

**DOMESTIC RELATIONS COMMITTEE**

<b>Date Action Required:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
October 15, 2010	<input checked="" type="checkbox"/> Formal Action/Request  <input type="checkbox"/> Information Only  <input type="checkbox"/> Other	INTERIM REPORT OF THE AD HOC CUSTODY WORKGROUP MARCH 2010 TO OCTOBER 2010

FROM: William Fabricius, Chair Ad Hoc Custody Workgroup

PRESENTER(S): William Fabricius

DISCUSSION: We will report on the progress the Workgroup has made on its charge to review and recommend improvements to Arizona Revised Statutes, Title 25, Chapter 4; Child Custody. We will ask for an extension of our charge to allow us time to present a final set of recommendations to the Domestic Relations Committee by October, 2011.

RECOMMENDED MOTION: That the Ad Hoc Custody Workgroup be charged to present its final recommendations for improvements to Arizona Revised Statutes, Title 25, Chapter 4; Child Custody to the Domestic Relations Committee by October 2011.

Interim Report on the Ad Hoc Custody Workgroup  
of the Domestic Relations Committee  
October 15, 2010  
William Fabricius, Chair

**Early History (pre-March 2010)**

September 2008

A proposal was made to the Domestic Relations Committee by Dr. William Fabricius to form a Custody Statute Workgroup as a sub-committee of the DRC to explore possible changes to ARS 25-403 (Custody; best interests of child).

The following members expressed interest in serving on such a Workgroup:

David Weinstock	Patti O'Berry	Bill Fabricius
Brian Yee	Grace Hawkins	Russell Smoldon
Sid Buckman	Daniel Cartagena	Ellen Seaborne
Hon. Thomas Wing	Donnalee Sarda	
Steve Wolfson	Jodi Brown	

October 2008

The DRC voted to establish the Ad-Hoc Custody Statute Workgroup with Dr. Fabricius as Chair "as a short-term (2-3 months), ad-hoc task group within the Substantive Law Workgroup for the sole propose of addressing changes to the custody statute (ARS 25-403 custody; best interest of child) that might accomplish two goals:

1. To reduce the 'deadbeat phenomenon;' i.e., those parents who stay involved with their children minimally or not at all after divorce or separation, and
2. To facilitate the 'shared parenting phenomenon;' i.e., those parents who work out arrangements that give their children large amounts of time with both parents."

Fall 2008

Background information about custody statutes in other states was distributed to Workgroup members. Members were polled for their initial ideas for possible reforms.

October 2009

The Workgroup began meeting after Dr. Fabricius and ASU colleagues had finished writing a comprehensive review for publication of the research on custody and parenting time. This publication was distributed to the Workgroup. Brandon Maxwell and John Weaver joined the Workgroup. Members agreed to submit preliminary ideas for changes to the statute in advance of the November meeting.

November 2009

The Workgroup agreed to take a "think tank / brainstorming" approach, and to refer whenever possible to solid research on issues. Dr. Fabricius shared data regarding:

- a. AZ public opinion about custody issues
- b. AZ historical trends in custody arrangements
- c. Outcomes for children in different custody arrangements

December 2009

Members attending: Sid Buckman, Danny Cartagena, Bill Fabricius, Grace Hawkins.  
John Weaver

The Workgroup set its procedural goals:

1. Research and develop proposal(s)
2. Refer any proposals to the Substantive Law Workgroup of the DRC
3. Substantive Law Workgroup drafts language and takes it forward to the DRC.

The Workgroup set its substantive goals:

1. Review research pertinent to legal custody and parenting time and, if necessary, develop proposals
2. Better define/delineate the difference between legal and physical custody with user-friendly terminology (“decision making/parental responsibility” “parenting time”)
3. Create alternate terminology for custodial parent and non-custodial parent.
4. Answer the questions
  - a. Is it beneficial for children if a judge makes an order for shared parenting when one parent objects?
  - b. Is there a “best outcome” for children with varying parenting time with high-conflict parents?

The Workgroup identified the following issues and considerations:

1. The cost of attorneys
2. The cost and number of custody evaluations (used when custody is contested – est. 5-10% of cases)
3. False accusations of sexual and/or physical abuse
4. Child alienation
5. Perception of loss, by parent when legal custody is not ordered for that parent
6. Child/parent attachments
7. Misunderstanding the paternity process
8. Paternity fraud
9. Title IV-D child support cases and the lack of a process/trigger for the remaining custody and parenting time issues; # of child support cases – Is this a court procedure issue or is an amended statute needed?
10. Presumptions and possible affects in default cases - # of defaults – presumption vs. education

Action Items:

Dr. Fabricius to gather additional data relevant to Substantive Goal # 4 (a).

Members to review Dr. Fabricius’ chapter for summaries of the research literature regarding Goals # 1 and # 4 (b).

#### January 2010

Members attending: Sid Buckman, Danny Cartagena, Bill Fabricius, Grace Hawkins.

John Weaver

Continued discussion of:

- a. Is it beneficial for children if a judge makes an order for shared parenting when one parent objects? Dr. Fabricius presented findings from the classic Stanford Child Custody Study suggesting it may be beneficial.
- b. Custodial parent and non-custodial parent terminology. Decided to request an opinion from Janet Sell, AG’s Office, regarding the implications of changing this terminology for state benefits

In advance of the February meeting Dr. Fabricius notified non-participating members to inform the Workgroup of their continuing interest.

#### February 2010

Members attending: Bill Fabricius, Grace Hawkins, John Weaver, David Weinstock.  
Members continued discussion from the previous month.

Action item:

Each member assigned sections of 25-403 to (1) Replace “legal custody” with “parental decision-making;” (2) Replace “physical custody” with parenting time;” (3) Draft new language, as needed, for these terms to work in the existing sentence.

### **Recent History (March 2010 to present)**

At the February meeting of the DRC, after a discussion of SB1314, Senator Gray charged the Ad Hoc Custody Workgroup to propose alternate language for SB1314, and to review and recommend improvements to Arizona Revised Statutes, Title 25, Chapter 4; Child Custody.

At the March meeting of the Workgroup, Dr. Fabricius designated each member as either a voting member or a participating member for the purposes of that meeting. The voting members included those who had either participated in previous meetings of the Ad Hoc Custody Workgroup or DRC members who expressed continuing interest: William Fabricius, Sidney Buckman, Daniel Cartagena, Grace Hawkins, Donnalee Sarda, John Weaver, David Weinstock, Steve Wolfson and Brian Yee (absent). The members voted 7 in favor of and 1 opposed to (0 abstentions) language that was incorporated by the sponsors into amended SB1314, which was passed by the Legislature and signed into law by the Governor.

The Workgroup decided to forego its previous plans in favor of a thorough examination and comprehensive re-write of the custody statutes. To that end, Dr. Fabricius established a Steering Committee, charged with developing and monitoring a work plan for the Ad Hoc Custody Workgroup. The Steering Committee members are Tom Alongi, Sidney Buckman, William Fabricius, Brooks Gibson, Grace Hawkins (Chair), Judge Colleen McNally.

The Steering Committee met by phone on April 1 and amended the list of Voting Members to 10 individuals (Alongi, Buckman, Cartagena, Fabricius, Hawkins, Gibson, McNally, Weaver Weinstock, Wolfson), and established 4 Task Forces to present initial drafts of designated sections of 25-403 at the April 16 Workgroup meeting. Participating Members became Bruce Cohen, Mike Espinoza, Patrick Lacroix, Patricia Madsen, Donnalee Sarda, Ellen Seaborne, Russell Smolden, Thomas Wing, Brian Yee.

#### April 2010

Voting Members attending: Alongi, Buckman, Fabricius, Gibson, McNally, Weaver, Wolfson. Participating Members attending: Lacroix, Madsen, Yee.

To address stakeholder inclusion and quorum issues, Dr. Fabricius announced the classification of members and circumstances for reclassification as following:

- i. Members of the Public, who are attending and providing ideas for improvements or assisting in identifying unintended consequences in draft proposals during the call to the public, may become a participating member.
- ii. Participating Members may, by a majority vote of the Voting Members, become a voting member.
- iii. Voting Members, who are not attending, may be designated as participating members.

By general consensus, the members set an ambitious meeting schedule; May 7, May 27, June 25, August 6, August 27 and September 17.

Dr. Fabricius requested a website be established for the Workgroup to post all of its materials and to solicit public input.

The members began work on the recommendations of the Task Forces.

#### May 2010 to present

The Workgroup has followed the meeting schedule above, and since has met on October 8. Future meetings in 2010 are scheduled for October 29, November 19, and December 10.

The Workgroup web page is

<http://www.azcourts.gov/cscommittees/AdHocCustodyWorkgroup.aspx>

The web page archives all the agendas, minutes, drafts of sections of the statute, and public comments. It functions well as a resource for Workgroup members. We hope that it also serves an outreach function in getting the word out about the Workgroup and in attracting individuals interested in serving. Concern about improving our outreach efforts led the Workgroup to brainstorm several mechanisms for promulgating information about the Workgroup, and to charge Dr. Fabricius to write to Senator Linda Gray and Representative Steve Court, Co-Chairs of the DRC, asking for their input and support of these efforts. The letter was written on October 8.

In all meetings to date we have had a quorum of Voting Members. Our procedures for monitoring and growing our membership have worked well so far. The members represent some of the best minds in the state on issues of child custody, and have shown a high degree of dedication to this project amid their busy schedules. Importantly, the members have also shown a high degree of professionalism, mutual respect, and objectivity in working together on complex issues that can arouse passionate feelings.

The Workgroup aims to produce a proposal for a comprehensive and coherent revision of A.R.S. § 25, Chapter 4 that achieves two goals: needed substantive changes, and needed organizational changes. The webpage records our progress to date. Additionally, attached to this report is a document (“ADDENDUM Interim Report of Ad Hoc Custody Workgroup”) that outlines the scope of work the Workgroup has set for itself. The Addendum identifies those sections of the current A.R.S. § 25, Chapter 4 that the Workgroup has addressed, plans to address, and plans not to address, in addition to new sections that we believe should be created to bring together related items that are currently dispersed in the statute.

At the most recent meeting on October 8, the Workgroup members agreed that we could not produce the type of product we envision, and that we feel is needed, in the time remaining before the next legislative session. At the DRC meeting on October 15, we will ask the DRC for a one-year extension of our charge, to have a product ready by October, 2011. We would plan to continue a meeting schedule of once every three weeks.

## Chapter 4

### Minor Children. Parental Decision-Making, Parenting Time & Relocation

New Section	Topic	Detail	Old Code
101	PUBLIC POLICY	states the legislature's policy concerning children in family court	new
102	JURISDICTION	reminds courts & litigants of duty to comply with interstate custody jurisdictional rules; sets forth how to commence a decision-making or parenting time case	A.R.S. § 25-401
103	DEFINITIONS	groups all definitions relevant to this section into one location	A.R.S. § 25-402
104	MANDATORY PRELIMINARY INQUIRY; SPECIAL CIRCUMSTANCES	instructs the family court to first evaluate whether a family is burdened by special circumstances (child abuse, intimate partner violence, substance addiction, molestation or felonious conduct) before proceeding to generic "best interests" test	new
105	INTIMATE PARTNER VIOLENCE (IPV) AND CHILD ABUSE	establishes rules and presumptions for adjudicating cases involving domestic violence	A.R.S. § 25-403.03
106	SUBSTANCE ABUSE	establishes rules and presumptions for adjudicating cases involving substance abuse (including alcohol)	A.R.S. § 25-403.04
107	DANGEROUS CRIMES AGAINST CHILDREN	establishes rules and presumptions for adjudicating cases involving sex offenses and other dangerous crimes against children	A.R.S. § 25-403.05
108	VIOLENT & SERIAL FELONS	establishes rules and presumptions for adjudicating cases involving murderers and recidivist felons	A.R.S. § 25-403.05

109	CONFLICTING PRESUMPTIONS	establishes procedure for resolving cases where both parents are burdened by special circumstances	new
110	PARENTING PLANS	outlines required content of parenting plans	A.R.S. § 25-403.02(A)
111	PARENTING TIME	establishes rules for court-ordered parenting time	A.R.S. §§ 25-403(A) & 403.02(B)
112	PARENTAL DECISION-MAKING; SOLE, FINAL & JOINT	establishes rules for court-ordered decision-making authority vested with each parent	A.R.S. §§ 25-403(A) & 403.01
113	SPECIFIC FINDINGS	requires the court to make specific findings on the record concerning both special circumstances <u>and</u> the child's best interests	A.R.S. § 25-403(B)
114	TEMPORARY ORDERS	establishes procedure for issuing temporary orders	A.R.S. § 25-404
115	RELOCATION	establishes rules and procedures for parental relocation with a child	A.R.S. § 25-408
116	DECREE MODIFICATION	establishes rules and procedures for modifying a prior parental decision-making or parenting time decree	A.R.S. § 25-411
117	THIRD PARTY RIGHTS	establishes rules and procedures for adjudicating custody and visitation for third-party nonparents (e.g. grandparents, in loco parentis candidates, etc.)	A.R.S. §§ 25-409 & 415
118	SANCTIONS	establishes comprehensive sanctions for any misconduct under this chapter	A.R.S. § 25-414

119	ACCESS TO RECORDS	clarifies that both parents enjoy access to records, irrespective of decision-making authority, absent a court order	A.R.S. § 25-403.06
120	CHILD SUPPORT	reminds court to issue child support order in any Chapter 4 proceeding	A.R.S. § 25-403.09
121	STATUTORY PRIORITY	assigns calendar priority to court cases involving parental decision-making or parenting time	A.R.S. § 25-407
122	AGENCY SUPERVISION	safety valve for cases requiring supervision by local social services agency	A.R.S. § 25-410
123	IDENTIFICATION OF PRIMARY CARETAKER	permits court to identify primary caretaker solely for purpose of establishing eligibility for public assistance	A.R.S. § 25-403.07
124	FEES & RESOURCES	establishes right of litigant to request financial assistance for legal/professional fees and costs	A.R.S. § 25-403.08
125	CHILD INTERVIEWS BY COURT & PROFESSIONAL ASSISTANCE	establishes right of court to interview child privately, and to seek guidance from appropriate professionals	A.R.S. § 25-405
126	INVESTIGATIONS & REPORTS	establishes procedures for requesting family evaluation by licensed professional	A.R.S. § 25-406
127	EXPEDITED CHILD SUPPORT & PARENTING TIME FUND	outlines duty of county treasurer to establish a child support and parenting time fund	A.R.S. § 25-412
128	DOMESTIC RELATIONS EDUCATION & MEDIATION FUND	outlines duty of county treasurer to establish a DR education/mediation fund	A.R.S. § 25-413

## Legend

"Best Interests" Task Force
"Jurisdiction, Definitions & Special Circumstances" Task Force
"Third Party Rights" Task Force
Statutes That Will Require Attention
Statutes That Will Likely Remain Unchanged
Statutes Falling Within Mandate of Different DRC Workgroup

Note: Provisions concerning child relocation (current A.R.S. § 25-408) do not fall within the mandate of the Ad Hoc Custody Workgroup, but are critical to the passage of any meaningful, omnibus, custody statute. In addition to fulfilling its own delegated responsibilities, this workgroup must coordinate with the DRC's Substantive Law Workgroup to ensure the absence of conflict between the two bills.