

2011 FEB 17 AM 8:39

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**STATE OF WASHINGTON
SKAGIT COUNTY SUPERIOR COURT**

In re the Detention of:

NO. **11 2 00340 2**

MICHAEL BARGAS,

CERTIFICATION FOR
DETERMINATION OF
PROBABLE CAUSE

Respondent.

I, Grady Leupold, 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, Michael Bargas.

Pursuant to RCW 71.09.030, the Attorney General for the State of Washington is filing this petition at the request of the Skagit 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, Michael Bargas, is a sexually violent predator pursuant to chapter 71.09 RCW.

I. OFFENSE HISTORY

Respondent, Michael Bargas, was born on June 16, 1957, and is now 53 years old. He has been convicted of two (2) sexually violent offense(s) as that term is defined in RCW 71.09.020(17).

A. SEXUALLY VIOLENT OFFENSES

1. First Degree Rape, Spokane County Superior Court, May 21, 1987, Cause No. 86-1-01203-7

On September 1, 1986, a 38-year-old woman, J.L. awoke to find the Respondent in her bedroom smelling intoxicated and appearing to be under the influence of drugs. The Respondent

1 physically attacked J.L., held her down and engaged in sexual intercourse against her will while
2 her children slept in adjacent rooms. In an attempt to fend off her attacker, J.L. warned the
3 Respondent that she expected her husband at any moment. Hearing a vehicle outside of the
4 residence, the Respondent fled the attack and abandoned a beer bottle and painter's hat. After a
5 jury trial resulting in his conviction, the court sentenced the Respondent to 51 months of
6 confinement on June 16, 1987.

7 **2. First Degree Child Molestation, Skagit County Superior Court,**
8 **January 23, 1997, Cause No. 96-1-00538-9**

9 In September, 1996, the Respondent escorted a 9-year-old girl, M.M., into the basement
10 of her residence, pulled down her overalls, and digitally penetrated her for several minutes. The
11 Respondent had been a family friend for several years. When M.M. finally reported the abuse on
12 October 24, 1996, to a school counselor, she also recounted two additional instances of abuse.
13 Five years earlier, the Respondent applied lotion to M.M.'s vagina while she was experiencing an
14 infection. On October 22, the Respondent began messaging M.M.'s back before proceeding to a
15 message of her buttocks. After accepting an Alford Plea, the court sentenced the Respondent to
16 171 months of confinement and community supervision on March 27, 1997.

17 **B. OTHER OFFENSES**

18 **1. Third Degree Assault, Skagit County Superior Court, December 6, 1990,**
19 **Cause No. 90-1-00408-1**

20 On August 25, 1990, four months following his release from incarceration for Spokane
21 County Cause No. 86-1-01203-7, the Respondent accompanied a 31-year-old female, S.N., and
22 another male to a residence. S.N. and the other male retired to a bedroom for the evening and fell
23 asleep beside one another. S.N. awoke to discover the Respondent engaging in sexual
24 intercourse with her against her will, he told her to relax and enjoy it before commenting to her
25 that she could make a lot of money with a body as good as hers. After initially claiming he did
26 not engage in sexual contact with S.N., the Respondent ultimately accepted an Alford Plea to
Third Degree Assault with Sexual Motivation and acknowledged he did participate in sexual

1 intercourse with the victim. On February 1, 1991, the court sentenced the Respondent to 12
2 months of confinement and community supervision.

3 **II. SEXUALLY VIOLENT PREDATOR EVALUATION**

4 On April 28, 2009, Dr. Kathleen Longwell, Ph.D., conducted an evaluation of
5 Mr. Bargas at the request of the Joint Forensic Unit (JFU). Dr. Longwell is familiar with
6 RCW 71.09 and has considerable expertise in the evaluation, diagnosis, and treatment of sex
7 offenders, including evaluations conducted for possible civil commitment. A copy of
8 Dr. Longwell's curriculum vitae is attached hereto as Exhibit A. In conducting her
9 evaluation, Dr. Longwell reviewed hundreds of pages of documents including Mr. Bargas'
10 criminal history, health information, court documents, and DOC documents. A copy of
11 Dr. Longwell's evaluation is attached hereto as Exhibit B and incorporated herein.

12 **A. Mental Abnormality**

13 Dr. Longwell determined Mr. Bargas meets the criteria as a sexually violent predator
14 as defined in RCW 71.09. Dr. Longwell opined, to a reasonable degree of psychological
15 certainty, that Mr. Bargas suffers from the mental abnormality of Pedophilia, Sexually
16 Attracted to Girls, Non-exclusive Type, Rule-out Paraphilia Not Otherwise Specified (NOS),
17 Alcohol Dependence in institutional remission, Polysubstance Dependence in institutional
18 remission and Antisocial Personality Disorder. In addition, Dr. Longwell scored Mr. Bargas
19 by using the Hare Psychopathy Checklist, revised, 2d edition (PCL-R) and diagnosed the
20 Respondent as a psychopath.

21 Dr. Longwell found these mental disorders constitute a mental abnormality as that
22 term is defined by RCW 71.09.020(8). Specifically, the diagnosis is a congenital or acquired
23 condition affecting the emotional or volitional capacity which predisposes Mr. Bargas to the
24 commission of criminal sexual acts in a degree constituting Mr. Bargas a menace to the health
25 and safety of others.

1 **B. Risk Assessment**

2 In determining whether Mr. Bargas is likely to engage in predatory acts of sexual
3 violence if not confined in a secure facility, Dr. Longwell utilized four actuarial instruments,
4 the Minnesota Sex Offender Screening Tool- Revised (MnSOST-R), Sexual Offender Risk
5 Appraisal Guide (SORAG), Static 99, and Static 2002.

6 The MnSOST-R was developed on offenders who were convicted of either rape or an
7 extra-familial sex offense. The instrument has also been shown to be a moderate predictor of
8 sexual re-offense and it provides the likelihood of re-arrest for a sexual offense for a period of
9 six years post-incarceration. Dr. Longwell calculated Mr. Bargas achieved a score of 14,
10 placing him in the highest risk category. Members of the MnSOST-R sample set with a similar
11 score to Mr. Bargas recidivated at a rate of 40% with community supervision in 6 years.
12 Without community supervision or parole, these individuals recidivated at a rate of 72%.

13 The SORAG is designed to establish risk estimates for a more general outcome
14 measure, specifically violent recidivism, than other actuarial instruments. Dr. Longwell
15 calculated Mr. Bargas achieved a score of 29, placing him in Bin 8. Members of the SORAG
16 sample set with a similar score to Mr. Bargas recidivated at a rate of 75% in 7 years and 89%
17 at 10 years. As Dr. Longwell reasoned “[s]ince most of Mr. Bargas’ violent offenses have
18 been sexual, his SORAG score appears to be reflecting a risk of sexual violence.”

19 The Static 99 and Static 2002 are actuarial measures of relative risk for sexual offense
20 recidivism. The instruments are widely used and have been shown to be moderate predictors
21 of sexual recidivism. The instruments’ accuracy in assessing relative risk has been consistent
22 across a wide variety of samples, countries, and unique settings. Dr. Longwell calculated
23 Mr. Bargas’ total score at 5 on the Static 99 instrument which places him in the medium to
24 high risk category for being charged or convicted of another sexual offense. Compared to a
25 representative and international sample of adult male sexual offenders, Mr. Bargas’ Static 99
26 score of 5 falls within the 83.7 to 91.0 percentile compared to the standardization samples. In

1 other words, 83.7 to 91.0 percent of sex offenders in these samples scored at or below
2 Mr. Bargas' score. Moreover, Dr. Longwell determined the sample of Static 99 offenders that
3 scored similarly to Mr. Bargas recidivated at a rate of 10.2 to 23.1 percent in five years and
4 11.8 to 32.1 percent in ten years.

5 Dr. Longwell calculated Mr. Bargas' total score at 6 on the Static 2002 instrument
6 which places him in the moderate category for being charged or convicted of another sexual
7 offense. Compared to a representative and international sample of adult male sexual offenders,
8 Mr. Bargas' Static 2002 score of 6 falls within the 79.5 to 88.5 percentile compared to the
9 standardization samples. In other words, 79.5 to 88.5 percent of sex offenders in these samples
10 scored at or below Mr. Bargas' score. Moreover, Dr. Longwell determined the sample of
11 Static 99 offenders that scored similarly to Mr. Bargas recidivated at a rate of 8.4 to 20.2
12 percent in five years and 9.7 to 28.1 percent in ten years.

13 Finally, Dr. Longwell considered various dynamic risk factors from the STABLE-2007
14 including significant social influences, intimacy deficits, sexual self-regulation, cooperation
15 with supervision and general self-regulation. After evaluating Mr. Bargas with the STABLE-
16 2007 and the four actuarial instruments, Dr. Longwell concluded Mr. Bargas is "more likely
17 than not to sexually reoffend in a violent and predatory manner."

18 The Respondent is due to be released to the community on February 20, 2011.

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

21 RESPECTFULLY SUBMITTED this 17th day of February, 2011.

22 ROBERT M. MCKENNA
23 Attorney General

24 

25 GRADY LEUPOLD, WSBA # 31836
26 Assistant Attorney General
Attorneys for State of Washington

EXHIBIT A

Kathleen Longwell, Ph.D.
P.O Box 13163—Station E
Oakland, California 94661-9991
(510) 530-7300 Facsimile (510) 530-6269
Email <kathylongwell@sbcglobal.net>

Education

Bachelor of Science

Major: Social Welfare, 1972
State University of New York at Buffalo

Masters of Education

Counseling and Guidance, 1976
University of Arizona, Tucson

Doctor of Philosophy

Clinical Psychology, 1991
California Graduate School of Family
Psychology, Point Richmond, California
Dissertation Title: Uncovering Psychotherapeutic
Processes in Milan-style Team Consultations with
Known Outcomes

Licensed

Psychologist, California, #Psy13730 (March, 1994)
Psychologist, Washington, #PY 3473
Marriage & Family Therapist #MFT 17931 (December 1982)

**Clinical
Experience**

1983-Present

Private Practice Psychotherapist, Piedmont, CA
Psychotherapy with adults, children, couples and families.
Psychological assessment and consultation. Psychological
evaluations, reports, and expert witness testimony.

2003-Present

Consulting Psychologist & Expert Witness
State of Washington, Joint Forensic Unit
Psychological evaluations on convicted sex offenders for
Treatment designation as Sexually Violent Predators.
Expert witness testimony.

1996-Present

Consulting Psychologist & Expert Witness
California Department of Mental Health
Sex Offender Commitment Program
Psychological evaluations on convicted sex offenders for
treatment designation as Sexually Violent Predators.

Expert witness testimony on these cases. Consultation to other examining psychologists. Training of other evaluators.

2000-Present

Consulting Psychologist

Gateways Conditional Release Program, Los Angeles
Psychological evaluations and reports on forensic mental health patients to assess risk and readiness for out-patient treatment.

2001-Present

Evaluating Psychologist

Bureau of Prisons, State of California
Psychological evaluations and reports on parole candidates to determine if they meet the qualifications as Mentally Disordered Offenders.

1994-Present

Consulting Psychologist

California Forensic Assessment Project
San Francisco Conditional Release Program
Assess adults with psychometric batteries and reports. Consultation to other psychologist panelists regarding test interpretation and report writing.

1991-1994

Post-doctorate Psychology Internship

San Francisco Conditional Release Program
Assessed mentally ill criminal adults with psychometric batteries and wrote reports. Provided out-patient psychotherapy. Wrote a successful grant proposal for a CONREP in Fresno, CA

1991-1992

Supervisor of Intensive Family Therapy

American School of Professional Psychology
Supervised advanced psychology doctoral student via a 1-way mirror with microphones.

1987-1988

Pre-doctoral Psychology Internship

Youth Intervention & Assessment Team (Y.I.A.C.T.)
Contra Costa County Mental Health, Concord CA
Administered and interpreted psychological testing batteries on court referred children and families. Wrote reports emphasizing placement needs.

1983-1986

Clinical Supervisor

New Connections, Concord CA
Provided individual and group supervision to counseling staff. Delivered drug/alcohol education presentations

and in-service trainings to community groups.

- 1982-1983 **Counselor**
Bay Area Addiction Research & Treatment, San Francisco
Out-patient psychotherapy for individuals, couples and families. Supervised M.F.C.C. interns.
- 1981 **Program Coordinator**
Mobile After Hours Intervention Network, Tucson AZ
Developed and administered a family crisis intervention program.
- 1978-1980 **Program Director**
Center for Behavioral Health Services, Inc., Tucson AZ
Directed a private out-patient mental health program.
Wrote grant proposals. Administered programs:
Methadone maintenance/detoxification, Federal parole, juvenile court, and alcohol rehabilitation. Psychotherapy with individuals, couples and families.
- 1977-1978 **Counselor Coordinator**
Marin Treatment Center, San Rafael, CA
Supervised drug rehabilitation counselors and student interns. Psychotherapy with clients. Designed and conduct a treatment program for pregnant addicts.
- 1976-1977 **Pregnant Women's Services Coordinator**
La Frontera Mental Health Center, Tucson, AZ
Developed and administered a program for pregnant narcotic addicts. Provided individual, family and group psychotherapy. Provided consultation, education and training to medical and social services agencies.
- 1977 **Counseling Internship**
Southern Arizona Mental Health Center, Tucson
Psychotherapy with chronically mentally ill patients in a community half-way house.
- 1972 **Social Worker**
The Salvation Army, Buffalo NY
Psychotherapy with inter-city residents. Trained volunteers.
- Professional Organizations**
American Psychological Association (APA)
California Psychological Association (CPA)
Association for the Treatment of Sexual Abusers (ATSA)
American Association of Marriage & Family Therapists

EXHIBIT B

Kathleen Longwell, Ph.D.
Post Office Box 13163—Station E
Oakland, California 94661-9991
(510) 530-7300
Facsimile (510) 530-6269

RECEIVED

MAY 04 2009

ESRC/LEN PROGRAMS

Licensed Psychologist
California: Psy 13730
Washington: PY3473

SEXUALLY VIOLENT PREDATOR EVALUATION

Date of Report: April 28, 2009

I. IDENTIFYING INFORMATION

NAME	Bargas, Michael Anthony aka, Bargas, Miguel Antonio
DATE OF BIRTH	June 16, 1957
DOC NUMBER	250927
COUNTY	Skagit
CURRENT LOCATION	Stafford Creek Correctional Center
DATE of EXAMINATION	April 15, 2009

Mr. Michael Bargas is a 51 year old, divorced Native-American and Hispanic man who is presently incarcerated at Stafford Creek Correctional Center, following a conviction for First Degree Child Molestation.

II. REASON FOR REFERRAL

This evaluation is being completed pursuant to RCW 71.09, the Sexually Violent Predator Act, at the request of the State of Washington, Department of Corrections, Community Protection Unit and the Joint Forensic Unit (JFU). The purpose of this evaluation is to determine if Mr. Bargas meets the criteria as a Sexually Violent Predator. Mr. Bargas was asked if he would be willing to participate in a clinical interview by the undersigned. He was offered a "Notification as a Sexually Violent Predator" that informed him of the nature and purpose of the interview. He was informed that the interview was not confidential and that information he provided may be included in written reports and testimony on his case. Issues of mandated reporting were explained to Mr. Bargas. Mr. Bargas had no questions about the nature of the examination. After

M. Bargas 001527

reviewing the notification, he agreed to be interviewed and signed the consent form indicating his agreement. Mr. Bargas was offered, but declined, a copy of the consent.

Mr. Bargas was examined on April 15, 2009 for approximately 3 ¼ hours. The examination occurred in a private conference room at Stafford Creek Correctional Center in Aberdeen, Washington. Prior to the examination, Mr. Bargas had signed a consent with his correctional counselor agreeing to participate in the examination.

This evaluation will address the following two questions:

- A. Does Mr. Bargas have a mental abnormality defined in RCW 71.09 as "a congenital or acquired condition affecting the emotional or volitional capacity which predisposes him to the commission of criminal sexual acts in a degree constituting him a menace to the health and safety of others?"
- B. By reason of his mental abnormality, is Mr. Bargas likely to engage in predatory acts of sexual violence?

III. SOURCES OF INFORMATION

The Attorney General's Office provided Mr. Bargas' records. All records were reviewed which includes Bates Stamped numbers 000001--001480. When documents are referenced in this report, the Bates Stamped number will be put in parenthesis.

Evaluation Procedures

1. Record review
2. Mental Status Examination
3. Clinical Interview
4. Hare Psychopathy Checklist, revised, 2nd edition (PCL-R)
5. Static 99
6. Static 2002
7. Sentence Completion, adult form
8. Minnesota Sex Offender Screening Tool, revised (MnSOST-R)
9. Sex Offender Risk Appraisal Guide (SORAG)

SEX OFFENDING HISTORY

Below is a description of Mr. Bargas' known sex offense history in chronological order:

Spokane County Cause #86-1-01203-7

The Access Interface Message lists Mr. Bargas as being arrested on October 10, 1986 in Spokane. He was charged with First Degree Rape. He was found guilty and sentenced to 51 months of confinement (000020). At the time of this arrest, Mr. Bargas was 35 years old.

The DOC Criminal History Summary (000059) describes this offense as follows:

Bargas entered the home of Judith L (last names of victims are omitted) in the early morning hour. The exterior doors were locked. He entered her bedroom and asked her if she was the one to whom he was to sell dope. She convinced him that she was not the person and he left the house. He re-entered the house and came back upstairs to her bedroom wanting sex. He then proceeded to rape her telling her if she cooperated, he would not hurt her. Her children were asleep in other rooms of the home. She had told him that she expected her husband home at any time. When he heard a car stop, he thought it was her husband and he ran out. He left behind a beer bottle, a painter's type hat with the words, "Olympic Foods, Inc.", and a couple of keys. She gave the police a description, plus the fact that he had tattoos. Bargas was traced through the hat and the victim identified him from a photo montage. Bargas fingerprints were found on the beer bottle.

The Spokane Police Report #8655423 states that the victim was 38 years old (000112). The victim, Judith L, told police that she was terrified when she saw Mr. Bargas in her room. She was afraid that he would hurt her children. She said that Mr. Bargas smelled of beer and looked like he was on drugs. He used force to keep her from moving away from him. The victim said that Mr. Bargas bit her left ear and neck (000114). The Police Report states that Mr. Bargas was a suspect in a rape report from Betsey S on 10/6/85 in the ladies room of the Riverside Tavern (000123).

The Complaint on this case (#86-9-72253-0) was filed on 10/8/86 in the District Court for Spokane County. Mr. Bargas was charged with First Degree Rape occurring on or about 9/1/86 against Judith L. He was charged with engaging in sexual intercourse with Judith L by forcible compulsion (000147). The Information was filed on 11/13/86 in the Superior Court for Spokane County (case #86-9-72253-0) charging Mr. Bargas with the same offenses as charged in the Complaint (000149). The Judgment and Sentence (felony) in the Superior Court of Spokane County (case #86101203-7) states that Mr. Bargas was found guilty on 5/21/87 by a jury of First Degree Rape per RCS 9A.44.040(1)(d) and sentenced to 51 months of confinement (000193—000197. The Warrant of Commitment (000199) confirms the sentence of 51 months (000199; 6/16/87).

Bargas, Michael
DOC #250927

4

The transcript of court testimony on this case indicates that at the time of this offense, Mr. Bargas had a girlfriend named, Mary Cox (000450).

The Court of Appeals, Division III, affirmed the decision on 3/1/88 (000535—000554).

Skagit County Cause #90-1-00408-1

The Access Interface Message lists Mr. Bargas as being arrested on August 29, 1990 by Mount Vernon Sherriff's Department. He was charged with Second Degree Rape and Assault 3. He was found guilty of Assault 3 and sentenced to 365 days in jail and 12 months of community supervision (000020).

The DOC Criminal History Summary (000060—00061) describes the offense as follows:

The female victim stated that she had been at the Town Pump Tavern the previous evening. While at the tavern, she meet a subject named, Don Howson. During the evening, they were joined by a third subject, later identified as Bargas. The victim indicated that when the bar closed, she, Howson, and the other subject purchased additional beer and went to Howson's residence, which was located nearby. At Howson's residence, they continued to drink beer and talk. Eventually, the victim and Howson went to bed, but did not engage in sexual intercourse. The victim woke up during the night and found the other subject, later identified as Bargas, on top of her and that he had penetrated her with his penis. She indicted that when she looked up and saw who it was, Bargas told her to relax and enjoy it. He made a comment about her being able to make a lot of money with a body as good as hers. She kneed the subject, causing him to fall to one side, and jumped out of bed, put her clothes on, and left the trailer.

DISPOSITION: Bargas was originally charged with Rape 2nd, but plea bargained to Assault 3rd and was given 12 months confinement and community supervision.

The Mount Vernon Police Department Reports for case #90-3919 (000617—000659) state that the victim was born in 1958 making her 31 years old at the time of the offense. Mr. Bargas was 33 years old at the time. The victim told police that she knew Don Howson through her deceased husband. As such, she felt comfortable with him. The victim's name is Sheila N. The victim stated that she had drunk approximately 10 to 12 glasses of beer. She said that she felt "buzzed" but not drunk. The victim said that she went to bed naked with Don Howson, but did not have sexual relations with him. Sheila N told police that Mr. Bargas said that with her body, she could make a lot of money and that he would like to pimp her. Later, the victim changed her story and said that she and Mr.

M. Bargas 001530

Howson did have sexual relations, but not sexual intercourse. Witness Don Howson said that he had met Mr. Bargas for the first time on the evening of the incident. Mr. Howson said that he was very drunk and did not recall Mr. Bargas' name or his appearance. He did recall that Mr. Bargas had told him that he had just been released from Walla Walla prison. Mr. Howson then recalled "fooling around" with Sheila in bed that evening. He said that he passed out and the next thing he remembered was Sheila waking him in the morning saying she had been raped by the other man.

Police were able to identify Mr. Bargas from contacts with the bartender. On 8/29/90, police interviewed Mr. Bargas about the incident. He said that he had been living in the area of the bar with a close friend, Lynn Strouse. He had been out of prison for approximately 4 months. On the night of the incident, Mr. Bargas said he had a date with his girlfriend, Sandra Tate. He had gone to the Town Pump Tavern to drink beer and play cards. Mr. Bargas recalled meeting Don and Sheila at the bar and their taking a tax cab to Don's trailer. He said that he never got into bed with Sheila and never had any sexual contact with her. Mr. Bargas agreed to take a polygraph test with the police. Mr. Bargas failed the polygraph test. When confronted with the failed polygraph test, Mr. Bargas said that he had also been using cocaine on the night of the incident and that he sometimes had blackouts so that he might not recall the events of the evening.

On 9/2/90, Sheila N called police saying that on 8/31/90 at 1925 hours she received a telephone call from a man asking if she needed work done on her house. She believed the man was Mr. Bargas as she recognized his voice. The man wanted to know where she lived (000648).

The Information filed on 9/27/90 in the Superior Court of Skagit County (case #90-1-00408-1) charged Mr. Bargas with Rape in the second degree per RCW 9A.44.050(1) occurring on or about 8/25/90 against an adult female. The charging Deputy District Attorney was Dave Needy (000661). The Amended Information file on 12/4/90 by Deputy Needy charged Mr. Bargas with Assault in the third degree per RCW 9A.36.031(1)(e) and RCW 9A.94A.030(30) occurring on or about 8/25/90 against Sheila N. The charge states, "The State hereby places the defendant on notice of its intent to seek a special finding of sexual motivation pursuant to RCW 9.94.390(20) (the numbers are not clearly readable) (000681).

The Statement of Defendant on Plea of Guilty filed in the Superior Court of Skagit County on 12/6/90 states that Mr. Bargas pled guilty to Assault in the third degree with sexual motivation findings. Mr. Bargas wrote the following statement: "I had sex with a woman on August 25, 1990. I believe it was consensual and am therefore not guilty of a crime. However, I wish to take advantage of this plea bargain and believe there is a substantial chance of my conviction at trial." (000682—000687)

The Judgment and Sentence in the Superior Court of Skagit County on this case on 1/31/91 (000694—00698) states that Mr. Bargas was confined in jail for 365 days and ordered to serve 12 months of community supervision. The case was discharged on 7/6/92 (000701) after Mr. Bargas successfully completed his sentence.

The police reports and the pre-sentencing report on this case (00074100747) state that the victim was emotionally traumatized by the incident. She was constantly fearful including being fearful that Mr. Bargas would harm her or her family if he were released. Mr. Bargas told the pre-sentencing probation officer that in the early morning hours of 8/25/90, he got up to use the bathroom. He said he heard the victim crying so he got into bed and held her. He claimed that the victim began to hug and kiss him. He said that they then had consensual sexual intercourse.

Skagit Cause #96-1-00538-9

The Access Interface Message lists Mr. Bargas as being arrested on November 21, 1996, at the age of 45 years, and charged with Rape of a Child and Child Molestation 1. He was convicted of First Degree Child Molestation and sentenced to 171 months of confinement (000020—000022). The Legal Face Sheet (000079) states that Mr. Bargas has 3 years of community supervision.

The DOC Criminal History Summary (000060) describes this offense as follows:

The nine-year-old female victim disclosed to a school counselor that she had been molested by a family friend by the name of Miguel. The victim was interviewed and disclosed that a friend of her mother's had come over to her house in September 1996. She further stated that she and Miguel went down to the basement of the residence and he pulled her overalls down and put his fingers in her vagina. Disposition: 14 years, three month SRA term.

The Mount Vernon Police Department Report on case #96-M14470 (000749—000762) states that Cindy Downie of Child Protective Services made a police report of sexual abuse. The victim was Makaela M (dob, 11/26/86). The original reporter was Anita Gately, a counselor at Lincoln Elementary School. The suspect was known as Miguel. The police report states:

According to the referral, Makaela M disclosed to Anita Gately that she (Makaela) had been sexually molested by Miguel. The report goes on to say that Makaela remembers an incident approximately 5 years ago when she had a yeast infection and Miguel had rubbed the lotion on her privates. The next incident was not until September, 1996, when Miguel and Makaela had been downstairs and Miguel had pulled down Makaela's overalls and put his finger

insider her vagina. According to the report, Makaela told her mother, Joleyne, but her mother did not believe her. Makaela then reports that there was another incident on 10-22-96 in the p.m. in which Miguel started to massage Makaela's back and then started to massage her "butt". It is reported Makaela's cousin, Dosha M, knows of the incident and initially reported it to Anita Gately at Lincoln Elementary School.

The school counselor told police that Makaela said that there had been 3 incidents where Mr. Bargas had touched her. The first incident occurred when Makaela was about 4 or 5 years old. The second incident occurred in September of 1996. During the second incident, Mr. Bargas asked Makaela about gymnastics. Mr. Bargas then proceeded to take down the victim's overalls and underpants and digitally penetrate her vagina for 10 to 15 minutes. The third incident occurred after Makaela had hurt her back. Mr. Bargas massaged her shoulders and rubbed her hand over her buttocks. She was dressed at the time. Makaela had also told her aunt who, unlike her mother, believed her.

When police interviewed Makaela, she said that Mr. Bargas lived down the street from her family's home. When police interviewed Mr. Bargas, he said he lived down the street from the family and that he had known Jolene M for 6 or 7 years. Mr. Bargas said that he was good friends with Jolene M and that he frequently went to their home to help with repairs. Mr. Bargas told police that he was out of work. He said that his past sex offenses were related to his alcohol problem; however, he had not drunk alcohol for some time. After several questions from police, Mr. Bargas said that he had rubbed Makaela's sore leg and that it was possible that he touched her vagina and may have even digitally penetrated her vagina. He suggested that any such touching was accidental.

The Information filed on 11/26/96 in the Superior Court of Skagit County on case #96-1-00538-9 (000781—000759) charged Mr. Bargas with Rape of a child in the first degree per RCW 9A.44.073 occurring during September of 1996 against a child less than 12 years of age. The Prosecuting Attorney was Dave Needy. The Amended Information file on 1/23/97 charged Mr. Bargas with Child Molestation in the first degree in violation of RCW 9A.44.083 occurring on the same date and against the same victim (000805).

The Findings of Fact and Conclusion of Law on Alford Plea (000806—000808), case #96-1-00538-9 from the Superior Court of Skagit County states that Mr. Bargas pled guilty to the charges in the Amended Information on 1/23/97. The Statement of Defendant on Plea of Guilty (000809—00815) states that Mr. Bargas did not believe that he had done anything illegal; however, he conceded that there was a likelihood that he could be convicted by a trial and therefore took the plea agreement offered by the Prosecutor's Office.

The Pre-sentencing Report on this case (000873—000879) states that Mr. Bargas indicated that someone else had sexually molested the victim and that she named Mr. Bargas in order to stop the abuse. Mr. Bargas said that the victim felt unable to name her actual abuser because of family relationships.

CRITERIA A. Does Mr. Bargas have a mental abnormality as defined in RCW 71.09? YES

According to RCW 71.09, the danger posed by an individual and the basis for his or her judicial commitment is a mental abnormality that predisposes the individual to the commission of criminal sexual acts. A "mental abnormality" is defined 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 him a menace to the health and safety of others?"

While the definition of a "mental abnormality" is statutorily defined, clinicians utilize the diagnostic categories of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR) to describe the mental abnormality. Following is a review of Mr. Bargas' mental status examination and psychosocial history.

Mental Status and Observations

Mr. Bargas is a right-handed man who stated that he is of "Indian and Mexican" heritage. During this entire examination, he was alert and oriented to his immediate environment. There were no overt signs of cognitive deficits involving memory, attention or comprehension. The examination began with Mr. Bargas saying that he felt "good" but "a little apprehensive".

Mr. Bargas has a stocky build. As he got up to leave, it was noticed that he is quite overweight. Mr. Bargas has receding dark and gray hair that is cut short. He has freckles and a somewhat dark complexion. He was clean shaven. Mr. Bargas wore eyeglasses only when looking at his papers. It was noticed that Mr. Bargas had some tattoos of crosses on his hands. They could have been Native American feathers. He wore clean and pressed clothing including a long sleeved tan shirt with a white t-shirt underneath, tan pants and black athletic shoes. His face is round and he has large ears.

Mr. Bargas spoke at a normal rate, and for the most part, spoke clearly and coherently. He was evasive when asked about drugs and sex. While completing sentences, he asked me how to spell "cheat". Mr. Bargas has a marked evasive and manipulative manner. He would refer to himself in the third person or discuss how others respond to sexual or drug problems. It was difficult for him to refer to himself. When caught in a lie, he simply tried to rework his story while claiming memory problems. He could not give a good reason for not participating in sex offender or drug treatment in prison. When confronted, he tended to get a bit menacing by learning forward and getting tense.

Mr. Bargas' intelligence appeared to be about average compared to the general population. There were no overt signs of a thought or mood disorder. He affect was blunted. There were no indications of any actual emotional attachments. He would reference religion in an abstract way to say he was rehabilitated. His psychomotor movements were unremarkable.

When asked to complete sentences, Mr. Bargas asked for help with spelling. He mumbled to himself while completing sentences. He asked what he should write. He said he just prints.

Mr. Bargas was superficially cooperative. He was generally polite and well mannered. He did not refuse to answer any questions, but became vague when asked about sex, drugs and alcohol.

At the end of the examination, I asked Mr. Bargas if he had anything else to say. He paused and said, "Yes. I want you to know that I'm talking to you because you are a stranger to me. I asked God to forgive me for my crimes. (He is teary eyed). I'm a human being and make mistakes. There comes a time when you have to be a man and learn from your mistakes. These last 14 years, I've had time to reflect on my past. I want to put it behind me. Is there room for correction in my life? Yes. I'm I a changed person? Yes. I can't undo my past. I want to be a father to my children. I want to work and be a model citizen. I need to get help for my drinking. I need to be with people who can support me in that area. I'm sorry for what I have done and the victims I have hurt. Life is short but I believe that in my heart it's going to be okay. I'm going to make it. Take one day at a time. Think before I act. Be aware of my surroundings. Don't be influenced by the things I use to do. Be around people who are positive and strong. I'm a believer. I am a Christian. There has been a transformation in me mentally. If God is before me, who is against me."

As he got up, Mr. Bargas said, "God bless you" as he left.

Psychosocial History

Mr. Bargas provided the following account of his life. The reader might note that much of this information cannot be verified by other sources. As such, it might be considered tentative. A notation will be made where information from the records conflicts with Mr. Bargas' self report.

Developmental History

Mr. Bargas was born in Montana (000077). The 1/24/91 Pre-sentence Report (00745-00746) states that Mr. Bargas left home at age 13 or 14. He was raised primarily by his father who had to work 2 jobs to support his 8 children.

A Mental Health Evaluation on 5/1/88 (001382) states that Mr. Bargas said that he met his mother only twice. Mr. Bargas said that after leaving home, he worked in the fields, hitchhiked, did odd jobs and traveled through Washington, Nevada, California and Colorado.

During this examination, Mr. Bargas said He was born in Billings, Montana. He was with his mother for a little while as an infant. His parents were separated from each other at the time of his birth. They had been married. During his early years, he was staying on a farm with friends of the family. He was raised on this farm with family friends until he was 5 years of age. His baby sister was also with him on the farm. His parents were having marital problems. He then came to Billings, and lived with his father and paternal grandparents. He did not see his mother while on the farm, but he saw his father and paternal grandparents on weekends. The farm was about 50 miles from Billings. His maternal grandparents also lived in Billings. They would visit the children occasionally.

Mr. Bargas said that he saw his mother for the first time since the age of 5 when he left home at age 13. He has 4 brothers and 3 sisters. He is the youngest of the boys. All the other siblings came from the same mother and father. His father got custody of him in court.

Mr. Bargas said that his father was a very bitter man. He told the children that his mother was a "whore and a drunk". He left home at age 13. His mother lived in Lewiston, Idaho. Mr. Bargas hitchhiked to see his mother, Viola Lucero, who had remarried. She told him to go away. She then invited him in. He discovered that he had 4 other half brothers. He spent 2 days with his mother. His mother was an alcoholic. His mother said she loved him, but his father would not allow her in the children's life. He never saw her again. His oldest sister had always been in contact with their mother. His mother is now in North Dakota.

Mr. Bargas said that the first 5 years on the farm was the best time in his life. He was treated very well. He was never spanked. He felt loved and well cared for by the family. One day his uncle, at the insistence of Mr. Bargas' father, severely punished him for accidentally starting a fire. He was not a fire-starter. His father was there when his uncle spanked him with a switch. His father then took him away from the rest of the family and beat his face. His grandparents then spanked him. He ran away for a day.

Mr. Bargas' family sold their farm and moved to California. He went with his father. His father never remarried. His paternal grandmother was mean. He said his grandmother came from the old country. I asked Mr. Bargas to explain what he meant. He said, "We were slaves to our family. We were isolated and made to work hard before school. They were taught how to care for themselves. We were made to kneel in front of the altar. I was whipped more than the other children because I had burned the alfalfa."

Between age 5 and 13, his father beat him and blacked Mr. Bargas' eyes if he did poorly in school. His father humiliated him in front of the class by pulling his pants down and beating him in front of the other children. Mr. Bargas said that he seldom attended school after that experience. Social Services observed his father for a while, but then his father resumed the beatings. He did not feel loved by his father. He believes his father hated him. He got all the hand-me-downs from his siblings. The family was Catholic. He was not sexually abused as a child.

To his knowledge, he was healthy as a child. His birth was normal. His mother drank while she was pregnant with him. His father was a drinker, but not a drunk. His paternal relatives were also alcoholics. When his father was drinking, he was more abusive. He is not aware of any family member using other drugs. To his knowledge, no one had problems with mental illness and his family has longevity.

Mr. Bargas' father died 2 years ago of colon cancer at the age of 78. His youngest sister died in 1995 in a car accident. No other family member had legal trouble. He said he does not really know his family. His second oldest sister communicates with him through letters about the family. No one in his family has ever visited him. In the last 8 years, his brother, John, sent Christmas cards. His sister Debbie and Gloria also write to him. His family knows why he is in prison.

Education

The 1/24/91 Pre-sentence Report (00745-00746) states that Mr. Bargas quit school at the age of 13 or 14.

DOC I.Q. testing on 6/30/87 indicated an I.Q. of 94 which is in the 34th percentile compared to the general population (001233). Another I.Q. test on 4/3/97 scored 105 or in the 62nd percentile (001244). At that time, Mr. Bargas had an academic achievement level of 1.1

During this examination, Mr. Bargas said that he began school with kindergarten. He made it to the 8th grade. He attended 2 schools: elementary and junior high along with summer school. He skipped school often. He did not graduate from junior high. He was held back in school twice. They did not have special education. He did not have learning problems but did not like school. He said he reads well. He did not like school because it did not interest him. He said he felt afraid and preferred the farm. He had no friends except his siblings. He had a lot of fights in school with the other boys. Mr. Bargas stated that he was angry and mean. He was sent home for hurting another boy. He was suspended several times. He was not expelled. He was frequently sent home from school for misbehavior.

Mr. Bargas said that he had no psychiatric help as a youngster. He was afraid of social services and did not believe that they could protect him from his father and grandmother's abuse. When he skipped school, he would explore the neighborhoods by himself. He walked around. He did not gamble in school.

Mr. Bargas said that he never obtained a GED or did other job training. He is working on his GED now.

Employment

A Mental Health Evaluation on 5/1/88 (001382—001383) states that Mr. Bargas reported to Social Worker, Jere S. Howell, that he worked as a bartender in a tavern for a number of years. When asked by Mr. Howell if he ever worked as a pimp, Mr. Bargas became uncomfortable and said that he knew a lot of prostitutes and helped them out. Mr. Bargas told Mr. Howell that one woman bought a lot of things for him and did a lot for him, but he never sold any women.

During this examination, Mr. Bargas said that he worked at various jobs, including framing, landscaping, and as a cook. After his first jail sentence, he worked for a year or so at K Mart but drinking and drugs interfered with his job. He worked for a while for Taco Time as a cook and then a manager. Mr. Bargas said that he went to work for another taco place in 1976 for a while. Then he got another job in a steak and food house called, Chapter 11. He worked there until 1980 and then got married. He has collected welfare; unemployment between jobs; and food stamps; but not disability.

Mr. Bargas said that he was working in a laundry before his instant arrest, but he was not actually working at the time of his instant arrest. He moved near the Strauss' and worked in a chicken factory in Mt. Vernon.

Criminal History

Juvenile

During this examination, Mr. Bargas said that at age 8, he was selling weed at the junior and senior high schools. He cut lawns and had money. He bought his own clothes. He and his father had a physical confrontation and he said, "I'm leaving. I'm done." His father said, "You are so bad. You're going to prison and I'm not going to lift a finger to help you."

Mr. Bargas said that his father had a 22 pistol under his bed. His father would say, "You're no good like your mother." He pulled out the gun and put it to his father's head, and said, "If you ever touch me again, I'll kill you." He pulled the trigger, but the safety was on. He then left home. He went back home in 1980 for a year. He did not stay with his family. He had married and had a house by that time.

After he left home, Mr. Bargas traveled from age 13—18 in California and Nevada. He said he smoked weed; worked a few jobs; and explored. He was never arrested as a juvenile. When he was 17 or 18, he did some time in the King County jail for a robbery. He threw a rock through a grocery store, hitting some food. He traveled by himself. He said that "everyone was partying. It was the hippy time."

Mr. Bargas clarified that he recalled that he had one juvenile conviction for robbery.

Adult

The Access Interface Message (000017—000036) and the DOC Criminal History (000059—000063) lists Mr. Bargas' criminal history as follows:

Date of Arrest	Age	Location	Charge	Disposition
4/16/76	24	Seattle	2 nd degree Burglary	Deferred disposition restitution
1/5/77	25	Spokane	2 nd degree Theft	Convicted > 6 mo. confinement; 3 years probation
10/10/83	32	Spokane	Simple Assault	Dismissed
3/21/85	33	Spokane	Domestic Violence	
4/14/76	24	Seattle	Burglary II	Deferred sentence; 3 years probation
1/5/77	25	Spokane	Theft 2	6 mo. confinement; 3 years probation
10/10/86	35	Spokane	1 st degree Rape	Convicted > 51 mo. confinement
8/29/90	39	Mt. Vernon	2 nd degree Rape; Assault 3	Convicted of Assault 3 > 365 days in jail; 12 mo. of community supervision
4/15/94	39	Las Vegas, NV	Possession of a Controlled Substance (felony)	
5/25/94	42	Las Vegas, NV	Uttering forged instruments (felony)	Unknown
11/21/96	45	Mt. Vernon	Rape of a Child, Child Molestation 1	Convicted of 1 st Degree Child Molestation > 171 months confinement

During this examination, Mr. Bargas said that after his time in the King County Jail, he had parole, but he took off. He was at St. Mary's, Idaho, drinking under a

bridge. A man in a van picked him up, named Lynn Strauss. This man has been in his life since then. Lynn worked for Strauss Jewelers. He worked for a Christian organization on the weekend. Lynn shared Christ with him. Lynn took him to his house where he met his wife, Barb, who also worked at the jewelry store. Lynn called his probation officer who transferred his probation to him. He lived with Lynn a year or two.

Mr. Bargas said that his second arrest was in 1985 for rape. He was working for a bottling company in Spokane. He was living alone. He was divorced at that time. He had a girlfriend, but did not live with her. He was drinking and using drugs including heroin, cocaine, and speed. He was using illicit drugs most every day especially on the weekends.

Regarding his first sex offense conviction, Mr. Bargas believes it occurred on a weekend. There was a company barbecue. He had to work the next day so he left early. Some of his associates went to a bar. They had been drinking all day. He was getting high on heroin, cocaine and methamphetamines which he shot in his vein. He shared needles once and said it was a mistake. He said his memory is vague. He went to a party in an apartment complex. It was about 2 or 3 a.m. Someone else drove. The next thing he knew, it was morning and he was back at work. He had been back to his apartment. He said he has no memory of entering the woman's house. The police found his work hat and supposedly some keys. He was in Chapter 11, a bar, one night, when the victim saw him and he was arrested.

Mr. Bargas said that he went to a jury trial. He did not recall the incident. He denied ever forcing himself on anyone before that first rape. He was sentenced to 3 years in prison.

After his first prison sentence for rape, Mr. Bargas said that he was paroled in 1988 to Mt. Vernon. He thinks it was summer or early spring. He lived with the Strauss' a little while. They had children who were little children. He then got his own place. When this Examiner informed Mr. Bargas that the records indicated that he was released in 1990, Mr. Bargas changed his story, saying he was released in 1990 to the Strauss'. Then Mr. Bargas again changed his story saying he is not sure if he was on or off probation at the time of his second arrest for a sex offense. He resumed drinking as soon as released from his first prison term. The Strauss would not allow him to be around then with he was drinking. He was only drinking and not yet using drugs. He lived alone. He worked for a chicken processing plant.

Regarding his second sex offense, Mr. Bargas said that he was with another gentleman and a lady. He recalled going to the guy's house. Mr. Bargas said that the next thing he recalled was getting up the next morning and leaving. Mr. Bargas then recalled more about the incident. He said that he recalled waking up while on the sofa and the woman was standing in front of him naked. She

was talking to him, but he does not recall the conversation. He said that he called her "crazy" and left. He lived near the trailer where the incident occurred. He walked home. He does not recall if he had to work. He was arrested at work. Mr. Bargas said that he was a registered sex offender. He then said that he is not sure where he was arrested. He stayed in jail. He went to court and pled guilty on an Alford Plea. He was sentenced to jail for about a year. He had probation and he completed probation without an incident.

Mr. Bargas did not have treatment in jail. He started working with a man who built sidewall for housing in Oak Harbor. Then he said that's wrong. He was working. After his probation, he left Mt. Vernon. He went to Las Vegas to get away. He liked to gamble. He was in Las Vegas for 2 to 3 years. He lived alone and worked odd jobs. He was played dice, craps, blackjack and was good at it. He also played Keno. He said he was very lucky. He dated some.

Mr. Bargas said that he hung out with prostitutes from time to time. He got back into drinking and doing drugs. He did not use needles again. He was smoking crack, but not dealing. He did not have sex with prostitutes. Then, he said he did pay for sex sometimes. Mr. Bargas said that he never worked as a pimp. Then, he indicates that sometimes, he got dates for prostitutes and got money for it. He said he does not consider it pimping but it was. Mr. Bargas said, "I hung out at the 'Lucky Lady' where lots of girlfriends came in." He got a date for them and was paid for it.

Mr. Bargas said that he again got into trouble. A man was looking for some crack. He was with a man and women in an alley smoking crack. The prostitutes robbed him. He was thrown in jail for robbing the man, but he was released. The judge told him to leave Nevada.

Mr. Bargas followed the judge's orders and went back to Spokane. He then described the circumstances leading up to his instant sex offense. It was about 1995. His sister had died. He lived with Rudy and Sue Newman who owned a laundry, called "Action Laundry". They were Christian people he knew threw the Strauss. The Newman had 2 daughters, Anna (about age 5) and Bethany (age 12 or 13). The family knew he was a convicted sex offender. He said has not drinking or doing drugs. He was going to church.

Mr. Bargas said that he and Rudy had a falling out. He went back to Mt. Vernon and stayed with the Strauss' a little bit. He worked for Skagit Garden's. He got his own place living alone and working as a maintenance man. He was going to church. He resumed drinking with people from work. He had a friend, Wayne Cook, who was a heavy drinker. He smoked some weed. He may have snorted a little cocaine.

Mr. Bargas then said that he went back to shooting cocaine again. He shot dope with a couple down the street. They had 2 daughters and a son. He had only

known these people a few months. Maybe 3 to 4 months. He met them in the neighborhood. It was a drug using, Mexican like neighborhood. Mr. Bargas said that he speaks Spanish. He did not know the daughters well.

Mr. Bargas said that he then left his job at Skagit Garden's. People were giving him a hard time about being a registered sex offender. He was working on siding with a guy who also used drugs. He was using methamphetamines. He went to the house and watched the child a few minutes. The mother had to go to get dope. He watched the children a few minutes while the parents did a dope run. He was high and drinking. The mother's brother was there in bed with a broken leg. He does not remember what happened. Then next thing he knew, he was being accused of child molestation.

Then Mr. Bargas said that he recalled fondling the little girl. Mr. Bargas said that the girl was running up and down the stairs. She was down stairs when he recalled "inappropriately touching her. Mr. Bargas was asked to describe the crime. He said, "I was drunk and we were playing. I remember grabbing her and I touched her private part." He recalled her having on trousers." Then, he recalled pulling her trousers down upon further questioning. He recalled putting his finger in her vagina. After Mr. Bargas said that he had just recently met the family, I informed him that the victim had said that he had previously molested her when she was 5 years old. Mr. Bargas then said he had known the family before but not well. He said that he knows that the girl said that when she was 5, he touched her genitals. He does not recall the incident, but says he probably did because it was in his blackout phases. He denies sexual interest in little girls and said he does not know why he did it.

Mr. Bargas said that he again took an Alford Plea. He said he recalled he had molested the child during his court hearing, but denied the crime. He got an exceptional sentence of 14 years.

Institutional

DOC Movement Accounting (000063) lists Mr. Bargas as entering WCC on 6/25/87 and released on 5/11/90.

The Legal Face Sheet from DOC lists Mr. Bargas as being readmitted to DOC on 4/1/90 (000067). The Legal Face Sheet lists the following infractions (00068; 000105). Inmate Infractions (000139; 2/9/07) also list infraction from Mr. Bargas' current prison term:

3/11/90	Staff interference	
4/23/97	Possession of money (stamps)	
8/3/97	Sexual harassment: making sexual remarks concerning female staff to other inmates concerning the staff's background. When ordered to cease, he ignored staff and continued to make offensive	

	remarks laced with sexual overtones.	
12/2/97	Refused cell assignment	
2/9/98	Refused cell assignment	
1/21/98	Refused cell assignment	
11/22/99	Threatening; Refusing to program	
4/25/00	Failure to perform	
2/25/02	Failure to complete sanction of 5 hours of extra work duty	
5/19/04	Guilty of 4 general infractions in 6 month period	

Mr. Bargas lists his emergency contacts as Barbara and Lynn Straus (000079).

Mr. Bargas has worked as a therapy aid with superior ratings from his supervisor on 12/8/08 (000095—000096). On 10/11/01, Mr. Bargas was warned about his verbal interactions with staff as he was noted to having a history of being obnoxious to persons in authority (000102). He has worked as a laundry worker and groundskeeper in DOC. He was noted to have problems with his work supervisor (4/17/01; 000103).

On 4/27/00, at MICC, it was noted that a female Pierce College instructor had told Mr. Bargas that they could possible share a table at the inmate volunteer banquet that evening after Mr. Bargas asked if he could sit with her. Mr. Bargas was discovered to be telling other inmates that he had a date with the instructor. Mr. Bargas was barred from the banquet and to have no contact with female employees unless strictly job related (000104).

A DOC Classification Referral Report (000927) on 12/11/89 state that Mr. Bargas completed the STOP program, 8/18/89. "He was viewed as a poor to fair client due to his failure to admit being chemically dependent and resistiveness to a structured aftercare program. The mental health evaluation, 5-1-88, indicates that it appears he has little insight into his own behavior. Steps of progress should be based on his ability to remain infraction free, to cooperate with correctional officers and to program positively."

A DOC Classification Referral Report (000932) on 8/28/87 states that on 8/3/87, Mr. Bargas was infraacted for saying that a female officer had been a striper in Alaska. He told this to other inmates. He had been told to stop, but he persisted.

A Classification Referral Report on 4/18/01 states that Mr. Bargas worked as a janitor and spent his spare time in the gym, in the yard, and attending religious services. He completed Industrial Safety and Job Dynamic classes. He had also completed Anger/Stress Management and Victim Awareness by 5/3/99 (000944). He had declined substance abuse treatment (000946).

Mr. Bargas was offered, but declined, SOTP (Sex Offender Treatment Program). He denies his sex offenses (000962; 5/19/97).

During this examination, Mr. Bargas said that his first prison term began after his first sex offense conviction. Mr. Bargas said that he went to Walla Walla Penitentiary for 3 years and spent a little time at Callam Bay and then McNeil Island. He said it was rough during his first prison term because of his crime. He had lots of fights. He had some infractions. He worked in the kitchen and in industries. He did not go to school. He had no mental health treatment.

During this prison term, Mr. Bargas said that he went to AA meetings several times. He had papers with him. He told me about the things he accomplished in prison. For example, in his typed up release plan for community supervision, stated that he had 11 certificates of completion including Self Direct Goals and Created Behavior (6/18/98); Industrial Safety (1/21/99); Victim Awareness Program (5/3/99); Industries Job Dynamics Course (9/16/99); Prayer Therapy (Jan. 2000); Family Orientation (3/31/00); Wining the Victory (9/17/05); Going for the Gold—Life Plan Series (12/4/05); Winning the Victory (2/19/06); A New Freedom (11/19/06); and A New Community (3/31/07).

I asked Mr. Bargas about infraction. He said he was under pressure and put in segregation because of fights associated with his crime. He did well at McNeil Island. He was in Minnesota from 2005 until 2008 due to prison over crowding. He said he did a lot of soul searching. He led bible study. He had a job as a cart pusher. He did not attend AA. He has not attended AA meeting except the first few years of his sentence. He said he did a lot of soul searching. "When I'm drinking, I'm like a Jeckle and Hyde..." The reason he has not gone back to AA or other substance abuse treatment is because, "I search my heart and realized I can't go back to doing it because every time I pick up a glass, I'm weak. . . Does Michael have the strength to stay away from people like that? Will Michael fall again? I can't say I will or won't. I believe I won't. Do I need AA? Yes, I believe I probably do. I've just been in the word of God and reading what the Good Book tells me to do."

Mr. Bargas said that he experienced sexual harassment during the first and second term. Mr. Bargas stated that he was "hanging with the Indians and Mexicans" who wanted to see his paper work. He got into trouble. He was in protective custody. He was getting beat up. When asked about his sexual harassment infraction involving a female staff person, Mr. Bargas said that he was never in Alaska. He recalled a joke about a female staff. He then recalled being involved in harassing a female staff person about her dancing in a bar in Canada or Alaska. The other inmates told her about his remarks. He said everyone was doing it.

I asked Mr. Bargas about his other sexual harassment infraction involving a female staff person. He then recalled the banquet incident. He said that he asked to sit with a teacher. He recalled saying to the teacher, "That's a date." He drank pruno a few times in prison a long time ago but it made him sick. He has not used other drugs in prison.

Substance Abuse History

During the Mount Vernon Police interview on 8/30/90 (000645), Mr. Bargas admitted to having a serious problem with alcohol. He said that he had suffered alcoholic blackouts on a number of occasions. He claimed that he may have suffered a blackout on the evening of the 1990 sex offense. Mr. Bargas said, "Alcohol takes control of Miguel." Mr. Bargas told police that he needed to begin attending AA meetings.

The 1/24/91 Pre-sentence Report (00745-00746) states that Mr. Bargas sold drugs after he left high school and that he used cocaine and heroin on a regular basis. Mr. Bargas' father said that Michael Bargas' mother was an alcoholic. Michael Bargas' father said that Michael used drugs and alcohol at an early age. By his adolescence, he had a drug and alcohol problem. Michael Bargas indicated that he is an alcoholic who cannot drink.

The Pre-sentencing Report on Mr. Bargas' instant, 1996, offense (000873—000879) states that his friend, Lynn Strauss, said that Mr. Bargas had resumed drinking alcohol and using drugs prior to his 1996 arrest. Mr. Strauss said that Mr. Bargas fairs well when he is not using drugs or alcohol, but deteriorates with substance abuse.

It appears that Mr. Bargas completed a 5 week intensive out-patient substance abuse program at DOC (000969; 8/17/89). He had reported combining heroin with cocaine or speed (speed balls). He said that he was not sure if he would use drugs again.

A Mental Health Evaluation on 5/1/88 (001383) states that Mr. Bargas reported to Social Worker, Jere S. Howell, that he used and sold drugs since high school. Mr. Bargas used heroin and cocaine on a regular basis.

During this examination, Mr. Bargas said that as a youngster, he began not coming home at night. He started drinking by 8 years of age. He had a friend, Jimmy Erickson, who sometimes skipped school with him. He stole the alcohol from his father's bar. He drank whiskey. In the summer, he would stay at Jimmy's house. He said he grew up around older children. He said he acted older than his age. By age 8, he was also smoking weed; going to parties; and staying out all night. He started to fight back with his father.

Mr. Bargas said that he moved out from the Strauss' home after his probation was up. He worked; drank and got high on marijuana. The Strauss' kicked him out for smoking weed. He went to Spokane and worked for K Mart for a couple of years, but his drinking got him into trouble. He was late for work. He was fired from K Mart. He was living alone. He sold dope again. The Strauss' were still in his life. They went to church sometimes.

As previously stated, Mr. Bargas said that he drank so much he had blackouts starting when he was a teenager. He was using heroin, cocaine and methamphetamines which he shot in his veins during this first sex offense. He shared needles once and said it was a mistake.

Mr. Bargas said that during this first prison sentence, he participated in the STOP substance program for about a year. It was a group that met once a week at Walla Walla Penitentiary. Mr. Bargas said that he completed the program. When asked what he had learned during this treatment, he said that he learned "that being out of control... substance abuse alters and changes his mind and a person does not do what they would normally do... alcohol was probably the worse of anything... What you see is Michael sitting before you, but when I use to drink, I was not a good person. Barb and them did not like me around them when I was drinking..." Mr. Bargas was speaking in a remote and vague manner. He stated that he only attended a few AA meetings and he does not know why he did not continue with his treatment.

Mr. Bargas said that he has twice overdosed on heroin. He did go to the hospital.

Psychosexual Development

The 1/24/91 Pre-sentence Report (00745-00746) states that Mr. Bargas became sexually active at age 13.

During this examination, Mr. Bargas said that he learned about sex with magazines as a kid. They belonged to his father. There were pictures of women. He was not molested as a child. Then, Mr. Bargas began to say that "one of his brothers"—he stopped. He does not know when he went through puberty. He began to masturbate at age 6 or 7. After he got beat up by his father, he would be crying and upset. He then started to masturbate. He recalled having child sex play with his sister who was one year younger. He said he masturbated every week after his father beat him up. He did not masturbate every day even as a teenager. He would get stimulated by reading a magazine.

When asked about his first sexual experience involving another person, Mr. Bargas said that he had sex with an older girl when he was 11 or 12. The girl was 14 or 15. They were at party. They had sexual intercourse. He does not recall much. He had been drinking. He has no interest or experience with homosexuality. He had sex with girls who were older at parties. He estimates having about 100 different sex partners. Many were one-night-stands. He never had a venereal disease. He sometimes used condoms. He only got his wife pregnant.

Mr. Bargas said that he has looked at pornography. He had group sex with men and women. He went to a few strip clubs. He denied interest in sadism or masochism. He denied looking at child pornography. He does not know how to use a computer. He denied cross dressing, indecent exposure, obscene telephone calls, and fetishes. He does not have sex in prison.

Regarding his current sexuality, Mr. Bargas said he has not masturbated in 8 years. He said, "I know that this will shock you." He then said, "I'm not using God as an excuse. I have learned to lay down this flesh. It's sin. I'm responsible for my actions. I did wrong. The good Lord helped me take that away. The thing does not rise anymore. It's a blessing from God." He then admits to sometimes waking with a morning erection. He said he does not have the desire to masturbate.

Relationship History

The 1/24/91 Pre-sentence Report (00745-00746) states that Mr. Bargas had married his then 16 or 17 year old pregnant girlfriend. The couple divorced in 1983. Mr. Bargas was court ordered to pay child support.

The DOC Classification Referral/Progress Report (000908) on 1/7/88 states that Mr. Bargas reported his ex-wife and 2 children live in Spokane, but he has no contact with them. His father, 5 brothers, and 3 sisters live in Billings, Montana. He speaks to his father by telephone. He also maintains contact with a friend, Mary Cox, who lives in Spokane. Mr. Bargas did not know the whereabouts of his mother.

A Mental Health Evaluation on 5/1/88 (001382) states the following about Mr. Bargas reported relationships up to that time:

He said that he has always been with women who were older, either five or ten years older than himself. He did admit to reading books and magazines, drinking and going to parties prior to leaving home. He had been married one time. At the point in time when he got married, his wife was sixteen and had their first child. They were rooming together for approximately five years and he has two children, ages seven and eight. He stated that he has always had a girlfriend. He stated that he has always respected women and he does not respect women who share themselves with many men. He said, "I like women, I like to get to know them. I am very picky about whom I have sexual intercourse with. However, I have had one-night stands." He said that it is important that he treat these women like ladies. He stated that sometimes he believed that cocaine was better than sex because the high stayed around longer and he enjoyed it. He denied any ongoing use of pornography and

stated that he like to drive his motorcycle but did not consider himself to be a biker.

During this examination, Mr. Bargas said that he has 3 daughters. He has been married once. He has also lived with other women. His first live-in relationship was with his wife. Her name is Lisa. He met Lisa when he was 20 or 21. Lisa was 17. They met in Spokane. Lisa was a prostitute. She was using drugs (acid, speed, mescaline, and alcohol). A month after meeting, she moved in with him. She had been sleeping in the park. He never loved her. He cared for her. Lisa needed a place to stay. She got pregnant about 5 months after they met. He is not sure it was his child. His daughter is Sanchia. He was not there when she was born. He was in Idaho delivering trees. He lived with Lisa from 1979. He had another daughter on 8/21/81 with Lisa. They had moved to Montana. His second daughter was Keesha who was born in Montana. He writes to his daughter in Florida, but she has not written in years. His other daughter is in Idaho. His youngest daughter was with Karen. She is in Mt. Vernon. Lisa did not like Montana. They had arguments. He believes he hit her when they fought. After the divorce, he paid for the girls, but then Lisa took off. He had visitations before that losing track of Lisa.

Mr. Bargas said that he lived with Mary and 2 different women named, Karen. He lived with 4 different women. His longest relationship was Lisa. The reader might note that Mr. Bargas' marital timeline does not jive with the records. Lynn Strauss has stated to authorities that he met Mr. Bargas when he was with his wife. Mr. Bargas said that he met the Strauss' after he had absconded probation following his 6 month jail sentence in 1977. Mr. Bargas told this Examiner that he met Lisa when he was 21 or 21 years old. Then, he said that he had met Lisa is 1979. He would have been 27 years old at that time. It may have been that Mr. Bargas met the Strauss' after absconding probation for his 1977 theft conviction in Spokane. Nevertheless, it is difficult to ascertain with any degree of certainty that Mr. Bargas actual lived with Lisa for 2 or more consecutive years.

Medical (including psychiatric) History

DOC medical records indicate that Mr. Bargas suffers from chronic shoulder and lower back pain related to degenerative arthritis (0001396). He also has been treatment for an anal fissure (001417; 12/10/08). A medical consultation on 2/10/06 (001443) states that Mr. Bargas has chronic elevated liver function with a possible diagnosis of hepatitis C. He had positive hepatitis B and C antibodies (001444). Mr. Bargas had been exposed to hepatitis; however, it was not conclusive that he had hepatitis.

During this examination, Mr. Bargas said that he takes no medicine at this time. He has a fistula and needs surgery. He has lower back pain. He has not had any psychiatric treatment. He said he attempted suicide once in the King County

Jail when he was around age 18. He was afraid and tried to hang himself with a sheet, but it broke. He denied experiencing hallucinations, but when asked, said that he experienced hallucinations when he was high on drugs. Mr. Bargas again became vague and evasive. He said he heard conversations between angels and also between Satan and God. This only occurred when he was high. He may have experienced visual hallucinations when high, but he can't recall. He said he was paranoid when he went to prison. He does not get depressed or manic.

Psychological Evaluations and Treatment

Mr. Bargas was given a mental health evaluation on 5/1/88 for consideration of promotion to MFSC work camp and minimum-R (001382001386). Evaluation Jere S. Howell, MSW, ACSW (Social Worker) interviewed Mr. Bargas for one hour and reviewed his records. Mr. Howell diagnosed Opioid and Cocaine Abuse in institutional remission. Mr. Howell also suggested a possibility of Antisocial Personality Disorder.

During this examination, Mr. Bargas said that he never had sex offender treatment. He does not recall being told about sex offender treatment. I told him that in May of 1997 he had declined to participate in the Sex Offender Treatment Program. He said that his memory was vague about the matter. He then said that maybe he declined sex offender treatment.

Plans

The Draft file Review for ESRC states that Mr. Bargas will have 36 months of community supervision (000002—000004). The End of Sentence Review/Community Protection Report, dated February 9, 2007, states that Mr. Bargas has friends in the community, Barb and Lynn Strauss of Mt. Vernon, Washington (000014). The Strauss' said that they will not allow Mr. Bargas to reside with them, but they are in a position to assist with locating housing and potential employment. Mr. Bargas reported skills in construction and a job waiting for him upon release (000098; 6/17/08).

During this examination, Mr. Bargas said that he thinks he has 3 years of community supervision. He wants to go to Mt. Vernon. He wants to be near the Strauss'. He can't stay with the Strauss' because Lynn has guns. He could live at a farm house owned by the Strauss' outside of Mt. Vernon. He could work for the Strauss' building homes. He would like to build a restaurant. He enjoys cooking. He would like to financially help his children. He likes to make hot dogs. The Strauss' would help him financially. He showed me his plans and recipes. He wants to complete probation. He said he has lots of construction skills.

Mr. Bargas said he will maybe go to AA meetings. He was being very vague at this point during the examination. He said he does not intend to use drugs or alcohol. He said he's been a loner most of his life. He was vague again when asked if he plans to date. Mr. Bargas said that he may date eventually "if the good Lord wills it."

I asked Mr. Bargas under what circumstance he might re-offend. He said, "If I go to places I should not be. I will fall." I asked what type of place. Mr. Bargas replied, "casinos, bars. I need to be around people who live the straight life. I just need to stand on my own 2 feet and be the man that is inside of me."

Diagnoses and Test Results

PCL-R

The Hare Psychopathy Checklist, revised, 2nd edition or PCL-R was scored to ascertain the presence and degree of Psychopathy. The PCL-R manual describes a psychopath as having a distinct personality pattern involving interpersonal, affective, and behavioral symptoms.

Interpersonally, psychopaths are grandiose, egocentric, manipulative, dominant, forceful and cold-hearted. Affectively, they display shallow and labile emotions, are unable to form long-lasting bonds to people, principles, or goals, and are lacking in empathy, anxiety, and genuine guilt and remorse. Behaviorally, psychopaths are impulsive and sensation seeking, and they readily violate social norms. The most obvious expressions of these predispositions involve criminality, substance abuse, and failure to fulfill social obligations and responsibilities.

Psychopathy is a concept that is similar to Antisocial Personality Disorder; however, it represents a more extreme form of dangerousness. On the PCL-R, this examination found Mr. Bargas to have an overall score of 34. This places him in the very high range for Psychopathy. Compared to other North American inmates, his score falls into the approximate 96.4 percentile. This score is above the cutoff where a subject would be considered a psychopath.

The PCL-R is subdivided into 2 factors. Factor I measures psychopathic personality tendencies or interpersonal and affective styles such as glibness, grandiosity, need for stimulation, pathological lying, etc. Factor II measures a history of actual psychopathic behaviors or social deviance. Mr. Bargas' Factor I score was 15 points out of a possible 16 points placing him at the 98.6 percentile compared to other prison inmates. His Factor II score was 15 points out of a possible 20 points placing him at the 76.1 percentile compared to prison inmates.

High scores on the PCL-R have been associated with poor parole adjustment and future violent offenses.

The second edition of the PCL-R further divides scores into 4 facets. Mr. Bargas' scores were as follows:

Facet	Score	Total Possible Points	Percentile ¹
1 Interpersonal	7	8	96.4
2 Affective	8	8	100
3 Lifestyle	8	10	83.3
4 Antisocial	7	10	68.0

Scores in this range suggest that Mr. Bargas is a psychopath who will have a difficult time avoiding future criminal behavior.

This Examination indicates the following diagnoses:

Axis I Pedophilia, girls, non-exclusive type
 (rule out Paraphilia NOS (not otherwise specified))
 Alcohol Dependence in institutional remission
 Polysubstance Dependence in institutional remission

Axis II Antisocial Personality Disorder

Pedophilia, girls, non-exclusive type; (rule out Paraphilia NOS)

The DSM-IV-TR describes a Paraphilia as follows:

The essential features of a Paraphilia are recurrent, intense sexually arousing fantasies, sexual urges, or behaviors generally involving 1) non-human object, 2) the suffering or humiliation of one's self or one's partner, or 3) children or other non-consenting persons that occur over a period of six months. (Criteria A). For some individuals, Paraphilic fantasies or stimuli are obligatory for erotic arousal and are always included in a sexual activity. In other cases, the Paraphilic preferences appear only episodically (e.g., perhaps during periods of stress), whereas at other times a person is able to function sexually without Paraphilic fantasies or stimuli. . . . The diagnosis is made if the behavior, sexual urges, or fantasies cause clinically significant distress or impairment in social, occupational, or other important areas of functioning. (Criteria B).

¹ Compared to other North American inmates

The Diagnostic and Statistical Manual Disorders, 4th Ed., Text Revision (DSM-IV-TR) describes Pedophilia as follows:

- A. Over a period of at least six months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally 13 years of younger).
- B. Fantasies, sexual urges or behaviors cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.
- C. The person is at least 16 years and at least five years older than the child or children in Criteria A.

Mr. Bargas was charged with Rape of a Child and First Degree Child Molestation in late 1996. The 9 year old victim said that Mr. Bargas pulled her overalls down and penetrated her vagina with his fingers in September of 1996. The victim said that one month later, in October of 1996, Mr. Bargas massaged her back and then began to massage her buttocks. The victim told authorities that Mr. Bargas had also sexually molested her when she was 4 or 5 years of age by rubbing her genitals with lotion. Apparently, Mr. Bargas had not been in much, if any contact, with the victim's mother between the incidents. During his court appearances, Mr. Bargas denied molesting the victim and took an Alfred Plea. However, now Mr. Bargas admits that he recalls molesting the victim on each occasion (although he was vague with his admission). Mr. Bargas stated, and his friend Lynn Strauss confirms, that he had resumed alcohol and drug abuse prior to the 1996 sex offense. Mr. Bargas states that he was under the influence of alcohol and drugs when he molested the victim.

By the circumstances of these offenses, it is evident that Mr. Bargas has a known 5 year span of time of molesting a prepubescent child that was at best a casual acquaintance. By Mr. Bargas' actions, it is evident that he had irresistible sexual urges, fantasies and behavior toward a prepubescent child. Given that Mr. Bargas was already a twice convicted sex offender, he was clearly aware of the criminal penalties for child molesting. He had stated that he suffered persecution in his prison and during his jail sentence because of his sex offenses. He must have been aware that child molesters can suffer even greater prison harassment than convicted rapist. Yet, Mr. Bargas could not control his deviant sexual urges toward this child.

Mr. Bargas may have other child victims as he associated with substance abusers who would have, as did this victim's mother, poorly supervised their children and were not likely to contact the police if their child was molested by

Mr. Bargas. In fact, this child's mother did not believe her and did not contact police when she told her that Mr. Bargas had molested her. It was not until a school counselor became aware of the crime, that Child Protective Services was alerted to Mr. Bargas.

Certainly, Mr. Bargas' alcohol and drug dependence contributed to his acting on his deviant sexual urges toward this prepubescent girl. However, the great majority of substance abusers do not sexually molest children. Mr. Bargas has deviant sexual urges and fantasies about prepubescent children that are outside of his emotional and volitional control.

Regarding the rule out diagnosis of Paraphilia NOS, Mr. Bargas committed his second sex offenses within what appears to be 4 to 6 months after his release from prison for his first known sex offense. He quickly resumed alcohol and drug abuse despite his attributing his first sex offense to both. He stated that he had a girlfriend and access to consensual sex at the time he raped the 2 adult women. There were also allegations that he had raped another woman on 10/6/85. Again, most substance abusers do not desire non-consensual sex. As such, it cannot be said that substance abuse was the sole contributor to Mr. Bargas' raping his 2 known adult victims. Mr. Bargas has a sexual desire deviancy directed against non-consenting persons. This desire is intense enough that it over came Mr. Bargas' fear of returning to jail or prison. It should be recalled that Mr. Bargas is not the type of criminal who is comfortable incarcerated. He stated that during each prison or jail term he was attacked and lived in fear of reprisals because he was a sex offender. As such, there is evidence of his being emotionally and volitionally impaired and his having a Paraphilia NOS diagnosis.

Alcohol Dependence in institutional remission
Polysubstance Dependence in institutional remission

During the Mount Vernon Police interview on 8/30/09 (000645), Mr. Bargas admitted to having a serious problem with alcohol. He said that he had suffered alcoholic blackouts on a number of occasions. He claimed that he may have suffered a blackout on the evening of the 1990 sex offense. Mr. Bargas said, "Alcohol takes control of Miguel." During this examination, Mr. Bargas said that he began drinking when he was 8 years old. He said that he began experiencing alcoholic blackouts in his teens. Mr. Bargas said that he was under the influence of alcohol during each of his sex offense. He attributed his sex offenses to being under the influences of alcohol and other drugs. Mr. Bargas stated that he began using marijuana at age 8. He stated that he used heroin intravenously, cocaine and methamphetamines. Mr. Bargas said that he often used heroin and cocaine or methamphetamines together (speed ball) along with drinking alcohol. Mr. Bargas said that he was under the influence of cocaine, methamphetamines, or marijuana, along with alcohol during each of his sex offenses. Mr. Bargas resumed substance abuse after each jail or prison sentence. After attending the

STOP substance abuse program during this first prison term, he soon resumed alcohol, and later the abuse of marijuana, cocaine and methamphetamines. Mr. Bargas clearly stated that he becomes a different person when he is using drugs and alcohol. He stated that he becomes angry and aggressive and loses control over himself. His long time friend, Lynn Strauss, stated the same: that Mr. Bargas' personality deteriorates under the influence of drugs and alcohol.

Mr. Bargas' emotional and volitional controls have been severely compromised by alcohol and drug dependence. It is unfortunately that he elected to not participate in substance abuse treatment during this prison term despite his own assertion that he is at risk to reoffend if he resumes substance abuse. Given his history, there is little reason to believe that he will not follow his same pattern of resuming alcohol and drug abuse upon his release from custody. The abuse of alcohol and drugs will erode his abilities to control his deviant sexual urges and place him at a very high risk to sexually assault a child or woman.

Antisocial Personality Disorder

The DSM-IV-TR describes the diagnostic features of an Antisocial Personality Disorder as follows:

Antisocial Personality Disorder is defined by DSM-IV-TR 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 grounds for arrest; 2) Deceitfulness, as indicated by repeated lying, use of aliases or conning others for personal profit or pleasure; 3) Impulsivity and failure to plan ahead; 4) Irritability and aggressiveness as indicated by repeated physical fights or assaults; 5) Reckless disregard for the safety of oneself 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.

In addition to the above, the individual under consideration for the diagnosis of Antisocial Personality Disorder must be at least 18 years old, and should be indications that the criteria of Conduct Disorder were met before age 15. A Conduct Disorder is defined as a repetitive and persistent pattern of behavior in which the basic rights of others or major age appropriate societal norms or rules are violated.

To begin with, Mr. Bargas has definitive indications of Conduct Disorder by age 15. He began using alcohol and marijuana by age 8. At the same time, he began a pattern of chronic truancy from school. He was frequently suspended

from school and had many fights with other pupils. Prior to age 15, he was selling drugs to other youngsters and dropped out of school.

A mere examination of his criminal record confirms a pattern of failure to conform to social norms. Mr. Bargas is the definition of a pathological liar. He completely denied each of his sex offenses at the time of prosecution. During this examination, he moved from complete denial of his sex offense to saying that he was in an alcohol and drug induced blackout so he had no recollection of the offenses. He kept reworking his story in an attempt to find one that would indicate that he had reformed. Finally, Mr. Bargas recalled details of each sex offense and admitted that he had recalled each incident at the time of each prosecution.

Mr. Bargas' entire life has been a testimony to his being impulsive. He is hedonistic and self-centered. He uses others for personal gain and has shown no sense of responsibility toward his children. He has not developed vocational skills and had few, short-term, jobs. He is shiftless and gravitates toward the out-of-bounds. Even in prison, he continued his sexual impropriety toward women by harassing female staff. The only time he has expressed any remorse was during this examination when he felt it would serve his goals of avoiding sex offender treatment. Mr. Bargas' refusal to attend sex offender treatment and his denial of his sex offenses indicates that he has no intention of reforming.

Mr. Bargas completed 33 sentences which pull for one's attitudes toward a variety of psychosocial subjects. Many of Mr. Bargas' responses contain a religious theme. His responses indicate that he tends not to think about his problems with sex, alcohol and drugs. As such, in his mind there is no need for substance abuse or sex offender treatment. He is vague, remote and passive in his thinking. He indicates that he just puts his faith in God to forgive him and the power of prayer to direct him.

In summary, Mr. Bargas has diagnosed mental abnormalities which predispose him to the commission of future sex crimes.

CRITERIA B: By reason of his mental abnormality, is Mr. Bargas likely to engage in predatory acts of sexual violence? YES

In order to assess Mr. Bargas' risk of sexual re-offense he was scored on 4 actuarial instruments that provide general base rates of sexual re-offense for offenders similar to Mr. Bargas. These instruments include the Static-99, Static-2002, the Minnesota Sex Offender Screening Tool-Revised (MnSOST-R) and the Sex Offender Risk Assessment Guide (SORAG). All 4 instruments have been subject to multiple validation studies that have established their usefulness in predicting sexual re-offense.

Static-99

Mr. Bargas was scored on the Static-99², which is an actuarial measure of risk for sexual offense recidivism. This instrument has been shown to be a moderate predictor of sexual re-offense potential. As the table below illustrates, Mr. Bargas received a total score of 5, which places him in the medium-high risk category for being charged or convicted of another sexual offense.

Static-99 Score Summary

	Risk Factor	Yes = 1, No = 0	Scores
1	Under age 25 at release?		0
2	Single (no two year relationship)?		0
3	Index non-sexual violence, any conviction?		0
4	Prior non-sexual violence, any convictions?		0
5	Prior sex offenses? (Score range is 0-3)		2
6	Prior sentencing dates (excluding index)?		1
7	Convictions for non-contact sex offenses?		0
8	Any unrelated victims?		1
9	Any stranger victims?		1
10	Any male victims?		0
TOTAL SCORE =			5

There have been a large number of studies examining the sexual recidivism rates associated with Static-99 scores. Harris, Helmus, Hanson & Thornton (2008)³ summarized the results of 18 samples of sexual offenders (N=6,406) drawn from different countries including Canada, the United States, New Zealand, United Kingdom and Western Europe. In the studies used to develop these norms, recidivism was defined as charges in about half of the cases and as convictions in the other half.⁴

² Hanson, R.K. & Thornton, D. (2000). Static-99: Improving risk assessments for sex offenders: A comparison of three actuarial scales. *Law and Human Behavior*, 24, 119-136.

³ Harris, A. J. R., Helmus, L., Hanson, R. K., & Thornton, D. (2008, October). *Are new norms needed for Static-99?* Paper presented at the 27th Annual Research and Treatment Conference of the Association for the Treatment of Sexual Abusers, Atlanta. GA.

⁴ Convictions provide a conservative estimate of sexual offending as research has shown that most sexual crimes do not result in charges or convictions, and when protected from prosecution, sexual offenders report they have committed more sexual crimes than they have been caught for. Another important consideration is that risk for re-offense increases as the opportunity time to reoffend increases. Thus, although the new Static-99 norms provide rates for a maximum of a 10-year period, cumulative risk continues to increase after 10 years. This is important because WIC 6600 requires that lifetime risk of re-offense, as indicated by additional criminal sexual behavior, rather than additional arrests, be determined.

These recent studies found that the ability of Static-99 to rank relative risk is reasonably consistent across samples and settings, but the observed recidivism rates vary across samples. Specifically, the average recidivism rates associated with each score are lower in contemporary samples (1990s and more recent) than in the original developmental samples, who were primarily released during the 1970s and 1980s. Consequently, the developers of Static-99 recommend that the original norms be replaced by new norms based on samples that are more recent, more representative, and larger than the original samples.

Research has also found that there is meaningful variation in the recidivism rates based on factors not measured by Static-99. Samples that were pre-selected to be high risk (5 samples) show the highest recidivism rates, and the routine samples from the Correctional Service of Canada (CSC; 5 samples) show recidivism rates substantially lower than the original developmental samples. Consequently, in order to evaluate the recidivism risk of Mr. Bargas we need to consider the extent to which he more closely resembles the typical member of the high risk samples or the typical member of the CSC samples.

The differences between the high risk and CSC samples are not fully known; nevertheless, the following features are worth considering. The typical member of the CSC samples would have graduated from both specialized sexual offender treatment programs as well as programs addressing other areas of skill deficits needs. Since the 1990s, CSC treatment programs have been based on principles that are known to be effective in reducing criminal recidivism⁵. The typical member of the CSC samples would have been supported through a gradual re-integration into the community by parole supervision and human service programming.

In contrast, members of the high risk sample included offenders who resisted or failed to complete treatment, and those whose antisocial behavior during incarceration was sufficiently problematic to compel the conclusion that their criminal propensities were still active. As well, the high risk groups included offenders who had been judged by the court to have a risk that was sufficiently high to warrant exceptional measures (preventive detention, treatment orders, refusal of statutory release).

Recidivism norms for both the CSC and the high risk group are now available in the 2008 update of recidivism rates. These norms now apply to scores from 0 to 10+. The new risk estimates are determined by logistic regression. This is because logistic regression takes into account the recidivism rate associated with a single score in the context of the overall relationship between the Static-99 and recidivism. This reduces the impact of fluke variations in the observed recidivism

⁵ Bonta, J., & Andrews, D. A. (2007). Risk-need-responsivity model for offender assessment and rehabilitation. (User Report 2007-05). Public Safety and Emergency Preparedness, Ottawa, Canada.

rates that are due to fewer subjects within a given subgroup. The logistic regression estimates of recidivism are "bounded" by the lower risk estimates found in the CSC samples and the higher rates found in the high risk samples for each cut off score on the Static-99.

Mr. Bargas' score of 5 on the Static-99 places him in the medium-high range of risk for sexual recidivism and at the 83.7—91.0 percentile compared to other sex offenders. The range of risk for this score on the Static-99 is 10.2 to 23.1 percent in 5 years; and 11.8 to 32.1 percent in 10 years.

Static-2002

The Static-2002 is an instrument designed to assist in the prediction of sexual and violent recidivism for sex offenders. Hanson and Thornton⁶ developed this risk assessment instrument based on follow-up studies from Canada, the United States, and the United Kingdom with a total sample size of 2,169 sexual offenders. Using eight replication samples from four countries (Canada, UK, US, Denmark; n = 3,034), Static-2002 demonstrated moderate to large accuracy in the prediction of sexual, violent, and general recidivism.^{7,8,9} The Static-2002 consists of 14 items and produces estimates of relative risk based upon the number of risk factors present in any one individual. The risk factors included in the risk assessment instrument are grouped into five domains: age, persistence of sex offending, deviant sexual interests, relationship to victims, and general criminality.

Normative data for the Static-2002 scores were based on a sample of 2,507 Canadian sexual offenders. On the Static-2002, an offender can be placed in one of five risk categories based on their total score (ranging from 0-14): low (0 – 2), low-moderate (3, 4), moderate (5, 6), moderate-high (7, 8) and high (9+). Similar to the Static-99 results, recidivism rates are provided based on logistic regression estimates. Also similar to the Static-99 the range of risk for five and ten years the recidivism estimates are presented as a range bounded on the low end with the CSC sample and the high end with the high-risk sample. Mr. --

⁶ Hanson, R. K., & Thornton, D. (2003). Notes on the development of the Static-2002 (User Report No. 2003-01). Ottawa, ON: Solicitor General Canada.

⁷ Hanson, R. K., Helmus, L., & Thornton, D. (2008). Predicting recidivism among sexual offenders: A multi-site study of Static-2002. Manuscript in preparation.

⁸ Hanson, R. K., Lloyd, C. D., Helmus, L., & Thornton, D. (2008). Using multiple samples to estimate percentile ranks for actuarial risk tools: A Canadian example using Static-2002. Manuscript submitted for publication.

⁹ Hanson, R. K., & Thornton, D. (2003). Notes on the development of the Static-2002 (User Report No. 2003-01). Ottawa, ON: Solicitor General Canada.

scored a 6 on the Static-2002. This places him in the moderate risk category for sexual re-offense and at the 79.5—88.5 percentile compared to other sex offenders. The range of risk for this score on the Static-2002 is 8.4 to 20.5 percent in 5 years and 9.7 to 28.1 percent in 10 years.

When attempting to ascertain whether a subject is similar to the CSC or the pre-selected high risk samples from Canada, we cannot be precise since these sentencing categories do not exist in California. Furthermore, the Canadian penal system strongly encourages participation in sex offender treatment during incarceration whereas no such treatment presently exists in the California penal system. As advised by the authors of the Static 99 and Static 2002, we should consider how certain traits, such as PCL-R score, continued antisocial behavior, sex offender treatment participation, and the level of supervision and treatment in the community if the subject were released from custody without civil commitment when evaluating the risk category for a sex offender outside of Canada.

Mr. Bargas most closely resembles the higher risk group in both the Static 99 and Static 2002 studies. He has never had sex offender treatment and declined to participate in sex offender treatment in prison. Additionally, dynamic risk factors suggest a high risk for sexual recidivism in that he has many problem areas that need to be addressed in treatment. He has an exceptionally high PCL-R score and continued antisocial behavior in prison.

MnSOST-R

The Minnesota Sex Offender Screening Tool-Revised (MnSOST-R) has also been shown to be a moderate predictor of sexual re-offense and it provides the likelihood of re-arrest for a sexual offense for a period of six years post-incarceration. The instrument was developed on offenders who were convicted of either rape or an extra-familial sex offense. On the MnSOST-R, Mr. Bargas received a score of 14. This score falls in the highest risk range of sexual re-offense risk where a referral for civil commitment for sex offender treatment is recommended. Current data indicates that while the subjects in this risk range are on community supervision/parole, their average risk of sexual recidivism is 40%. After or without community/parole supervision, the risk is 72%.

Sex Offender Risk Appraisal Guide (SORAG)

The SORAG is another actuarial measure of sexual recidivism that has shown to be a moderate predictor of non-sexual and sexual violence. Mr. Bargas received a score of 29 on the SORAG, placing him at the category 8 of 9 risk levels. Subjects in this group have a 75 percent risk of being charged with another violent offense in the next 7 years after their release from custody, and an 89 percent risk of violent recidivism in the next ten years after their release from

custody. Since most of Mr. Bargas' violent offenses have been sexual, his SORAG score appears to be reflecting a risk of sexual violence.

The following table provides a comparison of each risk instrument utilized:

Instrument	Score	Risk Category	Percentile	5—7 year % risk	10 year % risk
Static 99	5	medium -- high	83.7—91.0	10.2—23.1 in 5 years	11.8—32.1
Static 2002	6	moderate	79.5—88.5	8.4—20.5 in 5 years	9.7—28.1
MnSOST-R	14	highest/refer		40 with community supervision in 6 years	72 after community supervision in 6 years
SORAG	29	level 8 of 9		75 in 7 years	89

Consideration of Dynamic Risk Factors

In addition to the static risk factors described above, it is also important to review relevant dynamic risk factors when assessing one's risk for sexual re-offense. A dynamic risk factor refers to something that has the capacity to change over time, for example with treatment. Below is a discussion of dynamic risk factors that are not scored on actuarial instruments but have been shown to be significantly related to sexual offense recidivism. These factors are contained in the STABLE-2007 a dynamic risk assessment instrument developed by Hanson, Harris and Helmus¹⁰. The presence of dynamic risk factors is not considered to aggravate Mr. Bargas' risk. Instead, they help identify treatment targets that could potentially reduce his risk for sexual re-offense in the future.

- Significant Social Influences
- Intimacy Deficits
 - Lovers/Intimate partners
 - Emotional identification with children
 - Hostility towards women
 - Loneliness/Social rejection
 - Lack of concern for others
- Sexual self-regulation
 - Sex drive/Preoccupation

¹⁰ Hanson, R.K., & Harris A.J.R., & Helmus, L. (2007). Assessing the risk of sexual offenders on community supervision: The Dynamic Supervision Project. User Report, Corrections Research, Ottawa: Public Safety Canada.

- Sex as coping
- Deviant sexual interests
- Cooperation with supervision
- General self-regulation
 - Impulsive acts
 - Poor cognitive problem solving skills
 - Negative emotionality/Hostility

Significant Social Influences: Criminal peer association is one of the most well established predictors of general recidivism. Significant social influences are also a factor to be considered that when present increase the risk of future sexual re-offense. These social influences would include an examination of the role relatives, friends and social supports play in an offender's life.

Mr. Bargas' main source of positive support appears to be his friendship with the Strauss'. He has some very limited contact with his family. Unfortunately, in the past, Mr. Bargas has resumed substance abuse despite the influence of this couple. This is a problem area for Mr. Bargas.

Intimacy deficits are evaluated by examining five components that represent potential problem areas for sexual offenders including lovers/intimate partners; emotional identification with children; hostility toward women; loneliness/social rejection; and lack of concern for others. Individuals with a lack of concern for others have little consideration for the feelings of others and act according to their own self-interest. They have shallow regret and little or no remorse. They may have friends and associates and acquaintances but no stable caring relationships.

Other than possibly his wife, Mr. Bargas has had only short-term romantic relationships. He stated that he was not in love with his wife and that she was a drug addict and a prostitute. Mr. Bargas has referred to himself as a loner. Although he does not appear to be particularly lonely or to feel rejected by others, he has not demonstrated any real attachment or concern for others. His expressions of regret have been shallow. This is a problem area for him.

Individuals who have poorly controlled sexual impulses are at greater risk for sexual re-offense. The STABLE-2007 divides **sexual self-regulation** into three components including sex drive/preoccupation, sex as coping and deviant sexual interests. Sexual preoccupation focuses on the recurrent sexual thoughts and behaviors that are not directed to a current romantic partner.

Mr. Bargas reported having around 100 different sexual partners. He has engaged in group sex and multiple one-night-stands. He has frequented prostitutes and worked as a pimp. Additionally, the obvious is that Mr. Bargas has sexually assaulted a prepubescent girl and 2 known adult women. Although

he reports no current sexual drive, this cannot be believed given his excessive sexual history. This is another problem area for him.

An offender's **lack of cooperation with supervision** is related to an increased risk for sexual re-offense. While on the STABLE-2007 this was studied for individuals who have been released in the community, it is also helpful to examine institutional behavior in regard to cooperation with supervision.

Historically, this has been a significant problem for Mr. Bargas who had multiple prison rule infractions, including 2 for sexual harassment of female staff, and a new sex offense soon after his first prison sentence. He abused alcohol and drugs while on community supervision. Mr. Bargas' rule infractions have slowed down significantly in the last few years; however, this is quite typical of those with high PCL-R scores and long prison sentences. This is an area of concern.

The final component of the STABLE-2007 is composed of **general self-regulation** that is assessed by examining the inmate's impulsivity, problem solving skills and negative emotionality and hostility.

Individuals who feel hostile, victimized and resentful, and those vulnerable to emotional collapse when stressed, are at higher risk of sexual re-offense.

Again, this is a problem area for Mr. Bargas although there is minimal information about his feelings. Mr. Bargas denied experiencing negative emotions; however, it appears that he abuses alcohol and drugs to cope.

Protective Risk Factors

There are, additionally, three factors that are considered **protective**. That is, they decrease the risk of further sexual offending. They are: (1) having been in the community without sexually re-offending for 7 years; (2) having less than 15 years left in the offender's time at risk due to illness or physical conditions that significantly decrease the motivation and/or ability to sexually reoffend and (3) very advanced age. Mr. Bargas may be a bit lower risk for sexual recidivism now that he is 51 years of age. However, it should be noted that his last sex offense was committed when he was not young (age 45). Mr. Bargas' health is good and there is no reason to believe that his age has significantly reduced his risk of sexual recidivism.

In summary, Mr. Bargas scored in the moderate to high range of risk of sexual re-offense on the Static-99, Static-2002, MnSOST-R and the SORAG. Each of these instruments predicts whether an offender will be charged with a new sexual offense. Consequently all of these actuarial instruments underestimate the probability that an offender will commit a new sexual offense. In other words, it is well known that most sexual offenses go unreported and undetected. Therefore, the probability that an offender will commit a new sexual offense is necessarily

Bargas, Michael
DOC #250927

37

higher than the probability that he will be detected, arrested, prosecuted and convicted of committing a new sexual offense.

Predatory

Of Mr. Bargas' known sex crime victims, 2 were strangers and one was at most a casual acquaintance. Future sex offenses are likely to be predatory in nature.

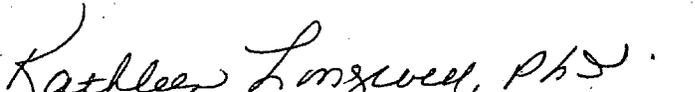
Alternative Sex Offender Treatment Plans

Mr. Bargas declined to admit to having a sexual problem and declined sex offender treatment in prison. He did not indicate plans for an alternative sex offender program. There is no reason to believe that he would voluntarily seek out a comprehensive sex offender treatment program.

Based upon the above information, it is my opinion that Mr. Bargas is more likely than not to sexually reoffend in a violent and predatory manner. It is my opinion that Mr. Bargas meets the likely standard as specified in the State of Washington, SVP statute.

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

Signed and dated in Piedmont, California


Kathleen Longwell, Ph.D.

April 28, 2009

M. Bargas 001563

**THIS IS THE END OF THE FORENSIC
PSYCHOLOGICAL EVALUATION**