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

Article 2. Introduction & AND Preliminary Requirements

- 25-420. Public Policy
- 25-421. Jurisdiction
- 25-422. Definitions
- 25-423. Mandatory Preliminary Inquiry: Special Circumstances
- 25-424. Specific Findings Required

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Parenting Time: Cases Without Special Circumstances

- 25-430. Parenting Plans
- 25-431. Parental Decision-Making: Shared, Final or Sole
- 25-432. Parenting Time

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Article 7. Records & AND Sanctions

- 25-470. Access to Records
- 25-471. Sanctions for Misconduct

Article 8. Miscellaneous

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- 1 ~~25-480. Statutory Priority~~
- 2 ~~25-481. Agency Supervision~~
- 3 ~~25-482. Identification of Primary Caretaker~~
- 4 ~~25-483. Fees & AND Resources~~
- 5 ~~25-484. Child Interviews by Court & AND Professional Assistance~~
- 6 ~~25-485. Investigations & AND Reports~~
- 7 ~~25-486. Child Support & AND Parenting Time Fund~~
- 8 ~~25-487. Domestic Relations Education & AND Mediation Fund~~

11 ~~ARTICLE 2.~~
 12 ~~INTRODUCTION & AND PRELIMINARY REQUIREMENTS~~

15 ~~25-420. Public policy~~
 16 ~~Absent evidence to the contrary, it serves a child's best interests for both legal~~
 17 ~~parents to:~~
 18 ~~A. Share parental decision-making concerning their child;~~
 19 ~~B. Have substantial, frequent, meaningful and continuing parenting~~
 20 ~~time with their child;~~
 21 ~~C. Develop a mutually agreeable parental decision-making and~~
 22 ~~parenting time plan.~~

24 ~~AD HOC CUSTODY WORKGROUP NOTE~~

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

30 ~~25-421. Jurisdiction [FORMER A.R.S. § 25-401]~~
 31 ~~A. Before conducting any proceeding concerning parental decision-~~
 32 ~~making or parenting time, including any proceeding scheduled to decide the~~
 33 ~~custody or visitation of a non-parent, all Arizona courts shall first confirm their~~
 34 ~~authority to do so to the exclusion of any other state, Indian tribe or foreign~~
 35 ~~nation by complying with the Uniform Child Custody Jurisdiction and~~
 36 ~~Enforcement Act ('UCCJEA'), at ~~A.R.S. §§~~ ARIZONA REVISED STATUTES~~
 37 ~~SECTIONS 25-1001, ~~et seq.,~~ TO 25-1067, Parental Kidnapping Prevention Act~~
 38 ~~('PKPA') at 28 U.S.C. § UNITED STATES CODE SECTION 1738A, and any~~
 39 ~~applicable international law concerning the wrongful abduction or removal of~~
 40 ~~children.~~
 41 ~~B. ~~A proceeding under this chapter is commenced in superior court: the~~~~
 42 ~~THE FOLLOWING PERSONS MAY REQUEST PARENTAL DECISION-MAKING OR~~
 43 ~~PARENTING TIME UNDER THE FOLLOWING CIRCUMSTANCES:~~

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

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

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

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

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

16
17 AD HOC CUSTODY WORKGROUP NOTE

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

22
23 SUBSTANTIVE LAW/COURT PROCEDURES WORKGROUP NOTE

24 Pending.

25
26 **25-422. Definitions** [Former A.R.S. § 25-402]

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

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

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

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

33 ~~— (c) does not primarily or exclusively focus on anger or stress~~
34 ~~management, impulse control, conflict resolution or communication skills;~~

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

37 ~~— (e) preserves records establishing an offender's participation,~~
38 ~~contribution and progress toward rehabilitation, irrespective of whether a~~
39 ~~given session involves individual treatment or group therapy including multiple~~
40 ~~offenders.~~

41 ~~2. "Child abuse" means any of the following acts where the relationship~~
42 ~~between the offender and victim qualifies under A.R.S. § ARIZONA REVISED~~
43 ~~STATUTES SECTION 13-3601(A)(5), including any attempt, conspiracy or~~
44 ~~solicitation of another to commit such act:~~

Comment [KS2]: Domestic violence definitions moved to the beginning of Article 4, except the definitions for "strangulation" and "suffocation". These definitions were moved to new subsection (E) in 25-441.

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1 ~~_____ (a) Endangerment, as defined by A.R.S. § ARIZONA REVISED STATUTES~~
2 ~~SECTION 13-1201-~~
3 ~~_____ (B) Threatening or intimidating, as defined by A.R.S. § ARIZONA REVISED~~
4 ~~STATUTES SECTION 13-1202(A)-~~
5 ~~_____ (C) Assault, as defined by A.R.S. § ARIZONA REVISED STATUTES SECTION~~
6 ~~13-1203(A)-~~
7 ~~_____ (D) Aggravated assault, as defined by A.R.S. § ARIZONA REVISED~~
8 ~~STATUTES SECTION 13-1204(A)(1) (5)-~~
9 ~~_____ (E) Child abuse, as defined by A.R.S. § ARIZONA REVISED STATUTES~~
10 ~~SECTION 13-3623-~~
11 ~~_____ 3. "Conviction" shall include guilty, "no contest" and Alford pleas, and~~
12 ~~guilty verdicts issued by a trier of fact.~~
13 ~~_____ 4. "Deferred prosecution" and "diversion" means any program offered~~
14 ~~by a criminal court or government agency through which an alleged offender~~
15 ~~avoids criminal prosecution by agreeing to pay a fine, participate in counseling,~~
16 ~~or perform other remedial tasks in exchange for dismissal of one or more~~
17 ~~pending charges or a promise by the state not to proceed with a complaint or~~
18 ~~indictment.~~
19 ~~_____ 5 1. "In loco parentis" means a person who has been treated as a parent~~
20 ~~by the child and who has formed a meaningful parental relationship with the~~
21 ~~child for a substantial period of time.~~
22 ~~_____ 6 2. "Intimate partner violence" means any act that would meet the~~
23 ~~definition of A.R.S. § 13-3601(A), as well as any other act of physical or sexual~~
24 ~~violence constituting a felony, where inflicted by a person against an intimate~~
25 ~~partner. This definition also includes any attempt, conspiracy, or solicitation~~
26 ~~of another to commit such act. It does not include any behavior that would~~
27 ~~constitute self defense or other legal justification as defined by A.R.S. §§ 13-~~
28 ~~404 through 408-~~
29 ~~_____ 7. "Intimate partners" means persons whose relationship with each~~
30 ~~other qualifies under A.R.S. § 13-3601(A)(1), (2), (3) OR (6)-~~
31 ~~_____ 8 3.2. "Legal parent" means a biological or adoptive parent whose~~
32 ~~parental rights have not been terminated. It does not include a person whose~~
33 ~~paternity has not been established under state law pursuant to sections 25-812~~
34 ~~and 25-814.~~
35 ~~_____ 9 4. 3. "Parental decision-making" means the legal right and~~
36 ~~responsibility to make major life decisions affecting the health, welfare and~~
37 ~~education of a child, including - but not limited to - schooling, religion,~~
38 ~~daycare, medical treatment, counseling, commitment to alternative long-term~~
39 ~~facilities, authorizing powers of attorney, granting or refusing parental consent~~
40 ~~where legally required, entitlement to notifications from third parties on~~
41 ~~behalf of the child, employment, enlistment in the armed forces, passports,~~
42 ~~licensing and certifications, and blood donation. For purposes of interpreting~~
43 ~~or applying any international treaty, federal law, uniform code or other state~~
44 ~~statute, "parental decision-making" shall mean the same as "legal custody."~~

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Comment [KLR3]: Sarah – biological needs to be defined.

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Comment [KLR4]: CCR suggestion - 8. "Legal parent" means, for any of the following whose parental rights have not been terminated, a biological mother or father, a biological father who has established paternity pursuant to Section 25-814, or an adoptive parent.
Ellen – what about 3rd party custodian who has custody and will be making custody decisions?
Keith – they have decision making under separate statute. Temporary decision-making.
Ellen – but have right to make those decisions
Grace – page 17 – 3rd party section (CCR version)
Grace – motion to adopt CCR recommendation for this definition. Sid seconds.
Keith – agrees with change because jurisdiction standard previously edited
Danny – 814 points to 812.
Sarah Y. – confusing because it lists bio father and bio father who has established paternity. If bio father without designation is referred to in other statutes, probably needs to be designated differently.
Danny – 814 is presumption of paternity
Sarah – need a court order to establish paternity
Jami – married man presumed to be father if ... Husband can be presumptive father but doesn't have court order.
Jami – clear up discrepancy between 812 and 814 – when person has established paternity.
Sarah – point reader to 25-801 et seq.
Danny – will bring language for subsequent discussion at future meeting

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Comment [KLR5]: Jenny – if joint PDM, have to decide on specific day care. Thoughts?
Bill – not huge issue. Important to parents to have input.
Danny – Agree with Bill. Who is child being taken to? Are grandparents available? Big part of child's life. Worth keeping in.
Jami – In practice sees people arguing over daycare in court. One party want grandparent to watch child. Hostile exchanges? Putting this in invites more litigation. If put it in, will fight about it more. Parties already argue about it. Can be used to infringe on other parent's decisions when child is in his (... [53])

Comment [KLR6]: Keith – volunteers to draft some language for this section for April 29 meeting.

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

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

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

13 ~~10 5- 4.~~ "Parenting time" refers to a parent's physical access to a child
14 at specified times, and entails the provision of food, clothing and shelter, as
15 well positive role-modeling and active involvement in a child's activities, while
16 the child remains in that parent's care. A person exercising parenting time is
17 expected to make routine decisions regarding the child's care that do not
18 contradict the major life decisions made by a parent vested with parental
19 decision-making authority.

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

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

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

28 ~~14 6- 5.~~ "Visitation" involves the same rights and responsibilities as
29 parenting time when exercised by a non-parent.

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Comment [KS7]: Moved to 25-441(E)

Comment [KS8]: Moved to 25-441(E)

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30
31 AD HOC CUSTODY WORKGROUP NOTE

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

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

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

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

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SL/CP Workgroup

Title 25 – Custody Rewrite

Version ~~4.08.11~~ RED-LINED (Prepared for 04.29.11 Meeting)

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

3 The definitions of "strangulation" and "suffocation" are copied almost verbatim from new A.R.S. § 13-
4 1204(B)(1), which elevated both behaviors to felonious aggravated assault. They have significance in the
5 definition of "coercive control" at Sec. 106(E)(17).

6
7 **SL/CP WORKGROUP NOTE**

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

10
11 **25-423. Mandatory Preliminary Inquiry: Special Circumstances [New]**
12 Before evaluating the best interests of the child and deciding parental
13 decision-making and parenting time, the court shall first determine whether
14 special circumstances exist under SECTIONS §§ 25-440 through 25-443 (Intimate
15 Partner Violence & Child Abuse), § SECTION 25-444 (Substance Abuse), ~~§~~
16 SECTION 25-445 (Dangerous Crimes Against Children) or § SECTION 25-446
17 (Violent & Serial Felons). If so, the court shall enter parental decision-making
18 and parenting time orders in accordance with those statutes. If not, the court
19 shall proceed directly to the general provisions of §§ SECTIONS 25-430 through
20 25-432 to devise a parenting plan that allocates parental decision-making and
21 parenting time consistent with the child's best interests.

22
23 **AD HOC CUSTODY WORKGROUP NOTE**

24 This new addition constitutes the heart of the "decision-tree" philosophy. The goal is to openly require
25 the court to evaluate special circumstances first, and only then engage the generic "best interests" test if
26 none of those circumstances apply. Despite arbitrary (and rather confusing) sequencing in the current
27 statute, existing case law already says much the same thing. See *In re Marriage of Hurd*, 223 Ariz. 48, 219
28 P.3d 258, 261 (App. 2009) ("when the party that committed the act of violence has not rebutted the
29 [domestic violence] presumption ... the court need not consider all the other best-interest factors in A.R.S.
30 § 25-403.A").

31
32
33 **25-424. Specific Findings Required [New]**
34 In any evidentiary hearing involving parental decision-making, parenting time
35 or third-party rights, including both temporary orders and trial, the court shall
36 make specific findings on the record about all relevant factors and reasons for
37 why the judicial decision serves a child's best interests. The findings shall
38 include a description of any special circumstances established by the evidence,
39 and an explanation for the court's decision in light of the controlling rules.

40
41 **ARTICLE 3.**

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

44
45 **25-430. Parenting Plans [former A.R.S. § 25-403.02]**

46 **A. Consistent with the child's physical and emotional well-being, the**
47 **court shall adopt a parenting plan that provides for both parents to share**

1 parental decision-making concerning their child and maximizes their respective
2 parenting time. The court shall not prefer one parent over the other due to
3 gender.

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

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

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

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

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

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

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

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

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

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

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

30
31 **25-431. Parental Decision-Making; Shared, Final or Sole** [Former A.R.S. §
32 25-403.01]

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

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

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

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

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

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

Comment [KS9]: Need at least two subunits involved. If "A", need a "B".

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25-432. Parenting Time [New]

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

1. The historical, current and potential relationship between the parent and the child.
2. The mental and physical health of all individuals involved.
3. The child's adjustment to home, school and community.
4. The interaction and relationship between the child and the child's siblings and any other person who may significantly affect the child's best interest.
5. The child's own viewpoint and wishes, if possessed of suitable age and maturity, along with the basis of those wishes.
6. Whether one parent is more likely to support and encourage the child's relationship and contact with the other parent. This paragraph does not apply if the court determines that a parent is acting in good faith to protect the child from witnessing or suffering an act of intimate partner violence or child abuse.
7. The feasibility of each plan taking into account the distance between the parents' homes, the parents' and/or child's work, school, daycare or other schedules, and the child's age.
8. Whether a parent has complied with the educational program prescribed in ~~A.R.S. §§~~ SECTIONS 25-351 through -353.

ARTICLE 4.
SPECIAL CIRCUMSTANCES

25-XXX. DEFINITIONS

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "Batterer's intervention program" means an individual or group treatment program for intimate partner violence offenders that:
 - (a) emphasizes personal responsibility;
 - (b) clearly identifies intimate partner violence as a means of asserting power and control over another individual;
 - (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 other family members, including the victim or children; and
 - (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.

Comment [KS10]: Need at least two subunits involved. If "A", need a "B".

Comment [KS11]: Moved from 25-422 to Article 4

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1 2. "Child abuse" means any of the following acts where the relationship
2 between the offender and victim qualifies under ~~A.R.S. §~~ SECTION 13-
3 3601(A)(5), including any attempt, conspiracy or solicitation of another to
4 commit such act:

5 (a) Endangerment, as defined ~~by A.R.S. §~~ IN SECTION 13-1201.

6 (B) Threatening or intimidating, as defined ~~by A.R.S. §~~ IN SECTION 13-
7 1202(A).

8 (C) Assault, as defined ~~by A.R.S. §~~ IN SECTION 13-1203(A).

9 (D) Aggravated assault, as defined ~~by A.R.S. §~~ IN SECTION 13-1204(A)(1)
10 - (5).

11 (E) Child abuse, as defined ~~by A.R.S. §~~ IN SECTION 13-3623.

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

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

20 ~~6~~ 5. "Intimate partner violence" means any act ~~that would meet the~~
21 ~~definition of A.R.S. §~~ DEFINED IN SECTION 13-3601(A), as well as any other act
22 of physical or sexual violence constituting a felony, where inflicted by a person
23 against an intimate partner. This definition also includes any attempt,
24 conspiracy, or solicitation of another to commit such act. It does not include
25 any behavior that would constitute self-defense or other legal justification as
26 defined by ~~A.R.S. §§~~ 13-404 through 408.

27 ~~7~~ 6. "Intimate partners" means persons whose relationship with each
28 other qualifies ~~under A.R.S. §~~ PURSUANT TO SECTIONS 13-3601(A)(1), (2), (3)
29 OR (6).

30 ~~6~~ 7. "Intimate partner violence" means any act ~~that would meet the~~
31 ~~definition of A.R.S. §~~ AS DEFINED IN SECTION 13-3601(A), as well as any other
32 act of physical or sexual violence constituting a felony, where inflicted by a
33 person against an intimate partner. This definition also includes any attempt,
34 conspiracy, or solicitation of another to commit such act. It does not include
35 any behavior that would constitute self-defense or other legal justification as
36 defined by ~~A.R.S. §§~~ SECTIONS 13-404 through 408.

37 ~~7~~ 8. "Intimate partners" means persons whose relationship with each
38 other qualifies ~~under A.R.S. §~~ PURSUANT TO SECTIONS 13-3601(A)(1), (2), (3)
39 OR (6).

40 ~~11~~ 9. "Special circumstance" refers to conduct requiring application of
41 one or more mandatory rules ~~described in A.R.S. §§~~ PURSUANT TO SECTIONS 25-
42 440 through -446.

43
44 SL/CP WORKGROUP NOTE

SL/CP Workgroup

Title 25 – Custody Rewrite

Version ~~4.08.11~~ RED-LINED (Prepared for 04 ~~29.11~~ Meeting)

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

6 25-440. Intimate Partner Violence and Child Abuse: Basic Principles

7 [Former A.R.S. § 25-403.03(B)]

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

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

22 AD HOC CUSTODY WORKGROUP NOTE

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

34 25-441. Intimate Partner Violence and Child Abuse: Parental Decision- 35 making

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

37 A. Cases Where Parental Decision-Making Presumptively Disallowed. If
38 the court determines from a preponderance of the evidence that a parent has
39 previously committed any act of intimate partner violence against the other
40 parent, or child abuse against the child or child’s sibling, then it shall not
41 award parental decision-making to the offending parent without proof that
42 such parent should still make major decisions for the child despite the proven
43 history of abuse or violence. The offending parent may submit this proof by
44 asking the court to consider the criteria listed in ~~Subsection~~ SUBSECTION (B).
45 In that event, the court shall also evaluate whether the offending parent has

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1 nevertheless failed to prove his or her suitability for parental decision-making
2 by considering each of the criteria listed in ~~Subsection~~ SUBSECTION(C).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 3. Attempted or threatened suicide;

18 4. Injured or threatened to injure household pets;

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

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

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

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

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

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

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

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

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

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

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

- 1 16. Forbade or prevented the victim from achieving the victim's
- 2 educational or career objectives;
- 3 17. Used especially dangerous forms of physical violence against the
- 4 victim, including burning, strangulation, suffocation or use of a deadly weapon
- 5 18. Inflicted any form of physical violence against a pregnant victim; or
- 6 19. Engaged in any other controlling behavior consistent with the
- 7 conduct described in this definition.

8 **E. FOR THE PURPOSES OF THIS SECTION:**

- 9 1. "STRANGULATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-
- 10 1204(B)(1).
- 11 2. "SUFFOCATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-
- 12 1204(B)(1).

Comment [KS12]: Added new subsection (E). 3-18-11

13 AD HOC CUSTODY WORKGROUP NOTE

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

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

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

44 In cases of so-called "mutual combat," the amendment also requires the court to evaluate what
 45 motivated the violence, the force applied, and resulting injuries – rather than dismantling the
 46 presumption from the start. See A.R.S. § 25-403.03(D) ("presumption does not apply if both parents have
 47 committed an act of domestic violence"). The bill would also include the failure to make obligatory, IPV-

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1 related, Rule 49 disclosure as an explicit factor for deciding whether a proven offender had overcome the
2 presumption against an award of parental decision-making.

3
4
5 **25-442. Intimate Partner Violence and Child Abuse: Parenting Time**
6 [Former A.R.S. § 25-403.03(F)]

7 A. Cases Where Parenting Time Presumptively Disallowed. If the court
8 finds that a parent has committed any act of intimate partner violence or child
9 abuse, that parent has the burden of proving to the court's satisfaction that
10 unrestricted parenting time will not physically endanger the child or
11 significantly impair the child's emotional development. The victim need not
12 prove the reverse. In deciding whether the offending parent has met this
13 burden, the court shall consider all of the criteria listed in ~~A.R.S. §~~ SECTIONS
14 25-441(B) and (C), giving due consideration to whether parenting time with
15 that parent under the existing circumstances may:

- 16 1. Expose the child to poor role-modeling related to the confirmed
17 intimate partner violence as the child grows older and begins to develop his or
18 her own intimate relationships, irrespective of whether the offending parent
19 poses a direct physical risk to the child; and
- 20 2. Endanger the child's safety due to the child's physical proximity to
21 new, potential acts of violence by the parent against a new intimate partner or
22 other child.

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

- 28 1. Order child exchanges to occur in a specified safe setting.
- 29 2. Order that a person or agency specified by the court must supervise
30 parenting time. If the court allows a family or household member or other
31 person to supervise the offending parent's parenting time, the court shall
32 establish conditions that this supervisor must follow. When deciding whom to
33 select, the court shall also consider the supervisor's ability to physically
34 intervene in an emergency, willingness to promptly report a problem to the
35 court or other appropriate authorities, and readiness to appear in future
36 proceedings and testify truthfully.
- 37 3. Order the completion of a batterer's intervention program, as
38 defined by ~~A.R.S. §~~ SECTION 25-422(1), and any other counseling the court
39 orders.
- 40 4. Order abstention from or possession of alcohol or controlled
41 substances during parenting time, and at any other time the court deems
42 appropriate.
- 43 5. Order the payment of costs associated with supervised parenting
44 time.
- 45 6. Prohibit overnight parenting time.

- 1 7. Require the posting of a cash bond from the offending parent to
- 2 assure the child's safe return to the other parent.
- 3 8. Order that the address of the child and other parent remain
- 4 confidential.
- 5 9. Restrict or forbid access to, or possession of, firearms or ammunition.
- 6 10. Suspend parenting time for a prescribed period.
- 7 11. Suspend parenting time indefinitely, pending a change in
- 8 circumstances and a modification petition from the offending parent.
- 9 12. Impose any other condition that the court determines is necessary to
- 10 protect the child, the other parent, and any other family or household
- 11 member.

12
13 WORKGROUP NOTE

14 Although new A.R.S. § 25-442 does not alter the basic premise of current A.R.S. § 25-403.03(F) –
15 which governs parenting time – the rules are clarified to emphasize the twin problems of physical safety
16 and emotional development. Current law already cites both for the court's consideration, but litigants
17 typically focus on physical danger at the expense of overlooking the (potentially more serious) long-term
18 risk of emotional harm resulting from constant access time with an unrepentant abuser. The amendment
19 clearly directs the court to consider the issue of future, parental role-modeling.
20

21
22 **25-443. Intimate Partner Violence and Child Abuse: Assorted Provisions**
23 [Former A.R.S. § 25-403.03(C), (G) and (H)]

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

- 28 1. Findings or judgments from another court of competent jurisdiction.
- 29 2. Police or medical reports.
- 30 3. Counseling, school or shelter records.
- 31 4. Child Protective Services records.
- 32 5. Photographs, recordings, text messages, electronic mail or written
- 33 correspondence.
- 34 6. Witness testimony.

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

43 C. Collateral Protective Order Proceedings. For purposes of this
44 section, no judgment resulting from protective order proceedings under ~~A.R.S.~~

1 §-SECTION 13-3602(I) shall be considered conclusive evidence that intimate
2 partner violence or child abuse did or did not occur.

3 D. Shelter Residency. A parent’s residency in a shelter for victims of
4 intimate partner violence shall not constitute grounds for denying that parent
5 any degree of decision-making authority or parenting time. For purposes of
6 this section, “shelter” means any facility meeting the definitions of SECTIONS
7 36-3001(6) and 36-3005.

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

13 F. Alternative Dispute Resolution. A victim of intimate partner violence
14 may opt out of alternative dispute resolution (‘ADR’) imposed under ~~Family~~
15 ~~Law~~ RULES OF FAMILY LAW PROCEDURE Rule 67 or 68 to the extent that a
16 suggested ADR procedure requires the parties to meet and confer in person.
17 The court shall notify each party of this right before requiring their
18 participation in the ADR process. As used in this subsection only, “victim of
19 intimate partner violence” means: (1) a party who has acquired a protective
20 order against the other parent pursuant to ~~A.R.S. §~~ SECTION 13-3602; (2) a
21 party who was previously determined by a civil or family court to have suffered
22 intimate partner violence by the other parent; or (3) a party who was the
23 named victim in a criminal case that resulted in the conviction, diversion or
24 deferred prosecution of the other parent for an act of intimate partner
25 violence.

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

30
31 AD HOC CUSTODY WORKGROUP NOTE

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

42 Subsection (C) clarifies that family court litigants should not use the outcome of contested,
43 domestic violence protective order proceedings as “proof” that intimate partner violence did or did not
44 exist. The amendment recognizes that protective order proceedings apply a different legal standard,
45 potentially apply different evidentiary rules, and frequently occur with little advance notice to the alleged
46 victim – who bears the burden of proof and may not be able to collect witnesses or exhibits within the

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1 allotted time. This amendment does not, however, preclude the use of evidence presented at such an
2 earlier hearing, or even the use of the judgment itself in conjunction with other evidence. It bars only use
3 of the judgment as conclusive proof, standing alone, that intimate partner violence did or did not occur.
4 Subsection (D) shields victims of intimate partner violence from the loss of decision-making
5 authority or access time merely by virtue of their temporary residency in a domestic violence shelter.
6 Subsection (E) strengthens the protections for potentially vulnerable IPV victims otherwise
7 forced into mediation or other forms of ADR with their abusers.
8

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1 **25-444. Substance Abuse** [Former A.R.S. § 25-403.04]

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

6 1. Any drug offense ~~under A.R.S., Title AS DEFINED IN TITLE 13, Chapter~~
7 CHAPTER 34.

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

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

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

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

17 1. The absence of any other drug or alcohol-related arrest or
18 conviction.

19 2. Reliable results from random urinalyses, blood or hair follicle tests,
20 or some other comparable testing procedure.

21
22
23 **25-445. Dangerous Crimes Against Children** [Former A.R.S. § 25-403.05]

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

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

28 2. A person required to register ~~under A.R.S. §~~ PURSUANT TO SECTION
29 13-3821.

30 B. A child's parent or custodian must immediately notify the other
31 parent or custodian if the parent or custodian knows that a convicted or
32 registered sex offender or a person who has been convicted of a dangerous
33 crime against children, as defined in ~~A.R.S. §~~ SECTION 13-705(P)(1), may have
34 access to the child. The parent or custodian must provide notice by first-class
35 mail, return receipt requested, or by electronic means to an electronic mail
36 address that the recipient provided to the parent or custodian for notification
37 purposes, or by some other means of communication approved by the court.
38
39

40 **25-446. Violent & AND Serial Felons** [Former A.R.S. § 25-403.05]

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

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

4 2. A person whose criminal history meets the definition of a category
5 two or three repetitive offender ~~under A.R.S. §~~ PURSUANT TO SECTIONS 13-
6 703(B) and (C).

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

13
14 25-447. Conflicting Presumptions or Mandatory Rules [New]

15 In the event that neither parent is eligible for an award of parental decision-
16 making or parenting time due to special circumstances, as defined by ~~A.R.S. §~~
17 25-422(11), the court may refer the matter for juvenile dependency
18 proceedings pursuant to ~~A.R.S. §§~~ SECTION 8-800, ~~et seq.~~, assign parental
19 decision-making or visitation to another family member or third party
20 consistent with the child's best interests, or provide detailed, written findings
21 that describe the extraordinary conditions that justify an award of decision-
22 making or parenting time to a parent normally disqualified by ~~A.R.S. §§~~
23 SECTIONS 25-440 through 25-446. The court shall also explain why its decision
24 best serves the child, with particular focus on the child's safety.

25
26 Article 5.
27 Third Parties

28
29 25-450. Third-Party Rights; Decision-Making and Visitation by
30 Grandparents, Parental Figures & AND Other Third Parties [Former A.R.S. §§
31 25-409 and -415]

32
33 A. Decision-Making Authority. ~~Consistent with A.R.S. §~~ PURSUANT TO
34 SECTION 25-421(B)(2), a person other than a legal parent may petition the
35 superior court for decision-making authority over a child. The court shall
36 summarily deny a petition unless it finds that the petitioner has established
37 that all of the following are true in the initial pleading:

38 1. The person filing the petition stands in loco parentis to the child.
39 2. It would be significantly detrimental to the child to remain, or be
40 placed in the care of, either legal parent who wishes to keep or acquire
41 parental decision-making.

42 3. A court of competent jurisdiction has not entered or approved an
43 order concerning parental decision-making within one year before the person
44 filed a petition pursuant to this section, unless there is reason to believe the

1 child's present environment may seriously endanger the child's physical,
2 mental, moral or emotional health.

3 4. One of the following applies:

4 (a) One of the legal parents is deceased.

5 (b) The child's legal parents are not married to each other at the time
6 the petition is filed.

7 (c) There is a pending proceeding for dissolution of marriage or for legal
8 separation of the legal parents at the time the petition is filed.

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

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

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

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

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

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

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

40 1. The child's legal parents.

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

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

Comment [KS13]: Judge Bruce Cohen's comment involves 25-450(C)(4)

4. For in loco parentis visitation, there is a pending proceeding for dissolution of marriage or for legal separation INVOLVING ONE of the legal parents AND THE PERSON CLAIMING TO STAND IN LOCO PARENTIS at the time the petition is filed.

Judge Cohen says: Look at 25-450 (c)(4) relating to in loco parentis visitation. This to me is the step parent section. I may be reading it wrong, but it appears to limit the request from the THIRD PARTY (who has alleged that he or she has been serving a parental role) to being able to seek the relief only if there is a PENDING divorce or legal separation between the LEGAL PARENTS. Therefore, biological mom and biological dad must be in the process of divorce or legal separation for step parent to seek visitation. How would there be a step parent at that time?

Shouldn't the statute state that there is a pending action for divorce and legal separation between ONE OF THE LEGAL parents and the person claiming to stand in loco parentis?

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1 4. A person or agency that already possesses physical custody of the
2 child, or claims decision-making authority or visitation rights concerning the
3 child.

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

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

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

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

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

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

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

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

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

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

34
35 Article 6. Temporary Orders, Modification & Relocation

36 § 25-460. Temporary Orders

37 [former A.R.S. § 25-404]

38 | § 25-461. Decree Modification

39 [former A.R.S. § 25-411]

40 | § 25-462. Relocation of a Child

41 [former A.R.S. § 25-408(B)]

42 | Article 7. Records & Sanctions

43 § 25-470. Access to Records

44 [former A.R.S. § 25-403.06]

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- 1 | § 25-471. Sanctions for Misconduct
- 2 | [former A.R.S. § 25-414]
- 3 | Article 8. Miscellaneous
- 4 | § 25-480. Statutory Priority
- 5 | [former A.R.S. § 25-407]
- 6 | § 25-481. Agency Supervision
- 7 | [former A.R.S. § 25-410]
- 8 | § 25-482. Identification of Primary Caretaker
- 9 | [former A.R.S. § 25-403.07]
- 10 | § 25-483. Fees & Resources
- 11 | [former A.R.S. § 25-403.08]
- 12 | § 25-484. Child Interviews by Court & Professional Assistance
- 13 | [former A.R.S. § 25-405]
- 14 | § 25-485. Investigations & Reports
- 15 | [former A.R.S. § 25-406]
- 16 | § 25-486. Child Support & Parenting Time Fund
- 17 | [former A.R.S. § 25-412]
- 18 | § 25-487. Domestic Relations Education & Mediation Fund
- 19 | [former A.R.S. § 25-413]
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CCRT -Are there unintended consequences that will arise based on this change of language? Look into whether there have been unintended consequences in other states (Florida, Washington) that have moved to this term. Are other rights affected?

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Jenny – if joint PDM, have to decide on specific day care. Thoughts?

Bill – not huge issue. Important to parents to have input.

Danny – Agree with Bill. Who is child being taken to? Are grandparents available? Big part of child's life. Worth keeping in.

Jami – In practice sees people arguing over daycare in court. One party want grandparent to watch child. Hostile exchanges? Putting this in invites more litigation. If put it in, will fight about it more. Parties already argue about it. Can be used to infringe on other parent's decisions when child is in his/her care.

Keith – Doesn't think it should be in there. Gets into statutorily mandated caregiver of choice. Invites litigation. Daycare isn't defined – paid facility? Opens up can of worms.

Steve – Difficult to list items without having them abused. Schooling, selection of school, selection of private school, public school? How detailed to be? [Refers to comments from CCRT].

Grace – first comment was re title. CCR prefers PDM.

Sid – defining of this is minutia. Giving them ammo to fight over things. Don't need to include it here.

Steve - self-service center has user guides. State Bar Fam Law Section has been updating divorce manual. Could see us taking language from "including but not limited to" and down to blood donation and make sure it gets in other publications to explain to individuals what's encompassed by these decisions.

Grace - 25-403.02 - [reading current statute]. Shorten to that? Thinking of mediator. Will have hard time defining "welfare."

Keith - needs to be legal decision regarding medical, education, religion.

Grace - personal care - haircuts tattoos piercing -- things that bring people back to court

Grace - when it comes to mediation, what are your proposals. if they want PDM, how are they going to decide about school, religion, personal care going to be decided.

Bill - including day care might make good sense.

Grace - part of education; encompasses it

Jenny - disagree with adding personal care. Haircuts? Baths? Toothbrushing? Non-emergency, educational, and religious. Anything else adds to future litigation.

Steve - reason for religious training? Virtually unenforceable. Important issue but ...

Sarah - almost never litigated (religious)

Keith - sole PDM, you do have right to make that decision. one or two cases out there. You can prevent them from going to other church. If child can't do without parent signing, that's what this is limited to. Religious, education medical.

Tom - can we say decisions where parental consent required?

Grace - is it parental consent to sign child up for ? classes?

Tom - only virtue in list is to give parents idea of what PDM means. Difference between legal and physical custody.

Jenny - just added daycare back in by adding that language

Jami - agrees with Keith. Instead of health, define medical care or medical treatment. Medical decisions or medical care.

Grace - when you're talking about health, you're talking about dental and mental in addition to medical. Talking about braces, wisdom teeth...can't limit to medical.