



**TEXAS BOARD
OF
PARDONS AND PAROLES**

Number: BPP-POL. 145.265

Date: July 15, 2021

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Supersedes: October 28, 2020

BOARD POLICY

SUBJECT: SPECIAL CONDITION “N” (PROHIBITION ON INTERNET ACCESS FOR CERTAIN SEX OFFENDERS)

PURPOSE: To establish Special Condition “N” (Prohibition on Internet Access for Certain Sex Offenders) as a special condition of parole or mandatory supervision and to establish a procedure for imposing prohibition on internet access as a condition of parole or mandatory supervision.

AUTHORITY: Texas Government Code Sections 508.044, 508.045, and 508.1861
Texas Code of Criminal Procedure Chapter 62

POLICY: Special Condition “N” 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 who will be returned to the community, while preserving an offender’s First Amendment right to freedom of speech.

At any time Special Condition “N” is in effect, the offender shall fully comply with state laws governing the prohibition on internet access for certain sex offenders as well as Board and Division policies.

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 this statutorily mandated condition, the United States Supreme Court issued an opinion on June 19, 2017, which held that a North Carolina law prohibiting sex offenders from accessing a commercial social networking website was a suppression of lawful speech

in violation of the First Amendment. The Board recognizes the Supreme Court's decision and has incorporated appropriate procedures in this policy.

DEFINITIONS: Reportable conviction – a conviction or adjudication, regardless of the pendency of appeal, which is listed in Article 62.001(5), Code of Criminal Procedure.

PROCEDURE:

- I. Criteria for Imposition – Offenders who have a reportable conviction under the Penal Code listed in Article 62.001(5), Code of Criminal Procedure and:
 - A. Are serving a sentence for an offense under Section 21.11, 22.011(a)(2), 22.021(a)(1)(B), 33.021, or 43.25, Penal Code; or
 - B. Used the internet or any other type of electronic device used for internet access to commit the offense or engage in the conduct for which the person is required to register under Chapter 62, Code of Criminal Procedure; or
 - C. Are assigned a numeric risk level of two (2) or three (3) based on an assessment conducted under Article 62.007, Code of Criminal Procedure.

- II. Imposition Requirements
 - A. A parole panel shall prohibit an offender from using the internet to:
 1. Access material that is obscene as defined by Section 43.21, Penal Code;
 2. Access a commercial social networking site, as defined by Article 62.0061(f), Code of Criminal Procedure;
 3. Communicate with any individual concerning sexual relations with an individual who is younger than 17 years of age; or
 4. Communicate with another individual the offender knows is younger than 17 years of age.

 - B. A parole panel shall ensure the offender's compliance with Subsection II.A. above by requiring the offender to submit to regular inspection or monitoring of each electronic device used by the offender to access the internet. If the offender is authorized to use electronic devices and authorizes the search of the devices, the parole officer shall conduct a warrantless search, inspection and monitor of each of the offender's devices. (Reference TDCJ Department of Criminal Justice Parole Division PD/POP-3.6.2 Sex Offender Program Supervision Guidelines)

III. Imposition of Special Condition

- A. A parole panel, upon a majority vote, may impose Special Condition “N” as a condition of parole or mandatory supervision.
- B. Unless otherwise directed, Special Condition “N” becomes effective on the date of the parole panel decision.
- C. An offender is not in violation of this policy if:
 - 1. the offender is accessing commercial social networking websites for lawful speech protected by the First Amendment, or
 - 2. the parole panel modifies the condition per Section IV.B. below.

IV. Withdrawal or Modification of Special Condition

- A. Special Condition “N” shall not be withdrawn but shall remain in effect for the duration of the supervision period.
- B. Upon recommendation by the Division, Special Condition “N” may be modified by a majority of the parole panel if:
 - 1. The condition interferes with the offender’s ability to attend school or become or remain employed and consequently constitutes an undue hardship for the offender; or
 - 2. The offender is the parent or guardian of an individual who is younger than 17 years of age and the offender is not otherwise prohibited from communicating with that individual.

ADOPTED BY MAJORITY VOTE OF THE BOARD ON THE 15TH DAY OF JULY, 2021.

DAVID GUTIÉRREZ, PRESIDING OFFICER (CHAIR)

**Signature on file.*