

1 MARICOPA COUNTY ATTORNEY  
2 Rachel H. Mitchell (Firm #00032000)  
3 Michael A. Minicozzi  
4 Deputy County Attorney (State Bar # 024743)  
5 Joseph Hinrichsen  
6 Deputy County Attorney (State Bar # 028110)  
7 225 West Madison Street  
8 Phoenix, AZ 85003  
9 (602) 506-8556

10 ARIZONA VOICE FOR CRIME VICTIMS  
11 Colleen Clase (State Bar # 029360)  
12 111 E. Taylor Street  
13 Phoenix, AZ. 85004  
14 480-600-2661  
15 cclase@voiceforvictims.org

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
IN THE SUPREME COURT  
STATE OF ARIZONA

IN THE MATTER OF:  
PETITION TO AMEND THE  
ARIZONA RULES OF EVIDENCE

No. R-25-  
**PETITION**

Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, the Maricopa County Attorney's Office (MCAO) and Arizona Voice for Crime Victims, Inc (AVCV) (collectively, Petitioners) respectfully petitions this Court to amend the

1 Arizona Rules of Evidence by adopting new Rule 807.01; Hearsay Exception;  
2 Statement Made by a Child to a Forensic Interviewer.  
3

4 The Maricopa County Attorney's Office (MCAO) is one of the largest public  
5 prosecuting agencies in the United States and the largest in Arizona. Its 900 plus  
6 employees, including attorneys and victim advocates, serve over four million  
7 people. MCAO's mission is to deliver high quality prosecution, comprehensive  
8 victims' services, crime prevention programs, and legal representation for county  
9 government. County Attorney Rachel Mitchell and her office are dedicated to  
10 fighting crime and honoring victims' rights.  
11  
12

13 MCAO's Victims Services Division provides victims with support and  
14 advocacy throughout the criminal justice process. Through the work of the  
15 Division, victims are empowered to understand and assert their constitutional and  
16 statutory rights as victims. They are given notice of criminal proceedings and  
17 provided accompaniment to court. At stages when the law gives victims the right  
18 to be heard, advocates are there to help them prepare. The Division assists victims  
19 in making restitution and compensation claims. It offers the support of victim  
20 advocates who are specially trained to work with child victims of crime and offers  
21 programs such as Kids in Court and K9 Victim Support.  
22  
23  
24  
25

1 Arizona Voice for Crime Victims (AVCV), founded in 1996, is a non-profit  
2 organization located in Phoenix, Arizona that provides pro bono legal representation  
3 and social services to victims of crime in state and federal criminal proceedings.  
4 AVCV seeks to foster a fair and compassionate justice system in which all crime  
5 victims are informed of their rights under the Arizona Victims' Bill of Rights (VBR),  
6 Ariz. Const. art. II, § 2.1, fully understand their rights, and have a meaningful way  
7 to participate and assert these constitutional guarantees throughout the criminal  
8 justice process. To achieve these goals, AVCV empowers victims of crime through  
9 legal advocacy and social services. Another key part of AVCV's mission is to  
10 provide information and policy insights in an effort to ensure victims' rights are  
11 upheld during the practical day-to-day application of victims' rights in Arizona's  
12 courtrooms.

## 17 **I. PROPOSED RULE 807.01**

18 Petitioners propose that a new Rule and accompanying Comment to the new  
19 Rule be adopted as follows below.<sup>1</sup> The proposed text is also attached to this petition  
20 as Appendix A.

### 22 **Rule 807.01. Hearsay Exception; Statement Made by a Child to a 23 Forensic Interviewer**

24 (a) **Admissibility of Statement.** A statement made by a child who is  
25 under the age of fifteen at the time the statement is made that is not

---

<sup>1</sup> Petitioners are not aware of a similar petition that has been filed in the last five years. Ariz. R. Sup. Ct. 28(a)(4)(A)(iv).

1 otherwise admissible by statute or court rule, is admissible as  
2 evidence in a criminal proceeding against the defendant if the court  
3 finds, by a preponderance of the evidence, all of the following:

4 (1) The statement made by the child describes any of the  
5 following:

6 (A) An act of sexual contact, sexual intercourse, or oral  
7 sexual contact, as defined by A.R.S. § 13-1401,  
8 performed with or on the child by another person or  
9 by the child at the direction of another person;

10 (B) An act of sexual conduct, as defined by A.R.S. § 13-  
11 3551, performed with or on the child by another  
12 person or by the child at the direction of another  
13 person;

14 (C) An act of prostitution, as defined by A.R.S. § 13-  
15 3211(5);

16 (D) An act of luring, as defined by A.R.S. § 13-3554;

17 (E) An act of child abuse or neglect of the child by  
18 another, as defined by A.R.S. § 8-201;

19 (F) An act of sexual contact, sexual intercourse, oral  
20 sexual contact, sexual conduct, prostitution, luring,  
21 child abuse or neglect of another child observed by  
22 the child making the statement.

23 (2) The child testifies at trial and is subject to cross-examination  
24 or the court finds that the child is unavailable to testify and  
25 that the child has provided prior sworn testimony deemed  
admissible pursuant to Rule 804(b)(1);

(3) The child made the statement during a forensic interview;

(4) The court finds that all of these circumstances surrounding  
the forensic interview are true:

1 (A) The recording is both visual and aural and is  
2 recorded on film or videotape or by any other  
3 electronic means;

4 (B) The recording is accurate, has not been altered, and  
5 reflects what the child said;

6 (C) The statement, in the context of the entire interview,  
7 was made in response to questioning that was  
8 conducted in a manner that would avoid undue  
9 influence of the child or was not made in response to  
10 specific questions that were calculated to lead the  
11 child to make a particular statement;

12 (D) The person conducting the forensic interview of the  
13 child is available to testify and be subject to cross-  
14 examination;

15 (E) The opposing party is afforded the opportunity to  
16 view the recording before it is offered into evidence.

17 (b) **Notice.** The party seeking to admit the recorded statements of the  
18 child must provide notice to the opposing party at least twenty days  
19 before trial of its intention to admit evidence under this rule. The  
20 court may excuse the party seeking to admit evidence pursuant to  
21 this rule from this requirement upon a finding of good cause.

22 (c) **Hearing.** The court may hold a hearing prior to the commencement  
23 of trial to determine the admissibility of any statements that a party  
24 seeks to admit pursuant to this rule. There shall be a rebuttable  
25 presumption that the child who made the statements shall not be  
called as a witness at the hearing. This presumption can only be  
overcome by a showing of extraordinary circumstances that would  
necessitate the calling of the child who made the statements.

(d) **Age of Child.** The age of the child, at the time of trial, is  
immaterial as to admission of statements pursuant to this rule.

(e) **Admissibility.** If all of the requirements for admission pursuant to  
this rule are met, the presumption shall be that the entire forensic

1 interview shall be admissible. The court may find that certain  
2 statements made by the child in the forensic interview are  
3 objectionable pursuant to statute, other Rules of Evidence, or are the  
4 product of leading or suggestive questioning. The court, in its  
5 discretion, may order the removal of these questions and the  
6 corresponding answers if it is in the interest of justice to do so but  
7 otherwise admit the forensic interview in its entirety.

8 (f) **Otherwise Inadmissible Statements.** Any statements made by a  
9 child during a forensic interview that are inadmissible pursuant to  
10 A.R.S. § 13-1421 shall not be admissible pursuant to this rule.

11 (g) **Conformity.** If the definitions above are altered by future  
12 legislation, this rule is automatically deemed to conform to the  
13 changes in the law once those changes go into effect.

14 COMMENT TO RULE:

15 While this rule does not expressly prohibit the trial judge from requiring the  
16 child who made the statements during a forensic interview to testify at an  
17 evidentiary hearing held pursuant to Section (c), it is presumed that it will not be  
18 necessary. Exceptions to this presumption should be exceedingly rare. In deciding  
19 whether to require the child to testify at an evidentiary hearing held pursuant to  
20 Section (c), the trial court should consider all of the circumstances but give special  
21 consideration to the potential adverse effects it will have on the child, the specific  
22 need stated as to why the child needs to testify at the hearing, if there are alternative  
23 means of obtaining the evidence required for the evidentiary hearing, and to the  
24 constitutional mandate that victims be treated with fairness, dignity, and respect and  
25

1 to be free from intimidation, harassment, or abuse throughout the criminal justice  
2 process.

## 3 4 **II. ARGUMENTS IN SUPPORT OF PROPOSED NEW RULE<sup>2</sup>**

5 Victims of violent crimes and those who witness violent crimes experience  
6 significant psychological consequences. Jodi A. Quas & Gail S. Goodman,  
7 *Consequences of Criminal Court Involvement for Child Victims*, 18 *Psychology,*  
8 *Public Policy, and Law* 392 (2012). It is not unusual for victims and witnesses to  
9 experience Post-Traumatic Stress Disorder (PTSD). Ana Carolina Alves, *Impact of*  
10 *Sexual Abuse on Post-Traumatic Stress Disorder in Children and Adolescents: A*  
11 *Systematic Review, Social Sciences*, 13 *Soc. Sci.* 189, [https://doi.org/10.3390/](https://doi.org/10.3390/socsci13040189)  
12 <https://doi.org/10.3390/socsci13040189>, last accessed December 12, 2024.

13  
14  
15  
16 Early exposure to traumatic events may be more detrimental than those  
17 occurring later in life as children are less capable of organizing responses to  
18 traumatic events coherently and are more vulnerable to adverse brain development  
19 that may disrupt crucial normal stages to of childhood development and predispose  
20 children to subsequent psychiatric disorders in adulthood. Caron Zlotnick, et al.,  
21 *Childhood Trauma, Trauma in Adulthood, and Psychiatric Diagnoses*, National  
22 Library of Medicine, <https://pmc.ncbi.nlm.nih.gov/articles/PMC2648973/#S16>, last  
23  
24  
25

---

<sup>2</sup> The studies cited in this petition are attached as Appendix B.

1 accessed December 12, 2024. The psychological consequences of violent crime are  
2 often compounded by involvement in the criminal justice system. Jodi A. Quas &  
3 Gail S. Goodman, *Consequences of Criminal Court Involvement for Child Victims*,  
4 18 *Psychology, Public Policy, and Law* 392, 394-95 (2012). Involvement in the  
5 criminal justice system may be more traumatic than the initial traumatic event. Sue  
6 D. Hobbs & Gail S. Goodman, *Self-Representation: Pro se Cross-Examination and*  
7 *Revisiting Trauma upon Child Witnesses*, *Int. Journal on Child Maltreatment* 78, 84  
8 (2018).

9 “Indeed, any system that relies on exposing children to confrontation or  
10 courtroom stress in order to get a conviction is not a system that is working well.”  
11 Kirsten Hanna, et al., *Child Witnesses’ Access to Alternative Modes of Testifying in*  
12 *New Zealand*, 19 *Psychiatry, Psychology and Law* 184, 192 (April 2012). Social  
13 science research supports the notion that child witness testimony is not an ideal  
14 methodology for obtaining accurate or detailed information. Samantha Andrews, et  
15 al., *Question Types, Responsiveness and Self-contradictions when Prosecutors and*  
16 *Defense Attorneys Question Alleged Victims of Child Sexual Abuse*, 29 *Appl. Cogn.*  
17 *Psychol.* 253 (2015).

18 In an effort to promote more accurate and reliable information from children  
19 who are either abused themselves or witness abuse, it is now universally accepted  
20 that children must be interviewed using techniques that promote non-leading,  
21

1 narrative driven strategies (generally classified as forensic interviews). “The  
2 question types used to elicit accounts of children’s experiences affect both the  
3 quantity and quality of the information obtained...On the one hand, when questioned  
4 with open-ended free-recall prompts (e.g. ‘Tell me what happened.’), children  
5 provide accounts that may be brief but are more likely to be accurate. Samantha  
6 Andrews, et al., *Question Types, Responsiveness and Self-contradictions when*  
7 *Prosecutors and Defense Attorneys Question Alleged Victims of Child Sexual Abuse,*  
8 *29 Appl. Cogn. Psychol. 253, 253-4 (2015).* Additional open-ended prompts can be  
9 used to follow up and thus elicit elaborations or further details...*Id.* Suggestive  
10 prompts are the most problematic because children may change details in their  
11 accounts and thus respond inconsistently, by either incorporating suggested  
12 information into their memories of experienced events or acquiescing to perceived  
13 interviewer coercion...*Id.* To minimize the risk of eliciting erroneous information,  
14 therefore, best-practice guidelines for forensic interviewers encourage maximal  
15 reliance on free-recall open-ended prompts, advise against the use of closed-ended  
16 ‘yes/no’ questions, and strongly discourage suggestive utterances.” *Id.*

22 It is indeed strange that while research starkly highlights the issues with  
23 courtroom testimony and promotes the use of forensic interviewing, we still hold  
24 courtroom testimony as the only viable method of reviewing information for juries  
25 to make factual findings. This proposed rule will not eliminate the child from being

1 present and subject to cross-examination. While our rich history of trial rules and  
2 procedures suggest there is still use in courtroom testimony, and our Constitution  
3 may demand that children still be called to the stand to testify, there is no reason  
4 why juries should not also be examining information from the forensic interviews  
5 to decide if a fact is true.  
6

7  
8 “Even prosecutors and judges – both of whom are likely to be motivated to  
9 make questioning as straightforward as possible for child complainants – struggle to  
10 use age-appropriate questioning. M. Powell et. al., *An evaluation of how evidence*  
11 *is elicited from complainants of child sexual abuse*, Royal Commission into  
12 Institutional Responses to Child Sexual Abuse (2016). A considerable body of  
13 evidence shows that cross-examination-style questions are detrimental to accuracy,  
14 even in relatively small numbers (see Zajac et al., 2012, for a review). Rachel Zajac,  
15 et al., *The ‘Good Old Days’ of Courtroom Questioning: Changes in the Format of*  
16 *Child Cross-Examination Questions Over 60 Years*, 23 *Child Maltreatment* 186, 192  
17 (2018). In fact, even when children are lying about the event in question, the nature  
18 of their responses to cross-examination questions is not diagnostic of their accuracy  
19 (Zajac, Irvine, Ingram, & Jack, 2016)...” *Id.* at 188.  
20  
21  
22

23  
24 The general prohibition on prior consistent statements comes from the notion  
25 that simply repeating testimony in the form of prior statements in transcripts is just  
bolstering credibility on repetition. However, forensic interviews differ greatly in

1 the sense that the jury is allowed to see and hear the child during a disclosure  
2 unencumbered by the confines of a courtroom. That allows the jury to verify a  
3 child's disclosure without wondering if a child muddling through a statement on the  
4 stand is a result of the stress of discussing highly traumatic information in front of  
5 a host of strangers.  
6

7  
8 It should be emphasized that this new rule is not meant to replace live  
9 testimony. The child will still be required to testify and be subject to questioning  
10 from the defense. The use of forensic interviews during trial will assist the jury in  
11 being able to evaluate both live testimony in court and disclosures obtained through  
12 the best practices of forensic interviewing. It is not unusual for disclosures and  
13 testimony to be the key piece of evidence for a jury to consider. A child's manner  
14 while disclosing in a neutral setting, the questions and answers used that began the  
15 investigation, and the details provided in those forensic interviews should all be  
16 available to the jury in order to determine credibility. It does not deprive the  
17 defendant of the opportunity to both confront and cross-examine the child on those  
18 statements, but merely gives context to the jury to decide credibility.  
19  
20  
21

22 Arizona is currently in a small minority of states that does not allow the  
23 admission of a child forensic interview. Twenty-nine states currently allow for the  
24 admission of statements made by children under circumstances similar to those that  
25

1 would be permitted under the proposed rule.<sup>3</sup> Nine states allow for the admission  
2 of a child’s forensic interview at trial but under circumstances not similar to the  
3 proposed rule.<sup>4</sup> Only twelve states, Arizona included, do not have a provision, either  
4  
5

6  
7 <sup>3</sup> Alabama (Ala. Code §§ 15-25-31, 15-25-32); Alaska (AK. R. REV. Rule  
8 801(d)(3)); California (Cal. Evid. Code § 1360); Colorado (C.R.S.A. § 13-25-129);  
9 Delaware (11 Del.C. § 3513); Florida (F.S.A. § 90.803(23)); Georgia (Ga. Code  
10 Ann. § 24-8-820); Illinois (725 ILCS 5/115-10); Indiana (IC 35-37-4-6); Louisiana  
11 (LSA-R.S. 15:440.2, 15:440.5); Maryland (MD Code, Criminal Procedure, § 11-  
12 304); Minnesota (M.S.A. § 595.02); Mississippi (M.R.E. Rule 803(25)); Missouri  
13 (V.A.M.S. 491.075); Nevada (N.R.S. 51.385); New Jersey (NJR Evid. N.J.R.E.  
14 803(27)); North Dakota (N.D.R.Ev. Rule 803(24)); Oklahoma (12 Okl.St. Ann. §  
15 2803.1); Oregon (OR R REV Rule 803(18a)); Pennsylvania (42 Pa.C.S.A. § 5985.1);  
16 South Carolina (SC ST § 17-23-175); South Dakota (SDCL § 19-19-806.1);  
17 Tennessee (T.C.A. § 24-7-123); Texas (TX CRIM PRO Art. 38.072); Utah (UT R  
18 RCRP Rule 15.5); Vermont (Vermont Rules of Evidence, Rule 804A); Virginia (VA  
19 Code Ann. § 19.2-268.3); Washington (RCWA 9A.44.120); Wisconsin (W.S.A. §  
20 908.08).

21 <sup>4</sup> Arkansas (AR R REV Rule 803(25), requires that child’s testimony be inconsistent  
22 with prior statements before prior statements are admissible); Connecticut (CT R  
23 REV Sec. 8-10, limited by case law that requires statements made by the child to be  
24 non-testimonial in nature before being admissible under this rule—*see State v.*  
25 *Maguire*, 78 A.3d 828 (Conn. 2013); Hawaii (HRS § 626-1, Rule 804, child must be  
declared unavailable before the child’s statements are admissible under this rule);  
Kansas (K.S.A 60-460, child must be declared unavailable before the child’s  
statements are admissible under this statute); Maine (15 M.R.S. § 1205, before the  
child’s statements can be admissible at trial, the trial court must make a finding that  
the mental or physical well-being of the child will more likely than not be harmed if  
the child were to testify in open court); Massachusetts (MA R EVID Section 804(8),  
child must be declared unavailable before the child’s statements are admissible  
under this rule); Michigan (MI R REV MRE 803A, child’s statement must meet the  
requirements of an excited utterance before it is admissible); Montana (M.C.A. 46-  
16-220, child must be declared unavailable before the child’s statements are  
admissible under this statute); Ohio (OH ST REV Rule 807, child must be declared  
unavailable before the child’s statements are admissible under this rule).

1 one created by statute or court rule, that allow for the playing of a child’s forensic  
2 interview at trial under most circumstances.<sup>5</sup>  
3

4 **III. Conclusion**

5 To protect the integrity of the criminal proceedings, the rights of the accused,  
6 and the constitutional rights of child-victims to justice and due process and “[to] be  
7 treated with fairness, respect, and dignity, and to be free from intimidation,  
8 harassment, or abuse, throughout the criminal justice process,” (Ariz. Const. art, II,  
9 § 2.1(A)(1)), this Court should consider and adopt the proposed rule.  
10  
11

12  
13 Respectfully submitted January 8, 2025.

14 MARICOPA COUNTY ATTORNEY’S OFFICE

15  
16 BY: *Rachel H. Mitchell*  
17

18 ARIZONA VOICE FOR CRIME VICTIMS, INC

19  
20 BY: : /s/ Colleen Clase  
21  
22  
23

24  
25 <sup>5</sup> Arizona, Idaho, Iowa, Kentucky, Nebraska, New Hampshire, New Mexico, New  
York, North Carolina (though North Carolina does permit a child’s forensic  
interview to be played for a jury on grounds that it constitutes a prior consistent  
statement—see *State v. King*, 759 S.E.2d 713 (N.C. Ct. App. 2014)), Rhode Island,  
West Virginia, and Wyoming.