

**Substantive Law Workgroup**  
Steve Wolfson, Chairperson

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

**DOMESTIC RELATIONS COMMITTEE**

Agenda

**July 29, 2011**

11:30 – 1:00 p.m.

Arizona State Courts Building  
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 05-13-11 minutes  
\_\_\_\_\_ Approval of 06-24-11 minutes  
\_\_\_\_\_ Approval of 07-15-11 minutes

**2. Review of comments received** .....*Chairmen*

- Bill Fabricius comments
- Ellen Seaborne’s comments
- Comments from CIDVIC

**3. Review proposed custody rewrite** ..... *Chairmen*

- Discuss § 25-441 coercive control provision and impact with ARS § 25-404; *mandatory preliminary inquiry; special circumstances* (Alongi)
- **Discuss proposed changes to coercive control – Jenny Gadow**
- Discuss proposed language changes to § 25-422 *Definitions; parental decision-making* (Berkshire)
- **Discuss proposed changes – Danny Cartagena**

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

**4. Call to the Public**.....*Chairmen*

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

Next Meeting:

August 19, 2011

Arizona State Courts Building, 1501 W. Washington, Conference Room - TBD

Please contact Kathy Sekardi at (602) 452-3253, with any questions concerning this Agenda. Persons with a disability may request reasonable accommodations by contacting Tama Reily at (602) 452-3637. Requests should be made as early as possible to allow time to arrange the accommodation.

# *Substantive Law/Court Procedures Workgroup*

## *Minutes*

<b>Date:</b> July 15, 2011	<b>Time:</b> 12:00 PM – 1:30 PM	<b>Location:</b> Conference Room 345 B
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**Minute Taker:** Tama Reily

**Members Attending:**

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

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

**Matters Considered:**

**I. Welcome and Announcements**

The July 15, 2011 meeting of the Substantive Law / Court Procedures Workgroup was called to order at 10:13. Members and guests were welcomed.

**II. Approval of Minutes**

The minutes of the Substantive Law / Court Procedures Workgroup meeting April 29, 2011 were presented for approval.

**Motion:** To approve the minutes from the Substantive Law / Court Procedures Workgroup April 29, 2011 meeting as presented. Motion seconded. Motion approved unanimously.

**III. Future Meeting Dates**

Mr. Wolfson addressed the lack of members' responses to staff RSVP requests, emphasizing the importance of determining a quorum prior to going forward with meetings. Additionally, as attendance has been weak over the past several meetings, he discussed the importance of attendance. He noted that if necessary, meeting dates could be changed in order to elicit improved attendance.

**IV. Review of Comments Received**

Members' responses to comments submitted by Bill Fabricius and Bob Reuss were discussed. Mr. Wolfson stated that the concerns of Mr. Reuss were valid and the workgroup would contemplate them as each respective section was addressed. There was mention of developing a "frequently asked questions" (FAQ) form regarding coercive control. Grace Hawkins pointed out that she has received some comments from attorneys and judges in her area and the main concerns were the complexity and length of the bill.

**VI. Review Proposed Custody Rewrite**

Tom Alongi presented his proposed changes to A.R.S. § 25-471; *Sanctions for Litigation Misconduct*, and offered his reasoning for the suggested changes. After discussion, a motion was made to approve the revised language.

**Motion:** To approve revisions to A.R.S. § 25-471(A) as submitted. Motion seconded. Motion approved unanimously.

The workgroup moved on to review Mr. Alongi's suggested revisions to A.R.S. § 25-441(D); *Coercive Control*. Mr. Alongi specified his rationale for the ten proposed items the court should consider with regard to the existence of coercive control. Lengthy discussion ensued on the matter of inclusion of all ten proposed items. A consensus was not obtained at the close of discussion.

Mr. Wolfson mentioned the possibility of modifying the proposed language to alleviate a potential burden to the courts by inquiring of an issue that hasn't already been raised by a party. He therefore recommended that the workgroup should start the next meeting by discussing A.R.S. § 25-404; *Mandatory preliminary inquiry; special circumstances*, to consider a slight change of language in A.R.S. § 25-441(D).

While concluding the meeting, Mr. Wolfson reiterated the importance of members responding to committee staff's requests regarding expected attendance. He again stressed that attendance is paramount to accomplishing the workgroup's task. He also noted that repeated absences could be interpreted as a lack of interest in participating on the workgroup.

**VII. Call to the Public**

No comments were submitted by the general public.  
Meeting adjourned at 1:32.

**Next Meeting**

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

# *Substantive Law/Court Procedures Workgroup*

## *Minutes*

<b>Date:</b> June 24, 2011	<b>Time:</b> 12:00 PM – 1:30 PM	<b>Location:</b> Conference Room 119 A/B
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**Minute Taker:** Tama Reily

**Members Attending:**

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

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

**Guests:** Joi Davenport, Trey Harris

**Matters Considered:**

**I. Welcome and Announcements**

The June 24, 2011 meeting of the Substantive Law / Court Procedures Workgroup was called to order by Steve Wolfson, co-chair, at 12:07 p.m. Members and guests were welcomed.

**II. Approval of Minutes**

The minutes were not presented for approval at this time due to lack of a quorum.

**III. Review of Comments Received**

Members discussed comments received from Superior Court Judge Randy Warner regarding some of the draft amendments to the custody statute. Judge Hyatt previously stated that she would be circulating Judge Warner's comments throughout the bench for additional feedback from superior court judges.

**IV. Review of Proposed Custody Rewrite**

Tom Alongi reviewed his proposed changes to A.R.S. § 25-471; *Sanctions for Misconduct*, and detailed the basis for his suggestions. There was lengthy discussion regarding the establishment of false allegations and judicial discretion when persons of impaired mental status might make false allegations. After considerable debate, Mr. Alongi agreed to continue modifying the section, taking into account the comments members offered today.

**VI. Call to the Public**

Member of the public, Joi Davenport, commented that children should not be present at the workgroup meetings to avoid exposing them to adult topics of discussion. She also expressed concern that the workgroup is considering reducing the coercive control language in the custody statute. She stated it is imperative to include coercive control in a thorough manner because the courts need to be educated about the issue if it is to be recognized by the family court judiciary. Finally, she argued that abuse and coercive tactics continue throughout the divorce process and its effects remain long after the divorce is finalized.

Meeting adjourned at 1:37 p.m.

**Next Meeting**

July 15, 2011

12:00 p.m. – 1:30 p.m.

Arizona State Courts Building

1501 W. Washington, Conference Room 345 B

# *Substantive Law/Court Procedures Workgroup*

## *Minutes*

<b>Date:</b> May 13, 2011	<b>Time:</b> 12:00 PM – 1:30 PM	<b>Location:</b> Conference Room 230
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**Minute Taker:** Tama Reily

**Members Attending:**

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

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

**Guests:** Professor Joan S. Meier, Terry Decker, Michael Espinoza, Joi Davenport, Timothy Frank, Brent Miller, Karen Duckworth, Jarrett Williams.

**Matters Considered:**

**I. Welcome and Announcements**

The May 13, 2011 meeting of the Substantive Law / Court Procedures Workgroup was called to order by Steve Wolfson, co-chair, at 12:10 p.m. Members and guests were welcomed.

**II. Approval of Minutes**

The minutes of the Substantive Law / Court Procedures Workgroup April 8, 2011, meeting was presented for approval.

**Motion:** To approve the minutes from the Substantive Law / Court Procedures Workgroup April 8, 2011 meeting as presented. Motion seconded. Motion approved unanimously.

**III. Evaluating Domestic Violence Allegations**

Professor Joan S. Meier, George Washington University Law School, presented information to the workgroup regarding how an analysis of coercive control is helpful to evaluate domestic violence allegations. Professor Meier revealed that research trends put coercive control in the forefront, stating the power-control dynamic is considered to be dangerous and puts children at high-risk. Professor Meier stated there is enormous resistance from the courts to acknowledge coercive control in domestic violence cases. She noted that “intimate terrorism” (control and violence) is mostly perpetrated by males against females and is highly correlated to risk to children, whereas situational violence is less indicative of risk to children. She cited studies that assessed validity of abuse allegations and noted that findings indicate the vast majority of abuse allegations are made in good faith. In addition, assessments of validity found intentionally false allegations were more often made by noncustodial fathers.

**IV. Review of General Public Comments Received**

There were no workgroup member responses to the general public comments received at the April 29, 2011, meeting. The workgroup discussed a proposed language change to A.R.S. § 25-103 submitted by Laura Sabin Cabanillas. The proposed change would replace the term “strong” with “healthy” in section A(1)(2). Although

there was some agreement with the suggested change, consensus was that with so many revisions already being undertaken, it would be preferable to leave this section unchanged.

**VI. Discuss June 3, 2011, Domestic Relations Committee Meeting**

Mr. Wolfson put forth the idea of extending the timeframe for the workgroup to complete its review of the custody statute. He submitted that the draft in its current form not be presented to the DRC at its June 3, 2011, meeting, but rather, the workgroup request more time to work on the proposal. After some discussion, a motion was made to that effect.

**Motion:** To continue working on the custody statute revisions beyond the June 3, 2011 DRC meeting, as a complete work product will not be finished by June. Motion seconded. Motion passed unanimously.

**Motion:** To amend the above motion to state that the workgroup provide an interim report of the current draft of the custody statute at the June 3, 2011 DRC meeting for purposes of soliciting feedback from the committee. Motion seconded. Motion passed unanimously.

**VII. Review Proposed Custody Rewrite**

Item tabled.

**VIII. Call to the Public**

Several members of the public, including Terry Decker, Brent Miller, Karen Duckworth, Michael Espinoza, and Joi Davenport, addressed the workgroup. Their concerns included the following:

- Domestic violence and coercive control issues do not belong in the custody statute. They need to be managed in the criminal court.
- The statute needs a lot more work. It should not be rushed.
- Workgroup members are not true stakeholders, they are interest-holders, and as such there is a conflict of interest. In order to be effective, the workgroup needs more representation of true stakeholders.
- Coercive control needs to be in the custody statute because the strategies and tactics used to control a spouse or partner, such as threats of suicide, withholding money, isolating from family members, are not matters handled in the criminal court.

In closing, Mr. Wolfson informed members that additional meeting dates spanning the summer months will be forthcoming. The workgroup will be notified of potential dates as they are scheduled.

Meeting adjourned at 1:35 p.m.

**Next Meeting**  
June 24, 2011  
12:00 p.m. – 1:30 p.m.  
Arizona State Courts Building  
1501 W. Washington  
Conference Room 119 A/B

**§ 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 public activities, or the victim’s interaction with family or social acquaintances; or

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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 legal or 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.”

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

1 ARTICLE 2.  
2 INTRODUCTION & AND PRELIMINARY REQUIREMENTS

3  
4 25-420. Public policy

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

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

12  
13 AD HOC CUSTODY WORKGROUP NOTE

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

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

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

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

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

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

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

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

| Jenny Gadow – draft re: special circumstances and false allegations

| Title 25 – Custody Rewrite

| Prepared for 04.08.11 Meeting

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

3  
4 AD HOC CUSTODY WORKGROUP NOTE

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

9  
10 SUBSTANTIVE LAW/COURT PROCEDURES WORKGROUP NOTE

11 Pending.

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

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

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

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

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

20 ~~— (c) does not primarily or exclusively focus on anger or stress~~

21 ~~management, impulse control, conflict resolution or communication skills;~~

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

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

28 ~~2. “Child abuse” means any of the following acts where the relationship~~  
29 ~~between the offender and victim qualifies under A.R.S. § ARIZONA REVISED~~

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

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

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

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

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

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

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

44 ~~4. “Deferred prosecution” and “diversion” means any program offered~~  
45 ~~by a criminal court or government agency through which an alleged offender~~  
46 ~~avoids criminal prosecution by agreeing to pay a fine, participate in counseling,~~

1 | Jenny Gadow – draft re: special circumstances and false allegations

2 | Title 25 – Custody Rewrite

3 | Prepared for 04.08.11 Meeting

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1 ~~or perform other remedial tasks in exchange for dismissal of one or more~~  
2 ~~pending charges or a promise by the state not to proceed with a complaint or~~  
3 ~~indictment.~~

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

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

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

16 § 3. "Legal parent" means a biological or adoptive parent whose  
17 parental rights have not been terminated.

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

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

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

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

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

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

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

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

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

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

13  
14 AD HOC CUSTODY WORKGROUP NOTE

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

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

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

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

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

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

35  
36 SL/CP WORKGROUP NOTE

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

39  
40 **25-423. Mandatory Preliminary Inquiry: Special Circumstances** [New]  
41 Before evaluating the best interests of the child and deciding parental  
42 decision-making and parenting time, the court shall first determine whether  
43 special circumstances exist under SECTIONS §§ 25-441 through 25-445. If so, the  
44 court shall enter parental decision-making and parenting time orders in  
45 accordance with those statutes. If not, the court shall proceed directly to the  
46 general provisions of §§ SECTIONS 25-430 through 25-432 to devise a parenting  
47 plan that allocates parental decision-making and parenting time consistent  
48 with the child's best interests.

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

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AD HOC CUSTODY WORKGROUP NOTE

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

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

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

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

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

- A. Consistent with the child’s physical and emotional well-being, the court shall adopt a parenting plan that provides for both parents to share parental decision-making concerning their child and maximizes their respective parenting time. The court shall not prefer one parent over the other due to gender.
- B. If a child’s parents cannot agree to a plan for parental decision-making or parenting time, each shall submit to the court a detailed, proposed parenting plan.
- C. Parenting plans shall include at least the following:
  - 1. A designation of the parental decision-making plan as either shared, final or sole, as defined in ~~A.R.S. §~~ SECTION 25-422(9).
  - 2. Each parent's rights and responsibilities for making decisions concerning the child in areas such as education, health care, religion, extracurricular activities and personal care.
  - 3. A plan for communicating with each other about the child, including methods and frequency.
  - 4. A detailed parenting time schedule, including holidays and school vacations.
  - 5. A plan for child exchanges, including location and responsibility for transportation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 ARTICLE 4.  
11 SPECIAL CIRCUMSTANCES

12  
13 25-XXX. DEFINITIONS

14 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

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

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

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

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

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

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

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

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

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

23 ~~11~~ 9. "Special circumstance" refers to conduct requiring application of  
24 one or more mandatory rules ~~described in A.R.S. §§~~ PURSUANT TO SECTIONS 25-  
25 440 through 446.

26  
27 SL/CP WORKGROUP NOTE

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

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

34 [Former A.R.S. § 25-403.03(B)]

35 A.

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

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

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

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AD HOC CUSTODY WORKGROUP NOTE

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

25-441. Child Abuse

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

25-442. Dangerous Crimes Against Children [Former A.R.S. § 25-403.05]

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

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

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

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

25-443. False Allegations

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

25-444. Intimate Partner Violence

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

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1  
2 THIS SECTION SHOULD BE COMBINED WITH THE FOLLOWING SECTION TO  
3 ADDRESS PARENTAL DECISION-MAKING AND PARENTING TIME TO MAKE  
4 CONSISTENT WITH ABOVE SECTIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Attempted or threatened suicide;¶

4. Injured or threatened to injure household pets;¶

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

6. Threatened to conceal or remove children from the victim's care, or atten... [1]

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1 AD HOC CUSTODY WORKGROUP NOTE

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

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

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

32 In cases of so-called “mutual combat,” the amendment also requires the court to evaluate what  
33 motivated the violence, the force applied, and resulting injuries – rather than dismantling the  
34 presumption from the start. See A.R.S. § 25-403.03(D) (“presumption does not apply if both parents have  
35 committed an act of domestic violence”). The bill would also include the failure to make obligatory, IPV-  
36 related, Rule 49 disclosure as an explicit factor for deciding whether a proven offender had overcome the  
37 presumption against an award of parental decision-making.  
38  
39

40 **25-442. THIS SECTION SHOULD BE COMBINED WITH ABOVE SECTION**  
41 **Intimate Partner Violence.**

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

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1 due consideration to whether parenting time with that parent under the  
2 existing circumstances may:

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

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

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

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

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

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

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

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

32 6. Prohibit overnight parenting time.

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

35 8. Order that the address of the child and other parent remain  
36 confidential.

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

38 10. Suspend parenting time for a prescribed period.

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

41 12. Impose any other condition that the court determines is necessary to  
42 protect the child, the other parent, and any other family or household  
43 member.

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45 WORKGROUP NOTE

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

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

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

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

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

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

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

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

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

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

30  
31 25-446. Violent & AND Serial Felons [Former A.R.S. § 25-403.05]

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

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

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

40 B. If a parent is criminally convicted of first- or second-degree murder  
41 of the child’s other parent, the court may award parental decision-making and  
42 unrestricted parenting time to the convicted parent on a showing of credible  
43 evidence, which may include testimony from an expert witness, that the  
44 convicted parent was a victim of intimate partner violence at the hands of the  
45 murdered parent and suffered trauma as a result.  
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3 ~~25-447, §Special Circumstances: Evidence Required~~

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

5 A. Appropriate Evidence. To determine if a parent has engaged in  
6 special circumstances, and subject to RULES OF FAMILY LAW PROCEDURE Rule  
7 2(B), the court shall consider all relevant factors including, but not limited to,  
8 the following:

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

15 6. Witness testimony.

16 7. Test results.

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

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

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

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

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

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

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

11  
12 AD HOC CUSTODY WORKGROUP NOTE

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

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

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

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

35  
36  
37 25-448 Rebutting The Presumption as to False Allegations, Intimate Partner  
38 Violence and Substance Abuse.

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

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

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1 | completion does not alone prove rehabilitation. The treatment records  
2 | themselves must exhibit active involvement and positive steps by the  
3 | offending parent during therapy.  
4 | 2. Completed a counseling program for alcohol or other substance  
5 | abuse, if the evidence establishes that these considerations played a role in  
6 | past intimate partner violence or child abuse.  
7 | 3. Refrained from any further behavior considered a special  
8 | circumstance.  
9 | 4. Demonstrated sincere remorse and acceptance of personal  
10 | responsibility by words and conduct following the confirmed act or acts.

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

Article 5.  
Third Parties

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

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

1. The person filing the petition stands in loco parentis to the child.
2. It would be significantly detrimental to the child to remain, or be placed in the care of, either legal parent who wishes to keep or acquire parental decision-making.
3. A court of competent jurisdiction has not entered or approved an order concerning parental decision-making within one year before the person filed a petition pursuant to this section, unless there is reason to believe the child’s present environment may seriously endanger the child’s physical, mental, moral or emotional health.
4. One of the following applies:
  - (a) One of the legal parents is deceased.
  - (b) The child’s legal parents are not married to each other at the time the petition is filed.
  - (c) There is a pending proceeding for dissolution of marriage or for legal separation of the legal parents at the time the petition is filed.

**Deleted: 25-444. Substance Abuse** [Former A.R.S. § 25-403.04]¶  
. A. If the court determines from a preponderance of the evidence that a parent has been criminally convicted for any of the following conduct within the past three years, a rebuttable presumption shall arise prohibiting an award of parental decision-making to that parent:¶

1. Any drug offense ~~under A.R.S., Title AS DEFINED IN TITLE 13, Chapter CHAPTER 34.~~¶
2. Driving under the influence of alcohol, as defined ~~by A.R.S. §~~ IN SECTION 28-1381.¶
3. Extreme driving under the influence of alcohol, as defined ~~by A.R.S. §~~ IN SECTION 13-1382.¶
4. Aggravated driving under the influence of alcohol, as defined ~~by A.R.S. §~~ IN SECTION 13-1383.¶

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

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

**Deleted: 25-445. Dangerous Crimes Against Children** [Former A.R.S. § 25-403.05]¶  
. A. The court shall not award parental decision-making or unsupervised parenting time to:¶

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

. B. A child’s parent or custodian must immediately notify the other parent or custodian if the parent or custodian knows that a convicted or registered sex offender or a person who has been convicted of a dangerous crime against children, as defined in ~~A.R.S. §~~ SECTION 13-705(P)(1), may have access to the child. The parent or custodian must provide notice by first-class mail, return receipt requested, or by electronic means to an electronic mail address that the recipient provided to the parent or custodian for ... [2]

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

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

... [3]

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

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

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

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

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

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

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

32 1. The child's legal parents.

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

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

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

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

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

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

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

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

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

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

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

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

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

25  
26 Article 6. Temporary Orders, Modification & Relocation

27 § 25-460. Temporary Orders

28 [former A.R.S. § 25-404]

29 A.

30 § 25-461. Decree Modification

31 [former A.R.S. § 25-411]

32 A.

33 § 25-462. Relocation of a Child

34 [former A.R.S. § 25-408(B)]

35 A.

36  
37 Article 7. Records & Sanctions

38 § 25-470. Access to Records

39 [former A.R.S. § 25-403.06]

40 A.

41 § 25-471. Sanctions for Misconduct

42 [former A.R.S. § 25-414]

43 A.

44  
45 Article 8. Miscellaneous

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

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

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

1. A person criminally convicted for a dangerous crime against children, as defined 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.

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

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

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

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.

**From Bill Fabricius (7/25/2011):** I don't think we have anything yet for Temporary Orders, so I thought I would share the OK statute (below) for consideration. We may not need to go this far in explicitly talking about “*substantially equal access*” given what we say in § 25-432 about “maximizing” parenting time, if we want to transpose that language into the Temporary Orders section.

I could however see some advantages to explicitly talking about “*substantially equal access*” in the Temporary Orders section. Given that we have plenty of safeguards built in against IPV, and given that in the absence of IPV the court can't do a full evaluation about parenting time anyway at this stage, then encouraging parents to consider substantially equal access at the temporary orders stage could:

- (a) Give kids more sense of parental stability in their lives during the stressful time of separation
- (b) Give the parents a chance to try it out
- (c) Give the courts some data about how it worked when it comes time for final orders.
- (d) Bring the language of the statute in line with the AZ public, which is solidly in favor of substantially equal parenting time already, and go a long way toward rectifying the AZ public's skepticism that the family courts are gender-biased. (see Braver, S.L., Ellman, I., Vortuba, A., & Fabricius, W.V. (2011). Lay judgments about child custody after divorce: *Psychology, Public Policy and Law*, 17, 212 – 240).

**From Patrick Parkinson (2011) *Family Law and the Indissolubility of Parenthood*, Cambridge University Press, pp. 100 – 101:**

“In Oklahoma, legislative policy is in favor of shared parenting, and the court is required to order “substantially equal access” at the time of making temporary orders, if requested by one parent to do so.<sup>i</sup> The legislation states:

*“It is the policy of the state to insure that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interests of their children and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or dissolved their marriage, provided that the parents agree to cooperate and that domestic violence, stalking, or harassing behaviors ... are not present in the parental relationship. To effectuate this policy, if requested by a parent, the court may provide substantially equal access to the minor children to both parents at a temporary order hearing, unless the court finds that shared parenting would be detrimental to the child.*

“The presumption in favor of substantially equal access does not carry through to the legislative requirements governing final orders.”

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<sup>i</sup> OKLA. STAT. § 43 – 110.1. This provision is confined to temporary orders. See Redmond v Cauthen, (2009) OK CIV. APP. 46;211 P. 3d 233 (Ct. Civ. App.).

**From Bill Fabricius (7/25/2011):** The Wisconsin statute (described below) sounds similar to ours, and apparently was unclear enough to require a Supreme Court case to clarify it. I suggest we try to avoid that expenditure of effort in AZ and clarify what we mean by “:maximize” in § 25-432. Our original intent was that the court should go off what the parents proposed. This avoids the court ordering something neither parent wants, and avoids a one-size-fits-all approach, and is a real strength of our statute I believe.

**From Patrick Parkinson (2011) *Family Law and the Indissolubility of Parenthood*, Cambridge University Press, pp. 94 – 95:**

“The Wisconsin statute was amended [in 1999] to provide that the “court shall set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each partner and that maximizes the amount of time the child may spend with each parent, taking into account geographical separation and accommodations for different households.”<sup>i</sup> The Supreme Court of Wisconsin has nonetheless made it clear that the legislature did not intend “maximizing” to mean equal placement or equal time.”<sup>ii</sup>

<sup>i</sup> WIS. STAT. § 767.41 (4) (a) 2.

<sup>ii</sup> Landwehr v Landwehr, 2006 WI 64, 291 Wis 2d 49, 715 N.W. 2d 180, 185 (2006);

**Bill’s proposed clarification: § 25-432. Parenting Plans**

A. Consistent with the child’s physical and emotional well-being, the court shall adopt a parenting plan that maximizes the sharing of parental decision-making to the extent specified in at least one parent’s proposed parenting plan, and that maximizes both parents’ respective parenting time to the extent specified in at least one parent’s proposed parenting plan. The court shall not prefer one parent over the other due to gender.

- Deleted: provides for both parents to share
- Deleted: concerning their child
- Deleted: their

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

C. A parenting plan must contain at least the following: (8 items follow)

D. The final parenting plan may include any level of shared or sole parental decision-making without regard to the distribution of parenting time. The degree of parenting time exercised by each parent does not effect which parent exercises parental decision-making.

- Deleted: parties
- Deleted: agree
- Deleted: to

**Examples of how the court maximizes PD-M & PPT, assuming consistent with child’s physical and emotional well-being:**

	Mom’s plan		Dad’s plan		Court <u>adopts</u>
	PD-M	Dad’s PT	PD-M	Dad’s PT	
Family 1	shared	30%	shared	40%	shared/40%
Family 2	Mom final	35%	shared	35%	shared/35%
Family 3	shared	30%	Mom final	50%	shared/50%
Family 4	Mom final	50%	Mom final	30%	Mom final/50% ? *

\*Court would have to consider whether giving Dad the 50% PT that Mom proposes will be consistent with the child’s physical and emotional well-being because that’s more PT than he requests.

1 **25-812. Voluntary acknowledgment of paternity; action to overcome paternity**

2 A. This state or the parent of a child born out of wedlock may **BEGIN THE PROCESS TO**  
3 establish the paternity of a child by filing one of the following with the clerk of the superior  
4 court, the department of economic security or the department of health services:

5 1. A notarized or witnessed statement that contains the social security numbers of both  
6 parents and that is signed by both parents acknowledging paternity or two separate  
7 substantially similar notarized or witnessed statements acknowledging paternity. If the  
8 voluntary acknowledgment is filed with the court, the filing party must redact any social  
9 security numbers and file them separately pursuant to section 25-501, subsection G. ~~If another~~  
10 ~~man is presumed to be the child's father pursuant to section 25-814, an acknowledgment of~~  
11 ~~paternity is valid only with the presumed father's written consent or as prescribed pursuant to~~  
12 ~~section 25-814.~~ **IF ANOTHER MAN OTHER THAN THE HUSBAND OF THE MOTHER AT**  
13 **ANY TIME IN THE TEN MONTHS IMMEDIATELY PRECEDING THE BIRTH IS TO**  
14 **ACKNOWLEDGE PATERNITY, A SIGNED WRITTEN CONSENT FROM THE THEN**  
15 **HUSBAND MUST ALSO BE SUBMITTED.** A statement that is witnessed by an employee of  
16 the department of economic security or the department of health services or by an employee of  
17 a hospital must contain the printed name and residential or business address of the witness. A  
18 statement that is witnessed by any other person must contain the printed name and residential  
19 address of the witness. If the acknowledgment of paternity is witnessed, the witness must be an  
20 adult who is not related to either parent by blood or by marriage.

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

25 **BD. EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION,** A voluntary  
26 acknowledgment of paternity executed pursuant to subsection A, paragraph 1 of this section may be  
27 filed with the department of economic security, which shall provide a copy to the department of health  
28 services. A voluntary acknowledgment of paternity made **FILED WITH THE DEPARTMENT OF**  
29 **ECONOMIC SECURITY** pursuant to this section ~~is a determination of~~ **IS THEREBY EFFECTED**  
30 **AND SHALL ESTABLISH THE** paternity **OF THE CHILD** and has the same force and effect as a  
31 superior court judgment.

32 **CB.** On filing a document required in subsection A of this section with the clerk of the superior  
33 court **A VOLUNTARY ACKNOWLEDGEMENT OF PATERNITY IS THEREBY EFFECTED. THE,**  
34 ~~the~~ clerk or authorized court personnel shall issue an order establishing paternity, which may amend the  
35 name of the child or children, if requested by the parents. The clerk shall transmit a copy of the order of  
36 paternity to the department of health services and the department of economic security.

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

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

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

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

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

7 ~~1. Sixty days after the last signature is affixed to the notarized acknowledgment of~~  
8 ~~paternity that is filed with the department of economic security, the department of health~~  
9 ~~services or the clerk of the court.~~

10 ~~2. The date of a proceeding relating to the child, including a child support proceeding~~  
11 ~~in which the mother or father is a party.~~

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

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

19 **I. BY SIGNING THE ACKNOWLEDGEMENT OF PATERNITY FORM, THE MOTHER IS**  
20 **AFFIRMING, UNDER PENALTY OF LAW, THAT THE FATHER NAMED ON THE BIRTH**  
21 **CERTIFICATE IS THE ONLY POSSIBLE FATHER OF THE CHILD.**

22  
23  
24

1           **25-814. Presumption ESTABLISHMENT of paternity**

2           ~~A. A man is presumed to be the father of the child if~~ **A MAN IS ESTABLISHED AS THE**  
3 **FATHER OF THE CHILD AND THEREBY THE CHILD'S PATERNITY HAS BEEN**  
4 **ESTABLISHED IF ANY OF THE FOLLOWING CONDITION HAVE BEEN MET:**

5           **1. EXCEPT AS PROVIDED FOR UNDER SUBSECTION C, He and the mother of the child**  
6 **were married at any time in the ten months immediately preceding the birth or the child is born within**  
7 **ten months after the marriage is terminated by death, annulment, declaration of invalidity or dissolution**  
8 **of marriage or after the court enters a decree of legal separation.**

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

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

11          ~~2. A notarized or witnessed statement is signed by both parents acknowledging paternity or~~  
12 ~~separate substantially similar notarized or witnessed statements are signed by both parents~~  
13 ~~acknowledging paternity.~~ **HE AND THE MOTHER HAVE ACKNOWLEDGED HIS PATERNITY**  
14 **PERSUANT TO ARS 25-812, AND THAT ACKNOWLEDGEMENT HAS BEEN EFFECTED**  
15 **PURSUANT TO EITHER ARS 25-812 SUBSECTION B OR D.**

16          **3. PATERNITY HAS BEEN ESTABLISHED IN ANOTHER STATE BY A COURT OR**  
17 **ADMINISTRATIVE ORDER OR VOLUNTARY ACKNOWLEDGEMENT, THE DETERMINATION**  
18 **OF PATERNITY HAS THE SAME FORCE AND EFFECT IN THIS STATE AS IF THE**  
19 **DETERMINATION OF PATERNITY WAS GRANTED BY A COURT IN THIS STATE.**

20          **4. A COURT DECREE FINDS THAT HE IS THE FATHER BASED ON GENETIC TESTING**  
21 **AFFIRMING AT LEAST NINETY FIVE PER CENT PROBABILITY OF PATERNITY.**

22          **5. THE FATHER IS LISTED ON THE ADOPTION ORDER OF THE CHILD.**

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

27          ~~C. Any presumption under this section shall be rebutted by clear and convincing evidence. If~~  
28 ~~two or more presumptions apply, the presumption that the court determines, on the facts, is based on~~  
29 ~~weightier considerations of policy and logic will control.~~ **THE CONDITION SET FORTH IN**  
30 **SUBSECTION A PARAGRAPH 1 WILL NOT APPLY IF A court decree establishing ESTABLISHES**  
31 **paternity of the child by another man rebuts the presumption OR IF ANOTHER MAN IS LISTED AS**  
32 **THE FATHER IN AN ACKNOWLEDGEMENT OF PATERNITY AS DESCRIBED IN ARS 25-812**  
33 **AND EFFECTED AS DESCRIBED IN ARS 25-812 SUBSECTION B OR D.**

34          **D. AS PROVIDED BY ARS 36-334, THE LISTING OF THE FATHER'S NAME ON THE**  
35 **CHILD'S ARIZONA BIRTH CERTIFICATE IS PROOF THAT PATERNITY HAS BEEN**  
36 **ESTABLISHED FOR THE CHILD.**

37          **E. PATERNITY THAT IS ESTABLISHED IN ANY OF MANNER ABOVE IS VALID FOR**  
38 **PETITIONING FOR CHILD SUPPORT AND CHILD CUSTODY ESTABLISHMENT**  
39 **WITH OUT ANY FURTHER HEARINGS OR DECREES.**

40          **F. PATERNITY THAT IS ESTABLISHED IN ANY MANNER ABOVE EXCEPT**  
41 **SUBSECTION A PARAGRAPH 5, MAY BE CONTESTED IN A COURT HEARING.**  
42 **UPON PRESENTING PROOF OF GENETIC TESTING THAT THE PATERNITY WAS**  
43 **MISTAKEN, A COURT SHALL ISSUE AN ORDER TERMINATING THE PARENT-**  
44 **CHILD RELATIONSHIP AND THE ORDER OF PATERNITY SHALL BE RESCINDED.**

45           **1. PATERNITY MAY NOT BE RESCINDED IF THE CHILD WAS CONCEIVED**  
46 **BY ASSISTED REPRODUCTION AND THE FATHER CONSENTED TO**  
47 **ASSISSTED REPORDUCTION BY HIS WIFE.**

48          **G. Repeal ~~25-815. Paternity; full faith and credit~~**

49          ~~H. If paternity has been established in another state by a court or administrative order or~~  
50 ~~voluntary acknowledgment, the determination of paternity has the same force and effect in~~  
51 ~~this state as if the determination of paternity was granted by a court in this state.~~

1           **25-816. Title IV-D child support; paternity establishment; genetic testing**

2           A. On receipt of a sworn statement by the mother or the alleged father alleging paternity and  
3 setting forth the facts establishing a reasonable possibility of the requisite sexual contact between the  
4 parties, the department of economic security or its agent may order the mother, her child or children  
5 and the alleged father to submit to the drawing of blood or tissue samples for genetic testing of a type  
6 generally acknowledged as reliable by accreditation bodies. If the mother cannot be located the  
7 department or its agent may order the caretaker of the child or children to present the child or children  
8 for genetic testing. The order shall be served by first class mail or delivered at least ten business days  
9 before the genetic testing. The department or its agent shall pay the costs of the test subject to  
10 repayment from the mother or the alleged father if paternity is established. An order of genetic testing  
11 issued by the department or its agent has the same force and effect as a superior court order.

12           B. If the results of the genetic testing indicate that the likelihood of the alleged father's  
13 paternity is ninety-five per cent or greater, the alleged father is presumed to be the parent of the child  
14 and the party opposing the establishment of the alleged father's paternity shall establish by clear and  
15 convincing evidence that he is not the father of the child.

16           C. A person who is tested pursuant to this section may contest the test results in writing to the  
17 department or its agent within thirty days after the department or its agent mails the results to that  
18 person. If the original test results are contested in a timely manner, on request and advance payment by  
19 the requesting party, the department or its agent shall order a second genetic test pursuant to subsection  
20 A.

21           **36-334. Determining maternity and paternity for birth certificates**

22           A. A person completing a birth certificate shall state the name of the woman who gave birth to  
23 the child on the birth certificate as the child's mother unless otherwise provided by law or court order.

24           B. The state registrar shall not refuse to register a birth certificate because the birth certificate  
25 does not include the name of the father.

26           C. If a father's name is stated on a birth certificate, the father's name shall be stated on a birth  
27 certificate **ONLY WHEN THE CHILD'S PATERNITY HAS BEEN ESTABLISHED UNDER SECTION**  
28 **25-814. as follows:**

29           1. ~~Except as provided in section 25-814, if the mother is married at the time of birth or was~~  
30 ~~married at any time in the ten months before the birth, the name of the mother's husband.~~

31           2. ~~If a mother and father who are not married to each other at the time of birth and were not~~  
32 ~~married to each other in the ten months before the birth voluntarily acknowledge paternity pursuant to~~  
33 ~~section 25-812, the name of the father acknowledging paternity.~~

34           3. ~~If the state registrar receives an administrative order or a court order establishing paternity,~~  
35 ~~the father's name in the order.~~

36           D. If the acknowledgement of paternity is rescinded pursuant to section 25-812, the state  
37 registrar shall remove the father's name from the registered birth certificate.

38           **E. BY SIGNING THE BIRTH CERTIFICATE, THE MOTHER IS AFFIRMING, UNDER**  
39 **PENALTY OF LAW, THAT THE FATHER NAMED ON THE BIRTH CERTIFICATE IS THE**  
40 **ONLY POSSIBLE FATHER OF THE CHILD.**

41

**COMMENT RECEIVED BY CIDVIC STAFF  
(Committee on the Impact of Domestic Violence and the Courts)  
07/25/11**

**Re: Public Comment**

**From:** [REDACTED]  
**Sent:** Monday, July 18, 2011 5:22 PM  
**To:** Radwanski, Kay  
**Subject:** Committee on the Impact of DV and the Courts

Dear Kay,

I was looking at the Arizona Judicial Branch website recently because I landed there while trying to find more information about an article I ran across while looking for resources for my own case. The article headline read, "Proposed child custody changes explore 'coercive control' in domestic violence." While browsing the Arizona Judicial Branch site I found the Committee on the Impact of DV and the Courts link to your email address and decided to contact you, because I have some very specific concerns that your committee may be especially able to address.

My concern is that victims with children are not being adequately informed by the court of the many ways that batterers can use the court to attack them after victims attempt to seek help from the court. As I see it, the court is sending two opposing messages: on the one side through its mediation services, high conflict resolution classes, supervised visitation counselors and custody rulings, and on the other side through the family violence prevention center. Although the domestic violence resources that the court offers through the family violence prevention center suggest that it is alright to leave an abusive situation and that it is even okay to speak with your children about appropriate safety measures, through its more frightening and authoritative arm the family court says that children **MUST** have access to both parents, even if one parent is abusive and dangerous, and that protecting one's children or insinuating in any way that their other parent is unfit could cause the victim parent to lose custody of the children to the abusive parent.

Furthermore, domestic violence victims who have children with their abusers are forced by the courts into an 18 year sentence of regular -- often weekly -- contact with their abusers and are forced into allowing their abusers to have contact with their children, or else they may be punished by the courts with loss of custody entirely. Domestic violence victims who have children with their abusers are forced to walk an impossible, fuzzy, not well defined line between never violating the other parent's parenting rights in court, and protecting themselves and their children from domestic violence in the real world. What's worse, the victim parent is held jointly accountable for the "high conflict" that arises from this toxic situation and is expected to cooperate with the batterer, especially if the batterer

manages to avoid being labeled a "batterer" by the system.

The ways to avoid being labeled as a batterer are apparently quite numerous, because in my experience, my ex husband having two separate orders of protection issued against him that were upheld in court two years in a row, losing custody of his children on the basis of that domestic violence, being ordered into batterers prevention classes and failing to take those classes, and then later being handcuffed and arrested for Domestic Violence Criminal damage with written statements by himself and his wife and police indicating that he yelled, swore, and put a hole in the wall of his home with a bottle while seven minor children were inside his home is apparently not enough to get him labeled a batterer in the system. Apparently a good domestic violence lawyer can get you off the hook with these kinds of charges, and if your new wife won't press charges, your old wife won't ever be notified of the court dates, your kids aren't allowed a voice, and voila, 8 months later you're suddenly clean.

Orders of protection are a very limited protection against domestic violence, and for children are even more so as they are only awarded for a very short time. In my case, that order of protection -- the third I had been awarded against the same man -- was awarded for my children for only ONE MONTH after their father was arrested on charges of Domestic Violence, Criminal Damage for an incident that occurred between he and his wife while our children were present in his home. Miraculously my ex husband didn't even need to request a hearing this time, he just let the order expire, at which point he was able to get the entire thing dismissed on the grounds that I was the only one left on the order and since I wasn't present in the home when the incident occurred, the judge was forced to dismiss it all. Now when the police and judges and the children's school look at his dismissed order paperwork, it appears to them that the order of protection was no good to begin with, and I have become the bad guy.

What's worse, victims with children cannot protect themselves physically the same way that victims without children can. Children need to be in school, and a batterer can use the children's school as a battle ground, where school staff don't know who to believe and will give in to a smooth talking batterer's requests for access to the children in order to maintain peace, making a cautious victim who would deny him access there look hysterical and vindictive. For victims with children, information laws that protect the non custodial parent's access to school records make any attempt to hide a victim's address impossible, but what good would it do to protect your address for a single month anyway? How often is a victim supposed to be able to move? Victims with children simply cannot get away.

Batterers also have an extremely strong weapon against their victims in the court system if they just claim not to be batterers -- which any good liar will do, of course -- or if they obtain legal defense against domestic violence charges, because the court has many biases against a parent who behaves in the ways

that a domestic violence victim might legitimately need to act in order to protect themselves or their children, such as obstructing the visitation rights of a batterer (like when the children are still terrified to go for visitation after a one month long order of protection has expired) or "alienating" the batterer parent by discussing the children's safety with them (arguably "causing" the children to be afraid of the batterer parent) Regardless of how legitimate the children's fears are, the family court demands that both parents must be present in the child's life, and existing visitation orders can trump domestic violence arrests and other such dangerous, terrifying behavior. Ask me how I know.

How many batterers are going to simply admit to being dangerous and accept the consequences? People who are prone to attack their victims will invariably attack their victims in court too, with false accusations, and intimidating legal tactics outside of court as an extension of their aggressive, controlling nature, and all of this will heap astronomical legal fees on their victims (all this, even though domestic violence victims often have limited financial resources and little community support to begin with, as many batterers use financial abuse and isolation as a means to control their victims).

Unfortunately, the court seems to contain two opposing factions without even realizing it. The family violence prevention side doesn't seem to be aware of what the family court side threatens to do to the domestic violence victim once the domestic violence victim with children tries to leave, and this is why I am writing to you today. At the very least, I would like to see some sort of warning go out to the domestic violence victims who are counseled by the court, that once you attempt to leave, you open yourself up to court enforcement of your abuser's contact with you and your children. This is a serious issue that domestic violence victims have a right to consider.

Second, I wish that the Committee on the Impact of DV and the Courts could somehow interface with the family court and review its mediation procedures, custody evaluation policies, supervised visitation policies, parenting coordination policies and the High Conflict Resolution class with an eye for how they each impact the domestic violence victims who come into contact with them. For some reason, even though all of those services seem to me to be logical extensions of a domestic violence prevention program (supervised visitation might logically be ordered as the result of a domestic violence act, for instance) from my experience they all seem to be solely in place to enforce the court's dual parent mandate.

I would also specifically like to request that perhaps you consider having a representative secretly attend and record the High Conflict Resolution class a time or two and see what they are advising there, because I suspect that little to no oversight is really going on with them (at least not by advocates for victims of domestic violence). The day I was ordered to attend, the class started with an introduction to the historical context of the class that explained how the court

started offering these classes in the seventies when the father's rights movement had just begun, and that it was launched in an effort to promote father's involvement in families, and the entire class was obviously slanted in that regard.

[REDACTED] they have made decisions about the welfare of various children in extreme situations like supervised visitations and reunification counseling, and how little information they had to go on, and yet made decisions for children to return to overnight visitation with men in one or two visits, where the mother had made serious accusations against the father [REDACTED] [REDACTED] claimed that in all these cases they were convinced purely by the disposition of the mother that the mother was simply alienating the children from the father, case closed. These were all merely anecdotal stories told in short form of course, but the resounding message was that despite the cases having been given to the case workers after being heard by a judge and presented by both sides, the case workers themselves had acted as judge and jury and made decisions that would impact these families for years to come within an hour or two of mediation or supervised visitation time.

I was absolutely shocked and terrified by the cavalier attitudes and the misinformation they were spreading there: that it is predominantly mothers who alienate fathers without just cause, and that they as former mediators and custody evaluators and supervised parenting time supervisors are able (and allowed) to judge -- without hearing any facts -- that most women were guilty of alienating their children's fathers without any reason to do so. I suggest that you ask the instructors of that class, as I did, what a domestic violence victim is supposed to learn from their course, because I really don't understand why I was ordered to attend.

Personally, I walked away more terrified than ever that mine and other domestic violence victims' rights as a custodial parent are under fire, but I also worry that batterers who come in contact with such programs may come away from the experience even more emboldened to threaten and attack their victims with the full backing of the court system.

Thank you for hearing my concerns.

From: [REDACTED]  
To: "kradwanski@courts.az.gov" <kradwanski@courts.az.gov>  
Sent: Monday, July 25, 2011 11:02 AM  
Subject: Re: Substantive Law/Court Procedures Workgroup

I was aware of the Workgroup, but ultimately decided to contact you instead because of what I see as a conflicting though interdependent relationship between the family violence prevention side of the court and the family court, and

the way that the two sides leave domestic violence victims trapped in an impossible situation.

The [REDACTED] Court I went to for an Order of Protection in [REDACTED] 2010 for example, issued orders within the O.O.P. for me to seek a Family Court hearing to determine parenting time for my ex husband following his arrest for Domestic Violence, Criminal Damage, but through a series of unfortunate events (and shady lawyer tactics) the Family Court delayed giving me that hearing until [REDACTED] this year, so that it has now become pointless. I have ultimately requested to vacate the hearing but still haven't heard my case status as of today.

On the other hand, from my experience Family Court custody rulings may actually depend on the existence of Orders of Protection as demonstration that domestic violence exists (or in the reverse, their dismissal may be used to disprove it). In that way, it seems that the Superior Court needs to be 100% aware of the many ways that orders of protection can be used and abused in the family courts and those who advise domestic violence victims need to help them understand the pitfalls of seeking Orders of Protection. Orders of Protection may also be dismissed or caused to expire, and shady lawyers know how to make this work to the advantage of unscrupulous clients. View any domestic violence defense lawyer's website and you'll see advice that suggests that Orders of Protection are often sought in the "heat of the moment" and batterers are being advised to soft talk their victims into not pressing charges. This can be absolute court-death in a custody hearing, and a good batterer's defense lawyer knows it, but they aren't the ones to tell domestic violence victims that they need every bit of documented evidence against a batterer that they can get. Unfortunately it is incredibly difficult to document emotional abuse, but that is the bulk of most batterer's arsenal. Most batterers only hit their victims once or twice, apologize profusely and then use the threat of violence, isolation, forceful restraint (which would require injury to the perpetrator to break free from, which is then used as a threat) and "you don't have any bruises, so who are you going to tell?" to intimidate and control their victims thereafter.

If Superior Court judges aren't aware of how batterer's lawyers are using this to harm victims, or how Family Court judges are viewing the results of such dismissals in a negative light, then they may not be as diligent as they should be in producing a clear ruling. For example, my children's O.O.P. was dismissed on the grounds that their father -- the respondent -- never requested a hearing, allowing it to expire after one month, and because I -- the person who requested the O.O.P. on their behalf because he obviously wouldn't and his wife couldn't -- was not present in the home during the altercation (so it did not apply to me any more). Yet when he filed a complaint against me for obstructing his visitation rights in the following weeks -- just one month after the O.O.P. expired while the children were still terrified of him and he sent the police to my home where they interviewed the children and made reports that he had a recent domestic

violence arrest, that I legitimately feared for their safety and was showing good cause for obstructing his parenting time -- the judge cut my testimony (attempting to explain this convoluted story) short and decided that since the O.O.P. was "dismissed," that meant it was never valid to begin with. She charged me with contempt of court for violating the batterer's parenting time and ordered that the children have additional make up time with him.

After she issued this ruling I (stupidly) pleaded with the judge, "But your honor, the children are still in danger!" and she simply got up, closed her books, and walked away. This all despite the judge basing her ruling on parenting time laid out in the decree that clearly states that the batterer lost custody to me due to previous acts of domestic violence which were proven by two previous orders of protection that were issued against him and upheld in two prior hearings, and after discussion of his failure to attend batterer's prevention classes that were also ordered in that same decree.

Kay, I reached out to you first because unfortunately, I don't believe that the family court has domestic violence victims' advocacy at heart, because it is instead focused intently on protecting the rights of both parents, regardless of whether one parent is a batterer or not. This single mindedness of purpose traps the domestic violence victim with children into an extremely dangerous situation which is not only court enforced but multiplied a hundred fold by the threat of the court's most unconscionable punishments against the domestic violence victim: the court does not just threaten the victim's own custody of their children if the batterer takes the obvious position of innocence, but it even threatens to place the victim's children WITH THEIR BATTERER.

What parent wouldn't rather lose a limb than leave a child unsupervised with a violent offender? There are few forms of torture that can compare to the constant emotional agony and physical danger that the court can help a batterer inflict on the domestic violence victim with children, and that is no exaggeration. I know because I am experiencing it myself.

Current Statute **25-403.03**

1. If “significant” DV, then “joint custody” →  
is *prohibited*.
2. If “an act” of DV, then *rebuttable* →  
*presumption* against “custody”.  
“An act” means either
  - a. Sexual assault / serious injury, or
  - b. Threat of serious injury, or
  - c. Order of protection issued.
3. How to *rebut* the presumption: →
  - a. Show “custody” is child’s best interest
  - b. Batterer program completion
  - c. Alcohol program completion
  - d. Parenting class completion
  - e. No order of protection in effect
  - f. No further acts of DV
4. Parent must also *prove* that parenting time →  
(PT) will not endanger the child.

New Statute **25-425 & 25-426**

1. This section on the *prohibition* is removed
2. If preponderance of evidence of “an act” of  
IPV or child abuse, then parent must *prove*  
they should still have parental decision-  
making (PD-M), and unrestricted parenting  
time (PT).  
No judgment from *protective orders*  
*hearings* shall be considered conclusive  
evidence that IPV or child abuse did or did  
not occur.
3. How to *prove* they should have PD-M and  
unrestricted PT
  - a. Batterer program completion
  - b. Alcohol program completion
  - c. Refrained from further acts
  - d. Demonstrate remorse
  - e. (for PT) Show PT will not expose child  
to poor role modeling in the future
  - f. (for PT) Show PT will not endanger  
child by exposure to future IPV
4. How the other parent *disproves* this parent  
should have PD-M and unrestricted PT:
  - a. Show a history of coercive control  
during the relationship, or other acts of  
child abuse
  - b. Show this parent has committed past acts  
of IPV or child abuse after program  
completion
  - c. Show this parent has committed past acts  
of IPV or child abuse or new acts on  
new person
  - d. If the IPV was mutual, show this parent  
was the one who had the worst motive  
and did the most injury
  - e. Show this parent minimizes or denies  
responsibility for proven violence
  - f. Show this parent has engaged in other  
criminal behavior
  - g. This parent has not complied with  
Disclosure Requirements

5. If parent *proves* that PT will not endanger → the child, then court shall put *conditions* on PT which may include:
- a. Supervised exchange
  - b. Supervised PT
  - c. DV program / counseling completion
  - d. Refrain from alcohol before visits
  - e. Pay for supervised PT
  - f. No overnights
  - g. Pay bond for child's safe return
  - h. Child's address kept confidential

5. If parent *fails* to prove that they should have unrestricted PT, then court shall put *conditions* on PT which may include
- a. Supervised exchange
  - b. Supervised PT
  - c. DV program / counseling completion
  - d. Refrain from alcohol before visits
  - e. Pay for supervised PT
  - f. No overnights
  - g. Pay bond for child's safe return
  - h. Child's address kept confidential
  - i. Restrict access to firearms
  - j. Suspend PT for prescribed period
  - k. Suspend PT indefinitely pending change in circumstances or modification petition.

