



**TEXAS BOARD
OF
PARDONS AND PAROLES**

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Supersedes: October 28, 2020

BOARD POLICY

SUBJECT: SPECIAL CONDITION “X” (SEX OFFENDER CONDITION)

PURPOSE: To establish Special Condition “X” (Sex Offender Condition) as a special condition of parole or mandatory supervision and to establish a procedure for imposing sex offender requirements and restrictions as a condition of parole or mandatory supervision.

AUTHORITY: Texas Government Code Sections 508.0441, 508.045, 508.187, 508.1862, 508.228, 508.281, and 508.225
Texas Administrative Code Title 37, Part 5, Chapter 148
Board Policies BPP-POL. 145.205, 145.256, 145.265, 145.269, and 148.200
Texas Code of Criminal Procedure Articles 62.051, 62.054, 62.063, and 62.064

POLICY: Special Condition “X” represents a cooperative effort between the Texas Board of Pardons and Paroles (Board), the Texas Department of Criminal Justice Parole Division (Division), and local law enforcement agencies to minimize the threat of sex offenders to the community when an offender is released on parole or mandatory supervision.

At any time Special Condition “X” is in effect, the offender shall fully comply with state laws governing sex offender treatment, sex offender registration, DNA submission, internet access, and child safety zone restrictions, as well as Board and Division policies governing sex offender conditions and supervision.

DISCUSSION: The Board determines conditions of parole and mandatory supervision. Except in special circumstances, Board Members and Parole Commissioners act in panels comprised of three persons, and panel decisions are made by majority vote. The Presiding Officer designates the composition of the parole panels. Special conditions are conditions imposed in addition to the standard conditions of parole or mandatory supervision. Unless otherwise provided, any condition may be imposed before or after release and shall remain in effect until specifically removed by a parole panel.

As it specifically relates to a warrantless search (see Section J.4.), the Ninth Court of Appeals, Beaumont, Texas, issued an opinion on October 23, 2019, which held that a condition of community supervision which subjects a person to a warrantless search at any time was reasonably restricted to promoting the purposes of community supervision, and therefore, did not violate the 4th Amendment or Texas

Constitution. A parole panel has the authority to impose the component in Section J.4. of this policy pursuant to Section 508.221, Government Code, which authorizes a parole panel to impose any condition a court may impose.

DEFINITIONS: Child victim – a person younger than 17 years of age as defined by Sections 21.11(a) and 22.011(c), Penal Code.

Guardian of a victim – a person who is the legal guardian of a victim, whether or not the legal relationship between the guardian and victim exists because of the age of the victim or the physical or mental competency of the victim.

Legally recognized parent – the mother, a man presumed to be the father, a man legally determined to be the father, a man who has been adjudicated to be the father by a court of competent jurisdiction, a man who has acknowledged his paternity under applicable law, or an adoptive mother or father, as defined in Section 101.024, Family Code; or where the offender has been appointed legal guardian of said child.

Sex offender – an offender who has been convicted of or transferred from juvenile parole or commitment to adult parole or prison for an offense in Chapter 21, Penal Code; required to register pursuant to Chapter 62, Code of Criminal Procedure; or constituted a threat to society by reason of lack of sexual control. This definition does not apply to those defendants who are currently on or discharged a deferred adjudication community supervision.

Victim – a person who is the victim of the offense of sexual assault, kidnapping, aggravated robbery, trafficking of persons, or injury to a child, elderly individual, or disabled individual or who has suffered personal injury or death as a result of the criminal conduct of another.

COMPONENTS: At any time this condition is in effect, unless modified or withdrawn by the parole panel, an offender shall comply with the following:

A. Sex Offender Treatment

1. Enroll in and participate in a treatment program for sex offenders; and
2. Submit to polygraph examinations outside the treatment contract between the sex offender and the sex offender treatment provider, as directed by the supervising Parole Officer and approved by the parole panel.

Evidence of a polygraph, while admissible in a hearing on revocation of parole or mandatory supervision, is not in and of itself a valid ground for revocation.

B. Sex Offender Registration – When Special Condition “M” is imposed by the parole panel, offenders shall register as a sex offender with law enforcement as directed by the supervising Parole Officer.

C. Victim of the Offense

1. Not intentionally or knowingly communicate directly or indirectly by telephone, correspondence, video or audio device, third person, media or by any electronic means, with the victim or guardian of the victim of the sex offense, or
2. Not intentionally or knowingly go near a residence, school, place of employment, or business of a victim or guardian of the victim.

This component applies even when the offender is the legally recognized parent of the victim.

D. Child Victim – Offenders shall:

1. Receive psychological counseling until such time as the treatment provider, in conjunction with the Division, determines that treatment is no longer required. The Division will submit a recommendation to withdraw the requirement to attend psychological counseling to the appropriate parole panel in those instances where such action is deemed appropriate. *[Child safety zone restriction Section 508.187(b)(2), Texas Government Code]*
2. Not supervise, operate, cause to operate, participate in, or attend any program that includes as participants or recipients persons who are 17 years of age or younger and that regularly provides athletic, civic, or cultural activities. *[Child safety zone restriction Sections 508.187(b)(1)(A) and 508.225(a)(1), Texas Government Code]*
3. Not reside with, have unsupervised contact with, or cause to be contacted, any child 17 years of age or younger, in person, by telephone, correspondence, video or audio device, third person, media, or any electronic means, unless the offender is the legally recognized parent of the child (See Section II.C. below).
4. Not have any unsupervised contact with any person 17 years of age or younger when the offender is not the legally recognized parent of a child 17 years of age or younger. The supervising Parole Officer also must approve in writing requests for residence and the chaperone for any authorized contact.
5. Not become involved in dating, marriage, or a platonic relationship with any person who has children 17 years of age or younger unless approved in writing by the offender's supervising Parole Officer.
6. Not go in, on, or within a distance specified by Board policy of a premises where children commonly gather, including a school, day care facility, playground, public or private youth center, public swimming pool, or video arcade facility. *[Child safety zone restriction Sections 508.187(b)(1)(B) and 508.225(a)(2), Texas Government Code]*
 - a. Modification – A parole panel may modify the standardized distance, upon written request from the supervising Parole Officer, if the child safety zone:
 - i. interferes with the offender's ability to attend school or hold a job and consequently constitutes an undue hardship for the offender; or

- ii. is broader than necessary to protect the public, given the nature and circumstances of the offense.
- b. Not applicable – Notwithstanding the standardized distance for child safety zone restrictions adopted by this policy, the requirement that an offender not go in, on, or within the distance specified by a parole panel of certain premises does not apply to an offender while the offender is in or going immediately to or from:
 - i. a parole office;
 - ii. a premises at which the offender is participating in a program or activity required as a condition of release;
 - iii. a residential facility in which the offender is required to reside as a condition of release;
 - iv. a private residence in which the offender is required to reside as a condition of release; or
 - v. any other premises, facility, or location that is:
 - (a) designed to rehabilitate or reform the offender; or
 - (b) authorized by the Division as a premises, facility, or location where it is reasonable and necessary for the offender to be present and at which the offender has legitimate business including a church, synagogue, or other established place of religious worship, a workplace, a health care facility, or a location of a funeral.

E. Computer, Photographic Equipment, or Electronic Device

- 1. Not own, maintain, or operate computer equipment or an electronic device which functions or operates as a computer and has access to the internet where the offender used such equipment or any other electronic device to commit the offense without a declared purpose and the written authorization of the offender's supervising Parole Officer.
 - a. If authorization is granted, the offender shall submit to a regular inspection, monitoring, or search of the computer equipment and electronic device without a warrant, at any time, day or night, by any Division or law enforcement official.
 - b. The offender shall allow the supervising Parole Officer to install a specified computer program designed to track computer activity.
- 2. Not own, maintain, or operate photographic equipment or an electronic device with photographic capabilities, to include instamatic, still photo, video, or any electronic imaging equipment where the offender used such equipment or any other electronic device to commit the offense unless approved in writing by the offender's supervising Parole Officer. The offender shall allow the supervising Parole Officer to inspect all photographic equipment or electronic devices with photographic capabilities.

F. Prohibited Employment – Offenders subject to Article 62.063, Code of Criminal Procedure, shall:

- 1. Not operate or offer to operate a bus;

2. Not provide or offer to provide a passenger taxicab or limousine transportation service;
 3. Not provide or offer to provide any type of service in the residence of another person unless the provision of service is supervised; or
 4. Not operate or offer to operate any amusement ride.
- G. Prohibited Location of Residence – Offenders subject to Article 62.064, Code of Criminal Procedure, may not reside on the campus of a public or private institution of higher education unless:
1. the person is assigned a numeric risk level of one (1) based on an assessment conducted using the sex offender screening tool developed or selected under Article 62.007, Code of Criminal Procedure; and
 2. the institution approves the person to reside on the institution’s campus.
- H. Entry Onto School Premises; Notice Required – In addition to the child safety zone condition requirements imposed under Section 508.187, Government Code, offenders subject to Article 62.054, Code of Criminal Procedure, must notify the administrative office of the school of their presence on the premises and their registration status under Chapter 62, Code of Criminal Procedure. This does not apply to:
1. a student enrolled at the school;
 2. a student from another school participating in an event at the school; or
 3. an offender who has entered into a written agreement with the school that exempts the person from those requirements.
- I. Other Sex Offender Restrictions
1. Not operate, cause to operate, secure employment in, participate in, attend, nor go in or on any sexually-oriented business, including adult bookstores, massage parlors, adult video stores, or any business that provides adult entertainment, such as nude or partially-nude service, dancing, or exhibition.
 2. Not participate in any volunteer activities or volunteer any services without prior written approval of the offender’s supervising Parole Officer. In the event any such volunteer activity or service is approved, the offender must provide written notification to the prospective recipient agency or person regarding criminal history, as directed by the supervising Parole Officer.
 3. Not enroll in, attend, be employed by, volunteer for, or enter an institution of higher learning, to include community college, junior college, university, public or private, or any facilities, off-site or otherwise, without approval by a parole panel and notification to the victim or guardian of the victim of the sex offense.
 4. Not view, possess, purchase, or subscribe to, or cause to be purchased or subscribed to, any photographs, literature, magazines, books, or visual media that depict sexually explicit

images, nor communicate or cause to communicate with a person for sexually explicit purposes through telecommunications or any other electronic means, including 1-900 services.

- J. Other Components – In addition to the above components, at any time Special Condition “X” is imposed, and to the extent directed in writing by the offender’s supervising Parole Officer, an offender shall:
1. Not leave the offender’s approved County of Residence without written permission from the offender’s supervising Parole Officer.
 2. Abide by a curfew established in writing by the supervising Parole Officer.
 3. Notify any prospective employer regarding the offender’s criminal history if directed in writing by the supervising Parole Officer.
 4. Submit to a warrantless search of the offender’s person, motor vehicle, and place of residence, property, or any property to which the offender has been given permission to use, day or night, by the offender’s supervising Parole Officer or any authorized representative of the Division, with the assistance of any law enforcement officer.

The supervising Parole Officer or Division representative must have a reasonable suspicion in order to conduct a search under their statutory duty to investigate and supervise all offenders on parole or mandatory supervision. Reasonable suspicion is defined as specific and articulable facts, taken together with reasonable inferences from these facts, reasonably warranting a belief that a condition of supervision has been or is being violated.

Note: Other components deemed necessary for adequate supervision will be submitted to a parole panel for approval.

PROCEDURE:

I. Statutory Criteria for Imposition

A. Sex Offender Treatment – Mandatory for offenders who:

1. Served a sentence for an offense under Chapter 21, Penal Code, or are required to register as a sex offender under Chapter 62, Code of Criminal Procedure; and
2. Participated in a sex offender treatment program immediately before being released from prison.

B. Sex Offender Treatment – Discretionary for offenders:

1. Who served a sentence for an offense under Chapter 21, Penal Code, or are required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or

2. Where a designated agent made an affirmative finding, regardless of the offense for which the offender was serving a sentence, that the offender constitutes a threat to society by reason of his lack of sexual control.

II. Impose Special Condition

- A. A parole panel, upon a majority vote, may impose Special Condition “X” as a condition of parole or mandatory supervision.
- B. Unless otherwise directed, any condition of parole or mandatory supervision imposed, withdrawn, or modified is effective on the date of the parole panel’s decision.
- C. At any time Special Condition “X” is in effect, an offender’s supervising Parole Officer may direct the offender in writing to comply with any or all components of Special Condition “X.” An acknowledgment form shall be executed every time compliance requisites are imposed or withdrawn.

III. Legally Recognized Parent

- A. In order to request that the parole panel impose restrictions on contact with a child 17 years or age or younger, when the offender is the legally recognized parent of that child, the supervising Parole Officer shall submit a transmittal along with a copy of the court’s order which specially prohibits the legally recognized parent from having contact with their child(ren).
- B. The parole panel may impose the no contact condition based upon the court’s order. The no contact condition shall remain in effect for the duration of the court’s order. If the court enters an order authorizing the legally recognized parent to have access to their child(ren), the supervising Parole Officer shall submit a transmittal along with the court’s order requesting the parole panel withdraw the no contact condition.
- C. If the offender is the legally recognized parent of the victim of the offense, the panel shall impose Special Condition “V”, which requires that the offender not intentionally or knowingly communicate by any means directly or indirectly with the victim of the offense or intentionally or knowingly go near a residence, school, place of employment, or business of a victim.

IV. Offender Not Convicted of a Sex Offense

- A. In order for a parole panel to consider a request to impose Special Condition “X” on offenders who have no current or prior conviction, as described in BPP-POL. 148.200 Sex Offender Conditions – Releasee Not Convicted of a Sex Offense, an offender must be afforded due process as required by Title 37, Part 5, Chapter 148, Texas Administrative Code, which may include a finding that the offender constitutes a threat to society by reason of his lack of sexual control.
- B. Before submission of a request to the parole panel to impose Special Condition “X” on offenders who have no current or prior conviction for a sex offense, the supervising Parole Officer or Division representative must follow the Division policy for the Administrative

Guidelines for Imposition of Special Condition “X” for Offenders without a Sex Offense Conviction.

V. Withdrawal of Special Condition

- A. Once imposed, Special Condition “X” shall continue to govern the offender for the duration of the supervision period. Only the parole panel by majority vote can modify or remove the condition in its entirety.
- B. All requests for modification or removal of any components of Special Condition “X” shall be submitted in writing to the supervising Parole Officer and shall be forwarded to the parole panel with a recommendation for decision.
- C. The Board intends to afford the offender’s supervising Parole Officer the flexibility to perform the day-to-day supervision of the offender in furtherance of the restrictions identified in this policy.

ADOPTED BY MAJORITY VOTE OF THE BOARD ON THE 21ST DAY OF OCTOBER, 2021.

DAVID GUTIÉRREZ, PRESIDING OFFICER (CHAIR)

**Signature on file.*