

ARIZONA JUVENILE LAW LEGAL RESEARCH:
RESOURCES AND STRATEGIES

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I. INTRODUCTION

This article aims to provide a practical resource not currently available to juvenile attorneys helping Arizona's children and youth find permanency and support as they grow to adulthood. This article provides a comprehensive review of the history of Arizona juvenile law and available Arizona legal resources along with their usefulness and accessibility for the Arizona

juvenile legal practitioner. It also provides assessments of the cost, best applications, overall utility and locations of the various resources around the state. The appendices include outlines of the Arizona case law regarding both delinquent and dependent juveniles.

In 2007, the author was an extern with the Honorable John M. Gaylord,¹ a Maricopa County Superior Court judge on a juvenile assignment. With reassignment on the horizon, Judge Gaylord hoped to give his successor a “leg up” on learning what he had spent significant time learning on his own. He remarked that the learning curve for him, particularly in the relatively specialized area of the law relating to dependent children, had taken about a year, despite his significant prior legal experience. Based on observing the issues and questions presented by many different cases in Judge Gaylord’s court, the author developed the two Arizona juvenile case law outlines included in this article. Subsequent research indicates that, at present, there is no current guide to Arizona-specific legal research that identifies existing resources and assesses their value to the practitioner’s work. The objective of this article is to create such a guide, as well as provide a resource that summarizes Arizona juvenile case law from a practitioner’s perspective.

II. ARIZONA JUVENILE LAW HISTORY

Arizona began its juvenile court system before statehood. In 1907, the Territory of Arizona adopted the Juvenile Court Act, which stated in its preamble:

[E]xperience has shown that children *lacking proper parental care or guardianship are led* into courses of life which may render them liable to the pains and the penalties of the criminal law of the Territory, although in fact *the real interests of such child* or children, *require* that they be not incarcerated in the penitentiaries and jails as members of the criminal class but be *subjected to a wise care, treatment and control*, that their evil tendencies may be checked and their better instincts may be strengthened²

The preamble makes the observation that it is the absence of family support that creates the potential for children to become delinquent. Accordingly, the statutes represent the state’s efforts to compensate, via a compul-

¹ The author dedicates this work to the memory of Judge Gaylord, who loved his opportunity to serve Arizona’s children and youth as a juvenile court judge.

² 1907 Ariz. Sess. Laws 142 (emphasis added).

sory process, for the lack of familial care, treatment, and control of the child. The author, a former foster parent and former member of a Foster Care Review Board, acutely recognizes that the state is not the best parent. Through the state, however, has an interest and responsibility to the child to help when natural parents cannot or are not willing to parent or control. In implementing this responsibility, one guiding principle is used, one that is embodied in this earliest declaration of the purpose of Arizona juvenile law: “the real interests of [the] child”³ Today, this principle has become the “best interests of the child standard” and is used to govern the decisions made in nearly all juvenile dependency and child custody proceedings in Arizona. While many changes to the law have occurred since 1907, the principles enunciated above still continue to guide Arizona’s juvenile system today.

In addition to the many state and federal statutory changes since 1907, the United States Supreme Court has intervened in the juvenile court arena numerous times. Beginning in 1966, in cases from the District of Colombia⁴ and Arizona,⁵ the Court directed that the protections found in adult court, such as *Miranda* warnings, should be included in portions of the juvenile court process. An excellent review of the major developments in juvenile law in this country may be found on pages five through twenty-one of *Arizona Juvenile Law and Practice*.⁶

III. JUVENILE LEGAL TERMINOLOGY

When the juvenile courts were created a new terminology was developed to differentiate and remove the stigma of words like “criminal” and “conviction.” Terms such as “delinquent,” “incorrigible,” and “dependent” emerged both as labels and as legal statuses of juveniles defined in statutes. Juvenile court proceedings generally follow a criminal procedure model but use different words at each step of the process. A few key definitions of terms used in this guide are included as an aid to the reader. For a comprehensive list of juvenile law related terms and acronyms, see those in Appendix B in *Arizona Juvenile Law and Practice*.⁷

³ *Id.*

⁴ *Kent v. United States*, 383 U.S. 541 (1966).

⁵ *In re Gault*, 387 U.S. 1 (1967).

⁶ THOMAS A. JACOBS, *ARIZONA JUVENILE LAW AND PRACTICE* 6-25 (2007-08 ed. 2007).

⁷ *Id.* at 365, 371.

Delinquency: Describes the legal process utilized by a juvenile court when dealing with juveniles who have committed acts that, if committed by adults, would be crimes⁸ as well as some juvenile-specific status offenses.⁹

Dependency: Describes the legal process used by the juvenile court to handle cases involving abused and neglected (“dependent”) children who may become or are wards of the state.¹⁰

Detention: Time spent in a secured facility analogous to a jail for juveniles.¹¹ Detention centers are run by the juvenile courts; adjudicated (“convicted”) delinquent juveniles may receive at disposition (“sentencing”) a term of incarceration in a facility analogous to a prison run by the Department of Juvenile Corrections.

Juvenile: A person under the age of 18.¹² Juveniles as young as eight may be found competent to participate in the proceedings as determined by the juvenile judge in a competency hearing.¹³

Juvenile Court: A judicial function performed in each county by the Superior Court of Arizona; in some counties, the juvenile court is a division of the Superior Court sitting in that county.¹⁴

Title 8 Guardianship: A dispositional alternative in a dependency proceeding where an adult is granted a legal right, superior to the natural parents’ rights, to make decisions for and have physical custody of a child but does not become the child’s parent (in contrast with adoption).¹⁵

Because of the similarity between adult criminal proceedings and juvenile proceedings, the decisions made in adult cases have been applied analogously in juvenile cases. The researcher should be cautioned, however, that since the juvenile courts have specific court rules and statutes, making the argument that an adult criminal or other civil decision controls on similar facts should be made with caution. Experience and a review of the cases indicates that the Arizona juvenile court process provides the juvenile judge with flexibility in tailoring a solution to enable him or her to best help a juvenile. This flexibility stands in contrast with the rigid sentencing guide-

⁸ ARIZ. REV. STAT. ANN. §§ 8-201(10), (11) (2008).

⁹ An example would be an “incorrigible child,” which is a child who is habitually truant or a runaway. *Id.* § 8-201(16)(a-f).

¹⁰ See *id.* § 8-201(13) for a discussion of what constitutes a “dependent child.”

¹¹ *Id.* § 8-201(14).

¹² *Id.* § 8-201(6).

¹³ See *id.* § 8-201(13)(iv); *id.* § 8-291(2) (“[a]ge alone does not render a person incompetent.”).

¹⁴ ARIZ. REV. STAT. ANN. § 8-201(18).

¹⁵ *Id.* § 8-871.

lines imposed by the legislature in the adult system and is a reflection of the juvenile court's goals of reformation and restitution rather than retribution.

IV. ARIZONA JUVENILE LEGAL RESEARCH RESOURCES

The following sections include a discussion of many Arizona legal resources available to the juvenile legal researcher. The focus of review of each resource is its usefulness to the juvenile legal researcher along with assessments of the cost, value, and accessibility of the resource.¹⁶

A. *Arizona Statutory Resources*

Because at common law, juveniles were tried as adults if they committed the same offenses,¹⁷ the scheme of Arizona juvenile law administered today is necessarily a creature of statute and of various appellate court decisions rendered mostly since 1970, when Arizona juveniles received the right to appeal decisions of the juvenile court.¹⁸ The Supreme Court of Arizona and the Superior Court of Arizona sitting in each county have enacted various rules of procedure for the Juvenile Court. Often, both are critical to the resolution of a given legal question. For example, the Arizona Revised Statutes section 8-303(C) authorizes a peace officer to take a juvenile into temporary custody.¹⁹ However, the standard of proof and the specific findings a juvenile court judge must make when determining whether the juvenile can remain detained are found only the Arizona Juvenile Court Rules.²⁰ Because of this interplay, statutes and rules should be consulted together. The following are resources for finding Arizona statutes and court rules.

B. *Arizona Revised Statutes, Annotated*

The *Arizona Revised Statutes, Annotated* in print is Arizona's official code and contains the history of each statute as well as summaries of cases that interpret that statute. Accompanied by comprehensive indexes, popular name tables, and other research aids, it is both a formidable and powerful resource. The electronic form on Westlaw (and Lexis) is probably the most current version of the statutes available anywhere. However, while having access to the most current version is a plus, the practitioner should consider

¹⁶ The statements made in this article reflect the opinions of the author only.

¹⁷ JACOBS, *supra* note 6, at 1.

¹⁸ 1970 Ariz. Sess. Laws 1117.

¹⁹ ARIZ. REV. STAT. ANN. § 8-303(C) (2008).

²⁰ ARIZ. JUV. CT. R. 23(D).

whether the annotations are worth paying for in view of the significance of the research question. If cost is critical but the price is not right, Westlaw through Westlaw Patron Access is accessible for free in the computer room on the second floor of the Maricopa County Law Library and at the Arizona State Law Library.

*C. Arizona Juvenile Law and Practice*²¹

Arizona Juvenile Law and Practice was the first and remains the only commercial resource on Arizona juvenile law. The book contains copies of the majority of the statutes in Title 8.²² The statutes are not annotated but are accompanied by a brief statutory history, identifying session law information. *Arizona Juvenile Law and Practice* also includes the Rules of Procedure for the Juvenile Court, including the county-specific court rules. A few other selected statutes relating to juvenile law are also included. The book does not, however, include the guardian and conservatorship statutes in Title 14,²³ which are relevant in a number of situations where the interplay between the Title 14 and Title 8 statutes is important. An example of such a situation is when children in the custody of individuals appointed as Title 14 guardians to children become dependent under Title 8. The book is expensive, but is the only regularly updated commercial publication specifically devoted to Arizona juvenile law.

*D. West's Arizona Family Law and Rules*²⁴

This book is the most complete collection of unannotated statutes outside the Arizona Revised Statutes relating to juvenile and family law. It contains the statutes in Title 8 as well as the relevant guardianship and conservatorship statutes in Title 14. In addition, the book also includes a wide

²¹ THOMAS A. JACOBS, ARIZONA JUVENILE LAW AND PRACTICE (2007-08 ed. 2007) (updated annually).

²² ARIZ. REV. STAT. ANN. tit. 8 includes chapters concerning the following topics: Adoption, Juvenile Court, Juvenile Offenders, Uniform Child Custody Jurisdiction Act, Child Welfare and Placement, Children's Camps, Legitimacy of Children, Early Intervention Programs and Services for Infants and Toddlers, Healthy Families Program, Dependent Children, Family Group Decision Making Program, Early Child Development and Health Programs.

²³ ARIZ. REV. STAT. ANN. tit. 14, ch. 5 includes articles concerning the following topics: Guardians of Minors, Guardians of Incapacitated Persons, Protection of Property of Persons Under a Disability and Minors.

²⁴ WEST'S ARIZONA FAMILY LAW AND RULES (2007-08 ed., Thomson-West 2007). Updated yearly.

variety of other useful state statutes relating to the care of juveniles such as those relating to vital records, child support, and crimes against children. The complete Rules of Procedure for the Juvenile Court along with county-specific rules are also included. Since juvenile cases, at times, require family court interaction, such as when necessary to establish custody as between unmarried parents, having a current copy of the Title 25²⁵ statutes and the Rules of Family Law Procedure on hand may be helpful to the practitioner.

One confusing aspect of the book, however, is that in many places the version of the statute effective until the end of the previous year (e.g., December 31, 2007) is placed right next to the version of the same statute that is effective at the beginning of the next year (January 1, 2008). This placement can be a trap to the unwary. Relatively inexpensive, this book is a good print supplement to *Arizona Juvenile Law and Practice*.

*E. Statutes on the Arizona State Legislature Website*²⁶

The Arizona State Legislature's website contains the complete text of all Arizona statutes. The site is fully word-searchable and is generally easier to browse through than the electronic table of contents feature on Westlaw. Browsing is easier because selecting a given title pulls up the list of all statutes under that title with their headings, similar to the table of contents feature available on Lexis. Another helpful feature is that if a popular name exists for a given group of statutes, that popular name is used as the heading for the corresponding group of statutes, making them easy to find.

Since the site is completely accessible for free, the price cannot be beat, but some features and information are lacking that would be helpful or critical for certain research projects. For example, the statutes are not internally hyperlinked with each other and contain no annotations or legislative history, which makes the site essentially useless for researching legislative history). However, for cheap and fast access to the current unofficial text of a specific Arizona statute, this site is the resource of choice.

²⁵ ARIZ. REV. STAT. ANN. tit. 25 concerns Marital and Domestic Relations, and includes chapters concerning the following topics: Child Support and Visitation, Family Support Duties, Maternity and Paternity Proceedings, Uniform Child Custody Jurisdiction and Enforcement Act, and Uniform Interstate Family Support Act.

²⁶ ARIZONA STATE LEGISLATURE, ARIZONA REVISED STATUTES, <http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp> (last visited Jan. 24, 2010).

*F. Westlaw's Online Arizona Court Rules*²⁷

The Arizona Supreme Court has contracted with West to provide free online access to all of the Court's rules. This site provides a comprehensive collection of the rules used by practically every tribunal in Arizona and includes all of the rules available in Westlaw, including such arcane and hard-to-find ones like the Rules of Procedure for the State Foster Care Review Board. Access to the statutes on this site can be purchased through links to paid Westlaw. This site is the top alternative to paid online Westlaw access for all of the Arizona Rules and is more current than the yearly print update.

For research projects requiring an occasional browse for a reasonably up-to-date text of a particular rule or statute, the State Legislature's website and Arizona rules available on the Arizona Supreme Court's website are the best and least expensive choice. For substantive legal research, however, such as drafting documents for the court, opinions requiring analysis of legislative history, or shepardizing statutes, *Arizona Juvenile Law and Practice* and/or *West's Family Law and Rules* coupled with Westlaw are probably the best choice to ensure the most current information has been consulted. For the day-to-day work of the practitioner, however, the print copies of in *Arizona Juvenile Law and Practice* and *West's Family Law and Rules* are essential office and courtroom resources.

V. RESEARCHING ARIZONA LEGISLATIVE HISTORY

While many resources describe how to access the vast and generally well-indexed collection of federal legislative history, documentation on researching Arizona legislative history is hard to find. However, in 2008, a resource became available that provided an admirable summary of the approach. *Arizona Legal Research* outlines how to access Arizona legislative history from statehood to the present.²⁸ In addition to the print resources, legislative histories from 1995 to the present are available for free electronically on the web through the Arizona Legislative Information System (ALIS) on the Arizona Legislature's website.²⁹ Electronic histories are also available from 1988-1995 through Lexis and Westlaw, as well as in print, while legislative history prior to 1988 only exists in print form. Research indicates that the Arizona House of Representatives has committee reports

²⁷ Arizona Court Rules Forum, Welcome to the online source for the Arizona Court Rules, <http://government.westlaw.com/linkedslice/default.asp?SP=AZR-1000> (last visited Jan. 24, 2010).

²⁸ TAMARA S. HERRERA, ARIZONA LEGAL RESEARCH 54-57 (2008).

²⁹ *Id.* at 53 (discussing how to access and use ALIS to track a bill's history).

only from 1970 forward; the Arizona Senate has reports from 1969 forward. Prior to these dates, some committee information may be available but cannot be guaranteed to exist.

The following demonstrates the research approach in action through an actual research project conducted by the author. By way of background, the first part of the legislative history search was for the statute that defines the grounds upon which parental rights may be terminated, Arizona Revised Statute § 8-533.³⁰ Because the goal was to follow the development of the statute, the research was conducted in print. Through this process, this author came to appreciate how powerful such a history could be. The sequence of amendments and recorded thoughts of a bill sponsor in a committee report can provide valuable insight into what legislators were actually thinking at the time a particular statute was passed. It was also observed that the Arizona Senate tends to take more comprehensive notes of its committee meetings and included more useful information to the researcher than did the House.

The following are the steps followed during this research effort. First, the author found the session law references for the statute, which are available on Westlaw or in *West's Arizona Family Law and Rules* following each statute. The session law references provide all of the session laws combined to produce the codified statute. Print copies of session laws may be found at the Maricopa County Law Library, Arizona State University's William C. Blakely Law Library, the Arizona State Law Library, and the University of Arizona's Daniel F. Cracchiolo Law Library. Armed with the session law information and the resources available at the Maricopa County Law Library, the author found the appropriate session law volume for each session law reference listed, turned to the cited chapter and found the appropriate bill number. This same bill number is used in both the Senate and the House to track the bill's progress.

After finding the bill number, the volumes of the *Journal of the House* and *Journal of the Senate* were used to locate the year of the bill's passage. To find the committees to which the bills had been referred, a section toward the back of each volume called "History of House and Senate Bills" was used to locate a reference to the bill. In this section, bill histories are arranged in ascending order by bill number. In the *Journal of the House*, House bills are listed first. The *Journal of the Senate* lists Senate bills first.

³⁰ ARIZ. REV. STAT. § 8-533 (2008). As an aside, at the time the severance statute was first enacted in 1970, a free conference committee of senators and representatives had to be appointed to resolve differences in the language of the bills passed by the two houses. One of the senators on that committee was Sandra Day O'Connor.

Each bill history provides a record of the life of the bill, chronicling the activity related to the bill and dates on which these activities occurred.

Once locating the bill's history, the author photocopied the bill histories, which contain the names of the committees to which the bill was referred as well as the dates of referral, and made a visit to the State Capitol to secure any available committee reports. To retrieve the committee reports, the author visited the office of the Clerk of the House, which is located on the second floor of the House of Representatives (when entering the building, turn right and go up the staircase on the right side, then go straight ahead to the counter on the right). For the cost of photocopies, a clerk retrieved any committee reports that contained references to the bill after the date it was referred to that committee. It appears that all of the House histories have been digitized, but the collection is only accessible to the clerks at the Clerk of House office.

The process was repeated at the Senate, but while the process was not as technologically advanced. The office of the Senate Archivist is located by turning right and entering the first door on the right down the hall. After giving the archivist the date and committee name information acquired from the bill histories, the archivist began to thumb through the documents by hand and photocopied those that were relevant. While the Senate process took longer to complete, it was more fruitful. After getting only eleven pages from the House, the author was pleased to receive sixty-nine pages of history from the Senate.

Some in the legal community remark that legislative histories are seldom used and rarely useful. However, the archivist stated the Senate Archivist's office receives at least one or two requests for a paper history—not just electronic—per day, indicating that the Arizona appellate courts and other private parties look to the print information from the legislature more than some may realize.

VI. INTERSTATE COMPACTS/UNIFORM LAWS ENACTED IN ARIZONA

Two additional sources of statutory law in Arizona are interstate compacts and uniform laws. Interstate compacts are essentially contracts between two or more states to address a matter of mutual or group concern. Uniform laws, originally proposed by the National Conference of Commissioners on Uniform State Laws ("Uniform Law Commission")³¹ are enacted by the legislature. Table 1 lists the juvenile-related uniform laws promulgat-

³¹ Nat'l Conf. of Comm'rs on Uniform State Laws, <http://www.nccusl.org> (last visited Jan. 24, 2010).

ed by the Uniform Commission, whether Arizona has adopted those laws, and citations to the relevant code sections.³² Table 2 lists juvenile-related interstate compacts that Arizona entered into along with the corresponding statutory sections.³³

Table 1. Juvenile-Related Uniform State Laws.

Title of Uniform Act	Adopted in AZ?	Corresponding Statutes
Uniform Adoption Act (1994)	N	
Uniform Child Abduction Prevention Act (2006)	N	
Uniform Child Custody Jurisdiction Enforcement Act (1997)	Y	ARIZ. REV. STAT. ANN. §§ 25-1001 to -1067 (2008).
Uniform Child Witness Testimony by Alternative Methods Act (2002)	N	
Uniform Guardianship and Protective Proceedings Act (1997)	N	
Uniform Interstate Family Support Act (2001)	Y	ARIZ. REV. STAT. ANN. §§ 25-1201 to -1342 (2008).
Uniform Probate Code (1991)	Y	Adopted, but with changes. ARIZ. REV. STAT. ANN. §§ 14-1102 to -7710 (2008).
Uniform Parentage Act (2002)	N	
Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings Act (2007)	N	

³² The up-to-date list of Uniform Acts, along with the final versions and drafts may be found on the National Conference of Commissioners on Uniform State Laws website. *See id.* The website also lists which states have adopted each act and which are considering adoption.

³³ Learning which interstate compacts Arizona has adopted is probably best done by reviewing the Table of Contents of the Arizona statutes themselves, since there is no official organization like NCCUSL for interstate compacts.

Uniform Status of Children Of Assisted Conception Act (1988)	N	
Uniform Transfer to Minors Act (1986)	Y	ARIZ. REV. STAT. ANN. §§ 14-7651 to -7671 (2008).

Table 2. Juvenile-Related Interstate Compacts.

Title of Interstate Compact	Adopted in AZ?	Corresponding Statutes
Interstate Compact on the Placement of Children (1976)	Y	ARIZ. REV. STAT. ANN. §§ 8-548 to -48.06 (2008).
Interstate Adoption Assistance Compacts (1992), authority for Arizona's participation in the Interstate Compact on Adoption and Medical Assistance (1986)	Y	ARIZ. REV. STAT. ANN. §§ 8-171 to -173 (2008).
Interstate Compact on Juveniles (1961)	Y	ARIZ. REV. STAT. ANN. §§ 8-368 to -368.01 (2008).

VII. JUVENILE FORM BOOKS

The author encountered two principal resources for legal forms directed specifically to Arizona juvenile practice. The first is contained in Appendix J of *Arizona Juvenile Law and Practice*.³⁴ The practitioner should be careful to note that forms for guardianship are found in the *Dependency* and *Guardianship* sections.

Also, a review of the dependency petition form in *Arizona Juvenile Law and Practice* proved that it is not as comprehensive as a dependency petition filed by Child Protective Services' counsel; accordingly, the practitioner is advised to use it as a guide and utilize other practice resources to ensure any desired details are included. In addition, the dependency petition form in *Arizona Juvenile Law and Practice* does not address situations when a child is an Indian child and the provisions of the Indian Child Welfare Act³⁵ apply.

³⁴ JACOBS, *supra* note 6, at app. J.

³⁵ 25 U.S.C. §1901 (2008).

A. *Arizona Legal Forms, Volumes 4 and 4A*³⁶

The second source for Arizona juvenile forms is related to the forms set in *Arizona Juvenile Law and Practice*. Volumes 4 and 4A of the comprehensive *Arizona Legal Forms* set, also sold as a combined set as *Domestic Relations 3d*, is the most comprehensive Arizona resource for adoption-related forms. It even contains examples of sample engagement letters for adoption clients. The comprehensive information on Arizona adoption law available in this volume is greater than that presented in the forms in *Arizona Juvenile Law and Practice*.

While the entire *Arizona Legal Forms* set is probably too expensive and comprehensive for the juvenile practitioner, West does offer the individual volumes and their yearly supplements. Volumes 4 and 4A can be purchased individually, but when purchased as *Domestic Relations 3d*, the price of the set drops in cost. As with all yearly updated legal sets, the practitioner should be mindful of the yearly subscription costs, which can be almost half of the original expense. For any juvenile practitioner, however, the resource is definitely worth considering, particularly if just starting up a practice.

VIII. RELEVANT LAW REVIEW ARTICLES

Law review articles addressing Arizona juvenile law issues are rare. This is partly due to the fact that Arizona had only one general law journal for many years, the *Arizona Law Review*. Arizona's second law journal, *Arizona State Law Journal*, began publishing in the 1970s and its third, *Phoenix Law Review*, arrived in 2008. Arizona currently has no specialized law journals focusing on juvenile law; however, commentary on current juvenile case law decisions can sometimes be found in either the *Arizona State Law Journal* or *Arizona Law Review* when discussing the past year's decisions by the Arizona Supreme Court. Whether such a commentary will be produced for a given year depends upon the editorial staff of the respective law reviews.

Table 3 is a selection of relevant law review articles discovered while researching this article, along with a summary of the juvenile law issues discussed in the article. To identify collect these articles, the author used Westlaw, searching the terms: "juvenile law," "child! law," "child law," "dependency law," and conducting a keyword search under "dependency /S child."

³⁶ 4 CATHERINE A. CREIGHTON, ARIZONA LEGAL FORMS: DOMESTIC RELATIONS (3d ed. 2008 & Supp. 2010).

Table 3. Juvenile-Related Law Review Articles.

Title	Juvenile Issues Discussed
Barbara Atwood, <i>Voice of the Indian Child: Strengthening the Indian Child Welfare Act Through Children's Participation</i> , 50 ARIZ. L. REV. 127 (2008).	Indian Child Welfare Act.
David Kader et al., <i>The Supreme Court of Arizona: Its 2003-2004 Decisions</i> , 37 ARIZ. ST. L.J. 17 (2005).	Juvenile death penalty, juvenile <i>Miranda</i> rights, authority and procedure of city court judge juvenile proceedings, and individual liability of Child Protective Services workers.
Brenda Gordon, <i>A Criminal's Justice Or A Child's Injustice? Trends In The Waiver Of Juvenile Court Jurisdiction And The Flaws In The Arizona Response</i> , 41 ARIZ. L. REV. 193 (1999).	Arizona's past and current system of waiver of juveniles for prosecution in adult court.
Vivian M. Chang, <i>The Juvenile Crime Omnibus</i> , 27 ARIZ. ST. L.J. 313 (1995).	Legislative history and purpose of 1994 changes to: ARIZ. REV. STAT. ANN. §§ 4-244.01, 8-201, 8-202, 8-203, 8-229, 8-230.02, 8-235, 8-241, 8-243.01, 8-246, 12-268, 12-661, 13-912.01, 13-904, 13-1415, 13-3101, 13-3111, 13-3112, 41-2816, 41-2822, 41-2826 (added).
Keri B. Lazarus, <i>Adoption of Native American and First Nations Children: Are the United States and Canada Recognizing the Best Interests of the Children?</i> , 14 ARIZ. J. INT'L & COMP. L. 255 (1997).	Indian Child Welfare Act, and Canadian system of child welfare.
Jeffrey A. Sandquist, <i>Continuous Child Sexual Abuse</i> , ARIZ. ST. L.J. 317 (1994).	Legislative history and purpose of 1993 amendments to ARIZ. REV. STAT. ANN. §§ 13-604.01, 1417 (added).

Janet L. Dolgin, <i>Suffer the Children: Nostalgia, Contradiction and the New Reproductive Technologies</i> , 28 ARIZ. ST. L.J. 473 (1996).	Best interests of the child standard and children of assisted reproduction.
Lawrence Schlam, <i>Standing in Third-Party Custody Disputes in Arizona: Best Interests to Parental Rights—and Shifting the Balance Back Again</i> , 47 ARIZ. L. REV. 719 (2005).	Third-party custody issues, including rights of adoptive parents as third parties.
Paul Bennett, <i>Secret Reflections: Some Thoughts About Secrets and Court Processes in Child Protection Matters</i> , 45 ARIZ. L. REV. 713 (2003).	Attorney-child client relationship and confidentiality of information in dependency proceedings.
Michael D. Moberly, <i>Children Should Be Seen and Not Heard: Advocating the Recognition of a Parent-Child Privilege in Arizona</i> , 35 ARIZ. ST. L.J. 515 (2003).	Boundaries of a proposed parent-child privilege and ARIZ. R. EVID. 501.
Ellen Marrus, <i>Over the Hills and Through the Woods to Grandparents' House We Go: Or Do We, Post-Troxel?</i> , 43 ARIZ. L. REV. 751 (2001).	Grandparent visitation rights: statutes and procedure (from a national perspective).
David D. Meyer, <i>Family Ties: Solving the Constitutional Dilemma of the Faultless Father</i> , 41 ARIZ. L. REV. 753 (1999).	Rights of unwed fathers in adoption (from a national perspective).
Jean Montoya, <i>Something Not So Funny Happened on the Way to Conviction: The Pretrial Interrogation of Child Witnesses</i> , 35 ARIZ. L. REV. 927 (1993).	Child witnesses and child witness testimony.

IX. BOOKS AND OTHER SECONDARY SOURCES AVAILABLE IN LAW LIBRARIES

The review of Arizona-relevant juvenile law resources began with personal visits and the review of the collections at five of the state's law libraries: the Arizona State Law Library, the Maricopa County Law Library, the Pinal County Law Library, the Arizona State University's William C. Blakely Law Library, and the Phoenix School of Law Information Resource Center. In addition, a review of the resources of the University of Arizona's Daniel F. Cracchiolo Law Library was conducted using the library's online catalog. When searching the online catalogs for potential resources, "title field" searches using broad words like "juvenile," "child," "dependency" worked best, casting a wide net while limiting the search to relevant results.

Most of the libraries carry a number of commentary-style books discussing the pros and cons of various aspects of the juvenile court system. Most of these books are concerned with questions of social policy and discuss general principles using cases across the nation. As a result, they are not terribly useful for doing real Arizona juvenile legal research. Such books were not included in the lists below; rather, the lists focus on those that would be useful for the practitioner doing substantive legal research.

A. Arizona State Law Library Holdings

The Arizona State Law Library is a fascinating multi-story maze containing everything from a comprehensive legal periodicals collection to large numbers of various federal documents and reporters. This library has the largest collection of older Arizona and national legal materials anywhere in the state and is the place to look for something in print that cannot be found anywhere else. The library also has a huge collection of historical state-specific reporters and statute sets.

This library is the premier resource for historical Arizona research, legal or otherwise. It contains one-of-a kind books written about Arizona issues and many books found nowhere else in our relatively young state. However, as with many of the state's other law libraries, the number of useful Arizona juvenile-specific legal resources is small.

Table 4. Arizona State Law Library Arizona Juvenile Legal Research Holdings.

Title	Notes
PHILLIP G. URRY, ARIZONA JUVENILE APPEALS (2000). Call No. KFA2995.U7 2000	This is the library's most current resource on the juvenile appeals process.

CHILDREN'S ACTION ALLIANCE, TERMINATING PARENTAL RIGHTS BY JURY TRIAL IN ARIZONA: A FIRST YEAR LOOK (2005). Call No. KFA2995.A9 C4 2005	A comprehensive review of Arizona's brief practice of granting jury trials to parents facing termination of parental rights.
THOMAS A. JACOBS, ARIZONA JUVENILE LAW (1991). Call No. KFA2995 .J33 1991	The library's copy of the publication was signed by the author.
WILLIAM B. MOONEY, CHILDREN IN THE ARIZONA LEGAL SYSTEM A SELF-PACED COURSE, A.R.S. TITLE 8 (1989). Call No. KFA2986 .A7 M6 1989	This loose-leaf binder contains an instructional course describing the Arizona juvenile legal process. This course has not been updated since 1991, and is available only here at the library.

B. Phoenix School of Law Library Holdings

Phoenix School of Law's collection of Arizona juvenile-specific materials is limited to the commercially available sources and a few very recent CLE materials. The library has current copies of *Arizona Juvenile Law and Practice*, West's Statutes and Rules Books, *Arizona Legal Forms*, the *Arizona Reporter* and other standard Arizona resources. The Phoenix School of Law Information Resource Center is a private library, and is therefore not open to the public for general legal research.

C. Maricopa County Law Library Holdings

The Maricopa County Law Library is located in downtown Phoenix in Maricopa County's East Court building at 101 West Jefferson Street. The library is probably the best public legal research resource in Maricopa County because it provides the combination of a large collection of newer legal publications and form books along with a number of Westlaw patron access terminals. A Westlaw patron access terminal allows the user complete access to the principal features of paid Westlaw at no cost. The library also provides free access to HeinOnline, which permits the researcher to access copies of materials older than Westlaw typically includes in its databases.

Title	Notes
NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, JUVENILE AND FAMILY LAW DIGEST (1967-present). Call No. KF9776.3 .J88	Newsletter formatted reporter of national juvenile and family law cases. Volumes are bound versions of the newsletters. Indexes exist for 1967-72, 1974-80, cumulative index by topic of law for 1974-1981 in vol. 14, cumulative indexes in vols. 15-23. Individual indexes are also included in some volumes, with other “cumulative indexes” that cover various periods. A review of the set reveals the topical law index as an extremely detailed and comprehensive overview of juvenile law (with relevant national cases cited by topic). Definitely a resource to consult when seeking a national view of a particular juvenile law issue or set of facts.
STATE BAR OF ARIZONA, CURRENT ISSUES IN THE LAW OF ADOPTION (1998). Call No. KFA2504.5.A75 C87 1998	Library’s most current CLE material on Arizona adoption law.
VIRGINIA RICHTER ET AL., JUVENILE LAW: DEPENDENCY (1999). Call No. KFA2504.6.A75 J88 1999	Contains 1999 vintage practice information including outlines of the process and flow of severance and dependency cases, copies of statutes, practice aids, petitions, etc. The library has similar State Bar materials presented by various authors for the period 1993-1998 as well but nothing more current than 1999.
HELLEN J. CARTER ET AL., JUVENILE LAW: DELINQUENCY (1999). Call No. KFA2995.A75 J88 1999	Contains 1999 vintage practice information for delinquency proceedings. The library has similar state bar materials presented by

	various authors for the period 1994-1998 as well but has nothing more current than 1999.
MARK E. CURRY ET AL., HANDLING DEPENDENCY MATTERS: ADVANCED JUVENILE LAW PRACTICE (1999). Call No. KFA2504.A75 H36 1999.	Focuses on the 1999-era juvenile appeals process.
ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE, AND ADOPTION CASES (1993).	Written by a very experienced Arizona juvenile legal practitioner, this series of books, which includes a 1999 cumulative update, covers all aspects of juvenile law practice from a national perspective. It includes sample petitions, checklists, and comprehensive information on just about everything a practitioner should know about the legal process. It also includes evidentiary information and tips on how to interview clients, including sexually abused children. While dated, it was the only comprehensive series found that focuses on providing the tools practitioners need to handle all types of juvenile cases. The two-volume set is still in print, now being published by West. It is a helpful resource for the new practitioner.
JUVENILE AND FAMILY COURT JOURNAL (Nat'l Counc. of Juv. & Fam. Ct. Judges, William S. Hein and Co.). Electronic Resource on HeinOnline	Using the library's free access to HeinOnline, a user can access the entire collection from 1950-2004. This periodical focuses on current issues in court administration and juvenile justice. Articles are written by sitting judges and are not directed toward the same subject matter that a law review article would be. National in scope.

D. Pima County Law Library Holdings

Title	Notes
THOMAS A. JACOBS, JUVENILE BENCHBOOK (2001). Call No. KFA 2914 J7	This is the book Arizona juvenile court judges use while sitting at the bench and contains the scripts they follow when holding the many different kinds of hearings conducted in juvenile court. Pima County was the only library found to have a copy of the <i>Benchbook</i> available to the public. Short of asking a judge, this is the place to get it. Be certain to verify that this copy is up-to-date however, since it is updated annually.

E. Pinal County Law Library Holdings

The juvenile-specific legal resources at the Pinal County Law Library in the Pinal County Courthouse in Florence are limited. A current copy of *Arizona Juvenile Law and Practice* is present along with a current set of the *Arizona Reports* and *Arizona Revised Statutes Annotated*. Although the library has been in operation for many years, it is behind the larger counties in terms of the size and scope of its collection. However, the collection includes many areas of law and a number of loose-leaf services in various subject areas. The law library's holdings are searchable online only through the Pinal County Library System; the law library does not yet have its own catalog. The law library does not offer Westlaw patron access terminals.

F. Arizona State University's William C. Blakely Law Library Holdings

While the William C. Blakely Law Library is very large, few useful Arizona-specific juvenile legal research materials are actually available. The library has three copies of the first edition of *Arizona Juvenile Law and Practice*, two dated copies of *Dependency and Delinquency* CLE materials, and a current set of West's *Arizona Legal Forms*. Beyond this, the library probably has among the largest collection of commentary-style books in the state, which generally are not a very useful resource for real legal research.

The most useful resource for the juvenile law practitioner at this library is its current print copies of *Shepard's Citations* for the various reporters in the library. Since using a *Shepard's Citations* in print reduces the need to perform electronic shepardizing, the practitioner on a budget can utilize the set to reduce research expenses.

G. University of Arizona's Daniel F. Cracchiolo Law Library

Title	Notes
STATE OF ARIZONA, JUVENILE CODES OF VARIOUS ARIZONA INDIAN TRIBES (196-?). Call No. KF8224.C45 A3 196-	The laws of many Indian tribes are not well-documented or compiled, if written down at all. This set includes the juvenile codes of the Navajo, Hualapai, Pima, and Maricopa tribes. It appears to be quite dated but may still be a useful research tool.
THERESA M. ARMENDAREZ ET AL., JUVENILE LAW IN A NUTSHELL: DELINQUENCY (2001). Call No. KFA2995.A75 J88 2001 CANDY DAHL ET AL., JUVENILE LAW IN A NUTSHELL: DEPENDENCY (2001). Call No. KFA2504.6.A75 J88 2001	These appear to be the most recent CLE material the state bar has published on delinquency law. Nothing similar is currently available from the state bar as overviews of Arizona delinquency or dependency law.

X. OTHER COMMERCIAL BOOKS AND CLE MATERIALS

Title	Notes
PATRICIA K. NORRIS ET AL., HANDLING DEPENDENCY AND PARENTAL TERMINATION APPEALS AND SPECIAL ACTIONS (2008).	This is the only current publication available from the state bar on juvenile law. At only \$25.00, ³⁷ it is a bargain for any practitioner looking for up-to-date practice tips on dependency proceedings, termination proceedings, and special actions.

³⁷ State Bar of Arizona, www.myazbar.org (select the CLE menu and click on Programs and Publications, then scroll down and select Juvenile Law) (last visited Jan. 24, 2010).

TAMARA S. HERRERA, ARIZONA
LEGAL RESEARCH (2008).

As a small paperback book of 156 pages, this is the most current general guide to Arizona legal research available. The format is easy to use; the text walks you through how to access various online as well as paper resources, helping guide you on which to choose and when. This book is an essential resource for finding Arizona legislative history online and in paper. At \$22.00,³⁸ this book is a must-have for any Arizona legal practitioner.

XI. RESEARCHING ARIZONA JUVENILE CASE LAW

A. Identifying Case Law

While the juvenile courts have existed in Arizona for over a hundred years, it was not until 1970 that juveniles had a general right to appeal final orders from those courts.³⁹ Accordingly, the majority of Arizona juvenile case law has been created since that time, although some cases involving adoption and guardianship exist prior to 1970. *Arizona Juvenile Law and Practice* contains summaries of and references to juvenile cases in the text and footnotes; the information is organized under the broad topical headings used to develop the book. While this format aids the treatise in achieving comprehensive scope, this author found the format cumbersome when trying to research specific legal issues that arise during specific juvenile proceedings, particularly those that involve both statutes and rules. In addition, at times, some of the cases in the footnotes appear to have little connection to, or are not best suited for, the point of law for which they were cited.

As a result of these observations and observations of the issues and questions presented by the cases in Judge Gaylord's court, during and subsequent to this author's externship, two outlines of current case law and case

³⁸ Amazon.com, www.amazon.com (search books for ARIZONA LEGAL RESEARCH) (last visited Jan. 24, 2010).

³⁹ 1970 Ariz. Sess. Laws 1117.

summaries emerged. The outlines were based on personal research and review of many of the published Arizona juvenile appeals cases, including many of those cited in *Arizona Juvenile Law and Practice*. The organization and choice of topics in the case outlines focus on the issues relevant to the day-to-day sitting juvenile court judge and juvenile practitioner. The outlines follow in this article.

B. Accessing Case Opinions

Identifying the most cost-effective way to access Arizona case opinions depends in part on the age of the opinion. For cases decided within the past ten years, LexisOne is a premier case law resource, providing no cost access to full Lexis-annotated cases the Arizona Supreme Court and Arizona Court of Appeals.⁴⁰ The only cost to sign up for this service is the time it takes to register and the bit of personal information the site requires for registration. LexisOne is accessible from the Arizona State Bar website as well.

The websites of the Supreme Court⁴¹ and the Arizona Court of Appeals, Division One⁴² and Division Two⁴³ also contain full-text electronic opinions. The available opinions date from 1998 for the Supreme Court, from 2000 for Division One, and from 2000-2001 for Division Two. The court websites are an excellent resource when looking for a specific case, published after 2000, no longer available through LexisOne.

The court websites present a couple of challenges to the researcher. First, opinions are presented on a single page by general topic (e.g., juvenile); and, second, text search capability on the sites is limited. However, the opinions are free and already in electronic form.

⁴⁰ LexisOne Community, <http://www.lexisone.com> (last visited Jan. 24, 2010).

⁴¹ Arizona Supreme Court Opinions, <http://www.supreme.state.az.us/opin> (last visited Jan. 24, 2010).

⁴² Court of Appeals, Division One, State of Arizona, <http://www.cofad1.state.az.us/opinionfiles/opidx.htm> (last visited Jan. 24, 2010). When considering a particular court opinion, the practitioner should be aware of which division of the Arizona Court of Appeals is deciding the particular case. This fact is important because only two divisions of the Court of Appeals exist in this state, and decisions made in one division are only persuasive on the Superior Court judges sitting in the other division. This fact can be helpful to bring up to a judge if a case's holding runs counter to a client's interests and the proceeding is being conducted in one of the counties not included in the deciding division's jurisdiction. Division One includes Maricopa, Yuma, La Paz, Mohave, Coconino, Yavapai, Navajo and Apache counties.

⁴³ Recent Decisions in the Court of Appeals, State of Ariz., Div. Two, <http://www.apltwo.ct.state.az.us/ODSPlus/RecentDecisions.cfm> (last visited Jan. 24, 2010). Division Two includes Cochise, Gila, Graham, Greenlee, Pima, Pinal, and Santa Cruz counties.

A recent addition to the Arizona practitioner's toolbox is Fastcase, a free benefit provided by the Arizona State Bar available via the MyAZBar website.⁴⁴ Fastcase is a comprehensive legal research data resource and search aid that contains cases from all jurisdictions, federal and state. Its statutory resources generally link the user directly to the official websites that maintain the particular statutes, rather than including them in the database, as Westlaw and Lexis do.

The author's experience with Fastcase indicates that it does not contain all cases and the sites search by citation function, particularly for cases published within the past ten years, is not robust. For example, a number of Arizona juvenile cases are not retrievable by *Arizona Reporter* citation from Fastcase.⁴⁵ Some of those not retrievable can be found using a *Pacific Reporter* citation; others can only be found by doing a keyword search for the party name as a phrase (e.g., "Niky R.") because they have been stored under a citation in a public domain format.⁴⁶ Even then, a few reported cases could not be located.

When contacted, Fastcase stated that missing cases can be retrieved by emailing the citation to their service email address. This allows Fastcase to both provide the case to the sender and add it to the database.⁴⁷ In addition, Fastcase stated that it is engaged in an on-going process of auditing its databases to ensure comprehensiveness.⁴⁸ Between Fastcase and LexisOne, the practitioner can electronically access practically all of the Arizona juvenile-related cases for free.

Fastcase offers a capability similar to shepardizing by allowing the user to view a list of all of the cases that have cited a given case. No indication of the degree of treatment or the type of treatment is provided in the list; however, several lines of text from each case around the location of the citation are provided in an abstract form, allowing the user to get an idea of how the case is being used or discussed. If full shepardizing on Lexis or a KeyCite on Westlaw are desired, then Fastcase provides direct links to Lex-

⁴⁴ State Bar of Arizona, <http://www.myazbar.org/fastcase/info.cfm> (last visited Jan. 24, 2010). The State Bar also offers webinars on using Fastcase.

⁴⁵ Generally, if a case was older than ten years, it was available by Arizona Reporter citation in Fastcase; for more recent cases, finding them by citation became more challenging.

⁴⁶ A public domain formatted citation looks like *Orange v. Purple*, 2005 AZ 123, where the 123 is the sequential number of the case for that year. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 10.3.3, at 88 (Columbia Law Review Ass'n et al. eds., 18th ed. 2005).

⁴⁷ Email from Fastcase customer service to Adam Stephenson (Feb. 17, 2009) (on file with author).

⁴⁸ *Id.*

is and Westlaw for the case on the same page to enable the user to quickly purchase the service.

Fastcase search parameters are straightforward; constructing an effective search, particularly when terms of art are involved, is not difficult and may be easier for most practitioners than searching in Lexis and Westlaw. However, because Fastcase does not include the ability to use West key numbers or other Lexis-related topical aids as search tools, searching is conducted primarily on a keyword basis. The downside to using only keywords is that such searches tend to return too many results of questionable relevance and/or exclude relevant sources merely because the particular word forms are not present in the case.

However, use of Fastcase before going to Lexis and Westlaw could save the practitioner hundreds of dollars, particularly in the early phase of a legal research project, where the search logic and keywords are still being screened. Because there are no database-specific charges and no charges by the minute, the practitioner can take the time to be thorough without watching the clock or being too careful to avoid searching too many databases at once. Throughout the process, the researcher can always pay for Shephard's citations or KeyCite results for a specific case and use these to continue the search.

For some practitioners, however, it may still be cheaper to purchase the full *Arizona Reports* in print,⁴⁹ since there are no single user license issues that limit access by members of a firm, as in CD-ROM subscriptions, which are also quite expensive. However, if key number research and shepardizing is required, Westlaw or Lexis will likely be less expensive, per search, than attempting to purchase a copy of the *Arizona Digest* in print or *Shephard's Arizona Citations*. This obviously depends upon the size of the firm and the amount of legal research conducted.

XII. CONCLUSION

The goal of this article was to provide a review of the history of Arizona juvenile law and a comprehensive review of the legal resources available to the Arizona juvenile law practitioner. This article included commentary on the accessibility, usefulness, and cost of these resources. The appendices that follow contain outlines of Arizona case law regarding both delinquent and dependent juveniles. These outlines were written to aid the legal re-

⁴⁹ KENDALL SVENGALIS, THE LEGAL INFORMATION BUYER'S GUIDE AND REFERENCE MANUAL 513 (2008).

search efforts of Arizona juvenile law practitioners as they help Arizona's children and youth along their personal paths of growth and independence.

APPENDIX A: ARIZONA DELINQUENCY CASE LAW OUTLINE⁵⁰*I. Jurisdiction*

The jurisdiction of juvenile court, granted by statute, does not depend on whether the child is on probation; Ariz. Rev. Stat. Ann. § 8-202(G) grants continuing jurisdiction over a child until he or she reaches 18 years of age.⁵¹

II. Standards of Proof

A. Probable Cause

1. Detention: Police citation that contained only a statement of belief that the person cited committed the offense was insufficient for the juvenile court to find probable cause.⁵² “Although a citation may establish probable cause if it contains or is accompanied by sufficient sworn facts and circumstances for the court to make an independent finding of probable cause, the citation here was deficient in that regard, and no procedural rule can finesse that constitutional defect.”⁵³

B. Preponderance of the Evidence

1. Violation of probation⁵⁴
2. Revocation of Probation⁵⁵
3. Restitution claim⁵⁶

4. Transfer Hearings: Findings of probable cause that offense was committed, the juvenile committed it, and “that the public safety would best be served by the transfer of the juvenile for criminal prosecution.”⁵⁷

⁵⁰ Formatting note: Intended to be a hands-on tool, these outlines focus on function over format. As a result, parts of the outline may stray from traditional Bluebook format where the editor believed it would improve ease of use for the practitioner.

⁵¹ ARIZ. REV. STAT. ANN. § 8-202(G) (2008); *In re Stephanie N.*, 110 P.3d 1280 (Ariz. Ct. App. 2005).

⁵² *In re Otel H. v. Barton*, 62 P.3d 138 (Ariz. Ct. App. 2003).

⁵³ *Id.* at 140.

⁵⁴ *In re Appeal in Maricopa County*, Juv. Action No. J-72752, 520 P.2d 327 (Ariz. Ct. App. 1974).

⁵⁵ *In re Appeal in Maricopa County* Juv. Action No. J-66470, 509 P.2d 650 (Ariz. Ct. App. 1973).

⁵⁶ *In re Stephanie B.*, 65 P.3d 114 (Ariz. Ct. App. 2003).

C. Clear and Convincing Evidence: Minor obtaining abortion through judicial bypass.⁵⁸

D. Proof Beyond a Reasonable Doubt: Establishing delinquency and incorrigibility.⁵⁹

III. Procedural Issues, Generally

A. Contempt: Mother who was found to have failed to execute the orders of the juvenile court under Ariz. Rev. Stat. § 8-234(E) could be incarcerated only for the thirty days specified in that statute rather than under the general contempt statute.⁶⁰

B. Change of Judge: Notice under Ariz. R. Juv. P. 26 does not constitute notice sufficient to toll the five-day period for providing notice of change of judge under Ariz. R. Juv. P. 17B, nor does an internal court order under Ariz. R. Sup. Ct. 91(c) or 92(a) constitute notice to a juvenile that tolls the period.⁶¹

C. Speedy Trial

1. The State can refile a petition after a speedy trial violation causes the original petition to be dismissed without prejudice.⁶² Absent a showing that the prosecution acted in bad faith or that the defendant has been prejudiced, the speedy trial limits “begin anew” for a case dismissed without prejudice upon refiling.⁶³

2. Dismissal of a case by the juvenile court with prejudice may only occur if the interests of justice require it and requires specific findings to that effect.⁶⁴ “To dismiss with prejudice under [Ariz. Juv.] Rule 6.1, the trial court must find that a time limit has been violated and that justice requires

⁵⁷ *In re Edgar V.*, 158 P.3d 206, 207 (Ariz. Ct. App. 2007).

⁵⁸ *In re Matter of B.S.*, 74 P.3d 285 (Ariz. Ct. App. 2003).

⁵⁹ ARIZ. R. JUV. P. 29; *In re Appeal in Maricopa County*, Juv. Action No. J-72918-S, 524 P.2d 1310 (Ariz. 1974).

⁶⁰ *In re Manny*, 120 P.3d 1111 (Ariz. Ct. App. 2005); *see also* ARIZ. REV. STAT. § 8-234(E) (2008).

⁶¹ *Denise S. v. Corsaro*, 142 P.3d 245 (Ariz. Ct. App. 2006).

⁶² *State v. Rose*, 589 P.2d 5 (Ariz. 1978).

⁶³ *Id.* at 11.

⁶⁴ *In re Appeal in Maricopa County No. JV-114857*, 868 P.2d 350 (Ariz. Ct. App. 1993).

dismissal with prejudice . . . [Ariz. Juv.] Rule 14 only allows for dismissal without prejudice.”⁶⁵

3. Speedy trial is violated if an advisory hearing is held more than thirty days after a traffic citation is filed in any court.⁶⁶

4. Refiling in Adult Court

a. “A.R.S. section 8-302(C) requires the juvenile court to dismiss a delinquency petition pending before it when the county attorney seeks adult prosecution of the subject offenses pursuant to A.R.S. section 13-501.”⁶⁷

b. “We hold a juvenile court is not obliged to accept a minor’s plea at an advisory hearing and may, pursuant to [Ariz. R. Proc. Juv. Ct.] Rule 28(E), defer acceptance of a plea until the time of disposition. Because there had been no adjudication, the delinquency proceeding against Reymundo was still pending for purposes of [Arizona Revised Statute] § 8-302(C) when the state filed its motion to dismiss, and dismissal of the delinquency petition without prejudice was required under that statute.”⁶⁸ Accordingly, because the juvenile court had not accepted the plea, even though the juvenile had admitted and established a factual basis, the State could still begin the process of transfer to adult court.⁶⁹

5. Transfer Hearings: The statute does not direct the court to weigh any one of the ten factors to be considered as more significant than another, when ordering a transfer of a juvenile to adult court, but the court may properly do so.⁷⁰ “[W]e conclude that the statute requires an individualized, fact-specific inquiry that may cause the court to give appropriately varying weights to the relevant factors . . .”⁷¹ Even if a numerical majority of the factors oppose transfer, the weight of the remaining factors can support it.⁷²

⁶⁵ *Id.* at 353.

⁶⁶ *In re Luis A. v. Bayham-Lesselyong*, 4 P.3d 994 (Ariz. Ct. App. 2000).

⁶⁷ *In re Timothy M.*, 4 P.3d 449, 455 (Ariz. Ct. App. 2000).

⁶⁸ *In re Reymundo F.*, 177 P.3d 330, 333-34 (Ariz. Ct. App. 2008).

⁶⁹ *Id.* at 333.

⁷⁰ *In re Edgar V.*, 158 P.3d 206 (Ariz. Ct. App. 2007).

⁷¹ *Id.* at 207.

⁷² *In re Edgar V.*, 158 P.3d 206.

IV. Detention Issues

A. Ariz. R. Juv. P. 23(D): “A juvenile shall be detained only if there is probable cause to believe that the juvenile committed the acts alleged in the referral, petition, or complaint, and there is probable cause to believe:

1. Juvenile otherwise will not be present at any hearing; or
2. Juvenile is likely to commit an offense injurious to self or others; or
3. Juvenile must be held for another jurisdiction; or
4. Interests of the juvenile or the public require custodial protection; or
5. Juvenile held pending filing complaint pursuant to A.R.S. 13-501.”⁷³

B. Predisposition Detention

1. Pre-disposition detention is permissible for delinquent and incorrigible children despite post-disposition detention for incorrigibles not being a dispositional alternative under Ariz. Rev. Stat. § 8-241(A)(3).⁷⁴

2. Child adjudicated incorrigible without being represented by counsel cannot be detained predisposition for the original offense or predisposition for subsequent violation of probation offenses.⁷⁵

C. Disposition Detention

1. For delinquents, specified terms of weekend detention as condition of probation are permitted by statute.⁷⁶

2. For juveniles adjudicated incorrigible, Division Two case law states that detention is not a dispositional alternative.⁷⁷

3. Dispositions that allow for waiver of detention upon completion of a particular condition are valid only if they will always result in a waiver of detention; if the juvenile allegedly fails to meet the condition, the juvenile

⁷³ ARIZ. R. JUV. P. 23(D).

⁷⁴ JV-130549 v. Superior Court, 871 P.2d 758 (Ariz. Ct. App. 1994) (citing Gila County Juv. Action No. DEL-6325 v. Duber, 816 P.2d 944 (Ariz. Ct. App. 1991)); *see also* ARIZ. REV. STAT. ANN. § 8-241(A)(3) (2008).

⁷⁵ Lana A. v Woodburn, 116 P.3d 1222 (Ariz. Ct. App. 2005).

⁷⁶ *In re Appeal in Pima County Juv. Action No. J-20705-3*, 650 P.2d 1278 (Ariz. Ct. App. 1982).

⁷⁷ *Duber*, 816 P.2d 944.

must be given notice of the charge, an opportunity to contest and present evidence.⁷⁸

4. “A court cannot order a juvenile into detention without a petition to revoke probation or without a hearing because to do so would violate the juvenile’s right to due process.”⁷⁹

V. Competency Issues

A. Dismissal without prejudice of incompetent-eleven-year old affirmed under Ariz. Rev. Stat. § 8-291.01(D) (1998) despite expert opinions that juvenile was non-restorable.⁸⁰

B. State’s right to request a contested hearing on competency ends when the 240-day maximum statutory period concludes.⁸¹

VI. Adjudication Issues

A. Establishing Factual Basis: “[F]actual basis can be established by ‘strong evidence’ of guilt and does not require a finding of guilt beyond a reasonable doubt”; factual basis can be derived from any part of the record.⁸²

B. Plea Agreements

1. Juvenile court must determine a factual basis exists for a juvenile’s admission to be established.⁸³

2. Juvenile’s plea agreement may be revoked at any time by any party until accepted by the court.⁸⁴

⁷⁸ *In re Marie G.*, 944 P.2d 1246 (Ariz. Ct. App. 1997).

⁷⁹ *In re Richard M.*, 993 P.2d 1048, 1050 (Ariz. Ct. App. 1999).

⁸⁰ *In re Charles B.*, 978 P.2d 659 (Ariz. Ct. App. 1998).

⁸¹ *In re Craig H.*, 1 CA-JV 04-0194 (Ariz. Ct. App. 2005) (mem. opin.).

⁸² *State v. Salinas*, 887 P.2d 985, 987 (Ariz. 1994).

⁸³ *In re Appeal in Maricopa County Juv. Action No. J-86715*, 594 P.2d 554 (Ariz. Ct. App. 1979).

⁸⁴ *In re Timothy M.*, 4 P.3d 449 (Ariz. Ct. App. 2000).

3. When statute underlying plea found unconstitutional, plea may be vacated and original charges reinstated when juvenile has failed to complete terms of probation.⁸⁵

4. Must be voluntary and in accordance with *Boykin* standards (failure to ask if anyone had made any additional promises when accepting a plea agreement does not render admission involuntary).⁸⁶

C. Defenses: Guilty but insane: “[P]ursuant to the requirements of [Arizona Revised Statute] § 13-502(A), the juvenile court’s assessment of whether a juvenile suffers from a mental disease or defect is merely a threshold determination that does not require the court to find the juvenile is insane. Rather, the court must then address whether that defect was so severe that it deprived the juvenile of the ability to know the delinquent act was wrong and whether, even if the juvenile’s moral judgment was impaired, that impairment arose from some other cause excluded as a basis for legal insanity.”⁸⁷

D. Lesser Included Offenses

1. The Elements Test

a. “To be a lesser-included offense, ‘the offense must be composed solely of some but not all of the elements of the greater crime so that it is impossible to have committed the crime charged without having committed the lesser one.’”⁸⁸

b. The court must determine “whether the purported lesser included offense is, by its nature, *always* a constituent part of the greater offense.”⁸⁹

2. The Charging Documents Test

a. “[T]he offense is also lesser included when the charging document describes the lesser offense even though the lesser offense would not always

⁸⁵ *In re Alex M.*, 30 P.3d 137 (Ariz. Ct. App. 2001).

⁸⁶ *In re Harry B.*, 971 P.2d 203 (Ariz. Ct. App. 1998).

⁸⁷ *In re Natalie Z.*, 153 P.3d 1081, 1085 (Ariz. Ct. App. 2007).

⁸⁸ *In re Jeremiah T.*, 126 P.3d 177, 179 (Ariz. Ct. App. 2006) (quoting *State v. Celaya*, 660 P.2d 849, 852 (Ariz. 1983)).

⁸⁹ *In re Jerry C.*, 151 P.3d 553, 556 (Ariz. Ct. App. 2007) (citing *State v. Siddle*, 47 P.3d 1150, 1154 (Ariz. Ct. App. 2002)).

form a constituent part of the greater offense.”⁹⁰ Since the charging documents sufficiently described the lesser offense, the lesser offense was a lesser included offense of the offense charged.⁹¹

b. Example: Assault under Ariz. Rev. Stat. § 13-1203(A)(1) (2007) is not a lesser included offense of child molestation.⁹²

3. Facts Sufficient to Establish Specific Offenses

a. Spray painting a smudge did not meet the sign, symbol, message, or slogan requirements under Ariz. Rev. Stat. § 13-1602(A)(5) (2003) for the offense of “[d]rawing or inscribing . . . on a public or private building, structure or surface”⁹³ one of the above; the state should have charged under the general defacing subsection (A)(1) for the evidence to support the crime.⁹⁴

b. Resisting arrest under Ariz. Rev. Stat. § 13-2508(A) (2007): “Whether a person is reasonably known to another to be a peace officer turns strongly on the facts of each case.”⁹⁵ The statute does not require that the individual reasonably know that the peace officer is acting under color of official authority.⁹⁶ Here the juvenile tried to punch a uniformed school resource officer who was attempting to restrain him.⁹⁷ Since the juvenile knew the officer was a peace officer, by the end of the scuffle the officer was trying to effect, and the juvenile was resisting, arrest.⁹⁸

c. “A true threat is measured objectively: It is a statement that a reasonable person would foresee to be understood by those hearing it ‘as a genuine threat to inflict harm.’”⁹⁹

⁹⁰ *Id.* at 556-57 (quoting *State v. Brown*, 64 P.3d 847, 852 (Ariz. Ct. App. 2003)).

⁹¹ *Id.*

⁹² *See* ARIZ. REV. STAT. ANN. § 13-1203(A)(1) (2007); *In re James P.*, 153 P.3d 1049 (Ariz. Ct. App. 2007).

⁹³ ARIZ. REV. STAT. ANN. § 13-1602(A)(5) (2003).

⁹⁴ *In re Ubaldo B.*, 81 P.3d 334 (Ariz. Ct. App. 2003).

⁹⁵ *In re Jessi W.*, 152 P.3d 1217, 1220 (Ariz. Ct. App. 2007).

⁹⁶ *Id.*

⁹⁷ *Id.* at 1219.

⁹⁸ *Id.* at 1220.

⁹⁹ *In re David M.*, 1 CA-JV 06-0005 (Ariz. Ct. App. 2006) (mem. opin.) (citing *In re Ryan A.*, 39 P.3d 543 (Ariz. Ct. App. 2002)).

d. Placing urinal water in a person's drink constitutes a "touching" supporting aggravated assault within the meaning of Ariz. Rev. Stat. § 13-1203(A)(3) (2007).¹⁰⁰

VII. Evidentiary Issues

A. Searches

1. At School: Fourth Amendment protections extend to school searches and "reasonable suspicion" must be present to permit searching of student locker, purse, etc.¹⁰¹

2. Generally

a. When initial encounter is consensual and without suspicion of ongoing or previously committed criminal activity, evidence seized by police from a subsequent pat down search must be suppressed.¹⁰²

b. Once the juvenile's purse had been validly seized under the exigency of the circumstances and was in control of the police officer, a search of the purse without a warrant and without probable cause could not be justified under *Terry*, the emergency aid exception, or the community caretaker function exceptions.¹⁰³ Accordingly, the marijuana pipe found in the purse was improperly received into evidence.¹⁰⁴

B. Confessions

1. *Miranda* Warnings

a. "Voluntary responses to 'questions necessary to secure [the officer's] own safety or the safety of the public' may be admitted in court despite the lack of *Miranda* warnings."¹⁰⁵

¹⁰⁰ *In re* P.D., 166 P.3d 127 (Ariz. Ct. App. 2007) (discussing ARIZ. REV. STAT. ANN. § 13-1203(A)(3) (2007)).

¹⁰¹ *In re* Appeal in Pima County Juv. Action No. 80484-1, 733 P.2d 316 (Ariz. Ct. App. 1987); *In re* Roy L., 4 P.3d 984 (Ariz. Ct. App. 2000).

¹⁰² *In re* Ilono H., 113 P.3d 696 (Ariz. Ct. App. 2005).

¹⁰³ *In re* Tiffany O., 174 P.3d 282 (Ariz. Ct. App. 2007).

¹⁰⁴ *Id.*

¹⁰⁵ *In re* Roy L., 4 P.3d at 989 (quoting *New York v. Quarles*, 467 U.S. 649, 659 (1984)) (alteration in original).

b. “[T]he initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned. . . . [t]he relevant inquiry is how a reasonable person in the suspect’s position would have understood his situation.’ . . . [T]he objective test for determining whether an adult was in custody for purposes of *Miranda* . . . applies also to juvenile interrogations, but with additional elements that bear upon a child’s perceptions and vulnerability, including the child’s age, maturity and experience with law enforcement and the presence of a parent or other supportive adult.”¹⁰⁶

c. Admissions of sixteen-year-old in custody prior to any warning regarding murder were not admissible.¹⁰⁷

2. Voluntariness

a. Juvenile confessions as a result of police questioning must be carefully examined to ensure that the “‘admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright, or despair.’”¹⁰⁸

b. The totality of the circumstances surrounding the confession must be considered.¹⁰⁹

c. Relevant factors when assessing totality of circumstances: age, education, intelligence, advice regarding constitutional rights, length of detention and questioning, use of physical force, presence of parents, consent of parents to the interview, juvenile’s prior exposure to *Miranda* warnings because of previous arrests, and conduct by law enforcement that frustrates parent’s attempt to confer with the juvenile.¹¹⁰

¹⁰⁶ *In re Jorge D.*, 43 P.3d 605, 608-09 (Ariz. Ct. App. 2002) (citing *State v. Doe*, 948 P.2d 166, 170, 171 (Idaho Ct. App. 1997)).

¹⁰⁷ *State v. Councilman*, 460 P.2d 640 (Ariz. 1969).

¹⁰⁸ *State v. Jimenez*, 799 P.2d 785, 790 (Ariz. 1990) (quoting *In re Gault*, 387 U.S. 1, 55 (1967)).

¹⁰⁹ *In re Andre M.*, 88 P.3d 552 (Ariz. 2004).

¹¹⁰ See *In re Timothy C.*, 978 P.2d 644 (Ariz. Ct. App. 1998); *State v. Jimenez*, 799 P.2d 785 (Ariz. 1990).

d. Confession voluntary when father attended police questioning of son but was not read *Miranda* rights personally and was not able to confer privately prior to the interrogation.¹¹¹

e. List of fifteen factors to consider when determining voluntariness of a confession.¹¹²

C. Sixth Amendment Right to Counsel

1. Right to counsel begins with the filing of a complaint or filing of a juvenile petition.¹¹³

2. Parents are not allowed under Ariz. Sup. Ct. R. 31(b) of the Supreme Court to assist in representing their children.¹¹⁴

D. Identification of the Accused: Substantial likelihood of misidentification during the identification process.¹¹⁵

E. Drug Tests: A Supreme Court administrative order cannot limit or conflict with the rules of evidence or limit the juvenile court's dispositional alternatives; accordingly, the failure to obtain a confirmatory gas chromatograph/mass spectrograph test on a positive urine sample did not limit use of the test as evidence or the ability of the juvenile court to impose detention in probation violation proceedings.¹¹⁶

F. Judicial Notice: Juvenile's age in underage drinking case can be judicially noticed by use of information on court files.¹¹⁷ "It is proper for a court to take judicial notice of its own records or those of another action tried in the same court."¹¹⁸

¹¹¹ *In re Cody A.*, 1 CA-JV 04-0168 (Ariz. Ct. App. 2005) (mem. opin.).

¹¹² *State v. Scholtz*, 791 P.2d 1070 (Ariz. Ct. App. 1990).

¹¹³ *Edwards v. Arizona*, 451 U.S. 477, (1981).

¹¹⁴ *In re Lawrence N.*, 1 CA-JV 04-0233 (Ariz. Ct. App. 2005) (mem. opin.) (citing *Byers-Watts v. Parker*, 18 P.3d 1265 (Ariz. Ct. App. 2001)).

¹¹⁵ *Neil v. Biggers*, 409 U.S. 188 (1972); *Stovall v. Denno*, 388 U.S. 293 (1967).

¹¹⁶ *In re Jonah T.*, 994 P.2d 1019 (Ariz. Ct. App. 1999).

¹¹⁷ *In re Sabino R.*, 10 P.3d 1211 (Ariz. Ct. App. 2000).

¹¹⁸ *Id.* at 1212.

G. Specific Statutes

1. Drivers license statute Ariz. Rev. Stat. Ann. § 28-1595(B) (2001) is constitutional, and the absence of a license requires a showing of documentary, not verbal, proof of a license.¹¹⁹

2. Imitation controlled substance statute Ariz. Rev. Stat. § 13-3451(4) (2000) is constitutional and not void for vagueness or overbroad.¹²⁰

VIII. Disposition Issues

A. Drug Court: Involuntary imposition of drug court as a term of probation constitutional.¹²¹ Excellent overview of the purposes and treatment of constitutional issues relative to the drug court process.¹²²

B. Statutory DNA Testing Requirements

1. DNA statute is constitutional and DNA evidence gathered while a juvenile may be used against him or her after the age of eighteen.¹²³

2. Juvenile is statutorily required to submit to a DNA test even if probation department fails to obtain the sample within the statutory period.¹²⁴

C. Required Findings for Commitment to Arizona Department of Juvenile Corrections (ADJC): Commitment to ADJC does not require specific findings, a juvenile's record is sufficient.¹²⁵

D. Juvenile Intensive Probation Supervision (JIPS) Issues

1. Juvenile Court lacks authority to place an incorrigible child on JIPS.¹²⁶

¹¹⁹ *In re* Moises L., 18 P.3d 1231 (Ariz. Ct. App. 2001).

¹²⁰ *In re* Dayvid S., 15 P.3d 771 (Ariz. Ct. App. 2000).

¹²¹ *In re* Miguel R., 63 P.3d 1065 (Ariz. Ct. App. 2003).

¹²² *Id.*

¹²³ *In re* Appeal in Maricopa County Juv. Action Nos. JV-512600 and JV-512797, 930 P.2d 496 (Ariz. Ct. App. 1996).

¹²⁴ *In re* Aaron M., 61 P.3d 34 (Ariz. Ct. App. 2003).

¹²⁵ *In re* Niky R., 55 P.3d 81 (Ariz. Ct. App. 2002).

¹²⁶ *In re* Sheree M., 4 P.3d 1067 (Ariz. Ct. App. 2000).

2. Juvenile court can place juvenile on JIPS after juvenile leaves residential placement but must make specific findings stating its reasons for imposing JIPS.¹²⁷

E. ADJC Issues: Juvenile court has authority to direct only the minimum length of sentence at ADJC (no other services can be ordered).¹²⁸

F. Errors in Disposition: Court of Appeals has authority to delete an unlawful provision in a disposition and affirm the remainder.¹²⁹

IX. Restitution Issues

A. Victim's Loss and Amount of Restitution

1. A recoverable loss is determined by three factors: "the loss must be economic . . . one that the victim would not have incurred but for the [juvenile]'s criminal offense . . . [and] the criminal conduct must directly cause the economic loss[.]" that is, the damage must not be consequential.¹³⁰ Restitution may be ordered under this analysis for payment of the value of a loan above the market value of a vehicle as determined by an insurance company since the loss in value can be determined by the court to be an economic loss.¹³¹

2. Economic Losses: "A common definition of 'economic' is the following: 'Of, relating to, or based on the production, distribution, and consumption of goods and services.' We hold that the breadth of this definition encompasses the breadth of the definition that the legislature intended when it determined that 'economic loss' meant 'any loss,' except as otherwise defined. We adopt it and apply it here. Using this definition of 'economic,' the pre-paid educational fees at issue clearly qualify. The inability to attend the culinary class certainly is one 'relating to . . . consumption of goods and services.' In the language of the definition, the victim was unable to 'consume' the 'services' for which he had paid: the culinary class. In this case

¹²⁷ *In re J.G.*, 993 P.2d 1055 (Ariz. Ct. App. 1999).

¹²⁸ *In re Daniel A.*, 108 P.3d 941 (Ariz. Ct. App. 2005).

¹²⁹ *Id.*

¹³⁰ *State v. Wilkinson*, 39 P.3d 1131, 1133 (Ariz. 2002).

¹³¹ *In re William L.*, 119 P.3d 1039 (Ariz. Ct. App. 2005).

the ‘service’ that the victim was precluded from consuming was the culinary class that he had purchased.”¹³²

3. Full property value has been ordered as restitution notwithstanding victim’s actual loss was only insurance deductible.¹³³

B. Restitution for Crimes Charged/Uncharged

1. Juvenile can be ordered to pay restitution for crimes he may have committed but for which he was not charged.¹³⁴

2. Restitution is due provided a juvenile is adjudicated delinquent for a criminal offense that supports the award, even if not delinquent for the charged offense.¹³⁵

3. If the restitution award is reasonably related to the victim’s loss it will be affirmed.¹³⁶

C. Proof of and Items Included in Restitution

1. Proof that a juvenile actually stole missing personal property from a vehicle not required “where circumstances support an inference that he did so and the trial court may not have found his denial credible. . . . [T]he trial court could have reasonably inferred that juvenile participated in the vehicle’s theft because he was found in possession [of] it.”¹³⁷

2. Parents’ lost income allowable as restitution for their time dealing with victim’s medical issues.¹³⁸

¹³² *In re Andrew C.*, 160 P.3d 687, 690 (Ariz. Ct. App. 2007) (quoting MERRIAM WEBSTER COLLEGIATE DICTIONARY (10th ed. 2005) (defining “economic” as “[o]f, relating to, or based on the production, distribution, and consumption of goods and services.”)).

¹³³ *In re Appeal in Pima County Juv. Action No. 45363-3*, 729 P.2d 345 (Ariz. Ct. App. 1986).

¹³⁴ *State v. Lindsley*, 953 P.2d 1248 (Ariz. Ct. App. 1997).

¹³⁵ *In re Stephanie B.*, 65 P.3d 114 (Ariz. Ct. App. 2003).

¹³⁶ *In re Ryan A.*, 39 P.3d 543 (Ariz. Ct. App. 2002).

¹³⁷ *In re Andrew A.*, 58 P.3d 527, 529 (Ariz. Ct. App. 2002).

¹³⁸ *In re Erika V.*, 983 P.2d 768 (Ariz. Ct. App. 1999).

D. Parental Payment of Restitution

1. Parent can be constitutionally ordered to pay restitution.¹³⁹ Parent is entitled to a meaningful restitution hearing and cannot be bound by juvenile's stipulation as to the amount of restitution.¹⁴⁰ Indigent parent is not entitled to court-appointed counsel at the restitution hearing.¹⁴¹

2. Joint and several liability for juvenile and parents permitted.¹⁴²

E. Timeliness of Claims for Restitution

1. When restitution deadline passes, the disposition order becomes final and victims can no longer request restitution.¹⁴³

2. Court may impose a reasonable restitution deadline for victim's restitution claims and the State cannot seek during the period of probation to add new restitution claims from victims.¹⁴⁴

3. Juvenile court can order payment by age eighteen, even if practically eighteen, to ensure the victim can recover through a restitution lien.¹⁴⁵

4. When juvenile court does not inform victim of the need to file a verified victim statement, the victim provides the state with the necessary evidence within the timeframe for restitution, and the state fails to request a restitution hearing, the court's ordering the juvenile to pay restitution was not an abuse of discretion.¹⁴⁶

5. A juvenile court abused its discretion by ordering payment of restitution, because the prosecution produced a restitution affidavit over a year after the disposition hearing after failing to file the affidavit with the court before the hearing or submitting any information regarding restitution

¹³⁹ *In re Kory L.*, 979 P.2d 543 (Ariz. Ct. App. 1999).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² ARIZ. REV. STAT. ANN. § 8-344 (2005); *In re Daniel M.*, 1 CA-JV 04-0210 (Ariz. Ct. App. 2005) (mem. opin.); *In re Kory L.*, 979 P.2d 543.

¹⁴³ *In re Kevin A.*, 32 P.3d 1088 (Ariz. Ct. App. 2001).

¹⁴⁴ *In re Alton D.*, 994 P.2d 402 (Ariz. 2000).

¹⁴⁵ *In re Kristen C.*, 975 P.2d 152 (Ariz. Ct. App. 1999).

¹⁴⁶ *In re Richard B.*, 163 P.3d 1077 (Ariz. Ct. App. 2007) (distinguishing *Kevin A.*, 32 P.3d 1088) and *Alton D.*, 994 P.2d 402).

claims at the time of disposition.¹⁴⁷ While the existence of a restitution cap was mentioned, it was “insufficient to cause restitution to be at issue at the disposition hearing. At most, the restitution cap indicated that a restitution claim might be forthcoming. No claim having been made to the juvenile court at or before the disposition hearing, however, the court’s disposition order resolved all issues that had been placed before it. Because the juvenile court did not set a deadline allowing later claims for restitution, the issue of restitution was not held open beyond the disposition, and the disposition order thus became final and appealable when it was signed by the judge and filed by the clerk of the court in July 2005.”¹⁴⁸ Since neither party appealed, the juvenile court lacked authority to reopen the original order.¹⁴⁹

X. Probation Issues

A. Terms of Probation

1. The judge must determine the conditions of probation and cannot abdicate this responsibility by delegating to the probation officer and recommending that counsel and the juvenile confer with the probation officer to negotiate the terms of probation.¹⁵⁰

2. “A condition of probation which does not violate basic fundamental rights and bears a relationship to the purpose of probation will not be disturbed on appeal.”¹⁵¹

3. Terms Must Be Written

i. An oral term of probation—for example, a date and time for drug testing—cannot be used as the basis for a probation violation; it must be written out.¹⁵²

ii. Terms must sufficiently describe behavior to enable juvenile to know what conduct will constitute a violation of the condition.¹⁵³

¹⁴⁷ *In re Michelle G.*, 173 P.3d 1041 (Ariz. Ct. App. 2008).

¹⁴⁸ *Id.* at 1045.

¹⁴⁹ *Id.*

¹⁵⁰ *In re Harry B.*, 971 P.2d 203 (Ariz. Ct. App. 1998); *In re Appeal in Navajo County*, Juv. Action No. 92-J-040, 885 P.2d 1127 (Ariz. Ct. App. 1994).

¹⁵¹ *In re Appeal in Pima County* Juv. Action No. J-20705-3, 650 P.2d 1278, 1280 (Ariz. Ct. App. 1982).

¹⁵² *In re Richard M.*, 993 P.2d 1048 (Ariz. Ct. App. 1999).

B. Modification of Terms of Probation: “The juvenile court has continuing authority to modify the terms of a delinquent juvenile’s probation. The juvenile court must exercise this authority consistently with the standards of due process; it does not take a violation, however, to trigger a review or revision of a juvenile’s probationary terms.”¹⁵⁴

C. Extension of Term of Probation

1. Provided petition is filed prior to end of probation period, juvenile court has jurisdiction to hear violation of probation actions and to extend probation.¹⁵⁵

2. Under Ariz. Rev. Stat. § 13-903 (2004), the filing of the petition for revocation of probation tolls the running of the term of probation, meaning that remaining probation time continues to push forward into the future pending a decision on the petition.¹⁵⁶

D. Unsuccessful Completion of Probation

1. Court may terminate probation unsuccessfully and designate undesignated offenses as felonies.¹⁵⁷

2. Court lacks jurisdiction to designate juvenile’s probation as unsuccessful after the juvenile turns eighteen years of age.¹⁵⁸

E. Probation and Custody

1. Unauthorized removal of an electronic monitoring device and departure from home detention constitutes an act of departing from custody for the purpose of determining whether a juvenile has committed the offense of escape in the third degree.¹⁵⁹

¹⁵³ *In re Appeal in Maricopa County Juv. Action No. JV-511237*, 938 P.2d 67 (Ariz. Ct. App. 1996).

¹⁵⁴ *In re J.G.*, 993 P.2d 1055, 1057 (Ariz. Ct. App. 1999) (citations omitted).

¹⁵⁵ *In re Stephanie N.*, 110 P.3d 1280 (Ariz. Ct. App. 2005).

¹⁵⁶ ARIZ. REV. STAT. ANN. § 13-903 (2004); *In re Chauntel M.*, 1 CA-JV 04-0018 (Ariz. Ct. App. 2004) (mem. opin.).

¹⁵⁷ *In re Themika M.*, 81 P.3d 344 (Ariz. Ct. App. 2003).

¹⁵⁸ *In re William W.*, 1 CA-JV 04-0158 (Ariz. Ct. App. 2004) (mem. opin.).

¹⁵⁹ *In re Brittany Y.*, 147 P.3d 1047 (Ariz. Ct. App. 2006).

2. When a juvenile has been adjudicated delinquent and is placed on home detention and electronic monitoring for subsequent probation violations, he or she is “in custody” within the meaning of Ariz. Rev. Stat. § 13-2502(A) (2006), because their probation violation offenses relate back to their original adjudication as delinquent.¹⁶⁰

XI. Abortion

Ariz. Rev. Stat. § 36-2152 (2003): Clear and convincing evidence required from juvenile to demonstrate “(1) that she is sufficiently mature and well-informed to make her abortion decision, in consultation with her physician, independently of her parents’ wishes, or (2) that if she cannot make the decision independently, and abortion would serve her best interests.”¹⁶¹ Maturity is can be determined by individually considering evidence presented by the juvenile that relates to the juvenile’s experience, perspective, and judgment.¹⁶² The court can also properly consider “the manner in which the minor makes significant decisions, including her decision to obtain an abortion” when making a determination of the juvenile’s maturity.¹⁶³

¹⁶⁰ *Id.*

¹⁶¹ *In re B.S.*, 74 P.3d 285, 288 (Ariz. Ct. App. 2003).

¹⁶² *Id.* at 290.

¹⁶³ *Id.* at 292.

APPENDIX B: ARIZONA DEPENDENCY CASE LAW OUTLINE¹⁶⁴*I. Standards of Proof*

A. Beyond a Reasonable Doubt: Involuntary severance of parental rights under the Indian Child Welfare Act.¹⁶⁵

B. Clear and Convincing Evidence = Highly Probable (*Kent K.*)

1. Statutory grounds for termination of parental rights: clear and convincing evidence required by due process.¹⁶⁶

2. Proof that CPS has made reasonable efforts to preserve the family or that such preservation efforts are futile.¹⁶⁷

3. Clear and convincing evidence are not required in severance cases involving abandonment.¹⁶⁸

4. Removal of child from permanent guardian.¹⁶⁹

C. Preponderance of the Evidence

1. Consideration of best interest of the child as required by statute.¹⁷⁰

2. Finding a child dependent.¹⁷¹

D. Probable Cause: CPS is required to show evidence establishing probable cause before taking temporary custody of a child.¹⁷²

¹⁶⁴ Formatting note: Intended to be a hands-on tool, these outlines focus on function over format. As a result, parts of the outline may stray from traditional Bluebook format where the editor believed it would improve ease of use for the practitioner.

¹⁶⁵ 25 U.S.C. § 1912(f) (2008).

¹⁶⁶ *Santosky v. Kramer*, 455 U.S. 745 (1982); *Kent K. v. Bobby M.*, 110 P.3d 1013 (Ariz. 2005); *In re Appeal in Pima County Juv. Action No S-919*, 646 P.2d 262 (Ariz. 1982).

¹⁶⁷ *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 971 P.2d 1046 (Ariz. Ct. App. 1999).

¹⁶⁸ *Toni W. v. Ariz. Dep't of Econ. Sec.*, 993 P.2d 462 (Ariz. Ct. App. 1999).

¹⁶⁹ *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 944 P.2d 68 (Ariz. Ct. App. 1997).

¹⁷⁰ *Kent K.*, 110 P.3d at 1022.

¹⁷¹ *In re Appeal in Cochise County Juv. Action No. 5666-J*, 650 P.2d 459 (Ariz. 1982).

¹⁷² *Marina P. v. Ariz. Dep't of Econ. Sec.*, 152 P.3d 1209 (Ariz. Ct. App. 2007).

II. Dependency Issues

A. Establishing Dependency, In General

1. Procedure

a. Counsel for a parent can also serve as that parent's guardian *ad litem*.¹⁷³ Dual representation of parents by same attorney has been approved.¹⁷⁴

b. "[A]bsent stipulation of the parties, parents are denied due process of law when refused the right to cross-examine their children during a dependency hearing. We recognize, however, there may be instances in which the court may wish to limit the conditions under which children are examined by providing that examination be in chambers or by providing that only counsel for the parties be present. Testimony which is traumatic in nature would merit an examination in chambers, and the presence of counsel alone would be justified where a party's presence is potentially inhibiting. Such reasonable limitations would protect the emotional interests of the child while preserving the parents' due process right of cross-examination."¹⁷⁵

c. "It is clear that any objection to the in-chambers interviews was waived by both counsel and the parents. The right to cross-examine the children was never refused, and therefore no due process right was violated, because the opportunity to exercise that right was never requested."¹⁷⁶

d. In termination and dependency proceedings, a parent must object to specific material in a social study report to have those contents not be considered,¹⁷⁷ but a parent does not have the ability to require the court to exclude the entire report by objecting to it in its entirety.¹⁷⁸

¹⁷³ *In re Appeal in Pima County*, Juv. Action No. S-828, 659 P.2d 1326 (Ariz. Ct. App. 1982).

¹⁷⁴ *Id.*

¹⁷⁵ *In re Appeal in Maricopa County* Juv. Action No. JD-561, 638 P.2d 692, 695 (Ariz. 1981).

¹⁷⁶ *In re Appeal in Santa Cruz County* Juv. Dependency Action Nos. JD-89-006 & JD-89-007, 804 P.2d 827, 830 (Ariz. Ct. App. 1990).

¹⁷⁷ *In re Appeal in Maricopa County*, Juv. Action No. J-75482, 536 P.2d 198 (Ariz. 1975).

¹⁷⁸ *In re Appeal in Maricopa County* Juv. Action No. JS-501904, 884 P.2d 234 (Ariz. Ct. App. 1994).

2. Dependency and Orders of Protection: The juvenile court has authority under Ariz. Rev. Stat. § 8-202(F) (2007) to “issue orders that take precedence over a pre-existing municipal court order of protection and therefore supersede it.”¹⁷⁹ Accordingly, dependency cannot rest solely on the ground that because of the existence of an order of protection, a parent is not entitled to the custody of the child, even when the parent has failed to follow the defined process to dissolve the order.¹⁸⁰

3. Jurisdiction of Children in Dependency Actions

a. Arizona juvenile court still had jurisdiction over private dependency petition even though petitioners had moved to Louisiana.¹⁸¹

b. “For purposes of determining whether a court has jurisdiction to hear a matter, the relevant time is the commencement of the proceeding.”¹⁸²

c. Arizona juvenile court had jurisdiction and authority under the Uniform Child Custody Jurisdiction and Enforcement Act to both find dependency and have Texas authorities take children from parents who were en route to Kentucky despite express denial of permission to move from the court.¹⁸³ Court did not abuse its discretion in refusing parents to participate telephonically at dependency hearing.¹⁸⁴

4. Intervention in Dependency Actions

a. Grandparents may intervene provided analysis under *Bechtel* factors indicates intervention is in the best interest of the child.¹⁸⁵

b. Custodial family member may intervene in the dependency, even if not found preliminarily fit by CPS to serve as a placement, unless specific

¹⁷⁹ Michael M. v. Ariz. Dep’t of Econ. Sec., 172 P.3d 418, 421 (Ariz. Ct. App. 2007).

¹⁸⁰ *Id.* at 423.

¹⁸¹ David S. v. Audilio S., 32 P.3d 417 (Ariz. Ct. App. 2001).

¹⁸² *Id.* (citing *In re Appeal in Pima County Juv. Action No. J-78632*, 711 P.2d 1200 (Ariz. Ct. App. 1985)).

¹⁸³ Willie G. v. Ariz. Dep’t of Econ. Sec., 119 P.3d 1034 (Ariz. Ct. App. 2005).

¹⁸⁴ *Id.*

¹⁸⁵ William Z. v. Ariz. Dep’t of Econ. Sec., 965 P.2d 1224 (Ariz. Ct. App. 1998) (citing *Bechtel v. Rose*, 722 P.2d 236 (Ariz. 1986)).

findings that such intervention would not be in the best interest of the child under the *Bechtel* factors are made.¹⁸⁶

i. Factors: “[T]he nature and extent of the intervenors’ interest, their standing to raise relevant legal issues, the legal position they seek to advance, and its probable relation to the merits of the case. The court may also consider whether changes have occurred in the litigation so that intervention that was once denied should be reexamined, whether the intervenors’ interests are adequately represented by other parties, whether intervention will prolong or unduly delay the litigation, and whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented.”¹⁸⁷

5. Intervention by Tribes under ICWA (see ICWA section): While tribes may intervene in the state court proceedings, the state court can refuse to transfer the dependency case to the tribal courts if good cause can be shown.¹⁸⁸ Good cause can be shown if: 1) the proceeding was at an advanced state and the petitioner did not file promptly after receiving notice; and, 2) the evidence necessary to decide the case cannot be adequately presented in the tribal court without undue hardship to the parties or the witnesses.¹⁸⁹ Consideration of the best interest of the child is properly considered in making the determination.¹⁹⁰ Socioeconomics and the state of the tribal or Bureau of Indian Affairs services or judicial process may not be considered.¹⁹¹

6. Requirements of Findings Establishing Dependency: “Where a trial court makes findings of ultimate facts, there is competent evidence of the existence of such facts, and the findings are such that a reviewing court is able to ‘test the validity’ of the judgment, the findings are sufficient.”¹⁹²

¹⁸⁶ Allen v. Chon-Lopez, 153 P.3d 382 (Ariz. Ct. App. 2007).

¹⁸⁷ Bechtel v. Rose, 722 P.2d 236, 240 (Ariz. 1986) (quoting Spangler v. Pasadena City Bd. of Educ., 552 F.2d 1326, 1329 (9th Cir. 1977)).

¹⁸⁸ *In re* Appeal in Maricopa County Juv. Action No. JS-8287, 828 P.2d 1245 (Ariz. Ct. App. 1991).

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Lisa P. & Brian R. v. Ariz. Dep’t of Econ. Sec., 1 CA-JV04-0127 (Ariz. Ct. App. 2005) (mem. opin.) (citing Gilliland v. Rodriguez, 268 P.2d 334 (Ariz. 1954)).

7. Appropriate Findings Establishing Dependency

a. “In balancing the interests of religious freedom, we will not interfere with a parent’s fundamental right to the custody of his or her child if providing medical care is contrary to the parent’s religious beliefs and there is no known medical danger.”¹⁹³

b. A finding of fault by a parent is not a requirement for finding dependency as to a child; rather dependency relates to protecting the special legal rights of the child.¹⁹⁴

c. Parents’ financial situation is pertinent to determining whether parents are capable of providing for their children and thus making a finding of dependency.¹⁹⁵

d. “Evidence that a child is born out of wedlock does not alone establish dependency of [a] child”¹⁹⁶

8. Who is a Parent or Guardian?

a. A child in the custody of a parent who is without legal custody by virtue of family court orders is not dependent within the meaning of the statute, and any dependency thus filed should be dismissed in the absence of imminent harm to the child.¹⁹⁷

b. Putative father who does not take steps to establish paternity cannot have dependency dismissed as to himself even when CPS has awarded physical custody to him and determined he can exercise effective parental care and control, because he can no more than anyone else legally protect the child from its mother.¹⁹⁸ “[O]ne claiming to be able to exercise care and control must have the legal ability to do so.”¹⁹⁹

¹⁹³ *In re Appeal in Cochise County Juv. Action No. 5666-J*, 650 P.2d 459, 465 (Ariz. 1982) (citation omitted).

¹⁹⁴ *In re Appeal in Maricopa County, Juv. Action No. J-75482*, 536 P.2d 198 (Ariz. 1975).

¹⁹⁵ *In re Appeal in Maricopa County Juv. Action No. JD-500325*, 788 P.2d 1206 (Ariz. Ct. App. 1989).

¹⁹⁶ *Caruso v. Sup. Court in and for County of Pima*, 412 P.2d 463, 467 (Ariz. 1966).

¹⁹⁷ *Meryl R. v. Ariz. Dep’t of Econ. Sec.*, 992 P.2d 616 (Ariz. Ct. App. 1999).

¹⁹⁸ *In re Appeal in Maricopa County Juv. Action No. JD-500200*, 788 P.2d 1208 (Ariz. Ct. App. 1989).

¹⁹⁹ *Id.* at 1211.

c. Legal delegation of parental responsibility to another does not make that person a guardian under Title 8 or a custodian under Title 25.²⁰⁰ To be a guardian under the statutes after a dependency petition has been filed, a finding of dependency must be made by the juvenile court and the guardian appointed by the court.²⁰¹

9. Cases Establishing Dependency

a. “Arizona courts have found [grounds for dependency] in situations where children are afraid of their parents, where return to the home might subject them to violence, or where evidence of abuse existed.”²⁰²

b. Discipline with belts and black rubber molding learned from the children’s parents along with verbal abuse was sufficient to justify a finding of dependency to preserve the health and welfare of the child.²⁰³

III. Severance Issues

A. Standards of Proof for Statutory Test

1. Proof of statutory ground for termination of rights by clear and convincing evidence; and,

2. Proof that termination is in the best interests of the child by the preponderance of the evidence.²⁰⁴ The standards of proof are permissible both because of legislative intent and due process under the three factors set forth in *Mathews v. Eldridge*.²⁰⁵

B. Summary Judgment

1. Arizona Department of Economic Security (ADES) must show no genuine issues of material fact and the judge must not engage in weighing

²⁰⁰ *In re* Appeal in Maricopa County Juv. Action No. JD-05401, 845 P.2d 1129 (Ariz. Ct. App. 1993).

²⁰¹ *Id.*

²⁰² *Jennifer B. v. Ariz. Dep’t of Econ. Sec.*, 944 P.2d 68, 71 (Ariz. Ct. App. 1997).

²⁰³ *In re* Appeal in Pima County Dependency Action No. 93511, 744 P.2d 455 (Ariz. Ct. App. 1987).

²⁰⁴ *Kent K. v. Bobby M.*, 110 P.3d 1013 (Ariz. 2005).

²⁰⁵ *Id.*

of the evidence presented for parental rights to be severed through summary judgment.²⁰⁶

2. Parental rights can be terminated by summary judgment, provided the requirements of *Orme Sch. v. Reeves* are met.²⁰⁷

3. “We are cognizant that Margaret could not ‘defeat [ADES’s] motion for summary judgment based solely on the unsupported contention that a dispute exist[ed].’ Nor is a party’s conclusory affidavit usually enough to defeat a motion for summary judgment. But the peculiarly factual nature of the statutory grounds for severance alleged here, § 8-533(B)(3) and (B)(8), makes parents themselves uniquely able to refute some essential elements of those grounds. To the extent Margaret’s state of mind and anticipated conduct were at issue, Margaret raised factual issues by her own affidavit.”²⁰⁸

C. Procedure

1. The right to a jury trial accrues at the date of the filing of the severance petition and vests when the parents request a jury trial prior to December 31, 2006.²⁰⁹

2. A jury instruction that stated that if the jury found that the child was in an adoptive placement, adoptable, or that severance would be in the child’s best interest, “the best interest requirement for termination of the parent’s rights is *satisfied*” was erroneous.²¹⁰ “While a jury *may* find that severance is in a child’s best interests if the child is found to be adoptable, the jury is not required to do so.”²¹¹

3. Parents under criminal investigation for suspicious death of their child “had no constitutional right to refuse to participate in reunification

²⁰⁶ Jennifer G. v. Ariz. Dep’t of Econ. Sec., 123 P.3d 186 (Ariz. Ct. App. 2005).

²⁰⁷ Kenneth T. v. Ariz. Dep’t of Econ. Sec., 128 P.3d 773 (Ariz. Ct. App. 2006).

²⁰⁸ Margaret H. v. Ariz. Dep’t of Econ. Sec., 148 P.3d 1174, 1177 (Ariz. Ct. App. 2006) (citations omitted).

²⁰⁹ Ariz. Dep’t of Econ. Sec. v. Reinstein, 150 P.3d 782 (Ariz. Ct. App. 2007). The holding does not address whether right accrues at the date of filing of the dependency petition. *Id.* at 787 n.4.

²¹⁰ Lawrence R. v. Ariz. Dep’t of Econ. Sec., 177 P.3d 327, 330 (Ariz. Ct. App. 2008).

²¹¹ *Id.*

services, because there was no evidence that such services would have required them to incriminate themselves.”²¹²

4. Multiple permanency hearings are permitted by statute.²¹³

5. Failure to comply with the Arizona Rules of Procedure for Juvenile Court is not structural error and does not necessarily require reversal.²¹⁴

6. Failure by ADES and attorney for mother to provide notice of right to jury trial or Form III, since unobjected to at the termination hearing, was not fundamental error and did not require reversal.²¹⁵

7. Despite failure of court to find extraordinary circumstances, since parent had failed to raise the issue at the time the severance hearing was set and the record reflected extraordinary circumstances, there was no fundamental error nor was the parent prejudiced.²¹⁶

8. “[W]e hold the entry of default or, more properly stated, a finding of waiver of rights, precludes Mother from affirmatively presenting testimony or other documentary evidence to contest the statutory bases for termination, but the requirement of fair procedures mandates giving Mother the opportunity to remain in the courtroom and participate. That right of participation includes cross-examination of ADES’s witnesses and testifying if she so desires as it relates to the issue of the best interests of the children.”²¹⁷

9. The juvenile court does not have to have *in personam* jurisdiction over the parents of a child who currently resides in the state to have jurisdiction to sever their parental rights.²¹⁸

10. “[A] child may be the petitioner in an action to sever the parental rights of that child’s parents”²¹⁹

²¹² Minh T. v. Ariz. Dep’t of Econ. Sec., 41 P.3d 614, 616 (Ariz. Ct. App. 2001).

²¹³ Veronica T. v. Ariz. Dep’t of Econ. Sec., 126 P.3d 154 (Ariz. Ct. App. 2005).

²¹⁴ *In re* Melissa K., 4 P.3d 1034 (Ariz. Ct. App. 2000).

²¹⁵ Monica C. v. Ariz. Dep’t of Econ. Sec., 118 P.3d 37 (Ariz. Ct. App. 2005).

²¹⁶ Carolee T. v. Ariz. Dep’t of Econ. Sec., 1 CA-JV 05-0041 (Ariz. Ct. App. 2005) (mem. opin.).

²¹⁷ Christy A. v. Ariz. Dep’t of Econ. Sec., 173 P.3d 463, 470 (Ariz. Ct. App. 2007).

²¹⁸ *In re* Appeal in Maricopa County, Juv. Action No. JS-734, 543 P.2d 454 (Ariz. Ct. App. 1975) (discussing requirements of service).

11. Nothing in Ariz. Rev. Stat. § 8-862 (2007) prevents ADES from filing a termination petition under Ariz. Rev. Stat. § 8-533 (2007).²²⁰ In other words, a petition for termination of parental rights can be filed by ADES before a final finding of dependency as to the children.²²¹

12. “Taken together, [Ariz. Rev. Stat. § 8-532 (2007) and Ariz. Juv. Ct. R. 64(B)] make clear that Arizona’s statutes provide two procedurally distinct paths toward termination of parental rights, but they do not prohibit the filing of a petition for termination at any time before a motion for termination is ordered.”²²² In this case, while a permanency hearing was continued, a severance petition was properly filed and not dismissed, then consolidated with the pending proceedings and acted upon.²²³

13. Evidence relating to another child born during the dependency is not relevant to determining whether termination of parental rights is in the child’s best interest, and exclusion of such evidence is not an abuse of discretion.²²⁴

14. Testimony of Child Victims

a. Transcripts of former testimony are admissible under Ariz. Rev. Stat. § 8-237 (1989), even with a finding that the child is not an unavailable witness under the rules of evidence.²²⁵

b. “While protecting a parent’s due process right to test the reliability of a child’s testimony through *cross-examination*, the supreme court [in *Appeal in Maricopa County Juv. Action No. JD-561*] neither stated nor implied that due process required that the parent be permitted to *confront* the child[.]”²²⁶ The right of confrontation applies only to criminal defendants

²¹⁹ *In re Appeal in Pima County Juv. Sev. Action No. S-113432*, 872 P.2d 1240, 1243 (Ariz. Ct. App. 1993).

²²⁰ *Kimu P. v. Ariz. Dep’t of Econ. Sec.*, 178 P.3d 511 (Ariz. Ct. App. 2008).

²²¹ *Id.*

²²² *Bobby G. v. Ariz. Dep’t of Econ. Sec.*, 200 P.3d 1003, 1006-07 (Ariz. Ct. App. 2008).

²²³ *Id.* at 1005.

²²⁴ *Kimu P.*, 178 P.3d at 514.

²²⁵ *In re Appeal in Maricopa County Juv. Action No. JS-7499*, 786 P.2d 1004 (Ariz. Ct. App. 1989).

²²⁶ *Id.* at 1008.

and not to parental rights termination cases, which are “essentially civil in nature.”²²⁷

c. A parent who has had the opportunity for cross-examination in a previous proceeding (a military court-martial) is not entitled to an additional opportunity to cross-examine the child during a termination proceeding.²²⁸

d. Interview of child by referee in chambers while parties watched on closed circuit television proper, even when terminated before counsel could submit follow-up questions because of state of child.²²⁹

e. “The best of intentions and the greatest zeal to care for neglected, dependent, or delinquent children do not justify the violation of the constitutional provisions as to due process that are involved in removing a child from the custody of its parent.”²³⁰

D. Statutory Grounds for Severance

1. “[A] parent’s illegal status in this country is not, in and of itself, a statutorily enumerated basis for terminating Mother’s parental rights. . . . [H]owever, a parent’s illegal status may cause or contribute to the existence of such a basis.”²³¹

2. Ariz. Rev. Stat. § 8-533(B) Statutory Bases for Severance

a. (B)(1): Abandonment by the Parent

i. Factors from *In re Appeal in Pima County Juvenile Severance Action No. S-114487*:²³²

(a) Did the parent establish and create a parental relationship?

(b) Did the parent promptly assert his or her legal rights?

²²⁷ *Id.*

²²⁸ *Id.* at 1009.

²²⁹ *In re Appeal in Pima County Sev. Action No. S-2248*, 767 P.2d 25 (Ariz. Ct. App. 1988).

²³⁰ *Arizona State Dept. of Pub. Welfare v. Barlow*, 296 P.2d 298, 300 (Ariz. 1956) (quoting *In re Godden*, 63 N.W.2d 151, 156 (Neb. 1954)); *see also* *Anguis v. Superior Court ex rel. County of Maricopa*, 429 P.2d 702 (Ariz. Ct. App. 1967).

²³¹ *Marina P. v. Ariz. Dep’t of Econ. Sec.*, 152 P.3d 1209, 1216 (Ariz. Ct. App. 2007).

²³² 876 P.2d 1121 (Ariz. 1994).

- (c) Did the parent have just cause for failing to assert his or her rights?
- (d) Was the process used by the state to terminate the parent's right in accord with the principles of due process?
- (e) Is termination of the parent's rights in the best interests of the child?

ii. "What constitutes reasonable support, regular contact, and normal supervision [under Ariz. Rev. Stat. § 8-546(A)(1), now Ariz. Rev. Stat. § 8-531(1) (1994)] varies from case to case."²³³

(a) Status of Child Support: Failure to keep up with child support payments does not in itself constitute abandonment but is rather a factor to be considered, "and, when coupled with a failure to communicate or the absence of sending gifts, is sufficient to uphold a conclusion that the child has been abandoned."²³⁴

(b) Unwed v. Married Parents

(i) "Thus, in whatever manner we apply the statute's language to termination proceedings against an unwed father with no parental relationship, the message, put simply, is this: do something, because conduct speaks louder than words or subjective intent."²³⁵

(ii) The factors of *In re Appeal in Pima County Juvenile Severance Action No. S-114487* and the definition of abandonment of Ariz. Rev. Stat. § 8-531.1 (2000) are applied to severance actions involving married as well as unmarried parents; the standard is objective.²³⁶

(c) "[W]e have adopted a rule that preserves parental interests when the parent grasps the opportunity quickly, diligently, and persistently. When the parent fails to do so, even though the failure may be understandable, the trial court may find abandonment and terminate parental rights if that is in the child's best interest."²³⁷

²³³ *Id.* at 1131.

²³⁴ *In re Appeal in Maricopa County Juv. Action No. JS-3594*, 653 P.2d 39, 43 (Ariz. Ct. App. 1982).

²³⁵ *In re Appeal in Pima County Juv. Sev. Action No. S-114487*, 876 P.2d at 1132.

²³⁶ *Michael J. v. Ariz. Dep't of Econ. Sec.*, 995 P.2d 682 (Ariz. 2000).

²³⁷ *In re Appeal in Pima County Juv. Sev. Action No. S-114487*, 876 P.2d at 1136.

(d) “[Q]uestions of abandonment . . . are questions of fact for resolution by the trial court.”²³⁸

(e) Defenses of Imprisonment, Due Process, Failure of CPS to Provide Reunification Services

(i) “Imprisonment, per se, neither ‘provide[s] a legal defense to a claim of abandonment’ nor alone justifies severance on the grounds of abandonment.”²³⁹

(ii) A parent has no statutory right under Ariz. Rev. Stat. § 8-533(C) (1999) to have reunification services provided by CPS since court is not required to consider the availability of services or a parent’s participation in them under any grounds for termination but the duration of out-of-home placement grounds ((B)(8) and (B)(11)).²⁴⁰

(iii) Under the standard in *Lehr v. Robertson*, “in the absence of an existing parent-child relationship, [a parent is] not entitled, based on constitutional due process principles, to require ADES to provide [him or] her with reunification services before seeking severance . . . on the statutory ground of abandonment.”²⁴¹

(iv) “[A] prima facie case of abandonment cannot automatically be considered rebutted merely by post-petition attempts to reestablish a parental relationship.”²⁴²

(v) An adoptive family without knowledge of the circumstances cannot terminate a father’s rights when the mother has hidden the child and subsequently relinquished her rights to the adoptive family.²⁴³

²³⁸ *In re Appeal in Maricopa County Juv. Action No. JS-500274*, 804 P.2d 730, 733 (Ariz. 1990).

²³⁹ *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 995 P.2d 682, 686 (Ariz. 2000) (quoting *In re Pima County Juv. Action No. S-624*, 616 P.2d 948 (Ariz. Ct. App. 1980)) (alteration in original).

²⁴⁰ *Toni W. v. Ariz. Dep’t of Econ. Sec.*, 993 P.2d 462 (Ariz. Ct. App. 1999).

²⁴¹ *Id.* at 467.

²⁴² *In re Appeal in Maricopa County Juv. Action No. JS-500274*, 804 P.2d at 737.

²⁴³ *In re Appeal in Pima County Juv. Action No. S-1182*, 666 P.2d 532 (Ariz. Ct. App. 1983).

b. (B)(2): Neglect, Willful Abuse, or Knowledge of Another's Abuse of A Child

i. Phrase "a child" in Ariz. Rev. Stat. § 8-533(B)(2) (2005) was meant by the legislature to allow a parent's rights to other children to be terminated when neglect or abuse has been found as to one of the children.²⁴⁴

ii. "We are of the opinion that termination of the parent-child relationship on the grounds of neglect requires a showing of serious harm to the child, be it physical, mental or 'moral.'"²⁴⁵

iii. Failure to reasonably seek employment, failure to pay child support, and sending of children back to mother with no commitment to support them was sufficient evidence to find neglect by father.²⁴⁶

iv. Failure to secure medical advice or assistance for deaf child, and no effort to learn sign language to communicate with the child were sufficient evidence to find neglect.²⁴⁷

v. Beating of children and mother in presence of children coupled with expert testimony regarding psychological effect of abuse on children sufficient to find grounds of physical and emotional abuse.²⁴⁸

vi. The court found that "person" or "child" under (B)(2) does not include a fetus later born alive utilizing the criminal definition of "person" rather than the civil tort definition of "person."²⁴⁹

c. (B)(3): Mental Illness, Mental Deficiency, Chronic Substance Abuse with Reasonable Grounds for Belief Abuse Will Continue for a Prolonged Indeterminate Period.

²⁴⁴ Linda V. v. Ariz. Dep't of Econ. Sec., 117 P.3d 795 (Ariz. Ct. App. 2005).

²⁴⁵ *In re* Appeal in Pima County, Juv. Action No. S-111, 543 P.2d 809, 819 (Ariz. Ct. App. 1975).

²⁴⁶ *In re* Appeal in Pima County, Adoption of B-6355 and H-533, 575 P.2d 310 (Ariz. 1978).

²⁴⁷ *Id.*

²⁴⁸ *In re* Appeal in Pima County Juv. Sev. Action No. S-113432, 872 P.2d 1240 (Ariz. Ct. App. 1993).

²⁴⁹ *In re* Appeal in Pima County Juv. Sev. Action No. S-120171, 905 P.2d 555 (Ariz. Ct. App. 1995) (Hathaway, J., dissenting).

i. Specific Findings Required for Mental Illness or Deficiency Grounds from *In re Appeal in Maricopa County Juv. Action No. JS-5209 and No. JS-4963*²⁵⁰

(a) “[T]he parent is unable to discharge the parental responsibilities;”

(b) “[T]his inability is the result of a mental illness or a mental deficiency;”

(c) “That there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.”²⁵¹

(d) Standard of Proof: Clear and convincing evidence required that the illness or deficiency prevents the parent from performing parental responsibilities AND that the illness will continue for a prolonged indeterminate period.²⁵²

ii. Mental Illness/Incapacity

(a) “[M]ental illness’ under the statute is defined as ‘a substantial mental condition which renders the person unable to discharge parental responsibilities and which condition is likely to continue for a prolonged indeterminate period.’”²⁵³

(b) “[P]roof of actual or likely harm to the child . . .” because of the illness or deficiency implied in (B)(3) is required.²⁵⁴

(c) “[A]lthough the State is not obliged to undertake futile rehabilitative measures [for a parent with mental illness], it is obliged to undertake those which offer a reasonable possibility of success.”²⁵⁵

(d) Parent argued that the State failed to make reasonable efforts to provide services to preserve the family did not challenge findings of inability to

²⁵⁰ 692 P.2d 1027 (Ariz. Ct. App. 1984).

²⁵¹ *Id.* at 1033.

²⁵² *Id.*; *In re Appeal in Maricopa County, Juv. Action No. JS-5894*, 701 P.2d 1213, 1217-18 (Ariz. Ct. App. 1985).

²⁵³ *In re Appeal in Maricopa County Juv. Action No. JS-5209 and No. JS-4963*, 692 P.2d at 1033.

²⁵⁴ *Id.* at 1034.

²⁵⁵ *Mary Ellen C. v. Ariz. Dep’t of Econ. Sec.*, 971 P.2d 1046, 1048 (Ariz. Ct. App. 1999).

“discharge her parental responsibilities because of mental deficiency and that such condition would continue for a prolonged indeterminate period of time.”²⁵⁶ The State argued that providing services was futile given the parent’s condition.²⁵⁷ “We do not have any quarrel with the dissent’s assertion that ‘reasonable efforts’ includes seeking to reasonably accommodate disabilities from which a parent may suffer. We view reasonable accommodations as a component of making ‘reasonable efforts.’ Without commenting on the standard or approach that the dissent lays out in this regard, one fundamental flaw in the dissent’s position is that on this record there is abundant evidence showing that no amount of ‘reasonable efforts’ in providing services would have enabled Vanessa to function as a minimally adequate parent.”²⁵⁸

iii. Juvenile court is not automatically required to appoint a guardian *ad litem* for a parent when ADES seeks termination under Ariz. Rev. Stat. § 8-533(B)(3) (2006).²⁵⁹

iv. Parental Capacity: “[T]he essential question in deciding if reasonable grounds exist to believe a parent is mentally incompetent is whether the parent is unable to understand the nature and object of the proceedings or assist in his or her defense.”²⁶⁰

v. Substance Abuse

(a) “[C]hronic use of drugs or alcohol by either parent during the mother’s pregnancy may reflect a pattern of substance abuse and may be so telling of the kind of environment to which the child will be born as to justify the child’s immediate removal from the parents at birth”²⁶¹

(b) Brief period of sobriety following a long history of substance abuse does not bar severance under Ariz. Rev. Stat. § 8-533(B)(8)(a) (2005).²⁶²

²⁵⁶ Vanessa H. v. Ariz. Dep’t of Econ. Sec., 159 P.3d 562, 566 (Ariz. Ct. App. 2007).

²⁵⁷ *Id.*

²⁵⁸ *Id.* (citation omitted).

²⁵⁹ Kelly R. v. Ariz. Dep’t of Econ. Sec., 137 P.3d 973 (Ariz. Ct. App. 2006).

²⁶⁰ *Id.* at 978 (holding limited to adult parents).

²⁶¹ *In re Appeal in Pima County Juv. Sev. Action No. S-120171*, 905 P.2d 555, 558 (Ariz. Ct. App. 1995).

²⁶² Rosalinda Q. v. Ariz. Dep’t of Econ. Sec., 1 CA-JV 04-0188 (Ariz. Ct. App. 2005) (mem. opin.) (citing *In re Appeal in Maricopa County Juv. Action No. JS-501568*, 869 P.2d 1224 (Ariz. Ct. App. 1994)).

(c) Expert testimony stating that father had “fair” prognosis and needed one year of sobriety out of prison prior to reunification was not an “indeterminate period” under the statute.²⁶³

(d). (B)(4): Felony Conviction of Parent for Crime Proving Unfitness to Parent or Length of Sentence Depriving Child of Normal Home for Period of Years

i. Unfitness to Parent

(a) “The statute requires the felony to be of a nature to prove unfitness. A felony proves unfitness if its commission permits a rational inference of unfitness. It would be difficult to identify any felony violation [child molestation] that would more clearly indicate the unfitness of the appellant as a parent to his young daughter.”²⁶⁴

(b) “[T]he parent may rebut the assessment of unfitness based on a past act by showing actual fitness at the time of the hearing.”²⁶⁵

(c) “Crimes such as child molestation, . . . rape, . . . rape and armed robbery, . . . and the murder of one’s own child . . . are crimes that have been found to support a rational inference of parental unfitness.”²⁶⁶

(d) The child involved in the severance proceeding need not have been born at the time of the crime.²⁶⁷

ii. Length of Sentence

(a) Abandonment factors for use when determining whether length of sentence deprives a child of a normal home for a period of years.

(i) The length and strength of any parent-child relationship existing when incarceration begins;

²⁶³ Steven K. v. Ariz. Dep’t of Econ. Sec., 113 P.3d 1240 (Ariz. Ct. App. 2005).

²⁶⁴ *In re Juvenile No. J-2255 v. Morris*, 613 P.2d 304, 306 (Ariz. Ct. App. 1980).

²⁶⁵ *Id.* at 307.

²⁶⁶ *In re Pima County, Juv. Action Nos. S-826 and J-59015*, 643 P.2d 736, 738 (Ariz. Ct. App. 1982) (citations omitted).

²⁶⁷ *Id.*

(ii) The degree to which the parent-child relationship can be continued and nurtured during the incarceration;

(iii) The age of the child and the relationship between the child's age and the likelihood that incarceration will deprive the child of a normal home;

(iv) The length of the sentence

(v) The availability of another parent to provide a normal home life; and

(vi) The effect of the deprivation of a parental presence on the child at issue.²⁶⁸

(b) All relevant factors under *Michael J.* need to be considered during severance under (B)(4).²⁶⁹ “A lack of evidence on one or several of the *Michael J.* factors may or may not require reversal or remand on a severance order . . . Similarly, there is no threshold level under each individual factor in *Michael J.* that either compels, or forbids, severance. It is an individualized, fact-specific inquiry.”²⁷⁰

(c) Phrase “normal home” refers to a home provided by the biological parent, not an environment created by other relatives.²⁷¹

(d) Juvenile court looks to the entire period of incarceration and not just the length of the sentence remaining at the time of the severance hearing.²⁷²

(e) The actual length of the sentence is what must be considered by the juvenile court, not an anticipated release date.²⁷³

(f) Nothing in Ariz. Rev. Stat. § 8-533(B)(4) (1989) requires the court to wait until all of a parent's appeals of a conviction have been exhausted before proceeding with severance.²⁷⁴

²⁶⁸ *Michael J. v. Ariz. Dep't of Econ. Sec.*, 995 P.2d 682 (Ariz. 2000).

²⁶⁹ *Christy C. v. Ariz. Dep't of Econ. Sec.*, 153 P.3d 1074 (Ariz. Ct. App. 2007).

²⁷⁰ *Id.* at 1079 (citations omitted).

²⁷¹ *In re Appeal in Maricopa County Juv. Action No. JS-5609*, 720 P.2d 548 (Ariz. Ct. App. 1986).

²⁷² *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 53 P.3d 203 (Ariz. Ct. App. 2002).

²⁷³ *Id.*; *James S. v. Ariz. Dep't of Econ. Sec.*, 972 P.2d 684 (Ariz. Ct. App. 1998).

(g) CPS has no statutory or constitutional duty to provide family reunification services to a parent whose rights are terminated under length of sentence grounds.²⁷⁵

e. (B)(5): Failure of Potential Father to File Paternity Action under Ariz. Rev. Stat. § 8-106(G).

f. (B)(6): Failure of Putative Father to File a Claim of Paternity under Ariz. Rev. Stat. § 8-106.01.

g. (B)(7): Relinquishment of Rights to an Agency or Consent to Adoption: Mother's emotion when signing consent agreement and later seeking to revoke consent to adoption five months after signing insufficient to establish duress under Ariz. Rev. Stat. § 8-106(D) (1991).²⁷⁶ Failure of adoption agency to disclose mother's desire to revoke consent at the time of the adoption hearing was cured by disclosure in subsequent hearing to set aside the adoption and thus did not constitute fraud on the court under Ariz. Rev. Stat. § 8-106(D) (1991).²⁷⁷

h. (B)(8)(a): Out of Home Placement with Diligent Effort Toward Reunification by Agency and Nine Months Out of Care and Substantial Neglect or Willful Refusal to Remedy Circumstances by Parent.

i. "To terminate parental rights pursuant to A.R.S. § 8-533(B)(8)(a), the moving party must establish that the circumstances that caused Mother's children to be placed out of her home had been previously identified to her, that the circumstances continued to exist at the time of severance and that Mother had 'substantially neglected or willfully refused' to remedy those circumstances despite appropriate services being provided by the agency responsible for the care of the child."²⁷⁸

²⁷⁴ *In re* Appeal in Pima County Juv. Sev. Action No. S-2462, 785 P.2d 56 (Ariz. Ct. App. 1989).

²⁷⁵ *James H. v. Ariz. Dep't of Econ. Sec.*, 106 P.3d 327 (Ariz. Ct. App. 2005).

²⁷⁶ *In re* Appeal in Navajo County Juv. Action No. JA-691, 831 P.2d 368 (Ariz. Ct. App. 1991) (discussing adoption).

²⁷⁷ *Id.*

²⁷⁸ *Marina P. v. Ariz. Dep't of Econ. Sec.*, 152 P.3d 1209, 1217 (Ariz. Ct. App. 2007).

ii. “Termination is not limited to those who have *completely* neglected or willfully refused to remedy such circumstances.”²⁷⁹

iii. Father’s participation in drug treatment programs in prison, sobriety in prison, and other programs was evidence sufficient to rebut substantial neglect and willful refusal.²⁸⁰

iv. “To achieve this expedited termination, the moving party must establish that the parent has ‘substantially neglected or willfully refused’ to cure the circumstances that had caused the child to remain in a court-supervised placement out of the parent’s care. Thus, the test focuses on the level of the parent’s effort to cure the circumstances rather than the parent’s success in actually doing so.”²⁸¹

v. “To ‘substantially [neglect] or willfully [refuse] to remedy a circumstance,’ a parent must be aware that ADES alleges that the circumstance exists and is one that, if it continues to exist at severance, may result in the termination of her parental rights.”²⁸²

vi. Circumstances “‘mean those circumstances existing at the time of the severance’ that prevent a party from being able to appropriately provide for his or her children.”²⁸³ “Missing one visit and being late for two others fourteen months prior to the severance trial hardly qualifies as an existing circumstance at the time of severance.”²⁸⁴

vii. The purpose of the statute is “to ‘free children for adoption’ not to free DES from the responsibility of working with recalcitrant or uncooperative parents. . . . We believe a termination of parental rights, the destruction of the natural family, must serve more than a casework goal.”²⁸⁵ The record

²⁷⁹ *In re Appeal in Maricopa County Juv. Action No. JS-501568*, 869 P.2d 1224, 1229 (Ariz. Ct. App. 1994).

²⁸⁰ *Steven K. v. Ariz. Dep’t of Econ. Sec.*, 113 P.3d 1240 (Ariz. Ct. App. 2005).

²⁸¹ *Marina P. v. Ariz. Dep’t of Econ. Sec.*, 152 P.3d 1209, 1212 (Ariz. Ct. App. 2007).

²⁸² *Id.* at 1215 (alterations in original).

²⁸³ *Id.* at 1213 (citing *In re Appeal in Maricopa County Juv. Action No. JS-8441*, 857 P.2d 1317, 1322 (Ariz. Ct. App. 1993)).

²⁸⁴ *Id.* at 1214.

²⁸⁵ *In re Appeal in Maricopa County Juv. Action No. JS-6520*, 756 P.2d 335, 341, 343 (Ariz. Ct. App. 1988).

must establish that the children will receive a benefit if severance is granted or a detriment if it is denied.²⁸⁶

viii. ADES not required to seek a foster care placement for teen mother, which would allow placement of both the mother and her child together, to prove reasonable efforts.²⁸⁷

ix. To terminate parental rights on the grounds of time out of care, “there must be evidence on the record that the children are adoptable.”²⁸⁸

i. (B)(8)(b): Out of Home Placement with Diligent Effort Toward Reunification by Agency, Child Under Three, Six Months in Out-of-home Placement, Parent has Substantially Neglected or Willfully Refused to Remedy Circumstances, Including Refusing Reunification Services.

j. (B)(8)(c): Out of Home Placement with Diligent Effort Toward Reunification by Agency and Fifteen Months Out of Care and Parent Unable to Remedy Circumstances with Substantial Likelihood of Incapacity for Proper and Effective Parental Control in the Near Future.

k. Reasonable Efforts by CPS.

i. ADES’s provision of services to parents who refuse to acknowledge need for treatment and also refuse to participate is futile.²⁸⁹

ii. ADES’s mandate is fulfilled when substantial evidence in the record clearly and convincingly demonstrates provision of a parent “with the time and opportunity to participate in programs designed to help her become an effective parent.”²⁹⁰

²⁸⁶ *Id.* at 343.

²⁸⁷ *Lashonda M. v. Ariz. Dep’t of Econ. Sec.*, 107 P.3d 923 (Ariz. Ct. App. 2005).

²⁸⁸ *In re Appeal in Yavapai County Juv. Action No. J-9956*, 818 P.2d 163, 165 (Ariz. Ct. App. 1991).

²⁸⁹ *Ferrah H. v Ariz. Dep’t of Econ. Sec.*, 1 CA-JV 04-0123 (Ariz. Ct. App. 2005) (mem. opin.) (citing *In re Appeal in Pinal County, Juv. Action No. S-389*, 729 P.2d 918 (Ariz. Ct. App. 1986)).

²⁹⁰ *Id.*, 1 CA-JV 04-0123 (mem. opin.) (citing *In re Appeal in Maricopa County Juv. Action No. JS-501904*, 884 P.2d 234 (Ariz. Ct. App. 1994)).

iii. If parent's efforts at reunification are almost nothing, ADES is not required to do more to ensure reunification.²⁹¹

iv. "Our reading of the trial court's decision leads us to conclude that the court applied the wrong legal standard to DES's efforts. The court found that DES had not made its 'best' efforts, whereas the statute speaks in terms of 'diligent' efforts. We believe that a 'best efforts' standard would be impossible to define and equally impossible to fulfill."²⁹²

1. (B)(9): Unknown Parental Identity after Three Months Diligent Search.

m. (B)(10): Previous Termination of Parental Rights of Parent to Another Child within Two Years for the Same Cause and Current Inability to Discharge Parental Responsibilities Due to Same Cause: "We conclude that the juvenile court properly interpreted the "same cause" language in subsection (B)(10) as referring to the factual 'cause' that led to the termination of Appellant's parental rights to Mary, and not the statutory ground or grounds that supported that preceding severance."²⁹³

n. (B)(11): Removal of Child from Parent within Eighteen Months after Return to Parent from Care of Out of Home Placement.

E. Best Interests of the Child Findings.

1. ADES must show that the child would receive an affirmative benefit from termination or incur a detriment by continuing the parental relationship and factual findings must be made on the record supporting such a finding.²⁹⁴

2. An adoptive plan is an example of affirmative benefit.²⁹⁵

²⁹¹ *In re Appeal in Pima County*, Sev. Action No. S-110, 556 P.2d 1156 (Ariz. Ct. App. 1976).

²⁹² *In re Appeal in Yuma County* J-88-201, J-88-202, J-88-203, 833 P.2d 721, 725 (Ariz. Ct. App. 1992).

²⁹³ *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 83 P.3d 43, 48 (Ariz. Ct. App. 2004).

²⁹⁴ *In re Appeal in Maricopa County Juv. Action No. JS-500274*, 804 P.2d 730 (Ariz. 1990); *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 100 P.3d 943, 945 (Ariz. Ct. App. 2004).

²⁹⁵ *Oscar O.*, 100 P.3d at 945.

3. Evidence that the child is adoptable is sufficient to support a finding of best interest; a current adoption plan is not required.²⁹⁶

4. “To establish that severance is in the best interests of the child, the state is not required to rule out possible placements with biological relatives before considering other placements. Nor does the juvenile court weigh alternative placement possibilities to determine which might be better.”²⁹⁷

F. Assistance of Counsel.

1. Ineffective Assistance of Counsel.

a. The court examined the issue of ineffective assistance of counsel in the context of a dependency hearing, but did not explicitly decide that a right to effective assistance of counsel exists in the context of dependency.²⁹⁸

b. Where counsel failed to meet with the parent prior to the severance hearing, did not cross-examine the state’s expert witness who testified against parent, and failed to object to insufficient findings of fact to support statutory grounds for severance, parent was ineffectually assisted by counsel.²⁹⁹

c. “We agree with the majority of states in concluding that no reversal of a termination order is justified by inadequacy of counsel unless, at a minimum, a parent can demonstrate that counsel’s alleged errors were sufficient to ‘undermine confidence in the outcome’ of the severance proceeding and give rise to a reasonable probability that, but for counsel’s errors, the result would have been different.”³⁰⁰

²⁹⁶ *In re Appeal in Maricopa County Juv. Action No. JS-51904*, 884 P.2d 234 (Ariz. Ct. App. 1994).

²⁹⁷ *Audra T., v. Ariz. Dep’t of Econ. Sec.*, 982 P.2d 1290, 1291 (Ariz. Ct. App. 1998).

²⁹⁸ *In re Appeal in Santa Cruz County Juv. Dependency Action Nos. JD-89-006 and JD-89-007*, 804 P.2d 827 (Ariz. Ct. App. 1990).

²⁹⁹ *In re Appeal in Gila County Juv. Action No. J-3824*, 637 P.2d 740 (Ariz. 1981).

³⁰⁰ *John M. v. Ariz. Dep’t of Econ. Sec.*, 173 P.3d 1021, 1026 (Ariz. Ct. App. 2007) (citing *N.J. Div. of Youth & Family Serv. v. B.R.*, 929 A.2d 1034, 1038-39 (N.J. 2007)).

2. Right to Counsel.

a. “An indigent parent against whom a [severance] petition has been filed has the right to appointed counsel.”³⁰¹

b. “[A] parent’s right to counsel in severance proceedings is not co-extensive with a criminal defendant’s right to counsel under the Sixth Amendment.”³⁰²

c. “[I]rreconcilable differences’ between client and counsel, without more, is not sufficient to merit forfeiture of the right to counsel without advance warning.”³⁰³

d. Fair procedures require that a parent who appears at the evidentiary portion of a severance hearing after being defaulted (or having waived their rights) has the right to have counsel and have counsel present at such a hearing, because the parent can participate to a limited extent at the hearing and needs their interests represented there.³⁰⁴

g. Right to Appeal: No right to an *Anders* appeal of a severance decision (review for fundamental error). Appointed counsel is not required by statute to file frivolous appeals.³⁰⁵

IV. Guardianship Issues

A. Termination of Title 8 Permanent Guardianship

1. “These more stringent guardianship statutes [Arizona and New Mexico’s] thus required, for removal of a guardian, proof by clear and convincing evidence of a statutory ground, such as the guardian’s inability to properly care for the child, and a finding that the child’s best interests would be served by revocation of the guardianship.”³⁰⁶

³⁰¹ Denise H. v. Ariz. Dep’t of Econ. Sec., 972 P.2d 241, 243 (Ariz. Ct. App. 1998).

³⁰² Daniel Y. v. Ariz. Dep’t of Econ. Sec., 77 P.3d 55, 58 (Ariz. Ct. App. 2003) (citing Denise H. v. Ariz. Dep’t of Econ. Sec., 972 P.2d 241, 241 (Ariz. Ct. App. 1998)).

³⁰³ *Id.* at 61.

³⁰⁴ Christy A. v. Ariz. Dep’t of Econ. Sec., 173 P.3d 463 (Ariz. Ct. App. 2007).

³⁰⁵ Denise H. v. Ariz. Dep’t of Econ. Sec., 972 P.2d 241 (Ariz. Ct. App. 1998).

³⁰⁶ Jennifer B. v. Ariz. Dep’t of Econ. Sec., 944 P.2d 68, 71 (Ariz. Ct. App. 1997).

2. "A finding that the best interests of the child will be served by removal from a custodial relationship may be established by either showing an affirmative benefit to the child by removal or a detriment to the child by continuing in the relationship."³⁰⁷

3. "The guardianship revocation statute does not require a finding that ADES provided adequate services to preserve the placement."³⁰⁸ However, the placement is authorized to request services.³⁰⁹

B. Termination of a Title 14 Guardianship (by contrast): "A guardian should not be removed except for good cause or for the most cogent reasons, and he may not be removed at the mere caprice of the court or the complaining party. . . . Dissatisfaction with the guardian is not a sufficient basis for his removal[.]"³¹⁰

C. Establishing a Guardianship, Generally

1. Case law requires the court, after making the findings under Ariz. Rev. Stat. § 14-5207 (1987), to appoint a Title 14 guardian.³¹¹ Appointment of a Title 8 guardianship, however, is discretionary under Ariz. Rev. Stat. § 8-871 (2009) ("The court may establish a permanent guardianship . . .").

2. Under the requirements for forming a Title 14 guardianship, "the probate court lacks jurisdiction to effect a *de facto* termination of the parent-child relationship. . . . Parental rights cannot be suspended indefinitely without either the consent of the parent or court-ordered termination or suspension following the procedural safeguards required under *Stanley*."³¹² A Title 14 permanent guardianship based on consent of the parents cannot be continued after the parent withdraws consent and is a fit parent, otherwise the probate court would invade the province of the juvenile court.³¹³

³⁰⁷ *Id.* at 72 (citing *In re Appeal in Maricopa County Juv. Action No. JS-500274*, 804 P.2d 730, 735-36 (1990) and applying standards for severance of parental rights).

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *In re Estate of Cosden v. S. Ariz. Bank & Trust Co.*, 467 P.2d 928, 929-30 (Ariz. Ct. App. 1970).

³¹¹ *In re Guardianship of Cruz*, 741 P.2d 317 (Ariz. Ct. App. 1987).

³¹² *In re Guardianship of Mikrut v. Charlebois*, 858 P.2d 689, 692 (Ariz. Ct. App. 1993); see also *Stanley v. Illinois*, 405 U.S. 645 (1972).

³¹³ *In re Guardianship of Mikrut*, 858 P.2d at 692.

V. Adoption Issues

A. Procedure

1. Revocation of interlocutory adoption order: The interlocutory adoption order may be revoked if sufficient evidence shows it would be in the best interest of the child.³¹⁴

2. Court entry of adoption after Father's failure to register with the putative father's registry, establish a substantial relationship with or support his child did not violate due process of law.³¹⁵ Use of a putative father's registry constitutional.³¹⁶

3. Filing by putative father with putative father's registry thirty-one days after the birth of the child failed to comply with the statutory requirement and therefore did not make putative father's consent to child's adoption necessary.³¹⁷

4. While Ariz. Rev. Stat. § 8-123 (1982) allows any irregularities in an adoption proceeding to be cured one year after entry of the decree, if the court entering the adoption decree did not have jurisdiction, such a defect is not cured by the statute.³¹⁸

B. Jurisdiction

1. Even after granting of a petition of habeas corpus directing delivery of a child back to biological parents, a writ of prohibition on the grounds that res judicata removes jurisdiction from the court cannot be issued to stop the court from hearing a new petition for adoption and granting custody to adoptive parents.³¹⁹

2. Until the parents and/or next of kin have been adjudged to be dead, personally served, or service by publication has been effected, the juvenile

³¹⁴ *In re Adoption of Luke*, 414 P.2d 176 (Ariz. Ct. App. 1966).

³¹⁵ *Lehr v. Robertson*, 463 U.S. 248 (1983).

³¹⁶ *Id.*

³¹⁷ *Marco C. v. Sean C.*, 181 P.3d 1137 (Ariz. Ct. App. 2008).

³¹⁸ *Goclanney v. Desrochers*, 660 P.2d 491 (Ariz. Ct. App. 1982).

³¹⁹ *Garcia v. Sup. Court ex rel. County of Greenlee*, 280 P.2d 270 (Ariz. 1955).

court is without jurisdiction to proceed further with hearing the adoption petition.³²⁰

3. ICWA: See Jurisdiction under Indian Child Welfare Section (section XII.A, *infra*)

4. Residency

a. That the adoptive parents be residents of the state is a constitutional statutory requirement necessary for the juvenile court to exercise jurisdiction.³²¹

b. Residents of the state are required to file an adoption petition in the county of residency by statute; if original juvenile proceedings are pending in another county, the juvenile court receiving the petition must transfer the case to the county where the original proceedings are being heard.³²² The juvenile court in that county may then hear a motion for change of venue.³²³

c. In the context of health care statutes, undocumented aliens can become residents of the county, because they can form the requisite subjective intent to remain indefinitely in the county while being physically present.³²⁴

5. Presence of Child in the State: A child is physically present in the state when the person who has legal custody of the child is a resident.³²⁵ Because the child was in the custody of the Yavapai County juvenile court, the child was physically present in the state and residents of the state could file an adoption petition.³²⁶ The court did not decide that “physically present” means merely actual presence in the state at the time of filing of the adoption petition but did state that adoption petitions filed when children

³²⁰ *In re Gallegos*, 187 P. 573 (Ariz. 1920).

³²¹ *In re Appeal in Pima County Juv. Action No. B-8736*, 647 P.2d 1181 (Ariz. Ct. App. 1982).

³²² *In re Appeal in Maricopa County Juv. Action No. A-27789*, 680 P.2d 143, 145 (Ariz. 1984).

³²³ *Id.*

³²⁴ *St. Joseph's Hospital and Medical Center v. Maricopa County*, 688 P.2d 986 (Ariz. 1984).

³²⁵ *In re Appeal in Maricopa County Juv. Action No. A-27789*, 680 P.2d at 143.

³²⁶ *Id.*

are physically present in the state through wrongful retention should continue to be dismissed for lack of jurisdiction.³²⁷

6. Domicile of Child

a. “The domicile of an infant born out of wedlock remains that of its mother until a new one is lawfully acquired.”³²⁸ A child born out of wedlock living with prospective adoptive parents prior to finalization of the adoption legal domicile is still that of the mother.³²⁹

b. “An infant . . . cannot fix or change his domicile. His residence is that of his parents or the one of them who has the legal custody of him, or if neither parent has the legal custody, the one who stands in the relationship of loco parentis to him. The domicile of the father, if the parents are married, is ordinarily the domicile of the child. A domicile once acquired continues until a new one is acquired.”³³⁰

7. Interplay of the Interstate Compact of the Placement of Children (ICPC), Uniform Child Custody Jurisdiction Act (UCCJA) and Parental Kidnapping Prevention Act (PKPA).

a. According to *J.D.S. v. Franks*, 893 P.2d 732, 745 (Ariz. 1995), “A.R.S. § 8-406 mandates that the Arizona court ‘shall not exercise its jurisdiction’ if another proceeding was commenced first in another state and that state is exercising its jurisdiction substantially in conformity with the UCCJA.”³³¹ Here, a child had been placed for adoption in Florida following the procedures in the ICPC.³³² The Supreme Court held that the UCCJA provisions allowed both the Arizona and Florida court to exercise jurisdiction over the adoption proceeding when had begun in Florida prior to the biological father’s challenge.³³³ Because the Florida proceeding had started first and jurisdiction was being exercised there substantially in conformity with the UCCJA, the Arizona court had to defer to the Florida court.³³⁴ This

³²⁷ *Id.*

³²⁸ *In re* Appeal in Pima County Juv. Action No. S-903, 635 P.2d 187, 191 (Ariz. Ct. App. 1981).

³²⁹ *Id.*

³³⁰ *In re Webb’s Adoption*, 177 P.2d 222, 224 (Ariz. 1947) (citations omitted).

³³¹ *J.D.S. v. Franks*, 893 P.2d 732, 745 (Ariz. 1995).

³³² *Id.* at 735-36.

³³³ *Id.* at 745.

³³⁴ *Id.*

case is an excellent overview of the ICPC, UCCJA, and the PKPA and how the provisions of each are used simultaneously to determine which court should have jurisdiction.³³⁵

C. Consent Issues

1. Irrevocable Consent

a. Consent not voidable and irrevocable, because mother produced no evidence sufficient to establish that her consent was given under conditions of duress when she sought three months later to revoke her consent.³³⁶

b. Mother's emotion when signing consent agreement and later seeking to revoke consent to adoption five months after signing insufficient to establish duress under Ariz. Rev. Stat. § 8-106(D) (1991).³³⁷ Failure of adoption agency to disclose mother's desire to revoke consent at the time of the adoption hearing was cured by disclosure in subsequent hearing to set aside the adoption and thus did not constitute fraud on the court under Ariz. Rev. Stat. § 8-106(D) (1991).³³⁸

c. A parent may not regain a child placed for adoption after signing the consent form with "an unexpressed misconception as to the form's legal significance, which misconception was not the result of any improper actions on the part of the adoption agency. . . . To allow the efforts and expectations produced by, and flowing from, petitioner's conduct to be destroyed by her unexpressed misconception, which was neither the result of actions by the adoption agency nor the adoptive parents, would be contrary to the public policy manifested by our adoption statutes."³³⁹

d. "[O]nce a valid written consent to adopt has been given and the adoption process has begun, a parent may not revoke that consent unless there is a showing of some compelling reason for the revocation. A mere change of mind is insufficient."³⁴⁰

³³⁵ *J.D.S.*, 893 P.2d 732.

³³⁶ *Anonymous v. Anonymous*, 530 P.2d 896 (Ariz. Ct. App. 1975).

³³⁷ *In re Appeal in Navajo County Juv. Action No. JA-691*, 831 P.2d 368 (Ariz. Ct. App. 1991).

³³⁸ *Id.*

³³⁹ *Acedo v. State Dep't of Pub. Welfare*, 513 P.2d 1350, 1351, 1354 (Ariz. Ct. App. 1973).

³⁴⁰ *In re Appeal in Yuma County, Juv. Action Nos. J-81-339 and J-81-340*, 682 P.2d 6, 10 (Ariz. Ct. App. 1984).

e. “[A] mistaken belief in one’s impending death is not such a mistake as would vitiate a consent to adoption [A] breach of such a secret agreement [that mother could live with adoptive parents, would have liberal visitation with adopted children, and her relationship with them would not be alienated] cannot be recognized as affording a ground for vacating the final order of adoption.”³⁴¹

2. Voidable Consent

a. “We are of the opinion that the purported consent executed by Barbara Steffen before the birth of the child was voidable for the reason that the statutes contemplate adoption only of a child in being and separate from its mother. A voidable consent may be ratified by a subsequent act which sufficiently manifests a present intention to consent to the adoption of the child.”³⁴²

b. Where a side agreement between the agency and the mother existed that permitted revocation of consent, the consent was voidable rather than void.³⁴³ To become effective, the mother was required to reaffirm consent.³⁴⁴

c. “An allegation of fraud does not attack the court’s jurisdiction to decide a case. Consequently a judgment obtained by fraud is not void but merely voidable.”³⁴⁵ Accordingly, consent procured by fraud is voidable, and not void, and can be ratified by the natural parents.³⁴⁶

3. Void Consent: Consent to adopt is void if the juvenile court lacks jurisdiction over the subject matter, the person, or to enter an adoption order.³⁴⁷ Without the consents of natural parents required by statute, the juvenile court would be without jurisdiction and an adoption order so entered would be void.³⁴⁸ Because the adoptive father had relied on the statute that

³⁴¹ *In re Adoption of Hammer*, 487 P.2d 417, 419 (Ariz. Ct. App. 1971).

³⁴² *In re Adoption of Krueger*, 448 P.2d 82, 86 (Ariz. 1968).

³⁴³ *In re Appeal in Pima County Juv. Sev. Action No. S-2698*, 806 P.2d 892 (Ariz. Ct. App. 1990).

³⁴⁴ *Id.*

³⁴⁵ *In re Adoption of Hadtrath*, 592 P.2d 1262, 1265-66 (Ariz. 1979).

³⁴⁶ *Id.* at 1264-66.

³⁴⁷ *Id.*

³⁴⁸ *Id.*

allowed adoption without consent of unwed fathers to complete the adoption, there was no jurisdictional defect in the adoption order.³⁴⁹

4. Step-Parent Adoptions and Unwed Fathers

a. Georgia law that gave exclusive authority to the mother to consent to adoption of a child born out of wedlock unless the unwed father either married mother or obtained a court order establishing paternity upheld under equal protection and due process grounds.³⁵⁰ Mother was able to unilaterally give consent to step-father to adopt child.³⁵¹

b. A statute that requires consent for adoptions only by mothers violates the Equal Protection Clause by discriminating on the basis of gender when an unwed father who had established a family unit and a relationship with his children sought to block adoption of his older children by the mother and her husband.³⁵²

5. Revoking consent: A conditional consent to adoption by specific persons may be withdrawn at any time before the adoption order is entered notwithstanding entry of a severance order.³⁵³

D. Obligation to Support Adopted Child After Dissolution of Marriage but Prior to Adoption

1. Since the legal adoption had not been finalized at the time of dissolution of the marriage, the father could not be ordered to pay child support on the grounds that (1) payment was in the best interests of the child; (2) his status as a parent *in loco parentis* established an obligation; or (3) the father was stopped under the doctrine of equitable adoption from denying he had an obligation of support.³⁵⁴ Provided the elements of estoppel can be shown³⁵⁵ (see fn. 3 in the case), the court stated, “[w]e do not foreclose that, in a case similar to those we have reviewed, Arizona courts might similarly

³⁴⁹ *Id.*

³⁵⁰ *Quilloin v. Walcott*, 434 U.S. 246 (1978).

³⁵¹ *Id.*

³⁵² *Caban v. Mohammed*, 441 U.S. 380 (1979).

³⁵³ *Cheree L. v. Ariz. Dep’t of Econ. Sec.*, 66 P.3d 1248 (Ariz. Ct. App. 2003).

³⁵⁴ *In re Fenn v. Fenn*, 847 P.2d 129 (Ariz. Ct. App. 1993).

³⁵⁵ *Id.* at 133 n.3.

estop a putative father from denying an obligation to support a putative child.”³⁵⁶

2. Since “parents have no authority to modify child support orders without court approval, we conclude that the execution of a consent to adoption form does not terminate the signing parent’s duty to support the child or children to be adopted.”³⁵⁷ The support obligation does not end until the adoption is finalized.³⁵⁸

E. Adoption Subsidy: Noncustodial parent is not entitled to receive a credit against his child support obligation equal to the amount of Title IV-E adoption subsidies.³⁵⁹ The subsidies are the property of the children and are apportioned between the parents according to the visitation adjustment.³⁶⁰

F. Equitable Adoption: See *In re Lamfrom’s Estate* (a probate case) for a discussion of Arizona law on equitable adoption.³⁶¹

G. Adoption Certification Issues

1. “The primary issue the court should consider when deciding whether to certify an applicant as suitable to adopt children is the best interest and welfare of any child who might be adopted by that person. The situation is akin to the problem before courts when determining custody or visitation as between natural parents, where the controlling standard is the best interest of the child.”³⁶²

2. “Prospective adoptive parents have no absolute right to adopt a child, nor any right to be free from a thorough investigation and screening before their adoption certification and petition are approved and the adoption is finalized.”³⁶³ Statement made in the context of holding that CPS workers are

³⁵⁶ *Id.* at 134.

³⁵⁷ *In re Schnepf v. State ex rel. Dep’t of Econ. Sec.*, 899 P.2d 185, 189 (Ariz. Ct. App. 1995).

³⁵⁸ *Id.*

³⁵⁹ *Hamblen v. Hamblen*, 54 P.3d 371 (Ariz. Ct. App. 2002).

³⁶⁰ *Id.*

³⁶¹ *In re Estate of Lamfrom*, 368 P.2d 318 (Ariz. 1962).

³⁶² *In re Appeal in Pima County Juv. Action B-10489*, 727 P.2d 830, 833 (Ariz. Ct. App. 1986).

³⁶³ *Adams v. State*, 916 P.2d 1156, 1163 (Ariz. Ct. App. 1995).

not absolutely immune from liability for negligent pre-adoption and post-placement supervision.³⁶⁴

3. Persons not certified to adopt who have received custody of a child by a power of attorney under the probate statutes, but intend to adopt the child, must either file a petition to the court to permit them to retain custody prior to certification or face having to show cause why custody should not be denied.³⁶⁵

4. Juvenile judge does not have to grant certification despite unanimous expert testimony; the judge must consider all relevant evidence including evidence of past and present depression, divorces, and relationships with existing children to determine fitness to adopt.³⁶⁶

5. The ex-spouse of the natural parent cannot under the statutes be certified to adopt the natural parent's child who will remain in custody of the natural parent.³⁶⁷

6. Sexual orientation is a factor to be considered along with the other factors (employment, history of depression, family support, religious background, etc.) when determining whether a person may be certified to adopt.³⁶⁸

VI. *Service of Process Issues*

A. Is Service of Process on Attorney Allowed?

1. "[W]hile A.R.S. § 8-863 requires that a motion to terminate parental rights be served pursuant to Rule 5(c), subsection 1 applies because such a motion does not seek to modify, vacate or enforce a final judgment."³⁶⁹ However, the juvenile court may still require personal service of the motion.³⁷⁰

³⁶⁴ *Id.*

³⁶⁵ *In re Appeal in Maricopa County Juv. Action No. A-20917*, 534 P.2d 434 (Ariz. Ct. App. 1975).

³⁶⁶ *Leslie C. v. Maricopa County Juv. Court*, 971 P.2d 181 (Ariz. Ct. App. 1997).

³⁶⁷ *In re Appeal in Pima County Juv. Adoption Action No. B-13795*, 859 P.2d 1343 (Ariz. Ct. App. 1993).

³⁶⁸ *In re Appeal in Pima County Juv. Action B-10489*, 727 P.2d 830 (Ariz. Ct. App. 1986).

³⁶⁹ *Mara M v. Ariz. Dep't of Econ. Sec.*, 38 P.3d 41, 45 (Ariz. Ct. App. 2002).

³⁷⁰ *Id.*

2. “Because Monica was aware of, and took advantage of, the rights set forth in Form III, any failure by ADES to provide a copy of Form III was not fundamental error. There is no indication that she was prejudiced by failure to receive Form III.”³⁷¹

3. “An attorney, solely by reason of his capacity as attorney, does not thereby become his client’s agent authorized by appointment to receive service of process. What is necessary is that it appear that the attorney was authorized, either expressly or impliedly, to receive service of process for his client”³⁷² This case requires that the authorization come from the client, rule, or statute, not merely because the client has an attorney.³⁷³

4. A parent’s appearance and participation is a waiver of any defects in service.³⁷⁴

B. Parental Default (i.e. Waiver of Rights)

1. Under Ariz. R. Juv. P. 64(C), a parent who fails to appear at “the initial hearing, pretrial conference, *status conference* or termination adjudication hearing, without good cause” may be found to have waived their rights and may be “defaulted,” or deemed to admit the allegations in the petition.³⁷⁵ Accordingly, the juvenile court can proceed in the parent’s absence with the termination proceeding and enter a termination order.³⁷⁶ In effect, Ari. Juv. R. 64(C) overrules *Don L. v. A.D.E.S.*³⁷⁷

2. While the rules of the juvenile court refer to “waiver of rights” rather than the civil court concept of entry of default for failure to appear, the concepts can be analogized.³⁷⁸ Accordingly, because the juvenile court found that neither excusable neglect nor good cause existed for the mother’s fail-

³⁷¹ *Monica C. v. Ariz. Dep’t of Econ. Sec.*, 118 P.3d 37, 43 (Ariz. Ct. App. 2005) (citing *State v. Henderson*, 115 P.3d 601 (Ariz. 2005)).

³⁷² *Rotary Club of Tucson v. Chaprales Ramos de Pena*, 773 P.2d 467, 470 (Ariz. Ct. App. 1989).

³⁷³ *Id.*

³⁷⁴ *In re Appeal in Pima County*, Juv. Action No. S-828, 659 P.2d 1326 (Ariz. Ct. App. 1982).

³⁷⁵ *Adrian E. v. Ariz. Dep’t of Econ. Sec.*, 158 P.3d 225 (Ariz. Ct. App. 2007).

³⁷⁶ *Id.*

³⁷⁷ *Id.* (*Don L. v. Ariz. Dep’t Econ. Sec.*, 975 P.2d 146 (Ariz. Ct. App. 1998)).

³⁷⁸ *Christy A. v. Ariz. Dep’t of Econ. Sec.*, 173 P.3d 463 (Ariz. Ct. App. 2007).

ure to appear at the termination hearing, a finding of waiver of rights (or default) was proper to establish the statutory grounds for termination.³⁷⁹

3. “In sum, although the rule [Ariz. R. Juv. P. 66] provides that a parent’s failure to appear may be construed as a constructive admission to the allegations of a motion or petition, the contemplated scope of those admissions must be understood in the context of the rule’s other provisions. That language imposes a duty on the juvenile court to determine whether the grounds for termination have been proven by the record and evidence—a process that would become unnecessary if we construed a parent’s failure to appear as a wholesale admission to the legal grounds contained in the allegations. Thus . . . we conclude that the parent admits only the factual contentions contained in the motion. The parent does not thereby concede that those factual allegations sustain the quantum of evidence required to establish the legal grounds for terminating a parent’s rights. Rather, the determination of whether the evidence, including admissions, establishes clearly and convincingly at least one ground for terminating a parent’s rights remains a relevant and contestable topic at the hearing.”³⁸⁰ Accordingly, counsel for the defaulted parent is entitled to cross-examine witnesses to emphasize portions of the admitted factual record.³⁸¹

C. Publication: The affidavit made supporting service by publication “must ‘set forth facts indicating [the serving party] made a due diligent effort to locate an opposing party to effect personal service.’”³⁸² Therefore, the fact that efforts to locate were made is insufficient.³⁸³

VII. *Right for Parent to Appear*

A. Rules of procedure contemplate that a parent can be present at: disposition, preliminary protective, initial dependency, settlement conference, pretrial conference, a dependency adjudication, dependency review and a permanency hearing, and a parent has the right to attend.³⁸⁴ If the parent is

³⁷⁹ *Id.*

³⁸⁰ Manuel M. v. Ariz. Dep’t of Econ. Sec., 181 P.3d 1126, 1134-35 (Ariz. Ct. App. 2008) (criticizing aspects of Division I’s decision in Christy A. v. Ariz. Dep’t of Econ. Sec., 173 P.3d 463 (Ariz. Ct. App. 2007)).

³⁸¹ *Id.*

³⁸² Barlage v. Valentine, 110 P.3d 371, 374 (Ariz. Ct. App. 2005) (quoting Sprang v. Petersen Lumber, Inc., 798 P.2d 395, 399 (Ariz. Ct. App. 1990)) (alterations in original).

³⁸³ *Id.*

³⁸⁴ Lindsey M. v. Ariz. Dep’t of Econ. Sec., 127 P.3d 59 (Ariz. Ct. App. 2006).

unable to attend, the parent must show they were prejudiced by the juvenile court's decision to proceed in his or her absence.³⁸⁵

B. Good cause for parent to fail to appear: “Whether the facts of a particular case establish ‘good cause’ is a matter left to the sound discretion of the trial court.”³⁸⁶

VIII. Placement/Custody Issues

A. ICPC: “Based on [Regulation No. 3], when the sending agency is a child protective services agency acting through the state . . . and the child is placed with a parent or other family member who does not have full custodial rights to or guardianship of the child, the ICPC applies to that out-of-state placement.”³⁸⁷ Accordingly, the juvenile court exceeded its jurisdiction in ordering ADES to place child with out-of-state, noncustodial parent when the requirements of the Interstate Compact on Placement of Children (ICPC) had not been received.³⁸⁸ Regulation 3 is consistent with the ICPC and with its purpose and policy.³⁸⁹

B. Presumption in Favor of Parent Placement

1. The divorce and guardianship statutes create “a rebuttable presumption that a fit parent is to be preferred over non-parents with respect to child custody. Nothing to the contrary appearing, the law presumes parental fitness. Unless there is a finding of parental unfitness, a parent is entitled to custody as against a grandparent.”³⁹⁰ Since there were no findings of unfitness, the judge's order to transfer custody to the nonparty grandparent was vacated.³⁹¹

2. “[A] natural parent is entitled to custody as against anyone else, in the absence of a showing of unfitness. This ruling is subject to the proviso

³⁸⁵ *Id.*

³⁸⁶ *John C. v. Sargeant ex. rel County of Maricopa*, 90 P.3d 781, 784 (Ariz. Ct. App. 2004) (quoting *Ugalde v. Burke*, 65 P.3d 103, 106 (Ariz. Ct. App. 2003)).

³⁸⁷ *Ariz. Dep't of Econ. Sec. v. Leonardo*, 22 P.3d 513, 518 (Ariz. Ct. App. 2001).

³⁸⁸ *Id.* at 514.

³⁸⁹ *Id.* at 519.

³⁹⁰ *LeRoy v. Odgers*, 503 P.2d 975, 977 (Ariz. Ct. App. 1972) (citations omitted).

³⁹¹ *Id.*

that parental right to custody can and should be ignored if the best interests of the child demand otherwise.”³⁹²

3. Assignment of sole custody to one parent in a divorce, without a finding of unfitness, does not establish the unfitness of the parent without custody.³⁹³ “[A]warding of custody to the father did not extinguish the mother’s parental rights of custody as against the grandparents. And we have stated, ‘upon the death of a party who holds legal custody pursuant to a divorce decree, the right of legal custody automatically inures to the surviving parent.’”³⁹⁴

4. As between two fit parents and grandparents who have been given custody, the parents’ right to custody is superior; as between the two parents, if habeas corpus is used to transfer custody from one parent to another, the best interests of the child should be considered.³⁹⁵

5. “As a natural father, petitioner is entitled to the care, custody and control of his child against all others except the mother.”³⁹⁶

6. A contract to determine the custody of a child “would nevertheless be void as against public policy; for the father cannot make a valid and irrevocable contract which relieves him from the legal obligation to maintain, support, and educate his minor child . . . The breaking of the ties that bind father and child to each other can never be justified without the most solemn and substantial reasons, established by plain proof.”³⁹⁷

C. Unwed parents: When dependency is going to be dismissed: Ariz. R. Juv. Proc. 48 allows court to award temporary custody to one of the parents; Ariz. Rev. Stat. § 25-404 requires a motion for a temporary custody order in family court for establishment of temporary custody by one parent over another when never married. Some juvenile judges wait until filing of the temporary custody orders in family court before entering temporary custody orders in juvenile court and dismissing the dependency petition.

³⁹² *In re Guardianship and Estate of Arias*, 521 P.2d 1146, 1147 (Ariz. Ct. App. 1974).

³⁹³ *Morales v. Glenn*, 560 P.2d 1234 (Ariz. 1977).

³⁹⁴ *Id.* at 1237 (quoting *Woodford v. Super. Ct. ex rel. Graham County*, 309 P.2d 973, 974 (Ariz. 1957)).

³⁹⁵ *Ex parte Winn*, 63 P.2d 198 (Ariz. 1936).

³⁹⁶ *Caruso v. Super. Ct. ex rel. County of Pima*, 412 P.2d 463, 467 (Ariz. 1966).

³⁹⁷ *Harper v. Tipple*, 184 P. 1005, 1007 (Ariz. 1919).

D. Generally

1. The juvenile court is not required to grant custody to the dependency petitioner.³⁹⁸

2. “We conclude that the preferences for placement contained in Arizona Revised Statutes (A.R.S.) section 8-514(B) (2007) do not mandate placing a child with a person with an acceptable higher preference if the juvenile court finds it in the child’s best interest to be placed with someone with a lower preference.”³⁹⁹

IX. Parental Support Issues

Minority of parent is irrelevant to obligation of parent to provide financially for support of child.⁴⁰⁰

X. Visitation Issues

A. Parental Visitation (Dependency Context)

1. “Although a parent should be denied the right of visitation only under extraordinary circumstances, once that right is at issue, the trial court has broad discretion.”⁴⁰¹ Trial court used standards set down under family law section Ariz. Rev. Stat. § 25-337(A) (1993) to make its findings for dependency visitation.⁴⁰²

2. “[C]ourts have held that incarcerated parents retain the right of reasonable visitation with their children.”⁴⁰³ Blanket orders forbidding visitation by parents in prison are abuse of discretion.⁴⁰⁴

3. A parent’s visitation may be restricted or terminated only if it endangers the child.⁴⁰⁵

³⁹⁸ Marshall v. Superior Court *ex rel.* County of Yavapai, 701 P.2d 567 (Ariz. 1985).

³⁹⁹ Antonio P. v. Ariz. Dep’t of Econ. Sec., 187 P.3d 1115, 1116 (Ariz. Ct. App. 2008).

⁴⁰⁰ State v. Anonymous, 768 P.2d 174 (Ariz. Ct. App. 1988).

⁴⁰¹ *In re Appeal in Maricopa County Juv. Action No. JD-5312*, 873 P.2d 710, 713 (Ariz. Ct. App. 1994) (citations omitted).

⁴⁰² *Id.* at 714-15.

⁴⁰³ Michael M. v. Ariz. Dep’t of Econ. Sec., 42 P.3d 1163, 1165 (Ariz. Ct. App. 2002).

⁴⁰⁴ *Id.* at 1166.

⁴⁰⁵ *Id.* Statute used in *In re Appeal in Maricopa County Juvenile Action No. JD-5312*, 873 P.2d 710, 713 (Ariz. Ct. App. 1994) was not discussed in this opinion.

B. Grandparent Visitation

1. Grandparent visitation after severance of parental rights may continue if, after a hearing, the court determines it is in the best interests of the child.⁴⁰⁶

2. Under Ariz. Rev. Stat. § 25-409(F) (1996) grandparents' rights to visitation continue after a stepparent adoption but are terminated by adoption of the child in any other case.⁴⁰⁷ Case law confirms that for children born out of wedlock and adopted by maternal grandparents, paternal grandparents have no right to visitation.⁴⁰⁸

3. Existing Ariz. Rev. Stat. § 25-409(F) (2000) "does not unconstitutionally distinguish between two-parent adoptions and stepparent adoptions by permitting continuing grandparent visitation when a child is adopted by a stepparent. . . . [T]he last sentence of A.R.S. section 25-409(F) supersedes the policy expressed in A.R.S. section 8-117(A) as it relates to grandparent visitation"⁴⁰⁹ By altering section F, the legislature created an exception to the policy embodied in Ariz. Rev. Stat. § 8-117(A) (2000) that an adoption terminates all of a child's ties.⁴¹⁰

4. After a stepparent adoption, grandparent of the former spouse without current visitation rights could not subsequently seek to establish court ordered visitation, because the three preconditions to visitation were not met: 1) dissolution of parent's marriage for at least 3 months; 2) parent dead or missing for at least 3 months; or 3) child born out of wedlock.⁴¹¹ Since Ariz. Rev. Stat. § 8-117(A) (1995) states that the children should be treated as though born in lawful wedlock, the parents' marriage was not dissolved, but was intact at the time the grandparent sought visitation; accordingly, the threshold requirements for granting visitation did not exist.⁴¹²

⁴⁰⁶ *Sands v. Sands*, 757 P.2d 126 (Ariz. Ct. App. 1988).

⁴⁰⁷ *In re Appeal in Maricopa County, Juv. Action No. JA-502394*, 925 P.2d 738 (Ariz. Ct. App. 1996).

⁴⁰⁸ *Id.*

⁴⁰⁹ *Jackson v. Tangreen*, 18 P.3d 100, 102, 106 (Ariz. Ct. App. 2000).

⁴¹⁰ *Id.* at 105.

⁴¹¹ *Gueth v. Truscott*, 912 P.2d 33 (Ariz. Ct. App. 1995).

⁴¹² *Id.*

Grandparents on notice of a pending stepparent adoption cannot wait to establish their visitation rights or they will lose them.⁴¹³

XI. CPS Issues

A. CPS has a duty to act with reasonable care when it receives information from a person concerning a threatened child and can be held civilly liable for failure to do so.⁴¹⁴ The duty CPS possesses is specific to threatened individuals and not a duty owed to the general public.⁴¹⁵

B. CPS caseworkers have absolute immunity when acting in their capacity as caseworkers for activities that relate to the initiation and filing of a dependency petition, including its contents; for conduct incident to or in connection with the proceedings after the filing of the petition; and for actions involving pursuing, obtaining, and executing temporary custody over a child.⁴¹⁶

C. For those activities that occurred prior to the filing of the petition, a CPS caseworker has qualified immunity depending on whether his or her conduct during the investigation was objectively reasonable and is not so egregious as to justify denial of immunity.⁴¹⁷

D. “[A] foster child can establish § 1983 liability against a state official by showing that the official, without justification, acted with deliberate indifference by placing a child in foster care or by maintaining a placement when the official knew that the placement exposed the child to danger or would have known of the danger but for the official’s deliberate indifference. If a state worker, with time to consider the placement for a foster child, acts with such deliberate indifference as to ignore information indicating that the placement will result in danger to the child or refuses to obtain information that, if considered, would reveal a danger to the child, the official’s indifference is sufficiently egregious to justify imposing liability under § 1983.”⁴¹⁸

⁴¹³ *Id.*

⁴¹⁴ *Mammo v. State*, 675 P.2d 1347 (Ariz. Ct. App. 1983).

⁴¹⁵ *Id.*

⁴¹⁶ *Nation v. Colla*, 841 P.2d 1370 (Ariz. Ct. App. 1991).

⁴¹⁷ *Id.*

⁴¹⁸ *Weatherford ex rel. Michael L. v. State*, 81 P.3d 320, 328-29 (Ariz. 2003).

E. “[T]he juvenile court does not use an abuse-of-discretion standard when reviewing a DES recommendation concerning out-of-home placement of a dependent child. Rather, the court owes it to the child to independently determine the child’s best interest.”⁴¹⁹

F. A juvenile judge can order CPS to change a child’s placement and require them to pay for expenses of the placement.⁴²⁰

XII. Indian Child Welfare Act (ICWA) Issues

A. Jurisdiction of Tribal Courts

1. In an adoption proceeding involving an Indian child where all parties are Indian and reside on the reservation, the tribal courts have exclusive jurisdiction.⁴²¹

2. The domicile of Indian children is that of their parents under the ICWA even if the children have never resided on the reservation.⁴²² Indian parents cannot avoid the tribal courts by leaving the reservation to have their children, then surrendering them to adoptive parents and invoking the jurisdiction of state courts.⁴²³

3. Guardian *ad litem*’s objection is not sufficient to prevent a juvenile court from transferring a dependency case to a tribal court.⁴²⁴ Good cause must be shown or either parent must object.⁴²⁵

4. Provided parent is competent, the parent’s objection to transfer of the dependency to the tribe absolutely requires the state court to continue to hear the matter.⁴²⁶

⁴¹⁹ *In re Appeal in Maricopa County, Juv. Action No. JD-6236*, 874 P.2d 1006, 1009 (Ariz. Ct. App. 1994).

⁴²⁰ *Ariz. Dep’t of Econ. Sec. v. Gerald F.*, 945 P.2d 1321 (Ariz. Ct. App. 1997).

⁴²¹ *Fisher v. Dist. Ct. of the Sixteenth Jud. Dist. of Mont. ex rel. County of Rosebud*, 424 U.S. 382 (1976).

⁴²² *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 (1989).

⁴²³ *Id.*

⁴²⁴ *Michael J. v. Michael J.*, 7 P.3d 960 (Ariz. Ct. App. 2000).

⁴²⁵ *Id.*

⁴²⁶ *In re Appeal in Maricopa County, Juv. Action No. JD-6982*, 922 P.2d 319 (Ariz. Ct. App. 1996).

5. If tribe petitions to intervene and the parent does not object, if the child is domiciled or resides with the tribe, the tribal courts have exclusive jurisdiction over the proceeding, and the juvenile court must transfer the case.⁴²⁷

6. “Good cause” under 25 U.S.C. § 1911(b) (1981) means an application of the doctrine of *forum non conveniens* and includes but is not limited to: (1) unavailability of biological parents; (2) no appointment of an Indian custodian; (3) no contact between the child and the tribe for a significant period of time; (4) the child has not resided on the reservation for a significant period; and, (5) a child over twelve opposes the transfer.⁴²⁸

7. “[T]he superior court has jurisdiction over an action brought by the state against a non-Indian father to determine paternity, custody, and child support obligations.”⁴²⁹

B. Applicability of the ICWA

1. Simply because child has been raised in a non-Indian home, if the child is an enrolled member of the tribe and has a relationship with her Indian putative father, it is error for the trial court to ignore the ICWA and order foster care in a non-Indian home.⁴³⁰

2. “ICWA only applies if a proceeding is a child custody proceeding and if the child involved in an Indian child.”⁴³¹

3. “[T]he mere fact that a court has reason to believe ICWA could apply, requiring further inquiry into the question and compliance with the notice requirements of the rule and [25 U.S.C] § 1912(a), does not mean ICWA applies in the interim.”⁴³²

⁴²⁷ *In re Appeal in Pima County Juv. Action No. S-903*, 635 P.2d 187 (Ariz. Ct. App. 1981).

⁴²⁸ *Id.*

⁴²⁹ *State v. Zaman*, 984 P.2d 528, 528 (Ariz. 1999) (discussing *State v. Zaman*, 946 P.2d 459 (Ariz. 1997)).

⁴³⁰ *In re Appeal in Coconino County Juv. Action No. J-10175*, 736 P.2d 829 (Ariz. Ct. App. 1987).

⁴³¹ *Ariz. Dep’t of Econ. Sec. v. Bernini*, 48 P.3d 512, 515 (Ariz. Ct. App. 2002) (citing *In re Maricopa County Juv. Action No. JS-8287*, 828 P.2d 1245 (Ariz. Ct. App. 1991)).

⁴³² *Id.* at 514.

4. “We hold that in the case of a child born out of wedlock to a non-Indian mother, until such time as the putative Indian father acknowledges or establishes paternity, the provisions of the ICWA are not applicable.”⁴³³

C. Establishing Dependency Under the ICWA

1. Requirements of expert witnesses: “The Guidelines [from the Bureau of Indian Affairs] thus only suggest that individuals with a certain experience are ‘most likely to meet the requirements for a qualified expert witness.’ Neither they nor the Act limit a qualified expert exclusively to someone with expertise with Indian children or culture. Drawing on the Guidelines and the Act, this court has said that an expert must be qualified to make ‘substantially more reliable judgments than those of a non-expert,’ but ‘[s]pecial knowledge of Indian life is not necessary where a professional person has substantial education and experience and testifies on matters not implicating cultural bias.’ ‘This interpretation—that distinctive knowledge of Indian culture is necessary only when cultural mores are involved—is consistent with the Act’s overall concern’”⁴³⁴

2. Content of qualified expert’s testimony: “In short, in addition to any evidence establishing the state statutory grounds for dependency, ICWA requires qualified expert testimony that addresses the determination that the Indian child is at risk of future harm unless the child is removed from the parents’ custody. But the statute does not require that the necessary expert testimony recite the specific language of [U.S.C.] § 1912(e); nor need such testimony be expressed in a particular way. As long as the expert testimony addresses the likelihood of future harm, it will suffice. . . . So long as expert testimony addresses the issue that continued custody of the Indian child by the parent is likely to result in emotional or physical harm, this requirement of [U.S.C.] § 1912(e) is satisfied.”⁴³⁵

D. Severance Under the ICWA

1. “Even if the Indian Child Welfare Act applied and the preferred placements were ignored, this is immaterial to the question whether termi-

⁴³³ *In re* Appeal in Maricopa County Juv. Action No. A-25525, 667 P.2d 228, 232-33 (Ariz. Ct. App. 1983).

⁴³⁴ *Rachelle S. v. Ariz. Dep’t of Econ. Sec.*, 958 P.2d 459, 461-62 (Ariz. Ct. App. 1998) (quoting *In re* Maricopa County Juv. Action No. JS-8287, 828 P.2d 1245, 1252 (Ariz. Ct. App. 1991)).

⁴³⁵ *Steven H. v. Ariz. Dep’t of Econ. Sec.*, 190 P.3d 180, 186-87 (Ariz. 2008).

nation based on a failure to remedy the condition which made the out-of-home placement necessary is appropriate. In a termination proceeding the focus is not on where the children have been living but on why they are dependent, whether the situation can be remedied, and if not, why not.”⁴³⁶

2. “The issue here is whether ICWA imposes a reasonable doubt standard for these state-law findings in a case involving an Indian child.” Other standards of proof include the finding of the statutory grounds for severance by clear and convincing evidence and the finding that termination is in the best interests of the child.⁴³⁷ . . . We do not believe that Congress intended to apply the reasonable doubt standard to state-law findings. . . . With the benefit of hindsight, we recognize that the language of [Ariz. Sup. Ct.] Rule 66(C) should not have embraced an evidentiary standard higher than required by Arizona statutes.”⁴³⁸ Ariz. Sup. Ct. R. 66(C) appears to state that findings in cases involving Indian children require proof of all the allegations in the petition beyond a reasonable doubt; the Supreme Court acknowledged that the rule is controlled by the statute.⁴³⁹

E. ICWA Adoption Issues

1. “It is apparent from the very wording of 25 U.S.C.A. § 1913(c) that Congress was not concerned with the reason a parent might have for withdrawal of consent [for adoption].”⁴⁴⁰ This case states the proposition that the purpose of the ICWA is that by protecting the child’s relationship with the tribe the child’s best interest is served and that the ICWA prevents a juvenile court from retaining jurisdiction based on considering overall best interest of the child.⁴⁴¹ The statutory mandates must be followed and cannot be overcome by considerations of the best interest of the child.⁴⁴²

2. Court of Appeals split on whether considering the best interests of the child can trump the mandate of the ICWA that the tribal courts and Indian families be, by default, the exclusive placement for Indian children.

⁴³⁶ *In re Appeal in Maricopa County Juv. Action No. JS-7359*, 766 P.2d 105, 108-09 (Ariz. Ct. App. 1988) (citations omitted).

⁴³⁷ *See Kent K. v. Bobby M.*, 110 P.3d 1013 (Ariz. 2005).

⁴³⁸ *Valerie M. v. Ariz. Dep’t of Econ. Sec.*, 198 P.3d 1203, 1206-08 (Ariz. 2009).

⁴³⁹ *Id.*

⁴⁴⁰ *In re Appeal in Pima County Juv. Action No. S-903*, 635 P.2d 187, 192 (Ariz. Ct. App. 1981).

⁴⁴¹ *Id.*

⁴⁴² *Id.*

This means that depending upon the county in which a case is heard, the best interest of the child argument may keep the case from transferring to tribal court or may stop the child from being placed with an Indian family:

a. Division 1: “It is patently clear that Congress envisioned situations in which the child’s best interest may override a tribal or family interest—the preferences for placement are to be followed absent ‘good cause to the contrary.’”⁴⁴³

b. Division 2: Best interest of the child is not good cause under the statutes to prevent transfer of the case to tribal court.⁴⁴⁴

XIII. Right to Appeal

A. Orders that are “a final order of the juvenile court” that can be appealed include: orders finding dependency, orders reaffirming findings of dependency, orders issued during review of dependency or of a custodial arrangement (review of placement), orders terminating parental visitation rights, orders substantially limiting visitation rights, orders severing parental rights, and dependency disposition orders.⁴⁴⁵

B. Orders that are not appealable: Order to move a child from one foster home to another, orders after permanency hearing entering concurrent reunification/severance case plans.⁴⁴⁶

C. In severance proceedings, it is the oral pronouncement of severance of parental rights or the latest date on the minute entry (typically the “Received” date) when the matter is taken under advisement that starts the fifteen-day period for filing an appeal.⁴⁴⁷

D. A state cannot deny a parent whose rights have been severed an appeal because of the parent’s indigency and must provide transcripts to support the appeal.⁴⁴⁸

⁴⁴³ *In re Appeal* in Maricopa County Juv. Action No. A-25525, 667 P.2d 228, 234 (Ariz. Ct. App. 1983).

⁴⁴⁴ *In re Appeal* in Pima County Juv. Action No. S-903, 635 P.2d 187, 192 (Ariz. Ct. App. 1981).

⁴⁴⁵ *Lindsey M. v. Ariz. Dep’t of Econ. Sec.*, 127 P.3d 59 (Ariz. Ct. App. 2006).

⁴⁴⁶ *Id.*

⁴⁴⁷ *In re Appeal* in Maricopa County Juv. Action No. JS-8441, 849 P.2d 1371 (Ariz. 1992).

⁴⁴⁸ *M.L.B. v S.L.J.*, 519 U.S. 102 (1996).

E. “[T]he failure to include a statement of grounds and supporting memorandum in a timely filed notice of appeal does not render the appeal jurisdictionally defective. Rather, such failure may . . . constitute a basis for dismissal of the appeal in the exercise of the court’s discretion.”⁴⁴⁹

⁴⁴⁹ *In re Appeal in Yuma County, Juv. Action Nos. J-81-339 and J-81-340*, 682 P.2d 6, 8-9 (Ariz. Ct. App. 1984).

