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SUPREME COURT  
STATE OF WASHINGTON  
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BY SARAH R. PENDLETON  
CLERK

Supreme Court No. 1041616  
COA No. 39866-8-III

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, RESPONDENT

v.

GILBERT GARCIA, APPELLANT

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**ANSWER TO APPELLANT'S PETITION FOR REVIEW**

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## **TABLE OF AUTHORITIES**

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## **I. INTRODUCTION**

Appellant Gilbert Garcia seeks review of the Court of Appeals Division III unpublished opinion dated April 10, 2025 affirming his conviction for Child Molestation First Degree. This Court should decline review because the Second Amended Information sufficiently stated the essential facts constituting the charged offense, allowing him to present a defense.

## **II. STATEMENT OF THE CASE**

For purposes of answering this petition, the State does not dispute Appellant's Statement of the Case and adopts it here. RAP 10.3(b). The State, however, augments with the following facts.

The relevant charging document—SECOND AMENDED INFORMATION, filed May 28, 2019—alleges two counts of Child Molestation in the First Degree. Count 1 reads:

On or between June 18, 2018 and June 19, 2018, in the State of Washington, the above-named Defendant, being at least thirty-six (36) months older than the victim, had sexual contact with another person who was less than twelve (12) years old and not married to the perpetrator, to-wit: M.M., (06/11/2009), contrary to RCW 9A.44.083.

Count 2 reads:

On or about between July 1, 2017 and July 31, 2017, in the State of Washington, the above-named Defendant, being at least thirty-six (36) months older than the victim, had sexual contact with another person who was less than twelve (12) years old and not married to the perpetrator, to-wit: M.M., (06/11/2009), contrary to RCW 9A.44.083.

The “to convict” instruction for Count 1 provided to the jury during trial on June 6, 2023 mirrored the language provided by the Washington Pattern Jury Instructions number 44.21, and read in relevant part:

To convict the defendant of the crime of child molestation in the first degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That between June 18, 2018 and June 19, 2018, the defendant had sexual contact with Monica Rubi Mendoza;

(2) That Monica Rubi Mendoza was less than twelve years old at the time of the sexual contact and was not married to the defendant;

(3) That Monica Rubi Mendoza was at least thirty-six months younger than the defendant; and

(4) That this act occurred in the State of Washington.

The “to convict” instruction for Count 2 provided to the jury during trial on June 6, 2023 mirrored the language provided in the Washington Pattern Jury Instructions number 44.21, and read in relevant part: To convict the defendant of the crime of child molestation in the first degree as charged in Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That between July 1, 2017 and July 31, 2017, the defendant had sexual contact with Monica Rubi Mendoza;

(2) That Monica Rubi Mendoza was less than twelve years old at the time of the

sexual contact and was not married to the defendant;

(3) That Monica Rubi Mendoza was at least thirty-six months younger than the defendant; and

(4) That this act occurred in the State of Washington.

### **III. ARGUMENT**

#### **A. The Court Should Decline Review Because the Second Amended Information Sufficiently Stated the Essential Facts Constituting the Offense Charged.**

In a criminal proceeding filed by the prosecuting attorney in a Superior Court of Washington, the initial pleading by the State shall be an indictment or an information. CrR 2.1(a). The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. CrR 2.1(a)(1). The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. *Id.*

If warranted, the court may direct the filing of a bill of particulars. CrR 2.1(c). A motion for a bill of particulars may be made before arraignment or within 10 days after arraignment or at such later time as the court may permit. *Id.*

In an information or complaint for a statutory offense, it is sufficient to charge in the language of the statute if the statute defines the crime sufficiently to apprise an accused person with reasonable certainty of the nature of the accusation. *State v. Leach*, 113 Wn.2d 679, 682, 782 P.2d 552, 553 (1989). Omission of any statutory element of a crime in the charging document is a constitutional defect which may result in dismissal of the charges. *Id.*

If the information states each statutory element of a crime, but is vague as to some other matter significant to the defense, a bill of particulars is capable of correcting that defect. *State v. Holt*, 104 Wn.2d 315, 316, 704 P.2d



1189, 1190 (1985). In that event, a defendant is not entitled to challenge the information on appeal if he failed to request the bill of particulars at an earlier time. *Id.*

In the present case, this Court should decline further review of Garcia's case because, as the Court of Appeals Division III correctly found, the charging document was legally and factually sufficient. The Second Amended Information filed May 28, 2019 alleged two counts of Child Molestation in the First Degree. The language for each count included a plain and concise statement of the essential facts of the offenses charged, including the range of dates during which the offenses were alleged to have occurred, the alleged conduct, the alleged victim, and the statute Garcia was alleged to have violated.

Moreover, the language of each count used the language of the statute, and in doing so, contained each of the statutory elements of the offense.

<b>Elements of Child Molestation in the First Degree (WPIC 44.21)</b>	<b>Counts 1 &amp; 2 of the Second Amended Information, May 28, 2019</b>
(1) That between (dates), the defendant had sexual contact with Monica Rubi Mendoza;	“On or between (dates)... the above-named Defendant... had sexual contact with... M.M., (06/11/2009)”
2) That Monica Rubi Mendoza was less than twelve years old at the time of the sexual contact and was not married to the defendant;	“...the above-named Defendant... had sexual contact with another person who was less than twelve (12) years old and not married to the perpetrator, to-wit: M.M., (06/11/2009)....”
(3) That Monica Rubi Mendoza was at least thirty-six months younger than the defendant;	“...the above-named Defendant... being at least thirty-six (36) months older than the victim....”
(4) That this act occurred in the State of Washington.	“...in the State of Washington....”

Garcia relies heavily on *State v. Leach*, where the court found the charging document to be constitutionally defective because it failed to include "the offense charged, in the language of the statute, together with a statement as to the time, place, person, and property involved to

enable the defendant to understand the character of the offense charged." *Leach*, 113 Wn.2d at 689-690. But *Leach* is distinguished here. The defendant in *Leach* was charged by *citation*, directly filed by law enforcement officers in district court, not by the prosecutor in superior court. *Id.* at 683. In *Leach*, the charging document merely stated "RCW 9A.88.010/PUBLIC INDECENCY" and incorporated an attached police report describing the general facts of the July 8, 1986, offense. *Id.* at 684. Further, the *Leach* charging document did not even specify whether a misdemeanor or a gross misdemeanor was charged. *Id.* None of the deficiencies identified by the *Leach* court are present in the instant matter.

As the Court of Appeals Division III noted, Garcia also relied largely on *City of Seattle v. Termain*, where the charging document alleged the defendant had violated a domestic violence no contact order, yet failed to identify the order or the protected person, and included multiple

municipal and state codes. *City of Seattle v. Termain*, 124 Wn. App. 798, 800-801, 103 P.3d 209, 211 (2004). On review, the Court of Appeals Division I concluded the charging document was so awkwardly worded and vague as to sufficiently inform the defendant as to what conduct was being charged—going so far as to call the charging document “gobbledygook.” *Termain*, 124 Wn. App. at 806.

But like *Leach*, *Termain* is an inapt comparison, because in the present case, the Second Amended Information *does* contain a description of the facts, identifies the victim, identifies the time period, and identifies the correct statute Garcia is alleged to have violated—all so as to sufficiently allow Garcia to present a defense.

#### **IV. CONCLUSION**

For the foregoing reasons, the Court should decline Garcia’s petition for review. The charging document was

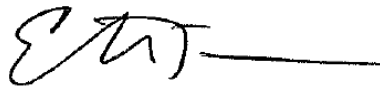
sufficient and alleged all of the necessary information and elements of the offense(s) charged.

## **V. CERTIFICATE OF COMPLIANCE**

This answer is 13 pages long including cover page and signature block, and contains 1,421 words, excluding the title sheet, table of contents, table of authorities, certificate of compliance, certificate of service, and signature block.

Dated this 11<sup>th</sup> day of June, 2025.

W. GORDON EDGAR  
Prosecuting Attorney

A handwritten signature in black ink, appearing to read 'ETM', followed by a horizontal line.

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Ethan T. Morris, WSBA  
#49114  
Deputy Prosecuting Attorney  
Attorney for Respondent

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	NO. 1041616
Plaintiff/Respondent,	)	
	)	
vs.	)	AFFIDAVIT OF MAILING
	)	
GILBERT GARCIA,	)	
Defendant/Petitioner.	)	

STATE OF WASHINGTON)  
: ss.  
COUNTY OF DOUGLAS )

The undersigned, being first duly sworn on oath deposes and says: That on the 11<sup>th</sup> day of June, 2025, affiant deposited in the United States Mail at Waterville, Washington, postage prepaid thereon, an envelope containing the original of this Affidavit and the original and one copy of the Answer to Appellant's Petition for Review, addressed to:

Sara Sofia Taboada  
Washington Appellate Project  
1511 3rd Ave. Ste. 610  
Seattle, WA 98101-3647

  
\_\_\_\_\_

SUBSCRIBED AND SWORN to before me this 11<sup>th</sup> day of June, 2025.

A handwritten signature in blue ink, appearing to read "Jenny Sank", is written over a horizontal line.

NOTARY PUBLIC in and for the State  
of Washington, residing at East  
Wenatchee; my commission expires  
02/26/27.

# DOUGLAS COUNTY PROSECUTOR'S OFFICE

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## Transmittal Information

**Filed with Court:** Supreme Court  
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**Appellate Court Case Title:** State of Washington v. Gilbert Garcia Jr.  
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