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**STATE OF WASHINGTON  
PIERCE COUNTY SUPERIOR COURT**

In re the Detention of:  
  
THOMAS CLAYBROOK  
  
Respondent.

NO.  
  
CERTIFICATION FOR  
DETERMINATION OF  
PROBABLE CAUSE

I, ERIN C. JANY, Assistant Attorney General for the State of Washington, am familiar with the investigation conducted by the Washington State Department of Corrections and various law enforcement agencies relating to Respondent, THOMAS CLAYBROOK.

Pursuant to RCW 71.09.030, the Attorney General for the State of Washington is filing this Petition at the request of the Pierce County Prosecuting Attorney, MARK LINDQUIST.

Petitioner, State of Washington, sets forth the following in support of its Motion for the Determination of Probable Cause that Respondent, THOMAS CLAYBROOK, is a sexually violent predator pursuant to chapter 71.09 RCW et. seq.

**I. SEXUALLY VIOLENT OFFENSES**

Respondent, THOMAS CLAYBROOK, was born on July 3, 1981, and is now 33 years old. He has been convicted of a sexually violent offense as that term is defined in RCW 71.09.020(17). He currently is incarcerated by the Washington State Department of Corrections, and is scheduled for release on October 24, 2014.

1 **A. Rape of a Child in the First Degree and Child Molestation in the First Degree,**  
2 **Pierce County Superior Court (No. 95-8-01250-4), February 20, 1997.**

3 During the period between June 1, 1994 and September 15, 1994, Respondent, then 13  
4 years old, had sexual contact with R.G., a 3 year old neighbor boy. On September 19, 1994,  
5 the child's mother reported to police that she believed her son had been sexually  
6 assaulted/molested by Mr. Claybrook based on several disturbing incidents between the two  
7 and behaviors related to her son acting out sexually, which she linked back to the timing of  
8 her son's contact with Mr. Claybrook. During the course of the investigation, among other  
9 disturbing disclosures, R.G. reported that, "'Tom' put sugar on his pee-pee and made me suck  
10 it off" and "it tasted yucky."

11 The resulting investigation also brought to light that at least one other child, 4 year old  
12 C.K., had been molested by Mr. Claybrook, during the period between June 1, 1994 and June  
13 15, 1994, in which he reportedly touched her vagina with his hands and a stick and exposed  
14 himself to her. C.K. also reported that she had seen Mr. Claybrook laying on top of R.G. and  
15 jumping up and down on top of him and that Mr. Claybrook had touched R.G.'s penis and anal  
16 area. C.K. and another girl, 11 year old S.W., reported that Mr. Claybrook had touched other  
17 children, made attempts to sexually violate other children, had exposed himself to other  
18 children, and talked suggestively and touched his body in a sexual manner around children.  
19 Specifically, S.W. reported observing Mr. Claybrook take R.G. and another female child,  
20 M.N., into a shed and overheard him saying, "Just touch it. I won't say anything." before she  
21 interrupted them.

22 Mr. Claybrook was originally charged with two counts of Rape of a Child in the First  
23 Degree on July 5, 1995. On February 20, 1997, Mr. Claybrook ultimately pled guilty to one  
24 count of Rape of a Child in the First Degree and one count of Child Molestation in the First  
25 Degree. The court sentenced Mr. Claybrook to 21-28 weeks on the rape charge and 8-12  
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1 weeks on the molestation charge and sent him to a juvenile rehabilitation facility to service his  
2 sentence.

3 **B. Child Molestation in the Second Degree, King County Superior Court (No. 02-1-  
4 03098-6), July 12, 2004.**

5 On or about January 9, 2002, Respondent, then 22 years old, had sexual contact with  
6 R.Y., a 13 year old girl. R.Y. reported that Mr. Claybrook had touched her over and inside  
7 her clothing, kissed the back of her neck, fondled her buttock and breasts, and touched her  
8 vagina. R.Y. reported that she told Mr. Claybrook to stop, but that he didn't. R.Y. further  
9 reported that Mr. Claybrook wanted her to touch his penis, telling her, "I want to come," but  
10 that she had refused. R.Y. stated that Mr. Claybrook was aware of her young age because she  
11 kept reminding him that she was only 13 and he allegedly said, "...age doesn't matter. A  
12 teenage life age doesn't matter..." in response.

13 Mr. Claybrook was charged with Child Molestation in the Second Degree on July 21,  
14 2003 and he elected to take the case to trial pro se with stand-by counsel. During the course  
15 of the trial, Mr. Claybrook wrote numerous letters and documents to the court with  
16 accusations of sexual assaults against him by corrections staff, accusations that his documents  
17 were being destroyed/kept from him, attempts to have his stand-by counsel removed, and  
18 other nonsensical ramblings about freedom of speech/constitutional issues, money owed to  
19 him by the court/government, and misconduct by the judge, prosecutor, and other parties to  
20 the case. A competency hearing was set in the case in February of 2004 with the case  
21 eventually going to trial on July 6, 2004. On July 12, 2004, Mr. Claybrook was found not  
22 guilty of Child Molestation in the Second Degree and no further action was taken on the case.

23 **C. Failure to Register as a Sex Offender and Assault in the Second Degree (Plead  
24 down from Indecent Liberties with Forcible Compulsion), Pierce County Superior  
Court (No. 09-1-03889-1), December 18, 2009.**

25 On or about July 8, 2009, Respondent, then 28 years old, had sexual contact with J.B.,  
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1 a 15 year old boy. J.B.'s parents discovered the incident after the fact and reported the incident  
2 to the police on July 29, 2009. J.B. reported that Mr. Claybrook had lain on top of him, which  
3 pushed his penis up into his pants and belt, causing him discomfort. J.B. was unable to move  
4 due to their size difference and, despite J.B. repeatedly telling him to get off, Mr. Claybrook  
5 continued to lie on top of J.B. Mr. Claybrook then began thrusting his hips into J.B.'s genitals,  
6 making attempts to grab J.B.'s buttocks over the course of the assault, which lasted  
7 approximately 5 minutes. Thereafter, J.B. was able to push Mr. Claybrook off of him and he  
8 rolled over onto his stomach. Mr. Claybrook then stood on J.B.'s back, just above his  
9 buttocks, which made J.B.'s spine curve and caused him pain that lasted several days. J.B.  
10 reported that he was not a willing participant and that he had not told his parents about the  
11 incident earlier because he was scared and ashamed.  
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13  
14 Mr. Claybrook was originally charged with one count of Failure to Register as a Sex  
15 Offender and one count of Indecent Liberties with Forcible Compulsion, which were both  
16 committed while he was on community custody, on August 27, 2009. On December 18, 2009,  
17 Mr. Claybrook ultimately pled guilty to one count of Failure to Register as a Sex Offender and  
18 one count of Assault in the Second Degree. The court sentenced Mr. Claybrook to 12 months  
19 on Count I and 60 months on Count II and he is presently incarcerated on this case.  
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## 21 **II. OTHER OFFENSES**

22 In addition to those crimes listed above, Mr. Claybrook has also been convicted of  
23 numerous other serious crimes, including Burglary (amended to Robbery in the First Degree)  
24 at the age of 12 in 1993, Possession of a Dangerous Weapon (a knife) on School Facility in  
25 1994, Malicious Mischief in the Third Degree in 2000, four counts of Domestic Violence  
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1 Assault in 2001, Malicious Mischief in the Third Degree and Criminal Trespass in 2001,  
2 [Attempted] Failure to Register as a Sex Offender in 2001, Theft in the Third Degree in 2001,  
3 No Valid Operator's License in 2001, Theft in the Third Degree in 2002, Domestic Violence  
4 Assault in 2002, Failure to Register as a Sex Offender in 2002, [Attempted] Failure to Register  
5 as a Sex Offender in 2003, Obstruction in 2004, Failure to Register as a Sex Offender in 2004,  
6 No Valid Operator's License and Refusal to Provide Information/Cooperate in 2005, Hit and  
7 Run – Attended (reduced to Unattended) in 2005, Vehicle Operator Refuse to Comply, False  
8 Information, and Possession of Marijuana (reduced to Making a False Statement) in 2005,  
9 Refusal to Provide Information/Cooperate in 2005, Harassment (originally filed as a Felony  
10 DV Harassment) and Firearm Possession in 2005, Dangerous Weapon Violation, Possession of  
11 Drug Paraphernalia, and False/Misleading Statement in 2005, DUI, Possession of Drug  
12 Paraphernalia, and Failure to Sign Notice of Infraction in 2005, Failure to Register as a Sex  
13 Offender in 2007, DWLS/R in the Third Degree and IID violation in 2007, Failure to Register  
14 as a Sex Offender in 2007, Custodial Assault in 2007, Kidnapping in the Second Degree  
15 (amended to Unlawful Imprisonment), DWLS/R in the Third Degree, and IID violation in  
16 2008, DWLS/R in the Third Degree in 2009, and Dangerous Weapon in 2009.

### 19 **III. PSYCHOLOGICAL EVALUATIONS AND SEX OFFENDER TREATMENT**

20 Following Mr. Claybrook's charges of Robbery in the First Degree, Rape of a Child in  
21 the First Degree, Child Molestation in the First Degree and Student with a Weapon, he was  
22 referred for a Psychosexual Evaluation and Treatment Plan and the evaluation was conducted  
23 on January 25, 1997. Mr. Claybrook was 15 years old at the time of the evaluation and both  
24 the evaluator, Mr. Comte, and the polygraph administrator, Mr. Minnich, expressed concern  
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1 about Mr. Claybrook's unusual manner during their contact with him and thought he was  
2 emotionally unstable. Mr. Claybrook displayed the inability to separate fact from fantasy by  
3 making statements such as describing himself as a "genius" with a "straight A" average as a  
4 student, citing his superior intelligence and advanced academic abilities, despite school records  
5 that indicated Mr. Claybrook only read at a 4<sup>th</sup> grade level and had an IQ of 91. Mr. Claybrook  
6 also described his father as "an ex-Black Panther" who played professional football for the  
7 Pittsburgh Steelers who had been a Green Beret and a war hero in the military, retiring after 20  
8 years of service. This information was in contrast to his father's statement that he had one  
9 enlistment with the military where he was assigned to the infantry and that he had, thereafter,  
10 subsisted on SSI disability for a number of years.  
11

12 Mr. Claybrook claimed that he was sexually abused by a 68 year old woman who had  
13 been his babysitter when he was 6 years old. Mr. Claybrook stated that, as a child, he engaged  
14 in sexual play (mutual fellatio) with a boy his age and the boy's sister, who was 2 years older  
15 (mutual sexual fondling). Mr. Claybrook denied sexual contact with anyone between the ages  
16 of 7 and 11 despite the fact that he had told Mr. Minnich that he had an on-going sexual  
17 contact (mutual oral sex on "approximately 50 occasions") with a girl his age and mutual  
18 sexual fondling with her sister, who was 3 years older, between the ages of 5 and 11. Mr.  
19 Comte found clear evidence of a conduct disorder and that Mr. Claybrook was at risk for  
20 further law breaking behavior, including sexual assault, and that he was not safe to be at large.  
21 Mr. Comte also described Mr. Claybook as a psychologically and emotionally unstable young  
22 man, in need of long-term and intensive psychotherapy.  
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1 While in custody at the juvenile rehabilitation facility, Mr. Claybrook was initially a  
2 continuous management problem and was resistant to treatment. After several months of this  
3 behavior, Mr. Claybrook eventually changed his behavior and decision making and was able to  
4 complete his treatment program. Mr. Claybrook was later released on probation, however, he  
5 absconded near the end of his parole. Mr. Claybrook was re-incarcerated where he did not  
6 attend any treatment groups, although some records indicated that he did complete written  
7 treatment work in both Anger/Frustration management and Sex Offender Relapse prevention in  
8 early 1999. However, there are also records that indicate in late 2000 that, although Mr.  
9 Claybrook attended treatment groups for drug and alcohol issues, he failed to attend sex  
10 offender treatment since July 30, 1999.  
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12 While in the community between convictions, other than what has been previously  
13 noted, it does not appear that Mr. Claybrook engaged in sex offender, psychological, or  
14 substance abuse treatment. He remained out of school and unemployed; missed appointments  
15 with his probation officer; used at least marijuana and alcohol; and frequently had apparent  
16 mental health problems and issues with competency during his various criminal cases over the  
17 years. After his incarceration with the Department of Corrections for his last sexual offense,  
18 Mr. Claybrook was placed in the Sex Offender Unit in October of 2011. Although he initially  
19 declined treatment in April of 2012, Mr. Claybrook attended Check-In, Changing Cognitions,  
20 Effective Communication, Emotional Readiness, Depression Management, Bible Therapy,  
21 Anxiety Management, Detour, Problem Solving, Think, and Relaxation until August of 2012.  
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1 **IV. SEXUALLY VIOLENT PREDATOR EVALUATION**

2 Dr. Amy Phenix, a psychologist with extensive experience in the evaluation,  
3 diagnosis, and treatment of sex offenders, conducted an initial assessment of Mr. Claybrook at  
4 the request of the Joint Forensic Unit (JFU). A copy of Dr. Phenix’s curriculum vitae is  
5 attached hereto as Exhibit A. A copy of the April 11, 2013 report generated pursuant to Dr.  
6 Phenix’s assessment of Mr. Claybrook is attached hereto as Exhibit B and is incorporated by  
7 reference.

8 Dr. Phenix is familiar with RCW 71.09 and has previously conducted assessments of sex  
9 offenders who are being considered for civil commitment pursuant to this statute and similar  
10 statutes in other states. In conducting her assessment, Dr. Phenix reviewed over 2000 pages of  
11 records, including police reports, legal documents, health information, previous psychological  
12 evaluations, and materials from the Department of Corrections relevant to Mr. Claybrook’s  
13 incarceration. Those records are the same as those upon which this certification is based. Mr.  
14 Claybrook declined to participate in an interview, thus, Dr. Phenix’s evaluation is based the  
15 available records, which creates inherent limitations on the evaluation.

16 Despite being unable to obtain a firsthand perspective of Mr. Claybrook or to perform  
17 a Mental Status Examination, Dr. Phenix reported that it is her opinion, to a reasonable degree  
18 of psychological certainty, that Mr. Claybrook suffers from a mental abnormality and  
19 personality disorder. Specifically, Dr. Phenix diagnosed Mr. Claybrook with Schizoaffective  
20 Disorder, Bipolar Type and Antisocial Personality Disorder (APD). Dr. Phenix also opined,  
21 to a reasonable degree of psychological certainty, that Mr. Claybrook’s mental abnormality  
22 and personality disorder cause him serious difficulty in controlling his behavior, such that he  
23 is likely to engage in predatory acts of sexual violence if not confined to a secure facility.  
24 Specifically, she concluded that Mr. Claybrook “is at high risk for sexual re-offense” and “is  
25 likely to engage in predatory acts of sexual violence.” Ex. B at 47. In short, these disorders  
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1 meet the definition of mental abnormality or personality disorder under RCW 71.09 in Mr.  
2 Claybrook's case.

3 In addition to her review of Mr. Claybrook's records, Dr. Phenix employed several risk  
4 assessment instruments to aid in assessing Mr. Claybrook's risk of recidivism. Some of these  
5 risk assessment instruments were actuarial in nature, and others were not, but each of the  
6 instruments used by Dr. Phenix are generally used and relied upon by similarly situated  
7 professionals. In her risk assessment of Mr. Claybrook, Dr. Phenix used two different actuarial  
8 instruments – the Static-99 Revised (Static-99R) and the Static-2002 Revised (Static-2002R),  
9 which are designed to help evaluators estimate the probability of sexual and violent recidivism  
10 for adult males convicted of at least one sexual offense. Ex. B at 47.

11 Dr. Phenix scored Mr. Claybrook as a 9 on the Static-99R, which is associated with a  
12 rate of high risk for being charged with, or convicted of, another sexual offense. Ex. B at 39.  
13 A score of 9 places Mr. Claybrook in the 99.9 percentile and Dr. Phenix noted that the sexual  
14 recidivism rate of sex offenders with the same score as Mr. Claybrook would be expected to  
15 be approximately 7.3 times higher than the recidivism rate of the typical sex offender. *Id.* at  
16 40. Dr. Phenix also noted that the appropriate norms to make a determination of absolute risk  
17 of sexual re-offense for Mr. Claybrook with a score of 9 on the Static-99R would be the High  
18 Risk Need Norms. *Id.* at 41. Thus, Mr. Claybrook is similar to a sample of offenders who  
19 were arrested for a sexual offense at a rate of 52.4 percent in five years and 61.9 percent in ten  
20 years. *Id.* Dr. Phenix scored Mr. Claybrook as a 10 on the Static-2002R, which places him in  
21 the High Risk Category. *Id.* Compared to other adult male sex offenders, Mr. Claybrook's  
22 score of 10 places him in the 99.7 percentile and Dr. Phenix noted that the sexual recidivism  
23 rate of sex offenders with the same score as Mr. Claybrook would be expected to be  
24 approximately 6.9 times higher than the recidivism rate of the typical sexual offender. *Id.* at  
25 42. Dr. Phenix again noted that the appropriate norms for Mr. Claybrook with a score of 10  
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1 on the Static-2002R would be the High Risk Needs Norms. *Id.* at 43. Thus, offenders with  
2 the same score as Mr. Claybrook from the High Risk Needs Norms have been found to  
3 sexually reoffend at a rate of 48.3 percent in five years and 58.6 percent in ten years. *Id.*

4 Dr. Phenix also used the Structured Risk Assessment-Forensic Version-Light  
5 (SRA:FV) to evaluate Mr. Claybrook. Ex. B. at 44. This instrument covers psychological  
6 factors that function as long-term vulnerabilities for sexual offending that fall in the three  
7 domains of Sexual Interest, Relational Style and Self-Management. *Id.* Mr. Claybrook  
8 obtained a total score of 3.0 on the SRA:FV Needs Assessment, which is consistent with the  
9 use of the High Risk Need Norms for the Static-99R. *Id.* Finally, Dr. Phenix determined that  
10 there were no protective factors present for Mr. Claybrook. *Id.* After considering the  
11 actuarial scores, dynamic risk factors, and protective factors, Dr. Phenix opined that Mr.  
12 Claybrook is likely to engage in predatory acts of sexual violence [if not confined in a secure  
13 facility]. *Id.* at 47. Furthermore, based on her entire evaluation of Mr. Claybrook, it is her  
14 opinion that Mr. Claybrook does meet the criteria as a sexually violent predator as described  
15 in RCW 71.09.

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

18  
19 RESPECTFULLY SUBMITTED this \_\_\_\_\_ day of October, 2014.

20 ROBERT FERGUSON  
21 Attorney General

22  
23 \_\_\_\_\_  
24 ERIN C. JANY, WSBA #43071  
25 Assistant Attorney General  
26 Attorneys for Petitioner