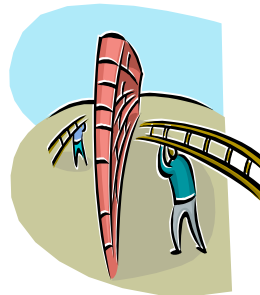




PAROLE AND PROBATION CONDITIONS AS A BARRIER TO REENTRY

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PURPOSE OF PAROLE AND PROBATION CONDITIONS

- Provide adequate supervision and protect community.
- Promote successful reintegration into community.
- Address criminogenic needs.
- **Not** intended as form of punishment.

TYPES OF CONDITIONS

1. Standard Conditions: e.g. reporting, no firearms, seek employment, not violate law
2. Standard Special: Menu of conditions that are tied to offense
 - e.g. no driving if driving offense; financial restrictions if financial crime
3. Individualized conditions: 99 series

AUTOMATED ASSIGNMENT OF STANDARD SPECIAL CONDITIONS

- Largely computer generated process.
- Particular standard special conditions are linked to particular factors (e.g. was there a child victim?), and then conditions “dropped” automatically by the computer.
- Offense-based rather than risk or needs based.
- Conditions imposed can be very inappropriate.

SEX OFFENDER STANDARD SPECIAL CONDITIONS

- Extensive series of restrictions that go far beyond requirements of SORA.
- Some conditions focus on treatment.
- Other conditions target various types of offenders (e.g. internet sex crimes, offenders against children).

LACK OF INDIVIDUALIZATION

- In most cases, entire set of 1.0, 1.1 etc. conditions drops on parolee with a sex offense, regardless of the nature of the crime or the person's risk level.
- Conditions that are appropriate can be helpful to reentry, e.g. treatment.
- Conditions that are inappropriate can severely undermine reentry.

CONDITIONS THAT CAN UNDERMINE REENTRY: NO CONTACT WITH CHILDREN

- Some cases where appropriate.
- But absolute prohibition on any kind of contact with own children undermines pro-social support, affects housing placements.
- Can be very difficult for children to understand why parent is coming home from prison, but now can no longer have contact.
- Also used to restrict other pro-social activities, like attending church.

CASE EXAMPLES

- Client commits sex offense at 17; not charged till 31 when married family man; parole condition that no contact with children, including son.
- Client (18) has consensual sex girlfriend (15), resulting in child. Probation order allows contact. Goes to prison on probation violation, and absolute prohibition on contact on parole.

GEOGRAPHIC RESTRICTIONS CAN UNDERMINE REENTRY

- State law and conditions both prohibit reside/work/loiter within 1000 feet of school.
- Conditions provide that cannot go to or “be” within 500 feet of parks, child-care centers, swimming pools, playgrounds, etc.
- Severely restricts housing and work opportunities.
 - Makes housing with supportive family members unavailable.

CASE EXAMPLES

- Best housing placement for young parolee with serious offense history is with parents. But placement unavailable because parents live within 500 feet of daycare.
- Invalid mother of parolee lives within 1000 feet of school. Parolee denied permission to visit, which agent considers “loitering.”
- Parolee forced to quit job at McDonalds because there was a playland.

INTERNET RESTRICTIONS CAN UNDERMINE REENTRY

- Cannot possess or uses any computer or other device capable of connecting to internet without written agent permission.
- No exceptions if crime involved computer.
- Severely restricts employment and education options, as
- Also affects housing, as can't have accessible computer in home.

CASE EXAMPLE

- Parolee seeking to attend college and must use computer for classes. Permission denied because parolee had solicited sex from a prostitute on-line.

INTERSECTION OF CONDITIONS: CASE EXAMPLES

- Parolee cannot live with wife, because custody of kids. Cannot live with mom because within 500 feet of park. Believes has agent approval for contact with wife, and admits in required polygraph that seeing his wife. Violation.
- Family home too close to school; seeking to buy new home, but restrictions on living with wife or kids; DOC pays for commercial placement.

STANDARD SPECIAL CONDITIONS PROBATION VS. PAROLE

- Menu of conditions very similar for Probation and Parole.
- Process very different.

SPECIAL STANDARD PROBATION CONDITIONS

- Conditions recommended by probation office and imposed by court as part of order of probation.
- Jurisdiction to remove, add or modify conditions is with sentencing court.
 - Some conditions give discretion to agent.
- Probation offices may also have series of local special standard conditions, e.g. no congregating at particular location.

PRACTICE TIPS FOR PROBATION CONDITIONS

- Ensure accuracy of PSI.
- Review conditions with client to determine if any are inappropriate.
- Seek concurrence of prosecutor for removal/modification of condition; can use individualized condition as alternative.
- Seek removal/modification from court.
- If problems arise post-conviction, petition court

SPECIAL STANDARD PAROLE CONDITIONS

- Conditions imposed during parole process.
- Jurisdiction to add, remove, or modify conditions is with the Parole Board.
 - Some conditions give agent discretion.
- No formal process by which parolee can obtain review.
 - Request to agent for agent to request Parole Board to modify.
 - *Houle* interim review process

PRACTICE TIPS FOR PAROLE CONDITIONS

- Ensure accuracy of PSI.
- Work with parole agent to get agent to exercise discretion or agent to submit request for modification.
- Support of therapist can be critical.

***HOULE V. SAMPSON* LITIGATION**

- Challenge on behalf of parolees and their children.
- Objected to automatic imposition of parole conditions that prevent parolees from having contact with own children and spouses/partners, and restrictions on religious worship.

LEGAL REQUIREMENTS

- Due process before imposition of conditions that restrict fundamental rights.
- Parole conditions that restrict fundamental rights must be narrowly tailored to address compelling government interest.

SETTLEMENT IN *HOULE*

- Individual plaintiffs granted contact with their own children.
- Parole Board indicated that making changes to system of assigning parole conditions.
- Set up interim review process, that was to be temporary mechanism to resolve cases till new system instituted. Now in operation over a year.

RESULTS OF INTERIM REVIEW PROCESS

- Handled over 50 cases, in which vast majority ultimately saw modification of conditions.
- Tremendous variation in level of restrictions that were appropriate.
- Significant delays in getting conditions modified, creating disruptions for families.
- Need for individualized decision-making to occur pre-release.

FUTURE OF STANDARD SPECIAL CONDITIONS

- Parole Board considering moving to more risk-based, diagnosis-based approach.
- DOC using various risk assessment tools that make more tailored conditions possible.
- Also reviewing efficacy of geographic and internet restrictions.

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