

**FILED**

**MAY 11 2018**

GRAYS HARBOR COUNTY, WA  
CHERYL BROWN, COUNTY CLERK

**STATE OF WASHINGTON  
GRAYS HARBOR COUNTY SUPERIOR COURT**

In re the Detention of:

DAVID HUNTER,

Respondent.

NO. 18-2-379-14

CERTIFICATION FOR  
DETERMINATION OF  
PROBABLE CAUSE

I, Kristie Barham, am an Assistant Attorney General for the State of Washington and am familiar with the investigation conducted by the Washington State Department of Corrections and various law enforcement agencies relating to the Respondent, DAVID HUNTER (hereafter, Hunter). Pursuant to RCW 71.09.030, the Attorney General for the State of Washington is filing this Petition at the request of the Grays Harbor County Prosecuting Attorney. Petitioner, State of Washington, sets forth the following in support of its motion for the determination of probable cause that the Respondent is a sexually violent predator pursuant to chapter 71.09 RCW.<sup>1</sup>

**I. SEXUAL OFFENDING HISTORY**

**A. SEXUALLY VIOLENT OFFENSES**

Respondent, David Hunter, was born on April 19, 1974, and is currently 44 years old. He has been convicted of two sexually violent offenses as that term is defined in RCW 71.09.020(17). A "sexually violent offense" includes any "out-of-state conviction for a

<sup>1</sup> "Sexually violent predator" means "any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility." RCW 71.09.020(18).

1 felony offense that under the laws of this state would be a sexually violent offense” as defined  
2 in RCW 71.09.020(17). Courts employ a comparability analysis to determine whether an out-  
3 of-state conviction would be a sexually violent offense in Washington. Applying this analysis,  
4 Hunter has two convictions out of Oregon that qualify as sexually violent offenses, namely  
5 unlawful sexual penetration in the first degree and sexual abuse in the first degree. Hunter is  
6 scheduled to be released on May 15, 2018.

7 **1995 Unlawful Sexual Penetration in the First Degree (Ct. 1); Sexual Abuse in the**  
8 **First Degree (Ct. 6): Multnomah County, State of Oregon Cause No. 95-04-33018**

9 **1. Facts and Disposition**

10 On or between September 1, 1994 and February 16, 1995, 20-year-old Hunter inserted  
11 his finger into the vaginas of two young girls, H.T. (age 8) and S.T. (age 12), on multiple  
12 occasions. In February 1995, Children’s Services received anonymous information that the girls  
13 were living in the same house as a known child molester, Hunter. Hunter was living at the  
14 residence with the girls, his stepbrother, and his stepbrother’s girlfriend, who was the mother of  
15 the two girls. Hunter resided with the girls despite a court order requiring him to have no contact  
16 with minor children.

17 Several witnesses, including the mother of the two girls, reported to the police that Hunter  
18 admitted to penetrating the girls’ vaginas with his finger. On February 27, 1995, Hunter told a  
19 detective that while playing a wrestling game, the girls touched him first so he “touched them  
20 back.” He initially denied inserting his finger inside the girls’ vaginas. However, during the  
21 subsequent presentence investigation, Hunter admitted that he put his finger inside their vaginas.  
22 He claimed that the girls, ages 8 and 12, “came on” to him and he “gave them what they wanted.”  
23 He reported that this occurred while babysitting the girls and usually while watching the Playboy  
24 channel. He reported that he did this approximately six times with each girl over a period of  
25 approximately five months.  
26

1 In December 2016, the State's expert, Dr. Brian Judd, interviewed Hunter about these  
2 offenses as part of his sexually violent predator evaluation. Hunter told Dr. Judd that the sexual  
3 abuse of these girls occurred on a frequent basis and involved both digital and oral penetration  
4 of the girls. Hunter also admitted that he forced the girls to masturbate and fellate him.  
5 Hunter previously reported that he used verbal threats to obtain and maintain the girls'  
6 compliance.

7 Hunter was initially charged in Multnomah County, Oregon with two counts of unlawful  
8 sexual penetration in the first degree, one count of unlawful sexual penetration in the second  
9 degree, and three counts of sexual abuse in the first degree. On August 23, 1995, Hunter pled  
10 guilty to one count of unlawful sexual penetration in the first degree against H.T. (Ct. 1) and one  
11 count of sexual abuse in the first degree against S.T. (Ct. 6). In exchange for this plea, the District  
12 Attorney dismissed the other four counts.

13 After Hunter pled guilty and prior to sentencing, the court found probable cause to  
14 believe Hunter is a "sexually dangerous person" based on his "repeated and compulsive acts of  
15 sexual misconduct" and deemed him dangerous and likely to continue to commit acts of sexual  
16 misconduct. Based on this probable cause finding, the court ordered Hunter to undergo a  
17 "sexually dangerous person" evaluation at Oregon State Hospital. Dr. John Cochran conducted  
18 the evaluation and concluded that although Hunter fit the definition of a "sexually dangerous  
19 person" based on his deviant sexual acting out, he did not appear amenable to treatment at the  
20 state hospital. Dr. Cochran noted Hunter's long history of antisocial acting out and failure in  
21 different placements. Dr. Cochran concluded that Hunter was not a fitting candidate for the  
22 program and should receive a prison sentence. On October 5, 1995, the court sentenced Hunter  
23 to 100 months in prison for Ct. 1 and 35 months in prison for Ct. 6, to run concurrent.  
24  
25  
26

1           **2.       Comparability Analysis**

2                   **a.       Unlawful Sexual Penetration in the First Degree is Comparable to**  
3                           **Washington’s Rape of a Child in the First Degree**

4           Hunter’s Oregon conviction for unlawful sexual penetration in the first degree is a  
5 sexually violent offense because it is comparable to the Washington crime of rape of a child in  
6 the first degree, which is a sexually violent offense under RCW 71.09.020(17).

7           The SVP statutory scheme is silent as to the method used to determine whether an  
8 out-of-state conviction would be a sexually violent offense in Washington. However,  
9 Washington courts commonly employ a comparability analysis in criminal cases to determine  
10 what weight to give a foreign conviction at sentencing. This same analysis is appropriate to use  
11 in determining whether Hunter’s Oregon conviction qualifies as a sexually violent offense.  
12 Washington law uses a two-part test to determine the comparability of a foreign offense.  
13 *State v. Thiefault*, 160 Wn.2d 409, 415, 158 P.3d 580 (2007). “A court must first query whether  
14 the foreign offense is legally comparable—that is, whether the elements of the foreign offense  
15 are substantially similar to the elements of the Washington offense.” *Id.* If the elements of the  
16 foreign offense are broader than the Washington offense, the court must determine whether the  
17 offense is “factually comparable—that is, whether the conduct underlying the foreign offense  
18 would have violated the comparable Washington statute.” *Id.* In making a factual comparison,  
19 the court may rely on facts in the foreign record that are admitted or proved beyond a reasonable  
20 doubt. *Id.*

21           Applying this analysis to Hunter’s case, the court must first look at the elements of the  
22 crime. *See State v. Morley*, 134 Wn.2d 588, 605, 952 P.2d 167 (1998). The elements of unlawful  
23 sexual penetration in the first degree must be compared to the elements of the comparable  
24 Washington crime that was in effect when the Oregon crime was committed. *See id.* at 606.  
25 If the elements are not identical, or if the Oregon statute is broader than the Washington statute,  
26 the court may look at Hunter’s conduct “as evidenced by the indictment or information, to

1 determine whether the conduct would have violated the comparable Washington statute.” *See id.*  
2 The purpose of the inquiry is “to insure that the out-of-state court found each element of the  
3 Washington counterpart crime, just as a Washington court would have if the defendant had been  
4 prosecuted here.” *State v. Russell*, 104 Wn. App. 422, 442-43, 16 P.3d 664 (2001). “The key  
5 inquiry is under what Washington statute could the defendant have been convicted if he or she  
6 had committed the same acts in Washington.” *Morley*, 134 Wn.2d at 606 (emphasis in original).

7 The crime of unlawful sexual penetration in the first degree that was in effect in Oregon  
8 when Hunter committed the crime on or between September 1, 1994, and February 16, 1995, is  
9 found at Oregon Revised Statutes (ORS) 163.411. *See Exhibit A*, ORS 163.411, 1993 and 1995  
10 Editions. This is the same statute that is referenced in the Indictment and that Hunter was  
11 convicted of. *See Exhibit B*, Indictment, Guilty Plea, and Judgment of Conviction and Sentence.  
12 At the time Hunter committed unlawful sexual penetration in the first degree, it was defined as  
13 follows:

- 14 (1) a person commits the crime of unlawful sexual penetration in the first degree if  
15 the person penetrates the vagina, anus or penis of another with any object other  
16 than the penis or mouth of the actor and:  
17 (a) The victim is subjected to forcible compulsion;  
18 (b) The victim is under 12 years of age; or  
19 (c) The victim is incapable of consent by reason of mental defect, mental  
20 incapacitation or physical helplessness.

21 Ex. A. The relevant statutory provision is (1)(b), which indicates that the victim is “under 12  
22 years of age.” This crime is comparable to Washington’s rape of a child in the first degree.  
23 The elements of rape of a child in the first degree when Hunter committed the Oregon crime  
24 were as follows:

25 A person is guilty of rape of a child in the first degree when the person has sexual  
26 intercourse with another who is less than twelve years old and not married to the  
perpetrator and the perpetrator is at least twenty-four months older than the  
victim.

1 See **Exhibit C**, RCW 9A.44.073, Chapter 145, Section 2 (1988). At the time, Washington law  
2 defined "sexual intercourse" as follows:

- 3 (1) "Sexual intercourse" (a) has its ordinary meaning and occurs upon any  
4 penetration, however slight, and (b) Also means any penetration of the vagina or  
5 anus however slight, by an object, when committed on one person by another,  
6 whether such persons are of the same or opposite sex, except when such  
7 penetration is accomplished for medically recognized treatment or diagnostic  
8 purposes, and (c) Also means any act of sexual contact between persons involving  
9 the sex organs of one person and the mouth or anus of another whether such  
10 persons are of the same or opposite sex.

11 See **Exhibit D**, RCW 9A.44.010(1), Chapter 271, Part III, Section 302 (Laws of 1994).

12 Although the elements of the Oregon and Washington offenses are substantially similar  
13 in that both statutes involve penetration of the vagina with an object and require that the victim  
14 be under the age of 12, the statutes are not identical. The Washington statute requires that the  
15 defendant be at least 24 months older than the victim and that the defendant and victim are not  
16 married. Because the crime is defined more broadly in the Oregon statute, Hunter's conduct, as  
17 demonstrated by the language in the Indictment, may be considered in determining whether the  
18 conduct that he was convicted of falls within the more restricted scope of the Washington statute.

19 See *Thiefault*, 160 Wn.2d at 415; see also *Morley*, 134 Wn.2d at 605-06. The Oregon Indictment  
20 to which Hunter pled "no contest" to and was convicted of states:

21 The said defendant, on or between September 1, 1994 and February 16, 1995, in  
22 the County of Multnomah, State of Oregon, did unlawfully and knowingly  
23 penetrate the vagina of [H.T.], a person under the age of twelve years, with an  
24 object, contrary to the Statutes in such cases made and provided and against the  
25 peace and dignity of the State of Oregon[.]

26 Ex. B, Ct. 1 of the Indictment. The Indictment includes Hunter's April 19, 1974 date of birth,  
which indicates that he was twenty years old at the time of the crime and therefore "at least  
twenty-four months older" than H.T. who was "under the age of twelve." Ex. B. Also, H.T. was  
not married to Hunter because she was not of the legal age of consent in Oregon.

See **Exhibit E**, ORS 106.010 (1993 and 1995 Editions). Because Hunter pled "no contest" to the

1 Indictment, this Court can be sure that the Oregon court found him guilty of all of the elements  
2 as alleged in the Indictment. Those elements are factually comparable to the Washington crime  
3 of rape of a child in the first degree. In other words, had Hunter committed those same Oregon  
4 acts in Washington State on or between September 1, 1994, and February 16, 1995, he could  
5 have been convicted of rape of a child in the first degree. *See Morley*, 134 Wn.2d at 606.  
6 Thus, the Oregon crime of unlawful sexual penetration in the first degree is comparable to the  
7 Washington crime of rape of a child in the first degree and is a sexually violent offense under  
8 RCW 71.09.020(17).

9           **b. Sexual Abuse in the First Degree is Comparable to Washington's**  
10           **Child Molestation in the Second Degree**

11           Hunter's Oregon conviction for sexual abuse in the first degree is a sexually violent  
12 offense because it is comparable to the Washington crime of child molestation in the second  
13 degree, which is a sexually violent offense under RCW 71.09.020(17). The comparability  
14 analysis starts with looking at the elements of the crime. *Morley*, 134 Wn.2d at 605. The crime  
15 of sexual abuse in the first degree that was in effect in Oregon when Hunter committed the crime  
16 on or between September 1, 1994, and February 16, 1995, is found at ORS 163.427.  
17 *See Exhibit F*, ORS 163.427, 1993 Edition. This is the same statute that is referenced in the  
18 Indictment and that Hunter was convicted of. *See Ex. B*. At the time Hunter committed sexual  
19 abuse in the first degree, it was defined in relevant part as:

- 20           (1) A person commits the crime of sexual abuse in the first degree when that person:  
21           (a) Subjects another person to sexual contact and:  
22           (A) The victim is less than 14 years of age; ...

23           Ex. F. At the time, Oregon law defined "sexual contact" as "any touching of the sexual or other  
24 intimate parts of a person or causing such person to touch the sexual or other intimate parts of  
25 the actor for the purpose of arousing or gratifying the sexual desire of either party." **Exhibit G**,  
26 ORS 163.305(6), 1993 Edition. This crime is comparable to Washington's child molestation in

1 the second degree. The elements of child molestation in the second degree when Hunter  
2 committed the Oregon crime were as follows:

3 A person is guilty of child molestation in the second degree when the person has,  
4 or knowingly causes another person under the age of eighteen to have, sexual  
5 contact with another who is at least twelve years old but less than fourteen years  
6 old and not married to the perpetrator and the perpetrator is at least thirty-six  
7 months older than the victim.

8 *See Exhibit H*, RCW 9A.44.086, Chapter 271, Laws of 1994 (Part III, Sec. 304). At the time,  
9 Washington law defined "sexual contact" as "any touching of the sexual or other intimate parts  
10 of a person done for the purpose of gratifying sexual desire of either party or a third party."  
11 Ex. H, RCW 9A.44.010(2), Chapter 271, Laws of 1994 (Part III, Sec. 302).

12 Although the elements of the Oregon and Washington offenses are substantially similar  
13 in that both statutes involve sexual contact and have comparable definitions of sexual contact  
14 and both statutes involve a victim under the age of 14, the statutes are not identical.  
15 The Washington statute requires that the defendant be at least 36 months older than the victim  
16 and that the defendant and victim are not married. Because the crime is defined more broadly in  
17 the Oregon statute, Hunter's conduct, as demonstrated by the language in the Indictment, may  
18 be considered in determining whether the conduct that he was convicted of falls within the more  
19 restricted scope of the Washington statute. *See Thiefaul*, 160 Wn.2d at 415; *see also Morley*,  
20 134 Wn.2d at 605-06. The Oregon Indictment to which Hunter pled "no contest" to and was  
21 convicted of states:

22 The said defendant, on or between September 1, 1994 and February 16, 1995, in  
23 the County of Multnomah, State of Oregon, did unlawfully and knowingly  
24 subject [S.T.] a person under the age of fourteen years, to sexual contact by  
25 touching her vaginal area, a sexual or intimate part of [S.T.], contrary to the  
26 Statutes in such cases made and provided and against the peace and dignity of the  
State of Oregon[.]

Ex. B, Ct. 6 of the Indictment. The Indictment includes Hunter's April 19, 1974 date of birth,  
which indicates that he was twenty years old at the time of the crime and therefore "at least

1 thirty-six months older” than S.T. who was “under the age of fourteen.” Ex. B. Also, S.T. was  
2 not married to Hunter because she was not of the legal age of consent in Oregon. *See* Ex. E.

3 Both statutes require that the victim be under the age of 14; however, the Washington  
4 statute states that the victim is “at least twelve years old but less than fourteen years old.” This  
5 difference does not affect the comparability analysis because the lower age criterion is not an  
6 essential element of the crime. *See State v. Goss*, 189 Wn. App. 571, 358 P.3d 436 (2015);  
7 *see also State v. Smith*, 122 Wn. App. 294, 93 P.3d 206 (2004). “The sole purpose of the ‘at least  
8 twelve’ language of the statute is to differentiate the lower degrees from the higher degrees of  
9 child molestation.” *Goss*, 189 Wn. App. at 580. “The lower age limit is not an essential element  
10 of the crime[.]” *Id.* Thus, the inclusion of the “at least twelve years old” language in the  
11 Washington statute does not mean that the elements are different or that Hunter’s conduct did  
12 not violate both the Washington and Oregon statutes where he had sexual contact with a victim  
13 under the age of fourteen. Because Hunter pled “no contest” to the Indictment, this Court can be  
14 sure that the Oregon court found him guilty of all of the elements as alleged in the Indictment.  
15 Those elements are factually comparable to the Washington crime of child molestation in the  
16 second degree. In other words, had Hunter committed those same Oregon acts in Washington  
17 State on or between September 1, 1994 and February 16, 1995, he could have been convicted of  
18 child molestation in the second degree. *See Morley*, 134 Wn.2d at 606. Thus, the Oregon crime  
19 of sexual abuse in the first degree is comparable to the Washington crime of child molestation  
20 in the second degree and is a sexually violent offense under RCW 71.09.020(17).

21 **B. RECENT OVERT ACT**

22 Due process requires the State to prove that an alleged sexually violent predator is both  
23 mentally ill and dangerous. *In re Det. of Marshall*, 156 Wn.2d 150, 157, 125 P.3d 111 (2005).  
24 Due process does not require the State to prove a “recent overt act” when, on the day a sexually  
25 violent predator petition is filed, an individual is incarcerated for a sexually violent offense or  
26

1 for an act that would qualify as a “recent overt act.” *Id.*<sup>2</sup> Instead, where the individual is  
2 incarcerated on the day the petition is filed, the trial court determines whether the confinement  
3 is for a sexually violent act or an act that qualifies as a recent overt act. *Id.* at 158.

4 Hunter is currently incarcerated as a result of his convictions for assault in the third  
5 degree with sexual motivation and failure to register as a sex offender, which are not sexually  
6 violent offenses under RCW 71.09.020(17). However, the acts for which Hunter is incarcerated  
7 for constitute a recent overt act. Petitioner will file a motion for a court ruling that the acts  
8 underlying Hunter’s convictions qualify as a “recent overt act” as a matter of law.

9 **1. Assault in the Third Degree with Sexual Motivation and Failure to Register**  
10 **as a Sex Offender, Grays Harbor County Cause No. 13-1-197-0**

11 On or about May 11, 2013, the Aberdeen Police were dispatched to a hotel after receiving  
12 a report that a man was dragging a heavily intoxicated woman under a bridge. Upon arrival,  
13 witnesses directed the officers to a trail behind the hotel. One witness reported that the woman  
14 appeared unresponsive as the male was dragging her down the sidewalk. Officers located a  
15 concealed camping spot and saw movement in a sleeping bag. An officer opened the sleeping  
16 bag and saw Hunter with an adult female, S.C.

17 S.C.’s shirt was pulled up, exposing her breasts, and her pants were unbuttoned and  
18 pulled down to the middle of her buttocks. Hunter’s hands were inside S.C.’s shirt. Hunter was  
19 reluctant to comply with the officer’s request to step out of the wooded area. Hunter initially  
20 gave a false name and false date of birth to the officer. Officers attempted to contact S.C., but  
21 she was unconscious. S.C. eventually regained consciousness and reported that she did not know  
22 Hunter and did not give anyone permission to have sexual contact with her. She was unaware  
23 that anyone had tried to have sexual relations with her.<sup>3</sup>

24  
25 <sup>2</sup> A “recent overt act” is defined as “any act, threat, or combination thereof that has either caused harm of  
26 a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who  
knows of the history and mental condition of the person engaging in the act or behaviors.” RCW 71.09.020(12).

<sup>3</sup> S.C. was unable to provide a written statement due to her condition.

1 The police interviewed Hunter, who reported that a female acquaintance asked him to  
2 take S.C. back to the campsite because she was intoxicated. Hunter reported that he carried S.C.  
3 because she was falling down. He claimed that her shirt kept coming up and exposing her breasts  
4 and that her pants were also falling down. He stated that they started to “fool around and get  
5 ready to have sex” when S.C. passed out and that he still had his hand on her breast when officers  
6 arrived. He claimed that he gave a false name and date of birth to the officers because he “felt  
7 intimidated.”

8 On May 14, 2013, S.C. went to the Grays Harbor Community Hospital for a sexual  
9 assault examination. The sexual assault nurse examiner took photographs of an abrasion on  
10 S.C.’s upper inner thigh. No other visible injuries were noted.

11 At the time of the assault, Hunter was on supervision in Oregon and had a warrant out  
12 for his arrest for a parole violation on a prior sexual assault. Hunter admitted to the police that  
13 he had been living in Grays Harbor since February 2013 and that he had not registered as a sex  
14 offender as required. He reported that he did not want anyone to know where he was.

15 On May 17, 2013, Hunter was charged with indecent liberties and failure to register as a  
16 sex offender. On September 30, 2013, Hunter pled guilty to an amended charge of assault in the  
17 third degree with sexual motivation (Ct. 1) and failure to register as a sex offender (Ct. 2). In a  
18 Victim Impact Statement, S.C. reported that Hunter threatened her with a knife during the  
19 incident. During a 2016 interview with Dr. Judd, Hunter confirmed that he used a knife to  
20 threaten S.C. and exploited her level of intoxication in order to commit the sexual assault.  
21 On November 18, 2013, the court sentenced Hunter to 60 months in prison on Ct. 1 and  
22 48 months in prison on Ct. 2 with 36 months of community custody. Hunter is currently  
23 incarcerated and due to be released on May 15, 2018.

1 **C. OTHER SEXUAL OFFENSES / FAILURE TO REGISTER**

2 **1. 1992 Sodomy in the First Degree (2 counts), Multnomah County Juvenile**  
3 **Court Oregon Cause No. 89-01-80113**

4 In 1988 or early 1999, 14-year-old Hunter repeatedly sexually assaulted his stepfather's  
5 two grandsons<sup>4</sup> who were approximately ages eleven and twelve at the time. Hunter repeatedly  
6 attempted anal intercourse with the two boys, forced them to perform oral sex on him, and  
7 threatened to beat up the boys if they resisted or reported what was occurring. The boys reported  
8 that Hunter fondled them and forced them to engage in anal sex. On April 17, 1992, 17-year-old  
9 Hunter was convicted of two counts of sodomy in the first degree in juvenile court. It appears  
10 that Hunter was sentenced to three years of probation.<sup>5</sup>

11 **2. 2009 Attempted Sexual Abuse in the First Degree, Deschutes County, State**  
12 **of Oregon Cause No. 09FE0527MS**

13 On or between December 11, 2003, and April 19, 2005, Hunter<sup>6</sup> sexually assaulted an  
14 adult female, R.M., who was incapable of consenting due to physical helplessness. In 2009,  
15 Hunter's probation officer requested that the Oregon State Police investigate this incident after  
16 Hunter admitted to fondling R.M.'s genitals while she was sleeping.

17 On December 11, 2003, Hunter was released from prison and placed on supervision.  
18 He moved in with his mother and stepfather. Hunter's step-nephew and his step-nephew's  
19 girlfriend, R.M., also resided at the residence. In February 2004, Hunter's mother discovered  
20 that Hunter had stolen revealing photographs of R.M. giving birth. Hunter subsequently admitted  
21 that he stole the photographs and used them as masturbatory material, along with pictures of  
22 children he had cut out of magazines. One evening, Hunter entered R.M.'s bedroom while she  
23 sleeping. As she slept, Hunter fondled her vagina over her clothing and masturbated to

24 <sup>4</sup> The victims were also Hunter's step-nephews.

25 <sup>5</sup> These convictions may constitute sexually violent offenses pursuant to RCW 71.09.020(17). However,  
26 to date, the State has not received any police reports or court records from the Multnomah County Juvenile Court  
regarding this incident. The information for these offenses is from various Presentence Investigations and a 1994  
psychiatric evaluation.

<sup>6</sup> Hunter was approximately age 29-31 at the time of the sexual assault.

1 | ejaculation. Hunter reported that R.M. never gave him permission to touch her. R.M. confirmed  
2 | that she was not a consenting participant to any sexual contact with Hunter.

3 |         In April 2009, Hunter was charged with sexual abuse in the first degree. In July 2009,  
4 | Hunter pled guilty to attempted sexual abuse in the first degree. On October 22, 2009, the court  
5 | sentenced Hunter to 40 months in prison and ordered that he complete a sex offender evaluation  
6 | and comply with any treatment recommendations.

7 |         **3. Failure to Register as a Sex Offender**

8 |         In addition to Hunter's 2013 conviction for failure to register as a sex offender, Hunter  
9 | was convicted on two other occasions of failing to register as a sex offender. In 2006, Hunter  
10 | was convicted of failure to report as a sex offender, a Class C felony, in Multnomah County,  
11 | Oregon Cause No. 060733924. The court sentenced Hunter to 60 days in jail and two years of  
12 | supervised probation. In 2008, Hunter was convicted of failure to register as a sex offender, a  
13 | class C felony, in Deschutes County, Oregon Cause No. 08FE0821AB. The court sentenced  
14 | Hunter to six months in jail and two years of post-prison supervision.

15 |                                   **II. SEX OFFENDER TREATMENT**

16 |         In 1991, Hunter was referred for sexual deviancy treatment after he disclosed deviant  
17 | pedophilic fantasies and several sexual offenses, including the sexual abuse of children, animals,  
18 | adults, and peers. At the time, Hunter had not been convicted of any sexual offenses.  
19 | He participated in treatment at Clackamas Adolescent Intervention Services between May and  
20 | September 1991 before being transferred to the Seider Residential Sex Offender Treatment  
21 | Program in Ontario, Oregon. He was terminated from this treatment program in May 1993 based  
22 | on his behavior and his refusal to cooperate with treatment.

23 |         In 1995, after Hunter pled guilty to unlawful sexual penetration in the first degree and  
24 | sexual abuse in the first degree, the Oregon court found probable cause to believe that Hunter  
25 | was a "sexually dangerous person" and ordered him to undergo a "sexually dangerous person"  
26 |

1 evaluation at Oregon State Hospital. Although the evaluator found that Hunter fit the definition  
2 of a sexually dangerous person, he found that Hunter was not amenable to treatment at the state  
3 hospital based on his long history of antisocial acting out and failure in various placements.  
4 The evaluator concluded that Hunter was not a fitting candidate for the program and  
5 recommended a prison sentence, which was subsequently imposed by the court.

6 Records indicate that Hunter has not benefitted from any of the sex offender treatment  
7 programs he has been minimally involved with over the years. Although records are sporadic,  
8 it appears that Hunter participated in some sex offender treatment in 2004. He initially entered  
9 sex offender treatment with Jon Schwecten on February 1, 2004, but was terminated from  
10 treatment less than two months later. He entered sex offender treatment with a different provider,  
11 Dr. Fred Saporito, on December 4, 2004, but was terminated within three months. Probation  
12 records from 2006 indicate that Hunter was so disruptive in sex offender treatment groups that  
13 he was not permitted to attend treatment. Hunter entered sex offender treatment with Lamont  
14 Boileau after his release from custody in January 2009, but was terminated from treatment three  
15 months later based on his numerous contradictions and lack of transparency. In January 2012,  
16 Hunter entered sex offender treatment with Dr. Maxine Hoggan, but was terminated three  
17 months later.

18 Hunter entered sex offender treatment in prison on two separate occasions while serving  
19 his sentence for the 2013 assault in the third degree with sexual motivation conviction. In 2015,  
20 after participating in treatment for only two and a half months, Hunter self-terminated from  
21 treatment because it was "too stressful." At the time, Hunter was masturbating "exclusively to  
22 thoughts of pre-pubescent boys and girls as well as thoughts about the victims." His treatment  
23 provider indicated that he did not present any treatment assignments and made minimal progress  
24 in addressing his risk factors. She noted that Hunter was unwilling to address issues related to  
25 his sexual offending. Hunter reentered sex offender treatment in February 2016. However, he  
26

1 was terminated from the program after three months for violating confidentiality rules.  
2 His treatment provider reported that he did not demonstrate sufficient progress in reducing his  
3 risk and that he was terminated from the program before completing any core assignments.  
4 Dr. Judd reported that Hunter remains an untreated sex offender.

### 5 III. SEXUALLY VIOLENT PREDATOR EVALUATION

6 Brian Judd, Ph.D., conducted an evaluation of Hunter at the request of the Washington  
7 State Department of Corrections End of Sentence Review Committee to determine whether Hunter  
8 meets the definition of a sexually violent predator as that term is defined in RCW 71.09.020(18).  
9 Dr. Judd is a licensed psychologist and certified sex offender treatment provider who is familiar  
10 with RCW 71.09 and has considerable expertise evaluating sex offenders, including individuals  
11 alleged to be sexually violent predators. A true and accurate copy of Dr. Judd's Curriculum Vitae  
12 is attached hereto as **Exhibit I**.

13 In conducting his evaluation, Dr. Judd reviewed more than 1,300 pages of records  
14 involving Hunter, including police reports, court records, psychological evaluations, records from  
15 the Department of Corrections, treatment reports, and medical records. Dr. Judd also interviewed  
16 Hunter on December 19, 2016 for approximately four hours at the Airway Heights Corrections  
17 Center. Dr. Judd summarized the material he considered and his opinions regarding Hunter in a  
18 written evaluation dated December 26, 2016. A true and accurate copy of this evaluation is attached  
19 as **Exhibit J**. As a result of this evaluation, Hunter was detained until his maximum release date.  
20 In order to provide the most current opinion possible, Dr. Judd submitted an updated addendum to  
21 the 2016 evaluation, which is dated April 16, 2018. A true and accurate copy of the addendum is  
22 attached as **Exhibit K**. As part of the updated evaluation, Dr. Judd reviewed approximately 200  
23 pages of additional discovery from the Department of Corrections. Dr. Judd also re-interviewed  
24 Hunter on March 30, 2018 for approximately 1.5 hours at the Airway Heights Corrections Center.

25 It is Dr. Judd's opinion that Hunter meets the criteria for civil commitment as a sexually  
26

1 violent predator. Dr. Judd diagnosed Hunter with the following disorders: Pedophilic Disorder,  
2 Nonexclusive type, Sexually attracted to both; Fetishistic Disorder, Nonliving objects, In a  
3 controlled environment;<sup>7</sup> Alcohol Use Disorder and Opioid Disorder, In a controlled environment;  
4 and Antisocial Personality Disorder. Pedophilic Disorder is characterized by recurrent, intense,  
5 sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a  
6 prepubescent child or children (generally age thirteen or younger) over a period of at least six  
7 months. The person must have either acted on these sexual urges or the sexual urges or fantasies  
8 must have caused marked distress or interpersonal difficulty. The person must be at least age  
9 sixteen and at least five years older than the child.

10 Dr. Judd indicated that Hunter has a history of sexual offending against prepubescent males  
11 and females and vulnerable adult females. Hunter acknowledged using threats of physical violence  
12 to enlist and maintain the cooperation of his child victims. He acknowledged a preference for pre-  
13 pubescent children, but has victimized sleeping, intoxicated, and mentally challenged females that  
14 he characterized as “petite and vulnerable.” While on community supervision in Oregon in 2007,  
15 Hunter intentionally placed himself in proximity to minor and adolescent females and males in  
16 violation of his conditions of release. Hunter reported that he frequently observed children in his  
17 preferred victim range (age 8 to 15) while in the community and that his paraphilic urges were so  
18 difficult to control that he went inside nearby restrooms and masturbated. Hunter stated that when  
19 he was terminated from sex offender treatment in 2015, 100 percent of his masturbatory fantasies  
20 were to pre-prepubescent children. During the 2016 interview, he admitted that his paraphilic urges  
21 remained “pretty strong” and that he continues to masturbate to pre-pubescent females  
22 approximately 50 percent of the time. Dr. Judd opined that, “There is no question that Mr. Hunter  
23 meets criteria for Pedophilic Disorder.” Dr. Judd opined that Hunter’s Pedophilic Disorder  
24

25 <sup>7</sup> This disorder involves the recurrent and intense sexual arousal from the use of nonliving objects as  
26 manifested by fantasies, urges, or behaviors. Hunter has a history of theft of women’s undergarments for  
masturbation purposes. In December 2016, Hunter admitted to persisting arousal to bras and panties as fetish  
objects.

1 constitutes a mental abnormality as that term is defined in RCW 71.09.020(18), which predisposes  
2 him to engage in predatory acts of sexual violence.

3 In determining whether Hunter is likely to engage in predatory acts of sexual violence,  
4 Dr. Judd conducted a risk assessment, which included the use of two actuarial instruments: the  
5 Static-99R and Violence Risk Appraisal Guide – Revised (VRAG-R). Hunter’s score of “9” on the  
6 Static-99R places him in the 100th percentile. Individuals with a similar score are expected to  
7 recidivate at a rate 7.32 times higher than the recidivism rate of the typical sex offender. Forty-four  
8 percent of individuals with scores similar to Hunter recidivated within five years of time at risk.  
9 Hunter’s score of “31” on the VRAG-R places him at the 95th percentile compared to the  
10 standardization sample. Seventy-six percent of individuals with a similar score recidivated at five  
11 years of time at risk and 87 percent recidivated at 12 years of time at risk. Dr. Judd also scored  
12 Hunter on the PCL-R. Categorically, individuals with scores of 30 and above are regarded as being  
13 psychopathic and at a significantly higher risk for violent and nonviolent recidivism. Scores can  
14 also be viewed dimensionally such that individuals with higher scores are at a relatively higher risk  
15 of violent recidivism compared to individuals obtaining lower scores. Hunter scored a “27” on the  
16 PCL-R placing him at the 71st percentile compared to North American male offenders and at the  
17 78th percentile compared to North American male forensic psychiatric patients. Dr. Judd opined  
18 that Hunter’s assessed level of psychopathy in conjunction with his pedophilic interests “denotes  
19 an exceptionally high risk for sexual recidivism due to the kindling effect of psychopathy and  
20 deviant sexual interests.”

21 During the December 2016 interview, Hunter told Dr. Judd that while he would prefer to  
22 offend against a child, he “would take the first opportunity that became available,” indicating that  
23 he would sexually assault a child or vulnerable adult female. Hunter estimated his risk of  
24 recidivism as “high” and expressed a desire to be civilly committed under the SVP statute.  
25 Hunter acknowledged that civil commitment would be in the community’s best interest and his  
26 best interest in order to “have a more stable environment to work on myself.” During the March

1 2018 interview, Hunter claimed that he no longer harbors paraphilic urges and is at minimal risk  
2 to reoffend. Although Hunter did not participate in any sex offender treatment after Dr. Judd's  
3 2016 interview, Hunter claimed that he took "a couple of classes" in prison that helped him redirect  
4 his thinking and that he now has the tools to think positively and make the right choices. Dr. Judd  
5 opined that Hunter's current self-report "is simply not credible due to his failure to participate in  
6 relevant programming."

7 In conclusion, Dr. Judd opined that Hunter's mental abnormality makes him likely to  
8 engage in predatory acts of sexual violence if not confined in a secure facility. Dr. Judd opined to  
9 a reasonable degree of psychological certainty that Hunter meets criteria as a sexually violent  
10 predator. Hunter is due to be released to the community on May 15, 2018.

11 Under penalty of perjury under the laws of the State of Washington, I certify that the  
12 foregoing is true and correct to the best of my knowledge.

13 RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of May, 2018.

14  
15 ROBERT W. FERGUSON  
16 Attorney General

17  
18 KRISTIE BARHAM, WSBA # 32764  
19 KELLY PARADIS, WSBA # 47175  
20 Assistant Attorneys General  
21 Attorneys for State of Washington  
22  
23  
24  
25  
26

# Exhibit A

# Chapter 163

1993 EDITION

## Offenses Against Persons

### HOMICIDE

- 163.005 Criminal homicide
- 163.095 "Aggravated murder" defined
- 163.103 Pleading, proof and stipulation regarding previous conviction element in aggravated murder case
- 163.105 Sentencing options for aggravated murder
- 163.115 Murder; affirmative defense to certain felony murders; sentence of life imprisonment required; minimum term
- 163.117 Aiding commission of suicide not murder
- 163.118 Manslaughter in the first degree
- 163.125 Manslaughter in the second degree
- 163.135 Extreme emotional disturbance as affirmative defense to murder; notice of expert testimony; right of state to psychiatric examination
- 163.145 Criminally negligent homicide
- 163.150 Sentencing for aggravated murder; proceedings; issues for jury; review by Supreme Court; effect of plea of guilty or no contest

### ASSAULT AND RELATED OFFENSES

- 163.160 Assault in the fourth degree
- 163.165 Assault in the third degree
- 163.175 Assault in the second degree
- 163.185 Assault in the first degree
- 163.190 Menacing
- 163.195 Recklessly endangering another person
- 163.197 Hazing
- 163.200 Criminal mistreatment in the second degree
- 163.205 Criminal mistreatment in the first degree
- 163.206 Application of ORS 163.200 and 163.205
- 163.208 Assaulting a public safety officer

### KIDNAPPING AND RELATED OFFENSES

- 163.215 Definitions for ORS 163.215 to 163.257
- 163.225 Kidnapping in the second degree
- 163.235 Kidnapping in the first degree
- 163.245 Custodial interference in the second degree
- 163.257 Custodial interference in the first degree

### COERCION

- 163.275 Coercion
- 163.285 Defense to coercion

### SEXUAL OFFENSES

- 163.305 Definitions
- 163.315 Incapacity to consent
- 163.325 Ignorance or mistake as a defense
- 163.345 Age as a defense in certain cases
- 163.355 Rape in the third degree
- 163.365 Rape in the second degree

- 163.375 Rape in the first degree
- 163.385 Sodomy in the third degree
- 163.395 Sodomy in the second degree
- 163.405 Sodomy in the first degree
- 163.408 Unlawful sexual penetration in the second degree
- 163.411 Unlawful sexual penetration in the first degree
- 163.412 Exceptions to sexual penetration with foreign object prohibition
- 163.415 Sexual abuse in the third degree
- 163.425 Sexual abuse in the second degree
- 163.427 Sexual abuse in the first degree
- 163.435 Contributing to the sexual delinquency of a minor
- 163.445 Sexual misconduct
- 163.465 Public indecency

### OFFENSES AGAINST FAMILY

- 163.505 Definitions for ORS 163.505 to 163.575
- 163.515 Bigamy
- 163.525 Incest
- 163.535 Abandonment of a child
- 163.545 Child neglect in the second degree
- 163.547 Child neglect in the first degree
- 163.555 Criminal nonsupport
- 163.565 Evidence of paternity; confidentiality between husband and wife not applicable; spouses competent and compellable witnesses
- 163.575 Endangering the welfare of a minor
- 163.580 Posting of signs concerning sale of smoking devices

### VISUAL RECORDING OF SEXUAL CONDUCT BY CHILDREN

- 163.665 Definitions for ORS 163.670 to 163.695
- 163.670 Using child in display of sexually explicit conduct
- 163.672 Possession of depiction of sexual conduct involving a child
- 163.673 Dealing in depictions of sexual conduct involving a child
- 163.676 Exemption from prosecution under ORS 163.673
- 163.677 Transporting child pornography into state
- 163.680 Paying for viewing sexual conduct involving a child
- 163.682 Exceptions to ORS 163.665 to 163.695
- 163.690 Lack of knowledge of age of child as affirmative defense
- 163.693 Failure to report child pornography
- 163.695 Forfeiture of materials and conveyances

### MISCELLANEOUS

- 163.705 Polygraph examination of victims in certain criminal cases prohibited

## CRIMES AND PUNISHMENTS

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### STALKING

- |   |   |
|---|---|
| <p>163.730 Definitions for ORS 163.730 to 163.750</p> <p>163.732 Stalking</p> <p>163.735 Officer's stalking protective order; issuing order; form</p> <p>163.738 Effect of officer's stalking protective order; contents; hearing; court's stalking protective order</p> <p>163.741 Service of order; entry of order into Law Enforcement Data System</p> <p>163.744 Initiation of action to obtain officer's stalking protective order; complaint form</p> <p>163.747 Violating officer's stalking protective order</p> <p>163.750 Violating court's stalking protective order</p> <p>163.753 Immunity of officer acting in good faith</p> | <p>Punishable offenses for multiple violations or victims, 161.062</p> <p>Reports of suspected criminal homicides, 181.580</p> <p>Sentencing, age and physical disability as factors to be considered, 137.085</p> <p style="text-align: center;">163.005 to 163.150</p> <p>Deaths to be reported to medical examiner, 146.100</p> <p style="text-align: center;">163.105</p> <p>Aggravated murder, death penalty, Const. Art. I §40</p> <p style="text-align: center;">163.150</p> <p>Aggravated murder, death penalty:</p> <p style="padding-left: 20px;">Stay of execution of sentences federal habeas corpus, 138.687</p> <p style="padding-left: 20px;">Stay of sentence, post-conviction relief, 138.685</p> <p style="text-align: center;">163.305 to 163.465</p> <p>Payment of costs for medical examination requested by law enforcement agency, 147.375</p> <p style="text-align: center;">163.732</p> <p>Court order or civil action, 30.866</p> |
|---|---|

### CROSS REFERENCES

- Classification of offenses, 161.505 to 161.585
- Criminal Code, definitions, 161.015, 161.085
- Minimum period of probation for certain offenses, 137.012

**163.411 Unlawful sexual penetration in the first degree.** (1) Except as permitted under ORS 163.412, a person commits the crime of unlawful sexual penetration in the

first degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and:

(a) The victim is subjected to forcible compulsion;

(b) The victim is under 12 years of age;  
or

(c) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

(2) Unlawful sexual penetration in the first degree is a Class A felony. [1981 c.549 §3; 1989 c.359 §6; 1991 c.386 §2]

Chapter 163

1995 EDITION

Offenses Against Persons

OFFENSES AGAINST PERSONS

CRIMES AND PUNISHMENTS

HOMICIDE

- 163.005 Criminal homicide
- 163.095 "Aggravated murder" defined
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- 163.160 Assault in the fourth degree
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- 163.190 Menacing
- 163.195 Recklessly endangering another person
- 163.197 Hazing

- 163.200 Criminal mistreatment in the second degree
- 163.205 Criminal mistreatment in the first degree
- 163.206 Application of ORS 163.200 and 163.205
- 163.208 Assaulting a public safety officer
- 163.211 Definitions for ORS 163.211 to 163.213
- 163.212 Unlawful use of an electrical stun gun, tear gas or mace in the second degree
- 163.213 Unlawful use of an electrical stun gun, tear gas or mace in the first degree

#### KIDNAPPING AND RELATED OFFENSES

- 163.215 Definitions for ORS 163.215 to 163.257
- 163.225 Kidnapping in the second degree
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- 163.555 Criminal nonsupport
- 163.565 Evidence of paternity; confidentiality between husband and wife not applicable; spouses competent and compellable witnesses
- 163.575 Endangering the welfare of a minor
- 163.577 Failing to supervise a child
- 163.580 Posting of signs concerning sale of smoking devices

#### VISUAL RECORDING OF SEXUAL CONDUCT BY CHILDREN

- 163.665 Definitions for ORS 163.670 to 163.695
- 163.670 Using child in display of sexually explicit conduct
- 163.676 Exemption from prosecution under ORS 163.684
- 163.682 Exceptions to ORS 163.665 to 163.695
- 163.684 Encouraging child sexual abuse in the first degree
- 163.686 Encouraging child sexual abuse in the second degree
- 163.687 Encouraging child sexual abuse in the third degree

**163.411 Unlawful sexual penetration in the first degree.** (1) Except as permitted under ORS 163.412, a person commits the crime of unlawful sexual penetration in the first degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and:

- (a) The victim is subjected to forcible compulsion;
- (b) The victim is under 12 years of age; or
- (c) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

(2) Unlawful sexual penetration in the first degree is a Class A felony. [1981 c.549 s.3; 1989 c.359 s.6; 1991 c.386 s.2]

# Exhibit B

Indictment Nbr 053 DA Unit UD GJ Room Nbr 728

In the Circuit Court of the State of Oregon  
for Multnomah County

STATE OF OREGON,

Plaintiff,

v

DAVID KYLE HUNTER

DOB: 04/19/1974

Defendant.

Court Nbr 95-04-33018  
DA Case 1058371  
Crime Report PP 95-16789

Indictment for Violation of

ORS 163.411 (1-2)  
ORS 163.427 (3-4,6)  
ORS 163.408 (5)

FILED IN JUDICIAL DISTRICT  
95 APR 18 PM 2:09

The above-named defendant is accused by the Grand Jury of Multnomah County, State of Oregon, by this indictment of crime(s) of: COUNT 1-2 - UNLAWFUL SEXUAL PENETRATION IN THE FIRST DEGREE, COUNT 3-4,6 - SEXUAL ABUSE IN THE FIRST DEGREE, COUNT 5 - UNLAWFUL SEXUAL PENETRATION IN THE SECOND DEGREE, committed as follows:

COUNT 1

UNLAWFUL SEXUAL PENETRATION IN THE FIRST DEGREE

The said defendant, on or between September 1, 1994 and February 16, 1995, in the County of Multnomah, State of Oregon, did unlawfully and knowingly penetrate the vagina of H [REDACTED] I [REDACTED] T [REDACTED], a person under the age of twelve years, with an object, contrary to the Statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

COUNT 2

UNLAWFUL SEXUAL PENETRATION IN THE FIRST DEGREE

The said defendant, on or between September 1, 1994 and February 16, 1995, in the County of Multnomah, State of Oregon, did unlawfully and knowingly penetrate the vagina of H [REDACTED] I [REDACTED] T [REDACTED], a person under the age of twelve years, with an object, contrary to the Statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

COUNT 3

SEXUAL ABUSE IN THE FIRST DEGREE

The said defendant, on or between September 1, 1994 and February 16, 1995, in the County of Multnomah, State of Oregon, did unlawfully and knowingly subject H [REDACTED] I [REDACTED] T [REDACTED], a person under the age of fourteen years, to sexual contact by touching her vaginal area, a sexual or intimate part of H [REDACTED] I [REDACTED] T [REDACTED], contrary to the Statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

COUNT 4

SEXUAL ABUSE IN THE FIRST DEGREE

The said defendant, on or between September 1, 1994 and February 16, 1995, in the County of Multnomah, State of Oregon, did unlawfully and knowingly subject H [REDACTED] I [REDACTED] T [REDACTED], a person under the age of fourteen years, to sexual contact by touching her vaginal area, a sexual or intimate part of H [REDACTED] I [REDACTED] T [REDACTED], contrary to the Statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

COUNT 5

UNLAWFUL SEXUAL PENETRATION IN THE SECOND DEGREE

APR 18 1995

ENTERED  
IN REGISTER BY JKT

D. Hunter 000090

Page: 2 Defendant: DAVID KYLE HUNTER Court: 95-04-33018

The said defendant, on or between September 1, 1994 and February 16, 1995, in the County of Multnomah, State of Oregon, did unlawfully and knowingly penetrate the vagina of S. [REDACTED] M. [REDACTED] T. [REDACTED], a person under the age of fourteen years, with an object other than the defendant's penis or mouth, contrary to the Statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

COUNT 6  
SEXUAL ABUSE IN THE FIRST DEGREE

The said defendant, on or between September 1, 1994 and February 16, 1995, in the County of Multnomah, State of Oregon, did unlawfully and knowingly subject S. [REDACTED] M. [REDACTED] T. [REDACTED] a person under the age of fourteen years, to sexual contact by touching her vaginal area, a sexual or intimate part of S. [REDACTED] M. [REDACTED] T. [REDACTED] contrary to the Statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

Dated at Portland, Oregon, in the county aforesaid, on APRIL 18, 1995.

Witnesses

Examined Before the Grand Jury  
CRAIG YOST  
H. [REDACTED] T. [REDACTED]  
S. [REDACTED] T. [REDACTED]  
GERALD GRAY  
KATHERINE GRAY  
BENNY A. HURLEY

A TRUE BILL

Donna J. Crawford  
/s/ DONNA J. CRAWFORD  
Foreman of the Grand Jury

MICHAEL D. SCHRUNK (67111)  
District Attorney  
Multnomah County, Oregon

By Steven A. Todd Deputy  
/s/ Steven A. Todd, OSB 81398

Security Amount \$50,000 + \$50,000 + \$20,000 + \$20,000 + \$20,000 + \$20,000  
Uniform Complaint

AFFIRMATIVE DECLARATION

The District Attorney hereby affirmatively declares for the record, as required by ORS 161.565, upon the date scheduled for the first appearance of the defendant, and before the court asks under ORS 135.020 how the defendant pleads to the charge(s), the State's intention that any misdemeanor charged herein proceed as a misdemeanor. COPIC OSB 89036/nw

In the Circuit/District Court of the State of Oregon  
for Multnomah County

STATE OF OREGON,

Plaintiff,

C 95-04-33018  
DA No. \_\_\_\_\_  
Citation No. \_\_\_\_\_

v.

DAVID HUNTER

Defendant.

PETITION TO PLEAD GUILTY/  
NO CONTEST AND WAIVER OF  
JURY TRIAL ENTERED

AUG 25 1995

The defendant represents to the Court:

1. My full true name is DAVID KYLE HUNTER,  
but I also am known as \_\_\_\_\_ IN REGISTER BY JKT  
2. I am 21 years of age. I have gone to school through 10TH GRADE.  
My physical and mental health are satisfactory. I am not under the influence of any drugs or intoxicants, except  
NONE

3. I understand my right to hire or have the Court appoint a lawyer to help me.  
(a) I am represented by: LAM CHAMBER  
(b) I choose to give up my right to a lawyer; I will represent myself: \_\_\_\_\_ (defendant's initials).

4. I have told my lawyer all the facts I know about the charge(s) against me. My lawyer has advised me of the nature of the charge(s) and the defenses, if any, that I have in this case. I am satisfied with the advice and help I have received from my lawyer.

5. I understand that I have the following rights: (A) the right to a jury trial; (B) the right to see, hear and cross-examine or question all witnesses who testify against me at trial; (C) the right to remain silent about all facts of the case; (D) the right to subpoena witnesses and evidence in my favor; (E) the right to have my lawyer assist me at trial; (F) the right to testify at trial; (G) the right to have the jury told, if I decide not to testify at trial, that they cannot hold that decision against me; and (H) the right to require the prosecutor to prove my guilt beyond a reasonable doubt.

6. I understand that I give up all of the rights listed in paragraph 5 when I plead guilty/no contest. I also understand that I give up: (A) any defenses I may have to the charge(s); (B) objections to evidence; and (C) challenges to the accusatory instrument.

7. I want to plead Guilty/No Contest to the charge(s) of  
CFI - UNLAWFUL SEXUAL PENETRATION 1  
CSA - SEX ABUSE I

8. I know that a No Contest Plea will result in a Guilty finding regarding the charge(s) listed in Paragraph 7.

9. I know that when I plead Guilty/No Contest to the charge(s) in paragraph 7, the maximum possible sentence is 30 years in (prison) (jail), and a fine with assessments totaling \$ 500,000.00, including a mandatory fine of \$ \_\_\_\_\_. I also know that the Court can impose a minimum sentence of 15. Further I know that these maximum and minimum sentences can be added to sentences in these other cases: JUV PAROLE

Finally, I know that my driver's license (can) (will) (cannot) be suspended for \_\_\_\_\_.

10. I understand that I might ( ) will not ( X ) be sentenced as a dangerous offender, which could increase each maximum sentence to 30 years, with a 15-year minimum.

11. I have been told that if my crime involved my use or threatened use of a firearm I can receive a mandatory minimum sentence without parole or work release for a period of \_\_\_\_\_.

12. I know that if I am not a United States citizen, my plea may result in my deportation from the USA, or denial of naturalization, or exclusion from future admission to the United States.

13. I know that this plea can affect probation or parole and any hearing I may have regarding probation or parole. If probation or parole is revoked, I know that the rest of the sentence in each of those cases could be imposed and executed, and could be added to any sentence in this case.

14. I know that the sentence is up to the Court to decide. The District Attorney may provide reports or other information if requested by the Court. I understand that the District Attorney will make the following recommendation to the Court about my sentence or about other pending charges. This recommendation is ( X ) is not ( ) made pursuant to ORS 135.432(2): DES CTS 2-5, OSH S.D. EVAL; IF ACCEPTED, PROBATION W. CONDITIONS, IF NOT, OPEN SENTENCE WITH 100 MONTH CAP, PSI

15-A. I plead Guilty because, in Multnomah County, Oregon, I did the following: \_\_\_\_\_

15-B. I plead No Contest because (A) I understand that a jury or judge could find me guilty of the charge(s), so I prefer to accept the plea offer (defendant's initials: \_\_\_\_\_). of (B): UNLAWFUL PENETRATION & SEX ABUSE

16. I declare that no government agents have made any threats or promises to me to make me enter this plea other than the District Attorney's recommendation set forth in Paragraph 14, except: \_\_\_\_\_

17. I am signing this plea petition and entering this plea voluntarily, intelligently, and knowingly.

8/23/95  
(Date)

David K Hunter  
(Defendant's Signature)

CERTIFICATE OF COUNSEL

I am the lawyer for the defendant and I certify:

1. I have read and explained fully to the defendant the allegations contained in the accusatory instrument(s). I believe defendant understands the charges and all possible defenses to them. I have explained alternatives and trial strategies to defendant.
- 2 I have explained to the defendant the maximum and minimum penalties that could be imposed for each charge and for all charges together.
3. The plea(s) offered by defendant is (are) justified by my understanding of the facts related to me.
4. To the best of my knowledge and belief, the declarations made by defendant in the foregoing petition are true and accurate.
5. Defendant's decision to enter the plea is made voluntarily, intelligently, and knowingly. I recommend that the Court accept the plea.

I have signed this certificate in the presence of the defendant and after full discussion of its contents with the defendant.

8/23/95  
(Date)

Kelly Clavin  
(Lawyer's Signature)

79024  
(Bar No.)

In the Circuit Court of the State of Oregon  
for Multnomah County

THE STATE OF OREGON,

Plaintiff,

No. C 95-04-33018 Cr  
DA 1658371

vs.  
DAVID Kyle Hunter

ORDER ENTERING PLEA OF GUILTY  
PURSUANT TO PETITION FILED

Residence and phone.

Defendant.

ENTERED  
AUG 25 1995  
IN REGISTER BY JKT

IT IS ORDERED that the following be entered of record:

Appearances: John Copic Dep. DA: KERRY CHIPMAN Def. Att.

() defendant's plea of ~~NOT GUILTY~~ NO CONTACT (\_\_\_) and arraignment (truly named in charging instrument, or as follows: \_\_\_)

() to UNLAW SEX PEN I as charged in CT 1  
SEX ABUSE I count, indictment, information, complaint CT 6

(\_\_\_) to the lesser, included offense of \_\_\_

() defendant's withdrawal of his former plea of Not Guilty and his Plea of ~~NOT GUILTY~~ GUILTY.

() this case continued pending receipt of a presentence investigation conducted by \_\_\_

() the Corrections Division: (\_\_\_) long form; () short form

(\_\_\_) previous report updated; must be received by \_\_\_

(\_\_\_) Diagnostic Center; must be received by \_\_\_

(\_\_\_) other \_\_\_

(\_\_\_) the following matters be continued pending disposition of the within case: (\_\_\_) indictment;

() count(s) 2, 3, 4, 5 of the indictment. (\_\_\_) other cases, Nos. \_\_\_

() this case continued for sentence to August 23, 1995  
(day, date and time)

Sept 29, 1995

(\_\_\_) the within matter be continued to a later date yet to be determined by the Court.

(\_\_\_) other \_\_\_

DATED this 23 day of August, 19 95.

Joseph Ceniceros  
JUDGE

DISTRIBUTION:

- Original: File
- Green: Def. Att.
- Yellow: Court
- Pink: DA
- Goldenrod: DA

73

SGL

**IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH**

STATE OF OREGON

Circuit Court Case Nbr: 95-04-33018

District Attorney Nbr: 1058371

v.

**DAVID KYLE HUNTER**

**JUDGMENT OF CONVICTION AND SENTENCE**

Date of proceeding: October 2, 1995  
Defense Attorney: CHIPMAN, KERRY  
District Attorney: WILLIAMS, BILL J

Reporter/Tape: KATIE BRADFORD  
Bar Nbr: 79024  
Bar Nbr: 90136

Defendant is in custody.

Defendant is convicted of the following offenses:

<u>Count</u>	<u>Offense</u>	<u>Date of Incident</u>
1	UNLAWFUL SEXUAL PENETRATION IN THE FIRST DEGREE	09/01/94-02/16/95
6	SEXUAL ABUSE IN THE FIRST DEGREE	08/01/94-02/28/95

Defendant's DOB: 04/19/1974

It is adjudged that defendant has been convicted on defendant's plea of: **no contest**  
Conviction Date: **08/23/95**

Counts 2,3,4,5 contained in the charging instrument in this case are hereby dismissed on the motion of the District Attorney in the interest of justice.

Defendant was advised of the right to appeal (ORS 135.020).

ENTERED  
OCT 5 1995  
IN REGISTER BY SB

95 OCT -5 AM 6:37  
JUDICIAL DISTRICT

SGL

**DISPOSITION ON COUNT 1****IT IS ORDERED THAT THE FOLLOWING SENTENCE IS IMPOSED:**

SGL grid coordinates are 10 and C.

Departure Reasons:

1) STIPULATION OF THE PARTIES

This sentence is a durational departure.

Sentence is imposed under ORS 137.635.

**IMPRISONMENT**

A term for **100 MONTHS**, and a period of post-prison supervision for **125 months**. If the defendant violates the conditions for post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment in accordance with the rules of the State SGL Board. Defendant is committed to the custody of the Oregon State Corrections Department.

**FINE** - defendant shall pay the fine, if any, listed in the money judgment.

**OTHER** - DNA TESTING PER ORS 137.076

SEX OFFENDER REGISTRATION PER ORS 181.518 & 181.519

SGL

**DISPOSITION ON COUNT 6****IT IS ORDERED THAT THE FOLLOWING SENTENCE IS IMPOSED:**

SGL grid coordinates are 8 and B.

Departure Reasons:

1) STIPULATION OF THE PARTIES

This sentence is a durational departure.

Sentence is imposed under ORS 137.635.

**IMPRISONMENT**

A term for **35 MONTHS**, and a period of post-prison supervision for **85 months**. If the defendant violates the conditions for post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment in accordance with the rules of the State SGL Board. Defendant is committed to the custody of the Oregon State Corrections Department.

The sentence to imprisonment is to run concurrently with COUNT 1.

**FINE** - defendant shall pay the fine, if any, listed in the money judgment.

**OTHER** - DNA TESTING PER ORS 137.076

SEX OFFENDER REGISTRATION PER ORS 181.518 & 181.519

SGL

### MONEY JUDGMENT ON COUNT 1

IT IS ADJUDGED THAT DEFENDANT PAY THE FOLLOWING OBLIGATIONS:

Judgment Creditor: STATE OF OREGON

Judgment Debtor: DEFENDANT

<u>Obligation:</u>	<u>Total Imposed</u>	<u>Waived</u>
* (1) Penalty Assessment (CIC)	\$	X
(2) Restitution (REST)	\$	
(3) Indigent Defense Recovery (IDRC)	\$	
(4) Fine (FINE)	\$	
* (5) BPST (BPAS)	\$	X
* (6) DUII Conviction (DMVC)	\$	X
* (7) DMV Records (MVRA)	\$	X
* (8) Jail Assessment (CJAS)	\$	X
(9) Other:		
<b>TOTAL MONEY JUDGMENT</b>	<b>\$</b>	

\*Unless a waiver is indicated, those fees and assessments marked are to be imposed administratively if the amount is left blank, and will be a condition of probation, and will not be subject to judgment docketing.

TERMS OF PAYMENT: The amount of the money judgment is:

Date Signed: \_\_\_\_\_

XXXXXXXXXXXXXXXXXXXXX  
\_\_\_\_\_  
Signature (Applies to all Counts)

See last page for signature

JOSEPH F. CENICEROS  
\_\_\_\_\_  
Typed or Printed Name of Judge

SGL

### MONEY JUDGMENT ON COUNT 6

IT IS ADJUDGED THAT DEFENDANT PAY THE FOLLOWING OBLIGATIONS:

Judgment Creditor: STATE OF OREGON

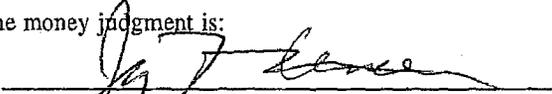
Judgment Debtor: DEFENDANT

<u>Obligation:</u>	<u>Total Imposed</u>	<u>Waived</u>
* (1) Penalty Assessment (CIC)	\$	x
(2) Restitution (REST)	\$	
(3) Indigent Defense Recovery (IDRC)	\$	
(4) Fine (FINE)	\$	
* (5) BPST (BPAS)	\$	x
* (6) DUII Conviction (DMVC)	\$	x
* (7) DMV Records (MVRA)	\$	x
* (8) Jail Assessment (CJAS)	\$	x
(9) Other:		
<b>TOTAL MONEY JUDGMENT</b>	<b>\$</b>	

\*Unless a waiver is indicated, those fees and assessments marked are to be imposed administratively if the amount is left blank, and will be a condition of probation, and will not be subject to judgment docketing.

TERMS OF PAYMENT: The amount of the money judgment is:

Date Signed: 10/4/95



Signature (Applies to all Counts)

JOSEPH F. CENICEROS

Typed or Printed Name of Judge

# Exhibit C

**RCW 9A.44.073**

**Rape of a child in the first degree.**

(1) A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least twenty-four months older than the victim.

(2) Rape of a child in the first degree is a class A felony.

[ 1988 c 145 § 2.]

**NOTES:**

**Effective date—Savings—Application—1988 c 145:** See notes following RCW 9A.44.010.

**NEW SECTION.** Sec. 3. Sections 1 and 2 of this act apply to all causes of action commenced on or after the effective date of this act, regardless of when the cause of action may have arisen. To this extent, sections 1 and 2 of this act apply retrospectively.

Passed the Senate March 7, 1988.

Passed the House March 3, 1988.

Approved by the Governor March 21, 1988.

Filed in Office of Secretary of State March 21, 1988.

---

## CHAPTER 145

[Substitute House Bill No. 1333]

### SEXUAL OFFENSES

AN ACT Relating to creating sexual offenses with age differentials between victims and perpetrators; amending RCW 9A.44.010, 9A.44.100, 9.94A.440, 9A.46.060, 9A.88.030, 13.40-.020, 13.40.110, 70.125.030, and 9A.44.030; reenacting and amending RCW 9.94A.030, 9.94A.320, and 9A.04.080; adding new sections to chapter 9A.44 RCW; creating new sections; repealing RCW 9A.44.070, 9A.44.080, and 9A.44.090; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION. Sec. 2. RAPE OF A CHILD IN THE FIRST DEGREE.** (1) A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least twenty-four months older than the victim.

(2) Rape of a child in the first degree is a class A felony.

# Exhibit D

**RCW 9A.44.010****Definitions.**

As used in this chapter:

(1) "Sexual intercourse" (a) has its ordinary meaning and occurs upon any penetration, however slight, and

(b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and

(c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

(2) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.

(3) "Married" means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and who has filed in an appropriate court for legal separation or for dissolution of his or her marriage.

(4) "Mental incapacity" is that condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse whether that condition is produced by illness, defect, the influence of a substance or from some other cause.

(5) "Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(6) "Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped.

(7) "Consent" means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(8) "Significant relationship" means a situation in which the perpetrator is:

(a) A person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors;

(b) A person who in the course of his or her employment supervises minors; or

(c) A person who provides welfare, health or residential assistance, personal care, or organized recreational activities to frail elders or vulnerable adults, including a provider, employee, temporary employee, volunteer, or independent contractor who supplies services to long-term care facilities licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW, but not including a consensual sexual partner.

(9) "Abuse of a supervisory position" means:

(a) To use a direct or indirect threat or promise to exercise authority to the detriment or benefit of a minor; or

(b) To exploit a significant relationship in order to obtain the consent of a minor.

(10) "Person with a developmental disability," for purposes of RCW 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a developmental disability as defined in RCW 71A.10.020.

(11) "Person with supervisory authority," for purposes of RCW 9A.44.050(1) (c) or (e) and 9A.44.100(1) (c) or (e), means any proprietor or employee of any public or private care or treatment facility who directly supervises developmentally disabled, mentally disordered, or chemically dependent persons at the facility.

(12) "Person with a mental disorder" for the purposes of RCW 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental disorder" as defined in RCW 71.05.020.

(13) "Person with a chemical dependency" for purposes of RCW 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically dependent" as defined in \*RCW 70.96A.020(4).

(14) "Health care provider" for purposes of RCW 9A.44.050 and 9A.44.100 means a person who is, holds himself or herself out to be, or provides services as if he or she were: (a) A member of a health care profession under chapter 18.130 RCW; or (b) registered under chapter 18.19 RCW or licensed under chapter 18.225 RCW, regardless of whether the health care provider is licensed, certified, or registered by the state.

(15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means the active delivery of professional services by a health care provider which the health care provider holds himself or herself out to be qualified to provide.

(16) "Frail elder or vulnerable adult" means a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself. "Frail elder or vulnerable adult" also includes a person found incapacitated under chapter 11.88 RCW, a person over eighteen years of age who has a developmental disability under chapter 71A.10 RCW, a person admitted to a long-term care facility that is licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and a person receiving services from a home health, hospice, or home care agency licensed or required to be licensed under chapter 70.127 RCW.

[ 2007 c 20 § 3; 2005 c 262 § 1; 2001 c 251 § 28. Prior: 1997 c 392 § 513; 1997 c 112 § 37; 1994 c 271 § 302; 1993 c 477 § 1; 1988 c 146 § 3; 1988 c 145 § 1; 1981 c 123 § 1; 1975 1st ex.s. c 14 § 1. Formerly RCW 9.79.140.]

#### NOTES:

**\*Reviser's note:** RCW 70.96A.020 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (5), effective April 1, 2016. RCW 70.96A.020 was amended by 2016 sp.s. c 29 § 101, changing subsection (5) to subsection (6); and subsequently repealed by 2016 sp.s. c 29 § 301, effective April 1, 2018.

**Effective date—2007 c 20:** See note following RCW 9A.44.050.

**Severability—2001 c 251:** See RCW 18.225.900.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Intent—1994 c 271:** "The legislature hereby reaffirms its desire to protect the children of Washington from sexual abuse and further reaffirms its condemnation of child sexual abuse

that takes the form of causing one child to engage in sexual contact with another child for the sexual gratification of the one causing such activities to take place." [ 1994 c 271 § 301.]

**Purpose—Severability—1994 c 271:** See notes following RCW 9A.28.020.

**Severability—Effective dates—1988 c 146:** See notes following RCW 9A.44.050.

**Effective date—1988 c 145:** "This act shall take effect July 1, 1988." [ 1988 c 145 § 26.]

**Savings—Application—1988 c 145:** "This act shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which is already in existence on July 1, 1988, and shall apply only to offenses committed on or after July 1, 1988." [ 1988 c 145 § 25.]





1 PART IV - DNA IDENTIFICATION . . . . . 9

2 PART V - TOXICOLOGIST AS WITNESS . . . . . 10

3 PART VI - RESTITUTION . . . . . 11

4 PART VII - BAIL JUMPING . . . . . 14

5 PART VIII - STALKING . . . . . 14

6 PART IX - DISCHARGE OF OFFENDERS . . . . . 21

7 PART X - SITING OF CORRECTIONAL FACILITIES . . . . . 21

8 PART XI - MISCELLANEOUS . . . . . 22

9 **PURPOSE**

10 NEW SECTION. **Sec. 1.** The purpose of this act is to make certain  
 11 technical corrections and correct oversights discovered only after  
 12 unanticipated circumstances have arisen. These changes are necessary  
 13 to give full expression to the original intent of the legislature.

14 **PART I - SENTENCING FOR ATTEMPTED MURDER**

15 **Sec. 101.** RCW 9A.28.020 and 1981 c 203 s 3 are each amended to  
 16 read as follows:

17 (1) A person is guilty of an attempt to commit crime if, with  
 18 intent to commit a specific crime, he does any act which is a  
 19 substantial step toward the commission of that crime.

20 (2) If the conduct in which a person engages otherwise constitutes  
 21 an attempt to commit a crime, it is no defense to a prosecution of such  
 22 attempt that the crime charged to have been attempted was, under the  
 23 attendant circumstances, factually or legally impossible of commission.

24 (3) An attempt to commit a crime is a:

25 (a) Class A felony when the crime attempted is murder in the first  
 26 degree, murder in the second degree, or arson in the first degree;

1 criminal investigation or the abuse or neglect of a minor child, he or  
2 she attempts to:

3 (a) Influence the testimony of that person; or

4 (b) Induce that person to elude legal process summoning him or her  
5 to testify; or

6 (c) Induce that person to absent himself or herself from such  
7 proceedings; or

8 (d) Induce that person not to report the information relevant to a  
9 criminal investigation or the abuse or neglect of a minor child, not to  
10 prosecute the crime or the abuse or neglect of a minor child, not to  
11 have the crime or the abuse or neglect of a minor child prosecuted, or  
12 not to give truthful or complete information relevant to a criminal  
13 investigation or the abuse or neglect of a minor child.

14 (2) "Threat" as used in this section means:

15 (a) To communicate, directly or indirectly, the intent immediately  
16 to use force against any person who is present at the time; or

17 (b) Threats as defined in RCW 9A.04.110(25).

18 (3) Intimidating a witness is a class B felony.

19 **Sec. 205.** RCW 9A.72.120 and 1982 1st ex.s. c 47 s 19 are each  
20 amended to read as follows:

21 (1) A person is guilty of tampering with a witness if he or she  
22 attempts to induce a witness or person he or she has reason to believe  
23 is about to be called as a witness in any official proceeding or a  
24 person whom he or she has reason to believe may have information  
25 relevant to a criminal investigation or the abuse or neglect of a minor  
26 child to:

27 (a) Testify falsely or, without right or privilege to do so, to  
28 withhold any testimony; or

29 (b) Absent himself or herself from such proceedings; or

30 (c) Withhold from a law enforcement agency information which he or  
31 she has relevant to a criminal investigation or the abuse or neglect of  
32 a minor child to the agency.

33 (2) Tampering with a witness is a class C felony.

34 **PART III - CHILD MOLESTATION**

35 NEW SECTION. **Sec. 301.** The legislature hereby reaffirms its  
36 desire to protect the children of Washington from sexual abuse and

1 further reaffirms its condemnation of child sexual abuse that takes the  
2 form of causing one child to engage in sexual contact with another  
3 child for the sexual gratification of the one causing such activities  
4 to take place.

5 **Sec. 302.** RCW 9A.44.010 and 1993 c 477 s 1 are each amended to  
6 read as follows:

7 As used in this chapter:

8 (1) "Sexual intercourse" (a) has its ordinary meaning and occurs  
9 upon any penetration, however slight, and

10 (b) Also means any penetration of the vagina or anus however  
11 slight, by an object, when committed on one person by another, whether  
12 such persons are of the same or opposite sex, except when such  
13 penetration is accomplished for medically recognized treatment or  
14 diagnostic purposes, and

15 (c) Also means any act of sexual contact between persons involving  
16 the sex organs of one person and the mouth or anus of another whether  
17 such persons are of the same or opposite sex.

18 (2) "Sexual contact" means any touching of the sexual or other  
19 intimate parts of a person done for the purpose of gratifying sexual  
20 desire of either party or a third party.

21 (3) "Married" means one who is legally married to another, but does  
22 not include a person who is living separate and apart from his or her  
23 spouse and who has filed in an appropriate court for legal separation  
24 or for dissolution of his or her marriage.

25 (4) "Mental incapacity" is that condition existing at the time of  
26 the offense which prevents a person from understanding the nature or  
27 consequences of the act of sexual intercourse whether that condition is  
28 produced by illness, defect, the influence of a substance or from some  
29 other cause.

30 (5) "Physically helpless" means a person who is unconscious or for  
31 any other reason is physically unable to communicate unwillingness to  
32 an act.

33 (6) "Forcible compulsion" means physical force which overcomes  
34 resistance, or a threat, express or implied, that places a person in  
35 fear of death or physical injury to herself or himself or another  
36 person, or in fear that she or he or another person will be kidnapped.

37 (7) "Consent" means that at the time of the act of sexual  
38 intercourse or sexual contact there are actual words or conduct

1 indicating freely given agreement to have sexual intercourse or sexual  
2 contact.

3 (8) "Significant relationship" means a situation in which the  
4 perpetrator is:

5 (a) A person who undertakes the responsibility, professionally or  
6 voluntarily, to provide education, health, welfare, or organized  
7 recreational activities principally for minors; or

8 (b) A person who in the course of his or her employment supervises  
9 minors.

10 (9) "Abuse of a supervisory position" means a direct or indirect  
11 threat or promise to use authority to the detriment or benefit of a  
12 minor.

13 (10) "Developmentally disabled," for purposes of RCW  
14 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a  
15 developmental disability as defined in RCW 71A.10.020.

16 (11) "Person with supervisory authority," for purposes of RCW  
17 9A.44.050(1)(c) or (e) and 9A.44.100(1)(c) or (e), means any  
18 proprietor or employee of any public or private care or treatment  
19 facility who directly supervises developmentally disabled, mentally  
20 disordered, or chemically dependent persons at the facility.

21 (12) "Mentally disordered person" for the purposes of RCW  
22 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental  
23 disorder" as defined in RCW 71.05.020(2).

24 (13) "Chemically dependent person" for purposes of RCW  
25 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically  
26 dependent" as defined in RCW 70.96A.020(4).

27 (14) "Health care provider" for purposes of RCW 9A.44.050 and  
28 9A.44.100 means a person who is, holds himself or herself out to be, or  
29 provides services as if he or she were: (a) A member of a health care  
30 profession under chapter 18.130 RCW; or (b) registered or certified  
31 under chapter 18.19 RCW, regardless of whether the health care provider  
32 is licensed, certified, or registered by the state.

33 (15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means  
34 the active delivery of professional services by a health care provider  
35 which the health care provider holds himself or herself out to be  
36 qualified to provide.

37 **Sec. 303.** RCW 9A.44.083 and 1990 c 3 s 902 are each amended to  
38 read as follows:

Passed the Senate March 9, 1994.  
Passed the House March 9, 1994.  
Approved by the Governor April 1, 1994.  
Filed in Office of Secretary of State April 1, 1994.

# Exhibit E

# TITLE 11

## DOMESTIC RELATIONS

- Chapter 106. Marriage  
107. Dissolution, Annulment; Separation; Mediation and Conciliation Services  
108. Husband and Wife Relationship; Property Rights; Family Violence; Premarital Agreements  
109. Rights and Relationships of Parent and Child  
110. Enforcement of Support

### Chapter 106

1993 EDITION

#### Marriage

- |         |  |         |   |
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| 106.020 | Prohibited and void marriages  | 106.990 | Penalties   |
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| 106.041 | Necessity for marriage license; application  |         |   |
| 106.045 | Additional fee for marriage license; purpose   |         |   |
| 106.050 | Proof of age; when affidavit prerequisite to the issuance of a marriage license            |         |   |
| 106.060 | Consent of parent or guardian if party under 18  |         |   |
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| 106.079 | False statements in records required by ORS 106.041 prohibited                             |         |   |
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| 106.110 | Unlawful issue of marriage license prohibited  |         |   |
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| 106.130 | Marriage by person acting in capacity of person authorized                                 |         |   |
| 106.140 | Solemnizing marriage unlawfully or without authority                                       |         |   |
| 106.150 | Form of solemnization; witnesses; solemnization before congregation                        |         |   |
| 106.160 | Delivery of marriage certificate   |         |   |
| 106.165 | Form of certificate; preparation   |         |   |
| 106.170 | Report of marriage to county clerk   |         |   |
| 106.180 | Filing and recording report  |         |   |
| 106.190 | Legitimacy of issue of certain imperfect marriages   |         |   |
| 106.210 | Certain marriages validated; children of such marriages declared legitimate                |         |   |

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Community property, disposition at death, 112.705 to 112.776  
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Paternity, establishing, 109.070  
Person considered spouse for purposes of intestate succession, 112.017  
Presumption of lawful marriage, 109.070  
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- 106.010  
Certain agreements upon consideration of marriage to be in writing, 41.580, 108.700 to 108.740
- 106.020  
Determination of validity of marriages, Ch. 107  
Effective date of decrees dissolving marriage, 107.115
- 106.030  
Delegation of certain powers by parent or guardian, power to consent to marriage or adoption prohibited, 126.030

## DOMESTIC RELATIONS

---

106.060

Consent to marriage of child within jurisdiction of juvenile court, 419B.376, 419C.558

Delegation of certain powers by parent or guardian, power to consent to marriage or adoption prohibited, 12B.030

106.077

Fees relating to marriage records, 205.320

106.081

Fetal alcohol syndrome information, 431.825

106.180

County clerk to report marriages to Vital Statistics Unit, 432.405

106.180

Certain children declared legitimate, 107.142

Children of void marriages legitimate, 109.070

106.210

Validity of certain marriages, 107.142

**106.010 Marriage as civil contract; age of parties.** Marriage is a civil contract entered into in person by males at least 17 years of age and females at least 17 years of age, who are otherwise capable, and solemnized in accordance with ORS 106.150. [Amended by 1965 c.422 §1; 1975 c.583 §1]

## Chapter 106

TITLE 11  
DOMESTIC RELATIONS

- |         |   |
|---------|---|
| Chapter | 106. Marriage   |
|         | 107. Dissolution, Annulment; Separation; Mediation and Conciliation Services                |
|         | 108. Husband and Wife Relationship; Property Rights; Family Violence; Premarital Agreements |
|         | 109. Rights and Relationships of Parent and Child   |
|         | 110. Uniform Interstate Family Support Act  |

## Chapter 106

## 1995 EDITION

## Marriage

## MARRIAGE

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- |                       |   |
|-----------------------|---|
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| 106.030               | Voidable marriages  |
| 106.041               | Necessity for marriage license; application                                     |
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| 106.050               | Proof of age; when affidavit prerequisite to the issuance of a marriage license |
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| 106.077               | Issuance of marriage license by county clerk; waiting period; exception         |
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- 106.160 Delivery of marriage certificate
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**106.010 Marriage as civil contract; age of parties.** Marriage is a civil contract entered into in person by males at least 17 years of age and females at least 17 years of age, who are otherwise capable, and solemnized in accordance with ORS 106.150. [Amended by 1965 c.422 s.1; 1975 c.583 s.1]

# Exhibit F

# Chapter 163

1993 EDITION

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- 163.115 Murder; affirmative defense to certain felony murders; sentence of life imprisonment required; minimum term
- 163.117 Aiding commission of suicide not murder
- 163.118 Manslaughter in the first degree
- 163.125 Manslaughter in the second degree
- 163.135 Extreme emotional disturbance as affirmative defense to murder; notice of expert testimony; right of state to psychiatric examination
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- 163.175 Assault in the second degree
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- 163.197 Hazing
- 163.200 Criminal mistreatment in the second degree
- 163.205 Criminal mistreatment in the first degree
- 163.206 Application of ORS 163.200 and 163.205
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- 163.215 Definitions for ORS 163.215 to 163.257
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- 163.275 Coercion
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### SEXUAL OFFENSES

- 163.305 Definitions
- 163.315 Incapacity to consent
- 163.325 Ignorance or mistake as a defense
- 163.345 Age as a defense in certain cases
- 163.355 Rape in the third degree
- 163.365 Rape in the second degree

- 163.375 Rape in the first degree
- 163.385 Sodomy in the third degree
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- 163.405 Sodomy in the first degree
- 163.408 Unlawful sexual penetration in the second degree
- 163.411 Unlawful sexual penetration in the first degree
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- 163.415 Sexual abuse in the third degree
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### OFFENSES AGAINST FAMILY

- 163.505 Definitions for ORS 163.505 to 163.575
- 163.515 Bigamy
- 163.525 Incest
- 163.535 Abandonment of a child
- 163.545 Child neglect in the second degree
- 163.547 Child neglect in the first degree
- 163.555 Criminal nonsupport
- 163.565 Evidence of paternity; confidentiality between husband and wife not applicable; spouses competent and compellable witnesses
- 163.575 Endangering the welfare of a minor
- 163.580 Posting of signs concerning sale of smoking devices

### VISUAL RECORDING OF SEXUAL CONDUCT BY CHILDREN

- 163.665 Definitions for ORS 163.670 to 163.695
- 163.670 Using child in display of sexually explicit conduct
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- 163.676 Exemption from prosecution under ORS 163.673
- 163.677 Transporting child pornography into state
- 163.680 Paying for viewing sexual conduct involving a child
- 163.682 Exceptions to ORS 163.665 to 163.695
- 163.690 Lack of knowledge of age of child as affirmative defense
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- 163.695 Forfeiture of materials and conveyances

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## CRIMES AND PUNISHMENTS

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### STALKING

- |   |   |
|---|---|
| <p>163.730 Definitions for ORS 163.730 to 163.750</p> <p>163.732 Stalking</p> <p>163.735 Officer's stalking protective order; issuing order; form</p> <p>163.738 Effect of officer's stalking protective order; contents; hearing; court's stalking protective order</p> <p>163.741 Service of order; entry of order into Law Enforcement Data System</p> <p>163.744 Initiation of action to obtain officer's stalking protective order; complaint form</p> <p>163.747 Violating officer's stalking protective order</p> <p>163.750 Violating court's stalking protective order</p> <p>163.753 Immunity of officer acting in good faith</p> | <p>Punishable offenses for multiple violations or victims, 161.062</p> <p>Reports of suspected criminal homicides, 181.580</p> <p>Sentencing, age and physical disability as factors to be considered, 137.085</p> <p style="text-align: center;">163.005 to 163.150</p> <p>Deaths to be reported to medical examiner, 146.100</p> <p style="text-align: center;">163.105</p> <p>Aggravated murder, death penalty, Const. Art. I §40</p> <p style="text-align: center;">163.150</p> <p>Aggravated murder, death penalty:</p> <p style="padding-left: 20px;">Stay of execution of sentences federal habeas corpus, 138.687</p> <p style="padding-left: 20px;">Stay of sentence, post-conviction relief, 138.685</p> <p style="text-align: center;">163.305 to 163.465</p> <p>Payment of costs for medical examination requested by law enforcement agency, 147.375</p> <p style="text-align: center;">163.732</p> <p>Court order or civil action, 30.866</p> |
|---|---|

### CROSS REFERENCES

- Classification of offenses, 161.505 to 161.585
- Criminal Code, definitions, 161.015, 161.085
- Minimum period of probation for certain offenses, 137.012

(a) Subjects another person to sexual contact and:

(A) The victim is less than 14 years of age; or

(B) The victim is subjected to forcible compulsion by the actor; or

(b) Intentionally causes a person under 18 years of age to touch or contact the mouth, anus or sex organs of an animal for the purpose of arousing or gratifying the sexual desire of a person.

(2) Sexual abuse in the first degree is a Class B felony. [1991 c.830 §3]

Note: 163.427 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 163 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

163.430 [Amended by 1967 c.359 §683; repealed by 1971 c.743 §432]

**163.427 Sexual abuse in the first degree.** (1) A person commits the crime of sexual abuse in the first degree when that person:

# Exhibit G

# Chapter 163

1993 EDITION

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- 163.735 Officer's stalking protective order; issuing order; form
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- 163.747 Violating officer's stalking protective order
- 163.750 Violating court's stalking protective order
- 163.753 Immunity of officer acting in good faith

### CROSS REFERENCES

- Classification of offenses, 161.505 to 161.585
- Criminal Code, definitions, 161.015, 161.085
- Minimum period of probation for certain offenses, 137.012

- Punishable offenses for multiple violations or victims, 161.062
- Reports of suspected criminal homicides, 181.580
- Sentencing, age and physical disability as factors to be considered, 137.085
- 163.005 to 163.150
- Deaths to be reported to medical examiner, 146.100
- 163.105
- Aggravated murder, death penalty, Const. Art. I §40
- 163.150
- Aggravated murder, death penalty:
  - Stay of execution of sentences federal habeas corpus, 138.687
  - Stay of sentence, post-conviction relief, 138.685
- 163.305 to 163.465
- Payment of costs for medical examination requested by law enforcement agency, 147.375
- 163.732
- Court order or civil action, 30.866

will immediately or in the future be kidnapped.

(3) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appraising the nature of the conduct of the person.

(4) "Mentally incapacitated" means that a person is rendered incapable of appraising or controlling the conduct of the person at the time of the alleged offense because of the influence of a controlled or other intoxicating substance administered to the person without the consent of the person or because of any other act committed upon the person without the consent of the person.

(5) "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(6) "Sexual contact" means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(7) "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight; emission is not required. [1971 c.743 §104; 1975 c.461 §1; 1977 c.844 §1; 1979 c.744 §7; 1983 c.500 §1]

Note: Legislative Counsel has substituted "chapter 743, Oregon Laws 1971," for the words "this Act" in section 104, chapter 743, Oregon Laws 1971, compiled as 163.305. Specific ORS references have not been substituted, pursuant to 173.160. The range of sections for which substitutions would be required yields ORS references too numerous to be useful. These sections may be determined by referring to the 1971 Comparative Section Table located in Volume 15 of ORS.

163.310 [Renumbered 166.180]

## SEXUAL OFFENSES

**163.305 Definitions.** As used in chapter 743, Oregon Laws 1971, unless the context requires otherwise:

(1) "Deviate sexual intercourse" means sexual conduct between persons consisting of contact between the sex organs of one person and the mouth or anus of another.

(2) "Forcible compulsion" means physical force that overcomes earnest resistance; or a threat, express or implied, that places a person in fear of immediate or future death or physical injury to self or another person, or in fear that the person or another person

# Exhibit H

**RCW 9A.44.086**

**Child molestation in the second degree.**

(1) A person is guilty of child molestation in the second degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Child molestation in the second degree is a class B felony.

[ 1994 c 271 § 304; 1988 c 145 § 6.]

**NOTES:**

**Intent—1994 c 271:** See note following RCW 9A.44.010.

**Purpose—Severability—1994 c 271:** See notes following RCW 9A.28.020.

**Effective date—Savings—Application—1988 c 145:** See notes following RCW 9A.44.010.

**RCW 9A.44.010****Definitions.**

As used in this chapter:

- (1) "Sexual intercourse" (a) has its ordinary meaning and occurs upon any penetration, however slight, and  
(b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and  
(c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.
- (2) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.
- (3) "Married" means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and who has filed in an appropriate court for legal separation or for dissolution of his or her marriage.
- (4) "Mental incapacity" is that condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse whether that condition is produced by illness, defect, the influence of a substance or from some other cause.
- (5) "Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.
- (6) "Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped.
- (7) "Consent" means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.
- (8) "Significant relationship" means a situation in which the perpetrator is:
  - (a) A person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors;
  - (b) A person who in the course of his or her employment supervises minors; or
  - (c) A person who provides welfare, health or residential assistance, personal care, or organized recreational activities to frail elders or vulnerable adults, including a provider, employee, temporary employee, volunteer, or independent contractor who supplies services to long-term care facilities licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW, but not including a consensual sexual partner.
- (9) "Abuse of a supervisory position" means:
  - (a) To use a direct or indirect threat or promise to exercise authority to the detriment or benefit of a minor; or
  - (b) To exploit a significant relationship in order to obtain the consent of a minor.

(10) "Person with a developmental disability," for purposes of RCW 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a developmental disability as defined in RCW 71A.10.020.

(11) "Person with supervisory authority," for purposes of RCW 9A.44.050(1) (c) or (e) and 9A.44.100(1) (c) or (e), means any proprietor or employee of any public or private care or treatment facility who directly supervises developmentally disabled, mentally disordered, or chemically dependent persons at the facility.

(12) "Person with a mental disorder" for the purposes of RCW 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental disorder" as defined in RCW 71.05.020.

(13) "Person with a chemical dependency" for purposes of RCW 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically dependent" as defined in \*RCW 70.96A.020(4).

(14) "Health care provider" for purposes of RCW 9A.44.050 and 9A.44.100 means a person who is, holds himself or herself out to be, or provides services as if he or she were: (a) A member of a health care profession under chapter 18.130 RCW; or (b) registered under chapter 18.19 RCW or licensed under chapter 18.225 RCW, regardless of whether the health care provider is licensed, certified, or registered by the state.

(15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means the active delivery of professional services by a health care provider which the health care provider holds himself or herself out to be qualified to provide.

(16) "Frail elder or vulnerable adult" means a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself. "Frail elder or vulnerable adult" also includes a person found incapacitated under chapter 11.88 RCW, a person over eighteen years of age who has a developmental disability under chapter 71A.10 RCW, a person admitted to a long-term care facility that is licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and a person receiving services from a home health, hospice, or home care agency licensed or required to be licensed under chapter 70.127 RCW.

[ 2007 c 20 § 3; 2005 c 262 § 1; 2001 c 251 § 28. Prior: 1997 c 392 § 513; 1997 c 112 § 37; 1994 c 271 § 302; 1993 c 477 § 1; 1988 c 146 § 3; 1988 c 145 § 1; 1981 c 123 § 1; 1975 1st ex.s. c 14 § 1. Formerly RCW 9.79.140.]

#### NOTES:

**\*Reviser's note:** RCW 70.96A.020 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (5), effective April 1, 2016. RCW 70.96A.020 was amended by 2016 sp.s. c 29 § 101, changing subsection (5) to subsection (6); and subsequently repealed by 2016 sp.s. c 29 § 301, effective April 1, 2018.

**Effective date—2007 c 20:** See note following RCW 9A.44.050.

**Severability—2001 c 251:** See RCW 18.225.900.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Intent—1994 c 271:** "The legislature hereby reaffirms its desire to protect the children of Washington from sexual abuse and further reaffirms its condemnation of child sexual abuse

that takes the form of causing one child to engage in sexual contact with another child for the sexual gratification of the one causing such activities to take place." [ 1994 c 271 § 301.]

**Purpose—Severability—1994 c 271:** See notes following RCW 9A.28.020.

**Severability—Effective dates—1988 c 146:** See notes following RCW 9A.44.050.

**Effective date—1988 c 145:** "This act shall take effect July 1, 1988." [ 1988 c 145 § 26.]

**Savings—Application—1988 c 145:** "This act shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which is already in existence on July 1, 1988, and shall apply only to offenses committed on or after July 1, 1988." [ 1988 c 145 § 25.]

CERTIFICATION OF ENROLLMENT  
SUBSTITUTE SENATE BILL 6007

Chapter 271, Laws of 1994

53rd Legislature  
1994 Regular Session

CRIMES--CLARIFICATION AND TECHNICAL CORRECTIONS

EFFECTIVE DATE: 6/9/94 - Except Section 1001 which takes effect  
7/1/94

Passed by the Senate March 9, 1994  
YEAS 45 NAYS 0

JOEL PRITCHARD

President of the Senate

Passed by the House March 9, 1994  
YEAS 96 NAYS 0

BRIAN EBERSOLE

Speaker of the  
House of Representatives

Approved April 1, 1994

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6007** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

Secretary

FILED

April 1, 1994 - 2:19 p.m.

Secretary of State  
State of Washington



1 PART IV - DNA IDENTIFICATION . . . . . 9

2 PART V - TOXICOLOGIST AS WITNESS . . . . . 10

3 PART VI - RESTITUTION . . . . . 11

4 PART VII - BAIL JUMPING . . . . . 14

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6 PART IX - DISCHARGE OF OFFENDERS . . . . . 21

7 PART X - SITING OF CORRECTIONAL FACILITIES . . . . . 21

8 PART XI - MISCELLANEOUS . . . . . 22

9 **PURPOSE**

10 NEW SECTION. **Sec. 1.** The purpose of this act is to make certain  
 11 technical corrections and correct oversights discovered only after  
 12 unanticipated circumstances have arisen. These changes are necessary  
 13 to give full expression to the original intent of the legislature.

14 **PART I - SENTENCING FOR ATTEMPTED MURDER**

15 **Sec. 101.** RCW 9A.28.020 and 1981 c 203 s 3 are each amended to  
 16 read as follows:

17 (1) A person is guilty of an attempt to commit crime if, with  
 18 intent to commit a specific crime, he does any act which is a  
 19 substantial step toward the commission of that crime.

20 (2) If the conduct in which a person engages otherwise constitutes  
 21 an attempt to commit a crime, it is no defense to a prosecution of such  
 22 attempt that the crime charged to have been attempted was, under the  
 23 attendant circumstances, factually or legally impossible of commission.

24 (3) An attempt to commit a crime is a:

25 (a) Class A felony when the crime attempted is murder in the first  
 26 degree, murder in the second degree, or arson in the first degree;

1 further reaffirms its condemnation of child sexual abuse that takes the  
2 form of causing one child to engage in sexual contact with another  
3 child for the sexual gratification of the one causing such activities  
4 to take place.

5 **Sec. 302.** RCW 9A.44.010 and 1993 c 477 s 1 are each amended to  
6 read as follows:

7 As used in this chapter:

8 (1) "Sexual intercourse" (a) has its ordinary meaning and occurs  
9 upon any penetration, however slight, and

10 (b) Also means any penetration of the vagina or anus however  
11 slight, by an object, when committed on one person by another, whether  
12 such persons are of the same or opposite sex, except when such  
13 penetration is accomplished for medically recognized treatment or  
14 diagnostic purposes, and

15 (c) Also means any act of sexual contact between persons involving  
16 the sex organs of one person and the mouth or anus of another whether  
17 such persons are of the same or opposite sex.

18 (2) "Sexual contact" means any touching of the sexual or other  
19 intimate parts of a person done for the purpose of gratifying sexual  
20 desire of either party or a third party.

21 (3) "Married" means one who is legally married to another, but does  
22 not include a person who is living separate and apart from his or her  
23 spouse and who has filed in an appropriate court for legal separation  
24 or for dissolution of his or her marriage.

25 (4) "Mental incapacity" is that condition existing at the time of  
26 the offense which prevents a person from understanding the nature or  
27 consequences of the act of sexual intercourse whether that condition is  
28 produced by illness, defect, the influence of a substance or from some  
29 other cause.

30 (5) "Physically helpless" means a person who is unconscious or for  
31 any other reason is physically unable to communicate unwillingness to  
32 an act.

33 (6) "Forcible compulsion" means physical force which overcomes  
34 resistance, or a threat, express or implied, that places a person in  
35 fear of death or physical injury to herself or himself or another  
36 person, or in fear that she or he or another person will be kidnapped.

37 (7) "Consent" means that at the time of the act of sexual  
38 intercourse or sexual contact there are actual words or conduct

1 indicating freely given agreement to have sexual intercourse or sexual  
2 contact.

3 (8) "Significant relationship" means a situation in which the  
4 perpetrator is:

5 (a) A person who undertakes the responsibility, professionally or  
6 voluntarily, to provide education, health, welfare, or organized  
7 recreational activities principally for minors; or

8 (b) A person who in the course of his or her employment supervises  
9 minors.

10 (9) "Abuse of a supervisory position" means a direct or indirect  
11 threat or promise to use authority to the detriment or benefit of a  
12 minor.

13 (10) "Developmentally disabled," for purposes of RCW  
14 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a  
15 developmental disability as defined in RCW 71A.10.020.

16 (11) "Person with supervisory authority," for purposes of RCW  
17 9A.44.050(1)(c) or (e) and 9A.44.100(1)(c) or (e), means any  
18 proprietor or employee of any public or private care or treatment  
19 facility who directly supervises developmentally disabled, mentally  
20 disordered, or chemically dependent persons at the facility.

21 (12) "Mentally disordered person" for the purposes of RCW  
22 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental  
23 disorder" as defined in RCW 71.05.020(2).

24 (13) "Chemically dependent person" for purposes of RCW  
25 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically  
26 dependent" as defined in RCW 70.96A.020(4).

27 (14) "Health care provider" for purposes of RCW 9A.44.050 and  
28 9A.44.100 means a person who is, holds himself or herself out to be, or  
29 provides services as if he or she were: (a) A member of a health care  
30 profession under chapter 18.130 RCW; or (b) registered or certified  
31 under chapter 18.19 RCW, regardless of whether the health care provider  
32 is licensed, certified, or registered by the state.

33 (15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means  
34 the active delivery of professional services by a health care provider  
35 which the health care provider holds himself or herself out to be  
36 qualified to provide.

7       **Sec. 304.** RCW 9A.44.086 and 1988 c 145 s 6 are each amended to  
8 read as follows:

9       (1) A person is guilty of child molestation in the second degree  
10 when the person has, or knowingly causes another person under the age  
11 of eighteen to have, sexual contact with another who is at least twelve  
12 years old but less than fourteen years old and not married to the  
13 perpetrator and the perpetrator is at least thirty-six months older  
14 than the victim.

15       (2) Child molestation in the second degree is a class B felony.

Passed the Senate March 9, 1994.  
Passed the House March 9, 1994.  
Approved by the Governor April 1, 1994.  
Filed in Office of Secretary of State April 1, 1994.

# Exhibit I

**BRIAN W. JUDD, Ph.D., P.C.**  
**501 Columbia NW, Suite A**  
**Olympia, WA 98501**  
**360.352.5351**  
**Fax 360.352.5357**

**CURRICULUM VITAE**

**04/18**

**EDUCATION:**

Kansas State University	BS	Psychology/Anthropology	1980
University of Chicago	MS	Social Science	1983
University of Houston	MA	Psychology	1987
University of Houston	Ph.D.	Psychology	1989

**MASTER'S THESIS:** Topography of the 40 Hertz Evoked Potential in the Auditory and Visual Modalities

**DOCTORAL DISSERTATION:** Lateralization of Language in Traumatically Brain Injured Children

Jan. 1986 - July 1988  
Clinical Internship in the Department of Psychiatry, University of Texas Medical School, Houston, Texas, and The Mental Health Section, Department of Pediatrics, The University of Texas M.D. Anderson Hospital and Tumor Institute, Houston, Texas. Internship program coordinated through the Clinical Neuropsychology Program at the University of Houston by Jack Fletcher, Ph.D.

**EXPERIENCE:**

Sept. 1983 - Jan. 1984  
Clinical Practicum, Division of Neuropsychology, Medical Center Del Oro Hospital, Houston, TX

*A Professional Corporation*  
*Licensed Psychologist*  
*Certified Sex Offender Treatment Provider*  
*Clinical & Forensic Consultation & Assessment*

## JUDD CURRICULUM VITAE

04/18

2

Jan. 1984 - Sept. 1984	Clinical and Research Practicum, Transitional Learning Community, Galveston, TX
Sept. 1984 - May 1985	Clinical Practicum, Department of Psychology, Veterans Administration Medical Center, Houston, TX
Sept. 1984 - Sept. 1986	Research Associate, Regional Cerebral Blood Flow Laboratory, Department of Neurology, Baylor College of Medicine, Houston, TX
July 1988 - May 1989	Consultation & Assessment, Larry Pollock, Ph.D. and Associates, and HCA Medical Center Hospital, Houston, TX
May 1989 - March 1991	Coordinator of Outpatient Neuropsychology, Larry Pollock, Ph.D. and Associates, and HCA Medical Center Hospital, Houston, TX
March 1991- Oct. 1992	Staff Neuropsychologist New Medico Community Re-Entry Services of WA, Mountlake Terrace, WA
Oct. 1992 – January 2001	Psychological Consultant, Office of Disability Insurance, Renton, WA
January 1993 - Present	Private Practice, Olympia, WA
April 1993 - January 1998	Contract Neuropsychologist, Rehab w/o Walls Inc., Seattle, WA
March 1994 – 2000	Court Psychologist, West Seattle Psychiatric Hospital, Seattle, WA
May 1994 – November 2002	Affiliate Sex Offender Treatment Provider, State of Washington
June 1994 – January 2001	Contract Neuropsychologist, Green Mountain Rehabilitation Medicine, Bremerton, WA
January 1996 – January 2001	Court Psychologist, Harborview Hospital, Seattle, WA
January 1996 – May 2002	Court Psychologist, Snohomish County Evaluation and Treatment Facility and Steven's Hospital, Snohomish County, WA
January 1999 – Present	Contract Psychologist, Special Commitment Center, Steilacoom, WA

November 2002 – Present                      Certified Sex Offender Treatment Provider, State of Washington.  
April 2004 – May 2005                      Contract Psychologist, Office of Disability Insurance, Olympia, WA.  
August 2013 – Present                      Member, Pierce County Forensic Panel, Pierce County, WA.  
August 2014 – Present                      Member, Thurston County Forensic Panel, Thurston County, WA

**PROFESSIONAL AFFILIATIONS:**

**Member:**

**American Psychological Association**  
**American Psychology/Law Society**  
**Association for the Treatment of Sexual Abusers (ATSA)**  
**Washington Association for the Treatment of Sexual Abusers**  
**Association for Applied Psychophysiology and Biofeedback**

**BIBLIOGRAPHY:**

**Published Articles in Peer Reviewed Journals:**

Sinnott, E.R., Judd, B.W., Rissman, K., & Harvey, W.M. (1980). Temporal patterns of drug abuse by heroin addicts. International Journal of Addictions, *15*, 1241-1248

Sinnott, E.R., Judd, B.W., & Olson M.A. (1983). Food, drugs and alcohol: A common temporal pattern of use. Perceptual and Motor Skills, *57* 37-39.

Rogers, R.D., Meyer, J.S., Judd, B.W., & Mortel, K.F. (1985). Abstention from cigarette smoking improves cerebral perfusion among elderly chronic smokers. Journal of the American Medical Association, *253*, 2970-2974. French Edition JAMA, *10*, 947-950.

Rogers, R.L., Meyer, J.S., Mortel, K.F. Mahurin, R.K., Judd, B.W. (1986). Decreased cerebral blood flow precedes multiinfarct dementia, but follows senile dementia of Alzheimer's type. Neurology, *36*, 1-6.

Meyer, J.S., Rogers, R.L., Mortel, K.F. & Judd, B.W. (1987). Hyperlipidemia is a risk factor for decreased cerebral perfusion and stroke. Archives of Neurology, *44*, 418-422.

Meyer, J.S., Judd, B.W., Tawaklna, T., Rogers, R.L., & Mortel, K.F. (1986). Improved cognition after control of risk factors for multi-infarct dementia. Journal of the American Medical Association, *265*, 2203-2209. French edition JAMA, Supplement Neuro-Psychiatrie, *11*, 27-34.

Judd, B.W., Meyer, J.S., Rogers, R.L., Gandhi, S., Tanahashi, N., Mortel, K.F., and Tawaklna, T. (1986). Cognitive performance correlates with cerebrovascular impairments in multi-infarct dementia. Journal of the American Geriatric Society, *34*, 355-360.

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Meyer, J.S., Rogers, R.L., Judd, B.W., Mortel, K.F., & Simms, P. (1988). Cognition and blood-flow fluctuate together in multi-infarct dementia. Stroke, *19*, 163-169.

Copeland, D.R., Dowell, R.E., Fletcher, J.M., Sullivan, M.P., Jaffe, N., Cangir, A., Frankel, L.S. & Judd, B.W. (1988). Neuropsychological test performance of pediatric cancer patients at diagnosis and one year later. Journal of Pediatric Psychology, *13*,(2), 183-186.

Dowell, R.E., Jr., Copeland, D.R., & Judd, B.W. (1989). Neuropsychological effects of chemotherapeutic agents. Journal of Developmental Neuropsychology, *5*, (1). 17-24.

**Abstracts in Peer Reviewed Journals:**

Rogers, R.L., Meyer, J.S., Judd, B.W., & Mortel, K.F. (1985). Abstention from cigarette smoking improves cerebral perfusion among elderly chronic smokers. Modern Medicine of Canada.

Judd, B.W., Meyer, J.S., Rogers, R.L., Gandhi, S., Tanahashi, N., Mortel, K.F., & Takwala, T. (1986). Cognitive performance correlates with cerebrovascular impairments in multi-infarct dementia. Geriatric Digest, *7*, 19-20.

Meyer, J.S., Judd, B.W., & Rogers, R.L., (1986). Cognitive performance fluctuates in multi-infarct dementia. Neurology (supplement) *1*, 36.

Meyer, J.S., Judd, B.W., & Rogers, R.L., & Mortel, K.F. (1986). Improved condition after control of risk factors in multi-infarct dementia. Annals of Neurology, *20*, 158.

Meyer, J.S., Judd, B.W., Rogers, R.L., & Mortel, K.F. (1987). Cognition fluctuates in multi-infarct dementia. Stroke, *18*, 297.

Meyer, J.S., Rogers, R.L., Judd, B.W., & Mortel, K.F. (1987). Cognitive performance and cerebral blood flow fluctuate in multi-infarct dementia. American Neurological Association, 112th Meeting, 37.

Judd, B.W., Dowell, R.E., Jr., & Copeland, D.R. (1987). Neuropsychological performance in an untreated brain tumor population: Implications for a taxonomy. Journal of Clinical and Experimental Neuropsychology, *10*, (1) 45.

Dowell, R., Copeland, D. & Judd, B.W. (1987). Anterograde amnesia following diencephalic tumors in children. Journal of Clinical and Experimental Neuropsychology, *10*, (1), 1718.

Ewing-Cobbs, L., Judd, B.W., & Miner, M.E. (1990). Lexical retrieval and intellectual function following traumatic brain injury in children. Journal of Clinical and Experimental Neuropsychology, *12*, (1), 104.

Judd, B.W., Ewing-Cobbs, L., Papanicolaou, A.C., Fletcher, J.M., & Miner, M.D. (1990). Lateralization of language following traumatic brain injury in children. Journal of Clinical and Experimental Neuropsychology, *12*, (1), 104.

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**Book Chapters:**

Meyer, J.S., Judd, B.W., Rogers, R.L. & Mortel, K.F. (1988). Control of hypertension, abstinence from smoking, and surgical revascularization procedures improve cognition in different categories of multi-infarct dementia. In *Cerebral Vascular Diseases, 6*, World Federation of Neurology 13th Salzburg Conference, International Conference Series, Excerpta Medica, Amsterdam.

**PRESENTATIONS:**

Schrock, B., Thompson, N., & Judd, B.W. Changes in cognitive functioning in head injury following non-acute rehabilitation. Poster presentation at the International Neuropsychological Society, San Diego, CA, February, 1985.

Spydell, J.D., & Judd, B.W. Topography of 40 Hz evoked potential in the auditory modality. Poster presentation at the American EEG Society, Orlando, FL, October, 1985.

Meyer, J.W., & Judd, B.W. Cognitive performance correlates with cerebrovascular impairment in multi-infarct dementia. Platform presentation at the Congress of Neurology, New Orleans, LA, May, 1986.

Meyer, J.S., Judd, B.W., Rogers, R.L., & Mortel, K.F. Improved cognition after control of risk factors in multi-infarct dementia. Poster presentation at the American Neurological Association, Boston, MA, October, 1986.

Judd, B.W., Dowell, R.E., Jr., & Copeland, D.R. Neuropsychological performance in an untreated brain tumor population: Implications for a taxonomy. Poster presentation at the International Neuropsychological Society, New Orleans, LA, January 1988.

Dowell, R., Copeland, D., & Judd, B.W. Anterograde amnesia following diencephalic tumors in children. Poster presentation at the International Neuropsychological Society, New Orleans, LA, January 1988.

Ewing-Cobbs, L., Judd, B.W., & Miner, M.E. Lexical retrieval and intellectual function following traumatic brain injury in children. Platform presentation at the International Neuropsychological Society, Kissimmee, FL, February, 1990.

Judd, B.W., Ewing-Cobbs, L., Papanicolaou, A.C., Fletcher, J.M., & Miner, M.E. Lateralization of language following traumatic brain injury in children. Poster presentation at the International Neuropsychological Society, Kissimmee, FL, February, 1990.

Hart, S.D., Judd, B.W., & Boer, D.P. Actuarial risk assessment of sexually violent recidivism. Platform presentation to the Association for the Treatment of Sexual Abusers, Chicago, IL, November, 1996.  
Judd, B.W. Use of structured clinical techniques in evaluating risk of violent recidivism. Presentation to the Region III Parole Clinic, Los Angeles County, Los Angeles, CA, March, 1997.

Judd, B.W. Actuarial assessment of sexually violent recidivism. Presentation to the Los Angeles Roundtable On Sexual Offending, Los Angeles, CA, March, 1997.

## **JUDD CURRICULUM VITAE**

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**04/18**

Judd, B.W., What's New in Neuropsychology? Invited presentation to the Washington State Trial Lawyers Association, Seattle, WA, May, 1997.

Judd, B.W., & Hart, S.D. Actuarial and Clinical Risk Assessment of Violent Recidivism. Platform Presentation to the American Academy of Forensic Sciences, San Francisco, CA, February, 1998.

Judd, B.W. Neuropsychological Indices Associated with Domestic Abuse: Description of Preliminary Relationship. Invited presentation to the Kitsap County Bar Association, Port Orchard, WA, April, 1998.

Judd, B.W. Assessment of Domestic Abuse Recidivism. Presentation to the Region III Parole Clinic, Los Angeles County, Los Angeles, CA, September, 1998.

Judd, B.W. Actuarial and Clinical Risk Assessment of Violent Recidivism. Invited Presentation to Seattle Forensic Institute, Seattle, WA, October, 1998.

Judd, B.W. Efficacy of Treatment with Sex Offenders. Invited Presentation to Seattle Forensic Institute, Seattle, WA November, 2000.

Judd, B.W. Assessment of Child and Adolescent Psychopathy. Presentation to Jefferson County Department of Juvenile Services, Pt. Townsend, WA, March, 2001.

Judd, B. W. Long Term Psychological Vulnerabilities and Recidivism. Presentation to the King County Prosecuting Attorney and the Office of the Attorney General, Seattle, WA, March, 2012.

Judd, B. W. Paraphilic Coercive Disorder. Presentation to the King County Prosecuting Attorney and the Office of the Attorney General, Seattle, WA, March, 2012.

Judd, B. W. Integration of Psychological Need into Actuarial Risk Assessment. Presentation to the Washington Association for the Treatment of Sexual Abusers Fall Retreat, Chelan, WA, September 2012.

Judd, B. W. (co-presenter). The Violence Risk Appraisal Guide – Revised (VRAG-R). Application to Sex Offenders. Association for the Treatment of Sexual Abusers Annual Conference, San Diego, CA, November 2014.

Judd, B. W. (co-presenter). The Violence Risk Appraisal Guide –Revised (VRAG-R), Application to Sex Offenders. Association for the Treatment of Sexual Abusers Annual Conference, Montreal, CA, October 2015.

Judd, B. W. Recidivism Amongst Child Molesters: A Review of Research. Children's Justice Conference, Spokane, WA, May 2016.

Judd, B. W. (co-presenter). The Violence Risk Appraisal Guide –Revised (VRAG-R). Western State Hospital, Steilacoom, WA, September 2016.

Judd, B. W. (co-presenter). The Violence Risk Appraisal Guide –Revised (VRAG-R), Application to Sex Offenders. Association for the Treatment of Sexual Abusers Annual Conference, Orlando, FL, November 2016.

Judd, B. W. The Violence Risk Appraisal Guide – Revised (VRAG-R), Application to Sex Offenders. Washington Association for the Treatment of Sexual Abusers, Olympia, WA, December, 2017.

Judd, B. W. Violence and Mental Illness. Invited presentation to the Office of the King County Prosecuting Attorney, Seattle, WA, March, 2018.

**SELECTED CONTINUING EDUCATION SEMINARS:**

The Battered Spouse Syndrome as a Criminal Defense	03/93
Battered Woman and Rape Trauma Syndrome as Forensic Issues	03/94
Forensic Evaluations and the MMPI-2	03/94
Forensic Evaluations and Forensic Applications of the MMPI and MMPI-2	05/94
Conference on Understanding the Anti-Social Personality	06/94
Detection of Distortion, Deception, and Malingering in the Witness, Victim, Defendant and Patient	11/94
The Ethics of Forensic Practice: Law, Ethics, and Professional Practice	11/94
Criminal Forensic Assessment: Exculpatory and Mitigating Defenses	01/95
Risk Assessment: Implications for Evaluation, Intervention and Decision-Making	01/95
Diagnostic and Structured Interviewing: Applications to Forensic Evaluations	01/95
Ethical Issues in Medicolegal Consultations	02/95
Neuropsychology in a Psychiatric Setting	02/95
Working Memory: An Interface Between Brain Organization and Cognition	02/95
Personal Injury Evaluation: Ethics, Practice and Case Law	02/95
The Role of the Psychologist in Death Penalty Litigation	02/95
Sexual Violence: Perpetrators & Victims	03/95
Practical Legal Research Techniques for Forensic Psychologists	03/95
Forensic Assessment of Juveniles	03/95
Forensic Neuropsychological Assessment	03/95
WSOSA Conference on Risk Assessment and Risk Management	05/96
Advanced Workshop on Application of the PCL-R	05/96

**04/18**

Criminal Responsibility Assessment: A Practical Guide	04/97
Mental Health Law Update	04/97
The Psychopathic Personality	04/97
Assessment of Violence Potential	04/97
Sexual Offender Profiling	12/98
Risk Assessment of Sexual Offenders	12/98
Assessment of Violent Juvenile Offenders	01/99
Childhood Trauma: Forensic Psychological Issues and Applications	01/99
Ethical Issues for the Forensic Practitioner	01/00
Assessment of Workplace Violence	01/00
Role of the Forensic Psychologist in Death Penalty Litigation	01/00
Sex Offender Re-Offense Risk Assessment	09/00
Assessing Psychopathy with the Hare Psychopathy Checklist – Revised	02/02
Assessing Violence Risk	02/02
Sexually Abusive Youth	02/02
Washington Association For The Treatment of Sexual Abusers – Spring Evaluation and Research Conference	02/04
Washington Association For The Treatment of Sexual Abusers – Spring Evaluation and Research Conference	02/05
Association For The Treatment of Sexual Abusers – Annual Conference, Salt Lake City, Utah. Adult Risk Assessment Track	11/05
Washington Association For The Treatment of Sexual Abusers – Spring Evaluation and Research Conference	02/06
Association For the Treatment of Sexual Abusers – Annual Conference, Chicago, Illinois.	09/06
Washington Association For The Treatment of Sexual Abusers – Spring Evaluation and Research Conference	02/08
Washington Association For the Treatment of Sexual Abusers – Spring	02/09

**JUDD CURRICULUM VITAE**

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## Evaluation and Research Conference

Association for the Treatment of Sexual Abusers - Annual Conference, Dallas, Texas	10/09
Washington Association For the Treatment of Sexual Abusers - Spring Evaluation and Research Conference	02/10
Association for the Treatment of Sexual Abusers - Annual Conference, Phoenix, Arizona	10/10
Washington Association For the Treatment of Sexual Abusers - Spring Evaluation and Research Conference	02/11
Association for the Treatment of Sexual Abusers - Annual Conference, Toronto, CN	11/11
Washington Association for the Treatment of Sexual Abusers – Spring Evaluation and Research Conference	02/12
Washington Association for the Treatment of Sexual Abusers – Fall Retreat	09/12
Association for the Treatment of Sexual Abusers – Annual Conference, Denver, CO	10/12
Washington Association for the Treatment of Sexual Abusers – Spring Evaluation and Research Conference	02/13
Washington Association for the Treatment of Sexual Abusers – Fall Retreat	10/13
Association for the Treatment of Sexual Abusers – Annual Conference, Chicago, IL	11/13
American Academy of Forensic Psychology – Comprehensive Assessment of Feigning in Forensic Settings, Ft. Lauderdale, FL	11/13
American Academy of Forensic Psychology – Challenges to Diagnostic Accuracy in Forensic Assessment, Ft. Lauderdale, FL	11/13
American Academy of Forensic Psychology – The MMPI-2-RF: An Advanced Workshop For Forensic Psychologists, Ft. Lauderdale, FL	11/13
American Academy of Forensic Psychology – Insanity Defense Evaluations, Ft. Lauderdale, FL	11/13
American Academy of Forensic Psychology – Assessment of Competency to Stand Trial Ft. Lauderdale, FL	11/13
Washington Association for the Treatment of Sexual Abusers – Spring Evaluation and Research Conference	02/14
Washington Association for the Treatment of Sexual Abusers – Fall Retreat, Manson, WA	10/14

**JUDD CURRICULUM VITAE**

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Association for the Treatment of Sexual Abusers Annual Conference, San Diego, CA	10/14
Washington Association for the Treatment of Sexual Abusers – Spring Evaluation and Research Conference	03/15
Washington Association for the Treatment of Sexual Abusers – Spring Retreat, Manson WA	06/15
Association for the Treatment of Sexual Abusers Annual Conference, Montreal, CA	10/15
Washington Association for the Treatment of Sexual Abusers – Spring Evaluation and Research Conference	03/16
American Academy of Forensic Psychology Annual Conference, San Diego, CA	03/16
Association for the Treatment of Sexual Abusers Annual Conference, Orlando, FL	11/16
Washington Association for the Treatment of Sexual Abusers – Spring Evaluation and Research Conference	02/17
4 Day Professional EEG/Neurofeedback Certificate Program, Mill Valley, CA	03/17
3 Day Professional Quantitative Electroencephalography Program, Mill Valley, CA	03/17
Assessing Psychopathy with the PCL-R	05/17
WATSA Retreat & Training, Manson, WA	05/17
5 Day Professional Biofeedback Certification Program, Las Vegas, NV	08/17
4 Day Professional EEG/Neurofeedback Certificate Program, Las Vegas, NV	08/17
The Neuroanatomy & Neurophysiology of Brain & Behavior, Burbank, CA	10/17
Association for the Treatment of Sexual Abusers Annual Conference, Kansas City, MO	10/17
Advances in Trauma Treatment: Trauma, Memory, and Restoration, Portland, OR	02/18
The Duty to Protect: Ethical, Legal and Professional Considerations, Seattle, WA	04/18
What You Should Know: Psychopharmacology for Psychologists, Seattle, WA	04/18

**TESTIMONY:**

Qualified as an expert in: Superior Court, State of Washington  
Federal District Court

**AREAS OF ESTABLISHED COMPETENCY:**

- 1) Neuropsychological and Emotional Sequelae of Traumatic Head Injury
- 2) Civil Commitment - RCW 71.05
- 3) Assessment of Violence Risk and Risk of Recidivism
- 4) Juvenile Declines
- 5) Sexual Deviancy
- 6) Diminished Capacity
- 7) Competency To Stand Trial
- 8) Not Guilty By Reason of Insanity
- 9) Civil Commitment of Sexually Violent Predators – RCW 71.09

# Exhibit J

**Brian W. Judd, Ph.D., P.C.**  
501 Columbia NW, Suite A  
Olympia, WA 98501  
360.352.5351  
Fax 360 352.5357

**PSYCHOSEXUAL EVALUATION**

**NAME:** David Hunter  
**DOB:** 4/19/74  
**EDUCATION:** 11<sup>th</sup> Grade  
**OCCUPATION:** Unemployed  
**JURISDICTION:** Grays Harbor Superior Court  
**CAUSE NO.:** 13-1-197-0  
**EVALUATOR:** Brian W. Judd, Ph.D.  
**DATE OF REPORT:** 12/26/16

**REASON FOR REFERRAL:**

Mr. David Hunter a 42 year old male with a history of hands-on offending against pre-pubescent and adult females, and minor males. He was referred by the Department of Corrections End of Sentence Review Committee for consideration of filing as a "*sexually violent predator*" pursuant to RCW 71.09.020(18).

For purposes of the current evaluation I was provided with 1334 pages of discovery. Mr. Hunter was interviewed on 12/19/16 for approximately 4.0 hours at the Airway Heights Correction Center in Airway Heights, WA.

**RECORDS REVIEWED:**

The following records were reviewed and relied upon in the preparation of this report:

- 1) Incident Report for Case # 93-113233, dated 12/15/93, 0032-0034.
- 2) Oregon Department of Corrections Presentence Investigation Report authored by Mr. Barry Renshaw, dated 5/6/94, 0052-0062.
- 3) *State of Oregon v. Hunter, David K.* Violation of Probation for Case # 93-12-38513, dated 10/2/95, 0063.
- 4) Psychiatric Evaluation authored by Barry Maletzky, MD, dated 10/7/94, 0064-0068.
- 5) Multnomah County Department of Community Corrections Presentence Investigation authored by Mr. Barry Renshaw, dated 9/20/95, 0110-0124.
- 6) *State of Oregon v. David Kyle Hunter* Judgment of Conviction and Sentence for Cause # 95-04-33018, dated 8/23/95, 0128-0131.
- 7) Deschutes County Sheriff's Office Offense Report – 1 Supplementals [sic] on File for Case # 04-10-64429, dated 8/1/04, 0138-0140.
- 8) *State of Oregon v. David K. Hunter* Judgment of Conviction and Order of Sentence/Probation for Case # MI05-721, dated 4/26/05, 0142-0143.

*A Professional Corporation  
Licensed Psychologist  
Clinical & Forensic Consultation & Assessment*

**D. Hunter 001518**

- 9) *State of Oregon v. David K. Hunter* Judgment of Conviction and Order of Sentence/Probation for Case # MI04-2143, dated 6/26/06, 0144-0145.
- 10) Oregon State Police Incident Report for Case # 369594, dated 7/20/06, 0146-0150.
- 11) Oregon State Police Custody Report for Incident # 07352531, dated 9/11/07, 0151-0159.
- 12) *State of Oregon vs. David Kyle Hunter* Judgment of Conviction for Case # 07FE1306AB, dated 10/18/07, 0166-0171.
- 13) *The State of Oregon vs. Hunter, David Kyle* Indictment for 08FE0821AB, dated 7/22/08, 0172-0173.
- 14) *State of Oregon vs. David Kyle Hunter* Judgment of Conviction for Case # 08FE0821AB, dated 8/21/08, 0174-0177.
- 15) Oregon State Police Incident Report for Incident # 09-135986, dated 4/26/09, 0178-0190.
- 16) Exhibit 3, undated, 0191-0204.
- 17) *State of Oregon vs. David Kyle Hunter* Judgment of Conviction for Case # 09FE0527MS, dated 11/3/09, 0214-0216.
- 18) Violation and Structured Sanction Reporting Form, dated 3/9/04, 0231-0232.
- 19) Violation and Structured Sanction Reporting Form, dated 3/30/04, 0233-0234.
- 20) Violation and Structured Sanction Reporting Form, dated 9/24/04, 0235-0237.
- 21) Violation and Structured Sanction Reporting Form, dated 3/24/05, 0238-0240.
- 22) Violation and Structured Sanction Reporting Form, dated 9/28/05, 0241-0242.
- 23) Violation and Structured Sanction Reporting Form, dated 12/7/05, 0243-0245.
- 24) Violation and Structured Sanction Reporting Form, dated 1/24/06, 0246-0247.
- 25) Violation and Structured Sanction Reporting Form, dated 3/31/06, 0248-0251.
- 26) Violation and Structured Sanction Reporting Form, dated 8/5/06, 0252-0255.
- 27) Violation and Structured Sanction Reporting Form, dated 12/1/06, 0256-0258.
- 28) Violation and Structured Sanction Reporting Form, dated 2/7/07, 0259-0261.
- 29) Violation and Structured Sanction Reporting Form, dated 5/30/07, 0262-0264.
- 30) Violation and Structured Sanction Reporting Form, dated 9/6/07, 0265-0267.
- 31) Violation and Structured Sanction Reporting Form, dated 4/30/09, 0268-0270.
- 32) Violation and Structured Sanction Reporting Form, dated 8/8/08, 0271-0274.
- 33) Violation and Structured Sanction Reporting Form, dated 4/19/12, 0275-0282.
- 34) Aberdeen Police Department Booking Report for Case # 13-A09162, dated 5/11/13, 0296-0299.
- 35) Aberdeen Police Department Statement of David Hunter in reference to Case # 13-A09162, 0315.
- 36) Pre-Sentence Investigation Report for Cause # 13-1-197-0 authored by Mark Shaffer, CCO-2, dated 11/1/13, 0399-0412.
- 37) *State of Washington vs. David K. Hunter* Felony Judgment and Sentence for Cause # 13-1-197-0, dated 11/18/13, 0417-0428.
- 38) OMNI: Legal Face Sheet, 0459-0469.
- 39) OMNI: Chronos Search from 10/15/13 through 8/5/16, various authors, 0470-0482.
- 40) Initial Serious Infraction Report, dated 2/10/15, 0508.

- 41) Sex Offender Treatment Program Termination Summary authored by K. Reiter, MSW and T. Johnson, BA, dated 8/28/15, 0648-0654
- 42) Sex Offender Treatment & Assessment Programs (SOTAP) Discharge Summary authored by M. Nickerson, MA and M. Keeler, BS, dated 6/8/16, 0655-0664.
- 43) Sex Offender Treatment Program Pre-Admission Risk Screen authored by Paul Victor, MA, dated 0705-0708.
- 44) Primary Encounter Reports from 10/10/14 through 6/30/16 authored by Susan Crowe, MS, 0755-0789.
- 45) Emergency Room Report Deaconess Medical Center authored by Mark E. Mueller, MD, dated 7/20/16, 1037-1041.
- 46) Department of Corrections Health Services Kite, dated 11/10/14, 1086.
- 47) *State of Oregon vs. Hunter, David K.* Judgment of Conviction and Sentence for Case # 9312-38513, dated 6/2/94, 1113-1117.
- 48) *State of Oregon vs. David Kyle Hunter* Judgment for Case # 060733924, dated 8/18/06.
- 49) Aberdeen Police Department Polygraph Examination Report authored by Mr. Kevin S. Darst, dated 5/6/13, 1332-1333.

#### **RISK ASSESSMENT:**

For purposes of evaluating Mr. Hunter's risk for sexual and violent (including sexually violent) recidivism, I assessed Mr. Hunter with the Hare Psychopathy Checklist-Revised 2<sup>nd</sup> Edition (PCL-R),<sup>1</sup> the Static-99R,<sup>2,3,4</sup> and the Violence Risk Appraisal Guide – Revised (VRAG-R).<sup>5</sup>

#### **LEGAL STANDARD:**

RCW 71.09.020(18) defines a "sexually violent predator" 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."

My opinion is organized around three questions: A) Has Mr. Hunter been "convicted of or charged with a crime of sexual violence?"; B) Does Mr. Hunter suffer "from a mental abnormality or personality disorder?"; C) Is Mr. Hunter, as a result of a mental abnormality or personality disorder, "likely to engage in predatory acts of sexual violence if not confined in a secure facility?"

<sup>1</sup> Hare, R.D. (2003). *Manual for the Psychopathy Checklist – Revised*, 2<sup>nd</sup> Edition. Toronto: Multi-Health Systems.

<sup>2</sup> Phenix, A., Fernandez, Y., Harris, A.J.R., Helmus, L.M., Hanson, R.K., & Thornton, D. (2016). *Static-99R Coding Rules – Revised*.

<sup>3</sup> I chose to not assess the density of Mr. Hunter's psychological needs and vulnerabilities due to the high score he received on the Static-99R and the overlap of recidivism rates for Routine Corrections and High Risk/Needs samples at extreme ends of their respective continua. Please see: Thornton, D., & Knight, R. (2013). Construction and validation of SRA-FV Need Assessment. *Sexual Abuse: A Journal of Research and Treatment*. doi: 10.1177/1079063213511120.

<sup>4</sup> The revised normative data was published by Amy Phenix, Maaiké-Leslie Helmus, and R. Karl Hanson on 1/1/15 and is available for download at static99.org.

<sup>5</sup> Harris, G.T., Rice, M.E., Quinsey, V.L., & Cormier, C.A. (2015). *Violent Offenders: Appraising and managing risk (3rd Edition)*. Washington, DC: American Psychological Association.

**FINDINGS:**

A) Has Mr. Hunter been "convicted of or charged with a crime of sexual violence?" YES.

Pursuant to RCW 71.09.020 (17) a "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection."

Mr. Hunter has been convicted of the following predicate offenses:

Charge	Date of Conviction	Jurisdiction
Sodomy in the 1 <sup>st</sup> Degree (2 Cts)	4/17/92	Multnomah County, OR
Unlawful Sexual Penetration in the 1 <sup>st</sup> Degree Sexual Abuse in the 1 <sup>st</sup> Degree	8/23/95	Multnomah County, OR
Attempted Sexual Abuse in the 1 <sup>st</sup> Degree	10/22/09	Deschutes County, OR

**Sodomy in the 1<sup>st</sup> Degree:<sup>6</sup>**

Review of the presentence investigation report for Case # 95-04-33018 authored by Mr. Barry Renshaw (0110-0124) provides a summary of Mr. Hunter's first predicate offense. In regard to this offense Mr. Renshaw wrote: "While caring for his stepfather's two grandsons, then under the age of 12, the defendant repeatedly attempted anal intercourse with the two boys. The defendant also forced the two boys to suck his penis. The defendant threatened to beat up the two boys if they resisted or if they told of what

<sup>6</sup> Primary records regarding these offenses were not included in the discovery.

*was occurring. Other victims of sexual abuse were mentioned, but there was not enough information to locate or positively identify the other victims.” (0113).<sup>7</sup>*

**Unlawful Sexual Penetration in the 1<sup>st</sup> Degree:  
Sexual Abuse in the 1<sup>st</sup> Degree:**

The presentence investigation report for Case # 95-04-33018 authored by Mr. Barry Renshaw (0110-0124) denotes that on 2/16/95 the Portland Police Bureau received a report from the Children Services Division that 12 y/o ST and 8 y/o HT were residing in the same residence as Mr. Hunter. The victims' mother reportedly became aware of the abuse of her daughters following an argument with Mr. Hunter's step-brother, Mr. Ben Hurley. Ms. Thompson declined to report the sexual assault to the Children Services Division, and it was discovered only after an investigation was initiated by the Children Services Division pertaining to Mr. Hunter cohabitation with vulnerable minors.

When confronted regarding the allegations, Mr. Hunter acknowledged the assaults. Mr. Renshaw wrote, *“He claims the two young girls ‘came on’ to him and he in turn gave them what they wanted. According to the defendant, while babysitting the girls and while usually watching the Playboy channel on television, the two girls would either attempt to touch his penis or attempt to kiss him. Mr. Hunter acknowledges he would merely touch the girls’ [sic] back by placing his finger in their vagina [sic].” (0116).<sup>8</sup>*

Mr. Hunter was charged with 2 counts of Unlawful Sexual Penetration in the 1<sup>st</sup> Degree, 1 count of Unlawful Sexual Penetration in the 2<sup>nd</sup> Degree, and 3 counts of Sexual Abuse in the 1<sup>st</sup> Degree. In exchange for pleading to 1 count of Unlawful Sexual Penetration in the 1<sup>st</sup> Degree, and Sexual Abuse in the 1<sup>st</sup> Degree, the remaining 4 charges were dropped (0114). Mr. Hunter was referred to the Oregon State Hospital Sex Offender Program where he was found not amenable to treatment (0123). Mr. Hunter was returned to court and found guilty on 8/23/95. He was sentenced to 100 months incarceration on Count I, and 35 months incarceration on Count VI (0128-0131).

**Attempted Sexual Abuse in the 1<sup>st</sup> Degree:<sup>9</sup>**

Pursuant to his 1/2/09 release from custody (0268) following conviction on 2 counts of Failing to Register as a Sex Offender, Case # 08FE0821AB (0174-0177), Mr. Hunter was referred to outpatient sexual deviancy treatment with Mr. Lamont Boileau (0268). Mr. Hunter disclosed the 2004 sexual assault of RLM in a 4/1/09 pre-polygraph interview conducted by Ms. Becky Wanless. As a result of Mr. Hunter's disclosure and the ensuing investigation, it was determined that Mr. Hunter had stolen pictures of victim

<sup>7</sup> Records indicate that Mr. Hunter was initially charged with 8 counts of Sodomy (0064). Six counts were dropped predicated on pleading guilty to the remaining 2 counts.

<sup>8</sup> When interviewed on 12/19/16 Mr. Hunter reported that the abuse occurred on a frequent basis and entailed digital and oral penetration of the girls. Additionally, he stated that he forced the victims to masturbate and fellate him. Upon matriculation into SOTAP, Mr. Hunter reported verbal threats were utilized to obtain and maintain the victims' compliance (0662).

<sup>9</sup> The investigation of this assault is summarized in records regarding Incident # 09-135986 (0178-0190).

RLM<sup>10</sup> giving birth, in violation of his conditions of supervision. As described in the 4/1/09 interview, in addition to theft of photographs of RLM, Mr. Hunter described fondling RLM's genitals on multiple occasions while she slept and masturbating to ejaculation. More specifically, Mr. Hunter informed Ms. Wanless, "*R didn't give me permission to do anything with her but I would sneak into her room [sic] she lived with us in Sunriver I was 29 she was 32 and I would start by watching her sleep I would make sure she was asleep I would start rubbing her private area and use her panties to masterbate [sic] on if she started to wake up I would stop until she was asleep again. I did this until I ejaculated [sic] this happened for about 1 month.*" (0190.)

As a result of this conviction, on 10/22/09 Mr. Hunter was convicted on Attempted Sexual Abuse in the 1<sup>st</sup> Degree and sentenced to 40 months incarceration in the Oregon Department of Corrections (0214-0217).

**B. Does Mr. Hunter suffer 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?" YES**

RCW 71.09.020 (8) defines a "mental abnormality" as "...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." RCW 71.09.020 (9) defines a "personality disorder" as "...an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has onset in adolescence or early adulthood, is stable over time and leads to distress or impairment."

**NON-PREDICATE SEXUAL OFFENDING:**

In addition to the predicate offenses, Mr. Hunter has a history of non-predicate sexual offending. Records indicate that while on probation for Case # 95-04-33018, Mr. Hunter incurred 2 convictions for prostitution on 4/26/05 (0142-0143) and 6/26/06 (0144-0145).

Following release on Case # 09FE0527MS, Attempted Sexual Abuse in the 1<sup>st</sup> Degree, Mr. Hunter fled to Washington State on escape status. Records (0296-0299; 0399-0412) indicate that on 5/11/13, Mr. Hunter was seen dragging an intoxicated woman, victim SJC, to a campsite under the Heron Street Bridge in Aberdeen, WA. Responding officers arrived at a campsite that was hidden in the brush and found a Native American female in a sleeping bag with her breasts exposed and her pants pulled down to the middle of her buttocks. Also present was Mr. Hunter with his hands inside of the victim's shirt. Upon contact, SJC was unconscious and unresponsive. Mr. Hunter verbally identified himself to the investigating officers as David Kyle Smith from Los

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<sup>10</sup> RLM was the girlfriend of Mr. Hunter's step-nephew, one of the victims of the initial predicate offense, Sodomy. Following Mr. Hunter's release from custody on Case # 95-04-33018 on or around 12/11/03, he returned to the residence to his parent's residence where his step-nephew and RLM resided.

Angeles, CA and provided a false date of birth. Upon confirmation of Mr. Hunter's actual identity, he was taken into custody.

When SJC returned to consciousness, she informed investigating officers that she did not know Mr. Hunter nor had she given him permission to have sexual intercourse or sexual contact with her (0298).<sup>11</sup>

Mr. Hunter was subsequently charged with Assault in the 3<sup>rd</sup> Degree with sexual motivation and Failure to Register as a Sex Offender. On 11/18/13 he was sentenced to 60 months confinement on Count I, and 40 months confinement and 36 months of community supervision on Count II (0417-0428). Mr. Hunter has remained continuously incarcerated since his 5/11/13 arrest.<sup>12</sup>

#### **NON-SEXUAL OFFENDING:**

Records indicate that Mr. Hunter has juvenile convictions for Burglary in the 1<sup>st</sup> Degree (2/28/89) and Assault in the 4<sup>th</sup> Degree (5/3/90) (0111-0112). Additionally Mr. Hunter has adult adjudications for Burglary in the 1<sup>st</sup> Degree (12/15/93) (0112-0113; 1113-1117), Identity Theft, and Forgery in the 2<sup>nd</sup> Degree (3 Counts) (10/18/07) (0166-0171), Failure to Register as a Sex Offender in 2006 (1124-1126), and an additional 2 counts of Failure to Register as a Sex Offender in 2008 (0174-0177).

#### **TREATMENT HISTORY:**

Predating Cause # 89-01-80113, Mr. Hunter was referred for sexual deviancy treatment at Serendipity Center, Inc. pursuant to disclosure of pedophilic fantasies and disclosure of (unspecified) sexual abuse of "*children, animals, adults and peers.*" (0120). As the adolescent program had not opened and was not accepting patients, Mr. Hunter was referred to Clackamas Adolescent Intervention Services between 5/91 and 9/91. Due to continued pedophilic fantasies and predatory behavior, Mr. Hunter was transferred to the Seider Residential Sex Offender Treatment Program in Ontario, OR. Mr. Hunter was terminated from the latter program on 5/21/93 for "*refusal to cooperate with treatment and for his behaviors.*" (0120).

Pursuant to Case # 95-04-33018 in which Mr. Hunter was convicted of Unlawful Sexual Penetration in the 1<sup>st</sup> Degree and Sexual Abuse in the 1<sup>st</sup> Degree for the sexual abuse of the 8 and 12 y/o daughters of his step-brother's girlfriend, Mr. Hunter was referred for evaluation to Oregon State Hospital. Following review of all available records and interview with Mr. Hunter, it was determined that he fit the statute for

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<sup>11</sup> SJC subsequently informed the Grays Harbor County Prosecutor's Office that she had no interest in testifying or participating in the prosecution of Mr. Hunter. However, in a Victim Impact Statement she stated that Mr. Hunter had threatened her with a knife to obtain her compliance. When interviewed on 12/19/16, Mr. Hunter confirmed that he had utilized a knife to threaten SJC and exploited her level of intoxication in order to commit the sexual assault.

<sup>12</sup> Mr. Hunter passed a 5/16/13 polygraph in regard to the assault of SJC (1332-1333). Questions that he was deemed to have responded to non-deceptively were discordant with the arresting officer's observations, the victim's self-report, and Mr. Hunter's 12/19/16 report to the undersigned. Mr. Hunter's successful use of deception on the 5/16/13 polygraph brings into question the utility of polygraphy in assessing both his sexual history and future compliance.

"Sexually Dangerousness" [sic]. Mr. Hunter was found to not be amenable to treatment through the Oregon State Hospital Sex Offender Treatment Program and was returned to the court for adjudication (0123).

While ensuing records are sporadic, it appears that Mr. Hunter was again referred for treatment in 2006 but was dismissed from treatment as he was "*so disruptive to the sex offender treatment groups that he is not allowed to even attend sex offender treatment.*" (0253).

Pursuant to his 1/2/09 release from custody (0268) following conviction on 2 counts of Failing to Register as a Sex Offender, Case # 08FE0821AB (0174-0177), Mr. Hunter was again referred to outpatient sexual deviancy treatment with Mr. Lamont Boileau (0268). Mr. Hunter's self-reported sexual history completed for Mr. Boileau deviated significantly from the sexual history he completed in preparation for a full disclosure polygraph. Due to the numerous contradictions between the respective sexual histories (and disclosure of previously unknown offenses), Mr. Hunter was terminated from treatment on or around 4/1/09 (0268-0269).<sup>13</sup>

Records next indicate that Mr. Hunter entered sexual deviancy treatment following incarceration on Cause # 13-1-197-0. The 8/28/15 Sex Offender Treatment Program Termination Summary authored by K. Reiter, MSW and T. Johnson, BA (0648-0654) noted that Mr. Hunter self-terminated from treatment after approximately 2.5 months of primary group. At the time of termination, Mr. Hunter had made minimal progress in addressing dynamic risk factors associated with sexual self regulation, attitudes supportive of sexual assault, intimacy deficits, social functioning, general self regulation and compliance. It was noted that Mr. Hunter continued to masturbate exclusively "*to thoughts of pre-pubescent boys and girls as well as thoughts about the victims.*" (0650). In her concluding statement, Ms. Reiter wrote, "*The risk level he presents, his designation as a sexually violent predator in the state of Oregon, his history of repeated sex offending and his own admission to reinforcing deviant arousal all indicate the significant need for sex offender treatment; however Mr. Hunter has demonstrated that he is not willing to address his issues related to his sexual offending at this time. While signing his termination paperwork he stated that he hopes he can receive treatment once he is released since 'it's too stressful to do it in prison right now.'*" (0654).

Mr. Hunter reentered sexual deviancy treatment at Airway Heights on 2/9/16. In the Sex Offender Treatment & Assessment Programs (SOTAP) Discharge Summary (0655-0664), Maureen Nickerson, MA wrote that Mr. Hunter was terminated from the

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<sup>13</sup> Mr. Hunter's contradictions were also noted in the current assessment. Specifically, when interviewed on 12/19/16, Mr. Hunter reported that his common-law wife, (identified as Amanda Hernandez and her daughter from a prior relationship, Anna-Marie Hernandez) had perished in an accident along with his mother and step-father as they were coming to visit Mr. Hunter at Airway Heights Correction Center in 2013. In addition to no established report of 4 individual perishing in a motor vehicle accident in 2013, in 2009 Mr. Hunter made a similar report of being married to a stripper, who perished in a motor vehicle accident along with their biological daughter (0269) during the preceding year. Mr. Hunter's 4/1/09 report to Ms. Wanless differed from his report to his treatment provider, Mr. Boileau. Mr. Hunter had informed the latter that he had never been married (0269).

program on 5/18/16 following 3 months of primary treatment. In summarizing his participation, progress, and basis for termination, Ms. Nickerson wrote, "Overall, Mr. Hunter did not demonstrate sufficient progress towards reducing risk relevant factors and therefore has unsuccessfully discharged from institutional sex offender treatment. A summary of his participation is as follows: Mr. Hunter was terminated from group after three months due to a breach of confidentiality that involved sharing the identity and detailed information of another members' report of childhood trauma. The fact of the breach became known when other members were approached with the details by another inmate not associated with SOTAP...He denied intention to breach confidentiality, describing it as impulsive. He acknowledged that his actions resulted in disruption of group dynamics. Sharing graphic details of another member's trauma with someone outside of SOTAP created potential for harm to the individual whose confidence he broke. For these reasons, Mr. Hunter was terminated from the program before he was able to complete his core assignments." (0663).

#### **INSTITUTIONAL AND COMMUNITY COMPORIMENT:<sup>14</sup>**

Records indicate relatively good comporiment following incarceration on Cause # 13-1-197-0 with infractions noted on 9/29/14, 2/10/15, and 3/15/16 (0459-0469).

Mr. Hunter's record of in-custody comporiment diverges dramatically from his comporiment while on conditional release into the community. Mr. Hunter had numerous violations following his juvenile adjudications for Burglary in the 1<sup>st</sup> Degree, Assault in the 4<sup>th</sup> Degree, and Sodomy (0111-0112), including commission of his first adult felony, Burglary in the 1<sup>st</sup> Degree (Case # 93-12-38513), while on conditional release.

Following his 12/11/03 release into the community on Case # 95-04-33018 (0184), the longest contiguous stretch that Mr. Hunter remained at liberty in the community was 3 months (0189) due to the numerous absconds and other violations. Review of records indicates frequent sanctions for violation behavior (0231-0232; 0233-0234; 0235-0237; 0238-0240; 0241-0242; 0243-0245; 0246-0247; 0248-0251; 0252-0255; 0256-0258; 0259-0261; 0262-0264; 0265-0267; 0268-0270; 0271-0274; 0275-0282) as well as new criminal charges and convictions (0142-0143; 0144-0145; 0166-0171; 0174-0177; 1124-1126) while on conditional release in Oregon.<sup>15</sup>

#### **INTERVIEW WITH MR. HUNTER:**

Mr. Hunter was interviewed for approximately 4 hours on 12/19/16 at the Airway Heights Correction Center.<sup>16,17</sup>

<sup>14</sup> No records regarding Mr. Hunter's institutional comporiment throughout his numerous incarcerations in the State of Oregon were included in available discovery.

<sup>15</sup> When interviewed on 12/19/16 Mr. Hunter acknowledged that community supervision and the risk of additional sanctions was not a deterrent and had no dampening effect on violation and offending behavior.

<sup>16</sup> Prior to initiation of the interview, I described the nature of the evaluation, my relationship with the referring agency, the absence of confidentiality, and possible dispositional recommendations and outcomes. Following my disclosure, both orally and in written form, Mr. Hunter agreed to proceed with the interview.

<sup>17</sup> With Mr. Hunter's permission, the interview was recorded in its entirety. At the conclusion of the interview I offered Mr. Hunter the opportunity to review my typewritten notes to ensure accuracy. Mr. Hunter declined the offer.

Responses to questions were clear, coherent and goal directed. Mr. Hunter was noted to be affectively broad throughout the interview and appeared to establish good rapport with the undersigned. Mentation was grossly intact on screening with intact orientation and attention and concentration, although Mr. Hunter demonstrated some deficits in short-term recall with 0/3 words recalled following a 5-minute delay with intervening tasks.

Mood, appetite and sleep were grossly intact. Mr. Hunter reported somewhat diminished energy, although on further probing he reported working daily in textiles from 7:30 am to 2:30 pm, and playing cards after his shift, suggesting no impediment in his overall functioning.

Current suicidal ideation was denied, although Mr. Hunter reported that he had a prior history of self-injurious behavior (superficial cutting with razor blades) during periods of depression.<sup>18</sup>

Homicidal ideation was denied. Consistent with documentation (1086), Mr. Hunter endorsed occasionally hearing voices making disparaging comments. On follow-up, Mr. Hunter stated he experienced the voices internally. No diurnal pattern was discernible on inquiry, nor relationship with mood state. Asked how he coped with the occasional intrusions, Mr. Hunter stated he simply reminded himself of his recent achievements and the voices would recede.

Visual hallucinations were denied as were all other first rank symptoms of psychosis.

In regard to current programming, Mr. Hunter reported that he is currently employed sewing in the textile department, approximately 35 hours per week. He also reported meeting with Susan L. Crowe, MS, on a monthly basis for treatment and case-management services (0755-0789). Medications at the time of the interview consisted of Trazadone 50 mg,<sup>19</sup> Lipitor (Atorvastatin) for treatment of hypercholesterolemia, Pantazole (Pantoprazole) for treatment of acid reflux, and Albuterol for treatment of asthma.

Mr. Hunter reported that he currently masturbates on a daily basis. Mr. Hunter initially reported that his current masturbatory stimuli consisted of the 2 youngest daughters on *'Keeping Up With The Kardashians.'* Upon further probing, and discussion of disclosures made while participating in SOTP (0650), Mr. Hunter revised his initial report and confirmed that his principle masturbatory focus was prepubescent children, principally females.<sup>20</sup> Mr. Hunter stated that at the termination of his SOTP treatment in 2015, 100% of his masturbatory fantasies were exclusively to pre-pubescent children. While acknowledging paraphilic urges remained "*pretty strong,*" Mr. Hunter reported a

<sup>18</sup> When arrested on 5/11/13 in conjunction with Cause # 13-1-197-0, arresting officers noted lateral cuts on Mr. Hunter's wrists (0298).

<sup>19</sup> Records indicate the actual dose is 75 mg prior to bed (0755). This dosage is typically prescribed to assist with sleep but is generally regarded as sub-therapeutic for treatment of depression.

<sup>20</sup> He noted that the younger Kardashian daughters resembled the female victims of his 1995 offenses.

recent decline in the frequency and intensity of paraphilic arousal to prepubescent children. However, he estimated that he continued to masturbate to prepubescent females approximately 50% of the time. Relative to consensual, peer-aged fantasies, Mr. Hunter continued to experience paraphilic urges regarding children as more compelling and difficult to manage. In addition to intentionally placing himself in proximity to children (0248; 0260; 0262), Mr. Hunter stated he frequently observed children in his preferred victim range while at liberty in the community.<sup>21</sup> He noted that his paraphilic urges were so difficult to control that he would seek out a nearby restroom for purposes of masturbation.<sup>22</sup> Likewise, when I inquired as to whether Mr. Hunter acquired stimuli of children while in custody or attempted to view programs with depictions of children, he stated that he did not collect stimuli out of fear of detection and loss of his job.<sup>23</sup>

Consistent with records (0660-0662), Mr. Hunter reported a longstanding pattern of sexually compulsive behavior manifesting in masturbation on a several time per day basis (0660), frequenting sexually themed businesses (0241), engaging in identity theft and forgery for purposes of contacting sexually themed live chat lines (0151-0159), frequent viewing of pornography (0660), and fetishistic behavior focused predominantly on female undergarments (0238-0240; 0660). While generally denying fantasies involving coercion, Mr. Hunter acknowledged instrumental use of threats of physical violence to enlist and maintain the cooperation of his child victims and the victim of his index offense.

While acknowledging an a paraphilic preference for pre-pubescent children, Mr. Hunter acknowledged victimizing sleeping (0178-0190), intoxicated (0296-0299), or intellectually limited/handicapped (0243-0245; 0275-0282) females that he characterized as "*petite and vulnerable*" (12/19/16 Interview).

In the absence of completed treatment, Mr. Hunter estimated his risk for recidivism if conditionally released as "*high*." While preferring to offend against a child, Mr. Hunter stated that he "*would take the first opportunity that became available*" indicating that he would sexually assault a child or a vulnerable female adult.

Consistent with his statements to staff at AHCC (0470; 0652) Mr. Hunter expressed a desire to be civilly committed under RCW 71.09. In addition to asserting that it would be in the best interest of the community, he endorsed the belief that commitment would be in his best interest stating, "*I would have a more stable environment to work on myself.*" (12/19/16 Interview).

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<sup>21</sup> Mr. Hunter stated that his preferred range was from 8 to 15, with a preference for pre-pubescent females.

<sup>22</sup> Mr. Hunter denied attempting to initiate contact or stalking the children for fear of detection.

<sup>23</sup> Mr. Hunter reported that he had enough stimuli from his prior offending that he felt that he did not have to seek out new stimuli with the attendant risk of possible detection.

**DIAGNOSES:**

On 5/13/13, the American Psychiatric Association issued the DSM-5.<sup>24</sup> In addition to dismissing the multi-axial format of the preceding editions, the APA substantially reworked the domain of paraphilic disorders. Specifically, the DSM-5 now distinguishes between a “paraphilia” and a “paraphilic disorder”, stating, “*The term paraphilia denotes any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners. In some circumstances, the criteria ‘intense and persistent’ may be difficult to apply, such as in the assessment of persons who are very old or medically ill and who may not have ‘intense’ sexual interests of any kind. In such circumstances, the term paraphilia may be defined as any sexual interest greater than or equal to normophilic sexual interests. There are also specific paraphilias that are generally better described as preferential sexual interests than as intense sexual interests*” (p. 685). In contrast, “*A paraphilic disorder is a paraphilia that is currently causing distress or impairment to the individual or a paraphilia whose satisfaction has entailed personal harm, or risk of harm, to others. A paraphilia is a necessary but not a sufficient condition for having a paraphilic disorder, and a paraphilia by itself does not necessarily justify or require clinical intervention. In the diagnostic criteria set for each of the listed paraphilic disorders, Criterion A specifies the qualitative nature of the paraphilia (e.g. an erotic focus on children or on exposing the genitals to strangers), and Criterion B specifies the negative consequences of the paraphilia (i.e., distress, impairment, or harm to others). In keeping with the distinction between paraphilias and paraphilic disorders, the term diagnosis should be reserved for individuals who meet both Criteria A and B (i.e., individuals who have a paraphilic disorder). If an individual meets Criterion A but not Criterion B for a particular paraphilia – a circumstance that might arise when a benign paraphilia is discovered during the clinical investigation of some other condition – then the individual may be said to have that paraphilia but not a paraphilic disorder*” (p. 685-686).<sup>25</sup>

Pedophilia, one of eight paraphilic disorders identified by the DSM-5, is defined as a disorder which occurs over a period of at least 6 months during which the individual experiences, “*...recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger)*” (p. 697). In addition, the criterion entails that the individual has, “*acted on these sexual urges or the sexual urges or fantasies caused marked distress or interpersonal difficulty.*” In addition to the 6 month durational requirement, a diagnosis of Pedophilic Disorder requires that the individual must be at least 16 years of age and at least 5 years older than the child or children.<sup>26</sup>

<sup>24</sup> American Psychiatric Association (2013). *Diagnostic and Statistical Manual of Mental Disorders (5<sup>th</sup> Edition)*. Washington DC: Author.

<sup>25</sup> The scope of paraphilic disorders identified in the DSM-5 maps closely on the range of disorders identified by the DSM-IV-TR. The principle difference is the breakout of the DSM-IV-TR category of Paraphilia, Not Otherwise Specified (302.9) into Other Specified Paraphilic Disorder (302.89) and Unspecified Paraphilic Disorder (302.9). Additionally, with the exception of Pedophilic Disorder (302.2) each of the paraphilic disorders now has “*In full remission*” or “*In a controlled environment*” specifiers.

<sup>26</sup> The criteria for Pedophilic Disorder (302.2) are essentially unchanged from the criteria for Pedophilia in the DSM-IV-TR.

Mr. Hunter has a history of sexually offending against prepubescent males (0064; 0112) and females (0114; 0128-0131) and vulnerable adult females (0214-0216; 0417-0428). While on community supervision in Oregon in 2007, Mr. Hunter enacted plans to intentionally place himself in proximity to minor and adolescent females and males (0259-0261; 0262-0264) in violation of the conditions of his release. Preferential arousal to minors was noted in the 8/28/15 in the Sex Offender Treatment Program Termination Summary authored by K. Reiter, MSW and T. Johnson, BA (0648-0654). In addition to failure to make substantive progress in treatment during the preceding 2.5 months, Ms. Reiter wrote: *"During this time he did not present any treatment assignments nor did he discuss any of his need areas within this domain during group and individual sessions. He told this therapist, in the presence of an SOTP tutor with whom he had worked, that he struggles with a significant amount of deviant arousal toward minor-aged children. He said that he currently masturbates exclusively to thoughts of pre-pubescent boys and girls as well as thoughts about the victims."* (0650). Relatedly, when interviewed on 12/19/16, Mr. Hunter stated that he continued to masturbate to minors, estimating that approximately 50% of his current fantasies entail minor females between the ages of 8 and 15, with a preference for prepubescent females.<sup>27</sup> Mr. Hunter's paraphilic urges involving prepubescent children, particularly females is durable, chronic, and enduring. Cumulatively, there is no question that Mr. Hunter meets criteria for Pedophilic Disorder, Nonexclusive type, Sexually attracted to both (F65.4).<sup>28</sup>

The DSM-5 defines Fetishistic Disorder as *"recurrent and intense sexual arousal from either the use of nonliving objects or a highly specific focus on nongenital body part(s), as manifested in fantasies, urges or behaviors."* (p. 700).

Mr. Hunter has a history of theft of women's undergarments for purposes of masturbation (0238). He acknowledged, both in records (0238-0239; 0660) and his current self-report (12/19/16 Interview), persisting arousal to bras and panties as fetish objects. As such, Mr. Hunter meets criteria for Fetishistic Disorder, Nonliving objects, In a controlled environment (F 65.0).

The DSM-5 defines Alcohol Use Disorder as, *"A problematic pattern of alcohol use leading to clinically significant impairment or distress, as manifested by at least two of the following, occurring within a 12-month period: 1) Alcohol is often taken in larger amounts or over a longer period than was intended; 2) There is a persistent desire or unsuccessful efforts to cut down or control alcohol use; 3) A great deal of time is spent in activities necessary to obtain alcohol, use alcohol, or recover from its effects; 4) Craving,*

<sup>27</sup> Mr. Hunter characterized his paraphilic interest in minors as *"strong"* and stated that he constituted a relatively high risk for reoffending if released from his current incarceration. Asked to characterize a future offense, Mr. Hunter stated that he would preferentially target a minor female, but would settle for a petite and vulnerable adult female and *"take the first opportunity that became available."* (12/19/16 Interview).

<sup>28</sup> As noted previously, records (0054; 0400; 0662) and self-report (12/19/16 Interview) indicate that Mr. Hunter used threats of injury (0054; 0662) or displayed weapons for purposes of committing sexual assaults against the minor males (0054) and females (0662), and one of his adult female victims (0400; 12/19/16 Interview). Mr. Hunter denied arousal to threats throughout the 12/19/16 interview. He reported that his preferred means of enlisting cooperation was through grooming his victims, and threats and weaponry were solely instrumental to ensure victim compliance. As such, while considered, I did not feel there was sufficient evidence for a diagnosis of Other Specified Paraphilic Disorder (Nonconsent) (F65.89) although this remains a diagnostic consideration and warrants assessment with phallometry.

*or a strong desire or urge to use alcohol; 5) Recurrent alcohol use resulting in a failure to fulfill major role obligations at work, school, or home; 6) Continued alcohol use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of alcohol; 7) Important social, occupational, or recreational activities are given up or reduced because of alcohol use; 8) Recurrent alcohol use in situations in which it is physically hazardous; 9) Alcohol use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by alcohol; 10) Tolerance, as defined by either of the following: a) A need for markedly increased amounts of alcohol to achieve intoxication or desired effect; b) A markedly diminished effect with continued use of the same amount of alcohol; 11) Withdrawal, as manifested by either of the following: a) The characteristic withdrawal syndrome for alcohol (refer to Criteria A and B of the criteria set for alcohol withdrawal, pp. 499-500); b) Alcohol (or a closely related substance, such as a benzodiazepine) is taken to relieve or avoid withdrawal symptoms” (p 490-491).<sup>29</sup>*

When interviewed on 12/19/16, Mr. Hunter reported a history of abuse of alcohol, heroin, and methamphetamine beginning in mid to late adolescence. While endorsing a broad spectrum of substance abuse, Mr. Hunter implicated alcohol and methamphetamine in prior and index offending, and reported weekly use of heroin.<sup>30</sup> Mr. Hunter meets criteria for Alcohol Use Disorder, In a controlled environment (F10.20), Stimulant Use Disorder, In a controlled environment (F15.20), and Opioid Use Disorder, In a controlled environment (F11.20).

The DSM-5 defines a personality disorder as, “*an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual’s culture. This pattern is manifested in two (or more) of the following areas: 1) Cognition (i.e., ways of perceiving and interpreting self, other people, and events); 2) Affectivity (i.e., the range, intensity, lability, and appropriateness of emotional response); 3) Interpersonal Functioning; 4) Impulse Control; B) The enduring pattern is inflexible and pervasive across a broad range of personal and social situations. C) The enduring pattern leads to clinically significant distress or impairment in social, occupational, or other important areas of functioning. D) The pattern is stable and of long duration, and its onset can be traced back at least to adolescent or early adulthood. E) The enduring pattern is not better explained as a manifestation or consequence of another mental disorder. F) The enduring pattern is not attributable to the physiological effects of a substance (e.g., a drug of abuse, a medication) or another medical condition (e.g., head trauma)” (p. 646-647).*

The DSM-5 defines Antisocial Personality Disorder (301.7) as 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*

<sup>29</sup> The diagnostic criteria for Opioid Use Disorder and Stimulant Use Disorder are identical to Alcohol Use Disorder and will not be repeated.

<sup>30</sup> Mr. Hunter reported that he contracted Hepatitis A through shared needles and had recently completed a course of treatment while incarcerated on Cause # 13-1-197-0. I believe he is incorrect in this assertion. More likely, Mr. Hunter contracted Hepatitis B or Hepatitis C as a result of sharing needles.

grounds for arrest; 2) Deceitfulness, as indicated by repeated lying, use of aliases, or conning others 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; 7) Lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another.” (p. 659). Moreover, the disorder entails that the individual is at least 18 years of age and there is evidence of a Conduct Disorder prior to the age of 15 years, and that the antisocial behavior does not occur exclusively in the course of schizophrenia or bipolar disorder.

Mr. Hunter has a history of failure to conform to social norms with respect to lawful behaviors beginning in adolescence and persisting throughout adulthood (0063; 0110-0124; 0128-0131; 0142-0143; 0144-0145; 0166-0171; 0174-0177; 0214-0216; 0238-0240; 0417-0428). Mr. Hunter has also demonstrated a pattern of deceitfulness (0064; 0116; 0243; 0257; 0269; 0298); impulsivity (0058; 0064; 0189; 0252-0253; 0315; 0652); and, lack of remorse (0054; 0060; 0662). Mr. Hunter reported onset of illicit substance abuse at the age of 14 and was initially adjudicated for Burglary in the 1<sup>st</sup> Degree on 2/28/89 6 weeks prior to his 15<sup>th</sup> birthday. In the absence of schizophrenia spectrum disorder or bipolar disorder, I believe Mr. Hunter meets criteria for Antisocial Personality Disorder (F60.2).

In summary, I believe that Mr. Hunter meets criteria for Pedophilic Disorder, Nonexclusive type, Sexually attracted to both (F65.4), Fetishistic Disorder, Nonliving objects, In a controlled environment (F 65.0), Alcohol Use Disorder, In a controlled environment (F10.20), Stimulant Use Disorder, In a controlled environment (F15.20), Opioid Use Disorder, In a controlled environment (F11.20), and Antisocial Personality Disorder (F60.2). Of these disorders, I regard Pedophilic Disorder, Nonexclusive type, Sexually attracted to both (F65.4) as constituting a “*mental abnormality*” as defined by RCW 71.09.020(8), predisposing Mr. Hunter to engage in predatory acts of sexual violence which places the health and safety of prepubescent males and females (particularly females) at risk.<sup>31</sup>

**C. Is Mr. Hunter as a result of a mental abnormality or personality disorder “likely to engage in predatory acts of sexual violence if not confined in a secure facility?” YES.**

#### RECIDIVISM RISK:

Mr. Hunter was assessed with the PCL-R, 2<sup>nd</sup> Edition. Factor analysis of the PCL-R has yielded 2 main factors and 4 facets. Broadly, Factor 1 is comprised of 8 items

<sup>31</sup> In addition to the preceding mental disorders, Mr. Hunter also reported a history of depression for which he receives Trazodone and is seeing a therapist on a regular basis (0755-0789). Review of his institutional functioning did not indicate significant functional limitations in programming, mood, appetite, or sleep. The current prescribed dosage of Trazodone is within the therapeutic range to assist with sleep, and approximately 1/3 to 1/2 of the dose used for treatment of depression. While I considered a diagnosis of a depressive disorder, I did not feel there was sufficient evidence to warrant a diagnosis at the present time.

which load on interpersonal traits broadly described as selfishness, callousness, lack of empathy, and remorseless use of others. Factor 2 is comprised of 10 items pertaining to an unstable antisocial lifestyle and social deviance. Scores on the PCL-R range from 0 to 40. Categorically, individuals obtaining scores of 30 and above are regarded as being psychopathic and therefore at a significantly higher risk for violent and nonviolent recidivism. In addition, scores on the PCL-R can be viewed dimensionally such that individuals obtaining higher scores on the measure are at a relatively higher risk of violent recidivism compared to individuals obtaining lower scores.

I assigned Mr. Hunter a prorated score of 27 on the PCL-R placing him at the 71<sup>st</sup> percentile<sup>32</sup> compared to North American male offenders and at the 78<sup>th</sup> percentile<sup>33</sup> compared to North American male forensic psychiatric patients.<sup>34</sup>

#### STATIC-99R:

Mr. Hunter received a score of 9 on the Static-99R, placing him at the 100<sup>th</sup> percentile.<sup>35</sup> Individuals with similar scores to Mr. Hunter would be expected to exhibit a recidivism rate (of at least) 7.32 times higher than the recidivism rate of the typical sex offender (defined as a median score of 2). Forty-four percent<sup>36</sup> of individuals with scores similar to Mr. Hunter recidivated within 5 years of time at risk.<sup>37,38</sup>

#### VRAG-R:

Mr. Hunter was assessed with the Violence Risk Appraisal Guide – Revised (VRAG-R).<sup>39</sup> Mr. Hunter was assigned a prorated score 31 on the VRAG-R placing him in Bin 9 at the 95<sup>th</sup> percentile compared to the standardization sample.<sup>40</sup> Seventy-six

<sup>32</sup> Technically, the 71.4 percentile.

<sup>33</sup> Technically, the 78.2 percentile.

<sup>34</sup> I chose to omit and prorate Item 12, *Early Behavioral Problems*, due to a lack of records and an absence of collaterals.

<sup>35</sup> Technically 99.9%, 99.5% to 100.0% at the 95% confidence interval compared to 4 samples comprised of 2011 Canadian offenders.

<sup>36</sup> Technically 43.8%, 37.8% to 50.1% at the 95% confidence interval.

<sup>37</sup> If compared to the High Risk/Need norms, 42.2% (32.6% to 52.5% at the 95% confidence interval) of individuals with scores similar to Mr. Hunter recidivated at 5 years of time at risk. There are no 10-year estimates for either Routine Corrections or High Risk/Need samples at the present time.

<sup>38</sup> With regard to newly defined nominal risk categories, Mr. Hunter's score of 9 would place him in Level IVb, well above average risk.

<sup>39</sup> The VRAG-R was standardized on 961 offenders and cross-validated on an additional 300 offenders. AUC for the entire sample was .758. For the subsample of 745 sex offenders, the VRAG-R yielded an ROC of .738, compared to an AUC of .719 for the VRAG, and .727 for the SORAG. As such, the VRAG-R demonstrated comparable or greater predictive validity than either the VRAG or SORAG. A recent cross-validation on an independent sample of 534 released Austrian sex offenders found an AUC of .751 for violent recidivism with adequate calibration across all 9 bins. Additionally, an unpublished Canadian dissertation examined 321 treated sex offenders and found an AUC of .71 for violent recidivism. Please see: Hertz, P.G., Rettenberger, M., & Eher, R. (2016). A cross-validation of the VRAG-R using a sexual offender sample from Austria. Presented at the International Association for the Treatment of Sex Offenders Conference, Copenhagen; Sewall, L.A. (2015). The treatment of psychopathic sexual offenders: Exploring the influence of risk, change, subtype, and adaptation to recidivism. Unpublished Doctoral Thesis, University of Saskatchewan.

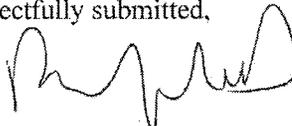
<sup>40</sup> I chose to omit Items 2 and 4 – *Elementary School Maladjustment* and *Marital Status*, due to an absence of information and conflicting information, respectively.

percent of individuals with similar scores recidivated at 5 years of time at risk and 87% recidivated at 12 years of time at risk.

**SUMMARY AND CONCLUSIONS:**

Mr. David Hunter is a multi-paraphilic 42 y/o male with a history of offending against prepubescent males (0064; 0112), and prepubescent (0114; 0128-0131) and adult (0214-0216; 0417-0428) females. Mr. Hunter has been repeatedly sanctioned and remains an untreated sex offender. He was previously deemed not amenable to treatment (0123), and failed (0059; 0252-0253; 0655-0664) or self-terminated (0648-0654) from treatment on 6 prior occasions. He continues to report strong urges to reoffend, principally against prepubescent females, and acknowledges if released he would "take the first opportunity that became available" to offend against a prepubescent female or a petite and vulnerable adult female. There is simply no question that Mr. Hunter meets criteria under RCW 71.09.020(7)(8) based upon his self-report, and assessment with 2 measures of actuarial risk.<sup>41</sup> To Mr. Hunter's credit, he believes that civil commitment would be in the best interest of the community and in his best interest. In simple terms, I concur. Based upon the preceding, I clearly believe that Mr. Hunter meets criteria as a "sexually violent predator" as defined in RCW 71.09.020(18).

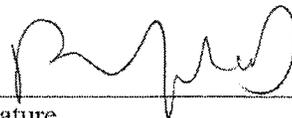
Respectfully submitted,



Brian W. Judd, Ph.D.  
Licensed Psychologist  
Washington License 1522  
Certified Sex Offender Treatment Provider 171

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

12/26/16 Olympia WA  
Date and Place

  
Signature

<sup>41</sup> Independent of Mr. Hunter's assertions, his assessed level of psychopathy as measured by the PCL-R in conjunction with his pedophilic interests as measured by the Screening Scale of Pedophilic Interests (SSPI) denotes an exceptionally high risk for sexual recidivism due to the kindling effect of psychopathy and deviant sexual interests yielding an odds ratio of 6.68. Please see: Seto, M.C., Harris, G.T., Rice, M.E., & Barbaree, H.E. (2004). The Screening Scale of Pedophilic Interests predicts recidivism among adult sex offenders with child victims. *Archives of Sexual Behavior*, 33, 455-466.

# Exhibit K

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360.352.5351  
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**End of Sentence Review Committee Psychosexual Addendum**

**NAME:** David Hunter  
**DOB:** 4/19/74  
**EDUCATION:** 11<sup>th</sup> Grade  
**OCCUPATION:** Unemployed  
**JURISDICTION:** Grays Harbor Superior Court  
**CAUSE NO.:** 13-1-197-0  
**EVALUATOR:** Brian W. Judd, Ph.D.  
**DATE OF REPORT:** 4/16/18

**REASON FOR REFERRAL:**

Mr. David Hunter a 43 year old male with a history of hands-on offending against pre-pubescent and adult females, and minor males. Mr. Hunter was initially referred for review in 2016 by the Department of Corrections End of Sentence Review Committee for consideration of filing as a '*sexually violent predator*' prior to his earned early release date of 1/18/17.

In my 12/26/16 report<sup>1</sup> I opined that Mr. Hunter met statutory criteria as delineated in RCW 71.09.020(18). Based upon review of 1,334 pages of discovery and a 4 hour interview conducted on 12/19/16 at Airway Heights Correction Center in Airway Heights, WA, I opined that Mr. Hunter met DSM-5<sup>2</sup> diagnostic criteria for Pedophilic Disorder, Nonexclusive type, Sexually attracted to both (F65.4), Fetishistic Disorder, Nonliving objects, In a controlled environment (F 65.0), Alcohol Use Disorder, In a controlled environment (F10.20), Stimulant Use Disorder, In a controlled environment (F15.20), Opioid Use Disorder, In a controlled environment (F11.20), and Antisocial Personality Disorder (F60.2). Of the listed disorders, I regarded Pedophilic Disorder, Nonexclusive type, Sexually attracted to both (F65.4) as constituting a '*mental abnormality*' which predisposed Mr. Hunter to engage in predatory acts of sexual violence thereby placing the health and safety of prepubescent males and females (particularly females) at risk.

<sup>1</sup> 1518-1534.

<sup>2</sup> American Psychiatric Association (2013). *Diagnostic and Statistical Manual of Mental Disorders (5<sup>th</sup> Edition)*. Washington DC: Author.

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Licensed Psychologist  
Clinical & Forensic Consultation & Assessment*

**D. Hunter 001538**

Assessment with the Static-99R,<sup>3,4,5</sup> and the Violence Risk Appraisal Guide – Revised (VRAG-R)<sup>6</sup> yielded concordant risk estimates suggesting that Mr. Hunter constituted a high risk for sexual and violent (including sexually violent) recidivism.<sup>7</sup> Based upon the aggregate information of a ‘*mental abnormality*’ and meeting the statutory criteria of “*more probably than not*” as defined in RCW 71.09.020(7), I concluded that Mr. Hunter met the statutory definition of a ‘*sexually violent predator*’ as described in RCW 71.09.020(18).

As a result of my 12/26/16 report Mr. Hunter was detained until his maximum expiration date of 5/15/18. I was therefore asked to update my 12/26/16 evaluation and render a conclusion as to whether Mr. Hunter continued to meet statutory criteria as a ‘*sexually violent predator*.’ For purposes of the current addendum, I was provided with an additional 201 pages of discovery. Additionally, on 3/30/18 Mr. Hunter participated in a 1.5 hour interview at Airway Heights Correction Center.

### **RECORDS REVIEWED:**

The following records were reviewed and relied upon in the preparation of this addendum:

- 1) Washington State Department of Corrections Draft File Review for ESRC, 1370-1375.
- 2) Department of Corrections Health Services Kite, dated 12/27/17, 1465.
- 3) Department of Corrections PREA Mental Health Notification, dated 9/21/17, 1476.
- 4) Department of Corrections Primary Encounter Reports from 10/19/16 through 12/29/17, various authors, 1473-1498.

### **INSTITUTIONAL COMPORIMENT:**

Records indicate that Mr. Hunter has continued to demonstrate good institutional comporiment since my 12/26/16 report. No institutional infractions were noted, although in 9/17 records indicate that Mr. Hunter initiated a PREA report as he felt another inmate had been “*harassing him and pressuring him for sex.*” (1476; 1479).

Throughout a majority of the reporting period Mr. Hunter was employed as a quality control clerk in the textile department. He maintained the job through late

<sup>3</sup> Phenix, A., Fernandez, Y., Harris, A.J.R., Helmus, L.M., Hanson, R.K., & Thornton, D. (2016). *Static-99R Coding Rules – Revised*.

<sup>4</sup> I chose to not assess the density of Mr. Hunter’s psychological needs and vulnerabilities due to the high score he received on the Static-99R and the overlap of recidivism rates for Routine Corrections and High Risk/Needs samples at extreme ends of their respective continua. Please see: Thornton, D., & Knight, R. (2013). Construction and validation of SRA-FV Need Assessment. *Sexual Abuse: A Journal of Research and Treatment*. doi: 10.1177/1079063213511120.

<sup>5</sup> The revised normative data was published by Amy Phenix, Maaiké-Leslie Helmus, and R. Karl Hanson on 1/1/15 and is available for download at static99.org.

<sup>6</sup> Harris, G.T., Rice, M.E., Quinsey, V.L., & Cormier, C.A. (2015). *Violent Offenders: Appraising and managing risk (3rd Edition)*. Washington, DC: American Psychological Association.

<sup>7</sup> In addition to assessed high levels of actuarial risk, Mr. Hunter continued “*to report strong urges to reoffend, principally against prepubescent females, and acknowledges if released he would “take the first opportunity that became available” to offend against a prepubescent female or a petite and vulnerable adult female.*” (1534)

2017/early 2018 at which time he resigned from his position due to allegations that he had made sexual advances toward a supervisor (1465; 1473).<sup>8</sup> Mr. Hunter remained unemployed following cessation of employment with Correctional Industries in late 2017.

Following termination from the Sex Offender Treatment & Assessment Program (SOTAP) on 5/18/16 (0663), Mr. Hunter matriculated into offender programming entitled 'Houses of Healing' which met for 13 weekly sessions of 2 hours duration during the fall of 2016.<sup>9,10</sup> Additionally, Mr. Hunter participated in intermittent treatment/assessment with mental health professionals (1473; 1474; 1475; 1479; 1480; 1482; 1485; 1486) once every 4 to 8 weeks or on an as-needed basis.<sup>11</sup>

#### **INTERVIEW WITH MR. HUNTER:**

Mr. Hunter was interviewed for approximately 1.5 hours on 3/30/18 at the Airway Heights Correction Center.<sup>12,13</sup>

Responses to questions were clear, coherent and goal directed. Mr. Hunter was noted to be affectively broad throughout the interview and appeared to establish good rapport with the undersigned. Mentation was grossly intact on screening with intact orientation, attention and concentration, and short-term memory.

Mood, appetite, energy and sleep were grossly intact upon screening. Suicidal and homicidal ideation were denied. Unlike my prior 12/19/16 interview, Mr. Hunter denied experiencing the occasional disparaging comments which he previously characterized as auditory hallucinations.<sup>14</sup> No other first rank symptoms of psychosis were endorsed. Mr. Hunter endorsed realistic anxiety as it pertained to his future but denied any affective disruption or substantive impact on his daily functioning.

<sup>8</sup> When interviewed on 3/30/18, Mr. Hunter categorically denied that he made any sexual advances towards his Correctional Industries supervisor, and that the allegations were fabricated by other inmates. Records do not indicate that Mr. Hunter was sanctioned or infraacted for the allegations.

<sup>9</sup> In an online description of the program developed by Robin Casarjian, MA, *Houses of Healing* is described as employing mindfulness-based practices to offer "guidance in stress management techniques and healthy, practical coping strategies. It addresses, in depth, the necessity of self-forgiveness and forgiveness of others – subjects that are often overlooked and misunderstood despite the fact that they are essential to the cultivation of empathy and emotional and spiritual maturity."

<sup>10</sup> While *Houses of Healing* may constitute efficacious offender programming, the programmatic description does not comport with the established standards of sex offender specific treatment. As such, Mr. Hunter continues to be an untreated sex offender. For a description of sex offender specific treatment designed to mitigate the risk for reoffense, please see: *ATSA Practice Guidelines for the Assessment, Treatment, and Management of Male Adult Sexual Abusers* (2014). Association for the Treatment of Sexual Abusers; Beaverton; OR.

<sup>11</sup> Due to the sporadic contact with Susan Crowe, MS, and Mike Spencer, MSW, Mr. Hunter's sessions appeared to be for monitoring purposes and not for the purpose of achieving therapeutic goals.

<sup>12</sup> Prior to initiation of the interview, I described the nature of the evaluation, my relationship with the referring agency, the absence of confidentiality, and possible dispositional recommendations and outcomes. Following my disclosure, both orally and in written form, Mr. Hunter agreed to proceed with the interview.

<sup>13</sup> With Mr. Hunter's permission, the interview was recorded in its entirety. At the conclusion of the interview I offered Mr. Hunter the opportunity to review my typewritten notes to ensure accuracy. Mr. Hunter declined the offer.

<sup>14</sup> 1086.

Medications at the time of the interview consisted of Trazadone 25 mg,<sup>15</sup> Lipitor (Atorvastatin) for treatment of hypercholesterolemia, Protonix (Pantoprazole) for treatment of acid reflux, and Albuterol for treatment of asthma. Additionally, Mr. Hunter currently takes 81 mg of aspirin daily as a blood thinner following chest pain on 10/24/16 and again on 11/21/17. Aside from being overweight, Mr. Hunter assessed himself as generally in good health.

Following cessation of employment as a quality control clerk in late 2017/early 2018, Mr. Hunter stated that he had remained unemployed. When queried, Mr. Hunter stated that given the short duration of time until his max date, he was unable to obtain additional employment. When queried as to how he spends his days in the absence of programming, Mr. Hunter reported that he occupies his time with drawing and writing poetry.

Mr. Hunter reported a significant decline in arousal, stating that he had masturbated on 8 occasions since my prior evaluation in late 2016. Mr. Hunter attributed the decline in masturbation to the effects of the above referenced treatment and an enhanced appreciation that objectification of women was inappropriate. Consistent with his 12/19/16 report, Mr. Hunter stated that on the few occasions he did masturbate it was to the 2 youngest daughters on *Keeping Up With The Kardashians*. His masturbatory fantasies were described as being comprised of "simple intercourse" and without coercion.<sup>16</sup> Mr. Hunter denied masturbating to other women he viewed on television, or female correctional or support staff at Airway Heights Correctional Center.

As described in my 12/26/16 report, Mr. Hunter endorsed pronounced paraphilic interests in prepubescent females during our 12/19/16 interview. Mr. Hunter denied paraphilic interests during our current interview. When I inquired as to when he last masturbated to a female minor, Mr. Hunter vaguely responded, "it's been a long time," without further elaboration.<sup>17</sup>

Commensurate with his self-reported decline in paraphilic interests, Mr. Hunter asserted that he constituted a minimal risk for reoffense. When I queried as to the basis for his attenuated risk, Mr. Hunter responded, "I've been dealing with mental health and taking

<sup>15</sup> Records (1381) indicated that Mr. Hunter was receiving 50 mg of Trazodone each night. He stated that due to his overall improvement, the dosage had been reduced to 25 mg several weeks prior to the interview.

<sup>16</sup> In his comments regarding masturbation, Mr. Hunter again alluded to difficulty with volitional control. Specifically, he stated that he had asked his cellmate to take *Keeping Up With The Kardashians* off of his viewing list. Asked why he made this request of his cellmate, Mr. Hunter stated that he would have difficulty enacting control of his viewing behavior if the program was readily available.

<sup>17</sup> I am skeptical of Mr. Hunter's current statements regarding his masturbation and paraphilic interests due to their marked deviation from his 12/19/16 report. Specifically, when interviewed on 12/19/16 Mr. Hunter stated that at the termination of his SOTP treatment in 2015, 100% of his masturbatory fantasies were exclusively to pre-pubescent children. At the time of the 12/19/16 interview Mr. Hunter acknowledged paraphilic urges remained "pretty strong," and were more compelling and difficult to manage than nonparaphilic urges. In the absence of completed treatment, Mr. Hunter estimated his risk for recidivism if conditionally released as "high." While preferring to offend against a child, Mr. Hunter stated that he "would take the first opportunity that became available" indicating that he would sexually assault a child or a vulnerable female adult. In the absence of sex offender specific treatment addressing dynamic risk factors associated with recidivism, there is no rational basis for attenuation of Mr. Hunter's paraphilic interests or preferences.

*a couple of classes that have helped me redirect my ways of thinking.” (“How has your thinking been redirected?”) “I can stop and realize is this going to benefit me over time or will this put me at risk to hurt myself or somebody else. Like I told mental health, I would call the cops and tell them that I need somebody to talk to.” (“How would you assess your risk to reoffend at this point?”) “Pretty low. I don’t feel like doing anything like that anymore. Not doing it at all. I know right from wrong. I just need to make the right choice rather than the wrong choice.”<sup>18</sup>*

When I inquired as to whether Mr. Hunter felt he required future sexual deviancy treatment to mitigate risk, Mr. Hunter responded that while it wouldn’t hurt, *“I would say no because I have the tools to do positive thinking rather than negative thinking now.”<sup>19</sup>* When I inquired as to what factors would elevate his risk for recidivism, Mr. Hunter identified not being able to access his support network or a support person. Mr. Hunter did not identify any other factors which would elevate his risk upon discharge, thereby demonstrating a negligible understanding of the dynamic risk factors associated with prior offending.

Asked as to his 5/15/18 discharge plans, Mr. Hunter was unable to identify a discharge location or release address. He reported limited financial resources and negligible community supports. Asked to elaborate regarding housing, Mr. Hunter responded that he had a friend whose family might permit him to reside in a trailer that they would park *“somewhere.”* Alternately, he stated that he could register as a transient and rely upon homeless missions for food and housing. Asked regarding a support network, Mr. Hunter referenced that support might be forthcoming from an (unspecified) Jehovah’s Witness congregation, although again, Mr. Hunter was not definitive that any assistance would be available.

### **DIAGNOSES:**

In my 12/26/16 report I opined that Mr. Hunter met DSM-5 criteria for Pedophilic Disorder, Nonexclusive type, Sexually attracted to both (F65.4), Fetishistic Disorder, Nonliving objects, In a controlled environment (F 65.0), Alcohol Use Disorder, In a controlled environment (F10.20), Stimulant Use Disorder, In a controlled environment

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<sup>18</sup> Although records only documented participation in 13 weeks of *‘Houses of Healing,’* Mr. Hunter asserted that he had also participated in and completed programs entitled *‘Thinking for Change’* and *‘Chemical Dependency’* in 2017. This appears to be in error as records (0652) indicate that Mr. Hunter was participating in these courses in 2015, concurrent with SOTP. When I inquired as to how these additional courses had affected him, Mr. Hunter responded, *“It gave me, particularly Thinking for Change, the opportunity to see where my thought processes were wrong and that I needed to change to a new way of thinking.”* Given that the cited adjunct programming was completed in 2015, the asserted efficacy of these treatment programs is inconsistent with Mr. Hunter’s masturbatory focus on minor females as late as December 2016.

<sup>19</sup> Prior to his 5/15 matriculation in sex offender treatment, Mr. Hunter had failed 5 prior treatment programs. Mr. Hunter chose to discontinue SOTP after 2.5 months, having failed to submit any assignments or meaningfully address any of his dynamic risk factors. In the Program Termination Summary (0648-0654), Mr. Hunter’s primary therapist, K. Reiter, MSW, noted that Mr. Hunter avoided dealing with issues related to his sexual deviancy, but was motivated in other treatment areas, such as chemical dependency treatment, where he was described as doing very well (0652). Mr. Hunter’s current assertion that adjunct programming has addressed his paraphilic urges and mitigated his recidivism risk appears to be yet another iteration of his reluctance to meaningfully engage in sex offender treatment and address core issues related to his prior offending and sustained paraphilic urges.

(F15.20), Opioid Use Disorder, In a controlled environment (F11.20), and Antisocial Personality Disorder (F60.2).<sup>20</sup> In the absence of sex offender specific or chemical dependency treatment subsequent to 12/19/16, I have no basis for modification of my prior diagnoses. As previously opined, I regard Pedophilic Disorder, Nonexclusive type, Sexually attracted to both (F65.4) as constituting a “*mental abnormality*” as defined by RCW 71.09.020(8). I am also of the opinion that this disorder continues to predispose Mr. Hunter to engage in predatory acts of sexual violence placing the health and safety of prepubescent males and females (particularly females) at risk.<sup>21</sup>

### RISK ASSESSMENT:

Mr. Hunter was previously assessed with the Hare Psychopathy Checklist-Revised 2<sup>nd</sup> Edition (PCL-R).<sup>22</sup> I previously assigned Mr. Hunter a prorated score of 27 on the PCL-R placing him at the 71<sup>st</sup> percentile<sup>23</sup> compared to North American male offenders and at the 78<sup>th</sup> percentile<sup>24</sup> compared to North American male forensic psychiatric patients.<sup>25,26</sup>

### Static-99R:

As with my 12/26/16 report, Mr. Hunter’s score on the Static-99R remains a 9, placing him at the 100<sup>th</sup> percentile.<sup>27</sup> Individuals with similar scores to Mr. Hunter would be expected to exhibit a recidivism rate (of at least) 7.32 times higher than the recidivism rate of the typical sex offender (defined as a median score of 2). Forty-four percent<sup>28</sup> of individuals with scores similar to Mr. Hunter recidivated within 5 years of time at risk.<sup>29,30</sup>

<sup>20</sup> The evidentiary basis for my diagnoses is detailed in my 12/26/16 report (1529-1532).

<sup>21</sup> In addition to the preceding mental disorders, mental health records (1473; 1474; 1475; 1479; 1480; 1482; 1485; 1486) diagnosed Mr. Hunter with a recurrent major depressive disorder in partial remission, Posttraumatic Stress Disorder, Amphetamine Dependence in a controlled environment, and provided a rule-out diagnosis of Borderline Personality Disorder. With regard to psychoactive drugs, the only medication noted in the available records (1381) was a nightly 50 mg dose of Trazodone which reportedly had been reduced to 25 mg during the weeks prior to my 3/30/18 interview. Review of his institutional functioning did not indicate significant functional limitations in programming, mood, appetite, or sleep. As the prescribed dosage of Trazodone is less than ¼ of the dose used for treatment of depression, the prescription appears solely to be a sleep aid. While I considered the diagnoses in the Primary Encounter Reports, in the absence of clear functional limitations in Mr. Hunter’s vocational, social or avocational functioning, I felt there was an insufficient evidentiary basis to support the diagnoses.

<sup>22</sup> Hare, R.D. (2003). *Manual for the Psychopathy Checklist – Revised*, 2<sup>nd</sup> Edition. Toronto: Multi-Health Systems.

<sup>23</sup> Technically, the 71.4 percentile.

<sup>24</sup> Technically, the 78.2 percentile.

<sup>25</sup> I chose to omit and prorate Item 12, *Early Behavioral Problems*, due to a lack of records and an absence of collaterals.

<sup>26</sup> As noted in the PCL-R manual, “*PCL-R items are rated on the basis of the person’s lifetime functioning as revealed by evaluations of the assessment data. Items should not be rated solely or primarily on the basis of present state or relatively recent behavioral history, each of which may be atypical of the individual’s usual functioning...*” (p 19-20). As such, there was no basis for modifying Mr. Hunter’s PCL-R score given the recency of his last rating.

<sup>27</sup> Technically 99.9%, 99.5% to 100.0% at the 95% confidence interval compared to 4 samples comprised of 2011 Canadian offenders.

<sup>28</sup> Technically 43.8%, 37.8% to 50.1% at the 95% confidence interval.

<sup>29</sup> If compared to the High Risk/Need norms, 42.2% (32.6% to 52.5% at the 95% confidence interval) of individuals with scores similar to Mr. Hunter recidivated at 5 years of time at risk. There are no 10-year estimates for either Routine Corrections or High Risk/Need samples at the present time.

<sup>30</sup> With regard to newly defined nominal risk categories, Mr. Hunter’s score of 9 would place him in Level IVb reflecting a high density of enduring criminogenic needs.

**VRAG-R**

Assessment with the Violence Risk Appraisal Guide – Revised (VRAG-R)<sup>31</sup> yielded a prorated score<sup>32</sup> of 31 placing Mr. Hunter in Bin 9 at the 95<sup>th</sup> percentile compared to the standardization sample. Seventy-six percent of individuals with similar scores recidivated at 5 years of time at risk and 87% recidivated at 12 years of time at risk.

**SUMMARY AND CONCLUSIONS:**

Mr. David Hunter is a multi-paraphilic 43 y/o male with a history of offending against prepubescent males (0064; 0112), and prepubescent (0114; 0128-0131) and adult (0214-0216; 0417-0428) females. Mr. Hunter has reoffended whenever at liberty in the community despite repeated sanctioning. He remains an untreated sex offender having previously been deemed not amenable to treatment (0123) and failed (0059; 0252-0253; 0655-0664) or self-terminated (0648-0654) from treatment on 6 prior occasions. While Mr. Hunter currently asserts that he no longer harbors paraphilic urges nor does he constitute a risk to reoffend, Mr. Hunter's self-report is simply not credible due to his failure to participate in relevant programming.<sup>33</sup> I remain of the opinion that Mr. Hunter continues to suffer from a 'mental abnormality' as defined in RCW 71.09.020(8) and that Mr. Hunter meets the statutory criteria of 'more probably than not' as defined by RCW 71.09.020(7) based upon assessment with 2 measures of actuarial risk.<sup>34,35</sup> Cumulatively, I believe that Mr. Hunter meets criteria as a 'sexually violent predator' as defined in RCW 71.09.020(18). I hold this opinion to a reasonable degree of psychological certainty.

<sup>31</sup> The VRAG-R was standardized on 961 offenders and cross-validated on an additional 300 offenders. AUC for the entire sample was .758. For the subsample of 745 sex offenders, the VRAG-R yielded an ROC of .738, compared to an AUC of .719 for the VRAG, and .727 for the SORAG. As such, the VRAG-R demonstrated comparable or greater predictive validity than either the VRAG or SORAG. A recent cross-validation on an independent sample of 534 released Austrian sex offenders found an AUC of .751 for violent recidivism with adequate calibration across all 9 bins. Additionally, a study of 296 treated sex offenders found an AUC of .73 for violent recidivism at 5 years follow-up and .71 at 10 years follow-up. Please see: Hertz, P.G., Rettenberger, M., & Eher, R. (2016). A cross validation of the VRAG-R using a sexual offender sample from Austria. Presented at the International Association for the Treatment of Sex Offenders Conference, Copenhagen; Olver, M.E., & Sewall, L.A. (2018) Cross-validation of the discrimination and calibration properties of the VRAG-R in a treated sexual offender sample. *Criminal Justice and Behavior*, 1-21. doi10.1177/0093854818762483.

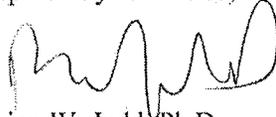
<sup>32</sup> I chose to omit Items 2 and 4 – *Elementary School Maladjustment* and *Marital Status*, due to an absence of information and conflicting information, respectively.

<sup>33</sup> Additionally, Mr. Hunter's credibility is called into question due to the stark contrast from his 12/19/16 report to the undersigned.

<sup>34</sup> Mr. Hunter's assessed level of psychopathy as measured by the PCL-R in conjunction with his pedophilic interests as measured by the Screening Scale of Pedophilic Interests (SSPI) denotes an exceptionally high risk for sexual recidivism due to the kindling effect of psychopathy and deviant sexual interests. Please see: Seto, M.C., Harris, G.T., Rice, M.E., & Barbaree, H.E. (2004). The Screening Scale of Pedophilic Interests predicts recidivism among adult sex offenders with child victims. *Archives of Sexual Behavior*, 33, 455-466.

<sup>35</sup> Mr. Hunter has 3 years of community supervision following his release on Cause # 13-1-197-0. When interviewed on 12/19/16, Mr. Hunter acknowledged that community supervision did not have a dampening effect on violation or offending behavior when previously at liberty. Specifically, following his 12/11/03 release into the community on Case # 95-04-33018 (0184), the longest contiguous stretch that Mr. Hunter remained at liberty in the community was 3 months (0189). Review of records indicates frequent sanctions for violation behavior (0231-0232; 0233-0234; 0235-0237; 0238-0240; 0241-0242; 0243-0245; 0246-0247; 0248-0251; 0252-0255; 0256-0258; 0259-0261; 0262-0264; 0265-0267; 0268-0270; 0271-0274; 0275-0282) as well as new criminal charges and convictions (0142-0143; 0144-0145; 0166-0171; 0174-0177; 1124-1126) while on conditional release in Oregon.

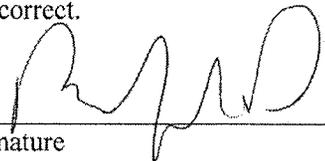
Respectfully submitted,



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

4/16/18 Olympia WA  
Date and Place

  
Signature