

Substantive Law Workgroup
Steve Wolfson, Chairperson

Court Procedures Workgroup
Dr. Brian Yee, Chairperson

DOMESTIC RELATIONS COMMITTEE

March 25, 2011

12:00 – 1:30 p.m.

Arizona State Courts Building - AOC
1501 W. Washington St., Conference Room 230
Phoenix, Arizona 85007

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

Action Item/Vote: _____ Approval of 11-23-10 minutes

Action Item/Vote: _____ Approval of 03-11-11 minutes

2. Procedures Review*Chairmen*

3. Hospital Paternity Program.....*Margie Cook*
Director of Outreach and Community Initiatives, DCSE

4. Review of Comment Forms.....*Chairmen*

5. Review proposed custody rewrite.....*Workgroup members*

Action Item/Vote: _____ Provisions of custody rewrite

6. 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.

7. Set next meeting agenda*Chairmen*

Next Meeting

April 8, 2011, 12:00 p.m. to 1:30 p.m.

Arizona State Courts Building, 1501 W. Washington, Phoenix, Arizona
Conference Room: 230

Please contact Kathy Sekardi at (602) 452-3253, with any 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 Workgroup

Minutes

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| Date: November 23, 2010 | Time: 12:00 – 1:30 p.m. | Location: Conference Room 119A |
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Minute Taker: Susan Pickard

Members Attending:

- | | |
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| <input checked="" type="checkbox"/> Steve Wolfson <input checked="" type="checkbox"/> Brian Yee <input checked="" type="checkbox"/> Thomas Alongi <input type="checkbox"/> Sidney Buckman <input checked="" type="checkbox"/> Daniel Cartagena <input checked="" type="checkbox"/> Judge Sharon Douglas | <input type="checkbox"/> Grace Hawkins <input type="checkbox"/> Ella Maley <input checked="" type="checkbox"/> Robert Reuss <input type="checkbox"/> Laura Sabin Cabanillas <input type="checkbox"/> Russell Smolden <input type="checkbox"/> Thomas Wing |
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Staff/Admin. Support: Susan Pickard

Guests: Sarah Youngblood, Kendra Leiby, Lindsay Simmon, Ingrid Garvey, Gina, Bill Fabricius

Matters Considered: (continue on separate sheet if necessary)

The workgroup discussed the proposed amendments to A.R.S. § 25-408; relocation as drafted by the Relocation Subgroup. Concerns regarding the draft amendments included:

- the provision of all contact information vs keeping the other parent up-to-date with one means of contact and repercussions of non-compliance;
- inclusion of a provision regarding post-decree domestic violence events and exempting the victim from the requirement to keep the other parent up-to-date with contact information;
- more clearly delineating the notice requirements for a move with little or no impact on the parenting plan from the notice requirements and avenues for objecting to the relocation of a child in instances where there is substantial or adverse impact to the parenting plan;
- address the issue of persons who rent their home and can receive as little as a 30-day notice that their lease is not going to be renewed in the temporary order provision; and
- simplify the language and organization of this section for the benefit of pro se litigants.

The proposed amendments and concerns will be returned to the Relocation Workgroup for consideration preferably before the December 3 meeting of the DRC.

Votes Taken: (continue on separate sheet if necessary)

No votes were taken

25-812. Voluntary acknowledgment of paternity; action to overcome paternity

A. This state or the parent of a child born out of wedlock may establish the paternity of a child by filing one of the following with the clerk of the superior court, the department of economic security or the department of health services:

1. A notarized or witnessed statement that contains the social security numbers of both parents and that is signed by both parents acknowledging paternity or two separate substantially similar notarized or witnessed statements acknowledging paternity. If the voluntary acknowledgment is filed with the court, the filing party must redact any social security numbers and file them separately pursuant to section 25-501, subsection G. If another man is presumed to be the child's father pursuant to section 25-814, an acknowledgment of paternity is valid only with the presumed father's written consent or as prescribed pursuant to section 25-814. A statement that is witnessed by an employee of the department of economic security or the department of health services or by an employee of a hospital must contain the printed name and residential or business address of the witness. A statement that is witnessed by any other person must contain the printed name and residential address of the witness. If the acknowledgment of paternity is witnessed, the witness must be an adult who is not related to either parent by blood or by marriage.

2. An agreement by the parents to be bound by the results of genetic testing including any genetic test previously accepted by a court of competent jurisdiction, or any combination of genetic testing agreed to by the parties, and an affidavit from a certified laboratory that the tested father has not been excluded.

B. On filing a document required in subsection A of this section with the clerk of the superior court, the clerk or authorized court personnel shall issue an order establishing paternity, which may amend the name of the child or children, if requested by the parents. The clerk shall transmit a copy of the order of paternity to the department of health services and the department of economic security.

C. On entry of an order by the clerk of the superior court, the paternity determination has the same force and effect as a judgment of the superior court. In a non-title IV-D case, the clerk shall transmit a copy of an order granted under this subsection to the state title IV-D agency. The case filing fee prescribed by section 12-284 shall not be charged to any person who, in the same county, initiates or responds to a proceeding to establish child support or to obtain an order for custody or parenting time within ninety days after an order establishing paternity is issued under subsection B of this section.

D. A voluntary acknowledgment of paternity executed pursuant to subsection A, paragraph 1 of this section may be filed with the department of economic security, which shall provide a copy to the department of health services. A voluntary acknowledgment of paternity made pursuant to this section is a determination of paternity and has the same force and effect as a superior court judgment.

E. Pursuant to rule 85(c) of the Arizona rules of family law procedure, the mother, father or child, or a party to the proceeding on a rule 85(c) motion, may challenge a voluntary acknowledgment of paternity established in this state at any time after the sixty day period only on the basis of fraud, duress or material mistake of fact, with the burden of proof on the challenger and under which the legal responsibilities, including child support obligations of any signatory arising from the acknowledgment shall not be suspended during the challenge except for good cause shown. The court shall order the mother, her child or children and the alleged father to submit to genetic testing and shall direct that appropriate testing procedures determine the inherited characteristics, including blood and tissue type. If the court finds by clear and convincing evidence that the genetic tests demonstrate that the established father is not the biological father of the child, the court shall vacate the determination of paternity and terminate the obligation of that party to pay ongoing child support. An order vacating the determination of paternity operates prospectively only and does not alter the obligation to pay child support arrearages or, unless otherwise ordered by the court, any other amount previously ordered to be paid pursuant to section 25-809.

F. Before signing a voluntary acknowledgment of paternity pursuant to this section, the parties shall be provided notice of the alternatives to, the legal consequences of and the rights and responsibilities that arise from signing the acknowledgment.

G. The department of economic security shall notify the department of health services of all paternity determinations and rescissions.

H. The mother or the father may rescind the acknowledgment of paternity within the earlier of:

1. Sixty days after the last signature is affixed to the notarized acknowledgment of paternity that is filed with the department of economic security, the department of health services or the clerk of the court.
2. The date of a proceeding relating to the child, including a child support proceeding in which the mother or father is a party.

I. A rescission authorized pursuant to subsection H of this section must be in writing and a copy of each rescission of paternity shall be filed with the department of economic security. The department of economic security shall mail a copy of the rescission of paternity to the other parent and to the department of health services.

J. Voluntary acknowledgments of paternity and rescissions of paternity filed pursuant to this section shall contain data elements in accordance with the requirements of the United States secretary of health and human services.

25-814. Presumption of paternity

A. A man is presumed to be the father of the child if:

1. He and the mother of the child were married at any time in the ten months immediately preceding the birth or the child is born within ten months after the marriage is terminated by death, annulment, declaration of invalidity or dissolution of marriage or after the court enters a decree of legal separation.

2. Genetic testing affirms at least a ninety-five per cent probability of paternity.

3. A birth certificate is signed by the mother and father of a child born out of wedlock.

4. A notarized or witnessed statement is signed by both parents acknowledging paternity or separate substantially similar notarized or witnessed statements are signed by both parents acknowledging paternity.

B. If another man is presumed to be the child's father under subsection A, paragraph 1, an acknowledgment of paternity may be effected only with the written consent of the presumed father or after the presumption is rebutted. If the presumed father has died or cannot reasonably be located, paternity may be established without written consent.

C. Any presumption under this section shall be rebutted by clear and convincing evidence. If two or more presumptions apply, the presumption that the court determines, on the facts, is based on weightier considerations of policy and logic will control. A court decree establishing paternity of the child by another man rebuts the presumption.

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ARTICLE 2.
INTRODUCTION AND PRELIMINARY REQUIREMENTS

25-420. Public policy

Absent evidence to the contrary, it serves a child’s best interests for both legal parents to:

- A. Share parental decision-making concerning their child;
- B. Have substantial, frequent, meaningful and continuing parenting time with their child;
- C. Develop a mutually agreeable parental decision-making and parenting time plan.

25-421. Jurisdiction [Former A.R.S. § 25-401]

A. Before conducting any proceeding concerning parental decision-making or parenting time, including any proceeding scheduled to decide the custody or visitation of a non-parent, all Arizona courts shall first confirm their authority to do so to the exclusion of any other state, Indian tribe or foreign nation by complying with the Uniform Child Custody Jurisdiction and Enforcement Act (‘UCCJEA’), at ARIZONA REVISED STATUTES SECTIONS 25-1001 TO 25-1067, Parental Kidnapping Prevention Act (‘PKPA’) at 28 UNITED STATES CODE SECTION 1738A, and any applicable international law concerning the wrongful abduction or removal of children.

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

- 1. A PARENT, IN ANY PROCEEDING FOR MARITAL DISSOLUTION, LEGAL SEPARATION, PATERNITY, OR MODIFICATION OF AN EARLIER DECREE.
- 2. BY A PERSON OTHER THAN A PARENT, BY FILING A PETITION FOR THIRD-PARTY RIGHTS UNDER SECTION 25-450 IN THE COUNTY IN WHICH THE CHILD PERMANENTLY RESIDES.

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

- 1. “In loco parentis” means a person who has been treated as a parent by the child and who has formed a meaningful parental relationship with the child for a substantial period of time.
- 2. “Legal parent” means a biological or adoptive parent whose parental rights have not been terminated.
- 3. “Parental decision-making” means the legal right and responsibility to make major life decisions affecting the health, welfare and education of a child, including - but not limited to - schooling, religion, daycare, medical treatment, counseling, commitment to alternative long-term facilities, authorizing powers of attorney, granting or refusing parental consent where legally required, entitlement to notifications from third parties on behalf of

Comment [KS1]: Domestic violence definitions moved to the beginning of Article 4, except the definitions for “strangulation” and “suffocation”. These definitions were moved to new subsection (E) in 25-441.

1 the child, employment, enlistment in the armed forces, passports, licensing
2 and certifications, and blood donation. For purposes of interpreting or
3 applying any international treaty, federal law, uniform code or other state
4 statute, “parental decision-making” shall mean the same as “legal custody.”

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

11 (B) “Final parental decision-making” means one parent is ultimately
12 responsible for child-related decisions, but must still reasonably consult with
13 the other before exercising this authority.

14 (C) “Sole parental decision-making” means one parent is exclusively
15 responsible for child-related decisions, and does not require any level of
16 consultation with the other before the authority is exercised.

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

24 5. “Visitation” involves the same rights and responsibilities as parenting
25 time when exercised by a non-parent.

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28 **25-423. Mandatory Preliminary Inquiry: Special Circumstances [New]**

29 Before evaluating the best interests of the child and deciding parental
30 decision-making and parenting time, the court shall first determine whether
31 special circumstances exist under SECTIONS 25-440 through 25-443 (Intimate
32 Partner Violence & Child Abuse), SECTION 25-444 (Substance Abuse), SECTION
33 25-445 (Dangerous Crimes Against Children) or SECTION 25-446 (Violent & Serial
34 Felons). If so, the court shall enter parental decision-making and parenting
35 time orders in accordance with those statutes. If not, the court shall proceed
36 directly to the general provisions of SECTIONS 25-430 through 25-432 to devise
37 a parenting plan that allocates parental decision-making and parenting time
38 consistent with the child’s best interests.

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41 **25-424. Specific Findings Required [New]**

42 In any evidentiary hearing involving parental decision-making, parenting time
43 or third-party rights, including both temporary orders and trial, the court shall
44 make specific findings on the record about all relevant factors and reasons for

1 why the judicial decision serves a child’s best interests. The findings shall
2 include a description of any special circumstances established by the evidence,
3 and an explanation for the court’s decision in light of the controlling rules.
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5 ARTICLE 3.
6 PARENTING PLANS, DECISION-MAKING AND PARENTING TIME:
7 CASES WITHOUT SPECIAL CIRCUMSTANCES
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9 **25-430. Parenting Plans** [Former A.R.S. § 25-403.02]

10 A. Consistent with the child’s physical and emotional well-being, the
11 court shall adopt a parenting plan that provides for both parents to share
12 parental decision-making concerning their child and maximizes their respective
13 parenting time. The court shall not prefer one parent over the other due to
14 gender.

15 B. If a child’s parents cannot agree to a plan for parental decision-
16 making or parenting time, each shall submit to the court a detailed, proposed
17 parenting plan.

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

19 1. A designation of the parental decision-making plan as either shared,
20 final or sole, as defined in SECTION 25-422(9).

21 2. Each parent’s rights and responsibilities for making decisions
22 concerning the child in areas such as education, health care, religion,
23 extracurricular activities and personal care.

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

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

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

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

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

34 8. A statement that each party has read, understands and will abide by
35 the notification requirements of SECTION 25-445(B) pertaining to access of sex
36 offenders to a child.

37 D. The parties may agree to any level of shared or sole parental
38 decision-making without regard to the distribution of parenting time.
39 Similarly, the degree of parenting time exercised by each parent has no effect
40 on who exercises parental decision-making.
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1 **25-431. Parental Decision-Making; Shared, Final or Sole** [Former A.R.S. § 25-
2 403.01]

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

- 6 1. The agreement or lack of an agreement by the parents regarding the
7 parental decision-making plan.
- 8 2. Whether a parent’s lack of agreement is unreasonable or influenced
9 by an issue not related to the best interests of the child.
- 10 3. Whether an award of final or sole parental decision-making would be
11 abused.
- 12 4. The past, present and future willingness and ability of the parents to
13 cooperate in decision-making about the child.
- 14 5. Whether the parental decision-making plan is logistically possible.

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16 **25-432. Parenting Time** [New]

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

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

Comment [KS2]: Need at least two subunits involved. If “A”, need a “B”.

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ARTICLE 4.
SPECIAL CIRCUMSTANCES

25-XXX. DEFINITIONS

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. “Batterer’s intervention program” means an individual or group treatment program for intimate partner violence offenders that:
 - (a) Emphasizes personal responsibility;
 - (b) Clearly identifies intimate partner violence as a means of asserting power and control over another individual;
 - (c) Does not primarily or exclusively focus on anger or stress management, impulse control, conflict resolution or communication skills;
 - (d) Does not involve the participation or presence other family members, including the victim or children; and
 - (e) Preserves records establishing an offender’s participation, contribution and progress toward rehabilitation, irrespective of whether a given session involves individual treatment or group therapy including multiple offenders.
2. “Child abuse” means any of the following acts where the relationship between the offender and victim qualifies under SECTION 13-3601(A)(5), including any attempt, conspiracy or solicitation of another to commit such act:
 - (a) Endangerment, as defined IN SECTION 13-1201.
 - (B) Threatening or intimidating, as defined IN SECTION 13-1202(A).
 - (C) Assault, as defined IN SECTION 13-1203(A).
 - (D) Aggravated assault, as defined IN SECTION 13-1204(A)(1) - (5).
 - (E) Child abuse, as defined IN SECTION 13-3623.
3. “Conviction” shall include guilty, “no contest” and Alford pleas, and guilty verdicts issued by a trier of fact.
4. “Deferred prosecution” and “diversion” means any program offered by a criminal court or government agency through which an alleged offender avoids criminal prosecution by agreeing to pay a fine, participate in counseling, or perform other remedial tasks in exchange for dismissal of one or more pending charges or a promise by the state not to proceed with a complaint or indictment.
5. “Intimate partner violence” means any act DEFINED IN SECTION 13-3601(A), as well as any other act of physical or sexual violence constituting a felony, where inflicted by a person against an intimate partner. This definition also includes any attempt, conspiracy, or solicitation of another to commit such act. It does not include any behavior that would constitute self-defense or other legal justification as defined by 13-404 through 408.
6. “Intimate partners” means persons whose relationship with each other qualifies PURSUANT TO SECTIONS 13-3601(A)(1), (2), (3) OR (6).

Comment [KS3]: Moved from 25-422 to Article 4

1 7. "Intimate partner violence" means any act AS DEFINED IN SECTION
2 13-3601(A), as well as any other act of physical or sexual violence constituting
3 a felony, where inflicted by a person against an intimate partner. This
4 definition also includes any attempt, conspiracy, or solicitation of another to
5 commit such act. It does not include any behavior that would constitute self-
6 defense or other legal justification as defined by SECTIONS 13-404 through 408.

7 8. "Intimate partners" means persons whose relationship with each
8 other qualifies PURSUANT TO SECTIONS 13-3601(A)(1), (2), (3) OR (6).

9 9. "Special circumstance" refers to conduct requiring application of one
10 or more mandatory rules PURSUANT TO SECTIONS 25-440 through -446.

11 12 13 **25-440. Intimate Partner Violence and Child Abuse: Basic Principles**

14 [Former A.R.S. § 25-403.03(B)]

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

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

27 28 29 **25-441. Intimate Partner Violence and Child Abuse: Parental Decision-** 30 **making**

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

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

43 B. How a Confirmed Offender May Prove Suitability for Parental
44 Decision-Making. To determine if the offending parent may exercise parental

1 decision-making, despite the proven history of intimate partner violence or
2 child abuse, and in addition to any other relevant, mitigating evidence, the
3 court shall consider whether that parent has:

4 1. Completed a batterer's intervention program, as defined SECTION 25-
5 422(1), in cases involving intimate partner violence, and has also disclosed and
6 submitted into evidence a complete set of treatment records proving an
7 acceptable level of rehabilitation. A mere certificate of completion does not
8 alone prove rehabilitation. The treatment records themselves must exhibit
9 active involvement and positive steps by the offending parent during therapy.

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

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

16 4. Demonstrated sincere remorse and acceptance of personal
17 responsibility by words and conduct following the confirmed act of intimate
18 partner violence or child abuse.

19 C. Reasons to Refuse Parental Decision-Making to an Offender. To
20 evaluate whether the mitigating evidence presented in SUBSECTION (B) is
21 adequate to award parental decision-making to the offending parent, and in
22 addition to any other relevant, aggravating factors, the court shall also
23 consider:

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

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

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

33 4. In cases of mutual violence not amounting to self-defense or other
34 legal justification, as defined by SECTIONS 13-404 through ~~408~~, the motivation
35 of each parent for the violence, the level of force used by each parent, and
36 their respective injuries.

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

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

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

1 D. Coercive Control. As used in subsection C(1), “coercive control”
2 refers to one or more controlling behaviors inflicted by one parent against
3 another, when the latter has also suffered intimate partner violence by that
4 parent. With regard to each behavior, the court shall consider its severity,
5 whether it comprises part of a wider pattern of controlling conduct, and the
6 actor’s motivation. Specifically, the court shall contemplate whether the
7 offending parent has:
8 1. Persistently engaged in demeaning, degrading or other verbally
9 abusive conduct toward the victim;
10 2. Confined the victim or otherwise restricted the victim’s movements;
11 3. Attempted or threatened suicide;
12 4. Injured or threatened to injure household pets;
13 5. Damaged property in the victim’s presence or without the victim’s
14 consent;
15 6. Threatened to conceal or remove children from the victim’s care, or
16 attempted to undermine the victim’s relationship with a child;
17 7. Restricted or hindered the victim’s communications, including
18 attempts by the victim to report intimate partner violence, child abuse or
19 other criminal behavior to law enforcement, medical personnel or other third
20 parties;
21 8. Eavesdropped on the victim’s private communications or Internet
22 activities, interrupted or confiscated the victim’s mail, or accessed the
23 victim’s financial, electronic mail or Internet accounts without permission;
24 9. Engaged in a course of conduct deliberately calculated to jeopardize
25 the victim’s employment;
26 10. Illicitly tampered with the victim’s residential utilities, or entered
27 onto residential property inhabited by the victim without permission;
28 11. Reported or threatened to report the victim’s immigration status to
29 government officials;
30 12. Terminated the victim’s or children’s insurance coverage;
31 13. Forbade or prevented the victim from making decisions concerning
32 disposition of property or income in which the victim possessed a legal interest;
33 14. Opened financial or credit accounts in the victim’s name without
34 the victim’s consent, forged the victim’s signature, or otherwise appropriated
35 the victim’s identity without the victim’s authority;
36 15. Restricted the victim’s participation in social activities, or access to
37 family, friends or acquaintances;
38 16. Forbade or prevented the victim from achieving the victim’s
39 educational or career objectives;
40 17. Used especially dangerous forms of physical violence against the
41 victim, including burning, strangulation, suffocation or use of a deadly weapon
42 18. Inflicted any form of physical violence against a pregnant victim; or
43 19. Engaged in any other controlling behavior consistent with the
44 conduct described in this definition.

1 E. FOR THE PURPOSES OF THIS SECTION:

- 2 1. "STRANGULATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-
3 1204(B)(1).
4 2. "SUFFOCATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-
5 1204(B)(1).

Comment [KS4]: Added new subsection (E). 3-18-11

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9 **25-442. Intimate Partner Violence and Child Abuse: Parenting Time**
10 [Former A.R.S. § 25-403.03(F)]

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

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

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

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

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

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17 **25-443. Intimate Partner Violence and Child Abuse: Assorted Provisions**
18 [Former A.R.S. § 25-403.03(C), (G) and (H)]

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

- 23 1. Findings or judgments from another court of competent jurisdiction.
- 24 2. Police or medical reports.
- 25 3. Counseling, school or shelter records.
- 26 4. Child Protective Services records.
- 27 5. Photographs, recordings, text messages, electronic mail or written

28 correspondence.

- 29 6. Witness testimony.

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

38 C. Collateral Protective Order Proceedings. For purposes of this
39 section, no judgment resulting from protective order proceedings under
40 SECTION 13-3602(I) shall be considered conclusive evidence that intimate
41 partner violence or child abuse did or did not occur.

42 D. Shelter Residency. A parent's residency in a shelter for victims of
43 intimate partner violence shall not constitute grounds for denying that parent
44 any degree of decision-making authority or parenting time. For purposes of

1 this section, “shelter” means any facility meeting the definitions of SECTIONS
2 36-3001(6) and 36-3005.

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

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

20 G. Referrals to CPS. The court may request or order the services of the
21 Division of Children and Family Services in the Department of Economic
22 Security if it believes that a child may be the victim of abuse or neglect as
23 defined in SECTION 8-201.

24
25
26 **25-444. Substance Abuse** [Former A.R.S. § 25-403.04]

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

- 31 1. Any drug offense AS DEFINED IN TITLE 13, CHAPTER 34.
- 32 2. Driving under the influence of alcohol, as defined IN SECTION 28-
33 1381.
- 34 3. Extreme driving under the influence of alcohol, as defined IN
35 SECTION 13-1382.
- 36 4. Aggravated driving under the influence of alcohol, as defined IN
37 SECTION 13-1383.

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

- 40 1. The absence of any other drug or alcohol-related arrest or
41 conviction.
- 42 2. Reliable results from random urinalyses, blood or hair follicle tests,
43 or some other comparable testing procedure.

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

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

- 1. A person criminally convicted for a dangerous crime against children, as defined IN SECTION 13-705(P)(1); or
- 2. A person required to register PURSUANT TO SECTION 13-3821.

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

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

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

- 1. A person criminally convicted for first- or second-degree murder, as defined IN SECTIONS 13-1105(A) and 13-1104(A), except as provided in SUBSECTION(B).
- 2. A person whose criminal history meets the definition of a category two or three repetitive offender PURSUANT TO SECTIONS 13-703(B) and (C).

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

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

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

1 Article 5.
2 Third Parties

3
4 **25-450. Third-Party Rights; Decision-Making and Visitation by**
5 **Grandparents, Parental Figures AND Other Third Parties [Former A.R.S. §§**
6 **25-409 and -415]**

7 A. Decision-Making Authority. PURSUANT TO SECTION 25-421(B)(2), a
8 person other than a legal parent may petition the superior court for decision-
9 making authority over a child. The court shall summarily deny a petition unless
10 it finds that the petitioner has established that all of the following are true in
11 the initial pleading:

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

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

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

21 4. One of the following applies:

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

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

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

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

35 C. Visitation. PURSUANT TO 25-421(B)(2), a person other than a legal
36 parent may also petition the superior court for visitation with a child. The
37 superior court may grant visitation rights during the child's minority on a
38 finding that the visitation is in the child's best interests and that any of the
39 following is true:

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

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

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

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

8 D. Verification of Petition and Mandatory Notice. Any petition filed
9 under SUBSECTION (A) or (C) shall be verified, or supported by affidavit, and
10 include detailed facts supporting the petitioner's claim. The petitioner shall
11 also provide notice of this proceeding, including a copy of the petition itself
12 and any affidavits or other attachments, and serve the notice consistent with
13 RULES OF FAMILY LAW PROCEDURE rules 40-43 to all of the following:

14 1. The child's legal parents.

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

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

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

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

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

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

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

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

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

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

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

40 G. Consolidation of Cases. A grandparent or great-grandparent seeking
41 visitation rights under this section shall petition in the same action in which the
42 family court previously decided parental decision-making and parenting time,
43 or if no such case ever existed, by separate petition in the county of the child's
44 home state PURSUANT TO 25-1002(7).

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

7
8 Article 6. Temporary Orders, Modification & Relocation

9 § 25-460. Temporary Orders

10 [Former A.R.S. § 25-404]

11 § 25-461. Decree Modification

12 [Former A.R.S. § 25-411]

13 § 25-462. Relocation of a Child

14 [Former A.R.S. § 25-408(B)]

15 Article 7. Records & Sanctions

16 § 25-470. Access to Records

17 [Former A.R.S. § 25-403.06]

18 § 25-471. Sanctions for Misconduct

19 [Former A.R.S. § 25-414]

20 Article 8. Miscellaneous

21 § 25-480. Statutory Priority

22 [Former A.R.S. § 25-407]

23 § 25-481. Agency Supervision

24 [Former A.R.S. § 25-410]

25 § 25-482. Identification of Primary Caretaker

26 [Former A.R.S. § 25-403.07]

27 § 25-483. Fees & Resources

28 [Former A.R.S. § 25-403.08]

29 § 25-484. Child Interviews by Court & Professional Assistance

30 [Former A.R.S. § 25-405]

31 § 25-485. Investigations & Reports

32 [Former A.R.S. § 25-406]

33 § 25-486. Child Support & Parenting Time Fund

34 [Former A.R.S. § 25-412]

35 § 25-487. Domestic Relations Education & Mediation Fund

36 [Former A.R.S. § 25-413]

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1 ARTICLE 2.
2 INTRODUCTION ~~§~~ AND PRELIMINARY REQUIREMENTS
3

4 **25-420. Public policy**

5 Absent evidence to the contrary, it serves a child’s best interests for both legal
6 parents to:

- 7 A. Share parental decision-making concerning their child;
- 8 B. Have substantial, frequent, meaningful and continuing parenting
9 time with their child;
- 10 C. Develop a mutually agreeable parental decision-making and
11 parenting time plan.

12 AD HOC CUSTODY WORKGROUP NOTE

13 This section descends from 2010 Senate bill 1314, enacted into law at A.R.S. § 25-103, and
14 reaffirms its core principles relevant to children here, while leaving A.R.S. § 25-103(a) itself intact at its
15 current location, due to its broader application to families that do not have shared children.
16

17
18
19 **25-421. Jurisdiction [FORMER A.R.S. § 25-401]**

20 A. Before conducting any proceeding concerning parental decision-
21 making or parenting time, including any proceeding scheduled to decide the
22 custody or visitation of a non-parent, all Arizona courts shall first confirm their
23 authority to do so to the exclusion of any other state, Indian tribe or foreign
24 nation by complying with the Uniform Child Custody Jurisdiction and
25 Enforcement Act (‘UCCJEA’), at ~~A.R.S. §§~~ ARIZONA REVISED STATUTES
26 SECTIONS 25-1001, ~~et seq.~~, TO 25-1067, Parental Kidnapping Prevention Act
27 (‘PKPA’) at 28 ~~U.S.C. §~~ UNITED STATES CODE SECTION 1738A, and any
28 applicable international law concerning the wrongful abduction or removal of
29 children.

30 ~~B. A proceeding under this chapter is commenced in superior court: the~~
31 THE FOLLOWING PERSONS MAY REQUEST PARENTAL DECISION-MAKING OR
32 PARENTING TIME UNDER THE FOLLOWING CIRCUMSTANCES:

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

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

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

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

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

3
4 AD HOC CUSTODY WORKGROUP NOTE

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

9
10 SUBSTANTIVE LAW/COURT PROCEDURES WORKGROUP NOTE

11 Pending.

12
13 **25-422. Definitions** [Former A.R.S. § 25-402]

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

15 ~~1. “Batterer’s intervention program” means an individual or group~~
16 ~~treatment program for intimate partner violence offenders that:~~

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

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

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

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

24 ~~— (e) preserves records establishing an offender’s participation,~~
25 ~~contribution and progress toward rehabilitation, irrespective of whether a~~
26 ~~given session involves individual treatment or group therapy including multiple~~
27 ~~offenders.~~

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

32 ~~— (a) Endangerment, as defined by A.R.S. § ARIZONA REVISED STATUTES~~
33 ~~SECTION 13-1201.~~

34 ~~— (B) Threatening or intimidating, as defined by A.R.S. § ARIZONA REVISED~~
35 ~~STATUTES SECTION 13-1202(A).~~

36 ~~— (C) Assault, as defined by A.R.S. § ARIZONA REVISED STATUTES SECTION~~
37 ~~13-1203(A).~~

38 ~~— (D) Aggravated assault, as defined by A.R.S. § ARIZONA REVISED~~
39 ~~STATUTES SECTION 13-1204(A)(1)–(5).~~

40 ~~— (E) Child abuse, as defined by A.R.S. § ARIZONA REVISED STATUTES~~
41 ~~SECTION 13-3623.~~

42 ~~3. “Conviction” shall include guilty, “no contest” and Alford pleas, and~~
43 ~~guilty verdicts issued by a trier of fact.~~

44 ~~4. “Deferred prosecution” and “diversion” means any program offered~~
45 ~~by a criminal court or government agency through which an alleged offender~~

Comment [KS1]: Domestic violence definitions moved to the beginning of Article 4, except the definitions for “strangulation” and “suffocation”. These definitions were moved to new subsection (E) in 25-441.

1 ~~avoids criminal prosecution by agreeing to pay a fine, participate in counseling,~~
2 ~~or perform other remedial tasks in exchange for dismissal of one or more~~
3 ~~pending charges or a promise by the state not to proceed with a complaint or~~
4 ~~indictment.~~

5 5 1. “In loco parentis” means a person who has been treated as a parent
6 by the child and who has formed a meaningful parental relationship with the
7 child for a substantial period of time.

8 ~~6 2. “Intimate partner violence” means any act that would meet the~~
9 ~~definition of A.R.S. § 13-3601(A), as well as any other act of physical or sexual~~
10 ~~violence constituting a felony, where inflicted by a person against an intimate~~
11 ~~partner. This definition also includes any attempt, conspiracy, or solicitation~~
12 ~~of another to commit such act. It does not include any behavior that would~~
13 ~~constitute self-defense or other legal justification as defined by A.R.S. §§ 13-~~
14 ~~404 through 408.~~

15 ~~7. “Intimate partners” means persons whose relationship with each~~
16 ~~other qualifies under A.R.S. § 13-3601(A)(1), (2), (3) OR (6).~~

17 8 3. “Legal parent” means a biological or adoptive parent whose
18 parental rights have not been terminated.

19 9 4. “Parental decision-making” means the legal right and
20 responsibility to make major life decisions affecting the health, welfare and
21 education of a child, including - but not limited to - schooling, religion,
22 daycare, medical treatment, counseling, commitment to alternative long-term
23 facilities, authorizing powers of attorney, granting or refusing parental consent
24 where legally required, entitlement to notifications from third parties on
25 behalf of the child, employment, enlistment in the armed forces, passports,
26 licensing and certifications, and blood donation. For purposes of interpreting
27 or applying any international treaty, federal law, uniform code or other state
28 statute, “parental decision-making” shall mean the same as “legal custody.”

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

35 (B) “Final parental decision-making” means one parent is ultimately
36 responsible for child-related decisions, but must still reasonably consult with
37 the other before exercising this authority.

38 (C) “Sole parental decision-making” means one parent is exclusively
39 responsible for child-related decisions, and does not require any level of
40 consultation with the other before the authority is exercised.

41 ~~10~~ 5. “Parenting time” refers to a parent’s physical access to a child at
42 specified times, and entails the provision of food, clothing and shelter, as well
43 positive role-modeling and active involvement in a child’s activities, while the
44 child remains in that parent’s care. A person exercising parenting time is

1 expected to make routine decisions regarding the child’s care that do not
2 contradict the major life decisions made by a parent vested with parental
3 decision-making authority.

4 ~~11. “Special circumstance” refers to conduct requiring application of
5 one or more mandatory rules described in A.R.S. §§ 25-440 through 446.~~

6 ~~12. “Strangulation” means intentionally impeding the normal breathing
7 or circulation of blood of another person by applying pressure to the throat or
8 neck.~~

Comment [KS2]: Moved to 25-441(E)

9 ~~13. “Suffocation” means intentionally impeding the normal breathing of
10 another person by obstructing the nose and mouth either manually or through
11 the use of an instrument.~~

Comment [KS3]: Moved to 25-441(E)

12 14 6. “Visitation” involves the same rights and responsibilities as
13 parenting time when exercised by a non-parent.

14
15 AD HOC CUSTODY WORKGROUP NOTE

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

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

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

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

31 “Intimate partner violence” now adds anticipatory crimes, and expressly excludes violence
32 legitimately inflicted in self-defense.

33 The definitions of “strangulation” and “suffocation” are copied almost verbatim from new A.R.S. § 13-
34 1204(B)(1), which elevated both behaviors to felonious aggravated assault. They have significance in the
35 definition of “coercive control” at Sec. 106(E)(17).

36
37 SL/CP WORKGROUP NOTE

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

40
41 **25-423. Mandatory Preliminary Inquiry: Special Circumstances [New]**
42 Before evaluating the best interests of the child and deciding parental
43 decision-making and parenting time, the court shall first determine whether
44 special circumstances exist under SECTIONS §§ 25-440 through 25-443 (Intimate
45 Partner Violence & Child Abuse), § SECTION 25-444 (Substance Abuse), §
46 SECTION 25-445 (Dangerous Crimes Against Children) or § SECTION 25-446
47 (Violent & Serial Felons). If so, the court shall enter parental decision-making

1 and parenting time orders in accordance with those statutes. If not, the court
2 shall proceed directly to the general provisions of ~~§§~~ SECTIONS 25-430 through
3 25-432 to devise a parenting plan that allocates parental decision-making and
4 parenting time consistent with the child's best interests.

5
6 AD HOC CUSTODY WORKGROUP NOTE

7 This new addition constitutes the heart of the "decision-tree" philosophy. The goal is to openly require
8 the court to evaluate special circumstances first, and only then engage the generic "best interests" test if
9 none of those circumstances apply. Despite arbitrary (and rather confusing) sequencing in the current
10 statute, existing case law already says much the same thing. See *In re Marriage of Hurd*, 223 Ariz. 48, 219
11 P.3d 258, 261 (App. 2009) ("when the party that committed the act of violence has not rebutted the
12 [domestic violence] presumption ... the court need not consider all the other best-interest factors in A.R.S.
13 § 25-403.A").

14
15
16 **25-424. Specific Findings Required [New]**

17 In any evidentiary hearing involving parental decision-making, parenting time
18 or third-party rights, including both temporary orders and trial, the court shall
19 make specific findings on the record about all relevant factors and reasons for
20 why the judicial decision serves a child's best interests. The findings shall
21 include a description of any special circumstances established by the evidence,
22 and an explanation for the court's decision in light of the controlling rules.

23
24 **ARTICLE 3.**

25 **PARENTING PLANS, DECISION-MAKING ~~&~~ AND PARENTING TIME:**
26 **CASES WITHOUT SPECIAL CIRCUMSTANCES**

27
28 **25-430. Parenting Plans [former A.R.S. § 25-403.02]**

29 A. Consistent with the child's physical and emotional well-being, the
30 court shall adopt a parenting plan that provides for both parents to share
31 parental decision-making concerning their child and maximizes their respective
32 parenting time. The court shall not prefer one parent over the other due to
33 gender.

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

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

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

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

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

- 1 4. A detailed parenting time schedule, including holidays and school
2 vacations.
3 5. A plan for child exchanges, including location and responsibility for
4 transportation.
5 6. In shared parental decision-making plans, a procedure by which the
6 parents can resolve disputes over proposed changes or alleged violations, which
7 may include the use of conciliation services or private mediation.
8 7. A procedure for periodic review of the plan.
9 8. A statement that each party has read, understands and will abide by
10 the notification requirements of ~~A.R.S. §~~ SECTION 25-445(B) pertaining to
11 access of sex offenders to a child.

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

16
17 **25-431. Parental Decision-Making; Shared, Final or Sole** [Former A.R.S. §
18 25-403.01]

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

- 22 1. The agreement or lack of an agreement by the parents regarding the
23 parental decision-making plan.
24 2. Whether a parent's lack of agreement is unreasonable or influenced
25 by an issue not related to the best interests of the child.
26 3. Whether an award of final or sole parental decision-making would be
27 abused.
28 4. The past, present and future willingness and ability of the parents to
29 cooperate in decision-making about the child.
30 5. Whether the parental decision-making plan is logistically possible.

31
32 **25-432. Parenting Time** [New]

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

- 36 1. The historical, current and potential relationship between the parent
37 and the child.
38 2. The mental and physical health of all individuals involved.
39 3. The child's adjustment to home, school and community.
40 4. The interaction and relationship between the child and the child's
41 siblings and any other person who may significantly affect the child's best
42 interest.
43 5. The child's own viewpoint and wishes, if possessed of suitable age
44 and maturity, along with the basis of those wishes.

Comment [KS4]: Need at least two subunits involved. If "A", need a "B".

Comment [KS5]: Need at least two subunits involved. If "A", need a "B".

1 6. Whether one parent is more likely to support and encourage the
2 child's relationship and contact with the other parent. This paragraph does not
3 apply if the court determines that a parent is acting in good faith to protect
4 the child from witnessing or suffering an act of intimate partner violence or
5 child abuse.

6 7. The feasibility of each plan taking into account the distance between
7 the parents' homes, the parents' and/or child's work, school, daycare or other
8 schedules, and the child's age.

9 8. Whether a parent has complied with the educational program
10 prescribed in ~~A.R.S. §§~~ SECTIONS 25-351 through -353.

11
12 ARTICLE 4.
13 SPECIAL CIRCUMSTANCES
14

15 **25-XXX. DEFINITIONS**

16 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

- 19 (a) emphasizes personal responsibility;
- 20 (b) clearly identifies intimate partner violence as a means of asserting
21 power and control over another individual;
- 22 (c) does not primarily or exclusively focus on anger or stress
23 management, impulse control, conflict resolution or communication skills;
- 24 (d) does not involve the participation or presence other family
25 members, including the victim or children; and
- 26 (e) preserves records establishing an offender's participation,
27 contribution and progress toward rehabilitation, irrespective of whether a
28 given session involves individual treatment or group therapy including multiple
29 offenders.

30 2. "Child abuse" means any of the following acts where the relationship
31 between the offender and victim qualifies under ~~A.R.S. §~~ SECTION 13-
32 3601(A)(5), including any attempt, conspiracy or solicitation of another to
33 commit such act:

- 34 (a) Endangerment, as defined ~~by A.R.S. §~~ IN SECTION 13-1201.
- 35 (B) Threatening or intimidating, as defined ~~by A.R.S. §~~ IN SECTION 13-
36 1202(A).
- 37 (C) Assault, as defined ~~by A.R.S. §~~ IN SECTION 13-1203(A).
- 38 (D) Aggravated assault, as defined ~~by A.R.S. §~~ IN SECTION 13-1204(A)(1)
39 - (5).
- 40 (E) Child abuse, as defined ~~by A.R.S. §~~ IN SECTION 13-3623.

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

43 4. "Deferred prosecution" and "diversion" means any program offered
44 by a criminal court or government agency through which an alleged offender

Comment [KS6]: Moved from 25-422 to Article

4

1 avoids criminal prosecution by agreeing to pay a fine, participate in counseling,
2 or perform other remedial tasks in exchange for dismissal of one or more
3 pending charges or a promise by the state not to proceed with a complaint or
4 indictment.

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

12 ~~7~~ 6. “Intimate partners” means persons whose relationship with each
13 other qualifies ~~under A.R.S. §~~ PURSUANT TO SECTIONS 13-3601(A)(1), (2), (3)
14 OR (6).

15 ~~6~~ 7. “Intimate partner violence” means any act ~~that would meet the~~
16 ~~definition of A.R.S. §~~ AS DEFINED IN SECTION 13-3601(A), as well as any other
17 act of physical or sexual violence constituting a felony, where inflicted by a
18 person against an intimate partner. This definition also includes any attempt,
19 conspiracy, or solicitation of another to commit such act. It does not include
20 any behavior that would constitute self-defense or other legal justification as
21 defined by ~~A.R.S. §§~~ SECTIONS 13-404 through 408.

22 ~~7~~ 8. “Intimate partners” means persons whose relationship with each
23 other qualifies ~~under A.R.S. §~~ PURSUANT TO SECTIONS 13-3601(A)(1), (2), (3)
24 OR (6).

25 ~~4~~ 9. “Special circumstance” refers to conduct requiring application of
26 one or more mandatory rules ~~described in A.R.S. §§~~ PURSUANT TO SECTIONS 25-
27 440 through -446.

28
29 SL/CP WORKGROUP NOTE

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

32
33
34
35 **25-440. Intimate Partner Violence and Child Abuse: Basic Principles**

36 [Former A.R.S. § 25-403.03(B)]

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

43 B. The court shall always consider a history of intimate partner violence
44 or child abuse as contrary to the best interests of the child, irrespective of

1 whether a child personally witnessed a particular act of violence. When
2 deciding both parental decision-making and parenting time, the court shall
3 assign primary importance to the physical safety and emotional health of the
4 child and the non-offending parent.
5

6
7 AD HOC CUSTODY WORKGROUP NOTE

8 This section amends the legislative policy statement concerning intimate partner violence by
9 explicitly – and for the first time – recognizing controlling behavior as a primary motivator for classic
10 intimate partner violence. This is important because our current law makes no effort to discern what
11 prompted a given act of violence and what that portends for decision-making and parenting time in the
12 future. Second, the law clarifies that IPV disserves a child’s best interests even when s/he did not
13 personally witness it. Generally accepted research has made this point for years, yet it may be
14 disregarded or discounted if the child was absent during an assault, with the thought that “it was just
15 between the two parents” or that “the offender is still a good father/mother even though s/he abused
16 the other parent.”
17

18
19 **25-441. Intimate Partner Violence and Child Abuse: Parental Decision-**
20 **making**

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

22 A. Cases Where Parental Decision-Making Presumptively Disallowed. If
23 the court determines from a preponderance of the evidence that a parent has
24 previously committed any act of intimate partner violence against the other
25 parent, or child abuse against the child or child’s sibling, then it shall not
26 award parental decision-making to the offending parent without proof that
27 such parent should still make major decisions for the child despite the proven
28 history of abuse or violence. The offending parent may submit this proof by
29 asking the court to consider the criteria listed in ~~Subsection~~ SUBSECTION (B).
30 In that event, the court shall also evaluate whether the offending parent has
31 nevertheless failed to prove his or her suitability for parental decision-making
32 by considering each of the criteria listed in ~~Subsection~~ SUBSECTION(C).
33

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

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

- 1 2. Completed a counseling program for alcohol or other substance
2 abuse, if the evidence establishes that these considerations played a role in
3 past intimate partner violence or child abuse.
- 4 3. Refrained from any further behavior that would constitute a criminal
5 offense under federal or state law, including new acts of intimate partner
6 violence or child abuse.
- 7 4. Demonstrated sincere remorse and acceptance of personal
8 responsibility by words and conduct following the confirmed act of intimate
9 partner violence or child abuse.
- 10 C. Reasons to Refuse Parental Decision-Making to an Offender. To
11 evaluate whether the mitigating evidence presented in ~~Subsection~~ SUBSECTION
12 (B) is adequate to award parental decision-making to the offending parent, and
13 in addition to any other relevant, aggravating factors, the court shall also
14 consider:
- 15 1. The extent to which the offending parent coercively controlled the
16 other parent during their relationship, as described in ~~Subsection~~ SUBSECTION
17 (D), or committed other acts of child abuse against the child or child's sibling.
- 18 2. Whether the offending parent committed successive acts of intimate
19 partner violence or child abuse against any person after having already
20 received counseling on past occasions.
- 21 3. The extent to which the offending parent inflicted intimate partner
22 violence or child abuse against some other person in the past, or has recently
23 done so with a new intimate partner or child.
- 24 4. In cases of mutual violence not amounting to self-defense or other
25 legal justification, as defined by ~~A.R.S. §§~~ SECTIONS 13-404 through -408, the
26 motivation of each parent for the violence, the level of force used by each
27 parent, and their respective injuries.
- 28 5. Whether the offending parent continues to minimize or deny
29 responsibility for proven violence or blame it on unrelated issues.
- 30 6. Whether the offending parent has engaged in other behavior that
31 would constitute a criminal offense under federal or state law.
- 32 7. Whether the offending parent failed to comply with the mandatory
33 disclosure requirements of ARIZONA RULES OF Family Law PROCEDURE rules
34 49(B)(2) THROUGH (4) or reasonable discovery requests for records associated
35 with treating intimate partner violence or child abuse.
- 36 D. Coercive Control. As used in ~~SUBSECTION~~ subsection C(1), "coercive
37 control" refers to one or more controlling behaviors inflicted by one parent
38 against another, when the latter has also suffered intimate partner violence by
39 that parent. With regard to each behavior, the court shall consider its
40 severity, whether it comprises part of a wider pattern of controlling conduct,
41 and the actor's motivation. Specifically, the court shall contemplate whether
42 the offending parent has:
- 43 1. Persistently engaged in demeaning, degrading or other verbally
44 abusive conduct toward the victim;

- 1 2. Confined the victim or otherwise restricted the victim’s movements;
- 2 3. Attempted or threatened suicide;
- 3 4. Injured or threatened to injure household pets;
- 4 5. Damaged property in the victim’s presence or without the victim’s
- 5 consent;
- 6 6. Threatened to conceal or remove children from the victim’s care, or
- 7 attempted to undermine the victim’s relationship with a child;
- 8 7. Restricted or hindered the victim’s communications, including
- 9 attempts by the victim to report intimate partner violence, child abuse or
- 10 other criminal behavior to law enforcement, medical personnel or other third
- 11 parties;
- 12 8. Eavesdropped on the victim’s private communications or Internet
- 13 activities, interrupted or confiscated the victim’s mail, or accessed the
- 14 victim’s financial, electronic mail or Internet accounts without permission;
- 15 9. Engaged in a course of conduct deliberately calculated to jeopardize
- 16 the victim’s employment;
- 17 10. Illicitly tampered with the victim’s residential utilities, or entered
- 18 onto residential property inhabited by the victim without permission;
- 19 11. Reported or threatened to report the victim’s immigration status to
- 20 government officials;
- 21 12. Terminated the victim’s or children’s insurance coverage;
- 22 13. Forbade or prevented the victim from making decisions concerning
- 23 disposition of property or income in which the victim possessed a legal interest;
- 24 14. Opened financial or credit accounts in the victim’s name without
- 25 the victim’s consent, forged the victim’s signature, or otherwise appropriated
- 26 the victim’s identity without the victim’s authority;
- 27 15. Restricted the victim’s participation in social activities, or access to
- 28 family, friends or acquaintances;
- 29 16. Forbade or prevented the victim from achieving the victim’s
- 30 educational or career objectives;
- 31 17. Used especially dangerous forms of physical violence against the
- 32 victim, including burning, strangulation, suffocation or use of a deadly weapon
- 33 18. Inflicted any form of physical violence against a pregnant victim; or
- 34 19. Engaged in any other controlling behavior consistent with the
- 35 conduct described in this definition.

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

- 37 1. “STRANGULATION” HAS THE SAME MEANING PRESCRIBED IN SECTION 13-
- 38 1204(B)(1).
- 39 2. “SUFFOCATION” HAS THE SAME MEANING PRESCRIBED IN SECTION 13-
- 40 1204(B)(1).

Comment [KS7]: Added new subsection (E). 3-18-11

41
42 **AD HOC CUSTODY WORKGROUP NOTE**

43 Arizona law currently segregates intimate partner violence into a two-part analysis. The first
44 part, found at A.R.S. § 25-403.03(A), forbids joint custody to a “significant” IPV offender, either because of
45 significant violence or a significant history of violence. Unfortunately, the statute does not define

1 “significant,” which leads to widely varying outcomes for comparable conduct. The current statute also
2 produces the unintended consequence of invalidating the ordeal of intimate partner violence survivors
3 who suffer injuries that the court is unwilling to classify as “significant” for purposes of an absolute bar to
4 parental decision-making.

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

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

28 In cases of so-called “mutual combat,” the amendment also requires the court to evaluate what
29 motivated the violence, the force applied, and resulting injuries – rather than dismantling the
30 presumption from the start. See A.R.S. § 25-403.03(D) (“presumption does not apply if both parents have
31 committed an act of domestic violence”). The bill would also include the failure to make obligatory, IPV-
32 related, Rule 49 disclosure as an explicit factor for deciding whether a proven offender had overcome the
33 presumption against an award of parental decision-making.

36 **25-442. Intimate Partner Violence and Child Abuse: Parenting Time** 37 **[Former A.R.S. § 25-403.03(F)]**

38 **A. Cases Where Parenting Time Presumptively Disallowed.** If the court
39 finds that a parent has committed any act of intimate partner violence or child
40 abuse, that parent has the burden of proving to the court’s satisfaction that
41 unrestricted parenting time will not physically endanger the child or
42 significantly impair the child’s emotional development. The victim need not
43 prove the reverse. In deciding whether the offending parent has met this
44 burden, the court shall consider all of the criteria listed in ~~A.R.S. §~~ **SECTIONS**
45 **25-441(B) and (C)**, giving due consideration to whether parenting time with
46 that parent under the existing circumstances may:

47 1. Expose the child to poor role-modeling related to the confirmed
48 intimate partner violence as the child grows older and begins to develop his or

1 her own intimate relationships, irrespective of whether the offending parent
2 poses a direct physical risk to the child; and

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

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

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

12 2. Order that a person or agency specified by the court must supervise
13 parenting time. If the court allows a family or household member or other
14 person to supervise the offending parent's parenting time, the court shall
15 establish conditions that this supervisor must follow. When deciding whom to
16 select, the court shall also consider the supervisor's ability to physically
17 intervene in an emergency, willingness to promptly report a problem to the
18 court or other appropriate authorities, and readiness to appear in future
19 proceedings and testify truthfully.

20 3. Order the completion of a batterer's intervention program, as
21 defined by ~~A.R.S. §~~ SECTION 25-422(1), and any other counseling the court
22 orders.

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

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

28 6. Prohibit overnight parenting time.

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

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

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

34 10. Suspend parenting time for a prescribed period.

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

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

40
41 WORKGROUP NOTE

42 Although new A.R.S. § 25-442 does not alter the basic premise of current A.R.S. § 25-403.03(F) –
43 which governs parenting time – the rules are clarified to emphasize the twin problems of physical safety
44 and emotional development. Current law already cites both for the court's consideration, but litigants
45 typically focus on physical danger at the expense of overlooking the (potentially more serious) long-term

1 risk of emotional harm resulting from constant access time with an unrepentant abuser. The amendment
2 clearly directs the court to consider the issue of future, parental role-modeling.
3
4

5 **25-443. Intimate Partner Violence and Child Abuse: Assorted Provisions**
6 [Former A.R.S. § 25-403.03(C), (G) and (H)]

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

- 11 1. Findings or judgments from another court of competent jurisdiction.
- 12 2. Police or medical reports.
- 13 3. Counseling, school or shelter records.
- 14 4. Child Protective Services records.
- 15 5. Photographs, recordings, text messages, electronic mail or written

16 correspondence.

- 17 6. Witness testimony.

18 B. Collateral Criminal Proceedings. For purposes of this section,
19 evidence that a parent previously consented to deferred prosecution or
20 diversion from criminal charges for intimate partner violence or child abuse
21 shall constitute adequate proof that such parent committed the act or acts
22 alleged in the criminal complaint later dismissed pursuant to the diversion or
23 deferred prosecution. Nothing in this subsection prevents either parent from
24 introducing additional evidence related to the event in question in support of
25 that parent's case.

26 C. Collateral Protective Order Proceedings. For purposes of this
27 section, no judgment resulting from protective order proceedings under ~~A.R.S.~~
28 ~~§~~SECTION 13-3602(I) shall be considered conclusive evidence that intimate
29 partner violence or child abuse did or did not occur.

30 D. Shelter Residency. A parent's residency in a shelter for victims of
31 intimate partner violence shall not constitute grounds for denying that parent
32 any degree of decision-making authority or parenting time. For purposes of
33 this section, "shelter" means any facility meeting the definitions of SECTIONS
34 36-3001(6) and 36-3005.

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

40 F. Alternative Dispute Resolution. A victim of intimate partner violence
41 may opt out of alternative dispute resolution ('ADR') imposed under ~~Family~~
42 ~~Law~~ RULES OF FAMILY LAW PROCEDURE Rule 67 or 68 to the extent that a
43 suggested ADR procedure requires the parties to meet and confer in person.
44 The court shall notify each party of this right before requiring their
45 participation in the ADR process. As used in this subsection only, "victim of

1 intimate partner violence” means: (1) a party who has acquired a protective
2 order against the other parent pursuant to ~~A.R.S. §~~ SECTION 13-3602; (2) a
3 party who was previously determined by a civil or family court to have suffered
4 intimate partner violence by the other parent; or (3) a party who was the
5 named victim in a criminal case that resulted in the conviction, diversion or
6 deferred prosecution of the other parent for an act of intimate partner
7 violence.

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

12
13 AD HOC CUSTODY WORKGROUP NOTE

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

24 Subsection (C) clarifies that family court litigants should not use the outcome of contested,
25 domestic violence protective order proceedings as “proof” that intimate partner violence did or did not
26 exist. The amendment recognizes that protective order proceedings apply a different legal standard,
27 potentially apply different evidentiary rules, and frequently occur with little advance notice to the alleged
28 victim – who bears the burden of proof and may not be able to collect witnesses or exhibits within the
29 allotted time. This amendment does not, however, preclude the use of evidence presented at such an
30 earlier hearing, or even the use of the judgment itself in conjunction with other evidence. It bars only use
31 of the judgment as conclusive proof, standing alone, that intimate partner violence did or did not occur.

32 Subsection (D) shields victims of intimate partner violence from the loss of decision-making
33 authority or access time merely by virtue of their temporary residency in a domestic violence shelter.

34 Subsection (E) strengthens the protections for potentially vulnerable IPV victims otherwise
35 forced into mediation or other forms of ADR with their abusers.

36

1 **25-444. Substance Abuse** [Former A.R.S. § 25-403.04]
2 A. If the court determines from a preponderance of the evidence that a
3 parent has been criminally convicted for any of the following conduct within
4 the past three years, a rebuttable presumption shall arise prohibiting an award
5 of parental decision-making to that parent:
6 1. Any drug offense ~~under A.R.S., Title~~ AS DEFINED IN TITLE 13, ~~Chapter~~
7 CHAPTER 34.
8 2. Driving under the influence of alcohol, as defined ~~by A.R.S. §~~ IN
9 SECTION 28-1381.
10 3. Extreme driving under the influence of alcohol, as defined ~~by A.R.S. §~~
11 IN SECTION 13-1382.
12 4. Aggravated driving under the influence of alcohol, as defined ~~by~~
13 ~~A.R.S. §~~ IN SECTION 13-1383.
14 B. To determine if an offender has overcome the presumption described
15 in ~~Subsection~~ SUBSECTION(A), the court shall consider all relevant factors,
16 including:
17 1. The absence of any other drug or alcohol-related arrest or
18 conviction.
19 2. Reliable results from random urinalyses, blood or hair follicle tests,
20 or some other comparable testing procedure.
21

22
23 **25-445. Dangerous Crimes Against Children** [Former A.R.S. § 25-403.05]
24 A. The court shall not award parental decision-making or unsupervised
25 parenting time to:
26 1. A person criminally convicted for a dangerous crime against children,
27 as defined ~~by A.R.S. §~~ IN SECTION 13-705(P)(1); or
28 2. A person required to register ~~under A.R.S. §~~ PURSUANT TO SECTION
29 13-3821.
30 B. A child's parent or custodian must immediately notify the other
31 parent or custodian if the parent or custodian knows that a convicted or
32 registered sex offender or a person who has been convicted of a dangerous
33 crime against children, as defined in ~~A.R.S. §~~ SECTION 13-705(P)(1), may have
34 access to the child. The parent or custodian must provide notice by first-class
35 mail, return receipt requested, or by electronic means to an electronic mail
36 address that the recipient provided to the parent or custodian for notification
37 purposes, or by some other means of communication approved by the court.
38

39
40 **25-446. Violent & AND Serial Felons** [Former A.R.S. § 25-403.05]
41 A. The court shall not award parental decision-making or unsupervised
42 parenting time to:

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

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

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

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

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

25
26 **Article 5.**
27 **Third Parties**

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

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

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

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

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

3 4. One of the following applies:

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

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

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

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

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

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

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

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

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

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

40 1. The child's legal parents.

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

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

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

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

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

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

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

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

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

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

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

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

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

34
35 Article 6. Temporary Orders, Modification & Relocation

36 § 25-460. Temporary Orders

37 [former A.R.S. § 25-404]

38 A.

39 § 25-461. Decree Modification

40 [former A.R.S. § 25-411]

41 A.

42 § 25-462. Relocation of a Child

43 [former A.R.S. § 25-408(B)]

44 A.

1
2 Article 7. Records & Sanctions
3 § 25-470. Access to Records
4 [former A.R.S. § 25-403.06]
5 A.
6 § 25-471. Sanctions for Misconduct
7 [former A.R.S. § 25-414]
8 A.
9
10 Article 8. Miscellaneous
11 § 25-480. Statutory Priority
12 [former A.R.S. § 25-407]
13
14 § 25-481. Agency Supervision
15 [former A.R.S. § 25-410]
16 § 25-482. Identification of Primary Caretaker
17 [former A.R.S. § 25-403.07]
18 § 25-483. Fees & Resources
19 [former A.R.S. § 25-403.08]
20 § 25-484. Child Interviews by Court & Professional Assistance
21 [former A.R.S. § 25-405]
22 § 25-485. Investigations & Reports
23 [former A.R.S. § 25-406]
24 § 25-486. Child Support & Parenting Time Fund
25 [former A.R.S. § 25-412]
26 § 25-487. Domestic Relations Education & Mediation Fund
27 [former A.R.S. § 25-413]
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