

**Substantive Law Workgroup**  
Steve Wolfson, Chairperson

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

**DOMESTIC RELATIONS COMMITTEE**

Agenda

**April 29, 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 Dr. Brian Yee*

Action Item/Vote: \_\_\_\_\_ Approval of 03-25-11 minutes

- 2. Role of Coercive Control in an Analysis of Domestic Violence** ..... *Dr. Evan Stark*  
*Professor, School of Public Affairs and Administration*  
*Rutgers University*

Action Item/Vote: \_\_\_\_\_

- 3. Review of general public comments received**.....*Chairmen*  
Action Item/Vote: \_\_\_\_\_

- 4. Review proposed custody rewrite**.....*Workgroup members*

- Danny Cartagena...Proposed language for A.R.S. § 25-812 (*Voluntary acknowledgement of paternity*), A.R.S. § 814 (*Presumption of paternity*), and A.R.S. § 25-815 (*Paternity; full faith and credit*)
- Keith Berkshire...Proposed language for § 25-422 *Definitions: Parental decision-making*
- Tom Alongi ...Proposed language for § 25-471 *Sanctions for Misconduct*

Action Item/Vote: \_\_\_\_\_ Provisions of custody rewrite

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

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

- 6. Set next meeting agenda** .....*Chairmen*

**Next Meeting**

May 13, 2011, 12:00 p.m. to 1:30 p.m.

Arizona State Courts Building

1501 W. Washington, Phoenix, Arizona, Conference Room: 230a

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.

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# *Substantive Law/Court Procedures Workgroup*

## *Minutes*

<b>Date:</b> March 25, 2011	<b>Time:</b> 12:00 PM – 1:30 PM	<b>Location:</b> Conference Room 230
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**Minute Taker:** Tama Reily

**Members Attending:**

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

**Staff/Admin. Support:** Kathy Sekardi

**Guests:** Marjorie Cook, Julie Minnick, Bill Fabricius

**General public:** Joi Davenport, Terry Decker, Eric Bates, David Alger, Alvil Kumitz, Jarrett Williams, Kira Dietz, Dennis P. Lee, Karen Duckworth, Dennis Levine, Brent Miller

**I. Welcome and Announcements**

The March 25, 2011 joint meeting of the Substantive Law / Court Procedures Workgroups was called to order by Substantive Law Workgroup Chair, Steve Wolfson, at 12:10 pm.

The November 2010 and March 2011 meeting minutes were not presented for approval at this time due to the lack of a quorum.

Mr. Wolfson announced that Senator Gray, at the request of the Relocation Workgroup, withdraw SB1083 from further consideration in the House Human Services committee.

**II. Procedures Review**

Court Procedures Workgroup Chair, Brian Yee, spoke briefly on the procedures that would be followed in order to adhere to open meeting laws. He reiterated how public comments and public requests to speak should be submitted to committee staff at the beginning of meetings in order to obtain the fullest participation of the general public.

**III. Hospital Paternity Program**

Ms. Marjorie Cook, DSCE Director of Outreach and Community Initiatives, and Ms. Julie Minnick, Assistant Attorney General, addressed the group regarding the Hospital Paternity Program (HPP). Ms. Cook explained the paternity process, and what the required actions and documents are required when paternity is challenged. Ms. Minnick discussed the circumstances under which a court hearing could be requested and further discussed genetic testing in certain situations such as when an ‘Acknowledgement of Paternity’ is rescinded. Ms. Cook stated that she would provide the suggestions and issues raised by workgroup members today to the attention of her assistant director at DSCE.

**IV. Review of Comment Forms**

Based upon the comments at the March 25, 2011 meeting it was suggested that the issues of domestic violence, coercive control, false allegations, alienation or manipulation of the children, and possibly substance abuse could be contained in the *Special Circumstances* section. Several members agreed with this proposal, however, it was also thought that the workgroup should hear from experts in the field prior to making any changes to the statute. Jenny Gadow volunteered to draft proposed language in time for the next meeting.

**V. Review proposed custody rewrite**

Item not addressed.

**VI. Call To The Public**

Public attendee, Terry Decker, expressed the following:

- Domestic violence should be removed from the custody statutes. A.R.S. § 25-103 “has to, by law, be reflected in all language and Title 25 statutes.” In addition, he stated domestic violence toward a spouse is irrelevant when the parents are divorced.
- The parenting time baseline should be 50/50 unless there is clear and convincing proof that a parent is unfit.
- The term *primary residential parent* does not conform to A.R.S. § 25-103. Paternity should only be overturned by court action. A mother wishing to challenge the father’s paternity should have to file an appropriate pleading before the court.

Public attendee, Brent Miller’s commented on the following:

- On the establishment of paternity and custody, once a birth certificate is signed, the parties should have joint custody until a court or DNA shows otherwise.
- Intimate partner violence is broadened by adding any person that may have a casual relationship with parties involved in dissolution, custody, and parenting time issues. The language should be removed or put in Title 13.
- Wishes to change several portions of the meeting minutes of 3/11/11, stating “they were not an accurate reflection of the events that took place” at the meeting.

Public attendee, Karen Duckworth had the following comments:

- Believes the format of these meetings excludes and invalidates public opinion.
- Objects to the use of the word “*complaints*” in the March 31 meeting minutes, where the term is used in the comments made by public attendee, Brent Miller.
- There is inconsistent language in the unified draft where the definition section references A.R.S. § 13-3601(A) regarding *Intimate Partner Violence*, however, section (C) *Collateral Protective Order Proceedings* and section (F) *Alternative Dispute Resolution* use A.R.S. § 13-3602(I).

Public attendee, Joi Davenport had the following comments:

- Suggests addressing false allegations of parental alienation as research proves perpetrators of domestic violence center allegations of abuse by falsely accusing the victim of parental alienation when the parent is trying to protect the children from witness or experiencing domestic violence.

**Next Meeting**

April 8, 2011

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

Conference Room 230

Arizona State Courts Building

1501 W. Washington

**DOMESTIC RELATIONS COMMITTEE**

**REPORT OF THE AD HOC CUSTODY WORKGROUP**

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**to the SUBSTANTIVE LAW/COURT PROCEDURES WORKGROUPS**

**Dr. William Fabricius, Chair  
Sidney Buckman  
Daniel Cartegena  
Grace Hawkins  
Dr. Brian Yee**

**April 6, 2011**

**Summary**

The Ad Hoc Custody Workgroup (AHCW) was established by the Domestic Relations Committee, (DRC), an interim legislative committee. The AHCW was charged to review Arizona Revised Statutes, Title 25, Chapter 4; Child Custody and recommend improvements to it. The workgroup was directed to deliver its final work product to the DRC's Substantive Law/Court Procedures Workgroup, a standing subcommittee of the DRC. To generate a final work product for this specific task, the AHCW met publicly 19 times between October 23, 2009, and March 4, 2011. Numerous drafts were prepared and reviewed by the workgroup and have been consolidated into a Unified Draft (Final Version).

The AHCW recommends consideration of the Unified Draft (Final Version), which was adopted by unanimous agreement of the DRC-appointed voting members who attended the workgroup's final meeting on March 4, 2011. The AHCW also strongly recommends that the Substantive Law/Court Procedures Workgroup seek outside researchers to review the draft, including the work that has come from the AHCW, and provide comment on a proposed bill.

**Background**

The DRC, currently co-chaired by Senator Linda Gray and Representative Steve Court, established the AHCW on October 3, 2008. Dr. William Fabricius was appointed as chair. The AHCW was charged to review and recommend improvements to Arizona Revised Statutes, Title 25, Chapter 4; Child Custody. The AHCW was directed to refer its final work product to the DRC's Substantive Law Workgroup, a standing subcommittee of the DRC. The Substantive Law and Court Procedures workgroups have merged for the purpose of reviewing the AHCW's draft proposal, making any changes deemed necessary, and then taking it forward to the full DRC for debate and vote in time to prepare a bill for the next legislative session.

The AHCW began to explore the topic of child custody, including review of relevant research and child custody statutes in Arizona and other states, on October 23, 2009. The workgroup met regularly over the next five months and focused on replacing the term "custody" with "parenting time" and "parental decision-making" as appropriate. In early 2010, Senate Bill 1314; Domestic Relations was introduced and began to make its way through the legislative process. In its original form, the bill called for a presumption of joint legal custody.

Senator Gray brought the House version of the bill to the DRC at its March 5, 2010, meeting and assigned the bill to the Ad Hoc Custody Workgroup for consideration and, if needed, amendment. The AHCW members met on March 19, 2010, and voted 7-1 in favor of amending SB1314 to remove the presumption of joint custody and add language identifying children's best interests with substantial, frequent, meaningful and continuing parenting time with both parents, and with both parents participating in decision-making about the child, absent evidence to the contrary. These recommended changes were offered to the sponsors. SB1314 was amended

to reflect these changes and was signed into law by Governor Janice Brewer as A.R.S. 25-103 §§ (B) and (C).

**Workgroup  
Structure and Focus**

At this point, because of the high level of interest in the AHCW task, to assist with disseminating information, staff developed a webpage on the Judicial Branch website. Throughout its existence, the AHCW has used this website to make materials accessible to workgroup members and the general public. The webpage functioned as an archive, as outreach, and as a mechanism to solicit public comment. Meeting materials, minutes, draft documents, reference materials, and outreach efforts are available at <http://www.azcourts.gov/cscommittees/AdHocCustodyWorkgroup.aspx> All public comments received through the webpage are presented in Appendix A.

Additionally, the workgroup extended an open invitation to interested individuals to join their discussions in order to include a broad spectrum of members. The members set a goal of drafting an omnibus bill that would improve the organization, consistency, and clarity of the statute, and also instantiate A.R.S. §§ 25-103 (B) and (C) into specific policies and procedures. They also affirmed that their process was to be as evidence-based, open, and inclusive as possible.

In total, the workgroup held 19 meetings, each no less than two hours in duration, between October 23, 2009, and March 4, 2011. The workgroup was organized into a steering committee, voting members, participating members, and public members. Additionally, task forces consisting of three to four persons were developed to work on assigned sections.

Task forces met between regular workgroup meetings to develop draft documents for review by the entire workgroup. The workgroup began with A.R.S. § 25-401; jurisdiction, § 25-402; definitions, and § 25-403; best interests of the child. During this time, the workgroup was presented with no less than nine versions of the Criteria for Best Interests draft and eight versions of the Jurisdiction, Definitions, Special Circumstances sections. All drafts have now been consolidated into a Unified Draft. The final version of the Unified Draft is attached as Appendix D.

At the October 15, 2010, DRC meeting, the AHCW presented an Interim Report and Addendum chart (see Appendix B) outlining the reorganization of the statute and the sections that needed revision. The interim report stated that some of the statutory issues identified thus far and the sheer breadth and complexity of the task meant that the workgroup could not have a product in time for the beginning of the 2011 legislative session. Thus, the workgroup requested that the DRC extend the timeframe to complete its charge until October 2011. The AHCW's request for an extension was granted by a DRC vote.

Finally, in January, 2011 in keeping with Senator Gray's vision to have input from all interested stakeholders she determined the workgroup should proceed with a roundtable format, managing unlimited discussion by all those present at the final two meetings. Accordingly, the final report reflects the minority and majority opinions of those stakeholders even though they were not voting members and may not have attended meetings frequently.

### **Current Status**

The AHCW's objective is to have proposed legislation ready to submit to the Legislature by October 2011. This deadline provides any of the co-legislative members of the DRC the opportunity to sponsor a proposed bill for the next legislative session. Because of diverse interests of stakeholders following the work of the AHCW, it is believed the final proposal submitted to the DRC may require all of the scheduled 2011 meetings (June, September, and October) for continued discussion, debate, and public testimony before a final vote will be considered.

On February 11, 2011, AHCW leadership announced that the workgroup would be wrapping up its task at the March 4, 2011, meeting in order to forward a final draft to the Substantive Law/Court Procedures Workgroup for its review as was agreed in October 2008, when the AHCW was originally established by the DRC. It was explained at this meeting that this timeline would allow the Substantive Law/Court Procedures Workgroup from March through May to continue to work on proposed language and further vet the proposal with the goal of presentation to the full DRC at its next scheduled meeting in June 2011.

### **Final Meeting; Majority and Minority Positions**

At the March 4, 2011, meeting, Dr. Fabricius informed the workgroup that he had asked Peter Salem, executive director of the Association of Family and Conciliation Courts, whether he would be willing to solicit national experts on family law, best interests of children, and domestic violence to provide some feedback or commentary on the workgroup's product. A motion was passed to endorse the concept and refer it to the Substantive Law/Court Procedures Workgroup for action at the appropriate time. Dr. Fabricius presented a power point overview (Appendix C) of the AHCW product and the intended goals it sought to accomplish.

The remainder of the meeting was devoted to examining the proposed statute revisions section-by-section and taking straw polls among all persons present on all suggested changes. Procedures were established for the final meeting so that consensus on the various sections of the draft could be measured and the DRC-appointed members could take a final vote. Four of five DRC-appointed members (Dr. William Fabricius, Sidney Buckman, Grace Hawkins, and Dr. Brian Yee) were present; Daniel Cartegena was absent.

To determine consensus on the draft, sections were reviewed and put before all those present for a straw vote. The straw vote (show of hands) was not based on scientific principles. Except for AOC staff, all of those persons

present at meeting (DRC-appointed and general public, including those participating by telephone) were allowed to participate in the straw polls. Persons participating in the straw polls were not asked to identify themselves with any specific stakeholder group, and poll results were not classified by stakeholder groups. Persons who were present for the first time were allowed to participate in straw poll votes, even though they had not attended any previous meetings. Changes that were supported by a majority present have been incorporated into the Unified Draft, Final Version (Appendix D). Changes that were supported by a minority of those present are shown in Table 1 (page 7) as “minority consensus.”

**Recommendation**

All drafts have now been consolidated into a Unified Draft (Final Version), which is attached as Appendix D. The AHCW recommends consideration of the attached Unified Draft (Final Version), which was adopted by unanimous agreement of the DRC-appointed voting members (Dr. William Fabricius, Sidney Buckman, Grace Hawkins, and Dr. Brian Yee) who attended the workgroup’s final meeting on March 4, 2011.

By a unanimous vote of DRC-appointed members, the AHCW strongly recommends that the Substantive Law/Court Procedures Workgroup seek outside researchers to review the draft, including the work that has come from the AHCW, and provide comment on a proposed bill.

**Appendices**

- Appendix A – Public comments received on webpage
- Appendix B – Interim Report and Addendum
- Appendix C – Power Point (from “Overview of Scope of Work” presentation at March 4, 2011, meeting)
- Appendix D – Unified Draft, Final Version

**Table 1 – Majority and Minority Consensus**

<b>Section</b>	<b>Majority Consensus</b>	<b>Minority Consensus</b>
A.R.S. § 420	No changes	
A.R.S. § 421	No changes	
A.R.S. §§432-436	Relocate §§ 432-436 to follow § 423 and add Table of Contents	Leave in current location as shown in Unified Draft, Version 2
A.R.S. § 422 – Definitions	Leave as written	Add definitions of “false allegations,” “parental alienation syndrome,” and “hostile aggressive parenting”
	Leave as written	Remove “religion” from definition of “parental decision-making”
A.R.S. § 423	No changes	
A.R.S. § 424(A)	Leave as written	Change the word “one” to “either” in this phrase: “Intimate partner violence is frequently characterized by an effort of <b>one</b> parent to control the other ...”
A.R.S. § 425	Leave as written	Omit all references to intimate partner violence; retain references to child abuse
	Leave as written	Change standard of proof from a “preponderance of the evidence” to “clear and convincing evidence”
A.R.S. § 425(C)(2)	Leave as written	In the sentence, “Whether the offending parent committed successive acts of intimate partner violence or child abuse against any person after having already received counseling on past occasions,” change “successive” to “continuing”
A.R.S. § 425(C)(7)	Retain the paragraph	Strike the paragraph: “Whether the offending parent failed to comply with the mandatory disclosure requirements of Family Law Rules 49(B)(2)-(4) or reasonable discovery requests for records associated with treating intimate partner violence or child abuse.”
A.R.S. § 425(D)	Leave as written	Change the word “one” to “either” in the phrase, “As used in Subsection C(1), “coercive control” refers to <b>one</b> or more controlling behaviors inflicted by

		one parent against another ..." and throughout the draft when used in this context.
	Leave as written	Change "offending parent" to "either"
	Leave as written	Add italicized language: "Specifically, when the court has determined that intimate partner violence has occurred, the court shall ..."
A.R.S. § 426(A)	Leave as written	Add " <i>false allegations of domestic violence or intimate partner violence</i> " to the phrase "If the court finds that a parent has committed any act of intimate partner violence or child abuse ..."
A.R.S. § 427(B)	Leave as written	Change the word "shall" to "may"
A.R.S. § 427(D)	Leave as written	Strike Paragraph D regarding shelter residency
A.R.S. § 428(A)(1)	Leave as written	Change "any drug offense" to a drug offense occurring within the past one year (instead of three years)
A.R.S. § 429	No changes	
A.R.S. § 430	No changes	
A.R.S. § 431	No changes	
A.R.S. § 432	No changes	
A.R.S. § 433	No changes	
A.R.S. § 434	No changes	
A.R.S. § 435	No changes	
A.R.S. § 436	Leave as written	Add a reference to ARFLP Rule 82(a)
Throughout the draft	Leave as written	Change the term "intimate partner violence" to "domestic violence" wherever it appears in the draft

# **APPENDIX A**

## Comments Received on AHCW Webpage

*\*No corrections or edits have been made to the content of comments submitted, except for formatting. Personal contact information has been redacted.*

1.	Thu 11/11/10 6:43 a.m.
	Maricopa County
	Interest: Attorney
	Re: - 403-Custody: best interests of child; - 404-Temporary orders
	<p>Your website is great, but there is nothing posted under Research/ Shared Materials section. Could you please post the available research which was reviewed by the committee, both in support of and against a presumption of equally shared parenting time as serving the best interests of children at various ages and developmental stages.</p> <p>Thank you.</p>

2.	Tues 11/16/10 9:27 a.m.
	Yavapai County
	Interest: Eight members of the Conciliation Court Roundtable
	Re: - 403-Custody: best interests of child
	<p>Conciliation Court mediation and mediation through the ADR programs in all courts is voluntary. These ADR processes are provided to parties as opportunities to resolve their disputes without a Judge imposing involuntary orders upon them. For the law to effectively discriminate against victims of domestic violence by taking away the discretion of a Judge to allow victims to participate in these processes is contrary to their best interests in many cases.</p> <p>Each case has unique circumstances and may be more appropriate for ADR than for arguing the issues in Court potentially exposing the victim to vicarious re-victimization. In addition, each Court has procedures in place to protect victims of domestic violence when they attend ADR including the right of victims to request to opt out of the ADR process. Consequently, allowing victims of domestic violence to attend ADR may empower them.</p> <p>The Conciliation Court Roundtable respectfully submits the following rewrite to Section 105, Intimate Partner Violence and Child Abuse (Former ARS § 25-403.03):</p> <p>K. The Court may order the victim of intimate partner violence to alternative dispute resolution pursuant to ARFLP 67 and 68.</p>

## Comments Received on AHCW Webpage

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1.	Fri 12/17/10 11:19 a.m.
	Maricopa County
	Interest: Parent (Joint Custody)
	Re: - 403-Custody: best interests of child - 404-Temporary orders - 408-Rights of noncustodial parents/parenting time/relocation of child/exception/enforcement-access to records - 414-Violation of visitation or parenting time rights-penalties
	<p>I am a joint custodial parent, but it was not always the case. I had to battle in court for 7 years to obtain peace. Fairness and equity were another matter altogether.</p> <p>Some may think, "he's a nutcase for battling in court for 7 years". Let me set the record straight. The vast majority of litigation was initiated by my ex-wife and despite my pleas to the various judges presiding over my case none of the judges would agree that enough was enough. Hence the case festered in the courts for an obscene amount of time. To be certain, this was not good for our child.</p> <p>I am concerned with the work of this workgroup because it is a travesty for innocent people to be dragged into court based on false allegations of domestic violence. It is much more a travesty for the families and children sucked into the legal process based on false allegations that the families must endure what is in many cases years of bitterness simply because the courtroom provides a forum for people to play out their hostility towards one another -- I liken it to the Jerry Springer Show. People come to court and are encouraged to display their worst behavior in a public setting: anger, revenge, backstabbing, you name it. There is no judge who has presided in family court that can honestly disagree with this.</p> <p>I understand that the judges feel that they are doing the best that they can. After all, there is a significant responsibility for the attorneys to hold their clients in check and to assist the judge in maintaining decorum. It's just not that profitable for an attorney to help their client to diffuse their anger.</p> <p>Judges never hesitate to admonish the parties about how to conduct themselves, but that is too little too late. The process itself must be one of healing rather than adversarial conduct.</p> <p>Perhaps this is a simplistic view of things, but in the end analysis, it doesn't matter whether my ex was the instigator of the litigation or if I was. The fact is that it only takes one litigant to resume the war in the courtroom. A pleading is filed and both parties ready themselves for battle. Any hope of conciliatory conduct is out the window.</p> <p>I don't even want to start about the uselessness of the special masters. By the time a custody evaluator, independent medical examiner or parenting coordinator is appointed, the matter has already been permitted to drag out way too far. If the court was focused on healing the scars of a family that is broken rather than giving them a venue for a ready-for-prime-time soap opera then there would be much less suffering and much less damage to the children.</p>

	<p>The court could accomplish this with a presumption of equal parenting time for the parents and to have this presumption enforced as part of the preliminary injunction. This does not preclude parents from reaching an agreement to allocate parenting time differently, but fairness dictates that the parents enjoyed equal parenting time before filing with the court and it shouldn't change just because one parent feels that it is best.</p> <p>I also think that it is dangerous to inject rhetoric about domestic violence into the child custody statutes. Domestic violence is involved in a small minority of family court cases. I am not trying to discount the problem of domestic violence but domestic violence is addressed in the criminal code and the gaming of the family court system by people who are willing to falsify claims of domestic violence in order to gain an upper hand in custody disputes is an obscenity that is so widely recognized that most attorneys will play the domestic violence card even if no domestic violence has occurred and no domestic violence has been alleged. This must change.</p>
2.	<p>Fri 12/17/10 2:28 p.m.</p> <p>Maricopa County</p> <p>Interest: Parent (Custodial)</p> <p>Re:  - 403-Custody: best interests of child  - 404-Temporary orders</p> <p>Equal parenting time is a right. A child is born as a equal part of both a father and a mother. Litigation regarding parenting time, false accusations of domestic violence and child abuse, and litigation regarding the quality of a parent's ability to parent are unacceptable processes. I believe such inappropriate litigation is not in the best interest of any child. Therefore, I propose that the State stipulate the known best case, as its priority. Here is my proposed language:</p> <ol style="list-style-type: none"> <li>1. The court shall assume that both parents have the right to equal parenting time.</li> <li>2. The court shall assume that equal parenting time is the initial allocation.</li> <li>3. The court shall alter the initial allocation only by clear and convincing evidence.</li> </ol> <p>This is my priority. All other changes and modifications to family law, in my view of the world, flow from the principle that both parents are equal, by right, by initial consideration, and that such right is violated only by clear and convincing evidence to the contrary.</p>
3.	<p>Sat 12/18/10 1:37 p.m.</p> <p>Maricopa County</p> <p>Interest: Child Advocate</p> <p>Re:  - 402-Definitions  - 403-Custody: best interests of child  - 408-Rights of noncustodial parents/parenting time/relocation of child/exception/enforcement-access to records</p> <p>I am concerned about the domestic violence provisions contemplated, especially but not limited to, the coercive control provisions. 1. All of the domestic violence is required to be addressed by the criminal court under title 13. It should only be addressed by reference in child custody. It is legally required for the judge and all professionals involved to report suspected DV to the police. In that case a parent will be forced to fight two expensive and</p>

	<p>exhausting cases for his most prized relation at the same time. It is an understatement that this is unfair and ripe for gaming the system. Very few parents have the resources to fight this fight and should not have to.</p> <p>2. The appearance is that an effort is being made to effectively reduce the title 13 DV standard of proof to preponderance of the evidence because the civil court and findings can be used in the criminal court.</p> <p>3. Another consequence is that thousands of children will be taken from their parents and put under the state in foster care. Many parents that may have been caught once carrying marijuana, perhaps without even knowing it, would be barred as parents and the children would be denied access to possibly extremely nurturing parents.</p> <p>5. There is the substantial additional costs to the state of the aforementioned. It is extremely concerning that children presently on foster care will surely suffer substantial reductions in an already minimal lifestyle.</p> <p>6. This language effectively removes any limit whatsoever to judicial discretion. Any of this vast number of ill defined things can be used to justify any judicial action of any kind.</p> <p>7. The state will suffer a great deal of extra costs associated with multiple judicial actions occurring parallel to one another. Family Court will be burdened with much more complicated and time consuming proceedings.</p> <p>8. We already have a system set up for DV. Family court is not set up with the investigatory facilities or with the expertise.</p> <p>9. Very importantly, this language serves as a handbook to game the system and the children will suffer the consequences of much greater exposure to conflict and rulings that put them with the poorer parent or with no parent at all. It is well known that presently DV is being used much more for facetious and unethical purposes than for the purposes for which it was intended.</p> <p>10. The purpose for the family court custody statute should be to minimize conflict, require reasonable conduct by parents. The addition of DV, except by reference to title 13, is to increase conflict many fold.</p> <p>11. Another purpose of custody statute is to effect the public policy enumerated by Senate Bill 1314 that was passed in the last session. The DV addition does just the opposite, it defeats the policy voted by the legislature.</p> <p>12. If this bill is attempted by omnibus, then the addition of DV will doom it to failure. The Domestic Violence advocates have tried and failed to get much of this language in statute before. It will be defeated again. Except this time, it will take any improvements to title 25 down with it.</p>
4.	<p>Thu 01/13/11 10:32 a.m.</p> <p>Maricopa County</p> <p>Interest: Parent (Non-Custodial); Child Advocate</p> <p>Re: - 403-Custody: best interests of child</p> <p>It is the criminal court's purview and jurisdiction to protect all persons. Further any concern regarding anyone's safety is by law to be reported to the proper authorities. The criminal court will do its duty with the support of law enforcement to the best of its ability. Criminal court has jurisdiction and takes precedent over any civil court. Therefore all reference to domestic violence should be removed. These references could be seen as an attempt by the civil court to co-opt the criminal court's authority.</p>

Comments Received on AHCW Webpage

*\*No corrections or edits have been made to the content of comments submitted, except for formatting. Personal contact information has been redacted.*

1.	Thu 1/13/11 3:36 p.m.
	Maricopa County
	Interest: Parent (non-custodial); child advocate
	Re: - 403-Custody: best interests of child
	<p>The criminal court is in the business of protecting people from harm. Children are people. That is not the business or jurisdiction of the family court. Most psychology schools insist on using the term "good enough parent" instead of "bad parent" or "good parent." This implies that even the best trained and most eminent psychologists step away from making a determination that, for instance, it is optimal for the childrens' "best interest" that one parent should care for a child for 4 days out of 14 and the other for 10. This is better for the child than five out of 14 with one parent and 10 with the other or any other arbitrary division of parenting time. For it is entirely arbitrary now and certainly not in line with the state policy enacted by SB1314 and 1309. The proposition that a judge has this kind of psychological aptitude that no one else has is not very believable. This leads one inevitably to wonder if there are not other factors at work in this determination. Such as sexual bias, personal bias, or some other inappropriate motivation. Surely, we are treading on some very unconstitutional grounds with any determination other than 50/50 in a contested case. Senate bill 1309 passed last year. It is the parent's bill of rights. There are also the childrens' rights to consider because we are not talking about the child's best interest. 50/50 time must be mandated as an order of the family court. Any set of circumstances that would reasonably preclude this are the province and jurisdiction of the criminal court, not the family court.</p> <p>Thank you for your time and service.</p>
2.	Thu 1/13/11 5:25 p.m.
	Maricopa County
	Interest: Parent (non-custodial)
	Re: - 403-Custody: best interests of child
	<p>I have been struggling for nearly six years to acquire a presence in my children's lives. My 17 year old is now ready to graduate from HS, and my 14 year old has not spent significant time with me since early 2005. It is nearly impossible to change the parenting time schedule without expensive litigation and lengthy hearing schedules --- especially, as is my situation, the mother is entirely uncooperative, retains an attorney who advises her on all the deviations for avoiding a parenting time change, and can simply make unjustified claims that "it is not in the children's best interest", etc.</p> <p>Have any of you actually tried to overcome an uncooperative custodial parent?</p> <p>You can't do it unless something is seriously wrong with her. Once established, the every other weekend schedule is, for all practical purposes, impossible to modify. By the time it all works its way through budgets and courts the children are grown and gone, and "father" is a historical footnote.</p> <p>It is time to end this type of parental abuse. Being a "fit parent" causes nothing useful to happen in the court of today. Perhaps, if one is lucky, you have a cooperative mother. Get an attorney involved, and with all the exceptions, deviations, and details in the current laws, a</p>

	<p>father is out of luck. The nightmare of emotional distancing from the children begins immediately.</p> <p>Six years later, I might as well just disappear.</p> <p>It is too late for me to participate in the lives of my children. They have grown up --- without me in their lives. Mother treats me like I don't exist. Any request to modify parenting time is met with countless excuses, endless delays, and "intimate discussions with the children as to why they shouldn't be spending more time with (gasp) 'their father'".</p> <p>I'm sick of the excuses flowing out of the work-group, the DRC, and the legislature. I'm sick of being treated like a "non-person" just because I am a father.</p> <p>I'm sick of mothers using the law of today to prevent "dad" from having a presence in his children's lives.</p> <p>It is long past time to end these abuses.</p> <p>The majority of fathers are TRYING to get some time with their children. And you INTENTIONALLY deny them. Don't you think that you should be ENCOURAGING participation?</p> <p>There's only ONE ANSWER to these abuses. The presumption of EQUAL PARENTING time; from the very beginning of the case; unless by CLEAR AND CONVINCING EVIDENCE to the CONTRARY a parent ought be excluded.</p> <p>Let's get abuse #1 fixed: children are being denied their father's time and energy.</p> <p>Thank you for your consideration.</p>
3.	<p>Tu 1/18/11 9:05 a.m.</p> <p>Maricopa County</p> <p>Interest: Parent (non-custodial)</p> <p>Re: - 403-Custody: best interests of child</p> <p>It was good to meet you all on Friday, January 14. I now have developed a perception of your motivations regarding the custody statutes.</p> <p>I think we are all trying to do the right thing. I'm looking forward to getting to know all of you better in coming months.</p>
4.	<p>Sat 2/5/11 10:06 a.m.</p> <p>Maricopa County</p> <p>Interest: Parent (joint custody)</p> <p>Re: - 403-Custody: best interests of child; - 404-Temporary orders; - 405-Interviews by court-professional assistance; - 406-Investigations and reports; - 407-Custody Hearings-Priority-costs-record; - 408-Rights of noncustodial parents/parenting time/relocation of child/exception/enforcement-access to records; - 410-Judicial supervision; - 411-Modification of custody decree-affidavit-contents; - 413-Domestic relations education and mediation fund-report; - 414-Violation of visitation or parenting time rights-penalties</p> <p>I would like to emphasize that the reform of child custody statutes should do vastly more to reduce the incentives for litigation that exist in the process today. Although the court process is an adversarial process there is no research that suggests that the adversarial process is the</p>

	<p>correct process for contested child custody disputes. We simply applied the existing adversarial model to child custody. Ms. Ellen Seaborne attempted to change the context for child custody several years ago when she spearheaded the integrated family court. While her efforts resulted in some reform and most notably yielded the Arizona Rules of Family Law Procedure, her work is not yet complete. We have not gone far enough in reforming the family courts.</p> <p>It is a rather complacent perspective that if one or both parties want to contest child custody that this means that the parties are entitled to litigate. The Ad Hoc Child Custody Workgroup should broaden its efforts to develop language for the new child custody statutes that addresses more alternatives to litigation and more emphasis on fostering post-dissolution cooperation in regard to the children.</p> <p>An adversarial process is inherently harmful to the children. It promotes increased animosity and distrust amongst the parents and tends to undermine any willingness that the parties might have to cooperate. The children of contested cases are most often left in the lurch as their parents struggle to navigate the court process and sort out their emotions and priorities in a very hostile environment (the family court system)</p> <p>Certainly the statutes can direct the court to reward those parents who demonstrate a willingness to put the past in the past and focus on the cooperative needs that the child has of his or her parents. Certainly the statutes can find ways to promote cooperation in a fundamental and tangible way. I would like to work with those on the committee who are committed to the welfare of children to remove incentives for litigation wherever possible.</p> <p>Finally, I occurs to me that since the parties often enter are funneled into the family courts with imbalance in regard to their standing relative to the issues that they are asking the court to decide that the court should attempt to first introduce a balance at the time of the filing of the original petition (whenever feasible) that provides for joint custody and equal parenting time. Such rebuttable presumption should remain in proceedings for temporary orders thus promoting cooperation. These presumptions would not preclude the parties from reaching a settlement that is different, but absent agreement by the parties, and there being no special circumstances, the court should first attempt to establish balance so that neither party is at a disadvantage regarding child custody. I know that such an approach will be better for the children.</p>
5.	<p>Sat 2/5/11 10:10 a.m.</p> <p>Maricopa County</p> <p>Interest: [none indicated]</p> <p>Re: Access to workgroup meetings / Meeting minutes</p> <p>I have had the opportunity to peruse the draft meeting minutes from January. Certain material comments that I made during my public comment were omitted from the minutes.</p> <p>I spoke at some length regarding the limited number of dial-in lines available for the meetings. I was unable to attend in person and I was stunned when I was unable to dial in at the start of the meeting. I continued to try to dial in and it was nearly 2 hours into the meetnig before I was able to gain access.</p> <p>There simply must be more dial-in access to these meetings.</p> <p>Thank you for your consideration.</p>

6.	Mon 2/7/11 8:58 p.m.
	Maricopa County
	Interest: Parent (non-custodial); child advocate
	<p>Re:</p> <ul style="list-style-type: none"> <li>- 403-Custody: best interests of child</li> <li>- 404-Temporary orders</li> <li>- 408-Rights of noncustodial parents/parenting time/relocation of child/exception/enforcement-access to records</li> <li>- 409-Visitation rights of grandparents and great-grandparents</li> <li>- 410-Judicial supervison</li> <li>- 411-Modification of custody decree-affidavit-contents</li> <li>- 414-Violation of visitation or parenting time rights-penalties</li> <li>- 415-Custody by nonparent-presumption-grounds-definitions</li> </ul>
	<p>Following is the essence of the actual statute enacted by SB1309, the parent's bill of rights enacted this summer:</p> <p>ARS 1-601. Parents' rights protected</p> <p>A. The liberty of parents to direct the upbringing, education, health care and mental health of their children is a fundamental right.</p> <p>B. This state, any political subdivision of this state or any other governmental entity shall not infringe on these rights without demonstrating that the compelling governmental interest as applied to the child involved is of the highest order, is narrowly tailored and is not otherwise served by a less restrictive means.</p> <p>*****</p> <p>The family court's compelling interest is not of the highest order. Alleging that two days out of fourteen is more in the child's best interest than four days, or six, is not of any order at all. It is only a manifestation of the judge's bias and which side of the bed he got out of that day.</p> <p>The "highest order" must mean a danger to the child, and it must be proven by the highest standard of proof. A highest order requires the highest standard of proof. Criminal law requires the highest order. And that is "beyond reasonable doubt." If there is any higher order then the standard must be at least "beyond reasonable doubt."</p> <p>Furthermore, the family court has not even tried to demonstrate what the compelling government interest is. Just stating that its "in the best interests of the child" does not define what the compelling interest is. That can be used for anything, and purely means that a judge has complete judicial discretion and can be motivated by any bias, anger, or personal motivation.</p>

Comments Received on AHCW Webpage

*\*No corrections or edits have been made to the content of comments submitted, except for formatting. Personal contact information has been redacted.*

1.	<p>Fri 2/11/11 8:57 p.m.</p> <p>Pinal County</p> <p>Interest: Parent (non-custodial)</p> <p>Re:</p> <ul style="list-style-type: none"> <li>- 406-Investigations and reports</li> <li>- 407-Custody Hearings-Priority-costs-record</li> <li>- 408-Rights of noncustodial parents/parenting time/relocation of child/exception/enforcement-access to records</li> <li>- 411-Modification of custody decree-affidavit-contents</li> </ul> <p>To whom it may concern:</p> <p>As I have read on this site I have some troubling concerns. In special circumstances there lies no consequences for false allegations. NONE!!! I do not understand how a bill can be put forth without being complete. Is the Ad-hoc committee just interested in writing a bill that addresses partial concerns? Having been the victim of false allegations I have intimate experiences of the affore mentioned. I believe that in order to mitigate false allegation there needs to be stiff penalties that tie the judges hands and make it mandatory to deliver them. I have read also the temporary orders and although they seem a bit extreme or extensive they do address the issues of false allegations. Not only does the petitioner have to prove clear and convincing evidence but so does the respondent having to prove that false allegations exist. There needs to be a remedy that stops or at least curtails the events of false allegations. Also, attornies line their pockets by telling their clients to allege false allegations. Where are the penalties for them. For over thirty years this system has been ran by judges, whether through training or through personal experience, who deliver unjust rulings. If they didn't deliver unjust rulings there would not be a need for reform.</p> <p>If unintended consequences are a major player in the decisions that are made when creating a bill I believe that this group has lost focus. If everyone is willing to admit that false allegations are a problem, then you either want them or you do not. Either they are intended or they are not. Not addressing the unintended consequences will not make them go away. If unintended consequences are not addressed then that makes them intended.</p> <p>Please take the time to make this bill good for children. Especially in special circumstances.</p> <p>does this group want to be remembered as the group that almost got it right???</p>
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# **APPENDIX B**

Interim Report on the Ad Hoc Custody Workgroup  
of the Domestic Relations Committee  
October 15, 2010  
William Fabricius, Chair

**Early History (pre-March 2010)**

September 2008

A proposal was made to the Domestic Relations Committee by Dr. William Fabricius to form a Custody Statute Workgroup as a sub-committee of the DRC to explore possible changes to ARS 25-403 (Custody; best interests of child).

The following members expressed interest in serving on such a Workgroup:

David Weinstock	Patti O'Berry	Bill Fabricius
Brian Yee	Grace Hawkins	Russell Smoldon
Sid Buckman	Daniel Cartagena	Ellen Seaborne
Hon. Thomas Wing	Donnalee Sarda	
Steve Wolfson	Jodi Brown	

October 2008

The DRC voted to establish the Ad-Hoc Custody Statute Workgroup with Dr. Fabricius as Chair "as a short-term (2-3 months), ad-hoc task group within the Substantive Law Workgroup for the sole propose of addressing changes to the custody statute (ARS 25-403 custody; best interest of child) that might accomplish two goals:

1. To reduce the 'deadbeat phenomenon;' i.e., those parents who stay involved with their children minimally or not at all after divorce or separation, and
2. To facilitate the 'shared parenting phenomenon;' i.e., those parents who work out arrangements that give their children large amounts of time with both parents."

Fall 2008

Background information about custody statutes in other states was distributed to Workgroup members. Members were polled for their initial ideas for possible reforms.

October 2009

The Workgroup began meeting after Dr. Fabricius and ASU colleagues had finished writing a comprehensive review for publication of the research on custody and parenting time. This publication was distributed to the Workgroup. Brandon Maxwell and John Weaver joined the Workgroup. Members agreed to submit preliminary ideas for changes to the statute in advance of the November meeting.

November 2009

The Workgroup agreed to take a "think tank / brainstorming" approach, and to refer whenever possible to solid research on issues. Dr. Fabricius shared data regarding:

- a. AZ public opinion about custody issues
- b. AZ historical trends in custody arrangements
- c. Outcomes for children in different custody arrangements

December 2009

Members attending: Sid Buckman, Danny Cartagena, Bill Fabricius, Grace Hawkins.  
John Weaver

The Workgroup set its procedural goals:

1. Research and develop proposal(s)
2. Refer any proposals to the Substantive Law Workgroup of the DRC
3. Substantive Law Workgroup drafts language and takes it forward to the DRC.

The Workgroup set its substantive goals:

1. Review research pertinent to legal custody and parenting time and, if necessary, develop proposals
2. Better define/delineate the difference between legal and physical custody with user-friendly terminology (“decision making/parental responsibility” “parenting time”)
3. Create alternate terminology for custodial parent and non-custodial parent.
4. Answer the questions
  - a. Is it beneficial for children if a judge makes an order for shared parenting when one parent objects?
  - b. Is there a “best outcome” for children with varying parenting time with high-conflict parents?

The Workgroup identified the following issues and considerations:

1. The cost of attorneys
2. The cost and number of custody evaluations (used when custody is contested – est. 5-10% of cases)
3. False accusations of sexual and/or physical abuse
4. Child alienation
5. Perception of loss, by parent when legal custody is not ordered for that parent
6. Child/parent attachments
7. Misunderstanding the paternity process
8. Paternity fraud
9. Title IV-D child support cases and the lack of a process/trigger for the remaining custody and parenting time issues; # of child support cases – Is this a court procedure issue or is an amended statute needed?
10. Presumptions and possible affects in default cases - # of defaults – presumption vs. education

Action Items:

Dr. Fabricius to gather additional data relevant to Substantive Goal # 4 (a).

Members to review Dr. Fabricius’ chapter for summaries of the research literature regarding Goals # 1 and # 4 (b).

#### January 2010

Members attending: Sid Buckman, Danny Cartagena, Bill Fabricius, Grace Hawkins.

John Weaver

Continued discussion of:

- a. Is it beneficial for children if a judge makes an order for shared parenting when one parent objects? Dr. Fabricius presented findings from the classic Stanford Child Custody Study suggesting it may be beneficial.
- b. Custodial parent and non-custodial parent terminology. Decided to request an opinion from Janet Sell, AG’s Office, regarding the implications of changing this terminology for state benefits

In advance of the February meeting Dr. Fabricius notified non-participating members to inform the Workgroup of their continuing interest.

#### February 2010

Members attending: Bill Fabricius, Grace Hawkins, John Weaver, David Weinstock.  
Members continued discussion from the previous month.

Action item:

Each member assigned sections of 25-403 to (1) Replace “legal custody” with “parental decision-making;” (2) Replace “physical custody” with parenting time;” (3) Draft new language, as needed, for these terms to work in the existing sentence.

### **Recent History (March 2010 to present)**

At the February meeting of the DRC, after a discussion of SB1314, Senator Gray charged the Ad Hoc Custody Workgroup to propose alternate language for SB1314, and to review and recommend improvements to Arizona Revised Statutes, Title 25, Chapter 4; Child Custody.

At the March meeting of the Workgroup, Dr. Fabricius designated each member as either a voting member or a participating member for the purposes of that meeting. The voting members included those who had either participated in previous meetings of the Ad Hoc Custody Workgroup or DRC members who expressed continuing interest: William Fabricius, Sidney Buckman, Daniel Cartagena, Grace Hawkins, Donnalee Sarda, John Weaver, David Weinstock, Steve Wolfson and Brian Yee (absent). The members voted 7 in favor of and 1 opposed to (0 abstentions) language that was incorporated by the sponsors into amended SB1314, which was passed by the Legislature and signed into law by the Governor.

The Workgroup decided to forego its previous plans in favor of a thorough examination and comprehensive re-write of the custody statutes. To that end, Dr. Fabricius established a Steering Committee, charged with developing and monitoring a work plan for the Ad Hoc Custody Workgroup. The Steering Committee members are Tom Alongi, Sidney Buckman, William Fabricius, Brooks Gibson, Grace Hawkins (Chair), Judge Colleen McNally.

The Steering Committee met by phone on April 1 and amended the list of Voting Members to 10 individuals (Alongi, Buckman, Cartagena, Fabricius, Hawkins, Gibson, McNally, Weaver Weinstock, Wolfson), and established 4 Task Forces to present initial drafts of designated sections of 25-403 at the April 16 Workgroup meeting. Participating Members became Bruce Cohen, Mike Espinoza, Patrick Lacroix, Patricia Madsen, Donnalee Sarda, Ellen Seaborne, Russell Smolden, Thomas Wing, Brian Yee.

#### April 2010

Voting Members attending: Alongi, Buckman, Fabricius, Gibson, McNally, Weaver, Wolfson. Participating Members attending: Lacroix, Madsen, Yee.

To address stakeholder inclusion and quorum issues, Dr. Fabricius announced the classification of members and circumstances for reclassification as following:

- i. Members of the Public, who are attending and providing ideas for improvements or assisting in identifying unintended consequences in draft proposals during the call to the public, may become a participating member.
- ii. Participating Members may, by a majority vote of the Voting Members, become a voting member.
- iii. Voting Members, who are not attending, may be designated as participating members.

By general consensus, the members set an ambitious meeting schedule; May 7, May 27, June 25, August 6, August 27 and September 17.

Dr. Fabricius requested a website be established for the Workgroup to post all of its materials and to solicit public input.

The members began work on the recommendations of the Task Forces.

#### May 2010 to present

The Workgroup has followed the meeting schedule above, and since has met on October 8. Future meetings in 2010 are scheduled for October 29, November 19, and December 10.

The Workgroup web page is

<http://www.azcourts.gov/cscommittees/AdHocCustodyWorkgroup.aspx>

The web page archives all the agendas, minutes, drafts of sections of the statute, and public comments. It functions well as a resource for Workgroup members. We hope that it also serves an outreach function in getting the word out about the Workgroup and in attracting individuals interested in serving. Concern about improving our outreach efforts led the Workgroup to brainstorm several mechanisms for promulgating information about the Workgroup, and to charge Dr. Fabricius to write to Senator Linda Gray and Representative Steve Court, Co-Chairs of the DRC, asking for their input and support of these efforts. The letter was written on October 8.

In all meetings to date we have had a quorum of Voting Members. Our procedures for monitoring and growing our membership have worked well so far. The members represent some of the best minds in the state on issues of child custody, and have shown a high degree of dedication to this project amid their busy schedules. Importantly, the members have also shown a high degree of professionalism, mutual respect, and objectivity in working together on complex issues that can arouse passionate feelings.

The Workgroup aims to produce a proposal for a comprehensive and coherent revision of A.R.S. § 25, Chapter 4 that achieves two goals: needed substantive changes, and needed organizational changes. The webpage records our progress to date. Additionally, attached to this report is a document (“ADDENDUM Interim Report of Ad Hoc Custody Workgroup”) that outlines the scope of work the Workgroup has set for itself. The Addendum identifies those sections of the current A.R.S. § 25, Chapter 4 that the Workgroup has addressed, plans to address, and plans not to address, in addition to new sections that we believe should be created to bring together related items that are currently dispersed in the statute.

At the most recent meeting on October 8, the Workgroup members agreed that we could not produce the type of product we envision, and that we feel is needed, in the time remaining before the next legislative session. At the DRC meeting on October 15, we will ask the DRC for a one-year extension of our charge, to have a product ready by October, 2011. We would plan to continue a meeting schedule of once every three weeks.

## Chapter 4

### Minor Children. Parental Decision-Making, Parenting Time & Relocation

New Section	Topic	Detail	Old Code
101	PUBLIC POLICY	states the legislature's policy concerning children in family court	new
102	JURISDICTION	reminds courts & litigants of duty to comply with interstate custody jurisdictional rules; sets forth how to commence a decision-making or parenting time case	A.R.S. § 25-401
103	DEFINITIONS	groups all definitions relevant to this section into one location	A.R.S. § 25-402
104	MANDATORY PRELIMINARY INQUIRY; SPECIAL CIRCUMSTANCES	instructs the family court to first evaluate whether a family is burdened by special circumstances (child abuse, intimate partner violence, substance addiction, molestation or felonious conduct) before proceeding to generic "best interests" test	new
105	INTIMATE PARTNER VIOLENCE (IPV) AND CHILD ABUSE	establishes rules and presumptions for adjudicating cases involving domestic violence	A.R.S. § 25-403.03
106	SUBSTANCE ABUSE	establishes rules and presumptions for adjudicating cases involving substance abuse (including alcohol)	A.R.S. § 25-403.04
107	DANGEROUS CRIMES AGAINST CHILDREN	establishes rules and presumptions for adjudicating cases involving sex offenses and other dangerous crimes against children	A.R.S. § 25-403.05
108	VIOLENT & SERIAL FELONS	establishes rules and presumptions for adjudicating cases involving murderers and recidivist felons	A.R.S. § 25-403.05

109	CONFLICTING PRESUMPTIONS	establishes procedure for resolving cases where both parents are burdened by special circumstances	new
110	PARENTING PLANS	outlines required content of parenting plans	A.R.S. § 25-403.02(A)
111	PARENTING TIME	establishes rules for court-ordered parenting time	A.R.S. §§ 25-403(A) & 403.02(B)
112	PARENTAL DECISION-MAKING; SOLE, FINAL & JOINT	establishes rules for court-ordered decision-making authority vested with each parent	A.R.S. §§ 25-403(A) & 403.01
113	SPECIFIC FINDINGS	requires the court to make specific findings on the record concerning both special circumstances <u>and</u> the child's best interests	A.R.S. § 25-403(B)
114	TEMPORARY ORDERS	establishes procedure for issuing temporary orders	A.R.S. § 25-404
115	RELOCATION	establishes rules and procedures for parental relocation with a child	A.R.S. § 25-408
116	DECREE MODIFICATION	establishes rules and procedures for modifying a prior parental decision-making or parenting time decree	A.R.S. § 25-411
117	THIRD PARTY RIGHTS	establishes rules and procedures for adjudicating custody and visitation for third-party nonparents (e.g. grandparents, in loco parentis candidates, etc.)	A.R.S. §§ 25-409 & 415
118	SANCTIONS	establishes comprehensive sanctions for any misconduct under this chapter	A.R.S. § 25-414

119	ACCESS TO RECORDS	clarifies that both parents enjoy access to records, irrespective of decision-making authority, absent a court order	A.R.S. § 25-403.06
120	CHILD SUPPORT	reminds court to issue child support order in any Chapter 4 proceeding	A.R.S. § 25-403.09
121	STATUTORY PRIORITY	assigns calendar priority to court cases involving parental decision-making or parenting time	A.R.S. § 25-407
122	AGENCY SUPERVISION	safety valve for cases requiring supervision by local social services agency	A.R.S. § 25-410
123	IDENTIFICATION OF PRIMARY CARETAKER	permits court to identify primary caretaker solely for purpose of establishing eligibility for public assistance	A.R.S. § 25-403.07
124	FEES & RESOURCES	establishes right of litigant to request financial assistance for legal/professional fees and costs	A.R.S. § 25-403.08
125	CHILD INTERVIEWS BY COURT & PROFESSIONAL ASSISTANCE	establishes right of court to interview child privately, and to seek guidance from appropriate professionals	A.R.S. § 25-405
126	INVESTIGATIONS & REPORTS	establishes procedures for requesting family evaluation by licensed professional	A.R.S. § 25-406
127	EXPEDITED CHILD SUPPORT & PARENTING TIME FUND	outlines duty of county treasurer to establish a child support and parenting time fund	A.R.S. § 25-412
128	DOMESTIC RELATIONS EDUCATION & MEDIATION FUND	outlines duty of county treasurer to establish a DR education/mediation fund	A.R.S. § 25-413

## Legend

"Best Interests" Task Force
"Jurisdiction, Definitions & Special Circumstances" Task Force
"Third Party Rights" Task Force
Statutes That Will Require Attention
Statutes That Will Likely Remain Unchanged
Statutes Falling Within Mandate of Different DRC Workgroup

Note: Provisions concerning child relocation (current A.R.S. § 25-408) do not fall within the mandate of the Ad Hoc Custody Workgroup, but are critical to the passage of any meaningful, omnibus, custody statute. In addition to fulfilling its own delegated responsibilities, this workgroup must coordinate with the DRC's Substantive Law Workgroup to ensure the absence of conflict between the two bills.

# **APPENDIX C**

# Ad Hoc Custody Workgroup

## Overview of Scope of Work

### **New Terms:**

*Parental Decision-Making (PD-M)* replaces “legal custody”

*Parenting Time (PT)* replaces “physical custody;” “visitation” now refers to child’s time with non-parents (e.g., grandparents).

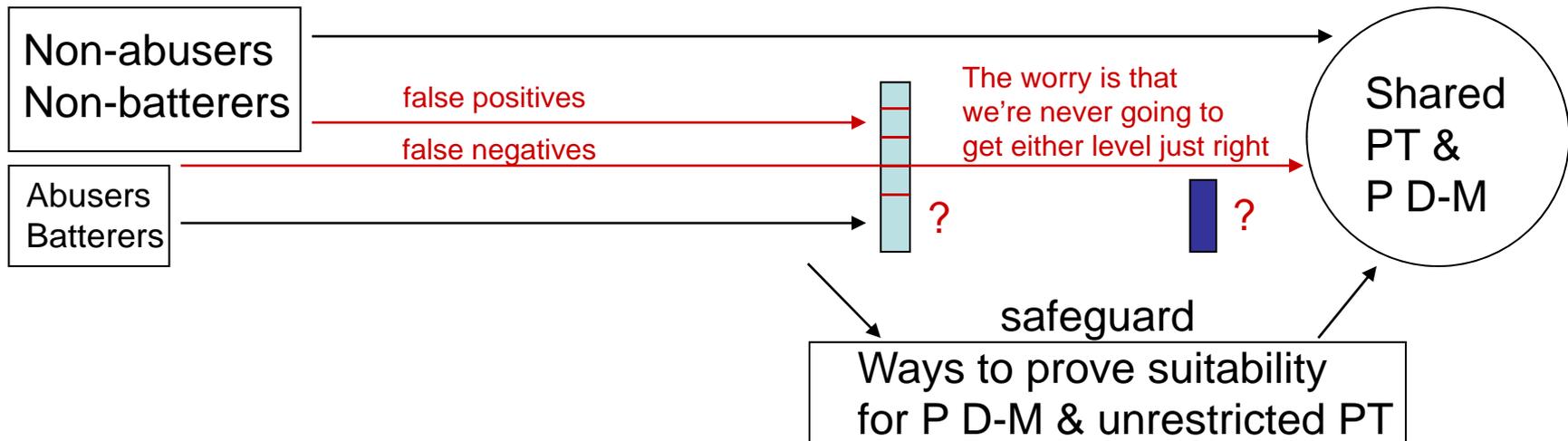
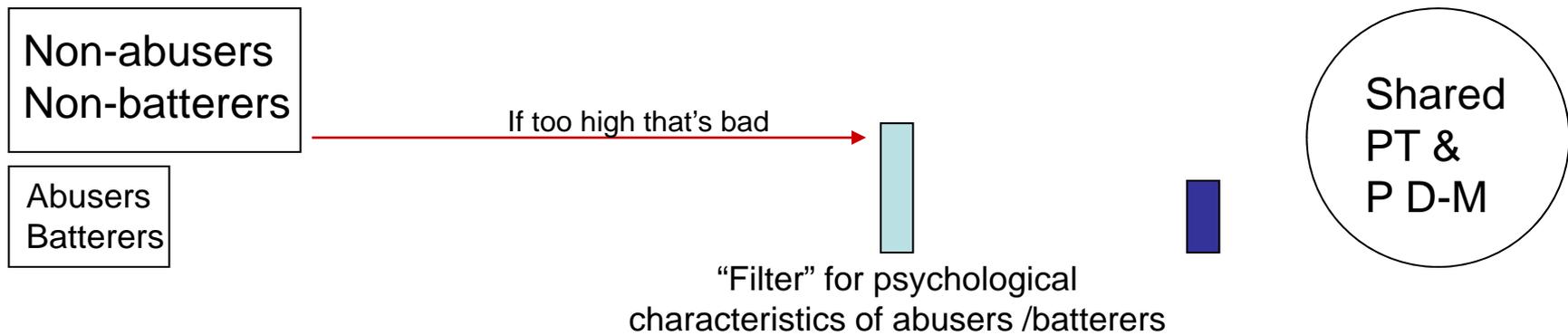
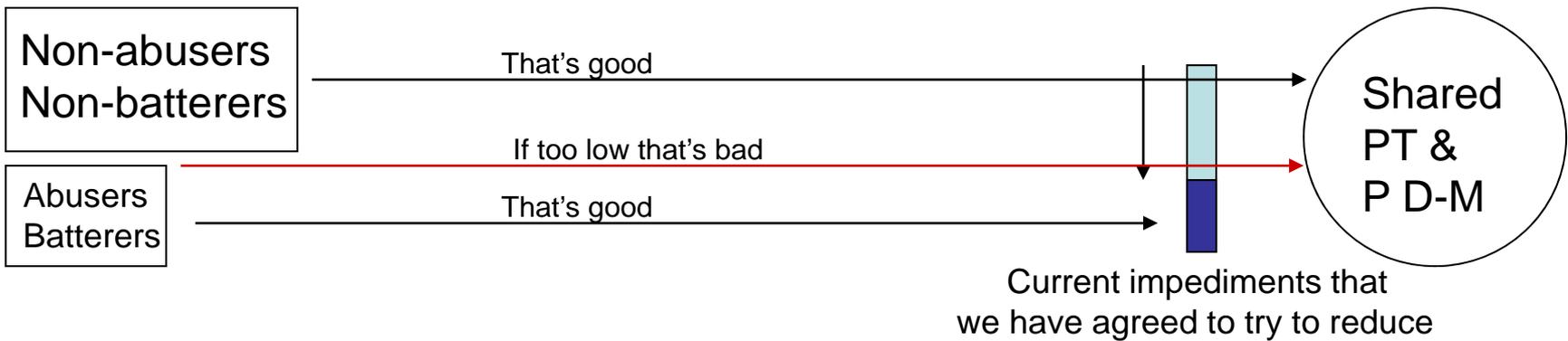
### **New Recommendations**

are research-based -- both in terms of research on Parenting Time and Psychological Characteristics of Abusers / Batterers.

### **New Organization**

meant to make the statute clearer, more consistent, and easier to use.

# Basic Principles



# Flow Chart of Statute Operation

**25-420 Public Policy:** Best Interests = Shared PD-M & substantial, meaningful, etc PT

**25-423 Mandatory Considerations:** (a) IPV / Child Abuse (b) Substance Abuse (c) Dangerous Crimes Against Children (d) Violent & Serious Felons. No change in how proven

*No Allegations or Not Proven*

(a) *Proven IPV / Child Abuse*

**25-443 Evidence:** Orders of Protection are not conclusive evidence

**25-441 Parental Decision-Making:** shall not grant PD-M

**25-442 Parenting Time:** gives court a range of possible restrictions on PT to protect the child  
Offender can later prove suitability for PD-M & PT; therefore, no absolute ban  
Presence / absence of coercive control is relevant only when proving suitability

(b) *Proven Substance Abuse*

**25-444:** rebuttable presumption against PD-M

(c) *Proven Crimes Against Children & (d) Violent Felons*

**25-445 25-446:** not award PD-M or unsupervised PT

**25-430 Parenting Plans:**

Consistent with child well-being, court adopts the parent's plan that provides shared PD-M and maximizes PT.

Child well-being factors: *Include* relationship history and future with each parent, mental health, adjustment, child's wishes, "friendly parent," feasibility, etc.

*Not* the "primary parent," or the arrangement in temp. orders, or false report of child abuse.

# **APPENDIX D**

**DRC SUBSTANTIVE LAW WORKGROUP**  
**NEW CHILD CUSTODY BILL**

- i. Version:**       Version 1 (*as inherited from Ad Hoc Custody WG on March 4, 2011*)
- ii. Date:**         March 11, 2011
- iii. Section Number and Title:**   A.R.S. Title 25, Chapter 4, Article 1

**CHAPTER 4**  
**MINOR CHILDREN: PARENTAL**  
**DECISION-MAKING,**  
**PARENTING TIME & RELOCATION**

**ARTICLE 2. INTRODUCTION & PRELIMINARY REQUIREMENTS**

- 25-420. Public Policy
- 25-421. Jurisdiction
- 25-422. Definitions
- 25-423. Mandatory Preliminary Inquiry: *Special Circumstances*
- 25-424. Specific Findings Required

**ARTICLE 3. PARENTING PLANS, DECISION-MAKING & PARENTING TIME: CASES WITHOUT SPECIAL CIRCUMSTANCES**

- 25-430. Parenting Plans
- 25-431. Parental Decision-Making: *Shared, Final or Sole*
- 25-432. Parenting Time

**ARTICLE 4. SPECIAL CIRCUMSTANCES**

- 25-440. Intimate Partner Violence & Child Abuse: *Basic Principles*
- 25-441. Intimate Partner Violence & Child Abuse: *Parental Decision-Making*
- 25-442. Intimate Partner Violence & Child Abuse: *Parenting Time*
- 25-443. Intimate Partner Violence & Child Abuse: *Assorted Provisions*
- 25-444. Substance Abuse
- 25-445. Dangerous Crimes Against Children
- 25-446. Violent & Serial Felons
- 25-447. Conflicting Presumptions or Mandatory Rules

**ARTICLE 5. THIRD PARTIES**

- 25-450. Third Party Rights: *Decision-Making and Visitation by Grandparents, Parental Figures & Other Third Parties*

**ARTICLE 6. TEMPORARY ORDERS, DECREE MODIFICATION & RELOCATION OF A CHILD**

- 25-460. Temporary Orders
- 25-461. Modification of an Existing Decree
- 25-462. Relocation of a Child

**ARTICLE 7. RECORDS & SANCTIONS**

- 25-470. Access to Records
- 25-471. Sanctions for Misconduct

**ARTICLE 8. MISCELLANEOUS**

- 25-480. Statutory Priority
- 25-481. Agency Supervision
- 25-482. Identification of Primary Caretaker
- 25-483. Fees & Resources
- 25-484. Child Interviews by Court & Professional Assistance
- 25-485. Investigations & Reports
- 25-486. Child Support & Parenting Time Fund
- 25-487. Domestic Relations Education & Mediation Fund

**ARTICLE 2. INTRODUCTION & PRELIMINARY REQUIREMENTS**

**§ 25-420. Public Policy**

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

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

**WORKGROUP NOTE**

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

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

**A.** Before conducting any proceeding concerning parental decision-making or parenting time, including any proceeding scheduled to decide the custody or visitation of a non-parent, all Arizona courts shall first confirm their authority to do so to the exclusion of any other State, Indian tribe or foreign nation by complying with the Uniform Child Custody Jurisdiction and Enforcement Act ('UCCJEA') at A.R.S. §§ 25-1001, et seq., Parental Kidnapping Prevention Act ('PKPA') at 28 U.S.C. § 1738A, and any applicable international law concerning the wrongful abduction or removal of children.

**B.** A proceeding under this chapter is commenced in superior court:

1. By a parent, upon filing a petition for one of the following:

(a) Marital dissolution or legal separation.

(b) Parental decision-making or parenting time regarding a child born out of wedlock, if there has been an establishment of maternity or paternity.

(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.

WORKGROUP NOTE

This section makes no substantive changes to old A.R.S. § 25-401. Rather, it explicitly cites the two

most relevant jurisdictional statutes by name and number to facilitate the immediate assessment of Arizona's right to adjudicate decision-making responsibility and parenting time – particularly when such the resulting decree may conflict with an existing order issued by another State or Nation.

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

In this article, unless the context otherwise requires:

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

(a) emphasizes personal responsibility;

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

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

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

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

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

(a) Endangerment, as defined by A.R.S. § 13-1201

(b) Threatening or intimidating, as defined by A.R.S. § 13-1202(A)

(c) Assault, as defined by A.R.S. § 13-1203(A)

(d) Aggravated assault, as defined by A.R.S. § 13-1204(A)(1) – (5)

(e) Child abuse, as defined by A.R.S. § 13-3623

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

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

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

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

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

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

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

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

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

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

10. “*Parenting time*” refers to a parent’s physical access to a child at specified times, and entails the provision of food, clothing and shelter, as well positive role-modeling and active involvement in a child’s activities, while the

child remains in that parent’s care. A person exercising parenting time is expected to make routine decisions regarding the child’s care that do not contradict the major life decisions made by a parent vested with parental decision-making authority.

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

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

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

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

#### WORKGROUP NOTE

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

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

“*Conviction*” is broadened to include all criminal court outcomes where factual guilt was established either because: (1) the trier of fact was convinced of

that guilt beyond a reasonable doubt (i.e. bench or jury trial, or (2) the defendant agreed that a factual basis existed for a conviction, even though s/he did not want to actually admit responsibility (i.e. nolo contendere plea).

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

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

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

#### § 25-423. Mandatory Preliminary Inquiry: Special Circumstances New

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

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 & 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. § 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.
6. In shared parental decision-making plans, a procedure by which the parents can resolve disputes over proposed changes or alleged violations, which may include the use of conciliation services or private mediation.
7. A procedure for periodic review of the plan.
8. A statement that each party has read, understands and will abide by the notification requirements of A.R.S. § 25-445(B) pertaining to access of sex offenders to a child.

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

**§ 25-431. Parental Decision-Making; Shared, Final or Sole**

[former A.R.S. § 25-403.01]

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

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

**§ 25-432. Parenting Time** [new]

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

1. The historical, current and potential relationship between the parent and the child.
2. The mental and physical health of all individuals involved.
3. The child's adjustment to home, school and community.
4. The interaction and relationship between the child and the child's siblings and any other

person who may significantly affect the child's best interest.

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

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

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

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

ARTICLE 4. SPECIAL CIRCUMSTANCES

**§ 25-440. Intimate Partner Violence and Child Abuse: BASIC PRINCIPLES**

[Former A.R.S. § 25-403.03(B)]

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

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

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

#### 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. Intimate Partner Violence and Child Abuse: PARENTAL DECISION-MAKING**

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

**A. Cases Where Parental Decision-Making Presumptively Disallowed.** If the court determines from a preponderance of the evidence that a parent has previously committed any act of intimate partner violence against the other parent, or child abuse against the child or child’s sibling, then it shall not award parental decision-making to the offending parent without proof that such parent should still make major decisions for the child despite the proven history of abuse or violence. The offending parent may submit this proof by asking the court to consider the criteria listed in Subsection (B). In that event, the court shall also evaluate whether the

offending parent has nevertheless failed to prove his or her suitability for parental decision-making by considering each of the criteria listed in Subsection (C).

**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. § 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.

**C. Reasons to Refuse Parental Decision-Making to an Offender.** To evaluate whether the mitigating evidence presented in Subsection (B) is adequate to award parental decision-making to the offending parent, and in addition

to any other relevant, aggravating factors, the court shall also consider:

1. The extent to which the offending parent coercively controlled the other parent during their relationship, as described in Subsection (D), or committed other acts of child abuse against the child or child's sibling.
2. Whether the offending parent committed successive acts of intimate partner violence or child abuse against any person after having already received counseling on past occasions.
3. The extent to which the offending parent inflicted intimate partner violence or child abuse against some other person in the past, or has recently done so with a new intimate partner or child.
4. In cases of mutual violence not amounting to self-defense or other legal justification, as defined by A.R.S. §§ 13-404 through -408, the motivation of each parent for the violence, the level of force used by each parent, and their respective injuries.
5. Whether the offending parent continues to minimize or deny responsibility for proven violence or blame it on unrelated issues.
6. Whether the offending parent has engaged in other behavior that would constitute a criminal offense under federal or state law.
7. Whether the offending parent failed to comply with the mandatory disclosure requirements of Family Law Rules 49(B)(2) – (4) or reasonable discovery requests for records associated with treating intimate partner violence or child abuse.

**D. Coercive Control.** As used in 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 attempted to undermine the victim's relationship with a child;
7. Restricted or hindered the victim's communications, including attempts by the victim to report intimate partner violence, child abuse or other criminal behavior to law enforcement, medical personnel or other third parties;
8. Eavesdropped on the victim's private communications or Internet activities, interrupted or confiscated the victim's mail, or accessed the victim's financial, electronic mail or Internet accounts without permission;
9. Engaged in a course of conduct deliberately calculated to jeopardize the victim's employment;
10. Illicitly tampered with the victim's residential utilities, or entered onto residential property inhabited by the victim without permission;

11. Reported or threatened to report the victim's immigration status to government officials;
12. Terminated the victim's or children's insurance coverage;
13. Forbade or prevented the victim from making decisions concerning disposition of property or income in which the victim possessed a legal interest;
14. Opened financial or credit accounts in the victim's name without the victim's consent, forged the victim's signature, or otherwise appropriated the victim's identity without the victim's authority;
15. Restricted the victim's participation in social activities, or access to family, friends or acquaintances;
16. Forbade or prevented the victim from achieving the victim's educational or career objectives;
17. Used especially dangerous forms of physical violence against the victim, including burning, strangulation, suffocation or use of a deadly weapon;
18. Inflicted any form of physical violence against a pregnant victim; or
19. Engaged in any other controlling behavior consistent with the conduct described in this definition.

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. Intimate Partner Violence and Child Abuse: PARENTING TIME**

[Former A.R.S. § 25-403.03(F)]

**A. Cases Where Parenting Time Presumptively Disallowed.** If the court finds that a parent has committed any act of intimate partner violence or child abuse, 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. § 25-441(B) and (C), giving due consideration to whether parenting time with that parent under the existing circumstances may:

1. Expose the child to poor role-modeling related to the confirmed intimate partner violence as the child grows older and begins to develop his or her own intimate relationships,

irrespective of whether the offending parent poses a direct physical risk to the child; and

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

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

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

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

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

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

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

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

WORKGROUP NOTE

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

**§ 25-443. Intimate Partner Violence and Child Abuse: ASSORTED PROVISIONS**

[Former A.R.S. § 25-403.03(C), (G) & (H)]

**A. *Appropriate Evidence.*** To determine if a parent has committed an act of intimate partner violence or child abuse, and subject to Family Law 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.

**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. § 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 A.R.S. §§ 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 Rule 67 or 68 to the extent that a suggested ADR procedure requires the parties to meet and confer in person. The court shall notify each party of this right before requiring their participation in the ADR process. As used in this subsection only, "victim of intimate partner violence" means: (1) a party who has acquired a protective order against the other parent pursuant to A.R.S. § 13-3602; (2) a party who was previously determined by a civil or family court to have suffered intimate partner violence by the other parent; or (3) a party who was the named victim in a criminal case that resulted in the conviction, diversion or deferred prosecution of the other parent for an act of intimate partner violence.

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

#### WORKGROUP NOTE

Subsection (A) updates existing A.R.S. § 25-403.03(C). Subsection (B) holds IPV offenders accountable for conduct previously resolved by diversion or deferred prosecution in criminal court. This reform recognizes that such programs are best reserved for defendants who admit responsibility for conduct alleged in the charging complaint or

indictment, but avoid formal conviction by seeking rehabilitation through counseling or other measures. They are not appropriate for defendants who deny accountability for their alleged misconduct and simply want to evade criminal prosecution. Under such circumstances, it is both illogical and unfair to require a victim of that crime to prove its occurrence in family court – sometimes several months or even years after the fact (when witnesses or other evidence may no longer be available) – simply because the offender dodged a conviction with an admission, counseling and subsequent dismissal of charges.

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

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

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

### § 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 13, Chapter 34
2. Driving under the influence of alcohol, as defined by A.R.S. § 28-1381
3. Extreme driving under the influence of alcohol, as defined by A.R.S. § 13-1382
4. Aggravated driving under the influence of alcohol, as defined by A.R.S. § 13-1383

**B.** To determine if an offender has overcome the presumption described in 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.

### § 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. § 13-705(P)(1); or

2. A person required to register under A.R.S. § 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. § 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.

### § 25-446. Violent & 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. §§ 13-1105(A) and 13-1104(A), except as provided in Subsection (B).

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

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

**§ 25-447. Conflicting Presumptions or Mandatory Rules**

[new]

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

ARTICLE 5. THIRD PARTIES

**§ 25-450. Third-Party Rights; Decision-Making and Visitation by Grandparents, Parental Figures & Other Third Parties**

[former A.R.S. §§ 25-409 and -415]

**A. Decision-Making Authority.** Consistent with A.R.S. § 25-421(B)(2), a person other than a legal parent may petition the superior court for decision-making authority over 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.

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

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

1. One of the legal parents is deceased or has been missing at least three months. For the purposes of this paragraph, a parent is considered to be missing if the parent's location

has not been determined and the parent has been reported as missing to a law enforcement agency.

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

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

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

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

1. The child's legal parents.
2. A third party who already possesses decision-making authority over the child or visitation rights.
3. The child's guardian or guardian ad litem.
4. A person or agency that already possesses physical custody of the child, or claims decision-making authority or visitation rights concerning the child.
5. Any other person or agency that has previously appeared in the action.

**E. Criteria for Granting Third-Party Visitation.** When deciding whether to grant

visitation to a third party, the court shall give special weight to the legal parents' opinion of what serves their child's best interests, and then consider all relevant factors, including:

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

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

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

**H. Termination of Third-Party Visitation.** All visitation rights granted under this section automatically terminate if the child has been adopted or placed for adoption. If the child is removed from an adoptive placement, the court may reinstate the visitation rights. This subsection does not apply to the adoption of the

child by the spouse of a natural parent if the natural parent remarries.

ARTICLE 6. TEMPORARY ORDERS,  
MODIFICATION & RELOCATION

**§ 25-460. Temporary Orders**

[former A.R.S. § 25-404]

A.

**§ 25-461. Decree Modification**

[former A.R.S. § 25-411]

A.

**§ 25-462. Relocation of a Child**

[former A.R.S. § 25-408(B)]

A.

ARTICLE 7. RECORDS & SANCTIONS

**§ 25-470. Access to Records**

[former A.R.S. § 25-403.06]

A.

**§ 25-471. Sanctions for Misconduct**

[former A.R.S. § 25-414]

A.

ARTICLE 8. MISCELLANEOUS

**§ 25-480. Statutory Priority**

[former A.R.S. § 25-407]

**§ 25-481. Agency Supervision**

[former A.R.S. § 25-410]

**§ 25-482. Identification of Primary Caretaker**

[former A.R.S. § 25-403.07]

**§ 25-483. Fees & Resources**

[former A.R.S. § 25-403.08]

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

[former A.R.S. § 25-405]

**§ 25-485. Investigations & Reports**

[former A.R.S. § 25-406]

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

[former A.R.S. § 25-412]

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

[former A.R.S. § 25-413]

1 **§ 25-471. Sanctions for Misconduct**

2  
3 **A.** The court shall sanction a litigant for costs and reasonable attorney fees  
4 incurred by an adverse party if the court finds, by clear and convincing evidence, that the  
5 litigant:

6  
7 1. intentionally and maliciously presented a claim of special  
8 circumstances, as defined in this chapter, with full knowledge that the claim was  
9 false, and with the intention that the court rely on that claim to withhold parental  
10 decision-making or parenting time from the adverse party;

11  
12 2. intentionally and maliciously accused an adverse party of making a  
13 false report of special circumstances, as defined in this chapter, with full  
14 knowledge that the report was actually true, and with the intention that the court  
15 rely on that accusation to withhold parental decision-making or parenting time  
16 from the party who made the report;

17  
18 3. illegally relocated a child with deliberate or reckless indifference to any  
19 existing, court-ordered parenting plan, if the court later determines that the  
20 relocation did not serve the child's best interests;

21  
22 4. opposed a proposed relocation of a child without good cause, if the  
23 court later determines that the relocation did serve the child's best interests; or

24  
25 5. violated a court order compelling disclosure or discovery under Rule  
26 65 of the Arizona Rules of Family Law Procedure, unless the court finds that the  
27 failure to obey the order was substantially justified, or that other circumstances  
28 make an award of expenses unjust

29  
30 **B.** If the court makes a finding against any litigant under Subsection (A), it may  
31 also:

32 1. impose additional financial sanctions on behalf of an aggrieved party  
33 who can demonstrate economic loss directly attributable to the litigant's  
34 misconduct;

35  
36 2. institute civil contempt proceedings on its own initiative, or on request  
37 of an aggrieved party, with proper notice and an opportunity to be heard; or

38  
39 3. modify parental decision-making or parenting time, if that modification  
40 would also serve the best interests of the child.

41  
42 **C.** This section shall not prevent the court from awarding costs and attorney fees,  
43 or imposing other sanctions, if authorized elsewhere by state or federal law.

**§ 25-441. Intimate Partner Violence and Child Abuse: PARENTAL DECISION-MAKING**

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

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

**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. § 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.

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

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

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

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

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

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

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

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

**D. Coercive Control.** As used in 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 these behaviors, the court shall consider the actor’s motivation, and whether the behaviors appeared in tandem as part of a continuing pattern of controlling conduct during the parties’ relationship. Specifically, the court shall contemplate whether the offending parent has:

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

2. Physically confined the victim, or otherwise restricted the victim’s freedom of movement;

3. Unreasonably restricted or hindered the victim’s educational or financial activities, or jeopardized the victim’s employment or financial welfare without good cause;

4. Appropriated the victim’s identity, as defined in A.R.S. § 13-2008;

5. Attempted or threatened suicide, or injured or threatened to injure other persons or household pets, as a means of coercing the victim’s compliance with the offender’s wishes;

6. Threatened to conceal or remove a child from the victim’s care for reasons other than a legitimate concern for the child’s physical or emotional welfare, attempted to undermine the victim’s relationship with a child, or used a child to facilitate either criminal conduct against the victim or one or more controlling behaviors described in this subsection;

7. Restricted or hindered the victim’s attempts to report intimate partner violence, child abuse or other criminal behavior to law enforcement, medical personnel or other third parties by means of duress or coercion;

8. Eavesdropped on the victim’s private communications or Internet activities, interrupted or confiscated the victim’s mail, or accessed the victim’s financial, electronic mail or Internet accounts without permission;

9. Restricted or hindered the victim’s family or social relationships, or public activities; or

10. Engaged in any other controlling behavior that is consistent with the conduct described in this definition, or that society would recognize as a violation of the victim’s fundamental human rights.

#### 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.

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Current Titles:

Professor, School of Public Affairs and Administration and Director of Public Health, Rutgers University, Newark. Professor and Chair, Department of Urban Health Administration, University of Medicine and Dentistry of New Jersey School of Public Health.

EDUCATION:

M.S.W., Fordham University School of Social Work, Tarrytown, New York, 1991.

Ph.D in sociology, SUNY-Binghamton, Binghamton, New York, 1984. With distinction.

M.A. in sociology, University of Wisconsin- Madison, 1967.

B.S. Brandeis University, Waltham, MA., 1963. Cum laude.

PROFESSIONAL TRAINING:

U.S. Veteran's Hospital, National Centers for Post Traumatic Stress, West Haven, CT. Intern 1990-91. 3000 hours. Outpatient psychotherapy with individuals, families and groups.

## EMPLOYMENT

1985- Present.

Assistant Professor to Professor, School of Public Affairs and Administration (SPAA), Rutgers University, Newark. New Jersey

1991-92

Visiting Professor, School of Social Welfare, State University of New York at Stony Brook, Stony Brook, Long Island.

1983-84

Director of Grants and Human Resources, City of Bridgeport, CT..

1978- 84

Research Associate to Senior Research Scientist, Center for Health Studies and Institution for Social and Policy Studies, Yale University, New Haven, CT. .

1980-81

Fulbright Research Professor of Sociology, University of Essex, Wivenhoe, England.

1971-75

Assistant Professor of Sociology, Quinnipiac University, Hamden, CT.

1968-70

Administrator, Citizens Community Centers, Minneapolis, Minnesota.

1967

Senior Planner, ARDA (Agricultural and Rural Development Agency), Government of Canada, Ottawa, CA..

1967

Lecturer in Sociology, City College of New York.

## APPOINTMENTS

Spring 2006

International Fellow. School of Policy Studies, University of Bristol, Bristol, England

2002-2005

Panel member. Nicholson Review Panel, New York City, 2002-2005.

Appointed by 2<sup>nd</sup> District Federal Court to oversee compliance with injunction by NYC's Administration for Children's Services. Heard and ruled on complaints, reviewed agency

policies and procedures, mediated disputes between the parties, wrote annual reports to the court, and recommended reforms.

1986-2004

Co-Director, Domestic Violence Training Project, Inc. New Haven, CT.

Led award-winning state and grant funded agency designed to train health, justice, law enforcement and social service personnel to better identify and respond to domestic violence.

1985

Co-Chair, U.S. Surgeon General's Special Working Group on Violence Prevention and Public Health.

## RECOGNITION

2009 "Choice" Award. American Library Association. Outstanding academic book reviewed in 2008.

2008 "Excellence Award," American Publishers' Association, for "best book in sociology/social work" published in 2007

2008 Faculty Community Service Award, UMDNJ School of Public Health

2007 New Jersey Advocacy Award ("For outstanding service to New Jersey's women and children"). New Jersey Coalition for Battered Women.

2006 International Fellow, School of Policy Studies, University of Bristol, Bristol, England

2005 Pro Bono Award for exemplary services to immigrant women. Legal Services Corporation, New York City

2002 Richard Manware Humanitarian Award. "For Groundbreaking Contributions to the Fields of Domestic Violence and Child Maltreatment." Coordinating Council for Children in Crisis Inc.

1997 Best Practices Award: Innovative Domestic Violence Programs in Health Care U.S. Department of Health and Human Services.

1996 Lifetime Achievement Award. Women's Health Services of Greater New Haven

1996 Dolphin Award "Creating a Health Future for Connecticut." Awarded to Connecticut Community Health Center's Domestic Violence Initiative, Evan Stark and Anne Flitcraft, Directors."

1993 First Annual Trend Setter Award. “For Two Decades of Pioneering Research Contributions to Women’s Health.” National Health Councils.

1995 Sanctity of Life Award. Brandeis University.

1991 Legislative Citation “In Recognition of Outstanding Research on Women’s Health.

1990 Governor’s Victim Services Award. “For outstanding individual contributions to the women and children of Connecticut.”

1990 Governor’s Victim Services Award. “For outstanding programmatic contributions to the women and children of Connecticut.”

1985 Founder’s Award. New Haven Project for Battered Women.

## PUBLIC SERVICE

### Recent

Centers for Disease Control, Injury and Violence Prevention Review Panel.

Connecticut Book Awards (Nonfiction). Judge.

Children's Law Center, Manchester, CT., Advisory Board

Child Fatality and Near Fatality Review Board, Central and Northern New Jersey Region. Panel member.

Institute for Women's Policy Research, Washington D.C., Executive Board (Emeritus, 2005-present)

Mathmatica, Princeton, New Jersey. CDC grant to evaluate DELTA projects involving State-community collaborations domestic violence. Consultant

Newark Police Department, Domestic Violence Response Team, Newark, NJ. Trainer.

New Jersey State Police and Office of the Attorney General. Personnel Consultant.

U.S. Department of Justice, National Institute of Justice. Consultant.

### Selected Previous Appointments

State of Connecticut:

Department of Children and Families, New Haven, CT.  
Appointee, Regional Working Group, Family Preservation and Support

Department of Children and Youth Services, Hartford, CT.  
Evaluator, Family Advocacy Program, New London, CT.;

Evaluator, Family Violence Outreach Program, New Haven, CT.

Consultant, Coordinated state-wide policy group, developed Domestic Violence Assessment Tool.

Appointee, Trauma Services Advisory Council, Department of Mental Health, Consortium for Substance Abusing Women

#### State of New Jersey

Department of Family and Youth Services. Improving the response to domestic violence. Consultant, Trainer.

Department of Community Affairs, Trenton  
Develop Emergency Medicine Guide and Protocol

New Jersey Hospital Association (NJHA). Health Research and Educational Trust of New Jersey, "Medical and Social Management of Care for Victims."  
Consultant

New Jersey State Police. "Eliminating Domestic Violence by Police Officers."  
Evaluator.

#### U.S. Government:

Centers for Disease Control, Atlanta, GA.,  
Appointee, Health and Human Services Panel on Youth Violence,  
Injury Control Demonstration Grants; National Centers for Injury Prevention and Control.

Evaluator, National Trauma Surveillance Feasibility Study; Multi-site assessment of deliberate injury

National Science Foundation  
Violence Review Panel

U.S. Congress

Advisor, Senator Bill Bradley,  
Advisor, Congresswoman Rosa De Lauro

Department of Defense,  
Appointee, Panel on “Violence Against Women and Children in U.S. Military.”

Department of Health and Human Services, Office of the Secretary:

Office of the U.S. Surgeon General,  
Co-Chair. Working Group on Spouse Abuse

Advisor, Interagency Task Force on Domestic Violence;

Advisor, Interagency Task Force on Child Abuse;

Advisor/Trainer, National Center for Child Abuse and Neglect;

Consultant, U.S. Task Force on Child Abuse and Neglect.

Appointee, Maternal and Child Health, Advisory Panel on Futures  
of Families.

Department of Housing and Urban Development (HUD)  
Appointee, National Low-income Housing Task Force ("Operation reaktthrough").

National Institutes of Health (NIH),  
Special Emphasis Panel on Child Neglect;  
Behavioral and Neurosciences Special Emphasis Panel.

Department of Justice:

National Institute of Justice  
Peer Review Panel, Juvenile Justice;  
Special Panel on Violence by Women

Gender Symmetry Workshop. Panel member.,

National Institute of Justice and Health and Human Services.  
Research Strategic Planning Workshop. Coordinator.

Office of Justice Planning. Peer Review of Violence Against Women Act

RESEARCH:

New Jersey Medical School, Center on Injury Prevention and Control. Member of research consortium and Violence Against Women working group.. Responsibilities include proposal preparation and review.

Centers for Disease Control.. “Domestic Violence Prevention Enhancement and Leadership Through Alliances (DELTA). With Mathematica Policy Research Inc. Princeton, New Jersey Consultant, Evaluator, 2002-2004.

New Jersey State Police. “Domestic Violence by New Jersey Police Officers, Prevention and Response.” Program evaluation. 1999-2001

Connecticut Health Department. Domestic Violence Training Project. General Support. \$100,000 per annum. Co-Director. 1993-1998.

Commonwealth Fund. "Domestic Violence in the Community Health Setting." In conjunction with Connecticut Primary Care Association, a multi-year project to research, develop and evaluate model domestic violence interventions at Connecticut's eleven Community Health Centers. Responsibilities include implementing and evaluating model intervention program at two selected sites. \$350,000. Co-PI. 1994-97.

Rockefeller Foundation."Assessing the Economic Impact of Domestic Violence." In conjunction with Victim Services, NYC and the Institute for Women's Policy Research, to oversee background review of problem, convene national expert panel and develop research/action agenda. \$45,000. Co-PI. 1995-96.

1989-90 March of Dimes. “Violence and Pregnancy: A Training Program for Perinatal Care Providers”. \$11,000. Co-Director. 1990-1992.

Connecticut Department of Human Resources. “A Proactive Data-base Management System. Principal. \$94,000. City of Bridgeport, 1989-1990.

William T. Grant Foundation."Job stress and children's Mental health: An ecological approach." Co-PI. \$150,000. 1984-1986.

National Institutes of Mental Health."Medical contexts and sequelae of domestic violence." NIMH (MH-30868). Co-PI. \$385,000. 1978-1983.

Kaiser Family Foundation."A nonmedical approach to health." \$600.000. 1978-1981.

## PUBLICATIONS:

### Books

Eve Buzawa, Carl Buzawa and Evan Stark, Responding to Domestic Violence: The Integration

of Criminal Justice and Human Services (4<sup>th</sup> Edition) Sage 2010

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04/25/11 – Keith Berkshire

Proposed language for “Parental Decision-Making” definition

“Parental decision-making” means the legal right and responsibility to make all non-emergency legal decisions, including but not limited to those regarding medical, dental, vision, orthodontic, mental health, counseling, education and religion. For purposes of interpreting or applying any international treaty, federal law, uniform code or other state statute, “parental decision-making” shall mean the same as “legal custody.”

**Deleted:** major life

**Deleted:** affecting

**Deleted:** the health, welfare and education of a child, including – but not limited to – schooling, religion, daycare, medical treatment, counseling, commitment to alternative long-term facilities, authorizing powers of attorney, granting or refusing parental consent where legally required, entitlement to notifications from third parties on behalf of the child, employment, enlistment in the armed forces, passports, licensing and certifications, and blood donation.

1 Chapter 4  
2 Minor Children: Parental Decision-Making,  
3 Parenting Time AND Relocation  
4

5 Article 2. Introduction & Preliminary Requirements

6 25-420. Public Policy

7 25-421. Jurisdiction

8 25-422. Definitions

9 25-423. Mandatory Preliminary Inquiry: Special Circumstances

10 25-424. Specific Findings Required  
11

12 Article 3. Parenting Plans, Decision-Making AND

13 Parenting Time: Cases Without Special Circumstances

14 25-430. Parenting Plans

15 25-431. Parental Decision-Making: Shared, Final or Sole

16 25-432. Parenting Time  
17

18 Article 4. Special Circumstances

19 25-XXX DEFINITIONS

20 25-440. Intimate Partner Violence AND Child Abuse: Basic Principles

21 25-441. Intimate Partner Violence AND Child Abuse: Parental Decision-  
22 Making

23 25-442. Intimate Partner Violence AND Child Abuse: Parenting Time

24 25-443. Intimate Partner Violence AND Child Abuse: Assorted Provisions

25 25-444. Substance Abuse

26 25-445. Dangerous Crimes Against Children

27 25-446. Violent & Serial Felons

28 25-447. Conflicting Presumptions or Mandatory Rules  
29

30 Article 5. Third Parties

31 25-450. Third Party Rights: Decision-Making and Visitation by

32 Grandparents, Parental Figures AND Other Third Parties  
33

34 Article 6. Temporary Orders, Decree Modification AND Relocation of a Child

35 25-460. Temporary Orders

36 25-461. Modification of an Existing Decree

37 25-462. Relocation of a Child  
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39 Article 7. Records AND Sanctions

40 25-470. Access to Records

41 25-471. Sanctions for Misconduct  
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43 Article 8. Miscellaneous

44 25-480. Statutory Priority

- 1 25-481. Agency Supervision
- 2 25-482. Identification of Primary Caretaker
- 3 25-483. Fees AND Resources
- 4 25-484. Child Interviews by Court AND Professional Assistance
- 5 25-485. Investigations AND Reports
- 6 25-486. Child Support AND Parenting Time Fund
- 7 25-487. Domestic Relations Education AND Mediation Fund

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ARTICLE 2.

12

INTRODUCTION AND PRELIMINARY REQUIREMENTS

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**25-420. Public policy**

15

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

16

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A. Share parental decision-making concerning their child;

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B. Have substantial, frequent, meaningful and continuing parenting time with their child;

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C. Develop a mutually agreeable parental decision-making and parenting time plan.

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AD HOC CUSTODY WORKGROUP NOTE

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

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

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

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

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1. BY A PARENT, IN ANY PROCEEDING FOR MARITAL DISSOLUTION, LEGAL SEPARATION, PATERNITY, OR MODIFICATION OF AN EARLIER DECREE.

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2. BY A PERSON OTHER THAN A PARENT, BY FILING A PETITION FOR THIRD-PARTY RIGHTS UNDER SECTION 25-450 IN THE COUNTY IN WHICH THE CHILD PERMANENTLY RESIDES.

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AD HOC CUSTODY WORKGROUP NOTE

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

SUBSTANTIVE LAW/COURT PROCEDURES WORKGROUP NOTE

Pending.

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

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

2. “Legal parent” means a biological or adoptive parent whose parental rights have not been terminated. It does not include a person whose paternity has not been established under state law pursuant to sections 25-812 and 25-814.

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

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

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

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

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

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

6  
7 AD HOC CUSTODY WORKGROUP NOTE

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

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

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

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

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

25 The definitions of “strangulation” and “suffocation” are copied almost verbatim from new A.R.S. § 13-  
26 1204(B)(1), which elevated both behaviors to felonious aggravated assault. They have significance in the  
27 definition of “coercive control” at Sec. 106(E)(17).

28  
29 SL/CP WORKGROUP NOTE

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

32  
33 **25-423. Mandatory Preliminary Inquiry: Special Circumstances** [New]  
34 Before evaluating the best interests of the child and deciding parental  
35 decision-making and parenting time, the court shall first determine whether  
36 special circumstances exist under SECTIONS 25-440 through 25-443 (Intimate  
37 Partner Violence & Child Abuse), SECTION 25-444 (Substance Abuse), SECTION  
38 25-445 (Dangerous Crimes Against Children) or SECTION 25-446 (Violent & Serial  
39 Felons). If so, the court shall enter parental decision-making and parenting  
40 time orders in accordance with those statutes. If not, the court shall proceed  
41 directly to the general provisions of SECTIONS 25-430 through 25-432 to devise  
42 a parenting plan that allocates parental decision-making and parenting time  
43 consistent with the child’s best interests.

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45 AD HOC CUSTODY WORKGROUP NOTE

46 This new addition constitutes the heart of the “decision-tree” philosophy. The goal is to openly require  
47 the court to evaluate special circumstances first, and only then engage the generic “best interests” test if  
48 none of those circumstances apply. Despite arbitrary (and rather confusing) sequencing in the current

1 statute, existing case law already says much the same thing. *See In re Marriage of Hurd*, 223 Ariz. 48, 219  
2 P.3d 258, 261 (App. 2009) (“when the party that committed the act of violence has not rebutted the  
3 [domestic violence] presumption ... the court need not consider all the other best-interest factors in A.R.S.  
4 § 25-403.A”).

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6  
7 **25-424. Specific Findings Required [New]**

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

14  
15 **ARTICLE 3.**

16 **PARENTING PLANS, DECISION-MAKING AND PARENTING TIME:**  
17 **CASES WITHOUT SPECIAL CIRCUMSTANCES**

18  
19 **25-430. Parenting Plans [former A.R.S. § 25-403.02]**

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

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

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

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

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

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

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

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

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

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

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

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

8  
9 **25-431. Parental Decision-Making; Shared, Final or Sole** [Former A.R.S. §  
10 25-403.01]

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

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

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

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

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

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

23  
24 **25-432. Parenting Time** [New]

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

28 1. The historical, current and potential relationship between the parent  
29 and the child.

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

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

32 4. The interaction and relationship between the child and the child's  
33 siblings and any other person who may significantly affect the child's best  
34 interest.

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

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

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

1 8. Whether a parent has complied with the educational program  
2 prescribed in SECTIONS 25-351 through-353.

3  
4 ARTICLE 4.  
5 SPECIAL CIRCUMSTANCES  
6

7 25-XXX. DEFINITIONS

8 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

11 (a) emphasizes personal responsibility;  
12 (b) clearly identifies intimate partner violence as a means of asserting  
13 power and control over another individual;

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

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

18 (e) preserves records establishing an offender's participation,  
19 contribution and progress toward rehabilitation, irrespective of whether a  
20 given session involves individual treatment or group therapy including multiple  
21 offenders.

22 2. "Child abuse" means any of the following acts where the relationship  
23 between the offender and victim qualifies under SECTION 13-3601(A)(5),  
24 including any attempt, conspiracy or solicitation of another to commit such  
25 act:

26 (a) Endangerment, as defined IN SECTION 13-1201.

27 (B) Threatening or intimidating, as defined IN SECTION 13-1202(A).

28 (C) Assault, as defined IN SECTION 13-1203(A).

29 (D) Aggravated assault, as defined IN SECTION 13-1204(A)(1) - (5).

30 (E) Child abuse, as defined IN SECTION 13-3623.

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

33 4. "Deferred prosecution" and "diversion" means any program offered  
34 by a criminal court or government agency through which an alleged offender  
35 avoids criminal prosecution by agreeing to pay a fine, participate in counseling,  
36 or perform other remedial tasks in exchange for dismissal of one or more  
37 pending charges or a promise by the state not to proceed with a complaint or  
38 indictment.

39 5. "Intimate partner violence" means any act DEFINED IN SECTION 13-  
40 3601(A), as well as any other act of physical or sexual violence constituting a  
41 felony, where inflicted by a person against an intimate partner. This definition  
42 also includes any attempt, conspiracy, or solicitation of another to commit  
43 such act. It does not include any behavior that would constitute self-defense  
44 or other legal justification as defined by 13-404 through 408.

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

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

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

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

13  
14 SL/CP WORKGROUP NOTE

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

17  
18  
19  
20 **25-440. Intimate Partner Violence and Child Abuse: Basic Principles**

21 [Former A.R.S. § 25-403.03(B)]

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

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

34  
35  
36 AD HOC CUSTODY WORKGROUP NOTE

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

1  
2 **25-441. Intimate Partner Violence and Child Abuse: Parental Decision-**  
3 **making**

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

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, or child abuse against the child or child's sibling, then it shall not  
9 award parental decision-making to the offending parent without proof that  
10 such parent should still make major decisions for the child despite the proven  
11 history of abuse or violence. The offending parent may submit this proof by  
12 asking the court to consider the criteria listed in SUBSECTION (B). In that  
13 event, the court shall also evaluate whether the offending parent has  
14 nevertheless failed to prove his or her suitability for parental decision-making  
15 by considering each of the criteria listed in SUBSECTION(C).

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

21 1. Completed a batterer's intervention program, as defined SECTION 25-  
22 422(1), in cases involving intimate partner violence, and has also disclosed and  
23 submitted into evidence a complete set of treatment records proving an  
24 acceptable level of rehabilitation. A mere certificate of completion does not  
25 alone prove rehabilitation. The treatment records themselves must exhibit  
26 active involvement and positive steps by the offending parent during therapy.

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

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

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

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

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

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

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

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

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

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

15          7. Whether the offending parent failed to comply with the mandatory  
16 disclosure requirements of ARIZONA RULES OF Family Law PROCEDURE rules  
17 49(B)(2) THROUGH (4) or reasonable discovery requests for records associated  
18 with treating intimate partner violence or child abuse.

19          D. Coercive Control. As used in subsection C(1), “coercive control”  
20 refers to one or more controlling behaviors inflicted by one parent against  
21 another, when the latter has also suffered intimate partner violence by that  
22 parent. With regard to each behavior, the court shall consider its severity,  
23 whether it comprises part of a wider pattern of controlling conduct, and the  
24 actor’s motivation. Specifically, the court shall contemplate whether the  
25 offending parent has:

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

28           2. Confined the victim or otherwise restricted the victim’s movements;

29           3. Attempted or threatened suicide;

30           4. Injured or threatened to injure household pets;

31           5. Damaged property in the victim’s presence or without the victim’s  
32 consent;

33           6. Threatened to conceal or remove children from the victim’s care, or  
34 attempted to undermine the victim’s relationship with a child;

35           7. Restricted or hindered the victim’s communications, including  
36 attempts by the victim to report intimate partner violence, child abuse or  
37 other criminal behavior to law enforcement, medical personnel or other third  
38 parties;

39           8. Eavesdropped on the victim’s private communications or Internet  
40 activities, interrupted or confiscated the victim’s mail, or accessed the  
41 victim’s financial, electronic mail or Internet accounts without permission;

42           9. Engaged in a course of conduct deliberately calculated to jeopardize  
43 the victim’s employment;

- 1 10. Illicitly tampered with the victim’s residential utilities, or entered
- 2 onto residential property inhabited by the victim without permission;
- 3 11. Reported or threatened to report the victim’s immigration status to
- 4 government officials;
- 5 12. Terminated the victim’s or children’s insurance coverage;
- 6 13. Forbade or prevented the victim from making decisions concerning
- 7 disposition of property or income in which the victim possessed a legal interest;
- 8 14. Opened financial or credit accounts in the victim’s name without
- 9 the victim’s consent, forged the victim’s signature, or otherwise appropriated
- 10 the victim’s identity without the victim’s authority;
- 11 15. Restricted the victim’s participation in social activities, or access to
- 12 family, friends or acquaintances;
- 13 16. Forbade or prevented the victim from achieving the victim’s
- 14 educational or career objectives;
- 15 17. Used especially dangerous forms of physical violence against the
- 16 victim, including burning, strangulation, suffocation or use of a deadly weapon
- 17 18. Inflicted any form of physical violence against a pregnant victim; or
- 18 19. Engaged in any other controlling behavior consistent with the
- 19 conduct described in this definition.

20 E. FOR THE PURPOSES OF THIS SECTION:

- 21 1. “STRANGULATION” HAS THE SAME MEANING PRESCRIBED IN SECTION 13-
- 22 1204(B)(1).
- 23 2. “SUFFOCATION” HAS THE SAME MEANING PRESCRIBED IN SECTION 13-
- 24 1204(B)(1).

25  
26 AD HOC CUSTODY WORKGROUP NOTE

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

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

44 Moreover, under new A.R.S. § 25-441(C), the court would also consider “aggravating” factors to  
45 evaluate whether more serious issues detract from what the offender has offered in a rebuttal case. This  
46 section lists a broad range of conduct often ignored or minimized in IPV cases, and includes an  
47 examination of the behaviors defined under “coercive control.” The definition of “coercive control” was

1 added to help a trial court evaluate the motivation for proven intimate partner violence and assess the  
2 danger posed to the victim and child alike by permitting joint decision-making or unfettered parenting  
3 time to a batterer. The listed factors are not intended to be exclusive, but instead represent some of the  
4 more common conduct of batterers motivated by a desire to control their partners. It is vital not to  
5 review these factors strictly in isolation or conclude that, in their absence, all is necessarily well.  
6 However, the appearance of these behaviors in tandem should cause significant concern – both in terms  
7 of safety for the victim and child, as well as future role-modeling as a parent. The definition also requires  
8 the court to consider whether the conduct in question may be attributable to a cause other than  
9 controlling behavior, or motivated by legitimate concerns.

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

## 18 25-442. Intimate Partner Violence and Child Abuse: Parenting Time

19 [Former A.R.S. § 25-403.03(F)]

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

29 1. Expose the child to poor role-modeling related to the confirmed  
30 intimate partner violence as the child grows older and begins to develop his or  
31 her own intimate relationships, irrespective of whether the offending parent  
32 poses a direct physical risk to the child; and

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

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

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

42 2. Order that a person or agency specified by the court must supervise  
43 parenting time. If the court allows a family or household member or other  
44 person to supervise the offending parent’s parenting time, the court shall  
45 establish conditions that this supervisor must follow. When deciding whom to  
46 select, the court shall also consider the supervisor’s ability to physically

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

4 3. Order the completion of a batterer's intervention program, as  
5 defined by SECTION 25-422(1), and any other counseling the court orders.

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

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

11 6. Prohibit overnight parenting time.

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

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

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

17 10. Suspend parenting time for a prescribed period.

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

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

23  
24 WORKGROUP NOTE

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

31  
32  
33 **25-443. Intimate Partner Violence and Child Abuse: Assorted Provisions**  
34 [Former A.R.S. § 25-403.03(C), (G) and (H)]

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

39 1. Findings or judgments from another court of competent jurisdiction.

40 2. Police or medical reports.

41 3. Counseling, school or shelter records.

42 4. Child Protective Services records.

43 5. Photographs, recordings, text messages, electronic mail or written  
44 correspondence.

45 6. Witness testimony.

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

9 C. Collateral Protective Order Proceedings. For purposes of this  
10 section, no judgment resulting from protective order proceedings SECTION 13-  
11 3602(l) shall be considered conclusive evidence that intimate partner violence  
12 or child abuse did or did not occur.

13 D. Shelter Residency. A parent's residency in a shelter for victims of  
14 intimate partner violence shall not constitute grounds for denying that parent  
15 any degree of decision-making authority or parenting time. For purposes of  
16 this section, "shelter" means any facility meeting the definitions of SECTIONS  
17 36-3001(6) and 36-3005.

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

23 F. Alternative Dispute Resolution. A victim of intimate partner violence  
24 may opt out of alternative dispute resolution ('ADR') imposed under RULES OF  
25 FAMILY LAW PROCEDURE Rule 67 or 68 to the extent that a suggested ADR  
26 procedure requires the parties to meet and confer in person. The court shall  
27 notify each party of this right before requiring their participation in the ADR  
28 process. As used in this subsection only, "victim of intimate partner violence"  
29 means: (1) a party who has acquired a protective order against the other  
30 parent pursuant to SECTION 13-3602; (2) a party who was previously  
31 determined by a civil or family court to have suffered intimate partner violence  
32 by the other parent; or (3) a party who was the named victim in a criminal case  
33 that resulted in the conviction, diversion or deferred prosecution of the other  
34 parent for an act of intimate partner violence.

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

39  
40 AD HOC CUSTODY WORKGROUP NOTE

41 Subsection (A) updates existing A.R.S. § 25-403.03(C). Subsection (B) holds IPV offenders  
42 accountable for conduct previously resolved by diversion or deferred prosecution in criminal court. This  
43 reform recognizes that such programs are best reserved for defendants who admit responsibility for  
44 conduct alleged in the charging complaint or indictment, but avoid formal conviction by seeking  
45 rehabilitation through counseling or other measures. They are not appropriate for defendants who deny

1 accountability for their alleged misconduct and simply want to evade criminal prosecution. Under such  
2 circumstances, it is both illogical and unfair to require a victim of that crime to prove its occurrence in  
3 family court – sometimes several months or even years after the fact (when witnesses or other evidence  
4 may no longer be available) – simply because the offender dodged a conviction with an admission,  
5 counseling and subsequent dismissal of charges.

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

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

16 Subsection (E) strengthens the protections for potentially vulnerable IPV victims otherwise  
17 forced into mediation or other forms of ADR with their abusers.  
18

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, AS DEFINED IN TITLE 13, CHAPTER 34.
- 7 2. Driving under the influence of alcohol, as defined IN SECTION 28-  
8 1381.
- 9 3. Extreme driving under the influence of alcohol, as defined IN  
10 SECTION 13-1382.
- 11 4. Aggravated driving under the influence of alcohol, as defined IN  
12 SECTION 13-1383.

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

- 15 1. The absence of any other drug or alcohol-related arrest or  
16 conviction.
- 17 2. Reliable results from random urinalyses, blood or hair follicle tests,  
18 or some other comparable testing procedure.

19  
20  
21 **25-445. Dangerous Crimes Against Children** [Former A.R.S. § 25-403.05]

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

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

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

35  
36  
37 **25-446. Violent AND Serial Felons** [Former A.R.S. § 25-403.05]

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

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

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

7  
8 **25-447. Conflicting Presumptions or Mandatory Rules [New]**

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

19  
20 **Article 5.**  
21 **Third Parties**

22  
23 **25-450. Third-Party Rights; Decision-Making and Visitation by**  
24 **Grandparents, Parental Figures AND Other Third Parties [Former A.R.S. §§**  
25 **25-409 and -415]**

26  
27 A. Decision-Making Authority. PURSUANT TO SECTION 25-421(B)(2), a  
28 person other than a legal parent may petition the superior court for decision-  
29 making authority over a child. The court shall summarily deny a petition unless  
30 it finds that the petitioner has established that all of the following are true in  
31 the initial pleading:

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

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

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

41 4. One of the following applies:

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

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

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

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

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

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

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

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

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

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

33 1. The child's legal parents.

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

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

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

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

42 E. Criteria for Granting Third-Party Visitation. When deciding whether  
43 to grant visitation to a third party, the court shall give special weight to the

1 legal parents' opinion of what serves their child's best interests, and then  
2 consider all relevant factors, including:

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

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

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

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

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

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

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

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

## 27 Article 6. Temporary Orders, Modification & Relocation

### 28 § 25-460. Temporary Orders

29 [former A.R.S. § 25-404]

### 30 § 25-461. Decree Modification

31 [former A.R.S. § 25-411]

### 32 § 25-462. Relocation of a Child

33 [former A.R.S. § 25-408(B)]

## 34 Article 7. Records & Sanctions

### 35 § 25-470. Access to Records

36 [former A.R.S. § 25-403.06]

### 37 § 25-471. Sanctions for Misconduct

38 [former A.R.S. § 25-414]

## 39 Article 8. Miscellaneous

### 40 § 25-480. Statutory Priority

41 [former A.R.S. § 25-407]

### 42 § 25-481. Agency Supervision

43 [former A.R.S. § 25-410]

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

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Chapter 4  
Minor Children: Parental Decision-Making,  
Parenting Time AND Relocation

Article 2. Introduction & AND Preliminary Requirements

- 25-420. Public Policy
- 25-421. Jurisdiction
- 25-422. Definitions
- 25-423. Mandatory Preliminary Inquiry: Special Circumstances
- 25-424. Specific Findings Required

Article 3. Parenting Plans, Decision-Making AND  
Parenting Time: Cases Without Special Circumstances

- 25-430. Parenting Plans
- 25-431. Parental Decision-Making: Shared, Final or Sole
- 25-432. Parenting Time

Article 4. Special Circumstances

- 25-XXX. DEFINITIONS
- 25-440. Intimate Partner Violence & AND Child Abuse: Basic Principles
- 25-441. Intimate Partner Violence & AND Child Abuse: Parental Decision-Making
- 25-442. Intimate Partner Violence & AND Child Abuse: Parenting Time
- 25-443. Intimate Partner Violence & AND Child Abuse: Assorted Provisions
- 25-444. Substance Abuse
- 25-445. Dangerous Crimes Against Children
- 25-446. Violent & AND Serial Felons
- 25-447. Conflicting Presumptions or Mandatory Rules

Article 5. Third Parties

- 25-450. Third Party Rights: Decision-Making and Visitation by Grandparents, Parental Figures & AND Other Third Parties

Article 6. Temporary Orders, Decree Modification & AND Relocation of a Child

- 25-460. Temporary Orders
- 25-461. Modification of an Existing Decree
- 25-462. Relocation of a Child

Article 7. Records & AND Sanctions

- 25-470. Access to Records
- 25-471. Sanctions for Misconduct

Article 8. Miscellaneous

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- 1 ~~25-480. Statutory Priority~~
- 2 ~~25-481. Agency Supervision~~
- 3 ~~25-482. Identification of Primary Caretaker~~
- 4 ~~25-483. Fees & AND Resources~~
- 5 ~~25-484. Child Interviews by Court & AND Professional Assistance~~
- 6 ~~25-485. Investigations & AND Reports~~
- 7 ~~25-486. Child Support & AND Parenting Time Fund~~
- 8 ~~25-487. Domestic Relations Education & AND Mediation Fund~~

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11 ~~ARTICLE 2.~~  
 12 INTRODUCTION & AND PRELIMINARY REQUIREMENTS

15 25-420. Public policy  
 16 Absent evidence to the contrary, it serves a child's best interests for both legal  
 17 parents to:  
 18 A. Share parental decision-making concerning their child;  
 19 B. Have substantial, frequent, meaningful and continuing parenting  
 20 time with their child;  
 21 C. Develop a mutually agreeable parental decision-making and  
 22 parenting time plan.

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

30 25-421. Jurisdiction [FORMER A.R.S. § 25-401]  
 31 A. Before conducting any proceeding concerning parental decision-  
 32 making or parenting time, including any proceeding scheduled to decide the  
 33 custody or visitation of a non-parent, all Arizona courts shall first confirm their  
 34 authority to do so to the exclusion of any other state, Indian tribe or foreign  
 35 nation by complying with the Uniform Child Custody Jurisdiction and  
 36 Enforcement Act ('UCCJEA'), at ~~A.R.S. §§~~ ARIZONA REVISED STATUTES  
 37 SECTIONS 25-1001, ~~et seq.,~~ TO 25-1067, Parental Kidnapping Prevention Act  
 38 ('PKPA') at 28 U.S.C. § UNITED STATES CODE SECTION 1738A, and any  
 39 applicable international law concerning the wrongful abduction or removal of  
 40 children.  
 41 B. ~~A proceeding under this chapter is commenced in superior court: the~~  
 42 THE FOLLOWING PERSONS MAY REQUEST PARENTAL DECISION-MAKING OR  
 43 PARENTING TIME UNDER THE FOLLOWING CIRCUMSTANCES:

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

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

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

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

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

16  
17 AD HOC CUSTODY WORKGROUP NOTE

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

22  
23 SUBSTANTIVE LAW/COURT PROCEDURES WORKGROUP NOTE

24 Pending.

25  
26 **25-422. Definitions** [Former A.R.S. § 25-402]

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

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

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

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

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

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

37 ~~— (e) preserves records establishing an offender's participation,~~  
38 ~~contribution and progress toward rehabilitation, irrespective of whether a~~  
39 ~~given session involves individual treatment or group therapy including multiple~~  
40 ~~offenders.~~

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

**Comment [KS2]:** 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.

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1 ~~\_\_\_\_\_ (a) Endangerment, as defined by A.R.S. § ARIZONA REVISED STATUTES~~  
2 ~~SECTION 13-1201-~~  
3 ~~\_\_\_\_\_ (B) Threatening or intimidating, as defined by A.R.S. § ARIZONA REVISED~~  
4 ~~STATUTES SECTION 13-1202(A)-~~  
5 ~~\_\_\_\_\_ (C) Assault, as defined by A.R.S. § ARIZONA REVISED STATUTES SECTION~~  
6 ~~13-1203(A)-~~  
7 ~~\_\_\_\_\_ (D) Aggravated assault, as defined by A.R.S. § ARIZONA REVISED~~  
8 ~~STATUTES SECTION 13-1204(A)(1) (5)-~~  
9 ~~\_\_\_\_\_ (E) Child abuse, as defined by A.R.S. § ARIZONA REVISED STATUTES~~  
10 ~~SECTION 13-3623-~~  
11 ~~\_\_\_\_\_ 3. "Conviction" shall include guilty, "no contest" and Alford pleas, and~~  
12 ~~guilty verdicts issued by a trier of fact.~~  
13 ~~\_\_\_\_\_ 4. "Deferred prosecution" and "diversion" means any program offered~~  
14 ~~by a criminal court or government agency through which an alleged offender~~  
15 ~~avoids criminal prosecution by agreeing to pay a fine, participate in counseling,~~  
16 ~~or perform other remedial tasks in exchange for dismissal of one or more~~  
17 ~~pending charges or a promise by the state not to proceed with a complaint or~~  
18 ~~indictment.~~  
19 ~~\_\_\_\_\_ 5 1. "In loco parentis" means a person who has been treated as a parent~~  
20 ~~by the child and who has formed a meaningful parental relationship with the~~  
21 ~~child for a substantial period of time.~~  
22 ~~\_\_\_\_\_ 6 2. "Intimate partner violence" means any act that would meet the~~  
23 ~~definition of A.R.S. § 13-3601(A), as well as any other act of physical or sexual~~  
24 ~~violence constituting a felony, where inflicted by a person against an intimate~~  
25 ~~partner. This definition also includes any attempt, conspiracy, or solicitation~~  
26 ~~of another to commit such act. It does not include any behavior that would~~  
27 ~~constitute self defense or other legal justification as defined by A.R.S. §§ 13-~~  
28 ~~404 through 408-~~  
29 ~~\_\_\_\_\_ 7. "Intimate partners" means persons whose relationship with each~~  
30 ~~other qualifies under A.R.S. § 13-3601(A)(1), (2), (3) OR (6)-~~  
31 ~~\_\_\_\_\_ 8 3.2. "Legal parent" means a biological or adoptive parent whose~~  
32 ~~parental rights have not been terminated. It does not include a person whose~~  
33 ~~paternity has not been established under state law pursuant to sections 25-812~~  
34 ~~and 25-814.~~  
35 ~~\_\_\_\_\_ 9 4. 3. "Parental decision-making" means the legal right and~~  
36 ~~responsibility to make major life decisions affecting the health, welfare and~~  
37 ~~education of a child, including - but not limited to - schooling, religion,~~  
38 ~~daycare, medical treatment, counseling, commitment to alternative long-term~~  
39 ~~facilities, authorizing powers of attorney, granting or refusing parental consent~~  
40 ~~where legally required, entitlement to notifications from third parties on~~  
41 ~~behalf of the child, employment, enlistment in the armed forces, passports,~~  
42 ~~licensing and certifications, and blood donation. For purposes of interpreting~~  
43 ~~or applying any international treaty, federal law, uniform code or other state~~  
44 ~~statute, "parental decision-making" shall mean the same as "legal custody."~~

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**Comment [KLR3]:** Sarah – biological needs to be defined.

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**Comment [KLR4]:** CCR suggestion - 8. "Legal parent" means, for any of the following whose parental rights have not been terminated, a biological mother or father, a biological father who has established paternity pursuant to Section 25-814, or an adoptive parent.  
**Ellen** – what about 3<sup>rd</sup> party custodian who has custody and will be making custody decisions?  
**Keith** – they have decision making under separate statute. Temporary decision-making.  
**Ellen** – but have right to make those decisions  
**Grace** – page 17 – 3<sup>rd</sup> party section (CCR version)  
**Grace** – motion to adopt CCR recommendation for this definition. Sid seconds.  
**Keith** – agrees with change because jurisdiction standard previously edited  
**Danny** – 814 points to 812.  
**Sarah Y.** – confusing because it lists bio father and bio father who has established paternity. If bio father without designation is referred to in other statutes, probably needs to be designated differently.  
**Danny** – 814 is presumption of paternity  
**Sarah** – need a court order to establish paternity  
**Jami** – married man presumed to be father if ... Husband can be presumptive father but doesn't have court order.  
**Jami** – clear up discrepancy between 812 and 814 – when person has established paternity.  
**Sarah** – point reader to 25-801 et seq.  
**Danny** – will bring language for subsequent discussion at future meeting

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**Comment [KLR5]:** Jenny – if joint PDM, have to decide on specific day care. Thoughts?  
**Bill** – not huge issue. Important to parents to have input.  
**Danny** – Agree with Bill. Who is child being taken to? Are grandparents available? Big part of child's life. Worth keeping in.  
**Jami** – In practice sees people arguing over daycare in court. One party want grandparent to watch child. Hostile exchanges? Putting this in invites more litigation. If put it in, will fight about it more. Parties already argue about it. Can be used to infringe on other parent's decisions when child is in his (... [53])

**Comment [KLR6]:** Keith – volunteers to draft some language for this section for April 29 meeting.

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

7 (B) "Final parental decision-making" means one parent is ultimately  
8 responsible for child-related decisions, but must still reasonably consult with  
9 the other before exercising this authority.

10 (C) "Sole parental decision-making" means one parent is exclusively  
11 responsible for child-related decisions, and does not require any level of  
12 consultation with the other before the authority is exercised.

13 ~~10 5- 4.~~ "Parenting time" refers to a parent's physical access to a child  
14 at specified times, and entails the provision of food, clothing and shelter, as  
15 well positive role-modeling and active involvement in a child's activities, while  
16 the child remains in that parent's care. A person exercising parenting time is  
17 expected to make routine decisions regarding the child's care that do not  
18 contradict the major life decisions made by a parent vested with parental  
19 decision-making authority.

20 ~~11. "Special circumstance" refers to conduct requiring application of  
21 one or more mandatory rules described in A.R.S. §§ 25-440 through 446.~~

22 ~~12. "Strangulation" means intentionally impeding the normal breathing  
23 or circulation of blood of another person by applying pressure to the throat or  
24 neck.~~

25 ~~13. "Suffocation" means intentionally impeding the normal breathing of  
26 another person by obstructing the nose and mouth either manually or through  
27 the use of an instrument.~~

28 ~~14 6- 5.~~ "Visitation" involves the same rights and responsibilities as  
29 parenting time when exercised by a non-parent.

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Comment [KS7]: Moved to 25-441(E)

Comment [KS8]: Moved to 25-441(E)

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#### AD HOC CUSTODY WORKGROUP NOTE

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

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

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

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

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SL/CP Workgroup

Title 25 – Custody Rewrite

Version ~~4.08.11~~ RED-LINED (Prepared for 04.29.11 Meeting)

1 "Intimate partner violence" now adds anticipatory crimes, and expressly excludes violence  
2 legitimately inflicted in self-defense.

3 The definitions of "strangulation" and "suffocation" are copied almost verbatim from new A.R.S. § 13-  
4 1204(B)(1), which elevated both behaviors to felonious aggravated assault. They have significance in the  
5 definition of "coercive control" at Sec. 106(E)(17).

6  
7 **SL/CP WORKGROUP NOTE**

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

10  
11 **25-423. Mandatory Preliminary Inquiry: Special Circumstances [New]**  
12 Before evaluating the best interests of the child and deciding parental  
13 decision-making and parenting time, the court shall first determine whether  
14 special circumstances exist under SECTIONS §§ 25-440 through 25-443 (Intimate  
15 Partner Violence & Child Abuse), § SECTION 25-444 (Substance Abuse), ~~§~~  
16 SECTION 25-445 (Dangerous Crimes Against Children) or § SECTION 25-446  
17 (Violent & Serial Felons). If so, the court shall enter parental decision-making  
18 and parenting time orders in accordance with those statutes. If not, the court  
19 shall proceed directly to the general provisions of §§ SECTIONS 25-430 through  
20 25-432 to devise a parenting plan that allocates parental decision-making and  
21 parenting time consistent with the child's best interests.

22  
23 **AD HOC CUSTODY WORKGROUP NOTE**

24 This new addition constitutes the heart of the "decision-tree" philosophy. The goal is to openly require  
25 the court to evaluate special circumstances first, and only then engage the generic "best interests" test if  
26 none of those circumstances apply. Despite arbitrary (and rather confusing) sequencing in the current  
27 statute, existing case law already says much the same thing. See *In re Marriage of Hurd*, 223 Ariz. 48, 219  
28 P.3d 258, 261 (App. 2009) ("when the party that committed the act of violence has not rebutted the  
29 [domestic violence] presumption ... the court need not consider all the other best-interest factors in A.R.S.  
30 § 25-403.A").

31  
32  
33 **25-424. Specific Findings Required [New]**  
34 In any evidentiary hearing involving parental decision-making, parenting time  
35 or third-party rights, including both temporary orders and trial, the court shall  
36 make specific findings on the record about all relevant factors and reasons for  
37 why the judicial decision serves a child's best interests. The findings shall  
38 include a description of any special circumstances established by the evidence,  
39 and an explanation for the court's decision in light of the controlling rules.

40  
41 **ARTICLE 3.**

42 **PARENTING PLANS, DECISION-MAKING & AND PARENTING TIME:**  
43 **CASES WITHOUT SPECIAL CIRCUMSTANCES**

44  
45 **25-430. Parenting Plans [former A.R.S. § 25-403.02]**

46 **A. Consistent with the child's physical and emotional well-being, the**  
47 **court shall adopt a parenting plan that provides for both parents to share**

1 parental decision-making concerning their child and maximizes their respective  
2 parenting time. The court shall not prefer one parent over the other due to  
3 gender.

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

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

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

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

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

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

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

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

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

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

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

30  
31 **25-431. Parental Decision-Making; Shared, Final or Sole** [Former A.R.S. §  
32 25-403.01]

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

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

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

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

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

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

Comment [KS9]: Need at least two subunits involved. If "A", need a "B".

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25-432. Parenting Time [New]

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

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

ARTICLE 4.  
SPECIAL CIRCUMSTANCES

25-XXX. DEFINITIONS

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "Batterer's intervention program" means an individual or group treatment program for intimate partner violence offenders that:
  - (a) emphasizes personal responsibility;
  - (b) clearly identifies intimate partner violence as a means of asserting power and control over another individual;
  - (c) does not primarily or exclusively focus on anger or stress management, impulse control, conflict resolution or communication skills;
  - (d) does not involve the participation or presence other family members, including the victim or children; and
  - (e) preserves records establishing an offender's participation, contribution and progress toward rehabilitation, irrespective of whether a given session involves individual treatment or group therapy including multiple offenders.

Comment [KS10]: Need at least two subunits involved. If "A", need a "B".

Comment [KS11]: Moved from 25-422 to Article 4

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1 2. "Child abuse" means any of the following acts where the relationship  
2 between the offender and victim qualifies under ~~A.R.S. §~~ SECTION 13-  
3 3601(A)(5), including any attempt, conspiracy or solicitation of another to  
4 commit such act:

5 (a) Endangerment, as defined ~~by A.R.S. §~~ IN SECTION 13-1201.

6 (B) Threatening or intimidating, as defined ~~by A.R.S. §~~ IN SECTION 13-  
7 1202(A).

8 (C) Assault, as defined ~~by A.R.S. §~~ IN SECTION 13-1203(A).

9 (D) Aggravated assault, as defined ~~by A.R.S. §~~ IN SECTION 13-1204(A)(1)  
10 - (5).

11 (E) Child abuse, as defined ~~by A.R.S. §~~ IN SECTION 13-3623.

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

14 4. "Deferred prosecution" and "diversion" means any program offered  
15 by a criminal court or government agency through which an alleged offender  
16 avoids criminal prosecution by agreeing to pay a fine, participate in counseling,  
17 or perform other remedial tasks in exchange for dismissal of one or more  
18 pending charges or a promise by the state not to proceed with a complaint or  
19 indictment.

20 ~~6~~ 5. "Intimate partner violence" means any act ~~that would meet the~~  
21 ~~definition of A.R.S. §~~ DEFINED IN SECTION 13-3601(A), as well as any other act  
22 of physical or sexual violence constituting a felony, where inflicted by a person  
23 against an intimate partner. This definition also includes any attempt,  
24 conspiracy, or solicitation of another to commit such act. It does not include  
25 any behavior that would constitute self-defense or other legal justification as  
26 defined by ~~A.R.S. §§~~ 13-404 through 408.

27 ~~7~~ 6. "Intimate partners" means persons whose relationship with each  
28 other qualifies ~~under A.R.S. §~~ PURSUANT TO SECTIONS 13-3601(A)(1), (2), (3)  
29 OR (6).

30 ~~6~~ 7. "Intimate partner violence" means any act ~~that would meet the~~  
31 ~~definition of A.R.S. §~~ AS DEFINED IN SECTION 13-3601(A), as well as any other  
32 act of physical or sexual violence constituting a felony, where inflicted by a  
33 person against an intimate partner. This definition also includes any attempt,  
34 conspiracy, or solicitation of another to commit such act. It does not include  
35 any behavior that would constitute self-defense or other legal justification as  
36 defined by ~~A.R.S. §§~~ SECTIONS 13-404 through 408.

37 ~~7~~ 8. "Intimate partners" means persons whose relationship with each  
38 other qualifies ~~under A.R.S. §~~ PURSUANT TO SECTIONS 13-3601(A)(1), (2), (3)  
39 OR (6).

40 ~~11~~ 9. "Special circumstance" refers to conduct requiring application of  
41 one or more mandatory rules ~~described in A.R.S. §§~~ PURSUANT TO SECTIONS 25-  
42 440 through -446.

43  
44 SL/CP WORKGROUP NOTE

SL/CP Workgroup  
Title 25 – Custody Rewrite  
Version 4.08.11 RED-LINED (Prepared for 04.29.11 Meeting)

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

### 6 25-440. Intimate Partner Violence and Child Abuse: Basic Principles

7 [Former A.R.S. § 25-403.03(B)]

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

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

#### 22 AD HOC CUSTODY WORKGROUP NOTE

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

### 34 25-441. Intimate Partner Violence and Child Abuse: Parental Decision- 35 making

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

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

1 nevertheless failed to prove his or her suitability for parental decision-making  
2 by considering each of the criteria listed in ~~Subsection~~ SUBSECTION(C).

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

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

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

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

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

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

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

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

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

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

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

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

3           7. Whether the offending parent failed to comply with the mandatory  
4 disclosure requirements of ARIZONA RULES OF Family Law PROCEDURE rules  
5 49(B)(2) THROUGH (4) or reasonable discovery requests for records associated  
6 with treating intimate partner violence or child abuse.

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

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

16           2. Confined the victim or otherwise restricted the victim’s movements;

17           3. Attempted or threatened suicide;

18           4. Injured or threatened to injure household pets;

19           5. Damaged property in the victim’s presence or without the victim’s  
20 consent;

21           6. Threatened to conceal or remove children from the victim’s care, or  
22 attempted to undermine the victim’s relationship with a child;

23           7. Restricted or hindered the victim’s communications, including  
24 attempts by the victim to report intimate partner violence, child abuse or  
25 other criminal behavior to law enforcement, medical personnel or other third  
26 parties;

27           8. Eavesdropped on the victim’s private communications or Internet  
28 activities, interrupted or confiscated the victim’s mail, or accessed the  
29 victim’s financial, electronic mail or Internet accounts without permission;

30           9. Engaged in a course of conduct deliberately calculated to jeopardize  
31 the victim’s employment;

32           10. Illicitly tampered with the victim’s residential utilities, or entered  
33 onto residential property inhabited by the victim without permission;

34           11. Reported or threatened to report the victim’s immigration status to  
35 government officials;

36           12. Terminated the victim’s or children’s insurance coverage;

37           13. Forbade or prevented the victim from making decisions concerning  
38 disposition of property or income in which the victim possessed a legal interest;

39           14. Opened financial or credit accounts in the victim’s name without  
40 the victim’s consent, forged the victim’s signature, or otherwise appropriated  
41 the victim’s identity without the victim’s authority;

42           15. Restricted the victim’s participation in social activities, or access to  
43 family, friends or acquaintances;

- 1 16. Forbade or prevented the victim from achieving the victim's
- 2 educational or career objectives;
- 3 17. Used especially dangerous forms of physical violence against the
- 4 victim, including burning, strangulation, suffocation or use of a deadly weapon
- 5 18. Inflicted any form of physical violence against a pregnant victim; or
- 6 19. Engaged in any other controlling behavior consistent with the
- 7 conduct described in this definition.

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

- 9 1. "STRANGULATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-
- 10 1204(B)(1).
- 11 2. "SUFFOCATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-
- 12 1204(B)(1).

Comment [KS12]: Added new subsection (E). 3-18-11

13 **AD HOC CUSTODY WORKGROUP NOTE**

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

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

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

44 In cases of so-called "mutual combat," the amendment also requires the court to evaluate what  
 45 motivated the violence, the force applied, and resulting injuries – rather than dismantling the  
 46 presumption from the start. See A.R.S. § 25-403.03(D) ("presumption does not apply if both parents have  
 47 committed an act of domestic violence"). The bill would also include the failure to make obligatory, IPV-

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1 related, Rule 49 disclosure as an explicit factor for deciding whether a proven offender had overcome the  
2 presumption against an award of parental decision-making.

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4  
5 **25-442. Intimate Partner Violence and Child Abuse: Parenting Time**  
6 [Former A.R.S. § 25-403.03(F)]

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

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

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

28 1. Order child exchanges to occur in a specified safe setting.  
29 2. Order that a person or agency specified by the court must supervise  
30 parenting time. If the court allows a family or household member or other  
31 person to supervise the offending parent's parenting time, the court shall  
32 establish conditions that this supervisor must follow. When deciding whom to  
33 select, the court shall also consider the supervisor's ability to physically  
34 intervene in an emergency, willingness to promptly report a problem to the  
35 court or other appropriate authorities, and readiness to appear in future  
36 proceedings and testify truthfully.

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

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

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

45 6. Prohibit overnight parenting time.

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

12  
13 WORKGROUP NOTE

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

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21  
22 **25-443. Intimate Partner Violence and Child Abuse: Assorted Provisions**  
23 [Former A.R.S. § 25-403.03(C), (G) and (H)]

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

- 28 1. Findings or judgments from another court of competent jurisdiction.
- 29 2. Police or medical reports.
- 30 3. Counseling, school or shelter records.
- 31 4. Child Protective Services records.
- 32 5. Photographs, recordings, text messages, electronic mail or written
- 33 correspondence.
- 34 6. Witness testimony.

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

43 C. Collateral Protective Order Proceedings. For purposes of this  
44 section, no judgment resulting from protective order proceedings under ~~A.R.S.~~

1 §-SECTION 13-3602(I) shall be considered conclusive evidence that intimate  
2 partner violence or child abuse did or did not occur.

3 D. Shelter Residency. A parent’s residency in a shelter for victims of  
4 intimate partner violence shall not constitute grounds for denying that parent  
5 any degree of decision-making authority or parenting time. For purposes of  
6 this section, “shelter” means any facility meeting the definitions of SECTIONS  
7 36-3001(6) and 36-3005.

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

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

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

30  
31 AD HOC CUSTODY WORKGROUP NOTE

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

42 Subsection (C) clarifies that family court litigants should not use the outcome of contested,  
43 domestic violence protective order proceedings as “proof” that intimate partner violence did or did not  
44 exist. The amendment recognizes that protective order proceedings apply a different legal standard,  
45 potentially apply different evidentiary rules, and frequently occur with little advance notice to the alleged  
46 victim – who bears the burden of proof and may not be able to collect witnesses or exhibits within the

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1 allotted time. This amendment does not, however, preclude the use of evidence presented at such an  
2 earlier hearing, or even the use of the judgment itself in conjunction with other evidence. It bars only use  
3 of the judgment as conclusive proof, standing alone, that intimate partner violence did or did not occur.  
4 Subsection (D) shields victims of intimate partner violence from the loss of decision-making  
5 authority or access time merely by virtue of their temporary residency in a domestic violence shelter.  
6 Subsection (E) strengthens the protections for potentially vulnerable IPV victims otherwise  
7 forced into mediation or other forms of ADR with their abusers.  
8

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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:

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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 [KS13]:** 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?

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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 | § 25-461. Decree Modification

39 [former A.R.S. § 25-411]

40 | § 25-462. Relocation of a Child

41 [former A.R.S. § 25-408(B)]

42 | Article 7. Records & Sanctions

43 § 25-470. Access to Records

44 [former A.R.S. § 25-403.06]

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- 1 | § 25-471. Sanctions for Misconduct
- 2 | [former A.R.S. § 25-414]
- 3 | Article 8. Miscellaneous
- 4 | § 25-480. Statutory Priority
- 5 | [former A.R.S. § 25-407]
- 6 | § 25-481. Agency Supervision
- 7 | [former A.R.S. § 25-410]
- 8 | § 25-482. Identification of Primary Caretaker
- 9 | [former A.R.S. § 25-403.07]
- 10 | § 25-483. Fees & Resources
- 11 | [former A.R.S. § 25-403.08]
- 12 | § 25-484. Child Interviews by Court & Professional Assistance
- 13 | [former A.R.S. § 25-405]
- 14 | § 25-485. Investigations & Reports
- 15 | [former A.R.S. § 25-406]
- 16 | § 25-486. Child Support & Parenting Time Fund
- 17 | [former A.R.S. § 25-412]
- 18 | § 25-487. Domestic Relations Education & Mediation Fund
- 19 | [former A.R.S. § 25-413]
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CCRT -Are there unintended consequences that will arise based on this change of language? Look into whether there have been unintended consequences in other states (Florida, Washington) that have moved to this term. Are other rights affected?

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Jenny – if joint PDM, have to decide on specific day care. Thoughts?

Bill – not huge issue. Important to parents to have input.

Danny – Agree with Bill. Who is child being taken to? Are grandparents available? Big part of child's life. Worth keeping in.

Jami – In practice sees people arguing over daycare in court. One party want grandparent to watch child. Hostile exchanges? Putting this in invites more litigation. If put it in, will fight about it more. Parties already argue about it. Can be used to infringe on other parent's decisions when child is in his/her care.

Keith – Doesn't think it should be in there. Gets into statutorily mandated caregiver of choice. Invites litigation. Daycare isn't defined – paid facility? Opens up can of worms.

Steve – Difficult to list items without having them abused. Schooling, selection of school, selection of private school, public school? How detailed to be? [Refers to comments from CCRT].

Grace – first comment was re title. CCR prefers PDM.

Sid – defining of this is minutia. Giving them ammo to fight over things. Don't need to include it here.

Steve - self-service center has user guides. State Bar Fam Law Section has been updating divorce manual. Could see us taking language from "including but not limited to" and down to blood donation and make sure it gets in other publications to explain to individuals what's encompassed by these decisions.

Grace - 25-403.02 - [reading current statute]. Shorten to that? Thinking of mediator. Will have hard time defining "welfare."

Keith - needs to be legal decision regarding medical, education, religion.

Grace - personal care - haircuts tattoos piercing -- things that bring people back to court

Grace - when it comes to mediation, what are your proposals. if they want PDM, how are they going to decide about school, religion, personal care going to be decided.

Bill - including day care might make good sense.

Grace - part of education; encompasses it

Jenny - disagree with adding personal care. Haircuts? Baths? Toothbrushing? Non-emergency, educational, and religious. Anything else adds to future litigation.

Steve - reason for religious training? Virtually unenforceable. Important issue but ...

Sarah - almost never litigated (religious)

Keith - sole PDM, you do have right to make that decision. one or two cases out there. You can prevent them from going to other church. If child can't do without parent signing, that's what this is limited to. Religious, education medical.

Tom - can we say decisions where parental consent required?

Grace - is it parental consent to sign child up for ? classes?

Tom - only virtue in list is to give parents idea of what PDM means. Difference between legal and physical custody.

Jenny - just added daycare back in by adding that language

Jami - agrees with Keith. Instead of health, define medical care or medical treatment. Medical decisions or medical care.

Grace - when you're talking about health, you're talking about dental and mental in addition to medical. Talking about braces, wisdom teeth...can't limit to medical.

C

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Special Issue: Domestic Violence

**\*500 CUSTODY DISPUTES INVOLVING ALLEGATIONS OF DOMESTIC VIOLENCE: TOWARD A DIFFERENTIATED APPROACH TO PARENTING PLANS**Peter G. Jaffe, [Janet R. Johnston](#), Claire V. Crooks, Nicholas Bala [FNa1]

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Premised on the understanding that domestic violence is a broad concept that encompasses a wide range of behaviors from isolated events to a pattern of emotional, physical, and sexual abuse that controls the victim, this article addresses the need for a differentiated approach to developing parenting plans after separation when domestic violence is alleged. A method of assessing risk by screening for the *potency*, *pattern*, and *primary perpetrator* of the violence is proposed as a foundation for generating hypotheses about the type of and potential for future violence as well as parental functioning. This kind of differential screening for risk in cases where domestic violence is alleged provides preliminary guidance in identifying parenting arrangements that are appropriate for the specific child and family and, if confirmed by a more in-depth assessment, may be the basis for a long-term plan. A series of parenting plans are proposed, with criteria and guidelines for usage depending upon this differential screening, ranging from highly restricted access arrangements (no contact with perpetrators of family violence and supervised access or monitored exchange) to relatively unrestricted ones (parallel parenting) and even co-parenting. Implications for practice are considered within the context of available resources.

**Keywords:** *custody disputes; allegations of domestic violence; parenting plans*

**INTRODUCTION**

Highly conflicted, separated spouses disputing custody put their children at high risk and take up a disproportionately large amount of professional and court time, posing special challenges to all who work in the family justice system. Typified by the parents' high levels of hostility, distrust, fear, and blaming of one another, these cases become especially difficult when there are allegations of domestic violence or child abuse. Inevitably questions arise that reflect ongoing debates in the field: Do these allegations have a factual basis of spousal or child abuse involving violent, negligent, substance-abusing, and criminal behavior? If so, is sufficient evidence available to sustain these findings in a court of law, and if not, what to do? What access should violent parents have, if any, to their children?

Where the violence is severe, ongoing, and clearly committed by one party, the answers to these questions are fairly evident, albeit often difficult to implement. But what if abuse appears to be jointly inflicted, less serious in nature, or a relatively isolated event? During the past decade, a growing body of social science research has addressed the wide range of violent and abusive behavior in families, documenting its severity, frequency, and injurious outcomes and arguing about who perpetrates it and for what apparent purpose (for a review, see Kelly & Johnson, 2008). There is an emerging

consensus that the following types of spousal violence [FN1] are relevant to family law cases, with the first two receiving more research attention than the others (Dalton, Carbon, & Olesen, 2003; Johnson, \*501 1995, 2005; Johnston & Campbell, 1993; Pence & Dasgupta, 2006; Statistics Canada, 2001; Ver Steegh, 2005):

- *Abusive-controlling violent relationships (ACV)*, also called *battering* or *intimate terrorism* (or *coercive controlling violence*; see Kelly & Johnson, 2008): This is an ongoing pattern of use of threat, force, emotional abuse, and other coercive means to unilaterally dominate one partner and induce fear, submission, and compliance in the other. In studies of shelter and criminal court samples, men are the offenders and women are victims in most cases of this type.

- *Conflict-instigated violence (CIV)*, also called *situational* or *common couple violence* (or *situational couple violence*; see Kelly & Johnson, 2008): In these cases, violence is perpetrated by both partners, who have limited skills in resolving conflict. These cases involve bilateral assertion of power by the man and woman, without a regular primary instigator, and are identified more often in community samples.

- *Violent resistance (VR)*: This occurs when a partner uses violence to defend in response to abuse by a partner. Women have been identified most clearly as this type in shelter samples and in studies of victims who have killed their batterers. In some cases, this may in law constitute self-defense, but in other cases it may be an overreaction.

- *Separation-instigated violence (SIV)*: This is isolated acts of violence perpetrated by either a man or a woman reacting to stress during separation, divorce, and its aftermath in a relationship that has not otherwise been characterized by violence or coercive control.

Other types of spousal violence identified in the literature merit further research attention, especially women's violence. It has been argued that most females who are violent belong to two of the aforementioned types (VR or CIV). Debates are ongoing as to the numbers who are primary instigators and, if so, whether they are distinctively different from male batterers (ACV; Dutton, 2005; Loseke & Kurz, 2005; Straus, 2005). Intimate partner violence is also prevalent in same-sex relationships and is an area for further research.

## HOW IS DOMESTIC VIOLENCE RELEVANT TO POSTSEPARATION PARENTING ARRANGEMENTS?

Research on parent--child relationships and parenting styles in families where domestic violence occurs is sparse, mainly limited to clinical observations; most of the literature does not differentiate between types of violence. Despite this, if we take into account the context of different studies, we can glean some insights--and make reasonable hypotheses--about typical parenting issues relevant to the different types of violence identified within those particular settings. [FN2] These insights provide the rationale for legal and programmatic changes that include a differentiated approach to domestic violence as a relevant factor in determining the appropriate postseparation parenting arrangement and are as follows:

- *Spousal abuse does not necessarily end with separation of the parties*. While in a majority of cases the incidence and risk of violence diminishes once the parties are separated, in a small proportion of cases, especially abusive battering relationships \*502 (ACV), the intensity and lethality of domestic violence escalates after the victim leaves the relationship (Hotton, 2001; Statistics Canada, 2001). Furthermore, promoting parent-- child contact where ex-spouses are prone to become physically violent when in conflict (CIV) may create opportunities for renewed domestic violence over visitation issues and exchanges of children (Jaffe, Lemon, & Poisson, 2003; Sheer-

an & Hampton, 1999). In the worst cases (ACV), terrorizing control of an ex-spouse is achieved by refusing to return the child after visits, abducting the child, or threatening to do so (Greif & Hegar, 1993; Johnston & Girdner, 2001).

- *In extreme cases, domestic violence following separation is lethal, especially in the case of the more abusive relationships (ACV).* Domestic violence and homicides are inextricably linked. National statistics from the United States and Canada clearly suggest that women are three to four times more likely than men to be the victims in intimate partner homicides. Moreover, this threat escalates at the time of separation for both genders (Fox & Zawitz, 1999; Statistics Canada, 2001; Websdale, 2003). In the most tragic of these cases, children are witnesses to the homicide/suicide or victims of abduction/murder themselves (Jaffe & Juodis, 2006).

- *Perpetrators of domestic violence are more likely to be deficient if not abusive as parents.* There is a wide range of capacity to parent among high-conflict and violent families, ranging from frankly abusive, to poor or marginal, to adequate or even good-enough parenting. However, common features are lack of warmth, coercive tactics, and rejection of their children (Anderson & Cramer-Benjamin, 1999; Azar, 2002; Straus, 1983). This pattern is especially true for those exhibiting abuse and coercive control of their spouse (ACV), probably also true for couples who resort to physical force to resolve conflict (CIV), and less likely or time limited if the violence was an isolated event (SIV). A review of research, largely based on women in shelters, suggests that children whose mothers had been assaulted by their male partners are more likely to be directly abused (Appel & Holden, 1998; Edleson, 1999). Where there is a pattern of abuse (ACV), erratic role reversals, swings from permissive to rigid, authoritarian parenting, and periodic abandonment are also common. Children of such primary abusers are subjected to emotional abuse such as name calling, cruel put-downs, and distortion of their reality by telling false and frightening stories. At times they are made the favorite at the expense of siblings who are isolated or outrightly rejected. At other times they may be encouraged in morally corrupt and criminal behavior (Bancroft & Silverman, 2002; Johnston & Campbell, 1993). Boundary violations between adult abusers (ACV) and children are more likely, especially where substance abuse is also involved, with a greater incidence of child sexual abuse being reported (Wilson, 2001).

- *Individuals who have a pattern of abuse of their partners (ACV) and those who commonly resolve conflicts using physical force (CIV) are poor role models for children.* Poor role modeling occurs even after the parental separation, whether or not parents mistreat their children directly, because when children witness one parent assaulting the other, their sibling, or other family member, and using threats of violence to maintain control, their own expectations about relationships tend to emulate these observations. Moreover, often very frightened by these scenes, young children tend to identify more intensely with the violent parent (i.e., "I will become powerful and mean like my dad and everyone will be scared of me"). To the extent that there is potential for the abusive parent to be violent in subsequent intimate relationships, \*503 children's exposure to poor modeling will continue (Bancroft & Silverman, 2002; Johnston & Campbell, 1993).

- *Abusive ex-partners (ACV) are likely to undermine the victim's parenting role.* In a range of obvious and more insidious ways, abusive ex-partners are likely to attempt to alienate the children from the other parent's affection (by asserting blame for the dissolution of the family and telling negative stories), sabotage family plans (by continuing criticism or competitive bribes), and undermine parental authority (by explicitly instructing the children not to listen or obey; Bancroft & Silverman, 2002; Johnston, Walters, & Olesen, 2005). This facet of the abuser's parenting needs to be considered when deciding what access, if any, the perpetrator should have to the children, what interventions are needed to address these problems, and the prognosis for change with treatment (Scott & Crooks, 2004).

- *Abusive ex-spouses (ACV) may use family court litigation as a new forum to continue their coercive controlling behavior and to harass their former partner* (Jaffe et al., 2003). Litigation exacts a high emotional and financial price, especially for abused women already overwhelmed with the aftermath of a violent relationship. Some authors have suggested that some perpetrators have the persona and social skills to present themselves positively in court and convince assessors and judges to award them custody (Zorza, 1995). In some of these cases the perpetrators are self-represented, heightening the possibilities for abuse through intimidating or berating a former partner in cross-examination, unless an astute judge intervenes.

- *Diminished parenting capacities among victims of domestic violence often occurs*. Preoccupation with the demands of their abuser (ACV), a conflict-ridden marriage (CIV), or a traumatic separation (SIV) may render parents physically and emotionally exhausted, inconsistently available, overly dependent upon, or unable to protect their children from the abuser (Anderson, 2002; Lieberman & Van Horn, 1998). For the majority of victims, separation from the perpetrator of domestic violence may provide an opportunity for improvement in both general functioning and parenting capacities. However, those who have been victimized by prolonged abuse and control (ACV cases) are likely to suffer sustained difficulties--like anxiety, depression, substance abuse, and posttraumatic stress disorder-- all of which can compromise their parenting for some time (Herman, 1997). Female victims may have been brainwashed by the abuser into accepting their own and their children's abusive treatment, and intimidated and embarrassed male victims tend not to protect the children from their abusive mother's rages (Johnston & Campbell, 1993). Poor self-esteem, lack of confidence in their parenting, and inability to control their children, especially their older sons, makes the female victim an obvious target of blame by the abusive ex-spouse and may raise the suspicions of family court professionals as to her fitness to parent. During the court process, these parents may present more negatively than they will in the future once the stress of the proceedings and life changes have attenuated (for a review, see Jaffe, Crooks, & Bala, 2005).

- *Victims' behavior under the stress of the abusive relationship (ACV) and during the aftermath of a stressful separation (SIV) should not inappropriately prejudice the residential or access decision*. In the face of a real threat of violence, victims who live in fear of their ex-partner are not paranoid, nor may it be appropriate for them to promote a relationship between their children and the other parent. In cases of ACV, parents' voiced concerns about their ex-partner's abusive predispositions and their own refusal to communicate or reluctance to agree to the child's liberal access \*504 should not be seen as unwillingness to cooperate or as manifestations of parental alienation. Similarly, victims of abuse who leave the family home without the children should not be viewed as abandoning, neglectful, or irresponsible parents; in these cases, leaving alone may be the only way that they believe that they appease their volatile partner (Jaffe et al., 2003). Likewise, distraught individuals who have suffered a traumatic separation (SIV) may parent in a less child-centered manner than they would normally, although their compromised functioning is usually time limited (Johnston & Campbell, 1993).

- *Victims of abusive relationships may need time to reestablish their competence as parents and opportunity to learn how to nurture and appropriately protect themselves and their children*. Time, protection, and support allow an adequate opportunity for a distinction to be made between the majority of victims of spousal abuse who are able to reestablish effective parenting, and the small minority of cases where the victim's mental status will be chronic--a product of prior psychological problems and a history of repeated victimization in earlier relationships such that they cannot ever parent adequately.

## **DIMENSIONS OF VIOLENCE RELEVANT TO PARENTING PLANS**

Although domestic violence is a very important factor to consider when making parenting plans, capacities of perpetrators and victims to parent adequately are likely to vary greatly depending upon the nature of the violence. However, other than clinical descriptive criteria, instruments to reliably differentiate between types of violence and how they might relate to parenting have yet to be developed. What can be done under these constraints? We propose that three basic factors should be considered: the *potency*, *pattern*, and *primary perpetrator* of the violence (henceforth referred to as a PPP screening).

First, level of potency--the degree of severity, dangerousness, and potential risk of serious injury and lethality [FN3]-is the foremost dimension that needs to be assessed and monitored so that protective orders can be issued and other immediate safety measures taken and maintained. Prior incidents of severe abuse and injuries inflicted on victims are an important indicator of the capacity of an individual to explode or escalate to dangerous levels. In some cases, explosive or deadly violence can erupt with little or no history of abuse, but other warning signs are often evident (see Table 1, Part A for indicators of potency).

### Table 1

#### The PPP Screening

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#### Part A: *Potency of Violence (level of severity, dangerousness, or risk of lethality)*

1. Are there any threats or fantasies of homicide and/or suicide? If so, does the person have a specific plan to Aact on them?
2. Are weapons available (guns, knives, etc.), indicating the means are accessible?
3. How extreme was any prior violence? Were injuries caused, and if so, how serious?
4. Is the person highly focused upon/obsessed with the specific victim as a target of blame?
5. Is there a history of mental illness--especially thought disorder, paranoia, or severe personality disorder?
6. Is the person under the influence of drugs or alcohol, indicating diminished capacity to inhibit angry impulses? Is there a history of substance abuse?
7. Does the person express a high degree of depression, rage, or extreme emotional instability (indicating a propensity to act irrationally and unpredictably)?
8. Is the party recently separated or experiencing other stressful events like loss of job, eviction from home, loss of child custody, severe financial problems, etc.?<sup>FN [FN4]</sup>

#### Part B: *Pattern of Violence and Coercive Control*

1. Is there a history of physical violence including: Destruction of property? Threats (to hurt self or loved ones)? Assault or battery? Sexual coercion or rape?
2. Has there been disregard or contempt for authority (e.g., refusal to comply with court-ordered parenting plans, violation of protective orders, a criminal arrest record)?
3. How fearful and/or intimidated is the partner?
4. Is there a history of emotional abuse and attacks on self-esteem?
5. Does one party make all decisions (e.g., about social, work, and leisure activities; how money is spent; how children are disciplined and cared for; household routines and meals; personal deportment and attire, etc.)?
6. Has the partner been isolated/restricted from outside contacts (e.g., with employment, friends and family)?
7. Is there evidence of obsessive preoccupation with, sexual jealousy, and possessiveness of the partner?
8. After separation, have there been repeated unwanted attempts to contact the partner (e.g., stalking, hostage-taking, threats or attempts to abduct the partner or child)?
9. Have there been multiple petitions/litigation that appear to have the purpose of controlling and harassing?

**Part C: Primary Perpetrator Indicators:** *Who is the primary aggressor, if either?*

1. Who provides a more clear, specific and plausible account of the violent incident(s)? Who denies, minimizes, obfuscates, or rationalizes the incident? (The victim more likely does the former; the perpetrator the latter).
2. What motives are used to explain why the incident(s) occurred? (Victims tend to use language that suggests they were trying to placate, protect, avoid, or stop the violence, whereas perpetrators describe their intent being to control or punish).
3. What is the size and physical strength of each party relative to the amount of damage and injury resulting from the incident(s)? Does either party have special training or skill in combat? (Perpetrators who are better equipped are able to cause the greater damage).
4. Are the types of any injuries or wounds suffered likely to be caused by aggressive acts (the perpetrator's) or defensive acts (the victim's)?

5. If the incident(s) involved mutual combat, were the violent acts/injuries by one party far in excess of those of the other? (Violent resisters [VR] tend to assert only enough force to defend and protect; when primary perpetrators retaliate, they are more likely to escalate the use of force aiming to control and punish).

6. Has either party had a prior protective order issued against them--whether in this or a former relationship (indicating who was determined to be the primary aggressor in the past)?

Second, the extent to which the violence is part of a *pattern* of coercive control and domination (rather than a relatively isolated incident) is a crucial indicator of the extent of stress and trauma suffered by the child and family and the potential for future violence (Stark, 2007). It also suggests what kind of protective, corrective, and rehabilitative measures to take (e.g., high-security supervision of visits, substance abuse or psychiatric treatment). A history of using physical violence and power assertion are obvious indicators of a pattern of abuse. However, overt acts are often mere tips of the iceberg in a deeply embedded pattern of coercive control that can be long hidden from public scrutiny. It is also important to consider the degree of submission induced in the victim, the control asserted by a partner's insistence on unilateral authority in multiple domains, and after separation the more subtle harassment and control exerted through manipulation of the children and/or continued litigation (Kropp et al., 1999; Palarea, Zona, Lane, & Langhinrichsen-Rohling, 1999). See Table 1, Part B for a list of indicators of the pattern of violence and coercive control. There may be circumstances where the level of violence is related to the perpetrator's \*505 history of mental illness or substance abuse and these factors will have to be considered in regards to both assessment and intervention strategies.

Third, whether there is a *primary perpetrator* of the violence (rather than it being mutually instigated or initiated by one or the other party on different occasions) will indicate whose access needs to be restricted and which parent, if either, is more likely to provide a nonviolent home, other things being equal (Nielson, 2004). Accounts of the violent incident(s) by the participants themselves should be assessed with caution, because victims may tend to \*506 assume more blame, and abusers usually minimize or deny their conduct. Moreover, the motivation to conceal or admit violent behavior varies depending upon the aggressor's views of the consequences of doing so (i.e., he is unlikely to admit abusive behavior to a judge, but may do so in an appropriate therapeutic intervention). Nevertheless, it is helpful to obtain a detailed account of the violent incidents--within the context of the relationship--from each party separately. However, professionals need to be wary of differentiating the abuser from the victim based on who claims to be the victim; who is more charming, charismatic, and likeable; who appears more organized, reasonable, and sensible; and who feels more entitled and morally outraged. Sociopaths, narcissists, and chauvinists--who use violence for interpersonal control--can make a very smooth presentation whereas the victim can appear emotionally distraught and disorganized (Bancroft & Silverman, 2002; Herman, 1997). See Table 1, Part C for a list of indicators that help discriminate who might be the primary perpetrator.

In general, a PPP screening provides the legal or mental health professional with a *working hypothesis* as to the type of violence involved in any case. Furthermore, multiple indicators, especially those that are more potent, signal the more difficult and high-risk cases where full measures of protection are needed for the victim and child, and highly restricted access orders are warranted. For example, multiple indicators of potency and a clear pattern of using coercive-controlling tactics by a primary perpetrator indicate a probable high-risk abusive controlling relationship (ACV). Several indicators of moderate severity or potency and use of violent tactics to resolve conflict with neither party as the primary perpetrator suggest moderate-risk common couple violence (CIV). Levels of potency commensurate with the threat posed by a violent partner suggest a violent resistor (VR); and few indicators of potency with acts of violence only around the time of separation instigated by one or both parties suggest an isolated incident related to the separation (SIV). The latter types

of case may require few, if any, restrictions on custody and access arrangements in the longer term.

Who can undertake this kind of preliminary assessment? We suggest that family court and related professionals--judges, attorneys, mediators, custody evaluators, and social workers--can do so provided they have access to relevant facts and appropriate training, even at an interim stage in the proceedings. Because the risk of misdiagnosis can have very serious consequences, attempts to reach a definite conclusion about the nature and effects of domestic violence in a case or make recommendations about a long-term plan of care should be undertaken by qualified mental health professionals with specialized domestic violence training who undertake a multilevel, multimethod assessment with both parents and their children.

## CREDIBILITY OF ALLEGATIONS

Multiple, serious conflicting allegations of child maltreatment, domestic violence, and parental abuse of drugs and alcohol are commonly raised in high-conflict custody-litigating postseparation families. Substantiation of claims can be difficult, which poses great challenges for professionals involved in making parenting plans. With regard to substantiation of those claims, published research is limited, and studies are mostly of small and nonrandomly drawn samples, [FN5] but findings from the few studies that exist indicate a significant proportion of domestic violence allegations (50-75%) and child abuse allegations (22-52%) in family law matters can be subsequently substantiated in some manner (Bala, Mitnick, Trocmé, & Houston, in press; Bala & Schuman, 1999; Brown, 2003; Johnston, Lee, Olesen, & Walters, 2005; Shaffer & Bala, 2003; Thoennes & Tjaden, 1990).

**\*507** The practical dilemma that remains in making parenting plans in high-conflict separating families is: What reliable evidence can be gleaned from the mutual finger pointing and counterblaming of a “he-said/she-said” variety? To reconcile these conflicting stories, a naïve professional in the family court system may dismiss or minimize the claims of both spouses or erroneously conclude that the abuse is mutual when it is not. Alternatively, a women's advocate may immediately harbor the suspicion that the male must be the perpetrator and lying about his allegations or denials (Neilson, 2004). There are a number of steps to avoiding premature or erroneous judgments.

Systematic inquiry from the following multiple sources can yield direct or circumstantial information that supports or refutes the parents' respective claims (Austin, 2000). Each corroborating piece of information then needs to be weighed and aggregated by a neutral screener who has been trained to avoid common errors in human perception. First, objective verification of specific incidents can be provided by police and medical reports, self-admissions, or eye witness accounts. Second, corroboration of aspects of an allegation by neutral third parties--like neighbors, teachers, or babysitters--is important. Relatives may offer useful information, but their allegiance and potential bias must be considered. Conversely, the absence of denials of violence by credible others who are alleged to have observed the violence (older teenagers, adult children, and nonrelatives sharing the family home) may be a curious omission that needs to be explored. Third, the psychological status of the alleged abuser and victim may affect credibility assessment. For the alleged abuser, a diagnosis of a severe sociopathic or mental illness like bipolar disorder, major depression, panic disorder, schizophrenia, obsessive-compulsive disorder, or substance abuse problems may be relevant. For the alleged victim, the presence of reality testing problems, psychotic, paranoid, or histrionic personality disorders are pertinent.

The specific abuse complaints need to be examined in terms of their logical and emotional meaning for the complainant: Did the abuse involve deep shaming and humiliation? Was the victim made to feel responsible? Was the abuse normalized, that is, seen as justly deserved punishment or discipline? How an abusive incident is perceived needs to be understood in terms of the family and cultural context in which it is made. Particular behaviors may be deemed especially insulting and offensive in some minority ethnic families in ways that may not be understood by most others (e.g., slap-

ping with shoes in an Islamic culture). Moreover, a victim might have multiple abusers (e.g., her spouse and mother-in-law in some Indian families); or the violence to which the children are exposed is between family members other than the parents (e.g., between father and mother's new boyfriend or involving older siblings).

Last but not least, in assessing credibility, the timing of the disclosure and stage of the legal proceedings are potentially relevant, although often difficult to interpret. Although allegations made for the first time in the context of family litigation may appear to be self-serving, in order to buttress a claim for custody or restriction of access to the other parent, more often there are other valid reasons for a delay in disclosure. Some victims may hesitate to report violence in an attempt to reduce conflict, while others may not initially recognize what they have experienced as abuse until they have some distance and counseling. For example, a woman may not recognize that sexual abuse can even happen in the context of a marriage, but may later come to understand her experience as a violation of her rights. Unfortunately, in these cases, she might be subjected to an unjustifiable extent of suspicion by justice system professionals when she discloses sexual abuse for the first time after separation. Reports of abuse first made in the context of litigation should never be dismissed solely because of the timing of disclosure.

**\*508 Unfounded Allegations of Abuse.** Although existing research provides sobering estimates of the problem of domestic violence and child abuse, we cannot ignore the other side of the coin--that a notable proportion of allegations cannot be substantiated. There are several diverse sources of misunderstandings and suspicions of abuse in highly conflicted and violent families that need to be considered in making parenting plans.

First, it is important to acknowledge that a proportion of these allegations may be valid disclosures that simply lack convincing data to substantiate them (Moloney et al., 2007). After all, most family violence occurs behind closed doors; is not reported to any authorities or professionals; is the subject of shame and denial by the victim and other family members; or is normalized, excused, and rationalized within some families and cultures (e.g., as is excessive child corporal punishment and coercive marital sex).

Second, both clinical observation and empirical studies indicate that only a small number of unfounded child abuse allegations are due to deliberate or malicious fabrication (Bala et al., in press; Brown, 2003). More commonly, the accusing parent has an honestly held (albeit erroneous) belief about the abuse. Suspicions of child abuse, especially for young children during visitation, may arise from distressed behavior of the child of ambiguous origin or relatively benign incidents that are misreported to parents who are no longer communicating with one another. Where parents harbor fear, distrust, and negative convictions about one another, the potential for such misunderstanding is greatly increased. Such distortions are too often reaffirmed by family, friends, and even professionals in a world now split in two, sometimes generating a form of tribal warfare within an adversarial legal system focused on finding fault (Johnston & Roseby, 1997).

There is virtually no research on the extent to which spousal abuse allegations are clearly false and maliciously fabricated, but this issue is becoming an increasing concern for the justice system. An unintended negative consequence of bringing social and statutory attention to the relevance of domestic violence in child custody determinations is the possibility of encouraging fabrication, or more commonly exaggeration and biased recall in reporting events, in order to support legal claims and to access services and social supports (White, 2007). On the other hand, it is critical to emphasize that the making of false allegations of spousal abuse is much less common than the problem of genuine victims who fail to report abuse, and the widespread false denials and minimization of abuse by perpetrators (Jaffe et al., 2003; Johnston, Lee, et al., 2005; Shaffer & Bala, 2003).

Finally, the psychological vulnerabilities of the parents may also play a role in unfounded allegations. Individuals (made vulnerable by their own histories of deprivation and trauma) are inordinately humiliated by the divorce--and what

it implies about their deficiencies. These individuals may defend themselves by vigorously deflecting the blame onto the former partner, becoming convinced that the other parent is irrelevant, irresponsible, or even dangerous, in contrast to themselves who are truly perceived as the caretaker who is essential, responsible, and safe. Furthermore, many of these same individuals, panicked by feelings of loss and abandonment, try to use their children as substitutes for, bridges to, and weapons to punish their ex-partner for leaving. Children in turn can become distressed, cling to the needy parent, and may resist contact with the other, evoking allegations of parental alienation on one side and child abuse or children witnessing spousal abuse on the other.

In cases of most severe vulnerability, one partner experiences the other's rejection, custody demands, or accusations as such a devastating attack and profound loss in defense to which he or she develops paranoid ideas of betrayal, conspiracy, and exploitation by the ex-mate. Indeed, in this small minority of cases, the rage of the rejected partner could \*509 result in abduction and/or murder of children and victim parent and/or suicide of the rejected partner. These kinds of situations remind us that highly conflicted divorcing families and domestic violence cases are not discrete populations, but rather share common dynamics that can precipitate further violence, sometimes with lethal consequences. It follows that parents with unfounded allegations should not be simply dismissed, but treated with the same differential concern in making parenting plans, lest they escalate to violence and subject their children to ongoing emotional abuse (Johnston & Roseby, 1997).

## PRINCIPLES FOR MAKING PARENTING ARRANGEMENTS AND RESOLVING CONFLICTING PRIORITIES

In most domestic violence cases there are multiple factors to consider. What is needed is a risk-benefit analysis of different kinds of parenting plans that are in the best interests of the particular child and family (Sturge & Glaser, 2000). What are some guiding principles for undertaking this kind of analysis? It is submitted that the goals of any plan should be prioritized in the following order:

1. Protect children directly from violent, abusive, and neglectful environments;
2. Provide for the safety and support the well-being of parents who are victims of abuse (with the assumption that they will then be better able to protect their child);
3. Respect and empower victim parents to make their own decisions and direct their own lives (thereby recognizing the state's limitations in the role of *loco parentis*);
4. Hold perpetrators accountable for their past and future actions (i.e., in the context of family proceedings, have them acknowledge the problem and take measures to correct abusive behavior); and
5. Allow and promote the least restrictive plan for parent-child access *that benefits the child*, along with parents' reciprocal rights.

Premised on the notion that the goal of protecting children must never be compromised, the strategy is to begin with the aim of achieving all five goals and to resolve conflicts by abandoning the lower priorities. This approach provides a pathway to just and consistent resolution of many common dilemmas. For example, in principle, if a parent denies engaging in his or her substantiated violence and does not comply with court-ordered treatment, Priority 5 should be dropped or modified by suspending or supervising access. Furthermore, the victim should be allowed to relocate upon request (forgoing Priorities 4 and 5). If the victim is subsequently abused by a new partner, these principles imply an alternative

safer place to live can be offered along with a choice: Live with your violent mate or have the care and custody of your child (Priorities 3, 4, and 5 are dropped, and Priority 2 may have to be dropped as well). Note that Priority 5, as stated, implies that access may need to be suspended in some cases even though a violent parent has sought and benefited from corrective treatment (e.g., if a child, traumatized by the parent's past abusive tirades, continues to be highly distressed and resistant to supervised visits despite reasonable efforts to alleviate that distress).

It must be acknowledged that constraints on a parent--child relationship like supervised visits and related injunctions are highly intrusive interventions in the family. They not only \*510 constitute an important threat to parents' civil liberties, but also establish an artificial and potentially difficult environment for both parent and child to relate freely and fully. For these reasons, intrusive constraints should not be imposed lightly and should require the accountability of all parties. Any court-imposed restrictions on a parent's regular and unsupervised access need to include: explicit goals with behavioral criteria that need to be met in order for the parent and child to graduate to a less restrictive option, a timely review of progress, and/or monitoring by the family court or its designated agent. Likewise, any removal of restrictions on a parent's access to his or her child should be contingent upon cessation of the threat of violence, as well as credible reports of successful progress or completion of treatment for the problem (of violence, substance abuse, or mental illness).

To what extent is it important to consider children's expressed wishes when making access arrangements that are feasible and safe? In general, it is important to be responsive to their need for age-appropriate input and, in particular, the requests and concerns of a child who is rejecting a violent parent need to be respected. [FN6] However, the spoken preferences of children who have been abused or witnessed violence can take many forms and should be interpreted with caution, optimally with the help of a child therapist. Some children can be intensely angry at an abusive parent but only feel safe enough to verbally resist or refuse visitation--even minimal contact within the safe confines of supervision--after the separation. In other cases, children who have witnessed or sustained abuse, out of fear, become aligned with the more powerful perpetrator and reject an innocent victim parent. More commonly, youngsters from abusive homes grieve the loss of a parent who does not visit them; they imagine that they have been abandoned, blame themselves for the parent's absence, and worry greatly about that parent's welfare. All of these possible motivations for the child's expressed preferences need to be teased out.

Usually in setting up the conditions under which access occurs, one can be responsive to many of the child's concerns (e.g., who should attend, what activities to expect, where the visits take place, and perhaps how long they will last). Furthermore, children need to be prepared for resuming unrestricted access, armed with coping skills and safety plans, together with an explanation of why it has become permissible to see their visiting parent on their own again. It may also be important for parents who have been violent to acknowledge their behavior directly to their child and to take steps to reassure him or her about their commitment to nonviolence and the measures they have taken to ensure future safety. However, much caution is needed to avoid subtle emotional manipulation and ensure a genuine commitment to change by the abuser such that these kinds of conversations may need to take place with the help of a counselor who is experienced with parent--child reunification.

## **DIFFERENTIAL PARENTING ARRANGEMENTS**

In the following section we outline a range of parenting arrangements, with corresponding definitions, criteria for use, and special considerations of each, designed for postseparation and divorced families where there has been high conflict and violence. We have applied the family violence literature to these arrangements within the context of our experience as custody assessors, trainers, and researchers, but acknowledge there is only a limited scientific foundation to build on and that the proposed guidelines are preliminary. The range of parenting arrangements discussed in this section in-

cludes co-parenting, parallel parenting, supervised exchanges, supervised access, and no access, as depicted in Table 2, Sections A-E. The legal frameworks of joint and sole custody are also discussed.

**Table 2**

Proposed Parenting Plans in High Conflict and Violent Separating and Divorced Families

<i>Section A: CO-PARENTING</i>	<i>Access arrangements</i>	<i>Other provisions</i>	<i>Appropriate for</i>	<i>Not appropriate for</i>
Shared decision-making on major issues--education, health, etc.	Time share ranges with specific provisions stipulated in court order or by agreement of the parties	If requested by either party, permanent court order, such as restrictions on taking child out of area w/o consent, etc.	Parents sufficiently able to communicate, have measure of trust in & respect for one another; able to be child focused or able to resolve difficulties	Cases with DV in general
Common child care practices, consistent routines, discipline expected across homes	Explicit court access order includes holidays: explicit dates, times, places of exchange	Protocols for telephone access to child	<i>Re DV: Low ratings on potency, pattern, &amp; primary perpetrator of violence, e.g.,</i>	Chronic conflict, coercive interactions, inability to joint problem solve, no history or capacity to cooperate & communicate
Ongoing communication & joint problem solving by parents	Flexibility & compromise re schedule are encouraged, where possible	Comfortable place of exchange for both parents & child	• Low levels of Separation-induced Violence [SIV] after crisis is passed & trauma resolved	Mentally ill & substance abusers in general
<i>May be called joint legal &amp; joint physical custody</i>	Court order provides back-up when no agreement is reached about any temporary changes negotiated by parents directly	Protocols for communicating emergency information	• For other types of past violence, only with substantial history of successful parallel parenting & cessation of abuse & control	Some mentally ill & substance abusers

with substantial proof  
of rehabilitation

<i>Section B: PARALLEL PARENTING</i>	<i>Access arrangements</i>	<i>Other provisions</i>	<i>Appropriate for</i>	<i>Not appropriate for</i>
Divided decision-making responsibilities, different issues allotted to each parent	<i>Unsupervised day &amp;/or overnight visits for VP</i>	Protocols in place to avoid conflict, threat of any violence, & sabotage between parents	Each parent has a positive contribution to make in time spent with children, but direct parent-parent contact provokes acrimony	Infants, & very young children, & special needs children who require consistent & closely coordinated care across family homes
Parenting plan provides for clear boundaries & separation between parents	Time sharing between parents may range, as specified by the court	Permanent restraining orders in place	Chronically conflicted non-violent couples (incl. repeated unfounded DV allegations)	Child experiences ongoing symptoms of trauma & distress
Time-share schedule requires minimal communication, seeks to avoid direct parent-parent contact, <i>and</i> also provide stability & continuity in child's life	Natural transition times & places minimize disruption of child's school, social, & extra-curricular activities	Restraints from taking child out of area w/o consent	<i>Re DV: Moderate-low ratings on potency, &amp; pattern, no primary perpetrator, e.g.,</i>	Findings that one parent poses a physical, sexual, or emotional threat of abuse to child
<i>May be joint or sole legal &amp; physical custody (if joint, the time-share schedule should meet all the above criteria)</i>	Explicit court order for access (times, dates, place of exchange, holidays, etc.)	Neutral place of exchange--safe & comfortable for child (e.g., neutral relative, visiting center, school, library)	• Conflict-instigated violence [CIV]	Any on-going threat of violence to one parent by the other
	Expect adherence to details of court order (not flexibility & compromise re changes)	Structured telephone access to child	• Separation-induced violence [SIV] during & post-crisis	
	Consistent, safe	Rules in place for	• Other types (incl.	

<p>child-care practices within separate homes are emphasized rather than common practices</p>	<p>communicating emergency information between parents</p>	<p>abusive relationships [ACV] with credible evidence of good progress &amp;/or, completion of treatment)</p>
	<p>Other necessary info communicated by email, etc. (never by child)</p>	<ul style="list-style-type: none"> <li>• Victims traumatized by past violence of any type (incl. VR), but no longer a threat</li> </ul>
	<p>Procedure in place for resolving any new issues, e.g., parenting coordinator</p>	

<i>Section C: SUPERVISED EXCHANGE CHANGE</i>	<i>Access arrangements</i>	<i>Other provisions</i>	<i>Appropriate for</i>	<i>Not appropriate for</i>
Decision-making authority & parenting time assigned solely to the parent more able to provide a nonviolent home	<i>Monitored exchange between parents</i>	<i>Specific goals &amp; behavioral criteria that need to be met for VP to graduate to non-monitored exchange</i>	<i>Re DV: Moderate ratings on potency, &amp; primary perpetrator of violence where risk or fear of renewed violence or conflict occurs only when parents meet, e.g.,</i>	Any current threat of violence and ongoing concerns about safety & wellbeing of child with either parent alone
Time-share schedule requires minimal communication, seeks to avoid direct parent-parent contact, and also provide stability & continuity in child's life	Transfer of child by third party at neutral site to buffer child & prevent ongoing conflict at transitions	Explicit court orders in place detailing exchange arrangements (all times, dates, location, monitors)	<ul style="list-style-type: none"> <li>• Conflict-instigated violence [CIV]</li> </ul>	Inadequate monitoring or non-neutral monitoring
<i>Usually sole legal custody &amp; sole physical</i>	Exchange supervisor monitors behavior	Safety provisions for victim parent &	<ul style="list-style-type: none"> <li>• Violent Resisters [VR] &amp; other victims</li> </ul>	

<i>al custody</i>	<p>or of all parties, enforces rules, &amp; helps communicate essential information</p> <p>Access usually limited to several hours or day visits, but may have overnights</p> <p>Explicit court order for access (times, dates, place of exchange, holidays, etc.)</p>	<p>child in place, e.g., escort to site, protective orders in place</p> <p>Permissible activities &amp; persons allowed / not allowed during visits (optional)</p> <p>Restraints from taking child out of area w/o consent</p> <p>Rules in place for behavioral etiquette at time of exchange, &amp; permission for any attendance at child activities</p>	<p>with residual trauma from past violence</p> <ul style="list-style-type: none"> <li>• Separation-instigated [SIV] during crisis period</li> <li>• Other types (incl. abusive relationships [ACV] with credible evidence of good progress &amp;/or, completion of treatment)</li> </ul> <p><i>Chronically conflicted non-violent couples</i> (incl. repeated unfounded allegations)</p> <p>Problematic behavior or distress at transition by either parent &amp;/or child needs checking</p>
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<i>Section D: SUPERVISED ACCESS</i>	<i>Access arrangements</i>	<i>Other provisions</i>	<i>Appropriate for</i>	<i>Not appropriate for</i>
<p>Decision-making authority &amp; parenting time assigned by court to the parent more able to provide non-violent home</p>	<p><i>Supervised Visits for VP</i></p>	<p><i>Specific goals &amp; behavioral criteria that need to be met to graduate to monitored exchange</i></p>	<p><i>Re DV: High ratings on potency alone &amp; moderate-high ratings on potency, pattern, &amp; primary perpetrator of violence</i></p>	<p>Child's ongoing distress &amp; lack of any apparent benefit in contact</p>
<p><i>Sole legal custody &amp; sole physical custody</i></p>	<p>Supervised in a safe place with a neutral supervisor who</p>	<p>Safety provisions for victim parent &amp; child in place, e.g., es-</p>	<ul style="list-style-type: none"> <li>• Currently or recently violent (all types of violence)</li> </ul>	<p>Inadequate supervision available, i.e., lacks training, skills, not neut-</p>

<p>agrees to terms of a detailed supervision order and is able to control the VP and willing to report violations to court</p>	<p>court to site, protective orders in place</p>	<p>ral for child or parents</p>	
<p>Explicit court order for access (times, dates, place of exchange, supervisor, etc.)</p>	<p>Support &amp; treatment services offered, but victims (&amp; <i>violent resisters</i>) empowered by respecting self-determination</p>	<p>• Abusive relationships [ACV]</p>	<p>Child or visiting parent needs more intensive therapeutic intervention</p>
<p>Duration of visits usually limited to a few hours</p>	<p>Court-ordered treatment/rehab for abuser</p>	<p>Current substance abusers &amp; acutely mentally ill, if treatment in progress</p>	<p>Visiting parent has met explicit conditions for less restrictive access</p>
		<p>Temporarily for ambiguous cases during a DV assessment</p>	<p>Custodial parent remains distrustful &amp; wants supervision despite unfounded abuse allegations following full assessment</p>
		<p>Parents with established risk of child physical, sexual abuse, abduction threat to child</p>	
		<p>Child may have been traumatized by DV or abuse, but wants contact or stands to gain from parent's continuing involvement</p>	

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<p><i>Section E: SUS-PENDED CONTACT</i></p>	<p><i>Access arrangements</i></p>	<p><i>Other provisions</i></p>	<p><i>Appropriate for</i></p>	<p><i>Not appropriate for</i></p>
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Decision-making authority & parenting time assigned by court to the parent more able to provide non-violent home	<i>All access or visiting rights with VP are suspended</i> as per specific court order	Report critical incidents to child protection services	No meaningful parent-child contact seems possible: no remorse or willingness to change by abusive parent [ACV]	Supervised visitation is not conveniently available
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<i>Sole legal custody &amp; sole physical custody</i>	May resume after court review for specified period of times, contingent on specific remedial behaviors being reliably demonstrated	Referral of case to child protection services if suspension is expected to be long term or permanent	Persistent distress or refusal of child to supervised visits	Custodial parent's (CP) unjustified refusal to make child available for supervised visits or other non-compliance with terms of order
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Specify goals & behavioral criteria that need to be met to graduate to supervised access	Parent's (VP) non-compliance with terms of supervised contact order
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*Re DV: Very high ratings on potency, pattern, & primary perpetrator, e.g., abusive VP's [ACV] with*

- Attempts or threats to abduct, seriously hurt, kill, or blatant use of child to hurt & harass other parent
- Conviction for serious assault or attempted homicide or homicide of family member
- Child completely

estranged from parent  
&/or family due to  
trauma of past abuse  
by VP

Some severe cur-  
rent substance abusers  
& acutely mentally ill  
(no treatment)

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### **\*516 CO-PARENTING**

Co-parenting refers to an arrangement in which parents cooperate closely postseparation in all significant aspects of raising their children. This arrangement approximates the pre-separation ideal for the children, where both parents are actively involved in the lives of their children, share information, and problem solve the normal challenges of parenting as they arise. Within the broad definition of co-parenting, there may be a range of divisions of time spent in each parent's home and flexibility in scheduling, taking into account the distance between homes and the children's changing needs and stages of development, as well as changes in the parents' schedules. From a legal perspective, the term "joint custody" is the typical legal framework for a co-parenting arrangement. The terms "co-parenting," "shared parenting," and "joint custody" are often used interchangeably, especially as the word "custody" is being increasingly replaced with concepts like parenting time and contact. Joint custody does not require a particular time split (i.e., equal time with each parent), but rather is intended to establish a nonconflicted parental relationship that allows for ongoing joint decision making about significant issues and significant time spent in the home of each parent.

There may be a parent who will frustrate the possibility of co-parenting, in spite of the best efforts of the other parent and third parties, such as mediators. There is considerable debate about whether or not co-parenting should be imposed on an unwilling parent. These cases require special skills on the part of custody assessors, lawyers, and judges to properly assess the authenticity of the resistance to co-parenting. Understanding the underlying reasons for the resistance is important. For example, a parent who has felt bullied or victimized and experiences considerable anticipatory anxiety in dealings with the other parent may have a legitimate aversion to co-parenting. On the other hand, a parent who has never lived with the other parent may resent having to involve the other parent in his or her life as a result of co-parenting, but may be helped to develop an effective co-parenting relationship. Table 2, Section A provides criteria for its use and misuse in family violence.

### **PARALLEL PARENTING**

In contrast to the cooperative nature of a co-parenting arrangement, parallel parenting is an arrangement where each parent is involved in the children's lives, but the relationship is structured to minimize contact between the parents and protect the children from exposure to ongoing parental conflict, typically by having each parent make day-to-day decisions independently of each other when the children are in his or her care, and responsibility for major decisions (e.g., education) is assigned to one parent. There is limited flexibility in a parallel parenting arrangement, and the parents typ-

ically abide by a very structured and detailed schedule. Parallel parenting developed in recognition of high-conflict separations in which both parents appear sufficiently competent. Rather than encourage co-parenting, the goal of this plan is to disengage the parents from each other and their long-standing hostilities.

Parallel parenting will typically involve a child spending more time in the care of one parent, who will be the primary residential parent, though there can be roughly equal time in the care of each parent. The hope is that, over time, parental hostility may decline and parallel parenting may evolve toward some form of co-parenting, but this may take years and in some cases will never occur. Therapy for the parents to deal with their feelings of anger and hostility toward each other may help parallel parenting to evolve toward \*517 co-parenting, but this is not always a realistic possibility. The legal framework for parallel parenting may be joint or sole legal and physical custody, depending on the philosophy of the court or parties establishing the arrangement and the resources available to counsel and monitor the family. The time-share arrangement, however, should not be one that divides the child's world into two spheres that do not relate to one another or unduly disrupts the child's continuity in schooling, social, and extracurricular activities. Criteria for appropriate use of parallel parenting and factors that contraindicate its use are outlined in Table 2, Section B.

### **SUPERVISED EXCHANGE**

Supervised or monitored exchange involves transferring children from one parent to the other under the supervision of a third party. The supervision can be informal, through the use of a responsible third party (e.g., by a family member, neighbor, or volunteer) who uses a specified venue for the exchange. The supervision can also be formalized through a supervised access center or use of a designated professional, such as a child care worker or a social worker. The underlying premise is that, by either staggering arrival and departure times or having third-party witnesses, the parents will be on their best behavior (or at least avoid direct confrontation) or will not come into physical contact. An important caveat is that using the police station for exchanges, while a popular arrangement for some professionals, is not a preferred solution. Although a police station may offer a parent a sense of security, it is not a child-centered environment and may cause undue anxiety in the child. Table 2, Section C outlines the details associated with monitored exchange.

For supervised exchange and the following two arrangements (i.e., supervised access and no contact), sole custody is definitely the framework for the parenting plans. By sole custody, the court is establishing that one parent is clearly in charge of all major decisions, while the noncustodial parent has more limited contact and access to important information about the children (e.g., school reports).

### **SUPERVISED VISITATION (ALSO KNOWN AS SUPERVISED ACCESS)**

Supervised visitation is a parenting arrangement designed to promote safe contact with a parent who is a risk due to a range of behavior from emotional or physical abuse to possible abduction of the child. It may also be appropriate where a child has fears of a parent, for example, because of having witnessed that parent perpetrate abuse or because of having been directly abused by that parent. Although supervised access is a long-accepted practice in the child protection field, it has emerged more recently in the parental separation context with parents who pose a risk to the children and/or the other parent. Similar to supervised exchanges, supervised access varies in structure, with supervisors ranging from extended family or volunteers to a specialized center with professional staff with expertise in these issues.

In most instances, supervised access in domestic violence cases should be viewed as a transition phase after which either supervision is dropped or access is terminated, depending on the change shown by perpetrators of violence and the child's adjustment. Related to this plan is the concept of supervised therapeutic access, [FN7] which involves a mental

health professional who is attempting to heal a troubled parent-child relationship through counseling and support during the access visits. Although a genuine attempt at intervention is important, in some cases the complexity and intransigence of the conflict may be beyond even the \*518 most skilled therapist and supervised access may be required as a longer-term solution. In other cases, long-standing limitations of a parent (e.g., due to chronic mental health problems) may necessitate ongoing supervised access. The Supervised Visitation Network in the United States has excellent standards and guidelines, as well as sample contracts available on their Web site (see also Sheeran & Hampton, 1999). The appropriate use and misuse of supervised visitation is briefly outlined in Table 2, Section D.

## **SUSPENDED CONTACT**

Contact between a child and parent may be suspended in the short term or long term for a host of reasons. When the decision to suspend contact is made based largely on a child's vehement refusal to see a parent, it is extremely challenging to disentangle the factors leading to this resistance. Differentiating between estrangement for valid reasons and pathological alienation can be a formidable challenge and should be done by a mental health evaluator with expertise in both child alienation and domestic violence. When there is a reasonable basis in fact for a child to be fearful of a parent due to exposure to domestic violence, it is inappropriate to label the nonoffending parent as engaging in alienation. When a parent has engaged in alienating behavior, appropriate attempts at therapeutic intervention should be implemented in an attempt to restore the damaged parent-child relationship.

There is in law a presumption that the best interests of the child will be promoted by a child having a relationship with both parents, thus requiring significant evidence of risk of harm to the child before terminating access (Shaffer & Bala, 2003). In cases where it is established that a parent presents an ongoing risk of violence to the child or parent, emotional abuse to the child, or abduction, however, no meaningful parent--child relationship is possible. In these cases, the court may be forced to suspend all access. These cases present a significant challenge for lawyers and mental health professionals to provide thorough and credible information to the court to obtain an order to at least temporarily end the parent--child relationship. Criteria for suspended access are shown in Table 2, Section E.

## **IMPLICATIONS FOR PRACTICE IN THE CONTEXT OF LIMITED RESOURCES**

There is often a large gap between the ideal plan that a family requires and the actual resources available in a community. There is also debate about the effectiveness of various programs to change behavior quite apart from a family member's willingness to attend (e.g., batterers' treatment; Gondolf, 2004).

In reality, many courts have to make do with limited resources, impeded by litigant poverty, waiting lists, and a lack of culturally appropriate service providers. Often multiple services need to be accessed, including services for batterers, victims, and children exposed to domestic violence, requiring coordinated service delivery and communication of information beyond the mandate, policy, confidentiality, and record-keeping practices of individual agencies involved. To compound these problems, it is often not clear that anybody is in charge of monitoring treatment compliance and progress.

Parenting plans that differentiate among patterns of domestic violence on the basis of safety and prognosis should allow for better triage--more careful matching of scarce resources appropriate to the needs of victims and children. The PPP screening that is proposed in this article is a systematic way of doing a preliminary differential assessment of what are often complex cases. It may have an added advantage to the extent that it helps \*519 a wide range of professionals recognize cases that are beyond their expertise, requiring more specialized assessment by highly trained professionals.

The guidelines proposed in this article are designed to provide the general framework for family court orders for children, victims, and violent parents whose access to their children is restricted contingent upon their rehabilitation. If so, some next steps would involve developing model court orders for each type of parenting plan, with a menu of options specifying explicit behavioral goals and treatment contracts that could be adapted for use by busy judges and others drafting and monitoring court orders. These kinds of court orders require the support of corresponding treatment contracts for services within the community that fully inform families about the programs they are required to attend, including goals, procedures, limits of confidentiality, responsibility for payment, expectations for completion, and accountability to the court. Case management protocols and timelines also need to be developed to help coordinate between services and monitor progress over time.

In sum, differentiated parenting plans in the context of domestic violence that are more explicitly articulated, implemented, and monitored should benefit families who would receive services more appropriate to their needs. These plans could also help mental health and legal professionals--therapists, parenting counselors, custody evaluators, family attorneys, and judges--to better coordinate their roles and provide checks and balances to their interventions while ensuring accountability for violence, protecting civil rights of all parties, and monitoring cost-effectiveness of nonvoluntary, court-ordered interventions.

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[FN1]. Here a cautionary note: The research findings are from samples obtained from different sources and of widely different sizes. Furthermore, the studies use varying methodologies and definitions (e.g., what constitutes violence and the criteria for substantiation of allegations). For these reasons, the findings summarized in this article provide only a partial and incomplete picture and may not hold true for the broader population, nor even for the special subpopulation of those-disputing custody within family court, especially with respect to gender differences in perpetrating the different types of violence.

[FN2]. Parenting and parent-child relationships have been examined in domestic violence agencies and women's shelters (e.g., Bancroft & Silverman, 2002) and in families litigating custody (Johnston & Campbell, 1993), and these observations and findings can be compared with those from empirical studies of general community samples (e.g., Straus, 1983).

[FN3]. Numerous instruments have been developed for this purpose, from early checklists like the CTS (Straus, 1979) to more recent comprehensive assessment kits like SARA (Kropp, Hart, Webster, & Eaves, 1999). The list of indicators in Table 1, Part A is one of many ways to screen for potency or severity of violence when making custody and access plans. For others, see Campbell (2005).

[FN4]. Whereas generally multiple positive indicators signal higher risk, some are more important than others, for example, #1, #2, and #3. Some at risk for lethal violence are difficult to detect because the person has highly secretive and organized paranoid delusions, for example, #1, #4, and #5, but not #6 or #7. While not critical predictors by themselves, #6, #7, and #8 can act as precipitants or aggravate a violence prone individual or situation.

[FN5]. *See supra* note 1.

[FN6]. These cases need to be treated differently from those of an alienated child in a nonviolent high-conflict divorcing family, albeit in practice, the latter are difficult to distinguish from those who are realistically estranged (Drozd & Olesen, 2004).

[FN7]. Therapeutic supervised access offers an opportunity for access between a parent and child to occur in a supervised setting with a therapist intervening, promoting healthy parenting, relationship building, and cooperation between the parties. Therapeutic supervised access is a specialized short-term intervention aimed at assisting parents toward non-supervised access while meeting the needs of the children.

46 Fam. Ct. Rev. 500

END OF DOCUMENT

1 **25-812. Voluntary acknowledgment of paternity; action to overcome paternity**  
2 A. This state or the parent of a child born out of wedlock may **BEGIN THE PROCESS TO**  
3 establish the paternity of a child by filing one of the following with the clerk of the superior court, the  
4 department of economic security or the department of health services:  
5 1. A notarized or witnessed statement that contains the social security numbers of both parents  
6 and that is signed by both parents acknowledging paternity or two separate substantially similar  
7 notarized or witnessed statements acknowledging paternity. If the voluntary acknowledgment is filed  
8 with the court, the filing party must redact any social security numbers and file them separately  
9 pursuant to section 25-501, subsection G. ~~If another man is presumed to be the child's father pursuant~~  
10 ~~to section 25-814, an acknowledgment of paternity is valid only with the presumed father's written~~  
11 ~~consent or as prescribed pursuant to section 25-814.~~ **IF ANOTHER MAN OTHER THAN THE**  
12 **HUSBAND OF THE MOTHER AT ANY TIME IN THE TEN MONTHS IMMEDIATELY**  
13 **PRECEDING THE BIRTH IS TO ACKNOWLEDGE PATERNITY, A SIGNED WRITTEN**  
14 **CONSENT FROM THE THEN HUSBAND MUST ALSO BE SUBMITTED.** A statement that is  
15 witnessed by an employee of the department of economic security or the department of health services  
16 or by an employee of a hospital must contain the printed name and residential or business address of the  
17 witness. A statement that is witnessed by any other person must contain the printed name and  
18 residential address of the witness. If the acknowledgment of paternity is witnessed, the witness must be  
19 an adult who is not related to either parent by blood or by marriage.  
20 2. An agreement by the parents to be bound by the results of genetic testing including any  
21 genetic test previously accepted by a court of competent jurisdiction, or any combination of genetic  
22 testing agreed to by the parties, and an affidavit from a certified laboratory that the tested father has not  
23 been excluded.  
24 **BD. EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION,** A voluntary  
25 acknowledgment of paternity executed pursuant to subsection A, paragraph 1 of this section may be  
26 filed with the department of economic security, which shall provide a copy to the department of health  
27 services. A voluntary acknowledgment of paternity made **FILED WITH THE DEPARTMENT OF**  
28 **ECONOMIC SECURITY** pursuant to this section ~~is a determination of~~ **IS THEREBY EFFECTED**  
29 **AND SHALL ESTABLISH THE** paternity **OF THE CHILD** and has the same force and effect as a  
30 superior court judgment.  
31 **CB.** On filing a document required in subsection A of this section with the clerk of the superior  
32 court **A VOLUNTARY ACKNOWLEDGEMENT OF PATERNITY IS THEREBY EFFECTED. THE,**  
33 ~~the~~ clerk or authorized court personnel shall issue an order establishing paternity, which may amend the  
34 name of the child or children, if requested by the parents. The clerk shall transmit a copy of the order of  
35 paternity to the department of health services and the department of economic security.  
36 **DC.** On entry of an order by the clerk of the superior court, the paternity determination has  
37 the same force and effect as a judgment of the superior court. In a non-title IV-D case, the clerk shall  
38 transmit a copy of an order granted under this subsection to the state title IV-D agency. The case filing  
39 fee prescribed by section 12-284 shall not be charged to any person who, in the same county, initiates or  
40 responds to a proceeding to establish child support or to obtain an order for custody or parenting time  
41 within ninety days after an order establishing paternity is issued under subsection B of this section.  
42 E. Pursuant to rule 85(c) of the Arizona rules of family law procedure, the mother, father or  
43 child, or a party to the proceeding on a rule 85(c) motion, may challenge a voluntary acknowledgment of  
44 paternity established in this state at any time ~~after the sixty-day period~~ only on the basis of fraud, duress  
45 or material mistake of fact, with the burden of proof on the challenger and under which the legal  
46 responsibilities, including child support obligations of any signatory arising from the acknowledgment  
47 shall not be suspended during the challenge except for good cause shown. The court shall order the  
48 mother, her child or children and the alleged father to submit to genetic testing and shall direct that  
49 appropriate testing procedures determine the inherited characteristics, including blood and tissue type.  
50 If the court finds by clear and convincing evidence that the genetic tests demonstrate that the established  
51 father is not the biological father of the child, the court shall vacate the determination of paternity and  
52 terminate the obligation of that party to pay ongoing child support. An order vacating the  
53 determination of paternity operates prospectively only and does not alter the obligation to pay child  
54 support arrearages or, unless otherwise ordered by the court, any other amount previously ordered to  
55 be paid pursuant to section 25-809.  
56

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

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

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

7 ~~1. Sixty days after the last signature is affixed to the notarized acknowledgment of paternity~~  
8 ~~that is filed with the department of economic security, the department of health services or the clerk of~~  
9 ~~the court.~~

10 ~~2. The date of a proceeding relating to the child, including a child support proceeding in which~~  
11 ~~the mother or father is a party.~~

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

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

19

- 1            **25-814. Presumption ESTABLISHMENT of paternity**  
2            ~~A. A man is presumed to be the father of the child if~~ **A MAN IS ESTABLISHED AS THE**  
3 **FATHER OF THE CHILD AND THEREBY THE CHILD'S PATERNITY HAS BEEN**  
4 **ESTABLISHED IF ANY OF THE FOLLOWING CONDITIONS HAVE BEEN MET:**  
5            **1. EXCEPT AS PROVIDED FOR UNDER SUBSECTION C, He and the mother of the child**  
6 **were married at any time in the ten months immediately preceding the birth or the child is born within**  
7 **ten months after the marriage is terminated by death, annulment, declaration of invalidity or dissolution**  
8 **of marriage or after the court enters a decree of legal separation.**  
9            **2. Genetic testing affirms at least a ninety-five per cent probability of paternity.**  
10           **3. A birth certificate is signed by the mother and father of a child born out of wedlock.**  
11           ~~4. A notarized or witnessed statement is signed by both parents acknowledging paternity or~~  
12 ~~separate substantially similar notarized or witnessed statements are signed by both parents~~  
13 ~~acknowledging paternity.~~ **HE AND THE MOTHER HAVE ACKNOWLEDGED HIS PATERNITY**  
14 **PURSUANT TO SECTION 25-812, AND THAT ACKNOWLEDGEMENT HAS BEEN EFFECTED**  
15 **PURSUANT TO SECTION 25-812 SUBSECTION B OR D.**  
16           **5. IF HIS PATERNITY HAS BEEN ESTABLISHED IN ANOTHER STATE BY A COURT**  
17 **OR ADMINISTRATIVE ORDER OR VOLUNTARY ACKNOWLEDGEMENT, THE**  
18 **DETERMINATION OF PATERNITY HAS THE SAME FORCE AND EFFECT IN THIS STATE AS**  
19 **IF THE DETERMINATION OF PATERNITY WAS GRANTED BY A COURT IN THIS STATE.**  
20           **6. A COURT DECREE FINDS THAT HE IS THE FATHER BASED ON A**  
21 **PREPONDERANCE OF THE EVIDENCE INCLUDING, BUT NOT LIMITED TO, GENETIC**  
22 **TESTING AFFIRMING AT LEAST NINETY FIVE PER CENT PROBABILITY OF PATERNITY.**  
23           **7. IF HE IS LISTED AS THE FATER ON THE ADOPTION ORDER OF THE CHILD.**  
24           ~~B. If another man is presumed to be the child's father under subsection A, paragraph 1, an~~  
25 ~~acknowledgment of paternity may be effected only with the written consent of the presumed father or~~  
26 ~~after the presumption is rebutted. If the presumed father has died or cannot reasonably be located,~~  
27 ~~paternity may be established without written consent.~~  
28           ~~C. Any presumption under this section shall be rebutted by clear and convincing evidence. If~~  
29 ~~two or more presumptions apply, the presumption that the court determines, on the facts, is based on~~  
30 ~~weightier considerations of policy and logic will control.~~ **THE CONDITION SET FORTH IN**  
31 **SUBSECTION A PARAGRAPH 1 WILL NOT APPLY IF A court decree establishing ESTABLISHES**  
32 **paternity of the child by another man rebuts the presumption OR IF ANOTHER MAN IS LISTED AS**  
33 **THE FATHER IN AN ACKNOWLEDGEMENT OF PATERNITY AS DESCRIBED IN SECTION 25-**  
34 **812 AND EFFECTED AS DESCRIBED IN SECTION 25-812 SUBSECTION B OR D.**  
35           **D. AS PROVIDED BY SECTION 36-334, THE LISTING OF THE FATHER'S NAME ON**  
36 **THE CHILD'S ARIZONA BIRTH CERTIFIATE IS PROOF THAT PATERNITY HAS**  
37 **BEEN ESTABLISHED FOR THE CHILD.**  
38           **E. PATERNITY THAT IS ESTABLISHED IN ANY OF MANNER ABOVE IS VALID FOR**  
39 **PETITIONING FOR CHILD SUPPORT AND CHILD CUSTODY ESTABLISHMENT**  
40 **WITH OUT ANY FURTHER HEARINGS OR DECREES.**  
41           **F. PATERNITY THAT IS ESTABLISHED IN ANY MANNER ABOVE MAY BE**  
42 **CONTESTED IN A COURT HEARING.**  
43  
44           **25-815. Paternity; full faith and credit**  
45 ~~If paternity has been established in another state by a court or administrative order or~~  
46 ~~voluntary acknowledgment, the determination of paternity has the same foree and effect in this~~  
47 ~~state as if the determination of paternity was granted by a court in this state.~~  
48