

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE  
PAROLE DIVISION**



**POLICY AND  
OPERATING PROCEDURE**

**NUMBER: PD/POP-3.6.8**

**DATE: 08/06/15**

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**SUPERSEDES: 02/24/15**

**SUBJECT:** ADMINISTRATIVE GUIDELINES FOR IMPOSITION OF SPECIAL CONDITION “X” FOR OFFENDERS WITHOUT A SEX OFFENSE CONVICTION

**AUTHORITY:** 37 TEXAS ADMINISTRATIVE CODE § 149.40-.55, *Meza v. Livingston*, 607 F.3d 392 (5th Cir. 2010), *Meza v. Livingston*, No. 09-50367 (5th Cir. Oct. 19, 2010); *Ex parte Evans*, No. AP-76,445 (Texas Criminal Appeal May 4, 2011)

**POLICY:** To establish administrative guidelines for the hearing process for offenders who do not have a sex offense conviction and for offenders with discharged juvenile adjudications for sex offenses.

**PROCEDURE:**

Pursuant to the United States Court of Appeals Fifth Circuit and the Texas Court of Criminal Appeals, offenders who do not have a sex offense conviction are entitled to be heard in person to present evidence, call witnesses, and confront and cross-examine witnesses prior to the imposition of Special Condition “X.”

In accordance with the Texas Board of Pardons and Paroles (BPP) Policy BPP-POL. 148.200, *Sex Offender Conditions—Releasee Not Convicted of a Sex Offense*, offenders with discharged juvenile adjudications for sex offenses shall be reviewed prior to the imposition of sex offender special condition.

**I. NOTICE OF SPECIAL CONDITION “X” CRITERIA**

- A.** The Parole Division shall ensure an offender who meets the following criteria is provided with the Notice of Sex Offender Conditions (Special Condition “X”) form (SP-0801):
1. Has a current conviction for a non-sexual offense, but criminal sexual behavior was exhibited during the offense; or
  2. Has a discharged juvenile adjudication for a sex offense.

- B. If an offender meets one of the above criteria and does not waive the right to a hearing after being provided the SP-0801, the hearing process shall occur.
- C. If the offender refuses to sign the SP-0801 form, the parole officer shall note the offender's refusal on the signature line, document the date of the refusal, and inform the offender that the hearing will be scheduled.

## II. PREPARING THE NOTICE FORM AND SUPPORTING DOCUMENTS

- A. If an offender meets the above criteria and has Special Condition "O.33"—Evaluate for Sex Offender Counseling or Special Condition "X," which was previously imposed, the offender shall be referred to a licensed sex offender treatment provider (LSOTP). The referral shall include a letter to the LSOTP outlining the expectations of the evaluations as well as all documents referenced in PD/POP-3.6.9, *Sex Offender Treatment and Polygraph Guidelines*. A letter shall also be sent to the polygraph examiner, if applicable, detailing the relevant polygraph report and video, which may be required in the event a hearing may be scheduled.
- B. The evaluation and report shall be completed within 30 calendar days of the offender's release, imposition of "O.33," or if the offender is currently receiving treatment, and an evaluation has not been completed within the previous six (6) months. If the offender is currently receiving treatment and an evaluation has been completed within the previous six (6) months, an evaluation summary shall be requested. The parole officer shall request that the LSOTP complete the summary report within 14 calendar days.
- C. During the evaluation process, the parole officer shall review the file and request any additional supporting documents to provide to the offender (e.g., court documents, offense report, polygraph video(s), etc.). In the event the offender has also been convicted of a prior offense where criminal sexual behavior was exhibited during the offense, those court documents shall be included in the packet.

**Note:** The parole officer shall redact all Personally Identifiable Information (PII) corresponding to **a victim who was under 18 years of age at the time of the offense**, so the identity of the victim is not discernable. Examples of PII would be the name of the victim, statements that show the victim to be the son, daughter, brother, sister, or cousin of any individual, or other statements indicating who the victim is related to, such as an aunt or uncle. **The age of the victim is not PII and should not be redacted.** All redacted documents shall be thoroughly reviewed and approved by the unit supervisor prior to the release of the information to persons outside the agency.

- D. Documents that were not available at the time of the referral, and later obtained, shall be provided to the LSOTP immediately upon receipt.

- E. Documents listed under the “Other” section on the SP-0801 shall be identified and approved by the unit supervisor, parole supervisor, and the Sex Offender program supervisor.
- F. If the evaluation report does not include a recommendation for sex offender treatment, within three (3) business days, the parole officer shall submit to the unit supervisor for review the evaluation report, polygraph exam report (if applicable), court documents, and the offense report related to the sex offense.
  - 1. Within three (3) business days of receipt, the unit supervisor shall review the packet to ensure all information is accurate and contains the required documents as identified on the SP-0801, and shall submit the packet to the parole supervisor for review.
  - 2. Within three (3) business days of receipt, the parole supervisor shall review the packet to ensure all information is accurate and contains the required documents as identified on the SP-0801, and submit it to the Sex Offender program supervisor or designee.
  - 3. Within seven (7) business days, the Sex Offender program supervisor or designee shall complete a final review of the packet and notify the parole supervisor authorizing the supervising parole officer to either satisfy Special Condition “O.33” in the Offender Information Management System (OIMS), or if Special Condition “X” is in effect, submit a Special Condition Review of Special Condition “X”—Current Offense transmittal to the BPP to withdraw Special Condition “X.”
- G. If the evaluation report includes a recommendation for sex offender treatment, the parole officer shall complete the SP-0801 to include the following:
  - 1. The parole officer shall identify witnesses that will be requested to testify at the hearing and complete the Notice of Sex Offender Treatment Witness Disclosure form (SP-0802). The SP-0802 shall include all witnesses for which the division will request subpoenas or to attend the hearing.
  - 2. Within three (3) business days of receipt of the sex offender evaluation or evaluation summary report, whichever applies, the parole officer shall complete and submit the SP-0801 and supporting documents to include the SP-0802 to the unit supervisor for review and approval.
  - 3. Within three (3) business days of receipt, the unit supervisor shall review the packet to ensure all information is accurate, and the packet contains the required documents as identified on the SP-0801. The entire packet shall be submitted to the parole supervisor for review and approval.
  - 4. Within three (3) business days of receipt, the parole supervisor shall review the packet for accuracy and, if no additional documentation is required, submit the entire packet to the Sex Offender program supervisor or designee for review and approval.

5. Within seven (7) business days, the Sex Offender program supervisor or designee shall complete a final review of the packet and notify the parole supervisor, authorizing the parole officer to provide notice to the offender following the procedures in Section III.
- H. In the event an offender is identified by field staff as meeting the criteria in this procedure and has not received initial instructions from Specialized Programs, the parole officer shall submit all documents via an Interoffice Memorandum (PSV-109) to his unit supervisor for review and approval within 10 calendar days of release or being identified as meeting the criteria.

### III. DELIVERING THE NOTICE FORM AND PACKET

- A. Within three (3) business days of receiving approval from the Sex Offender program supervisor or designee and after redacting the necessary information, the parole officer shall deliver the approved SP-0802 and packet to the offender. The packet provided to the offender shall contain identical documentation that will be submitted to the BPP panel member.
- B. By way of the notice form, the offender shall be informed in writing that his response shall be provided to the parole officer **and** the BPP panel member.
- C. The parole officer shall explain to the offender that the witnesses on the SP-0802 are potential witnesses, and if the offender wants to request certain persons to be present at the hearing, the offender shall inform the parole officer of such.
- D. The parole officer shall obtain the offender's signature by signing and dating the appropriate section of the SP-0801 (page one) and witnessing the signature acknowledging that the offender has received the SP-0801.
- E. In the event the offender elects to waive his right to the hearing, each of the following shall occur:
  1. The offender shall sign and date the appropriate section of the SP-0801 (page two), entitled Waiver of Hearing. The parole officer shall witness the offender's signature.
  2. Within three (3) business days of obtaining the offender's signature, the parole officer shall submit the entire packet for review through the unit supervisor to the parole supervisor, with a copy forwarded to the Sex Offender program supervisor or designee.
  3. Within seven (7) business days of the offender signing the waiver, the parole supervisor shall deliver the packet to the BPP panel member.

#### IV. SCHEDULING THE HEARING

- A. If the offender is requesting a hearing or refuses to sign the SP-0801, the parole officer shall contact the BPP Central Scheduling Unit at (888) 839-7773 to set the hearing date, time, and location seven (7) calendar days after the offender receives notice.

Pursuant to the BPP rules, the BPP scheduler will not schedule the hearing until seven (7) calendar days after the offender has received notice. The parole officer shall indicate the request is for a hearing for Special Condition "X."

- B. The BPP will schedule the hearing date, time, and location no earlier than 21 calendar days from the date the parole officer called to schedule the hearing. The BPP scheduler will provide the parole officer with written notice of the hearing, including the panel member who will preside over the hearing.

#### V. HEARING PREPARATION

- A. Within three (3) business days of obtaining the hearing date, time, and location, the parole officer shall complete a Request for Subpoena form, available in Eform in the Mainframe Electronic Mail System, to include the names of all witnesses the parole officer intends to subpoena to be present at the hearing, as well as the offender's witnesses. Witnesses shall include, but not be limited to, the LSOTP who completed the evaluations and/or provided treatment, the polygraph examiner, if applicable, and any witness the offender requests to be present to testify.

- B. The polygraph examiner shall only be subpoenaed if the offender admitted the sexual elements to the polygraph examiner; showed deception or inconclusive on an instant offense, sexual history, or monitoring polygraph; or admitted to or showed deceptive to sexually deviant fantasies or behaviors during a maintenance polygraph. In the event any polygraph report indicates no deception and there are no admissions, the polygraph report shall be included, but the polygraph examiner need not be subpoenaed or requested to testify at the hearing, unless requested by the offender.

- C. Other staff who may be requested to attend the hearing and who do not require a subpoena include, but are not limited to, previous parole officers who have knowledge of the offender, the institutional parole officer who prepared the case summary (if the offender admitted to the offense but now denies the offense), or the sociologist, if the only reference to the sexual elements is contained in the admission summary.

- D. Within three (3) business days of obtaining the hearing information, the parole officer shall:

1. Enter the hearing date, time, and location on the SP-0801.
2. Enter the name and address of the BPP panel member on the SP-0801.
3. Confirm the witnesses the offender requested to be present to testify.

4. Instruct the offender that if the offender intends to respond in writing, the response shall be provided to the parole officer **and** the designated BPP panel member at the address noted on the form, no later than seven (7) calendar days prior to the date of the scheduled hearing.
5. Provide the SP-0801 to the offender and the offender's attorney, if applicable, which includes the information noted above.
- E. If the offender requests additional witnesses within three (3) business days, the parole officer shall prepare and transmit a subsequent Request for Subpoena form, available in Eform in the Mainframe Electronic Mail System, with the names of the additional witnesses requested by the offender.
- F. The parole officer shall deliver the subpoenas within three (3) business days of receiving approval from the BPP.
- G. The parole officer shall notify the offender within seven (7) business days of receiving notice that the BPP panel member denied any of the offender's witnesses the offender requested to be present.
- H. The parole officer shall send the SP-0802 and the offender's acknowledgment of the hearing to the Sex Offender program supervisor or designee within three (3) business days after providing the offender with the hearing date, time, and location.
- I. The parole officer shall provide the offender's response to the unit and parole supervisors the same day of receipt.
- J. The parole supervisor shall provide the complete hearing packet to include the offender's response to the BPP panel member, no later than seven (7) calendar days prior to the date of the scheduled hearing. The packet provided to the panel member shall contain exactly the same documents provided to the offender.

## VI. HEARING PROCEDURES

- A. The parole supervisor or Assistant Region Director shall bring two (2) copies of the hearing packet to the hearing. One packet may be used to reference documents prepared by the person who is providing testimony.
- B. Once prompted by the BPP panel member, the parole supervisor or Assistant Region Director shall:
  1. Identify for the record each document and the corresponding date of the document that is being offered into evidence.
  2. Identify the witnesses by name and title who are present and available for cross-examination and to answer questions.

3. Identify by name and title any TDCJ employee who is present to provide testimony.

## VII. POST HEARING PROCEDURES AND NOTIFICATION TO OFFENDER

- A. The BPP Hearing Section will image the hearing summary report into the OIMS and will place a copy in the central file. An e-mail will be sent to the parole officer, unit supervisor, parole supervisor, and Sex Offender program supervisor indicating the BPP has made a decision, and the documents are imaged in the OIMS.
- B. The Sex Offender program supervisor or designee shall document the imposition or withdrawal, whichever applies, of Special Condition "X" in the OIMS Special Condition Maintenance screen.
- C. The parole officer shall:
  1. Deliver the report to the offender during the next visit with the offender and obtain the offender's signature acknowledging receipt of the report.
  2. Image the acknowledgment form in the OIMS within three (3) business days of obtaining the offender's signature.
  3. Update the caseload type, if applicable, and enter or remove the appropriate indicator if Special Condition "X" is imposed or withdrawn.
  4. Complete a new Notice of Special Condition form generated from the OIMS and obtain the offender's signature during the next visit with the offender, if the BPP panel imposed or withdrew Special Condition "X."
- D. In the event the BPP does not impose or withdraws Special Condition "X" for an offender who meets the criteria in this procedure, the offender shall not be identified as a sex offender and shall remain or be transferred, whichever applies, to a regular or other appropriate caseload, unless otherwise instructed by the Sex Offender program supervisor or designee.
- E. If the offender is in treatment, the parole officer shall notify the LSOTP that the condition has been withdrawn.

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