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OCT 27 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By SA

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION 3**

PERSONAL RESTRAINT
PETITION OF:

JERRY LAIN

Case No.: 303497
PERSONAL RESTRAINT
PETITION

87109-4

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2011 OCT 24 PM 3:47

I. STATUS OF PETITIONER

Jerry Lain, DOC No. 238088 (hereinafter "Petitioner" or "Lain") applies for relief from restraint. He is now incarcerated at Monroe Correctional Complex, Twin Rivers Unit, serving a life sentence under the jurisdiction of the Department of Corrections (DOC) and the Indeterminate Sentence Review Board (herein after, "ISRB" or "Board").

The court in which he was sentenced is Benton County Superior Court, Cause No. 82-1-00219-8 Exhibit 1, Judgment and Sentence

ORIGINAL

1. Petitioner was convicted, at trial, of the crimes of Assault in the First Degree While Armed with a Firearm and Deadly Weapon and Vehicle Prowling in the Second Degree
2. The sentencing Judge was Hon. Albert Yencopal
3. Petitioner's lawyer at sentencing was Joseph Schneider
4. Petitioner appealed the decision to the Court of Appeals Division 3, Case No. 5494-III-2 Exhibit 2
5. Petitioner's Appellate lawyer was Joseph Schneider, WSBA #6719. The decision of the court was not published.
6. Petitioner has not asked a court for relief other than what is written above.

II. GROUNDS FOR RELIEF

This petition is filed pursuant to RAP 16.4(c)(1),(2),(3),(6). No other remedies are available to the Petitioner. Petitioner's restraint is unlawful based on the following grounds:

1. The Governor violated the laws of Washington because she lacked the authority under RCW 9.95.160 to make a parolability decision, overruling the Indeterminate Sentence Review Board;
2. The Governor's order cancelling parole violated Lain's constitutional due process rights under the 14th Amendment, because parole was canceled after a release date had been set and Lain was not given notice or an opportunity to be heard;

3. RCW 9.95.160 is unconstitutional as applied and on its face, violating the 14th Amendment, in this case and on its face because it does not afford an offender the opportunity for a hearing prior to the revocation or cancellation of parole;
4. The Governor's finding of non-parolability violated Lain's First Amendment right to access to the courts, because she used Lain's request for reconsideration of a parolability decision as a factor in her decision to find Lain not-parolable. The Governor's parolability decision also constitutes an abuse of discretion because the decision relied on the nature of the original offense, contained conjecture and speculation and ignored favorable evidence and distorted evidence that was in the record.
5. The ISRB's decision to add 36 months to Lain's minimum term constitutes an abuse of discretion because the Board relied on facts that it had previously reviewed favorably to parole Lain; blindly accepted the Governor's conjecture and distorted facts and ignored the rehabilitative evidence presented at the hearing, in total disregard of the facts.
6. The Governor's order cancelling parole violates Lain's rights to substantive due process, in violation of the 14th Amendment'.

III.

SUMMARY OF THE CASE

A. PROCEDURAL HISTORY

Lain was found conditionally parolable to a Mutual Re-entry Plan on 8/25/09. Exhibit 3, Decision and Reasons (hereinafter, D&R). A second hearing was held on 5/3/10, the result of which was to maintain Lain on conditional parole status. Exhibit 4 . On 6/29/10, the ISRB issued an Administrative Board Decision amending the prior decisions to “now find Mr. Lain parolable.” Exhibit 5 On 11/15/10, the ISRB issued an Administrative Release approving release to the Offender Release Plan dated 11/9/10 and indicating that offender will reside in Iowa. Exhibit 6 On 11/17/10, the Board issued an Administrative Board Decision setting a 12/20/10 date for parole and indicating that DOC had issued an Offender Release Plan on 11/9/10. Exhibit 7, Administrative Board Decision with attachments. On 11/17/10, the ISRB issued an Order of Parole and Supervision Conditions, fixing a 12/20/10 parole date to Iowa. Exhibit 8 On 12/16/10, the Governor issued an Order Cancelling Parole Pursuant to RCW 9.95.160. Exhibit 9 On 3/8/11, the ISRB held a hearing to set a new minimum term and on 6/9/11, the Board issued a decision setting a new minimum term of 36 months. Exhibit 10 , Decision and Reasons

B. STATEMENT OF FACTS

Jerry Lain was convicted of Assault 1° in 1982. (Exhibit 1, Judgment and Sentence) According to the Court of Appeals opinion, the following occurred:

“Shortly before midnight on September 7, 1982, Officer Fitzpatrick of the Richland police department responded to a report of a car prowler in progress. While he was waiting near the scene for another officer to arrive, the suspect started to run. Officer Fitzpatrick chased the suspect into a field into a field where the suspect attacked him. During the ensuing struggle, the suspect

stabbed at the officer's protective vest arm with a knife. Somehow the suspect managed to get the officer's gun, placed it under the officer's vest and pulled the trigger. He shot the officer a second time in the face and then ran. The following morning Mr. Lain was arrested at a nearby campground. There was blood on him and his bloody jeans and shirt were found nearby. The officer's gun was found under his sleeping bag."¹ State v. Lain No. 5494-III-2 (3/22/84) Exhibit 2

Lain's time start in prison was 11/4/82. Exhibit 11, DOC Release Date Calculation printout. The Board found Lain conditionally parolable on 7/23/09 Exhibit 3, ISRB Decision and Reasons. Lain attended the hearing. His counselor also appeared at the hearing and testified that "he is a stabilizing factor on the unit and gets along well with others." (Id.) Among the positive factors cited by the Board were the programming, community support in Iowa, a "very thorough report" from Dr. Colby² (indicating that his testing scores put him well below the cutoff score usually used to differentiate psychopaths from non-psychopaths;" he has done a relative good job of maintaining control over his anger and has attended anger/stress management and non-violent communication." Exhibit 3. The parole was conditional on Lain participating in a mutual re-entry program (MRP); which is a transitional process.³ Some time

¹ There are more detailed versions of the struggle contained in the Governor's Order and ISRB Decision and Reasons; however, those accounts are not documented. According to the trial transcript, on direct examination, the victim stated that he did not recall the second shot, nor did he remember falling to the ground. Exhibit 12, Declaration of Jerry Lain, with trial transcript and police report transcript Also, upon questioning on 9/16/82, by an officer, the victim could not say whether Lain was standing when the second shot was fired. Id., officer report 9/16/82.

² Dr. Colby's 2009 psychological report is attached as Exhibit 13

³ Pursuant to DOC Policy 350.300, attached as Exhibit 14

after the parolability decision, Lain questioned the MRP as unnecessary.⁴ As a result, the Board conducted a second in-person hearing with Lain on 5/3/10. Exhibit 4, Decision and Reasons. All issues were thoroughly discussed and clarified at that hearing. (Id.) Although the Board indicated that he resisted direction and conveyed a sense of entitlement, Mr. Lain testified that he would abide by a MRP and , “Recognizing his efforts to rehabilitate himself over the years through a variety of programming previously documented, and his continued positive behavior in the institution”, the Board determined that Mr. Lain was still releasable on conditional parole. Id.

On 6/29/10, the Board amended its conditional parole decision to direct parole due to “Difficulty for work-release approval to either King or Pierce Counties due to current tension surrounding high profile cases” Exhibit 5, Administrative Board Decision. The Board indicated that its next action would be to submit an out of state parole plan to Iowa only. Id.

In its 7/9/11 minimum term decision, the Board described the “current tension” in the following language:

“Unfortunately, it became apparent during that summer (2010) that a transition through a MRP to work release was not feasible in Washington State due to a recent spate of murders and/or serious assaults of law enforcement officers in the region and the resultant heightened sensitivity to offenders being released from prison – whether to transitional placement such as work release or to parole supervision in the community.” Exhibit 10, 2011 Decision and Reasons

⁴ As per DOC policy 350.300, inmates can decline to participate in MRP's. See Exhibit 14

In reaction to the community tension, on 11/17/10, the Board approved a release plan to Iowa and set the date of parole for 12/20/10. Exhibit 7⁵ The Offender Release Plan (ORP), completed by DOC, and work-ups for out of state parole (prepared by the Board) were extremely positive and described Lain's rehabilitation through the years.⁶ Id. In the Board's Parole Review, the recommended plan was very strong. Id. It acknowledged that, "[Lain] has done extensive research in regards to what this community has to offer, and has found a Chemical Dependency aftercare group that is 8 miles away from his parents home. He is planning on participating in this group if approved." Also, Iowa Department of Corrections has approved Mr. Lain releasing to their state and will accept supervision of him." Id.

⁵ This exhibit includes the following attachments: ISRB Parole and Release Decision Sheet; Administrative Parole or Release Workup; Offender Release Plan-in-Work.

⁶ DOC reported, in the investigation for parole, that "Lain is planning to participate in Chemical Dependency aftercare in the community in Iowa, and has done significant research into locating a group approximately 8 miles from his family's residence. Lain has participated in all of the crime related programming to which he has been referred. He completed Chemical Dependency at WSP. He was reassessed in 2004 and found to be non dependent. Mr. Lain was evaluated again at MCC/TRU. That evaluation stated he was in remission - no treatment necessary. He has completed Stress/Anger Management on 6/6/90, 11/25/98 and 2/27/04. He completed Victim Awareness on 8/18/95 and 11/26/98. He also completed MRT, Non-Violent Communication, Alternatives to Violence and Getting it Right, 4/24/09....Lain has been incarcerated for the past 28 years. He has held a variety of positions and has received positive evaluations from all his supervisors. Lain also has many skills to take with him to the community to assist in finding employment. He has also participated in several of the self help classes and programs available through EDCC and DOC. Lain has received numerous job offers from neighbors of his parents in Iowa. They are involved in the agriculture business and are willing to hire him after release."

After the out of state parole was approved and set, the community and victim protests intensified. On 12/13/10, KOMO news reported that, "A convicted cop shooter is set to be back on the streets in just one week. But his victim says that's repeating the mistakes that led to the murders of four Lakewood police officers. ...[the victim] came to [KOMO] Problem Solvers for help because everyone else told me there was nothing more to be done. But we learned late Monday afternoon (12/13) that Gov. Chris Gregoire does have the ability to cancel or revoke parole. We've contacted her office, asked her to take a look at this case and let us know what she decides."⁷ Exhibit 15, KOMO News article, 12/13/10. On 12/1/10, KOMO reported that, "the fight to prevent the parole of a man convicted of shooting a cop is getting some high-profile help. The Lakewood Police Guild has made it a top priority to keep that convict behind bars...Pain and sorrow still cuts sharply through the Lakewood Police Department for the memory of four officers gunned down by parolee Maurice Clemmons, who was released by another state....'All the speeches and all the memorials – they said, 'We can't let it happen again,'" said Lakewood Police Guild President Brian Wurts. He believes the cases are eerily similar. Exhibit 16

⁸ Numerous Law Enforcement related organizations exhorted citizens to demand that the Governor stop the parole. As an example, the president of the

⁷ Evidently, KOMO informed the Governor of RCW 9.95.160, a rarely used and forgotten statute.

⁸ This is a reference to Maurice Clemons' multiple homicide. As indicated below, his name was brought up directly or indirectly numerous times in Lain's case. Lain and Clemmons bear no resemblance. A Wikipedia biography of Clemons is attached as Exhibit 17 to show that Clemons cannot be compared to Lain - Clemons served 10 years, was mentally ill, referred to himself as "Jesus" and "the beast". Lain has spent 28 stable, programming years in prison and there are no reports of mental illness.

Washington Fraternal Order of Police provided the Governor's website on its own website, urging law enforcement people to email the Governor. The website asked readers to blindly accept the president's email that stated in part: "...Lain attempted to execute [victim]...I along with you, have been to too many line of duty deaths and know the citizens of this state cannot afford to have violent criminals such as Mr. Lain released to society once they demonstrate their unnerving attack on our communities' peace keepers." Exhibit 18 , Objection to Release of Jerry Lain, 12/16/10. WASStateC.O.P.S. urged readers to email the Governor. The few facts included on its information site included, "While incarcerated here in Washington Lain had 18 serious infractions." Exhibit 19, WASStateCOPS protest

In addition to the intense political pressure put on the Governor, the Board received numerous letters Exhibit 10, ISRB Decision and Reasons, 7/9/11 One email, for example, states: "Do you remember the Governor stating "This will not happen again" when four Lakewood police officers were gun down (sic) after Maurice Clemmons was released from jail. Did you have to wait for a directive from the Governor to change your attitudes toward violent criminals" Exhibit 20 12/21/10.

The victim, KOMO news, and the police all combined to pressure the Board and Governor to prevent release. After this pressure from KOMO and the emails on or after 12/13, the Governor conducted a quick review and, on 12/17 issued a decision to cancel the Board's parole decision. Exhibit 9, Governor's Order Cancelling Parole, 12/17/10. The Governor's order was written in the form

of a parole hearing "decision and reasons" in that she made a determination that Lain was not rehabilitated. Among the factors that the governor stressed in her "Statement of Facts and Reason" were the following: 1) the nature of the offense; 2) a misquoted⁹ DOC report involving a claw hammer "attack" in Iowa; 3) a small portion of Dr. Colby's 2009 psychological report;¹⁰ 4) a formal request by Lain to the Board for reconsideration of a parolability decision in 2002;¹¹ 5) a particular concern for the potential for violence against law enforcement (no documentary support was given); 6) a threatening infraction in 2003 and 7) one inflammatory sentence from a 2005 psychological report by DOC psychologist, Dr. Chan.¹² Based on her review, the Governor found Lain not parolable and issued the order "Cancelling Parole."

Lain was not given any notice prior to the Governor's decision nor did he have any opportunity to present his own evidence or rebut the evidence that the Governor cited. On 2/3/11, Lain, through his attorney, sent the Governor and the Board a letter with 26 character references from other inmates who have known Lain for a long time. Exhibit 24, Letters to Governor and ISRB with letters of support. They were all very positive and were cited as an examples of what

⁹ See DOC Admission Summary, Exhibit 21, indicating that Lain self-reported a claw hammer fight which the governor erroneously refers to as an "attack" by Lain

¹⁰ See Exhibit 13 for the full report

¹¹ See Exhibit 22, formal letter of request for reconsideration, with Administrative Board Decision.

¹² Statement regarding original intention "to kill the officer" Elsewhere in that evaluation, Lain is quoted as saying, "I was drunk and scared...I regret that the (police officer) got hurt, but I have to thank him for saving my life." Dr. Chan rated Lain as a medium risk for re-offending in a violent nature, and "Refrain from alcohol and drug use, full time employment, stable lifestyle, and no possession/carrying weapons would decrease his risk." Exhibit 23, psychological report dated 11/23/05.

Lain would have presented to the Governor had a hearing been held or had there been an opportunity to be heard.

In response to Lain's request for a hearing, the Governor, through counsel, rejected the request and indicated that her review of the Board's parolability decision was similar to a Governor's review in California. The Governor expressly indicated that she was reviewing the Board's parolability decision and making her own decision. She indicated that there is no need for a hearing.¹³

As a result of the Governor's decision, the Board was forced to hold a hearing to set a new minimum term. The Board added 36 months to Lain's minimum term. The Board properly characterized the Governor's order as a parolability decision under RCW 9.95.100¹⁴: "The Governor's order previously determined that Mr. Lain's rehabilitation was not complete and that he was not a fit subject for release, citing the statutory test for parole release under RCW 9.95.100. In light of the Governor's decision to deny Mr. Lain's release on parole, the Board was effectively precluded from making its own release determination." Exhibit 10, ISRB Decision and Reasons, 7/9/11

At the minimum term hearing, the Board considered all the material from DOC that it had considered in making its two recent parolability decisions to parole Lain in 2009 and 2010 (Id.) The Board also heard positive testimony from Lain's counselor. Id. The Board also considered the letters of support that had

¹³ For further discussion on California law and how it relates to this case, see fn 25, *infra*.

¹⁴ RCW 9.95.100 states in relevant part, "...The board shall not...release a prisoner, unless in its opinion his or her rehabilitation has been complete and he or she is a fit subject for release..

not previously been in the record. (see Exhibit 24) The only other “new” evidence considered by the Board was the Governor’s statement of “particular concern... that the *potential* for violence would be escalated in any future contact with law enforcement officers, which *could lead to revocation* of his parole release.” Id. (emphasis added) .

In making a decision to add 36 months to Lain’s minimum term, the Board admitted that Lain has programmed extensively and did not ask Lain to participate in any new programs. In fact, the Board recommended transfer to Camp, which would have been part of the MRP¹⁵, which had previously been agreed upon, until blocked by the community protest against Lain.

IV. ARGUMENT

INTRODUCTION

The Indeterminate Sentence Review Board found petitioner, Jerry Lain rehabilitated and parolable and ordered him to be released from prison on 12/20/10. Lain had been incarcerated since 1982 for assaulting a police officer. Prior to release, the victim and other concerned citizens, who had no familiarity with Lain’s 28 years of rehabilitative efforts, complained to the media and KOMO-TV approached the Governor about the protests and pointed out a rarely used statute, RCW 9.95.160, that authorizes the Governor to cancel or revoke

¹⁵ Mutual Re-entry Program, DOC Policy 350.300, Exhibit 14

parole. Three days prior to release, the Governor cancelled Lain's parole pursuant to that statute. The Governor admittedly made a parolability decision, which is not authorized by RCW 9.95.160. Lain was not given notice or an opportunity to be heard and present evidence on his own behalf, which constitutes a violation of procedural due process. The Governor's decision impermissibly relied on conjecture, a distortion of Lain's prison record and Lain's own attempts to use administrative and legal channels to appeal a previous Board decision. The Board abused its discretion when it added 36 months to Lain's term, because it relied on the Governor's conjecture and erroneous facts and ignored every positive fact it had considered in its prior decision to parole Lain. The Board exercised no discretion in blindly basing its minimum term decision on the facts raised in the Governor's order. RCW 9.95.160 is unconstitutional on its face and as applied, because it authorizes the Governor to make a decision cancelling or revoking parole without providing procedures to satisfy due process requirements. The nature of the executive action, arbitrarily overriding the Board on a parolability decision, using an inappropriate statute to make a parolability decision and arbitrarily applying that statute for the first time in 30 years to an offender who has shown that he is rehabilitated, and to base the action on community pressure, shocks the conscience and therefore violates Lain's rights to substantive due process. Lain's parole was cancelled and 36 months added to his minimum term solely because of a public outcry that was ignorant of his 28 years of rehabilitative efforts.

STANDARD OF REVIEW

Where the petitioner has not had a prior opportunity for judicial review, we do not apply the heightened threshold requirements applicable to personal restraint petitions. Instead, the petitioner need show only that he is restrained under RAP 16.4(b) and that the restraint is unlawful under 16.4(c) In re Grantham, 168 Wn.2d 204, 212-13, 227 P.3d 285 (2010), citing In re Isadore, 151 Wn.2d 294, 298-99, 88 P.3d 390 (2004) “A PRP challenging a Board decision on a minimum sentence need not meet the threshold requirements addressed in Cook¹⁶...[and the court will] evaluate [the] PRP by examining only the requirements of RAP 16.4.” In re Cashaw, 123 Wn.2d 138, 149, 866 P.2d 8 (1994). [Cook] does not apply to decisions made by executive officers and agents. In re Grantham, 168 Wn.2d at 214.

“We review issues regarding statutory construction de novo...Constitutional challenges are questions of law and are also reviewed de novo.” City of Redmond v. Moore, 151 Wn.2d 664, 877-78, 91 P.3d 875 (2004).

¹⁶ In re Cook, 114 Wn.2d 802, 792 P.2d 506 (1990) holding that “A PRP alleging a constitutional error must show ‘actual and substantial prejudice,’ while a PRP alleging nonconstitutional error must show a fundamental defect which inherently results in a complete miscarriage of justice.”

1. **The Governor's Order violates Washington law, because the Washington statutory scheme only authorizes the Governor to cancel "parole" and does not authorize the governor to make a parolability decision prior to release.**

RCW 9.95.160 , which the Governor's Order cited as authority, states in full:

This chapter shall not limit or circumscribe the powers of the governor to commute the sentence of, or grant a pardon to, any convicted person., and *the governor may cancel or revoke the parole granted to any convicted person by the board.* The written order of the governor canceling or revoking such parole shall have the same force and effect and be executed in like manner as an order of the Board. (emphasis added)

The powers of the Governor concerning commutation and pardon derive from the Washington constitution¹⁷, while power to cancel or revoke parole are contained in RCW 9.95.160. The power of the Governor to cancel and revoke parole is part of the statutory scheme enacted in 1935 , 1935 Wn. Sess. Laws Ch. 114. (hereafter, "the Act") Ch. 114 created the board of prison terms and paroles, which is the predecessor of the Indeterminate Sentence Review Board.

In the one state court opinion addressing the Governor's power to cancel or revoke parole pursuant to the Act, the court states that, "The effect of the new statute (the Act) ...Even if [prisoners] are admitted to parole, to which they become eligible after the expiration of the terms fixed by the board, they remain subject to its surveillance and the parole may, until expiration [of the maximum sentence], be revoked at the discretion of the board or *cancelled at the will of the*

¹⁷ WA constitution art 3 , sect 9, "pardoning power is vested in the governor..."

governor.” Pierce v. Smith, 31Wn.2d 52, 56, 195 P.2d 112 (1948), citing Lindsey v. Washington, 301 U.S. 397, 57 S.Ct.797, 789, 81 L.Ed. 1182 (1937) (emphasis added)

There is no statutory authority giving the Governor the power to review a parolability decision of the ISRB or to substitute her own parolability decision.¹⁸

RCW 9.95.001(5) defines parole: “Parole means that portion of a person’s sentence... served on conditional release in the community...” RCW 9.95.110 gives the Board authority to parole inmates: “The Board may permit an offender ...[to leave prison] on parole...The board may establish rules under which an offender may be allowed to leave [prison] and may [revoke parole] at its discretion.” However, “[T]he Board shall not release [a prisoner] unless his or her rehabilitation has been complete and he or she is a fit subject for release.” RCW 9.95.100 “[the Board shall give public safety considerations the highest priority when making [decisions regarding parole.] RCW 9.95.009(3) “In making its decision on an inmate's parolability, the ISRB is guided by WAC 381-60-160, which provides: The Board panel shall render a decision of either parolable or not parolable on each case heard under this chapter.” In re Dyer, 157 Wn.2d 358,

¹⁸ Compare the Washington statutory scheme with California. California law provides statutory and constitutional procedures for that state’s governor to review a parole decision by the board. “No decision by the Board shall become effective for 30 days, during which the governor may review and only affirm, modify or reverse the Board decision. (CA constitution Article 5 (Executive), Sec. 8(b)); “During the 30 day period, the governor shall review materials provided by the Board...and if he/she modifies a parole decision, he/she shall send a written statement to the inmate specifying the reasons. Cal Penal Code 3041.2 (a), (b)

139 P.3d 320 (2006) Neither WAC 381 nor RCW 9.95 provide authority or rules for the Governor to make a determination of rehabilitation or parolability.

RCW 9.95.120 provides that the Board may “ order the suspension of parole by issuance of a written order bearing its seal, which order shall be sufficient warrant for [law enforcement to take the prisoner into custody]” RCW 9.95.150 states that “the board shall make all necessary rules and regulations to carry out the provisions of this chapter...”

In short, the Act and current statutes reserve determination of parolability solely to the Board. Neither the Act nor current statutes gives the Governor power to cancel or amend a finding of parolability. The only power the Governor has is to revoke or cancel parole, which, by statutory definition, the offender is serving in the community. Pursuant to RCW 9.95.150, the board has the sole authority to make rules to implement this chapter. . There are no WAC rules that serve to implement a cancellation or revocation of parole by the Governor under RCW 9.95.160. WAC 381-50 pertains to procedures for conducting disciplinary hearings. WAC 381-60 covers procedures for the Board to conduct parolability hearings pursuant to RCW 9.95.100 and 9.95.009(2). WAC 381-70 covers parole revocation hearings; however, WAC 381-70-020, entitled “Authority” derives solely from RCW 9.95.120 through 9.95.130 and 9.95.009(2). “The provisions of this chapter shall apply to offenders granted parole...who are alleged to have violated the terms of their order of parole..” WAC 381-70-030. The only reference to actions by the Governor contained in the Board’s rules is

WAC 381-80-060, which addresses the Governor's requests for pardons, commutations, etc., pursuant to RCW 9.95.260.

The statute is silent on the power of the Governor to make a determination of parolability. The one court decision interpreted RCW 9.95.160 as giving the Governor power to cancel or revoke parole at will, without a hearing.

Pierce v. Smith, supra

In Lain's case, the Governor did not cancel or revoke parole, rather, she made a rehabilitation determination in the manner of a parolability Decision and Reasons by the Board pursuant to RCW 9.95.100.¹⁹ That procedure is reserved solely for the Board. Pursuant to her parolability decision, the Governor cancelled the order of parole release by the Board and then gave the Board the responsibility of setting a new minimum term based on the factors cited in the "facts and reason" section of the Governor's parolability type decision. The Board, in fact, recognized and stated that the Governor had made a de facto parolability decision under RCW 9.95.100, and not a parole revocation or cancellation order under RCW 9.95.160, and therefore the Board conducted a hearing to reset the minimum term as if they, the Board, had properly held a parolability hearing and found that the inmate was not parolable.

The Governor violated the laws of Washington because she did not cancel or revoke parole, rather she made a parolability determination, stating that, "I conclude his rehabilitation is not complete."

¹⁹ Under RCW 9.95.100, the board determines whether the offender is rehabilitated and issues a parolability decision. See also, WAC 381-60.

2. The Order of the Governor violated due process, because the order was issued after Lain had been found parolable, the Board had issued an order of parole and a fixed parole date had been set and Lain did not have an opportunity to be heard and present evidence at a hearing.

If the Governor's action is construed as an action canceling parole, that action occurred after the parole process had become final and a date for release was set. The ordered release date of 12/20/10 triggered due process considerations.

For due process protections to attach to Lain, he must have a liberty interest in avoiding cancelation of parole. In re Bush, 164 Wn.2d 697,701, 193 P.3d 103 (2008). "A liberty interest may arise from the constitution, from guarantees implicit in the word 'liberty', or from an expectation or interest created by the state laws or policies. Id. at 702. Citing, In re Pers. Restraint of McCarthy, 161 Wn.2d 234,240, 164 P.3d 1283 (2007) Where parole decisions are wholly discretionary, there is no liberty interest in *receiving* parole. Id. at 703, citing Greenholtz v. Inmates of Neb. Penal & Corr. Complex, 442 U.S. 1, 7, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979). However, the court has recognized a liberty interest in *avoiding revocation* of both parole and probation. Id., citing Morrissey v. Brewer, 408 U.S. 471, 480, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972) and Gagnon v. Scarpelli, 411 U.S. 778, 781-82, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973).

(emphasis added) The Morrissey Court explained that the liberty interest in avoiding revocation of parole arises from the parolee's justifiable reliance on the conditions of parole." Id. at 703-4. "The due process clause guarantees that the

State will not deprive [an offender] of a protected liberty interest without appropriate procedural safeguards. At bare minimum, procedural due process 'requires notice and an opportunity to be heard.' In re Bush at 704

In Bush, the offender's sentence had been conditionally commuted by the governor.²⁰ Subsequently, the commutation was revoked without a hearing. The State argued that the Governor had the power under the state constitution and statutes "to revoke a conditional pardon without a hearing 'when she is satisfied that the conditions of the pardon are being violated,'" citing Spenser v. Kees, 47 Wn. 276, 91 P. 963 (1907); In re Costello, 22 Wn.2d 697, 157 P.2d 713 (1945) and In re Habeas Corpus of Henry, 21 Wn.2d 283, 150 P.2d 693 (1944) The court stated: "none of these cases analyzed conditional pardons in a due process framework... The cases do not resolve due process questions." In re Bush at fn 2

Although no case has addressed the due process requirements resulting from the Governor canceling parole under RCW 9.95.160, the Washington Supreme Court, in Monahan v. Burdman, 84 Wn.2d 922, 530 P.2d 334 (1975), has held that due process attaches to an offender whose release date has been set by the Board. "The precise question posed here is whether the right of minimal due process hearings, as guaranteed to probationers and parolees under Gagnon v. Scarpelli, (supra) and Morrissey v. Brewer, (supra) should be accorded to proceedings leading up to the cancellation of a previously established, tentative parole release date for reasons other than inability to

²⁰ Pursuant to WASH. CONSTIT art III, §9

develop an acceptable parole rehabilitation plan. ...[W]e believe it should.”

Monahan at 926.

In Monahan, the offender's release date had been set by the Board. While he was out on temporary furlough, he was arrested and returned to prison, where the Board conducted a hearing. The offender was not advised of the reasons for the hearing nor was he given notification of the issues to be considered. He was not given the opportunity to face his accusers or to present witnesses on his behalf. The Board cancelled his tentative release date. (see Monahan at 923-24) The offender contended that the tentative parole date was cancelled without appropriate notice and an adjudicatory hearing. In this unique situation, the court indicated that “the problem...may best be resolved by looking to the analogous situation of a parole revocation proceeding. We have [under Morrissey and Gagnon]...recognized that a parolee is entitled to a preliminary and final revocation hearing.” Id. The court went on to state that “...once parole or promise of parole has been granted in the form of a tentative release date, we are satisfied that the prospective parolee enjoys a unique status and is deserving of minimal due process safeguards before cancellation of that state for reasons other than failure to develop an adequate rehabilitation plan.” Monahan at 929, citing Anderson v. Nelson, 352 F.Supp 1124 (N.D. Cal. 1972) (redetermination of a sentence involves grievous loss of liberty and requires due process)

As indicated above, a liberty interest may arise from an expectation or interest created by the state laws or policies. The court, in Monahan, observed, “The system of establishing in advance a tentative parole release date would

appear to assume that, given a satisfactory parole rehabilitation plan, the prisoner may justifiably rely upon the prefixed release date, so long as he otherwise abides by the conditions of his incarceration.” Monahan at 928; see also In re Pullman, 167 Wn.2d 205, 215, 218 P.3d 913 (2009), contrasting a tentative release date under Monahan to an SRA release date statute. “Since former RCW 9.94A.728 explicitly precludes a prisoner from relying on its terms for an expected release date, our decision in Monahan is inapplicable.” Pullman at 215

In Lain's case, when the Board found him parolable, ordered parole with conditions, and set a parole date of 12/20/10, a liberty interest arose due to the expectation of release. Lain's situation was similar to the offender's in Monohan and analogous to the parolee and probationer in Gagnon and Morrissey. In triggering due process, the revocation of his parole required the state to give Lain an opportunity to be heard and present evidence prior to cancellation of parole. Had Lain been afforded a hearing, he would have presented the 26 favorable references (see Exhibit 24) and would have rebutted the Governor's distortions of the facts of the offense (see Exhibit 12) He could have answered the Governor's speculation of potential risk to law enforcement by describing all of his rehabilitative efforts in detail since the 2003 infraction and showing his strong release plan to his community in Iowa . Although RCW 9.95.160 states that the Governor can cancel parole, as the Court stated in Bush, her action must comport with the requirements of due process. Here, no due process was provided to Lain.

3.. RWC 9.95.160 is unconstitutional on its face and as applied in this case, because Lain's due process rights had attached and the statute has no implementation provision for notice and the opportunity to be heard.

RCW 9.95.160 gives the Governor the power to revoke or cancel parole. As a prerequisite to revocation of parole the Board must have found Lain parolable and have granted him parole and ordered him released. RCW 9.95.100, .040 "When a statute creates an expectancy of release, offenders are entitled to some measure of constitutional protection." In re McCarthy, 161 Wn.2d 234, 164 P. 3d 1283 (2007) citing Greenholtz, 442 U.S. 1 (1979) citing Matthews v. Eldridge, 424 U.S. 319 (1976)). "[The Supreme Court] has recognized a liberty interest in avoiding revocation of both parole and probation." In re Bush, 164 Wn.2d 697, 703, 193 P.3d 103 (2008), citing Morrissey v. Brewer, 408 U.S. 471, 480, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). "Morrissey made it clear that the conditions placed on the particular parolee and the implicit promise those conditions confer, not the initial entitlement to parole, create the liberty interest. (Id., at 703). Given a satisfactory rehabilitation plan, the prisoner may justifiably rely upon the prefixed release date." (Monahan v. Burdman, supra).

The due process required where a release date has been fixed consists of written notice, disclosure of evidence, opportunity to be heard, right to confront and cross-examine adverse witnesses; neutral and detached hearing body and a written statement by the fact-finders as to evidence relied on.

Monahan at 930

There are no provisions in RCW 9.95 or the WAC 381 implementing due process requirements for decisions under RCW 9.95.160.. Nor were any of these procedures provided to Lain prior to revocation of his parole.

In an analogous situation, City of Redmond v. Moore, 151 Wn.2d 664, 91 P.3d 875 (2004), held that statutes providing for mandatory suspension of drivers licenses without an administrative hearing violated procedural due process. In that case, the petitioners challenged RCW 46.20.289 which provided in part that “the department (of licensing) shall suspend all driving privileges of a person when the department receives notice from a court...that the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing...” Id. at 668 The petitioners challenged the constitutionality of the statute. “The essence of their argument is that [the statute] violates due process because it fails to afford any driver facing a suspension of his or her license under that statute an opportunity for an administrative hearing with DOL prior to or after such suspension.” (Moore at 669) As with revocation of parole under RCW 9.95, the court pointed out that “it is well settled that drivers licenses may not be suspended or revoked without procedural due process.” Id. at 670 “Though the procedures may vary according to the interest at stake, “the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” Id.

The Court reviewed the Mathews²¹ factors to determine if the existing procedures were adequate. The Mathews factors are 1) the private interest; 2)

²¹ Mathews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)

risk of erroneous deprivation of such interest; 3) government's interest.

Reviewing those factors, based on the premise that there was a liberty interest resulting in a due process requirement, the court held that the statutes (RCW 46.20.289 and .324(1))²² are contrary to the guaranty of due process because they do not provide adequate procedural safeguards to ensure erroneous deprivation of a driver's interest in the continued use and possession of his or her license." Id. at 677

In Lain's case, it is clearly established law that a liberty interest and consequent due process rights are created in the context of cancellation of a definite release date and parole revocation . When the Board alleges violation of parole, RCW 9.95.120-.125 requires a hearing and WAC 381 provides procedures for a hearing. However, when the Governor cancels or revokes parole, there are no procedural provisions for a hearing other than RCW 9.95.150.²³ She can cancel parole "at will" Pierce v. Smith, 31 Wn.2d 52, supra. This is analogous to the situation in Moore, where that statute provided no opportunity for a hearing.

If , as the Board concedes in its minimum term setting Decision and Reasons (and the Governor in her letter to counsel), the Governor's decision was actually a determination of rehabilitation and parolability decision pursuant to 9.95.100, resulting in the Board's resetting of the minimum term, then, RCW

²² RCW 46.20.324(1) provides: "A person shall not be entitled to a driver improvement interview or formal hearing as hereinafter provided:...(1) When the action by the department is made mandatory by the provisions of this chapter or other law."

²³ "The board shall make all necessary rules and regulations to carry out the provisions of this chapter..."

9.95.160 is unconstitutional as applied, because it only authorized the Governor to make a parole revocation, not a parolability decision. In other words, the Governor, in this case, rather than revoke parole for a violation (or any reason), applied the statute in the same manner as RCW 9.95.100 (making a rehabilitation and parolability determination) and issued a decision in the manner of WAC 381-60-160 ("The Board shall render a decision of either parolable or not parolable on each case heard under this chapter..."). Since there is no authorization for RCW 9.95.160 to be applied as a substitute for RCW 9.95.100, it was unconstitutionally applied.

In Lain's case, the Board found Lain parolable pursuant to 9.95.100 and under its own rules²⁴. The Board issued an order of parole and set a definite release date for 12/20/10. The Governor applied RCW 9.95.160 to redetermine Lain's rehabilitation and risk to the community and then based on her findings, made a determination that Lain was not parolable, the Governor then issued an order cancelling the parolability decision. The Governor also used RCW 9.95.160 to write a decision and reasons on parolability. This was beyond the authority granted to the Governor by RCW 9.95.160 and an unconstitutional application of the statute. In addition, the statute is unconstitutional on its face, because it does not provide procedures to satisfy due process concerns and, therefore, "[N]o set of circumstances exists in which the statute, as currently

²⁴ WAC 381-60 "Procedures for conducting parolability hearings"

written, can be constitutionally applied.”²⁵ Redmond v. Moore at 669, citing In re Turay, 139 Wn.2d 379, 417 n.27, 986 P.2d 790 (1999)

4. Even if RCW 9.95.160 authorizes the Governor to make parolability decisions similar to RCW 9.95.100, the Order Canceling Parole constitutes an abuse of discretion.

A. Construing the Governor’s Order as a parolability decision, the Governor violated Lain’s First Amendment rights of access to the courts when she prominently cited a 2002 request for consideration of a Board parolability decision and used it as a factor in determining non-parolability.

In the “Statement of Facts and Reason,” the Governor prominently stated that, “In an October 2002 letter to the ISRB he wrote the following after parole was denied: Your reasons have no justification...I have done time and should be paroled.”

In In re Addleman, 139 Wn.2d 751, 991 P.2d 1123 (2000) the court addressed a situation where the Board considered the inmate’s litigation and grievance activities when finding him unfit for parole. In that case, the ISRB had been provided with material indicating that “[Addleman] has developed a significant relationship in regards to using the ‘power of the pen’ in order to keep

²⁵ The Governor, in a letter to Lain’s counsel following the cancellation order, pointed to California law in justifying the lack of a hearing. see Exhibit 25 However, contrary to the statutes in Washington, California law provides strict and constitutional procedures for that state’s governor to review a parole decision by the board. “No decision by the Board shall become effective for 30 days, during which the governor may review and only affirm, modify or reverse the Board decision. (CA constitution; During the 30 day days period, the governor shall review materials provided by the Board...and if he/she modifies a parole decision, he/she shall send a written statement to the inmate specifying the reasons In Washington, the decision of the Board was final. The governor is not authorized to conduct a review during a 30 day statutory period. Instead, the Governor canceled the parole decision (not the parole), three days before Lain was set to be released..

from being controlled by DOC. He has filed grievance after grievance which is his right, however, it is noted that he has not filed a grievance for approximately 13 months, which is significant in his case.” Id. at 753 Other material submitted at the parolability hearing stated, “In summary, [offender] has used his intellectual, legal and compositional skills to gain personal or legal advantage while incarcerated.” Id. at 752. The court stated, “ Since the ISRB has access to information about Addleman’s litigation and grievance activities, it at least appears the decision to deny parole was based partially on that knowledge and meets the test for retaliation.” Id. at 754. The court did not require that the adverse ISRB decision be caused solely by the ISRB’s response to Addleman’s protected conduct. “A partial causal connection is all that is required.” Id. at 755 Where the inmate wrote material that could be construed as legal, the Addleman court found that he had a “right of access to the courts[that is] rooted in the petition clause of the First Amendment to the U.S, Constitution. Id. at 753-54, referring to California Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 513, 93 S.Ct 609, 30 L.Ed.2d 642 (1972) The court held that, “the ISRB may not retaliate for the exercise of a constitutionally protected right.” Id. at 755

In Lain’s case, the Governor retaliated for Lain’s exercise of his right to appeal a Board decision. Lain wrote a 2002 letter of reconsideration. In response, the Board issued an administrative decision to “continue on present status.” Exhibit 22 Lain’s letter can easily be considered an attempt to exhaust remedies. . “The appellate court will only grant relief by a personal restraint petition if other remedies which may be available to petitioner are inadequate

under the circumstances...” RAP 16.4(d) See also, WAC 381-30-150, (Minimum Term Challenges): Inmates wishing to challenge adverse information used by the Board for just cause may do so in writing to the Board through their institution counselor....” Lain was attempting an administrative remedy in the 2002 letter and opened it by stating that, “Dear Board: I have received your decisions and reasons. I respectfully *request reconsideration on this matter.*”²⁶ (emphasis added) Lain wrote that “I have taken every self help program offered by DOC.” He also stated that “Officers P.M, M and ACC, all of which have submitted letters of reference, and several other DOC employees can not even believe that I have been locked up [so long]. He ends by saying “ Thank you for your time and consideration” Although he stated some opinions in the letter that the Governor does not agree with in her Cancellation Order, it was Lain’s constitutional right to exhaust the administrative process prior to litigation. As evidenced by its subsequent decisions in Lain’s parolability hearings, the ISRB, rightfully, never considered this letter requesting reconsideration as evidence of lack of rehabilitation, which would have been a violation of the Addleman holding. Yet, the letter was prominently featured in the Governor’s order. It is one of the reasons she came to the conclusion that Lain was not parolable. The action by the Governor, featuring a letter for reconsideration, constitutes retaliation, and creates a chilling effect for any inmate who would desire to challenge a decision by the Board. “The courts are wary of allowing state action that chills First

²⁶ The 2002 Board decision added 60 months to Lain’s minimum term. Exhibit 27, Decision and Reasons

Amendment activities.” Id. at 755 Therefore, just as in Addleman, the Governor violated Lain’s First Amendment right to access to the courts.

B. Since the Governor issued a de facto parolability decision and reasons, that decision constitutes an abuse of discretion, due to the conjecture concerning risk; failure to review all the current evidence and disproportionate reliance on the crime itself and old evidence.

In In re Dyer, 157 Wn.2d 358, 139 P.3d 320 (2006) the Court reviewed a parolability hearing for abuse of discretion, stating that: “Where the ISRB disregards the evidence presented and supports its decision with speculation and conjecture, it abuses discretion.” Id. at 369 In Dyer, the inmate, a sex offender, had submitted a very favorable psychological report but had not participated in the sexual offender treatment program (SOTP). The Board denied parole, stating its concern that Dyer had learned how to manipulate psychological tests. The Board also considered prior decisions, previous psychological evaluations and DOC file materials. The court found that:

“[T]he ISRB’s decision is primarily supported by speculation and conjecture suggesting that Dyer is manipulative, poses a high risk to reoffend and had the ability to learn how to take psychological tests. The ISRB also relied on the unchangeable circumstances of Dyer’s crimes, the same facts that justified the imposition of Dyer’s original exceptional sentence.” Id. at 365

The court found that nothing existed in the record to support the ISRB’s conclusion that Dyer could manipulate tests, and therefore, the Board’s conclusion amounted to conjecture. Id. at 367 The Board also disregarded that Dyer had participated in positive programming. Id. at 368 The court found that,

the Board's statement that "[Dyer's] potential reaction to stress that is of significant concern to the Board as a trigger to more attacks" was not supported by any evidence and the Board's statement was "undermined by Dyer's participation in offender change programming..." Id. Finally, the court stated that "the ISRB's reliance on the nature of Dyer's crimes and disregard of evidence of Dyer's rehabilitation conflicts with its statutory responsibility to consider the evidence presented in determining whether a prisoner has established he is rehabilitated." Id. The court concluded, "The ISRB cannot ignore the evidence presented at the hearing nor rely on mere conjecture in making its decisions." Id. at 369

In Lain's case, there are no statutory or administrative rules guiding the decision making process pursuant to RCW 9.95.160. Since, as the Board admits, the Governor made a parolability decision, by analogy we apply Dyer and the statutory rules as expressed in Dyer to the Governor's decision. In addition, WAC 381-60-160 (Disposition of parolability hearings) lists examples of adequate reasons for a finding on nonparolability.²⁷ The Governor's Order Cancelling Parole relies prominently on conjecture within conjecture. She states: I am particularly concerned that the *potential* for violence would be escalated in any future contact with law enforcement officers that *could lead to revocation of his parole release.*" Exhibit 9 (emphasis added) That statement expressly

²⁷ (1) Active refusal to participate in available program or resources...; (2) serious and repetitive disciplinary infractions...; (3) Evidence of continuing intent or propensity to engage in illegal activity...; (4) Statements or declarations by inmate that he or she intends to reoffend...; (5) Evidence that an inmate presents a substantial danger to the community...

states that there is potential for revocation of parole. That is a truism in every parole case. Compare that statement to the ISRB's statement in Dyer that, "[i]t's the potential reaction to [stress after release] that is of significant concern to the Board as a trigger to more attacks." Id. at 368 Other than the original offense and one threatening infraction eight years ago, there is nothing to support the statement that contact with police is of significant concern. Just as Dyer's positive programming undermined Board conjecture, Lain's extended period of positive programming and his counselor's report of his stabilizing influence, undermine the Governor's speculative statement. The DOC records²⁸ show that Lain got along with, and continues to enjoy excellent relations with, corrections officers. In fact, at the 2009 parolability hearing, where the Board questioned witnesses and Lain had the opportunity to be heard, evidence was submitted that he was a "stabilizing factor on his unit." There is no evidence on record that after the offense was committed that Lain has ever expressed animosity toward the victim. In fact, the 2005 psychological report quotes Lain as thanking the victim for saving his life. Exhibit 23 No animosity or anger has ever been shown toward law enforcement. The Governor focused on the 12/12/03 threatening infraction but glossed over the "positive factors." In other words, the Governor gave great weight to one infraction, but neglected to indicate that after that infraction, Lain participated in Anger/Stress Management, and that he has become a positive influence in his unit. In fact, the record shows that Lain has committed only two

²⁸ See ISRB Decision and Reasons, Offender Release Plan....., Exhibit 7

infractions since 1996 and, other than the verbal threat, he has not shown animosity toward law enforcement.

There can only be three reasons for the governor's speculation concerning Lain's potential risk to law enforcement: 1) the nature of the original offense; 2) the infraction in 2003 involving a verbal threat that was addressed and, after which, Lain has had seven years of excellent relations with staff ; or 3) the unprecedented barrage of protests from the victim, citizens and media comparing Lain to Maurice Clemmons and depicting Lain as an unrehabilitated would be cop killer. While Lain and the Board were investigating a parole plan, in the Board's own words, the "community" would not allow him to parole. (See Exhibit 10) In addition, the Governor's statement is wrapped in speculation. It plainly states that the potential for possible revocation is there. This is precisely the type of speculation that Dyer addressed.

Other statements by the Governor are clearly erroneous: The Governor states that Lain relates a history of "attacking another inmate [in Iowa] with a claw hammer." That statement by the Governor is an example of how she distorts the facts and may not have even read the prison record. The only primary source material on the claw hammer incident is contained in the DOC admission summary dated 12/3/82, where Lain self-reported that "he was involved in a claw-hammer fight approximately one month after his arrival at the [Iowa] penitentiary." Exhibit 21, DOC Admission Summary, dated 12/3/82.

There is nothing in the record about an "attack" by Lain. This is a small, but

representative, example of how the Governor distorts the record and uses it to make a parolability decision.

Another example of distorting the facts occurs where the Governor writes: “after [victim] had fallen to the ground [Lain] stood over the officer and shot him in the face.” Exhibit 9 That statement is not supported by the trial transcript. The officer did not testify that Lain stood over him. Exhibit 12

The Governor is also “concerned about the 2009 forensic risk evaluation by Dr. Colby.” Yet she ignores the fact that the psychologist provides clear disclaimers. Dr. Colby states that he would not vouch for a decision based solely on his report and that the actuarial risk scores are problematic at best. Exhibit 13. She also ignores much of the rest of the “thorough”²⁹ psychological report that the Board carefully reviewed in its 2009 decision finding Lain parolable. Dr. Colby stated, “[Lain’s] comments showed sensitivity to the plight of his victim, even if he did not show the kind of grief and remorse expected of someone who has first come to such realizations. It is worth the ISRB’s understanding that time can play a significant role in dulling the intensity of grief and remorse responses, even for crimes as heinous as the offender’s.”...Offender was quite frank with me in describing the horror of the crime.” Id.

Just as in Dyer, the Governor, as indicated above, gave much more weight to the nature of the crime and to pure speculation on potential revocation issues involving contact with law enforcement than to the positive rehabilitation that has occurred over the past 15 to 20 years. In addition to engaging in

²⁹ As described by the Board in its 2009 Decision and Reasons Exhibit 3

conjecture unsupported by the record, just as with the ISRB, the Governor's reliance on the nature of the crime and disregard of evidence of rehabilitation conflicts with the responsibility found in RCW 9.95 to consider all the evidence in determining whether a prisoner has established he is rehabilitated. See Dyer at 368

Examining the factors under WAC 381-60-160³⁰, Lain has made only one statement that could be construed as a threat and, as in Dyer, reliance on that one statement is undermined by his "participation in offender change programming." There is no current evidence that Lain presents a substantial danger to the community. In fact, the Board's own statements indicate that Lain faces hostility from the public and that release to parole supervision in Washington would put him at risk. (Exhibit 10)

By analogy to ISRB guidelines and related case law, where the Governor disregards the evidence presented, focuses on the unchangeable nature of the crime, does not consider the available evidence and engages in speculation and conjecture to support the parolability decision, she abuses her discretion. In re Dyer at 369

5. The Board abused its discretion in the minimum term setting by adding 36 months to the minimum term.

The standard of review for the ISRB decisions setting new minimum terms is an abuse of discretion In re Locklear, 118 Wn.2d 409, 823 P.2d 1078 (1992),

³⁰ "In making its decision on an inmate's parolability, the ISRB is guided by WAC 381-60-160." In re Dyer at 363

citing In re Myers, 105 Wn.2d 257, 714 P.2d 303 (1986) (other citations omitted) “A minimum term decision falls into this category of ‘decisions on duration of confinement.’” In re Locklear at 418. RCW 9.95.009(2) specifically provides that minimum term decisions outside the SRA ranges must have “adequate written reasons.” Id. There must be some written indication that the Board exercised its discretion in accordance with the applicable statutes and rules.” Id. In order to sustain an abuse of discretion argument, the offender, must show “that the ISRB acted ‘without consideration of and in disregard of the facts.’” In re Addleman, 151 Wn.2d 769, 777, 92 P.3d 221 (2004), citing Ben-Neth v. Indeterminate Sentencing Review Bd., 49 Wn.App. 39, 42, 740 P.2d 855 (1987). In reviewing for abuse of discretion, the court will review the ISRB’s decision with care and will look at factors besides the SRA range. “Regardless of any due process implications, an inmate filing a PRP may be entitled to relief merely by showing that the board failed to follow its own procedural regulations in setting a minimum term.” In re Cashaw, 123 Wn.2d 138, 147-8, 823 P.2d 1078, citing to In re Locklear, 118 Wn.2d at 419-21.

WAC 381-30-050 covers New Minimum Terms set by the Board, although it applies to violators under RCW 9.95.125, which is clearly not the case with Lain. Since the Board, in Lain’s case treated the hearing as one setting a minimum following a determination of non-parolability, it appears that the only rule that would apply is WAC 381-60-160, “Disposition” (for parolability decisions). That rule does not give guidance for the Board in setting a minimum term other than the following: “In parolability hearings, actions may range from no

change in the length of the sentence to redetermination of the original sentence and imposition of an extension of the term not to exceed the maximum term...” The Board had the discretion to add a minimal amount of time, or even no time. The Board should not rely on the unchangeable circumstances of the original crime that justified the imposition of the original exceptional sentence of 240 months (see Exhibit 10). See In re Dyer, supra, at 365

In adding 36 months, the Board based its decision largely on “factors set out by the Governor in her order canceling [Lain’s] parole release.” Exhibit 10 In so doing, the Board ignored positive evidence it had previously considered to parole Lain and considered negative and speculative evidence it had previously found not to be probative regarding parole. This blind adherence to the Governor’s Order constitutes a lack of consideration of evidence and an utter disregard of the facts and therefore constitutes an abuse of discretion.

The Board was concerned “in particular”, with Lain’s 2002 letter of reconsideration to the Board. Id. As argued above³¹, consideration of the request for reconsideration is a violation of Lain’s First Amendment rights, because the Board retaliated against Lain for exercising his constitutional rights. In re Addleman, supra, 139 Wn.2d at 755. The Board also refers to the nature of the crime, which is not supposed to be a major factor when determining rehabilitation. See In re Dyer, supra, 157 Wn.2d at 368. (“The ISRB’s reliance on the nature of [offender’s] crimes and disregard of evidence of [offender’s]

³¹ See PRP Argument, part 4(A)

rehabilitation conflicts with its statutory authority to consider the evidence presented in determining whether a prisoner has established he is rehabilitated.”)

The Decision and Reasons indicates that the Board carefully considered the 2009 actuarial scores. In its previous decision to release Lain, the Board had considered the “very thorough report” from Dr. Colby, rather than limit its consideration to the actuarial test scores (see Exhibit 3, D&R, 8/25/09) The Board ignored the positive portion of the report in addition to the recommendation concerning risk management.³² Dr. Colby recommended a release program that closely resembled the parole plan approved by DOC and the Board prior to the Governor’s Order being issued. The Board ignored Dr. Colby’s recommendation at the minimum term setting.

The Board carefully considered the 23 infractions (18 incidents) mentioned by the Governor; yet in prior decisions, the Board had complimented Lain on his infraction free behavior, positive programming and rehabilitative efforts. Id.

³² For example, “What is important for recidivism risk [for Lain] is that [Lain] did not hide important facts, admitted openly that he had engaged in planned, intentional action, and that he later, tried – albeit in a drunken state – to conceal his acts....[Lain’s] comments showed sensitivity to the plight of his victim, even if he did not show the kind of grief and remorse expected of someone who had first come to such realizations. It is worth the ISRB’s understanding that time can play a significant role in dulling the intensity of grief and remorse responses, even for crimes as heinous as the offender’s.” Exhibit 13, 2009 psychological evaluation

Regarding release: “Perhaps more important than risk estimates is recommendations regarding risk management. The offender wishes to release back to Iowa, his home state...post release supervision will be largely dependent upon resources available in the area where he will live...The offender has expressed concerns about being released back to the county of conviction [where the victim is in the Sheriff’s department]...It would be prudent to make the chances for the offender’s having a successful parole as great as possible [possibly by not releasing to original county]...it will be critically important for [Lain] to engage in outpatient alcohol treatment once he is released, whether that be in a formal[program] or [AA type group]...As he has described it, he has gained skills while in prison that can help him be so employed, and he has expressed an interest in being involved in farming.” Id.

The Board also considered his potential for possible violence specifically against law enforcement, which they had never been concerned with before, until the Governor included that speculative statement in her Order. The Board had previously been concerned and satisfied with his rehabilitative efforts and had seen no evidence concerning future violence specifically against law enforcement.

The Board stated that some of the Governor's factors are static and therefore will never change; however, the Board stressed, in the D&R, that Lain had programmed extensively. That is true and would support a decision of release as opposed to an additional 36 months. The Board also indicated that more alcohol drug treatment would be beneficial, yet, in its own records, previous Decisions and in the Parole Release work-up, it was stated that Lain had participated in alcohol/drug treatment, had been tested at least twice and had been found to be in remission. Exhibit 7, Offender Release Plan. In addition, the parole plan included definite participation in substance abuse treatment and AA. Therefore, the Board's recommendation for more treatment in DOC is in utter disregard of the facts in evidence.

The Board recommends camp for Lain, yet, as the Board certainly knows, ISRB offenders are only eligible for camp if they have been found conditionally parolable by the Board.³³ Besides being in total disregard of the facts, the Board's recommendation makes no sense. They are basically saying: "we (and the Governor) have found you not rehabilitated or even a candidate for parole,

³³ DOC Policy 350.300, Exhibit 14

so we therefore recommend you go to camp, which is for ISRB inmates who have been found conditionally parolable.”

After recommending additional programming to satisfy the need for 36 more months, the Board turns around and states that DOC has eliminated and/or reduced all or most of the programs. Therefore, the Board is knowingly recommending programs that do not exist, in support of an additional 36 months. In addition, the parole release plan included some of the programs, not available in DOC, that the Board is concerned about. see Exhibit 7, Offender Release Plan, “Lain is planning to participate in Chemical Dependency aftercare in the community in Iowa, and has done significant research into locating a group 8 miles from his family’s residence.” Id. Again, to use these conditions that are not available in DOC, but available in the community, to satisfy a 36 month minimum is a total disregard of the facts and an abuse of discretion.

The Board concludes its decision by stating that if Lain follows its recommendations and remains infraction free, the next time they see him, he will have gone ten years without infracting. Exhibit 10 That does not justify the addition of 36 months. In its previous decision, the Board had stated, “Recognizing his efforts to rehabilitate himself over the years through a variety of programming previously documented, and his continued positive behavior in the institution, the Board determined Mr. Lain was still releasable on conditional parole.” Exhibit 4, D&R, 5/30/10 At the 3/08/11 minimum term hearing, the

Board heard only positive evidence³⁴ – Lain’s calm demeanor; favorable letters of character reference; continued positive behavior, etc.. In light of the fact that nothing had changed since the last hearing on 5/30/10, this declaration that ten years infraction free behavior is warranted makes no sense, disregards the facts is clearly arbitrary.

By relying on speculative factors and disregarding the full psychological report and programming over the years, blatantly contradicting its own previous findings and admitting that Lain is ready for camp and a candidate for conditional parole, the Board was simply adding 36 months to the minimum term, because the Governor's order put the Board in an untenable position, where as the sole entity authorized to make parole decisions, it had to enforce an unauthorized executive decision and order.

The Board abused its discretion because it ignored facts clearly established in the ISRB and DOC record and issued an arbitrary decision to add time to the minimum term. Reading the D&R in its entirety, it is clear that the Board had to disregard the facts as presented in the 2009, 2010 and 2011 hearings and the facts and testimony contained in the Offender Release Plan and other parole documents, in order to follow the Governor's Order and add 36 months to the minimum term. This disregard of the facts and evidence in the Board and DOC files constitutes an abuse of discretion in setting the new

³⁴ “[Lain] remained cooperative and cordial with staff... Compared with prior disappointments, Mr. Lain handled the Governor’s cancellation of his parole calmly and maturely. Mr. Lain’s primary concern was to ensure his mother was notified of the decision so she would not drive in winter conditions to pick him up upon his arrival.” Lain was released from segregation after four days and returned to his job in the inmate kitchen.” (Exhibit 10, Decision and Reasons)

minimum term, when under the Board's own rules³⁵, it did not have to add time. No additional time should have been added to the minimum term.

6. The Governor's Order Canceling Parole violates Lain's rights to Substantive due Process

The substantive component of the due process clause protects against certain government actions 'regardless of the fairness of the procedures used to implement them.'" In re Bush, 164 Wn.2d at 706, citing Daniels v. Williams, 474 U.S. 327, 331, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986). In the context of executive action, the United States Supreme Court has emphasized that only the most egregious official conduct can be said to be "arbitrary in the constitutional sense.'" Id., citing County of Sacramento v. Lewis, 523 U.S. 833, 846, 118 S.Ct. 1708, 140 L.Ed.2d 12043 (1998). Only executive action that 'shocks the conscience' is cognizable under the due process clause. Id.

"The touchstone of due process is protection of the individual against arbitrary action of government" County of Sacramento, supra, 523 U.S. at 845. "The substantive due process guarantee protects against government power arbitrarily and oppressively exercised." Id., citing Daniels v. Williams, supra, 474 U.S. at 331. Rules of due process are not, however, subject to mechanical application in unfamiliar territory....That which may, in one setting, constitute a denial of fundamental fairness, shocking to the universal sense of justice, may, in

³⁵ WAC 380-60-160

other circumstances, and in the light of other considerations, fall short of such denial.” County of Sacramento, at 851.

In Bush the Governor revoked the petitioner’s commutation for violation of conditions. The court found that the revocation did not violate substantive due process because the Governor reviewed all the reports of his violation and “she acted logically, in good faith and pursuant to evidence that she believed to be reliable.” Id. at 707

In Lain’s case, the offender had progressed through prison for 28 years and the ISRB had carefully reviewed his records and met with him at least seven times during the course of his incarceration. In the due course of time, after 28 years, much rehabilitative effort, and many other indications of progress, the inmate had been granted parole and a release date. Washington law gives the Board the sole authority to make a parole decision. The United States Supreme Court has explained the nature of a parole decision and the reason why the parole board is entrusted with the authority to make that decision:

“The parole-release decision...is more subtle [than revocation of parole] and depends on an amalgam of elements, some of which are factual but many of which are purely subjective appraisals by the *Board members based on their experience with the difficult and sensitive task of evaluating the advisability of parole release*. Unlike the revocation decision, there is no set of facts which, if shown, mandate a decision favorable to the individual. The parole determination, like a prisoner-transfer decision, may be made ‘for a variety of reasons and often involves no more than informed predictions as to what would best serve [correctional purposes] of the *safety and welfare of the inmate*.” Greenholtz v. Inmates of Nebraska penal and Correctional Complex, 442 U.S. 1, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979), citations omitted, emphasis added

Based on the Board's experience, expertise, multiple meetings with Lain and his counselors, they had determined that the rehabilitation was evident and the release plan to the state of Iowa was strong. The Board had considered Lain's safety and welfare, and the strength of his release plan to his family and community in Iowa, in making its decision. Then at the last minute, there was a frenzy of publicity and protest and the media went directly to the Governor. This frenzy was based on the nature of the crime itself. Not a single protestor was as familiar with Lain's rehabilitation as was the Board. The Governor immediately misapplied a statute that was intended to allow her only to revoke parole. That statute had not been applied in 30 years. Exhibit 18 (statement by president of Washington Fraternal Order of Police) With three days to spare, the Governor reviewed the Board's parolability decision and overruled the Board by issuing a new parolability decision, usurping the authority of the Board. This action by the Governor forced the Board to redetermine Lain's sentence based on no new evidence and no new negative or violative behavior. The Board issued a minimum term setting that made no sense – it just rubber stamped the Governor's Order. In fact, subsequent to the Board's 2010 parolability decision, Lain had behaved in exemplary fashion. (Exhibit 10, minimum term setting D&R). Lain had rehabilitated himself over a period of 28 years and clearly was a candidate for parole before he was seen by the Board in 2009.

The Governor reviewed the case only after KOMO brought RCW 9.95.160 to her attention. The complaining victim and citizens who had virtually no knowledge of the progress made by Lain during his 28 years in prison in

Washington, protested in venomous fashion, comparing Lain to an acknowledged mentally ill monster (Maurice Clemons) who had garnered national headlines in the Lakewood murders. The only factor linking Lain to Clemons was the fact that their victims were law enforcement. The Governor had no evidence on which to state that Lain is especially dangerous to law enforcement in 2010. The general public was sending the Governor protest letters and Law Enforcement were making ignorant statements blindly comparing Lain to Clemons. The only explanation for using this statute for the first time in 30 years, misapplying it and usurping the Board's duties was the intense external pressure brought on the Governor.

The Governor revoked Lain's parole solely because he had assaulted and nearly killed a police officer in 1982. The Governor picked and chose all the negative facts in the prison record and glossed over anything that was favorable and refused to meet with or afford Lain an opportunity to be heard. Anyone who has committed a horrible crime, as Lain did, and has spent 28 years in prison will inevitably have negative things in the record³⁶, although the Board had clearly recognized the trend in Lain's behavior. The Governor's action forced the Board to make a minimum term decision that contradicted the Board's previous decisions. More importantly, the Governor's decision caused Lain's sentence to be redetermined, after his case had previously been carefully considered by the

³⁶ Of Lain's 23 infractions, for example, only 2 have been committed since 1996. The media (and Governor) stressed the number of infractions.

Board. The Governor also ignored the very favorable out-of-state parole plan which had been had been set up.

The Board had approved a release plan that “best served [correctional purposes] of the *safety and welfare of the inmate.*” Greenholtz, supra The release plan also addressed the concerns of the “public” that Lain not be released to this State.

The Governor's action sets a dangerous precedent for the chief executive of this state to misapply a statute and to usurp the Board's authority any time an offender is released and the media, victim and angry citizens, who have no knowledge of rehabilitative efforts, protest. Given the totality of the circumstances, it is clear that the Governor did not act in good faith³⁷, that she ignored favorable evidence, and focused on the negative and misapplied a statute to satisfy public protest that made parole in this state impossible. In this particular case, the chief executive's misuse of RCW 9.95.160 makes a mockery of RCW 9.95 and the ISRB and shocks the conscience.

The Governor's action, followed by the Board's decision, to pull Lain back on the eve of his parole release and to add 36 months to the minimum term constitutes arbitrary government action and therefore violates Lain's substantive due process rights.

CONCLUSION

³⁷ The Governor justified the procedure she followed on California law (Exhibit 26) and would not even consider 26 letters of support from long-time acquaintances on the inmate.

For the reasons argued and presented above, this personal restraint petition should be granted.

V. RELIEF REQUESTED

Lain requests this court to vacate the Governor's Order and reinstate the Board's order of parole.

In the alternative, Lain requests this court to vacate the Board order adding 36 months to the minimum term.

VI. STATEMENT OF INDIGENCE

Petitioner is an indigent prisoner and requests a waiver of expenses necessary to consider the Petition in this court. RAP 16.15(g). A copy of the Inmate Trust Account Statement is included with this petition.

VII. STATEMENT OF PETITIONER'S FINANCES

1. Petitioner requests this court to file this without paying a filing fee.
2. Petitioner has a current spendable income of \$7.80.
3. Petitioner does not ask the court to appoint a lawyer.
4. Petitioner is employed at a salary of approximately \$55 a month.

Petitioner's employer is DOC.

5. During the past 12 months, Petitioner has received no money from a business, profession or other form of self-employment..
6. During the past 12 months, Petitioner has received no rent payments, interest, dividends. He has received a total of \$100. Petitioner has no cash other than the spendable balance in his inmate account.
7. Petitioner owns no real estate or things of value.
8. Petitioner is not married.
9. Petitioner does not support anyone
10. Petitioner has no Legal Financial Obligations.

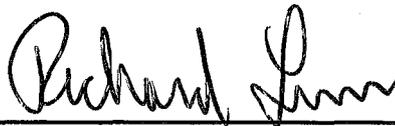
VIII. VERIFICATION

Pursuant to RAP 16.7(a)(6), verification will be filed within 30 days after this petition is filed.

IX. PARTY DECLARATION

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

DATED THIS 24th day of October , 2011



Richard Linn
WSBA #16795
Law Office of Richard Linn, PLLC
12501 Bel-Red Rd. Suite 209
Bellevue, WA 98005
Tel: (425) 646-6017
Fax: (425) 732-9007

CAMCCOLLOUGH

WASHINGTON STATE REFORMATORY

OTRTASTB

TRUST ACCOUNT STATEMENT

6.03.1.0.1.9

DOC# 0000238088 Name: LAIN, JERRY D
 LOCATION: D02-048-D2071

BKG# 1603

Account Balance Today (10/04/2011) Current : 3753.68
 Hold : 15.00
 Total : 3768.68

Account Balance as of 09/30/2011 3750.68

07/01/2011 09/30/2011

SUB ACCOUNT	START BALANCE	END BALANCE
POSTAGE ACCOUNT	0.00	0.00
SPENDABLE BAL	37.35	0.74
SAVINGS BALANCE	3749.94	3749.94
MEDICAL ACCOUNT	0.00	0.00
COMM SERV REV FUND ACCOUNT	0.00	0.00
EDUCATION ACCOUNT	0.00	0.00
WORK RELEASE SAVINGS	0.00	0.00

DEBTS AND OBLIGATIONS

TYPE	PAYABLE	INFO NUMBER	AMOUNT OWING	AMOUNT PAID	WRITE OFF AMT.
TVD	TV CABLE FEE DEBT	12082001	0.00	1.32	0.00
SPHD	STORES PERSONAL HYGIENE DEBT	08022004-2	0.00	0.83	0.00
MEDD	MEDICAL COPAY DEBT	11282005	0.00	1.92	0.00
COPD	COPY COSTS DEBT	02252011	0.00	20.11	0.00
CVCS	CRIME VICTIM COMPENSATION/07112000	08151999	UNLIMITED	253.38	0.00
POSD	POSTAGE DEBT	07282004	0.00	1.17	0.00
COI	COST OF INCARCERATION	08151999	UNLIMITED	2811.83	0.00
POSD	POSTAGE DEBT	12091999	0.00	0.77	0.00
HYGA	INMATE STORE DEBT	04132011	0.00	10.45	0.00
TVD	TV CABLE FEE DEBT	12121999	0.00	0.72	0.00
TVD	TV CABLE FEE DEBT	07092005	0.00	0.78	0.00
POSD	POSTAGE DEBT	08062009	0.00	2.09	0.00
CVC	CRIME VICTIM COMPENSATION	08151999	UNLIMITED	985.59	0.00
COIS	COST OF INCARCERATION /07112000	08151999	UNLIMITED	1013.50	0.00
MISCD	MISCELLANEOUS DEBT	04082005	0.00	4.81	0.00

TRANSACTION DESCRIPTIONS --

POSTAGE ACCOUNT SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
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TRANSACTION DESCRIPTIONS --

SPENDABLE BAL SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
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07/01/2011	CLASS 3 GRATUITY TRU IK 06/11		51.66	89.01
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CAMCCOLLOUGH

WASHINGTON STATE REFORMATORY

OTRTASTB

T R U S T A C C O U N T S T A T E M E N T

6.03.1.0.1.9

DOC# 0000238088 Name: LAIN, JERRY D
LOCATION: D02-048-D2071

BKG# 1603

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
07/01/2011	Deductions-CVC-08151999 D D		(2.58)	86.43
07/01/2011	COPIES LEGAL		(18.40)	68.03
07/05/2011	CRS SAL ORD #6393860STOR		(16.05)	51.98
07/12/2011	CRS SAL ORD #6403469STOR		(4.59)	47.39
07/12/2011	JPAY MEDIA ACCT WITHDRAWAL		(45.00)	2.39
07/23/2011	I05 - TV CABLE FEE		(0.50)	1.89
08/05/2011	CLASS 3 GRATUITY TRU IK 07/11		54.60	56.49
08/05/2011	Deductions-CVC-08151999 D D		(2.73)	53.76
08/09/2011	CRS SAL ORD #6448744STOR		(29.99)	23.77
08/13/2011	I05 - TV CABLE FEE		(0.50)	23.27
08/16/2011	CRS SAL ORD #6460635STOR		(22.61)	0.66
09/02/2011	CLASS 3 GRATUITY TRU IK 08/11		55.00	55.66
09/02/2011	Deductions-CVC-08151999 D D		(2.75)	52.91
09/06/2011	CRS SAL ORD #6490777STOR		(20.16)	32.75
09/10/2011	I05 - TV CABLE FEE		(0.50)	32.25
09/20/2011	CHECK BARKLEIGH PRODUCTIONS, INC.		(24.95)	7.30
09/20/2011	CHECK HARBOR FREIGHT TOOLS		(3.00)	4.30
09/23/2011	POSTAGE JT		(1.08)	3.22
09/27/2011	CRS SAL ORD #6523488STOR		(2.48)	0.74

TRANSACTION DESCRIPTIONS --

SAVINGS BALANCE SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
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TRANSACTION DESCRIPTIONS --

MEDICAL ACCOUNT SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
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TRANSACTION DESCRIPTIONS --

COMM SERV REV SUB-ACCOUNT
FUND ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
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TRANSACTION DESCRIPTIONS --

EDUCATION ACCOUNT SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
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TRANSACTION DESCRIPTIONS --

WORK RELEASE SUB-ACCOUNT
SAVINGS

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
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LIST OF EXHIBITS

1. Judgment and Sentence
2. Court of Appeals Opinion, 5494-III-2
3. ISRB Decision and Reasons, 8/25/09
4. ISRB Decision and Reasons, 5/3/10
5. Administrative Board Decision, 6/29/10
6. ISRB Decision and Reasons, Administrative Release, 11/9/10
7. Administrative Board Decision with attachments
 - a. ISRB Parole and Release Decision Sheet
 - b. Administrative Parole or Release Review Workup
 - c. Offender Release Plan
8. Order of Parole and Supervision Conditions, 11/17/10
9. Governor's Order Cancelling Parole, 12/16/10
10. ISRB Decision and Reasons setting new minimum term, 7/9/11
11. Department of Corrections Release Date Calculation
12. Declaration of Jerry Lain with trial transcript and officer's report
13. Forensic Risk Evaluation (Dr. Colby), 3/27/09
14. DOC 350.300, Mutual ReEntry Program
15. KOMO News Article, 12/13/10
16. KOMO News article, 12/15/10
17. Wikipedia biography of Maurice Clemons
18. Objection to release of Lain by WA Fraternal Order of Police, 12/16/10
19. WASTateC.O.P.S. protest (undated)
20. Letter to Board from Concerned Citizen, 12/21/10
21. DOC Admission Summary, 12/3/82
22. Lain Request for Reconsideration, with Board Administrative Decision, 10/10/02
23. Psychological Report (Dr. Chan), 11/23/05
24. Letters to Governor and ISRB with letters of support, 2/3/11
25. Letter from Governor to counsel, 2/4/11
26. ISRB Decision and Reasons, 8/26/02
27. Psychological Evaluation (Dr. van Dam), 3/18/02

SUPERIOR COURT OF WASHINGTON

COUNTY OF BENTON

THE STATE OF WASHINGTON,)	
)	
Plaintiff,)	
)	
vs.)	No. 82-1-00219-8
)	
JERRY DALE LAIN, AKA)	JUDGMENT AND SENTENCE/
DAVID BRIDGER)	WARRANT OF COMMITMENT
Defendant.)	

I. HEARING

- The above named defendant was found guilty by ~~(plea)~~ (verdict) of the crime(s) of: COUNT I - ASSAULT IN THE FIRST DEGREE (RCW 9A.36.010) WHILE ARMED WITH A FIREARM (RCW 9A.41.025) AND DEADLY WEAPON (RCW 9.95.040) AND COUNT II - VEHICLE PROWLING IN THE SECOND DEGREE (RCW 9A.52.100)
On: November 4 1982.
(Date)
- On November 4 1982, a sentencing hearing was held.
- The following persons were present:
Defendant: JERRY DALE LAIN
Defendant's Lawyer: JOSEPH R. SCHNEIDER
(Deputy) Prosecuting Attorney: CURTIS LUDWIG
- The defendant was asked if there was any legal cause why judgment should not be pronounced and no legal cause was shown.

II. JUDGMENT

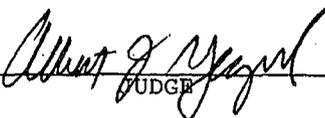
IT IS ADJUDGED that the defendant is guilty of the crime(s) of: COUNT I - ASSAULT IN THE FIRST DEGREE (RCW 9A.36.010) WHILE ARMED WITH A FIREARM (RCW 9A.41.025) AND DEADLY WEAPON (RCW 9.95.040) AND COUNT II - VEHICLE PROWLING IN THE SECOND DEGREE (RCW 9A.52.100)

III. ORDER

IT IS ORDERED that:

- The defendant is sentenced to a maximum term of:
3 1/2 years for the crime of: Assault in the first degree pursuant to RCW 9A.20.020(1)(a)
1 year for the crime of: Vehicle prowling in the second degree pursuant to RCW 9A.20.020(2)
~~_____ years for the crime of: _____~~
and not less than 5 years pursuant to RCW 9.41.025
in such facility as the Department of Corrections shall deem appropriate;
- The sentences are to run (concurrently) (~~consecutively~~);
- Defendant shall pay costs of prosecution taxed at \$ _____;
- Defendant shall pay a fine as follows:
- Defendant is remanded to the custody of the Sheriff of this county to be detained and delivered into the custody of the proper officers for transportation to and confinement in the appropriate facility.

Dated: November 4 1982



JUDGE

IV. WARRANT OF COMMITMENT

THE STATE OF WASHINGTON

TO: The Sheriff of Benton County and to the proper officers of the Department of Corrections.

The defendant has been convicted in the Superior Court of the State of Washington of the crime(s) of: Count I - Assault in the First Degree (RCW 9A.36.010) While Armed with a Firearm (RCW 9A.41.025) and Deadly Weapon (RCW 9.95.040) and Count II-Vehicle Prowling in the Second Degree (RCW 9A.52.100)

and the Court has ordered that the defendant be punished by serving not more than:

Life pursuant to RCW 9A.20.020(1)(a) and not less than 5 years pursuant to RCW 9.41.025

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence and a minimum term to be fixed by the Board of Prison Terms and Paroles.

Dated: November 4 1982

ALBERT J. YENCOPAL
JUDGE

Laura Brader
LAURA BRADER
Clerk



attested by: *Laura Brader*
11-4-82

By _____
Deputy Clerk

I, LAURA BRADER, Clerk of this Court, certify that the above is a true copy of the Judgment and Sentence and Warrant of Commitment in this action on record in my office.

Dated: November 4 1982

Laura Brader
LAURA BRADER
Clerk

By _____

cc: Prosecuting Attorney
Defendant's Lawyer
Defendant
Jail
Institution(3)

FILE
 IN CLERKS OFFICE
 COURT OF APPEALS
 STATE OF WASHINGTON - DIVISION III
 DATE MAR 22 1984
Ray L. Munson
 CHIEF JUDGE

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,)	No. 5494-III-2
)	
Respondent,)	
)	
v.)	Division Three
)	Panel Two
JERRY DALE LAIN aka DAVID)	
BRIDGER,)	
)	
Appellant.)	Filed <u>MAR 22 1984</u>

PER CURIAM--Jerry Dale Lain was convicted of first degree assault and vehicle prowling. He appeals claiming the court erred in failing to grant his motion for change of venue and that he did not receive a fair and accurate competency evaluation. We affirm.

Shortly before midnight on September 7, 1982, Officer Fitzpatrick of the Richland police department responded to a report of a car prowl in progress. While he was waiting near the scene for another officer to arrive, the suspect started to run. Officer [REDACTED] chased the suspect into a field where the suspect attacked him. During the ensuing struggle, the suspect stabbed at the officer's protective vest and arm with a knife. Somehow the suspect managed to get the officer's gun, placed it under the officer's vest and pulled the trigger. He shot the officer a second time in the face and then ran. The following

morning Mr. Lain was arrested at a nearby campground. There was blood on him and his bloody jeans and shirt were found nearby. The officer's gun was found under his sleeping bag.

At a pretrial hearing, Mr. Lain moved for a change of venue on the ground an impartial jury could not be seated in Benton County due to pretrial publicity. This motion was denied; the court indicated, however, that if on voir dire examination of the prospective jurors a sufficient number of them had heard about the case and formed an opinion, the motion would be granted.

Prior to the individual voir dire examination, the judge asked all prospective jurors whether they had heard about the case and formed an opinion. He excused those who indicated they had. During voir dire, two jurors were excused for cause because of their feelings on the insanity defense. A jury was selected without either party exercising all of their peremptory challenges. The motion for change of venue was not renewed following voir dire. The jury found Mr. Lain guilty as charged.

First, Mr. Lain contends the court erred in denying his motion for change of venue because the amount of pretrial publicity created a strong probability of prejudice. He also argues that the pretrial publicity violated the bench-bar-press guidelines. We disagree.

A decision on a motion for change of venue will not be disturbed absent an abuse of discretion. State v. Braun, 82 Wn.2d 157, 166, 509 P.2d 742 (1973); State v. Crudup, 11 Wn. App. 583, 586, 524 P.2d 479 (1974). A change of venue is required when a probability of prejudice is shown. Sheppard v. Maxwell, 384 U.S. 333, 16 L. Ed. 2d 600, 86 S. Ct. 1507 (1966); State v.

Gilcrist, 91 Wn.2d 603, 609, 590 P.2d 809 (1979); State v. Wixon, 30 Wn. App. 63, 68, 631 P.2d 1033 (1981). Factors used by the courts in determining whether a probability of prejudice exists due to pretrial publicity are:

- (1) the inflammatory or noninflammatory nature of the publicity;
- (2) the degree to which the publicity was circulated throughout the community;
- (3) the length of time elapsed from the dissemination of the publicity to the date of trial;
- (4) the care exercised and the difficulty encountered in the selection of the jury;
- (5) the familiarity of prospective or trial jurors with the publicity and the resultant effect upon them;
- (6) the challenges exercised by the defendant in selecting the jury, both peremptory and for cause;
- (7) the connection of government officials with the release of publicity;
- (8) the severity of the charge; and
- (9) the size of the area from which the venire is drawn.

State v. Wixon, supra at 68 (quoting from State v. Crudup, supra at 587).

The record here shows there were 13 radio announcements about the incident. Four of them gave Mr. Lain's name and made reference to his prior convictions and parole violations in Iowa. There were a total of ten newspaper articles relating to the incident. Only four articles mentioned Mr. Lain, two contained pictures of him and two stated he was wanted for parole violation in Iowa where he had been convicted and served time for assault with a deadly weapon.

Applying the criteria of State v. Crudup, supra, we conclude:

- (1) While the contents of some of the radio reports and newspaper articles were inflammatory, the record shows the same information was brought out in testimony at trial;
- (2) Other than the mention of Mr. Lain's criminal record and the pictures of him, the reports

and articles were limited to procedural matters; (3) Over a month and a half elapsed from the time of the dissemination of the reports to the date of trial; (4) and (5) Review of the voir dire examination indicates no apparent difficulty was encountered in selecting the jury; (6) Neither side exercised all of their peremptory challenges and two prospective jurors were excused for cause due to their opinions on the insanity defense; (7) While some of the comments by the chief police officer should not have been made, voir dire examination shows they had no resultant effect upon the potential jurors; (8) and (9) While the charge of first degree assault was severe and the population of the area from which the venire was drawn was small in comparison with the population of the state, there is no evidence that the public was unduly aroused by the publicity even in view of the seriousness of the crime. A review of the voir dire examination shows no difficulty in obtaining competent jurors. Thus, we find no error in denying the motion for change of venue.

Mr. Lain argues the pretrial publicity violated bench-bar-press guidelines. A similar argument was rejected in State v. Butler, 11 Wn. App. 605, 524 P.2d 488 (1974). There local newspapers reported the defendant had a previous record of armed robbery and assault and gave detailed evidentiary facts involving the victim and the crime. Even though the court found a violation of the bench-bar-press guidelines, the denial of defendant's motion for change of venue was affirmed because the voir dire examination indicated no difficulty in obtaining jurors. State v. Butler, supra at 611-12. The same situation exists here.

Moreover, Mr. Lain, while testifying, admitted car prowling

and although he claimed he forgot what happened the night of the incident, he admitted that, thinking the officer was a Viet Cong, he fired the gun and saw the officer on the ground bleeding. He also testified he was never in the military. This testimony coupled with evidence of blood on his person, a bloody shirt and pants and the officer's gun under his sleeping bag, amply supports the jury's verdict of guilt beyond a reasonable doubt.

Second, Mr. Lain contends he did not receive a fair and accurate evaluation as to his competency. We have reviewed the record in light of this contention and find no error. The jury considered the testimony on the insanity defense and rejected it. There was sufficient evidence to support that determination.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.



STATE OF WASHINGTON

INDETERMINATE SENTENCE REVIEW BOARD

4317 Sixth Ave., S.E. * P.O. Box 40907 * Olympia, Washington 98504-0907 * (360) 493-9266
(TDD Relay 1-800-833-6388)

DECISION AND REASONS

NAME: LAIN, Jerry D.
NUMBER: 238088
INSTITUTION: MCC – Twin Rivers Unit
TYPE OF MEETING: .100 Hearing
DATE: July 23, 2009
PANEL MEMBERS: JC & BH
FINAL DECISION DATE: August 25, 2009

This matter came before Jeri Costa and Betsy Hollingsworth, 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 9.95.100. Mr. Lain appeared in person and was represented by attorney Rich Linn. Testimony was provided by Department of Corrections (DOC) Classification Counselor (CC) Nancy Watts.

BOARD DECISION:

This was a Deferred Decision. Based on the requirements of RCW 9.95.009(3) and RCW 9.95.100 and the totality of evidence and information provided to the Board, the Board finds that Mr. Lain is conditionally parolable to a MRP (Mutual Reentry Plan), and adds 24 months to his minimum term to allow for programming. It is the Board's desire that Mr. Lain program through something like the Right Living Program, or a similar program that would allow him to learn community and cognitive skills that would assist him in being successful in the community.

PRE – D&R (3/09)

NEXT ACTION:

Submit a MRP that includes the step down process of a program such as Right Living and, following that, a minimum security camp-type setting with a potential for a Work Release Program, if agreed to by the DOC. Any Work Release Program considered for Mr. Lain should not be in an eastern Washington location. Schedule .100 hearing at conclusion of MRP, or 120 days prior to PERD. Any infractions should be immediately reported to the Board.

JURISDICTION:

Jerry D. Lain is under the jurisdiction of the Board on a 1982 conviction in Benton County Cause #82-1-00219-8 for Assault in the First Degree and Vehicle Prowling. His time start is November 4, 1982. His initial duration of confinement was set by the Board at 240 months. The standard range of the Sentencing Reform Act (SRA) at the time was 77 to 102 months. His maximum term is Life. He has served approximately 318 months in prison.

NATURE OF INDEX OFFENSE(S):

File materials indicate that the crime of jurisdiction involved a witness observing Mr. Lain prowling cars. About the time that the police arrived, the witness yelled at the offender, who began to run, dropping items that had been stolen as he did. The officer pursued Mr. Lain, calling for him to stop. Finally the offender fell to his knees and told the officer to kill him. However, as the officer approached the offender suddenly attacked the officer, stabbing at him with a large knife. While the officer's chest was shielded, the officer's arms were vulnerable and he received some potentially lethal cuts to his arms. When the officer finally managed to wrestle the knife away from the offender's control, the offender grabbed the officer's pistol and fired two rounds at him, hitting him first in the abdomen and then, after the officer had fallen to the ground, shooting him in the face. This crime caused severe and permanent disabling and disfiguring injuries to the victim. Mr. Lain

reportedly then fled to his campground, where he made efforts to conceal his involvement in the crime. The disposition for this crime was that Mr. Lain was found guilty in a jury trial of Vehicle Prowling and Assault in the First Degree against a peace officer. He was sentenced to one year for Vehicle Prowling and to Life in prison for the Assault in the First Degree. The Board is aware that had Mr. Lain actually killed the officer, which could have very easily happened, this would have been a Murder First Degree crime.

PRIOR CRIMINAL CONDUCT:

File materials describe Mr. Lain's history as follows. As a teenager he was discharged from military school at age 15, after nine months. This discharge was because he stabbed two students, one of whom had swung a chair at him. This was not prosecuted; however, Mr. Lain has admitted this incident during a previous .100 hearing. In 1976 Mr. Lain stabbed a man in a knife fight in Iowa and was sent to prison. During that incarceration he permanently blinded an inmate by throwing acid in his face while working in the photo shop. Shortly before that particular incident he had attacked another inmate with a claw hammer. Mr. Lain was paroled on those incidents from Iowa and absconded from Iowa supervision while there were several charges pending, one of which was a parole violation. The current offense for which Mr. Lain is under the jurisdiction of the Board occurred approximately five months after he was released from prison while he was on abscond status from Iowa on his parole supervision.

HISTORY/COMMENTS:

Mr. Lain's last hearing was held on January 10, 2006. At that time the Board found him not parolable and added 60 months to his minimum term.

EVIDENCE CONSIDERED:

In preparation for Mr. Lain's hearing and its decision in this case, the Board completed a review of his DOC and ISRB files. The Board considered all information contained in those

files, including but not limited to: 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; and the psychological evaluation prepared by Dr Faulder Colby. The Board also considered the testimony of the witnesses listed above.

REASONS:

Mr. Lain has spent 27 years in prison. Many of his first years in prison involved multiple violations and infraction behavior. His record indicates there were 25 infractions, with his last infraction being in 2004.

Mr. Lain has programmed and taken a number of courses, including Non-Violent Communication and Victim Awareness classes. He has used his time well, learning work skills and job skills including upholstery, farm work, welding, and some computer classes. Mr. Lain reports that he would like to be able to return to Iowa where his family resides. His mother is 76 years of age and his stepfather is 86 years of age. His plan is to try to eventually release back to them, and they have agreed, according to his classification counselor, to have him live with them.

Mr. Lain had a significant drinking problem from the age of 15, as well as doing some other drugs, including heroin and methamphetamines. He was highly intoxicated according to himself during the time period of the crimes that he committed. During the time that he has been incarcerated, Mr. Lain has been clean and sober according to his account, and while he has not participated in AA (Alcoholics Anonymous) in the institution, he has contacted an AA coordinator in the county in which his parents reside in Iowa, realizing that he may be required to participate in an AA program if he were to be released to the community.

Mr. Lain reportedly has \$3800.00 in his inmate savings account, and he indicates that that would assist him in his release into the community. His parents have made contacts with farming employers in the Iowa community in which he wishes to reside, and he has indicated that there are jobs that are available to him. His classification counselor also indicated that she had followed up on those job offers and, in fact, did confirm them. The Board addressed with Mr. Lain today that although he was actually residing in Iowa at the time of his crime committed in Washington and his family is in Iowa, the decision to accept him under supervision in Iowa is up to the Interstate Compact office and the state of Iowa.

It is the Board's desire that Mr. Lain work his way out into the community under a supervision plan that would include at least a year within the community in Washington where the Board has an opportunity to observe his behavior and address any behavioral issues. In his March of 2009 psychological evaluation Dr. Colby provided a very thorough report, which also indicates that Mr. Lain's scores are in the medium to high range for the LSI-R, and the medium to high range on the VRAG. His PCLR score was 13, which puts him well below the cutoff score usually used to differentiate psychopaths from non-psychopaths. It is Dr. Colby's recommendation that the offender release into a geographical area where there is a higher likelihood that post release supervision resources will be comparable to what they would be in Washington. Dr. Colby also indicates that with his history of alcoholism it will be critically important for the offender to engage in outpatient alcohol treatment once he is released, whether that be in a formal structured program or through a self help program like AA.

File materials indicate that Mr. Lain self admits that for many years he has had an anger problem for many years, which he has attempted to address in prison. He has attended Anger/Stress Management and Non-Violent Communication. It appears from his demeanor today that Mr. Lain has done a relatively good job of maintaining control over his anger. His classification counselor reports that he is a stabilizing factor on the unit and

LAIN, Jerry D. – DOCNUM 238088
Page 6 of 6

gets along well with others. It is the Board's desire that Mr. Lain have time to work his way through lower levels of custody and address issues that will help him to be successful when he releases into the community.

JC:jas

August 11, 2009

CC: Institution
Jerry D. Lain
File
Rich Linn, Attorney
Patty Noble-Desy



STATE OF WASHINGTON
INDETERMINATE SENTENCE REVIEW BOARD
PO BOX 40907 • Olympia, Washington 98504 • (360) 493-9266 FAX (360) 493-9287

DATE: August 11, 2009

TO: Full Board

FROM: JC & BH (Jody)

RE: LAIN, Jerry D. #238088

Panel recommends that Mr. Lain be found conditionally parolable to a MRP, and that 24 months be added to his minimum term to allow for programming.

Next Action: Submit MRP. Schedule .100 hearing at conclusion of MRP, or 120 days prior to PERD.

RECUSED TS

AGREE

DISAGREE

BH 8/17/09
JC 8/12/09
Jody 8-25-09



STATE OF WASHINGTON

INDETERMINATE SENTENCE REVIEW BOARD

4317 Sixth Ave., S.E. * P.O. Box 40907 * Olympia, Washington 98504-0907 * (360) 493-9266
(TDD Relay 1-800-833-6388)

DECISION AND REASONS

NAME:	LAIN, Jerry D.
NUMBER:	238088
INSTITUTION:	MCC - Twin Rivers Unit (TRU)
TYPE OF MEETING:	.100 Hearing
DATE:	March 16, 2010
PANEL MEMBERS:	Lynne De Lano & Dennis Thaut
FINAL DECISION DATE:	May 3, 2010

This matter came before Lynne De Lano and Dennis Thaut 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 9.95.100. Mr. Lain appeared in person and was represented by attorney, Richard Linn. Testimony was provided by Department of Corrections (DOC) Classification Counselors (CC) Nancy Watts and Jeffrey Flick. Others present at the hearing were: Correctional Officer Gomez (observer).

BOARD DECISION:

This was a Deferred Decision. Based on the requirements of RCW 9.95.009(3) and RCW 9.95.100 and the totality of evidence and information considered by the Board, the Board continues to find Mr. Lain conditionally parolable to a MRP and adds no additional time to his minimum term.

PRE - D&R (3/09)

EXHIBIT 4

NEXT ACTION:

Submit a MRP that includes work release which excludes eastern Washington. If Mr. Lain is denied work release or refuses to go to work release, the Board must be notified immediately. At that point, another .100 hearing will be scheduled.

JURISDICTION:

Jerry D. Lain is under the jurisdiction of the Board on a 1982 conviction in Benton County Cause #82-1-00219-8 for Assault in the First Degree. His time start is November 4, 1982. His initial duration of confinement was set by the Board at 240 months. The standard range of the Sentencing Reform Act (SRA) at the time was 77 to 102 months. His maximum term is Life. He has served approximately 328 months in prison and 55 days of jail time.

NATURE OF INDEX OFFENSE(S):

Mr. Lain was found guilty in a jury trial of Assault in the First Degree against a peace officer. He was sentenced to Life in prison for the Assault in the First Degree. This index crime involved a witness observing Mr. Lain prowling cars. About the time that the police arrived, the witness yelled at the offender, who began to run, dropping items that had been stolen as he did. The officer pursued Mr. Lain, calling for him to stop. Finally the offender fell to his knees and told the officer to kill him. However, as the officer approached, Mr. Lain suddenly attacked the officer, stabbing at him with a large knife. While the officer's chest was shielded, the officer's arms were vulnerable and he received some potentially lethal cuts to his arms. When the officer finally managed to wrestle the knife away from his assailant's control, Mr. Lain grabbed the officer's pistol and fired two rounds at him, hitting him first in the abdomen and then, after the officer had fallen to the ground, shooting him in the face. This crime caused severe and permanent disabling and disfiguring injuries to the victim. Mr. Lain reportedly then fled to his campground, where he made efforts to conceal his involvement in the crime.

PRIOR CRIMINAL CONDUCT:

Mr. Lain has admitted during a previous .100 hearing that, as a 15 year old, he was discharged from military school because he stabbed two students, one of whom had swung a chair at him. This offense was not prosecuted. In 1976, Mr. Lain stabbed a man in a knife fight in Iowa and was sent to prison. During that incarceration he permanently blinded an inmate by throwing acid in his face while working in the photo shop. Shortly before that particular incident, Mr. Lain had attacked another inmate with a claw hammer. Mr. Lain was paroled on those incidents from Iowa and absconded from Iowa supervision while there were several charges pending, one of which was a parole violation. The current offense for which Mr. Lain is under the jurisdiction of the Board occurred approximately five months after he was released from prison while he was on abscond status from Iowa on his parole supervision.

HISTORY/COMMENTS:

Mr. Lain's last hearing was held on July 23, 2009. The Board found him conditionally parolable to a MRP and added 24 months to his minimum term to allow for programming. The Board recommended in July, that Mr. Lain participate in a program such as Right Living or a similar program that would allow him to learn community and cognitive skills that would assist him in being successful in the community.

Mr. Lain had submitted to the Board several release plans prior and subsequent to his July, 2009 hearing. He explained in writing and at today's Board hearing why he felt a program such as Right Start would not be beneficial to him and also indicated referral to work release would be counterproductive since he had heard 'no one' gets approved for a MRP through work release.

EVIDENCE CONSIDERED:

In preparation for Mr. Lain's hearing and its decision in this case, the Board completed a review of Mr. Lain's Department of Corrections (DOC) and ISRB files. The Board considered all information contained in those files, including but not limited to: 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; psychological evaluation prepared by Faulder Colby, Ph.D. The Board also considered the testimony of the witnesses listed above.

REASONS:

While the Board acknowledges some of Mr. Lain's concerns about the difficulty of developing MRP's, he seemed to be very rigid in his thinking and had preconceived notions about some specific programs. He appeared to convey resistance to the Board's direction and a sense of entitlement that he did not require a transitional release.

After discussion with the Board, Mr. Lain testified he would be willing to develop and abide by a MRP that included transition to the community. Recognizing his efforts to rehabilitate himself over the years through a variety of programming previously documented, and his continued positive behavior in the institution, the Board determined Mr. Lain was still releasable on conditional parole.

The Board discussed with Mr. Lain the need for a transitional release and that an out-of-state parole prior to transition in this state is unlikely.

Note: Board member Tom Sahlberg recused himself from this decision.

LD:mze
April 21, 2010

CC: Institution/Lain, Jerry/File/Richard Linn, Esq.



STATE OF WASHINGTON
INDETERMINATE SENTENCE REVIEW BOARD
PO BOX 40907 • Olympia, Washington 98504 • (360) 493-9266 FAX (360) 493-9287

DATE: April 21, 2010

TO: Full Board ****FILE IS IN ISIS****

FROM: LD & DT (Melissa)

RE: Jerry LAIN #238088

*TOM IS
REFUSED ON
THIS ONE*

Panel recommends to continue to find Mr. Lain conditionally parolable to a MRP and adds no additional time to his MT. Next action: Submit a MRP that includes work release which excludes Eastern Washington. If Mr. Lain is denied work release or refuses to go to work release, the Board must be notified immediately. At that point, another .100 hearing will be scheduled.

Agree

Disagree

DS
LD

4/21/2010

DS
BRH

[Signature] 5-3-10



STATE OF WASHINGTON
INDETERMINATE SENTENCE REVIEW BOARD

PO BOX 40907 • Olympia, Washington 98504 • (360) 493-9266 FAX (360) 493-9287

DATE: June 29, 2010
TO: MCC-TRU
Attn: Records
SUBJECT: Administrative Board Decision
RE: Jerry LAIN
DOC #238088

An administrative decision of the Board in regard to the above-named individual has been made and is as follows:

The full Board has amended the prior Board decision to **now find Mr. Lain parolable.**

Next action is amended to: **Submit an Out of state parole plan to Iowa only.**

If out of state release/transfer is not approved or accepted by Iowa, the Board will then consider parole to work release.

REASON: Difficulty for work release approval to either King or Pierce counties due to current tension surrounding high profile cases.

I. Seifert
Correctional Records Technician
Indeterminate Sentence Review Board

EXHIBIT 5

Indeterminate Sentence Review Board

Offender Name: **LAIN, Jerry**

DOC#: **238088**

CCB or Pre-84

- √ **ACTIONS**
- 1. Reinstate Offender
 - 2. Continue on Present Status
 - 3. Issue Board Warning
 - 4. Approve special condition(s) submitted by CCO. Issue Addendum
 - 5. Delete special condition Enter Data Issue Addendum
 - 6. Disapprove special conditions submitted by CCO.
 - 7. Suspend Offender. Serve violations specified. Schedule violation hearing
 - 8. Suspend Parole Date pending recommendation from institution.
 - 9. Serve violations specified. Schedule violation hearing. Do NOT Suspend at this time.
 - 10. Issue Suspend and Return Order
 - 11. Order extradition proceedings
 - 12. Schedule .100/.420 hearing*
 - 13. Schedule .100/.420 hearing 120 days prior to PERD/ERD*
 - 14. Set new minimum term**
 - 15. Other: Amend finding to parolable

- √ **ACTIONS for CCB Offenders Only**
- 17. Approve stipulated agreement
 - 18. Deny stipulated agreement
- ACTIONS for Pre-84 Offenders Only**
- 19. Grant Final Discharge and Restoration of Civil Rights*
 - 20. Deny Final Discharge and Restoration of Civil Rights*

DESCRIPTION OF ISSUE(S):

Prior Board decision found Mr. Lain conditionally parolable to a MRP. There has been considerable difficulties in getting Mr. Lain moved to a work release facility. Reasons: Difficulty for work release approval to either King or Pierce counties is due to current tension surrounding high profile cases.

PERTINENT INFORMATION AND RELEVANT DOCUMENTS CONSIDERED:

COMMENTS/RECOMMENDATION:

Due to the above information, the Full Board amends prior decision finding Mr. Lain Conditionally Parolable to a MRP, and now finds Mr. Lain parolable. Next action is amended to: Submit an Out of State release plan to Iowa only. If out of state release/transfer is not approved or accepted by Iowa, the Board would then consider pursuit of parole to a work release facility.

FULL BOARD DISCUSSION AND APPROVAL 6-28-2010.

Hearing Officer: Drop Down Menu

CRT: Irene Seifert

Date: **June 29, 2010**

AGREE		
DECISION #	INITIAL	DATE
#15	LD*	6-29-10

DISAGREE		
DECISION #	INITIAL	DATE

** on behalf of 3 in accordance with entire Board.*
yes

* - Requires 2 signatures
 ** - Requires 3 signatures



STATE OF WASHINGTON

INDETERMINATE SENTENCE REVIEW BOARD

4317 Sixth Ave., S.E. * P.O. Box 40907 * Olympia, Washington 98504-0907 * (360) 493-9266
(TDD Relay 1-800-833-6388)

DECISION AND REASONS

NAME: LAIN, Jerry
NUMBER: 238088
INSTITUTION: ISRB
TYPE OF MEETING: Administrative Release CCB Pre-84
DATE: November 15, 2010
PANEL MEMBERS: BH & DT

BOARD DECISION:

The Indeterminate Sentence Review Board (ISRB) approves release to the Offender Release Plan (ORP) dated November 9, 2010. The Board acknowledges that his Parole date is slightly prior to his PERD as reflected in OMNI of January 8, 2011.

REASONS FOR DECISION:

The offender will reside in Kossuth County at 2909 – 165th Avenue, Burt, Iowa, 50522.

Within 24 hours of release, the offender will report to CCO Misty Sweet at the DOC office located at 100 West Fifth Street, Spencer, Iowa, 51301. The CCO's phone number is (712) 262-5252 extension 18. The Board expects compliance with all conditions and full cooperation with the CCO. The CCO shall immediately report any violations to the Board at isrb@doc1.wa.gov or (360) 493-9266.

HISTORY AND COMMENTS:

Jerry D. Lain is under the jurisdiction of the Board on a 1982 conviction in Benton County Cause #82-1-00219-8 for Assault in the First Degree. His time start is November 4, 1982. His initial duration of confinement was set by the Board at 240 months. The standard range of the Sentencing Reform Act (SRA) at the time was 77 to 102 months. His maximum term is Life.

Mr. Lain was found guilty in a jury trial of Assault in the First Degree against a peace officer. He was sentenced to Life in prison for the Assault in the First Degree. This index crime involved a witness observing Mr. Lain prowling cars. About the time that the police arrived, the witness yelled at the offender, who began to run, dropping items that had been stolen as he did. The officer pursued Mr. Lain, calling for him to stop. Finally the offender fell to his knees and told the officer to kill him. However, as the officer approached, Mr. Lain suddenly attacked the officer, stabbing at him with a large knife. While the officer's chest was shielded, the officer's arms were vulnerable and he received some potentially lethal cuts to his arms. When the officer finally managed to wrestle the knife away from his assailant's control, Mr. Lain grabbed the officer's pistol and fired two rounds at him, hitting him first in the abdomen and then, after the officer had fallen to the ground, shooting him in the face. This crime caused severe and permanent disabling and disfiguring injuries to the victim. Mr. Lain reportedly then fled to his campground, where he made efforts to conceal his involvement in the crime.

BH:mze

November 15, 2010

CC: INSTITUTION
Jerry Lain
FILE



STATE OF WASHINGTON
INDETERMINATE SENTENCE REVIEW BOARD
PO BOX 40907 • Olympia, Washington 98504 • (360) 493-9266 FAX (360) 493-9287

DATE: November 17, 2010

TO: Monroe Correctional Complex – Twin Rivers Unit
Attn: Records

SUBJECT: Administrative Board Decision

RE: Jerry LAIN
#238088

An administrative decision of the Board in regard to the above-named individual has been made and is as follows:

<u>12-20-2010</u>	Date of Parole
<u>11-9-2010</u>	Offender Release Plan

See Parole Order for special conditions.

CC: Comm. Corrections Officer Andrew Scroggs, Interstate

File/mze

EXHIBIT 7

Indeterminate Sentence Review Board Parole and Release Decision Sheet

Offender: Lain, Jerry

DOC#:238088

PRE CCB

Date: November 9, 2010

Parole / Release APPROVED

Parole / Release NOT Approved

Release ASAP (+35 day notification)

Release on PERD/ERD

Other:

CONDITIONS:

1. You are prohibited from having any contact with the victim in your case or any member of his/her family, whether in person, telephonically, through a third party, by mail or email, or any other means of communication without the prior written approval of the ISRB and the court, if this was a court ordered condition of supervision.
2. You must not use, possess or control any mind or mood-altering substances, drugs, narcotics, controlled substances, alcohol or drug paraphernalia without a valid prescription from a licensed physician. You must submit to periodic and random drug and alcohol monitoring through an agency approved by your CCO and sign a full release of information allowing the treatment or monitoring agency to release information to your CCO and the Indeterminate Sentence Review Board (ISRB).
3. You must stay out of establishments, such as bars, taverns, casinos, and cocktail lounges, where alcohol is the primary beverage served.
4. You must enter into, successfully participate in, and complete a Chemical Dependency aftercare program and sign all releases necessary to ensure that the CCO and ISRB can consult with the treatment provider to monitor progress and compliance.
5. You must attend meetings at AA/NA (Alcoholics/Narcotics Anonymous) or some other alcohol and/or drug self-help support group approved by your CCO at least once per week and provide written proof of attendance to your CCO on a weekly basis. The frequency of this requirement may be increased or decreased by your CCO after consultation with your chemical dependency treatment provider.
6. You must participate in Global Positioning System (GPS) tracking if determined appropriate and necessary by your CCO and follow all rules and requirement of the GPS program.
7. You must not enter eastern Washington without prior written approval of your CCO and the ISRB.
8. You must submit to a polygraph examination to be conducted by a polygraph operator certified by the American Polygraph Association when requested by your CCO to verify compliance with your release conditions and sign a full release of information allowing the treatment or monitoring agency to release information to your CCO and the Indeterminate Sentence Review Board (ISRB) for the entire period of your supervision until you are granted a final discharge or this condition is removed by the Board. IN AGREEING TO RELEASE UNDER THIS CONDITION, BOTH THE STATE AND THE OFFENDER STIPULATE THAT THE RESULTS OF ANY POLYGRAPH EXAMINATION SHALL BE ADMISSIBLE IN ANY VIOLATION HEARINGS HELD BEFORE THE ISRB or IOWA authorities.

Indeterminate Sentence Review Board Parole and Release Decision Sheet

- 9. You must follow all directions and conditions imposed by the Iowa Department of Corrections.
- 10. You must register your DNA as directed by the Iowa Department of Corrections.

REASONS FOR DECISION:

The Indeterminate Sentence Review Board authorizes parole for Jerry Lain #238088 as outlined in the ORP dated.

The offender will reside in Kossuth County at:
2909 165th Avenue, Burt, IA 50522

Within 24 hours of release, the offender will report to CCO Misty Sweet at the DOC office located at 100 West Fifth Street, Spencer, IA 51301. The CCO's phone number is (712)262-5252 extention 18. The Board expects compliance with all conditions and full cooperation with the CCO. The CCO shall immediately report any violation to the Board at isrb@doc1.wa.gov or (360) 493-9266.

ADDITIONAL COMMENTS:

APPROVE (initial and date)

NOT APPROVE (initial and date)

BRH 11/15/10

DT 11-15-10

Administrative Parole or Release Review Workup

Offender LAST, First Name: Lain, Jerry	DOC#: 238088	CCB <input type="checkbox"/> PAR <input checked="" type="checkbox"/>
(P)ERD: 01/08/2011	Max Expiration Date: Life	
Hearings Investigator: Monika Fields	CRT: Melissa Zuniga-Espinoza	Report Date: November 9, 2010

Prior Release History:

None

Infraction Behavior Since Last Hearing

Yes – Summary, if yes. No

Click here to enter text.

Outstanding Warrants: Yes No

Explain what affect this warrant will have on ORP, if any.

Click here to enter text.

Community Concerns:

The Victim Liaison is aware of this release and **Community Concerns exist** for this offender.
Community Concerns exist for Eastern Washington.

The Victim Liaison is aware of this release. We are **unaware of any community concerns** at this time.

Recommended Plan for Offender:

The proposed release address is to Mr. Lain's parent's house. The address is 2909 165th Avenue, Burt, IA 50522. He would be living with his mother, Joann Carlson, and Step-father, Ralph Carlson. The Counselor has verified that both parents have agreed to have Mr. Lain reside with them until he is able to support himself. Burt Iowa is a small rural community, and several of the Carlson's neighbors have offered to provide employment for Mr. Lain on their farms. It is further noted that Mr. Lain has done extensive research in regards to what this community has to offer, and has found a Chemical Dependency aftercare group that is 8 miles away from his parents home. He is planning on participating in this group if approved. Mr. Lain has \$3,734 in his mandatory savings account, and will be receiving gate money as well. Mr. Lain has noted that he will be working on obtaining a valid driver's license, but until that time he will use public transportation or solicit the support of his family with transportation needs. Iowa Department of Corrections has approved Mr. Lain releasing to their state and will accept supervision of him.

Hearing Investigator Recommendation:

It is my recommendation that the Board approve the Interstate Compact ORP.

Recommended Conditions:

List any conditions you believe should be imposed and include your justification.

Attach J&S conditions (including appendix), CCO recommended conditions, ORP and last board decision to this workup.

Hearings Investigator recommended conditions

- No contact with victim or victim's family for life.
- Do not enter Eastern Washington without written consent from the ISRB
- Follow all conditions imposed by Iowa's Department of Corrections.

Iowa State Department of Correction's recommended conditions:

- Comply with Iowa State DOC travel restrictions or conditions

Administrative Parole or Release Review Workup

- Comply with Electronic Monitoring conditions
- Register your DNA as directed by the State of Iowa DOC

OFFENDER RELEASE PLAN - IN-WORK

CLASSIFICATION COUNSELOR/FACILITY COMMUNITY CORRECTIONS OFFICER

Status COMPLETED	Last Update Date 11/09/2010	Last Update By aascroggs
----------------------------	---------------------------------------	------------------------------------

ASSIGNED COUNSELOR INFORMATION

1. CC/FCCO Name Watts, Nancy E.	2. CC/FCCO Position Number 0721
3. CC/FCCO Email Address newatts@doc1.wa.gov	4. CC/FCCO Facility MCC-Twin Rivers Unit

OFFENDER INFORMATION

5. DOC Number 238088	6. Offender Name Lain, Jerry Dale	7. Earned Release Date 01/08/2011
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8. County of Origin Benton

<p>8a. Current Commitment - Prefix and Cause Number 82-1-00219-8 Benton County Cause Assault 1st</p> <p>Lain was observed prowling motor vehicles in an apartment parking lot by a private citizen. When police responded, Officer Fitzpatrick was observing Lain when the citizen who had reported the crime yelled at Lain and he ran, dropping items he took from the vehicles. Officer Fitzpatrick gave chase. The chase proceeded through the parking lot into a large vacant field. Fitzpatrick yelled at Lain that he was a police officer and for him to stop. Lain continued to run. Fitzpatrick again yelled and told Lain to give it up. The pursuit continued another two to three hundred yards across the field towards a camp ground where Lain was staying. Finally he dropped down on all fours and told Officer Fitzpatrick "kill me". Officer Fitzpatrick holstered his weapon and approached Lain. Lain then attacked the officer with a knife by attempting to stab him in the chest. The officer was wearing a protective vest under his uniform and as Lain struck the officer numerous times in the chest with the knife, it slid off the vest causing cuts under the left arm and on the left arm. These cuts were deep and life threatening. Officer Fitzpatrick then managed to get both of his hands on Lain's hand wielding the knife and held off the attack. Lain with his left hand, pulled Officer Fitzpatrick's weapon from the holster and deliberately and consciously wedged it under the officer's protective vest and shot the officer in the lower abdomen. Officer Fitzpatrick fell to the ground. Lain then steadied the firearm with his right hand and shot the officer a second time. The second shot hit the officer dead center of the lower jaw with the round traveling inside the jaw, taking tissue and teeth with it and finally lodged in the officer's neck with the bullet actually protruding from the neck. Lain then fled back to the camp ground with the firearm. The officer was able to use his portable radio and call for help. Other officers arrived at the scene and Fitzpatrick was transported to Kadlec Hospital. Lain attempted to hide his bloody clothing in a garbage can in a concrete pipe back at his campsite. He then changed clothes, placed the gun under a sleeping bag and went to sleep. Law enforcement sealed off the campground at daybreak and did a search. When questioned by officers, they noticed blood on his face and drops around his tent. He was then arrested.</p>	
--	--

9. Risk Level <input checked="" type="checkbox"/> Moderate
10. <input type="radio"/> No End of Sentence Review Required?
11. <input type="radio"/> No Current Sex Offense Or Other Current Offense With A Finding Of Sexual Motivation Enhancement?
12. <input type="radio"/> No Offense Requires Registration?
13. <input type="radio"/> No Civil Commitment - Sexually Violent Predator (SVP) Consideration?
14. <input type="radio"/> No Dangerous Mentally Ill Offender (DMIO)?
15. <input type="radio"/> No Is current incarceration a DOSA sentence?
16. <input type="radio"/> No Re-Entry Process Required?
17. <input type="radio"/> No Assigned Facility Re-Entry Specialist?
18. <input type="radio"/> No Assigned Community Re-Entry Specialist?

OFFENDER RELEASE ADDRESS INFORMATION

20. Proposed Address			
Street Address 2909 165th Avenue	Apt	Phone Number (515) 924-3373	Phone Ext
City Burt	State IA	ZipCode 50522-8531	
Contact Person Joann Carlson	Age 77	Relationship to Offender Mother	
Best Time to Contact Days	Phone Number (515) 924-3373	Phone Ext	
Other Living at Residence	Name Ralph Carlson	Age 87	Relationship to Offender Stepfather
Other Living at Residence	Name	Age	Relationship to Offender

Comments
This address is the home of Lain's parents in Burt, IA. Counselor has verified that they are willing to have Lain reside with them until he is able to support himself. They live in a small rural community and several neighbors are willing to provide employment to Lain on their farms.

PURPOSE OF REFERRAL

- 22. Investigation**
- Assign for ISRB Transition Plan Investigation (Pre-1984 Indeterminate Sentence)
 - Assign for Interstate Compact Transition Plan Investigation

OFFENDER NOTIFICATION AND INVESTIGATION INFORMATION

- 23. Yes Treatment Needs and Availability?**
Lain is planning to participate in Chemical Dependency aftercare in the community in Iowa, and has done significant research into locating a group approximately 8 miles from his family's residence. Lain has participated in all of the crime related programming to which he has been referred. He completed Chemical Dependency at WSP. He was reassessed in 2004 and found to be non dependent. Mr. Lain was evaluated again at MCC/TRU. That evaluation stated he was in remission - no treatment necessary. He has completed Stress/Anger Management on 6/6/90, 11/25/98, and 2/27/04. He completed Victim Awareness on 8/18/95 and 11/26/98. He also completed MRT, NVC, AVP and Getting It Right, 4/24/09.
- 24. Yes Community Concerns?**
Lain has no specific conditions of supervision at this time, but will not be allowed any victim contact.
- 25. No Child Protective Services/Adult Protective Services Concerns?**
- 26. Yes Support System?**
Lain has his mother and stepfather and many families in their local community who are willing to provide housing, financial support (if necessary), and employment for him in Burt, IA.
- 27. Yes Available Resources?**
Lain has \$3,734 in his mandatory savings account. He will be receiving \$40 gate money plus an additional \$60 from the ISRB.
- 28. Yes Employment?**
Lain has several promises of employment from neighboring farms in Burt, IA. He also has a significant variety of hand and power tools which are located at his parents home there.
- 29. Yes Transportation?**
Lain will need to secure a valid driver's license and insurance prior to getting his own vehicle. In the interim, he will utilize public transportation or have his family and friends transport him.
- 30. Yes Additional Information?**
Lain has been incarcerated for the past 28 years. He has held a variety of positions and has received positive evaluations from all his supervisors. Lain also has many skills to take with him to the community to assist in finding employment. He has also participated in several of the self-help classes and programs available through EDCC and DOC. Lain has received numerous job offers from neighbors of his parents in Iowa. They are involved in the agriculture business and are willing to hire him after release.

31. Assignment Office
Interstate Compact

* * * * *

ASSIGNMENT OFFICER

Status COMPLETED	Last Update Date 11/09/2010	Last Update By aascroggs
----------------------------	---------------------------------------	------------------------------------

ASSIGNMENT OFFICER INFORMATION	
1. Assignment Officer Name scroggs, andrew	2. Assignment Officer Position Number ck81
3. Assignment Office Email Address interstatecompact@doc1.wa.gov	
6. Assign Case	
CCO Email Address aascroggs@doc1.wa.gov	CCO Position Number ck81
Comments	

* * * * *

COMMUNITY CORRECTIONS OFFICER

Status	Last Update Date	Last Update By
COMPLETED	11/09/2010	aascroggs

ASSIGNED CCO INFORMATION	
1. Assigned CCO Name Scroggs, Andrew	2. CCO Position Number CK81
3. Assigned CCO Email Address aascroggs@doc1.wa.gov	

6. Investigation Review

INVESTIGATION INFORMATION		
7. Investigation Completed On 11/09/2010	8. Investigation Completed By Scroggs	9. Investigation Position Number CK81
10. Yes Residence? P's interstate transfer to Iowa was approved on 11/09/2010. P will be living with his parents, Ralph and Joann Carlson at; 2909 165th Ave.; Burt, IA 50522-8531.		
11. Yes Treatment Needs and Availability? Lain is planning to participate in Chemical Dependency aftercare in the community in Iowa, and has done significant research into locating a group approximately 8 miles from his family's residence. Lain has participated in all of the crime related programming to which he has been referred. He completed Chemical Dependency at WSP. He was reassessed in 2004 and found to be non dependent. Mr. Lain was evaluated again at MCC/TRU. That evaluation stated he was in remission - no treatment necessary. He has completed Stress/Anger Management on 6/6/90, 11/25/98, and 2/27/04. He completed Victim Awareness on 8/18/95 and 11/26/98. He also completed MRT, NVC, AVP and Getting It Right, 4/24/09.		
12. Yes Community Concerns/Access to Potential Victims? Lain has no specific conditions of supervision at this time, but will not be allowed any victim contact.		
13. No Child Protective Services/Adult Protective Services Concerns?		
14. Yes Support System? Lain has his mother and stepfather and many families in their local community who are willing to provide housing, financial support (if necessary), and employment for him in Burt, IA.		
15. Yes Available Resources? Lain has \$3,734 in his mandatory savings account. He will be receiving \$40 gate money plus an additional \$60 from the ISRB.		
16. Yes Employment? Lain parents, Ralph and Joann Carlson, are willing to provide housing and financial support for him until he is able to support himself. Lain has a variety of skills that provide him with many opportunities for employment. Several neighbors of the Carlson's have large farms		
17. Yes Transportation? Lain will need to secure a valid driver's license and insurance prior to getting his own vehicle. In the interim, he will utilize public transportation or have his family and friends transport him.		
18. Yes Additional Information? IA would like the following conditions be impose; travel restrictions, electronic monitoring and DNA registration. **Please note** this is an ISRB case and this ORP will be forwarded to the ISRB for final conditions and approval		
19. No Sex Offender Registration Level has been Determined?		
20. No Civil Commitment - Sexually violent Predator (SVP) Referral Status?		

21. No **Dangerous Mentally Ill Offender Consideration?**

CCO RECOMMENDATION INFORMATION

22. **CCO Supervisor Email Address**

23. **CCO Recommendation**

Approve Transition Plan - Investigation Complete

Comments

ISRB case

please see above listed additional conditions recommended by IA

DIFFERENT RELEASE ADDRESS INFORMATION

24. No **Release Address is different than proposed address?**

REPORTING INSTRUCTIONS INFORMATION

25. **Upon release, offender should be directed to report to the Department of Corrections located at**

Street Address 100 W 5th St	Phone Number (712) 262-5252	Phone Ext 18	
Suite	City Spencer	State IA	ZipCode 51301

Comments

Report In Person To

CCO

CCO Name Misty Sweet	Phone Number (712) 262-5252	Phone Ext 18	
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STATE OF WASHINGTON
INDETERMINATE SENTENCE REVIEW BOARD
PO BOX 40907 • Olympia, Washington 98504 • (360) 493-9266 FAX (360) 493-9287

IN THE MATTER OF:

Name: LAIN, Jerry
DOC#: 238088 Date of Birth: 6/13/1957
Time Start: 11/4/1982
Date of Sentence: 11/4/1982
Max Expiration: Life
Statutory Maximum Term: Life
County: Benton Cause #:82-1-00219-8

**ORDER OF PAROLE AND
SUPERVISION CONDITIONS**

PRE Offenders

**RCW 9.95.120
RCW 72.04A.070**

Parole Date: 12/20/2010

The Indeterminate Sentence Review Board (ISRB) of the state of Washington, after carefully reviewing all available information, hereby orders the Secretary of the Department of Corrections (DOC) to release on parole supervision Jerry LAIN, DOC #238088, an inmate of a Washington State Correctional Facility.

The ISRB or the DOC Community Corrections Officer (CCO) may issue an order directing arrest and detention by suspending parole pending a review as provided for RCW 9.95.120.

PAROLE IS HEREBY GRANTED SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. **If you are a convicted sex offender, you MUST register as a sex offender with the Sheriff of the county where you reside. You must register within 24 hours of your release.**
2. Upon release from the Correctional Facility, you must report within one business day to your CCO, or any other person designated by DOC. Thereafter, you must report as directed.
3. You may not leave the state of Washington without prior written permission from the ISRB and your supervising CCO.
4. You must obey all laws and court orders, and abide by any special conditions imposed by the ISRB.
5. You are prohibited from owning, possessing, receiving, shipping, or transporting a firearm, deadly weapon, ammunition or explosives.
6. You must submit to a search of your person, residence, vehicle and/or possessions, when requested by a CCO.
7. You must consent to DOC home visits to monitor compliance with supervision. Home visits include access for the purpose of visual inspection of all areas of residence in which the offender lives or has exclusive/joint control/access.
8. Pursuant to RCW 9.96.050, as amended by SB 5060 (1993), you will be issued a Final Discharge and Restoration of Civil Rights on Benton Cause #82-1-00219-8 only when you have completed three years of parole in the community. Time spent in total confinement on a subsequent conviction while on parole does not apply toward the three year date. Should your parole be revoked prior to completion of three years in the community, a Final Discharge will not be granted. If your sentence expires before you have spent three years on parole in the community, you may request a Final Discharge. In these cases, granting a Final Discharge remains discretionary with the Board.
9. Abide by any additional conditions listed below:

**ADDITIONAL CONDITIONS
RCW 72.04A.070 and RCW 9.95.120**

LAIN, Jerry

238088

Offender Name:

DOC#:

Additional Specific Condition(s):

- A. You are prohibited from having any contact with the victim in your case or any member of his/her family, whether in person, telephonically, through a third party, by mail or email, or any other means of communication without the prior written approval of the ISRB and the court, if this was a court ordered condition of supervision.
- B. You must not use, possess or control any mind or mood-altering substances, drugs, narcotics, controlled substances, alcohol or drug paraphernalia without a valid prescription from a licensed physician. You must submit to periodic and random drug and alcohol monitoring through an agency approved by your CCO and sign a full release of information allowing the treatment or monitoring agency to release information to your CCO and the Indeterminate Sentence Review Board (ISRB).
- C. You must stay out of establishments, such as bars, taverns, casinos, and cocktail lounges, where alcohol is the primary beverage served.
- D. You must enter into, successfully participate in, and complete a Chemical Dependency aftercare program and sign all releases necessary to ensure that the CCO and ISRB can consult with the treatment provider to monitor progress and compliance.
- E. You must attend meetings at AA/NA (Alcoholics/Narcotics Anonymous) or some other alcohol and/or drug self-help support group approved by your CCO at least once per week and provide written proof of attendance to your CCO on a weekly basis. The frequency of this requirement may be increased or decreased by your CCO after consultation with your chemical dependency treatment provider.
- F. You must participate in Global Positioning System (GPS) tracking if determined appropriate and necessary by your CCO and follow all rules and requirement of the GPS program.
- G. You must not enter eastern Washington without prior written approval of your CCO and the ISRB.
- H. You must submit to a polygraph examination to be conducted by a polygraph operator certified by the American Polygraph Association when requested by your CCO to verify compliance with your release conditions and sign a full release of information allowing the treatment or monitoring agency to release information to your CCO and the Indeterminate Sentence Review Board (ISRB) for the entire period of your supervision until you are granted a final discharge or this condition is removed by the Board. **IN AGREEING TO RELEASE UNDER THIS CONDITION, BOTH THE STATE AND THE OFFENDER STIPULATE THAT THE RESULTS OF ANY POLYGRAPH EXAMINATION SHALL BE ADMISSIBLE IN ANY VIOLATION HEARINGS HELD BEFORE THE ISRB or IOWA authorities.**

**ADDITIONAL CONDITIONS
RCW 72.04A.070 and RCW 9.95.120**

LAIN, Jerry
Offender Name:

238088
DOC#:

Additional Specific Condition(s):

- I. You must follow all directions and conditions imposed by the Iowa Department of Corrections.
- J. You must register your DNA as directed by the Iowa Department of Corrections.

INDETERMINATE SENTENCE REVIEW BOARD

11/17/2010
Date:

F2A7AA61928E454
Betsy R. Hollingsworth
 DocuSigned By: Betsy R. Hollingsworth
Member's signature

E0D9A11AF5F1413
Dennis L. Thaut
 DocuSigned By: Dennis L. Thaut
Member's signature

I have read, or have had read to me, the foregoing conditions of my parole and have been given a copy; I fully understand and I agree, in consideration of granting of parole, to observe and abide by such conditions. I FURTHER UNDERSTAND THAT I AM ALSO ON SUPERVISION FOR THE FOLLOWING CONVICTION(S): County Cause#

Date:

Offender's signature:
 Jerry LAIN

Offender's name:

Witness's signature:

CHRISTINE O. GREGOIRE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

GOVERNOR'S ORDER CANCELING PAROLE PURSUANT TO RCW 9.95.160

IN THE MATTER OF:

Name: LAIN, Jerry
DOC# 238088 Date of Birth: 6/13/1957
Time Start: 11/4/1982
Date of Sentence: 11/4/1982
Max Expiration: Life
Statutory Maximum Term: Life
County: Benton County Cause #82-1-00219-8

ACTION: ISRB Parole Order Cancelled

I, Christine O. Gregoire, Governor of the state of Washington, by virtue of the power vested in me by RCW 9.95.160, do hereby order and direct:

The Order of the Indeterminate Sentence Review Board (ISRB) of the state of Washington in this matter, dated November 17, 2010, and attached hereto as Attachment A is cancelled. The Secretary of the Department of Corrections (DOC) is ordered not to release Jerry LAIN, DOC #238088. The parole granted to Mr. Lain by the ISRB in this order and any prior orders is cancelled.

STATEMENT OF FACTS AND REASON:

In 1982, Jerry Lain was observed prowling cars. About the time that the police arrived, a witness yelled at the offender, who began to run, dropping items that had been stolen. The officer pursued Mr. Lain, who eventually fell to his knees and told the officer to kill him. As the officer approached, Mr. Lain suddenly attacked the officer and stabbed him with a large knife. While the officer's chest was shielded, the officer's arms were vulnerable and he received potentially lethal cuts to his arms. When the officer wrestled the knife away, Mr. Lain grabbed the officer's pistol and fired two rounds at him, hitting him first in the abdomen and then, after the officer had fallen to the ground, stood over the officer and shot him in the face. This crime caused severe and permanent disabling and disfiguring injuries to the victim. As noted in the psychological report dated November 23, 2005, "There was no question that he intended to kill the office[r]." Mr. Lain fled and was later discovered attempting to conceal his involvement in the crime. Mr. Lain was convicted in Benton County Superior Court of Assault in the First Degree and Vehicle Prowling. His sentence start was November 4, 1982, and his maximum term is life.

This offense, for which Mr. Lain is under the jurisdiction of the ISRB, occurred approximately five months after he was released from prison in Iowa. Mr. Lain had absconded from Iowa where he was on parole supervision. Mr. Lain has stated that he decided to fight the police officer who responded to the vehicle prowling report instead of going back to prison.

Mr. Lain has related a history that includes stabbing fellow students in a fight at age 15 and, while incarcerated in Iowa, permanently blinding an inmate by throwing acid in his face while working in the photo shop and attacking another inmate with a claw hammer.

While incarcerated in Washington, Mr. Lain has been found to have committed 23 infractions in 18 incidents, including three that involved threatening. On December 12, 2003, Mr. Lain was found to have threatened staff of the correctional institution. During the hearing he maintained that he would hurt staff when he was released from segregation or the prison. He stated that he would attack staff in the parking lot when he was released from prison. He has not been found to have committed an infraction since 2004.

A March 2009 psychological evaluation indicates Mr. Lain's scores are in the medium to high range for the LSI-R and the medium to high range on the VRAG. Although Mr. Lain had a history of anger problems, he attended Anger/Stress Management and Non-Violent Communication.

I considered various positive factors in reviewing whether Mr. Lain is suitable for parole release at this time. While incarcerated in Iowa, he earned a General Equivalency Diploma. He has completed community college and other educational courses. He obtained vocational experience in upholstery, farming, and welding. He has availed himself of Non-Violent Communication, Victim Awareness and Anger/Stress Management classes, the Getting it Right program, and other programs.

However, I am concerned by a 2009 forensic risk evaluation that places Mr. Lain in the group of offenders at a risk of recidivism for both general and violent crimes in the range of medium to high risk. I understand risk assessment tools must be considered in light of the particular circumstances. My concern is based on a number of additional factors specific to the circumstances of this case as reflected in the ISRB record. These include the nature and gravity of the crime for which he is incarcerated; his behavior and verbalization of threats during incarceration; and his statements to the ISRB and others that reflect resistance to the ISRB's direction and a sense of entitlement to release. The offender stated that he decided to fight instead of going back to prison when he was approached by a police officer while on parole from Iowa. Since that time, during his incarceration, Mr. Lain has stated his view that it is unfair that he is incarcerated. For example, in a letter dated September 12, 1999, he wrote to an official at the Airway Heights facility that ISRB decisions changing his minimum sentence were "unacceptable." He stated that such decisions were cruel and unusual punishment and civil commitment without due process. He also wrote: "A few years ago the ISRB issued gold seals (discharges) to several people. Now, the ISRB has been revoking the discharges and bringing people back to prison for no reason. Once a person has received a discharge, how can it be revoked. This is now a liberty issue . . ." In an October 1, 2002, letter to the ISRB he wrote

the following after parole was denied : "Your reasons have no justification, only the underlying tone of warehousing because the victim was a police officer, as you so stated on tape. I believe that is a double standard, and there is such a thing as Equal protection under the law," and "I have done the time and should be paroled." He has also at times resisted the direction of the ISRB. In its decision following a hearing on March 16, 2010, the ISRB noted: "While the Board acknowledges some of Mr. Lain's concerns about the difficulty of developing MRP's, he seemed to be very rigid in his thinking and had preconceived notions about some specific programs. He appeared to convey resistance to the Board's direction and a sense of entitlement that he did not require a transitional release."

This information indicates to me that Mr. Lain would pose an unreasonable risk to public safety if released from prison at this time. My concern would be the same whether the risk assessment were moderate or high. I am particularly concerned that the potential for violence would be escalated in any future contact with law enforcement officers that could lead to revocation of his parole release. At age 53, after being incarcerated for more than 28 years, Mr. Lain has made creditable gains. Nonetheless, after carefully considering the record before the ISRB and the factors in chapter 9.95 RCW, I conclude his rehabilitation is not complete and he is not a fit subject for release from prison. Based on the provisions in chapter 9.95 RCW and the totality of evidence and information in the ISRB files, I conclude Mr. Lain would pose an unreasonable risk of danger to public safety at this time.

Accordingly, I CANCEL the ISRB orders to grant parole release to Mr. Lain. In light of this decision, this matter is remanded to the ISRB for further proceedings.

This order takes effect immediately.

Signed and sealed with the official seal of the state of Washington on this 16th day of December 2010 at Olympia, Washington.


Christine O. Gregoire
Governor

BY THE GOVERNOR:


Secretary of State



ATTACHMENT A

STATE OF WASHINGTON
INDETERMINATE SENTENCE REVIEW BOARD
PO BOX 40907 • Olympia, Washington 98504 • (360) 493-9266 FAX (360) 493-9287

IN THE MATTER OF:

Name: LAIN, Jerry
DOC#: 238088 Date of Birth: 6/13/1957
Time Start: 11/4/1982
Date of Sentence: 11/4/1982
Max Expiration: Life
Statutory Maximum Term: Life
County: Benton Cause #:82-1-00219-8

**ORDER OF PAROLE AND
SUPERVISION CONDITIONS**

PRE Offenders

**RCW 9.95.120
RCW 72.04A.070**

Parole Date: 12/20/2010

The Indeterminate Sentence Review Board (ISRB) of the state of Washington, after carefully reviewing all available information, hereby orders the Secretary of the Department of Corrections (DOC) to release on parole supervision Jerry LAIN, DOC #238088, an inmate of a Washington State Correctional Facility.

The ISRB or the DOC Community Corrections Officer (CCO) may issue an order directing arrest and detention by suspending parole pending a review as provided for RCW 9.95.120.

PAROLE IS HEREBY GRANTED SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. If you are a convicted sex offender, you **MUST** register as a sex offender with the Sheriff of the county where you reside. You must register within 24 hours of your release.
2. Upon release from the Correctional Facility, you must report within one business day to your CCO, or any other person designated by DOC. Thereafter, you must report as directed.
3. You may not leave the state of Washington without prior written permission from the ISRB and your supervising CCO.
4. You must obey all laws and court orders, and abide by any special conditions imposed by the ISRB.
5. You are prohibited from owning, possessing, receiving, shipping, or transporting a firearm, deadly weapon, ammunition or explosives.
6. You must submit to a search of your person, residence, vehicle and/or possessions, when requested by a CCO.
7. You must consent to DOC home visits to monitor compliance with supervision. Home visits include access for the purpose of visual inspection of all areas of residence in which the offender lives or has exclusive/joint control/access.
8. Pursuant to RCW 9.96.050, as amended by SB 5060 (1993), you will be issued a Final Discharge and Restoration of Civil Rights on Benton Cause #82-1-00219-8 only when you have completed three years of parole in the community. Time spent in total confinement on a subsequent conviction while on parole does not apply toward the three year date. Should your parole be revoked prior to completion of three years in the community, a Final Discharge will not be granted. If your sentence expires before you have spent three years on parole in the community, you may request a Final Discharge. In these cases, granting a Final Discharge remains discretionary with the Board.
9. Abide by any additional conditions listed below:

**ADDITIONAL CONDITIONS
RCW 72.04A.070 and RCW 9.95.120**

LAIN, Jerry
Offender Name:

238088
DOC#:

Additional Specific Condition(s):

- A. You are prohibited from having any contact with the victim in your case or any member of his/her family, whether in person, telephonically, through a third party, by mail or email, or any other means of communication without the prior written approval of the ISRB and the court, if this was a court ordered condition of supervision.
- B. You must not use, possess or control any mind or mood-altering substances, drugs, narcotics, controlled substances, alcohol or drug paraphernalia without a valid prescription from a licensed physician. You must submit to periodic and random drug and alcohol monitoring through an agency approved by your CCO and sign a full release of information allowing the treatment or monitoring agency to release information to your CCO and the Indeterminate Sentence Review Board (ISRB).
- C. You must stay out of establishments, such as bars, taverns, casinos, and cocktail lounges, where alcohol is the primary beverage served.
- D. You must enter into, successfully participate in, and complete a Chemical Dependency aftercare program and sign all releases necessary to ensure that the CCO and ISRB can consult with the treatment provider to monitor progress and compliance.
- E. You must attend meetings at AA/NA (Alcoholics/Narcotics Anonymous) or some other alcohol and/or drug self-help support group approved by your CCO at least once per week and provide written proof of attendance to your CCO on a weekly basis. The frequency of this requirement may be increased or decreased by your CCO after consultation with your chemical dependency treatment provider.
- F. You must participate in Global Positioning System (GPS) tracking if determined appropriate and necessary by your CCO and follow all rules and requirement of the GPS program.
- G. You must not enter eastern Washington without prior written approval of your CCO and the ISRB.
- H. You must submit to a polygraph examination to be conducted by a polygraph operator certified by the American Polygraph Association when requested by your CCO to verify compliance with your release conditions and sign a full release of information allowing the treatment or monitoring agency to release information to your CCO and the Indeterminate Sentence Review Board (ISRB) for the entire period of your supervision until you are granted a final discharge or this condition is removed by the Board. **IN AGREEING TO RELEASE UNDER THIS CONDITION, BOTH THE STATE AND THE OFFENDER STIPULATE THAT THE RESULTS OF ANY POLYGRAPH EXAMINATION SHALL BE ADMISSIBLE IN ANY VIOLATION HEARINGS HELD BEFORE THE ISRB or IOWA authorities.**

**ADDITIONAL CONDITIONS
RCW 72.04A.070 and RCW 9.95.120**

LAIN, Jerry
Offender Name:

238088
DOC#:

Additional Specific Condition(s):

- I. You must follow all directions and conditions imposed by the Iowa Department of Corrections.
- J. You must register your DNA as directed by the Iowa Department of Corrections.

11/17/2010
Date:

INDETERMINATE SENTENCE REVIEW BOARD

F2A7AA61928E454
Betsy R. Hollingsworth
 DocuSigned By: Betsy R. Hollingsworth
Member's signature

E0D9A11AF6F1413
Dennis L. Thaut
 DocuSigned By: Dennis L. Thaut
Member's signature

I have read, or have had read to me, the foregoing conditions of my parole and have been given a copy; I fully understand and I agree, in consideration of granting of parole, to observe and abide by such conditions. I FURTHER UNDERSTAND THAT I AM ALSO ON SUPERVISION FOR THE FOLLOWING CONVICTION(S): County Cause#

Date:

Offender's signature:
Jerry LAIN

Offender's name:

Witness's signature:



STATE OF WASHINGTON
INDETERMINATE SENTENCE REVIEW BOARD

PO BOX 40907 • Olympia, Washington 98504 • (360) 493-9266 FAX (360) 493-9287

DECISION AND REASONS

NAME:	LAIN, Jerry
NUMBER:	238088
INSTITUTION:	Monroe Correctional Complex – Twin Rivers Unit
TYPE OF MEETING:	Hearing to set new Minimum Term
DATE:	March 8, 2011
PANEL MEMBERS:	BH, LD, & DT
FINAL DECISION DATE:	June 9, 2011

This matter came before Betsy Hollingsworth, Lynne DeLano and Dennis Thaut, who are members of the Indeterminate Sentence Review Board (ISRB or the Board), on the above date for a hearing to determine a new minimum term. Board Member Thomas Sahlberg recused himself from consideration of this matter. Mr. Lain appeared in person and was represented by his attorney, Richard Linn. Testimony was provided by Department of Corrections (DOC) Classification Counselor (CC) Veltry Johnson; CC William Thacker and Mr. Lain. Others present at the hearing were: Correctional Unit Supervisor Charlotte Hedley; Melissa Zuniga-Espinoza; Kristen Cramer (reporter from Tri-Cities); and Correctional Officer (CO) Ruth VanDuren.

BOARD DECISION:

This was a Deferred Decision. Based on and the totality of evidence and information considered by the Board, the Board sets a new minimum term of 36 months.

NEXT ACTION:

Schedule a .100 hearing for Mr. Lain 120 days prior to his new Parole Eligibility Review Date (PERD).

JURISDICTION:

Jerry D. Lain is under the jurisdiction of the Board on a 1982 conviction in Benton County Cause #82-1-00219-8 for Assault in the First Degree (While Armed with a Deadly Weapon and Firearm). His time start is November 4, 1982. He has served approximately 340 months in prison and 55 days of jail time. Mr. Lain was sentenced by the trial court to the maximum term of Life, with the minimum term to be set by the Board. Both the prosecutor and judge recommended a minimum term of life. The prosecutor further recommended that Mr. Lain not be considered for parole until he had served at least 190 months. The standard range of the Sentencing Reform Act (SRA) at the time was 105 to 135 months. Mr. Lain's initial minimum term was set by the Board in 1983 at 240 months, aggravated by 105 months over the top of the standard range due to the seriousness of the crime. In a later Duration of Confinement hearing, the Board maintained the same minimum term; however, Mr. Lain was given 24 months *Phelan* credit for his jail time.

NATURE OF THE INDEX CRIME:

Mr. Lain was released from prison in Iowa in 1982 and placed on parole. He self-reported that two weeks after he was out on parole he married a young woman he met at a party. Two months later he had an altercation with her and/or with her father, which, according to his estimation, would have resulted in new charges and a trip back to prison. He decided to run and hitchhiked to the Tri-Cities area of Washington State. For several months, he lived in a campground. He reported that he was drinking heavily and using drugs. He did some odd jobs but got by "mostly stealing."

On the night of the index crime, a witness observed Mr. Lain prowling cars and called the police. About the time that the police arrived, the witness yelled at the offender, who began to run, dropping items that had been stolen as he ran. The officer pursued Mr. Lain, calling for him to stop. Finally, Mr. Lain fell to his knees and told the officer to kill him. However, as the officer approached, Mr. Lain suddenly attacked the officer, stabbing at him with a large knife. While the officer's chest was shielded, the officer's arms were vulnerable, and he received some

potentially lethal cuts to his arms. When the officer finally managed to wrestle the knife away from his assailant's control, Mr. Lain grabbed the officer's pistol and fired two rounds at him, hitting him first in the abdomen and then, after the officer had fallen to the ground, shooting him in the face. This crime caused severe and permanent disabling and disfiguring injuries to the victim. Mr. Lain reportedly then fled to his campsite where he made efforts to conceal his involvement in the crime. He was apprehended there a short time later.

Mr. Lain's attorney entered a plea of Not Guilty by Reason of Insanity. At the trial, professionals from Eastern State Hospital testified that he was sane at the time of the crime commission. A private psychologist hired by Mr. Lain testified to the contrary. Mr. Lain told the jury that he thought he was being chased by the Viet Cong, although he had never served in the Army or gone to Vietnam. He later reported that this was a ruse on his part in an attempt to avoid responsibility for the crime. He was found guilty by the jury.

HISTORY/COMMENTS:

Mr. Lain was found conditionally parolable to a Mutual Re-Entry Plan (MRP) on July 23, 2009. The MRP would have allowed Mr. Lain to transition into the community in incremental steps that would include a period of time in a minimum security facility and work release in the community. Mr. Lain subsequently questioned the Board's suggestions, and as a result, another .100 hearing was schedule for him to discuss his issues.

That hearing, on May 3, 2010, resulted in the Board continuing to find Mr. Lain conditionally parolable and did not adjust his PERD. At the hearing, the Board and Mr. Lain discussed the Mutual Re-Entry Plan program, and he indicated a willingness to participate as required. Unfortunately, it became apparent during that summer that a transition through a MRP to work release was not feasible in Washington State due to a recent spate of murders and/or serious assaults of law enforcement officers in the region and the resultant heightened sensitivity to offenders being released from prison –whether to a transitional placement such as work release or to parole supervision in the community.

At the direction of the Board, Mr. Lain submitted an Offender Release Plan (ORP) in November, 2010. The proposed release address was to Mr. Lain's parents' home in Iowa. The Iowa Department of Corrections approved Mr. Lain's release to their state and was willing to accept supervision of him.

The Board approved this plan on November 15, 2010, with a release date of December 20, 2010 for Mr. Lain. Mr. Lain made travel arrangements to take a bus to a nearby town in Iowa upon his release, where he would be picked up by his mother. However, after Mr. Lain's release plan was approved and he had a firm release date, the Board received a number of letters, telephone calls and emails from concerned citizens protesting Mr. Lain's release.

Governor Gregoire undertook a review of Mr. Lain's file, and on December 16, 2010, the Governor issued an order cancelling Mr. Lain's parole. The Governor determined that Mr. Lain was not completely rehabilitated and that he would pose an unreasonable risk to public safety. The Governor based her conclusion on several factors: First, she pointed to the nature and gravity of the crime and noted incidents of violence in Iowa prison, which Mr. Lain had self-reported, essentially underscoring Mr. Lain's history of violence. The Governor's order noted that Mr. Lain's actuarial risk to reoffend was in the range of moderate to high. The Governor identified other factors, including his behavior and verbalization of threats during incarceration and his statements to the ISRB and others that reflected resistance to the ISRB's direction and a sense of entitlement to release. In particular, the Governor referenced Mr. Lain's 1999 letter to prison officials and his letter to the Board in 2002, in which he criticized the Board's decision to deny him parole. The Governor also referenced the Board's own 2010 Decision and Reasons, in which the Board found that he appeared to convey resistance to the Board's direction.

As noted, the Governor's order previously determined that Mr. Lain's rehabilitation was not complete and that he was not a fit subject for release, citing the statutory test for parole release under RCW 9.95.100. In light of the Governor's decision to deny Mr. Lain's release on

parole, the Board was effectively precluded from making its own parole release determination. Normally, if the Board denies parole release in an offender's case, it then adds a period of confinement time to an offender's minimum term. Therefore, based on the Governor's order remanding Mr. Lain's case to the ISRB "for further proceedings," the Board conducted, as the logical next step in his case, an in-person hearing for the purpose of establishing the appropriate amount of confinement time to add to his minimum term. At that hearing, the Board provided Mr. Lain and his attorney with a complete opportunity to present any evidence they believed the Board should consider prior to setting his minimum term.

Staff testified that Mr. Lain was taken to segregation as a precautionary measure when the decision to cancel his parole was issued and reported Mr. Lain did not resist. He remained cooperative and cordial with the staff, even after he was told of the Governor's decision. Compared with prior disappointments, Mr. Lain handled the Governor's cancellation of his parole calmly and maturely. Mr. Lain's primary concern was to ensure his mother was notified of the decision so she would not drive in winter conditions to pick him up upon his arrival. Mr. Lain was released from segregation after four days and returned to his job in the Inmate Kitchen.

EVIDENCE CONSIDERED:

In preparation for Mr. Lain's hearing and its decision in this case, the Board completed a review of Mr. Lain's Department of Corrections (DOC) and ISRB files. The Board considered all information contained in those files, including but not limited to: 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; all psychological evaluations of Mr. Lain; previous Decisions and Reasons of the Board; Mr. Lain's Offender Release Plan; and the Governor's Order Cancelling Parole, dated December 16, 2010. The Board also considered the testimony of the witnesses listed above and the testimony provided at a concerned citizen's meeting held prior to this hearing.

REASONS:

In setting the new minimum term for Mr. Lain, the Board has carefully considered the factors set out by the Governor in her order canceling Mr. Lain's parole release. Some of the factors cited in the order included a March 2009 psychological evaluation that indicated that Mr. Lain's scores were in the medium to high range for the LSI-R and the medium to high range on the VRAG. The order also noted a 2009 forensic risk evaluation that placed Mr. Lain in the group of offenders at a risk of recidivism for both general and violent crimes in the range of medium to high risk.

Further, the order also referenced that Mr. Lain's current offense occurred approximately five months after he was released from prison in Iowa; that he had absconded from Iowa where he was on parole supervision; and that he decided to fight the police officer who responded to the vehicle prowling report instead of going back to prison. The order also noted that while incarcerated in Washington, Mr. Lain was found to have been found to have committed 23 infractions in 18 incidents. The order also states that on December 12, 2003, Mr. Lain was found to have threatened staff of the correctional institution and that, during the hearing for that infraction; Mr. Lain maintained that he would hurt staff when he was released from segregation or prison. The order noted that Mr. Lain said he would attack staff in the parking lot when he was released from prison. The Governor's order also found that Mr. Lain has not been found to have committed an infraction since 2004. The order expressed a particular concern that the potential for violence would be escalated in any future contact with law enforcement officers, which could lead to revocation of his parole release. Finally, the order noted that Mr. Lain would pose an unreasonable risk to public safety if he was released from prison at this time.

It should be noted that some factors are static and cannot be changed, regardless of any positive steps taken by Mr. Lain. In other words, because of the nature of his crime, he will always pose some risk to public safety. However, dynamic factors that can help reduce Mr. Lain's risk to reoffend include various programs that target criminogenic needs and can include

education, vocational training, chemical dependency, stress/anger management and other offender change programs.

The Board notes that Mr. Lain has programmed extensively and has completed several offender change programs that should reduce his risk to reoffend, including educational, vocational and chemical dependency programming. However, it has been 11 years since Mr. Lain completed chemical dependency (CD) treatment. By his self-report, he has remained clean and sober for well over 20 years; however, given the continued concern about the possibility of relapse if released, the Board believes that participating in CD treatment again, if it would be available to him, could be beneficial in addressing this concern.

Ideally, it would also be beneficial if Mr. Lain could be considered for a camp/minimum security placement prior to his next .100 hearing. The Board also suggests that once AA/NA (Alcoholics Anonymous/Narcotics Anonymous) is reinstated at the institution in which he is incarcerated, Mr. Lain should plan on returning to regular attendance.

The Board noticed it was recommended in several psychological evaluations that Mr. Lain participate in one-on-one counseling. We would urge Mr. Lain to utilize his time before his next Board hearing to explore the value of counseling, if available, to address his past issues regarding anger and frustration. Participation in counseling would not only benefit Mr. Lain but would also provide the Board with another professional's testimony at his next hearing regarding his progress and rehabilitation.

The new minimum term of 36 months is retroactive because Mr. Lain's parole eligibility release date passed on January 8, 2011. In setting the new minimum term, the Board also had to take into consideration that the DOC has reduced and/or eliminated several programs as a result of the state's budget crisis. Because he has previously participated in most of the programs the Board now recommends, Mr. Lain may not be allowed to participate immediately, if at all, due to the increased demand for fewer program opportunities. The additional time also enables

Mr. Lain the opportunity to continue to demonstrate positive and appropriate behavior. If he remains infraction free, by the time of his next Board hearing, he will have managed to avoid any serious infractions for ten years.

BH:mze

May 8, 2011

CC: Institution
Jerry Lain
File
Attorney for Mr. Lain

P//1 0 238088

03/03/06 16.28.32

IISO005

RELEASE DATE CALCULATION

PAGE 001

DOC NO: 238088 NME: LAIN, JERRY D.

STA MAX: LIFE

STATUS: ACTIVE

COMMITMENT: "AA" COMM.STATUS: ACTIVE

	"AA"		"AA"	"AA-AA"
TIME START DATE-----*	11/04/1982	TIME SERVED TO-DATE	8520	
+ MAX (999Y99M98D)	99998	MINIMUM EXPIR. DATE-----*		09/03/2017
- CREDIT TIME SERVED	55	GCT CERT. & ADDR.	282	282
+ OUT-TIME + WICKERT	0	GCT CERT. ONLY	0	0
+ CCI OUT/PAR ABSC TIME	0	+ GCT DENIED & ADDR.	0	0
MAXIMUM EXPIRATION DATE--*	LIFE	+ GCT NOT CERTIFIED	80	80
		FUTURE/UNCERT.GCT	2495	2495
+ MIN (34Y10M 0D)	12722	ET I & II	1315.35	1315.35
- CREDIT TIME SERVED(SRA)	0	+ ET NOT EARNED	25.00	25.00
- GOOD TIME (JAIL)	0	FUTURE ET	43.65	43.65
+ OUT-TIME + WICKERT	0	EARNED RELEASE DATE-----*		02/07/2006
MINIMUM EXPIRATION DATE--*	09/03/2017	ADJ. EARNED RELEASE-----*		05/08/2006
		EARLY POSS. REL. DATE-----*		02/07/2006
+ MAND (0Y 0M 0D)	0000000	ADJ. EARLY POSS. REL-----*		05/08/2006
- CREDIT TIME SERVED	0	TIME REMAINING TO SERVE	66	
+ OUT-TIME + WICKERT	0			
- EARNED RELEASE	0	SANCTION ADMIT DATE-----*		
MANDATORY EXPIR. DATE-----*	00/00/0000	SANCTION RELEASE DATE-----*		

1
2 IN RE THE PERSONAL RESTRAINT)
3 PETITION OF) DECLARATION OF JERRY LAIN
4 JERRY LAIN) AND ATTACHMENTS
5)
6)
7)

8
9 My name is Jerry Lain, I am over 18 years of age and
10 declare as follows:

11 The crime that I committed in 1982 was horrific. During my
12 incarceration, I have never expressed anger or hostility toward
13 my victim, Officer Fitzpatrick. I have even thanked him, in a
14 way, for saving my life, because at the time I committed the
15 offense, my life was on a downward spiral.

16 I want to take this opportunity to again apologize to
17 Officer Fitzpatrick and his family. I am truly sorry for the
18 pain and suffering that I cause. I wish I could take back what I
19 did.

20 I do not minimize what I did, but I know that many of the
21 "facts" cited by the governor in her Order are false or
22 misleading. I have attached an officer's report dated 9/16/82.
23 It is a report of an interview with Officer Fitzpatrick in which
24 he says that that before the fight I said "kill me kill me, kill
25 me" I was so desperate then, that I remember saying those

1 words. Officer Fitzpatrick is not sure what happened after I
2 shot him the first time. He does not say that I stood over him
3 execution style, because that never happened. And that is one
4 example of the misleading statement of the Governor's order,
5 where she says that I "stood over the officer and shot him in
6 the face." I committed a horrible act and was desperate and
7 suicidal, but I was not an "executioner" as portrayed by the
8 Governor and the public.

9 I have also attached a two page transcript of Officer
10 Fitzpatrick's direct examination from the trial. Officer
11 Fitzpatrick testified that he didn't fall down after my first
12 shot. Again, I shot him, but the Governor distorted what
13 happened. I am not an "executioner."

14 The governor's Order says that I attacked another inmate
15 with a claw hammer. That is incorrect, because it was I who was
16 hit. I told DOC that I was involved in a fight, but not that I
17 attacked. Again, this distorts my past behavior, which I admit
18 was bad. I got into fights.

19 I never stabbed any fellow students in a fight.

20 Finally, I have had only two infractions since 1996 and
21 have not been in any fights since 1986 and that one wasn't
22 really a fight. I get along well with all inmates and
23 corrections officers. If the governor had held a hearing, I
24 would have presented the references from inmates that my lawyer
25 presented to the Board at the minimum term hearing and sent to

1 the Governor. I would have explained what happened at the 2003
2 threatening infraction and how I have programmed and progressed
3 since then. I would have told her that my 2002 letter to the
4 Board was a sincere effort to follow the proper procedure to
5 appeal the Board's action. At that time, I truly felt, as I do
6 now, that I am rehabilitated and ready to live with my parents
7 and in their community in Iowa, where there are lots of
8 resources and support.

9 I am truly sorry for the things I have done, but I
10 have not been accurately portrayed by the Governor in her Order
11 and by the statements made in the media.

12
13
14 I declare under the penalty of perjury under the laws of
15 the state of Washington that the foregoing is true and correct,
16 to the best of my knowledge.

17
18 Signed at Monroe, WA

19
20
21 Dated this 20th day of
October, 2011

22
23 
JERRY LAIN

CONTINUATION OF NARRATIVE

Following are the questions that were asked of Ofc. Fitzpatrick, and his replies. The writer, Higgins, and Fitzpatrick were present. It occurred September 9, 1982 starting at 1520 hrs. and ending at 1540 hrs. It took place in the Intensive Care Unit of Kadlec Hospital.

- 1) Did you have your gun out when chasing him? Answer: Yes
- 2) Did you catch up with the suspect? Answer: Yes. Fitzpatrick then motioned that he had holstered his gun. He was asked if he had his gun out when chasing the suspect and then holstered it just prior to catching the suspect, and he indicated "yes"
- 3) Did you see the knife when you caught the guy? Answer: No
- 4) Did you fight hand to hand first? Answer: Yes
- 5) Did he pull out the knife and stab you when you were wrestling? Answer: Yes. Fitzpatrick motioned that he was using both his hands in an attempt to restrain the suspect's knife hand.
- 6) Did you try to draw your gun when you were fighting the suspect? Answer: No
- 7) Did the suspect grab your weapon from the holster? Answer: Yes
- 8) During the shooting, did the suspect pull the trigger? Answer: Yes
- 9) Were you first shot in the stomach? Answer: Dont know. Fitzpatrick then wrote "I don't know the sequence". He also wrote "It was hand to hand when I was shot in gut", and "I did not pull the trigger ever".
- 10) Did you fall to the ground after the first shot? Answer: He motioned that he and the suspect had both been on the ground when the shooting occurred. He was asked if they had both fallen to the ground when the struggle first started, and he indicated "yes".
- 1) Were you shot in the chin the second shot? Answer: Dont know
- 2) Was the suspect standing when you were shot the second time? Answer: Dont know
- 3) Did the suspect say anything to you? Answer: Fitzpatrick wrote "Before the fight he said kill me kill me, kill me".
- 4) Did the suspect run away after the second shot? Answer: Yes. Fitzpatrick motioned that he had run away, then indicated the suspect had run away and wrote "S.E."

OFFICER'S SIGNATURE

A.P.W.

BADGE NO.

1436

HAVE REVIEWED THIS REPORT AND BY MY SIGNATURE INDICATE THAT IT IS ACCEPTABLE.

SIGNATURE - SUPERVISOR

MD Thomas

BADGE NO.

914

DATE

9-16-82

TIME

0800

R.F.D. NO.

082-3005

apparently meaning the direction that the suspect ran.

5) Did the suspect try to shoot you a third time? Answer: Fitzpatrick wrote "I took 3/at least", and continued writing "I remember 2 shots in gut",

6) Do you think you can identify the suspect? Answer: Fitzpatrick first signaled "yes", but then wrote "I never saw his face much",

A personal message was written to department members and the interview was terminated,

R.F.D.
NO.

082-3005

OFFICER'S SIGNATURE

A. P. Wolf

BADGE NO.

1436

HAVE REVIEWED THIS REPORT AND BY MY SIGNATURE INDICATE THAT IT IS ACCEPTABLE.

SIGNATURE - SUPERVISOR

MD Thomas

BADGE NO.

914

DATE

9-16-82

TIME

0800

1 dropped to my knees, but I went over and went low, and I
2 remember grabbing for my side.

3 Q Do you recall the second shot?

4 A No, I don't.

5 Q This individual that you were scuffling with, as you were down
6 on the ground, did you see or observe him at that time?

7 A After the first shot, like I say, it went through my mind that
8 I'd been shot, and I remember doubling over, and the next
9 thing I remember seeing, him standing in front of me just a
10 short distance. Not even an arm's length. And as I remember,
11 I saw his feet and his lower legs and his knees, and I just
12 came right up him -- right up the front -- and I remember
13 grabbing him by the lapels and shoving him as hard as I could.
14 And I remember very distinctly his feet coming off the ground.
15 I must've looked down like this (demonstrating) and just give
16 him a heave.

17 The last thing I remember is him -- he went
18 back, and he looked back over his shoulder, and I remember
19 seeing a gun down in his one hand being held down at his side,
20 and he took off running.

21 Q How is it you're sure that that was your firearm?

22 A Well, I was the only one around. No other officer down there.

23 Q What was the lighting like there?

24 A Well, like I say, it was a bright -- fairly bright night.
25 My light was still on -- my flashlight. We were in the sand,
26 and sand, once your eyes get used to it -- and I'd been in
27 the dark for probably five minutes now, or more -- it kind of
28 tends to illuminate the area, kind of like if you're in a
29 snowbank or something like that. Not quite as bright, but
30 close, and it's a stainless steel gun. So it reflects a

1 A It probably wasn't more than five seconds.

2 Q What happened next, Officer Fitzpatrick?

3 A Well, a lot of things go through your mind. I'm trying to
4 hold off this knife, and I remember thinking I'm getting tired
5 because we've run all that way, and now we've been fighting
6 for, you know, maybe 20 seconds. I don't know. Not very
7 long; but we had run quite a ways, and I remember thinking
8 I've got to stay on my feet. I'm in the sand, and it's
9 uneven. I've got to stay on my feet because if I go down on
10 my back, I'll have even less chance of defending myself.

11 So I'm concentrating on staying on my feet and
12 keeping this knife away, and then the next thing I felt is --
13 I realized he had my gun, and it was up underneath my vest on
14 my right side. I remember feeling the barrel being nosed up
15 very forcibly, put underneath my vest in a very distinct
16 motion, very different than if it was just stuck into my
17 side. It was a very distinct effort to put it underneath my
18 vest.

19 Q What next happened?

20 A Well, I didn't realize he had my gun until I could feel it
21 going under my vest, and then just as soon as I realized that,
22 he pulled the trigger. I heard a -- it sounded to me like a
23 muffled shot. I'm sure it was quite louder, but to me, it was
24 a muffled shot, and I remember thinking, "Oh, my God, I've
25 been shot". And then I doubled over, and we just -- I felt
26 pretty helpless about that time.

27 Q When you doubled over, did you fall to the ground, did you
28 remain standing, what happened?

29 A I can't recall whether I went all the way over. I know I
30 didn't fall over flat on my face. I don't remember if I

NON-DISCLOSABLE¹

FORENSIC RISK EVALUATION

STATE of WASHINGTON, DEPARTMENT of CORRECTIONS
MONROE CORRECTIONAL COMPLEX
MONROE, WASHINGTON

DO NOT THIN

Not For The Medical Record: Legal Section of the Central File Only

NAME: Lain, Jerry Dale
DOC NUMBER: 239088
DATE OF BIRTH (AGE): 6/13/1957 (51)
EVALUATION DATE(S): 3/12, 3/27/09
DATE OF REPORT: 3/27/09
PSYCHOLOGIST: Faulder Colby, Ph.D.

REASON FOR REFERRAL

Jerry D. Lain, hereinafter referred to as the Offender, is a 51-year-old male currently housed in Unit D of the Twin Rivers Unit (TRU) at Monroe Correctional Complex (MCC). He is currently serving a sentence of 20 years to Life in prison after having been convicted of the crime of Assault in the 1st Degree Using a Deadly Weapon and Vehicle Prowling in Benton County, WA, on 11/4/1982. His sentence falls under the jurisdiction of the Indeterminate Sentencing Review Board (ISRB).

According to the Offender, his Maximum Expiration Date (MXED) is 5/12/2990, and his Earliest Release Date (ERD) is 9/7/2009. His last *LSI-R* score (11/8/2004) was 35, putting him in the "Medium/High" range of recidivism risk according to the test manuals and in the "High" range according to the latest research findings for long-term incarcerated offenders. His RMI classification (11/8/2004) was determined to be RMA.

The ISRB, anticipating an approaching parole board hearing, asked that an instrument-based risk assessment be performed on the Offender to assist the

¹ Because this is a report of a Forensic Psychological Evaluation, its distribution does not fall under the usual guidelines and rules that apply to the dissemination of medical records. The Offender may receive a copy of this report only with the permission of the Board, Agency or DOC Department that originally requested it. In the case of the ISRB, if the Offender is acting as his or her own attorney (i.e., *pro se* or *pro per*), a copy of the report may also be sent, upon request of the ISRB, to the Offender's Classification Counselor for the Offender's review. A treating Psychologist (Psych 3 or Psych 4) or Psychological Associate may also review this report with the Offender without giving him or her a copy of the report to keep in his or her possession.

ISRB in reaching decisions about reductions in level of custody and/or eventual release of the Offender into the community. The present evaluation was done in response to the ISRB's request.

Before proceeding with the evaluation, the Offender signed the Consent to Mental Health Treatment (DOC 13-386). While not required to participate, the Offender did so voluntarily.

ASSESSMENT PROCEDURES USED

Records review (Electronic Records and Medical File)
Clinical Forensic Interview
Risk Assessment Instruments
 Level of Service Inventory, Revised (*LSI-R*)
 Psychopathy Checklist, Revised (*PCL-R*)
 Violence Risk Appraisal Guide (*VRAG*)
 Washington's new Risk Level Classification system

EXECUTIVE SUMMARY

Jerry Lain is a 51-year-old male serving a sentence of 20 years to Life in prison after being convicted of Assault in the 1st Degree Using a Deadly Weapon. His victim, whom he injured critically, was a uniformed police officer who was attempting to arrest him for suspected Vehicle Prowling, an offense he was also convicted of at the time he was convicted for Assault. During his incarceration, he has committed more than 20 serious infractions, including Threatening, Fighting and Staff Interference. Prior to coming to prison, he had spent time in prison in IA, and he absconded from parole, there, before he came to WA and relatively quickly began committing new crimes (by his report, as well as by the record). While he has been in prison, he has engaged in a number of offender change programs, as well as education, and he has credited his changed attitudes about himself and criminal behavior to those programs.

Risk assessment tools put him into groups of offenders who have been shown to reoffend at higher than average percentages across various time periods. This was true both for general and for violent crimes. Of course, there are limitations to such instruments, partly because the Offender is unlike the samples upon whom the instruments were developed, in some respects, and partly because he has already been in prison longer than any of the people upon whom the tools were developed or later were further researched.

Management of risk, assuming release, is as important as estimating risk. While the Offender seeks to be released into a relatively rural environment out of state, it is important that wherever he is released, there be sufficient resources to provide him adequate post-release supervision, especially in the early year(s). Given his history of alcohol abuse and/or dependence, albeit long ago, it will also be important for him, once he is back in the community, to engage in some type

of relapse prevention, such as outpatient treatment or involvement in self-helps groups like A.A. Employment is also an important factor in successful parole, and the Offender has developed skills while in prison that should stand him in good stead as he searches for work, whether in a trade or in the farm setting in which he has expressed the most interest.

CRIMINAL HISTORY - The following is taken from the Prosecutor's Statement dated 11/10/1982 and a Criminal History constructed in 1984.

Juvenile:

According to the Criminal History, the Offender was sent to the El Dora Boys Reformatory in IA in 1974 for Unauthorized Use of a Motor Vehicle.

Adult:

According to the Prosecutor's Statement, the Offender was given County Jail time for Possession of Marijuana in July 1976.

According to the Prosecutor's Statement, the Offender was given a suspended sentence to the IA correctional system in March 1976 for Operating a Motor Vehicle Without the Owner's Consent.

According to the Criminal History, until 5/77, the Offender was in prison as an extension of his sentence as a youth for UUMV.

According to the Criminal History and the Prosecutor's Statement, on 4/8/78, the Offender threw acid into another man's face when the other said he was going to rob the Offender in Waterloo, IA. The result was loss of sight for the other man. DISPOSITION: On 5/13/78, he was sentenced to the Men's Reformatory in Anamosa, IA.

April 1982: The Offender absconded from parole in IA and came to WA.

He has made the self-report that he had been involved in a claw hammer fight with another offender soon after he arrived at the IA prison.

NATURE OF INDEX OFFENSE and DISPOSITION

9/7/84: Benton County, WA: Vehicle Prowling and Assault in the 1st Degree. According to official records, a witness observed the Offender's prowling cars. About the time that the police arrived, the witness yelled at the Offender, who began to run, dropping items that had been stolen as he did. The officer pursued him, calling for him to stop. Finally, the Offender fell to his knees and told the officer to kill him. However, as the officer approached, the Offender suddenly attacked the officer, stabbing at him with a large knife. While his chest was

shielded, the officer's arms were vulnerable, and he received some potentially lethal cuts to his arms. When the officer finally wrested the knife away from the Offender's control, the Offender grabbed the officer's pistol and fired two rounds at him, hitting him first in the abdomen and then, after the officer had fallen to the ground, in the face. The Offender then fled to his campground, where he made efforts to conceal his involvement in the crime. However, when officers came through the next day, having sealed off the campground, the Offender was not hard to find. Upon discovering him, police read him his Miranda rights and immediately arrested him. After inquiring as to what might happen to him, the Offender exercised his constitutional right to request that he be provided access to an attorney.

DISPOSITION: The Offender was found Guilty of Vehicle Prowling and Assault in the 1st Degree against a peace officer. He was sentenced to one year for Vehicle Prowling and to Life in prison for Assault in the 1st Degree.

At the trial, the Offender attempted to plead that he was insane at the time of the offense, claiming that the Viet Cong were chasing him, not a police officer. While a Defense Psychologist supported his claim, doctors from Eastern State Hospital decried it. As it turned out, the Defendant had neither been to Viet Nam nor been in the military. Jury members later allegedly stated that the Defendant's story was "laughable." Both the Prosecutor and the Trial Judge recommended that the Offender never be paroled. If he were to be found eligible for parole, however, the Prosecutor stated both that it should not be for at least 16 years, rather than after 8-10 years, and that the Prosecutor's Office should be notified if the Offender were ever to be considered for parole.

CORRECTIONS MENTAL HEALTH HISTORY

The Offender does not have a current mental health diagnosis listed on the DT86 screen of the Offender Based Tracking System (OBTS). The DT85 screen shows no history of mental health treatment as an inpatient or outpatient, whether inside or outside DOC; this was contrary to the Offender's self-report that he had been hospitalized twice in Iowa following arrests, there, for court-ordered or parole board-ordered evaluations. There was a history of past violence and/or unmanageability indicated in DT85.

PROGRAMMING HISTORY – see Central File

INFRACTIONS HISTORY

The Offender has received the following 23 serious infractions covering 18 incidents since becoming a DOC inmate:

Incident Date	Violation Codes	Description
12/23/1983	555	Theft of property of possession of stolen property
01/04/1984	701	Dangerous infraction
02/23/1984	602	Possession, manufacture or introduction of any weapon

Incident Date	Violation Codes	Description
03/30/1984	554	Damaging State or other property GE \$10, not the offender's
01/28/1985	701	Dangerous infraction
12/26/1985	505	Fighting
02/07/1986	506	Threatening
07/24/1986	552	Providing false information leading to another person being penalized
06/14/1987	558, 652, 701	Staff interference, Inciting a group demonstration, Dangerous infraction
08/19/1988	701	Dangerous infraction
08/14/1990	554	Damaging State or other property GE \$10
09/03/1990	658	Failing to comply with a sanction imposed
07/20/1991	701	Dangerous Infraction
03/29/1995	555, 702	Theft or possession of stolen property; Possession of an unauthorized tool
04/01/1995	557	Refusing to program
03/04/1996	506	Threatening
12/20/2003	506	Threatening
09/18/2004	702, 710, 714	Possession of an unauthorized tool; Possessing tattoo paraphernalia; Bartering value GE \$10

BACKGROUND INFORMATION SUPPLIED BY INMATE

PRESENTING SITUATION AND PROBLEMS. He said he had been in prison since 1982. His conviction was by jury trial, and his lengthy sentence was due to his having assaulted a police officer. He said the first few years were hard, but then he adjusted, got his head put on right, and improved his education. He completed Walla Walla Community College, 2 years of carpentry and upholstery and 2½ years of computer programming and applications, as well as some business and payroll accounting. He had already earned a GED when he was in prison in Iowa in the early 80s. He also has completed Victim Awareness, Stress and Anger Management, Moral Reconciliation Therapy, Alternatives to Violence, Chemical Dependency and Non-Violent Communications.

He said he had earned 25 serious infractions [the record showed only 23] over 27 years in 18 different incidents. Some of these, he admitted, were violent infractions. He has had more trouble with himself than anything, saying that he thought he was above the rules and laws and smarter than everyone else, and he had to find out the hard way that he was not. He had spent periods of days and months in the hole, lost jobs, lost friends, etc.

His last serious infraction was in 9/04 for having tattoo paraphernalia, an unauthorized tool and property in excess of \$10. It was a cell tag, and they were all found guilty. He said he had not had problems with other offenders for years because he had learned how to read the body language of folks. Those up to no good he avoided. He said he got along with staff, all right, except that he has trouble when authority seems to be abused; he tries to avoid those who seem to do that. While this has not always been the case, it had been for at least the last 15 years. He said his biggest enemy was his mouth, saying stuff that might antagonize someone or be taken wrong. He vents, and it may be taken wrong.

PERSONAL MEDICAL HISTORY. In response to general inquiry, the Offender volunteered information about his lungs' collapsing twice, caused by stress, too

much coffee and tobacco and working in a dusty environment without a respirator. Both these events happened at Airway Heights. Upon specific inquiry, he denied a history of heart problems, thyroid dysfunction, liver dysfunction, kidney dysfunction, hepatitis, meningitis, diabetes, convulsions or seizures, blackouts, paralysis, strokes or other cerebrovascular accidents and HIV exposures. In response to direct inquiry, he reported issues with:

Hypertension: His blood pressure was elevated before he saw the parole board the last time.

Fainting or Passing Out: He has fainted from hypoglycemia.

Symptoms of Chronic Fatigue Syndrome or Epstein-Barr Viral Infection: He has had these symptoms, but it was only when he was working 12 hours a day, both on the streets and at the Washington State Penitentiary farm.

Toxic Chemical Exposures: He has been exposed to the fumes of various highly corrosive acids as well as toluene and perhaps other solvents.

Head Injuries: He fell from a farm elevator at age seven and hit his head on a wagon wheel. He was hit in the head with a claw hammer in the Iowa prison (he was running his mouth).

ANGER MANAGEMENT. He said he was told to do Stress and Anger Management because of an anger problem. He said he has had a short fuse and has taken his anger out violently. The worst he has ever hurt someone was stabbing and shooting a policeman, stabbing a man over 9-ball, throwing acid into a man's face when he was threatened, and fist fights. He has been hit hard in fights and knocked out once, just for a couple of minutes. People used to tell him he was hot-headed. He figured it was because of low self-esteem and an inflated ego; he realized it when he realized neither was true. He fixed low self-esteem when he quit drinking and using drugs, took pride in his direction and worked on his future. He said his anger problems stemmed from his early childhood after he was abandoned by his mom and step-dad. He thought his step-dad was taking his mom away (when they went on their honeymoon) and rebelled, and then that spread into everything else. His real dad had died. Unlike him, his little brother was sensitive and emotional rather than rebellious.

FAMILY MEDICAL HISTORY. He was unaware of a family history of diagnosed mental illness. The Offender, himself, was the only alcohol abuser.

PSYCHIATRIC HISTORY. He was an inpatient two places in Iowa. Cherokee was a court-ordered evaluation, and Oakdale, IA, was for a parole board evaluation. He did not take medication either time. He said he had never seen a counselor, and there was no counselor in his small town school.

MEDICATIONS HISTORY. He denied ever taking mental health medications.

SUBSTANCE ABUSE HISTORY. His first illegal drug was marijuana, which he started at age 15 because it was "the in thing." He continued marijuana until he

was about 25; it kept him from working, because he would be sleepy, and it cost too much, but he did not do crime to support it. He stopped on his own. He has also used heroin, "crank" (methamphetamine), which he inhaled, and mescaline. He tried cocaine once. Heroin, but not "crank," was intravenous. He started meth when he was 16, and that lasted until 1993; he was using in prison, he said. He also started heroin and mescaline after he was in prison. He last used an illegal drug in 1993; he no longer liked his associates, disliked the hole, etc., saying that it was not productive. He had Chemical Dependency classes at WSP in the early 90s, before he had stopped using. He had a Chemical Dependency evaluation the last time he was at WSP in 2004; they said he was in remission and did not need treatment.

He quit drinking in 1982, having started at 15. He drank heavily starting when he was 17 or 18. He used 10 years; it got him to prison, so it was time to quit. It took him two years to unfog his brain. He said alcohol was involved in his Index Offense as well as others. Other drugs were not involved in any crimes; he did not use crime to support his habits. He mostly used drugs in prison with others buying, feeling like he had to fit in.

He used to fit in, socially, not just to use. He admitted he figured this out in 92-93 when he looked at things.

He said he did dangerous things, driving motorcycles or racing cars on the freeway or climbing water towers when he was using. He said he was a "live on the edge" person because it made people be in awe of him, part of his ego tripping. He said only himself got hurt; there were minor injuries in a MC accident.

SOCIAL HISTORY. He was born in Versailles, MO, and reared in Burt, IA. His dad died when he was three; he vaguely remembered it. His mom was pregnant. His dad was climbing a ladder, and he was electrocuted when a metal pole touched a transformer. His mom remarried when he was seven. Before she remarried, they lived in the basement of his grandparents' home. It was like the kids would play with him for a little while, and then they would want him to go away. He had few friends as he was growing up. When his mom took her honeymoon to South Dakota, they were gone for a week, and it seemed like forever. He was staying with a step-uncle. He recalled no physical or sexual abuse as a child.

He said he was not in trouble a lot at home. He would break the rules by stepping on nails, etc., saying he did not want to work on the farm. But he grew into it, making it be OK. He'd like to return to farm living, he said. He ran away a few times when he was in his mid-adolescence. He was in trouble more than his younger brother because his brother was sickly, making more chores for the Offender. He left home to be on his own at 17, living with a woman in town and then going to prison.

HOME LIFE AS A CHILD. See above.

ACADEMIC. He completed 8th grade, stopping because it was too boring. He said he knew there were things out in the world to see, and he was not seeing it. He said he later learned it was a world he could live without. He went to a bar and sat there, drinking, and finally missing out on all the other stuff. He was in Cub Scouts and played 4-H basketball. His best school subject was recess, and his worst was math. He said he made Ds and Fs in everything, mostly. He was in trouble for not paying attention and not doing his homework. He was never suspended. Pranks included cutting class and smoking in the bathroom but not stealing or pulling the fire alarm.

MARITAL. He started dating when he was 16. He said he had no good friends, when he was young. A good friend would be someone loyal, self-motivated and success-oriented, now. Then it was anyone who was an outlaw. He said he has a couple of close friends, now: his mom and a couple in here.

He said he was first sexual when he was 16 with someone he was dating. It was on the spur of the moment, so there were no precautions taken. He has been married once for a couple of months; he was 25, she was 21, and they just drank without either having a job. He came here on the run (absconding from parole in IA), and she filed for divorce. They had no children. He figured he had been with 40-50 women sexually in his life. He would shack up for a couple of weeks here or there, sometimes, relationships of convenience. There were no prostitutes, but there were "quite a few" one night stands. He said he never cheated, and none cheated on him. No one had intentions to make things last.

MILITARY. While never in the military as an adult, he was in a military academy at 15 because his parents figured he would do better with the structure. They were wrong, he said. It was but a year before he was expelled for drinking and being violent.

VOCATIONAL. He has worked as a truck driver, farmer and in construction. His longest street job was farming with his dad. He was fired from jobs at least once for not going to work. He never used on the job, but it was right after work and never before. He thought he would have been described as a hard worker, knowledgeable, taking pride in his work. The same would be true in prison, as well as dependable.

He would like to drive draft horses (teamster). He would need some time with the Amish to do that. He saw no reason he could not, and he hoped to do that, someday. He said farming was not profitable with big machinery; animals and more natural stuff were profitable with organics.

FINANCIAL. He said he had never had a bank loan or credit card. He said he had never borrowed without intending to repay it. He also tries not to loan

money, but he also does not expect it back: it's a test. He collected Food Stamps for two months the last time he was out, but no other public assistance and no unemployment.

LEGAL. He was first in trouble with the law when he was 15 or 16, never before. That was for stealing cars and joy riding. He was sent to Juvenile for a couple of months for one and to prison for a year and a day for another. He was 18 when he went to prison in IA. When he was 19 or 20, he was convicted of Willful Injury (a lesser included for Assault, plea bargain), and he served 4½-5 years of 10. After that, he absconded from parole to WA and was charged with Assault at age 25, which is his Index Offense. He has been in prison ever since, so he has been in prison almost all his adult life.

He said he committed crimes, then, as a way to fit in, to boost his ego and reputation to others and out of boredom. He would commit assaults out of respect or disrespect: if they didn't like him, they got beaten up. He said he could probably have been charged with other assaults if everyone pressed charges, but back then, it was drink, dance and fight in small redneck towns.

What would keep him out of crime would be getting quality time with his diabetic sister, starting a farm based on his dad's experience and seeing his parents while they are still alive. Now, there is no reason to commit crimes. He hasn't seen his old crowd for 30 years and has no desire to do so. He was last before the ISRB in January 2006; he had an infraction in 2004, and they said come back with no infractions, giving him five more years. He anticipated a better outcome, now.

He would release to his parents' place in IA, he said. He has talked to the ISRB about that, and that has been his plan for 20 years. If he had to release to his offense county, the police officer he assaulted is now the Captain of police, there, so he would fight it. If he had to release there, he would do so, however, and live as best he could within the means of the law.

The most depressed he had ever been, he said, was 12/15/03 when he was denied clemency and an interstate transfer back to IA; he was in the hole for seven months after that for venting frustration verbally. Someone overheard him, and he went to the hole for threatening. The happiest he had ever been, he said, was usually getting a job he wanted. The absconsion was resolved, he said, after he wrote them a letter and told them he was serving 20 to life in WA.

For goals, he would like to lose 20 pounds, and he is still locked up; however, he feels really good about himself. He thinks his having been to prison will be hard at the start, as he gets used to the changes. He has never used a microwave, for example. However, he did not think his having been in prison would interfere with his getting work.

With² regard to his Index Offense, the Offender stated that he had been drinking and doing vehicle prowls and burglaries. He decided to fight instead of going back to prison when a cop came up. He was running through an archery range, trying to get away. He tripped and pulled a knife out, hiding it from him. Then he stabbed him when he was coming up behind the offender, stabbed him seven times and then took his gun and shot him twice. After that, he left and hid in his tent until they found him the next morning. He said he tried to conceal the evidence by discarding his jeans, someplace. He did not recall where the knife went. He washed and tried to bandage his hand; he was drunk, at the time. As a result of his being drunk, it did not occur to him that he had not cleaned up very much; he said that with alcohol, there is no logic.

The officer lived and is captain of the Sheriff's Department in Benton County. He said the officer was doing his job, and the Offender was out of line. If he could say something, he would say he was truly sorry and wished it had never happened. He said he would hope the other could forgive him, since he is not the same as he was 27 years ago. He might say that, under different circumstances, they might have been friends.

There was a jury trial, and he pled temporary insanity, telling them he thought Charlie (Viet Nam) was chasing him. That was just a story he made up, he said. He said the story did not work. His attorney did all right for a public defender; he asked questions and tried to defend him, although there was a smoking gun and blood all over.

He said the justice system is broken. They keep extending the sentences instead of letting things run out. He said they move the ERDs, add lots of time, and try to keep you there, forever. Under the old system, they got you out to see how you'd do, and if you couldn't make it in prison, there would be no parole. It's not that way, anymore, he said. He thinks it changed because, in 1984, the Sentencing Reform Act made determinant sentences. Extending the sentences has lead to over-crowding, he said. He said it was popular to be tough on crime, as a politician, because everybody wants that.

If he could start over, it would be (reflecting) that it would be when he was about 14 or 15. What would have changed is that he would have spent more time on school and working with his dad on the farm, so he could take over some day. That was sort of a turning point; 15 was when he went to the military school instead of staying at home. He started using alcohol and marijuana and getting no supervision.

He sees finish carpentry and cabinet work as skills, as well as metal work and jewelry; there is always somebody better. Whatever he does, he does his best even if he fails, he said. In terms of intelligence, he sees himself as being

² From this point down to "Other Comments," below, the information was obtained on 3/27/09.

more logical and filled with common sense that folks around him. He looks ways to multi-task when he works, in order to be more efficient. He is good at cost-cutting, too. For example, he thought of a way to save 24 large plastic garbage bags a day in the dining hall. The Food Manager liked it, and he will talk to the Offender and listen to his ideas. He got no reward, and that was all right.

In closing, he said that he disagreed with the police report that he shoved the gun up under the vest of the officer. Instead, he grabbed it, twisted, and shot downward through his abdomen, and the bullet came out the rectum. He observed that had he shoved it under the vest, the bullet would have gone up, not down. He then added that he "gets roasted" every time he sees the parole board because he does not agree with the police reports.³

OTHER COMMENTS. Lately, he has been spending money on books, magazines, farming information, etc. He said it was all part of his plan to work for someone as well as get a couple of acres to get something going for himself and his folks, too. He said he has \$3,700 of mandatory savings from the money he has made over the years, so this will get him started. His mom will cover him on her car insurance and also provide transportation.

He wanted to know how much risk he posed, and I explained that risk assessment tools are based upon group data, not individual assessment. He knew that his past hurt him, and he also realized that his past could not be changed, only his present and future. My comment was that the ISRB already knew this and factored it into its decisions.

TEST RESULTS

RISK ASSESSMENT INSTRUMENTS

DISCLAIMER: The risk assessment instruments used to provide information about the likelihood of violent, general and/or sexual recidivism that are in common usage were developed and normed on Canadian or, in one case, Minnesota offenders. Even the Risk Level Classification (RLC) system in use by Washington Department of Corrections employs the *RRASOR*, an instrument normed on Canadians. It is not known how Canada's and Minnesota's offenders differ from Washington's offenders, nor is it known how the present Offender differs from the members of the groups used to develop the norms for these instruments. Furthermore, the research on these instruments is based upon group, or aggregate, data, and not upon individual performances. The most that can be said, assuming the present Offender matches a particular normative sample, is that persons with similar scores, as a group, have a given likelihood of committing such and such offense over this or that period of time with different margins of error.

³ As it turns out, this is a really minor detail. The Offender admitted to having intentionally attacked the officer with the plan of getting away and not going to prison, again. He has applied logic to his memory, which is reasonable, inasmuch as he was drunk at the time, so his actual memory could have been quite clouded. What is important for recidivism risk is that he did not hide important facts, admitted openly that he had engaged in planned, intentional action, and that he then, later, tried – albeit in a drunken state – to conceal his acts. He also admitted that his "insanity defense" was a futile attempt to avoid maximum penalties by manufacturing a defense in case it turned out that the officer had died as a result of the assault.

In other words, an individual's score places him or her into a risk group and says nothing about the individual's risks, *per se*. Therefore, I would be unwilling to vouch for any decision regarding release or change in custody status that was based solely upon the Offender's scores on any or all of these instruments, separately or in combination. It is worth noting that the current state of research on risk assessment instruments does not support the use of multiple actuarial tools, since they tend to provide redundant information. At present, the *Static 99/02* is considered as good as any sexual recidivism tool, the *LSI-R* is considered as good as any general recidivism tool, and the *VRAG* is considered as good as any violence prediction tool. Nevertheless, at the ISRB's request, risk estimates based upon several different tools are provided, below. **It is worth noting that, until very recently, there had been no studies that had established base rates of recidivism for offenders who had been released after decades of imprisonment. However, research using the *LSI-R*, published in 12/08 in Law and Human Behavior, studied 1,144 male offenders in Washington State released from 1999-2005. The research showed that the *LSI-R* worked fairly well for general, although not violent, recidivism among people who have been in prison for an extended period of time. The problem with violent recidivism could have been largely due to the relatively low base rate for violent reconviction (3.9%). In the Law and Human Behavior article, recidivism was defined as reconviction within a year of release. Since bringing violent offense to trial could take longer than bringing non-violent crimes to trial, the usefulness of the instrument for violent recidivism could also have been by using such a stringent definition.**

Level of Service Inventory, Revised (*LSI-R*). The *LSI-R* was developed and normed using Canadian offenders, although additional research has added to the normative base (see above). The Offender's last (11/8/04) *LSI-R* score was 35, putting him into the "Medium/High" range (scores from 34 to 40) of recidivism risk by the original norms and in the "High" range (scores greater than 28) by the norms for long term incarcerated Washington offenders published in 2008.

Using the original sample, of the more than 900 Canadian offenders who also scored in the "Medium/High" range, 57.3% had been reconvicted of any offense in the first year following their release from prison. Comparing the Offender with the data from more than 17,000 U.S. offenders that were published in the year 2000, 76.5% earned scores of 35 or less. Using the data from the 2008 study published in Law and Human Behavior, about 38% of the long term incarcerated offenders scoring in the "high" range had been reconvicted of any offense, i.e., "general recidivism," within four years of their release from prison.

Again referencing the 2008 study, "high" scorers (scores above 28), using the 2008 study's revised risk categories, were about three times as likely as low scorers (scores below 22) to be reconvicted. Furthermore, using the traditional *LSI-R* risk categories, offenders who were in the "Medium/High" range were four times as likely as offenders in the "Low" range (scores from 0 to 13) to be reconvicted.

Psychopathy Checklist, Revised (*PCL-R*). The *PCL-R* was developed and normed using Canadian offenders. On the *PCL-R*, the Offender earned a total score of 13 (13th percentile), putting him well below the cut score of 30 (84th percentile) usually used to differentiate Psychopaths from non-Psychopaths. His Factor 1 score (2nd percentile) was much lower than his Factor 2 score (37th percentile).

Violence Risk Appraisal Guide (VRAG). The VRAG was developed and normed using Canadian offenders. On the VRAG, the Offender earned a total score of 15, putting him into VRAG risk Category 7 (scores from 14-20). Of the Canadian offenders in the development sample whose scores also put them into Category 7, 55% had been convicted of a new violent felony within seven years of their release from prison, compared to a base rate of 31%, and 64% had been convicted of a new violent felony within 10 years of their release from prison, against a base rate of 43%.

Washington's new Risk Level Classification system. As noted, above, the Offender has yet to be classified under the new classification system. Therefore, his interim risk designation uses the older RMI classification system and places him into the category, RMA (as opposed to HN-RMB, RMB, RMC or RMD).

FORMULATION

Using the above data, which are based in large part, although not completely so, upon static risk factors, the Offender falls into risk groups that generally have a better than even chance of being reconvicted after their release from prison. In the case of the *LSI-R*, using either the older or newer risk categories, the ratios of risk relative to the respective "low" risk categories were three-fold and four-fold.

An additional wrinkle, unfortunately, pointed out by the authors of the 2008 study, is that the computation of *LSI-R* scores in the State of Washington involves changing some of the scoring criteria for eight (8) of the dynamic risk factor items. In any case, computation of scores for so-called "dynamic" factors generally reference the time period prior to incarceration, whether one year or some other period (as was sometimes the case for Washington). The effect of such differential scoring upon risk estimation using the *LSI-R* is unknown. Unlike offenders who have served shorter sentences, the time period prior to incarceration was 10-20 years before the individuals in the 2008 study had been released from prison. For the Offender, it would be almost 27 years. How such a lengthy period of time between dynamic factor computation and potential release would affect the ability of the *LSI-R* to estimate recidivism risk for someone like the Offender is unknown and cannot be reliably estimated.

SUMMARY and RECOMMENDATIONS

Jerry Lain is a 51-year-old male currently serving a sentence of 20 years to Life in prison after being convicted of Assault in the 1st Degree Using a Deadly Weapon. He was evaluated as to risk of reoffense, both generally and violently, upon his potential release back into the community at the request of the ISRB. The Offender's history of serious infractions was moderate in length and included items such as Threatening, Fighting, Possessing a Weapon, Possessing an Unauthorized Tool and Staff Interference. His last three serious infractions, all

stemming from the same incident, were in 2004. According to his criminal histories, he was in trouble with the police when he was 17 for Possession of Marijuana, and he also has one other violent conviction for throwing acid into another person's face, causing blindness. Prior to committing his Index Offenses, he absconded from parole in IA and traveled to WA, where he lived in a camp until he had committed the Index Offense. At trial, he attempted to plead insanity, saying that he thought the Viet Cong were chasing him, even though he had never actually been in the military (he said he had been in a Military Academy at age 15) or in Viet Nam. The Prosecutor and Trial Judge recommended that he never be paroled.

The Offender has been regularly employed while in prison, and his record of employment has generally been good. He has completed many offender change programs, some of which he credits with helping him gain insight and understanding of his criminogenic thinking and criminal attitudes and behaviors. While he showed no remorse for his victim at trial, he came fully clean with me about his crime and expressed much guilt and remorse about having committed it. His comments showed sensitivity to the plight of his victim, even if he did not show the kind of grief and remorse expected of someone who had first come to such realizations. It is worth the ISRB's understanding that time can play a significant role in dulling the intensity of grief and remorse responses, even for crimes as heinous as the Offender's.

In an aside, the Offender commented, after he had told his version of his crime, that he had routinely been "roasted" at Board hearings for not agreeing with every detail of the official reports. He stated to me that he was quite drunk at the time of the offense, although he was not in a "blackout," so his memory for the events could be dulled, somewhat. He stated that he has used logic to reconstruct some of the details rather than specifically to recall them. Such generated memory is not uncommon even for persons who have not committed heinous acts or been drunk. It is, in fact, how most people remember the details of significant events. The Offender was quite frank with me in describing the horror of his crime.

Risk assessment tools commonly in use for estimating recidivism risks put the Offender into risk groups that were reconvicted in percentages greater than base rates. In other words, more people who scored as the Offender did were later reconvicted across various time periods than released offenders generally, or on average, were reconvicted. Against these facts must also be weighed the facts that the Offender was unlike the people upon whom most of these tools were developed in some respects. This was even true of the subjects involved in the *LSI-R* study published in 2008. The maximum time they had been in prison was 20 years, while the Offender has already been in prison for more than 26 years.

Perhaps more important than risk estimates is recommendations regarding risk management. The Offender wishes to release back to IA, his home state.

Faulder Colby, PhD
Psychologist 4: MCC

RE: Lain, Jerry D.
DOC No.: 238088

Assuming that is acceptable both to the ISRB and to the State of IA, post-release supervision will be largely dependent upon the resources available in the area where he will live. Since he plans to live in a farming environment, the resources might not be substantial.

For the first year, at least, then, I recommend that the Offender release into a geographical area where there is a higher likelihood that post-release supervision resources will be comparable to what they would be in Washington. The Offender has expressed concerns about being released back to the county of his conviction, since his victim is allegedly now a ranking officer in the Sheriff's Department. Whether that is a concern for the ISRB is not something about which I am qualified to render an opinion. Nevertheless, it would likely be prudent to make the chances for the Offender's having a successful parole as great as possible in order to reduce the likelihood that, in the future, he would again do something to cause significant pain, or injury, to another person.

Certainly, with his history of alcoholism, it will be critically important for the Offender to engage in outpatient alcohol treatment once he is released, whether that be in a formal, structured program or through a self-help group like A.A. Similarly, since financial stability and employment appear to be positively related to parole success, it will be important for the Offender to be gainfully employed, rather than living on public assistance. As he has described it, he has gained skills while in prison that can help him be so employed, and he certainly has expressed an interest in being involved in farming.

Thank you for referring Mr. Lain.



Faulder Colby, Ph.D.
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 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY PRISON/WORK RELEASE OFFENDER MANUAL		
	REVISION DATE 3/1/10	PAGE NUMBER 2 of 5	NUMBER DOC 350.300
	TITLE MUTUAL RE-ENTRY PROGRAM		

REFERENCES:

DOC 100.100 is hereby incorporated into this policy; RCW 9.95.100; DOC 300.380 Classification and Custody Facility Plan Review; DOC 300.500 Work Release Screening; DOC 350.200 Risk Based Offender Transition and Release

POLICY:

- I. The Department has established a re-entry planning process for offenders committed for Murder 1, or continuously confined for 10 years or more, whether committed to a determinate or indeterminate sentence. This policy is not intended to give an offender any expectation of, or right to, placement in a Minimum security facility, even if the offender meets all requirements of the Custody Facility Plan.

DIRECTIVE:

- I. Mutual Re-entry Plan Criteria
 - A. Offenders must meet the following criteria for consideration:
 1. Must be serving a sentence for Murder 1.
 2. May be referred if continuously confined for 10 years or more for other conviction(s), if approved by the Indeterminate Sentence Review Board (ISRB) Chair, if applicable, and the Department Secretary/designee.
 3. Must be within 5 years of an Earned Release Date (ERD) or a Parole Eligibility Release Date (PERD) to begin development.
 4. Must be assigned minimum custody per DOC 300.380 Classification and Custody Facility Plan Review.
 - B. In order to be considered for placement in a Minimum security facility, offenders sentenced to indeterminate terms must be found conditionally parolable by the ISRB, as evidenced through a finding of parolability or conditional parolability pursuant to a hearing approximately 36 months prior to the PERD under the provisions of RCW 9.95.100.
 - C. Regardless of the duration, an offender will not be eligible for approval until his/her mandatory term has been served.
 - D. An offender who meets the criteria may decline to participate.
 1. Offenders will not be infraacted or lose Good Conduct Time/Earned Time for refusing to participate.



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
**PRISON/WORK RELEASE
OFFENDER MANUAL**

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NUMBER
DOC 350.300

POLICY

TITLE
MUTUAL RE-ENTRY PROGRAM

2. If an offender refuses to participate, the release process will be consistent with DOC 350.200 Risk Based Offender Transition and Release.

II. Mutual Re-entry Plan Development

- A. The Mutual Re-entry Plan development will begin during the offender's 5 year review.
- B. The Counselor will work with the offender to develop the Mutual Re-entry Plan, to include:
 1. Identifying and cultivating support of community sponsor(s) or family who may be release resources or advocates.
 2. Determining the offender health needs and how those needs impact facility placement.
 3. Ensuring offender criminal conviction record is accurately completed.
 4. Completing an End of Sentence Review prior to the offender's placement at any Minimum security facility, if applicable.
 5. Contacting Victim Services to obtain or determine victim and community stakeholder concerns in the re-entry plan process.
 - a. The Victim Services Program staff will work closely with community stakeholders and the ISRB to provide input for the Custody Facility Plan.
 6. Consulting with the Risk Management Intensive Transition Team for the development of the release plan.
 7. A summary of the offender's risk level and needs.
 - a. The summary will specifically address the offender's need for Work Release placement in order to develop a viable release plan.
 - 1) Screening for Work Release placement will be conducted per DOC 300.500 Work Release Screening.
 8. Other expectations for conduct regarding infractions and other behavior.
 9. Conditions that should be required either in Prison or the community to mitigate risk and address offender needs.



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
**PRISON/WORK RELEASE
OFFENDER MANUAL**

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- C. The plan will not exceed 36 months in duration unless the Headquarters Community Screening Committee (HCSC) or the ISRB has cited reasons for an extension.
- D. The assigned Counselor will document the proposed Mutual Re-entry Plan on the Offender Management Network Information (OMNI) Custody Facility Plan.
 - 1. The plan will address the Offender Needs Assessment and target custody and facility placement.
- E. The Facility Risk Management Team (FRMT) will review the Mutual Re-entry Plan with the offender and make appropriate recommendations and changes. The Custody Facility Plan will be submitted to the HCSC approximately 48 months prior to ERD or PERD.

III. Review and Approval of Mutual Re-entry Plans

- A. The HCSC will:
 - 1. Include an ISRB representative to review the Mutual Re-entry Plan for an offender who is under ISRB jurisdiction.
 - 2. Review the Mutual Re-entry Plan and decide whether to give alternative direction to the FRMT or approve the submitted plan.
 - 3. Forward the proposed plan to the Mutual Re-entry Plan Staffing Committee to determine any necessary changes or for final approval/denial.
- B. The HCSC will request a decision from the ISRB regarding parolability for offenders under ISRB jurisdiction:
 - 1. Eight months or earlier prior to the PERD for plans that do not include Minimum facility placement, or
 - 2. Three months prior to the first targeted Minimum facility placement identified in the Mutual Re-entry Plan for plans including Minimum facility placement.

IV. Mutual Re-entry Plan Implementation

- A. The plan will be implemented upon approval by the Mutual Re-entry Plan Staffing Committee.
 - 1. The Headquarters Classification Unit will monitor and the Counselor will document progress on the OMNI Custody Facility Plan according to the



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DEPARTMENT OF CORRECTIONS

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targeted custody dates specified in the Mutual Re-entry Plan, including progress to address risks and needs identified.

2. Review dates will be consistent with DOC 300.380 Classification and Custody Facility Plan Review.

- B. Prior to an offender's transfer, the Assistant Secretary for Community Corrections/designee will provide the final decision for Work Release placement.

1. Upon approval, the Department Secretary/designee will be notified.
2. The Headquarters Classification Unit will assign Minimum 1 custody and transfer to the approved Work Release will be authorized.

V. Mutual Re-entry Plan Changes

- A. Infractions during the implementation of the Mutual Re-entry Plan will be addressed per with DOC 300.380 Classification and Custody Facility Plan Review.

- B. Infractions resulting in a change of custody will be documented immediately in an updated OMNI Custody Facility Plan that includes the recommendations of the FRMT.

- C. Infractions not resulting in a change of custody will be documented in the Mutual Re-entry Plan update prior to consideration of the next targeted custody and placement or prior to release consideration by the ISRB.

- D. The Department may make placement decisions for the offender consistent with the availability of resources or other factors.

- E. The ISRB may schedule an additional .100 hearing prior to making a final decision regarding parole of the offender.

DEFINITIONS:

Words/terms appearing in this policy may be defined in the glossary section of the Policy Manual.

ATTACHMENTS:

None

DOC FORMS:

None

KOMO News

[Print this article](#)

Victim: Releasing a convicted cop shooter is a mistake

Originally printed at <http://www.komonews.com/news/problemsolvers/111822974.html>

By [Tracy Vedder](#) December 13, 2010

SEATTLE -- A convicted cop shooter is set to be back on the streets in just one week. But his victim says that's repeating the mistakes that led to the murders of four Lakewood police officers.

Mike Fitzpatrick spoke exclusively to the KOMO 4 Problem Solvers as he described the night 28 years ago when he fought for his life.

"I remember the look in his eyes when I was fighting him, face-to-face," he said.

Former Richland Police Officer Fitzpatrick nearly died that day at the hands of convicted felon Jerry Lain.

Fitzpatrick still works as an officer, and he still vividly recalls Lain grabbing his gun and shooting him in the stomach then in the face.

"What he tried to do was put it in my mouth to finish me off, but I was still fighting," said Fitzpatrick.

The attack rocked the Tri-Cities, especially since Lain was a parole violator from Iowa. Lain was convicted and sentenced to life after the attack on Fitzpatrick.

But now, after 28 years behind bars, the Sentencing Review Board has decided to release Lain.

"We feel like 28 years, in this case is, we hope, enough time that he will be able to successfully reintegrate back into society," said board chairperson Lynne DeLano.

In addition to Lain's stabbing conviction in Iowa and his conviction here for assaulting Fitzpatrick, Lain has had 18 serious infractions during his incarceration, although none of them came after 2004. The review board says it is releasing Lain due to the amount of time he had served, how he appeared at his parole hearing and what he'd accomplished during incarceration. DeLano believes the community will be safe.

"You know, I can't guarantee that. I don't think anybody could, but we believe he will be

EXHIBIT 15

safe," she said.

The board only approved Lain's release if he goes to Iowa where he has family and a better chance toward successful reintegration. But KOMO News obtained documents showing the board wouldn't release him here due to "current tension surrounding high profile cases." They were referring to the murders of four Lakewood officers by Maurice Clemmons, a parole violator.

Fitzpatrick believes the risk of another Lakewood incident is too high if Lain is released.

"I think eventually he'll hurt somebody else, kill somebody else," he said.

Fitzpatrick came to the Problem Solvers for help because everyone else told him there was nothing more to be done. But we learned late Monday afternoon that Gov. Chris Gregoire does have the ability to cancel or revoke parole. We've contacted her office, asked her to take a look at this case and let us know what she decides.

KOMO News

[Print this article](#)

Lakewood Police Guild joins fight against release of cop shooter

Originally printed at <http://www.komonews.com/news/problemsolvers/111968369.html>

By [Tracy Vedder](#) December 15, 2010

LAKEWOOD, Wash. -- The fight to prevent the parole of a man convicted of shooting a cop is getting some high-profile help. The Lakewood Police Guild has made it a top priority to keep that convict behind bars.

Pain and sorrow still cuts sharply through the Lakewood Police Department for the memory of four officers gunned down by parolee Maurice Clemmons, who was released by another state.

The memories are so sharp that when [KOMO News reported](#) convicted cop shooter Jerry Lain is due to be paroled here next Monday, the reaction was swift.

"All the speeches and all the memorials -- they said, 'We can't let it happen again,'" said Lakewood Police Guild President Brian Wurts. He believes the cases are eerily similar.

"This guy has proven multiple times that he is a threat to people and its just unacceptable," he said.

Twenty eight years ago, Richland Police Officer Mike Fitzpatrick nearly lost his life. Lain stabbed Fitzpatrick repeatedly, then shot him, first in the stomach beneath his vest, then a second time in the face.

"I remember the look in his eyes when I was fighting for my life. His intent was to kill me," said Fitzpatrick.

After a conviction in his home state of Iowa for a stabbing attack, then the conviction for the assault on Fitzpatrick, Lain had 18 serious infractions while in prison here, though none of them occurred after 2004. After reviewing Lain's record, the State Sentencing Review Board decided to release Lain Monday and send him back home to Iowa.

Wurts is shocked.

"We're going to sit here with a guy with life already; we know he's dangerous. We're going to let him go and I hope to God there's not four cops in Iowa sitting down when this guy comes through a door."

EXHIBIT 16

So the Lakewood Police Guild is adding its voice to the fight. The guild hopes that by lobbying Gov. Chris Gregoire, it can convince her to step in and cancel Lain's parole -- something she has the authority to do.

The governor told KOMO News she has staff reviewing all angles of this case and agrees it is serious.

"This is an individual intent on killing this officer, and only by the grace of God is this officer alive today," she said.

The Governor said she believes in rehabilitation, but added, "When you look at a person who has done what this individual has done...I want to be assured that I can tell the people of Iowa that yes, this person's ready to be paroled to your state."

The governor promises to make a decision by Friday -- soon enough that if she decides not to cancel Lain's parole, Fitzpatrick will have time to take legal action.

But both he and the Lakewood Police Guild hope that won't be necessary.

Maurice Clemmons

From Wikipedia, the free encyclopedia

Maurice Clemmons (February 6, 1972 – December 1, 2009) was an American felon who was responsible for the November 29, 2009, murder of four police officers in Parkland, Washington.^[1] After evading police for two days following the shooting, Clemmons was shot and killed by a police officer in Seattle.

Prior to his involvement in the shooting, Clemmons had at least five felony convictions in Arkansas and at least eight felony charges in Washington.^[2] His first incarceration began in 1989, at age 17. Facing sentences totaling 108 years in prison, the burglary sentences were reduced in 2000 by Governor of Arkansas Mike Huckabee to 47 years, which made him immediately eligible for parole. The Arkansas Parole Board unanimously moved to release him in 2000.

Clemmons was subsequently arrested on other charges and was jailed several times. In the months prior to the Parkland shooting, he was in jail on charges of assaulting a police officer and raping a child. One week prior to the Parkland shooting, he was released from jail after posting a \$150,000 bail bond.

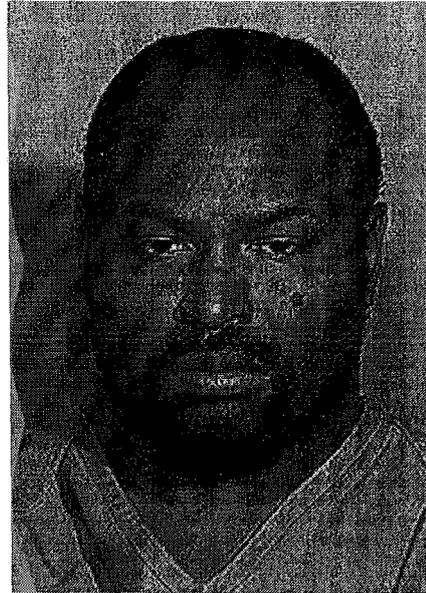
Contents

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Early life and crimes

Maurice Clemmons's father made frames for automobile seats at a Chrysler factory,^{[3][4]} and

Maurice Clemmons



Mugshot of Maurice Clemmons

Background information

Born	February 6, 1972 North Little Rock, Arkansas
Died	December 1, 2009 (aged 37) Seattle, Washington
Cause of death	Gunshot wounds from police
Spouse(s)	Nicole Smith (2004–2009)

Killings

Target(s)	Four police officers
Location(s)	Parkland, Washington
Killed	4
Weapon(s)	Handgun

his mother, Dorothy Mae Clemmons,^[3] worked in a nursing home.^[5] He had five siblings.^[3] Clemmons lived in Marianna, Arkansas in his early youth, and moved to Little Rock as a teen. He was arrested when he was a junior at Hall High School for carrying a .25-caliber pistol on school property.^{[5][6]} He claimed to be carrying the gun because he was "beaten by dopers", and said he had "something for them" if they attacked him again.^[5] Clemmons did not return to school, and finished his education at eleventh grade.^[7] In 1989, a 17-year-old Clemmons and two other accomplices robbed a woman at midnight in the parking lot of a Little Rock hotel bar. Clemmons pretended to have a gun in his pocket and threatened to shoot her if she did not give him her purse. When she responded, "Well, why don't you just shoot?", he punched her in the head and ran off with the purse, which contained \$16 and a credit card.^[6]

Clemmons was accused multiple times of displaying violent behavior during court appearances. In one incident, he dismantled a metal door stop and hid it in his sock to use as a weapon. It was discovered and confiscated by a court bailiff. In another incident, he took a lock from his holding cell and threw it at a bailiff, but missed and accidentally hit his mother instead.^{[5][6]} Clemmons was once accused of reaching for a guard's pistol while being transported to court. During one trial, he was shackled in leg irons and seated next to a uniformed officer because the presiding judge ordered extra security, claiming Clemmons had threatened him.^[5] At age 16, Clemmons' charges were committed from juvenile court to adult court due to the extremely violent nature of his crimes and demeanor.^[8]

By 1990, Clemmons was sentenced to 108 years in prison for eight felony charges from his teenage years in Arkansas. The total prison term stemmed from multiple sentences, some of which were concurrent to others and some were consecutive.^{[8][9]} The largest sentencing came in 1990, when he was given a 60-year prison term for breaking into an Arkansas state trooper's home and stealing about \$6,700-worth of items, including a gun.^{[6][10]} During his sentencing on the charges, a circuit judge told Clemmons that he had broken his mother's heart, to which he responded, "I have broken my own heart."^[5] Clemmons was also sentenced in 1989 to 35 years in prison for robbing the woman in front of the Little Rock hotel bar. Among his other sentencings were six years for weapon possession based on his high school arrest;^[6] and eight years for burglary, theft and probation in Pulaski County on September 9, 1989.^[9] He was not to be eligible for parole until 2015 or later.^[6] He was originally held at the Tucker Correctional Facility in Tucker, Arkansas,^[11] but was eventually transferred to the Cummins Unit near Grady.^[12]

Clemency

In 1999, after having served 10 years of his sentence, Clemmons filed a clemency appeal with Arkansas Governor Mike Huckabee.^[8] In his petition to Huckabee, Clemmons wrote he came from "a very good Christian family" and was "raised much better than my actions speak".^{[6][13]} Clemmons claimed he had just moved from Seattle, Washington, to Arkansas as a teenager, and because he

“ Where once stood a young ... misguided fool, who's (sic) own life he was unable to rule. Now stands a 27 year old man, who has learned through 'the school of ”

had no friends he gave in to peer pressure and "fell in with the wrong crowd" to be accepted by his young peers, which led him to commit his crimes.^{[6][8]} Although he apologized for his actions, Clemmons also complained that he received overly harsh sentences. He also claimed to have changed and expressed regret that his mother had recently died without seeing him turn his life around. Clemmons' clemency application was supported by Pulaski County Circuit Court Judge Marion Humphrey, who argued the cumulative sentence was excessive and cited Clemmons' young age at the time he committed the crimes.^[6]

hard knocks' to appreciate and respect the rights of others. And who has in the midst of the harsh reality of prison life developed the necessary skills to stand along (sic) and not follow a multitude to do evil, as I did as a 16 year old child.

Maurice Clemmons, in his clemency application to Governor Mike Huckabee^[6]

The decision was made over the objections of some victims and prosecutors involved in Clemmons' previous cases but was supported by the bipartisan parole board and the trial court judge in Clemmons' case.^[5]^{[6][8][14]} Mark Fraiser, an attorney who prosecuted early cases against Clemmons in Pulaski County, argued Clemmons was extremely likely to commit further acts of violence in the future, and said for a teen to receive such a lengthy prison sentence without committing a murder, "you've got to be a bad little dude".^[6] On May 3, 2000, Huckabee commuted Clemmons' 108-year sentence to 47 years, 5 months and 19 days, which made him eligible for parole that day.^[9] As a factor in his decision, Huckabee cited the unusually long sentence for Clemmons' age at the time the crimes were committed.^[5] The Arkansas Parole Board unanimously approved Clemmons' release on July 13, 2000, and he was set free on August 1, 2000.^{[9][6]}

Later crimes

In March 2001, Clemmons violated parole by committing aggravated robbery and theft again in Ouachita County. He was convicted on July 13, 2001 and sentenced to 10 years in prison.^[9] He also faced charges of parole violations, but due to problems with the case, he was not served with the charges until 2004. His attorney argued the parole violation charges should be dropped because so much time had passed, and they were subsequently dismissed.^[8] Clemmons was granted parole on the robbery charges in 2004. He told the parole board he was "not ready" the first time he was released, but that he "doesn't want to die in prison" and will "try to do the right thing".^[13] Clemmons moved to Washington in 2004 while still on parole, which was approved by Arkansas authorities.^[6] That year, he married a woman named Nicole Smith, although *The Seattle Times* later reported the relationship had "been tumultuous".^{[5][6][15]} Clemmons was placed under the supervision of the Washington State Department of Corrections and classified as "high risk to reoffend". His supervision was to continue until October 2015. He lived in Tacoma, where he ran a landscaping and power-washing business out of his house.^[5] Over the next five years, Clemmons bought six houses, including one in Arkansas and five in Washington.^[8]

Following his parole in 2004, Clemmons had no arrests or problems with the law until May

2009.^[8] *The Seattle Times* referred to four days in May 2009 as the time when "Maurice Clemmons' behavior and mental state deteriorated".^[15] On May 9, a Pierce County sheriff's deputy responded to Clemmons' home after reports he was throwing rocks at houses, cars and people. When the deputy tried to enter the house, one of Clemmons' cousins grabbed his wrist. After a struggle, Clemmons emerged from the house and punched the deputy in the face, and assaulted a second deputy who arrived to help. Clemmons was placed under arrest and taken to Pierce County Jail, where he continued to struggle and told jail workers, "I'll kill all you bitches."^{[8][15]} He was charged with two felony assault charges and two felony malicious mischief charges, and released from jail the next day after posting a \$40,000 bail bond without seeing a judge.^[15]

On May 11, around 1 a.m., Clemmons appeared naked in his living room and ordered two female relatives, ages 11 and 12, to fondle him. The two reportedly complied out of fear, and the 11-year-old fled the house afterward. Clemmons took the 12-year-old into his bedroom along with Clemmons' wife.^[15] Clemmons repeatedly referred to himself as Jesus, and said his wife was Eve.^{[13][15]} He released the 12-year-old girl after his wife begged him to let her go. However, at about 4 a.m. that same morning, Clemmons gathered his family back into the living room and demanded they strip naked together. He later left the house, claiming the world was coming to an end and that he was "going to fly to heaven". A family member called 911 and police found Clemmons at a nearby second house he was building, but Clemmons fled on foot and escaped. He failed to appear the next day for an arraignment on his May 9 charges. Child Protective Services investigated and substantiated the sexual abuse complaint.^[15] Latanya Clemmons, Maurice's sister, told authorities he had undergone a change and was "not in his right mind".^[13]

Clemmons was arrested on July 1, 2009, after he appeared in a Pierce County court trying to have his bench warrant thrown out. He was charged with second-degree rape of a child, as well as being a fugitive from Arkansas.^[15] At the time of his arrest, Clemmons made religiously themed comments and referred to himself as "the beast". He also told a police officer that President Barack Obama and LeBron James were his brothers, and Oprah Winfrey was his sister.^[8] Pierce County prosecutors claimed Clemmons' recent crimes amounted to a violation of Clemmons' parole in Arkansas, and that he faced years in prison if he was returned to the state. However, the Arkansas Department of Community Correction notified Pierce County on July 22 that they did not intend to ask for his extradition and that he should be adjudicated on his Washington charges. Stephen Penner, a deputy prosecuting attorney in Pierce County, said of the Arkansas decision, "There's a built-in incentive to not following through. In a way, the more violent they are, the less you want them in your community."^[15]

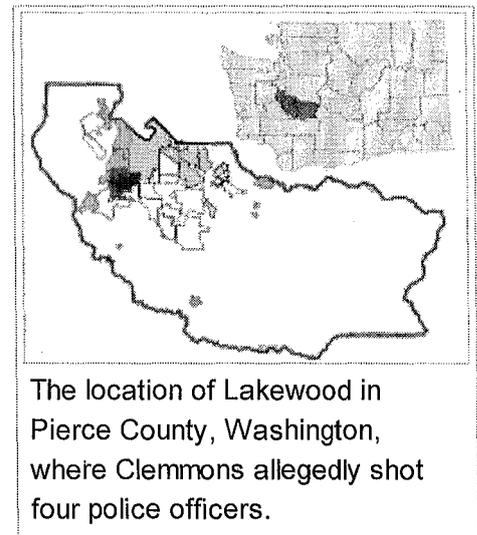
During a court-ordered mental health evaluation, Clemmons told psychologists he had experienced hallucinations in May 2009 of "people drinking blood and people eating babies, and lawless on the streets, like people were cannibals".^[8] He claimed the visions had since passed. He also claimed to have no faith in the American justice system and thought he was being "maliciously persecuted because I'm black and they believe the police".^[8] The evaluation, completed by two psychologists from the Western State Hospital on October 19, concluded Clemmons was dangerous and presented an increased risk of future criminal

acts.^[8] Pierce County Judge John McCarthy set bail for Clemmons' assault charges at \$40,000, below the \$100,000 that prosecutors sought based on Clemmons' history of violence. Pierce County Judge Thomas Felnagle set bail for the child-rape charges at \$150,000, lower than the \$200,000 sought by prosecutors,^[15] but higher than usual for the charges.^{[6][8]} After a mental evaluation, a psychologist concluded Clemmons was competent to stand trial on the charges, which eliminated him as a candidate for involuntary commitment. An attorney for Clemmons notified the court he planned to pursue an insanity or diminished-capacity defense.^{[5][8]} On November 23, 2009, Clemmons paid \$15,000 for a \$190,000 bail bond from Jail Sucks Bail Bonds, a Chehalis-based company, to secure his release.^{[5][15]} Two other bail bond agencies had rejected Clemmons based on his history of failing to appear in court.^[15]

2009 police officer shooting

Main article: Lakewood police officer shooting

Clemmons failed to check in with his community corrections officer within 24 hours of his release as required, but nothing was done in response.^[16] On November 26, 2009, less than one week after Clemmons posted his bail bond,^{[5][14]} during a Thanksgiving gathering at the home of Clemmons' aunt, Clemmons told several people he was angry about his Pierce County legal problems and that he planned to use a gun to murder police officers and others, including school children. He showed a gun to the people in the room and told them he had two others in his car and home. Clemmons said he planned to activate an alarm by removing a court-ordered ankle monitor, then he would shoot the police officers who responded to his house.^{[17][18]} In describing the planned murder, Clemmons said, "Knock, knock, knock, boom!"^[17] Darcus Allen, a convicted murderer who previously served in a Arkansas prison with Clemmons, was allegedly present for the conversation.^[17] Also on Thanksgiving, Clemmons cut off a GPS monitor Jail Sucks Bail Bonds had secured onto his ankle.^[16] On November 28, Clemmons showed two handguns to friends Eddie and Douglas Davis and told them he planned to shoot police officers with them; the exchange was witnessed by Clemmons' half-brother Rickey Hinton, with whom he shared a house.^[19] During the exchange, Clemmons danced around with the guns in his hands, claiming to be Lucifer. He told the men he had twice tried to go to a Tacoma police station, where he planned to walk in and start shooting. The first time the station was closed, and the second time he got a flat tire on the way there, Clemmons claimed. He also talked about stopping at a crowded intersection or a school and shooting people there.^[16]



The location of Lakewood in Pierce County, Washington, where Clemmons allegedly shot four police officers.

On the morning of November 29, Clemmons drove a white pickup truck to Allen's home, then

Allen drove him past the Forza Coffee Co. coffee shop in Lakewood, a suburb of Tacoma. After they saw marked police patrol cars in the parking lot, Allen drove back past the coffee shop and parked nearby. Some reports from witnesses said Clemmons parked his truck in a car wash stall at the coffee shop and pretended to clean the vehicle, but never turned the hose on.^{[17][18]} Around 8 a.m, Clemmons walked into the Forza Coffee Co. coffee shop, where four police officers were working on laptops before their shift. Clemmons opened fire on the officers, shooting them to death.^{[13][20]} Investigators said the murders were a targeted, execution-style attack and not associated with a robbery;^[21] Clemmons did not aim at any other customers or the two baristas working at the time.^[22] The four slain officers were Mark Renninger, 39; Ronald Owens, 37; Tina Griswold, 40; and Greg Richards, 42.^[2]

As Clemmons fled, Officer Richards struggled with him in the restaurant's doorway, then shot Clemmons in the back before the officer succumbed to a bullet wound to his head.^{[13][19]} The shooter stole Richards' Glock pistols before escaping.^[16] Clemmons returned to the truck and Allen drove him away. Allen later told detectives he stopped at an intersection and abandoned Clemmons and the truck, claiming he "wants of no part of this". Authorities however, later disputed this claim and said there was no evidence Allen abandoned the vehicle.^{[17][18]} Clemmons was identified later that day as a "person of interest" in the murders,^[2] but soon after was identified as a wanted suspect. Police identified no motive for the murders, and Detective Ed Troyer, Pierce County Sherriff's Office spokesman, said, "We're going to be surprised if there is a motive worth mentioning."^[1] Police initially believed the suspect may have died from his injuries shortly after the shooting.^{[1][23]}

Clemmons went back to his house and told Hinton he had been shot by police, and Hinton allegedly gave Eddie and Douglas Davis brothers a car to "get Clemmons out of here". As they drove, Clemmons told the brothers he "had taken care of his business". The Davis brothers took Clemmons to other friends, who bandaged his wounds.^[19] Later that day, police received a tip that Clemmons was seeking shelter from friends in Seattle. Police pulled over a white car they believed to have been transporting him, and the female driver admitted Clemmons was a friend and she had brought him to Seattle after he told her "he had killed a police officer or officers".^[19]

Coffee shop employees who witnessed the shooting identified Clemmons as the shooter from a series of photos.^[19] Authorities sought him in what was considered one of the biggest manhunts the Seattle-Tacoma area had ever seen, and Clemmons was considered the most wanted man in the Pacific Northwest.^[24] Authorities also surrounded the homes of Clemmons' friends and family in order to prevent him from finding shelter, and to determine who was helping him.^{[13][19]} After receiving what they later learned was a false tip, police locked down a Leschi, Seattle neighborhood house for 11 hours in the early morning of November 30, believing Clemmons to be holed up inside. After several attempts to coax or force him out of the house, including use of a robot and flashbang grenades, police entered and discovered Clemmons was not inside.^{[19][23][25]} Later in the day, police searched multiple locations in the Seattle and Tacoma areas, including a park where they found a handgun carried by Clemmons and his pickup truck, which had blood stains inside.^[26]

Death

On December 1, 2009, Clemmons was shot and killed by a Seattle Police Officer, Benjamin L. Kelly.^{[27][28][29][30][31]} Around 2:45 a.m., Officer Kelly, age 39, was on patrol and stopped to investigate a broken-down car on the side of the road, which was idling with its hood up. Officer Kelly recognized the vehicle as having been reported stolen. While sitting in his patrol car and writing a report, Officer Kelly noticed Clemmons approaching him, and recognized him as the suspect in the Lakewood shooting. Officer Kelly ordered him to stop and show his hands, but he instead began to flee around the disabled vehicle.^{[13][19][24][26]} Police claim that Clemmons reached into his waist area, for a gun. Officer Kelly fired several rounds at Clemmons and hit him at least twice, killing him.^{[19][24][27][30]}

Clemmons was carrying a handgun that had belonged to Lakewood Officer Greg Richards. Officer Kelly was placed on routine administrative leave following the shooting.^[26] Police later said Clemmons would have eventually died from the gunshot wound he sustained at the Lakewood shooting.^[29]

Since his death, multiple people have been arrested for helping Clemmons during and after the Lakewood shooting. Authorities claim the accomplices misled police about his whereabouts, gave him cell phones and money, applied first aid to his gunshot wounds and tried to help him leave the state.^{[13][26][27]} Among those arrested were Clemmons' sister, who bandaged his wounds and provided him transportation.^{[27][28]} Authorities arrested five other people for assisting Clemmons: Letricia Nelson, Quiana Williams, Douglas Davis, Eddie Davis, and Ricky Hinton.^[19] Darcus Allen was arrested and charged with aggravated first-degree murder for his alleged role as Clemmons' getaway driver. Allen claims he did not know Clemmons' plans when he drove him to the coffee shop, but authorities argued he had known for days that Clemmons planned to murder police officers.^{[17][18]}

A cell phone photograph taken of Clemmons' shirtless dead body quickly spread among city residents and government employees, prompting questions over who took it and how it became circulated. If the photo was leaked by an employee of the city or emergency responder, the action may possibly violate their employment contract.^[32] Funeral arrangements were kept private by the family due to the circumstances of his crime.^[3]

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Post-shooting photograph of Clemmons with previous bullet wound visible.

- p. A1.
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Objection to Release of Jerry Lain

Posted On: Dec 16, 2010 (12:28:39)

Brothers and Sisters,

The Washington State Fraternal Order of Police has been working on stopping the parole release of Jerry Lain who attempted to kill a Richland Police Officer in 1982. Below is the E-mail I sent to Governor Gregoire today. In addition I have spoken directly to the Governor's Office on this matter this evening and it appears there will possibly be a decision made this Friday at the earliest.

It is believed the statute gives the Governor the authority to reverse the decision of the Parole Board keeping Jerry Lain incarcerated, but has not been used in at least the last 25 years, if ever, according to the Governor's representative handling this issue. They want to make sure that she has the authority and is legal prior to any decision.

If you read my E-mail below to the Governor you will find that Jerry Lain attempted to execute Officer Mike Fitzpatrick in cold blood.

Governor,

I urge your immediate attention in halting the parole / release of Jerry Lain. Mr. Lain attempted to execute Richland Police Officer Fitzpatrick in 1982. Mr. Lain's aggravated assault on Officer Fitzpatrick and attempt to flee was not enough, once Officer Fitzpatrick was unable to defend himself any further and Mr. Lain had the chance to escape he then, in execution style, shot Officer Fitzpatrick one last time in the face to ensure his death. Miraculously however, Officer Fitzpatrick lived but only after a struggle and life altering medical conditions. Governor, as a police officer for over 24 years and the President of the Washington State Fraternal Order of Police I know too well the dangers we face each night. I, along with you, have been to too many line of duty deaths and know the citizens of this state cannot afford to have violent criminals such as Mr. Lain released to society once they demonstrate their unnerving attack on our communities peace keepers.

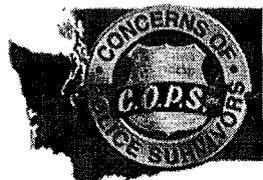
Here is the link to the Governor's website: www.governor.wa.gov/contact/default.asp

Fraternally,

Ken Roske

State President

Washington Fraternal Order of Police



WAsateC.O.P.S.

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- Grenada Police Department (MS)
- Pottawatomie County Sheriff's Office (OK)
- Pottawatomie County Sheriff's Office (OK)

more

DONATIONS GRATEFULLY ACKNOWLEDGED

- Michele Egan (10/10)
- Mr. Troy Meyers (10/10)
- Ms. Gabriele Swe (9/30)
- Spiro's Pizza and Pasta (9/28)
- Ms. Gabriele Swe (8/6)
- Ms. Rita White (8/6)
- Kirkland Police Department (8/3)

Home

Jerry Dean Lain (WA DOC # 238088) Parole

The Washington State Sentencing Review board has set a release date of Monday 12/20/2010 for Jerry Dean Lain (DOC # 238088). After reviewing the available details Washington State Concern of Police Survivors(WAsateC.O.P.S.) considers Lain unsuitable for release and believes he poses a serious risk to Law Enforcement and the public. WAsateC.O.P.S. is asking Governor Gregoire to step up and use her authority to stop Lain from being released. We are asking that you please review the details below and share your concern with with the Governor as well.

FACTS:

- In 1982 Jerry Dean Lain was in Washington while fleeing parole from Iowa where he had been convicted of a stabbing attack.
- Richland Police Officer Mike Fitzpatrick nearly lost his life when Jerry Dean Lain stabbed Officer Fitzpatrick repeatedly, took the Officer Fitzpatrick's gun then shot him, first in the stomach beneath his vest, then a second time in the face.
- While incarcerated here in Washington Lain had 18 serious infractions.

It is quick and easy to share your concerns with the Governor:

- Visit <http://www.governor.wa.gov/contact/default.asp>
- Under "What is the subject of your message?" choose legal/crime/law enforcement from drop down box
- Refer to DOC # is 238088
- Reference Jerry Dean Lain and Richland Police Officer Mike Fitzpatrick
- Urge the governor to remember the promises she made at recent LEO funerals, to remember her outrage at Arkansas for sending Clemmons to Washington, and to not let Washington be a state that paroles a violent offender.

News links:

- <http://www.desmoinesregister.com/article/20101214/NEWS10/12140353/Inmate-with-history-of-violence-gets-parole>
- <http://www.tri-cityherald.com/2010/12/15/1292028/keep-would-be-cop-killer-in-state.html#storylink=related>
- http://www.thenewtribune.com/2010/12/16/1467285/gregoire-may-be-able-to-revoke.html?storylink=rss_xml
- <http://www.komonews.com/news/problemsolvers/111822974.html>
- <http://www.q13fox.com/news/kcpq-governor-ill-decide-friday-if-121510,0,6089255.story> <http://www.komonews.com/news/problemsolvers/111968369.html>

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Like

UPCOMING

- C.O.P.S. In-Laws Retreat October 14th, 2011
- C.O.P.S. Parents Retreat October 28th, 2011
- C.O.P.S. Co-Workers Retreat November 4th, 2011
- WAsateC.O.P.S. Winter chapter meeting December 3rd, 2011
- WAsateC.O.P.S. Spring Meeting March 3rd, 2012

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Riley, Robin L. 'ISRB' (DOC)

To: [REDACTED]
Subject: FW: Jerry Lain

Dear Mr. Orth:

Thank you for your e-mail. It will be made available for the Board Members' review.

Robin Riley
Administrative Assistant 5
Indeterminate Sentence Review Board
360-493-9271 rriley@doc1.wa.gov
fax: 360-493-9287

From: Orth, Robert [REDACTED]
Sent: Tuesday, December 21, 2010 9:06 AM
To: ISRB
Subject: Jerry Lain

I am writing you regarding Jerry Lain who 28 years ago attempted to end the life of [REDACTED] and my view regarding your decision to release him from WA. DOC.

First I don't know what information you had before you to determine to release Jerry Lain but I am sure I have less information than you when I make my determination whether he should be set free or not.

Lain tried real, REAL hard to kill officer [REDACTED] will live with that night for the rest of his life especially when he looks into the mirror. I don't know [REDACTED] but I do know what it's like to be on the edge of death while I worked in law enforcement 30 years. I am also pretty sure you might have battled amongst yourself whether to release him or not.

Do you remember the governor stating "This will not happen again" when four Lakewood police officers were gun down after Maurice Clemons was released from jail. Did you have to wait for an directive from the governor to change your attitudes toward violent criminals'. I hope you don't wait. Everybody wants to feel that when violence is use to commit crimes the offender never, ever forgets the consequences. Lain went over the edge.

Lain does not deserve to be released under any conditions. Walk in our shoes, if you haven't. Understand what we go through when criminals are not given their just reward for failing society, if you haven't. Believe us when we say how frustrated we are when a crime is commented and the person responsible is let off or given leniency. Our job is to protect you and others from people that don't care if we live or die. Carrying a burden like that we have a hard time sleeping, just like Mike does, hoping that our job has not been in vain or someone slips through the cracks of our judicial system.

Bob Orth

ADMISSION SUMMARY

I. INTRODUCTION

Jerry Dale Lain, #238088, is a 25 year old, divorced, caucasian male, whose religious preference is Pentecostal. He was born on 6-13-67 in Versailles, Missouri. Lain was committed to the Department of Corrections from Benton County for a conviction of Assault in the First Degree, cause 82-1-00219-8.

The following information was obtained through interviews with Lain, a prosecuting attorney's statement, an FBI Rap Sheet, and a psychological evaluation by Dr. Sanford M. Bunin on 10-1, 4, and 6. Lain indicated to this writer that he was on parole from Iowa State at the time of his instant offense and he expects that he has charges in that state for absconding from parole, injury to a building, criminal trespassing and assault in the second degree. This information is in the process of being verified by the WCC records office.

II. PRIOR RECORD

A. Juvenile: Lain indicated that he was incarcerated in the Eldora Boys Reformatory in Iowa during 1974 for unauthorized use of a motor vehicle. He indicates that this was his only juvenile institution experience.

B. Adult:	Date	Institution	Charge
	9-76/5-77	Animosa Men's Reformatory Iowa	Continued incarceration for unauthorized use of motor vehicle (juvenile conviction)
	3-78/4-82	Fort Madison State Penitentiary, Iowa	Willful Injury

This writer questioned Lain regarding his adjustment during his prior incarcerations. Lain responded that he "got along okay at the institution until someone told me he was going to rob me" and Lain reacted by throwing acid in the other inmate's face. The result was that the other inmate was permanently blinded. Lain also indicated that he was involved in a claw-hammer fight approximately one month after his arrival at the penitentiary. He stated that the reason for this was because he and the other fellow did not like each other.

III. FAMILY BACKGROUND

A. Relation and Address	Age	Occupation
Ralph Carlson (stepfather) Rural Rt. 1 Burt, Iowa 50522	60	Farmer
Joann Carlson (mother) same as above	50	Housewife
Fred Lain (brother) same as above	22	Student

ADMISSION SUMMARY CONTINUED

III. FAMILY BACKGROUND

A. Relation and Address	Age	Occupation
Valerie Carlson (stepsister) Rural Rt. 1 Burt, Iowa	17	Student
Bill Carlson (stepbrother) as above	15	Student
Steve Carlson (stepbrother) as above	11	Student

B. Social summary: Lain indicated to this writer that he was approximately 3 years old when his father was killed rescuing a raccoon from atop an electrical transformer. This occurred on 6-1-60. Lain spoke of his natural father as being a cowboy and a biker, and he appeared to be very proud of this fact. Lain indicated that he himself identified with bikers and in the recent past has been a member of the "chosen few" bikers. Following his natural father's death, Lain's mother raised him and his brother Fred who is three years younger than Lain. Four years after she became a widow, Lain's mother remarried and Lain indicated that he did not get along with his stepfather. He said that he resented his stepfather for marrying his mother. His younger brother tended to imitate Lain's behavior and attitude on this issue. Lain indicated that his brother Fred has always been sickly with asthma and that Lain took a protective approach toward his brother. He indicated that he has always gotten along with his mother.

IV. EDUCATION, TRAINING AND WORK EXPERIENCE

Lain attended school from age 7 to age 16 in Algona, Iowa, which is adjacent to Burt, Iowa. Lain indicated that he repeated the 1st and 3rd grades and left school in the 9th grade. Lain admitted that he did not do well in school. He attributed this to the fact that he did not like to read and spent most of his time staring out the window. Subjects which did interest him were P. E. and art and later he developed an interest in history and math. His school grades were d's, f's, and low c's according to him. While growing up Lain stated that he participated in a school play and "as little as possible" concerning school activities. His free time was spent in fighting, shooting, trapping and hunting. Lain stated that he did these activities alone, preferring that to the company of others.

When he was approximately 15 years old, Lain was entered into the Kemper Military Academy in Booneville, Missouri. He stated that he was sent there because of disciplinary problems at home and at school. Lain was at the academy for approximately one year when he was dismissed after stabbing two students and going AWOL. Lain indicated to this writer that he was taught the martial arts and hand-to-hand combat, explosives, and weaponry technique at that school. He stated that he enjoyed the military aspect and became quite proficient at fighting. He objected to the discipline for scholastic activities, however.

As a teenager, Lain began to have contact with mental health agencies as a result of court orders for evaluations following his convictions on certain charges. During 1974 he was evaluated for 90 days at the Cherokee Mental Health Institute in Cherokee, Iowa. This was related to the unauthorized use of a motor vehicle conviction. He was also evaluated at the Mason City Mental Health Center, Mason City, Iowa during 1976, on a

ADMISSION SUMMARY

IV. EDUCATION, TRAINING AND WORK EXPERIENCE

court order involving the same charge. From 7-80 to 9-80 Lain was placed in a maximum security mental health hospital in Oakdale, Iowa for evaluation prior to parole from the Fort Madison State Penitentiary.

Lain appears to have made a poor social adjustment as an adolescent. He reports that he hung out with significantly older men, specifically 10 to 15 years old than him. When asked why he associated with such older people. Lain replied that he felt older at the time and identified with their lifestyle which was usually drinking and fighting. Lain reports that he began his drinking pattern at age 14 and quite proudly announced that he had reduced his intake to 5 beers a day when he was arrested on the instant offense. Lain also stated that he suffers from black outs when drinking. Lain has experimented with pot, cocaine, hash, mescaline, and crystal mescaline. He denies having ever used heroin.

Lain reported with some pride that he has had numerous relationships with the opposite sex, although these do not appear to be long-termed or more than superficial. In 5-82 he married Dianne Lynn Stuckey after having known her for a week and a half. He related that they divorced in 10-82 after spending a total of two months as husband and wife. Mrs. Lain initiated the divorce after Lain backslapped her against the refrigerator during an argument. The argument had begun when she confronted him concerning him why he was continuing to see other women during their entire marriage. When this writer asked if that was a correct accusation, Lain admitted that it was. He had no explanation for the reason why he had been unfaithful to his wife. As an afterthought he mentioned that he was drunk the first two weeks after the marriage. Lain indicates that he and his wife plan to remarry as soon as possible and she is very supportive of him now. Mrs. Lain is 21 and owns her own housecleaning service.

Lain reports that he obtained his GED in 1980 while at the Oakdale Mental Hospital. He further reports that he attended Southeastern Community College while incarcerated. His attendance was for one year and he was enrolled in electrical engineering, drafting, and psych 101. Lain's most recent job experience has been as a marine and diesel mechanic at three different marinas located in Nebraska, New Mexico, and Washington state. The total time on these jobs appears to be approximately 5½ weeks. Lain indicates that he loves boats and motorcycles.

V. EVALUATION AND IMPRESSIONS

When Lain learned from his counselor that background information concerning him was unavailable, he offered copies of his FBI Rap Sheet, the prosecuting attorney's statement, and his psychological by Dr. Bunin. Lain was also quite cooperative in answering questions during the interview. It was interesting to note that Lain had made notations and unlined specific comments written by the psychologist and that he appears to feel that this psychological report is quite accurate. He even appeared to wish to identify with the comments made. Lain did not mention any of the circumstances of his crime except for the fact that he claims to have blacked out and does not remember shooting the police officer. The prosecuting attorney's statement, however, indicates that Lain was very deliberate and direct in his attack on the officer. Lain also does not appear to show remorse for this crime or past crimes and assaults he has initiated. Lain did not request alcoholism counseling during his incarceration. He states that he would only become involved in alcoholism counseling if it were with his wife, whom he states is currently involved with Alcoholic Anonymous. Lain strongly identifies with bikers, violence and excitement, and militant activity. In contrast, he claims

ADMISSION SUMMARY (continued)

V. EVALUATION AND IMPRESSIONS

to have developed a strong interest in religious and Bible studies and has had numerous contacts with the chaplain and chaplain's assistants while housed in the R Unites.

Lain appears to be an extremely dangerous individual, who feels confused about his violent activities yet is inclined to rationalize them by stating they are the results of blackouts. It is anticipated that he will be a very difficult management problem in an institution in that his adjustment will be punctuated by frequent infractions. Lain is also considered to be a serious escape risk. It is also expected that Lain will gravitate toward biker groups or subversive militant groups in the institution.

VI. RECOMMENDATIONS

Because of his age, his prior criminal history, his previous institutional experiences, and his diagnosis as having paranoid tendencies, it is recommended that Lain be classified for the Washington State Penitentiary. It is also recommended that he receive regular psychiatric intervention and participate in alcoholism and drug abuse counseling. It is further recommended that Lain receive remedial classes in arithmetic and spelling and that he then be afforded an opportunity to enter a vocational training program of his choice at that institution.

VII. ATTACHMENTS

Presentence Intake Form
Vocational Counselor's Report
Inmate's Version
Psychological, Psychiatric Reports
Prosecuting Attorney's Statement (when available)



JULIE ZEMBAL
CLASSIFICATION COUNSELOR III
DICTATED: 12-3-82

Jerry Dale Lain
SCCC 238088 H2-A25L
191 Constantine Way
Aberdeen, WA 98520

RECEIVED
OCT 02 2002

October 1, 2002

INDETERMINATE SENTENCE
REVIEW BOARD

Indeterminate Sentence Review Board
4317 Sixth Ave., S.E.
P.O. Box 40907
Olympia, WA 98504-0907

Dear Board Members;

I have received your decisions and reasons. I respectfully request reconsideration on this matter. Your reasons have no justification, only the underlying tone of warehousing because the victim was a police officer, as you so stated on tape. I believe that is a double standard, and there is such a thing as Equal protection under the law.

I know of some people who have been paroled with fighting infractions as close as six months to release. Consider the fact that my last so called fight was December 1985 makes no sense.

I also know of some people who have been paroled with drug infractions just months prior to release, and even after release and they are either still on the streets, or on their way back out on parole. Consider the fact that I have never failed or refused a UA, nor have I ever had an infraction for Drugs or Alcohol. I have taken The STOP Chemical Dependence program in July 1990. I have also been to A.A. for years, and made a conscious decision years ago that I do not want or need any chemicals in my Life. My last drink was over 20 years ago.

If my problem is as bad as everyone says, then why is it that I have never had an infraction for drugs or alcohol. There must be drugs and alcohol in the prison system to justify UA's. If by chance, the prison system does not have drugs or alcohol within its confines, then why are we wasting tax dollars doing random UA testing, or transfer UA testing. But since there are those who choose to use such chemicals, there will continue to be testing. I am not the same person that I was 20 years ago.

EXHIBIT 22

Education is the only factor that has made a difference in whether people return to prison or not. The more education a person has the less likely they are to commit another crime. And if you will check my educational background, you will see that in the last 20 years, I have spent about half of my time getting an education.

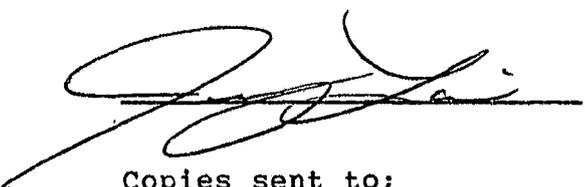
I have taken every self help program offered by the Department of Corrections(DOC). If taking these programs does not mean anything, then why are we wasting the taxpayers money? There has to be some sort of faith that these programs work, but you must also give the person the opportunity to put this knowledge to use. People grow up and most even wise up with time, it has been 20 years. Give people a chance that have earned it, that is all that I am asking for is a chance. I don't care if it is work release for a year or two. It is an opportunity to prove that I can be a productive member of society.

I also presented you with a letter stating that Iowa would work with me on an Interstate Compact if WA would find me Parolable. Iowa is willing to take a chance on me, why doesn't the state of Washington have faith in their programs? If Washington would have a faith that their programs work, then I would no longer be a burden on the taxpayers of Washington, but a productive tax paying member of society.

Correctional Officers P. Marine, L. Mays, Medak, and AC Colton, all of which have submitted letters of reference, and several other DOC employees can not even believe that I have been locked up 236 months on a Charge that only carries 72 to 102 months with no distinction on who the victim may be. As many DOC employees have said it makes no difference who the victim was, I have done the time and should be paroled.

Thank you for your time and consideration on this matter.

Sincerely,



Copies sent to;
Governor Locke
Attorney General
Joe Lehman
A.C.L.U.
Tim Eyman
House Members
Senate Members

Indeterminate Sentence Review Board

ADMINISTRATIVE DECISION SHEET

Name: Lain, Jerry D.

DOC#: 238088

1. Reinstatement.	9. Suspend and Return.
2. Continue on present status.	10. Order extradition proceedings.
3. Issue Board Warning.	11. SUSPEND PAROLE DATE Pending recommendation from institution.
4. Request 60 day letter.	12. Schedule .100 hearing.
5. a. Special conditions submitted by CCO approved. Issue addendum.	13. Schedule .100 hearing 120 days prior to PERD.
b. Delete special condition _____. Issue addendum.	14. Schedule two-year Administrative Progress Review.
6. Special conditions submitted by CCO Disapproved.	15.* Grant Final Discharge and Restoration of Civil Rights.
7. Suspend. Serve violations specified. Schedule on-site.	16.* Deny Final Discharge and Restoration of Civil Rights. (State reasons).
8. Serve violations specified. Schedule on-site. DO NOT SUSPEND AT THIS TIME.	17. Other.

* - Denotes two signatures required.

Comments/Recommendation

#17: Mr. Lain is requesting reconsideration of last Board decision.

*#2 continued on present status
MM 10/7/02
dq 10/7/02*

Hearing Officer/CRS: *RL*

Date: *10-7-02*

AGREE		DISAGREE	
INITIAL	DATE	INITIAL	DATE



STATE OF WASHINGTON

INDETERMINATE SENTENCE REVIEW BOARD

4317 Sixth Ave., S.E. * P.O. Box 40907 * Olympia, Washington 98504-0907 * (360) 493-9266
(TDD Relay 1-800-833-6388)

October 10, 2002

Jerry Dale Lain
DOC #238088 H2-A25L
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

Dear Mr. Lain:

The Board has reviewed your letter of October 1, 2002 and voted not to make any changes in their last decision.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard P. LaRosa".

Richard P. LaRosa
Hearing Officer

RPL:rlr



ISRB

MONROE CORRECTIONAL COMPLEX
TWIN RIVERS UNIT

CONFIDENTIAL

Psychological Report

LAIN, Jerry #238088
Date of Birth: 06/13/1957
Age: 48

Evaluator: Savio Chan, Ph.D.
Date of Report: 11/23/2005
MXED: Life

Sources of Information

Central file, Electronic record, and Health file.

Psychological Tests: Minnesota Multiphasic Personality Inventory - 2 (MMPI-2) (11/04/2005)

Risk Rating Schedules: Violence Risk Appraisal Guide (VRAG)

Level of Service Inventory - Revised (LSI-R)

A 45-minute interview (11/04/2005).

RECEIVED
DEC 02 2005

INDETERMINATE SENTENCE
REVIEW BOARD

Reason for Referral

Mr. Lain was referred by his counselor, Steven Robins, CC2, for an evaluation as requested by the Indeterminate Sentence Review Board (ISRB) for Mr. Lain's upcoming parolability hearing.

Purpose and Accessibility

This is a psychological report providing information for DOC classification staff, community corrections officers, the Indeterminate Sentence Review Board, the End of Sentence Review Committee, and care providers within the DOC who have a need to know. Disclosure and dissemination of this report shall be in accordance with RCW 70.02 and DOC Policy 640.020. It shall not be released to individuals outside DOC without the inmate's consent or unless otherwise authorized by law. Mr. Lain was advised of the purpose of the evaluation and departmental policy regarding information practices.

A copy of this report should not be given to the inmate without the author's consent. However the inmate may request an oral interpretive summary of its finding from mental health staff at any correctional facilities within DOC.

Criminal Behavior

Current Offense Mr. Lain has been in prison since 11/82 for an Assault 1st. The offense took place in the evening of 9/7/82. Mr. Lain was car prowling at the parking lot by an apartment. When the police came he was seen carrying some cassette equipment taken from a car. Someone from the apartment yelled and he dropped the loot and took off with the police officer chasing after and ordering him to stop. After he ran for a while he suddenly dropped on all fours and asked the police to kill him. Disarmed by his submissive behavior the officer approached him unguarded. He suddenly sprang up holding a knife with a 4 or 5 inch blade and

stabbed the officer in full force. Blocked by the officer's protective vest, the knife slid from the chest and made a deep cut in the officer's arm. While the officer tried to gain control of his knife he managed to take the officer's revolver. Knowing the officer had a protective vest, he wedged the gun under the vest and shot the officer in the lower abdomen. As the officer lay wounded on the ground, he steadied the gun the shot the officer in the head seriously wounding the officer in the jaw and neck before he fled. He was apprehended the next day. At the time of the offense he had just been released on parole from the Iowa state prisons just five months earlier and he absconded parole supervision. He was convicted by the verdict of the jury.

Past Record Mr. Lain grew up in Iowa and his juvenile record is unknown. Our record indicates that when he was 17 (1974) he was confined in a juvenile institution in Iowa for Unauthorized Use of a Motor Vehicle.

His prior adult record (all took place in Iowa) included Possession of Controlled Substance (7/76), Car Theft (11/67) for which he did time in Iowa state prisons, Possession of Stolen Property (1/78), Breaking and Entering (1/78) and Willful Injury (4/78) for which he did time in Iowa state prisons. He was last paroled from the Iowa system in 4/82.

Social History Mr. Lain is the oldest of five children in his family. He had a full brother and three half-siblings. He was born in Missouri. When he was three his father died of electrocution while working on a transformer. His mother moved the family back to her hometown in Iowa. At seven, his mother married his stepfather who was a farmer. He reports no history abuse or neglect. His didn't do well in school because of lack of interest and would not put any effort in his studies. He repeated the first and the third grades and as a result he was two years older his classmates. He often fought with other students. By junior high he began drinking and staying out late. At fifteen his parents placed him in a military academy, apparently hopping that he would do better in the structured environment. However, he lasted only one year and was dismissed by the academy reportedly after he stabbed two students. Mr. Lain reports that he liked the academy, particularly being a junior ROTC, but that he "rebelled against authority, against the abuse of authority" and he believes that was the real reason he got kicked out. He reports that he stole a pick up truck and was sent to a Reform School. After he got out he decided not to go back to school. He reports that he drank more and was using drugs, including heroin. "But my drug of choice was alcohol." He stole a car and spent eight months in the state Reformatory. He was out only couple months when he stabbed and seriously injured a man for which he received ten years. He served only four. He confirms that while he was in the penitentiary he had indeed blinded the eye of another inmate with acid, which was used in photo processing. He reports that two weeks after he was out on parole he married a young woman he met at a party. Two months later he had an altercation with her and/or with her father, which, according to his estimation, would result in three new charges and a trip back to prison. He decided to run and hitchhiked to the Tri-Cities area of WA. For several months he lived in the campground. He was drinking heavily and using drugs. He did some odd jobs but "mostly stealing." He committed the instant offense in the process of stealing. He reports having support from his family in Iowa.

Mental History Mr. Lain reports no history of psychiatric illness. He discloses that when he was first charged with the instant offense, his lawyer went for an insanity defense but on one bought it.

Deviant Sexual History None known.

Current Behavior/Functioning

Programming Mr. Lain works in the Kitchen, the same job he had prior to coming here. He says that he spends his spare time walking in the yard and reading. He reports that he had completed all the Offender Change programs available to him, some of them more than once and that he is presently on the waiting list for the Non Violent Communication workshop.

Infractions This is Mr. Lain's third prison term. So far he has been in prison for 23 years. He has 23 major infractions on record. Only one infraction involved fighting, which occurred 20 years ago. Since he saw the Board three years ago he had gotten four more infractions: verbally threatening a staff (12/03), possession of unauthorized tool, tattoo/paraphernalia, and possession of property no belonged to him (9/04). The last three infractions were a cell tag.

Plan Mr. Lain likes to have an out-of-state parole back to his home state of Iowa, where his elderly parents and some of his siblings are living.

Interview observations

During the interview Mr. Lain was generally appropriate; he showed no gross signs of affective or psychotic disorder and no suicidal or homicidal thoughts. He was somewhat apprehensive but seemed open. Looking back, he related that time of his offense his life was on a downward spiral. He believed he was hunted not only for parole absconding but also three new charges and he didn't want to go back to prison. He was on the run and had no place to go. He was by himself in Washington, living in a campground and surviving by petty thefts. "I was drunk and scared. I was just trying to get away. I was unable to control my thoughts and emotions." In hindsight he said, "I regret (the police officer) got hurt, but I have to thank him for saving my life." He explained that given the situation he was in and his state of mind, had he not been locked up he would probably be dead long ago. While he expressed verbally of his regret, he came across as a person lacking the capacity for empathy. He wanted to tell the Board that he can't change his past, but he had learned and changed over the years, that he now values life and has control over himself. He said he is cognizant of his high-risk areas, which include "alcohol, drugs, and people—bad people." The last one came as a surprise, as in all his offenses, he had been acting on his own. ✓

Psychological Testing

MMPI-2 The validity scales of the test suggest that he is likely to be a person who is rigid, self-righteous, and short on insight. He was rather open in his response to the test and produced

a valid profile. In general, people responded the way he did often harbor chronic and intense anger and are unable to express their hostile impulses in a modulated and socially acceptable manner. They tend to overcontrol themselves and act out occasionally in an explosive manner. Their anger usually stems from family and marital relations. They demand attention and approval and are very sensitive to rejection and criticism. They seem conforming outwardly but rebellious inside. They often are sexually maladjusted.

Risk Ratings:

VRAG Mr. Lain's score on this rating scale would fall in the high-risk range. In the scale development sample, among offenders scored as Mr. Lain 55% committed another violent offense with 7 years and 64% within 10 years. Caveat: since the norms of his scale were developed on Canadian offenders, we do not know how well it would apply to offenders in our State. But it does give us a reference point.

LSI-R The most recent LSI rating yielded a score of 35, which would place Mr. Lain in the "high" level of need and risk category according to the norms recommended for Washington State risk classification.

Summary and Impressions

We are facing a 48 year old divorced white male with a history of alcohol and drug abuse who is serving time for Assault 1st. Mr. Lain was chased by a police officer who had observed him car prowling. He feigned submission causing the officer off guard. When the officer approached him he jumped up and viciously attacked the officer with knife, attempted to stab the officer in the chest. He took the officer's gun and put it under the officer's protective vest and shot the officer. After the officer was down he shot the officer a second time, in the head. There was no question that he intended to kill the officer. While the officer survived he reportedly suffered permanent damage and disability. At the time of the offense Mr. Lain had been out of Iowa state prison less than six months after serving time of a similar offense ("Willful Injury") and he was on abscond status. He has had prior incarceration both in juvenile and in adult system. He reportedly had a long history of violent behavior and always carried a knife. At present he has been continuously confined for 23 years. To his credit, he does not have significant violent behavior during his present incarceration. On a three-point scale ranging from low to high I would rate his re-offense risk as high and his violent risk as medium. Refrain from alcohol and drug use, full time employment, stable lifestyle, and no possession/carrying weapons would decrease his risk. Based on his institutional conduct he would likely not be a management problem in less structured facilities and his risk for escape seems low.



Savio Chan, Psychologist 4
TRCC

VRAG

NAME: Lain, Jerry

Doc# 238088

DATE: 11/4/2005

Table 4.4: Method and weights for determining a Risk Assessment Guide (RAG) score

1. Psychopathy Checklist (PCL-R) Score ^a	
Scores 4 and under = -5 Scores of 5 through 9 = -3 Scores of 10 through 14 = -1 Scores of 15 through 24 = 0 Scores of 25 through 34 = +4 Scores 35 and over = +12	CATS → +2 +2
2. Elementary School Maladjustment	
No problems = -1 Slight (minor discipline or attendance) problems = +2 Moderate (seeming behaviour or attendance) problems = +3 Severe (serious discipline and/or attendance) problems = +5	+4
3. DSM-III Diagnosis of Personality Disorder	
No = -2, Yes = +3	+7
4. Age at Index Offence	
Age of 39 or over = -5 Age of 34 through 38 = -2 Age of 28 through 33 = -1 Age of 27 = 0 Age of 26 or under = +2	+9
5. Lived with Both Parents to Age 16 (except for death of parents)	
Yes = -2, No = +3	+7
6. Failure on Prior Conditional Release	
No = 0, Yes = +3	+10
7. Non Violent Offence Score (Cornier-Lang Criminal History Score, CLCH) ^b	
Score 0 = -2 Score 1 or 2 = 0 Score 3 or over = +3	+13
Marital Status	
Ever married (or equivalent) = -2 Never married = +1	+14
8. DSM-III Diagnosis of Schizophrenia	
Yes = -3, No = +1	+15
10. Victim Injury (for Index Offence): the most serious is scored.	
Death = -2 Hospitalized = 0 Treated and released = +1 None or slight = +2	+15
11. History of Alcohol Abuse:	
One point is allotted for each of the following: Parental alcoholism, Teenage alcohol problem, Adult alcohol problem, Alcohol involved in a prior offence, Alcohol involved in the index offence. 0 = -1, 1 or 2 = 0, 3 = +1, 4 or 5 = +2	+17
12. Female Victim (for Index Offence)	
Yes = -1, No = +1	+18

3/82
25 yr
divorced
2 wife
no more c.
3 mos.

CATS (0 or 1 = -3; 2 or 3 = 0; 4 = +2; 5 or more = +3)

- Elementary school maladjustment >2
- Teenage alcohol problem
- Occasional or frequent extreme aggression
- >3 conduct disorder symptoms (DSM III)
- suspended or expelled from school
- arrested <16
- parental alcoholism
- lived with both parents to age 16

? "dismissed"
Pu P. kicked out of military Academy.
in mid year
or end of term?

4 → +2

10. Cornier-Lang Criminal History (CLCH) seriousness scores are reached using the figures supplied below:

Robbery (bank, store)	7
Robbery (purse snatching)	3
Arson (church, house, barn)	5
Arson (garbage can)	1
Threatening With A Weapon	3
Threatening	2
Possession Of A Weapon	1
Theft Over	5
Theft Under	1
Break And Enter	1
Fraud (extortion, bank scams)	5
Fraud (forged cheque, impersonation)	1
Mischief	1
Trafficking In Narcotics	1
Dangerous Driving, Drive While Ability Impaired	1

All criminal charges for non-violent offences are scored and then added. This yields a single overall history score. A score of 0 is weighted in the scheme outlined in Table 4.3 as -2. A score of 1 or 2 is allotted 0. A score of three or more is assigned +3.

Table 4.5: The relation between RAG scores and the probability of violent recidivism (P/V) for two follow-up intervals

RAG score	years of follow-up	
	7 P/V	10 P/V
1. ≤ -22	0.00	.08
2. -21 to -15	.08	.10
3. -14 to -8	.12	.24
4. -7 to -1	.17	.31
5. 0 to +6	.35	.48
6. +7 to +13	.44	.58
7. +14 to +20	.55	.64
8. +21 to +27	.76	.82
9. ≥ +28	1.00	1.00

High

12501 Bel Red Rd | Suite 209
Bellevue, WA 98005-2509
Phone: 425-646-6017



Richard Linn | En-Tie Soon

LAW OFFICE OF RICHARD LINN, PLLC

February 3, 2011

Lynne DeLano
Indeterminate Sentence Review Board
4317 Sixth Ave. SE
P.O. Box 40907
Olympia, WA 98504-0907

Re: Jerry Lain No. 239088; minimum term hearing issues; letters of support

Dear Ms. DeLano:

In light of the tragic events at WSR this past weekend, I wish to follow up on my letters dated 1/18 and 1/28.

As you know, I am most concerned about the fact that the Governor canceled parole without a hearing after you, the Board, had carefully reviewed DOC and ISRB files, met with Mr. Lain and found him parolable twice within the past 18 months. No new information or violation behavior was presented to the Governor. The only new information I see, and it is positive, is the requirement for 90 to 100 days of work release in Iowa.

I believe that the Board made a difficult, but correct decision, to parole Mr. Lain, based on his positive record and the in-person meetings with him. I also strongly believe that since the Governor did not give him an opportunity to be heard and just basically said that you, the Board, made the wrong decision, that this upcoming hearing should be treated as a .100 hearing similar to where the inmate's MRP has not progressed and therefore another parolability hearing needs to be held. That, really, is the only type of hearing that makes sense when, through no fault of his own, a decision from a prior hearing becomes unenforceable.

I am enclosing 26 additional (5 were submitted on 1/18) character references from inmates who appear to have daily contact with Mr. Lain. Many have known him during his entire incarceration at TRU and longer. If Mr. Lain is to get a fair hearing, the Board should question these inmates in depth about Mr. Lain in contrast to the Governor, who gave Mr. Lain no chance to respond to the public outcry.

I have reviewed the DOC file, including every classification referral since 1995 for Mr. Lain. As the Board probably knows, except for the 2003 infraction, they are generally consistent about how he has programmed positively and has family support in Iowa. For the twelve months after the 2003 infraction, Lain addressed his anger issues (stress/anger completed 2/24/04) and now has reached the point where the counselor at the hearing on 7/23/09 gave a very positive accounting of his behavior, stating that he is a "stabilizing factor" on the unit. The Board has recognized his behavior and programming in its D&R's over the past ten years. The reports are consistent in that Mr. Lain wants to



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Phone: 425-646-6017

Richard Linn | En-Tie Soon

LAW OFFICE OF RICHARD LINN, PLLC

return to his family, which is exactly where he was supposed to parole to. The indications are (and the record supports) that he will be returning to a very stable and supportive community.

Mr. Lane is not a sex offender. There are NO issues with woman. He is outspoken and doesn't hide things. He does not appear to be a volcano ready to explode or an accident waiting to happen. He appears to be transparent and discloses everything to friends (see enclosed letters and statements from counselors at the past two hearings). Since his disturbing venting in 2003, he has done nothing but work, program, make friends, continue his family relationships and impress people.

He committed a brutal crime, one that is impossible to comprehend if you do not place it in the context of Mr. Lain's life at the time. However, with all due respect to Mr. Fitzpatrick, who suffered unfathomable injuries, his statement that, "I don't care how much he's changed supposedly, which I don't think he's changed one bit. *I think he's gotten worse.*" (quoted in the Tri-City Herald, 1/28/11, "Lawyer: 1982 attacker...") contains a patently absurd comment that Mr. Lain is even more dangerous today. That statement, apparently, is how the public views Mr. Lain.

We want the opportunity to show the Board why the "...he's gotten worse" is fantasy. The Governor gave him no opportunity to be heard

Finally, as I pointed out previously, there are serious legal questions here concerning procedural issues created by the Governor's Order, which is why I would like to know, as soon as possible, exactly what authority (the specific WAC and/or RCW) the Board will be using to conduct the minimum term setting. I am sending a copy of this letter to the Governor so that she can see examples of what Mr. Lain might have presented to her if he had been given a hearing prior to the Order that canceled parole. In fact, the Governor could have solicited a statement from Mr. Lain (similar to statements submitted to the Board prior to APR's) before making her decision.

Sincerely,

A handwritten signature in cursive script that reads "Richard Linn".

Richard Linn
Encl

cc: J. Lain
Governor Gregoire



12501 Bel Red Rd | Suite 209
Bellevue, WA 98005-2509
Phone: 425-646-6017

Richard Linn | En-Tie Soon

LAW OFFICE OF RICHARD LINN, PLLC

February 3, 2011

Governor Christine Gregoire
Office of the Governor
P.O. Box 40002
Olympia, WA 985-0002

Re: Jerry Lain DOC No. 238088, Governor's Order Cancelling Parole Pursuant to RCW 9.95.160

Dear Governor Gregoire:

I sent you a letter on 1/28 concerning the above cited order, asking you to reconsider your decision and addressing procedural issues that the order seems to have created. Today, I am enclosing a copy of a letter I have sent to the ISRB concerning Lain's upcoming hearing. Attached to the letter are 26 letters of support for Mr Lain. That constitutes a portion of what he could present were you to reconsider your decision.

As contract attorneys for the Monroe inmates, Mr. Soon and I are shocked, saddened and repulsed by the crime committed at WSR last weekend. We occasionally saw c/o Biendl during visits to WSR. Whatever ultimately happens in Lain's case, we hope that he is treated totally independently of that case, because I fear that the public will lump him together with the suspect.

Sincerely,

A handwritten signature in cursive script that reads "Richard Linn".

Richard Linn
cc: Lynne Delano, ISRB
J. Lain

1-24-11

To whom It May Concern

I am writing in regards to
Jerry Cain # 238088.

I have known of Jerry Cain
for close to 20 yrs. - and I have never
heard of him uttering any type of threat
towards anyone - nor have I had any
negative interactions with him.

In the time I have been
here at T.R.C.C., I have seen him
act in only a positive manner. Even
when he was faced with the letdown
he was handed last month - when it would
have been easy and understandable to
have lashed out in frustration. And yet
still - he acts and deals with the
situation in a positive manner -
keeping his goals and future in sight.

Enough is enough. Jerry
has done over and above what he would
of been sentenced to today. His release
was approved all through the levels.
His behavior speaks volumes for him
- not to mention he's done more than
enough time.

Thanks for your time

A.W. Langstead

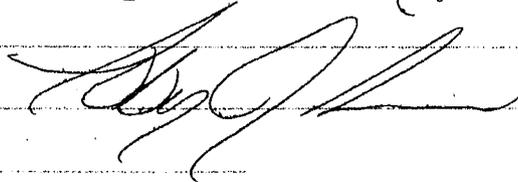
A.W. Langstead #26281

SIR, OR MADAM.

JANUARY 21ST 2011

I, TOBY JOHNSON Doc # 948007 HAVE WORKED IN THE INMATE KITCHEN WITH JERRY LAIN FOR THE PAST 2 YEARS HERE AT THE MONROE CORRECTIONAL COMPLEX / TWIN RIVERS UNIT. I HAVE NOTICED THAT MR. LAIN HAS A VERY STRONG WORK ETHIC, HE TAKES PRIDE IN HIS WORK, AND JOB. I'VE ALSO NOTICED THAT MR. LAIN SEEMS TO ONLY ASSOCIATE HIMSELF WITH PEOPLE THAT ARE DECENT, RESPECTFUL, AND HONEST. MR. LAIN DOES NOT HAVE ANY AUTHORITY FIGURE ISSUES WHAT SO EVER, HE ALWAYS SEEMS TO TREAT STAFF MEMBERS WITH RESPECT, AND CURTISY. THE FEW CONVERSATIONS THAT I HAVE HAD WITH MR. LAIN ALL REVOLVED AROUND HIS PARENTS, AND PLANS OF BEING RELEASED TO IOWA.

SINCERELY,



Name: TOBY JOHNSON Doc# 948007
Monroe Correctional Complex / TRU
P. O. Box 888 Cell # C118
Monroe, WA 98272-0888

January 22, 2011

To whom it may concern,

My name is Mark Bidon, I am writing this letter to help lend a voice to the character that Jerry Laine shows in his daily walk.

I have been incarcerated for 30 plus years. During that time I've witnessed the character of many men, for good and bad. While "doing the time" all of us are challenged in many ways. We all have good days, so-so days and bad days. The good days are the fewest and the easiest, the so-so days the most frequent and we simply want to get to the next day, the bad days happen more often than we want and are the most difficult.

During the bad days I've watched Jerry face the here and now, looking into who he is and what damage he is responsible for. Jerry readily acknowledges that he's responsible for altering and creating a victim with his actions of many years ago. He has no doubt that the victim is still affected by his actions of that time. This weighs heavy in his heart. To me, that is the most important aspect of developing the character that Jerry demonstrates daily.

One can talk about the depth of responsibility, or the ownership of the harm he's done, what separates Jerry from many others is that he feels the harm and damage he is responsible for. He shares what he feels with those that are close to him. It is not easy to do when the prison environment dictates that "to feel" is dangerous and weak. Jerry speaks from his heart in sharing the responsibility of his past harmful actions and deeds.

To feel the heart of being responsible for taking someone's normalcy of life, safety, and creating fear in the victim, the victim's family and others associated with victim is a process many people do not experience, quite possibly because it's

Jan 20, 2011

Mr. Ginn,

My name is Paul Brown. I met Jerry Jain around 1990 at the Walla Walla State Penitentiary. We got to know each other while working under the same Recreation supervisors over the course of a few years.

It is obvious, now, in retrospect, that when I met Jerry he was already on the road to change from the young, angry, and out-of-control hoodlum that he later described himself to have been in his past.

On the time and place that we met it would have been easy to be enemies, however, it would've been difficult to find a reason to be Jerry's enemy. By the time I met him he carried himself in a well-balanced and mature manner so it was pleasant to work around Jerry and easy to socialize with him.

In this current chapter of our incarceration together Jerry has only enhanced his growth. On a daily basis Jerry is respectful, he's gracious and his default facial expression is pleasant or a smile. Never have I witnessed erratic behavior by Jerry in these recent years, or the years before. And I see that Jerry is more able to reveal and discuss his personal thoughts and feelings when things are weighing on him. I know this

to be a major step that can be, and often is, scary and uncomfortable, but absolutely necessary when coming from the places that we have, so I commend Jerry on his hard work in this area.

I believe Jerry Cain knows remorse because he recognizes that his own actions affected not only the life of his victim and his family and friends, but also the lives of those he loves - his family. And I know from him that his priorities, in his future, are to return home, be with his aging parents, and till his land.

Jerry has taken time on several occasions to enlighten me on some of the various aspects of agriculture, so I know he has the know-how and the passion to immerse himself in that lifestyle from here on.

I believe Jerry would be a productive citizen in society if given the opportunity.

Sincerely,

Paul Brown D208

244495 P.O. Box 888

Monroe, WA 98272-0888

To whom it may concern:

I've known Mr. Jerry Laine for about 4 years. He and I worked in the SK (Canteen Kitchen) together for approximately 2 years. From the first moment I met Jerry he has always been a very respectful person. He had an even temperament about him, calm. He always had a positive attitude and a smile. He was always willing to lend a hand to others when they needed it. I've never seen him be unkind or malicious to anyone. I personally haven't seen the person they described on the news. I don't believe Jerry will ever re-offend. When you've been around the system long enough you're able to see through people and the facades they're built, and you know who will re-offend and who won't. There's no doubt in my mind he will be successful in all his endeavors.

Sincerely

Orlando D. Campbell

To whom it may concern my
name is John Richards and I have
known Jerry Law since 1988,
He is not the same man that I
met in 1988. He is honest,
level headed and trust worthy.
Jerry is ready for society and
has shown himself to me to
be a changed man one who needs
to go home,

Sincerely
John Richards

1-23-11

To Whom It May Concern:

I am writing this on the behalf of Jerry Fein. I have only known him for one year, but in that short time that I have known him he has made a lot of changes in his life. He is a highly motivated individual and is very goal oriented. While working with him in the kitchen he is a very hard worker and ensures every task that is assigned to him gets completed on time and effecently. Also from talking with him, his plans for the futre are to move back home and take care of his parents and work on their farm. Mr. Fein is a very nice and changed individual, please consider him for release and thank you for taking the time to review this letter.

Sincerely

Jarvis Craig

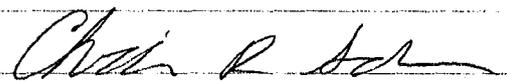
To whom this may concern-

1-22-11

My name is Christopher Adams and I am writing this concerning a friend of mine Jerry Lane. I have known Jerry going on 7 months now and he has been a good friend to me always giving me good advice and explaining to me how prison is a waste of life I know once given a second chance Jerry will be law abiding citizen and I know he regrets his crime and can only look forward to the future I ask that you please give Jerry a chance to show what kind of person he is now.

Sincerely,
Chris R. Adams

Christopher R. Adams
869732



Any Questions concerning
Jerry's interest please contact:
(971)388-7774

1/22/11

I am incarcerated with Jerry Lane and I have known him since 2006. I do see a big change in him since the first day I met him. He does not bother anyone and just does things daily to better himself. He is very polite to all especially to people with authority here at the prison. He is a very hard worker and do seriously believe that even though he may of made bad choices in the past I believe he is over that and would be nothing but an asset to the community and believe that he should be given the chance to prove himself.

I am proud that someone I met in Jerry Lane that I have found someone that I can call a true friend.

Thank you
Jeff Frazer
Jeff Frazer

Glen Nordsven
#248359 D-1-03
Monroe Correctional Complex
Twin Rivers Unit
P.O. Box 888
Monroe, WA 98272

January 19, 2011

Dear Sir,

I have know Jerry Lain for thirteen years of my incarceration. I watch Jerry make choices daily in prison that reflect what type of citizen in the community he would be.

The Jerry Lain I know is positive, supportive, and a role model for how the younger inmates should do their time. I have never once heard Jerry talk bad about another inmate and I have the privilege to count him as a confidant.

We all grow in our lives, and I think by looking at Jerry's infraction record it is easy to see his growth. It is a shame all of his accomplishments were over shadowed by the poor choices he made earlier in life.

Sincerely,

Glen Nordsven

Glen Nordsven

From: Joseph Frederick #278839.

Re: Jerry Lain

My name is Joseph "Joe" Frederick and I am the inmate facilitator of the "Inside Dispute Resolution" Program at TRU. I am a "Mediator Practitioner" and the only one at TRU. I assist inmates in dealing with their prison disputes with other inmates.

I have known Mr. Lain for several years, and although due to limited availability and his work schedule, he has not attended any of our classes, we are in constant contact and ongoing conversations concerning interpersonal relationships, and building working relationships, and finding better ways to handle difficult situations.

Jerry has learned to talk through difficult situations, asking questions and listening compassionately ~~to~~ to the people around him. This is quite different from how he once dealt with his issues. Though age has mellowed him, his knowledge of himself and his better understanding of others, combined with his willingness to learn and his ever expanding compassion for others, is his most impressive personal growth.

I am quite pleased to have witnessed the man Jerry has become. His search for meaning and understanding, for knowledge and compassion are solely his endeavors. Though others may claim glory for his advances, it is Jerry who has taken responsibility for his actions, past and present, and Jerry who seeks out the people and tools to make him a better person.

January 22, 2011

To All interested parties in the matter of Jerry Lain being released.

My name is Donald Forvilly. I am an offender at the Monroe Correctional Complex-Twin Rivers Unit in Monroe WA. I have known Mr. Lain approximately 3 years. Mr Lain at one time had shared his story with me. I have come to know the new Jerry Lain as he is now. In my opinion he is not the same individual who had committed his crime in 1982. I have observed a tremendous growth in Mr. Lain in the way that he once described him self to me, to be; when he had committed his crime. I have had extensive conversations with Mr. Lain over the years, covering several different subjects from composting to subjects in the Bible over the years, Mr. Lain has been a tremendous friend to me, giving me good advice to address issues that I was facing. I believe also gotten his life going the right way.

In my opinion, the decision our Governor had made not to release him, was a poor decision.

Mr. Lain has the desire, and should be given the priveledge to be released to Iowa, and be near his parents, and live the rest of his life; with out provocation.

Sincerely

Donald Forvilly #723335

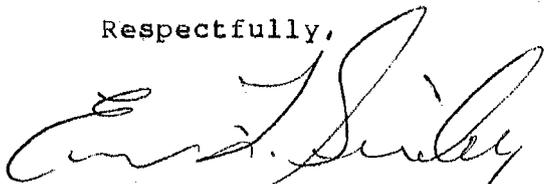
To Whom It May concern,

I've composed this letter in support of Mr. Jerry Lain, who I've been housed with at TRU for the last 2 years. And what I've seen of Mr. Lain is a very quiet individual who hasn't associated himself with negative people; from my perspective, he's conducting himself like a man who wants to go home and stay home with his family.

I realize that this letter may be subject to question because it's coming from another inmate. But I'd ask that you review my prison conduct and see that I'm qualified to advocate for Mr. Lain in what has become a very sensitive situation obviously pertaining to his past, present, and future conduct. I pray this board will remain steadfast in what it provided Mr. Lain, and that's the precious opportunity for freedom.

I thank you for your time.

Respectfully,

A handwritten signature in cursive script, appearing to read "Eric L. Smiley". The signature is written in dark ink and is positioned above the typed name.

Mr. Eric L. Smiley #935312
MCC-TRU (D-106-1)

DEAR PAROLE BOARD,

MY NAME IS MARVIN HUNTER
DOC #952015. I have been confined in the DEPARTMENT
OF CORRECTIONS SINCE 1992. I AM WRITING ON BEHALF
OF MR. JERRY LAIN DOC. I have been housed
AT MCC-TRU in the SAME UNIT 2 CELLS DOWN
FROM MR. LAIN. HE IS KIND, RESPECTFUL, CONSIDERATE
AND ALWAYS WILLING TO HELP ANOTHER. I HAVE ONLY
BEEN HERE FOR 9 MONTHS BUT I HAVE ALOT OF KNOWLEDGE
ABOUT PRISON AND THE CONDUCT OF PRISONERS. THE FACT
THAT MR. LAIN HAS BEEN INFLECTION FREE FOR SO MANY
YEARS IS A TESTIMENT TO THE CHANGED PERSON HE
IS TODAY.

INMATES HAVE CHOICES TO MAKE
CHANGES AND I SEE MR. LAIN AS A MAN WHO HAS
MADE A SOLID CHOICE TO LIVE AS A DIFFERENT MAN.
PRISON HAS NOT MADE MR. JERRY LAIN A BITTER
MAN BUT A BETTER MAN. HE HAS MANY TALENTS IN
CARPENTRY, COMPUTER SKILLS AND VARIOUS OTHER AREA'S.
HE HAS WENT ABOVE AND BEYOND IN TAKING EVERY
SELF HELP CLASS OFFERED. I BELIEVE EVERY OFFENDER
THAT HAS DONE ALOT OF TIME IS CHECKING FOR MR.
LAIN BECAUSE IT GIVES US ALL HOPE. THIS HOPE IS VERY
IMPORTANT. PLEASE FIND MR. LAIN PAROLABLE SO NOT ONLY
CAN WE SEE THE POSITIVE CHANGES HE HAS MADE BUT SO

CAN SOCIETY. I AM NOT SAYING HE HAS NOT MADE HIS SHARE OF MISTAKES IN LIFE. HOWEVER, HE HAS MADE REMARKABLE CHANGES IN HIS LIFE, HIS CONDUCT AND HIS DECISION MAKING. MR. JERRY LAIN IS MAKING ALL THE RIGHT DECISIONS TO BE AN ASSET TO SOCIETY AND I TRULY BELIEVE HE IS READY AND CAPABLE TO MAKE THIS TRANSITION.

MR. LAIN HAS BEEN CONFINED IN PRISON FOR 28 YEARS AND HE REFUSED TO JUST SIT IN PRISON AND BE WHORE HOUSED. HE WENT TO SCHOOL, HE APPLIED HIMSELF BY TAKING MANY SELF-HELP CLASSES HE INSPIRES OTHERS TO BE ACCOUNTABLE AND TO APPLY ^{THEMSELVES} ~~YOURSELF~~. THE MOST AMAZING THING I NOTICE IS THAT EVEN NOW IN HIS DARKEST MOMENT AFTER BEING READY TO GO HOME ONLY TO BE DENIED AT THE 11TH HOUR HE STILL HAS A POSITIVE OUTLOOK. HE STILL HAS A KIND AND GENTLE WORD OR SMILE. THAT SHOWS GROWTH, STRENGTH AND CHANGE. THAT IS NOT THE CONDUCT OF A DANGEROUS MAN. JERRY LAIN IS NO LONGER A DANGEROUS MAN HE IS A CHANGED MAN DESERVING OF A SECOND CHANCE. THANK YOU FOR YOUR TIME AND PATIENCE.

SINCERELY
MARTIN HUNTER

Mr. Thomas R. Hargrove, #775412
Monroe Correctional Complex / Twin Rivers Unit
P.O. Box 888 ** D-209-1 ** Monroe, Washington 98272-0888

January 21st, 2011

Law Offices of Richard Lynn, PLLC
12501 Bel-Red Road * Suite #209
Bellevue, Washington 98005
(425) 646-6028

Dear Counsel,

I come to you with this letter telling you just how wrong the decision recently made by this state's Governor regarding Jerry Lain. Although I did not know Jerry twenty eight years ago, I have had the pleasure and privilege of knowing the man for the past Six years.

Everyone makes mistakes, quite often, more than one mistake is made, and some even make several. In Jerry's case, he's made his share, but he has also paid the price each and every time for his mistakes.

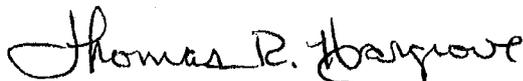
What has become of our society, for the past 100 + years, judges across our great nation have always made statements such as "*the man did his time, he's paid his debt to society*". Jerry did not take the life of any man, he had nothing to do with someone else's crime, therefore, Jerry Lain should not be punished for another man's crime.

Jerry Lain is a good man, he's had almost thirty years to improve his life, educate himself, and grow old, Jerry is my friend, a very good friend, and I'm compelled to simply say stop punishing Jerry for something Officer Fitzpatrick claims Jerry might do.

There has been a lot of articles written and things said over the past few weeks, both on TV and News Papers that are simply not the truth, very hurtful things to all involved. If one man judges another man, the judging man should know the facts, the honest truth before hand and not second hand, with speculation and half truths.

I hope this letter is actually read, Jerry deserves another chance to make good in society and grow older in the free world.

Sincerely,



Thomas R. Hargrove

January 21, 2011

Law Office of Richard Linn, PLLC
12501 Bel-Red Road, Suite 209
Bellevue, WA 98005

To Whome It May Concern:

It is an honor to write this letter on behalf of Jerry Lain. I have had the pleasure of knowing Mr. Lain since November 2009 and in the last six years I have not met anyone, that has been in prison as long as he has, who has no malice toward the one(s) that they have harmed, even when they have been denied release.

Mr. Lain and I have had many conversations based upon religious beliefs, which some days came around to the idea of forgiveness. He has told me that he has prayed for forgiveness for the acts that he committed and he hopes that one day others will forgive him as well. He also has stated that he knows that the acts he committed can never be forgotten, but he prays that they can be forgiven.

You also can not believe the change that comes over Mr. Lain when we have talked about what he plans to do when he is finally released. His eyes light up when he talks about moving back to Iowa to live on his parents farm. He also has plans for raising horses and taking care of his parents. If his work ethics, that I have witnessed, prove anything, he will do very well on the farm or any other job that he takes on.

In conclusion, I feel that no matter what I say, about Mr. Lain, will not change your mind(s) about him, and until you or anyone else, who has a say in his release, sits down with him and get to know the man he is today, you will be doing him an injustice. To judge a man based on what someone else has done is a travesty, because each and every one of us is different no matter how similar we may act. So, I ask you today to sit down with Mr. Lain and see for yourselves that he is not the same man he was when he committed his crime.

Sincerely yours,


Steven L. Burge #866104

D-413
Monroe Correctional Complex - TRU
P.O. Box 888
Monroe, WA 98272

To whom it may concern,

January 21, 2011

My name is Barry Krantz, #977148

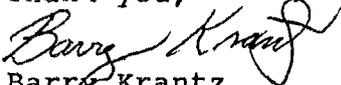
I am an inmate here at TRU.

I first meet Jerry Lain at Stafford Creek Corrections in 2003. Having known Jerry then and now I can say their in a change in him and how he communicates his feelings.

He has grown personally and emotionally by leaps and bounds since I first meet him.

I think it is a shame that the Governor would pull his parole after doing 28 years for a 1st degree assault conviction. Their are people released daily who are more of a threat to society then Jerry.

Thank you,


Barry Krantz.

TO WHOM IT MAY CONCERN

1-21-11

MY NAME IS ZACHARY VIKES #815746, I'M WRITING
IN BEHALF OF JERRY LAIN #238088.

I LIVE IN THE SAME UNIT AS MR. LAIN, I
BELIEVE HE IS READY FOR RELEASE. HE CARRIES
HIMSELF HUMBLLY AND RESPECTFULLY.

I ALSO BELIEVE HE IS ONE OF THE FEW PEOPLE
IN PRISON WHO WILL DO WELL WHEN RELEASED
AS HE HAS REHABILITATED HIMSELF.

HE HAS TAKEN RESPONSIBILITY FOR HIMSELF.
PLEASE LET THIS MAN HAVE A CHANCE.

SINCERELY,

ZACHARY VIKES #815746 PRU/P-220-2

TWIN RIVERS UNIT

MORRDE CORRECTIONAL COMPLEX

P.O. BOX 388

MORRDE, WA 98272

1-21-11

I have been at MCC Tru for over a year.
And in the time that i have been here and
have known Mr. Lain he has never been
disrespectful or aggnessive towards staff
or other inmates, He has been very respectful
towards everyone around him.

David Kaulitzke
~~David Kaulitzke~~

Jan 21, 2011

Dear Mr Linn,

My name is Derek Staton I have known Jerry Lain for about 5 years now, since I've been here at MCC/TRU. I work in the kitchen as does Jerry. I have been here since 2006 I have been working around and with him for the whole time I've been here. Jerry is one of the nicer inmates/offenders I have known while incarcerated. I have seen no violent acts or attitude from him at all in the time I have known him, none have I heard of any. Besides working around each other we all so live in the same unit on the same wing. It is apperent from how he carrys himself he strives to be a positive influence on others here in our community.

Derek J. Staton

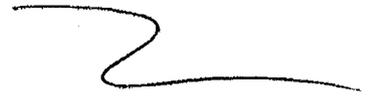
01/21/11

To Whom It may concern
I've known MR. Lane now for
"3" yrs here at T.R.U. And have personally

Mire, Charles
#849930
T.R.U.
A-Wing
D-Unit

witnessed his behavior here as a positive
role-model Inmate who works hard everyday,
avoids drama, is polite & respectful to all
staff & Inmates! If there's an
Inmate I look up to to succeed in life
And not come back to prison, it's MR. Lane!

With All Due Respect:
Sincerely: Charles A. Mire



To Whom it may concern

1-20-2011

I have been here a JRV since June of 2010 and have interacted and been around Jerry Dain during that time. Jerry seems like a stand up guy to me. He's courteous, respectful and always willing to help another inmate or staff member out if he can. I wish Jerry the best and hope you also see his good qualities and allow him to proceed in starting a new life.

Sincerely

James L. Arthur
966553

JAN 23-2011

MY name is Mike Corne I have been here a TRU for 10 months. In this time I have known Jerry Lain. I see and spend time with him daily. I have spent time with him at chapel as well as conversations on the tier. I know him to be a very caring and understanding person as well as compassionate and concern for others. In my opinion MR Lain is a man who has earned his right to be free and rebuild his life with his family.

Mike Corne #337401

I'm writing this on behalf of Mr. Jerry
Kain. I've known Mr. Kain for a couple of years
and for that entire length of time I've known
him to be an honorable, straight forward, trustworthy
man. Mr. Kain has a simple, down to earth disposition
and in spite of his length of incarceration, he is
soprisingly optimistic and maintains a healthy sense
of humor. I've watched him maintain his composure
in times when most others would come apart
at the seams. Mr. Kain is assertive and hardworking
as well as patient and willing to help when needed.
In conclusion let me say that Mr. Kain is
respectful and honest and he has acquired an
equal amount of respect from those whom have
come to know him.

Respectfully,

Bryan L. Strauss

TO Whom this may concern,

I Juan Bailey know Jerry
Jane personally and in NO way is
he in anyway a threat to anyone.

All he talks about is
Starting his new life as any other
non-violent citizen living in the
Community.

He takes full Responsibility
for his actions and has used his
time in prison to work on himself
as a person to become more Responsible
for his actions and many other ways
to make sure that this time entering
the Community he will have a head
Start for Bettering his life.

Juan Bailey

CHRISTINE O. GREGOIRE
Governor



FEB 08 2011

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

February 4, 2011

Richard Linn
Law Office of Richard Linn, PLLC
12501 Bel Red Road, Suite 209
Bellevue, WA 98005-2509

Dear Mr. Linn,

I am writing in response to your letter of January 28, 2011, in which you express a concern that the Governor's order cancelling the parole of Jerry Lain violated his right to due process. In particular, you contend the Indeterminate Sentence Review Board's Order of Parole created a liberty interest in Mr. Lain's release, and the cancellation of parole without additional hearings and written findings deprived Mr. Lain of this liberty interest without requisite due process. Having reviewed this matter and the relevant case law, it is clear the Governor's order was authorized by law and did not violate due process.

Just this past month, the Supreme Court considered a similar procedure in *Swarthout v. Cooke*, 562 U.S. ___, ___ S. Ct. ___ (January 24, 2011) (No. 10-333) (WESTLAW 2011 WL 197627). Like Washington law, California law authorizes the Governor to review an order of parole issued by the parole board. *Swarthout*, 2011 WL 197627 at *2. Like the matter here, the parole board had ordered the parole of a prisoner, Elijah Clay, but exercising his authority, the California Governor reviewed the case and canceled the scheduled parole after concluding that Clay posed a risk of reoffense. *Id.* Clay then filed for habeas corpus relief. *Id.* The Supreme Court concluded the Governor's cancellation of Clay's parole did not violate due process. *Id.* The Supreme Court held Clay received any process due when he was afforded access to his records, was allowed to appear and contest evidence at the hearing before the parole board, and was notified of the reasons why the Governor canceled Clay's parole. *Swarthout*, 2011 WL 197627, at *2. The Governor's cancellation of parole did not violate due process. *Id.*

The California state courts have also rejected due process challenges to the Governor's cancellation of an order of parole based on a review of the record before the parole board. For example, in *In re Johnny Arafiles*, 6 Cal. App.4th 1467, 8 Cal. Rptr.2d 492 (1992) the California parole board had granted parole to Arafiles, but the Governor reviewed the case and canceled the order of parole. *Id.* at 1472-73. At the hearing before the parole board, Arafiles had been "given notice and an opportunity to be heard, including the right to be present at the hearing, to ask and

EXHIBIT 25



answer questions, and to speak on his own behalf.” *Id.* at 1479. However, Arafiles was not given any additional hearing when the Governor reviewed the parole board’s decision and canceled the parole. *Id.* Citing *Morrissey v. Brewer*, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972), Arafiles alleged the absence of any additional notice and hearing violated his right to procedural due process. *Arafiles*, 6 Cal. App.4th at 1479. Reaching the same conclusion as the *Swarthout* Court, the California Court of Appeals rejected Arafiles’s due process claim. *Id.* at 1480-81. Like the *Swarthout* Court, the California court determined that the procedures afforded Arafiles by the parole board provided the process constitutionally due, and that further procedures were not required when the Governor reviewed and canceled the parole board’s order. *Id.* at 1481. The Governor’s review was limited to the record before the parole board, and the Governor applied the same criteria considered by the parole board in making a parole decision. *Id.* “The procedures surrounding the parole release determination of the BPT provided petitioner the process which was his constitutional due. We perceive no unfairness to petitioner in not extending these procedures to the Governor’s limited review of that decision.” *Id.* The California Court of Appeals reaffirmed this legal reasoning in a later case. *See In re Morrall*, 102 Cal. App.4th 280, 304, 125 Cal. Rptr.2d 391 (2002).

In your letter, you cite to *Monohan v. Burdman*, 84 Wn.2d 922, 530 P.2d 334 (1975), but *Monohan* involved a distinctly different situation from the one here. *Monohan* did not involve the Governor’s review under RCW 9.95.160 of the board’s decision to grant parole. Rather, *Monohan* involved the parole board’s own revocation of parole after Monohan subsequently engaged in misconduct while furloughed to the community. *Id.* at 923-24. The parole board revoked parole after determining Monohan had violated his furlough conditions. *Id.* The Washington Supreme Court determined that the board’s revocation of parole based upon the violation of furlough conditions was analogous to a revocation of parole for a violation of conditions of parole. *Id.* at 926-28. The Court determined the board’s action involved the retrospective factual determination of whether conditions had been violated, and the determination of whether parole should be revoked in light of the violation. *Id.* at 928. The Court determined that, under the circumstances of that case, the board was required to provide notice and an adjudicatory hearing prior to revocation of Monohan’s parole.

Similarly, in *In re Bush*, 164 Wn.2d 697 (2008) the petitioner had no opportunity to be heard after his arrest for assault of a child, the basis on which the Governor revoked his conditional commutation. The Court held that due process protections attach to the revocation of a conditional commutation and that because Bush received no opportunity to be heard on the facts that formed the basis of the revocation, his procedural due process rights were violated.

This matter is unlike the situation in *Monohan* or *Bush*. The Governor did not cancel the order of parole based upon subsequent misconduct by Mr. Lain, and the Governor did not make a retrospective factual determination of whether Mr. Lain had violated any conditions. Instead, the Governor’s review of the order of parole was identical to the type of review conducted in the cases of *Swarthout* and *Arafiles*. As in *Swarthout* and *Arafiles*, the Governor reviewed the record before the Board and applied the same criteria the Board would apply in determining whether a prisoner is suitable for parole. The Governor considered the record before the Board,

Richard Linn
February 4, 2011
Page 3

including the facts underlying Mr. Lain's current conviction and sentence, Mr. Lain's prior criminal history, and Mr. Lain's prior institutional history. The record included a prior psychological evaluation and risk evaluation, as well as positive factors such as Mr. Lain's treatment and education while in confinement. Applying the criteria established in chapter 9.95 RCW, the Governor reviewed this record and determined Mr. Lain was not a proper subject for parole. As the Governor stated in the Order, "after carefully considering the record before the ISRB and the factors in chapter 9.95 RCW, I conclude his rehabilitation is not complete and he is not a fit subject for release from prison. Based on the provisions in chapter 9.95 RCW and the totality of evidence and information in the ISRB files, I conclude Mr. Lain would pose an unreasonable risk of danger to public safety at this time." Order, at 2.

Mr. Lain received due process through the hearings conducted and the record developed by the Board and the Governor's consideration of that record. The Governor's written Order was based on review of that record and detailed the reasons for the decision to cancel parole. The Governor's Order was authorized by law and did not violate due process.

Sincerely,



Narda Pierce
Counsel for the Governor

cc: Lynne DeLano, Chair, Indeterminate Sentence Review Board



STATE OF WASHINGTON

INDETERMINATE SENTENCE REVIEW BOARD

4317 Sixth Ave., S.E. * P.O. Box 40907 * Olympia, Washington 98504-0907 * (360) 493-9266
(TDD Relay 1-800-833-6388)

DECISION AND REASONS

NAME:	LAIN, Jerry
NUMBER:	238088
INSTITUTION:	Stafford Creek Corrections Center
TYPE OF MEETING:	.100
DATE:	July 29, 2002
PANEL MEMBERS:	MM & JG
FINAL DECISION DATE:	August 26, 2002

BOARD DECISION:

The full Board finds Mr. Lain not parolable and that 60 months be added to his minimum term.

NEXT ACTION:

Schedule a July 2004 Administrative Progress Review.

HISTORY AND COMMENTS:

Mr. Lain is under the Board's jurisdiction for Assault First Degree. The time start was November 4, 1982 with a maximum expiration date of Life. The Sentence Reform Act (SRA) guideline range is 72 to 102 months. As of today's date, Mr. Lain has served approximately 236 months.

File materials describe the underlying Assault as Mr. Lain being approached by a police officer while Mr. Lain was prowling cars. The police officer gave chase, Mr. Lain attacked the officer stabbing him numerous times in the chest area, which his bullet proof vest deflected, but the officer received deep wounds in his arms and on his side. Mr. Lain secured the officer's gun and file materials describe the bullet wound to the stomach as Mr. Lain lifting the officer's bullet proof vest to shoot under it. The officer was also shot in the face causing severe and permanent disabilities and

LAIN, Jerry D.
(DOC #238088)

HISTORY AND COMMENTS CONTINUED - PAGE 2

disfiguring injuries. The officer did eventually recover after a lengthy recuperation, but did suffer permanent injuries from this attack. The assault occurred after Mr. Lain was paroled from Iowa and had absconded from Iowa supervision. Mr. Lain's propensity for violence dates back to the age of 15 years old.

REASONS:

The Board last saw Mr. Lain in February of 1999. That Board dictation noted that Mr. Lain's history is extremely violent in and out of custody. The Board further noted that Mr. Lain's chemical dependency assessment rated him as having no problem even though he has a substantial history of chemical dependency problems. Mr. Lain has also claimed (in the past) to have been in a blackout during the attack on the officer. Since that time, Mr. Lain has completed Moral Reconciliation Therapy (MRT), Job Dynamics, and two computer classes. He is receiving above average work evaluations, although there was some question regarding his work attitude on a prior assignment in the kitchen. Since the Board last saw Mr. Lain, he has received no infractions.

The file contains a psychological evaluation dated March 18, 2002 by Carla van Dam. Dr. van Dam notes that there is concern in his reliance on substances, his problem solving skills, lack of empathy and experience in successfully living in the community. In conversation with Mr. Lain today, this was further substantiated when in discussion regarding the shooting of the Richland officer, he simply described him as his attacker and that he only shot him once in the face.

The Board is in the same position as they were before regarding Mr. Lain and his parolability to the community. The same concerns remain. The Board at this time believes that Mr. Lain continues to be an unreasonable risk to be released to the community. Again he is to be commended for his course work and the Board encourages Mr. Lain to continue any self-help efforts toward gaining further understanding into his behavior.

LAIN, Jerry D.

(DOC #238088)

FACTS RELIED UPON – PAGE 3:

The Board relied upon previous Board dictations and review of the Indeterminate Sentence Review Board (ISRB) and Department of Corrections (DOC) files and face to face interview with Mr. Lain today.

CC: INSTITUTION
RESIDENT
FILE

TO: Full Board

FROM: JG & MM & (Robin)

RE: Jerry Lain, DOC #238088

Panel recommends that he be found not parolable and 60 months be added to his minimum term.

Next Action:

Schedule 7-04 Administrative Progress Review

AGREE

DISAGREE

JG 8/15/02
MM 9/26/02
MM 8/26/02

Carla van Dam, Ph.D.
Clinical & Forensic Psychology

Box 4453
Tumwater, WA 98501

carlavandam@hotmail.com
Phone: (360) 956-0271
Fax: (360) 236-9055

PSYCHOLOGICAL EVALUATION

Name: Jerry Dean Lain
(AKA David Allen Bridger)
Number: 238088
Date of Birth (Age): June 13, 1957 (44)
Date of Evaluation: March 12, 2002
Date of Report: March 18, 2002
Psychologist: Consulting Psychologist Carla van Dam, Ph.D.

REASON FOR REFERRAL: Mr. Lain was evaluated at the request of the Indeterminate Sentence Review Board (ISRB) to better assess the level of risk he might present upon release to a less restrictive environment or to the community. This is a psychological report providing risk assessment information for DOC classification staff, community corrections officers, DOC Risk Management Specialists, and care providers within DOC who have a need to know. Disclosure and dissemination of this report shall be in accordance with RCW 70.02 and DOC Policy 640.020. It shall not be released to individuals outside DOC without the inmate's consent or unless otherwise authorized by law. The inmate was advised of the purpose of the evaluation and departmental policy regarding information practices. A written explanation of the limits of confidentiality was presented and explained to the inmate and a copy, signed by the inmate, accompanies this report.

DISCLOSABLE: The inmate may request a copy of this report. *BEFORE* receiving his copy, the inmate must attend an interpretive meeting with the author, a licensed psychologist, or a licensed psychologist designee.

This health care information is expected to be used by classification and other staff who have a legitimate need to know it to effectively manage the inmate within the Department of Corrections. This report is replicated in the inmate's health record.

SOURCES OF INFORMATION:

DATE(S):

Clinical Interview (3 hours):
Mental Status Examination

03/12/02

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Collateral Documentation Review:

Letter by Psychologist Bunin, Ph.D. to Attorney Schneider	10/25/82
Admission Summary by Zembai	12/03/82
Criminal History Summary by Kropf	05/04/84
Mental Health Evaluation by Page, Ph.D.	02/03/93
Mental Health Evaluation by Page, Ph.D.	09/14/95
Psychological Report by McEnderfer	09/18/97

Documents not Available:

Mental Hospital Psychiatric Notes (Cherokee Mental Health Institute)	1974
Mental Hospital Psychiatric Notes (Mason City Mental Health Center)	1976
Psychiatric Notes from the Maximum Security Hospital in Oakdale	1980
Detailed Psychological Report by Bunin, Ph.D.	1982
Assessment at Eastern State Hospital	1982

Psychological Testing:

Raven's Standard Progressive Matrices	03/12/02
Wide Range Achievement Test 3 (WRAT 3) Arithmetic Subtest	03/12/02
Wisconsin Card Sorting Test (WCST)	03/12/02
Personality Assessment Inventory (PAI)	03/12/02
Rorschach Inkblot Test using Exner Scoring	03/12/02

Risk Assessment:

Hare Psychopathy Check List – Revised (PCL – R)	03/15/02
Level of Service Inventory – Revised (LSI-R)	03/15/02
Violence Risk Appraisal Guide (VRAG)	03/15/02

CRIMINAL HISTORY/OFFENSE BEHAVIOR: Mr. Lain has an extensive history of violence, with apparent juvenile misconduct resulting in his attending a military academy from which he was expelled because of continued aggression while there.

Juvenile

1974 - Unauthorized Use of a Motor Vehicle: As a result of this crime he apparently attended El Dora Boys Reformatory. According to the Admission Summary, at this time he may also have been evaluated for 90 days at the Cherokee Mental Health Institute.

Adult

July 1976 - Possession of Marijuana: He was found guilty and given a sentence in the Iowa county Jail.

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September 1976 - Unauthorized Use of a Motor Vehicle: He was sent to Animosa Men's Reformatory in Iowa where he remained through May 1977. According to the Admission Summary he was evaluated at the Mason City Mental Health Center at this time, for a charge that occurred while he had been at Animosa Men's Reformatory at which time he had thrown "acid in another inmate's face." The inmate was permanently blinded. He was also involved in a fight with another inmate involving the use of a claw hammer, because "he and the other fellow did not like each other."

April 1978 - Willful Injury: He was sentenced to the Fort Madison State Penitentiary. He explained that this conviction occurred because "I got in a bar fight [and] ended up stabbing a guy. They gave me a 10 year sentence." Prior to his parole, he was placed from July through September of 1980 in a maximum security mental health hospital in Oakdale. No information from that evaluation was available for this review. According to Dr. Page's 1995 report, he was released in 1982, and absconded from supervision at that time.

November 1982 - First Degree Assault While Armed With a Deadly Weapon: Mr. Lain was observed Prowling Vehicles by a private citizen who called the police. When the police officer tried to stop him, he ran. The police officer gave chase, at which time Mr. Lain stopped and asked to be killed, but then attacked the officer at close range with a knife. Mr. Lain first stabbed the officer numerous times, managing to create deep life threatening cuts despite the fact that the officer was wearing a protective vest. Mr. Lain subsequently took the officer's weapon and shot the officer twice at close range, then fled to the campground where he was staying, tried to hide the bloody evidence, and went to sleep. The officer had somehow managed to call for help, thereby allowing officers to locate and arrest Mr. Lain. At the time of the trial Mr. Lain testified that he was suffering from an "acute psychotic episode," as he tried to convince psychologists and later the jury that he thought "the 'Viet Cong' were chasing him rather than a police officer," despite the fact he had never served in the military or been to Vietnam. He later acknowledged this had been a ruse to avoid incarceration or receive leniency.

At the time of this conviction he was still on parole from his prior conviction. During this evaluation he explained, "I shot a cop that was trying to arrest me. I was breaking the law by doing vehicle prowling and burglaries. I wanted the money to buy food and beer." The jury at the time of sentencing felt he "should not be paroled."

Substance Abuse: During this evaluation Mr. Lain admitted to having begun drinking "probably" when he was 14 or 15, claiming his preferred drink to be beer. And while "I think I had one possession of a controlled substance back in the 1970's and that was for a couple roaches," he insisted he did not begin any other drug use until he was incarcerated at Walla Walla. "Before, I'd smoked a little weed on the street and drank, but I didn't start any hard drugs until after I was incarcerated." At that time his drug use reportedly included speed and heroin. To Dr. Page in 1993 he "admitted significant

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alcohol addiction in the past, but denied utilization of illicit substances." To McEnderfer in 1997 he denied alcohol addiction, although he acknowledged "that alcohol 'got him into trouble' a great deal." During this evaluation he attributed all of his violence to alcohol. "The alcohol made me feel invincible...I wasn't violent when I was sober [and] I'd only get violent at times when I felt threatened either physically or emotionally. Then I'd get violent." He denied ever experiencing black outs during these rages, yet elsewhere in the files he variously explained his violence as occurring during blackouts or resulting from combat PTSD symptoms despite the fact he had never been in combat before.

During this evaluation he claimed he has been clean and sober for a number of years. "I haven't had a drink since September 7, 1982." He denied any drug use since "the summer of 1988."

RELEVANT PERSONAL HISTORY: Mr. Lain said he was born in Versailles, Missouri where he lived with his family on a cattle ranch for the first three years of his life. At age three his father was "electrocuted on a farm accident, when the pole he was holding hit the transformer." Mr. Lain and his mother both witnessed the death, but Mr. Lain indicated during this evaluation "I don't really remember much. I don't know if I remember seeing it or from being told about it." After his father's death he, his younger brother, and his mother all moved to Burt, Iowa where they lived with his maternal grandparents. "We stayed there in the basement for a couple years." When he was seven-years old his mother remarried a farmer who lived on a 240 acre farm "about eight miles up the road." During this evaluation he denied experiencing any violence while growing up and described his new stepfather as a "nice guy." His mother and stepfather had another three children together, two boys and one girl.

During his childhood on the farm "I felt I was being treated different because I was the oldest and I had to work. My little brother was sick, and my sister [was a girl] so I ended up doing most of the work." While during this evaluation he described his stepfather in positive terms, he told Dr. Bunin in 1982 that he "resented his stepfather because he feared his mother would be taken away from him and his brother," but that he "now gets along with his stepfather." However, he denied experiencing any abuse or violence during his childhood. However, according to the Chrono notes he explained to staff in 1996 that his was bullied as a child and felt his violence was in reaction to his parents' divorce and not being accepted in school. This was also at variance with other information that his father died, rather than that his parents divorced.

While living in Iowa and working on his stepfather's farm he did attend school, but claimed he did not do well because "I wasn't interested. I would have rather spent my time outside." Dr. Bunin reported that he "repeated grades one and three." During this evaluation he denied many fights, admitting that maybe he experienced a "couple fights," but was never kicked out of school. "I dropped out in the eight grade." This

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information was significantly at odds with file information, which referred to numerous instances of violence while he was growing up. According to the Admission Summary his school participation was minimal and he spent his time "fighting, shooting, trapping, and hunting." However, he also described to the classification counselor Zembai that he preferred socializing with people 10 to 15 years older because he "identified with their lifestyle which was usually drinking and fighting," indicating that this pattern of heavy drinking began at age 14.

According to the summary, at age 15 he was sent to the Kemper Military Academy in Booneville, Missouri because of "disciplinary problems at home and at school." He was dismissed from the school "after stabbing two students and going AWOL."

Mr. Lain elsewhere endorsed having had many short relationships, and was briefly married from May 1982 until October 1982. He explained that both he and his wife drank, although according to other records he claimed she was involved with a twelve-step recovery program. He said he had "known her about five days when we got married. I met her in a bar parking lot...I just got out of prison. She was 21." She ended the relationship when "I slapped her to get her attention one time." While he minimized this, he acknowledged that it may have resulted in Domestic Violence charges, but nothing happened with this because shortly thereafter he was incarcerated for the instant offense.

He endorsed a sporadic work history prior to this incarceration, having worked on farms, as a mechanic, and in construction. He claimed to have been fired once because "they used to pay us on Wednesday so I wouldn't show up to work until Monday [because] the bars were open."

CURRENT FUNCTIONING: Mr. Lain arrived promptly to the interview. During this evaluation he appeared to be entirely cooperative and friendly. This was different than his 1997 presentation to McEnderfer when he initially "presented himself in an irritable and antagonistic fashion," and claimed to be participating "under duress." During this evaluation he demonstrated good hygiene and grooming, as he wore his dark graying hair was cut short and carefully combed back. He had a mustache, wore glasses, had dimples when he smiled, and was missing his front teeth.

He was fully oriented, demonstrated good abstract reasoning ability as indicated by a number of standard questions on a mental status examination. All other areas were also within normal limits. He denied having any suicidal or homicidal thoughts, stated his sleep was "good" and was not receiving any medication at this time. He also denied ever having any psychotic symptoms. He described having had a number of head injuries over the years, first falling 15 feet when he was seven-years old and hitting his head on the iron wheel of a cart, and then again being hit on the head with a claw

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hammer in 1978, but denied experiencing any identifiable symptoms from either injury, consistent with Dr. Bunin's screening for organic brain damage in 1982.

PSYCHOLOGICAL TESTING: *Note: Caution is indicated in generalizing from the information provided in this report. Psychological test data alone have not been found adequate as predictors of an individual's behavior in a setting different from the testing situation. Furthermore, misinterpretation of the statements by a nonprofessional reader may lead to inaccurate or unreliable conclusions.*

It is important to note that this individual was evaluated in a prison setting under conditions that were less than ideal for psychological testing. Therefore, any results from the test scores should be used only as hypotheses about the examinee. No decisions should be made based solely on the information contained in this report. This material should be integrated with all other sources of information available about the individual in reaching professional decisions.

A number of tests were administered to better understand current cognitive competencies and personality functioning. On the Raven's Standard Progressive Matrices he demonstrated good competencies at problem solving when using a visual modality. This was consistent with Intelligence testing administered by Dr. Bunin in 1982 at which time he similarly demonstrated strong performance skills. While overall scores at that time were in the average range, the significant disparity between verbal and performance skills is typically seen among individuals with histories of learning difficulties and Attention Deficit Hyperactive Disorder (ADHD). Academic functioning during this evaluation, as noted by the Arithmetic portion of the WRAT 3 was at the high school level. He also demonstrated good competencies in changing cognitive sets and responding to corrective feedback as indicated by the WCST.

Personality testing was also done. His responses on the PAI would be considered valid, with people who respond similarly viewing themselves as well adjusted with no significant psychiatric concerns. On the Rorschach, his responses were similar to individuals who are guarded and reluctant to be forthcoming, but are nevertheless extremely inflexible in their thinking. While such individuals normally tend to avoid their emotions, they may be experiencing some regrets about prior behavior and/or decisions they have made. Such individuals typically also do better when in structured environments where they experience less stress, and have difficulty maintaining appropriate conduct when situations become more complex.

RISK ASSESSMENT: Mr. Lain has a history of extreme violence towards others beginning during adolescence and continuing through to his incarceration on the instant offense. During this evaluation he attributed his violence to his alcohol abuse, claimed total sobriety since 1982, yet has numerous infractions through 1996 for ongoing violence thus suggesting the violent behavior not to be as directly linked to his alcohol use as he would suggest.

Mr. Lain's behavior during this evaluation was entirely appropriate, but as already noted there were some inconsistencies in the information he gave. He described plans to

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parole to his mother's neighborhood where he hoped to find work, attend her church, and become heavily involved with day trading which he has been doing with great interest while incarcerated.

To better determine his potential for a safe return to the community, a number of approaches were used including relying on both actuarial and clinical data.

Actuarial Data: To better understand Mr. Lain's potential for further recidivism, he was compared to similar individuals whose recidivism rates have been better studied. On the LSI-R he obtained a score of over 40, which placed him in the highest risk/needs category corresponding to over a 76% recidivism rate. It should be noted, however, that this scale is scored based on behavioral data while in the community and Mr. Lain has not lived in the community since 1982. Without current data on how he would operate in an unrestricted living environment, more accurate scores using this scale cannot be obtained. On the PCL-R, Mcenderfer had previously assigned a score of 23, below criteria to be considered a psychopath. During this evaluation he was assigned a very conservative score of 25, but it should be noted that on many of the items a higher score was not assigned only because of insufficient data. On the VRAG, his score was between 16 to 18 (depending on whether his brief marriage would be viewed as having a history of being married), which would correspond to a 55% to 64% recidivism rate within a seven to ten year period.

Clinical Data: According to file information Mr. Lain has an extensive history of extreme violence. There was no current indication based on either clinical data or his presentation to suggest any evidence of significant remorse. More recent behavior during this incarceration would indicate an apparent decrease in violence as indicated by his lowered infraction record since 1996. However, ongoing variations in explanations would suggest continued tendencies to be opportunistic.

Mr. Lain has apparently become more appropriate in his behavior should his current presentation and decreasing infraction record be any indication. However, clinical data would suggest he does best in structured environments with low stress, and that he would tend to continue to be quite simplistic in his problem solving strategies with a tendency to be quite rigid in his opinions and solution strategies. This, in combination with his having had no experience living in the community, would suggest that should he be considered for parole it would need to be done by gradually phasing him into opportunities to experience decreased external structure while demonstrating his ability to tolerate increased ambiguity and responsibility.

SUMMARY AND RISK MANAGEMENT RECOMMENDATIONS: Mr. Lain may be able to manage his behavior in a slightly less structured environment. Of continued concern would be his resumed reliance on substances, his poor problem solving skills, his lack of empathy, and his lack of experience in living successfully in the community.

Should he be considered for parole, his return to the community should be only gradually phased in, with both careful monitoring, and close supervision, as well as provision of therapy from someone well versed in working with individuals experiencing disorders of self.

Thus, should parole be considered, the following recommendations would be made:

1. Mr. Lain should maintain total abstinence from all substance use. To help ensure this, he should participate in the twelve-step treatment community, and obtain a sponsor, and if necessary, receive further treatment. To ensure continued compliance with complete abstinence, he would also need to receive frequent but random urinalysis. There should be no tolerance for any substance use.
2. He should participate in therapy to address the issues that led to his prior criminal history and would allow him to continue to ignore the rights of others. This should be with someone well versed in working with individuals who suffer from disorders of the self.
3. He would do best in a clearly structured work environment. He has expressed an interest in day trading on the stock market, a money making scheme that precludes reliance on such external structure. Thus, in addition to using his interest in the stock market, he should maintain work in an area that would provide him with a 40-hour week of required tasks to provide the routine and structure that would assist him in maintaining appropriate habits.



Carla van Dam, Ph.D.
Consulting Psychologist for DOC
Licensed Psychologist, WA# 2218

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**CHAIR,
INDETERMINATE SENTENCE REVIEW BOARD**

RE: LAIN, JERRY DOC# 238088

.100 DOCKET

RECEIVED

APR 22 2002

SCCC RECORDS

**I HAVE COPIED ALL MEDICAL/MENTAL HEALTH DOCUMENTS
AS REQUIRED BY THE ISRB**

**THERE ARE NO DOCUMENTS AS REQUIRED BY THE ISRB IN THE
OFFENDERS MEDICAL FILE**

Terrie James, AHRT

TERRIE JAMES, AHRT

4/19/02

DATE

**PLEASE RETURN COMPLETED FORM AND ALL DOCUMENTS ATTACHED TO SUE
SCHULER, RECORDS OFFICE BY 4-30-02**



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
OFFICE OF CORRECTIONAL OPERATIONS
STAFFORD CREEK CORRECTIONS CENTER
191 Constantine Way, MS WA-39 - Aberdeen, Washington 98520
(360) 537-1800
FAX: (360) 537-1807

DISCLOSURE STATEMENT

TO: ISRB DATE: April 19, 2002
FROM: Terrie James, RHIT
Stafford Creek Corrections Center
Aberdeen, WA 98520
PATIENT'S NAME: Jerry Laine YOUR REF #: -
DOC #: 238088

Attached is the health information you have been authorized to receive.

GENERAL RELEASE OF INFORMATION:

This information is intended for the person to whom it is addressed and for the stated purpose only. It is disclosed to you from records whose confidentiality is protected by state law and may not be disclosed further without the specific consent of the person to whom it pertains or as permitted by law.

_____ This information is not to be disclosed to the patient without authorization from the health care professional as authorized under RCW 70.20.090*.

SEXUALLY TRANSMITTED DISEASES AND HIV/AIDS INFORMATION:

This information is disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. A general authorization for the release of medical or other information is NOT sufficient for this purpose.

ALCOHOL AND DRUG RELATED INFORMATION:

This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR part 2). Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of this information to criminally investigate or prosecute any alcohol or drug abuse patient.

* RCW 70.02.090 Patient's request-Denial of examination and copying.

Informed Consent for Psychological Evaluation

The purpose of this document is to ascertain that you have agreed to participate in a psychological evaluation, which will be conducted by Carla van Dam, Ph.D., There are several things that you should know about this evaluation:

1. Dr. van Dam has been retained by the Department of Corrections, and is therefore working for them. It is her intention, however, to remain impartial and neutral, in order to most accurately report her findings.
2. You should know that a report will be made to the Department of Corrections (DOC).
3. If you decide you wish to participate, you are free to refuse to answer specific questions or refuse to participate in other tasks (such as psychological tests). You will also be free to stop participating at any time during the evaluation. Any such decisions would be noted in the report.
4. The evaluation will consist of an extensive interview and a variety of psychological tests. These may include tests to measure your intelligence, your reading comprehension ability, and personality tests.
5. You should know that, by law, if you tell me things that give me reasonable cause to believe that a child or other vulnerable persona may have been or is at risk to be abused, neglected, or exploited, I must report that to the appropriate authorities. In the same way, if you tell me things or act in a way to give me reasonable cause to believe that you are an immediate danger to yourself or someone else, I must also report that belief to the appropriate authorities.

I may be asked, or ordered, to testify about the findings of this evaluation in probable cause hearings, depositions, and commitment hearings.

By signing below, I LAIN, JERRY, indicate that I have read all of the above, understand the nature of the evaluation to be performed, and agree to participate in the evaluation. By signing I am also indicating that I have had the opportunity to ask any and all questions that I have, and that I have received answers to my satisfaction.

Name

Date


Carla van Dam, Ph.D.
Clinical & Forensic Psychology
Washington License #2218

Date

3-12-02
Date

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