ARIZONA SUPREME COURT

THE STATE OF ARIZONA, Appellee, v. JOSE ADRIAN AGUNDEZ-MARTINEZ Appellant.	Arizona Supreme Court No. CR-23-0053-PR Court of Appeals No. 1 CA-CR 21-0369 Yuma County Superior Court No. CR 2019-00622

BRIEF OF *AMICUS CURIAE* ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE IN SUPPORT OF APPELLANT

Molly Brizgys
molly@mscclaw.com
MITCHELL | STEIN | CAREY | CHAPMAN, PC
2600 North Central Avenue, Suite 1000
Phoenix, AZ 85004
Telephone: (602) 358-0290
Facsimile: (602) 358-0291
AZ Bar No. 029216

Attorney for Amicus Curiae *Arizona Attorneys for Criminal Justice*

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INTRODUCTION

Mr. Agundez-Martinez was between 10 and 12 years old when he committed the charged offenses, yet he was prosecuted as an adult and sentenced to 51 years in prison, years after the conduct. The Court of Appeals correctly determined that unlawful conduct committed by Arizona citizens of that young age is a "delinquent act", which is subject only to the juvenile adjudication process absent certain exceptions not implicated on these facts. The Court should affirm the Court of Appeals decision because it correctly recognized that under Arizona law—and consistent with social norms, scientific knowledge, and canons of statutory interpretation—childhood conduct does not transform into an adult criminal offense simply because time passes and the offender matures into adulthood.

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 in order to give a voice to the rights of the criminally accused and to those attorneys who defend the accused. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law through

education, training, and mutual assistance, and fostering public awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

AACJ offers this brief because the issue in this case implicates a court's power to exercise jurisdiction over an adult prosecution based on actions committed as a young child. Through its advocacy efforts, AACJ calls the public's attention to the harms of overcriminalization and excessive punishments, both of which are at issue here.

ARGUMENT

I. The State's Position Bypasses Both the Plain Language of the Statutes and the Intention of the Scheme.

a. The Statutes are Clear and Must be Read Together.

The State fails to appreciate that the definitions controlling the Court of Appeals' analysis are part of a broader legislative scheme governing how Arizona law treats juveniles. That broader legislative scheme is Title 8 of the Arizona Revised Statutes, which makes clear demarcations about when adult criminal culpability attaches to children, and what the State can do about it.

Title 8 clearly sets forth when offensive conduct by minors can trigger state action. Generally, Arizona children under 8 years of age are not held legally responsible for their own unlawful conduct. *See* A.R.S. § 8-201(15)(iv) (defining children under 8 who engage in "delinquent" acts as "dependent"). Subject to limited exceptions not relevant here, the juvenile court has jurisdiction over all

delinquency proceedings for Arizona children between the ages of 8 and 18. A.R.S. §§ 8-202. This grant of juvenile court authority over minors over 8 but under 18 years of age is consistent with the vast authority for the proposition that, legally, "children are different." *See* Sec. I (b), *infra*.

Immediately relevant—and controlling—is the fact that Arizona law also sets forth two limited scenarios in which Arizona children can become subject to jurisdiction of the adult criminal court system. The first scenario— commonly referred to as a transfer hearing— arises when *any* juvenile is accused of felonious conduct in juvenile court and the prosecutor requests transfer to adult court for the purpose of charging the juvenile with adult offenses subject to the process set forth in A.R.S. § 8-327. *See* A.R.S. § 8-202(I)(1). This first scenario gives a broad opportunity for an Arizona child accused of serious misconduct to be held to adult standards—but the State must ask to do so before the child ages out of the juvenile court's jurisdiction and meet specific juvenile-centered transfer criteria.

The second scenario arises when the defendant is 14 to 17 years-old "at the time [of] the alleged offense" and stands accused of certain serious offenses. *See* A.R.S. §§ 13-501(A), (B). This portion of the statute creates a tiered system of justice for "delinquent acts" organized around three main considerations: age at the time of the offense, type and severity of the offense, and whether the offender is a recidivist. *Id.* As the Court of Appeals noted, based on Mr. Agundez-Martinez's

age at the time of the offense (10-12 years old), the type of offense (class 2 felonies in Chapter 14: Sexual Offenses), and the fact that the State did not allege that he was a recidivist, Mr. Agundez-Martinez's conduct did not fall within the plain language of the statutes that span Title 8 and Title 13. Accordingly, the State's prosecution fails as a matter of law. *See Arizona ex rel. Brnovich v. Maricopa Cnty. Cmty. Coll. Dist. Bd*., 243 Ariz. 539, 541 ¶ 7, (2018) (quoting *State v. Miller*, 100 Ariz. 288, 296, 413 P.2d 757 (1966)) ("In interpreting constitutional and statutory provisions, we give words 'their ordinary meaning unless it appears from the context or otherwise that a different meaning is intended.").

In this instance, the State is not asking the Court to disregard only a word or two, it is arguing that the entire juvenile statutory scheme is irrelevant after a defendant reaches the age of majority. The State's position that the intersecting provisions of Title 8 and Title 13 can be completely disposed of after an offender reaches the age of 18, renders these provisions superfluous, in violation of a critical canons of statutory construction. *See Fann v. State*, 251 Ariz. 425, 434 (2021) ("We also avoid interpreting a statute in a way that renders portions superfluous.")

b. <u>The Statutory Scheme Appropriately Recognizes that Children Are Different.</u>

This broader statutory scheme clearly (and correctly) limits a child's criminal culpability based on his or her age at the time of the offensive conduct, reflecting the well-accepted public understanding that "children are different." The

law has long recognized that acts committed by adults are on different moral footing than acts committed by children. *See Roper v. Simmons*, 543 U.S. 551, 570 (2005) ("From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult."); s*ee also Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988) (a juvenile's "irresponsible conduct is not as morally reprehensible as that of an adult.") This recognition draws from practical experience, cognitive psychology, moral philosophy, religious tradition, and neuroscience, and these foundations have become embedded in jurisprudence that reflects the complexities of how a society grapples with different kinds of transgressive acts when they are committed by children. This is because children are works in progress, as "the character of a juvenile is not as well formed as that of an adult." *Roper* 543 U.S. at 570. Society holds children's behavior, their ability to control themselves, and their capacity to understand the meaning and consequences of their behavior to a different standard than adults. *See Johnson v. Texas*, 509 U.S. 350, 367 (1993); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012); *Montgomery v. Louisiana*, 577 U.S. 190 (2016).

Modern case law has benefitted from advancements in scientific research that demonstrate the medico-reality of the gradual cognitive development of a child. "[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of

the brain involved in behavior control continue to mature through late adolescence." *Graham* 560 U.S. at 48. "[S]tudies of brain development during adolescence…indicate that the most important developments during adolescence occur in regions that are implicated in processes of long-term planning, the regulation of emotion, impulse control, and the evaluation of risk and reward." Linda Spear, *The adolescent brain and age-related behavioral manifestations*" 24 (4) NEUROSCIENCE AND BIOBEHAVIORAL REVIEW, 417–463 (2000).

The law's different treatment of children versus adults stems from a variety of considerations including (1) whether a child can form the sufficient *mens rea* for the act (2) whether a child can form the moral reasoning to be held responsible for an act (3) whether a child can comprehend and participate in the attendant judicial process and, (4) whether the prescribed sanction serves the child's and society's principles of punishment or rehabilitation. *See* Gerry Maher, *Age and Criminal Responsibility*, 2 Ohio St. J. Crim. L. 493, 497-501 (2005).

The cases treating children differently from adults in the criminal space are not confined to only considering the constitutional limits to a sentence—they go to the heart of a juvenile's culpability for the act itself:

> Youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. A lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-

considered actions and decisions.

Johnson, 509 U.S. at 367. Youth are more susceptible to negative influences and have less "control, or less experience with control, over their own environment" *Roper* 543 U.S. at 569. While an adult may have the imagination, means, and ability to extricate himself from a negative situation or influence, a child is not only susceptible to others' behavior but is dependent on others for food, shelter, education, and moral guidance. And because a child has both a "diminished culpability" and "heightened capacity for change," *Miller*, 567 U.S. at 479, a society remains committed and does not abandon this hopeful potential and accordingly, treats juveniles differently than adults.

The State wrongly presumes that certain types of transgressive acts committed by juveniles should always entail some gateway to criminal prosecution and punishment, even if that means waiting until after the juvenile reaches the age of majority. State's Supp. Br. at 6 (arguing that the Court of Appeals "functionally created a category of offender who is entirely immune from prosecution.") In doing so, the State presupposes that in a civil society, where the care and custody of children is entrusted to the adults of that society, criminal punishment is always society's preferred method of contending with the transgressive acts of juveniles. But there are myriad social institutions that serve to correct and punish a juvenile's behavior. The foremost is a child's family. "In our society, parents, not the State,

have the primary authority and duty to raise, educate, and form the character of their children. *Mahanoy Area Sch. Dist. v. B. L. by & through Levy*, 141 S. Ct. 2038, 2053 (2021). Teachers, guidance counselors, principals, coaches, and other educational staff are part of a team of people who influence children and play a role in correcting and forming behavior. Religious, civic, and cultural institutions also have an important role to play in the moral development of the child. This "village" serves an unparalleled function of shaping a child's behavior that the courts do not.

A 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). It is not an act committed by an adult. As the law recognizes, the delinquent act does not become more blameworthy once the child reaches the age of 18—it remains always less blameworthy.

c. The Court Should Reject a "Purposivism" Read of the Statutes Because of the Context in Which They Were Passed.

Pivoting from the statutory text, the State turns its focus to the purpose behind the passage in the mid-1990s of constitutional and legislative changes to Arizona's juvenile justice laws, arguing that the legislature's intent was "to make possible more effective and more severe responses to juvenile crimes' and urging this Court to consider the context, historical background, and spirit of the Initiative. *See* State's Supp. Brief at 14-16. The historical wind-up to the passage in the mid-

1990s of these tough-on-juvenile-crime laws is worth examining more deeply.

The first juvenile court was opened in 1899 in Chicago by Jane Addams and her fellow progressive reformers. *See* David S. Tanenhaus, *First Things First: Juvenile Justice Reform in Historical Context*, 46 Tex. Tech. L. Rev. 281, 282 (2013). At the time, the purpose was explained as follows:

> Instead of reformation, the thought and idea in the judge's mind should always be formation. No child should be punished for the purpose of making an example of him, and he certainly cannot be reformed by punishing him. The parental authority of the State should be exercised instead of the criminal power.

Id. The idea of separate juvenile courts took hold nationally and internationally. *Id*. at 283.

But by the mid-1960s these specialized courts faced scathing criticism for their lack of due process, which were resulting in lengthy sentences for juveniles to prison-like "reform schools." *Id*. at 284. This blowback came to a head in 1966 when the ACLU sued to free 15-year-old Gerald Gault, an Arizona juvenile defendant. Gault had faced a largely procedure-less process that resulted in a six-year sentence, for the crime of making a lewd phone call—an act which, if committed by an adult, would be a misdemeanor resulting in a $5-$50 fine or a maximum punishment of two months. *In re Gault,* 387 U.S. 1, 8-9 (1967). The Court chided, "the condition of being a boy does not justify a kangaroo court," *id*. at 28, and enshrined several constitutional rights for juveniles who came into

contact with law enforcement and the criminal justice system. The decision is now referred to as the "magna carta" for juveniles.

Panic over juvenile crime in the late 1980s and early 90s shepherded in a "get tough" era, resulting in sweeping legislative changes all around the country that made it easier to transfer prosecution of juveniles to adult courts. *See* Tanenhaus, 46 Tex. Tech L. R. at 288-289. The origins of the panic has been attributed to the development of a "super-predator" myth, a term coined by a professor at Princeton, John Dilulio, in an article published in 1995.[1] Dilulio wanted to call public attention to a new "breed" of juvenile offender who he described as "radically impulsive, brutally remorseless youngsters, including ever more teenage boys, who murder, assault, rob, burglarize, deal deadly drugs, join gun-toting gangs, and create serious communal disorders.[2]" Dilulio warned: "All of the research indicates that Americans are sitting atop a demographic crime bomb. And all of those who are closest to the problem hear the bomb ticking."[3]

The now-debunked super-predator myth gained further traction when it was linked to forecasts by Dilulio and his collaborators of increased levels of juvenile

[1] John Dilulio, "The Coming of the Super-Predators" WASHINGTON EXAMINER (November 27, 1995). *Available at*: https://www.washingtonexaminer.com/weekly-standard/the-coming-of-the-super-predators.
[2] J. Bennett, J. William, J. DiLulio, Body Count: Moral Poverty…and How to Win America's War Against Crime and Drugs, Simon & Schuster (1996).
[3] Dilulio, *supra*, note 1.

violence based on population and demographic shifts, in particular the projected growth of the black teenage population.[4] This impending "crime bomb" and the "super-predators" who would commit those crimes was widely reported in the media, capturing the public's attention.[5] These reports instilled widespread fear and animus towards young teenage men of color.[6]

The research, extrapolations, and conclusions of Dilulio and his collaborators were widely criticized, even at the time, and have been since critiqued by the academic community as deeply flawed—their data projections were wrong and their methods sloppy.[7] Dilulio has since repudiated his own writings,[8] turning his focus to faith-based initiatives to prevent crime. He was even a co-signer of an amicus brief of fellow academic sociologists in *Miller* to inform the United States Supreme Court that "the juvenile super-predator was a myth and

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[4] *See* James Fox, *Trends in Juvenile Violence: A Report to the United States Attorney General on Current and Future Rates of Juvenile Offending*; Bureau of Justice Statistics (March 1996) ("By the year 2005, the number of teens, ages 14-17, will increase by 20%, with a larger increase among blacks in this age group (26%)").
[5] Carroll Bogert and LynNell Hancock, *Analysis: How the Media Created a 'Superpredator Myth that harmed a generation of Black Youth*, NBC NEWS (Nov. 20, 2020).
[6] *See* Mary Romero, S*tate Violence, and the Social and Legal Construction of Latino Criminality: From El Bandido to Gang Member*, 78 DENV. U. L. REV. 1081, 1083-84 (2001).
[7] Malcolm C. Young and Jenni Gainsborough, *Prosecuting Juveniles in Adult Court An Assessment of Trends and Consequences*, THE SENTENCING PROJECT (2000).
[8] Elizabeth Becker, *As Ex-Theorist on Young "Superpredators,'Bush Aide Has Regrets*, N.Y. TIMES, Feb. 9, 2001, at A2.

the predictions of future youth violence were baseless."[9]

But "[t]his metaphor was successful in catalyzing policymakers and the public." Kenneth A. Dodge, *Framing Public Policy and Prevention of Chronic Violence in American Youth*, 63 AM. PSYCHOLOGIST, 573, 576 (2008). Dilulio's repudiations were too little, too late; the theories had taken root, were hard to disavow the public of, and had already provided the inspiration and impetus for laws like Arizona's which, in predicting an uptick of juvenile violence perpetrated by monster-like children, necessitated stronger legal mechanisms to be able to charge and punish them as adults. During this period almost every state made it easier to try juveniles as adults.[10] Arizona's mid-1990s juvenile justice overhaul is but one example of these fatally flawed sentencing regimes, passed to protect against an imagined enemy who never came and based on troubling stereotypes.[11]

Given this greater context and the wholesale repudiation of both the data they were based on and the problematic policy arguments that served as the purpose for the passage of these tough on juvenile crime juvenile justice laws, this Court would be justified in being wary of ascribing too much credence to what the

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[9] *Amicus brief* available at: https://eji.org/files/miller-amicus-jeffrey-fagan.pdf.
[10] *See* Young, *supra*, note 7.
[11] "[T]he crime wave never happened. And still, the sentencing regimes spawned of the hysteria were kept in place." Vincent M. Southerland, *Youth Matters: The Need to Treat Children like Children* 27 (4) J. CIV. RIGHTS AND ECONOMIC DEV. 765, 788 (2015).

State argues is the statute's legitimate legislative intent and important historical context. *See Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018) (confirming that *Korematsu*, which had already "been overruled in the court of history" was being formally repudiated in the court of law)

II. The State's Position Ignores Canons of Statutory Construction.

As noted above, the State's position in this case would render superfluous the entire statutory scheme governing when adult criminal culpability can attach to children. But superfluity is not the only canon of statutory construction the State's position runs afoul of.

a. The State's Argument Leads to Absurd Results.

The State refers to the statutory interpretation undertaken by the Court of Appeals as absurd. State's Supp. B. at 21-24 ("this case creates absurd results for all involved"). But it is the State's interpretation—not the Court of Appeals—that would create absurd results. Under the State's theory, adults may face mandatory, lengthy prison sentences for acts they committed when they were in elementary school. Mr. Agundez-Martinez is asking this Court to dismiss a prosecution for acts he committed when he was no older than 12, and for which he was sentenced to 51 years in prison. This outcome strains credulity in a just society. And although the State has finally conceded an Eighth Amendment violation as to the sentence, this concession is far from guaranteed by other prosecutors or in other

jurisdictions. The State offers no limiting principle to the reach of its position—apparently believing that the statutes permit charging an 80-year old person for acts committed as a young child so long as there is no statute of limitations on those offenses.

One of the biggest concerns with the State's position is that it would allow a prosecutor to wait until a juvenile turned 18 years old to try them as an adult for something the State could not have tried them for when the juvenile was under 18. For instance, the State's argument seems to suggest that it could prosecute someone as an adult for a transgressive act they committed when he or she was under the age of 8 as soon as they hit 18—whereas A.R.S. § 8-201(15)(iv) wouldn't permit even a juvenile delinquency adjudication. The State's position allows gamesmanship, which has no place in the fair administration of criminal justice.

b. The Rule of Lenity Favors the Liberty Interest of Mr. Agundez-Martinez.

The State is asking this Court to uphold multiple convictions that carry decades-long sentences on non-existent statutory authority. Putting aside the clear statutory arguments, these convictions cannot stand because this Court should also invoke the rule of lenity in the defendant's favor. "The 'rule of lenity' is a new name for an old idea—the notion that 'penal laws should be construed strictly. The rule first appeared in English courts, justified in part on the assumption that when

Parliament intended to inflict severe punishments it would do so clearly." *Wooden v. United States*, 142 S. Ct. 1063, 1082 (2022) (Gorsuch concurring) (cleaned up); *see also State v. Tarango*, 185 Ariz. 208, 210 (1996) (quoting *State v. Pena*, 140 Ariz. 545, 549-50 (App. 1983) ("When a statute is 'susceptible to more than one interpretation, the rule of lenity dictates that any doubt should be resolved in favor of the defendant.'") That is because a foundational principle of a free and just society is that every person has a right "to suffer only those punishments dictated by the plain meaning of words" and "where uncertainty exists, the law gives way to liberty." *Wooden,* 142 S. Ct. at 1083. Any doubts in the interpretation of the statutes must be resolved on the side of Mr. Agundez-Martinez's liberty.

III. The State's Prosecutorial Authority is Only as Extensive as What the Statutes Permit, Contrary to Any Dicta in *McBeth.*

The State's authority is limited to bringing prosecutions for "public offenses." A.R.S. §11-532. These offenses are delineated by the legislature. "All common law offenses are abolished…No conduct… is an offense… unless it is an offense under this title or another statute or ordinance." A.R.S. §13-103. Contrary to the State's argument, it has no "inherent authority" to prosecute Mr. Agundez-Martinez. *See* State's Supp. Brief at 17-19 (referring to its "inherent" or "implicit" authority to file criminal charges against adults for acts they committed as children).

In the absence of statutory authority, the State primarily relies on a cryptic statement originating in the 1931 case *Burrows*, and later cited in *McBeth v. Rose*, 111 Ariz. 399 (1975), that "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." The State's largely bases its "inherent" and broad sweep of authority on this statement. *See* State's Supp. Brief at 2-9. For several reasons *McBeth* and its progeny cannot justify the State's prosecution of Mr. Agundez-Martinez.

First, the court in *McBeth* considered different constitutional and statutory provisions than are at issue here. That court did not grapple with the definition of delinquency, the intersection of the delinquency definition with A.R.S.§ 13-501, A.R.S. § 8-327, or the myriad of other constitutional and statutory changes that occurred since that case was decided. Because the statutory scheme that the *McBeth* court was interpreting is the not the same one at issue here, that court's reference to "the age factor" is dicta and has no binding authority in this modern moment. *Williams v. United States*, 289 U.S. 553, 568 (1933) ("None of these cases involved the question now under consideration, and the expressions referred to were clearly obiter dicta."); *Creach v. Angulo*, 186 Ariz. 548, 552 (App. 1996) (defining dictum and reasoning that because the previous case had not considered the full range of issues at hand, "it is not binding precedent.").

Second, *McBeth* is almost 50 years old and was penned in a different era, well before the advances of cognitive psychology and neuroscience provided concrete evidence of the developmental differences between children and adults.

Finally, even if this Court were to find that the statement was not dicta or the case was not an historical relic, it was wrongly decided, and should not stand. Although this Court "has a strong respect for precedent, this respect is a reasonable one which balks at the perpetuation of error, and the doctrine of stare decisis should not prevail when a departure therefrom is necessary to avoid the perpetuation of pernicious error." *Arizona Free Enter. Club v. Hobbs*, 253 Ariz. 478, 497, (2022) (internal citations omitted); *see* also *Lowing v. Allstate Ins.,* 176 Ariz. 101,108 (1993) ("[A]lthough we have a healthy respect for stare decisis, we will not be bound by a rule with nothing more than precedent to recommend it."). Given that *McBeth* is stale and referred to different statutory and constitutional provisions, this Court should not feel bound by it, especially when to do so is to authorize widespread prosecution of criminal defendants who face lengthy prison sentences for acts committed as children.

IV. To Hold Otherwise Violates Mr. Agundez-Martinez's Right to Equal Protection.

At issue are two classes of offenders who are under 14 "at the time of the offense" when they commit certain offenses. An offender in this first group gets charged when he is under 18 and within the jurisdiction of the juvenile court.

Before he can be prosecuted as an adult, he must undergo a transfer hearing where the judge must consider several juvenile-specific factors and determine that "public safety would best be served by the transfer of the juvenile for criminal prosecution." A.R.S. §8-327. The second class of offenders, also under 14 at the time of the offense, get charged after they turn 18. An offender in this second group would never have the chance to challenge his or her adult prosecution through the transfer hearing process. *Id*. And, as the State has pointed out, the common-law immaturity defense has been repealed so these offenders will not be able to marshal this type of juvenile-specific information at all to challenge their criminal prosecution. *See* State Supp. Br. at 15-16. In the delinquency forum, the offender faces a significantly different punishment regime by an order of magnitude, than the offender who finds himself in adult court. *Compare* A.R.S. §8-341 to §13-705.

If this Court holds that both pathways to prosecution for the same exact offense committed by the same age offender are permissible under the statutes, the statutes violate Mr. Agundez-Martinez's right to Equal Protection under the Fourteenth Amendment. "The equal protection clauses of the state and federal constitutions have the same effect and generally require that all persons subject to state legislation shall be treated alike under similar circumstances*." Crerand v. State*, 176 Ariz. 149, 151 (App. 1993). By charging one class of offender after

they reach the age of majority, the State is depriving this class of offenders of their statutorily-created right to challenge their amenability to adult prosecution through transfer under A.R.S.§ 8-327. This deprives Mr. Agundez-Martinez of his right to equal protection under the law.[12]

Even if the Court does not apply intermediate or strict scrutiny based on this deprivation of his statutory right, there is no rational basis for the difference in treatment. "There is no denial of equal protection if there exists a rational basis for differentiated punishment," *State v. Navarro*, 201 Ariz. 292, 299 (Ct. App. 2001). Here, the difference in treatment to these two classes of offenders is irrational. Mr. Agundez-Martinez has lived safely in the community for a lengthy period, suggesting public safety is not at risk and not a legitimate concern for punishment. *See* A.R.S.§ 13-101 (5) (stated purpose of Title 13 is "to ensure the public safety"). The likelihood that an offender charged as an adult— years after the offense— will benefit from any sort of therapeutic treatment related to sex offenses is diminished because the treatment is different for juvenile offenders than adults.[13] Most

[12] The State also violates the right to Equal Protection of offenders charged pursuant to A.R.S.§ 13-501 (B) after they reach the age of majority. This is because this class of offenders retains the statutory right to challenge the transfer through A.R.S.§ 13-504 (A)—often referred to as a reverse transfer. If the offender is over 18 when they are charged, he or she cannot be remanded to the juvenile court because it no longer has jurisdiction. This group also loses out on their rights due under Title 8.

[13] *See* Tolan, P.H., Walker, T., & Reppucci, N.D. Applying developmental criminology to law: Reconsidering juvenile sex offenses. (1) Justice Research and P., 117–146 (2012).

importantly, the transgressive act is the same in terms of culpability, flouting A.R.S. §13-101 ("to impose just and deserved punishment"). For one group of offenders to retain the right to challenge their transfer based on their youth and receive delinquency consequences and the other group to be barred from doing so and therefore face decades in prison as a foregone conclusion has no "sufficient nexus with the underlying crime," *State v. Arevalo*, 249 Ariz. 370, 375 (2020). Therefore, the interpretation of the scheme, as urged by the State, fails rational basis review. *Id*.

CONCLUSION

Neuroscience, experience, tradition, and the law recognize that children are different and less blameworthy than adults. An act committed by a child does not become more blameworthy with the passage of time. The State cannot ignore entire provisions of the Code that forbid the adult prosecution of Mr. Agundez-Martinez for acts he committed as a child. This Court should affirm the decision of the Court of Appeals.

RESPECTFULLY SUBMITTED on September 26, 2023.

MITCHELL | STEIN | CAREY | CHAPMAN, PC

By: _____
Molly Brizgys
Attorneys for Amicus Curiae AACJ