

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE
PAROLE DIVISION**



**POLICY AND
OPERATING PROCEDURE**

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SUPERSEDES: 09/12/07

SUBJECT: SPECIAL CONDITION "X" SEARCH GUIDELINES

AUTHORITY: TEX. GOV'T CODE ANN. §§ 508.112, 508.143, 508.144, 508.154; 508.221

PURPOSE: To establish procedures regarding search of an offender's property or person by Parole Division (PD) employees when the search component of Special Condition "X" is in effect.

The Parole Division has adopted the Containment Approach in the supervision of sex offenders. This approach consists of a philosophy that values public safety, victim protection, and focuses on the prevention of future victimization. This policy seeks to hold offenders accountable for rules and special conditions through the combined resources of the parole officer and law enforcement authorities.

DEFINITIONS:

Contraband: Any item, property, possession, or substance that is defined in the Texas Penal Code as unlawful to possess, or any such prohibited item that would constitute a violation of one or more of the offender's conditions of release.

Imminent Danger: A reasonable fear of physical harm to oneself or a third party.

Offender: Any person currently under the legal authority or supervision and subject to the rules and conditions of Texas Department of Criminal Justice (TDCJ)-PD and the Texas Board of Pardons and Paroles (BPP).

Pat-Down Search: The technique of using the open hand(s) to pat the outer clothing and person of an offender to search for contraband.

Plain View Search: The technique of using a complete, visual observation of the person(s), the environment, and any item(s) in plain view of the officer without having to move or otherwise disrupt any item obstructing the officer's general line of vision.

Reasonable Cause: Information received from a reliable source, observation of suspicious behavior, or any other objective evidence that the offender may possess contraband.

Seizure: Taking possession of any property or item deemed as illegal contraband (**law enforcement only**).

Warrantless Search: The technique of a parole officer, with the assistance of Law Enforcement if necessary, of thoroughly searching without a warrant, an offender's person, motor vehicle, and/or place of residence, or any property to which the offender has been given permission to use by the offender's parole officer or any authorized representative of TDCJ-PD.

PROCEDURE:

I. NOTICE OF SPECIAL CONDITION "X" SEARCH COMPONENT

Upon imposition of Special Condition "X" – Sex Offender Program, the officer shall select the necessary components for effective supervision. In the event the Search Component is in effect, and reasonable cause exists to believe the offender is in possession of contraband, a warrantless search of the offender, his residence, motor vehicle, property, or any property to which the offender has been given permission to use may be conducted in accordance with this procedure.

II. IMMINENT DANGER PRE REVOCATION WARRANT PROCEDURE

If a parole officer, while in the normal course of duty, suspects that he or a third party are in imminent danger of physical harm by an offender; observes that the offender is in possession of any object that constitutes a law violation; **or** observes any item or behavior that the officer reasonably believes demonstrates evidence of high-risk behavior with relation to the offender's offense or pattern of offending behavior; the parole officer shall immediately:

- A. Remove himself from the threat of danger.
- B. Call the Warrants Section Command Center at (512) 406-5390 and request emergency warrant issuance.
- C. Call the local law enforcement agency to advise them of the situation including any indefensible third party present, and inform them of the warrant in effect, if local law enforcement is not present.
- D. Call the unit supervisor to inform him of the incident.
- E. Within 24 hours, the parole officer shall complete a Violation Report in accordance with Parole Division policy 4.1.1, *Processing Violations of the Rules and Conditions of Release*, and complete or gather any other necessary documentation (e.g., incident report).

III. REFUSAL OF CONSENT TO SEARCH

- A. If the offender refuses to give consent to any type of search listed above, the parole officer shall **immediately** contact his unit supervisor for further instruction on how to proceed.
- B. Any such violation shall be processed in accordance to Parole Division policy 4.1.1, *Processing Violations of the Rules and Conditions of Release*.

IV. PLAIN VIEW SEARCH

The parole officer shall conduct a plain view search of the offender, the residence, and/or the environment (e.g., residence, job site) during every contact. When conducting a plain view search, the parole officer shall exercise extreme caution so as not to create a hostile situation.

- A. If, while conducting a plain view search, the parole officer observes that the offender is in possession of contraband, or observes any item that the parole officer reasonably believes demonstrates evidence of high-risk behavior in relation to the offender's offense or pattern of offending, the officer shall immediately:
 - 1. Terminate the contact with the offender without arousing suspicion;
 - 2. Notify the local law enforcement authority and inquire if they will take possession of the item(s), if the contraband is a **violation of law** (e.g., drugs, child pornography, firearms, etc.); and
 - 3. Notify unit supervisor of the situation.
- B. If law enforcement arrives and takes possession of the illegal contraband, the parole officer shall request a case number. The parole officer shall request an emergency warrant as outlined in section II of this procedure. The parole officer shall also complete the Offender Search Report (SP-0401) within one (1) business day, indicating the items seized.
- C. If the contraband viewed would constitute a violation of the offender's conditions of release, the parole officer shall submit a Violation Report in accordance with Parole Division policy 4.1.1, *Processing Violations of Rules and Conditions of Release*. The parole officer shall also complete the SP-0401 within one (1) business day, indicating the items viewed while conducting a plain view search.
- D. The parole officer shall document all aspects and outcomes related to the plain view search that results in the submission of the SP-0401 within one (1) business day in the Offender Information Management System (OIMS) as an Investigative contact.

V. WARRANTLESS SEARCH

- A. A warrantless search shall be conducted only when:
1. The offender has previously been provided notification that the search component is in effect;
 2. There is reasonable cause based on observations during the plain view search or information received from a reliable source to believe that a warrantless search is appropriate; and
 3. The officer has been given permission to conduct the search.
- B. Procedure for completing a warrantless search:
1. The parole officer shall initiate the SP-0401 completing the Request/Approval Information section and submit the form to the unit supervisor for review and approval. The following pertinent information shall be included:
 - a. Offender's name and TDCJ number;
 - b. Circumstances leading to reasonable cause;
 - c. Date, time, and location of the proposed search;
 - d. Type of contraband to be sought; and
 - e. Parole officer or Community safety issues.

In the event the parole officer initiates the request while in the field, the SP-0401 may be filled in when he or she returns to the office. However, all information necessary to obtain permission shall be provided to the unit supervisor and may be done verbally.

2. Prior to the end of the shift that day or the next day if the search occurred after business hours, the unit supervisor shall send an email notification containing this information along with any additional comments to the parole supervisor, Assistant Region Director, and Region Director, who will forward it to the Deputy Director of Field Operations for discussion with the Division Director. If occurring after hours or on weekends, a phone call shall be placed to the necessary parties.
3. The unit supervisor shall work with the supervising parole officer to make arrangements for law enforcement, a parole officer, or unit supervisor to be present during the warrantless search if determined necessary.

4. On weekends or after hours, the supervising parole officer shall:
 - a. Contact the unit supervisor for approval. If an attempt to contact a supervisor is unsuccessful, the supervising parole officer shall contact the Warrants Section Command Center at (512) 406-5390 to establish contact with the region or division management. The supervising parole officer shall not conduct the search on his own.
 - b. Upon supervisor approval, the supervising parole officer shall contact the Warrants Section Command Center at (512) 406-5390 and follow the procedure outlined in Parole Division policy 4.1.8, *Safety Guidelines for After-Dark Investigations*, immediately **prior to** conducting the search.
5. In the event of a search, the supervising parole officer shall:
 - a. Inform the law enforcement authority, if assisting with the search, that the offender has a condition in effect that allows the officer to conduct a warrantless search of the premises;
 - b. Notify the offender of the search. Explain to the offender that denying permission for the search may constitute grounds for a parole violation based upon the imposition of the search component, which is authorized by the BPP. Parole officers shall use extreme caution so as not to create a hostile situation;
 - c. Request that the offender voluntarily disclose any hazardous or illegal items in the search area and relinquish any contraband to law enforcement if present;
 - d. Conduct a complete physical search of the residence, vehicle, and/or other property as originally intended, regardless of any disclosures;
 - e. Have the authority to move, disrupt, and open items during the search, but should respect the integrity of the search area by disrupting the premises as little as possible; and
 - f. Complete the SP-0401 within one (1) business day, detailing all events observed during the search. The report shall be submitted to the unit supervisor for final review and approval. Once approved, the SP-0401 shall be distributed to the parole supervisor, Assistant Region Director, Region Director, and Deputy Director of Field Operations for discussion with the Division Director.
6. After completion of the search and the parole officer is safely removed from the search location, the parole officer shall contact the approving supervisor and Command Center (after hours or on weekends) to report the end of the search.

7. The parole officer shall fully document the search within one (1) business day in the OIMS as an Investigative Contact.
8. If the search results in any illegal contraband being discovered, the parole officer shall follow the procedure described in section II of this procedure.
9. If present, law enforcement officers are reasonably expected to:
 - a. Ensure the security of the premises.
 - b. Contain and protect against third-party interference in the search.
 - c. Provide security and safety for all TDCJ-PD representatives at the location.
 - d. Act as a witness as to the integrity of the search and as a witness to any prohibited item discovered.
 - e. Take custody of any illegal contraband.
 - f. Arrest persons deemed appropriate as a result of any illegal contraband seized during the search or as a result of aggressive behavior displayed during the search.
 - g. Aid in the search **only** by giving procedural advice or consultation but NOT physically engage in any search functions, unless the law enforcement officer finds legal grounds for a reasonable cause search or obtains a legal search warrant for the location.

VI. PAT DOWN SEARCH

Only the Region Director or designee has the authority to give approval for a pat-down search. Pat-down searches shall be in accordance with Parole Division policy 1.2.6, *Offender Pat-Down, Plain View Search and Strip Search*.

Stuart Jenkins
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