

2018 AG REQUEST LEGISLATION

SVP Unconditional Release Statutory Fix

PROBLEM

A recent Washington State Supreme Court Case, *In re the Detention of John Marcum*¹, created an unforeseen problem that requires legislative action.

Individuals who have been committed as **sexually violent predators**² require intense treatment and supervision in a secure facility before unconditional release is considered. **Sexually violent predators can now be entitled to unconditional release trials even if the State shows they are still likely to reoffend**, if the annual review finds that less restrictive placement (conditional release) is appropriate.

The error will entitle sexually violent predators to a new *unconditional release* trial every time the annual review finds that they qualify for *conditional release*. The result will be **numerous costly trials that will create a significant burden on the judicial system** and an **increased possibility of the erroneous release of Sexually Violent Predators** before they receive proper treatment.

BACKGROUND

The Legislature and the Courts have found that sexually violent predators are extremely dangerous and their treatment needs are long term³. Historically, Washington Courts have held that the State has a two-pronged burden:⁴ show that the individual continues to be a sexually violent predator and, conditional release is not appropriate. Courts have held that each prong is independently determined.

The Marcum decision changed this interpretation and found that even when the State satisfies the burden to show the individual continues to be a sexually violent predator, if the annual review determines that *conditional* release is appropriate, the State has failed to meet both prongs and the Court may order an *unconditional* release trial.

LEGISLATION (SB 6217 / HB 2271)

The goal of this legislation is to clarify the Legislature's original intent of post-commitment procedures contained in RCW 71.09.090. A simple amendment to existing statutory language⁵ would clarify that the "two-pronged" burden actually consists of two independent lanes.



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1: *In re the Detention of John Marcum*, ___P. 3d. ___, 189 Wash.2d 1 (2017)

2: An SVP is defined as a person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder that makes the person more likely than not to engage in predatory acts of sexual violence if not confined in a secure facility. RCW 71.09.020(18).

3: RCW 71.09.010; *In re Petersen*, 138 Wn.2d 70, 78, 980 P.2d 1204 (1999) (*Petersen I*)

4: (a) the person's condition has changed that the person no longer meets the definition of SVP or (b) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that would adequately protect the community. RCW 71.09.060(1)

5: RCW 71.090.090(2)(b)