



Texas Department of Criminal Justice

Brad Livingston
Executive Director

May 5, 2016

Burke Butler *Delivery by email only*
Staff Attorney
Texas Defender Service
bbutler@texasdefender.org

Re: Clarification of social media policy for offenders

Dear Burke:

I am in receipt of your April 19, 2016 letter wherein you request clarification of TDCJ's social media policy in the April 2016 Offender Orientation Handbook. You note in your letter that many death row offenders are featured in social media accounts maintained by third parties over whom the offenders have no control. The TDCJ policy is not meant to apply to persons who feature death row offenders on their social media pages. It is meant to apply to social media pages maintained by third parties *on behalf of and at the direction of* offenders. I think the answers to your questions, as I have everything listed below, will provide your requested clarification.

1. How does TDCJ define "social media account"? FaceBook, Twitter, Instagram, and similar social media.
 - 1.1 Does the definition include webpages and blogs? No.
 - 1.2 Does the definition include social media accounts that are about an inmate or discuss an inmate, but are maintained by third parties and do not claim to be personally maintained by the inmate? No.
 - 1.3 Does the definition include sites where static profiles of inmates are posted, but site visitors do not interact with one another on the site itself and the profiles are not frequently updated or changed? (This would include, *e.g.*, "pen pal" sites, where inmate profiles are posted for purposes of soliciting written correspondence that will be sent through the US Mail.). No.

Our mission is to provide public safety, promote positive change in offender behavior, reintegrate offenders into society, and assist victims of crime.

Office of the General Counsel

Sharon Felfe Howell, General Counsel – sharon.howell@tdcj.texas.gov

P.O. Box 13084 Capitol Station
Austin, Texas 78711-3084
Phone (512) 463-9899, FAX (512) 936-2159

P.O. Box 4004
Huntsville, Texas 77342-4004
Phone (936) 437-6700, FAX (936) 437-6994

www.tdcj.texas.gov

2. What is the potential range of punishment under the rule? It would be a level 3 offense (failure to obey a posted rule). Punishment would be based upon an offender's recent institutional behavior in accordance with the TDCJ Disciplinary Rules and Procedures for Offenders.
3. Can an inmate be punished for the actions of a third party who maintains a social media account about him or her, even if the inmate did not direct the third party to maintain the social media account and has no control over the third party's decision to maintain the account? No.
4. What process will an inmate be afforded prior to punishment, in the event he or she claims that he or she has no agency or control over a social media site maintained by a third party? The offender will receive due process as set out in the TDCJ Disciplinary Rules and Procedures for Offenders.
5. Can TDCJ penalize third parties for violations of the rule through denial of visitation or the right to correspond with a particular inmate, or by other actions? We do not anticipate penalizing third parties by denying visitation. If we found correspondence between an offender and a third party who was maintaining a social media page on behalf of the offender, which is in violation of the FaceBook usage agreement, and the letter provided some indication of that relationship, it is possible that the ability of those two to correspond could be suspended in accordance with the TDCJ Uniform Offender Correspondence Rules.
6. Will rule violations by inmates or third parties impact inmates' ability to access legal visitation? No.
7. Does the rule prohibit legal or advocacy organizations from maintaining websites or using social media as part of an inmate's representation or other advocacy on his or her behalf? No, so long as there is no misrepresentation along the lines of the subject matter of this letter.

I am glad to have had the opportunity to clarify these issues with you. If you have any further questions, please feel free to let me know.

Sincerely,



Sharon Felfe Howell
General Counsel