

FILED
SUPREME COURT
STATE OF WASHINGTON
1/2/2019 9:32 AM
BY SUSAN L. CARLSON
CLERK

NO.

(Court of Appeals Cause No. 77047-1-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint Petition of:

GAIL BRASHEAR,

Petitioner.

MOTION FOR DISCRETIONARY REVIEW

ROBERT W. FERGUSON
Attorney General

MANDY L. ROSE #38506
Assistant Attorney General
Corrections Division OID #91025
P.O. Box 40116
Olympia, WA 98504-0116
(360) 586-1445

JAY D. GECK #17916
Deputy Solicitor General
P.O. Box 40100
Olympia, WA 98504-0100
(360) 586-2697

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. IDENTITY OF MOVING PARTY AND DECISION2

III. STATEMENT OF THE ISSUES.....3

IV. STATEMENT OF THE CASE.....3

 A. The Superior Court Sentenced Brashear to 51-Years
 Confinement for Killing a Man When She was 15 Years
 Old3

 B. The Board Denied Brashear Release Under RCW
 9.94A.730 After Finding Her More Likely than Not to
 Reoffend.....4

 C. The Court of Appeals Found the Board Abused Its
 Discretion, and Directed the Board to Order Brashear’s
 Release7

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED9

 A. The Court of Appeals Ruling Presents a Significant
 Question of Law that Conflicts with Numerous Decisions
 Holding that if the Board Abuses its Discretion, a Court
 Should Remand the Matter to the Board.....10

 1. Prior cases universally require remand to the Board
 when a court finds that the Board erred.....11

 2. Remanding to the Board fulfills the legislative intent
 that the Board use experience, expertise, and Board
 resources to make decisions regarding early release
 of juvenile offenders under RCW 9.94A.730.....14

B. The Board Should Be Allowed to Review the Facts of Her Crime and its Impacts, and the Sentence Served, When Deciding if Brashear is More Likely Than Not to Commit Crime if Released.....	17
VI. CONCLUSION	20
Appendix A: Published Opinion, <i>In re Brashear</i> , Court of Appeals Cause No. 77047-1-I	
Appendix B: Decisions and Reasons, April 21, 2017	
Appendix C: Judgment and Sentence, <i>State v. Brashear</i> , Snohomish County Superior Court No. 96-1-01273-9	
Appendix D: Criminal History Summary, May 22, 1997	
Appendix E: OMNI Legal Face Sheet	
Appendix F: Psychological Evaluation, September 21 2016	
Appendix G: Administrative Board Decision, November 6, 2018	

TABLE OF AUTHORITIES

Cases

<i>In re Addleman</i> , 139 Wn.2d 751, 991 P.2d 1123 (2000).....	13
<i>In re Ayers</i> , 105 Wn.2d 161, 713 P.2d 88 (1986).....	13
<i>In re Cashaw</i> , 123 Wn.2d 138, 866 P.2d 8, 14 (1994).....	14, 15, 18
<i>In re Dyer</i> , 157 Wn.2d 358, 139 P.3d 320 (2006).....	7, 11, 12
<i>In re Dyer</i> , 175 Wn.2d 186, 283 P.3d 1103 (2012).....	19
<i>In re Locklear</i> , 118 Wn.2d 409, 823 P.2d 1078 (1992).....	12, 17
<i>In re Marler</i> , 108 Wn. App. 799, 33 P.3d 743 (2001).....	13
<i>In re Martinez</i> , 2 Wn. App. 2d 904, 413 P.3d 1043 (2018).....	13
<i>In re Myers</i> , 105 Wn.2d 257, 714 P.2d 303 (1986).....	13
<i>In re Pers. Restraint of Brashear</i> , 430 P.3d 710 (2018), 2018 WL 6303704 (Wash. Ct. App.).....	2
<i>In re Personal Restraint of Whitesel</i> , 111 Wn.2d 621, 763 P.2d 199 (1988).....	10
<i>In re Shepard</i> , 127 Wn.2d 185, 898 P.2d 828 (1995).....	12

<i>Matter of Sinka</i> , 92 Wn.2d 555, 599 P.2d 1275 (1979).....	13
<i>Miller v. Alabama</i> , 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).....	1
<i>Morrissey v. Brewer</i> , 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).....	14
<i>State v. Collins</i> , 46 Wn. App. 636, 731 P.2d 1157, 1161 (1987).....	13

Statutes

RCW 10.95.030	14
RCW 7.69.032	18
RCW 9.94A.730.....	1, 3, 9, 19
RCW 9.94A.730(1).....	4
RCW 9.94A.730(3).....	1, 5, 14, 15, 18, 19
RCW 9.94A.730(4).....	5, 14, 18
RCW 9.95.009(3).....	5
RCW 9.95.100	11, 18

Rules

RAP 13.4(b)(1)	9
RAP 13.4(b)(2)	9
RAP 13.4(b)(4)	9

I. INTRODUCTION

In 1997, the superior court sentenced Gail Brashear to 51.2 years confinement for intentionally murdering a man when she was age 15. Then, in 2014, the Legislature enacted RCW 9.94A.730 in response to *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), which held that a mandatory sentence of life without parole imposed on a juvenile offender violates the Eighth Amendment. Going beyond *Miller*, RCW 9.94A.730(3) requires the Indeterminate Sentence Review Board (Board) to evaluate certain juvenile offenders for release after twenty years of confinement “unless the board determines by a preponderance of the evidence that . . . it is more likely than not that the person will commit new criminal law violations if released.”

The Board applied this new statute to Brashear in 2017, after she had served twenty years. The Board considered the totality of the evidence in Brashear’s file, including her institutional record, the testimony from the release hearing, and a psychologist’s report that assessed Brashear’s risk of reoffense. The Board found by a preponderance of the evidence that Brashear was more likely than not to commit new crimes if released and denied release, subject to review in five years.

Brashear filed a personal restraint petition challenging the Board’s decision. The Court of Appeals found that the Board had abused its

discretion in several details, including by considering the facts and impacts of Brashear's crimes and the relatively minimal portion of the sentence served. Although the statute requires the Board to make the risk assessment, the Court of Appeals reviewed evidence in the record and found that Brashear's likelihood to reoffend was "low or very low." Appendix A at 11. Having made that assessment of the risk of future criminal acts on what it described as a portion of the record, the court directed the Board to order her release.

The Court should grant review and reverse. An appellate court lacks authority, as well as the procedures and resources, to assess an offender's risk of future crimes. Recognizing that the Board is suited to make this complex determination, the new statute gives the Board, not the court, authority to assess that risk. Thus, assuming for argument that the Board abused its discretion in denying release, the correct remedy is remand for a hearing where the Board assesses risk using proper factors. By reassessing Brashear's risk and by directing the Board to order her release, the Court of Appeals improperly usurped the role of the Board.

II. IDENTITY OF MOVING PARTY AND DECISION

The Board asks this Court to accept review of the Court of Appeals' published decision, *In re Pers. Restraint of Brashear*, 430 P.3d 710 (2018), 2018 WL 6303704 (Wash. Ct. App.) (Appendix A).

III. STATEMENT OF THE ISSUES

1. The Court of Appeals concluded that the Board abused its discretion by failing to explain its view of certain evidence and by considering improper factors in denying release. Did the court err by directing the Board to order Brashear's release, thus exercising the authority and discretion granted to the Board by RCW 9.94A.730?

2. Did the Board abuse its discretion when it considered the totality of the circumstances, including the facts and impacts of Brashear's crimes, information from the prosecutor and victim, and the portion of the sentence served, as part of deciding whether Brashear could be safely released under RCW 9.94A.730?

IV. STATEMENT OF THE CASE

A. The Superior Court Sentenced Brashear to 51-Years Confinement for Killing a Man When She was 15 Years Old

In 1996, Gail Brashear brutally killed a man by stabbing him in the neck. Appendix D (Criminal History Summary) at 1. While camping in Snohomish County, Brashear and her teenage friends decided to steal a car. Appendix D at 1. Brashear went to the road and flagged down Danny Varnell as he drove past. Appendix D at 1. When Varnell stopped, Brashear asked him for a ride, entered the passenger side of the truck, and shot him twice. Appendix D at 1. Two of Brashear's friends then came up to the truck

to try to remove the injured Varnell from the truck. Appendix D at 1. When people in a passing car noticed the activity and asked if Brashear and the others needed help, the teens asked for directions to a hospital. Appendix D at 1. Brashear and the teens drove away in the truck after the passersby suggested a nearby fire station. Appendix D at 1. As they drove, Brashear repeatedly stabbed Danny Varnell in the neck, killing him. Appendix D at 1. In addition to the events of the murder, Brashear had previously committed a burglary where she had stabbed the victim. Appendix B (Board's Decision and Reasons) at 3.

Brashear pled guilty to first-degree murder, first-degree assault, and first-degree burglary, with two firearm enhancements and one deadly weapon enhancement. Appendix C (Judgment and Sentence) at 1. Combining the sentences for the crimes and the enhancements, the court imposed a total sentence of 614 months, or 51.2 years. Appendix C at 5.

B. The Board Denied Brashear Release Under RCW 9.94A.730 After Finding Her More Likely than Not to Reoffend

RCW 9.94A.730(1) allows an offender sentenced for certain crimes committed prior to age eighteen to seek release after serving at least twenty years in confinement. Under the statute, the offender must undergo and the Board must consider an evaluation “incorporating methodologies that are recognized by experts in the prediction of dangerousness, and including a

prediction of the probability that the person will engage in future criminal behavior if released on conditions to be set by the board.” RCW 9.94A.730(3). The statute also requires that the Board consider impact statements provided by the victim or the survivors of the victim. RCW 9.94A.730(4). The statute states that the Board shall order release unless it “determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the person will commit new criminal law violations if released.” RCW 9.94A.730(3). Like other Washington parole and release statutes, such as RCW 9.95.009(3), the Board must “give public safety considerations the highest priority when making all discretionary decisions regarding the ability for release and conditions of release.” RCW 9.94A.730(3).

In 2017, the Board considered Brashear’s request for early release. The Board used a “structured decision-making framework that takes into consideration: the statistical estimate of risk, criminal history, parole/release history, ability to control behavior, responsivity to programming, demonstrated offender change, release planning, discordant information, and other case specific factors.” Appendix B at 5. The Board expressly considered a psychological evaluation from Deborah Wentworth, Ph.D. Appendix B at 6; *see also* Appendix F (Psychological Evaluation). Among other factors, the Board stated that it considered Brashear’s institutional

behavior and programming, the impact of the crime on the victim's survivors, the amount of time Brashear has served in comparison to the sentence imposed, and the prosecutor's strong recommendation against release. Appendix B at 6. Brashear's history includes numerous serious infractions between 1997 and 2008, resulting in prison officials transferring her out of state in an attempt to control her behavior. Appendix B at 3; Appendix E (OMNI Legal Face Sheet) at 3-4. Brashear's behavior finally improved after 2008, although she still received several general infractions. Appendix E at 4. The Board acknowledged Brashear's history including the progress after 2008, but reasoned additional programming was necessary to enable her to prepare for lower levels of custody and eventual release. Appendix B at 6.

Based on all of this, the Board found "by a preponderance of the evidence that Ms. Brashear is more likely than not to commit any new criminal law violations if released on conditions" and denied release. Appendix B at 1. The Board reasoned that it wanted "to see Ms. Brashear continue to demonstrate that her past behaviors are truly in her past and continue to participate in any programming available to her that will prepare her for a future step down to lower levels of custody and eventually release to the community." Appendix B at 6.

In November 2018, however, the Board scheduled a new hearing for 2019 to reconsider Brashear's release. Appendix G (Administrative Board Decision).

C. The Court of Appeals Found the Board Abused Its Discretion, and Directed the Board to Order Brashear's Release

Brashear filed a personal restraint petition challenging the Board's decision to deny release. After finding the new release hearing set for 2019 did not moot the case, the Court of Appeals concluded that the Board abused its discretion in denying release. Appendix A. The court relied on the principle that the "ISRB abuses its discretion when it . . . acts without consideration of and in disregard of the facts." Appendix A at 6 (quoting *In re Dyer*, 157 Wn.2d 358, 363, 139 P.3d 320 (2006) (*Dyer I*). The Court of Appeals stated, "Disregarding the evidence and supporting its decision with speculation and conjecture also constitutes an abuse of discretion." Appendix A at 6 (citing *Dyer I*, 157 Wn.2d at 369).

The court faulted the Board in several details. A number of the errors concern the Board's failure to explain its findings or address subjects. For example, the court said the Board "did not rely on any direct evidence of Brashear's likelihood to reoffend," and the Board "did not cite any evidence refuting Dr. Wentworth's finding that Brashear is at a low risk to reoffend . . ." Appendix A at 8. The court, however, also found the Board erred when

it “relied on Brashear’s underlying crimes, the impact of those crimes, and the small portion of her sentence served in denying her petition.” Appendix A at 9. The court held that these were “not factors that guide the ISRB’s decision under RCW 9.94A.730(3).” Appendix A at 9; *see also* at 10 (“The ISRB’s reliance on Brashear’s underlying crimes, their impact, and the portion of her sentence served conflicts with its statutory mandate to consider whether she is more likely than not to reoffend.”).

The Court of Appeals rejected a remand for a new release hearing. It instead examined available portions of the record and found that, “Brashear’s behavioral turn around compared to her first 10 to 11 years in prison is probative of the maturation of a juvenile offender that the statute intended to identify, not probative that Brashear is likely to reoffend.” Appendix A at 11. To the court, the psychologist’s assessment showed Brashear’s “likelihood to reoffend is low or very low.” Appendix A at 11. The court held that “[i]n the context of an early release determination pursuant to RCW 9.94A.730, where the record does not establish a likelihood to reoffend, the statute requires a release on appropriate conditions, not a second bite at the apple.” Appendix A at 11-12. The court “reverse[d] and remand[ed] to the ISRB to order Brashear released and to determine appropriate release conditions.” Appendix A at 12.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The Court should grant review for two reasons. First, by ordering the Board to release Brashear rather than remanding for a new release hearing, the ruling conflicts with cases holding that the Board is responsible for determining whether an individual meets criteria for release. That unprecedented relief conflicts with decades of cases that remand erroneous parolability or other Board decisions when the Board violates procedural rules, lacks supporting evidence, or relies on insufficiently explained reasons. RAP 13.4(b)(1), (2).

Second, the Court of Appeals erred in broadly holding that the Board's "reliance on Brashear's underlying crimes, their impact, and the portion of her sentence served conflicts with its statutory mandate to consider whether she is more likely than not to reoffend." Appendix A at 10. This ruling denies the Board discretion to give appropriate consideration to such information when fulfilling the statutory obligation to protect public safety and predict whether an offender will reoffend.

These issues involve matters of substantial public interest so that review is also justified under RAP 13.4(b)(4). The new release statute, RCW 9.94A.730, will govern countless future decisions. By categorically barring the Board from certain information, the Court of Appeals undermines the Board's ability to evaluate offenders and protect public

safety. And, by denying remand to the Board to assess risk, the Court of Appeals contradicts the statutory plan that requires the Board to make discretionary release decisions.

A. The Court of Appeals Ruling Presents a Significant Question of Law that Conflicts with Numerous Decisions Holding that if the Board Abuses its Discretion, a Court Should Remand the Matter to the Board

The Court of Appeals acknowledges this Court’s long-standing rule that, “the courts are *not* a super Indeterminate Sentencing Review Board and will not interfere with a Board determination in this area unless the Board is first shown to have *abused its discretion* in setting a prisoner’s discretionary minimum term.” Appendix A at 11 (quoting *In re Personal Restraint of Whitesel*, 111 Wn.2d 621, 628, 763 P.2d 199 (1988) (emphasis in original)). But the court then severely limits this rule, holding that it applies only when the Board is exercising “very broad discretion in setting a prisoner’s minimum term.” Appendix A at 11. By ordering release, the lower court ruling conflicts with numerous decisions holding that errors should be remanded to allow the Board to apply its expertise and discretion. The lower court’s order of release presents an especially important issue because the lower court expressly substitutes its view of the record and exercises the authority and discretion to order release that is, by statute, expressly assigned to the Board.

1. Prior cases universally require remand to the Board when a court finds that the Board erred

This Court and the Court of Appeals have consistently recognized that when the Board abuses its discretion in any way, the proper remedy is a remand directing the Board to apply the law as articulated by a court. No case limits this rule to determinations involving the “very broad discretion” of setting minimum terms as held below. Appendix A at 11. Rather, the reasons for remanding in those prior cases apply here, where the statute expressly requires that the Board make a particular determination before ordering early release.

For example, in *In re Dyer*, 157 Wn.2d 358, 139 P.3d 320 (2006), this Court reviewed a Board decision that an offender was not yet parolable. While that parole decision was under RCW 9.95.100, the error that led to remand is analogous to Brashear’s case. The *Dyer* Court held that “the ISRB must base its decision on the evidence presented” and that it “abused its discretion” because it “disregarded the evidence presented, including his most recent psychological evaluation.” *Id.* at 365. This Court did not order Dyer’s release, even though its “review of the evidence and testimony presented at the parolability hearing *suggests Dyer met his burden*” to obtain release. *Id.* at 369 (emphasis added). Rather, the Court “remand[ed] for a new parolability hearing during which the ISRB must make its

determination based on the evidence and testimony presented, and not on speculation and conjecture.” *Id.*

In *In re Locklear*, 118 Wn.2d 409, 823 P.2d 1078 (1992), this Court addressed an error where “the ISRB failed to provide sufficient written reasons to support the length of this new minimum term.” *Id.* at 411. Again, the Court “vacate[d] the petitioner’s new minimum term and remand[ed] to the Board for redetermination in light of this opinion.” *Id.* To aid that remand, the Court also “review[ed] the legal principles, statutes, and case law that outline what the ISRB must do in order to exercise its discretion to impose an exceptional minimum term.” *Id.* at 416.

The Court in *In re Shepard*, 127 Wn.2d 185, 898 P.2d 828 (1995), remanded for a new parolability hearing after finding the Board misapplied procedures. *Shepard* is particularly relevant, because the Court explains how remand to the Board is necessary and whether the Board’s abuse of discretion is “procedural” (not following legal directives) or “substance” (a decision without basis in the record). *Id.* at 191-92. In each of these scenarios, offenders are entitled “to a new hearing, not to a particular substantive outcome.” *Id.* at 192.

Dyer, *Locklear*, and *Shepard* are part of an unbroken line of cases holding that the remedy here should be remand to the Board for a new release hearing in compliance with the court’s decision, not a ruling

directing the Board to order the offender's release. *See e.g. In re Myers*, 105 Wn.2d 257, 268, 714 P.2d 303 (1986) (normal remand procedure not necessary since the Board had already paroled the offender); *In re Addleman*, 139 Wn.2d 751, 991 P.2d 1123 (2000) (remanding for a new parolability hearing); *In re Ayers*, 105 Wn.2d 161, 168, 713 P.2d 88 (1986) (remand to allow Board to comply with its rules); *In re Marler*, 108 Wn. App. 799, 33 P.3d 743 (2001) (remanding for new minimum term hearing); *State v. Collins*, 46 Wn. App. 636, 641, 731 P.2d 1157 (1987) (same); *Matter of Sinka*, 92 Wn.2d 555, 570, 599 P.2d 1275 (1979) (same); *In re Martinez*, 2 Wn. App. 2d 904, 413 P.3d 1043 (2018) (remand to reevaluate community custody conditions). By ruling that Brashear does not pose a risk of future criminal action and ordering release, the Court of Appeals has created a conflict. The conflict is especially important because, for the first time, a court usurps authority granted by statute to the Board.

The Court of Appeals' ruling cannot be reconciled with these cases. Rather, just as this Court ordered remand for a new hearing in *Dyer* even though the record suggested that Dyer was releasable, the Court of Appeals should have allowed the Board to reconsider Brashear's release.

2. Remanding to the Board fulfills the legislative intent that the Board use experience, expertise, and Board resources to make decisions regarding early release of juvenile offenders under RCW 9.94A.730

The Court of Appeals ruling frustrates the legislative intent to have the Board make release decisions, making the issue presented a matter of significant public interest. The statutes expressly recognize the Board's expertise in considering evaluations using methodologies that predict future criminal behavior, how to ensure public safety, and how to consider information about the crime from victims and survivors "when making all discretionary decisions regarding the ability for release and conditions of release." RCW 9.94A.730(3), (4). In contrast, courts have no similarly institutional expertise in evaluating fitness for release.¹

The standards for a personal restraint petition also reflect the different roles of a court and the Board. The court "examin[es] only the requirements of RAP 16.4" to determine whether "restraint is unlawful under the provisions of RAP 16.4(c)." *In re Cashaw*, 123 Wn.2d 138, 149, 866 P.2d 8, 14 (1994). If the Board abused its discretion, a court may find

¹ The Legislature could have assigned authority to the judicial branch. *See* RCW 10.95.030 (new sentencing proceeding for juveniles convicted of aggravated murder). When it assigned the Board responsibility to determine whether certain juvenile offenders should be released, it presumably intends the Board to use its experience, expertise, practices, and procedures to make the decision. *See generally Morrissey v. Brewer*, 408 U.S. 471, 486, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972) ("granting and revocation of parole are matters traditionally handled by administrative officers.").

that restraint is unlawful. But “the proper relief” is “a remand to allow the Board to conduct another hearing, this time using the proper procedures.” *Id.* at 150. This provides a meaningful judicial remedy for unlawful restraint, while respecting the Board’s responsibilities and preserving its discretion.

To avoid a remand, the Court of Appeals relies on the standard for release in RCW 9.94A.730(3) (“The board shall order the person released . . . unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the person will commit new criminal law violations if released.”). The court opines that if the Board’s record supports release, there can be no second bite at the apple on remand. That approach, however, results in the Court of Appeals substituting its view of evidence for the Board’s and exercising the discretionary executive branch function assigned by law to the Board. A remand ensures that the Board, not a court, is responsible for evaluating information relevant to an offender’s suitability for release.

For example, the Court of Appeals interprets Dr. Wentworth’s expert opinion to find that Brashear poses a “low to very low” risk to reoffend. Appendix A at 11. Dr. Wentworth’s report, however, is more complex and does not advocate immediate release. The report states that the Board must consider whether changes in Brashear’s behavior were of such

duration and quantity as to warrant release at this time. Appendix F at 10-11 (“Whether these risk estimations & factors are sufficient to justify changes in sentencing (or a release to less restrictive levels), however, is not a scientific/clinical question and is respectfully deferred to the Board.”). The report opines that evidence supports moving Brashear to “a less restrictive setting” with continued treatment and “continued visits and family programming while she is incarcerated.” Appendix F at 11; at 12 (suggesting possible placement in “a Camp setting”). Similarly, the Court of Appeals finds that Brashear’s improvements demonstrate maturation of a juvenile offender and is “not probative that Brashear is likely to reoffend.” Appendix A at 11. There is no reason why the Board should be required to accept the court’s subjective view of that information. However, by relying on these independent views of the record, the Court of Appeals has deprived the Board of its primary responsibility to interpret the report and other evidence.

Finally, the Court of Appeals approach creates a risk to the public by mandating release without any further proceedings. For example, in 2017, the Board wanted to see if Brashear’s improved behavior continued as she progressed to lower levels of custody. Appendix B at 6. Remand allows the Board to learn whether Brashear’s behavior continued to improve in prison after 2017, or whether recent behavior indicates a likelihood of criminal acts. It makes no sense for the Court to deprive the Board of the

ability to act on new information that might shed more light on the release decision.

By ordering the Board to release Brashear, the Court of Appeals literally acted as the super Indeterminate Sentence Review Board. Whether the case should have been remanded to the Board thus presents a significant issue that should be decided by this Court to give guidance to the Board, to offenders, and to the courts who review the Board's application of RCW 9.94A.730 to other offenders.

B. The Board Should Be Allowed to Review the Facts of Her Crime and its Impacts, and the Sentence Served, When Deciding if Brashear is More Likely Than Not to Commit Crime if Released

The Court should also grant review to address the Board's discretion to consider information in making a release decision.

In ruling that the Board abused its discretion, the Court of Appeals ruled that considering the facts and impact of Brashear's crimes, a prosecutor or victim's information, or the portion of the sentence served "conflicts with" the statute. Appendix A at 9-10.² The Court should clarify that the Board may consider all information and factors rationally connected

² In other passages, the Court of Appeals focused on the Board's responsibility to explain the basis of its decision. The Board does not seek review regarding those aspects of the ruling because the Board has already decided to rehear Brashear's case, Appendix G, and it can comply with those aspects of the Court of Appeals ruling. Thus, the Board limits this second issue to the Court of Appeals' categorical statements that could, if not corrected, prevent the Board from fairly considering relevant information on remand. *See generally, Locklear*, 118 Wn.2d at 421 (reviewing legal principles governing "what the ISRB must do in order to exercise its discretion" on remand).

to its responsibility to protect public safety and to determine if an offender will “commit new criminal law violations if released.” RCW 9.94A.730(3).

The Court of Appeals’ focus on how RCW 9.94A.730(3) provides a standard for release and burden of proof loses sight of the fact that the Board’s decision is, at its heart, analogous to other parolability determinations such as RCW 9.95.100 (“rehabilitation has been complete and he or she is a fit subject for release”). In such release decisions, the Board must predict future behavior based on “‘subjective appraisals’ and ‘discretionary assessment of a multiplicity of imponderables.’” *Cashaw*, 123 Wn.2d at 146. The statute recognizes this, stating that the Board must make “*discretionary decisions regarding the ability for release and conditions of release.*” RCW 9.94A.730(3) (emphasis added).

Moreover, the statute expressly requires the Board to allow victim and survivor impact statements. RCW 9.94A.730(4). The Court of Appeals concluded, incorrectly, that this only allows the Board to consider such information only when setting conditions of supervision, not when deciding whether to release an offender. Appendix A at 9-10. But both RCW 9.94A.730(4) and RCW 7.69.032 provide victims and survivors the right to make impact statements concerning the decision to release an offender. Not only do the statutes require such consideration, that type of information may be relevant to public safety and prediction of future criminal activity.

The psychological report concerning Brashear explains why the Board should be allowed to examine the facts and impacts of a crime. The report explains risk assessment uses “a systematic review of past aggressive behaviors, looking specifically at the antecedents of the behavior, as well as the degree of harm and context in which the behavior occurred.” Appendix F at 2. Thus, risk assessment includes an “evaluation of past behavior and its impact on future behavior,” and “[w]hether a person will act aggressively is a function of a variety of factors that include history. . . .” Appendix F at 2. Just as experts may examine such factors, the Board should also be allowed to consider such factors to determine if an offender is likely to commit crimes and to “give public safety considerations the highest priority.” RCW 9.94A.730(3). *See In re Dyer*, 175 Wn.2d 186, 205, 283 P.3d 1103 (2012) (facts of a crime, time served, and prosecutor’s recommendation were relevant to “public safety considerations.”).

Thus, review should be granted to examine the provisions of the lower court ruling because, if not corrected, the ruling will hobble the Board’s use of relevant information. This Court should restore the Board’s discretion to consider facts and impact of Brashear’s crimes, prosecutor or victim information, or the portion of the sentence served, where that information is relevant to the Board’s duties under RCW 9.94A.730.

VI. CONCLUSION

The Court should grant review and reverse the Court of Appeals. The court erred by mandating release rather than remanding for the Board to reconsider the petition for release. And, the court erred by concluding that the Board is categorically precluded from considering the facts or impacts of Brashear's crimes, information from prosecutors or victims, or the portion of the sentence served.

RESPECTFULLY SUBMITTED this 2nd day of January, 2019.

ROBERT W. FERGUSON
Attorney General

s/ Mandy L. Rose
MANDY L. ROSE, WSBA #38506
Assistant Attorney General
Corrections Division OID #91025
P.O. Box 40116
Olympia, WA 98504-0116
(360) 586-1445
MandyR@atg.wa.gov

s/ Jay D. Geck
JAY D. GECK #17916
Deputy Solicitor General
P.O.Box 40100
Olympia, WA 98504-0100
(360) 586-2697
JayG@atg.wa.gov

CERTIFICATE OF SERVICE

I certify that on the date below I caused to be electronically filed the foregoing MOTION FOR DISCRETIONARY REVIEW with the Clerk of the Court using the electronic filing system and I hereby certify that I have served the document to the following case participants as indicated below:

Via Email to: Jeffreyerwinellis@gmail.com
JEFFREY E ELLIS
LAW OFFICE OF ALSEPT & ELLIS
621 SW MORRISON ST STE 1025
PORTLAND OR 97205-3813

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

EXECUTED this 2nd day of January, 2019, at Olympia,
Washington.

s/ Katrina Toal
KATRINA TOAL
Legal Assistant 3
Corrections Division
PO Box 40116
Olympia WA 98504-0116
(360) 586-1445
KatrinaT@atg.wa.gov

Appendix A

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington
Seattle

DIVISION I
One Union Square
600 University Street
98101-4170
(206) 464-7750
TDD: (206) 587-5505

December 3, 2018

Department of Corrections A.G. Office
Attorney at Law
PO Box 40116
Olympia, WA 98504-0116
correader@atg.wa.gov

Mandy Lynn Rose
Attorney General of Washington
1125 Washington St SE
PO Box 40116
Olympia, WA 98504-0116
mandyr@atg.wa.gov

Jeffrey Erwin Ellis
Law Office of Alsept & Ellis
621 SW Morrison St Ste 1025
Portland, OR 97205-3813
jeffreyerwinellis@gmail.com

CASE #: 77047-1-I
Personal Restraint Petition of: Gail Ann Brashear

County, Cause No.

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"We reverse and remand."

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days. The Supreme Court has determined that a filing fee of \$200 is required.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

jh

Enclosure

2018 DEC -3 AM 9: 23

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of
GAIL BRASHEAR,
Petitioner.

No. 77047-1-I

DIVISION ONE

PUBLISHED OPINION

FILED: December 3, 2018

APPELWICK, C.J. — Brashear was convicted of first degree murder, first degree assault, and first degree burglary. At the time of her crimes, she was 15 years old. She was sentenced to 614 months (51.2 years) of confinement. After serving 20 years of confinement, she petitioned the ISRB for early release pursuant to RCW 9.94A.730, a 2014 statute governing review of juvenile sentences. Following a hearing on the matter, the ISRB found that she was not releasable. We reverse and remand.

FACTS

On May 11, 1996, 15 year old Gail Brashear stopped an adult male in his pickup truck and asked him for a ride. She then got into his passenger seat and shot him twice. Her two male companions then joined her and attempted to move the victim out of the truck. Noticing that the three of them appeared to be having trouble with the truck, two people stopped to offer help. Brashear and her companions asked them where the nearest hospital was. After they left, Brashear fatally stabbed the victim in the neck several times.

No. 77047-1-1/2

Brashear pleaded guilty to first degree murder, first degree assault, and first degree burglary, with a special finding for use of a deadly weapon on all counts. On May 7, 1997, she was sentenced to a total of 614 months.

In the 20 years between Brashear's sentencing and petition for release, the United States Supreme Court has held that a mandatory life sentence without parole for those under the age of 18 at the time of their crime violates the Eighth Amendment. Miller v. Alabama, 567 U.S. 460, 465, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). In response to that decision, the Washington legislature, in 2014, enacted RCW 9.94A.730 as a statutory "Miller fix." State v. Scott, 196 Wn. App. 961, 966-67, 385 P.3d 783 (2016), aff'd, 190 Wn.2d 586, 416 P.3d 1182 (2018). Under the statute, a person convicted of one or more crimes committed prior to turning 18 may petition the Indeterminate Sentence Review Board (ISRB) for early release after serving 20 years of confinement.¹ RCW 9.94A.730(1). Within 180 days of receiving a petition, the Department of Corrections (DOC) must conduct an examination of the petitioner, "including a prediction of the probability that the person will engage in future criminal behavior if released on conditions to be set by the board." RCW 9.94A.730(3).

The statute directs the ISRB as follows in making its release determination:

The board shall order the person released under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the person will commit

¹ The statute does not apply if a person received a sentence for aggravated first degree murder under RCW 10.95.030 or a sex offense under RCW 9.94A.507. RCW 9.94A.730(1).

new criminal law violations if released. The board shall give public safety considerations the highest priority when making all discretionary decisions regarding the ability for release and conditions of release.^[2]

Id. (emphasis added). The statute also states that the ISRB “shall provide opportunities for victims and survivors of victims of any crimes for which the offender has been convicted to present statements as set forth in RCW 7.69.032.” RCW 9.94A.730(4).

On April 12, 2017, the ISRB held a hearing regarding Brashear’s petition for release pursuant to RCW 9.94A.730. At the hearing, both Brashear and DOC Classification Counselor (CC) Jessica Poston testified.³ In addition to this testimony, the ISRB considered the following:

[I]nformation provided by the sentencing court/prosecutor; 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 dated September 21, 2016 [sic] by Deborah Wentworth, Ph.D.

² This statute differs from parolability decisions under RCW 9.95.100. RCW 9.94A.730(3) directs the ISRB to order a person released unless it determines by a preponderance of the evidence that, despite conditions, the person is more likely than not to reoffend. In contrast, when the ISRB makes a parolability decision under RCW 9.95.100, “[t]he board cannot grant parole until it determines the inmate has been rehabilitated and is a fit subject for release.” In re Pers. Restrain of Lain, 179 Wn.2d 1, 11, 315 P.3d 455 (2013). “An offender is not entitled to parole” under RCW 9.95.100. Id. at 12. “The decision of whether to parole a prisoner ‘may be made for a variety of reasons and often involve[s] no more than informed predictions as to what would best serve [correctional purposes] or the safety and welfare of the inmate.’” In re Pers. Restraint of Dyer, 157 Wn.2d 358, 363, 139 P.3d 320 (2006) (Dyer I) (alterations in original) (internal quotation marks omitted) (quoting Meachum v. Fano, 427 U.S. 215, 225, 96 S. Ct. 2532, 49 L. Ed. 2d 45 (1976)). Thus, whereas parole is not presumptive under RCW 9.95.100, early release is presumptive under RCW 9.94A.730(3) unless the ISRB determines that the petitioner is more likely than not to reoffend.

³ This testimony is not in the record before us. In describing the testimony, we cite to the ISRB’s summary of the testimony in its decision and reasons.

CC Poston stated that Brashear has been a model inmate since making a turnaround in 2008, when she had her last serious infraction. Before making that turnaround, she stated that Brashear's infractions were so significant that she was sent to a program in another state better equipped to handle her "extreme acting out."

Brashear provided the ISRB with a "disclosure of her index offense" and context for what was happening in her life at the time of her offenses. She described having a "shift in her thinking" in 2008, and stated that since that time she has taken advantage of programming opportunities. The ISRB noted that Brashear "became quite emotional at times and did appear to be remorseful for her actions." It also noted that Brashear appeared to have "somewhat limited insight into her thinking or emotions at the time of the murder and other violent assault beyond the connection to her codefendant."

In its reasoning, the ISRB first discussed the psychological evaluation Dr. Wentworth conducted for the DOC. The ISRB acknowledged Brashear's description of her offense to Dr. Wentworth, the mental health therapy Brashear has received, and Dr. Wentworth's evaluation of Brashear's stability and risk to reoffend. Dr. Wentworth stated that Brashear "openly and transparently describe[d] the instant offense with no distortions or denials about her role in killing the victim." She further stated that Brashear has previously benefitted from mental health treatment "to address her history of others abusing her and her criminogenic behaviors and thoughts," and that she "has been stable and not required mental

health treatment since September 2013.” Dr. Wentworth concluded that “[o]verall, the results of this evaluation suggest that Ms. Brashear is at a low risk to reoffend.”⁴ She found that Brashear would benefit from continued therapy “for stress and anger issues, especially concerning those that may stem from possible reintegration into the community.”

The ISRB next stated that since her behavior escalated in 2007 and 2008,⁵ Brashear “appears to have made a complete shift in her behavior and subsequent programming.” It found that she acknowledges her role in her crimes and has participated in programs to assist her in understanding her behavior. It continued,

However, Ms. Brashear has committed horrible crimes that have left lasting impacts to many of the survivors of her victims. The Board believes it is also important to note that Ms. Brashear has served a relatively small portion of what the minimum sentence is on all counts as well as the SRA [(Sentencing Reform Act of 1981, ch. 9.94A RCW)] minimum/maximum. Additionally, the Board has received a strong recommendation from the Snohomish [County] Prosecutor that requests the Board to not release Ms. Brashear.

Snohomish County Prosecutor Mark Roe stated in his letter that “[t]he 20 years [Brashear] has served is simply nowhere near adequate punishment” for the crime she committed.

The ISRB denied Brashear’s petition for release. It acknowledged Brashear’s “good work” since 2008, stating that it would like to see her “continue

⁴ Dr. Wentworth further concluded that records documenting improved functioning and maturation over time, combined with results from the structured assessment of protective factors, suggest that, for Brashear, “the risk level could be viewed as more in the ‘very low’ range.”

⁵ The ISRB noted that between 1997 and 2008, Brashear’s infraction history consisted of 97 serious infractions. Brashear has received six general infractions since that time, the last of which she received in 2014.

to demonstrate that her past behaviors are truly in her past” and continue to participate in programming “that will prepare her for a future step down to lower levels of custody and eventually release to the community.”

Brashear filed this personal restraint petition (PRP), alleging that the ISRB abused its discretion when it denied her parole.

DISCUSSION

I. Early Release Under RCW 9.94A.730

Brashear argues that the ISRB abused its discretion by citing a reason other than recidivism as the only support for its denial of her release. She asks this court to reverse the ISRB’s decision and remand with instructions to the ISRB ordering her to be paroled.

To succeed on a PRP challenge of an ISRB decision, a petitioner must show that she is under unlawful restraint. RAP 16.4; In re Pers. Restraint of Dyer, 164 Wn.2d 274, 285, 189 P.3d 759 (2008) (Dyer II). Brashear argues that the ISRB’s abuse of discretion results in an unlawful restraint.

A petitioner bears the burden to prove the ISRB abused its discretion. Id. at 286. “The ISRB abuses its discretion when it fails to follow its own procedural rules for parolability hearings or acts without consideration of and in disregard of the facts.” In re Pers. Restraint of Dyer, 157 Wn.2d 358, 363, 139 P.3d 320 (2006) (Dyer I). Disregarding the evidence and supporting its decision with speculation and conjecture also constitutes an abuse of discretion. Id. at 369. This court “must

find the ISRB acted willfully and unreasonably to support a determination that the parolability decision is arbitrary and capricious.” Dyer II, 164 Wn.2d at 286.

RCW 9.94A.730(1) permits a person convicted of a crime as a juvenile to petition the ISRB for early release after serving at least 20 years of confinement. Early release under conditions the ISRB determines appropriate is presumptive, unless the ISRB determines by a preponderance of the evidence that, “despite such conditions, it is more likely than not that the person will commit new criminal law violations if released.” RCW 9.94A.730(3). The statute directs the ISRB to “give public safety considerations the highest priority when making all discretionary decisions regarding the ability for release and conditions of release.” Id.

Brashear argues that the ISRB’s failure to address her risk level in light of possible parole conditions illuminates the fact that she “was denied parole for non-statutory reasons.” She relies on Dyer I and states that this case is a “near carbon copy” of that decision.

In Dyer I, the State Supreme Court held that the ISRB abused its discretion when it gave “no indication that the evidence in [Dyer’s] file supported its decision or that the evidence was used to refute any new evidence presented at the hearing.” 157 Wn.2d at 365. The ISRB had considered Dyer for parole under RCW 9.95.100 and concluded that he was not parolable. Id. at 360, 362. Despite a psychological evaluation indicating he was at a low risk to reoffend, the ISRB rejected the value of the evaluation because of its concern that Dyer had learned how to take psychological tests. Id. at 367. The court found that other than

conjecture, nothing in the record supported the conclusion that Dyer had learned how to manipulate tests. Id. Next, the court found that despite the ISRB's statutory mandate to consider whether Dyer demonstrated his rehabilitation was complete, the ISRB dismissed evidence of Dyer's rehabilitation "based on the facts of his underlying crimes." Id. at 368. Specifically, the ISRB disregarded the fact that Dyer had participated in offender change programming and assumed his good behavior in prison was motivated by manipulation. Id. The court found that this conclusion was also unsupported by the record. Id.

Here, the ISRB did not explicitly reject the psychological evaluation conducted by Dr. Wentworth. It acknowledged Dr. Wentworth's finding that Brashear is at a low risk to reoffend. It also acknowledged that Brashear appeared to struggle during her first 10 to 11 years in prison, but then made "a complete shift in her behavior." But, the ISRB did not rely on any direct evidence of Brashear's likelihood to reoffend. It did not cite evidence refuting Dr. Wentworth's finding that Brashear is at a low risk to reoffend or its own acknowledgment that Brashear made a complete shift in her behavior. Instead, it cited Brashear's role in the crimes she committed, the lasting impacts those crimes had on others, the "relatively small portion" of the minimum sentence she has served on each count, and Prosecutor Roe's letter opposing her release. The ISRB also failed to discuss any conditions associated with her release and why, despite appropriate conditions, she would be likely to reoffend.

Early release under RCW 9.94A.730(3) is presumptive unless the ISRB determines that, despite conditions, it is more likely than not that a person will reoffend. The ISRB stated that during her testimony, Brashear appeared to have "somewhat limited insight into her thinking or emotions at the time of the murder." But, Brashear's testimony before the ISRB is not in the record before us. It later stated that she "acknowledges her role in her crimes." And, Dr. Wentworth observed that Brashear "openly and transparently describe[d] the instant offense with no distortions or denials about her role in killing the victim." The ISRB also recognized Brashear's "complete shift" in behavior after struggling her first 10 to 11 years in prison. It made note of CC Poston's testimony that Brashear has been a "model inmate" since 2008. This dramatic shift in behavior is probative of change and is particularly relevant to the purpose of the statute, consideration of whether a juvenile offender has changed.

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

RCW 9.94A.730(4) provides victims and survivors of victims the opportunity to present statements to the ISRB. These statements shall be made in accordance with RCW 7.69.032. RCW 9.94A.730(4). Under RCW 7.69.032, it is the

legislature's intent "to ensure that victims, survivors of victims, and witnesses of crimes are afforded the opportunity to make a statement that will be considered prior to the granting of postsentence release from confinement." But, the impact on victims and survivors of victims was a consideration at the time of sentencing in setting the length of sentence. See RCW 9.94A.500(1). The inclusion of the opportunity for such statements here is for a different purpose, and its availability does not change the statutory standard to be applied by the ISRB. The ISRB must order a person released unless it finds that, despite conditions, he or she is more likely than not to reoffend. RCW 9.94A.730(3). Therefore, the statements received pursuant to RCW 9.94A.730(4) are properly considered as to only what community release conditions are appropriate or whether the offender is likely to reoffend. The ISRB did not consider any conditions in reaching its decision. The letters opposing Brashear's release are not probative of her likelihood to reoffend.

RCW 9.94A.730 applies only where the crimes of the juvenile were very serious and resulted in very long sentences. Of course Brashear's crimes were heinous. But, Brashear's crime was not one of a limited number of crimes for which the legislature declared that no presumption of release is available. RCW 9.94A.730(1). The statute expressly contemplates that the offender will not serve more than 20 years of their sentence unless they are likely to reoffend. RCW 9.94A.730(3). The ISRB's reliance on Brashear's underlying crimes, their impact, and the portion of her sentence served conflicts with its statutory mandate to consider whether she is more likely than not to reoffend.

Brashear's behavioral turn around compared to her first 10 to 11 years in prison is probative of the maturation of a juvenile offender that the statute intended to identify, not probative that Brashear is likely to reoffend. The other direct evidence in the record that assesses Brashear's likelihood to reoffend is Dr. Wentworth's psychological evaluation. It suggests her likelihood to reoffend is low or very low. The ISRB abused its discretion by denying Brashear's release and not determining appropriate release conditions.

II. Remedy

At oral argument, the State argued that if this court finds that the ISRB abused its discretion, the appropriate remedy is to remand the case back to the ISRB for it to consider what this court felt it ignored. Relying on In re Personal Restraint of Whitesel, 111 Wn.2d 621, 763 P.2d 199 (1988), it argued that it is not the role of this court to substitute its discretion for that of the ISRB.

In Whitesel, the State Supreme Court reiterated that "the courts are not a super Indeterminate Sentencing Review Board and will not interfere with a Board determination in this area unless the Board is first shown to have abused its discretion in setting a prisoner's discretionary minimum term." Id. at 628. We see no reason that a different standard should apply to evaluation of the ISRB in the context of juveniles petitioning under RCW 9.94A.730. But, here, the ISRB was not exercising its very broad discretion in setting a prisoner's minimum term. An abuse of discretion in that context will usually require remand for another opportunity to exercise that discretion. In the context of an early release

No. 77047-1-I/12

determination pursuant to RCW 9.94A.730, where the record does not establish a likelihood to reoffend, the statute requires a release on appropriate conditions, not a second bite at the apple. RCW 9.94A.730(3).

We reverse and remand to the ISRB to order Brashear released and to determine appropriate release conditions.

Appelwick, J.

WE CONCUR:

Chen, J.

Schubert, J.

Appendix B



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

DECISION AND REASONS

NAME:	BRASHEAR, Gail
DOC #:	765306
FACILITY:	Washington Corrections Center for Women (WCCW)
TYPE OF HEARING:	LTJUVBRD Hearing
HEARING DATE:	April 12, 2017
PANEL MEMBERS:	JP & TW
FINAL DECISION DATE:	April 21, 2017

This matter came before Jeff Patnode and Tana Wood, 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 9.94A.730. Ms. Brashear appeared in person. Testimony was provided by Department of Corrections (DOC) Classification Counselor (CC) Jessica Poston, and Ms. Brashear.

BOARD DECISION:

Based on the burden of proof set out in RCW 9.94A.730(3) and the totality of evidence and information provided to the Board, the Board does find by a preponderance of the evidence that Ms. Brashear is more likely than not to commit any new criminal law violations if released on conditions. Consequently, the Board finds Ms. Brashear not releasable.

NEXT ACTION:

Ms. Brashear may re-petition the Board in May 2022 for another hearing. If she continues to meet statutory requirements, the Board will schedule Ms. Brashear for another release hearing. An updated psychological evaluation is required.

Appendix B

EXHIBIT 2

Gail Brashear is under the jurisdiction of the Board on a May 7, 1997 conviction in Snohomish County Cause No. 96-1-01273-9 for First Degree Murder, Count I; First Degree Assault, Count II; and First Degree Burglary, Count III. The time start is May 8, 1997.

Count I: The minimum term for Count I was set at 407 months from a Sentencing Reform Act (SRA) range of 261 to 347 months. There was also a 60 month Firearm Enhancement (347 month base and 60 month Firearm Enhancement). The maximum term is Life.

Count II: The minimum term for Count II was set at 147 months from a Sentencing Reform Act (SRA) range of 93 to 123 months. There was also a 24 month Deadly Weapon Enhancement (123 month base and a 24 month Deadly Weapons Enhancement). The maximum term is Life.

Count III: The minimum term for Count III was set at 108 months from a Sentencing Reform Act (SRA) range of 36 to 48 months. There was also a 60 month Firearm Enhancement (48 month base and 60 month Firearm Enhancement). The maximum term is Life. This count has reached the maximum expiration date.

60 month DW enhancement on Counts I and III; 24 month Firearm Enhancement on Count II all served as flat time and consecutive. The Judge ordered Counts I and II, plus the enhancement on Count III to run consecutive; everything else is concurrent.

Ms. Brashear has served approximately twenty (20) years and ten (10) months in prison and 361 days of jail time.

NATURE OF INDEX OFFENSE(S):

File materials indicate that in 1996 Ms. Brashear, age 15 and two defendants were camping and decided they needed to steal a car. They had two weapons with them, a gun and a knife. Ms. Brashear flagged down the unknown adult male victim who had been fishing in the area and asked for a ride. When she got in the passenger seat, she shot the victim twice and then when

her two co-defendants came to the truck, Ms. Brashear stabbed the victim in the neck several times. Witnesses came upon them and asked if they needed help and they indicated they were trying to get the victim to the hospital. After the witnesses left, they dumped the victim's body over an embankment and tried to leave in the victim's truck but could not get it started so they discarded it as well.

PRIOR CRIMINAL CONDUCT:

Ms. Brashear was arrested prior to this murder and was under investigation for an earlier stabbing of a juvenile, and was also a suspect with one of the co-defendants from the index offense in a First Degree Burglary in which a handgun was stolen. According to the Supplemental Affidavit of Probable Cause dated January 23, 1997, on April 18, 1996, Ms. Brashear stabbed the victim twice in the abdomen, once in the hand, and inflicted several superficial scratches to his neck with a knife. Ms. Brashear was identified to police by the victim's cousin, who was acquainted with her. Additionally, on May 3, 1996, Ms. Brashear, along with two others, burglarized a residence and took several items. Among the items taken was a .380 caliber Jennings pistol. This is the firearm that was used in the murder described above.

HISTORY/COMMENTS:

This is the first Board hearing for Ms. Brashear.

Ms. Brashear has an extensive infraction history between 1997 and 2008 which consisted of 97 serious infractions. As a result she was transferred out of State for a period of time.

Ms. Brashear has participated in a long list of programs/seminars/groups in prison as follows: Stress and Anger Management – 2010; Capital and Culture – 2012; Moving On – 2015; Beyond Trauma – 2015; Re-entry Life Skills – 2015; Communications 101 – 2017. Relationships Training Seminar, Toastmasters Ice Breaker, Healthy Relationships, Sisters of Charity, Beyond Incarceration-Foundation of Character Understanding, Turn around System Conflict Work Shop (x2), Teaching to Learn and Facilitator Training, Women Navigating Life and Adversity,

Mindfulness Mediation Course, Anger Management, Peer Support Training, Emotional Predictability and Problem Solving, Prisoner Assistance Scholastic Service (PASS) the course consisted to the following Modules: Parenting, Victim Awareness, Living w/Purpose, Domestic Violence, Conflict Resolution, Addiction, Anger Management, Gang Diversion, Re-entry in Society and Nonviolent Communication, Health and Wellness, IF Program (x2), Success Program, Independent Women's Seminar, Re-employment training through the rotary club. Peer Support, Emotions Anonymous, Braille, Catechism, GED tutoring, Lifer's Group, attends lecture series and continues to participate in the I.F. Project.

Classification Counselor Poston provided testimony regarding Ms. Brashear's behavior, programming, and possible release plans. She stated she has known and or worked with Ms. Brashear for many years at WCCW. CC Poston provided a very favorable report on Ms. Brashear. She stated she has been a model inmate since she made her turnaround in 2008 at which time she had her last serious infraction. CC Poston stated that Ms. Brashear's infractions were so significant that she was sent to another state in a program better equipped to handle her extreme acting out. CC Poston indicated that Ms. Brashear has taken advantage of all appropriate programs since her turnaround and that she has strong community support in the Snohomish County area. CC Poston indicated that Mr. Brashear is currently working in the CI Braille program and that there is a variety of employment opportunities for her in this area. CC Poston also stated Ms. Brashear had completed her AA degree and may attend college in Bellingham at Western Washington University if she is found releasable.

Mr. Brashear provided a disclosure of her index offense that mostly matched file material. She provided some context for what was happening in her life at the time. She described her actions in a way that indicated she was carrying out the requests of her "boyfriend" and co-defendant. She became quite emotional at times and did appear to be remorseful for her actions.

Ms. Brashear does appear to have somewhat limited insight into her thinking or emotions at the time of the murder and other violent assault beyond the connection to her codefendant. Ms. Brashear provided a description of how she has changed since the time of her offenses. Ms.

Brashear described some of the programming she has completed and how it has altered her thinking. She described a circumstance in 2008 during which she had a shift in her thinking and how she decided she wanted to live her life. She stated that since that time, she has taken advantage of programming opportunities that has been available to her, which is consistent with her CC's testimony as well as file material.

INFORMATION CONSIDERED:

In preparation for Mr. Brashear's hearing and its decision in this case, the Board completed a review of her ISRB file. The Board considered all information contained in that file, including but not limited to: information provided by the sentencing court/prosecutor; 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 dated September 21, 2016 by Deborah Wentworth, Ph.D. The Board also considered the testimony of the witnesses.

The Snohomish County Prosecutor provided a recommendation to the Board, dated April 10, 2017, requesting a do not release decision from the Board.

REASONS:

This was a deferred decision following a full Board discussion using a structured decision-making framework that takes into consideration: the statistical estimate of risk, criminal history, parole/release history, ability to control behavior, responsivity to programming, demonstrated offender change, release planning, discordant information, and other case specific factors. Based on the requirements of RCW 9.94A.730 (3) the Board finds Ms. Brashear not releasable at this time.

In her most recent psychological evaluation completed in September 2016 by Dr. Wentworth, it was noted Ms. Brashear was open and transparently described the index offense with no distortions or denials about her role in killing the victim. Dr. Wentworth also stated that Ms. Brashear received mental health therapy after she returned to Washington State. Ms. Brashear

stated this therapy was helpful in giving her significant insight, and reported it as having been very helpful. Dr. Wentworth noted Ms. Brashear has been stable, and has not required mental health treatment since September 2013. Dr. Wentworth also notes that "Overall, the results of this evaluation suggest that Ms. Brashear is at a low risk to reoffend." If returned to the community Dr. Wentworth pointed out that Ms. Brashear will need continued support and structure to manage her levels of anxiety as she transitions into the community.

Ms. Brashear appears to have struggled during her first 10-11 years in prison. Her behavior escalated significantly during 2007/2008 to the extent that she was moved to a facility in Arizona that was better equipped to handle her acting out. Since that time, Ms. Brashear appears to have made a complete shift in her behavior and subsequent programming. Ms. Brashear acknowledges her role in her crimes and has participated in a variety of programs to assist her in understanding the "why" of her behavior so that she does not commit another crime if back in the community. However, Ms. Brashear has committed horrible crimes that have left lasting impacts to many of the survivors of her victims. The Board believes it is also important to note that Ms. Brashear has served a relatively small portion of what the minimum sentence is on all counts as well as the SRA minimum/maximum. Additionally, the Board has received a strong recommendation from the Snohomish Prosecutor that requests the Board to not release Ms. Brashear.

The Board acknowledges the good work Ms. Brashear has done since 2008. However the Board would like to see Ms. Brashear continue to demonstrate that her past behaviors are truly in her past and continue to participate in any programming available to her that will prepare her for a future step down to lower levels of custody and eventually release to the community.

JP: ffo

April 12, 2017

April 21, 2017

cc: Institution
Gale Brashear
File



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

DATE: April 20, 2017

TO: Full Board

FROM: JP & TW (Fawn Opp)

RE: BRASHEAR, Gail, DOC# 765306

Panel recommends: Find Ms. Brashear NOT releasable.

Next action: May petition the Board in May 2022.

Agree	Disagree
Jeff Patnode 4-21-2017 Lori Ramsdell-Gilkey 4-21-2017 Kecia Rongen 4-21-17	Tana Wood 4-21-2017

Appendix C

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

FILED

MAY 07 1997

CLERK OF SUPERIOR COURT
SNOHOMISH COUNTY CLERK
1000 1/2 AVENUE, SUITE 100
EVERETT, WA 98201

THE STATE OF WASHINGTON,) No. 96-1-01273-9
)
Plaintiff,) JUDGMENT AND SENTENCE
) [X] Prison
) [] Jail One Year or Less
) [] First Time Offender
v.) [] Special Sexual Offender
BRASHEAR, GAIL ANN,) Sentencing Alternative
Defendant,) Clerk's action required,
) restraining order entered para. 4.4
SID: WA18012658) [X] Clerk's action required,
If no SID, use DOB: [REDACTED]) firearms rights revoked para. 4.3 and 5.6
) Clerk's action required, para 5.4
) Restitution Hearing set.

CERTIFIED
COPY

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the deputy prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on January 24, 1997 by plea of:

COUNT	CRIME	RCW	INCIDENT #	DATE OF CRIME
I	First Degree Murder	9A.32.030(1)(c)	SSO 9607524	5/11/96
II	First Degree Assault	9A.36.011(1)(a)	SSO 9607524	5/11/96
III	First Degree Burglary	9A.52.020(1)(a)	SSO 9607524	5/11/96
IV				

as charged in the Amended Information.

- Additional current offenses are attached in Appendix 2.1.
- A special verdict/finding for use of deadly weapon which was not a firearm was returned on Count(s) II.
RCW 9.94A.125,310.
- A special verdict/finding for use of a deadly weapon which was a firearm was returned on Count(s). I and III.
RCW 9.94A.125, 310, 9.41.010.
- A special verdict/finding of sexual motivation was returned on Count(s) . RCW 9.94A.127
- A special verdict/finding for Violation of the Uniform Controlled Substances Act was returned on Count(s) , RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, in a public transit vehicle, or in a public transit stop shelter.
- The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):
- The offense in Count(s) was committed in a county jail or state correctional facility. RCW 9.94A.310(5).

Appendix C

EXHIBIT

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J		TYPE OF CRIME
				Adult, Juv.		
1 None						
2						
3						
4						
5						

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360
- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENT	MAXIMUM TERM
I	2	XIV	261 - 347 Months	60 Months	Life
II	0	XII	93 - 123 Months	24 Months	Life
III	4	VII	36 - 48 Months	60 Months	Life
IV					

- Additional current offense sentencing data is attached in Appendix 2.3.

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence

above within below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.142

- The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142):

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 [] The Court DISMISSES Counts _____

3.3 [] The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

\$ _____	Restitution to: _____	
JASS CODE \$ _____	Restitution to: _____	
RTN/RJN \$ _____	Restitution to: _____	
	<small>(Name and Address—address may be withheld and provided confidentially to Clerk's Office).</small>	
RMA \$15/\$25/\$50	Restitution Monitoring Fee	SCC 4.94.010
	The Clerk shall collect this fee before collecting restitution or any other assessed legal financial obligations.	RCW 9.94A.145
PCV \$100/\$250	Victim assessment	RCW 7.68.035
	\$100.00 crimes committed prior to June 6, 1996.	
	\$500.00 crimes committed on or after June 6, 1996.	
CRC \$ _____	Court costs, including	RCW 9.94A.030, 9.94A.120, 10.01.160, 10.46.190
	Criminal filing fee \$ _____	FRC
	Witness costs \$ _____	WFR
	Sheriff service fees \$ _____	SFR/SFS/SFW/SRF
	Jury demand fee \$ _____	JFR
	Other \$ _____	
PUB \$667/727	Fees for court appointed attorney	RCW 9.94A.030
WFR \$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.030
FCM \$ _____	Fine RCW 9A.20.021; [] VUCSA additional fine deferred due to indigency	RCW 69.50.430
CDP/LDU \$ _____	Drug enforcement fund of _____	RCW 9.94A.030
FCD/NTF/SAD/SDI		
CLF \$ _____	Crime lab fee [] deferred due to indigency	RCW 43.43.690
EXT \$ _____	Extradition costs	RCW 9.94A.120
\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)	RCW 38.52.430
\$ _____	Other costs for: _____	
\$ _____	TOTAL	RCW 9.94A.145

[X] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.142.

[] RESTITUTION. Schedule attached, Appendix 4.1.

[] Restitution ordered above shall be paid jointly and severally with:

NAME of other defendant CAUSE NUMBER (Victim name) (Amount-\$)

RJN

[] The Department of Corrections may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010

All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here: Not less than

\$ _____ per month commencing _____ RCW 9.94A.145

All payments shall be made within _____ months of:

Release of confinement.

_____ 1997, (today's date)

Other whenever defendant has funds to pay towards

In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145

The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

4.2 HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. The defendant, if out of custody, shall report to the HIV/AIDS Program Office at 3020 Rucker, Suite 206, Everett, WA 98201 within one (1) hour of this order to arrange for the test. RCW 70.24.340

DNA TESTING. The defendant shall have a blood sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or Department of Corrections, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

4.3 The defendant shall not use, own, or possess firearms or ammunition while under the supervision of the Department of Corrections. RCW 9.94A.120

4.4 The defendant shall not have contact with Family of Danny Vannell (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life years (not to exceed the maximum statutory sentence).

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER CHAPTER 10.99 RCW AND WILL SUBJECT A VIOLATOR TO ARREST; ANY ASSAULT OR RECKLESS ENDANGERMENT THAT IS A VIOLATION OF THIS ORDER IS A FELONY. RCW 10.99.050

The clerk of the court shall forward a copy of this order on or before the next judicial day to the Snohomish County Sheriff's Office or Everett Police Department (where the protected person above-named lives), which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

4.5 PROSECUTOR'S RECOMMENDATION

The Prosecutor made the following recommendation:

- 407 months/days as to Count I.
- 147 months/days as to Count II.
- 108 months/days as to Count III.
- _____ months/days as to Count IV.
- _____ months/days as to Count V.
- _____ months/days as to Count VI.

The Prosecutor recommended said counts 1 & 2 to run ~~concurrently~~ concurrent with ct. 3

4.6 OTHER: _____

4.7 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

<u>407</u>	months on Count	<u>1</u>	months on Count	_____
<u>147</u>	months on Count	<u>2</u>	months on Count	_____
<u>108</u>	months on Count	<u>3</u>	months on Count	_____

Actual number of months of total confinement ordered is: 614 mos.

All counts shall be served concurrently, except for the following which shall be served consecutively: Ch. 1 & 2 and the deadly weapon/forearm enhancement in Ch. 3.

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.400

Confinement shall commence immediately unless otherwise set forth here: _____

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____

4.8 COMMUNITY PLACEMENT. RCW 9.94A.120. Community placement is ordered for a community placement eligible offense (e.g., sex offense, serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense), and standard mandatory conditions are ordered. Community Placement is ordered for the period of time provided by law. The defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at Department of Corrections-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by the Department of Corrections. The residence location and living arrangements are subject to the prior approval of the Department of Corrections while in community placement.

- The defendant shall not consume any alcohol.
- Defendant shall have no contact with: _____
- Defendant shall remain within outside of a specified geographical boundary, to wit: _____
- The defendant shall participate in the following crime related treatment or counseling services: _____

4.9 **WORK ETHIC CAMP.** RCW 9.94A.137, RCW 72.09.410. The court finds that defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. If the defendant successfully completes work ethic camp, the department shall convert the period of work ethic camp confinement at the rate of one day of work ethic camp to three days of total standard confinement. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement.

4.10 **SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE.** RCW 9.94A.120. The Court finds the defendant is eligible for the special drug offender sentencing alternative and the current offense involves only a small amount of controlled substance, therefore the court imposes a sentence of _____ months. The court also imposes twelve months of concurrent/community supervision to commence upon the defendant's release from custody. This period of community custody/supervision shall include appropriate out-patient substance abuse treatment including monitored urinalysis or other testing as directed by the Department and the following crime related prohibitions

- The defendant shall not use or possess any controlled substance without a valid prescription.
- The defendant shall remain within _____ and notify the Department of any changes in address.
- The defendant shall report to a community corrections officer.
- The defendant shall perform _____ hours of community service.
- The defendant shall pay all court ordered legal financial obligations.
- The defendant shall not enter _____
- The defendant shall devote time to specific employment or training, to wit: _____
- The defendant shall pay \$30.00 per month to offset the cost of monitoring.

4.11 Unless otherwise ordered, all conditions of this sentence shall remain in effect notwithstanding any appeal.

4.12 **OTHER:** _____
 See additional page for other conditions of sentence)

V. NOTICES AND SIGNATURES

- 5.1 COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 LENGTH OF SUPERVISION. The defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations. RCW 9.94A.145
- 5.3 NOTICE OF INCOME-WITHHOLDING ACTION. If the court has not ordered an immediate notice of payroll deduction in paragraph 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.200010. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030.
- 5.4 RESTITUTION HEARING.
 Defendant waives any right to be present at any restitution hearing (sign initials): GR
 Defendant waives any right to a restitution hearing within 6 months RCW 9.94A.140.
 A restitution hearing shall be set for Oct. 3, 1997 at 12 pm
The Prosecutor shall provide a copy of the proposed restitution order and supporting affidavit(s) of victim(s) 21 judicial days prior to the date set for said restitution hearing. The defendant's presence at said restitution hearing may be excused only if a copy of the proposed restitution order is signed by both defendant and defense counsel and returned to the Court and Prosecutor no later than 10 judicial days prior to said hearing.
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200

Cross off if not applicable:

<p>5.6 FIREARMS. You may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047</p> <p>If this is a crime enumerated in RCW 9.41.040 which makes you ineligible to possess a firearm, you must surrender any concealed pistol license at this time, if you have not already done so.</p> <p>(Pursuant to RCW 9.41.047(1), the Judge shall read this section to the defendant in open court. The Clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the department of licensing along with the date of conviction).</p>
<p>5.7 SEX OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense, you are required to register with the sheriff of the county of the state of Washington where you reside. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.</p> <p>If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.</p> <p>If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 10 days of establishing your new residence. If you change your residence to a new county within this state, you must register with the sheriff of the new county and you must give written notice of your change of address to the sheriff of the county where last registered, both within 10 days of establishing your new residence.</p>

Cross off if not applicable:

5.8 RIGHT TO APPEAL. If you plead not guilty, you have a right to appeal this conviction. If the sentence imposed was outside of the standard sentencing range, you also have a right to appeal the sentence.

This right must be exercised by filing a notice of appeal with the clerk of this court within 30 days from today. If a notice of appeal is not filed within this time, the right to appeal is IRREVOCABLY WAIVED.

If you are without counsel, the clerk will supply you with an appeal form on your request, and will file the form when you complete it.

If you are unable to pay the costs of the appeal, the court will appoint counsel to represent you, and the portions of the record necessary for the appeal will be prepared at public expense.

5.9 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: May 7, 1997



JUDGE LARRY E. MCKEEMAN

Print name:



MICHAEL D. MAGEE, #4734
Deputy Prosecuting Attorney



RICK H. MERRILL, #21088
Attorney for Defendant



GAIL ANN BRASHEAR
Defendant

Translator signature/Print name: _____

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

CAUSE NUMBER of this case: 96-1-01273-9

I, Pam L. Daniels, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action, now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____

5/7/97

Clerk of said County and State, by: _____

 Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. WA18012658
(If no SID take fingerprint card for State Patrol)

Date of Birth: [REDACTED]

FBI No.

Local ID No.

PCN No.

DOC

Alias name, SSN, DOB:

Race: White

Ethnicity:

Sex: F

Hispanic

Non-Hispanic

Height: 5 8

Weight: 155

Hair: Brown

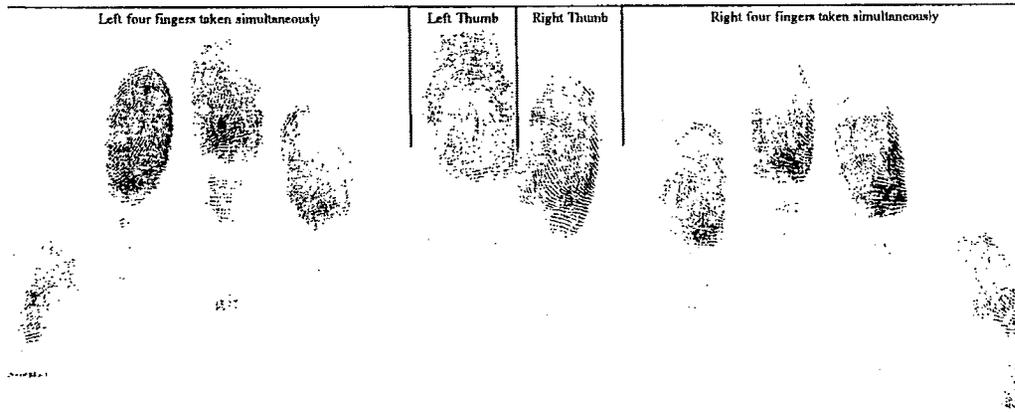
Eye: Blue

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints

and signature thereto. Clerk of the Court: A. Jelleries, Deputy Clerk. Dated: 5-7-97

DEFENDANT'S SIGNATURE: Gail Brashear

ADDRESS: Snohomish County Jail



ORDER OF COMMITMENT

THE STATE OF WASHINGTON to the Sheriff of the County of Snohomish; State of Washington, and to the Secretary of the Department of Corrections, and the Superintendent of the Washington Corrections Center of the State of Washington, GREETINGS:

WHEREAS, GAIL ANN BRASHEAR, has been duly convicted of the crime(s) of Count 1 First Degree Murder, Count 2 First Degree Assault, Count 3 First Degree Burglary, as charged in the Amended Information filed in the Superior Court of the State of Washington, in and for the County of Snohomish, and judgment has been pronounced against him/her that he/she be punished therefore by imprisonment in such correctional institution under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections pursuant to RCW 72.02.210, for the term of 604 months all of which appears of record in this court; a certified copy of said judgment being endorsed hereon and made a part thereof, Now, Therefore,

THIS IS TO COMMAND YOU, the said Sheriff, to detain the said defendant until called for by the officer authorized to conduct him to the Washington Corrections Center at Shelton, Washington, in Mason County, and this is to command you, the said Superintendent and Officers in charge of said Washington Corrections Center to receive from the said officers the said defendant for confinement, classification, and placement in such corrections facilities under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections.

And these presents shall be authority for the same. HEREIN FAIL NOT.

WITNESS the Honorable LARRY E. MCKEEMAN, Judge of the said Superior Court and the seal thereof, this 7 day of May, 1997.

CLERK OF THE SUPERIOR COURT

By: A. J. Joffe
Deputy Clerk

Appendix D



DEPARTMENT OF CORRECTIONS
CRIMINAL HISTORY SUMMARY

FACILITY/LIVING UNIT: WCCW/RC

1. PREPARED BY: Cheryl Jorban, Classification Counselor 3	DATE: 5/22/97	2. REVIEWED BY: Kelsey Lonergan, CUS	DATE: 5/22/97
-----------------------------------------------------------	---------------	--------------------------------------	---------------

3. SOURCE/REFERENCE DOCUMENTS:
Snohomish County Judgment and Sentence dated 5/7/97, Affidavit of Probable Cause, WASIS and FBI Criminal Histories, WCCW Intake Questionnaire dated 5/12/97, and OBTS.

4. CRIMINAL HISTORY

A. CURRENT OFFENSE (S):

5/11/96: Murder in the First Degree, Count 1; Assault in the First Degree, Count 2; and Burglary in the First Degree, Count 3 (Snohomish County Cause #96-1-01273-9). Gail Brashear and three other juveniles had been camping near Granite Falls, Snohomish, Washington. They had run out of fresh water and decided to steal a vehicle from someone. One of the male juveniles, Clayton Gagnier, had a .380 handgun and another male juvenile, Jason Rutledge, had a .22 rifle. The two boys left to try and steal someone's car, but they returned shortly, saying that Rutledge didn't have it in him to use a gun to steal a car. Brashear then took the .380 and went with Gagnier back up the road.

Brashear stopped victim Danny Roy Varnell in his pickup truck and asked him for a ride. She got into the passenger seat and pulled out the .380, shooting at him twice. The second shot was a contact wound to the abdomen. At that point, Gagnier and Rutledge came up to the truck and the three of them attempted to move the body out of the way and start the truck.

Shortly thereafter, two witnesses drove up, noticing that the young people appeared to be having trouble with the truck, and offered help. Brashear and her male codefendants acted nervously and asked for directions to a hospital. The witnesses got out of their car and looked inside the pickup where they saw the body of the victim shoved down under the dashboard. They also noticed a gun in the vehicle. The witnesses told the juveniles to get help at a nearby fire station.

Brashear and her codefendants then got the truck started and headed off down the road. Brashear admitted to police that after the witnesses left, she took a folding knife with a three-and-a-half-inch blade and stabbed the victim in the neck several times. Medical examiners later stated that the gunshot wound to the victim's abdomen would not have been fatal, but the evidence showed that the victim was fatally stabbed inside the truck. Brashear stated unequivocally to police that it was her knife wounds which killed the victim. After stabbing the victim, Brashear and her codefendants dumped the victim's body over an embankment and tried to leave in the victim's truck, but could not get it to run. They pushed the truck over the embankment and then went back to their campsite, where they washed the blood off of themselves and fled the area.

Brashear was found guilty by plea on 1/24/97. Disposition: 407 months on Count 1, including a 60-month enhancement for a firearm; 147 months on Count 2, including a 24-month enhancement for a deadly weapon (knife); and 108 months on Count 3, including a 60-month enhancement for a firearm. Counts 1 and 2 run are to run consecutively, and count 3 runs concurrently, except for the 60-month enhancement for Count 3, which runs consecutively to the other two counts. Total of 614 months.

B. PRIOR OFFENSE (S):

JUVENILE

The source/reference documents received so far by WCCW do not delineate her juvenile history. Juvenile offenses will be updated upon receipt of the Pre-Sentence Investigation.

ADULT

None noted.

Adult Misdemeanors: None noted.

C. VIOLENT BEHAVIOR/SEXUAL DEVIANCY STATUS:

The current offenses are considered serious, violent offenses.

D. ESCAPE BEHAVIOR HISTORY:

None noted.

Appendix D

EXHIBIT 4

NUMBER 765306	NAME: LAST BRASHEAR	FIRST Gail	MIDDLE A.
------------------	------------------------	---------------	--------------

DISTRIBUTION: FACILITY CENTRAL FILE (1) HEADQUARTERS (1)



DEPARTMENT OF CORRECTIONS
CRIMINAL HISTORY SUMMARY

C

FACILITY/LIVING UNIT: WCCW/RC

E. GANG AFFILIATIONS:

None noted.

F. WANTS/WARRANTS:

None noted.

NUMBER	NAME: LAST	FIRST	MIDDLE
765306	BRASHEAR	Gail	A.

DISTRIBUTION: FACILITY CENTRAL FILE (1) HEADQUARTERS (1)

Appendix E

Inmate: BRASHEAR, Gail Ann (765306)

Gender: Female	DOB: [REDACTED]	Age: 36	Category: Regular Inmate	Body Status: Active Inmate
RLC: LOW	Wrap-Around: No	Comm. Concern: Yes	Custody Level: Minimum 3 - Long Term Minimum	Location: WCCW — MSU / MA210U
ERD: 10/21/2041	CC/CCO: Rieck, Brydee I			

Offender Information (Combined)

Prison Max Expiration Date: 07/08/2047	Last Static Risk Assessment Date: 06/19/2013	DOSA:
Planned Release Date:	Last Offender Need Assessment Date: 08/02/2017	ISRB? No
Earned Release Date: 10/21/2041	RLC Override Reason:	CCB? No
ESR Sex Offender Level:		SOSSA? No
ESR Sex Offender Level Date:	Offender Release Plan:	Investigation WEP? No
County Sex Offender Level:	Victim Witness Eligible?	Yes
Registration Required?	County Of First Felony Conviction:	Snohomish
ORCS?	P U L H E S D X T R [REDACTED]	
IDCNF?	No	
SMICNF?	No	

Sentence Structure (Field)

Cause: AA - 961012739 - Snohomish

Convicted Name: Gail Brashear	Date Of Sentence: 05/07/1997	Cause Status: Active	Offense Category: Murder 1
Distinct Supervision Type: CP	Start Date: 07/08/2047	Scheduled End Date: 07/07/2049	Consecutive Supervision:
Count: 1 - RCW 9A.32.030(1)(c)(1) - Murder 1			
Count Start Date: 07/08/2047	Supervision Length: 0Y, 24M, 0D	Length In Days: 730	Count End Date: 07/07/2049
Violent Offense? Yes	DW / FA Enhancement? Y	Anticipatory:	Stat Max: Life
Count: 2 - RCW 9A.36.011 - Assault 1			
Count Start Date: 07/08/2047	Supervision Length: 0Y, 24M, 0D	Length In Days: 730	Count End Date: 07/07/2049
			Stat Max: Life

Appendix E

EXHIBIT 3

Violent Offense? DW / FA Enhancement? Anticipatory:
 Yes Y

Cause: AB – 961012739 – Snohomish

Convicted Name:	Date Of Sentence:	Cause Status:	Offense Category:
Gail Brashear	05/07/1997	Active	Murder 1
Distinct Supervision Type:	Start Date:	Scheduled End Date:	Consecutive Supervision:
MON	07/08/2047		

Count: 3 – RCW 9A.52.020 – Burglary 1

Count Start Date:	Supervision Length:	Length In Days:	Count End Date:	Stat Max:
07/08/2047	0Y, 0M, 0D	0		Life
Violent Offense?	DW / FA Enhancement?	Anticipatory:		
Yes	Y			

Sentence Structure (Inmate)

Cause: AA – 961012739 – Snohomish

State:	Convicted Name:	Date Of Sentence:	Consecutive Cause:
Washington	Gail Brashear	05/07/1997	
Time Start Date:	Confinement Length:	Earned Release Date:	
05/08/1997	0Y, 554M, 0D	10/21/2041	

Count: 1 – RCW 9A.32.030(1)(c)(1) – Murder 1

Anticipatory:	Modifier:	Enhancement:	Mandatory:	Confinement Length:	ERT %:	ERD:	MaxEx:	Stat Max:	Violent Offense?
		0Y, 60M, 0D		0Y, 407M, 0D	15.00%	02/04/2033	12/23/2045	Life	Yes
Supervision Type:	Supervision Length:	Consecutive Count:					Hold To Stat Max Expiration:		
CP	0Y, 24M, 0D								

Count: 2 – RCW 9A.36.011 – Assault 1

Anticipatory:	Modifier:	Enhancement:	Mandatory:	Confinement Length:	ERT %:	ERD:	MaxEx:	Stat Max:	Violent Offense?
		0Y, 24M, 0D		0Y, 147M, 0D	15.00%	10/21/2041	07/08/2047	Life	Yes
Supervision Type:	Supervision Length:	Consecutive Count:					Hold To Stat Max Expiration:		
CP	0Y, 24M, 0D								

Cause: AB – 961012739 – Snohomish

State:	Convicted Name:	Date Of Sentence:	Consecutive Cause:
Washington	Gail Brashear	05/07/1997	
Time Start Date:	Confinement Length:	Earned Release Date:	
05/06/2004	0Y, 108M, 0D	05/25/2011	

Count: 3 - RCW 9A.52.020 - Burglary 1

Anticipatory:	Modifier:	Enhancement:	Mandatory:	Confinement Length:	ERT %:	ERD:	MaxEx:	Stat Max:	Violent Offense?
				0Y, 108M, OD	33.33%	05/25/2011	05/08/2012	Life	Yes
Supervision Type:	Supervision Length:	Consecutive Count:					Hold To Stat Max Expiration:		
MON	0Y, 0M, OD								

Infraction Summary

Offender Infraction

Infraction Group Number	Overall Infraction Report Status	Hearing Type	Infraction Data Indicator	Incident Date	Violation Codes
1	Hearing Complete	Full Hearing	Serious	On 08/25/1997	657
2	Hearing Complete	Full Hearing	Serious	On 09/30/1997	517
3	Hearing Complete	Full Hearing	Serious	On 03/12/1998	505
4	Hearing Complete	Full Hearing	Serious	On 04/08/1998	517 , 509 , 558
7	Hearing Complete	Full Hearing	Serious	On 04/28/1998	506 , 506
9	Hearing Complete	Full Hearing	Serious	On 05/29/1998	517
10	Hearing Complete	Full Hearing	Serious	On 06/17/1998	777 , 777
12	Hearing Complete	Full Hearing	Serious	On 09/30/1998	517 , 658
14	Hearing Complete	Full Hearing	Serious	On 10/14/1998	517
15	Hearing Complete	Full Hearing	Serious	On 11/05/1998	652
16	Hearing Complete	Full Hearing	Serious	On 12/02/1998	517
17	Hearing Complete	Full Hearing	Serious	On 06/20/1999	555
18	Hearing Complete	Full Hearing	Serious	On 04/21/2000	714
19	Hearing Complete	Full Hearing	Serious	On 10/07/2000	555
20	Hearing Complete	Full Hearing	Serious	On 12/31/2001	708 , 717 , 553 , 601 , 554 , 558
26	Hearing Complete	Full Hearing	Serious	On 11/28/2002	714
27	Hearing Complete	Full Hearing	Serious	On 05/18/2003	657
28	Hearing Complete	Full Hearing	Serious	On 10/07/2005	505
29	Hearing Complete	Full Hearing	Serious	On 10/15/2006	714
30	Hearing Complete	Full Hearing	Serious	On 03/23/2007	602 , 713
32	Hearing Complete	Full Hearing	Serious	On 04/20/2007	716 , 724 , 509
35	Hearing Complete	Full Hearing	Serious	On 07/17/2007	563 , 720
37	Hearing Complete	Full Hearing	Serious	On 08/08/2007	716
38	Hearing Complete	Full Hearing	Serious	On 10/26/2007	716
39	Hearing Complete	Full Hearing	Serious	On 11/03/2007	720 , 563
41	Hearing Complete	Full Hearing	Serious	On 11/05/2007	720 , 563 , 717
44	Hearing Complete	Full Hearing	Serious	On 11/07/2007	563 , 720
46	Hearing Complete	Full Hearing	Serious	On 11/08/2007	563 , 554 , 720
49	Hearing Complete	Full Hearing	Serious	On 11/10/2007	563 , 720
51	Hearing Complete	Full Hearing	Serious	On 11/15/2007	720 , 554 , 563
54	Hearing Complete	Full Hearing	Serious	On 11/16/2007	720 , 563
56	Hearing Complete	Full Hearing	Serious	On 11/20/2007	554 , 713
58	Hearing Complete	Full Hearing	Serious	On 12/20/2007	744
59	Hearing Complete	Full Hearing	Serious	On 12/27/2007	563 , 720
61	Hearing Complete	Full Hearing	Serious	On 12/27/2007	554 , 720 , 563

Infraction Group Number	Overall Infraction Report Status	Hearing Type	Infraction Data Indicator	Incident Date	Violation Codes
64	Hearing Complete	Full Hearing	Serious	On 12/28/2007	554 , 563
66	Hearing Complete	Full Hearing	Serious	On 12/29/2007	554 , 563 , 720 , 554
70	Hearing Complete	Full Hearing	Serious	On 12/29/2007	554 , 563 , 720
73	Hearing Complete	Full Hearing	Serious	On 12/29/2007	563 , 554
75	Hearing Complete	Full Hearing	Serious	On 12/30/2007	563 , 554
77	Hearing Complete	Full Hearing	Serious	On 01/04/2008	554 , 720 , 563
80	Hearing Complete	Full Hearing	Serious	On 01/05/2008	554 , 720
82	Hearing Complete	Full Hearing	Serious	On 01/17/2008	563 , 720
84	Hearing Complete	Full Hearing	Serious	On 01/24/2008	554 , 720
86	Hearing Complete	Full Hearing	Serious	On 01/24/2008	720 , 554 , 563
89	Hearing Complete	Full Hearing	Serious	On 01/26/2008	554 , 720 , 563
92	Hearing Complete	Full Hearing	Serious	On 01/26/2008	563 , 720 , 554
95	Hearing Complete	Full Hearing	Serious	On 01/27/2008	508 , 506 , 554
98	Hearing Complete	Full Hearing	General	On 04/27/2010	210
100	Hearing Complete	Full Hearing	General	On 07/17/2010	355
103	Hearing Complete	Full Hearing	General	On 05/24/2012	351
105	Hearing Complete	Full Hearing	General	On 09/22/2013	355
106	Hearing Complete	Full Hearing	General	On 03/18/2014	210 , 203
107	Hearing Complete	Full Hearing	General	On 08/01/2014	210

Appendix F

WASHINGTON STATE DEPARTMENT OF CORRECTIONS
PSYCHOLOGICAL EVALUATION

FOR THE
INDETERMINATE SENTENCE REVIEW BOARD

NAME:	Gail Brashear	EXAMINER:	Deborah Wentworth, PhD
DOC:	765306	EXAM DATES:	September 13, 2016
DOB:	██████████	REPORT DATE:	September 21, 2016
AGE	35 years, 8 months	ERD: 3/30/2032	RLC: Low

Residence: WCCW

Reason for Referral

Ms. Brashear has been referred for a psychological evaluation by Chief Psychologist Dr. Lou Sowers on behalf of the Indeterminate Sentence Review Board (ISRB) which requires a fully-instrument supported evaluation to be used in Ms. Brashear's upcoming JUVBRD hearing before the Board. The purpose of the assessment is to provide a written evaluation of the current behavior and risks that may assist the Board in determining the potential for re-offense, violence risk, capacity to function in a less restrictive environment, and/or whether Ms. Brashear's rehabilitation is complete and she may be considered appropriate for parole in terms of her risk to herself, DOC and the community.

Dissemination of Information

This psychological report provides information to be available to DOC classification staff, community corrections officers, the Indeterminate Sentence Review Board, the End of Sentence Review Committee, and care providers within DOC who have a need to know in order to effectively manage the inmate within the Department Of Corrections. 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 written consent or unless otherwise authorized by law.

Consent

Ms. Brashear was advised of the purpose of this evaluation and departmental policy regarding information practices in plain language and in writing. I explained that I am not her treating therapist and that the information gathered from this interview would be gathered and reported to the Board for use in her hearing. Her written consent to participate was obtained on DOC Form 13-386 and placed in her health care records. She repeated back to the examiner that he understood that her participation is voluntary and that she may ask questions or refuse to answer a question. The inmate

may request to review a copy of this evaluation. BEFORE reviewing a copy, the inmate must attend an interpretive meeting with the author, a licensed psychologist, or licensed psychologist designee.

Description of Risk Assessment and limitations

A Risk assessment involves a systematic review of past aggressive behaviors, looking specifically at the antecedents of the behavior, as well as the degree of harm and context in which the behavior occurred. This review is combined with assessment tools specifically for evaluation of past behavior and its impact on future behavior. Whether a person will act aggressively is a function of a variety of factors that include history, personal disposition, and situational variables that cannot all be known in advance. Mental Health professionals often over predict aggression and statements concerning an individual's potential for future risk become less valid over time and must be revisited periodically to consider dynamic or changeable factors. Recently, there are researched based instruments that use structured professional judgment to review risk reducing or mitigating factors which are included in this report.

Current literature in risk assessment best practices, shows that it is important to identify who the person was at the time of the incident crime; e.g., their age and developmental maturity. The importance of these factors are identified in the conclusion of one organizations presentation at the 2012 National Conference of State Legislators: "Findings by the Mac-Arthur Foundation's Research Network on Adolescent Development and Juvenile Justice show that adolescent brains do not fully develop until about age 25, and the immature, emotional and impulsive nature characteristic of adolescents makes them more susceptible to committing crimes. Studies also have shown that juveniles who commit crimes or engage in socially deviant behavior are not necessarily destined to be adult criminals." (Trends in Juvenile Justice State Legislation: June 2012 National Conference of State Legislators, P.3). Research presented by Dr. Dahl from the University of Pittsburgh Departments of Psychiatry and Pediatrics (2008) elaborates on the more specific connections between these developmental processes and the multitude of ways they affect an individual's functioning. He writes that, "The capacities for competent self-control of behavior and emotions encompass a set of slow, gradual processes that continue to develop through the late teenage years and into the twenties. Such dramatic changes create challenges in the integration of cognitive and emotional processes in ways that place demands on the functional neural circuits that are critical for mediating arousal, orientation, attention, and affect (e.g., limbic regions) as well as for regulating and integrating these drives in the generation of long-term, goal-directed behaviors (e.g., regions of prefrontal cortex)." Dr. Dahl goes on to summarize what the research findings show as important areas of impact on an adolescent's functional behavior. "These findings suggest that adolescents engage relatively fewer prefrontal regulatory processes than adults when making decisions— in ways that may make adolescents more prone to risk taking in certain situations. More generally, engaging less prefrontal cognitive control may permit a relatively greater influence from affective systems that influence decision making and behavior which, in turn, increases adolescent vulnerability to some social and peer contexts that activate strong feelings."

The importance of these factors is also recognized/ validated by our legal system. In a Committee Report and Recommendations made to the Joint Legislative Task Force on Juvenile Sentencing Reform (Dec. 2014) it was presented that "The Miller opinion was the third in a series of three major pronouncements addressing the issue of proportionality of criminal punishment for youthful offenders. In all three cases, the United States Supreme Court, relying on substantial and compelling brain science, as well as 'emerging standards of decency' concluded that children who commit

crimes, even horrific crimes, must be sentenced in a manner that recognizes their youth, culpability and capacity to change.”

This current assessment reflects efforts to incorporate measures of static, maturational, and dynamic factors that the Board may want to consider in their decision making process. It is important to note that science has not advanced to the point of being able to precisely predict future risk of violence/recidivism for any one individual; rather observations are offered based on what we have learned about behavior within large groups of people that we see as having similar characteristics and factors. Whether a person will act aggressively is a function of a variety of factors that include history, personal disposition, and situational variables that cannot all be known in advance.

Sources of Information

Interviews:

Ms. Brashear was interviewed and tested on September 13, 2016 in a private mental health office at Washington Correctional Center for Women for approximately four hours of face to face time. Ms. Brashear was also administered the MMPI by the Psychologist 4 at WCCW on October 4, 2016 due to a lack of time available to the writer on the 13th of September. Additional time was spent administering tests, scoring instruments and for preparing this report

Review of Records

Review of DOC Medical Files
Review of DOC Electronic Files (OMNI)
Review of DOC Mental Health Files

Psychological Tests Used:

Bender-Gestalt
Trails A & B
Draw a Clock
PCL-R
MMPI-2-RF

Risk Assessment Instruments Used:

SAPROF

Criminal History/Offense Behavior

There are no prior offenses listed in her record.

Instant Offense Description:

On May 7, 1997 Ms. Brashear committed the crimes of:
Count I First degree murder, firearm
Count II First degree assault, DW

Count III First degree burglary, firearm

Relevant Personal History

Family:

Ms. Brashear was born in Thousand Oaks, California and lived briefly in Fallbrook, CA before her father was offered a position at Boeing and the family moved to Washington when she was about 11 years old. She is the older of two daughters; her sister is 18 months younger. Her parents' marriage was off and on over the years.

Developmentally, Ms. Brashear states that her mother experienced Toxic Shock Syndrome on December 25th and she was born by C-section on the 27th, two days later at full term. She believes the pregnancy was otherwise normal. She states that she did not learn to crawl and went directly to walking at six or seven months of age. She was told that she was too heavy to crawl. She also states she had two head injuries as a child; one at 18-20 months which resulted in a "cracked skull," and at the age of four or five years when she split her head between her eyebrows doing a back dive in a swimming pool. She is unaware if she lost consciousness either time. She had no serious childhood illnesses or hospitalizations.

Ms. Brashear began school in kindergarten and always loved school. She began keeping a personal journal in second grade and would note things she liked about her life. She identifies as wanting to become a school teacher. She reports that her family moved around quite a bit at least once per year at this time.

She states that in the 4th or 5th grade, she became very anxious and had a difficult time with social cues. She began cutting school to avoid some bullying and anxiety. She had one or two friends, but always felt like an outsider and other children were mean to her. She began having enuresis at school and at night. Through her therapy work, she understands now that there was familial sexual abuse from an uncle and older cousins. She states that her parents were aware of the abuse, but her mom avoids reality and didn't protect her or come to her aid. She states that there were no boundaries in the home and everyone ran around in the nude. Her parents described nudity as natural and normal. She began experiencing suffocating anxiety and stayed with other family members and skipping school. Her family sent her to live with a cousin in Utah who had a new infant. She states another cousin in his 30s raped her at this time. She attempted to press charges, but the police told her they would also press charges against her female cousin for not protecting her so she did not move forward with the charges. She moved between family members in California and Utah over the next few years.

Eventually at age 14, she returned to Washington and fell in with a small group including a man of 27 years of age. She began thinking of this group as a family and enjoyed the protective structure of the older man even though she did not enjoy the sexual aspects. She states she did not use drugs and little alcohol. It was this group of another man of age 20 and another young female that committed the instant offense.

She openly and transparently describes the instant offense with no distortions or denials about her role in killing the victim. She was 1 years old at the time of the offense in 1997.

She states that she went crazy after she felt abandoned when her parents moved to Florida. She also attempted suicide. She was getting infractioned frequently to be sent to the solitary cells in the IMU. Because she could not control herself, she was sent to Arizona from March 2007 to December 2008

and placed in solitary confinement until her return to WA DOC. Her parents have also returned to Washington State and they are reconciled and very supportive with calls, extended visits, and other support. Her sister also participates in Extended Family Visits.

Work:

Due to her age at incarceration, Ms. Brashear has never worked in the community, but she has acquired specific work skills for prison work, correctional industries, and community employment. She has had extensive training in Braille work and plans to continue to work part time as a Braille transcriber and has skills in Basic Nemeth Code. Please see her most recent custody facility plan for a complete list of her programming accomplishments.

Military: none

Medical: There are no known medical concerns that would affect community placement.

Mental Health:

Ms. Brashear has benefitted from mental health treatment in the past to address her history of others abusing her and her criminogenic behaviors and thoughts. She has been stable and not required mental health treatment since September 2013. She states she would seek help and support without hesitation during transition and when released and she has demonstrated good help-seeking skills in the past.

Substance Abuse:

She has had substance abuse programming two times per OSP entries. She was evaluated for further chemical dependency treatment needs and found not to need further treatment. She continues to participate in AA activities.

Current Functioning/Behavior

Programming:

Ms. Brashear has participated in every program and educational opportunity available to her. She has earned her GED (1997) and many college credits and is close to achieving an AA degree.

Infractions:

Ms. Brashear has achieved Earned Incentive Program level # 5 and has not had a major infraction in eight years. Ms. Brashear has incurred a total of 107 infractions of which all but six are serious. She desisted serious infractions in 2008. Her last general infraction occurred on August 1, 2014 so she has managed a significant improvement in her institutional behavior. Most importantly, Ms. Brashear states that her therapy with Dr. Dahlbeck was helpful in giving her significant insight and she desisted after her treatment with him. She has also had intensive therapy with another psychologist that she reports as being very helpful.

Peer Relationships/Community Support:

Ms. Brashear has a strong family support network (parents, brother, sister, aunts and grandmother), support from her teachers and instructors, and is receiving a mentor from the IF project in the community. She reports having good friends inside the prison, but is careful to not be involved in prison drama. She participates in Extended Family Visits regularly for which she pays the fees.

Strengths/Weaknesses:

Ms. Brashear is bright, motivated to achieve her educational goals and is making significant progress. She has learned important pro-social coping skills. She has no current medical or mental health concerns that would impede her ability to succeed in the community and has demonstrated excellent help seeking skills if she were to need assistance in the future. She is highly motivated and prepared with good work skills. She has a committed family support system.

Her weaknesses include never having worked or lived in the community as an adult. She will require patience and a good attitude to make the necessary adjustments to all of the technology, driving, and cultural changes she will confront. She will also need continued support and structure to manage her levels of anxiety as she transitions into the community.

Goals and Plans for the Future:

Ms. Brashear and her parents are preparing together for her to live with them and saving money to support her initial transition into the community. Her sister lives near by. She has an offer to work for the American Printing House doing her Braille transcription work. She plans to enter college and complete her BA and has some relationships established at the University of Puget Sound and Everett Community College. Long term goals include pursuit of a law degree after she determines her qualification to join the Bar. She would like to give back to others with legal and social justice work. She would like to make reparations to her family and make her parents happy. Her plans appear sensible and achievable.

Clinical Interview

Ms. Brashear arrived on time for her appointment. She appeared her stated age and was dressed appropriately in clean prison clothing. Her grooming was neat and clean. She was initially nervous, but calmed herself and established appropriate rapport. Every aspect of her presentation, speech, language and mood were within normal limits. She was fully oriented. She has received mental health treatment while incarcerated to gain insight into her instant offense. She has participated in group programming which she has found quite helpful. She states that she would seek out continuing treatment groups when released from prison for accountability and support. She is pleasant and cooperative and establishes appropriate rapport with good eye contact. She reports that her appetite is good and she is sleeping well. Her recent and remote memory is intact. Her mood and affect are congruent with the content of her speech and her thought process is organized, logical and forward thinking. She denies suicidal or self-harm thoughts. She demonstrates no attention to internal stimuli or delusional thoughts. There are no signs of a thought disorder.

Her insight and judgment are assessed to be good at this time.

Cognitive Functioning:

Ms. Brashear performed within normal limits on the Bender-Gestalt, Trails A & B, and Draw a Clock which indicates that she functions adequately for the purposes of this evaluation. Testing completed at the time of her admission to DOC confirmed an average level of cognitive function.

Psychological Test Findings:

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.

Psychological tests are used to provide one source of information necessary to construct the model. The psychologist chooses tests depending upon the information needed to complete the clinical and risk assessment. The battery of tests selected and the opinions regarding risk status are based on the training, experience, skill, judgment, and expertise of this licensed psychologist and not on any particular test, historical information, or record.

MMPI-2-RF

Ms. Brashear was administered the Minnesota Multiphasic Personality Inventory-2-Restructured Form, (MMPI-2-RF) to examine for clinical levels of mental illness. Ms. Brashear completed the entire instrument. Ms. Brashear denied minor faults and shortcomings that most individuals acknowledge to a degree which invalidates the results of the test. The manual for the instrument gives two possible explanations for positive impression management or underreporting.

The first factor mentioned in the manual would be if the test taker was raised in an environment stressing traditional values. Ms. Brashear was not raised in a conventional family per her report although she yearned for a more traditional home as a teenager and hopes for more predictable and stable roles in her family today.

Ms. Brashear's obtained score more likely is a result of wanting to exert positive impression management because of the import of the evaluation. The Manual for Administration, Scoring, and Interpretation states, "self-report measures of personality and psychopathology are inherently susceptible to intentional under-reporting, which is most likely to occur when, given the assessment context, good adjustment is a highly desirable quality and the individual has a great deal at stake (e.g., child custody evaluations, pre-employment assessments or release from involuntary commitment)."

Year	Test	Results
Clinical Assessment		
2016	MMPI-2-RF	Invalid test results
2016	PCL-R	Very low, no evidence of psychopathy
Forensic Risk Assessment		
2016	HCR-20-FAM	low

Risk Assessment:

A central feature of this evaluation is to render an opinion regarding Ms. Brashear's risk for future dangerousness in terms of criminal recidivism, violence and/or sexual re-offense. Assessing any individual's risk for engaging in future violent behavior is an inherently difficult task, as the scientific literature attests. This is particularly the case where the

information is either incomplete or deliberately concealed. Mental health professionals can make use of a large and growing body of empirical literature for identifying risk-elevating factors.

Because risk-elevating factors, particularly the dynamic factors-change over time with or without intervention, risk assessment updates are necessary to insure accuracy and guard against decision-making based on outdated information.

Author's Note: Evaluation of female offenders for purposes of classification and Risk Assessment is a complex issue and has been under research study by a joint partnership between several state and local agencies, the National Institute of Corrections (NIC), and the University of Cincinnati. They are working to construct and validate gender responsive risk and needs assessments for women offenders. The focus is primarily upon the notion of gender responsive needs fit with program planning and risk reduction. Another study is focused upon developing supplemental dynamic risk assessment instruments and improving their predictive validity. Currently, there are three different types of instruments in use today: gender-neutral, gender responsive, and women centered. Each of the following instruments used in assessment of Ms. Brashear will be placed in the appropriate category for the information and use by The Board.

PCL-R: The PCL-R has been demonstrated to be valid and reliable in female samples, (Bolt, Vitale, and Newman, 2004). It is considered to be gender-responsive since the question upon which scoring is based can be sensitive to issues in women's lives and their pathways to crime. Detailed attention was paid in the administration of this instrument to consider those issues such as poverty, trauma, experience of abuse, and relationships. The PCL-R has been found to have a moderate predictive value of future risk in females.

Ms. Brashear was carefully scored on the PCL-R giving consideration to women's issues. Ms. Brashear scored in the lowest quartile of the PCL-R which means there is no sign of psychopathy and little evidence of an Antisocial Personality disorder at this time. Ms. Brashear turned her behavioral difficulties around with the benefit of intensive therapy at the time of her return from out of state placement. It is been more than eight years since she incurred a serious infraction which places her achievement of self-regulation at around age 26 which is on target for achieving brain maturity as determined by developmental specialists including Dr. Dahl as mentioned on page 2 of this report.

Historical-Clinical-Risk Management-20 v3 (HCR-20v3) with Female Additional Manual (FAM)

The *Female Additional Manual (FAM)* is an addition to the widely-used violence risk assessment tool the HCR-20 / HCR-20^{v3}, for the assessment of violence risk in women. The goal of the FAM is to provide a clinically relevant and useful additional tool for accurate, gender-sensitive assessment of violence risk, which offers concrete guidelines for risk management in women. The FAM contains additional guidelines for women for five Historical HCR-20 items (H6-H10) or two Historical HCR-20^{v3} items (H7-H8) and eight new items with specific relevance to women. Furthermore, there are three extra risk ratings in addition to Violence to others: Self-destructive behavior; Victimization; Non-violent criminal behavior.

Ms. Brashear has points tabulated on the HI (historical) section of the HCR-20 v3 which reflect her criminal past. Her Clinical (present) and Risk Management (future) Scales are both scored as not present or low. Her total score is judged to be low risk to reoffend.

Protective or Risk Reducing Factors:

There may be significant risk reducing factors that merit consideration in order to present a balanced assessment of Ms. Brashear's current risk to reoffend. The Structured Assessment of Protective Factors or **SAPROF** was developed as a structured clinical judgment instrument that research has found to be relevant factors that may reduce or protect from future risk behaviors. A protective factor is a factor reducing the negative effects that certain chronic or acute risk factors have on an individual's behavior.

Items on the SAPROF are scored dynamically, predominantly based on information from the past six months and the current plans regarding the near future. The SAPROF score is considered valid for the next 12 months, providing that the context stays the same. Ms. Brashear scores at a high level of protective factors from violence risk. Her factors are evenly distributed over Internal, Motivational, and External Factors and bode well for lowering her overall risk to recidivate over the next twelve months.

Other significant mitigating factors that indicate possible reduction in risk include: increasing age which at age 35 is applicable to her, decreased frequency of institutional misbehavior-having no serious infractions for more than eight years, and participation in criminogenic related cognitive-behavioral programming. She has several cognitive-behavioral treatments completed. These factors plus a high score on the SAPROF give a strong indication that Ms. Brashear possesses the attitude and skills needed to make succeed in the community.

Summary and Risk Management Recommendations

Current literature in Risk Assessment Best Practices asks questions such as: Who the person "is" in terms of gender, age, and developmental growth currently as well as at the time of the Incident Crime; What the person "has done" in terms of their criminal activities; What the person "has" in terms of psychiatric conditions that might increase or decrease risk; and what has been "done to" the person in terms of abuse, neglect, or familial actions. These questions are used as a format for understanding a person's level of risk.

The question of who a person "is," can be reviewed from perspective of past & current functioning.

While nothing can excuse the tragic loss of life; awareness of the factors affecting the inmate's behavior might help one evaluate how she could be a part of such activities and whether similar current conditions exist that could influence behaviors if sentencing was modified. As elaborated on above, Ms. Brashear was approximately 16 years old when she committed the instant offense.

Information presented earlier in this report suggests that Ms. Brashear would still be chronologically and emotionally in the middle of completing important developmental processes. She appeared to be lacking key developmental/environmental supports that often protect an individual from bad choices/behaviors during these vulnerable times. Factors shown to decrease chances of engaging in risky behavior include presence of a loving & supporting adult relationship, connection to positive peer groups/influences, and sense of academic success. At the time of her incident crime, Ms. Brashear had been distributed to various family members in California and Utah without finding a

safe and nurturing home. She had been suffering from debilitating anxiety since the age of 11 and did not achieve success at school as a result of bullying and social anxiety.

Again, the research finds that individuals in these situations are going to be more at risk for negative behaviors. Although not excusing any delinquent behaviors, Dahl (2008) reminds us of the strong influence these biological/neurological processes can have: "These findings suggest that adolescents engage relatively fewer prefrontal regulatory processes than adults when making decisions— in ways that may make adolescents more prone to risk taking in certain situations. More generally, engaging less prefrontal cognitive control may permit a relatively greater influence from affective systems that influence decision making and behavior which, in turn, increases adolescent vulnerability to some social and peer contexts that activate strong feelings."

Ms. Brashear's history informs that as a young adolescent she began feeling disconnected and unaccepted by family & appropriate peers; exhibiting acting out behaviors at home and school; experiencing an absence of parental/social limits & rules; associating primarily with peers having negative influence on her; and participating in illegal activities. This pattern continued for several years and culminated in the tragic instant offense. Also important to this review was the examination of the inmate's records while in prison which are also elaborated on above. Ms. Brashear reported that over the years when she was first imprisoned, she felt abandoned, angry, alone, and without a core personality which led her to feel very crazy. She figured she would never get out with her sentence structure. Her behavior reflected these beliefs and involved frequent verbal defiance of authority, refusing to comply, a suicide attempt, drug/alcohol and assaults.

Significant changes in behavior/attitude reportedly began steadily occurring after she commenced intensive therapeutic treatment and achieved a level of pre-frontal lobe development. She is proud of the fact that she has not had any serious infractions in eight years.

The question of who the inmate is currently recognizes that she is now 35 years old and has experienced growth and maturation over time. Evidence in her records validate Ms. Brashear's report of having made significant changes in many areas including: establishing a nourishing and adult relationship with her family; elimination of violent & destructive behaviors; disconnection from negative & anti-social peer influences; increasing presence of positive peer relations; and in establishment of daily structure that includes employment, education, and coping activities. Whether the changes are of sufficient duration, quantity, or quality to warrant reconsideration of sentencing is a legal decision to be determined by the Board.

If based primarily on criminal & infraction history, Ms. Brashear would be considered to be in the "low" range for risk of reoffending after release. However, overall risk assessment may benefit from taking into consideration of dynamic factors such as eight years of no serious infractions and the lack of current biological/neurological development risk factors that were present as an adolescent and young adult. Under these parameters, and accounting for the results of the SAPROF, the risk of reoffending would best be seen as in the "low to very low" range. Whether the changes/factors are of sufficient duration, quantity, or quality to warrant reconsideration of sentencing is a legal decision to be determined by the Board.

The question of what a person "has," can be defined by the diagnosis of any mental health disorders that could increase/decrease one's risk for recidivism or violence. These could include major mental disorders (e.g., Mood, Anxiety, or Psychotic Disorders), Personality disorders (Antisocial Personality

Disorders, etc.), and/or Substance Abuse disorders. This individual does not meet current diagnostic criteria for these disorder types and has not required mental health services for several years since 2013. A prior period of mental health treatment revolved around childhood physical and sexual abuse issues and severe anxiety. Ms. Brashear has made effective use of treatment and her recent testing indicates no current levels of pathology.

A last question, asking what has been “done to” the person, is consistent with the findings of the National Research Council’s Panel on the Understanding and Control of Violent Behavior. They concluded that whether or not the person was raised in a pathological family environment and whether the individual was physically abused can correlate as risk factors for future violence. Ms. Brashear has “somewhat elevated” risk of reoffending based on the factor of physical and sexual abuse and rape to which she was subjected. Given the reconciliation that has occurred, her parents and Ms. Brashear have matured to a healthier relationship. Her participation in intensive therapy has also reduced her risk level to “low” for what was “done to her.”

Overall, the results of this evaluation suggest that Ms. Brashear is at a low risk to reoffend. Records documenting improved functioning and maturation over time (combined with results from the SAPROF) suggest that, for this particular individual, the risk level could be viewed as more in the “very low” range. Taking into account maturational and dynamic risk factors is consistent with the legal and clinical findings elaborated on earlier in this report. Whether these risk estimations & factors are sufficient to justify changes in sentencing (or a release to less restrictive levels), however, is not a scientific/ clinical question and is respectfully deferred to the Board.

Recommendations:

Ms. Brashear appears to be a reasonable candidate for transitioning to a less restrictive setting. She would benefit from continued involvement in therapy for stress and anger issues, especially concerning those that may stem from possible reintegration into the community.

1. Ms. Brashear is less likely to engage in criminal activity in the presence of mandatory ongoing external supervision & monitoring to be required by the legal system as well as other support systems.
2. Ms. Brashear is less likely to engage in criminal activity in the presence of strong family and positive peer connections and these should be encouraged with continued visits and family programming while she is incarcerated.
3. Ms. Brashear is less likely to engage in criminal activity in the presence of required participation in a therapeutic group where they discuss issues/stress associated with the process of transitioning to life outside of prison. She reports having learned some important communication, anger management, and coping skills from programming activities such as the CBT and “thinking for a change” program. Continuing in a therapeutic group could help establish a place to reinforce that knowledge/skill and to expand its use for outside of prison; as well as for situations not yet encountered. A structured regular group activity would also provide additional exposure to a positive peer culture with others who might be experiencing similar adjustment problems.

Decisions regarding Ms. Brashear's placement in a Camp setting should be based on medical considerations. Ms. Brashear's rule breaking is considerably less than earlier in her incarceration and there is no behavioral indicator of escape risk.

With the submission of this report, my evaluation of Ms. Brashear is complete. Please do not hesitate to contact me if there are any questions.

Deborah Wentworth PhD

Deborah Wentworth, PhD
Psychologist 4, Evaluator for the
Indeterminate Sentence Review Board

Appendix G

Opp, Fawneil F. (DOC)

From: Opp, Fawneil F. (DOC)
Sent: Wednesday, November 07, 2018 8:53 AM
To: DOC DL WCCW RECORDS; Kalip, Erika T. (DOC); DOC EOSR; DOC PREA Triage; DOC Victim Services; Berschauer, Nicole L. (DOC); Garcia, Roxana (DOC); Lewallen, Sheila R. (DOC); Rasler, Elisabeth D. (DOC); Sowers, Louis C. (DOC); Wentworth, Deborah C. (DOC); Riley, Robin L. (DOC); Titus, Nakia M. (DOC)
Subject: BRASHEAR, Gail DOC# 765306
Attachments: BRASHEAR, Gail 765306 - Admin Memo.doc; LT JUV BRD Fact sheet.doc
Importance: High

Due to the recent decision *In re Personal Restraint of Pauley*, 2018 Wash. App. dated Aug. 13, 2018, which directed the Board to reschedule hearings to review information regarding efforts towards self-improvement, the Board has made an administrative decision to schedule Ms. Brashear for a JUVBRD release determination hearing in approximately 10 months. See attached Administrative Board Decision.

Please submit referral for psychological evaluation immediately.

Cut-off date for the following documents to be received at the ISRB is **05/13/2019.

NOTE: This hearing will be scheduled only **after** the ISRB receives the required psychological evaluation. This scheduling process is different than other Board hearings, as the requirement is that the psych eval is received at the ISRB before the hearing is scheduled. As well, the above RCW directs this offender will be reviewed, regardless of the ERD listed in OMNI.

Documents required for JUVBRD release determination hearing:

- **Complete instrument supported psychological evaluation.**
- Copies of any psychological evaluations occurring since offender was incarcerated.
- Current Facility Plan (no more than 6 months old) that contains information on infractions, programming, victim contact, family contact and support, crime related issues, and reports from any specialized counseling or classes.
- Copies of all typed reports **relating to mental health only**, located in both the central/medical files.
- Copies of all reports **relating to chemical dependency** treatment located in both the central/medical files. A signed waiver must also be included.

If there are any questions or problems, please advise.

Thank you,

Fawn Opp

Correctional Records Technician

(360) 407-2453

ffopp@doc1.wa.gov



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
INDETERMINATE SENTENCE REVIEW BOARD
PO BOX 40907 • Olympia, Washington 98504-0907

DATE: November 6, 2018

TO: WCCW
Attn: Records

SUBJECT: Administrative Board Decision

RE: BRASHEAR, Gail
DOC# 765306

An administrative decision of the Board has been made and is as follows:

Due to the recent decision *In re Personal Restraint of Pauley*, 2018 Wash. App. dated Aug. 13, 2018, which directed the Board to reschedule hearings to review information regarding efforts towards self-improvement, the Board has made an administrative decision to:

RESCHEDULE Ms. Brashear for a new JUVBRD release hearing.

Pursuant to RCW 9.94A.730, Ms. Brashear will be scheduled for a JUVBRD release determination hearing in approximately 10 months, but only after the ISRB receives the required psychological evaluation.

cc: Gail Brashear
Counselor Erika Kalip
file



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
INDETERMINATE SENTENCE REVIEW BOARD
PO BOX 40907 • Olympia, Washington 98504-0907

FACT SHEET
Long Term Juvenile Board Cases
RCW 9.94A.730

The ISRB is charged with the duty to review cases of juvenile offenders convicted as adults. The Board must hold a review hearing to determine whether the offender is *“more likely than not to commit a future criminal offense”*. The statute has a *presumption of release and the Board must decide* whether a preponderance of evidence exists that overcomes the presumption of release.

Below is the process these cases will follow

To be eligible for review under this law, offenders must fit the criteria:

- Have committed their crime under the age of 18 and were sentenced as an adult;
 - Have served at least 20 consecutive years of confinement;
 - Has not incurred any new major infractions the past 12 months;
 - Has not been convicted of any new crimes since the age of 18.
-
- Offenders must submit a petition to the ISRB to have their cases reviewed for possible early release.
 - When the petition is accepted by the ISRB, DOC is notified and a psychological evaluation is completed within 6 months.
 - When the ISRB receives the results of the completed psychological evaluation, the offender is scheduled for an early release consideration hearing (typically within 3-4 months).

ISRB Victim Services will send a notification to the victim/survivors:

- If/when a response is received, ISRB Victim Services schedules an appointment for the survivors to meet with the Board either in-person, telephonically, or assists them in writing a statement to the Board.
- Explains the confidentiality rules;
- Assists in gaining Board and DOC approval to attend offender’s hearing, if requested.

Board will publish/issue its decision within 30 days of the hearing.

Board's decision from hearing must be to **either**:

✓ **Release:**

- Board will set a next action for Offender to submit a Release Plan;
- Offender will not be released until they have developed an Offender Release Plan that has been investigated and approved by the Board;
- If Release Plan is approved by the ISRB, an Order of Release will be issued.
- Offender will be on community custody supervision **for 3 years or until_____**. DOC Policy 380.200 indicates Juvenile Board offenders will be supervised as High Risk Violent for 12 months following release from prison/work release; then reassessed per DOC 320.400 Risk and Needs Assessment Process.

✓ **Not release:**

- The Board will state a time frame within which the offender may “repetition” (up to 60 months);
- The Board can suggest various programs the offender may participate in.

ISRB - ADMINISTRATIVE DECISION SHEET

Offender Name: Brashear, Gail A.	DOC#: 765306	CCB <input type="checkbox"/> JUVBRD <input checked="" type="checkbox"/> Pre-84 <input type="checkbox"/>
Hearing Investigator: Matt Frank	CRT: Fawn Opp	DATE: November 6, 2018
PERTINENT INFORMATION AND RELEVANT DOCUMENTS CONSIDERED: ISRB Decision and Reasons dated April 21, 2017 <i>In re Personal Restraint of Pauley</i> , 2018 Wash. App. dated Aug. 13, 2018		
DESCRIPTION OF ISSUE(S): On April 12, 2017 at a LT JUVBRD Hearing, Ms. Brashear was found not releasable and was informed that she could re-petition the Board in May 2022. Subsequent to Ms. Brashear's LT JUVBRD Hearing, on August 13, 2018, the Washington State Court of Appeals published the following document: Washington State Court of Appeals No. 76489-6-1 Division One Unpublished Opinion re: <i>Personal Restraint of Pauley</i> , 2018, in which the Courts noted that the ISRB's statutory responsibility is to consider evidence of rehabilitation (an inmate's rehabilitative efforts and achievements) more so than the nature of an inmate's past crimes, to determine if an inmate is rehabilitated. The Courts remanded to allow the ISRB to conduct a hearing and properly consider evidence of Pauley's rehabilitation in accordance with its procedures. It appears proper that the Board consider conducting a new hearing in the case of Ms. Brashear in light of the significant new information, (<i>In re Personal Restraint of Pauley</i> , 2018 Wash. App. dated Aug. 13, 2018), which at the time of Ms. Brashear's LT JUVBRD Hearing was not yet authored.		
RECOMMENDATIONS: Other as Described in Comments		
RECOMMENDATIONS continued: The Board has two options; 1) Continue on Present Status, 2) Schedule LT JUVBRD Hearing (which requires two Board Member signatures)		
COMMENTS/ANALYSIS:		
DECISION: Other - SEE REASONS		
REASONS: Ms. Brashears should be scheduled for a new LTJUVBRD Hearing in light of a recent court decision in re: Personal Restraint of Pauley and Ms. Brashears continued effort towards self-improvement. She falls under 9.95.422 and will require appropriate notification to the Court, Prosecutors and Victims/Survivors. In addition,		

the Board will require an updated psychological evaluation. Please work with Robin, Nakia and Sheila for scheduling.

AGREE: INITIAL/DATE	DISAGREE: INITIAL/DATE
JP 11/06/18	
LRG 11/06/18	
EB 11/6/18	
KLR 11/6/18	

CORRECTIONS DIVISION ATTORNEY GENERAL'S OFFICE

January 02, 2019 - 9:32 AM

Filing Motion for Discretionary Review of Court of Appeals

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: Personal Restraint Petition of: Gail Ann Brashear (770471)

The following documents have been uploaded:

- DCA_Motion_Discretionary_Rvw_of_COA_20190102093055SC257747_6049.pdf
This File Contains:
Motion for Discretionary Review of Court of Appeals
The Original File Name was MotDiscReviewFinal.pdf

A copy of the uploaded files will be sent to:

- correader@atg.wa.gov
- ellis_jeff@hotmail.com
- jayg@atg.wa.gov
- jeffreywinellis@gmail.com

Comments:

Sender Name: Katrina Toal - Email: katrinat@atg.wa.gov

Filing on Behalf of: Mandy Lynn Rose - Email: mandyr@atg.wa.gov (Alternate Email:)

Address:
Attorney General's Office, Corrections Division
PO Box 40116
Olympia, WA, 98504-0116
Phone: (360) 586-1445

Note: The Filing Id is 20190102093055SC257747