



**TABLE OF CONTENTS**

	Page
A. TABLE OF AUTHORITIES .....	
B. ASSIGNMENT OF ERROR	
1. Assignment of Error .....	1
2. Issue Pertaining to Assignment of Error .....	1
C. STATEMENT OF THE CASE .....	2
D. ARGUMENT	
<b>I. THE TRIAL COURT ERRED WHEN IT ENTERED FINDING OF FACT NO. 22, PORTIONS OF WHICH ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE .....</b>	<b>8</b>
<b>II. THE TRIAL COURT ERRED WHEN IT ENTERED AN ORDER OF COMMITMENT AS A SEXUALLY VIOLENT PREDATOR BECAUSE THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT THE RESPONDENT WOULD LIKELY ENGAGE IN PREDATORY ACTS OF SEXUAL VIOLENCE UNLESS CONFINED TO A SECURE FACILITY .....</b>	<b>10</b>
E. CONCLUSION .....	17
F. APPENDIX	
1. Washington Constitution, Article 1, § 3 .....	18
2. United States Constitution, Fourteenth Amendment .....	18
3. RCW 71.09.020 .....	19

**TABLE OF AUTHORITIES**

Page

***Federal Cases***

*Foucha v. Louisiana*,  
504 U.S. 71, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992) ..... 12

*Jackson v. Virginia*,  
443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) ..... 13

***State Cases***

*Detention of Sease*, 149 Wn.App. 66, 201 P.3d 1078 (2009) ..... 13

*Detention of Thorell*, 149 Wn.2d 724, 72 P.3d 708 (2003) ..... 12, 13

*State v. Agee*, 89 Wn.2d 416, 573 P.2d 355 (1977) ..... 8

*State v. Ford*, 110 Wn.2d 827, 755 P.2d 806 (1988) ..... 8

*State v. Hill*, 123 Wn.2d 641, 870 P.2d 313 (1994) ..... 8

*State v. Nelson*, 89 Wn.App. 179, 948 P.2d 1314 (1997) ..... 8

*State v. Taplin*, 9 Wn.App. 545, 513 P.2d 549 (1973) ..... 13

***Constitutional Provisions***

Washington Constitution, Article 1, § 3 ..... 12

United States Constitution, Fourteenth Amendment ..... 12

***Statutes and Court Rules***

RAP 2.2(a)(8) ..... 12

RCW 71.09.020 ..... 10-12

RCW 71.09.060 ..... 10, 12

## ***ASSIGNMENT OF ERROR***

### ***Assignment of Error***

1. The trial court erred when it entered Finding of Fact No. 22, portions of which are not supported by substantial evidence.

2. The trial court erred when it entered an order of commitment as a sexually violent predator because the state failed to prove beyond a reasonable doubt that the respondent would likely engage in predatory acts of sexual violence unless confined to a secure facility.

### ***Issues Pertaining to Assignment of Error***

1. Does a trial court err when it enters findings of fact that are unsupported by substantial evidence?

2. Does a trial court err if it enters an order of commitment as a sexually violent predator when the state has failed to prove beyond a reasonable doubt that the respondent would likely engage in predatory acts of sexual violence unless confined to a secure facility?

## STATEMENT OF THE CASE

On May 7, 2007, the State of Washington filed a petition under RCW 71.09 asking the Lewis County Superior Court to enter an order committing Respondent Kevin Troy Dollicker to the custody of the Department of Social and Health Services in a secure facility as a sexually violent predator (SVP). CP 193-194. At the time the state filed the petition, Mr. Dollicker was in the custody of the Washington State Department of Corrections (DOC) finishing a 175 month sentence on a 1993 conviction for child molestation in the first degree. CP 96. Mr. Dollicker was 18-years-old at the time he committed that offense. CP 94. He was 32-years-old at the time the state filed the petition for commitment. CP 96. During the last 16 months of his incarceration, Mr. Dollicker voluntarily participated in the sex offender treatment program at Twin Rivers Treatment Center. Exhibit 15, pages 37-38.<sup>1</sup>

Following the filing of the State's Petition, the court entered an order determining probable cause and an order for the arrest Mr. Dollicker without bail requiring his transfer from the custody of DOC to the custody of the

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<sup>1</sup>The record in this case includes one volume for each of the days of trial occurring on May 26<sup>th</sup>, 27<sup>th</sup>, 28<sup>th</sup>, and 29<sup>th</sup> of 2009, and June 1, 2009. The record also includes one volume for the hearing held on February 6, 2009. Unfortunately, the court reporter started each volume at the number "1", and did not give any of them volume numbers. As a result, there are referred to herein as "RP [date] [page number]." In addition, in this case the court admitted the state's 87 page deposition of the defendant into evidence as Exhibit No. 15. It is referred to herein as "Exhibit 15, [page number]."

Lewis County Jail. CP 89- 91, 92-93. After Mr. Dollicker's transfer to the Lewis County Jail, the court appointed an attorney to represent him, and then entered a new order on May 10, 2007, finding probable cause and committing him to the custody of the Special Commitment Center (SCC) on McNeil Island. CP 77, 85-86. Mr. Dollicker thereafter began voluntary treatment at SCC, and actively participated in the programs presented at that facility. RP 5/26/09 10-14, 38-40.

On May 26, 2009, over two years after the court ordered Mr. Dollicker detained at the SCC, the case came on for trial before the bench in Lewis County Superior Court. RP 5/26/09 1-4. The delay in the trial was facilitated by Mr. Dollicker who filed six speedy trial waivers in the case in order to facilitate his continued treatment regime at the SCC. CP 20, 66, 70, 71, 74, 87. During the trial, the state called two witnesses: Lessell Hutchins and Shoba Sreenivasan. RP 5/26/09 1-41, 47-121, RP 5/27/09 4-72. Ms Hutchins was one of Mr. Dollicker's treating psychologists at the SCC. RP 5/26/09 10-13. Ms Sreenivasan was a psychologist from California with a temporary license to practice in Washington. RP 5/26/09 48-51. Some four years and eight months previous, she had performed an SVP evaluation on Mr. Dollicker while he was in treatment at DOC's Twin Rivers Treatment Center. RP 5/27/09 56. Although reviewing his treatment file from the SCC, she had not seen the defendant since her evaluation of him in September of

2005. *Id.* As part of its case-in-chief, the state also successfully moved for the admission of a prior deposition it had performed on Mr. Dollicker. Exhibit 15, pages 1-87.

In her testimony, Ms Hutchins stated that Mr. Dollicker had been in treatment at the SCC since June or July of 2008 and that he was finishing up with phase two of a five phase treatment program. RP 5/26/09 15-19. According to Ms Hutchins, Mr. Dollicker works very hard and appears to want to be successful in treatment. RP 5/26/09.

While on the witness stand, Ms Sreenivasan testified concerning to her prior evaluation on Mr. Dollicker in 2005, as well as her review of his treatment records since that evaluation. RP 5/26/09 79-80. According to Ms Sreenivasan, her evaluation of Mr. Dollicker indicates that he suffers from “Pedophilia,” an “Axis I Major Mental Disorder” under the American Psychiatric Associations “Diagnostic and Statistical Manual of Mental Disorders (DSM-IV).” RP 5/26/09 65-76. He also suffers from “Personality Disorder Not Otherwise Specified (NOS) (schizoid, avoidant type),” an “Axis II Personality Disorder” also defined in the DSM-IV. RP 5/26/09 54, 65-106. During her testimony, Ms Sreenivasan opined that Mr. Dollicker’s mental disorder and personality disorder predispose him to committing sexual crimes against children. *Id.*

In addition, Ms Sreenivasan testified that in her opinion, Mr.

Dollicker posed a high risk of committing new sexual crimes against children if not committed to a secure facility. RP 5/26/09 113. She based this opinion on Mr. Dollicker's results on three actuarial assessment tools: the Static-99, the Sex Offender Risk Appraisal Guide (SORAG), and the Minnesota Sex Offender Screening Tool - Revised (MnSOST-R). RP 5/26/09 115-119. All of these tests are generally accepted in the psychological community as valid predictors of potential sexual recidivism. RP 5/26/09 119. According to Ms Sreenivasan, Mr. Dollicker's scores on the Static-99 test indicated a "high risk of reoffense," meaning that there was a 39% risk for reoffense at 5 years, a 42% risk for reoffense in 10 years, and a 52% risk of reoffense in 15 years. RP 5/27/09 10-22. On the SORAG actuarial assessment tool, his score indicated a 75% risk of reoffense after 7 years and an 83% risk of reoffense after 10 years. RP 5/27/09 27. Finally, on the MnSOST-R actuarial assessment he took, Mr. Dollicker's scores indicated an 83% risk of reoffense after six years of release. RP 5/27/09 23-48.

In its case-in-chief, the defense presented the testimony of Dr. Richard Wollert, a psychologist licensed in Washington State with a PhD in psychology from Indiana State University. RP 5/27/09 78-90. Over his 30 year career, he has performed approximately 1,000 psychosexual evaluations and has provided treatment for thousands of sex offenders. *Id.* He has 30 years teaching experience at the University level, and is currently in private

practice. *Id.* According to Dr. Wollert's evaluation of Mr. Dollicker, along with his review of prior assessments and treatment records, Ms Sreenivasan's diagnosis of the defendant as suffering from the Axis I major mental disorder of "pedophilia," is incorrect, as is her diagnosis of personality disorder (NOS) (schizoid, avoidant type)." RP 5/27/09 122-146. He specifically based his opinion on the former upon the evidence that over the past six months, Mr. Dollicker had not had any recurrent intense sexually arousing fantasies, or sexual behaviors that involved sexual activity with children, which would preclude the diagnosis of "pedophilia" under the DSM-IV. RP 5/27/09 140-145.

In addition, Dr. Wollert testified that he reviewed the assessment tests that Ms Sreenivasan performed on Mr. Dollicker and found that she had employed out-of-date actuarial tables associated with those assessment tools. RP 5/28/09 51. In his opinion and using current actuarial tables, there is a 38% possibility of recidivism for Mr. Dollicker. RP 5/28/09 31-50. Following Dr. Wollert's testimony, the defense called Respondent Kevin Dollicker to the stand, and then recalled Dr. Wollert for some further testimony. RP 5/28/09 118-147, RP 5/29/09 2-72. The defense then rested its case and the state did not call any rebuttal witnesses. RP 5/29/09 72.

Following the reception of evidence in this case, both sides presented closing argument. RP 5/30/09 2-21. The court then gave its oral ruling that

the state had proven those facts necessary to commit Mr. Dollicker as a sexually violent predator. RP 5/30/09 21-30. The court later entered written findings of fact and conclusions of law, including Finding of Fact No. 22, which stated as follows:

22. Dr. Sreenivasan testified that the Respondent's risk level was assessed by using three different actuarial instrument: the Static-99, the SORAG (Sex Offender Risk Appraisal Guide), and the MnSOST-R. The Respondent's score on the Static-99 was 7, placing him in the highest risk category for sexual recidivism. His score on the SORAG was 30, which is a Category 8, placing him in the high risk category for violent, including sexually violent, recidivism. His score on the MnSOST-R was an 8, placing him in the 83<sup>rd</sup> percentile and the high risk category for recidivism.

CP 199.

Following entry of the court's order of commitment, Mr. Dollicker filed timely notice of appeal. CP 1-2.

## ARGUMENT

### I. THE TRIAL COURT ERRED WHEN IT ENTERED FINDING OF FACT NO. 22, PORTIONS OF WHICH ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

The purpose of findings of fact and conclusions of law is to aid an appellate court on review. *State v. Agee*, 89 Wn.2d 416, 573 P.2d 355 (1977). The Court of Appeals reviews these findings under the substantial evidence rule. *State v. Nelson*, 89 Wn.App. 179, 948 P.2d 1314 (1997). Under the substantial evidence rule, the reviewing court will sustain the trier of facts' findings "if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." *State v. Ford*, 110 Wn.2d 827, 755 P.2d 806 (1988). In making this determination, the reviewing court will not revisit issues of credibility, which lie within the unique province of the trier of fact. *Id.* Finally, findings of fact are considered verities on appeal absent a specific assignment of error. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

In the case at bar, Mr. Dollicker has specifically assigned error to Finding of Fact 22. This finding states as follows:

22. Dr. Sreenivasan testified that the Respondent's risk level was assessed by using three different actuarial instrument: the Static-99, the SORAG (Sex Offender Risk Appraisal Guide), and the MnSOST-R. The Respondent's score on the Static-99 was 7, placing him in the highest risk category for sexual recidivism. His score on the SORAG was 30, which is a Category 8, placing him in the high risk category for violent, including sexually violent, recidivism. His score on the

MnSOST-R was an 8, placing him in the 83<sup>rd</sup> percentile and the high risk category for recidivism.

CP 199.

A careful review of the record in this case reveals that this finding misrepresents the level of risk that Ms Sreenivasan stated the actuarial assessment tools assigned to Mr. Dollicker. According to Ms Sreenivasan, Mr. Dollicker's scores on the Static-99 test indicated a "high risk of reoffense," meaning that there was a 39% risk for reoffense at 5 years, a 42% risk for reoffense in 10 years, and a 52% risk of reoffense in 15 years. RP 5/27/09 10-22. She did not place him in the "highest" level of risk. On the SORAG actuarial assessment tool, his score indicated a 75% risk of reoffense after 7 years and an 83% risk of reoffense after 10 years. RP 5/27/09 27. Finally, on the MnSOST-R actuarial assessment he took, Mr. Dollicker's scores indicated an 83% risk of reoffense after six years of release. RP 5/27/09 23-48. Thus, to the extent Finding of Fact No. 22 misrepresented this testimony, Mr. Dollicker assigns error to it.

**II. THE TRIAL COURT ERRED WHEN IT ENTERED AN ORDER OF COMMITMENT AS A SEXUALLY VIOLENT PREDATOR BECAUSE THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT THE RESPONDENT WOULD LIKELY ENGAGE IN PREDATORY ACTS OF SEXUAL VIOLENCE.**

Under RCW 71.09.060, prior to committing a person to a secure treatment facility and thereby taking away that person's liberty, the state must prove beyond a reasonable doubt that the person to be committed is a "sexually violent predator." Under RCW 71.09.020(18), the term "sexually violent predator" is defined as follows:

(18) "Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

RCW 71.09.020(18).

This subsection contains four phrases that have special definitions under RCW 71.09.020. They are: (1) "crime of sexual violence," (2) "mental abnormality or personality disorder," and (3) "likely to engage in predatory acts of sexual violence if not confined in a secure facility." Subsection (17) of the statute defines the first phrase as follows:

(17) "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the

first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

RCW 71.09.020(17).

Subsections (8) and (9) of the statute define the second set of terms as follows:

(8) “Mental abnormality” means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

(9) “Personality disorder” means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual’s culture, is pervasive and inflexible, has onset in adolescence or early adulthood, is stable over time and leads to distress or impairment. Purported evidence of a personality disorder must be supported by testimony of a licensed forensic psychologist or psychiatrist.

RCW 71.09.020(8)&(9).

Finally, subsection (7) of RCW 71.09.020 gives the following

definition to the last phrase:

(7) “Likely to engage in predatory acts of sexual violence if not confined in a secure facility” means that the person more probably than not will engage in such acts if released unconditionally from detention on the sexually violent predator petition. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed under RCW 71.09.030.

RCW 71.09.020(7).

Since an order to commit an individual as a sexually violent predator under RCW 71.09.060 constitutes a significant curtailment of that individual’s civil rights, due process under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, require that the State prove beyond a reasonable doubt that the person to be committed is both “mentally ill” and is “currently a danger to others.” *Detention of Thorell*, 149 Wn.2d 724, 731, 72 P.3d 708 (2003); *Foucha v. Louisiana*, 504 U.S. 71, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992). Under RAP 2.2(a)(8), a person committed as an SVP has a right to appeal that determination and the order of commitment.

As part of the due process rights guaranteed under both Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, and as part of the “proof beyond a reasonable doubt standard,” the court on appeal must reverse the order of commitment unless each and every factual finding necessary for commitment under RCW 71.09 is

supported in the record by substantial evidence. *Detention of Sease*, 149 Wn.App. 66, 201 P.3d 1078 (2009). This is the same “proof beyond a reasonable doubt” and “substantial evidence” requirement to exists in criminal cases. *Detention of Thorell*, 149 Wn.2d at 731.

“Substantial evidence” in the context of a criminal case as well as an SVP case means evidence sufficient to persuade “an unprejudiced thinking mind of the truth of the fact to which the evidence is directed.” *State v. Taplin*, 9 Wn.App. 545, 513 P.2d 549 (1973) (quoting *State v. Collins*, 2 Wn.App. 757, 759, 470 P.2d 227, 228 (1970)). In the context of a criminal case, the test for determining the sufficiency of the evidence is whether “after viewing the evidence in the light most favorable to the prosecution any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 334, 99 S.Ct. 2781, 2797, 61 L.Ed.2d 560 (1979). To paraphrase *Jackson v. Virginia*, in an SVP case, the test for determining the sufficiency of the evidence is whether

“after viewing the evidence in the light most favorable to the [state] any rational trier of fact could have found the essential required elements of [commitment] beyond a reasonable doubt.”

In the case at bar, Mr. Dollicker does not dispute that the state proved beyond a reasonable doubt that he had “been convicted of . . . a crime of

sexual violence” and that he was in custody at the time the state filed its petition for commitment. Neither does he dispute that the state proved beyond a reasonable doubt that he “suffered from a mental abnormality or personality disorder.” While the defense did present an expert who significantly cast doubt upon the conclusion of the state’s expert on these issues, it was well within the trial court’s right to find in favor of the conclusions made by the state’s experts on these issues. Rather, what Mr. Dollicker argues is that the record does not contain substantial evidence that proved beyond a reasonable doubt that he was “likely to engage in predatory acts of sexual violence if not confined in a secure facility” as that phrase is used in the definition of a “sexually violent predator.”

The state’s evidence on this issue was presented through Ms Sreenivasan’s testimony concerning the three actuarial assessment tools she employed to evaluate Mr. Dollicker’s propensity to commit further crimes of sexual violence. According to Ms Sreenivasan, Mr. Dollicker’s scores on the first of these three tests, the Static-99, indicated a “high risk of reoffense,” meaning that there was a 39% risk for reoffense at 5 years, a 42% risk for reoffense in 10 years, and a 52% risk of reoffense in 15 years. RP 5/27/09 10-22. On the SORAG actuarial assessment tool, Ms Sreenivasan scored Mr. Dollicker with a 75% risk of reoffense after 7 years and an 83% risk of reoffense after 10 years. RP 5/27/09 27. Finally, on the MnSOST-R actuarial

assessment took, Ms Sreenivasan's scoring predicted an 83% risk of reoffense after six years of release. RP 5/27/09 23-48.

The problem with this evidence is threefold. First, it was not based upon a current assessment of Mr. Dollicker's propensity to commit sexual crimes. Rather, the tests were based, at least in part, upon testing that Ms Sreenivasan had performed upon Mr. Dollicker some four and one-half years previous. Second, the actuarial tests that Ms Sreenivasan employed did not constitute evidence of what current risk Mr. Dollicker was for reoffense. Rather, they only provided an assignment of risk many years into the future. Finally, and most important, even had the assessment tools assigned current levels of risks, those levels ran from a low of 39% to a high of 83%. This did not constitute evidence that proved "beyond a reasonable doubt" that Mr. Dollicker was "likely to engage in predatory acts of sexual violence if not confined in a secure facility."

To put this evidence in context, a comparison to the "proof beyond a reasonable doubt" in criminal cases is apropos. Consider the hypothetical of a criminal charge of forcible rape and murder in which there is overwhelming evidence that the crime was committed by someone, but the only evidence of who committed the offense comes from a DNA sample obtained from semen taken from the body of the victim of the crime. The defendant is charged, tried, convicted, and then appeals. In that appeal, the record reveals that the

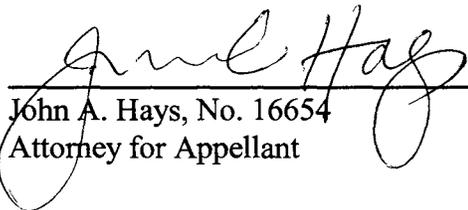
only evidence identifying the defendant as the perpetrator of the offenses is the testimony of the state's expert that there is a 39% to 83% statistical probability that the DNA belonged to the defendant. No court on appeal would sustain convictions based upon this evidence because a 39% to 83% statistical probability does not constitute proof beyond a reasonable doubt. Yet in the case at bar, this is precisely what the court did. It found that a 39% to 83% statistical probability of reoffense, and that sometime years into the future, constituted proof beyond a reasonable doubt that Mr. Dollicker was "likely to engage in predatory acts of sexual violence if not confined in a secure facility." Since this does not constitute proof "beyond a reasonable doubt," this court should reverse the trial court's conclusions that the state has proven all of the elements necessary to justify commitment in the case at bar.

**CONCLUSION**

The state failed to prove all of the elements requisite for commitment under RCW 71.09. As a result, this court should reverse the order of commitment and order the defendant released.

DATED this 8<sup>th</sup> day of February, 2010.

Respectfully submitted,

  
\_\_\_\_\_  
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Attorney for Appellant

**APPENDIX**

**WASHINGTON CONSTITUTION  
ARTICLE 1, § 3**

No person shall be deprived of life, liberty, or property, without due process of law.

**UNITED STATES CONSTITUTION,  
FOURTEENTH AMENDMENT**

All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

## **RCW 71.09.020**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) Department means the department of social and health services.

(2) Health care facility means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

(3) Health care practitioner means an individual or firm licensed or certified to engage actively in a regulated health profession.

(4) Health care services means those services provided by health professionals licensed pursuant to RCW 18.120.020(4).

(5) Health profession means those licensed or regulated professions set forth in RCW 18.120.020(4).

(6) Less restrictive alternative means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions set forth in RCW 71.09.092. A less restrictive alternative may not include placement in the community protection program as pursuant to RCW 71A.12.230.

(7) Likely to engage in predatory acts of sexual violence if not confined in a secure facility means that the person more probably than not will engage in such acts if released unconditionally from detention on the sexually violent predator petition. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed under RCW 71.09.030.

(8) Mental abnormality means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

(9) Personality disorder means an enduring pattern of inner experience

and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has onset in adolescence or early adulthood, is stable over time and leads to distress or impairment. Purported evidence of a personality disorder must be supported by testimony of a licensed forensic psychologist or psychiatrist.

(10) Predatory means acts directed towards: (a) Strangers; (b) individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or (c) persons of casual acquaintance with whom no substantial personal relationship exists.

(11) Prosecuting agency means the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney, as provided in RCW 71.09.030.

(12) Recent overt act means any act, threat, or combination thereof that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act or behaviors.

(13) Risk potential activity or risk potential facility means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: Public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, public libraries, public and private youth camps, and others identified by the department following the hearings on a potential site required in RCW 71.09.315. For purposes of this chapter, school bus stops does not include bus stops established primarily for public transit.

(14) Secretary means the secretary of social and health services or the secretary's designee.

(15) Secure facility means a residential facility for persons civilly confined under the provisions of this chapter that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement under RCW 71.09.096.

(16) Secure community transition facility means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facility established pursuant to RCW 71.09.250(1)(a)(i) and any community-based facilities established under this chapter and operated by the secretary or under contract with the secretary.

(17) Sexually violent offense means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

(18) Sexually violent predator means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

(19) Total confinement facility means a secure facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a total confinement facility by the secretary.

