



# Justice for Victims of Child Sexual Abuse Task Force Recommendations

# Recommendations - Civil

- ▶ Assist GOYFF in spreading awareness of new law lifting civil S of L
- ▶ Funding competitive grants for organizations, including FACs to provide services for Vs of sexual abuse, sex trafficking.
- ▶ Funding for 24-hour hotline to report abuse
- ▶ Require courts to report on number of cases filed/age of each plaintiff since new law to determine appropriate age for S of L
  - ▶ Work with universities to study extending S of L

# Recommendations - Education

- ▶ Assign DOE to
  - ▶ Create statewide training on MRL and additional resources for students and parents
  - ▶ Determine best practices for social media/cell phone use between students and educators, coaches, etc.
- ▶ Expand DOE jurisdiction to uncertified educators (currently approx. 6K)
- ▶ Fund additional DOE investigators to lower caseload from 120-150 to 50.

# Recommendations - Education

- ▶ Require DCS/DOE to come up with program for schools to teach prevention and awareness to teachers and students.
- ▶ Spread awareness in schools of 24-hour hotline.
- ▶ Require DCS to provide age-appropriate children with info on preventing and reporting abuse before being placed in foster/group home.

# Recommendations – Criminal

- ▶ No S of L for Child Sex Trafficking
- ▶ Expand definition of “Position of Trust”

# Position of Trust - Current

- ▶ The minor's parent, stepparent, adoptive parent, legal guardian or foster parent.
- ▶ The minor's teacher.
- ▶ The minor's coach or instructor, whether the coach or instructor is an employee or volunteer.
- ▶ The minor's clergyman or priest.
- ▶ Engaged in a sexual or romantic relationship with the minor's parent, adoptive parent, legal guardian, foster parent or stepparent.

# Position of Trust – 2 impacts

- ▶ Sexual Abuse (13-1404): Do NOT have to show lack of consent for Vs 15 – 17
- ▶ Sexual Conduct with a Minor (13-1405): Sex with a 15 – 17 year old elevated from a class 6 felony to a class 2 felony.
  - ▶ Class 6: .33 – 2 years DOC (85%) or probation.
  - ▶ Class 2: 3 – 12.5 DOC (100%)

# Possible Positions of Trust

- ▶ Other relatives
- ▶ Employers/bosses
- ▶ People 10 years older than V



# Recommendations

- ▶ Statute to allow judges to disallow pro se defendants from questioning their victims in court under certain circumstances.

# ARS 13-4253, AZ Supreme Court 1989

- ▶ An exception exists, we hold, under both the state and federal constitutions, where the state sustains its burden of proving by an individualized showing to the trial court that face-to-face testimony would so traumatize a child witness as to prevent the child from reasonably communicating.

# Recommendations

- ▶ Special probation terms, including
  - ▶ Not enter any school grounds unless registered as a student at that school.
  - ▶ Obtain prior written approval of the APD before going within 500 feet of any shelter, safe house, group home or similar facility.
  - ▶ Not go to a hotel or motel without the prior written approval of APD.
  - ▶ Not loiter in the area of 27th Ave btw Indian School and Northern.

# Recommendations

- ▶ Statute that prohibits a finding in a dependency/severance case from impacting a criminal prosecution.

# Bottom Line of State v. Crosby-Garbotz

- ▶ A judge's decision in a dependency and severance case that DCS has not proven its case bars the State from prosecuting the case based on the same issues.

# Facts

- ▶ DCS filed a dependency petition against parents for severely abusing 5 mo.
- ▶ Pima County Attorney's Office indicted them for child abuse.
- ▶ Victim suffered
  - ▶ Subdural hematoma
  - ▶ Bilateral retinal hemorrhaging
  - ▶ Retinoschisis

# Rulings

- ▶ Pro tem judge ruled that DCS had not proven its case.
- ▶ Defense atty asked for prosecution to be dismissed.
  - ▶ Trial court refused and Court of Appeals agreed
  - ▶ Az Supreme Court granted (4 – 3 decision)

# Crosby Opinion (Justice Bales)

- ▶ Issue preclusion serves to “protect[] litigants from the burden of relitigating an identical issue” and to “promot[e] judicial economy by preventing needless litigation.” As our courts have noted, the doctrine seeks to avoid the basic unfairness associated with duplicative, harassing litigation.
- ▶ (Citations omitted)



# Crosby Dissent (Justice Ann Timmer)

- ▶ This is not a case in which the State pursued criminal charges to get a “second bite at the apple” after failing to prove its case in dependency proceedings—a scenario that may result in the “rare circumstance” when issue preclusion should apply. The State indicted Crosby while the dependency proceedings were pending, and the superior court had exclusive authority in that circumstance to adjudicate the criminal charge against him through the criminal trial process. See § 8-202(C)(1). By applying issue preclusion here, the majority eradicates that authority and bypasses the prosecution and public’s interest and roles in the pending criminal proceedings.

	<b>Dependency</b>	<b>Criminal</b>
<b>Time to File</b>	72 hours after taking child (usually immediately to protect child)	Can wait until investigation complete*
<b>Time to Trial</b>	90 days from filing dependency motion	270 days
<b>Trier of Fact</b>	Judge	Jury
<b>Right to Jury Trial</b>	None.	Both parties. Guaranteed by statute, rule and case law.
<b>Focus</b>	Best interests of the child	Accountability and punishment of the offender.

\*In child physical abuse cases, the statute of limitations is 7 years from the date of report/discovery of the crime. In class 2 child sexual abuse cases, there is no statute of limitation.

	<b>Dependency</b>	<b>Criminal</b>
<b>Victim's Rights</b>	Not provided in Az Constitution for these proceedings.	Guaranteed by Az Constitution, statute, and rules.
<b>Standard of Proof</b>	Dependency – Preponderance Severance – Clear & Convincing.	Beyond a reasonable doubt.
<b>Court Proceedings</b>	Open, but admonished to maintain confidentiality.	Open to public.
<b>Evidence</b>	Far less structured.	Structured – rules governing admissibility apply to both sides.

# Other States that have rejected issue preclusion include

- ▶ Washington
- ▶ Michigan
- ▶ Illinois
- ▶ Florida
- ▶ Minnesota
- ▶ Ohio

# Not addressed by Az Supreme Court

- ▶ Victim's rights are unique to criminal cases
- ▶ State has a right to a jury trial

# Legislative Intent

- ▶ ARS 13-103(A): The legislature abolished all common law offenses and affirmative defenses. Issue preclusion is a common law concept.
- ▶ ARS 8-202(C): Juvenile court shall not consolidate a criminal proceeding that involves a child who is subject to the jurisdiction of the juvenile court.
- ▶ ARS 28-1321(N) shows a similar principle: If a driver's license suspension is not sustained by the administrative law judge, the ruling has no effect on any criminal court proceeding.

# My recommendation

- ▶ Wait.
- ▶ MCAO has a case poised to re-present this issue to the Supreme Court with additional arguments.
- ▶ If legislation is proposed, court may decline jurisdiction to wait for legislation. Case needs to be overturned.

# Other Recommendations - Criminal

- ▶ Funding mechanism for forensic interviews
- ▶ Funding mechanism for cold cases units
- ▶ Have DPS study creation of statewide database for LE