

1 **Elizabeth Burton Ortiz**
State Bar No. 012838
2 ARIZONA PROSECUTING ATTORNEYS'
ADVISORY COUNCIL
3 3838 N. Central Avenue, Suite 850
Phoenix, Arizona 85012
4 Tel. (602) 542-7222
Fax. (602) 274-4215

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6 **IN THE SUPREME COURT OF THE STATE OF ARIZONA**

7 In the Matter of

In Re: R-25-0004

8 PETITION TO ADOPT RULE 807.01,
9 OF THE ARIZONA RULES OF
EVIDENCE

**ARIZONA PROSECUTING
ATTORNEYS' ADVISORY
COUNCIL COMMENT IN
SUPPORT**

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12 The Arizona Prosecuting Attorneys' Advisory Council ("APAAC")

13 respectfully submits the following comment supporting Petition R-25-0004, which
14 proposes to amend the Arizona Rules of Evidence and adopt Rule 807.01, regarding
15 admissibility of hearsay statements made by a child victim to a forensic interviewer.

16 As thoroughly detailed in the Petition, Arizona yet remains in a very small
17 minority of jurisdictions that do not permit the admission of child forensic
18 interviews. Conversely, the overwhelming majority of jurisdictions permit the
19 admissibility of such evidence. In addition, a brief legal search reveals that some
20 Federal Circuits also permit the admission of this evidence. *See, e.g., United States*

1 *v. Thunder Horse*, 370 F.3d 745 (8th Cir. 2004) (determining admissibility of
2 statements made by a child victim of sexual abuse to a forensic interviewer by
3 examining a “wide range” of nonexclusive factors and determining whether
4 sufficient circumstantial guarantees of trustworthiness warrant admission under
5 Rule 807).

6 Arizona law permits the admission of such hearsay statements, albeit under
7 different legal rules. For example, in *State v. Johnson*, the trial court admitted the
8 child victim’s recorded statements to a forensic interviewer as a recorded
9 recollection exception to the hearsay rule, pursuant to Arizona Rule of Evidence
10 803(5). *State v. Johnson*, 2014 WL 3608693 (Ariz. App. July 22, 2014). The Arizona
11 Court of Appeal affirmed admission of those recorded statements, reasoning that the
12 recordings “were made when the matters were fresh in the victims’ memory,” and
13 both victims “confirmed that their statements during the forensic interviews were
14 truthful.” Those same indicia of reliability will be true in every case in which a
15 forensic reviewer records an interview with a child victim. The crime will often be
16 recent, the conduct clear in the child’s mind, and the account generally made without
17 any motive to fabricate. *See also State v. Robinson*, 153 Ariz. 191, 199-203 (1987)
18 (discussing the various exceptions to the hearsay rule for admission of the child
19 victim’s statements to doctors).

