



# 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.

# Awareness 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 wanted to get a “second bite at the apple” after failing to prove its case in dependency proceedings . . . [t]he State indicted Crosby while the dependency proceedings were pending, and the [criminal] court had exclusive authority in that circumstance to adjudicate the criminal charge . . . 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



# Other Recommendations - Criminal

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