumstances).

b. Classification Boundaries

General Population Level III (G3) custody- Primarily SAT III, SAT IV, Line Class I time-earning status offenders shall be subject to the following classification boundaries:

- (1) eligible for contact visits with immediate family members;
- (2) may be eligible for consideration for an emergency absence;
- (3) requires direct armed supervision on job assignments and activities outside the security perimeter, and requires indirect supervision inside the security perimeter;
- (4) may be housed in a cell or dormitory, in accordance with the following guidelines:
  - (a) General Population Level III (G3) custody offenders may be assigned to a dormitory inside the main building of a unit.
  - (b) General Population Level III (G3) custody offenders shall not be assigned to a dormitory outside of the main building of a unit, inside the security fence.
  - (c) General Population Level III (G3) custody offenders shall not be assigned to a trusty camp.
  - (d) General Population Level III (G3) custody offenders shall only be assigned to housing areas that are specifically designated for General Population Level III (G3) custody offenders. However, in exceptional circumstances General Population Level III (G3) and General Population Level II (G2) offenders may be housed together upon prior approval of the housing scheme by the Chairperson of the SCC.
- (5) Recreation - allowed four (4) hours weekdays; seven (7) hours weekends. (Refer to AD 03.40 for specific guidelines).



- (6) Commissary - allowed to make commissary purchases up to \$75 every two (2) weeks.
- (7) Property - allowed to keep personal property except items restricted through disciplinary actions or under AD-03.72.
- (8) Jobs - may be assigned to any job except maintenance worker, SSI, any other clerk position, dock worker, or any job where the offender would have access to multiple areas of the unit.
- (9) Education Programs - eligible for consideration to participate in academic programs if specific program criteria are met. Access to vocational programs determined by Warden based on location of vocational shops.

4. General Population Level IV Custody – (G4/J4)

a. Classification Characteristics

General Population Level IV (G4/J4) custody - Shall be primarily assigned to those SAT IV, Line Class I, II, III time-earning status, or State Jail offenders, who have one or more of the following characteristics:

- (1) no requirement for a more restrictive custody;
- (2) does not qualify for a less restrictive custody assignment;
- (3) has recently demonstrated a positive change in behavior and attitude and was previously in General Population Level V (G5/J5) custody;
- (4) two (2) or more non-assaultive disciplinary convictions resulting in major penalties within the past six (6) months;
- (5) one (1) disciplinary conviction resulting in a major penalty for offender or staff assault without a weapon within the past twelve (12) months;
- (6) Line Class II, III time-earning status, Institutional offender, if the offender is not assaultive or aggressive in nature. Age, physical size, and the circumstances surrounding any assaultive disciplinary offenses will be taken into consideration when determining appropriate custody assignment.
- (7) Placement of a security precaution designator for escape (ES), staff assault (SA), or hostage (HS) will prevent an offender from being assigned to a custody less restrictive than G4/J4.

General Population Level IV (G4/J4) custody may be assigned to offenders who have the following characteristics:

A newly-received offender, upon transfer to his initial unit of assignment, may be assigned to General Population Level IV (G4/J4) custody by the UCC if the offender's current offense of record is for a violent crime, if the UCC establishes that the offender has a pattern

of free-world convictions for offenses of violence, or if the offender has committed an assault on staff or offenders in an adult correctional institution within the past twenty-four (24) months.

b. Classification Boundaries

General Population Level IV (G4/J4) custody - Primarily SAT IV, Line Class I, II, III time-earning status, or State Jail offenders shall be subject to the following classification boundaries:

- (1) Generally allowed one (1) regular visit each weekend; ineligible for contact visits; however, S3 and S4 Institutional offenders with one (1) year clear major disciplinary shall be allowed to receive contact visits with immediate family members (frequency depends on time-earning status when applicable);
- (2) ineligible for an emergency absence;
- (3) requires direct armed supervision on job assignments and activities outside the security perimeter; requires indirect supervision on jobs inside the security perimeter;
- (4) must be housed in a cell specifically designated for housing General Population Level IV (G4/J4) custody offenders. (Note: Female and State Jail offenders in General Population Level IV (G4/J4) custody may be housed in dormitories specifically designated for housing General Population Level IV (G4/J4) custody offenders).
- (5) Recreation - Institutional offender - allowed four (4) hours weekdays. (Refer to AD 03.40 for specific guidelines).  
State Jail offender – allowed two (2) hours of recreation each weekday. At least one (1) hour of this recreation time will be in the gym or outdoors (weather permitting). Four (4) hours will be allowed on the weekends with at least one (1) hour of this recreation time in the gym or outdoors (weather permitting).
- (6) Commissary – generally allowed to make commissary purchases up to \$30 every two (2) weeks; however, SAT III, SAT IV, and State Jail offenders with one (1) year clear major disciplinary shall be allowed to make purchases up to \$75 every two (2) weeks.
- (7) Property - allowed to keep personal property except items restricted through disciplinary actions or under AD-03.72.
- (8) Jobs - will generally be assigned to field force and secure jobs inside the perimeter as designated by the Warden. May not be assigned to maintenance worker, SSI, any other clerk position, dock worker, or any job where the offender would have access to multiple areas of the unit.



- (9) Education Programs – participation in educational programs will be determined by the Warden on a unit by unit basis and specific program criteria. Access to vocational programs to be determined by the Warden based on location of the vocational shops.

5. General Population Level V Custody – (G5/J5)

a. Classification Characteristics

General Population Level V (G5/J5) custody - Shall be primarily assigned to those Line Class I, II, III, time-earning status or State Jail offenders who have one or more of the following characteristics:

- (1) one (1) or more disciplinary convictions resulting in major penalty for an assault with a weapon on staff or offenders within the past twenty-four (24) months;
- (2) two (2) or more disciplinary convictions resulting in major penalties for offender or staff assaults without a weapon within the past twelve (12) months;
- (3) one (1) or more disciplinary convictions resulting in major penalties for extortion or sexual abuse within the past twenty-four (24) months.
- (4) primarily Line Class I, II, III time-earning status, or State Jail offender, if the offender is assaultive or aggressive in nature. Age, physical size, and the circumstances surrounding any assaultive disciplinary offenses will be taken into consideration when determining appropriate custody assignment.
- (5) escape from a TDCJ secure adult correctional facility within the past five (5) years will prevent an offender from being assigned to a custody less restrictive than G5/J5.

General Population Level V (G5/J5) custody may be assigned to offenders who have the following characteristics:

- (1) Recent history of escape or attempted escape from an adult correctional institution (within the past ten (10) years).
- (2) A newly-arrived offender, upon transfer to his initial unit of assignment, may be assigned to General Population Level V custody under the following circumstances:
  - (a) If the current offense of record is for a violent crime against a person and the UCC does not establish that a pattern of convictions for violent acts exists, the offender may still be assigned to (G5/J5) custody. However, the offender may be considered for

assignment to a less restrictive custody in light of other classification characteristics.

- (b) If in addition to the offender's current conviction for a violent crime, a pattern of convictions for violent acts can be established by the UCC, the offender can be assigned to (G5/J5) custody.
- (c) If the offender has committed an assault on staff or offenders in an adult correctional institution within the past twenty-four (24) months, the offender will be considered for assignment to General Population Level V (G5/J5) custody.

b. Classification Boundaries

General Population Level V (G5/J5) custody – Primarily Line Class I, II, III time-earning status, or State Jail offenders shall be subject to the following classification boundaries:

- (1) generally ineligible for SAT status good conduct time credits (does not apply to State Jail offenders);
- (2) ineligible for contact visits;
- (3) ineligible for an emergency absence;
- (4) requires direct armed supervision on job assignments and activities outside the security perimeter, and requires direct supervision inside the security perimeter (however, certain positions with limited access to ingress/egress from the position (i.e. dishwasher) may be allowed frequent, indirect supervision with the approval of the Warden);
- (5) must be housed in a cell specifically designated for housing only General Population Level V (G5/J5) custody offenders.
- (6) Recreation - Institutional offender - allowed two (2) hours a day. (Refer to AD 03.40 for specific guidelines).  
State Jail offender – allowed one (1) hour a day.
- (7) Commissary - allowed to make commissary purchases up to \$20 every two (2) weeks.
- (8) Property - allowed to keep personal property except items restricted through disciplinary actions or under AD-03.72.
- (9) Jobs – primarily assigned to field force. May not be assigned to maintenance worker, SSI, any other clerk position, dock worker, or any job where the offender would have access to multiple areas of the unit.
- (10) Education Programs – generally ineligible for participation in educational programs, but may be eligible in certain situations such as GRAD process.

6. Maximum Custody (Administrative Segregation/Special Management)a. Security Detention(1) Classification Characteristics

In accordance with the provisions of the Administrative Segregation Plan, offenders who have one or more of the following characteristics shall be assigned to administrative segregation- security detention:

- (a) constitutes a threat to the physical safety of other offenders or staff;
- (b) constitutes a threat to the order and security of the institution, as evidenced by repeated, serious disciplinary violations;
- (c) constitutes a threat to the physical safety of other offenders or staff due to having been identified as a security threat group member;
- (d) is a current escape risk.

(2) Classification Boundaries

Offenders in security detention shall be subject to the following classification boundaries:

- (a) ineligible for promotion above the time-earning class of SAT IV;
- (b) ineligible for contact visits;
- (c) ineligible for an emergency absence ;
- (d) ineligible for a job assignment or for participation in educational programs;
- (e) requires constant armed supervision outside the security perimeter, and requires escort to and from activities outside his or her assigned cell;
- (f) must be housed in a single cell specifically designated for housing security detention offenders.

b. Protective Custody(1) Classification Characteristics

In accordance with the provisions of the Administrative Segregation Plan, offenders who require the highest degree of protection available due to threats of harm by others shall be assigned to administrative segregation - protective custody.

(2) Classification Boundaries

Offenders in protective custody shall be subject to the following classification boundaries:

- (a) ineligible for promotion above the time-earning class of SAT III;
- (b) may be eligible for contact visits with immediate family members;
- (c) ineligible for an emergency absence;
- (d) ineligible for a job assignment or for participation in educational programs;
- (e) requires constant armed supervision outside the security perimeter, and requires escort to and from activities outside his or her assigned cell;
- (f) must be housed in a single cell specifically designated for housing protective custody offenders.

B. Special Status Categories1. Death Sentence Status

Offenders in death sentence status require the highest level of custody supervision available in the Institutional Division. Offenders in this status (usually referred to as death row offenders) are precluded from assignment to a principal custody designation and shall be classified into two groups: 1) Death Row Segregation, and 2) Death Row Work-Capable. Classification of death row offenders shall be based on the criteria outlined in the Death Row Plan.

2. Medical Status

- a. Offenders who require special consideration due to their medical conditions (e.g., offenders who are assigned to special medical treatment programs, those who have medical restrictions with regard to housing, job and other assignments) will be assigned to units and given housing, job, and program assignments which are commensurate with their special medical needs.
- b. Whenever an inter-unit transfer request involving an offender who requires special consideration due to a medical condition is initiated for other than health-related reasons, a "medical hold" will be placed on the offender by the attending physician if he determines that the proposed receiving unit would be unable to provide the necessary level of care. All transfer requests initiated by Health Services will be submitted in accordance with Health Services policy and procedures.

- f. Mobility-impaired offenders assigned to a barrier-free facility (see Section IV.B.4, Physically Handicapped Offender Status) will be designated as medical status offenders (MD) in lieu of assignment to a principal custody designation. All other medical status offenders will be assigned to an appropriate custody designation and given housing, job and program assignments commensurate with their special medical needs.
- g. All health-related restrictions regarding basic housing requirements, bunk assignment, row assignment, job assignment or disciplinary procedures, as identified by the attending physician and noted on an offender's Health Summary for Classification form, shall be binding on all classification staff, classification committees and security personnel.

3. Mentally Retarded Offender Status (MROP Status)

- a. A designation of mentally retarded offender status, or "MROP" status, shall be assigned to those offenders who require special consideration due to their retardation or developmental disability. MROP status is a status assigned to an offender who has a WAIS-R full scale IQ of 73 or below or a social history indicative of mental retardation (see the Mentally Retarded Offender Plan).
- b. All offenders who are assigned to MROP status will initially be assigned to an MROP-Sheltered Facility and will be designated as intellectually impaired (II) in lieu of assignment to a principal custody designation. Housing and other restrictions for MROP status offenders (II), as identified by MROP professional treatment staff, will be specified on the Health Summary for Classification form. In accordance with the Mentally Retarded Offender Plan and Health Services policies and procedures, offenders housed in an MROP-Sheltered Facility will be single-celled upon the recommendation of the MROP professional treatment staff.
- c. An MROP status offender may be transferred to a regular, non-sheltered unit if the MROP professional treatment staff determines that the offender can be maintained at another unit as an outpatient. Although the offender will be reclassified to an appropriate custody designation upon transfer to a new unit, the offender's MROP status remains. Upon arrival at the new unit of assignment, the regular unit classification process will then be in effect. The recommendations of the MROP professional treatment staff which are noted on the Health Summary for Classification form shall be binding on all classification staff, classification committees and security personnel.

4. Physically Disabled Offender Status

- a. Offenders who require special consideration due to a permanent physical disability will be assigned to units and given housing, job and program assignments which are commensurate with their special needs. The term "physically disabled" refers to offenders with a mobility impairment, or visual, hearing or speech impairment.
- b. As outlined in the Physically Disabled Offender Plan, physically disabled offenders will be classified and housed by custody designation in accordance with the criteria established in this Classification Plan, except in those cases where the examining/treating physician makes specific housing recommendations. For mobility-impaired offenders assigned to a designated barrier-free facility, per the physician's orders, the Unit Classification Committee will determine the offender's housing assignment based upon behavioral characteristics, institutional history, and the need to separate specific offenders. While housed in a designated barrier-free facility, mobility impaired offenders will be classified as medical status (MD) in lieu of assignment to a principal custody designation.
- c. Housing and other restrictions for offenders in physically disabled offender status, as identified by appropriate medical staff and noted on the Health Summary for Classification form, shall be binding on all classification staff, classification committees and security personnel.

5. Psychiatric Status

- a. "Psychiatric status" is defined as a status assigned to an offender by a Psychiatric Services clinician as the result of any psychiatric diagnosis for which active psychiatric treatment is being delivered. "Active psychiatric treatment" includes receiving psychiatric services on an inpatient or outpatient basis or being under psychiatric observation. This population is described in the Psychiatric Services Plan, and is operationally defined in the Health Services Policy and Procedure Manual.
- b. Offenders who are in inpatient psychiatric status will be designated as psychiatric status offenders (MH) in lieu of assignment to a principal custody designation, and will be assigned to the appropriate psychiatric inpatient treatment facility. All psychiatric inpatients (to include acute and intermediate) will be single-celled unless the treating psychiatrist determines that multiple housing would be more therapeutic.



- c. Psychiatric status outpatients will be assigned to an appropriate custody designation and given housing, job and program assignments commensurate with their special mental health needs. Psychiatric outpatients whose Individual Treatment Plans (medical) recommend they be celled alone will be single-celled.
- d. All of the housing and other restrictions for psychiatric status offenders identified by mental health professional treatment staff shall be specified on the Health Summary for Classification form, and shall be binding on all classification staff, classification committees and security personnel.
- e. Whenever an inter-unit transfer request involving an offender in psychiatric status is initiated for other than health-related reasons, a "psychiatric hold" will be placed on the offender by the attending Psychiatric Services clinician if he determines that the proposed receiving unit would be unable to provide the necessary level of care. All transfer requests initiated by Health Services will be submitted in accordance with Health Services policy and procedures.

6. Safekeeping Status

- a. In addition to assignment to General Population Levels G1-G5, or State Jail Levels J1-J5, safekeeping status levels P1-P5 for Institutional offenders and PJ for State Jail offenders will be assigned to those offenders who require separate housing in the general population because of threats to their safety due to offender enemies, a history of deviant sexual behavior, a potential for victimization or other similar reasons. Safekeeping status is dissimilar to the protective custody category of Administrative Segregation or Special Management because offenders in safekeeping status can work, go to school, etc., with other general population offenders while protective custody is an Administrative Segregation or Special Management assignment reserved for those offenders who require maximum supervision and the highest degree of protection available at all times due to threats of harm by others.
- b. Offenders in safekeeping status shall be assigned to custody designations appropriate to their institutional adjustment and the level of security supervision required. There is only one level of safekeeping for State Jail offenders.
- c. Offenders in safekeeping status will be assigned to cell housing which is specifically designated for safekeeping status offenders in their assigned custody (i.e. Safekeeping Levels I, II, III, IV, V, or PJ). Such housing shall be commensurate with the specific safety needs of the



offenders assigned there. State Jail offenders assigned to safekeeping status will live in appropriately designated housing areas.

- d. Safekeeping status offenders identified by the Unit Classification Committee or the State Classification Committee as being too vulnerable to be safely housed with another offender shall be single-celled in safekeeping.
- e. Offenders assigned to safekeeping status shall have the opportunity to participate in general population activities.

7. Transient Status

- a. Transient is not an offender custody designation. It is a temporary status assigned to offenders in addition to their principal custody designation (except for newly-received offenders undergoing reception processing who have been assigned a 'NR' [newly received] designation). "Transient" also indicates a designated housing area used to house offenders who are in transient status. Offenders may be assigned to transient status for one or more of the following reasons:

- (1) reception processing;
- (2) medical treatment;
- (3) pending release from the Institutional Division to parole or mandatory supervision (or by discharge, if offense committed prior to August 27, 1977, or on or after September 1, 1987), or pending departure on bench warrant, Interstate Agreement on Detainers or other authorized release;
- (4) special purpose transfers such as inter-unit visits between offenders, etc.;
- (5) pending initial classification (of offenders newly arrived to a unit);
- (6) unavailable custody level or unavailable bed space in the appropriate custody level;
- (7) pending subsequent classification reviews;
- (8) Transfer Facility offenders pending transfer to a permanent facility due to being a High Risk or Special Needs offender;

Note: Institutional offenders undergoing intake and diagnostic processes at any reception unit and who have not received a permanent unit of assignment may be confined in a cell for twenty (20) hours or more a day for a period not to exceed forty (40) days without being transferred to a permanent facility.

- b. Offenders in transient status for reasons outlined in Section 7.a. (1), (2), (3) and (4), above, shall be assigned to housing areas specifically

designated as transient, except for offenders granted inter-unit visits who may be assigned to housing areas of their custody level. Except in unusual circumstances, offenders may be assigned to transient status for reasons outlined in Section 7.a.(1), (2), (3) and (4) for no more than thirty (30) days. Offenders in transient status for the aforementioned reasons are not subject to regular classification procedures (e.g., reviews for custody change, promotion in time-earning class).

- c. Offenders in transient status for reasons outlined in Section 7.a. (5), (6), (7) and (8) above, will be assigned to a housing area which can best provide for the safety and security of the offender, other offenders and staff, and the institution. The offender may be retained in his current housing location, be moved to another housing area (still out of his assigned custody), or be assigned to transient housing. These offenders are subject to regular classification procedures. Offenders may be assigned to transient status for reasons outlined in Section 7.a. (5), (6), (7) and (8) for no more than thirty (30) days. Upon arrival at the receiving unit (if a transfer was required), the Unit Classification Committee will determine the offender's custody designation and house the offender appropriately.
- d. Offenders who are placed in transient due to special medical or mental health problems, intellectual impairments or physical handicaps shall be assigned to the appropriate special status category upon recommendation by the appropriate treatment professional(s). The special status category codes are as follows:

II – Intellectually Impaired Status  
 MH – Mental Health Status  
 MD – Medical Status

8. Transfer Facility Offender Transfers for Reasons of Safety, Security and Medical Risk

Upon identification of an offender who is placed into one of the following categories, the Unit Classification Committee, Transfer Facility Warden or his designee will request transfer of the offender:

1. The offender is identified as a high escape risk;
2. The offender is identified as being violent or aggressive;
3. The offender is identified as being assaultive;
4. The offender is identified as a member or is associated with a disruptive group;
5. The offender is identified as having current enemies assigned to the facility;

6. The offender is identified as having a history of deviant sexual behavior and/or is weak and vulnerable with the potential for victimization and cannot be safely housed at the Transfer Facility in a dorm setting;
7. The offender is identified as a high risk or special needs offender due to a mental health or medical condition as determined by a Health Services Professional (e.g. MROP, PHOP, Psychiatric, Medical, etc.);
8. The offender is identified as having a conflict with a staff member due to family relationships or previous associations;
9. The offender is serving an aggravated life sentence or a sentence for capital murder.

Requests for transfer for reasons of safety and security will be made through the State Classification Committee. Requests for transfer due to medical or psychiatric reasons will be consulted with and coordinated through the Health Services Liaison to the SCC. Emergency transfers for medical or psychiatric reasons will be handled in accordance with Health Services Policies and Procedures.

#### C. Overrides of Principal Custody Designations

1. Unit Classification Committees shall have the authority, in some instances, to override principal custody designations which would otherwise be indicated by established custody assignment specifications (classification characteristics and boundaries). These overrides, however, shall only be initiated in the interest of good correctional practice, and in accordance with the following guidelines:
  - a. The decision of a Unit Classification Committee to override custody criteria shall be based on unusual or peculiar circumstances relative to individual classification considerations and issues not otherwise covered by established custody assignment specifications.
  - b. Lack of bed space in an appropriate custody housing area for an offender shall never be grounds for exercise of an override.
  - c. When professional judgment and discretion compel classification decisions which constitute a departure from established classification criteria, the reasons for such decisions shall be clearly stated and explained in sufficient detail by the Unit Classification Committee on the Classification Committee Docket, Unit Classification Committee History Form, and other appropriate documents. Documentation shall include entry of such overrides in the UC00 computer program. These documents will be made available to central office classification staff during unit audits.
2. The State Classification Committee (SCC) shall have the authority to override Unit Classification Committee decisions when such overrides are deemed by the SCC to be necessary in the interests of good correctional practice, i.e. in

order to ensure the safety, security and orderly management of offenders and institutions. In the event of such an override, the SCC shall promptly notify the unit in writing, with the reasons for the override clearly stated and explained in sufficient detail. Unit Classification Committees may appeal SCC decisions to the Departmental Review Board.

## TEXAS DEPARTMENT OF CRIMINAL JUSTICE

## CLASSIFICATION PLAN

POLICY NO. C-2

SUBJECT: OFFENDER HOUSING ASSIGNMENTS

PURPOSE: To outline policy and procedures for making offender housing assignments.

POLICY: It is the policy of the Texas Department of Criminal Justice that each offender shall be housed in such a manner so as to ensure, to the maximum extent possible, that the safety, security and treatment needs of all offenders are being met, and the safety and security of staff and the institution are maintained. All offender housing assignments, to include assignment to a unit and to specific housing areas, shall be made on the basis of rational, objective criteria, and not on the basis of race, color or ethnic origin. It is the responsibility of all classification committees, classification and security staff, and health services staff, both at the central and unit levels, to adhere to the guidelines and procedures established in this Classification Plan, and in the Comprehensive Health Care Plan, Psychiatric Services Plan, Mentally Retarded Offender (MROP) Plan, Physically Disabled Offender Plan, Administrative Segregation Plan, and any and all other court-approved plans which pertain to offender housing assignments.

PROCEDURES:I. General Housing Guidelines

The following guidelines for offender housing assignments, to include assignment to a unit and to a specific housing area, shall be observed by all classification committees and by all individuals with authority to make specific decisions related to offender housing.

- A. Housing assignments shall be made on the basis of an offender's total record and as required by the offender's current needs and circumstances, as reflected in the offender's unit folder, Health Summary for Classification form, and the information contained in the offender's computerized classification record (UC00 computer program) and institutional records, in order to ensure that each offender receives appropriate and adequate safety, supervision, and treatment. An offender's unit file will be forwarded with the offender upon his transfer to a new unit of assignment. All records which arrive with the offender shall be reviewed before initial housing or other assignments are made.
- B. Offenders shall be assigned to housing areas which are specifically designated for their custody designation requirements. Offenders will only be housed with offenders of like custody designations. If a bed in an offender's assigned custody is not available or the custody designation itself is not available on the unit, the offender will be assigned by the Unit Classification Committee to housing which can best



provide for the safety and security of the offender, other offenders and staff, and the institution. The offender may be retained in his or her current housing location, be moved to another housing area (still out of his assigned custody), or be assigned to transient housing. An offender will be assigned to transient housing only if his safety or security needs cannot otherwise be met. Offenders assigned to transient housing or housed out of custody as outlined in this section shall not remain so housed for more than thirty (30) calendar days. Offenders assigned to double-cell housing will be double-celled only with offenders of the same custody designation. (Note: G1/J1 and G2/J2 offenders living in GB/LB housing areas will be allowed to cell together; G2 and G3 offenders living in approved GA designated housing areas will be allowed to cell together.)

- C. In making housing assignments, consideration will be given to characteristics such as age, height and weight, violent or passive tendencies, criminal history and sophistication, homosexual (active and passive) tendencies, offender enemies, STG affiliation and current institutional adjustment. Consideration may also be given to an offender's job assignment upon the determination that such consideration would not be inconsistent with the offender's needs and requirements relative to safety, security and treatment. Assignment of Institutional offenders to two-person cells shall be made consistent with the offender's current cell assignment status.
- D. No offender shall be assigned to any housing area solely on the basis of race, color, ethnic origin, or religious affiliation.
- E. Any offender identified by a classification committee as being too assaultive or too vulnerable to be safely housed with another offender shall be housed in a cell alone (see Section III., below). Those offenders assigned to a transfer facility shall be housed in transient status pending transfer to a permanent facility.
- F. Housing-related restrictions and recommendations of health services professional treatment staff, as noted on the offender's current Health Summary for Classification form, shall be followed by all classification committees and classification and security staff. If the Unit Classification Committee determines that conflicting security and treatment concerns exist in terms of an appropriate housing assignment for an offender (e.g., single-celling versus double-celling), the committee shall immediately refer the matter to the Unit Warden and the Unit Health Authority for resolution. If the conflict cannot be resolved at this level, the Unit Health Authority shall immediately refer the case to the Deputy Director for Health Services, or designee, for final resolution.
- G. Health services physicians shall be responsible for updating an offender's Health Summary for Classification form and providing appropriate notification with respect to any change(s) in an offender's health status which requires that a housing move be made for health-related reasons (e.g., offender requires lower bunk due to change in medical status).

## II. Housing for Offenders Convicted of Selected Disciplinary Offenses

- A. Unless there are specific mitigating circumstances (see Section II.B., below) as determined by the Unit Classification Committee (UCC), an offender shall not be assigned to dormitory housing, irrespective of his or her custody designation, if: \*
1. the offender has a conviction resulting in a major penalty within the previous twelve (12) months for a disciplinary offense involving possession of a weapon; or
  2. the offender has a conviction resulting in a major penalty within the previous 24 months for a disciplinary offense involving either assault with a weapon or aggressive (or assaultive) sexual misconduct; or
  3. the offender demonstrates a recent pattern of in-prison assaultive behavior.  
\*Due to the physical design of State Jail facilities these offenders may be housed in a dorm under certain circumstances as determined by the UCC.
- B. The following are the only acceptable mitigating circumstances for placing the offender, or allowing the offender to remain, in dormitory housing:
1. Possession of a Weapon: If the offender was found in possession of a weapon due to obtaining the weapon in the midst of an act of self-defense, i.e. the offender grabbed a weapon which was being used against him/her in the midst of an attack.
  2. Assault with a Weapon: If the weapon used in the assault was not a bonafide weapon, e.g., the offender threw a washrag at another offender.
  3. Aggressive Sexual Misconduct: There are no mitigating circumstances.
- C. If mitigating circumstances exist and the UCC makes the determination to house the offender in a dormitory, a statement describing the specific mitigating circumstances shall be entered on the Classification Committee Docket and a justification shall be entered on the appropriate UC00 computer screen.
- D. Those offenders assigned to a transfer facility will be placed in transient status pending transfer to a permanent facility if the UCC determines that mitigating circumstances do not exist.
- E. Institutional Offenders in a more restrictive custody than General Population Level I (G1/J1) custody level shall not be housed in a dormitory outside of a unit's security fence (such as a co-located trusty camp). Institutional offenders in a more restrictive custody than General Population Level II (G2/J2) custody shall not be housed in a dormitory outside the main building of the unit, even if still inside the unit's security fence. Institutional offenders in a more restrictive custody than General Population Level III (G3) custody shall not be housed in a dormitory.



## TEXAS DEPARTMENT OF CRIMINAL JUSTICE

## CLASSIFICATION PLAN

POLICY NO. C-3

SUBJECT: OFFENDER JOB ASSIGNMENTS

PURPOSE: To outline policy and procedures for making offender job assignments.

POLICY: It is the policy of the Texas Department of Criminal Justice that each offender shall be assigned a job in such a manner so as to ensure, to the maximum extent possible, that the safety, security, treatment and rehabilitative needs of all offenders are being met, and the safety and security of staff and the institution are maintained. All offender job assignments shall be made on the basis of rational, objective criteria, taking into consideration each individual offender's safety, security, treatment and rehabilitative needs. No job assignment shall be made on the basis of disability, race, color or ethnic origin. It is the responsibility of all staff, both at the central and unit levels, to adhere to the guidelines and procedures established in the Classification Plan, and in the Comprehensive Health Care Plan, Psychiatric Services Plan, Mentally Retarded Offender (MROP) Plan, Physically Disabled Offender Plan, Health Services policies and procedures, and any and all other court-approved plans which pertain to offender job assignments.

PROCEDURES:

The following guidelines for offender job assignments, to include assignment to a specific job or general work area, shall be observed by all classification committees and by all individuals with authority to make specific decisions related to offender jobs.

- I. Job assignments shall be made on the basis of an offender's total record and as required by the offender's current needs and circumstances, as reflected in the offender's unit folder, Health Summary for Classification Form, Individualized Treatment Plan, and the information contained in the offender's computerized classification record (UCOO computer program) and institutional records, in order to ensure that each offender receives appropriate and adequate safety, supervision, and treatment.
- II. The workforce requirements of the unit, and specialized skills of an individual offender (e.g., welder, carpenter, baker, typist), shall be considered when making job assignments. Staff should attempt to match the workforce needs of the unit with the skills of the available offender workers whenever possible.
- III. In making job assignments, consideration must be given to offenders' security characteristics and health-related needs. Consideration may be given to offenders' treatment programming (e.g., vocational, academic), assignment status (e.g., transient), educational background (e.g., E.A., I.Q.), and special skills (e.g., clerical, mathematical, mechanical), and to the unit's job

needs, provided that such consideration would not be inconsistent with offenders' needs and requirements relative to safety, security, treatment and rehabilitation.

- IV. Offenders in a more restrictive custody than Level I shall not be assigned to jobs outside the unit's security fence without armed, direct supervision. Additionally, offenders in a more restrictive custody than Level II shall not be assigned to maintenance, SSI, any other clerk positions, dock worker, or any job where the offender would have access to multiple areas of the unit.
- V. No job assignment shall be made on the basis of disability, race, color, ethnic origin, or religious preference.
- VI. Job-related restrictions and recommendations of health services professional treatment staff, as noted on each offender's Health Summary for Classification Form, shall be followed by all classification committees and all individuals with authority to make specific decisions related to offender jobs.
- VII. Health services physicians shall be responsible for updating an offender's Health Summary for Classification Form and providing appropriate notification with respect to any changes in an offender's health status which result in a new job restriction(s) being placed on the offender. Unit classification staff (Chief of Unit Classification, Unit Classification Casemanager) shall be responsible for ensuring that no offender is assigned to a job which is contraindicated by the offender's current health-related job restrictions.

## TEXAS DEPARTMENT OF CRIMINAL JUSTICE

## CLASSIFICATION PLAN

POLICY NO. D-1

SUBJECT: MONITORING OF THE CLASSIFICATION SYSTEM

PURPOSE: To establish policy and procedures with regard to the monitoring of the classification system.

POLICY: It is the policy of the Texas Department of Criminal Justice that the implementation of the *Classification Plan*, including both the process of classification and classification-related decisions, shall be closely monitored by central office classification staff for the purposes of ensuring adherence to TDCJ policy; ensuring the consistent and objective application of classification-related policies and procedures; and ascertaining the effectiveness of those policies and procedures and making appropriate modifications, as necessary.

PROCEDURES:

- I. The central office classification staff, to include the Departmental Review Board, the Assistant Director for Classification and Records, the Classification and Records Chairman, the Classification and Records Vice-Chairman and the Unit Classification Department's administrative staff (e.g., Administrator for Unit Classification, Unit Classification and Countroom Coordinators, etc.) shall be responsible for ensuring that the classification system as delineated in this *Classification Plan* is operating consistently and uniformly on all units. This shall be accomplished through direct unit contact and regularly-scheduled meetings with the Regional Directors for the purposes of:
  - A. monitoring unit classification processes and classification-related decisions;
  - B. identifying and clarifying procedural or philosophical inconsistencies, and developing corrective procedures;
  - C. identifying training needs and developing training programs for unit classification staff.
  
- II. Unit Classification Monitoring
  - A. The monitoring of unit classification processes and unit-level classification decisions, which shall be conducted by the Unit Classification Department's administrative staff, shall include the following:
    1. Regular reviews of decisions and recommendations made by classification committees at each unit, to include an assessment of the adequacy of committee documentation. This shall be accomplished through regular

random sampling of Classification Committee Dockets, Unit Classification Committee History Forms etc., observing Unit Classification Committees and interviews with randomly selected unit staff.

2. Visits to each unit once every six (6) months for the purposes of interviewing the Chief of Unit Classification and observing classification committee hearings, to determine the effectiveness of classification training and to monitor compliance with established policies and procedures.
- B. Whenever possible and appropriate, findings of noncompliance shall be resolved informally through consultation with appropriate unit staff. If problems cannot be resolved informally, the findings of noncompliance shall be clearly documented and reported for resolution to the Assistant Director for Classification and Records, the appropriate Regional Director, and the Unit Warden.
- C. The Assistant Director for Classification and Records shall be responsible for ensuring that adequate and effective action is taken to correct all areas of noncompliance with established policies and procedures relative to the classification system.

### III. Regional Directors

Functioning at the administrative level, each Regional Director is responsible for overseeing the operations of all units in the region, to include ensuring the proper and successful implementation of the Classification Plan at each unit. In addition, the Regional Directors, as the "second step" in the offender grievance process, are responsible for reviewing and rendering decisions on all offender grievances filed at the regional level, including offenders' appeals of classification decisions. Other classification related responsibilities of the Regional Directors include membership on the Departmental Review Board (DRB), the Security Precaution Designator Review Committee (SPDRC), and making determinations with regard to offenders' STG membership.

## Classification Custody Conversion Chart

October 2003

Old Classification Custody Codes		Current Classification Custody Codes	
1A	Security Detention Level 1	No Change	
2A	Security Detention Level 2	No Change	
3A	Security Detention Level 3	No Change	
4A	Protective Custody Level 1	No Change	
5A	Protective Custody Level 2	No Change	
6A	Protective Custody Level 3	No Change	
CG	Grad Program Offender	No Change	
CC	Close Custody	G5	General Population Level 5
ME	Medium Custody	G4	General Population Level 4
MI	Minimum In	G3	General Population Level 3 Offenders with job/housing restrictions
		G2	General Population Level 2
MO	Minimum Out	G1	General Population Level 1
OT	Outside Trusty (Assigned to Trusty Camp)	No Change	
PC	Safekeeping Close	P5	Safekeeping Level 5
PE	Safekeeping Medium	P4	Safekeeping Level 4
PI	Safekeeping Minimum	P3	Safekeeping Level 3 Offenders with job/housing restrictions
		P2	Safekeeping Level 2
PO	Safekeeping Minimum Out	Deleted	
MD	Inpatient Paraplegic	No Change	
MH	Mental Health Status	No Change	
II	Mentally Retarded Offender Program	No Change	
D1	Death Row Level I	No Change	
D2	Death Row Level II	No Change	
D3	Death Row Level III	No Change	
DW	Death Row Work Capable	No Change	
SA	Special Alternatives to Incarceration Program	No Change	
IT	In-Prison Therapeutic Community	No Change	
FT	Substance Abuse Felony Punishment Facility	No Change	
PR	Pre-Release Therapeutic Community	No Change	
HR	High Risk (State Jail)	J5	State Jail Level 5
M2	Medium Risk 2 (State Jail)	J4	State Jail Level 4
M1	Medium Risk 1 (State Jail)	J2	State Jail Level 2
LR	Low Risk (State Jail)	J1	State Jail Level 1
SR	Special Management (State Jail)	No Change	
PJ	Safekeeping (State Jail)	No Change	

## **EXHIBIT 2**



STATE OF MISSOURI            )  
   )  
 COUNTY OF FRANKLIN         )

DECLARATION OF FRANK G. AUBUCHON

My name is FRANK G. AUBUCHON, I am over the age of eighteen and I am competent to make this declaration. I declare as follows:

1. I was retained by current post-conviction counsel for Travis Runnels to review and evaluate the testimony of State's witness A.P. Merillat from the penalty phase of Mr. Runnels' 2005 capital murder trial, and to determine whether any portions of Mr. Merillat's testimony were false or misleading to the jury.
2. I have worked in the criminal justice field in Texas for 37 years. I was employed by the Texas Department of Criminal Justice (TDCJ) for over 26 years, from June 1981 through December 2007. I began my career as a correctional officer at the Huntsville "Walls" Unit and progressed through the ranks to Administrator for Classification Operations at the agency's Classification and Records Headquarters. My curriculum vitae is attached as Attachment A.
3. After retiring from TDCJ, I began consulting as a prison classifications expert in criminal trials in Texas, primarily capital trials in which the defendant faces the death penalty, but also in misdemeanor and felony trials. I have also consulted on sentencing and plea agreements, assisting both the defense and prosecution in understanding the implications of the various changes in laws regarding parole, mandatory supervision and discretionary-mandatory supervision over the past 40 years. I have also consulted in both state and federal habeas corpus proceedings for death-sentenced inmates.
4. In addition, I have been asked to be a presenter or a member of a panel of presenters for Continuing Legal Education (CLE) seminars by the Texas Criminal Defense Lawyers Association, the Center for American and International Law, the Tarrant County Criminal Defense Bar, and by a State District Judge in Waller County, Texas. I have an Associate's Degree in Criminal Justice from East Central College, Union, Missouri, and have completed additional hours of study at Sam Houston State University, Huntsville, Texas.
5. As part of my consulting practice, I have kept abreast of policy and procedural developments at TDCJ. I closely monitor TDCJ's published policies, annual reports, statistical reports, and board meeting minutes. I have also reviewed TDCJ's current Departmental Procedure Operations Manual. In addition, I monitor the Texas Register, where TDCJ's proposed policy changes are posted for public comment, and review all legislation taken up by the Texas legislature affecting prison policy. Typically, each Wednesday, I review the Texas Court of Criminal Appeals' hand-down list to ensure that I am aware of all of the court's decisions involving prison litigation, and I similarly monitor prison litigation in the United States Court of Appeals for the Fifth Circuit.
6. In preparing this declaration, I reviewed the transcript of Mr. Merillat's testimony in Volume 16 of the reporter's record of the penalty phase proceedings in Mr. Runnels'



capital trial, pages 100 to 127. Mr. Merillat testified on October 27, 2005. I also reviewed the brief filed by the State of Texas in the Texas Court of Criminal Appeals opposing Mr. Runnels' direct appeal to get a complete sense of the nature of the State's evidence against Mr. Runnels at trial. Brief for State, *Runnels v. State*, 2007 WL 2655682, No. AP-75,318 (Tex. Crim. App. Sept. 12, 2007) (unpublished).

7. Mr. Merillat's testimony during the penalty phase of Mr. Runnels' trial was false and misleading to the jury. The falsehoods in Mr. Merillat's testimony grossly misled the jury as to how an offender convicted of capital murder would be classified and managed while incarcerated in a TDCJ facility. Mr. Merillat's false testimony misled the jury into believing that TDCJ classification policies would prevent Mr. Runnels from being confined to a secure environment if he was not sentenced to death. As this declaration will demonstrate, nothing could be further from the truth.

**Mr. Merillat falsely told the jury that Mr. Runnels would "automatically" be classified at a "minimum/medium custody" level in general population.**

8. On page 107, lines 15-19 of Mr. Merillat's testimony, the State asks Mr. Merillat about the security classification that TDCJ would assign to a defendant, such as Mr. Runnels, convicted of capital murder and sentenced to life in prison. Mr. Merillat states that such an inmate would "automatically" be classified as a G-3<sup>1</sup> inmate "for a minimum of ten years," irrespective of any other factors. On page 106, line 22, Mr. Merillat describes G-3 as "minimum/medium custody" level. Mr. Merillat describes this classification as "automatic" again on page 108, line 11. On page 110, lines 7-8, he reiterates this point by stating that all capital murder defendants who receive a life sentence are "classified as a G-3 and put into general population."
9. Mr. Merillat describes G-3 inmates as having significant liberties in prison. On page 108, Mr. Merillat tells the jury that as a G-3 inmate, Mr. Runnels could be housed with a low-level non-violent offender such as a "DWI offender." According to Mr. Merillat, if sentenced to life imprisonment, Mr. Runnels would be "free to come and go" from his cell and could "go to work, visitation, church, medical, chow, unescorted."
10. This testimony was patently false. TDCJ does not "automatically" classify inmates at any security level, and did not do so at the time of Mr. Runnels' trial. Many factors must be considered before ascertaining the appropriate custody level for an offender. Some relevant factors include, but are not limited to: offense of record, prior criminal history, age, physical and mental health factors, length of sentence, disciplinary history on prior incarcerations, gang affiliation, etc. See Attachment B, TDCJ Classification Plan, dated October 2003, at 59-60, 73. In fact, TDCJ rules in place at the time of Mr. Runnels' trial provided that an inmate housed in general population with a history of staff assaults could *not* be classified at a security level as low as G-3. Attachment C, Supplement to Classification Plan, dated July 2005. Mr. Runnels, who was convicted of not merely assaulting, but killing, a corrections officer, would never have been

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<sup>1</sup> "G" refers to "general population." Inmates in general population are assigned to one of five security levels, G-1 being the least restrictive and G-5 being the most restrictive. Throughout his testimony, Mr. Merillat demonstrates his lack of knowledge on the classification system as a whole, even going as far as to say, "I have no idea what the letter G stands for. It's just the letter the prison issued for that classification." (pg 106, lines 5-6).



eligible for G-3 status. In fact, Mr. Runnels ultimately would not have been eligible for general population at all.

**Mr. Runnels would have been imprisoned in administrative segregation if he had he been sentenced to life in prison.**

11. Mr. Merillat went on to falsely tell the jury that the only way for a capital murder convict to be imprisoned in a high security environment would be to sentence them to death. On page 100, lines 5 to 14, Mr. Merillat contrasts the G-3 status that he falsely told the jury that Mr. Runnels would receive if sentenced to life with that of death-sentenced inmates, who are “sent directly to death row and . . . put into Ad[ministrative] Seg[regation].” Mr. Merillat describes death row as starkly different from a G-3 custody level:

An inmate spends 23 hours a day inside that cell. He can only come out when he’s handcuffed and escorted by two officers. He has to single recreate -- recreate by himself. He has to be escorted to a shower once a day, if he chooses to. Then he’s back in his cell, he eats inside his cell, very restrictive custody.

(page 111, line 12-18).

12. Again, Mr. Merillat’s testimony was false. Because Mr. Runnels had been convicted of killing a correctional officer, he would have been assigned to the strictest level of administrative segregation and would remain in that status for many years, even under a life sentence. He would never have been “put into general population” as Mr. Merillat claims. (page 110, lines 7-8). Under the TDCJ plan in place at the time of Mr. Runnels’ trial, an inmate “shall be assigned to administrative segregation-security detention” if the inmate meets one or more of the following characteristics:

- (a) constitutes a threat to the physical safety of other offenders or staff;
- (b) constitutes a threat to the order and security of the institution, as evidenced by repeated, serious disciplinary violations;
- (c) constitutes a threat to the physical safety of other offenders or staff due to having been identified as a security threat group member;
- (d) is a current escape risk.

Attachment B, at 84. The TDCJ Classification Plan cites the TDCJ Administrative Segregation Plan for more details on administrative segregation procedures. The Administrative Segregation Plan in place at the time of Mr. Runnels’ trial also requires “administration segregation-security detention” for inmates who are a “[t]hreat to the physical safety of other offenders or staff.” Attachment D, TDCJ Administrative Segregation Plan, dated Feb. 2005, at 1.

13. Based on my experience as a former TDCJ administrator and an expert on prison classifications in Texas, as well as my knowledge of the plain language of the TDCJ classification plan itself, Mr. Runnels would have certainly been designated as a maximum custody/administrative segregation security level by the Administrative



Segregation Committee (ASC)<sup>2</sup> based on these criteria. Mr. Runnels was convicted of intentionally killing a corrections officer. This is an offense that the ASC would have taken very seriously in assessing his security level, and as such they would have found that Mr. Runnels “constitutes a threat to the physical safety of other offenders or staff.”

14. Because of the severity of his prior offense, Mr. Runnels would have remained in administrative segregation for many years after his initial placement. An inmate held in administrative segregation is entitled to regular review of his status by the ASC and the State Classification Committee. However, similar to the initial determination to place an inmate in administrative segregation, an administratively segregated inmate’s release to general population is conditioned on a finding that he is no longer a “physical threat to staff or other offenders.” Attachment D, at 23. Given the extreme nature of Mr. Runnels’ crime of conviction, no committee would have found that he met this criteria for a minimum of many years. Even then, any change in his status would have depended on many factors, including Mr. Runnels’ disciplinary infractions, “medical evaluations,” [r]elationships with other inmates and staff,” participation in inmate programs, and the inmate’s own statements to the reviewing committee. Attachment D, at 23-24.
15. An inmate designated for an administrative segregation custody level is placed in a very high security environment that is very similar to the death row conditions that Mr. Merillat described in his testimony, and virtually nothing like the conditions Mr. Merillat told the jury Mr. Runnels would be subjected to if he were sentenced to life in prison. Instead of being housed with a low-level inmate such as a “DWI offender,” Mr. Runnels would have been “housed in a single cell specifically designated for housing security detention offenders.” Instead of being “free to come and go” from his cell without handcuffs and being permitted to “go to work, visitation, church, medical, chow, unescorted,” Mr. Runnels would have been required to have “constant armed supervision outside the security perimeter” and he would have required “escort to and from activities outside his or her assigned cell.” In fact, Mr. Runnels would have been “ineligible for a job assignment or for participation in educational programs.” He also would be ineligible for contact visits. Attachment B, at 84.<sup>3</sup> In short, Mr. Runnels would have spent the vast majority of time alone in his cell, and when outside his cell, he would have been closely supervised by corrections officers.

## Conclusion

16. Mr. Merillat testified falsely on virtually all matters concerning the custody level and level of security Mr. Runnels would have been subjected to had he been sentenced to life in prison. At no point during his testimony were these false statements corrected.

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<sup>2</sup> The ASC is a committee of prison staff members that is responsible for making administrative segregation placement decisions in the prison. The ASC is composed of the “Warden or his designee; a “Lieutenant (or above) or Chief of Classification;” a “Correctional Officer (or above) who is assigned to the Administrative Segregation area;” and a “Representative from the Health Services Division (medical or psychiatric) as an additional member, if needed, who would function in a consultative capacity for issues impacting the physical or mental wellbeing of offenders.” Attachment D, at 3.

<sup>3</sup> More detailed rules regarding the restrictive Administrative Segregation conditions are contained in the Administrative Segregation Plan. Attachment D, at 10-20.

His multiple falsehoods served to mislead the jury into believing that TDCJ would be completely unprepared to imprison Mr. Runnels in a secure environment unless he received a death sentence. Based on my decades of experience as a TDCJ corrections officer, administrator, and prison classifications expert, I can say that this is categorically false. TDCJ is not only capable of placing inmates in a high security setting, but is required to do so when evidence suggests that inmate is a risk to others. No inmate is "automatically" classified at any custody level. Based on his history, Mr. Runnels would not only have been ineligible for G-3 custody level, but he would have been assigned to highly secure administrative segregation.

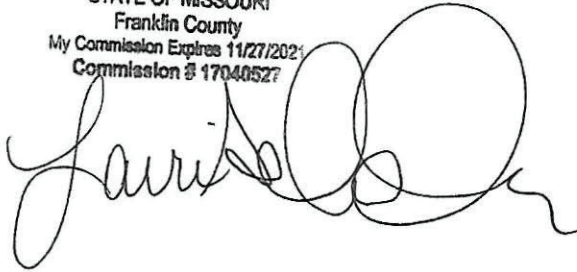
I declare under the laws of the State of Texas that the foregoing is true and correct to the best of my knowledge.

Executed this 9<sup>th</sup> day of September, 2019, in St. Clair Missouri



Frank G. AuBuchon

Lauri Schroeder  
Notary Public - Notary Seal  
STATE OF MISSOURI  
Franklin County  
My Commission Expires 11/27/2021  
Commission # 17040527



## **EXHIBIT 3**





Texas Department  
of  
Criminal Justice

Number: 2.00  
Date: July 2005  
Page: 1 of 2  
Supersedes: October 2003

## UNIT CLASSIFICATION PROCEDURE

SUBJECT: CUSTODY DESIGNATIONS

AUTHORITY: TDCJ Classification Plan, revised 10/03

PURPOSE: The purpose of custody assignment shall be to ensure each offender in TDCJ receives appropriate and adequate supervision and housing commensurate with the changing needs and requirements during his/her incarceration. Custody assignments shall be primarily influenced by institutional adjustment factors and sentence length; however, factors such as prior criminal record, prior institutional adjustment and current offense of record may be considered when making initial classification decisions relating to custody. Custody assignment shall serve to indicate the type of housing required (cell or dormitory), the level of supervision required by the offender, and the appropriate job assignment.

PROCEDURES:

The principal custody designations for Institutional offenders are General Population Level 1 (G1), General Population Level 2 (G2), General Population Level 3 (G3), General Population Level 4 (G4), General Population Level 5 (G5) and maximum (administrative segregation) custody. Principal custody designations for State Jail offenders are State Jail Level 1 (J1), State Jail Level 2 (J2), State Jail Level 4 (J4) State Jail Level 5 (J5) and Special Management. The diversity of characteristics in the offender population compels that special status categories also be provided which are consistent with special custody or treatment requirements. These special status categories are death sentence status, medical status, mental health (psychiatric) status, mentally retarded offender (MROP) status, physically disabled offender status, safekeeping status and transient status.

Assignment to a special status category may preclude assignment to a principal custody designation (e.g., death sentence status offenders; MROP status offenders in an MROP-Sheltered Facility; psychiatric status offenders in an inpatient facility). Offenders with special medical or mental health needs, intellectual impairments or physical handicaps will generally be referred to as "special needs" offenders. "Special needs" offenders shall be assigned to the appropriate special status category upon recommendation by the appropriate treatment professional(s). Refer to the TDCJ Classification Plan, 10/03 for additional information.

The following reviews are conducted by classification committees regarding custody consideration:

1. Upon initial assignment to a unit, the offender will be reviewed for custody assignment.
2. Upon receipt of a major disciplinary case for which major punishment was assessed, the offender will be reviewed for custody consideration to ensure the offender is assigned the custody that best fits his/her security needs.
3. Once an offender is seen for a major disciplinary, the UCC will set a subsequent review date for promotional consideration. Institutional offenders may be eligible for promotion in custody designation six (6) months from the date of the major disciplinary; however, the offender must be reviewed within twelve (12) months. SJ offenders may be eligible for promotion three (3) months from the date of the major disciplinary, but must be reviewed after six (6) months.

4. While some custody designations are overrideable, others are mandatory. For instance, offenders with a security precaution designator (SPD) of ES, SA, or HS will not be assigned to a custody less restrictive than G4 (J4 for State Jail offenders). In addition, Institutional offenders serving a 50 year or more sentence who have not completed the 5 year/10 year flat time requirement, will not be assigned to a custody less restrictive than G3. Institutional and SJ offenders with SPD removal codes of NE, NA, and NS will not be assigned to a custody less restrictive than G3 or J2, respectively. (Although State Jail offenders with a removal code can be assigned to J2 custody, they still have the same housing and job restrictions as a G3 offender). Effective 9/1/05, offenders convicted of Capital Murder and sentenced to "life without parole" will not be classified to a custody less restrictive than G3 throughout their incarceration.

Upon assignment of a custody, it is the responsibility of the Classification Committee to assess the need for a custody override. A custody override statement is required when the custody assigned to an offender by the Classification Committee is different than the computer recommended custody. The override will explain what the computer recommends and why, as well as what the committee assigned custody is and why. When an override is required, the Classification Committee shall document the override on the docket and the committee history form. The information on the Docket and the Committee History Form should match the information being entered on the computer.

The following pages include charts depicting the custody designation characteristics (Attachment A), the custody conversion chart (Attachment B) and guidelines the computer uses to assign computer recommended custodies (Attachment C). Refer to the TDCJ Classification Plan, 10/03 for more detailed information regarding custody designations.



**OFFENDER CUSTODY CHARACTERISTICS AND BOUNDARIES  
CORRECTIONAL INSTITUTIONS DIVISION**

<b>GENERAL POPULATION LEVEL 1 (G1/J1)</b>	
<b>CHARACTERISTICS</b>	<b>BOUNDARIES</b>
<p><u>G1/J1 custody</u>— shall only be assigned to SAT II, Line Class I time-earning status, or State Jail offenders who have <u>all</u> of the following characteristics:</p> <ol style="list-style-type: none"> <li>(1) No requirement for a more restrictive custody;</li> <li>(2) No evidence of current psychological instability, (PULHES psych indicator of 2,3 or 4) based on the recommendation of mental health professional treatment staff, which would negatively impact the offender's ability to successfully function in General Population Level I (G1/J1) custody;</li> <li>(3) No current or prior convictions for capital murder, murder or voluntary manslaughter; no current or prior convictions of any type where the offender intentionally caused the death of another person; no current or prior convictions of kidnapping, injury to a child, injury to the elderly, escape or stalking.</li> <li>(4) No major disciplinary convictions resulting in major penalties within the past twenty-four (24) months for offender and/or staff assaults, with or without a weapon; no disciplinary offenses for extortion or sexual abuse.</li> <li>(5) No placement of security precaution designator for escape (ES), staff assault (SA), hostage (HS); no predator codes of PD or PP.</li> <li>(6) No placement of security precaution removal code of escape removal (NE), staff assault removal (NA), hostage removal (NS)</li> <li>(7) No unresolved felony or United States Immigration Service detainers; no blue or white warrants for State Jail offenders</li> <li>(8) To be promoted to G1/J1, must have a clear conduct record, with no disciplinary convictions resulting in major penalties, for a minimum period of six (6) months, unless a State Jail offender, then three (3) months, (newly-received offenders to TDCJ may be approved for immediate assignment to General Population Level I G1/J1).</li> <li>(9) No pattern of freeworld convictions for offenses of violence, and no freeworld convictions for offenses of sexual misconduct.</li> <li>(10) Must be within 24 months of parole eligibility.</li> <li>(11) No confirmed or suspected STG.</li> </ol>	<p><u>G1/J1 custody</u> - SAT II, Line Class I time-earning status, or State Jail offenders are subject to the following classification boundaries:</p> <ol style="list-style-type: none"> <li>(1) Eligible for contact visits with visitors on approved visitation list;</li> <li>(2) May be eligible for consideration for an emergency absence;</li> <li>(3) Eligible for consideration to participate in specialized vocational training programs;</li> <li>(4) Unarmed periodic supervision required on job assignments or activities inside or outside the security perimeter (sight-checked at a minimum of once every two (2) hours);</li> <li>(5) May be housed in a cell or dormitory, in accordance with the following guidelines;             <ol style="list-style-type: none"> <li>a. General Population Level I (G1/J1) - offenders shall be assigned to dormitories on a priority basis.</li> <li>b. General Population Level I (G1) - SAT II or Line Class I status offenders may be assigned to the trusty camp adjacent to their assigned unit upon approval by the Warden and medical department. Upon assignment to the trusty camp, the designation of OT will be utilized for custody and housing purposes. (Does not apply to State Jail offenders).</li> <li>c. General Population Level I (G1/J1) - SAT II, Line Class I time-earning status or State Jail offenders shall only be assigned to housing areas which are specifically designated for General Population (G1/J1) custody offenders. However, General Population I (G1/J1) and General Population Level II (G2/J2) offenders may be housed together, in exceptional circumstances, upon prior approval of the housing scheme by the Chairperson of the SCC.</li> </ol> </li> <li>(6) Recreation - Institutional offenders - allowed a minimum of four (4) hours weekdays; seven (7) hours weekends. (Refer to AD 03.40 for specific guidelines).  State Jail offenders - allowed a minimum of four (4) hours weekdays. At least one (1) hour of this recreation time will be in the gym or outdoors (weather permitting). Seven (7) hours will be allowed on the weekends with at least two (2) hours of this recreation time in the gym or outdoors (weather permitting).</li> <li>(7) Commissary - allowed to make commissary purchases up to \$75 every (2) two weeks.</li> <li>(8) Property - allowed to keep personal property except items restricted through disciplinary actions or under AD-03.72.</li> <li>(9) Jobs - may be assigned to any job deemed appropriate by the unit administration.</li> <li>(10) Education Programs - eligible for consideration to participate in academic programs if specific program criteria are met.</li> </ol>

### GENERAL POPULATION LEVEL 2 (G2/J2)

G2/J2 custody – shall primarily be assigned to those SAT III, IV, Line Class I time-earning status, or State Jail offenders who have all of the following characteristics:

- (1) No requirement for a more restrictive custody;
- (2) No recent pattern of in-prison assaultive behavior (three (3) or more separate disciplinary convictions resulting in major punishment within the past twenty-four (24) months for offender and/or staff assaults, with or without a weapon);
- (3) In order to promote to Level II, must have a clear conduct record, with no disciplinary convictions resulting in major penalties for a minimum period of six (6) months, unless State Jail offender, then three (3) months, (newly received TDCJ offenders may be approved for immediate assignment to General Population Level II (G2/J2) custody);
- (4) Offenders committed to TDCJ with 3G (murder, capital murder, indecency with a child, aggravated kidnapping, aggravated sexual assault, aggravated robbery, Health and Safety Code, Chapter 481.134 (c), (d), (e), and (f), sexual assault, any offense with affirmative finding – use of a deadly weapon) offenses for sentences of fifty (50) years or more must have served ten (10) years flat time to be eligible for General Population Level II (G2/J2) custody;
- (5) Offenders committed to TDCJ-CID with non-3G offenses for sentences of fifty (50) years or more must have served five (5) years flat to be eligible for General Population Level II (G2/J2) custody;
- (6) No placement of security precaution designator for escape (ES), staff assault (SA), hostage (HS);
- (7) No placement of security precaution removal code of escape removal (NE), staff assault removal (NA), or hostage removal (NS) (unless State Jail offender).

G2/J2 custody – Primarily SAT III, SAT IV, Line Class I time-earning status, or State Jail offenders shall be subject to the following classification boundaries:

- (1) Eligible for contact visits with immediate family members;
- (2) May be eligible for consideration for an emergency absence;
- (3) Requires direct armed supervision on job assignments and activities outside the security perimeter, and requires indirect supervision inside the security perimeter;
- (4) May be housed in a cell or dormitory, in accordance with the following guidelines:
  - a. General Population Level II (G2/J2) custody offenders may be assigned to a dormitory within the security perimeter; however, a General Population Level II (G2/J2) custody offender shall not be assigned to a trusty camp.
  - b. General Population Level II (G2/J2) custody offenders shall only be assigned to housing areas which are specifically designated for General Population Level II (G2/J2) custody offenders. However, in exceptional circumstances, General Population Level II (G2/J2) and General Population Level I (G1/J1) offenders may be housed with General Population Level III (G3) custody offenders the main building of a unit with prior approval of the housing scheme by the Chairperson of the SCC.
- (5) Recreation – Institutional offender - allowed four (4) hours weekdays; seven (7) hours weekends. (Refer to AD 03.40 for specific guidelines).  
  
State Jail offender – allowed four (4) hours of recreation each weekday. At least one (1) hour of this recreation time will be in the gym or outdoors (weather permitting). Seven (7) hours will be allowed on the weekends with at least two (2) hours of this recreation time in the gym or outdoors (weather permitting).
- (6) Commissary – allowed to make commissary purchases up to \$75 every two (2) weeks.
- (7) Property – allowed to keep personal property except items restricted through disciplinary actions or under AD-03.72.
- (8) Jobs - may be assigned to any job deemed appropriate by the unit administration. (Unless State Jail offender with a NE, NA, NS code). Offender in this category may not be assigned to maintenance work, clerk position, dock worker, or any job where the offender would have access to multiple areas of the unit.
- (9) Education Programs - eligible for consideration to participate in academic/vocational programs if specific program criteria are met.

### GENERAL POPULATION LEVEL 3 (G3, Does not apply to State Jail Offenders)

G3 custody – shall be assigned to primarily SAT III, SAT IV, or Line Class I time-earning status offenders. Custody shall only be assigned to offenders who have one or more of the following characteristics;

- (1) No requirement for a more restrictive custody;
- (2) No recent pattern of in-prison assaultive behavior (three (3) or more separate disciplinary convictions resulting in major punishment within the past twenty-four (24) months for offender and/or staff assaults, with or without a weapon);
- (3) In order to promote to General Population Level III (G3), an offender must have a clear conduct record, with no disciplinary convictions resulting in major penalties for a minimum period of six (6) months, (newly received TDCJ offenders may be approved for immediate assignment to General Population Level III (G3) custody);
- (4) Offenders committed to TDCJ for sentences of fifty (50) years or more for a 3G offense and have not served ten (10) flat years.
- (5) Offenders committed to TDCJ for sentences of fifty (50) years or more for a non-3G offense and have not served five (5) flat years.
- (6) No placement of security precaution designator of escape (ES), staff assault (SA) or hostage (HS);
- (7) Placement of a security precaution removal code of escape removal (NE), staff assault removal (NA), or hostage removal (NS) will prevent an offender from being assigned to a custody less restrictive than G3.
- (8) Offenders convicted of Capital Murder and sentenced to "life without parole".

The codes of escape (ES) and staff assault (SA) must be removed if the incident which caused the placement of the designator occurred more than ten (10) years ago in accordance with AD 04.11 (unless approved by the SPDRC to remain due to extraordinary circumstances).

G3 custody – Primarily SAT III, SAT IV, or Line Class I time-earning status offenders shall be subject to the following classification boundaries:

- (1) Eligible for contact visits with immediate family members;
- (2) May be eligible for consideration for an emergency absence;
- (3) Requires direct armed supervision on job assignments and activities outside the security perimeter, and requires indirect supervision inside the security perimeter;
- (4) May be housed in a cell or dormitory, in accordance with the following guidelines:
  - a. General Population Level III (G3) custody offenders may be assigned to a dormitory inside the main building of a unit;
  - b. General Population Level III (G3) custody offenders shall not be assigned to a dormitory outside of the main building of a unit, inside the security fence.
  - c. General Population Level III (G3) custody offenders shall not be assigned to a trusty camp;
  - d. General Population Level III (G3) custody offenders shall only be assigned to housing areas that are specifically designated for General Population Level III (G3) custody offenders. However, in exceptional circumstances, General Population Level III (G3) and General Population Level II (G2) offenders may be housed together upon prior approval of the housing scheme by the Chairperson of the SCC.
- (5) Recreation – allowed four (4) hours weekdays; seven (7) hours weekends. (Refer to AD 03.40 for specific guidelines).
- (6) Commissary – allowed to make commissary purchases up to \$75 every two (2) weeks.
- (7) Property – allowed to keep personal property except items restricted through disciplinary actions or under AD-03.72.
- (8) Jobs - may be assigned to any job except maintenance worker, SSI, any other clerk position, dock worker, or any job where the offender would have access to multiple areas of the unit.
- (9) Education Programs - eligible for consideration to participate in academic programs if specific program criteria are met. Access to vocational programs determined by Warden based on location of vocational shops.

### GENERAL POPULATION LEVEL 4 (G4/J4)

G4/J4 custody – shall be primarily assigned to those SAT IV, Line Class I, II, III time-earning status, or State Jail offenders who have one or more of the following characteristics:

- (1) No requirement for a more restrictive custody;
- (2) Does not qualify for a less restrictive custody assignment;
- (3) Has recently demonstrated a positive change in behavior and attitude and was previously in General Population Level V (G5/J5) custody;
- (4) Two (2) or more non-assaultive disciplinary convictions resulting in major penalties within the past six (6) months;
- (5) One (1) disciplinary conviction resulting in a major penalty for offender or staff assault without a weapon within the past twelve (12) months;
- (6) Line Class II, III time-earning status, Institutional offender, if the offender is not assaultive or aggressive in nature. Age, physical size, and the circumstances surrounding any assaultive disciplinary offenses will be taken into consideration when determining appropriate custody assignment.
- (7) Placement of a security precaution designator for escape (ES), staff assault (SA), or hostage (HS) will prevent an offender from being assigned to a custody less restrictive than G4/J4. Offenders with ES, SA and HS designators must be assigned to a Level 5 facility.

**Note:**

General Population Level IV (G4/J4) custody may be assigned to offenders who have the following characteristics:

A newly-received offender, upon transfer to his initial unit of assignment, may be assigned to General Population Level IV (G4/J4) custody by the UCC if the offender's current offense of record is for a violent crime; if the UCC establishes that the offender has a pattern of free-world convictions for offenses of violence; or if the offender has committed an assault on staff or offenders in an adult correctional institution within the past twenty-four (24) months.

G4/J4 custody – Primarily SAT IV, Line Class I, II, III time-earning status, or State Jail offenders shall be subject to the following classification boundaries:

- (1) Generally, allowed one (1) visit each weekend; ineligible for contact visits; S3 and S4 Institutional offenders with one (1) year clear major disciplinary shall be allowed to receive contact visits with immediate family members (frequency dependent on time-earning status when applicable);
- (2) Ineligible for emergency absence;
- (3) Requires direct armed supervision on job assignments and activities outside the security perimeter; requires indirect supervision on jobs inside the security perimeter;
- (4) Must be housed in a cell specifically designated for housing General Population Level IV (G4/J4) custody offenders. (Note: Female and State Jail offenders in General Population Level IV (G4/J4) custody may be housed in dormitories specifically designated for housing General Population Level IV (G4/J4) custody offenders.)
- (5) Recreation – Institutional offender - allowed four (4) hours weekdays. (Refer to AD 03.40 for specific guidelines).  
  
State Jail offender – allowed two (2) hours of recreation each weekday. At least one (1) hour of this recreation time will be in the gym or outdoors (weather permitting). Four (4) hours will be allowed on the weekends with at least one (1) hour of this recreation time in the gym or outdoors (weather permitting).
- (6) Commissary – generally allowed to make commissary purchases up to \$30 every two (2) weeks; however, SAT III, SAT IV, and State Jail offenders with one (1) year clear major disciplinary shall be allowed to make purchases up to \$75 every two (2) weeks.
- (7) Property – allowed to keep personal property except items restricted through disciplinary actions or under AD-03.72.
- (8) Jobs – will generally be assigned to field force and secure jobs inside the perimeter as designated by the Warden. May not be assigned to maintenance worker, SSI, any other clerk position, dock worker, or any job where the offender would have access to multiple areas of the unit.
- (9) Education Programs – participation in educational programs will be determined by the Warden on a unit by unit basis and specific program criteria. Access to vocational programs to be determined by the Warden based on location of the vocational shops.

### GENERAL POPULATION LEVEL 5 (G5/J5)

G5/J5 custody – shall be primarily assigned to those Line Class I, II, III time-earning status or State Jail offenders who have one or more of the following characteristics:

- (1) One (1) or more disciplinary conviction resulting in major penalty for an assault with a weapon on staff or offenders within the past twenty-four (24) months;
- (2) Two (2) or more disciplinary convictions resulting in major penalties for offender or staff assaults without a weapon within the past twelve (12) months;
- (3) One (1) or more disciplinary convictions resulting in major penalties for extortion or sexual abuse within the past twenty-four (24) months.
- (4) Primarily Line I, II, III time-earning status, or State Jail offender, if the offender is assaultive or aggressive in nature. Age, physical size, and the circumstances surrounding any assaultive disciplinary offenses will be taken into consideration when determining appropriate custody assignment.
- (5) Escape from a TDCJ secure adult correctional facility within the past five (5) years will prevent an offender from being assigned to a custody less restrictive than G5/J5.

Note:

General Population Level V (G5/J5) custody may be assigned to offenders who have the following characteristics:

- (1) Recent history of escape or attempted escape from an adult correctional institution (within the past ten (10) years).
- (2) A newly-arrived offender, upon transfer to his initial unit of assignment, may be assigned to General Population Level V (G5/J5) custody under the following circumstances:
  - (a) If the current offense or record is for a violent crime against a person and the UCC does not establish that a pattern of convictions for violent acts exists, the offender may still be considered for (G5/J5) custody. However, the offender may be considered for assignment to a less restrictive custody in light of other classification characteristics.
  - (b) If in addition to the offender's current conviction for a violent crime, a pattern of convictions for violent acts can be established by the UCC, then the offender may be assigned to (G5/J5) custody.
  - (c) If the offender has committed an assault on staff or offenders in an adult correctional institution within the past twenty-four (24) months, then the offender may be assigned to (G5/J5) custody.

G5/J5 Custody – Primarily Line Class I, II, III time-earning-status, or State Jail offenders shall be subject to the following classification boundaries:

- (1) Generally ineligible for SAT status good conduct time credits (does not apply to State Jail offenders);
  - (2) Ineligible for contact visits;
  - (3) Ineligible for an emergency absence;
  - (4) Requires direct armed supervision on job assignments and activities outside the security perimeter, requires direct supervision inside the security perimeter (however, certain positions with limited access to ingress/egress from the position (i.e., dishwasher) may be allowed frequent, indirect supervision with the approval of the Warden);
  - (5) Must be housed in a cell specifically designated for housing only General Population Level V (G5/J5) custody offenders;
  - (6) Recreation – Institutional offender - allowed two (2) hours a day; (Refer to AD 03.40 for specific guidelines).
- State Jail offender – allowed one (1) hour a day.
- (7) Commissary – allowed to make commissary purchases up to \$20 every two (2) weeks;
  - (8) Property – allowed to keep personal property except items restricted through disciplinary actions or under AD-03.72.
  - (9) Jobs – primarily assigned to field force. May not be assigned to maintenance worker, SSL, any other clerk position, dock worker, or any job where the offender would have access to multiple areas of the unit.
  - (10) Education Programs – generally ineligible for participation in educational programs but may be eligible in certain situations such as GRAD process.

## **EXHIBIT 4**



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**TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

***CORRECTIONAL INSTITUTIONS DIVISION***



**ADMINISTRATIVE SEGREGATION PLAN**

**FEBRUARY 2005**

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# TEXAS DEPARTMENT OF CRIMINAL JUSTICE

## *Administrative Segregation Plan*

### FOREWORD

There are occasions within a correctional setting when it becomes necessary to segregate offenders in order to preserve the safety and security of both offenders and staff. The Texas Department of Criminal Justice (TDCJ) policy, Administrative Directive (AD)-03.50, "Administrative Segregation" directs the Agency to develop an *Administrative Segregation Plan* which establishes uniform rules and regulations to guide staff in both the conditions and procedures relating to the segregated offender.

The TDCJ is fully committed to abide by and enforce the provisions outlined herein, and all employees are expected to comply with its requirements.

Supersedes: *Administrative Segregation Plan*, August 2002



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Doug Dretke, Director  
Correctional Institutions Division

2/14/2005  
Date

# *Administrative Segregation Plan*

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**January 2005**

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## ***ADMINISTRATIVE SEGREGATION PLAN***

The purpose of the *Administrative Segregation Plan* is to provide uniform rules and regulations for the use of Administrative Segregation within the TDCJ. This *Plan* is intended to guide TDCJ staff in matters of both the conditions and procedures relating to Administrative Segregation.

### **I. DEFINITIONS**

A. "ADMINISTRATIVE SEGREGATION" is a non-punitive, maximum custody status involving separation of an offender from the general population within the prison institution for the purpose of maintaining safety, security and order among general population offenders, correctional personnel, and the public. An offender shall be considered to be in Administrative Segregation anytime he is separated from the general population by confinement in a cell for twenty (20) hours or more a day without a disciplinary hearing. For the purpose of this *Plan*, Administrative Segregation shall consist of the following categories:

1. Security Detention
2. Pre-Hearing Detention (PHD)
3. Protective Custody
4. Temporary Detention

An offender is not considered to be in Administrative Segregation if he is segregated due to an institutional lockdown; undergoing intake and diagnostic evaluation; transient status or the offender is on a non-permanent unit of assignment.

At no time is Administrative Segregation to be used as punishment for misconduct. Punishment of an offender is to be assessed and imposed only pursuant to the provisions of the rules governing disciplinary procedures.

Procedures and standards for medical and psychiatric segregation shall be governed by the medical and special needs plans.

B. "SECURITY DETENTION" is for an offender who is a:

1. Current escape risk;
2. Threat to the physical safety of other offenders or staff;
3. Threat to the order and security of the institution as evidenced by repeated serious disciplinary violations or;
4. Confirmed member of a Security Threat Group (STG).

C. "PRE-HEARING DETENTION - (PHD)" is utilized for an offender charged with, or suspected of, a disciplinary violation, when at least one of the following conditions exists:

1. The offender is a current escape risk;
2. The offender's presence in general population would create a threat to the physical safety of other offenders or staff; or
3. It is necessary to maintain the integrity of an investigation, i.e., to preserve information or evidence either in the offender's possession or another offender's possession.

**NOTE:** An offender shall not be placed in PHD solely because he is being reviewed by the unit for protection or is suspected of STG participation.

D. "PROTECTIVE CUSTODY" is for an offender who requires maximum supervision at all times and the highest degree of protection due to threats of harm by others or high likelihood of victimization. The offender requires a higher degree of safety and security in a more controlled environment than general population offenders do in order to provide for his protection. These offenders may be housed in Protective Custody in order to provide the sufficient degree of safety and security. They should not be recreated, showered, or otherwise placed in the same proximity as offenders in any other category.

E. "TEMPORARY DETENTION" is used between consecutive terms of solitary confinement for general population offenders under the following procedures and confinement guidelines:

1. The offender has been sentenced to two or more consecutive terms in solitary confinement (when assessed more than one [1] term of Solitary Confinement, each term must be separated by at least 72 hours of temporary placement/detention); and
2. The Warden or designee determines that the offender's presence in general population would create a threat to the physical safety of other offenders or staff.

Offenders placed in Temporary Detention shall be afforded the same privileges as Level I offenders and recreated at least once during the seventy-two (72) hour period.

F. "LEVELS OF ADMINISTRATIVE SEGREGATION" to which an offender may be assigned are based upon the offender's behavior. The Administrative Segregation Committee (ASC) and the State Classification Committee (SCC) shall have the authority to change the level which an offender is assigned.

1. Level I: Offenders are generally maintaining good behavior but have a requirement for segregation from general population offenders. Level I



offenders may have ~~had~~ a history of assaultive behavior, but their current behavior (within the last 90 days) should be non-assaultive in nature.

2. Level II: Offenders may be chronic rule violators or may have a recent history of in-prison assaultive or aggressive behavior within the last ninety (90) days. This behavior must be documented by a major disciplinary case.
3. Level III: Offenders who have been charged with a major disciplinary case within the last thirty (30) days. These offenders are assaultive or aggressive in nature, i.e., institutional violence, weapons possession, assaults or attempted assaults on staff or offenders or fighting with or without a weapon.

G. "ADMINISTRATIVE SEGREGATION COMMITTEE" (ASC) is comprised of staff members who are responsible to the Warden:

1. The members shall consist of the following staff:
  - a. Warden or designee (Captain or above) shall serve as chairperson;
  - b. Lieutenant (or above) or Chief of Classification;
  - c. Correctional Officer (or above) who is assigned to the Administrative Segregation area; and a
  - d. Representative from the Health Services Division (medical or psychiatric) as an additional member, if needed, who would function in a consultative capacity for issues impacting the physical or mental well-being of offenders.
2. The Warden or designee shall schedule the following systematic reviews by the ASC for offenders assigned to Administrative Segregation:
  - a. Initial 7-day hearings;
  - b. Review for possible change in level designation; and
  - c. Placement on restrictions according to Security Memorandum (SM)-01.29, "Offender Management Restrictions."
3. The ASC shall be responsible for making the following recommendations in writing to the SCC for their review and approval:
  - a. Initial placement of an offender into Administrative Segregation;
  - b. Promotion in time-earning status; and
  - c. Release to general population.

- H. "YOUTHFUL OFFENDER" is an offender who is 17 years old or younger. However, some 18 year olds may be classified as youthful offenders because of their behavior and/or maturity. Procedures for the placement of a youthful offender in Administrative Segregation are contained in Section II.B. Procedures for the release of a youthful offender from Administrative Segregation are contained in Section VI.C.

## II. PLACEMENT PROCEDURES

Offenders confined to Administrative Segregation shall be placed in accordance with prescribed confinement procedures relating to the specific category of segregation. Once a decision has been made to place an offender in segregation, unit medical staff shall be notified. Initial and regular medical evaluations of segregated offenders are detailed in Health Services Policy E-39.1, "*Health Evaluation and Documentation – Offenders in Segregation.*" Initial placement from general population into Protective Custody, Security Detention, or PHD shall be made by the highest-ranking security supervisor on duty (Lieutenant or above).

### A. CATEGORIES OF ADMINISTRATIVE SEGREGATION

#### 1. Security Detention/Protective Custody:

- a. The Warden or designee may place an offender in either of these categories prior to notice and hearing, as noted below:
  - (1) Security Detention: in cases of immediate threat to the physical safety of other offenders or correctional personnel; or
  - (2) Protective Custody: in cases of immediate threat to the physical safety of the affected offender. Requests for placement in Protective Custody shall be processed in accordance with the *Safe Prisons Plan*.
- b. Offenders shall be assigned to Level I status unless their behavior warrants a more restrictive level. The initial decision related to assignment to a level shall be made by the highest-ranking security supervisor on duty at the time the offender is placed in Administrative Segregation housing.
- c. If an offender is placed in Security Detention or Protective Custody prior to notice and hearing, he shall, within seventy-two (72) hours of being placed in segregation, either be released from segregation confinement or be given a written notice specifying the reasons for confinement to segregation.
- d. The offender shall be brought before the ASC for an initial hearing (unless medical, mental health or safety/security concerns preclude the offender's presence) in accordance with the following:



- (1) Within ~~seven~~ (7) days of receipt by the offender of the written notice or of placement in segregation, whichever comes first;
  - (2) An I-169 Form shall be completed prior to the hearing and retained in the offender's unit file;
  - (3) The offender shall be provided the same due process as followed for minor disciplinary hearings, unless otherwise required by this *Plan*;
  - (4) Documented on the Classification Docket (SSP-109) as the initial 7-day hearing; and
  - (5) The initial decisions regarding placement into Security Detention or Protective Custody (i.e., category, level, restrictions, or any other similar decisions) shall require confirmation by the ASC at the 7-day hearing and shall be documented on the I-169A Form.
- e. Based on the evidence presented at the hearing, the ASC shall determine whether to continue the offender's confinement in segregation or release the offender to general population.
- f. If the ASC determines that the offender shall be held in segregation, the Committee shall further determine whether any of the following special conditions or restrictions are required for security purposes.
- (1) Level of segregation;
  - (2) Security precaution designator;
  - (3) Recreation/exercise precautions;
  - (4) Personal property restrictions;
  - (5) Known enemies (by name and TDCJ number [found on UCR 07 Screen]);
  - (6) STG affiliations;
  - (7) Restraint requirements (for movement);
  - (8) Physical health conditions;
  - (9) Mental health conditions;

- (10) Special ~~108~~ requirements (medical or religious);
- (11) Medication requirements; or
- (12) Any other special circumstances related to the offender's segregation.

- g. Upon assignment to Administration Segregation by the ASC, the offender shall be advised of the criteria for release, which shall be considered at subsequent review hearings (see Section V., "Review Procedures After Initial Placement").
- h. The offender shall have the right to appeal the decision of the Committee through the offender grievance procedure. The grievance shall not be reviewed by an official who served on the ASC.
- i. The ASC shall notify the SCC, in writing, of its initial decision. The ASC's decision shall be affirmed or denied by the SCC.

2. Pre-Hearing Detention (I-188 Form)

- a. The decision to place an offender in PHD without notice or hearing shall be made by the Warden or designee (Lieutenant or above). Offenders housed in PHD shall generally be placed on Level I; however, the authorizing official may opt for a more restrictive level (see levels of Administrative Segregation for criteria). If the offender has not had a disciplinary hearing within ten (10) days, he shall be released from PHD, unless his time is extended by the Warden.
- b. The original 10-day period may be extended another ten (10) days if the Warden certifies in writing (an IOC justifying in detail the reason for the extension) that it is necessary in order to complete an investigation. Only one such extension may be granted. The IOC justifying the extension shall be placed in the offender's unit file. A completed I-169 Form is not necessary.
- c. At the time the offender is placed into PHD, the PHD Log, Form I-188, shall be utilized to document each offender's placement. Each entry shall include the: date/time placed in PHD; offender's name/number; criteria code for placement (i.e., escape risk; threat to physical safety of other offenders or staff; or to preserve information or evidence either in the offender's or another offender's possession); violation (brief description or offense code); authorizing official (Lieutenant or above) name printed/sign initials; date released from PHD; date/time and name printed/sign initials certifying review by the Warden or designee (Captain or above), within 72 hours of the offender's placement in PHD.

- d. If an offender in PHD temporarily departs the unit (e.g., for medical reasons), his time in PHD shall continue upon return, with no credit given for the absent days. If permanently reassigned, the receiving unit may continue or discontinue PHD housing.

B. YOUTHFUL OFFENDERS

1. Prior to placement of a youthful offender in Administrative Segregation, a written request describing the specific reasons for segregation placement shall be presented to the Unit Classification Committee (UCC) and maintained in the offender's unit file. The UCC shall include the Youthful Offender Program (YOP) Director or designee as a voting member.
2. If the UCC recommends the youthful offender be placed in segregation, the request shall be e-mailed to the SCC. The e-mail will include the specific reasons for the request. The SCC shall respond by concurring or non-concurring with the unit's request.
  - a. When the SCC concurs, the offender shall receive written notification specifying the reasons for confinement to Administrative Segregation. The offender shall be housed in a transient cell pending transfer to an appropriate housing unit. The unit housing the offender at the time the initial 7-day hearing is due shall be responsible for conducting the hearing. The regular procedures for an initial 7-day hearing shall be followed. The YOP Director or designee must be a voting member of the ASC unless the offender has transferred to another unit for Administrative Segregation housing. If the offender has been transferred prior to the 7-day hearing, a progress report or recommendation from the YOP Director or designee must be submitted during the hearing.
  - b. If SCC non-concurs, the unit shall release the offender to general population or appeal the SCC's decision to the Departmental Review Board (DRB).
3. The YOP Director or designee shall continue to monitor the offender's behavior while housed in Administrative Segregation. This allows the offender to remain in touch with the YOP and provides an opportunity for the offender to return to the YOP if deemed appropriate.
4. The YOP staff shall document any visits they make, along with any pertinent observations, in the offender's unit file.

## C. RECORDKEEPING REQUIREMENTS

Administrative Segregation activities are primarily documented on two (2) forms – the Segregation Confinement Record (I-201) completed on each offender and the Daily Activity Log (I-216) completed for each housing area. Current forms are maintained in the Administrative Segregation Housing area, accessible to staff for recording purposes and are described below:

## 1. Segregation Confinement Record (I-201 Form)

A separate I-201 Form shall be initiated for each offender and maintained in cell order. The I-201 is divided into two (2) sections – “Placement Information” and “Activity Record.” The color-coded form shall be used as follows: blue for Level I, yellow for Level II, and orange for Level III.

- a. Immediately prior to the actual placement of an offender in segregation, the ASC or the unit official authorizing the segregation shall initiate the I-201 by fully completing Section 1, “Placement Information.” This shall include identifying and recording all special conditions and restrictions relative to the segregation of the offender, as noted below. For any that do not apply, the word “none” shall be entered.
  - (1) Recreation/exercise precautions (e.g., "Single recreate only" or "Not to be recreated with..." in the case of Protective Custody Level I offenders);
  - (2) Restrictions (e.g., property, paper mask, paper gown, food loaf and recreation) imposed by the appropriate authority;
  - (3) STG affiliation (found on UCR07 Screen);
  - (4) Security precaution designator;
  - (5) Special medical conditions; and
  - (6) Any other special circumstances related to the offender's segregation.

If the offender is placed in Administrative Segregation by a unit official, the placement information entered by that individual shall require confirmation by the ASC at the initial 7-day hearing.

- b. The initial and subsequent review dates for placement of an offender on any restriction pursuant to SM-01.29, “Offender Management Restrictions,” shall be documented on the I-201.



- c. Upon completion of the placement information on the I-201, and providing the appropriate placement criteria have been met, the offender may be placed in segregation.
- d. The segregation officer receiving the offender shall note the information recorded on the I-201, paying particular attention to the segregation category/level and special conditions/restrictions.
- e. The segregation officer shall make the first entry in Section II, "Activity Record," of the I-201 by recording the cell assignment for the offender. He shall then ensure the assigned cell receives a comprehensive search and the offender is strip-searched prior to placement in the cell.
- f. Thereafter, Section II of the I-201 shall be used for documentation when an offender:
  - (1) Does not receive some form of routine activity, such as recreation, shower, or meals;
  - (2) Departs from or returns to the cellblock;
  - (3) Is placed on restriction;  

**NOTE:** There must be an I-203, "Placement on Restrictions/Administrative Segregation Level Review Form" to support this. The additional use of the I-206, "Restriction Tracking Log" is optional to assist staff with offenders' restriction timeframes.
  - (4) Exhibits inappropriate behavior, such as cleanliness issues (either personal hygiene or housing area) or relating to social interaction; or
  - (5) Undergoes ASC action or subsequent reviews.
- g. Every entry in Section II of the I-201 shall also reflect the date, time, and appropriate officer's last name printed and signed initials for the relevant activity.
- h. If an offender is going to be transferred to another unit, prior to the transfer:
  - (1) Any special precautionary information shall be indicated on the e-mail sent from Classification and Records to the receiving unit; and
  - (2) The I-201 for that offender shall be filed in the offender's unit file.

2. Daily Activity Log (I-216 Form)

For segregated housing at 2250, System I, and expansion cellblock facilities, a separate I-216 shall be utilized on each wing or pod (i.e., identified alphabetically or numerically).

- a. Based on housing location, a separate I-216 shall be kept for each category of segregated offender (Administrative Segregation, Solitary Confinement, Management Status, or Lockdown) to record the daily activities of that particular cellblock/pod (i.e., meals, showers). The Segregation Officer shall document daily activities and note exceptions (e.g., an offender refuses to eat, recreate, and other similar events) on the Daily Activity Log (noting location and reason). The officer shall also document the exception on the individual offender's I-201 in Section II.
- b. The I-216's shall be filed at the unit where the form was originated.

### III. CONDITIONS

The following conditions shall apply to all Administrative Segregation offenders.

#### A. HOUSING

Unit officials shall designate specific cells or cellblocks capable of providing separation from the general population and the required degree of security and control to be used. Solitary Confinement cells may not be used for Administrative Segregation except: (a) when there is no space available in the Administrative Segregation housing area; and (b) in an extraordinary case in which several offenders must be both separated from the population and prevented from communicating with each other, and only as long as this extraordinary situation exists. If deemed appropriate to use a Solitary Confinement cell to house Administrative Segregation offenders, that cell shall contain all fixtures described below; except it need not contain electric outlets. The solid outer door shall only be closed at offender request and the door closure must be documented on the I-201 and I-216. This door closure is not to be confused with management status, as defined in AD-03.80, "Implementation of Offender Management Status."

#### B. CELL FIXTURES

Cells that house Administrative Segregation offenders shall have all the permanent fixtures of general population housing. Electrical outlets may be removed from cells housing Level III offenders for safety/management reasons on a case-by-case basis with approval by the appropriate Regional Director.



C. RECREATION (See Attachment 188 for quick reference)

1. Schedule: Offenders in any category of Administrative Segregation shall be recreated at least one (1) hour within the first 72 hours of placement. Thereafter, offenders shall be allowed physical recreation outside of their cells, to include the opportunity to recreate outdoors, weather permitting. Recreation shall be in accordance with the Level to which the offender has been assigned, unless security or safety considerations dictate otherwise. If an offender refuses the offer to recreate, that refusal shall be noted on the I-201 and I-216.

a. Level I

(1) One (1) hour per day seven (7) days a week, with two (2) hours of the weekly out-of-cell recreation taking place outdoors; or

(2) Two (2) hours five (5) days a week, with two (2) hours of the weekly out-of-cell recreation taking place outdoors.

It is at the Warden, Assist Warden, or designee's discretion as to which of the two (2) schedules will be used. Level I Protective Custody offenders may be group recreated (size of the group is determined by the square footage of the recreation yard, allowing at least 25 square feet per offender).

b. Level II and Level III

One (1) hour five (5) days a week, with one (1) hour of the weekly out-of-cell recreation taking place outdoors.

c. If an offender declines his recreation time, he shall be allowed to shower and then be returned to his cell.

d. Alternative days should be made available when an offender is unable to go to outside recreation due to inclement weather.

2. Equipment: Indoor recreation areas shall be equipped with a minimum of one exercise mat, one chinning bar, and a game table. Indoor recreation areas shall have access to a urinal and a drinking fountain. Only Level I Protective Custody offenders shall have television viewing privileges. Outdoor recreation yards shall have a hard surface (asphalt or concrete), one basketball goal, one basketball or handball, and one chinning bar.

3. Denial of Recreation: Segregation offenders may, on a case-by-case basis, be denied the opportunity for out-of-cell recreation when fulfillment of the requirement would create an immediate and serious threat to the physical safety or security of the offender, other offenders or staff. However, an offender shall not be denied recreation when the immediate and serious threat to the physical

safety or security would not exist if the offender were recreated in an alternate location.

The decision to deny an offender recreation shall be in writing and shall explain the reasons for the denial and the reasons why the use of an alternative recreation area would not have prevented the immediate and serious threat to the physical safety or security of the offender, other offenders or staff. Copies of the decision shall be placed in the offender's unit file.

D. VISITATION (See Attachment A for quick reference)

Administrative Segregation offenders shall be allowed visitation privileges according to their assigned level: (For additional information, see to the *Visitation Plan*.)

1. Level I:
  - a. Security Detention: one (1) two (2) hour non-contact visit each week.
  - b. Protective Custody: up to three (3) two (2) hour contact visits each month.
2. All Level II's: two (2) two (2) hour non-contact visits each month.
3. All Level III's: one (1) two (2) hour non-contact visit each month.

**NOTE:** PHD - non-contact visits in accordance with the offender's custody designation.

E. MEALS (See Attachment A for quick reference)

Offenders shall have access to nutritional meals in accordance with the Food Service Policy. Safety precautions shall be followed in serving meals pursuant to PO-07.006, "Segregation Officer."

F. CORRESPONDENCE/COMMISSARY (See Attachment A for quick reference)

Offenders shall be provided writing instruments, stationery and postage either by accessing their Offender Trust Fund Account or through the provisions for indigent supplies. Offenders shall have access to the commissary in accordance with their assigned Level. Commissary items shall be delivered to Administrative Segregation offenders.

**NOTE:** Exception - Administrative Segregation offenders shall not be permitted to purchase razors.

1. Level I offenders may spend \$60 every two (2) weeks for regular purchase items. Offenders are allowed approved special purchases (i.e., fan, typewriter, radio, and other similar types of purchases). Level I Protective Custody offenders may spend the same amount as G1/J1, G2/J2, or G3 offenders.

2. Levels II and III offenders may purchase one (1) of each personal hygiene items (toothbrush, toothpaste, deodorant, soap, shampoo, comb, sunscreen, shower shoes, and tampons for female offenders) and a maximum of \$10 in correspondence supplies (stamps, stamped envelopes, legal pads, writing tablets, envelopes, pens, and pencils) every two (2) weeks. Additional correspondence supplies may be purchased upon submission of a special purchase request by the offender and approval by the Warden or designee.

G. PROPERTY (See Attachment A for quick reference)

Offenders shall retain personal property allowed in accordance with AD-03.72, "Offender Property," and the level to which they have been assigned. The ASC may restrict, on a case-by-case basis, only those items presenting a danger to the physical safety and security of staff, offenders or others, or any item that may be used to affect an escape. Restriction of those items shall be in accordance with SM-01.29, "Offender Management Restrictions."

1. All offenders are allowed the following basic personal property items:
  - a. Current legal materials/legal research materials (no metal fasteners/paper clips);
  - b. Approved religious books or articles necessary for the practice of the offender's religion that does not violate the security of the institution;
  - c. Photographs, letters, and approved publications, (must not contain sexually explicit images as defined in BP-03.91, "Uniform Offender Correspondence Rules");
  - d. Correspondence supplies, pursuant to AD-07.90, "Correspondence Supplies and Postage for Offenders;"
  - e. "Keep-on-Person" medications, in accordance with the Pharmacy Policy and Procedures Manual Number 50-05 or any medically-required items;
  - f. Health care devices and supplies prescribed for the offender by Health Services;
  - g. One (1) each of the following personal hygiene items: small comb or brush; soap; a pair of shower shoes; toothbrush; toothpaste/tooth powder; deodorant; and shampoo/conditioner;
  - h. One (1) roll of toilet tissue;
  - i. Two (2) pairs of TDCJ authorized or issued shoes (non-steel toe); and

j. Necessities items (listed below):

Clothing and shower towels shall be furnished at shower time and exchanged on a one-for-one basis. The clothing exchange, however, shall be offered even if the offender refuses to shower. Units allowing offenders to keep a shower towel in their possession are not required to issue a cell towel.

- (1) Daily change of socks and undergarments;
- (2) A shower towel and outer clothing (i.e., pants, shirt, coveralls [with sleeves for female offenders]) provided at least three (3) times weekly;
- (3) One (1) cell towel, two (2) sheets, and a pillowcase (if appropriate) once weekly;
- (4) One (1) gown weekly to female offenders;
- (5) Mattress and pillow (may be one piece); and
- (6) Seasonal items (i.e., thermals, jacket, blankets) as required.

k. Personal jewelry items in accordance with AD-03.72, "Offender Property;"

l. Gender-related items to include bras, panties, sanitary napkins, tampons, douche items; and

m. Small amount of cleaning supplies, as the Warden deems appropriate.

2. Level I offenders shall be allowed to possess the following additional property:

- a. One (1) State-issued razor (allowed at Warden's discretion);
- b. Items approved for purchase through the Commissary;
- c. General library books; and
- d. Gender-related items to include make-up, slip, girdle, hair accessories, perfume, stud earrings, curling iron, hair rollers, and hair dryer.

3. Property Storage

Upon assignment to Administrative Segregation, the offender's property shall be inventoried on a PROP-05, "Offender Property Inventory." Property, other than that which is allowed in Administrative Segregation, shall be confiscated in accordance with AD-03.72, "Offender Property." However, if an offender has several similar personal hygiene items in his property, he should receive them upon request on a one-for-one exchange basis, until his supply is exhausted. The exchange shall be documented on a PROP-03 with copies maintained with the property and original documentation.



## H. SHOWERING

Offenders shall be provided the opportunity to take a shower seven (7) days per week. Offenders are expected to wear clean clothes and adhere to grooming standards as outlined in AD-03.83, "TDCJ Offenders Who Refuse To Comply With Grooming Standards." All offenders are authorized the following items for showering: soap, shampoo/conditioner, towel, shower shoes, and a razor. For Level II and III offenders, (Level I, at the Warden's discretion) security staff shall issue male offenders a disposable razor to be replaced every week and for female offenders to be replaced once a month. Razors shall be issued to offenders after entering the shower, and returned before exiting the shower. Security staff shall store the razor in such a manner as to ensure each offender receives his own razor.

## I. IN-CELL PROGRAMS

Offenders may have access to in-cell programs consistent with security requirements. Administrative Segregation offenders are only allowed materials available through the unit commissary. The Warden or designee may, on a case-by-case basis, suspend an in-cell program when an offender has abused that privilege.

## J. OTHER IN-CELL SERVICES

Offenders shall have access to counselors, chaplains, and to medical care (pursuant to Health Services policy).

## IV. MANAGEMENT PROCEDURES

The following are guidelines related to the management of segregation areas. A current copy of the *Administrative Segregation Plan*, its Attachments, and any additional guidance relating to the operation of segregation areas shall be placed in a notebook to be maintained in each segregation area. All assigned segregation officers are charged with the responsibility to become thoroughly familiar with all procedures maintained in the segregation procedures notebook. Each Warden is responsible for ensuring that these procedures are followed.

## A. STAFFING

1. Staffing in segregation areas shall comply with the unit's staffing document provided to Wardens by the appropriate Regional Director and authorized by Security Operations.
2. The staffing of segregation areas shall be a priority deployment of the unit staff.
3. To the extent possible, segregation areas are to be staffed with experienced correctional officers. Generally, officers are to be regularly assigned to the segregation area and are not to be rotated to other unit posts on a daily basis; however, the Warden has the discretion to reassign or rotate any officer to or from Administrative Segregation based upon the needs of the unit. For

example, an officer working with Level III offenders should frequently rotate to work with Level I offenders, because of the intensity of working with Level III offenders.

B. HOUSING PRACTICES

1. Each unit shall implement procedures to ensure that categories and levels of Administrative Segregation can be identified by the cell number or row. Offenders in Level I, Level II, and Level III should be housed in separate physical locations (e.g., different rows, or with partitions between the groups). If this separation of levels cannot be accomplished in this manner, every effort shall be made to maintain an empty cell between the levels. Where possible, offenders in the various categories (i.e., Security Detention, Pre-Hearing Detention, Protective Custody, Temporary Detention) within these levels should be housed in separate physical locations as defined above. If an offender is mishoused, a housing justification must be placed on the UC00 Mainframe Program, Screen 2, Option A, indicating the specific reasons the offender cannot be housed appropriately.

The rows or group of cells designated for certain categories and levels of Administrative Segregation offenders should remain constant to the extent possible, i.e., only under special circumstances such as lack of bed space for another category/level of Administrative Segregation shall the designation of rows or cells change in the Administrative Segregation housing area.

2. Offenders shall be single-celled.
3. Offenders should be assigned to housing areas that are specifically designated for their custody requirements. The housing recommendations of treatment professionals, as noted in each offender's Health Summary for Classification Form, shall be followed by classification committees, classification and security staff.
4. Offenders who pose an imminent threat to the physical safety of staff or other offenders by throwing or intending to cause any substance or item to come into contact with staff or offenders may be placed on management status, pursuant to AD-03.80, "Implementation of Management Status."

C. UNIT FILE – ADMINISTRATIVE SECTION

One (1) unit file shall be maintained on each offender to include Administrative Segregation records and all pertinent information. However, the Administrative Segregation section of the unit file may be maintained in the Administrative Segregation Office so that it is accessible to the staff for daily utilization. This section must be combined with the unit file whenever the offender is transferred to another unit of assignment, or released into general population. The Administrative Segregation supervisor shall be responsible for ensuring that each file contains the following information:



1. Forms to be retained in ~~each~~<sup>194</sup> offender's unit file:
  - a. Section 5
    - (1) I-169, "Administrative Segregation (Ad Seg) Initial Placement and Notification"
    - (2) I-169A, "Administrative Segregation (Ad Seg) Initial Hearing Record"
    - (3) I-189, "State Classification Committee (SCC) Administrative Segregation (Ad Seg) Review Hearing Record"
    - (4) I-201, "Segregation Confinement Record"
    - (5) I-203, "Placement on Restriction/Administrative Segregation Level Review"
    - (6) I-214, "Referral to Mental Health Services"
  - b. Section 6 - Disciplinary Reports
2. Administrative Segregation Records are to be chronologically maintained at the unit.
  - a. I-216, "Daily Activity Log"
  - b. I-188, "Pre-Hearing Detention Log"
  - c. I-206, "Restriction Tracking Log" (if used)

D. OFFENDER MANAGEMENT RESTRICTIONS

Additional restriction procedures may be found in SM-01.29, "Offender Management Restrictions."

E. DAILY CELL INSPECTIONS

1. All offender and cell searches shall be in accordance with AD-03.22, "Offender Searches" and SM-03.02, "Security Searches," respectively. An offender's cell shall be searched at least every 72 hours. Offenders shall be observed on a daily basis for healthy and adaptive behavior. The general areas to be observed are house cleaning, personal hygiene, and social behavior. Through daily contact and cell inspections, security staff shall note any inappropriate behavior on the I-216 and I-201. Specific areas security staff shall observe are:
  - a. Bunk: used for intended purpose and free of clutter;
  - b. Floor: clean and free of trash;

- c. Property: offender's property must be stored in the storage space provided and in accordance with AD-03.72, "Offender Property;"
  - d. Cell front: uncovered and unobstructed;
  - e. Toilet: face bowl and toilet shall be kept clean and toilet flushed;
  - f. Necessities: neither altered nor soiled; and
  - g. Walls/windows: uncovered, clean, nothing posted.
2. Following guidance provided in PO-07.006, "Segregation Officer," security staff shall submit to Mental Health Services a "Referral to Mental Health Services" Form (I-214) on any offender they believe exhibits extreme or unusual behavior. This Form is for *non-emergency* referrals only. For emergencies, contact a Security Supervisor and the Mental Health or Medical Department immediately by telephone or in person. Referrals to Mental Health shall also be noted on the I-201.

F. GENERAL PROVISIONS

1. Visiting: Security cubicles shall be utilized in unit visiting rooms for Administrative Segregation offenders.
  - a. Every precaution shall be taken to ensure combinations of offenders receiving visits are compatible. Known enemies shall not be allowed to have visits simultaneously.
  - b. Offenders shall be escorted and restrained in accordance with provisions established in PO-07.006, "Segregation Officer."
  - c. Each offender must be strip-searched prior to leaving, or being returned to his cell for a visit; as well as immediately before entering and after exiting the visitation area.
  - d. Guidelines for officers assigned duty in the visiting room:
    - (1) Administrative Segregation offenders shall be placed into the security cubicle and a minimum of one (1) seat shall be left empty between each security cubicle.
    - (2) Security shall be present in the visiting room when Administrative Segregation offenders are present.
  - e. Only one (1) offender at a time shall be removed from the security cubicle and taken to the shakedown area. This shall be done only after the escort officers are present.
  - f. The shakedown area and the visiting room shall be searched prior to and after the completion of a visit.

- f. The shakedown area and the visiting room shall be searched prior to and after the completion of a visit.
  - g. Each security cubicle shall be searched prior to and after the offender completes a visit.
  - h. Restraints shall be removed from the offender once the offender is placed in the security cubicle. Restraints shall be placed on the offender in the security cubicle prior to leaving the visiting area.
  - i. Units with visiting rooms outside of the main building shall continue to use the inside visiting area for segregation offenders, if available. These areas shall be modified to ensure that each Administrative Segregation offender is contained in a closed area and separated from other offenders.
2. Access to General Library: Each unit shall provide Level I offenders access to general library books. Offenders shall not be allowed to go to the unit's general library. Library books shall be delivered by staff.
  3. Access to Law Library: An offender's access to law library books is governed by procedures established in BP-03.81, "Offender Access To The Courts, Counsel, and Public Official Rules." Books shall be delivered to the offender by staff.
  4. Interviews with Parole Representatives: Offenders shall be afforded opportunity for interviews with members of the Board of Pardons and Paroles (BPP). The Warden shall take steps to ensure that necessary security precautions are taken to protect BPP members. The Warden may deny the right to interview or may terminate an interview if there is an immediate and legitimate threat to institutional security, but only for so long as the threat exists and only if no lesser action would alleviate the threat.

#### G. SECURITY MEASURES

Each Warden shall take all necessary steps to assure that the physical safety and security of offenders and staff in each segregation area is maximized.

1. All persons shall present an identification card and be positively identified prior to entering/exiting the Administrative Segregation area. All persons, other than offenders, shall sign-in as noted below and must include their name, title/department, date, time in/out, and purpose.

**NOTE:** Security staff shall "sign-in" the required information for offenders.

- a. Upon entering an expansion cellblock facility or a 2250 – 12 building, a sign-in log (i.e., Visitor's Log) shall be used; and

- b. Upon entrance into a housing area (wing/pod/cellblock), the I-216 shall be used.
2. All non-uniformed staff, contract employees, and volunteers shall be accompanied by a security staff at all times within the wings/pods/cellblocks.
  3. Written special orders specific to offender movement within each segregation area on each unit shall be attached to the unit post orders. The procedures outlined in these post orders and special orders shall be followed at all times.
  4. Each segregation area shall be equipped with the necessary construction modifications (security screening, food tray slots).
  5. Any offender worker entering or departing the segregation housing area (wing/pod/cellblock) shall be strip-searched. While within the segregation area the offender shall be kept under direct supervision at all times.

#### H. WEEKLY INSPECTIONS

A Senior Administrative Staff member (Warden, Assistant Warden, or Major) shall conduct weekly inspections of the Administrative Segregation activities and areas including housing. They are responsible for initiating any corrective actions as appropriate.

### V. REVIEW PROCEDURES AFTER INITIAL PLACEMENT

All Administrative Segregation hearings shall be documented on the appropriate form and maintained in the offender's Classification folder.

#### A. REVIEW PROCEDURES BY THE UNIT ASC

1. All offenders initially placed in Administrative Segregation (except for PHD/Temporary Detention) shall be afforded an initial hearing within seven (7) days and shall undergo a subsequent paper review by the ASC every seven (7) days for the first two months, and at least every 30 days thereafter. These reviews shall be documented on the I-203 Form.
2. The ASC shall review offenders assigned to Level III every 30 days for any major disciplinary infractions involving assaultive or aggressive behavior. If there are none, the offender shall be promoted to Level II.
3. Within 90 days of the initial hearing, the ASC shall review offenders assigned to Level II for major disciplinary infractions. If there are none, a Level II offender shall be promoted to Level I. Subsequent review hearings shall be held within 30 days of the previous ASC hearing. Once a Level II offender maintains a clear major disciplinary record for a period of 90 continuous days, he shall be promoted to Level I.



4. Offenders need not be present at the subsequent 7/30 day reviews unless it is deemed appropriate by the ASC.
5. The offender shall be notified in writing within 24 hours of any decision made by the ASC.
6. At the subsequent 7/30 day reviews, the ASC shall consider the offender for promotion in time earning status if eligible; possible change in level; or recommend release from Administrative Segregation. If the offender is on any type of restriction (i.e., paper gown, paper mask, property restriction, food loaf), the ASC shall also review the offender for continuation or removal of the restriction. Units may elect to use the I-206, Restriction Tracking Log, but it is not required.
7. Recommendations for promotion in class shall be made to the SCC by the ASC and should be based on the same criteria that are used for consideration of offenders in the general population (see AD-04.81, "Review Process for Promotion in Time-Earning Class"). These recommendations may be coordinated to coincide with a regularly-scheduled review at which time an SCC member shall be present as a member of the reviewing committee. However, offenders must be reviewed and considered for promotion upon maintaining a clear conduct record for 12 months (i.e., an offender must be reviewed after 12 months from the offender's most recent major disciplinary conviction). Promotion boundaries for offenders shall be as follows:
  - a. Security Detention - An offender shall not be promoted above the time-earning status of SAT IV.
  - b. Protective Custody - An offender shall not be promoted above the time-earning status of SAT III.
8. Subsequent determinations regarding Level I, Level II, or Level III designation during the offender's confinement in Administrative Segregation may be made by the Warden, Assistant Warden, Major or Administrative Segregation supervisor or any regularly scheduled classification committee. All such decisions made by an individual shall be affirmed or denied by the ASC.
9. When a more restrictive level is warranted, the classification docket and the I-203 shall reflect the safety or security reasons for the change in level.
10. A subsequent review by the ASC for a change in an offender's level neither requires notification to nor confirmation by the SCC.
11. All decisions made by the ASC shall be documented on the SSP-109 Form, "Classification Docket." Each section/column of the docket shall be documented completely and accurately.

12. Current Administrative Segregation levels and subsequent review dates shall be entered on UC00 Screen 1.

**B. REVIEW PROCEDURES BY THE SCC**

1. Within sixty (60) days of the initial 7-day hearing, the offender's status shall be reviewed by the SCC and their decisions documented on the I-189.
  - a. The unit shall notify Classification and Records to schedule hearings;
  - b. The SCC shall consist of a representative of the SCC, the Warden or designee, and other staff as deemed appropriate; and
  - c. The 60-day SCC review will not be necessary for STG members.
2. Subsequent classification review hearings by the SCC shall be held within 180 days of the previous hearing, except for STG offenders who shall be reviewed annually by the SCC. The subsequent hearing shall also be documented on an I-189.
3. An offender shall receive notice no more than two (2) weeks, and not less than 24 hours, before the SCC review hearing. Such notice shall specify any reasons, of which the offender would not otherwise have reason to know, being considered as justifying continued segregation. The offender shall have the right to attend the hearing (unless the offender presents a threat to the security of offenders or staff by attending the hearing -- in these situations, an explanation should be noted on the SCC documentation), to make a statement, submit written statements from witnesses and submit other documentary evidence. If the offender refuses to attend, the hearing may be held in his absence.
4. Based on the evidence presented at the SCC hearings and the criteria for release, the SCC shall determine whether reasons for the offender's continued segregation exist. If the SCC determines that the offender should remain in segregation, it shall further determine whether any of the conditions or restrictions imposed should be changed or if the offender's level should be changed. The decision of the SCC member to maintain the offender's current Administrative Segregation level or release the offender to general population shall prevail, unless the unit administration decides to appeal the SCC's decision through the DRB process.
5. The SCC shall provide the offender with a written decision after the review hearing, stating the reasons for the decisions and summarizing the information presented and considered.



## C. HEARING TEMPORARILY SUSPENDED

If an offender departs his unit of assignment, (e.g., due to medical, bench warrant, or any other similar situation) the hearing schedule shall be temporarily suspended. Upon the offender's return to his unit of assignment, the hearing schedule shall resume. The Administrative Segregation Supervisor shall not consider any of the time that the offender was absent from the unit when calculating the offender's next classification committee review date (7-day, 30-day, 60-day or 180-day review). The Committee conducting the review hearing (i.e., the ASC or the SCC) shall document the reason the hearing was delayed.

## VI. RECOMMENDATIONS FOR RELEASE

## A. SECURITY THREAT GROUP OFFENDERS

Release of STG offenders from Administrative Segregation shall be in accordance with the *Security Threat Group Plan*.

## B. GENERAL PROCEDURES

1. The ASC may make recommendations to the SCC for removal of an offender from Administrative Segregation who is between routine SCC reviews.
2. When considering the release of an Administrative Segregation offender to the general population, the SCC shall base their decision on whether the offender would still be:
  - a. A current escape risk;
  - b. A physical threat to staff or other offenders;
  - c. A threat to the order and security of the institution as evidenced by repeated, serious disciplinary violations; or
  - d. If in Protective Custody, and still requires protection due to threat of harm by others.
3. In assessing the above criteria, the SCC shall consider the following factors relating to the offender's behavior while in Administrative Segregation:
  - a. Any disciplinary violations, including seriousness and frequency;
  - b. Medical evaluations;
  - c. Relationships with other offenders and staff;

- d. Participation in ~~201~~ programs in which the offender is entitled to participate; and
  - e. The offender's expressed desire to remain in, or his stated readiness to be released from Administrative Segregation.
4. If the offender is released from Administrative Segregation by the SCC, he shall appear before the UCC for a determination of the offender's custody level.

C. YOUTHFUL OFFENDERS

Youthful offenders housed in Administrative Segregation shall be reviewed in accordance with the *Classification Plan* by the SCC to determine if the offender shall remain in Administrative Segregation. The YOP Director or designee shall be present at the review.

**VII. APPEAL PROCESS**

- A. The offender shall have the right to appeal the decisions of the ASC and SCC as outlined in the Offender Grievance Procedures.
- B. A warden may challenge an SCC decision by making an appeal to the DRB. The offender's status shall remain unchanged until the DRB hears the appeal and renders a decision.



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**TEXAS DEPARTMENT OF CRIMINAL JUSTICE**  
**Administrative Segregation Reference Chart**

Level	Classification Boundaries	Conditions
<b>SECURITY DETENTION</b>	I Offenders in Security Detention shall be subject to the following classification boundaries: (a) Ineligible for promotion above the time-earning class of SAT IV; (b) Ineligible for contact visits; however, may have one 2-hour non-contact visit each week; (c) Ineligible for an emergency absence; (d) Ineligible for job assignment or for participation in educational programs; (e) Requires constant armed supervision outside the security perimeter, and requires escort to and from activities outside his assigned cell; and (f) Must be housed in a single cell specifically designated for housing Security Detention offenders.	(a) Out-of-cell recreation (scheduled at Warden's discretion): → One hour 7 days a week; or → Two hours 5 days a week. (b) Meals – regular food tray. (c) Commissary – allowed \$60 every 2 weeks. Allowed special purchase items. (d) Property – basic list items; plus additional items generally available to GP. (e) Provided opportunity to shower 7 days a week. (f) May have access to in-cell programs that are consistent with security requirements. Only allowed materials available through the commissary. (g) Shall have access to counselors, chaplains, and to medical care.
	II Same as Level I – Security Detention, except for: (b) Ineligible for contact visits; however, may have two 2-hour non-contact visits each month.	(a) Out-of-cell recreation – → One hour 5 days a week. (b) Meals – regular food tray. (c) Commissary – allowed one each of personal hygiene items and a maximum of \$10 in correspondence supplies every 2 weeks. (d) Property – basic list items; plus approved personal hygiene items.
	III Same as Level I – Security Detention, except for: (b) Ineligible for contact visits; however, may have one 2-hour non-contact visit each month.	(a) Out-of-cell recreation – → One hour 5 days a week. (b) Meals – regular food tray. (c) Commissary – allowed one each of personal hygiene items and a maximum of \$10 in correspondence supplies every 2 weeks. (d) Property – basic list items; plus approved personal hygiene items.
<b>PROTECTIVE CUSTODY</b>	I Offenders in Protective Custody shall be subject to the following classification boundaries: (a) Ineligible for promotion about the time-earning class of SAT III; (b) Eligible for contact visits, may have up to three-two hour contact visits each month; (c) Ineligible for an emergency absence; (d) Ineligible for a job assignment or for participation in educational programs; (e) Requires constant armed supervision outside the security perimeter, and requires escort to and from activities outside his assigned cell; and (f) Must be housed in a single cell specifically designated for housing Protective Custody offenders.	(a) Allowed to group recreate. (b) Able to view television programs. (c) Meals – regular food tray. (d) No difference on commissary spend from G1, G2, or G3. (e) No difference on property from G1, G2, or G3. (f) The determination of need for restraints shall normally be made by the unit official or ASC that authorizes initial placement into Ad Seg and reviewed by an ASC during subsequent reviews. This use of restraints shall be considered routine and shall not constitute a Use of Force unless the offender resists the placement of restraints. (g) Provided opportunity to shower 7 days a week. (h) May have access to in-cell programs that are consistent with security requirements. Only allowed materials available through the commissary. (i) Shall have access to counselors, chaplains, and to medical care.
	II Same as Level I – Protective Custody, except for: (b) Ineligible for contact visits; however, may have two 2-hour non-contact visits each month.	(a) Out-of-cell recreation – → One hour 5 days a week. (b) Meals – regular food tray. (c) Commissary – allowed one each of personal hygiene items and a maximum of \$10 in correspondence supplies every 2 weeks. (d) Property – basic list of items; plus approved personal hygiene items.
	III Same as Level I – Protective Custody, except for: (b) Ineligible for contact visits; however, may have one 2-hour non-contact visit each month.	(a) Out-of-cell recreation – → One hour 5 days a week. (b) Meals – regular food tray. (c) Commissary – allowed one each of personal hygiene items and a maximum of \$10 in correspondence supplies every 2 weeks. (d) Property – basic list of items plus approved personal hygiene items.



TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Administrative Segregation (Ad Seg)

Initial Placement & Notification

I. OFFENDER / HOUSING INFORMATION

Instructions: Unit staff shall complete Section I for all offenders initially placed in Administrative Segregation (except for PHD and Temporary Detention), and provide the form intact to the Warden (or designee).

Offender Name: \_\_\_\_\_ TDCJ No.: \_\_\_\_\_ Time-earning Status: \_\_\_\_\_ Custody: \_\_\_\_\_
Unit: \_\_\_\_\_ Cellblock/Pod: \_\_\_\_\_ Row/Section: \_\_\_\_\_

II. PLACEMENT IN AD SEG

Instructions: The Warden (or designee) recommends placement of an offender into Ad Seg and shall place a checkmark to note whether it is Security Detention or Protective Custody.

a. It is recommended that the above-named offender be placed in Ad Seg for the following reason(s) [check either Security Detention or Protective Custody, whichever applies]:

- SECURITY DETENTION (check each of the following that apply):
1. Current Escape Risk.
2. Threat to the physical safety of others and/or the order and security of the institution.
3. Confirmed member of a Security Threat Group (STG).

PROTECTIVE CUSTODY -- Protection from threat of harm by others.

b. SPECIFY IN DETAIL the nature of the risk or threat. Additionally, if #2 is checked the specific disciplinary violations must be cited.

c. Offender confined in Administrative Segregation: Prior to Notice? Yes No; -OR- Prior to Hearing? Yes No

If 'yes', provide date and time of placement in Administrative Segregation: (Date) (Time)

d. Placement recommended by: (Print Name) (Rank / Title)
(Signature) (Date)

III. OFFENDER NOTIFICATION

Instructions: Staff shall notify the offender of the Ad Seg Committee hearing date, which shall be held within seven (7) days of this notice, or within seven (7) days of the offender's placement in Ad Seg -- whichever comes first. The staff member making notification shall ask the offender: if witness(es) are requested -- and if so, provide their name(s); and whether the offender wishes to present documentary evidence. Staff shall then: complete the required information below; request the offender to sign (if offender refuses, document the refusal); and provide the offender a copy of the completed document.

a. Offender Notified: (Date) (Time); By: (Print Name and Rank/Title)

b. Was certified interpreter used? Yes N/A; If 'yes', provide (print) name:

c. Witness(es) Requested? Yes No; If 'yes', provide names:

d. Offender wishes to present documentary evidence? Yes No

(Offender's Signature)

(Signature of Staff making notification)

TEXAS DEPARTMENT OF CRIMINAL JUSTICE  
*Administrative Segregation (Ad Seg)*

**Initial Hearing Record**

**I. OFFENDER INFORMATION**

**Instructions:** The Unit Classification Staff / Ad Seg Clerk shall complete Section I and, on the day of the hearing, ensure this form (I-169A) and the following documents are available to the Ad Seg Committee (ASC): travel card; offender file; necessary computer screens; and appropriate forms (I-169 and I-201).

Offender Name \_\_\_\_\_ TDCJ # \_\_\_\_\_ Unit \_\_\_\_\_

SEGREGATION CATEGORY ( one):  Security Detention;  Protective Custody

**II. HEARING**

**Instructions:** The ASC shall complete Section II to document the hearing.

a. Hearing Information: \_\_\_\_\_; Was the offender present? Yes  No   
(Date) (Time)

b. Was certified interpreter used? Yes  N/A ; If 'yes', provide (print) name: \_\_\_\_\_

c. Was the offender excluded from the hearing during the taking of evidence? Yes  No

If 'yes', provide the reason(s): \_\_\_\_\_

Offender Statement: \_\_\_\_\_

Did offender provide a written statement?  Yes  No; (If 'yes', it must be attached).

d. If witness(es) requested, were any or all excluded? Yes  No  N/A

If 'yes', provide the reason(s): \_\_\_\_\_

Witness statement: \_\_\_\_\_

e. If documentary evidence was presented, was it excluded? Yes  No  N/A

If 'yes', provide the reason(s): \_\_\_\_\_

**(NOTE: Attach documentary evidence, even if excluded.)**

**III. COMMITTEE RECOMMENDATION**

**Instructions:** The ASC shall complete Section III to document their recommendation following the hearing.

a. The ASC recommends that the offender be ( one):  Confined to Ad Seg (followed by E-mail to BOC); or  
 Released to General Population (must be reviewed by UCC).

b. If confinement to Ad Seg is recommended, note the Level ( I;  II; or  III) and provide evidence relied upon/reason(s) for such confinement: \_\_\_\_\_

c. Special conditions or restrictions required for security purposes: \_\_\_\_\_

d. ASC Committee Members (Print Name & Rank/Title / Sign initials): \_\_\_\_\_  
\_\_\_\_\_ ; and \_\_\_\_\_

**IV. OFFENDER NOTIFICATION**

**Instructions:** To notify the offender, staff shall: complete the required information below; request the offender to sign (if offender refuses, document the refusal); and provide the offender a copy of the completed document.

Offender Notified: \_\_\_\_\_; By: \_\_\_\_\_  
(Date) (Time) (Print Name and Rank/Title)

\_\_\_\_\_  
(Offender's Signature)

\_\_\_\_\_  
(Signature of Staff making notification)



**TEXAS DEPARTMENT OF CRIMINAL JUSTICE**  
**Pre-Hearing Detention Log**  
 Unit \_\_\_\_\_

**Instructions:** To be placed in PHD, an offender must be charged with, or suspected of, a disciplinary violation AND satisfy at least one of the three placed in PHD criteria below.

- 1 = Escape risk; 2 = Threat to physical safety of other offenders or staff; or 3 = Maintain integrity of investigation [i.e., preserve offender's, or another offender's, possession.
- If an offender in PHD temporarily departs the unit (e.g., medical reasons, bench warrant, etc), the 'date out' must be entered. Upon offender's return, the 'date out' must be made for 'placed in PHD (date/time) and the time in PHD picks up where it left off (the time away from the unit is not calculated against the offender's time in PHD).
- NOTE: An offender shall not be placed in PHD if he is solely being reviewed for protection (Life endangerment) or is suspected of ST...

Placed in PHD		Offender Name	TDCJ No.	Reason for Placement		Authorizing Official <small>(Lieutenant or above; Print name &amp; Sign initials)</small>	Date Out
Date	Time			Criteria Code	Violation <small>(Briefly describe or provide Offense Code)</small>		

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TEXAS DEPARTMENT OF CRIMINAL JUSTICE  
State Classification Committee (SCC)  
Administrative Segregation (Ad Seg)  
Review Hearing Record

I. OFFENDER INFORMATION

**Instructions:** Unit Staff shall: complete Section I.a. thru d.; and notify the offender at least 24 hours, and no more than two weeks, prior to the Ad Seg Hearing. Staff shall read the 'notification' in Sect. I.d. to the offender and have the offender sign in Sect. I.e. (if offender refuses, document the refusal). On the hearing date, unit staff shall ensure this form (I-189) and the following documents are available to the SCC: travel card; offender file; necessary computer screens; and appropriate forms (I-169, I-169A and I-201).

- a. Offender Name \_\_\_\_\_ TDCJ # \_\_\_\_\_ Unit \_\_\_\_\_
- b. Current Segregation Category [ either Security Detention or Protective Custody, whichever applies]:
- SECURITY DETENTION ( each of the following that apply):
1. \_\_\_ Current Escape Risk.
  2. \_\_\_ Threat to the physical safety of others and/or the order and security of the institution.
  3. \_\_\_ Confirmed member of a Security Threat Group (STG).
- PROTECTIVE CUSTODY -- Protection from threat of harm by others.
- c. Type of hearing ( appropriate one):  60-day Hearing;  180-day Hearing;  Annual Hearing (STG ONLY)
- d. Offender Notification [Read (at >) to the offender; do not provide a copy]:
- NOTE: Was certified interpreter used?  Yes  N/A; If 'yes', who? (print name): \_\_\_\_\_
- > "You will be scheduled for an Ad Seg Hearing during the week of \_\_\_\_\_. You have the right to attend the hearing, to make a statement, to submit written statements from witnesses, and to submit other documentary evidence."
- e. Offender Notified: (Date) \_\_\_\_\_ (Time) \_\_\_\_\_; By (Print Name/Rank): \_\_\_\_\_
- Offender Signature: \_\_\_\_\_; Staff Signature: \_\_\_\_\_

II. HEARING

**Instructions:** An SCC member (or designee) shall complete Section II to document the hearing and evidence presented/considered.

- a. Hearing Date / Time: On \_\_\_\_\_, at \_\_\_\_\_; Was offender present?  Yes  No
- b. Was certified interpreter used?  Yes  N/A; If 'yes', who? (print name): \_\_\_\_\_
- c. Was the offender excluded from the hearing during the taking of evidence? Yes  No
- If 'yes', provide the reason(s): \_\_\_\_\_
- d. Offender Statement: \_\_\_\_\_
- Did offender provide a written statement?  Yes  No; (If 'yes', it must be attached).
- e. If witness(es) requested, were any or all excluded?  Yes  No  N/A; If 'yes', provide the reason(s): \_\_\_\_\_
- Witness statement: \_\_\_\_\_
- f. If documentary evidence was presented, was it excluded?  Yes  No  N/A; If 'yes', provide the reason(s): \_\_\_\_\_
- (NOTE: Attach documentary evidence, even if excluded.)
- g. Interview with Offender:
- Disciplinary Violations: \_\_\_\_\_
  - Medical Evaluations: \_\_\_\_\_
  - Offender/Staff Interaction: \_\_\_\_\_
  - Program Participation: \_\_\_\_\_
  - Psychiatric Evaluations: \_\_\_\_\_
  - Offender Request: \_\_\_\_\_
  - Other: \_\_\_\_\_

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TEXAS DEPARTMENT OF CRIMINAL JUSTICE

**State Classification Committee (SCC)**  
**Administrative Segregation (Ad Seg)**  
**Review Hearing Record**

Cont'd.

III. COMMITTEE DECISION

**Instructions:** The SCC designee shall complete Section III to document the Committee decision and the basis for it.

a. **SUMMARY of the basis for Committee Decision:**

- |   |  |
|---|--|
| <input type="checkbox"/> Escape Risk (ES)             | <input type="checkbox"/> Riot Participation  |
| <input type="checkbox"/> History of Multiple Assaults | <input type="checkbox"/> Extortion Activity  |
| <input type="checkbox"/> Offender Assaultive          | <input type="checkbox"/> Sexually Assaultive   |
| <input type="checkbox"/> Staff Assaultive (SA)        | <input type="checkbox"/> Serious Bodily Injury   |
| <input type="checkbox"/> Hostage Taker (HS)           | <input type="checkbox"/> Confirmed STG _____   |
| <input type="checkbox"/> Defeats Restraints (SR)      | <input type="checkbox"/> Multiple Ad Seg Placements                                      |
| <input type="checkbox"/> Weapons Possession (WP)      | <input type="checkbox"/> Unresolved Felony Charges (pertaining to current Ad Seg Status) |
| <input type="checkbox"/> Other (Specify): _____       |  |

b. **DISPOSITION** -- The offender shall (✓one):

- Remain on current status until \_\_\_\_\_.
- Promote to: \_\_\_\_\_.
- Be released to General Population (Note recommended Custody \_\_\_\_\_);
- By transfer?  Yes;  No; If 'yes', note the Unit: \_\_\_\_\_.

c. **SPECIAL CONDITIONS OR RESTRICTIONS** required for security purposes: \_\_\_\_\_

d. **REFERRALS** (✓if any):  Medical Department;  Psychiatric Department;  STG Officer;  Other (Specify): \_\_\_\_\_

e. Attended by the following staff (Print Name/Rank/Title/Sign initials below): \_\_\_\_\_  
(SCC Representative)\*

\_\_\_\_\_; and \_\_\_\_\_  
(Warden or designee) (Other Staff, as deemed appropriate)

➤ \* Was the SCC Representative connected via telephone?  Yes;  No

IV. OFFENDER NOTIFICATION OF DECISION

**Instructions:** Staff making notification to the offender shall: complete this section; and, provide the offender (either in person, or via truck mail) the "pink" copy of this completed hearing record. (NOTE: If offender is not present at the hearing, the staff making notification will generally be completing this section with only the "canary" and "pink" copies of the form – as the SCC will keep the original following the hearing).

Offender Notified by: \_\_\_\_\_; Staff Signature/Date: \_\_\_\_\_  
(Print Name & Rank/Title)

<b>TEXAS DEPARTMENT OF CRIMINAL JUSTICE</b> <b>Segregation Confinement Record</b> Unit: _____	<b>SECURITY PRECAUTION DESIGNATOR(S)</b> <i>Instructions: Place a ✓ beside (and highlight)</i> <input type="checkbox"/> Escape Risk (ES) <input type="checkbox"/> Hostage Taker (HS)
---	---

**I. PLACEMENT INFORMATION**

*Instructions: A separate I-201 shall be initiated for each offender and maintained in cell order. Immediately prior to the actual placement of an offender in authorizing the segregation shall initiate the I-201 by fully completing Section I. Placement Information.*

Offender Name: \_\_\_\_\_ TDCJ Number: \_\_\_\_\_ Race: \_\_\_\_\_ Date Assigned: \_\_\_\_\_

<p align="center"><b>SEGREGATION CATEGORY</b></p> <p><b>CHECK ONLY ONE:</b></p> <p><input type="checkbox"/> Pre-Hearing Detention</p> <p><input type="checkbox"/> Security Detention</p> <p><input type="checkbox"/> Protective Custody</p> <p><input type="checkbox"/> Temporary Detention</p> <p><input type="checkbox"/> ♦ Solitary (<i>White form; Levels do not apply</i>)</p> <hr/> <p><b>CHECK ONLY ONE:</b></p> <p><input type="checkbox"/> LEVEL I (<i>Blue form</i>)</p> <p><input type="checkbox"/> LEVEL II (<i>Yellow form</i>)</p> <p><input type="checkbox"/> LEVEL III (<i>Orange form</i>)</p>	<p align="center"><b>SPECIAL CONDITIONS / RESTRICTIONS</b></p> <p><i>Instructions: Complete all blanks for recreation, Security Threat Group (STG) affiliation, the specific information, or "none"; complete restriction sections, if applicable.</i></p> <p>Recreation/Exercise: _____ Date/Time Restricted _____</p> <p>STG Affiliation: _____</p> <p>Special Medical Conditions: _____</p> <p>Other Special Conditions: _____</p> <p><b>PROPERTY RESTRICTIONS:</b></p> <p>→ Circle (see Key below): CON HP LK ME PT</p> <p>→ Other Property Restrictions (<i>List</i>): _____</p> <p><b>MANAGEMENT STATUS RESTRICTIONS:</b></p> <p>→ Property (e.g., mattress, blankets, sheets, etc.) _____</p> <p>→ Paper Mask _____</p> <p>→ Paper Gown _____</p> <p>→ Food Loaf _____</p> <p>→ Solid Outer Door _____</p> <p>→ Water Interruption _____</p> <p>→ Restraints _____</p>
---	---

**II. ACTIVITY RECORD**

*Instructions: The segregation officer shall make the first entry in Section II. Activity Record, by recording the cell assignment for the offender. Thereafter when an offender: does not receive some form of routine activity; departs from/returns to the cellblock; requests solid outer door closure; inappropriate behavior; or undergoes ASC action/reviews.*

Assigned Cell	Date	Time	√ Each Routine Activity <u>not</u> received			Cell Cleanliness (See Key Below)	Remarks (Note other non-routine out-of-cellblock activity, clarify other entries, noteworthy comments, Mgmt. Status, etc.)	UCC / ASC Committed Action
			Shower	Recreation	Meal B - L - S			

<b>Property Restriction Codes:</b> CON = Container HP = Hard Plastic LK = Lock	<b>Meal Codes:</b> B = Breakfast L = Lunch S = Supper	<b>Cell Cleanliness Codes:</b> B = Bunk (not used for intended purpose, cluttered, etc) C = Cell front (covered, obstructed, etc.) F = Floor (dirty, cluttered, etc.)	N = Necessities P = Property (a...) T = Toilet (dirty...) W = Walls/Win...
---	--	--	---

Page # \_\_\_\_\_ (Number must be sequential; for 'fronts' of pages -- 1; then 3; then 5; etc.)



II. ACTIVITY RECORD

Assigned Cell	Date	Time	√Each Routine Activity <u>not</u> received				Cell Cleanliness (See Key Below)	Remarks <i>(Note other non-routine out-of-cellblock activity; clarify other entries, noteworthy comments, Mgmt. Status, etc.)</i>	UCC / A Commit Action
			Shower	Recreation	Meal B - L - S				

Cell Cleanliness Codes:

B = Bunk (not used for intended purpose, cluttered, etc.)  
 C = Cell front (covered, obstructed, etc.)  
 F = Floor (dirty, cluttered, etc.)

N = Necessities (altered, soiled, etc.)  
 P = Property (altered, improperly stored, excess)  
 T = Toilet (dirty, plugged, etc.)

W = Walls/Window (dirty)

Page # \_\_\_\_\_ (Number must be sequential for 'backs' of pages – 2; then 4; then 6; etc.)

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

**Placement on Restriction**

**Ad Seg Level Review**

*(Ad Seg Offenders ONLY)*

**I. OFFENDER INFORMATION**

Offender Name: \_\_\_\_\_; TDCJ Number: \_\_\_\_\_; Custody: \_\_\_\_\_; Unit: \_\_\_\_\_

**II. PLACEMENT ON RESTRICTION (Initial Placement ONLY)**

**Instructions:** The highest-ranking supervisor on duty has the authority to initially place an offender on restriction. The shift supervisor (may be the same individual) shall document the placement in Sections I. and II. of this form; and then notify the Unit Classification Committee (UCC) or the Administrative Segregation Committee (ASC) – by providing them this form intact.

a. As of (date) \_\_\_\_\_, at (time) \_\_\_\_\_, the above-named offender has been placed on restriction, in accordance with SM-01.29, Offender Management Restrictions. [NOTE: Place a ✓ in front of each restriction imposed]:

\_\_\_ Paper gown;      \_\_\_ Paper mask;      \_\_\_ Food loaf

\_\_\_ Personal property (i.e., container; hard plastic; lock; metal; hotpot; etc.)

• List specific property restricted: \_\_\_\_\_

\_\_\_ State-issued property (i.e., mattress; blanket; sheet; etc.)

• List specific property restricted: \_\_\_\_\_

b. Reason for Placement: \_\_\_\_\_

c. Documented by: \_\_\_\_\_

(Print Name & Rank/Title)

(Signature/Date)

➔ The restriction(s) may only continue up to 24 hours without review by the UCC/ASC (or until their earliest following workday).

**III. UCC / ASC REVIEW**

**Instructions:** This section shall be utilized for both UCC and ASC reviews. If the form is being utilized for a \*subsequent review, the Committee must ensure Section I (Offender Information) is completed and have the previous I-203 available for review.

a. **REVIEW:** (✓one)  Initial;  \*Subsequent; Review held on \_\_\_\_\_ at \_\_\_\_\_ by the (✓ one)  UCC;  ASC.  
(Date) (Time)

b. **Type of Review:**  Restriction;  7-day;  30-day;

c. **RESTRICTIONS:** The UCC/ASC has reviewed the offender's record and has decided to either impose, continue, or discontinue restrictions, as noted below:

- Paper gown?  YES;  NO      Review/Expiration Date: \_\_\_\_\_

- Food loaf?  YES;  NO      Review/Expiration Date: \_\_\_\_\_

- Personal property?  YES;  NO      Review/Expiration Date: \_\_\_\_\_

• List specific property restricted: \_\_\_\_\_

- State-issued property?  YES;  NO      Review/Expiration Date: \_\_\_\_\_

• List specific property restricted: \_\_\_\_\_

d. **LEVELS (To be completed for Ad Seg offenders ONLY):**

Pursuant to the Administration Segregation Plan, the offender is assigned to Level (✓ one):  I;  II; or  III

e. Justification for Decision(s): \_\_\_\_\_

f. Committee Members (Print Name & Rank/Title/Sign Initials): \_\_\_\_\_

\_\_\_\_\_ ; and \_\_\_\_\_

**IV. OFFENDER NOTIFICATION**

**Instructions:** Staff shall: notify the offender that the UCC/ASC decision will expire on the date indicated or be reviewed for continuation; request the offender to sign (if offender refuses, document the refusal); and provide the offender a copy of the completed document.

Notified by: \_\_\_\_\_

(Employee -- Print Name & Sign Initials)

(Offender Signature & Date)



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TEXAS DEPARTMENT OF CRIMINAL JUSTICE  
**Referral To Mental Health Services**

→ **NOTE: For emergencies, contact a Security Supervisor and the Mental Health or Medical Department immediately by telephone or in person.**

**I. OFFENDER / HOUSING INFORMATION**

**Instructions:** Unit staff shall complete Sections I and II for any offender they believe is exhibiting extreme or unusual behavior.

Offender Name: \_\_\_\_\_ TDCJ No.: \_\_\_\_\_ Custody: \_\_\_\_\_

Unit: \_\_\_\_\_ Cellblock/Pod: \_\_\_\_\_ Row/Section: \_\_\_\_\_

**II. REASON FOR REFERRAL**

**Instructions:** Complete this section by placing a ✓ by each that apply in Section II.a. Sign and date Section II.b. and place the completed form intact in any 'Sick Call Box'.

a. The above offender is being referred to Mental Health Services for the following reason(s):

- |   |  |
|---|--|
| <input type="checkbox"/> Foul body odor; Has not showered for several days                            | <input type="checkbox"/> Has been crying, laughing, and/or talking to self                   |
| <input type="checkbox"/> Messy appearance; Not shaving or cutting hair                                | <input type="checkbox"/> Seems paranoid, anxious, fearful                                    |
| <input type="checkbox"/> Dirty cell; Presence of food, feces, urine, or blood                         | <input type="checkbox"/> Says s/he is being spied on; Monitored by satellites or computers;  |
| <input type="checkbox"/> Has not eaten meals for one or more days                                     | <input type="checkbox"/> Thinks the food is poisoned; There is a plot against him/her        |
| <input type="checkbox"/> Has not left the cell for several days                                       | <input type="checkbox"/> Is preoccupied with religion; Says s/he is a prophet, Jesus, or God |
| <input type="checkbox"/> Does not communicate or is hostile for no apparent reason                    | <input type="checkbox"/> Seems withdrawn, depressed; Has been crying                         |
| <input type="checkbox"/> Seems to have changed significantly from his/her normal behavior or attitude |  |
| <input type="checkbox"/> Other (Specify): _____   |  |

b. Referral made by (Print Name & Rank/Title): \_\_\_\_\_  
(Signature) \_\_\_\_\_ (Date) \_\_\_\_\_

**III. MENTAL HEALTH STAFF RESPONSE TO REFERRAL**

**Instructions:** Mental Health Staff shall complete Section III and place the original in the offender's Medical Record, and forward the copy to the Warden's Office for review and placement in the offender's unit file.

- a. As a result of this Referral, the above-named offender was evaluated on (Date) \_\_\_\_\_.
- b. The offender is in need of transfer to a psychiatric inpatient facility:  Yes;  No. (If 'yes', skip Section III.c.)
- c. It was determined at the time of the evaluation that (✓ one):
- These problems are related to the offender's mental condition; Mental Health Services staff is currently addressing the problems.
  - The offender will be scheduled for further evaluation to determine if s/he may be experiencing mental problems.
  - The offender does not appear to be experiencing mental problems at this time.

**NOTE:** Should staff observe that the offender's extreme or unusual behavior continues, or appears to worsen, please make another referral to Mental Health Services.

d. Response provided by (Print Name / Title): \_\_\_\_\_  
(Signature) \_\_\_\_\_ (Date) \_\_\_\_\_

**IV. WARDEN ACKNOWLEDGEMENT**

**Instructions:** The Warden or designee shall acknowledge (by signature below) receipt/review of this Referral and Mental Health Services' Response. The form shall then be filed in the offender's unit file.

Acknowledged by (Print Name & Rank/Title): \_\_\_\_\_  
(Signature) \_\_\_\_\_ (Date) \_\_\_\_\_

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Restriction Tracking Log

Unit: \_\_\_\_\_

*Instructions: Use of this form is optional. (NOTE: Its use is helpful at units with a large segregated offender population.)*

Offender (Print Name/TDCJ #)	Restriction(s) (see codes below)	Month/Year: _____																						
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23

**Restriction Codes:**

- Paper Gown = G
- Paper Mask = M
- Food Loaf = FL

Property = CON; HP; LK; ME; PT

State-issued Property (e.g., mattress, blankets, sheets, lighting, or any other similar type items) = SIP

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

**Daily Activity Log**

**I. HOUSING AREA**

**Instructions:** A separate form is to be completed for each status. On the left, enter the date and location information. Place a ✓ in the blank beside the appropriate status and complete additional information for Management Status and Lockdowns. (NOTE: Refer to appropriate Directive or Plan [noted in brackets] for required activities.)

Date: \_\_\_\_\_

Unit: \_\_\_\_\_

Cellblock/Pod: \_\_\_\_\_

Row/Section: \_\_\_\_\_

Administrative Segregation [Ad Seg Plan]

Solitary [AD-03.53]

Management Status ( \_\_\_\_\_ Ad Seg; \_\_\_\_\_ Solitary) [AD-03.80]

Lockdown (Incident # \_\_\_\_\_ ; Week # \_\_\_\_\_ ; # of Offenders \_\_\_\_\_) [AD-03.31]

**II. ROUTINE ACTIVITIES**

	Time		IF OFFENDER(S) DID NOT RECEIVE, NOTE EXCEPTIONS <i>(Instructions: For Ad Seg, Solitary, or Management Status – use cell number; for Lockdown Status – use offender number.)</i>	Officer <i>(Print last name; Sign initials)</i>
	Start	Finish		
Breakfast (B)				
Lunch (L)				
Supper (S)				
Showers				
Recreation				
Necessities				

**III. CELL CLEANLINESS INSPECTIONS**

Time of Inspection:	NOTE VIOLATIONS <i>(Instructions: For Ad Seg, Solitary, or Management Status – note by cell number; for Lockdown Status – note using offender number.)</i>	
	Inspected by:	B = Bunk (used for intended purpose; no clutter, etc.)
C = Cell front (uncovered; unobstructed, etc.)		
F = Floor (clean, uncluttered, etc.)		
N = Necessities (unaltered, clean, etc.)		
P = Property (not altered; properly stored; no excess)		
T = Toilet (clean, not plugged, etc.)		
W = Walls/Windows (uncovered, clean, nothing posted, etc.)		

**IV. SECURITY CHECKS** *(If additional space is needed, record in Section V.)*

12:01 A to 8:00 A	Time																				
	Initial																				
8:01 A to 4:00 P	Time																				
	Initial																				
4:01 A to 12 Mid	Time																				
	Initial																				
Supervisor Checks	Time																				
	Name																				

**NOTE:** Record "Cell Block Activities (Staff, Volunteers, and Offenders)" on reverse side of form.

**V. CELLBLOCK ACTIVITIES (Staff, Volunteers, and Offenders)**

**Instructions:** *This section is to be used to document cellblock activity (i.e., commissary; haircuts; lay-ins; legal visits; mail; law library; work details; nurse visits/pill call; etc.), closure of solid outer door, as well as offender behavioral problems, etc.*

- *All persons shall present an identification card and be positively identified prior to entering/exiting the administrative segregation or locked-down area (NOTE: Non-uniform staff, contract and volunteers staff members shall be escorted by a security staff member at all times while in the wing, cellblock or pod);*
- *Each person shall complete the log below; Security staff shall complete the required information for any offender(s); and*
- *Any offender worker entering or departing the segregation area shall be strip-searched, and accompanied by staff (under constant, direct supervision) while in the area.*

Type of Activity, or Behavioral Problem	Time		Person (List each)		Comments	Staff Member (Print Last Name; Sign initials)
	In	Out	Print Name	Department/ TDCJ or Cell #		

## **EXHIBIT 5**



NO. 48950-0

STATE OF TEXAS § IN THE DISTRICT COURT  
VS. § 320th JUDICIAL DISTRICT  
TRAVIS TREVINO RUNNELS § POTTER COUNTY, TEXAS

ORDER

This Court has considered the defendant's ex parte request to appoint counsel to represent him in subsequent state writ proceedings, and that request is hereby:

( ) DENIED

GRANTED, and Janet Gilger-VanderZanden is appointed; Mark Pickett, having complied with Texas Government Code § 82.0361 and Rule 19 of the Rules Governing Admission to the Bar of Texas is also appointed pro hac vice.

SIGNED on this the 1st day of August, 2019.

  
\_\_\_\_\_  
Judge Presiding



# APPENDIX D

State's Motion to Dismiss First Subsequent Application for  
Post-Conviction Writ of Habeas Corpus, *Ex Parte Travis Trevino Runnels*,  
No. WR-46, 226-03, October 24, 2019

NO. WR-46,226-03  
TRIAL COURT NO. 48,950-D

EX PARTE

§ IN THE 320<sup>TH</sup>

RECEIVED  
COURT OF CRIMINAL APPEALS  
DISTRICT COURT  
10/24/2019  
DEANA WILLIAMSON, CLERK

§  
§ IN AND FOR

TRAVIS TREVINO RUNNELS

§  
§ POTTER COUNTY, TEXAS

§ AND IN THE COURT OF  
CRIMINAL APPEALS OF TEXAS

**STATE’S MOTION TO DISMISS FIRST SUBSEQUENT APPLICATION  
FOR POST-CONVICTION WRIT OF HABEAS CORPUS**

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

NOW COMES the State of Texas, by and through its 47<sup>th</sup> District Attorney Randall Sims, and moves the Court to dismiss applicant Travis Trevino Runnels’ First Subsequent Application for Post-Conviction Writ of Habeas Corpus. The State shows the following:

***I. The Basis for Relief Applicant Asserts in his Subsequent Application for Post-Conviction Writ of Habeas Corpus***

The State presented testimony from Special Prosecution Unit criminal investigator A.P. Merillat about the prison environment and the inmate classification system. Merillat testified a capital murder convict receiving a sentence of life imprisonment would automatically be classified as G-3, minimum/medium security.

*RR16: 106-07.* As a G-3 inmate, that capital murder convict would be in general

population with a cell-mate, who could have a lower G-2 or G-1 security classification, such as a DWI convict, Merillat explained. *RR16: 108*. The murder convict would have the G-3 classification a minimum of ten years, said Merillat, and would then be eligible for a lower security classification. *RR16: 107*.

Applicant points to the inaccuracy of Merillat's testimony, in light of then existing regulations and a TDCJ regulation becoming effective a few weeks before applicant's trial, as a compelling ground for habeas relief. Under the new regulation, applicant notes, a capital murder convict with a life sentence whose victim was a prison staffer could never achieve a classification lower than G-4; that convict would likely be housed in high-security administrative segregation, applicant asserts.

Merillat imparted the false impression applicant would have easy access to other inmates and staff if sentenced to life imprisonment, applicant says; that applicant thereby posed a significant risk to others unless sentenced to death, applicant posits, likely "weighed heavily on jurors' minds" *First Subsequent Application for Post-Conviction Writ of Habeas Corpus*, p. 26. Merillat's misleading testimony contributed to applicant's death sentence in violation of his Constitutional rights, applicant charges. *First Subsequent Application for Post-Conviction Writ of Habeas Corpus* pp. 32-33.

Applicant invokes two provisions under Article 11.071 Section 5(a) of our criminal procedural code as alternative theories for his alleged entitlement to habeas

relief:

(a) If a subsequent application for a writ of habeas corpus is filed after an initial application, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that:

(1) the current claims and issues have not been and could not have been presented previously in a timely initial application or in a previously considered application filed under this article or Article 11.07 because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application;

...

(3) by clear and convincing evidence, but for a violation of the United States Constitution no rational juror would have answered in the state's favor one or more of the special issues that were submitted to the jury in the applicant's trial under Article 37.071, 37.0711, or 37.072.

Tex. Code Crim. Proc. Ann. Art. 11.071 Sec. 5(a)(West Supp. 2018).

***II. Applicant Has Failed to Satisfy the Texas Code of Criminal Procedure Article 11.071 Section 5(a)(1) Prerequisites for a Subsequent Application***

To gain review of his subsequent application, applicant must show that the factual or legal basis for his new claim was not earlier available. Tex. Code Crim. Proc. Ann. Art. 11.071 Sec. 5(a)(1). Availability of the instant claim, applicant asserts, came only on June 24, 2019, when the United States Supreme Court denied certiorari in his last subsequent appeal from the denial of federal habeas relief. Applicant argues from a faulty premise. He could have much earlier presented in state court the claim he now raises.

The Court of Criminal Appeals has noted that unknowing false or misleading testimony as a basis for habeas relief became “available” with the Court’s holding in *Ex parte Chabot*, 300 S.W.3d 768 (Tex.Crim.App. 2009). See *Ex parte Chavez*, 371 S.W.3d 200, 205-06 (Tex.Crim.App. 2012). Then, the basis for relief applicant advances here has been available for almost ten years.

Applicant filed his initial application for writ of habeas corpus in the Court of Criminal Appeals on October 22, 2010.<sup>1</sup> In that application Merillat’s testimony was not made an issue. The Court of Criminal Appeals on March 7, 2012 denied habeas corpus relief.

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<sup>1</sup> Applicant filed his initial application with the Potter County District Clerk on September 18, 2007. The trial court made findings of fact and conclusions of law on October 5, 2010, and the application was docketed in the Court of Criminal Appeals on October 22, 2010.

On December 28, 2012 applicant filed a petition for writ of habeas corpus in the United States District Court for the Northern District of Texas. That court on March 31, 2016 denied the federal application for writ of habeas corpus. The Fifth Circuit Court of Appeals on November 3, 2016 affirmed the United States District Court's denial of habeas corpus relief. The United States Supreme Court on June 18, 2018 denied applicant's petition for writ of certiorari.

On June 1, 2017 applicant filed in the United States District Court for the Northern District of Texas a Motion for Relief from Judgment under Federal Rule of Civil Procedure 60(b). Viewing the motion as a successive habeas petition requiring authorization by the Court of Appeals, the United States District Court on October 31, 2017 transferred the motion to the United States Fifth Circuit Court of Appeals. The United States Fifth Circuit Court of Appeals on August 14, 2018 denied applicant's application for a certificate of appealability respecting the United States District Court's ruling on the Rule 60(b) motion. On June 24, 2019 the United States Supreme Court denied applicant's petition for writ of certiorari.

With reasonable diligence applicant could have identified Merillat's inaccurate testimony as a legal basis for a request for habeas relief under *Chabot* nearly ten years ago. He could have raised the complaint in a supplement to his initial application in this Court while it was pending. Or, after this Court denied his initial application, he could have filed a subsequent application in state court when the legal



basis for the claim was still “recently available,” deferring recourse to the federal courts. Even after filing his initial application in federal court, he could have asked that court to stay the federal proceeding to allow him to pursue this claim in the Court of Criminal Appeals.

Instead, applicant filed multiple pleadings in federal court, spanning several years, until he finally exhausted his federal remedies. Only with his execution imminent did applicant raise in this Court this perceived ground for habeas relief. He has violated both the letter and spirit of Article 11.071 Section 5(b)(1). *See Ex parte Milam*, No. WR-79,322-02, 2019 WL 190209 (Tex.Crim.App. Jan. 14, 2019)(not designated for publication)(Yeary dissenting)(authorizing the convicting court to entertain a legal claim in a subsequent writ that was readily available in 2012 “would violate both the letter and certainly the spirit of our codified abuse-of-the-writ provision in Section 5 of Article 11.071”). *See, also, Ex parte Diaz*, No. WR-55,850-02, 2013 WL 5424971(Tex.Crim.App. Sept. 23, 2013)(not designated for publication)(Alcala concurring)(observing that the applicant’ s delaying presenting affidavits supporting subsequent habeas application until less than a week before his scheduled execution “seriously impedes the credibility of his arguments.”).

The Court of Criminal Appeals modified the strict “two forums” or abstention doctrine it enunciated for habeas cases in 1972 in *Ex parte Powers*, 487 S.W.2d 101 (Tex.Crim.App. 1972). Now permitted is the Court of Criminal Appeals’

consideration of a subsequent writ if the federal court stays proceedings in a parallel writ so the applicant can return to the state court to exhaust his state remedies. *See Ex parte Soffar*, 143 S.W.3d 804, 807 (Tex.Crim.App. 2004). That has occurred on numerous occasions.<sup>2</sup>

Applicant's able present counsel apparently are the first attorneys to have detected the discrepancy in Merillat's testimony. Nonetheless, applicant was counseled throughout his post-conviction proceedings. Previous counsels' having overlooked the issue present counsel now see cannot justify the failure to timely advance the issue. *Accord: Ex parte Ruiz*, 543 S.W.3d 805, 825 (Tex. Crim.App. 2016) and *Ex parte Graves*, 70 S.W.3d 103 (Tex.Crim.App. 2002)(if an applicant's habeas counsel fails to raise a potentially meritorious ineffective assistance of counsel in an initial writ application, that claim cannot be revived in a subsequent writ application by asserting ineffective assistance of habeas counsel),

The Court of Criminal Appeals recognizes the common law doctrine of laches in the habeas corpus context. *See Ex parte Smith*, 444 S.W.3d 661 (Tex.Crim.App.

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<sup>2</sup> *See, e.g. Alba v. State*, 256 S.W.3d 682, 683-84 (Tex.Crim.App. 2008); *Ex parte Gallo*, No. WR-77940-03, 2017 WL 562724 (Tex.Crim.App. Feb. 8, 2017)(not designated for publication); *Ex parte Shuffield*, No. WR-69,454-02, 2014 WL 2126630 (Tex.Crim.App. May 21, 2014)(not designated for publication); *Ex parte Acker*, No. WR-56,841-05, 2014 WL 2002200 (Tex.Crim.App. May 14, 2014)(not designated for publication); *Ex parte Sparks*, No. WR\_76,786-02, 2014 WL 2002211(Tex.Crim.App. May 14, 2014)(not designated for publication); *Ex parte Gonzales*, Nos. WR-70,969-01 and WR-70,9069-02, 2012 WL 340407 (Tex.Crim.App. Feb. 1, 2012)(not designated for publication); and *Ex parte Speer*, No. WR-59,101-02 (Tex.Crim.App. March 3, 2010)(not designated for publication).

2014); *Ex parte Perez*, 398 S.W.3d 206 (Tex.Crim.App. 2013). That doctrine is applicable here. Applicant should be held to have forfeited consideration of the claim he raises in his subsequent application for writ of habeas corpus.

***III. No Clear and Convincing Evidence Exists That, But for Merillat's Inaccurate Testimony, No Rational Juror Would Have Answered in the State's Favor the Punishment Special Issues***

“Had the jury heard accurate information [from Merillat], there is a reasonable probability that at least one juror would have determined that Mr. Runnels did not in fact present a future danger if sentenced to a term of incarceration, rather than death,” applicant proposes. *First Subsequent Application for Post-Conviction Writ of Habeas Corpus*, pp. 41-42. The trial record does not support that proposition.

Shown at trial was applicant savagely attacked the victim Stanley Wiley from behind, cutting Wiley's neck with enough force to reach the spine with the knife he used. *RR15: 36, 37*. The murder was callous, unprovoked, and premeditated; applicant told other inmates he was “going to do something” and might not return. *RR15: 237*. The apparent motive for the killing was applicant's desire to work at the barber shop, rather than the boot factory. *RR15: 56-57*.

Applicant had three previous felony convictions: two burglaries and aggravated robbery with a deadly weapon finding; he received a 70-year prison sentence for the latter offense, which he was serving when he killed Wiley. During his

imprisonment, applicant committed acts of misconduct. Before the capital murder offense on trial, applicant hit a guard on the jaw on January 19, 1999. *RR16: 45*. In the period between Wiley's murder and the trial, applicant threw urine in a guard's face on May 3, 2003, threw a light bulb at a guard on November 18, 2003, and threw feces at a guard on June 25, 2004. *RR16: 55, 85, 92*.

Non-exclusive factors relevant to the jury's determination whether a capital murder convict poses a continuing threat to society include: 1) the defendant's state of mind and whether he was working alone or with other parties; 2) the calculated nature of the defendant's acts; 3) the forethought and deliberateness exhibited by the crime's execution; 3) the existence and severity of prior crimes; 4) the defendant's age and personal circumstances at the time of the offense; 5) whether the defendant was acting under duress or the domination of another at the time of the commission of the offense; 6) psychiatric evidence; and, 7) character evidence. *Druery v. State*, 225 S.W.3d 491, 507 (Tex.Crim.App. 2007).

The facts of the crime alone can be sufficient to support an affirmative finding on the future dangerousness special issue. *Jasper v. State*, 61 S.W.3d 413, 418 (Tex.Crim.App. 2001). Indeed, the circumstances of the offense itself can be among the most revealing evidence of future dangerousness. *Druery*, 225 S.W.3d at 507.

As indicated, applicant's murderous assault on Wiley was calculated and premeditated. He had spoken of "doing something," "killing someone," and getting

shipped from the boot factory “one way or another.” *RR15: 62*. His lack of remorse or contrition is seen in his expressions immediately after the attack: he was unconcerned about receiving the death penalty because “dead men don’t talk.” *RR15: 240*. The assault may even have been partly random, as applicant remarked “It could have been any offender or inmate . . . as long as they was white.” *RR15: 240*.

The offense applicant was imprisoned for when he killed Wiley, aggravated robbery, was a crime of violence. Applicant’s actions toward prison guards prior to and after Wiley’s murder- striking a guard on the jaw and throwing feces, urine, and a light bulb at guards on different occasions- reflected his general hostility toward authority.

During its deliberations, the jury signaled by note that a dispute existed about inmate Bud Williams’ testimony; the dispute centered on what applicant said to Williams when Williams learned applicant had slid barber combs under Williams’ cell door. *RR17: 39-40*. The judge read to the jury Williams’ testimony in controversy, the only expressed point of contention the jurors had. No inference obtains from the record the jury had any concern about the prison environment for a death row inmate *vis a vis* a capital murder convict sentenced to life imprisonment. Scant possibility exists that, but for Merillat’s inaccurate testimony, the jury would have answered the future dangerousness special punishment issue differently - -

certainly no clear and convincing evidence of such.

A contrary conclusion is not impelled by the *Estrada v. State*, 313 S.W.3d 274 (Tex.Crim.App. 2010), *Velez v. State*, No. AP-76051, 2012 WL 2130890 (Tex.Crim.App. June 23, 2012)(not designated for publication), and *Ex parte Espada*, No. WR-78,108-01, 2015 WL 4040778 (Tex.Crim.App. July 1, 2015)(not designated for publication) decisions upon which applicant much relies. The circumstances in those cases contrast sharply with the circumstances here.

A defense punishment witness in *Estrada* testified that the least restrictive classification a capital murder convict with a life imprisonment sentence could obtain is a G-3 classification. Merillat testified in rebuttal, falsely, that such a convict could achieve a lower classification after ten years. During deliberations, the jury sent out two notes bearing directly on the future dangerousness issue: what would happen if the jury could not come to a decision; and, did a possibility exist the defendant could be eligible for a less restrictive status after ten years. 313 S.W.3d at 286-287. The defendant had no criminal history. Again, here the jury evinced no concern about applicant's housing conditions in answering the future dangerousness issue.

Merillat testified similarly in *Velez*. In finding harm, this Court noted: the incriminating evidence was circumstantial;<sup>3</sup> the un-contradicted defense psychiatric

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<sup>3</sup> As applicant notes, *Velez* ultimately was released from prison. But, he was not wholly exonerated.



evidence was the defendant would not be a future danger; the defendant's criminal record, involving mostly misdemeanors, included only non-violent crimes except for a bar fight; and, the defendant had a clean disciplinary record while in custody. Those considerations are absent here. In upholding on direct appeal the jury's finding of future dangerousness, the Court pointed to: the crime's brutality and premeditation; applicant's criminal history reflecting an escalating pattern of violence; his disciplinary infractions involving violence in prison; and, his lack of remorse. *Runnels v. State*, No. AP-75,318, 2007 WL 2655682 (Tex.Crim.App. Sept. 12, 2007)(not designated for publication), op. pp.4-5.

At issue in *Espada* was whether the defendant had committed the assaultive misconduct a jail guard testified to. In the trial court's post-conviction evidentiary hearing, the guard's testimony at the defendant's trial was roundly discredited. The trial court saw the guard's false testimony as "more likely than not the tipping point" on the future dangerousness issue, and recommended habeas relief. Op. p. 3. Applicant's prison environment here as an abstract consideration cannot compare to direct evidence the defendant had not committed the jail misconduct alleged.

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Rather than face re-trial, Velez pled guilty to the lesser offense of reckless injury to a child and was released for time served. See Pilkington, Ed, *Texas releases death row inmate Manuel Velez after wrongful conviction*, The Guardian, Oct. 8, 2014, <https://www.theguardian.com/us-news/2014/oct/08/texas-releases-death-ow-inmate-manuel-velez>.

As in *Coble v. Davis*, 728 Fed.Appx. 297, 302 (5<sup>th</sup> Cir.), *cert. denied*, 139 S.Ct. 338 (2018), Merillat's erroneous testimony was overshadowed by other evidence of applicant's future dangerousness. The testimony did not contribute to the future dangerousness finding.

Applicant has shown no creditable reason habeas corpus relief should be granted.

WHEREFORE, the State requests that this court deny Runnels' "First Subsequent Application for Post-Conviction Writ of Habeas Corpus " and Motion for Stay of Execution.

Respectfully submitted,

Randall Sims

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Attorneys for the State

## CERTIFICATE OF SERVICE

I hereby certify that on this 24<sup>th</sup> day of October, 2019 I have served a copy of this State's Motion to Dismiss First Subsequent Application for Post-Conviction Writ of Habeas Corpus to applicant's attorneys by email as follows:

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I further certify that I served a courtesy copy of the foregoing State's Answer to

Ben Wolff  
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\_\_\_\_\_/s/\_\_\_\_\_  
 John L. Owen  
 Assistant District Attorney

**CERTIFICATE OF COMPLIANCE**

In accordance with Tex.R.App.P. 9.4 (i)(3), I hereby certify that the foregoing State's Motion to Dismiss First Subsequent Application for Post-Conviction Writ of Habeas Corpus contains, as reflected in the computer program word count, 3,053 words. That count includes words in portions of the document which, under the Rule, are excluded from the prescribed word limit. The brief is printed in 14-point typeface.

      /s/ John L. Owen        
Assistant District Attorney

# **APPENDIX E**

Response to State's Motion to Dismiss First Subsequent Application for  
Post-Conviction Writ of Habeas Corpus, Writ No. WR-46, 226-03,  
Texas Court of Criminal Appeals, October 29, 2019

**IN THE TEXAS COURT OF CRIMINAL APPEALS  
AUSTIN, TEXAS**

RECEIVED  
COURT OF CRIMINAL APPEALS  
10/29/2019  
DEANA WILLIAMSON, CLERK

	)	
EX PARTE TRAVIS TREVINO RUNNELS	)	WRIT NO.
	)	<u>WR-46,226-03</u>
	)	
APPLICANT,	)	TRIAL COURT CASE
	)	No. 48,950-D
	)	
	)	CAPITAL CASE
	)	
	)	<b>EXECUTION DATE</b>
<hr style="width: 50%; margin-left: 0;"/>	)	<b>DECEMBER 11, 2019</b>

**RESPONSE TO STATE’S MOTION TO DISMISS FIRST  
SUBSEQUENT APPLICATION FOR POST-CONVICTION WRIT  
OF HABEAS CORPUS**

Comes now Applicant, Travis Trevino Runnels, by and through counsel, and respectfully submits this Response to the State’s Motion to Dismiss First Subsequent Application for Post-Conviction Writ of Habeas Corpus.

**INTRODUCTION**

Applicant Travis Runnels’ state and federal constitutional rights were violated by a prosecution that relied on false State testimony, and accurate testimony in its place would not have supported a sentence of death. *See* Tex. Code of Crim. Proc. Article 11.071; *Ex Parte Chabot*, 300



S.W.3d 768 (Tex. Crim. App. 2009); *Ex Parte Chavez*, 371 S.W. 3d 200 (Tex. Crim. App. 2012). In Mr. Runnels' capital sentencing hearing, the State relied on the false and misleading testimony of A.P. Merillat, a prison classification "expert" who falsely told the jury that, if sentenced to life in prison, Mr. Runnels would automatically be classified as a G-3, "mid-grade" offender, and would enjoy significant freedoms within the prison environment as a result. As a result, the jury was falsely led to believe that the Texas prison system would be unable to imprison Mr. Runnels in a secure environment unless he was sentenced to death.

Mr. Runnels has moved this Court for relief in finding that the requirements of Texas Code of Criminal Procedure Article 11.071, Section 5 have been satisfied and subsequently remanding the case to the convicting court for judgment on the pleadings; and/or in the alternative issue an order remanding the case to the convicting court for an evidentiary hearing for the purpose of examining the merits of this claim. As set out fully in his First Subsequent Application for Post-Conviction Writ of Habeas Corpus, Mr. Runnels meets the statutory requirement for a subsequent application.

In its response, the State advances two principal arguments: 1)

that Mr. Runnels could have raised this claim earlier and should thus be barred from raising it now, and 2) no rational juror could have found Mr. Runnels to not be a future danger, regardless of Merillat's testimony. Neither of these arguments support the dismissal of Mr. Runnels' pending application, and Applicant addresses these arguments in turn.

### **ARGUMENT**

#### **1. The State's argument to dismiss under Texas Code of Criminal Procedure Article 11.071, Section 5(a)(1) misstates the law.**

The State asserts that the relief Mr. Runnels is now seeking, based on the false and misleading testimony of Merillat, has been available to him for "almost ten years." State's Motion to Dismiss First Subsequent Post-Conviction Application for Writ of Habeas Corpus (hereinafter "Motion to Dismiss") at 4. However, this is a misstatement of the law. Mr. Runnels only prior habeas application pursuant to Article 11.071 was filed on September 17, 2007. This was prior to this Court's decision in *Ex parte Chabot*, 300 S.W.3d 768 (Tex. Crim. App. 2009), which abandoned the prior requirement that an applicant on habeas corpus prove that the State *knowingly* presented false evidence.

It is uncontroverted that statutory law provides that claims brought forth in a subsequent application may be considered on the merits if the “factual or legal basis for the claim was unavailable on the date the applicant *filed* the previous application.” Tex. Code Crim. Proc. Art. 11.071, § 5(a)(1) (emphasis added). Because the legal basis for Mr. Runnels’ *Chabot* claim was not available on September 17, 2007, the date the initial habeas application was filed, the claim is not barred under Section 5 now.

Furthermore, the State is incorrect in its assertion that Mr. Runnels could have “raised the complaint in a *supplement* to his initial application in this Court while it was pending.” Motion to Dismiss at 5 (emphasis added). This Court has held that when an amended application is filed in the trial court after the deadline provided for the filing of an initial application for habeas corpus and raises new claims, it is treated as a subsequent application. *Ex Parte Ramirez*, No. WR-71,401-01, 2015 WL 6282336, at \*1 (Tex. Crim. App. Oct. 14, 2015).

The State cites the *dissenting* opinion in *Ex parte Milam*, No. WR-79,322-02, 2019 WL 190209 (Tex. Crim. App. Jan 14, 2019) (not designed for publication) (Yeary dissenting), to support the proposition

that filing a subsequent application with an “execution imminent” both violated the letter and spirit of Article 5(b)(1). Motion to Dismiss at 6. What the State fails to articulate, however, is that in *Milam*, the dissenting opinion of Justice Yearly rested in the belief that the claim raised (intellectual disability) should have been raised in the *initial application*, because at the time of the applicant’s filing, an argument could “reasonably have been fashioned” from Supreme Court precedent that the prevailing law was changing. *See* Article 11.071 § 5(d). This is vastly different than the situation Mr. Runnels was in at the time of his initial filing.

The State further cites *Ex parte Diaz*, No. WR-55,850-02, 2013 WL 5424971 (Tex. Crim. App. Sept. 23, 2013)(not designated for publication)(Alcala concurring), for an example of a case where an applicant’s subsequent habeas application, filed less than a week before a scheduled execution date, “seriously impedes the credibility of [the applicant’s] arguments.” Again, this is distinguishable from Mr. Runnels’ case. In *Diaz*, affidavits filed in support of the applicant’s claim were dated nine years prior to the date of the filing of the subsequent application. While that may have been objectionable, the

reason for Justice Alcala's concurrence in dismissal of the application, was not due to the *timeliness* of the application, but rather because it did not meet the procedural *requirement* of Article 11.071, section 5.

The State now suggests that during the time Mr. Runnels was in federal court he should have requested leave to stay the federal proceedings and return to state court to litigate the issue of Merillat's false testimony. Motion to Dismiss at 6. However, there is no statutory deadline to file a subsequent application pursuant to Article 11.071 section 5. There is no requirement that a subsequent application be filed as soon as an applicant becomes aware that a potential claim exists. Waiting to resolve all pending federal claims prior to filing does not bar an applicant from then filing a subsequent application, so long as it meets one of the requirements outlined by the statute. The State is essentially asking this Court to dismiss Mr. Runnels' subsequent application because of what a federal court, in its discretion, *might* have done.

Mr. Runnels' meets the statutory requirements of Article 11.071, Section 5(a)(1) and should be authorized to proceed.

**2. The State's argument to dismiss under Texas Code of Criminal Procedure Article 11.071, Section 5(a)(3) is inaccurate and does not take into account the grave weight of Merillat's testimony.**

The State asserts that there can be no clear and convincing evidence that if not for Merillat's false and misleading testimony, no rational juror would have answered in the State's favor the issue of future dangerousness.. Motion to Dismiss at 8-10. At the outset, it should be stated that this argument by the State, if considered valid at all, is only applicable to Mr. Runnels' *alternative* grounds for authorization of a subsequent writ application under Tex. Code Crim. Proc. Art. 11.071(5)(a)(3). Mr. Runnels' principal argument for authorization is based on a change in the law as contemplated by Tex. Code Crim. Proc. Art. 11.071(5)(a)(1). Subsequent Writ Application at 38-40.

However, there can be little dispute that any rational juror would be profoundly affected by testimony that Mr. Runnels, who had just pled guilty to premeditated murder, would enjoy significant freedom in wit prison, including being "free to come and go" from his cell, the opportunity to attend work, visitation, church, medical, and chow, all unescorted, if he were sentenced to life in prison. The jury also heard



that Mr. Runnels would not be isolated from others and could potentially be housed with low-level, non-violent offenders. (16 RR 108-109.) And even though this testimony was false and fundamentally misleading, there was no reason for the jury not to believe what Merillat told them, as it was never effectively challenged by defense counsel. The prosecutor reiterated this argument during closing that Mr. Runnels could not be safely imprisoned under a life sentence. (17 RR 35.) The jury never once heard the truth – that Mr. Runnels would be imprisoned under an extremely strict and highly regimented environment that required him to not only be closely monitored at all times, but remain isolated from others almost all of the time.

The State attempts to distinguish *Estrada v. State*, 313 S.W.3d 274, 286-88 (Tex. Crim. App. 2010) and *Velez v. State*, AP-76051, 2012 WL 2130890 (Tex. Crim. App. June 23, 2012), both cases in which relief was granted based on Merillat's false testimony. With respect to *Estrada*, the State argues that it involved a defendant with no prior criminal history, and that during deliberations the jury sent out two notes specifically on the issue of future dangerousness. Motion to Dismiss at 11.

In *Estrada*, Merillat was a rebuttal witness and testified falsely that “a sentenced-to-life-without-parole capital murderer could achieve a lower (and less restrictive) G classification status than a G-3 status” after first serving ten years at G-3. *Estrada*, 313 S.W.3d at 286. The fact that a juror note was sent out indicates that there was at least some need for clarification with regard to Merillat’s *contested* assertions on classification. In Mr. Runnels’ trial, Merillat’s testimony was never contested by a defense witness, and trial defense counsel’s cross-examination of Merillat merely allowed him to double down on his false claims. (16 RR 122-123.) Thus, the *lack* of a juror note during the deliberations in Mr. Runnels’ trial does not mean the jury was not contemplating the issue of future dangerousness. The more reasonable conclusion is that, because Merillat was the only witness called (by the State or the defense) with regard to classification, they had no reason to question the validity of his testimony, thus believing Mr. Runnels would be a future danger if sentenced to life rather than death.

The State also attempts to distinguish *Velez* by suggesting that the reason the defendant in that case got relief due to Merillat’s false testimony was because of defense evidence against future

dangerousness, and the defendant's relatively minor prior criminal offenses. Motion to Dismiss at 12. This ignores the aggravation that was presented, namely that the jury found the defendant guilty of slamming a one-year-old baby's head against a hard object. *Velez v. State*, 2012 WL 2130890 at 31, 35. Furthermore, in both *Estrada* and *Velez*, Merillat's false testimony was an isolated statement, in contrast to his testimony in Mr. Runnels' case, which was extensive and completely uncontroverted. The jury simply did not have the correct information with which to weight the actual threat that Mr. Runnels' may or may not have posed in the future. As such, there is a reasonable probability that, but for Merillat's false testimony, the result of Mr. Runnels' sentencing proceeding would have been different. Mr. Runnels' meets the statutory requirements of Article 11.071, Section 5(a)(3) and should be authorized to proceed.

### **CONCLUSION AND PRAYER FOR RELIEF**

For the foregoing reasons, Travis Trevino Runnels respectfully requests that the State's Motion to Dismiss Applicant's First Subsequent Post-Conviction Application for Writ of Habeas Corpus be denied, and that the Court find that the claims presented in Mr.

Runnels' First Subsequent Application satisfy the requirements of Article 11.071, Section 5, and remand to the trial court for further proceedings.

Dated: October 28, 2019

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 28, 2019, I served the foregoing Response to State's Motion to Dismiss Applicant's First Subsequent Post-Conviction Application for Writ of Habeas Corpus on:

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/s/ Janet Gilger-VanderZanden  
Janet Gilger-VanderZanden

# APPENDIX F

Trial Transcript excerpts, *State v. Runnels*, No. 48, 950-D,  
320<sup>th</sup> District Court in and for Potter County, Texas, October 27, 2005



R E P O R T E R ' S R E C O R D  
VOLUME 16 of 19

TRIAL COURT CAUSE NO. 48,950-D

THE STATE OF TEXAS	)	IN THE 320TH DISTRICT COURT
	)	
	)	
VS.	)	IN AND FOR
	)	
	)	
TRAVIS TREVINO RUNNELS	)	POTTER COUNTY, TEXAS

\*\*\*\*\*

TRIAL ON THE MERITS

OCTOBER 27, 2005

\*\*\*\*\*

On the 27th day of October, 2005, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Don Emerson, Judge Presiding, held in Amarillo, Potter County, Texas:

Proceedings reported by Machine Shorthand.

COPY

## A-P-P-E-A-R-A-N-C-E-S:

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1 State's 6-B, ask if you're familiar with that?

2 A. Yes, sir.

3 MR. DURHAM: Your Honor, may I inquire into the  
4 relevance of marking each of these knives when we have a  
5 picture of the knives?

6 MR. YONTZ: Defense counsel requested each one  
7 identified individually. He wanted to see each one before he  
8 could make his determination as to whether or not he would  
9 admit them.

10 MR. DURHAM: Well, if they're duplicitous of  
11 State's 16, then I -- I'll object on grounds of duplicity.

12 MR. YONTZ: Your Honor, this is State's Exhibit  
13 16. Those knives are not duplicitous --

14 MR. DURHAM: Well, whatever the picture is.  
15 I'm sorry, I'm just not smart enough to remember the numbers.  
16 Let me look at this and see. The number I'm talking about is  
17 51.

18 THE COURT: Well, let's just stop arguing for a  
19 minute. Is it the State's intention to offer each of those  
20 knives?

21 MR. YONTZ: All ten, yes, sir.

22 THE COURT: Okay. His objection went to you  
23 offering an exhibit that contained unknown items that would  
24 not be within the record. That was the basis of that.

25 Now, if we're going to go down through and --

1 THE WITNESS: Yes, sir.

2 THE COURT: And state your full name, please.

3 THE WITNESS: A.P. Merillat.

4 A.P. MERILLAT,

5 having been first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. SIMS:

8 Q. How are you employed, sir?

9 A. I'm a criminal investigator with the Special  
10 Prosecution Unit headquartered in Huntsville, Texas.

11 Q. How long have you been so employed with that group?

12 A. About 16-1/2 years.

13 Q. What is your educational background in regards to  
14 law enforcement?

15 A. I'm a Certified Texas Peace Officer. I have been so  
16 for -- since 1977. I worked for the Houston Police Department  
17 for ten years, and I worked for the Huntsville Police  
18 Department for three years, then I've worked at this office  
19 for over 16. I've had about 1,700 hours of training in law  
20 enforcement type matters, criminal investigations, all types  
21 of situations like that.

22 Q. Have you also, based on your training and  
23 experience, had the opportunity to train and educate others  
24 and give lectures in regards to criminal investigations and  
25 law enforcement related topics?

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1 to have each of these in, then let's just take them all out of  
2 the sack and mark them 6-A infinitum, then.

3 Actually, let's have someone else do it while  
4 you continue your interrogation. There are folks here from  
5 the office that can mark these things.

6 MR. YONTZ: That's fine.

7 Your Honor, pending the admission of those  
8 particular items, I have no further questions.

9 THE COURT: Any cross-examination, Mr. Durham?

10 MR. DURHAM: No.

11 THE COURT: Okay. Are you going to have  
12 questions after --

13 MR. YONTZ: No, sir.

14 THE COURT: -- they're marked?

15 Okay. Well, then, you can step down, you're  
16 free to go.

17 THE WITNESS: Thank you.

18 THE COURT: Call your next witness.

19 MR. SIMS: A.P. Merillat.

20 THE COURT: Raise your right hand, please, sir.  
21 (Witness sworn)

22 THE COURT: If you would take a seat on the  
23 witness stand, please.

24 Once you get comfortable, make sure you're  
25 speaking directly into that microphone that just disappeared.

1 A. Yes, sir. I've written five books in law

2 enforcement related topics. I've given seminars to college  
3 students, to prosecutors and investigators, police officers  
4 throughout the state of Texas. I've testified numerous times  
5 across the state and in the state of Florida as an expert in  
6 various types of criminal investigations, bloodstain  
7 interpretation, fingerprints, and violence, particularly in  
8 the penitentiary.

9 Q. In addition to your generalized knowledge in regards  
10 to criminal investigation and law enforcement related topics,  
11 as a result of your work with the Special Prosecution Unit,  
12 have you developed an expertise in the specific area of Texas  
13 prison system?

14 MR. DURHAM: That's leading and bolstering.

15 THE COURT: Sustained.

16 Q. (BY MR. SIMS) Have you developed any expertise in  
17 regards to the Texas prison system?

18 MR. DURHAM: That's bolstering, Your Honor.  
19 That's not a proper predicate for the --

20 THE COURT: Rephrase the question, please.

21 MR. DURHAM: No predicate has been laid.

22 Q. (BY MR. SIMS) Based on your experiences, have you  
23 gained any kind of particular expertise?

24 A. Yes, I have.

25 MR. DURHAM: Same objection, Your Honor.

1 THE COURT: Sustained.  
 2 MR. DURHAM: Instruction.  
 3 THE COURT: Jury will disregard the last  
 4 answer.  
 5 Q. (BY MR. SIMS) Do you specialize in any particular  
 6 areas?  
 7 A. Yes, I do.  
 8 Q. Based on what, sir?  
 9 A. Our office prosecutes prison crimes, and I have to  
 10 be familiar with the situation in prison as far as preparing  
 11 cases for trial.  
 12 Q. What are your specific responsibilities as Senior  
 13 Criminal Investigator for the Special Prosecution Unit?  
 14 A. I take cases from their inception, primarily in the  
 15 prison units across the state, cases of murder, rape, hostage  
 16 situations, things like that, I take those cases from their  
 17 inception through the investigation process, through the grand  
 18 jury, into trial, I work the trial with our lawyers, and then  
 19 we also go all the way through the appellate process until the  
 20 case is finalized.  
 21 Q. Have you previously testified in other courts as an  
 22 expert witness?  
 23 A. Yes, I have, many times.  
 24 Q. Specifically in regards to what area?  
 25 A. Primarily, I've been testifying in the area of

1 "Yes, I am."  
 2 "Explain that, please, sir."  
 3 THE COURT: Objection is overruled.  
 4 Q. (BY MR. SIMS) Are there specific classification  
 5 designations under that system?  
 6 A. Yes, there are.  
 7 Q. Would you explain those, please, sir?  
 8 A. Yes, sir. The classification system relies on two  
 9 basic factors.  
 10 THE COURT: Okay. Maybe we ought to stay away  
 11 from narrative answers, then, and just ask direct questions,  
 12 please.  
 13 Q. (BY MR. SIMS) What are the specific classification  
 14 identifiers?  
 15 A. There are S classifications, the letter S, and there  
 16 are the letter G classifications.  
 17 Q. What do each of those stand for?  
 18 A. The S stands for State Approved Trusty or SAT  
 19 classification, and there are levels within that  
 20 classification.  
 21 Q. What levels are within that classification?  
 22 A. S-1 is like a trusty or a real good inmate. S-2, S-  
 23 3, and S-4, the more misbehaved or more of a problem an inmate  
 24 becomes, they lower in classification. In other words, 2 is  
 25 bad, 3 is worse, 4 is real bad.

1 prison violence in Texas.  
 2 Q. Okay. Are you familiar with how inmates are housed  
 3 in the Texas prison system?  
 4 A. Yes, I am.  
 5 Q. Are you familiar with the classification process in  
 6 the Texas system?  
 7 A. Yes, I am.  
 8 Q. Would you explain that, please, sir?  
 9 A. Yes, sir. The classification system in Texas prison  
 10 is the crux of how an inmate will spend his time from the time  
 11 he gets to the prison system until the time he paroles. The  
 12 classification system governs where he lives, how he's housed,  
 13 how tightly he's secured, what his privileges are within the  
 14 prison system, the jobs he can have, and his time earning  
 15 classification. All of those are part of the classification  
 16 system.  
 17 MR. DURHAM: I'm going to object, Your Honor.  
 18 That's a nonresponsive answer. He gave us the purpose of the  
 19 classification, but he did not give us the classification,  
 20 which was the question.  
 21 THE COURT: What was the question, do you  
 22 remember?  
 23 MR. YONTZ: Sir?  
 24 THE REPORTER: "Are you familiar with the  
 25 classification process in the Texas system?"

1 Q. And the other general classification you mentioned  
 2 is what?  
 3 A. The letter G.  
 4 Q. What does that stand for?  
 5 A. I have no idea what the letter G stands for. It's  
 6 just a letter the prison issued for that classification.  
 7 Q. Are there any subclassifications under it?  
 8 A. Yes, sir, there are. And once again, it's according  
 9 to how -- your behavior inside the penitentiary.  
 10 Q. How many levels are there in that --  
 11 A. There are four.  
 12 Q. What are they, sir?  
 13 A. G-1, 2, 3, and 4, and there's a 5 as well, G-5.  
 14 Q. What is G-1, sir?  
 15 A. A G-1 is a well-behaved inmate, doesn't present  
 16 problems, is a minimal-custody type inmate.  
 17 Q. What is G-2?  
 18 A. G-2 is also minimum custody, but he has more of a  
 19 disciplinary behavior problem. He has to be watched a little  
 20 closer and --  
 21 Q. What is G-3?  
 22 A. G-3 is what we call minimum/medium custody. It's an  
 23 inmate that has certain characteristics of violence in his  
 24 history or certain disciplinary problems. He's had to be  
 25 leveled out at a G-3. And then as you get worse, they go in



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1 number.

2 Q. Okay. Do G-3s have any specific subcategory in  
3 regards to aggravated or nonaggravated offenses?

4 A. Yes, sir.

5 Q. What are those, sir?

6 A. A G-3 inmate is an inmate, among other things, but  
7 primarily an inmate who comes into the prison system with an  
8 aggravated offense, like aggravated rape, robbery, murder,  
9 capital murder, such as that. He will be a G-3 inmate, and  
10 he'll be classified as such for a minimum of ten years.

11 And if he has a nonaggravated sentence of 50  
12 years or more, for whatever crime, he'll be a G-3 inmate for a  
13 minimum of five years before he can be eligible to be elevated  
14 in his G classification.

15 Q. And included in that inmates that have been  
16 convicted of capital murder?

17 A. Yes, sir.

18 Q. Explain how they wind up as a G-3.

19 A. It's an automatic classification. A capital  
20 murderer or a -- what we call a straight murderer, when he  
21 comes in the penitentiary, will automatically be classified as  
22 G-3. And like I said, if it's an aggravated sentence, he'll  
23 have to stay that way for ten years.

24 Q. What is G-4?

25 A. G-4 is a closed custody inmate.

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1 Q. G-5?

2 A. That's also a closed custody or an Ad Segregated  
3 type inmate.

4 Q. You indicated earlier you're familiar with how  
5 inmates are housed --

6 A. Yes, sir.

7 Q. -- is that correct?

8 A. Yes, sir.

9 Q. Explain how capital murder convictions are generally  
10 housed.

11 A. A G-3 inmate, like I said, he'll be automatically  
12 classified as G-3. He will be housed in general population  
13 with a cell mate. He could have a cell mate who happens to be  
14 a G-2 or a G-1 inmate. He could be housed with a DWI  
15 offender, for example.

16 The -- the G simply tells the prison officials  
17 what kind of sentence that man has, not necessarily what the  
18 details of his crime were that brought him to the  
19 penitentiary. They're free to come and go from their cells.

20 They're not handcuffed when they're leaving their cells. They  
21 can go to work, visitation, church, medical, chow, unescorted.

22 The G-3, like I said, simply tells them what  
23 kind of sentence --

24 MR. DURHAM: Your Honor, we've gotten into a  
25 very nonresponsive area here to the question, I believe.

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1 THE COURT: Let's move back away from narrative  
2 responses and questions, please.

3 Q. (BY MR. SIMS) Are those -- would a capital murderer  
4 indicated as a G-3, are they going to be isolated or with  
5 others?

6 A. No, sir, they will not be isolated.

7 Q. Are there certain stipulations that are placed on  
8 inmates at times?

9 A. Yes, sir.

10 Q. Are they broken down into any specific categories?

11 A. Yes, sir.

12 Q. What are those categories?

13 A. That would be in the G classification, the 4 and the  
14 5, and also the line classification, which would be a No. 3,  
15 4, or 5, but it's for their behavior after their arrival at  
16 the penitentiary.

17 Q. How does their behavior in the penitentiary affect  
18 their status?

19 A. The more problems they present to the prison  
20 officials, the tighter they are housed or restricted in their  
21 freedoms with inside the penitentiary.

22 Q. If they behave appropriately, are they rewarded?

23 A. Yes, sir.

24 Q. How so?

25 A. First of all, they can earn more time for -- during

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1 their sentence. They can earn opportunities to use the  
2 telephone. They can earn recreational opportunities, more  
3 visitation type privileges, opportunities to have more items  
4 in their cells, make life more comfortable.

5 Q. Describe specifically how capital murder defendants  
6 that receive a life sentence are classified.

7 A. They're classified as a G-3 and put into general  
8 population.

9 Q. How are capital murder defendants convicted and  
10 sentenced to the death penalty classified?

11 A. They are sent directly to death row and classified  
12 separately according to their system, but it's -- they're  
13 still put into Ad Seg, or segregation on death row in  
14 Polunsky.

15 Q. Explain what Ad Seg is.

16 A. It's an abbreviation for Administrative Segregation,  
17 and any inmate can be housed in Ad Seg for disciplinary  
18 problems, but death row is Ad Seg. It's a very restrictive  
19 housing custody and it's only found at the Polunsky Unit for  
20 males, which is in Livingston, Texas, and it's in the Ad Seg  
21 building.

22 Q. Have you ever heard the term "closed custody"?

23 A. Yes, sir, I've heard that term.

24 Q. Does that have anything to do with death row?

25 A. Death row inmates are closed custody, yes, sir.

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1 Q. Explain to the ladies and gentlemen of the jury what  
2 closed custody means.

3 A. As it applies to death row, it means they have to  
4 be -- an inmate has to be handcuffed when he leaves his cell.  
5 He has to be escorted by two officers. He cannot co-recreate  
6 with other inmates, he can't eat outside of his cell, very  
7 restrictive housing and custody.

8 Q. Do all capital murder convictions result in a closed  
9 custody status?

10 A. No, sir, only the death penalty ones.

11 Q. Briefly describe the security on death row.

12 A. As I said, it's very -- very tight security. An  
13 inmate spends 23 hours a day inside that cell. He can only  
14 come out when he's handcuffed and escorted by two officers.  
15 He has to single recreate -- recreate by himself. He has to  
16 be escorted to a shower once a day, if he chooses to. Then  
17 he's back in his cell, he eats inside his cell, very  
18 restrictive custody.

19 Q. So is there Administrative Segregation on other  
20 places other than death row?

21 A. Yes, sir, there is.

22 Q. Okay. Is that the highest level of security that  
23 there is?

24 A. No, sir, it's not.

25 Q. What's the highest level of security?

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1 A. The highest we have now is called high security and  
2 there are a few units in the state that have high security  
3 buildings which are separate from the main buildings.

4 Q. What is different about high security versus Ad Seg?

5 A. High security is for inmates who were in Ad Seg that  
6 could not be controlled even in Ad Seg. They have to have a  
7 more tight custody. So they have these special buildings  
8 where inmates are virtually out of one-on-one contact with  
9 prison guards. The buildings are designed so that everything  
10 can be done for an inmate without personal contact between a  
11 guard and that particular inmate.

12 He remains in his cell 23 hours a day, he  
13 showers in his cell, he eats in his cell. He comes out --  
14 like on death row, he comes out under handcuffs to a  
15 single-man rec yard. It's very -- extremely strict housing,  
16 but it's only for certain levels of inmates.

17 Q. What level of inmate would get to that point?

18 A. It's an Ad Seg inmate who cannot be controlled in Ad  
19 Seg.

20 Q. Are there efforts by the prison system to try to  
21 negate violence inside its system?

22 A. Yes, sir. That's how our office came into  
23 existence.

24 Q. And the office has been in existence for how long?

25 A. Twenty-one years.

1 Q. In addition do the Department of Corrections take  
2 actions themselves to try to negate violence inside the prison  
3 system?

4 A. Yes, sir. Yes, sir, that's true.

5 Q. Would few or many of most of the regulations that  
6 are imposed inside a prison be based on security and  
7 protection?

8 A. Yes, sir. The primary factor for the restrictions  
9 inside the penitentiary are safety oriented.

10 Q. Okay. Now, in regards to your function with the  
11 Special Prosecution Unit, do you have the opportunity to keep  
12 up with statistics in regards to the state of Texas regarding  
13 violence in the prison system?

14 A. Yes, I do.

15 Q. How long have you been doing that, sir?

16 A. Since I've been there. We have to report to the  
17 governor's office every year.

18 Q. Okay. What is the trend in regards to assaultive  
19 behavior --

20 MR. DURHAM: Predicate. There has been no  
21 showing that he has --

22 THE COURT: We haven't even heard the end of  
23 the question.

24 MR. DURHAM: Oh, okay, I'm sorry. Withdrawn.

25 Q. (BY MR. SIMS) Have you collected -- specifically

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1 collected numbers in regards to the assaultive behavior -- or  
2 assaultive cases inside the prison system?

3 A. Yes, I have.

4 Q. Okay. And how long have you been keeping a record  
5 of that, sir?

6 A. For over 16 years; since I've been there.

7 Q. Have you noticed any kind of trend in regards to  
8 those numbers?

9 MR. DURHAM: Objection. I want to take the  
10 witness on voir dire --

11 THE COURT: Go right ahead, sir.

12 MR. DURHAM: -- to test the statistics.

13 THE COURT: Be seated.

14 VOIR DIRE EXAMINATION

15 BY MR. DURHAM:

16 Q. Officer, these statistics you've prepared, do you  
17 investigate the report?

18 A. Do I investigate the report?

19 Q. Yes, to determine that it was, in fact, an assault?

20 A. Oh, yes, sir, yes, sir.

21 Q. You do?

22 A. Yes, sir.

23 Q. You investigate each one of them?

24 A. We investigate each one to see if it --

25 Q. No, sir, not we, you.

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1 A. No, sir, I personally don't investigate each one.  
2 Q. Okay. So you -- you do not have any reliable base  
3 for your statistical analysis, do you?  
4 A. Yes, I do.  
5 Q. You do?  
6 A. Yes.  
7 Q. What constitutes an assault?  
8 A. Contact -- in the prison system, contact between a  
9 prison inmate and another inmate or a guard or an employee or  
10 a visitor.  
11 Q. Any contact?  
12 A. Any contact that's considered offensive or harmful  
13 to that person.  
14 Q. And that is a subjective consideration?  
15 A. No, sir, not in my view.  
16 Q. Well, if I say I consider the contact offensive,  
17 that's an assault, isn't it?  
18 A. That's -- you as a reporter, would tell me that and  
19 I would have to investigate to determine whether or not --  
20 Q. But you have not investigated each case. In other  
21 words, your base for assault includes anything as simple as  
22 throwing water on a guard, would be an assault, wouldn't it?  
23 A. That's correct.  
24 Q. Whether the guard was hit with it or not?  
25 A. That is not correct.

1 a bad term.  
2 MR. DURHAM: Well, then, I'm going to object to  
3 him testifying about statistical trends.  
4 THE COURT: Sustained.  
5 MR. DURHAM: Thank you.  
6 DIRECT EXAMINATION - Cont'd  
7 BY MR. SIMS:  
8 Q. Are you familiar with the numbers of assaultive --  
9 A. Yes, sir.  
10 Q. -- reports?  
11 A. Yes, sir.  
12 Q. How many assaultive reports were reported in the  
13 prison system --  
14 MR. DURHAM: Object --  
15 THE COURT: You have got to let the man --  
16 MR. DURHAM: All right. Yes, sir.  
17 THE COURT: -- ask the question, please, sir.  
18 MR. DURHAM: I'm sorry.  
19 Q. (BY MR. SIMS) Are you familiar with the number of  
20 inmate-on-inmate assaults that were reported in the year 2000  
21 in the prison system?  
22 THE COURT: Are you familiar or are you  
23 unfamiliar?  
24 THE WITNESS: Not for that year, no, sir.  
25 Q. (BY MR. SIMS) Based on your expertise, and we've

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1 Q. Oh. It has to splash on him?  
2 A. Yes, sir.  
3 Q. If you throw it and it hits the floor and splashes  
4 on him, that would be an assault?  
5 A. If it bounces off the floor and hits him?  
6 Q. Yes.  
7 A. Technically, it could be, probably.  
8 Q. Uh-huh. So it could be included in your statistical  
9 base.  
10 Now, in arriving at your statistical base, do  
11 you take into consideration the nature of the expansion of the  
12 prison system?  
13 A. I don't understand what you mean by that.  
14 Q. Well there are more prisoners than there were 16  
15 years ago?  
16 A. Yes, sir.  
17 Q. Okay. So there are probably going to be more  
18 assaults. If there are more people -- if there are more  
19 chances for a car wreck because there are more cars, makes  
20 more chances, right?  
21 A. That's correct.  
22 Q. Okay. And do -- what is your mathematical factor  
23 for determining the effect of increased population and prison  
24 crowding upon your statistical conclusions?  
25 A. There is not a statistical analysis. Perhaps that's

1 heard -- I'll rephrase it.  
2 Based on your knowledge in regards to what  
3 you've already expressed, is there any safe place in the  
4 prison system?  
5 A. No, sir.  
6 Q. At what level have you found offenses to occur as  
7 far as the G rating?  
8 A. Everywhere from the trusty camp to the chapel.  
9 Q. Does that include even death row?  
10 A. Yes, sir. We've worked murders on death row.  
11 Q. You've worked murders on death row?  
12 A. Yes, I have.  
13 Q. What about Administrative Segregation?  
14 A. I've worked numerous murders in Ad Seg.  
15 Q. Have there ever been escapes from Ad Seg?  
16 A. Yes, sir.  
17 Q. Approximately how many murders have occurred inside  
18 the prison system since you have been keeping records?  
19 MR. DURHAM: I'm going to object as to  
20 relevance, Your Honor; also would be hearsay reporting. As to  
21 whether it was a murder or not would depend upon the facts and  
22 circumstances, and it does not deviate between assaults on  
23 guards or prison personnel and upon personnel and people  
24 acting in self-defense, and we -- there's no basis for the  
25 question to be answered. There's no definition of murder.

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1 THE COURT: Overruled.  
2 A. There have been 138 murders, prosecutable murders,  
3 inside the Texas penitentiaries since 1984.  
4 Q. (BY MR. SIMS) How many convicted capital murderers,  
5 if you are aware, have been involved in further murders?  
6 A. I don't know the exact number today.  
7 MR. DURHAM: Then I'm going to object to the  
8 response because it assumes by the very nature of the response  
9 that there have been some.  
10 THE COURT: Sustained.  
11 MR. DURHAM: May I have an instruction for the  
12 jury to disregard?  
13 THE COURT: The jury is so instructed.  
14 Q. (BY MR. SIMS) Have capital murderers been known to  
15 commit murder in prison?  
16 A. Yes, sir.  
17 Q. You previously said that, hadn't you?  
18 A. I believe I have said that.  
19 Q. I thought you had.  
20 MR. SIMS: Pass the witness, Your Honor.  
21 THE COURT: Let's just -- it's a quarter of  
22 12:00. I assume you've got some cross-examination of this  
23 witness?  
24 MR. DURHAM: I do have a few questions, yes.  
25 THE COURT: Let's break until -- be back here

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1 at 1:15, please, folks.  
2 All folks out in the gallery need to remain  
3 seated, please.  
4 (Jury left the courtroom)  
5 Okay. I need all members of the gallery there  
6 to remain seated until all the jurors have cleared the  
7 elevators.  
8 Gary, if you would come back in and tell them  
9 at that point.  
10 MR. YONTZ: Your Honor, may I --  
11 THE COURT: Sir?  
12 MR. YONTZ: I just have one question for  
13 defense counsel. I gave them earlier State's Exhibits 26 and  
14 27, which are prior convictions. I don't know --  
15 THE COURT: Inside what? Which was inside  
16 what?  
17 MR. DURHAM: Which we will not stipulate to.  
18 THE COURT: Okay.  
19 MR. YONTZ: Okay. Then what we need is, we  
20 need to take his fingerprints during the lunch hour.  
21 THE COURT: Fine. Get me an order on it.  
22 MR. YONTZ: Okay.  
23 THE COURT: Okay. You can step down.  
24 (Recess)  
25 THE COURT: Okay. Let's proceed.

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1 (Jury returned to the courtroom)  
2 CROSS-EXAMINATION  
3 BY MR. DURHAM:  
4 Q. Will you pronounce your last name for me where I  
5 don't mess it up.  
6 A. Merillat.  
7 Q. Okay. I'm just going to refer to you as sir because  
8 I'll mess up Merillat --  
9 A. That's fine either way.  
10 Q. -- more often than not.  
11 Okay. Now, as I understand it, you're with the  
12 Special Prosecution Unit?  
13 A. Yes, sir.  
14 Q. Is that correct?  
15 A. Yes, sir.  
16 Q. Okay. And it's your job to prosecute crimes that  
17 occur in prison?  
18 A. Primarily, yes, sir.  
19 Q. So you're part of the prosecution team?  
20 A. Yes, sir.  
21 Q. So you don't ever testify for a defendant?  
22 A. I've been called many times by the defense, but they  
23 don't put me on the stand.  
24 Q. Well, but my question was testify for them, and I  
25 guess what you just said was no?

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1 A. That's correct.  
2 Q. So the answer to my question was no?  
3 A. That's correct.  
4 Q. Okay. All right. Now, I've got a couple of  
5 questions on this -- when a capital murderer goes in, he's  
6 classified as a 3, right?  
7 A. Yes, sir.  
8 Q. Okay. And anybody that has an aggravated offense or  
9 has a sentence over 50 years is a 3?  
10 A. That's correct.  
11 Q. All right. Is that without regard to any other  
12 history?  
13 A. No, sir, it's not -- it's not without regard to --  
14 Q. What I mean -- let me give you an example because I  
15 really don't -- I'm not as familiar with your system as maybe  
16 I could be or should be, and you need to educate me and the  
17 jury a little bit.  
18 Suppose that a man has been in prison for  
19 manslaughter or something and did a stint and then he's in  
20 prison for 20 years for murder and he finishes that, and then  
21 he commits a capital murder, so he's got -- he's going in with  
22 two prior offenses and a capital murder. Is he going to come  
23 in as a 3?  
24 A. He is certainly going to come in as a G-3, yes, he  
25 is. You're talking about a brand new conviction, although --



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1 Q. So -- I'm sorry, I didn't mean to interrupt you.  
2 A. If he had prior convictions -- if I understand you  
3 correctly, say he came in for burglary, paroled, got out into  
4 the free world, got convicted for a manslaughter, came back  
5 in, paroled, went back out, came back in for a capital murder,  
6 yes, he's going to come back in as a G-3.  
7 The prison is not going to look at those  
8 previous convictions. They're going to start him with his  
9 capital case as a G-3, and then his behavior will determine  
10 what happens after that situation.  
11 Q. Okay. So y'all assume that his behavior is what  
12 you're going to look at from then on?  
13 A. Did you just say I assume that?  
14 Q. No, the system assumes it. I'm not asking you to  
15 assume that. I'm asking you about classifications.  
16 A. No, sir, the system doesn't assume anything like  
17 that. The system assigns that classification as a result of  
18 an incident that happened in Texas not too long ago. There  
19 was no G system before that incident.  
20 MR. DURHAM: Nonresponsive, objection.  
21 THE COURT: Sustained.  
22 A. Perhaps I don't understand your question.  
23 Q. (BY MR. DURHAM) Well, let's move on. I'm probably  
24 asking bad questions.  
25 But there are provisions for people who are

1 A. Absolutely. You could have someone who has a trusty  
2 classification in Ad Seg.  
3 Q. So -- all right. Now, in that regard, say you have  
4 a trusty that does something so outlandish, do you move them  
5 to G-2 or do -- or do you move them up the ladder or can they  
6 jump from a trusty to 5?  
7 A. You sure can, yes, sir.  
8 Q. You can go from trusty to 5?  
9 A. That's correct.  
10 Q. Okay. Did you testify in that rape case of the  
11 inmate in Wichita Falls?  
12 A. No, sir, I worked that case, I didn't testify in it.  
13 Q. Didn't testify for the plaintiff in that?  
14 A. No, sir.  
15 Q. Now, you didn't hear Lieutenant Brown's testimony,  
16 did you?  
17 A. No, sir.  
18 Q. Okay.  
19 MR. DURHAM: I'll pass the witness.  
20 REDIRECT EXAMINATION  
21 BY MR. SIMS:  
22 Q. For inmates housed in the high security -- the high  
23 security I think is what you called it?  
24 A. Yes, sir.  
25 Q. Have there been acts of violence committed by those

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1 considered risks to be more than 3s; is that correct?  
2 A. Yes.  
3 Q. There is 4, which is higher than 3?  
4 A. That's correct.  
5 Q. And then you get into the Administration Segregation  
6 categories?  
7 A. Yes, sir.  
8 Q. Which have more than one level?  
9 A. That's correct.  
10 Q. And you actually have a unit where you put people  
11 whose behavior is extremely violent in -- in this new prison?  
12 A. Yes, sir, high security.  
13 Q. And what prison is that?  
14 A. They're all over the state. They're at the larger  
15 prisons. There's one here in Amarillo, they're in Livingston  
16 and Gatesville, all over the state, Beeville.  
17 Q. Where they have that to have that (sic)?  
18 A. Sir?  
19 Q. Where they -- where they are locked in a very --  
20 very -- a 5 level, I think you -- what did you call it?  
21 A. Well, it's called high security. It's not  
22 necessarily for 5s only, but it's for the ones who cannot be  
23 managed in Ad Seg. It's a separate building.  
24 Q. Well, would you have somebody that is a G-1 that  
25 could end up in Ad Seg?

1 inmates --  
2 A. Yes, sir.  
3 Q. -- in prison?  
4 Have there been murders committed by those --  
5 A. Yes, sir.  
6 Q. -- type classed inmates?  
7 A. Yes, sir.  
8 MR. SIMS: Pass the witness, Your Honor.  
9 RECROSS-EXAMINATION  
10 BY MR. DURHAM:  
11 Q. In the high security, there have been murders  
12 committed?  
13 A. Yes, sir.  
14 Q. When was that?  
15 A. The Allred Unit in 2003, I believe the date was.  
16 Q. Was that another prisoner?  
17 A. Yes, sir.  
18 Q. So the guards failed to protect the other prisoner?  
19 A. They did the best they could.  
20 Q. I didn't say they didn't do their best, I said they  
21 failed. Is that correct or incorrect? It happened?  
22 A. Yes, it happened.  
23 MR. DURHAM: Okay. No further questions.  
24 MR. SIMS: Nothing else, Your Honor.  
25 THE COURT: Okay, you can step down, sir.

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1 Do you want this witness released?  
2 MR. DURHAM: No objection.  
3 MR. SIMS: That will be fine.  
4 THE COURT: You're free to go. Thanks a lot.  
5 THE WITNESS: Thank you.  
6 THE COURT: Call your next witness.  
7 MR. YONTZ: Michael Wright.  
8 Call Catherine Nall, Your Honor. Mr. Wright  
9 will be here in a few minutes.  
10 THE COURT: Catherine who?  
11 MR. YONTZ: Catherine Nall.  
12 THE COURT: Ms. Nall, come up, please. Come  
13 right up and take a seat on the witness stand.  
14 Once again, make yourself comfortable and move  
15 that mike around to wherever you need to so you're speaking  
16 into it.  
17 You're still under the same oath that I  
18 administered to you previously.  
19 THE WITNESS: Yes, sir.  
20 CATHERINE NALL,  
21 having been previously duly sworn, testified as follows:  
22 DIRECT EXAMINATION  
23 BY MR. YONTZ:  
24 Q. Would you state your name for the record, please?  
25 A. My name is Catherine Nall.

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1 Q. And Catherine, you testified previously in this  
2 case; is that correct?  
3 A. That's correct.  
4 Q. And at that time, you identified a photograph; is  
5 that right?  
6 A. Yes, a photo of my brother.  
7 Q. Is your brother older than you or younger?  
8 A. He's my younger brother by about three years.  
9 Q. Okay. How old was he when he died?  
10 A. I'm sorry, I can't do the math.  
11 Q. Still a couple of years younger than you?  
12 A. He's three years younger than me, yes.  
13 Q. And what type of person was he?  
14 A. He was a wonderful person.  
15 Q. Can you give me some examples of what -- what you  
16 mean?  
17 A. I think the best way that I can describe his  
18 character to you is that I named my youngest son after  
19 Stanley, and I think when you share a family name with one of  
20 your children, it's because that you hope when that child  
21 grows up, that they'll emulate that person and display their  
22 characteristics and use them as a role model. I think that's  
23 one of the highest forms of praise that I can think of.  
24 Q. Do you know what other people thought of him?  
25 A. He was well liked.

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1 MR. DURHAM: I'm sorry, that calls for  
2 speculation and conclusions without proper predicate.  
3 THE COURT: Sustained.  
4 MR. DURHAM: May I have an instruction?  
5 THE COURT: The jury is instructed to disregard  
6 the last question and answer.  
7 Q. (BY MR. YONTZ) How has his loss affected your  
8 family?  
9 MR. DURHAM: I think she can testify how the  
10 loss has affected her, but not other people.  
11 THE COURT: Sustained.  
12 Q. (BY MR. YONTZ) Are you familiar with the members of  
13 your family?  
14 A. Yes.  
15 Q. Who all is in your immediate family?  
16 A. My father is still living, my mother died of cancer  
17 about three months before Stanley was killed. I have another  
18 sister, Margaret.  
19 Q. Okay. What about your children?  
20 A. I have three children, all teenagers, and I'm  
21 married.  
22 Q. Your sister -- you have a sister; is that correct?  
23 A. Yes, I have an older sister.  
24 Q. Does she have children?  
25 A. Yes, she has two. I have two nieces with her.

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1 Q. How about Stanley, did he have children?  
2 A. No, Stanley was not married and he didn't have any  
3 children.  
4 Q. Have you had occasion since his death to meet with  
5 family members at various occasions?  
6 A. Oh, yes.  
7 Q. Has there been a difference in things since Stanley  
8 is not there?  
9 A. Yes.  
10 Q. Can you explain that?  
11 A. Stanley was incredibly family oriented. He made a  
12 huge effort to spend time with family. Anytime Margaret's  
13 family or mine would come to Amarillo, Stanley would arrange  
14 to have as much time off as possible to spend with us and the  
15 kids, and he adored the children.  
16 And we have a huge Thanksgiving dinner in  
17 Dallas every year, and he was always there if it was at all  
18 possible. And, of course, at the lake every year, we have a  
19 bit of a family reunion. And, again, whoever could come would  
20 be there, and Stanley was always there.  
21 Q. How has his death affected you?  
22 A. Well, I can't even come home without flying into the  
23 Amarillo airport and I drive past the prison and all of those  
24 details of his death just crowd in on you and you can't get  
25 away from it, so I can't even come home without being vividly



# APPENDIX G

Trial Transcript excerpts, *State v. Runnels*, No. 48, 950-D,  
320<sup>th</sup> District Court in and for Potter County, Texas, October 28, 2005

R E P O R T E R ' S R E C O R D  
VOLUME 17 of 19

TRIAL COURT CAUSE NO. 48,950-D

THE STATE OF TEXAS	)	IN THE 320TH DISTRICT COURT
	)	
	)	
VS.	)	IN AND FOR
	)	
	)	
TRAVIS TREVINO RUNNELS	)	POTTER COUNTY, TEXAS

\*\*\*\*\*

TRIAL ON THE MERITS

OCTOBER 28, 2005

\*\*\*\*\*

On the 28th day of October, 2005, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Don Emerson, Judge Presiding, held in Amarillo, Potter County, Texas:

Proceedings reported by Machine Shorthand.

COPY

## A-P-P-E-A-R-A-N-C-E-S:

FOR THE STATE:

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MR. RANDALL C. SIMS  
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EXHIBIT INDEX

VOLUME 17

EXHIBIT NUMBER	DESCRIPTION	OFFERED	ADMITTED
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(No exhibits offered)

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1 "Members of the jury, the defendant, Travis  
2 Trevino Runnels, stands charged by indictment with the offense  
3 of capital murder, alleged to have been committed in Potter  
4 County, Texas on or about the 29th day of January, 2003.  
5 "To this charge the defendant has pleaded  
6 'guilty,' and he has persisted in entering such plea,  
7 notwithstanding the court, as required by law, has admonished  
8 him of the consequences of the same; and it plainly appearing  
9 to the court that the defendant is sane, and that he is not  
10 influenced to make this plea by any consideration of fear, nor  
11 by any persuasive or delusive hope of pardon prompting him to  
12 confess his guilt, said plea is by the court received, and the  
13 jury is instructed to find the defendant guilty as charged in  
14 the indictment.  
15 It now becomes your duty to answer certain  
16 questions, called 'Special issues' in order that the Court may  
17 assess the punishment prescribed by law. Before answering the  
18 Special Issues, you must carefully consider the following  
19 instructions:  
20 "You are instructed that the mandatory  
21 punishment for the offense of Capital Murder is confinement in  
22 the Institutional Division of the Texas Department of Criminal  
23 Justice for life, or death.  
24 "In determining your answers to the questions,  
25 or the Special Issues submitted to you, you shall consider all

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1 the evidence submitted to you in this trial.  
2 "In arriving at the answers to the Special  
3 Issues submitted, during your deliberations you must not  
4 consider, discuss, nor relate any matters not in evidence  
5 before you. You should not consider nor mention any personal  
6 knowledge or information you may have about any fact or person  
7 connected with this case which is not shown by the evidence.  
8 "In arriving at the answers to the Special  
9 Issues submitted, you are instructed that you cannot, and you  
10 must not, render a compromise verdict; that is, in arriving at  
11 your answers to the Special Issues, you are not to arrive at  
12 the same by agreeing among yourselves to answer one Special  
13 Issue in one way in exchange for an agreement to answer the  
14 other Special Issue another way. Nor are you to arrive at  
15 your answers by lot or by chance; or by any other method other  
16 than by a full, fair, and free discussion of the evidence  
17 bearing thereon.  
18 "In arriving at the answers to the Special  
19 Issues submitted, you are instructed that if there is any  
20 testimony before you in this case regarding the defendant  
21 having committed offenses or bad acts other than the offense  
22 alleged against him in the indictment in this case, you cannot  
23 consider said testimony for any purpose unless you first find  
24 and believe, beyond a reasonable doubt, that the defendant  
25 committed such other offense, offenses, bad act, or bad acts,

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1 if any."  
2 Folks, if you will delete after the word -- end  
3 that sentence with "any." Delete "were committed," please.  
4 "Even then, you may only consider the same as  
5 they bear upon the Special Issues submitted, and for no other  
6 purpose.  
7 "In the event the jury is unable to agree upon  
8 an answer to any Special Issue in accordance with the  
9 conditions and instructions outlined herein, the Presiding  
10 Juror will not sign an answer to that Special Issue.  
11 "You are instructed that you will answer  
12 Special Issue No. 1 either 'Yes' or 'No,' in accordance with  
13 the instructions contained herein.  
14 "You are instructed that the burden of proof in  
15 Special Issue No. 1 rests upon the State, and it must prove  
16 the affirmative - that is, an answer of 'Yes' -- as to such  
17 issue beyond a reasonable doubt.  
18 "You are instructed that you shall consider all  
19 evidence, including evidence of the defendant's background or  
20 character or the circumstances of the offense that militates  
21 for or mitigates against the imposition of the death penalty.  
22 "In the event you have a reasonable doubt as to  
23 an affirmative answer to Special Issue no. 1 after considering  
24 all the evidence before you and these instructions, you will  
25 answer Special Issue No. 1 in the negative, if you can do so

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1 in accordance with the instructions contained herein, and say  
2 by your verdict 'No' as to that Special Issue.  
3 "You are instructed that you may not answer  
4 Special Issue No. 1 'Yes' unless all twelve (12) jurors agree  
5 to such answer. Furthermore, you are instructed that you may  
6 not answer Special Issue No. 1 'No' unless ten (10) or more  
7 jurors agree.  
8 "It is not necessary that all members of the  
9 jury agree on what particular evidence supports a negative  
10 answer - that is, an answer of 'No' - to Special Issue No. 1.  
11 "You are further instructed that if the jury  
12 returns an affirmative finding - that is a 'Yes' answer - as  
13 to Special Issue No. 1, then the jury shall answer Special  
14 Issue No. 2. Otherwise, you will not answer Special Issue  
15 No. 2.  
16 "You are instructed that you will answer  
17 Special Issue No. 2 either 'Yes' or 'No,' in accordance with  
18 the instructions herein.  
19 "You are instructed that you may not answer  
20 Special No. 2 'No' unless all twelve (12) members agree to  
21 such answer. Furthermore, you are instructed that you may not  
22 answer Special Issue No. 2 'Yes' unless ten (10) or more  
23 jurors agree.  
24 "It is not necessary that members of the jury  
25 agree on what particular evidence supports an affirmative

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1 answer - that is, an answer of 'Yes' - to Special Issue No. 2.  
2 "You are instructed that you shall consider  
3 'mitigating evidence' to be evidence that a juror might regard  
4 as reducing the defendant's moral blameworthiness.

5 "In the event the jury is unable to agree upon  
6 an answer to Special Issue No. 1 [sic] in accordance with the  
7 conditions and instructions outlined above, the Presiding  
8 Juror will not sign either answer to Special Issue No. 2.

9 "You are instructed that if the jury answers  
10 that a circumstance or circumstances warrant that a sentence  
11 of life imprisonment rather than a death sentence be imposed,  
12 the court will sentence the defendant to imprisonment in the  
13 institutional division of the Texas Department of Criminal  
14 Justice for life.

15 "Under the law applicable in this case, if the  
16 defendant is sentenced to imprisonment in the Institutional  
17 Division of the Texas Department of Criminal Justice for life,  
18 the defendant will become eligible for release on parole, but  
19 not until the actual time served by the defendant equals forty  
20 (40) years, without consideration for any good conduct time.  
21 It cannot accurately be predicted how the parole laws might be  
22 applied to this defendant if the defendant is sentenced to a  
23 term of imprisonment for life because the application of those  
24 laws will depend on decisions made by prison and parole  
25 authorities, but eligibility for parole does not guarantee

1 "After you have retired to the jury room, it is  
2 the duty of your presiding juror to preside at your  
3 deliberations, vote with you, and when you have agreed upon a  
4 verdict in accordance with the instructions contained herein,  
5 to certify to your verdict by signing his or her name as  
6 presiding juror to the verdict form attached hereto. After  
7 you have retired to the jury room, no one has any authority to  
8 communicate with you except the officer who has you in charge.  
9 You may communicate with this Court in writing through the  
10 officer who has you in charge. Do not attempt to talk to the  
11 officer who has you in charge, or the attorneys or the Court,  
12 or anyone else concerning any question you may have. After  
13 you have arrived at your verdict, you may use one of the  
14 verdict forms attached hereto by having your presiding juror  
15 sign his or her name to the particular form that conforms to  
16 your verdict, but in no event shall he or she sign more than  
17 one of such form.

18 "Following the arguments of counsel, you may  
19 retire to consider your verdict."

20 Signed Don Emerson, Judge Presiding.

21 There follow verdict forms.

22 I will tell you, folks, that this charge I just  
23 read to you, that last little bit about one verdict form only  
24 refers to those contained within Special Issues No. 1 and 2.

25 The first thing you will find in this packet is

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1 that parole will be granted.

2 "When you are given a legal definition, you are  
3 bound to accept that definition in place of any other meaning.  
4 If a word or phrase is not defined, simply ascribe to it the  
5 meaning commonly understood for that word or phrase.

6 "You, the jury, are the exclusive judges of the  
7 credibility of the witnesses, of the weight to be given the  
8 evidence and of the facts proved, but you are bound to receive  
9 the law from this Court as given in this charge and be  
10 governed thereby.

11 "Our law provides that a defendant may testify  
12 in his own behalf if he elects to do so. This, however, is a  
13 privilege accorded a defendant, and in the event he elects not  
14 to testify, that fact cannot be taken as a circumstance  
15 against him. In this case, the defendant has elected not to  
16 testify, and you are instructed that you cannot and must not  
17 consider, discuss, allude to, comment upon or refer to that  
18 fact throughout your deliberations or take it into  
19 consideration for any purpose whatsoever against him.

20 "You are charged that it is only from the  
21 witness stand that the jury is permitted to receive evidence  
22 regarding the case, or any witness therein, and no juror is  
23 permitted to communicate to any other juror anything he or she  
24 may have heard regarding the case or any witness therein, from  
25 any source other than the witness stand.

1 a verdict form with regard to the guilt/innocence stage, which  
2 is to be signed by the presiding juror in accordance with the  
3 instructions I gave you to find the defendant guilty. That is  
4 merely a formality and those portions that I just read you  
5 about signing only one of the forms only applies to Special  
6 Issue No. 1 or No. 2.

7 Do you see why we're sending 12 copies back?  
8 Okay. Let me see the lawyers up here a minute.  
9 (At the bench, on the record)

10 THE COURT: You made 12 copies, right?

11 MR. OWEN: No, I haven't. I will.

12 THE COURT: That's okay, I'll handle it.

13 Okay. Thanks.

14 (Open court)

15 THE COURT: Go ahead.

16 STATE'S CLOSING STATEMENT

17 MR. YONTZ: Your Honor, may it please the  
18 Court, Counsel. Throughout this trial, at times this has been  
19 referred to as a tragedy. It's not a tragedy. This is a  
20 murder, far worse than a tragedy.

21 Many years ago, there was an episode of Mash in  
22 which Father Mulcahy and Hawkeye --

23 MR. DURHAM: I'm sorry, that's outside the  
24 record, Your Honor. I didn't -- don't recall seeing that  
25 being played to the jury. That's outside the record.



1 THE COURT: Overruled.  
2 MR. YONTZ: Which Hawkeye and Father Mulcahy  
3 were talking, and Father Mulcahy quotes General Sherman that  
4 "War is hell." And Hawkeye says, "No, war is war and hell is  
5 hell and of the two, war is the worst because in hell only the  
6 guilty suffer."

7 What this gentleman has wreaked upon the Wiley  
8 family is far closer to the latter, where the innocent suffer  
9 as well and continue to suffer.

10 There is no question of guilt in this case.  
11 There is no issue of that. After you sign the verdict form  
12 indicating guilty, then go to the Special Issues. And each of  
13 you have seen this chart before.

14 Ladies and gentlemen, in looking at Special  
15 Issue No. 1, look to the evidence that's been presented to  
16 you, consider the testimony of the witnesses. Out of  
17 everything that's been said in this trial, perhaps the most  
18 eloquent statement comes from Mr. Ellis [sic] as he testified,  
19 an inmate in the penitentiary. His simple words through his  
20 tears, "Mr. Wiley was a good boss."

21 Whether there is a probability the defendant  
22 would commit criminal acts of violence that would constitute a  
23 continuing threat to society. All people are members of  
24 society; all people, including those in the penitentiary and  
25 outside the penitentiary, whether they're employees or inmates

1 in the criminal justice system.

2 Look to the actions of the defendant. It was  
3 interesting that defense counsel would ask each one of those  
4 witnesses, "Well, have you seen him involved in any fights  
5 with other inmates?" "No, he hasn't been involved in fights  
6 with other inmates."

7 But you do have what type of person he is. You  
8 have his criminal history, you have his burglary conviction,  
9 you have his armed robbery conviction with a firearm, you have  
10 the assault where he hit the officer in the jaw and then ran  
11 back to his cell. You have the murder where he snuck up  
12 behind him, pulled his head back and cut his throat with a  
13 knife. You have him continuing to throw urine, feces, light  
14 bulbs, attacking people that have done nothing to him, except  
15 for whatever reason he wants to strike out.

16 His action in prison, his actions before tell  
17 you he is going to be a person who will commit criminal acts  
18 of violence that constitute a continuing threat to society.

19 You are then asked to look at Question 2,  
20 Special Issue No. 2. Taking into consideration all the  
21 evidence, the circumstances of the offense, he had a  
22 disagreement, he was in the penitentiary, but he didn't want  
23 to work, he didn't want to sweep the floor. And because --

24 MR. DURHAM: Your Honor, that is outside the  
25 record. There was no evidence that that's what was said, that

1 he didn't want to sweep the floor. There's no evidence --

2 THE COURT: The jury will recall the evidence.

3 MR. DURHAM: Thank you, Your Honor.

4 MR. YONTZ: He didn't want to do it, and he  
5 carried out his plan to kill Stanley Wiley because of words,  
6 not even a physical confrontation, simply words, he committed  
7 a murder.

8 You saw the injuries that Stanley Wiley  
9 sustained. You heard Dr. Natarajan describe those injuries.  
10 That knife cut so deep that it cut entirely through the  
11 trachea and actually cut the spinal cord in back of the  
12 trachea. His only intent was to murder.

13 The defendant's character and background.  
14 We've touched on that. The defendant is a violent person.  
15 The defendant will continue to be a violent person.

16 The personal and moral culpability of the  
17 defendant. Ladies and gentlemen, that's one of the knives  
18 that was introduced that was picked up. Set that knife down,  
19 ladies and gentlemen, and if I stand over here and I look at  
20 that knife all day, it's not going to move. No matter what I  
21 want to do with that knife, it's not going to move. It's not  
22 going to move until I walk over and pick it up and then do  
23 whatever I want with it. And that's the same with the  
24 defendant.

25 That knife was not going to cut Stanley Wiley's

1 throat until the defendant put it to that use. He is the only  
2 one responsible for this crime. He is the only one that is  
3 personally and morally culpable of this murder. He acted  
4 alone, and there is no mitigating circumstance or  
5 circumstances that warrant a life sentence in this case over a  
6 death sentence.

7 Ladies and gentlemen, this is not to suggest in  
8 any way that your decision is going to be easy or that's it  
9 should be made in haste. It's a difficult decision. It's a  
10 terribly difficult decision. But it's one that you have sworn  
11 an oath to base upon the evidence in the case.

12 Society is full of difficult decisions that  
13 have been made by brave people that are willing to take upon  
14 them the responsibility that has been placed similarly as it  
15 has upon your shoulders.

16 One of the things that I have done, or used to  
17 do more than I do now, is collect ties of historical events,  
18 historical people. And once in a while I wear this one.  
19 Somebody will get up close to it and they'll say, "Well,  
20 what's that little design or that little person in there?"  
21 That's actually a person of somewhat historical significance,  
22 though not very well known. He was a captain of an army, he  
23 was the leader of a nation, and the people in his nation  
24 wanted to succumb to taking the easy way out of their  
25 problems. They were at war and they were thinking of

1 surrendering --

2 MR. DURHAM: Your Honor, this is -- I have no  
3 way of testing the validity of this story, and I'm going to  
4 object to it as being outside the record.

5 THE COURT: Overruled.

6 MR. YONTZ: They were at war, they wanted to  
7 take the easy way out, they wanted to take the easy way out of  
8 decisions in their society. And it got to the point that he  
9 became so flustered and so angered that the historical record  
10 records that he ripped his coat, he tore his coat and he wrote  
11 upon it, "For our nation, for our justice, for our liberty,  
12 for our families, our wives, and our children is why we must  
13 make the tough decisions."

14 He could very easily have put, "For our society  
15 is why we have to make the tough decisions." It's also why  
16 you have to make the tough decision.

17 THE COURT: Mr. Durham?

18 DEFENDANT'S CLOSING STATEMENT

19 MR. DURHAM: May it please the Court. Ladies  
20 and gentlemen of the jury. I've got a tie story, too. My tie  
21 has crosses on it for a man who made a difficult decision, who  
22 died for all of us where we could enjoy forgiveness for our  
23 sins and omissions, real and imagined.

24 I told you on voir dire, I stood before you and  
25 I said, "I have a very sober and awesome responsibility." Do

1 and our movies, you can't go to a movie that there's not 14  
2 cars destroyed and a dozen people killed. We're losing troops  
3 every day in Iraq to fight for freedom, freedom, due process,  
4 the American way.

5 Now, where does this come down to? It comes  
6 down to one specific question. Stop and consider all the  
7 evidence. Some of you go to Palo Duro Canyon. I've gone to  
8 Palo Duro Canyon. I look across there and I see the vista and  
9 the cedar trees, sometimes when it's rained, the stream  
10 running through, and it's green. And sometimes you might even  
11 see an animal down there. There are animals down there that  
12 you might see. And you're just taken with the totality of the  
13 landscape.

14 But, you know, you can focus on one thing.  
15 Right there, there's a bare spot where somebody's polluted the  
16 ground, dropped some gasoline on it and it's a bare spot and  
17 it's ugly. So are you going to ignore the entire vista  
18 because of one gasoline spot? No, you're going to look at the  
19 totality.

20 Now, that's what I'm asking you to do, is look  
21 at the totality and answer this one question? What witness,  
22 what one witness looked you in the eye and said, "Travis  
23 Runnels is a future danger"? What psychologist, what  
24 psychiatrist, what expert brought their magic ball, their  
25 crystal -- maybe you've seen these little things, 8-balls, you

1 y'all remember that? Representing a man on trial for his  
2 life, Travis Trevino Runnels. Well, my job, after a sleepless  
3 night, ends today. Your job begins, I hand to you the awesome  
4 and sober responsibility of evaluating the evidence and  
5 answering Special Issues.

6 And I want to talk about the evidence, and I  
7 will. The Court gives you a charge, tells you to follow the  
8 evidence. Now, we spent a lot of time talking about the  
9 murder. And let me -- let me hasten, it was a horrific  
10 murder. But do you know that every murder, every loss of  
11 life, be it man, woman, child, adult, the unborn, every loss  
12 of life is horrific and it leaves a void, it leaves a void for  
13 those around them.

14 There is nothing that Travis can do to restore  
15 Stanley Wiley to life. There's nothing you can do. We can  
16 seek revenge. We can take him out to the nearest tree and  
17 string him up, because he pled guilty, so why the -- the  
18 pageantry of a trial? Because we are a society, we are a  
19 sane, rational society that looks at all the evidence. And  
20 instead of taking the easy way out and just killing everyone  
21 who offends us -- and all of us -- well, maybe not all of us,  
22 but many of us have at various times said things like -- when  
23 you're cut off in traffic, "I could kill that SOB," and you  
24 didn't mean it. But it was out of anger. And you see, we're  
25 so permeated with the violence in our TV and our literature

1 turn it over and it has an answer, you know, "Will I be rich?"  
2 You turn it over and it says, "It depends on what you do," you  
3 know. You don't plan your life on a toy. You consult  
4 experts, you ask questions.

5 What expert, what expert did they bring that  
6 said, "He will be a future danger"? What Travis Runnels will  
7 be is living in an area roughly this size for the rest of his  
8 life, is what he will be.

9 Now, looking at the issue of mitigation, yes, I  
10 asked if he were a violent person, if he fought in prison,  
11 because that's -- you know, those are the people he lived  
12 with, those were the people he was around all the time, those  
13 are the people who were in his face, except for the bosses.

14 And you know what really impressed me, we had  
15 seven -- seven inmates testify. Y'all recall that. Six  
16 black, one white. And while they were testifying on those  
17 back two rows, it was full of correctional officers staring at  
18 those seven prisoners. But the next day, the next day when  
19 the prisoners weren't testifying, there were not two rows of  
20 correctional officers back there.

21 When the correctional officers were testifying,  
22 they didn't have the support of their fellow correctional  
23 officers, but when the prisoners were testifying, the  
24 prisoners certainly had what appeared to me to be the  
25 intimidation of the correctional officers, the bosses.

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1 You know the difference in slavery and the  
2 penitentiary? The slaves could escape. But now we've got the  
3 razor wire, we've got the double lock. We have Administrative  
4 Segregation, and we poke the animal in the cage and say, "Be  
5 tame. Walk this line, walk on this side, be tame. If you're  
6 not tame, if you don't behave good, we'll take away your  
7 radio. And if you don't behave good soon, we'll destroy your  
8 radio."  
9 Now, certainly, they have a problem controlling  
10 people, but they're still human, they're still human.  
11 The witnesses. Stan's sister. My heart, just  
12 as yours, goes out to Stanley's sister, both when she  
13 identified his picture and at the end when she testified about  
14 the void his death left.  
15 Well, if the only issue in this case were  
16 revenge, then we might well just set up a guillotine or  
17 something and let Stan's sister pull the switch and chop off  
18 his head. But this is not a revenge society. That's not what  
19 it's about.  
20 And I don't think that would give her closure.  
21 Nothing will ever close that void, no more than the void left  
22 by the death of her mother just a scant three months before  
23 her brother was murdered. A double hit. My heart goes out to  
24 her.  
25 Then our doctor testifies. We knew he was

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1 dead. We knew that when we came in or we wouldn't be here.  
2 We knew it was by his throat being cut. We knew that or we  
3 wouldn't be here. And Travis stood up and said, "Guilty. I  
4 am guilty of murder. I am guilty of murder." He bared his  
5 soul. "I am guilty."  
6 And in effect said, "Okay, Mr. Sims, prove  
7 beyond a reasonable doubt I'm a future danger." And Mr. Sims  
8 did not prove he was a future danger. Instead, the  
9 evidence -- the seven prisoners were asked, "Is he a trouble  
10 maker? Has he caused trouble?" Something caused this, and  
11 the biggest -- the biggest question in my mind, and it may or  
12 may not be in your mind, is not the fingerprints, I understand  
13 fingerprints, but the biggest question in my mind is why. Why  
14 do we have such a system that we lock people up like animals,  
15 treat them like animals, and expect them to be citizens of the  
16 month? Why?  
17 Okay. What's going to happen in the future?  
18 Well, I'll predict that the sun will come up tomorrow in the  
19 east, and that's one of the few things that I feel pretty sure  
20 about without some evidence.  
21 I'm not going to predict that Harriet Myers  
22 will be on Supreme Court, even though yesterday morning at  
23 this time I would have predicted it based upon the evidence.  
24 But it didn't happen. I couldn't see the future. I didn't  
25 know she was going to withdraw, and I doubt that -- I think

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1 President Bush may have known she was going to withdraw, but I  
2 didn't. You can't predict the future.  
3 Anyway, these seven inmates testified about his  
4 peaceable nature, about him not being violent. And, of  
5 course, there's going -- and from 1990, or something like that  
6 to 2003, 13 -- ten, 13 years, you're locked up, are you going  
7 to get in a little -- have some trouble? One incident before  
8 this murder with Officer Madigan, one incident in the previous  
9 ten years. Then he committed a murder.  
10 Then he went in Administrative Segregation for  
11 months, 23 hours a day, right here, this size, 23 hours a day.  
12 Twenty-three hours a day if he was a good boy. If he was not  
13 a good boy, then they would take away his shower time, his  
14 outside time, and he would stay in his 54 square foot, one  
15 side with a bed and the little space in between, 23 hours a  
16 day.  
17 The LVN and the RN who testified, testified  
18 that Mr. Wiley's injuries, those injuries were fatal. No  
19 question about it. That -- we didn't contest -- we did not  
20 contest for one minute that Travis killed Stanley Wiley. He  
21 did. That's a fact.  
22 We didn't say, "Okay, take a week, a month and  
23 bring us DNA and test the knives and prove all this." We  
24 said, "We did, we bare our soul, we did." The first act of  
25 contrition is admission. The first act of contrition is

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1 admission.  
2 Now, he threw things at the guards. They  
3 weren't hurt, didn't hit them, splashed on them. Disgusting,  
4 disgusting. He didn't have a shiv, and we all know what shivs  
5 are. We've seen enough television or read enough stories or  
6 heard enough about the prison to know what shivs are.  
7 So, you know, since the murder he threw three  
8 things, so, boy, that -- boy, he sure -- sure is a danger.  
9 If -- that probably will happen 20 times in the next hour at  
10 the prisons in Texas, something being thrown at a guard or a  
11 prisoner, with about the same result. And that certainly  
12 justifies taking a man's life.  
13 In effect, they're asking you to speculate  
14 Travis into a death sentence. They have not brought you proof  
15 beyond a reasonable doubt. And you swore you would do that.  
16 You swore you would hold the State to their burden of proof.  
17 I tried to pick an intelligent jury that would follow the  
18 evidence, that would hold the State to their burden of proof,  
19 that would expect to hear expert testimony about how you  
20 predict future dangerousness.  
21 Did you hear one word, one word from one expert  
22 who said, "He presents a danger in the future based upon my  
23 experience, my studies, psychological tests or anything?" Not  
24 one word, not one word.  
25 Now, they're going to say, "Well, just answer



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1 that yes and go down here," mitigation, what is -- mitigation  
 2 is like we told you on voir dire. Mitigation is whatever you  
 3 say it is. If you think -- let me tell you something.  
 4 Honestly, if I were on trial for my life and it were a choice  
 5 between life in prison and the death sentence, and knowing  
 6 that this area right here that I pace is my world, kill me,  
 7 just kill me. That's no punishment. Walking in a circle for  
 8 at least, at least, at least 40 years, to the age of 78 years,  
 9 or 68, whatever it is, remembering that he's still serving his  
 10 first sentence that has to be completed before he starts  
 11 serving this sentence, just kill me. I don't want to die. An  
 12 old man, doddering, not knowing anyone, not knowing anything,  
 13 not having a television, not getting to see Dallas play  
 14 football, a little thing. It's the little things in life  
 15 that, when they're taken away from us that count, like radios  
 16 and tobacco and things of that nature. Just kill me. That's  
 17 the easy decision, just kill me.  
 18 Well, Mr. Yontz talked about his tie. I have a  
 19 tie. And, you know, once there was a jury of one. That  
 20 jury's name was Pontius Pilate, and he washed his hands. He  
 21 ignored the evidence, he just washed his hands. He wasn't  
 22 bound by the evidence. It didn't have to be proven by this  
 23 man beyond a reasonable doubt. He just washed his hands, and  
 24 we now have the cross.  
 25 You can do what your oath said, hold the State

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1 to prove their case beyond a reasonable doubt, prove beyond a  
 2 reasonable doubt that he's a future danger, or you can wash  
 3 your hands, automatically answer it yes. You're the judges of  
 4 the evidence. You're the jury. Thank God we have juries.  
 5 Thank God that we don't have lynchings, that we don't have  
 6 summary execution. Thank God that we can live and not worry  
 7 about notes being passed to us in our cell that says, "Nigger,  
 8 you're going to die."  
 9 Look at the entire panorama of Palo Duro  
 10 Canyon. Do not look only at the polluted gas spot. Thank  
 11 you.  
 12 THE COURT: Mr. Sims?  
 13 STATE'S FINAL CLOSING STATEMENT  
 14 MR. SIMS: May it please the Court, Counsel.  
 15 Ladies and gentlemen of the jury, in voir dire, we talked  
 16 about common sense. Genius, common sense is genius dressed up  
 17 in work clothes. And when we looked for a jury, we looked for  
 18 a jury that was intelligent and one with common sense. And I  
 19 told you then and I'm telling you now, I ask you to use both,  
 20 use both.  
 21 We accept our responsibility for the burden of  
 22 proof in this case. We were ready to do so in guilt/innocence  
 23 beyond a reasonable doubt. Our burden of proof on the first  
 24 issue is beyond a reasonable doubt. We have no burden on the  
 25 second issue. And folks, I submit to you that there is no

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1 doubt that the defendant is guilty of this crime; thus, the  
 2 guilty plea.  
 3 I submit the evidence has showed that to you  
 4 and it had showed that to them. And I'm going to further  
 5 suggest to you that the evidence does substantiate beyond a  
 6 reasonable doubt that there is the probability that this  
 7 defendant will commit future acts of violence, and we'll get  
 8 into that in a minute. Jim touched on it to start off with,  
 9 but we'll get into that evidence. And that there is not a  
 10 single shred of mitigating evidence before you.  
 11 And you made an oath to make your decision  
 12 based on the law and the facts as you hear them in court. And  
 13 that is the issue. It is not if and but and candies and nuts  
 14 about what could be brought to you. The question is: Has the  
 15 State of Texas proved to you beyond a reasonable doubt with  
 16 the evidence that you have heard to answer this question yes?  
 17 And that's what you took an oath to do, is listen to the  
 18 evidence and make that decision and not speculate about  
 19 things.  
 20 Forgiveness. Jesus Christ stood on the cross  
 21 next to a thief, and he forgave that thief, but what else did  
 22 he do? He did not interfere with the punishment that had been  
 23 assessed. He allowed the death sentence to be imposed.  
 24 When you are driving down the road, ladies and  
 25 gentlemen, and you make that comment, "I just want to kill

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1 that somebody," you're right, you don't mean it. When this  
 2 defendant told Bud Williams, Jr., before he committed this  
 3 crime he wanted to kill Mr. Wiley, guess what, he meant it and  
 4 he did it. Premeditation. He went to three different people  
 5 before he got the knives, and he duped Mr. Elkins out of his  
 6 knife, and I'll come back to that in a minute.  
 7 An expert witness would have been just a  
 8 witness. That word is not gold. That witness would do the  
 9 same thing you're going to be asked to do, just make a  
 10 decision based on the evidence. And that's what would have  
 11 happened. Folks, y'all can do that just as good as anyone can  
 12 in this case because it is clear, and we'll talk about that  
 13 again a little more in the future.  
 14 All that is needed for evil to flourish is for  
 15 good men and women to do nothing. Inmate Yow. I asked him,  
 16 "Why did you hurt Mr. Wiley," something to that effect. And  
 17 his response, "Any offender or inmate" -- the defendant's  
 18 response, "Any offender or inmate, as long as they were  
 19 white." Anybody, anybody.  
 20 Then Mr. Yow, inmate Yow said something to the  
 21 effect of, "Don't you realize if he dies, you can get the  
 22 death penalty?" Can you recall those chilling words, "Dead  
 23 men can't talk," was his response. And he's absolutely right,  
 24 dead men can't talk directly to you. Mr. Wiley can no longer  
 25 talk directly to you. He silenced him, and the defendant

1 relied on the code of silence of the inmates --  
 2 MR. DURHAM: I'm sorry, I don't recall there  
 3 being evidence about a code of silence among the inmates and  
 4 I'm going to object to that --  
 5 THE COURT: The jury will recall the evidence.  
 6 MR. DURHAM: -- as being totally outside the  
 7 record.  
 8 MR. SIMS: The code of the inmates. And we had  
 9 seven come in, murder, aggravated robbery, aggravated sexual  
 10 assault, injury to a child, aggravated robberies. But you  
 11 know what, folks, they stood up and they spoke for Mr. Wiley  
 12 and they told you about the facts and circumstances of this  
 13 offense and what occurred as they saw it; that it was  
 14 premeditated. I submit to you that it was unprovoked. Words  
 15 allow for the killing of an individual? That person in the  
 16 car is dead if that's the case. Words do not justify death.  
 17 Premeditation. He told inmate Johnson he was  
 18 going to do it and he did it. He asked two different people  
 19 for the knife before he went to Mr. Elkins and finally got the  
 20 knife.  
 21 Mr. Elkins, how sad. A man who referred to  
 22 Mr. Wiley as a good boss, through his tears, a good guy. And  
 23 he now believes that it was his knife that was used to kill  
 24 that man, and that is why he wept, because he --  
 25 MR. DURHAM: Your Honor, that -- that's --

1 strong and severe blow for injustice because Mr. Wiley had  
 2 done nothing to deserve it.  
 3 A dead man can't talk. Well, what if -- but  
 4 what else can speak besides the inmates in regards to what  
 5 occurred that day? What is the best method of predicting the  
 6 future? Even Mr. Durham uses it. He predicts the sun will  
 7 rise in the east tomorrow morning. Why? Because it has  
 8 always risen in the east.  
 9 He's using the past to predict the future. And  
 10 that is the only way you can do it. That is the best way to  
 11 do it. And now we're going --  
 12 MR. DURHAM: Your Honor, we're going to object.  
 13 That is not the only way to predict the future, Your Honor,  
 14 and I'm going to object to that as being outside the record.  
 15 THE COURT: Sustained.  
 16 MR. DURHAM: Thank you. May I have an  
 17 instruction?  
 18 THE COURT: Jury is so instructed.  
 19 MR. DURHAM: Thank you, Your Honor.  
 20 MR. SIMS: The best way to predict the future,  
 21 I'll submit to you, is to look at past conduct. Who's  
 22 responsible for their actions? The person that commits them.  
 23 Who is responsible for this? This defendant.  
 24 And, folks, who is responsible for this?  
 25 Mr. Wiley's -- or this defendant's background? It is the

1 that's entirely outside the record.  
 2 THE COURT: Objection is sustained.  
 3 MR. DURHAM: May I have an instruction?  
 4 THE COURT: Jury is instructed to disregard.  
 5 MR. SIMS: I'll suggest that he has remorse  
 6 over what happened to Mr. Wiley, and you have seen that, and  
 7 that for a life sentence to be worse than death, a person must  
 8 have remorse. If they don't, it's not.  
 9 And the evidence in this case, from the actions  
 10 this defendant took that day, show he has no remorse for this  
 11 offense. He took a knife like this and pulled his head back  
 12 and cut his throat. And in that action, he turned this man  
 13 into this man. (Indicating) And will you please look at the  
 14 look on his face?  
 15 It was an intentional and knowing killing. I  
 16 submit to you it was cold-blooded, I submit to you it was  
 17 cowardly. He attacked him from behind, with no warning, no  
 18 chance to defend himself, and killed him with no chance to  
 19 tell his family goodbye and with no due process, and for what?  
 20 Asking a guy to work, asking him to do what he was supposed to  
 21 be doing. He had committed no offense to justify the death  
 22 penalty. We cannot say the same thing about this defendant.  
 23 And he calmly walked away and sat down. Those are the things  
 24 he did.  
 25 By striking that blow, this defendant struck a

1 defendant. Not you, not I, not Mr. Wiley, not the prison  
 2 system, but this defendant.  
 3 And let's look at it a minute. Born July 21,  
 4 1976, commits a burglary of a building when he's 17 and gets  
 5 ten years probation, gets that revoked very shortly thereafter  
 6 and sentenced to five years in prison. Gets out of prison,  
 7 very shortly thereafter, because in less -- about a year  
 8 later, he's committing an aggravated robbery. He gets a 70-  
 9 year sentence, folks, from a jury, Exhibit No. 26 over here, a  
 10 70-year sentence for an aggravated robbery with a firearm.  
 11 And while in prison -- he struck an officer  
 12 because the officer asked him to go do something, he committed  
 13 this capital murder, and since that time, he threw urine on a  
 14 guard from his cell where he was in closed security, while the  
 15 inmate was -- while the guard was dealing with another inmate,  
 16 wasn't even dealing with Mr. Runnels, threw the bulb at  
 17 Lieutenant Brown who was on the stand for quite some time, who  
 18 was just going -- only contact with the defendant was to go  
 19 give him some papers. Another act of violence.  
 20 Is it -- is it severe? No. Does it say it has  
 21 to be severe violence, folks? Other acts of criminal  
 22 violence. Threw the bulb at her. While he is incarcerated in  
 23 the highest security they have on that unit, he goes after an  
 24 inmate -- a worker.  
 25 Then he threw feces at another inmate [sic] who

1 had had no dealings with him at all. He was dealing with  
 2 another inmate, was not directed toward him at all.  
 3 And what do these show, folks, lack of  
 4 authority, lack of respect, a lack of willingness to conform,  
 5 and a lack of willingness to comply with the prison structure  
 6 which is very structured for everyone's safety, the workers  
 7 and the other inmates.  
 8 You heard A.P. testify there's been murders on  
 9 death row, there's been murders on the highest level security  
 10 that we have, and it was an inmate on another inmate, and  
 11 they're supposed to be kept separate. And he said, "There are  
 12 no safe places in prison, nowhere."  
 13 These things show his unwillingness to conform.  
 14 He's in for a 70-year sentence, folks. We didn't get his  
 15 attention with a long sentence in prison. Look what he's done  
 16 since, including this. It's an escalating chain of events  
 17 because he's gone from this to striking to killing and now to  
 18 attacking however he can those who don't even have anything to  
 19 do with him.  
 20 Those who forget the past are condemned to  
 21 repeat it. Do not forget the past.  
 22 Mr. Durham missed a shiv -- mentioned a shiv.  
 23 I'll let you just -- he hasn't had a shiv yet. He's had  
 24 feces, he's had urine, he's had a light bulb, and he got this.  
 25 After using a firearm, what will be his next weapon that he

1 today the last words of Mr. Wiley's life will be spoken. The  
 2 last words, the last three words written for his life will be  
 3 spoken. They will be spoken by you. Stan Wiley cannot speak.  
 4 You must strike that strong blow for justice according to your  
 5 intelligence, your common sense, the law and the evidence.  
 6 And you must, based on that, speak three words, "guilty,"  
 7 "yes," "no."  
 8 THE COURT: All right. Members of the jury,  
 9 you'll now retire to consider your verdict.  
 10 Gary where are the jury charges, please? Have  
 11 you got them all there?  
 12 THE BAILIFF: Twelve.  
 13 THE COURT: Okay. If you'll step down now,  
 14 please.  
 15 (Jury left the courtroom)  
 16 THE COURT: Okay, folks, you were the  
 17 alternates. This will conclude your service. Thank you very  
 18 much for being with us. We'll see you next time the computer  
 19 brings you down. If you'll stop by on the first floor and  
 20 tell them that I have discharged you. Thank you very much.  
 21 We're in recess.  
 22 (Recess)  
 23 THE COURT: Okay. Let me see the lawyers up  
 24 here a minute, please.  
 25 (At the bench, on the record)

1 gets or makes? Based on this, it's not a question of if, it  
 2 is a question of when. And an expert doesn't have to get up  
 3 here to tell you that. Your intelligence and your common  
 4 sense tells you that, folks.  
 5 Before -- be just before you're generous. Why  
 6 ask for life if it is such a bad punishment? Why seek the  
 7 punishment if it is worse than death? Common sense, folks,  
 8 common sense, use it.  
 9 Mr. Wiley clung to his last breath of light  
 10 because it's the most precious thing every living human being  
 11 has. And while he could not speak, he spoke to Mr. Askins to  
 12 make sure that the person that killed him was identified and  
 13 caught, and I would submit, in hopes of a successful  
 14 prosecution.  
 15 The inmates have spoken for him. I submit the  
 16 defendant's past speaks for Mr. Wiley as well. Mr. Wiley is  
 17 now silenced, but you are not, and the defendant cannot  
 18 silence you. You speak today and you must strike just as  
 19 strong and just as severe a stroke for justice as was struck  
 20 by this defendant for injustice. It will not be pleasant, it  
 21 will not be enjoyable, but I submit to you if you do that, you  
 22 will look your face in the mirror tomorrow, and I will suggest  
 23 you will know you have done the right thing.  
 24 Today is the last day of Mr. Wiley's life. He  
 25 is not here to speak, but others have spoken for him, and

1 THE COURT: You're objecting to both these  
 2 responses that we found because you think that this note does  
 3 not certify a dispute. Is that your objection?  
 4 MS. HAMILTON: Yes, sir.  
 5 THE COURT: It's overruled. Okay.  
 6 MS. HAMILTON: But I thought you were -- just  
 7 to be clear, I thought you said on the second part, you  
 8 weren't going to read that unless they --  
 9 THE COURT: I'm not. This is going to be --  
 10 MS. HAMILTON: Okay.  
 11 THE COURT: -- if they come back. I just  
 12 didn't want to have to get you guys --  
 13 MS. HAMILTON: Okay.  
 14 THE COURT: -- up here and do it again.  
 15 MS. HAMILTON: Okay.  
 16 THE COURT: Yes, but I'm not going to do that  
 17 at this first juncture.  
 18 MS. HAMILTON: Okay. Thank you.  
 19 (Open court)  
 20 THE COURT: Okay. Bring the jury in.  
 21 (Jury enters the courtroom)  
 22 THE COURT: Members of the jury, you have sent  
 23 me a letter telling me that you have -- the jury has a dispute  
 24 as to what was said by the first or possibly the second  
 25 witness about Mr. Runnels giving him the barber combs.



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1 The lawyers have suggested I say, "I'm sorry,  
2 there's no dispute because it was the third witness." But  
3 they have -- they have helped the court reporter find that  
4 portion of the testimony and she will now read it to you.  
5 THE REPORTER: Direct Examination of  
6 Mr. Williams by Mr. Simms.  
7 QUESTION: "Did you wake up one morning and  
8 find anything under your door?"  
9 ANSWER: "I woke up and there were some barber  
10 combs up under my door."  
11 And then later, in direct examination,  
12 QUESTION: "So you talked to this defendant when you said  
13 Mr. Runnels; is that correct?"  
14 ANSWER: "Yes, sir."  
15 QUESTION: "And he told you what?"  
16 ANSWER: "That he put the barber combs up under  
17 my door."  
18 QUESTION: "What happened at that point, very  
19 next thing?"  
20 ANSWER: "He had a letter in his hand and asked  
21 me would I mail this letter off to his mom if he don't come  
22 back, and I asked him, 'Where are you going?' And he said, 'I  
23 might not come back. I ain't going to be coming back.'"  
24 THE COURT: The second portion of your request  
25 simply says, "Also testimony about Mr. Runnels saying

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1 something about Mr. Wiley that morning prior to going to the  
2 boot factory."  
3 That does not indicate any sort of dispute  
4 about anything.  
5 So I'll send you back now. If you determine  
6 that you do have some -- some dispute you wish to certify to  
7 about this second portion, then I'll send this note back in  
8 with you, just let me know. Okay.  
9 (Jury left the courtroom)  
10 (At the bench, on the record)  
11 MR. DURHAM: While it's not necessary to  
12 request, I would request that the Court instruct the audience  
13 not to have any reaction to the verdict.  
14 THE COURT: Well, it's not going to be  
15 necessary. They are all going to remain in their places  
16 before we exit, until the jury is completely out of here.  
17 They --  
18 MR. DURHAM: Well, I mean no clapping or  
19 cheering or --  
20 THE COURT: Well, if anybody does that, they're  
21 going to jail.  
22 MR. DURHAM: Okay. All right.  
23 MR. SIMS: I've already said something to them,  
24 Your Honor.  
25 THE COURT: Okay.

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1 MR. DURHAM: All right. Thank you.  
2 (Open court)  
3 THE COURT: Okay. Bring the jury in, please.  
4 (Jury enters the courtroom)  
5 THE COURT: Members of the jury, have you  
6 reached a verdict?  
7 JURY FOREPERSON: We have.  
8 THE COURT: All right. If you would give the  
9 verdict form, please, to Colonel Johnson.  
10 Special Issue No. 1, the answer is, "We, the  
11 jury, unanimously find and determine beyond a reasonable doubt  
12 that the answer to Special Issue No. 1 is 'Yes.'"  
13 Signed, Kathryn Foster, Presiding Juror.  
14 Special Issue No. 2, "Answer: We, the jury,  
15 unanimously find and determine that the answer to this Special  
16 Issue is 'No.'"  
17 Signed, Kathryn Foster, Presiding Juror.  
18 Members of the jury, is that each of your  
19 verdicts?  
20 JURY PANEL: Yes.  
21 THE COURT: State wish the jury polled?  
22 MR. SIMS: No, Your Honor.  
23 THE COURT: Defense?  
24 MR. DURHAM: No, Your Honor.  
25 THE COURT: Okay, folks, I'll receive your

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1 verdict, then. Thank you very much for your attention and  
2 your deliberations in the case. I will release you now from  
3 the instructions I've previously given you with regard to the  
4 secrecy of your deliberations. You may feel free to discuss  
5 your verdict or your deliberations with the lawyers, or anyone  
6 else, for that matter, that you wish to. At the same time,  
7 you may certainly decline to do that. That declination is  
8 binding on everyone and no one will bother you further about  
9 that.  
10 Okay. You are released now. If you'll step  
11 through this way and leave your badges with us, we thank you  
12 very much for your service.  
13 (Jury excused)  
14 THE COURT: Okay, folks, I've released the  
15 jury. I'll require each member of the gallery, though, with  
16 the exception of the law enforcement officers that work with  
17 me here in the courthouse to remain in your place until the  
18 bailiff signifies that all jurors have left the building.  
19 Mr. Runnels, do you have any legal reason you  
20 should not formally be sentenced, sir?  
21 MR. RUNNELS: No, sir.  
22 THE COURT: Travis Trevino Runnels, you having  
23 been found guilty of the offense of capital murder, and in  
24 accordance with the verdict of the jury returned in this case,  
25 I do now sentence you to death. That sentence, of course, is