# Traps and Pitfalls of Plea Bargains

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## INTRODUCTION

Defense attorneys are well aware that the great majority of criminal defendants who enter their office will ultimately resolve their case through a plea agreement. Any veteran defense has had numerous clients who, for whatever reason, and notwithstanding their initial protests of innocence and declarations to take their case all the way to the Supreme Court, eventually decide to enter a plea of guilty. Usually, the plea is part of a plea agreement.

In those cases where a decision has been reached to plead guilty, generally the client's, and therefore the defense attorney's, concerns are, in descending order of importance: (1) preventing incarceration; (2) limiting incarceration; (3) limiting the duration of any probation, and the amount of any fees, fines, or restitution; and, (4) minimizing the number and seriousness of the offense(s) to which the client will plead.

It is the defense attorney's duty to advise the client as to the meaning and consequences of the plea agreement. It isn't very difficult to get the client to focus on the incarceration aspect of a plea agreement. Most clients will also want to discuss when they will be eligible for parole. Beyond those considerations, many attorneys, and few clients, are aware of the other collateral consequences of their plea. Even factors that can affect the length of confinement are oftentimes misunderstood, or simply overlooked by client and attorney alike.

There are few things as frustrating for an attorney as having to retrieve a closed file to answer a client's questions about why the client was not advised of some unexpected consequence of the conviction. Not only is there no new fee related to these inquiries, there is little likelihood that anything you say to the client will leave them satisfied. Then there is that gnawing fear of a bar grievance or a writ alleging ineffective assistance.

The attorney's failure to advise the client of the meaning and affect of the plea, may constitute ineffective assistance of counsel. However, where a defense attorney fails to advise the client of a consequence of his plea, appellate courts have held that only the failure to advise a client of a direct consequence, as opposed to a collateral consequence, will render a plea involuntary.

Regardless of whether the courts deem a particular consequence collateral or direct, you can be sure that the client will not think it is collateral when it affects them in a very direct way. When that happens, the client's first inclination is to blame the defense attorney for not warning them in advance. They may even assert that refrain often heard by writ attorneys: "if I had known that, I never would have pled guilty." Never mind that the client committed the crime while video surveillance cameras recorded his every move; that he voluntarily confessed; and that no attorney in your jurisdiction had ever been able to negotiate a deal as sweet as the one you negotiated for this type of offense.

The purpose of this paper is to address matters that may arise after the plea and that the client may have expected the defense attorney to advise him on prior to the plea. Doing so may help prevent complaints from clients, and reduce the number of cases where old closed files have to be retrieved to answer questions that could have easily been explained or resolved at the time of the plea.

## MATTERS AFFECTING THE LENGTH OF SENTNECE

### 1. Time credits

The length of incarceration is not the only factor that will determine how long a defendant will serve after entering a guilty plea. The "sentence begin date" will determine the date on which the sentence starts to run. In addition to using that date for computing the inmate's end of sentence discharge, TDCJ will use that date to determine eligibility dates for parole and, where applicable, mandatory supervision. The Time Section at TDCJ will base the sentence begin date on the Judgment and Sentence. For purposes of awarding time credits, they will only accept a certified copy Judgment and Sentence that is sent directly from the court of conviction. If time credits are not noted on the Judgment and Sentence, they will not be credited toward the sentence begin date.

When the inmate receives his time sheet from TDCJ, he may notice the discrepancy. The inmate will then write to his former defense attorney, or he may write to the Time Section of the TDCJ State Classification Office in Huntsville, Texas. In either event, if the time credits are not reflected in the Judgment and Sentence, a Judgment Nunc Pro Tunc will have to be presented to the trial court. If it is agreed to by the State, the judge will usually sign it. When the court sends a certified copy to TDCJ, the time credits will be applied.

Indigent inmate may write to State Counsel for Offenders (SCFO) for assistance in time credit cases. SCFO represents indigent inmates who have certain types of legal problems, including time credit issues. Each year, SCFO assists inmates in obtaining hundreds of thousands of man days of time credit entitlements. Many of those are jail time credits that were not reflected on a judgment and sentence.

Unfortunately, TDCJ and SCFO can take months to correct the time problem. In the case of a short sentence, this may mean the inmate will serve more time than required

before discharging the sentence. Parole and mandatory supervision eligibility may also be delayed. The best way to avoid these problems, and the calls and letters from disgruntled clients and family members, is for the defense attorney to insure that the time credits are correctly stated in the Judgment and Sentence. In those jurisdictions where the Judgment and Sentence is included with the plea papers the defense attorney can easily insure the time credits are included. In those jurisdictions where the Judgment and Sentence is not prepared until after the plea is entered, it is a good idea to either write the agreed time credits on some other appropriate document, or state on the record the specific time credits that were part of the plea agreement. If a Judgment Nunc Pro Tunc becomes necessary, at least there will be some record of the time credits. This can avoid a hearing on the Judgment Nunc Pro Tunc where the State contests the time credits.

It is also important to understand that TDCJ will not award time credits that predate the offense for which the time credits are being awarded. In other words, if the time between the date of offense and the sentencing date is one year, TDCJ will not compute jail time credits for more than one year, regardless of what the Judgment and Sentence says. Further, TDCJ will only award credit and good time credits at the rate authorized for inmates in TDCJ. TDCJ will not award the double and triple credits that the county jail in that jurisdiction may award county inmates.

**2. Parole eligibility concerns for 3(g) Aggravated offenses other offenses**

Usually, the single most important concern for clients who will be going to TDCJ is when they will be eligible for parole. No client ever assumes they will have to do their sentence day for day. It is important to address this issue before beginning the plea negotiations because parole eligibility can vary greatly, depending upon the offense. Parole eligibility is determined using the law in effect at the time of the offense. Currently, for most offenses an inmate will become parole eligible when flat time served, plus good time credits, equals ¼ of the sentence, or 15 years, whichever is less.[i] Of course, making parole on one's first consideration is problematic, but clients will typically want to know when they will first become eligible for parole.

For certain serious offenses known as "3(g)" offenses, parole eligibility will not occur until completion of ½ of the sentence, without credit for any good time credits. [ii] Currently, these include all cases involving an affirmative finding of a deadly weapon, murder, indecency with a child, aggravated kidnapping, aggravated sexual assault, aggravated robbery, certain drug offenses, sexual assault, use of a child in the commission of offense, and certain cases involving Drug Free Zones.

In plea negotiation, there is often the opportunity to plead to one or more of a list of offenses, or lesser included offenses. All other factors being equal, it is much less advantageous to plead to a "3(g)" offense. In some cases, the prosecutor will consider a sliding scale for confinement, depending upon whether the defendant pleads to a 3(g) offense. For example, the prosecutor may want 10 years on a 3(g) offense, or 15 years on a non 3(g) offense. The defense attorney then has to advise his client on the benefits of each offer.

In the case of the 3(g) offense, parole eligibility will occur when the defendant has completed 7 ½ years flat, i.e., without consideration of good time credits. In the case of the non 3(g) offense, parole consideration will occur when good time plus flat time equals ¼. Under ideal conditions, an inmate could accumulate enough good time credits to come up for parole in about 2 years. Many clients will prefer the 15 year non 3(g) sentence in this case. Typically, a conviction for a non violent, no sex, offense will have the highest likelihood for release.

In advising a client on this scenario, several other factors are important. First, there are no assurances of a first parole. In fact, first paroles can be difficult. Second, even though the plea was to a non 3(g) offense, the Parole Board will have an extensive file on the client's criminal record. It will include the details of the offense. The Board will consider that the offense was really an aggravated offense, but was plead down to a non aggravated offense. This will make a first parole more difficult. Third, if your client has a long criminal history, the Board will not likely grant a first parole. And finally, if your client can't behave in prison, he may have to do the sentence day for day.[iii] We all have had clients who, for one reason or another, are at high risk to have constant disciplinary problems in TDCJ. For those clients, because disciplinary cases may disqualify one from being paroled, the shorter aggravated sentence may be a much better deal.

**3. Non Aggravated offenses that the Parole Board treats as Aggravated**

The Board considers the potential risk of physical harm to third parties in all parole cases. Although an offense may not be listed as aggravated under Article 42.12 § 3(g), Code of Criminal Procedure, the Parole Board views certain offenses as more serious than other non aggravated cases. For instance, it is extremely difficult to obtain parole in a DWI case. Thus, in any case involving such an offense, it will be much more difficult to obtain parole. If possible, the attorney should seek a plea on some other offense.

Some other offense the Parole Board tend to treat as aggravated for parole purposes, regardless of a deadly weapon finding, include intoxication manslaughter arson, burglary of a habitation, robbery, aggravated robbery, and all sex related offenses (including child pornography cases).

The title of the offense of conviction is not always as important as the underlying circumstances. The Parole Board can, and does, look to the underlying facts to determine the nature of the risk the potential parolee will pose to the public. If a case is pled down from a 3(g) offense purely as an accommodation to working out a plea, it may allow parole consideration earlier, but may not result in a favorable parole vote any earlier.

In some cases, a defense attorney successfully negotiates a reduced plea because post indictment investigation reveals that the charged offense was erroneous, or because other favorable information was developed in post indictment investigation. If that information

is not included in the police reports for the case, the Parole Board will likely consider the reduced plea one of convenience, and they may give more weight to the original indictment than to the offense of conviction. The defense attorney can help avoid that result by discussing it with the client, and impressing the client with the importance of having this new information presented to the Parole Board when the client is coming up for parole.

**4. Mandatory supervision considerations**

a. Special considerations in DWI cases

In Texas, an inmate may be released to "mandatory supervision" when flat time plus awarded by the prison equal the total sentence.[iv] Currently, all offenses are eligible for mandatory supervision except: all 3(g) offenses, aggravated assault, injury to a child or elderly individual (1st degree), arson (1st degree), robbery, and burglary (1st degree).[v] Prior to September 1, 1996, mandatory supervision was just that – mandatory. TDCJ was required to release any inmate to supervision when their actual calendar time and accrued good conduct time equals the term of their sentence.[vi] Unless revoked, they would then remain on supervision until their flat time and time on supervision equaled their total sentence.

Effective September 1, 1996, the legislature added a new oxymoron to the English language "discretionary mandatory supervision". Under the current law, inmates with offenses that qualify for mandatory supervision, must be released to supervision when their actual calendar time and accrued good conduct time equals the term of their sentence, unless, the parole panel determines that the inmate's accrued good conduct time is not an accurate reflection of the inmate's potential for rehabilitation, and the inmate's release would endanger the public.[vii]

Where any element of an offense occurred before September 1, 1996, the old mandatory supervision law will apply, and the inmate must be released when calendar and good time equals the term of the sentence.[viii] Under certain circumstances, a DWI offense may be enhanced to a third degree felony by proof of two prior DWI convictions.[ix] Where any felony DWI indictment uses an enhancement where the DWI occurred prior to September 1, 1996, the old mandatory supervision law applies. In a case where the State argued an enhancement DWI need not be stipulated to by the State, the Court of Criminal Appeals stated that prior DWIs used to enhance a current DWI to a felony, "are elements of [felony] driving while intoxicated."[x] Although the Texas courts have not specifically ruled on whether the DWI enhancements are elements of the offense for purposes of applying the old mandatory supervision law, this will eventually be addressed to the courts.

What this means is that, whenever possible, the defense attorney should at least consider trying to get any <u>extra</u> DWI enhancements that occurred after September 1, 1996, dismissed from the indictment before any plea of guilty or no contest. In the event that the courts ultimately decide that the enhancements are elements of the offense for

purposes of mandatory supervision, it could result in the client's release to supervision years earlier than might otherwise occur. This is particularly true since DWI cases are among the most difficult for which to obtain parole.

b. Mandatory supervision issues for Inmate cases

As explained above, inmates incarcerated in TDCJ who currently have a mandatory supervision date under the old law are entitled to be released when good time and calendar time equal their term of sentence. However, inmates who receive a subsequent conviction while in TDCJ are being denied the mandatory release date on the conviction for which they were serving time.[xi] Loss of the original mandatory supervision date can add years of incarceration to even the most appealing plea offer. Further, the sentence for any conviction an inmate receives while in TDCJ must be stacked upon the sentence he is currently serving.[xii]

**5. Special considerations in parole and deferred adjudication cases**

In cases where a defense attorney is successful in negotiating probation or deferred adjudication community in a sexual offense that requires registration under the Sex Offender Registration Program[xiii], the client should be aware that early termination is no longer permitted.[xiv] In cases of indecency with a child, sexual assault, and aggravated sexual assault, the judge, after a hearing, may extend the maximum period of community supervision up to an additional 10 years.[xv]

**6. "Street time" eligible offenses**

Currently, if revoked while on parole supervision, an inmate may be entitled to credit for time spent on parole, or "street time."[xvi] Any inmate with a conviction for an offenses listed in Gov't Code § 508.149(a), Inmates Ineligible for Mandatory Supervision, are not eligible for street time credit. Other inmates who have successfully completed at least one half of their parole before issuance of a blue warrant or summons are entitled to credit for street time.[xvii]

When negotiating a plea for a client on parole for a street time eligible conviction, the defense attorney should understand that the client will lose any street time that he may have otherwise been entitled to, if the client pleads guilty to an offense listed in Gov't Code § 508.149(a). Where a client has years of street time on a sentence, that can turn an otherwise great plea agreement into along prison sentence. If at all possible, the attorney should try to negotiate a plea to an offense not listed in 508.149(a). If the new sentence is going to run consecutive with the old sentence, this consideration is even more important.

## MATTERS AFFECTING PAROLE CONDITIONS AND CONDITIONS AFTER DISCHARGE OF SENTENCE

### 1. Sex Offenses

In Texas, being a convicted sex offender is akin to being branded with the Scarlet "A" in Colonial Massachusetts.[xviii] For sex offenders, different, more onerous, rules apply to probation and deferred adjudication eligibility, as well as to conditions of community supervision.[xix] Parole rates are not only low for sexual offenses, but the Parole Board may require completion of an 18 month sex offender program in TDCJ after parole is granted.[xx] Upon conviction there are strict technical registration requirements that result in publication of one's name, address and nature of conviction. Failure to comply with the registration requirements is a second degree felony.[xxi] Sex offenders are also the only class of offenders in Texas who face the prospect of life long civil commitment after they successfully complete their sentence. Further, the failure to comply with any of the myriad onerous conditions of civil commitment is a third degree felony.[xxii]

The harsh direct and collateral consequences of a sexual conviction demand that defense attorneys pay special attention to any plea agreement in such cases. This section will focus on those consequences that attorneys must consider when entering a plea agreement involving a sexual offense.

a. Sex Offender Registration.

Long after a client's sentence ends, the requirement to register as a sex offender persists. These requirements continues for 10 years, unless the conviction is for incest, compelling prostitution of a person younger than 17, possession or promotion of child pornography, or a "sexually violent offense," in which cases life long registration is mandated.[xxiii] The defense attorney should advise the client of these registration requirements. However, failure to advise is seldom a problem, because judges are required to include the notice of the registration requirement in the plea admonishments.[xxiv]

There have been cases when the court has also failed to admonish the defendant of the registration requirement. Texas Rule of Appellate Procedure 25.2(a)(2) limits the right to appeal where the punishment assessed does not exceed that recommended by the prosecutor and agreed to by the Defendant.[xxv] Where the issue is addressed on appeal, it must be assessed under the harmless error rule.[xxvi]

A critical provision of the registration requirement is that which allows for certain sex offenders to petition the court having jurisdiction over the case to exempt registration any time after sentencing or placement on deferred adjudication. This provision applies only if:

(1) the person is "required to register only as a result of a single reportable conviction or adjudication, other than an adjudication of delinquent conduct; and
(2) the court must have entered in the appropriate judgment or filed in the appropriate papers, a statement of an affirmative finding described by Article 42.017 or Section 5(g), Article 42.12.[xxvii]

Article 42.017 and Section 5(g), Article 42.12 require that the judge make an affirmative finding if he determines that, at the time of the offense the defendant was younger than 19 and the victim was at least 13; and, the conviction was based solely on the ages of the defendant and victim. Defense attorneys owe it to their client to move for such a finding where appropriate.

Minor victims will not always acknowledge that they otherwise consented to a sexual act. Fear of parental disapproval, punishment, embarrassment, or a host of other factors may keep the victim from admitting to the consensual nature of the act. However, even those convicted before the effective date of the act may petition the court for the registration exemption.[xxviii] This clearly establishes a procedure for going back to cases where a plea has already been entered, and seeking a registration exemption.

Where a client insists that the act was consensual, but the victim will not admit to the consensual nature of the act, the attorney should advise the client that the exemption may be revisited in the future. Once the victim reaches majority, she will be in a better position to come forward with the truth. Although there is some ambiguity as to whether the exemption provision can be used in this manner, if the judge and prosecutor agree, it is doubtful that the law enforcement authorities will question the court's exemption.

Civil commitment of sexually violent predators.

In 1999, The Texas legislature created a system for the civil commitment of sexually violent predators.[xxix] The name is really a misnomer in Texas. Although the Texas Legislature wanted to protect the citizenry from sexually violent predators, they did not want to commit the funds necessary for in patient supervision and treatment. Instead they created a system of supervision that controls every aspect of the subject's life.

The standard Treatment and Supervision Contract that the subject must sign in these Civil Commitment cases contains 97 conditions. The conditions include: not watching R-rated TV programs or movies without prior permission; not displaying pictures in their home of people wearing swimsuits, underwear or tight and revealing clothes; not going to schools, parks, movie theatres, public parks, amusement parks, arcades or malls where children or potential victims are likely to be; not obtaining work where potential victims might be (but maintaining full time employment); not masturbating to deviant sexual fantasies; not allowing deviant sexual fantasies to continue once they begin. The subject must also wear an electronic monitor; and agree to submit to plethysmograph testing.[xxx] A violation of any condition of civil commitment is punishable as a third degree felony.[xxxi]

Every sex offender is reviewed more than a year before their anticipated discharge date to determine if they might qualify as a sexually violent predator. The final screening is done by the Special Prison Prosecution Unit Civil Commitment Division, who ultimately files the petition for civil commitment. [xxxii]

Considering the severity of these conditions, defense attorneys should be aware of the triggering provisions of this civil commitment statute. An otherwise great plea agreement could lead to a bar grievance or ineffective assistance claim where the attorney has not advised the client that the plea could result in lifelong civil commitment.

A person qualifies as a sexually violent predator under this statute if they are a repeat sexual offender, and suffer from a behavioral abnormality that makes them likely to engage in a predatory act of sexual violence. The predatory act must be directed at a stranger, a casual acquaintance, or a person selected for a relationship for the purpose of victimization.

To minimize the possibilities of civil commitment, defense attorneys should try to avoid pleas to multiple acts of sexually violent crimes. Under the commitment statute, prior probations or deferred adjudications may be considered.

Finally, in any case where a defense attorney pleads a client to offenses that might result in civil commitment as a sexually violent predator, defense attorneys should preserve any evidence, or leads, that may help minimize the nature of the offenses. Individuals are screened for civil commitment under this statute only as they approach the end of their release from TDCJ. This may be many years or even decades after the plea is entered. Police reports and prosecution files will have been preserved, and will serve as the basis for the referral for civil commitment. Mitigating matters will likely not be contained in those files. The subject of civil commitment will be at a distinct disadvantage in trying to gather evidence many years later.

Names, addresses, phone numbers, and other personal information of witnesses and victims should be preserved in the client file, or provided to the client to assist in any investigation that may be necessary years later. Mitigation evidence should also be preserved. Finally, if there is any way to get such mitigation on the court records, that could be helpful to the client if his file is later selected for screening as a civil commitment prospect.

### 2. Recent Parole Board actions

Court cases addressing ineffective assistance claims have repeatedly ruled that defense attorneys are not ineffective for failing to recognize future changes by the courts or the legislature. Certainly, clairvoyance in regards to Parole Board actions is even far more difficult. However, there have been some disturbing trends by the Parole Board in tightening the supervisory noose around the necks of certain types of offenders. Any information a defense attorney can give a prospective inmate about how to deal with parole, when that day comes, may pay dividends when those problems arise.

Instead of a former client who is disturbed over unexpected problems with his parole supervision, the client may well return to the attorney who sagely predicted the client's present dilemma. The client may not remember the advice, but he will remember that the defense attorney knows what to do about his current problem.

Recent actions by the Parole Board have caused considerable concern by inmates currently on parole. Newspaper reports have examined Parole Board actions that placed certain parolees on sex offender parole conditions, even where the parolee has never been convicted of a sex offense.[xxxiii] Other Parole Board actions include home "lockdown" conditions for parolees convicted of sex offenses, as well as for parolees who were only accused of a sex offense sometime in the past.[xxxiv] Recently, many on parole for DWI offenses were required to sign agreements to stay home on New Years Eve.[xxxv]

No one can dispute that the Parole Board has an obligation to safeguard the public from dangers posed by parolees. However, their actions must be based upon well reasoned decisions that are consistent with the Constitution. Recently, the Fifth Circuit, struck down sex offender registration and therapy conditions placed on a inmate released to mandatory supervision, because the inmate had never been convicted of a sex crime.[xxxvi]

Attorneys may want to advise clients who are going to TDCJ, that when asked to sign such questionable conditions that are added after their release to supervision, they may sign "under protest" next to their names.[xxxvii] This may improve the chances of successfully defending the client who, on parole from a drug conviction, had the temerity to leave his home on Christmas Eve and join his family in celebrating a religious holiday.

## CONCLUSION

Many things can happen to your client after he has entered his plea of guilty and has begun his sentence – most of them are bad. When he has nothing but time to reflect upon all of these bad things that are happening to him, and to figure out who is to blame, often he will conclude it is his attorney's fault for not telling him about all traps the and pitfalls that awaited him after his guilty plea. Many of the matters discussed above cannot support a claim of ineffective assistance or professional misconduct. However, addressing those matters with your client can prevent such claims. The advice will also be appreciated by the client if he needs an attorney in the future.

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[i] Tex. Gov't Code Ann. § 508.145 (Vernon 2004).
[ii] Tex. Code Crim. Proc. Ann. Art 42.12 § 3(g) (Vernon 2004).
[iii] See, 37 Tex. Ad. Code § 5 (Texas Board of Pardons and Paroles Rules, §145.3).
[iv] Tex. Gov't Code Ann. § 508.149 (Vernon 2004).
[v] *Id.*

[vi] Tex. Code Crim. Proc. Ann. Art. 42.18 § 8(c) (Vernon 1994).
[vii] Texas Gov't Code Ann. §§ 508.147-508.149 (Vernon 2004).
[viii] § 3(a) of the enabling statute of the amendments contained in the Session Laws changing the mandatory supervision provisions included a saving clause that continued the old law for any offense in which any element of the offense occurred before the effective date of the change. Session Laws, 74th Legislature, Regular Session, Chapter 263 (1995).
[ix] Tex. Pen. Code Ann. §§ 49.04 and 49.09(b).
[x] *Gibson v. State*, 995 S.W.2d 693, 696 (Tex.Cr.App. 1999). See also, *Weaver v. State*, 87 S.W.3d (Tex.Cr.App. 2002).
[xi] Tex. Gov't Code Ann. § 508.150 (Vernon 2004).
[xii] Tex. Code Crim. Proc. Ann. Art. 42.08(b) (Vernon 2004).
[xiii] Tex. Code Crim. Proc. Ann. Chap. 62 (Vernon 2004).
[xiv]Tex. Code Crim. Proc. Ann. Art. 42.12 §5(c) (Vernon 2004).
[xv] Tex. Code Crim. Proc. Ann. Art. 42.12 § 22A (Vernon 2004).
[xvi] Tex. Gov't Code Ann. § 508.283(c) (Vernon 2004).
[xvii] *Id*.
[xviii] One Texas sex offender was forced out of six towns and denied residence in over 200 halfway houses. Rick Hampton, *What's Gone Wrong with Megan's Law?*, USA Today, May 14, 1997, at A1.
[xix] See Tex. Code Crim. Proc. Ann. Arts. 42.12 §§5(c), 13B, and 22A (Vernon 2004).
[xx] Tex. Code Crim. Proc. Ann. Art 42.12 § 3(g) (Vernon 2004).
[xxi] Tex. Code Crim. Proc. Ann. Art 62.10 (Vernon 2004).
[xxii] See Tex. Health & Safety Code, Title 11, Chap. 841.
[xxiii] Tex. Code Crim. Proc. Ann. Art 62.12 (Vernon 2004).
[xxiv] Tex. Code Crim. Proc. Ann. Art 26.13(a) (Vernon 2004).
[xxv] Shankle v. Texas,119 S.W. 3d 808 (Tex.Cr.App. 2003).
[xxvi] Webb v. Texas, No. 05-03-00710-CR and 05-03-00711-CR,Tex. App. Lexis 147, (Tex.App.-Dallas 2005). *Id.*
[xxvii] Tex. Code Crim. Proc. Ann. Art 62.0105 (Vernon 2004).
[xxviii] *Id.*
[xxix]Tex. Health & Safety Code, Title 11, Chap. 841 (Vernon 1999).
[xxx] Civil Commitment Requirements: Treatment and Supervision Contract, State of Texas Sexually Violent Predator Program
[xxxi] See Tex. Health & Safety Code, Title 11, Chap. 841.085.
[xxxii] For a discussion of the process for selecting prospects for civil commitment, See David P. O'Neil, *Civil Commitment of Sexually Violent Predators: Indeterminate Life Sentencing*, VOICE for the Defense, Vol. 28, (September 1999).
[xxxiii] *Parolees Say State Policy Targets Them for Treatment as Sex Offenders*, The Dallas Morning News, December 13, 2004.
[xxxiv] Thom Marshall, *Parolees,Lawyers Blast Sex-offender Program*, Houston Chronicle, December 12, 2004.
[xxxv] Janet Elliot, *State to curb Parolees' Cheer,* Houston Chronicle, December 29, 2004.
[xxxvi] *Coleman v. Dretke*, No. 03-50743 (5th Cir. 2004)
[xxxvii] Inmates released on mandatory supervision under the law as it existed before September 1, 1996, cannot be required to sign for their conditions of release. In those cases, release is mandated by law. Of course, the parolee is not exempt from the imposed conditions, he merely cannot be denied mandatory supervision for failing to sign the parole conditions.