

Substantive Law Workgroup
Steve Wolfson, Chairperson

Court Procedures Workgroup
Dr. Brian Yee, Chairperson

DOMESTIC RELATIONS COMMITTEE

Agenda

July 15, 2011

12:00 – 1:30 p.m.

Arizona State Courts Building - AOC
1501 W. Washington St., Conference Room 345B
Phoenix, Arizona 85007

- 1. Welcome and Announcements**.....*Chairman Steve Wolfson*
Chairman Dr. Brian Yee

Action Item/Vote: _____ Approval of 04-29-11 minutes
_____ Approval of 05-13-11 minutes

- 2. Future Meeting Dates** *Chairmen*

- 3. Review of comments received** *Chairmen*

- 4. Review proposed custody rewrite**..... *Workgroup members*

- Tom Alongi ...Proposed language for § 25-471 *Sanctions for Misconduct*
- Tom Alongi...Proposed language changes in § 25-441 “coercive control” provision
- Keith Berkshire...Proposed language for § 25-422 *Definitions: Parental decision-making*

Action Item/Vote: _____ Provisions of custody rewrite

- 5. Call to the Public**..... *Chairmen*

This is the time for the public to comment. Members of the workgroup may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. § 38-431.01(H), action taken as a result of public comment will be limited to directing staff to study the matter, responding to any criticism, or scheduling the matter for further consideration and decision at a later date.

Next Meeting:

July 29, 2011 Noon to 1:30 p.m.

Please contact Kathy Sekardi at (602) 452-3253, with any questions concerning this Agenda. Persons with a disability may request reasonable accommodations by contacting Tama Reily at (602) 452-3637. Requests should be made as early as possible to allow time to arrange the accommodation.

Substantive Law/Court Procedures Workgroup

Minutes

Date: April 29, 2011	Time: 12:00 PM – 1:30 PM	Location: Conference Room 230
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Minute Taker: Tama Reily

Members Attending:

Steve Wolfson	X	Daniel Cartagena	X	Ella Maley	X	David Weinstock	
Brian Yee	X	Jami Cornish	X	Robert Reuss	X	Sarah Youngblood	X
Thomas Alongi	X	William Fabricius	X	Ellen Seaborne	X		
Theresa Barrett	X	Jennifer Gadow	X	Lindsay Simmons	X		
Keith Berkshire		Grace Hawkins		Laura Sabin Cabanillas	X		
Sidney Buckman	X	Carey Hyatt	X	Russell Smolden			

Staff/Admin. Support: Kathy Sekardi; Kay Radwanski; Tama Reily

Guests: Dr. Evan Stark; Michael Espinoza; Karen Duckworth; Joi Davenport; Ana Jabkowski; John Weaver; Patricia Madsen; Timothy Frank; Brian Calaway

Matters Considered: (continue on separate sheet if necessary)

I. Welcome and Announcements

The April 29, 2011 meeting of the Substantive Law / Court Procedures Workgroup was called to order at 12:05pm. Members and guests were welcomed.

II. Approval of Minutes

The minutes of the Substantive Law / Court Procedures Workgroup meeting March 25, 2011 were presented for approval.

Motion: To approve the minutes from the Substantive Law / Court Procedures Workgroup March 11, 2011 meeting as presented. Motion seconded. Motion approved unanimously.

III. Role of Coercive Control in an Analysis of Domestic Violence

Dr. Evan Stark, Professor, School of Public Affairs and Administration, Rutgers University, addressed the workgroup about the concept of coercive control. He discussed domestic violence (dv) and its consequences with regard to children and custody. He noted several points: 1) dv is not one specific incident, 2) the majority of dv incidents are trivial physically; the hallmark is the frequency and duration, 3) it is an ongoing process – repeated assaults, 4) 60% to 80% is accompanied by other salient tactics, multiple tactics – coercive control. Dr. Stark discussed the significant, cumulative effect of dv and stated that the victim often may try to keep her/himself and the child away from the abuser. He stated that the vast majority of dv cases are coercive control. He also discussed that abuse is trivialized – if there is no physical injury, there is no recognition of abuse in family court, in fact, the victim's fears can be viewed as exaggerated. He pointed out some of the tactics abusers use, including patterns of isolation, intimidation and control. About 54% of men arrested for dv have admitted to taking their partners' money and other items, preventing them from driving, and isolating them from family and friends, in addition to threats of taking the children. He noted the evidence is quite compelling – thousands of studies showing that the effects of coercive control on children are dramatic and also that the risk of abusive incidents is higher during the separation and divorce and in post-separation visitation.

IV. Review Proposed Custody Rewrite

Members assigned to proposing language for certain provisions presented their suggestions.

- Danny Cartagena – discussed his proposed language changes for:

A.R.S. § 25-812 Voluntary Acknowledgement of Paternity

A.R.S. § 25-814 Presumption of Paternity

A.R.S. § 25-815 Paternity; Full Faith and Credit.

Mr. Cartagena explained he wanted to remove the ambiguity surrounding presumptions of paternity and establishing paternity, as well as to clarify the Acknowledgement of Paternity form process. The workgroup reviewed the suggested changes. There were questions as to the removal of the section on the rescission process and whether it would be federally mandated to include some language on this. Mr. Cartagena will continue to work on this and follow up with the Attorney General's Office for clarification.

- Keith Berkshire - proposed language for **A.R.S. § 25-422 Definitions: Parental Decision-Making.**
Item not discussed.
- Tom Alongi – proposed language for **A.R.S. § 25-471 Sanctions for Misconduct.**
Item not discussed.

VI. Call to the Public

See attached for public comments.

Next Meeting

May 13, 2011

12:00pm – 1:30pm

Arizona State Courts Building

1501 W. Washington

Conference Room 230

Comment Form

Substantive Law / Court Procedures Workgroups of the DRC

Date Submitted: 04/29/2011

Name:

Joi Davenport

My specific comment regarding the proposed unified version:

I am concerned with the committee members considering wanting to remove coercive control from Title 25. Removing this language will unfairly disadvantage victims of domestic violence, and the accompanying coercive control tactics in family court, as well as having detrimental effects on their children. I implore those members to remove the blinders that are keeping them from supporting the language so they can truly see how needful this language is for ~~all~~ people of this state who are domestic violence situations and family court.

Comment Form

Substantive Law / Court Procedures Workgroups of the DRC

Date Submitted: 04/29/2011

Name: Timothy Frank

My specific comment regarding the proposed unified version:

25-814(A)6 Adoption Order

"father" - Biological father or
adopting father? I'm assuming
adopting father... should you
make that clear?

Comment Form

Substantive Law / Court Procedures Workgroups of the DRC

Date Submitted: 04/29/2011

Name: Timothy Frank, District 6

My specific comment regarding the proposed unified version:

Section 25-446 B. The language as written
appears to sanction murder in the name
of child custody. Murder is an unacceptable
response for any purpose to child custody.
As such, this subsection should be deleted
from the proposal.

Comment Form

Substantive Law / Court Procedures Workgroups of the DRC

Date Submitted: 04/29/2011

Name:

Michael Espinoza

My specific comment regarding the proposed unified version:

~~Make a~~ It is possible to make a
sub section public policy ~~§~~ 25-420 and
leave 25-103 Alone. It was promised that
25-103 would be left alone.

Also, the domestic violence sections need to be
removed. If the Antidomestic violence ~~prop~~ advocates
are so ~~confident~~ confident in their language I suggest ~~them~~
that they propose their language in another bill and
let their language pass on its own merits

Comment Form

Substantive Law / Court Procedures Workgroups of the DRC

Date Submitted: 04/29/2011

Name: Timothy Frank

My specific comment regarding the proposed unified version:

Section 25-441(D) Coercive Control.

This language is far too broad. It clearly
will unsettle the law and encourage

litigation. The terminology is unspecific
and unvetted either legally or socially.

It is not acceptable in its current form.

It is also off subject and has little to
do with custody establishment, or encouraging
cooperative resolution, in families which are
capable of purchasing legal services.

Comment Form

Substantive Law / Court Procedures Workgroups of the DRC

Date Submitted: 04/29/2011

Name: Karen Duckworth

My specific comment regarding the proposed unified version:

To add definitions to 25-422, based on solid
research like the Columbia University Study (I
provided this last week.)

★ This definition is necessary pursuant to 25-422.6

★ 1) parental alienation - or just alienation:

Acts including but not limited to deliberate interference
with the relationship between child and other parent;

by ^{talking} inappropriately, callously, harshly, and falsely about
the other parent's feelings for or actions towards the child.
By making false allegations about the other parent's conduct
to the child. By forbidding, inhibiting, or punishing child
from contacting or interacting with the other parent.

including but not limited to telephonic access, text msgs, online resources such as email or facebook, or communication through extended family members. Alienation should be defined as any act that upon further examination has the potential to cause emotional, mental, psychological harm to the child and reduces or inhibits the level of attachment the child had to the other parent before the alienation tactics began. Alienation should also encompass overcontrolling behaviors by the parent acting inappropriately, the consequences which may affect siblings, the damage caused by deliberate defiance of court orders in the form of access and custodial interference, and the ramifications the ~~parent~~^{damaged} parent-child relationships have on future developmental concerns and repeating patterns of coercive controlling behaviors and partner violence.

1 § 25-471. Sanctions for Litigation Misconduct

2
3 A. The court shall sanction a litigant for costs and reasonable attorney fees
4 incurred by an adverse party if the court finds, by clear and convincing evidence, that the
5 litigant has done any one or more of the following:

6
7 1. intentionally ~~and maliciously~~ presented a claim of special
8 circumstances, as defined in this chapter, with full knowledge that the claim was
9 false, ~~and with the intention that the court rely on that claim to withhold parental~~
10 ~~decision-making or parenting time from the adverse party~~;

11
12 2. intentionally ~~and maliciously~~ accused an adverse party of making a
13 false report of special circumstances, as defined in this chapter, with full
14 knowledge that the report was actually true, ~~and with the intention that the court~~
15 ~~rely on that accusation to withhold parental decision-making or parenting time~~
16 ~~from the party who made the report~~;

17
18 ~~3. illegally relocated a child with deliberate or reckless indifference to any~~
19 ~~existing, court-ordered parenting plan, if the court later determines that the~~
20 ~~relocation did not serve the child's best interests~~;

21
22 ~~4. opposed a proposed relocation of a child without good cause, if the~~
23 ~~court later determines that the relocation did serve the child's best interests~~; or

24
25 ~~5~~3. violated a court order compelling disclosure or discovery under Rule
26 65 of the Arizona Rules of Family Law Procedure, unless the court finds that the
27 failure to obey the order was substantially justified, or that other circumstances
28 make an award of expenses unjust.

29
30 B. If the court makes a finding against any litigant under Subsection (A), it may
31 also:

32
33 1. impose additional financial sanctions on behalf of an aggrieved party
34 who can demonstrate economic loss directly attributable to the litigant's
35 misconduct;

36
37 2. institute civil contempt proceedings on its own initiative, or on request
38 of an aggrieved party, with proper notice and an opportunity to be heard; or

39
40 3. modify parental decision-making or parenting time, if that modification
41 would also serve the best interests of the child.

42
43 C. This section shall not prevent the court from awarding costs and attorney fees,
44 or imposing other sanctions, if authorized elsewhere by state or federal law.

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2

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7 1. intentionally presented a claim of special circumstances, as defined in
8 this chapter, with full knowledge that the claim was false;
9

10 2. intentionally accused an adverse party of making a false report of
11 special circumstances, as defined in this chapter, with full knowledge that the
12 report was actually true; or
13

14 3. violated a court order compelling disclosure or discovery under Rule
15 65 of the Arizona Rules of Family Law Procedure, unless the court finds that the
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27 of an aggrieved party, with proper notice and an opportunity to be heard; or
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29 3. modify parental decision-making or parenting time, if that modification
30 would also serve the best interests of the child.
31

32 **C.** This section shall not prevent the court from awarding costs and attorney fees,
33 or imposing other sanctions, if authorized elsewhere by state or federal law.

§ 25-441. Intimate Partner Violence and Child Abuse: PARENTAL DECISION-MAKING

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

A. Cases Where Parental Decision-Making Presumptively Disallowed. If the court determines from a preponderance of the evidence that a parent has previously committed any act of intimate partner violence against the other parent, or child abuse against the child or child's sibling, then it shall not award parental decision-making to the offending parent without proof that such parent should still make major decisions for the child despite the proven history of abuse or violence. The offending parent may submit this proof by asking the court to consider the criteria listed in Subsection (B). In that event, the court shall also evaluate whether the offending parent has nevertheless failed to prove his or her suitability for parental decision-making by considering each of the criteria listed in Subsection (C).

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

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

2. Completed a counseling program for alcohol or other substance abuse, if the evidence

establishes that these considerations played a role in past intimate partner violence or child abuse.

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

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

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

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

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

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

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

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

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

7. Whether the offending parent failed to comply with the mandatory disclosure requirements of Family Law Rules 49(B)(2) – (4) or reasonable discovery requests for records associated with treating intimate partner violence or child abuse.

D. Coercive Control. As used in Subsection C(1), “*coercive control*” refers to one or more controlling behaviors inflicted by one parent against another, when the latter has also suffered intimate partner violence by that parent. With regard to these behaviors, the court shall consider the actor’s motivation, and whether the behaviors appeared in tandem as part of a continuing pattern of controlling conduct during the parties’ relationship. Specifically, the court shall contemplate whether the offending parent has:

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

2. Physically confined the victim, or otherwise restricted the victim’s freedom of movement;

3. Unreasonably restricted or hindered the victim’s educational or financial activities, or jeopardized the victim’s employment or financial welfare without good cause;

4. Appropriated the victim’s identity, as defined in A.R.S. § 13-2008;

5. Attempted or threatened suicide, or injured or threatened to injure other persons or household pets, as a means of coercing the victim’s compliance with the offender’s wishes;

6. Threatened to conceal or remove a child from the victim’s care for reasons other than a legitimate concern for the child’s physical or emotional welfare, attempted to undermine the victim’s relationship with a child, or used a child to facilitate either criminal conduct against the victim or one or more controlling behaviors described in this subsection;

7. Restricted or hindered the victim’s attempts to report intimate partner violence, child abuse or other criminal behavior to law enforcement, medical personnel or other third parties by means of duress or coercion;

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

9. Restricted or hindered the victim’s family or social relationships, or public activities; or

10. Engaged in any other controlling behavior that is consistent with the conduct described in this definition, or that society would recognize as a violation of the victim’s fundamental human rights.

WORKGROUP NOTE

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

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

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

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

ARTICLE 2.
INTRODUCTION & AND PRELIMINARY REQUIREMENTS

25-420. Public policy

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

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

AD HOC CUSTODY WORKGROUP NOTE

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

25-421. Jurisdiction [FORMER A.R.S. § 25-401]

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

~~B. A proceeding under this chapter is commenced in superior court: the~~
THE FOLLOWING PERSONS MAY REQUEST PARENTAL DECISION-MAKING OR PARENTING TIME UNDER THE FOLLOWING CIRCUMSTANCES:

~~(a) 1. Marital dissolution or legal separation.~~ BY A PARENT, IN ANY PROCEEDING FOR MARITAL DISSOLUTION, LEGAL SEPARATION, PATERNITY, OR MODIFICATION OF AN EARLIER DECREE.

~~(b) 2. Parental decision-making or parenting time regarding a child born out of wedlock, if there has been an establishment of maternity or paternity.~~ BY A PERSON OTHER THAN A PARENT, BY FILING A PETITION FOR THIRD-PARTY RIGHTS UNDER A.R.S. § SECTION 25-450 IN THE COUNTY IN WHICH THE CHILD PERMANENTLY RESIDES.

~~(c) Modification of a decree or judgment previously issued under this chapter.~~

~~2. By a person other than a parent, by filing a petition for third party rights under A.R.S. § 25-450 in the county in which the child permanently resides.~~

Jenny Gadow – draft re: special circumstances and false allegations

Title 25 – Custody Rewrite

Prepared for 04.08.11 Meeting

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SL/CP Workgroup

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1 ~~3. At the request of any person who is a party to a maternity or~~
2 ~~paternity proceeding pursuant to A.R.S. §§ 25-801, et. seq.~~

3
4 AD HOC CUSTODY WORKGROUP NOTE

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

9
10 SUBSTANTIVE LAW/COURT PROCEDURES WORKGROUP NOTE

11 Pending.

12
13 **25-422. Definitions** [Former A.R.S. § 25-402]

14 ~~In this article, unless the context otherwise requires:~~

15 ~~1. "Batterer's intervention program" means an individual or group~~
16 ~~treatment program for intimate partner violence offenders that:~~

17 ~~— (a) emphasizes personal responsibility;~~

18 ~~— (b) clearly identifies intimate partner violence as a means of asserting~~
19 ~~power and control over another individual;~~

20 ~~— (c) does not primarily or exclusively focus on anger or stress~~

21 ~~management, impulse control, conflict resolution or communication skills;~~

22 ~~— (d) does not involve the participation or presence other family~~
23 ~~members, including the victim or children; and~~

24 ~~— (e) preserves records establishing an offender's participation,~~

25 ~~contribution and progress toward rehabilitation, irrespective of whether a~~

26 ~~given session involves individual treatment or group therapy including multiple~~
27 ~~offenders.~~

28 ~~2. "Child abuse" means any of the following acts where the relationship~~
29 ~~between the offender and victim qualifies under A.R.S. § ARIZONA REVISED~~

30 ~~STATUTES SECTION 13-3601(A)(5), including any attempt, conspiracy or~~
31 ~~solicitation of another to commit such act:~~

32 ~~— (a) Endangerment, as defined by A.R.S. § ARIZONA REVISED STATUTES~~
33 ~~SECTION 13-1201.~~

34 ~~— (B) Threatening or intimidating, as defined by A.R.S. § ARIZONA REVISED~~
35 ~~STATUTES SECTION 13-1202(A).~~

36 ~~— (C) Assault, as defined by A.R.S. § ARIZONA REVISED STATUTES SECTION~~
37 ~~13-1203(A).~~

38 ~~— (D) Aggravated assault, as defined by A.R.S. § ARIZONA REVISED~~
39 ~~STATUTES SECTION 13-1204(A)(1) — (5).~~

40 ~~— (E) Child abuse, as defined by A.R.S. § ARIZONA REVISED STATUTES~~
41 ~~SECTION 13-3623.~~

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

44 ~~4. "Deferred prosecution" and "diversion" means any program offered~~
45 ~~by a criminal court or government agency through which an alleged offender~~
46 ~~avoids criminal prosecution by agreeing to pay a fine, participate in counseling,~~

1 | Jenny Gadow – draft re: special circumstances and false allegations

2 | Title 25 – Custody Rewrite

3 | Prepared for 04.08.11 Meeting

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1 or perform other remedial tasks in exchange for dismissal of one or more
2 pending charges or a promise by the state not to proceed with a complaint or
3 indictment.

4 § 1. "In loco parentis" means a person who has been treated as a parent
5 by the child and who has formed a meaningful parental relationship with the
6 child for a substantial period of time.

7 ~~6 2. "Intimate partner violence" means any act that would meet the~~
8 ~~definition of A.R.S. § 13-3601(A), as well as any other act of physical or sexual~~
9 ~~violence constituting a felony, where inflicted by a person against an intimate~~
10 ~~partner. This definition also includes any attempt, conspiracy, or solicitation~~
11 ~~of another to commit such act. It does not include any behavior that would~~
12 ~~constitute self-defense or other legal justification as defined by A.R.S. §§ 13-~~
13 ~~404 through 408.~~

14 ~~7. "Intimate partners" means persons whose relationship with each~~
15 ~~other qualifies under A.R.S. § 13-3601(A)(1), (2), (3) OR (6).~~

16 § 3. "Legal parent" means a biological or adoptive parent whose
17 parental rights have not been terminated.

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

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

34 (B) "Final parental decision-making" means one parent is ultimately
35 responsible for child-related decisions, but must still reasonably consult with
36 the other before exercising this authority.

37 (C) "Sole parental decision-making" means one parent is exclusively
38 responsible for child-related decisions, and does not require any level of
39 consultation with the other before the authority is exercised.

40 ~~10~~ 5. "Parenting time" refers to a parent's physical access to a child at
41 specified times, and entails the provision of food, clothing and shelter, as well
42 positive role-modeling and active involvement in a child's activities, while the
43 child remains in that parent's care. A person exercising parenting time is
44 expected to make routine decisions regarding the child's care that do not

| Jenny Gadow – draft re: special circumstances and false allegations

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contradict the major life decisions made by a parent vested with parental decision-making authority.

~~11. "Special circumstance" refers to conduct requiring application of one or more mandatory rules described in A.R.S. §§ 25-440 through 446.~~

~~12. "Strangulation" means intentionally impeding the normal breathing or circulation of blood of another person by applying pressure to the throat or neck.~~

~~13. "Suffocation" means intentionally impeding the normal breathing of another person by obstructing the nose and mouth either manually or through the use of an instrument.~~

14 6. "Visitation" involves the same rights and responsibilities as parenting time when exercised by a non-parent.

AD HOC CUSTODY WORKGROUP NOTE

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

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

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

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

"Intimate partner violence" now adds anticipatory crimes, and expressly excludes violence legitimately inflicted in self-defense.

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

SL/CP WORKGROUP NOTE

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

25-423. Mandatory Preliminary Inquiry: Special Circumstances [New]

Before evaluating the best interests of the child and deciding parental decision-making and parenting time, the court shall first determine whether special circumstances exist under SECTIONS ~~§§ 25-441~~ through 25-445. If so, the court shall enter parental decision-making and parenting time orders in accordance with those statutes. If not, the court shall proceed directly to the general provisions of ~~§§~~ SECTIONS 25-430 through 25-432 to devise a parenting plan that allocates parental decision-making and parenting time consistent with the child's best interests.

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

25-424. Specific Findings Required [New]

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

ARTICLE 3.

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

25-430. Parenting Plans [former A.R.S. § 25-403.02]

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

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

C. Parenting plans shall include at least the following:

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

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

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

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

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

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

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

5 8. A statement that each party has read, understands and will abide by
6 the notification requirements of ~~A.R.S. §~~ SECTION 25-445(B) pertaining to
7 access of sex offenders to a child.

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

12
13 **25-431. Parental Decision-Making; Shared, Final or Sole** [Former A.R.S. §
14 25-403.01]

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

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

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

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

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

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

27 6. Whether either parent has made allegations in bad faith.

28
29 **25-432. Parenting Time** [New]

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

33 1. The historical, current and potential relationship between the parent
34 and the child.

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

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

37 4. The interaction and relationship between the child and the child's
38 siblings and any other person who may significantly affect the child's best
39 interest.

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

42 6. Whether one parent is more likely to support and encourage the
43 child's relationship and contact with the other parent. This paragraph does not
44 apply if the court determines that a parent is acting in good faith to protect

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1 the child from witnessing or suffering an act of intimate partner violence or
2 child abuse.

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

6 8. Whether a parent has complied with the educational program
7 prescribed in ~~A.R.S. §§~~ SECTIONS 25-351 through -353.

8 9. Whether either parent has made allegations in bad faith.

10 ARTICLE 4.
11 SPECIAL CIRCUMSTANCES

12
13 25-XXX. DEFINITIONS

14 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

15 1. "Batterer's intervention program" means an individual or group
16 treatment program for intimate partner violence offenders that:

- 17 (a) emphasizes personal responsibility;
18 (b) clearly identifies intimate partner violence as a means of asserting
19 power and control over another individual;
20 (c) does not primarily or exclusively focus on anger or stress
21 management, impulse control, conflict resolution or communication skills;
22 (d) does not involve the participation or presence other family
23 members, including the victim or children; and
24 (e) preserves records establishing an offender's participation,
25 contribution and progress toward rehabilitation, irrespective of whether a
26 given session involves individual treatment or group therapy including multiple
27 offenders.

28 2. "Child abuse" means any of the following acts where the relationship
29 between the offender and victim qualifies under ~~A.R.S. §~~ SECTION 13-
30 3601(A)(5), including any attempt, conspiracy or solicitation of another to
31 commit such act:

- 32 (a) Endangerment, as defined ~~by A.R.S. §~~ IN SECTION 13-1201.
33 (B) Threatening or intimidating, as defined ~~by A.R.S. §~~ IN SECTION 13-
34 1202(A).
35 (C) Assault, as defined ~~by A.R.S. §~~ IN SECTION 13-1203(A).
36 (D) Aggravated assault, as defined ~~by A.R.S. §~~ IN SECTION 13-1204(A)(1)
37 - (5).
38 (E) Child abuse, as defined ~~by A.R.S. §~~ IN SECTION 13-3623.
39 3. "Conviction" shall include guilty, "no contest" and Alford pleas, and
40 guilty verdicts issued by a trier of fact.

41 4. "Deferred prosecution" and "diversion" means any program offered
42 by a criminal court or government agency through which an alleged offender
43 avoids criminal prosecution by agreeing to pay a fine, participate in counseling,
44 or perform other remedial tasks in exchange for dismissal of one or more

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1 pending charges or a promise by the state not to proceed with a complaint or
2 indictment.

3 ~~6~~ 5. "Intimate partner violence" means any act ~~that would meet the~~
4 ~~definition of A.R.S. §~~ DEFINED IN SECTION 13-3601(A), as well as any other act
5 of physical or sexual violence constituting a felony, where inflicted by a person
6 against an intimate partner. This definition also includes any attempt,
7 conspiracy, or solicitation of another to commit such act. It does not include
8 any behavior that would constitute self-defense or other legal justification as
9 defined by ~~A.R.S. §§~~ 13-404 through 408.

10 ~~7~~ 6. "Intimate partners" means persons whose relationship with each
11 other qualifies ~~under A.R.S. §~~ PURSUANT TO SECTIONS 13-3601(A)(1), (2), (3)
12 OR (6).

13 ~~6~~ 7. "Intimate partner violence" means any act ~~that would meet the~~
14 ~~definition of A.R.S. §~~ AS DEFINED IN SECTION 13-3601(A), as well as any other
15 act of physical or sexual violence constituting a felony, where inflicted by a
16 person against an intimate partner. This definition also includes any attempt,
17 conspiracy, or solicitation of another to commit such act. It does not include
18 any behavior that would constitute self-defense or other legal justification as
19 defined by ~~A.R.S. §§~~ SECTIONS 13-404 through 408.

20 ~~7~~ 8. "Intimate partners" means persons whose relationship with each
21 other qualifies ~~under A.R.S. §~~ PURSUANT TO SECTIONS 13-3601(A)(1), (2), (3)
22 OR (6).

23 ~~11~~ 9. "Special circumstance" refers to conduct requiring application of
24 one or more mandatory rules ~~described in A.R.S. §§~~ PURSUANT TO SECTIONS 25-
25 440 through ~~446~~.

26 SL/CP WORKGROUP NOTE

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

33 25-440. Special Circumstances: Basic Principles

34 [Former A.R.S. § 25-403.03(B)]

35 A.

36 ~~A.~~ The court shall always consider a finding of special circumstances, as
37 contrary to the best interests of the child, irrespective of whether a child
38 personally witnessed ~~the~~ particular act or acts. When deciding both parental
39 decision-making and parenting time, the court shall assign primary importance
40 to the physical safety and emotional health of the child and the non-offending
41 parent.

42 B. Special Circumstances consist of: child abuse, dangerous crimes
43 against children, false allegations, intimate partner violence, substance abuse,
44 and/or violent and serial felons.

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Deleted: Intimate Partner Violence and Child Abuse

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

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

25-441. Child Abuse

INSERT PROVISIONS REGARDING PARENTAL DECISION-MAKING AND PARENTING TIME WHEN CHILD ABUSE INVOLVED.

25-442. Dangerous Crimes Against Children [Former A.R.S. § 25-403.05]

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

1. A person criminally convicted for a dangerous crime against children, as defined by A.R.S. § IN SECTION 13-705(P)(1); or

2. A person required to register under A.R.S. § PURSUANT TO SECTION 13-3821.

B. A child’s parent or custodian must immediately notify the other parent or custodian if the parent or custodian knows that a convicted or registered sex offender or a person who has been convicted of a dangerous crime against children, as defined in A.R.S. § SECTION 13-705(P)(1), may have access to the child. The parent or custodian must provide notice by first-class mail, return receipt requested, or by electronic means to an electronic mail address that the recipient provided to the parent or custodian for notification purposes, or by some other means of communication approved by the court.

25-443. False Allegations

INSERT PROVISIONS REGARDING PARENTAL DECISION-MAKING AND PARENTING TIME WHEN FALSE ALLEGATIONS INVOLVED.

25-444. Intimate Partner Violence

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

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THIS SECTION SHOULD BE COMBINED WITH THE FOLLOWING SECTION TO ADDRESS PARENTAL DECISION-MAKING AND PARENTING TIME TO MAKE CONSISTENT WITH ABOVE SECTIONS.

A. Cases Where Parental Decision-Making Presumptively Disallowed. If the court determines from a preponderance of the evidence that a parent has previously committed any act of intimate partner violence against the other parent, then it shall not award parental decision-making to the offending parent without proof that such parent should still make major decisions for the child despite the proven history of abuse or violence. The offending parent may submit this proof by asking the court to consider the criteria listed in Subsection SUBSECTION (B). In that event, the court shall also evaluate whether the offending parent has nevertheless failed to prove his or her suitability for parental decision-making by considering each of the criteria listed in Subsection SUBSECTION(C).

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

1. The extent to which the offending parent coercively controlled the other parent during their relationship, as described in Subsection SUBSECTION (D), or committed other acts of child abuse against the child or child's sibling.
2. Whether the offending parent committed successive acts of intimate partner violence or child abuse against any person after having already received counseling on past occasions.
3. The extent to which the offending parent inflicted intimate partner violence or child abuse against some other person in the past, or has recently done so with a new intimate partner or child.
4. In cases of mutual violence not amounting to self-defense or other legal justification, as defined by A.R.S. §§ SECTIONS 13-404 through -408, the motivation of each parent for the violence, the level of force used by each parent, and their respective injuries.
5. Whether the offending parent continues to minimize or deny responsibility for proven violence or blame it on unrelated issues.
6. Whether the offending parent has engaged in other behavior that would constitute a criminal offense under federal or state law.
7. Whether the offending parent failed to comply with the mandatory disclosure requirements of ARIZONA RULES OF Family Law PROCEDURE rules 49(B)(2) THROUGH (4) or reasonable discovery requests for records associated with treating intimate partner violence or child abuse.

REMOVED THESE AS THEY ARE BETTER SUITED FOR TRAINING OF THE JUDICIARY TO IDENTIFY IPV

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

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

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

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

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

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

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

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

3. Attempted or threatened suicide;¶

4. Injured or threatened to injure household pets;¶

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

6. Threatened to conceal or remove children from the victim's care, or atten ... [1]

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AD HOC CUSTODY WORKGROUP NOTE

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

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

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

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

25-442. THIS SECTION SHOULD BE COMBINED WITH ABOVE SECTION Intimate Partner Violence.

A. Cases Where Parenting Time Presumptively Disallowed. If the court finds that a parent has committed any act of intimate partner violence that parent has the burden of proving to the court’s satisfaction that unrestricted parenting time will not physically endanger the child or significantly impair the child’s emotional development. The victim need not prove the reverse. In deciding whether the offending parent has met this burden, the court shall consider all of the criteria listed in A.R.S. § SECTIONS 25-441(B) and (C), giving

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1 due consideration to whether parenting time with that parent under the
2 existing circumstances may:

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

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

10 B. Restrictions on Parenting Time. If the offending parent fails to prove
11 his or her suitability for unrestricted parenting time under ~~Subsection~~
12 SUBSECTION (A), the court shall then place conditions on parenting time that
13 best protect the child and the other parent from further harm. With respect to
14 the offending parent, the court may:

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

16 2. Order that a person or agency specified by the court must supervise
17 parenting time. If the court allows a family or household member or other
18 person to supervise the offending parent's parenting time, the court shall
19 establish conditions that this supervisor must follow. When deciding whom to
20 select, the court shall also consider the supervisor's ability to physically
21 intervene in an emergency, willingness to promptly report a problem to the
22 court or other appropriate authorities, and readiness to appear in future
23 proceedings and testify truthfully.

24 3. Order the completion of a batterer's intervention program, as
25 defined by ~~A.R.S. §~~ SECTION 25-422(1), and any other counseling the court
26 orders.

27 4. Order abstention from or possession of alcohol or controlled
28 substances during parenting time, and at any other time the court deems
29 appropriate.

30 5. Order the payment of costs associated with supervised parenting
31 time.

32 6. Prohibit overnight parenting time.

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

35 8. Order that the address of the child and other parent remain
36 confidential.

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

38 10. Suspend parenting time for a prescribed period.

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

41 12. Impose any other condition that the court determines is necessary to
42 protect the child, the other parent, and any other family or household
43 member.

44
45 WORKGROUP NOTE

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1 Although new A.R.S. § 25-442 does not alter the basic premise of current A.R.S. § 25-403.03(F) –
2 which governs parenting time – the rules are clarified to emphasize the twin problems of physical safety
3 and emotional development. Current law already cites both for the court’s consideration, but litigants
4 typically focus on physical danger at the expense of overlooking the (potentially more serious) long-term
5 risk of emotional harm resulting from constant access time with an unrepentant abuser. The amendment
6 clearly directs the court to consider the issue of future, parental role-modeling.
7
8
9

10 25-445. Substance Abuse [Former A.R.S. § 25-403.04]

11 A. If the court determines from a preponderance of the evidence that a
12 parent has been engaged in any of the following conduct within the past three
13 years, a rebuttable presumption shall arise prohibiting an award of parental
14 decision-making to that parent:

15 1. Any drug offense under A.R.S., Title AS DEFINED IN TITLE 13, Chapter
16 CHAPTER 34.

17 2. Driving under the influence of alcohol, as defined by A.R.S. § IN
18 SECTION 28-1381.

19 3. Extreme driving under the influence of alcohol, as defined by A.R.S. §
20 IN SECTION 13-1382.

21 4. Aggravated driving under the influence of alcohol, as defined by
22 A.R.S. § IN SECTION 13-1383.

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

26 1. The absence of any other drug or alcohol-related arrest or
27 conviction.

28 2. Reliable results from random urinalyses, blood or hair follicle tests,
29 or some other comparable testing procedure.
30

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

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

34 1. A person criminally convicted for first- or second-degree murder, as
35 defined by A.R.S. §§ IN SECTIONS 13-1105(A) and 13-1104(A), except as
36 provided in Subsection SUBSECTION(B).

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

40 B. If a parent is criminally convicted of first- or second-degree murder
41 of the child’s other parent, the court may award parental decision-making and
42 unrestricted parenting time to the convicted parent on a showing of credible
43 evidence, which may include testimony from an expert witness, that the
44 convicted parent was a victim of intimate partner violence at the hands of the
45 murdered parent and suffered trauma as a result.
46

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25-447, ~~s~~Special Circumstances: Evidence Required

[Former A.R.S. § 25-403.03(C), (G) and (H)]

A. Appropriate Evidence. To determine if a parent has engaged in special circumstances, and subject to RULES OF FAMILY LAW PROCEDURE Rule 2(B), the court shall consider all relevant factors including, but not limited to, the following:

1. Findings or judgments from another court of competent jurisdiction.
2. Police or medical reports.
3. Counseling, school or shelter records.
4. Child Protective Services records.
5. Photographs, recordings, text messages, electronic mail or written correspondence.

6. Witness testimony.

7. Test results.

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

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

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

E. Joint Counseling Prohibited. The court shall not order joint counseling between a perpetrator of intimate partner violence and his or her victim under any circumstances. The court may refer a victim to appropriate counseling, and provide a victim with written information about available community resources related to intimate partner violence or child abuse.

F. Alternative Dispute Resolution. A victim of intimate partner violence may opt out of alternative dispute resolution ('ADR') imposed under ~~Family Law~~ RULES OF FAMILY LAW PROCEDURE Rule 67 or 68 to the extent that a suggested ADR procedure requires the parties to meet and confer in person. The court shall notify each party of this right before requiring their participation in the ADR process. As used in this subsection only, "victim of intimate partner violence" means: (1) a party who has acquired a protective

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1 order against the other parent pursuant to ~~A.R.S. §~~ SECTION 13-3602; (2) a
2 party who was previously determined by a civil or family court to have suffered
3 intimate partner violence by the other parent; or (3) a party who was the
4 named victim in a criminal case that resulted in the conviction, diversion or
5 deferred prosecution of the other parent for an act of intimate partner
6 violence.

7 G. Referrals to CPS. The court may request or order the services of the
8 Division of Children and Family Services in the Department of Economic
9 Security if it believes that a child may be the victim of abuse or neglect as
10 defined in ~~A.R.S. §~~ SECTION 8-201.

11
12 AD HOC CUSTODY WORKGROUP NOTE

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

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

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

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

35
36
37 25-448 Rebutting The Presumption as to False Allegations, Intimate Partner
38 Violence and Substance Abuse.

39
40 B. How a Confirmed Offender May Prove Suitability for Parental Decision-
41 Making. To determine if the offending parent may exercise parental
42 decision-making, despite the proven history of intimate partner violence or
43 child abuse, and in addition to any other relevant, mitigating evidence, the
44 court shall consider whether that parent has:

45 1. Completed a batterer’s intervention program, as defined by A.R.S.
46 § SECTION 25-422(1), in cases involving intimate partner violence, and has
47 also disclosed and submitted into evidence a complete set of treatment
48 records proving an acceptable level of rehabilitation. A mere certificate of

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1 completion does not alone prove rehabilitation. The treatment records
2 themselves must exhibit active involvement and positive steps by the
3 offending parent during therapy.
4 2. Completed a counseling program for alcohol or other substance
5 abuse, if the evidence establishes that these considerations played a role in
6 past intimate partner violence or child abuse.
7 3. Refrained from any further behavior considered a special
8 circumstance.
9 4. Demonstrated sincere remorse and acceptance of personal
10 responsibility by words and conduct following the confirmed act or acts.
11
12

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25-447. Conflicting Presumptions or Mandatory Rules [New]
In the event that neither parent is eligible for an award of parental decision-making or parenting time due to special circumstances, as defined by A.R.S. § 25-422(11), the court may refer the matter for juvenile dependency proceedings pursuant to A.R.S. §§ SECTION 8-800, *et seq.*, assign parental decision-making or visitation to another family member or third party consistent with the child's best interests, or provide detailed, written findings that describe the extraordinary conditions that justify an award of decision-making or parenting time to a parent normally disqualified by A.R.S. §§ SECTIONS 25-440 through 25-446. The court shall also explain why its decision best serves the child, with particular focus on the child's safety.

Article 5. Third Parties

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

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

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

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Deleted: 25-444. Substance Abuse [Former A.R.S. § 25-403.04]¶

A. If the court determines from a preponderance of the evidence that a parent has been criminally convicted for any of the following conduct within the past three years, a rebuttable presumption shall arise prohibiting an award of parental decision-making to that parent:¶

1. Any drug offense ~~under A.R.S., Title AS~~ DEFINED IN TITLE 13, ~~Chapter~~ CHAPTER 34.¶
2. Driving under the influence of alcohol, as defined ~~by A.R.S. §~~ IN SECTION 28-1381.¶
3. Extreme driving under the influence of alcohol, as defined ~~by A.R.S. §~~ IN SECTION 13-1382.¶

4. Aggravated driving under the influence of alcohol, as defined ~~by A.R.S. §~~ IN SECTION 13-1383.¶

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

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

Deleted: 25-445. Dangerous Crimes Against Children [Former A.R.S. § 25-403.05]¶

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

1. A person criminally convicted for a dangerous crime against children, as defined ~~by A.R.S. §~~ IN SECTION 13-705(P)(1); or¶
2. A person required to register ~~under A.R.S. §~~ PURSUANT TO SECTION 13-3821. ¶

B. A child's parent or custodian must immediately notify the other parent or custodian if the parent or custodian knows that a convicted or registered sex offender or a person who has been convicted of a dangerous crime against children, as defined in ~~A.R.S. §~~ SECTION 13-705(P)(1), may have access to the child. The parent or custodian must provide notice by first-class mail, return receipt requested, or by electronic means to an electronic mail address that the recipient provided to the parent or custodian for ... [2]

Deleted: 25-446. Violent & AND Serial Felons [Former A.R.S. § 25-403.05]¶

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

1. A person criminally convicted for first- or second-degree murder, as defined ~~by A.R.S. §§~~ IN SECTIONS 13-1105(A) and 13-1104(A), except as provided in ~~Subsection~~ SUBSECTION(B).¶ ... [3]

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1 B. Presumption in Favor of Legal Parent. If a person other than a
2 child's legal parent is seeking decision-making authority concerning that child,
3 the court must presume that it serves the child's best interests to award
4 decision-making to a legal parent because of the physical, psychological and
5 emotional needs of the child to be reared by a legal parent. A third party may
6 rebut this presumption only with proof by clear and convincing evidence that
7 awarding parental decision-making custody to a legal parent is not consistent
8 with the child's best interests.

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

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

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

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

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

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

32 1. The child's legal parents.

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

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

36 4. A person or agency that already possesses physical custody of the
37 child, or claims decision-making authority or visitation rights concerning the
38 child.

39 5. Any other person or agency that has previously appeared in the
40 action.

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

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

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

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

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

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

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

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

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

25 Article 6. Temporary Orders, Modification & Relocation

26 § 25-460. Temporary Orders

27 [former A.R.S. § 25-404]

28 A.

29 § 25-461. Decree Modification

30 [former A.R.S. § 25-411]

31 A.

32 § 25-462. Relocation of a Child

33 [former A.R.S. § 25-408(B)]

34 A.

35 Article 7. Records & Sanctions

36 § 25-470. Access to Records

37 [former A.R.S. § 25-403.06]

38 A.

39 § 25-471. Sanctions for Misconduct

40 [former A.R.S. § 25-414]

41 A.

42 Article 8. Miscellaneous

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1 § 25-480. Statutory Priority
2 [former A.R.S. § 25-407]
3
4 § 25-481. Agency Supervision
5 [former A.R.S. § 25-410]
6 § 25-482. Identification of Primary Caretaker
7 [former A.R.S. § 25-403.07]
8 § 25-483. Fees & Resources
9 [former A.R.S. § 25-403.08]
10 § 25-484. Child Interviews by Court & Professional Assistance
11 [former A.R.S. § 25-405]
12 § 25-485. Investigations & Reports
13 [former A.R.S. § 25-406]
14 § 25-486. Child Support & Parenting Time Fund
15 [former A.R.S. § 25-412]
16 § 25-487. Domestic Relations Education & Mediation Fund
17 [former A.R.S. § 25-413]
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D. Coercive Control. As used in ~~SUBSECTION~~ subsection C(1), "coercive control" refers to one or more controlling behaviors inflicted by one parent against another, when the latter has also suffered intimate partner violence by that parent. With regard to each behavior, the court shall consider its severity, whether it comprises part of a wider pattern of controlling conduct, and the actor's motivation. Specifically, the court shall contemplate whether the offending parent has:

1. Persistently engaged in demeaning, degrading or other verbally abusive conduct toward the victim;
2. Confined the victim or otherwise restricted the victim's movements;
3. Attempted or threatened suicide;
4. Injured or threatened to injure household pets;
5. Damaged property in the victim's presence or without the victim's consent;
6. Threatened to conceal or remove children from the victim's care, or attempted to undermine the victim's relationship with a child;
7. Restricted or hindered the victim's communications, including attempts by the victim to report intimate partner violence, child abuse or other criminal behavior to law enforcement, medical personnel or other third parties;
8. Eavesdropped on the victim's private communications or Internet activities, interrupted or confiscated the victim's mail, or accessed the victim's financial, electronic mail or Internet accounts without permission;
9. Engaged in a course of conduct deliberately calculated to jeopardize the victim's employment;
10. Illicitly tampered with the victim's residential utilities, or entered onto residential property inhabited by the victim without permission;
11. Reported or threatened to report the victim's immigration status to government officials;
12. Terminated the victim's or children's insurance coverage;
13. Forbade or prevented the victim from making decisions concerning disposition of property or income in which the victim possessed a legal interest;
14. Opened financial or credit accounts in the victim's name without the victim's consent, forged the victim's signature, or otherwise appropriated the victim's identity without the victim's authority;
15. Restricted the victim's participation in social activities, or access to family, friends or acquaintances;
16. Forbade or prevented the victim from achieving the victim's educational or career objectives;
17. Used especially dangerous forms of physical violence against the victim, including burning, strangulation, suffocation or use of a deadly weapon
18. Inflicted any form of physical violence against a pregnant victim; or
19. Engaged in any other controlling behavior consistent with the conduct described in this definition.

E. FOR THE PURPOSES OF THIS SECTION:

1. "STRANGULATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-1204(B)(1).

2. "SUFFOCATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-1204(B)(1).

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

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

1. A person criminally convicted for a dangerous crime against children, as defined ~~by A.R.S. §~~ IN SECTION 13-705(P)(1); or

2. A person required to register ~~under A.R.S. §~~ PURSUANT TO SECTION 13-3821.

B. A child's parent or custodian must immediately notify the other parent or custodian if the parent or custodian knows that a convicted or registered sex offender or a person who has been convicted of a dangerous crime against children, as defined in ~~A.R.S. §~~ SECTION 13-705(P)(1), may have access to the child. The parent or custodian must provide notice by first-class mail, return receipt requested, or by electronic means to an electronic mail address that the recipient provided to the parent or custodian for notification purposes, or by some other means of communication approved by the court.

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25-446. Violent & AND Serial Felons [Former A.R.S. § 25-403.05]

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

1. A person criminally convicted for first- or second-degree murder, as defined ~~by A.R.S. §§~~ IN SECTIONS 13-1105(A) and 13-1104(A), except as provided in **Subsection** SUBSECTION(B).

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

B. If a parent is criminally convicted of first- or second-degree murder of the child's other parent, the court may award parental decision-making and unrestricted parenting time to the convicted parent on a showing of credible evidence, which may include testimony from an expert witness, that the convicted parent was a victim of intimate partner violence at the hands of the murdered parent and suffered trauma as a result.

From Bill Fabricius (7/13/2011): The Wisconsin statute (described below) sounds similar to ours, and apparently was unclear enough to require a Supreme Court case to clarify it. I suggest we try to avoid that expenditure of effort in AZ and clarify what we mean by “:maximize” in § 25-432. Our original intent was that the court should go off what the parents proposed. This avoids the court ordering something neither parent wants, and avoids a one-size-fits-all approach, and is a real strength of our statute I believe.

From Patrick Parkinson (2011) *Family Law and the Indissolubility of Parenthood*, Cambridge University Press, pp. 94 – 95:

“The Wisconsin statute was amended [in 1999] to provide that the “court shall set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each partner and that maximizes the amount of time the child may spend with each parent, taking into account geographical separation and accommodations for different households.”ⁱ The Supreme Court of Wisconsin has nonetheless made it clear that the legislature did not intend the term “maximizing” to mean equal placement or equal time.”ⁱⁱ

§ 25-432. Parenting Plans

A. Consistent with the child’s physical and emotional well-being, the court shall adopt a parenting plan that maximizes the sharing of parental decision-making to the extent specified in at least one of the proposed parenting plans, and that maximizes both parents’ respective parenting time to the extent specified in at least one of the proposed parenting plans. The court shall not prefer one parent over the other due to gender.

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ⁱ WIS. STAT. § 767.41 (4) (a) 2.

ⁱⁱ Landwehr v Landwehr, 2006 WI 64, 291 Wis 2d 49, 715 N.W. 2d 180, 185 (2006);

04/25/11 – Keith Berkshire

Proposed language for “Parental Decision-Making” definition

“Parental decision-making” means the legal right and responsibility to make all non-emergency legal decisions, including but not limited to those regarding medical, dental, vision, orthodontic, mental health, counseling, education and religion. For purposes of interpreting or applying any international treaty, federal law, uniform code or other state statute, “parental decision-making” shall mean the same as “legal custody.”

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Deleted: the health, welfare and education of a child, including – but not limited to – schooling, religion, daycare, medical treatment, counseling, commitment to alternative long-term facilities, authorizing powers of attorney, granting or refusing parental consent where legally required, entitlement to notifications from third parties on behalf of the child, employment, enlistment in the armed forces, passports, licensing and certifications, and blood donation.

From Bill Fabricius (7/13/2011): I don't think we have anything yet for Temporary Orders, so I thought I would share the OK statute (below) for consideration. We may not need to go this far in explicitly talking about "*substantially equal access*" given what we say in § 25-432 about "maximizing" parenting time, if we want to transpose that language into the Temporary Orders section.

I could however see perhaps some advantages to explicitly talking about "*substantially equal access*" in the Temporary Orders section. Given that we have plenty of safeguards built in against IPV, and given that in the absence of IPV the court can't do a full evaluation about parenting time anyway at this stage, then encouraging parents to consider substantially equal access at the temporary orders stage could:

- (a) Give kids more sense of parental stability in their lives during the stressful time of separation
- (b) Give the parents a chance to try it out
- (c) Give the courts some data about how it worked when it comes time for final orders.
- (d) Bring the language of the statute in line with the AZ public, which is solidly in favor of substantially equal parenting time already, and go a long way toward rectifying the AZ public's skepticism that the family courts are gender-biased.

From Patrick Parkinson (2011) *Family Law and the Indissolubility of Parenthood*, Cambridge University Press, pp. 100 – 101:

"In Oklahoma, legislative policy is in favor of shared parenting, and the court is required to order "substantially equal access" at the time of making temporary orders, if requested by one parent to do so.ⁱ The legislation states:

"It is the policy of the state to insure that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interests of their children and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or dissolved their marriage, provided that the parents agree to cooperate and that domestic violence, stalking, or harassing behaviors ... are not present in the parental relationship. To effectuate this policy, if requested by a parent, the court may provide substantially equal access to the minor children to both parents at a temporary order hearing, unless the court finds that shared parenting would be detrimental to the child.

"The presumption in favor of substantially equal access does not carry through to the legislative requirements governing final orders."

ⁱ OKLA. STAT. § 43 – 110.1. This provision is confined to temporary orders. See Redmond v Cauthen, (2009) OK CIV. APP. 46;211 P. 3d 233 (Ct. Civ. App.).

General Public Comments from June 24, 2011

Friday, June 24, 2011		Issue	Proposes
47	Joi Davenport	Removing coercive control from the custody statute would be a disservice to the victims and children of abuse in this state. In addition, it would allow the abuse to continue.	

CHAPTER 4

PARENTAL DECISION-MAKING AND PARENTING TIME

ARTICLE 1. GENERAL PROVISIONS

25-401. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "FINAL PARENTAL DECISION-MAKING" MEANS THAT ONE PARENT HAS ULTIMATE RESPONSIBILITY FOR MAKING CHILD-RELATED DECISIONS BUT MUST REASONABLY CONSULT WITH THE OTHER PARENT BEFORE EXERCISING THIS RESPONSIBILITY.

2. "IN LOCO PARENTIS" MEANS A PERSON WHO HAS BEEN TREATED AS A PARENT BY THE CHILD AND WHO HAS FORMED A MEANINGFUL PARENTAL RELATIONSHIP WITH THE CHILD FOR A SUBSTANTIAL PERIOD OF TIME.

3. "LEGAL PARENT" MEANS A BIOLOGICAL OR ADOPTIVE PARENT WHOSE PARENTAL RIGHTS HAVE NOT BEEN TERMINATED. LEGAL PARENT DOES NOT INCLUDE A PERSON WHOSE PATERNITY HAS NOT BEEN ESTABLISHED PURSUANT TO SECTION 25-812 OR 25-814.

4. "PARENTAL DECISION-MAKING" MEANS THE LEGAL RIGHT AND RESPONSIBILITY TO MAKE MAJOR LIFE DECISIONS AFFECTING THE HEALTH, WELFARE AND EDUCATION OF A CHILD INCLUDING, FOR EXAMPLE, SCHOOLING, RELIGION, DAY CARE, MEDICAL TREATMENT, COUNSELING, COMMITMENT TO ALTERNATIVE LONG-TERM FACILITIES, AUTHORIZING POWERS OF ATTORNEY, GRANTING OR REFUSING PARENTAL CONSENT WHERE LEGALLY REQUIRED, ENTITLEMENT TO NOTIFICATIONS FROM THIRD PARTIES ON BEHALF OF THE CHILD, EMPLOYMENT, ENLISTMENT IN THE ARMED FORCES, PASSPORTS, LICENSING AND CERTIFICATIONS, AND BLOOD DONATION. FOR PURPOSES OF INTERPRETING OR APPLYING ANY INTERNATIONAL TREATY, FEDERAL LAW, A UNIFORM CODE OR THE STATUTES OF OTHER JURISDICTIONS OF THE UNITED STATES, PARENTAL DECISION-MAKING MEANS LEGAL CUSTODY.

1 SPECIAL CIRCUMSTANCES EXIST. IF THE COURT DETERMINES THAT SPECIAL
2 CIRCUMSTANCES EXIST, THE COURT SHALL ENTER PARENTAL DECISION-MAKING AND
3 PARENTING TIME ORDERS PURSUANT TO ARTICLE 3 OF THIS CHAPTER. IF THE COURT
4 DETERMINES THAT SPECIAL CIRCUMSTANCES DO NOT EXIST, THE COURT SHALL DEVISE A
5 PARENTING PLAN THAT ALLOCATES PARENTAL DECISION-MAKING AND PARENTING TIME
6 CONSISTENT WITH THE CHILD'S BEST INTERESTS AND THE REQUIREMENTS OF ARTICLE 2 OF THIS
7 CHAPTER.

8 25-405. Specific findings required

9 A. PURSUANT TO AN EVIDENTIARY HEARING INVOLVING PARENTAL
10 DECISION-MAKING, PARENTING TIME OR THIRD-PARTY RIGHTS, THE COURT SHALL MAKE
11 SPECIFIC FINDINGS ON THE RECORD REGARDING ALL RELEVANT FACTORS THAT LEAD IT
12 TO EACH COURT ORDER AND HOW EACH ORDER IS IN THE CHILD'S BEST INTERESTS.

13 B. THE FINDINGS REQUIRED PURSUANT TO SUBSECTION A OF THIS SECTION
14 SHALL INCLUDE A DESCRIPTION OF ANY SPECIAL CIRCUMSTANCES ESTABLISHED BY THE
15 EVIDENCE AND AN EXPLANATION FOR THE COURT'S DECISION IN RELATIONS TO THE
16 CONTROLLING RULES.

17 ARTICLE 2. PARENTING PLANS, DECISION-MAKING
18 AND PARENTING TIME WITHOUT SPECIAL CIRCUMSTANCES

19 25-421. Parenting plans

20 A. CONSISTENT WITH THE CHILD'S PHYSICAL AND EMOTIONAL WELL-BEING, THE
21 COURT SHALL ADOPT A PARENTING PLAN THAT PROVIDES FOR BOTH PARENTS TO SHARE
22 PARENTAL DECISION-MAKING CONCERNING THEIR CHILD AND MAXIMIZES EACH PARENT'S
23 PARENTING TIME. THE COURT SHALL NOT PREFER ONE PARENT OVER THE OTHER DUE TO
24 THE CHILD'S SEX.

25 B. IF A CHILD'S PARENTS CANNOT AGREE TO A PLAN FOR PARENTAL
26 DECISION-MAKING OR PARENTING TIME, EACH PARENT MUST SUBMIT TO THE COURT A
27 DETAILED PROPOSED PARENTING PLAN.

28 C. A PARENTING PLAN MUST INCLUDE AT LEAST THE FOLLOWING:

29 1. A DESIGNATION OF THE PARENTAL DECISION-MAKING PLAN AS EITHER SHARED
30 PARENTAL DECISION-MAKING, FINAL PARENTAL DECISION-MAKING OR SOLE PARENTAL
31 DECISION-MAKING.

32 2. EACH PARENT'S RIGHTS AND RESPONSIBILITIES FOR PARENTAL
33 DECISION-MAKING.

34 3. A PLAN FOR COMMUNICATING WITH EACH OTHER ABOUT THE CHILD, INCLUDING
35 METHODS AND FREQUENCY.

36 4. A DETAILED PARENTING TIME SCHEDULE, INCLUDING HOLIDAYS AND SCHOOL
37 VACATIONS.

38 5. A PLAN FOR CHILD EXCHANGES, INCLUDING LOCATION AND RESPONSIBILITY
39 FOR TRANSPORTATION.

40 6. FOR SHARED PARENTAL DECISION-MAKING PLANS, A PROCEDURE BY WHICH THE
41 PARENTS CAN RESOLVE DISPUTES OVER PROPOSED CHANGES OR ALLEGED VIOLATIONS,
42 WHICH MAY INCLUDE THE USE OF CONCILIATION SERVICES OR PRIVATE MEDIATION.

43 7. A PROCEDURE FOR PERIODIC REVIEW OF THE PLAN.

1 8. A STATEMENT THAT EACH PARTY HAS READ, UNDERSTANDS AND WILL ABIDE BY
2 THE NOTIFICATION REQUIREMENTS OF SECTION 25-437, SUBSECTION B.

3 D. THE PARTIES MAY AGREE TO ANY LEVEL OF SHARED OR SOLE PARENTAL
4 DECISION-MAKING WITHOUT REGARD TO THE DISTRIBUTION OF PARENTING TIME. THE
5 DEGREE OF PARENTING TIME EXERCISED BY EACH PARENT DOES NOT EFFECT WHICH
6 PARENT EXERCISED PARENTAL DECISION-MAKING.

7 E. IF PARENTS ARE GRANTED SHARED DECISION-MAKING, EACH PARENT MUST
8 CONSULT WITH THE PARENT ABOUT CHILD-RELATED DECISIONS AND ATTEMPT TO
9 RESOLVE DISPUTES BEFORE SEEKING COURT INTERVENTION.

10 25-422. Parental decision-making; shared, final or sole

11 THE COURT SHALL DETERMINE PARENTAL DECISION-MAKING IN ACCORDANCE WITH
12 THE BEST INTERESTS OF THE CHILD. THE COURT SHALL CONSIDER THE RELEVANT
13 FINDINGS MADE PURSUANT TO SECTION 25-423, AND ALL OF THE FOLLOWING:

14 1. THE AGREEMENT OR LACK OF AN AGREEMENT BY THE PARENTS REGARDING THE
15 PARENTAL DECISION-MAKING PLAN.

16 2. WHETHER A PARENT'S LACK OF AGREEMENT IS UNREASONABLE OR INFLUENCED
17 BY AN ISSUE NOT RELATED TO THE BEST INTERESTS OF THE CHILD.

18 3. WHETHER AN AWARD OF FINAL OR SOLE PARENTAL DECISION-MAKING WOULD BE
19 ABUSED.

20 4. THE PAST, PRESENT AND FUTURE WILLINGNESS AND ABILITY OF THE PARENTS
21 TO COOPERATE IN DECISION-MAKING ABOUT THE CHILD.

22 5. WHETHER THE PARENTAL DECISION-MAKING PLAN IS LOGISTICALLY POSSIBLE.

23 25-423. Parenting time

24 THE COURT SHALL DETERMINE PARENTING TIME IN ACCORDANCE WITH THE BEST INTERESTS
25 OF THE CHILD AND SHALL CONSIDER ALL FACTORS RELEVANT TO THE CHILD'S PHYSICAL AND
26 EMOTIONAL WELFARE, INCLUDING:

27 1. THE HISTORICAL, CURRENT AND POTENTIAL RELATIONSHIP BETWEEN THE
28 PARENT AND THE CHILD.

29 2. THE MENTAL AND PHYSICAL HEALTH OF ALL INDIVIDUALS INVOLVED.

30 3. THE CHILD'S ADJUSTMENT TO HOME, SCHOOL AND COMMUNITY.

31 4. THE INTERACTION AND RELATIONSHIP BETWEEN THE CHILD AND THE CHILD'S
32 SIBLINGS AND ANY OTHER PERSON WHO MAY SIGNIFICANTLY AFFECT THE CHILD'S BEST
33 INTEREST.

34 5. THE CHILD'S OWN WISHES, IF THE CHILD IS OF SUITABLE AGE AND
35 MATURITY, ALONG WITH THE BASIS OF THOSE WISHES.

36 6. WHETHER ONE PARENT IS MORE LIKELY TO SUPPORT AND ENCOURAGE THE
37 CHILD'S RELATIONSHIP AND CONTACT WITH THE OTHER PARENT. THIS PARAGRAPH DOES
38 NOT APPLY IF THE COURT DETERMINES THAT A PARENT IS ACTING IN GOOD FAITH TO
39 PROTECT THE CHILD FROM WITNESSING OR SUFFERING AN ACT OF DOMESTIC VIOLENCE OR
40 CHILD ABUSE.

41 7. THE FEASIBILITY OF EACH PLAN TAKING INTO ACCOUNT THE DISTANCE
42 BETWEEN THE PARENTS' HOMES, EACH PARENT'S OR CHILD'S WORK, SCHOOL, DAY CARE
43 OR OTHER SCHEDULES, AND THE CHILD'S AGE.

44 8. WHETHER A PARENT HAS COMPLIED WITH THE EDUCATIONAL PROGRAM PRESCRIBED
45 IN SECTION 25-352.

ARTICLE 3. SPECIAL CIRCUMSTANCES

25-431. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "BATTERER'S INTERVENTION PROGRAM" MEANS AN INDIVIDUAL OR GROUP TREATMENT PROGRAM FOR PERSONS WHO COMMIT AN ACT OF DOMESTIC VIOLENCE AGAINST THEIR INTIMATE PARTNERS AND THAT:

- (a) EMPHASIZES PERSONAL RESPONSIBILITY;
- (b) CLEARLY IDENTIFIES DOMESTIC VIOLENCE AS A MEANS OF ASSERTING POWER AND CONTROL OVER ANOTHER PERSON.
- (c) DOES NOT PRIMARILY OR EXCLUSIVELY FOCUS ON ANGER OR STRESS MANAGEMENT, IMPULSE CONTROL, CONFLICT RESOLUTION OR COMMUNICATION SKILLS.
- (d) DOES NOT INVOLVE THE PARTICIPATION OR PRESENCE OF OTHER FAMILY MEMBERS, INCLUDING THE VICTIM OR CHILDREN.
- (e) PRESERVES RECORDS ESTABLISHING AN OFFENDER'S PARTICIPATION, CONTRIBUTION AND PROGRESS TOWARD REHABILITATION, IRRESPECTIVE OF WHETHER A GIVEN SESSION INVOLVES INDIVIDUAL TREATMENT OR GROUP THERAPY INCLUDING MULTIPLE OFFENDERS.

2. "CHILD ABUSE" MEANS THE ATTEMPT, CONSPIRACY OR SOLICITATION TO COMMIT OR THE COMMISSION OF ANY OF THE FOLLOWING ACTS IF SECTION 13-3601, SUBSECTION A, PARAGRAPH 5 APPLIES TO THE RELATIONSHIP BETWEEN THE VICTIM AND THE OFFENDER:

- (a) ENDANGERMENT AS DEFINED IN SECTION 13-1201.
- (b) THREATENING OR INTIMIDATING AS DEFINED IN SECTION 13-1202.
- (c) ASSAULT AS DEFINED IN SECTION 13-1203.
- (d) AGGRAVATED ASSAULT AS DEFINED IN SECTION 13-1204.
- (e) ABUSE WHEN USED IN REFERENCE TO A CHILD, AS DEFINED IN SECTION 13-3623.

3. "CONVICTION" INCLUDES A PLEA OR VERDICT OF GUILTY OR A CONVICTION FOLLOWING A PLEA OF NO CONTEST.

4. "DEFERRED PROSECUTION" OR "DIVERSION" MEANS A PROGRAM OFFERED BY A CRIMINAL COURT OR GOVERNMENT AGENCY THROUGH WHICH AN ALLEGED OFFENDER AVOIDS CRIMINAL PROSECUTION BY AGREEING TO PAY A FINE, PARTICIPATE IN COUNSELING OR PERFORM OTHER REMEDIAL TASKS IN EXCHANGE FOR DISMISSAL OF ONE OR MORE PENDING CHARGES OR A PROMISE BY THE STATE NOT TO PROCEED WITH A COMPLAINT OR INDICTMENT.

5. "DOMESTIC VIOLENCE" MEANS THE ATTEMPT, CONSPIRACY OR SOLICITATION TO COMMIT OR THE COMMISSION OF AN ACT INVOLVING DOMESTIC VIOLENCE AS DEFINED IN SECTION 13-3601 OR A FELONY OFFENSE THAT INVOLVES PHYSICAL OR SEXUAL VIOLENCE AND THAT IS COMMITTED BY A PERSON AGAINST THE PERSON'S INTIMATE PARTNER. DOMESTIC VIOLENCE DOES NOT INCLUDE AN ACT OF SELF-DEFENSE THAT IS JUSTIFIED UNDER TITLE 13, CHAPTER 4.

6. "INTIMATE PARTNER" MEANS A PERSON WHOSE RELATIONSHIP WITH ANOTHER PERSON QUALIFIES PURSUANT TO SECTIONS 13-3601 SUBSECTION A, PARAGRAPH 1, 2, 3 OR 6.

1 C. TO EVALUATE WHETHER THE MITIGATING EVIDENCE PRESENTED IN SUBSECTION
2 B OF THIS SECTION IS ADEQUATE TO AWARD PARENTAL DECISION-MAKING TO THE
3 OFFENDING PARENT, AND IN ADDITION TO ANY OTHER RELEVANT AGGRAVATING FACTORS,
4 THE COURT SHALL ALSO CONSIDER:

5 1. THE EXTENT TO WHICH THE OFFENDING PARENT COERCIVELY CONTROLLED THE
6 OTHER PARENT DURING THEIR RELATIONSHIP, AS PRESCRIBED IN SUBSECTION D OF THIS
7 SECTION, OR COMMITTED OTHER ACTS OF CHILD ABUSE AGAINST THE CHILD OR THE
8 CHILD'S SIBLING.

9 2. WHETHER THE OFFENDING PARENT COMMITTED SUCCESSIVE ACTS OF INTIMATE
10 PARTNER VIOLENCE OR CHILD ABUSE AGAINST ANY PERSON AFTER HAVING RECEIVED
11 COUNSELING ON PAST OCCASIONS.

12 3. THE EXTENT TO WHICH THE OFFENDING PARENT INFLECTED INTIMATE PARTNER
13 VIOLENCE OR CHILD ABUSE AGAINST SOME OTHER PERSON IN THE PAST OR HAS RECENTLY
14 DONE SO WITH A NEW INTIMATE PARTNER OR CHILD.

15 4. IN CASES OF MUTUAL VIOLENCE INVOLVING ACTS THAT ARE NOT JUSTIFIED
16 PURSUANT TO TITLE 13, CHAPTER 4, THE MOTIVATION OF EACH PARENT FOR THE
17 VIOLENCE, THE LEVEL OF FORCE USED BY EACH PARENT AND EACH PARENT'S RESPECTIVE
18 INJURIES.

19 5. WHETHER THE OFFENDING PARENT CONTINUES TO MINIMIZE OR DENY
20 RESPONSIBILITY FOR PROVEN VIOLENCE OR BLAME IT ON UNRELATED ISSUES.

21 6. WHETHER THE OFFENDING PARENT HAS ENGAGED IN OTHER BEHAVIOR THAT
22 WOULD CONSTITUTE A CRIMINAL OFFENSE UNDER FEDERAL OR STATE LAW.

23 7. WHETHER THE OFFENDING PARENT FAILED TO COMPLY WITH THE MANDATORY
24 DISCLOSURE REQUIREMENTS OF ARIZONA RULES OF FAMILY LAW PROCEDURE OR REASONABLE
25 DISCOVERY REQUESTS FOR RECORDS ASSOCIATED WITH TREATING INTIMATE PARTNER
26 VIOLENCE OR CHILD ABUSE.

27 D. FOR THE PURPOSES OF DETERMINING IF A PARENT HAS COERCIVELY
28 CONTROLLED ANOTHER PARENT, THE COURT SHALL DETERMINE IF THE PARENT HAS
29 INFLECTED ONE OR MORE CONTROLLING BEHAVIORS AGAINST THE OTHER PARENT WHO HAS
30 ALSO SUFFERED INTIMATE PARTNER VIOLENCE BY THAT PARENT. WITH REGARD TO EACH
31 BEHAVIOR, THE COURT SHALL CONSIDER ITS SEVERITY, WHETHER IT COMPRISES PART OF
32 A WIDER PATTERN OF CONTROLLING CONDUCT AND THE PARENT'S MOTIVATION.
33 SPECIFICALLY, THE COURT SHALL CONSIDER WHETHER THE OFFENDING PARENT HAS:

34 1. PERSISTENTLY ENGAGED IN DEMEANING, DEGRADING OR OTHER VERBALLY ABUSIVE
35 CONDUCT TOWARD THE VICTIM.

36 2. CONFINED THE VICTIM OR OTHERWISE RESTRICTED THE VICTIM'S MOVEMENTS.

37 3. ATTEMPTED OR THREATENED SUICIDE.

38 4. INJURED OR THREATENED TO INJURE HOUSEHOLD PETS.

39 5. DAMAGED PROPERTY IN THE VICTIM'S PRESENCE OR WITHOUT THE VICTIM'S
40 CONSENT.

41 6. THREATENED TO CONCEAL OR REMOVE CHILDREN FROM THE VICTIM'S CARE OR
42 ATTEMPTED TO UNDERMINE THE VICTIM'S RELATIONSHIP WITH A CHILD.

43 7. RESTRICTED OR HINDERED THE VICTIM'S COMMUNICATIONS, INCLUDING
44 ATTEMPTS BY THE VICTIM TO REPORT DOMESTIC VIOLENCE, CHILD ABUSE OR OTHER
45

1 CRIMINAL BEHAVIOR TO LAW ENFORCEMENT, MEDICAL PERSONNEL OR OTHER THIRD
2 PARTIES.

3 8. EAVESDROPPED ON THE VICTIM'S PRIVATE COMMUNICATIONS OR INTERNET
4 ACTIVITIES, INTERRUPTED OR CONFISCATED THE VICTIM'S MAIL OR ACCESSED THE
5 VICTIM'S FINANCIAL, ELECTRONIC MAIL OR INTERNET ACCOUNTS WITHOUT PERMISSION.

6 9. ENGAGED IN A COURSE OF CONDUCT DELIBERATELY CALCULATED TO
7 JEOPARDIZE THE VICTIM'S EMPLOYMENT.

8 10. ILLICITLY TAMPERED WITH THE VICTIM'S RESIDENTIAL UTILITIES OR
9 ENTERED ONTO RESIDENTIAL PROPERTY INHABITED BY THE VICTIM WITHOUT PERMISSION;

10 11. REPORTED OR THREATENED TO REPORT THE VICTIM'S IMMIGRATION STATUS TO
11 GOVERNMENT OFFICIALS.

12 12. TERMINATED THE VICTIM'S OR CHILDREN'S INSURANCE COVERAGE.

13 13. FORBADE OR PREVENTED THE VICTIM FROM MAKING DECISIONS CONCERNING
14 DISPOSITION OF PROPERTY OR INCOME IN WHICH THE VICTIM POSSESSED A LEGAL
15 INTEREST.

16 14. OPENED FINANCIAL OR CREDIT ACCOUNTS IN THE VICTIM'S NAME WITHOUT
17 THE VICTIM'S CONSENT, FORGED THE VICTIM'S SIGNATURE OR OTHERWISE APPROPRIATED
18 THE VICTIM'S IDENTITY WITHOUT THE VICTIM'S AUTHORITY.

19 15. RESTRICTED THE VICTIM'S PARTICIPATION IN SOCIAL ACTIVITIES OR ACCESS TO
20 FAMILY, FRIENDS OR ACQUAINTANCES.

21 16. FORBADE OR PREVENTED THE VICTIM FROM ACHIEVING THE VICTIM'S
22 EDUCATIONAL OR CAREER OBJECTIVES.

23 17. USED ESPECIALLY DANGEROUS FORMS OF PHYSICAL VIOLENCE AGAINST THE
24 VICTIM, INCLUDING BURNING, STRANGULATION, SUFFOCATION OR USE OF A DEADLY
25 WEAPON.

26 18. INFLICTED ANY FORM OF PHYSICAL VIOLENCE AGAINST A PREGNANT VICTIM.

27 19. ENGAGED IN ANY OTHER CONTROLLING BEHAVIOR CONSISTENT WITH THE
28 CONDUCT DESCRIBED IN THIS DEFINITION.

29 E. FOR THE PURPOSES OF THIS SECTION "STRANGULATION" AND "SUFFOCATION"
30 HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 13-1204.

31 25-434. Intimate partner violence and child abuse: parenting
32 time

33 A. IF THE COURT FINDS THAT A PARENT HAS COMMITTED ANY ACT OF INTIMATE
34 PARTNER VIOLENCE OR CHILD ABUSE, THAT PARENT HAS THE BURDEN OF PROVING TO THE
35 COURT'S SATISFACTION THAT UNRESTRICTED PARENTING TIME WILL NOT PHYSICALLY
36 ENDANGER THE CHILD OR SIGNIFICANTLY IMPAIR THE CHILD'S EMOTIONAL DEVELOPMENT.
37 IN DETERMINING WHETHER THE OFFENDING PARENT HAS MET THIS BURDEN, THE COURT
38 SHALL CONSIDER ALL OF THE CRITERIA LISTED IN SECTIONS 25-433, SUBSECTIONS B
39 AND C. THE COURT MUST ALSO CONSIDER IF PARENTING TIME WITH THAT PARENT UNDER
40 THE EXISTING CIRCUMSTANCES MAY:

41 1. EXPOSE THE CHILD TO POOR ROLE MODELING RELATED TO THE CONFIRMED
42 INTIMATE PARTNER VIOLENCE AS THE CHILD GROWS OLDER AND BEGINS TO DEVELOP the
43 OWN INTIMATE RELATIONSHIPS, IRRESPECTIVE OF WHETHER THE OFFENDING
44 PARENT POSES A DIRECT PHYSICAL RISK TO THE CHILD.
45

1 2. ENDANGER THE CHILD'S SAFETY DUE TO THE CHILD'S PHYSICAL PROXIMITY
2 TO NEW, POTENTIAL ACTS OF VIOLENCE BY THE PARENT AGAINST A NEW INTIMATE
3 PARTNER OR OTHER CHILD.

4 B. IF THE OFFENDING PARENT FAILS TO PROVE THE PARENT'S SUITABILITY FOR
5 UNRESTRICTED PARENTING TIME PURSUANT TO SUBSECTION A OF THIS SECTION, THE
6 COURT SHALL PLACE CONDITIONS ON PARENTING TIME THAT BEST PROTECT THE CHILD
7 AND THE OTHER PARENT FROM FURTHER HARM. WITH RESPECT TO THE OFFENDING
8 PARENT, THE COURT MAY:

9 1. ORDER CHILD EXCHANGES TO OCCUR IN A SPECIFIED SAFE SETTING.

10 2. ORDER THAT A PERSON OR AGENCY SPECIFIED BY THE COURT MUST SUPERVISE
11 PARENTING TIME. IF THE COURT ALLOWS A FAMILY OR HOUSEHOLD MEMBER OR OTHER
12 PERSON TO SUPERVISE THE OFFENDING PARENT'S PARENTING TIME, THE COURT SHALL
13 ESTABLISH CONDITIONS THAT THIS SUPERVISOR MUST FOLLOW. WHEN DECIDING WHOM TO
14 SELECT, THE COURT SHALL ALSO CONSIDER THE SUPERVISOR'S ABILITY TO PHYSICALLY
15 INTERVENE IN AN EMERGENCY, WILLINGNESS TO PROMPTLY REPORT A PROBLEM TO THE
16 COURT OR OTHER APPROPRIATE AUTHORITIES AND READINESS TO APPEAR IN FUTURE
17 PROCEEDINGS AND TO TESTIFY.

18 3. ORDER THE COMPLETION OF A BATTERER'S INTERVENTION PROGRAM AND ANY
19 OTHER COURT-ORDERED COUNSELING.

20 4. ORDER THE OFFENDING PARENT TO ABSTAIN FROM THE CONSUMPTION OR
21 POSSESSION OF ALCOHOL OR CONTROLLED SUBSTANCES DURING THAT PARENT'S PARENTING
22 TIME AND AT ANY OTHER TIME THE COURT DEEMS APPROPRIATE.

23 5. ORDER THE PAYMENT OF COSTS ASSOCIATED WITH SUPERVISED PARENTING
24 TIME.

25 6. PROHIBIT OVERNIGHT PARENTING TIME.

26 7. REQUIRE THE POSTING OF A CASH BOND FROM THE OFFENDING PARENT TO
27 ASSURE THE CHILD'S SAFE RETURN TO THE OTHER PARENT.

28 8. ORDER THAT THE ADDRESS OF THE CHILD AND OTHER PARENT REMAIN
29 CONFIDENTIAL.

30 9. RESTRICT OR FORBID ACCESS TO OR POSSESSION OF FIREARMS OR
31 AMMUNITION.

32 10. SUSPEND PARENTING TIME FOR A PRESCRIBED PERIOD.

33 11. SUSPEND PARENTING TIME INDEFINITELY, PENDING A CHANGE IN
34 CIRCUMSTANCES AND A MODIFICATION PETITION FROM THE OFFENDING PARENT.

35 12. IMPOSE ANY OTHER CONDITION THAT THE COURT DETERMINES IS NECESSARY
36 TO PROTECT THE CHILD, THE OTHER PARENT, AND ANY OTHER FAMILY OR HOUSEHOLD
37 MEMBER.

38 25-435. Intimate partner violence and child abuse; evidence;
39 collateral proceedings; prohibited activity;
40 alternate dispute resolution; referrals

41 A. TO DETERMINE IF A PARENT HAS COMMITTED AN ACT OF INTIMATE PARTNER
42 VIOLENCE OR CHILD ABUSE, AND SUBJECT TO THE APPLICABLE RULES OF FAMILY LAW
43 PROCEDURE, THE COURT SHALL CONSIDER ALL RELEVANT FACTORS INCLUDING THE
44 FOLLOWING:
45

1 1. FINDINGS OR JUDGMENTS FROM ANOTHER COURT OF COMPETENT JURISDICTION.
2 2. POLICE OR MEDICAL REPORTS.
3 3. COUNSELING, SCHOOL OR SHELTER RECORDS.
4 4. CHILD PROTECTIVE SERVICES RECORDS.
5 5. PHOTOGRAPHS, RECORDINGS, TEXT MESSAGES, ELECTRONIC MAIL OR WRITTEN
6 CORRESPONDENCE.
7 6. WITNESS TESTIMONY.
8 B. FOR PURPOSES OF SUBSECTION A OF THIS SECTION:
9 1. EVIDENCE THAT A PARENT PREVIOUSLY CONSENTED TO DEFERRED PROSECUTION
10 OR DIVERSION FROM CRIMINAL CHARGES FOR DOMESTIC VIOLENCE AGAINST AN INTIMATE
11 PARTNER OR CHILD ABUSE CONSTITUTES ADEQUATE PROOF THAT THE PARENT COMMITTED
12 THE ACT OR ACTS ALLEGED IN THE CRIMINAL COMPLAINT, REGARDLESS OF WHETHER THE
13 COMPLAINT WAS DISMISSED PURSUANT TO THE DIVERSION OR DEFERRED PROSECUTION.
14 THIS SUBSECTION DOES NOT PREVENT EITHER PARENT FROM INTRODUCING ADDITIONAL
15 EVIDENCE RELATED TO THE EVENT IN QUESTION IN SUPPORT OF THAT PARENT'S CASE.
16 2. A JUDGMENT RESULTING FROM A PROCEEDING UNDER SECTION 13-2602,
17 SUBSECTION I IS NOT CONCLUSIVE EVIDENCE THAT DOMESTIC VIOLENCE OR CHILD ABUSE
18 DID OR DID NOT OCCUR.
19 C. A PARENT'S RESIDENCY IN A SHELTER FOR VICTIMS OF INTIMATE PARTNER
20 VIOLENCE DOES NOT CONSTITUTE GROUNDS FOR DENYING THAT PARENT ANY DEGREE OF
21 DECISION-MAKING AUTHORITY OR PARENTING TIME. FOR THE PURPOSES OF THIS
22 SUBSECTION, "SHELTER" MEANS A FACILITY THAT MEETS THE REQUIREMENTS OF SECTION
23 36-3005.
24 D. THE COURT SHALL NOT ORDER JOINT COUNSELING BETWEEN A PERPETRATOR OF
25 VIOLENCE AND THAT PERSON'S VICTIM. THE COURT MAY REFER A VICTIM TO
26 APPROPRIATE COUNSELING AND PROVIDE A VICTIM WITH WRITTEN INFORMATION ABOUT
27 AVAILABLE COMMUNITY RESOURCES RELATED TO INTIMATE PARTNER VIOLENCE OR CHILD
28 ABUSE.
29 E. A VICTIM OF INTIMATE PARTNER VIOLENCE MAY OPT OUT OF ALTERNATIVE
30 DISPUTE RESOLUTION IMPOSED UNDER THE ARIZONA RULES OF FAMILY LAW PROCEDURE TO
31 THE EXTENT THAT A SUGGESTED DISPUTE RESOLUTION PROCEDURE REQUIRES THE PARTIES
32 TO MEET AND CONFER IN PERSON. THE COURT SHALL NOTIFY EACH PARTY OF THIS
33 RIGHT BEFORE REQUIRING THEIR PARTICIPATION IN THAT PROCESS. FOR THE PURPOSES OF
34 THIS SUBSECTION, "VICTIM OF INTIMATE PARTNER VIOLENCE" MEANS A PARENT WHO:
35 1. WAS ISSUED AN ORDER OF PROTECTION AGAINST THE OTHER PARENT PURSUANT
36 TO SECTION 13-3602.
37 2. WAS PREVIOUSLY DETERMINED BY A CIVIL OR FAMILY COURT TO HAVE
38 SUFFERED INTIMATE PARTNER VIOLENCE BY THE OTHER PARENT.
39 3. WAS THE NAMED VICTIM IN A CRIMINAL CASE THAT RESULTED IN THE
40 CONVICTION, DIVERSION OR DEFERRED PROSECUTION OF THE OTHER PARENT FOR AN ACT
41 INVOLVING INTIMATE PARTNER VIOLENCE.
42 F. THE COURT MAY REQUEST OR ORDER THE SERVICES OF THE DIVISION OF
43 CHILDREN AND FAMILY SERVICES IN THE DEPARTMENT OF ECONOMIC SECURITY IF IT
44 BELIEVES THAT A CHILD MAY BE THE VICTIM OF ABUSE OR NEGLECT AS DEFINED IN
45 SECTION 8-201.

1 25-436. Substance abuse

2 A. IF THE COURT DETERMINES FROM A PREPONDERANCE OF THE EVIDENCE THAT A
3 PARENT HAS BEEN CONVICTED OF ANY OF THE FOLLOWING OFFENSES WITHIN THE PAST
4 THREE YEARS, A REBUTTABLE PRESUMPTION IS ESTABLISHED PROHIBITING AN AWARD OF
5 PARENTAL DECISION-MAKING TO THAT PARENT:

- 6 1. ANY DRUG OFFENSE UNDER TITLE 13, CHAPTER 34.
7 2. A VIOLATION OF SECTION 28-1381, 28-1382 OR 28-1383.

8 B. TO DETERMINE IF AN OFFENDER HAS REBUTTED THE PRESUMPTION, THE COURT
9 SHALL CONSIDER ALL RELEVANT FACTORS INCLUDING:

- 10 1. THE ABSENCE OF ANY OTHER DRUG OR ALCOHOL-RELATED ARREST OR
11 CONVICTION.
12 2. RELIABLE RESULTS FROM RANDOM URINALYSES OR BLOOD OR HAIR FOLLICLE
13 TESTS OR OTHER COMPARABLE TESTING PROCEDURES.

14 25-437. Dangerous crimes against children: definition

15 A. THE COURT SHALL NOT AWARD PARENTAL DECISION-MAKING OR UNSUPERVISED
16 PARENTING TIME TO A PERSON WHO:

- 17 1. HAS BEEN CONVICTED OF A DANGEROUS CRIME AGAINST CHILDREN.
18 2. IS REQUIRED TO REGISTER PURSUANT TO SECTION 13-3821.

19 B. A CHILD'S PARENT OR CUSTODIAN MUST IMMEDIATELY NOTIFY THE OTHER
20 PARENT OR CUSTODIAN IF THE PARENT OR CUSTODIAN KNOWS THAT A CONVICTED OR
21 REGISTERED SEX OFFENDER OR A PERSON WHO HAS BEEN CONVICTED OF A DANGEROUS
22 CRIME AGAINST CHILDREN MAY HAVE ACCESS TO THE CHILD. THE PARENT OR CUSTODIAN
23 MUST PROVIDE NOTICE BY FIRST-CLASS MAIL, RETURN RECEIPT REQUESTED, OR BY
24 ELECTRONIC MEANS TO AN ELECTRONIC MAIL ADDRESS THAT THE RECIPIENT PROVIDED TO
25 THE PARENT OR CUSTODIAN FOR NOTIFICATION PURPOSES OR BY SOME OTHER MEANS OF
26 COMMUNICATION APPROVED BY THE COURT.

27 C. FOR THE PURPOSES OF THIS SECTION, "DANGEROUS CRIME AGAINST CHILDREN"
28 HAS THE SAME MEANING PRESCRIBED IN SECTION 13-705.

29 25-438. Violent and serial felons

30 A. THE COURT SHALL NOT AWARD PARENTAL DECISION-MAKING OR UNSUPERVISED
31 PARENTING TIME TO A PERSON WHO HAS BEEN:

- 32 1. CONVICTED OF SECOND DEGREE MURDER PURSUANT TO SECTION 13-1104 OR
33 FIRST DEGREE MURDER PURSUANT TO SECTION 13-1105.
34 2. SENTENCED AS A CATEGORY TWO OR CATEGORY THREE REPETITIVE OFFENDER
35 PURSUANT TO SECTION 13-703.

36 B. NOTWITHSTANDING SUBSECTION A, PARAGRAPH 1 OF THIS SECTION, IF A
37 PARENT IS CONVICTED OF FIRST DEGREE MURDER OR SECOND DEGREE MURDER OF THE
38 CHILD'S OTHER PARENT, THE COURT MAY AWARD PARENTAL DECISION-MAKING AND
39 UNRESTRICTED PARENTING TIME TO THE CONVICTED PARENT ON A SHOWING OF CREDIBLE
40 EVIDENCE, WHICH MAY INCLUDE TESTIMONY FROM AN EXPERT WITNESS, THAT THE
41 CONVICTED PARENT WAS A VICTIM OF INTIMATE PARTNER VIOLENCE AT THE HANDS OF
42 THE MURDERED PARENT AND SUFFERED TRAUMA AS A RESULT.

43 25-447. Rulings not consistent with statutory presumptions

44 A. IF THE COURT DETERMINES THAT SPECIAL CIRCUMSTANCES APPLY TO BOTH
45 PARENTS AND THAT NEITHER PARENT SHOULD BE AWARDED PARENTAL DECISION-MAKING OR

1 PARENTING TIME, THE COURT MAY REFER THE MATTER FOR JUVENILE DEPENDENCY
2 PROCEEDINGS PURSUANT TO TITLE 8, CHAPTER 10 OR MAY AWARD PARENTAL
3 PARENTAL DECISION-MAKING OR VISITATION TO ANOTHER FAMILY MEMBER OR THIRD PARTY
4 CONSISTENT WITH THE CHILD'S BEST INTERESTS.

5 B. IF THE COURT AWARDS PARENTAL DECISION-MAKING OR PARENTING TIME TO A
6 PARENT WHO IS OTHERWISE DISQUALIFIED PURSUANT TO THIS ARTICLE, THE COURT MUST
7 PROVIDE DETAILED, WRITTEN FINDINGS THAT DESCRIBE THE EXTRAORDINARY CONDITIONS
8 THAT JUSTIFY THE AWARD.

9 C. THE COURT MUST EXPLAIN WHY ITS DECISION PURSUANT TO THIS SECTION IS
10 IN THE CHILD'S BEST INTEREST, WITH PARTICULAR FOCUS ON THE CHILD'S SAFETY.

11 ARTICLE 4. THIRD-PARTY RIGHTS

12 25-441. Decision-making authority

13 A. PURSUANT TO SECTION 25-403, SUBSECTION B, PARAGRAPH 2, A PERSON
14 OTHER THAN A LEGAL PARENT MAY PETITION THE SUPERIOR COURT FOR DECISION-MAKING
15 AUTHORITY OVER A CHILD. THE COURT SHALL SUMMARILY DENY A PETITION UNLESS IT
16 FINDS THAT THE PETITIONER'S INITIAL PLEADING ESTABLISHES THAT ALL OF THE
17 FOLLOWING ARE TRUE:

18 1. THE PERSON FILING THE PETITION STANDS IN LOCO PARENTIS
19 TO THE CHILD.

20 2. IT WOULD BE SIGNIFICANTLY DETRIMENTAL TO THE CHILD TO REMAIN, OR BE
21 PLACED IN THE CARE OF, EITHER LEGAL PARENT WHO WISHES TO KEEP OR ACQUIRE
22 PARENTAL DECISION-MAKING.

23 3. A COURT OF COMPETENT JURISDICTION HAS NOT ENTERED OR APPROVED AN
24 ORDER CONCERNING PARENTAL DECISION-MAKING WITHIN ONE YEAR BEFORE THE PERSON
25 FILED A PETITION PURSUANT TO THIS SECTION, UNLESS THERE IS REASON TO BELIEVE
26 THE CHILD'S PRESENT ENVIRONMENT MAY SERIOUSLY ENDANGER THE CHILD'S PHYSICAL,
27 MENTAL, MORAL OR EMOTIONAL HEALTH.

28 4. ONE OF THE FOLLOWING APPLIES:

29 (a) ONE OF THE LEGAL PARENTS IS DECEASED.

30 (b) THE CHILD'S LEGAL PARENTS ARE NOT MARRIED TO EACH OTHER AT THE
31 TIME THE PETITION IS FILED.

32 (c) A PROCEEDING FOR DISSOLUTION OF MARRIAGE OR FOR LEGAL SEPARATION
33 OF THE LEGAL PARENTS IS PENDING AT THE TIME THE PETITION IS FILED.

34 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, IT IS A REBUTTABLE
35 PRESUMPTION THAT AWARDED DECISION-MAKING TO A LEGAL PARENT SERVES THE CHILD'S
36 BEST INTERESTS BECAUSE OF THE PHYSICAL, PSYCHOLOGICAL AND EMOTIONAL
37 NEEDS OF THE CHILD TO BE REARED BY A LEGAL PARENT. A THIRD PARTY MAY REBUT
38 THIS PRESUMPTION ONLY WITH PROOF SHOWING BY CLEAR AND CONVINCING EVIDENCE
39 THAT AWARDED PARENTAL DECISION-MAKING TO A LEGAL PARENT IS NOT CONSISTENT
40 WITH THE CHILD'S BEST INTERESTS.

41 C. PURSUANT TO SECTION 25-403, SUBSECTION B, PARAGRAPH 2, A PERSON
42 OTHER THAN A LEGAL PARENT MAY PETITION THE SUPERIOR COURT FOR VISITATION WITH
43 A CHILD. THE SUPERIOR COURT MAY GRANT VISITATION RIGHTS DURING THE CHILD'S
44 MINORITY ON A FINDING THAT THE VISITATION IS IN THE CHILD'S BEST INTERESTS
45 AND THAT ANY OF THE FOLLOWING IS TRUE:

1 1. ONE OF THE LEGAL PARENTS IS DECEASED OR HAS BEEN MISSING AT LEAST
2 THREE MONTHS. FOR THE PURPOSES OF THIS PARAGRAPH, A PARENT IS CONSIDERED TO
3 BE MISSING IF THE PARENT'S LOCATION HAS NOT BEEN DETERMINED AND THE PARENT
4 HAS BEEN REPORTED AS MISSING TO A LAW ENFORCEMENT AGENCY.

5 2. THE CHILD WAS BORN OUT OF WEDLOCK AND THE CHILD'S LEGAL PARENTS ARE
6 NOT MARRIED TO EACH OTHER AT THE TIME THE PETITION IS FILED.

7 3. FOR GRANDPARENT OR GREAT-GRANDPARENT VISITATION, THE MARRIAGE OF
8 THE PARENTS OF THE CHILD HAS BEEN DISSOLVED FOR AT LEAST THREE MONTHS.

9 4. FOR IN LOCO PARENTIS VISITATION, A PROCEEDING FOR DISSOLUTION OF
10 MARRIAGE OR FOR LEGAL SEPARATION OF THE LEGAL PARENTS IS PENDING AT THE TIME
11 THE PETITION IS FILED.

12 D. A PETITION FILED UNDER SUBSECTION A OR C OF THIS SECTION MUST BE
13 VERIFIED OR SUPPORTED BY AFFIDAVIT AND MUST INCLUDE DETAILED FACTS SUPPORTING
14 THE PETITIONER'S CLAIM. THE PETITIONER MUST ALSO PROVIDE NOTICE OF THIS
15 PROCEEDING, INCLUDING A COPY OF THE PETITION AND ANY AFFIDAVITS OR OTHER
16 ATTACHMENTS, AND SERVE THE NOTICE PURSUANT TO THE ARIZONA RULES OF FAMILY LAW
17 PROCEDURE TO ALL OF THE FOLLOWING:

18 1. THE CHILD'S LEGAL PARENTS.

19 2. A THIRD PARTY WHO POSSESSES DECISION-MAKING AUTHORITY OVER THE
20 CHILD OR VISITATION RIGHTS.

21 3. THE CHILD'S GUARDIAN OR GUARDIAN AD LITEM.

22 4. A PERSON OR AGENCY THAT POSSESSES PHYSICAL CUSTODY OF THE CHILD OR
23 CLAIMS DECISION-MAKING AUTHORITY OR VISITATION RIGHTS CONCERNING THE CHILD.

24 5. ANY OTHER PERSON OR AGENCY THAT HAS PREVIOUSLY APPEARED IN THE
25 ACTION.

26 E. WHEN DECIDING WHETHER TO GRANT VISITATION TO A THIRD PARTY, THE
27 COURT SHALL GIVE SPECIAL WEIGHT TO THE LEGAL PARENTS' OPINION OF WHAT SERVES
28 THEIR CHILD'S BEST INTERESTS AND CONSIDER ALL RELEVANT FACTORS INCLUDING:

29 1. THE HISTORICAL RELATIONSHIP, IF ANY, BETWEEN THE CHILD AND THE
30 PERSON SEEKING VISITATION.

31 2. THE MOTIVATION OF THE REQUESTING PARTY SEEKING VISITATION.

32 3. THE MOTIVATION OF THE PERSON OBJECTING TO VISITATION.

33 4. THE QUANTITY OF VISITATION TIME REQUESTED AND THE POTENTIAL ADVERSE
34 IMPACT THAT VISITATION WILL HAVE ON THE CHILD'S CUSTOMARY ACTIVITIES.

35 5. IF ONE OR BOTH OF THE CHILD'S PARENTS ARE DECEASED, THE BENEFIT IN
36 MAINTAINING AN EXTENDED FAMILY RELATIONSHIP.

37 F. IF LOGISTICALLY POSSIBLE AND APPROPRIATE, THE COURT SHALL ORDER
38 VISITATION BY A GRANDPARENT OR GREAT-GRANDPARENT IF THE CHILD IS RESIDING OR
39 SPENDING TIME WITH THE PARENT THROUGH WHOM THE GRANDPARENT OR
40 GREAT-GRANDPARENT CLAIMS A RIGHT OF ACCESS TO THE CHILD.

41 G. A GRANDPARENT OR GREAT-GRANDPARENT SEEKING VISITATION RIGHTS UNDER
42 THIS SECTION SHALL PETITION IN THE SAME ACTION IN WHICH THE FAMILY COURT
43 PREVIOUSLY DECIDED PARENTAL DECISION-MAKING AND PARENTING TIME, OR IF NO SUCH
44 CASE EXISTED, BY SEPARATE PETITION IN THE COUNTY OF THE CHILD'S HOME STATE, AS
45 DEFINED IN SECTION 25-1002.

1 H. ALL VISITATION RIGHTS GRANTED UNDER THIS SECTION AUTOMATICALLY
2 TERMINATE IF THE CHILD IS ADOPTED OR PLACED FOR ADOPTION. IF THE CHILD IS
3 REMOVED FROM AN ADOPTIVE PLACEMENT, THE COURT MAY REINSTATE THE VISITATION
4 RIGHTS. THIS SUBSECTION DOES NOT APPLY IF THE CHILD IS ADOPTED BY THE SPOUSE
5 OF A NATURAL PARENT AFTER THE NATURAL PARENT REMARRIES.

6 ARTICLE 5. TEMPORARY ORDERS, MODIFICATION AND RELOCATION

7 24-451. Temporary Orders

8 A. A PARTY TO A CUSTODY PROCEEDING MAY MOVE FOR A TEMPORARY CUSTODY
9 ORDER. THIS MOTION MUST BE SUPPORTED BY PLEADINGS AS PROVIDED IN SECTION
10 25-452. THE COURT MAY AWARD TEMPORARY CUSTODY PURSUANT TO THE REQUIREMENTS
11 OF THIS CHAPTER AFTER A HEARING OR, IF THERE IS NO OBJECTION, SOLELY ON THE
12 BASIS OF THE PLEADINGS.

13 B. IF A PROCEEDING FOR DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION IS
14 DISMISSED, ANY TEMPORARY CUSTODY ORDER IS VACATED UNLESS A PARENT OR THE
15 CHILD'S CUSTODIAN MOVES THAT THE PROCEEDING CONTINUE AS A CUSTODY PROCEEDING
16 AND THE COURT FINDS, AFTER A HEARING, THAT THE CIRCUMSTANCES OF THE PARENTS
17 AND THE BEST INTEREST OF THE CHILD REQUIRE THAT A CUSTODY DECREE BE ISSUED.

18 C. IF A CUSTODY PROCEEDING COMMENCED IN THE ABSENCE OF A PETITION FOR
19 DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION IS DISMISSED, ANY TEMPORARY
20 CUSTODY ORDER IS VACATED.

21 25-452. Modification of decree; affidavit; contents

22 A. A PERSON SHALL NOT MAKE A MOTION TO MODIFY A PARENTAL
23 DECISION-MAKING OR PARENTING TIME DECREE EARLIER THAN ONE YEAR AFTER ITS
24 DATE, UNLESS THE COURT PERMITS IT TO BE MADE ON THE BASIS OF AFFIDAVITS THAT
25 THERE IS REASON TO BELIEVE THE CHILD'S PRESENT ENVIRONMENT MAY SERIOUSLY
26 ENDANGER THE CHILD'S PHYSICAL, MENTAL, MORAL OR EMOTIONAL HEALTH. AT ANY
27 TIME AFTER A SHARED PARENTAL DECISION-MAKING ORDER IS ENTERED, A PARENT MAY
28 PETITION THE COURT FOR MODIFICATION OF THE ORDER ON THE BASIS OF EVIDENCE
29 THAT DOMESTIC VIOLENCE INVOLVING A VIOLATION OF SECTION 13-1201 OR 13-1204,
30 SPOUSAL ABUSE OR CHILD ABUSE OCCURRED SINCE THE ENTRY OF THE JOINT CUSTODY
31 ORDER. SIX MONTHS AFTER A SHARED PARENTAL DECISION-MAKING ORDER IS ENTERED,
32 A PARENT MAY PETITION THE COURT FOR MODIFICATION OF THE ORDER BASED ON THE
33 FAILURE OF THE OTHER PARENT TO COMPLY WITH THE PROVISIONS OF THE ORDER. A
34 MOTION OR PETITION TO MODIFY A CUSTODY ORDER SHALL MEET THE REQUIREMENTS OF
35 THIS SECTION. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION B OF THIS SECTION,
36 IF A CUSTODIAL PARENT IS A MEMBER OF THE UNITED STATES ARMED FORCES, THE
37 COURT SHALL CONSIDER THE TERMS OF THAT PARENT'S MILITARY FAMILY CARE PLAN TO
38 DETERMINE WHAT IS IN THE CHILD'S BEST INTEREST DURING THE CUSTODIAL PARENT'S
39 MILITARY DEPLOYMENT.

40 B. FOR THE PURPOSES OF A MOTION TO MODIFY A DECREE, THE MILITARY
41 DEPLOYMENT OF A CUSTODIAL PARENT WHO IS A MEMBER OF THE UNITED STATES ARMED
42 FORCES IS NOT A CHANGE IN CIRCUMSTANCES THAT MATERIALLY AFFECTS THE WELFARE
43 OF THE CHILD IF THE CUSTODIAL PARENT HAS FILED A MILITARY FAMILY CARE PLAN
44 WITH THE COURT AT A PREVIOUS CUSTODY PROCEEDING AND IF THE MILITARY
45 DEPLOYMENT IS LESS THAN SIX MONTHS.

1 C. A DECREE OR ORDER ISSUED PURSUANT TO THIS CHAPTER THAT A COURT
2 ENTERS IN CONTEMPLATION OF OR DURING THE MILITARY DEPLOYMENT OF A CUSTODIAL
3 PARENT OUTSIDE OF THE CONTINENTAL UNITED STATES SHALL SPECIFICALLY REFERENCE
4 THE DEPLOYMENT AND INCLUDE PROVISIONS GOVERNING THE CUSTODY OF THE MINOR
5 CHILD AFTER THE DEPLOYMENT ENDS. EITHER PARENT MAY FILE A PETITION WITH THE
6 COURT AFTER THE DEPLOYMENT ENDS TO MODIFY THE DECREE OR ORDER, IN COMPLIANCE
7 WITH SUBSECTION F OF THIS SECTION. THE COURT SHALL HOLD A HEARING OR CONFERENCE
8 ON THE PETITION WITHIN THIRTY DAYS AFTER THE PETITION IS FILED.

9 D. THE COURT MAY MODIFY AN ORDER GRANTING OR DENYING PARENTING TIME
10 RIGHTS WHENEVER MODIFICATION WOULD SERVE THE BEST INTEREST OF THE CHILD, BUT
11 THE COURT SHALL NOT RESTRICT A PARENT'S PARENTING TIME RIGHTS UNLESS IT FINDS
12 THAT THE PARENTING TIME WOULD ENDANGER SERIOUSLY THE CHILD'S PHYSICAL,
13 MENTAL, MORAL OR EMOTIONAL HEALTH.

14 E. IF AFTER A CUSTODY OR PARENTING TIME ORDER IS IN EFFECT ONE OF THE
15 PARENTS IS CHARGED WITH A DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN
16 SECTION 13-705, CHILD MOLESTATION AS DEFINED IN SECTION 13-1410 OR AN ACT
17 OF DOMESTIC VIOLENCE AS PRESCRIBED IN SECTION 13-3601 IN WHICH THE VICTIM IS
18 A MINOR, THE OTHER PARENT MAY PETITION THE COURT FOR AN EXPEDITED HEARING.
19 PENDING THE EXPEDITED HEARING, THE COURT MAY SUSPEND PARENTING TIME OR CHANGE
20 CUSTODY EX PARTE.

21 F. TO MODIFY ANY TYPE OF CUSTODY ORDER A PERSON SHALL SUBMIT AN
22 AFFIDAVIT OR VERIFIED PETITION SETTING FORTH DETAILED FACTS SUPPORTING THE
23 REQUESTED MODIFICATION AND SHALL GIVE NOTICE, TOGETHER WITH A COPY OF THE
24 AFFIDAVIT OR VERIFIED PETITION, TO OTHER PARTIES TO THE PROCEEDING, WHO MAY
25 FILE OPPOSING AFFIDAVITS. THE COURT SHALL DENY THE MOTION UNLESS IT FINDS
26 THAT ADEQUATE CAUSE FOR HEARING THE MOTION IS ESTABLISHED BY THE PLEADINGS,
27 IN WHICH CASE IT SHALL SET A DATE FOR HEARING ON WHY THE REQUESTED MODIFICATION
28 SHOULD NOT BE GRANTED.

29 G. THE COURT SHALL ASSESS ATTORNEY FEES AND COSTS AGAINST A PARTY
30 SEEKING MODIFICATION IF THE COURT FINDS THAT THE MODIFICATION ACTION IS
31 VEXATIOUS AND CONSTITUTES HARASSMENT.

32 H. SUBSECTION F OF THIS SECTION DOES NOT APPLY IF THE REQUESTED RELIEF
33 IS FOR THE MODIFICATION OR CLARIFICATION OF VISITATION AND NOT FOR A CHANGE
34 OF JOINT CUSTODY, JOINT LEGAL CUSTODY, JOINT PHYSICAL CUSTODY OR SOLE
35 CUSTODY.

36 25-453. Relocation; notice

37 IF BY WRITTEN AGREEMENT OR COURT ORDER BOTH PARENTS ARE ENTITLED TO
38 CUSTODY OR PARENTING TIME AND BOTH PARENTS RESIDE IN THE STATE, AT LEAST
39 SIXTY DAYS' ADVANCE WRITTEN NOTICE SHALL BE PROVIDED TO THE OTHER PARENT
40 BEFORE A PARENT MAY DO EITHER OF THE FOLLOWING:

- 41 1. RELOCATE THE CHILD OUTSIDE THE STATE.
- 42 2. RELOCATE THE CHILD MORE THAN ONE HUNDRED MILES WITHIN THE STATE.

ARTICLE 6. RECORDS AND SANCTIONS

25-461. Parental access to records

A. UNLESS OTHERWISE PROVIDED BY COURT ORDER OR LAW, ON REASONABLE REQUEST BOTH PARENTS ARE ENTITLED TO HAVE EQUAL ACCESS TO DOCUMENTS AND OTHER INFORMATION CONCERNING THE CHILD'S EDUCATION AND PHYSICAL, MENTAL, MORAL AND EMOTIONAL HEALTH INCLUDING MEDICAL, SCHOOL, POLICE, COURT AND OTHER RECORDS DIRECTLY FROM THE CUSTODIAN OF THE RECORDS OR FROM THE OTHER PARENT.

B. A PERSON WHO DOES NOT COMPLY WITH A REASONABLE REQUEST SHALL REIMBURSE THE REQUESTING PARENT FOR COURT COSTS AND ATTORNEY FEES INCURRED BY THAT PARENT TO FORCE COMPLIANCE WITH THIS SECTION.

C. A PARENT WHO ATTEMPTS TO RESTRICT THE RELEASE OF DOCUMENTS OR INFORMATION BY THE CUSTODIAN WITHOUT A PRIOR COURT ORDER IS SUBJECT TO APPROPRIATE LEGAL SANCTIONS.

25-414. Violation of visitation or parenting time rights: penalties

A. IF, BASED ON A VERIFIED PETITION AND AFTER IT GIVES REASONABLE NOTICE TO AN ALLEGED VIOLATING PARENT AND AN OPPORTUNITY FOR THAT PERSON TO BE HEARD, THE COURT FINDS THAT A PARENT HAS REFUSED WITHOUT GOOD CAUSE TO COMPLY WITH A VISITATION OR PARENTING TIME ORDER, THE COURT SHALL DO AT LEAST ONE OF THE FOLLOWING:

1. FIND THE VIOLATING PARENT IN CONTEMPT OF COURT.
2. ORDER VISITATION OR PARENTING TIME TO MAKE UP FOR THE MISSED SESSIONS.
3. ORDER PARENT EDUCATION AT THE VIOLATING PARENT'S EXPENSE.
4. ORDER FAMILY COUNSELING AT THE VIOLATING PARENT'S EXPENSE.
5. ORDER CIVIL PENALTIES OF NOT TO EXCEED ONE HUNDRED DOLLARS FOR EACH VIOLATION. THE COURT SHALL TRANSMIT MONIES COLLECTED PURSUANT TO THIS PARAGRAPH EACH MONTH TO THE COUNTY TREASURER. THE COUNTY TREASURER SHALL TRANSMIT THESE MONIES MONTHLY TO THE STATE TREASURER FOR DEPOSIT IN THE ALTERNATIVE DISPUTE RESOLUTION FUND ESTABLISHED BY SECTION 12-135.
6. ORDER BOTH PARENTS TO PARTICIPATE IN MEDIATION OR SOME OTHER APPROPRIATE FORM OF ALTERNATIVE DISPUTE RESOLUTION AT THE VIOLATING PARENT'S EXPENSE.
7. MAKE ANY OTHER ORDER THAT MAY PROMOTE THE BEST INTERESTS OF THE CHILD OR CHILDREN INVOLVED.

B. WITHIN TWENTY-FIVE DAYS OF SERVICE OF THE PETITION THE COURT SHALL HOLD A HEARING OR CONFERENCE BEFORE A JUDGE, COMMISSIONER OR PERSON APPOINTED BY THE COURT TO REVIEW NONCOMPLIANCE WITH A VISITATION OR PARENTING TIME ORDER.

C. THE VIOLATING PARENT SHALL PAY THE COURT COSTS AND ATTORNEY FEES THAT ARE INCURRED BY THE NONVIOLATING PARENT AND THAT ARE ASSOCIATED WITH THE REVIEW OF NONCOMPLIANCE WITH A VISITATION OR PARENTING TIME ORDER. IF THE CUSTODIAL PARENT PREVAILS, THE COURT MAY AWARD COURT COSTS AND ATTORNEY FEES TO THE CUSTODIAL PARENT.

ARTICLE 7. MISCELLANEOUS PROVISIONS

25-471. Custody hearings; priority; costs; record

A. PROCEEDINGS BROUGHT PURSUANT TO THIS CHAPTER RECEIVE PRIORITY IN BEING SET FOR HEARING.

B. THE COURT MAY TAX AS COSTS THE PAYMENT OF NECESSARY TRAVEL AND OTHER EXPENSES INCURRED BY ANY PERSON WHOSE PRESENCE AT THE HEARING THE COURT DEEMS NECESSARY TO DETERMINE THE BEST INTEREST OF THE CHILD.

C. THE COURT, WITHOUT A JURY, SHALL DETERMINE QUESTIONS OF LAW AND FACT. IF IT FINDS THAT A PUBLIC HEARING MAY BE DETRIMENTAL TO THE CHILD'S BEST INTEREST, THE COURT MAY EXCLUDE THE PUBLIC FROM A CUSTODY HEARING, BUT MAY ADMIT ANY PERSON WHO HAS A DIRECT AND LEGITIMATE INTEREST IN THE PARTICULAR CASE OR A LEGITIMATE EDUCATIONAL OR RESEARCH INTEREST IN THE WORK OF THE COURT.

D. IF THE COURT FINDS THAT TO PROTECT THE CHILD'S WELFARE, THE RECORD OF ANY INTERVIEW, REPORT, INVESTIGATION, OR TESTIMONY IN A CUSTODY PROCEEDING SHOULD BE KEPT SECRET, THE COURT MAY THEN MAKE AN APPROPRIATE ORDER SEALING THE RECORD.

25-472. Judicial supervision

A. EXCEPT AS OTHERWISE AGREED BY THE PARTIES IN WRITING AT THE TIME OF THE CUSTODY DECREE, THE CUSTODIAN MAY DETERMINE THE CHILD'S UPBRINGING, INCLUDING THE CHILD'S EDUCATION, CARE, HEALTH CARE AND RELIGIOUS TRAINING, UNLESS, ON MOTION BY THE NONCUSTODIAL PARENT, THE COURT, AFTER A HEARING, FINDS THAT IN THE ABSENCE OF A SPECIFIC LIMITATION OF THE CUSTODIAN'S AUTHORITY, THE CHILD'S PHYSICAL HEALTH WOULD BE ENDANGERED OR THE CHILD'S EMOTIONAL DEVELOPMENT WOULD BE SIGNIFICANTLY IMPAIRED.

B. IF EITHER PARENT REQUESTS THE ORDER, OR IF ALL CONTESTANTS AGREE TO THE ORDER, OR IF THE COURT FINDS THAT IN THE ABSENCE OF THE ORDER THE CHILD'S PHYSICAL HEALTH WOULD BE ENDANGERED OR THE CHILD'S EMOTIONAL DEVELOPMENT WOULD BE SIGNIFICANTLY IMPAIRED, AND IF THE COURT FINDS THAT THE BEST INTERESTS OF THE CHILD WOULD BE SERVED, THE COURT SHALL ORDER A LOCAL SOCIAL SERVICE AGENCY TO EXERCISE CONTINUING SUPERVISION OVER THE CASE TO ASSURE THAT THE CUSTODIAL OR PARENTING TIME TERMS OF THE DECREE ARE CARRIED OUT. AT THE DISCRETION OF THE COURT, REASONABLE FEES FOR THE SUPERVISION MAY BE CHARGED TO ONE OR BOTH PARENTS IF THE FEES HAVE BEEN APPROVED BY THE SUPREME COURT.

25-473. Identification of a primary caretaker and public assistance

THE COURT MAY SPECIFY ONE PARENT AS THE PRIMARY CARETAKER OF THE CHILD AND ONE HOME AS THE PRIMARY HOME OF THE CHILD FOR THE PURPOSES OF DEFINING ELIGIBILITY FOR PUBLIC ASSISTANCE. THIS FINDING DOES NOT DIMINISH THE RIGHTS OF EITHER PARENT AND DOES NOT CREATE A PRESUMPTION FOR OR AGAINST EITHER PARENT IN A PROCEEDING FOR THE MODIFICATION OF A CUSTODY ORDER.

1 25-474. Resources and fees

2 A. IN A PROCEEDING REGARDING SOLE CUSTODY OR JOINT CUSTODY, EITHER
3 PARTY MAY REQUEST ATTORNEY FEES, COSTS AND EXPERT WITNESS FEES TO ENABLE THE
4 PARTY WITH INSUFFICIENT RESOURCES TO OBTAIN ADEQUATE LEGAL REPRESENTATION AND
5 TO PREPARE EVIDENCE FOR THE HEARING.

6 B. IF THE COURT FINDS THERE IS A FINANCIAL DISPARITY BETWEEN THE
7 PARTIES, THE COURT MAY ORDER PAYMENT OF REASONABLE FEES, EXPENSES AND COSTS
8 TO ALLOW ADEQUATE PREPARATION.

9 25-475. Interviews by court; professional assistance

10 A. THE COURT MAY INTERVIEW THE CHILD IN CHAMBERS TO ASCERTAIN THE
11 CHILD'S WISHES AS TO THE CHILD'S CUSTODIAN AND AS TO PARENTING TIME.

12 B. THE COURT MAY SEEK THE ADVICE OF PROFESSIONAL PERSONNEL, WHETHER OR
13 NOT EMPLOYED BY THE COURT ON A REGULAR BASIS. THE ADVICE GIVEN SHALL BE IN
14 WRITING AND SHALL BE MADE AVAILABLE BY THE COURT TO COUNSEL, ON REQUEST,
15 UNDER SUCH TERMS AS THE COURT DETERMINES. COUNSEL MAY EXAMINE AS A WITNESS ANY
16 PROFESSIONAL PERSONNEL CONSULTED BY THE COURT, UNLESS THAT RIGHT IS WAIVED.

17 25-476. Investigations and reports

18 A. IN CONTESTED CUSTODY PROCEEDINGS, AND IN OTHER CUSTODY PROCEEDINGS
19 IF A PARENT OR THE CHILD'S CUSTODIAN SO REQUESTS, THE COURT MAY ORDER AN
20 INVESTIGATION AND REPORT CONCERNING CUSTODIAL ARRANGEMENTS FOR THE CHILD.
21 THE INVESTIGATION AND REPORT MAY BE MADE BY THE COURT SOCIAL SERVICE AGENCY,
22 THE STAFF OF THE JUVENILE COURT, THE LOCAL PROBATION OR WELFARE DEPARTMENT, OR
23 A PRIVATE PERSON. THE REPORT MUST INCLUDE A WRITTEN AFFIRMATION BY THE
24 PERSON COMPLETING THE REPORT THAT THE PERSON HAS MET THE TRAINING
25 REQUIREMENTS PRESCRIBED IN SUBSECTION C OF THIS SECTION.

26 B. IF AN INVESTIGATION AND REPORT ARE ORDERED PURSUANT TO THIS SECTION
27 AND IF THE COURT APPOINTS A FAMILY COURT ADVISOR, THE COURT SHALL ALLOCATE
28 COST BASED ON THE FINANCIAL CIRCUMSTANCES OF BOTH PARTIES.

29 C. THE COURT SHALL REQUIRE ANY PERSON WHO CONDUCTS AN INVESTIGATION OR
30 PREPARES A REPORT PURSUANT TO THIS SECTION TO RECEIVE TRAINING THAT MEETS THE
31 MINIMUM STANDARDS PRESCRIBED BY THE DOMESTIC RELATIONS COMMITTEE, ESTABLISHED
32 BY SECTION 25-323.02 AS FOLLOWS:

- 33 1. SIX INITIAL HOURS OF DOMESTIC VIOLENCE TRAINING.
34 2. SIX INITIAL HOURS OF CHILD ABUSE TRAINING.
35 3. FOUR SUBSEQUENT HOURS OF TRAINING EVERY TWO YEARS ON DOMESTIC
36 VIOLENCE AND CHILD ABUSE.

37 D. A PERSON THAT HAS COMPLETED PROFESSIONAL TRAINING TO BECOME LICENSED
38 OR CERTIFIED MAY USE THAT TRAINING TO COMPLETELY OR PARTIALLY FULFILL THE
39 REQUIREMENTS IN SUBSECTION C OF THIS SECTION IF THE TRAINING INCLUDED AT
40 LEAST SIX HOURS EACH ON DOMESTIC VIOLENCE AND CHILD ABUSE IF THE TRAINING
41 MEETS THE MINIMUM STANDARDS PRESCRIBED BY THE DOMESTIC RELATIONS COMMITTEE.
42 SUBSEQUENT PROFESSIONAL TRAINING IN THESE SUBJECT MATTERS MAY BE USED TO
43 PARTIALLY OR COMPLETELY FULFILL THE TRAINING REQUIREMENTS PRESCRIBED IN
44 SUBSECTION C OF THIS SECTION IF THE TRAINING MEETS THE MINIMUM STANDARDS
45 PRESCRIBED BY THE DOMESTIC RELATIONS COMMITTEE.

1 E. A PHYSICIAN WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17
2 IS EXEMPT FROM THE TRAINING REQUIREMENTS PRESCRIBED IN SUBSECTION C OF THIS
3 SECTION.

4 F. IN PREPARING A REPORT CONCERNING A CHILD, THE INVESTIGATOR MAY
5 CONSULT ANY PERSON WHO MAY HAVE INFORMATION ABOUT THE CHILD OR THE CHILD'S
6 POTENTIAL CUSTODIAL ARRANGEMENTS.

7 G. THE COURT SHALL MAIL THE INVESTIGATOR'S REPORT TO COUNSEL AT LEAST
8 TEN DAYS BEFORE THE HEARING. THE INVESTIGATOR SHALL MAKE AVAILABLE TO
9 COUNSEL THE NAMES AND ADDRESSES OF ALL PERSONS WHOM THE INVESTIGATOR HAS
10 CONSULTED. ANY PARTY TO THE PROCEEDING MAY CALL FOR EXAMINATION OF THE
11 INVESTIGATOR AND ANY PERSON CONSULTED BY THE INVESTIGATOR.

12 25-477. Expedited child support and parenting time fund

13 A. EACH COUNTY TREASURER SHALL ESTABLISH AN EXPEDITED CHILD SUPPORT
14 AND PARENTING TIME FUND CONSISTING OF MONIES RECEIVED PURSUANT TO SECTION
15 12-284, SUBSECTION D.

16 B. THE PRESIDING JUDGE OF THE SUPERIOR COURT SHALL USE FUND MONIES TO
17 ESTABLISH, MAINTAIN AND ENHANCE PROGRAMS DESIGNED TO EXPEDITE THE PROCESSING
18 OF PETITIONS FILED PURSUANT TO SECTION 25-326 AND TO ESTABLISH, ENFORCE AND
19 MODIFY COURT ORDERS INVOLVING CHILDREN.

20 C. THE COUNTY TREASURER MAY INVEST MONIES IN THE FUND AND SHALL
21 DEPOSIT INTEREST EARNED IN THE FUND.

22 D. MONIES RECEIVED FROM THIS FUND SHALL BE USED TO SUPPLEMENT AND NOT
23 SUPPLANT MONIES ALLOCATED BY THE COUNTY.

24 25-478. Domestic relations education and mediation fund; report

25 A. EACH COUNTY TREASURER SHALL ESTABLISH A DOMESTIC RELATIONS
26 EDUCATION AND MEDIATION FUND CONSISTING OF MONIES RECEIVED PURSUANT TO SECTION
27 12-284, SUBSECTION C.

28 B. THE PRESIDING JUDGE OF THE SUPERIOR COURT SHALL USE FUND MONIES TO
29 ESTABLISH, MAINTAIN AND ENHANCE PROGRAMS DESIGNED TO EDUCATE PERSONS ABOUT
30 IMPACTS ON CHILDREN OF DISSOLUTION OF MARRIAGE, LEGAL SEPARATION AND
31 RESTRUCTURING OF FAMILIES AND PROGRAMS FOR MEDIATION OF VISITATION OR CUSTODY
32 DISPUTES UNDER THIS CHAPTER OR CHAPTER 6 OF THIS TITLE.

33 C. THE COUNTY TREASURER SHALL DISBURSE MONIES FROM THE FUND ONLY AT THE
34 DIRECTION OF THE PRESIDING JUDGE OF THE SUPERIOR COURT.

35 D. ON NOTICE OF THE PRESIDING JUDGE, THE COUNTY TREASURER SHALL INVEST
36 MONIES IN THE FUND AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE
37 FUND.

38 E. MONIES THAT ARE EXPENDED FROM THE FUND SHALL BE USED TO SUPPLEMENT, AND
39 NOT SUPPLANT, ANY STATE OR COUNTY APPROPRIATIONS THAT WOULD OTHERWISE BE
40 AVAILABLE FOR PROGRAMS DESCRIBED IN SUBSECTION B OF THIS SECTION.

41 F. ON OR BEFORE AUGUST 10 OF EACH YEAR, THE COUNTY TREASURER SHALL
42 SUBMIT A REPORT TO THE PRESIDING JUDGE THAT SHOWS THE AMOUNT OF MONIES IN THE
43 DOMESTIC RELATIONS EDUCATION AND MEDIATION FUND.

25-479. Child support

A. FOR EACH PARENTAL DECISION-MAKING OR PARENTING TIME ORDER ENTERED UNDER THIS CHAPTER, THE COURT SHALL DETERMINE AN AMOUNT OF CHILD SUPPORT IN ACCORDANCE WITH SECTION 25-320 AND GUIDELINES ESTABLISHED PURSUANT TO THAT SECTION.

B. AN AWARD OF JOINT CUSTODY DOES NOT DIMINISH THE RESPONSIBILITY OF EITHER PARENT TO PROVIDE FOR THE SUPPORT OF THE CHILD.

Sec. 6 Section 25-803, Arizona Revised Statutes, is amended to read:

25-803. Persons who may originate proceedings; custody; parenting time; conciliation court

A. Proceedings to establish the maternity or paternity of a child or children and to compel support under this article may be commenced by any of the following:

1. The mother.

2. The father.

3. The guardian, conservator or best friend of a child or children born out of wedlock.

4. A public welfare official or agency of the county where the child or children reside or may be found.

5. The state pursuant to section 25-509.

B. An adult may bring an action to establish the adult's biological parent.

C. Any party to a proceeding under this article other than the state may request that custody and specific parenting time be determined as a part of the proceeding. When paternity is established the court may award custody and parenting time as provided in section 25-408. The attorney general or county attorney shall not seek or defend any ancillary matters such as custody or parenting time.

D. In any case in which paternity is established the parent with whom the child has resided for the greater part of the last six months shall have legal custody unless otherwise ordered by the court.

E. The services of the conciliation court may be used in regard to disputed matters of custody and parenting time.

Sec. 7. Section 25-1002, Arizona Revised Statutes, is amended to read:

25-1002. Definitions

In this chapter, unless the context otherwise requires:

1. "Abandoned" means left without provision for reasonable and necessary care or supervision.

2. "Child" has the same meaning prescribed in section 1-215.

3. "Child custody determination":

(a) Means any judgment, decree or other order of a court, including a permanent, temporary, initial and modification order, for legal custody, physical custody or visitation with respect to a child.

(b) Does not include an order relating to child support or any other monetary obligation of an individual.

4. "Child custody proceeding":

(a) Means a proceeding, including a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence, in which legal custody, physical custody or visitation with respect to a child is an issue or in which that issue may appear.

(b) Does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under article 3 of this chapter.

5. "Commencement" means the filing of the first pleading in a proceeding.

6. "Court" means an entity authorized under the law of a state to establish, enforce or modify a child custody determination.

7. "Home state" means:

(a) The state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding, including any period during which that person is temporarily absent from that state.

(b) If a child is less than six months of age, the state in which the child lived from birth with a parent or person acting as a parent, including any period during which that person is temporarily absent from that state.

8. "Initial determination" means the first child custody determination concerning a particular child.

9. "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.

10. "Issuing state" means the state in which a child custody determination is made.

11. "Modification" means a child custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

12. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, or public corporation or any other legal or commercial entity.

13. "Person acting as a parent" means a person, other than a parent, who meets both of the following requirements:

(a) Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding.

(b) Has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

14. "Physical custody" means the physical care and supervision of a child.

1 15. "State" means a state of the United States, the District of
2 Columbia, Puerto Rico, the United States Virgin Islands or any territory
3 or insular possession subject to the jurisdiction of the United States.

4 16. "Tribe" means an Indian tribe or band or Alaskan native village
5 that is recognized by federal law or formally acknowledged by a state.

6 17. "Visitation" includes parenting time as defined in section ~~25-402~~
7 ~~25-401~~.

8 18. "Warrant" means an order issued by a court authorizing law
9 enforcement officers to take physical custody of a child.

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