**Substantive Law Workgroup**
Steve Wolfson, Chairperson

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

**DOMESTIC RELATIONS COMMITTEE**
Agenda

**May 13, 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 04-08-11 minutes

2. **Evaluating domestic violence allegations**.....*Prof. Joan S. Meier*
*Professor of Clinical Law*
*George Washington University Law School*

   Action Item/Vote: _____

3. **Review of general public comments received**.....*Chairmen*

   Action Item/Vote: _____

4. **Discuss June 3, 2011 DRC meeting** .....*Chairmen*
   - Method of presentation to the DRC
   - Inclusion of "coercive control" provisions to section 25-401
   - Content of recommendation

   Action Item/Vote: _____

5. **Review proposed custody rewrite**.....*Workgroup members*
   - Tom Alongi …Proposed language for § 25-471 *Sanctions for Misconduct*
   - Keith Berkshire…Proposed language for § 25-422 *Definitions: Parental decision-making*

   Action Item/Vote: _____ Provisions of custody rewrite

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

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*

| Date: April 8, 2011 | Time: 12:00 PM – 1:30 PM | Location: Conference Room 230 |
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**Minute Taker:** **Tama Reily**

**Members Attending:**

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

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

**Guests:** Dean Christoffel, Bill Fabricius; Brent Miller; Karen Duckworth; Terry Decker; Joi Davenport; Sheri Fetzer; Ana Jabkowski; Lisa Royal, Pima County Superior Court
Donnalee Sarda

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**Matters Considered:**

**I. Welcome and Announcements**

The April 8, 2011 meeting of the Substantive Law / Court Procedures Workgroup was called to order at 12:15 p.m. Members and guests were welcomed.

Discussion began with proposed legislation, SB 1373, which significantly impacts community property law. It is a broad bill that prevents the non-military spouse from receiving any share of the property and/or income acquired by the other spouse as a result of military service. The legislation was never vetted in the Domestic Relations Committee (DRC) and Mr. Wolfson suggested that this workgroup make a recommendation to the DRC to oppose the legislation. It was noted that the DRC does not meet again until after the legislative session ends, however, Mr. Wolfson suggested the workgroup contact Senator Gray with a request that she call an "accelerated" DRC meeting, perhaps telephonically, for this purpose and she could then pass the DRC's comments to the legislature.

With a quorum now present, a vote was taken on the issue.

**Motion:** To communicate the workgroup's opposition to proposed amendment SB 1373, to Senator Gray as discussed. Motion seconded. Motion approved unanimously.

**II. Approval of Minutes**

The minutes of the Substantive Law / Court Procedures Workgroup meetings November 23, 2010 and March 11, 2011 were presented for approval.

**Motion:** To approve the meeting minutes from the Substantive Law / Court Procedures Workgroup meeting dates November 23, 2010 and March 11, 2011as presented. Motion seconded. Motion approved unanimously.

**III. Independent Review of Custody Rewrite**

At previous meetings, the workgroup discussed having an independent review of the re-write product by outside experts, specifically, to consult with mental health expert Peter Salem, Executive Director, Association of Family and Conciliation Courts, for recommendations. A motion to that effect was made.

**Motion:** To consult with outside experts for comment on the re-write draft. Specifically, to request that Peter Salem provide his recommendations for mental health experts to review this custody re-write document and provide feedback. Motion seconded. Motion approved unanimously.

**IV. Review of Comments Received**

Mr. Wolfson discussed public comments received at the March 25th meeting. He noted a recurring trend in the comments which is to remove all references to domestic violence from Title 25. He pointed out that neither A.R.S. section 13-3601 nor A.R.S. section 13-3602 mention child custody, and the failure to address domestic violence in Title 25 disregards the relationship and impact of domestic violence to parenting time decisions. Additionally, he stated that 49 of the 50 states recognize the relevance of domestic violence and parenting time decisions and include it in their statutory schemes. Mr. Wolfson also noted that other general public comments indicated that "after separation domestic violence stops" however, national studies show that a separated woman is three times more likely than a divorced woman, and 25 more times likely than a married woman, to be victimized by her spouse. According to these studies domestic violence often increases, not stops. The study referenced was provided by the Bureau of Justice Statistics, U.S. Dept. of Justice, Special Report, Violence Against Women; Estimates from the Redesigned Survey 4 (NCJ – 154348, August 1998.)

Mr. Wolfson commented that the workgroup received a comment from Comm. Kathryn Stocking-Tate regarding false reporting of domestic violence and child abuse, and that the comments provided by Judge Bruce R. Cohen are already included as a sidebar into the current version, section 25-450 (Third party rights, page 18.) The Conciliation Court Roundtable have also provided a version with their feedback and comments, as well as a version authored by workgroup member, Jenny Gadow, which focuses on changes to the sections regarding special circumstances and false allegations.

**V.** Based upon comments received previously, the unified draft has been revised to contain the domestic violence definitions, except "strangulation" and "suffocation," at the beginning of Article 4, Special Circumstance on page 7. There was no change in the language.

**Motion:** To keep the ordering of the statute in accordance with the above description. Motion seconded. Approved unanimously.

Discussion moved to comments received from the Conciliation Court Roundtable on the definition of "legal parent." Members considered the suggested terminology and its reference to A.R.S. section 25-814. However, there was no consensus regarding when a person has actually established paternity. After lengthy debate, member, Danny Cartagena volunteered to draft proposed language to clarify establishment of paternity as addressed in A.R.S. section 25-814.

**VI. Call to the Public**

Public attendee, Mr. Terry Decker expressed his belief that Title 13 does impact a person's contact or association with a child and that it takes precedence over Title 25. In addition, he stated that in section 25-422 the parental decision-making definition should include "in a divided family, it shall not include changing the name of the child or representing a changed identity to any entity." He also made the observation that the workgroup is making many citations, but not tracing them to their conclusions; specifically, he noted child abuse, which he said "ultimately can trace back to things like a parent looking at the other parent's email."

Public attendee, Ms. Karen Duckworth, informed members that she provided staff with a copy of a Columbia University study on parental alienation. She commented about the elements of false allegations and other types of child abuse, like mental and psychological abuse. She stated that the legal definition for parental alienation and its tactics needs to be included in the language the workgroup is developing. She encouraged the workgroup to study the Columbia University report. She also commented that her understanding of some of the definitions

which may be stricken now, such as the intimate partner violence, was inconsistent with later references throughout the draft. She stated it is her understanding that A.R.S. section 13-3602 is actually more procedural and doesn't imply that an order of protection should have any bearing on the custody decision-making.

Public attendee, Mr. Brent Miller, commented that he believes daycare should be included in the draft despite the fact that it is something people argue and go to court about. Member, Steve Wolfson, asked Mr. Miller if he didn't think that it might be better to have a broader discussion and explanation in another separate publication as opposed to trying to approach it in this one definition section. Mr. Miller agreed and stated it needs to be expanded upon and further explored because there is so much misunderstanding about it.

**Next Meeting**

April 29, 2011
12:00pm – 1:30pm
Arizona State Courts Building, 1501 W. Washington, Conference Room 230

# 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


**Comment [KS1]: 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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25-480. Statutory Priority
25-481. Agency Supervision
25-482. Identification of Primary Caretaker
25-483. Fees ~~&~~ AND Resources
25-484. Child Interviews by Court ~~&~~ AND Professional Assistance
25-485. Investigations ~~&~~ AND Reports
25-486. Child Support ~~&~~ AND Parenting Time Fund
25-487. Domestic Relations Education ~~&~~ AND Mediation Fund

## ARTICLE 2.
## INTRODUCTION ~~&~~ AND PRELIMINARY REQUIREMENTS

### 25-420. Public policy

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

A. Share parental decision-making concerning their child;

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

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

AD HOC CUSTODY 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~~. ~~§§~~ ARIZONA REVISED STATUTES SECTIONS 25-1001~~, et seq.,~~ TO 25-1067, Parental Kidnapping Prevention Act ('PKPA') at 28 ~~U.S.C.~~ ~~§~~ UNITED STATES CODE SECTION 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: the~~ THE FOLLOWING PERSONS MAY REQUEST PARENTAL DECISION-MAKING OR PARENTING TIME UNDER THE FOLLOWING CIRCUMSTANCES:

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

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

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

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

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

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]

~~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. § ARIZONA REVISED STATUTES SECTION 13-3601(A)(5), including any attempt, conspiracy or 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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~~(a) Endangerment, as defined by A.R.S. § ARIZONA REVISED STATUTES SECTION 13-1201.~~

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

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

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

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

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

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

~~5~~ 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.

~~6~~ ~~2.~~ ~~"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~~ ~~3~~2. "Legal parent" means a biological or adoptive parent whose parental rights have not been terminated. It does not include a person whose paternity has not been established under state law pursuant to sections 25-812 and 25-814.

~~9~~ ~~4.~~ 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."

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

**Deleted:** -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¶

**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 3rd 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 – 3rd 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/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. ... [1]

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

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

AD HOC CUSTODY 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.

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

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

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"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).

SL/CP WORKGROUP NOTE

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

**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 SECTIONS ~~§§~~ 25-440 through 25-443 (Intimate Partner Violence & Child Abuse), ~~§~~ SECTION 25-444 (Substance Abuse), ~~§~~ SECTION 25-445 (Dangerous Crimes Against Children) or ~~§~~ SECTION 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 ~~§§~~ SECTIONS 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.

AD HOC CUSTODY WORKGROUP NOTE

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

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

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

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

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

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

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

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

C. Parenting plans shall include at least the following:

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

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

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

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

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

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. §~~ SECTION 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.

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

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

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

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

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

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

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

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

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

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

~~6~~ 7. "Intimate partner violence" means any act ~~that would meet the definition of A.R.S. §~~ AS DEFINED IN SECTION 13-3601(A), as well as any other act of physical or sexual violence constituting a felony, where inflicted by a person against an intimate partner. This definition also includes any attempt, conspiracy, or solicitation of another to commit such act. It does not include any behavior that would constitute self-defense or other legal justification as defined by ~~A.R.S. §§~~ SECTIONS13-404 through 408.

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

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

SL/CP WORKGROUP NOTE

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

## 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.

AD HOC CUSTODY WORKGROUP NOTE

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

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

[Former A.R.S. § 25-403.03(A), (D) and (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~~ SUBSECTION (B). In that event, the court shall also evaluate whether the offending parent has

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nevertheless failed to prove his or her suitability for parental decision-making by considering each of the criteria listed in ~~Subsection~~ 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. §~~ SECTION 25-422(1), in cases involving intimate partner violence, and has also disclosed and submitted into evidence a complete set of treatment records proving an acceptable level of rehabilitation. A mere certificate of completion does not alone prove rehabilitation. The treatment records themselves must exhibit active involvement and positive steps by the offending parent during therapy.

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

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

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

C. Reasons to Refuse Parental Decision-Making to an Offender. To evaluate whether the mitigating evidence presented in ~~Subsection~~ 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~~ 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. §§~~ SECTIONS 13-404 through ~~-~~408, the motivation of each parent for the violence, the level of force used by each parent, and their respective injuries.

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

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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 ARIZONA RULES OF Family Law PROCEDURE rules 49(B)(2) THROUGH (4) or reasonable discovery requests for records associated with treating intimate partner violence or child abuse.

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

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

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

3. Attempted or threatened suicide;

4. Injured or threatened to injure household pets;

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

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

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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.

E. FOR THE PURPOSES OF THIS SECTION:

1. "STRANGULATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-1204(B)(1).

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

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

AD HOC CUSTODY WORKGROUP NOTE

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

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

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

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

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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. §~~ SECTIONS 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~~ 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. §~~ SECTION 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.

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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) and (H)]

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

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

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.~~

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

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

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

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

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. §~~ SECTION 8-201.

AD HOC CUSTODY 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

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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.

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

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

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

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

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

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

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

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

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

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

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

1. A person criminally convicted for a dangerous crime against children, as defined ~~by A.R.S. §~~ IN SECTION 13-705(P)(1); or

2. A person required to register ~~under A.R.S. §~~ PURSUANT TO SECTION 13-3821.

B. A child's parent or custodian must immediately notify the other parent or custodian if the parent or custodian knows that a convicted or registered sex offender or a person who has been convicted of a dangerous crime against children, as defined in ~~A.R.S. §~~ SECTION 13-705~~(P)(1),~~ may have access to the child. The parent or custodian must provide notice by first-class mail, return receipt requested, or by electronic means to an electronic mail address that the recipient provided to the parent or custodian for notification purposes, or by some other means of communication approved by the court.

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

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

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

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

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

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

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

## Article 5.
## Third Parties

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

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

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

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

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

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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. §~~ PURSUANT TO 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~~ 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 OF FAMILY LAW PROCEDURE 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.

**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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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. §~~ PURSUANT TO 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]

§ 25-461. Decree Modification

[former A.R.S. § 25-411]

§ 25-462. Relocation of a Child

[former A.R.S. § 25-408(B)]

Article 7. Records & Sanctions

§ 25-470. Access to Records

[former A.R.S. § 25-403.06]

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§ 25-471. Sanctions for Misconduct
[former A.R.S. § 25-414]
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]

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| Page 4: [1] Comment [KLR5] | Kay L. Radwanski | 4/8/2011 1:27:00 PM |
|---|---|---|

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.
Bill - list is preemptive. If people think about ahead of time ...
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.

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


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## ARTICLE 2.
## INTRODUCTION AND PRELIMINARY REQUIREMENTS

### 25-420. Public policy

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

A. Share parental decision-making concerning their child;

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

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

AD HOC CUSTODY 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 ARIZONA REVISED STATUTES SECTIONS 25-1001 TO 25-1067, Parental Kidnapping Prevention Act ('PKPA') at 28 UNITED STATES CODE SECTION 1738A, and any applicable international law concerning the wrongful abduction or removal of children.

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

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

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

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

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.

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

AD HOC CUSTODY 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).

SL/CP WORKGROUP NOTE

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

**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 SECTIONS 25-440 through 25-443 (Intimate Partner Violence & Child Abuse), SECTION 25-444 (Substance Abuse), SECTION 25-445 (Dangerous Crimes Against Children) or SECTION 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 SECTIONS 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.

AD HOC CUSTODY WORKGROUP NOTE

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

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

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

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

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

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

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

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

C. Parenting plans shall include at least the following:

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

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

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

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

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

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

7. A procedure for periodic review of the plan.

8. A statement that each party has read, understands and will abide by the notification requirements of SECTION 25-445(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 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.

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

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

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

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

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

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

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

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

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

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

7. "Intimate partner violence" means any act AS DEFINED IN SECTION 13-3601(A), as well as any other act of physical or sexual violence constituting a felony, where inflicted by a person against an intimate partner. This definition also includes any attempt, conspiracy, or solicitation of another to commit such act. It does not include any behavior that would constitute self-defense or other legal justification as defined by SECTIONS13-404 through 408.

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

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

SL/CP WORKGROUP NOTE

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

## 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.

AD HOC CUSTODY WORKGROUP NOTE

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

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

[Former A.R.S. § 25-403.03(A), (D) and (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 SECTION 25-422(1), in cases involving intimate partner violence, and has also disclosed and submitted into evidence a complete set of treatment records proving an acceptable level of rehabilitation. A mere certificate of completion does not alone prove rehabilitation. The treatment records themselves must exhibit active involvement and positive steps by the offending parent during therapy.

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

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

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

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 SECTIONS 13-404 through 408, the motivation of each parent for the violence, the level of force used by each parent, and their respective injuries.

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 ARIZONA RULES OF Family Law PROCEDURE rules 49(B)(2) THROUGH (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.

E. FOR THE PURPOSES OF THIS SECTION:

1. "STRANGULATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-1204(B)(1).

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

AD HOC CUSTODY WORKGROUP NOTE

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

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

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

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

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

## 25-442. 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 SECTIONS 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 SECTION 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) and (H)]

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

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

2. Police or medical reports.

3. Counseling, school or shelter records.

4. Child Protective Services records.

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

6. Witness testimony.

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

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

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

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

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 SECTION 8-201.

AD HOC CUSTODY 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, AS DEFINED IN TITLE 13, CHAPTER 34.

2. Driving under the influence of alcohol, as defined IN SECTION 28-1381.

3. Extreme driving under the influence of alcohol, as defined IN SECTION 13-1382.

4. Aggravated driving under the influence of alcohol, as defined IN SECTION 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 IN SECTION 13-705(P)(1); or

2. A person required to register PURSUANT TO SECTION 13-3821.

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

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

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

1. A person criminally convicted for first- or second-degree murder, as defined IN SECTIONS 13-1105(A) and 13-1104(A), except as provided in SUBSECTION(B).

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

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

25-447. Conflicting Presumptions or Mandatory Rules [New]
In the event that neither parent is eligible for an award of parental decision-making or parenting time due to special circumstances, as defined by 25-422(11), the court may refer the matter for juvenile dependency proceedings pursuant to SECTION 8-800, assign parental decision-making or visitation to another family member or third party consistent with the child's best interests, or provide detailed, written findings that describe the extraordinary conditions that justify an award of decision-making or parenting time to a parent normally disqualified by SECTIONS 25-440 through 25-446. The court shall also explain why its decision best serves the child, with particular focus on the child's safety.

## Article 5.
## Third Parties

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

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

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

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

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

4. One of the following applies:

(a) One of the legal parents is deceased.

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

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

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. PURSUANT TO 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 RULES OF FAMILY LAW PROCEDURE 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, PURSUANT TO 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]
§ 25-461. Decree Modification
[former A.R.S. § 25-411]
§ 25-462. Relocation of a Child
[former A.R.S. § 25-408(B)]
Article 7. Records & Sanctions
§ 25-470. Access to Records
[former A.R.S. § 25-403.06]
§ 25-471. Sanctions for Misconduct
[former A.R.S. § 25-414]
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]

# General Public Comments from April 29, 2011

| | Friday, April 29, 2011 | Issue | | Proposes |
|---|---|---|---|---|
| 24 | Joi Davenport | I am concerned with the committee membes considering wanting to remove coercive control from Title 25. Removing this language will unfairly disadvantage victims of domestic violence and the accompanying coercive control tactics in family court, as well as having detrimental effects on their children. I implore those members to remove the blinders that are keeping them from supporting the language so they can truly see how needful this language is for the people of this state who are domestic violence situations and family court. | | |
| 25 | Timothy Frank | 25-814(A)(6) Adoption Order "father" - biological father or adopting father? I'm assuming adopting father…should you make that clear? | | |
| 26 | Timothy Frank | Section 25-446(B). The language as written appears to sanction murder in the name of child custody. Murder is an unacceptable response for any purpose to child custody. As such, this subsection should be deleted from the proposal. | | |
| 27 | Michael Espinoza | It is possible to make a sub section public policy 25-420 and leave 25-103 alone. It was promised that 25-103 would be left alone. Also, the domestic violence sections need to be removed. If the antidomestic violence advocates are so confident in their language I suggest that they propose their language in another bill and let their language pass on its own merits. | | |
| 28 | Timothy Frank | Section 25-441(D) Coercive control. This language is far too broad. It clearly will unsettle the law and encourage litigation. The terminology is unspecific and unvetted either legally or socially. It is not acceptable in its current form. It is also off subject and has little to do with custody establishment, or encouraging cooperative resolution in families which are capable of purchasing legal services. | | |
| 29 | Karen Duckworth | To add definitions to 25-422, based on solid research like the Columbia University Study (I provided last week.) * This definition is necessary pursuant to 25-432.6 | | *1) Parental alienation or just alienation: acts including but not limited to deliberate interference with the relationship between child and other parent; by talking inappropriately, callously, harshly, and falsely about the other parents feeling for or actions towards the child. by making false allegations about the other parents conduct to the child. by forbidding, inhibiting, or punishing child for seeking or enacting contact with the other parent, including but not limited to telephonic access, text mesgs, online resources such as email or facebook, or communications through extended family members. Alienation should be defined as any act that upon further examination has the potential to cause emotional, mental, psychological harm to the child and reduces or inhibits the level of attachment the child had to the other parent before the alienation tactics began. Alienations should also encompass overcontrolling behaviors by the acting inappropriately, the consequences which may affect siblings, the damage caused by deliberate defiance of court orders in the form of access and custodial interference, and the reamifications the damaged parent-child relationships have on future developmental concerns and repeating patterns of coercive controlling behaviors and partner violence. |

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

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

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

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

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

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

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

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

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

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

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

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

## § 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.

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.

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## EDUCATION

**University of Chicago Law School,** J.D. *cum laude* — 1983
**Harvard University, B.A.**, *magna cum laude* in Government — 1980

## LEGAL EMPLOYMENT

**Domestic Violence Legal Empowerment and Appeals Project (DV LEAP)** — 2003 - present
Founding Executive Director

**George Washington University Law School** — 1991 - present
Professor of Clinical Law (1995-present);
Associate Professor of Clinical Law (1991-1995)

Designed and teach the Domestic Violence Project, in which students are placed in local and national non-profit organizations to do litigation and/or legislative and policy reform work. — 2003 - present (part-time)

Founded and Directed Domestic Violence Advocacy Project (litigation clinic), in which students represented clients seeking civil protection orders and criminal enforcement of those orders in court under faculty supervision. — 1993 - 2001

Co-Founded and Co-Directed Domestic Violence Emergency Department (DVED) Clinic, in which students provided crisis intervention, risk assessment, safety planning and legal advocacy for domestic violence victims in local emergency rooms and in-patient Psychiatry Department. — 1998 - 2001

Co-taught Civil and Family Litigation Clinic. — 1991 - 1993

**Washington & Lee School of Law** (Visiting Professor of Law) — Fall 1997
Taught Criminal Law and Family Law.

**Winthrop, Stimson, Putnam & Roberts,** Washington, DC — 1987 - 1991
Associate specializing in litigation, environmental law, and pro bono litigation.

**Public Citizen Litigation Group, Washington, DC** — 1986 - 1987
Staff attorney for PCLG and Director of Freedom of Information Clearinghouse.
Litigated in federal court and administrative agencies under the Freedom of Information Act and U.S. Constitution.

**Georgetown University Law Center, Sex Discrimination Clinic**
Women's' Law & Public Policy Fellow — 1985 - 1986
Adjunct Professor — Spring 1991

**Adjunct Professor of Family Law**
George Washington University Law School — 1993 and 1998
American University, Washington College of Law — 1989

**U.S. Court of Appeals for the Seventh Circuit,** Chicago, Illinois — Spring 1985
Law Clerk to Judge Frank H. Easterbrook

**Jenner & Block,** Chicago, Illinois — 1983 - 1985
Associate specializing in general litigation.

## CONSULTING AND PROFESSIONAL ACTIVITIES

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| Invited Lay Member, Board for Advancement of Psychology in the Public Interest (BAPPI) of the American Psychological Association | 2009 –2012 |
| Board Member, Washington Council of Lawyers | 2005 - 2009 |
| Editorial Board Member, Journal of Child Custody | 2005 - present |
| Advisory Board, National Evaluation of Domestic Violence Victims' Civil Legal Assistance Program | 2001 - 2006 |
| Peer Reviewer, U.S. Department of Justice, Violence Against Women Act grants | 2000 - 2003 |
| Member, Mayor's Commission on Violence Against Women | 1996 - 2001 |
| Member, Advisory Committee, ABA Commission on Domestic Violence Curriculum Project | 1996 - 1997 |
| Member, National Task Force on Women, Welfare and Abuse | 1996 - 1997 |
| Board of Advisors, *Domestic Violence Report,* a bimonthly Report published by the Civic Research Institute | 1995 - present |
| Ad Hoc Reviewer, *Law & Society Review* | 1992 - 1995 |
| Periodic Reviewer, Family Law Chapter, *Street Law: A Course in Practical Law* | 1987 - 1993 |
| Co-Chair, DC/MD/VA/W.VA Women Law Professors Group | 1994 - 1995 |
| Member, DC Superior Court Domestic Violence Coordinating Council | 1993 - 2001 |
| Member, Working Group, Battered Women's Justice Project Ongoing consultation with Pennsylvania Coalition Against Domestic Violence and battered women's advocates around country concerning a variety of issues. | 1993 - 2001 |
| Member, DC Coalition Against Domestic Violence Testimony before DC Council on numerous provisions relating to domestic violence, litigation of constitutional issues under IntraFamily Offenses Act in Superior Court, DC Court of Appeals and U.S. Supreme Court; Advocacy and policy development with DC Superior Court, Metropolitan Police Department and U.S. Attorney's Office concerning treatment of family and domestic violence cases; Development of empirical study and Report on Police Response to Domestic Violence; and extensive media appearances. | 1986 – present |
| Member, Inter-University Consortium on Poverty Law Participated in Meetings and consultations concerning poverty-related issues in legal education and policy; Co-hosted *"Peer Exchange"* at George Washington University National Law Center. | 1993 – 1996 |
| Member, U.S. Attorney's Office Advisory Board on Domestic Violence | 1993 – 1995 |
| Member, DC Metropolitan Police Department Task Force on Domestic Violence | 1990 |

## AWARDS AND FELLOWSHIPS

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| Receipt of $450,000 (for two years) from the U.S. Dept of Justice under the Violence Against Women Act to support Custody and Abuse Project trainings (DV LEAP) | 2011 |
| Sunshine Peace Award from the Sunshine Lady Foundation, Inc. | 2010 |
| Inaugural Sharon Corbitt Award for "Exemplary Legal Services to Victims of Domestic Violence, Sexual Assault and Stalking," ABA Commission on Domestic Violence | 2009 |

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| Washington Area Women's Foundation Leadership Award (to DV LEAP) | 2009 |
| Catalogue for Philanthropy (DV LEAP) | 2007, 2010 |
| Justice for Children Award for Outstanding Leadership | 2007 |
| Mary Byron Foundation Celebrating Solutions Award (to DV LEAP) | 2006 |
| National Equal Justice Library Edgar Cahn Award for article, *Domestic Violence, Character and Social Change in the Welfare Reform Debate* | Spring 2001 |
| Receipt of grants for $200-300,000 from the U.S. Department of Justice under the Violence Against Women Act to support clinical teaching programs | 1999, 2001 |
| Georgetown Women's Law & Public Policy Fellowship Georgetown University Law Center Sex Discrimination Clinic | 1985 - 1986 |
| Public Interest Law Internship Graduate Fellowship Legal Assistance Foundation of Chicago | Summer 1983 |

## SELECTED PUBLICATIONS

*Getting Real about Abuse and Alienation: A Critique of Drozd and Olesen's Decision Tree,,* Journal of Child Custody 7:4, 219 (2010)

*A Historical Perspective on Parental Alienation Syndrome and Parental Alienation,* Journal of Child Custody, 6:3, 232 (Symposium on Domestic Violence)(2009)

*The Misuse of Parental Alienation Syndrome in Custody Suits,* in Stark and Buzawa, Eds., VIOLENCE AGAINST WOMEN IN FAMILIES AND RELATIONSHIPS, Vol. 2,The Family Context (ABC-CLIO)(2009)

*Parental Alienation Syndrome and Parental Alienation: Research Reviews.* Harrisburg, PA (January, 2009): VAWnet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition Against Domestic Violence, http://new.vawnet.org/Assoc_Files_VAWnet/AR_PAS.pdf

*Davis/Hammon, Domestic Violence, and the Supreme Court: The Case for Cautious Optimism,* 105 MICH. L. REV. FIRST IMPRESSIONS 22 (2006), http://students.law.umich.edu/mlr/firstimpressions/vol105/meier.pdf

*A Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions,* 11 A.U. J. Gender, Social Policy & the Law 657 (2003)

*Domestic Violence, Character and Social Change in the Welfare Reform Debate,* Law and Policy 19:2, 205-263 (April 1997)(Symposium on Domestic Violence and Welfare)(Equal Justice Award)

*Domestic Violence and Feminist Jurisprudence: Toward a New Agenda* 4 Boston University Public Interest Law Journal 339 (Symposium 1995)(with Naomi Cahn)

Introduction to Chapter, "Feminist Theory and Legal Norms" in *The Public Nature of Private Violence,* Fineman & Mykitiuk, Eds., (Routledge: 1994)

*Notes From the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice* 21 Hofstra L. Rev. 1295 (Symposium)(Summer 1993)

*The 'Right' to a Disinterested Prosecutor of Criminal Contempt: Unpacking Public and Private Interests,* 70 Washington Law Quarterly 85 (Spring 1992)

Recent Developments, *Double Jeopardy and Enforcement of Civil Protection Orders,* 1 Tex. J. of Women and Law 269 (Spring 1992)(with Naomi Cahn)

*Battered Justice, The Washington Monthly* (May 1987) (cover story), *reprinted in* Social Issues Resources Series, Vol. 3 (1984-1987)

## TRAININGS

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|---|---|
| Invited Presenter, "Alienation and Abuse Allegations in Child Custody Litigation: What Courts Should Know" Ohio Association of Domestic Relations Judges, Columbus, OH | December, 2010 |
| Invited Panelist presenting on "Sexual Abuse Casework and Secondary Trauma: An Occupational Hazard for Professionals" at the DC Superior Court's Ninth Annual Family Court Multidisciplinary Training Institute, Washington, DC | October, 2010 |
| Invited Participant, *Families Matter Symposium,* American Bar Association Section of Family Law and U. Balt. School of Law Center for Families, Children and the Courts, Baltimore, MD | June 24-25, 2010 |
| Competitively Selected Presenter, *Getting Real about Parental Alienation,* at the Association of Family and Conciliation Courts Annual Meeting, Denver, Colorado (with Julie Field) | June, 2010 |
| Invited Full Day Trainer, *The Reality of Custody Disputes: Effective Representation of the Victim of Sexual and Domestic Violence,* for the Kansas Coalition Against Sexual and Domestic Violence, Lawrence, Kansas | December 2009 |
| Invited Presenter, *Domestic Violence and Custody in Family Court,* for the D.C. Volunteer Lawyers' Project, Washington, D.C. | December 2009 |
| Invited Presenter, *Pitfalls in Adjudications of Custody and Abuse,* for the District of Columbia Family Court Conference, Washington, D.C. | October 2009 |
| Competitively Selected Presenters, *Parental Alienation in Family Court and Child Welfare Agencies: Challenges & Strategies,* at the National Summit on the Intersection of Domestic Violence and Child Welfare, Jackson Hole, Wyoming (with Elizabeth Liu) | June 2009 |
| Invited Presenter, *Defining Domestic Violence: The Potential and Pitfalls of the New Paradigms,* for Jewish Women International's Fourth International Conference on Domestic Abuse, Baltimore, MD | April 2009 |
| Invited Trainer, *Custody Evaluations in Abuse Cases: Problems and Responses,* for the Florida Coalition Against Domestic Violence, Tampa, FL | January 2009 |
| Invited Presenter, *Vicarious Traumatization: What it is and What Can Be Done About it,* for the Children's Law Center, Washington, DC | November 2008 |
| Invited Presenter, *Parental Alienation: Challenges and Strategies,* at the Battered Women's Justice Project 12th Annual Coalition Advocates and Attorneys' Network Meeting, Washington, DC | September 2008 |
| Invited Presenter, *Abuse Evaluations in Civil/Family Courts,* for the National Children's Bench Book Project: Symposium on Improving Judicial Responses to Child Sexual Abuse, , Washington, DC | September 2008 |
| Invited Presenter, *Can Batterers Still be Prosecuted after the Giles Decision*? Jewish Women International TeleConference | June 2008 |
| Invited Presenter, *Parental Alienation Syndrome or Abuse? Getting Past the Rhetoric,* for the East Central Multidisciplinary Team, Manchester, CT | January 2008 |
| Invited Presenter, *Challenges of Child Protection in Custody Courts,* Domestic Violence Consultant Initiative for Connecticut Department of Children and Families, Hartford, CT | January 2008 |

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| Co-Trainer, *Evidence in Domestic Violence Litigation*, ABA Commission on Domestic Violence Continuing Legal Education Teleconference Series | March 2006 and February 2008 |
| Organizer and Co-Host, *The Art of the Appeal – Critical Tools for Protecting Children in Custody Cases*, Training Sponsored by DV LEAP and Justice for Children, Washington, DC | Jun. 2007 |
| Presenter, *Statutory Issues in Domestic Violence/Custody Cases* for The Art of the Appeal – Critical Tools for Protecting Children in Custody Cases, Training Sponsored by DV LEAP and Justice for Children, Washington, DC | June, 2007 |
| Presenter, *Introduction to Parental Alienation Syndrome – Critiques and Legal Challenges*, for The Art of the Appeal – Critical Tools for Protecting Children in Custody Cases, Training Sponsored by DV LEAP and Justice for Children, Washington, DC | June, 2007 |
| Presenter, *Parental Alienation Syndrome*, and Discussion Leader, "Breaking the Silence: Children's Stories," Florida Coalition Against Domestic Violence Clearinghouse Lawyer Training, Tampa, FL | February 2006 |
| Presenter and Workshop Teacher, *Parental Alienation Syndrome or Abuse? The Battle for Truth*, and *Cross-Examination of Experts*, for the Muskie School of Public Service Child Custody and Domestic Violence Institute, San Antonio, TX | November 2005 |
| Invited Presenter, *Post-Trial Remedies and Appeal*, American Bar Association Commission on Domestic Violence, National Civil Law Institute, Chicago, IL | July 2005 |
| Litigation Coach, American Bar Association Commission on Domestic Violence, National Civil Law Institute, Chicago, IL | July 2005 |
| Trainer, *Thinking Appeal*, presented at: | |
| ➢ American Bar Association Commission on Domestic Violence: Teleconference on Litigation Tips in Domestic Violence Cases | May 2004 |
| ➢ DC Bar Public Service Activities Corporation Domestic Violence Training for Pro Bono Attorneys | October 2003 thru 2009 |
| Invited Presenter, New Jersey Judicial Training Conference on Domestic Violence, *Vicarious Traumatization: What it is and What can be Done About it*, Easton, NJ | April, 2004 |
| Invited Expert Presenter, American Bar Association Asia Law Initiative U.S.-China Legal Aid Training Program, *Domestic Violence and the Law; Clinical Legal Education*, Xi'an, China. | January 2004 |
| Presenter, *A Litigation Tactics and Strategies in CPO Litigation* at DC Bar Public Service Activities Corporation, CLE Course on new Domestic Violence Rules, Washington, DC | March 2001 |
| Trainer, *Dynamics of Domestic Violence; Counseling and Safety Planning for Battered Women*, DC Bar Public Service Activities Corporation, Domestic Violence Training, Washington, DC | October 2000 |
| Invited Panel Presentation, *Expert Witnesses in Domestic Violence Cases*, at A Civil Institute co-sponsored by ABA Commission on Domestic Violence and U.S. Department of Justice's Violence Against Women Office, Washington, DC | May 2000 |
| Invited Two-day Facilitator for ongoing Breakout Sessions, DC Domestic Violence Training Conference, Co-sponsored by the U.S. Department of Justice, DC Coalition Against Domestic Violence, DC Superior Court Domestic Violence Intake Center et al, Washington, DC | May 1999 |

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| Training, National Association of Public Interest Law, *Empowering Battered Women Clients*, Doubletree Inn, Washington, DC | April 1999 |
| Presenter, Workshop, *Helping Clients Overcome Domestic Violence*, Legal Services of New Jersey Annual Conference, Eatontown, NJ | November 1998 |
| Presenter, Workshop on Domestic Violence, St. Francis Center 1998 Illness, Loss & Grief Conference (for grief counselors) | October 1998 |
| Trainer, Nuts & Bolts Seminar on "Representing Children in Domestic Violence Cases" DC Bar PSAC et al., (training for Guardians Ad Litem), Washington, DC | June 1998 |
| Trainer, *Domestic Violence, Work and Welfare*, for DC Coalition Against Domestic Violence Victim Advocacy Project, Washington, DC | May 1997 |
| Presenter, Child Support Enforcement and Domestic Violence, by invitation of U.S. Department of Health and Human Services at the A New Responsibilities Forum, Washington, DC | October 1996 |
| Presenter, TeleConference Forum on Domestic Violence and Welfare, by invitation of U.S. Department of Health and Human Services, Washington, DC | October 1996 |
| Trainer, *Interviewing a Victim of Domestic Violence*, DC Bar Public Service Activities Corporation, Domestic Violence Training, Washington, DC | October 1996 |
| Trainer, *Contempt Enforcement of Civil Protection Orders*, DC Bar Public Service Activities Corporation, Domestic Violence Training, Washington, DC | October 1995 and October 1996 |
| Trainer, ABA Section on Litigation, Pro Bono Committee, Legal Services Advocacy Program, Catholic University Law School, Washington, DC | June 1995 |
| Trainer, *Counseling and Safety Planning*, DC Bar Public Service Activities Corporation, Domestic Violence Training, Washington, DC | October 1994 |
| Trainer, *Civil Protection Orders in DC*, for Emergency Domestic Relations Project Pro Bono Training, Crowell & Moring, Washington, DC | July 1994 |
| Trainer, *Criminal Prosecution of Domestic Violence*, for DC Coalition Against Domestic Violence Criminal Justice Advocacy Project, Washington, DC | 1991 - 1993 |
| Trainer, *Police Response to Domestic Violence*, for DC Coalition Against Domestic Violence and DC Metropolitan Police Department, Washington, DC | 1992 |

## SPEECHES AND PRESENTATIONS

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| Invited Speaker, Debated leading advocate for criminal defendants' confrontation rights, Jeffery Fisher, on panel, "Confrontation Rights in Domestic Violence Cases" for the National Association of Women Judges Annual Conference, San Francisco, CA | October, 2010 |
| Invited Keynote Presenter, *"Domestic Violence in Family Court: Where have we been and where should we go?";* and workshop presenter, *"Custody Evaluations" and "Thinking Appeal;"* 2nd Annual Seattle University Symposium on Domestic Violence | September, 2010 |
| *The Domestic Violence Legal Empowerment and Appeals Project (DV LEAP),* at the National Summit to End Domestic Violence hosted by The Mary Byron Project | November 2009 |
| *Keynote Domestic Violence Presentation* for the State Department International Visitor Leadership Program, S. African delegation | September 2009 |

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| *Keynote Domestic Violence Presentation* for the Delegation from Hungary, Department of State International Visitor Leadership Program hosted by the Meridian International Center, Washington, DC | March 2009 |
| Invited Speaker, Department of State International Visitor Leadership Program: *The United States Experience in Combating Domestic Violence, A Project for Ukraine,* hosted by the Meridian International Center, Washington, DC | December 2008 |
| Invited Panelist, *Partnering to Prevent Domestic Abuse – Panel Discussion: What you may not Know*, sponsored by the World Bank, International Monetary Fund, and Inter-American Development Bank, Washington, DC | October 2008 |
| Invited Keynote Panelist, *Violence Against Women in the Supreme Court* for the Ortner-Unity Family Violence Center & the University of Pennsylvania Law School, Philadelphia, PA | October 2008 |
| Invited Speaker, Department of State International Visitor Leadership Program: *Supporting Victims of Gender Violence, a Project for South Africa,* hosted by the Meridian International Center, Washington, DC | July 2008 |
| Invited Speaker, *Models of Domestic Violence,* for panel on *Laying the Foundation for Theoretical Development in Elder Mistreatment,* National Institutes of Justice Workshop on Elder Mistreatment, Washington, DC | February 2008 |
| Symposium Organizer and Host, *Custody and Abuse Cases in the Supreme Court,* George Washington University Law School, Washington, DC | December 2007 |
| Presenter, *Sociohistorical Perspective and Legal Strategies for Change,* for Symposium on Custody and Abuse Cases in the Supreme Court, George Washington University Law School, Washington, DC | December 2007 |
| Panelist, *Domestic Violence in the Supreme Court,* George Washington University Law School, Orientation, Washington, DC | August 2005<br>August 2007 |
| Invited Panelist, *Has the Debate Between Feminist and Non-Feminist Researchers Been Resolved? Michael Johnson's Two (or Four) Types of Domestic Violence,* for panel on Empirical Research on Domestic Violence, American Association of Law Schools Workshop on Family Law 2007, Vancouver, Canada | June 2007 |
| Invited Panelist, Child Custody Plenary Panel, 3rd National Conference of Jewish Women International Conference on Domestic Abuse in the Jewish Community, Baltimore, MD | March 2007 |
| Invited Panelist, Response to Keynote, *Battered Mothers & Witnessing Children: Failure to Protect and Conceptions of State Accountability,* Denver University Law School, Denver, CO | March 2007 |
| Invited Keynote Speaker, *Getting Real about Abuse and Alienation,* for the Fourth Battered Mothers' Custody Conference, Albany, NY | January 2007 |
| Guest Speaker, "DV LEAP and the *Hammon/Davis* cases," Georgetown University Law Center Domestic Violence Clinic, Washington, DC | April 2006 |
| Presenter, *Domestic Violence Appeals,* on panel on *Poverty Law in the DC Court of Appeals: Important Recent Developments,* DC Bar and Judicial Conference, Washington, DC | March 2006 |

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| Presenter and Organizer of Panel, *The Confrontation Clause vs. Effective Domestic Violence Prosecution? A Panel Discussion of the Pending Hammon/Davis Cases Before the Supreme Court,* George Washington University Law School, Washington, DC | March 2006 |
| Invited Keynote Speaker, *City of Castle Rock v. Gonzales Conference: Some are Guilty-All are Accountable*, University of Denver Sturm College of Law, Denver, CO | March 2006 |
| Presenter, *The Confrontation Clause and Domestic Violence Prosecution,* DC Bar Family Law Section, Washington, DC | February, 2006 |
| Panelist, *Breaking the Silence: Children's Voices,* at the 3rd Annual Battered Mothers' Custody Conference, Siena, NY. | January 2006 |
| Invited Keynote Speaker, *City of Castle Rock v. Gonzales*, 22nd Annual Domestic Violence Awareness Luncheon, Safe Nest, Las Vegas, NV. | October, 2005 |
| Invited Speaker, *City of Castle Rock v. Gonzales,* Zonta Club of Washington, DC Annual Dinner, Washington, DC | Sept. 2005 |
| Invited Presenter, *City of Castle Rock v. Gonzales,* National Network to End Domestic Violence Annual Conference and Lobby Day, Washington, DC | June 2005 |
| Invited Presenter, *City of Castle Rock v. Gonzales*, Greenbook Initiative 2005 All-Sites Conference, Colorado Springs, CO. | June, 2005 |
| Guest Speaker, *City of Castle Rock v. Gonzales*" Georgetown University Law Center Domestic Violence Clinic, Washington, DC | April 2005 |
| Presenter and Organizer of Panel, *Litigating the First Domestic Violence Civil Rights Case in the U.S. Supreme Court*, George Washington University Law School, Washington, DC | March 2005 |
| Invited Presenter, *Domestic Violence Custody Cases in the Unified Family Court Context,* Florida Unified Family Courts Conference, Orlando, FL | October 2004 |
| Invited Presenter, *The Intersection of Custody Battles and Criminal Prosecution of Domestic Violence, or When is a Woman Alleging Abuse not Credible?* for the National Association of Attorney Generals' Annual National Conference, *Emerging Issues: Violence Against Women*, Washington, DC | June 2004 |
| *Co-Occurrence of Domestic Violence and Child Maltreatment,* 11th National ABA-APA Conference on Children and the Law, Washington, DC | June, 2004 |
| Presentation, *The Domestic Violence Legal Empowerment and Appeals Project,* DC Bar PART Program Meeting, Washington, DC | November,2003 |
| Panel Presentation, *The Domestic Violence Legal Empowerment and Appeals Project,* Washington Council of Lawyers Brown Bag Panel on Domestic Violence Pro Bono Opportunities, Washington, DC | September 2003 |
| Panel Presentation, *Interdisciplinary Approaches to Domestic Violence,* Family Violence Prevention Fund Annual Conference on Domestic Violence and Health, San Francisco, CA | October 2000 |
| Invited Panel Presentation, *The Domestic Violence Emergency Department Clinic,* ABA Commission on Domestic Violence Conference on *Educating to End Domestic Violence,* George Washington University Law School, Washington, DC | September 1999 |

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| Facilitator, *Domestic Violence Clinics,* Small Group Workshop, ABA Commission on Domestic Violence Conference on Educating to End Domestic Violence, George Washington University Law School, Washington, DC | September 1999 |
| Panel Presentation, *A Psychological Perspective: Sources of Conflict, Feminism and Legal Theory* Workshop on An Uncomfortable Conversations, Ithaca, NY | April 1999 |
| Moderator, Feminism and Legal Theory Workshop on *Law and the Construction of Identity,* New York, NY | November 1998 |
| Presenter, *Domestic Violence, Character, and Social Change,* Feminism and Legal Theory Workshop, New York, NY | November 1998 |
| Guest Speaker, *Domestic Violence in DC,* Family Violence Course, George Washington University Department of Sociology, Washington, DC | October 1998 |
| Panel Presentation, *The District of Columbia Unified Domestic Violence Court,* American Bar Association Summit on Unified Family Courts, Philadelphia, PA | May 1998 |
| Keynote Speaker, *Professional Challenges: Advanced Perspectives on the Psychological and Economic Issues Involved in Advocating for Domestic Violence Victims,* Training Conference on Special Issues in Representing Victims of Domestic Violence, Rutgers-Camden School of Law, Camden, NJ | April 1997 |
| *Welfare Reform and Domestic Violence,* DC Bar Mid-Winter Convention, Washington, DC | February 1997 |
| *Changing Perspectives on Domestic Violence as a Crime,* Joint Program of Criminal Law and Family/Juvenile Law Sections on "Criminal Law and the Family," Association of American Law Schools (AALS) Annual Meeting, Washington, DC | January 1997 |
| *Teaching about Women and Poverty in the Clinic,* 12th Annual Women and the Law Program of the Washington College of Law at the 1997 AALS Annual Meeting, Washington, DC | January 1997 |
| Small Group Facilitator, Joint Program of Women in Legal Education, Poverty Law and Clinical Law Sections on *Women and Poverty: The State, Care Giving, Work and Violence,* 1997 AALS Annual Meeting, Washington, DC | January 1997 |
| Presenter, Presidential Showcase Session, *Domestic Violence and Child Support Collection,* Eastern Regional Interstate Child Support Association Training Conference, Buffalo, NY | May 1997 |
| *Domestic Violence, Character and Social Change in the Welfare Reform Debate,* Mid-Atlantic Clinical Theory and Practice Workshop, Catholic University School of Law, Washington, DC | December 1996 |
| *An Interdisciplinary Domestic Violence Clinic* (with Mary Ann Dutton, PhD), ABA Commission on Domestic Violence Meeting on Domestic Violence Curriculum Project, Washington, DC | December 1996 |
| Panel Presentation, *A Feminist Perspective on the Simpson Case,* George Washington University Law School, Washington, DC | October 1995 |
| *Welfare and Domestic Violence,* by invitation of the U.S. Department of Health and Human Services, at Conference on A Changing the Culture, Washington, DC | September 1996 |
| *Legal Remedies for Domestic Violence,* Asian Women's Self-Help Association, MD | April 1996 |

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| *Domestic Violence and the Law*, American University, Family Violence Course, Washington, DC | February 1996 |
| *History of Legal Developments concerning Domestic Violence in the United States*, before the International Association of Women Judges, Washington, DC | July 1995 |
| Moderator, Panel on *The Problem of Violence and Poverty*, NOW Legal Defense and Education Fund, "Leadership Summit," Washington, DC | April 1995 |
| Guest Speaker, *Domestic Violence and the Law*, Mount Vernon College course on "Cultures in Crisis, Washington, DC | April 1995 |
| Work-in-Progress, *Criminal Law and the Family*, Women Law Professors of Washington, Baltimore, Maryland Area Spring Symposium, Baltimore, MD. | April 1995 |
| *Domestic Violence*, National Youth Leadership Forum, Washington, DC | March 1995 |
| Commentator on Papers by Peter Margulies and Ann Shalleck at Symposium on Professional Responsibility, Community and Pluralism, George Washington University National Law Center, Washington, DC | February 1995 |
| Co-Facilitator, *Social Change Lawyering*, Workshop at Alliance for Justice Symposium, Washington, DC | October 1994 |
| Co-presenter, *Social Change Lawyering in the Law School Clinic*, Mid-Atlantic Clinical Theory Workshop, Catholic University Law School, Washington, DC | September 1994 |
| Reviewer and Contributor, DC Practice Manual, Third Edition, Chapter on *Domestic Relations*, Washington, DC | 1993-94 |
| Co-teacher and Presenter, *Counter-transference in Domestic Violence Work* in Small Group on Domestic Violence at American Association of Law Schools Clinical Section Workshop, Newport Beach, CA | June 1994 |
| Co-host of National Peer Exchange on Domestic Violence and Feminist Jurisprudence at George Washington University National Law Center, Washington, DC | April, 1994 |
| *An Interdisciplinary Approach to Teaching a Domestic Violence Clinic* (with Mary Ann Dutton, PhD), at Peer Exchange on Domestic Violence and Feminist Juris-prudence at George Washington University National Law Center, Washington, DC | April, 1994 |
| *The Connection Between Spouse Abuse and Child Abuse: A Study of System Failure*, before the Family Law Section, Annual Meeting of American Association of Law Schools, Orlando, FL. | January, 1994 |
| Co-teacher, *Evaluation in the Law School Clinic*, at the American Association of Law Schools Annual Conference Clinical Section Meeting, San Francisco, CA | January 1993 |
| Panelist in Workshop on Domestic Violence, Legal Services of New Jersey Annual Conference, New Brunswick, NJ | November 1992 |
| Presentation and Publication, "Defending Battered Mothers: Some Thoughts on the Child Factor in Domestic Violence," ABA National Institute Section on Criminal Justice, *Defending Battered Women in Criminal Cases*, Baltimore, MD | September 1992 |
| Commentator, Panel on *Feminist Theory and Legal Norms* at Domestic Violence Symposium, Columbia University School of Law, New York, NY | April 1992 |
| Paper, *The Relevance of Domestic Violence in Establishing Jurisdiction over Child Custody*, commissioned by the National Council of Juvenile and Family Court Judges and the National Woman Abuse Prevention Center, Washington, DC | December 1991 |

## LEGISLATIVE TESTIMONY

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| Invited Congressional Briefing on *Protecting Children in Custody and Abuse Litigation,* with Leadership Council on Interpersonal Violence and Child Abuse and other groups, for Majority Leader Steny Hoyer and other Congressional staff. | 23 March 2009 |
| Testimony before the D.C. Council on the *Omnibus Anti-Crime Amendment Act of 2009* and *Public Safety & Justice Amendments Act of 2009*, Washington, DC | 18 March 2009 |
| Testimony before DC Council, on the *Safe and Stable Homes for Children and Youth Act of 2007,* Bill 17-4001 for the Judiciary Committee Roundtable, Washington, DC | 24 April 2007 |
| Testimony before DC Council, *2006 Public Oversight Hearing on Funding for Domestic Violence Service,* Washington, DC | May 2006 |
| Testimony before DC Council on Phase II welfare reform legislation, A Self-Sufficiency Promotion Emergency Amendment Act of 1998, Washington, DC | April 1998 |
| Testimony before DC Task Forces on Welfare Reform Plan under Personal Responsibility and Work Opportunity Act of 1996, Washington, DC | December 1996 |
| Testimony before DC Council on "Joint Custody of Children Amendment Act of 1995," Washington, DC | May 1995 |
| Testimony (written) before U.S. Senate Judiciary Committee in Opposition to the Nomination of Alexander Williams to the U.S. District Court for the Eastern District of Maryland. | July 1994 |
| Testimony before DC Council on "Joint Custody of Children Amendment Act of 1993," Washington, DC | April 1994 |
| Testimony before DC Council on "Evidence of Spouse Abuse in Child Custody Cases Act of 1993" and "Evidence of Battered Spouse Syndrome Act of 1993," Washington, DC | May 1993 |
| Testimony before DC Council on "Anti-Stalking Amendment Act of 1993," Washington, DC | March 1993 |
| Testimony before DC Council on *Prevention of Domestic Violence Amendment Act of 1990,* Washington, DC | 1990 |

## PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS

American Association of Law Schools Clinical Law, Women and the Law, and Family Law Sections
American Bar Association, Family Law Section
Washington Council of Lawyers
United States Supreme Court
U.S. District Court for the District of Columbia
District of Columbia Bar
Illinois Bar (Inactive)

## MEDIA

Extensive media interviews with radio, newspapers and television news and documentaries.

**REFERENCES AVAILABLE UPON REQUEST**

## § 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.