

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE
PAROLE DIVISION**



**POLICY AND
OPERATING PROCEDURE**

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DATE: 08/07/15

PAGE: 1 of 11

SUPERSEDES: 09/01/11

SUBJECT: IMPOSING MANDATED SPECIAL CONDITIONS

AUTHORITY: TEXAS GOVERNMENT CODE ANN. § 508.181–508.191, 508.1861, AND 508.1862; CODE OF CRIMINAL PROCEDURE 42.12, Section 13g, ARTICLE 42.014 AND 42.037; GENERAL APPROPRIATIONS ACT

PURPOSE: To establish guidelines for the imposition of statutorily mandated special conditions on the release certificates.

PROCEDURE:

- I. Review and Release Processing (RRP) Program Specialist I's (PS I's) shall review files eligible for mandatory supervision or parole release to determine if imposition of special condition(s) of release is mandated by statute.
 - A. If mandated special conditions are required on offenders with a Parole Division file, the PS I's shall make the appropriate entry on the Clemency and Parole System (CAPS) Certificate Issuance screen and the Board Minute Sheet in the Parole Division file, while issuing the release certificate.
 - B. The Offender Information Management System (OIMS) certificate issuance is completed through utilization of the Release Authorization Checklist tab. The statutorily mandated conditions may be pre-selected based on data elements within the OIMS, but are also available for the PS I's to select to add to the release certificate.

II. Statutorily Mandated Special Conditions which can be added to the release certificate by RRP PS I's

	Condition	Statute	Chapter.Article
A.	O.01	Residence During Release	Gov. Code 508.181
B.	O.03	Controlled Substance Testing	Gov. Code 508.184
C.	O.04	Post-Secondary Education Reimbursement	General App. Act
D.	O.05	Substance Abuse Treatment (Drug/Alcohol Continuum of Care)	Gov. Code 508.185
E.	O.06	Child Safety Zone	Gov. Code 508.187
F.	O.07	Community Service for Certain Releasees	Gov. Code 508.188
G.	E	Educational Skill Level	Gov. Code 508.183
H.	M	Sex Offender Registration	Gov. Code 508.186
I.	N	Prohibitions on Internet Access for Certain Sex Offenders	Gov. Code 508.1861
J.	R	Restitution	Code of Criminal Proc. 42.037
K.	V1	Avoiding Victim of Stalking Offense	Gov. Code 508.190
L.	V2	No Contact with Victim	Gov. Code 508.191
M.	X	Sex Offender Treatment	Gov. Code 508.1862
N.	General	Parole Fee for Certain Releasees	Gov. Code 508.189
O.	General	Parole Supervision Fee; Administrative Fee	Gov. Code 508.182

III. The Parole Division files shall be reviewed by PS I's for special condition determination and, if required, the PS I's shall ensure the appropriate condition is added to the "Special Condition" section of the release certificate upon issuance.

- A. **Residence During Release (Special Condition O.01)**—Unless otherwise provided, the offender shall reside in the county where he resided at the time he committed the offense for which he was sentenced to the CID, or the county of the offense for which the offender was sentenced to the CID, if the offender was not a resident of the State of Texas. This condition is programmed to appear on all offenders' OIMS records upon release. It is not necessary for the PS I's to add the condition to the release certificate as a special condition.
- B. **Controlled Substance Testing (Special Condition O.03)**—This condition is programmed to appear on all offenders' OIMS records to allow for random testing while under supervision. It is not necessary for the PS I's to add the condition to the release certificate as a special condition.
- C. **Post-Secondary Education Reimbursement (PSER) (Special Condition O.04)**—An offender is required to reimburse the State of Texas for post-secondary education programs. This applies to offenders who enroll in such courses at a Texas Department of Criminal Justice (TDCJ)-Correctional Institutions Division (CID) facility on or after 09/01/1995. This condition is programmed to appear on all offenders' OIMS records upon release. It is not necessary for the PS I's to add the condition to the release certificate as a special condition.
- D. **Substance Abuse Treatment (Drug/Alcohol Continuum of Care) (Special Condition O.05)**—This condition shall be imposed immediately **before** release after completion of the In-Prison Therapeutic Community (IPTC) program, established under Section 501.0931 of the Texas Government Code, to ensure participation in a drug and alcohol continuum of care treatment program, post release.
1. Upon completion of the IPTC program, the offender shall be released to a Therapeutic Treatment Center (TTC) or Phase I-B approved residence for aftercare treatment.
 2. The PS I's shall enter the appropriate special condition when the certificate is issued.

E. **Child Safety Zone (Special Condition O.06)**—This condition shall be imposed for offenders whose victim was a child younger than seventeen (17) years of age and are serving a sentence for any of the following listed offenses and/or Texas Penal Codes:

- 20.04(a)(4) Aggravated Kidnapping with intent to inflict bodily injury or violate or abuse sexually
- 21.02 Continuous Sexual Abuse of Young Child or Children
- 21.11 Indecency with a Child
- 22.011 Sexual Assault (formerly Rape)
- 22.021 Aggravated Sexual Assault
- 25.02 Prohibited Sexual Conduct (formerly Incest)
- 43.25 Sexual Performance by a Child
- 43.26 Possession or Promotion of Child Pornography
- 30.02(d) Burglary of a Habitation with intent to commit a violation of an offense listed above

1. PS I's shall review the Case Summary, the TDCJ Admission Summary, and/or the:
 - a. Judgment and Sentence to determine whether the offender meets the criteria for a Child, or
 - b. Safety Zone special condition.
2. If it is determined that the special condition is warranted, the PS I's shall enter the appropriate special condition when the certificate is issued.

F. **Community Service for Certain Releasees (Special Condition O.07)**—This condition shall be imposed for offenders serving a sentence for certain crimes committed because of bias or prejudice. With this condition, offenders are required to perform not less than 300 hours of community service at projects that serve the persons or groups who were the targets of the offender. This condition requires an affirmative finding by the sentencing court under Article 42.014 of the Texas Code of Criminal Procedure. The affirmative finding must be noted on the Judgment and Sentence. Those offenses are listed under the following Texas Penal Code:

- 28.02 Arson
- 28.03 Criminal Mischief
- 28.08 Graffiti

If the offender has a conviction for one of the three (3) aforementioned penal codes and has an affirmative finding on the Judgment and Sentence, the PS I's shall enter the appropriate special condition when the certificate is issued.

G. **Educational Skill Level (Special Condition E)**—This condition shall be imposed for mentally competent offenders who have **not** attained a 6th grade education level prior to release.

1. PS I's shall review the Windham Education (EDIC) screen on the mainframe to determine the offender's educational skill level and IQ score.
2. If the offender has not completed the 6th grade or has not attained an educational achievement score of 6.9 or higher, the PS I's shall enter the appropriate special condition when the certificate is issued.

H. **Sex Offender Registration (Special Condition M)**—This condition shall be imposed for offenders convicted on or after 09/01/1970 for the following Texas Penal Codes:

- 20A.02(a) (3), (4), (7), and/or (8) – Trafficking of Persons for offenses committed on or after 09/01/2011
- Conviction for Attempt, Conspiracy, or Solicitation, as defined by Chapter 15 of the Penal Code, to commit an offense listed below (excluding Indecent Exposure)
- Adjudication for juvenile delinquent conduct for the offenses listed below
- Deferred adjudication for the offenses listed below (excluding Indecent Exposure)
- 20.02 – Unlawful Restraint, Kidnapping, or Aggravated Kidnapping, and the
- 20.03 – judge made an affirmative finding that the victim or intended victim was
- 20.04 – younger than 17 years of age
- 20.04(a)(4) Aggravated Kidnapping with intent to inflict bodily injury or violate or abuse the victim sexually
- 21.02 Continuous Sexual Abuse of Young Child or Children
- 21.08 Indecent Exposure (second conviction, excluding deferred adjudications)
- 21.11 Indecency with a Child
- 22.011 Sexual Assault (formerly Rape)
- 22.021 Aggravated Sexual Assault

- 25.02 Prohibited Sexual Conduct (formerly Incest)
- 30.02(d) Burglary of a Habitation with the intent to commit a felony sexual offense
- 33.021 Online Solicitation of a Minor
- 43.05 Compelling Prostitution
- 43.25 Sexual Performance by a Child
- 43.26 Possession or Promotion of Child Pornography

When there is a conviction under the laws of another state, Federal law, a foreign country, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of the offenses listed above, the Texas Department of Public Safety (DPS) shall make the determination of substantially similar offenses.

When the defendant, not more than four (4) years older than the victim, and the victim was at least 15 years of age, receives a conviction based solely on the ages of both the defendant and victim, the defendant may petition the court for an order exempting registration at any time on or after the date of the person's sentencing, or the date the person is placed on deferred adjudication, as applicable.

Note: Some of these Penal Code section titles have been renamed since 1970, but the Penal Code section numbers have not changed over time. Officers shall apply the registration requirement to the Texas Penal Code section number, not the title. For example, Texas Penal Code 25.02 was originally entitled "Incest" and later changed to "Prohibited Sexual Conduct."

1. PS I's shall review the Case Summary, offense report, the TDCJ Admission Summary, and/or the Judgment and Sentence to determine the applicable offense dates.
2. If appropriate, the PS I's shall enter the special condition when the certificate is issued.

- I. **Prohibitions on Internet Access for Certain Sex Offenders (Special Condition N)**—This condition shall be imposed when the offender is required to register as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure by court order or otherwise, and is serving a sentence for any in the following three (3) categories:
1. Texas Penal Code offenses:
 - 21.11 Indecency with a Child
 - 22.011(a)(2) Sexual Assault of a Child
 - 22.021(a)(1)(B) Aggravated Sexual Assault of a Child
 - 33.021 Online Solicitation of a Minor
 - 43.25 Sexual Performance by a Child; or
 2. The Internet or any other type of electronic device is used for Internet access to commit the offense or engage in the conduct for which the person is required to register under Chapter 62 of the Texas Code of Criminal Procedure; or
 3. The offender is assigned a numeric risk level of two (moderate) or three (high) based on an assessment (STATIC 99R) conducted under Article 62.007 (Risk Assessment Review Committee; Sex Offender Screening Tool) of the Texas Code of Criminal Procedure.
 - a. The PS I's shall review the Case Summary, Offense Report, Judgment and Sentence, and STATIC 99R to determine whether the offender meets the criteria for the Restricted Internet Access special condition.
 - b. If it is determined that the special condition is warranted, the PS I's shall enter the appropriate special condition when the certificate is issued.
- J. **Restitution (Special Condition R)**—This condition shall be imposed if the court where the offender was convicted orders the offender to make restitution to any victim of the crime, current offense(s) only. The offense must have been committed between 09/01/1981 and 09/01/1989, or after 08/31/1993.
1. PS I's shall review the Judgment and Sentence to determine whether restitution was ordered.
 2. If it is determined that the special condition is warranted, the PS I's shall enter the appropriate special condition—**not the amount**—when the certificate is issued.
- K. **Avoiding Victim of Stalking Offense (Special Condition V1)**—This condition shall be imposed when the offender is serving a conviction for Texas Penal Code 42.072, Stalking.

1. PS I's shall review the Commitment screen to determine if the offender was convicted of the listed Texas Penal Code.
 2. If the "V1" special condition is to be imposed, the PS I's shall submit a transmittal requesting a Psychological Evaluation (Special Condition P1) in accordance with Texas Government Code, Section 508.223.
 3. If it is determined that the special conditions are warranted, the PS I's shall enter the appropriate special conditions (V1 and/or P1).
- L. **No Contact with Victim (Special Condition V2)**—If a parole panel releases an offender on parole or to mandatory supervision, the panel shall require, as a condition of parole or mandatory supervision, that the offender not intentionally or knowingly communicate directly or indirectly with a victim of the offense, or intentionally or knowingly go near a residence, school, place of employment, or business of a victim. At any time after the offender is released on parole or mandatory supervision, a victim of the offense (of a current or prior conviction) may petition the panel for a modification of the conditions of the offender's parole or mandatory supervision, allowing the offender contact with the victim, subject to reasonable restrictions.

According to the Texas Code of Criminal Procedure, "victim" means 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; stalking; or one who has suffered personal injury or death as a result of the criminal conduct of another.

Any offense listed in Section III of PD/POP-2.2.6, *Super-Intensive Supervision Program Referral Process*, shall be considered as having a victim, regardless as to whether a specific victim was identified.

These offenses are:

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| 22.02 | Aggravated Assault |
| 20.04 | Aggravated Kidnapping |
| 43.04 | Aggravated Promotion of Prostitution |
| 29.03 | Aggravated Robbery |
| 22.021 | Aggravated Sexual Assault |
| 28.02 | Arson |
| 30.02 | Burglary (If punished as 1st degree felony) |
| 19.03 | Capital Murder |
| 43.05 | Compelling Prostitution |

21.02	Continuous Sexual Abuse of Child(ren)
20A.03	Continuous Trafficking of Persons
46.10	Deadly Weapon in a Penal Institution
21.11	Indecency with Child
22.04	Injury to child, Elderly, or Disabled Individual
20.03	Kidnapping
19.04	Manslaughter
19.02	Murder
25.02	Prohibited Sexual Conduct
29.02	Robbery
43.24	Sale, distribution, or display of harmful material to minor
25.08	Sale or purchase of a child
22.011	Sexual Assault
43.25	Sexual Performance by a Child
20A.02	Trafficking of Persons

1. PS I's shall review the Case summary, TDCJ-CID Admissions summary, Offense Report, and/or PD/POP-2.2.6, *Super-Intensive Supervision Program Referral Process*, to determine whether the offense involved a victim as defined in Article 56.01 (3) of Texas Code of Criminal Procedure.
2. The PS I's shall enter the appropriate special conditions when the certificate is issued.

M. Sex Offender Treatment (Special Condition X)—This condition shall be imposed if:

1. The offender was serving a sentence for an offense under Chapter 21 of the Texas Penal Code, or
2. The offender is required to register as a sex offender under Chapter 62 of the Code of Criminal Procedure, and
3. Immediately before release, the offender is participating in a sex offender treatment program established under 499.054 of the Texas Government Code to include the Sex Offender Education four (4) month program (FI-4R), the Sex Offender Treatment nine (9) month program (FI-9R), and the Sex Offender Treatment 18 month program (FI-18R).

The following offenses fall under Chapter 21 of the Texas Penal Code:

- 20.04(a)(4) Aggravated Kidnapping with intent to inflict bodily injury or violate or abuse the victim sexually
- 21.08 Indecent Exposure (one conviction/adjudication) or Indecent Exposure (second conviction/adjudication), if there is evidence of sexual behavior
- 21.11 Indecency with a Child
- 22.011 Sexual Assault (formerly Rape)
- 22.021 Aggravated Sexual Assault
- 25.02 Prohibited Sexual Contact, (formerly Incest)
- 30.02(d) Burglary of a Habitation with the intent to commit a felony sexual offense
- 43.05 Compelling Prostitution
- 43.25 Sexual Performance by a Child
- 43.26 Possession or Promotion of Child Pornography
- 33.021 Online Solicitation of a Minor (c) or (f)
- 21.02 Continuous Sexual Abuse of Young Child or Children
- 21.12 Improper Relationship Between Educator and Student
- 21.15 Improper Photography or Visual Recording

- 20A.02 Trafficking a Person (a) (3), (4), (7), or (8)
- 71.02 Engaging in Organized Criminal Activity to commit any of the above listed offenses

1. PS I's shall review the Case Summary, Judgment and Sentence, Indictment, Commitment screen, and Individualized Treatment Plan (ITP) screen to determine if the offender meets the criteria for the Sex Offender Treatment special condition.
2. If it is determined that the offender meets the above criteria, the PS I's shall enter the appropriate special condition when the certificate is issued.

N. **Parole Fee for Certain Releasees**—A parole panel shall require, as a condition of parole or mandatory supervision, that an offender convicted of an offense under Section 21.02, 21.08, 21.11, 22.011, 22.021, 25.02, 43.25, or 43.26 of the Texas Penal Code, pay the Parole Division a parole supervision fee of \$5.00 each month during the period of parole supervision. (Reference PD/POP-3.1.6, *Fees/Restitution/Post-Secondary Education Reimbursement/Collection*.) This condition appears on the release certificate for all offenders under the “General Conditions of Release.” It is not necessary for the PS I's to add it to the release certificate as a special condition.

O. **Parole Supervision Fee; Administrative Fee**—A parole panel shall require, as a condition of parole or mandatory supervision, an offender pay a parole supervision fee of \$10.00 and an administrative fee of \$8.00 to the Parole Division for each month the offender is under parole supervision. This condition appears on the release certificate for all offenders under the “General Conditions of Release.” It is not necessary for the PS I's to add these fees on the release certificate as a special condition.

Stuart Jenkins
Director, Parole Division