

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

81324-8

In re the Personal Restraint	)	
Petition of:	)	NO. 58823-1-I
	)	
MARK MATTSON.	)	PETITIONER'S
	)	STATEMENT OF
	)	ADDITIONAL
	)	AUTHORITIES

Pursuant to RAP 10.8, Petitioner submits the following:

1. **Release Process** - designated as Attachment 5 to Department of Corrections (DOC) Policy Directive 350.200 revised December 25, 2006, submitted by DOC in the present case on May 25, 2007
2. **Transition Plan Procedure** – designated as Attachment 6 to DOC Policy Directive 350.200 revised December 25, 2006, submitted by DOC in the present case on May 25, 2007.

Providing in relevant part:

**TO DETERMINE THE APPROPRIATENESS OF A PROPOSED PLAN**  
**Counselor/facility Community Corrections Officer (CCO)** will consider:

3. All End of Sentence Review Committee (ESRC) decisions, including referrals for Civil Commitment under 71.09”

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3. **DOC Policy Directive 350.500: End of Sentence Review/Post Confinement Review**

Generally requiring End of Sentence Review Committee (ESRC) to determine among other things whether inmate meets criteria for Sexually Violent Predator (SVP). More specifically requiring

Offenders who have been found by ESRC to meet the definition of an SVP shall not be:

...

2. Released to Community Placement.

DOC 350.500(VI)(C)

Respectfully submitted this 6<sup>th</sup> day of June, 2007.



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GREGORY C. LINK – 25228

Attorney for Petitioner

## RELEASE PROCESS

Correctional Records Manager (CRM) or designee will:

1. Review Offender Based Tracking System (OBTS) and the official offender record to ensure:
  - a. The release and/or transfer to Community Custody/Monetary Only date is accurate on the cause(s) of commitment.
  - b. An approved plan or verified address has been received, if applicable.
  - c. The offender has been identified as a Risk Level 1, 2, or 3 notification or Child Protective Services Notification (DT07).
  - d. Address information is updated on OBTS DT24 and emergency contact information is updated on OBTS DT04.
  - e. Any prior cause(s) for which the offender still has supervision requirements are identified and printed.
    - 1) Verify ISRB status on previous causes, if applicable.
    - 2) Verify there are no pending/outstanding court cases, if applicable.
  - f. Closure of DT07 RM-A, RM-B, RM-C, TPD entries for CCI offenders to ensure CCO has completed that portion of the Offender Release Plan (ORP).
  - g. Verification of eligibility with Counselor for 10 day release per DOC 350.240 Ten Day Release.
2. For offenses that require registration:
  - a. Complete DOC 20-312 Registration Notification Requirements (OBTS DI57) and review with the offender per DOC 350.255 Registration Notification.
3. Run NCIC/WACIC for any outstanding wants/warrants. Review OBTS DT03 for detainers.
  - a. Contact agency with holds to verify pickup/transportation arrangements prior to release.
4. Complete notifications per DOC 350.600 Teletype Notification of Release of Offenders and DOC 390.300 Victim Witness Notification (OBTS DT22), if applicable.
5. Set Actual Release Date (OBTS DI56).
  - a. Community Custody offenders, including violators, who are returning to Community Custody Inmate/Prison (CCI/CCP) status, who are not being detained to their maximum expiration date or identified on OBTS DT07 as a sexually violent predator, may release 2 working days prior to a weekend or holiday to allow one full working day for reporting/intake.

## RELEASE PROCESS

- b. Community Custody offenders without an approved plan or verified address specified may be held to their maximum Prison release date.
6. Complete all sections of DOC 20-311 Order of Release.
7. No more than Thirty days and no less than 5 days prior to the Actual Release Date (ARD), the CRM will update OBTS DI57.
8. For all causes eligible for 5990 closure, complete DOC 09-182 Court-Prison Special 5990/5256 Supervision Closure and DOC 02-243 5990/5256 Notice to Offender.
  - a. If Legal Financial Obligations (LFO) are paid in full prior to release from Prison, no supervision upon release, and no open causes on DP13/14, the CRM will send an email to the LFO Unit (lfoprisonreleases@doc1.wa.gov) with the following information: Offender name, DOC number, cause prefix, and statement that all LFOs are paid in full and there is no supervision upon release.
  - b. If offender still owes LFOs upon release from Prison, no supervision upon release and no open causes on DP13/14, the CRM will send the 5990 Special Report electronically to the LFO Unit (lfoprisonreleases@doc1.wa.gov).
9. Review DOC 20-311 Order of Release, DOC 20-312 Registration Notification Requirements, and OBTS DI57 DOC Registration screen with offender.
  - a. Explain all reporting instructions, registration requirements, if applicable, and/or 5990 requirements for paying LFOs.
  - b. Obtain offender's signature on all documents.
  - c. Witness all offender signatures.
  - d. Original documents or copies, as applicable, are all maintained in the central file.
10. Notify the CCO of release.
11. Notify the End of Sentence Review Committee (ESRC), if applicable.
12. Notify CRM/designee in regional records office where offender is releasing, if applicable.

### **Facility Records staff/designee or Work Release CCO will:**

1. Complete a new DOC 20-311 Order of Release if the scheduled release date and/or transfer date changes by 31 days or more, or if the residence/emergency contact changes.
2. Immediately notify the CCO or field CRM/designee, via email, if the scheduled release date and/or transfer to community custody date changes.
3. Re-notify law enforcement and Victim/Witness Unit.

## TRANSITION PLAN PROCEDURE

### TO DETERMINE THE APPROPRIATENESS OF A PROPOSED PLAN

Counselor/facility Community Corrections Officer (CCO) will consider:

1. The offender's risk (i.e., LSI-R, RMI),
2. All Offender Based Tracking System (OBTS) DT37 chrono entries, paying specific attention to "CC" chrono entries, and
3. All End of Sentence Review Committee (ESRC) decisions, including referrals for Civil Commitment under 71.09.

**A Transition Plan will not be forwarded for investigation for the following reasons, which will be documented on OBTS DT37 using "CA" chrono code:**

1. The plan will place the offender in a situation where s/he is likely to re-offend. This will be reviewed by the facility Risk Management Team (FRMT),
2. The plan will place the offender in violation of the Judgment and Sentence (J&S) and/or Department conditions,
3. The sponsor withdraws, and/or
4. The offender has an in-state hold/detainer and the potential sentence is longer than 6 months, or if release to detainers, Immigration and Customs Enforcement (ICE), or other jurisdiction has been confirmed by the Correctional Records Manager (CRM)/designee.

The following do not require a Transition Plan:

1. The current commitment is monetary release and/or eligible for 5990 supervision closure.
2. RM-C offenders without Court-ordered drug treatment. This does not include registerable sex offenders.
3. RM-D offender releasing to community placement or Community Custody.

### SUBMITTING THE TRANSITION PLAN INFORMATION FOR INVESTIGATION

Counselor/facility CCO will:

1. Complete the Transition Plan component of the Offender Release Plan (ORP) with assistance from the Facility Risk Management Team/Reentry Intensive Transition Team.
  - a. If at any time prior to release the offender provides a new address, the facility staff will notify the Field Office that has the current release packet. If the new address is in a different catchment area, the assignment officer will notify that assignment officer via email that the ORP is being transferred for investigation.

## TRANSITION PLAN PROCEDURE

- b. Assist in the development of the ORP if s/he is a member of the Reentry Intensive Transition Team.

### INVESTIGATING THE TRANSITION PLAN

#### CCO will:

1. Develop an investigation packet by reviewing Liberty for file material. If information is not available, s/he may request copies of any available file material through the facility records/designated staff. Facility will also scan copies into Liberty.
2. Visit the proposed sponsor's residence as part of the investigation.
3. Assess the degree of risk for victims and potential victims of similar age or circumstances for sex offenders.
4. Collaborate with Child Protective Services/Adult Protective Services (CPS/APS) per DOC 350.550 Reporting Abuse and Neglect.
5. Obtain Office/Unit Supervisor approval for plans with victimization concerns requiring mandatory reporting.
  - a. Sex offenders will not return to a residence where minor victim(s) or other children of similar age are present unless:
    - 1) A family reunification plan is in effect by order of the Court or Department guidelines,
    - 2) The Court is aware the offender will be returning to the home, and
    - 3) CPS/APS is involved with the case.
6. Inform the proposed sponsor of the following and document this on OBTS DT37 using an "FC" chrono code:
  - a. The offender's criminal history,
  - b. Recommended level of sex offender notification and that local law enforcement may conduct community notification if the offender is a sex or kidnapping offender with a requirement to register,
  - c. Conditions of release, and
  - d. Tentative release date.
7. Review and update the ORP and make recommendations to mitigate risk and enhance the offender's opportunity for a successful transition.
  - a. Recommendations may include approval for up to an additional \$60, when authorized in RCW 72.02.100, for offenders being paroled to an Indeterminate Sentence Review Board (ISRB) approved plan.
8. Update the ORP components for all Risk Management (RM)-A and RM-B cases, and include, at a minimum, the plan for management of the offender from the point of release through the point of intake in the CCO's office after the offender is released.

## TRANSITION PLAN PROCEDURE

9. Review all close proximity issues with his/her immediate supervisor prior to recommending approval or denial of the residence. All denials must be reviewed and approved by the Community Corrections Supervisor and facility Correctional Unit Supervisor. Only one plan will be considered at one time. Previous plan must be denied and OBTS/DT07 must be updated before a new ORP is submitted.
  - a. The assigned Counselor/facility CCO will continue to work on the development of an alternative plan.
  - b. If the ORP is denied, the assigned CCO will telephone/email the assigned Counselor/facility CCO to determine if there is/are alternate residence(s) when the initial plan is denied because the address:
    - 1) Is not available,
    - 2) Will place the offender in violation of Court-imposed conditions,
    - 3) Will place the offender at a likely risk to re-offend,
    - 4) Will return the offender to a residence where there is a victim(s) that the CCO believes is at risk, and/or
    - 5) Will place a sex offender in the same house or in close proximity to a minor victim(s), school, child care center, playground, or other facility where children of similar age and circumstance to the offender's sexually motivated conviction(s) are present and who may be put at substantial risk of harm by the offender residing at that location.
10. Document:
  - a. The approved address on OBTS DT24, and
  - b. Appropriate information in the investigation section of the ORP Transition Plan.
    - 1) If the ESRC has identified the offender for civil commitment consideration under RCW 71.09, the assigned CCO must review and consider all relevant information, to include static and dynamic risk factors relating to the offender's risk within the larger community, before a proposed release plan can be approved or denied.
    - 2) The assigned CCO will review all file materials up to the offender's actual release date, including End of Sentence Review (ESR) file material available in Liberty, and may contact the ESR/Civil Commitment Program Manager for additional information.
    - 3) Prior to approving or denying an ORP, the CCO must contact his/her Field Administrator for assistance, who will in turn contact the End of Sentence Review/Civil Commitment Program Manager to ensure that all relevant information has been made available to them for review, including but not limited to:

## TRANSITION PLAN PROCEDURE

- 4) Sex Offender Treatment information,
  - 5) Psychological/psychiatric reports, and
  - 6) Forensic Psychological Evaluation (FPE) reports that have been completed to assess whether the offender meets criteria for civil commitment consideration under RCW 71.09.
- c) If a forensic psychological evaluation has been completed and an expert has concluded that the offender does meet civil commitment criteria, as defined under RCW 71.09.020, the proposed plan must meet the level of protection necessary to ensure community safety.
  - d) If a forensic psychological evaluation is pending a professional assessment of public safety risks, the assigned CCO and Field Administrator must carefully review all available file material to determine whether approval of a proposed plan is appropriate when the level of protection necessary to ensure community safety is not fully known.
11. Close the OBTS DT07 check date, as appropriate. The OBTS/DT07 check date must be closed before an ORP process is considered complete.

STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS   <b>POLICY DIRECTIVE</b>  <input checked="" type="checkbox"/> Offender Manual <input type="checkbox"/> Spanish	<b>PRISON/PRE-RELEASE/          WORK RELEASE/FIELD</b>	NUMBER <b>DOC 350.500</b>
	SIGNATURE  DATE	EFFECTIVE DATE 6/28/02
	JOSEPH D. LEHMAN, SECRETARY	PAGE NUMBER 1 of 8
TITLE <b>END OF SENTENCE REVIEW/POST CONFINEMENT REVIEW</b>		

**SUPERSESSION:**

DOC 350.500 effective 3/15/96; DOP 350.500 effective 6/28/91; DCC 200.490 effective 4/15/96; DCC 200.491 effective 4/15/96

**REFERENCES:**

DOC 100.100 is hereby incorporated into the Policy Directive; RCW 4.24.550; RCW 71.09; RCW 72.09; DOC 320.410 Offender Risk Management; DOC 390.300 Victim Witness Notification

**POLICY:**

- I. The Department is mandated to establish and administer an End of Sentence Review Committee (ESRC) for the purpose of assigning risk levels, reviewing available release plans, and making appropriate referrals for sex offenders.
- II. ESRC shall review all offenders who have been convicted of a sex offense, a kidnapping offense, and all other registerable offenses in accordance with RCW 72.09. In addition, ESRC shall review all offenders who have committed a crime against a child and special needs offenders who are considered a high risk to re-offend due to their mental illness or developmental disability, and those offenders who are considered a high risk to re-offend in a violent way due to current threats they may be making toward past or future victims.
- III. The Department shall ensure that all offenders who appear to meet the definition of a Sexually Violent Predator (SVP) are reviewed by ESRC and are referred to the appropriate prosecuting authority.
- IV. ESRC membership shall include representation from each state agency with jurisdiction over the release of sex offenders and law enforcement.

**DIRECTIVE:**

- I. Referral
  - A. The Community Protection Unit (CPU) is responsible for administering the Department's ESRC, Dangerous Mentally Ill Offender (DMIO) Program Selection Committee, Risk Management Transition Program, and Victim Services. Recognizing that many offenders have multiple needs or present risks that are

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addressed by separate functions within CPU, staff may request multiple services utilizing a single End of Sentence Review (ESR)/CPU referral form. Likewise, CPU staff may refer the offender for other services within the Unit once the referral is received.

- B. Facility Counselors/Community Corrections Officers (CCO) shall identify and refer all offenders requiring review to CPU 18 to 24 months prior to the offender's Earned Release Date (ERD) using DOC 05-411 End of Sentence Review/Community Protection Unit Referral.
  - 1. Offenders with less than 18 months to serve when identified shall immediately be referred to CPU.
  - 2. Offenders who have previously been referred but have decompensated or demonstrated dangerous behavior shall be referred to CPU through an amended referral which includes all new information.
  - 3. Designated facility staff shall prepare an ESRC packet in accordance with DOC 20-315 End of Sentence Review/Community Protection Unit Referral Attachments Checklist and forward it to CPU, attention Records.
- C. CPU Records staff shall document the receipt of the referral on Offender Based Tracking System (OBTS) DT07. Records staff shall also review the documents within the referral to determine if additional information is needed prior to ESRC review.
- D. Attempts to gather the above-noted records shall be documented if the information is no longer available. Document requests will be recorded in the ESR file.
  - 1. CPU Records staff shall make at least 3 attempts to retrieve the information unless it is documented by the agency of record that it is no longer available.
  - 2. If the information has not been received 120 days prior to the offender's ERD, the case shall be assigned to CPU staff to prepare for review based on available information.

## II. Preparation

- A. Designated CPU staff shall review all available documents and prepare a detailed narrative which includes:
  - 1. A summary of the current offense;
  - 2. Criminal history;
  - 3. Sexual deviancy history;
  - 4. Psychological history;
  - 5. Treatment history;

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6. Infractions;
7. Employment; and
8. Community resources.

- B. CPU staff shall complete DOC 05-729 Washington State Sex Offender Risk Level Classification, and update the Risk Management Identification (RMI) if appropriate.

### III. ESRC Review

- A. CPU staff shall present the prepared cases to ESRC for review. The presentation shall include a verbal summary of the offender's criminal history and history of sexual deviancy.
- B. Each committee member shall be provided a copy of the file review, completed sex offender risk assessment, and supporting case documents.
- C. ESRC shall have access to all relevant records and information in possession of public agencies relating to the offender under review, including those attached to the ESR referral.
- D. ESRC shall determine:
  1. The appropriate risk level classification for all offenders required to register; and/or
  2. If the offender appears to meet the statutory definition of an SVP for referral to the SVP Subcommittee.
- E. ESRC may direct CPU to:
  1. Alert local law enforcement of the release of offenders who may be of special interest to them due to the nature of their crime and/or current behavior at least 30 days prior to their release, when possible.
  2. Alert Child Protective Services (CPS) of offenders who are returning to a residence where the victim or victim-aged children reside, or where CPS is already involved or has a special interest. In the event of an unanticipated release, CPS shall be notified as soon as possible by CPU Notification staff.
  3. Provide potential victim notification. ESRC shall work with the Department's Victim/Witness Notification Program staff to notify identified potential victims of the release of the offender when the potential victim did not have a previous opportunity to enroll in the program or when current substantiated threats are being made.

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4. Explore program options and services with the Department of Social and Health Services (DSHS). If appropriate, ESRC shall work with facility staff to set up referrals for mental health and developmental disability services. Eligibility for services must be established by DSHS before services can be rendered; neither ESRC nor the Department determines eligibility for these services.
5. Refer cases to the DMIO Program Selection Committee for its review and appropriate action.
6. Notify other state agencies or organizations based on their need to know necessary and relevant information.

#### IV. ESRC Decisions

- A. CPU staff shall document ESCR's decision on OBTS DT07.
- B. The completed ESR/CPU referral form shall be returned to the facility with copies of DOC 05-729 Washington State Sex Offender Risk Level Classification, the file review, and all new documents obtained by CPU Records staff. An additional copy of this material shall be imaged in the Office of Correctional Operations (OCO) Imaging System.
- C. If the offender is determined to meet the requirements for Risk Management Transition, facility staff shall be notified in accordance with DOC 320.410 Offender Risk Management.
- D. If ESRC determines the offender may meet the definition of an SVP, CPU Records staff shall request copies of all facility files, to include:
  1. Juvenile reports;
  2. State hospital reports;
  3. Out of state DOC and state hospital records;
  4. Police reports for all uncharged offenses;
  5. Treatment records; and
  6. Court documents on all underlying criminal offenses.
- E. The CPU/ESRC Program Manager shall request an evaluation from the Mental Health Manager at the facility where the offender is currently incarcerated.
  1. The evaluation must be completed by a licensed Psychologist and should be given a priority status.
  2. Following receipt of additional documentation and the evaluation, the ESRC Program Manager shall review the records and prepare a formal referral to the ESRC SVP Subcommittee.

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V. Subcommittee Review

- A. The ESRC Program Manager shall present the case to the Subcommittee for its review. Each committee member shall review a copy of the referral and supporting documents.
- B. If the Subcommittee determines that the offender meets the definition of an SVP, the ESRC Program Manager shall notify the appropriate prosecuting authority and document the decision on OBTS DT07, DT08, and DT37, and place a hold on OBTS DI63.

VI. Sexually Violent Predator Referrals

- A. The ESRC Program Manager shall submit the SVP referral to the Criminal Division of the Attorney General Office or King County for offenders under their jurisdiction. A copy of the referral letter shall be sent to the Prosecutor of the county of the offender's most recent sexually violent offense 90 days prior to the offender's maximum expiration date or Actual Release Date (ARD) if the offender does not have community custody.
- B. A copy of the Civil Commitment letter shall be sent to the facility Superintendent and retained in the offender's Central File.
- C. Offenders who have been found by ESRC to meet the definition of an SVP shall not be:
  - 1. Transferred to a facility designated to be any level of minimum custody except Minimum 3 (MI3); or
  - 2. Released to Community Placement.
- D. Facility/field staff shall not contact the Prosecutor or the Attorney General Office directly to check on the status of an offender's SVP referral. All questions and concerns shall be directed to the ESRC Program Manager.
- E. If a significant change occurs prior to the offender's release, ESRC shall conduct an additional review to determine whether the Civil Commitment referral continues to be appropriate. Significant changes may include, but are not limited to:
  - 1. Offender completed sex offender treatment and is determined a low to moderate risk to re-offend; or
  - 2. Offender becomes medically incapacitated to commit additional sex offenses.
- F. The ESRC Program Manager shall monitor the offender's release dates and movements to ensure that appropriate actions are taken within allowable time

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frames. All actions and completion dates shall be documented on OBTS DT07 and in the offender's Chronos.

- G. If the prosecuting authority declines to file for Probable Cause on the offender as an SVP, the ESRC Program Manager shall notify the appropriate Department staff.

#### VII. Release of Offenders Subject to Notification

- A. At least 30 days prior to the release of all sex offenders and any other offender designated by ESRC to be the subject of notification, the assigned CPU staff shall request any additional relevant information from the offender's Counselor, Risk Management Specialist, or CCO to include treatment summaries, release address, and information regarding the release conditions.
- B. The assigned CPU staff shall review the offender's Offender Accountability Plan (OAP), update the ESRC file, and complete the notification to the appropriate law enforcement and/or other agencies if needed.
  - 1. The narrative notices shall, at a minimum, describe the identity and criminal history of the offender and shall include the Department's risk level classification for the offender as well as the underlying reasons for the classification.
  - 2. The notification shall be distributed to:
    - a. Prosecutor's Office from the county of conviction;
    - b. Sheriff's Office from the county of residence;
    - c. Police Department from the city in which the offender will reside;
    - d. Department office where the offender will be supervised;
    - e. Homicide Information Tracking System (HITS) Unit;
    - f. If the offender is releasing to another state, that state's Interstate Unit; and
    - g. Indeterminate Sentence Review Board (IRSB).
- C. Changes in the offender's release plan shall be reported to CPU as soon as possible to allow CPU staff to issue amended notifications necessary to ensure that accurate and updated information is shared.
  - 1. The facility Records Managers shall contact CPU Notification Program Manager immediately if the offender's release date is changed.
  - 2. The Counselor is responsible for reporting any changes in the offender's release address or release location, if the address is unknown.
- D. If an offender is returned to custody for violations that indicate a continuation of the offender's sexual deviancy or a new offense, the Counselor must submit a new ESRC/CPU referral.

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VIII. Post Confinement Reviews

- A. CCOs shall immediately refer an offender to CPU if it appears the offender has committed an overt act and has been released from confinement. Overt acts include:
1. Any act or threat that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows the history and mental condition of the person engaging in the act; and
  2. Conviction of a crime against a minor-aged victim and returned to a residence where the minor victim or victim-aged minor reside, regardless of the authority having jurisdiction over the offender's release.
- B. CCOs shall complete the Violent Sex Predator E-form and forward it to the Community Corrections Supervisor (CCS) for review and approval, and immediately telephone the ESRC Program Manager.
- C. The CCS shall forward the E-form to the ESRC Program Manager and shall:
1. Ensure the violation report is routed immediately to the ESRC Program Manager when the overt act centers around actual violations;
  2. Document action(s) taken on OBTS DT37; and
  3. Notify the Risk Management Team for Risk Management A (RM-A) offenders.
- D. If ESRC determines a recent overt act has occurred, the appropriate Prosecuting authority shall be notified and a Civil Commitment referral shall be completed for filing consideration as an SVP. This referral shall be logged and tracked on OBTS DT07 and DT37 by the ESRC Program Manager.
- E. If the Prosecuting Attorney declines to file Probable Cause for Civil Commitment, the ESRC Program Manager shall enter this decision on OBTS DT07 and DT37.
- F. The offender's Risk Management Team shall reconvene to modify the offender's OAP and release plan into the community.
- G. All hearing reports shall be routed to the ESRC Program Manager for those offenders convicted of a registerable sex offense.

**DEFINITIONS:**

Words/terms appearing in this Policy Directive may also be found in the Glossary section of the Policy Directive Manual.

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**ATTACHMENTS:**

None

**DOC FORMS (See Appendix):**

DOC 05-411 End of Sentence Review/Community Protection Unit Referral  
DOC 05-729 Washington State Sex Offender Risk Level Classification  
DOC 20-315 End of Sentence Review/Community Protection Unit Referral Attachments  
Checklist

MEMORY TRANSMISSION REPORT

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*I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.*



*MARIA ARRANZA RILEY, Legal Assistant  
Washington Appellate Project*

*Date: June 6, 2007*

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