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WASHINGTON STATE
SUPREME COURT

NO. 93900-4

byh

SUPREME COURT OF THE STATE OF WASHINGTON

In re the Detention of

TROY BELCHER,

Petitioner.

APPEAL FROM THE SUPERIOR COURT FOR
COWLITZ COUNTY

**AMENDED BRIEF OF AMICUS CURIAE
WASHINGTON ASSOCIATION OF PROSECUTING ATTORNEYS**

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ORIGINAL

filed via
PORTAL

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A. INTEREST OF AMICUS CURIAE

The Washington Association of Prosecuting Attorneys (WAPA) represents the elected prosecuting attorneys of Washington State. Those persons are responsible by law for the prosecution of all felony cases in this state and of all gross misdemeanors and misdemeanors charged under state statutes. WAPA is interested in cases, such as this, that may impact county prosecutors' ability to refer particularly dangerous sex offenders for potential civil commitment under chapter 71.09 RCW when their prior sexually violent crimes were committed before the age of 18, that may limit the admissibility of highly relevant evidence in sexually violent predator trials, and that also may impact criminal cases where juvenile convictions are used as predicate offenses or are considered for purposes of sentencing.

B. ISSUES ADDRESSED BY AMICUS CURIAE

Belcher argues that his civil commitment as a sexually violent predator violates substantive due process. More specifically, he argues that because juveniles do not have fully-developed brains, adults whose prior sexually violent offenses were

committed before the age of 18 should be categorically exempt from civil commitment under chapter 71.09 RCW.

But civil commitment is fundamentally different from criminal prosecution and punishment. Categorically exempting particularly dangerous sex offenders from civil commitment because they committed sexually violent offenses before age 18 is not constitutionally required, and would thwart the purpose of the SVP statute to provide treatment to particularly dangerous sex offenders in a secure setting before they are released back into the community.

Belcher's argument, if taken to its logical conclusion, could lead to absurd and unintended consequences, both in criminal cases and in civil commitment cases. A far better approach for SVP cases involving people who have committed sexually violent offenses as juveniles is for trial courts to allow properly-qualified, individualized expert testimony regarding the person's level of development and maturity. Such testimony will help juries and trial courts make the highly fact-specific determination that these complex cases require without thwarting the purpose of the statute or excluding highly relevant evidence.

C. ARGUMENT

1. CIVIL COMMITMENT IS FUNDAMENTALLY DIFFERENT FROM CRIMINAL PROSECUTION AND PUNISHMENT.

The purpose of chapter 71.09 RCW is to provide for the civil commitment and treatment of “a small but extremely dangerous group of sexually violent predators” whose mental abnormalities and personality disorders “are unamenable to existing mental illness treatment modalities,” whose risk of re-offense is high, and whose treatment needs “are very long term” and “very different” from people who are civilly committed under chapter 71.05 RCW. RCW 71.09.010. The statute’s primary goals are treatment and incapacitation, both of which are legitimate civil law goals. In re Personal Restraint of Young, 122 Wn.2d 1, 22, 857 P.2d 989 (1993). By contrast, the goals of criminal law are punitive, including retribution and deterrence. Id.

All recent cases in which the United States Supreme Court has held that juveniles are categorically exempt from being treated the same as adults are criminal cases involving the harshest punishments available under the law. See Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (capital punishment cannot be imposed on a juvenile); Graham v. Florida,

560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010) (a life sentence without parole cannot be imposed on a juvenile for crimes other than homicide); Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012) (a mandatory life sentence without parole cannot be imposed on a juvenile who commits murder).¹ Each of these cases was decided based on the Eighth Amendment prohibition against cruel and unusual punishment, which applies only in criminal cases. See Ingraham v. Wright, 430 U.S. 651, 666-71, 97 S. Ct. 1401, 51 L. Ed. 2d 711 (1977) (citing numerous cases). In other words, each of these cases involves a harsh punitive sanction under the criminal law rather than civil commitment for the purpose of treatment as in this case.

Recognizing this conundrum, Belcher frames his argument under the far more general rubric of substantive due process, and he relies upon Miller and its progeny by analogy. However, it is crucial for this Court's analysis to more fully explore the fundamental differences between punishment resulting from the

¹ In addition, this Court has held that a juvenile facing a "de facto life sentence" is entitled to a hearing at which the trial court "must meaningfully consider how juveniles are different from adults" before imposing sentence. State v. Ramos, 187 Wn.2d 420, 434, 387 P.3d 650 (2017). This Court has also held that a trial court may exercise its discretion to impose a mitigated exceptional sentence based on an offender's youth and immaturity under the Sentencing Reform Act. State v. O'Dell, 183 Wn.2d 680, 358 P.3d 359 (2015).

commission of a crime and civil commitment resulting from a person's current mental illness and dangerousness. This critical distinction undermines the foundation of Belcher's argument for a categorical exemption for adults who have committed sexually violent offenses as juveniles in the civil commitment context.

As a preliminary matter, this Court has already held repeatedly that sexually violent predator proceedings are neither criminal nor "quasi-criminal"; rather, these cases are "resolutely civil in nature." In re Detention of Reyes, 184 Wn.2d 340, 347, 358 P.3d 394 (2015) (citing In re Detention of Stout, 159 Wn.2d 476, 492, 55 P.3d 597 (2002), In re Young, 122 Wn.2d at 19-23, and In re Detention of Ticeson, 159 Wn. App. 374, 380-81, 246 P.3d 440 (2011)). Accordingly, this Court has also held that constitutional trial rights expressly conferred upon criminal defendants by the state and federal constitutions do not extend to sexually violent predator proceedings. In re Reyes, 184 Wn.2d at 347-48 (citing In re Detention of Strand, 167 Wn.2d 180, 191, 217 P.3d 1159 (2009), In re Detention of Petersen, 138 Wn.2d 70, 91, 980 P.2d 1204 (1999), In re Stout, 159 Wn.2d at 368-69, and In re Young, 122 Wn.2d at 18). Importantly for purposes of the issue raised here, this Court has held unequivocally that although a qualifying

predicate charge or conviction is required for civil commitment as an SVP, the SVP statute is neither an ex post facto law nor a double jeopardy violation. In re Young, 122 Wn.2d at 24-25. These holdings conclusively establish that civil commitment is not punishment for the predicate offense, but the result of a person's current mental condition and dangerousness.

The statute itself further illustrates this point. A person is subject to civil commitment as a sexually violent predator if the State proves beyond a reasonable doubt that the person "*has been* convicted of or charged with a crime of sexual violence,"² and

² The statute provides that a "sexually violent offense" is:

[A]n 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

"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) (emphasis supplied). Thus, although the statute requires a qualifying charge or conviction for a sexually violent offense at some point in the past, which may have been committed as a juvenile³ or as an adult, the statute's focus is the person's current mental condition and current likelihood of re-offense. Accordingly, if a jury or a trial judge finds beyond a reasonable doubt that a person is a sexually violent predator, the Department of Social and Health Services must provide "control, care, and treatment" until the person's condition has "so changed" that he or she may be safely released on conditions, or, if the person no longer meets the criteria for civil commitment, the person will be released unconditionally. RCW 71.09.060(1). This bears no meaningful resemblance to a criminal life sentence.

Further, in order to determine whether there is a continuing basis for civil commitment, every person found to be an SVP is

one of the felonies designated in (a), (b), or (c) of this subsection.

RCW 71.09.020(17).

³ In re Detention of Anderson, 185 Wn.2d 79, 368 P.3d 162 (2016).

entitled to an evaluation of his or her current mental condition and risk of re-offense at least once a year. RCW 71.09.070. An SVP detainee is also entitled to a show cause hearing, at which the State bears the burden of producing prima facie evidence that he or she continues to meet the definition of an SVP. RCW 71.09.090(2). If the State cannot meet this burden, or if the SVP detainee presents evidence showing that his or her mental condition and/or dangerousness has changed through treatment, the detainee is entitled to a full trial on the merits on the issue of conditional or unconditional release.⁴ In re Detention of Petersen, 145 Wn.2d 789, 798, 42 P.3d 952 (2002).

These protections and options for an SVP detainee are not merely illusory, nor is the prospect of release beyond a detainee's control as would be the case with a life sentence under the criminal law. To the contrary, an SVP detainee is entitled to a trial on the issue of release if he or she presents prima facie evidence of change "brought about through positive response to continuing participation" in sex offender treatment. RCW 71.09.090(4)(b)(ii); RCW 71.09.020(20). The decision whether to participate in treatment is the detainee's choice to make. Moreover, unlike prison

⁴ Belcher's most recent trial was ordered as the result of such a hearing.

inmates under a death sentence or serving life without parole, a significant number of SVP detainees are obtaining their release.

In King County alone,⁵ while 46 SVP detainees remain in secure confinement at the Special Commitment Center, publically available court records confirm the following:

- 18 SVP detainees are currently on conditional release in less restrictive alternative (LRA) placements, either in a secure transition facility (SCTF) or in community-based housing
- 8 SVP detainees have either a conditional release trial or an unconditional release trial pending in King County Superior Court (including 4 detainees who are currently on LRAs)
- 7 people who had an SVP petition filed against them have been unconditionally released in the last 5 years because the State dismissed the SVP petition before the initial civil commitment trial took place⁶
- 20 SVP detainees have been unconditionally released post-commitment in the last 5 years

See Appendix A.⁷

⁵ As Washington State's most populous county, King County also has the largest number of SVP detainees.

⁶ One of these individuals committed his predicate sexually violent offenses as a juvenile, and the State dismissed the SVP petition because he participated in and made substantial progress in treatment at the SCC prior to trial. In re Detention of Martin, No. 15-2-30033-4 SEA.

⁷ In addition, one King County SVP detainee was transferred to the Department of Corrections in 2014 for a minimum of 175 months after pleading guilty to second-degree murder when DNA connected him to the sexually-motivated killing of a young woman in 1980. In re Detention of Halgren, No. 02-2-08007-3

In summary, civil commitment as an SVP does not resemble capital punishment, a life sentence without parole, or a de facto life sentence in any meaningful way. Rather than imposing punishment, the SVP statute is designed to provide treatment in a secure setting for particularly dangerous recidivist sex offenders with the goal of reducing their risk of re-offense prior to their release into the community.

Substantive due process is concerned with government action that is arbitrary and unreasonable, even if the attendant procedures are constitutionally adequate. Amunrud v. Board of Appeals, 158 Wn.2d 208, 218-19, 143 P.3d 571 (2006). Unlike the death penalty or a mandatory life sentence based solely on crimes committed as a juvenile in violation of the Eighth Amendment, civil commitment based on proof beyond a reasonable doubt that a person is currently a mentally ill and dangerous adult is neither arbitrary nor unreasonable. Expanding Miller and its progeny into this arena is unwarranted as a matter of due process, and it would thwart the legislative purpose of the SVP statute. This Court should decline Belcher's invitation to create a categorical exemption from

SEA; State v. Halgren, 13-1-00684-3 SEA. A few others are currently serving sentences in state or federal prison for other charges.

civil commitment for anyone who has committed a sexually violent offense before the age of 18.

**2. A CATEGORICAL EXEMPTION IN SVP CASES
COULD LEAD TO ABSURD AND UNINTENDED
CONSEQUENCES; ADMITTING EXPERT
TESTIMONY IN APPROPRIATE CASES IS A
BETTER APPROACH IN THE CIVIL COMMITMENT
CONTEXT.**

As the State of Washington's supplemental brief explains, juvenile offenses are used as predicate offenses for subsequent crimes and for sentencing purposes in many criminal cases. State's Supplemental Brief at 8-9. These criminal cases are analogous because it is the *existence* of the prior sexually violent offense that satisfies the necessary element in SVP cases; the State is not required to re-prove the underlying facts, and a prior conviction is not subject to collateral attack via the SVP proceedings. In re Stout, 159 Wn.2d at 365-67; In re Young, 122 Wn.2d at 54-55. But in addition to the potential impact that Belcher's proposed rule would have in the criminal arena if extended to its logical conclusion, there are potential absurd and unintended consequences in sexually violent predator cases as well.

For example, if "Person A" pleaded guilty to first-degree child molestation as a juvenile, pleaded guilty to indecent liberties without forcible compulsion several years later as an adult, and then later admitted to committing an armed rape of a stranger as an adult that cannot be charged because it is beyond the statute of limitations, the only qualifying predicate charge or conviction for an SVP proceeding is the juvenile offense. Would Belcher's proposed categorical exemption apply? What if the underlying facts of the indecent liberties would establish forcible compulsion, which would make it a qualifying offense, but cannot be proved in court because the victim left the country many years ago?

As another example, if "Person B" was arrested at age 16 after lying in wait and sexually assaulting multiple young boys in a public restroom, pleaded guilty to first-degree child molestation and attempted first-degree child molestation in juvenile court, and remained in the custody of the Juvenile Rehabilitation Administration until his 21st birthday, it appears that this person would fall within Belcher's proposed categorical exemption from civil commitment. But what if this person continued to engage in sexual misconduct with younger and more vulnerable JRA residents after turning 18, and he continued to exhibit

uncontrollable sexual fixation on children in diapers even after his transfer to the SCC at age 21? What if this person's own expert witness testified that he will always have serious difficulty controlling his sexual impulses due to irreversible brain damage, that he needs intensive therapy, and that he needs to be directly supervised 24 hours a day to keep both him and the community safe?

These cases are not hypothetical,⁸ nor do they comprise the only circumstances under which a categorical exemption would lead to consequences that are antithetical to the purposes of civil commitment under the SVP statute. To the contrary, each SVP case is unique. But based on these two examples alone, the difficulty with applying a categorical exemption becomes apparent. In one case, the fact that the person's only qualifying conviction is a juvenile offense does not reflect the true extent of his sexually violent behavior. In the other case, overwhelming evidence shows that the person is obsessed with young children, and that his extreme sexual impulsivity is due to a mental abnormality rather

⁸ "Person A" describes In re Detention of Hammond, No. 15-2-18421-1 SEA, which is currently pending trial for initial commitment. "Person B" describes In re Detention of Jaeger, COA No. 72392-8-I, Wa. Sup. Ct. No. 93929-2, which is stayed pending a final decision in this case.

than youth; thus, a categorical exemption would be arbitrary. Unlike mitigating harsh criminal sentences imposed solely as a result of youthful criminal behavior, creating a categorical exemption in the civil commitment context is unwarranted because a person's entire life history is already taken into account.

Nonetheless, Belcher cites various sources to support the general proposition that juvenile offenders are different from adult offenders, and he asks this Court to extrapolate from that general proposition that a categorical exclusion is required. But again, unlike mandatory or standardized sentencing in criminal cases, civil commitment is a highly fact-specific, individualized decision based on the unique history and characteristics of each SVP respondent, including any current psychological considerations.

For instance, Belcher cites page 30 of a 57-page article (with 7 pages of references) for the proposition that "[j]uvenile offending is not predictive of adult sexual misconduct." Petitioner's Supplemental Brief at 8 (citing Sue Righthand & Carlann Welch, Juveniles Who have Sexually Offended: A Review of the Professional Literature (March 2001)).⁹ Although the studies compiled in this article generally support that broad proposition, the

⁹ <https://www.ncjrs.gov/pdffiles1/ojdp/184739.pdf>, last accessed 5/12/17.

article also states that studies have shown that adolescent sex offenders may be more likely to reoffend if, for example: 1) the initial offending was pleasurable and consequences were minimal; 2) the initial offense was committed against a peer-aged stranger; 3) the initial offense involved penetration; 4) the offender has had multiple female victims; 5) the offender has a high level of psychopathy and deviant arousal; or 6) the offender blames the victim. Id. at 32-34. Based on the appellate pleadings filed to date, it appears that many or all of these characteristics may be present in Belcher's case.

Belcher also cites the ATSA¹⁰ guidelines for the proposition that adolescent sex offenders have a low rate of recidivism in adulthood. *See, e.g.*, Petitioner's Supplemental Brief at 5-6 (citing ATSA Practice Guidelines for Assessment, Treatment, and Intervention with Adolescents Who Have Engaged in Sexually Abusive Behavior (2017)).¹¹ But as a group, adult sex offenders also have a low rate of recidivism. As reflected in a report from the Washington State Institute for Public Policy, a study of the records of over 4,000 sex offenders released into the community showed

¹⁰ "ATSA" stands for "Association for the Treatment of Sexual Abusers."

¹¹http://www.atsa.com/pdfs/Adolescent/ATSA_2017_Adolescent_Practice_Guidelines.pdf, last accessed 5/12/17.

only a 2.7 percent recidivism rate within 5 years.¹² On the other hand, this report further reflects that the small number of sex offenders who were identified for potential civil commitment under the SVP statute “is a unique subgroup *with much higher recidivism rates*”¹³ than sex offenders generally. In other words, they comprise “a small but extremely dangerous group of sexually violent predators” whose risk of re-offense is much higher than that of a more typical offender. RCW 71.09.010. In short, Belcher’s generalizations do not apply in the SVP civil commitment context.

Instead of a categorical exemption that would undermine the purpose of the SVP statute, a far better approach is to allow trial courts to exercise their discretion to admit testimony from a properly-qualified expert on adolescent development in appropriate cases.¹⁴ The expert could provide relevant testimony about an individual SVP respondent’s level of development and maturity that would assist the factfinder in evaluating the respondent’s juvenile

¹² Cheryl Milloy (2007), Six-year follow-up of 135 released sex offenders recommended for commitment under Washington’s sexually violent predator law, where no petition was filed, Washington State Institute for Public Policy, Doc. No. 07-06-1101, at 7.

¹³ Id. (emphasis supplied).

¹⁴ Indigent SVP respondents are already entitled to an expert at public expense; thus, allowing testimony about juvenile development will not place additional burdens upon scarce public resources. RCW 71.09.055.

sex offending behavior without undermining the legislative purpose of the statute. This approach is wholly consistent with Roper, Graham, and Miller, which reject mandatory sentencing in favor of individualized consideration of a juvenile offender's personal situation.

As this Court has recognized, "the United States Supreme Court has "always been reluctant to expand the concept of substantive due process.'" In re Detention of Morgan, 180 Wn.2d 312, 324, 330 P.3d 774 (2014) (quoting Sacramento v. Lewis, 523 U.S. 833, 842, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998), in turn quoting Collins v. City of Harker Heights, 503 U.S. 115, 125, 112 S. Ct. 1061, 117 L. Ed. 2d 261 (1992)). This Court should be similarly reluctant to create a categorical exemption for sexually violent behavior committed before age 18 in the civil commitment context, particularly in light of the potential ripple effects such a rule could create. Rather than the one-size-fits-none approach Belcher suggests, this Court should endorse the use of qualified experts, who can offer relevant evidence in appropriate cases to assist the trier of fact in reaching a just verdict.

D. CONCLUSION

Every recent case where an offender's youth has been used as a basis to create a categorical exemption is a criminal case involving a harsh sentence imposed as a direct result of conduct committed as a juvenile. In sexually violent predator cases, by contrast, civil commitment is the result of a person's current mental condition and dangerousness as an adult. Expanding a categorical exemption from the death penalty and mandatory life without parole into the civil commitment context is constitutionally unwarranted and would undermine the legislative purpose behind the sexually violent predator law.

A categorical exemption would potentially affect criminal cases where juvenile crimes are used as predicate offenses and at sentencing, and would lead to absurd consequences in civil commitment cases. Civil commitment is a highly fact-specific, individualized decision for which a person's entire life history is relevant, and imposing a blanket rule exempting juvenile sex offenses is simply untenable. Instead of a categorical exemption, allowing trial courts to admit properly-qualified, individualized expert testimony regarding an SVP respondent's level of development and

maturity would be helpful to the fact-finder and will best serve the interests of both the State and the respondents in these cases.

For the reasons stated above, and for the reasons stated in the briefing submitted by the State of Washington, the Court of Appeals should be affirmed.

DATED this 25th day of May, 2017.

Respectfully submitted,

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On behalf of Amicus Curiae
Washington Association of Prosecuting Attorneys

Appendix A: King County SVP cases

King County SVP detainees in total confinement: 46

<u>Name</u>	<u>Cause #</u>	<u>Division</u>
Kokko, Kenneth Gene	09-2-42555-8	KNT
Danforth, Robert Reives	06-2-34440-5	SEA
Pugh, Bob Andrew	05-2-14019-4	SEA
Stewart, Darrel Wayne	06-2-07708-3	SEA
Church, James Shannon	00-2-23258-6	SEA
Neeves, Michael	03-2-35570-4	SEA
Mulkins, Christopher Alan	03-2-12912-7	SEA
Obert, John Michael	04-2-20218-3	SEA
Pedersen, Randy Cedar	02-2-07981-4	SEA
Moinette, Ryan Michael	05-2-32539-9	SEA
Porter, Robert Raymond	10-2-35875-7	SEA
Jaeger, Gregory Stevenson	10-2-31629-9	SEA
Aston, James K	07-2-23224-9	SEA
Wright, Sammy Lee	04-2-26908-3	SEA
Williams, Lawrence J	02-2-20859-2	SEA
Marten, Curtis Andrew	03-2-16262-1	SEA
Williams, Eddie Leon	02-2-08006-5	SEA
Sheaffer, Robert Whitney	02-2-08000-6	SEA
Daniels, Burt Bobby	00-2-07190-6	SEA
Taylor, Barry Lewis	02-2-20837-1	SEA
Strong, Darren Richard	02-2-08010-3	SEA
Halgren, Michael Allan	02-2-08007-3	SEA ¹
Spellman, Steven Maurice	02-2-07998-9	SEA
Scott, Richard Roy	03-2-25609-9	SEA
Knapp, Stevan James	02-2-08009-0	SEA
Lough, Robert Eugene	09-2-29232-9	SEA
Cannon, Victor Kenneth	06-2-22648-8	KNT
Wrathall, David John	02-2-07989-0	SEA
Burd, Everette J	06-2-23355-7	SEA
Black, Mark Antonio	11-2-36238-8	KNT
Schoenecker, Scott Michael	13-2-05070-6	SEA
Pisoni, John Luigi	04-2-25764-6	SEA
Dumas, Dennis Thomas	07-2-26783-2	SEA
Gordon, Kenneth Ray	02-2-07996-2	SEA
Daly, Kim Patrick	04-2-10006-2	SEA
Robinson, Jeffrey Leon	03-2-31408-1	SEA
Frisina, Ralph Arthur	02-2-08004-9	SEA
Thorell, Bernard Basil	02-2-07991-1	SEA
Stueve, Gary W	07-2-17129-1	KNT
Law, Dennis Erik	05-2-30022-1	SEA
Smith, Mark Edward	05-2-29574-1	SEA
Herald, Kenneth Lee	06-2-07150-6	SEA
Green, William Ray	15-2-07191-2	SEA
Goldschmidt, Zachary Thomas	13-2-31983-7	SEA
Turner, James Taylor	14-2-23665-4	SEA
Bean, Chad Allan	15-2-11651-7	SEA

¹ Halgren is currently serving a prison sentence with a minimum term of 175 months for a sexually motivated murder he committed in 1980 under King County cause no. 13-1-00684-3 SEA.

King County SVP detainees on LRA: 14²

<u>Name</u>	<u>Cause #</u>	<u>Division</u>
Bringham, James Michael	10-2-13822-6	SEA
Tollesfen, Randy Eugene	05-2-40592-9	SEA
Smith, Brian Eugene	02-2-08008-1	JUV
Johnson, Ronnie Lynn	03-2-19186-8	SEA
Allen, James Samuel	04-2-12240-6	SEA
Mattson, Mark David	08-2-38500-1	SEA
Kleinman, Lance B	00-2-03759-7	SEA
Ticeson, Calvin Keith	03-2-21388-8	SEA
Holmes, Donald Theodore	11-2-17075-6	KNT
Scott, David Conrad	01-2-09494-7	SEA
Motley, Winston	06-2-33534-1	SEA
Rogers, Richard P	01-2-18458-0	KNT
Ambers, Kevin Anthony	02-2-07993-8	SEA
Bern, Patrick Allan	02-2-10032-5	SEA

King County SVP detainees with release trial pending: 8

<u>Name</u>	<u>Cause #</u>	<u>Division</u>
Conditional release trial		
Duffy, Sean Garrett	00-2-19526-5	SEA
Unconditional release trial		
Farnan, James John	04-2-19815-1	SEA ³
Campbell, Elmer James	02-2-07982-2	SEA
Smith, Arthur Lee	03-2-19773-4	SEA
Nelson, Zachary Shane	11-2-20771-4	SEA
Calhoun, Ricky	02-2-20777-4	SEA ⁴
Pouncy, Curtis N	03-2-20900-7	SEA ⁵
Messmer, Raymond John	02-2-07994-6	SEA ⁶

² As will be noted below, there are 4 other SVP detainees on LRAs who also have an unconditional release trial pending.

³ Farnan is on an LRA.

⁴ Calhoun is on an LRA.

⁵ Pouncy is on an LRA.

⁶ Messmer is on an LRA.

King County SVP detainees unconditionally released, last 5 years: 27⁷

<u>Name</u>	<u>Cause #</u>	<u>Division</u>
Franklin, Rudolph	02-2-08002-2	SEA
Strauss, Gordon	02-2-08003-1	SEA
Audett, Daniel	00-2-28949-9	SEA
Kelly, George	10-2-20257-9	SEA ⁸
Giles, Danny	11-2-25736-3	SEA ⁹
Christenson, Kyle	12-2-08183-2	SEA ¹⁰
Soliz, Gilbert	02-2-07984-9	SEA
Jones, Leroy	02-2-07995-4	SEA
Torrison, Christopher	02-2-07997-1	SEA
Rudolph, Christopher	00-2-01735-9	SEA
Herzog, Dennis	00-2-15307-4	SEA
Cronn, James	02-2-08011-1	SEA
Roth, Robert	01-2-00857-9	SEA
Baiz, Cecil	01-2-21591-4	SEA
Kelly, Timothy	02-2-05980-5	SEA
West, Gale	02-2-16729-8	SEA
Post, Charles	03-2-15442-3	SEA
Duncan, William	04-2-07753-2	SEA
Edwards, Craig	06-2-11444-2	SEA
Hosier, Richard	07-2-24520-1	SEA
Atkins, Michael	08-2-32241-6	SEA
Wissing, David	09-2-22706-3	SEA
Hunsaker, Robert	09-2-35899-1	SEA
Roberts, Corey	03-2-18652-0	SEA ¹¹
Linker, Kevin	09-2-18158-6	SEA ¹²
Martin, Michael	15-2-30033-4	SEA ¹³
McClinton, Sallyea	12-2-28104-1	SEA ¹⁴

⁷ As noted below, 7 of these SVP detainees were released because the SVP petitions filed against them were dismissed before the initial civil commitment trial took place.

⁸ The State dismissed the SVP petition against Kelly before the initial commitment trial occurred because the State's expert ultimately concluded that Kelly's personality disorder did not predispose him to commit criminal sexual acts.

⁹ The State dismissed the SVP petition against Giles prior to trial; the specific reason is not reflected in the court file.

¹⁰ The SVP petition against Christianson was dismissed prior to trial by agreement of the parties after Christianson participated in treatment sex offender treatment and attended AA meetings at the SCC.

¹¹ The State dismissed the SVP petition against Roberts before trial because two experts retained by the State independently concluded that Roberts did not meet the criteria for civil commitment.

¹² The State dismissed the SVP petition against Linker prior to trial because he made progress in treatment at the SCC, and because the State's expert concluded that his risk to reoffend had fallen below 50 percent.

¹³ The State dismissed the SVP petition against Martin before trial because he made substantial progress in treatment after being transferred to the SCC. Martin committed his predicate offenses as a juvenile.

¹⁴ The State dismissed the SVP petition against McClinton prior to trial because a revised risk assessment analysis from the State's expert concluded that he was at a lower risk to reoffend.

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the Attorney for Amicus Curiae (Washington Association of Criminal Defense Lawyers), Amy I. Muth, at amy@amymuthlaw.com, containing a copy of *Amended Brief of Amicus Curiae Washington Association of Prosecuting Attorneys* in In Re the Detention of Troy Belcher, Cause No. 93900-4, in the Supreme Court of the State of Washington.

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

Marjorie Bedford
Name: Marjorie Bedford
Done in Seattle, Washington

5/25/2017
Date

Certificate of Service by Electronic Mail

Today, in accordance with a standing electronic service agreement, I directed electronic mail addressed to the attorney for the appellant, Travis Stearns, at wapofficemail@washapp.org containing a copy of *Amended Brief of Amicus Curiae Washington Association of Prosecuting Attorneys* in In Re the Detention of Troy Belcher, Cause No. 93900-4, in the Supreme Court of the State of Washington.

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

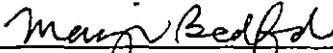
Marjorie Bedford
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Done in Seattle, Washington

5/25/2017
Date

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the Attorney for Amicus Curiae (ACLU), Prachi V. Dave, at pdave@aclu-wa.org, containing a copy of *Amended Brief of Amicus Curiae Washington Association of Prosecuting Attorneys* in In Re the Detention of Troy Belcher, Cause No. 93900-4, in the Supreme Court of the State of Washington.

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



Name: Marjorie Bedford
Done in Seattle, Washington

5/25/2017
Date

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorney for the respondent, Sarah Sappington, at sarajs@atg.wa.gov, containing a copy of *Amended Brief of Amicus Curiae Washington Association of Prosecuting Attorneys* in In Re the Detention of Troy Belcher, Cause No. 93900-4, in the Supreme Court of the State of Washington.

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

Marjorie Bedford
Name: Marjorie Bedford
Done in Seattle, Washington

5/25/2017
Date

KING COUNTY PROSECUTING ATTORNEY SVP UNIT

May 25, 2017 - 9:55 AM

Transmittal Information

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