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DIVISION III  
STATE OF WASHINGTON  
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Court of Appeals No. 34718-4-III

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STATE OF WASHINGTON  
COURT OF APPEALS, DIVISION III

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State of Washington,  
*Plaintiff-Respondent,*

v.

Meghan Lillian MianECKi,  
*Defendant-Appellant.*

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BRIEF OF THE APPELLANT

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## A. INTRODUCTION

This case arises out of the alleged sexual engagement of a male subject, 12 years 11 months of age,<sup>1</sup> by a 17-year-old female subject, the appellant, Meghan Mianecki.<sup>2</sup> The alleged perpetrator and alleged victim went to school at the same location and participated in extra-curricular activities together. The allegations include sexual conduct that is statutorily prohibited by RCW 9A.44.076 and RCW 9A.44.086. There is no contention by the State that the alleged incidents involved acts of forcible rape, violence, threat, or intimidation. All acts, sexual or otherwise between the alleged victim and alleged perpetrator, if any, were engaged in voluntarily.

Although the alleged misconduct occurred over five months before Ms. Mianecki's eighteenth birthday and her age was an essential element of the alleged crime, the investigating officer failed to refer the matter to the prosecutor until after the opportunity for juvenile jurisdiction had passed—166 days after the alleged incident. Throughout this time, the alleged victim and Ms. Mianecki continued to attend the same school and continued to participate in the same extra-curricular activities.

Ms. Mianecki moved the trial court to dismiss the charges as a result of the preaccusatorial delay. At a hearing on her motion, the

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<sup>1</sup> He turned 13 years-old on 9/6/2015 (45 days after the alleged event).

<sup>2</sup> She turned 18 years-old on 12/19/2015 (149 days after the alleged event).

investigating officer acknowledged he possessed everything needed to refer the case before Ms. MianECKi's eighteenth birthday, but could not "answer" why he failed to do so. Despite the absence of an explanation for the delay and the severe prejudice caused to Ms. MianECKi, the trial court denied her motion to dismiss, commenting that "[t]here's delay in every case."

Ms. MianECKi timely sought discretionary review of the trial court's decision under RAP 2.3(b)(4). This Court accepted review on November 28, 2016. Ms. MianECKi respectfully asks the Court to reverse the trial court's September 22, 2016 denial of her motion to dismiss and to remand the case with instructions to dismiss the case with prejudice. The State's unwarranted preaccusatorial delay deprived her of juvenile jurisdiction in violation of her right to due process and in a manner inconsistent with similarly situated juveniles.

**B. ASSIGNMENTS OF ERROR**

1. The trial court erred by failing to grant Ms. MianECKi's Motion to Dismiss for Preaccusatorial Delay.

**C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Did the trial court improperly deny Ms. MianECKi's Motion to Dismiss for Preaccusatorial Delay? (Assignment of Error 1). In particular:

- a. Did the trial court err in applying the required balancing test when assessing whether dismissal was warranted given the State failed to provide a basis for its delay and the prejudice caused to Ms. Mianecki is substantial?
- b. Does proceeding against Ms. Mianecki as an adult for a crime premised upon her juvenile age violate her right to due process as it offends fundamental conceptions of justice? (Assignment of Error 1).
- c. Does proceeding against Ms. Mianecki as an adult for these alleged juvenile acts violate her right to equal protection when such treatment is inconsistent and arbitrary when compared with other similarly situated juveniles? (Assignment of Error 1).

**D. STATEMENT OF THE CASE**

**1. Grant County Sheriff's Office Delays Referring Case to Adams County Prosecutor Until After Ms. Mianecki Turns 18-years-old, Preventing Exercise of Jurisdiction by Juvenile Court**

The events giving rise to the charges allegedly took place on July 23, 2015. The Grant County Sheriff's Office was informed of the alleged crime and initiated an investigation the same day. [RP 32, 11.2-9]. That day, the Sheriff's Office gathered all of the physical evidence subsequently relied upon by the prosecutor in this case and obtained witness statements of the alleged victim and his parents. [See RP 32-35].

Although the Grant County Sheriff's Office has detectives or deputies specially assigned to handle sex crimes, Grant County assigned a Field Training Officer to lead the investigation, Deputy Nick

Overland. [RP., 23, 1.23-24, 1.5]. The investigation was Deputy Overland's first sex crime investigation. [RP 25, 11.8-9; RP 27, 11.15-23]. At the time of the hearing on Ms. Mianecki's motion to dismiss, Deputy Overland was unaware of the juvenile justice act, and explained he believed minors and adults were treated identically under Washington's legal system. [RP 26:16-27:10].

On August 14, 2015, 22 days after the alleged incident, deputies served Ms. Mianecki with a search warrant to obtain a DNA sample. No one from the Sheriff's Office contacted the prosecutor's office to discuss the investigation during this time, or at any point, until more than five months later—after Ms. Mianecki turned 18-years-old. [RP 36, 11.19-25]. Deputy Overland submitted the DNA samples to the Washington State Patrol Crime Laboratory for analysis on August 15, 2015. [Id., A18, 11.13-15].

Although the laboratory provides an expedited process, including **“for pending court dates,”** Deputy Overland chose to not “rush the process” for Ms. Mianecki's DNA analysis. [RP 41:11-16; RP 43:5-25; RP 59:6-17]. The laboratory received the submission from Grant County Sheriff's Office on August 18 or 19, 2015. [RP 60:11-15]. A scientist at the laboratory, Alison Walker, was assigned to the case on October 9, 2015. [RP 60:16-17]. Deputy Overland received the DNA report back

from the laboratory on December 2, 2015, still 17 days before Ms. Mianecki's 18<sup>th</sup> birthday. [RP 37:16-38:1; RP 44:5-7].

Although aware of her birthdate, as he was investigating a charge of statutorily prohibited sexual misconduct premised on a difference in age, Deputy Overland made no effort to even review the DNA analysis results until December 23, 2015, after Ms. Mianecki turned 18-years-old. [RP 44:1-25]. When asked for an explanation for his delay, Deputy Overland could not answer why neither he nor his supervising officer reviewed the DNA analysis prior to Ms. Mianecki's birthdate:

Q. And neither one of you had any time during those --let's see. It would have been 17 days until Meghan's birthday on the 19th -- to review that report and submit a report to the prosecutor?

A. **I don't have an answer for that, sir.**

[RP 45:12-16](emphasis added). Deputy Overland explained that while his office learned Ms. Mianecki's date of birth, identifying her as a minor on the very first day of its investigation, [RP 25, ll.17-25], it failed to "keep track of her birthday" because "we have multiple other issues in Adams going on then." [RP 50, ll.2-7].

Grant County did not refer this case to the prosecutor until January 5, 2016—166 days after the alleged incident and after Ms. Mianecki's 18<sup>th</sup> birthday. Throughout this time, the alleged victim and Ms. Mianecki

continued to attend the same school and continued to participate in the same extra-curricular activities. Adams County filed charges against Ms. Mianecki under RCW 9A.44.076 and 9A.44.086 on April 1, 2016. [CP 1-3].

**2. Trial Court Denies Motion to Dismiss Based on Preaccusatorial Delay by Grant County Sheriff's Office**

On or about June 29, 2016, Ms. Mianecki filed a Motion to Dismiss for preaccusatorial delay. [CP 14-24]. At an evidentiary hearing on Ms. Mianecki's motion to dismiss for preaccusatorial delay [CP 32-34], the trial court orally explained its decision to deny the motion:

I'm going to deny defendant's motion. One, I think there's prejudice. Prejudice is presumed and rises out of the disparate treatment that juvenile offenders receive in the juvenile system, not available to people in the adult system. Balanced, of course, against the fact that if you get charged as an adult, you get a jury trial, not a bench trial. Which most of the bench, most of the bar perceives as, say, big advantage. But, practically speaking, there is prejudice.

We've been talking about delay. There's delay in every case. Even disorderly conduct, there's a delay. You've got to find some time to sit down and write up a report. And it's got to make its way to the prosecutor's office or your supervisor before it goes to the prosecutor's office. There's always going to be some delay.

I think we have to look at whether the delay is undue. I do not see any evidence of undue delay. I can see that the process could have been hastened.

But I did not recall reading any case ever decided by any appellate court in this State that the rules of procedure are

different for child rape cases, or that the rules of procedure are different with respect to offenders nearing the age of 18.

I don't see any undue delay in this case. And balancing the prejudice against the fact that there was no undue delay, I deny defendant's motion.

[RP 87:18-88:20]. The trial court subsequently entered an order denying the dismissal with the language, "THE PARTIES STIPULATE and the Court finds that this Order involves a controlling question of law as to which there is substantial ground for a difference of opinion, and that immediate review of the order may materially advance the ultimate termination of the litigation under RAP 2.3(b)(4)." [CP 35-36, p.1, ll.21-27].

Ms. MianECKi timely sought discretionary review of the trial court's decision, arguing, *inter alia*, that "case law has not addressed the question of what constitutes pre-accusatorial delay in the context of sexual misconduct that involves two minors. And, this Court should take review to provide a clear standard that will prevent 'arbitrary and inconsistent outcomes.'" [CP 37-38; CP 47]. This Court accepted review on November 28, 2016. [CP 44-47]. The Commissioner's Ruling reasoned:

...this Court's grant of review rests on the lack of specific appellate authority in the context here - i.e., a juvenile sex offense in which the juvenile turns 18 between the time of the offense and the time the State charges the juvenile. And, a reasonable difference of opinion may exist as to

whether the occurrence of the juvenile's 18th birthday during that delay adds a separate factor that the court should consider as a matter of law in determining whether the delay violates the juvenile's due process rights.

[CP 47].

**E. SUMMARY OF ARGUMENT**

The trial court erred in failing to correctly apply the balancing test as articulated by *State v. Oppelt*, 172 Wn.2d 285, 257 P.3d 653 (2011) to determine if a preaccusatorial delay violates an accused's right to due process. Balancing the actual, substantial prejudice caused to Ms. Mianecki by the State's preaccusatory delay and the State's lack of reason for that delay, it is clear the prejudice in this context far outweighs the stated reason. Moreover, proceeding against Ms. Mianecki as an adult for an alleged juvenile act based on her age offends basic conceptions of justice in this context. Further, proceeding against her as an adult, a manner inconsistent with other juveniles similarly situated, because of the State's preaccusatorial delay, violates her right to Equal Protection. Dismissal of the charges against Ms. Mianecki is warranted.

**F. ARGUMENT**

**1. Legal Standard: Court Required to Balance Actual Prejudice Caused to Ms. Mianecki Against Actual "Reasons for Delay"**

Whether due process rights are violated by a preaccusatorial delay is a question the Court reviews *de novo*. *State v. Maynard*, 183 Wn.2d

253, 259, 351 P.3d 159 (2015)(“*de novo* whether preaccusatorial delay violated a defendant’s right to due process”); State v. Oppelt, 172 Wn.2d 285, 290, 257 P.3d 653 (2011)(“Whether due process rights are violated by a preaccusatorial delay is a question we review *de novo*.”)(internal citations omitted).

Courts apply a three-part test to determine whether preaccusatorial delay violates an accused’s right to due process. First, the accused must specifically show actual prejudice from the delay. Oppelt, 172 Wn.2d at 295. An accused is not required to show bad faith; “negligent delay can violate due process.” Id. at 292. If an accused establishes prejudice, the burden shifts to the State to show the reasons for the delay. Id. at 295. Courts then examine the entire record to weigh the reasons for the delay against the prejudice and “determine whether fundamental conceptions of justice would be violated by allowing prosecution.” Id.; see also State v. Warner, 125 Wn.2d 876, 890, 889 P.2d 479 (1995)(“The ultimate issue in balancing the interests is whether the action complained of ... violates those ‘fundamental conceptions of justice which lie at the base of our civil and political institutions.’”)(internal citation omitted). Washington’s Supreme Court recently clarified this test, explaining what “is to be balanced are **the reasons for the delay and the prejudice to the defendant** caused by the delay.” Oppelt, 172 Wn.2d at 294 (internal

citations omitted)(emphasis added).

**2. Allowing Prosecution of Ms. Mianeki as an Adult Violates Her Right to Due Process as the Prejudice Caused by the Delay Outweighs the State's Unexplained Delay**

Here, the trial court failed to appropriately balance the gravity of the actual prejudice caused to Ms. Mianeki by the preaccusatorial delay against the purported reasons for the State's delay. See Calderon, 102 Wn.2d at 354 (“we could conceive of a case in which an offender could successfully argue that the prejudice resulting from the loss of juvenile court jurisdiction outweighed the State's reasons for the charging delay, this is not that case.”). Unlike many of the prior decisions regarding preaccusatorial delay, this is not a case of minimal prejudice; the difference between juvenile and adult jurisdiction *in this case* is particularly severe. E.g., id., at 352–53 (“... appellant's criminal history makes it very unlikely that any juvenile court would have retained jurisdiction over these offenses. Nevertheless...the offender has carried his burden of showing the minimal prerequisite of prejudice.”). Nor has the State come forward with a reasonable basis for its preaccusatorial delay. See Frazier, 82 Wn. App. at 592-93.

- a. Majority of prior decisions are distinguishable both in terms of the severity of the prejudice to Ms. Mianeki and the reasons for the preaccusatorial delay

While prior decisions make it clear that this balancing test is

dependent upon the particular facts of a case, Ms. Mianecky has not found any binding decisions involving similar allegations of statutorily prohibited sexual contact between minors. Nor has Ms. Mianecky found any legal authority that addresses the severe level of prejudice that she faces in this context. See § F.1.b infra.

Below is a chronological survey of the most relevant case law where, like here, the juvenile accused's 18<sup>th</sup> birthday occurs *during* the preaccusatory delay.<sup>3</sup> Each case is substantially distinguishable from the present case and, therefore, provides unclear precedent for this context.

	Crime	Prejudice	Reason for Delay	Holding
<u>State v. Brandt</u> Wn. App. (2000)	1 <sup>st</sup> degree child molestation, multiple victims	2-year investigation caused loss of juvenile jdx.	Number of victims, amount of investigation	No evidence delay was negligent; delay justified
<u>State v. Gidley</u> Wn. App. (1995)	3 <sup>rd</sup> degree rape (forcible)	Police delay in interviewing accused caused loss of juvenile jdx.	Police followed dept.'s standard procedure	No argument delay was negligent; delay justified
<u>State v. Dixon</u> Wn.2d (1990)	Residential burglary, eluding police	15-month delay in filing charges caused loss of juvenile jdx.	Investigated sequentially, beginning with accused's co-suspect	Delay not negligent
<u>State v. Lidge</u> Wn.2d (1989)	Burglary of store money drawer	8-day delay in investigation, 13 days before 18 <sup>th</sup> birthday, caused loss of juvenile jdx.	Prosecutor's request for additional information from police	Delay justified, reason outweighs prejudice

<sup>3</sup> Full citations to the cases are included in Appellant's Table of Authorities.

<u>State v. Schifferl</u> Wn. App. (1988)	Unlawful imprisonment	Delay from Feb. to April in referring case to prosecutor, when 18 <sup>th</sup> birthday was April 27, caused loss of juvenile jdx.	Following standard referral procedures, clerical errors in process caused delay	Reason for delay outweighs prejudice
<u>State v. Alvin</u> Wn.2d (1987)	Malicious mischief, dismantling laundry machines to steal coins	2-3 month delay between confession and referral to prosecutor caused loss of juvenile jdx.	Officer took leave for training and vacation; criminal background check took a few weeks.	Reason for delay outweighs prejudice
<u>State v. Robbers</u> Wn. App. (1986)	4 counts of delivery of controlled substance, cocaine	55-day delay in referral to prosecutor caused loss of juvenile jdx.	Ongoing, large-scale drug sting investigation spanning over 4 months	Delay not negligent, reason outweighs prejudice
<u>State v. Calderon</u> Wn.2d (1984)	Escapee from juvenile detention center, residential burglary	6-7 month delay between act and filing charges caused loss of "benefits" of juvenile court jdx., including avoiding stigma of adult conviction and receiving less harsh penalties	No probable cause before verifying the accused's fingerprints; lab had backlog that gave property crimes "fairly low priority"; lab was not aware of accused's age	Delay not negligent, outweighs prejudice
<u>State v. Hodges</u> Wn. App. (1981)	2 <sup>nd</sup> degree escape from juvenile detention center	4-month delay from apprehension to arraignment caused loss of "benefits" of juvenile court jdx.	No justification on record	Remanded with instructions: delay violated due process unless the State can justify the delay

These prior decisions are all distinguishable from the present case, because none involve an alleged crime where, like here, an essential element is the fact that the accused was a minor at the time the alleged act occurred, the State provided reasons for its preaccusatorial delay, and none discussed the same level of severe prejudice at issue in this case.

The distinction between allegations of statutorily prohibited sexual contact between two minors under RCW 9A.44.076 or 9A.44.086 from other alleged criminal acts is important. Prior decisions have reflected a reluctance to require the State to consider the age of the alleged minor perpetrator. E.g., State v. Alvin, 109 Wn.2d 602, 605, 746 P.2d 807, 808 (1987)(“Absent extraordinary circumstances, it is appropriate that juvenile offenses be managed in the same manner as are adult crimes”), holding modified by Oppelt, 172 Wn.2d at 285. Prior decision involved acts that would be criminal regardless of the age of the accused (i.e., forcible rape, residential burglary, unlawful imprisonment, theft, delivery of controlled substance, escape from detention center). In contrast, what makes sexual contact between two juveniles lawful versus unlawful depends *precisely* on the age of the alleged perpetrator. See RCW 9A.44.076 and 9A.44.086. Here, the age of Ms. MianECKi at the time of the alleged act is an element of the alleged crime, and the State admittedly learned and considered her

age the day the underlying incident was reported. [RP 25, ll.17-25]; RCW 9A.44.076 and 9A.44.086.

The prior decisions are further distinguishable because of the justifiable reason the State provided for its delay. In Brandt and Gidley, where allegations involved sexual conduct, there was no evidence or argument that the State's delay was deliberate or negligent. In every case but Hodges, unlike here, the State provided at least *some* reason to justify its delay. And the Court of Appeals in Hodges remanded the case with instructions for the trial court to "determine whether or not the State can carry its burden to justify the delay in arraignment of defendant." State v. Hodges, 28 Wn. App. 902, 905, 626 P.2d 1025 (1981).

Of the prior decisions involving preaccusatorial delay, one is analogous to this context, State v. Frazier, 82 Wn. App. 576, 918 P.2d 964 (1996), holding modified by Oppelt, 172 Wn.2d at 285. In Frazier, like here, the State failed to give any explanation for its preaccusatory delay in handling the juvenile's particular file. Frazier, 82 Wn. App. at 589. Similarly, the juvenile alleged specific prejudice in addition to the general loss of juvenile jurisdiction, like here, including "enormously greater period of incarceration" and having "to serve...time in the state prison system." Id. at 582.

The juvenile was charged with residential burglary 17 months after he confessed to the act, and he had turned age 18 in the interim. Frazier, 82 Wn. App. at 579. The Court found that, even though the prosecutor's office provided testimony that they were overworked and understaffed, id. at 588, the State failed to provide a credible explanation for either the eight-week delay between the police's completion of its report and its receipt by the juvenile court, or the eight-week delay between the prosecutor's receipt of the report and the juvenile's eighteenth birthday. Id. at 579-80 The Frazier Court held,

The trial court weighed the State's interests in prosecuting crime, in ensuring a just society, and in protecting people's due process rights against the prejudice to Frazier of the longer period of incarceration in the state prison system. The trial court concluded that the State had not met its responsibility to provide Frazier with "full protection of the law," and then dismissed the prosecution. We hold that the trial court properly weighed the evidence, determined the credibility of the witnesses, and determined that prosecution of this case is contrary to fundamental concepts of justice.

Id. at 592-93. Ms. Miannecki asks the Court to reach the same conclusion here: the State's reasons for its preaccusatorial delay, balanced against the severe prejudice caused to Ms. Miannecki demonstrate that "prosecution of this case is contrary to fundamental concepts of justice." *See id.*

b. The State's "reason for delay" does not outweigh the severe prejudice caused to Ms. Miannecki

In its briefing to the trial court, the State appropriately acknowledged that Ms. Mianecki had suffered prejudice as a result of its preaccusatorial delay. [CP 27, ll.15-17]. When a delay in bringing charges prevents the juvenile court from making the jurisdictional decision, defendants have carried their burden of showing the first prong of prejudice. E.g., Maynard, 183 Wn.2d at 260 (“defendant meets his or her burden to show actual prejudice when the preaccusatorial delay *causes* the loss of juvenile jurisdiction”)(emphasis original); Calderon, 102 Wn.2d at 352–53. Though agreeing that Ms. Mianecki has been prejudiced as a result of the State’s delay, there appears to be a lack of agreement regarding the significance of the severe prejudice faced by Ms. Mianecki in this context. She currently faces a vastly *inconsistent* outcome compared to other minors who have faced the same or similar charges under juvenile jurisdiction.

At the time of the alleged crime, Ms. Mianecki was a 17-year-old female high school senior allegedly involved in sexual contact with an almost 13-year-old teammate of her school’s cross-country team. If, like other minors charged with similar crimes, Ms. Mianecki had faced charges under the juvenile system, she would have faced a uniform set of statutory guidelines designed for rehabilitation under RCW 13.04.0357 as follows:

- Under “Option A”: Incarceration in a juvenile facility for a maximum term of 36 weeks;
- Under “Option B”: Suspended Disposition.

RCW 13.40.0357; See State v. Crabtree, 116 Wn. App. 536, 546, 66 P.3d 695 (2003)(A primary purpose of the juvenile justice act is rehabilitation and thus, a trial court is required to “take into consideration a host of factors which may not be relevant to the sentencing of adults.”).<sup>4</sup> In addition, her file would be sealed and there would be no sex offender registration requirement.

In stark contrast, if she is convicted as an adult, this college-bound, recent high school graduate, who has no prior criminal record at all, is facing:

- Incarceration in a penitentiary **for a term up to “life”**;
- Monetary fines ranging up to \$50,000.00;
- Sex offender registration for life;
- Public humiliation and the social stigma associated with the offense charged; and
- Professional and academic restrictions related to the offense charged.

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<sup>4</sup> It is important to note that Ms. Mianeki is not an offender and is presumed innocent. See, e.g., State v. Gonzalez, 129 Wn. App. 895, 900, 120 P.3d 645, 648 (2005)(“This constitutionally guaranteed presumption is the bedrock foundation in every criminal trial”).

The sole reason juvenile court could not exercise its jurisdiction over Ms. Mianecki was due to the preaccusatorial delay.<sup>5</sup> Once a juvenile court loses jurisdiction, it cannot reinstate it retroactively. State v. Rosenbaum, 56 Wn. App. 407, 411-412, 784 P.2d 166 (1989).

The trial court appears to have not considered the reasons stated by the investigating officer for his delay or the actual prejudice that the State's preaccusatorial delay caused Ms. Mianecki. In the face of testimony that the deputy investigating the charges, who was still in training (and investigating his first sex crime), could not "answer" why he failed to timely review the DNA results prior to Ms. Mianecki's eighteenth birthday, the State has failed to show *any reason* beyond an argument from counsel for its preaccusatorial delay, let alone a reason that outweighs the severe prejudice in Ms. Mianecki's case. [See RP 45, ll.12-16]. To allow the State to engage in a preaccusatorial delay that deprives a minor of juvenile jurisdiction without even offering an explanation for its delay would render this doctrine, meant to protect accused from arbitrary and inconsistent outcomes, superfluous.

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<sup>5</sup> RCW 13.40.300 provides, in pertinent part, that "[a] juvenile may be under the jurisdiction of the juvenile court or the authority of the department of social and health services beyond the juvenile's eighteenth birthday only if prior to the juvenile's eighteenth birthday...[p]roceedings are pending seeking the adjudication of a juvenile offense and the court by written order...extends jurisdiction of juvenile court over the juvenile beyond his or her eighteenth birthday..."

Moreover, though it was required to balance the actual prejudice against the State's reasons for delay, the trial court's oral ruling made no reference to the severe prejudice caused to Ms. Mianecky in this context. [RP 87:18-88:20]. Indeed, the trial court appeared to view the prejudice as minimal and, perhaps, even somehow beneficial to Ms. Mianecky, commenting that "if you get charged as an adult, you get a jury trial, not a bench trial. Which most of the bench, most of the bar perceives as, say, big advantage. But, practically speaking, there is prejudice." [Id.]. Ms. Mianecky asks this Court to apply the balancing test as articulated in Oppelt and order the dismissal of the charges against her.

**3. Allowing the Prosecution of Ms. Mianecky as an Adult for a Crime Premised Upon Her Juvenile Age Due to a Preaccusatorial Delay Violates Fundamental Notions of Justice**

When reviewing whether a preaccusatorial delay violates due process rights, "[t]he core question is whether the action by the government violates fundamental conceptions of justice." State v. Oppelt, 172 Wn.2d 285, 292, 257 P.3d 653 (2011). This question is what is meant to be answered by application of the balancing test. Id. Beyond the application of the balancing test, in this specific context there is good reason to find charging Ms. Mianecky as an adult for an alleged sexual act

with another juvenile, prohibited because of their age difference, violates these fundamental principles.

a. Due process prohibits prosecutions that violate fundamental notions of decency and fairness

“Upon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by that Constitution.” Mooney v. Holohan, 294 U.S. 103, 113, 55 S. Ct. 340, 342, 79 L. Ed. 791 (1935). The right to due process is protected by the Fourteenth Amendment and article I, section 3 of the Washington Constitution. E.g., State v. Clinkenbeard, 130 Wn. App. 552, 564, 123 P.3d 872, 878 (2005). Regard for the due process rights afforded an accused under the Fourteenth Amendment requires the courts to engage in “an exercise of judgment...in order to ascertain whether [the proceedings] offend those canons of decency and fairness...” Rochin v. California, 342 U.S. 165, 169, 72 S. Ct. 205, 208, 96 L. Ed. 183 (1952)(internal citations omitted). When determining whether a preaccusatorial delay violates an accused’s right to due process, the Court’s role is to determine if the delay violates those “fundamental conceptions of justice which lie at the base of our civil and political institutions, and which define the community’s sense of fair play and decency.” U.S. v. Lovasco, 431 U.S. 783, 790, 97 S. Ct. 2044, 2049, 52 L. Ed. 2d 752 (1977)(internal citations omitted).

- b. Given our recent acknowledgment of the difference in culpability for juvenile crime, proceeding against Ms. Mianecki as an adult for an alleged juvenile act violates fundamental conceptions of justice

The alleged actions of Ms. Mianecki were juvenile and permitting a preaccusatorial delay to result in prosecution of these particular juvenile actions as an adult offends common sense and fundamental conceptions of justice. Though not directly analogous, the recent developments in the law regarding the sentencing of minors reflects Washington's recognition regarding the difference between juvenile and adult crime.

In recent years, "the law governing the sentencing of juveniles has been significantly informed and in some respects unequivocally altered by the Eighth Amendment jurisprudence of the United States Supreme Court." State v. Ronquillo, 190 Wn. App. 765, 771–72, 361 P.3d 779, 782–83 (2015)(citing Miller v. Alabama, — U.S. —, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), its predecessors, Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), and Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010)). The difference between sentencing for adults versus juveniles arises from a juvenile's lack of maturity, underdeveloped sense of responsibility, greater vulnerability to negative outside influences, including peer pressure, and the less fixed nature of the juvenile's character traits. Id. Because juveniles have

diminished culpability and greater prospects for reform, they are less deserving of the most severe punishments. Id.

The U.S. Supreme Court has explained its evolving awareness of the fundamental differences between criminal actions taken by a juvenile versus an adult:

[W]e cited studies showing that only a relatively small proportion of adolescents who engage in illegal activity develop entrenched patterns of problem behavior. And in *Graham*, we noted that developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds—for example, in parts of the brain involved in behavior control. We reasoned that those **findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child’s moral culpability** and enhanced the prospect that, as the years go by and neurological development occurs, his deficiencies will be reformed.

*Roper* and *Graham* emphasized the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes. Because the heart of the retribution rationale relates to an offender’s blameworthiness, the case for retribution is not as strong with a minor as with an adult.

Miller v. Alabama, 132 S. Ct. at 2464–65, (citing Roper and Graham)(internal citations omitted).

The vast difference in consequences described above between juveniles and adults for violations of RCW 9A.44.076 and 9A.44.086 may be explained by consideration of the conceptual difference between the

allegations at issue in this case (sexual contact between two juveniles) versus similar acts alleged between a 12- to 14-year-old and a 40-year-old. Clearly the state actors involved in the investigation viewed the allegations as juvenile and distinct from crimes under these same statutes committed by adults. If Ms. Mianecki had been an adult, for example, it is highly unlikely she would have been allowed to continue to visit the school where her purported victim attended or engage in extra-curricular activities where he would be present.

Further, the alleged acts are a quintessential example of a youth exhibiting a lack of impulse control, “lack of maturity, underdeveloped sense of responsibility...” “transient rashness, proclivity for risk, and inability to assess consequences.” See supra. The allegations are not based on violence or forcible rape, but rather a statutorily defined range of permissible difference in age for sexual activity of minors. If the prosecution is allowed to proceed, it will proceed against a person who allegedly committed an act as a juvenile with “diminished culpability” as if that person was an adult at the time of the offense.

Given the recent acknowledgment of diminished juvenile culpability, the nature of the specific crimes alleged, and the state’s own treatment of the alleged crimes as juvenile, allowing the state to prosecute Ms. Mianecki as if she committed the alleged acts as an adult violates

fundamental conceptions of justice. While Ms. Mianecki may not currently face cruel and unusual punishment for her purported juvenile actions under the adult penal system, the State's failure to timely file charges for this alleged juvenile crime stemming from sexual contact between two minors fails to recognize the "fundamental difference between the juvenile and adult minds..." and violates her due process rights. See Oppelt, 172 Wn.2d at 295. As such, Ms. Mianecki asks the Court to reverse the trial court's denial of her motion to dismiss and remand for entry of dismissal with prejudice.

**4. Allowing Ms. Mianecki to Be Tried as an Adult for These Alleged Juvenile Acts Would Result in Inconsistent and Arbitrary Treatment In Violation of Her Right to Equal Protection**

a. Equal Protection requires "like treatment" for "similarly situated persons"

Under the Equal Protection clauses of the Fourteenth Amendment to the United States Constitution and article I, section 12 of the Washington Constitution, persons similarly situated with respect to the legitimate purpose of the law **must receive like treatment**. State v. Thorne, 129 Wn.2d 736, 770-71, 921 P.2d 514 (1996); State v. Campbell, 103 Wn.2d 1, 25, 691 P.2d 929, 943 (1984)("equal protection of the laws is denied when a prosecutor is permitted to seek varying degrees of punishment when proving identical criminal elements.").

In a decision upholding the Legislature's ability to assign adult jurisdiction to specific serious crimes committed by juveniles, the potential for inequitable treatment of similarly situated youth was noted in a concurrence by Justice Alexander:

Fundamentally, persons who are similarly situated must receive like treatment from the government. Stated another way, when members of the same class are accorded different treatment under a statute, there is an equal protection violation unless there is a rational basis for the disparate treatment.

In re Boot, 130 Wn.2d 553, 576, 925 P.2d 964 (1996)(internal citations omitted).

“Equal protection claims are reviewed under one of three standards based on the level of scrutiny required for the statutory classification: (1) strict scrutiny when a fundamental right is threatened; (2) intermediate or heightened scrutiny when important rights or semisuspect classifications are involved; and (3) rational basis scrutiny when none of the above rights or classes is threatened.” State v. Williams, 156 Wn. App. 482, 496–97, 234 P.3d 1174 (2010). The loss of juvenile court jurisdiction involves important rights. See State v. Dixon, 114 Wn.2d 857, 860–61, 792 P.2d 137, 138–39 (1990)(“...the loss of juvenile court jurisdiction deprives an offender of numerous benefits...”). As such, the Court should apply a heightened scrutiny standard to this context. See supra.

b. Allowing prosecution of Ms. Mianecki as an adult for an alleged juvenile act based on her age violates her right to Equal Protection

Without a reasonable basis for its preaccusatorial delay, allowing the State to prosecute Ms. Mianecki as an adult in this would impermissibly result in arbitrary and disparate treatment of Ms. Mianecki from similarly situated juveniles. Juvenile court jurisdiction is strictly construed in this state. Juvenile court jurisdiction ends when a youth becomes eighteen unless extended prior to that date. State v. Rosenbaum, 56 Wn. App. 407, 410, 784 P.2d 166, 167 (1989). RCW 13.40.300(1)(a) provides in pertinent part:

A juvenile may be under the jurisdiction of the juvenile court or the authority of the department of social and health services beyond the juvenile's eighteenth birthday only if prior to the juvenile's eighteenth birthday:

(a) Proceedings are pending seeking the adjudication of a juvenile offense and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile beyond his or her eighteenth birthday;

State v. Rosenbaum, 56 Wn. App. at 411-412.

As noted in §D.1, supra, the deputy investigating the charges, who was still in training (and investigating his first sex crime), could not “answer” why he failed to timely review the DNA results prior to the loss of juvenile jurisdiction. If convicted as an adult, she would be subject to drastically more severe punishment from other juveniles accused of the

exact same crime, solely because the Grant County Sheriff's office assigned (1) a trainee, (2) without any prior experience investigating sex crimes, (3) without any awareness of the Juvenile Justice Act, and (4) who could not "answer" why he delayed reviewing the case before Ms. Mianecki's eighteenth birthday. Depriving Ms. Mianecki of juvenile jurisdiction due to a new deputy's failure to timely review the file on his desk does not satisfy the heightened standard required to provide a reasonable basis to treat her differently from other similarly situated minors, nor does it even provide a rational basis for the State's actions. Ms. Mianecki asks the Court to prohibit the State from treating her in a manner inconsistent with other juveniles because of its unexplained preaccusatorial delay.

#### **G. CONCLUSION**

Ms. Mianecki respectfully requests this Court reverse the trial court's denial of her motion to dismiss for preaccusatorial delay and to remand the case with instructions for its dismissal with prejudice. The State failed to articulate a reason for its preaccusatorial delay. Allowing Ms. Mianecki to be prosecuted as an adult for the alleged crimes will cause particularly severe prejudice. As such, allowing the prosecution to continue violates her right to due process and offends "fundamental conceptions of justice." Further, Ms. Mianecki asks the Court to reverse

her motion to prevent her from being subjected to prevent an arbitrary and inconsistent outcome in violation of her right to Equal Protection. Ms. Miannecki further asks for an award of costs on appeal under RAP 14.2.

DATED this 13<sup>th</sup> day of February, 2017.

Respectfully submitted,



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Appeals  
~~SUPERIOR~~ COURT OF WASHINGTON FOR Spokane COUNTY

State of Washington

Plaintiff/Petitioner

No. 34718-4-111

v.

DECLARATION OF  
EMAILED DOCUMENT

Meghan Lillian Miznecki

(DCLR)

Defendant/Respondent

Pursuant to the provisions of GR 17, I declare as follows:

1. I am the party who received the foregoing facsimile transmission for filing.
2. My address is: 304 W Spruce Ct, Spokane, WA 99218
3. My phone number is: (509) 262-8106
4. The email address where I received the document is: sgobble@abclegal.com
5. I have examined the foregoing document, determined that it consists of 34 pages, including this Declaration page, and that it is complete and legible.

I certify under the penalty of perjury under the laws of the State of Washington that the above is true and correct.

Dated: 2/13/17, at, 2:15pm

Signature: 

Print Name: SKYLER GOBBLE

**FILED**

FEB 13 2017

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

Court of Appeals No. 347184

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STATE OF WASHINGTON  
COURT OF APPEALS, DIVISION III

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State of Washington,  
*Plaintiff-Respondent,*

v.

Meghan Lillian Mianeki,  
*Defendant-Petitioner.*

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CERTIFICATE OF SERVICE

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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury of the laws of the State of Washington, that on the date set forth below, I caused a Brief of the Appellant to be served by legal messenger service to the following:

Carolyn J. Benzel, Deputy Prosecuting Attorney  
Adams County Prosecutor's Office  
210 W. Broadway Ave.  
Ritzville, WA 99169

Court of Appeals, Division III  
500 N Cedar St  
Spokane, WA 99201

DATED this 13<sup>th</sup> day of February, 2017.



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Appeals  
SUPERIOR COURT OF WASHINGTON FOR SPOKANE COUNTY

State of Washington Plaintiff/Petitioner

v.

Meghan Lillian  
Miannecki

Defendant/Respondent

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5. I have examined the foregoing document, determined that it consists of 3 pages, including this Declaration page, and that it is complete and legible.

I certify under the penalty of perjury under the laws of the State of Washington that the above is true and correct.

Dated: 2/13/17, at, 2:15pm

Signature: 

Print Name: Skyler Gobble