

Substantive Law Workgroup
Steve Wolfson, Chairperson

Court Procedures Workgroup
Dr. Brian Yee, Chairperson

DOMESTIC RELATIONS COMMITTEE

Agenda

November 10, 2011

11:00 – 1:00 p.m.

Arizona State Courts Building

1501 W. Washington St., Conference Room 119A/B

Phoenix, Arizona 85007

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

Action Item/Vote: _____ Approval of 09-22-11 minutes

- 2. DRC update**.....*Chairmen*
- ARS § 25-320 Child support; factors; methods of payment

Action Item/Vote: _____

- 3. Discuss and review new custody rewrite proposal**.....*Grace Hawkins*

Action Item/Vote: _____

- 4. Discuss and review current custody rewrite provisions and comments table**.....*Chairmen*

Action Item/Vote: _____

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

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

- 6. Adjourn** - Next Meeting: TBD

Please call (602) 452-3358 regarding questions concerning this agenda. Persons with a disability may request reasonable accommodations by contacting Tama Reily at (602) 452-3637. Requests should be made as early as possible to allow time to arrange the accommodation.

Substantive Law/Court Procedures Workgroup

Minutes

Date: September 22, 2011	Time: 11:30AM – 12:45PM	Location: Conference Room 345B
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Minute Taker: Tama Reily

Members Attending:

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

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

Guests: Honorable Linda Gray; Katy Proctor; Amber O'Dell; Joi Davenport; Rena Selden; Brent Miller

Matters Considered:

I. Welcome and Announcements

The meeting was called to order at 11:42 a.m. by co-chair, Steve Wolfson. Members and guests were welcomed. Mr. Wolfson introduced Senator Linda Gray, co-chair of the DRC and thanked her for attending this meeting.

In light of events during the Call to the Public at the recent DRC meeting, Mr. Wolfson addressed the workgroup and the general public present, regarding appropriately addressing the committee during the Call to the Public. He stated the Open Meeting Laws allow discretion to a public body to hold an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions. The intent is for constructive comments, not personalized attacks, and that abusive and defamatory remarks are out of order and will not be tolerated. He reiterated the public comment process, that the public are asked not to repeat issues that have already been stated by other speakers so that those with different issues will have the opportunity to state theirs, and that comments are taken in the order they are submitted.

II. Approval of Minutes

The minutes for the July 29, 2011, August 19, 2011, and September 1, 2011, were presented for approval.

MOTION: To approve the minutes of the July 29, 2011, SLCP Workgroup meeting as presented. Motion seconded. Passed unanimously.

MOTION: To approve the minutes of the August 19, 2011, SLCP Workgroup meeting as presented. Motion seconded. Passed unanimously.

MOTION: To approve the minutes of the September 1, 2011, SLCP Workgroup meeting as presented. Motion seconded. Passed unanimously.

III. DRC Update

Mr. Wolfson reported on the information he and Dr. Yee provided to the DRC at the September 16 meeting. He informed the workgroup members that the DRC's feedback was to address four issues: 1) The scope of the work product 2) Identifying the controversial issues 3) Outlining the coercive control issues, and 4) Whether or not to include the expanded domestic violence language, and if so, the most appropriate placement of that language. Mr. Wolfson explained that a motion was made to have these items addressed at the next DRC meeting. Dr. Yee

related that the DRC recommended the workgroup have a member prepare a summary of what the main differences are among the versions. Senator Gray offered to have a legislative staff member, Amber O'Dell, draft an analysis and create the summarization as discussed. Mr. Wolfson stated the workgroup would work with Amber and provide whatever information she would find helpful to complete the task.

At this point, Mr. Wolfson suggested the workgroup discuss some of the terminology issues that arose recently, and vote on some of the outstanding issues such as: 1) Whether to approach the statute changes in a comprehensive manner or to make changes to the statute in a piecemeal fashion. 2) Whether to include coercive control language as a "front-loaded" best interest factor, as one of the special circumstances, or whether to include it at all.

Jami Cornish informed the workgroup that the statute changes were addressed last week at the Domestic Relations Task Force meeting hosted by the Morris Institute for Justice. The meeting included domestic relations attorneys from all the legal services providers around the state. Ms. Cornish reported that the general consensus at the meeting was that coercive control should be in the statute as a factor and that a more streamlined version is preferable. She noted there was concern about added confusion with the change in language from *custody* to *parental decision-making*.

Subsequent discussion explored several alternate avenues, including bifurcating the bill, working section by section or issue by issue, further developing a streamlined version, or moving ahead with a comprehensive bill. Senator Gray supported the suggestions that the workgroup could go forward with the more comprehensive bill or approach it as two separate bills. She pointed out that the DRC could amend any portion found to be too controversial. Bill Fabricius made a motion to go forward this year with the parenting time, best interests, and parental decision making sections of the bill and to continue to work on the rest of the bill including the domestic violence section, during the next year. There was no second and the motion was withdrawn.

MOTION: To proceed with work on recommendations to A.R.S. § 25-401 on the Legislative Council version and Alongi variations. Motion seconded. Motion passed 6-1-1.

IV. Call to the Public

Member of the public, Brent Miller, expressed his feelings that the workgroup should ask for input from the public prior to voting on an issue such as how to proceed with the work on the custody statute. He objects to the expansive language regarding coercive control and states there is no substantial, quantified evidence; rather it is based on speculation. He asserted most of these custody cases are filed by pro pers and the language in the statute will not educate the public. He urged the workgroup to simplify the statute.

V. Adjourn

Meeting adjourned at 12:47pm.

Next Meeting

TBD

Arizona State Courts Building
1501 W. Washington

25-320. Child support; factors; methods of payment; additional enforcement provisions; definitions

D. The supreme court shall establish guidelines for determining the amount of child support. The amount resulting from the application of these guidelines is the amount of child support ordered unless a written finding is made, based on criteria approved by the supreme court, that application of the guidelines would be inappropriate or unjust in a particular case. The supreme court shall review the guidelines at least once every four years to ensure that their application results in the determination of appropriate child support amounts. The supreme court shall base the guidelines and criteria for deviation from them on all relevant factors, including:

1. The financial resources and needs of the child.
2. The financial resources and needs of the custodial parent.
3. The standard of living the child would have enjoyed had the marriage not been dissolved.
4. The physical and emotional condition of the child, and the child's educational needs.
5. The financial resources and needs of the noncustodial parent.
6. The medical support plan for the child. The plan should include the child's medical support needs, the availability of medical insurance or services provided by the Arizona health care cost containment system and whether a cash medical support order is necessary.
7. Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.
8. The duration of parenting time and related expenses.

OUTSTANDING COMMENTS TO CUSTODY REWRITE BILL (11-03-11)

	Version	Section	Comment
1.	Alongi Version 1 as inherited from AHCW on 03/04/11	Using “ Parental Decision-Making ” terminology instead of “custody”	CCRT (Conciliation Court Roundtable): Are there unintended consequences that will arise based on this change of language? (From “custody” to “PDM”) Look into whether there have been unintended consequences in other states (FL, WA) that have moved to this term. Are other rights affected?
2.	Alongi Version 4	§ 25-402(B)(1) Jurisdiction	Todd Franks: Need to include “annulment” in 25-402(B)(1)
	Current Alongi V.4 (Page 3, line 22)	B. The following persons may request parental decision-making or parenting time under the following circumstances: 1. A parent, in any proceeding for marital dissolution, legal separation, paternity or modification of an earlier decree;	
3.	Alongi Version 1 as inherited from AHCW on 03/04/11	§ 25-422(8) Definitions NOW § 25-403(2)	
	Proposed changes Conciliation Court Roundtable	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 22-814, or an adoptive parent whose parental rights have not been terminated.	
	Current Alongi V.4 (Page 4, lines 1-3)	2. “Legal parent” means a biological or adoptive parent whose parental rights have not been terminated. It does not include a person whose paternity has not been established under Section 25-812 or 25-814.	
4.	Alongi Version 4	§ 25-403(3) Definitions	Todd Franks: Page 4, line 6 - Instead of “medical treatment” should include “medical or health care treatment or evaluation” Page 4, line 9 – Drivers’ license is a big issue...is this

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			included?
	Proposed changes Keith Berkshire	<p><i>“Parental decision-making”</i> means the legal right and responsibility to make major life all non-emergency legal 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, and blood donation including but not limited to those regarding medical, dental, vision, orthodontic, mental health, counseling, education and religion. For purposes of interpreting or applying any international treaty, federal law, uniform code or other state statute, “parental decision-making” shall mean the same as “legal custody.”</p>	
	Current Alongi V.4 (Page 4, lines 4-11)	<p>3. <i>“Parental decision-making”</i> refers to a parent’s legal right and responsibility to make major life decisions affecting the health, welfare and education of a child, including, for example, schooling, religion, daycare, medical treatment, counseling, commitment to alternative long-term facilities, authorizing powers of attorney, granting or refusing parental consent where legally required, entitlement to notifications from third parties on behalf of the child, employment, enlistment in the Armed Forces, passports, licensing and certifications, and blood donation. For purposes of interpreting or applying any international treaty, federal law, uniform code or other state statute, “parental decision-making” shall mean the same as “legal custody.”</p>	
5.	Alongi Version 4	<p>§ 25-403(3)(a) Shared parental decision-making</p>	<p>Todd Franks: Page 4, lines 12-14 Can either parent make a decision without the consent of the other parent? Important consideration for third parties.</p>
	Current Alongi V.4 (Page 4, lines 12-14)	<p>(a) <i>“Shared parental decision-making”</i> means that both parents equally share the burdens and benefits of the authority described in this section, with neither parent possessing superior authority over the other.</p>	
6.	Alongi Version 1 as inherited	<p>§ 25-422(9)(c) Definitions NOW § 25-</p>	

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	from AHCW on 03/04/11	403(3)(c) Sole parental decision-making	
	Proposed changes Conciliation Court Roundtable	(c) <i>“Sole parental decision-making”</i> means one parent is exclusively responsible for child-related decisions, and does not require any level of consultation with the other parent before the authority is exercised.	
	Current Alongi V.4 (Page 4, lines 17-18)	(c) <i>“Sole parental decision-making”</i> means that one parent exclusively exercises the authority described in this section, and is not required to consult with the other before doing so.	
7.	Alongi Version 1 as inherited from AHCW on 03/04/11	§ 25-422(10) Definitions NOW § 25-403(4) Parenting time	
	Proposed changes Conciliation Court Roundtable	10. <i>“Parenting time”</i> refers to a each parent’s physical access to a child at specified times, and may entails the provision of food, clothing and shelter, as well as 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.	
	Current Alongi V.4 (Page 4, lines 19-23)	4. <i>“Parenting time”</i> refers to a parent’s physical access to a child at specified times, and while the child remains in that parent’s care, providing the child with food, clothing and shelter, and actively participating in the child’s activities in a positive manner. It also includes making routine decisions regarding the child’s care that do not contradict decisions made by a parent who has been granted parental decision-making authority.	
8.	Alongi Version 1 as inherited from AHCW on 03/04/11	§ 25-422(14) Definitions NOW § 25-403(5) Visitation	CCRT: Different rights than the parents have when they exercise parenting time.
	Current Alongi V.4 (Page 4, lines 24-25)	5. <i>“Visitation”</i> means the same as parenting time when exercised by someone other than a legal parent.	
9.	Alongi Version 4	§ 25-404(2) Special definitions; family violence and coercive control	Judge Peter Swann: The affect of a definition that contains so many provisions is that it gets litigated. Best statutes are ones that: 1) have potential for a just decision 2) little potential for abuse of use 3) don’t create undue income 4) don’t allow proceedings to
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		take longer than necessary.
Current Alongi V.4 (Page 5, lines 4-31)	2. <i>“Coercive control”</i> refers to a discernible pattern of controlling behaviors inflicted by one parent against another. With regard to these behaviors, the court shall consider the frequency of these behaviors, their remoteness in time, the psychological injury they inflicted on the victim and other household members, the degree to which they influenced the victim’s daily life, and the extent to which one or more behaviors were, in truth, attributable to some other condition or motivation. Specifically, the court shall consider whether the offending parent:	
	(a) Engaged in exceptionally demeaning or emotionally abusive conduct toward the victim;	
	(b) Unreasonably restricted the victim’s freedom of movement;	
	(c) Unreasonably restricted the victim’s educational or financial activities without consent, or maliciously jeopardized the victim’s employment or financial credit;	
	(d) Appropriated the victim’s identity, as defined in Section 13-2008;	
	(e) Attempted or threatened suicide, or injured or threatened to injure other persons or household pets, as a means of coercing the victim’s compliance with the offender’s wishes;	
	(f) Unreasonably threatened to conceal or remove a child from the victim’s care as a means of coercing that person’s compliance with the offender’s wishes, or used a child to facilitate either criminal conduct against the victim or one or more controlling behaviors described in this subsection;	
	(g) Impeded the victim’s attempt to report family violence or other criminal behavior to law enforcement, medical personnel or other third parties by means of duress or coercion;	
	(h) Eavesdropped on the victim’s private Internet activities, telephone conversations or other communications, or accessed the victim’s electronic, password-protected accounts without permission;	
	(i) Unreasonably restricted the victim’s public activities, or the victim’s interaction with family or social acquaintances; or	
	(j) Engaged in any other exceptionally controlling behavior consistent with the conduct described in this definition, or that society would recognize as a violation of the victim’s legal or fundamental human rights.	
10.	Alongi Version 4	§ 25-404(5) Family violence AZCADV: Remove references to “intimate partner

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			violence” throughout the draft, changing them to “domestic violence.” (Note: Legislative drafting conventions do not use “and/or.” Consider changing to “...means child abuse or domestic violence, or both, as defined in this section.”
	Proposed changes AZCADV	5. “Family violence” means child abuse as defined in this section and/or intimate partner domestic-violence, as both are defined in this section.	
	Current Alongi V.4 (Page 6, lines 9-10)	5. “Family violence” means child abuse or intimate partner violence, as both are defined in this section.	
11.	Alongi Version 4	§ 25-404(6) Intimate partner violence	AZCADV: Change the definition of “intimate partner violence” to “domestic violence,” with the same definition listed on page 6 in Tom’s version 4. We do not feel that it is necessary to create a whole new phrase in statute in order to limit what is referred to as domestic violence in the child custody statute. We can say, “for the purposes of this section, domestic violence means,” without having to create a whole new term that could create confusion for victims and lawyers alike.
	Proposed changes AZCADV Propose same change to: Page 6 lines 9, 11 and 22 Page 8 line 25 Page 9 lines 3, 14 and 15 Page 11 lines 25, 29-30, 32 and 33 Page 12 lines 2, 4, and 6	6. “Intimate partner Domestic violence” means any of the following acts when inflicted against an intimate partner: (a) physical or sexual violence, or any threat to commit the same; (b) assaultive behavior not resulting in physical contact that places the victim in reasonable apprehension of immediate bodily harm; (c) any other conduct listed in Section 13-3601(A) that would also constitute a felony under the laws of this State; or (d) any violation of a domestic violence protective order or harassment injunction. This definition also includes any attempt, conspiracy, or solicitation of another to commit an act described above. It does not include any defensive behavior that would qualify as legal justification under Sections 13-404 through -408.	

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	Current Alongi V.4 (Page 6, lines 11-18)	6. <i>“Intimate partner violence”</i> means any of the following acts when inflicted against an intimate partner: (a) physical or sexual violence, or any threat to commit the same; (b) assaultive behavior not resulting in physical contact that places the victim in reasonable apprehension of immediate bodily harm; (c) any other conduct listed in Section 13-3601(A) that would also constitute a felony under the laws of this State; or (d) any violation of a domestic violence protective order or harassment injunction. This definition also includes any attempt, conspiracy, or solicitation of another to commit an act described above. It does not include any defensive behavior that would qualify as legal justification under Sections 13-404 through -408.	
12.	Alongi Version 4	§ 25-404(7) Intimate partner	AZCADV: Strike entire provision.
	Proposed changes AZCADV	7. <i>“Intimate partner”</i> means a person whose relationship with another qualifies under Section 13-3601(A)(1), (2), (3) or (6).	
	Current Alongi V.4 (Page 6, lines 19-20)	7. <i>“Intimate partner”</i> means a person whose relationship with another qualifies under Section 13-3601(A)(1), (2), (3) or (6).	
13.	Alongi Version 4	§ 25-405 Shared Parental Decision-Making and Parenting Time	Todd Franks: Believes this section is inconsistent with § 25-408. Maximize parenting time, or be consistent with the factors set forth in section 25-408?
	Current Alongi V.4 (Page 7, lines 4-7 § 25-405; page 8, lines 8-10 § 25-408)	<p>§ 25-405. Shared Parental Decision-Making and Parenting Time Consistent with the child’s physical and emotional well-being, the court shall adopt a parenting plan that provides for both parents to share parental decision-making concerning their child, and that maximizes each parent’s parenting time. The court shall not prefer one parent over the other due to the gender of either parent or the child.</p> <p>§ 25-408. Best interests of child; family violence; judicial findings; appellate review A. The court shall determine both parental decision-making and parenting time in accordance with the best interests of the child. The court shall consider all factors relevant to the child’s physical safety and emotional welfare, including:</p>	

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14.	Alongi Version 4	§ 25-405 Shared Parental Decision-Making and Parenting Time	Grace Hawkins: CCRT recommends that “shall” language should be changed to “may” in order to give the court discretion.
	Proposed changes	§ 25-405. Shared Parental Decision-Making and Parenting Time Consistent with Taking into account the child’s physical and emotional well-being, the court shall may adopt a parenting plan that provides for both parents to share parental decision-making concerning their child, and that maximizes each parent’s parenting time. The court shall not prefer one parent over the other due to the gender of either parent or the child.	
	Current Alongi V.4 (Page 7, lines 4-7)	§ 25-405. Shared Parental Decision-Making and Parenting Time Consistent with the child’s physical and emotional well-being, the court shall adopt a parenting plan that provides for both parents to share parental decision-making concerning their child, and that maximizes each parent’s parenting time. The court shall not prefer one parent over the other due to the gender of either parent or the child.	
15.	Alongi Version 1 as inherited from AHCW on 03/04/11	§ 25-431 Parental Decision-Making; Shared, Final or Sole NOW § 25-405 Shared Parental Decision-Making and Parenting Time	
	Proposed changes Conciliation Court Roundtable	§ 25-431 Parental Decision-Making; Shared, Final or Sole	
	Current Alongi V.4 (Page 7, line 3)	§ 25-405 Shared Parental Decision-Making and Parenting Time	
16.	Alongi Version 1 as inherited from AHCW on 03/04/11	§ 25-432 Parenting Plans NOW § 25-405 Shared Parental Decision-Making and Parenting Time	Bill Fabricius: Clarify what is meant by “maximize.”
	Proposed changes Bill Fabricius	A. Consistent with the child’s physical and emotional well-being, the court shall adopt a parenting plan that provides for both parents to share maximizes the sharing of parental decision-making concerning their child, to the extent specified in at least one of the proposed parenting plans, and that maximizes each both parent’s parents’ respective parenting time to the extent specified in at least one of the proposed parenting plans. The court shall not prefer one parent over the other due to the gender.	
	Current Alongi V.4	§ 25-405. Shared Parental Decision-Making and Parenting Time	
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	(Page 7, lines 4-7)	Consistent with the child’s physical and emotional well-being, the court shall adopt a parenting plan that provides for both parents to share parental decision-making concerning their child, and that maximizes each parent’s parenting time. The court shall not prefer one parent over the other due to the gender of either parent or the child.	
15.	Alongi Version 4	§ 25-406(B) Proposed plans	Judge Peter Swann: This provision calls for specific requirements. In default cases the courts frequently work with people who are unable to articulate these requirements. If the requirements are mandatory it means they are unable to comply with the law. Should consider an alternative in those cases where no evidence is offered.
	Current Alongi V.4 (Page 7, lines 13-26)	B. A parenting plan must include at least the following: <ol style="list-style-type: none"> 1. A designation of the parental decision-making plan as either shared, final or sole, as defined in Section 403(3). 2. Each parent’s additional rights and responsibilities for parental decision-making. 3. A plan for communicating with each other about the child, including methods and frequency. 4. A detailed parenting time schedule, including holidays and school vacations. 5. A plan for child exchanges, including location and responsibility for transportation. 6. In shared parental decision-making plans, a procedure by which the parents can resolve disputes over proposed changes or alleged violations, which may include the use of conciliation services or private mediation. 7. A procedure for periodic review of the plan. 8. A statement that each party has read, understands and will abide by the notification requirements of Section 25-411(G), pertaining to access of sex offenders to a child. 	
16.	Alongi Version 1 as inherited from AHCW on 03/04/11	§ 25-430 Parenting Plans NOW § 25-406(B)(7) Proposed plans	
	Proposed changes Conciliation Court Roundtable	7. A procedure for periodic review of the plan.	
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		<p>8- 7. A statement that each party has read, understands and will abide by the notification requirements of A.R.S. § 25-445(B) pertaining to access of sex offenders to a child.</p>	
	Current Alongi V.4 (Page 7, lines 24-25)	<p>§ 25-406(B) 7. A procedure for periodic review of the plan. 8. A statement that each party has read, understands and will abide by the notification requirements of Section 25-411(G), pertaining to access of sex offenders to a child.</p>	
17.	Alongi Version 1 as inherited from AHCW on 03/04/11	<p>§ 25-430 Parenting Plans NOW ARTICLE 2. PARENTING PLANS § 25-406(E)</p>	<p>CCRT: Adds new sub-section E to section 25-430 to instruct how to handle when full agreement between the parties does not exist.</p>
	Proposed changes Conciliation Court Roundtable	<p>E. Whenever controversy exists regarding parental decision-making or parenting time, the parties may consider private mediation, or the court, pursuant to Rule 68, Arizona Rules of Family Law Procedure, shall refer the parties to the Court of Conciliation for mediation or other alternative dispute resolution services.</p>	
	Current Alongi V.4	Not applicable.	
18.	Alongi Version 4	<p>§ 25-407 Alternative dispute resolution</p>	<p>Judge Peter Swann: This provision shouldn't be mandatory.</p>
	Current Alongi V.4 (Page 8, lines 1-4)	<p>§ 25-407. Alternative dispute resolution; preliminary duty If two parents already share parental decision-making by prior court order, each must consult with the other about child-related decisions, and attempt to resolve disputes outside of court through conciliation services or private mediation before seeking formal judicial intervention.</p>	
19.	Alongi Version 1 as inherited from AHCW on 03/04/11	<p>§ 25-432(5) Parenting Time NOW § 25-408(A)(7) Best interests of child; family violence; judicial findings</p>	
	Proposed changes Conciliation Court Roundtable	<p>5. The child's own viewpoint and wishes, if possessed of suitable age and maturity, along with the basis of those wishes.</p>	
	Current Alongi V.4 (Page 8, line 20-21)	<p>§ 25-408(A)(7) 7. The child's own viewpoint and wishes, if possessed of suitable age and maturity, along with the</p>	

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		basis for those wishes.	
20.	Alongi Version 1 as inherited from AHCW on 03/04/11	§ 25-431(3) Parental Decision-Making NOW § 25-408(A)(8) Best interests of child; family violence; judicial findings	
	Proposed changes Conciliation Court Roundtable	3. Whether an award of final or sole parental decision-making would be abused.	
	Current Alongi V.4 (Page 8, line 22-25)	§ 25-408(A)(8) Best interests of child; family violence; judicial findings; appellate review 8. Whether one parent is more likely to encourage the child’s relationship with the other, and respect parental decision-making rules. 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.	
21.	Alongi Version 1 as inherited from AHCW on 03/04/11 (Three suggested changes that relate to § 25-408 are included in number 21.)	§ 25-423 Mandatory Preliminary Inquiry NOW § 25-408(B) Best interests of child; family violence; judicial findings ALL “SPECIAL CIRCUMSTANCES” PROVISIONS HAVE BEEN DELETED IN CURRENT VERSION; HOWEVER THIS PROVISION CORRELATES TO § 25-408(B)	CCRT: (Highlighted language) Sounds like it requires a judge to determine whether there are special circumstances before sending parties to mediation. Conciliation Court performs a best interest’s evaluation. If there’s a special circumstance, does Conciliation still perform a best interest’s evaluation? Is the court still going to refer cases to Conciliation or make a determination first and then send to Conciliation? Second highlighted language – Judges – Does this mean that if there are special circumstances, best interests aren’t evaluated? Judges will do what they believe they’re required to do – concerns about appeals.
	Proposed changes Conciliation Court Roundtable	§ 25-423. 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 §§ 25-440 through 25-443 (Intimate Partner Violence & and Child Abuse), § 25-444 (Substance Abuse), § 25-445 (Dangerous Crimes Against Children) or § 25-446 (Violent & and Serial Felons). If so special circumstances exist,	

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		the court shall enter parental decision-making and parenting time orders in accordance with those statutes prior to evaluating the best interests factors . If not no special circumstances exist , the court shall proceed directly to the general provisions of §§ 25-430 through 25-432 to devise a parenting plan that allocates parental decision-making and parenting time consistent with the child’s best interests.
Alongi Version 1 as inherited from AHCW on 03/04/11	Article 4. Special Circumstances NOW § 25-408(B), (C) ALL SPECIAL CIRCUMSTANCES PROVISIONS HAVE BEEN DELETED IN V.4.	
Proposed changes Conciliation Court Roundtable	§ 25-440. Intimate Partner Violence and Child Abuse: BASIC PRINCIPLES [Former A.R.S. § 25-403.03(B)] 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.	
Alongi Version 1 as inherited from AHCW on 03/04/11	§ 25-441. Intimate Partner Violence and Child Abuse: Parental Decision-making NOW § 25-408(B), (C) ALL SPECIAL CIRCUMSTANCES PROVISIONS HAVE BEEN DELETED IN V.4.	Should there be a timeframe for this? What if abuse happened when child was 5 years old and is now 15 years old? Is the fact that the parties stayed together after that, part of the rebuttal case? Alternate point of view – leave as is. Does remoteness in time negate the act of violence? Within a reasonable time of the petition being filed? ARFLP Rule 49(b) has disclosure timeframes. Should this be consistent with

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			ARFLP? Rule mentions DV with 5-year look-back. Difference between one act of violence and “proven history.” History suggests more than one act.
	Proposed changes Conciliation Court Roundtable	A. Cases Where Parental Decision-Making Presumptively Disallowed. If the court determines from a preponderance of the evidence that a parent has previously committed a significant any act of intimate partner violence against the other parent, or child abuse against the child or child’s sibling, then it shall not award parental decision-making to the offending parent without proof that such parent should still make major decisions for the child despite the proven act or acts of history of abuse or violence. The offending parent may submit this proof by asking the court to consider the criteria listed in Subsection (B). In that event, the court shall also evaluate whether the offending parent has nevertheless failed to prove his or her suitability for parental decision-making by considering each of the criteria listed in Subsection (C).	
	Current Alongi V.4 (Page 8, lines 29-31; page 9, 1-21)	§ 25-408(B) and (C) Best interests of child; family violence; judicial findings; appellate review B. The court shall not award any level of parental decision-making or unrestricted parenting time to a parent who has committed one or more acts of family violence, unless the court finds from clear and convincing evidence that other statutory factors substantially outweigh the history of that violence. When determining the relative strength of those competing factors, the court shall consider: 1. The extent to which the offending parent inflicted intimate partner violence or child abuse against the same or some other person in the past, or has recently done so with a new intimate partner or child, especially after having already received related counseling on past occasions. 2. In cases of mutual violence not amounting to legal justification, as defined in Sections 13-404 through -408, the motivation of each parent for the violence, the level of force used by each parent, and their respective injuries. 3. Whether the offending parent continues to minimize or deny responsibility for the history of violence, or blame it on unrelated issues. 4. Whether the offending parent failed to comply with the mandatory disclosure requirements of Family Law Rules 49(B)(2) – (4) or reasonable discovery requests for records associated with treating	

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		intimate partner violence or child abuse. 5. In cases involving intimate partner violence, whether the offending parent has completed an offender treatment program, as defined in Section 25-404(8), and has also disclosed and submitted into evidence a complete set of treatment records proving an acceptable level of productive participation in the rehabilitation process. A certificate of completion alone does not prove rehabilitation. 6. The remoteness of the last act of family violence, and reasons for the absence of renewed violence over the passage of time. C. When conducting the analysis described in Subsection (B), the court shall always consider a history of family violence as contrary to the best interests of the child, irrespective of whether a child personally witnessed a particular act of violence. ☐	
22.	Alongi Version 4	§ 25-408(B) Best interests of child; family violence; judicial findings; appellate review	Todd Franks: Clear and convincing evidence as standard of proof?
	Current Alongi V.4 (Page 8, lines 29-31; page 9, lines 1-2)	B. The court shall not award any level of parental decision-making or unrestricted parenting time to a parent who has committed one or more acts of family violence, unless the court finds from clear and convincing evidence that other statutory factors substantially outweigh the history of that violence. When determining the relative strength of those competing factors, the court shall consider:	
23.	Alongi Version 4	§ 25-408(B)(6) Best interests of child; family violence; judicial findings; appellate review	AZCADV: Change the phrase “remoteness of” to “length of time since” when referring to the last act of family violence.
	Proposed changes AZCADV	6. The remoteness of length of time since the last act of family violence, and reasons for the absence of renewed violence over the passage of time.	
	Current Alongi V.4 (Page 9 lines 20-21)	6. The remoteness of the last act of family violence, and reasons for the absence of renewed violence over the passage of time.	
24.	Alongi Version 1 as inherited from AHCW on 03/04/11	§ 25-441. Intimate Partner Violence and Child Abuse: Parental Decision-making NOW § 25-409 Parenting time; restrictions and special considerations	

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		ALL SPECIAL CIRCUMSTANCES PROVISIONS HAVE BEEN DELETED IN V.4.	
	Proposed changes Conciliation Court Roundtable	B. How a Confirmed Offender May Prove Suitability for Parental Decision-Making. To determine if the offending parent may exercise parental decision-making, despite the proven history of intimate partner violence or child abuse, and in addition to any other relevant, mitigating evidence, the court shall consider whether that parent has:	
	Current Alongi V.4 (Page 9, line 25-29)	§ 25-409. Parenting time; restrictions and special considerations A. If a parent does not appear suitable for unrestricted parenting time based on evidence presented at trial, the court shall then place conditions on parenting time that best protect the child and the other parent from further harm. With respect to the restricted parent, the court may:	
25.	Alongi Version 4	§ 25-409 Parenting time; restrictions and special conditions	Todd Franks: Concerned about basing a finding on an appearance. Need a finding based on a legal standard.
	Current Alongi V.4 (Page 9, lines 25-29)	§ 25-409. Parenting time; restrictions and special considerations A. If a parent does not appear suitable for unrestricted parenting time based on evidence presented at trial, the court shall then place conditions on parenting time that best protect the child and the other parent from further harm. With respect to the restricted parent, the court may:	
26.	Alongi Version 4	§ 25-409(A)(4) Parenting time; restrictions and special conditions	Todd Franks: Highlighted provision may be unconstitutional. Permitted to order a parent not to consume alcohol in the context of parenting.
	Current Alongi V.4 (Page 10, lines 6-7)	4. Order abstention from or possession of alcohol or controlled substances during parenting time, and at any other time the court deems appropriate.	
27.	Alongi Version 4	§ 25-409(B)(1) Parenting time; restrictions and special conditions	Todd Franks: Perhaps the “role-modeling” is better placed as a factor in § 25-403.
	Current Alongi V.4 (Page 10, lines 19-21)	B. When deciding whether to grant parenting time to a parent who has committed one or more acts of family violence, the court shall specifically contemplate whether that parent’s access to a child 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	

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		the child; or	
28.	Alongi Version 1 as inherited from AHCW on 03/04/11	§ 25-424 Specific Findings Required NOW § 25-410(A) Judicial findings; appellate review	(Highlighted language) Will the requirement result in three-hour temporary order hearings?
	Proposed changes Conciliation Court Roundtable	§ 25-424. Specific Findings Required In any evidentiary hearing involving parental decision-making, parenting time or third-party rights, including both temporary orders and trial final orders, the court shall make specific findings in writing or on the record about of all relevant factors and reasons for why the judicial decision serves a child’s best interests. The findings shall include a description of any special circumstances established by the evidence, and an explanation for the court’s decision in light of the controlling rules.	
	Current Alongi V.4 (Page 10, lines 28-31; page 11, lines 1-4)	§ 25-410. Judicial findings; appellate review A. After any evidentiary hearing involving parental decision-making, parenting time, or visitation by a third party, the court shall make specific findings on the record, or in its written order, concerning all relevant factors in Section 25-408(A). The court shall also provide specific findings to justify any decision to grant parental decision-making or unrestricted parenting time to a parent who has committed family violence. Those findings shall identify which competing statutory factors outweighed the significance of the offending parent’s violence, and shall also thoroughly explain why the court believed that those competing factors were more relevant to the child’s best interests.	
29.	Alongi Version 4	§ 25-410(B) Judicial findings; appellate review	Judge Peter Swann: This provision doesn’t allow deference to the conclusions of the trial court. Tom Alongi: This provision is stricken in V.5.
	Current Alongi V.4 (Page 11, lines 5-8)	§ 25-410. Judicial findings; appellate review B. The Arizona Court of Appeals shall review <i>de novo</i> any superior court determination that evidence of family violence was outweighed by other considerations. Any other trial judgment concerning parental decision-making or parenting time shall be reviewed only for an abuse of discretion.	
30.	Alongi Version 4	§ 25-411(A) Family violence; miscellaneous provisions	AZCADV: Clarifying language added.
	Proposed changes	A. A criminal conviction for an act of family violence shall constitute adequate proof of family violence	

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	AZCADV	under Section 25-408(A)(1). No person so convicted may claim in proceedings under this chapter that the crime of conviction did not occur. However, Either party may introduce evidence of facts related to the incident, either as a means of contending that other best interests to show that considerations in Section 25-408(A) outweigh the importance of the adjudicated family violence, conviction or to prove that the offender’s conduct was actually worse than the crime of conviction suggests. Nothing in this subsection prevents an alleged victim from proving family violence by means other than a criminal conviction.	
	Current Alongi V.4 (Page 11, lines 10-17)	A. A criminal conviction for an act of family violence shall constitute adequate proof of family violence under Section 25-408(A)(1). No person so convicted may claim in proceedings under this chapter that the crime of conviction did not occur. However, either party may introduce evidence of facts related to the incident, either as a means of contending that other best interests considerations in Section 25-408(A) outweigh the importance of the adjudicated family violence, or to prove that the offender’s conduct was actually worse than the crime of conviction suggests. Nothing in this subsection prevents an alleged victim from proving family violence by means other than a criminal conviction.	
31.	Alongi Version 4	§ 25-411(B) Family violence; miscellaneous provisions	Judge Peter Swann: As written, this provision suggests that consent can be used against a person without adjudication of facts, as the facts have not been proven. This could allow the court to be an instrument of injustice.
	Current Alongi V.4 (Page 11, lines 18-22)	B. Evidence that a parent previously consented to deferred prosecution or diversion from criminal charges for an act of family violence shall constitute adequate proof that such parent committed the act or acts alleged in the criminal complaint later dismissed pursuant to the diversion or deferred prosecution. Nothing in this subsection prevents either parent from introducing additional evidence related to the event in question in support of that parent’s case.	
32.	Alongi Version 4	§ 25-411(E) Family violence; miscellaneous provisions	Todd Franks: In those cases where counseling is simply not going to work, the court should make a finding that counseling is not going to work.
	Proposed changes	E. The court shall not order joint counseling between a perpetrator of intimate partner domestic	

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	AZCADV	violence and the victim under any circumstances. The court may refer a victim to appropriate counseling, and provide a victim with written information about available community resources related to intimate partner family violence or child abuse.	
	Current Alongi V.4 (Page 11 lines 29-32)	E. The court shall not order joint counseling between a perpetrator of intimate partner violence and the victim under any circumstances. The court may refer a victim to appropriate counseling, and provide a victim with written information about available community resources related to intimate partner violence or child abuse.	
33.	Alongi Version 4	§ 25-411(F) Family violence; miscellaneous provisions	CCRT: The CCRT recommends using the language from Rules 67-68 ARFLP in this section.
	Proposed changes CCRT	F. Alternative Dispute Resolution. A victim of intimate partner violence may opt out of alternative dispute resolution ('ADR') imposed under pursuant to Family Law Rule 67 or 68 to the extent that a suggested ADR procedure requires the parties to meet and confer in person. The court shall notify each party of this right before requiring their participation in the ADR process. As used in this subsection only, "victim of intimate partner violence" means: (1) a party who has acquired a protective order against the other parent pursuant to A.R.S. § 13-3602; (2) a party who was previously determined by a civil or family court to have suffered intimate partner violence by the other parent; or (3) a party who was the named victim in a criminal case that resulted in the conviction, diversion or deferred prosecution of the other parent for an act of intimate partner violence.	
	Current Alongi V.4 (Page 11, Lines 33-35, page 12, lines 1-6)	F. A victim of intimate partner violence may opt out of alternative dispute resolution ('ADR') imposed under Family Law Rule 67 or 68 to the extent that a suggested ADR procedure requires the parties to meet and confer in person. The court shall notify each party of this right before requiring their participation in the ADR process. As used in this subsection only, "victim of intimate partner violence" means: (1) a party who has acquired a protective order against the other parent pursuant to Section 13-3602; (2) a party who was previously determined by a civil or family court to have suffered intimate partner violence by the other parent; or (3) a party who was the named victim in a criminal case that resulted in the conviction, diversion or deferred prosecution of the other parent for an act of intimate partner violence.	
34.	Alongi Version 1 as inherited	§ 25-447. Conflicting Presumptions or	Can a judge give custody to a third party without a

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<p>from AHCW on 03/04/11</p>	<p>Mandatory Rules</p>	<p>petition being filed? Can make a referral for CPS to do investigation, appoint a best interests attorney who could file a dependency, but the court can't initiate a dependency. How could PDM be awarded to another family member without that person having initiated an action by filing a petition? No petition filed to bring another person into the case as a party to the action. Can the judge suggest to a third party that they file a petition? Still doesn't resolve immediate problem. Can the judge stop the hearing long enough for the third party to go file the petition? Does Family Court have jurisdiction to do that? If sent to Juvenile, then state determines who an appropriate party would be.</p> <p>At minimum, court could do something temporary on an emergency basis.</p> <p>Appoint a best interests attorney to investigate.</p>
<p>Proposed changes Conciliation Court Roundtable</p>	<p>In the event that If neither parent is eligible for an award of parental decision-making or parenting time due to special circumstances, as defined by A.R.S. § 25-422(11), the court may refer the matter for juvenile dependency proceedings pursuant to A.R.S. §§ 8-800, et seq., assign parental decision-making or visitation to another family member or third party to Child Protective Services for investigation and appoint a best interests attorney consistent with the child's best interests, or provide detailed, written findings that describe the extraordinary conditions that justify an award of decision-making or parenting time to a parent normally disqualified by A.R.S. §§ 25-440 through 25-446. The court shall also explain why its decision best serves the child, with particular focus on the child's safety.</p>	

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	Current Alongi V.4	No comparable provision in this version.	
35.	Alongi Version 1 as inherited from AHCW on 03/04/11	Article 5. Third Parties § 25-450. Third-Party Rights; Decision-Making and Visitation by Grandparents, Parental Figures & Other Third Parties NOW § 25-412 Third-party rights; decision-making and visitation by grandparents, parental figures and other third parties	CCRT: Does this preclude a third party from petitioning for decision-making and physical custody of the child? If court has only authority to award visitation or only decision-making, where will the child be placed?
	Proposed changes Conciliation Court Roundtable	A. Decision-Making Authority. Consistent with A.R.S. § 25-421(B)(2), a person other than a legal parent may petition the superior court for decision-making authority over and placement of a child. The court shall summarily deny a petition unless it finds that the petitioner has established that all of the following are true in the initial pleading:	
	Current Alongi V.4 (Page 12, lines 21-24)	A. Consistent with Section 402(B)(2), a person other than a legal parent may petition the superior court for decision-making authority over a child. The court shall summarily deny a petition unless it finds that the petitioner has established that all of the following are true in the initial pleading:	
36.	Alongi Version 1 as inherited from AHCW on 03/04/11	§ 25-450(C)(4). Third-Party Rights; Decision-Making and Visitation by Grandparents, Parental Figures & Other Third Parties NOW § 25-412(C) Third-party rights;	
	Proposed changes Conciliation Court Roundtable	4. For in loco parentis visitation, there is has been a pending proceeding for dissolution of marriage or for legal separation of the legal parents at the time the petition is filed.	
	Current Alongi V.4 (Page 13, lines 22-23)	4. For in loco parentis visitation, there is a pending proceeding for dissolution of marriage or for legal separation of the legal parents at the time the petition is filed.	
37.	Alongi Version 1 as inherited from AHCW on 03/04/11	§ 25-450(D)(3). Third-Party Rights; Decision-Making and Visitation by Grandparents, Parental Figures & Other Third Parties NOW § 25-412(D)(3) Third-party rights;	
	Proposed changes Conciliation Court Roundtable	3. The child’s guardian or guardian ad litem attorney.	
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	Current Alongi V.4 (Page 13, line 31)	3. The child’s guardian or guardian ad litem.	
38.	Alongi Version 1 as inherited from AHCW on 03/04/11	§ 25-450(G). Third-Party Rights; Decision-Making and Visitation by Grandparents, Parental Figures & Other Third Parties NOW	
	Proposed changes Conciliation Court Roundtable	G. Consolidation of Cases. A grandparent or great-grandparent seeking visitation rights under this section shall petition in the same action in which the family court previously decided parental decision-making and parenting time, or if no such case ever existed, by separate petition in the county of the child’s home state and county of residence, as defined by A.R.S. § 25-1002(7).	
	Current Alongi V.4 (Page 14, lines 15-18)	G. A grandparent or great-grandparent seeking visitation rights under this section shall petition in the same action in which the family court previously decided parental decision-making and parenting time, or if no such case ever existed, by separate petition in the county of the child’s home state, as defined by Section 25-1002(7).	
39.	Alongi Version 1 as inherited from AHCW on 03/04/11	§ 25-450(H). Third-Party Rights; Decision-Making and Visitation by Grandparents, Parental Figures & Other Third Parties NOW	CCRT: Mom and Dad have child, Dad dies. Mom remarries. New husband adopts child, no notice to grandparents. New husband and mom terminate grandparents’ visitation. Case in AZ Supreme Court on this issue.
	Proposed changes Conciliation Court Roundtable	H. Termination of Third-Party Visitation. All visitation rights granted under this section automatically terminate if the child has been adopted or placed for adoption. If the child is removed from an adoptive placement, the court may reinstate the visitation rights. This subsection does not apply to the adoption of the child by the spouse of a natural parent if the natural parent remarries.	
	Current Alongi V.4 (Page 14, lines 19-22)	H. All visitation rights granted under this section automatically terminate if the child has been adopted or placed for adoption. If the child is removed from an adoptive placement, the court may reinstate the visitation rights. This subsection does not apply to the adoption of the child by the spouse of a natural parent if the natural parent remarries.	

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- 1 **i. Title:** CHILD CUSTODY – SIMPLIFIED INITIATIVE
- 2
- 3 **ii. Drafter:** Tom Alongi
- 4
- 5 **iii. Contributions:** Leslie Satterlee & Chris Rike
- 6
- 7 **iv. Version:** 4
- 8
- 9 **v. Meeting Date:** August 26, 2011
- 10
- 11 **vi. Statute:** A.R.S. Title 25, Chapter 4
- 12
- 13

1
2 **COMMENT:**

3 This initiative strives to simplify the final product offered by the Ad Hoc Custody Workgroup (AHCWG) in March 2011,
4 while still preserving its core priorities.

5 **Elimination of Rebuttable Presumptions & Special Circumstances.** All “special circumstances” provisions
6 (including statutory presumptions and rebuttal sections) have been deleted. Issues previously governed by sections
7 dealing with substance abuse and felons are incorporated into New 25-408(A)(6). Sex crimes involving children have
8 been transferred into the expanded definition of “child abuse.” Behavior constituting either child abuse or intimate
9 partner violence (IPV) is now unified into “family violence,” and appears as a best interests factor at New 25-
10 408(A)(1) with a more restrictive definition in New 25-404(6).

11 As a tradeoff for deletion of the mandatory presumption now codified at ARS 25-403.03(D), the new initiative simply
12 instructs the court not to award PDM or unrestricted PT to a proven child abuser or intimate partner violence offender,
13 unless the offender offers clear and convincing evidence that other “best interest” factors significantly outweigh the
14 act(s) of violence. See New 25-408(B). If the court adopts the offender’s proposal, it must cite the statutory factors
15 that ultimately prevailed, and explain why a focus on them better served the child’s interests. The initiative also
16 provides for de novo appellate review from any trial decision that prioritizes competing “best interests” factors over
17 proven family violence. See New 25-410(A) and (B).

18 **Parenting Plans.** Concepts dealing with the feasibility of a parenting plan are unified into New 25-408(A)(9), and the
19 concern over a parent’s abuse of sole PDM is merged into the “friendly parent” provision of New 25-408(A)(8). The
20 reader will also notice that, because there was considerable overlap between parental decision-making (PDM) and
21 parenting time (PT), one “best interests” list now governs both PDM and PT. Restrictions on parenting time that were
22 formerly specified only in cases of domestic violence (see ARS 25-403.03(F)) are now made available for all
23 circumstances where restrictions would be appropriate, but still include the revised list of factors previously
24 recommended by the AHCW. See New 25-409(A).

25 **Coercive Control.** At the workgroup’s recommendation, the new concept of “coercive control” has been moved from
26 its original location (as a balancing consideration tied to proof of intimate partner violence) into the list of “best
27 interests” factors as an independent consideration. See New 25-408(A)(5). However, both the definition and
28 illustrative examples have been tightened in an effort to forestall abuses by litigants for whom the concept of coercive
29 control was never intended. See New 25-404(2).

30 **Miscellaneous.** Prior legislative declarations (see ARS 25-403.03(B)) about the harm inflicted by IPV are preserved
31 and transferred to New 25-408(C). However, statements about the “primary importance” of protecting victims of
32 family violence were deleted as needless in light of the designation of that circumstance as a leading “best interests”
33 factor that would already be entitled to elevated consideration.

34 Lastly, miscellaneous reforms already adopted by the AHCW were moved and unified into New 25-411. They include
35 instructions on the proper consideration of outcomes from criminal and DVPO proceedings, a prohibition against
36 using a parent’s shelter residency as “evidence of instability,” clarifications on ADR and counseling in IPV situations,
37 and a preservation of current ARS 25-403.05(B) (concerning access of sex offenders to children).

38 **Definitions.** In an effort to accommodate both: (1) the introduction of coercive control as a consideration
39 independent of family violence, with (2) previously-expressed fears over mixing definitions, this Version 4 introduces
40 “Definitions; general application” (applicable to all cases), followed immediately by “Special Definitions” (applicable
41 only to cases involving family violence and coercive control). See New 25-403 and -404.

42

1 2. “*Legal parent*” means a biological or adoptive parent whose parental rights have not been
2 terminated. It does not include a person whose paternity has not been established under Section
3 25-812 or 25-814.

4 3. “*Parental decision-making*” refers to a parent’s legal right and responsibility to make
5 major life decisions affecting the health, welfare and education of a child, including, for
6 example, schooling, religion, daycare, medical treatment, counseling, commitment to alternative
7 long-term facilities, authorizing powers of attorney, granting or refusing parental consent where
8 legally required, entitlement to notifications from third parties on behalf of the child,
9 employment, enlistment in the Armed Forces, passports, licensing and certifications, and blood
10 donation. For purposes of interpreting or applying any international treaty, federal law, uniform
11 code or other state statute, “parental decision-making” shall mean the same as “legal custody.”

12 (a) “*Shared parental decision-making*” means that both parents equally share the
13 burdens and benefits of the authority described in this section, with neither parent possessing
14 superior authority over the other.

15 (b) “*Final parental decision-making*” means that one parent ultimately exercises the
16 authority described in this section, but must reasonably consult with the other before doing so.

17 (c) “*Sole parental decision-making*” means that one parent exclusively exercises the
18 authority described in this section, and is not required to consult with the other before doing so.

19 4. “*Parenting time*” refers to a parent’s physical access to a child at specified times, and
20 while the child remains in that parent’s care, providing the child with food, clothing and shelter,
21 and actively participating in the child’s activities in a positive manner. It also includes making
22 routine decisions regarding the child’s care that do not contradict decisions made by a parent
23 who has been granted parental decision-making authority.

24 5. “*Visitation*” means the same as parenting time when exercised by someone other than a
25 legal parent.

26 **§ 25-404. Special definitions; family violence and coercive control**

27 In this article, unless the context otherwise requires:

28 1. “*Child abuse*” means any of the following acts, where the relationship between the
29 offender and victim qualifies under Section 13-3601(A)(5), including any attempt, conspiracy or
30 solicitation of another to commit such act:

31 (a) Endangerment, as defined in Section 13-1201

32 (b) Threatening or intimidating, as defined in Section 13-1202(A)

33 (c) Assault, as defined in Section 13-1203(A)

1 (d) Aggravated assault, as defined in Section 13-1204(A)(1) – (5)

2 (e) Child abuse, as defined in Section 13-3623

3 (f) A dangerous crime against children, as defined in Section 13-705(P)(1).

4 2. “*Coercive control*” refers to a discernible pattern of controlling behaviors inflicted by one
5 parent against another. With regard to these behaviors, the court shall consider the frequency of
6 these behaviors, their remoteness in time, the psychological injury they inflicted on the victim
7 and other household members, the degree to which they influenced the victim’s daily life, and
8 the extent to which one or more behaviors were, in truth, attributable to some other condition or
9 motivation. Specifically, the court shall consider whether the offending parent:

10 (a) Engaged in exceptionally demeaning or emotionally abusive conduct toward the
11 victim;

12 (b) Unreasonably restricted the victim’s freedom of movement;

13 (c) Unreasonably restricted the victim’s educational or financial activities without
14 consent, or maliciously jeopardized the victim’s employment or financial credit;

15 (d) Appropriated the victim’s identity, as defined in Section 13-2008;

16 (e) Attempted or threatened suicide, or injured or threatened to injure other persons or
17 household pets, as a means of coercing the victim’s compliance with the offender’s wishes;

18 (f) Unreasonably threatened to conceal or remove a child from the victim’s care as a
19 means of coercing that person’s compliance with the offender’s wishes, or used a child to
20 facilitate either criminal conduct against the victim or one or more controlling behaviors
21 described in this subsection;

22 (g) Impeded the victim’s attempt to report family violence or other criminal behavior to
23 law enforcement, medical personnel or other third parties by means of duress or coercion;

24 (h) Eavesdropped on the victim’s private Internet activities, telephone conversations or
25 other communications, or accessed the victim’s electronic, password-protected accounts without
26 permission;

27 (i) Unreasonably restricted the victim’s public activities, or the victim’s interaction with
28 family or social acquaintances; or

29 (j) Engaged in any other exceptionally controlling behavior consistent with the conduct
30 described in this definition, or that society would recognize as a violation of the victim’s legal or
31 fundamental human rights.

1 **3.** “*Conviction*” means any criminal conviction resulting from: (a) a guilty verdict entered
2 by a judge or jury; and (b) any formal plea entered by a defendant regardless of the form of that
3 plea.

4 **4.** “*Deferred prosecution*” and “*diversion*” mean any program offered by a criminal court
5 or government agency through which an alleged offender avoids criminal prosecution by
6 agreeing to pay a fine, participate in counseling, or perform other remedial tasks in exchange for
7 dismissal of one or more pending charges or a promise by the state not to proceed with a
8 complaint or indictment.

9 **5.** “*Family violence*” means child abuse or intimate partner violence, as both are defined in
10 this section.

11 **6.** “*Intimate partner violence*” means any of the following acts when inflicted against an
12 intimate partner: (a) physical or sexual violence, or any threat to commit the same; (b) assaultive
13 behavior not resulting in physical contact that places the victim in reasonable apprehension of
14 immediate bodily harm; (c) any other conduct listed in Section 13-3601(A) that would also
15 constitute a felony under the laws of this State; or (d) any violation of a domestic violence
16 protective order or harassment injunction. This definition also includes any attempt, conspiracy,
17 or solicitation of another to commit an act described above. It does not include any defensive
18 behavior that would qualify as legal justification under Sections 13-404 through -408.

19 **7.** “*Intimate partner*” means a person whose relationship with another qualifies under
20 Section 13-3601(A)(1), (2), (3) or (6).

21 **8.** “*Offender treatment program*” means an individual or group treatment program for
22 intimate partner violence offenders that:

23 (a) emphasizes personal responsibility;

24 (b) clearly identifies intimate partner violence as a means of asserting power and control
25 over another individual;

26 (c) does not primarily or exclusively focus on anger or stress management, impulse
27 control, conflict resolution or communication skills;

28 (d) does not involve the participation or presence other family members, including the
29 victim or children; and

30 (e) preserves records establishing an offender’s participation, contribution and progress
31 toward rehabilitation, irrespective of whether a given session involves individual treatment or
32 group therapy including multiple offenders.

1
2 **Article 2. PARENTING PLANS**
3

4 **§ 25-405. Shared Parental Decision-Making and Parenting Time**

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

9 **§ 25-406. Proposed Plans**

10 **A.** If a child’s parents cannot agree to a plan for parental decision-making or parenting time,
11 each parent must submit to the court a detailed, proposed parenting plan. The court may
12 consider other factors not raised by the parties in order to best promote and protect the emotional
13 and physical health of the child.

14 **B.** A parenting plan must include at least the following:

15 1. A designation of the parental decision-making plan as either shared, final or sole, as
16 defined in Section 403(3).

17 2. Each parent’s additional rights and responsibilities for parental decision-making.

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

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

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

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

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

26 8. A statement that each party has read, understands and will abide by the notification
27 requirements of Section 25-411(G), pertaining to access of sex offenders to a child.

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

1
2 **§ 25-407. Alternative dispute resolution; preliminary duty**

3 If two parents already share parental decision-making by prior court order, each must consult
4 with the other about child-related decisions, and attempt to resolve disputes outside of court
5 through conciliation services or private mediation before seeking formal judicial intervention.

6 **Article 3. COURT PROCEEDINGS**

7
8 **§ 25-408. Best interests of child; family violence; judicial findings; appellate review**

9 **A.** The court shall determine both parental decision-making and parenting time in
10 accordance with the best interests of the child. The court shall consider all factors relevant to the
11 child’s physical safety and emotional welfare, including:

- 12 1. Whether a parent has committed family violence, as defined in Section 25-404(5).
- 13 2. The historical, current and potential relationship between the parent and the child.
- 14 3. The child’s adjustment to home, school and community.
- 15 4. The interaction and relationship between the child and the child’s siblings and any
16 other person who may significantly affect the child’s best interests.
- 17 5. The extent to which one parent coercively controlled the other during their
18 relationship, as defined in Section 25-404(2).
- 19 6. The mental health, physical condition, and criminal, delinquent or otherwise harmful
20 behavior of the child, parents and any other person present in the child’s household.
- 21 7. The child’s own viewpoint and wishes, if possessed of suitable age and maturity,
22 along with the basis for those wishes.
- 23 8. Whether one parent is more likely to encourage the child’s relationship with the other,
24 and respect parental decision-making rules. This paragraph does not apply if the court
25 determines that a parent is acting in good faith to protect the child from witnessing or suffering
26 an act of intimate partner violence or child abuse.
- 27 9. The practicality of any proposed or agreed parenting plan.
- 28 10. Whether a parent has complied with the educational program prescribed in Sections
29 25-351 through -353.

30 **B.** The court shall not award any level of parental decision-making or unrestricted parenting
31 time to a parent who has committed one or more acts of family violence, unless the court finds
32 from clear and convincing evidence that other statutory factors substantially outweigh the history

1 of that violence. When determining the relative strength of those competing factors, the court
2 shall consider:

3 1. The extent to which the offending parent inflicted intimate partner violence or child
4 abuse against the same or some other person in the past, or has recently done so with a new
5 intimate partner or child, especially after having already received related counseling on past
6 occasions.

7 2. In cases of mutual violence not amounting to legal justification, as defined in Sections
8 13-404 through -408, the motivation of each parent for the violence, the level of force used by
9 each parent, and their respective injuries.

10 3. Whether the offending parent continues to minimize or deny responsibility for the
11 history of violence, or blame it on unrelated issues.

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

15 5. In cases involving intimate partner violence, whether the offending parent has
16 completed an offender treatment program, as defined in Section 25-404(8), and has also
17 disclosed and submitted into evidence a complete set of treatment records proving an acceptable
18 level of productive participation in the rehabilitation process. A certificate of completion alone
19 does not prove rehabilitation.

20 6. The remoteness of the last act of family violence, and reasons for the absence of
21 renewed violence over the passage of time.

22 C. When conducting the analysis described in Subsection (B), the court shall always
23 consider a history of family violence as contrary to the best interests of the child, irrespective of
24 whether a child personally witnessed a particular act of violence.

25 **§ 25-409. Parenting time; restrictions and special considerations**

26 A. If a parent does not appear suitable for unrestricted parenting time based on evidence
27 presented at trial, the court shall then place conditions on parenting time that best protect the
28 child and the other parent from further harm. With respect to the restricted parent, the court
29 may:

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

31 2. Order that a person or agency specified by the court must supervise parenting time. If
32 the court allows a family or household member or other person to supervise the restricted
33 parent’s parenting time, the court shall establish conditions that this supervisor must follow.
34 When deciding whom to select, the court shall also consider the supervisor’s ability to physically

1 intervene in an emergency, willingness to promptly report a problem to the court or other
2 appropriate authorities, and readiness to appear in future proceedings and testify truthfully about
3 that supervisor’s observations and actions.

4 3. Order the completion of an offender treatment program, as defined by Section 25-
5 404(8), or any other counseling the court considers necessary.

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

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

9 6. Prohibit overnight parenting time.

10 7. Require the posting of a cash bond from the offending parent to assure the child’s safe
11 return to the other parent.

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

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

14 10. Suspend parenting time for a prescribed period.

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

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

19 **B.** When deciding whether to grant parenting time to a parent who has committed one or
20 more acts of family violence, the court shall specifically contemplate whether that parent’s
21 access to a child will:

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

25 2. Endanger the child’s safety due to the child’s physical proximity to new, potential acts
26 of violence by the parent against a new intimate partner or other child.

27 **§ 25-410. Judicial findings; appellate review**

28 **A.** After any evidentiary hearing involving parental decision-making, parenting time, or
29 visitation by a third party, the court shall make specific findings on the record, or in its written
30 order, concerning all relevant factors in Section 25-408(A). The court shall also provide specific
31 findings to justify any decision to grant parental decision-making or unrestricted parenting time

1 to a parent who has committed family violence. Those findings shall identify which competing
2 statutory factors outweighed the significance of the offending parent’s violence, and shall also
3 thoroughly explain why the court believed that those competing factors were more relevant to the
4 child’s best interests.

5 **B.** The Arizona Court of Appeals shall review *de novo* any superior court determination that
6 evidence of family violence was outweighed by other considerations. Any other trial judgment
7 concerning parental decision-making or parenting time shall be reviewed only for an abuse of
8 discretion.

9 **§ 25-411. Family violence; miscellaneous provisions**

10 **A.** A criminal conviction for an act of family violence shall constitute adequate proof of
11 family violence under Section 25-408(A)(1). No person so convicted may claim in proceedings
12 under this chapter that the crime of conviction did not occur. However, either party may
13 introduce evidence of facts related to the incident, either as a means of contending that other best
14 interests considerations in Section 25-408(A) outweigh the importance of the adjudicated family
15 violence, or to prove that the offender’s conduct was actually worse than the crime of conviction
16 suggests. Nothing in this subsection prevents an alleged victim from proving family violence by
17 means other than a criminal conviction.

18 **B.** Evidence that a parent previously consented to deferred prosecution or diversion from
19 criminal charges for an act of family violence shall constitute adequate proof that such parent
20 committed the act or acts alleged in the criminal complaint later dismissed pursuant to the
21 diversion or deferred prosecution. Nothing in this subsection prevents either parent from
22 introducing additional evidence related to the event in question in support of that parent’s case.

23 **C.** No judgment resulting from protective order proceedings under Section 13-3602(I) shall
24 be considered conclusive evidence that family violence did or did not occur.

25 **D.** A parent’s residency in a shelter for victims of intimate partner violence shall not
26 constitute grounds for denying that parent any degree of decision-making authority or parenting
27 time. For purposes of this section, “shelter” means any facility meeting the definitions of
28 Sections 36-3001(6) and 36-3005.

29 **E.** The court shall not order joint counseling between a perpetrator of intimate partner
30 violence and the victim under any circumstances. The court may refer a victim to appropriate
31 counseling, and provide a victim with written information about available community resources
32 related to intimate partner violence or child abuse.

33 **F.** A victim of intimate partner violence may opt out of alternative dispute resolution
34 (‘ADR’) imposed under Family Law Rule 67 or 68 to the extent that a suggested ADR procedure
35 requires the parties to meet and confer in person. The court shall notify each party of this right

1 before requiring their participation in the ADR process. As used in this subsection only, “victim
2 of intimate partner violence” means: (1) a party who has acquired a protective order against the
3 other parent pursuant to Section 13-3602; (2) a party who was previously determined by a civil
4 or family court to have suffered intimate partner violence by the other parent; or (3) a party who
5 was the named victim in a criminal case that resulted in the conviction, diversion or deferred
6 prosecution of the other parent for an act of intimate partner violence.

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

14 **H.** The court may request or order the services of the Division of Children and Family
15 Services in the Department of Economic Security if it believes that a child may be the victim of
16 abuse or neglect as defined in Section 8-201.

17 **Article 4. THIRD PARTIES**

18 **§ 25-412. Third-party rights; decision-making and visitation by grandparents, parental** 19 **figures & other third parties** [SUBJECT TO JUDGE COHEN’S SUGGESTED EDIT] 20

21 **A.** Consistent with Section 402(B)(2), a person other than a legal parent may petition the
22 superior court for decision-making authority over a child. The court shall summarily deny a
23 petition unless it finds that the petitioner has established that all of the following are true in the
24 initial pleading:

25 1. The person filing the petition stands in loco parentis to the child.

26 2. It would be significantly detrimental to the child to remain, or be placed in the care of,
27 either legal parent who wishes to keep or acquire parental decision-making.

28 3. A court of competent jurisdiction has not entered or approved an order concerning
29 parental decision-making within one year before the person filed a petition pursuant to this
30 section, unless there is reason to believe the child’s present environment may seriously endanger
31 the child’s physical, mental, moral or emotional health.

32 4. One of the following applies:

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

1 (b) The child’s legal parents are not married to each other at the time the petition
2 is filed.

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

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

11 **C.** Consistent with Section 25-402(B)(2), a person other than a legal parent may also petition
12 the superior court for visitation with a child. The superior court may grant visitation rights
13 during the child’s minority on a finding that the visitation is in the child’s best interests and that
14 any of the following is true:

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

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

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

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

24 **D.** Any petition filed under Subsection (A) or (C) shall be verified, or supported by affidavit,
25 and include detailed facts supporting the petitioner’s claim. The petitioner shall also provide
26 notice of this proceeding, including a copy of the petition itself and any affidavits or other
27 attachments, and serve the notice consistent with Family Law Rules 40-43 to all of the following:

28 1. The child’s legal parents.

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

31 3. The child’s guardian or guardian ad litem.

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

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

2 **E.** When deciding whether to grant visitation to a third party, the court shall give special
3 weight to the legal parents’ opinion of what serves their child’s best interests, and then consider
4 all relevant factors, including:

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

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

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

8 4. The quantity of visitation time requested and the potential adverse impact that
9 visitation will have on the child’s customary activities.

10 5. If one or both of the child’s parents are deceased, the benefit in maintaining an
11 extended family relationship.

12 **F.** If logistically possible and appropriate, the court shall order visitation by a grandparent or
13 great-grandparent to occur when the child is residing or spending time with the parent through
14 whom the grandparent or great-grandparent claims a right of access to the child.

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

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

23
24 **Article 5. TEMPORARY ORDERS, MODIFICATION & RELOCATION**

25
26 **§ 25-413. Temporary orders**

27 **§ 25-414. Modification of existing decree**

28 **§ 25-415. Relocation of a child**

29 **Article 6. RECORDS & SANCTIONS**

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31 **§ 25-416. Access to records**

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§ 25-417. Sanctions for litigation misconduct

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

- 1. intentionally presented a claim under Section 25-408(A) with full knowledge that the claim was false;
- 2. intentionally accused an adverse party of making a false claim under Section 25-408(A) with full knowledge that the claim was actually true; or
- 3. violated a court order compelling disclosure or discovery under Rule 65 of the Arizona Rules of Family Law Procedure, unless the court finds that the failure to obey the order was substantially justified, or that other circumstances make an award of expenses unjust.

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

- 1. impose additional financial sanctions on behalf of an aggrieved party who can demonstrate economic loss directly attributable to the litigant’s misconduct;
- 2. institute civil contempt proceedings on its own initiative, or on request of an aggrieved party, with proper notice and an opportunity to be heard; or
- 3. modify parental decision-making or parenting time, if that modification would also serve the best interests of the child.

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

ARTICLE 7. MISCELLANEOUS

- 25-418. Statutory Priority
- 25-419. Agency Supervision
- 25-420. Identification of Primary Caretaker
- 25-421. Fees & Resources
- 25-422. Child Interviews by Court & Professional Assistance
- 25-423. Investigations & Reports
- 25-424. Child Support & Parenting Time Fund
- 25-425. Domestic Relations Education & Mediation Fund

25-402. Definitions

In this article, unless the context otherwise requires:

1. "Joint custody" means joint legal custody or joint physical custody, or both.
2. "Joint legal custody" means the condition under which both parents share legal custody and neither parent's rights are superior, except with respect to specified decisions as set forth by the court or the parents in the final judgment or order.
3. "Joint physical custody" means the condition under which the physical residence of the child is shared by the parents in a manner that assures that the child has substantially equal time and contact with both parents.
4. "Parenting time" means the condition under which a parent has the right to have a child physically placed with the parent and the right and responsibility to make, during that placement, routine daily decisions regarding the child's care consistent with the major decisions made by a person having legal custody.
5. "Sole custody" means the condition under which one person has legal custody.

Visitation rights of grandparents and great-grandparents

A. The superior court may grant the grandparents of the child reasonable visitation rights to the child during the child's minority on a finding that the visitation rights would be in the best interests of the child and any of the following is true:

1. The marriage of the parents of the child has been dissolved for at least three months.
2. A parent of the child has been deceased or has been missing for at least three months. For the purposes of this paragraph, a parent is considered to be missing if the parent's location has not been determined and the parent has been reported as missing to a law enforcement agency.
3. The child was born out of wedlock.

B. The superior court may grant the great-grandparents of the child reasonable visitation rights on a finding that the great-grandparents would be entitled to such rights under subsection A if the great-grandparents were grandparents of the child.

C. In determining the child's best interests the court shall consider all relevant factors, including:

1. The historical relationship, if any, between the child and the person seeking visitation.
2. The motivation of the requesting party in seeking visitation.
3. The motivation of the person denying visitation.
4. The quantity of visitation time requested and the potential adverse impact that visitation will have on the child's customary activities.
5. If one or both of the child's parents are dead, the benefit in maintaining an extended family relationship.

D. If logistically possible and appropriate the court shall order visitation by a

time with the parent through whom the grandparent or great-grandparent claims a right of access to the child. If a parent is unable to have the child reside or spend time with that parent, the court shall order visitation by a grandparent or great-grandparent to occur when that parent would have had that opportunity.

E. A grandparent or great-grandparent seeking to obtain visitation rights under this section shall petition for these rights in the same action in which the parents had their marriage dissolved or in which the court determined paternity or maternity, or by a separate action in the county where the child resides if no action has been filed or the court entering the decree of dissolution or determination of paternity or maternity no longer has jurisdiction.

F. All visitation rights granted under this section automatically terminate if the child has been adopted or placed for adoption. If the child is removed from an adoptive placement, the court may reinstate the visitation rights. This subsection does not apply to the adoption of the child by the spouse of a natural parent if the natural parent remarries.

25-415. Custody by nonparent; presumption; grounds; definitions

A. In addition to section 25-401, a child custody proceeding may be commenced in the superior court by a person other than a legal parent by filing a verified petition, or by filing a petition supported by an affidavit, in the county in which the child is permanently resident or is found. The petition shall include detailed facts supporting the petitioner's right to file the petition. The petitioner shall provide notice as required by subsection E of this section. Notice shall include a copy of the petition and any affidavits. The court shall summarily deny a petition unless it finds that the petitioner by the pleadings established that all of the following are true:

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

B. If a person other than a child's legal parent is seeking custody there is a rebuttable presumption that it is in the child's best interest to award custody to a legal parent because of the physical, psychological and emotional needs of the child to be reared by the child's legal parent. To rebut this presumption that person must show by clear and convincing evidence that awarding custody to a legal parent is

C. The superior court may grant a person who stands in loco parentis to a child, including grandparents and great-grandparents, and who meets the requirements of section 25-409 reasonable visitation rights to the child on a finding that the visitation is in the child's best interests and that any of the following is true:

1. One of the legal parents is deceased or has been missing at least three months.

2. The child's legal parents are not married to each other at the time the petition is filed.

3. There is a pending proceeding for dissolution of marriage or for legal separation of the legal parents at the time the petition is filed.

D. A grandparent, a great-grandparent or a person who stands in loco parentis to a child may bring a proceeding for visitation rights with a child by filing a verified petition in the county in which the child is permanently resident or is found.

E. Notice of a custody or visitation proceeding filed pursuant to this section shall be served pursuant to the Arizona rules of family law procedure to all of the following:

1. The child's parents.

2. A person who has court ordered custody or visitation rights.

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

4. A person or agency that has physical custody of the child or that claims to have custody or visitation rights.

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

F. A person shall file proceedings for custody or visitation under this chapter in the same action in which the legal parents had their marriage dissolved or any other proceeding in which a previous custody order has been entered regarding the child.

G. For the purposes of this chapter:

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

2. "Legal parent" means a biological or adoptive parent whose parental rights have not been terminated.

1 25-401. Jurisdiction

2 A. Before conducting any proceeding concerning legal decision-making or
3 parenting time, including any proceeding to determine the legal decision making or
4 visitation of a nonparent, a court in this state first must confirm its authority to do
5 so to the exclusion of any other state, Indian tribe or foreign nation by complying
6 with the uniform child custody jurisdiction and enforcement act, the parental
7 kidnapping prevention act and any applicable international law concerning the
8 wrongful abduction or removal of children.

9 b. The following persons may request legal decision-making or parenting time
10 under the following circumstances:

11 1. A parent in any proceeding for marital dissolution, legal separation,
12 annulment paternity, or modification of an earlier decree or judgment.

13 2. A person other than a parent, by filing a petition for third-party rights under
14 section 25-409 in the county in which the child permanently resides.

15 25-402. Definitions

16 In this chapter, unless the context otherwise requires:

17 1. "Coercive Control" means a discernable pattern of controlling behaviors
18 inflicted by one parent against another. This occurs when a perpetrator uses force
19 as one tactic in a larger escalating pattern aimed at intimidating and controlling a
20 victim. Physical violence and sexual abuse are often accompanied by threats,
21 psychological and emotional abuse, isolation of the victim, manipulation of children,
22 and exercise of economic control.

23 2. "In loco parentis" means a person who has been treated as a parent by a
24 child and who has formed a meaningful parental relationship with a child for a
25 substantial period of time.

26 3. "Legal parent" means a biological or adoptive parent whose parental rights
27 have not been terminated. Legal parent does not include a person whose paternity
28 has not been established pursuant to section 25-812 or 25-814.

29 4. "Legal Decision Making" means the legal right and responsibility to make all
30 non-emergency legal decisions for a child including but not limited to those
31 regarding education, health care, religious training and personal care decisions. For
32 purposes of interpreting or applying any international treaty, federal law, a uniform
33 code or the statutes of other jurisdictions of the United States, legal decision
34 making means legal custody.

35 a.) "Joint legal decision making" means both parents share decision making
36 and neither parent's rights nor responsibilities are superior except with respect to
37 specified decisions as set forth by the court or the parents in the final judgment or
38 order.

39 b.) "Sole legal decision making" means one parent has the legal right and
40 responsibility to make major decisions for a child.

41 5. "Parenting Time" means the schedule of time during which each parent has
42 access to a child at specified times. Each parent during their scheduled parenting
43 time is responsible for providing the child with food, clothing and shelter and may
44 make routine decisions concerning the child's care that do not contradict decisions

Deleted: 25-401. Jurisdiction:
commencement of proceedings¶

A. Jurisdiction for child custody proceedings is governed by chapter 8 of this title.¶

B. A child custody proceeding is commenced in the superior court:¶

1. By a parent, by filing a petition for either of the following:¶

(a) Dissolution or legal separation.¶

(b) Custody of a child born out of wedlock if there has been a prior establishment of maternity or paternity.¶

2. By a person other than a parent, by filing a petition for custody of the child in the county in which the child is permanently resident or found, but only if the child is not in the physical custody 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 chapter 6, article 1 of this title.¶

Deleted: 25-402. Definitions¶

In this article, unless the context otherwise requires:¶

1. "Joint custody" means joint legal custody or joint physical custody, or both.¶

2. "Joint legal custody" means the condition under which both parents share legal custody and neither parent's rights are superior, except with respect to specified decisions as set forth by the court or the parents in the final judgment or order.¶

3. "Joint physical custody" means the condition under which the physical residence of the child is shared by the parents in a manner that assures that the child has substantially equal time and contact with both parents.¶

4. "Parenting time" means the condition under which a parent has the right to have a child physically placed with the parent and the right and responsibility to make, during that placement, routine daily decisions regarding the child's care consistent with the major decisions made by a person having legal custody.¶

5. "Sole custody" means the condition under which one person has legal custody. ¶

1 | made by a parent having sole legal decision making or by one or both parents as
2 | determined in a joint legal decision making plan.

3 | 6. "Visitation" means a schedule of time which is to be exercised with a child by
4 | someone other than a legal parent.

5 | 25-403. Legal decision making; parenting time; best interests of child

6 | A. The court shall determine legal decision making and parenting time, either
7 | originally or on petition for modification, in accordance with the best interests of the
8 | child. The court shall consider all relevant factors, including:

Deleted: Custody

Deleted: custody

9 | 1. Whether there has been domestic violence or child abuse as defined in
10 | section 25-403.03.

11 | 2. The wishes of the child's parent or parents as to legal decision making
12 | and parenting time.

Deleted: custody

13 | 3. The wishes of the child, if of suitable age and maturity, as to the,
14 | parenting time plan and legal decision making.

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Deleted: custodian

15 | 4. The interaction and interrelationship of the child with the child's parent or
16 | parents, the child's siblings and any other person who may significantly affect the
17 | child's best interest.

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18 | 5. The child's adjustment to home, school and community.

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19 | 6. The mental and physical health of all individuals involved.

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20 | 7. Which parent is more likely to allow the child frequent and meaningful
21 | continuing contact with the other parent. This paragraph does not apply if the court
22 | determines that a parent is acting in good faith to protect the child from witnessing
23 | an act of domestic violence or being a victim of domestic violence or child abuse.

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24 | 8. The past, present and potential future relationship between the parent and
25 | the child.

Deleted: 7

26 | 9. The extent to which one parent coercively controlled the other during
27 | their relationship.

Deleted: Whether one parent, both parents or neither parent has provided primary care of the child.

28 | 10. The nature and extent of coercion or duress used by a parent in
29 | obtaining an agreement regarding legal decision making or parenting time.

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

Deleted: 9

31 | 12. Whether either parent was convicted of an act of false reporting of child
32 | abuse or neglect under section 13-2907.02.

Deleted: 10

33 | B. In a contested legal decision making or parenting time case, the
34 | court shall make specific findings on the record about all relevant factors and the
35 | reasons for which the decision is in the best interests of the child.

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

36 | 25-403.01. Sole and joint legal decision making; parenting time

37 | A. In awarding legal decision making, the court may order sole legal decision
38 | making or joint legal decision making. This section does not create a presumption
39 | in favor of one legal decision making or parenting time arrangement over another.
40 | The court in determining legal decision making and parenting time, shall not prefer
41 | a parent, because of that parent's gender.

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42 | B. The court may issue an order for joint legal decision making or a parenting
43 | time plan over the objection of one of the parents if the court makes specific
44 | written findings of why the order is in the child's best interests. In determining
45 | whether joint legal decision making and a parenting time plan is in the child's best
46 | interests, the court shall consider the factors prescribed in section 25-403,
47 | subsection A and all of the following:

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Deleted: as custodian

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1 1. The agreement or lack of an agreement by the parents regarding joint
2 | legal decision making or a parenting time plan. Deleted: custody
3 2. Whether a parent's lack of agreement is unreasonable or is influenced by
4 an issue not related to the best interests of the child.
5 3. The past, present and future abilities of the parents to cooperate in
6 decision-making about the child to the extent required by the order of joint legal
7 decision making. Deleted: custody
8 4. Whether the joint legal decision making arrangement or parenting time
9 plan is logistically possible. Deleted: custody
10 C. The court may issue an order for joint legal decision making of a child if
11 both parents agree and submit a written parenting plan and the court finds such an
12 order is in the best interests of the child. The court may order joint legal decision
13 making, without ordering substantially equal parenting time. An order for sole legal
14 decision making does not allow the parent designated as sole legal decision maker
15 to alter a court-ordered parenting time plan. Deleted: custody
16 D. A parent who is not granted sole or joint legal decision making of a child
17 is entitled to reasonable parenting time rights to ensure that the minor child has
18 frequent and continuing contact with the parent unless the court finds, after a
19 hearing, that parenting time would endanger seriously the child's physical, mental,
20 moral or emotional health. Deleted: joint physical custody
21 25-403.02. Parenting plans
22 A. Before an award is made granting joint legal decision making, the parents
23 shall submit a proposed parenting plan that includes at least the following: Deleted: custody
24 1. Each parent's rights and responsibilities for the personal care of the child
25 and for decisions in areas such as education, health care and religious training.
26 2. A schedule of parenting time for the child with each parent, including Deleted: the physical residence
27 holidays and school vacations. Deleted: of
28 3. A plan for the exchanges of the child.
29 4. A procedure by which proposed changes, disputes and alleged breaches
30 may be mediated or resolved, which may include the use of conciliation services or
31 private counseling. Deleted: 3
32 5. A procedure for periodic review of the plan's terms by the parents. Deleted: 4
33 6. A statement that the parties understand that joint legal decision making
34 does not necessarily mean equal parenting time. Deleted: 5
35 6. A statement that each party has read, understands and will abide by the
36 notification requirements of section 25-403.05, subsection B. Deleted: custody
37 B. If the parents are unable to agree on any element to be included in a
38 parenting plan, the court shall determine that element. The court may determine
39 other factors that are necessary to promote and protect the emotional and physical
40 health of the child.
41 25-403.03. Domestic violence and child abuse
42 A. Notwithstanding subsection D of this section, joint legal decision making
43 shall not be awarded if the court makes a finding of the existence of significant Deleted: custody
44 domestic violence pursuant to section 13-3601 or if the court finds by a
45 preponderance of the evidence that there has been a significant history of domestic
46 violence.
47 B. The court shall consider evidence of domestic violence as being contrary to
48 the best interests of the child. The court shall consider the safety and well-being of

1 the child and of the victim of the act of domestic violence to be of primary
2 importance. The court shall consider a perpetrator's history of causing or
3 threatening to cause physical harm to another person.

4 C. To determine if a person has committed an act of domestic violence the
5 court, subject to the rules of evidence, shall consider all relevant factors including
6 the following:

- 7 1. Findings from another court of competent jurisdiction.
- 8 2. Police reports.
- 9 3. Medical reports.
- 10 4. Child protective services records.
- 11 5. Domestic violence shelter records.
- 12 6. School records.
- 13 7. Witness testimony.

14 D. If the court determines that a parent who is seeking sole or joint legal
15 decision making, has committed an act of domestic violence against the other
16 parent, there is a rebuttable presumption that an award of sole or joint legal
17 decision making, to the parent who committed the act of domestic violence is
18 contrary to the child's best interests. This presumption does not apply if both
19 parents have committed an act of domestic violence. For the purposes of this
20 subsection, a person commits an act of domestic violence if that person does any of
21 the following:

- 22 1. Intentionally, knowingly or recklessly causes or attempts to cause sexual
23 assault or serious physical injury.
- 24 2. Places a person in reasonable apprehension of imminent serious physical
25 injury to any person.
- 26 3. Engages in a pattern of behavior for which a court may issue an ex parte
27 order to protect the other parent who is seeking child custody or to protect the child
28 and the child's siblings.

29 E. To determine if the parent has rebutted the presumption the court shall
30 consider all of the following:

- 31 1. Whether the parent has demonstrated that being awarded sole, or joint
32 legal decision making, or substantially equal parenting time is in the child's best
33 interests.
- 34 2. Whether the parent has successfully completed a batterer's prevention
35 program.
- 36 3. Whether the parent has successfully completed a program of alcohol or
37 drug abuse counseling, if the court determines that counseling is appropriate.
- 38 4. Whether the parent has successfully completed a parenting class, if the
39 court determines that a parenting class is appropriate.
- 40 5. If the parent is on probation, parole or community supervision, whether
41 the parent is restrained by a protective order that was granted after a hearing.
- 42 6. Whether the parent has committed any further acts of domestic violence.

43 F. If the court finds that a parent has committed an act of domestic violence,
44 that parent has the burden of proving to the court's satisfaction that parenting time
45 will not endanger the child or significantly impair the child's emotional
46 development. If the parent meets this burden to the court's satisfaction, the court
47 shall place conditions on parenting time that best protect the child and the other
48 parent from further harm. The court may:

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- 1 1. Order that an exchange of the child must occur in a protected setting as
- 2 specified by the court.
- 3 2. Order that an agency specified by the court must supervise parenting
- 4 time. If the court allows a family or household member to supervise parenting time,
- 5 the court shall establish conditions that this person must follow during parenting
- 6 time.
- 7 3. Order the parent who committed the act of domestic violence to attend
- 8 and complete, to the court's satisfaction, a program of intervention for perpetrators
- 9 of domestic violence and any other counseling the court orders.
- 10 4. Order the parent who committed the act of domestic violence to abstain
- 11 from possessing or consuming alcohol or controlled substances during parenting
- 12 time and for twenty-four hours before parenting time.
- 13 5. Order the parent who committed the act of domestic violence to pay a fee
- 14 for the costs of supervised parenting time.
- 15 6. Prohibit overnight parenting time.
- 16 7. Require a bond from the parent who committed the act of domestic
- 17 violence for the child's safe return.
- 18 8. Order that the address of the child and the other parent remain
- 19 confidential.
- 20 9. Impose any other condition that the court determines is necessary to
- 21 protect the child, the other parent and any other family or household member.
- 22 G. The court shall not order joint counseling between a victim and the
- 23 perpetrator of domestic violence. The court may provide a victim with written
- 24 information about available community resources related to domestic violence.
- 25 H. The court may request or order the services of the division of children and
- 26 family services in the department of economic security if the court believes that a
- 27 child may be the victim of child abuse or neglect as defined in section 8-201.
- 28 I. In determining whether the absence or relocation of a parent shall be
- 29 weighed against that parent in determining legal decision making or parenting time,
- 30 the court may consider whether the absence or relocation was caused by an act of
- 31 domestic violence by the other parent.
- 32 **25-403.04. Drug offenses**
- 33 A. If the court determines that a parent has been convicted of any drug
- 34 offense under title 13, chapter 34 or any violation of section 28-1381, 28-1382 or
- 35 28-1383 within twelve months before the petition or the request for legal decision
- 36 making or parenting time, is filed, there is a rebuttable presumption that sole or
- 37 joint legal decision making by that parent is not in the child's best interests. In
- 38 making this determination the court shall state its:
 - 39 1. Findings of fact that support its determination that the parent was
 - 40 convicted of the offense.
 - 41 2. Findings that the legal decision making or parenting time arrangement
 - 42 ordered by the court appropriately protects the child.
 - 43 B. To determine if the person has rebutted the presumption, at a minimum
 - 44 the court shall consider the following evidence:
 - 45 1. The absence of any conviction of any other drug offense during the
 - 46 previous five years.
 - 47 2. Results of random drug testing for a six month period that indicate that
 - 48 the person is not using drugs as proscribed by title 13, chapter 34.

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1 | ~~25-403.05. Sexual offenders; murderers; legal decision making and parenting time;~~
2 | ~~notification of risk to child~~

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3 | A. Unless the court finds that there is no significant risk to the child and
4 | states its reasons in writing, the court shall not grant a person sole or joint legal
5 | decision making, of a child or unsupervised parenting time with a child if the
6 | person:

Deleted: physical or legal custody

7 | 1. Is a registered sex offender.
8 | 2. Has been convicted of murder in the first degree and the victim of the
9 | murder was the other parent of the child who is the subject of the order. In making
10 | its finding, the court may consider, among other factors, the following:

11 | (a) Credible evidence that the convicted parent was a victim of domestic
12 | violence, as defined in section 13-3601, committed by the murdered parent.

13 | (b) Testimony of an expert witness that the convicted parent suffered trauma
14 | from abuse committed by the murdered parent.

15 | B. A child's parent or custodian must immediately notify the other parent or
16 | custodian if the parent or custodian knows that a convicted or registered sex
17 | offender or a person who has been convicted of a dangerous crime against children
18 | as defined in section 13-705 may have access to the child. The parent or custodian
19 | must provide notice by first class mail, return receipt requested, by electronic
20 | means to an electronic mail address that the recipient provided to the parent or
21 | custodian for notification purposes or by other communication accepted by the
22 | court.

23 | 25-403.06. Parental access to records

24 | A. Unless otherwise provided by court order or law, on reasonable request
25 | both parents are entitled to have equal access to documents and other information
26 | concerning the child's education and physical, mental, moral and emotional health
27 | including medical, school, police, court and other records directly from the
28 | custodian of the records or from the other parent.

29 | B. A person who does not comply with a reasonable request shall reimburse
30 | the requesting parent for court costs and attorney fees incurred by that parent to
31 | force compliance with this section.

32 | C. A parent who attempts to restrict the release of documents or information
33 | by the custodian without a prior court order is subject to appropriate legal
34 | sanctions.

35 | 25-403.07. Identification of a primary caretaker and public assistance

36 | The court may specify one parent as the primary caretaker of the child and one
37 | home as the primary home of the child for the purposes of defining eligibility for
38 | public assistance. This finding does not diminish the rights of either parent and
39 | does not create a presumption for or against either parent in a proceeding for the
40 | modification of a legal decision making or parenting time order.

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41 | 25-403.08. Resources and fees

42 | A. In a proceeding regarding sole, or joint legal decision making, or parenting
43 | time, either party may request attorney fees, costs and expert witness fees to
44 | enable the party with insufficient resources to obtain adequate legal representation
45 | and to prepare evidence for the hearing.

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Deleted: custody

46 | B. If the court finds there is a financial disparity between the parties, the
47 | court may order payment of reasonable fees, expenses and costs to allow adequate
48 | preparation.

1 25-403.09. Child support

2 A. For any parenting time order entered under this article, the court shall
3 determine an amount of child support in accordance with section 25-320 and
4 guidelines established pursuant to that section.

Deleted: custody

5 B. An award of joint legal decision making or a substantially equal parenting
6 time plan, does not diminish the responsibility of either parent to provide for the
7 support of the child.

Deleted: custody

8 25-404. Temporary orders

9 A. A party to a legal decision making and parenting time proceeding may
10 move for a temporary order. This motion must be supported by pleadings as
11 provided in section 25-411. The court may award temporary legal decision making
12 and parenting time under the standards of section 25-403 after a hearing, or, if
13 there is no objection, solely on the basis of the pleadings.

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14 B. If a proceeding for dissolution of marriage or legal separation is dismissed,
15 any temporary legal decision making or parenting time order is vacated unless a
16 parent or the child's custodian moves that the proceeding continue as a legal
17 decision making or parenting time proceeding and the court finds, after a hearing,
18 that the circumstances of the parents and the best interest of the child require that
19 a legal decision making or parenting time plan decree be issued.

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20 C. If a legal decision making or parenting time proceeding commenced in
21 the absence of a petition for dissolution of marriage or legal separation is
22 dismissed, any temporary order thereby is vacated.

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Deleted: custody

23 25-405. Interviews by court; professional assistance

24 A. The court may interview the child in chambers to ascertain the child's
25 wishes as to the child's legal decision maker, and as to parenting time.

Deleted: custodian

26 B. The court may seek the advice of professional personnel, whether or not
27 employed by the court on a regular basis. The advice given shall be in writing and
28 shall be made available by the court to counsel, on request, under such terms as
29 the court determines. Counsel may examine as a witness any professional
30 personnel consulted by the court, unless that right is waived.

31 25-406. Investigations and reports

32 A. In contested legal decision making and parenting time proceedings, and
33 in other proceedings if a parent or the child's custodian so requests, the court may
34 order an investigation and report concerning legal decision making or parenting
35 time arrangements for the child. The investigation and report may be made by the
36 court social service agency, the staff of the juvenile court, the local probation or
37 welfare department, or a private person. The report must include a written
38 affirmation by the person completing the report that the person has met the
39 training requirements prescribed in subsection C.

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40 B. If an investigation or report is ordered pursuant to this section or if the
41 court appoints a family court advisor, the court shall allocate cost based on the
42 financial circumstances of both parties.

43 C. The court shall require a court appointed attorney for a child, a court
44 appointed advisor, or any person who conducts an investigation, or prepares a
45 report, pursuant to this section to receive training that meets the minimum
46 standards prescribed by the domestic relations committee, established pursuant to
47 section 25-323.02 as follows:

Deleted: Beginning on July 1, 2006, t

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1 1. Six initial hours of training on domestic violence and information on coercive
2 controlling patterns of behavior.

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3 2. Six initial hours of child abuse training.

4 3. Four subsequent hours of training every two years on domestic violence and
5 child abuse.

6 D. A person that has completed professional training to become licensed or
7 certified may use that training to completely or partially fulfill the requirements in
8 subsection C if the training included at least six hours each on domestic violence
9 and child abuse if the training meets the minimum standards prescribed by the
10 domestic relations committee. Subsequent professional training in these subject
11 matters may be used to partially or completely fulfill the training requirements
12 prescribed in subsection C if the training meets the minimum standards prescribed
13 by the domestic relations committee.

14 E. A physician who is licensed pursuant to title 32, chapter 13 or 17 is
15 exempt from the training requirements prescribed in subsection C.

16 F. In preparing a report concerning a child, the investigator may consult any
17 person who may have information about the child or the child's potential legal
18 decision making and parenting time arrangements.

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19 G. The court shall mail the investigator's report to counsel at least ten days
20 prior to the hearing. The investigator shall make available to counsel the names
21 and addresses of all persons whom the investigator has consulted. Any party to the
22 proceeding may call for examination of the investigator and any person consulted
23 by the investigator.

24 25-407. Legal decision making and parenting time, hearings, priority, costs, record

Deleted: Custody

25 A. Legal decision making and parenting time proceedings shall receive
26 priority in being set for hearing.

Deleted: Custody

27 B. The court may tax as costs the payment of necessary travel and other
28 expenses incurred by any person whose presence at the hearing the court deems
29 necessary to determine the best interest of the child.

30 C. The court, without a jury, shall determine questions of law and fact. If it
31 finds that a public hearing may be detrimental to the child's best interest, the court
32 may exclude the public from a hearing, but may admit any person who has a direct
33 and legitimate interest in the particular case or a legitimate educational or research
34 interest in the work of the court.

Deleted: custody

35 D. If the court finds that to protect the child's welfare, the record of any
36 interview, report, investigation, or testimony in a legal decision making or parenting
37 time proceeding should be kept secret, the court may then make an appropriate
38 order sealing the record.

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39 25-408. Rights of each parent; parenting time; relocation of child; exception;
40 enforcement; access to records

Deleted: A. A parent who is not granted custody of the child is entitled to reasonable parenting time rights to ensure that the minor child has frequent and continuing contact with the noncustodial parent unless the court finds, after a hearing, that parenting time would endanger seriously the child's physical, mental, moral or emotional health.

41 A. If by written agreement or court order both parents are entitled to joint
42 legal decision making, or unsupervised parenting time and both parents reside in
43 the state, at least sixty days' advance written notice shall be provided to the other
44 parent before a parent may do either of the following:

Deleted: B

45 1. Relocate the child outside the state.

46 2. Relocate the child more than one hundred miles within the state.

Deleted: custody

47 B. The notice required by this section shall be made by certified mail, return
48 receipt requested, or pursuant to the Arizona rules of family law procedure. The

Deleted: C

1 court shall sanction a parent who, without good cause, does not comply with the
2 notification requirements of this subsection. The court may impose a sanction that
3 will affect legal decision making, or parenting time only in accordance with the
4 child's best interests. Deleted: custody

5 C. Within thirty days after notice is made the nonmoving parent may petition
6 the court to prevent relocation of the child. After expiration of this time any petition
7 or other application to prevent relocation of the child may be granted only on a
8 showing of good cause. This subsection does not prohibit a parent who is seeking to
9 relocate the child from petitioning the court for a hearing, on notice to the other
10 parent, to determine the appropriateness of a relocation that may adversely affect
11 the other parent's legal decision making, or parenting time rights. Deleted: D

12 D. Subsection B of this section does not apply if provision for relocation of a
13 child has been made by a court order or a written agreement of the parties that is
14 dated within one year of the proposed relocation of the child. Deleted: custody
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15 E. Pending the determination by the court of a petition or application to
16 prevent relocation of the child: Deleted: F

17 1. A parent with sole legal decision making, or a parent with joint legal
18 decision making and primary residence of a child, who is required by circumstances
19 of health or safety or employment of that parent or that parent's spouse to relocate
20 in less than sixty days after written notice has been given to the other parent may
21 temporarily relocate with the child. Deleted: custody
Deleted: custody
Deleted: primary physical custody

22 2. A parent who shares joint legal decision making, and substantially equal
23 and who is required by circumstances of health or safety or employment of that
24 parent or that parent's spouse to relocate in less than sixty days after written
25 notice has been given to the other parent may temporarily relocate with the child
26 only if both parents execute a written agreement to permit relocation of the child. Deleted: custody
Deleted: physical custody

27 F. The court shall determine whether to allow the parent to relocate the child
28 in accordance with the child's best interests. The burden of proving what is in the
29 child's best interests is on the parent who is seeking to relocate the child. To the
30 extent practicable the court shall also make appropriate arrangements to ensure
31 the continuation of a meaningful relationship between the child and both parents. Deleted: G

32 G. The court shall not deviate from a provision of any parenting plan or other
33 written agreement by which the parents specifically have agreed to allow or prohibit
34 relocation of the child unless the court finds that the provision is no longer in the
35 child's best interests. There is a rebuttable presumption that a provision from any
36 parenting plan or other written agreement is in the child's best interests. Deleted: H

37 H. In determining the child's best interests the court shall consider all
38 relevant factors including: Deleted: I

39 1. The factors prescribed under section 25-403.
40 2. Whether the relocation is being made or opposed in good faith and not to
41 interfere with or to frustrate the relationship between the child and the other parent
42 or the other parent's right of access to the child.
43 3. The prospective advantage of the move for improving the general quality
44 of life for the custodial parent or for the child.
45 4. The likelihood that the parent with whom the child will reside after the
46 relocation will comply with parenting time orders.
47 5. Whether the relocation will allow a realistic opportunity for parenting time
48 with each parent.

1 6. The extent to which moving or not moving will affect the emotional,
2 physical or developmental needs of the child.

3 7. The motives of the parents and the validity of the reasons given for
4 moving or opposing the move including the extent to which either parent may
5 intend to gain a financial advantage regarding continuing child support obligations.

6 8. The potential effect of relocation on the child's stability.

7 J. The court shall assess attorney fees and court costs against either parent if
8 the court finds that the parent has unreasonably denied, restricted or interfered
9 with court-ordered parenting time.

10 J. Pursuant to section 25-403.06, each parent is entitled to have access to
11 documents and other information about the child unless the court finds that access
12 would endanger seriously the child's or a parent's physical, mental, moral or
13 emotional health.

14 25-409. Third party rights

15 Pursuant to section 25-403, subsection b, paragraph 2, a person other than a
16 legal parent may petition the superior court for legal decision making authority or
17 placement of the child. The court shall summarily deny a petition unless it finds
18 that the petitioner's initial pleading establishes that all of the following are true:

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

35 B. Notwithstanding subsection a of this section, it is a rebuttable presumption that
36 awarding legal decision making to a legal parent serves the child's best interests
37 because of the physical, psychological and emotional needs of the child to be reared
38 by a legal parent. A third party may rebut this presumption only with proof showing
39 by clear and convincing evidence that awarding legal decision making to a legal
40 parent is not consistent with the child's best interests.

41 C. Pursuant to section 25-403, subsection b, paragraph 2, a person other than a
42 legal parent may petition the superior court for visitation with a child. The superior
43 court may grant visitation rights during the child's minority on a finding that the
44 visitation is in the child's best interests and that any of the following is true:

- 45 1. One of the legal parents is deceased or has been missing at least three
46 months. For the purposes of this paragraph, a parent is considered to be

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Deleted: the noncustodial

Deleted: the custodial

Deleted: Visitation rights of grandparents and great-grandparents

A. The superior court may grant the grandparents of the child reasonable visitation rights to the child during the child's minority on a finding that the visitation rights would be in the best interests of the child and any of the following is true:

1. The marriage of the parents of the child has been dissolved for at least three months.

2. A parent of the child has been deceased or has been missing for at least three months. For the purposes of this paragraph, a parent is considered to be missing if the parent's location has not been determined and the parent has been reported as missing to a law enforcement agency.

3. The child was born out of wedlock.

B. The superior court may grant the great-grandparents of the child reasonable visitation rights on a finding that the great-grandparents would be entitled to such rights under subsection A if the great-grandparents were grandparents of the child.

C. In determining the child's best interests the court shall consider all relevant factors, including:

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

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

3. The motivation of the person denying visitation.

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

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

D. If logistically possible and appropriate the court shall order visitation by a grandparent or great-grandparent to occur when the child is residing or spending time with the parent through whom the grandparent or great-grandparent claims a right of access to the child. If a parent is unable to have the child reside or spend time with that parent, the court shall order visitation by a grandparent or great-grandparent to occur when that parent would have had that opportunity.

E. A grandparent or great-grandparent seeking to obtain visitation rights ur... [1]

1 missing if the parent's location has not been determined and the parent has
2 been reported as missing to a law enforcement agency.
3 2. The child was born out of wedlock and the child's legal parents are not
4 married to each other at the time the petition is filed.
5 3. For grandparent or great-grandparent visitation, the marriage of the
6 parents of the child has been dissolved for at least three months.
7 4. For in loco parentis visitation, a proceeding for dissolution of marriage
8 or for legal separation of the legal parents is pending at the time the petition
9 is filed.
10 D. A petition filed under subsection a or c of this section must be verified or
11 supported by affidavit and must include detailed facts supporting the petitioner's
12 claim. The petitioner must also provide notice of this proceeding, including a copy
13 of the petition and any affidavits or other attachments, and serve the notice
14 pursuant to the Arizona rules of family law procedure to all of the following:
15 1. The child's legal parents.
16 2. A third party who possesses legal decision making authority over the child
17 or visitation rights.
18 3. The child's guardian or guardian ad litem.
19 4. A person or agency that possesses physical custody of the child or claims
20 legal decision making authority or visitation rights concerning the child.
21 5. Any other person or agency that has previously appeared in the action.
22 E. When deciding whether to grant visitation to a third party, the court shall give
23 special weight to the legal parents' opinion of what serves their child's best
24 interests and consider all relevant factors including:
25 1. The historical relationship, if any, between the child and the person
26 seeking visitation.
27 2. The motivation of the requesting party seeking visitation.
28 3. The motivation of the person objecting to visitation.
29 4. The quantity of visitation time requested and the potential adverse impact
30 that visitation will have on the child's customary activities.
31 5. If one or both of the child's parents are deceased, the benefit in
32 maintaining an extended family relationship.
33 F. If logistically possible and appropriate, the court shall order visitation by a
34 grandparent or great-grandparent if the child is residing or spending time with the
35 parent through whom the grandparent or great-grandparent claims a right of
36 access to the child.
37 G. A grandparent or great-grandparent seeking visitation rights under this section
38 shall petition in the same action in which the family court previously decided legal
39 decision making and parenting time, or if no such case existed, by separate petition
40 in the county of the child's home state, as defined in section 25-1002.
41 H. All visitation rights granted under this section automatically terminate if the
42 child is adopted or placed for adoption. If the child is removed from an adoptive
43 placement, the court may reinstate the visitation rights. This subsection does not
44 apply if the child is adopted by the spouse of a natural parent after the natural
45 parent remarries.
46 25-410. Judicial supervision
47 A. Except as otherwise agreed by the parties in writing at the time of the
48 Legal decision making or parenting time order or divorce decree, the parent

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1 | designated as sole legal decision maker, may determine the child's upbringing,
2 | including the child's education, health, care and religious training, unless, on
3 | motion by the other parent, the court, after a hearing, finds that in the absence of
4 | a specific limitation of the parent designated as the sole legal decision maker's,
5 | authority, the child's physical health would be endangered or the child's emotional
6 | development would be significantly impaired.

7 | B. If either parent requests the order, or if all contestants agree to the order,
8 | or if the court finds that in the absence of the order the child's physical health
9 | would be endangered or the child's emotional development would be significantly
10 | impaired, and if the court finds that the best interests of the child would be served,
11 | the court shall order a local social service agency to exercise continuing supervision
12 | over the case to assure that the custodial or parenting time terms of the decree are
13 | carried out. At the discretion of the court, reasonable fees for the supervision may
14 | be charged to one or both parents, provided that the fees have been approved by
15 | the supreme court.

16 | 25-411. Modification of legal decision making or parenting time; affidavit; contents
17 | A. A person shall not make a motion to modify a legal decision making or
18 | parenting time, decree earlier than one year after its date, unless the court permits
19 | it to be made on the basis of affidavits that there is reason to believe the child's
20 | present environment may seriously endanger the child's physical, mental, moral or
21 | emotional health. At any time after a joint legal decision making, order is entered, a
22 | parent may petition the court for modification of the order on the basis of evidence
23 | that domestic violence involving a violation of section 13-1201 or 13-1204, spousal
24 | abuse or child abuse occurred since the entry of the joint legal decision making,
25 | order. Six months after a joint legal decision making, order is entered, a parent
26 | may petition the court for modification of the order based on the failure of the other
27 | parent to comply with the provisions of the order. A motion or petition to modify an,
28 | order shall meet the requirements of this section. Except as otherwise provided in
29 | subsection B of this section, if a parent, is a member of the United States armed
30 | forces, the court shall consider the terms of that parent's military family care plan
31 | to determine what is in the child's best interest during that parent's military
32 | deployment.

33 | B. For the purposes of a motion to modify a decree, the military deployment
34 | of a parent who is a member of the United States armed forces is not a change in
35 | circumstances that materially affects the welfare of the child if the parent has filed
36 | a military family care plan with the court at a previous legal decision making or
37 | parenting time, proceeding and if the military deployment is less than six months.

38 | C. An, order that a court enters in contemplation of or during the military
39 | deployment of a parent outside of the continental United States shall specifically
40 | reference the deployment and include provisions governing the legal decision
41 | making and /or parenting time arrangements, of the minor child after the
42 | deployment ends. Either parent may file a petition with the court after the
43 | deployment ends to modify the decree or order, in compliance with subsection F of
44 | this section. The court shall hold a hearing or conference on the petition within
45 | thirty days after the petition is filed.

46 | D. The court may modify an order granting or denying parenting time rights
47 | whenever modification would serve the best interest of the child, but the court shall

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1 not restrict a parent's parenting time rights unless it finds that the parenting time
2 would endanger seriously the child's physical, mental, moral or emotional health.

3 | E. If after a [legal decision making](#) or parenting time order is in effect one of
4 the parents is charged with a dangerous crime against children as defined in section
5 13-705, child molestation as defined in section 13-1410 or an act of domestic
6 violence as prescribed in section 13-3601 in which the victim is a minor, the other
7 parent may petition the court for an expedited hearing. Pending the expedited
8 | hearing, the court may suspend parenting time or change [legal decision making](#), ex
9 parte.

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10 | F. To modify any type of [legal decision making or parenting time](#) order a
11 person shall submit an affidavit or verified petition setting forth detailed facts
12 supporting the requested modification and shall give notice, together with a copy of
13 the affidavit or verified petition, to other parties to the proceeding, who may file
14 opposing affidavits. The court shall deny the motion unless it finds that adequate
15 cause for hearing the motion is established by the pleadings, in which case it shall
16 set a date for hearing on why the requested modification should not be granted.

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17 G. The court shall assess attorney fees and costs against a party seeking
18 modification if the court finds that the modification action is vexatious and
19 constitutes harassment.

20 H. Subsection F of this section does not apply if the requested relief is for the
21 modification or clarification of [parenting time](#), and not for a change of [legal decision](#)
22 [making](#).

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joint physical custody or sole custody

23 [25-412. Expedited child support and parenting time fund](#)
24 A. Each county treasurer shall establish an expedited child support and
25 parenting time fund consisting of monies received pursuant to section 12-284,
26 subsection D.

27 B. The presiding judge of the superior court shall use fund monies to
28 establish, maintain and enhance programs designed to expedite the processing of
29 petitions filed pursuant to section 25-326 and to establish, enforce and modify court
30 orders involving children.

31 C. The county treasurer may invest monies in the fund and shall deposit
32 interest earned in the fund.

33 D. Monies received from this fund shall be used to supplement and not
34 supplant monies allocated by the county.

35 [25-413. Domestic relations education and mediation fund; report](#)

36 A. Each county treasurer shall establish a domestic relations education and
37 mediation fund consisting of monies received pursuant to section 12-284,
38 subsection C.

39 B. The presiding judge of the superior court shall use fund monies to
40 establish, maintain and enhance programs designed to educate persons about
41 impacts on children of dissolution of marriage, legal separation and restructuring of
42 | families and programs for mediation of [parenting time](#) or [legal decision making](#),
43 disputes under this chapter or chapter 6 of this title.

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44 C. The county treasurer shall disburse monies from the fund only at the
45 direction of the presiding judge of the superior court.

46 D. On notice of the presiding judge, the county treasurer shall invest monies
47 in the fund and monies earned from investment shall be credited to the fund.

1 E. Monies that are expended from the fund shall be used to supplement, and
2 not supplant, any state or county appropriations that would otherwise be available
3 for programs described in subsection B of this section.

4 F. On or before August 10 of each year, the county treasurer shall submit a
5 report to the presiding judge that shows the amount of monies in the domestic
6 relations education and mediation fund.

7 25-414. Violation of visitation or parenting time rights; penalties

8 A. If the court, based on a verified petition and after it gives reasonable
9 notice to an alleged violating parent and an opportunity for that person to be heard,
10 finds that a parent has refused without good cause to comply with a visitation or
11 parenting time order, the court shall do at least one of the following:

- 12 1. Find the violating parent in contempt of court.
- 13 2. Order visitation or parenting time to make up for the missed sessions.
- 14 3. Order parent education at the violating parent's expense.
- 15 4. Order family counseling at the violating parent's expense.

16 5. Order civil penalties of not to exceed one hundred dollars for each
17 violation. The court shall transmit monies collected pursuant to this paragraph each
18 month to the county treasurer. The county treasurer shall transmit these monies
19 monthly to the state treasurer for deposit into the alternative dispute resolution
20 fund established by section 12-135.

21 6. Order both parents to participate in mediation or some other appropriate
22 form of alternative dispute resolution at the violating parent's expense.

23 7. Make any other order that may promote the best interests of the child or
24 children involved.

25 B. Within twenty-five days of service of the petition the court shall hold a
26 hearing or conference before a judge, commissioner or person appointed by the
27 court to review noncompliance with a visitation or parenting time order.

28 C. Court costs and attorney fees incurred by the nonviolating parent
29 associated with the review of noncompliance with a visitation or parenting time
30 order shall be paid by the violating parent. In the event the custodial parent
31 prevails, the court in its discretion may award court costs and attorney fees to the
32 custodial parent.

Deleted: 25-415. Custody by nonparent: presumption; grounds; definitions

A. In addition to section 25-401, a child custody proceeding may be commenced in the superior court by a person other than a legal parent by filing a verified petition, or by filing a petition supported by an affidavit, in the county in which the child is permanently resident or is found. The petition shall include detailed facts supporting the petitioner's right to file the petition. The petitioner shall provide notice as required by subsection E of this section. Notice shall include a copy of the petition and any affidavits. The court shall summarily deny a petition unless it finds that the petitioner by the pleadings established that all of the following are true:

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

B. If a person other than a child's legal parent is seeking custody there is a rebuttable presumption that it is in the child's best interest to award custody to a legal parent because of the physical, psychological and emotional needs of the child to be reared by the child's legal parent. To rebut this presumption that person must show by clear and convincing evidence that awarding custody to a legal parent is not in the child's best interests.

C. The superior court may grant a person who stands in loco parentis to a child, including grandparents and great-grandparents, and who meets the requirements of section 25-409 reasonable visitation rights to the child on a finding that the visitation is in the child's best interests and that any of the following is true:

[... [2]

Visitation rights of grandparents and great-grandparents

A. The superior court may grant the grandparents of the child reasonable visitation rights to the child during the child's minority on a finding that the visitation rights would be in the best interests of the child and any of the following is true:

1. The marriage of the parents of the child has been dissolved for at least three months.
2. A parent of the child has been deceased or has been missing for at least three months. For the purposes of this paragraph, a parent is considered to be missing if the parent's location has not been determined and the parent has been reported as missing to a law enforcement agency.
3. The child was born out of wedlock.

B. The superior court may grant the great-grandparents of the child reasonable visitation rights on a finding that the great-grandparents would be entitled to such rights under subsection A if the great-grandparents were grandparents of the child.

C. In determining the child's best interests the court shall consider all relevant factors, including:

1. The historical relationship, if any, between the child and the person seeking visitation.
2. The motivation of the requesting party in seeking visitation.
3. The motivation of the person denying visitation.
4. The quantity of visitation time requested and the potential adverse impact that visitation will have on the child's customary activities.
5. If one or both of the child's parents are dead, the benefit in maintaining an extended family relationship.

D. If logistically possible and appropriate the court shall order visitation by a grandparent or great-grandparent to occur when the child is residing or spending time with the parent through whom the grandparent or great-grandparent claims a right of access to the child. If a parent is unable to have the child reside or spend time with that parent, the court shall order visitation by a grandparent or great-grandparent to occur when that parent would have had that opportunity.

E. A grandparent or great-grandparent seeking to obtain visitation rights under this section shall petition for these rights in the same action in which the parents had their marriage dissolved or in which the court determined paternity or maternity, or by a separate action in the county where the child resides if no action has been filed or the court entering the decree of dissolution or determination of paternity or maternity no longer has jurisdiction.

F. All visitation rights granted under this section automatically terminate if the child has been adopted or placed for adoption. If the child is removed from an adoptive placement, the court may reinstate the visitation rights. This subsection does not apply to the adoption of the child by the spouse of a natural parent if the natural parent remarries.

verified petition, or by filing a petition supported by an affidavit, in the county in which the child is permanently resident or is found. The petition shall include detailed facts supporting the petitioner's right to file the petition. The petitioner shall provide notice as required by subsection E of this section. Notice shall include a copy of the petition and any affidavits. The court shall summarily deny a petition unless it finds that the petitioner by the pleadings established that all of the following are true:

1. The person filing the petition stands in loco parentis to the child.

2. It would be significantly detrimental to the child to remain or be placed in the custody of either of the child's living legal parents who wish to retain or obtain custody.

3. A court of competent jurisdiction has not entered or approved an order concerning the child's custody within one year before the person filed a petition pursuant to this section, unless there is reason to believe the child's present environment may seriously endanger the child's physical, mental, moral or emotional health.

4. One of the following applies:

(a) One of the legal parents is deceased.

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

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

B. If a person other than a child's legal parent is seeking custody there is a rebuttable presumption that it is in the child's best interest to award custody to a legal parent because of the physical, psychological and emotional needs of the child to be reared by the child's legal parent. To rebut this presumption that person must show by clear and convincing evidence that awarding custody to a legal parent is not in the child's best interests.

C. The superior court may grant a person who stands in loco parentis to a child, including grandparents and great-grandparents, and who meets the requirements of section 25-409 reasonable visitation rights to the child on a finding that the visitation is in the child's best interests and that any of the following is true:

1. One of the legal parents is deceased or has been missing at least three months.

2. The child's legal parents are not married to each other at the time the petition is filed.

3. There is a pending proceeding for dissolution of marriage or for legal separation of the legal parents at the time the petition is filed.

D. A grandparent, a great-grandparent or a person who stands in loco parentis to a child may bring a proceeding for visitation rights with a child by filing a verified petition in the county in which the child is permanently resident or is found.

E. Notice of a custody or visitation proceeding filed pursuant to this section shall be served pursuant to the Arizona rules of family law procedure to all of the following:

3. The child's guardian or guardian ad litem.
 4. A person or agency that has physical custody of the child or that claims to have custody or visitation rights.
 5. Any other person or agency that has previously appeared in the action.
- F. A person shall file proceedings for custody or visitation under this chapter in the same action in which the legal parents had their marriage dissolved or any other proceeding in which a previous custody order has been entered regarding the child.
- G. For the purposes of this chapter:
1. "In loco parentis" means a person who has been treated as a parent by the child and who has formed a meaningful parental relationship with the child for a substantial period of time.
 2. "Legal parent" means a biological or adoptive parent whose parental rights have not been terminated