

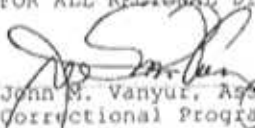


U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20334  
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MEMORANDUM FOR ALL REGIONAL DIRECTORS AND WARDENS

FROM:  John M. Vanyur, Assistant Director  
Correctional Programs Division

SUBJECT: Interim Procedures for Implementation of Walsh Act  
Civil Commitment of Sexually Dangerous Persons

The Adam Walsh Child Protection and Safety Act (Walsh Act) includes a provision for the civil commitment of sexually dangerous persons due for release from Bureau of Prisons (Bureau) custody (18 U.S.C. § 4248). To initiate court commitment proceedings, the Bureau must certify the inmate as a "sexually dangerous person" as specified in the statute. We are in the process of developing policy to guide staff in making these determinations. Pending federal regulations and further guidance or policy issuance, the following procedures will be implemented to accomplish this review.

**Categories of Inmates to be Reviewed for Potential Certification as a Sexually Dangerous Person:**

- Inmates releasing from a term of imprisonment (this includes all sentenced offenders housed in the Bureau, such as, District of Columbia Code offenders, military prisoners, and treaty transfer cases);
- Inmates whose charges are dismissed due to a mental condition; and/or
- Inmates found incompetent to stand trial and unrestorable under § 4241(d).
- NOTE: The following inmates **DO NOT** need to be reviewed for potential certification under these procedures:
  - Pre-trial inmates;
  - Persons held as material witnesses;
  - Persons held on contempt orders; or
  - Persons being released on bond.

**Cases to be Referred to the Bureau Certification Review Panel (CRP) (Of all Bureau Offenders in the Categories Above):**

- Refer all inmates with the Public Safety Factor (PSF) Sex Offender who are eighteen months or less from release or anticipated RRC transfer date.
- Refer any other inmate who lacks the PSF Sex Offender assignment, but who has engaged or attempted to engage in sexually violent conduct or child molestation, and is eighteen months or less from release or anticipated RRC transfer date. These inmates may be identified by review of the Presentence Investigation Report (PSR) and all other documents in the inmate's Central File. These inmates may have engaged in sexually violent conduct or child molestation described in connection with another offense or charge, have a description of such behavior although charges were dropped, or have a history of sexual violence in an institution.
- Definitions:

**Definition of "Sexually Violent Conduct."**

(A) Any unlawful conduct of a sexual nature with another person ("the victim") that involves:

- (1) the use or threatened use of force against the victim;
- (2) threatening or placing the victim in fear that the victim, or any other person, will be harmed;
- (3) rendering the victim unconscious and thereby engaging in conduct of a sexual nature with the victim;
- (4) administering to the victim, by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance, and thereby substantially impairing the ability of the victim to appraise or control conduct;
- (5) engaging in such conduct with a victim who is incapable of appraising the nature of the conduct, or physically or mentally incapable of declining participation in, or communicating unwillingness to engage in, that conduct; or

(B) Engaging in any conduct of a sexual nature with another person with knowledge of having tested positive for the human immunodeficiency virus (HIV), or other potentially life-threatening sexually-transmissible disease, without the informed consent of the other person to be potentially exposed to that sexually transmissible disease.

**Definition of "Child Molestation."**

"Child molestation" includes any unlawful conduct of a sexual nature with, or sexual exploitation of, a person under the age of 18 years.

These definitions are subject to change with the issuance of regulations or clarifying policy.

**Questionable Cases:**

- As the above definitions are not all-inclusive, any questionable cases should be referred to the institution Sex Offender Release Coordinator (SORC), who may in turn consult with the Bureau CRP to determine whether the case should be referred for full review.

**Cases Not to be Referred to the CRP:**

- Inmates who have been engaged in sexual misconduct of a non-violent nature during confinement.

**Documents to be Reviewed:**

- The PSR, the Judgement and Commitment Order (J&C), and the Statement of Reasons (SOR) will be the documents most frequently consulted by staff when identifying inmates who need further review for potential certification as a sexually dangerous person.
- Other documents. The Central File may also contain information in the FOIA section or other areas which documents inmate sexual conduct during confinement. Examples may include Supervised Release or Parole Violation Reports, or documentation of attempted sexual assault of an inmate, visitor, or staff member. These acts may or may not have resulted in criminal prosecution or a finding by the DHO. In addition, SIS files, the Medical file or Psychology Data System records may contain information which describes sexually violent conduct or child molestation not reported elsewhere in the Central File.

**Transmittal of Cases Needing Review:**

- Ordinarily, Case Managers will identify cases requiring further review. Each case identified will be referred to the institution SORC for forwarding to the CRP. If the referral is based on behavior described in a document other than the PSR, SOR, or J&C, that document will be scanned into an Adobe (.PDF) file and attached to the e-mail from the Unit Team to the SORC.

- The SORC will notify the CRP of inmates requiring further review by Groupwise e-mail.
  - The e-mail will be sent to the following address: BOP-CPD/Certification Review Panel.
  - The subject line of the e-mail will read as follows: LAST NAME, Register Number, PRD (or Residential Reentry Center (RRC) transfer date, whichever is earlier).
  - The body of the e-mail should include information about any detainers (i.e., state or jurisdiction, reason for the detainer, likely outcome if known), or other unique information about the case. A summary of the case is not needed in this e-mail.

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**Special Procedure for Transmittal of Witness Security Program (WITSEC) Cases:**

- Unit staff assigned responsibility for management of WITSEC cases will identify cases requiring further review. The case will be forwarded to the Inmate Monitoring Branch, Correctional Programs Division, instead of to the SORC as described above.
- The Inmate Monitoring Branch will notify the CRP of receipt of the case and arrange for its review. If additional documentation is needed to assist in the review, it will be obtained by the Inmate Monitoring Branch rather than the CRP.

**Institution Procedures:**

- Each Warden will designate a SORC. This person will be a non-bargaining unit staff member (unless a bargaining unit member volunteers) familiar with unit management issues.
- The SORC should assist Unit Teams in identifying cases requiring referral, organizing required information for review, and ensuring all release preparation activities and RRC referrals for inmates affected by these procedures are completed six months prior to their release date. The SORC will forward referrals of cases for review to the Groupwise addresses listed above. In cases requiring expedited review, or in the absence of the SORC, any other Unit Team member may forward the required information.
- Unit Teams should identify cases requiring review, and refer these to the SORC. If information other than the PSR, J&C, and SOR is the source of the referral, the relevant document(s) should be scanned into Adobe (.PDF) files and forwarded to the SORC. RRC referrals should be completed prior to transfer of any case to an SOMP or SOTP site pursuant to these procedures.

- Release Preparation Coordinators should ensure release preparation activities are completed six months prior to projected release or RRC transfer date for inmates affected by these procedures.
- Pre-arrival screening will include monitoring the incoming designation "pipeline" for cases which may require immediate review (e.g., cases designated to the institution who are serving short sentences). These cases should be referred to the CRP for immediate review with a copy of the PSR, SOR, and J&C attached to the transmittal request.
- Chief Psychologists or designees may be required to provide a diagnostic assessment at the request of the CRP. In such cases, a request for the assessment will be sent to the Chief Psychologist by the CRP.

**Community Corrections Procedures:**

- Inmates currently assigned to the responsibility of a Community Corrections Office (CCM) (i.e., those in RRCs, state boarding institutions, local jails, and juvenile programs) must be reviewed to determine if the inmate is subject to provisions of the Walsh Act. Cases determined to require CRP review will be processed according to the procedures outlined in the Transmittal of Cases Needing Review section of this memorandum. If the CCM office does not have access to a scanner, the materials will be faxed to (202) 616-3220 and the fax cover page must include the inmate's name, register number, and projected release date.
- CCM staff should refer cases who may require immediate review (e.g., cases sentenced by the Court to time served or short sentences where designation to a Bureau facility may not be feasible). These cases should be referred to the CRP for immediate review with a copy of the PSI, SOR, and J&C attached to the transmittal request.
- For inmates in Bureau institutions that have an existing designation to an RRC or are awaiting RRC action, the Unit Team working in conjunction with the SORC will ensure the cases are reviewed by the CRP prior to transfer to an RRC.
- Inmates requiring review under these procedures may not be transferred to RRCs without review by the CRP.

**Review of Cases For Whom An Immediate Order of Release Has Occurred:**

- Institution or CCM staff should contact the CRP as soon as they become aware of an immediate order of release for an inmate requiring review under these procedures.

- Staff will scan a copy of the PSI, J&C, and SOR and forward this to the GroupWise mailbox: BOP-CPD/Certification Review Panel.
  - Telephonic contact should occur as soon as possible. The following office telephone number is provided to facilitate contact with panel members: 202-514-4492.
  - After-hours notifications will be made through the Grand Prairie Designations Duty Officer to the on-call CRP Member. Further information on procedures for after-hours notifications is being established and will be communicated in the near future.
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**Procedures for Inmates in Private Contract Facilities:**

- Effective immediately, inmates with the PSF Sex Offender will no longer be designated to contract facilities.
- Review of existing cases in contract facilities will occur according to the Technical Direction Memorandum issued previously by the Correctional Programs Division Privatization Branch to these facilities.

**Procedures for Inmates Being Referred for State Placement:**

- Prior to submitting a Request for State Placement, Unit Teams should determine whether the case requires review under these procedures. CRP review of such cases must be completed prior to forwarding the Request for State Placement to the Designation and Sentence Computation Center.

**Designation and Sentence Computation Center Procedures:**

- DSCC staff will enter the relevant Walsh Sentry CMA assignment for all newly designated offenders. In addition, they will refer cases to the Bureau CRP when an initially designated offender's PRD is eighteen months or less. The PSR, J&C, and SOR should be attached to the transmittal request. In cases where these documents are not available CRP staff may seek the assistance of DSCC staff in forwarding arrest report or case disposition information.

**Regional Procedures:**

- Each region will have two interim representatives on the CRP. These interim panel members will review releasing inmates' cases and provide input in to the Chairperson's decision to certify an inmate as a "sexually dangerous person." Regional panel members will also assist in

ensuring all necessary information is provided by the parent institution prior to a CRP meeting to discuss the case.

**Central Office CRP Procedures:**

- The CRP will meet at least weekly to review releasing cases. Cases will be reviewed in order of ensuing release or transfer date.
- For each case reviewed, the CRP may:
  - Certify an inmate as a Sexually Dangerous Person. In most cases, this will require transfer to an SOMP or SOTP site prior to filing of the certificate.
  - Request additional information (either from the parent institution or in the form of a diagnosis and enhanced risk review at an SOMP or SOTP site).
  - Decide not to certify the inmate.
- For each possible decision above, the CRP will communicate its decision via GroupWise to the SORC. In cases where certification will occur, or the CRP seeks an enhanced risk review at an SOMP or SOTP site, the e-mail will also provide specific instruction to the institution on the language to be used when requesting re-designation to an SOMP or SOTP site for this purpose. In cases where the CRP decides not to certify an inmate, the SORC will be notified of this fact and the institution will continue normal release procedures planned for the inmate.

**Sentry Assignments:**

- Sentry assignments are being developed to inform staff of the status of each inmate's review and to assist in transfer and management of sex offenders. As these assignments become available in the near future, additional information and guidance will be provided.

**Conditions of Confinement for Certified Cases:**

- Currently, inmates who have been certified under the Walsh Act will be treated under similar conditions of confinement as pre-trial inmates.

**Representation**

- If an employee is sued for conduct in his or her capacity as a federal employee, representation may be provided in accordance with 28 C.F.R. §§ 50.15 and 50.16.

#### **Sallyport Information**

- The Walsh Act guidance memorandum will be placed on the Sallyport main page and on the Correctional Programs Branch (CPB) web page. The Correctional Programs Division (CPD) web page will contain a link to the memorandum. The memorandum will remain on Sallyport until superceded by policy on the Walsh Act.
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Walsh Act - CMA Assignments Entered by DSCC

All newly designated inmates will have one of the following assignments applied by the DSCC.

- **WA NO HIST NO WALSH ACT OFFENSE HISTORY**  
This assignment will be applied when there is no conduct (i.e., applicable charge or conviction) subject to review under Walsh Act procedures.
- **WA NO CONV WALSH ACT HIST-NO CONVICTION**  
This assignment will be applied when there is conduct (e.g., a charge without conviction) subject to review under Walsh Act procedures.
- **WA W CONV WALSH ACT HIST WITH CONVICTION**  
This assignment will be applied based on offenses listed in PS5141.02, Sex Offender Notification and Registration, § 6.

When DSCC applies the WA NO CONV or WA W CONV assignment for an inmate with a PRD of less than 18 months, the following CMA assignment will be entered:

- **WA HIST ST WALSH ACT OFFN HIST-SHORT SENT**

Upon review of the daily log the Clinical Psychologist assigned to the DSCC will determine whether the inmate requires designation to a SOMP site or whether routine designation procedures should be followed. The DSCC Clinical Psychologist will enter the following assignment:

- **WA REFER REFERRED TO CERT REVIEW PANEL**  
This assignment will be replace the WA HIST ST assignment, and denotes referral to the Bureau Certification Review Panel.

**Walsh Act - CMA Assignments Entered by Institutions (or CCMs)**

When no Walsh Act assignment exists (i.e. cases not initially designated by DSCC), the application of the following CMA assignments will occur in conjunction with the inmate's next regularly scheduled program review, or 18 months prior to his/her projected release date (whichever comes first).

- **WA NO HIST      NO WALSH ACT OFFENSE HISTORY**  
This assignment will be applied when there is no conduct (i.e., applicable charge or conviction) subject to review under Walsh Act procedures.

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- **WA NO CONV      WALSH ACT HIST-NO CONVICTION**  
This assignment will be applied when there is conduct (e.g., a charge without conviction) subject to review under Walsh Act procedures.
- **WA W CONV WALSH ACT HIST WITH CONVICTION**  
This assignment will be applied based on offenses listed in PS5141.02, Sex Offender Notification and Registration, § 6.

At subsequent inmate program reviews, conduct of a sexually violent nature (e.g., sexual assault) may require replacement of a WA NO HIST assignment with WA NO CONV.

The institution SORC will identify inmates with a WA NO CONV or WA W CONV assignment when they are 18 months to their projected release date, and enter:

- **WA REFER      REFERRED TO CERT REVIEW PANEL**  
This assignment triggers review by the Bureau Certification Review Panel.

**Walsh Act - CMA Assignments Entered by the  
Bureau Certification Review Panel**

The Central Office Certification Review Panel will review and apply one of the following assignments for inmates with WA REFER:

- **WA NOT CER      WALSH ACT-NOT CERTIFIED**  
This assignment is entered when an inmate is not certified as a sexually dangerous person.
- **WA TRANSFR      WALSH ACT-REQUIRES TRANSFER**  
This assignment is entered when an inmate will be transferred to a SOMP or SOTP site for further pre-certification review.
- **WA CERTIFD      WALSH ACT-CIV COMT CERTIFIED**  
This assignment is entered when an inmate is certified as a sexually dangerous person.

ARS ASSIGNMENTS FOR ADAM WALSH ACT

| <u>Assignment</u> | <u>Description</u>              |
|-------------------|---------------------------------|
| A-PRE WA          | Admit for Walsh Act Review      |
| A-PRE WA J        | Admit for Walsh Act Review, Juv |
| A-CIV WA          | Civil Commit, Walsh Act         |
| A-CIV WA J        | Civil Commit, Walsh Act, Juv    |

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Prior to the court order for civil commitment, the inmate will be admitted using one of the following ARS assignments:

|            |                    |
|------------|--------------------|
| A-PRE WA   | (Adult inmates)    |
| A-PRE WA J | (Juvenile inmates) |

After the court hearing, if the court orders civil commitment of the inmate under the Walsh Act, the inmate's ARS assignment will be changed. First, the inmate will be released using the following assignment:

|            |                                |
|------------|--------------------------------|
| ADM CHANGE | (Release for Admission Change) |
|------------|--------------------------------|

The inmate will then be readmitted using one of the following ARS admission assignments:

|            |                    |
|------------|--------------------|
| A-CIV WA   | (Adult Inmates)    |
| A-CIV WA J | (Juvenile Inmates) |

When released following a period of civil commitment, the following assignment will be used:

|            |                                      |
|------------|--------------------------------------|
| WA CIV REM | (Walsh Act Civil Commitment Removed) |
|------------|--------------------------------------|

If the court does not order civil commitment, the inmate will be released:

|            |                                  |
|------------|----------------------------------|
| PRE REMOVE | (Pre-sentenced Detainee Removed) |
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