

WASHINGTON DEFENDER ASSOCIATION
WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

March 16, 2018

Governor Jay Inslee
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002

Re: Veto request HB 2271: Concerning the processes for reviewing sexually violent predators committed under chapter 71.09 RCW

Dear Governor Inslee,

We are writing on behalf of the Washington Defender Association (WDA) and Washington Association of Criminal Defense Lawyers (WACDL) to request that you veto HB 2271: Concerning the processes for reviewing sexually violent predators committed under chapter 71.09 RCW. We especially are concerned about section 3 which would make the legislation retroactive. In addition, we request that instead of signing this legislation you support the creation of a workgroup to look at how to enact improvements in the handling of 71.09 commitments that includes representatives from the Attorney General's Office (AGO), public defenders and Disability Rights of Washington (DRW) as well as key stakeholders from DSHS and the Special Commitment Center (SCC).

We believe HB 2271 is unnecessary and the fiscal note used to support its passage relating to the number of FTEs required by the AGO was grossly overinflated creating a false sense of urgency. In fact, passage of this bill to overturn the ruling in the *Marcum* case will not reduce the number of pending trials, but will keep more people at the SCC unnecessarily, produce more litigation and trials, and inhibit the oversight and review of costly state experts.

The *Marcum* decision as it stands saves taxpayer money as it shines light on cases that are weak and warrant conditional or unconditional release – both of which save the state considerable money. The Washington State Supreme Court ordered a new trial in *Marcum* because the state's own evaluator agreed Mr. Marcum had achieved maximum benefit from total confinement yet the state was not helping him transition into a less restrictive setting. We should respond to *Marcum* by encouraging the state to help people appropriately transition into the community. Instead, HB 2771 re-writes the statute to permit the state to keep people like Mr. Marcum in total confinement when instead it should be providing tools for individuals to safely return to the community.

The fiscal costs relating to these cases are not only in the pre-commitment trials, but increasingly in the post-commitment trials and continued confinement of aged and ill individuals. The last dozen or so trials we have seen statewide have been overwhelmingly positive for the respondent, which underscores the deleterious effect of allowing one state expert to determine if an individual stays in the system or is released.

It is important to veto the retroactivity clause in particular as it is barred by published case law and would lead to costly and pointless litigation in trial courts around the state. Our court has

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WDA is a non-profit organization created in 1983 to promote, assist, and encourage public defense systems which ensure that all accused persons in every court receive effective assistance of counsel

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held that a statutory amendment may not be applied retroactively when written to change the court's interpretation of a statute, and HB 2271 admits it is intended to alter the decision in *Marcum*. There is no viable reason to include this language in the statute. It will cause confusion and unnecessary delay in court proceedings waiting for appellate courts to rule on the statute's retroactive application.

We strongly urge you to veto HB 2271 and instead to support the effort already underway to create a workgroup to make recommendations that will improve this area of practice and protect the legal rights of those being held under this statute.

Thank you for your consideration and please feel free to contact us if you have any questions.

Sincerely,



Christie Hedman
Executive Director, WDA



Teresa Mathis
Executive Director, WACDL