

# ARIZONA SUPREME COURT

STATE OF ARIZONA,

Appellee,

v.

JOSE ADRIAN AGUNDEZ-  
MARTINEZ,

Appellant.

CR-23-0053-PR

Court of Appeals  
No. 1 CA-CR 21-0369

Yuma County  
Superior Court  
No. S1400CR2019-00622

## STATE OF ARIZONA'S SUPPLEMENTAL BRIEF

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## **QUESTION PRESENTED FOR REVIEW**

Whether the Court of Appeals erred when it held that the State is prohibited from prosecuting an adult for offenses he committed when he was younger than 14.

# TABLE OF CONTENTS

	<b>Page</b>
QUESTION PRESENTED FOR REVIEW .....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES .....	iv
ARGUMENT .....	1
I.    Arizona law has long permitted prosecutions like this one. ....	2
II.   Constitutional and statutory changes did not implicitly remove the State’s authority to prosecute offenders like Agundez- Martinez.....	4
A.   The Juvenile Justice Initiative and implementing legislation were designed to punish juvenile criminal conduct more severely, not exempt it from prosecution.....	4
B.   The court of appeals read far too much into the definition of “delinquent act.” .....	6
C.   Other juvenile statutes cited by the court of appeals do not limit the State’s inherent authority to file criminal charges against adults. ....	12
D.   The Legislature’s repeal of the immaturity defense further supports the conclusion that it did not implicitly strip the State of authority to prosecute juveniles like Agundez-Martinez. ....	14
III.  The court of appeals’ statutory interpretation creates absurd results.....	16
CONCLUSION.....	19

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>Andrews v. Willrich</i> , 200 Ariz. 533 (App. 2001) .....	9
<i>Anson v. American Motors Corp.</i> , 155 Ariz. 420 (App. 1987) .....	17
<i>Bridges v. Nationstar Mortgage L.L.C.</i> , 253 Ariz. 532 (2022) .....	6
<i>Burrows v. State</i> , 38 Ariz. 99 (1931) .....	2
<i>Galloway v. Vanderpool</i> , 205 Ariz. 252 (2003) .....	8
<i>Gammons v. Berlat</i> , 144 Ariz. 148 (1985).....	7
<i>Hause v. City of Tucson</i> , 199 Ariz. 499 (App. 2001) .....	8
<i>In re Cameron T.</i> , 190 Ariz. 456 (App. 1997) .....	3, 5, 11
<i>In re Timothy M.</i> , 197 Ariz. 394 (App. 2000).....	12
<i>Matter of Pima Cnty. Juvenile Action No. J-70107-2</i> , 149 Ariz. 35 (1986) .....	3
<i>McBeth v. Rose</i> , 111 Ariz. 399 (1975).....	2, 3, 5, 14
<i>McGuire v. Lee</i> , 239 Ariz. 384 (App. 2016).....	5
<i>Premier Physicians Group, PLLC v. Navarro</i> , 240 Ariz. 193 (2016).....	15
<i>Roberts v. State</i> , 253 Ariz. 259 (2022) .....	12
<i>S. Ariz. Home Builders Ass’n v. Town of Marana</i> , 522 P.3d 671 (Ariz. 2023).....	7
<i>State ex rel. Montgomery v. Harris</i> , 237 Ariz. 98 (2014).....	16
<i>State v. Agundez-Martinez</i> , 254 Ariz. 452, 524 P.3d 832 (App. 2023) .....	passim
<i>State v. Davolt</i> , 207 Ariz. 191 (2004) .....	5, 6
<i>State v. Hernandez</i> , 83 Ariz. 279 (1958) .....	2
<i>State v. Hinden</i> , 224 Ariz. 508 (App. 2010) .....	14
<i>State v. Malvern</i> , 192 Ariz. 154 (App. 1998) .....	10, 11
<i>United States v. K.R.A.</i> , 337 F.3d 970 (8th Cir. 2003) .....	14, 16
<i>United States v. Leon H.</i> , 365 F.3d 750 (9th Cir. 2004) .....	13
<i>United States v. Marion</i> , 404 U.S. 307 (1971) .....	17
<i>United States v. Sineneng-Smith</i> , 140 S. Ct. 1575 (2020) .....	1
<i>Whitman v. American Trucking Ass’ns</i> , 531 U.S. 457 (2001).....	12
<b>Constitutional Provisions</b>	
Ariz. Const. art. II, § 2.1 .....	19
Ariz. Const. art. IV, pt. 2, § 22.....	5, 6, 19

## Statutes

A.R.S. § 8–201(12) .....	8, 9, 10
A.R.S. § 8–201(8) (1972) .....	8
A.R.S. § 8–202(A) .....	8
A.R.S. § 8–202(I).....	13
A.R.S. § 8–301 .....	13
A.R.S. § 8–302(A) .....	13
A.R.S. § 8–302(B).....	13
A.R.S. § 8–327 .....	11, 13
A.R.S. § 8–341(V) .....	11
A.R.S. §§ 8–381 to –422.....	19
A.R.S. § 13–105 .....	11
A.R.S. § 13–105(30) .....	3
A.R.S. § 13–107(A) .....	17
A.R.S. § 13–107(B).....	17
A.R.S. § 13–501 (1996) .....	15
A.R.S. § 13–501(B).....	9
A.R.S. § 13–501(C).....	9, 10
A.R.S. § 13–501(F)(2) .....	11
A.R.S. § 13–1201 .....	18
A.R.S. § 13–1204(A)(3).....	18
A.R.S. § 13–1204(A)(4).....	18
A.R.S. § 13–1204(A)(8).....	18
A.R.S. § 13–1405(A) .....	3
A.R.S. § 13–1703 .....	18
A.R.S. § 13–2503(B).....	11
A.R.S. § 13–2504.....	18
A.R.S. § 28–1383.....	18

## Other Authorities

Antonin Scalia & Bryan A. Garner, <i>Reading Law: The Interpretation of Legal Texts</i> , at 167 (2012).....	15
<i>H.D. Warren &amp; C.P. Jhong, Annotation, Age of Child at Time of Alleged Offense or Delinquency, or at Time of Legal Proceedings, As Criterion of Jurisdiction of Juvenile Court</i> , 89 A.L.R.2d 506.....	4
JuvenileJustice—Proposition 102 Reconciliation, 1997 Ariz. Legis. Serv. Ch. 220 (S.B. 1446).....	16

## ARGUMENT

The court of appeals, on its own initiative, radically reinterpreted a decades-old statutory scheme to hold that the Legislature *implicitly* stripped the State of authority to prosecute certain adults for crimes they committed as juveniles. In doing so, the court of appeals functionally created a category of offender who is entirely immune from prosecution.

The court of appeals' conclusion is at odds with the plain language of Arizona's constitution and statutes, the history and context of those provisions, and common sense. Moreover, the implications of the court of appeals' decision are not as narrow as the decision below claims; the decision is already impacting cases where offenders were 14 or older at the time of their offenses. Indeed, the decision arguably could exempt from prosecution someone who commits certain offenses the day before their eighteenth birthday and is not caught until the next morning. This Court should reverse and vacate the court of appeals' statutory interpretation, and affirm Agundez-Martinez's convictions.<sup>1</sup>

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<sup>1</sup> It is worth reiterating at the outset that not even Agundez-Martinez initially argued the State was without authority to charge him. *See* O.B. The court of appeals raised the issue on its own, ignoring that courts generally “follow the principle of party presentation.” *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020) (“[W]e rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.”) (cleaned up).

**I. Arizona law has long permitted prosecutions like this one.**

Since the early days of Arizona statehood, this Court has consistently held that an adult may be prosecuted for criminal conduct he committed as a juvenile if charges are filed after the individual reaches adulthood.

In 1931, “this Court held [in *Burrows v. State*] that a defendant who had reached the age of eighteen, charged by information for a crime committed before his eighteenth birthday was nevertheless subject to prosecution, trial, and sentence as an adult.” *McBeth v. Rose*, 111 Ariz. 399, 401–02 (1975) (citing *Burrows*, 38 Ariz. 99 (1931), *overruled in part on other grounds by State v. Hernandez*, 83 Ariz. 279 (1958)). In reaching that conclusion, *Burrows* highlighted that “the purpose of the Arizona juvenile law is not to attempt to establish an arbitrary age below which the child is presumed to be ignorant of the consequences of his acts.” 38 Ariz. at 111. Rather, the purpose is “to provide a special method of treatment for minors under the age of eighteen who have violated the criminal law.” *Id.*

“In effect, *Burrows* held that a juvenile could commit a crime, and his age made it no less a crime, but the law provided a special method of dealing with such a person by reason of his age.” *McBeth*, 111 Ariz. at 402. The “age factor was to be determined *as of the time of prosecution*” and “[i]f the age factor was not present at the time of prosecution the accused was to be tried as an adult.” *Id.* (emphasis added).

This Court reaffirmed *Burrows* in *McBeth*, decided in 1975. *Id.* And again in 1986, this Court reaffirmed the same core holding—that an individual “no longer subject to the jurisdiction of the juvenile court . . . is not beyond the purview of the criminal justice system.” *Matter of Pima Cnty. Juvenile Action No. J-70107-2*, 149 Ariz. 35, 38 (1986).

These conclusions not only comport with common sense; they are consistent with Arizona’s longstanding statutory scheme. “Offenses defined in Title 13 criminal statutes are committed by ‘persons.’” *In re Cameron T.*, 190 Ariz. 456, 462 (App. 1997); *see also, e.g., A.R.S. § 13–1405(A)* (“A *person* commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age.”) (emphasis added). A “person” is “a human being.” *A.R.S. § 13–105(30)*. And thus, juveniles “are all persons within that definition.” *Cameron T.*, 190 Ariz. at 463.

Although the law has long provided “a special method of dealing with [a juvenile] by reason of his age . . . as of the time of prosecution,” *McBeth*, 111 Ariz. at 402, this Court has long made clear that Arizona law does not exempt adults from prosecution merely because their criminal conduct was committed before they turned 18. And as is discussed below, while some constitutional and statutory provisions relating to prosecution of juveniles have changed since this Court’s

prior decisions, the core principle of *Burrows* and *McBeth* has not been undermined by those changes.<sup>2</sup>

**II. Constitutional and statutory changes did not implicitly remove the State’s authority to prosecute offenders like Agundez-Martinez.**

**A. The Juvenile Justice Initiative and implementing legislation were designed to punish juvenile criminal conduct more severely, not exempt it from prosecution.**

Agundez-Martinez now contends—and the court of appeals held—that the 1996 Juvenile Justice Initiative (“Proposition 102”) and implementing legislation stripped the State of all authority to prosecute individuals like Agundez-Martinez once they reach adulthood. Approximately 25 years after Proposition 102 and its implementing legislation became law, the court of appeals purported to discover (on its own initiative) that a confluence of several statutory provisions implicitly eliminated the authority to prosecute in these cases. The changes to the law did no such thing, and this Court should reject the court of appeals’ strained reading of the statutes.

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<sup>2</sup> Additionally, while looking to other states is of limited usefulness here because each state’s statutory scheme is unique, Arizona is hardly an outlier in long permitting adult prosecution under these circumstances. *See generally* [H.D. Warren & C.P. Jhong, Annotation, Age of Child at Time of Alleged Offense or Delinquency, or at Time of Legal Proceedings, As Criterion of Jurisdiction of Juvenile Court](#), 89 A.L.R.2d 506 (collecting cases).

The court of appeals’ analysis is flawed in several respects, including that the “analysis overlooks an obvious and determinative fact: the consequence of their construction would contravene the intent of the electorate in adopting Prop. 102.” *Cameron T.*, 190 Ariz. at 459 (holding that juvenile court had not been stripped of authority to transfer a juvenile for adult prosecution during the months between passage of Proposition 102 and enactment of implementing legislation). “The express intent of the amendment was ‘to preserve and protect the right of the people to justice and public safety, and to ensure fairness and accountability when juveniles engage in unlawful conduct . . . .’” *McGuire v. Lee*, 239 Ariz. 384, 386, ¶ 7 (App. 2016) (quoting Ariz. Const. art. IV, pt. 2, § 22). Or, as this Court has put it, “[t]he stated intent of Proposition 102 was to make possible more effective and *more severe* responses to juvenile crime.” *State v. Davolt*, 207 Ariz. 191, 214, ¶ 100 (2004) (citing *Cameron T.*, 190 Ariz. at 459) (emphasis added).

Prior to Proposition 102, no “person under the age of eighteen [could] be prosecuted criminally unless, after hearing, the juvenile court transfer[red] the matter to the adult side of the law for criminal prosecution.” *McBeth*, 111 Ariz. at 403. “The effect of [Proposition 102] was to divest the juvenile courts of jurisdiction over certain juvenile offenders.” *Davolt*, 207 Ariz. at 214, ¶ 100. Specifically, Proposition 102 provides that “[j]uveniles 15 years of age or older accused of murder, forcible sexual assault, armed robbery or other violent felony

offenses as defined by statute *shall be prosecuted as adults.*” [Ariz. Const. art. IV, pt. 2, § 22](#) (emphasis added). So too for “chronic felony offenders.” *Id.*

“In 1997, the Arizona legislature enacted A.R.S. § 13–501 to implement the provisions of Article 4, section 22 of the Arizona Constitution.” [Davolt, 207 Ariz. at 214, ¶ 100](#). While that statute directly implements the above-mentioned mandates from the Juvenile Justice Act, it makes no explicit changes to the scheme for prosecution of adults like Agundez-Martinez, who committed crimes not mentioned above or were under the relevant age at the time of their crimes.

In the face of this background, the court of appeals used an overly technical approach to reach an extraordinary outcome that the Legislature surely would have spelled out in the text if it meant to precipitate such a significant change, particularly one so flatly inconsistent with the other changes made at the time. The plain language of the statutory scheme, especially when viewed in context, does not prohibit prosecution in cases like this one.

**B. The court of appeals read far too much into the definition of “delinquent act.”**

The “cornerstone” principle of statutory interpretation “is the rule that the best and most reliable index of a statute’s meaning is its language and, when the language is clear and unequivocal, it is determinative of the statute’s construction.” [Bridges v. Nationstar Mortgage L.L.C., 253 Ariz. 532, 535, ¶ 14 \(2022\)](#) (citation omitted). “Statutory interpretation requires [courts] to determine the meaning of

the words the legislature chose to use.” *S. Ariz. Home Builders Ass’n v. Town of Marana*, 522 P.3d 671, 676, ¶ 31 (Ariz. 2023). Courts “do so neither narrowly nor liberally, but rather according to the plain meaning of the words in their broader statutory context, unless the legislature directs ... otherwise.” *Id.*

The court of appeals concluded that the law with respect to juveniles younger than 14 fundamentally changed after Proposition 102 and subsequent statutory changes. The lynchpin of the court of appeals’ analysis is its view that (1) Agundez-Martinez committed “delinquent acts” rather than criminal offenses, and (2) “delinquent acts” cannot be prosecuted in adult court. *State v. Agundez-Martinez*, 254 Ariz. 452, 524 P.3d 832, 837–39, ¶¶ 21–29 (App. 2023). The court of appeals relied on the definition of “delinquent act” found in § 8–201(12), concluding that “delinquent acts are different than criminal offenses” and “whether the conduct is a delinquent act depends on the offender’s age at the time of the conduct.” *Id.* at 836, ¶¶ 15–16.

But the definition of “delinquent act” is not materially different than it was when this Court decided *Burrows* and *McBeth*. As this Court observed in 1985, the definition of “delinquent act” was then “essentially unaltered from the original enactment of the juvenile code in 1912.” *Gammons v. Berlat*, 144 Ariz. 148, 149 (1985). The statute at the time of *McBeth*, for example, defined “delinquent act” as “an act by a child, which if committed by an adult would be a public offense.”

A.R.S. § 8–201(8) (1972). The current definition is substantively unchanged. *See* [A.R.S. § 8–201\(12\)](#) (a delinquent act is “an act by a juvenile that if committed by an adult would be a criminal offense”). And in keeping the statutory language this Court has already construed, the Legislature is presumed to have “approved of the court’s construction and intended that it remain a part of the statute.” *Galloway v. Vanderpool*, 205 Ariz. 252, 256, ¶ 17 (2003); *see also* *Hause v. City of Tucson*, 199 Ariz. 499, 502, ¶ 10 (App. 2001) (collecting cases holding same).

The court of appeals seized upon one addition made after Proposition 102, in which offenses under § 13–501(A) and (B), which either must or *may* be filed in adult court, are now exempted from the definition of “delinquent act” *if* “filed in adult court.” *See* [A.R.S. § 8–201\(12\)](#).

The mere fact that offenses “filed in adult court” pursuant to § 13–501(A) or (B) are exempt from the definition of delinquent act should not alter this Court’s prior interpretation of that definition. The juvenile court has original jurisdiction over delinquency proceedings. [A.R.S. § 8–202\(A\)](#). Exempting charges *filed in adult court* from the definition of “delinquent act” simply renders the definition consistent with the longstanding principle—which became especially salient under the post-Proposition 102 statutory scheme—that charges filed in adult court are not subject to the juvenile court’s original jurisdiction.

In its analysis, the court of appeals held that “any act committed by a juvenile under the age of 14 ... is, by definition, a delinquent act and thus not a criminal offense and may be prosecuted only in the juvenile court or transferred to adult court under A.R.S. § 8–327.” *Agundez-Martinez*, 524 P.3d at 838, ¶ 25. But the statutory scheme makes clear that an offensive act by a juvenile is not forever placed into the category of “delinquent act” or “criminal offense” at the time of the act.

[Section 13–501\(B\)](#), for example, provides that the State “*may* bring a criminal prosecution against a juvenile in the same manner as an adult.” (Emphasis added); *see also Andrews v. Willrich*, 200 Ariz. 533, 536, ¶ 11 (App. 2001) (§ 13–501(B) “authorized the [State] to decide on a case-by-case basis whether juveniles age 14 and older and accused of committing specified crimes should be tried as adults”). Offenses chargeable under § 13–501(B) are thus not inherently delinquent or criminal at the time they are committed; the determination depends on the State’s charging decision. *See also A.R.S. § 8–201(12)* (exempting only offenses “filed in adult court” from the definition of “delinquent act”).

Moreover, “delinquent act” and “criminal offense” are seemingly interchangeable elsewhere in the statutes. For example, [Section 13–501\(C\)](#) provides that “[a] criminal prosecution shall be brought against a juvenile in the same manner as an adult if the juvenile has been accused of a *criminal offense* and

has a historical prior felony conviction.” (Emphasis added.) This language would be rendered surplusage and make little sense under the court of appeals’ interpretation that an offense is either criminal or delinquent based on the offender’s age at the time the offense is committed. By its express language, § 13–501(C) applies only to juveniles and the definition of delinquent act does not reference § 13–501(C). See [A.R.S. § 8–201\(12\)](#). Nevertheless, § 13–501(C) plainly contemplates that a juvenile, regardless of age, may be “accused of” a “criminal offense” in some circumstances beyond those spelled out in § 13–501(A) and (B). The court of appeals’ conclusion that “whether the conduct is a delinquent act depends on the offender’s age at the time of the conduct,” [Agundez-Martinez, 524 P.3d at 836, ¶ 16](#), thus cannot be squared with the plain language of § 13–501 and the definition of “delinquent act” in § 8–201(12).

Before this case, the court of appeals had correctly rejected at least one similar attempt to capitalize on absurdities that could be created by an overly formalistic reading of the term “delinquent act.” In [State v. Malvern, 192 Ariz. 154, 155, ¶ 1 \(App. 1998\)](#), an adult defendant moved to dismiss a charge of “first-degree hindering prosecution in violation of A.R.S. § 13–2512(A) for rendering assistance to Daryl, a juvenile.” Malvern argued—and the trial court agreed—that Malvern could not have violated § 13–2512 because that statute “proscribes

assistance to a person who has committed a felony, and that, as a juvenile, Daryl could only commit delinquent acts rather than felonies.” *Id.*

The court of appeals reversed, concluding that it made little sense to apply such a formalistic reading of the statutes to exempt Malvern’s conduct from criminal prosecution. Even a juvenile’s “delinquent acts” are nonetheless “criminal in nature.” *Id.* at 156, ¶ 5. Indeed, “[t]he legislature has specifically used the term ‘felony’ to apply to acts committed by juveniles.” *Id.* at 156, ¶ 6 (citing A.R.S. §§ 8–341(V) (defining “first time felony juvenile offender”), 13–501(F)(2) (defining “chronic felony offender”), 13–2503(B) (escape from juvenile secure care facility a class five felony)); *see also* A.R.S. §§ 13–105 (defining “felony” and “misdemeanor” without mention of the offender’s age), 8–327 (contemplating filing of “felony” in juvenile court). It was “incongruous,” the court of appeals concluded, to read the statutes to punish those who hinder prosecution of adult offenders, but immunize those who hinder prosecution of juvenile offenders. *Malvern*, 192 Ariz. at 156, ¶ 7. “There is no logical reason for the legislature to have drawn such a distinction, and a logical reading of the statute does not require [a court] to read it that way.” *Id.*

So too here. “[A]s was true before Prop. 102 was adopted, no statute or constitutional provision precludes adult prosecution of a juvenile who is no longer under the jurisdiction of the juvenile court.” *Cameron T.*, 190 Ariz. at 462; *accord*

*In re Timothy M.*, 197 Ariz. 394, 400, ¶ 24 (App. 2000) (quoting *Cameron T.* for the proposition that “the superior court has statutory and constitutional jurisdiction over felonies and misdemeanors committed by juveniles who are no longer under the jurisdiction of the juvenile court”).

**C. Other juvenile statutes cited by the court of appeals do not limit the State’s inherent authority to file criminal charges against adults.**

In finding that post-Proposition 102 statutory changes implicitly repealed the State’s authority to prosecute cases like this one, the court of appeals relied not just on the definition of “delinquent act,” but also on a confluence of other statutory provisions. But in confronting claims that statutes have significant *implicit* effects, this Court has cautioned that “[i]t is a foundational rule of statutory construction that courts will not read into a statute something which is not within the manifest intention of the legislature as gathered from the statute itself.” *Roberts v. State*, 253 Ariz. 259, 266, ¶ 20 (2022) (cleaned up). “[A]nd similarly the court will not inflate, expand, stretch or extend a statute to matters not falling within its expressed provisions.” *Id.* (cleaned up). “Beyond its text, [this Court] will construe a statute to include only what is necessarily implied to effectuate the express manifest intention.” *Id.* (cleaned up); *see also Whitman v. American Trucking Ass’ns*, 531 U.S. 457, 468 (2001) (observing that Congress does not

“hide elephants in mouseholes”). The court of appeals violated these principles in this case.

Beyond the definition of “delinquent act,” the court of appeals also cited to §§ 8–202(I), 8–301, 8–302, and 8–327 to support its conclusion that juvenile criminal conduct can only be prosecuted pursuant to the juvenile code and § 13–501. *Agundez-Martinez*, 524 P.3d at 838, ¶¶ 23–24. None of these statutes, however, supports the court’s conclusion.

Instead, the statutes use present tense language, thus making clear that the statutes apply only when charging occurs while the offender is under the age of 18. *See* A.R.S. §§ 8–202(I) (detailing circumstances under which “[p]ersons *who are under eighteen years of age* shall be prosecuted in the same manner as adults”), 8–302(A), (B) (limiting application to instances where “the defendant *is a juvenile*” “*during the pendency* of a criminal charge”); *see also* A.R.S. §§ 8–301 (applying only to proceedings under Chapter 3 of Title 8), 8–327 (providing transfer procedures for “any felony *filed in the juvenile court*”). Section 13–501 also uses present tense language, stating that county attorneys can charge “a juvenile in the same manner as an adult if the juvenile *is*” within a specified age range.

The use of present tense language throughout these statutes reflects that the statutes apply only if the defendant is a juvenile at the time charges are pending, not when he committed his offenses. *See United States v. Leon H.*, 365 F.3d 750,

752–53 (9th Cir. 2004) (“Congress used the present tense”—that a juvenile who “is less than eighteen years old” be subject to one sentence, and a juvenile who “is between eighteen and twenty-one years old” be subject to a different sentence—to indicate that a juvenile should be placed into one of these two age groups based on the juvenile’s age at the time of sentencing.”) (emphasis in original); *see also United States v. K.R.A.*, 337 F.3d 970, 977 (8th Cir. 2003) (concluding the juvenile’s age at the time of sentencing “is the correct age to use” because the “statute does not refer to the age the juvenile *was* when she committed the original offense”) (emphasis in original); *State v. Hinden*, 224 Ariz. 508, 510, ¶ 10 (App. 2010) (court of appeals “has relied on the present tense construction of statutes when determining whether their terms contain a contemporaneous requirement”) (citing collected authority).

By their own terms, each of these statutes applies only while a juvenile remains a juvenile. Or, put differently, these statutes look to see if “the age factor” is present at the time of charging, and the statutes only apply if it is. *McBeth*, 111 Ariz. at 402.

**D. The Legislature’s repeal of the immaturity defense further supports the conclusion that it did not implicitly strip the State of authority to prosecute juveniles like Agundez-Martinez.**

Even if the relevant statutory language were ambiguous (it is not), courts will consider “secondary factors” of statutory construction, “such as the statute’s

context, subject matter, historical background, effects and consequences, and spirit and purpose” under such circumstances. *Premier Physicians Group, PLLC v. Navarro*, 240 Ariz. 193, 195, ¶ 9 (2016) (“Ambiguity arises when [statutory] language is reasonably susceptible to differing interpretations.”). Here, the court of appeals’ conclusion is contrary to each of those considerations. And one need not go beyond the text of the relevant provisions to reach that conclusion. It is implausible that, while making it *easier* to charge juveniles as adults, the Legislature would implicitly *eliminate* the State’s ability to charge those whose juvenile crimes escape detection until adulthood. *Cf.* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, at 167 (2012) (“Perhaps no interpretive fault is more common than the failure to follow the whole-text canon, which calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts.”).

This conclusion is bolstered by the fact that the Legislature repealed Arizona’s immaturity defense following the passage of the Juvenile Justice Initiative. Under this defense, a “person less than fourteen years old at the time of the conduct charged [was] not criminally responsible in the absence of clear proof that at the time of committing the conduct charged the person knew it was wrong.” *A.R.S. § 13–501 (1996)*. Following passage of Proposition 102, this defense was repealed and replaced with the current § 13–501, which permits juveniles to be

charged as adults under an array of circumstances.<sup>3</sup> See [Juvenile Justice—Proposition 102 Reconciliation, 1997 Ariz. Legis. Serv. Ch. 220 \(S.B. 1446\)](#).

Had the Legislature intended to immunize adults from being prosecuted for crimes they committed when younger than 14, it would have either left the immaturity defense in place or expanded it. The Legislature did not do so; it struck the defense from the statutes entirely.<sup>4</sup>

### **III. The court of appeals’ statutory interpretation creates absurd results.**

“Statutes should be construed sensibly to avoid reaching an absurd conclusion.” [State ex rel. Montgomery v. Harris, 237 Ariz. 98, 101, ¶ 13 \(2014\)](#).

The court of appeals’ interpretation here, if allowed to stand or adopted by this Court, will surely create absurd results.

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<sup>3</sup> Moreover, the fact that the current statutes refer to someone who “is” a juvenile in the present tense, instead of a juvenile “at the time of the conduct charged,” reflects that the Legislature did not intend for the current statutes to function as the immaturity defense once did. See [K.R.A., 337 F.3d at 977](#) (concluding the juvenile’s age at the time of sentencing “is the correct age to use” because the “statute does not refer to the age the juvenile *was* when she committed the original offense”) (emphasis in original).

<sup>4</sup> Functionally, the court of appeals’ Eighth Amendment holdings—which the State does not challenge—resurrect something akin to the immaturity defense by providing that an offender may only be sentenced as an adult for an act committed before the age of 14 after “a hearing to determine whether there is a legitimate reason to punish [the offender] as an adult.” [Agundez-Martinez, 524 P.3d at 844, ¶ 57](#).

Agundez-Martinez’s case illustrates the point. He sexually assaulted and abused three young children. While his own young age at the time is undoubtedly relevant in determining what consequences he should face—and the State does not challenge the court of appeals’ holding that the sentences previously imposed exceeded constitutional bounds—the court of appeals’ statutory interpretation would allow him to escape prosecution of any kind for the simple reason that his victims delayed reporting the crimes for years (as commonly happens in cases of sexual abuse). Although the passage of time will sometimes allow offenders to escape justice, the “adoption of a statute of limitations is the prerogative of the legislature.” *Anson v. American Motors Corp.*, 155 Ariz. 420, 425 (App. 1987). Here, no statute of limitations bars prosecution, except for the functional statute of limitations created by the court of appeals’ strained reading of the statutes.<sup>5</sup> See [A.R.S. § 13–107\(A\)](#) (no statute of limitations for sexual conduct with a minor), [\(B\)](#) (statute of limitations does not run when the State is unaware that an offense has been committed).

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<sup>5</sup> To the extent this Court is concerned that the State may intentionally delay filing charges to avoid juvenile court procedures entirely, as noted in the State’s petition for review, P.F.R. at 8, n.5, such action could violate due process. See *United States v. Marion*, 404 U.S. 307, 324 (1971) (acknowledging pre-indictment delay could violate due process).

Beyond this case, at least one superior court judge has interpreted the court of appeals' holding to dictate that certain crimes committed by a 17-year-old cannot be prosecuted if prosecution is initiated after the individual's 18<sup>th</sup> birthday. *See* Notice of Related Case (Court Docket Item 6). In an apparent attempt to limit the absurdity of its decision, the court of appeals claimed to limit its holding to prosecutions of individuals for acts committed before the age of 14. *Agundez-Martinez*, 524 P.3d at 838, ¶ 25. But it is difficult to discern why the court of appeals believed its logic extended no further.

After all, according to the court of appeals, “[t]he result of the legislature’s statutory changes is that an offensive ‘act by a juvenile’ is a ‘delinquent act’ unless it is enumerated in A.R.S. § 13–501(A) or (B).” *Id.* And just as neither § 13–501(A) nor (B) “criminalizes the conduct of an individual younger than fourteen years of age at the time the alleged offense is committed,” *id.* ¶ 25 (cleaned up), nor do those subsections criminalize a litany of serious offenses that could be committed by older juveniles. *See, e.g.,* A.R.S. §§ 13–1201 (endangerment involving a substantial risk of imminent death), 13–1204(A)(3), (4), (8) (aggravated assault), 13–1703 (arson of a structure), 13–2504 (first-degree escape), 28–1383 (aggravated DUI). Applying the court of appeals’ reasoning, it seems that a 17-year-old on the eve of his eighteenth birthday could commit any of these offenses with impunity, so long as he is not charged before midnight.

This creates absurd results for all involved, including victims of juvenile criminal conduct. Proposition 102 itself acknowledged the rights of victims, mandating that “[e]very juvenile convicted of or found responsible for unlawful conduct shall make prompt restitution to any victims of such conduct for their injury or loss.” [Ariz. Const. art. IV, pt. 2, § 22](#). Surely neither the Proposition nor the subsequent legislative action was designed to deprive victims of not only restitution, but of any justice whatsoever. *Cf.* [Ariz. Const. art. II, § 2.1](#) (Victims’ Bill of Rights); *see also* [A.R.S. §§ 8–381 to –422](#) (codifying victims’ rights in juvenile statutes).

## CONCLUSION

For good reason, juveniles are treated differently in our criminal justice system. And as the unchallenged portions of the court of appeals’ opinion ensure, even juvenile offenders prosecuted after reaching adulthood will (and should) often be treated differently at sentencing. But juvenile offenders should not escape accountability simply because they reach their eighteenth birthday before their crime is discovered. Arizona’s statutory scheme does not dictate such an absurd result.

The State respectfully requests that this Court reverse the court of appeals’ opinion insofar as it held the State cannot charge adults for crimes committed as juveniles younger than 14, and affirm Agundez-Martinez’s convictions.

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