

IN THE ARIZONA SUPREME COURT

JANE DOE I, JANE DOE II, and JOHN
DOE, by and through conservator,
Fleming and Curtis PLC,

Plaintiffs/Appellants,

v.

SHAUNICE WARR,

Defendant/Appellee.

Arizona Supreme Court
No. CV-25-0107-PR

Arizona Court of Appeals
No. 2 CA-CV 2023-0272

Cochise County Superior Court
No. S0200CV202000599

**BRIEF OF *AMICUS CURIAE*
ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE
IN SUPPORT OF DEFENDANT/APPELLEE**

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INTEREST OF *AMICUS CURIAE*

Arizona Attorneys for Criminal Justice (AACJ), the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 to give a voice to the rights of the criminally accused and to those attorneys who defend them. Ensuring that all Arizonans receive fair warning of what is required and prohibited by law falls within the core of AACJ’s mission. This case is not about endorsing, concealing, or turning a blind eye to suspected child abuse.¹ Mandatory reporting laws plainly serve an important public policy to protect children. The contours of reporting requirements should be unambiguous, however, so that those who are compelled to report have notice of the acute criminal penalties at issue if they fail to do so. A.R.S. §13-3620(A)(5) should be interpreted such that the failure to report is not criminalized outside of the parental or professional setting.

ARGUMENTS

The court of appeals adopted an unwarranted and overly broad interpretation of A.R.S. §13-3620(A)(5)—*i.e.*, that mandatory reporting requirements extend to anyone who “was ever responsible for the care” of a child (Op. ¶28)—despite compelling contrary statutory interpretation and public policy reasons. That interpretation, if left undisturbed, would leave numerous unsuspecting individuals—particularly those who generously volunteer to be part of the village it takes to raise

¹ *Cf.* Response at 7, 14.

a child—vulnerable to severe criminal penalties. *See* Dissent ¶¶39-40. Pursuant to §13-3620(O), a “person who violates this section is guilty of a class 1 misdemeanor, except if the failure to report involves a reportable offense,² the person is guilty of a class 6 felony.” The court of appeals’ interpretation could therefore result in prison sentences for people who (1) have only attenuated relationships with the children at issue, (2) have no institutional certification or training on how to identify or report child abuse, and (3) do not know, and have little reason to guess, that they are mandatory reporters. This interpretation not only violates the due process rights of ordinary Arizonans; it also ignores longstanding jurisprudence dictating that duty is a question of law, and not fact, in the civil context. This Court should grant review to address this issue of first impression and avoid such results.

I. Textualism dictates that A.R.S. §13-3620(A)(5) applies only to individuals in a professional setting.

“When interpreting statutes, [the] Court starts with the text.” *State v. Serrato*, -- Ariz. --, -- ¶9, 2025 WL 1387711, *2 (May 14, 2025). If the statutory language is clear on its face, judicial construction is “neither required nor proper.” *Planned Parenthood Ariz., Inc. v. Mayes*, 257 Ariz. 137, 142 ¶15 (2024). Courts interpreting

² The statute classifies a “reportable offense” as various offenses involving sexual crimes against children, including sexual offenses under Chapter 14, sexual exploitation of children under Chapter 35.1, surreptitious photographing, videotaping, filming, or digitally recording or viewing a minor, child sex trafficking, incest, and unlawful mutilation. §13-3620(P)(4).

statutory language consider the statute’s entire text and aim “to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous.” *Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶11 (2019).

While §13-3620(A)(5) creates mandatory reporting requirements for “[a]ny other person who has responsibility for the care or treatment of the minor,” *amicus* endorses Petitioner’s arguments and the textual analysis of the trial court, which both conclude that this language specifically “refer[s] to a person who provides care in a professional setting, such as childcare centers or similar facilities.” Petition at 7.

The court of appeals’ broader interpretation of §13-3620(A)(5)—which asserts that the legislature could have “said so” if it wanted to limit the provision to professionals (Op. ¶21)—“conflate[s] textualism with literalism.” *Serrato*, 2025 WL 1387711, ¶15. In *Serrato*, this Court rejected literalism, *i.e.*, “a narrow, crabbed reading of a text,” and cautioned against “interpret[ing] a statute’s plain text hyper literally to determine whether it is unambiguous.” *Id.* Instead, “Arizona courts analyze whether the ‘statute’s plain language is unambiguous *in context* ... [which] means reading statutes as a cohesive whole” *Id.* ¶16 (emphasis in original). In this case, the context of the entire mandatory reporting statutory scheme suggests that the language of §13-3620(A)(5) should be carefully limited. Specifically, and as the trial court already concluded, §13-3620(A)(6) indicates that anyone who supervises “a person who is listed in paragraph 1, 2, 4, or 5 of this subsection” is

also a mandatory reporter, implying that the individuals included in subsection 5 are employed individuals. Likewise, the inclusion of “care or treatment” also implies an intended professional limitation, as treatment is not typically provided in a non-professional setting. By disregarding these textual nuances, the court of appeals “overlooked several contextual clues that inform the meaning” of the words in §13-3620(A)(5). *See Serrato*, 2025 WL 1387711, ¶16. These contextual clues are also validated by this Court’s own conclusion in *Avitia v. Crisis Preparation and Recovery Inc.*, 256 Ariz. 198, 203 ¶21 (2023), that §13-3620’s purpose is to require “professionals who work with children to report instances of suspected child abuse.”

II. Due process requires that individuals who could be subjected to criminal penalty under §13-3620 have fair notice that the statute applies to them, and the interpretation below renders the statute unconstitutionally vague.

The court of appeals’ interpretation of §13-3620(A)(5) also results in potential constitutional violations. *See State v. Gray*, 239 Ariz. 475, ¶6 (2016) (plain text of a statute “controls unless an absurdity or constitutional violation results”); *State v. Thompson*, 204 Ariz. 471, 478 ¶27 (2003) (duty to construe a statute in a way that “gives effect to the legislature’s intent ... but also in a way that maintains its constitutionality”). Interpreting §13-3620(A)(5) to apply to any individual who “h[as] a relationship to the minor that has placed them in a position of responsibility” (Op. ¶23) is unconstitutionally vague and violates due process.

No person may be deprived of life, liberty, or property without due process of law. U.S. CONST. amends. V, XIV; ARIZ. CONST. art. 2, §4. Essential to due process is the concept of notice. “No one may be required...to speculate as to the meaning of penal statutes, [and a]ll are entitled to be informed as to what the State commands or forbids.” *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939); *State v. Burbey*, 243 Ariz. 145, 149 ¶15 (2017). “[T]he terms of a penal statute...must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties....” *State v. McNair*, 141 Ariz. 475, 483 (1984) (quoting *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926)). Likewise, it is the “public policy of this state and the general purpose” of the Criminal Code “[t]o give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction.” A.R.S. §13-101(2).

To determine whether a statute is sufficiently explicit to provide such notice, both the U.S and Arizona Supreme Courts adopt an ordinary or average person standard. To satisfy due process, “a penal statute [must] define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited....” *Kolender v. Lawson*, 461 U.S. 352, 357 (1983); *see also State v. Bateman*, 113 Ariz. 107, 109 (1978) (“An offense must be defined in terms that men of average intelligence understand.”). A law lacking legally fixed standards violates due process because it “leaves judges and jurors free to decide ... what is prohibited

and what is not in each particular case.” *Giaccio v. Pennsylvania*, 382 U.S. 399, 402-03 (1966).

The court of appeals’ vague interpretation of §13-3620(A)(5) raises significant due process concerns that must be redressed. The majority concluded that (A)(5) is “most reasonably interpreted as applying to individuals not already mentioned who also have a relationship to the minor that has placed them in a position of responsibility” (Op. ¶23). The majority further stated it would “not attempt to define every contour of 13-3620(A)(5),” and likewise refrained from deciding whether Warr qualified as a mandatory reporter under its interpretation of (A)(5), because “the question of whether Warr was ever responsible for the care of the Does ... depends on underlying factual questions regarding the nature and extent of their relationship.” (Op. ¶¶27-28). While the majority incorrectly determined that such fact-intensive inquiry was appropriate for assessing whether a duty exists (*see* Section III.A, *infra*), it also opened the door to what Judge Brearcliffe accurately describes as criminal penalties for the unsuspecting (Dissent ¶39).³ A person of ordinary intelligence who has occasional interactions with children—whether as a

³ Respondents contend that the Dissent’s view would “create a horrible ‘blind-eye’ standard of hiding abuse as a matter of public policy.” Response at 6. Nothing in the Dissent’s view requires potential reporters to turn a blind eye to suspected abuse; rather, it protects individuals who are not trained on identifying child abuse, as well as individuals who are not on notice that they are required to report, from facing criminal liability for failing to do so.

carpool driver,⁴ a first-time teenage babysitter, or a neighbor hosting a neighbor kid for an hour after school—would not likely be able to decipher, after the decision below, whether they are a mandatory reporter within the confines of the statute, and therefore whether they are subject to criminal penalties for the failure to report. Limiting §13-3620(A)(5) to the professional setting cures notice concerns because professionals who are mandatory reporters tend to receive—or are at least capable of receiving—trainings, education, and supervision regarding their duty to report.⁵

Interpreting §13-3620(A)(5) in a vague way that fails to satisfy due process notice requirements is a particularly acute error because violations of the statute can be penalized with felony convictions and prison terms. Pursuant to §13-3620(O), a person who fails to report a reportable offense is guilty of a class 6 felony.

Notably, Arizona is one of only a small minority of states with felony liability for the failure to report under a mandatory reporting statute, and most of those

⁴ Respondents assert that Petitioner did not have a “peripheral relationship” with children that was somehow analogous to a “carpool driver.” *See* Response at 4. By refusing to limit §13-3620(A)(5) to individuals who have a professional relationship with children, however, the court of appeals allows individuals who have any range of relationship with children, including peripheral relationships, to be susceptible to criminal liability without notice of the fact that the statute applies to them.

⁵ Respondents express outrage at the idea that a mandatory reporting statute might not criminalize the failure to report from certain non-professional individuals. Response at 3 n.2. This ignores that non-professional individuals do not, as a matter of course, receive on-the-job training relating to mandatory reporting duties, nor do they receive on-the-job training on how to identify and report suspected abuse. Such training is central to the certification process for educators, medical personnel, and other professionals who deal with children.

require the presence of an aggravating circumstance. For example, in Illinois, Connecticut, and Kentucky, felony charges are allowed only for repeat violations of the failure to report. *See* 325 ILL. COMP. STAT. ANN. §5/4.02 (felony for second or subsequent violation); KY. REV. STAT. ANN. §620.030(9) (felony for third or subsequent violation); CONN. GEN. STAT. §17A-101o(d)(1) (felony for subsequent violation). In Minnesota, a felony is only charged when a parent, guardian, or caretaker (as opposed to any of the other numerous categories of mandatory reporters) fails to report, and the child dies from a lack of medical care. *See* 2024 MINN. STAT. 260E.08(c). In Pennsylvania, a failure to report is only charged as a felony where the primary child abuse is a felony of the first degree or higher, and the potential reporter has direct knowledge of the abuse. *See* 23 PA CONS. STAT. §6319(a)(2). In Texas, the failure to report is a felony only when it involves serious bodily harm inflicted on children with intellectual disabilities living in state-supported facilities. *See* TEX. FAM. CODE §261.109(b). Florida seems to be the only other state that allows felony charges without such aggravating circumstances. *See* FLA. STAT. §39.205(1) (“A person who knowingly and willfully fails to report...commits a felony of the third degree”).

Most other states that allow for felony convictions subsequent to the failure to report nevertheless require that the individual who failed to report either knowingly or intentionally violated the statute. *See* FLA. STAT. §39.205(1) (willfully and

knowingly fails to report); 325 ILL. COMP. STAT. ANN. §5/4.02 (willfully fails to report); KY. REV. STAT. ANN. §620.030(9) (intentionally violates the provisions of the statute); 23 PA CONS. STAT. §6319(a)(2) (willfully fail to report); TEX. FAM. CODE §261.109(a) (knowingly fails to report); CONN. GEN. STAT. §17A-101o(d)(1) (violation is willful or intentional or due to gross negligence). In contrast, A.R.S. §13-3620(O) contains no requirement that the law be willfully or knowingly violated before criminal penalties ensue. Because Arizona’s statute does not have a knowledge requirement for violating the statute, it is critical that individuals who have no notice that the statute applies to them are not swept in under a broad interpretation of §13-3620(A)(5).⁶ Under the interpretation applied below, a one-time teenage babysitter with no expectation that mandatory reporting statutes apply to her, and with no training on the types of behaviors that should raise suspicions of child abuse, could nevertheless be criminally prosecuted for an unknowing violation of §13-3620(A)(5) if she fails to report after those particular behaviors occur.

⁶ Respondents conflate the *mens rea* requirement for making a report with the *mens rea* requirement for violating the statute. See Response at 5 n.7. Respondents criticize both the Dissent and Warr for cautioning against criminal liability for the “unsuspecting,” because—as the Respondents allege—“more than a mere suspicion of abuse is required by the statute (reasonable belief of abuse).” *Id.* However, having a reasonable belief that abuse is happening, but having no idea that one is a mandated reporter, still makes one “unsuspecting.”

III. Public policy requires that A.R.S. §13-3620(A)(5) apply to a limited subset of people.

If this Court concludes that the statutory text is unclear, it may look to public policy to assess the desirability of two competing statutory interpretations. *See Garibay v. Johnson*, -- Ariz. --, -- ¶23, 565 P.3d 236, 243 (2025) (“[A]lternative methods of statutory construction” include “the effects and consequences of competing interpretations”); *see also Serrato*, 2025 WL 1387711, ¶16. Arguments of public policy continue to bear on statutory interpretation in Arizona. *See e.g., State v. Foothills Reserve Master Owners Ass’n, Inc.*, -- Ariz. --, -- ¶¶24-29, 562 P.3d 866, 873-75 (2025); *In re Drummond*, 257 Ariz. 15, 19-20 ¶13 (2024); *Ariz. Republican Party v. Richer*, 257 Ariz. 237, 249 ¶¶38-41 (2024); *AZ Petition Partners LLC v. Thompson*, 255 Ariz. 254, 259 ¶¶21-23 (2023). In this case, the public policy concerns outlined below suggest the Dissent’s reading of §13-3620(A)(5) is preferable.

A. Public policy cautions against creating a duty where an antecedent fact-specific analysis is required, because in tort, duty is a question of law for the judge.

In the criminal context, due process requires notice before penalizing an individual for breaking the law. *See* Section II, *supra*. In the civil context, this concept of notice manifests itself in the Court’s insistence that duty is a question of law. That is to say, “the issue of duty is not a factual matter; it is a legal matter to be determined *before* the case-specific facts are considered.” *Gipson v. Kasey*, 214

Ariz. 141, 145 ¶21 (2007) (emphasis in original); *see also Avitia*, 256 Ariz. at 205 ¶33; *Dabush v. Seacret Direct LLC*, 250 Ariz. 264, 267 ¶10 (2021); *Quiroz v. ALCOA Inc.*, 243 Ariz. 560, 564 ¶7 (2018). Moreover, a “fact-specific analysis of the relationship between ... parties is a problematic basis for determining if a duty of care exists.” *Gipson*, 214 Ariz. at 145 ¶21.

In keeping with this jurisprudence, §13-3620(A)(5) should not be construed to apply beyond the professional context because doing so would necessitate a fact-specific inquiry into whether a duty of care exists on a case-by-case basis. In the decision below, the court of appeals concluded it was not equipped to make such a determination on the basis of the facts already disclosed at the summary judgment stage. *See Op.* ¶28 (finding that the record was not sufficient to address whether Petitioner “was ever responsible for the care of the Does, and therefore owed them a duty under the statute.”). This Court “disapprove[s] of [such] attempts to equate the concept of duty with specific details of conduct.” *Markowitz v. Arizona Parks Bd.*, 146 Ariz. 352, 355 (1985). Individuals ought to be able to determine whether they owe a duty of care in a particular context without having the issue litigated through the summary judgment phase of a civil proceeding.

In the decision below, the court of appeals explained that “although the existence of a duty is a legal issue for the court, ‘sometimes certain antecedent facts must be considered in determining whether a duty exists—for instance, whether a

statute applies to a circumstance to give rise to a duty.” (Op. ¶28) (quoting *Perez v. Circle K Convenience Stores, Inc.*, -- Ariz. --, -- ¶20, 564 P.3d 623, 630 (2025)). In *Perez*, however, this Court was analyzing antecedent facts to determine whether a special relationship existed that gave rise to a duty. 564 P.3d at 630 ¶21. It reviewed a limited set of undisputed facts to easily conclude that the plaintiff/shopper indisputably was Circle K’s business invitee. *Id.* Courts may indeed look to antecedent facts to determine whether “a statute applies to a circumstance to give rise to a duty” (Op. ¶28), as this Court did in *Gipson* when it assessed whether the criminal statute at issue gave rise to a duty of care owed by defendant Kasey to decedent Followill. 214 Ariz. at 146 ¶¶25-26. There, the determination did not require a fact-intensive inquiry; rather, Kasey clearly had distributed prescription drugs to persons lacking a valid prescription, as the relevant statute proscribed.⁷ *Id.* It follows that while the consideration of plainly evident antecedent facts may be appropriate, a fact-intensive analysis is not. The below interpretation of §13-3620(A)(5) would necessitate the latter.

⁷ Though *Gipson* stands for the proposition that criminal statutes can give rise to a duty of care, it also demonstrates that statutes can limit the scope of civil duties. 214 Ariz. at 146 ¶¶28-29. §13-3620 likewise both creates and limits civil duties. *See, e.g.*, §13-3620(A)(3) (limiting duty to where physicians “develop the reasonable belief in the course of treating a patient.”). It stands to reason that the contours of the statute can be interpreted to include certain categories of individuals who owe a civil duty while intentionally excluding others.

B. Expanding the application of §13-3620(A)(5) beyond the professional setting encourages antisocial behaviors and deters prosocial behaviors.

Courts may refrain from finding that a duty exists “based on concerns that potentially liability would chill socially desirable conduct or otherwise have adverse effects.” *Gipson*, 214 Ariz. at 146-147 ¶29. It bears consideration that an expansive reading of §13-3620(A)(5) would encourage certain antisocial behaviors and deter certain prosocial behaviors. As noted in the Petition for Review, the interpretation below encourages un- or under-substantiated reporting of child abuse to the relevant authorities. *See* Petition at 13; *see also Avitia*, 256 Ariz. at 203-04 ¶24. In the face of uncertainty about whether they could be subjected to criminal penalty under an expanded interpretation of (A)(5), non-professional adults who occasionally care for children, but are not trained in identifying child abuse, may choose to make reports based on attenuated facts, at best. Such reports, where false, are a drain on strained public resources, and cause significant harm to those who are falsely accused.

On the other hand, holding the dual threats of criminal and civil liability over the head of any person who would otherwise willingly volunteer to accept some level of occasional responsibility for a child deters desirable social conduct. The law should encourage individuals to lend a hand where it’s needed and to be part of the vital village required to raise children. This kind of community can be especially beneficial for children who are experiencing abuse or neglect at home. But, if individuals are forced to choose between volunteering to help with the occasional

care of children who need it the most, on the one hand, and sheltering themselves from exposure to potential criminal liability or civil suit, on the other, they may choose the latter.

CONCLUSION

AACJ requests this court grant review of Warr's petition so it can clarify the boundaries of §13-3620(A)(5), giving notice to those who may be subjected to criminal penalty under its auspices.

RESPECTFULLY SUBMITTED: May 29, 2025.

By /s/ David J. Euchner

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