

SUPREME COURT OF ARIZONA

STATE OF ARIZONA,)	Arizona Supreme Court
)	Case No. CR-24-0300-PR
)	Appellee,
)	Arizona Court of Appeals
v.)	Case No. 2 CA-SA 2024-0037
)	
HON. JAMES E MARNER, JUDGE)	Pima County Superior Court
OF THE SUPERIOR COURT OF)	Case No. CR20240488-001
THE STATE OF ARIZONA, in and)	
for the county of Pima,)	
)	
)	Respondent Judge,
)	
and)	
)	
HANEES MOHAMED HANIFFA,)	
)	
<u>Real Party in Interest.</u>)	

**BRIEF OF AMICUS CURIAE
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[Filed with the written consent of the parties, ARCAP 16(b)(1)(A)]

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Victim Law Bulletin, *Fundamentals of Victims' Rights: A Brief History of Crime Victims' Rights in the United States* (Nov. 2011), *available at*
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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. 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.

Among AACJ’s purposes is protecting and insuring by rule of law the individual rights guaranteed to all people by the Arizona and U.S. Constitutions, resisting efforts to curtail such rights, and working to ensure that the criminal-legal system metes out justice fairly and proportionally. Assuring the proper and restrained application of A.R.S. § 13-705, Arizona’s severe sentence-enhancement statute for Dangerous Crimes Against Children (“DCAC”), falls within the core of AACJ’s mission.

INTRODUCTION

AACJ provides this brief to offer the Court information relevant to its interpretation of Arizona’s DCAC sentencing scheme beyond the parties’ arguments, which focus on the text of the statutes at issue, because legislative

history, public policy, and other considerations continue to bear on statutory interpretation in Arizona. *See, e.g., Garibay v. Johnson*, 565 P.3d 236, 243 ¶ 23 (Ariz. 2025). This Court regularly takes such extra-textual considerations into account in its statutory interpretations, particularly when the concerns at issue are accurately reflected in one reasonable reading of the statute in its context that avoids absurd results, obviously unintended consequences, and potential constitutional violations. *E.g., State v. Foothills Reserve Master Owners Ass’n, Inc.*, 562 P.3d 866, 873-75 ¶¶ 24-29 (Ariz. 2025); *In re Drummond*, 543 P.3d 1022, 1026-27 ¶ 13 (Ariz. 2024); *Ariz. Republican Party v. Richer*, 547 P.3d 356, 368 ¶¶ 38-41 (Ariz. 2024); *AZ Petition Partners LLC v. Thompson*, 255 Ariz. 254, 259 ¶¶ 21-23 (2023).

AACJ offers additional arguments and information (1) related to the DCAC and luring statutes’ legislative history, (2) concerning due process violations akin to sentencing entrapment that could occur under the State’s proposed interpretation of the statute, and (3) regarding Arizona’s notorious mass incarceration problem, to which lengthy DCAC sentences contribute. As discussed below, many people are speaking out about the injustice of such harsh sentences even when real children are involved, because the long sentences often do not match the circumstances of the crime and the person who committed it. Along with the text of the statute, these and other considerations argue against the Court extending the DCAC statute to

require harsh mandatory minimum and consecutive sentences when no real minor children are involved, and the only “children” at issue are fictitious identities created by law enforcement.

I. The legislative history of the DCAC and luring statutes, including amendments before and after the court of appeals’ decision, makes clear that the legislature did not understand the applicable version of § 13-705 to apply to crimes involving fictitious child identities.

In *Wright v. Gates*, this Court explained that a Dangerous Crime Against Children is defined as “any of the enumerated crimes ‘committed against a minor who is under fifteen years of age.’” 243 Ariz. 118, 121 ¶ 13 (2017). “By referring to ‘a’ minor who ‘is’ under fifteen, **the statute ostensibly refers to an actual person.**” *Id.* (emphasis added). The Court acknowledged that the text and context of some statutes require a different definition for “minor,” but “the purpose of [A.R.S. § 13-705] was to provide enhanced punishment for offenders who **harmed actual—not fictitious—children.**” *Id.* ¶ 16.

Thus, it makes sense that the luring statute at issue in this case, A.R.S. § 13-3554, and other statutes that use the same language, like the aggravated luring statute, A.R.S. § 13-3560, distinguish between offenses committed against real minors and those involving fictitious child identities. Subsection (C) of each of those two statutes provides a generally applicable level of felony offense, followed by a clause reading “and if the minor is under fifteen years of age it is punishable pursuant to section 13-705.”

As the State’s brief correctly notes, Senate Bill 1585 was enacted into law earlier this year, and the newly amended version of § 13-705 does not apply to this case. *See* State’s Supp. Br. ep 20-21. Contrary to the State’s assertion, however, the new amendment **does** bear on the Court’s analysis in this case. In fact, this recent amendment makes clear that the previous version of § 13-705 was not understood or intended to apply to offenses involving fictitious child identities.

Senate Bill 1585 was enacted specifically to require DCAC-enhanced sentences for offenses involving fictitious child identities. The Senate Fact Sheet prepared for the bill explicitly states its “Purpose” is to “Modif[y] the definition of a *dangerous crime against children* (DCAC).” Sen. Fact Sheet for S.B. 1585, 1st Reg. Sess. (Ariz. Feb. 20, 2025). The Fact Sheet further specifies that the “Provisions” of the bill would “**Modif[y] the definition of DCAC to include specified acts committed against a person posing as a minor** if the defendant knew or had reason to know that the purported minor was under 15 years old.” *Id.* (emphasis added). The State’s urged reading of the applicable version of § 13-705, in effect before the 2025 amendments, to have already mandated DCAC enhancements for luring crimes involving fictitious child identities, would require the Court to conclude that Senate Bill 1585 amounted to “a void, meaningless, and futile provision,” which the Court may not do. *State v. Pitts*, 178 Ariz. 405, 407 (1994).

A 2022 amendment to the DCAC and luring statutes also clearly supports reading the applicable version of the statutes in this case to mean that DCAC sentencing does not apply to conduct involving fictitious minor identities. 2022 Ariz. Legis. Serv. Ch. 197 (H.B. 2696). Among other changes to several related statutes, this amendment added language to subsection (C) of both the luring and aggravated luring statutes that provide:

A person who is convicted of a violation of this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31–233, subsection A or B until the sentence imposed by the court has been served or commuted.

Id. The Senate Fact Sheet described this portion of bill as making people convicted of certain offenses, including luring and aggravated luring, ineligible for “suspension of sentence, probation, pardon or release from confinement on any basis.” Sen. Fact Sheet for H.B. 2696, 2d Reg. Sess. (Ariz. Mar. 8, 2022).

The purpose in 2022 for making people convicted of certain crimes, including luring and aggravated luring, ineligible for sentence reductions was to punish those people more harshly. The DCAC statute already in place at the time, however, required DCAC sentencing for aggravated luring. A.R.S. § 13-705(E) (2021) (“shall be sentenced” under DCAC). Likewise, the DCAC statute already in effect made a person convicted of Luring “not eligible for release.” A.R.S. § 13-705(F) (2021). Thus, the 2022 sentencing changes to the luring and aggravated

luring statutes must apply to convictions under those provisions that are not subject to DCAC sentencing – in other words, convictions under those statutes that do not involve real minors. Reading the amendments otherwise would impermissibly “render [the] statutory provisions meaningless, unnecessary, or duplicative.” *Ariz. Dep’t of Revenue v. Action Marine, Inc.*, 218 Ariz. 141, 143 ¶ 10 (2008).

In sum, the legislative history, like the text of the applicable DCAC and luring statutes, supports the court of appeals’ conclusion that DCAC sentencing does not apply to luring convictions involving fictitious child identities.

II. A reading of the DCAC statute that allows application to conduct involving fictitious child identities is akin to sentencing entrapment, which violates due process.

Rooted in constitutional due-process principles, the defense of sentencing entrapment or sentencing manipulation recognizes that mandatory-sentencing schemes operate unjustly when fictitious facts developed by law enforcement compel harsh increased sentences. *See, e.g., United States v. Stauffer*, 38 F.3d 1103, 1106 (9th Cir.1994) (“Sentencing entrapment or sentence factor manipulation occurs when a defendant, although predisposed to commit a minor or lesser offense, is entrapped in committing a greater offense subject to greater punishment.”) (cleaned up). As one federal district court explained, government-created or government-escalated crimes pose profound due-process concerns:

To the extent that principles of Due Process are meant to be a check on government power, there is no more fundamental interest than liberty.

A sting operation that constructs a crime implicates liberty interests in a unique way, in that the Government seeks out its citizens for the purpose of testing their willingness to commit a criminal act. There can be no greater manifestation of the coercive power of Government than creating what is, in effect, a morality test, while specifying the penalty for failing that test in advance.

United States v. McLean, 199 F. Supp. 3d 926, 943 (E.D. Pa. 2016).

In the current age of burgeoning artificial intelligence, one can easily conjure how sophisticated computer programs might be used to create and escalate situations involving fictitious child identities. A well-programmed bot could be trained to lurk in chat rooms and identify targeted individuals through algorithms using, for instance, time spent online or language suggestive of certain personality traits. One could imagine that a bot might have success in enticing certain people using expertly manipulative language to gradually suggest and make available younger and younger fictitious identities to those who engage with the bot. Under the State's reading of the DCAC statute, a person who engages only with the bot's successive fictitious child identities could end up with a mandatory decades-long prison sentence. In other words, a real human being could be manipulated by computer programming into committing crimes with no real victims that would require decades in prison. Such a reading of the statute departs from basic humanity, in addition to departing from the statute's text.

Similarly, deft use of large-language programming could produce chats between targeted individuals and fictitious child identities with the goal of

increasing or maximizing the number of luring offenses based on this Court’s holding on the unit of prosecution in *State v. Moninger*, 552 P.3d 519, 525 ¶ 23 (Ariz. 2024). Such government conduct would raise obvious fairness and arbitrariness concerns, but DCAC mandatory minimum and consecutive sentencing would still apply under the State’s reading of the statutes. That result does not comport with due process. *See Wolff v. McDonnell*, 418 U.S. 539, 558 (1974) (“The touchstone of due process is protection of the individual against arbitrary action of government.”).

In sum, due-process concerns also support reading the applicable DCAC and luring statutes as the court of appeals did in this case.

III. Long DCAC sentences contribute to Arizona’s mass incarceration crisis and are not warranted when no real child is involved in a crime.

It is no secret that Arizona has a mass-incarceration problem. With an incarceration rate of 710 per 100,000 people, Arizona “locks up a higher percentage of its people than any independent democratic country on earth.” Prison Policy Initiative, *Arizona profile*, <https://www.prisonpolicy.org/profiles/AZ.html>. Of the approximately 52,000 people behind bars in Arizona, about 34,000 reside in Arizona state prisons. *Id.* The average length of stay for Arizona inmates is a mean of 9.74 years and median 5.00. ADCRR Monthly Data Report, Mar ’25, *available at*

https://corrections.az.gov/sites/default/files/documents/reports/MonthlyDataReport/ADCRR_MDR%20-%20March%202025_FINAL.pdf.

Arizona's prison population has an average age around 37 years old and more than a third of its population over age 40. ADCRR Inmate Fact Sheet, FY 2024, *available at*

https://corrections.az.gov/sites/default/files/documents/reports/InmateFactSheet/FY2024_InmateFactSheet_Final.pdf. The state has struggled notoriously over time

to provide adequate healthcare for Arizona's large and aging prison population.

See, e.g., Hayden Larkin, *Monitoring reports show prison health care provider*

NaphCare, Arizona still noncompliant after 2022 case, Cronkite News (Sept. 20,

2024), *available at* <https://cronkitenews.azpbs.org/2024/09/30/naphcare-arizona-prisons-noncompliant-court-healthcare-standards/>.

AACJ has not identified any good source for numbers or statistics regarding individuals sentenced pursuant to the DCAC statute – who they are, their underlying offense or offenses, how long their cumulative sentences are, and other basic information. The mandatory minimum and consecutive DCAC sentences, however, unquestionably contribute to the number of people incarcerated in Arizona for a long time.

Such lengthy prison sentences may have been what the legislature intended when real minor children are involved in crimes, but even in those cases, many

voices have commented on the injustice of such harsh sentences. For instance, sentencing judges in Arizona have spoken out in proceedings before the Board of Executive Clemency expressing the opinion that DCAC sentencing resulted in sentences much too harsh for the circumstances. As one judge wrote, “Arizona’s harsh [DCAC] sentencing scheme is out of step with all other states.” John Leonardo, *I sent an Arizona man to prison for 290 years. His case still haunts me*, azcentral (Aug. 26, 2024; updated Sept. 3, 2024), available at <https://www.azcentral.com/story/opinion/op-ed/2024/08/26/arizona-law-minimum-sentencing-reform/74893304007/>.

When people are raising concerns about DCAC sentencing for crimes involving real child victims, applying such harsh sentencing to offenses involving only government-created fictitious identities does not make sense. And predicating lengthy prison sentences on conduct involving a fictitious child identities and no real minor children flouts the important and long-standing history of victim-driven criminal justice, as well as the modern-day focus in Arizona on victims’ rights. See Ariz. Const. Art. 2 § 2.1; see also, e.g., Victim Law Bulletin, *Fundamentals of Victims’ Rights: A Brief History of Crime Victims’ Rights in the United States* (Nov. 2011) (“The practice of private prosecution, whereby the crime victim initiated and controlled criminal prosecutions, dates back to the Middle Ages.”), available at <https://law.lclark.edu/live/files/26523-updated-history-of-vr-bulletin>.

Consistent with the text of the applicable statutes, these additional policy concerns weigh against reading the statutes as the State argues.

CONCLUSION

The Court should affirm the opinion of the court of appeals.

RESPECTFULLY SUBMITTED May 1, 2025.

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