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ARGUMENT

When petitioner was convicted of his third Class X felony and sentenced as a habitual criminal in 1995, 720 ILCS 5/33B-1 mandated a natural life sentence for any defendant who was convicted of a third Class X felony, regardless of the defendant's age at the time of the three offenses. 720 ILCS 5/33B-1 (1995). In 2009, 720 ILCS 33B-1 was repealed and recodified at 730 ILCS 5/5-4.5-95(a). *See* Pub. Act 95-1052, § 93; Peo. Br. 3-4. In 2016, the legislature amended 730 ILCS 5/5-4.5-95(a) — the provision that now governs habitual criminal sentencing for recidivist Class X felons — to require that a defendant have been at least 18 at the time of the third offense to receive that mandatory life sentence. In 2021, the legislature amended subsection 95(a) again, changing the age requirement from 18 years old at the time of the third offense to 21 years old at the time of the first offense. As the People demonstrated in their opening brief, petitioner's claim that he was entitled to the benefit of this 2021 amendment under what he called the "evolving law exception" failed to allege a cognizable claim of a constitutional violation. Peo. Br. 15-18.¹ Nor was the 2021 substantive change to subsection 95(a) retroactively applicable to petitioner's 1995 sentence. Peo.

¹ The People follow the citation convention from their opening brief, with these additions: the People's opening brief is cited as "Peo. Br. __," petitioner's brief and the amicus brief are cited as "Pet. Br. __" and "Am. Br. __," respectively, and petitioner's opening brief in the appellate court is cited as "Pet. App. Br. __."

Br. 19-20. Therefore, the circuit court correctly denied petitioner leave to file a successive postconviction petition raising his “evolving law” claim.

On appeal, petitioner abandoned his “evolving law” claim in favor of a new one: that his sentence was statutorily unauthorized when it was imposed in 1995, and therefore violated due process and the proportionate penalties clause of the Illinois Constitution. Petitioner argues that the 2021 amendment to section 95(a) did not change the law, but instead merely clarified the meaning of the law that was in effect at the time of his sentencing in 1995. But petitioner never raised this claim in the circuit court, and so the circuit court cannot have erred by denying him leave to pursue it in a successive postconviction petition.

Moreover, the 2021 amendment to subsection 95(a) was no mere clarification of the law as it existed in 1995. In arguing to the contrary, petitioner both ignores the presumption that the legislature amends a statute to change it, and mistakenly focuses his analysis on the fact that the 2021 amendment added the same language to subsection 95(b), reasoning that if it was added to clarify the meaning of subsection 95(b), the language must have been added to subsection 95(a) for the same purpose. But the 2021 amendment to subsection 95(a) could not have clarified the statute in effect in 1995, for two reasons. First, the 2021 amendment to subsection 95(a) could not clarify the statute that was in effect in 1995 because that was not the statute that it amended; the 1995 statute was not on the books when the

2021 amendment was enacted (and had not been since 2016). Second, the 2021 amendment did not clarify the meaning of the statute that it *did* amend. Barring an express statement by the General Assembly that an amendment was intended to clarify rather than change a prior law, whether an amendment clarified, rather than changed, the meaning of a statute turns on the context in which the amendment was enacted, and the contexts in which subsections 95(a) and 95(b) were amended were very different.

Accordingly, the Court should reverse the appellate court's judgment.

I. The Circuit Court Correctly Denied Petitioner Leave to File a Successive Postconviction Petition Raising a Noncognizable Claim That He Was Entitled to the Benefit of the 2021 Amendment to Subsection 95(a) Under the “Evolving Law Exception.”

Petitioner's proposed petition failed to state a cognizable claim for postconviction relief. Petitioner sought leave to file a successive postconviction petition raising a claim under a purported “evolving law exception,” C313, 318, arguing that although he was subject to a mandatory life sentence when he was sentenced in 1995, he would not have been subject to mandatory life had he been sentenced after the 2021 amendment to subsection 95(a), and he should get the benefit of that change in the law. *See* C314-15 (arguing that age requirement added by 2021 amendment “did not exist” until 2021 but that “if the current law would have been applicable at [his] sentencing,” he would not have been sentenced to life). In other words, petitioner sought to raise a claim for retroactive application of the 2021 law to his 1995 sentencing. But that claim fails to allege any constitutional error,

see 725 ILCS 5/122-1(a)(1) (postconviction petitioner must assert a denial of “rights under the Constitution of the United States or of the State of Illinois” that was “in the proceedings which resulted in his or her conviction”), for there is no constitutional right to the retroactive application of a statutory amendment; rather, whether a statute is retroactive raises a question of statutory interpretation, *see People v. Hunter*, 2017 IL 121306, ¶ 15.

Contrary to his argument on appeal, Pet. Br. 34, the proposed successive postconviction petition did not allege a violation of the proportionate penalties clause of the Illinois Constitution by observing that the penalty he received in 1995 was harsher than the penalty he would have received for the same offense had he been sentenced in 2021, *see* C315. And, in any event, petitioner’s belated argument that it would violate the proportionate penalties clause if, in 1995, defendants under the age of 21 who committed a third Class X felony received mandatory natural life sentences, while defendants under the age of 21 who committed a third Class 1 or Class 2 offenses could not receive a Class X sentence, *see* Pet. Br. 35-36, is incorrect. Petitioner’s comparison of the respective penalties for his Class X convictions and for Class 1 and 2 felony convictions, Pet. Br. 35-36, cannot be the basis of a proportionate penalties clause challenge. “A defendant may no longer challenge a penalty under the proportionate penalties clause by comparing it with the penalty for an offense with different elements.” *People v. Sharpe*, 216 Ill. 2d 481, 521 (2005). Petitioner fails to identify any Class 1 or 2 felony

with the same elements as either his Class X sexual assault conviction or his Class X kidnapping conviction. Therefore, even if petitioner’s proposed petition had included a proportionate penalties clause claim (which it did not), the petition could not state such a claim. *See People v. Flores*, 153 Ill. 2d 264, 278 (1992) (petitioner does not allege cognizable postconviction claim by “merely attach[ing] a constitutional label to factual allegations that do not themselves raise an issue of constitutional proportion”).²

Rather than reasserting his “evolving law” claim, on appeal, petitioner switched gears, asserting that his mandatory life sentence violated the statute in effect in 1995 and therefore violated the due process clause of the United States Constitution and the proportionate penalties clause of the Illinois Constitution. Pet. App. Br. 18-20; Pet. Br. 34-35. In other words,

² The Court need not address the additional proportionate penalties challenge raised by amici (which petitioner has never raised), *People v. P.H.*, 145 Ill. 2d 209, 234 (1991), i.e., that petitioner’s life sentence violated the proportionate penalties clause because it inadequately accounted for his rehabilitative potential, Am. Br. 23-26. Yet, it is worth noting that both petitioner, *see* Pet. Br. 1, and amici misunderstand how recidivism provisions operate. The sentence that petitioner received in 1995 punished him for his third Class X felony conviction — the sexual assault and kidnapping that he committed when he was 31 — not the prior Class X felonies that he committed when he was 17 and for which he had already been punished. Amici do not explain how petitioner, who at the age of 31 committed his third Class X felony, had such rehabilitative potential that the General Assembly could not deem a life sentence proportionate without “shock[ing] the moral sense of the community.” *People v. Coty*, 2020 IL 123972, ¶ 31. Indeed, “[t]he purpose of a recidivist statute” such as subsection 95(a) “is to impose harsher sentences on offenders whose repeated convictions have shown their resistance to correction.” *People v. Pastewski*, 164 Ill. 2d 189, 196 (1995) (quoting *People v. Robinson*, 89 Ill. 2d 469, 476 (1982)).

petitioner claimed in the circuit court that his 1995 sentence was unlawful because the 2021 amendment changed the law, while on appeal, he claimed that his 1995 sentence was unlawful because the 2021 amendment did *not* change the law.

But whether the circuit court erred by denying leave to file a successive postconviction petition turns on the petition's proposed claims; petitioner cannot fault the circuit court for denying leave to pursue a claim that he never mentioned in circuit court and raised for the first time on appeal. *See People v. Hilliard*, 2023 IL 128186, ¶ 32 (refusing to consider arguments based on allegations not set forth in the postconviction petition); *People v. Petrenko*, 237 Ill. 2d 490, 497-98, 502-03 (2010) (petitioner barred from raising legal issue on appeal based on facts in petition where legal theory was not alleged in petition); *see also* 725 ILCS 5/122-2 (petition must “clearly set forth the respects in which petitioner’s constitutional rights were violated”); 725 ILCS 5/122-3 (“Any claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived.”).

For these reasons, the circuit court correctly denied petitioner’s motion for leave to file a successive postconviction petition raising his claim to an “evolving law exception.”

II. Petitioner’s Claim that the 2021 Amendment to Subsection 95(a) Applied to His Sentencing in 1995 Is Meritless.

Even if petitioner had preserved his current claim that that his mandatory life sentence violated the statute in effect in 1995 and therefore violated the due process clause of the United States Constitution and the proportionate penalties clause of the Illinois Constitution, the circuit court would have correctly denied petitioner leave to raise it in a successive postconviction petition because any claim that the 2021 amendment to subsection 95(a) applied to petitioner’s 1995 sentencing would be meritless. The 2021 amendment to subsection 95(a) was neither a retroactively applicable change in the law nor a clarification of the law as it existed in 1995.

A. The 2021 amendment to subsection 95(a) did not apply retroactively.

This Court has already held that the public act implementing the 2021 amendment to subsection 95(a) had prospective effect only. In *People v. Alvin Brown*, this Court held that the legislature “clearly stated its intent” that Public Act 101-652, which includes the amendment to subsection 95(a), “apply prospectively” by expressly delaying the implementation date. 2024 IL 129585, ¶ 37; *see also* Peo. Br. 19-21. Accordingly, the 2021 amendment to subsection 95(a) does not apply retroactively to petitioner’s 1995 sentencing.

Indeed, the 2021 amendment would not apply retroactively to petitioner’s 1995 sentencing even if the General Assembly had not expressly stated its intent that the 2021 amendment apply prospectively. When the

General Assembly does not specify the temporal reach of an amended statute, that reach is determined by the default rule provided in section 4 of the Statute on Statutes. *Perry v. Dep’t of Fin. & Pro. Regul.*, 2018 IL 122349, ¶ 44. And under section 4, “a punishment mitigated by a new law is applicable only to judgments after the new law takes effect.” *People v. Hunter*, 2017 IL 121306, ¶ 54 (internal quotation marks omitted); 5 ILCS 70/4. Petitioner thus correctly recognized in the circuit court that the 2021 amendment to subsection 95(a) “change[d]” the law by reducing the penalty for the third Class X felony conviction of a defendant who committed his two prior Class X felonies before he turned 21. C314-15. Accordingly, had petitioner raised his current claim that the 2021 amendment applies retroactively, the circuit court would have correctly denied him leave to file a successive postconviction petition raising this meritless claim.

B. The 2021 amendment to subsection 95(a) changed, and did not merely clarify, existing law.

Indeed, petitioner concedes that where a statutory amendment works a change in the law and has a delayed effective date, that amendment does not apply retroactively. Pet. Br. 24. In arguing that the 2021 amendment to subsection 95(a) nonetheless applies to his 1995 sentencing, he reverses the position he took in the circuit court and argues that the 2021 amendment did *not* change the law but merely clarified what subsection 95(a) meant — or rather, what subsection 95(a)’s predecessor, section 33B-1, meant in 1995.

Compare Pet. Br. 15-16, *with* C314-15. Petitioner’s new argument is no more persuasive than the one he abandoned.

A statutory amendment is presumptively intended to change existing law. *See K. Miller Constr. Co. v. McGinnis*, 238 Ill. 2d 284, 299 (2010). This presumption may be overcome, but only in rare circumstances where the General Assembly’s intent to clarify the meaning of prior law is clear from the language of the amendment or its context. *See id.* at 298–99.

Accordingly, to determine whether an amendment is a clarification of rather than a change to prior law, this Court considers whether (1) the legislature stated that it was clarifying the prior law, (2) the language of the prior law was ambiguous and courts disagreed on its meaning (such that the legislature would have amended the law in response to a perceived need for clarification), and (3) the amendment is compatible with a reasonable interpretation of the prior law and its legislative history. *Id.* at 299.

This Court applied this analysis in *Stewart*, where it reviewed the context in which subsection 95(b) was amended and determined that the amendment was a rare instance in which the legislature intended to clarify rather than change existing law. 2022 IL 126116, ¶¶ 21-22. Prior to its amendment in 2021, subsection 95(b) expressly limited its application to circumstances “[w]hen a defendant, over the age of 21 years,” was convicted of a third Class 1 or Class 2 offense, 730 ILCS 5/5-4.5-95(b) (eff. Jan. 1, 2009-June 30, 2021); 730 ILCS 5/5-5-3(8) (eff. April 31, 2000-Dec. 31, 2008), and

the appellate districts had reached conflicting decisions over whether prior offenses committed when a defendant was a juvenile were qualifying prior convictions under subsection 95(b), *Stewart*, 2022 IL 126116, ¶ 17. In response to this split in authority, the legislature amended subsection 95(b) to specify that the defendant had to have been at least 21 at the time of the prior offenses. *Id.* ¶ 19. Given this context, this Court concluded that the 2021 amendment to subsection 95(b) was intended to clarify the prior law, *id.* ¶¶ 21-22, and for good reason: the prior law had included an age requirement of 21 years but was ambiguous as to whether that age requirement applied to prior offenses, the appellate court had split over whether there was an age requirement for prior offenses, and the legislature then amended the statute to resolve that disagreement. *See* Peo. Br. 23-24.

Subsection 95(a) shares none of this context. The version of subsection 95(a) that was amended in 2021 was unambiguous: it specified that a defendant was a habitual criminal subject to a mandatory life sentence if he had “attained the age of 18 at the time of the third offense.” 730 ILCS 5/5-4.5-95(a) (eff. Jan. 1, 2016 through June 30, 2021). Before its amendment in 2021, subsection 95(a) made no reference to a defendant being at least 21 years old at the time of any offense. Given the clarity of the pre-amendment statute’s requirement that a defendant be at least 18 at the time of his third offense, no court had ever construed it as requiring that a defendant be at least 21 at the time of his first offense. Thus, subsection 95(a) contained no

ambiguity regarding whether a defendant had to be 21 at the time of his first offense.

Nor was the 2021 amendment compatible with any reasonable interpretation of the prior version of subsection 95(a). The 2021 amendment's requirement that defendants be "21 years of age or older" at the time of the first offense cannot be harmonized with the prior version requiring that defendants be at least 18 at the time of the third offense. *Peo. Br. 28*. As a matter of legislative drafting, it would make no sense to specify that a defendant must be at least 18 at the time of his third offense if the intended requirement is that he be at least 21 at the time of his first offense. And indeed, the legislature addressed the incompatibility of the two age requirements in the 2021 amendment itself, which not only added the requirement that a defendant be 21 at the time of the first offense, but removed the prior requirement that the defendant be at least 18 at the time of the third offense. *See Public Act 101-652, § 10-281*. Thus, the context in which subsection 95(a) was amended in 2021 provides nothing to rebut the presumption that the replacement of the existing age requirement with a different age requirement was intended to change the law.

In arguing to the contrary, petitioner makes three fundamental errors. First, his invocation of "retroactivity" fails to recognize the distinction between substantive changes to the law and mere clarifications of existing law. *Pet. Br. 12, 22-23*. Second, he ignores the context in which the 2021

amendment to subsection 95(a) was enacted. *Id.* at 20-22. And third, he focuses on the wrong statute, arguing that the 2021 amendment to subsection 95(a) was intended to clarify section 33B-1, which had not been in effect since 2016, rather than the version of subsection 95(a) that was in effect at the time of the 2021 amendment. *Id.* at 13-20.

1. Petitioner’s invocation of “retroactivity” fails to distinguish changes to from mere clarification of existing law.

As an initial matter, petitioner fails to distinguish between (1) changes in the law, which raise questions of retroactivity, and (2) clarifications of the law, which do not. Retroactivity refers to the retroactive application of a change in the law. When the change is a judicial change, such as the pronouncement of a new constitutional rule, retroactivity turns on the nature of the new judicial rule. *See People v. Davis*, 2014 IL 115595, ¶¶ 34-36 (explaining retroactivity analysis for new constitutional rules under *Teague v. Lane*, 489 U.S. 288 (1989)). When the change is a legislative change via statutory amendment, retroactivity turns on the legislature’s intent regarding the temporal reach of the amendment. *See Stewart*, 2022 IL 126116, ¶ 20. If an amendment does not change the substance of a statute (such as by merely clarifying the statute’s current meaning), then the law is the same both before and after the amendment, and the question of retroactivity does not arise. Thus, petitioner’s assertions that the 2021

amendment applied “retroactively” as a clarification of the law are a non sequitur. *See* Pet. Br. 9-11.³

Relatedly, petitioner notes that where a court construes a statute to narrow the scope of a criminal offense or punishment, that is a substantive ruling that applies retroactively on collateral review. Pet. Br. 22-23. This rule has no application here. The issue in this case is the effect, if any, to petitioner’s sentence of the General Assembly’s 2021 amendment to subsection 95(a), not a judicial construction of subsection 95(a). Indeed, petitioner points to no judicial construction of subsection 95(a) that narrows its scope. Petitioner invokes *Stewart*, *see* Pet. Br. 22-23, but *Stewart* says nothing about subsection 95(a). Instead, *Stewart* interpreted the 2017 version of subsection 95(b), and considered whether the 2021 amendment shed light on the General Assembly’s intent with respect to the prior law. *See* 2022 IL 126116, ¶¶ 1, 22. Accordingly, petitioner’s citations to federal cases addressing whether a judicial construction of a criminal statute apply to cases on collateral review are inapposite. *See* Pet. Br. 22-23 (citing *Bousley v. United States*, 523 U.S. 614, 620 (1998) ; *Narvaez v. United States*, 674

³ A commentator’s opinion that clarification employs a “retroactivity idiom,” Pet. Br. 26 (citing Singer & Singer, *Sutherland Statutes and Statutory Construction*, Sec. 22:34 (8th ed. 2022)), does not collapse the distinction between amendments that change the law and amendments that merely clarify the law. If a law’s meaning is the same after an amendment as it was before the amendment, then the amendment introduced nothing to apply retroactively.

F.3d 621, 625 (7th Cir. 2011); *Welch v. United States*, 578 U.S. 120, 128 (2016)).

In sum, petitioner’s new argument that the 2021 amendment to subsection 95(a) applies to his 1995 sentencing raises no question of “retroactivity.” Rather, his argument presents a question of statutory interpretation: whether the General Assembly’s 2021 amendment to subsection 95(a) clarified, as opposed to changed, the prior law, which it did not.

2. Petitioner’s argument that the 2021 amendment clarified subsection 95(a) incorrectly ignores the context in which the amendment was enacted.

In arguing that the 2021 amendment to subsection 95(a) clarified rather than changed the law, petitioner fails to engage with the context in which the 2021 amendment was adopted. As explained, *see supra* p. 9, this Court in *K. Miller Construction* described the rare circumstances in which a statutory amendment may be deemed a clarification of existing law: where the General Assembly states in the amendment that it is clarifying existing law, where the amendment is enacted in response to an ambiguity in the prior law that produces a conflict among the appellate districts, and where the amendment is compatible with a reasonable interpretation of the prior law and its legislative history. *See* 238 Ill. 2d at 299.

Petitioner’s argument that the 2021 amendment merely clarified subsection 95(a) addresses only one of these factors — split in authority — and does so incorrectly. *See* Pet. Br. 28-30. Petitioner asserts that the

appellate districts had divided over the proper application of both subsections 95(a) and 95(b), *id.* at 28, but none of the decisions petitioner cites addressed subsection 95(a). *See People v. Williams*, 2020 IL App (1st) 190414, ¶¶ 13 (addressing subsection 95(b)); *People v. Miles*, 2020 IL App (1st) 180736, ¶ 10 (same); *People v. Reed*, 2020 IL App (4th) 180533, ¶¶ 17, 29 (same). In fact, to the extent that these decisions mentioned subsection 95(a), they did so to reject the People's argument that subsection 95(b) was analogous to subsection 95(a), and not to interpret subsection 95(a). *See Williams*, 2020 IL App (1st) 190414, ¶ 20; *Miles*, 2020 IL App (1st) 180736, ¶¶ 18-21; *Reed*, 2020 IL App (4th) 180533, ¶¶ 22-23. Petitioner's reliance on the First District's decision in *People v. Durant*, Pet. Br. 26-27, is misplaced for the same reason: the court there failed to consider any factors set forth in *K. Miller Construction* when deciding that the 2021 amendment clarified, rather than changed, subsection 95(a). *See Durant*, 2024 IL App (1st) 211190-B, ¶¶ 29-38 (extending *Stewart's* holding with respect to subsection 95(b) to subsection 95(a) without analysis).

Further, petitioner's argument that the language added to subsections 95(a) and 95(b) is the same and therefore the subsections must have the same meaning, *see* Pet. Br. 20-22, is misplaced. As this Court explained in *K. Miller Construction* and *Stewart*, whether an amendment clarified rather than changed the prior law turns on the circumstances under which the amendment was enacted, including whether there was a conflict or ambiguity

regarding the meaning of the statute before its amendment and whether the amendment is consistent with a reasonable interpretation of the pre-amendment statute and its legislative history. *K. Miller Constr.*, 238 Ill. 2d at 299; *see also Stewart*, 2022 IL 126116, ¶ 20. Petitioner mistakenly focuses on the text of the amendment in isolation from the text and history of the statute it was amending: the 2016 version of subsection 95(a).

This error explains petitioner’s insistence that it would be “absurd” for the addition of the same language to subsections 95(a) and 95(b) to change subsection 95(a) but clarify subsection 95(b). *See Pet. Br.* 11, 27-28. Because whether an amendment to a statute is a change or clarification depends on the text and history of the statute being amended, it is not absurd to conclude that the addition of the same language to two different subsections with different text and history generates two different results.

For example, suppose there were two statutes, one that prohibited life sentences for certain recidivist offenders unless “the defendant was 21 or older at the time of the first offense” and the other prohibiting life sentences for other recidivist offenders unless “the defendant was 25 or older at the time of the first offense.” If both of those statutes were amended so that they both prohibited life sentences for their respective groups of recidivist offenders unless “the person was at least 21 years of age at the time of the first offense,” that language would plainly be a clarification of the statute that previously required that the defendant be at least 21 at the time of the

first offense. But it would just as plainly be a change to the statute that previously required that the defendant be at least 25 at the time of the first offense. The bare fact that the same language was added to both statutes would be irrelevant to determining the effect of that addition to each statute.

The same is true here. Subsection 95(a) had different language and a different legislative history than subsection 95(b), and as a result of that distinct context, the effect of the 2021 amendments is different for each subsection. Subsection 95(b) contained an ambiguous requirement that a defendant be at least 21 to be sentenced under that provision, and there was a conflict among the appellate districts regarding what age a defendant had to be at the time of his first offense. *See Stewart*, 2022 IL 126116, ¶ 21 (describing split in appellate authority). In this context, the 2021 amendment's language specifying that a defendant must be at least 21 at the time of the first offense clarified subsection 95(b)'s ambiguous reference to 21 years. But subsection 95(a) contained no reference to the age of 21. Rather, it contained an unambiguous requirement that a defendant be at least 18 at the time of his third offense, and there was no ambiguity regarding the meaning of that requirement. In that context, the addition of the requirement that the defendant be at least 21 at the time of his first offense changed the substance of the statute.

Nor is it absurd that the legislature would treat subsection 95(a) and 95(b) differently. Indeed, it has treated them differently since they were first

enacted. Subsection 95(a), which governs recidivist Class X offenders, always provided for harsher punishment, because the convictions that triggered that provision are for more serious crimes than those addressed in subsection 95(b), which governs recidivist Class 1 and Class 2 offenders. Subsection 95(a) also had always applied to a wider range of offenders in terms of age; it initially contained no age restriction, then required offenders to be 18 at the time with the first offense, while subsection 95(b)'s text always included a 21-year-old age requirement. It was only in 2021 that both statutes were amended to require that defendants be at least 21 at the time of their third offense.

3. Petitioner's analysis focuses on the wrong version of the statute.

Petitioner's analysis focuses on the wrong version of subsection 95(a). Petitioner argues that the 2021 amendment clarified the sentencing statute that applied to his 1995 conviction, i.e., 720 ILCS 5/33B-1. Pet. Br. 13-20. But the 2021 amendment to subsection 95(a) amended the 2016 version of subsection 95(a). The 2021 amendment could not have amended the 1995 version because that statute was no longer in effect in 2021. Neither subsection 33B-1 (which was in effect in 1995) nor its substantively identical successor (the pre-2016 version of subsection 95(a)) had been in effect since 2016. Therefore, the 2021 amendment to the 2016 version of subsection 95(a) could not have been intended to clarify the law in effect in 1995 because that law no longer existed.

Moreover, even if there were some reason to believe that the legislature would amend a statute that no longer exists, the 2021 amendment to subsection 95(a) cannot have been intended to clarify the statute in effect in 1995, for that statute was unambiguous. From 1978 through 2015, the statute provided that “[e]very person” who is convicted of a third Class X felony “shall be adjudged an habitual criminal.” 720 ILCS 5/33B-1(1995); *see* 730 ILCS 5/5-4.5-95(a) (eff. July 1, 2009-Dec. 31, 2015) (same). The statute did not refer anywhere to the age of 21 or include any age requirement for any of the three offenses. No court ever construed it as requiring that a defendant be at least 21 when he committed his first offense, and for good reason: a court could not construe the statute that way without rewriting it. *See People v. Smith*, 2016 IL 119659, ¶ 28 (court may not “rewrite a statute to add provisions or limitations the legislature did not include”). Therefore, even if the 2021 amendment was intended to amend the pre-2016 statute, it could not have been a clarification of that statute because it was not consistent with any reasonable construction of the statute. *Stewart*, 2022 IL 126116, ¶ 20 (for amendment to clarify statute, statute must be ambiguous and amendment must be “consistent with a reasonable interpretation of the prior enactment and its history”).

Indeed, the legislature recognized that the pre-2016 statute did not have any age requirement for any of the three offenses. In 2016, the legislature amended the statute to require that a defendant be at least 18 at

the time of his third offense, thereby excluding juvenile defendants from sentencing as habitual criminals. This amendment would have been unnecessary if the statute already excluded not only defendants who were under 18 at the time of their third offense, but defendants who under 21 at the time of their first offense.

Contrary to petitioner's assertion, Pet. Br. 11, the 2016 amendment cannot be disregarded on the ground that it was part of a broader initiative to provide greater protections for juvenile offenders across the Criminal Code. Adopting petitioner's view would turn principles of statutory interpretation on their head. The purpose of statutory interpretation is to give effect to the legislature's intent, with the language enacted by the legislature being the best indication of that intent. *Stewart*, 2022 IL 126116, ¶ 13. A court cannot treat an entire legislative enactment as a nullity. The Court should reject this upending of the principles of statutory interpretation and apply the 2021 amendment to subsection 95(a) as the legislature intended: a substantive change to the prior version of the law, not a clarification.

CONCLUSION

This Court should reverse the judgment of the appellate court.

July 28, 2025

Respectfully submitted,

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RULE 341(c) CERTIFICATE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service and those matters to be appended to the brief under Rule 342(a), is 5,182 words.

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CERTIFICATE OF FILING AND SERVICE

Under penalty of law as provided in 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct.

On July 28, 2025, the foregoing **Reply Brief of Respondent-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the electronic filing system, which provided notice to the following registered email address:

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