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Court of Appeals  
Division II  
State of Washington  
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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

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IN RE PERSONAL RESTRAINT PETITION OF:

**DAVID EVANS,**

PETITIONER.

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**PERSONAL RESTRAINT PETITION**

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**A. STATUS OF PETITIONER**

David Evans, Petitioner, challenges the Indeterminate Sentence Review Board's (ISRB) denial of parole. A copy of the ISRB's *Decision and Reasons* is attached. Mr. Evans (DOC #879762) remains imprisoned at the Monroe Correctional Complex's Twin Rivers Unit.

**B. FACTS**

David Evans is under the jurisdiction ISRB for a May 6, 2005, conviction in Clark County Cause #04-1-01929-0 for Rape of a Child and Child Molestation. He was sentenced to an indeterminate term with a maximum of life. At the time of the *Decision* (January 2018), Mr. Walters had served approximately 165 months in prison, plus 118 days of jail credit.

*The Crimes of Conviction*

Mr. Evans was in his mid40's when he molested and raped the eleven year old son of a friend with whom he coached a soccer team. This offending behavior happened multiple times and came to an end when the victim told his mother what had occurred. This behavior resulted in convictions for Rape of a Child in the 1st Degree and Child Molestation in the 1st Degree.

When the soccer team learned about the offense above, parents began asking their sons if Mr. Evans had ever touched them inappropriately. A second victim reported that at age 12, while he was a member of the team, Mr. Evans picked him up to take him to a game but first they went to his house for a while. At the house Mr. Evans told him to lie down and rest then laid down near him and wrapped his legs around him and rubbed his thigh. This action resulted in the conviction for Communication with a Minor for Immoral Purposes.

In addition, Mr. Evans recently admitted he sexually abused both of his sons. Additional unsubstantiated allegations were raised by Mr. Evans' wife during the course of their divorce.

Facts related to Mr. Evans prison conduct and treatment appear in the argument section below.

## **C. ARGUMENT**

### *Introduction*

David Evans challenges the ISRB's decision denying parole because it does not find facts supporting the conclusion that he is likely to reoffend. Instead, the ISRB's *Decision* assumes that Mr. Evans is likely to reoffend because he has offended in the past and perhaps because he did not do as well in treatment as the

ISRB would prefer. The ISRB's Decision is premised on a presumption of reoffense, rather than the presumption of release mandated by statute. RCW 9.95.420(3)(a). Because the record does not establish a likelihood to reoffend, "the statute requires a release on appropriate conditions, not a second bite at the apple." *Matter of Brashear*, 6 Wash.App.2d 279, 430 P.3d 710, 716 (2018).

*The ISRB Subverted the Presumption of Release*

Mr. Evans was sentenced to indeterminate terms for sex offenses. He has served the minimum terms. RCW 9.95.420(3) provides the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board.

There is a presumption of release. That presumption can only be overcome by facts. The ISRB "shall" order the offender released, under such affirmative and other conditions as the board determines appropriate, "unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released." *Id.*

*The Standard of Review in a PRP*

To succeed on a PRP challenging an ISRB decision, a petitioner must show that he is under unlawful restraint. RAP 16.4; *In re Pers. Restraint of Dyer*, 164 Wash.2d 274, 285, 189 P.3d 759 (2008) (*Dyer II*). “The ISRB abuses its discretion when it fails to follow its own procedural rules for parolability hearings or acts without consideration of and in disregard of the facts.” *In re Pers. Restraint of Dyer*, 157 Wash.2d 358, 363, 139 P.3d 320 (2006) (*Dyer I*). Disregarding the evidence and supporting its decision with speculation and conjecture constitute an abuse of discretion. *Id.* at 369.

*The Evidence Relied on by the ISRB was Insufficient to Support the Conclusion He is Likely to Reoffend*

This case is similar to *Matter of Brashear*, 6 Wash.App.2d 279, 430 P.3d 710 (2018). In *Brashear*, a juvenile board case, the ISRB denied release despite the fact that the risk assessment found she was a low risk to reoffend, relying instead on her crime of conviction, early prison infraction history, the impact of the crime, and the length of the original sentence. The Court of Appeals held:

Rather than focusing on the statutory presumption of release, her awareness of her crimes, her changed behavior, her assessed low risk to reoffend, and appropriate release conditions, the ISRB relied on Brashear's underlying crimes, the impact of those crimes, and the small portion of her sentence served in denying her petition. These are not factors that guide the ISRB's decision under RCW 9.94A.730(3).

*Brashear*, 430 P.3d at 715.

The Court of Appeals held that the ISRB's decision failed to cite to sufficient evidence to overcome the presumption of release. Where the decision does not establish a likelihood to reoffend, "the statute requires a release on appropriate conditions, not a second bite at the apple." *Brashear*, 430 P.3d at 716.

The ISRB took an even more fundamentally flawed approach in this case. First, the ISRB did not rely on or cite any individualized risk assessment instrument. In other words, there was no affirmative evidence that Mr. Evans presented a risk to reoffend, much less a more likely than not risk of reoffense that conditions of release could not reduce. Instead, the Decision found "Mr. Evans is not releasable based on the following:

- Aggravated to a Risk level III by the End of Sentence Review Committee (ESRC);
- Lack of insight into his offending behavior even after treatment

- Did poorly in the SOTAP

Taking the three listed reasons in order, the first is merely conclusory and is not supported by any facts relevant to the risk of reoffense calculation that must be made by the ISRB. The statute does not permit the ISRB to abdicate its function, and especially not without setting forth facts.

The second and third conclusions are both premised on a presumption of reoffense. In other words, the second and third reasons assume, without any individualized or empirical proof, that Mr. Evans will more likely than not reoffend because he has offended in the past and his involvement in treatment was deemed unsatisfactory. While these factors may have intuitive appeal, the ISRB cannot assume away the presumption of release with a presumption of reoffense.

Most significantly, the ISRB's decision does not rely on an individualized risk assessment. In fact, Hanson, Broom and Stephenson (2004) reported sexual recidivism rates of 21.1 percent for the treated offenders and 21.8 percent for the untreated offenders. Olver, Wong and Nicholaichuk (2008), for example, conducted a treatment outcome study that examined sexual reconviction rates for 472 treated and 282 untreated sex

offenders using three-, five- and 10-year follow-up periods. For the treated sex offenders, the researchers found sexual reconviction rates of 11.1 percent after three years of follow-up, 16.9 percent after five years of follow-up and 21.8 percent after 10 years of follow-up. Sexual reconviction rates for the untreated sex offenders were 17.7 percent after three years, 24.5 percent after five years and 32.3 percent after 10 years of follow-up. These studies strongly suggest that factors other than performance in treatment are more robust predictors of reoffense risk. None of those individualized factors were examined or explained by the ISRB. Instead, the ISRB assumes a more likely than not risk of reoffense merely from past behavior. This is both impermissible and turns the statutory requirement in order to justify the denial of release on its head.

Equally concerning is the ISRB's complete failure to acknowledge the several positive factors. "CC Murray testified that since the last Board hearing Mr. Evans was able to enter the SOTAP Aftercare. He completed this as well as Bridges to Life and Making it Work. He works in the C1 Laundry as a machine operator. He participates in the Twin Rivers Unit LGBTQ

support group.” “He has incurred no serious infractions since his last hearing.”

Likewise, Mr. Evans presented a realistic release plan. “His plan regarding release is to DOC Transitional Housing in the King County area. Mr. Evans stated he has support from his children all of whom are adults now.”

*The ISRB Completely Ignored Whether Conditions of Release Would Reduce the Risk of Reoffense*

Finally, like in *Brashear*, the ISRB also failed to discuss any conditions associated with release and why, despite appropriate conditions, he would be likely to reoffend. At a minimum, this Court should remand. However, Evans urges this Court to find insufficient evidence and to direct the ISRB to release him.

It is an abuse of discretion for the ISRB to rest its decision denying release on only part of the statutory criteria. It “adds insult to injury” for the ISRB to first fail to premise its decision on “methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if

released,” and then to deny release based without consideration of the complete statutory criteria.

**D. CONCLUSION AND PRAYER FOR RELIEF**

Based on the above, this Court should grant relief and remand to the ISRB with directions to release Mr. Evans after setting appropriate conditions of release.

DATED this 3<sup>rd</sup> day of December 2019

Respectfully Submitted:

/s/Jeffrey Erwin Ellis  
Jeffrey Erwin Ellis #17139  
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VERIFICATION OF PETITION BY COUNSEL

I declare under penalty of perjury under the laws of the State of Washington that I am the attorney for the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

December 3, 2019//Portland, OR

s/Jeffrey Erwin Ellis



STATE OF WASHINGTON  
**DEPARTMENT OF CORRECTIONS**  
**INDETERMINATE SENTENCE REVIEW BOARD**  
P.O. BOX 40907, OLYMPIA, WA 98504-0907

**DECISION AND REASONS**

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NAME: Evans, David  
DOC #: 879762  
FACILITY: Monroe Correctional Complex-Twin Rivers Unit  
DATE OF HEARING: February 19, 2019  
TYPE OF HEARING: .420  
PANEL MEMBERS: Lori Ramsdell-Gilkey and Jeff Patnode  
FINAL DECISION DATE: March 11, 2019

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This matter came before the above named Board Members of the Indeterminate Sentence Review Board (ISRB or the Board) for his third .420 hearing in accordance with RCW 9.95.420. In preparation for the hearing, the Board reviewed Mr. Evans's ISRB file. Mr. Evans appeared in person. Testimony was provided by Department of Corrections (DOC) Classification Counselor (CC) Melinda Murray and Sex Offender Treatment and Assessment Program (SOTAP) Specialist Blaine Leal.

**LAST BOARD DECISION:**

At the January 5, 2016 hearing, the Board found Mr. Evans not releasable and added 36 months to his minimum term. The Board recommended that Mr. Evans participate in Thinking for a Change or other programming that may help him to be more open and honest.

**CURRENT BOARD DECISION:**

Based on the burden of proof set out in RCW 9.95.420 and the totality of evidence and information provided to the Board, the Board does find by a preponderance of the evidence that

Mr. Evans is more likely than not to commit a sex offense if released on conditions. Consequently, the Board finds Mr. Evans not releasable and adds 36 months to Mr. Evans's minimum term

**NEXT ACTION:**

**Schedule a .420 hearing approximately 120 days prior to ERD.**

**REASONS FOR DECISION:**

This was a deferred decision using a structured decision-making framework that takes into consideration; the statistical estimate of risk, criminal history, parole/release history, ability to control behavior, responsiveness to programming, demonstrated offender change, release planning, discordant information, and other case specific factors. Mr. Evans is not releasable based on the following:

- **Aggravated to a Risk level III by the End of Sentence Review Committee (ESRC)**
- **Lack of insight into his offending behavior even after treatment**
- **Did poorly in the SOTAP**

**RECOMMENDATIONS:**

**The Board recommends Mr. Evans be screened for possible participation in the SOTAP core program for a second time.** Although he completed this program previously in 2015, he appears to have internalized little of the curriculum. In addition, the curriculum has changed since then and the new program may offer continued benefits. Mr. Evans should continue to work on understanding more fully the motivation behind his offenses.

**JURISDICTION:**

David Evans is under the jurisdiction of the Board on a May 6, 2005 conviction of Rape of a Child in the First Degree, Count I, and Child Molestation in the First Degree, Count II, in Clark County Cause #04-1-01929-0. His time start is May 13, 2005. On Count I, his minimum term was set at 144 months from a Sentencing Reform Act (SRA) range of 120 to 160 months. On Count II, his minimum term was set at 89 months from an SRA range of 67 to 89 months, to be served

concurrently. His maximum term on each count is Life. Mr. Evans has served approximately 165 months, plus 118 days of jail time credit.

It should be noted that there is a third count under this Cause #, Communication with a Minor for Immoral Purposes, for which he received a 365 day suspended sentence.

**OFFENSE DESCRIPTION:**

According to file materials, between May 2001 and June 2004, Mr. Evans (age 45 to 47) sexually assaulted two known males. Victim #1 was the son of a good friend with whom he coached a soccer team. Mr. Evans was very involved with the family and sexually assaulted this victim on his 11<sup>th</sup> birthday. He took him out to dinner then back to his residence to watch television. He had the victim lie on the couch then pressed his groin against the victim's buttocks. Mr. Evans also went to this victim's residence during times he knew no one else would be home and took advantage of this to put his hands down the victim's pants, touch his penis and buttocks and hug him. On at least one occasion Mr. Evans orally raped this victim. This offending behavior happened multiple times and came to an end when the victim was told that Mr. Evans wanted to take him out for his birthday again. The victim did not want to go so told his mother what had occurred. This behavior resulted in convictions for Rape of a Child in the 1<sup>st</sup> Degree and Child Molestation in the 1<sup>st</sup> Degree.

When the soccer team learned about the offense above, parents began asking their sons if Mr. Evans had ever touched them inappropriately. A second victim reported that at age 12, while he was a member of the team, Mr. Evans picked him up to take him to a game but first they went to his house for a while. At the house Mr. Evans told him to lie down and rest then laid down near him and wrapped his legs around him and rubbed his thigh. The victim got up and got away from Mr. Evans. This action resulted in the conviction for Communication with a Minor for Immoral Purposes.

**PRIOR RISK RELATED CRIMINAL CONDUCT:**

Mr. Evans was charged with Child Molestation in the First Degree, Count I, and Child Molestation in the Second Degree, Count II, in Clark County in 1997. It was alleged that Mr. Evans, when he was aged 37 to 41, fondled his youngest son's penis and masturbated his son's penis when he was 10-13 years old. Mr. Evans was **acquitted** by a jury verdict in 1997 of both counts.

Mr. Evans' oldest son reported he was also sexually assaulted by his father beginning at his age of 3, however, no charges were filed regarding this victim apparently because this occurred in Alabama where they were living at the time. **Mr. Evans has since admitted he did indeed sexually abuse both of his sons.**

Additional allegations were brought forth by Mr. Evans' wife during the course of their divorce. She told authorities that Mr. Evans had been suspected of several occasions of inappropriate contact with minors that were in their care or otherwise involved in church ministry with them over the past 12 years. No new charges were filed as a result of any of these allegations.

**PROGRESS/BEHAVIOR:**

CC Murray testified that since the last Board hearing Mr. Evans was able to enter the SOTAP Aftercare. He completed this as well as Bridges to Life and Making it Work. He works in the CI Laundry as a machine operator. He participates in the Twin Rivers Unit LGBTQ support group. His plan regarding release is to DOC Transitional Housing in the King County area. He has incurred no serious infractions since his last hearing.

Mr. Evans stated he has support from his children all of whom are adults now. He claims he wrote a letter of apology to his two sons whom he had molested previously. (He was tried and acquitted of this in in 1997) He said he told his sons that he had been struggling with "who he really was" as a person (his sexuality) at the time. Mr. Evans stated he offended against his two sons because he was interested in knowing what it was like to be with a "male". In practically his next breath he admitted he had been involved in homosexual affairs during his marriage at least three

different times. He seemed to reason that it was more threatening to be found out for “being gay” by being sexual with a grown man than it did to be involved sexually with a minor male. He said felt safer with the minor aged males. He continuously blamed his involvement with the boys on his own sexual confusion. He denied he had a deviant sexual attraction to minor aged males which this Board finds disingenuous. He maintained the sex wasn’t his main focus. He later admitted that he had an attraction to “teen” males. He was reminded most of his victims were not yet teens before he started touching them. He said he now “embraces who he is as a gay man” as if this alone has solved his problem.

Mr. Evans offended against those closest to him. He shows little remorse other than to repeatedly state, “I don’t ever want to create another victim”. Mr. Evans minimizes his behavior and verbalizes little insight into his behavior. He has completed the SOTAP and Aftercare. He did very poorly in the core program and he was about 2/3 of the way done before he even admitted having offended against his sons. He has at least four minor male victims yet struggled to admit he had a deviant sexual attraction to them. He remains too high of a risk for sexual re-offense to consider him for release at this time.

LRG: ts

March 4, 2019

March 11, 2019

March 12, 2019

cc: MCC-TRU  
Offender  
File



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS  
INDETERMINATE SENTENCE REVIEW BOARD  
P.O. BOX 40907, OLYMPIA, WA 98504-0907

TO: Full Board

FROM: Lori Ramsdell-Gilkey (Teresa Schmidt, CRT)

RE: EVANS, David DOC #879762

Panel recommends: Not releasable, add 36 months to minimum term.

Next action: Schedule .420 120 days prior to ERD.

| Agree  | Disagree |
|--|----------|
| LR-G 3-11-2019<br>JP 3-11-2019<br>EB 3-11-2019<br>KR 3-11-2019 |          |

**ALSEPT & ELLIS**

**December 03, 2019 - 9:19 PM**

**Filing Personal Restraint Petition**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** Case Initiation  
**Trial Court Case Title:** State of Washington Vs Evans, David Wayne  
**Trial Court Case Number:** 04-1-01929-0  
**Trial Court County:** Clark Superior Court  
**Signing Judge:**  
**Judgment Date:**

**The following documents have been uploaded:**

- PRP\_Personal\_Restraint\_Petition\_20191203211835D2440597\_3192.pdf  
This File Contains:  
Personal Restraint Petition  
*The Original File Name was EvansDPRPISRB .pdf*

**Comments:**

This PRP challenges the decision of the ISRB, parole board

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**Note: The Filing Id is 20191203211835D2440597**