
IN THE WASHINGTON STATE COURT OF APPEALS

DIVISION TWO

46370-9

In Re the Personal Restraint of:

James Lee Walters

Petitioner *Pro Se*

Brief of Petitioner

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STATE OF WASHINGTON
BY DEPUTY

James Lee Walters
D.O.C. # 755724/H5B106U
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

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I. **Identity of Petitioner**

James Lee Walters is confined at the Stafford Creek Corrections Center; 191 Constantine Way, Aberdeen, WA 98520, and is under the jurisdiction of the Indeterminate Sentence Review Board pursuant to RCW 9.94A.712.

This petition was drafted with the assistance of another offender, working under the advisement of private counsel.

II. **Introduction**

The presumption of innocence is a paramount maxim within the judicial system that predates the formation of both the federal and state constitutions. This presumption continues throughout trial and only dissipates upon a finding *beyond a reasonable doubt* that the accused is guilty of the charged conduct.

Prior to the expiration of his minimum term, Mr. Walters went before the Indeterminate Sentence Review Board ("Board") for a hearing to determine whether it is more likely than not that he would engage in a sex offense if released on conditions. *RCW 9.95.420*

Relying primarily on facts surrounding a dated criminal acquittal Mr. Walters, the Board found that there was a greater chance of re-offense than not. The only information the Board had regarding this acquittal was a few police reports, some witness statements, a pre-sentence investigation report (*from his current case*), and an unsuccessful motion filed by the state in a *failed* attempt to bring evidence of the acquitted conduct in during trial.

Evidence the Board did not consider was the actual testimony that took place during the 1983 trial—a trial that resulted in an acquittal. When Mr. Walters tried to bring up things he remembered surrounding the 1983 acquittal, he was informed the Board was not there to retry the 1983 case, but would rely on whatever information, *as selective as it may be*, contained in the *Sinka* packet when making their decision.

Inquires were made with both the Pierce County Superior Court and the Pierce County Prosecutor's Office in an attempt to obtain transcripts from the 1983 case; however, it was revealed that *all* files pertaining to the 1983 acquittal were destroyed in 1993. The only remaining record was a lone index card including general information such as a list of the charges, the amount of bail, the prosecutor's name, the defendant's name, the defense attorney's name, along with the outcome of the trial.

A request was also made with the Pierce County Sheriff's Department and they were able to produce a few reports, such as a victim statement; a few witness statements, as well as a few other various reports. All of which the Board had received as part of the *Sinka* packet in this case. Of course, *there was no way to ensure this file was a complete copy of what was available during the 1983 trial*. Moreover, without trial transcripts, or some type of court record there is simply no way of determining exactly what evidence was revealed during the trial causing the jury to return a **not guilty** verdict.

After filing several Public Disclosure Requests, Mr. Walters was able to uncover documentation that the victim back in 1983 actually stated that while at first she thought the perpetrator was Mr. Walters, she later recanted her statement—asserting it was not Mr. Walters who raped her. This evidence was available—yet was never considered by the Board when making their decision.

The Board speculates that the Jury was unable to convict due to the victim's inability to identify her attacker. While this was a reason the jury *may* have relied upon, it is mere speculation to conclude it was the basis for the acquittal. It is difficult to grasp how the Board is able to determine how a jury was able to reach its decision, without a proper record to review.

While the Board made clear, they were not there to retry the case—they were certainly willing to find, based upon the assumption that Mr. Walters was guilty of the 1983 incident, that he had a greater risk to reoffend than not. Based thereupon the Board recommended, along with the End of Sentence Review Board, that his level should be elevated from a one to a three and added an additional three years to his minimum term.¹

¹ Mr. Walters was scored using two separate actuarials, both of which scored him as a level one—indicating a low risk to reoffend. Appendix A

III. Facts of the Case

a) Procedural Facts

Mr. Walters was convicted in the Pierce County Superior Court of kidnapping in the first degree with a finding of sexual motivation and indecent liberties. The jury in his first trial deadlocked 7-4 *in favor of acquittal*. Mr. Walters was convicted following a second trial and received a life sentence with a minimum term of 68 Months on both counts, concurrently.

On July 15, 2013 prior to the expiration of his minimum term, Mr. Walters was considered by the Board for release pursuant to RCW 9.95.420. Mr. Walters was denied release and three years was added to his minimum term.

b) Substantive Facts

In 1983, when Mr. Walters was 17 years old he was accused of raping his best friends sister, who at the time was 13-years old. The matter proceeded to trial and Mr. Walters was *acquitted* on all charges.

Fast-forward twenty-three years. A 13-year-old neighbor girl was sexually assaulted while walking through Mr. Walters' property on her way home from school. The victim explained to investigating officers that she *thought* the perpetrator *may* have been Mr. Walters based on his build; but, was ultimately unsure.

Mr. Walters was questioned by police and denied any involvement. Police soon discovered that Mr. Walters was previously accused of a sex offense in 1983, at which point he became the only suspect.

It took two trials to convince a jury Mr. Walters was guilty. Mr. Walters continues to maintain his innocence.

On July 15, 2013 prior to the expiration of his minimum term, Mr. Walters was interviewed by the Board for what is typically referred to as a .420 hearing pursuant to RCW 9.95.420. That statute requires the Board to 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 engage in sex offenses if released*.

As part of the hearing, the Board considered the results of two different actuarials, both of which scored Mr. Walters as a Level I—low risk to reoffend. Appendix A Disregarding the above actuarials, both the End of Sentence Review Board (“ESRB”) and the Indeterminate Sentence Review Board recommended elevation to a Level III—high risk to reoffend based upon nothing more than the prior 1983 acquittal. Appendix B & C

The Board also mentioned that it was troubled by the fact that Mr. Walters had not participated in the Sex Offender Treatment Program. Mr. Walters expressed his willingness to participate, but was found not amenable as he maintains his innocence.

Ultimately, Mr. Walters was denied released based primarily upon the assumption that he was guilty of the 1983 accusations he was acquitted of. Three years was added to his minimum term.

IV. Argument

1. The Board abused its discretion when it denied Mr. Walters release based upon various documents containing incomplete information surrounding a 1983 acquittal.

Under the provisions of RCW 9.95.420, the Board “shall order the offender released” under conditions 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. RCW 9.95.420

The standard of judicial review of Board decisions is an abuse of discretion. *In re Pers. Restraint of Locklear*, 823 P.2d 1078, 118 Wash.2d 409 (1992). An abuse of discretion may be shown where the Board either fails to follow its own rules for parolability hearings or when it bases its decision on speculation and conjecture. *In re Pers. Restraint of Dyer (Dyer-III)*, 189 P.3d 759, 164 Wash.2d 274 (2008).

When a statute creates a presumption of release, such as the presumption set forth in RCW 9.95.420, offenders are entitled to some measure of Constitutional protection under the Due Process clause. *Id* at 241.

In making its decision, the Board relied heavily on documentation included within Mr. Walters’ *Sinka* packet regarding a 1983 *acquittal* for rape and burglary. Included within these documents was an *unsuccessful* motion filed by the prosecution during Mr. Walters’ trial, which was filed in an attempt to bring in evidence of the 1983 accusation during Mr. Walters present case.

The Board also considered a Department of Corrections Criminal History Report containing an identical description of the assumed facts surrounding Mr. Walters' 1983 trial, which again, resulted in an acquittal. Like the motion filed by the State, this report contained nothing with which to verify the accuracy of the information included therein.

The Board took the unsupported facts outlined within these documents as truth and found based thereupon, that Mr. Walters was more likely to engage in sex offenses if released with conditions, concluding "*the past intervention did not preclude his current offense.*" See Board's decision at 5, Appendix C

The Board considered none of the available evidence supporting Mr. Walters attested innocence, and Mr. Walters was unaware of any procedure to introduce any documentation in support of his position.

In fact, when Mr. Walters wrote the ESRB asking how to appeal their decision, he was informed he could not. Then in the hearing, he again expressed trouble with the fact that there was not any way for him to correct the information the Board was relying on. Notably, he was never informed that he had a right to introduce evidence in support of his assertions. What he was told was that the Board was not there to retry the 1983 case, but would *only* rely upon the information supplied to them by the ESRB. Which is precisely what they have done in this case. Appendix D

The Board took the selected facts provided to them as truth, assumed Mr. Walters was guilty of the 1983 rape and burglary accusation he was acquitted of, and based thereupon found that he was a high risk to reoffend.

WAC 381-60-150 controls the evidence the Board may consider, which states in relevant part:

All relevant evidence shall be admissible which, in the opinion of the presiding officer, is the best evidence reasonably obtainable, having due regard for its necessity, availability, and *trustworthiness*.

WAC 381-60-150

There is nothing to establish the trustworthiness of the information relied upon by the Board. Only limited information was available and none of it was found to be admissible during Mr. Walters' current trial. Moreover, both the Pierce County Superior Court and the Pierce County Prosecutor's Office have destroyed their case files. The bottom line is the Board simply had insufficient information before them when their decision was made, and therefore the decision was speculative at best.

Most troubling is the fact that without a trial transcript, not only is Mr. Walters unable to prove his assertions, but the Board is not able to review them in an effort to weigh the evidence for themselves.

It is well established that even in the context of a .100 hearing, the Board *may not* base its decision on speculation and conjecture. Thus, in this case the Board's deep-seated reliance on assumed facts, without being able to delve into the record, was clearly an abuse of discretion. *Dyer-III*, 189 P.3d 759, 164 Wash.2d 274 (2008).

2. It was an abuse of discretion for the Board to rely upon accused conduct, which Mr. Walters was acquitted of in justifying its decision to add three years to his minimum term.

The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary. Its enforcement lies at the foundation of the administration of our criminal justice system. *Coffin v. United States*, 156 U.S. 432, 453 (1895); *Estelle v. Williams*, 425 U.S. 501, 503 (1976); *Delo v. Lashley*, 507 U.S. 272, 284 (1993).

An element of the presumption of innocence is that the accused is entitled to the physical indicia of innocence, which includes the right to be brought before the court with the appearance, dignity, and self-respect of a free and innocent man. *State v. Finch*, 975 P.2d 967, 137 Wash.2d 792, certiorari denied 120 S.Ct. 285, 528 U.S. 922, 145 L.Ed.2d 239 (1999).

This presumption disappears once a trier of fact is presented with evidence sufficient to overcome that presumption *beyond a reasonable doubt*. See e.g., *State v. Thompson*, 271 P.2d 204, 214, 173 Wn.2d 865 (holding: At trial, the defendant is presumed innocent and may demand that the government prove its case beyond a reasonable doubt. But once a defendant has been afforded a fair trial and convicted of the offense for which he was charged, the presumption of innocence disappears).

What happens, however, when a defendant, like Mr. Walters, who was accused of a horrible crime more than twenty years ago, stood trial and was found not guilty by a jury of his peers? Can the ISRB arbitrarily rely upon an unsupported assumed articulation of the alleged facts surrounding that matter to support its decision to deny parole in the context of a hearing under *RCW 9.95.420*? Reason dictates the answer is no.

It is improper for the ISRB to take unproven allegations as fact in order to support their decision to add time to Mr. Walters' minimum term. To hold otherwise would allow the ISRB to place itself in the seat of the Judge, Jury, and Executioner and substitute its feelings of those of the actual trier of fact, which in this case acquitted Mr. Walters of all wrong doing over twenty years ago, after weighing all the evidence. Something the Board was not able to do in this case.

This position comports with the legal definition of an acquittal as found in Black's Law Dictionary 9th Edition:

The Legal certification usu. By jury verdict, that an accused person is not guilty of the charged offense.

Once this finding is made, it is unlawful for a court to impose a sentence and commit to prison the party acquitted. Yet in this case, that is circuitously what has taken place. See generally Appendix-D, at pages 12-14

During the .420 hearing, Mr. Walters was presented with numerous questions surrounding the facts leading up to the charges filed in 1983. However, the Board was disinterested in the fact that there was evidence supporting Mr. Walters' innocence. Evidence such as the fact that the victim recanted her statement and testified it was not Mr. Walters who committed the crime.

Both Ms. Rongen and Ms. DeLano pressed Mr. Walters on what they felt were similarities between the two offenses. Mr. Walters tried to explain, as best a simpleton could, that he was not guilty of the charges, and that there was DNA evidence and hair samples that came out in trial that cleared him of any wrong doing.

What was not considered by the Board was the differences between the crimes. While true, both victims were of similar ages, at the time of the 1983 crime Mr. Walters was within two years of the victim's age. Whereas during the current offense Mr. Walters was well over twenty years older than the victim was. In the 1983 case, the attack was extremely violent—the later offense was not. Moreover, the first offense occurred privately in an indoor setting, the latter offense took place outdoors in the wide open.

Mr. Delano noted she felt it was weird that Mr. Walters was accused of two crimes. Ms. Rongen agreed, stating “[y]ou have to be the unluckiest person I know to be accused of two sex offenses as serious as this.” Yet in reality, once the police realized that Mr. Walters was previously accused, it makes sense their investigation would have revolved around him. Thus, it is actually more probable that once one is accused of a sex crime, or any crime for that matter, that they would be suspected for committing a crime.

Again, what the Board was basing this feeling on was certain unsupported documents containing nothing more than an assumption as to what the facts introduced at trial may have been. By failing to give any credence to the fact that Mr. Walters was acquitted of the allegations, the Board determined that he must have committed the offense, stating “[w]e’ve seen other offenders too, and I’m not saying this is true in your case necessarily, other offenders who have been found not guilty by a court for a previous offense—whether it’s a sex offense or not—and later they’ve admitted, ‘yeah I did it, I got off on it, but I did it.’” See Appendix D, at page 11

This type of *post hoc* determination of guilt is unreasonable and goes against fundamental maxims of law that pre-date even the formulation of our Nation’s Constitution. The U.S. Supreme Court in *Coffin v. United States* made this clear in the following excerpt:

Ammianus Marcellinus relates an anecdote of the Emperor Julian which illustrates the enforcement of this principle in the Roman Law. Numerius, the governor of Narbonensis, was on trial before the emperor, and, contrary to the usage in criminal cases, the trial was public. Numerius contended himself with denying his guilt, and there was not sufficient proof against him. His adversary, Delphidius, ‘a passionate man,’ seeing that the failure of the accusation was inevitable, could not restrain himself, and exclaimed, ‘Oh illustrious Cesar! If it is sufficient to deny, what hereafter will become of the guilty?’ To which Julian replied, ‘If it suffices to accuse, what will become of the innocent?’

Coffin v. United States, 156 U.S. 432, 456, 15 S.Ct. 394 (1895)

The fact remains, Mr. Walters already stood trial for the accusations made back in 1983 and was acquitted thereof. There is evidence the Board refused to consider, and it goes a long way in establishing that Mr. Walters’ was innocence of the 1983 accusation. The Board should be precluded from using this information now, without at minimum requiring them to consider all the relevant information available.

Admittedly, there are limited situations where courts allow evidence resulting from acquitted conduct to be used against a party in a later proceeding. For example, in *City of Aberdeen v. Regan*, it was held that an acquittal on firearm charges did not preclude a later verdict in a civil forfeiture proceeding. *City of Aberdeen v. Regan*, 170 Wash.2d 103, 293 P.3d 1102 (2010).

This is not a civil matter however, where the accused does not face the possibility of imprisonment. It is a criminal matter where there is a real probability that imprisonment may follow, and in this case, it did—in the amount of three years.

Importantly, the forfeiture finding in *Regan* was following a full trial where both sides were able to call witnesses and present evidence. Here, neither the Board nor Mr. Walters had any of the evidence from the original trial. What they did have was simply a one sided summary. The Board could not even review a transcript of the first trial, as one no longer exists, so it had no way of knowing what the actual evidence was.

While it is Mr. Walters' position that the Board should not be allowed to consider assumed facts which he was found *not guilty* of more than twenty years ago—should the Court disagree with that position—the Board's decision to deny release was still an abuse of discretion, as the Board's consideration of this evidence was speculative at best and not based upon all the verifiable facts.

3. Mr. Walters' non-amenability to treatment in and of itself is insufficient to support the addition of three years to his minimum term.

While the Board has wide discretion when adding to an offender's minimum term, it is an abuse of discretion to rely solely on an offender's refusal to admit guilt. *In Re Pers. Restraint of Ecklund*, 139 Wash.2d 166, 985 P.2d 342 (1999), (holding: "while we do not believe that it would have been appropriate for the Board to base an exceptional minimum term solely on *Ecklund's* refusal to admit that he was guilty of the offense which led to his sentence to prison, it is justified in considering his denial of guilt as a fact bearing on the question of whether he had been rehabilitated and presents a threat to community safety.)

Notably, the decision in *Ecklund* concerned the application of RCW 9.95.100, which prohibited the Board from releasing an offender *until his or her minimum term expires, unless in its opinion his or her rehabilitation has been complete*. The same standard does not apply to hearings under RCW 9.95.420, where the Board is *required* to release an offender *unless* it finds *by a preponderance of the evidence* that the offender *is more likely than not* to engage in sex offenses if released on conditions.

In this case, the Board relied upon two factors in its effort to meet this standard. First, the Board relied heavily upon the assumed facts surrounding a 1983 case, which Mr. Walters was acquitted of. The second factor cited by the Board was Mr. Walters' lack of treatment, which notably, was not due to his refusal to participate, but due to the fact that he was found not amenable as a result of maintaining his innocence.

Ironically, this does not increase his likelihood of re-offense. The Washington State Institute for Public Policy (WSIPP) found that participants in a Sex Offender Treatment Program had a *higher rate of recidivism* than prisoners who were willing to participate in treatment, but did not. Mr. Walters fits squarely in the later class. By all accounts he is willing to participate in any treatment required by the Board, but is being denied admittance because he maintains his innocence. See Appendix E

In this study, the WSIPP makes a distinction between willingness to participate in the SOTP and ability to be accepted into the SOTP. The paper sets out a flow chart entitled "SOTP participation process." Appendix E at 2 The first step is to determine the offender's willingness to participate. DOC then records whether the offender has applied for the program. Next, "SOTP may reject applicants because they *are appealing a conviction or deny the offense.*" (Emphasis mine).

Mr. Walters fits within both realms mentioned within this study. He asserts his willingness to participate *but* is denied entry because he was appealing and continues to maintain his innocence.

Based upon the fact that studies show that offenders, like Mr. Walters who actively assert their willingness to participate in SOTP yet are denied entry are at a lower risk of re-offense than even those that complete the program goes directly against the finding of the Board that they will not release Mr. Walters without treatment.

4. The Board abused its discretion when it violated its own procedural rules.

The Board abuses its discretion when it fails to follow its own procedural rules for parolability hearings. *Dyer-II*, 164 Wash.2d at 286, 189 P.3d 759 (2006) According to the Indeterminate Sentence Review Board, offenders are entitled to the following procedural protections during a .420 hearing:

1. An opportunity to be heard and to present information to the Board
2. The right to question other persons providing information to the Board
3. *A neutral and detached hearing body*
4. A written statement by the Board explaining the reasons upon which it decided to either release the offender to community custody or extend the offender's minimum term.

In re McCarthy, 161 Wash.2d 234, 241 (2007).

See the hearing transcript attached as Appendix D at page 7 where Ms. DeLano states: you're a convicted sex offender and, in treatment, *there's no way that this one member would **even think about** letting you out without having gone through treatment.*"

A hearing before a panel containing even one member who is not willing to participate in the hearing in a neutral and detached manner is tantamount to no hearing at all. For all intents and purposes, refusing to *even consider releasing Mr. Walters without treatment*, violated the rules the Board is required to follow in conducting .420 hearings, something the Supreme Court has recognized they are required to do.

Mr. Walters has a right to a hearing before a neutral and detached panel. Something that did not happen in this case.

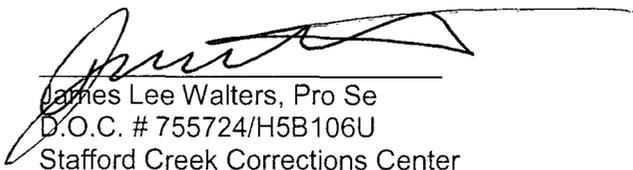
V. Conclusion

RCW 9.95.420 mandates that the Board order an offender released under appropriate conditions unless it finds by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit a sex offense if released.

To meet that burden in this case, the Board relied upon *assumed* facts surrounding a case Mr. Walters was acquitted of; and, his lack of treatment. It is settled law that the Board may not base decisions denying release upon speculation and conjecture, and may not base their decision upon an offender's refusal to admit guilt.

The Board's decision in this matter was an abuse of discretion.

Respectfully Submitted this 28th day of May, 2014.



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APPENDIX – A

STATIC-99 R CODING FORM

Name Walters, James Lee.	DOC Number 755724	Date 4/5/13
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Question Number	Risk Factor	Codes	Score
1.	<u>Young</u> Date of Birth:	Aged 18 to 34.9 Aged 35 to 39.9 Aged 40 to 59.9 47 Aged 60 or Older	1 0 -1 -3
2.	<u>Ever Lived With</u>	Ever lived with lover for at least two years? <u>Yes</u> No	0 1
3.	Index non-sexual violence - Any Convictions	<u>No</u> Yes <i>ESMC</i>	0 0
4.	Prior non-sexual violence - Any Convictions	No <u>Yes</u> <i>4th Assault</i>	0 1
5.	Prior Sex Offenses	<u>Charges</u> <u>Convictions</u> None <u>None</u> <u>1-2</u> 1 3-5 2-3 6+ 4+	0 <u>1</u> 2 3
6.	Prior sentencing dates (excluding index)	3 or less <u>4 or more</u>	0 <u>1</u>
7.	Any convictions for non-contact sex offenses	<u>No</u> Yes	<u>0</u> 1
8.	<u>Any Unrelated Victims</u>	No <u>Yes</u>	0 <u>1</u>
9.	<u>Any Stranger Victims</u>	<u>No</u> Yes	<u>0</u> 1
10.	<u>Any Male Victims</u>	<u>No</u> Yes	<u>0</u> 1
	Total Score	Add up scores from individual risk factors	<u>3</u>

For the shaded items, self-report can be used if it seems credible and reasonable.

TRANSLATING STATIC 99 R SCORES INTO NOTIFICATION LEVELS:

Score	Level
-3 to 3	<u>I</u>
4 to 5	II
6+	III

APPENDIX – B

SEX OFFENSE HISTORY:

DATE OF INCIDENT	CHARGES	CONVICTION	DISPOSITION
3/8/06 Index Offense	CT 1-Kidnapping 1st Degree w/ sexual motivation CT 2-Indecent Liberties Pierce Co., 06-1-01320-6	CT 1-Kidnapping 1st Degree w/ sexual motivation CT 2-Indecent Liberties Jury Verdict	DOS: 10/24/08 68 months to Life, Life community custody supervision.
Incident 3/20/83 Arrested 4/27/83	CT 1-Burglary 1st Degree CT 2-Rape 1st Degree Pierce Co. Incident # 83069178	None	8/22/83 Acquittal

DESCRIPTION OF SEXUAL ARRESTS/CONVICTIONS: Index Offense: **CT 1-Kidnapping-1st Degree, with Sexual Motivation; CT 2-Indecent Liberties** (Pierce Co., 06-1-01320-6). According to official records, on 3/8/06, Walters (age 40) abducted a 12-year-old known female, touching her bottom and kissing her cheek. The victim told police that she had gotten off the bus and was walking down the road leading to her home when she heard a noise. She turned and saw a man standing by the road wearing a camouflage ski mask, a red jacket, and brown boots. She thought the man was Walters due to the way the man was dressed. She told Walters to quit scaring her and turned to walk home. Walters walked up behind the victim and put a white towel over the victim's head, securing it with duct tape. He then picked the victim up and walked into the woods with her. After a time, he put her down and duct taped her hands in front of her, then pushed her neck from behind, and made her walk ahead of him. They walked for a time and then Walters made the victim stop, put her hands behind her back and re-duct taped them. He then made her lie down and got on top of her straddling her stomach. She said he reached down and kissed her near her mouth and cheek, and then he rolled her over and rubbed her bottom. A cell phone rang and she thought it sounded like Walters ring tone. She said she heard him open the phone and then he left. She was able to remove the restraints and head covering and recognized the area in the woods where she played with siblings and friends. She went home and told her father what had occurred. Her father then contacted police. The victim reported to police that the man she thought was Walters never said a word during the ordeal. The victim's mother later reported that she was worried about the victim and at about the same time the victim said that Walters's cell phone rang, she was calling Walters to ask him if he had seen the victim. Walters son, told police that when he arrived home that day, Walters' vehicle was there, but Walters was not around. When questioned by police, Walters voluntarily showed officers where the children play in the woods near his home known as the 'gully'. The location was the same 'gully' the victim showed to police. Walters was originally arrested on 3/20/06 and tried. The trial resulted in a hung jury and the judge declared a mistrial. In 2008, he was tried again and consequently charged with Kidnapping and Indecent Liberties. Walters pleaded not guilty; the case went to trial and a jury found him guilty as charged in the Information. The Court sentenced Walters to 68 months to life with life supervision. Walters appealed the decision and the Appellate Court upheld the sentence on 6/7/10. The Supreme Court denied a hearing and the case was returned to the sentencing court for Mandate on 5/18/11.

CT 1-Burglary 1st Degree, CT 2-Rape 1st Degree (Police Report #83069178) According to the Pierce County Prosecutors "Motion to Introduce Evidence" filed on 3/29/07 which states that Walters (age 17) sexually assaulted a known 15 year old female. He arrived at his friend's home on 3/10/83, to take him to school. Walters had been suspended a few days prior (see below). The victim, his friend's younger sister, later reported to police that she heard her brother tell Walters that she was ill and staying home that day. Later that morning, the victim was awakened by movement on her bed. She saw a white male who may have been 15-20 years old, nude, with a white cloth tied around his head, sitting on her bed. A struggle ensued and the male

THIS SEX OFFENDER INFORMATION IS FOR RELEASE TO LAW ENFORCEMENT PURSUANT TO RCW 4.24.550, 9.94A.843 AND 9.94A.846. FURTHER DISSEMINATION IS SUBJECT TO APPLICABLE FEDERAL AND STATE LAW.

RELATIONSHIP HISTORY: According to assessments completed during this incarceration, Walters reported living with his wife and three minor children prior to the current incarceration. His eldest son is now 18. It is unknown how many minor children are in the same residence as Walter's wife. He has a five-year-old son who has visited approximately 198 occasions and his wife has visited as many and more times during this incarceration. Walters has expressed his intentions to resume living with his wife and children upon his release. Note: Walters was convicted of a 4th Degree Assault DV and was not allowed to have firearms. During the execution of a warrant for the index offense, police located several firearms in Walters home. Walters wife gave the firearms to a friend to hold after their discovery by detectives. The detectives contacted the then 11-year-old stepson of Walters who admitted that the 11 firearms belonged to Walters. The police located the friend who had possession of the firearms and confiscated those weapons.

RISK LEVEL JUSTIFICATION: The Risk Level Assessments scored Walters in the Level I STATIC (= +3) and in the Level I MnSOST-R (= +2) risk level classification categories. The recommended risk level classification is based on the highest actuarial risk score. The End of Sentence Review Committee has determined this offenders risk classification should be **AGGRAVATED** to RISK LEVEL III (Due to: Past intervention did not deter sexual re-offending. Documented information that increases risk for sexual re-offense) for notification purposes. Further, it was determined that this file should be reviewed by the SVP sub-committee. On 5/2/13, the sub-committee recommended that a Forensic Psychological Evaluation be completed.

CCB RECOMMENDED CONDITIONS: In the event that the Board finds this offender releasable to community custody, the conditions recommended at sentencing, appear sufficient to mitigate his risk of sexual re-offense in the community.

SOURCES OF INFORMATION: Prosecutor's Information and Determination of Probable Cause, Motion to Introduce Evidence, Judgment and Sentence, Pre-Sentence Investigation report, Police report(s), and Official File records.

DISTRIBUTION: Pierce County Prosecutors Office, County Sheriffs Office, Police Department, DOC Office, HITS Unit, and the Department of Homeland Security.

If you have questions regarding this notification, contact the Department of Corrections Law Enforcement Notification Program, Diane Rowles at (360) 725-8663.

Drs 4/5/13 File reviewed

THIS SEX OFFENDER INFORMATION IS FOR RELEASE TO LAW ENFORCEMENT PURSUANT TO RCW 4.24.550, 9.94A.843 AND 9.94A.846. FURTHER DISSEMINATION IS SUBJECT TO APPLICABLE FEDERAL AND STATE LAW.

APPENDIX – C



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

DECISION AND REASONS

NAME: WALTERS, James
DOC #: 755724
FACILITY: Stafford Creek Corrections Center (SCCC)
TYPE OF HEARING: .420 Hearing
HEARING DATE: July 10, 2013
PANEL MEMBERS: KR & LD
FINAL DECISION DATE: August 1, 2013

This matter came before Kecia Rongen and Lynne Delano, who are members of the Indeterminate Sentence Review Board (ISRB or the Board) on the above date for a release hearing in accordance with the provisions of RCW 9.95.420. Mr. Walters appeared in person. Testimony was provided by Department of Corrections (DOC) Classification Counselor (CC) Susan Smith and Mr. Walters.

BOARD DECISION:

This was a Deferred 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. Walters is more likely than not to commit a sex offense if released on conditions. Consequently, the Board finds Mr. Walters not releasable and adds 36 months to his minimum term.

NEXT ACTION:

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

JURISDICTION:

James Walters is under the jurisdiction of the Board on an October 24, 2008 conviction of Kidnapping in the First Degree Count I and Indecent Liberties with Forcible Compulsion Count II in Pierce County Cause # 06-1-01320-6. His time start is October 30, 2008. His minimum term was set at 68 months concurrent for both counts from a Sentencing Reform Act (SRA) range of 51 to 68 months. His maximum term is Life. He has served approximately 56 months plus 45 days of jail time credit.

NATURE OF INDEX OFFENSE(S):

File materials indicate that on March 8, 2006, Mr. Walters, age 40 abducted a 12 year old known female, touching her bottom and kissing her cheek. The victim had gotten off of her school bus when she heard a noise turned around and saw a man standing by the road wearing a camouflage ski mask, a red jacket and brown boots. She thought the man was Mr. Walters by the way he was dressed and she told him to quit scaring her. Mr. Walters then walked behind the victim; put a white towel over the victim's head, securing it with duct tape. He then picked the victim up and walked into the woods with her. He eventually put her down and tied her hands in the front with duct tape and made her walk in front of him. After walking for a period of time, he put her hands behind her back and re-applied the duct tape. He then made her lie down and got on top of her straddling her stomach. He kissed her near her mouth and cheek and then rolled her over and rubbed her bottom. Mr. Walters's cell phone rang and the victim recognized his ring tone as well as the fact he had a flip phone. He opened the phone and then left. The victim was able to escape and run home to tell her father. Mr. Walters didn't say a word throughout the ordeal. The victim's mother indicated she had called Mr. Walters about the same time his phone rang as she was worried about the victim. The victim was best friends with Mr. Walters's daughter.

Mr. Walters's first trial resulted in a hung jury and mistrial. He was found guilty in the second trial. He appealed the decision and the Appellate court upheld the sentence. Mr. Walters indicates his sentence is currently still under appeal with the Supreme Court.

PRIOR CRIMINAL CONDUCT:

File materials indicate that in 1983, Mr. Walters, age 17 was accused of Burglary in the First Degree and Rape in the First Degree against a known 13 year old female. Mr. Walters arrived at his friend's home on March 10, 1983 to take her to school. The 15 year old victim overheard her brother tell Mr. Walters that she was staying home sick from school that day. Later, the victim heard movement on her bed. She saw a white male, nude, with a white cloth tied around his head, sitting on her bed. A struggle ensued and the male attempted to choke the victim with a piece of a broken ax handle. He also choked her with his hands and tried to smother her with a pillow. The victim had numerous scratches and abrasions on her neck. The victim described pleading with her attacker to leave her alone. The victim felt the attacker was going to kill her if she did not submit so she stopped fighting, he then vaginally raped her. The assailant did not say anything during the entire incident, placed a blanket over her head and after disconnecting the phone in her room, fled wearing a large blanket over his head. Mr. Walters was acquitted of these charges on August 22, 1983.

Mr. Walters has a felony from 1996 for Controlled Substance Violation-Marijuana Delivery and in 1997 for Unlawful Possession of a Firearm. He has several misdemeanors for driving violations to include, Suspended Operators License, No Valid License, Consuming Liquor in Public, License Nontransferable over Bag Limit Big Game and Assault in the Fourth Degree-Domestic Violence.

HISTORY/COMMENTS:

This is Mr. Walters's first hearing with the Board.

EVIDENCE CONSIDERED:

In preparation for Mr. Walters hearing and its decision in this case, the Board completed a review of his Department of Corrections (DOC) and ISRB files. The Board considered all information contained in those files, including but not limited to: the End of Sentence Review Committee's Report(s) (ESRC); the most recent DOC facility plan; information regarding

institutional behavior and programming; any letters of support and/or concerns sent to the Board; the Pre-Sentence Investigation report, a letter from The Supreme Court of WA, dated May 10, 2013 regarding the Personal Restraint Petition of James L. Walters Court of Appeals No. 43185-8-II and a letter from Nikki Walters, wife of James Walters dated July 2013. The Board also considered the testimony of the witnesses listed above.

REASONS:

Mr. Walters is currently in the Bookkeeping program and is working within the prison. He has not received any infractions and his behavior is fine within the unit. He receives extensive family support and visits.

In today's hearing, Mr. Walters indicated he did not want to talk about the index offense as he denies that he committed the sex offense and is still appealing. He also described wanting to do sexual deviancy treatment in the community, rather than in prison. The Board explained to Mr. Walters that he is currently in for a very serious sex offense and at this time has not participated in programming to mitigate that risk, so it is unlikely the Board will find him releasable at this time.

The ESRC has classified Mr. Walters as a Level III for community notification. This was an aggravation from a Level I based on "past intervention did not deter sexual re-offending and documented information that increases risk for sexual re-offense." He was assessed as a low-moderate and low risk to sexually re-offend on two different actuarials. The ESRC also referred Mr. Walters's case to the Sexually Violent Predator sub-committee who recommended a Forensic Psychological Evaluation be completed to see if he meets the criteria under RCW 71.09 if he is found releasable by the Board.

Mr. Walter's has the right to appeal his case; unfortunately, this precludes him by his own choice of fully participating in the Board hearing or the Sex Offender Treatment Program (SOTP). Mr. Walters indicates he would like to do whatever is necessary to get back to his

APPENDIX – D

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VERBATIM REPORT OF PROCEEDINGS

July 10, 2013

Heard before the Indeterminate Sentencing Review Board, Kecia Rongen and Lynne DeLano, at
Stafford Creek Corrections Center, 191 Constantine Way, Aberdeen, WA 98520.

1 MS. RONGEN: Good morning, we're on the record in the matter of James
2 Walters, DOC #755724. My name is Kecia Rongen and to my left is Lynne DeLano,
3 we're from the Indeterminate Sentence Review Board. We make up your panel today.
4 There is four board members and so we will make a recommendation back to the other
5 two board members and we will all vote on the decision and we will send you our
6 decision within four to six weeks. You're currently under the board's jurisdiction for
7 indecent liberties with force as well as kidnapping in the first degree. You have a current
8 release date of October 22, 2013 and you are under the board's jurisdiction for life. Do
9 you understand that?

10 MR. WALTERS: Yes.

11 MS. RONGEN: Okay. And, this is what we call a .420 hearing. So what we're
12 looking at today is whether or not the board believes you're more likely than not to
13 commit another sex offense if released upon conditions. You're here with your counselor,
14 Susan Smith, and you are not represented by an attorney so we want to make sure you've
15 had an opportunity to review what we refer to as *Sinka* packet. This is what we read to
16 prepare for your hearing today. Have you had ample time to go through this?

17 MR. WALTERS: Yes.

18 MS. RONGEN: Okay. So you feel you are ready to proceed today?

19 MR. WALTERS: Yes.

20 MS. RONGEN: This hearing is being recorded. So if you'd like a copy of the
21 recording you can write our office and we'll send you a CD. And we just ask you do that
22 in the next six months. Okay?

23 MR. WALTERS: Can my wife do that?
24
25

1 MS. RONGEN: Uh-huh. This is a quasi-judicial hearing and so I need to swear
2 you in. If you could raise your right hand. Do you swear or affirm to tell the truth today
3 in this matter?

4 MR. WALTERS: I do.

5 MS. RONGEN: Okay. And for voice recognition, could you please state your full
6 name?

7 MR. WALTERS: James L. Walters.

8 MS. SMITH: Susan G. Smith.

9 MS. RONGEN: Okay. So we are going to start with Ms. Smith and we're going to
10 have her give us an update on programming and any infractions that are applicable since
11 you've been in prison.

12 MS. SMITH. Okay. Mr. Walters has been programmed very well. He's not
13 considered to be a management or behavioral concern. He has been working in the food
14 services department at Stafford Creek for over three years now with "superior" or "above
15 average" marks from the supervisor. His behavior in his living unit is good. He gets along
16 well with staff as well as offenders and he is respectful and quiet. He has not received any
17 major infractions since his incarceration. He has no escapes, so STG affiliations, no
18 separatees, no detainers or warrants. He is currently on referral for the following
19 programs: anger management, partners in parenting, and crime related treatment. He has
20 completed the following family friendly activities or events: Mother's Day event, family
21 video program, winter event, back to school event, family craft activities. He has also
22 completed introduction to computers, parallel community orientation, and bookkeeping.
23 Mr. Walters has received several visits from family or friends within the last few days.
24 He has an extensive release plan including to include moving away from the area of the
25 victim. He has a very lovely wife, many friends and family members willing to do

1 whatever it takes to support and help him once he is released. And that's the end of my
2 report.

3 (Pause in proceedings.)

4 MS. RONGEN: Lynne, do you have questions for her?

5 MS. DeLANO: I may have been, I may have missed it. But, does he have regular
6 visitors?

7 MS. SMITH: He has very regular visits from his son and his wife, especially, and
8 his mother. Plus, he has an aunt that comes and sees him. (Unintelligible.) I don't have
9 his name or DOC number on this. That's within the last 90 days.

10 Unknown Male: (Unintelligible.)

11 MS. DeLANO: It's just a question I always ask to know how much contact the
12 family is able to maintain. It seems to me like they're doing well right now. Thank you.

13 MS. RONGEN: Any questions for your counselor or anything she didn't cover
14 that you'd like us to know?

15 MR. WALTERS: No.

16 MS. RONGEN: Okay. So here is what we usually do Mr. Walters: is we turn to
17 you and we want to hear about your offense, of why you're here, and then probably listen
18 to a few more questions for you.

19 MR. WALTERS: Oh. Man. I'm here because I was accused of something, well,
20 it's hard. Well, I'm here because I'm accused of kidnapping a neighbor girl, but I really
21 can't go into much because I'm fighting my case. I would, I would – it sucks because it
22 feels like I'm caught between a rock and a hard place because I want to do this treatment
23 and everything, but I can't because they won't let me without saying things to go against
24 my rights – I'm fighting my case. You know? And, it's, it's hard. 'Cause I'm willing to
25 do whatever it takes to get home to my family – point blank – but, you know, 'cause I've

1 been going to – well she just became, Ms. Smith, became my counselor about six months
2 ago.

3 MS. SMITH: No. It's only been about a month.

4 MR. WALTERS: About a month?

5 MS. SMITH: About a month and a half.

6 MR. WALTERS: And I used to have Counselor Redding and (unintelligible). See
7 my wife actually sent him a letter back in '11 asking about (unintelligible) and all my
8 programs. And they actually SOC – is it SOC? – Monroe.

9 MS. SMITH: Sexual offender center.

10 MR. WALTERS: Yeah. They actually sent me a, an application.

11 MS. SMITH: Oh, SOTP. Sex offender treatment program.

12 MR. WALTERS: Okay. And I filled it out and they rejected it because I couldn't
13 say, you know I couldn't do certain things 'cause I'm fighting my case.

14 MS. SMITH: They call it non-amenable treatment because of, you're appealing
15 your case.

16 MS. RONGEN: You are saying that you have an active appeal going...

17 MR. WALTERS: Yes.

18 MS. RONGEN: ...for your case.

19 MR. WALTERS: Yes.

20 MS. RONGEN: Is this different than a decision that you – I have something that
21 indicates the appellate court upheld the sentence in 2010 and that the Supreme Court
22 denied a hearing and the case was returned to the sentencing court for a mandate on May
23 18, 2011 – is this something different than that?

24 MR. WALTERS: Well, it's all the same things but it's. I don't know if that's the
25 right paper.

1 MS. RONGEN: Okay. So...

2 MR. WALTERS: I think it's (unintelligible) to July...

3 MS. RONGEN: 15th

4 MR. WALTERS: ..yeah, to get my, the rest of my papers in.

5 MS. RONGEN: That's not too long from here. It's like five days from here.

6 MR. WALTERS: Yeah, we were just copying some papers just the other night,

7 it's going to be probably in the mail today, probably tomorrow, be all done.

8 MS. RONGEN: Okay. If you get an opportunity, it would be helpful to have that
9 for our records. I don't know that I saw that in our records.

10 MR. WALTERS: Well you can have this if you want.

11 MS. RONGEN: Do you have one?

12 MS. DeLANO: I don't want to take (unintelligible).

13 MR. WALTERS: That's very, thank you.

14 MS. SMITH: I could make a copy of it before I leave.

15 MS. DeLANO: Okay.

16 MS. RONGEN: That would be great. (Long pause.) Okay, so, is there any
17 information that you are comfortable in talking with us in regards to your sex offense.

18 MR. WALTERS: Without. No. (Unintelligible) ...attorney was allowed here
19 'cause I don't, I'm quite ignorant when it comes to the law or whatever you want to say.

20 MS. DeLANO: If you're appealing your case, we don't want to jeopardize that.
21 You have every right to do your legal work. What you have to understand is, as far as we
22 know...

23 MR. WALTERS: Yes.

24

25

1 MS. DeLANO: you're a convicted sex offender and, in treatment, there's no way
2 that this one member would even think about letting you out without having gone through
3 treatment.

4 MR. WALTERS: See that's where my wife, my wife as well, we've done some
5 checking on, on when I get release on outside sources for and I've done something up in
6 the law library. Is that right? That's not right. And there are things on the outset my wife
7 and I can go to. There's a whole big whole thing about sex offender treatment providers
8 on the street which I'm more than willing to...

9 MS. RONGEN: See here's what you need to understand, Mr. Walters: you're in
10 for a very serious sex offense. And we certainly understand your case is under appeal,
11 and just like Ms. DeLano said, you have every right to appeal that and take whatever
12 steps you feel is necessary, but the information that we have in front of you, in front of
13 us, is that you've been convicted of a kidnapping and indecent liberties with force. And,
14 in fact, you probably read in your *Sinka* material that if we were, if we were to find you
15 releasable that the end of sentence review committee would refer you for a forensic
16 psychological evaluation for a civil commitment. Do you understand that? Do you know
17 what that means?

18 MR. WALTERS: Well if it takes me to drop my case and do your class for me to
19 get home to my family, I'll drop it right now. Send me...

20 MS. DeLANO: We can't, we can't send you.

21 MR. WALTERS: Oh, you don't have means?

22 MS. DeLANO: We, we recommend it. But the SOTP people won't take you
23 unless you say, "this is what I did."

24 MR. WALTERS: I, I...
25

1 MS. DELANO: We don't want you to lie. You have to, we can't force you to do
2 that. I think you need to pursue your legal avenue.

3 MR. WALTERS: My family and. Every, like okay, but, the first year I was in
4 here, I was getting visits every day, I had, you know, a half dozen friends. My family's
5 coming. And every year that goes by, my resources of, you know, family and friends, it's
6 shrinking. And I'm losing everything, you understand, you know that's why I...

7 MS. RONGEN: And we also, from our perspective, have a very serious sex
8 offense and a victim in this case. Not to mention a victim from 1983.

9 MR. WALTERS: I was not convicted in 1983.

10 MS. RONGEN: Right, but we still have the file material related to that or, at least,
11 in the sentence review report, and that's information that we take into consideration as
12 well.

13 MR. WALTERS: Wow. So you are taking that into consideration – the 1983?

14 MS. RONGEN: Well, it's part of the record.

15 MR. WALTERS: Okay. I just, 'cause that is one, 'cause, I just, I was asked to for
16 you guys, I was asked to ask that question for to you guys. That if you're going to use my
17 1983 innocence on, on, on this.

18 MS. RONGEN: We use all the information that is presented to us in the *Sinka*
19 packet.

20 MR. WALTERS: Even though it could be false and could just be false?

21 MS. RONGEN: Whatever is, it's not up to us to disprove this information.

22 MR. WALTERS: Oh I know, see that's, see that's the other thing that sucks about
23 this is that I get the *Sinka* packet from Ms. Smith, right? And, I don't know nothing about
24 it and I read it and I'm reading all this. And, I don't know the procedures or nothing. I
25 just tried to find out how I can, like if there's a hearing to disprove any of that

1 information. I can't find nothing to, you know, to have a hearing to try and get any of that
2 redacted or anything. 'Cause, far as I know, there ain't none. I couldn't find any. That's
3 why I was at the law library for this. You know, because there's a lot of things in there
4 that are just totally lies, you know. How can you, when someone is found not guilty of
5 something, say that they are guilty of it and just put a bunch of stuff in there? That's part
6 of our system, ain't it? Just like I was found guilty of, you know...

7 MS. RONGEN: We didn't say you were guilty of it. We said it's information that
8 we take into consideration. So, this is what we have in front of us and unless there's some
9 way for you to mitigate your risk and so, we look at what sort of programs you've taken,
10 sexual deviancy treatment will be at the top of the list to help mitigate your risk.

11 MR. WALTERS: I'm more than willing to do that, you know, from a private and,
12 you know, I got my mom and everybody willing to pay for it and everything. You know,
13 it's just like, my wife wanted you guys to read that there. She is more than willing to, you
14 know, she wanted me to submit that. And I got so much family support. My family is
15 willing to do whatever it takes. If you guys tell me that I'm on house arrest for a year or
16 whatever, you know what I mean, my family would make sure. You know, if you tell me
17 to go to wherever, you know. Just like my wife, you know, she's a school teacher and if
18 she had any inkling whatsoever that I was a threat to anyone, she had no problem to call
19 you guys up and say, "hey, take his ass back." No questions asked.

20 MS. RONGEN: Okay. We can't just release you because you have a supportive
21 family. We need to look at the law and the law says: does the Board believe you're more
22 likely than not to commit another sex if released, conviction.

23 MR. WALTERS: Yeah. I guarantee I won't. So how can I (unintelligible) see I'm
24 stuck between a rock, I would love to, to, to, my ri-, see I'm stuck here. How can I do this
25 without my, my, to try and fight my case? 'Cause, this case can go on for, I know some

1 people's cases go on for ten years. So, see if I fight my case for ten years, I'm gonna be
2 in here for ten years?

3 MS. RONGEN: I, I don't know that. I'm just letting you know, as one Board
4 member, I would like to see you do treatment. And I, it's my understanding, you're not
5 even admitting to the offense at this point. And so, based on that, the sex offender
6 treatment program is not gonna accept you. They want to work with people who believe
7 that they have an issue and something that they need to work on. So...

8 MR. WALTERS: There's, there's, my wife's done research and there's programs
9 out there, on the street, that you would take it.

10 MS. RONGEN: Absolutely there is. Mhmm. There's a whole list of providers
11 right there. I know that.

12 MR. WALTERS: Right on. And I'm more than willing to do it.

13 MS. DeLANO: Well, in my history with the Board, I don't think we've ever
14 released anybody with a crime this serious to do treatment in the community. It puts the
15 public in too big a risk. We want the treatment done before. We've released – and the
16 sentence review says you're a level 3 – for community notification. We've released level
17 3 offenders, but not with this serious offense with no treatment.

18 MR. WALTERS: How can, see that's the thing about, see I'm not a 3 if that 1983
19 stuff wasn't in there, I'm only a 1. But, see you're using something that I'm not guilty
20 on...

21 MS. RONGEN: We're not the end of sentence review committee. That's a
22 different committee.

23 MR. WALTERS: Okay. See there, there's no way to, to, to, like a hearing, or you
24 know what I'm saying? They give you this report and there's no way to fight what
25

1 they're saying in it. 'Cause they're saying I'm a 3 because of something that happened in
2 1983 that I was found not guilty on. If that wasn't there, I would be a 1. Right?

3 MS. RONGEN: You'd have to ask that...

4 MR. WALTERS: Yeah, well that's what it says in the report right there. Right?
5 So how can, they're holding something on me that I was found not guilty on to up it from
6 a 1 to a 3. And there's no way to fight that. And...

7 MS. DeLANO: It seems like you are. I mean, you're, you're pursuing through
8 legal avenues, which is very appropriate.

9 MR. WALTERS: It's just, I'm trying to get knowledge, is all I'm trying to do. I
10 don't want, you know. Ignorance, well you know what ignorance is, I get, I'm not, I'm
11 more of a worker bee, I guess you want to say. And, knowledge ain't my strong suit, so
12 I'm just trying to get a little as I can. Soon as I read all that, I go man there must be some
13 kind of hearing to dispute this. So, I think that was the first time I was up, or not the first,
14 you know, one of the few times I was up at the law library to try and figure this out. I go
15 man, here it says I'm a 1, but because of 1983 I'm a 3. I go, that's to me not right because
16 I was found not guilty, you know. And the stuff that they're saying there, heck. Man.

17 MS. DeLANO: We've seen other offenders too, and I'm not saying this is true in
18 your case necessarily, other offenders who have been found not guilty by a court for a
19 previous offense — whether it's a sex offense or not — and later they've admitted, "yeah-I
20 did it. I got off on it, but I did it."

21 MR. WALTERS: Oh really?

22 MS. DeLANO: Yes. It happens. So the Board has to take into consideration all
23 the information that is in our files. But it's more important, the fact that, you can't even
24 talk about your offense because...

25 MR. WALTERS: Oh I know. It sucks.

1 MS. DeLANO: So it really limits our ability to move forward as well. And that's
2 really, really a tough decision for you and you've gotta make that all your own. You can't
3 say one way or the other. And we definitely support your pursuit of, you know, your legal
4 rights.

5 MS. RONGEN: Do you want to talk about the 1983...

6 MR. WALTERS: Yeah. I'm willing to say whatever you want on that, because,
7 you know.

8 MS. RONGEN: Okay. So

9 MR. WALTERS: Cause, heck, the DNA cleared me on that. Point blank. The hair
10 samples, DNA, all that cleared me on that. That's why I don't understand about that.
11 How can they say I did it when everything cleared me of it.

12 MS. RONGEN: (Unintelligible) similar offense to the one you're in for now.

13 MR. WALTERS: So? To me they're night and day.

14 MS. RONGEN: How are they night and day?

15 MR. WALTERS: Well, one was at a house and (unintelligible). That was a long
16 time ago.

17 MS. DeLANO: It seems kind of odd that you've been accused of two cases.

18 MR. WALTERS: Oh, believe me. 'Cause like this one that came up here,
19 everything was good. Then all the sudden, the detectives, there's what a month and a half
20 after the fact it happened. They came and questioned me about that. And soon as that
21 came up it was like deer in the headlights. Me getting ran over. And, heck, it was a
22 snowball effect after that. Oh. Heck, 'cause that there.

23 MS. RONGEN: You have to be the unluckiest person I know to be accused of two
24 sex offenses as serious as this.

25

1 MR. WALTERS: Well I think one is prolonged to the other, more or less.

2 (Unintelligible). It kind of sucks.

3 MS. RONGEN: So why do you think the 1983 is different than the current sex
4 offense?

5 MR. WALTERS: Why do I think it's different? Well, I think, if I remember, did
6 she, well it's a whole different circumstances.

7 MS. DeLANO: Do you see any similarities?

8 MR. WALTERS: What that I knew them both? That I. Let's see here.

9 MS. RONGEN: Did you know the girl – you knew the girl in 1983?

10 MR. WALTERS: I guess but, well my good friend's sister.

11 MS. RONGEN: Why would she accuse you of raping her?

12 MR. WALTERS: She didn't accuse me.

13 MS. RONGEN: What do you mean she didn't accuse you?

14 MR. WALTERS: Nah. It was...this was 1983. I'm trying to remember everything.
15 Because she actually said it wasn't me if I remember right. That's what I'm saying, that
16 stuff in that, that, that folder don't even conpict (phonetic) to way in the trial and
17 everything went. So is the DNI – A – and the hair samples and everything came out?
18 Heck, it was, it was over, you know. That's when the, the, the judge more or less said
19 "done" or, you know what I mean.

20 MS. RONGEN: Okay. So were you there that morning, at this house?

21 MR. WALTERS: Yeah, I drove her brother to school. I picked him up every day.

22 MS. RONGEN: Okay. And where'd you claim that you were when the rape
23 happened?

24 MR. WALTERS: Ah heck, I was in Tacoma. Nowhere near that house.

25

1 MS. RONGEN: So I saw on the report that that couldn't be verified the time that
2 you claimed you were at the mall was about a four hour period. So...

3 MR. WALTERS: Mhmm. Tacoma Mall.

4 MS. RONGEN: Yeah. Well, it could've been within that four hour period, not
5 necessarily that you were there that entire time.

6 MR. WALTERS: I was, well I was there until probably eleven o'clock or
7 something like that. And then I went to my brother's house.

8 MS. RONGEN: And whoever did this burglary and rape had their face covered,
9 similar to the current offense.

10 MS. DeLANO: Didn't say anything. Didn't talk.

11 MS. RONGEN: Well, that's what the reports say.

12 MR. WALTERS: Only thing I know is when all this, Rhondas (phonetic) told the
13 new detectives at first it was not me, you know. See, stuff like that you don't read in
14 there. They didn't talk? I don't remember that part of the trial.

15 MS. DeLANO: The perpetrator, if I recall, didn't say anything.

16 MS. RONGEN: Take a polygraph back then?

17 MR. WALTERS: Yeah, I-I don't recall. Did I?

18 MS. RONGEN: That you were deceptive.

19 MR. WALTERS: I don't recall.

20 MS. RONGEN: Okay.

21 MR. WALTERS: That was back in - heck, I was 18-years-old, 17-years-old.

22 MS. RONGEN: So we're not going to retry your case. We're just letting you
23 know this is the information we have in front of us. You have the right to appeal your
24 case, it appears as if you're doing so. We want you to do treatment. We're not going to
25 release you to do treatment to the street at this point. And, the SOTP is likely not going to

1 take you until you're able to, or until you're ready to say that you committed a sex
2 offense.

3 MR. WALTERS: So, in other words, I'm also not even going to send this in.

4 MS. RONGEN: Again, that's up to you. We would not keep you from appealing
5 your case.

6 ~~MR. WALTERS: Alright. You kind of are.~~

7 MS. RONGEN: Well, absolutely not.

8 MR. WALTERS: You're making me choose between going home to my family or
9 my rights to, to fight my case.

10 MS. DeLANO: I don't know, even if you chose not to appeal, I don't know that
11 the SOTP would take you. It depends on what you say to them. I think they're pretty
12 good about, besides from whether they think someone is telling the truth or not, so if you
13 lie to them, "I didn't really do it, but I still want in," you're not going to get in to the
14 program, so you're going to be in the same boat. It's, you're going to have to do some,
15 you're going to have to decide. I've heard of offenders who spend 20 years appealing
16 their conviction and get out. Gets overturned.

17 MR. WALTERS: Oh, I know.

18 MS. DeLANO: You, you, it's a big decision you have to make.

19 ~~MR. WALTERS: Yes it is. It's not a decision for me, it's a decision for my wife~~
20 ~~and my kids. My wife's a single mom with three kids and she's just at her wits' end. You~~
21 ~~know, we've gone from, well yeah, out there.~~

22 MS. DeLANO: Do you know anything about the Sex Offender Treatment
23 Program?

24 MR. WALTERS: All I know is I filled out the application.
25

1 MS. DeLANO: Okay. Ms. Smith can probably tell you some things about it, but
2 it's probably the most difficult program in DOC's venue of programs. There's a lot of
3 soul searching. You have to be very honest. You have to be very open. They ask that the
4 offenders reveal all the things that most of us don't talk each other about. Either entire
5 sexual history, any unadjudicated victims, in other words, if you ever touched your sister
6 or the neighbor girl at whatever age. They make you start from your first advent of sexual
7 behavior. They don't make you, but that's part of the program. It's a tough program. You
8 may want to think about that. Ms. Smith can probably get you a little bit more
9 information about it. It's a very difficult program. And these men, and there's a handful
10 of women in it, take the program at the women's prison, and it's just very, very difficult.
11 But they're all, most of them are able to complete and, as far as we know, most of them
12 are honest about, not only did I do this, but I did this, this, and this, and we make, we
13 make release decisions. Most of the defenders we release have gone through the
14 treatment program.

15 MR. WALTERS: So you guys are saying I'm a 3 though, right?

16 MS. DeLANO: End of sentence review says you're a 3. Actually, if end of
17 sentence review says you're a 1, local law enforcement, if you're released, they can
18 decide what you're going to be. They may go, "No, no, we don't agree with end sentence.
19 We're going to raise it up to a 3."

20 MR. WALTERS: That's it, like I was doing my research, that's another thing that
21 I go who does, you know?

22 MS. DeLANO: It's, it's only a recommendation from the end of sentence review
23 committee to the local law enforcement. And it, it dictates what level of communication
24 goes on in, in the community when and if you're released.

25 MR. WALTERS: Just, yeah. I appreciate your time and...

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MS. RONGEN: Do you have any questions?

MR. WALTERS: Well, I had like 50 of them, but, but.

MS. RONGEN: Well you can always write our office and our hearings investigators will respond back if they can. And, certainly, if you get any sort of decision on your appeal, let us know that too.

MR. WALTERS: Well, I can...

MS. DeLANO: It's a big decision. I think you ought to be, I mean that's whichever you decide. It's a big, it's a big decision.

MR. WALTERS: My case is so strong, to, to get overturned. Such a, but I, see that's the whole thing, I have to wait till it gets to the federal courts because Washington State is, is terrible. So to get to the federal court, heck, you're talking another two years and, for another, I don't know how long, for the federal courts to hear it. So, you know, so I have to make this choice on giving up my rights so I can get home to, for my family and to me my family's going to come first. Just point blank. Yeah. Yeah. Got a 21-year-old son, a 20-year-old daughter. My 19-year-old son just, just is, he blames himself for a lot of this and I have to, and tell him it's not his fault. That's why he hasn't really come to see me. He told us a story.

MS. RONGEN: Okay. Well, this will conclude your hearing.

MR. WALTERS: You have a nice afternoon.

(Proceedings adjourned.)

CERTIFICATE

I, WILLIAM BRENC, swear, under penalty of perjury, that the foregoing is a correct transcript to the best of my ability from the record of proceedings in the above-entitled matter.

10.01.13



DATE

WILLIAM BRENC

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APPENDIX – E



SEX OFFENDER SENTENCING IN WASHINGTON STATE: DOES THE PRISON TREATMENT PROGRAM REDUCE RECIDIVISM?

The 2004 Legislature directed the Washington State Institute for Public Policy (Institute) to conduct a comprehensive evaluation of the impact and effectiveness of current sex offender sentencing policies.¹ Because this is an extensive topic, we are publishing a series of reports.

The Washington State Department of Corrections (DOC) has operated a prison-based Sex Offender Treatment Program (SOTP) at the Twin Rivers Corrections Center since 1988. The program has undergone a series of changes since its inception. Since 1996, the program has used a combination of treatment techniques including group therapy, psycho-educational classes, behavioral treatment, and family involvement. The length of treatment has decreased from two years in 1996 to approximately one year currently. Since 2000, sex offenders assessed as having a high likelihood to reoffend, based on their criminal history, are prioritized for program entry.²

Offenders selected for the treatment program must meet the following five requirements:

- Sex offense conviction
- Voluntary participation
- Admission of guilt
- One year minimum remaining in prison
- Medium or lower custody classification

This report estimates whether SOTP reduces recidivism by comparing the recidivism rates of sex offenders who were willing but did not participate in SOTP with those who did participate in the program.

A previous Institute report determined there are significant differences between sex offenders who participate in the SOTP and sex offenders not willing

SUMMARY

The Washington State Department of Corrections (DOC) has operated a prison-based Sex Offender Treatment Program (SOTP) at the Twin Rivers Corrections Center since 1988. SOTP uses a combination of treatment techniques including group therapy, psycho-educational classes, behavioral treatment, and family involvement.

The purpose of this study is to estimate whether SOTP reduces recidivism by comparing the recidivism rates of sex offenders willing but not participating in SOTP with those who did participate. The study sample consists of sex offenders released between January 1996 and December 1999 after serving at least one year in prison.

Two methods of analysis are employed: logistic regression for the entire study sample and logistic regression for a risk-factor-matched sample. Both methods find the following:

- No statistically significant differences are found between the two study groups for felony and non-sexual violent felony recidivism.
- The SOTP group has a statistically significant higher felony sex recidivism rate than the comparison group. However, the difference in the felony sex recidivism rates between the groups is small—less than two percentage points.

This study finds that SOTP does not reduce the recidivism rates of participants.

to participate.³ Because of these differences, the comparison group for this study includes only those sex offenders who indicated they were willing to participate in the program.

¹ ESHB 2400, Chapter 176, Laws of 2004.

² The SOTP uses three risk for sexual offense assessments: MnSOST-R, RRASOR, and Static 99.

³ R. Barnoski (2006). *Sex Offender Sentencing In Washington State: Who Participates in the Prison Treatment Program?* Olympia: Washington State Institute for Public Policy, Document No. 06-06-1204.

Study Groups. SOTP staff indicated that the program changed significantly in 1996, and any evaluation should include only sex offenders who have participated since that year. In addition, measuring sex offender recidivism rates requires a five-year follow-up period for reoffending and an additional one-year period for the adjudication of offenses.⁴

Thus, this outcome study examines sex offenders willing to participate in the STOP who were released between January 1996 and December 1999 after serving at least one year in prison. This group meets the required six-year period to adequately measure recidivism.⁵

Exhibit 1 displays the number of sex offenders in the two study groups and their characteristics: those participating in SOTP and those willing but not participating. The SOTP group has 655 sex offenders; 983 are in the comparison group.

The analyses reveal the following differences between the study groups:

- The SOTP group includes slightly more repeat sex offenders.
- SOTP participants have a higher percentage of sex offenders with a prior conviction for a child sex offense.
- SOTP participants spent a slightly longer time in prison.

Based on these differences, one might expect that the SOTP participants would be at a higher risk for committing another felony than the comparison group.

⁴ R. Barnoski (2005). *Sex Offender Sentencing in Washington State: Measuring Recidivism*. Olympia: Washington State Institute for Public Policy, Document No. 05-08-1202.

⁵ A 1994 study by the Institute examined sex offenders who completed the program in 1993 and compared them to a similar group who were released during the same time period who did not participate in the program. The follow-up period was three years. The study examined rearrest rates and found that program participants had slightly lower rates for sex crimes (11 percent compared to 12 percent), violent crimes (1 percent compared to 3 percent), and non-violent crimes (5 percent compared to 6 percent). None of the differences were statistically significant, meaning they could have occurred by chance. See L. Song and R. Lieb (1994). *Preliminary Recidivism Rates: The Twin Rivers Sex Offender Treatment Program (Revised)*. Olympia: Washington State Institute for Public Policy, Document No. 04-06-1102.

However, when actuarial risk scores are applied for these two groups, a different picture emerges.⁶ The risk scores are calculated using an actuarially based static risk assessment tool being developed by the Institute for DOC.⁷ The SOTP group exhibits a slightly lower, yet statistically significant, risk for reoffending.

Exhibit 1
Characteristics of Sex Offenders in Study Groups Released From Prison Between 1996 and 1999

Sex Offender Characteristic	Study Groups		Difference
	SOTP	Comparison	
Number of Offenders	655	983	n/a
Average Felony Risk Score	43.5	44.8	-1.3*
Average Violent Felony Risk Score	25.6	26.2	-0.6*
Percentage With Two or More Felony Sex Sentences	14.2%	12.9%	1.3%*
Percentage With Prior Child Sex Conviction	63.8%	50.3%	13.5%*
Average Years in Prison	4.3	3.9	0.4*
Average Age at Release	38.6	39.3	-0.7 ^{ns}
Race/Ethnicity:			
European-American	89.2%	78.8%	10.4%*
African-American	7.9%	13.8%	-5.9%*
Native-American	2.1%	3.4%	-1.3% ^{ns}
Asian-American	0.8%	3.1%	-2.3%*
Hispanic Origin	5.0%	13.1%	-8.1%*

* Statistically significant at the .05 probability level

^{ns} Not a statistically significant difference

n/a: not applicable

Exhibit 2 displays the five-year recidivism data for the study groups. Of the 655 offenders in the SOTP group, 82 recidivated with a felony, 27 with a violent felony other than sex, and 12 with a felony sex offense. These figures represent recidivism rates of 12.5, 4.1, and 1.8 percent respectively. The recidivism rates of the SOTP group are within three percentage points of the rates for those in the comparison group.

⁶ The comparison group includes all incarcerated sex offenders who indicated a willingness to participate but did not (willing, applied, declined, and rejected).

⁷ There is no static risk score for felony sexual reoffending because criminal history alone does not adequately predict sexual reoffending. The Institute's criminal history database is used to calculate these scores.

Exhibit 2
Comparison of Study Groups'
Actual Five-Year Recidivism

	Study Groups		
	SOTP	Comparison	Difference
Number of Offenders	655	983	1,638
Number Recidivating Within Five Years			
Felony	82	151	n/a
Violent Felony (Not Sex)	27	50	n/a
Felony Sex	12	6	n/a
Percentage Recidivating Within Five Years			
Felony	12.5%	15.4%	-2.8%
Violent Felony (Not Sex)	4.1%	5.1%	-1.0%
Felony Sex	1.8%	0.6%	+1.2%

n/a: not applicable

Adjusted Recidivism Rates by Key Factors

While it is straightforward to compute the recidivism rates of SOTP participants, the difficult task is estimating what the recidivism rates would have been if, keeping everything else the same, these sex offenders had not participated in the program. The ideal method is to randomly assign a group of sex offenders to either SOTP or a no-treatment comparison group. Under this optimal research design, one can be quite certain that any observed differences in recidivism rates between the treatment and comparison groups is due solely to the effect of the treatment.

However, a random assignment design cannot be used since the task is to retrospectively evaluate SOTP. Therefore, two alternative approaches are used to evaluate the impact of SOTP on recidivism:

- Standard logistic regression, and
- Risk-factor matching in combination with logistic regression.

The SOTP evaluation is a challenge because of the self-selection process for participation in this program. Factors we cannot measure in this study may influence an offender's decision to participate in the SOTP. As a result, SOTP participants may have recidivism rates different than the comparison group not necessarily due to the effects of the treatment, but due to the factors that resulted in the offender deciding to enter the program.

Method 1: Standard Logistic Regression. This approach uses logistic regression to estimate whether SOTP participation affects recidivism by statistically controlling for systematic differences in offender characteristics between the two study groups. These characteristics include age, gender, ethnicity, prior criminal convictions, and the defendant's current charges.

Method 2: Risk-Factor Matching. In a second approach, we create a comparison group of sex offenders who did not participate in SOTP but have characteristics matched to the participants. A comparison group is chosen by finding individual sex offenders with risk factors that match specific SOTP participant risk factors. The result is a one-to-one match between a SOTP participant and a non-participant where both offenders have the same risk factors.

Exhibit 3 presents the results of Method 1, the standard logistic regression analyses. The exhibit displays adjusted recidivism rates. These represent the recidivism rates assuming all the offenders have the same risk factors. The statistical adjustments reduce the differences in recidivism rates between the two groups.

There are no statistically significant differences between the two study groups for felony and non-sexual violent felony recidivism. The SOTP group has a higher felony sex recidivism rate that is statistically significant, although the difference is only 0.8 percentage points.

Exhibit 3
Standard Logistic Regression:
Adjusted Five-Year Recidivism Rates

Type of Recidivism	SOTP	Comparison	Difference
Number of Offenders	655	983	1,638
Felony	9.2%	10.4%	-1.2% ^{ns}
Violent Felony (Not Sex)	3.7%	3.8%	-0.1% ^{ns}
Felony Sex	1.3%	0.5%	+0.8%*

* Statistically significant at the .05 probability level

^{ns} Not a statistically significant difference

Exhibit 4 displays the actual five-year recidivism data for the two risk-factor matched groups. Of the 655 SOTP participants, 432 sex offenders were matched with those who indicated a willingness to participate but did not (66 percent). The matching by risk factors means there are no differences between the groups on these variables.

Of the 432 offenders in the SOTP group, 46 recidivated with a felony, 17 with a violent felony other than sex, and 8 with a felony sex offense. These numbers result in recidivism rates of 10.6, 3.9 and 1.9 percent respectively. The +1.6 percent difference in felony sex rates between the SOTP and comparison groups is statistically significant.

Exhibit 4
Risk-Factor Matched Sample
Actual Five-Year Recidivism

	Study Groups		
	SOTP	Comparison	Difference
Number of Offenders	432	432	
Number Recidivating Within Five Years			
Felony	46	49	-3
Violent Felony (Not Sex)	17	14	+3
Felony Sex	8	1	+7
Percentage Recidivating Within Five Years			
Felony	10.6%	11.3%	-0.7% ^{ns}
Violent Felony (Not Sex)	3.9%	3.2%	+0.7% ^{ns}
Felony Sex	1.9%	0.2%	+1.6%*

* Statistically significant at the .05 probability level
^{ns} Not a statistically significant difference

Exhibit 5 displays the adjusted five-year recidivism rates for the risk-factor matched cases using logistic regression as in the standard regression method. Because only one sex offender in the comparison group recidivated with a felony sex offense, it is not possible to calculate an adjusted

felony sex recidivism rate.⁸ As a result, felony sex offenses are included in the violent felony rate.

There are no statistically significant differences between the two study groups for felony and violent felony recidivism.

Exhibit 5
Logistic Regression Results
Adjusted Five-Year Recidivism Rates

Type of Recidivism	SOTP	Comparison	Difference
Felony	6.2%	6.7%	-0.4% ^{ns}
Violent Felony	4.4%	2.6%	+1.8% ^{ns}
Felony Sex	n/a	n/a	n/a

^{ns} Not a statistically significant difference
n/a: A recidivism rate cannot be estimated because only one sex offender in the comparison group recidivated with a felony sex offense.

Findings

The purpose of this study is to estimate whether SOTP reduces recidivism by comparing the recidivism rates of sex offenders willing but not participating in SOTP with those who participated. Two methods of analysis are employed: logistic regression for the entire study sample and logistic regression for a risk-factor matched sample. Both methods find the following:

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- The SOTP group has a higher felony sex recidivism rate than the comparison group that is statistically significant. However the difference in the felony sex recidivism rates between the groups is small—less than two percentage points.

⁸ Five comparison group sex offenders who recidivated with a felony sex offense were not matched to the SOTP group.

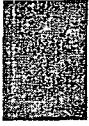
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Washington State
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The Washington State Legislature created the Washington State Institute for Public Policy in 1983. A Board of Directors—representing the legislature, the governor, and public universities—governs the Institute and guides the development of all activities. The Institute's mission is to carry out practical research, at legislative direction, on issues of importance to Washington State.



SEX OFFENDER SENTENCING IN WASHINGTON STATE: WHO PARTICIPATES IN THE PRISON TREATMENT PROGRAM?

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Offenders selected for the treatment program must meet the following five requirements:

- Sex offense conviction
- Voluntary participation
- Admission of guilt
- One year minimum remaining in prison
- Medium or lower custody classification

Because SOTP accepts only offenders who admit their guilt and voluntarily request treatment, significant differences may exist between those who participate in the program and those who do not. In addition, participation is dependent on the sex offender's custody level, which introduces additional systematic differences between participants and non-participants.

These differences can affect the ability to conduct an outcome evaluation of the program. A valid outcome evaluation must identify a comparison group of sex offenders similar to SOTP participants who did not participate in the program. Once this group is identified, we can examine whether the program reduces the recidivism rates of participants.

SUMMARY

The Washington State Department of Corrections (DOC) has operated a prison-based Sex Offender Treatment Program (SOTP) at the Twin Rivers Corrections Center since 1988.

This report examines trends in SOTP participation as a first step in identifying a valid comparison group to evaluate the impact of this program on participants' recidivism. We compare the characteristics of SOTP participants with sex offenders who did not participate in the program.

Since the program's content and format was significantly changed in 1996, we looked at sex offenders released from Washington prisons since that time. Decision patterns have changed in this 10-year period. Following are the key findings:

- Offenders who were unwilling to participate in SOTP differ significantly from those who volunteered to participate.
- The criminal histories, risk scores, and demographic characteristics are much higher for those who were unwilling to participate.

The Institute's next paper will analyze SOTP's effect on recidivism. The comparison group will include only sex offenders who indicated a willingness to participate in the program at some point, but did not.

This report examines trends in SOTP participation as a first step in identifying a valid comparison group needed to evaluate the impact of SOTP on recidivism.

The study sample consists of all sex offenders released from prison between 1996 and 2005 after serving at least one year.

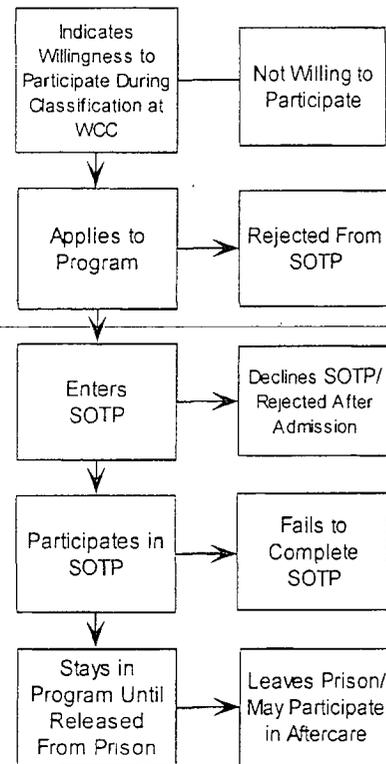
¹ ESHB 2400, Chapter 176, Laws of 2004.

² The SOTP uses three risk for sexual reoffense assessments: MnSOST-R, RRASOR, and Static 99.

Exhibit 1 shows the process sex offenders follow to participate in SOTP.

- When sex offenders with sentences of less than five years are going through classification at the Washington Corrections Center (WCC), they are asked whether they are *willing* to participate in SOTP. (Offenders with sentences longer than five years may apply at a later date.)
- During the sex offender's stay in prison, DOC records when the offender *applies* to participate in the program.
- SOTP may *reject* applicants because they are appealing a conviction or deny the offense.
- A sex offender can *decline* to participate in SOTP at any time.
- In this analysis, all sex offenders who enter SOTP are *participants* regardless of their program completion. Participants can be voluntarily or involuntarily terminated.
- After release from prison, participants can continue with DOC-sponsored treatment groups.

Exhibit 1
SOTP Participation Process



Since 2000, SOTP has prioritized volunteers based on their risk to reoffend with sex crimes.³

Exhibit 2 displays the last SOTP-related event for sex offenders released from prison since 1996 after serving at least one year.⁴ The number of sex offenders released from prison has grown from 445 in 1996 to 583 in

2005. The number of SOTP participants who stayed in the program and were released from prison peaked at 192 in 2000; 131 SOTP participants were released in 2005.

Exhibit 2
Last Recorded Event in SOTP Process for Sex Offenders Released From Prison Since 1996

Prison Release Year	Total Sex Offenders	Not Willing	Willing But Not SOTP Participant				SOTP Participant		Stayed in Program
			Willing	Applied	Later Declined	Rejected	Terminated		
							Involuntary	Voluntary	
1996	445	81	32	2	181	20	15	30	84
1997	470	70	39	3	172	34	7	15	130
1998	521	87	16	6	158	81	13	8	152
1999	537	102	22	3	149	65	8	11	177
2000	644	105	21	12	178	117	10	9	192
2001	557	108	18	22	113	149	8	4	135
2002	586	107	35	19	107	180	6	8	124
2003	606	140	25	24	108	183	6	5	115
2004	565	110	45	24	101	171	7	2	105
2005	583	125	20	6	116	174	7	4	131

³ The SOTP uses three risk for sexual reoffense assessments: MnSOST-R, RRASOR, and Static 99.

⁴ Data for this study are from DOC's Offender Based Tracking System, which began tracking progression in the SOTP process in 1993. Offenders in the "willing" and "applied" groups did not have subsequent records indicating whether they "declined" or were "rejected."

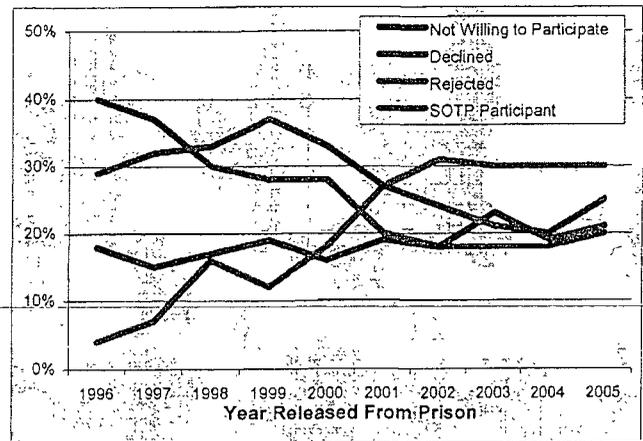
Exhibit 3 displays the percentage of sex offenders released each year by the following groups: (1) not willing to participate in SOTP, (2) declined to participate, (3) rejected by SOTP, and (4) SOTP participant.⁵ These percentages have changed considerably in 10 years.

- In 1996, 40 percent declined to participate, 30 percent participated, 18 percent were not willing to participate, and less than 5 percent were rejected.
- In 2005, 20 percent declined to participate, 25 percent participated, 20 percent were not willing, and 30 percent were rejected.

These participation patterns may be influenced by changes in laws and policies regarding sex offenders. For example, the full implementation of community notification laws (public release of information related to sex offenders leaving prison) may cause more sex offenders to seek treatment and, thus, potentially decrease their notification level. On the other hand, the law authorizing civil commitment of sexually violent offenders (RCW 79.09) could motivate some sex offenders to decline participation because revelations during their treatment about additional victims or violence could later be used as reasons for the state to file a Sexually Violent Predator petition.

We next examine whether the characteristics of the sex offenders in these groups have also changed over time.

Exhibit 3
Trends in SOTP Participation for Sex Offenders Released From Prison Since 1996



Summary of Trends for Sex Offenders Released From Prison and SOTP Participation

- The number of sex offenders released from prison has grown from 445 in 1996 to 583 in 2005.
- The number of SOTP participants released from prison peaked at 192 in 2000; 131 SOTP participants were released in 2005.

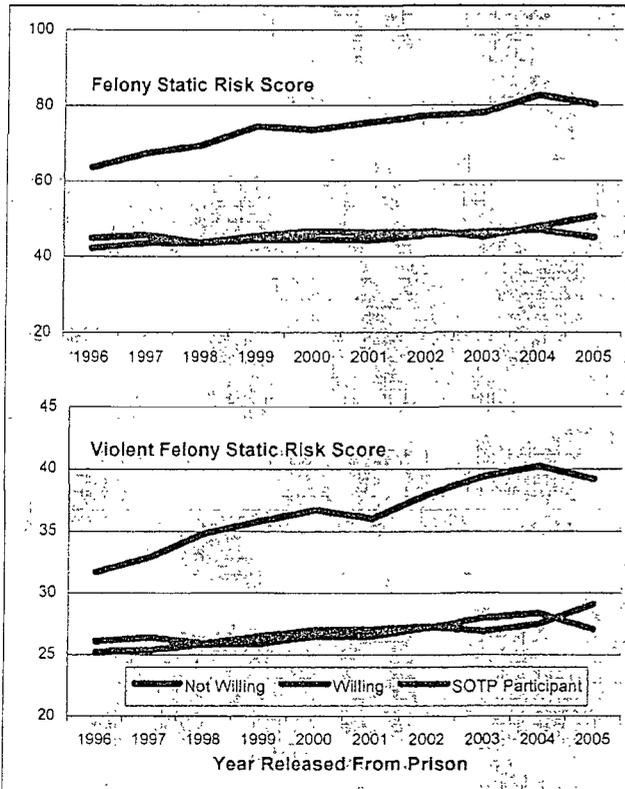
⁵ The percentages for each year add to approximately 90 percent, not 100 percent, because approximately 10 percent of the offenders are in the "willing" and "applied" groups, which are excluded from the exhibit for simplicity

Exhibit 4 displays trends in the characteristics of three groups of incarcerated sex offenders: those not willing to participate in SOTP, those willing but not participating,⁶ and those participating.

We first examine risk-for-reoffense scores. These scores measure an offender's propensity to recidivate with a felony or violent felony offense—a higher score indicates a greater likelihood of reoffending. The risk scores are calculated using an actuarially based static risk assessment tool being developed by the Institute for DOC.⁷

Felony and Violent Static Risk Scores. Those not willing to participate in SOTP consistently have higher felony and violent felony risk scores, and these scores have been increasing. The felony and violent felony risk scores for the other two groups are nearly identical and have not increased since 1996. That is, sex offenders who were willing but did not participate in SOTP have the same level of risk as those who participated in the program.

Exhibit 4
Trends in Static Risk Scores



⁶ This group includes all incarcerated sex offenders who indicated a willingness to participate but did not (willing, applied, declined, and rejected).

⁷ There is no static risk score for felony sexual reoffending because criminal history alone does not adequately predict sexual reoffending.

Exhibit 5 displays the trends for two key offender characteristics.

Repeat Sex Offenders. The SOTP group includes a higher percentage of sex offenders with more than one sentence involving a felony sex conviction, that is, repeat sex offenders. This pattern is especially true since 2000. Nearly 15 percent of SOTP participants released in 2005 are repeat sex offenders.

The percentage of repeat sex offenders in the other two groups has been gradually declining. About 10 percent of the offenders released in 2005 have a prior sex offense conviction.

Child Sex Conviction. SOTP participants consistently have the highest percentage of prior convictions for child sex offenses among the three groups throughout the 10-year period. Slightly more than 60 percent of SOTP participants have been convicted of a child sex offense. The percentages for those willing but not participating have increased from about 40 percent to as high as 60 percent. The percentage for those not willing to participate has remained near 25 percent.

Exhibit 5
Prior Sex Offense Convictions

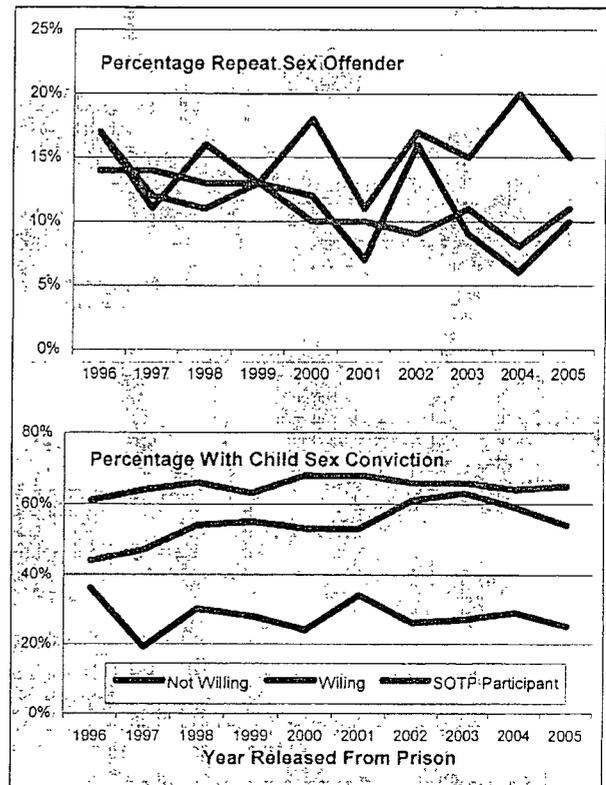


Exhibit 6 displays two additional trends: the average years sex offenders spend in prison and their average age at release.

Average Years in Prison. Compared to those not willing to participate, SOTP participants and those willing but not participating consistently served longer prison terms, and their average years in prison have been increasing. Those not willing to participate have the shortest prison stays; their years in prison are declining slightly.

Age at Release. Those willing but not participating are the same average age at release as SOTP participants. Those not willing to participate are the youngest group. On average, those not willing to participate are about two years younger than SOTP participants; however, their average age is increasing.

Exhibit 7 displays sex offender race and ethnicity characteristics between 1996 and 2005.

European-American. This chart simplifies the description of the ethnic/racial identity by displaying the percentage of European-American sex offenders.⁸ Approximately 90 percent of SOTP participants are European-American; slightly more than 80 percent of those willing but not participating in 2005 are European-American. About 60 percent of sex offenders not willing to participate are European-American.

Hispanic. Hispanics comprise only 5 percent of the participants, between 5 and 10 percent of those not willing to participate, and 15 percent of those willing but not participating in SOTP.

Exhibit 6
Trends in Sex Offender Characteristics

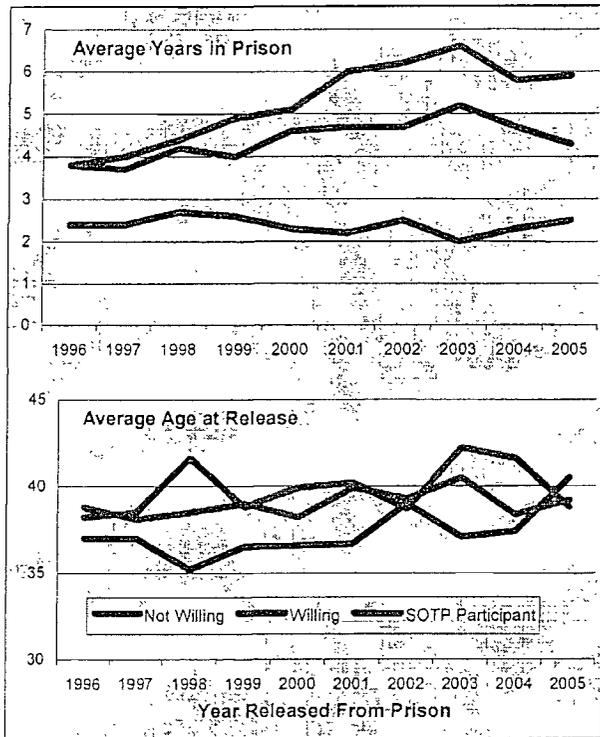
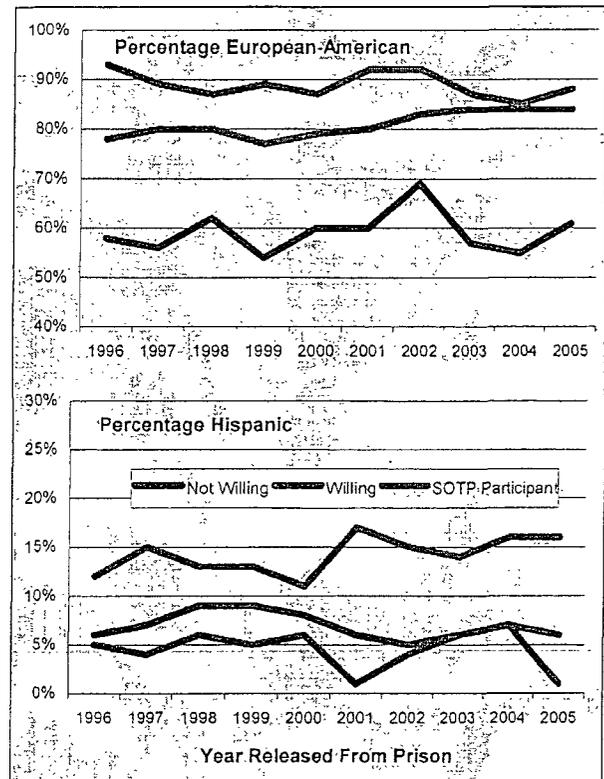


Exhibit 7
Trends in Race and Ethnicity Characteristics



Summary of Trends in Characteristics of the Three Groups of Sex Offenders

- The trends of those willing, but not participating in SOTP, are similar to the program's participants.
- Those not willing to participate in SOTP are most dissimilar from the other groups: increasingly higher risk for reoffense, fewer child sex convictions, shorter prison terms, and fewer European-Americans.

⁸ The four ethnic groups recorded by DOC include European, African, Asian, and Native American.

Exhibit 8 summarizes the characteristics of the three groups of sex offenders released between 1996 and 1999. This time period was selected because it corresponds to the study period that will be used in the SOTP recidivism outcome evaluation. The exhibit supports the previous conclusion that those offenders not willing to participate are significantly different than those willing to participate in SOTP. Some of the largest differences are related to risk for reoffending. The five-year recidivism rates displayed in the next exhibit reinforce this perspective.

Exhibit 8
Characteristics of Sex Offenders
Released From Prison Between 1996 and 1999

Sex Offender Characteristic	Not Willing	Willing	SOTP
Percentage Distribution	17.0%	50.0%	33.0%
Average Felony Risk Score	69.0	44.8	43.5
Average Violent Felony Risk Score	33.9	26.2	25.6
Percentage With Two or More Felony Sex Sentences	13.2%	12.9%	14.0%
Percentage With Child Sex Conviction	28.5%	50.3%	63.8%
Average Years in Prison	2.5	3.9	4.3
Average Age at Release	38.4	40.5	39.6
Race/Ethnicity:			
European-American	57.4%	78.8%	89.2%
African-American	39.1%	13.8%	7.9%
Native-American	2.9%	3.4%	2.1%
Asian-American	0.3%	3.1%	0.8%
Hispanic Origin	7.9%	13.1%	5.0%

Exhibit 9 presents the five-year recidivism rates for the three groups of sex offenders released between 1996 and 1999. The 340 sex offenders not willing to participate in SOTP have much higher recidivism rates than those willing to participate: 63 percent recidivated with a felony offense, 30 percent with a violent felony, and almost 13 percent with a felony sex offense.

Exhibit 9
Five-Year Felony Recidivism Rates

SOTP Final Status	Number of Sex Offenders	Five-Year Recidivism		
		Any Felony	Violent Felony	Felony Sex
Not Willing	340	63.2%	30.0%	12.6%
Willing	984	15.3%	5.7%	0.6%
Participant	655	12.5%	6.0%	1.8%
Total	1,979	22.6%	10.0%	3.1%

Conclusion

Based on the differences in offender characteristics and recidivism rates, the SOTP evaluation must exclude those offenders who were not willing to participate in the program. The comparison group will be derived from those with similar custody levels who were recorded as willing to participate in SOTP but never entered the program.

The Institute's next report will evaluate SOTP outcomes.

For further information, contact Robert Barnoski at (360) 586-2744 or barney@wsipp.wa.gov

Document No. 06-06-1204



Washington State
Institute for
Public Policy

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DIVISION II
2014 MAY 30 PM 12:16
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BY _____
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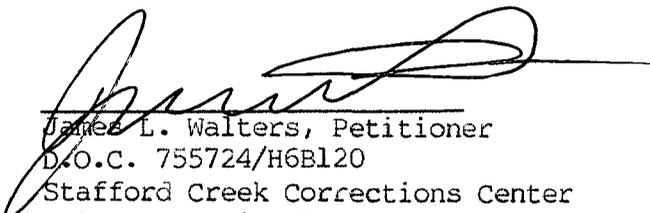
WASHINGTON STATE COURT OF APPEALS
Division Two

In Re the Personal Restraint)
Petition Of:) No.
)
James L. Walters,)
)
Petitioner Pro Se.)
) MOTION TO WAIVE FILING FEE
)
)
)

I, James L. Walters, the Petitioner Pro Se, move the above entitled court for an order allowing the filing of the attached Personal Restraint Petition without the payment of the ordinarily required filing fee. I am making this request in good faith as I am too poor to afford to expend the monies normally required to execute an action such as this.

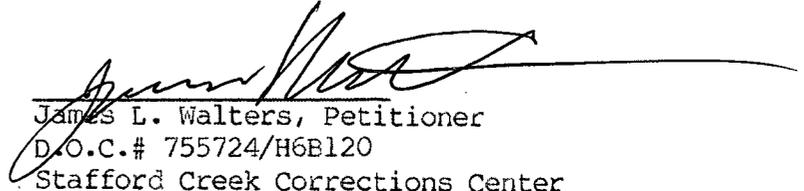
Please see the attached Financial Declaration setting forth my financial situation.

Respectfully Submitted on this 28th day of May, 2014.


James L. Walters, Petitioner
D.O.C. 755724/H6B120
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

of my knowledge.

Respectfully Submitted on this 28 day of May, 2014.

A handwritten signature in black ink, appearing to read 'James L. Walters', is written over a horizontal line. The signature is fluid and cursive, extending to the right beyond the end of the line.

James L. Walters, Petitioner
D.O.C.# 755724/H6E120
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

STATEMENT OF FINANCES

I, James L. Walters, hereby certify that I cannot afford to pay the \$280.00 filing fee normally required to file an action within this court.

1. I request that the filing fee be waived and that I be allowed to file the instant action without the prepayment of the filing fee.

2. My request in this matter is brought in good faith.

3. I am ___ am not employed. My salary or wages amount to \$ 0 per month. My employer is:

4. I do ___ do not have any checking or savings accounts in any financial institutions. The total amount of funds I have in any such accounts of any type is \$ 0.

5. In the past 12 months, I did ___ did not receive any interest, dividends, rental payments, or other money. The total amount of such money I received was \$ 0. The total amount of cash I have other than otherwise indicated above is \$ 0.

6. I own or have an interest in the following real estate, stocks, bonds, notes, and other property (list any property of a present value of more than \$50,00, its current value and the amount, if any, currently owed against said property):

None

FILED
COURT OF APPEALS
DIVISION II
2011 MAY 30 PM 12:16
STATE OF MISSISSIPPI
CLERK

7. I am X am not married. My spouse is X is not employed. His or her salary or wages amount to \$ 3,000.00 per month. He or she owns the following property not already described above:

Single dwelling Residential Home - Mortgaged
She is also the sole provider for our 5 year
old son. Thus, I ask for nothing from her.

8. These following persons depend on me for support. (List name, relationship, and address for each person)

None

9. I owe the following bills. (List name and address of creditors and any amount currently owed)

LFO's pertaining to current case

[IF APPLICABLE - If you are incarcerated in a correctional facility, complete number 10]

10. I have a spendable balance of \$.17 in my prison or institutional account as of the date of this financial statement.

I declare under the penalty of perjury [pursuant to the laws of the State of Washington] that I have read this financial statement, know its contents, and believe all of the information and statements contained herein to be true and correct to the best

COURT CLERK RECEIVED
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BY _____
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WASHINGTON STATE COURT OF APPEALS
Division Two

In Re the Personal Restraint
Petition Of:

James L. Walters,

Petitioner Pro Se.

No.

CERTIFICATE OF SERVICE

Mr. Walters, hereby certifies that a true and correct copy of the attached pleading entitled 'PERSONAL RESTRAINT PETITION' was served upon the following parties in the manner indicated:

[X] Division II Court of Appeals
950 Broadway, Ste 300
Tacoma, WA 98402

[X] U.S. Postal Service
Postage Pre-paid
[] Federal Express
[] G.H. Legal Process
[] Other: _____

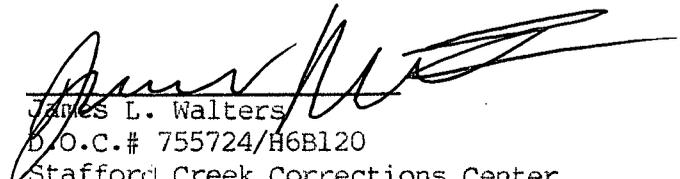
[X] Pierce County Prosecutor
930 Tacoma Ave. S. # 946
Tacoma, WA 98402

[X] U.S. Postal Service
Postage Pre-paid
[] Federal Express
[] G.H. Legal Process
[] Other: _____

James L. Walters, Pro Se
D.O.C.# 755724/H6B120
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

I, James L. Walters, hereby swear under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Respectfully Submitted this 28th day of May, 2014.


James L. Walters
D.O.C.# 755724/H6B120
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520