

**Substantive Law Workgroup**  
Steve Wolfson, Chairperson

**Court Procedures Workgroup**  
Dr. Brian Yee, Chairperson

**DOMESTIC RELATIONS COMMITTEE**

Agenda

**April 8, 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  
Action Item/Vote: \_\_\_\_\_ Approval of 03-25-11 minutes
2. **Discuss SB1373**.....*Steve Wolfson*  
Action Item/Vote: \_\_\_\_\_
3. **Discuss independent review of custody rewrite**.....*Chairmen*  
Action Item/Vote: \_\_\_\_\_
4. **Review of comments received** .....*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 29, 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*

|                                |                                |                                       |
|--------------------------------|--------------------------------|---------------------------------------|
| <b>Date:</b> November 23, 2010 | <b>Time:</b> 12:00 – 1:30 p.m. | <b>Location:</b> Conference Room 119A |
|--------------------------------|--------------------------------|---------------------------------------|

**Minute Taker:** Susan Pickard

**Members Attending:**

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

**Staff/Admin. Support:** Susan Pickard

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

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**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

# *Substantive Law/Court Procedures Workgroup*

## *Minutes*

|                             |                                 |  |
|-----------------------------|---------------------------------|--|
| <b>Date:</b> March 11, 2011 | <b>Time:</b> 12:00 PM – 2:30 PM | <b>Location:</b> Conference Room 345 B |
|-----------------------------|---------------------------------|--|

**Minute Taker:** Tama Reily

**Members Attending:**

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

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

**Guests:**

|                 |               |
|-----------------|---------------|
| Terry Decker    | David Alger   |
| Karen Duckworth | Joi Davenport |
| Eric Bates      | Brent Miller  |
| Bill Fabricius  |               |

- I. The March 11, 2011 joint meeting of the Substantive Law / Court Procedures Workgroup was called to order by Substantive Law Chair, Steve Wolfson, at 12:10 pm. Court Procedures Workgroup Chair, Brian Yee, was introduced. Introductions were made around the room, including new workgroup members Jennifer Gadow, Honorable Carey Hyatt, and Keith Berkshire.
  
- II. Mr. Wolfson explained the workgroup’s charge to review the product of the Ad Hoc Custody Workgroup (AHCW) and provide final recommendations on the product at the June 3 meeting of the Domestic Relations Committee (DRC). He went on to explain that the review process would approach the document section by section from beginning to end. Workgroup members were asked to specifically define any issue they raise with the document, and to provide possible resolution, keeping in mind any consequences that might result from the suggested resolution. He stated the workgroup meetings will be conducted in their usual manner, and laid out some of the following ground rules:
  - Other than the Call to the Public, meeting discussion will pertain to agenda items only. Public speakers are requested to confine their comments to the workgroup’s assigned issue.
  - Side conversations should be avoided or removed from the workgroup area. There should be only one person speaking at any time.
  - Discussions may include differing opinions, however, the debate should refer to ideas and not people.
  - Those members participating by conference call will be identified and included in the discussion.
  - Items will be decided by voting. Voting will be limited to DRC members.
  - Proposed agenda items should be submitted in advance to the co-chairs for approval.
  
- III. Mr. Bill Fabricius, Chair of AHCW, provided a brief report on the AHCW’s draft document and informed the workgroup that the final report should be completed by next week. He noted there were three sections they originally planned to address, but were unable due to time constraints. Those sections included: 1) Sanctions; 2) Temporary Orders; 3) Decree Modifications. He suggested that this workgroup may wish to address these areas. He reiterated the AHCW’s objective was to go through the entire bill and organize, clarify, update,

make language consistent, add SB1314, and bring the domestic violence section up to date. Mr. Fabricius raised the topic of having outside national experts review the product and offer feedback, something that the AHCW discussed at its last meeting, and suggested that the Substantive Law / Court Procedures Workgroup consider this as an option. Lengthy discussion ensued regarding the type of experts needed, such as mental health experts, and the protocol for selection. Dr. Brian Yee made the following motion:

**MOTION:** To consult with outside experts for comment on the product and to inquire of Peter Salem to use his networking of mental health experts. Motion seconded. Motion passed unanimously.

Discussion moved to the dissemination of the product, sooner rather than later, to the 'end users', including the Arizona State Bar and the Family Law Section members, family court presiding judges, the conciliation court roundtable, in order to solicit input. Several members will take part in getting the document to the various groups mentioned for further vetting.

As part of the AHCW's report, the workgroup began reviewing and discussing AHCW document. Changes were made to the following sections:

§ 25-421(B): Proposed changes were made to section 25-421(B) as noted:

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

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

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

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

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

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

Members discussed the appropriate placement of the definitions section and agreed that readers would find it more useful if definitions were placed in the statutes similar to a standard glossary.

**MOTION:** To place the definitions section at the end of the chapter. Motion seconded. Motion passed unanimously.

AOC Staff noted that it would be necessary to check with Legislative Council as to drafting conventions regarding the placement of definitions.

#### IV. Call To The Public

Public attendee, Mr. Terry Decker, related his concerns that the public will be affected by this statute, and he feels the workgroup does not fairly represent the public. He requested that the workgroup expand to include himself and four other non-custodial parents, who he states are the "actual stakeholders." Finally, he stated that the default policy for ARS § 25-103 is joint custody and equal parenting time unless by clear and convincing evidence a parent is deemed unfit, and he feels that point is missing.

Public attendee, Karen Duckworth, indicated her concerns with the meeting format as described today, which would hold the "call to the public" at the conclusion of meetings. She stated that the comments from the public would be more useful if allowed to be heard after each relevant section.

Public attendee, Mr. Brent Miller, voiced complaints regarding the "exclusion" of the public due to lack of time management on the part of the workgroup.

Meeting adjourned at 2:31

**Next Meeting**

March 25, 2011

12:00p.m. to 1:30 p.m.

Arizona State Courts Building

1501 W. Washington

Conference Room 230

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  
13 AD HOC CUSTODY WORKGROUP NOTE

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

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

19 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 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.~~

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.~~

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.

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

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 ~~11~~ 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

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).

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]  
28  
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38

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.

**Comment [KS8]:** Judge Bruce Cohen's comment involves 25-450(C)(4)

4. For in loco parentis visitation, there is a pending proceeding for dissolution of marriage or for legal separation INVOLVING ONE of the legal parents AND THE PERSON CLAIMING TO STAND IN LOCO PARENTIS at the time the petition is filed.

Judge Cohen says: Look at 25-450 (c)(4) relating to in loco parentis visitation. This to me is the step parent section. I may be reading it wrong, but it appears to limit the request from the THIRD PARTY (who has alleged that he or she has been serving a parental role) to being able to seek the relief only if there is a PENDING divorce or legal separation between the LEGAL PARENTS. Therefore, biological mom and biological dad must be in the process of divorce or legal separation for step parent to seek visitation. How would there be a step parent at that time?

Shouldn't the statute state that there is a pending action for divorce and legal separation between ONE OF THE LEGAL parents and the person claiming to stand in loco parentis?

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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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.~~

Jenny Gadow – draft re: special circumstances and false allegations  
Title 25 – Custody Rewrite  
Prepared for 04.08.11 Meeting

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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~~  
46 ~~avoids criminal prosecution by agreeing to pay a fine, participate in counseling,~~

Jenny Gadow – draft re: special circumstances and false allegations  
Title 25 – Custody Rewrite  
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1 ~~or perform other remedial tasks in exchange for dismissal of one or more~~  
2 ~~pending charges or a promise by the state not to proceed with a complaint or~~  
3 ~~indictment.~~

4 5 1. “In loco parentis” means a person who has been treated as a parent  
5 by the child and who has formed a meaningful parental relationship with the  
6 child for a substantial period of time.

7 6 2. ~~“Intimate partner violence” means any act that would meet the~~  
8 ~~definition of A.R.S. § 13-3601(A), as well as any other act of physical or sexual~~  
9 ~~violence constituting a felony, where inflicted by a person against an intimate~~  
10 ~~partner. This definition also includes any attempt, conspiracy, or solicitation~~  
11 ~~of another to commit such act. It does not include any behavior that would~~  
12 ~~constitute self-defense or other legal justification as defined by A.R.S. §§ 13-~~  
13 ~~404 through 408.~~

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

16 8 3. “Legal parent” means a biological or adoptive parent whose  
17 parental rights have not been terminated.

18 9 4. “Parental decision-making” means the legal right and  
19 responsibility to make major life decisions affecting the health, welfare and  
20 education of a child, including - but not limited to - schooling, religion,  
21 daycare, medical treatment, counseling, commitment to alternative long-term  
22 facilities, authorizing powers of attorney, granting or refusing parental consent  
23 where legally required, entitlement to notifications from third parties on  
24 behalf of the child, employment, enlistment in the armed forces, passports,  
25 licensing and certifications, and blood donation. For purposes of interpreting  
26 or applying any international treaty, federal law, uniform code or other state  
27 statute, “parental decision-making” shall mean the same as “legal custody.”

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

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

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

40 10 5. “Parenting time” refers to a parent’s physical access to a child at  
41 specified times, and entails the provision of food, clothing and shelter, as well  
42 positive role-modeling and active involvement in a child’s activities, while the  
43 child remains in that parent’s care. A person exercising parenting time is  
44 expected to make routine decisions regarding the child’s care that do not

1 contradict the major life decisions made by a parent vested with parental  
2 decision-making authority.

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

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

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

11 ~~14 6. “Visitation” involves the same rights and responsibilities as~~  
12 ~~parenting time when exercised by a non-parent.~~

13  
14 AD HOC CUSTODY WORKGROUP NOTE

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

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

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

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

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

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

35  
36 SL/CP WORKGROUP NOTE

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

39  
40 **25-423. Mandatory Preliminary Inquiry: Special Circumstances [New]**

41 Before evaluating the best interests of the child and deciding parental  
42 decision-making and parenting time, the court shall first determine whether  
43 special circumstances exist under SECTIONS ~~§§~~ 25-441 through 25-445. If so, the  
44 court shall enter parental decision-making and parenting time orders in  
45 accordance with those statutes. If not, the court shall proceed directly to the  
46 general provisions of ~~§§~~ SECTIONS 25-430 through 25-432 to devise a parenting  
47 plan that allocates parental decision-making and parenting time consistent  
48 with the child’s best interests.

49 Jenny Gadow – draft re: special circumstances and false allegations  
50 Title 25 – Custody Rewrite  
51 Prepared for 04.08.11 Meeting

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Deleted: (Intimate Partner Violence & Child Abuse), § SECTION 25-444 (Substance Abuse), § SECTION 25-445 (Dangerous Crimes Against Children) or § SECTION 25-446 (Violent & Serial Felons).

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AD HOC CUSTODY WORKGROUP NOTE

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

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

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

ARTICLE 3.  
PARENTING PLANS, DECISION-MAKING ~~§~~ AND PARENTING TIME:  
CASES WITHOUT SPECIAL CIRCUMSTANCES

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

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

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

C. Parenting plans shall include at least the following:

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

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

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

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

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

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

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

5 8. A statement that each party has read, understands and will abide by  
6 the notification requirements of ~~A.R.S. §~~ SECTION 25-445(B) pertaining to  
7 access of sex offenders to a child.

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

12  
13 **25-431. Parental Decision-Making; Shared, Final or Sole** [Former A.R.S. §  
14 25-403.01]

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

18 1. The agreement or lack of an agreement by the parents regarding the  
19 parental decision-making plan.

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

22 3. Whether an award of final or sole parental decision-making would be  
23 abused.

24 4. The past, present and future willingness and ability of the parents to  
25 cooperate in decision-making about the child.

26 5. Whether the parental decision-making plan is logistically possible.

27 6. Whether either parent has made allegations in bad faith.

28  
29 **25-432. Parenting Time** [New]

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

33 1. The historical, current and potential relationship between the parent  
34 and the child.

35 2. The mental and physical health of all individuals involved.

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

37 4. The interaction and relationship between the child and the child's  
38 siblings and any other person who may significantly affect the child's best  
39 interest.

40 5. The child's own viewpoint and wishes, if possessed of suitable age  
41 and maturity, along with the basis of those wishes.

42 6. Whether one parent is more likely to support and encourage the  
43 child's relationship and contact with the other parent. This paragraph does not  
44 apply if the court determines that a parent is acting in good faith to protect

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1 the child from witnessing or suffering an act of intimate partner violence or  
2 child abuse.

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

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

8 9. Whether either parent has made allegations in bad faith.

9  
10 ARTICLE 4.  
11 SPECIAL CIRCUMSTANCES

12  
13 25-XXX. DEFINITIONS

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. §~~ SECTION 13-  
30 3601(A)(5), including any attempt, conspiracy or solicitation of another to  
31 commit such act:

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

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

41 4. "Deferred prosecution" and "diversion" means any program offered  
42 by a criminal court or government agency through which an alleged offender  
43 avoids criminal prosecution by agreeing to pay a fine, participate in counseling,  
44 or perform other remedial tasks in exchange for dismissal of one or more

✓ Jenny Gadow – draft re: special circumstances and false allegations  
Title 25 – Custody Rewrite  
✓ Prepared for 04.08.11 Meeting

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1 pending charges or a promise by the state not to proceed with a complaint or  
2 indictment.

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

10 ~~7~~ 6. “Intimate partners” means persons whose relationship with each  
11 other qualifies ~~under A.R.S. §~~ PURSUANT TO SECTIONS 13-3601(A)(1), (2), (3)  
12 OR (6).

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

20 ~~7~~ 8. “Intimate partners” means persons whose relationship with each  
21 other qualifies ~~under A.R.S. §~~ PURSUANT TO SECTIONS 13-3601(A)(1), (2), (3)  
22 OR (6).

23 ~~4~~ 9. “Special circumstance” refers to conduct requiring application of  
24 one or more mandatory rules ~~described in A.R.S. §§~~ PURSUANT TO SECTIONS 25-  
25 440 through 446.

26  
27 SL/CP WORKGROUP NOTE

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

30  
31  
32  
33 **25-440. Special Circumstances; Basic Principles**

34 [Former A.R.S. § 25-403.03(B)]

35 A.

36 A. The court shall always consider a finding of special circumstances, as  
37 contrary to the best interests of the child, irrespective of whether a child  
38 personally witnessed the particular act or acts. When deciding both parental  
39 decision-making and parenting time, the court shall assign primary importance  
40 to the physical safety and emotional health of the child and the non-offending  
41 parent.

42 B. Special Circumstances consist of: child abuse, dangerous crimes  
43 against children, false allegations, intimate partner violence, substance abuse,  
44 and/or violent and serial felons.

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Jenny Gadow – draft re: special circumstances and false allegations  
Title 25 – Custody Rewrite  
Prepared for 04.08.11 Meeting

**Deleted:** Intimate Partner Violence and Child Abuse

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

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AD HOC CUSTODY WORKGROUP NOTE

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

**25-441. Child Abuse**

**INSERT PROVISIONS REGARDING PARENTAL DECISION-MAKING AND PARENTING TIME WHEN CHILD ABUSE INVOLVED.**

**25-442. 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 by A.R.S. § IN SECTION 13-705(P)(1); or**
  - 2. A person required to register under A.R.S. § 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 A.R.S. § SECTION 13-705(P)(1), may have access to the child. The parent or custodian must provide notice by first-class mail, return receipt requested, or by electronic means to an electronic mail address that the recipient provided to the parent or custodian for notification purposes, or by some other means of communication approved by the court.**

**25-443. False Allegations**

**INSERT PROVISIONS REGARDING PARENTAL DECISION-MAKING AND PARENTING TIME WHEN FALSE ALLEGATIONS INVOLVED.**

**25-444. Intimate Partner Violence**  
[Former A.R.S. § 25-403.03(A), (D) and (E)]

Jenny Gadow – draft re: special circumstances and false allegations  
Title 25 – Custody Rewrite  
Prepared for 04.08.11 Meeting

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2 THIS SECTION SHOULD BE COMBINED WITH THE FOLLOWING SECTION TO  
3 ADDRESS PARENTAL DECISION-MAKING AND PARENTING TIME TO MAKE  
4 CONSISTENT WITH ABOVE SECTIONS.

5 A. Cases Where Parental Decision-Making Presumptively Disallowed. If  
6 the court determines from a preponderance of the evidence that a parent has  
7 previously committed any act of intimate partner violence against the other  
8 parent, then it shall not award parental decision-making to the offending  
9 parent without proof that such parent should still make major decisions for the  
10 child despite the proven history of abuse or violence. The offending parent  
11 may submit this proof by asking the court to consider the criteria listed in  
12 ~~Subsection~~ SUBSECTION (B). In that event, the court shall also evaluate  
13 whether the offending parent has nevertheless failed to prove his or her  
14 suitability for parental decision-making by considering each of the criteria  
15 listed in ~~Subsection~~ SUBSECTION(C).

16  
17 C. Reasons to Refuse Parental Decision-Making to an Offender. To  
18 evaluate whether the mitigating evidence presented in ~~Subsection~~ SUBSECTION  
19 (B) is adequate to award parental decision-making to the offending parent, and  
20 in addition to any other relevant, aggravating factors, the court shall also  
21 consider:

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

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

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

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

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

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

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

43 REMOVED THESE AS THEY ARE BETTER SUITED FOR TRAINING OF THE  
44 JUDICIARY TO IDENTIFY IPV  
45

**Deleted:** or child abuse against the child or child's sibling,

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

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

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

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

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

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**Deleted:** D. Coercive Control. As used in ~~SUBSECTION~~ subsection C(1), "coercive control" refers to one or more controlling behaviors inflicted by one parent against another, when the latter has also suffered intimate partner violence by that parent. With regard to each behavior, the court shall consider its severity, whether it comprises part of a wider pattern of controlling conduct, and the actor's motivation. Specifically, the court shall contemplate whether the offending parent has:¶

1. Persistently engaged in demeaning, degrading or other verbally abusive conduct toward the victim;¶

2. Confined the victim or otherwise restricted the victim's movements;¶

3. Attempted or threatened suicide;¶

4. Injured or threatened to injure household pets;¶

5. Damaged property in the victim's presence or without the victim's consent;¶

6. Threatened to conceal or remove children from the victim's care, or attempte...

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AD HOC CUSTODY WORKGROUP NOTE

Arizona law currently segregates intimate partner violence into a two-part analysis. The first part, found at A.R.S. § 25-403.03(A), forbids joint custody to a “significant” IPV offender, either because of significant violence or a significant history of violence. Unfortunately, the statute does not define “significant,” which leads to widely varying outcomes for comparable conduct. The current statute also produces the unintended consequence of invalidating the ordeal of intimate partner violence survivors who suffer injuries that the court is unwilling to classify as “significant” for purposes of an absolute bar to parental decision-making.

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

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

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

**25-442. THIS SECTION SHOULD BE COMBINED WITH ABOVE SECTION Intimate Partner Violence,**

)]

A. Cases Where Parenting Time Presumptively Disallowed. If the court finds that a parent has committed any act of intimate partner violence that parent has the burden of proving to the court’s satisfaction that unrestricted parenting time will not physically endanger the child or significantly impair the child’s emotional development. The victim need not prove the reverse. In deciding whether the offending parent has met this burden, the court shall consider all of the criteria listed in ~~A.R.S. §~~ SECTIONS 25-441(B) and (C), giving

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Title 25 – Custody Rewrite  
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[Former A.R.S. § 25-403.03(F

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1 due consideration to whether parenting time with that parent under the  
2 existing circumstances may:  
3 1. Expose the child to poor role-modeling related to the confirmed  
4 intimate partner violence as the child grows older and begins to develop his or  
5 her own intimate relationships, irrespective of whether the offending parent  
6 poses a direct physical risk to the child; and  
7 2. Endanger the child's safety due to the child's physical proximity to  
8 new, potential acts of violence by the parent against a new intimate partner or  
9 other child.  
10 B. Restrictions on Parenting Time. If the offending parent fails to prove  
11 his or her suitability for unrestricted parenting time under ~~Subsection~~  
12 ~~SUBSECTION (A)~~, the court shall then place conditions on parenting time that  
13 best protect the child and the other parent from further harm. With respect to  
14 the offending parent, the court may:  
15 1. Order child exchanges to occur in a specified safe setting.  
16 2. Order that a person or agency specified by the court must supervise  
17 parenting time. If the court allows a family or household member or other  
18 person to supervise the offending parent's parenting time, the court shall  
19 establish conditions that this supervisor must follow. When deciding whom to  
20 select, the court shall also consider the supervisor's ability to physically  
21 intervene in an emergency, willingness to promptly report a problem to the  
22 court or other appropriate authorities, and readiness to appear in future  
23 proceedings and testify truthfully.  
24 3. Order the completion of a batterer's intervention program, as  
25 defined by ~~A.R.S. §~~ SECTION 25-422(1), and any other counseling the court  
26 orders.  
27 4. Order abstention from or possession of alcohol or controlled  
28 substances during parenting time, and at any other time the court deems  
29 appropriate.  
30 5. Order the payment of costs associated with supervised parenting  
31 time.  
32 6. Prohibit overnight parenting time.  
33 7. Require the posting of a cash bond from the offending parent to  
34 assure the child's safe return to the other parent.  
35 8. Order that the address of the child and other parent remain  
36 confidential.  
37 9. Restrict or forbid access to, or possession of, firearms or ammunition.  
38 10. Suspend parenting time for a prescribed period.  
39 11. Suspend parenting time indefinitely, pending a change in  
40 circumstances and a modification petition from the offending parent.  
41 12. Impose any other condition that the court determines is necessary to  
42 protect the child, the other parent, and any other family or household  
43 member.

44 WORKGROUP NOTE

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1 Although new A.R.S. § 25-442 does not alter the basic premise of current A.R.S. § 25-403.03(F) –  
2 which governs parenting time – the rules are clarified to emphasize the twin problems of physical safety  
3 and emotional development. Current law already cites both for the court’s consideration, but litigants  
4 typically focus on physical danger at the expense of overlooking the (potentially more serious) long-term  
5 risk of emotional harm resulting from constant access time with an unrepentant abuser. The amendment  
6 clearly directs the court to consider the issue of future, parental role-modeling.  
7  
8  
9

10 **25-445. Substance Abuse** [Former A.R.S. § 25-403.04]

11 A. If the court determines from a preponderance of the evidence that a  
12 parent has been engaged in any of the following conduct within the past three  
13 years, a rebuttable presumption shall arise prohibiting an award of parental  
14 decision-making to that parent:

15 1. Any drug offense under A.R.S., Title AS DEFINED IN TITLE 13, Chapter  
16 CHAPTER 34.

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

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

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

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

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

28 2. Reliable results from random urinalyses, blood or hair follicle tests,  
29 or some other comparable testing procedure.  
30

31 **25-446. Violent & AND Serial Felons** [Former A.R.S. § 25-403.05]

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

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

37 2. A person whose criminal history meets the definition of a category  
38 two or three repetitive offender under A.R.S. § PURSUANT TO SECTIONS 13-  
39 703(B) and (C).

40 B. If a parent is criminally convicted of first- or second-degree murder  
41 of the child’s other parent, the court may award parental decision-making and  
42 unrestricted parenting time to the convicted parent on a showing of credible  
43 evidence, which may include testimony from an expert witness, that the  
44 convicted parent was a victim of intimate partner violence at the hands of the  
45 murdered parent and suffered trauma as a result.  
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25-447, Special Circumstances: Evidence Required  
[Former A.R.S. § 25-403.03(C), (G) and (H)]

A. Appropriate Evidence. To determine if a parent has engaged in special circumstances, and subject to RULES OF FAMILY LAW PROCEDURE Rule 2(B), the court shall consider all relevant factors including, but not limited to, the following:

1. Findings or judgments from another court of competent jurisdiction.
2. Police or medical reports.
3. Counseling, school or shelter records.
4. Child Protective Services records.
5. Photographs, recordings, text messages, electronic mail or written correspondence.
6. Witness testimony.
7. Test results.

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

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

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

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

F. Alternative Dispute Resolution. A victim of intimate partner violence may opt out of alternative dispute resolution (‘ADR’) imposed under ~~Family Law~~ RULES OF FAMILY LAW PROCEDURE Rule 67 or 68 to the extent that a suggested ADR procedure requires the parties to meet and confer in person. The court shall notify each party of this right before requiring their participation in the ADR process. As used in this subsection only, “victim of intimate partner violence” means: (1) a party who has acquired a protective

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

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

11  
12 AD HOC CUSTODY WORKGROUP NOTE

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

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

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

33 Subsection (E) strengthens the protections for potentially vulnerable IPV victims otherwise  
34 forced into mediation or other forms of ADR with their abusers.  
35  
36

37 **25-448 Rebutting The Presumption as to False Allegations, Intimate Partner**  
38 **Violence and Substance Abuse.**

39  
40 **B. How a Confirmed Offender May Prove Suitability for Parental Decision-**  
41 **Making. To determine if the offending parent may exercise parental**  
42 **decision-making, despite the proven history of intimate partner violence or**  
43 **child abuse, and in addition to any other relevant, mitigating evidence, the**  
44 **court shall consider whether that parent has:**

45 1. Completed a batterer’s intervention program, as defined by A.R.S.  
46 § SECTION 25-422(1), in cases involving intimate partner violence, and has  
47 also disclosed and submitted into evidence a complete set of treatment  
48 records proving an acceptable level of rehabilitation. A mere certificate of

49 Jenny Gadow – draft re: special circumstances and false allegations  
50 Title 25 – Custody Rewrite  
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1 completion does not alone prove rehabilitation. The treatment records  
2 themselves must exhibit active involvement and positive steps by the  
3 offending parent during therapy.  
4 2. Completed a counseling program for alcohol or other substance  
5 abuse, if the evidence establishes that these considerations played a role in  
6 past intimate partner violence or child abuse.  
7 3. Refrained from any further behavior considered a special  
8 circumstance.  
9 4. Demonstrated sincere remorse and acceptance of personal  
10 responsibility by words and conduct following the confirmed act or acts.  
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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 ~~A.R.S. § 25-422(11)~~, the court may refer the matter for juvenile dependency proceedings pursuant to ~~A.R.S. §§ SECTION 8-800, et seq.~~, 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 ~~A.R.S. §§ 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.

Article 5.  
Third Parties

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

A. Decision-Making Authority. ~~Consistent with A.R.S. §~~ PURSUANT TO SECTION 25-421(B)(2), a person other than a legal parent may petition the superior court for decision-making authority over a child. The court shall summarily deny a petition unless it finds that the petitioner has established that all of the following are true in the initial pleading:  
1. The person filing the petition stands in loco parentis to the child.  
2. It would be significantly detrimental to the child to remain, or be placed in the care of, either legal parent who wishes to keep or acquire parental decision-making.  
3. A court of competent jurisdiction has not entered or approved an order concerning parental decision-making within one year before the person filed a petition pursuant to this section, unless there is reason to believe the child’s present environment may seriously endanger the child’s physical, mental, moral or emotional health.  
4. One of the following applies:  
(a) One of the legal parents is deceased.  
(b) The child’s legal parents are not married to each other at the time the petition is filed.  
(c) There is a pending proceeding for dissolution of marriage or for legal separation of the legal parents at the time the petition is filed.

Deleted: 25-444. Substance Abuse [Former A.R.S. § 25-403.04]¶

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

Deleted: 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 by A.R.S. § IN SECTION 13-705(P)(1); or¶  
.2. A person required to register under A.R.S. § 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 A.R.S. § SECTION 13-705(P)(1), may have access to the child. The parent or custodian must provide notice by first-class mail, return receipt requested, or by electronic means to an electronic mail address that the recipient provided to the parent or custodian for

Deleted: 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 by A.R.S. §§ IN SECTIONS 13-1105(A) and 13-1104(A), except as provided in Subsection SUBSECTION(B).¶

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

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

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

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

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

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

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

32 1. The child's legal parents.

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

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

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

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

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

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- 1           1. The historical relationship, if any, between the child and the person
- 2 seeking visitation.
- 3           2. The motivation of the requesting party seeking visitation.
- 4           3. The motivation of the person objecting to visitation.
- 5           4. The quantity of visitation time requested and the potential adverse
- 6 impact that visitation will have on the child’s customary activities.
- 7           5. If one or both of the child’s parents are deceased, the benefit in
- 8 maintaining an extended family relationship.
- 9           F. Coordinating Third-Party Visitation with Normal Parenting Time. If
- 10 logistically possible and appropriate, the court shall order visitation by a
- 11 grandparent or great-grandparent to occur when the child is residing or
- 12 spending time with the parent through whom the grandparent or great-
- 13 grandparent claims a right of access to the child.
- 14           G. Consolidation of Cases. A grandparent or great-grandparent seeking
- 15 visitation rights under this section shall petition in the same action in which the
- 16 family court previously decided parental decision-making and parenting time,
- 17 or if no such case ever existed, by separate petition in the county of the child’s
- 18 home state, ~~as defined by A.R.S. §~~ PURSUANT TO 25-1002(7).
- 19           H. Termination of Third-Party Visitation. All visitation rights granted
- 20 under this section automatically terminate if the child has been adopted or
- 21 placed for adoption. If the child is removed from an adoptive placement, the
- 22 court may reinstate the visitation rights. This subsection does not apply to the
- 23 adoption of the child by the spouse of a natural parent if the natural parent
- 24 remarries.

25  
26 Article 6. Temporary Orders, Modification & Relocation  
27 § 25-460. Temporary Orders  
28 [former A.R.S. § 25-404]

29 A.  
30 § 25-461. Decree Modification  
31 [former A.R.S. § 25-411]

32 A.  
33 § 25-462. Relocation of a Child  
34 [former A.R.S. § 25-408(B)]

35 A.  
36  
37 Article 7. Records & Sanctions  
38 § 25-470. Access to Records  
39 [former A.R.S. § 25-403.06]

40 A.  
41 § 25-471. Sanctions for Misconduct  
42 [former A.R.S. § 25-414]  
43 A.

44  
45 Article 8. Miscellaneous

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- 1 § 25-480. Statutory Priority
- 2 [former A.R.S. § 25-407]
- 3
- 4 § 25-481. Agency Supervision
- 5 [former A.R.S. § 25-410]
- 6 § 25-482. Identification of Primary Caretaker
- 7 [former A.R.S. § 25-403.07]
- 8 § 25-483. Fees & Resources
- 9 [former A.R.S. § 25-403.08]
- 10 § 25-484. Child Interviews by Court & Professional Assistance
- 11 [former A.R.S. § 25-405]
- 12 § 25-485. Investigations & Reports
- 13 [former A.R.S. § 25-406]
- 14 § 25-486. Child Support & Parenting Time Fund
- 15 [former A.R.S. § 25-412]
- 16 § 25-487. Domestic Relations Education & Mediation Fund
- 17 [former A.R.S. § 25-413]
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