

Special Investigation into the Management of the

Parole of Graeme William BURTON

Community Probation Service

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28 February 2007

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EXECUTIVE SUMMARY

Purpose

1. The purpose of this investigation was to report on the management of the Parole of Graeme BURTON and make such recommendations for the improvement of; promulgated standards, procedures, operating systems, work practices and internal controls, as may be necessary arising out of the investigation.

Background

2. Graeme BURTON was released on Life Parole on 10 July 2006, having served 14 years of a life sentence for murder.
3. Graeme BURTON was arrested on 6 January 2007, following a series of events in which one person was killed and three other people injured.
4. At the time of his arrest, Graeme BURTON was subject to standard and special conditions of Life Parole.

Methodology

5. The investigation was carried out by Cathryn Elsworth, Acting Area Manager and involved:
 - Interviewing the two Service Managers responsible for managing the Wellington Service Centre
 - Interviewing the Probation Officer responsible for the sentence management of this offender
 - Interviewing the Service Manager in the Upper Hutt Service Centre
 - Interviewing the Acting Service Manager responsible for managing the Wellington Service Centre in the absence of the Service Manager
 - Interviewing by telephone the Area Manager, Wellington
 - Interviewing by telephone the Victim Notification Co-ordinator, Wellington area
 - Interviewing by telephone two Operations Advisors and Manager, Policy and Operations.

FINDINGS

Establishing the Sentence

6. All key procedures relating to Graeme BURTON'S release on Parole were managed according to the CPS Operations Manual and Policies.

These included:

- Timely and appropriate allocation of the offender to a Probation Officer
- Early identification of Graeme BURTON'S Offender Warning Status
- Compliance with the Victim Notification Register requirements
- Timely Induction
- Appropriate reporting regime established
- Initial home visit undertaken with mother present
- Special condition relating to counselling activated in the first instance
- Timely completion of the Reintegration Needs Assessment and Sentence Plan
- Reintegration meeting with Graeme BURTON'S mother and Wellington Police.
- Liaison with Housing New Zealand Corporation to monitor establishment of accommodation.

Sentence Management

7. Graeme BURTON'S standard and special conditions of Parole were managed according to the CPS Operations Manual and Policies. This is evidenced by:

- Appropriate reporting regime maintained
- Instructions to Report issued for every new direction
- Report-In screen in IOMS completed
- Timely second home visit undertaken
- Appropriate follow-up regarding non contact
- Frequent contact with Housing New Zealand Corporation to establish stability with accommodation
- Ongoing liaison with Graeme BURTON'S mother
- Suitability of training course and subsequent employment assessed prior to approval
- Ongoing liaison with training co-ordinator
- Psychological assessment completed
- Ongoing assessment and observation with regard to alcohol and drug use
- Motivational work undertaken in regards to compliance and problem-solving.

8. A third home visit scheduled in November 2006 was not undertaken. However, this is not considered material given the police executed a search warrant at his address on 30 November 2006 and gave no indication that Graeme BURTON had vacated the residence.

Enforcement

9. The Supervising Probation Officer complied with the Sentence Management and Enforcement guidelines for offenders on the Offender Warning Register in that she applied the policy of zero tolerance to all incidences of non-compliance.
10. Zero tolerance for offenders of the OWS means that all instances of non-compliance are responded to at the earliest opportunity by some form of sanction or warning consistent with the severity of the incident.

Such sanctions include:

- Immediate instruction to report
 - Verbal warning
 - Written warning
 - Increased reporting requirements
 - Breach action in Court
 - Application to New Zealand Parole Board for recall
11. The Probation Officer imposed the following sanctions on Graeme BURTON following specific incidences of non-compliance:
 - 21 Nov - Graeme BURTON fails to report but made contact the following day. Provided reasonable excuse. Note the legislation only allows for breach action on non-reporting to a probation officer if there is no reasonable excuse.
 - 28 Nov - Graeme BURTON is issued with two Non-Association Orders against two known offenders following concerns from an anonymous caller and the Police.
 - 5 Dec - Graeme BURTON contacts Supervising Probation Officer requesting permission to be excused from reporting, citing work commitments. Probation Officer directs him to report by the end of the day. Graeme BURTON fails to report.
 - 6 Dec - Probation Officer sends written warning and directs him to report on 12 December 2006.
 - 12 Dec - Graeme BURTON fails to report. Probation Officer on annual leave from 11- 18 December 2006.

- 18 Dec - Probation Officer initiates breach action immediately following return to office. Undertakes home visit to locate him. Returns to the office and confirms with HNZN address vacated. Initiates second breach.
 - 20 Dec - Two Breaches of Parole were laid in the Wellington District Court.
 - 22 Dec - Two Warrants to Arrest were issued by the Court for The New Zealand Police to action.
12. The supervising Probation Officer appropriately considered a hierarchy of sanctions including verbal and written warning, and formal breach and recall action. She acted within her level of discretion in accordance with CPS Operations Manual and Policies.
 13. All incidences of non-compliance were responded to within one week of the discovery of the non-compliance in line with the Enforcement Guidelines for OWS offenders.
 14. Given the Probation Officer's response to incidences of non-compliance to date, it is the reviewer's assessment that breach action and a subsequent home visit would have been initiated on 13 December 2006 if the Supervising Probation Officer had not been on annual leave at this time. This raises the question as to whether or not the Service Manager has got appropriate measures in place to cover for staff managing sentences when they are absent from work.
 15. Consideration to recalling Graeme BURTON back to prison commenced as soon as concerns were raised by the Public and the Police. An application for recall succeeded the two Breaches of Parole, once sufficient grounds for recall were considered established. The timing of the recall is not considered material on this occasion given two Warrants to Arrest were issued on 22 December 2006.

Management Oversight/Administrative Matters

16. There was a high level of Service Manager involvement in the decision-making around the management and enforcement of Graeme BURTON; however, the Service Manager did not complete weekly checks in IOMS in accordance with the Sentence Management and Enforcement Guidelines for OWR offenders.
17. There was also a high level of co-ordination between the Service Managers at the Upper Hutt Service Centre and Wellington Service Centre to manage the anonymous information from the Public. There was subsequent timely co-ordination between the Service Managers and Probation Officer in dealing with the information provided by Police.

RECOMMENDATIONS

18. GMPOS to consider whether procedures relating to the discretion and nature of enforcement action for high risk offenders on Parole need to be revised and tightened.
19. Area Manager, Wellington, to ensure staff in the Area are undertaking home visits as required and that Service Managers are undertaking the appropriate management checks in a timely manner. Regional Manager Southern to oversee any remedial action needed in the Wellington Area.
20. Area Manager, Wellington, to ensure Probation Officer cover for managing high risk offenders is instigated in the Wellington Service Centre when the supervising Probation Officer is absent from the office and in other Service Centres in the Area if such arrangements are not in place.

INTRODUCTION

Background

21. Graeme BURTON was released on Life Parole on 10 July 2006, having served 14 years of a life sentence for murder.
22. Graeme BURTON was arrested on 6 January 2007, following a series of events in which one person was killed and three other people injured.
23. At the time of his arrest, Graeme BURTON was subject to special conditions of Parole until 09 July 2008. The special conditions of his Parole were:
 - Reside at Flat 4, 2 Huron Place, Berhampore, Wellington or at an address approved by the Probation Officer
 - For the first month at least, Mr BURTON'S mother will reside at the flat as part of his reintegration process. Any breach of this condition could result in his recall to the prison.
 - Do not leave the Wellington region without prior written approval of the Probation Officer
 - Undertake employment or employment related training as directed by the Probation Officer but he will not engage in the tattoo business without the prior written approval of the Probation Officer
 - Undertake a psychological assessment and any treatment recommended as a result of that assessment as directed by the Probation Officer
 - Attend a maintenance group run by Intervention Services in respect of the already completed criminogenic programme as directed by the Probation Officer.
 - Attend for any other counselling or programmes aimed at reducing his risk of reoffending in the community as directed by the Probation Officer.
 - Do not associate with any person nominated in writing by the Probation Officer.
 - Do not make contact with the Victim's family, either directly or indirectly, unless with the prior written approval of the Probation Officer.
24. Graeme BURTON was liable to be recalled to continue serving his sentence for life.
25. He was reporting to a Probation Officer at the Wellington Service Centre.

Methodology

26. The investigation was carried out by Cathryn Elsworth, Acting Area Manager, under the terms of reference approved by the Acting General Manager, Probation and Offender Services (AGMPOS). The investigation was to:

- Cover all aspects of the management of Graeme BURTON'S Parole.
- Summarise all key activities through his sentence management, noting what action was taken and by whom. It will assess the extent to which Graeme BURTON complied with all of the conditions of his Parole.
- Establish and clearly describe the chain of events from the first indication from Wellington Police that concerns about Graeme BURTON were emerging. This will include the date (s) on which CPS first became aware of such concern and any subsequent concern(s), as well as the action taken.
- Document all consideration given to the possibility of enforcement action, and the reasons given for the decisions made about whether or not to pursue such action. It will also include an assessment of the appropriateness of the decisions reached.
- Report on the extent to which relevant standards, procedures, operational systems, work practices and internal controls were complied with while Graeme BURTON was on Parole.
- Note any areas of concern in relation to the management of Graeme BURTON'S Parole, and make appropriate recommendations to address these concerns.
- Note any areas in which particularly good practice has been demonstrated, and make appropriate recommendations relating to the promulgation and recognition of the good practice.
- Make recommendations for the improvement of any promulgated standards, procedures, operating systems, work practices and internal controls that arise directly out of the investigation

The investigation methodology involved:

- Interviewing the two Service Managers responsible for managing the Wellington Service Centre
- Interviewing the Probation Officer responsible for the sentence management of this offender
- Interviewing the Upper Hutt Service Centre Manager
- Interviewing the Acting Service Manager responsible for managing the Wellington Service Centre in the absence of the Service Manager
- Interviewing by telephone the Area Manager, Wellington
- Interviewing by telephone the Victim Notification Co-ordinator, Wellington area

- Interviewing by telephone two Operations Advisors and Manager, Policy and Operations

Consultation

27. The consultation process involved Paul Tomlinson, Regional Manager, Gill Hood, Manager Operations and Policy, the Supervising Probation Officer, Service Managers in the Wellington and Upper Hutt Service Centres and the Area Manager, Wellington. Consultation also occurred with the NZ Police regarding the content of the Section on Enforcement.

FACTS AND CONTEXT

Establishing the Sentence

28. Graeme BURTON was released from Rimutaka Prison on 10 July 2006. He reported to the Wellington Service Centre on 11 July 2006, within the 72 hours allowance for reporting upon release from prison on Parole.
29. The Service Centre was aware of Graeme BURTON'S upcoming release following notification by the New Zealand Parole Board. On 5 July 2006, the file was formally allocated to the Probation Officer who had attended his pre-release meeting in May 2006. This is consistent with the CPS Operations Manual in that an offender is allocated as soon as practicable.
30. Graeme BURTON was allocated to a Probation Officer who was experienced with managing offenders on the Offender Warning System and Parole.
31. The Offender Warning System introduced by CPS in November 2001 is aimed at identifying and registering high-risk offenders. Once identified, a more prescriptive and intensive regime is applied to their sentence management.
32. The early notification of Graeme BURTON'S release allowed for a determination of his status in terms of the Offender Warning System (OWS) prior to allocation. An Offender Warning Assessment Form was completed by the Service Manager on 4 July 2006. He was assessed as meeting criteria for inclusion on the Offender Warning Register.
33. Offenders registered on the OWS are managed in the following way:
 - Operate within a reporting regime which requires more frequent reporting throughout the sentence/order

- Tighter timeframes for the completion of sentence management functions such as initial home visits, referrals to counselling/treatment/programmes and the initiation of enforcement action.
 - Closer monitoring of compliance with the requirements of the sentence or order.
 - Zero tolerance to non-compliance. This means that all instances of non-compliance are responded to by some form of sanction or warning consistent with the severity of the incident, within one week of the discovery of non-compliance.
 - Weekly Service Manager checks of the IOMS records for the first third of an offender's sentence and fortnightly thereafter if the Service Manager is satisfied that the offender is complying with the conditions.
34. The Victim Notification Register (VNR) was designed to help meet the rights of victims under the Victims' Rights Act 2002. It is a database that links information about offenders to information about victims, so that when an offender's circumstances change and the victim needs to be notified, their details are readily available.
 35. Graeme BURTON'S previous victim had applied for and was placed on the Victim Notification Register prior to his release.
 36. This was noted in Graeme BURTON'S Offender Header screen in IOMS and on his file in line with VNR operational procedures.
 37. At Graeme BURTON'S first report to the Wellington Service Centre on 11 July 2006, he was Inducted into his sentence and issued with a Written Instruction to Report on a weekly basis. The purpose of Induction is to set out the requirements of the sentence/order in terms of responsibilities, procedures and compliance. Completion of Induction the day after his release from prison was well within the manual requirement of one week for OWS offenders.
 38. The Written Instruction to Report also included details of a home visit scheduled for 13 July 2006. Home visits are completed to verify the offenders address, assess the appropriateness of the residence and to engage family members and support people in the sentence management process. OWS offenders must be visited at their home within 48 hours of their release from prison. Graeme BURTON was visited at this home 72 hours following his release to allow his mother to be present and to enable Graeme BURTON to attend scheduled appointments in the community. This was considered an appropriate decision given the mother was to reside with Graeme BURTON for the first month of his release.
 39. On 19 July 2006, Graeme BURTON was referred to Psychological Service for an assessment. The first referral for OWR offenders should be completed within one week of release.

40. Graeme BURTON'S reintegrative needs were assessed immediately following Induction, using the Reintegration Needs Checklist (RNC). Reintegrative needs are those needs which are considered to indirectly contribute to offending or are considered barriers to complying with the sentence or order, such as accommodation or employment. Once identified, strategies to address the needs are determined and added to the offender's sentence plan.
41. The main purpose of the sentence plan is to assist the offender to comply with the requirements of the sentence as well as outline how the identified needs of the offender will be addressed. Every offender is required to have a sentence plan completed within one month of release. Graeme BURTON'S sentence plan was developed and signed on 25 July 2006, which is within the one month requirement for all offenders.
42. At Graeme BURTON'S report in on 25 July 2006, his mother and a Senior Sergeant from the Wellington Police attended the meeting to discuss Graeme BURTON'S reintegration back into the community.
43. The supervising Probation Officer also established contact with Housing New Zealand Co-operation (HNZC) immediately following Graeme BURTON'S release to monitor his accommodation in line with a special condition of his sentence.

Sentence Management

44. An offender who is subject to the standard release conditions must comply with the following conditions:
 - *The offender must report in person to a Probation Officer in the probation area in which the offender resides as soon as practicable, and not later than 72 hours, after release;*
 - *The offender must report to a Probation Officer as and when required to do so by a Probation Officer, and must notify the Probation Officer of his or her residential address and the nature and place of his or her employment when asked to do so;*
 - *The offender must not move to a new residential address in another probation area without the prior written consent of the Probation Officer;*
 - *If consent is given, the offender must report in person to a Probation Officer in the new probation area in which the offender is to reside as soon as practicable, and not later than 72 hours, after the offender's arrival in the new area;*
 - *If an offender intends to change his or her residential address within a probation area, the offender must give the Probation Officer reasonable notice before moving from his or her residential address (unless notification is impossible in circumstances) and must advise the Probation Officer of the new address;*

- *The offender must not reside at any address at which the Probation Officer had directed the offender not to reside;*
 - *The offender must not engage, or continue to engage, in any employment or occupation in which the Probation Officer had directed the offender not to engage or continue to engage;*
 - *The offender must not associate with any specified person, or persons of any specified class, with whom the Probation Officer has, in writing, directed the offender not to associate;*
 - *The offender must take part in a rehabilitative and reintegrative needs assessment if and when directed to do so by the Probation Officer.*
45. Graeme BURTON reported on a weekly basis as directed by his Probation Officer from 10 July 2006 to 3 October 2006. Written Instructions to report were signed by Graeme BURTON and placed on his file. The Report-In screen in IOMS was also completed following each time he reported. These actions are fundamental in assessing an offender's compliance and were completed in line with manual requirements.
46. A second home visit was undertaken on 12 September 2006. This is consistent with the manual requirements for OWS offenders in that a home visit is required every two months following the initial one. At this time, the Probation Officer confirmed Graeme BURTON continued to occupy his residence.
47. Following his report-in on 3 October 2006, the Probation Officer attempted to make contact with Graeme BURTON to inform him of the date and time of a psychological appointment and to follow-up with issues he was having with his neighbour. Graeme BURTON failed to respond to the Probation Officer's messages. In response to this, the Probation Officer made contact with his Training Co-ordinator and support person to locate him. At this time, the Probation Officer was informed that Graeme BURTON had failed to attend his work place training on this day and had not had contact with his support person.
48. In an attempt to locate Graeme BURTON, a third home visit was undertaken on 5 October 2006. He was not present at this time; however, he reported as directed on 10 October 2006 and advised he had stayed with a friend in Lower Hutt due to problems with his neighbour. He was given a verbal warning for not informing his Probation Officer of his whereabouts. Strictly speaking this warning went beyond action that should occur in such circumstances. No formal enforcement action could have been initiated in this instance as the Probation Officer had no authority to control BURTON'S temporary absence from the address as he had no conditions around curfew or restriction of movement to the address at any time of the day or night. An offender is considered to reside at an address if there is evidence of living there, including food in the fridge, personal belongings and mail being delivered to the address.

49. Graeme BURTON continued to report weekly as directed from 17 October 2006 to 14 November 2006.
50. On 21 November 2006, Graeme BURTON failed to report as directed; however, he left two messages for the Probation Officer the following day. The Probation Officer accepted his excuse as reasonable and no further action was taken, however he was warned about the need to maintain his scheduled appointments with his Probation Officer. This response is considered appropriate given Graeme BURTON contacted his Probation Officer immediately following his failure to report and offered a reasonable excuse. Legislation states that breach action can only be undertaken in instances of failing to report to your supervising Probation Officer without a reasonable excuse (S71 (1) Parole Act 2002).
51. In addition to the standard conditions of Parole, Graeme BURTON was subject to the following special conditions:
- *Reside at Flat 4, 2 Huron Place, Berhampore, Wellington or at an address approved by the Probation Officer*
 - *For the first month at least, Mr BURTON'S mother will reside at the flat as part of his reintegration process. Any breach of this condition could result in his recall to the prison.*
 - *Do not leave the Wellington region without prior written approval of the Probation Officer*
 - *Undertake employment or employment related training as directed by the Probation Officer but he will not engage in the tattoo business without the prior written approval of the Probation Officer*
 - *Undertake a psychological assessment and any treatment recommended as a result of that assessment as directed by the Probation Officer*
 - *Attend a maintenance group run by Intervention Services in respect of the already completed criminogenic programme as directed by the Probation Officer.*
 - *Attend for any other counselling or programmes aimed at reducing his risk of reoffending in the community as directed by the Probation Officer.*
 - *Do not associate with any person nominated in writing by the Probation Officer.*
 - *Do not make contact with the Victim's family, either directly or indirectly, unless with the prior written approval of the Probation Officer.*

Reside at Flat 4, 2 Huron Place, Berhampore, Wellington or at an address approved by the Probation Officer

52. Prior to his release from prison, Graeme BURTON had involvement with the Reintegration team at Rimutaka Prison to find suitable accommodation for his release. This involved interagency meetings with Housing New Zealand Corporation (HNZC), the prison-based Reintegration team and the Community Probation Service.
53. His supervising Probation Officer attended one of these meetings on 30 May 2006 where she met Graeme BURTON and explained the requirements of his parole.
54. On 1 June 2006, HNZC notified CPS of a property available to Graeme BURTON on his release. The property was located at Flat 4, 2 Huron Place, Berhampore, Wellington. The address was visited and assessed as suitable by the Service Manager.
55. Graeme BURTON resided at the HNZC property of Flat 4, 2 Huron Place, Berhampore, Wellington upon his release. The Probation Officer visited the home on 13 July 2006 and 12 September 2006 and confirmed Graeme BURTON was residing there. The Probation Officer observed food in the fridge, clothes in the wardrobe and mail delivered to the address which indicated he was residing there. Home visits are required every two months for offenders on the OWS. Home visits were also undertaken on 5 October 2006 and 18 December 2006, however, Graeme BURTON was not present at this time.
56. The Probation Officer maintained regular contact with HNZC from 10 July 2006 until 5 October 2006 to monitor Graeme BURTON'S accommodation in the initial phase of his reintegration.

For the first month at least, Mr BURTON'S Mother will reside at the flat as part of his reintegration process. Any breach of this condition could result in his recall to the prison

57. Graeme BURTON'S mother resided with him for the first month following his release from prison. This was confirmed at a home visit on 13 July 2006 and at the Wellington Service Centre on 25 July 2006.

Do not leave the Wellington region without the prior written approval of the Probation Officer

58. Approval was given by the Supervising Probation Officer for Graeme BURTON to accompany his mother to Marton to visit his grandmother on 25 July 2006.

Undertake employment or employment related training as directed by the Probation Officer but will not engage in the tattoo business without the prior written approval of the Probation Officer

59. Upon his release from Prison, Graeme BURTON applied to undertake a Personal Trainers course through the New Zealand Institute of Sport (NZIS). Following a discussion with the Training Co-Coordinator, the course was assessed as suitable by the Probation Officer and Service Manager.
60. On 12 September 2006, the Probation Officer confirmed with NZIS that Graeme BURTON was passing his assessments and attending the course.
61. On 5 October 2006, the Probation Officer contacted NZIS to pass on an appointment time with a Psychologist to Graeme BURTON. At this time, the Probation Officer was informed that Graeme BURTON had not reported to his work placement on this day.
62. At his report-in on 10 October 2006, the Probation Officer followed up this absence with Graeme BURTON and was informed that he was no longer interested in being a Personal Trainer. He informed the Probation Officer he had been offered a job as "Project Overseer" and provided a letter from his employer to this effect. Graeme BURTON also told the Probation Officer that he informed the Managing Director about his background. At this time, the Probation Officer advised Graeme BURTON not to withdraw from his course until the proposed employment was approved.
63. On 13 October 2006, the Probation Officer met with the employer and confirmed a position was available. The position was not as a project overseer but as a trainee labourer in a construction related company. The Probation Officer discussed the details of the proposed employment and assessed it as suitable.

Undertake a psychological assessment and any treatment recommended as a result of that assessment as directed by the Probation Officer

64. Graeme BURTON was seen on three occasions by a Psychologist between 12 October and 2 November 2006. An Instruction to report was signed and placed on file for the initial appointment in line with manual requirements.
65. A Psychological Assessment report, dated 13 November 2006, was forwarded to the Probation Officer and placed on Graeme BURTON'S file. Further treatment was not recommended by the Psychologist at this stage due to the extensive treatment previously completed and the reported level of progress.

Attend a maintenance group run by Intervention Services in respect of the already completed criminogenic programme as directed by the Probation Officer

66. A Criminogenic Maintenance Group is for those offenders who have graduated from a Criminogenic Programme and need to maintain the strategies learned. Graeme BURTON graduated from a Criminogenic Programme while in Prison. This group is run monthly throughout the Wellington area; however, due to the cost of travelling, offenders are directed to attend meetings at the service centre they report to only.
67. The first maintenance group Graeme BURTON was expected to attend was in October 2006.
68. Following his report in on 3 October 2006, the Probation Officer attempted to contact Graeme BURTON to verbally direct him to attend the next meeting in Wellington on 6 October 2006 but was unable to reach him prior to the meeting.
69. On 28 November 2006, the Probation Officer directed Graeme BURTON to attend a meeting in the Hutt Valley on 1 December 2006.
70. On 1 December 2006, the Probation Officer received a message from Graeme BURTON'S employer stating he could not release him to attend the meeting. The Probation Officer was in Court at this time.

Attend Any Other Counselling or Programmes aimed at reducing his risk of reoffending in the community as directed by the Probation Officer

71. Legislation specifies that special conditions relating to counselling and programmes are designed to reduce the risk of reoffending through reintegration and rehabilitation. This special condition gives the Probation Officer discretion on what counselling or programmes are required. Probation Officers complete a post sentencing assessment with the offender to identify any counselling and programmes that would reduce his risk of reoffending.
72. The Probation Officer identified alcohol and drugs as a contributing factor in Graeme BURTON'S offending. Based on Graeme BURTON'S motivation to abstain from alcohol and drugs and the evidence provided by Rimutaka Prison that he was drug free prior to his release, the Probation Officer determined that alcohol and drug counselling was not required at this stage. It is unlikely that Graeme BURTON would have been assessed by a drug and alcohol programme provider as requiring treatment if he stated he was maintaining abstinence and was not admitting to having any issues with drugs or alcohol.
73. The Probation Officer monitored his alcohol and drug use at each weekly report-in through observations and discussions with Graeme BURTON. Graeme BURTON denied all use of alcohol and drugs and the Probation Officer saw no physical or emotional evidence to indicate he was using.

74. No other needs were identified for Graeme BURTON requiring counselling or treatment during this period.

Do not associate with any person nominated in writing by the Probation Officer

75. Immediately following anonymous public and Police concerns being raised, on 28 November 2006, the Probation Officer issued Graeme BURTON with two Non-Association Orders against two known offenders. One Non-Association order was issued for non contact at any time, whereas the other one took into consideration his employment and directed him to have no contact with the known offender outside of work hours. His ability to undertake employment was considered a stabilising factor in his reintegration back into the community.

Do not make contact with the Victim's family, either directly or indirectly, unless with the prior written approval of the Probation Officer

76. No issues regarding contact with Victims became evident while Graeme BURTON was on Parole.
77. In line with VNR protocols, the Acting Area Manager completed the VNR notification to the victims informing them of Graeme BURTON'S interim recall order on 4 January 2007.

Enforcement

78. On Friday 24 November 2006, an anonymous call was received at the Upper Hutt Service Centre stating Graeme BURTON had been associating with a known offender at strip clubs. No further details were provided and the caller refused to provide their contact details. The Upper Hutt Service Manager emailed this information to the supervising Probation Officer, her Service Manager and the Wellington Police.
79. On Saturday 25 November 2006, Wellington Police responded by email and informed the Upper Hutt Service Manager that on 24 November 2006, Wellington Police were called to an incident in which three persons were fighting. Graeme BURTON was reported to be at the scene when the Police arrived and had \$2100 cash on him. Police questioned him about the cash and were told he had received it from work labouring. The Police indicated that they had received comments implicating Graeme BURTON and one other in "taxing" low level drug dealers around Wellington. They said that they had a concern that

there may be one punch too many resulting in murder/death/kill and that Police CIB staff were following this information and concern up and had put Graeme BURTON on notice.

80. On Monday 27 November 2006, further information was passed on anonymously to the Upper Hutt Service Centre, informing CPS that Graeme BURTON had been "ticking up P all over the Hutt Valley" and then using stand over tactics with the dealers. This information did not include any specifics on names of dealers, or dates or times. This information was forwarded to the Wellington Service Centre, Area Manager and the Wellington Police.
81. The following day, the Probation Officer, in consultation with a Service Manager at the Wellington Service Centre, acted on the concerns raised by an anonymous caller and the New Zealand Police and issued Graeme BURTON with two Non Association orders against two known offenders, one of which was a non-association at any time whereas the other one took into consideration Graeme BURTON'S hours of employment to enable him to continue working. When these allegations were put to him, Graeme BURTON denied them. The Probation Officer also questioned Graeme BURTON about the cash found on him when spoken to by the Police. He stated the money was his wages, which he had cashed at the bank.
82. The sanction imposed on Graeme BURTON is considered timely and appropriate to manage the concerns raised in relation to his associations.
83. On 30 November 2006, a Detective from the Wellington Police made contact with the Probation Officer to inform her that the Armed Defenders Squad had executed a search warrant at 4/2 Huron Place that morning in search of a firearm following an alleged attack on a drug dealer. Graeme BURTON was not present at the address. No firearms were located and therefore, no charges were laid.
84. At this time, the Wellington Police informed the Probation Officer that Graeme BURTON'S employer was charged with Possessing an Offensive Weapon following the earlier incident. This raised questions about whether the employment was suitable on an ongoing basis. The Probation Officer intended to discuss this issue with BURTON at his next report in. This was an appropriate course of action to take.
85. During this discussion, the Detective expressed concern that Graeme BURTON was in possession of a firearm and assaulting people. He then asked the Probation Officer if CPS was going to recall him. The Detective did not implicitly or explicitly make comment or reference to any risk or likelihood of Graeme BURTON killing anyone in the community if not recalled to prison. The Probation Officer explained the legislative grounds that must be satisfied for a recall application and the special conditions that were imposed on Graeme BURTON, with

which, at that time, he was complying with. The Police questioned what it means to reside at an address as he was concerned Graeme BURTON was not present when the search warrant was executed at 5:30am that morning. The Probation Officer explained that BURTON had no conditions controlling or disallowing any temporary absences from the address and there were no conditions around curfew or restriction of movement. An offender is considered to reside at an address if there is evidence of living there, including food in the fridge, personal belongings and mail being delivered to the address. The Police gave no indication at this time that the residence appeared vacated.

86. Based on the information provided to CPS from anonymous callers and the Wellington Police, discussions around consideration to recalling Graeme BURTON back to prison commenced 27 November 2006 with the Probation Officer, Service Managers in Wellington, the Wellington Area Manager and Head Office Operations Advisors.
87. A recall is when an offender is returned to prison to resume serving the sentence of imprisonment. The Chief Executive delegations require the General Manager, Probation and Offender Services (GMPOS) to make the application to recall offenders on Life Parole. The GMPOS must assess the strength of the application and then consult with the Crown Solicitors on whether the recall application should proceed. If a decision is made to proceed with a recall application, the relevant local Crown Solicitor prepares the appropriate documentation at the direction of the GMPOS.
88. One or more of the grounds for recall set out in Section 61 of the Parole Act 2002 must be satisfied before an application to recall is made to the New Zealand Parole Board (NZPB).

The grounds for recall are that:

- the offender poses an undue risk to the safety of the community or any persons;
- has breached his release conditions;
- or has committed an offence punishable by imprisonment.

At this time, Graeme BURTON had not been charged with an offence and he was complying with his release conditions. Therefore, the only grounds considered available at this time was that Graeme BURTON posed an undue risk to the community. Evidence to satisfy this ground must be substantiated to the extent that the NZPB is able to make an informed and considered decision. The offender is able to defend the recall application and be represented by legal Counsel.

89. In an attempt to gather the supporting information for recall action, the Upper Hutt Service Manager in consultation with the Wellington Service Manager contacted the Wellington Police on 30 November 2006 via email and requested an affidavit from the Police to support a

recall application on the grounds that Graeme BURTON posed an undue risk to the community. The affidavit provided the opportunity for the Police to communicate what they wanted to say in their own words directly to the New Zealand Parole Board.

90. It was considered that CPS did not have the substantiated evidence needed to pursue a recall application without further supporting information from the Police. CPS did not have any named sources or specific detail relating to Graeme BURTON'S activities as Police had not provided specific information to the Probation Officer. An offender has the right to defend a recall application and the right to know what they are being accused of and by whom so that they may seek counsel and challenge the accusations. CPS would not have been able to provide this information. The Probation Officer did, however, act within her powers on the information provided by issuing Graeme BURTON with two Non-Association orders against two known offenders.
91. On this day, the Upper Hutt Service Manager and the Wellington Service Manager forwarded two separate incident reports involving Graeme BURTON to CPS Incidents, Head Office detailing the recent events.
92. On 1 December 2006, the Wellington Police responded to the request from the Service Manager and stated they were not in a position to provide an affidavit as the information provided was "informer based" and that providing this information would compromise the identity of the informers. The Police position was informed by confidential information that they did not want to disclose to Graeme BURTON. The application could therefore not proceed because CPS did not have the information needed to make it clear to the New Zealand Parole Board what Graeme BURTON was being accused of and by whom so that it could make a case for recall and enable him to challenge or defend the application.
93. On 5 December 2006, Graeme BURTON rang his supervising Probation Officer and asked to be excused from reporting citing work commitments. The Probation Officer refused this request and verbally directed him to report as directed by the end of the day. Graeme BURTON failed to report as instructed. In response, the Probation Officer posted a formal warning to his address on 6 December 2006 and directed him to report as instructed on 12 December 2006. There was no indication at this time that Graeme BURTON was no longer residing at 4/2 Huron Place, Wellington.
94. Zero tolerance for offenders of the OWS means that all instances of non-compliance are responded to at the earliest opportunity with some form of sanction or warning consistent with the severity of the incident within one week of the discovery of non-compliance. Enquiries and contact with the offender and or programme provider/significant others are made to determine the circumstances around the non-compliance.

The results of these enquiries will determine the appropriate response and may include the imposition of sanctions.

Such sanctions include:

- Immediate instruction to report
- Verbal warning
- Written warning
- Increased reporting requirements
- Breach action in Court
- Application to New Zealand Parole Board for recall

95. Community Probation Service considers a hierarchy of action before taking formal enforcement action. Depending on the severity of the offenders non-compliance, it may after appropriate consideration, be sufficient to issue the offender with a verbal or written warning which sets of the department's view of the behaviour, and the potential risks and consequences should the behaviour be repeated.
96. In appropriate circumstances, this approach provides the offender with the opportunity to review their response to the sentence and commit to complying fully with their sentence or order requirements. For non-reporting, it is necessary to use warnings to ascertain that there is a pattern of non-reporting that would warrant a person being recalled to prison.
97. Breach action involves laying a charge against the offender for failing to comply with a standard or special condition of the sentence/release order without a reasonable excuse. If an offender is convicted of a Breach of Parole, the maximum penalties that the Court can impose are a sentence of imprisonment of up to one year or a fine not exceeding \$2,000.00. However, the Court may choose to impose a sentence other than imprisonment. The Court may discharge the offender without conviction, convict and discharge the offender, convict and order the offender to come up for sentence if called upon, or sentence the offender to Community Work.
98. Breaches of Parole are heard in the District Court whereas recall applications are heard before the New Zealand Parole Board. Once a breach has been laid in Court, the Probation Officer serves the offender with a summons to appear in Court. If the Probation Officer is unable to serve the summons or the offender fails to attend the Court hearing, the Court can issue a Warrant for the offender's arrest. The Warrant is executed by the Police.
99. Issuing Graeme BURTON with a written warning the day after failing to report as directed was considered timely and appropriate in this instance. It was his first incidence of failing to report without a reasonable excuse and he had made contact with the Probation Officer in an attempt to reschedule his appointment.

100. Graeme BURTON failed to report as directed on 12 December 2006. The Probation Officer was on leave from 11 December 2006 until Monday 18 December 2006 so he would have been seen by either the Duty Probation Officer or the Service Manager.
101. On 15 December 2006, the Service Manager completed a check in IOMS which stated a home visit was required to locate the offender.
102. On 18 December 2006, the Probation Officer, in consultation with the Service Manager made a decision to lay a Breach of Parole for failing to report on 12 December 2006. Formal enforcement action is considered appropriate in this instance given it was his second failure to report as directed.
103. In an attempt to locate Graeme BURTON and inform him of breach action, the Probation Officer completed a Home visit on 18 December 2006. At the address, the Probation Officer formed the opinion that the property had been vacated.
104. On her return to the office, the Probation Officer immediately contacted HNZN who informed her that Graeme BURTON had not paid rent since 8 November 2006 and that they were terminating his tenancy. With this information, a decision was made to lay a second Breach of Parole for moving address without the approval of his Probation Officer. Due to the seriousness of the non-compliance, this immediate response is considered appropriate.
105. Both breaches were prepared on Tuesday 19 December 2006, affirmed in Court on Wednesday 20 December 2006 and heard in the Wellington Court on Friday 22 December 2006. In the Wellington District Court, breaches are heard on Monday, Wednesday and Fridays.
106. Once the Breaches of Parole were laid, the Probation Officer left a telephone message with the Detective from the Wellington Police, who she had previously spoken with, informing him that two Breaches of Parole were to be heard in the Wellington District Court on 22 December 2006 and that Warrants to Arrest would be sought.
107. Graeme BURTON'S next reporting time was scheduled for 19 December 2006. Should Graeme BURTON have reported, he would have been informed of his Court Appearance on 22 December 2006 for two Breaches of Parole.
108. On 22 December 2006, two Warrants to Arrest Graeme BURTON were issued in the Wellington District Court. Warrants to Arrest are issued by the District Court Judge when the whereabouts of the offender is unknown. A Warrant to Arrest gives the Police authority to hold an offender in custody until they appear before the Court in regards to the Breach.

109. Following this, the Probation Officer left a telephone message for the Detective from the Wellington Police, informing him that two Warrants to Arrest had been issued that morning.
110. At this time, consideration was given to recalling Graeme BURTON back to prison on the grounds that he had breached the conditions of his release, however, priority was given to laying the breaches in Court to enable a Warrant to Arrest to be issued immediately. Once a Warrant to Arrest is issued in the Wellington Court, it is placed in a file basket and collected daily by the Police Prosecutor.
111. To recall an offender immediately back to prison an Interim Recall needs to be sought in addition to the Recall. To make an Interim Recall Order, the panel convenor of the New Zealand Parole Board must be satisfied on reasonable grounds that:
- The offender poses an undue risk to the safety of the community or to any person or class of person; or
 - The offender is likely to abscond before the determination of the application for recall

Once the panel convenor makes an Interim Recall Order, a Warrant for Return to Prison is issued for the offender. This Warrant is forwarded to the Regional Police Central Intelligence Unit by the New Zealand Parole Board.

112. On 28 December 2006, the Head office Manager CPS Policy & Operations contacted the Acting Area Manager Wellington to discuss the breach action and possible recall action (the 28th December was the first working day after Christmas for Managers). The same day the Head Office Manager CPS Policy & Operations then contacted the General Manager POS to discuss possible recall action. The GMPOS directed that urgent and immediate action be taken to lodge a recall application for BURTON with the New Zealand Parole Board.
113. On 29 December 2006, the documentation was completed and affirmed and the application lodged with the New Zealand Parole Board. The NZPB immediately granted an Interim Recall Order and the Warrant for Return to Prison was hand delivered to the Wellington Police the same day. The timing of the recall action is not considered relevant in this instance given two Warrants to Arrest had already been issued and were still active throughout this period. Had the Arrest Warrants already obtained been activated, the recall procedure would have become a priority.
114. Once the documentation was completed and forwarded to the NZPB, the Probation Officer contacted the Wellington Police and left a message for the Detective informing him that a recall application was completed and currently before the Parole Board.

115. There has been some media speculation that BURTON had been charged of offences that occurred prior to the Arrest Warrants being issued on 22 December 2006. This is incorrect and all charges except for the Breach of Parole relate to the period after 3 January 2007. There has also been speculation that the Probation Officer should have noticed weapons at BURTON's residence. Note that Probation Officers have no powers of search and in this case the Armed Defenders squad undertook a search of BURTON's residence on 30 November 2006 and did not locate any weapons.

Management Oversight/Administrative Matters

116. CPS Operations Manual sets out the requirements for Service Managers checking the IOMS records of offenders on the Offender Warning Register (OWR). This requires Service Managers to check the IOMS record every week for the first third of an offender's sentence and fortnightly thereafter if the Service Manager is satisfied that the offender is complying with the conditions and any risks are being managed.
117. IOMS records show that two Manager Checks were completed, on 24 November 2006 and 15 December 2006. Notwithstanding, the Service Manager was aware of and involved in the decision-making around the management of Graeme BURTON.
118. There was a high level of coordination evidenced between Service Managers in the Upper Hutt and Wellington Service Centres to manage the concerns raised by anonymous callers and the Police. The communication of these issues to each other and the Police is considered timely.

FINDINGS

Establishing the Sentence

119. All key procedures relating to Graeme BURTON'S release on Parole were managed according to the CPS Operations Manual and Policies.

These included:

- Timely and appropriate allocation of the offender to a Probation Officer
- Early identification of Graeme BURTON'S Offender Warning Status
- Compliance with the Victim Notification Register requirements
- Timely Induction
- Appropriate reporting regime established
- Initial home visit undertaken with mother present
- Special condition relating to psychological counselling activated in the first instance
- Timely completion of the Reintegration Needs Assessment and Sentence Plan
- Reintegration meeting with Graeme BURTON'S mother and Wellington Police.
- Liaison with Housing New Zealand Corporation to monitor establishment of accommodation.

Sentence Management

120. Graeme BURTON'S standard and special conditions of Parole were managed according to the CPS Operations Manual and Policies.

This is evidenced by:

- Appropriate reporting regime maintained
- Instructions to Report issued for every new direction
- Report-In screen in IOMS completed
- Timely second home visit undertaken
- Appropriate follow-up regarding non contact
- Frequent contact with Housing New Zealand Corporation to establish stability with accommodation
- Ongoing liaison with Graeme BURTON'S mother
- Suitability of training course and subsequent employment assessed prior to approval
- Ongoing liaison with training co-ordinator
- Psychological assessment completed
- Ongoing assessment and observation with regard to alcohol and drug use

- Motivational work undertaken in regards to compliance and problem-solving.
121. A third Home visit scheduled in November 2006 was not undertaken. However, this is not considered material given the police executed a search warrant at his address on 30 November 2006 and gave no indication that Graeme BURTON had vacated the residence.

Enforcement

122. The Supervising Probation Officer complied with the Sentence Management and Enforcement guidelines for offenders on the Offender Warning Register in that she applied the policy of zero tolerance to all incidences of non-compliance.
123. Zero tolerance for offenders of the OWS means that all instances of non-compliance are responded to at the earliest opportunity by some form of sanction or warning consistent with the severity of the incident.

Such sanctions include:

- Immediate instruction to report
 - Verbal warning
 - Written warning
 - Increased reporting requirements
 - Breach action in Court
 - Application to New Zealand Parole Board for recall
124. The Probation Officer imposed the following sanctions on Graeme BURTON following specific incidences of non-compliance:
- 21 Nov - Graeme BURTON fails to report but made contact the following day. Provided reasonable excuse. Note the legislation only allows for breach action on non reporting to a Probation Officer if there is no reasonable excuse.
 - 28 Nov - Graeme BURTON is issued with two Non-Association Orders against two known offenders following concerns from an anonymous caller and the Police.
 - 5 Dec - Graeme BURTON contacts Supervising Probation Officer requesting permission to be excused from reporting citing work commitments. Probation Officer directs him to report by the end of the day. Graeme BURTON fails to report.
 - 6 Dec - Probation Officer sends written warning and directs him to report on 12 December 2006.

- 12 Dec - Graeme BURTON fails to report.
Probation Officer on annual leave from 11-18 December 2007.
 - 18 Dec - Probation Officer initiates breach action immediately following return to office. Undertakes Home visit to locate him. Returns to the office and confirms with HNZN address vacated. Initiates second breach.
 - 20 Dec - Two Breaches of Parole were laid in the Wellington District Court.
 - 22 Dec - Two Warrants to Arrest were issued by the Court for The New Zealand Police to action.
125. The supervising Probation Officer appropriately considered a hierarchy of sanctions including verbal and written warning, and formal breach and recall action. She acted within her level of discretion in accordance with CPS Operations Manual and Policies.
126. All incidences of non-compliance were responded to within one week of the discovery of the non-compliance in line with the Enforcement Guidelines for OWS offenders.
127. Given the Probation Officer's response to incidences of non-compliance to date, it is the reviewer's assessment that breach action and subsequent Home visit would have been initiated on 13 December 2006 if the Supervising Probation Officer had not been on annual leave at this time. This raises the question as to whether or not the Service manager has got appropriate measures in place to cover for staff managing sentences when they are absent from work.
128. Consideration to recalling Graeme BURTON back to prison commenced as soon as concerns were raised by the Public and the Police. An application for recall succeeded the two Breaches of Parole, once sufficient grounds for recall were considered established. The timing of the recall is not considered material on this occasion given two Warrants to Arrest was issued on 22 December 2006.

Management Oversight/Administrative Matters

129. There was a high level of Service Manager involvement in the decision-making around the management and enforcement of Graeme BURTON; however, the Service Manager did not complete weekly checks in IOMS in accordance with the Sentence Management and Enforcement Guidelines for OWR offenders.
130. There was also a high level of co-ordination between the Service Managers at the Upper Hutt Service Centre and Wellington Service Centre to manage the anonymous information from the Public. There was subsequent timely co-ordination between the Service Managers and Probation Officer in dealing with the information provided by Police.

RECOMMENDATIONS

131. GMPOS to consider whether procedures relating to the discretion and nature of enforcement action for high risk offenders on Parole need to be revised and tightened.
132. Area Manager Wellington to ensure staff in the Area are undertaking Home visits as required and that Service Managers are undertaking the appropriate management checks in a timely manner. Regional Manager Southern to oversee any remedial action needed in the Wellington Area.
133. Area Manager, Wellington, to ensure Probation Officer cover for managing high risk offenders is instigated in the Wellington Service Centre when the Supervising Probation Officer is absent from the office and in other Service Centres in the Area if such arrangements are not in place.