



**TEXAS BOARD
OF
PARDONS AND PAROLES**

Number: BPP-DIR. 148.300

Date: March 16, 2021

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Supersedes: June 6, 2019

BOARD DIRECTIVE

SUBJECT: SEX OFFENDER CONDITIONS – RELEASEE NOT CONVICTED OF A SEX OFFENSE

PURPOSE: To provide guidance to employees of the Texas Board of Pardons and Paroles to ensure that releasees identified in Board Rule Section 148.40 are afforded due process prior to the imposition of sex offender conditions.

AUTHORITY: Texas Constitution Article 4, Section 11
Texas Government Code Sections 508.035(d), 508.0441, 508.045, 508.141, and 508.228
Texas Administrative Code, Title 37, Part 5, Chapter 148
Board Policy BPP-POL. 148.200

DISCUSSION: On May 20, 2010, the United States Court of Appeals for the Fifth Circuit issued an opinion requiring the State to provide a releasee, who has not been convicted of a sex offense, due process prior to the imposition of sex offender treatment and registration. The Fifth Circuit subsequently clarified its opinion by stating that the opinion applies only to those releasees who were released on mandatory supervision for an offense committed prior to September 1, 1996. On May 4, 2011, the Texas Court of Criminal Appeals expanded the Fifth Circuit’s opinion requiring due process for all types of release – mandatory supervision, discretionary mandatory supervision, and parole – and for all the components of Special Condition “X”.

The procedures outlined in this directive represent a cooperative effort between the Texas Department of Criminal Justice Parole Division (Division) and the Board to ensure that a releasee is afforded the following due process as required by the Court: 1) Written notice that 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) A written statement by the fact-finder as to the evidence relied upon and the reasons for imposing sex offender conditions.

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 one Board Member and two Parole Commissioners as designated by the Presiding Officer.

Regional Operations Supervisor – the Hearing Operations supervisor responsible for supervising hearing officers in a designated region.

Scheduler – the Board employee assigned to schedule the hearing and notify the Hearing Officer and the Division of the hearing date, time, and location.

PROCEDURE:

- I. Notice – A Division Parole Officer will provide the releasee with the appropriate written notice (Notice) and disclosure of evidence that will be presented to the parole panel.
 - A. The Notice will list all the due process rights that will be afforded to the releasee in this process.
 - B. All Division documents that the parole panel will review will be attached to the Notice.
 - C. The Notice will provide the releasee an opportunity to request or waive his right to a hearing.
- II. Parole Panel – The Presiding Officer designates the parole panel~~s~~ 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 (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 calendar days have 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 Parole Officer and the Hearing Officer designated to conduct the hearing. The Parole Officer will notify the releasee and/or attorney.

- B. Subpoenas – If a releasee requests witnesses to appear at the hearing, the Parole Officer will submit the request for the subpoenas to the Board within three business days of obtaining the hearing date, time, and location.
 - 1. The Parole Officer will prepare a Request for Subpoena Form with the name and address of the witness or witnesses along 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. The parole panel may issue subpoenas for witnesses. However, the parole panel will issue the subpoena for witnesses who have testimony relevant to the pending matter, e.g. sex offender therapist and polygraph examiner.
- 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 Regional Operations Supervisor.
- V. Finding and Final Decision – The Hearing Officer or the Regional Operations Supervisor will make the appropriate finding or no finding that the releasee constitutes a threat to society by reason of his lack of sexual control, and the parole panel will make the final decision.
 - A. If the releasee waived the hearing, the Parole Officer will prepare a Summary Waiver Processing Sheet and submit it along with all documents to the 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.
 - B. The Regional Operations Supervisor will forward the waiver or hearing documents to the parole panel designated by the Presiding Officer to make the final decision.
 - C. The parole panel will make a final disposition on the matter pursuant to Texas Administrative Code Title 37, Part 5, Chapter 148, Section 148.53.
 - 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 (MTR) pursuant to Texas Administrative Code Title 37, Part 5, Chapter 148, Section 148.54, the Motion will be referred to the General Counsel’s Office (GCO) and assigned to an Assistant General Counsel (AGC) to review.
 - A. The AGC shall review and make a recommendation on all MTR requests for the General Counsel’s approval.

- B. Following approval by the General Counsel, the GCO staff will transmit the AGC's and General Counsel's recommendation to the appropriate parole panel as defined above (based on the parole panel that made the original decision).
- C. The parole panel shall review and consider the MTR request, then vote in accordance with Texas Administrative Code Title 37, Part 5, Chapter 148, Section 148.55.
- D. The GCO staff will notify the releasee and/or attorney of the parole panel's decision.

SIGNED THIS, THE 16TH DAY OF MARCH, 2021.

DAVID GUTIÉRREZ, PRESIDING OFFICER (CHAIR)

**Signature on file*