

COMMITTEE ON SUPERIOR COURT

Date Action Required:	Type of Action Required:	Subject:
May 20, 2011	<input type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input checked="" type="checkbox"/> Other	CHILD CUSTODY STATUTE REVISION

FROM: Kay Radwanski

PRESENTER(S): Steve Wolfson, Esq.

DISCUSSION: In October 2008, the Domestic Relations Committee (a legislative committee) established the Ad Hoc Custody Workgroup. The workgroup was subsequently charged with the task of rewriting Arizona's current child custody statutes (ARS 25-401 et. seq.). The workgroup met for more than a year and created a draft that changed some parts of the current statute dramatically while leaving other sections intact. In early March 2011, the AHCW forwarded its draft to the DRC's Substantive Law/Court Procedures Workgroup, which has been reviewing and modifying the draft. This workgroup intends to provide the Domestic Relations Committee, at the June 3, 2011, meeting, a full status report and unveiling of the work-in-progress. Stakeholders have included judges, attorneys, Conciliation Court professionals, mental health professionals, and parents. The relevance of domestic violence and child custody has been discussed frequently in both the AHCW and the SL/CP workgroups. Debate continues about what language about DV should be included in the statute. Once the DRC receives the draft, it will continue to work with it, and if a sponsor is located, a bill may be introduced in the Legislature in January 2012.

RECOMMENDED MOTION: Comment and review.

1 Chapter 4
2 Minor Children: Parental Decision-Making,
3 Parenting Time AND Relocation
4

5 Article 2. Introduction & Preliminary Requirements

6 25-420. Public Policy

7 25-421. Jurisdiction

8 25-422. Definitions

9 25-423. Mandatory Preliminary Inquiry: Special Circumstances

10 25-424. Specific Findings Required
11

12 Article 3. Parenting Plans, Decision-Making AND

13 Parenting Time: Cases Without Special Circumstances

14 25-430. Parenting Plans

15 25-431. Parental Decision-Making: Shared, Final or Sole

16 25-432. Parenting Time
17

18 Article 4. Special Circumstances

19 25-XXX DEFINITIONS

20 25-440. Intimate Partner Violence AND Child Abuse: Basic Principles

21 25-441. Intimate Partner Violence AND Child Abuse: Parental Decision-
22 Making

23 25-442. Intimate Partner Violence AND Child Abuse: Parenting Time

24 25-443. Intimate Partner Violence AND Child Abuse: Assorted Provisions

25 25-444. Substance Abuse

26 25-445. Dangerous Crimes Against Children

27 25-446. Violent & Serial Felons

28 25-447. Conflicting Presumptions or Mandatory Rules
29

30 Article 5. Third Parties

31 25-450. Third Party Rights: Decision-Making and Visitation by

32 Grandparents, Parental Figures AND Other Third Parties
33

34 Article 6. Temporary Orders, Decree Modification AND Relocation of a Child

35 25-460. Temporary Orders

36 25-461. Modification of an Existing Decree

37 25-462. Relocation of a Child
38

39 Article 7. Records AND Sanctions

40 25-470. Access to Records

41 25-471. Sanctions for Misconduct
42

43 Article 8. Miscellaneous

44 25-480. Statutory Priority

45 25-481. Agency Supervision

- 1 25-482. Identification of Primary Caretaker
- 2 25-483. Fees AND Resources
- 3 25-484. Child Interviews by Court AND Professional Assistance
- 4 25-485. Investigations AND Reports
- 5 25-486. Child Support AND Parenting Time Fund
- 6 25-487. Domestic Relations Education AND Mediation Fund

7
8
9
10 **ARTICLE 2.**
11 **INTRODUCTION AND PRELIMINARY REQUIREMENTS**

12
13 **25-420. Public policy**

14 Absent evidence to the contrary, it serves a child’s best interests for both legal
15 parents to:

- 16 A. Share parental decision-making concerning their child;
- 17 B. Have substantial, frequent, meaningful and continuing parenting
18 time with their child;
- 19 C. Develop a mutually agreeable parental decision-making and
20 parenting time plan.

21
22 **AD HOC CUSTODY WORKGROUP NOTE**

23 This section descends from 2010 Senate bill 1314, enacted into law at A.R.S. § 25-103, and
24 reaffirms its core principles relevant to children here, while leaving A.R.S. § 25-103(a) itself intact at its
25 current location, due to its broader application to families that do not have shared children.

26
27 **25-421. Jurisdiction [Former A.R.S. § 25-401]**

28 A. Before conducting any proceeding concerning parental decision-
29 making or parenting time, including any proceeding scheduled to decide the
30 custody or visitation of a non-parent, all Arizona courts shall first confirm their
31 authority to do so to the exclusion of any other state, Indian tribe or foreign
32 nation by complying with the Uniform Child Custody Jurisdiction and
33 Enforcement Act (‘UCCJEA’), at ARIZONA REVISED STATUTES SECTIONS 25-1001
34 TO 25-1067, Parental Kidnapping Prevention Act (‘PKPA’) at 28 UNITED STATES
35 CODE SECTION 1738A, and any applicable international law concerning the
36 wrongful abduction or removal of children.

37 B. THE FOLLOWING PERSONS MAY REQUEST PARENTAL DECISION-MAKING
38 OR PARENTING TIME UNDER THE FOLLOWING CIRCUMSTANCES:

- 39 1. BY A PARENT, IN ANY PROCEEDING FOR MARITAL DISSOLUTION, LEGAL
40 SEPARATION, PATERNITY, OR MODIFICATION OF AN EARLIER DECREE.
- 41 2. BY A PERSON OTHER THAN A PARENT, BY FILING A PETITION FOR
42 THIRD-PARTY RIGHTS UNDER SECTION 25-450 IN THE COUNTY IN WHICH THE
43 CHILD PERMANENTLY RESIDES.

44
45
46 **AD HOC CUSTODY WORKGROUP NOTE**

1 This section makes no substantive changes to old A.R.S. § 25-401. Rather, it explicitly cites the
2 two most relevant jurisdictional statutes by name and number to facilitate the immediate assessment of
3 Arizona’s right to adjudicate decision-making responsibility and parenting time – particularly when such
4 the resulting decree may conflict with an existing order issued by another State or Nation.

5
6 **25-422. Definitions** [Former A.R.S. § 25-402]

7 1. “In loco parentis” means a person who has been treated as a parent
8 by the child and who has formed a meaningful parental relationship with the
9 child for a substantial period of time.

10 2. “Legal parent” means a biological or adoptive parent whose parental
11 rights have not been terminated. It does not include a person whose paternity
12 has not been established under state law pursuant to sections 25-812 and 25-
13 814.

14 3. “Parental decision-making” means the legal right and responsibility
15 to make major life decisions affecting the health, welfare and education of a
16 child, including - but not limited to - schooling, religion, daycare, medical
17 treatment, counseling, commitment to alternative long-term facilities,
18 authorizing powers of attorney, granting or refusing parental consent where
19 legally required, entitlement to notifications from third parties on behalf of
20 the child, employment, enlistment in the armed forces, passports, licensing
21 and certifications, and blood donation. For purposes of interpreting or
22 applying any international treaty, federal law, uniform code or other state
23 statute, “parental decision-making” shall mean the same as “legal custody.”

24 (A) “Shared parental decision-making” means that both parents equally
25 share the burdens and benefits of decision-making responsibility, with neither
26 parent possessing superior authority over the other. Parents granted this
27 authority are expected to sensibly and respectfully consult with each other
28 about child-related decisions, and attempt to resolve disputes before seeking
29 court intervention.

30 (B) “Final parental decision-making” means one parent is ultimately
31 responsible for child-related decisions, but must still reasonably consult with
32 the other before exercising this authority.

33 (C) “Sole parental decision-making” means one parent is exclusively
34 responsible for child-related decisions, and does not require any level of
35 consultation with the other before the authority is exercised.

36 4. “Parenting time” refers to a parent’s physical access to a child at
37 specified times, and entails the provision of food, clothing and shelter, as well
38 positive role-modeling and active involvement in a child’s activities, while the
39 child remains in that parent’s care. A person exercising parenting time is
40 expected to make routine decisions regarding the child’s care that do not
41 contradict the major life decisions made by a parent vested with parental
42 decision-making authority.

43 5. “Visitation” involves the same rights and responsibilities as parenting
44 time when exercised by a non-parent.

1 This amendment explains terms that were never defined in our existing law, or that have now been
2 added through the new bill. Most are self-explanatory and require no elaboration. Others are discussed
3 as follows:

4 The definition of “batterer’s intervention program” draws almost verbatim from existing Ariz. Admin.
5 Code Title 9, Ch. 20, Sec. 1101 (which regulates the licensing of treatment programs for convicted DV
6 offenders) – with the exception of A.R.S. § 25-422(1)(e), which was added to highlight the importance of
7 requiring a batterer to disclose records that reveal the extent to which s/he learned anything from the
8 experience.

9 “Conviction” is broadened to include all criminal court outcomes where factual guilt was established
10 either because: (1) the trier of fact was convinced of that guilt beyond a reasonable doubt (i.e. bench or
11 jury trial, or (2) the defendant agreed that a factual basis existed for a conviction, even though s/he did
12 not want to actually admit responsibility (i.e. nolo contendere plea).

13 “Deferred prosecution and diversion” is added to allow the court to consider prior proceedings
14 involving intimate partner violence that resulted in dismissal of the charges based on an agreement that
15 the offender could earn dismissal or avoid prosecution by completing counseling or education.

16 “Intimate partner violence” now adds anticipatory crimes, and expressly excludes violence
17 legitimately inflicted in self-defense.

18 The definitions of “strangulation” and “suffocation” are copied almost verbatim from new A.R.S. § 13-
19 1204(B)(1), which elevated both behaviors to felonious aggravated assault. They have significance in the
20 definition of “coercive control” at Sec. 106(E)(17).

21 22 SL/CP WORKGROUP NOTE

23 Domestic violence definitions moved to Article 4 pursuant to the bill drafting conventions
24 outlined in the *Arizona Legislative Bill Drafting Manual 2011-2012*.

25
26 **25-423. Mandatory Preliminary Inquiry: Special Circumstances [New]**
27 Before evaluating the best interests of the child and deciding parental
28 decision-making and parenting time, the court shall first determine whether
29 special circumstances exist under SECTIONS 25-440 through 25-443 (Intimate
30 Partner Violence & Child Abuse), SECTION 25-444 (Substance Abuse), SECTION
31 25-445 (Dangerous Crimes Against Children) or SECTION 25-446 (Violent & Serial
32 Felons). If so, the court shall enter parental decision-making and parenting
33 time orders in accordance with those statutes. If not, the court shall proceed
34 directly to the general provisions of SECTIONS 25-430 through 25-432 to devise
35 a parenting plan that allocates parental decision-making and parenting time
36 consistent with the child’s best interests.

37 38 AD HOC CUSTODY WORKGROUP NOTE

39 This new addition constitutes the heart of the “decision-tree” philosophy. The goal is to openly require
40 the court to evaluate special circumstances first, and only then engage the generic “best interests” test if
41 none of those circumstances apply. Despite arbitrary (and rather confusing) sequencing in the current
42 statute, existing case law already says much the same thing. See *In re Marriage of Hurd*, 223 Ariz. 48, 219
43 P.3d 258, 261 (App. 2009) (“when the party that committed the act of violence has not rebutted the
44 [domestic violence] presumption ... the court need not consider all the other best-interest factors in A.R.S.
45 § 25-403.A”).

46
47
48 **25-424. Specific Findings Required [New]**

1 In any evidentiary hearing involving parental decision-making, parenting time
2 or third-party rights, including both temporary orders and trial, the court shall
3 make specific findings on the record about all relevant factors and reasons for
4 why the judicial decision serves a child's best interests. The findings shall
5 include a description of any special circumstances established by the evidence,
6 and an explanation for the court's decision in light of the controlling rules.

7
8 ARTICLE 3.

9 PARENTING PLANS, DECISION-MAKING AND PARENTING TIME:
10 CASES WITHOUT SPECIAL CIRCUMSTANCES

11
12 **25-430. Parenting Plans** [Former A.R.S. § 25-403.02]

13 A. Consistent with the child's physical and emotional well-being, the
14 court shall adopt a parenting plan that provides for both parents to share
15 parental decision-making concerning their child and maximizes their respective
16 parenting time. The court shall not prefer one parent over the other due to
17 gender.

18 B. If a child's parents cannot agree to a plan for parental decision-
19 making or parenting time, each shall submit to the court a detailed, proposed
20 parenting plan.

21 C. Parenting plans shall include at least the following:

22 1. A designation of the parental decision-making plan as either shared,
23 final or sole, as defined in SECTION 25-422(9).

24 2. Each parent's rights and responsibilities for making decisions
25 concerning the child in areas such as education, health care, religion,
26 extracurricular activities and personal care.

27 3. A plan for communicating with each other about the child, including
28 methods and frequency.

29 4. A detailed parenting time schedule, including holidays and school
30 vacations.

31 5. A plan for child exchanges, including location and responsibility for
32 transportation.

33 6. In shared parental decision-making plans, a procedure by which the
34 parents can resolve disputes over proposed changes or alleged violations, which
35 may include the use of conciliation services or private mediation.

36 7. A procedure for periodic review of the plan.

37 8. A statement that each party has read, understands and will abide by
38 the notification requirements of SECTION 25-445(B) pertaining to access of sex
39 offenders to a child.

40 D. The parties may agree to any level of shared or sole parental
41 decision-making without regard to the distribution of parenting time.
42 Similarly, the degree of parenting time exercised by each parent has no effect
43 on who exercises parental decision-making.
44

1 25-431. Parental Decision-Making; Shared, Final or Sole [Former A.R.S. §
2 25-403.01]

3 A. The court shall determine parental decision-making in accordance
4 with the best interests of the child. The court shall consider the relevant
5 findings made in accordance with section 25-432, and all of the following:

6 1. The agreement or lack of an agreement by the parents regarding the
7 parental decision-making plan.

8 2. Whether a parent's lack of agreement is unreasonable or influenced
9 by an issue not related to the best interests of the child.

10 3. Whether an award of final or sole parental decision-making would be
11 abused.

12 4. The past, present and future willingness and ability of the parents to
13 cooperate in decision-making about the child.

14 5. Whether the parental decision-making plan is logistically possible.
15

16 25-432. Parenting Time [New]

17 A. The court shall determine parenting time in accordance with the best
18 interests of the child, and consider all factors relevant to the child's physical
19 and emotional welfare, including:

20 1. The historical, current and potential relationship between the parent
21 and the child.

22 2. The mental and physical health of all individuals involved.

23 3. The child's adjustment to home, school and community.

24 4. The interaction and relationship between the child and the child's
25 siblings and any other person who may significantly affect the child's best
26 interest.

27 5. The child's own viewpoint and wishes, if possessed of suitable age
28 and maturity, along with the basis of those wishes.

29 6. Whether one parent is more likely to support and encourage the
30 child's relationship and contact with the other parent. This paragraph does not
31 apply if the court determines that a parent is acting in good faith to protect
32 the child from witnessing or suffering an act of intimate partner violence or
33 child abuse.

34 7. The feasibility of each plan taking into account the distance between
35 the parents' homes, the parents' and/or child's work, school, daycare or other
36 schedules, and the child's age.

37 8. Whether a parent has complied with the educational program
38 prescribed in SECTIONS 25-351 through-353.
39

40 ARTICLE 4.
41 SPECIAL CIRCUMSTANCES
42

43 25-XXX. DEFINITIONS

44 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1 1. "Batterer's intervention program" means an individual or group
2 treatment program for intimate partner violence offenders that:
3 (a) emphasizes personal responsibility;
4 (b) clearly identifies intimate partner violence as a means of asserting
5 power and control over another individual;
6 (c) does not primarily or exclusively focus on anger or stress
7 management, impulse control, conflict resolution or communication skills;
8 (d) does not involve the participation or presence other family
9 members, including the victim or children; and
10 (e) preserves records establishing an offender's participation,
11 contribution and progress toward rehabilitation, irrespective of whether a
12 given session involves individual treatment or group therapy including multiple
13 offenders.

14 2. "Child abuse" means any of the following acts where the relationship
15 between the offender and victim qualifies under SECTION 13-3601(A)(5),
16 including any attempt, conspiracy or solicitation of another to commit such
17 act:

- 18 (a) Endangerment, as defined IN SECTION 13-1201.
- 19 (B) Threatening or intimidating, as defined IN SECTION 13-1202(A).
- 20 (C) Assault, as defined IN SECTION 13-1203(A).
- 21 (D) Aggravated assault, as defined IN SECTION 13-1204(A)(1) - (5).
- 22 (E) Child abuse, as defined IN SECTION 13-3623.

23 3. "Conviction" shall include guilty, "no contest" and Alford pleas, and
24 guilty verdicts issued by a trier of fact.

25 4. "Deferred prosecution" and "diversion" means any program offered
26 by a criminal court or government agency through which an alleged offender
27 avoids criminal prosecution by agreeing to pay a fine, participate in counseling,
28 or perform other remedial tasks in exchange for dismissal of one or more
29 pending charges or a promise by the state not to proceed with a complaint or
30 indictment.

31 5. "Intimate partner violence" means any act DEFINED IN SECTION 13-
32 3601(A), as well as any other act of physical or sexual violence constituting a
33 felony, where inflicted by a person against an intimate partner. This definition
34 also includes any attempt, conspiracy, or solicitation of another to commit
35 such act. It does not include any behavior that would constitute self-defense
36 or other legal justification as defined by 13-404 through 408.

37 6. "Intimate partners" means persons whose relationship with each
38 other qualifies PURSUANT TO SECTIONS 13-3601(A)(1), (2), (3) OR (6).

39 7. "Intimate partner violence" means any act AS DEFINED IN SECTION
40 13-3601(A), as well as any other act of physical or sexual violence constituting
41 a felony, where inflicted by a person against an intimate partner. This
42 definition also includes any attempt, conspiracy, or solicitation of another to
43 commit such act. It does not include any behavior that would constitute self-
44 defense or other legal justification as defined by SECTIONS 13-404 through 408.

1 8. "Intimate partners" means persons whose relationship with each
2 other qualifies PURSUANT TO SECTIONS 13-3601(A)(1), (2), (3) OR (6).

3 9. "Special circumstance" refers to conduct requiring application of one
4 or more mandatory rules PURSUANT TO SECTIONS 25-440 through 446.

5
6 SL/CP WORKGROUP NOTE

7 Domestic violence definitions moved to Article 4 pursuant to the bill drafting conventions outlined in the
8 *Arizona Legislative Bill Drafting Manual 2011-2012*.

9
10 **25-440. Intimate Partner Violence and Child Abuse: Basic Principles**

11 [Former A.R.S. § 25-403.03(B)]

12 A. Intimate partner violence is frequently characterized by an effort of
13 one parent to control the other through the use of abusive patterns of behavior
14 that operate at a variety of levels - emotional, psychological and physical. The
15 presence of this abusive dynamic will always be relevant to the question of
16 what decision-making or parenting time arrangement will serve the best
17 interests of any shared children.

18 B. The court shall always consider a history of intimate partner violence
19 or child abuse as contrary to the best interests of the child, irrespective of
20 whether a child personally witnessed a particular act of violence. When
21 deciding both parental decision-making and parenting time, the court shall
22 assign primary importance to the physical safety and emotional health of the
23 child and the non-offending parent.

24
25
26 AD HOC CUSTODY WORKGROUP NOTE

27 This section amends the legislative policy statement concerning intimate partner violence by
28 explicitly – and for the first time – recognizing controlling behavior as a primary motivator for classic
29 intimate partner violence. This is important because our current law makes no effort to discern what
30 prompted a given act of violence and what that portends for decision-making and parenting time in the
31 future. Second, the law clarifies that IPV disservices a child's best interests even when s/he did not
32 personally witness it. Generally accepted research has made this point for years, yet it may be
33 disregarded or discounted if the child was absent during an assault, with the thought that "it was just
34 between the two parents" or that "the offender is still a good father/mother even though s/he abused
35 the other parent."

36
37
38 **25-441. Intimate Partner Violence and Child Abuse: Parental Decision-**
39 **making**

40 [Former A.R.S. § 25-403.03(A), (D) and (E)]

41 A. Cases Where Parental Decision-Making Presumptively Disallowed. If
42 the court determines from a preponderance of the evidence that a parent has
43 previously committed any act of intimate partner violence against the other
44 parent, or child abuse against the child or child's sibling, then it shall not
45 award parental decision-making to the offending parent without proof that
46 such parent should still make major decisions for the child despite the proven
47 history of abuse or violence. The offending parent may submit this proof by

1 asking the court to consider the criteria listed in SUBSECTION (B). In that
2 event, the court shall also evaluate whether the offending parent has
3 nevertheless failed to prove his or her suitability for parental decision-making
4 by considering each of the criteria listed in SUBSECTION(C).

5 B. How a Confirmed Offender May Prove Suitability for Parental
6 Decision-Making. To determine if the offending parent may exercise parental
7 decision-making, despite the proven history of intimate partner violence or
8 child abuse, and in addition to any other relevant, mitigating evidence, the
9 court shall consider whether that parent has:

10 1. Completed a batterer's intervention program, as defined SECTION 25-
11 422(1), in cases involving intimate partner violence, and has also disclosed and
12 submitted into evidence a complete set of treatment records proving an
13 acceptable level of rehabilitation. A mere certificate of completion does not
14 alone prove rehabilitation. The treatment records themselves must exhibit
15 active involvement and positive steps by the offending parent during therapy.

16 2. Completed a counseling program for alcohol or other substance
17 abuse, if the evidence establishes that these considerations played a role in
18 past intimate partner violence or child abuse.

19 3. Refrained from any further behavior that would constitute a criminal
20 offense under federal or state law, including new acts of intimate partner
21 violence or child abuse.

22 4. Demonstrated sincere remorse and acceptance of personal
23 responsibility by words and conduct following the confirmed act of intimate
24 partner violence or child abuse.

25 C. Reasons to Refuse Parental Decision-Making to an Offender. To
26 evaluate whether the mitigating evidence presented in SUBSECTION (B) is
27 adequate to award parental decision-making to the offending parent, and in
28 addition to any other relevant, aggravating factors, the court shall also
29 consider:

30 1. The extent to which the offending parent coercively controlled the
31 other parent during their relationship, as described in SUBSECTION (D), or
32 committed other acts of child abuse against the child or child's sibling.

33 2. Whether the offending parent committed successive acts of intimate
34 partner violence or child abuse against any person after having already
35 received counseling on past occasions.

36 3. The extent to which the offending parent inflicted intimate partner
37 violence or child abuse against some other person in the past, or has recently
38 done so with a new intimate partner or child.

39 4. In cases of mutual violence not amounting to self-defense or other
40 legal justification, as defined by SECTIONS 13-404 through 408, the motivation
41 of each parent for the violence, the level of force used by each parent, and
42 their respective injuries.

43 5. Whether the offending parent continues to minimize or deny
44 responsibility for proven violence or blame it on unrelated issues.

1 6. Whether the offending parent has engaged in other behavior that
2 would constitute a criminal offense under federal or state law.

3 7. Whether the offending parent failed to comply with the mandatory
4 disclosure requirements of ARIZONA RULES OF Family Law PROCEDURE rules
5 49(B)(2) THROUGH (4) or reasonable discovery requests for records associated
6 with treating intimate partner violence or child abuse.

7 D. Coercive Control. As used in subsection C(1), "coercive control"
8 refers to one or more controlling behaviors inflicted by one parent against
9 another, when the latter has also suffered intimate partner violence by that
10 parent. With regard to each behavior, the court shall consider its severity,
11 whether it comprises part of a wider pattern of controlling conduct, and the
12 actor's motivation. Specifically, the court shall contemplate whether the
13 offending parent has:

14 1. Persistently engaged in demeaning, degrading or other verbally
15 abusive conduct toward the victim;

16 2. Confined the victim or otherwise restricted the victim's movements;

17 3. Attempted or threatened suicide;

18 4. Injured or threatened to injure household pets;

19 5. Damaged property in the victim's presence or without the victim's
20 consent;

21 6. Threatened to conceal or remove children from the victim's care, or
22 attempted to undermine the victim's relationship with a child;

23 7. Restricted or hindered the victim's communications, including
24 attempts by the victim to report intimate partner violence, child abuse or
25 other criminal behavior to law enforcement, medical personnel or other third
26 parties;

27 8. Eavesdropped on the victim's private communications or Internet
28 activities, interrupted or confiscated the victim's mail, or accessed the
29 victim's financial, electronic mail or Internet accounts without permission;

30 9. Engaged in a course of conduct deliberately calculated to jeopardize
31 the victim's employment;

32 10. Illicitly tampered with the victim's residential utilities, or entered
33 onto residential property inhabited by the victim without permission;

34 11. Reported or threatened to report the victim's immigration status to
35 government officials;

36 12. Terminated the victim's or children's insurance coverage;

37 13. Forbade or prevented the victim from making decisions concerning
38 disposition of property or income in which the victim possessed a legal interest;

39 14. Opened financial or credit accounts in the victim's name without
40 the victim's consent, forged the victim's signature, or otherwise appropriated
41 the victim's identity without the victim's authority;

42 15. Restricted the victim's participation in social activities, or access to
43 family, friends or acquaintances;

44 16. Forbade or prevented the victim from achieving the victim's
45 educational or career objectives;

- 1 17. Used especially dangerous forms of physical violence against the
- 2 victim, including burning, strangulation, suffocation or use of a deadly weapon
- 3 18. Inflicted any form of physical violence against a pregnant victim; or
- 4 19. Engaged in any other controlling behavior consistent with the
- 5 conduct described in this definition.

6 E. FOR THE PURPOSES OF THIS SECTION:

- 7 1. "STRANGULATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-
- 8 1204(B)(1).
- 9 2. "SUFFOCATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-
- 10 1204(B)(1).

11
12 AD HOC CUSTODY WORKGROUP NOTE

13 Arizona law currently segregates intimate partner violence into a two-part analysis. The first
14 part, found at A.R.S. § 25-403.03(A), forbids joint custody to a "significant" IPV offender, either because of
15 significant violence or a significant history of violence. Unfortunately, the statute does not define
16 "significant," which leads to widely varying outcomes for comparable conduct. The current statute also
17 produces the unintended consequence of invalidating the ordeal of intimate partner violence survivors
18 who suffer injuries that the court is unwilling to classify as "significant" for purposes of an absolute bar to
19 parental decision-making.

20 For all of these reasons, and due to strong opposition from professional stakeholders to the
21 theory of an absolute ban on parental decision-making, no descendant of A.R.S. § 25-403.03(A) appears in
22 the new bill. The proposed amendments do strengthen the second part of the existing law: the
23 "presumption" rule now codified at A.R.S. § 25-403.03(D). It also now includes acts of child abuse, which
24 were inexplicably omitted from the current statute. An alleged victim (or parent of an alleged victim)
25 must still prove "an act" of IPV or child abuse, but the procedure by which an offender proves (or fails to
26 prove) rehabilitation is more detailed. For example, in cases where an offender argues that s/he has
27 successfully completed an IPV treatment program, it requires that offender to disclose the actual records
28 of his/her treatment program to the opposing side and submit them into evidence for the court's review.
29 A.R.S. § 25-441(B)(1).

30 Moreover, under new A.R.S. § 25-441(C), the court would also consider "aggravating" factors to
31 evaluate whether more serious issues detract from what the offender has offered in a rebuttal case. This
32 section lists a broad range of conduct often ignored or minimized in IPV cases, and includes an
33 examination of the behaviors defined under "coercive control." The definition of "coercive control" was
34 added to help a trial court evaluate the motivation for proven intimate partner violence and assess the
35 danger posed to the victim and child alike by permitting joint decision-making or unfettered parenting
36 time to a batterer. The listed factors are not intended to be exclusive, but instead represent some of the
37 more common conduct of batterers motivated by a desire to control their partners. It is vital not to
38 review these factors strictly in isolation or conclude that, in their absence, all is necessarily well.
39 However, the appearance of these behaviors in tandem should cause significant concern – both in terms
40 of safety for the victim and child, as well as future role-modeling as a parent. The definition also requires
41 the court to consider whether the conduct in question may be attributable to a cause other than
42 controlling behavior, or motivated by legitimate concerns.

43 In cases of so-called "mutual combat," the amendment also requires the court to evaluate what
44 motivated the violence, the force applied, and resulting injuries – rather than dismantling the
45 presumption from the start. See A.R.S. § 25-403.03(D) ("presumption does not apply if both parents have
46 committed an act of domestic violence"). The bill would also include the failure to make obligatory, IPV-
47 related, Rule 49 disclosure as an explicit factor for deciding whether a proven offender had overcome the
48 presumption against an award of parental decision-making.

49
50 **25-442. Intimate Partner Violence and Child Abuse: Parenting Time**

1 [Former A.R.S. § 25-403.03(F)]

2 A. Cases Where Parenting Time Presumptively Disallowed. If the court
3 finds that a parent has committed any act of intimate partner violence or child
4 abuse, that parent has the burden of proving to the court's satisfaction that
5 unrestricted parenting time will not physically endanger the child or
6 significantly impair the child's emotional development. The victim need not
7 prove the reverse. In deciding whether the offending parent has met this
8 burden, the court shall consider all of the criteria listed in SECTIONS 25-441(B)
9 and (C), giving due consideration to whether parenting time with that parent
10 under the existing circumstances may:

11 1. Expose the child to poor role-modeling related to the confirmed
12 intimate partner violence as the child grows older and begins to develop his or
13 her own intimate relationships, irrespective of whether the offending parent
14 poses a direct physical risk to the child; and

15 2. Endanger the child's safety due to the child's physical proximity to
16 new, potential acts of violence by the parent against a new intimate partner or
17 other child.

18 B. Restrictions on Parenting Time. If the offending parent fails to prove
19 his or her suitability for unrestricted parenting time under SUBSECTION (A), the
20 court shall then place conditions on parenting time that best protect the child
21 and the other parent from further harm. With respect to the offending parent,
22 the court may:

23 1. Order child exchanges to occur in a specified safe setting.

24 2. Order that a person or agency specified by the court must supervise
25 parenting time. If the court allows a family or household member or other
26 person to supervise the offending parent's parenting time, the court shall
27 establish conditions that this supervisor must follow. When deciding whom to
28 select, the court shall also consider the supervisor's ability to physically
29 intervene in an emergency, willingness to promptly report a problem to the
30 court or other appropriate authorities, and readiness to appear in future
31 proceedings and testify truthfully.

32 3. Order the completion of a batterer's intervention program, as
33 defined by SECTION 25-422(1), and any other counseling the court orders.

34 4. Order abstention from or possession of alcohol or controlled
35 substances during parenting time, and at any other time the court deems
36 appropriate.

37 5. Order the payment of costs associated with supervised parenting
38 time.

39 6. Prohibit overnight parenting time.

40 7. Require the posting of a cash bond from the offending parent to
41 assure the child's safe return to the other parent.

42 8. Order that the address of the child and other parent remain
43 confidential.

44 9. Restrict or forbid access to, or possession of, firearms or ammunition.

45 10. Suspend parenting time for a prescribed period.

1 11. Suspend parenting time indefinitely, pending a change in
2 circumstances and a modification petition from the offending parent.

3 12. Impose any other condition that the court determines is necessary to
4 protect the child, the other parent, and any other family or household
5 member.

6
7 WORKGROUP NOTE

8 Although new A.R.S. § 25-442 does not alter the basic premise of current A.R.S. § 25-403.03(F) –
9 which governs parenting time – the rules are clarified to emphasize the twin problems of physical safety
10 and emotional development. Current law already cites both for the court’s consideration, but litigants
11 typically focus on physical danger at the expense of overlooking the (potentially more serious) long-term
12 risk of emotional harm resulting from constant access time with an unrepentant abuser. The amendment
13 clearly directs the court to consider the issue of future, parental role-modeling.

14
15 25-443. Intimate Partner Violence and Child Abuse: Assorted Provisions
16 [Former A.R.S. § 25-403.03(C), (G) and (H)]

17 A. Appropriate Evidence. To determine if a parent has committed an
18 act of intimate partner violence or child abuse, and subject to RULES OF
19 FAMILY LAW PROCEDURE Rule 2(B), the court shall consider all relevant factors
20 including, but not limited to, the following:

- 21 1. Findings or judgments from another court of competent jurisdiction.
- 22 2. Police or medical reports.
- 23 3. Counseling, school or shelter records.
- 24 4. Child Protective Services records.
- 25 5. Photographs, recordings, text messages, electronic mail or written
26 correspondence.
- 27 6. Witness testimony.

28 B. Collateral Criminal Proceedings. For purposes of this section,
29 evidence that a parent previously consented to deferred prosecution or
30 diversion from criminal charges for intimate partner violence or child abuse
31 shall constitute adequate proof that such parent committed the act or acts
32 alleged in the criminal complaint later dismissed pursuant to the diversion or
33 deferred prosecution. Nothing in this subsection prevents either parent from
34 introducing additional evidence related to the event in question in support of
35 that parent’s case.

36 C. Collateral Protective Order Proceedings. For purposes of this
37 section, no judgment resulting from protective order proceedings SECTION 13-
38 3602(I) shall be considered conclusive evidence that intimate partner violence
39 or child abuse did or did not occur.

40 D. Shelter Residency. A parent’s residency in a shelter for victims of
41 intimate partner violence shall not constitute grounds for denying that parent
42 any degree of decision-making authority or parenting time. For purposes of
43 this section, “shelter” means any facility meeting the definitions of SECTIONS
44 36-3001(6) and 36-3005.

45 E. Joint Counseling Prohibited. The court shall not order joint
46 counseling between a perpetrator of intimate partner violence and his or her

1 victim under any circumstances. The court may refer a victim to appropriate
2 counseling, and provide a victim with written information about available
3 community resources related to intimate partner violence or child abuse.

4 F. Alternative Dispute Resolution. A victim of intimate partner violence
5 may opt out of alternative dispute resolution ('ADR') imposed under RULES OF
6 FAMILY LAW PROCEDURE Rule 67 or 68 to the extent that a suggested ADR
7 procedure requires the parties to meet and confer in person. The court shall
8 notify each party of this right before requiring their participation in the ADR
9 process. As used in this subsection only, "victim of intimate partner violence"
10 means: (1) a party who has acquired a protective order against the other
11 parent pursuant to SECTION 13-3602; (2) a party who was previously
12 determined by a civil or family court to have suffered intimate partner violence
13 by the other parent; or (3) a party who was the named victim in a criminal case
14 that resulted in the conviction, diversion or deferred prosecution of the other
15 parent for an act of intimate partner violence.

16 G. Referrals to CPS. The court may request or order the services of the
17 Division of Children and Family Services in the Department of Economic
18 Security if it believes that a child may be the victim of abuse or neglect as
19 defined in SECTION 8-201.

20 21 AD HOC CUSTODY WORKGROUP NOTE

22 Subsection (A) updates existing A.R.S. § 25-403.03(C). Subsection (B) holds IPV offenders
23 accountable for conduct previously resolved by diversion or deferred prosecution in criminal court. This
24 reform recognizes that such programs are best reserved for defendants who admit responsibility for
25 conduct alleged in the charging complaint or indictment, but avoid formal conviction by seeking
26 rehabilitation through counseling or other measures. They are not appropriate for defendants who deny
27 accountability for their alleged misconduct and simply want to evade criminal prosecution. Under such
28 circumstances, it is both illogical and unfair to require a victim of that crime to prove its occurrence in
29 family court – sometimes several months or even years after the fact (when witnesses or other evidence
30 may no longer be available) – simply because the offender dodged a conviction with an admission,
31 counseling and subsequent dismissal of charges.

32 Subsection (C) clarifies that family court litigants should not use the outcome of contested,
33 domestic violence protective order proceedings as "proof" that intimate partner violence did or did not
34 exist. The amendment recognizes that protective order proceedings apply a different legal standard,
35 potentially apply different evidentiary rules, and frequently occur with little advance notice to the alleged
36 victim – who bears the burden of proof and may not be able to collect witnesses or exhibits within the
37 allotted time. This amendment does not, however, preclude the use of evidence presented at such an
38 earlier hearing, or even the use of the judgment itself in conjunction with other evidence. It bars only use
39 of the judgment as conclusive proof, standing alone, that intimate partner violence did or did not occur.

40 Subsection (D) shields victims of intimate partner violence from the loss of decision-making
41 authority or access time merely by virtue of their temporary residency in a domestic violence shelter.

42 Subsection (E) strengthens the protections for potentially vulnerable IPV victims otherwise
43 forced into mediation or other forms of ADR with their abusers.

44 45 **25-444. Substance Abuse** [Former A.R.S. § 25-403.04]

46 A. If the court determines from a preponderance of the evidence that a
47 parent has been criminally convicted for any of the following conduct within

1 the past three years, a rebuttable presumption shall arise prohibiting an award
2 of parental decision-making to that parent:

- 3 1. Any drug offense, AS DEFINED IN TITLE 13, CHAPTER 34.
- 4 2. Driving under the influence of alcohol, as defined IN SECTION 28-
5 1381.
- 6 3. Extreme driving under the influence of alcohol, as defined IN
7 SECTION 13-1382.
- 8 4. Aggravated driving under the influence of alcohol, as defined IN
9 SECTION 13-1383.

10 B. To determine if an offender has overcome the presumption described
11 in SUBSECTION(A), the court shall consider all relevant factors, including:

- 12 1. The absence of any other drug or alcohol-related arrest or
13 conviction.
- 14 2. Reliable results from random urinalyses, blood or hair follicle tests,
15 or some other comparable testing procedure.

16
17 **25-445. Dangerous Crimes Against Children** [Former A.R.S. § 25-403.05]

18 A. The court shall not award parental decision-making or unsupervised
19 parenting time to:

- 20 1. A person criminally convicted for a dangerous crime against children,
21 as defined IN SECTION 13-705(P)(1); or
- 22 2. A person required to register PURSUANT TO SECTION 13-3821.

23 B. A child's parent or custodian must immediately notify the other
24 parent or custodian if the parent or custodian knows that a convicted or
25 registered sex offender or a person who has been convicted of a dangerous
26 crime against children, as defined in SECTION 13-705 may have access to the
27 child. The parent or custodian must provide notice by first-class mail, return
28 receipt requested, or by electronic means to an electronic mail address that
29 the recipient provided to the parent or custodian for notification purposes, or
30 by some other means of communication approved by the court.

31
32
33 **25-446. Violent AND Serial Felons** [Former A.R.S. § 25-403.05]

34 A. The court shall not award parental decision-making or unsupervised
35 parenting time to:

- 36 1. A person criminally convicted for first- or second-degree murder, as
37 defined IN SECTIONS 13-1105(A) and 13-1104(A), except as provided in
38 SUBSECTION(B).

39 2. A person whose criminal history meets the definition of a category
40 two or three repetitive offender PURSUANT TO SECTIONS 13-703(B) and (C).

41 B. If a parent is criminally convicted of first- or second-degree murder
42 of the child's other parent, the court may award parental decision-making and
43 unrestricted parenting time to the convicted parent on a showing of credible
44 evidence, which may include testimony from an expert witness, that the

1 convicted parent was a victim of intimate partner violence at the hands of the
2 murdered parent and suffered trauma as a result.

3
4 **25-447. Conflicting Presumptions or Mandatory Rules [New]**

5 In the event that neither parent is eligible for an award of parental decision-
6 making or parenting time due to special circumstances, as defined by 25-
7 422(11), the court may refer the matter for juvenile dependency proceedings
8 pursuant to SECTION 8-800, assign parental decision-making or visitation to
9 another family member or third party consistent with the child's best interests,
10 or provide detailed, written findings that describe the extraordinary conditions
11 that justify an award of decision-making or parenting time to a parent normally
12 disqualified by SECTIONS 25-440 through 25-446. The court shall also explain
13 why its decision best serves the child, with particular focus on the child's
14 safety.

15
16 Article 5.
17 Third Parties

18
19 **25-450. Third-Party Rights; Decision-Making and Visitation by**
20 **Grandparents, Parental Figures AND Other Third Parties [Former A.R.S. §§**
21 **25-409 and -415]**

22
23 A. Decision-Making Authority. PURSUANT TO SECTION 25-421(B)(2), a
24 person other than a legal parent may petition the superior court for decision-
25 making authority over a child. The court shall summarily deny a petition unless
26 it finds that the petitioner has established that all of the following are true in
27 the initial pleading:

- 28 1. The person filing the petition stands in loco parentis to the child.
- 29 2. It would be significantly detrimental to the child to remain, or be
30 placed in the care of, either legal parent who wishes to keep or acquire
31 parental decision-making.
- 32 3. A court of competent jurisdiction has not entered or approved an
33 order concerning parental decision-making within one year before the person
34 filed a petition pursuant to this section, unless there is reason to believe the
35 child's present environment may seriously endanger the child's physical,
36 mental, moral or emotional health.
- 37 4. One of the following applies:
 - 38 (a) One of the legal parents is deceased.
 - 39 (b) The child's legal parents are not married to each other at the time
40 the petition is filed.
 - 41 (c) There is a pending proceeding for dissolution of marriage or for legal
42 separation of the legal parents at the time the petition is filed.

43 B. Presumption in Favor of Legal Parent. If a person other than a
44 child's legal parent is seeking decision-making authority concerning that child,
45 the court must presume that it serves the child's best interests to award

1 decision-making to a legal parent because of the physical, psychological and
2 emotional needs of the child to be reared by a legal parent. A third party may
3 rebut this presumption only with proof by clear and convincing evidence that
4 awarding parental decision-making custody to a legal parent is not consistent
5 with the child's best interests.

6 C. Visitation. PURSUANT TO 25-421(B)(2), a person other than a legal
7 parent may also petition the superior court for visitation with a child. The
8 superior court may grant visitation rights during the child's minority on a
9 finding that the visitation is in the child's best interests and that any of the
10 following is true:

11 1. One of the legal parents is deceased or has been missing at least
12 three months. For the purposes of this paragraph, a parent is considered to be
13 missing if the parent's location has not been determined and the parent has
14 been reported as missing to a law enforcement agency.

15 2. The child was born out of wedlock and the child's legal parents are
16 not married to each other at the time the petition is filed.

17 3. For grandparent or great-grandparent visitation, the marriage of the
18 parents of the child has been dissolved for at least three months.

19 4. For in loco parentis visitation, there is a pending proceeding for
20 dissolution of marriage or for legal separation of the legal parents at the time
21 the petition is filed.

22 D. Verification of Petition and Mandatory Notice. Any petition filed
23 under SUBSECTION (A) or (C) shall be verified, or supported by affidavit, and
24 include detailed facts supporting the petitioner's claim. The petitioner shall
25 also provide notice of this proceeding, including a copy of the petition itself
26 and any affidavits or other attachments, and serve the notice consistent with
27 RULES OF FAMILY LAW PROCEDURE Rules 40-43 to all of the following:

28 1. The child's legal parents.

29 2. A third party who already possesses decision-making authority over
30 the child or visitation rights.

31 3. The child's guardian or guardian ad litem.

32 4. A person or agency that already possesses physical custody of the
33 child, or claims decision-making authority or visitation rights concerning the
34 child.

35 5. Any other person or agency that has previously appeared in the
36 action.

37 E. Criteria for Granting Third-Party Visitation. When deciding whether
38 to grant visitation to a third party, the court shall give special weight to the
39 legal parents' opinion of what serves their child's best interests, and then
40 consider all relevant factors, including:

41 1. The historical relationship, if any, between the child and the person
42 seeking visitation.

43 2. The motivation of the requesting party seeking visitation.

44 3. The motivation of the person objecting to visitation.

1 4. The quantity of visitation time requested and the potential adverse
2 impact that visitation will have on the child's customary activities.

3 5. If one or both of the child's parents are deceased, the benefit in
4 maintaining an extended family relationship.

5 F. Coordinating Third-Party Visitation with Normal Parenting Time. If
6 logistically possible and appropriate, the court shall order visitation by a
7 grandparent or great-grandparent to occur when the child is residing or
8 spending time with the parent through whom the grandparent or great-
9 grandparent claims a right of access to the child.

10 G. Consolidation of Cases. A grandparent or great-grandparent seeking
11 visitation rights under this section shall petition in the same action in which the
12 family court previously decided parental decision-making and parenting time,
13 or if no such case ever existed, by separate petition in the county of the child's
14 home state, PURSUANT TO 25-1002(7).

15 H. Termination of Third-Party Visitation. All visitation rights granted
16 under this section automatically terminate if the child has been adopted or
17 placed for adoption. If the child is removed from an adoptive placement, the
18 court may reinstate the visitation rights. This subsection does not apply to the
19 adoption of the child by the spouse of a natural parent if the natural parent
20 remarries.

21
22 Article 6. Temporary Orders, Modification & Relocation

23 § 25-460. Temporary Orders

24 [former A.R.S. § 25-404]

25 § 25-461. Decree Modification

26 [former A.R.S. § 25-411]

27 § 25-462. Relocation of a Child

28 [former A.R.S. § 25-408(B)]

29 Article 7. Records & Sanctions

30 § 25-470. Access to Records

31 [former A.R.S. § 25-403.06]

32 § 25-471. Sanctions for Misconduct

33 [former A.R.S. § 25-414]

34 Article 8. Miscellaneous

35 § 25-480. Statutory Priority

36 [former A.R.S. § 25-407]

37 § 25-481. Agency Supervision

38 [former A.R.S. § 25-410]

39 § 25-482. Identification of Primary Caretaker

40 [former A.R.S. § 25-403.07]

41 § 25-483. Fees & Resources

42 [former A.R.S. § 25-403.08]

43 § 25-484. Child Interviews by Court & Professional Assistance

44 [former A.R.S. § 25-405]

45 § 25-485. Investigations & Reports

1 [former A.R.S. § 25-406]
2 § 25-486. Child Support & Parenting Time Fund
3 [former A.R.S. § 25-412]
4 § 25-487. Domestic Relations Education & Mediation Fund
5 [former A.R.S. § 25-413]

6
7
8
9
10
11
12
13
14
15
16