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Supreme Court No. 100532-6
(COA No. 54574-8-II)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

R.W.-W.,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLARK COUNTY

PETITION FOR REVIEW

TIFFINIE MA
Attorney for Petitioner
WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, WA 98101
(206) 587-2711
tiffinie@washapp.org
wapofficemail@washapp.org

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A. IDENTITY OF PETITIONER AND DECISION BELOW

R.W.-W. asks this Court to review the opinion of the Court of Appeals in *State v. R.W.-W.*, 54574-8-II (issued on August 24, 2021). A copy of the opinion is attached as Appendix A. A motion for reconsideration was denied by the Court of Appeals on December 1, 2021.

B. ISSUES PRESENTED FOR REVIEW

1. Whether the failure of the Juvenile Court and Juvenile Offenders Act to afford children the right to a jury trial violates Article I, §§ 21 and 22.

2. Whether mandatory lifetime sex offender registration based on a juvenile offense for which a child was not provided the right to a jury trial violates the state and federal due process clauses.

C. STATEMENT OF THE CASE

When he was 13 years old, R.W.-W. spent his summer with a group of friends who lived nearby, including 10-year-old L.H. and his older siblings, Ruthy and Nick. RP 95. The

children often travelled in groups, going to the park, riding bikes, swimming, and wandering in and out of each other's homes. RP 107, 110, 135, 282.

Some of the kids, including L.H., occasionally smoked marijuana, teased each other, picked fights, and engaged in crude behavior like cursing and using gay slurs. RP 96, 110, 121. L.H. had pierced ears, which caused other kids to jokingly call him "gay" or "faggot." RP 121, 145-46. At times, L.H. laughed it off and returned similar jabs; other times the names upset him. RP 280, 326.

One afternoon, L.H. and R.W.-W. smoked marijuana and decided to cool down in the pool. RP 246. L.H. became too cold and tried to climb out of the pool using the attached ladder. RP 137. According to L.H., R.W.-W. pulled him by his shorts, pulled them down, and "put his penis near [L.H.'s] butt hole." RP 141. L.H. told his friends and siblings about the incident, and they reported it to his mother, who confirmed the incident with L.H. on the phone. RP 97, 98. A police investigation

ensued, and L.H. participated in two medical examinations. RP 102, 113, 230. The exams did not reveal any physical evidence of penetration. RP 251-52. No one else witnessed the incident.

The State charged R.W.-W. with first degree rape of a child and second degree rape. CP 63. L.H. described the incident equivocally in his testimony and in a statement to doctors:

- "And then he, like, grabbed my shorts, pulled them off, and then, like, just, you know, tried to -- you know what I'm saying?" RP 137.
- "Well, then he tried to, like, I guess you could say put his penis near my butt hole but, like, put it in but -- well, yeah." RP 141.
- "I mean, not only did he try, he almost did, but then -- I mean, he did." RP 141.
- Q: Okay. . . was [R.W.-W.'s] penis in your butt hole?

  A. For a split second, yes. RP 143.

- "Then he said, I'm going to put my thing in your butt . . . Then he grabbed me again, pulled me down, and starting doing it." RP 246.
- Dr. Copeland: Okay. And did that end up happening, or he just said that?

  L.H.: He tried.

  Dr. Copeland: Was he able to do that?

  L.H.: (No audible response)

  Dr. Copeland: Are you nodding your head yes?

  L.H.: Uh-huh. RP 248.

Several members of friend group heard the allegations, but they also heard L.H. question whether the incident occurred. Braiden Fisher heard L.H. say he had been high that day and did not remember the incident. RP 217. Ruthy testified L.H. laughed about the incident when he started telling people about it. RP 186. Their brother, Nick, heard L.H. change parts of his story. RP 325. Alyssa Wren stated Lane was known to lie to his mother. RP 276.

Despite the conflicting accounts, the court found R.W.-W. guilty of first degree rape of a child at a bench trial. RP 348. The court acquitted him of second degree rape, finding no forcible compulsion. RP 348.

At sentencing, the court imposed a mandatory lifetime sex offender registration requirement without any individualized inquiry into the need for such a requirement. CP 65-67.

On review, the Court of Appeals declined to reach the merits of R.W.-W.'s arguments regarding his right to a jury trial and mandatory juvenile sex offender registration, finding they were not raised below. Slip Op. at 7-18.

D. <u>ARGUMENT WHY REVIEW SHOULD BE GRANTED</u>

1. The Washington Constitution affords children the right to a jury trial, and whether it violates Article I, §§ 21 and 22 to deny a child the right that right presents a significant constitutional question and is a matter of substantial public interest.

a. The Washington Constitution is more protective of the right to a jury trial than the federal constitution.

Article I, § 21 provides the "right of trial by jury shall remain in inviolate." Article I, § 22 provides that in criminal proceedings, the accused "shall have the right . . . to have a speedy public trial by an impartial jury."

This Court has determined the jury trial right under the Washington Constitution is broader than that of its federal counterpart. *State v. Smith*, 150 Wn.2d 135, 151, 75 P.3d 934 (2003); *see also State v. Williams-Walker*, 167 Wn.2d 889, 895-96, 225 P.3d 913 (2010)). Importantly, "Washington law that existed at the time of the adoption of our constitution" must determine the scope of the jury trial right under the Washington Constitution. *Id*. at 153.

Historically, children *were* afforded the right to a jury trial at the inception of the state constitution because no distinct juvenile courts existed at the time. Code of 1881, ch. 87, § 1078. When such courts arrived 25 years later, children were statutorily-entitled to jury trial until the Legislature struck the right in 1937. Laws of 1937, ch. 65, § 1, at 211.[1] Beginning in 1909, Washington's juvenile laws made special provision to police court of cases where "a child has been arrested upon the charge of having committed a crime." Laws of 1909, ch. 190, § 12, at 675. The capacity statute, also enacted in 1909, specifically contemplates the possibility that a "jury" will hear a case where a child younger than 12 stands accused of committing a "crime." RCW 9A.04.050. Thus, juveniles were

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[1] The original juvenile court statute in Washington State provided that "[i]n all trials under this act any person interested therein may demand a jury trial, or the Judge, of his own motion, may order a jury to try the case." Laws of 1905, ch. 18, § 2 (repealed, 1937). This provision remained substantially unchanged through revisions of the statute in 1909, 1913, 1921, and 1929.

entitled to jury trials at the time the Washington Constitution was adopted in 1889 and for nearly 50 years thereafter. Under *Smith*, that history leads to the conclusion that juveniles must be afforded a jury trial today.

b. Although State v. Schaaf concluded that children need not be afforded a jury trial, the Smith court disavowed the analysys employed in Schaaf.

In *State v. Schaaf*, the Court concluded the history of juvenile jury trials at the time the Constitution was adopted did not require that children receive jury trials because the framers could not have known of later efforts to legislate away the right, and thus could not have intended to provide the right in the first place or intended to foreclose its denial in the future. 109 Wn.2d 1, 14, 743 P.2d 240 (1987).

The *Smith* court disavowed this analysis of the framers's intent based upon later-enacted legislation. Because the law at issue in *Schaaf* did not exist until decades after the constitution was adopted, the *Smith* court correctly reasoned, "it could not have had any effect on the drafters' intent when they wrote

article I, sections 21 and 22." *Smith*, 150 Wn.2d at 154. *Schaaf*'s reliance on a statute enacted nearly 50 years *after* the drafting of Article I, § 21 is incompatible with the standard announced in *Smith*. The jury trial right protected in Article I, §§ 21 and 22 is that which existed in 1889. Later-enacted statutes do not alter the scope of that right. The decision in *Smith* rejected he analysis employed in *Schaaf*.

c. The "criminal stigma" attached to a proceeding determines the scope of the state constitutional right to a jury, not the label attached to the proceeding.

Additionally, the *Schaaf* court reasoned that the jury-trial right did not extend to juvenile adjudications because for several decades Washington had made every effort "to avoid accusing and convicting juveniles of crimes." 109 Wn.2d at 15. That observation is no longer true in law or fact.

R.W.-W. was clearly accused and convicted of a crime. The information in this case states: "COMES NOW the Prosecuting Attorney for Clark County, Washington, and does

by this inform the Court that [R.W.-W.] is guilty of the **crime(s)** committed as follows . . ..” CP 63 (emphasis added). Any difference in the manner of charging the *Schaaf* court believed existed is indiscernible here. The prosecution plainly believed, and rightly so, it was charging R.W.-W. with crimes. CP 63.

The *Schaaf* court noted that, at the time, efforts were made to avoid calling juvenile offenses “crimes” and to call a conviction an “adjudication.” The Legislature has said “An order of court adjudging a child a juvenile offender or dependent under the provisions of this chapter shall in no case be deemed a conviction of crime.” RCW 13.04.240. But this labeling is a distinction without a difference. For example, the Legislature has also said “‘Conviction’ means an adjudication of guilt pursuant to Title 10 or 13 RCW ....” RCW 9.94A.030(9). And, only a few years after *Schaaf*, this Court held juvenile offenders had been “convicted” of a crime for purpose of a DNA collection statute, recognizing:

> the Legislature's use of "conviction" in statutes to refer to juveniles appears to be endemic. Numerous other statutes, including sections of the Sentencing Reform Act of 1981, RCW 9.94A, and the Juvenile Justice Act of 1977, RCW 13.40, use "convicted" to reference both adult and juvenile offenders.

In Re Juveniles A, B, C, D, E, 121 Wn.2d 80, 87-88, 847 P.2d 455, 457 (1993).

More recently, this Court concluded a juvenile adjudication is a "conviction" upon which the State can predicate a petition for indefinite confinement as a sexually violent predator. *In re Det. of Anderson*, 185 Wn.2d 79, 86, 368 P.3d 162 (2016) (citing RCW 13.40.077 (recommended prosecutorial standards for juvenile court)) RCW 13.40.215(5) (school placement for "a convicted juvenile sex offender" who has been released from custody), RCW13.40.480 (release of student records regarding juvenile offenders); RCW 13.50.260(4) (sealing juvenile court records); JuCR 7.12(c)-(d) (criminal history of juvenile offenders)). The Legislature has

not truly dinstinguished distinguish between “convictions” and “adjudications” or “offenses” and “crimes.”

Even if there were such a distinction, that does not determine the scope of the jury right. Neither Article I, §§ 21 or 22 limit their reach based upon the term “conviction.” Instead, Article I, § 21 simply guarantees “the right of trial by jury shall remain inviolate.” Article I, § 22 guarantees the right to an impartial jury to all persons in criminal prosecutions. In addressing the scope of the Sixth Amendment right to a jury, the United States Supreme Court noted the “label” attached to a fact or fact-finding process does not determine the scope of the Sixth Amendment right. *Blakely v. Washington*, 542 U.S. 296, 306, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). Just as the Legislature cannot avoid a jury determination of facts by terming them “aggravating factors” rather than “elements,” it cannot deny a jury trial by terming a conviction an “adjudication.”

This Court has held a jury trial is required "for those offenses which carry a criminal stigma and particularly those for which a possible term of imprisonment is prescribed." *Pasco v. Mace*, 98 Wn.2d 87, 100, 653 P.2d 618 (1983) (emphasis added). The mere possibility of incarceration or criminal stigma triggers the right to a jury: "no offense can be deemed so petty as to warrant denying a jury if it constitutes a crime." *Id.* at 99. A "crime" is any offense defined as a misdemeanor or a felony. *Id*. (quoting RCW 9A.20.010). Rape of a child in the first degree is a class A felony. RCW 9A.44.073.

A juvenile adjudication plainly carries a possible term of imprisonment. Whether called a "criminal conviction" or not, an adjudication of first degree child rape carries the same stigma as an adult conviction. Few observers, such as future landlords and employers conducting background checks as authorized by RCW 43.43.830(6), are likely to appreciate any distinction.

Because children convicted of sex offenses are subject to lifetime registration, stigma is virtually guaranteed. RCW 9A.44.130 (1)(a) ("Any adult of juvenile . . . who has been found to have committed or has been convicted of any sex offense . . . shall register with the county sheriff for the county of the person's residence.") Such children cannot have their juvenile records administratively sealed. RCW 13.50.260(1). The United States Department of Justice maintains a searchable national registry of sex offenders, including those convicted in juvenile court. *See U.S. Dep't of Justice, Dru Sjodin National Sex Offender Public Website*.[2] Registered sex offenders are subject to continued harassment, even by government officials. *See* Emily S. Rueb, *Judge Says Sheriff Can't Post Sex Offender Warning Signs on Halloween*, NY Times, Oct. 30, 2019.[3]

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[2] Available at https://www.nsopw.gov/en.

[3] Available at https://www.nytimes.com/2019/10/30/us/georgia-sex-offenders-trick-or-treat.html.

The criminal stigma and possibility of incarceration are the same regardless of the label the Legislature has attached to the proceeding. Indeed, the stigma and range of possible incarceration is far greater in this case than the municipal proceedings at issue in *Mace*. As *Mace* recognized, such proceedings must include a jury unless that right is waived. 98 Wn.2d at 100.

d. No significant distinctions between juvenile and adult proceedings justify the denial of the right to a jury trial for children.

Schaaf concluded the right to a jury trial does not attach because "juvenile proceedings do not yet so resemble adult proceedings." 109 Wn.2d at 13. That is a standard divorced from the language of Article I, §§ 21 and 22, which does not limit the right to proceedings which "resemble" adult proceedings.

The degree to which one proceeding resembles another is inherently subjective, especially in the absence of any pronouncement of what degree of resemblance is necessary.

There is every reason to conclude the framers broadly extended the jury trial right based simply upon the belief and then-current practice that every person enjoyed the protections of a jury whenever charged with an offense. Indeed, when the juvenile courts were established less than 20 years later, there was no qualification of the right to jury trial. The metric of whether a proceeding resembles adult criminal proceedings was foreign to the framers and cannot determine whether one prosecution or another is afforded the protections of a jury.

Even if one employs the malleable "resemble" standard, it is virtually impossible to distinguish juvenile and adult proceedings.

R.W.-W. must provide the court his personal data. He must provide a DNA sample and submit to fingerprinting and photographing by the Sheriff upon arrest. RCW 43.43.735; RCW 43 43.754. No statutory provisions require future destruction of these records and no restrictions exist on their dissemination. RCW 10.97.050. Background checks apply

equally to adults and to children tried in juvenile court. RCW 43.43.830(6).

R.W.-W. must also register with his local sheriffs. RCW 9A.44.130. And while children have a greater ability to be removed from the registration list than adults, there is no guarantee they *will* be removed. *See* RCW 9A.44.143(3). Juveniles are be subject to involuntary commitment under RCW 71.09 just as adults are. *Anderson*, 185 Wn.2d at 86.

Children convicted in juvenile court may be housed in adult prisons. RCW 13.40.280. When the prosecution seeks to transfer a child to an adult prison, it is the child's burden to demonstrate why they should not be transferred. *Id*. Likewise, youth who are tried in adult court, and who enjoy the right to a jury trial, may serve their sentences in a juvenile facility until they are twenty five. RCW 72.01.410.

Not all juvenile records are eligible for sealing. RCW 13.50.260(1). Even when recent legislation eased sealing requirements for many juveniles, children with certain sex

offenses are exempted from administrative sealing their records. RCW 13.50.260(1)(c). R.W.-W., for example, is not entitled to administrative sealing of his records, even though he was only 13 at the time of the conviction, and he is not eligible for sealing unless and until he is relieved of his registration requirement. RCW 13.50.260(4).

As juvenile convictions become increasingly punitive, adults charged with felonies have enjoyed greater rehabilitative options, demonstrating how similar the two systems have become. Therapeutic court programs have been created with the purpose of rehabilitation, rather than punishment. RCW 2.30.010. More than 80 therapeutic courts have been created in Washington. Washington Courts, Drug Courts & Other Therapeutic Courts.[4]

Every rehabilitative program in juvenile court has an equivalent for adults. Juveniles and adults convicted of a sex

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[4] Available at https://www.courts.wa.gov/court_dir/?fa=court_dir.psc.

offense may ask the court for a community-based alternative sentence. RCW 13.40.160; RCW 9.94A.670. Juveniles and adults with drug dependency problems may seek treatment instead of a standard range sentence. RCW 13.40.0357; RCW 13.40.165. Juveniles may seek diversion and deferred sentences, options long available to adult misdemeanor defendants and increasingly available for adult felony defendants. RCW 13.40.070; RCW 13.40.127; RCW 3.66.068; RCW 3.50.330; RCW 10.05; *see also* LEAD, Law Enforcement Assisted Diversion.[5]

Minors and young persons tried in adult court and afforded a jury trial have the ability to be sentenced as if they were juveniles, even when jurisdiction lapses. *See State v. Maynard*, 183 Wn.2d 253, 264, 351 P.3d 159 (2015) (remedy for ineffective assistance is to remand to adult court for further proceedings in accordance with the Juvenile Justice Act). Even

[5] Available at http://leadkingcounty.org/.

an adult convicted of a felony is entitled to a sentencing hearing where the court considers youthfulness as a mitigating factor. *State v. O'Dell*, 183 Wn.2d 680, 688, 358 P.3d 359 (2015).

Indeed, juvenile prosecutions differ from current and historical adult prosecutions in only two ways: the name attached and the absence of a jury. Rehabilitative models in adult sentencing have never justified the denial of the right to a jury trial for adults. Nor could one seriously contend that altering the purposes of the Sentencing Reform Act to focus more on rehabilitation would permit the denial of jury trials in adult criminal case. A rehabilitative approach to juvenile or adult prosecutions cannot be determinative or alter the right to a jury trial.

e. RCW 13.04.021 violates Article I, §§ 21 and 22.

Smith requires courts to define the right to a jury trial by the right which existed in 1889. Subsequent, or even nearly contemporaneous, Legislative acts cannot enter the inquiry. In so holding, the Court disavowed the analysis employed in

Schaaf. Because juveniles had the right to a jury trial in 1889, they have that right today. The Legislature's effort to strip away that right in RCW 13.04.021 deprives juveniles of that right. This Court should accept review. RAP 13.4(b)(3), (4).

2. This Court should accept review to determine whether mandatory sex offender registration—imposed without a hearing to determine a child's risk of reoffending—violates due process.

a. Mandatory sex offender registration based on an offense adjudicated in juvenile court violates procedural due process.

RCW 9A.44.130(1)'s mandatory registration requirement for children, absent a hearing to assess future risk to reoffend, violates the procedural and substantive requirements of due process.

"The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." *Wisconsin v. Constantineau*, 400 U.S. 433, 437, 91 S. Ct. 507, 27 L. Ed. 2d 515 (1971). Children

charged with crimes cannot be deprived of life, liberty, and property without "constitutionally adequate procedures." *State v. Watkins*, 191 Wn.2d 530, 537, 423 P.3d 830, 834 (2018) (citing *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985)); Const. art. I, § 3; U.S. Const. amend. XIV. This protection against "the arbitrary exercise of the powers of government" has both procedural and substantive components. *Yim v. City of Seattle*, 194 Wn.2d 682, 688, 451 P.3d 694 (2019), *as amended* (Jan. 9, 2020).

Procedural due process requires the court to identify the private interest affected, the risk of erroneous deprivation, the probable value of additional safeguards, and the State's interests. *Watkins*, 191 Wn.2d at 537 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)).

Adult criminal laws mandate registration for a sex offense adjudicated in juvenile court. RCW 9A.44.130(1). First

degree rape of a child is a qualifying sex offense requiring mandatory lifetime registration in all cases. RCW 9A.44.073, .128, .130(1). As a result, children who are convicted of first degree child rape in juvenile court are subject to the requirements of the adult criminal code, without any individualized judicial inquiry.

When a juvenile is subjected to adult criminal penalties the child must receive a hearing that "measure[s] up to the essentials of due process and fair treatment." *Kent v. United States*, 383 U.S. 541, 562, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966). Application of the *Mathews* factors to the mandatory sex offender registration statute establishes that without a hearing, its mandatory inclusion of juvenile offenders violates due process.

i. A child under juvenile court jurisdiction has a significant interest in not being subject to adult criminal laws.

When a child is by "statute entitled to certain procedures and benefits as a consequence of his statutory right to the

'exclusive' jurisdiction of the Juvenile Court," the child is entitled to the "rights and immunities" inherent in this juvenile court jurisdiction over him. *Kent*, 383 U.S. at 556-57; *compare Watkins*, 191 Wn.2d at 536 (a child whom the legislature has subjected to adult court jurisdiction has no constitutional right to be tried in juvenile court).

Juvenile courts are designed to rehabilitate, not punish: "[W]e have found this policy as rehabilitative in nature, whereas the criminal system is punitive." *State v. Posey*, 161 Wn.2d 638, 645, 167 P.3d 560 (2007); *see also Monroe v. Soliz*, 132 Wn.2d 414, 420-21, 939 P.2d 205 (1997) (citing *Kent*, 383 U.S. at 557) (by proceeding in a juvenile court the State protects offenders "against [the] consequences of adult conviction . . .")

Before depriving children of the "special rights and immunities" inherent in juvenile court, the child is entitled to the minimal guaranties of due process. *Kent*, 383 U.S. at 556.

ii. Mandatory sex offender registration for juvenile offenses carries a high risk of erroneous deprivation.

There is a high risk that a child will be erroneously deprived of the rehabilitative guaranties of juvenile court through mandatory registration because children are adjudicated with fewer constitutional protections, and research establishes that juveniles who commit sex offenses pose little risk of sexual reoffending.

For adult defendants, the jury trial right acts as a necessary "circuitbreaker" in the State's "machinery of justice." *Blakely*, 542 U.S. at 306. Adult offenders are included on a sex offender registry without additional procedures because a "convicted offender has already had a procedurally safeguarded opportunity to contest." *Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 7, 123 S. Ct. 1160, 155 L. Ed. 2d 98 (2003).

Even as the Juvenile Courts and Juvenile Offenders Act has been amended to increase punishment for children's criminal behavior, this Court still deems juvenile courts to be

primarily rehabilitative. *State v. Chavez*, 163 Wn.2d 262, 270, 180 P.3d 1250 (2008). A jury trial continues to be deemed unnecessary for juveniles because "an adult criminal conviction carries far more serious ramifications for an individual than a juvenile adjudication, no matter where the juvenile serves his time." *Id*. at 271 (citing *Soliz*, 132 Wn.2d at 419-21).

In *Kent*, the Court recognized that this focus on rehabilitation in exchange for fewer constitutional protections may result in the "the worst of both worlds" for a juvenile defendant, because "he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." 383 U.S. at 556. This is certainly true for sex offender registration, where a juvenile is subjected to the requirements even though he was convicted through the "rehabilitative" process in juvenile court.

This is untenable given our courts' recognition of the fact that a child is less able to engage in the long-term decision-making that is required to understand the rigors and

consequences of complying with sex offender registration requirements. *O'Dell*, 183 Wn.2d at 692.

In R.W.-W.'s case, he received a 15-36 week sentence after being convicted of a serious sex offense when he was only 13 years old, without presenting his case to a jury. The "rehabilitative" principles justifying the denial of this basic constitutional protection in juvenile court were severely undermined when the conviction resulted in mandatory sex offender registration under an adult criminal law. RCW 9A.44.130(1).

Despite the constitutional limitations in juvenile proceedings and the constitutionally significant fact that children are far less capable of understanding the consequences of their decisions, juveniles are subjected to mandatory registration based on a juvenile adjudication under RCW 9A.44.130(1), which in this case will span the rest of R.W.-W.'s life unless a court agrees to relieve him.

Requiring judicial discretion before subjecting a child to the registration requirements of RCW 9A.44.130(1) would ensure a juvenile is not unjustly deprived of the rehabilitative protections of juvenile court jurisdiction.

Additionally, mandatory registration risks erroneously depriving children of the protections of juvenile court because research shows that children pose a very low risk of sexual reoffending—defeating the legislature's reason for subjecting them to registration.

A child convicted of a sex offense poses no greater risk of sexually reoffending than his juvenile peer who is adjudicated of a non-sex offense. *See*, *e.g.*, Michael F. Caldwell & Elizabeth Letourneau, et. al, as Amici Curiae Supporting Juvenile Appellant, *Commonwealth v. Juvenile*, NO. SJC-12790 (January 2020). This leads researchers to conclude that "distinguishing between youth likely to sexually reoffend or not involves more than simply knowing that a youth has a history of such offending." *Id*. at 19. The most common finding among

researchers "is that there is no significant relationship between specific risk factors and youth sexual recidivism. The extant research has not identified any stable, offense-based risk factors that reliably predict sexual recidivism in adolescents." *Id*. (emphasis added).

Because researchers uniformly conclude that a juvenile sex offense does not predict sexual offense recidivism, automatic registration requirements, without an individualized inquiry about future risk, leads to the erroneous deprivation of the privacy and rehabilitative purpose of the juvenile court.

iii. The government's interest, including fiscal and administrative burdens that the additional or substitute procedures would entail is minimal.

The process required need not be burdensome. It need only "measure up to the essentials of due process and fair treatment." *Kent*, 383 U.S. at 562.

States requiring a court's discretion before subjecting a child to sex offender registration are instructive. In Indiana, a child is statutorily entitled to a hearing before they may be

placed on the sex offender registry. I.C. § 11–8–8–5(b)(2). The court requires an "evidentiary hearing," representation by counsel, and a "registration decision must be based solely on information admitted into evidence at such a hearing." N.L. v. State, 989 N.E.2d 773, 780 (Ind. 2013).

This is a minimal burden when weighed against the risk of erroneously depriving a child of juvenile court protections. Due process requires a hearing on whether a child should be subjected to mandatory sex offender registration requirement intended for adults.

b. Mandatory sex offender registration predicated on a juvenile offense violates substantive due process.

Our courts have long recognized that "less culpability should attach" to the acts of a juvenile as compared to an adult. *Thompson v. Oklahoma*, 487 U.S. 815, 835, 108 S. Ct. 2687, 101 L. Ed. 2d 702 (1988); *see also Watkins*, 191 Wn.2d at 544 (the developmental differences between juveniles and adults are relevant to juvenile defendants' constitutional rights).

In *Watkins*, this Court held automatic decline laws did not invade a juvenile's "substantive due process right to be punished in accordance with his or her culpability because adult courts can take into account the 'mitigating qualities of youth at sentencing.'" *Id*. at 544-46 (quoting *State v. Houston-Sconiers*, 188 Wn.2d 1, 21, 391 P.3d 409 (2017)). This discretion, accounting for the child's diminished culpability in adult criminal court, is absent for mandatory registration based on a juvenile offense.

The State has a valid interest in public safety. Laws of 1990, ch. 3, § 401. However, there is no legitimate interest in imposing onerous, life-long conditions on a person solely because of what he did when he was 13 years old, when the person presents a low risk of reoffending and the registration law itself impedes the child's rehabilitation.

c. This court should accept review to determine what process is due before a child is subjected to mandatory sex offender registration.

Where juvenile court adjudications are entered without the same safeguards as adult convictions in the name of rehabilitation, and uncontroverted evidence establishes that juveniles who commit sex offenses pose no particular risk to sexually reoffend, automatic, mandatory registration raises serious procedural and substantive due process concerns. This Court should accept review to determine what process is due before a child is deprived of the rehabilitative protections of juvenile court by the registration requirements of RCW 9A.44.130 (1). RAP 13.4(b)(3), (4).

E. <u>CONCLUSION</u>

Based on the foregoing, R.W.-W. respectfully requests that review be granted. RAP 13.4(b)(3) and (4).

This document is proportionately spaced using 14-point font in Times New Roman and contains approximately 4994 words, excluding those portions of the document exempted from the word count by RAP 18.17 (word count by Microsoft Word).

DATED this 3rd day January, 2022.

Respectfully submitted,

/s Tiffinie B. Ma

Tiffinie B. Ma (51420)
Attorney for Appellant
Washington Appellate Project
(91052)
1511 Third Ave, Ste 610
Seattle, WA 98101

APPENDIX A

Filed
Washington State
Court of Appeals
Division Two

August 24, 2021

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. R.W.-W., Appellant.	No. 54574-8-II UNPUBLISHED OPINION

LEE, C.J. — R.W.-W. appeals the juvenile court's disposition finding him guilty of first degree rape of a child. R.W.-W. argues that (1) the juvenile court failed to enter specific findings of fact to permit meaningful appellate review; (2) Article I, Sections 21 and 22 of the Washington Constitution and the Sixth Amendment of the U.S. Constitution afford juveniles the right to a jury trial, which he was deprived; and (3) mandatory sex offender registration for juvenile offenders violates his due process rights.

We hold that the juvenile court's findings of fact permit meaningful appellate review. We do not address R.W.-W's arguments, raised for the first time on appeal, regarding whether juveniles have a constitutional right to a jury trial or whether R.W.-W.'s due process rights were violated by the mandatory sex offender registration requirement. Therefore, we affirm the juvenile court's disposition finding R.W.-W. guilty of first degree rape of a child.

FACTS

The State charged R.W.-W., who was 14 years old at the time of the incident, with first degree rape of a child and second degree rape of a child in juvenile court. The incident leading to

the charges involved L.H.,[1] who was 10 years old at the time of the incident. At the bench trial, the State presented testimony from a number of witnesses, including L.H. and L.H.'s mother, Crystal Johnson.

L.H. testified that he was playing with R.W.-W. in his pool alone. When L.H. went to get out of the pool, R.W.-W. grabbed him by his shorts, pulled them off, "and then, like, just, you know, tried to—you know what I'm saying?" Verbatim Report of Proceedings (VRP) (Dec. 11, 2019) at 137.

The State then offered and the trial court admitted Exhibit 2 into evidence. L.H. identified Exhibit 2 as a statement L.H. wrote with his father regarding the incident. In the statement, L.H. said that when he was going to get out of the pool, R.W.-W. grabbed him and told him, "I'm going to put my thing in your b[***]." VRP (Dec. 11, 2019) at 246. L.H. then stated, "[H]e grabbed me again, pulled me down, and started doing it." VRP (Dec. 11, 2019) at 246.

After reading the statement, the State asked L.H. what happened when he tried to get out of the pool. L.H. stated, "Well, then he tried to, like, I guess you could say put his penis near my b[***] hole, like, put it in but—well, yeah." VRP (Dec. 11, 2019) at 141. L.H. continued, "I mean, not only did he try, he almost did, but then—I mean, he did." VRP (Dec. 11, 2019) at 141.

On cross-examination, R.W.-W.'s counsel asked L.H., "You said [R.W.-W.] tried, right? You said a couple of times he was trying, or he tried." VRP (Dec. 11, 2019) at 159. L.H. responded, "He was trying, and then, well, I guess he succeeded." VRP (Dec. 11, 2019) at 159.

[1] We use initials for this witness pursuant to our General Order 2011-1.

Johnson also testified regarding the incident between L.H. and R.W.-W. She stated that she learned of the incident when "a number of kids came over and told [her] what had happened." VRP (Dec. 11, 2019) at 97. Johnson then called L.H., who was in the car with his father. L.H. was not comfortable talking about the incident over the phone while in the car, so Johnson asked him a series of yes-or-no questions.

Johnson first asked if R.W.-W. "put his d[***] in your a[**]." VRP (Dec. 11, 2019) at 98. L.H. responded, "[Y]es." VRP (Dec. 11, 2019) at 98. She then asked L.H. where the incident happened. L.H. said it happened in the pool at their house. Johnson further asked, "Does your b[***] hole hurt." VRP (Dec. 11, 2019) at 98. L.H. responded, "[Y]es." VRP (Dec. 11, 2019) at 98.

After hearing the evidence, the juvenile court found that L.H.'s testimony was the most critical in the case, the evidence of L.H. changing his story "was very thin," and L.H.'s testimony was "credible and consistent, it has the ring of truth, the disclosure to the other children shortly after." VRP (Jan. 10, 2020) at 347. The juvenile court further found that the testimony of L.H.'s mother was "fairly consistent. She wanted the truth to come out." VRP (Jan. 10, 2020) at 347. The juvenile court also found that the medical exam findings by Dr. Kimberly Copeland, the physician who examined L.H. after the incident, were completely normal. Based on these findings, the juvenile court found R.W.-W. guilty of first degree rape of a child. The juvenile court also found that it was "not satisfied as to the quantum of proof on the second charge of the rape in the second degree because the evidence of forcible compulsion was not persuasive enough." VRP (Jan 10, 2020) at 348.

The juvenile court entered written findings of fact and conclusions of law. The juvenile court made the following written findings:

> 1. On July 2, 2018, the Respondent had sexual intercourse with LPH.
> 2. LPH was less than twelve years old at the time of the sexual intercourse and was not married to the Respondent.
> 3. LPH, being born on January 22, 2008, was at least twenty-four months younger than the Respondent, born on November 20, 2004.
> 4. This act occurred in Clark County Washington.
> 5. LPH's testimony was credible, consistent, and helps prove the above stated facts beyond a reasonable doubt.

Clerk's Papers (CP) at 70-71.

The juvenile court sentenced R.W.-W. to a standard range of 15 to 36 weeks of commitment. As a result of his disposition for a class A felony sex offense, the juvenile court imposed a sex offender registration requirement.

R.W.-W. appeals.

ANALYSIS

A. ADEQUACY OF FINDINGS OF FACT

R.W.-W. argues that the juvenile court failed to enter adequate findings of fact to permit meaningful appellate review. We disagree.

1. Legal Principles

A juvenile court "shall state its findings of fact and enter its decision on the record." JuCR 7.11(c). The court "shall enter written findings and conclusions." JuCR 7.11(d). The written findings "shall state the ultimate facts as to each element of the crime and the evidence upon which the court relied in reaching its decision." JuCR 7.11(d). Written findings and conclusions are

required to enable adequate appellate review. *State v. Bynum*, 76 Wn. App. 262, 266, 884 P.2d 10 (1994), *review denied*, 126 Wn.2d 1012 (1995).

The findings of fact "must specifically state the ultimate facts necessary to support a conviction." *State v. Avila*, 102 Wn. App. 882, 896, 10 P.3d 486 (2000), *review denied*, 143 Wn.2d 1009 (2001). "Ultimate facts" are "'[t]he logical conclusions deduced from certain primary evidentiary facts.'" *State v. Roggenkamp*, 115 Wn. App. 927, 948-49, 64 P.3d 92 (2003) (internal quotation marks omitted) (quoting *State v. Alvarez*, 128 Wn.2d 1, 15 n.15, 904 P.2d 754 (1995)). They are "distinguished from evidentiary facts supporting them." *Id.* at 948 (internal quotation marks omitted) (quoting *Alvarez*, 128 Wn.2d at 15 n.15).

"If findings of fact and conclusions of law do not state the 'ultimate' facts, that error can be cured by remand." *Alvarez*, 128 Wn.2d at 19. But a remand is not necessary in cases where the juvenile court entered a "comprehensive oral ruling," rendering noncompliance with JuCR 7.11(d) inconsequential. *Bynum*, 76 Wn. App. at 265.

An individual is guilty of first degree rape of a child when they have "sexual intercourse with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least twenty-four months older than the victim." Former RCW 9A.44.073(1) (1988). "'Sexual intercourse' . . . has its ordinary meaning and occurs upon any penetration." RCW 9A.44.010(1)(a). "'Sexual intercourse' . . . also means any act of sexual contact between the persons involving the sex organs of one person and the . . . anus of another." RCW 9A.44.010(1)(c).

2. Findings of Fact Sufficient for Review on Appeal

R.W.-W. argues that the juvenile court failed to enter adequate findings of fact. But here, the juvenile court entered written findings of fact that mirror the elements required to find an individual guilty of first degree rape of a child. Under the written findings of fact, the juvenile court found that "the Respondent had sexual intercourse with LPH," that "LPH was less than twelve years old at the time of the sexual intercourse and was not married to the Respondent," and that "LPH, being born on January 22, 2008, was at least twenty-four months younger than the Respondent, born on November 20, 2004." CP at 70. These findings are logical conclusions that can be deduced from the evidence presented at trial.

The juvenile court deduced these logical conclusions from the primary evidentiary facts as stated under finding of fact 5: "LPH testimony was credible, consistent, and helps prove the above stated facts beyond a reasonable doubt." CP at 71. And the juvenile court's ultimate findings are further supported by the court's oral ruling, where the trial court's decision was obviously based on L.H.'s and Johnson's testimony; the juvenile court found that L.H.'s testimony was "the most critical," that Johnson "wanted the truth to come out," and that Johnson's testimony was "fairly consistent." VRP (Jan. 10, 2020) at 346-47.

R.W.-W. further argues that the juvenile court's findings were inadequate to permit meaningful review because the juvenile court referenced L.H.'s testimony as a whole in its decision, yet L.H. made various inconsistent statements during his testimony. The record fails to support this argument.

At trial, L.H. testified that when he tried to get out of the pool, R.W.-W. grabbed him by the shorts, pulled them off, "and then, like, just, you know, tried to—you know what I'm saying?"

VRP (Dec. 11, 2019) at 137. The State then offered and admitted Exhibit 2 into evidence. Exhibit 2 was the statement L.H. wrote with his father regarding the incident. In the statement, L.H. wrote that "he grabbed me again, pulled me down, and started doing it." VRP (Dec. 11, 2019) at 246. After reading the statement, L.H. first stated, "Well, then he tried to, like, I guess you could say put his penis near my b[***] hole but, like, put it in but—well, yeah." VRP (Dec. 11, 2019) at 141. L.H. continued, "I mean, not only did he try, he almost did, but then—I mean, he did." VRP (Dec. 11, 2019) at 141. During cross-examination, R.W.-W.'s counsel asked L.H., "You said [R.W.-W.] tried, right?" VRP (Dec. 11, 2019) at 159. L.H. responded, "I guess he succeeded." VRP (Dec. 11, 2019) at 159.

While each time L.H. spoke of the incident he began by saying that R.W.-W. tried to penetrate him, L.H. also corrected his language to reflect that R.W.-W. succeeded. The juvenile court relied on this testimony in finding that R.W.-W. had sexual intercourse with L.H. And the juvenile court found that L.H.'s testimony was "credible and consistent." VRP (Jan. 10, 2020) at 347. We do not review on appeal the credibility determinations made by the fact finder. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Further, whether or not testimony is credible does not affect whether the juvenile court made insufficient findings to allow for appellate review.

We hold that the juvenile court made ultimate findings of fact and stated the evidence upon which it relied. Remand is not necessary because the juvenile court's oral and written findings and conclusions are sufficient to permit meaningful appellate review.

B. CONSTITUTIONAL RIGHT TO JURY TRIAL

R.W.-W. argues that article I, sections 21 and 22 of the Washington Constitution and the Sixth Amendment of the U.S. Constitution afford juveniles the right to a jury trial. The State

argues that R.W.-W. waived his right to appeal the issue of whether juveniles have a right to a jury trial because he did not present his arguments to the juvenile court. We agree with the State.

We "may refuse to review any claim of error which was not raised in the trial court." RAP 2.5(a). But a party may raise a claim for the first time on appeal when it is a manifest error affecting a constitutional right. RAP 2.5(a)(3). An error is "manifest" if an appellant shows actual prejudice. *State v. O'Hara*, 167 Wn.2d 91, 99, 217 P.3d 756 (2009). To demonstrate actual prejudice, there must be a plausible showing by the appellant that the asserted error had practical and identifiable consequences in the proceedings of the case. *Id.*

"Cases in the juvenile court shall be tried without a jury." RCW 13.04.021(2). R.W.-W. argues that this statute is unconstitutional because it violates the guarantees to a jury trial in the state and federal constitutions.

Under article I, section 21 of the Washington Constitution "[t]he right of trial by jury shall remain inviolate." Under article I, section 22 of the Washington Constitution, the accused has the right "to have a speedy public trial by an impartial jury" in criminal prosecutions. Under the Sixth Amendment of the U.S. Constitution, "the accused shall enjoy the right to a speedy and public trial, by an impartial jury" in all criminal prosecutions.

Whether a statute is unconstitutional is a question of law that we review de novo. *State v. Chavez*, 163 Wn.2d 262, 267, 180 P.3d 1250 (2008). Over the past 50 years, the Washington Supreme Court has consistently rejected the argument that RCW 13.04.021(2) violates article I, sections 21 and 22 of the Washington Constitution, as well as the Sixth Amendment of the U.S. Constitution. *See id.* at 274 (holding no right to a jury trial in juvenile proceedings under article I, sections 21 and 22 of the Washington Constitution, as well as the Sixth Amendment of the U.S.

Constitution); *Monroe v. Soliz*, 132 Wn.2d 414, 419, 939 P.2d 205 (1997) (holding RCW 13.40.280 does not violate an individual's right to a jury trial because an individual does not have that right in a juvenile proceeding); *State v. Schaaf*, 109 Wn.2d 1, 21, 743 P.2d 240 (1987) (holding a jury trial is not constitutionally guaranteed in juvenile proceedings); *State v. Lawley*, 91 Wn.2d 654, 659, 591 P.2d 772 (1979) (holding "jury trials are not necessary in juvenile adjudicatory proceedings"); *Estes v. Hopp*, 73 Wn.2d 263, 268, 438 P.2d 205 (1968) (holding the right to a jury trial does not apply in juvenile adjudicatory proceedings).[2]

R.W.-W. argues that the Washington Constitution is more protective of the right to a jury trial than the federal constitution. For support, R.W.-W. relies on *State v. Smith*, 150 Wn.2d 135 75 P.3d 934 (2003), *review denied,* 541 U.S. 909 (2004).

In *Smith*, the Washington Supreme Court found, after conducting a *Gunwall*[3] analysis, that the right to a jury trial may be broader under the state constitution than under the federal constitution. *Id.* at 156. But 5 years after *Smith*, the Washington Supreme Court again reaffirmed that article I, sections 21 and 22 do not provide individuals in juvenile proceedings with the right to a jury trial. *Chavez*, 163 Wn.2d at 272. The court in *Chavez* specifically reaffirmed the analysis of the *Gunwall* factors employed in *Schaaf*. *Id.* at 269. Therefore, following *Chavez*, the constitutional right to a jury trial does not apply to cases in juvenile court.

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[2] The Washington Supreme Court recently denied review of a case addressing this exact issue. *See State v. J.K.T.*, 11 Wn. App. 2d 544, 455 P.3d 173 (2019), *review denied*, 195 Wn.2d 1017 (2020).

[3] *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986).

Because juveniles do not have a constitutional right to a jury trial, R.W.-W. has failed to show any manifest error affecting a constitutional right. Therefore, we do not address R.W.-W.'s claim raised for the first time on appeal that RCW 13.04.021(2) is unconstitutional.

C. MANDATORY SEX OFFENDER REGISTRATION

R.W.-W. argues that his procedural and substantive due process rights were violated by the mandatory sex offender registration requirement for juveniles found guilty of sex offenses. The State again argues that R.W.-W. has waived his right to appeal the issue of whether mandatory sex offender registration for juveniles violates his substantive and procedural due process rights because he did not raise the argument with the juvenile court.

As noted above, a party waives any argument raised for the first time on appeal unless the party can show a manifest error affecting a constitutional right. RAP 2.5(a)(3); *O'Hara*, 167 Wn.2d at 99. Because R.W.-W. fails to show a manifest error affecting a constitutional right, he has waived his challenge to the mandatory sex offender registration requirement for juveniles.

A juvenile in Washington "who has been found to have committed or has been convicted of any sex offense . . . shall register with the county sheriff." RCW 9A.44.130(1)(a). A juvenile offender may petition the superior court to be relieved of their duty to register if they have not been determined to be a sexually violent predator. RCW 9A.44.143(1). This may occur after 24 months have passed since the juvenile's adjudication and completion of any term of confinement if the offense was committed when the juvenile was younger than 15 years old. RCW 9A.44.143(3)(a).

1. Procedural Due Process Rights

R.W.-W. argues that his procedural due process rights were violated by the mandatory sex offender registration requirement for juvenile offenders. Specifically, R.W.-W. contends that, to comport with procedural due process, the sex offender registration requirement should only be imposed after an evidentiary hearing to determine whether the juvenile is a risk to sexually reoffend. We disagree that R.W.-W.'s procedural due process rights were violated.

Juveniles have a right to procedural due process. *State v. Watkins*, 191 Wn.2d 530, 537, 423 P.3d 830 (2018). To determine what process is due in a given context, courts apply the test enunciated in *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). This test balances (1) the private interest affected, (2) the risk of erroneous deprivation of that interest through existing procedures and the probable value of additional procedural safeguards, and (3) the government interest, including costs and administrative burdens of additional procedures. *Id.* In determining whether due process was violated, we must balance each factor. *Id.*

a. Private interest affected

Under the first *Mathews* factor, we evaluate the private interest affected. *Id.* In addressing this first *Mathews* factor, R.W.-W. argues that "a child under juvenile court jurisdiction has a significant interest in not being subject to adult criminal laws." Br. of Appellant at 30.

While both adults and juveniles are subject to the mandatory sex offender registration requirement, the mandatory registration statute draws a distinction between adult offenders and juvenile offenders. Juvenile offenders are given the possibility of relief from the duty to register much sooner than adult offenders. RCW 9A.44.142, .143. An adult is only eligible to petition for relief from registration after 10 years. RCW 9A.44.142(1)(b). A juvenile, however, is eligible to

petition for relief after 5 years if the juvenile was 15 years old or older when they committed the offense or after 2 years if the juvenile was under 15 years old when they committed the offense. RCW 9A.44.143(2)(a), (3)(a). Also, an adult convicted of a sex offense that is a class A felony and that was committed with forcible compulsion may never petition for relief from registration. RCW 9A.44.142(2)(a)(ii). This is not the case for a juvenile offender.

R.W.-W. also contends that the mandatory sex offender registration requirement punishes juveniles where the system is supposed to be rehabilitative. But mandatory sex offender registration is not punitive—it is a regulatory measure. *Russell v. Gregoire*, 124 F.3d 1079, 1089 (1997), *cert. denied*, 523 U.S. 1007 (1998). "Registration does no more than apprise law enforcement officials of certain basic information about an offender living in the area." *Id.* at 1087. "[N]o affirmative restraint or disability is imposed." *Id.* at 1089. And there is no evidence in the record that shows registration affected R.W.-W.'s ability to get a job, find housing, or travel. *See State v. Boyd*, 1 Wn. App. 2d 501, 511, 408 P.3d 362 (2017), *review denied*, 190 Wn.2d 1008, *cert. denied*, 139 S. Ct. 639 (2018). Therefore, the first *Mathews* factor weighs against a finding that the mandatory sex registration requirement for juvenile sex offenders violates procedural due process.

b. Risk of erroneous deprivation of interest

Under the second *Mathews* factor, we evaluate the risk of erroneous deprivation of the private interest through existing procedures and the probable value of additional procedural safeguards. 424 U.S. 335. R.W.-W. argues that the risk of erroneous deprivation is high where juvenile court procedures lack the same constitutional protections afforded adult defendants; specifically, a jury trial. We disagree.

Juvenile courts are primarily rehabilitative. *Chavez*, 163 Wn.2d at 269-70. However, procedures exist within the juvenile court system that provide safeguards against erroneous deprivation of rights. *McKeiver v. Pennsylvania*, 403 U.S. 528, 533, 91 S. Ct. 1976, 29 L. Ed. 2d 647 (1971). For example, a juvenile must still be found guilty beyond a reasonable doubt by the trier of fact. *Id.* And a juvenile has the right to appeal the juvenile court's order. RCW 13.04.033(1). Further, a juvenile has "the rights to appropriate notice, to counsel, to confrontation and to cross-examination, and the privilege against self-incrimination." *Id.* Therefore, even though a juvenile does not have the right to a trial by jury, a significant number of other safeguards exist to protect against the risk of erroneous deprivation. The second *Mathews* factor weights against a finding that mandatory sex registration for juveniles violates procedural due process.

c. Governmental interest

Under the third *Mathews* factor, we evaluate the governmental interest at stake, as well as the additional administrative and fiscal burdens of further procedures. 424 U.S. at 335. R.W.-W. does not address the governmental interest at stake. Instead, R.W.-W. focuses on the argument that the burdens placed on the government by the addition or substitution of procedures would be minimal.

R.W.-W. references an Indiana law, which states that a child is entitled to an evidentiary hearing to decide whether the child is likely to reoffend. Ind. Code 11-8-8-5(b)(2); *N.L. v. State*, 989 N.E.2d 773, 780 (2013). Yet, R.W.-W. ignores that fact that an increased number of hearings creates an incremental cost that would burden the government. *See Mathews*, 424 U.S. at 348 (finding a governmental interest "in conserving scarce fiscal and administration resources . . . that must be weighed").

The government has an interest in conserving administrative resources that must be weighed, and an additional evidentiary hearing would place administrative burdens on the juvenile court that affect the timely disposition of cases. *Id.* In this case specifically, the trial court stated, "[T]here's a deep dissatisfaction with the fact an incident alleged to have occurred in July of 2018 is now making it to trial in January 2020." VRP (Jan. 10, 2020) at 348. The trial court continued, "I think we can do better for the youth of our community on both sides of this table by getting a case like this more promptly to trial, to resolution, and to some sort of disposition." VRP (Jan. 10, 2020) at 349. Requiring an additional evidentiary hearing would slow juvenile proceedings even further.

R.W.-W. also argues that research shows juveniles pose a very low risk to sexually reoffend. R.W.-W. contends that the low risk "defeat[s] the legislature's reason for subjecting them to mandatory sex offender registration." Br. of Appellant at 37. R.W.-W. cites to an amicus brief that contends that there is a "common finding among researchers . . . 'that there is no significant relationship between specific risk factors and youth sexual recidivism.'" Br. of Appellant at 38 (quoting Br. of Appellant Appendix at 19 (Amicus Brief, *Commonwealth v. Juvenile*, No. SJC-12790 (January 2020)).

But "the constitution does not require legislatures to 'have scientific or exact proof of the need for legislation.'" *State v. Smith*, 185 Wn. App. 945, 955, 344 P.3d 1244, *review denied*, 183 Wn.2d 1011 (2015) (quoting *State v. J.D.*, 86 Wn. App. 501, 508, 937 P.2d 630 (1997)). There need only be an evidentiary nexus between the law's purpose and effect. *Id.* The legislature imposed the mandatory sex offender registration requirement "after considering recommendations from the Governor's Task Force on Community Protection and after hearing testimony from

representatives of several interested groups." *Id.* at 955-56. Based on these recommendations and testimony, the legislature was not "unfounded" in its decision to require mandatory registration. *See id.* at 956. This factor weighs against finding a violation of procedural due process.

"The state has a compelling interest in promoting the health, safety, and welfare of its citizens." *Id.* at 955. Mandatory registration of sex offenders serves this interest. *Id.* "[I]t is not excessive given the state interest at stake." *Gregoire*, 124, F.3d at 1089. Registration assists law enforcement agencies' efforts to protect their communities against sex offenders who may be likely to re-offend. *State v. Stratton*, 130 Wn. App. 760, 765, 124 P.3d 660 (2005). In evaluating the government interest at stake, as well as the additional administrative and fiscal burdens of further procedures the third *Mathews* factor weighs against a finding that mandatory sex registration for juveniles violates procedural due process.

In balancing R.W.-W.'s private interest, the risk of erroneous deprivation, and the State's interest, procedural due process does not mandate that an evidentiary hearing is necessary to determine a juvenile offender's risk of re-offence before requiring mandatory sex offender registration. Thus, R.W.-W. has not shown a procedural due process violation.

2. Substantive Due Process Rights

R.W.-W. argues that mandatory sex offender registration for juvenile offenders violates substantive due process. We disagree.

The Fourteenth Amendment to the U.S. Constitution prohibits the government from depriving an individual of "life, liberty, or property, without due process of law." U.S. CONST., amend. XIV, § 1. "[J]uveniles are developmentally different from adults and these differences are relevant to juvenile defendants' constitutional rights." *Watkins*, 191 Wn.2d at 544. Any

constitutional analysis regarding a juvenile defendant should take youthfulness into account. *Id.* at 544-45.

R.W.-W. was required to register as a sex offender because he committed a class A felony sex offense. RCW 9A.44.130(1)(a). R.W.-W. argues that mandatory sex offender registration for juvenile offenders denies a child the substantive right to be treated with the reduced culpability that attaches by virtue of their young age and immaturity.

We agree that "'there *are* differences which must be accommodated in determining the rights and duties of children as compared with those of adults.'" *Thompson v. Oklahoma*, 487 U.S. 815, 822, 108 S. Ct. 2687 101 L. Ed. 2d 702 (1988) (quoting *Goss v. Lopez*, 419 U.S. 565, 590-91, 95 S. Ct. 729` 42 L. Ed. 2d 725 (1975) (dissenting opinion)). Washington statutes provide such accommodations. As discussed above, while both adults and juveniles are subject to the mandatory sex offender registration, juvenile offenders are given the possibility of relief from the duty to register much sooner than adult offenders. RCW 9A.44.143. Further, an adult convicted of a sex offense that is a class A felony and that was committed with forcible compulsion may never petition for relief from registration. RCW 9A.44.142(2)(a)(ii). Juvenile offenders are not similarly precluded.

Further, RCW 9A.44.143 provides for separate categories based on the age of the offender. Under RCW 9A.44.143(2), a juvenile offender who was 15 years or older when the offenses were committed may petition the court for relief after at least 60 months, or 5 years, have passed since the juvenile's adjudication and completion of any term of confinement for the offense. RCW 9A.44.143(2)(a). On the other hand, a juvenile offender "not included in subsection (2)" may petition the court for relief after at least 24 months have passed since adjudication or completion

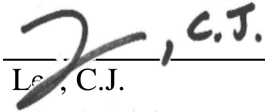
of confinement. RCW 9A.44.143(3)(a). This includes all juvenile offenders who were under the age of 15 when they committed sex offenses.

Contrary to R.W.-W.'s contention, mandatory registration for R.W.-W. is not an "onerous, lifelong condition[]." Br. of Appellant at 40. Instead, R.W.-W. is eligible for relief of this requirement after two years because he was under the age of 15 when he committed the offense. *See* RCW 9A.44.143(3)(a). As such, we hold that substantive due process rights are not violated by mandatory sex offender registration for juvenile offenders.

In sum, the mandatory sex registration requirement complies with both procedural and substantive due process. In balancing R.W.-W.'s private interest, the risk of erroneous deprivation, and the State's interest, procedural due process does not mandate that an evidentiary hearing is necessary to determine a juvenile offender's risk of re-offence before requiring mandatory sex offender registration. Further, the mandatory sex registration requirements do not violate liberty interests protected by substantive due process. Therefore, R.W.-W. has failed to show any manifest error affecting a constitutional right. Accordingly, we do not address R.W.-W.'s due process violation claims raised for the first time on appeal.

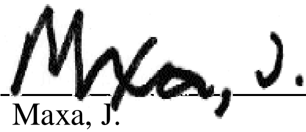
We affirm the juvenile court's disposition finding R.W.-W. guilty of first degree rape of a child.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

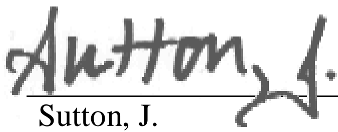


Lee, C.J.

We concur:



Maxa, J.



Sutton, J.

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The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division One** under **Case No. 54574-8-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent Aaron Bartlett, DPA
[aaron.bartlett@clark.wa.gov]
[prosecutor@clark.wa.gov]
Clark County Prosecutor's Office

☐ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Paralegal Date: January 3, 2022
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