

- i. Version Number: 6
- ii. Date of version: August 25, 2010 (incorporating feedback from workgroup meeting on August 6)
- iii. Current section number and short title: 25-403 best interests
- iv. Names of members: Bill Fabricius, Grace Hawkins
- v. Purpose:

In Version 6, C. 8. and C. 9. are removed, as agreed at the last meeting. C. 8. (false allegations) should be dealt with in the new Sections 104 & 105. C. 9. is now unnecessary in 403 given the new Sections 104 & 105.

The members did not feel that C. 3, C. 4., and C. 5. have too much overlap. We made some minor grammatical changes to C. 3.

As per suggestion from the members, "safety" was removed from the phrase " physical safety and emotional well-being" in C. and D.

There was much discussion about C. 7. at the meeting, and some alternate language was offered for the phrase "including whether one parent performed a disproportionate amount of care" (e.g., "Historical involvement in care and raising of child and the extent it impacts on current and future parenting." "Ability of each parent to meet day-to-day needs of the child."). After consideration, we felt that the alternate phrases moved too much in the direction of instructing the court to get into the issue of comparing the parenting abilities of the two parents. We also felt that C. 1. already provided enough direction to the court to consider whether there were any impediments to the child's day-to-day needs being met at each home. We concluded that simply removing that phrase ("including whether one parent performed a disproportionate amount of care") might be the best solution.

The major change is that we now combine 403 (Best Interests) and 403.01 (Sole and Joint Custody) and 403.02 (Parenting Plans), as per a suggestion made by Judge Cohen that perhaps factors for parenting time and parental decision making should be separately specified. The separation was already implicit in the way the current statute separated 403 and 403.01. So our new proposal is to have sections 403 (Best Interests), 403.01 (Parenting Plans), 403.02 (Parenting Time Factors), and 403.03 (Parental Decision Making Factors). Note we keep referring to the old "403" numbers for now just for clarity, realizing that they will be renumbered. Note that Section 403.03 below is actually our Version 2 of 403.01

Changes are tracked.

25-403. Parenting time and parental decision making; best interests of child

- A. Absent evidence to the contrary, it is in a child's best interests for both parents:
 - 1. To have substantial, meaningful, and continuing parenting time with their child;
 - 2. To share parental decision-making concerning their child.
 - 3. To develop a mutually agreeable parenting time plan and a parental decision-making plan.

B. In the event the parents are unable to reach an agreement on a plan for either parenting time or parental decision-making, each parent shall submit to the court a proposed, detailed parenting time plan and proposal for parental decision-making as outlined in 25-403.01.

C. Consistent with the child's physical and emotional well-being, the court shall adopt a plan that maximizes parenting time with both parents and provides for both parents to share parental decision-making concerning their child. In determining parenting time and/or parental decision-making responsibility, the court shall not prefer one parent over the other due to gender.

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D. In a contested parenting time and parental decision-making case, 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.

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25-403.01 Parenting plans

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A. The parents shall submit a proposed parenting plan that includes at least the following, or in the event the parents are unable to reach an agreement on a plan each parent shall submit to the court a proposal for a parenting plan that includes at least the following:

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1. Each parent's rights and responsibilities for making decisions concerning the child in areas such as education, health care, religious preference, extracurricular activities and personal care,

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2. A schedule of parenting time for the child, including holidays and school vacations.

3. A plan for the exchanges of the child.

4. In joint parental decision making plans, a procedure by which proposed changes, disputes and alleged breaches may be mediated or resolved, which may include the use of conciliation services or private counseling.

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5. In joint parental decision making plans, a procedure for periodic review of the plan's terms by the parents.

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6. In joint parental decision making plans, a statement that the parties understand that joint custody does not necessarily mean equal parenting time.

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7. In sole parental decision making plans, a statement that the parties understand that sole parental decision making does not override the schedule of parenting time.

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8. A statement that each party has read, understands and will abide by the notification requirements of section 25-403.05, subsection B.

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25-403.02 Parenting time

The court shall determine parenting time, either originally or on petition for modification, in accordance with the best interests of the child. The court shall consider all factors relevant to the child's physical and emotional well-being, including

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1. 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.

2. The child's own viewpoint and wishes.

3. 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.

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

5. The mental and physical health of all individuals involved.

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 an act of domestic violence or being a victim of domestic violence or child abuse.

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7. The historical nature of the relationship between the parent and the child, the current relationship between the parent and the child, and the potential future relationship between the parent and the child.

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Deleted: 9. Whether there has been domestic violence or child abuse as defined in section 25-403.03. ¶

8. Whether a parent has complied with chapter 3, article 5, of this title.

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25-403.03 Parental decision making, sole and joint

A. The court may issue an order for sole or joint parental decision making if both parents agree and the court finds such an order is in the best interests of the child. The court may order joint parental decision making without ordering a substantially equal parenting time plan.

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B. The court may issue an order for joint parental decision making over the objection of one of the parents if the court makes specific written findings of why the order is in the child's best interests. In determining whether joint parental decision making is in the child's best interests, the court shall consider the factors prescribed in section 25-403.02 and all of the following:

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1. The agreement or lack of an agreement by the parents regarding parental decision making.
2. Whether a parent's lack of agreement is unreasonable or is influenced by an issue not related to the best interests of the child.
3. The past, present and future abilities of the parents to cooperate in decision-making about the child to the extent required by the order of joint parental decision making.
4. Whether the joint parental decision making arrangement is logistically possible.

5. Whether a parent has complied with chapter 3, article 5, of this title.