

March 12, 2010

TO: Erin Terhune

FROM: Teresa Parsons, SPHR
Director's Review Program Supervisor

SUBJECT: Erin Terhune v. Department of Corrections (DOC)
Allocation Review Request ALLO-09-036

On December 9, 2009, I conducted a Director's review telephone conference regarding the allocation of the following positions:

Erin Terhune	Position #CM30
Terrina (Reid) Peterson	Position #CP04
Kristi Mueller	Position #CM38

You and the other employees all participated in the telephone conference. In addition, your supervisor, Correctional Records Supervisor Jennifer Williams, and the ESR/CC Program Manager, Kimberly Acker, also participated in the conference. Human Resources Consultants Joanne Harmon and Melissa Bovenkamp represented DOC.

Director's Determination

This position review was based on the work performed for the six-month period prior to March 2008, when DOC's Human Resources (HR) Office began reviewing your position. As the Director's designee, I carefully considered all of the documentation in the file, the exhibits presented during the Director's review conference, and the verbal comments provided by both parties. Based on my review and analysis of your assigned duties and responsibilities, I conclude your position is properly allocated to the Correctional Records Technician 1 classification.

Background

Your position is assigned to the End of Sentence Review (ESR) and Civil Commitment (CC) Program within the Offender Treatment and Reentry Programs Division at DOC (Exhibit B-4). During the Director's review conference, Ms. Bovenkamp explained that the HR Office began reviewing your position, as well as the other positions in your work unit, around

March 2008. The HR Office received a Position Review Request (PRR) for your position on July 1, 2008, signed by you in June 2008 and your supervisor, Ms. Williams, on March 11, 2009 (Exhibit B-1). You requested that your Correctional Records Technician 1 position be reallocated to a classification in the Program Specialist or Forms and Records Analyst series. In addition to the PRR, the HR Office reviewed the updated Position Description Forms (PDFs) for your position from August and October 2007 (Exhibits B-2-a and b). On May 1, 2009, HR Consultant Joanne Harmon determined your position was appropriately allocated as a Correctional Records Technician 1. Specifically, Ms. Harmon determined the majority of your duties and responsibilities included correctional records technical tasks within a correctional records office.

On May 28, 2009, the Department of Personnel received your request for a Director's review of DOC's allocation determination. In your request, you provided a historical perspective of the positions working in the ESR/CC Records Office (Exhibits A-1 and A-3). The following includes the historical background of your work unit:

The End of Sentence Review Committee (ESRC) was established in 1989 as an interagency group reviewing and coordinating services for mentally ill and developmentally disabled offenders approaching release from DOC incarceration and needing services from the Department of Social and Health Services (DSHS). In 1990, the Community Protection Unit (CPU) was established as a result of the Community Protection Act. You indicated that the CPU was "comprised of distinct yet overlapping programs," including ESR and CC.

In 1997, a new law mandated that all sex/kidnapping offenders be leveled for community notification. The scoring tool used to determine the level of a registered sex offender required the need for additional file material pertaining to an offender's criminal history to assist in determining the level. As a result, a Correctional Records Supervisor position and subsequently Correctional Records Technician positions were added to the ESR to assist with investigation of offenders' criminal histories by setting up each offender file in preparation for review and leveling by the ESRC.

Currently, the ESRC is comprised of multiple agencies with jurisdiction over the release of sex offenders or those impacted by the release of sex offenders. The ESRC includes representatives from DOC; the Indeterminate Sentence Review Board (ISRB); and DSHS, including the Special Commitment Center (SCC), Juvenile Rehabilitation Administration (JRA), Mental Health Division (MHD), Western State Hospital (WSH), Eastern State Hospital (ESH), and the Child Study and Treatment Center (CSTC). The ESRC uses three distinct subcommittees: End of Sentence Review, Level I/Child Protective Services, and Juvenile Rehabilitation Administration.

In addition, legislation in 2001 required certain sex offenders be sentenced under the Community Custody Board (CCB) sentencing under the ISRB jurisdiction. The Joint Forensic Unit (JFU) was also established in 2002 to centralize records processing and assign forensic psychological evaluations on behalf of the various

releasing agencies. DOC assumed the responsibility of investigating all sex offenders' criminal histories and requesting complete copies of all records including prosecutor records, all records of evaluation and/or treatment, the offender's version of the offense, police reports for sexually violent offenses, institutional and mental health records, child protective services records, developmental disabilities division records, and school records.

In 2004, the ESR/CC Program also began responding to public disclosure requests for the Office of the Secretary. Around 2005, the CPU disbanded and the programs under it became divided. The ESR/CC Program became part of the Offender Treatment and Reentry Programs Division.

The following summarizes your viewpoint, as well as your employer's:

Summary of Employees' (Terhune, Peterson, and Mueller) Perspectives

The employees assert that positions in the Victims Services Unit, another program formerly under the CPU, had been reallocated to Program Specialist classes. As a result, the employees state that in May 2007, the HR Manager at that time had concerns about the duties assigned to the records positions in the ESR Program. The employees assert the ESR Program is not a Correctional Records Program and that it could be considered a stand-alone program with statewide impact. The employees contend there are distinctions between the positions in the ESR unit and other Correctional Records Technicians within DOC. The employees contend their positions do not have responsibility for calculating offenders' sentence structures. Instead, the employees indicate they are processing case files for the ESR and Law Enforcement Notification (LEN) programs, as well as prosecuting attorneys and forensic experts.

The employees contend they support a multi-agency committee to include technical experts that interpret and explain program specific policies, statutes, and court decisions on releasing sex offenders. As a result, the employees assert their positions are required to have knowledge of historical and current state and federal sex offender legislation, procedures, and policies. The employees contend their duties include researching and collecting documents that cannot be searched or retrieved by records staff in DOC's institutions or field offices. The employees' supervisor, Ms. Williams, asserts the unique positions in the ESR Program pose many issues in recruitment and retention of very knowledgeable staff. Therefore, the employees and Ms. Williams believe the duties and responsibilities assigned to their positions exceed those performed by other Correctional Records Technicians.

Summary of DOC's Reasoning

DOC acknowledges the employees' assigned work requires the use of technical expertise to interpret, explain, and ensure compliance with applicable laws, directives, rules, regulations, policies, and procedures as they relate to sex/violent offenders and the statewide ESR/CC and LEN programs. However, DOC contends the majority of duties and responsibilities fit within the Correctional Records Technician 1 classification. DOC asserts the employees perform work creating or building ESR/CC offender files, applying technical

knowledge regarding policies and procedures; ensuring the files contain all the necessary documents; reviewing documentation for accuracy; collaborating with other staff and law enforcement entities regarding offender records; entering information into the offender tracking database; and organizing and assembling records based on a master discovery list or for public disclosure. DOC contends these functions support the Correctional Records Supervisor and ESR/CC Manager, as well as the ESRC and other units like the LEN or JFU, as part of records management of offender records. While DOC recognizes there are some similarities between the Correctional Records Technician classes and other classes, DOC contends the overall focus of the employees' positions is to process files containing offender records for the ESR unit. Therefore, DOC believes the employees' positions are appropriately allocated to the Correctional Records Technician 1 classification.

Rationale for Director's Determination

The purpose of a position review is to determine which classification best describes the overall duties and responsibilities of a position. A position review is neither a measurement of the volume of work performed, nor an evaluation of the expertise with which that work is performed. A position review is a comparison of the duties and responsibilities of a particular position to the available classification specifications. This review results in a determination of the class that best describes the overall duties and responsibilities of the position. Liddle-Stamper v. Washington State University, PAB Case No. 3722-A2 (1994).

The PDFs from 2007 and the PRR from July 2008 describe your position's objective or purpose, in part, as follows:

Assists several programs with statewide impact. Provides direct support to the End of Sentence Review/Civil Commitment/Joint Forensic Unit/Less Restrictive Alternative Program Manager, the Law Enforcement Notification Program Manager, and eight Law Enforcement Notification Specialists. . . . This position supports the End of Sentence Review/Civil Commitment and Law Enforcement Notification Programs and the program goals which are to work with local law enforcement and other stakeholders to promote community safety regarding releasing sex/registerable kidnapping offenders.

In summary, the PDFs and PRR describe the majority of duties and responsibilities assigned to your position (75%) as follows:

- Supports the multi-agency End of Sentence Review Committee by investigating, requesting and compiling all necessary documentation for committee review and DOC law enforcement notification per RCW 72.09.345 and RCW 4.24.550. Requests additional records and information for the Joint Forensic Unit, civil commitment prosecutors, and other outside stakeholders for offenders who are under civil commitment consideration per RCW 71.09. Serves as the liaison between the End of Sentence Review/Law Enforcement Notification programs and DOC field, institution and records staff, as well as law enforcement agencies and the Washington State Records Center.

- Technical expert that interprets and explains applicable laws, rules, regulations, policies and procedures; monitors program activities for compliance, and maintains knowledge of directives, policies, field instructions, WAC's and RCW's. Serves all levels of agency staff and outside agencies concerning interpretation of police, procedure, and application as it relates to sex/violent offenders and statewide End of Sentence Review and Law Enforcement Notification programs. Statewide contact for updating the DOC registration and ESRC referral screens.
- Communicates with statewide institution and community corrections staff to ensure compliance with Departmental policies, division directives, and state and federal statutes pertaining to End of Sentence Review and Law Enforcement Notification. Determines eligibility and requests referrals for End of Sentence Review Committee assessment per policy and statute, and updates the appropriate OBTS screens.

In addition, 15% of your work involves appropriate dissemination of information by assisting the Public Disclosure Coordinator with processing ESR/CC and LEN file material requests, redacting ESR file review packets for CCB cases, and responding to discovery and law enforcement dissemination requests.

During the Director's review conference, Ms. Williams explained the steps involved in processing files for the ESRC or CC. The following provides an overview of that process:

- The Offender Management Network Information System (OMNI) (formerly OBTS) generates a referral two years prior to an offender's release date, which prompts the Classification Counselors in the institutions to send the offender's information to your office. You also receive offender referrals from all other releasing agencies, for example, DSHS.
- Once the information reaches your office, clerical staff process the referrals by date stamping and verifying the current institution, earned release date (ERD) in OMNI, and type of offense. Clerical staff then enter a check date into OMNI, create the file by color code, and file the offender's ESR file in the file room or may forward to the Correctional Records Supervisor for review.
- Files are then assigned to your position and the other Correctional Records Technician positions to begin working the file or building a file that goes to the ESRC, CC, or LEN program. This includes reviewing criminal history, requesting any additional documentation, and compiling the file for committee review. In some cases, a file may not go forward to the ESRC, and the Correctional Records Supervisor completes a form, which the Program Manager signs.
- If the ESRC determines a case goes to a subcommittee for civil commitment consideration, Correctional Records Technicians build a file with the offender's complete criminal history obtained through a variety of criminal justice sources, including documents such as police reports and psychological evaluations.

- You work from a Master Discovery sheet to gather and compile documents and the Office Assistant 3 provides information to the Attorney General's Office or Prosecutor's Office by scanning and putting the information on a CD.

Ms. Williams provided an ESR Referral Checklist for Records and End of Sentence Review/Law Enforcement Notification Program Process to illustrate the steps described above (Exhibits A-10 and A-11).

When comparing the assignment of work and level of responsibility to the available class specifications, the class series concept (if one exists) followed by definition and distinguishing characteristics are primary considerations. While examples of typical work identified in a class specification do not form the basis for an allocation, they lend support to the work envisioned within a classification.

The **Program Specialist** Class Series concept reads, in part, as follows:

Positions in this series coordinate discrete, specialized programs consisting of specific components and tasks that are unique to a particular subject and are separate and distinguished from the main body of an organization. Positions coordinate program services and resources; act as a program liaison and provide consultation to program participants and outside entities regarding functions of the program; interpret, review and apply program specific policies, procedures and regulations; assess program needs; and develop courses of action to carry out program activities. Program coordination also requires performance of tasks and application of knowledge unique to the program and not transferable or applicable to other areas of the organization.

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At the **Program Specialist 2** level, the definition includes the following:

Positions at this level work under general supervision and plan, organize, direct and coordinate operations for programs such as the business enterprise, volunteer services and community resources, elections examination/administration programs. Incumbents oversee day-to-day program operations, function as the program representative and resource, have extensive contact with program participants and outside entities, and resolve problems within a delegated area of authority. Unusual problems, probable outcomes and solutions are presented to higher levels for resolution. Incumbents may be delegated limited authority to approve budget expenditures and may assist higher-level staff with developing and coordinating statewide program activities.

Your position processes sex offender records by collecting, compiling, verifying, and reviewing documents used to create files for review by the ESR/CC programs. I recognize your knowledge and ability to interpret and explain related laws and policies. However, the overall focus of your work pertains to correctional records management as part of the

Offender Treatment and Reentry Programs, which is not unique to DOC. While I understand you may perform similar aspects of the work described in the Program Specialist classes, the work assignments are in the context of reviewing, verifying, and processing all records related to sex offenders nearing the end of their sentences.

The Personnel Resources Board (PRB) has previously determined that while one class appeared to cover the scope of a position, there was another classification that not only encompassed the scope of the position, but specifically encompassed the unique functions performed. Alvarez v. Olympic College, PRB No. R-ALLO-08-013 (2008). In this case, the duties and responsibilities assigned to your position fit within the definition and closely align with the typical work examples of the Correctional Records Technician 1 class because you perform technical tasks relating to correctional records. The overall focus of your work pertains to correctional records management as part of the Offender Treatment and Reentry Programs. Therefore, the Program Specialist classes are not the best fit for your position.

I also reviewed the **Forms and Records Analyst 2** definition, which includes duties pertaining to records management and public records disclosure. However, when considering the totality of the work assigned to your position, the nature of work and duties you perform align with the technical tasks of processing correctional records. Therefore, the Forms and Records Analyst 2 is not the best fit for the duties assigned to your position.

The **Correctional Records Technician 1** definition states the following:

Performs correctional records technical tasks and sentencing structure duties within a correctional records office. Calculates length of incarceration and/or community supervision time under the supervision of a Correctional Records Supervisor.

I understand your position does not perform duties that specifically involve sentencing structure. However, your position does perform correctional records technical tasks. In Salsberry v. Washington State Parks and Recreation Commission, PRB Case No. R-ALLO-06-013 (2007), the Personnel Resources Board addressed the concept of best fit. The Board concurred with the former Personnel Appeals Board's conclusion that while the appellant's duties and responsibilities did not encompass the full breadth of the duties and responsibilities described by the classification to which his position was allocated, on a best fit basis, the classification best described the level, scope and diversity of the overall duties and responsibilities of his position. Allegrì v. Washington State University, PAB Case No. ALLO-96-0026 (1998). On a best fit basis, the overall duties and responsibilities assigned to your position fit the Correctional Records Technician 1 job classification.

Further, while not exact, the typical work examples most in line with the duties and level of responsibility assigned to your position include:

- Reviewing and verifying accuracy of Superior Court documents relating to convictions and sentencing;
- Responding to external requests for offender information based on Public Disclosure and Criminal History Records laws;

- Reviews and verifying all pertinent documents relative to the offender's sentence in order to prepare release documents (i.e., Notification of Release);
- Verifying offender database information against source documents;
- Interpreting Supreme, Appellant, and Superior Court decisions, RCWs and Indeterminate Sentencing Review Board Re-determinations to properly compute/recomputed release date for offenders;
- Updating inmate record (in offender databases);
- Preparing and submitting inmate files for review;
- Determining, on a case-by-case basis, items that are disclosable, non-disclosable, or partially disclosable;
- Testifying in court as expert witness regarding the validity of offender records and identity;
- Archiving offender records.

Your work involves the review, verification, compilation, and dissemination of offender records in accordance with RCWs and agency policies, as well as reviewing and updating information in offender database systems. The focus of your work encompasses offender records management, in this case processing records for sex offender files. It is clear the work you perform is very important and valued by your agency. A position's allocation is not a reflection of performance or an individual's ability to perform higher-level work. Rather, it is based on a comparison of duties and responsibilities to the available job classifications. The Correctional Records Technician 1 classification best encompasses the overall scope of work and level of responsibility assigned to your position.

Appeal Rights

RCW 41.06.170 governs the right to appeal. RCW 41.06.170(4) provides, in relevant part, the following:

An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to . . . the Washington personnel resources board Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

The mailing address for the Personnel Resources Board (PRB) is P.O. Box 40911, Olympia, Washington, 98504-0911. The PRB Office is located at 600 South Franklin, Olympia, Washington. The main telephone number is (360) 664-0388, and the fax number is (360) 753-0139.

If no further action is taken, the Director's determination becomes final.

c: Joanne Harmon, DOC
Lisa Skriletz, DOP

Enclosure: List of Exhibits

Erin Terhune v. Dept. of Corrections (DOC)

ALLO-09-036

List of Exhibits

A. Erin Terhune Exhibits

1. Letter requesting a Director's Review dated May 28, 2009
2. Agency Allocation determination letter dated May 1, 2009
3. Community Protection Unit – End of Sentence Review – Civil Commitment – Joint Forensic Unit – Least Restrictive – Alternative Program
4. Letter from Richard Packard, Ph.D. to Victoria Roberts, CPU, regarding Forensic Evaluation Unit. (14 pgs) 1/27/1999
 - a) Forensic Services Unit
 - b) Post Evaluation Time
 - c) Forensic Evaluation Unit Briefing document
 - d) Memorandum – 7/25/2000 Proposed DCO/DSHS SVP Forensic Unit
 - e) Email dated march 13, 2002 JFU: Investigator Information
 - f) Letter dated January 17, 2003 Re: ISRB Records in Sex Predator cases
 - g) Memorandum of Understanding between Dept. of Social and Health Services The Office of the Attorney General.
 - h) Email dated April 14, 2003 RE: Joint Forensic Unit
 - i) Email dated October 7, 2008 with attached AGO Investigator/Analyst Class Specification 429C.
5. Community Protection Unit/End of Sentence Review Records Staff Timeline
6. Chart explaining type of document, source, and release of document
7. Position Review Request dated stamped July 1, 2008, signed March 2009
 - a. Position Description, October 2007
8. Organizational Chart
9. Sex Offender laws and Applications
10. ESR Referral Checklist for Records
11. End of Sentence Review/Law Enforcement Notification Program Process

B. Dept. of Corrections Exhibits

1. Position Review Request dated stamped July 1, 2008
2. Position Descriptions
 - a. August 2007
 - b. October 2007
3. Classification Questionnaire from September 16, 2005
4. Offender Treatment and Re-Entry Programs Division Organizational Chart
5. Class Specification: Correctional Records Technician 1
6. Class Specification: Forms & Records Analyst 2
7. Class Specification: Program Specialist 2
8. Notes from meeting with Kristi Mueller (desk audit)