

Substantive Law Workgroup
Steve Wolfson, Chairperson

Court Procedures Workgroup
Dr. Brian Yee, Chairperson

DOMESTIC RELATIONS COMMITTEE

Agenda

December 9, 2011

11:00 a.m. – 1:00 p.m.

Arizona State Courts Building

1501 W. Washington St., Conference Room 345 A/B

Phoenix, Arizona 85007

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

Vote: _____ Draft minutes 11-10-11

Vote: _____ Draft minutes 11-23-11

- 2. Discuss relocation proposal**..... *Chairman*

Action Item/Vote: _____

- 3. Discuss and review “yellow” version of custody rewrite
along with other relevant comments***Chairmen*

- Comparison charts

Action Item/Vote: _____

- 4. 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.

- 5. 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: November 10, 2011 | Time: 11:00AM – 1:00PM | Location: Conference Room 119 A/B |
|--------------------------------|-------------------------------|--|

Minute Taker: Tama Reily

Members Attending:

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

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

Guests: Joi Davenport; Shelly Griffin; Rachel Metelits; Josh Eisenstein; Rena Selden

Matters Considered:

I. Welcome and Announcements

The meeting was called to order at 11:06 a.m., by co-chair, Dr. Brian Yee. Members and guests were welcomed.

II. Approval of Minutes

The minutes for the September 22, 2011, were presented for approval.

MOTION: To approve the minutes of the September 22, 2011, SLCP Workgroup meeting as presented. Motion seconded. Motion passed unanimously.

III. DRC Update

VI. New Custody Rewrite Proposal

Grace Hawkins acknowledged the countless hours that have been devoted to the custody rewrite by the Ad Hoc Custody and the Substantive Law/Court Procedures Workgroups. She reiterated the feedback received by practitioners, judges and the public, namely that the rewrite is not practicable, not workable, and difficult to digest. The custody statutes should be simpler and easier to understand. Ms. Hawkins reviewed a new proposed simplified version of the custody statute that is based on comments received from judges, attorneys, the Conciliation Court Roundtable members, and the public. The revision retains some of the language from the workgroup's most recent updated version and many provisions from the current custody statute. It eliminates the illustrations for coercive control. Ms. Hawkins discussed and explained proposed changes made to the statute section by section.

Lengthy discussion on the new proposal ensued. Bill Fabricius reminded members that the Ad Hoc Custody Workgroup began its work on the custody statute with the intent of using the new terms for custody and parenting time for clarity. The approach was to tighten and modernize the statute so the court and pro pers could easily make sense of it. Also, it was intended to maximize parenting time with a presumption for equal time. He stated that the new proposed version includes coercive control in a minimal way. Several members commented that language on false allegations and sanctions should be added in to the new version. There was also concern that the definition for coercive control was weak. Tom Alongi voiced concern that examples of coercive control are excluded from the new version, and its definition of coercive control is too simplistic. Brian Yee suggested using the new version as a starting off point from which to add in some of the provisions discussed today.

MOTION: To work with the new proposed “yellow” version, subject to potential amendments as discussion goes forward. Motion seconded. Approved 6-1-0.

MOTION: To add the false allegations and sanctions language previously included under section 25-417 in the “blue” version 4 work product to the “yellow” version, subject to potential amendments. Motion seconded. Approved unanimously.

MOTION: To add the language under section 25-421(A) in the “white” legislative version to section 25-403.01 of the “yellow” proposed version, subject to amendments. Motion seconded. Approved 5-2-0.

MOTION: To add the coercive control definition contained in the “white” legislative version to the “yellow” proposed version, subject to discussion about wording. Motion seconded. Motion tabled to next meeting.

In-depth discussion followed. There was concern with the lengthiness of the coercive control definition in the “white” legislative version. Lindsay Simmons offered to draft suggested language for coercive control by the next workgroup meeting.

VI. Call to the Public

Joi Davenport commented regarding false allegations language and the proposed custody statute.

V. Adjourn

Meeting adjourned at 1:02pm.

Next Meeting

TBD

Arizona State Courts Building
1501 W. Washington

Substantive Law/Court Procedures Workgroup

Minutes

| | | |
|--------------------------------|---------------------------------|--|
| Date: November 23, 2011 | Time: 10:00 AM – 12:00PM | Location: Conference Room 345AB |
|--------------------------------|---------------------------------|--|

Minute Taker: Tama Reily

Members Attending:

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

Staff/Admin. Support: Kathy Sekardi; Tama Reily

Guests: Katy Proctor, Joi Davenport, Merri Tiseth, Shannon Rich, Heidi Meyer, Michael Espinoza, Rena Selden, Brent Miller

Matters Considered:

I. Welcome and Announcements

The meeting of the Substantive Law/Court Workgroup meeting was called to order at 10:10 a.m. by Dr. Brian Yee.

II. Discuss and Review “Yellow” Version of Custody Rewrite along with Other Comments

Members reviewed the proposed language for coercive control submitted by Lindsay Simmons. Some members found the proposed language to be too broad. Katy Proctor, state senate policy staff, offered suggestions as to the structuring of the proposed statute language. There was lengthy discussion regarding the appropriate terminology for “electronic stalking.” Inappropriate electronic surveillance of a person is the latest form of controlling and abusive tactics.

MOTION: To insert the proposed language into 25-402 as it appeared in the yellow version, now the white version, under 25-401, the same definitions section, replacing what was line 17 through 22 of the yellow version definition, which would effectively replace lines 16 – 25 of the legislative council version. Motion not seconded. Motion fails.

MOTION: To take as the new working draft a version that replaces lines 19 through 25 of the legislative version, with lines 10 through 30 of the proposed language for coercive control. Motion seconded. Motion approved unanimously.

MOTION: To replace lines 16 – 17 of the legislative version with lines 1 – 2 from the proposed coercive control definition. Motion approved 5-2-1.

MOTION: To strike the term “solely” from subsection (a) in the proposed coercive control definition. Motion seconded. Motion approved unanimously.

MOTION: To replace the term “eavesdropping” in subsection (f) with the term “monitoring.” Motion seconded. Motion approved unanimously.

IV. Call to the Public

Rena Selden had comments about the proposed version and the revised legislative council version.

Michael Espinoza spoke regarding the proposed coercive control language.

Joi Davenport discussed proposed language for coercive control.

Shannon Rich commented regarding the proposed definition of coercive control.

Brent Miller spoke about the coercive control concept in the statute.

V. Adjourn

Meeting adjourned at 12:03.

Next Meeting

TBD

Arizona State Courts Building
1501 W. Washington

DRAFT

Proposed relocation language (Changes within the current statute)

1 ~~25-408. Rights of noncustodial parent; parenting time; relocation of child; CHANGE~~
2 ~~IN RESIDENTIAL ADDRESS OF CHILD; NOTICE; exception; enforcement; access to~~
3 ~~records~~

4 A. ~~EXCEPT AS PROVIDED IN SUBSECTION E A parent who is not granted custody of~~
5 ~~the child is entitled to reasonable parenting time rights to ensure that the minor~~
6 ~~child has frequent and continuing contact with the noncustodial parent unless the~~
7 ~~court finds, after a hearing, that parenting time would endanger seriously the~~
8 ~~child's physical, mental, moral or emotional health.~~ MUST PROVIDE WRITTEN
9 NOTICE TO THE OTHER PARENT PROMPTLY AFTER THE PARENT REASONABLY
10 ANTICIPATES A CHANGE TO THE PARENT'S CURRENT RESIDENTIAL ADDRESS, BUT
11 IN NO EVENT LESS THAN SIXTY DAYS BEFORE MOVING FROM THE CURRENT
12 RESIDENTIAL ADDRESS WITH A CHILD.

13 1. THE NOTICE MUST INCLUDE THE FOLLOWING:

14 (a) THE EFFECTIVE DATE OF THE CHANGE.

15 (b) UNLESS THE COURT HAS GRANTED A REQUEST TO PROTECT A
16 RESIDENTIAL ADDRESS, THE PROPOSED RESIDENTIAL ADDRESS, IF KNOWN. IF
17 THE PROPOSED RESIDENTIAL ADDRESS IS NOT KNOWN AT THE TIME OF NOTICE,
18 THE NOTICE MUST EXPLAIN THE REASON THAT THE RESIDENTIAL ADDRESS IS
19 NOT KNOWN AND WHEN IT WILL BE KNOWN.

20 (c) THE SCHOOLS THAT EACH CHILD WILL ATTEND UNTIL THAT CHILD HAS
21 GRADUATED FROM HIGH SCHOOL.

22 (d) THE REASON THAT THE PARENT IS PROPOSING TO MOVE WITH A CHILD.

23 (e) THE FOLLOWING LANGUAGE IN THE NOTICE:

24 YOU HAVE RECEIVED NOTICE FROM THE OTHER PARENT REGARDING
25 A CHANGE OF RESIDENCE OF THE CHILD OR CHILDREN. SECTION
26 25-408, ARIZONA REVISED STATUTES, GIVES YOU THE RIGHT TO
27 REQUEST A HEARING TO OBJECT TO THE MOVE IF YOU BELIEVE THAT
28 THE MOVE WILL RESULT IN A MATERIAL CHANGE OF
29 CIRCUMSTANCES AFFECTING THE WELFARE OF THE CHILD.
30 A RESIDENTIAL MOVE THAT MAY RESULT IN A MATERIAL CHANGE OF
31 CIRCUMSTANCES AFFECTING THE WELFARE OF THE CHILD INCLUDES,
32 FOR EXAMPLE, A RESIDENTIAL MOVE THAT:

33 1. RESULTS IN A CHANGE TO THE SCHOOL THE MINOR CHILD WILL
34 ATTEND AFTER THE MOVE.

35 2. INCREASES THE TRAVEL TIME FOR TRANSPORTATION OF THE
36 MINOR CHILD FOR THE EXERCISE OF PARENTING TIME TO SUCH A
37 DEGREE THAT THE CHILD'S TIME WITH EITHER PARENT WILL BE
38 DECREASED SIGNIFICANTLY.

39 3. SIGNIFICANTLY IMPACTS THE CHILD'S ESTABLISHED ROUTINE IN
40 THE CHILD'S HOME, SCHOOL OR COMMUNITY.

41 4. RESULTS IN A CHILD MOVING TO AN ADDRESS OUTSIDE THE
42 STATE OF ARIZONA.

43 IF YOU OBJECT TO THE PROPOSED MOVE, YOU MUST FILE AN
44 OBJECTION WITHIN TWENTY DAYS AFTER YOU RECEIVE THIS
45 NOTICE.

Proposed relocation language (Changes within the current statute)

- 1 ~~B. If by written agreement or court order both parents are entitled to custody or~~
2 ~~parenting time and both parents reside in the state, at least sixty days' advance~~
3 ~~written notice shall be provided to the other parent before a parent may do either~~
4 ~~of the following:~~
5 ~~1. Relocate the child outside the state.~~
6 ~~2. Relocate the child more than one hundred miles within the state.~~
7 B. IF NO OBJECTION IS FILED WITHIN TWENTY DAYS, THE PARENT WHO FILED
8 THE NOTICE MAY MOVE AS DESCRIBED IN THE NOTICE WITHOUT FURTHER ORDER
9 OF THE COURT. IF AN OBJECTION IS FILED WITHIN TWENTY DAYS, THE CHILD
10 MAY NOT BE MOVED FROM THE CURRENT RESIDENTIAL ADDRESS WITHOUT A
11 COURT ORDER AFTER A HEARING.
12 1. THE NOTICE AND PROOF OF SERVICE MUST BE FILED WITH THE COURT
13 TO BE EFFECTIVE UNDER THIS SECTION.
14 2. THE OBJECTION AND PROOF OF SERVICE MUST BE FILED WITH THE
15 COURT TO BE EFFECTIVE UNDER THIS SECTION.
16 C. The notice required by this section ~~shall~~ MUST be made by certified mail, return
17 receipt requested, or BE SERVED pursuant to the Arizona rules of family law
18 procedure. ANY OBJECTION UNDER THIS SECTION ALSO MUST BE MADE BY
19 CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BE SERVED PURSUANT TO
20 THE ARIZONA RULES OF FAMILY LAW PROCEDURE.
21 1. The court ~~shall~~ MAY sanction a parent who, without good cause, does not
22 comply with the ~~notification~~ NOTICE requirements of this ~~subsection~~-SECTION. The
23 court may ~~impose a~~ sanction ~~that will affect custody or parenting time only in~~
24 ~~accordance with the child's best interests~~ A PARENT WHO DOES NOT ACT IN GOOD
25 FAITH IN OBJECTING TO A MOVE.
26 2. THE COURT MAY IMPOSE A SANCTION THAT AFFECTS CUSTODY OR
27 PARENTING TIME ONLY IN ACCORDANCE WITH THE CHILD'S BEST INTERESTS.
28 D. ~~Within thirty days after notice is made~~ IF A TIMELY OBJECTION IS FILED the
29 ~~nonmoving~~ MOVING parent may petition the court to ~~prevent relocation of the child~~
30 APPROVE THE PROPOSED MOVE.
31 1. ~~After expiration of this time any~~ IF AN OBJECTION IS NOT TIMELY FILED
32 THE OBJECTING PARENT MAY petition ~~or other application~~ to prevent ~~relocation~~
33 THE PROPOSED MOVE of the child ~~may be granted~~, WHICH PETITION MAY BE
34 HEARD only on a showing of good cause FOR THE DELAY IN FILING THE
35 OBJECTION.
36 2. ~~This subsection does not prohibit~~ IN THE ABSENCE OF AN OBJECTION, a
37 parent who is ~~seeking to relocate~~ PROPOSING TO MOVE the child ~~from petitioning~~
38 MAY PETITION the court for a hearing, on notice to the other parent, to determine
39 the appropriateness of ~~a relocation~~ THE MOVE that may ~~adversely affect the other~~
40 ~~parent's custody or parenting time rights~~ RESULT IN A MATERIAL CHANGE OF
41 CIRCUMSTANCES AFFECTING THE WELFARE OF THE CHILD TO RESOLVE ANY
42 RELATED ISSUES, SUCH AS ADJUSTMENT TO THE PARENTING TIME SCHEDULE.
43 3. FOR THE PURPOSES OF THIS SECTION, A RESIDENTIAL MOVE THAT MAY
44 RESULT IN A MATERIAL CHANGE OF CIRCUMSTANCES AFFECTING THE WELFARE
45 OF THE CHILD INCLUDES A RESIDENTIAL MOVE THAT:

Proposed relocation language (Changes within the current statute)

- 1 (a). RESULTS IN A CHANGE TO THE SCHOOL THE MINOR CHILD WILL
2 ATTEND AFTER THE MOVE.
- 3 (b). INCREASES THE TRAVEL TIME FOR TRANSPORTATION OF THE MINOR
4 CHILD FOR THE EXERCISE OF PARENTING TIME TO SUCH A DEGREE THAT THE
5 CHILD'S TIME WITH EITHER PARENT WILL BE DECREASED SIGNIFICANTLY.
- 6 (c). SIGNIFICANTLY IMPACTS THE CHILD'S ESTABLISHED ROUTINE IN THE
7 CHILD'S HOME, SCHOOL OR COMMUNITY.
- 8 (d). RESULTS IN A CHILD HAVING A RESIDENTIAL ADDRESS OUTSIDE THE
9 STATE OF ARIZONA.
- 10 E. ~~Subsection B of this section does not apply if~~ NOTICE IS NOT REQUIRED IF A
11 provision for ~~relocation~~ A PROPOSED MOVE of a child has been made by a court
12 order or a written agreement of the parties that is dated within one year of the
13 proposed ~~relocation~~ MOVE of the A child.
- 14 ~~F. Pending the determination by the court of a petition or application to prevent
15 relocation of the child:~~
- 16 ~~1. A parent with sole custody or a parent with joint custody and primary physical
17 custody who is required by circumstances of health or safety or employment of that
18 parent or that parent's spouse to relocate in less than sixty days after written
19 notice has been given to the other parent may temporarily relocate with the child.~~
- 20 ~~2. A parent who shares joint custody and substantially equal physical custody and
21 who is required by circumstances of health or safety or employment of that parent
22 or that parent's spouse to relocate in less than sixty days after written notice has
23 been given to the other parent may temporarily relocate with the child only if both
24 parents execute a written agreement to permit relocation of the child.~~
- 25 ~~G. The court shall determine whether to allow the parent to relocate the child in
26 accordance with the child's best interests. The burden of proving what is in the
27 child's best interests is on the parent who is seeking to relocate the child. To the
28 extent practicable the court shall also make appropriate arrangements to ensure
29 the continuation of a meaningful relationship between the child and both parents.~~
- 30 ~~H.F.~~ The court shall not deviate from a provision of ~~any~~ THE CURRENT COURT-
31 ORDERED parenting plan or other written agreement ~~by~~ IN which the parents
32 specifically have agreed to allow or prohibit ~~relocation~~ THE MOVE of the child unless
33 the court finds BY CLEAR AND CONVINCING EVIDENCE that the provision is no
34 longer in the child's best interests. ~~There is a rebuttable presumption that a
35 provision from any parenting plan or other written agreement is in the child's best
36 interests.~~
- 37 G. THE PARENT WHO HAS GIVEN NOTICE OF A PROPOSED CHANGE IN
38 RESIDENTIAL ADDRESS MAY MOVE FOR JUDGMENT ON THE PLEADING AND SHALL
39 FOLLOW THE PROCEDURE PRESCRIBED IN RULE 32(C) OF THE ARIZONA RULES OF
40 FAMILY LAW PROCEDURE.
- 41 H. THE COURT SHALL DETERMINE WHETHER TO ALLOW THE PARENT TO CHANGE
42 A CHILD'S CURRENT RESIDENTIAL ADDRESS IN ACCORDANCE WITH THE CHILD'S
43 BEST INTERESTS. TO THE EXTENT POSSIBLE, THE COURT SHALL ALSO MAKE
44 APPROPRIATE ARRANGEMENTS TO ENSURE THE CONTINUATION OF A
45 MEANINGFUL RELATIONSHIP BETWEEN THE CHILD AND BOTH PARENTS.

Proposed relocation language (Changes within the current statute)

- 1 I. In determining the child's best interests **UNDER THIS SECTION**, the court shall
2 consider all relevant factors including:
- 3 1. The factors prescribed under section 25-403.
 - 4 2. Whether the ~~relocation~~ **REQUEST TO MOVE** is being made or opposed in
5 good faith. ~~and not to interfere with or to frustrate the relationship between the~~
6 ~~child and the other parent or the other parent's right of access to the child.~~
 - 7 3. The prospective advantage of the move for improving the general quality
8 of life for the ~~custodial parent or for the~~ child.
 - 9 4. The likelihood that the parent with whom the child will reside after the
10 ~~relocation~~ **MOVE** will comply with parenting time orders.
 - 11 5. Whether the ~~relocation~~ **MOVE** will allow a realistic opportunity for
12 parenting time with each parent **INCLUDING WHETHER IT WILL RESULT IN AN**
13 **INCREASE IN TRAVEL TIME TO TRANSPORT A CHILD FOR THE EXERCISE OF**
14 **PARENTING TIME AND WHETHER THE INCREASE IN TRAVEL TIME WILL CAUSE A**
15 **CHILD'S TIME WITH EITHER PARENT TO BE DECREASED SIGNIFICANTLY.**
 - 16 6. The extent to which moving or not moving will affect the **CHILD'S**
17 **STABILITY AND THE** emotional, physical or developmental needs of the child
18 **INCLUDING WHETHER IT SIGNIFICANTLY IMPACTS A CHILD'S ESTABLISHED**
19 **ROUTINE IN THE CHILD'S HOME, SCHOOL OR COMMUNITY.**
 - 20 7. **WHETHER A PARENT'S PRIMARY** ~~The motives of the parents and the~~
21 ~~validity of the reasons given for moving~~ **IN REQUESTING** or opposing the move
22 ~~including the extent to which either parent may intend~~ **IS** to gain a financial
23 advantage regarding continuing child support obligations.
 - 24 8. The ~~potential effect of relocation on the child's stability~~ **EXTENT TO WHICH**
25 **THE OBJECTING PARENT HAS FULFILLED THAT PARENT'S FINANCIAL OBLIGATIONS**
26 **TO THE PARENT WHO SEEKS TO MOVE A CHILD, INCLUDING CHILD SUPPORT,**
27 **SPOUSAL MAINTENANCE AND OBLIGATIONS RELATED TO MARITAL PROPERTY AND**
28 **MARITAL DEBT. THE COURT ALSO SHALL CONSIDER THE IMPACT THAT**
29 **COMPLIANCE OR NON-COMPLIANCE HAS ON THE PARENT WHO SEEKS TO MOVE,**
30 **INCLUDING OTHER RESOURCES THAT ARE AVAILABLE TO PROVIDE SUPPORT FOR**
31 **THE PARENT WHO SEEKS TO MOVE A CHILD.**
- 32 J. ~~The court shall assess attorney fees and court costs against either parent if the~~
33 ~~court finds that the parent has unreasonably denied, restricted or interfered with~~
34 ~~court-ordered parenting time~~ **IF THERE IS NO PROVISION IN THE CURRENT**
35 **COURT-ORDERED PARENTING PLAN OR OTHER WRITTEN AGREEMENT IN WHICH**
36 **THE PARENTS SPECIFICALLY HAVE AGREED TO ALLOW OR PROHIBIT THE MOVE, IF**
37 **THE MOVING PARENT HAS PRIMARY PHYSICAL CUSTODY AND HAS THE EXCLUSIVE**
38 **RIGHT TO MAKE EDUCATIONAL DECISIONS FOR THE CHILD AND THE PROPOSED**
39 **CHANGE OF RESIDENCE FOR THE CHILD WOULD ALLOW FOR REASONABLE AND**
40 **MEANINGFUL ACCESS THAT IS NOT SIGNIFICANTLY LESS THAN PROVIDED UNDER**
41 **THE CURRENT PARENTING TIME ORDER, THERE IS A PRESUMPTION THAT IT IS IN**
42 **THE CHILD'S BEST INTEREST TO ALLOW THE MOVE. EXCEPT AS PROVIDED ABOVE,**
43 1. **IF AN OBJECTION IS TIMELY FILED, THE BURDEN OF PROOF SHALL BE**
44 **ON THE MOVING PARENT TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE**
45 **THAT THE MOVE IS IN THE CHILD'S BEST INTERESTS.**

Proposed relocation language (Changes within the current statute)

- 1 2. IF AN OBJECTION IS NOT TIMELY FILED, THE BURDEN OF PROOF SHALL
- 2 BE ON THE OBJECTING PARENT TO ESTABLISH BY A PREPONDERANCE OF THE
- 3 EVIDENCE THAT THE MOVE IS NOT IN THE CHILD'S BEST INTERESTS.
- 4 K. ~~Pursuant to section 25-403.06, the noncustodial parent is entitled to have access~~
- 5 ~~to documents and other information about the child unless the court finds that~~
- 6 ~~access would endanger seriously the child's or the custodial parent's physical,~~
- 7 ~~mental, moral or emotional health~~ A PARENT WHO IS REQUIRED TO MOVE
- 8 BECAUSE OF CIRCUMSTANCES RELATED TO HEALTH, SAFETY, EMPLOYMENT OR
- 9 INVOLUNTARY CHANGE OF RESIDENCE OF THAT PARENT OR OF THAT PARENT'S
- 10 SPOUSE IN LESS THAN SIXTY DAYS AFTER WRITTEN NOTICE HAS BEEN GIVEN TO
- 11 THE OTHER PARENT MAY TEMPORARILY MOVE WITH THE CHILD ONLY IF BOTH
- 12 PARENTS EXECUTE A WRITTEN AGREEMENT OR A PARENT OBTAINS A COURT
- 13 ORDER PURSUANT TO RULE 47, 48 OR 91 OF THE ARIZONA RULES OF FAMILY LAW
- 14 PROCEDURE.
- 15 L. HEARINGS CONDUCTED ON PETITIONS TO PERMIT OR PREVENT A MOVE OF A
- 16 CHILD UNDER THIS SECTION ARE NOT MOTIONS TO MODIFY CHILD CUSTODY AND
- 17 THE PARTIES ARE NOT REQUIRED TO COMPLY WITH SECTION 25-411 OR RULE
- 18 91(D) OF THE ARIZONA RULES OF FAMILY LAW PROCEDURE.
- 19

Proposed relocation language with comments

1 25-408. Change in residential address of child; notice; exception; enforcement
2 A. EXCEPT AS PROVIDED IN SUBSECTION E, A parent must provide written notice
3 to the other parent promptly after the parent REASONABLY ANTICIPATES A change
4 to the parent's current residential address, but in no event less than sixty days
5 before MOVING FROM THE CURRENT RESIDENTIAL ADDRESS WITH a child.
6 1. The NOTICE must include THE FOLLOWING:
7 a. The effective date of the change.
8 b. UNLESS THE COURT HAS GRANTED A REQUEST TO PROTECT A RESIDENTIAL
9 ADDRESS, THE PROPOSED RESIDENTIAL ADDRESS, IF KNOWN. IF THE PROPOSED
10 RESIDENTIAL ADDRESS IS NOT KNOWN AT THE TIME OF NOTICE, THE NOTICE
11 MUST EXPLAIN THE REASON THAT THE RESIDENTIAL ADDRESS IS NOT KNOWN
12 AND WHEN IT WILL BE KNOWN.
13 c. THE SCHOOLS THAT EACH CHILD WILL ATTEND UNTIL THAT CHILD HAS
14 GRADUATED FROM HIGH SCHOOL.
15 d. THE REASON THAT THE PARENT IS PROPOSING TO MOVE WITH A CHILD.
16 e. The following language in the NOTICE:
17 You have received notice from the other parent regarding a change of
18 residence of the child or children. Section 25-408, Arizona Revised Statutes,
19 gives you the right to request a hearing to object to the move if you believe
20 that the move will RESULT IN A MATERIAL CHANGE OF CIRCUMSTANCES
21 AFFECTING THE WELFARE OF THE CHILD.
22 A residential move that may RESULT IN A MATERIAL CHANGE OF
23 CIRCUMSTANCES AFFECTING THE WELFARE OF THE CHILD includes, for
24 example, a residential move that:
25 1. Results in a change to the school the minor child will attend after the
26 move.
27 2. Increases the travel time for transportation of the minor child for the
28 exercise of parenting time to such a degree that the child's time with either
29 parent will be decreased significantly.
30 3. Significantly impacts the child's established routine in the child's home,
31 school or community.
32 4. RESULTS IN A CHILD MOVING TO AN ADDRESS OUTSIDE THE STATE OF
33 ARIZONA.
34 IF YOU OBJECT TO THE PROPOSED MOVE, you must file AN OBJECTION
35 within twenty days after you receive this notice.
36 B. IF NO OBJECTION IS FILED WITHIN TWENTY DAYS, THE PARENT WHO FILED
37 THE NOTICE MAY MOVE AS DESCRIBED IN THE NOTICE WITHOUT FURTHER ORDER
38 OF THE COURT. If an objection is filed WITHIN TWENTY DAYS, the child may not
39 be MOVED FROM THE CURRENT RESIDENTIAL ADDRESS without a court order after
40 a hearing.
41 1. THE NOTICE AND PROOF OF SERVICE MUST BE FILED WITH THE COURT TO BE
42 EFFECTIVE UNDER THIS SECTION.
43 2. THE OBJECTION AND PROOF OF SERVICE MUST BE FILED WITH THE COURT TO
44 BE EFFECTIVE UNDER THIS SECTION.

Deleted: Relocation

Deleted: knows of any actual or impending

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Comment [DBG1]: I consolidated the notice provisions under subsection A.

Deleted: Any primary residential parent or a parent with substantially equal parenting time must also include t

Deleted: notification

Deleted: substantially or adversely impact your court-ordered parenting time

Deleted: substantially or adversely impact a current court-ordered parenting plan or written agreement regarding parenting time

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Deleted: a request for a hearing

Comment [DBG2]: To avoid disputes about whether the notice was required or not, I thought it made sense to give the same notice to everyone.

The language "MATERIAL CHANGE OF CIRCUMSTANCES AFFECTING THE WELFARE OF THE CHILD" comes from section 25-411 regarding changes in custody. I think it works here, but I am open to suggestions.

I also added moving out of state as an example of a material change.

Deleted: if you object

Deleted: After receipt of the notice required pursuant to subsection A of this section,

Comment [DBG3]: I would suggest a sunset on the notice. Otherwise, years after the fact, a parent could make a unilateral move that was not an issue then, but would be an issue now. For example, "IF WITHIN ONE YEAR OF FILING THE NOTICE, THE PARENT HAS NOT MOVED IN ACCORDANCE WITH THE NOTICE, THE PARENT MUST AGAIN COMPLY WITH THE NOTICE PROVISIONS OF THE SECTION BEFORE MOVING.

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Proposed relocation language with comments

1 C. ~~▼~~ The notice required by this section must be made by certified mail, return
 2 receipt requested, or be served pursuant to the Arizona rules of family law
 3 procedure. ~~ANY OBJECTION UNDER THIS SECTION ALSO MUST BE MADE BY~~
 4 ~~CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BE SERVED PURSUANT TO~~
 5 ~~THE ARIZONA RULES OF FAMILY LAW PROCEDURE.~~
 6 1. ~~▼~~ The court may sanction a parent who, without good cause, does not comply with
 7 the ~~NOTICE~~ requirements of this ~~SECTION~~. The court may also sanction a parent
 8 who does not act in good faith in objecting to ~~A MOVE~~.
 9 2. The court may impose a sanction that affects custody or parenting time only in
 10 accordance with the child's best interests.
 11 ~~D. IF A TIMELY OBJECTION IS FILED, the MOVING parent may petition the court to~~
 12 ~~APPROVE the proposed move.~~
 13 1. ~~IF AN OBJECTION IS NOT TIMELY FILED, THE OBJECTING PARENT MAY petition~~
 14 ~~to prevent the proposed move of the child, WHICH PETITION may be heard only on~~
 15 ~~a showing of good cause for the delay IN FILING THE OBJECTION.~~
 16 2. ~~IN THE ABSENCE OF AN OBJECTION, a~~ parent who is proposing to move the
 17 child may petition the court for a hearing, on notice to the other parent, to
 18 determine the appropriateness of the ~~move that may, RESULT IN A MATERIAL~~
 19 ~~CHANGE OF CIRCUMSTANCES AFFECTING THE WELFARE OF THE CHILD TO~~
 20 ~~RESOLVE ANY RELATED ISSUES, SUCH AS ADJUSTMENT TO THE PARETING TIME~~
 21 ~~SCHEDULE.~~
 22 3. For the purposes of this section, a residential move that may ~~RESULT IN A~~
 23 ~~MATERIAL CHANGE OF CIRCUMSTANCES AFFECTING THE WELFARE OF THE CHILD~~
 24 includes a residential move that:
 25 a. Results in a change to the school the minor child will attend after the move.
 26 b. Increases the travel time for transportation of the minor child for the exercise of
 27 parenting time to such a degree that the child's time with either parent will be
 28 decreased significantly.
 29 c. Significantly impacts the child's established routine in the child's home, school or
 30 community.
 31 d. ~~RESULTS IN A CHILD HAVING A RESIDENTIAL ADDRESS OUTSIDE THE STATE~~
 32 ~~OF ARIZONA.~~
 33 ~~E.~~ Notice is not required if a provision for a proposed move of a child has been
 34 made by a court order or a written agreement of the parties that is dated within
 35 one year before the proposed move of a child.
 36 ~~F.~~ The court shall not deviate from a provision of the current court-ordered
 37 parenting plan or other written agreement in which the parents specifically have
 38 agreed to allow or prohibit the ~~MOVE~~ unless the court finds by clear and convincing
 39 evidence that the provision is no longer in the child's best interests.
 40 ~~G.~~ The parent who has given notice of a proposed ~~CHANGE IN RESIDENTIAL~~
 41 ~~ADDRESS~~ may move for judgment on the pleading and shall follow the procedure
 42 prescribed in rule 32(c) of the Arizona rules of family law procedure.
 43 ~~H.~~ The court shall determine whether to allow the parent to ~~CHANGE A CHILD'S~~
 44 ~~CURRENT RESIDENTIAL ADDRESS~~ in accordance with the child's best interests. ~~▼~~ To
 45 the extent possible, the court shall also make appropriate arrangements to ensure
 46 the continuation of a meaningful relationship between the child and both parents.

- Deleted: The notice required by subsection A of this section must include the anticipated date of the relocation and the proposed location including a residential address if known, unless the court has granted a request to protect a residential address. The notice must also state the reason that the parent is proposing the relocation of the child.
- Deleted:
- Deleted: notification
- Deleted: subsection
- Deleted: the relocation
- Deleted: D. If the court finds that the notice required pursuant to subsection a of this section unreasonably puts at risk the health, safety or liberty of a parent or child, the court may order any of the following:¶
 1. That the residential address, contact information or other identifying (... [1])
- Deleted: Within twenty days after no (... [2])
- Deleted: nonmoving
- Deleted: prevent
- Deleted: of the child if the move ma (... [3])
- Deleted: After expiration of this time
- Deleted: any
- Deleted: or other application
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- Deleted:
- Deleted: adversely affect the other (... [4])
- Deleted: substantially or adversely i (... [5])
- Deleted: 1
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- Comment [DBG5]: I would move this up (... [6])
- Deleted: G
- Comment [DBG6]: I would combine para (... [7])
- Deleted: H
- Deleted: relocation of the child
- Deleted: There is a rebuttable (... [8])
- Deleted: I
- Deleted: move
- Deleted: J
- Deleted: relocate the child
- Deleted: The court shall evaluate t (... [9])

Proposed relocation language with comments

1 | ~~J.~~ In determining the child's best interests UNDER THIS SECTION, the court shall
2 | consider all relevant factors including:
3 | 1. The factors prescribed under section 25-403.
4 | 2. Whether the REQUEST TO MOVE is being made or opposed in good faith.
5 | 3. The prospective advantage of the move for improving the general quality of life
6 | for the child.
7 | 4. The likelihood that the parent with whom the child will reside after the MOVE
8 | will comply with parenting time orders.
9 | 5. Whether the MOVE will allow a realistic opportunity for parenting time with each
10 | parent, INCLUDING WHETHER IT WILL RESULT IN AN INCREASE IN TRAVEL TIME
11 | TO TRANSPORT A CHILD FOR THE EXERCISE OF PARENTING TIME AND WHETHER
12 | THE INCREASE IN TRAVEL TIME WILL CAUSE A CHILD'S TIME WITH EITHER
13 | PARENT WILL BE DECREASED SIGNIFICANTLY.
14 | 6. The extent to which moving or not moving will affect the child's stability and the
15 | emotional, physical or developmental needs of the child, INCLUDING WHETHER IT
16 | SIGNIFICANTLY IMPACTS A CHILD'S ESTABLISHED ROUTINE IN THE CHILD'S
17 | HOME, SCHOOL OR COMMUNITY.
18 | 7. Whether a parent's primary motive in requesting or opposing THE MOVE is to
19 | gain a financial advantage regarding continuing child support obligations.
20 | 8. THE EXTENT TO WHICH THE OBJECTING PARENT HAS FULFILLED THAT
21 | PARENT'S FINANCIAL OBLIGATIONS TO THE PARENT WHO SEEKS TO MOVE
22 | A CHILD, INCLUDING CHILD SUPPORT, SPOUSAL MAINTENANCE AND
23 | OBLIGATIONS RELATED TO MARITAL PROPERTY AND MARITAL DEBT. THE
24 | COURT ALSO SHALL CONSIDER THE IMPACT THAT COMPLIANCE OR NON-
25 | COMPLIANCE HAS ON THE PARENT WHO SEEKS TO MOVE, INCLUDING
26 | OTHER RESOURCES THAT ARE AVAILABLE TO PROVIDE SUPPORT FOR THE
27 | PARENT WHO SEEKS TO MOVE AND A CHILD.
28 | I. IF THERE IS NO PROVISION IN THE CURRENT COURT-ORDERED PARENTING
29 | PLAN OR OTHER WRITTEN AGREEMENT IN WHICH THE PARENTS SPECIFICALLY
30 | HAVE AGREED TO ALLOW OR PROHIBIT THE MOVE, if the moving parent has
31 | primary physical custody and has the exclusive right to make educational decisions
32 | for the child and the proposed change of residence for the child would allow for
33 | reasonable and meaningful access that is not significantly less than provided under
34 | the current parenting time order, there is a presumption that it is in the child's best
35 | interests to ALLOW THE MOVE. EXCEPT A PROVIDED ABOVE.
36 | 1. IF AN OBJECTION IS TIMELY FILED, THE BURDEN OF PROOF SHALL BE ON THE
37 | MOVING PARENT TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT
38 | THE MOVE IS IN THE CHILD'S BEST INTERESTS.
39 | 1. IF AN OBJECTION IS NOT TIMELY FILED, THE BURDEN OF PROOF SHALL BE ON
40 | THE OBJECTING PARENT TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE
41 | THAT THE MOVE IS NOT IN THE CHILD'S BEST INTERESTS.
42 | ~~K.~~ A parent who is required to MOVE because of circumstances related to health,
43 | safety, employment or involuntary change of residence of that parent or of that
44 | parent's spouse in less than sixty days after written notice has been given to the

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Comment [DBG7]: I would combine paragraphs F and J so that all the burden of proof language is together.

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Comment [DBG8]: This burden of proof language is consistent with current law.

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Proposed relocation language with comments

1 | other parent may temporarily ~~MOVE~~ with the child only if both parents execute a
2 | written agreement or a parent obtains a court order pursuant to rule 47, 48 or 91
3 | of the Arizona rules of family law procedure.
4 | ~~L. Hearings conducted on petitions to permit or prevent, A MOVE of a child UNDER~~
5 | ~~THIS SECTION~~ are not motions to modify child custody and the parties are not
6 | required to comply with section 25-411 or rule 91(d) of the Arizona rules of family
7 | law procedure.

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D. If the court finds that the notice required pursuant to subsection a of this section unreasonably puts at risk the health, safety or liberty of a parent or child, the court may order any of the following:

1. That the residential address, contact information or other identifying information of the parent or child shall not be disclosed in the pleadings, other documents filed in the proceeding or the final order, except for an in camera disclosure.
2. That the notice required pursuant to subsection a of this section be waived to the extent necessary to protect confidentiality and the health, safety or liberty of the parent or child.
3. Any other action the court considers necessary to facilitate the legitimate needs of the parties and the child's best interests.

E. The court may conduct an ex parte hearing pursuant to subsection D of this section.

F

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Within twenty days after notice is received

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of the child if the move may substantially or adversely impact a current court-ordered parenting plan or written agreement regarding parenting time, except as provided in the servicemembers civil relief act

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adversely affect the other parent's custody or parenting time rights

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substantially or adversely impact a current court-ordered parenting plan or written agreement regarding parenting time

Page 2: [6] Comment [DBG5] David Gass 3/17/2011 11:08:00 PM

I would move this up to become subsection B. If the subsection is moved, then the cross-reference in subsection A needs to be changed.

Page 2: [7] Comment [DBG6] David Gass 3/17/2011 11:08:00 PM

I would combine paragraphs F and I so that all the burden of proof language is together.

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There is a rebuttable presumption that a relocation provision from the current court-ordered parenting plan or other written agreement is in the child's best interests.

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The court shall evaluate the extent to which the objecting parent has fulfilled the parent's financial obligations to the parent who is seeking to relocate the child, including child support, spousal maintenance and obligations related to marital property and marital debt. The burden of proving what is in the child's best interests is on the parent who is seeking to relocate the child.

1 PROPOSED REVISIONS from Ad Hoc Workgroup
2 Sections relevant to parenting time and parental
3 decision-making ONLY
4 [Blue text is new, black text is currently in the
5 statute]
6

7 **25-402. Definitions** [former A.R.S. § 25-402]
8 In this article, unless the context otherwise
9 requires:
10 1. "Legal parent" means a biological or adoptive
11 parent whose parental rights have not been
12 terminated. It does not include a person whose
13 paternity has not been established under state
14 law pursuant to sections 25-812 and 25-814.
15 2. "Parental decision-making" means the legal
16 right and responsibility to make major life
17 decisions affecting the health, welfare and
18 education of a child. For purposes of interpreting
19 or applying any international treaty, federal law,
20 uniform code or other state statute, "parental
21 decision-making" shall mean the same as "legal
22 custody."
23 3. "Parenting time" means the condition under
24 which a parent has the right to have a child
25 physically placed with the parent and the right
26 and responsibility to make, during that
27 placement, routine daily decisions regarding the
28 child's care consistent with the major decisions
29 made by a person having parental decision-
30 making authority.
31 4. "Shared parental decision-making" means the
32 condition under which both parents share
33 decision-making responsibility and neither
34 parent's rights are superior, except with respect
35 to specified decisions as set forth by the court or
36 the parents in the final judgment or order.
37 5. "Sole parental decision-making" means the
38 condition under which one person has parental
39 decision-making authority.
40 6. "Visitation" involves the same rights and
41 responsibilities as parenting time when exercised
42 by a non-parent.
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59 CURRENT STATUTE
60 Corresponding sections relevant to parenting
61 time and parental decision-making
62
63
64
65 **25-402. Definitions**
66 In this article, unless the context otherwise
67 requires:
68 1. "Joint custody" means joint legal custody or
69 joint physical custody, or both.
70 2. "Joint legal custody" means the condition
71 under which both parents share legal custody and
72 neither parent's rights are superior, except with
73 respect to specified decisions as set forth by the
74 court or the parents in the final judgment or
75 order.
76 3. "Joint physical custody" means the condition
77 under which the physical residence of the child is
78 shared by the parents in a manner that assures
79 that the child has substantially equal time and
80 contact with both parents.
81 4. "Parenting time" means the condition under
82 which a parent has the right to have a child
83 physically placed with the parent and the right
84 and responsibility to make, during that
85 placement, routine daily decisions regarding the
86 child's care consistent with the major decisions
87 made by a person having legal custody.
88 5. "Sole custody" means the condition under
89 which one person has legal custody.
90

1 **25-403.01. Parenting Plans** [former A.R.S. §
2 25-403.02]

3 A. If a child's parents cannot agree to a plan for
4 parental decision-making or parenting time, each
5 shall submit a proposed parenting plan.

6 B. Consistent with section 25-103 and with the
7 child's physical and emotional well-being as
8 indicated in sections 25-403.02 and 25-403.03,
9 the court shall adopt a parenting plan that
10 provides for both parents to share parental
11 decision-making concerning their child and that
12 maximizes their respective parenting time.
13 [Alternate wording: the court shall prefer that
14 parent's plan that provides for both parents to
15 share parental decision-making concerning their
16 child and that maximizes their respective
17 parenting time.]

18 The court shall not prefer a parent's proposed
19 plan because of that parent's sex.

20 C. Parenting plans shall include at least the
21 following:

22 1. A designation of the parental decision-making
23 plan as shared or sole as defined in section 25-
24 402.

25 2. Each parent's rights and responsibilities for
26 the personal care of the child and for decisions in
27 areas such as education, health care and
28 religious training.

29 3. A detailed schedule of parenting time,
30 including holidays and school vacations

31 4. A procedure by which proposed changes,
32 disputes and alleged breaches may be mediated
33 or resolved, which may include the use of
34 conciliation services or private counseling

35 5. A procedure for periodic review of the plan's
36 terms by the parents

37 6. A statement that each party has read,
38 understands and will abide by the notification
39 requirements of section 25-403.05, subsection B
40 pertaining to access of sex offenders to a child.

41 7. A plan for communicating with each other
42 about the child, including methods and
43 frequency.

44 8. A plan for child exchanges, including location
45 and responsibility for transportation.

46 D. Shared parental decision-making does not
47 necessarily mean equal parenting time.

48 E. If the parents are unable to agree on any
49 element to be included in a parenting plan, the
50 court shall determine that element, while
51 incorporating those elements agreed upon by the
52 parents. The court may determine other factors
53 that are necessary to promote and protect the
54 emotional and physical health of the child.

55 F. In a contested case, the court shall make
56 specific findings on the record about all relevant
57 factors and the reasons for which the decision is
58 in the best interests of the child

59 **25-403.02. Parenting plans**

60 A. Before an award is made granting joint
61 custody, the parents shall submit a proposed
62 parenting plan that includes at least the
63 following:

64 1. Each parent's rights and responsibilities for the
65 personal care of the child and for decisions in
66 areas such as education, health care and
67 religious training.

68 2. A schedule of the physical residence of the
69 child, including holidays and school vacations.

70 3. A procedure by which proposed changes,
71 disputes and alleged breaches may be mediated
72 or resolved, which may include the use of
73 conciliation services or private counseling.

74 4. A procedure for periodic review of the plan's
75 terms by the parents.

76 5. A statement that the parties understand that
77 joint custody does not necessarily mean equal
78 parenting time.

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

82 B. If the parents are unable to agree on any
83 element to be included in a parenting plan, the
84 court shall determine that element. The court
85 may determine other factors that are necessary
86 to promote and protect the emotional and
87 physical health of the child
88

1 **25-403.02. Parenting Time** [Former A.R.S. §
2 25-403]

3 The court shall determine **parenting time**, either
4 originally or on petition for modification, in
5 accordance with the best interests of the child. In
6 determining **the level of parenting time that** is in
7 the child's best interests, the court shall consider
8 all factors **relevant to the child's physical and**
9 **emotional well-being**, including:

10 1. **The child's own viewpoint and wishes, if**
11 **possessed of suitable age and maturity, along**
12 **with the basis of those wishes.**

13 2. The interaction and interrelationship **between**
14 the child **and** the child's siblings and any other
15 person who may significantly affect the child's
16 best interest.

17 3. The child's adjustment to home, school and
18 community

19 4. The mental and physical health of all
20 individuals involved

21 5. Which parent is more likely to allow the child
22 **substantial**, frequent, meaningful **and** continuing
23 contact with the other parent. This paragraph
24 does not apply if the court determines that a
25 parent is acting in good faith to protect the child
26 from witnessing an act of domestic violence or
27 being a victim of domestic violence or child
28 abuse.

29 6. **The historical, current and potential**
30 **relationship between the parent and the child.**

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

33 8. Whether there has been domestic violence or
34 child abuse as defined in section 25-403.03.

35 9. **The feasibility of each plan taking into account**
36 **the distance between the parents' homes, the**
37 **parents' and/or child's work, school, daycare or**
38 **other schedules, and the child's age.**

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59 **25-403. Custody; best interests of child**

60 A. The court shall determine custody, either
61 originally or on petition for modification, in
62 accordance with the best interests of the child.

63 The court shall consider all relevant factors,
64 including:

65 1. The wishes of the child's parent or parents as
66 to custody.

67 2. The wishes of the child as to the custodian.

68 3. The interaction and interrelationship of the
69 child with the child's parent or parents, the child's
70 siblings and any other person who may
71 significantly affect the child's best interest.

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

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

76 6. Which parent is more likely to allow the child
77 frequent and meaningful continuing contact with
78 the other parent. This paragraph does not apply
79 if the court determines that a parent is acting in
80 good faith to protect the child from witnessing an
81 act of domestic violence or being a victim of
82 domestic violence or child abuse.

83 7. Whether one parent, both parents or neither
84 parent has provided primary care of the child.

85 8. The nature and extent of coercion or duress
86 used by a parent in obtaining an agreement
87 regarding custody.

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

90 10. Whether either parent was convicted of an
91 act of false reporting of child abuse or neglect
92 under section 13-2907.02.

93 11. Whether there has been domestic violence or
94 child abuse as defined in section 25-403.03.

95 B. In a contested custody case, the court shall
96 make specific findings on the record about all
97 relevant factors and the reasons for which the
98 decision is in the best interests of the child
99

1 **25-403.03. Parental Decision-Making**
2 [Former A.R.S. § 25-403.01]
3 The court shall determine parental decision-
4 making either originally or on petition for
5 modification, in accordance with the best
6 interests of the child. In determining the level of
7 parental decision-making that is in the child's
8 best interests, the court shall consider all factors
9 prescribed in section 25-403.02, and all of the
10 following factors relevant to the child's physical
11 and emotional well-being:
12 1. The agreement or lack of an agreement by the
13 parents regarding the parental decision-making
14 plan.
15 2. Whether a parent's lack of agreement is
16 unreasonable or is influenced by an issue not
17 related to the best interests of the child.
18 3. The past, present and future abilities of the
19 parents to cooperate in decision-making about
20 the child
21 4. Whether the parental decision-making plan is
22 logistically possible.
23 5. Whether an award of final or sole parental
24 decision-making would be abused
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59 **25-403.01. Sole and joint custody**
60 A. In awarding child custody, the court may order
61 sole custody or joint custody. This section does
62 not create a presumption in favor of one custody
63 arrangement over another. The court in
64 determining custody shall not prefer a parent as
65 custodian because of that parent's sex.
66 B. The court may issue an order for joint custody
67 over the objection of one of the parents if the
68 court makes specific written findings of why the
69 order is in the child's best interests. In
70 determining whether joint custody is in the child's
71 best interests, the court shall consider the factors
72 prescribed in section 25-403, subsection A and all
73 of the following:
74 1. The agreement or lack of an agreement by the
75 parents regarding joint custody.
76 2. Whether a parent's lack of agreement is
77 unreasonable or is influenced by an issue not
78 related to the best interests of the child.
79 3. The past, present and future abilities of the
80 parents to cooperate in decision-making about
81 the child to the extent required by the order of
82 joint custody.
83 4. Whether the joint custody arrangement is
84 logistically possible.
85 C. The court may issue an order for joint custody
86 of a child if both parents agree and submit a
87 written parenting plan and the court finds such
88 an order is in the best interests of the child. The
89 court may order joint legal custody without
90 ordering joint physical custody

Arizona Domestic Relations Committee: SL/CP Workgroups

Requested Amendments to Working Draft of 2012 Custody Bill

(Alongi, 12-8-2011)

25-401. Definitions

1. Pg. 1: 16 means a ~~discernable~~ *recognizable* pattern ...
2. Pg. 1: 18 when the perpetrator ~~uses or~~ does any ...
3. Pg. 1: 19 to intimidate ~~and~~ *or* control the other parent ...
4. Pg. 1: 20 ~~emotionally abusive conduct intended~~ *inflicts emotional abuse* to demean ...
5. Pg. 1: 22-25 unreasonably restricts the victim's lawful activities *or access to the victim's own financial assets*, maliciously damages ~~to~~ the victim's financial credit or employment prospects, or nonconsensually appropriates ~~ion~~ of the victim's identity ...
6. Pg. 1: 30 offender's wishes, or ~~using~~ *uses* a ...
7. Pg. 1: 36 or other communications ~~without consent or legitimate purpose to facilitate other controlling behaviors described in this definition.~~
8. Pg. 1: 37 *Engages in other exceptionally controlling behavior that is consistent with the conduct described in this paragraph definition, or that society ...*

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

9. Pg. 2: 43 best interests of the child. *Unless otherwise required by this chapter, ~~The~~ court shall adopt ...*
10. Pg. 3: 4 Whether ~~there has been~~ *a parent has committed domestic violence or child abuse pursuant to as defined in Section 25-403.03.*
11. Pg. 3: 24-25 DELETE
12. Pg. 3: 38 the child. *In particular, the court shall provide specific findings to justify any decision to grant legal decision-making or unrestricted parenting time to a parent who has inflicted domestic violence or child abuse. Those findings shall identify which competing factors outweighed the*

significance of the offending parent's violence or abuse, and shall also thoroughly explain why the court determined that those competing factors were more relevant to the child's best interests.

13. Pg. 3: 45 ADDRESS CONFLICT WITH PAGE 2, LINES 43-45

25-403.03. Domestic violence and child abuse

14. Pg. 5: 17-21 DELETE

15. Pg. 5: 22-27 The court shall consider evidence of domestic violence *or child abuse* as being contrary to the best interests of the child, *irrespective of whether the child personally witnessed a particular event*. The court shall consider the safety and well-being of the child and of the victim of the act of domestic violence to be of primary importance. ~~The court shall consider a perpetrator's history of causing or threatening to cause physical harm to another person.~~

16. Pg. 5: 39-44 has committed *child abuse*, or an act of domestic violence against the other parent, there is a rebuttable presumption that an award of sole or joint legal decision-making is contrary to the child's best interests. ~~This presumption does not apply if both parents have committed an act of domestic violence.~~

17. Pg. 5: 44 INSERT NEW SUBSECTION (E):

E. For purposes of this subsection ...

18. Pg. 6: 1-7 DELETE AND REPLACE AS FOLLOWS:

(1) Physical or sexual violence, or any threat to commit the same;

(2) Conduct that places the victim in reasonable fear of bodily harm, irrespective of whether physical contact or injury results;

(3) Coercive control;

(4) Stalking, harassment, kidnapping or unlawful imprisonment, as those behaviors are defined in Article 13 of the Arizona Revised Statutes; or

(5) Violation of a domestic violence protective order.

This definition does not include any defensive behavior that would be legally justified under Sections 13-404 through -408.

19. Pg. 6: 8

INSERT NEW SUBSECTION (F):

For the purposes of this section, a person commits child abuse if that person does any of the following:

(a) Failure to provide food, clothing and shelter to a minor child, or neglect of a minor child's physical health, psychological condition or personal hygiene, to such an extent that it substantially endangers the child's welfare;

(b) Physically assaultive behavior against a minor child;

(c) Any form of sexual misconduct with a minor child; or

(d) Severe psychological abuse of a minor child resulting in demonstrable emotional harm.

20. Pg. 6: 8

~~EG.~~ To determine if the parent has rebutted the presumption *stated in Subsection D*, the court ...

21. Pg. 6: 13

~~2. Whether the parent has successfully completed a batterer's prevention program~~

... AND INSERT THE FOLLOWING:

2. The extent to which the offending parent inflicted domestic violence or child abuse against some other person in the past, or has recently done so with a new partner or child, and whether that parent has already received related counseling on past occasions.

3. In cases of mutual domestic 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.

4. Whether the offending parent continues to minimize or deny responsibility for the history of domestic violence or child abuse, or blame it on unrelated issues.

5. Whether the offending parent failed to disclose information to the other party required by Rules 49(B)(2), (3) and (4) of the Arizona Rules of Family Law Procedure, or ignored reasonable discovery requests for records related to domestic violence or child abuse.

6. *In cases involving domestic violence, whether the offending parent has completed an appropriate batterer intervention program, 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. For purposes of this subsection, “batterer intervention program” does not include anger management, impulse control, pastoral or couple’s counseling.*

7. *The passage of time since the last act of domestic violence or child abuse, and reasons for the absence of renewed misconduct.*

... AND THEN RE-LETTER THE EXISTING SUBSECTIONS THAT FOLLOW

- 22. Pg. 6: 25 parent has committed *child abuse* or an act of domestic violence ...
- 23. Pg. 6: 41 orders. *For purposes of this subsection, “program of intervention” does not include anger management, impulse control, pastoral or couple’s counseling.*
- 24. Pg. 6: 42 parent who committed the *child abuse* or act of domestic violence ...
- 25. Pg. 7: 12 perpetrator of domestic violence, *or require a domestic violence victim to personally supervise the offender’s parenting time, without the victim consent.* The court may provide a victim with written information ...
- 26. Pg. 7: 15 INSERT NEW SUBSECTIONS (H) and (I):

H. A parent’s residency in a shelter for victims of domestic violence shall not constitute grounds for denying that parent any degree of legal decision-making or parenting time. For purposes of this section, “shelter” means any facility meeting the definitions of Sections 36-3001(6) and 36-3005.

I. A victim of domestic violence may opt out of alternative dispute resolution (‘ADR’) ordered under Rule 67 or 68 of Arizona Rules of Family Law Procedure, but only to the extent that a suggested ADR procedure would require the parents to meet and confer in person. The court shall notify both parties of this right before requiring their participation in the ADR process. As used in this subsection only, “victim of domestic 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

domestic violence by the other parent; (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 domestic violence; or (4) a party who is currently the named victim in a pending criminal case against the other parent for an act of domestic violence.

... AND THEN RE-LETTER THE EXISTING SUBSECTIONS THAT FOLLOW

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Heading change

3 The chapter heading of title 25, chapter 4, Arizona Revised Statutes,
4 is changed from “CHILD CUSTODY AND VISITATION” to “LEGAL DECISION-MAKING AND
5 PARENTING TIME”.

6 Sec. 2. Heading change

7 The article heading of title 25, chapter 4, article 1, Arizona Revised
8 Statutes, is changed from “CHILD CUSTODY” to “LEGAL DECISION-MAKING AND
9 PARENTING TIME”.

10 Sec 3. Repeal

11 Sections 25-401 and 25-402, Arizona Revised Statutes, are repealed.

12 Sec. 4. Title 25, chapter 4, article 1, Arizona Revised Statutes, is
13 amended by adding sections 25-401 and 25-402, to read:

14 25-401 Definition

15 **IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:**

16 **1. “COERCIVE CONTROL” means A DISCERNABLE PATTERN OF EXCEPTIONALLY**
17 **CONTROLLING AND PSYCHOLOGICALLY DESTRUCTIVE BEHAVIORS INFLICTED BY ONE**
18 **PARENT AGAINST ANOTHER PARENT WHEN THE PERPETRATOR USES OR DOES ANY OF THE**
19 **FOLLOWING TO INTIMIDATE AND CONTROL THE OTHER PARENT.**

20 **(a) EMOTIONALLY ABUSE CONDUCT INTENDED TO Demean, DEGRADE OR**
21 **HUMILIATE THE VICTIM.**

22 **(b) UNREASONABLY RESTRICTS THE VICTIM’S LAWFUL ACTIVITIES, MALICIOUS**
23 **DAMAGE TO THE VICTIM’S FINANCIAL CREDIT OR EMPLOYMENT PROSPECTS OR**
24 **NONCONSENSUAL APPROPRIATION OF THE VICTIM’S IDENTITY FOR AN ILLEGITIMATE**
25 **PURPOSE.**

26 **(c) ATTEMPTS OR THREATENS SUICIDE, OR INJURY OR THREATS TO OTHER**
27 **PERSONS OR HOUSEHOLD PETS, AS A MEANS OF COERCING THE VICTIM’S COMPLIANCE**
28 **WITH THE OFFENDER’S WISHES.**

29 **(d) UNREASONABLY THREATENS TO WITHHOLD OR CONCEAL CHILDREN AS A MEANS**
30 **OF COERCING THE VICTIM’S COMPLIANCE WITH THE OFFENDER’S WISHES OR USING A**
31 **CHILD TO FACILITATE CRIMINAL CONDUCT AGAINST THE VICTIM.**

32 **(e) IMPEDES THE VICTIM’S ATTEMPT TO REPORT CRIMINAL BEHAVIOR TO LAW**
33 **ENFORCEMENT, MEDICAL PERSONNEL OR OTHER THIRD PARTIES BY FORCE, DURESS OR**
34 **COERCION.**

35 **(f) MONITORS THE VICTIM’S PRIVATE INTERNET ACTIVITIES, TELEPHONE**
36 **CONVERSATIONS OR OTHER COMMUNICATIONS WITHOUT CONSENT OR LEGITIMATE PURPOSE.**

37 **(g) OTHER EXCEPTIONALLY CONTROLLING BEHAVIOR THAT IS CONSISTENT WITH**
38 **THE CONDUCT DESCRIBED IN THIS PARAGRAPH OR THAT SOCIETY RECOGNIZES AS A**
39 **VIOLATION OF THE VICTIM’S LEGAL OR FUNDAMENTAL HUMAN RIGHTS.**

40 **2. “IN LOCO PARENTIS” A PERSON WHO HAS BEEN TREATED AS A PARENT**
41 **BY A CHILD AND WHO HAS FORMED A MEANINGFUL PARENTAL RELATIONSHIP WITH A CHILD**
42 **FOR A SUBSTANTIAL PERIOD OF TIME.**

43 **3. “JOINT LEGAL DECISION-MAKING” BOTH PARENTS SHARE**
44 **DECISION-MAKING AND NEITHER PARENT’S RIGHTS OR RESPONSIBILITIES ARE SUPERIOR**

1 EXCEPT WITH RESPECT TO SPECIFIED DECISIONS AS SET FORTH BY THE COURT OR THE
2 PARENTS IN THE FINAL JUDGMENT OR ORDER.

3 4. "LEGAL DECISION-MAKING" MEANS THE LEGAL RIGHT AND RESPONSIBILITY TO
4 MAKE ALL NONEMERGENCY LEGAL DECISIONS FOR A CHILD INCLUDING THOSE REGARDING
5 EDUCATION, HEALTH CARE, RELIGIOUS TRAINING AND PERSONAL CARE DECISIONS. FOR
6 THE PURPOSES OF INTERPRETING OR APPLYING ANY INTERNATIONAL TREATY, FEDERAL
7 LAW, A UNIFORM CODE OF THE STATUTES OF OTHER JURISDICTIONS OF THE UNITED
8 STATES, LEGAL DECISION-MAKING MEANS LEGAL CUSTODY.

9 5. "LEGAL PARENT" MEANS A BIOLOGICAL OR ADOPTIVE PARENT WHOSE PARENTAL
10 RIGHTS HAVE NOT BEEN TERMINATED. LEGAL PARENT DOES NOT INCLUDE A PERSON
11 WHOSE PATERNITY HAS NOT BEEN ESTABLISHED PURSUANT TO SECTION 25-812 OR
12 25-814.

13 6. "PARENTING TIME" MEANS THE SCHEDULE OF TIME DURING WHICH EACH
14 PARENT HAS ACCESS TO A CHILD AT SPECIFIED TIMES. EACH PARENT DURING THEIR
15 SCHEDULED PARENTING TIME IS RESPONSIBLE FOR PROVIDING THE CHILD WITH FOOD
16 CLOTHING AND SHELTER AND MAY MAKE ROUTINE DECISIONS CONCERNING THE CHILD'S
17 CARE.

18 7. "SOLE LEGAL DECISION MAKING" MEANS ONE PARENT HAS THE LEGAL RIGHT
19 AND RESPONSIBILITY TO MAKE MAJOR DECISIONS FOR A CHILD.

20 8. "VISITATION" MEANS A SCHEDULE OF TIME THAT OCCURS WITH A CHILD BY
21 SOMEONE OTHER THAN A LEGAL PARENT.

22 25-402 Jurisdiction

23 A. BEFORE IT CONDUCTS A PROCEEDING CONCERNING LEGAL DECISION-MAKING OR
24 PARENTING TIME, INCLUDING A PROCEEDING TO DETERMINE THE LEGAL DECISION-MAKING
25 OR VISITATION OF A NONPARENT, A COURT IN THIS STATE FIRST MUST CONFIRM ITS
26 AUTHORITY TO DO SO TO THE EXCLUSION OF ANY OTHER STATE, INDIAN TRIBE OR
27 FOREIGN NATION BY COMPLYING WITH THE UNIFORM CHILD CUSTODY JURISDICTION AND
28 ENFORCEMENT ACT, THE PARENTAL KIDNAPPING PREVENTION ACT AND ANY APPLICABLE
29 INTERNATIONAL LAW CONCERNING THE WRONGFUL ABDUCTION OR REMOVAL OF CHILDREN.

30 B. THE FOLLOWING PERSONS MAY REQUEST LEGAL DECISION-MAKING OR
31 PARENTING TIME UNDER THE FOLLOWING CIRCUMSTANCES:

32 1. A PARENT IN ANY PROCEEDING FOR MARITAL DISSOLUTION, LEGAL
33 SEPARATION, ANNULMENT PATERNITY, OR MODIFICATION OF AN EARLIER DECREE OR
34 JUDGMENT.

35 2. A PERSON OTHER THAN A PARENT, BY FILING A PETITION FOR THIRD PARTY
36 RIGHTS UNDER SECTION 25-409 IN THE COUNTY IN WHICH THE CHILD PERMANENTLY
37 RESIDES.

38 Sec. 5. Section 25-403, Arizona Revised Statutes, is amended to read:

39 25-403. Legal decision-making; parenting time; best interests
40 of child

41 A. The court shall determine ~~custody~~ LEGAL DECISION-MAKING AND
42 PARENTING TIME, either originally or on petition for modification, in
43 accordance with the best interests of the child. THE COURT SHALL ADOPT A
44 PARENTING PLAN THAT PROVIDES FOR BOTH PARENTS TO SHARE PARENTAL
45 DECISION-MAKING CONCERNING THEIR CHILD AND THAT MAXIMIZES EACH PARENT'S

1 TIME. THE COURT SHALL NOT PREFER ONE PARENT OVER THE OTHER DUE TO THE PARENT
2 OR CHILD’S SEX. The court shall consider all relevant factors, including:
3 1. THE CHILD’S PHYSICAL AND EMOTIONAL WELL-BEING.
4 2. WHETHER THERE HAS BEEN DOMESTIC VIOLENCE OR CHILD ABUSE PURSUANT
5 TO SECTION 25-403.03.
6 ~~1- 3.~~ The wishes of the child's parent or parents as to ~~custody~~ LEGAL
7 DECISION-MAKING AND PARENTING TIME.
8 ~~2- 4.~~ IF THE CHILD IS OF SUITABLE AGE AND MATURITY, the wishes of the
9 child as to ~~the custodian~~ LEGAL DECISION-MAKING AND PARENTING TIME PLAN.
10 ~~3- 5.~~ The interaction and interrelationship of the child with the
11 child's parent or parents, the child's siblings and any other person who may
12 significantly affect the child's best interest.
13 ~~4- 6.~~ The child's adjustment to home, school and community.
14 ~~5- 7.~~ The mental and physical health of all individuals involved.
15 ~~6- 8.~~ Which parent is more likely to allow the child frequent and
16 meaningful continuing contact with the other parent. This paragraph does not
17 apply if the court determines that a parent is acting in good faith to
18 protect the child from witnessing an act of domestic violence or being a
19 victim of domestic violence or child abuse.
20 ~~7- Whether one parent, both parents or neither parent has provided~~
21 ~~primary care of the child.~~
22 9. THE PAST, PRESENT AND POTENTIAL FUTURE RELATIONSHIP BETWEEN THE
23 PARENT AND THE CHILD.
24 10. THE EXTENT TO WHICH ONE PARENT COERCIVELY CONTROLLED THE OTHER
25 DURING THEIR RELATIONSHIP.
26 ~~8- 11.~~ The nature and extent of coercion or duress used by a parent
27 in obtaining an agreement regarding ~~custody~~ LEGAL DECISION-MAKING OR
28 PARENTING TIME.
29 ~~9- 12.~~ Whether a parent has complied with chapter 3, article 5 of
30 this title.
31 ~~10-13.~~ Whether either parent was convicted of an act of false
32 reporting of child abuse or neglect under section 13-2907.02.
33 ~~11- Whether there has been domestic violence or child abuse as defined in section~~
34 ~~25-403.03.~~
35 B. In a contested ~~custody~~ LEGAL DECISION-MAKING OR PARENTING TIME
36 case, the court shall make specific findings on the record about all relevant
37 factors and the reasons for which the decision is in the best interests of
38 the child.
39 Sec. 6 Section 25-403.01, Arizona Revised Statutes, is amended to
40 read:
41 25-403.01. Sole and joint legal decision-making and parenting
42 time
43 A. In awarding ~~child-custody~~ LEGAL DECISION-MAKING, the court may
44 order sole ~~custody~~ LEGAL DECISION-MAKING or joint ~~custody~~ LEGAL
45 DECISION-MAKING. This section does not create a presumption in favor of one

1 ~~custody~~ LEGAL DECISION-MAKING OR PARENTING TIME arrangement over another.
2 The court in determining ~~custody~~ LEGAL DECISION-MAKING AND PARENTING TIME
3 shall not prefer a parent as custodian because of that parent's sex.

4 B. The court may issue an order for joint ~~custody~~ LEGAL
5 DECISION-MAKING OR A PARENTING TIME PLAN over the objection of one of the
6 parents if the court makes specific written findings of why the order is in
7 the child's best interests. In determining whether joint ~~custody~~ LEGAL
8 DECISION-MAKING AND A PARENTING TIME PLAN is in the child's best interests,
9 the court shall consider the factors prescribed in section 25-403, subsection
10 A and all of the following:

11 1. The agreement or lack of an agreement by the parents regarding
12 joint ~~custody~~ LEGAL DECISION-MAKING OR A PARENTING TIME PLAN.

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

15 3. The past, present and future abilities of the parents to cooperate
16 in decision-making about the child to the extent required by the order of
17 joint ~~custody~~ LEGAL DECISION-MAKING.

18 4. Whether the joint ~~custody~~ LEGAL DECISION-MAKING arrangement OR
19 PARENTING TIME PLAN is logistically possible.

20 C. The court may issue an order for joint ~~custody~~ LEGAL
21 DECISION-MAKING of a child if both parents agree and submit a written
22 parenting plan and the court finds such an order is in the best interests of
23 the child. The court may order joint legal ~~custody~~ DECISION-MAKING without
24 ordering ~~joint-physical-custody~~ SUBSTANTIALLY EQUAL PARENTING TIME. AN ORDER
25 FOR SOLE LEGAL DECISION-MAKING DOES NOT ALLOW THE PARENT DESIGNATED AS
26 SOLE LEGAL DECISION-MAKER TO ALTER UNILATERALLY A COURT-ORDERED PARENTING
27 TIME PLAN.

28 D. A PARENT WHO IS NOT GRANTED SOLE OR JOINT LEGAL DECISION-MAKING IS
29 ENTITLED TO REASONABLE PARENTING TIME TO ENSURE THAT THE MINOR CHILD HAS
30 FREQUENT AND CONTINUING CONTACT WITH THE PARENT UNLESS THE COURT FINDS, AFTER
31 A HEARING, THAT PARENTING TIME WOULD SERIOUSLY ENDANGER THE CHILD’S PHYSICAL,
32 MENTAL, MORAL OR EMOTIONAL HEALTH.

33 Sec. 7. Section 25-403.02, Arizona Revised Statutes, is amended to
34 read:

35 **25-403.02. Parenting plans**

36 A. Before an award is made granting joint ~~custody~~ LEGAL
37 DECISION-MAKING, the parents shall submit a proposed parenting plan that
38 includes at least the following:

39 1. Each parent's rights and responsibilities for the personal care of the child and for
40 decisions in areas such as education, health care and
41 religious training.

42 2. A schedule of ~~the physical residence of~~ PARENTING TIME FOR the
43 child, including holidays and school vacations.

44 3. A PLAN FOR THE EXCHANGES OF THE CHILD.
45

1 ~~3.~~ 4. A procedure by which proposed changes, disputes and alleged
2 breaches may be mediated or resolved, which may include the use of
3 conciliation services or private counseling.

4 ~~4.~~ 5. A procedure for periodic review of the plan's terms by the
5 parents.

6 ~~5.~~ 6. A statement that the parties understand that joint ~~custody~~
7 does not necessarily mean equal parenting time.

8 ~~6.~~ 7. A statement that each party has read, understands and will
9 abide by the notification requirements of section 25-403.05, subsection B.

10 B. If the parents are unable to agree on any element to be included in
11 a parenting plan, the court shall determine that element. The court may
12 determine other factors that are necessary to promote and protect the
13 emotional and physical health of the child.

14 Sec. 8 Section 25-403.03, Arizona Revised Statutes, is amended to
15 read:

16 25-403.03. Domestic violence and child abuse

17 A. Notwithstanding subsection D of this section, joint ~~custody~~ LEGAL
18 DECISION-MAKING shall not be awarded if the court makes a finding of the
19 existence of significant domestic violence pursuant to section 13-3601 or if
20 the court finds by a preponderance of the evidence that there has been a
21 significant history of domestic violence.

22 B. The court shall consider evidence of domestic violence as being
23 contrary to the best interests of the child. The court shall consider the
24 safety and well-being of the child and of the victim of the act of domestic
25 violence to be of primary importance. The court shall consider a
26 perpetrator's history of causing or threatening to cause physical harm to
27 another person.

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

- 31 1. Findings from another court of competent jurisdiction.
- 32 2. Police reports.
- 33 3. Medical reports.
- 34 4. Child protective services records.
- 35 5. Domestic violence shelter records.
- 36 6. School records.
- 37 7. Witness testimony.

38 D. If the court determines that a parent who is seeking ~~custody~~ SOLE
39 OR JOINT LEGAL DECISION-MAKING has committed an act of domestic violence
40 against the other parent, there is a rebuttable presumption that an award of
41 ~~custody~~ SOLE OR JOINT LEGAL DECISION-MAKING to the parent who committed the
42 act of domestic violence is contrary to the child's best interests. This
43 presumption does not apply if both parents have committed an act of domestic
44 violence. For the purposes of this subsection, a person commits an act of
45 domestic violence if that person does any of the following:

- 1 1. Intentionally, knowingly or recklessly causes or attempts to cause
2 sexual assault or serious physical injury.
- 3 2. Places a person in reasonable apprehension of imminent serious
4 physical injury to any person.
- 5 3. Engages in a pattern of behavior for which a court may issue an ex
6 parte order to protect the other parent who is seeking child custody or to
7 protect the child and the child's siblings.
- 8 E. To determine if the parent has rebutted the presumption the court
9 shall consider all of the following:
 - 10 1. Whether the parent has demonstrated that being awarded sole ~~custody~~
11 or joint ~~physical~~-LEGAL DECISION-MAKING or ~~legal-custody~~ SUBSTANTIALLY EQUAL
12 PARENTING TIME is in the child's best interests.
 - 13 2. Whether the parent has successfully completed a batterer's
14 prevention program.
 - 15 3. Whether the parent has successfully completed a program of alcohol
16 or drug abuse counseling, if the court determines that counseling is
17 appropriate.
 - 18 4. Whether the parent has successfully completed a parenting class, if
19 the court determines that a parenting class is appropriate.
 - 20 5. If the parent is on probation, parole or community supervision,
21 whether the parent is restrained by a protective order that was granted after
22 a hearing.
 - 23 6. Whether the parent has committed any further acts of domestic
24 violence.
- 25 F. If the court finds that a parent has committed an act of domestic
26 violence, that parent has the burden of proving to the court's satisfaction
27 that parenting time will not endanger the child or significantly impair the
28 child's emotional development. If the parent meets this burden to the
29 court's satisfaction, the court shall place conditions on parenting time that
30 best protect the child and the other parent from further harm. The court
31 may:
 - 32 1. Order that an exchange of the child must occur in a protected
33 setting as specified by the court.
 - 34 2. Order that an agency specified by the court must supervise
35 parenting time. If the court allows a family or household member to
36 supervise parenting time, the court shall establish conditions that this
37 person must follow during parenting time.
 - 38 3. Order the parent who committed the act of domestic violence to
39 attend and complete, to the court's satisfaction, a program of intervention
40 for perpetrators of domestic violence and any other counseling the court
41 orders.
 - 42 4. Order the parent who committed the act of domestic violence to
43 abstain from possessing or consuming alcohol or controlled substances during
44 parenting time and for twenty-four hours before parenting time.
- 45

1 5. Order the parent who committed the act of domestic violence to pay
2 a fee ~~to the court to defray~~ FOR the costs of supervised parenting time.

3 6. Prohibit overnight parenting time.

4 7. Require a bond from the parent who committed the act of domestic
5 violence for the child's safe return.

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

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

11 G. The court shall not order joint counseling between a victim and the
12 perpetrator of domestic violence. The court may ~~refer a victim to~~
13 ~~appropriate counseling and shall~~ provide a victim with written information
14 about available community resources related to domestic violence.

15 H. The court may request or order the services of the division of
16 children and family services in the department of economic security if the
17 court believes that a child may be the victim of child abuse or neglect as
18 defined in section 8-201.

19 I. In determining whether the absence or relocation of a parent shall
20 be weighed against that parent in determining ~~custody~~ LEGAL DECISION-MAKING
21 or parenting time, the court may consider whether the absence or relocation
22 was caused by an act of domestic violence by the other parent.

23 Sec. 9 Section 25-403.04, Arizona Revised Statutes, is amended to
24 read:

25 25-403.04. Drug offenses

26 A. If the court determines that a parent has been convicted of any
27 drug offense under title 13, chapter 34 or any violation of section 28-1381,
28 28-1382 or 28-1383 within twelve months before the petition or the request
29 for ~~custody~~ LEGAL DECISION-MAKING OR PARENTING TIME is filed, there is a
30 rebuttable presumption that sole or joint ~~custody~~ LEGAL DECISION-MAKING by
31 that parent is not in the child's best interests. In making this
32 determination the court shall state its:

33 1. Findings of fact that support its determination that the parent was
34 convicted of the offense.

35 2. Findings that the ~~custody~~ LEGAL DECISION-MAKING or parenting time
36 arrangement ordered by the court appropriately protects the child.

37 B. To determine if the person has rebutted the presumption, at a
38 minimum the court shall consider the following evidence:

39 1. The absence of any conviction of any other drug offense during the
40 previous five years.

41 2. Results of random drug testing for a six month period that indicate
42 that the person is not using drugs as proscribed by title 13, chapter 34.

43
44
45

1 B. If the court finds there is a financial disparity between the
2 parties, the court may order payment of reasonable fees, expenses and costs
3 to allow adequate preparation.

4 Sec. 13 Section 25-403.09, Arizona Revised Statutes, is amended to
5 read:

6 25-403.09. Child support

7 A. For any ~~custody~~ PARENTING TIME order entered under this article,
8 the court shall determine an amount of child support in accordance with
9 section 25-320 and guidelines established pursuant to that section.

10 B. An award of joint ~~custody~~ LEGAL DECISION-MAKING OR A SUBSTANTIALLY
11 EQUAL PARENTING TIME PLAN does not diminish the responsibility of either
12 parent to provide for the support of the child.

13 Sec. 14 Section 25-404, Arizona Revised Statutes, is amended to read:

14 25-404. Temporary orders

15 A. A party to a ~~custody~~ LEGAL DECISION-MAKING AND PARENTING TIME
16 proceeding may move for a temporary ~~custody~~ order. This motion must be
17 supported by pleadings as provided in section 25-411. The court may award
18 temporary ~~custody~~ LEGAL DECISION-MAKING AND PARENTING TIME under the
19 standards of section 25-403 after a hearing, or, if there is no objection,
20 solely on the basis of the pleadings.

21 B. If a proceeding for dissolution of marriage or legal separation is
22 dismissed, any temporary ~~custody~~ LEGAL DECISION-MAKING OR PARENTING TIME
23 order is vacated unless a parent or the child's custodian moves that the
24 proceeding continue as a ~~custody~~ LEGAL DECISION-MAKING OR PARENTING TIME
25 proceeding and the court finds, after a hearing, that the circumstances of
26 the parents and the best interest of the child require that a ~~custody~~ LEGAL
27 DECISION-MAKING OR PARENTING TIME PLAN decree be issued.

28 C. If a ~~custody~~ LEGAL DECISION-MAKING OR PARENTING TIME proceeding
29 commenced in the absence of a petition for dissolution of marriage or legal
30 separation is dismissed, any temporary ~~custody~~ order thereby is vacated.

31 Sec. 15 Section 25-406, Arizona Revised Statutes, is amended to read:

32 25-406. Investigations and reports

33 A. In contested ~~custody~~ LEGAL DECISION-MAKING AND PARENTING TIME
34 proceedings, and in other custody proceedings if a parent or the child's
35 custodian so requests, the court may order an investigation and report
36 concerning ~~custodial~~ LEGAL DECISION-MAKING OR PARENTING TIME arrangements for
37 the child. The investigation and report may be made by the court social
38 service agency, the staff of the juvenile court, the local probation or
39 welfare department, or a private person. The report must include a written
40 affirmation by the person completing the report that the person has met the
41 training requirements prescribed in subsection C.

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

45

1 C. ~~Beginning on July 1, 2006, the~~ The court shall require A COURT
2 APPOINTED ATTORNEY FOR A CHILD, A COURT APPOINTED ADVISOR OR any person who
3 conducts an investigation or prepares a report pursuant to this section to
4 receive training that meets the minimum standards prescribed by the domestic
5 relations committee, established pursuant to section 25-323.02 as follows:

6 1. Six initial hours of TRAINING ON domestic violence ~~training~~ AND
7 INFORMATION ON COERCIVE CONTROLLING PATTERNS OF BEHAVIOR.

8 2. Six initial hours of child abuse training.

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

11 D. A person ~~that~~ WHO has completed professional training to become
12 licensed or certified may use that training to completely or partially
13 fulfill the requirements in subsection C if the training included at least
14 six hours each on domestic violence and child abuse ~~if the training~~ AND meets
15 the minimum standards prescribed by the domestic relations committee.
16 Subsequent professional training in these subject matters may be used to
17 partially or completely fulfill the training requirements prescribed in
18 subsection C if the training meets the minimum standards prescribed by the
19 domestic relations committee.

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

22 F. In preparing a report concerning a child, the investigator may
23 consult any person who may have information about the child or the child's
24 potential ~~custodial~~ LEGAL DECISION-MAKING AND PARENTING TIME arrangements.

25 G. The court shall mail the investigator's report to counsel at least
26 ten days BEFORE the hearing. The investigator shall make available
27 to counsel the names and addresses of all persons whom the investigator has
28 consulted. Any party to the proceeding may call for examination of the
29 investigator and any person consulted by the investigator.

30 Sec. 16 Section 25-407, Arizona Revised Statutes, is amended to read:

31 25-407. Legal decision-making and parenting time hearings;
32 priority; costs; record

33 A. ~~Custody~~ LEGAL DECISION-MAKING AND PARENTING TIME proceedings shall
34 receive priority in being set for hearing.

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

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

44 D. If the court finds that to protect the child's welfare, the record
45 of any interview, report, investigation, or testimony in a ~~custody~~ LEGAL

1 **DECISION-MAKING OR PARENTING TIME** proceeding should be kept secret, the court
2 may then make an appropriate order sealing the record.

3 Sec. 17 Section 25-408, Arizona Revised Statutes, is amended to read:

4 **25-408. Rights of each parent; parenting time; relocation of**
5 **child; exception; enforcement; access to records**

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

11 ~~B.~~ A. If by written agreement or court order both parents are
12 entitled to ~~custody~~ **JOINT LEGAL DECISION-MAKING** or **UNSUPERVISED** parenting
13 time and both parents reside in the state, at least sixty days' advance
14 written notice shall be provided to the other parent before a parent may do
15 either of the following:

- 16 1. Relocate the child outside the state.
- 17 2. Relocate the child more than one hundred miles within the state.

18 ~~C.~~ B. The notice required by this section shall be made by certified
19 mail, return receipt requested, or pursuant to the Arizona rules of family
20 law procedure. The court shall sanction a parent who, without good cause,
21 does not comply with the notification requirements of this subsection. The
22 court may impose a sanction that will affect ~~custody~~ **LEGAL DECISION-MAKING** or
23 parenting time only in accordance with the child's best interests.

24 ~~D.~~ C. Within thirty days after notice is made the nonmoving parent
25 may petition the court to prevent relocation of the child. After expiration
26 of this time any petition or other application to prevent relocation of the
27 child may be granted only on a showing of good cause. This subsection does
28 not prohibit a parent who is seeking to relocate the child from petitioning
29 the court for a hearing, on notice to the other parent, to determine the
30 appropriateness of a relocation that may adversely affect the other parent's
31 ~~custody~~ **LEGAL DECISION-MAKING** or parenting time rights.

32 ~~E.~~ D. Subsection ~~B~~ A of this section does not apply if provision for
33 relocation of a child has been made by a court order or a written agreement
34 of the parties that is dated within one year of the proposed relocation of
35 the child.

36 ~~F.~~ E. Pending the determination by the court of a petition or
37 application to prevent relocation of the child:

38 1. A parent with sole ~~custody~~ **LEGAL DECISION-MAKING** or a parent with
39 joint ~~custody~~ **LEGAL DECISION-MAKING** and primary ~~physical custody~~ **RESIDENCE OF**
40 **A CHILD** who is required by circumstances of health or safety or employment of
41 that parent or that parent's spouse to relocate in less than sixty days after
42 written notice has been given to the other parent may temporarily relocate
43 with the child.

44 2. A parent who shares joint ~~custody~~ **LEGAL DECISION-MAKING** and
45 substantially equal ~~physical custody~~ **PARENTING TIME** and who is required by

1 circumstances of health or safety or employment of that parent or that
2 parent's spouse to relocate in less than sixty days after written notice has
3 been given to the other parent may temporarily relocate with the child only
4 if both parents execute a written agreement to permit relocation of the
5 child.

6 ~~G.F.~~ The court shall determine whether to allow the parent to
7 relocate the child in accordance with the child's best interests. The burden
8 of proving what is in the child's best interests is on the parent who is
9 seeking to relocate the child. To the extent practicable the court shall
10 also make appropriate arrangements to ensure the continuation of a meaningful
11 relationship between the child and both parents.

12 ~~H.G.~~ The court shall not deviate from a provision of any parenting
13 plan or other written agreement by which the parents specifically have agreed
14 to allow or prohibit relocation of the child unless the court finds that the
15 provision is no longer in the child's best interests. There is a rebuttable
16 presumption that a provision from any parenting plan or other written
17 agreement is in the child's best interests.

18 ~~I.H.~~ In determining the child's best interests the court shall
19 consider all relevant factors including:

20 1. The factors prescribed under section 25-403.

21 2. Whether the relocation is being made or opposed in good faith and
22 not to interfere with or to frustrate the relationship between the child and
23 the other parent or the other parent's right of access to the child.

24 3. The prospective advantage of the move for improving the general
25 quality of life for the custodial parent or for the child.

26 4. The likelihood that the parent with whom the child will reside
27 after the relocation will comply with parenting time orders.

28 5. Whether the relocation will allow a realistic opportunity for
29 parenting time with each parent.

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

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

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

37 ~~J.I.~~ The court shall assess attorney fees and court costs against
38 either parent if the court finds that the parent has unreasonably denied,
39 restricted or interfered with court-ordered parenting time.

40 ~~K.J.~~ Pursuant to section 25-403.06, ~~the noncustodial~~ EACH parent is
41 entitled to have access to documents and other information about the child
42 unless the court finds that access would endanger seriously the child's or
43 ~~the custodial~~ A parent's physical, mental, moral or emotional health.

44 Sec 18. Repeal

45 Section 25-409, Arizona Revised Statutes, is repealed.

1 Sec. 19. Title 25, chapter 4, article 1, Arizona Revised Statutes, is
2 amended by adding a new section 25-409, to read:

3 25-409. Third party rights

4 A. PURSUANT TO SECTION 25-402, SUBSECTION B, PARAGRAPH 2, A PERSON
5 OTHER THAN A LEGAL PARENT MAY PETITION THE SUPERIOR COURT FOR LEGAL
6 DECISION-MAKING AUTHORITY OR PLACEMENT OF THE CHILD. THE COURT SHALL
7 SUMMARILY DENY A PETITION UNLESS IT FINDS THAT THE PETITIONER’S INITIAL
8 PLEADING ESTABLISHES THAT ALL OF THE FOLLOWING ARE TRUE:

9 1. THE PERSON FILING THE PETITION STANDS IN LOCO PARENTIS TO THE
10 CHILD.

11 2. IT WOULD BE SIGNIFICANTLY DETRIMENTAL TO THE CHILD TO REMAIN OR BE
12 PLACED IN THE CARE OF EITHER LEGAL PARENT WHO WISHES TO KEEP OR ACQUIRE LEGAL
13 DECISION-MAKING.

14 3. A COURT OF COMPETENT JURISDICTION HAS NOT ENTERED OR APPROVED AN
15 ORDER CONCERNING LEGAL DECISION-MAKING OR PARENTING TIME WITHIN ONE YEAR
16 BEFORE THE PERSON FILED A PETITION PURSUANT TO THIS SECTION, UNLESS THERE IS
17 REASON TO BELIEVE THE CHILD’S PRESENT ENVIRONMENT MAY SERIOUSLY ENDANGER THE
18 CHILD’S PHYSICAL, MENTAL, MORAL OR EMOTIONAL HEALTH.

19 4. ONE OF THE FOLLOWING APPLIES:

20 (a) ONE OF THE LEGAL PARENTS IS DECEASED.

21 (b) THE CHILD’S LEGAL PARENTS ARE NOT MARRIED TO EACH OTHER AT THE
22 TIME THE PETITION IS FILED.

23 (c) A PROCEEDING FOR DISSOLUTION OF MARRIAGE OR FOR LEGAL SEPARATION
24 OF THE LEGAL PARENTS IS PENDING AT THE TIME THE PETITION IS FILED.

25 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, IT IS A REBUTTABLE
26 PRESUMPTION THAT AWARDED LEGAL DECISION-MAKING TO A LEGAL PARENT SERVES THE
27 CHILD’S BEST INTERESTS BECAUSE OF THE PHYSICAL, PSYCHOLOGICAL AND EMOTIONAL
28 NEEDS OF THE CHILD TO BE REARED BY A LEGAL PARENT. A THIRD PARTY MAY REBUT
29 THIS PRESUMPTION ONLY WITH PROOF SHOWING BY CLEAR AND CONVINCING EVIDENCE
30 THAT AWARDED LEGAL DECISION-MAKING TO A LEGAL PARENT IS NOT CONSISTENT WITH
31 THE CHILD’S BEST INTERESTS.

32 C. PURSUANT TO SECTION 25-402, SUBSECTION B, PARAGRAPH 2, A PERSON
33 OTHER THAN A LEGAL PARENT MAY PETITION THE SUPERIOR COURT FOR VISITATION WITH
34 A CHILD. THE SUPERIOR COURT MAY GRANT VISITATION RIGHTS DURING THE CHILD’S
35 MINORITY ON A FINDING THAT THE VISITATION IS IN THE CHILD’S BEST INTERESTS
36 AND THAT ANY OF THE FOLLOWING IS TRUE:

37 1. ONE OF THE LEGAL PARENTS IS DECEASED OR HAS BEEN MISSING AT LEAST
38 THREE MONTHS. FOR THE PURPOSES OF THIS PARAGRAPH, A PARENT IS CONSIDERED TO
39 BE MISSING IF THE PARENT’S LOCATION HAS NOT BEEN DETERMINED AND THE PARENT
40 HAS BEEN REPORTED AS MISSING TO A LAW ENFORCEMENT AGENCY.

41 2. THE CHILD WAS BORN OUT OF WEDLOCK AND THE CHILD’S LEGAL PARENTS ARE
42 NOT MARRIED TO EACH OTHER AT THE TIME THE PETITION IS FILED.

43 3. FOR GRANDPARENT OR GREAT-GRANDPARENT VISITATION, THE MARRIAGE OF
44 THE PARENTS OF THE CHILD HAS BEEN DISSOLVED FOR AT LEAST THREE MONTHS.

1 4. FOR IN LOCO PARENTIS VISITATION, A PROCEEDING FOR DISSOLUTION OF
2 MARRIAGE OR FOR LEGAL SEPARATION OF THE LEGAL PARENTS IS PENDING AT THE TIME
3 THE PETITION IS FILED.

4 D. A PETITION FILED UNDER SUBSECTION A OR C OF THIS SECTION MUST BE
5 VERIFIED OR SUPPORTED BY AFFIDAVIT AND MUST INCLUDE DETAILED FACTS SUPPORTING
6 THE PETITIONER’S CLAIM. THE PETITIONER MUST ALSO PROVIDE NOTICE OF THIS
7 PROCEEDING, INCLUDING A COPY OF THE PETITION AND ANY AFFIDAVITS OR OTHER
8 ATTACHMENTS, AND SERVE THE NOTICE PURSUANT TO THE ARIZONA RULES OF FAMILY
9 LAW PROCEDURE TO ALL OF THE FOLLOWING:

10 1. THE CHILD’S LEGAL PARENTS.

11 2. A THIRD PARTY WHO POSSESSES LEGAL DECISION-MAKING AUTHORITY OVER
12 THE CHILD OR VISITATION RIGHTS.

13 3. THE CHILD’S GUARDIAN OR GUARDIAN AD LITEM.

14 4. A PERSON OR AGENCY THAT POSSESSES PHYSICAL CUSTODY OF THE CHILD OR
15 CLAIMS LEGAL DECISION-MAKING AUTHORITY OR VISITATION RIGHTS CONCERNING THE
16 CHILD.

17 5. ANY OTHER PERSON OR AGENCY THAT HAS PREVIOUSLY APPEARED IN THE
18 ACTION.

19 E. IN DECIDING WHETHER TO GRANT VISITATION TO A THIRD PARTY, THE COURT
20 SHALL GIVE SPECIAL WEIGHT TO THE LEGAL PARENTS’ OPINION OF WHAT SERVES THEIR
21 CHILD’S BEST INTERESTS AND CONSIDER ALL RELEVANT FACTORS INCLUDING:

22 1. THE HISTORICAL RELATIONSHIP, IF ANY, BETWEEN THE CHILD AND THE
23 PERSON SEEKING VISITATION.

24 2. THE MOTIVATION OF THE REQUESTING PARTY SEEKING VISITATION.

25 3. THE MOTIVATION OF THE PERSON OBJECTING TO VISITATION.

26 4. THE QUANTITY OF VISITATION TIME REQUESTED AND THE POTENTIAL ADVERSE
27 IMPACT THAT VISITATION WILL HAVE ON THE CHILD’S CUSTOMARY ACTIVITIES.

28 5. IF ONE OR BOTH OF THE CHILD’S PARENTS ARE DECEASED, THE BENEFIT IN
29 MAINTAINING AN EXTENDED FAMILY RELATIONSHIP.

30 F. IF LOGISTICALLY POSSIBLE AND APPROPRIATE, THE COURT SHALL ORDER
31 VISITATION BY A GRANDPARENT OR GREAT-GRANDPARENT IF THE CHILD IS RESIDING OR
32 SPENDING TIME WITH THE PARENT THROUGH WHOM THE GRANDPARENT OR
33 GREAT-GRANDPARENT CLAIMS A RIGHT OF ACCESS TO THE CHILD.

34 G. A GRANDPARENT OR GREAT-GRANDPARENT SEEKING VISITATION RIGHTS UNDER
35 THIS SECTION SHALL PETITION IN THE SAME ACTION IN WHICH THE FAMILY COURT
36 PREVIOUSLY DECIDED LEGAL DECISION-MAKING AND PARENTING TIME OR, IF NO SUCH
37 CASE EXISTED, BY SEPARATE PETITION IN THE COUNTY OF THE CHILD’S HOME STATE,
38 AS DEFINED IN SECTION 25-1002.

39 H. ALL VISITATION RIGHTS GRANTED UNDER THIS SECTION AUTOMATICALLY
40 TERMINATE IF THE CHILD IS ADOPTED OR PLACED FOR ADOPTION. IF THE CHILD IS
41 REMOVED FROM AN ADOPTIVE PLACEMENT, THE COURT MAY REINSTATE THE VISITATION
42 RIGHTS. THIS SUBSECTION DOES NOT APPLY IF THE CHILD IS ADOPTED BY THE SPOUSE
43 OF A NATURAL PARENT AFTER THE NATURAL PARENT REMARRIES.

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1 distance away from the parent’s residence a court shall not enter a final
2 order modifying parental rights and responsibilities and parent-child contact
3 in an existing order until ninety days after the deployment ends, unless a
4 modification is agreed to by the deploying parent.

5 C. The court shall not consider a parent’s absence caused by
6 deployment or mobilization or the potential for future deployment or
7 mobilization as the sole factor supporting a real, substantial and
8 unanticipated change in circumstances pursuant to this section.

9 D. On motion of a deploying or nondeploying, mobilizing or absent
10 military parent, the court, after a hearing, shall enter a temporary order
11 modifying parental rights and responsibilities or parent-child contact during
12 the period of deployment or mobilization if:

13 1. A military parent who has ~~custody~~ LEGAL DECISION-MAKING or
14 parenting time pursuant to an existing court order has received notice from
15 military leadership that the military parent will deploy or mobilize in the
16 near future.

17 2. The deployment or mobilization would have a material effect on the
18 military parent’s ability to exercise parental rights and responsibilities or
19 parent-child contact.

20 E. On motion of a deploying parent, if reasonable advance notice is
21 given and good cause is shown, the court shall allow that parent to present
22 testimony and evidence by electronic means with respect to parenting time or
23 parent-child contact matters instituted pursuant to this section if the
24 deployment of that parent has a material effect on that parent’s ability to
25 appear in person at a regularly scheduled hearing. For the purposes of this
26 subsection, “electronic means” includes communication by telephone or video
27 teleconference.

28 F. The court shall hear motions for modifications because of deployment
29 as expeditiously as possible.

30 G. If a military parent receives military temporary duty, deployment,
31 activation or mobilization orders that involve moving a substantial distance
32 away from the military parent’s residence or that otherwise have a material
33 effect on the military parent’s ability to exercise parenting time, at the
34 request of the military parent, for the duration of the military parent’s
35 absence the court may delegate the military parent’s parenting time, or a
36 portion of that time, to a child’s family member, including a stepparent, or
37 to another person who is not the child’s parent but who has a close and
38 substantial relationship to the minor child, if the court determines that is
39 in the child’s best interest. The court shall not allow the delegation of
40 parenting time to a person who would be subject to limitations on parenting
41 time. The parties shall attempt to resolve disputes regarding delegation of
42 parenting time through the dispute resolution process specified in their
43 parenting plan, unless excused by the court for good cause shown. A court
44 order pursuant to this subsection does not establish separate rights to
45 parenting time for a person other than a parent.

1 H. All temporary modification orders pursuant to this section shall
2 include a specific transition schedule to facilitate a return to the
3 predeployment order within ten days after the deployment ends, taking into
4 consideration the child’s best interests.

5 I. A ~~custody~~ decree or order that a court enters in contemplation of
6 or during the military deployment of a ~~custodial~~ parent outside of the
7 continental United States shall specifically reference the deployment and
8 include provisions governing the ~~custody~~ LEGAL DECISION-MAKING OR PARENTING
9 TIME ARRANGEMENTS, OR BOTH, of the minor child after the deployment ends.
10 Either parent may file a petition with the court after the deployment ends to
11 modify the decree or order, in compliance with subsection L of this section.
12 The court shall hold a hearing or conference on the petition within thirty
13 days after the petition is filed.

14 J. The court may modify an order granting or denying parenting time
15 rights whenever modification would serve the best interest of the child, but
16 the court shall not restrict a parent's parenting time rights unless it finds
17 that the parenting time would endanger seriously the child's physical,
18 mental, moral or emotional health.

19 K. If after a ~~custody~~ LEGAL DECISION-MAKING or parenting time order is
20 in effect one of the parents is charged with a dangerous crime against
21 children as defined in section 13-705, child molestation as defined in
22 section 13-1410 or an act of domestic violence as prescribed in section
23 13-3601 in which the victim is a minor, the other parent may petition the
24 court for an expedited hearing. Pending the expedited hearing, the court may
25 suspend parenting time or change ~~custody~~ LEGAL DECISION-MAKING ex parte.

26 L. To modify any type of ~~custody~~ LEGAL DECISION-MAKING OR PARENTING
27 TIME order a person shall submit an affidavit or verified petition setting
28 forth detailed facts supporting the requested modification and shall give
29 notice, together with a copy of the affidavit or verified petition, to other
30 parties to the proceeding, who may file opposing affidavits. The court shall
31 deny the motion unless it finds that adequate cause for hearing the motion is
32 established by the pleadings, in which case it shall set a date for hearing
33 on why the requested modification should not be granted.

34 M. The court shall assess attorney fees and costs against a party
35 seeking modification if the court finds that the modification action is
36 vexatious and constitutes harassment.

37 N. Subsection L of this section does not apply if the requested relief
38 is for the modification or clarification of ~~visitation~~ PARENTING TIME and not
39 for a change of ~~joint custody, joint legal custody, joint physical custody or~~
40 ~~sole custody~~ LEGAL DECISION-MAKING.

41 Sec. 22 Section 25-413, Arizona Revised Statutes, is amended to read:

42 25-413. Domestic relations education and mediation fund; report

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

1 B. The presiding judge of the superior court shall use fund monies to
2 establish, maintain and enhance programs designed to educate persons about
3 impacts on children of dissolution of marriage, legal separation and
4 restructuring of families and programs for mediation of ~~visitation~~ PARENTING
5 TIME or ~~custody~~ LEGAL DECISION-MAKING disputes under this chapter or chapter
6 of this title.

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

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

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

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

18 Sec 23. Repeal

19 Section 25-415, Arizona Revised Statutes, is repealed.

20 Sec. 24. Title 25, chapter 4, article 1, Arizona Revised Statutes, is
21 amended by adding a new section 25-415, to read:

22 25-415. Sanctions for litigation misconduct

23 A. THE COURT SHALL SANCTION A LITIGANT FOR COSTS AND REASONABLE
24 ATTORNEY FEES INCURRED BY AN ADVERSE PARTY IF THE COURT FINDS BY CLEAR AND
25 CONVINCING EVIDENCE THAT THE LITIGANT HAS DONE ANY ONE OR MORE OF THE
26 FOLLOWING:

27 1. INTENTIONALLY PRESENTED A CLAIM UNDER SECTION 25-402, SUBSECTION B
28 WITH FULL KNOWLEDGE THAT THE CLAIM WAS FALSE.

29 2. INTENTIONALLY ACCUSED AN ADVERSE PARTY OF MAKING A FALSE CLAIM
30 UNDER SECTION 25-402, SUBSECTION B WITH FULL KNOWLEDGE THAT THE CLAIM WAS
31 ACTUALLY TRUE.

32 3. VIOLATED A COURT ORDER COMPELLING DISCLOSURE OR DISCOVERY UNDER
33 RULE 65 OF THE ARIZONA RULES OF FAMILY LAW PROCEDURE, UNLESS THE COURT FINDS
34 THAT THE FAILURE TO OBEY THE ORDER WAS SUBSTANTIALLY JUSTIFIED OR THAT OTHER
35 CIRCUMSTANCES MAKE AN AWARD OF EXPENSES UNJUST.

36 B. IF THE COURT MAKES A FINDING AGAINST ANY LITIGANT UNDER SUBSECTION
37 A OF THIS SECTION, IT MAY ALSO:

38 1. IMPOSE ADDITIONAL FINANCIAL SANCTIONS ON BEHALF OF AN AGGRIEVED
39 PARTY WHO CAN DEMONSTRATE ECONOMIC LOSS DIRECTLY ATTRIBUTABLE TO THE
40 LITIGANT’S MISCONDUCT.

41 2. INSTITUTE CIVIL CONTEMPT PROCEEDINGS ON ITS OWN INITIATIVE OR ON
42 REQUEST OF AN AGGRIEVED PARTY, WITH PROPER NOTICE AND AN OPPORTUNITY TO BE
43 HEARD.

44 3. MODIFY PARENTAL DECISION-MAKING OR PARENTING TIME, IF THAT MODIFICATION
45 WOULD ALSO SERVE THE BEST INTERESTS OF THE CHILD.

1 C. THIS SECTION SHALL NOT PREVENT THE COURT FROM AWARDING COSTS AND
2 ATTORNEY FEES, OR IMPOSING OTHER SANCTIONS IF AUTHORIZED ELSEWHERE BY STATE OR
3 FEDERAL LAW.

4 Sec. 25. Section 252-803, Arizona Revised Statutes, is amended to read:

5 **25-803.** Persons who may originate proceedings; legal
6 decision-making; parenting time; conciliation court

7 A. Proceedings to establish the maternity or paternity of a child or
8 children and to compel support under this article may be commenced by any of
9 the following:

10 1. The mother.

11 2. The father.

12 3. The guardian, conservator or best friend of a child or children
13 born out of wedlock.

14 4. A public welfare official or agency of the county where the child
15 or children reside or may be found.

16 5. The state pursuant to section 25-509.

17 B. An adult may bring an action to establish the adult's biological
18 parent.

19 C. Any party to a proceeding under this article other than the state
20 may request that ~~custody~~ LEGAL DECISION-MAKING and specific parenting time be
21 determined as a part of the proceeding. When paternity is established the
22 court may award ~~custody~~ LEGAL DECISION-MAKING and parenting time as
23 provided in section 25-408. The attorney general or county attorney shall
24 not seek or defend any ancillary matters such as ~~custody~~ LEGAL
25 DECISION-MAKING or parenting time.

26 D. In any case in which paternity is established the parent with whom
27 the child has resided for the greater part of the last six months shall have
28 legal ~~custody~~ LEGAL DECISION-MAKING unless otherwise ordered by the court.

29 E. The services of the conciliation court may be used in regard to
30 disputed matters of ~~custody~~ LEGAL DECISION-MAKING and parenting time.

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