SUPREME COURT OF ARIZONA

In the Matter of RULES 8, 37, 48, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 63.2, 64, 65, 66, 68, 69, 76, 78, 79, 84, and RULE 85 and TO ADOPT NEW RULE 50.1 of ARIZONA RULES OF PROCEDURE FOR THE JUVENILE COURT	Arizona Supreme Court No. R-17-0025 **FILED 08/10/2017**

O R D E R

A petition having been filed proposing to amend Rules 8, 48, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 63.2, 64, 65, 66, 68, 69, 76. 78, 79, 84, and 85 and to Adopt New Rule 50.1 of Arizona Rules of Procedure for the Juvenile Court, and upon consideration,

IT IS ORDERED that Rules 8, 48, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 63.2, 64, 65, 66, 68, 69, 76. 78, 79, 84, and 85 and to Adopt New Rule 50.1 of Arizona Rules of Procedure for the Juvenile Court, be amended in accordance with the attachment effective this date.

Dated this 10th day of August, 2017.

_____/S/_____
SCOTT BALES
Chief Justice

TO:
David K. Byers
David L. Withey
Rule 28 Distribution List

APPENDIX A
17B A.R.S. Juvenile Court Rules of Procedure
Proposed Rule Changes

Rule 8. Applicability of the Indian Child Welfare Act

~~**A.** The Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., shall not apply to delinquency, incorrigibility or transfer proceedings involving an Indian child.~~

~~**B**~~**A. Application** ~~**Incorporation.**~~ All provisions of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963 ("ICWA"), and Part 23 of Title 25 of the Code of Federal Regulations ("Regulations"), ~~shall be incorporated by reference,~~ including any amendments to those provisions, govern proceedings subject to ICWA ~~the Act~~.

B. Excluded Proceedings. ICWA does not apply to delinquency, incorrigibility when there is no out-of-home placement, or criminal transfer proceedings involving an Indian child.

C. Findings. Under the Regulations, if the court determines or has reason to know the child is an Indian child as defined by ICWA, ~~T~~the court shall make all findings pursuant to the standards and burdens of proof as required ~~by~~ under ICWA ~~the Indian Child Welfare Act~~ and the Regulations and otherwise treat the child as an Indian child unless and until it is determined on the record that the child does not meet the definition of an Indian child under ICWA.

D. Jurisdiction. Under the Regulations, if the court determines or has reason to know the child is an Indian child as defined by ICWA and the proceeding is for foster care placement or termination of parental rights, the court shall determine whether to grant a petition to transfer the proceeding to tribal court according to the standards required under 25 U.S.C. § 1911(b) and 25 C.F.R. §§ 23.115-119.

~~COMMITTEE~~ COMMENTS

These rules acknowledge certain provisions ~~Because of the importance~~ of ICWA ~~the Indian Child Welfare Act~~ and ~~its applicability to state court proceedings, key provisions of the Act have been incorporated in these rules~~ the Regulations. However, not all provisions are ~~set forth~~ identified in these rules, and ICWA ~~the Act~~ and the Regulations should be carefully reviewed in cases in which they apply~~, particularly as it relates to adoption proceedings~~. In the event of a conflict with these rules, ICWA and the Regulations shall govern. ~~Any conflict between these rules and the Act shall be resolved in favor of the Act. The Bureau of Indian Affairs Guidelines for State Courts in Indian Child Custody Proceedings may be of assistance in interpreting provisions of the Act.~~

Under the Regulations, a court has "reason to know" that a child is an Indian child upon the occurrence of any of the following: (1) any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child; (2) any participant in the proceeding, officer of the court involved in

the proceeding, Indian Tribe, Indian organization , or agency informs the court that it has discovered information indicating that the child is an Indian child; (3) the child who is the subject of the proceeding gives the court reason to know he or she is an Indian child; (4) the court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a pueblo, reservation, or in an Alaska Native village; (5) the court is informed that the child is or has been a ward of a tribal court; or (6) the court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe. 25 C.F.R. § 23.107.

The Regulations also address the criteria for ruling on petitions to transfer proceedings to tribal court, including 25 C.F.R. §§ 23.115-119. Under 25 U.S.C. § 1911(b), the court must grant a petition by a parent, Indian custodian, or the child's Tribe to transfer the foster care placement or termination of parental rights proceeding to tribal court, absent objection by either parent or tribal declination of transfer, or when there is good cause to deny transfer. The regulations provide that in determining whether good cause exists, the court must *not* consider any of the following: (1) whether the foster-care or termination of parental rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or Tribe did not receive notice of the child-custody proceeding until an advanced stage; (2) whether there have been prior proceedings involving the child for which no petition to transfer was filed; (3) whether transfer could affect the placement of the child; (4) the Indian child's cultural connections with the Tribe or its reservation; or (5) socioeconomic conditions or any negative perception of Tribal or Bureau of Indian Affairs ("BIA") social services or judicial systems.

Rule 48. Petition, temporary orders and findings, notice of hearing, and service of process

A. Petition. A dependency petition invokes the authority of the court to act on behalf of a child who is alleged to be a dependent child. A petition on behalf of a dependent child shall be generally in the form and contain the information required by law. The action shall be captioned, "In the Matter of _____ a person under the age of 18 years," may be based upon information and belief and shall state whether there is reason to know the child is an Indian child as defined by ICWA ~~the Indian Child Welfare Act~~. The petitioner shall indicate a request for in-home intervention by including the words "In-home intervention requested" in parentheses below the words "Dependency Petition."

B. – C. [no changes]

D. Service of petition. The petitioner shall serve a copy of the petition, notice of hearing and temporary orders upon those persons as required by law. The petitioner shall provide any parent, guardian or Indian custodian appearing at the preliminary protective hearing with a copy of the petition, notice of hearing and temporary orders which shall constitute service, as provided by law. Otherwise, the petition, notice of hearing and temporary orders shall be served in the manner provided for in Rules 4.1 or 4.2, Arizona Rules of Civil Procedure. Except for service of process that occurs at the preliminary protective hearing or the execution of an acceptance of service and waiver, service of process shall be completed no less than five (5) days prior to the court hearing. In dependency proceedings:

1. – 8. [no changes]

9. Under the Regulations, ~~I~~if the petition alleges or the court has reason to ~~believe~~ know the child at issue is an Indian child as defined by ICWA ~~the Indian Child Welfare Act~~, in addition to service of process as required by these rules, notification shall be given to the parent, Indian custodian and child~~'~~'s tribe or tribes. Notice shall be provided by registered or certified mail with return receipt requested. If the identity or location of the parent or Indian custodian cannot be determined, notice shall be given to the Secretary of the Interior by registered or certified mail and the Secretary of the Interior shall have fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice shall advise the parent or Indian custodian and the tribe of their right to intervene. No hearing shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior. The court shall grant up to twenty (20) additional days to prepare for the hearing if a request is made by the parent or Indian custodian or the tribe.

10. The parent, Indian custodian or the child~~'~~'s tribe may waive the ten (10) day notice requirement, pursuant to ICWA ~~the Indian Child Welfare Act~~ and the Regulations, for purposes of proceeding with the preliminary protective hearing within the time limit as provided by state law.

E. [no changes]

~~COMMITTEE~~ COMMENT

The ~~It was the determination of the~~ committee concluded that a provision permitting the parent, Indian custodian or the child~~'~~'s tribe to waive the ten (10) day notice requirement does ~~is~~ not ~~in~~ conflict with ICWA ~~the Indian Child Welfare Act~~ and reflects ~~is reflective of~~ current practice in some counties. ~~Some of the tribes currently waive time in order to permit the preliminary protective hearing to proceed within the statutory time limits if the tribe is provided with sufficient information concerning the case in advance of the hearing. It is the belief of the committee that the~~ ~~i~~Inclusion of the waiver provision allows ~~is necessary to ensure~~ timely disposition of cases without interfering with the rights afforded the parent, Indian custodian or the tribe under ICWA ~~pursuant to the Indian Child Welfare Act~~. When the preliminary protective hearing is held as an emergency hearing under 25 U.S.C. §§ 1922 and 25 C.F.R. 23.113 the 10-day notice requirement does not apply.

Rule 50. Preliminary Protective Hearing

A. **Purpose**. At the preliminary protective hearing, the court shall determine whether continued temporary custody of the child is necessary and shall enter appropriate orders as to custody, placement, visitation and the provision of services to the child and family. The preliminary protective hearing may be held as an emergency hearing as provided in Section 1922 of ICWA and 25 C.F.R. § 23.113.

B. Procedure. At the preliminary protective hearing, the court shall:

1. Under the Regulations, ~~I~~inquire if any party has reason to ~~believe~~ know that the child at issue is an Indian child as defined by ICWA ~~subject to the Indian Child Welfare Act~~;

2. – 12. [no changes]

C. Findings and orders. All findings and orders, including any agreements reached by the parties shall be in the form of a signed order or contained in a minute entry, and shall be provided to the parties at the conclusion of the hearing. The court shall:

1. – 2. [no changes]

3. ~~Order the petitioner to obtain verification of the child's Indian status from the child's Indian tribe or from the United States Department of Interior, Bureau of Indian Affairs, if the court has reason to believe the child is an Indian child;~~ Under the Regulations, confirm based on a report, declaration, or testimony included in the record or by court order that the Department of Child Safety or other petitioner has used or will use due diligence to identify and work with all tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership);

4. – 5. [no changes]

6. If ICWA ~~the Indian Child Welfare Act~~ applies, the court shall make findings pursuant to the standards and burdens of proof as required ~~by~~ under ICWA ~~the Act~~ and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ~~the Act~~ ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences, unless the proceeding is an emergency proceeding governed by Section 1922 of ICWA; and

7. – 8. [no changes]

~~COMMITTEE~~ COMMENT

The ~~It is the recommendation of the~~ committee recommends that, in addition to the admonition set forth in this rule, the court should consider providing the parent, guardian or Indian custodian with a written copy of the admonition ~~in order to protect the due process rights of the parent, guardian or Indian custodian~~. See Form 1.

Rule 50.1 Deviation from Placement Preferences.

Under 25 C.F.R. § 23.132, the determination to depart from the placement preferences in Section 1915 of ICWA must be made in the following manner:

(a) If any party asserts that good cause not to follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child-custody proceeding and the court.

(b) The party seeking departure from the placement preferences should bear the burden of proving by clear and convincing evidence that there is "good cause" to depart from the placement preferences.

(c) A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and should be based on one or more of the following considerations:

(1) The request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;

(2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;

(3) The presence of a sibling attachment that can be maintained only through a particular placement;

(4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live;

(5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

(d) A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.

(e) A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.

COMMENT

The Regulations provide that good cause to deviate from placement preferences 'should' be based on one of the five factors, but leave open the possibility that a court may determine, given the particular facts of an individual case, that there is good cause to deviate from the placement preferences for some other reason. Although the rule provides this flexibility, courts should only

avail themselves of it in extraordinary circumstances, as Congress intended the good cause exception to be "narrow and limited in scope." 81 Fed. Reg. 38778, 38839 (June 14, 2016).

Rule 52: Initial Dependency Hearing

A. – B. [no changes]

C. Procedure. At the initial hearing the court shall:

1. Under the Regulations, ~~I~~inquire if any party has reason to ~~believe~~ know that the child is an Indian child as defined by ICWA ~~at issue is subject to the Indian Child Welfare Act~~;

2. – 6. [no changes]

D. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the initial hearing the court shall:

1. – 2. [no changes]

3. ~~Order the petitioner to obtain verification of the child's Indian status from the child's Indian tribe or from the United States Department of Interior, Bureau of Indian Affairs, if there is reason to believe the child is an Indian child;~~ Under the Regulations, confirm based on a report, declaration, or testimony included in the record or by court order that the Department of Child Safety or other petitioner has used or will use due diligence to identify and work with all tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership);

4. – 8. [no changes]

9. If ICWA ~~the Indian Child Welfare Act~~ applies, the court shall make findings pursuant to the standards and burdens of proof as required ~~by~~ under ICWA ~~the Act~~ and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ~~the Act~~ ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

10. – 11. [no changes]

E. Continuance. The court may continue the initial dependency hearing, upon a showing of good cause, for reasons which may include:

1. Service of process and/or notification pursuant to ICWA ~~the Indian Child Welfare Act~~ and the Regulations has not been completed as to the parties;

2. Additional time is requested by the child's tribe or if additional time is required to comply with the requirements of ICWA ~~the Indian Child Welfare Act~~ and the Regulations; or

3. [no changes]

Rule 53: Settlement Conference

A. – C. [no changes]

D. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the settlement conference, the court may:

1. – 4. [no changes]

5. If ICWA ~~the Indian Child Welfare Act~~ applies, the court shall make findings pursuant to the standards and burdens of proof as required ~~by~~ under ~~the Act~~ ICWA and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ~~the Act~~ ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

6. [no changes]

Rule 54: Findings and Orders

A. – B. [no changes]

C. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the pretrial conference, the court may:

1. [no changes]

2. Adjudicate the child dependent and enter findings and orders pursuant to Rule 55 and set or conduct a disposition hearing pursuant to Rule 56 if the court finds that the parent, guardian or Indian custodian failed to appear at the pretrial conference without good cause shown, had notice of the hearing, was properly served pursuant to Rule 48 and had been previously admonished regarding the consequences of failure to appear, including a warning that the hearing could go forward in the absence of the parent, guardian or Indian custodian and that failure to appear may constitute a waiver of rights and an admission to the allegations contained in the dependency petition. The court may adjudicate the child dependent based upon the record and evidence presented if the petitioner has established grounds upon which to adjudicate the child dependent;

a. - b. [no changes]

c. If ICWA ~~the Indian Child Welfare Act~~ applies, the court shall make findings pursuant to the standards and burdens of proof as required ~~by~~ under ICWA ~~the Act~~ and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ~~the Act~~ ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

d. [no changes]

Rule 55: Dependency Adjudication Hearing

A. – D. [no changes]

E. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. As to each parent, guardian or Indian custodian, based upon the record and evidence presented, the court shall:

1. – 6. [no changes]

7. If ICWA ~~the Indian Child Welfare Act~~ applies, the court shall make findings pursuant to the standards and burdens of proof as required ~~by~~ under ICWA ~~the Act~~ and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ~~the Act~~ ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

8. [no changes]

Rule 56: Disposition Hearing

A. – D. [no changes]

E. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. The court shall determine the appropriate case plan and shall:

1. – 5. [no changes]

6. If ICWA ~~the Indian Child Welfare Act~~ applies, the court shall make findings pursuant to the standards and burdens of proof as required ~~by~~ under ICWA ~~the Act~~ and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ~~the Act~~ ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

7. – 8. [no changes]

Rule 57: Provision of Reunification Services Hearing

A. – B. [no changes]

C. Findings and Orders. All findings shall be in writing, in the form of a minute entry or order. If the court finds, by clear and convincing evidence, that reunification efforts are not required, the court shall:

1. – 5. [no changes]

6. If ICWA ~~the Indian Child Welfare Act~~ applies, the court shall make findings pursuant to the standards and burdens of proof as required ~~by~~ under ICWA ~~the Act~~ and the Regulations; including whether placement of the Indian child is in accordance with Section 1915 of ~~the Act~~ ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

7. [no changes]

Rule 58: Review Hearing

A. [no changes]

B. Notice.

1. *Right to participate.* At a proceeding to review the disposition orders of the court, the court shall provide the following persons notices of the review and the right to participate in the proceeding and any future proceedings:

a. The authorized agency charged with the child'~~'~~s care and custody and the child's tribe as required under ICWA and the Regulations.

b. Any foster parents in whose home the child resided within the last six months or resides at present, except for those foster parents who maintain a receiving foster home where the child has resided for ten days or less. The petitioner shall provide the court with the names and addresses of all foster parents who are entitled to notice pursuant to statute.

c. A shelter care facility or receiving foster home where the child resides or has resided within the last six months for more than thirty days. The petitioner shall provide the court with the names and addresses of all shelter care facilities and receiving foster homes that are entitled to notice pursuant to this paragraph.

d. The child'~~'~~s parent or guardian (unless the parental rights of that parent or guardian have been terminated by court action or unless the parent has relinquished rights to the child to an agency or has consented to the adoption of the child as provided in A.R.S. § 8-107), and the child's Indian custodian as defined by ICWA and the Regulations.

e. The child, if twelve years of age or older.

f. The child's relative, as defined in A.R.S. § 8-501, if that relative files a written notice of right of participation with the court.

g. A person permitted by the court to intervene as a party in the dependency proceeding.

h. A physical custodian of the child within the preceding six months.

i. Any person who has filed a petition to adopt or who has physical custody pursuant to a court order in a foster-adoptive placement.

j. Any other person as the court may direct.

2. [no changes]

C. – E. [no changes]

F. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the hearing, the court shall:

1. – 6. [no changes]

7. If ICWA ~~the Indian Child Welfare Act~~ applies, the court shall make findings pursuant to the standards and burdens of proof as required ~~by~~ under ICWA ~~the Act~~ and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ~~the Act~~ ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

8. [no changes]

Rule 59: Return of the Child

A. – D. [no changes]

E. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. The court shall:

1. – 4. [no changes]

5. If ICWA ~~the Indian Child Welfare Act~~ applies, the court shall make findings pursuant to the standards and burdens of proof as required ~~by~~ under ICWA ~~the Act~~ and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ~~the Act~~ ICWA and 25 C.F.R. 23.131 or whether there is good cause to deviate from the preferences; and
6. [no changes]

Rule 60: Permanency Hearing

A. – D. [no changes]

E. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. The court shall make findings based upon the evidence presented and shall:

1. – 4. [no changes]

5. If ICWA ~~the Indian Child Welfare Act~~ applies, the court shall make findings pursuant to the standards and burdens of proof as required ~~by~~ under ICWA ~~the Act~~ and the Regulations; including whether placement of the Indian child is in accordance with Section 1915 of ~~the Act~~ ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

6. – 7. [no changes]

Rule 61: Motion of Hearing, Service of Process and Orders for Permanent Guardianship

A. Motion. If the court determines that the establishment of a permanent guardianship is in the best interests of a dependent child, the court shall order that a motion for guardianship be filed by the Department of Child Safety or by the child~~'~~s attorney or guardian ad litem within ten (10) days of the permanency hearing. The motion shall contain all information required by law and, under the Regulations, shall state whether there is reason to know the child is an Indian child as defined by ICWA.

B. [no changes]

C. Service. The motion for guardianship and notice of hearing shall be served by the moving party upon the parties and any other person as provided by law, pursuant to Rule 5(c), Ariz. R. Civ. Pro. If the motion alleges or, under the Regulations, the court has reason to ~~believe~~ know the child at issue is an Indian child as defined by ICWA ~~the Indian Child Welfare Act~~, in addition to service of process as required by this rule, notification shall be given to the parent, Indian custodian and child~~'~~s tribe. Notice shall be provided by registered or certified mail with return receipt requested. If the identity or location of the parent or Indian custodian cannot be determined, notice shall be given to the Secretary of the Interior by registered or certified mail and the Secretary of the Interior shall have fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice shall advise the parent or Indian custodian and the tribe of their right to intervene. No hearing shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior. The court shall grant up to twenty (20) additional days to prepare for the hearing if a request is made by the parent or Indian custodian or the tribe by registered or certified mail.

1. [no changes]

D. Orders. Upon the filing of a motion for guardianship, the court shall order the Department of Child Safety, an agency or a person designated as an officer of the court to conduct an investigation and prepare a report addressing whether the prospective guardian is a fit and proper person to become guardian of the child and whether it is in the best interests of the child to grant the guardianship. If the child is an Indian child, the report shall address whether the prospective guardian falls within the placement preferences as required ~~by~~ under ICWA ~~the Act~~ and the Regulations or whether good cause exists to deviate from the placement preferences. A copy of the report shall be provided to the parties and the court ten (10) days prior to the initial guardianship hearing. The court may enter any other orders, pending the hearing, as the court determines to be in the best interests of the child.

Rule 62: Initial Guardianship Hearing

A. – B. [no changes]

C. Procedure. At the initial hearing the court shall;

1. Under the Regulations, ~~I~~inquire if any party has reason to ~~believe~~ know that the child at issue is an Indian child as defined by ~~subject to~~ ICWA ~~the Indian Child Welfare Act~~;

2. – 8. [no changes]

D. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the hearing, the court shall:

1. – 4. [no changes]

5. If ICWA ~~the Indian Child Welfare Act~~ applies, the court shall make findings pursuant to the standards and burdens of proof as required ~~by~~ under ICWA ~~the Act~~ and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ~~the Act~~ ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

6. [no changes]

Rule 63: Guardianship Adjudication Hearing

A. – E. [no changes]

F. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the hearing the court shall:

1. – 3. [no changes]

4. If ICWA ~~the Indian Child Welfare Act~~ applies, the court shall make findings pursuant to the standards and burdens of proof as required ~~by~~ under ICWA ~~the Act~~ and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ~~the Act~~ ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences;

5. – 6. [no changes]

Rule 63.2: Initial Successor Permanent Guardianship Hearing

A. – B. [no changes]

C. Procedure. At the initial successor permanent guardianship hearing, the court shall:

1. Under the Regulations, ~~I~~inquire if any party has reason to ~~believe~~ know that the child at issue is an Indian child as defined by ~~subject to~~ ICWA ~~the Indian Child Welfare Act~~;

2. [no changes]

D. – E. [no changes]

Rule 64: Motion, Petition, Notice of Hearing and Service of Process and Orders

A. Motion for Termination of Parental Rights. If the court determines that termination of parental rights is in the best interests of a dependent child, the court shall order that a motion for termination of parental rights be filed by the Department of Child Safety or the child's attorney or guardian ad litem within ten (10) days of the permanency hearing. The motion shall allege the grounds for termination of parental rights as provided by law and, under the Regulations, shall state whether there is reason to know the child is an Indian child as defined by ICWA ~~the Indian Child Welfare Act~~.

B. Petition for Termination of Parental Rights. If the child at issue is not a dependent child or is a dependent child who was the subject of a dependency petition filed prior to July 1, 1998, the petitioner shall file a petition for termination of parental rights, pursuant to A.R.S. § 8-534 and, under the Regulations, shall state whether there is reason to know the child is an Indian child as defined by ICWA ~~the Indian Child Welfare Act~~. Nothing in this rule shall preclude the filing of a petition in those cases where the child was the subject of a dependency petition filed after July 1, 1998.

C. [no changes]

D. Service. Under the Regulations, ~~I~~if the motion or petition alleges or the court has reason to ~~believe~~ know the child at issue is an Indian child as defined by ICWA ~~the Indian Child Welfare Act~~, in addition to service of process as required by this rule, notification shall be given to the parent, Indian custodian and the child's tribe or tribes. Notice shall be provided by registered or certified mail with return receipt requested. If the identity or location of the parent or Indian

custodian cannot be determined, notice shall be given to the Secretary of the Interior by registered or certified mail and the Secretary of the Interior shall have fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

E. [no changes]

Rule 65: Initial Termination Hearing

A. – B. [no changes]

C. Procedure. At the initial hearing the court shall:

1. Under the Regulations, ~~I~~inquire if any party has reason to ~~believe~~ know that the child at issue is an Indian Child as defined by the ~~subject to~~ ICWA ~~the Indian Child Welfare Act~~;

2. – 7. [no changes]

D. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the hearing, the court shall:

1. – 3. [no changes]

4. If ICWA ~~the Indian Child Welfare Act~~ applies, the court shall make findings pursuant to the standards and burdens of proof as required ~~by~~ under ICWA ~~the Act~~ and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ~~the Act~~ ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

5. [no changes]

Rule 66: Termination Adjudication Hearing

A. – E. [no changes]

F. Findings and Orders by the court. All findings and orders shall be in the form of a signed order or set forth in a signed minute entry. At the conclusion of the hearing the court shall:

1. [no changes]

2. If the moving party or petitioner has met its burden of proof, the court shall:

a. – d. [no changes]

e. If ICWA ~~the Indian Child Welfare Act~~ applies, the court shall make findings pursuant to

the standards and burdens of proof as required ~~by~~ under ICWA ~~the Act~~ and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ~~the Act~~ ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences.

3. [no changes]

Rule 68: Definitions

A. [no changes]

B. 1. – 7. [no changes]

8. *Adoptive Placement Preferences*. In any adoptive placement of an Indian child, a preference shall be given, where the child's tribe has not established a different order of preference under ICWA and in the absence of good cause to the contrary, to a placement with:

a. A member of the Indian child~~'~~'s extended family;

b. Other members of the Indian child~~'~~'s tribe; or

c. Other Indian families.

Rule 69: Appointment, Appearance and Withdrawal of Counsel

A. Appointment. The court may appoint counsel for those persons entitled to counsel and determined to be indigent as provided by law, these rules, or ICWA ~~the Indian Child Welfare Act~~ and the Regulations. In determining whether a person is indigent, the court shall:

1. [no changes]

B. – D. [no changes]

Rule 76: Service of Process

A. [no changes]

B. Notice. Under the Regulations, ~~I~~if the petition to adopt alleges or the court has reason to ~~believe~~ know the child at issue is an Indian child as defined by ICWA ~~the Indian Child Welfare Act~~, in addition to service of process as required by these rules, notification shall be given to the parent, Indian custodian and child~~'~~'s tribe of any involuntary proceeding involving an Indian child. Notice shall be provided by registered or certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice

shall be given to the Secretary of the Interior by registered or certified mail and the Secretary of the Interior shall have fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice shall advise the parent or Indian custodian and the tribe of their right to intervene. No hearing shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior. The court shall grant up to twenty (20) additional days to prepare for the hearing if a request is made by the parent or Indian custodian or the tribe.

Rule 78: Temporary Custody

A. Petition for Temporary Custody. A person seeking temporary custody of child shall file a petition and a notice of hearing with the clerk of the court within five (5) days of obtaining the child. The petition shall set forth how the child came into the prospective adoptive parent's care, how long the child has resided with the prospective adoptive parent, why continued custody is in the best interests of the child and, under the Regulations, whether there is reason to know the child is an Indian child as defined by ~~subject to~~ ICWA ~~the Indian Child Welfare Act~~.

E. Findings and Orders. All findings and orders shall be in writing and signed by the court, in the form of an order or minute entry. The court shall;

1. [no changes]

2. If ICWA ~~the Indian Child Welfare Act~~ applies, the court shall make findings pursuant to the standards and burdens of proof as required ~~by~~ under ICWA ~~the Act~~ and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ~~the Act~~ ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences.

F. – G. [no changes]

Rule 79: Petition to Adopt

A. Petition to Adopt. The petition to adopt and notice of hearing shall be filed with the clerk of the court. A petition to adopt shall be captioned, "In the Matter of___, a person under the age of 18 years," and may be based upon information and belief. In addition to information required by law, each petition to adopt shall contain the following information:

1. Under the Regulations, ~~W~~whether there is reason to know the child to be adopted is an Indian child as defined by ~~subject to the requirements of~~ ICWA ~~the Indian Child Welfare Act~~. If ICWA ~~the Act~~ applies, the petition shall include the following:

a. Whether the placement preferences required ~~by~~ under Section 1915 of ~~the Act~~ ICWA and 25 C.F.R. § 23.130 have been complied with;

b. – d. [no changes]

2. – 4. [no changes]

B. – C. [no changes]

Rule 84: Hearing to Finalize Adoption

A. – B. [no changes]

C. Procedure. At the hearing the court shall:

1. - 5. [no changes]

6. If an Indian child subject to ICWA ~~the Act~~ is being adopted, the court shall determine whether:

a. The tribe was notified of the proceedings and the right to intervene, if applicable;

b. The parent or Indian custodian's consent to the adoption was taken in accordance with ICWA ~~the Indian Child Welfare Act~~ and the Regulations;

c. The placement complies with the preferences set forth in Section 1915 of ~~the Act~~ ICWA and 25 C.F.R. § 23.130 or whether good cause exists for deviation from the placement preferences; and

d. [no changes]

D. Findings and Orders. The court shall make its findings in writing, in the form of a minute entry or order and shall grant or deny the petition to adopt at the conclusion of the hearing. The court may take the matter under advisement if information required by law had not been received by the court prior to or at the hearing, as required by these rules. If ICWA ~~the Indian Child Welfare Act~~ applies, the court shall make findings and enter orders pursuant to the standards and burdens of proof as required ~~by~~ under ~~the Act~~ ICWA and the Regulations.

1. [no changes]

Rule 85: Motion and Hearing to Set Aside Adoption

A. Motion to Set Aside Adoption. A person seeking to set aside a final order of adoption shall file a motion to set aside the adoption with the clerk of the court. The motion shall allege grounds only as permitted by Rule 60(b)-(d), Ariz. R. Civ. P. or by ICWA ~~the Indian Child Welfare Act~~ and the Regulations. Upon receipt of the motion, the court shall set an initial hearing within ten (10) days and shall advise the parties as to the date, time and location of the initial

hearing. Under the Regulations, ~~I~~if there is reason to know the child is an Indian child as defined by ICWA, the court shall proceed ~~in the manner set forth in~~ under ICWA ~~the Indian Child Welfare Act~~ and the Regulations.

B. – F. [no changes]

G. Findings and Orders. The court shall make its findings in writing, in the form of a minute entry or order. The court shall advise the parties of their right to appeal and shall enter orders concerning the custody of the child if the adoption is set aside. If ICWA ~~the Indian Child Welfare Act~~ applies, the court shall make findings and enter orders pursuant to the standards and burdens of proof as required ~~by~~ under ~~the Act~~ ICWA and the Regulations.

ICWA Regulations Amendments to the Arizona Juvenile Court Rules Of Procedure

http://www.azcourts.gov/rules/Rule-Amendments-from-Recent-Rules-Agenda-s

Rule 8(A) Supremacy of Federal Law

- "All provisions of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963 ("ICWA"), and Part 23 of Title 25 of the Code of Federal Regulations ("Regulations"), including any amendments to those provisions, govern proceedings subject to ICWA."
- Federal regulations mandatory

Rule 8 Identifying Indian Children

- “Under the Regulations, a court has “reason to know” that a child is an Indian child upon the occurrence of any of the following:”
- (1) court informed by party to proceeding or an official;
- (2) discovered information indicating that the child is an Indian child;
- (3) child reports he or she is an Indian child;
- (4) court informed of reservation residence of the child, parent, or custodian
- (5) court informed child is or has been a ward of a tribal court
- (6) court informed either parent or the child has tribal membership card

Rule 8(C) Indian Child Presumption

- “Under the regulations, if the court determines or has reason to know the child is an Indian child as defined by ICWA, the court shall make all findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations and otherwise **treat the child as an Indian child unless and until it is determined on the record that the child does not meet the definition of an Indian child under ICWA.”**

Rule 8 (D) Transfer to Tribal Court

- “Under the Regulations, if the court determines or has reason to know the child is an Indian child as defined by ICWA and the proceeding is for foster care placement or termination of parental rights, the court shall determine **whether to grant a petition to transfer the proceeding to tribal court according to the standards required under 25 U.S.C. § 1911(b) and 25 C.F.R. §§ 23.115-119**.”
- Transfer consideration are included in the Rule 8 Comment.

Rule 50 Preliminary Protective Hearing

- “The preliminary protective hearing may be held as an emergency hearing as provided in Section 1922 of ICWA and 25 C.F.R. § 23.113.”
- “When the preliminary protective hearing is held as an emergency hearing under 25 U.S.C. §§ 1922 and 25 C.F.R. 23.113 the 10-day notice requirement does not apply.” (Rule 48 Com.)

Petitioner Duty to Verify Indian Child

- “Under the Regulations, confirm based on a report, declaration, or testimony included in the record or by court order that the Department of Child Safety or other **petitioner has used or will use due diligence** to identify and work with all tribes of which there is reason to know the child may be a member (or eligible for membership), to verify **whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership**).” **Rules 50(C)(3) and 52(D)(3).**

Rule 50.1 Deviation from Placement Preferences

- “Under 25 C.F.R. § 23.132, the determination to depart from the placement preferences in Section 1915 of ICWA must be made in the following manner:”
- The procedures and considerations contained in the regulations are provided in this rule verbatim.

Court Authorized Removal – New Rule

- Federal case law requires court authorization for the state to take temporary custody of a child unless the child requires protection during the time it would take to obtain a court order.
- AZ courts are developing a court rule and procedure to accomplish this.
- Court authorized removal appears to be handled as an emergency proceeding under ICWA.
- Distribution of draft rule for comment expected latter this summer.

Superior Court of Arizona in Maricopa County
Juvenile Department

Dependency Case Management Plan

Adopted May 16, 2017

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Introduction[1]

This Dependency Case Management Plan represents a documented description for case management and case handling practices for dependency cases at the Superior Court of Arizona in Maricopa County, Juvenile Department. This plan applies to the Juvenile Department (Juvenile Court) which operates at three locations: Durango Juvenile Court Facility in West Phoenix (DUR with 14 judicial officers), the Old Courthouse in downtown Phoenix (OCH with 4 judicial officers), and the Southeast Juvenile Court Facility in Mesa (SEF with 9 judicial officers).

Of importance, this plan is not intended to supplant current statutes, rules, administrative orders, bench books or scripts that prescribe dependency-related mandatory practices. Rather this Dependency Case Management Plan adds content to the practice of managing and overseeing all dependency cases, describes how the Juvenile Department intends to conduct its statutory responsibilities and oversight, and defines how the dependency caseload will be administered.

Underlying Plan and Program Assumptions

Among the assumptions supporting case management and case handling for dependency cases are the following:

Assumption #1. Protecting children from abuse and neglect is the first priority.

Assumption #2. High performing courts adopt and practice case management principles, including: efficient case initiation, case assignment, docket management, expeditious processing, management of continuances, court and agency collaboration and integration, and utilization of program performance metrics.

Assumption #3. Justice partners, child protection entities, service providers, and community advocates best understand and support case management when they collaborate on system processes and issues.

Guiding Principles

The Juvenile Department supports the following guiding principles:[2]

Principle #1. Adherence to statutes and rules governing dependency matters.

Principle #2. Recognition of and work toward compliance with accepted Arizona Case Processing Time Standards (see Appendix X).

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[1] This Proposed Dependency Case Management Plan was prepared with support of Casey Family Programs, and with technical assistance from the Court Consulting Services Division of the National Center for State Courts (Janet G. Cornell, Court Consultant).

[2] See Appendix I for a listing of Judges and Court Commissioners who approved the Case Management Plan.

Principle #3. Focus on the health and safety of children entering the judicial system.

Principle #4. Employment of practices that align with Superior Court in Maricopa County Strategic Plan areas[3] – access and delivery of services (Strategic Focus Area (SFA) #1), effective case management and efficient operations (SFA #2), and judicial branch accountability (SFA) #5).

Principle #5. Implementation of programs and processes in support of the Arizona Supreme Court Strategic Agenda[4] by ensuring access to justice, protection of children and families, refining court processes, and improving communications.

Principle #6. Maintaining competence and fidelity to best practices for all children including those practices developed for special populations including Cradle to Crayons, Crossover Youth Practice Model, and Indian Child Welfare Act cases (see Appendix IV and V, and footnote #4).

Related Initiatives

This Case Management Plan is in addition to and supports other ongoing program and operational initiatives, including:

- Utilization of the Superior Court in Maricopa County Dependency Court Mapping Tool;
- Dependency Case Processing Initiative (DCPI) and process improvements, including mediation enhancement, information sharing, technology upgrades, and improved statistical reporting;
- Collaboration with the Arizona Department of Child Safety (DCS), the Arizona Office of the Attorney General, and court-appointed counsel for children and parents; and
- Partnership with Casey Family Programs, Judicial Engagement Team.

Case Management Principles and Practices

Proven and recognized case management best practices include the following:

- Leadership over case management and case handling;
- Early attention and review of case elements requiring court actions and resources,
- Early and individual attention to case needs;

[3] http://www.superiorcourt.maricopa.gov/MediaRelationsDepartment/docs/annual-report-2016.pdf, p. 11.
[4] http://www.azcourts.gov/portals/0/AdvancingJusticeTogetherSA.pdf

- Intervention actions where appropriate (expedited scheduling, settlement or mediation activities);
- Specialized actions and processes based upon case need and complexity;
- Utilization of case handling deadlines and time processing goals;
- Court control, oversight, monitoring, and ongoing attention to timely processing, case inventory and case backlogs;
- Management of event continuances (for all event types) that cause delay;
- Use of performance measures and metrics, automation and technology; and
- Collaboration with system stakeholders, providers and partners.

Case Management Plan

Dependency Case Management Timelines

The Juvenile Department seeks to adhere to case processing times required by the Arizona Revised Statutes and Arizona Rules of Procedure for the Juvenile Court:

- Filing of dependency petition within 72 hours of removal of child [A.R.S. § 8-821(F); Ariz. R. P. Juv. Ct. 48].
- Case plan provided by DCS to the Court and parties no later than the day before the preliminary protective hearing (if child is in temporary custody) [A.R.S. § 8-824(H)].
- Preliminary protective hearing (PPH) 5 to 7 days from removal [A.R.S. § 8-824(A), Ariz. R. P. Juv. Ct. 50].
- Initial dependency hearing (IDH) within 21 days of petition filing [A.R.S. § 842(A); Ariz. R. P. Juv. Ct. 52(B)].
- Publication hearing approximately 75 to 90 days from petition filing [Ariz. R. Civ. P. 4.1(l)].
- DCS provides the initial case plan (identifying specific and measurable tasks, services and action steps) to the Court and all counsel no later than 60 days from the removal of child [Adoption and Safe Families Act, 42 U.S.C. § 675(1)].
- Dependency adjudication hearing– within 90 days of service of the petition [A.R.S. § 8-842(C); Ariz. R. P. Juv. Ct. 55(B)].
- Dependency disposition no more than 30 days after adjudication [A.R.S. § 8-844(E); Ariz. R. P. Juv. Ct. 56(B)].
- Review hearings at least every 6 months [A.R.S. § 8-847(A)] after adjudication for children over 3 and at least every 8 to 12 weeks for children under 3 and their siblings (See Appendix IV - C2C Approach).

- Permanency hearing within 6 months of child removal for children under the age of 3 who remain in out of home placements [A.R.S. § 8-862(A)(2); Ariz. R. P. Juv. Ct. 60(C)].
- Permanency hearing within 12 months of child removal for children ages 3 to 17 who remain in out of home placements [A.R.S. § 8-862(A)(2); Ariz. R. P. Juv. Ct. 60(C)].
- Review of permanency plan within 1 year of entering care and each year thereafter for children who remain in out of home placements [42 U.S.C. § 675(5)(C); A.R.S. § 8-862(C)].
- Upon permanency plan change:
    - Filing of termination motion within 10 days after permanency hearing or change of permanency plan [A.R.S. § 8-862(D)(1); Ariz. R. P. Juv. Ct. 64(A)], with initial termination hearing set within 30 days after change of permanency plan [A.R.S. § 8-862(D)(2); Ariz. R. P. Juv. Ct. 65(B)], and setting the termination adjudication hearing to begin within 90 days after permanency hearing or change of permanency plan [A.R.S. § 8-862(D)(2); Ariz. R. P. Juv. Ct. 66(B)].
    - Filing of guardianship motion within 10 days after permanency hearing or change of permanency plan [A.R.S. § 862(F)(1); Ariz. R. P. Juv. Ct. 61(A)], and initial guardianship hearing within 30 days after permanency hearing [A.R.S. § 862(F)(2); Ariz. R. P. Juv. Ct. 62(B)], and guardianship adjudication hearing to begin within 90 days after permanency hearing [Ariz. R. P. Juv. Ct. 63(B)].

Cases Included in the Plan

The following case types are included in this Case Management Plan (Appendix II includes the case types with descriptive information of each):

- Dependency petitions
- Motions for guardianship under Title 8
- Motions for termination of parent-child relationship
- Petitions for termination of parent-child relationship (arising from a dependency)
- Adoption petitions

Dependency Case Events and Actions – Purposes and Outcomes

Dependency case processes and events are depicted in the Superior Court in Maricopa County Dependency Process Court Mapping Tool, an interactive flow chart that was designed as a complement to the Dependency Case Management Plan.

In the succession of actions for dependency cases, the following are the expected events:

Cases Brought by DCS. At the time of review of the first requested order, whether it is an application for court authorization for removal or a petition for an out of home dependency, the Court must determine whether DCS has made a *prima facie* case that 1) supports removal of the child from the home, 2) supports a finding that it would be contrary to the welfare of the child to remain in the home, and 3) indicates proper notice has been given to the parent or guardian [A.R.S.§8-823(A)]. Within 60 days of removal, the Court must also determine whether DCS has made reasonable efforts to prevent removal or that it was reasonable for DCS to make no efforts to prevent removal home [A.R.S.§ 8-829(A)]. (See Appendix III)

Cases Brought by Private Parties. At the time of review of the first requested order, the Court must determine whether 1) the petitioner has made a *prima facie* case that the child has no parent willing or able to provide proper and effective parental care and control, 2) the petitioner has made allegations that require investigation by DCS, 3) the child should be placed in the temporary legal custody of DCS or another person or entity, and 4) the child should be placed in the temporary physical custody of DCS or another person or entity. If the child is in an out of home placement and if the child is placed in the legal custody of DCS, within 60 days, the Court must determine whether DCS has made reasonable efforts to prevent removal or that it was reasonable for DCS to make no efforts to prevent removal [A.R.S. § 8-829(A)].

Court Authorized Removal Orders. DCS will seek Court review and approval prior to removing a child from the parents or guardians, absent present danger. DCS will provide an affidavit of the circumstances under which it is requesting court authorization for removal of a child that includes specific safety threats that have been observed and reasons why remaining in the home would be contrary to the welfare of the child. DCS will also provide information for the Court to determine whether DCS has made reasonable efforts to prevent removal [Adoption and Safe Families Act of 1997, 42 U.S.C. § 671(a)(15)(2006); A.R.S. § 8-841].

Case Initiation. Upon DCS requesting a preliminary protective hearing date, or upon filing of a dependency petition, Juvenile Court Administration, the Clerk of Court and the Court will work together to initiate a case, schedule appropriate hearings, and determine the provisional appointment of counsel.

Initial Case Assessment and Review. Upon the filing of each case, a preliminary and initial review occurs to assess case factors, complexity, and characteristics. Staff assigned to the Clerk of Court and Court Administration performs these functions. Factors reviewed include information about:

- Existing dependency or delinquency cases;
- Existing adoption or guardianship cases;

- Existing/open juvenile probation cases; and
- Extraordinary circumstances (including a missing child or a child who is away without authorization/approval, or a child who is in need of inpatient treatment).

Proposed Case Plan. DCS shall submit a written report containing a proposed case plan no later than the day before the preliminary protective hearing setting forth the reasons for the child's removal, the need, if any for continued temporary custody and all other information required by A.R.S. § 8-824(H).

Preliminary Protective Conference (PPC). A PPC is required only in cases where a child has been removed from a parent or guardian. It is held immediately before the preliminary protective hearing, where parties discuss: safety, placement, custody, services, and visitation. It is recommended that parents, guardians, and the child (if of suitable age) meet with their attorneys before this meeting. The PPC is scheduled following written notice to the parent, guardian or Indian custodian [Ariz. R. P. Juv. Ct. 48 (C)]. The PPC is facilitated by a neutral third party.

Preliminary Protective Hearing (PPH). The PPH is required only in cases where a child has been removed from a parent or guardian and takes place 5 to 7 business days after the child's removal, though the Court may issue a continuance not to exceed 5 days [A.R.S. § 8-824(A)]. During this hearing, parties discuss and review: parental rights, reasons for removal, temporary custody provisions related to prevention of abuse and neglect, whether alternatives to temporary custody or removal are available, and consider services needed to facilitate the return of the child. Parents or guardians may request a review of temporary custody at the PPH [Ariz. R. P. Juv. Ct. 51(A) and A.R.S. §8-823(A)]. If a parent or guardian fails to appear after written notice is provided, the opportunity to request a review of temporary custody is waived. For those parents or guardians who appear at a PPH, all matters pertinent to the initial dependency hearing will be addressed at the same time.

Review of Temporary Custody. The temporary custody hearing is the parent or guardian's first opportunity to challenge removal of a child. Upon request of any parent or guardian, the Court will hold an evidentiary hearing to review the DCS or Court decision to remove the child. The hearing should be held on the same date as the PPH or as soon as all counsel and the Court are available for the hearing. The Court will determine whether probable cause exists to believe that temporary custody is clearly necessary to prevent abuse or neglect pending the hearing on the dependency petition [A.R.S. § 8-824(F); Ariz. R. P. Juv. Ct. 51].

Initial Case Plan. The initial case plan will be filed with the Court and provided to all counsel within 60 days [Adoption and Safe Families Act of 1980, 42 U.S.C. § 675(1)]. The Court will order DCS to notify the Court and all parties of any change of placement of the child that does not require a court order as soon as possible, but no later than 5 days from the change. The Court will order DCS to notify the

Court and all parties of any change of the assigned DCS child safety specialist responsible for the case as soon as possible, but no later than 5 days from the change.

Initial Dependency Hearing (IDH). If parents/guardians do not attend the preliminary protective hearing (PPH), or if the child has not been removed so no PPH is scheduled, an initial dependency hearing is held. This hearing will take place within 21 days of filing the dependency petition, but the Court may issue a continuance for good cause [A.R.S. §§ 8-842 (A), (C)]. The purpose of the hearing is to determine the child's placement, visitation rights, services for the child, parents or guardians, and whether parents will contest allegations in the dependency petition. If a parent enters a denial to the allegations in the petition, a dependency adjudication hearing will be set.

Publication Hearing. If DCS or the private petitioner is unable to locate a parent or guardian after making diligent efforts to do so, proof of efforts to locate the parent or guardian must be provided to the Court. Ariz. R. Civ. P. 4.1(I) regarding service of process apply. The Court will require that service be attempted at all known addresses and that any information about actual notice or contact with an absent parent be presented in determining whether service by publication will be accepted. The Court may authorize alternative means of service or may find that publication service is deemed necessary.

Rule 59 Motion/Hearing to Return Child to Parent or Guardian. At any time after the temporary custody hearing, if a parent, guardian or Indian Custodian files a motion for return of the child, the Court will set a hearing within 30 days of the motion being filed unless the Court is advised that no party objects. At the hearing, the Court will determine whether return of the child would create a substantial risk of harm to the child's physical mental or emotional health or safety. [A.R.S. § 8-861; Ariz. R. P. Juv. Ct. 59(B)].

Mediation (or alternative processes for settlement). A process that encourages cooperation and problem solving where parties may come to a full or partial agreement about one or more issues in the case. Successful mediation may: (a) increase family engagement and compliance in the dependency process; (b) reassure parents or guardians that proceedings will be fair and their voices will be heard;(c) expedite sound decision-making and court processes; (d) decrease the number of contested issues;(e) decrease number of contested trials; (e) decrease time in temporary placements; and (f) lead to more meaningful hearings.

Pretrial Management Conference. Held prior to the dependency adjudication to determine whether the parties intend to proceed to trial or resolve the matter without a trial, and to address any issues raised by the parties.

Final Pretrial Management Conference. The Court will determine whether there is an agreement to resolve the case without a trial. If not, the Court will affirm the

dependency adjudication hearing date and provide final information regarding the trial judge assignment. The Court will determine which exhibits are stipulated into evidence and refer rulings on admissibility of the remaining exhibits to the trial judge.

Dependency Adjudication. Scheduled within 90 days of service of the dependency petition [A.R.S. § 8-842(C); Ariz. R. P. Juv. Ct. 55(B)]. The Court will determine whether allegations of abuse or neglect are supported by the evidence. If the allegations are proven, the Court will adjudicate the child dependent as to the parent or guardian who contested the dependency petition.

Disposition Hearing. May occur as part of the dependency adjudication if the child is found dependent, or within 30 days afterward [A.R.S. § 8-844(E); Ariz. R. P. Juv. Ct. 56(B)]. The Court will determine placement of the child, set a permanency plan and determine how the case will proceed to achieve the permanency plan. Possible permanency plans are:

- Remain with family
- Family Reunification
- Termination of Parental Rights
- Guardianship
- Independent living

Review Hearing. Held at least once every 6 months, at which the Court examines progress made by the parties since the disposition or previous hearing to remedy the circumstances causing the dependency [A.R.S. § 8-847(A)]. The purpose is to ensure the case is progressing towards reunification or another permanency plan so that the child spends as little time as possible in temporary care. Cases involving children under the age of 3 should be seen by the Court for review or other hearing no less than every 8 to 12 weeks. [See Appendix IV – C2C Approach].

Permanency Hearing. For children age 3 and older, the hearing is held within 12 months of the child's removal. For children under the age of 3, the hearing is held within 6 months of removal [A.R.S. § 862(A); Ariz. R P. Juv. Ct. 60(C)]. During the hearing, the Court will determine whether a parent is making progress towards remediating the circumstances that brought the child into out of home care. If progress is being made, the Court may allow the permanency plan to continue as remain with family or family reunification and ensure that the conditions for return are articulated by DCS and explained to the parent. If insufficient progress is being made and no good cause is shown otherwise, the Court will set the most appropriate permanency plan for the child's circumstances.

The Court should consider whether the lack of progress is due to a parent's failure or refusal to participate in services or due to DCS' failure to make reasonable efforts to provide appropriate services to the parents to remedy the circumstances

that caused the child to be placed in out of home care. The Court will also determine what efforts have been made to place the child with siblings or provide opportunities for visits.

Family Treatment Court Hearings. If a parent has a permanency plan of family reunification and allegations of substance abuse, they may voluntarily enroll in Family Treatment Court (FTC) within the first 6 months of the dependency case. FTC will provide accountability, support, and encouragement to the parents and regular progress reports to the court and the parties (see Appendix VI).

Termination of Parental Rights or Guardianship Initial Hearing. If the Court changes the permanency plan to termination or guardianship, an initial hearing on the motion will be held within 30 days [A.R.S. § 862(F)]. At that hearing, the Court will determine whether service of the motion for termination or guardianship was timely and complete, appoint counsel if necessary, determine if any parent objects, and, if so, schedule the termination or guardianship adjudication hearing.

Guardianship Adjudication. A hearing where the Court determines whether: (a) DCS has made reasonable efforts to reunite the parent and child and further efforts would be unproductive, (b) the likelihood of adoption is remote or termination of parental rights is not in the child's best interests, and (c) the prospective guardian is a fit and proper person to become the permanent guardian of the child and whether guardianship is in the best interests of the child. The guardianship adjudication hearing will be set no later than 90 days after the permanency hearing where there is a change in permanency plan [Ariz. R. P. Juv. Ct. 63(B)]. The appointment of a permanent guardian "divests the birth or adoptive parent of legal custody of or guardianship for the child but does not terminate the parent's rights" [A.R.S. § 8-872(G)].

Termination of Parental Rights Adjudication. A hearing where the Court determines whether the petitioner has proven: (a) grounds for termination by clear and convincing evidence (non-Indian children) or beyond a reasonable doubt (Indian children); and (b) whether termination would serve the child's best interest by a preponderance of evidence. The termination adjudication hearing, also known as "severance trial," is to be held within 90 days after the permanency hearing when there is a change in permanency plan [A.R.S. § 8-862(D)(2); Ariz. R. P. Juv. Ct. 66(B)].

Judicial and Case Assignments

The cases will be assigned initially to a trial group and will then be assigned to a judge within the trial group on a rotating basis. The Dependency Unit of Juvenile Court Administration will rotate the assignment of trial groups and individual judges to maintain equity. The Dependency Data Connection report will be provided to the bench each month, and reports and describes the case assignment details for the month. When factors such as refile and supplemental petitions require assignment to a

particular judge, the next assignments will be balanced to maintain equity. Cross Over Youth Program (CYPM) assignments and protocols previously developed with system partners will remain in place (See Appendix V).

Juvenile Department Calendar and Trial Group Structure

The Juvenile Department operates at three locations with six distinct judicial Trial Groups. The Schedules for each are noted in Appendix VI, in the following locations:

- Durango (DUR),
- Old Court House (OCH), and
- Southeast Facility (SEF).

Emergency and Time Sensitive Hearings

The following matters require expedited review by the Court and should be noted in the caption and treated by all counsel and court staff as requiring immediate attention and response. Emergency and time sensitive matters and hearings may include the following:

- Motion for approval of 72 hour admission for inpatient assessment,
- Motion for inpatient psychiatric acute care services,
- Motion for pick up order,
- Rule 59 motion to return child,
- Motion for change of physical custody,
- Motion for temporary suspension of visitation,
- 60 day review hearing/review of placement,
- Shelter or emergency extension hearings, and
- Requests for out of country travel.

Any attorney who is seeking a judge's ruling on a time sensitive matter will go first to the assigned judge, and if that judge is unavailable, will be referred to the coverage judge. Attorneys are expected to communicate with each other to allow quick resolution of an emergency or time sensitive matter.

Alternative Dispute Resolution Opportunities

The Juvenile Department supports out-of-court alternatives to promote prompt and thoughtful resolutions to issues within a case and the case itself. Among the possible resolution actions available are the following:

- Mediation and Enhanced Mediation Process (see Appendix VIII)
- Use of Community Coordinators and Case Progress Review (CPR) (see Appendix IX)

Best Practices for Special Populations

The Juvenile Department follows best practices that are known to improve outcomes and promote permanency and well-being for children.

Indian Child Welfare Act (ICWA).[5]

- Judges state whether the child is a member or eligible for membership in a Tribe based on the tribal determination of membership early in the case.
- Judges require that placements are ICWA compliant early in the case.
- Judges receive regular training on the ICWA law and regulations and apply the heightened evidentiary requirements at each point in the proceedings.
- Judges use Community Coordinators and order Case Progress Reviews when system issues are delaying the delivery of services for ICWA cases.

Cradle to Crayons (C2C). Based on the *Safe Babies Court Team* model (see Appendix IV).

- Judges receive regular training regarding the effects of trauma and on the special needs of infants and toddlers.
- Judges set more frequent hearings for families when any of the children in the family are under age 3.
- Judges order more frequent opportunities for parenting time.
- Judges make sure that developmental needs including infant mental health needs are addressed.
- Judges use Community Coordinators and order Case Progress Reviews when system issues are delaying the delivery of services for C2C cases.

[5] http://uscode.house.gov/browse/prelim@title25/chapter21&edition=prelim

Crossover Youth Practice Model (CYPM). Developed by the Center for Juvenile Justice Reform, Georgetown University (see Appendix V).

- Judges expect for cross-system partners to communicate and collaborate with the family for joint case planning prior to court hearings.

- Judges require cross-system partners to resolve system issues outside the courtroom so that the focus in court can remain on the child and family.

- Judges receive regular training on the effects of trauma and adolescent brain development and the negative outcomes for multi-system involved youth.

- Judges use Community Coordinators and order Case Progress Reviews when system issues are delaying the delivery of services for CYPM cases.

Continuances and Postponements

Management of continuances and case delays is crucial to success in moving cases to final conclusion. The Juvenile Department has clear expectations that continuances will be managed, minimized, and monitored to ensure that unnecessary delays are avoided. Current Juvenile Department data indicates that continuances are held to a minimum and current practices adhere to the basic elements of managing continuances. Those elements include: requests for continuance made in advance if possible, with reasons noted, and that continuances will be the exception, not the norm. The Juvenile Department also strives to have agreed upon case schedules and dates, holding the parties accountable for adhering to the time schedule. The Court expects counsel to manage their own calendars, to avoid double-booking hearings and to not accept appointment to a case if they are not available to attend hearings.

Inventory Control and Backlog Reduction

A critical aspect of case management is the ongoing attention to any growing case delays and backlogs. This is typically conducted by review of the entire case inventory. Inventory control and backlog assessment will be performed by the following methods:

- Monthly review of the assigned case inventory by each judicial division.

- Timely updates by judicial division staff when changes occur to data elements that are tracked as part of case management and performance measurement.

- Monthly review of the entire pending case inventory by the Presiding Judge, Associate Presiding Judges and Court Administration.

- Monthly review of cases remaining open within specific case day increments (e.g., current performance statistics provide data for cases open in the increments of 0-100 days, 0-180 days, 0-365 days, 0-540 days, and 541 or more days). Monthly review includes scrutiny of cases pending beyond a specified date, with reports reviewed by the assigned judge and department-wide ("Cal-Acti" reports).

- Regular use of charts and graphs to clearly depict case and caseload status, and track trends for the entire Juvenile Department.

Adoption Hearings

To the extent possible, in dependency cases where a child is free for adoption and in an adoptive placement, the adoption will be assigned to the judge who presided over the dependency matter.

Program Performance Measures

Best practice case management actions are supported with program performance measures used to identify areas for continuous quality improvement and court efficiency. The Juvenile Department will utilize and expand monitoring systems and metrics for measuring:

- Arizona Case Processing Time Standards (see Appendix X).

- Dependency Case Management Timelines required by the Arizona Revised Statutes and Arizona Rules of Juvenile Procedure (see p.5).

- Performance measures suggested by the National Resource Center on Legal and Judicial Issues (see Appendix XI).

- Performance measures to assess case assignments, continuances, inventory control, and backlog reduction (see Appendix XI).

In 2009, the American Bar Association (ABA), the National Center for State Courts (NCSC), and the National Council of Juvenile and Family Court Judges (NCJFCJ) formalized as partners in the National Resource Center on Legal and Justice Issues (NRCLJI), with support from the Children's Bureau and the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Together they developed and piloted standardized court performance measures. The primary product was a five-volume series titled, *Court Performance Measurement in Child Abuse and Neglect Cases.*[6]

[6] https://www.ncjrs.gov/pdffiles1/ojjdp/223567.pdf

In addition to Arizona Case Processing Time Standards, the Juvenile Department plans to assess select key court performance measures, suggested by NRCLJI, to track progress in four areas of court performance: safety, permanency, due process, and timeliness (see Appendix XI).

Quality Assurance (QA)

Quality assurance in support of this case management plan will be provided in several ways, including the:

- Use of clear time standards and goals.
- Regular review of case processes and progress as measured against those goals.
- Regular review of statistics (e.g., monthly statistical reports, *ad hoc* data from the case management system, and reports generated to ensure that processes are adhering to established goals).
- Periodic assessment of data entry accuracy, timely scheduling of events, timeliness of record updates by division staff, and timelines for information and document dissemination.

Case Management Program Partners and Stakeholders

Juvenile Department Judges

The Juvenile Department is committed to this Plan. Positive outcomes can best be ensured by requiring best practices. In turn, best practices require each judge to be involved in supporting the Case Management Plan and sustaining the ongoing work to manage the dependency caseload. Working together, not only can the Department maintain the progress and achievements made to date, but it will continue to improve outcomes for children and families involved in the child welfare system in Maricopa County.

Program Partners

A number of stakeholders have an interest and role in the process used for handling dependency cases. Among the pertinent stakeholders are the following:

- Children
- Parents
- Parents' counsel
- Family members
- Foster parents
- Guardians
- Guardians Ad Litem
- Children's counsel
- Arizona attorney general's office
- Court appointed counsel
- Court Appointed Special Advocate (CASA)
- Foster Care Review Board (FCRB)
- Tribal counsel
- Tribal social services
- Department of Child Safety (DCS)
- Service providers
- Adoption counsel
- Juvenile probation
- County attorney's office

Case Management Plan Committee

The Case Management Plan is overseen by the Juvenile Department and shared with a Case Management Committee. The Juvenile Department will convene meetings, as appropriate, with interested parties to discuss case management initiatives. Regular Bench-Bar meetings will also be used to discuss best practices, performance measures, and review operational expectations. The Case Management Plan will be scheduled for review and revision on an annual basis so that it will current and useful.

Appendices

Appendix I – Judges and Commissioners Approving the Case Management Plan

Colleen McNally
Presiding Juvenile Judge

Arthur Anderson
Judge

Alison Bachus
Judge

Edward Bassett
Judge

Rodrick Coffey
Judge

Bruce Cohen
Judge

Janice Crawford
Judge

Connie Contes
Associate Juvenile Presiding Judge

John Ditsworth
Judge

Sally Duncan
Judge

Lisa Flores
Judge

Jeanne Garcia
Judge

Cari Harrison
Judge

Karen O'Connor
Judge

David Palmer
Judge

Susanna Pineda
Judge

Timothy Ryan
Associate Juvenile Presiding Judge

Joseph Welty
Judge

Alysson Abe
Commissioner

Glenn Allen
Commissioner

Veronica Brame
Commissioner

Monica Garfinkel
Commissioner

Nicolas Hoskins
Commissioner

Steve Lynch
Commissioner

Shellie Smith
Commissioner

Utiki Spurling Laing
Commissioner

William Wingard
Commissioner

Appendix II - Case Types and Descriptions

Dependency Petitions. Cases and actions brought by the State alleging that a child is in need of proper and effective parental care and control and who has no parent or guardian willing to exercise or capable of exercising such care and control, whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian or any other person having custody or care of the child or any other basis under the statutory definition.

Motions for Termination of Parent-Child Relationship. Actions brought by the State by motion within an existing dependency action seeking termination of the child's parental rights based on statutory grounds and an allegation that termination would be in the child's best interests.

Petitions for Termination of Parent-Child Relationship. Actions brought by the State by a separate petition seeking termination of the child's parental rights based on statutory grounds and an allegation that termination would be in the child's best interests. Private petitions for termination are not explicitly included in the Dependency Case Management Plan.

Adoption Petitions. Actions brought by the prospective adoptive parent or parents in which request is made for formal adoption of a child, following termination of a parent-child relationship.

Motions for Guardianship under Title 8. Actions brought by the State, by motion in a dependency case in which request is made for a formal, legal guardian to be appointed for a dependent child.[7]

[7] Senate Bill 1107 was signed May 2, 2017, becoming effective on August 9, 2017, and allows for guardianships prior to a finding of dependency.

Appendix III – First Review of Petitions and Orders in Dependency Cases

To: All Juvenile Judges and Commissioners

From: Colleen McNally
Juvenile Presiding Judge

Date: August 4, 2017

Re: **First Court Orders in Dependency Cases – Role of Duty Judge/Commissioner**

Each of us may have the responsibility of reviewing the first requested orders with a newly filed dependency petition from time to time, but with the newly adopted Dependency Case Management Plan, the commissioners carry the bulk of responsibility for this task which falls on the day that they are responsible for the detained calendar.

This is an important responsibility and there are issues that need to be determined on an expedited basis. The purpose of this memo is to provide guidance on what issues must be considered and addressed. It is anticipated that the information in this memo will need to be adjusted and updated with the implementation of the Court Authorized Removal Process. It will also be important for the judges and commissioners in each trial group to communicate with each other regarding inconsistencies that are observed in these orders as they have an important impact on the progress of the case at the Preliminary Protective Hearing (PPH) or Initial Hearing.

TIMELINESS

When the Attorney General, or any other party, files a dependency petition with the Clerk of Court, the Dependency Unit of Juvenile Court Administration gets an expedited copy of the petition and proposed orders so that they can begin the time sensitive process of securing court dates. By designating specific judicial officers to review petitions each day, we have improved our timeliness in scheduling PPHs and providing notice to the Petitioner who is responsible for notifying the other parties.

It is very important to treat the petition reviews in an expedited manner and to advise your staff that they need to take priority. The actual review and order signing ordinarily only takes a few minutes. Once the judicial officer has completed the review, the Dependency Unit should be notified immediately so that they can begin their work in securing counsel and providing hearing information back to the Petitioner. With the petition not being required until 72 hours after the removal and the PPH setting required within 5-7 days from removal, we don't have much turnaround time to get notice back out to the parents and other parties.

If, because of a flood of petitions or an overbooked calendar, the duty judicial officer cannot complete the review and return the orders within a few hours, the duty judicial officer should request assistance from the bench. Like orders of protection, these orders have statutory priority and we have a responsibility to provide expedited review. In all cases, the petitions presented for review should be returned to the Dependency Unit with signed orders the same day.

PURPOSE OF THE REVIEW

The purpose of the review is to determine whether a jurisdictional basis has been pled, what parties are entitled to court appointed counsel, whether there has been a removal requiring a Preliminary Protective Hearing, and, if there has been a removal, whether 1) continuation in the home would be CONTRARY TO THE WELFARE of the child, and 2) whether the Department of Child Safety (DCS) has made REASONABLE EFFORTS TO PREVENT REMOVAL.

Jurisdiction - Most petitions are filed by the Attorney General as counsel for the Department of Child Safety and use a formatted petition that states jurisdictional facts. There may be instances where DCS is only asserting emergency jurisdiction because although the child in need of protection is present in the State of Arizona, there are UCCJEA issues that may reveal that Arizona is not the home state of the child or does not have a basis for anything other than emergency jurisdiction. These issues do not require any action by the Duty Judge, but will be resolved later by the assigned judge.

Private petitions, filed by either Guardians ad Litem, or relatives or other interested persons should be reviewed closely. Since the petitioners may be self-represented, it is important to make sure that the petition asserts a jurisdictional basis and alleges facts upon which a dependency could be found. The child must be present in the state, at a minimum, and there must be a specific statement of facts alleging dependency.

Determination of counsel

Because of the constitutional rights of parents and the need to schedule the PPH so quickly, we enter provisional orders appointing counsel in the first orders. The provision is that the appointment is subject to a determination of indigency at the first hearing. All named parents are entitled to counsel, but please use discretion in only appointing counsel for the first hearing where there is a reasonable likelihood that the parent will be located. Guardians and custodians do not have a right to court appointed counsel.

Here are a few things to consider when determining whether to appoint counsel for parents:

Do NOT appoint if:

- a parent is alleged to have abandoned a child and been absent for a long time AND their current whereabouts are unknown
- they are only identified by first name
- their name is John Doe

Do appoint if:

- they are alleged to be in prison or jail or in another state
- their address is unknown, but the information is that they have been recently present

Children should be appointed counsel either in the form of an attorney/guardian ad litem, an attorney for the child, or both. When determining who to appoint to represent children, consider whether they are of an age to express their wishes.

Appoint a GAL (who is an attorney) --

- when there is an allegation of abuse or neglect against a child (most cases)
- when children are removed from their homes

Appoint an attorney (who will be representing the child's desires) –

- when the child is old enough to communicate those desires
- when there appears to be a conflict between the child's best interest and the child's desires

In our court we often start with a GAL (attorney) and determine later if it appears that the child would benefit from separate counsel to also represent their interests. There is a growing thought that older children should have their own counsel (not GALs) in their cases; however, ARS § 8-221(I) requires a GAL to be appointed if the dependency petition includes an allegation that the juvenile is abused or neglected. Since OPDS currently contracts with attorneys to fulfill the GAL role, there is no need to appoint both a GAL and an attorney to represent very young children. If an infant has a legal need, the GAL can file motions and take legal action on behalf of a child. Because of this, it is not necessary or appropriate to appoint attorneys, as opposed to GALs, for very young children.

Removal Determination

Private petitions: It is very rare that there are circumstances presented in a private petition that constitute a removal. If the allegations in the petition warrant the court ordering a DCS investigation, DCS will have authority to make a removal decision or seek a court authorized removal order. In other words, it is not a good idea to enter orders moving or removing children based on an ex parte private dependency petition. Think of it like an ex parte family court order being filed by someone other than a parent. You are going to need more information. Fortunately, you have a means to get more information by ordering a DCS investigation and authorizing DCS to take any necessary action.

In signing the form of order for private petitions (usually the one produced by the self-service center), review each option carefully to determine whether it applies. It is sometimes necessary to enter orders granting temporary emergency custody with the current custodian pending the hearing to keep the status quo pending the hearing.

Please make sure to read the petitions closely (rather than relying upon the captions, that are sometimes wrong) and take a look at the situation for each child. Sometimes only some of the children are removed while some remain with parents. If any child is removed from a parent, the entire case should be set for a preliminary protective hearing. Before you check the box that a PPH is required, also look at your decisions whether to appoint counsel for parents. If you don't appoint counsel for any parent because all parents' whereabouts are unknown, it's unlikely that the child was "removed" from a parent, and it's even more unlikely that any parent will show up for a PPH. If no parent is going to appear for a PPH, don't set one.

Occasionally, you will determine that a PPH is not required, but will see that a PPH date has already been provided through the Early Notification Process. This is a process where DCS can request a court date prior to filing the petition. The purpose is to improve the timeliness and accuracy of parents getting notice of the PPH date with the underlying goal of improving the rate of parents appearing and actively engaging in their case from the outset. If the routing slip shows that a PPH date has already been provided even though you determine that the PPH is not mandatory, please indicate your determination, but know that the PPH date will still be kept and used as the initial hearing, if parents appear.

Judge Lisa Flores prepared the following thoughtful analysis setting forth considerations in determining whether a removal has occurred and thus whether a preliminary protective conference and hearing is required:

> In reviewing a dependency petition, and entering the first orders, the judicial officer must determine whether the law requires that a preliminary protective conference and hearing must be set or whether the case should only be set for an initial hearing.
>
> Arizona Revised Statutes, Title 8, Chapter 10 includes Article 2 (Removal of Child) and Article 3 (Dependency Determination and Disposition). When read together, the legislature's intent is clear that there are two tracks: one for when the child is removed; and, one for when the child is not removed. Article 2's title – "Removal

of Child" – clarifies that it applies only to times when a child has been "removed" or taken away from a parent, guardian or custodian. The statutory scheme has always provided a right to an extra hearing when the child welfare agency takes a child away. In other circumstances, when the Department of Child Safety (DCS) asks for temporary legal custody but leaves the child with the parent, guardian or custodian, that right does not come into play.

The references in Article 2 to "temporary custody" do not change the analysis; both the title of the article and the many references to removal and placement show that Article 2 only applies to times when the Department interferes with physical custody of a child. Another way to look at it would be that if the right to a PPH applies in every case, regardless of whether the child was removed, there would be no reason for Article 2 to exist, and the PPH requirement would become the de facto "initial" (i.e. first) hearing that is currently required by 8-842.

The other question is whether a PPC/PPH must be held when a child is abandoned or left by the parent with someone who lacks legal authority to care for the child. ARS § 8-821 references removal from a parent, guardian "or custodian."

Custodian is defined in A.R.S. § 8-201 as "a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of the juvenile court." ["In loco parentis" simply means "in the place of the parent."] In addition, the administrative code further defines it:

> R6-5-5501.
> Definitions
> …

17. "Custodian" means a person defined in A.R.S. § 8-201(8). For CPS reporting purposes, a custodian is also any person with whom the child resides at the time of a maltreatment and includes a:

> a. Friend,
>
> b. Relative,
>
> c. Foster parent, and
>
> d. Child welfare agency.

In cases where a parent has left the child with a custodian, i.e., a person with whom the child resided when the petition was filed, and DCS leaves the child with the same custodian that the parent left the child with, the requirement of a PPC/PPH does not come into play. This includes the aunts, grandparents and others who took the child in when the parents disappeared.

This analysis would not apply if a child had been with a parent and then when the parent is either arrested or involuntarily committed for mental health treatment the child is placed by DCS with a grandparent or other relative. In those cases, a PPC/PPH should be set.

Contrary to Welfare and Reasonable Efforts to Prevent Removal Findings

In your review of the petition for dependency involving state action, you are being asked to make certain findings based upon facts set forth in the petition and attachments. These findings have significant impact upon the posture of the case going forward, and, like all judicial determinations, deserve thoughtful review.

Contrary to welfare finding

The Court is required to make the determination of whether continuation in the home is contrary to the child's welfare at the FIRST COURT RULING. If the determination is made that it is NOT contrary to the child's welfare to continue in the home, and the child has been removed, the Department will not be able to draw down federal money as the child will be ineligible for Title IV-E foster care maintenance payments for his/her entire stay in an out-of-home placement.

This Adoption and Safe Families Act (ASFA) requirement is codified in Arizona law:

> *If a child has been removed from the child's home, the court shall make protecting the child from abuse or neglect the first priority and shall make the following determinations within the following time periods:*
>
> *1. In the court's first order that sanctions the removal, whether continuation of the child's residence in the home would be* ***contrary*** *to the welfare of the child. This order may be the temporary order that the court issues on the filing of a dependency petition.* A.R.S. § 8-829(A)(1)

Reasonable efforts to prevent removal finding

ASFA requires that the State agency obtain a judicial determination that it made reasonable efforts to prevent a child's removal no later than 60 days from the date the child is removed from home. If this finding is not made timely, the child is ineligible for Title IV-E foster care maintenance payment for the entire foster care episode.

This Adoption and Safe Families Act (ASFA) requirement is codified in Arizona law:

> *If a child has been removed from the child's home, the court shall make protecting the child from abuse or neglect the first priority and shall make the following determinations within the following time periods:*
>
> *3. Within sixty days after the child is removed from the child's home, whether reasonable efforts have been made to prevent removal of the child or whether it was reasonable to make no efforts to prevent removal of the child.*
>
> A.R.S.§ 8-829(A)(3)

Written findings including a specific factual basis are required

A.R.S. § 8-829(B) states:

> *The court shall make each determination described in subsection A on a case-by-case basis and shall set forth in its written order the specific factual basis for each determination. In making its determination, the court shall consider documentation that is reasonably available at the time of the determination.*

The orders submitted with the petition state that the court is making findings supported by certain facts. If there is not a sufficient specific factual basis set forth in the *orders*, you may need to add any information contained in the verified petition that you considered.

If there are not sufficient specific facts in the *verified petition* and attachments to support the requested findings, it may be necessary to strike the findings from the order. The petition will proceed to the preliminary protective hearing and the child will remain in temporary custody, pending review at the PPH. The department will have an opportunity to cure the 'no reasonable efforts to prevent removal' finding and restore its ability to obtain Title IV-E Foster care maintenance funding within the first 60 days. There is no opportunity to cure the failure to obtain a 'contrary to the welfare' finding.

The Department of Child Safety and the Office of the Attorney General have been given notice that the court needs to have specific facts, rather than broad conclusory language, upon which to make its findings. Although "notice pleadings" may be sufficient for the dependency allegations, the findings that are being sought require a factual basis. Please pay careful attention to the sufficiency of the information to support these requested findings. This is an area of focus for practice improvement.

RESPONSIBILITY FOR COVERAGE

We need to have a judicial officer available to cover this responsibility during all business hours. If you have scheduled vacation or need to take personal leave during a day that you are scheduled for emergency coverage, please attempt to get coverage from one of the other judicial officers at your facility and notify Susan Hallett and Sheila Tickle of who will be covering emergencies. If you are unable to find someone to cover, please let me or Judge Ryan know so that we can find a solution. This is true for any time away from the court during emergency coverage, except for designated Critical Calendar Coverage.

Appendix IV – Cradle to Crayons (C2C)

Young children entering the child welfare system most often face two key risk factors: 1) prenatal exposure to alcohol, tobacco, and illicit drugs, and 2) early trauma due to abuse, neglect, and/or disruption from their biological family. Cradle to Crayons (C2C) recognizes that these experiences can cause changes in the structure and functioning of the child's developing brain, placing the children at risk for long-term health, behavioral health, and developmental problems. The benefits of early intervention – provided as early as possible in the life of the child – are well proven. Less obvious, but still important, are the savings a system of care can yield in the reduced number of children who would otherwise require costly services from Maricopa County's schools, criminal justice system, child welfare system, mental health system, and other health and social services.

The goal of the C2C approach is the removal of barriers for the purpose of integrated service delivery and expedited permanency for infants, young children and their families. This project directly addresses the co-occurrence of child maltreatment, substance abuse, domestic violence, trauma, and parental mental illness. C2C is a comprehensive approach to enable the Juvenile Department to address complex needs of abused and neglected infants and toddlers.

C2C Approach

C2C focuses specifically on the most vulnerable population of children in state care, those ages 0 to 3. Research has shown a strong correlation between permanency and a secure attachment to a child's successful development into productive adults. On the flip side, those children who remain in the system continue to be at higher risk of problems in later life, including increased rates of chronic illness, death, mental health issues, problems building relationships, etc. To reach C2C goals, the following has been implemented:

Judicial Leadership. Juvenile Department judges are trained in the special needs of the 0-3 population; judges drive court improvement efforts that help reduce the time to permanency such as, providing expedited and more frequent court oversight.

Community Coordination. Community Coordinators facilitate ongoing communication among community stakeholders including the Court, public, and private agencies that provide services and support to C2C families. Coordinators advocate for C2C parents and children to receive timely, high-quality service delivery specific to the identified needs of the 0-3 child and family members. This includes identification and resolution of barriers to service provision and reporting the results to the Court.

Family Treatment Court. Family Treatment Court (FTC) is designed to improve opportunities for success for parents who have dependency court involvement due to allegations of substance abuse. Court supervised drug treatment improves

success in gaining and maintaining sobriety. The program involves frequent hearings before a judge who works to motivate and provide accountability to parents as they travel on their journey to sobriety.

C2C Clinical Services

Relationship Based Parent-Child Therapy. Relationship Based Parent-Child Therapy using the intervention of Child Parent Psychotherapy (CPP) is a relationship based form of clinical intervention that focuses on child-parent interaction and on each partner's perception of the other. This dyadic therapy assists to increase parent's ability to be attuned to their child, understand their child's needs, increase parent's ability to protect their children from danger or harm, promotes the growth of a secure attachment relationship between the parent and child, and assists the parent to explore their own thoughts and feelings related to their childhood and how these can affect current parenting. CPP also assists the parent and child with processing through the trauma they experienced as a family.

Family Time Coaching. Frequent, supported family time is essential to maintaining attachments and the parent child relationship while contributing to successful reunification. Family Time Coaching focuses on the strengths of the family and the needs of the children who are most often in an out-of-home placement. Coached visit sessions improve the quality of the parent-child relationship, teach parents hands on skills and increase the likelihood of successful reunification.

Trauma Therapy. Many parents who are involved in the child welfare system have their own trauma history that they have never been able to resolve. C2C Clinical Services has the goal to heal the whole family in order to create a safe and healthy environment where a healthy relationship can form between the parent and the child. Individual trauma therapy provides the parent an opportunity to resolve their own past trauma so they can heal, maintain sobriety and be present and healthy in the relationship with their children.

Resource Coordination. Resource Coordination works to identify resources and providers already available in the community and connect families to those resources. This could include a multitude of resources such as assisting a parent with employment services, enrolling in an education program, housing, medical insurance and services, and/or learning if they are eligible for community assistance programs and services for their children. The Resource Coordinator also connects parents to the supports in their community to increase their likelihood of success.

Bridge Program. The Bridge Program began receiving referrals in February 2016. The Bridge Program assists families who are in the process of reunification or who have already reunified. The goals of the program are to connect families to their own communities and to natural supports in their lives so that when they experience stress or have a need after their DCS/Court case is closed, they will know where and how to access support and prevent further involvement with DCS Navigators meet

with families, assess their resource needs and work with them on completing a Family Support Plan that is based on the 5 Protective Factors, ensuring that they are connected to resources such as Family Resource Centers, medical and dental homes for themselves and their children, DES services, home visitation, early education (Head Start), quality child care, job training and employment services, or anything else they may need to ensure and sustain stability within their child's environment.

Community Partnerships

Arizona Department of Child Safety. C2C is host to several Department of Child Safety field units that conduct dependency case management for C2C and other children/families. This co-location provides opportunities to increase communication between the C2C services and the assigned DCS staff.

Arizona State University. C2C is one of many sites within the Juvenile Department that serve as a field location for interns from Arizona State University. Interns work directly with young children and their families through our Clinical Services, Dependency Treatment Court, and Community Coordinator components.

Terros. C2C collaborates with Terros to improve coordination of care for those parents with substance abuse histories. Terros has dedicated staff co-located at the C2C campuses, working closely with Dependency Treatment Court, completing on-site assessments, attending staffings, providing updates on enrolled client's participation in Terros treatment, and facilitating substance abuse support groups.

South Phoenix Healthy Start. A South Phoenix Healthy Start Coordinator is on-site to process requests for prenatal and perinatal services and supports to families, and provide case management. South Phoenix Healthy Start currently collaborates with C2C Resource Coordination to strengthen the availability of support resources in the family's community, and recently began exploring providing Triple P groups to C2C parents.

First Things First. In FY16, C2C began receiving funding from the Phoenix North and South Regional Councils to provide ongoing judicial training opportunities support the Bridge Program designed to work with reunified families, and complement additional components of the national Safe Babies Court Team Model.

Prevent Child Abuse Arizona. Prevent Child Abuse Arizona has been the state's leading child maltreatment prevention organization for more than 25 years. Through the use of programs, advocacy and training, Prevent Child Abuse Arizona implements strategies to keep children safe and support families in our communities.

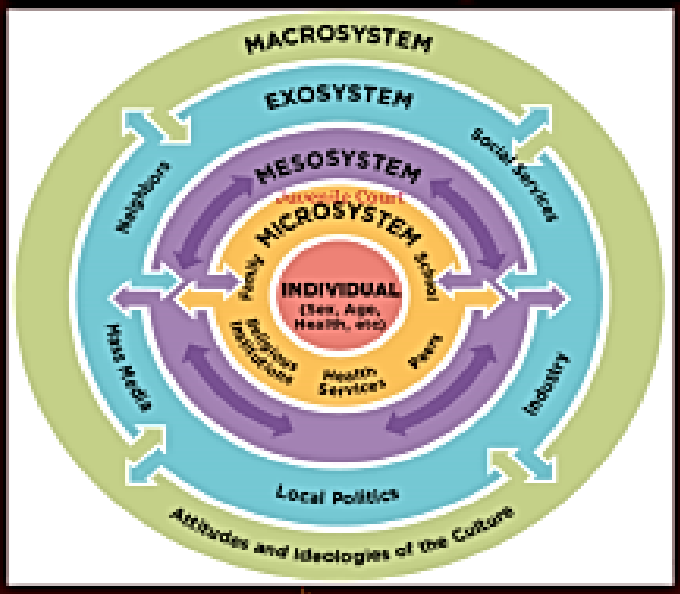
Maricopa County Cradle to Crayons (C2C)

Safe Babies Court Teams (SBCT)

Initiated in July 2011 by Maricopa County Juveline Court, this approach served children under 3 years & their families involved in the child welfare system

National initiative of ZERO TO THREE

An approach to community engagement and systems change focused on improving how the courts, child welfare agencies, and related child and family serving organizations work together to improve and expedite services for infants and toddlers in out of home care to protect children from further harm and address the damage already done. Rated a promising practice on the California Evidence Based Clearinghouse for Child Welfare



Judicial Leadership

One of 12 core components, Judicial Leadership is demonstrated by:

- More frequent court hearings & visitation
- Focus on timely permanency & resolution of safety issues
- Use of community coordinators to resolve barriers
- Attention to Concurrent planning
- Understanding the effects of trauma on the child and family

C2C works at the micro level of the child and the family and at broader levels interacting with providers and communities

C2C EVOLUTION

- Expanded judicial officers trained in infant/toddler mental health
- Funding from the Maricopa Board of County Supervisors
- Community coordinator & clinical services implemented
- Visit Coaching implemented
- Family Treatment Court (FTC): trauma informed with graduation ceremonies
- Bridge Program initiated
- Parents for Parents Program initiated

2016 C2C Evaluation Highlights

Outcome Evaluation

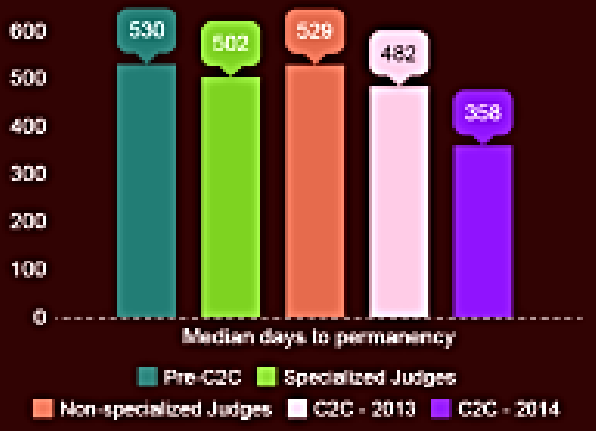
2010 – 2016
8,398 children
Longitudnal Comparison group
Largest evaluation of SBCT in the nation examines:
- Permanency
- Safety
- Stability

Process Evaluation

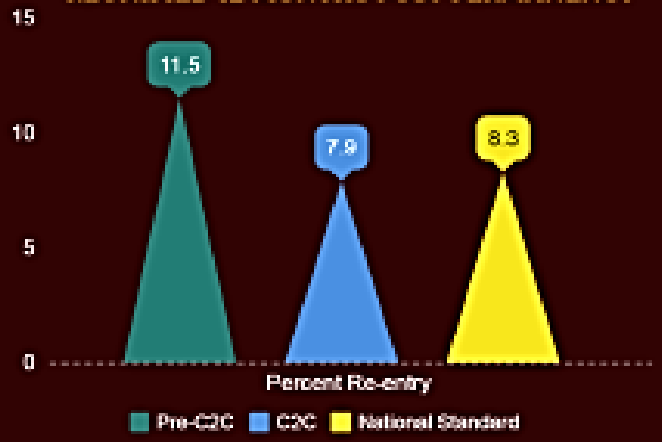
C2C demonstrated 3 criteria related to success:

1. Fidelity - Implemented according to plan
2. Scale - Expanded to serve entire county
3. Sustainability - Five years longevity with diversified & dedicated funding

MEDIAN DAYS TO PERMANENCY



PERCENT RE-ENTRY OF CHILDREN REUNIFIED 12 MONTHS POST PERMANENCY



✓ FINDINGS

- Despite a 55% increase in the number of infants & toddlers entering out-of-home care from 2010 - 2014, there was a 35% increase in the number of permanencies achieved within 12 months
- Significant decrease in median time to permanency for reunification & adoption
- Consistent rates of re-reports in the 12 month pre & post period in the context of quicker exits
- Significant reduction in re-entry for those reunifying 12 months post permanency

✓ SUMMARY

- Broad increase in knowledge of infant/toddler mental health, implementation of best practices, system changes
- Compared with other Safe Baby Court Teams across the United States, C2C has achieved similar times to permanency for reunification & adoption and relatively low rates of re-reports & re-entries

ASU Arizona State University
ASU Center for Child Well-Being

Acknowledgements:
Prevent Child Abuse Arizona, Maricopa County Board of Supervisors, First Things First, Department of Child Safety

https://child-wellbeing.asu.edu/content/research

Appendix V – Cross-Over Youth Practice Model (CYPM)

What is CYPM?

The Crossover Youth Practice Model (CYPM) seeks to improve outcomes for youth who are dually-involved in the child welfare and juvenile justice systems: crossover youth. The model uses a research-based approach to assist child welfare, juvenile justice and related agencies in adopting practices that better address the needs of these youth and improve their life outcomes.

CYPM Values and Principles

The CYPM is rooted in foundational principles and values. These principles express the overarching values that guide all policies, programs, practices, services and supports conducted within the model.

Family Engagement. Engaging families by building good working relationships to meet individualized goals is a fundamental aspect of the model. Agencies/jurisdictions must be strength-based and family focused, including family voices in their decision-making, planning and case work.

Permanency. All young people need lifelong, stable connections to others, but crossover youth may be less likely to achieve this. Permanency planning must begin at the initiation of the case and be a key focus of all case work.

Coordinated Case Management. Providing aligned services by performing coordinated case management creates enhanced opportunities to establish common goals for a case, develop a plan to achieve those goals, identify appropriate services, and conduct ongoing assessments to ensure effectiveness.

Disproportionality. Children of color are overrepresented in both the juvenile justice and child welfare systems, but among crossover youth this disproportionality is even greater. Looking at key decision points can help address this issue.

Gender. Females are a higher percentage of the crossover youth population than the juvenile justice system generally. Addressing this issue starts with looking at key decision points to assess the trend in your jurisdiction, as well as focusing on alternatives to detention.

Information Sharing. Information sharing is critically important. Opportunities begin as soon as a young person crosses over. Important issues regarding how, when and with whom information can be shared must be addressed early on and throughout the case.

Youth and Families have Strengths and should be treated as Unique Individuals. Those strengths should be reflected in our work with them and true partnerships should be developed in our working relationships in a manner that is fair and equitable. This includes on the individual case and systems level.

Systems must Utilize Data to make all Policy and Practice Decisions. Integration of data systems allows for timely exchange of information to improve cross-system case management and aggregate data exchange to assess population trends.

Strengthening Workforce Efficacy. Providing appropriate training to staff will ensure their knowledge and capacities about the newly developed processes and result in their improved ability to serve youth and families. This includes on-going supervision at all levels of staff.

Overarching Goals of CYPM

The CYPM is a strength-based model and recognizes that we must seek to improve the lives of youth and families by building on their strengths and helping them to overcome their challenges. This model builds on the principle of ensuring family engagement and equitable treatment and every level of the system and is paramount in this work. The overarching goals of this model are:

- A safe reduction in the number of youth placed in out-of-home care.
- A safe reduction in the use of congregate care.
- A reduction in the disproportionate representation of youth of color, particularly in the crossover population.
- A reduction in the number of youth re-entering child welfare from juvenile justice placements.
- A reduction in the level of penetration into the juvenile justice system by foster youth.
- A reduction in the use of pre-adjudication detention.
- A reduction in the rate of recidivism.
- An increase in the use of diversion in the juvenile justice system.
- An increase in interagency information sharing.
- An increase in the inclusion of family voice in decision-making.
- An increase in youth and parent satisfaction with the process.
- An increase in the use of a joint case assessment and planning process.
- A reduction in education instability.
- An increase in positive youth development and pro-social opportunities.

In the Courtroom

Information sharing is vital and the follow-through of the parties involved in the case is vital to a family being successful under the CYPM model. The following information and questions are a guideline to keeping communication consistent and ensuring that each party is responding to the needs of the family.

Judicial Considerations

- Were prior orders followed? If not, do not find reasonable efforts.
- When finding a party in contempt, consider allowing them to purge the contempt by offering training at their agency when appropriate.
- Limit 6 month reviews. Consider having reviews every 30 to 60 days.

DCS

- Who is the youth's DCS case specialist?
- How many times has DCS been involved with the family?
- If DCS was previously involved with the family, are the reasons the similar to the current case?
- What interventions or techniques were used to assist this family previously?
- Has this family moved frequently? If yes, why?

Juvenile Probation

- Who is the juvenile's probation officer?
- Has a psychological evaluation been completed? If yes, when? What is the diagnosis? Prognosis?
- What is the youth's pattern with regard to his/her criminal history?
- What is the youth's history of involvement with law enforcement?
- Is the youth or anyone in the family currently involved with law enforcement? (Do not allow the youth self-incriminate.)

Behavioral Health

- Who is the youth's high needs case manager (when applicable)?
- Has a psychiatric evaluation been completed? If yes, when? What was the diagnosis?
- Were medications prescribed?

- Is the youth still taking the medication? When was the last dose given?
- Has a neuropsychological evaluation been completed? If yes, when? What were the findings?
- Does the youth have a history of animal-harming behavior?
- Does the youth have a history of self-harming behavior?
- Has the youth undergone individual counseling? If yes, when? Was it helpful?
- Has the family undergone family counseling? If yes, when? Was it helpful?

Appendix VI – Juvenile Department Trial Group Structure (DUR, OCH, SEF)

Juvenile Department Calendars and Group Structure

Changes to the Juvenile Department calendars and processes will be fully implemented by the judicial calendar rotation on June 26, 2017.

The time schedule for preliminary protective conferences and hearings has been adjusted pursuant to the request from the attorneys to schedule the conferences and hearings in a manner to allow one attorney per office to cover all three matters if necessary.

These changes will require cooperation from the bench, the bar and all stakeholders. Adjustments regarding unintended consequences are expected with ongoing communication about processes and practices with Juvenile Department and stakeholders.

Calendar and Team Goals

- Maintain compliance with timeliness of PPH hearings.
- Improve ability to provide timely dependency adjudication trials.
- Improve case assignment equity.
- Position commissioners to assist with anticipated changes to removal process.

Calendar Changes

- Reduction in the number of PPH slots.
- Due to the steady decline in dependency petition filings over the last year, we are able to reduce the number of PPH slots each month. Across the court, this plan will provide 320 slots each month. Each trial group will have 12 hearings provided in 4 half days per week.

Trial Groups

Rather than having the dependency attorneys assigned to a single courtroom or to two courtrooms, in the pod system, the court will organize itself into Trial Groups. The trial groups will emulate the structure of the Downtown pilot in that they will consist of 3 judges and 1 or 2 commissioners. The trial group commissioner will hear one afternoon of PPHs per week. The trial group judges will have their PPH afternoon freed up for additional trials. The trial group judges will continue to hear PPHs one morning each week but will be able set other matters on the PPH morning. Cases assigned to the trial group for PPH may be assigned to any of the three judges within the trial group.

Case Assignments

Cases will be assigned initially to a trial group and will then be assigned to a judge within the trial group on a rotating basis. The Dependency Unit of Juvenile Department Administration will rotate the assignment of trial groups and individual judges to maintain equity. The monthly Dependency Data Connection report will be provided to the bench and will describe the case assignment details for the month. When factors such as refile and supplemental petitions require assignment to a particular judge, the next assignments will be balanced to maintain equity.

Attorney Assignments

Attorneys will be expected to organize themselves into the trial groups. They will be expected to take assignments to any division within the trial group and to not take new assignments outside of the trial group. They will be expected to decline new case assignments unless they can commit to being available for the PPC/PPH hearing or any other hearings that are set at the time of the assignment.

PPC/PPH Times

PPC/PPH hearings will be held back to back, rather than in a bi-furcated manner. The schedule will be as follows:

Mornings		
PPC	Attorneys are expected to be available	PPH
8:15	8:00 - 9:30	9:00
9:30	9:30 -10:45	10:15
10:45	10:45 -12:00	11:30
Afternoons		
1:00	12:45 - 2:15	1:45
2:15	2:15 - 3:30	3:00
3:30	3:30 - 4:45	4:15

Special Circumstances to Deviate from Case Assignment

Supplemental petitions, involving additional children in an open dependency; refiles of new allegations within a year of being before the same judicial officers; and cases that meet the CYPM criterion will be assigned to the appropriate judicial officer. The Dependency Unit will attempt to equalize any inequities caused by these decisions within the month and if it is not possible will report the reason in the Dependency Data Connection. Any inequities should be addressed no later than a three-month cycle.

Emergency Duty

Commissioners will have an emergency coverage day each week. Emergency duty will mean that the commissioner will be available to review first orders for dependency petitions. They will hear these requests for all cases assigned to their courthouse. The emergency coverage responsibility will correspond to the Detained Calendar so that coverage for critical calendar purposes will be more easily addressed. Durango and Downtown are grouped together for emergency coverage.

Changes in Case Type Assignments for Commissioners

The Commissioners will each be assigned delinquencies, adoptions, guardianships, private severances and emergency duty, and dependency PPHs. This will help all commissioners maintain experience and competency in all case types. Two of the commissioners will also hear Family Treatment Court a total of 4 half days per week. The commissioners will need to avoid setting other JV hearings on their advisory days because all slots may be necessary.

Trial Flexibility

Judges and commissioners will have maximum flexibility to schedule trials. The new configuration of the calendars will allow for changes to the trial calendars within each division and allow for trial group innovations. The SEF pilot (Cooperative Calendaring) can start without any additional changes and can be emulated at the other courthouses, if successful.

Juvenile Department and Division assignments are noted in the charts below, effective as of June 26, 2017.

Juvenile Department – Durango (DUR)

DUR1: Judges Brotherton, Gentry, Bachus Commissioner Abe DUR 2: Judges McCoy, Cohen, Ditsworth Commissioner Allen	Maricopa County Juvenile Courts Durango Judge/Commissioner Calendars	DUR 3: Judges Duncan, Welty, Comm. Hoskins Commissioner Vandenberg Backup: Commissioner Washington

Judges Calendars

	Judges	Time	Monday	Tuesday	Wednesday	Thursday	Friday
Trial Group I	JUJ03 Brotherton	AM	JD*	PPH*	JD	JD*	JD
		PM	Trials	Trials	Trials	Trials	Trials
	JUJ10 Gentry	AM	PPH*	JD*	JD*	JD	JD
		PM	Trials	Trials	Trials	Trials	Trials
	JUJ20 Bachus	AM	JD*	JD*	JD	PPH*	JD
		PM	Trials	Trials	Trials	Trials	Trials
Trial Group II	JUJ02 McCoy	AM	JD	JD*	PPH*	JD	JD*
		PM	Trials	Trials	Trials	Trials	Trials
	JUC03 Cohen	AM	JD	PPH*	JD*	JD	JD*
		PM	Trials	Trials	Trials	Trials	Trials
	JUJ06 Ditsworth	AM	JD	JD	JD*	JD*	PPH*
		PM	Trials	Trials	Trials	Trials	Trials
Trial Group III	JUJ04 Duncan	AM	JD	JD	PPH*	JD*	JD*
		PM	Trials	Trials	Trials	Trials	Trials
	JUJ07 Hoskins	AM	PPH*	JD	JD*	JD*	JD
		PM	Trials	Trials	Trials	Trials	Trials
	JUJ08 Welty	AM	JD*	JD*	JD	JD	PPH*
		PM	Trials	Trials	Trials	Trials	Trials

Commissioner Calendars

	Commissioners	Time	Monday	Tuesday	Wednesday	Thursday	Friday
Trial Group I	JUC02 Abe	AM	JG / JS	E ADVISORIES*	E JV	JA	JV*
		PM	JG / JS	E DETAINED*	E DETAINED*	PPH*	JV
Trial Group II	JUC05D Allen	AM	JA	JG / JS	FTC	FTC (SEF)	E ADVISORIES*
		PM	PPH*	JG / JS	JV	JV*	E DETAINED*
Trial Group III	JUC07 Vandenberg	AM	JV	JA	JV*	E ADVISORIES*	JG / JS
		PM	FTC	PPH*	FTC	E DETAINED*	JG / JS
Backup	JUC09 Washington	AM	E ADVISORIES*	JV	JV*	JG / JS	JA
		PM	E DETAINED*	JV	PPH*	JG / JS	JV

*Interpreter day E = Emergency coverage: JD petition review, Court hour's misc.

Juvenile Department– Old Court House (OCH)

OCH1: Judges Flores, Harrison, Garcia Commissioner Garfinkel	Maricopa County Juvenile Courts Old Courthouse Judge/Commissioner Calendars	

Judges Calendars

	Judges	Time	Monday	Tuesday	Wednesday	Thursday	Friday
Trial Group I	JUJ05 Flores	AM	JD*	JD*	JD	JD	JD
		PM	Trials	Trials	Trials	Trials	Trials
	JUJ17 Garcia	AM	JD	JD	JD	JD*	JD*
		PM	Trials	Trials	Trials	Trials	Trials
	JUJ18 Harrison	AM	JD	JD	JD*	JD	JD*
		PM	Trials	Trials	Trials	Trials	Trials

Commissioner Calendar

	Commissioner	Time	Monday	Tuesday	Wednesday	Thursday	Friday
Trial Group I	JUC10 Garfinkel	AM	PPH*	PPH*	*JD Emergency Ext Hearings* E JA	JS / PPH*	JS / PPH*
		PM	JD/JS Trials	JD/JS Trials	E JD/JS Trials	JD/JS Trials	JD/JS Trials

*Interpreter day E = Emergency coverage: JD petition review, Court hour's misc.

Juvenile Department – Southeast Facility

SEF1: Judges Ryan, Palmer, Crawford Commissioner Lynch SEF2: Judges Anderson, O'Connor, Oberbillig Commissioners Smith, Brame	Maricopa County Juvenile Courts Southeast Judge/Commissioner Calendars	

Judge Calendars

	Judges	Time	Monday	Tuesday	Wednesday	Thursday	Friday
Trial Group I	JUJ13 Palmer	AM	JD*	PPH*	JD	JD*	JD
		PM	Trials	Trials	Trials	Trials	Trials
	JUJ14 Crawford	AM	JD*	JD	PPH*	JD*	JD
		PM	Trials	Trials	Trials	Trials	Trials
	JUJ15 Ryan	AM	JD*	JD	JD	PPH*	JD*
		PM	Trials	Trials	Trials	Trials	Trials
Trial Group II	JUJ11 Oberbillig	AM	JD	JD	JD*	JD*	PPH*
		PM	Trials	Trials	Trials	Trials	Trials
	JUJ12 O'Connor	AM	PPH*	JD*	JD	JD	JD*
		PM	Trials	Trials	Trials	Trials	Trials
	JUJ16 Anderson	AM	JD	JD*	PPH*	JD	JD*
		PM	Trials	Trials	Trials	Trials	Trials

Commissioner Calendars

	Commissioners	Time	Monday	Tuesday	Wednesday	Thursday	Friday
Trial Group I	JUC09 Lynch	AM	E JV	JG / JS*	E JV*	ADVISORIES*	JG / JS
		PM	E DETAINED*	JA	E DETAINED*	PPH*	PPH*
Trial Group II	JUC04 Brame	AM	JV*	E JG / JS*	JV	JG / JS	ADVISORIES*
		PM	JV	E DETAINED*	PPH*	JA	JV
	JUJ19 Smith	AM	JG / JS*	ADVISORIES*	JG / JS	E JV*	E JV
		PM	JV	PPH*	JA	E DETAINED*	E DETAINED*

*Interpreter day E = Emergency coverage: JD petition review, Court hour's misc.

Appendix VII – Family Treatment Court

SUPERIOR COURT OF THE STATE OF ARIZONA
MARICOPA COUNTY JUVENILE COURT

Family Treatment Court (FTC):
new name, new eligibility requirements, same great program

The Maricopa County Juvenile Court announces some important changes to Dependency Treatment Court, including changing the name to Family Treatment Court effective on January 1, 2017. These changes will allow a broader population of parents to engage and participate in the program earlier in their dependency case.

The Family Treatment Court (FTC) mission is to assist parents involved in the child welfare system toward achieving and maintaining sobriety; to promote family reunification, and improve the well-being for children and families. This is a voluntary program that helps parents to stay motivated and focused on their recovery. The following changes include:

- **FTC referrals may occur from multiple sources:** Judges, attorneys, child safety specialists, treatment providers, peers or even self-referrals will be accepted. A judicial referral is no longer required. Referred parents will have an opportunity to observe a session to determine whether they wish to enroll.

- **Families with children of all ages may participate:** The FTC program was limited to families with children from 0-3. Family Treatment Court is now available to families with children of ALL ages. In the first two and half years of the programs, graduates had a 95% family reunification rate. Expanding program eligibility allows for an increase in anticipated success rates for Maricopa County FTC families.

- **Parents must enroll within six (6) months of dependency petition filing date:** Immediate participation is encouraged because parents are more likely to be successful in their dependency case with earlier engagement in treatment and support. If there is a special circumstance, a parent may petition for an exception to this requirement.

- **Family reunification case plan:** The purpose of FTC is to support and promote family reunification by providing motivation and accountability through the treatment court model. There must be a family reunification case plan goal for at least one child at the time of enrollment.

- **If a treatment provider determines a parent is not in need of substance abuse treatment, they are released from the program:** If substance abuse treatment is not recommended after assessment by a treatment provider, the participant will be released from the program to allow space for other eligible participants.

FAMILY TREATMENT COURT OBSERVATION REFERRAL

☐ SENSE Program ☐ Petition filed with the court

Date: _____

Name: _____ **JD # (if applicable):** _____

Referred by:
- ☐ **Judge**
- ☐ **Attorney** _____ Name
- ☐ **DCS**
- ☐ **Other**

Please complete the following steps.

1. **Schedule in person or by phone at the Cradle to Crayons Child Welfare Center location of your choice.**

   C2C – West: 3445 W Durango, Phoenix, AZ 85009 or call 602-506-5324.

   C2C – East: 1810 S Lewis St. Building B, Mesa, AZ 85210 or call 602-372-3979.

   (Directions to both locations are on the back)

2. **Attend the observation** as scheduled on the back of this paper.
3. **Please do not schedule any other appointments around your observation. You will be expected to stay the entire time. FTC hearings can last anywhere from 30 minutes to over an hour.**
4. **<u>If you are unable to attend the scheduled observation of FTC please provide 24-hour notice or it may be considered a Failure to Appear.</u>**

Observation date and time: _____

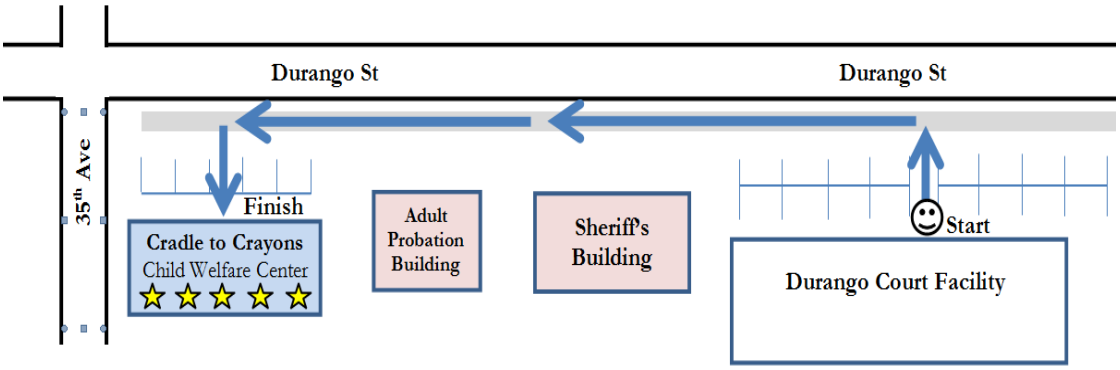
Scheduled by (FTC staff name & signature): _____

Questions or concerns about Family Treatment Court?
Please contact the Program Coordinator at 602-506-5062.

DIRECTIONS FOR PHOENIX LOCATION

Cradle to Crayons Child Welfare Center
Family Treatment Court Room
3445 W Durango | Phoenix, AZ 85009

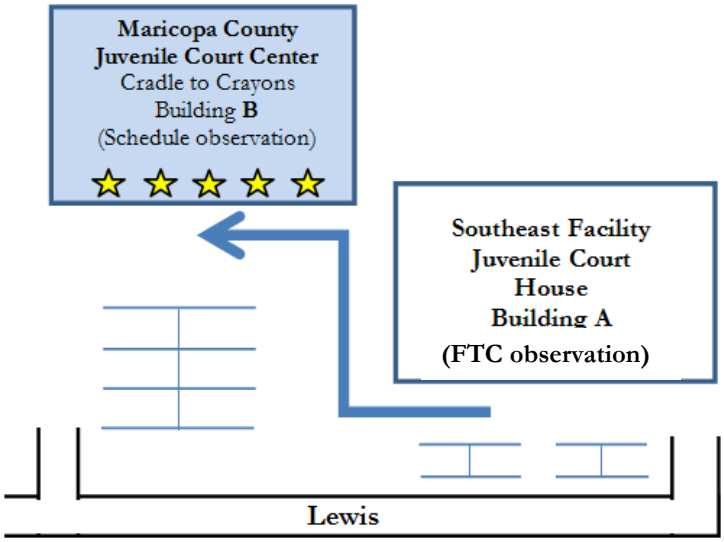
Arrive at least 15 minutes before the hearing is scheduled to begin and remain for the **entire session**. Your job is to just watch the FTC session and listen to the FTC Judge and participants. You will then be given a certificate of attendance after the hearing is over.

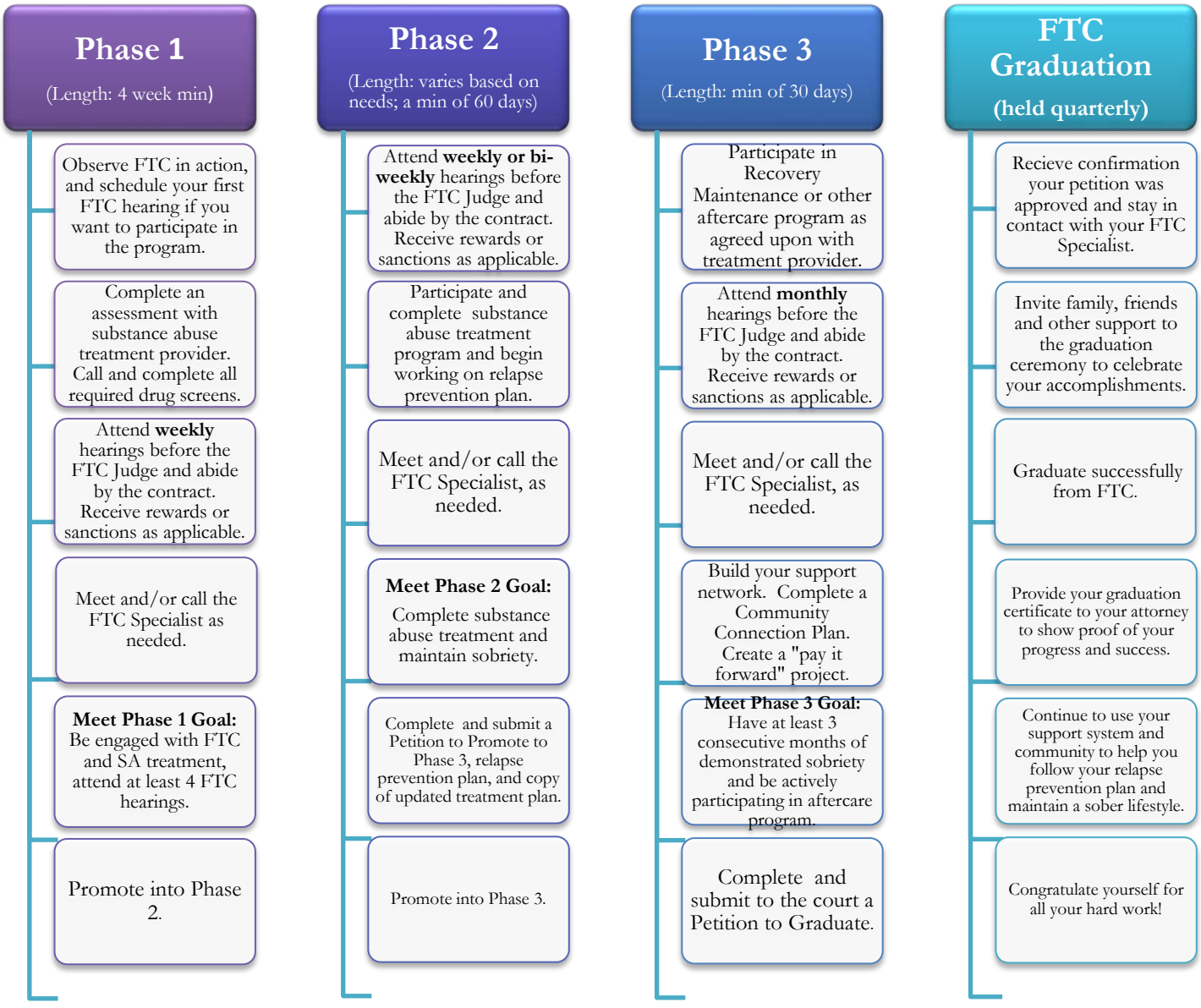


DIRECTIONS FOR MESA LOCATION

Juvenile Court Center
Cradle to Crayons East Center
1810 S Lewis St. Building B, Mesa, AZ 85210

***You will schedule your observation inside Building B, but the FTC observation will be held inside the main Juvenile Court House in Building A.**




Phase 1
(Length: 4 week min)
Observe FTC in action, and schedule your first FTC hearing if you want to participate in the program.
Complete an assessment with substance abuse treatment provider. Call and complete all required drug screens.
Attend **weekly** hearings before the FTC Judge and abide by the contract. Receive rewards or sanctions as applicable.
Meet and/or call the FTC Specialist as needed.
Meet Phase 1 Goal: Be engaged with FTC and SA treatment, attend at least 4 FTC hearings.
Promote into Phase 2.
Phase 2
(Length: varies based on needs; a min of 60 days)
Attend **weekly or bi-weekly** hearings before the FTC Judge and abide by the contract. Receive rewards or sanctions as applicable.
Participate and complete substance abuse treatment program and begin working on relapse prevention plan.
Meet and/or call the FTC Specialist, as needed.
Meet Phase 2 Goal: Complete substance abuse treatment and maintain sobriety.
Complete and submit a Petition to Promote to Phase 3, relapse prevention plan, and copy of updated treatment plan.
Promote into Phase 3.
Phase 3
(Length: min of 30 days)
Participate in Recovery Maintenance or other aftercare program as agreed upon with treatment provider.
Attend **monthly** hearings before the FTC Judge and abide by the contract. Receive rewards or sanctions as applicable.
Meet and/or call the FTC Specialist, as needed.
Build your support network. Complete a Community Connection Plan. Create a "pay it forward" project.
Meet Phase 3 Goal: Have at least 3 consecutive months of demonstrated sobriety and be actively participating in aftercare program.
Complete and submit to the court a Petition to Graduate.
FTC Graduation
(held quarterly)
Recieve confirmation your petition was approved and stay in contact with your FTC Specialist.
Invite family, friends and other support to the graduation ceremony to celebrate your accomplishments.
Graduate successfully from FTC.
Provide your graduation certificate to your attorney to show proof of your progress and success.
Continue to use your support system and community to help you follow your relapse prevention plan and maintain a sober lifestyle.
Congratulate yourself for all your hard work!

Appendix VIII – Enhanced Mediation

Program Purpose and Intent: The enhanced mediation program is intended to provide a means to resolve case issues, negotiate remaining areas in controversy, and to potentially settle the case resulting in a final court order.

Program Background: Based on almost a year and a half of favorable data, attorney feedback and judicial support, plus growing buy-in from the court community (for the most part), the enhanced mediation program has been expanded to be system-wide, effective on April 3, 2017. Program mediators will conduct all mediations in the following fashion:

1. Presuming parties have scheduled a full hour (within reason) for mediations.

2. Reminding parties to preserve the fidelity of the process by honestly attempting to arrive on time prepared to negotiate the case in good faith.

3. Requiring correspondence take place between attorneys at least one week prior to mediation and providing disclosure to address issues for resolution in mediation.

4. Expecting those who arrive at mediation to have authority to resolve issues in the case or at least be willing and able to contact a decision maker when appropriate.

5. Mediators will continue sending reminder emails to parties approximately 2 weeks prior to mediation, including the DCS Case Manager, since this was widely appreciated.

Example of Reminder Email Sent by Mediators

> RE: JD123456 - DOE
> This case is set for mediation on April 3, 2017 at 10:00am in the Southeast Facility Courthouse, located at 1810 S. Lewis St., Mesa, AZ 85210.
>
> As part of the expanded mediation program, parties are to be knowledgeable about the case and have authority to negotiate all aspects of the case. Email communication prior to the mediation is also required.
>
> NOTE: please “reply all” to include the mediator in your email as this helps prepare us to address the issues to be discussed during the mediation.
>
> REMINDER: Timely disclosure of all information to parties (including counsel for the children) helps the mediation process. Please do so no later than ten (10) business days prior to the mediation and/or in compliance with Rule 44.B.1. (within 5 days of receipt).

All parties, including parents, please plan to arrive 15 minutes prior to the scheduled mediation, especially if you need to discuss matters important to mediation.

The Mediation Brochure

The intended use of the new mediation brochure is to provide an extra avenue for parents and DCS Case Managers (and anyone else) to understand what to expect at mediation. It addresses the "who, what, when, where and why" and is written for a general audience.

Conciliation staff will provide these to parents and case managers following PPCs, plus the brochures will also be available in the lobbies, at the Court Guide stations and any other public spaces. Judges should also be provided with the brochures.

This brochure was a collaborative effort between Court Administration, the attorney groups and DCS counsel, and digital copies (in English and Spanish) have been disseminated so they can print and distribute them at their discretion. Court Administration will continue to have hard copies available at the courthouses.

Availability of Mediation 45 to 60 days from the PPH/initial hearing

Mediation calendars are not blocked, so judges are free (and respectfully encouraged) to set mediations within that 45 to 60 day timeframe. Revised minute entry language for enhanced mediation practices is:

Mediation is a confidential process; the Court will be advised by the mediator only of the terms of any agreement reached.

IT IS ORDERED that as part of the mediation ordered in this case, parties shall perform the following tasks to properly prepare for the mediation:

1. DCS shall provide timely disclosure of all information as required by law to Respondent parties (including counsel for the children), and by no later than 10 business days prior to the mediation;

2. Parents' attorneys, guardians *ad litem* and the children's attorneys shall provide a brief description by email to the assigned Assistant Attorney General of specific points of interest, factual disputes, and desired outcomes of mediation by no later than 5 business days prior to mediation; and

3. The Assistant Attorney General shall respond by email to the parents' attorneys, guardians *ad litem* and children's attorneys email(s) by no later than 1 business day prior to the mediation.

Appendix IX – Case Progress Review

Program Purpose and Intent

The Case Progress Review (CPR) is intended to be a mechanism for review and accountability to expedite permanency in a safe and timely manner. It is a Court-directed service plan or review. This program builds upon the Community Coordinator Program for Cradle to Crayon judges by resolving already occurring barriers to service delivery and ensuring Court-ordered services for children and parents are implemented in the early stages of a dependency matter, and to anticipate, identify, and resolve potential service barriers before they occur. CPR will not delve into legal issues, and will play no part in mediating or resolving issues of dependency. Community Coordinators will continue in their commitments to remain neutral observers and problem-solvers in the dependency process.

Program Background

Program reviews are established to monitor comprehensive service delivery in court-identified cases, anticipate, identify, and resolve potential service barriers before they occur, and provide a mechanism for court oversight of service provision between hearings. Specifically the program will address barriers to service delivery that have been identified by all parties in cases, including judges, Attorney General's Office, guardians *ad litem*, DCS child safety specialists, parents' counsel, and placements.

Case Progress Reviews can be ordered at the discretion of the Court at any time during a dependency timeline to monitor comprehensive service delivery for children and parents, and provide a mechanism for court oversight of service provision between regularly scheduled hearings. CPR will not be used to resolve any legal matters, and in its early stages, may only involve a team comprised of the Community Coordinator (facilitator), DCS representatives, service providers, and any other service specialist (e.g. behavioral health liaisons, AzEIP coordinators, non-contracted community service providers, etc.) who can assist in identifying and implementing targeted services relevant to parent and child needs.

During a CPR, the Community Coordinator will anticipate barriers to service identification and delivery, work to facilitate agreements for service delivery with DCS and providers, and assign tasks and responsibilities and completion dates to the team members for accountability purposed. Community Coordinators will follow-up with the team mid-way between the initial CPR and the next court date to ensure assignments are completed and services implemented. Community Coordinators will document outcomes of the CPR in a memo to the Court and all parties, distributed prior to the next court hearing. Community Coordinators will no longer attend hearings on a daily basis but will continue to accept and resolve issues as directed by the Court via email referral process.

CPR Referral Process

- Judge directs/orders JD to CPR
- Identified court staff calendars CPR in an identified time slot Calendar
- 5 to 6 time slots per day, 2-3 days per week
- Calendared within 2 weeks of hearing

Pre-CPR

- Community Coordinator Supervisor reviews calendar and assigns to staff
- Community Coordinator reviews /researches case – Orders, FCRB, docket, FTR, service provider contact info, status of services
- Invites service providers/DCS/ C2C specialists to teleconference

CPR

- Initial meeting – teleconference
- Identify all services for child/family
- Identify potential barriers
- Assign tasks/expectations, responsible parties, completion dates
- Identify date Community Coordinator will follow up (mid-way between initial CPR and next Court date)

Follow-Up

- Email all CPR participants agreements within 2 business days
- Follow-up with participants at identified follow-up date
- Calendar 2nd CPR date when necessary – teleconference or in person

Results

- Community Coordinator provides a memo/service template to the Court and parties (distinct from current CC memo) documenting results of CPR.
- If Community Coordinator identifies barriers/issues which impede progress, CC requests a status conference prior to the next hearing.
- Allow judges more flexibility and confidence in obtaining a thorough, timely accounting of all services provided in a case.

Appendix X – Arizona Case Processing Time Standards Summary Chart

ARIZONA CASE PROCESSING TIME STANDARDS SUMMARY CHART

JUVENILE CASES			
CASE TYPE	**STANDARD**	**CALCULATION OF TIME**	**EXCLUDED TIME**
NEGLECT AND ABUSE (DEPENDENCY) (Effective Date: July 1, 2015)	Adjudication Hearing: 98% within 100 days	Adjudication Hearing: Date of filing through a finding of dependency.	No excluded time.
NEGLECT AND ABUSE (DEPENDENCY) (Effective Date: January 1, 2015)	Permanency Hearing: 98% of children under 3 years of age within 180 days of removal. 98% of all other cases within 365 days of removal	Permanency Hearing: Date of removal through permanent plan determination.	No excluded time.
TERMINATION OF PARENTAL RIGHTS (DEPENDENCY) (Effective Date: January 1, 2015)	90% within 120 days 98% within 180 days ✓ Adoption cases are excluded.	Filing of motion/petition for termination of parental rights through entry of dismissal or order of termination.	No excluded time.

Source: Arizona Supreme Court

The Juvenile Department seeks to manage the caseload in recognition of the Arizona Case Processing Time Standards for Neglect and Abuse and Termination of Parental Rights:

- Convening dependency adjudication hearings at a rate of 98% within 100 days from date of case filing or initiation.
- Convening permanency hearings at a rate of 98% for children under 3 years of age within 180 days of removal, and at a rate of 98% for children age 3-17 within 365 days of removal.
- Convening termination of parental rights hearings, after permanency plan hearings, at a rate of 90% within 120 days, and 98% within 180 days.

Appendix XI – Performance Measures

Performance Measure	Currently Report[8]	Plan to Report[9]
Performance Measures Suggested by the National Resource Center on Legal and Judicial Issues[10]		
1. Child Safety- Percentage of refiles, children who may have been abused or neglected within 12 months after closure	X	
2. Permanency – Percentage of children in foster care who reach legal permanency by reunification, adoption, or legal guardianship	X	
3. Service/Due Process – Percentage of cases in which both parents receive written service of process of the original petition		X
4. Time to Permanent Placement – the median time from filing of the original petition to legal permanency	X	
Arizona Case Processing Time Standards		
5. Time to Adjudication – Date of filing through a finding of dependency	X	
6. Time to Permanency Hearing – date of removal (or petition filing) through permanent plan determination	X	
7. Time to Termination of Parental Rights – filing of motion/petition for termination of parental rights through entry of dismissal or order of termination	X	
Dependency Case Management Timelines (see p.5-6)		
8. Time to Filing of Petition – within 72 hours of removal of child	X	
9. Time to Preliminary Protective Hearing – within 5 to 7 days from removal	X	
10. Time to Initial Dependency Hearing – within 21 days of petition filing		X

[8] "*Currently report*" means the Juvenile Court has capacity to track and report the performance measure.
[9] "*Plan to Report*" indicates performance measures the Juvenile Court intends to track and report pending the establishment of an enhanced database, iCISng.
[10] Flango, V.E. & Kauder, N. (2009). *Court performance measures in child abuse and neglect cases: Key measures*. Publication of the U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Performance Measure	Currently Report	Plan to Report
11. Time to DCS Initial Case Plan – no later than 60 days from removal of child		X
12. Time to Adjudication Hearing – within 90 days of service of petition		X
13. Time to Disposition – no more than 30 days after adjudication		X
14. Review Hearings – at least every 6 months after adjudication for children over 3 and at least every 8 to 12 weeks for children under 3 and their siblings		X
15. Time to Permanency Hearing (children under 3) – within 6 months of child removal		X
16. Time to Permanency Hearing (children 3-17) – within 12 months of child removal		X
17. Time to Motion for Termination of Parental Rights – within 10 days after permanency hearing or change of permanency plan to severance and adoption		X
18. Time to Initial Termination Hearing – within 30 days after permanency hearing or change of permanency plan to severance and adoption		X
19. Time to Termination Adjudication Hearing – within 90 days after permanency hearing or change of permanency plan to severance and adoption		X
20. Time to Motion for Guardianship – within 10 days after permanency hearing or change in permanency plan		X
21. Time to Initial Guardianship Hearing – within 30 days after permanency hearing or change in permanency plan		X
22. Time to Guardianship Adjudication Hearing – within 90 days after permanency hearing or change in permanency plan		X
Performance Measures to Assess Case Assignments, Continuances, Inventory Control and Backlog Reduction		
23. Dependency Case Assignments - JD, refile/supplemental, CYPM	X	
24. Continuance rates – number of continuances for select hearings		X
25. Age of Active Cases – number of cases open in the increments of 0-100 days, 0-180 days, 0-365 days, 0-540 days, and 541 days and beyond	X	

Performance Measure	Currently Report	Plan to Report
26. Number of Filings – dependency, termination, and guardianship	X	
27. Number of Adjudications – dependency, termination, and guardianship	X	
28. Clearance Rates – number of filings closed	X	

Appendix XII – References

- Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases, http://www.ncjfcj.org/EnhancedResourceGuidelines
- National Council of Juvenile and Family Court Judges, http://www.ncjfcj.org
- "A Practical Guide to the Indian Child Welfare Act," http://www.narf.org/nill/documents/icwa/
- Arizona Guide to the Indian Child Welfare Act azicwa.com
- The Core Components of the Safe Babies Court Team Approach, https://www.zerotothree.org/resources/1655-the-core-components-of-the-safe-babies-court-team-approach
- Crossover Youth Practice Model, http://cjjr.georgetown.edu/our-work/crossover-youth-practice-model/
- Reasonable Efforts: A Judicial Perspective by Judge Leonard Edwards, https://www.ncjfcj.org/sites/default/files/Edwards_Reasonable_Efforts_Final.pdf

Dependency Process

Superior Court in Maricopa County, Juvenile Department

An Interactive Flowchart

2017

The Superior Court

in Maricopa County, Juvenile Department

Maricopa County Superior Court, Juvenile Department exercises jurisdiction over children in any proceeding relating to delinquency, dependency, or incorrigibility [A.R.S. §8-201(21)]. This interactive tool is a visual representation of standard dependency, termination of parental rights, adoption, and Title 8 guardianship processes in Maricopa County's Juvenile Court. Where appropriate, colored icons link to state and federal statues that govern their respective processes:

- Federal laws
- Arizona Revised Statutes
- Arizona Rules of Procedure for the Juvenile Court
- Arizona Rules of Civil Appellate Procedure
- Arizona Rules of Procedure for Special Actions

Additional Interactive Icons

- Links to respective page number
- Navigates to previous page
- Navigates to next page
- Links to Table of Contents

Acknowledgements

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This publication is intended for use by judges, attorneys, Guardians *ad litem*, Court Appointed Special Advocates, child welfare staff, and court professionals as a tool to enhance model court best practices in child abuse and neglect cases.

JUVENILE COURT DEPENDENCY PROCESS

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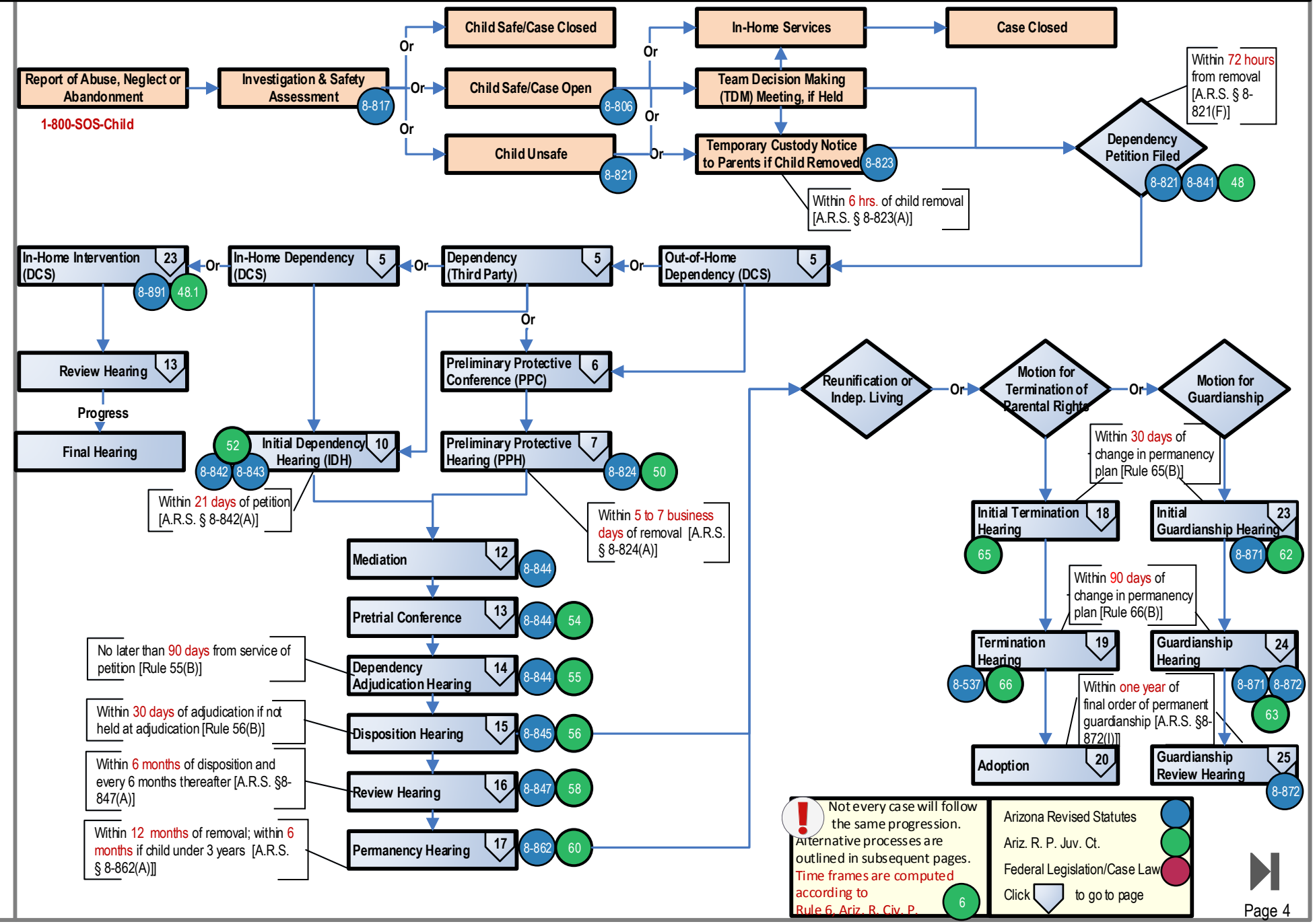
Overview


DCS Process
Report of Abuse, Neglect or Abandonment
1-800-SOS-Child
Investigation & Safety Assessment
8-817
Or
Child Safe/Case Closed
Child Safe/Case Open
8-806
Child Unsafe
8-821
In-Home Services
Case Closed
Team Decision Making (TDM) Meeting, if Held
Temporary Custody Notice to Parents if Child Removed
8-823
Within 6 hrs. of child removal [A.R.S. § 8-823(A)]
Within 72 hours from removal [A.R.S. § 8-821(F)]
Dependency Petition Filed
8-821
8-841
48
In-Home Intervention (DCS)
23
8-891
48.1
In-Home Dependency (DCS)
5
Dependency (Third Party)
5
Out-of-Home Dependency (DCS)
5
Review Hearing
13
Progress
Final Hearing
Preliminary Protective Conference (PPC)
6
52
8-842
8-843
Initial Dependency Hearing (IDH)
10
Within 21 days of petition [A.R.S. § 8-842(A)]
Preliminary Protective Hearing (PPH)
7
8-824
50
Within 5 to 7 business days of removal [A.R.S. § 8-824(A)]
Mediation
12
8-844
Pretrial Conference
13
8-844
54
No later than 90 days from service of petition [Rule 55(B)]
Dependency Adjudication Hearing
14
8-844
55
Within 30 days of adjudication if not held at adjudication [Rule 56(B)]
Disposition Hearing
15
8-845
56
Within 6 months of disposition and every 6 months thereafter [A.R.S. §8-847(A)]
Review Hearing
16
8-847
58
Within 12 months of removal; within 6 months if child under 3 years [A.R.S. § 8-862(A)]]
Permanency Hearing
17
8-862
60
Reunification or Indep. Living
Motion for Termination of Parental Rights
Motion for Guardianship
Within 30 days of change in permanency plan [Rule 65(B)]
Initial Termination Hearing
18
65
Initial Guardianship Hearing
23
8-871
62
Within 90 days of change in permanency plan [Rule 66(B)]
Termination Hearing
19
8-537
66
Guardianship Hearing
24
8-871
8-872
63
Within one year of final order of permanent guardianship [A.R.S. §8-872(I)]]
Adoption
20
Guardianship Review Hearing
25
8-872
Not every case will follow the same progression. Alternative processes are outlined in subsequent pages. Time frames are computed according to Rule 6, Ariz. R. Civ. P.
6
Arizona Revised Statutes
Ariz. R. P. Juv. Ct.
Federal Legislation/Case Law
Click to go to page

Dependency Petition

DCS Process

Report of Abuse, Neglect or Abandonment → Investigation and Child Safety Assessment

Or

- Child Safe/Case Close
- Child Safe/Case Open (8-806)
- Child Unsafe (8-821 (B))

May voluntarily place a child in out-of-home care for no more than two 90-day periods within 24 consecutive months unless a dependency petition is filed [A.R.S. § 8-806].

Unsafe if "probable cause" exists that a child is:
(1) A victim or will become a victim of abuse or neglect;
(2) Suffering serious physical/emotional injury diagnosed by a doctor/psychologist;
(3) Injured due to residing where drugs are being manufactured; or
(4) A missing child at risk of serious harm [A.R.S. § 8-821(B)].

When safety threats are present but can be controlled through services and close monitoring.

Child Safe/Case Open → In-Home Services

Child Unsafe → Medical Examination (8-821 (D)) → Safety Planning → Team Decision Making (TDM), if Held → Temporary Custody Notice (TCN), If Child Removed (8-822 (A)(2), 8-823)

Must be examined by a doctor or psychologist within 12 hours of removal [A.R.S. § 8-821(D)]

Within 6 hours of the child's removal [A.R.S. § 8-823(A)]

In-Home Services → Risk factors addressed?

- Yes → Child Safe/Case Closed
- No → File Petition & Temporary Custody Orders (8-821 (F), 8-841, 8-532, 48, 8-533, 25-1031, 25-1034, ASFA)

Jurisdiction/Venue:

(1) File in the County where the child resides [A.R.S. § 8-532; A.R.S. §§ 25-1001 to 25-1067].

(2) File with Indian tribe if Indian child resides within the reservation or if the child is a ward of a tribal court [25 U.S.C. § 1911(a)].

(3) File in Arizona if: (a) Arizona is the child's home state; or (b) Arizona was the home state of the child within 6 months before filing the petition; or (c) the child's home state has declined to exercise jurisdiction [A.R.S. § 25-1031].

Within 72 hours of a child's removal excluding weekends and holidays [A.R.S. §8-821(F)]. The petition will make a statement about "reasonable efforts made to prevent removing the child from home and to make it possible for a child to safely return home" [Adoption and Safe Families Act (ASFA) of 1997, 42 U.S.C. § 671(a)(15) (2006)]. Other requirements are listed in A.R.S. § 8-841].

File Petition & Temporary Custody Orders → Or

- In-Home Intervention (DCS) (8-891, 8-892, 48.1 (A))
- Out-of-Home Dependency (DCS)
- In-Home Dependency (DCS)
- Dependency (Third Party)

→ Judicial Review of Petition/ Temporary Orders (8-829 (A)(1), 8-841 (F), 47.1 (A), 48 (B)) → Or

- Initial In-Home Intervention Hearing 28
- Preliminary Protective Conference 6 → Preliminary Protective Hearing 7
- Initial Dependency Hearing 10
- No Basis for Dependency/ No Temporary Orders

Dependency Petition: "invokes the authority of the Court to act on behalf of a child who is alleged to be dependent," or in need of proper and effective parental care and control [Ariz. R. P. Juv. Ct. 48(A)]. The petition will list current threats to the child's safety and reasonable efforts to prevent removal. In cases of child removal, a petition must be filed within 72 hours from removal [A.R.S § 8-841]. (8-841, 48)

Arizona Revised Statutes
Ariz. R. P. Juv. Ct.
Federal Legislation/Case Law
Click to go to page

Preliminary Protective Conference

DCS Process

ICWA REGULATIONS

Occurs Simultaneously

Notify Parents of PPC/PPH; Notify Tribe (ICWA Only) — 8-823 (E), 48 (D)(9), ICWA, 25 CFR

Indian Child: If the identity or location of parent or Indian custodian is unknown, notice shall be given to the Secretary of the Interior who has 15 days to provide notice to parent or Indian custodian [Rule 48(D)(9); 25 U.S.C. §1912(a) (1978); 25 C.F.R. §23.11 (2016)].

Search for Parents, Relatives & Person with Significant Relationships with Child — FCA

Section 671(a)(29) of the Fostering Connections Act of 2008 requires DCS to notify all adult relatives of the child within 30 days after the removal of a child.

Disclosure — 44(B)

Within 24 hours before the PPH [Rule 44(B)]

Preliminary Protective Conference (PPC) — 8-824 (A), 8-823 (D), 48 (D), 49, ICWA

- Usually occurs immediately before the PPH.
- Takes place in front of a neutral 3rd party rather than a judicial officer.
- Occurs within 5 to 7 business days from child's removal. The Court may grant one continuance that does not exceed 5 days [A.R.S. §8-824(A)].
- Indian Child: no hearing until 10 days after parent or Indian custodian and tribe is notified; the Court may grant up to 20 additional days to prepare for a hearing. This requirement may be waived and is not required for emergency proceedings [Rule 48(D)(9)(10); 25 U.S.C. §1912(a), §1922 (1978)].

Parent(s) or Indian custodian Present?

No → **Vacate Conference** → **Initial Dependency Hearing** 10

Yes

Occurs Simultaneously

- **Review Alleged Safety Threats**
- **Discuss Temporary Custody Orders**
- **Discuss Child Placement & Family/Sibling Time**
- **Discuss Case Plan Services**
- **Discuss Decisions to Contest or Submit**

Occurs Simultaneously

Preliminary Protective Hearing (PPH) 7

Preliminary Protective Conference (PPC): Required only in cases where a child was removed from a parent or guardian. The PPC is usually held before the preliminary protective hearing (PPH). The PPC provides an opportunity for parties to exchange information and resolve issues before appearing in front of a judicial officer.

Arizona Revised Statutes
Ariz. R. P. Juv. Ct.
Federal Legislation/Case Law
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Preliminary Protective Hearing: Part I

5 to 7 business days from removal; court may issue a continuance not to exceed 5 days [A.R.S. § 8-824(A)]

8-824 50

Preliminary Protective Hearing (PPH): The PPH is required only in cases where a child was removed from a parent or guardian. It is usually the first court hearing in the dependency process. During this hearing, "the Court shall determine whether continued temporary custody of the child is necessary and shall enter appropriate orders as to custody, placement, visitation, and the provision of services" [Ariz. R. P. Juv. Ct. Rule 50].

50

ICWA REGULATIONS

Disclosure by Parties 44(B)

Within 24 hours prior to the PPH [Rule 44(B)]

Parent(s) or Indian custodian Present?

No → **Parents Notified? Tribe Notified? (ICWA Only)** 8-823(E) 48(C)(D) ICWA

Parents' Whereabouts Known?

No → **Notify Secretary of Interior (ICWA Only)** 48(D)(9) ICWA 25 CFR → **Diligent Search & Service by Publication** 4.1(I)*

Indian Child: If the identity or location of parent or Indian custodian is unknown, notice by registered mail shall be given to the Secretary of the Interior who has 15 days to provide notice to parent or Indian custodian [Rule 48(D)(9); 25 U.S.C. § 1912(a) (1978); 25 C.F.R. § 23.11(c) (2016)].

Yes → **Serve Parent(s); Serve Tribe (ICWA Only)** → **Initial Dependency Hearing** 10 50(B)(7)

Parent(s) Served? Tribe Served? (ICWA only) 8-841 48(D) 50(B)(3) ICWA 25 CFR

Parents may be served at PPH [Rule 48(D)]. Indian child: tribe must be served in addition to parent or Indian custodian [Rule 48(D)(9); 25 U.S.C. § 1912(a) (1978); 25 C.F.R. §§ 23.11(a), 23.111 (2016)].

No → **Proceed *in absentia*** → **Finding of Dependency, if Evidence Warrants** 52(C)(6)(c) 55(C) 56(E)(6) → **Disposition Hearing** 15 56(B) → **Review Hearing** 16

May occur in conjunction with PPH [Rule 56(B)]

Rarely occurs

Indian Child: See burden of proof on p.14

Yes → **Inquire About & Determine Applicability of ICWA** 50(B)(1) ICWA 25 CFR

Inquire if any party has reason to believe child is an Indian child [25 U.S.C. § 1903(3) (1978)]; instruct every participant to update the Court if they receive information that the child is an Indian child [25 C.F.R. § 23.107(a) (2016)]. If the Court does not have sufficient evidence to determine the child is or is not an Indian child, the Court must treat the child as an Indian child 25 C.F.R. §§ 23.107 to 23.110, 23.2 (2016)].

Waive 10 Day Requirement? (ICWA Only) 48(D)(10)

No → **Initial Dependency Hearing** 10

Yes → **Appoint Counsel/Guardian *Ad Litem*** 8-221(B) 38 40 50(B)(2) → **Contest Temporary Removal?**

Yes → **Review or Set Review of Temporary Custody** 9 50(B)(6) 51

Requested only at PPH [Rule 50(B)(6), (C)(6)]

No → **Continue with PPH (Part II in Map)** 8

Arizona Revised Statutes

Ariz. R. P. Juv. Ct.

*4.1(I) is Ariz. R. Civ. P.

Federal Legislation/Case Law

Click to go to page

Preliminary Protective Hearing: Part II

5 to 7 business days from removal; court may issue a continuance not to exceed 5 days [A.R.S. § 8-824(A)]

8-824 50

Preliminary Protective Hearing (PPH): The PPH is usually the first court hearing in the dependency process. During this hearing, "the Court shall determine whether continued temporary custody of the child is necessary and shall enter appropriate orders as to custody, placement, visitation, and the provision of services" [Ariz. R. P. Juv. Ct. Rule 50].

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Arizona Revised Statutes
Ariz. R. P. Juv. Ct.
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ICWA REGULATIONS

Must make reasonable efforts (non-Indian child) or active efforts (Indian child) to prevent or eliminate the need for removal by providing remedial services and rehabilitation programs [Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. § 671(15); 45 C.F.R. § 1356.21(b) (2002); 25 U.S.C. § 1912(d) (1978); 25 C.F.R. §§ 23.2, 23.120 (2016)].

Placement: least restrictive setting [A.R.S. § 8-514(B); Strengthening Families Act (SFA), 42 U.S.C. § 675(5) (2006)]. ICWA placement preferences, in absence of good cause, are listed in A.R.S. § 8-514(C); 25 U.S.C. § 1915 (1978); 25 C.F.R. §§ 23.129 to 23.132 (2016)] .

Voluntary Consent Indian Child: if parent or Indian custodian voluntarily consents to foster care placement, consent will not be valid unless given more than 10 days after birth of child; given in writing and recorded before a judge and accompanied by the Juvenile Presiding Judge's certificate that the terms and consequences of consent were explained in detail and fully understood by the parent or Indian custodian [25 U.S.C. § 1913(a) (1978); 25 C.F.R. §§ 23.124 to 23.127].

Must make reasonable efforts to place siblings together and if that is not possible, to maintain frequent visitation or ongoing contact between siblings [A.R.S. § 8-824(G)].

Occurs Simultaneously

- **Review Form 1 & PPC Orders** — 8-824 (D), 50(B) (5)
- **Determine Whether Paternity was Established** — 52 (C)(5)
  - Rule 52 is incorporated into Rule 50(B)(7)
- **Discuss Efforts to Prevent Removal** — 8-825 (D), 8-829 (A)(3), 47.1 (D), AAC WA, 45 CFR, ICWA, 25 CFR
  - Indian Child in Out-of-Home Placement: make finding as to whether emergency removal or placement continues to be necessary to prevent imminent physical damage or harm to child. If the Court finds Indian child was improperly removed, child is to be returned immediately to parent or Indian custodian [25 C.F.R. §§ 23.113 to 23.114].
- **Review Efforts to Locate Parents/Relatives/Friends** — 8-824 (E)(7), FCA
  - 42 U.S.C. §671(29)]
- **Review Alleged Safety Threats & Child Well-Being** — 8-825 (B)
- **Discuss Child & Sibling Placement** — 8-514 (B), 8-824 (G), 8-829 (A)(2), 47.1 (B), SFA, Case Law, ICWA, 25 CFR
  - *Antonio P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 402, 5, ¶ 1, 187 P.3d 1115, 403 (App. 2008) does not mandate placing a child with a person with an acceptable higher preference if the Court finds it in the child's best interest to be placed with some with a lower preference.
- **Propose Requirements for Family/Sibling Time** — 8-824 (G), Case Law
  - A parent may appeal an order of visitation rights [*In re Maricopa Cnty. No. JD-5312*, 178 Ariz. at 372, 873 P.2d at 710]
- **Review Proposed Case Plan (Services)** — 8-846 (D), 50(B) (8)(9), 45 CFR
  - 45 C.F.R. § 1356.21(b)(3) (2014)

Contest Dependency?

- **Yes** → Set Mediation 12 → Set Pretrial Conference 13 → Set Dependency Adjudication Hearing 14
- **No** → Understands & Knowingly, Intelligently, & Voluntarily Waives Rights — 50(B) (7), 52(C) (6)(a), 55 (D)(1), ICWA, 25 CFR
  - Rule 52 is incorporated into Rule 50(B)(7); 25 U.S.C. § 1913 (1978); 25 C.F.R. §§ 23.124 to 23.127 (2016)]

Proceed with Dependency Adjudication Hearing 14 — 55 (C), 56(C) (E)

May occur in conjunction with PPH [Rule 56(B)

Set or Conduct Disposition Hearing 15 — 56(B) → Set Review Hearing 16 → Set/Affirm Permanency Hearing 17

Indian child: See Burden of Proof on p.14

Dependency Adjudication Hearing

8-842 (C) | 8-844 | 55 | Case Law

Completed within 90 days after service of the dependency petition; may be extended up to 30 days for extraordinary cases [A.R.S. § 8-842(C); Rule 55(B)].

Dependency Adjudication Hearing: the purpose is to determine whether allegations of dependency are supported by a preponderance of evidence (non-Indian child) or clear and convincing evidence (Indian child). At this point, the Court may or may not make a determination of dependency-that DCS has legal custody of the child. Although dependency may have been found, parent(s) still have the opportunity to participate in services with the hopes of being reunified with their child in the future. It is not until later in the dependency process, if at all, that the parent-child relationship may be legally terminated at the termination adjudication hearing.

ICWA REGULATIONS

Disclosure — 44 (B)

Inquire About & Determine Applicability of ICWA — ICWA | 25 CFR

25 U.S.C. §1903(4); 25 C.F.R. §23.107-23.110, §23.2

Parent(s) or Indian Custodian Present?

- No → **Ensure Parties were Properly Notified & Proceed *in absentia*** — 8-844 (F) | 55(D) (2) | ICWA | 25 CFR

  25 U.S.C. § 1912(a) (1978); 25 C.F.R. § 23.11 (2016)

  While mandatory and directory timelines are meant to be followed, there are no consequences - "such as rendering the tardy determination void or depriving the Court of jurisdiction- for failing to meet the deadlines imposed." [*Joshua J. v. Ariz. Dep't of Econ. Sec.*, 230 Ariz. 417, ¶ 18, 286 P.3d 166, 423 (App. 2012)].

- Yes → **Advise Parent(s) of Rights & Purpose of Hearing**

Admission/No Contest?

- Yes → **Understands & Knowingly, Intelligently & Voluntarily Waives Rights** — 8-843 (C) | 55(D) (1) | ICWA | 25 CFR

  25 U.S.C. §1913; 25 C.F.R. §23.124-23.127

- No → **Presentation of the Case/ Evidence** — 8-237 | 8-844 | 45 | 55(C) (D)

  Expert witness requirements listed in 25 C.F.R. § 23.122 (2016); testimony need not parrot the language of the statute nor possess special knowledge of Indian life, so long as the expert testimony addresses the issue that continued custody is likely to result in emotional or physical harm; expert testimony limited to past harm cannot suffice [*Steven H./ Tammy H. v Ariz. Dep't of Econ. Sec.*, 218 Ariz. 566, ¶ 19, 190 P.3d 180, 185 (App. 2008)].

Occurs Simultaneously

Testimony of Qualified Expert Witness (ICWA Only) — 55(C) | ICWA | 25 CFR | Case Law

Discuss Active Efforts to Prevent Removal (ICWA Only) — 55(C) | ICWA | 25 CFR

Indian Child Active Efforts: Petitioner must satisfy that active efforts have been made to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family and those efforts have proven unsuccessful [Rule 55(C); 25 U.S.C. §1912(d); 25 C.F.R. §23.2, §23.120].

Discuss Placement Preferences — SFA | 8-514 (B) | ICWA | 25 CFR

Least restrictive placement [A.R.S. § 8-514(B); Strengthening Families Act (SFA), 42 U.S.C. §675(5) (2006)]. ICWA placement preferences, in absence of good cause, are listed in A.R.S. § 8-514(C); 25 U.S.C. § 1915 (1978); 25 C.F.R. §§ 23.129 to 23.132].

Non-Indian Child Burden of Proof: The court finds by a preponderance of evidence that the allegations in the petition are true and determines the child is now in the custody of DCS [A.R.S. § 844(C)(1); Rule 55(C)]. The court will make findings as to each parent [A.R.S. § 8--844(C)(1)(a)(D)].

Indian Child Burden of Proof: The Court finds by clear and convincing evidence, including testimony from a qualified expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child [Rule 55(C); 25 U.S.C. § 1912(e) (1978); 25 C.F.R. §§ 23.121 to 23.122].

Or

No Finding of Dependency/ Case Dismissed — 8-844 (C)(2) | 55(E) (2)

The Court does not find by a preponderance of the evidence that the allegations in the petition are true [A.R.S. § 8-844(C)(2)].

Or

Finding of Dependency (By Parent or Indian Custodian) — 8-201 | 8-844 (C)(D) | 55(E) (3) | ICWA | 25 CFR

Parent may Appeal Court Decision, if desired — 34 | 8-235 | 104 (A)

15 days to appeal [Rule 104(A)]

Set or Conduct Disposition Hearing — 15 | 8-844 (E) | 55(E) (4) | 56(B)

May occur in conjunction with adjudication hearing [Rule 56(B)]

Set Review Hearing — 16

Set/Affirm Permanency Hearing — 17

Arizona Revised Statutes
Ariz. R. P. Juv. Ct.
Federal Legislation/Case Law
Click ▽ to go to page

Review Hearing

At least every 6 months; often held in conjunction with permanency hearings [A.R.S.§ 8-847(A); 42 U.S.C. § 675(5)(B) (2006)].

8-847 | 58 | ASFA

Review Hearing: Also known in Maricopa County as a "report and review," is held to review the progress of the parties in achieving the case plan [and permanency] goals and determine whether the child continues to be dependent" [Ariz. Juv. Ct. 58(A)]. 58 (A)

Arizona Revised Statutes
Ariz. R. P. Juv. Ct.
Federal Legislation/Case Law
Click to go to page

Reports & Evidence — 45 (B) | 58 (C)(E)

Petitioner shall provide at least 15 days prior to the review hearing. Report requirements are listed in Rules 45(B) and 58(C).

Notice of Right to Participate — 58 (B) | 8-847 (B)

Motion for Evidentiary Hearing?

- Yes → **Set Separate or Concurrent Evidentiary Hearing** — 58 (D)

  Many contested issues are resolved at uncontested review hearings without motions for evidentiary hearings.

- No

25 U.S.C. § 1903(4) (1978); 25 C.F.R. §§ 23.107 to 23.110, 23.2 (2016)

Occurs Simultaneously

- **Inquire About & Determine Applicability of ICWA** — ICWA | 25 CFR
- **Advise Parent(s) of their Rights & Purpose of Hearing**
- **Review Child Safety, Well-Being, & Edu. Stability** — 8-847 (D)
- **Review Placement** — 8-514 (B) | 58 (F)(3) | ICWA | 25 CFR

  Absent good cause, placement preferences for non-Indian children are listed in A.R.S. § 8-514 and § 8-845; and listed in A.R.S. § 8-514(C); 25 U.S.C. § 1915 (1978); 25 C.F.R. §§ 23.129 to 23.132 (2016) for Indian children.

- **Discuss Possible Relative Placement** — 8-514 (B) | 8-847 (E) | 47.1 (C)(E)
- **Consider Foster Care Review Board Report** — 8-514 (B) | 8-516 | 58 (E)(3)
- **Discuss Efforts Towards Reunification/Permanency Plan** — 8-847 (C) | 47.1 (F)(G) | 58 (E) | AAC WA | ICWA

  Determine whether a parent of a child under 3yrs at the time of removal has substantially neglected or willfully refused to participate in reunification services [A.R.S. § 8-847(C); Rule 58(E)(4)].

  Determine whether the child continues to be dependent by a preponderance of evidence (non-Indian child) or clear and convincing evidence (Indian child) [Rule 58(F)(1)(7); 25 U.S.C. § 1912(e) (2016)].

- **Review Family/Sibling Time**

  42 U.S.C. § 671(a)(15) (2006)

- **Modify and/or Approve Permanency Plan** — 47.1 (F)
- **Modify Case Plan, if Applicable** — ASFA SFA

  Case plans must be developed within 60 days of removal. Requirements are outlined in the [Adoption and Safe Families Act (ASFA) of 1980, 42 U.S.C. § 675(1) (2006)]; additional requirements for youth over 14 and/or youth with independent living as their permanency plan [Preventing Sex Trafficking and Strengthening Families Act, 42 U.S.C. § 675(5)(C)(iv), (H), (I) (2006)]

Or

- **Court Finds Child is Not Dependent/Dismiss Case** — 58 (B)(F)

  Provide notice of the sibling information exchange program [Rule 58(B)(2)]

Or

- **Child Continues to be Dependent** — 58 (F)(2)

And/Or

- **Affirm/Modify Permanency Hearing** — 17 | 58 (F)(5)
- **Set Next Review Hearing** — 8-847 (A) | 58 (F)(4)

ICWA REGULATIONS

Indian Child Welfare Act of 1978 (ICWA)

In 1978, Congress enacted the Indian Child Welfare Act (ICWA), 25 U.S.C. 1901 *et seq.,* to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes" [25 U.S.C. § 1902]. In 2016, the Bureau of Indian Affairs (BIA) issued binding regulations in 25 C.F.R. Part 23 to "ensure ICWA is applied in all states consistent with the Act's express language, Congress's intent in enacting the statute, and to promote the stability and security of Indian tribes and families" [25 C.F.R. § 23.101].

Definition of an "Indian Child"

At the start of every proceeding it is best practice to inquire if the child is subject to ICWA and to instruct every participant to update the Court if they receive information that the child is an Indian child as defined by the Act: "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe" [25 U.S.C. § 1903(4)]. If ICWA status is undetermined but the Court has reason to know that the child is an Indian child, the Court must apply ICWA until it is determined on the record that the child does not meet the definition of an Indian child [25 C.F.R. § 23.107(b)].

Exclusive Jurisdiction

"An Indian tribe shall have jurisdiction exclusive as to any state over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, [or where an Indian child is ward of a tribal court], except where such jurisdiction is otherwise vested in the state by existing federal law" [25 U.S.C. § 1911]. Unless petitioned by the parent, the Indian custodian, or the Indian child's tribe, state may have jurisdiction. However, "the Indian child's tribe shall have a right to intervene at any point in the proceeding" [25 U.S.C. § 1911(c); 25 C.F.R. §§ 23.115 to 23.119]. **Click on the buttons below for more information.**

ICWA Legislation, Regulations, & Guidelines

- **ICWA Text (25 U.S.C. §§ 1901-63)**
- **ICWA Proceedings, Final Rule** 25 CFR Part 23; BIA on June 14, 2016
- **Revised 2015 Guidelines for State Court Indian Child Custody Proceedings**

ICWA Toolkits & Trainings

- **Bureau of Indian Affairs Free ICWA Toolkit & Trainings**
- **"A Practical Guide to the Indian Child Welfare Act"** Native American Rights Fund, 2011
- **Online ICWA Training by CASA of Arizona (free)**

ICWA Resources

- **Arizona Judicial Branch ICWA Committee**
- **National Indian Child Welfare Association (NICWA)**
- **Native American Rights Fund: ICWA Defense Project**

Resources

Click on the boxes below to access resources.

Policies, Procedures, and Best Practices

- **Arizona Revised Statutes**
  Title 8 – Child Safety
- **Arizona Court Rules**
  Westlaw
- **Arizona Department of Child Safety:**
  Policy and Procedure Manual
- **Enhanced Resource Guidelines, 2016**
  National Council of Juvenile and Family Court Judges

Partner Organizations

- **Maricopa County Superior Court,**
  Juvenile Department
- **Office of Legal Defender**
  Parent Representation, Dependency Matters
- **Office of Legal Advocate**
  Child Representation, Dependency Matters
- **Office of Public Advocate**
  Parent or Child Representation, Dependency Matters
- **Office of Public Defense Services**
  Contract Counsel
- **Court Appointed Special Advocates**
  Child Advocate
- **Arizona Administrative Office of the Courts**
- **Arizona Department of Child Safety**
- **Casey Family Programs**

Resources

- **Dependency Handbook for Parents and Guardians**
  Arizona Courts
- **Dependency Handbook for Parents-SPANISH Version**
  Arizona Courts
- **Law Library Resource Center**
  Juvenile Case Forms
- **AzCourtHelp.org**
  Assists with legal questions
- **Child Safety: A Guide for Judges and Attorneys**
  ABA and ACTION for Child Protection, Inc.

Glossary

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A B C D E F G H I J K L M
N O P Q R S T U V W X Y Z

A

Abandoned	"The failure of the parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision. Abandonment includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child. Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment" [A.R.S. § 8-201(1)].	8-201 (1)
Abuse	A.R.S. § 8-201(2) defines 'abuse' as "the infliction or allowing of physical injury, impairment of bodily function or disfigurement, or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual who has the care, custody and control of a child. Abuse includes: (a) Inflicting or allowing sexual abuse [A.R.S. § 13-1404], sexual conduct with a minor [A.R.S. § 13-1405], sexual assault [A.R.S. § 13-1406], molestation of a child [A.R.S. § 13-1410], commercial sexual exploitation of a minor [A.R.S. §13-3552], sexual exploitation of a minor [A.R.S. § 13-3553], incest [A.R.S. § 13-3608], or child prostitution [A.R.S. § 13-3212]; (b) Physical injury that results from permitting a child to enter or remain in any structure or vehicle in which volatile, toxic or flammable chemicals are found or equipment is possessed by any person for the purpose of manufacturing a dangerous drug as defined in section [A.R.S. § 13-3401]; or (c) Unreasonable confinement of a child."	8-201 (2) 13-1404 13-1405 13-1406 13-1410 13-3552 13-3553 13-3608 13-3212 13-3401
Active Efforts (ICWA)	The Final Rule outlining Indian Child Welfare Act Proceedings [25 C.F.R. § 23.2] defines active efforts as "affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Where an agency is involved in the child-custody proceedings, active efforts must involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. Examples of active efforts are listed in 25 C.F.R. § 23.2.	25 CFR

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Adoption Assistance & Child Welfare Act of 1980	Establishes a program of, and authorizes federal funding to states for adoption and foster care assistance for children under Title IV-B and XX of the Social Security Act (Aid to Families with Dependent Children and Aid to Child Welfare Services).	AAC W
Adoption Hearing	Hearing in which the petitioner proves by a preponderance of evidence that the petitioner is a fit and proper person to adoption and that it is in the best interests of the child to be adopted [Ariz. R. P. Juv. Ct. 84(B)].	84 (B)
Adoption & Safe Families Act of 1997 (ASFA)	Amended the 1980 Child Welfare Act (P.L. 96-272) to promote timely permanency planning and placement for children in foster care and the importance of children's safety and well-being during the permanency process. The Act was requires: (a) "reasonable efforts" be made to prevent the removal of a child from his or her home and to make it possible for a child to return home; (b) states establish reunification and preventive programs for all in foster care; (c) states place children in the least restrictive setting that is in the best interests of the child; and (d) courts review the status of child in out-of-home placement every six months to determine what is in the best interests of the child [42 U.S.C. § 675].	ASFA
Aggrieved	Only an aggrieved party in a juvenile court proceeding may appeal a final order of the juvenile court [A.R.S. § 8-235(A); Ariz. R. P. Juv. Ct. 103(A)]. "To qualify as an aggrieved party, the judgement must operate to deny the party some personal or property right or to impose a substantial burden on the party" [*Pima County Juvenile Action No. B-9385*, 138 Ariz. 291, 293, 674 P.2d 845, 847 (App. 1983)]. A parent who has been adjudicated or a child found dependent are examples of aggrieved parties. However, a parent may not file an appeal for the child's other parent who has been adjudicated [*Maricopa County Juvenile Action No. JS-5894*, 145 Ariz. 504, 408, 701 P.2d 1213, 1216 (App. 1985)].	8-235 (A) 103 (A) Case Law Case Law
Another Planned Permanent Living Arrangement (APPLA)	Another planned permanent living arrangement (APPLA) was established by the Adoption and Safe Families Act of 1997 (P.L. 105-89) to be the least preferred permanency option for children. The Arizona Department of Child Safety (DCS) will consider APPLA or long-term foster care "only when the permanency options of adoption and guardianship are not in the best interests of the child, the child is expected to remain in out-of-home care at least until the age of majority, and the foster home provider has made a commitment to continue as a permanent supportive adult in that child's life" [Chapter 3: Section 2.5 Long Term Foster Care, Arizona Department of Child Safety: Policy and Procedure Manual].	ASFA DCS
Appeal	Review of a judgement or order of a trial court or administrative tribunal, in this case a decision made by Maricopa County Superior Court, Juvenile Department. "The Appeals Court hears no witnesses and does not determine facts. Its review is generally limited to alleged errors of law or fact determinations that allegedly are not supported by any evidence. The Court of Appeals can only consider appeals within its jurisdiction, as prescribed by the Arizona Legislature. The Court can consider only those judgements, orders, and other matters that, by statue, are appealable. Thus, not every order or decision can be appealed" [Arizona Court of Appeals, Division Two, Frequently Asked Questions: What is an appeal?].	Div. 2 Web
Arizona Court of Appeals, Division One	Division One, located in Phoenix, resolves appeals from eight of Arizona's fifteen counties: Apache, Coconino, La Paz, Navajo, **Maricopa**, Mohave, Yavapai, and Yuma. The Court of Appeals decides appeals in a wide variety of substantive areas, including juvenile. "With few exceptions, every decision is made by three judges after they meet to consider the case and hear any necessary oral argument. Each decision is memorialized in writing, and options and memorandum decisions are posted on the court's website" [Arizona Court of Appeals Division One 2015: The Year in Review, p.3].	Div. 1 Web

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Arizona Court of Appeals, Division Two	Division Two, located in Tucson, resolves appeals from Cochise, Gila, Graham, Greenlee, Pima, Final, and Santa Cruz Counties. Div. 2 Web
Arizona Superior Court in Maricopa County	Arizona's Superior Court has jurisdiction over cases and proceedings in which exclusive jurisdiction is not vested by law in another court. For example, the Superior Court oversees criminal, civil, family, juvenile, and probate matters [Ariz. CONST. art. IV, § 14]. Art. IV (14)
Arizona Supreme Court	The Arizona Supreme Court has administrative supervision over all state courts [Ariz. CONST. art. VI, § 3 of the Arizona Constitution]. The powers of the Arizona Supreme Court are outlined in article VI sections 5 and 14 of the Arizona Constitution, and include appellate jurisdiction in juvenile matters. Art. VI(3) Art. VI(5) Art. VI(14)
Attorney General's Office	The Attorney General's Office (AGO) represents and provides legal advice to most state agencies. The Child and Family Protection Division provides legal services to the Department of Child Safety (DCS) by representing its claim for child dependency and ensuring the safety of the child. AGO

B

C

Case Plan	The Social Security Act, Title IV-E [42 U.S.C. § 675(1)] defines a 'case plan' as any written document which includes at least: (a) a description of the safety and appropriateness of the child's placement; (b) a plan for assuring that the child receives safe and proper care (c) plan for services for parent(s), child(ren), and foster parent(s) in order to improve the conditions in the parents' home and facilitate return of the child or permanent placement of the child; (d) filing of the health and education records of the child; (e) transition plan from foster care to independent living for children ages sixteen or older; (f) steps taken to find an adoptive family or other permanent living arrangement for the child; and (g) plan for ensuring educational stability of the child while in foster care. SSA
Child Custody Proceeding (ICWA)	The Final Rule on Indian Child Welfare Act Proceedings [25 C.F.R. § 23.2] defines child custody proceedings as any action other than an emergency proceeding that may culminate in one of the following outcomes: foster care placement, termination of parental rights, pre-adoptive placement, adoptive placement. 25 CFR