i. Version: **Version Two (2)**

ii. Date: **August 4, 2010**

iii. Section Number and Title: **new Sec. 102 (replacing A.R.S. § 25-401)**

new Sec. 103 (supplementing A.R.S. § 25-402)

new Sec. 104 (Mandatory Preliminary Inquiry)

new Sec. 105 (replacing A.R.S. § 25-403.03)

new Sec. 106 (replacing A.R.S. § 25-403.04)

new Sec. 107 (replacing A.R.S. § 25-403.05)

new Sec. 108 (Violent & Serial Felons)

new Sec. 109 (Conflicting Presumptions)

new Sec. 110 (supplementing A.R.S. § 25-403(A))

new Sec. 113 (Specific Findings)

iv. Names of members: **Tom Alongi, Sid Buckman, Hon. Colleen McNally**

v. Purpose: **To emphasize a court's duty to verify Arizona's subject matter jurisdiction over child custody and parenting time issues, provide new definitions for important terms, and clarify the proper procedure for evaluating families burdened by special circumstances**

Sec. 102. Jurisdiction.

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. §§ 25-1001, et seq., and the Parental Kidnapping Prevention Act ('PKPA') at 28 U.S.C. § 1738A.

B. A proceeding to resolve parental decision-making or parenting time is commenced in superior court:

(1) By a parent, upon filing a petition for one of the following:

(a) Marital dissolution or legal separation.

(b) Decision-making responsibility regarding a child born out of wedlock if there has been a prior establishment of maternity or paternity.

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

(2) By a person other than a parent, by filing a petition for custody or visitation in the county in which the child is permanently resident or found, but only if the child is not in the physical care of one of the child's parents.

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

WORKGROUP NOTE

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

Sec. 103. Definitions.

In this article, unless the context otherwise requires:

1. *"Batterer's intervention program"* means an individual or group treatment program for domestic violence offenders that:

(a) emphasizes personal responsibility;

(b) clearly identifies domestic 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; and

(d) does not involve the participation or presence 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 any of the following acts where the relationship between the offender and victim qualifies under A.R.S. § 13-3601(A)(5), including any attempt, conspiracy or solicitation of another to commit such act:

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

(b) Threatening or intimidating, as defined by A.R.S. § 13-1202(A)

(c) Assault, as defined by A.R.S. § 13-1203(A)

(d) Aggravated assault, as defined by A.R.S. § 13-1204(A)(1) – (5)

(e) Interfering with judicial proceedings, as defined by A.R.S. § 13-2810(A)(2)

(f) Child abuse, as defined by A.R.S. § 13-3623

3. *"Coercive control"* refers to one or more controlling behaviors inflicted by one intimate partner against another. When considering these behaviors, the court should not view any one in isolation, but instead determine whether, in tandem, they

constitute an ongoing pattern of conduct. : In particular, the court should contemplate whether an offender:

(a) Persistently engaged in demeaning, degrading or other verbally abusive conduct toward the victim;

(b) Physically confined the victim or otherwise restricted the victim's movements;

~~(c) Attempted or threatened suicide;~~

(d) Injured or threatened to injure household pets;

(e) Damaged property in the victim's presence or without the victim's consent;

(f) Threatened to conceal or remove children from the victim's care without good cause;

(g) 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;

(h) 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;

(i) Engaged in a course of conduct deliberately calculated to jeopardize the victim's employment;

(j) Illicitly tampered with the victim's residential utilities, or entered onto the victim's residential property without permission;

(k) Threatened to report the victim's immigration status to government officials;

(l) Terminated the victim's or children's insurance coverage in violation of A.R.S. § 25-315(A)(1)(b)(iii);

(m) Forbade or prevented the victim from making decisions concerning disposition of property or income in which the victim possessed a legal interest;

(n) 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;

(o) Restricted the victim's participation in social activities, or access to family, friends or acquaintances;

(p) Forbade or prevented the victim from achieving the victim's educational or career objectives;

(q) Used especially dangerous forms of physical violence against the victim, including burning, strangulation, suffocation or use of a deadly weapon; or

(r) Inflicted any form of physical violence against a pregnant victim;

(s) Engaged in any other controlling behavior consistent with the conduct described in this definition

4. *"Conviction"* shall include guilty, "no contest" and *Alford* pleas, guilty and verdicts issued by a trier of fact,

5. *"Parental decision-making"* implicates the legal right and responsibility to make major life decisions affecting 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, ~~extracurricular activities,~~ major purchases and blood donation. For purposes of interpreting or applying any federal law, uniform code or other state statute, "parental decision-making" shall mean the same as "legal custody."

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

(b) *"Final parental decision-making"* nominates one parent as the person ultimately responsible for child-related decisions, but still requires that parent to reasonably consult with the other before exercising this authority.

(c) *"Sole parental decision-making"* nominates one parent as the person exclusively responsible for child-related decisions, and does not require any level of consultation with the other before the authority is exercised.

6. *"Deferred prosecution"* and *"diversion"* includes any criminal charge that was resolved with an agreement that the alleged offender participate in counseling or treatment in exchange for the charge not being filed or being dismissed.

7. *"Historical aggressor"* means a person who has inflicted intimate partner violence against the other parent, or coercively controlled that parent, for a significant period of time.

8. *"Intimate partner violence"* means any act that would meet the definition of A.R.S. § 13-3602(A), as well as any other act of physical or sexual violence constituting a felony, where inflicted by a person against an intimate partner. This definition also includes any attempt, conspiracy, or solicitation of another to commit such act. It does not include any behavior that would constitute legal justification as defined by A.R.S. §§ 13-404 through -408.

9. *"Intimate partners"* means persons whose relationship with each other qualifies under A.R.S. § 13-3602(A)(1), (2), (3) or (6).

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

11. *"Primary caregiver"* refers to one with whom the child lives a majority of the time.

12. *"Primary residence"* refers to the primary caregiver's residence.

~~13. *"Special circumstance"* refers to conduct that activates one or more of the legal presumptions or other mandatory rules described in Sec. 105, 106, 107 and 108.~~

~~14. *"Strangulation"* means intentionally impeding the normal breathing or circulation of blood of another person by applying pressure to the throat or neck.~~

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

16. *"Visitation"* implicates the same rights and responsibilities as parenting time when exercised by a non-parent.

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 Ariz. Admin. Code Title 9, Ch. 20, Sec. 1101 (which regulates the licensing of treatment programs for convicted DV offenders), with the exception of Sec. 103(1)(E), which was added to highlight the importance of requiring a batterer to disclose records that reveal the extent to which s/he actually learned anything from the experience.

The definition of **"coercive control"** was added to help a trial court evaluate the motivation for proven domestic 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 18 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 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.

"**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.

"Historical aggressor" was added to help the court determine if one parent historically abused the other irrespective of what transpired in a given incident. The phrase appears later in Sec. 105(F)(5).

“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. 103(3)(q).

Sec. 104. Mandatory Preliminary Inquiry; Special Circumstances

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 Sec. 105 ("Intimate Partner Violence & Child Abuse"), 106 ("Substance Abuse"), 107 ("Dangerous Crimes Against Children") or 108 ("Violent & Serial Felons"). If so, the court shall enter parental decision-making and parenting time orders in accordance with those statutes. If not, the court shall proceed to Sec. 110 to determine parental decision-making and parenting time in the child's best interests.

WORKGROUP NOTE

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").

Sec. 105. Intimate Partner Violence and Child Abuse.

A. 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.

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

C. The court shall not award any level of parental decision-making to a parent whose past conduct meets either of the following criteria:

1. A felony conviction for intimate partner violence or child abuse against any person within the past 10 years, including an undesignated felony later designated as a misdemeanor, but not including any time during which the offender was imprisoned with the department of corrections or a fugitive from law enforcement authorities.

2. Two or more misdemeanor convictions, deferred prosecutions or diversions for intimate partner violence or child abuse against any combination of persons within the past 10 years, provided that the offenses occurred on different occasions, but not including any time during which the offender was imprisoned with the department of corrections or a fugitive from law enforcement authorities.

D. If the court determines from a preponderance of the evidence that a parent has previously committed any other act of intimate partner violence against the other parent, or child abuse against the child or child's sibling, neither of which qualifies under Sec. 105(C), then the offending parent must prove that he or she should still make major parental decisions despite the history of abuse or violence. The offending parent may submit this proof by asking the court to consider each of the criteria listed in Section 105(E), as well as other relevant evidence. Similarly, the victim may ask the court to decide that the offending parent has failed to prove his or her suitability for parental decision-making after considering each of the criteria listed in Section 105(F), as well as other relevant evidence.

E. To determine if the offending parent may exercise parental decision-making, despite the proven history of intimate partner violence or child abuse, the court shall consider whether that parent has:

1. Completed a batterer's intervention program, as defined by Section 103(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 improvement by the offending parent during therapy.

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

3. Refrained from any further criminal behavior, 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 adjudicated act of intimate partner violence or child abuse.

F. To evaluate whether the evidence presented in Section 105(E) is sufficient to award parental decision-making to the offending parent, the court shall also consider:

1. The extent to which the offending parent coercively controlled the other parent during their relationship, as described in Section 103(3), or committed other acts of child abuse against the child or child's sibling.

2. Whether the offender 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 offender 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 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 other parent was an historical aggressor against the offender, as defined by Sec. 103(7), and the offender both reasonably and personally believed that preemptive violence was necessary to prevent anticipated harm from the historical aggressor.

6. Whether the offender continues to minimize or deny responsibility for proven violence or blame it on unrelated, collateral issues.

7. Whether the offender has engaged in other criminal behavior.

8. Whether the offender failed to comply with the mandatory disclosure requirements of Ariz. R. Fam. L. Proc. 49(B)(2) – (4) or reasonable discovery requests for records associated with treating intimate partner violence or child abuse.

G. If the court finds that a parent has committed any act of intimate partner violence or child abuse, 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 Sec. 105(E) and (F), giving due consideration to whether parenting time with that parent will:

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

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

H. If the offender fails to meet the burden described in Sec. 105(G), the court shall then place conditions on parenting time that best protect the child and the other parent from further harm. The court may:

1. Order child exchanges to occur in a specified, protected setting.

2. Order that a person or agency specified by the court must supervise parenting time. If the court allows a family or household member or other person to supervise the offender's parenting time, the court shall establish conditions that this supervisor must follow. When deciding whom to select, the court shall also consider the supervisor's ability to physically intervene in an

emergency, willingness to promptly report a problem to the court or other appropriate authorities, and readiness to appear in future proceedings and testified truthfully as to what transpired.

3. Order the offender to complete a batterer's intervention program, as defined by Sec. 103(1), and any other counseling the court orders.

4. Order the offender to abstain from possessing or consuming alcohol or controlled substances during parenting time, and at any other time the court deems appropriate.

5. Order the offender to pay costs associated with supervised parenting time.

6. Prohibit overnight parenting time.

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

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

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

10. Suspend parenting time for a prescribed period.

11. Suspend parenting time indefinitely, pending a change in circumstances and a modification petition from the offender.

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

I. The court shall not order joint counseling between a victim and perpetrator of intimate partner violence or child abuse 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.

J. The court shall not order a victim of intimate partner violence into a parenting conference or other form of alternative dispute resolution in the direct presence of an alleged offender if: (1) the victim has acquired an existing domestic violence protective order from any court against the alleged offender; (2) some civil or family court has previously determined that the alleged offender inflicted intimate partner violence against the victim; or (3) the alleged offender has been criminally convicted of intimate

partner violence against the victim. A victim may waive this protection and proceed into mediation only following inquiry in open court, on the record, and only after being advised of the right to refuse the alternative dispute resolution process without negative repercussion.

K. For purposes of this section, no judgment resulting from contested, protective order proceedings under A.R.S. § 13-3602(I) shall be considered competent evidence that intimate partner violence or child abuse did or did not occur.

WORKGROUP NOTE

This amendment dramatically revamps A.R.S. § 25-403.03 in a number of important ways.

First, it explicitly – and for the first time – recognizes controlling behavior as a primary motivator for classic domestic 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 DV 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."

Third, Arizona law currently segregates domestic violence into a two-part analysis. A.R.S. § 25-403.03(A) forbids joint custody to a "significant" DV offender, either because of significant violence or a significant <u>history</u> of violence. Unfortunately, the statute does not define "significant," which leads to widely varying outcomes for comparable conduct. The amendment flatly defines the conduct that would lead to an absolute prohibition for an award of decision-making responsibility, and it includes comparable abuse inflicted on other victims in the past, so the offender cannot escape the amendment's application by arguing – as is common – that it was "just a relationship problem with someone else."

Fourth, the amendment strengthens the "presumption" rule now codified at A.R.S. § 25-403.03(D), and now includes acts of child abuse, which were inexplicably omitted from the current law. A litigant must still prove "an act" of DV, 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 a DV treatment program, it requires that offender to disclose the actual records of his/her treatment program to the opposing side <u>and</u> submit them into evidence for the court's review. Sec. 105(E).

Under new Sec. 105(F), the court would also consider "aggravating" factors to evaluate whether more serious issues detract from what the offender has offered in a rebuttal case. Sec. 105(F) lists a broad range of conduct often ignored or minimized in DV cases, and includes an examination of the behaviors defined under "coercive control." *See* Sec. 103(3). Also, as another example, in cases of so-called "mutual combat," the amendment 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, DV-related, Rule 49 disclosure as an explicit factor for deciding whether a proven offender had overcome the presumption against an award of decision-making responsibility.

Fifth, although Sec. 105(H) does not alter the basic substance of A.R.S. § 25-403.03(F) – which governs parenting time – the rules are clarified to emphasize the twin problems of physical safety and emotional development. Current law already cites both for the court’s consideration, but litigants typically focus on physical danger at the expense of overlooking the (potentially more serious) long-term risk of emotional harm resulting from constant access time with an unrepentant abuser. The amendment clearly directs the court to consider the issue of future, parental role-modeling.

Sixth, Sec. 105(J) would strengthen the protections for DV victims otherwise forced into mediation or other forms of ADR with their abusers.

Finally, Sec. 105(K) clarifies that family court litigants should not use the outcome of contested DV protective order proceedings as “proof” that intimate partner violence did or did not exist. The amendment recognizes that protective order proceedings apply a different legal standard, potentially apply different evidentiary rules, and frequently occur with little advance notice to the alleged victim – who bears the burden of proof and may not be able to collect witnesses or exhibits within the allotted time. This amendment does not, however, preclude the use of evidence presented at such an earlier hearing. It bars only the use of the judgment itself.

Sec. 106. Substance Abuse.

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 any level of decision-making responsibility to that parent:

1. Any drug offense under A.R.S. Title 13, Chapter 34

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

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

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

B. To determine if an offender has overcome the presumption described in Sec. 106(A), the court shall consider all relevant factors, including:

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

2. The results of random urinalyses for a six-month period immediately preceding trial, or alternatively, two or more hair follicle tests, each taken at least 60 days apart.

C. The court shall not award any level of decision-making responsibility to a parent who fails to overcome the presumption imposed by Sec. 105(D).

Sec. 107. Dangerous Crimes Against Children.

A. The court shall not award any level of parental decision-making or unsupervised parenting time, under any circumstances, to:

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

2. A person required to register under A.R.S. § 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. § 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.

Sec. 108. Violent & Serial Felons.

A. The court shall not award any level of parental decision-making or unsupervised parenting time, under any circumstances, to:

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

2. A person whose criminal history meets the definition of a category two or three repetitive offender under A.R.S. § 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.

Sec. 109. Conflicting Presumptions or Mandatory Rules.

Option One:

In the event that both parents are legally disqualified from an award of parental decision-making due to special circumstances, the court may assign that authority to another family member or third party consistent with the child's best interests, or if necessary, refer the matter for juvenile dependency proceedings pursuant to A.R.S. §§ 8-800, et seq.

Option Two:

In the event that neither parent is suitable for an award of parental decision-making due to special circumstances, the court may either refer the matter for juvenile dependency proceedings pursuant to A.R.S. §§ 8-800, et seq., or provide detailed written findings of the extraordinary circumstances that exist to explain why the award of parental decision-making to one or both parents is necessary, and why the court has determined that the award provides the best option for the child with particular focus on the child's safety.

Other options:

Sec. 110. Best Interests of the Child

A. In the absence of special circumstances proven under Sec. 105, 106, 107 or 108, the court shall assign some level of parental decision-making and parenting time, either originally or on petition for modification, in accordance with the best interests of the child. The court shall consider all relevant factors, including:

[INSERT BEST INTERESTS FACTORS HERE]

Sec. 111. Decision-Making Responsibility

Sec. 112. Parenting Time

Sec. 113. Specific Findings

In a contested case involving parental decision-making or parenting time, the court shall make specific findings on the record about all relevant factors and the reasons for which the decision is in the best interests of the child. The findings shall include an explanation of whether special circumstances apply and if so, the application of the law regarding special circumstances to the case.