



**TEXAS BOARD  
OF  
PARDONS AND PAROLES**

**Number: BPP-DIR. 148.300**

**Date: November 2, 2015**

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**Supersedes: BPP-DIR. 148.300  
Dated July 12, 2013**

**BOARD DIRECTIVE**

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**SUBJECT: SEX OFFENDER CONDITIONS – RELEASEES NOT CONVICTED OF A SEX OFFENSE**

**PURPOSE:** To provide guidance to the Board of Pardons and Paroles (Board) and staff to ensure releasees identified in Board Rule Section 148.40 are afforded due process prior to requiring them to attend sex offender treatment or register as a sex offender.

**AUTHORITY:** Texas Constitution, Article IV, Section 11  
Texas Government Code, Sections 508.0441, 508.141, 508.146 and 508.221  
Texas Administrative Code, Title 37, Part 5, Chapter 148

Board Policy 145.207, Sex Offender Treatment and Sex Offender Registration

**DEFINITIONS:** Hearing Officer – the designated agent of the Board authorized to conduct sex offender condition hearings as ordered by the court.

Parole Panel - a three-member panel comprised of board members and parole commissioners as designated by the Presiding Officer.

Scheduler – the Board employee assigned to schedule the hearing and notify the hearing officer and the Texas Department of Criminal Justice Parole Division of the hearing date, time and location.

**DISCUSSION:** The United States Court of Appeals Fifth Circuit, in its May 20, 2010, opinion in the *Meza v. Livingston, et al.* case, detailed the type of due process required prior to the imposition of sex offender treatment or stating the May 20, 2010 opinion does not apply to inmates released on discretionary mandatory supervision or parole thereby applying only to registration for releasees who have not been convicted of a sex offense. The Fifth Circuit panel clarified their opinion on October 19, 2010 by clearly stating the May 20, 2010 opinion does not apply to inmates released on discretionary mandatory supervision or parole thereby applying only to those releasees who were released to mandatory supervision for an offense committed before September 1, 1996. The Texas Court of Criminal Appeals, in its May 4, 2011, opinion in *Ex parte Johnathan Evans* extended

due process for releasees who have not been convicted of a sex offense to those released on discretionary mandatory supervision and parole.

The procedures outlined in this directive represent a cooperative effort between the Texas Department of Criminal Justice Parole Division (TDCJ Parole Division) and the Board to ensure a releasee is afforded the following due process as required by the court: 1) Written notice that the sex offender conditions may be imposed as condition of release; 2) Disclosure of the evidence being presented against him to enable him to marshal the facts asserted against him and prepare a defense; 3) A hearing at which he is permitted to be heard in person, present documentary evidence and call witnesses; 4) The right to confront and cross-examine witnesses; unless good cause is shown; 5) An impartial decision maker; and 6) Written statement by the fact finder as to the evidence relied on and the reasons it attached sex offender conditions.

**PROCEDURES:**

- I.** Notice – A TDCJ Parole Division parole officer (parole officer) will provide a releasee with the appropriate written notice (“Notice”) and disclosure of the evidence that will be presented to the parole panel.
  - A. The Notice will list all the due process rights that will be afforded to a releasee in this process.
  - B. All the TDCJ Parole Division documents the parole panel will review will be attached to the Notice.
  - C. The Notice will provide a releasee an opportunity to request or waive his right to a hearing.
  
- II.** Parole Panel – The Presiding Officer designates the parole panels to make the final decision concerning the matter.
  
- III.** Hearing
  - A. Scheduling the Hearing – The parole officer will contact the Board’s Central Scheduling Unit (the “Scheduler”) seven days after delivering the Notice to the releasee to set a hearing date, time and location.
    - 1. The Scheduler will confirm that the parole officer notified the releasee of his rights in this process; the releasee requested a hearing and more than seven days has elapsed from the date the releasee signed the notice requesting a hearing.
    - 2. The Scheduler will schedule the hearing no earlier than twenty-one calendar days from the date the parole officer requested the hearing. The Scheduler must obtain approval from the Board Administrator to schedule a hearing within 60 days of the releasee’s discharge date.

3. The Scheduler will send an electronic notification of the hearing date, time and location to the hearing officer designated to conduct the hearing and the parole officer. The parole officer will notify the releasee or attorney.
- B. Subpoenas – If a releasee requests witnesses to appear at the hearing, the parole officer will submit the requests for the subpoenas to the Board.
    1. The parole officer will prepare a Request for Subpoena Form with the name and address of the witness with the nature of the testimony the witness will provide at the hearing.
    2. The parole officer will transmit the request to the Parole Panel designated by the Presiding Officer to consider this matter who will issue subpoenas for witnesses who have relevant testimony to the pending matter.
  - C. Conducting the Hearing – A hearing officer will conduct the hearing.
- IV.** Waiver – If a releasee waives his right to the hearing, the parole officer will send the notice which includes the signed waiver along with the documents disclosed to the releasee to the hearing officer.
- V.** Decision – The hearing officer will make the appropriate finding or no finding that the releasee constitutes a threat to society by reason of his lack of sexual control.
- A. The Parole Panel will make final disposition of the matter pursuant to Texas Administrative Code Title 37, Part V, Chapter 148, Section 148.53.
  - B. If the releasee waives the hearing, the parole officer will prepare a Summary Waiver Processing Sheet and submit it along with all documents to a hearing officer who make the appropriate findings. If a hearing was conducted, the hearing officer will prepare a Summary Hearing Report and Summary Hearing Report Processing Sheet with the appropriate findings.
  - C. The hearing officer will forward the waiver or hearing documents to the Parole Panel designated by the Presiding Officer to make the final decision.
  - D. The Parole Panel or designee will send the Summary Waiver Processing Sheet or Summary Hearing Report and Processing Sheet to the Board's Central Office.
- VI.** Motion to Reopen Hearing – If a releasee or his attorney files a Motion to Reopen Hearing (MTR) pursuant to Texas Administrative Code Title 37, Part V, Chapter 148, Section 148.54, the Motion will be referred to the General Counsel's Office and assigned to an Assistant General Counsel (AGC) to review.
- A. The AGC shall review and make a recommendation on all MTR requests.
  - B. The General Counsel's Office staff will transmit the AGC's recommendation to the appropriate panel as defined above (based on the panel that made the original decision).

- C. The panel shall review and consider the MTR request, then vote in accordance with Texas Administrative Code Title 37, Part V, Chapter 148, Section 148.55.
- D. The General Counsel's Office staff will notify the releasee and/or attorney of the parole panel's decision.

**SIGNED THIS, THE 2nd DAY OF NOVEMBER, 2015.**

**DAVID GUTIÉRREZ, PRESIDING OFFICER (CHAIR)**

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*\* Signature on file.*