NO. 47328-3

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re the Detention of:

TROY BELCHER, ,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

RESPONDENT'S OPENING BRIEF

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I. INTRODUCTION

Troy Belcher, now 31 years old, was committed as a Sexually Violent Predator in 2011 by a unanimous jury. In 2015, the trial court granted his request for a new trial pursuant to RCW 71.09.090(2)(c)(ii)(A) based on his expert's report asserting that Belcher had "so changed" through treatment that he was no longer a Sexually Violent Predator. After a lengthy bench trial, the trial court entered detailed findings of fact and conclusions of law determining that he currently suffers from a mental abnormality in the form of an antisocial personality disorder combined with high psychopathy, and continued to meet criteria as a sexually violent predator.

Belcher's commitment comports with the Constitution and with the Sexually Violent Predator Statute. The State presented the testimony of a highly qualified licensed psychologist that established that Belcher is both mentally ill and dangerous. Belcher's age at the time of his sexual offense does not present an obstacle to his commitment: Due process does not require the release of sex offenders who are both mentally ill and dangerous simply because they committed their offenses as juveniles. This Court should affirm.

II. ISSUES

A. Where the State presented evidence that Belcher was both mentally ill and dangerous, does his commitment comport with due process?

B. Where there is no constitutional impediment to the involuntary treatment of persons who committed their crimes as juveniles and continue to be mentally ill and dangerous, does the Constitution prohibit Belcher's continued commitment?

C. Where expert testimony supported Belcher's commitment on the basis of a mental abnormality and established a nexus between that mental condition and the likelihood of re-offense, does his continued commitment comport with the Constitution?

D. Where Belcher raised no objection to the State's expert's qualifications at the time of trial, has he now waived objection to those qualifications?

E. Was the testimony of the State's expert, a licensed psychologist with demonstrated expertise in the assessment of sex offenders under the Sexually Violent Predator Act, sufficient to support the diagnosis of a personality disorder?

III. FACTS

Troy Belcher was born on December 13, 1984, and is now 31 years old. He has been convicted of two sexually violent offenses as that term is defined in RCW 71.09.020(17). He was convicted of Rape in the Second Degree by Forcible Compulsion in Clark County on October 15, 1998. CP at 847, Finding of Fact No. 1. Rape in the Second Degree is, by definition, a sexually violent offense. RCW 71.09.020(17). The facts of that offense,

as recited in this Court's decision affirming his civil commitment in 2011, are as follows:

> On or about July 16, 1998, Belcher approached a 13–year–old girl, [LC], who was babysitting at a park. [LC] and Belcher had never met prior to that day. Belcher struck up a conversation with [LC] while pushing one of the children on the swings.
>
> [LC] decided it was time to take the children home. When she was about half way home, she noticed that Belcher was following her. When she got to the house, Belcher tried to invite himself inside. [LC] wouldn't let him inside, but eventually agreed to give him her phone number hoping he would leave. After they exchanged phone numbers, Belcher left.
>
> A few minutes later there was a knock on the door. When [LC] answered the door, Belcher forced his way inside. Belcher told [LC] that he wanted to have sex with her. She told him no and unsuccessfully tried to push him away from her. Belcher pushed her up the stairs and into one of the bedrooms. He pinned her down on the floor and told her to remove her pants. When she refused, Belcher forced them off. [LC] kept telling him no and hit him repeatedly trying to get him off of her. Belcher then put his penis inside [LC]'s vagina and vaginally raped her. She was menstruating at the time. After approximately twenty to thirty seconds, one of the children knocked on the door. This alarmed Belcher, who quickly put on his pants and left.

Belcher v. State, 173 Wn. App 1021 at *1;[1] WL 634536 (2013). Belcher received a manifest injustice sentence and was committed to the Department of Juvenile Rehabilitation for 65 weeks. CP at 848, Finding of

[1] The page numbers of this unpublished opinion are given as shown as those numbers are given on Westlaw.

Fact No. 3. At trial, Belcher did not contest the existence of this conviction, nor that this conviction constitutes a Sexually Violent Offense under RCW 71.09.020(17). *Id.*

While still on parole for Rape in the Second Degree by Forcible Compulsion, Belcher committed his second sexually violent offense. The facts, as set forth by this Court, are as follows:

> In April 2000, 13–year–old [JA] was walking to a friend's house when she encountered 15–year–old Belcher. [JA] knew who Belcher was because they rode the same bus to school. Belcher offered to show [JA] a shortcut through the woods. [JA] agreed, although unbeknownst to her, there was no such shortcut.
>
> Once they were in the woods, Belcher started to kiss [JA]. He unbuttoned her pants, pulled her pants and underwear down to her knees, and pushed her to the ground on her back. Belcher then pulled down his pants and straddled her with one leg on each side of her. Belcher told her he wouldn't hurt her as long as she didn't scream. [JA] finally managed to push Belcher off of her, pull up her pants, and run away. However, Belcher chased her. Belcher caught up to [JA] and grabbed her. He then told her that she was a sweet girl and she shouldn't let anyone do that to her. During an interview with the police, Belcher admitted that he pulled down [JA]'s pants and underwear and that he planned on having sex with her. He also admitted that he had tried to rape [JA].

Belcher at *2. Belcher was convicted of Attempted Rape in the Second Degree in Cowlitz County. CP at 848; Finding of Fact No. 4. He received a manifest injustice sentence and was committed to the Department of Juvenile Rehabilitation for 256 weeks. *Id.* At trial, Belcher did not contest

the existence of this conviction, nor that this conviction constitutes a Sexually Violent Offense under RCW 71.09.020(17). *Id.*

In addition to these two convictions for sexual offenses, there are additional allegations that came to the attention of authorities, although no charges or convictions arose from these allegations. CP at 848-49, Finding of Fact No. 5 On March 27, 1998, Mr. Belcher was expelled from McLoughlin Middle School in Vancouver, Washington after eight female students between the ages of eleven and thirteen years old reported that Mr. Belcher had been sexually harassing them over the past several months. *Id.* Several of the girls reported that Mr. Belcher had grabbed their breasts and buttocks. *Id.* Additionally, H.F, a former girlfriend of Mr. Belcher, alleged that he vaginally raped her. *Id.* This incident was never reported to the police. *Id.*

While incarcerated at Green Hill School, Belcher solicited someone to kill one of his former victims, L.C. CP at 849, Finding of Fact No. 6; *Belcher* at *2. On October 8, 2004, Belcher was charged in Lewis County Superior Court with Solicitation to Commit Murder in the First Degree and Intimidating a Witness. *Id.*; *Belcher* at *2. Belcher pled guilty to Intimidating a Witness, and was sentenced to 27 months in prison and 9 to 18 months of community custody. *Id.*

In 2007, shortly before his scheduled release following his conviction for Intimidating a Witness, the State filed a petition alleging that Belcher was a Sexually Violent Predator (SVP). *Belcher* at *3. He was detained pursuant to that petition and sent to the SCC, a facility on McNeil Island where persons detained under the Sexually Violent Predator Act are housed. In 2011, a unanimous jury determined he was a Sexually Violent Predator and he was committed to the Department of Social and Health Services for care and treatment until further order of the court. RCW 71.09.060; *Belcher* at *4.

On appeal, Belcher raised both evidentiary objections relating to the testimony of his victims as well as challenges to the sufficiency of the evidence relating both to his mental condition and to his risk to reoffend. *Belcher* at *7. Specifically, he argued that the SORAG, an actuarial instrument used by Dr. Judd as part of his risk assessment "is an improper or inaccurate tool to use on those who committed sex crimes as juveniles." *Id.* at *7. This Court rejected his arguments and affirmed his commitment. *Id.* at *8.

Between his initial detention in 2007 and the beginning of 2013, Belcher presented constant and serious behavioral problems while at the SCC. Vol. 2A RP at 378. He has had no fewer than 85 infractions. Nonetheless, he was granted a new trial based upon an expert opinion that

his condition had changed. After a fair trial, the trial court found that he continued to meet the statutory criteria for commitment.

IV. ARGUMENT

A. Belcher's Commitment Comported With The Constitution Where The State Presented Overwhelming Evidence That He Is Both Mentally Ill And Dangerous

At his second trial, the State presented overwhelming evidence, primarily through the testimony of its expert, Dr. Brian Judd, that Belcher suffered from a mental abnormality (in the form of an antisocial personality disorder combined with high psychopathy) that made him likely to commit predatory acts of sexual violence if not confined. There is no constitutional impediment to commitment on the basis of such a diagnosis where it is presented by a qualified expert who is able to link such condition to the respondent's likelihood to sexually reoffend. Nor does the Constitution prohibit the commitment of a person who committed his sexual crimes while still a juvenile. Belcher's attempts to "constitutionalize" what are essentially evidentiary challenges fails, and his commitment should be affirmed.

1. Dr. Judd performed a comprehensive mental health examination and risk assessment of Belcher

At trial, the State presented the testimony of Dr. Brian Judd. Dr. Judd has extensive experience in the diagnosis and treatment of sex

offenders in general, and persons detained pursuant to the Sexually Violent Predator act in particular. Vol 2A, RP at 340-49. In addition, he had a great deal of experience with Belcher's case, having testified at his initial commitment trial in 2011 and having interviewed him four times over the years. Vol. 2A RP at 352. In the course of conducting his comprehensive evaluation and risk assessment in preparation for this trial, Dr. Judd considered over 5000 pages of information. Vol. 3 RP at 566. This information related to Belcher's criminal history, his history of incarceration, his psychological history, his behavior while at the SCC both before and since his 2011 commitment. Based on all of this information, Dr. Judd concluded that Belcher suffers from a mental abnormality consisting of a combination of an antisocial personality disorder and high psychopathy. Vol. 2B RP at 464; CP at 852-53; Finding of Fact No. 17.[2] He also concluded, based on both static and dynamic factors as measured by various instruments commonly used by experts in

[2] Finding of Fact No. 17 states that "the State must not only prove that Mr. Belcher suffers from a mental disorder but that the condition constitutes a mental abnormality as defined under RCW 71.09." This is incorrect; there is nothing in the Statute that requires that the State prove the existence of a mental abnormality, or that a personality disorder constitutes a mental abnormality. Rather, a Sexually Violent Predator is defined as "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).

his field to assess risk, that Belcher was likely to commit predatory acts of sexual violence if not confined in a secure facility. Vol. 3 RP at 565.

In assigning a diagnosis of antisocial personality disorder, Dr. Judd relied upon the 5th edition of the Diagnostic and Statistical Manual, or DSM-V. Vol 2A RP at 353. The essential features of an antisocial personality disorder, Dr. Judd explained, include a pervasive pattern of disregard for and violation of the rights of others occurring since age 15 years, as indicated by three (or more) of the following: 1) Failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest; 2) deceitfulness, as indicated by repeatedly lying, use of aliases or conning other for personal profit or pleasure; 3) impulsivity or failure to plan ahead; 4) irritability and aggressiveness as indicated by repeated physical fights or assaults; 5) reckless disregard for the safety of self or others; 6) consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations; and 7) lack of remorse, as indicated by being indifferent to or rationalizing have hurt, mistreated, or stolen from another. Vol. 2A RP at 359-374; CP at 851; Finding of Fact No. 13. Belcher, Dr. Judd noted, meets six of the seven criteria from adolescent through adulthood. Vol. 2A RP at 359-375; CP at 852; Finding of Fact No. 14. Belcher has failed to conform to social norms as

demonstrated by his numerous arrests and convictions, relating not only to sexual misconduct but to thefts, solicitation to commit murder, and intimidating a witness. Vol. 2A RP at 361. In addition, he has admitted having dealt drugs as an adolescent. *Id.* Belcher's deceitfulness is, as well, "very prevalent throughout" his records, both while in juvenile custody and since admission to the SCC. *Id.* at 362-63. He has lied about the factual basis of his offenses (*Id.* at 365), the number of children he has fathered (*Id.* at 365-66), and his status as a Level 3 offender if released as a result of his trial. *Id.* at 366. Belcher, as well, is frequently impulsive and fails to plan ahead, and his juvenile records note that his lack of impulse control makes his behaviors "very dangerous and unpredictable." *Id.* at 368-69. His impulsive, unpredictable and unproductive behaviors are reflected in his notes from his juvenile incarceration and in his treatment notes at the SCC. *Id.* at 369. This trait is also reflected in his having had sexual relations with SCC staff "out of the blue." *Id.* at 369-70. He also demonstrates irritability and aggressiveness in his expletives against SCC staff, and his threatening and demeaning of staff. *Id.* at 370. There was, in addition, an incident in 2012 in which it appeared as though Belcher was preparing to strike a staff member. *Id.* at 371. He has demonstrated consistent irresponsibility, first while in juvenile detention (resisting the instructions of authority figures and teachers (resulting in being dismissed

from classes)) and later at the SCC where, because he did not follow through on job-related responsibilities, he was dismissed from his job. *Id.* at 373. He has demonstrated a lack of remorse since adolescence, as evidenced by changing descriptions of his sexual offenses against L.C. and J.A., including the level of force used against both girls. *Id.* at 374. Since the time of his first incarceration, Belcher has denied the impact of his behaviors on his victims, and, indeed, he at times continues to deny that he committed any offenses at all. *Id.* at 375; CP at 852; Finding of Fact No. 14. Such attitudes are relevant from a therapeutic standpoint insofar as full acknowledgement of one's crimes is the foundation of sex offender treatment. *Id.* at 375.

In Belcher's case, this antisocial personality disorder is exacerbated by the presence of a high level of psychopathy as measured on the Hare Psychopathy Checklist-Revised, or PCL-R. Vol. 2B RP at 452. Psychopathy, Dr. Judd explained, is "a construct which refers to individuals that have a pattern of conduct which is demonstrated by impulsivity, potentially aggressiveness." *Id.* at 471-72. The PCL-R is regarded as "the gold standard for identification of psychopathy." *Id.* Psychopaths, Dr. Judd explained, have "affective," or emotional characteristics, characterized by a lack of empathy for others and a lack of remorse. *Id.* While some regard psychopathy as an extreme or more severe

type of antisocial personality disorder and others regard it as an independent taxon, it is clear that people with psychopathy are, as Dr. Judd explained, "worse, for lack of a better word" than people with antisocial personality disorder. *Id.* at 453. While 50-75% of persons incarcerated suffer from antisocial personality disorder, only 20-30% meet the criteria for psychopathy. *Id.* at 454. Psychopathy, he explained, appears to "kindle" antisocial personality disorder (*Id.* at 523), and psychopaths have a broader range of criminal conduct, are more violent, and tend to re-offend more quickly than those suffering simply from antisocial personality disorder. *Id.* at 454.

These two conditions—antisocial personality disorder and psychopathy—combine in Belcher's case to constitute a mental abnormality under the law. Vol. 2B RP at 464. A mental abnormality, Dr. Judd explained, is 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. *Id.* at 456-58.[3] Whether acquired or congenital, both psychopathy and antisocial personality disorder affect the individual's "emotional capacity," or ability to appreciate another individual's pain. *Id.* at 458. The combination of these conditions

[3] "Mental abnormality" is defined in RCW 71.09.020(8).

"basically limit[s] [Belcher's] ability to experience empathy, to experience a sense of remorse for his conduct and his behavior, [and] to identify with other people's feelings and emotions." *Id.* at 462. This means that there is a greater probability that Belcher will experience others simply as objects through which he can achieve gratification, uninhibited by empathy. *Id.* at 462-63. The effect of this condition on his volitional capacity, or his ability to inhibit his urges, means that people with this condition "don't have the ability to intervene" in their own assaultive behavior. *Id.* at 458. This in turn predisposes that person to the commission of criminal sexual acts. See RCW 71.09.020(17).

Dr. Judd also conducted a comprehensive assessment of Belcher's risk to reoffend. He testified that he relied upon the PCL-R as a "foundation" from which to begin any risk assessment (Vol. 2B RP at 466), noting that the PCL-R is frequently relied upon by experts in this field for purposes of risk assessment. *Id.* at 522.

In order to score this instrument, the evaluator looks at the subject's lifetime functioning, including juvenile behavior if such records are available. Vol. 2B at 472. Belcher's "grandiose sense of self," his need for stimulation, his pathological lying, and his use of deception to cheat, bilk, defraud or manipulate others are all characteristic of psychopaths. *Id.* at 471-84. Belcher demonstrates a lack of guilt or remorse for his crimes,

minimizes the use of force involved in his sexual crimes or, in some cases, denies those offenses altogether. *Id.* at 484-89. This, combined with his refusal to engage in treatment classes, "makes offense-specific treatment virtually impossible." *Id.* at 516. In addition, Belcher demonstrates behaviors and attitudes that are callous, displaying no empathy for his numerous victims, often claiming that he did nothing wrong and blaming his victims for his current dilemma. *Id.* at 494. He shows poor behavioral controls, tending "to respond to frustration, failure, discipline, and criticism with violent behavior or with threats and verbal abuse," and striking out in anger or rage when frustrated. *Id.* at 497. He has demonstrated promiscuous sexual behavior, having had many victims and sexual partners, and having, even when married, engaged and sought to engage in sexual contact with others while at the SCC. *Id.* at 498-500. Belcher also had early behavior problems, such as fights with others and suspensions from school. *Id.* at 508. Belcher, as well, is "extremely impulsive in his lack of self-control and judgment," a factor that adds "significantly" to his dangerousness. *Id.* at 511.

Overall, Belcher scored a 31 on the PCL-R; a score of 30 is generally regarded as a cutoff for the presence of psychopathy. Vol. 2B RP at 472; 476. Persons who suffer from antisocial personality disorder as well as meeting the conventional criteria for psychopathy are "at

disproportionally higher risk" to reoffend as compared to both persons with antisocial personality disorder" or with neither psychopathy nor an antisocial personality disorder. *Id.* at 524-25; Vol. 3 RP at 557.

After considering the impact of Belcher's psychopathy on his risk to reoffend, Dr. Judd then used two actuarial instruments, in this case, the Violence Risk Appraisal Guide-Revised, or VRAG-R and the SORAG, or Sex Offender Risk Appraisal Guide, as part of his overall risk assessment. Vol. 2B RP at 466. The use of actuarial instruments as part of a comprehensive risk assessment is well-accepted. *In re Detention of Thorell*, 149 Wn.2d 724, 755, 72 P.3d 708 (2003). Such instruments are not, however, dispositive of the ultimate issue of risk. Because actuarial measurements only evaluate a "limited set of predictors" often involving statistical analysis of small sample sizes, the results "have a variety of potential predictive shortcomings" (*Id.*, 149 Wn.2d at 753) and may underestimate the risk of re-offense. *See, e.g., In re Detention of Kelley*, 133 Wn. App. 289, 296, 135 P.3d 554 (2006); *see also In re Detention of Lewis*, 134 Wn. App. 896, 906, 143 P.3d 833 (2006). For these reasons, experts sometimes adjust the results of an actuarial risk assessment by "considering potentially important factors not included in the actuarial measure." *Thorell*, 149 Wn.2d at 753. This consideration can include

various "other dynamic risk factors" that identify the offender as a high risk to reoffend. *Lewis*, 134 Wn. App. at 906.

The VRAG was initially published in 1993, and, along with the SORAG, is the "oldest risk assessment instrument[t] that we have." Vol. 2B RP at 536. Explaining that certain otherwise-well-accepted actuarial instruments, such as the Static-99, are not appropriate for use on persons who committed their crimes below a certain age, Dr. Judd testified that the VRAG-R is in fact appropriate for use with such populations. *Id.* at 468; Vol. 3 RP at 660-61. His score on the VRAG-R—32 out of a possible 47—places Belcher in the highest "bin," or category, on the VRAG-R, and between the 95th and 96th percentile compared to the standardization sample. *Id.* at 546. After 12 years of follow up, 87 % of those with this score had been charged with a violent, including sexually violent, offense. Belcher's score on the SORAG, was similar: Of those with the same score as that assigned Belcher, 93% were re-charged for violent offenses within 10 years. Vol. 3 RP at 562.

Even with a score as high as this, however, Dr. Judd explained that this result was simply another "piece of the puzzle." *Id.* at 546. Dr. Judd testified that research demonstrated that non-compliance with supervision had perhaps the strongest relationship with sexual recidivism, exceeding even deviant sexual interest and other risk factors known to be empirically

related to recidivism. Vol. 3 RP at 553. Belcher, he noted, had had roughly 85-90 infractions, or "BMRs,"[4] at the SCC since his arrival in 2007 (Vol. 2A RP at 369), more than 50 of which have been since his commitment in 2011. As such, he is "one of the individuals that is going to be disproportionately at risk irrespective" of any findings on physiologic measures of arousal such as a penile plethysmograph. *Id.* at 559. After having considered all of this information, Dr. Judd concluded that Belcher suffered from a mental abnormality that made him more likely than not to commit predatory acts of sexual violence if not confined. Vol. 2B RP at 456-62. This determination was well supported by the evidence, and comported with due process.

2. Civil commitment of an adult who committed sexual offenses both as a juvenile and as an adult does not violate due process

Belcher argues that his civil commitment as a sexually violent predator violates due process because it is premised on conduct occurring when he was a "child," and as such lacked "the ability to exercise volitional control." App. Br. at 9. Substantive due process, he argues, requires a showing of "***sustained*** impairment of volitional control." *Id.* (emphasis added). "[W]hile [Belcher] was maturing," he argues, he "continued to engage in the risky and illegal behavior exhibited in many

[4] "BMR" stands for Behavior Management Report.

young persons." *Id.* at 15. However, because "recidivism rates for juvenile [sex] offenders are significantly lower than for adult [sex] offenders," there is a "lack of any correlation between juvenile and adult sexual offending." *Id.* at 13. As such, he argues, "basing involuntary commitment solely upon acts committed as a juvenile violates due process." *Id.*

Belcher's challenge under the due process clause fails. The constitutionality of Washington's statute has been repeatedly upheld against various due process challenges. *In re Young,* 122 Wn.2d 1, 857 P.2d 989 (1993); *In re Detention of Thorell*, 149 Wn.2d 724, 72 P.3d 708 (2003); *In re McCuistion*, 174 Wn.2d 369, 275 P.3d 1092 (2012). Substantive due process requires that those civilly committed under the sexually violent predator law be demonstrated to be both mentally ill and dangerous. *Kansas v. Hendricks,* 521 U.S. 346, 358, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997). Commitment must be supported by proof that the person has serious difficulty controlling his or her sexual behavior. *Kansas v. Crane.* 534 U.S. 407, 122 S.Ct. 867, 868, 151 L.Ed 856 (2002); *Thorell*, 149 Wn.2d 724.

Belcher does not directly address this body of case law, but appears to attempt to add an additional requirement to due process: Not only must the State demonstrate "serious difficulty controlling behavior," as required by *Crane;* it must demonstrate "***sustained*** impairment of volitional

control." App. Br. at 9. Because human brains continue to develop until an individual's mid-twenties, Belcher appears to reason, evidence of impaired volitional control before that time should not be considered. This logic would essentially prevent the State from acting to protect the public and incapacitate and treat dangerous sex offenders until some "sustained impairment" occurring after the brain's full maturation could be developed. Due process does not require this.

Although he does not appear to frame it as such, Belcher's challenge is essentially a challenge to the constitutionality of the sex predator statute. The Legislature has included juvenile sex offenders in the group subject of commitment as sexually violent predators. RCW 71.09.025[5]; 030.[6]By arguing that his commitment violates due process, Belcher effectively argues that these portions of the statute are

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[5] RCW 71.09.025 provides in pertinent part as follows:

(1)(a) When it appears that a person may meet the criteria of a sexually violent predator as defined in RCW 71.09.020(16), the agency with jurisdiction shall refer the person in writing to the prosecuting attorney of the county in which an action under this chapter may be filed pursuant to RCW 71.09.030 and the attorney general, three months prior to:

(ii) The anticipated release from total confinement of a person found to have committed a sexually violent offense as a juvenile...

[6] RCW 71.09.030 provides in pertinent part as follows:

(1) A petition may be filed alleging that a person is a sexually violent predator and stating sufficient facts to support such allegation when it appears that:... (b) a person found to have committed a sexually violent offense as a juvenile is about to be released from total confinement...

unconstitutional, in that they explicitly permit commitment in cases not only where much of the underlying conduct occurred when the person was a juvenile, but also in cases where, because the person is a juvenile at the time of filing, all such conduct must by definition have occurred before the age of 18. Because Belcher fails to meet the high burden required in order to invalidate a portion of a statute as unconstitutional, his challenge fails.

"A court will presume that a statute is constitutional and it will make every presumption in favor of constitutionality where the statute's purpose is to promote safety and welfare, and the statute bears a reasonable and substantial relationship to that purpose." *State v. Glas,* 147 Wn.2d 410, 422, 54 P.3d 147 (2002). The presumption of constitutionality is overcome only in exceptional cases. *City of Seattle v. Eze,* 111 Wn.2d 22, 28, 759 P.2d 366 (1988). Belcher does not meet this high standard.

Belcher begins with the now widely-accepted premise that the juvenile brain is not fully formed, and indeed appears to continue to develop until a person's mid-twenties. He then, however, asks this Court to draw inferences from that widely-accepted premise that are not in fact merited. He quotes extensively, for example, from three cases from the United State Supreme Court discussing the Due Process Clause as it relates to the sentencing of juveniles: *Roper v. Simmons,* 543 U.S. 551,

125 S.Ct. 1183, 161 L.Ed. 2d 1(2005) (juvenile offenders cannot be sentence to death); *Miller v. Alabama,* --U.S.--, 132 S. Ct. 2455, 183 L.Ed. 2d 407 (2012)(juvenile offenders cannot be given mandatory life-without-parole sentences) and *Graham v. Florida,* ---U.S. ---, 130 S. Ct. 2011, 176 L.Ed. 2d 825 (2010)(juveniles offenders may not receive a life-without-parole sentence where the juvenile did not commit homicide).

None of these cases, however, can be read to stand for the proposition that young people "lack the ability to exercise volitional control, even when they commit serious crimes" as alleged by Belcher (App. Br. at 9, citing *Miller v. Alabama,* 132 S.Ct. at 2464) much less for the proposition that due process prohibits their involuntary commitment in order to both protect society and treat the offender. Nor does the Supreme Court's recent decision in *Montgomery v. Louisiana*, USSC No. 14-280 (January 25, 2016) change this result, in that case simply announces that the substantive rule of constitutional law announced in *Miller* must be applied retroactively.

Belcher's argument, indeed, is unwarranted logically and unsupported by law. With the exception of *In re J.P.,* 339 N.J.Super. 443, 772 A.2d 54(Super.Ct. App. Div. 2001) the cases cited by Belcher are criminal cases in which the claims are analyzed under the Eighth Amendment to the United States Constitution. The Sexually Violent

Predator law is, however, civil, not criminal in nature. *Young*, 122 Wn. 2d at 18. As such, these cases have no bearing on the issue before this Court. Even setting that obvious distinction aside, these cases are entirely distinguishable from Belcher's. In *Roper,* the Court held that the execution of persons who committed their crimes as juveniles violated the constitution based, in part, on the "overwhelming weight of international opinion" (*Roper*, 543 U.S. at 579) against such executions. Belcher, however, is unable to point this Court to any such consensus, international or otherwise, pointing to the conclusion that persons who committed their crimes while juveniles and who continue to demonstrate the presence of the mental condition(s) that led to those crimes cannot be indefinitely detained for the purpose of incapacitation and treatment. Rather, Belcher simply asks this Court to accept the premise that, because the Supreme Court has established certain limitations on criminal punishments that can be imposed on persons who committed crimes prior to adulthood, the same should hold true in this context. Belcher's argument fails.

3. 3. Belcher's challenges to Dr. Judd's risk assessment lack merit

Belcher argues that "no reliable scientific instrument exists which can measure the likelihood that a youthful offender will reoffend as an adult." App. Br. at 20. First, this argument assumes that a risk assessment

consists of application of an actuarial instrument, and nothing more. This is clearly wrong, in that a comprehensive risk assessment such as the one conducted by Dr. Judd considers many factors, including but not limited to static factors as measured by certain actuarial instruments, dynamic factors, relevant psychological factors, and, of course, the evaluator's own clinical judgment. Moreover, Belcher's argument conflates the State's ultimate burden—that is, to demonstrate beyond a reasonable doubt that Belcher is more likely than not to reoffend—with the use of or score on a particular actuarial instrument. Dr. Judd's risk assessment was not limited to the scoring of a single actuarial instrument any more than the score on that instrument is dispositive of his risk to reoffend.

Belcher also argues that, given the nature and the limitations of the instruments Dr. Judd used to assess his risk, the State was able to demonstrate only that Belcher was likely to commit violent acts if released, not acts of sexual violence, as required by the Statute. App. Br. at 20-21. The record does not support this claim.

As noted above, the VRAG, along with the SORAG, is one of the first actuarial instruments used to assess risk of violent and sexually violent offense. Vol. 2B RP 536. It has been specifically approved by this Court (*In re Detention of Strauss*, 106 Wn. App. 1, 8-9, 20 P.3d 1022 (2001)) and has been used in countless SVP cases. Although it is correct

that the VRAG-R is designed to assess the risk of all violent recidivism, including sexual recidivism, it is regarded as a useful tool for purposes of assessing the risk of sexual violence as well. As Dr. Judd explained, "it provides at least a structured....assessment technique for assessing an individual's risk for recidivism[,] and provides information as to whether the person will be recharged for a violent, including a sexually violent, offense." Vol. 2B RP at 533-34. Dr. Judd testified that, because a sexually-motivated offense may be pled down to a non-sexual offense, looking at instruments that measure recidivism in terms of violent, including sexual violence, such as the VRAG, "was probably a more appropriate way to assess the probability of an individual's future sexual recidivism" rather than simply looking at a measure that focused on "rap sheet sexual recidivism." *Id.* at 535-36. In any case, it is impossible to create an ideal actuarial instrument to predict whether a specific individual will reoffend. While all actuarial instruments have their strengths and weaknesses, their use has been repeatedly upheld by our courts in SVP proceedings, and the record establishes that they were properly employed by Dr. Judd in this case.

B. Dr. Judd's Diagnosis Was A Sufficient Basis For Commitment

Dr. Judd determined that Belcher suffered from a mental abnormality in the form of an antisocial personality disorder with high

psychopathy. Vol. 2B RP at 464. Belcher argues that this is a constitutionally insufficient basis for commitment, urging first that commitment is permitted only where a mental abnormality is established, and, second, that antisocial personality disorder and psychopathy, because they are essentially the same thing, cannot, as a matter of law, constitute a mental abnormality. App. Br. at 23-25. This argument is unsupported by the Statute or by case law and must be rejected.

1. Antisocial personality disorder is an established and generally accepted diagnosis

Belcher appears to argue that any commitment based entirely or in part on antisocial personality disorder ("ASPD") violates due process because that diagnosis is "too imprecise" to provide a basis for his commitment. App. Br. at 23-25. This argument, however, has repeatedly been rejected by the appellate courts, and indeed was rejected in the first case in which the constitutionality of the SVP scheme was considered. In *Young,* appellants argued that the SVP scheme ran afoul of *Foucha v. Louisiana,* 504 U.S. 71, 112 S.Ct.1780, 118 L.Ed.2d 437 (1992) because it permitted the civil commitment of someone who has an "antisocial personality." *Young,* 122 Wn.2d at 38, n. 12. Rejecting this argument, the court specifically stated that, unlike the "antisocial personality" with

which Foucha had been diagnosed, "an 'antisocial personality disorder' is a recognized mental disorder which is defined in the DSM-III-R."[7] *Id.*

Since *Young,* numerous courts have rejected challenges to the diagnosis of ASPD as a basis for civil commitment. *See, e.g. Adams v. Bartow*, 330 F.3d 957, 961 (7th Cir. 2003) (*Foucha* does not preclude civil commitments based on a diagnosis of ASPD); *Hubbart v. Superior Court*, 19 Cal.4th 1138, 969 P.2d 584, 599 (Cal. 1999). Indeed, the *Hubbart* Court flatly rejected the same argument Belcher raises here:

> Nothing in . . . *Foucha* as a whole, purports to limit the range of mental impairments that may lead to the "permissible" confinement of dangerous and disturbed individuals. Nor did *Foucha* state or imply that antisocial personality conditions and past criminal conduct play no proper role in the commitment determination. The high court concluded only that Foucha's due process rights were violated because the State had sought to continue his confinement as an insanity acquittee without proving that he was *either* mentally ill *or* dangerous.

Id., 969 P.2d at 599 (internal citations omitted; emphasis in original). *See also In re G.R.H.*, 711 N.W.2d 587, 595 (N.D. 2006) (under both *Hendricks* and *Crane,* sufficient evidence in the record established nexus between G.R.H.'s ASPD and his difficulty controlling his sexually violent behavior); *In re Detention of Sease,* 149 Wn. App. 66, 201 P.3d 1078,

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[7] The DSM-III-R is the Diagnostic and Statistical Manual III-Revised, a compendium of mental disorders published by the America Psychiatric Association. The current iteration of this manual is the DSM-V.

1085 (2009) (affirming civil commitment based on diagnoses of ASPD and at least one other personality disorder, where each constituted an alternative means for establishing a mental disorder); *In re Commitment of Adams*, 588 N.W.2d 336, 341 (Wis.App. 1998); *In re Shafer*, 171 S.W.3d 768, 771 (Mo.App. S.D. 2005); *Murrell v. State*, 215 S.W.3d 96, 108 (Mo. 2007); *In re Detention of Barnes*, 689 N.W.2d 455, 459-60 (Iowa 2004) (concluding that neither *Hendricks* nor *Crane* precluded commitments based on ASPD).

While numerous courts have rejected this argument, the most thorough treatment of this issue is found in *Brown v. Watters*, 599 F.3d 602 (7th Cir. 2010). Brown, like Belcher, argued that the diagnosis of ASPD is "constitutionally insufficient to support civil commitment." 599 F.3d at 611-12. Citing both *Foucha* and *Crane*, the court soundly rejected this argument. While acknowledging that "the diagnosis of [ASPD] is the subject of some significant professional debate," the court stated that "the existence of a professional debate about a diagnosis or its use in the civil commitment context does not signify its insufficiency for due process purposes, particularly where, as here, that debate has been evaluated by the factfinder." *Id.* at 614. The court also rejected Brown's argument, identical to that made by Belcher (App. Br. at 26), that, because a significant percentage of the male prison population is diagnosable with

ASPD, the diagnosis "does not distinguish a subgroup of offenders for whom preventative detention is appropriate." *Id.* at 614. Commenting that this argument "misses the mark," the court went on to cite to *Crane*:

> [T]here must be proof of serious difficulty in controlling behavior. And this, when viewed in light of such features of the case as the nature of the psychiatric diagnosis, and the severity of the mental abnormality itself, must be sufficient to distinguish between the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case.

Id. at 614, citing *Crane,* 534 U.S. at 413. If, the court continued, "the condition of [ASPD] is serious enough to cause an inability to control sexually violent behavior, the standards set by the Supreme Court would be satisfied." *Id.,* 699 F.3d at 615. Belcher's argument that ASPD is an inadequate basis for commitment fails.

2. Dr. Judd's testimony established that Belcher suffered from a mental abnormality

Belcher next asserts that Dr. Judd's diagnosis of ASPD does not constitute a mental abnormality or form the basis for commitment. App. Br. at 29. This argument is without merit. As Dr. Judd's extensive trial testimony demonstrated, the term "mental abnormality," as applied to Belcher's particular mental condition and the way that mental condition

expressed itself in criminal behavior, has real meaning and withstands constitutional challenge.

Various unsuccessful vagueness challenges to the sex predator statute have been raised since the statute's inception. In *Young*, the Washington State Supreme Court rejected vagueness challenges to several statutory terms, including "mental abnormality." *Young,* 122 Wn.2d at 49. Rejecting the challenge to the term "mental abnormality," the Court held that "the experts who testified at the commitment trials adequately explained and gave meaning to this term within a psychological context." *Id.* at 49-50. Because the record clearly demonstrates that Dr. Judd "adequately explained and gave meaning to this term within a psychological context" in this case, Belcher's challenge fails.

Nor is Belcher's argument to the effect that the mental condition described by Dr. Judd is not a diagnosis within the pages of the DSM-V persuasive. In rejecting a similar argument relating to the diagnosis of Paraphilia Not Otherwise Specified: Nonconsent in that case, the *Young* court observed:

> The fact that pathologically driven rape, for example, is not yet listed in the DSM-III-R does not invalidate such a diagnosis. The DSM is, after all, an evolving and imperfect document. Nor is it sacrosanct. ... *What is critical for our purposes is that psychiatric and psychological clinicians*

> *who testify in good faith as to mental abnormality are able to identify sexual pathologies that are as real and meaningful as other pathologies already listed in the DSM.*

122 Wn. 2d at 28 (emphasis added) (quoting Alexander D. Brooks, *The Constitutionality and Morality of Civilly Committing Sexually Violent Predators,* 15 U. PUGET SOUND L. REV. 709, 733 (1991-92)).

Belcher's underlying concern appears to be that Dr. Judd's "novel" diagnosis runs afoul of *Crane* because it is not "medically recognized" and as such does not "distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him [or her] to civil commitment from the dangerous but typical recidivist in an ordinary criminal case" as required by *Hendricks*. App. Br. at 23.

A careful reading of both *Crane* and other cases cited in support of this proposition makes clear that, contrary to Belcher's assertions, Dr. Judd's conclusion that Belcher's diagnosis constituted a mental abnormality under the law forms, along with his other testimony, a sufficient basis for commitment. Neither the United States Supreme Court nor the appellate courts of other jurisdictions share Belcher's fixation on the semantics of particular diagnostic classifications. The Supreme Court has, for decades and in a variety of contexts, repeatedly acknowledged "the uncertainty of diagnosis in this field and the tentativeness of professional judgment" (*Greenwood v. United States,*

350 U.S. 366, 375, 76 S. Ct. 410, 100 L. Ed. 412 (1956). Reported cases, the Court has noted, "are replete with evidence of the divergence of medical opinion in this vexing area." *O'Conner v. Donaldson*, 422 U.S. 563, 579, 95 S. Ct. 2486, 45 L. Ed. 2d 396 (1975) (C.J. Burger, concurring). Psychiatry, the Court has noted, "is not… an exact science, and psychiatrists disagree widely and frequently on what constitutes mental illness, on the appropriate diagnosis to be attached to given behavior and symptoms, on cure and treatment, and on likelihood of future dangerousness." *Ake v. Oklahoma*, 470 US 68, 105 S. Ct. 1087, 84 L. Ed. 2d 53 (1985). Likewise, the Washington State Supreme Court has noted that "the DSM-IV-TR candidly acknowledges…that each category of mental disorder is not a completely discrete entity." *State v. Klein,* 156 Wn.2d 103, 120. 124 P.3d 644 (2005). For that reason, "the subjective and evolving nature of psychology may lead to different diagnoses that are based on the very same symptoms, yet differ only in the name attached to it." *Id. See also Personal Restraint of Meirhofer*, 182 Wn.2d 632, 343 P.3d 731 (2015). Construing the law to mandate release "based on mere semantics would lead to absurd results and risks to the patient and public beyond those intended by the legislature." *Klein* at 121.

The Court's decision in *Crane* reflects and is entirely consistent with this approach. There, the Court was asked to clarify the "lack of control" requirement articulated in *Hendricks*. Contrary to Belcher's assertion, there is nothing in *Crane* that requires that the underlying mental abnormality must be "medically recognized." While the *Crane* Court acknowledged "[t]he presence of what the "psychiatric profession itself classifie[d] . . . as a serious mental disorder" "helped to make" the distinction between those appropriate for civil commitment and the "typical recidivist" (*Crane,* 534 U.S. at 413), nowhere did the Court state that such "classification" by the psychiatric profession was mandated, nor did it state that, in order to justify commitment, the diagnosed condition must be "medically recognized." Consistent with its remark in *Hendricks* that the term "mental illness" was "devoid of any talismanic significance" (*Hendricks*, 521 U.S. at 358-59), the *Crane* Court steered clear of semantic mandates, noting that "the Constitution's safeguards of human liberty in the area of mental illness and the law are not always best enforced through precise bright-line rules." 534 U.S. at 413. The Court went on to observe that "the science of psychiatry, which informs but does not control ultimate legal determinations, is an ever-advancing science, whose distinctions do not seek precisely to mirror those of the law." *Id.* Noting that it had not, in *Hendricks,* given the phrase "lack of

control" "a particularly narrow or technical meaning," the Court observed that, "where lack of control is at issue, 'inability to control behavior' will not be demonstrable with mathematical precision." *Id.* Rather,

> [i]t is enough to say that there must be proof of serious difficulty in controlling behavior. And this, when viewed in light of such features of the case as the nature of the psychiatric diagnosis, and the severity of the mental abnormality itself, must be sufficient to distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case.

Id.

Here, the trial court had ample opportunity to evaluate the merits of Dr. Judd's opinion by listening to the substantial contrary professional opinions that were presented at trial by Belcher's expert, Dr. Brian Abbott. Dr. Judd explained the basis for his diagnosis at length, discussing the factual basis for both his opinion that the combination of antisocial personality disorder and a high level of psychopathy, as expressed in Belcher, constituted a mental abnormality under the law. Vol. 2B RP at 464. Dr. Judd explained both what he understood by the term "mental abnormality" (*Id.* at 456-58) and why that term applied to Belcher: He suffers from a "congenital or acquired condition" in the form of this combination of an antisocial personality disorder with high psychopathy. *Id.* This condition "affects his emotional or volitional capacity:" Dr. Judd

explained that the combination of these conditions "basically limit[s] [Belcher's] ability to experience empathy, to experience a sense of remorse for his conduct and his behavior, [and] to identify with other people's feelings and emotions." *Id.* at 462. Finally, this mental condition "predisposes" Belcher "to the commission of criminal sexual acts in a degree constituting ...a menace to the health and safety of others" and causes Belcher to have serious difficulty controlling his sexually violent behavior. *Id.* at 462-64. This testimony both gave meaning to the term mental abnormality "within a psychological context" as required by *Young,* and provided an ample basis from which the court could conclude that Belcher had "serious difficulty" controlling his sexually violent behavior as required by *Crane.* Belcher's challenge fails.

Belcher also argues that the diagnosis of ASPD is improper because it is based on behaviors long ago, and that he no longer evidences the antisocial behavior so prominent in his youth. Dr. Judd explained, however, that his assessment looked at "the overall functioning of the individual over a period of time." Vol. 2A RP at 378. Belcher's antisocial tendencies have persisted over a sustained period of time, emerging first in late childhood and adolescence, and continuing to be "significantly in evidence" until the last few years before this trial. Vol. 2B RP at 424. While the "relative cessation during the last couple of years" is an

indication that "maybe things are improving somewhat," the "broad spectrum of his conduct over a period of many, many years" still exists. *Id.* Manifestations of his personality disorder "can wax and wane because the manifestation of the disorder may also depend upon the opportunity to act upon these various urges" and "can be less prominent in a structured environment." *Id.* Antisocial personality disorder, however, "tends to be seen" as a chronic condition, for which there is "no real cure[.]" Vol. 2A at 380. Because Belcher had a sufficient number of relevant symptoms "both as an adolescent and as an adult," the diagnosis was warranted. *Id.* at 361. *See also* Vol. 2B RP at 463 (same "constellation of symptoms," has persisted since adolescence). As such, the mere fact of chronological aging is insufficient to reduce Belcher's risk of re-offense.

The trial court also heard extensive testimony from Belcher's expert, Dr. Brian Abbott, regarding Belcher's mental condition.[8] 5A RP at 847-1047; 5B RP at 1048-1123. Much of this testimony related to Belcher's central argument to the effect that his youthful behavior was not predictive of his behavior as an adult, and included testimony related to his diagnosis, the development of the pre-frontal cortex, the decreasing rates of recidivism for adolescents as they enter their adult years, and the

[8] Dr. Abbott did not conduct a risk assessment of Belcher. CP at 856; Finding of Fact No. 26.

difficulty in assessing risk for persons who committed sexual offenses as adolescents. Vol. 5A RP at 993-1027. The court thus had an opportunity to consider the possibility that, although Belcher had indeed been a juvenile at the time of his offenses, he had since aged and, as implied by Belcher's argument, matured to the point that he could no longer be said to be "likely" to reoffend. The trial court, however, rejected Dr. Abbott's "narrow view of the facts and circumstances surrounding Mr. Belcher's relevant psychological issues" as biased and lacking in credibility, noting that Dr. Abbott's opinions "have been inconsistent over a very short period of time" and "seem to change depending on Mr. Belcher's legal position, rather than psychological or other forensic issues." CP at 855-56, Finding of Fact Nos. 24-25. Belcher does not assign error to these findings. The trial court correctly concluded that Belcher suffered from a mental abnormality.

3. Belcher waived any claim that Dr. Judd's report lacked foundation or was insufficient because of his credentials.

In Washington, litigants and the courts are protected against issues and arguments made for the first time on appeal. RAP 2.5. A party waives the right to appeal an error not raised below. *State v. Kalebaugh*, 183 Wn.2d 578, 583, 355 P.3d 253, 255 (2015). In general, the reviewing court will not review an issue, theory, argument, or claim of error not presented

at the trial court level. *Mukilteo Ret. Apartments, L.L.C. v. Mukilteo Investors L.P.*, 176 Wn. App. 244, 258, 310 P.3d 814, 821 (2013*) review denied sub nom. Mukilteo Ret. Apartments v. Mukilteo Investors, LP*, 179 Wn.2d 1025, 320 P.3d 719 (2014) citing *Pellino v. Brink's, Inc.,* 164 Wn. App. 668, 685 n. 8, 267 P.3d 383 (2011).

Belcher's argument regarding Dr. Judd's credentials was not presented to the trial court, and Dr. Judd was permitted to offer his opinion regarding Belcher's personality disorder without objection. Vol. 2A RP at 355-381. Belcher also refers to board certifications regarding forensics which were not presented to the trial court. Belcher did not present anything to the trial court that even approached this argument and therefore Belcher has not preserved it for appellate review.

4. Dr. Judd is a licensed forensic psychologist as intended by the statute.

Nonetheless, if this Court reaches the issue, Belcher incorrectly asserts that Dr. Judd is not a licensed forensic psychologist as contemplated by RCW 71.09 *et. seq*. By doing so, he misleadingly implies that licensure exists for "forensic psychology." Belcher's attempt to distinguish between a "licensed forensic psychologist" and a forensic evaluation of by licensed psychologist should be rejected.

In Washington, psychology licensure is governed by RCW 18.83 *et seq*. Only one license exists for psychologists: "psychologist." RCW 18.83.080. There is no separate licensure for "forensic psychologist." *Id.* Psychological evidence, like anything else, is "forensic" if such evidence "belong[s] to the courts of justice." *State v. Post,* 118 Wn.2d 596, 613, 826 P.2d 172, 182 *amended*, 118 Wn.2d 596, 837 P.2d 599 (1992) (footnote 6, citing Black's Law Dictionary).

Dr. Judd's testimony at trial clearly established that his practice is forensic in nature. Dr. Judd completed his PhD in psychology with a focus on neuropsychology in 1989. Vol. 2A RP at 340. He has been a licensed psychologist since 1991. *Id.* at 342.His transition from private practice to forensic work began in roughly 1992 with evaluations under the general civil commitment law, RCW 71.05. *Id.* at 344. Dr. Judd described his current area of expertise as the evaluation and treatment of persons being considered for civil commitment, as well as assessment of persons referred by the courts for risk assessment due to a history of violence or sexual violence, competency to stand trial, or mental state at the time of an offense, and characterized his current focus as forensic in nature. *Id.* at 342. Since he first began evaluating persons under the sex predator law in 1995, he has evaluated roughly 140 people. *Id.* at 347. He has testified in

sex predator cases over 80 times. *Id.* at 349. Dr. Judd is clearly a forensic psychologist within the meaning of the Statute.

Belcher also argues that the legislature intended to "[limit] the class of persons who can provide such evidence to a narrow subset of professionals: a 'licensed forensic psychologist or psychiatrist'." App. Br. at 31. The statute makes no mention of board certifications in any subspecialty of psychology or medicine. Belcher argues that the legislature did not intend evidence be offered by a licensed psychologist giving a forensic opinion. Instead, Belcher argues evidence can only be offered by a person who holds a licensure that does not exist: "forensic psychologist."

> When construing a statute ... ***A literal reading will be avoided when it results in an unlikely, absurd, or strained interpretation.***

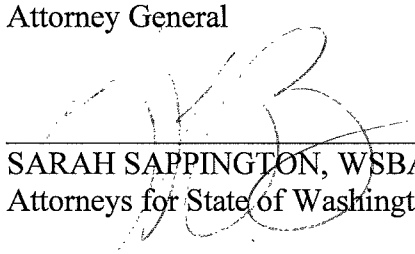
In re Det. of Jones, 149 Wn. App. 16, 24, 201 P.3d 1066, 1069 (2009) (emphasis added). The legislature clearly intended that licensed psychological professionals render opinions intended for use in court. They did not, under any possible interpretation, intend to create a basis for involuntary commitment in a statute, and then make that basis impossible to establish. Belcher's interpretation of the statute is an unlikely, absurd, and strained and his should be denied.

V. CONCLUSION

For the reasons set forth above, this Court should affirm Belcher's commitment as a sexually violent predator.

RESPECTFULLY SUBMITTED this 28th day of January, 2016.

ROBERT W. FERGUSON
Attorney General



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NO. 47328-3

WASHINGTON STATE COURT OF APPEALS, DIVISION II

In re the Detention of: TROY BELCHER, Respondent.	DECLARATION OF SERVICE

I, Allison Martin, declare as follows:

On January 28, 2016, I sent via electronic mail true and correct cop(ies) of Respondent's Opening Brief and Declaration of Service, , addressed as follows:

Travis Stearns
wapofficemail@washapp.org; travis@washapp.org

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

DATED this 28 day of January, 2016, at Seattle, Washington.

ALLISON MARTIN

WASHINGTON STATE ATTORNEY GENERAL

January 28, 2016 - 2:53 PM

Transmittal Letter

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