ARIZONA SUPREME COURT

STATE OF ARIZONA, Appellee, v. JOSE ADRIAN AGUNDEZ-MARTINEZ, Appellant.	Arizona Supreme Court CR-23-0053-PR Arizona Court of Appeals Div. 1 No. 1 CA-CR 21-0369 Yuma County Superior Court No. CR2019-00622

AMICUS CURIAE BRIEF OF THE MARICOPA COUNTY PUBLIC DEFENDER'S OFFICE

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STATEMENT OF INTEREST

The Maricopa County Public Defender's Office is dedicated to the basic American ideal that the quality of justice a person receives should never depend upon how much money he or she has. Our attorneys and staff strive to provide high quality legal representation to our clients and believe that defending the rights of our clients protects the rights of all members of our community.

This case addresses when people can be prosecuted as adults for delinquent acts they committed as juveniles. The Maricopa County Public Defender's Office regularly represents both juvenile and adult offenders who allegedly violated the law while under the age of 18. This includes the case referenced in the State's Notice of Related Case: *State v. Pariseau*, No. 1 CA-CR 23-0200.

The Public Defender's Office offers this *Amicus Curiae* brief in support of Mr. Agundez-Martinez because the plain language of our statutes provides a simple answer: the State cannot prosecute a person as an adult for their delinquent acts simply because the person turns 18 before the State files charges.

ARGUMENT

Arizona law does not give the State authority to prosecute individuals as adults for delinquent acts.

The question here is straightforward: What dictates whether the State can charge a person as an adult? Age at the time of the offense, or at the time the State files charges?

The legislature has already stated that it is the age at the time of the offense that matters. And the State cannot cite to any statutory authority otherwise. The State now comes to this Court asking for authority the legislature has not provided. Because the law does not permit the State's adult prosecution of Agundez-Martinez, or of any delinquent act, this Court should affirm the lower court's decision.

1. The plain text of our juvenile justice scheme only allows adult prosecution for acts committed as juveniles under certain circumstances, none of which were present in this case.

The Arizona legislature established a juvenile justice scheme they expect prosecutors to use. Under the plain language of this scheme, prosecutors cannot evade the juvenile courts by waiting to charge a juvenile offender until they turn 18.

A. The plain language of Arizona's juvenile justice laws does not permit adult prosecution for delinquent acts solely because the juvenile turns 18.

Arizona law distinguishes acts committed by juveniles from acts committed by adults. The legislature has defined acts committed by juveniles as delinquent acts, which, "if committed by an adult would be a criminal offense." A.R.S. § 8-201(12). A delinquent act is thus illegal but is treated differently than a criminal offense. And the defining characteristic of a delinquent act, as compared to a criminal offense, is the offender's age.

There are only two avenues for juvenile acts to be prosecuted in adult court as criminal offenses. First, a juvenile may be charged in juvenile court and the case transferred for adult prosecution pursuant to A.R.S. § 8-327. That method is not at issue in this case. Second, the State can initiate prosecution in adult court under A.R.S. § 13-501.

Whether the act is eligible for adult prosecution under A.R.S. § 13-501 depends on two elements: 1) the juvenile must be of a certain age when the act was committed; and 2) the conduct must be expressly enumerated under A.R.S. § 13-501. This is because, as the lower court noted in *Agundez-Martinez*, the legislature found "it is appropriate to respond to juvenile misconduct more harshly if the conduct

is more serious *and* the juvenile is older when the alleged offense is committed." *State v. Agundez-Martinez*, 254 Ariz. 452, ¶ 22 (App. 2023) (emphasis added).

The plain language makes this clear. Subsection (A) requires the County Attorney to initiate prosecution "against a juvenile in the same manner as an adult if the juvenile is fifteen, sixteen or seventeen years of age at the time the alleged offense is committed *and* the juvenile is accused of" specific enumerated offenses. A.R.S. § 13-501(A) (emphasis added). Additionally, subsection (B) permits adult prosecution "if the juvenile is at least fourteen years of age at the time the alleged offense is committed *and* the juvenile is accused of" a broader list of enumerated offenses. A.R.S. § 13-501(B) (emphasis added).

In both subsections, the statute uses "and" to indicate that both the age of the juvenile at the time of the offense and the specific offense must meet the statutory requirements. "And' is a conjunction requiring that both elements be met. *See State v. Brearcliffe*, 254 Ariz. 579, ¶ 13 (2023); Antonin Scalia & Bryan A. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS, at 116 (2012).

Also notable, both subsections use the phrase "at the time of the offense." It is the date of the alleged act, and not when the State initiates prosecution, that matters.

In sum, the legislature has differentiated acts by juveniles from acts by adults. The age at the time of the act and whether the act is enumerated determines whether an act is delinquent or a criminal offense. Delinquent acts cannot be prosecuted in adult court unless pursuant to a transfer hearing. And the statutory scheme does not contain a provision that transforms delinquent acts into criminal offenses solely based on when the State chooses to initiate prosecution. Thus, the plain language of the statutory scheme does not allow adult prosecution simply because the juvenile turns 18.

B. Common canons of construction support this plain reading.

This Court considers the plain language of a provision when assessing its meaning. *Jett v. City of Tucson*, 180 Ariz. 115, 119 (1994). "If the language is clear and unambiguous, we generally must follow the text of the provision as written." *Id.* And extrinsic evidence cannot justify departure from this meaning. *Id.* "In short, judicial construction is neither necessary nor proper." *Id.*

As explained above, the juvenile justice scheme leaves no ambiguity.

But even if this Court were to turn to common canons of statutory construction, it would reach the same result: the law does not allow for adult prosecution of delinquent acts simply because the alleged offender turns 18.

i. Harmonious Reading Canon.

Under the harmonious reading canon, "The provisions of a text should be interpreted in a way that renders them compatible, not contradictory." READING LAW, at 180; *see also Metzler v. BCI Coca-Cola Bottling Co. of Los Angeles*, 235 Ariz. 141, ¶ 13 (2014).

Here, A.R.S. §§ 8-201 and 13-501 both emphasize the date of offense. Under § 8-201, "'Delinquent act' means an act by a juvenile that if committed by an adult would be a criminal offense …." A.R.S. § 8-201(12). While the definition carves out offenses listed under A.R.S. § 13-501(A) and (B), the focus is still on when the act was committed. The same is true under § 13-501. Subsections (A) and (B) both look to the person's "age at the time the alleged offense is committed." A.R.S. § 13-501(A) & (B).

Applying the harmonious reading canon thus reinforces this singular conclusion: it is the age at the time of alleged offense that matters.

The State's argument would create disharmony. It contradicts the language in § 13-501—the relevant statute permitting adult prosecution of juveniles.

ii. Omitted Case Canon.

Under the Omitted Case Canon, "Nothing is to be added to what the text states or reasonably implies." READING LAW, at 93. In other words, "a matter not covered is to be treated as not covered." *Id.*; *see also Silver v. Pueblo Del Sol Water Co.*, 244 Ariz. 553, ¶ 41 (2018).

The statutes specify that age at the time of the act is what matters. To the extent the law may be silent on an issue, this Court has recognized that it "does not have the constitutional authority to construe a statute so that it encompasses matters that were not covered or addressed by the legislature." *Silver*, 244 Ariz. 553, ¶ 41. The State invites this Court to do precisely what it says it cannot: fill a purported silence in the law by allowing the State to charge people in adult court for delinquent acts, years after the acts were allegedly committed. That would be for the legislature to do, not this Court. *Id.* A matter not covered is a matter not covered.

iii. Presumptions against Invalidity and Ineffectiveness.

Interpretations that validate a statute and further its purpose outweigh an interpretation that invalidates and obstructs it. READING LAW, at 63, 66; *Silver*, 244 Ariz. 553, ¶ 75 (Bolick, J., concurring in part and dissenting in part).

The State essentially believes it can bypass the entire juvenile justice framework by merely waiting until the juvenile turns 18.

This would invalidate and render ineffective the entire juvenile justice framework the legislature carefully constructed. Section 13-501 and all juvenile court proceedings would be meaningless. This Court should reject the State's interpretation.

iv. Rule of Lenity.

Finally, the rule of lenity assumes "that a just legislature will not decree punishment without making clear what conduct incurs the punishment and what the extent of the punishment will be." READING LAW, at 296; *see also Shadid v. State*, 244 Ariz. 450, ¶ 5 fn.3 (App. 2018). The rule of lenity requires courts to construe ambiguous criminal statutes in favor of defendants because defendants must have notice of what is illegal and how an illegal act will be dealt with.

Here, both the rule of lenity and the reason for its existence are directly on point. The State invites this Court to fill in any unclear gaps in the juvenile statutory scheme by creating punishment (mandatory adult prosecution for delinquent acts) when the legislature itself has not created such a punishment. To make this argument,

however, the State necessarily attempts to introduce ambiguity. But their solution contravenes each of the canons addressed above.

Even if this Court were to credit the State's arguments, it would place this Court in a position "in which a reasonable doubt persists about a statute's intended scope …." *See Moskal v. U.S.*, 498 U.S. 103, 108 (1990); *accord* READING LAW, at 299.

That is when the Rule of Lenity applies. *See Moskal*, 498 U.S. at 108; READING LAW, at 299. Without express statutory authority permitting the State to prosecute individuals as adults for delinquent acts, this Court should assume the legislature did not intend such a result.

2. The legislature has already considered and addressed the State's concerns.

The State's main concern is the hypothetical where a juvenile commits a delinquent act on the eve of her 18th birthday and cannot be prosecuted. But the State's concerns are misplaced. Foremost, the legislature addressed this issue in two ways: by adding the "at the time of the offense" language and by giving the State the ability to extend juvenile court jurisdiction. Additionally, the State's hypothetical ignores the true problem: the express prohibition of the State's practice of waiting until defendants turn 18 to bypass the juvenile statutory scheme.

A. The legislature added "at the time of the offense" to § 13-501 to stop the State's practice of waiting until young juveniles turned 15 so it could prosecute in adult court.

The State's Supplemental Brief covers much of Arizona's history regarding juvenile prosecutions.

But it leaves out one critical piece: *why* the legislature amended A.R.S. § 13-501.

Before 2010, A.R.S. § 13-501 was silent on whether the time of filing or time of act controlled prosecution decisions. During that period, the State used the ambiguity to prosecute juveniles more harshly. For instance, if a 13-year-old committed murder, rather than file in juvenile court and petition for transfer under A.R.S. § 8-327, the State would wait until the juvenile turned 15, and then charge the juvenile under the mandatory adult statute in § 13-501(A). *See* Legislature History Video: Video Player (azleg.gov). In 2010, members of the community went to the legislature with concern over the State's practice. *Id.*

Following hearings, the legislature amended the statute to include the "at the time of the offense" language that is now present. Thus, the State was expressly prohibited from waiting until a young juvenile turned 15 to trigger mandatory filings

in adult court. Instead, the State had to file in juvenile court and petition to transfer to adult court under A.R.S. § 8-327 if it desired adult prosecution.

Although the statute now clarifies the age at the time of the offense is what dictates, the State still argues otherwise. The State posits that even though they are not permitted to wait until the pre-14 juvenile turns 15 to mandatorily file in adult court, they can wait until the juvenile turns 18 to do so. This defies logic. Surely if the legislature did not allow the State to wait until 15 to bypass the law, it does not permit the State to wait until 18 either.

This legislative history specifically applies to individuals in Agundez-Martinez's position. Undoubtedly, after this legislative change in 2010, the State was prohibited from filing this case against Agundez-Martinez in adult court once he turned 15 under § 13-501(A). Yet the State somehow believes it can mandatorily prosecute in adult court once he turned 18, despite there being no statutory authority to this effect. This Court should not permit the State's attempts to sidestep the legislature's clear and express intent.

B. The legislature has given the State power to extend juvenile court jurisdiction until the defendant turns 19.

The legislature has also addressed the State's exact concerns in its hypothetical by giving the State sole authority to extend juvenile court jurisdiction.

See A.R.S. § 8-202(H). Section 8-202(H) specifically applies to juveniles who commit delinquent acts at age 17. For a juvenile who is 17, the State is permitted to petition the juvenile court to extend jurisdiction until the juvenile turns 19. If the State files a notice to retain jurisdiction over the juvenile until she turns 19, "the juvenile court's jurisdiction … is retained on the filing of the notice and the court shall retain jurisdiction over the juvenile until the juvenile reaches nineteen years of age …." *Id.*

Two parts of A.R.S. § 8-202(H) are telling. First, the court's extended jurisdiction is effective at the time the State files its notice. Second, if the State files its notice, the court *must* extend jurisdiction.

In the instance the State describes—where a juvenile commits a delinquent act shortly before turning 18—the State can initiate prosecution at that time and simultaneously file a notice to extend jurisdiction.

The legislature has considered and addressed this situation.

C. The legislature has considered that the passage of time mitigates, not aggravates, a juvenile's act.

Section 13-504(B) is further proof that the legislature considers the passage of time after a juvenile's illegal act as mitigating, not aggravating. *See* A.R.S. § 13-504(B). Juveniles charged under A.R.S. § 13-501(B) are entitled to a mandatory

transfer hearing either on the juvenile's motion or on the court's own motion. A.R.S. § 13-504(A). However, if more than one year passes between the offense date and the filing date, the transfer hearing is mandatory and does not need to be requested. A.R.S. § 13-504(B).

Thus, the legislature has considered the mitigating effects of time passing between a juvenile's act and the filing of charges. The legislature has explicitly put guardrails in place for when the State waits to file criminal charges against a juvenile. Again, it defies logic to assume the legislature has allowed the State to avoid those guardrails by waiting even longer to bring charges.

D. The legislature intended the State to use the statutory scheme it created and not have the ability to bypass it by merely waiting to file charges.

The State essentially gives this Court three reasons why it should reverse the lower court's decision: 1) Affirming will lead to absurd results; 2) *Burrows v. State*, 38 Ariz. 99 (1931), and its progeny permit the State's practice; and 3) The defendant can simply raise an infancy defense not allowed under statute.

The State's first point here is opposite from the truth, their second point is just wrong, and their third point contradicts the law.

i. Allowing the State to wait until the defendant turns 18 to file in adult court has led, and will continue to lead, to absurd results.

The State tries to convince this Court to permit its practice solely because there may be the extremely rare instance where prosecution is avoided. While this could theoretically occur, it is incredibly rare. Moreover, to the extent the law is silent on this hypothetical, the legislature must be the one to address it, not this Court.

But the possibility of this hypothetical is not nearly as absurd as the reality of how the State presently misapplies the statutory framework. The State does not cite a single case where the juvenile committed delinquent acts immediately before midnight, was apprehended the next day, and thus avoided prosecution. However, the Maricopa County Public Defender's Office has identified three recent Maricopa County cases where the County Attorney turned down juvenile prosecution submissions and instead chose to wait until the juvenile turned 18 before filing: CR 2023-119152-001, CR 2023-118328-001, and CR 2023-113117-001.

Permitting the State to wait until a juvenile turns 18 to then file in adult court—without express statutory authority—is absurd. First, as iterated throughout this brief, it bypasses the comprehensive framework the legislature has set out. Second, it creates an arbitrary system in which the executive branch has total discretion for how and when to punish juveniles.

Agundez-Martinez highlights the problem. He allegedly committed these offenses when he was between 10 and 12 years old. Charged at that age, he would have been processed through the juvenile system. Instead, the State prosecuted Mr. Agundez-Martinez when he was 23—as if he was 23 when the acts occurred.

And under the State's theory, they would be permitted to do this in every case. Take for instance a 15-year-old possessing a small amount of illegal drugs. Under the State's argument, they could wait until the juvenile turned 18 and then file in adult court for an act that would likely never have been eligible for adult prosecution at the time the act was committed.

The State's practice of waiting to bring charges also calls into question their hypothetical concern. If the acts were so egregious and dangerous to society, surely the State would initiate prosecution immediately. Indeed, that's why § 13-501 permits the State to bring charges in adult court for serious offenses, and mandates filing in adult court when the charges are the most serious. By waiting to file, the State is allowing the offender to remain in the community, just to face harsher consequences later. But the juvenile system was designed to treat the offender while still a juvenile. Waiting to file bypasses this entire intent and framework. It avoids prosecution only to implement harsher penalties later. This all leads to absurd and unpredictable results.

ii. *Burrows* and its progeny are irrelevant.

Without statutory authority expressly permitting prosecution, the State relies on a 100-year-old case to justify its position: *Burrows v. State*, 38 Ariz. 99 (1931).

There are two problems with this reliance. First, *Burrows* dealt with a 17-year-old charged with murder—an age and offense that must be charged as an adult today. *See Burrows*, 38 Ariz. at 102, 105; A.R.S. § 13-501(A)(1). Second, as the State acknowledges in their Supplemental Brief, the law at the time focused on the person's age at prosecution: "This age factor was to be determined as of the time of prosecution." *McBeth v. Rose*, 111 Ariz. 399, 402 (1975); *accord* St. Supp. Br., 2.

The State largely argues that the Juvenile Justice Initiative in 1996 was designed to penalize juvenile offenders more harshly. Thus, it argues *Burrows* must still be good law.

The State is correct that the 1996 change in the law did aim to penalize juvenile offenders more harshly in some instances. One of those instances is when a 17-year-old commits murder—the exact scenario in *Burrows*. The defendant in *Burrows* would still face adult prosecution today, even if the State filed at 18. Section 13-501 codified this.

But the change also put limits on the State's authority to charge juveniles as adults. Neither *Burrows* nor any statute allow an act at age 12 to be prosecuted in adult court 10 years later with no safeguards in place. Nor does the law, or any case after the 1996 initiative, allow minor offenses not enumerated under § 13-501 to be prosecuted as adult-committed criminal offenses merely because the State waits until the defendant turns 18. In other words, as the Court of Appeals found, the decision did not overturn *Burrows*. *Agundez-Martinez*, 254 Ariz. 452, ¶ 29. Rather, *Burrows* was superseded by § 13-501, which would still allow a defendant like Mr. Burrows to be prosecuted in the same manner. And this conclusion is especially true in light of the 2010 amendment, which emphasized that age is determined "at the time the alleged offense is committed," not at the time charges are filed.

Thus, both things are true. The Juvenile Justice Initiative allowed for the harsh prosecution of juveniles like Mr. Burrows. And *Burrows* was superseded by statute.

iii. The Maricopa County Attorney's Office asks this Court for an improper solution.

Essentially conceding there is no direct statutory authority for its practice, the Maricopa County Attorney's Office offers this Court a solution: allow the State to prosecute delinquent acts as criminal offenses solely due to the juvenile turning 18, and, in exchange, allow charged defendants the chance to raise an infancy defense.

MCAO Amicus Br., 12. MCAO even argues this will "ensure that the State is exceptionally careful before charging adults with offenses committed years earlier as very young children." *Id.* at 13.

Despite its assurances, MCAO attempts a massive separation of powers hijacking here. The State does not have the power to define what conduct is criminal and what defenses should be available to defendants. Nor does it have the authority to ask this Court to create common law offenses and defenses, particularly where the legislature abolished the common law more than 50 years ago. *See* A.R.S. § 13-103. The State must apply the law as written.

3. This Court should affirm the lower court's decision.

The Court of Appeals correctly applied the law in this case. Absent a transfer hearing, an act committed by a juvenile can only be prosecuted in adult court if eligible under A.R.S. § 13-501. Here, Agundez-Martinez was not eligible for adult prosecution at the time the acts were committed absent a transfer hearing. The legislature specifically addressed this issue in 2010 prohibiting mandatory adult prosecutions once someone in Agundez-Martinez's shoes turned 15. Surely the law does not then allow the State to wait until 18. Nothing in our laws allow for this.

Because the acts were ineligible for adult prosecution at the time they were committed, and the legislature does not allow the State to prosecute individuals as adults due to the mere passage of time, this Court should affirm the lower court's decision.

CONCLUSION

Whether a juvenile's conduct is a criminal offense or delinquent act is based on § 13-501 eligibility at the time of the act. Nothing in our laws suggests a delinquent act becomes a criminal offense once the juvenile turns 18. Agundez-Martinez did not meet the age prong, so his acts were delinquent ones. Because the law is unambiguous, and the State's claimed concerns require legislative remedies and not judicial ones, this Court should affirm the lower court's ruling.