

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE
PAROLE DIVISION**



**POLICY AND
OPERATING PROCEDURE**

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SUBJECT: ADMINISTRATIVE GUIDELINES FOR IMPOSITION OF SPECIAL CONDITION “X” FOR CLIENTS WITHOUT A SEX OFFENSE CONVICTION

AUTHORITY: 37 TEXAS ADMINISTRATIVE CODE § 148.40–148.55, *Coleman v. Dretke*, 395 F.3d 216 (5th Cir. 2004); *Meza v. Livingston*, 607 F.3d 392 (5th Cir. 2010), *Meza v. Livingston*, No. 09-50367 (5th Cir. Oct. 19, 2010); *Ex parte Evans*, No. AP-76,445 (Tex. Crim. App. May 4, 2011), Texas Board of Pardons and Paroles, BPP-POL. 148.200, *Sex Offender Conditions—Releasee Not Convicted of a Sex Offense*.

POLICY: To establish administrative guidelines regarding the hearing process for clients who do not have a sex offense conviction, but the current offense includes sexual elements and for clients with discharged juvenile adjudications for sex offenses.

PROCEDURE:

Pursuant to the United States Court of Appeals for the Fifth Circuit and the Texas Court of Criminal Appeals, clients who do not have a sex offense conviction are entitled to be heard in person, to present evidence, call witnesses, and confront and cross-examine witnesses prior to the imposition of Special Condition “X” (Sex Offender Program).

In accordance with the Texas Board of Pardons and Paroles (BPP) Policy, BPP-POL. 148-200, *Sex Offender Conditions—Releasee Not Convicted of a Sex Offense*, “It is the policy of the Board to afford releasees who have not been convicted of a sex offense or who have a past juvenile adjudication for a sex offense due process prior to the imposition of sex offender conditions.”

I. SEX OFFENDER CONDITION (SOC) PROCESS CRITERIA

The Parole Division shall ensure clients who have a qualifying offense are provided the opportunity to participate in a hearing prior to the imposition of sex offender conditions:

- A. Current conviction for a non-sexual offense but exhibited criminal sexual behavior during the offense; or

- B. Discharged juvenile adjudication for a sex offense.

NOTE: When Special Condition “O.33” (Evaluate for Sex Offender Counseling) is in effect for clients convicted of a sex offense specified in PD/POP 3.6.1, *Sex Offender Program Administrative Guidelines*, a Sex Offender Condition (SOC) evaluation is **not** required. Reference PD/POP 3.6.9, *Sex Offender Treatment and Polygraph Guidelines*, for evaluation requirements and time frames.

II. IDENTIFICATION OF CLIENTS WHO QUALIFY FOR SOC DUE PROCESS

- A. The Division’s Review and Release Processing Section identifies clients who qualify for the SOC Process, ensures Special Condition “O.33” is imposed, and refers those cases to the Sex Offender Parole Officer IV (SO PO IV) or designee prior to release to supervision for review to ensure eligibility criteria is met. Upon release, the SO PO IV or designee shall provide instructions to the parole officer within five (5) business days on how to proceed with notification, for those who meet the criteria.
- B. The parole officer shall notify Specialized Programs if a client qualifies for the SOC Process but does not have Special Condition “O.33” imposed and/or no instructions have been received from Specialized Programs. The parole officer shall submit all court documents and offense reports via email to the unit supervisor for review and approval within ten (10) calendar days of being identified as meeting criteria. The unit supervisor shall submit the email, court documents, and offense report(s) to the SO PO IV or designee within three (3) business days. Specialized Programs shall provide instructions to the parole officer on how to proceed within three (3) business days.

III. SOC DUE PROCESS FOR PRIOR TERM OF SUPERVISION

- A. If a client was previously processed as a SOC case and treatment was not recommended, the client shall not be processed again, unless there is a new qualifying offense.
- B. If a client was previously processed as a SOC case, treatment was recommended but the BPP denied the imposition of Special Condition “X,” the client shall not be reprocessed, unless there is a new qualifying offense.
- C. If a client was previously processed as a SOC case, treatment was recommended, the BPP imposed Special Condition “X,” and the qualifying offense is still current or there is a new qualifying offense, the client shall be reprocessed.

IV. CASELOAD PLACEMENT

- A. Sex offender officers shall not classify or supervise these clients as sex offenders until Special Condition “X” is imposed. The client shall be supervised in accordance with PD/POP 3.2.34, *Contact Standards*, for regular or appropriate supervision caseloads (based on caseload eligibility criteria).

- B. Clients shall be placed on a regular or appropriate caseload but supervised by a sex offender officer until the BPP makes a determination on the imposition of Special Condition “X.”

V. EVALUATION AND SUPPORTING DOCUMENTS

- A. Clients who meet the criteria in Section II of this policy and have Special Condition “O.33” imposed, shall be referred to a licensed Council on Sex Offender Treatment (CSOT) sex offender treatment provider for a SOC evaluation within three (3) business days of notification for processing from Specialized Programs.
- B. The referral packet shall include the Letter to the Treatment Provider (SP-0804) outlining the expectations of the evaluation and documents related to the qualifying offense to include, but not limited to, court documents (e.g. judgement and sentence, indictment), offense reports, collateral reports (e.g., Child Protective Services reports) and parole case summary.
- C. The Disclosure of Information and Waiver of Confidentiality (PMS-33) shall be signed by the client, as well as the Consent for the Release of Substance Abuse Treatment Information and Records (ORA 01.06.A), and General Consent for Disclosure of Substance Abuse Treatment Information and Records (ORA 01.06.B). This allows for open communication between the parole officer and treatment provider.
- D. If a polygraph is requested by the treatment provider, the Letter to the Polygraph Examiner (SP-0805) shall be sent to a licensed Joint Polygraph Committee on Offender Testing (JPCOT) polygraph examiner requesting a digitally recorded Instant Offense or Sexual History polygraph and subsequent report to aid in determining if sex offender treatment is necessary.
- E. During the evaluation process, the parole officer shall review the file and request any additional supporting documents (e.g., court documents or offense reports related to a prior conviction where sexual behavior was exhibited during the offense to show a history of deviant behavior, psychological evaluations) to include in the SOC packet sent to the SO PO IV or designee through the unit supervisor and parole supervisor for review. Documents not available at the time of the referral and later obtained shall be provided to the treatment provider within one (1) business day of receipt.
- F. The SOC evaluation and report shall be completed within 60 calendar days of the imposition of Special Condition “O.33” or the release date, if imposed prior to release.
- G. Refusal to cooperate with the SOC process or evaluation shall be addressed in accordance with PD/POP 4.1.1, *Processing Violations of the Rules and Conditions of Release*.
- H. Refusal to cooperate with the polygraph shall not constitute a violation of Special Condition “O.33”. The treatment provider shall proceed with the SOC evaluation without the polygraph if a client refuses to, or is unable to, complete a polygraph.

VI. EVALUATION RESULTS

Upon receipt of the evaluation, the parole officer shall complete a packet of supporting documents, listed on the No Sex Offense Conviction Review Coversheet (SP-0803), based on the treatment provider's recommendation. The SP-0803 shall indicate reasons why any required documents are not included and additional documents not on the SP-0803 shall only be included (listed under "Other") upon approval by the unit supervisor, parole supervisor, and the SO PO IV or designee.

A. Treatment Not Recommended Packet:

If the evaluation does not indicate a recommendation for sex offender treatment, the parole officer shall compile the SOC packet with the documents reflected on the SP-0803 (Treatment Not Recommended section) and submit to the unit supervisor within three (3) business days of receipt of the evaluation.

1. Within three (3) business days of receipt, the unit supervisor shall review the packet to ensure all information is accurate and contains the required documents as identified on the SP-0803. The unit supervisor shall print their name, date, and sign the SP-0803 and submit the packet to the parole supervisor for review.
2. Within three (3) business days of receipt, the parole supervisor shall review the packet to ensure all information is accurate and contains the required documents as identified on the SP-0803. The parole supervisor shall print their name, date, and sign the SP-0803 and submit the packet to the SO PO IV or designee via email.
3. Within seven (7) business days of receipt, the SO PO IV or designee shall complete a final review of the packet and advise the parole officer to satisfy Special Condition "O.33" in the Offender Information Management System (OIMS). A hearing shall **not** be conducted.
4. The client shall be transferred to an appropriate caseload.

B. Treatment Recommended Packet:

If the evaluation does indicate a recommendation for sex offender treatment, the parole officer shall compile the SOC packet with the documents reflected on the SP-0803 (Treatment Recommended section) to the unit supervisor within three (3) business days of receipt of the evaluation:

1. Enter the client's name, TDCJ number, SID number, Region, District Parole Office, and Officer Name portions of both pages of the Notice of Sex Offender Conditions (SP-0801) and indicate which documents will be included in the packet.

NOTE: The parole officer shall **not** provide the client with the SP-0801 prior to authorization from the SO PO IV but will complete the form to include in the packet.

2. Complete the Notice of Sex Offender Treatment Witness Disclosure form (SP-0802), to include all witnesses for the Parole Division and client, regardless of the need for a subpoena. Include the parole officer, sex offender treatment provider, and polygraph examiner, if applicable, on the SP-0802.
3. Within three (3) business days of receipt, the unit supervisor shall review the packet to ensure all information is accurate and contains the required documents as identified on the SP-0803. The unit supervisor shall print their name, date, and sign the SP-0803 and submit the packet to the parole supervisor for review.
4. Within three (3) business days of receipt, the parole supervisor shall review the packet to ensure all information is accurate and contains the required documents as identified on the SP-0803. The parole supervisor shall print their name, date, and sign the SP-0803, complete the Business Records Affidavit, and submit the packet to the SO PO IV or designee via email.
5. Within seven (7) business days of receipt, the SO PO IV or designee shall complete a final review of the packet and advise the parole officer to provide the client with the SP-0801 initiating the process in Section VII.

VII. PROVIDING THE SP-0801 AND PACKET TO THE CLIENT

Within three (3) business days of receiving approval from the SO PO IV or designee, the parole officer shall provide the client with a copy of the approved SP-0801 and a copy of the SOC packet excluding the SP-0803.

The packet provided to the client shall be identical to the packet that will be submitted to the BPP hearing officer. The client shall initial and sign page one of the SP-0801. The client has the option to proceed to a hearing or waive the hearing by signing page two of the SP-0801.

Clients shall be afforded a hearing if they request a hearing, refuse to sign the SP-0801, or meet the guidelines in PD/POP 4.2.1, *Pre-Hearing and Hearing Process*, regarding mental impairments. Clients with Special Condition "P" shall not waive the hearing unless their attorney is present.

A. If the client elects to proceed to a hearing, the parole officer shall:

1. Advise the client that any documentation they wish to present at the hearing shall be provided to the parole officer no later than seven (7) calendar days prior to the hearing;
2. Explain to the client that witnesses listed on the SP-0802 are potential witnesses for the Parole Division and, if the client wants to request certain persons to be present at the hearing on their behalf, the client shall provide the parole officer with witness names, addresses, and phone numbers within seven (7) business days of the hearing being scheduled; and

3. Observe the client sign and date page two of the SP-0801 (Request for Hearing section).

NOTE: The client shall receive a copy of the SP-0801 and packet within one (1) business day. A copy of the signed SP-0801 only shall be submitted to the SO PO IV or designee by email within one (1) business day.

- B. In the event the client elects to waive the right to a hearing, the parole officer shall:

1. Observe the client sign and date page two of the SP-0801 (Waiver of Hearing section) and provide the client with a copy of the SP-0801 and packet;
2. Within three (3) business days of obtaining the client's signature, submit the entire packet for review to the unit supervisor, with a copy of the signed SP-0801 only forwarded to the SO PO IV or designee via email;
3. Within three (3) business days of receipt, the unit supervisor shall review the SP-0801 to ensure accuracy and completeness. The unit supervisor shall submit the entire packet to the parole supervisor for review; and
4. Within seven (7) business days of receipt, the parole supervisor shall review the SP-0801 to ensure accuracy and completeness. The parole supervisor shall then hand deliver or overnight mail the packet to the designated BPP Region Hearing Office, after removing the SP-0803.

- C. If the client refuses to sign the SP-0801, the parole officer shall note the client's refusal on the signature line, document the date of the refusal, inform the client a hearing will be scheduled, and provide the client with a copy of the SP-0801 and packet.

VIII. SCHEDULING THE HEARING

- A. To schedule a hearing, the parole officer shall contact the BPP Central Scheduling Unit at (888) 839-7773 to set the hearing date, time, and location seven (7) calendar days after the client signs the SP-0801. The parole officer shall indicate the request is for a hearing for Special Condition "X."

NOTE: Prior to the parole officer contacting the BPP Central Scheduling Unit, the parole officer shall contact the treatment provider and polygraph examiner, if applicable, to obtain available dates for them to attend the hearing. Pursuant to BPP-DIR.148.300, *Sex Offender Conditions–Releasee Not Convicted of a Sex Offense*, the BPP Central Scheduling Unit will schedule the hearing date, time, and location no earlier than 21 calendar days from the date the parole officer calls to schedule the hearing.

- B. The BPP Central Scheduling Unit will provide the parole officer with written notice of the hearing, including the name of the presiding hearing officer.

IX. HEARING PREPARATION

- A. Within three (3) business days of obtaining the hearing information, the parole officer shall:
1. Add the hearing date, time, location, and BPP hearing officer name and address on the SP-0801;
 2. Confirm the client's witness(es);
 3. Remind the client to submit any documentation on their behalf to the parole officer no later than seven (7) calendar days prior to the date of the scheduled hearing; and
 4. Witness the client sign and date the SP-0801 and provide the client and client's attorney, if applicable, with a signed copy of the SP-0801 that contains the hearing information. The client shall have an opportunity to review the packet prior to signing the SP-0801.
- B. Within three (3) business days of obtaining the hearing information, the parole officer shall complete a Request for Subpoena form, available in Eform in the Mainframe Electronic Mail System (EMS), to include the names and relationships of all Parole Division witnesses the parole officer intends to subpoena to be present at the hearing, as well as the client's witnesses. The parole officer shall send the subpoena request in Mainframe by transferring to the location code for the assigned Hearing Office (e.g.: HU_BOARD for Huntsville).
1. Witnesses on behalf of the Parole Division who require subpoenas shall include, but not be limited to, the treatment provider who completed the evaluation and the polygraph examiner. The polygraph examiner shall only be subpoenaed if the client admitted the sexual elements to the polygraph examiner, showed deception, or showed inconclusive on an Instant Offense or Sexual History polygraph.

In the event a polygraph report indicates no deception, and there are no admissions, the polygraph report shall be included in the SOC packet, but the polygraph examiner need not be subpoenaed or requested to testify at the hearing, unless requested by the client.
 2. Agency staff who may be requested to attend the hearing who do not require a subpoena include, but are not limited to, the supervising parole officer, previous parole officers who have knowledge of the client, the institutional parole officer who prepared the case summary if the client admitted to the offense but now denies the offense, or the sociologist, if the only reference to the sexual elements is contained in the admission summary.
- C. The parole officer shall input the information into the Subpoena form (HS-92S) and deliver the subpoenas to recipients within three (3) business days of receiving approval from the BPP.

- D. The parole officer shall notify the client within three (3) business days of receiving notice that the BPP denied any of the client's witnesses.
- E. If the client submitted any documentation on their behalf to the parole officer, the parole officer shall provide that documentation to the parole supervisor, to be included in the SOC packet, within one (1) business day.
- F. The parole supervisor shall provide a copy of the complete packet, to include the client's documentation, to the BPP hearing officer, no later than seven (7) calendar days prior to the date of the scheduled hearing. The packet provided to the BPP hearing officer shall contain exactly the same documents provided to the client.

X. HEARING PROCEDURES

- A. The parole supervisor, or Assistant Region Director if the parole supervisor is unavailable, shall bring the original and one copy of the packet to the hearing. One packet may be used to reference documents prepared by the person who is providing testimony. The packet provided to the BPP hearing officer at the hearing shall include the original Business Records Affidavit, as required by Texas Rules of Evidence 902.10.
- B. Once prompted by the BPP hearing officer, the parole supervisor shall:
 - 1. Identify, for the record, each document and the corresponding date of the document that is being offered into evidence; and
 - 2. Identify the witnesses and TDCJ employees by name and title who are present for testimony and cross-examination.
- C. The client's failure to appear for the Sex Offender Condition (SOC) Hearing shall be processed according to PD/POP 4.1.1, *Processing Violations of the Rules and Conditions of Release*.

XI. POST HEARING PROCEDURES AND NOTIFICATION TO CLIENT

- A. The BPP Hearing Section will image the Hearing/Waiver Results and will place a copy in the central file. An e-mail will be sent to the parole officer, unit supervisor, parole supervisor, and SO PO IV or designee indicating that the BPP has made a decision and the documents are imaged.
- B. The SO PO IV or designee shall enter Special Condition "X" into the OIMS Special Condition Maintenance screen if imposed by the BPP.
- C. Within three (3) business days, the parole officer, regardless of the decision of the BPP, shall:
 - 1. Satisfy Special Condition "O.33" in the OIMS after receiving notification of the BPP vote;

2. Deliver the Hearing/Waiver Results, obtain the client's signature acknowledging receipt, and image;
 3. Update the caseload type and enter the appropriate indicator. Sex offender officers shall not classify or supervise a client as a sex offender until Special Condition "X" is imposed.
- D. Within five (5) business days, the parole officer, regardless of the decision of the BPP, shall:
- Complete a new OIMS generated Notice of Special Conditions form, obtain the client's signature acknowledging receipt, and image.
- E. If Special Condition "X" is imposed by the BPP on a client who has a current conviction for a non-sexual offense with a sexual element, the client shall be classified as a sex offender and placed on the sex offender caseload until the discharge of the qualifying offense, at which time, Special Condition "X" shall be withdrawn.
- F. If Special Condition "X" is imposed by the BPP on a client with a discharged juvenile adjudication, the client shall be classified as a sex offender and placed on the sex offender caseload for the duration of supervision.
- G. If Special Condition "X" is not imposed by the BPP, the client shall not be classified as a sex offender and shall be placed on the appropriate caseload.

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