

Substantive Law Workgroup
Steve Wolfson, Chairperson

Court Procedures Workgroup
Dr. Brian Yee, Chairperson

DOMESTIC RELATIONS COMMITTEE

Agenda

August 19, 2011

12:00 – 2:00 p.m.

Arizona State Courts Building

1501 W. Washington St., Conference Room 119B

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. Process Review***Chairmen*

Action Item/Vote: _____

- 3. Request for comments regarding drafts***Chairmen*

- Judge Hyatt’s version
- Tom Alongi’s version
- Legislative Council’s version

Action Item/Vote: _____

- 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.

- 5. Adjourn**

Next Meeting:
August 26, 2011
Arizona State Courts Building
1501 W. Washington
Conference Room – 230

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

Substantive Law/Court Procedures Workgroup

Minutes

Date: July 15, 2011	Time: 12:00 PM – 1:30 PM	Location: 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

Date: June 24, 2011	Time: 12:00 PM – 1:30 PM	Location: 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

Date: May 13, 2011	Time: 12:00 PM – 1:30 PM	Location: 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

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CHAPTER 4
PARENTAL DECISION-MAKING AND PARENTING TIME
ARTICLE 1. GENERAL PROVISIONS

25-401. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "FINAL PARENTAL DECISION-MAKING" MEANS THAT ONE PARENT HAS ULTIMATE RESPONSIBILITY FOR MAKING CHILD-RELATED DECISIONS BUT MUST REASONABLY CONSULT WITH THE OTHER PARENT BEFORE EXERCISING THIS RESPONSIBILITY.
2. "IN LOCO PARENTIS" MEANS A PERSON WHO HAS BEEN TREATED AS A PARENT BY THE CHILD AND WHO HAS FORMED A MEANINGFUL PARENTAL RELATIONSHIP WITH THE CHILD FOR A SUBSTANTIAL PERIOD OF TIME.
3. "LEGAL PARENT" MEANS A BIOLOGICAL OR ADOPTIVE PARENT WHOSE PARENTAL RIGHTS HAVE NOT BEEN TERMINATED. LEGAL PARENT DOES NOT INCLUDE A PERSON WHOSE PATERNITY HAS NOT BEEN ESTABLISHED PURSUANT TO SECTION 25-812 OR 25-814.
4. "PARENTAL DECISION-MAKING" MEANS THE LEGAL RIGHT AND RESPONSIBILITY TO MAKE MAJOR LIFE DECISIONS AFFECTING THE HEALTH, WELFARE AND EDUCATION OF A CHILD INCLUDING, FOR EXAMPLE, SCHOOLING, RELIGION, DAY CARE, MEDICAL TREATMENT, COUNSELING, COMMITMENT TO ALTERNATIVE LONG-TERM FACILITIES, AUTHORIZING POWERS OF ATTORNEY, GRANTING OR REFUSING PARENTAL CONSENT WHERE LEGALLY REQUIRED, ENTITLEMENT TO NOTIFICATIONS FROM THIRD PARTIES ON BEHALF OF THE CHILD, EMPLOYMENT, ENLISTMENT IN THE ARMED FORCES, PASSPORTS, LICENSING AND CERTIFICATIONS, AND BLOOD DONATION. FOR PURPOSES OF INTERPRETING OR APPLYING ANY INTERNATIONAL TREATY, FEDERAL LAW, A UNIFORM CODE OR THE STATUTES OF OTHER JURISDICTIONS OF THE UNITED STATES, PARENTAL DECISION-MAKING MEANS LEGAL CUSTODY.

1 5. "PARENTING TIME" MEANS A PARENT'S PHYSICAL ACCESS TO A CHILD AT
2 SPECIFIED TIMES AND, WHILE THE CHILD REMAINS IN THAT PARENT'S CARE, PROVIDING
3 THE CHILD WITH FOOD, CLOTHING AND SHELTER AND ACTIVELY PARTICIPATING IN THE
4 CHILD'S ACTIVITIES IN A POSITIVE MANNER. PARENTING TIME INCLUDES MAKING
5 ROUTINE DECISIONS REGARDING THE CHILD'S CARE THAT DO NOT CONTRADICT DECISIONS
6 MADE BY A PARENT WHO HAS BEEN GRANTED LEGAL PARENTAL DECISION-MAKING BY A
7 COURT.

8 6. "SHARED PARENTAL DECISION-MAKING" MEANS THAT BOTH PARENTS EQUALLY
9 SHARE THE BURDENS AND BENEFITS OF DECISION-MAKING RESPONSIBILITY, WITH
10 NEITHER PARENT POSSESSING SUPERIOR DECISION-MAKING AUTHORITY.

11 7. "SOLE PARENTAL DECISION-MAKING" MEANS ONE PARENT IS EXCLUSIVELY
12 RESPONSIBLE FOR CHILD-RELATED DECISIONS AND IS NOT REQUIRED TO CONSULT WITH
13 THE OTHER PARENT BEFORE MAKING A DECISION.

14 8. "SPECIAL CIRCUMSTANCES" MEANS CONDUCT THAT REQUIRES APPLICATION OF
15 ONE OR MORE MANDATORY RULES PURSUANT TO ARTICLE 3 OF THIS CHAPTER.

16 9. "VISITATION" MEANS THAT A PARENT HAS THE SAME RIGHTS AND
17 RESPONSIBILITIES AS A PARENT WHO HAS BEEN AWARDED PARENTING TIME.

18 25-402. Policy regarding parental decision-making and parenting
19 time

20 THIS STATE FINDS THAT, ABSENT EVIDENCE TO THE CONTRARY, IT IS IN A
21 CHILD'S BEST INTEREST THAT BOTH LEGAL PARENTS:

22 A. SHARE PARENTAL DECISION-MAKING CONCERNING THEIR CHILD.

23 B. HAVE SUBSTANTIAL, FREQUENT, MEANINGFUL AND CONTINUING PARENTING
24 TIME WITH THEIR CHILD.

25 C. DEVELOP A MUTUALLY AGREEABLE PARENTAL DECISION-MAKING AND PARENTING
26 TIME PLAN.

27 25-403. Jurisdiction

28 A. BEFORE CONDUCTING ANY PROCEEDING CONCERNING PARENTAL
29 DECISION-MAKING OR PARENTING TIME, INCLUDING ANY PROCEEDING TO DETERMINE THE
30 CUSTODY OR VISITATION OF A NONPARENT, A COURT IN THIS STATE FIRST MUST
31 CONFIRM ITS AUTHORITY TO DO SO TO THE EXCLUSION OF ANY OTHER STATE, INDIAN
32 TRIBE OR FOREIGN NATION BY COMPLYING WITH THE UNIFORM CHILD CUSTODY
33 JURISDICTION AND ENFORCEMENT ACT, THE PARENTAL KIDNAPPING PREVENTION ACT AND
34 ANY APPLICABLE INTERNATIONAL LAW CONCERNING THE WRONGFUL ABDUCTION OR REMOVAL
35 OF CHILDREN.

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

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

40 2. BY A PERSON OTHER THAN A PARENT, BY FILING A PETITION FOR THIRD-PARTY
41 RIGHTS UNDER SECTION 25-451 IN THE COUNTY IN WHICH THE CHILD PERMANENTLY
42 RESIDES.

43 25-404. Mandatory preliminary inquiry: special circumstances

44 BEFORE EVALUATING THE BEST INTERESTS OF THE CHILD AND DECIDING PARENTAL
45 DECISION-MAKING AND PARENTING TIME, THE COURT FIRST SHALL DETERMINE IF

1 SPECIAL CIRCUMSTANCES EXIST. IF THE COURT DETERMINES THAT SPECIAL
2 CIRCUMSTANCES EXIST, THE COURT SHALL ENTER PARENTAL DECISION-MAKING AND
3 PARENTING TIME ORDERS PURSUANT TO ARTICLE 3 OF THIS CHAPTER. IF THE COURT
4 DETERMINES THAT SPECIAL CIRCUMSTANCES DO NOT EXIST, THE COURT SHALL DEVISE A
5 PARENTING PLAN THAT ALLOCATES PARENTAL DECISION-MAKING AND PARENTING TIME
6 CONSISTENT WITH THE CHILD'S BEST INTERESTS AND THE REQUIREMENTS OF ARTICLE 2 OF
7 THIS CHAPTER.

8 25-405. Specific findings required

9 A. PURSUANT TO AN EVIDENTIARY HEARING INVOLVING PARENTAL
10 DECISION-MAKING, PARENTING TIME OR THIRD-PARTY RIGHTS, THE COURT SHALL MAKE
11 SPECIFIC FINDINGS ON THE RECORD REGARDING ALL RELEVANT FACTORS THAT LEAD IT
12 TO EACH COURT ORDER AND HOW EACH ORDER IS IN THE CHILD'S BEST INTERESTS.

13 B. THE FINDINGS REQUIRED PURSUANT TO SUBSECTION A OF THIS SECTION
14 SHALL INCLUDE A DESCRIPTION OF ANY SPECIAL CIRCUMSTANCES ESTABLISHED BY THE
15 EVIDENCE AND AN EXPLANATION FOR THE COURT'S DECISION IN RELATIONS TO THE
16 CONTROLLING RULES.

17 ARTICLE 2. PARENTING PLANS, DECISION-MAKING
18 AND PARENTING TIME WITHOUT SPECIAL CIRCUMSTANCES

19 25-421. Parenting plans

20 A. CONSISTENT WITH THE CHILD'S PHYSICAL AND EMOTIONAL WELL-BEING, THE
21 COURT SHALL ADOPT A PARENTING PLAN THAT PROVIDES FOR BOTH PARENTS TO SHARE
22 PARENTAL DECISION-MAKING CONCERNING THEIR CHILD AND MAXIMIZES EACH PARENT'S
23 PARENTING TIME. THE COURT SHALL NOT PREFER ONE PARENT OVER THE OTHER DUE TO
24 THE CHILD'S SEX.

25 B. IF A CHILD'S PARENTS CANNOT AGREE TO A PLAN FOR PARENTAL
26 DECISION-MAKING OR PARENTING TIME, EACH PARENT MUST SUBMIT TO THE COURT A
27 DETAILED PROPOSED PARENTING PLAN.

28 C. A PARENTING PLAN MUST INCLUDE AT LEAST THE FOLLOWING:

29 1. A DESIGNATION OF THE PARENTAL DECISION-MAKING PLAN AS EITHER SHARED
30 PARENTAL DECISION-MAKING, FINAL PARENTAL DECISION-MAKING OR SOLE PARENTAL
31 DECISION-MAKING.

32 2. EACH PARENT'S RIGHTS AND RESPONSIBILITIES FOR PARENTAL
33 DECISION-MAKING.

34 3. A PLAN FOR COMMUNICATING WITH EACH OTHER ABOUT THE CHILD, INCLUDING
35 METHODS AND FREQUENCY.

36 4. A DETAILED PARENTING TIME SCHEDULE, INCLUDING HOLIDAYS AND SCHOOL
37 VACATIONS.

38 5. A PLAN FOR CHILD EXCHANGES, INCLUDING LOCATION AND RESPONSIBILITY
39 FOR TRANSPORTATION.

40 6. FOR SHARED PARENTAL DECISION-MAKING PLANS, A PROCEDURE BY WHICH THE
41 PARENTS CAN RESOLVE DISPUTES OVER PROPOSED CHANGES OR ALLEGED VIOLATIONS,
42 WHICH MAY INCLUDE THE USE OF CONCILIATION SERVICES OR PRIVATE MEDIATION.

43 7. A PROCEDURE FOR PERIODIC REVIEW OF THE PLAN.

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1 8. A STATEMENT THAT EACH PARTY HAS READ, UNDERSTANDS AND WILL ABIDE BY
2 THE NOTIFICATION REQUIREMENTS OF SECTION 25-437, SUBSECTION B.

3 D. THE PARTIES MAY AGREE TO ANY LEVEL OF SHARED OR SOLE PARENTAL
4 DECISION-MAKING WITHOUT REGARD TO THE DISTRIBUTION OF PARENTING TIME. THE
5 DEGREE OF PARENTING TIME EXERCISED BY EACH PARENT DOES NOT EFFECT WHICH
6 PARENT EXERCISED PARENTAL DECISION-MAKING.

7 E. IF PARENTS ARE GRANTED SHARED DECISION-MAKING, EACH PARENT MUST
8 CONSULT WITH THE PARENT ABOUT CHILD-RELATED DECISIONS AND ATTEMPT TO
9 RESOLVE DISPUTES BEFORE SEEKING COURT INTERVENTION.

10 25-422. Parental decision-making: shared, final or sole

11 THE COURT SHALL DETERMINE PARENTAL DECISION-MAKING IN ACCORDANCE WITH
12 THE BEST INTERESTS OF THE CHILD. THE COURT SHALL CONSIDER THE RELEVANT
13 FINDINGS MADE PURSUANT TO SECTION 25-423, AND ALL OF THE FOLLOWING:

14 1. THE AGREEMENT OR LACK OF AN AGREEMENT BY THE PARENTS REGARDING THE
15 PARENTAL DECISION-MAKING PLAN.

16 2. WHETHER A PARENT'S LACK OF AGREEMENT IS UNREASONABLE OR INFLUENCED
17 BY AN ISSUE NOT RELATED TO THE BEST INTERESTS OF THE CHILD.

18 3. WHETHER AN AWARD OF FINAL OR SOLE PARENTAL DECISION-MAKING WOULD BE
19 ABUSED.

20 4. THE PAST, PRESENT AND FUTURE WILLINGNESS AND ABILITY OF THE PARENTS
21 TO COOPERATE IN DECISION-MAKING ABOUT THE CHILD.

22 5. WHETHER THE PARENTAL DECISION-MAKING PLAN IS LOGISTICALLY POSSIBLE.

23 25-423. Parenting time

24 THE COURT SHALL DETERMINE PARENTING TIME IN ACCORDANCE WITH THE BEST INTERESTS
25 OF THE CHILD AND SHALL CONSIDER ALL FACTORS RELEVANT TO THE CHILD'S PHYSICAL AND
26 EMOTIONAL WELFARE, INCLUDING:

27 1. THE HISTORICAL, CURRENT AND POTENTIAL RELATIONSHIP BETWEEN THE
28 PARENT AND THE CHILD.

29 2. THE MENTAL AND PHYSICAL HEALTH OF ALL INDIVIDUALS INVOLVED.

30 3. THE CHILD'S ADJUSTMENT TO HOME, SCHOOL AND COMMUNITY.

31 4. THE INTERACTION AND RELATIONSHIP BETWEEN THE CHILD AND THE CHILD'S
32 SIBLINGS AND ANY OTHER PERSON WHO MAY SIGNIFICANTLY AFFECT THE CHILD'S BEST
33 INTEREST.

34 5. THE CHILD'S OWN WISHES, IF THE CHILD IS OF SUITABLE AGE AND
35 MATURITY, ALONG WITH THE BASIS OF THOSE WISHES.

36 6. WHETHER ONE PARENT IS MORE LIKELY TO SUPPORT AND ENCOURAGE THE
37 CHILD'S RELATIONSHIP AND CONTACT WITH THE OTHER PARENT. THIS PARAGRAPH DOES
38 NOT APPLY IF THE COURT DETERMINES THAT A PARENT IS ACTING IN GOOD FAITH TO
39 PROTECT THE CHILD FROM WITNESSING OR SUFFERING AN ACT OF DOMESTIC VIOLENCE OR
40 CHILD ABUSE.

41 7. THE FEASIBILITY OF EACH PLAN TAKING INTO ACCOUNT THE DISTANCE
42 BETWEEN THE PARENTS' HOMES, EACH PARENT'S OR CHILD'S WORK, SCHOOL, DAY CARE
43 OR OTHER SCHEDULES, AND THE CHILD'S AGE.

44 8. WHETHER A PARENT HAS COMPLIED WITH THE EDUCATIONAL PROGRAM PRESCRIBED
45 IN SECTION 25-352.

ARTICLE 3. SPECIAL CIRCUMSTANCES

25-431. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "BATTERER'S INTERVENTION PROGRAM" MEANS AN INDIVIDUAL OR GROUP TREATMENT PROGRAM FOR PERSONS WHO COMMIT AN ACT OF DOMESTIC VIOLENCE AGAINST THEIR INTIMATE PARTNERS AND THAT:

(a) EMPHASIZES PERSONAL RESPONSIBILITY;

(b) CLEARLY IDENTIFIES DOMESTIC VIOLENCE AS A MEANS OF ASSERTING POWER AND CONTROL OVER ANOTHER PERSON.

(c) DOES NOT PRIMARILY OR EXCLUSIVELY FOCUS ON ANGER OR STRESS MANAGEMENT, IMPULSE CONTROL, CONFLICT RESOLUTION OR COMMUNICATION SKILLS.

(d) DOES NOT INVOLVE THE PARTICIPATION OR PRESENCE OF OTHER FAMILY MEMBERS, INCLUDING THE VICTIM OR CHILDREN.

(e) PRESERVES RECORDS ESTABLISHING AN OFFENDER'S PARTICIPATION, CONTRIBUTION AND PROGRESS TOWARD REHABILITATION, IRRESPECTIVE OF WHETHER A GIVEN SESSION INVOLVES INDIVIDUAL TREATMENT OR GROUP THERAPY INCLUDING MULTIPLE OFFENDERS.

2. "CHILD ABUSE" MEANS THE ATTEMPT, CONSPIRACY OR SOLICITATION TO COMMIT OR THE COMMISSION OF ANY OF THE FOLLOWING ACTS IF SECTION 13-3601, SUBSECTION A, PARAGRAPH 5 APPLIES TO THE RELATIONSHIP BETWEEN THE VICTIM AND THE OFFENDER:

(a) ENDANGERMENT AS DEFINED IN SECTION 13-1201.

(b) THREATENING OR INTIMIDATING AS DEFINED IN SECTION 13-1202.

(c) ASSAULT AS DEFINED IN SECTION 13-1203.

(d) AGGRAVATED ASSAULT AS DEFINED IN SECTION 13-1204.

(e) ABUSE WHEN USED IN REFERENCE TO A CHILD, AS DEFINED IN SECTION 13-3623.

3. "CONVICTION" INCLUDES A PLEA OR VERDICT OF GUILTY OR A CONVICTION FOLLOWING A PLEA OF NO CONTEST.

4. "DEFERRED PROSECUTION" OR "DIVERSION" MEANS A PROGRAM OFFERED BY A CRIMINAL COURT OR GOVERNMENT AGENCY THROUGH WHICH AN ALLEGED OFFENDER AVOIDS CRIMINAL PROSECUTION BY AGREEING TO PAY A FINE, PARTICIPATE IN COUNSELING OR PERFORM OTHER REMEDIAL TASKS IN EXCHANGE FOR DISMISSAL OF ONE OR MORE PENDING CHARGES OR A PROMISE BY THE STATE NOT TO PROCEED WITH A COMPLAINT OR INDICTMENT.

5. "DOMESTIC VIOLENCE" MEANS THE ATTEMPT, CONSPIRACY OR SOLICITATION TO COMMIT OR THE COMMISSION OF AN ACT INVOLVING DOMESTIC VIOLENCE AS DEFINED IN SECTION 13-3601 OR A FELONY OFFENSE THAT INVOLVES PHYSICAL OR SEXUAL VIOLENCE AND THAT IS COMMITTED BY A PERSON AGAINST THE PERSON'S INTIMATE PARTNER. DOMESTIC VIOLENCE DOES NOT INCLUDE AN ACT OF SELF-DEFENSE THAT IS JUSTIFIED UNDER TITLE 13, CHAPTER 4.

6. "INTIMATE PARTNER" MEANS A PERSON WHOSE RELATIONSHIP WITH ANOTHER PERSON QUALIFIES PURSUANT TO SECTIONS 13-3601 SUBSECTION A, PARAGRAPH 1, 2, 3 OR 6.

1 7. "INTIMATE PARTNER VIOLENCE" MEANS BEHAVIOR THAT IS FREQUENTLY
2 CHARACTERIZED BY THE EFFORT OF ONE PARENT TO CONTROL THE OTHER PARENT THROUGH
3 THE USE OF ABUSIVE PATTERNS OF BEHAVIOR THAT OPERATE AT A VARIETY OF LEVELS,
4 INCLUDING EMOTIONAL, PSYCHOLOGICAL AND PHYSICAL.

5 25-432. Intimate partner violence and child abuse; mandatory
6 consideration

7 A. THE COURT MUST ALWAYS CONSIDER A HISTORY OF INTIMATE PARTNER
8 VIOLENCE OR CHILD ABUSE AS CONTRARY TO THE BEST INTERESTS OF THE CHILD,
9 IRRESPECTIVE OF WHETHER A CHILD PERSONALLY WITNESSED A PARTICULAR ACT OF
10 VIOLENCE.

11 B. WHEN DECIDING BOTH PARENTAL DECISION-MAKING AND PARENTING TIME, THE
12 COURT SHALL ASSIGN PRIMARY IMPORTANCE TO THE PHYSICAL SAFETY AND EMOTIONAL
13 HEALTH OF THE CHILD AND THE NONOFFENDING PARENT.

14 25-433. Intimate partner violence and child abuse; parental
15 decision-making: definitions

16 A. IF THE COURT DETERMINES FROM A PREPONDERANCE OF THE EVIDENCE THAT A PARENT
17 HAS PREVIOUSLY COMMITTED ANY ACT OF INTIMATE PARTNER VIOLENCE AGAINST
18 THE OTHER PARENT OR CHILD ABUSE AGAINST THE CHILD OR CHILD'S SIBLING, IT MAY
19 NOT AWARD PARENTAL DECISION-MAKING TO THE OFFENDING PARENT WITHOUT PROOF THAT
20 THE PARENT SHOULD STILL MAKE MAJOR DECISIONS FOR THE CHILD DESPITE THE PROVEN
21 HISTORY OF ABUSE OR VIOLENCE. THE OFFENDING PARENT MAY SUBMIT THIS PROOF BY
22 ASKING THE COURT TO CONSIDER THE CRITERIA LISTED IN SUBSECTION B OF THIS
23 SECTION. THE COURT SHALL ALSO EVALUATE WHETHER THE OFFENDING PARENT HAS
24 NEVERTHELESS FAILED TO PROVE THE PARENT'S SUITABILITY FOR PARENTAL
25 DECISION-MAKING BY CONSIDERING EACH OF THE CRITERIA LISTED IN SUBSECTION C OF
26 THIS SECTION.

27 B. TO DETERMINE IF THE OFFENDING PARENT MAY EXERCISE PARENTAL
28 DECISION-MAKING DESPITE THE PROVEN HISTORY OF INTIMATE PARTNER VIOLENCE OR
29 CHILD ABUSE, AND IN ADDITION TO ANY OTHER RELEVANT MITIGATING EVIDENCE, THE
30 COURT SHALL CONSIDER WHETHER THAT PARENT HAS

31 1. COMPLETED A BATTERER'S INTERVENTION PROGRAM IN CASES INVOLVING
32 INTIMATE PARTNER VIOLENCE AND HAS ALSO DISCLOSED AND SUBMITTED INTO EVIDENCE
33 A COMPLETE SET OF TREATMENT RECORDS PROVING AN ACCEPTABLE LEVEL OF
34 REHABILITATION. A CERTIFICATE OF COMPLETION DOES NOT BY ITSELF PROVE
35 REHABILITATION. THE TREATMENT RECORDS MUST DOCUMENT ACTIVE INVOLVEMENT AND
36 POSITIVE STEPS BY THE OFFENDING PARENT DURING THERAPY.

37 2. COMPLETED A COUNSELING PROGRAM FOR ALCOHOL OR OTHER SUBSTANCE ABUSE
38 IF THE EVIDENCE ESTABLISHES THAT SUBSTANCE ABUSE CONTRIBUTED TO INTIMATE PARTNER
39 VIOLENCE OR CHILD ABUSE.

40 3. REFRAINED FROM FURTHER BEHAVIOR THAT WOULD CONSTITUTE A CRIMINAL
41 OFFENSE UNDER FEDERAL OR STATE LAW, INCLUDING NEW ACTS OF INTIMATE PARTNER
42 VIOLENCE OR CHILD ABUSE.

43 4. DEMONSTRATED SINCERE REMORSE AND ACCEPTANCE OF PERSONAL
44 RESPONSIBILITY BY WORDS AND CONDUCT FOLLOWING THE CONFIRMED ACT OF INTIMATE
45 PARTNER VIOLENCE OR CHILD ABUSE.

1 C. TO EVALUATE WHETHER THE MITIGATING EVIDENCE PRESENTED IN SUBSECTION
2 B OF THIS SECTION IS ADEQUATE TO AWARD PARENTAL DECISION-MAKING TO THE
3 OFFENDING PARENT, AND IN ADDITION TO ANY OTHER RELEVANT AGGRAVATING FACTORS,
4 THE COURT SHALL ALSO CONSIDER:

5 1. THE EXTENT TO WHICH THE OFFENDING PARENT COERCIVELY CONTROLLED THE
6 OTHER PARENT DURING THEIR RELATIONSHIP, AS PRESCRIBED IN SUBSECTION D OF THIS
7 SECTION, OR COMMITTED OTHER ACTS OF CHILD ABUSE AGAINST THE CHILD OR THE
8 CHILD'S SIBLING.

9 2. WHETHER THE OFFENDING PARENT COMMITTED SUCCESSIVE ACTS OF INTIMATE
10 PARTNER VIOLENCE OR CHILD ABUSE AGAINST ANY PERSON AFTER HAVING RECEIVED
11 COUNSELING ON PAST OCCASIONS.

12 3. THE EXTENT TO WHICH THE OFFENDING PARENT INFLECTED INTIMATE PARTNER
13 VIOLENCE OR CHILD ABUSE AGAINST SOME OTHER PERSON IN THE PAST OR HAS RECENTLY
14 DONE SO WITH A NEW INTIMATE PARTNER OR CHILD.

15 4. IN CASES OF MUTUAL VIOLENCE INVOLVING ACTS THAT ARE NOT JUSTIFIED
16 PURSUANT TO TITLE 13, CHAPTER 4, THE MOTIVATION OF EACH PARENT FOR THE
17 VIOLENCE, THE LEVEL OF FORCE USED BY EACH PARENT AND EACH PARENT'S RESPECTIVE
18 INJURIES.

19 5. WHETHER THE OFFENDING PARENT CONTINUES TO MINIMIZE OR DENY
20 RESPONSIBILITY FOR PROVEN VIOLENCE OR BLAME IT ON UNRELATED ISSUES.

21 6. WHETHER THE OFFENDING PARENT HAS ENGAGED IN OTHER BEHAVIOR THAT
22 WOULD CONSTITUTE A CRIMINAL OFFENSE UNDER FEDERAL OR STATE LAW.

23 7. WHETHER THE OFFENDING PARENT FAILED TO COMPLY WITH THE MANDATORY
24 DISCLOSURE REQUIREMENTS OF ARIZONA RULES OF FAMILY LAW PROCEDURE OR REASONABLE
25 DISCOVERY REQUESTS FOR RECORDS ASSOCIATED WITH TREATING INTIMATE PARTNER
26 VIOLENCE OR CHILD ABUSE.

27 D. FOR THE PURPOSES OF DETERMINING IF A PARENT HAS COERCIVELY
28 CONTROLLED ANOTHER PARENT, THE COURT SHALL DETERMINE IF THE PARENT HAS
29 INFLECTED ONE OR MORE CONTROLLING BEHAVIORS AGAINST THE OTHER PARENT WHO HAS
30 ALSO SUFFERED INTIMATE PARTNER VIOLENCE BY THAT PARENT. WITH REGARD TO EACH
31 BEHAVIOR, THE COURT SHALL CONSIDER ITS SEVERITY, WHETHER IT COMPRISES PART OF
32 A WIDER PATTERN OF CONTROLLING CONDUCT AND THE PARENT'S MOTIVATION.
33 SPECIFICALLY, THE COURT SHALL CONSIDER WHETHER THE OFFENDING PARENT HAS:

34 1. PERSISTENTLY ENGAGED IN DEMEANING, DEGRADING OR OTHER VERBALLY ABUSIVE
35 CONDUCT TOWARD THE VICTIM.

36 2. CONFINED THE VICTIM OR OTHERWISE RESTRICTED THE VICTIM'S MOVEMENTS.

37 3. ATTEMPTED OR THREATENED SUICIDE.

38 4. INJURED OR THREATENED TO INJURE HOUSEHOLD PETS.

39 5. DAMAGED PROPERTY IN THE VICTIM'S PRESENCE OR WITHOUT THE VICTIM'S
40 CONSENT.

41 6. THREATENED TO CONCEAL OR REMOVE CHILDREN FROM THE VICTIM'S CARE OR
42 ATTEMPTED TO UNDERMINE THE VICTIM'S RELATIONSHIP WITH A CHILD.

43 7. RESTRICTED OR HINDERED THE VICTIM'S COMMUNICATIONS, INCLUDING
44 ATTEMPTS BY THE VICTIM TO REPORT DOMESTIC VIOLENCE, CHILD ABUSE OR OTHER
45

1 CRIMINAL BEHAVIOR TO LAW ENFORCEMENT, MEDICAL PERSONNEL OR OTHER THIRD
2 PARTIES.
3 8. EAVESDROPPED ON THE VICTIM'S PRIVATE COMMUNICATIONS OR INTERNET
4 ACTIVITIES, INTERRUPTED OR CONFISCATED THE VICTIM'S MAIL OR ACCESSED THE
5 VICTIM'S FINANCIAL, ELECTRONIC MAIL OR INTERNET ACCOUNTS WITHOUT PERMISSION.
6 9. ENGAGED IN A COURSE OF CONDUCT DELIBERATELY CALCULATED TO
7 JEOPARDIZE THE VICTIM'S EMPLOYMENT.
8 10. ILLICITLY TAMPERED WITH THE VICTIM'S RESIDENTIAL UTILITIES OR
9 ENTERED ONTO RESIDENTIAL PROPERTY INHABITED BY THE VICTIM WITHOUT PERMISSION;
10 11. REPORTED OR THREATENED TO REPORT THE VICTIM'S IMMIGRATION STATUS TO
11 GOVERNMENT OFFICIALS.
12 12. TERMINATED THE VICTIM'S OR CHILDREN'S INSURANCE COVERAGE.
13 13. FORBADE OR PREVENTED THE VICTIM FROM MAKING DECISIONS CONCERNING
14 DISPOSITION OF PROPERTY OR INCOME IN WHICH THE VICTIM POSSESSED A LEGAL
15 INTEREST.
16 14. OPENED FINANCIAL OR CREDIT ACCOUNTS IN THE VICTIM'S NAME WITHOUT
17 THE VICTIM'S CONSENT, FORGED THE VICTIM'S SIGNATURE OR OTHERWISE APPROPRIATED
18 THE VICTIM'S IDENTITY WITHOUT THE VICTIM'S AUTHORITY.
19 15. RESTRICTED THE VICTIM'S PARTICIPATION IN SOCIAL ACTIVITIES OR ACCESS TO
20 FAMILY, FRIENDS OR ACQUAINTANCES.
21 16. FORBADE OR PREVENTED THE VICTIM FROM ACHIEVING THE VICTIM'S
22 EDUCATIONAL OR CAREER OBJECTIVES.
23 17. USED ESPECIALLY DANGEROUS FORMS OF PHYSICAL VIOLENCE AGAINST THE
24 VICTIM, INCLUDING BURNING, STRANGULATION, SUFFOCATION OR USE OF A DEADLY
25 WEAPON.
26 18. INFLICTED ANY FORM OF PHYSICAL VIOLENCE AGAINST A PREGNANT VICTIM.
27 19. ENGAGED IN ANY OTHER CONTROLLING BEHAVIOR CONSISTENT WITH THE
28 CONDUCT DESCRIBED IN THIS DEFINITION.
29 E. FOR THE PURPOSES OF THIS SECTION "STRANGULATION" AND "SUFFOCATION"
30 HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 13-1204.
31 25-434. Intimate partner violence and child abuse: parenting
32 time
33 A. IF THE COURT FINDS THAT A PARENT HAS COMMITTED ANY ACT OF INTIMATE
34 PARTNER VIOLENCE OR CHILD ABUSE, THAT PARENT HAS THE BURDEN OF PROVING TO THE
35 COURT'S SATISFACTION THAT UNRESTRICTED PARENTING TIME WILL NOT PHYSICALLY
36 ENDANGER THE CHILD OR SIGNIFICANTLY IMPAIR THE CHILD'S EMOTIONAL DEVELOPMENT.
37 IN DETERMINING WHETHER THE OFFENDING PARENT HAS MET THIS BURDEN, THE COURT
38 SHALL CONSIDER ALL OF THE CRITERIA LISTED IN SECTIONS 25-433, SUBSECTIONS B
39 AND C. THE COURT MUST ALSO CONSIDER IF PARENTING TIME WITH THAT PARENT UNDER
40 THE EXISTING CIRCUMSTANCES MAY:
41 1. EXPOSE THE CHILD TO POOR ROLE MODELING RELATED TO THE CONFIRMED
42 INTIMATE PARTNER VIOLENCE AS THE CHILD GROWS OLDER AND BEGINS TO DEVELOP THE
43 OWN INTIMATE RELATIONSHIPS, IRRESPECTIVE OF WHETHER THE OFFENDING
44 PARENT POSES A DIRECT PHYSICAL RISK TO THE CHILD.
45

1 2. ENDANGER THE CHILD'S SAFETY DUE TO THE CHILD'S PHYSICAL PROXIMITY
2 TO NEW, POTENTIAL ACTS OF VIOLENCE BY THE PARENT AGAINST A NEW INTIMATE
3 PARTNER OR OTHER CHILD.

4 B. IF THE OFFENDING PARENT FAILS TO PROVE THE PARENT'S SUITABILITY FOR
5 UNRESTRICTED PARENTING TIME PURSUANT TO SUBSECTION A OF THIS SECTION, THE
6 COURT SHALL PLACE CONDITIONS ON PARENTING TIME THAT BEST PROTECT THE CHILD
7 AND THE OTHER PARENT FROM FURTHER HARM. WITH RESPECT TO THE OFFENDING
8 PARENT, THE COURT MAY:

9 1. ORDER CHILD EXCHANGES TO OCCUR IN A SPECIFIED SAFE SETTING.

10 2. ORDER THAT A PERSON OR AGENCY SPECIFIED BY THE COURT MUST SUPERVISE
11 PARENTING TIME. IF THE COURT ALLOWS A FAMILY OR HOUSEHOLD MEMBER OR OTHER
12 PERSON TO SUPERVISE THE OFFENDING PARENT'S PARENTING TIME, THE COURT SHALL
13 ESTABLISH CONDITIONS THAT THIS SUPERVISOR MUST FOLLOW. WHEN DECIDING WHOM TO
14 SELECT, THE COURT SHALL ALSO CONSIDER THE SUPERVISOR'S ABILITY TO PHYSICALLY
15 INTERVENE IN AN EMERGENCY, WILLINGNESS TO PROMPTLY REPORT A PROBLEM TO THE
16 COURT OR OTHER APPROPRIATE AUTHORITIES AND READINESS TO APPEAR IN FUTURE
17 PROCEEDINGS AND TO TESTIFY.

18 3. ORDER THE COMPLETION OF A BATTERER'S INTERVENTION PROGRAM AND ANY
19 OTHER COURT-ORDERED COUNSELING.

20 4. ORDER THE OFFENDING PARENT TO ABSTAIN FROM THE CONSUMPTION OR
21 POSSESSION OF ALCOHOL OR CONTROLLED SUBSTANCES DURING THAT PARENT'S PARENTING
22 TIME AND AT ANY OTHER TIME THE COURT DEEMS APPROPRIATE.

23 5. ORDER THE PAYMENT OF COSTS ASSOCIATED WITH SUPERVISED PARENTING
24 TIME.

25 6. PROHIBIT OVERNIGHT PARENTING TIME.

26 7. REQUIRE THE POSTING OF A CASH BOND FROM THE OFFENDING PARENT TO
27 ASSURE THE CHILD'S SAFE RETURN TO THE OTHER PARENT.

28 8. ORDER THAT THE ADDRESS OF THE CHILD AND OTHER PARENT REMAIN
29 CONFIDENTIAL.

30 9. RESTRICT OR FORBID ACCESS TO OR POSSESSION OF FIREARMS OR
31 AMMUNITION.

32 10. SUSPEND PARENTING TIME FOR A PRESCRIBED PERIOD.

33 11. SUSPEND PARENTING TIME INDEFINITELY, PENDING A CHANGE IN
34 CIRCUMSTANCES AND A MODIFICATION PETITION FROM THE OFFENDING PARENT.

35 12. IMPOSE ANY OTHER CONDITION THAT THE COURT DETERMINES IS NECESSARY
36 TO PROTECT THE CHILD, THE OTHER PARENT, AND ANY OTHER FAMILY OR HOUSEHOLD
37 MEMBER.

38 25-435. Intimate partner violence and child abuse; evidence;
39 collateral proceedings; prohibited activity;
40 alternate dispute resolution; referrals

41 A. TO DETERMINE IF A PARENT HAS COMMITTED AN ACT OF INTIMATE PARTNER
42 VIOLENCE OR CHILD ABUSE, AND SUBJECT TO THE APPLICABLE RULES OF FAMILY LAW
43 PROCEDURE, THE COURT SHALL CONSIDER ALL RELEVANT FACTORS INCLUDING THE
44 FOLLOWING:
45

- 1 1. FINDINGS OR JUDGMENTS FROM ANOTHER COURT OF COMPETENT JURISDICTION.
- 2 2. POLICE OR MEDICAL REPORTS.
- 3 3. COUNSELING, SCHOOL OR SHELTER RECORDS.
- 4 4. CHILD PROTECTIVE SERVICES RECORDS.
- 5 5. PHOTOGRAPHS, RECORDINGS, TEXT MESSAGES, ELECTRONIC MAIL OR WRITTEN
- 6 CORRESPONDENCE.
- 7 6. WITNESS TESTIMONY.
- 8 B. FOR PURPOSES OF SUBSECTION A OF THIS SECTION:
- 9 1. EVIDENCE THAT A PARENT PREVIOUSLY CONSENTED TO DEFERRED PROSECUTION
- 10 OR DIVERSION FROM CRIMINAL CHARGES FOR DOMESTIC VIOLENCE AGAINST AN INTIMATE
- 11 PARTNER OR CHILD ABUSE CONSTITUTES ADEQUATE PROOF THAT THE PARENT COMMITTED
- 12 THE ACT OR ACTS ALLEGED IN THE CRIMINAL COMPLAINT, REGARDLESS OF WHETHER THE
- 13 COMPLAINT WAS DISMISSED PURSUANT TO THE DIVERSION OR DEFERRED PROSECUTION.
- 14 THIS SUBSECTION DOES NOT PREVENT EITHER PARENT FROM INTRODUCING ADDITIONAL
- 15 EVIDENCE RELATED TO THE EVENT IN QUESTION IN SUPPORT OF THAT PARENT'S CASE.
- 16 2. A JUDGMENT RESULTING FROM A PROCEEDING UNDER SECTION 13-2602,
- 17 SUBSECTION I IS NOT CONCLUSIVE EVIDENCE THAT DOMESTIC VIOLENCE OR CHILD ABUSE
- 18 DID OR DID NOT OCCUR.
- 19 C. A PARENT'S RESIDENCY IN A SHELTER FOR VICTIMS OF INTIMATE PARTNER
- 20 VIOLENCE DOES NOT CONSTITUTE GROUNDS FOR DENYING THAT PARENT ANY DEGREE OF
- 21 DECISION-MAKING AUTHORITY OR PARENTING TIME. FOR THE PURPOSES OF THIS
- 22 SUBSECTION, "SHELTER" MEANS A FACILITY THAT MEETS THE REQUIREMENTS OF SECTION
- 23 36-3005.
- 24 D. THE COURT SHALL NOT ORDER JOINT COUNSELING BETWEEN A PERPETRATOR OF
- 25 VIOLENCE AND THAT PERSON'S VICTIM. THE COURT MAY REFER A VICTIM TO
- 26 APPROPRIATE COUNSELING AND PROVIDE A VICTIM WITH WRITTEN INFORMATION ABOUT
- 27 AVAILABLE COMMUNITY RESOURCES RELATED TO INTIMATE PARTNER VIOLENCE OR CHILD
- 28 ABUSE.
- 29 E. A VICTIM OF INTIMATE PARTNER VIOLENCE MAY OPT OUT OF ALTERNATIVE
- 30 DISPUTE RESOLUTION IMPOSED UNDER THE ARIZONA RULES OF FAMILY LAW PROCEDURE TO
- 31 THE EXTENT THAT A SUGGESTED DISPUTE RESOLUTION PROCEDURE REQUIRES THE PARTIES
- 32 TO MEET AND CONFER IN PERSON. THE COURT SHALL NOTIFY EACH PARTY OF THIS
- 33 RIGHT BEFORE REQUIRING THEIR PARTICIPATION IN THAT PROCESS. FOR THE PURPOSES OF
- 34 THIS SUBSECTION, "VICTIM OF INTIMATE PARTNER VIOLENCE" MEANS A PARENT WHO:
- 35 1. WAS ISSUED AN ORDER OF PROTECTION AGAINST THE OTHER PARENT PURSUANT
- 36 TO SECTION 13-3602.
- 37 2. WAS PREVIOUSLY DETERMINED BY A CIVIL OR FAMILY COURT TO HAVE
- 38 SUFFERED INTIMATE PARTNER VIOLENCE BY THE OTHER PARENT.
- 39 3. WAS THE NAMED VICTIM IN A CRIMINAL CASE THAT RESULTED IN THE
- 40 CONVICTION, DIVERSION OR DEFERRED PROSECUTION OF THE OTHER PARENT FOR AN ACT
- 41 INVOLVING INTIMATE PARTNER VIOLENCE.
- 42 F. THE COURT MAY REQUEST OR ORDER THE SERVICES OF THE DIVISION OF
- 43 CHILDREN AND FAMILY SERVICES IN THE DEPARTMENT OF ECONOMIC SECURITY IF IT
- 44 BELIEVES THAT A CHILD MAY BE THE VICTIM OF ABUSE OR NEGLECT AS DEFINED IN
- 45 SECTION 8-201.

- 1 25-436. Substance abuse
2 A. IF THE COURT DETERMINES FROM A PREPONDERANCE OF THE EVIDENCE THAT A
3 PARENT HAS BEEN CONVICTED OF ANY OF THE FOLLOWING OFFENSES WITHIN THE PAST
4 THREE YEARS, A REBUTTABLE PRESUMPTION IS ESTABLISHED PROHIBITING AN AWARD OF
5 PARENTAL DECISION-MAKING TO THAT PARENT:
6 1. ANY DRUG OFFENSE UNDER TITLE 13, CHAPTER 34.
7 2. A VIOLATION OF SECTION 28-1381, 28-1382 OR 28-1383.
8 B. TO DETERMINE IF AN OFFENDER HAS REBUTTED THE PRESUMPTION, THE COURT
9 SHALL CONSIDER ALL RELEVANT FACTORS INCLUDING:
10 1. THE ABSENCE OF ANY OTHER DRUG OR ALCOHOL-RELATED ARREST OR
11 CONVICTION.
12 2. RELIABLE RESULTS FROM RANDOM URINALYSES OR BLOOD OR HAIR FOLLICLE
13 TESTS OR OTHER COMPARABLE TESTING PROCEDURES.
14 25-437. Dangerous crimes against children: definition
15 A. THE COURT SHALL NOT AWARD PARENTAL DECISION-MAKING OR UNSUPERVISED
16 PARENTING TIME TO A PERSON WHO:
17 1. HAS BEEN CONVICTED OF A DANGEROUS CRIME AGAINST CHILDREN.
18 2. IS REQUIRED TO REGISTER PURSUANT TO SECTION 13-3821.
19 B. A CHILD'S PARENT OR CUSTODIAN MUST IMMEDIATELY NOTIFY THE OTHER
20 PARENT OR CUSTODIAN IF THE PARENT OR CUSTODIAN KNOWS THAT A CONVICTED OR
21 REGISTERED SEX OFFENDER OR A PERSON WHO HAS BEEN CONVICTED OF A DANGEROUS
22 CRIME AGAINST CHILDREN MAY HAVE ACCESS TO THE CHILD. THE PARENT OR CUSTODIAN
23 MUST PROVIDE NOTICE BY FIRST-CLASS MAIL, RETURN RECEIPT REQUESTED, OR BY
24 ELECTRONIC MEANS TO AN ELECTRONIC MAIL ADDRESS THAT THE RECIPIENT PROVIDED TO
25 THE PARENT OR CUSTODIAN FOR NOTIFICATION PURPOSES OR BY SOME OTHER MEANS OF
26 COMMUNICATION APPROVED BY THE COURT.
27 C. FOR THE PURPOSES OF THIS SECTION, "DANGEROUS CRIME AGAINST CHILDREN"
28 HAS THE SAME MEANING PRESCRIBED IN SECTION 13-705.
29 25-438. Violent and serial felons
30 A. THE COURT SHALL NOT AWARD PARENTAL DECISION-MAKING OR UNSUPERVISED
31 PARENTING TIME TO A PERSON WHO HAS BEEN:
32 1. CONVICTED OF SECOND DEGREE MURDER PURSUANT TO SECTION 13-1104 OR
33 FIRST DEGREE MURDER PURSUANT TO SECTION 13-1105.
34 2. SENTENCED AS A CATEGORY TWO OR CATEGORY THREE REPETITIVE OFFENDER
35 PURSUANT TO SECTION 13-703.
36 B. NOTWITHSTANDING SUBSECTION A, PARAGRAPH 1 OF THIS SECTION, IF A
37 PARENT IS CONVICTED OF FIRST DEGREE MURDER OR SECOND DEGREE MURDER OF THE
38 CHILD'S OTHER PARENT, THE COURT MAY AWARD PARENTAL DECISION-MAKING AND
39 UNRESTRICTED PARENTING TIME TO THE CONVICTED PARENT ON A SHOWING OF CREDIBLE
40 EVIDENCE, WHICH MAY INCLUDE TESTIMONY FROM AN EXPERT WITNESS, THAT THE
41 CONVICTED PARENT WAS A VICTIM OF INTIMATE PARTNER VIOLENCE AT THE HANDS OF
42 THE MURDERED PARENT AND SUFFERED TRAUMA AS A RESULT.
43 25-447. Rulings not consistent with statutory presumptions
44 A. IF THE COURT DETERMINES THAT SPECIAL CIRCUMSTANCES APPLY TO BOTH
45 PARENTS AND THAT NEITHER PARENT SHOULD BE AWARDED PARENTAL DECISION-MAKING OR

1 PARENTING TIME, THE COURT MAY REFER THE MATTER FOR JUVENILE DEPENDENCY
2 PROCEEDINGS PURSUANT TO TITLE 8, CHAPTER 10 OR MAY AWARD PARENTAL
3 PARENTAL DECISION-MAKING OR VISITATION TO ANOTHER FAMILY MEMBER OR THIRD PARTY
4 CONSISTENT WITH THE CHILD'S BEST INTERESTS.

5 B. IF THE COURT AWARDS PARENTAL DECISION-MAKING OR PARENTING TIME TO A
6 PARENT WHO IS OTHERWISE DISQUALIFIED PURSUANT TO THIS ARTICLE, THE COURT MUST
7 PROVIDE DETAILED, WRITTEN FINDINGS THAT DESCRIBE THE EXTRAORDINARY CONDITIONS
8 THAT JUSTIFY THE AWARD.

9 C. THE COURT MUST EXPLAIN WHY ITS DECISION PURSUANT TO THIS SECTION IS
10 IN THE CHILD'S BEST INTEREST, WITH PARTICULAR FOCUS ON THE CHILD'S SAFETY.

11 ARTICLE 4. THIRD-PARTY RIGHTS

12 25-441. Decision-making authority

13 A. PURSUANT TO SECTION 25-403, SUBSECTION B, PARAGRAPH 2, A PERSON
14 OTHER THAN A LEGAL PARENT MAY PETITION THE SUPERIOR COURT FOR DECISION-MAKING
15 AUTHORITY OVER A CHILD. THE COURT SHALL SUMMARILY DENY A PETITION UNLESS IT
16 FINDS THAT THE PETITIONER'S INITIAL PLEADING ESTABLISHES THAT ALL OF THE
17 FOLLOWING ARE TRUE:

18 1. THE PERSON FILING THE PETITION STANDS IN LOCO PARENTIS
19 TO THE CHILD.

20 2. IT WOULD BE SIGNIFICANTLY DETRIMENTAL TO THE CHILD TO REMAIN, OR BE
21 PLACED IN THE CARE OF, EITHER LEGAL PARENT WHO WISHES TO KEEP OR ACQUIRE
22 PARENTAL DECISION-MAKING.

23 3. A COURT OF COMPETENT JURISDICTION HAS NOT ENTERED OR APPROVED AN
24 ORDER CONCERNING PARENTAL DECISION-MAKING WITHIN ONE YEAR BEFORE THE PERSON
25 FILED A PETITION PURSUANT TO THIS SECTION, UNLESS THERE IS REASON TO BELIEVE
26 THE CHILD'S PRESENT ENVIRONMENT MAY SERIOUSLY ENDANGER THE CHILD'S PHYSICAL,
27 MENTAL, MORAL OR EMOTIONAL HEALTH.

28 4. ONE OF THE FOLLOWING APPLIES:

29 (a) ONE OF THE LEGAL PARENTS IS DECEASED.

30 (b) THE CHILD'S LEGAL PARENTS ARE NOT MARRIED TO EACH OTHER AT THE
31 TIME THE PETITION IS FILED.

32 (c) A PROCEEDING FOR DISSOLUTION OF MARRIAGE OR FOR LEGAL SEPARATION
33 OF THE LEGAL PARENTS IS PENDING AT THE TIME THE PETITION IS FILED.

34 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, IT IS A REBUTTABLE
35 PRESUMPTION THAT AWARDED DECISION-MAKING TO A LEGAL PARENT SERVES THE CHILD'S
36 BEST INTERESTS BECAUSE OF THE PHYSICAL, PSYCHOLOGICAL AND EMOTIONAL
37 NEEDS OF THE CHILD TO BE REARED BY A LEGAL PARENT. A THIRD PARTY MAY REBUT
38 THIS PRESUMPTION ONLY WITH PROOF SHOWING BY CLEAR AND CONVINCING EVIDENCE
39 THAT AWARDED PARENTAL DECISION-MAKING TO A LEGAL PARENT IS NOT CONSISTENT
40 WITH THE CHILD'S BEST INTERESTS.

41 C. PURSUANT TO SECTION 25-403, SUBSECTION B, PARAGRAPH 2, A PERSON
42 OTHER THAN A LEGAL PARENT MAY PETITION THE SUPERIOR COURT FOR VISITATION WITH
43 A CHILD. THE SUPERIOR COURT MAY GRANT VISITATION RIGHTS DURING THE CHILD'S
44 MINORITY ON A FINDING THAT THE VISITATION IS IN THE CHILD'S BEST INTERESTS
45 AND THAT ANY OF THE FOLLOWING IS TRUE:

1 1. ONE OF THE LEGAL PARENTS IS DECEASED OR HAS BEEN MISSING AT LEAST
2 THREE MONTHS. FOR THE PURPOSES OF THIS PARAGRAPH, A PARENT IS CONSIDERED TO
3 BE MISSING IF THE PARENT'S LOCATION HAS NOT BEEN DETERMINED AND THE PARENT
4 HAS BEEN REPORTED AS MISSING TO A LAW ENFORCEMENT AGENCY.

5 2. THE CHILD WAS BORN OUT OF WEDLOCK AND THE CHILD'S LEGAL PARENTS ARE
6 NOT MARRIED TO EACH OTHER AT THE TIME THE PETITION IS FILED.

7 3. FOR GRANDPARENT OR GREAT-GRANDPARENT VISITATION, THE MARRIAGE OF
8 THE PARENTS OF THE CHILD HAS BEEN DISSOLVED FOR AT LEAST THREE MONTHS.

9 4. FOR IN LOCO PARENTIS VISITATION, A PROCEEDING FOR DISSOLUTION OF
10 MARRIAGE OR FOR LEGAL SEPARATION OF THE LEGAL PARENTS IS PENDING AT THE TIME
11 THE PETITION IS FILED.

12 D. A PETITION FILED UNDER SUBSECTION A OR C OF THIS SECTION MUST BE
13 VERIFIED OR SUPPORTED BY AFFIDAVIT AND MUST INCLUDE DETAILED FACTS SUPPORTING
14 THE PETITIONER'S CLAIM. THE PETITIONER MUST ALSO PROVIDE NOTICE OF THIS
15 PROCEEDING, INCLUDING A COPY OF THE PETITION AND ANY AFFIDAVITS OR OTHER
16 ATTACHMENTS, AND SERVE THE NOTICE PURSUANT TO THE ARIZONA RULES OF FAMILY LAW
17 PROCEDURE TO ALL OF THE FOLLOWING:

18 1. THE CHILD'S LEGAL PARENTS.

19 2. A THIRD PARTY WHO POSSESSES DECISION-MAKING AUTHORITY OVER THE
20 CHILD OR VISITATION RIGHTS.

21 3. THE CHILD'S GUARDIAN OR GUARDIAN AD LITEM.

22 4. A PERSON OR AGENCY THAT POSSESSES PHYSICAL CUSTODY OF THE CHILD OR
23 CLAIMS DECISION-MAKING AUTHORITY OR VISITATION RIGHTS CONCERNING THE CHILD.

24 5. ANY OTHER PERSON OR AGENCY THAT HAS PREVIOUSLY APPEARED IN THE
25 ACTION.

26 E. WHEN DECIDING WHETHER TO GRANT VISITATION TO A THIRD PARTY, THE
27 COURT SHALL GIVE SPECIAL WEIGHT TO THE LEGAL PARENTS' OPINION OF WHAT SERVES
28 THEIR CHILD'S BEST INTERESTS AND CONSIDER ALL RELEVANT FACTORS INCLUDING:

29 1. THE HISTORICAL RELATIONSHIP, IF ANY, BETWEEN THE CHILD AND THE
30 PERSON SEEKING VISITATION.

31 2. THE MOTIVATION OF THE REQUESTING PARTY SEEKING VISITATION.

32 3. THE MOTIVATION OF THE PERSON OBJECTING TO VISITATION.

33 4. THE QUANTITY OF VISITATION TIME REQUESTED AND THE POTENTIAL ADVERSE
34 IMPACT THAT VISITATION WILL HAVE ON THE CHILD'S CUSTOMARY ACTIVITIES.

35 5. IF ONE OR BOTH OF THE CHILD'S PARENTS ARE DECEASED, THE BENEFIT IN
36 MAINTAINING AN EXTENDED FAMILY RELATIONSHIP.

37 F. IF LOGISTICALLY POSSIBLE AND APPROPRIATE, THE COURT SHALL ORDER
38 VISITATION BY A GRANDPARENT OR GREAT-GRANDPARENT IF THE CHILD IS RESIDING OR
39 SPENDING TIME WITH THE PARENT THROUGH WHOM THE GRANDPARENT OR
40 GREAT-GRANDPARENT CLAIMS A RIGHT OF ACCESS TO THE CHILD.

41 G. A GRANDPARENT OR GREAT-GRANDPARENT SEEKING VISITATION RIGHTS UNDER
42 THIS SECTION SHALL PETITION IN THE SAME ACTION IN WHICH THE FAMILY COURT
43 PREVIOUSLY DECIDED PARENTAL DECISION-MAKING AND PARENTING TIME, OR IF NO SUCH
44 CASE EXISTED, BY SEPARATE PETITION IN THE COUNTY OF THE CHILD'S HOME STATE, AS
45 DEFINED IN SECTION 25-1002.

1 H. ALL VISITATION RIGHTS GRANTED UNDER THIS SECTION AUTOMATICALLY
2 TERMINATE IF THE CHILD IS ADOPTED OR PLACED FOR ADOPTION. IF THE CHILD IS
3 REMOVED FROM AN ADOPTIVE PLACEMENT, THE COURT MAY REINSTATE THE VISITATION
4 RIGHTS. THIS SUBSECTION DOES NOT APPLY IF THE CHILD IS ADOPTED BY THE SPOUSE
5 OF A NATURAL PARENT AFTER THE NATURAL PARENT REMARRIES.

6 ARTICLE 5. TEMPORARY ORDERS, MODIFICATION AND RELOCATION

7 24-451. Temporary Orders

8 A. A PARTY TO A CUSTODY PROCEEDING MAY MOVE FOR A TEMPORARY CUSTODY
9 ORDER. THIS MOTION MUST BE SUPPORTED BY PLEADINGS AS PROVIDED IN SECTION
10 25-452. THE COURT MAY AWARD TEMPORARY CUSTODY PURSUANT TO THE REQUIREMENTS
11 OF THIS CHAPTER AFTER A HEARING OR, IF THERE IS NO OBJECTION, SOLELY ON THE
12 BASIS OF THE PLEADINGS.

13 B. IF A PROCEEDING FOR DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION IS
14 DISMISSED, ANY TEMPORARY CUSTODY ORDER IS VACATED UNLESS A PARENT OR THE
15 CHILD'S CUSTODIAN MOVES THAT THE PROCEEDING CONTINUE AS A CUSTODY PROCEEDING
16 AND THE COURT FINDS, AFTER A HEARING, THAT THE CIRCUMSTANCES OF THE PARENTS
17 AND THE BEST INTEREST OF THE CHILD REQUIRE THAT A CUSTODY DECREE BE ISSUED.

18 C. IF A CUSTODY PROCEEDING COMMENCED IN THE ABSENCE OF A PETITION FOR
19 DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION IS DISMISSED, ANY TEMPORARY
20 CUSTODY ORDER IS VACATED.

21 25-452. Modification of decree; affidavit; contents

22 A. A PERSON SHALL NOT MAKE A MOTION TO MODIFY A PARENTAL
23 DECISION-MAKING OR PARENTING TIME DECREE EARLIER THAN ONE YEAR AFTER ITS
24 DATE, UNLESS THE COURT PERMITS IT TO BE MADE ON THE BASIS OF AFFIDAVITS THAT
25 THERE IS REASON TO BELIEVE THE CHILD'S PRESENT ENVIRONMENT MAY SERIOUSLY
26 ENDANGER THE CHILD'S PHYSICAL, MENTAL, MORAL OR EMOTIONAL HEALTH. AT ANY
27 TIME AFTER A SHARED PARENTAL DECISION-MAKING ORDER IS ENTERED, A PARENT MAY
28 PETITION THE COURT FOR MODIFICATION OF THE ORDER ON THE BASIS OF EVIDENCE
29 THAT DOMESTIC VIOLENCE INVOLVING A VIOLATION OF SECTION 13-1201 OR 13-1204,
30 SPOUSAL ABUSE OR CHILD ABUSE OCCURRED SINCE THE ENTRY OF THE JOINT CUSTODY
31 ORDER. SIX MONTHS AFTER A SHARED PARENTAL DECISION-MAKING ORDER IS ENTERED,
32 A PARENT MAY PETITION THE COURT FOR MODIFICATION OF THE ORDER BASED ON THE
33 FAILURE OF THE OTHER PARENT TO COMPLY WITH THE PROVISIONS OF THE ORDER. A
34 MOTION OR PETITION TO MODIFY A CUSTODY ORDER SHALL MEET THE REQUIREMENTS OF
35 THIS SECTION. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION B OF THIS SECTION,
36 IF A CUSTODIAL PARENT IS A MEMBER OF THE UNITED STATES ARMED FORCES, THE
37 COURT SHALL CONSIDER THE TERMS OF THAT PARENT'S MILITARY FAMILY CARE PLAN TO
38 DETERMINE WHAT IS IN THE CHILD'S BEST INTEREST DURING THE CUSTODIAL PARENT'S
39 MILITARY DEPLOYMENT.

40 B. FOR THE PURPOSES OF A MOTION TO MODIFY A DECREE, THE MILITARY
41 DEPLOYMENT OF A CUSTODIAL PARENT WHO IS A MEMBER OF THE UNITED STATES ARMED
42 FORCES IS NOT A CHANGE IN CIRCUMSTANCES THAT MATERIALLY AFFECTS THE WELFARE
43 OF THE CHILD IF THE CUSTODIAL PARENT HAS FILED A MILITARY FAMILY CARE PLAN
44 WITH THE COURT AT A PREVIOUS CUSTODY PROCEEDING AND IF THE MILITARY
45 DEPLOYMENT IS LESS THAN SIX MONTHS.

1 C. A DECREE OR ORDER ISSUED PURSUANT TO THIS CHAPTER THAT A COURT
2 ENTERS IN CONTEMPLATION OF OR DURING THE MILITARY DEPLOYMENT OF A CUSTODIAL
3 PARENT OUTSIDE OF THE CONTINENTAL UNITED STATES SHALL SPECIFICALLY REFERENCE
4 THE DEPLOYMENT AND INCLUDE PROVISIONS GOVERNING THE CUSTODY OF THE MINOR
5 CHILD AFTER THE DEPLOYMENT ENDS. EITHER PARENT MAY FILE A PETITION WITH THE
6 COURT AFTER THE DEPLOYMENT ENDS TO MODIFY THE DECREE OR ORDER, IN COMPLIANCE
7 WITH SUBSECTION F OF THIS SECTION. THE COURT SHALL HOLD A HEARING OR CONFERENCE
8 ON THE PETITION WITHIN THIRTY DAYS AFTER THE PETITION IS FILED.

9 D. THE COURT MAY MODIFY AN ORDER GRANTING OR DENYING PARENTING TIME
10 RIGHTS WHENEVER MODIFICATION WOULD SERVE THE BEST INTEREST OF THE CHILD, BUT
11 THE COURT SHALL NOT RESTRICT A PARENT'S PARENTING TIME RIGHTS UNLESS IT FINDS
12 THAT THE PARENTING TIME WOULD ENDANGER SERIOUSLY THE CHILD'S PHYSICAL,
13 MENTAL, MORAL OR EMOTIONAL HEALTH.

14 E. IF AFTER A CUSTODY OR PARENTING TIME ORDER IS IN EFFECT ONE OF THE
15 PARENTS IS CHARGED WITH A DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN
16 SECTION 13-705, CHILD MOLESTATION AS DEFINED IN SECTION 13-1410 OR AN ACT
17 OF DOMESTIC VIOLENCE AS PRESCRIBED IN SECTION 13-3601 IN WHICH THE VICTIM IS
18 A MINOR, THE OTHER PARENT MAY PETITION THE COURT FOR AN EXPEDITED HEARING.
19 PENDING THE EXPEDITED HEARING, THE COURT MAY SUSPEND PARENTING TIME OR CHANGE
20 CUSTODY EX PARTE.

21 F. TO MODIFY ANY TYPE OF CUSTODY ORDER A PERSON SHALL SUBMIT AN
22 AFFIDAVIT OR VERIFIED PETITION SETTING FORTH DETAILED FACTS SUPPORTING THE
23 REQUESTED MODIFICATION AND SHALL GIVE NOTICE, TOGETHER WITH A COPY OF THE
24 AFFIDAVIT OR VERIFIED PETITION, TO OTHER PARTIES TO THE PROCEEDING, WHO MAY
25 FILE OPPOSING AFFIDAVITS. THE COURT SHALL DENY THE MOTION UNLESS IT FINDS
26 THAT ADEQUATE CAUSE FOR HEARING THE MOTION IS ESTABLISHED BY THE PLEADINGS,
27 IN WHICH CASE IT SHALL SET A DATE FOR HEARING ON WHY THE REQUESTED MODIFICATION
28 SHOULD NOT BE GRANTED.

29 G. THE COURT SHALL ASSESS ATTORNEY FEES AND COSTS AGAINST A PARTY
30 SEEKING MODIFICATION IF THE COURT FINDS THAT THE MODIFICATION ACTION IS
31 VEXATIOUS AND CONSTITUTES HARASSMENT.

32 H. SUBSECTION F OF THIS SECTION DOES NOT APPLY IF THE REQUESTED RELIEF
33 IS FOR THE MODIFICATION OR CLARIFICATION OF VISITATION AND NOT FOR A CHANGE
34 OF JOINT CUSTODY, JOINT LEGAL CUSTODY, JOINT PHYSICAL CUSTODY OR SOLE
35 CUSTODY.

36 25-453. Relocation; notice

37 IF BY WRITTEN AGREEMENT OR COURT ORDER BOTH PARENTS ARE ENTITLED TO
38 CUSTODY OR PARENTING TIME AND BOTH PARENTS RESIDE IN THE STATE, AT LEAST
39 SIXTY DAYS' ADVANCE WRITTEN NOTICE SHALL BE PROVIDED TO THE OTHER PARENT
40 BEFORE A PARENT MAY DO EITHER OF THE FOLLOWING:

- 41 1. RELOCATE THE CHILD OUTSIDE THE STATE.
 - 42 2. RELOCATE THE CHILD MORE THAN ONE HUNDRED MILES WITHIN THE STATE.
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ARTICLE 6. RECORDS AND SANCTIONS

25-461. Parental access to records

A. UNLESS OTHERWISE PROVIDED BY COURT ORDER OR LAW, ON REASONABLE REQUEST BOTH PARENTS ARE ENTITLED TO HAVE EQUAL ACCESS TO DOCUMENTS AND OTHER INFORMATION CONCERNING THE CHILD'S EDUCATION AND PHYSICAL, MENTAL, MORAL AND EMOTIONAL HEALTH INCLUDING MEDICAL, SCHOOL, POLICE, COURT AND OTHER RECORDS DIRECTLY FROM THE CUSTODIAN OF THE RECORDS OR FROM THE OTHER PARENT.

B. A PERSON WHO DOES NOT COMPLY WITH A REASONABLE REQUEST SHALL REIMBURSE THE REQUESTING PARENT FOR COURT COSTS AND ATTORNEY FEES INCURRED BY THAT PARENT TO FORCE COMPLIANCE WITH THIS SECTION.

C. A PARENT WHO ATTEMPTS TO RESTRICT THE RELEASE OF DOCUMENTS OR INFORMATION BY THE CUSTODIAN WITHOUT A PRIOR COURT ORDER IS SUBJECT TO APPROPRIATE LEGAL SANCTIONS.

25-462. Violation of visitation or parenting time rights; penalties

A. IF, BASED ON A VERIFIED PETITION AND AFTER IT GIVES REASONABLE NOTICE TO AN ALLEGED VIOLATING PARENT AND AN OPPORTUNITY FOR THAT PERSON TO BE HEARD, THE COURT FINDS THAT A PARENT HAS REFUSED WITHOUT GOOD CAUSE TO COMPLY WITH A VISITATION OR PARENTING TIME ORDER, THE COURT SHALL DO AT LEAST ONE OF THE FOLLOWING:

1. FIND THE VIOLATING PARENT IN CONTEMPT OF COURT.
2. ORDER VISITATION OR PARENTING TIME TO MAKE UP FOR THE MISSED SESSIONS.
3. ORDER PARENT EDUCATION AT THE VIOLATING PARENT'S EXPENSE.
4. ORDER FAMILY COUNSELING AT THE VIOLATING PARENT'S EXPENSE.
5. ORDER CIVIL PENALTIES OF NOT TO EXCEED ONE HUNDRED DOLLARS FOR EACH VIOLATION. THE COURT SHALL TRANSMIT MONIES COLLECTED PURSUANT TO THIS PARAGRAPH EACH MONTH TO THE COUNTY TREASURER. THE COUNTY TREASURER SHALL TRANSMIT THESE MONIES MONTHLY TO THE STATE TREASURER FOR DEPOSIT IN THE ALTERNATIVE DISPUTE RESOLUTION FUND ESTABLISHED BY SECTION 12-135.
6. ORDER BOTH PARENTS TO PARTICIPATE IN MEDIATION OR SOME OTHER APPROPRIATE FORM OF ALTERNATIVE DISPUTE RESOLUTION AT THE VIOLATING PARENT'S EXPENSE.
7. MAKE ANY OTHER ORDER THAT MAY PROMOTE THE BEST INTERESTS OF THE CHILD OR CHILDREN INVOLVED.

B. WITHIN TWENTY-FIVE DAYS OF SERVICE OF THE PETITION THE COURT SHALL HOLD A HEARING OR CONFERENCE BEFORE A JUDGE, COMMISSIONER OR PERSON APPOINTED BY THE COURT TO REVIEW NONCOMPLIANCE WITH A VISITATION OR PARENTING TIME ORDER.

C. THE VIOLATING PARENT SHALL PAY THE COURT COSTS AND ATTORNEY FEES THAT ARE INCURRED BY THE NONVIOLATING PARENT AND THAT ARE ASSOCIATED WITH THE REVIEW OF NONCOMPLIANCE WITH A VISITATION OR PARENTING TIME ORDER. IF THE CUSTODIAL PARENT PREVAILS, THE COURT MAY AWARD COURT COSTS AND ATTORNEY FEES TO THE CUSTODIAL PARENT.

25-463. Sanctions for litigation misconduct

Comment [KS1]: Language approved by workgroup on 07-15-11. Formerly numbered as 25-471.

1 THE COURT SHALL SANCTION A LITIGANT FOR COSTS AND REASONABLE ATTORNEY FEES
2 INCURRED BY AN ADVERSE PARTY IF THE COURT FINDS, BY CLEAR AND CONVINCING EVIDENCE,
3 THAT THE LITIGANT HAS DONE ANY ONE OR MORE OF THE FOLLOWING:

4 1. INTENTIONALLY PRESENTED A CLAIM OF SPECIAL CIRCUMSTANCES, AS DEFINED IN
5 THIS CHAPTER, WITH FULL KNOWLEDGE THAT THE CLAIM WAS FALSE.

6 2. INTENTIONALLY ACCUSED AN ADVERSE PARTY OF MAKING A FALSE REPORT OF
7 SPECIAL CIRCUMSTANCES, AS DEFINED IN THIS CHAPTER, WITH FULL KNOWLEDGE THAT THE
8 REPORT WAS ACTUALLY TRUE.

9 3. VIOLATED A COURT ORDER COMPELLING DISCLOSURE OR DISCOVERY UNDER RULE
10 65 OF THE ARIZONA RULES OF FAMILY LAW PROCEDURE, UNLESS THE COURT FINDS THAT THE
11 FAILURE TO OBEY THE ORDER WAS SUBSTANTIALLY JUSTIFIED, OR THAT OTHER
12 CIRCUMSTANCES MAKE AN AWARD OF EXPENSES UNJUST.

13 B. IF THE COURT MAKES A FINDING AGAINST ANY LITIGANT UNDER SUBSECTION A, IT
14 MAY ALSO:

15 1. IMPOSE ADDITIONAL FINANCIAL SANCTIONS ON BEHALF OF AN AGGRIEVED PARTY
16 WHO CAN DEMONSTRATE ECONOMIC LOSS DIRECTLY ATTRIBUTABLE TO THE LITIGANT'S
17 MISCONDUCT.

18 2. INSTITUTE CIVIL CONTEMPT PROCEEDINGS ON ITS OWN INITIATIVE, OR ON REQUEST
19 OF AN AGGRIEVED PARTY, WITH PROPER NOTICE AND AN OPPORTUNITY TO BE HEARD.

20 3. MODIFY PARENTAL DECISION-MAKING OR PARENTING TIME, IF THAT MODIFICATION
21 WOULD ALSO SERVE THE BEST INTERESTS OF THE CHILD.

22 C. THIS SECTION SHALL NOT PREVENT THE COURT FROM AWARDING COSTS AND
23 ATTORNEY FEES, OR IMPOSING OTHER SANCTIONS, IF AUTHORIZED ELSEWHERE BY STATE OR
24 FEDERAL LAW.

25 ARTICLE 7. MISCELLANEOUS PROVISIONS

26 25-471. Custody hearings; priority; costs; record

27 A. PROCEEDINGS BROUGHT PURSUANT TO THIS CHAPTER RECEIVE PRIORITY IN
28 BEING SET FOR HEARING.

29 B. THE COURT MAY TAX AS COSTS THE PAYMENT OF NECESSARY TRAVEL AND
30 OTHER EXPENSES INCURRED BY ANY PERSON WHOSE PRESENCE AT THE HEARING THE COURT
31 DEEMS NECESSARY TO DETERMINE THE BEST INTEREST OF THE CHILD.

32 C. THE COURT, WITHOUT A JURY, SHALL DETERMINE QUESTIONS OF LAW AND
33 FACT. IF IT FINDS THAT A PUBLIC HEARING MAY BE DETRIMENTAL TO THE CHILD'S
34 BEST INTEREST, THE COURT MAY EXCLUDE THE PUBLIC FROM A CUSTODY HEARING, BUT
35 MAY ADMIT ANY PERSON WHO HAS A DIRECT AND LEGITIMATE INTEREST IN THE
36 PARTICULAR CASE OR A LEGITIMATE EDUCATIONAL OR RESEARCH INTEREST IN THE WORK
37 OF THE COURT.

38 D. IF THE COURT FINDS THAT TO PROTECT THE CHILD'S WELFARE, THE RECORD
39 OF ANY INTERVIEW, REPORT, INVESTIGATION, OR TESTIMONY IN A CUSTODY PROCEEDING
40 SHOULD BE KEPT SECRET, THE COURT MAY THEN MAKE AN APPROPRIATE ORDER SEALING
41 THE RECORD.

42 25-472. Judicial supervision

43 A. EXCEPT AS OTHERWISE AGREED BY THE PARTIES IN WRITING AT THE TIME OF
44 THE CUSTODY DECREE, THE CUSTODIAN MAY DETERMINE THE CHILD'S UPBRINGING,
45 INCLUDING THE CHILD'S EDUCATION, CARE, HEALTH CARE AND RELIGIOUS TRAINING,

1 UNLESS, ON MOTION BY THE NONCUSTODIAL PARENT, THE COURT, AFTER A HEARING,
2 FINDS THAT IN THE ABSENCE OF A SPECIFIC LIMITATION OF THE CUSTODIAN'S
3 AUTHORITY, THE CHILD'S PHYSICAL HEALTH WOULD BE ENDANGERED OR THE CHILD'S
4 EMOTIONAL DEVELOPMENT WOULD BE SIGNIFICANTLY IMPAIRED.

5 B. IF EITHER PARENT REQUESTS THE ORDER, OR IF ALL CONTESTANTS AGREE TO
6 THE ORDER, OR IF THE COURT FINDS THAT IN THE ABSENCE OF THE ORDER THE CHILD'S
7 PHYSICAL HEALTH WOULD BE ENDANGERED OR THE CHILD'S EMOTIONAL DEVELOPMENT
8 WOULD BE SIGNIFICANTLY IMPAIRED, AND IF THE COURT FINDS THAT THE BEST
9 INTERESTS OF THE CHILD WOULD BE SERVED, THE COURT SHALL ORDER A LOCAL SOCIAL
10 SERVICE AGENCY TO EXERCISE CONTINUING SUPERVISION OVER THE CASE TO ASSURE
11 THAT THE CUSTODIAL OR PARENTING TIME TERMS OF THE DECREE ARE CARRIED OUT. AT
12 THE DISCRETION OF THE COURT, REASONABLE FEES FOR THE SUPERVISION MAY BE
13 CHARGED TO ONE OR BOTH PARENTS IF THE FEES HAVE BEEN APPROVED BY THE SUPREME
14 COURT.

15 25-473. Identification of a primary caretaker and public
16 assistance

17 THE COURT MAY SPECIFY ONE PARENT AS THE PRIMARY CARETAKER OF THE CHILD
18 AND ONE HOME AS THE PRIMARY HOME OF THE CHILD FOR THE PURPOSES OF DEFINING
19 ELIGIBILITY FOR PUBLIC ASSISTANCE. THIS FINDING DOES NOT DIMINISH THE RIGHTS
20 OF EITHER PARENT AND DOES NOT CREATE A PRESUMPTION FOR OR AGAINST EITHER
21 PARENT IN A PROCEEDING FOR THE MODIFICATION OF A CUSTODY ORDER.

22 25-474. Resources and fees

23 A. IN A PROCEEDING REGARDING SOLE CUSTODY OR JOINT CUSTODY, EITHER
24 PARTY MAY REQUEST ATTORNEY FEES, COSTS AND EXPERT WITNESS FEES TO ENABLE THE
25 PARTY WITH INSUFFICIENT RESOURCES TO OBTAIN ADEQUATE LEGAL REPRESENTATION AND
26 TO PREPARE EVIDENCE FOR THE HEARING.

27 B. IF THE COURT FINDS THERE IS A FINANCIAL DISPARITY BETWEEN THE
28 PARTIES, THE COURT MAY ORDER PAYMENT OF REASONABLE FEES, EXPENSES AND COSTS
29 TO ALLOW ADEQUATE PREPARATION.

30 25-475. Interviews by court; professional assistance

31 A. THE COURT MAY INTERVIEW THE CHILD IN CHAMBERS TO ASCERTAIN THE
32 CHILD'S WISHES AS TO THE CHILD'S CUSTODIAN AND AS TO PARENTING TIME.

33 B. THE COURT MAY SEEK THE ADVICE OF PROFESSIONAL PERSONNEL, WHETHER OR
34 NOT EMPLOYED BY THE COURT ON A REGULAR BASIS. THE ADVICE GIVEN SHALL BE IN
35 WRITING AND SHALL BE MADE AVAILABLE BY THE COURT TO COUNSEL, ON REQUEST,
36 UNDER SUCH TERMS AS THE COURT DETERMINES. COUNSEL MAY EXAMINE AS A WITNESS ANY
37 PROFESSIONAL PERSONNEL CONSULTED BY THE COURT, UNLESS THAT RIGHT IS WAIVED.

38 25-476. Investigations and reports

39 A. IN CONTESTED CUSTODY PROCEEDINGS, AND IN OTHER CUSTODY PROCEEDINGS
40 IF A PARENT OR THE CHILD'S CUSTODIAN SO REQUESTS, THE COURT MAY ORDER AN
41 INVESTIGATION AND REPORT CONCERNING CUSTODIAL ARRANGEMENTS FOR THE CHILD.
42 THE INVESTIGATION AND REPORT MAY BE MADE BY THE COURT SOCIAL SERVICE AGENCY,
43 THE STAFF OF THE JUVENILE COURT, THE LOCAL PROBATION OR WELFARE DEPARTMENT, OR
44 A PRIVATE PERSON. THE REPORT MUST INCLUDE A WRITTEN AFFIRMATION BY THE
45 PERSON COMPLETING THE REPORT THAT THE PERSON HAS MET THE TRAINING

1 REQUIREMENTS PRESCRIBED IN SUBSECTION C OF THIS SECTION.

2 B. IF AN INVESTIGATION AND REPORT ARE ORDERED PURSUANT TO THIS SECTION
3 AND IF THE COURT APPOINTS A FAMILY COURT ADVISOR, THE COURT SHALL ALLOCATE
4 COST BASED ON THE FINANCIAL CIRCUMSTANCES OF BOTH PARTIES.

5 C. THE COURT SHALL REQUIRE ANY PERSON WHO CONDUCTS AN INVESTIGATION OR
6 PREPARES A REPORT PURSUANT TO THIS SECTION TO RECEIVE TRAINING THAT MEETS THE
7 MINIMUM STANDARDS PRESCRIBED BY THE DOMESTIC RELATIONS COMMITTEE, ESTABLISHED
8 BY SECTION 25-323.02 AS FOLLOWS:

9 1. SIX INITIAL HOURS OF DOMESTIC VIOLENCE TRAINING.

10 2. SIX INITIAL HOURS OF CHILD ABUSE TRAINING.

11 3. FOUR SUBSEQUENT HOURS OF TRAINING EVERY TWO YEARS ON DOMESTIC
12 VIOLENCE AND CHILD ABUSE.

13 D. A PERSON THAT HAS COMPLETED PROFESSIONAL TRAINING TO BECOME LICENSED
14 OR CERTIFIED MAY USE THAT TRAINING TO COMPLETELY OR PARTIALLY FULFILL THE
15 REQUIREMENTS IN SUBSECTION C OF THIS SECTION IF THE TRAINING INCLUDED AT
16 LEAST SIX HOURS EACH ON DOMESTIC VIOLENCE AND CHILD ABUSE IF THE TRAINING
17 MEETS THE MINIMUM STANDARDS PRESCRIBED BY THE DOMESTIC RELATIONS COMMITTEE.
18 SUBSEQUENT PROFESSIONAL TRAINING IN THESE SUBJECT MATTERS MAY BE USED TO
19 PARTIALLY OR COMPLETELY FULFILL THE TRAINING REQUIREMENTS PRESCRIBED IN
20 SUBSECTION C OF THIS SECTION IF THE TRAINING MEETS THE MINIMUM STANDARDS
21 PRESCRIBED BY THE DOMESTIC RELATIONS COMMITTEE.

22 E. A PHYSICIAN WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17
23 IS EXEMPT FROM THE TRAINING REQUIREMENTS PRESCRIBED IN SUBSECTION C OF THIS
24 SECTION.

25 F. IN PREPARING A REPORT CONCERNING A CHILD, THE INVESTIGATOR MAY
26 CONSULT ANY PERSON WHO MAY HAVE INFORMATION ABOUT THE CHILD OR THE CHILD'S
27 POTENTIAL CUSTODIAL ARRANGEMENTS.

28 G. THE COURT SHALL MAIL THE INVESTIGATOR'S REPORT TO COUNSEL AT LEAST
29 TEN DAYS BEFORE THE HEARING. THE INVESTIGATOR SHALL MAKE AVAILABLE TO
30 COUNSEL THE NAMES AND ADDRESSES OF ALL PERSONS WHOM THE INVESTIGATOR HAS
31 CONSULTED. ANY PARTY TO THE PROCEEDING MAY CALL FOR EXAMINATION OF THE
32 INVESTIGATOR AND ANY PERSON CONSULTED BY THE INVESTIGATOR.

33 25-477. Expedited child support and parenting time fund

34 A. EACH COUNTY TREASURER SHALL ESTABLISH AN EXPEDITED CHILD SUPPORT
35 AND PARENTING TIME FUND CONSISTING OF MONIES RECEIVED PURSUANT TO SECTION
36 12-284, SUBSECTION D.

37 B. THE PRESIDING JUDGE OF THE SUPERIOR COURT SHALL USE FUND MONIES TO
38 ESTABLISH, MAINTAIN AND ENHANCE PROGRAMS DESIGNED TO EXPEDITE THE PROCESSING
39 OF PETITIONS FILED PURSUANT TO SECTION 25-326 AND TO ESTABLISH, ENFORCE AND
40 MODIFY COURT ORDERS INVOLVING CHILDREN.

41 C. THE COUNTY TREASURER MAY INVEST MONIES IN THE FUND AND SHALL
42 DEPOSIT INTEREST EARNED IN THE FUND.

43 D. MONIES RECEIVED FROM THIS FUND SHALL BE USED TO SUPPLEMENT AND NOT
44 SUPPLANT MONIES ALLOCATED BY THE COUNTY.

45 25-478. Domestic relations education and mediation fund; report

1 A. EACH COUNTY TREASURER SHALL ESTABLISH A DOMESTIC RELATIONS
2 EDUCATION AND MEDIATION FUND CONSISTING OF MONIES RECEIVED PURSUANT TO SECTION
3 12-284, SUBSECTION C.

4 B. THE PRESIDING JUDGE OF THE SUPERIOR COURT SHALL USE FUND MONIES TO
5 ESTABLISH, MAINTAIN AND ENHANCE PROGRAMS DESIGNED TO EDUCATE PERSONS ABOUT
6 IMPACTS ON CHILDREN OF DISSOLUTION OF MARRIAGE, LEGAL SEPARATION AND
7 RESTRUCTURING OF FAMILIES AND PROGRAMS FOR MEDIATION OF VISITATION OR CUSTODY
8 DISPUTES UNDER THIS CHAPTER OR CHAPTER 6 OF THIS TITLE.

9 C. THE COUNTY TREASURER SHALL DISBURSE MONIES FROM THE FUND ONLY AT THE
10 DIRECTION OF THE PRESIDING JUDGE OF THE SUPERIOR COURT.

11 D. ON NOTICE OF THE PRESIDING JUDGE, THE COUNTY TREASURER SHALL INVEST
12 MONIES IN THE FUND AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE
13 FUND.

14 E. MONIES THAT ARE EXPENDED FROM THE FUND SHALL BE USED TO SUPPLEMENT, AND
15 NOT SUPPLANT, ANY STATE OR COUNTY APPROPRIATIONS THAT WOULD OTHERWISE BE
16 AVAILABLE FOR PROGRAMS DESCRIBED IN SUBSECTION B OF THIS SECTION.

17 F. ON OR BEFORE AUGUST 10 OF EACH YEAR, THE COUNTY TREASURER SHALL
18 SUBMIT A REPORT TO THE PRESIDING JUDGE THAT SHOWS THE AMOUNT OF MONIES IN THE
19 DOMESTIC RELATIONS EDUCATION AND MEDIATION FUND.

20 25-479. Child support

21 A. FOR EACH PARENTAL DECISION-MAKING OR PARENTING TIME ORDER ENTERED
22 UNDER THIS CHAPTER, THE COURT SHALL DETERMINE AN AMOUNT OF CHILD SUPPORT IN
23 ACCORDANCE WITH SECTION 25-320 AND GUIDELINES ESTABLISHED PURSUANT TO THAT
24 SECTION.

25 B. AN AWARD OF JOINT CUSTODY DOES NOT DIMINISH THE RESPONSIBILITY OF
26 EITHER PARENT TO PROVIDE FOR THE SUPPORT OF THE CHILD.

27 Sec. 6 Section 25-803, Arizona Revised Statutes, is amended to read:

28 25-803. Persons who may originate proceedings: custody;
29 parenting time; conciliation court

30 A. Proceedings to establish the maternity or paternity of a child or
31 children and to compel support under this article may be commenced by any of
32 the following:

33 1. The mother.

34 2. The father.

35 3. The guardian, conservator or best friend of a child or children
36 born out of wedlock.

37 4. A public welfare official or agency of the county where the child
38 or children reside or may be found.

39 5. The state pursuant to section 25-509.

40 B. An adult may bring an action to establish the adult's biological
41 parent.

42 C. Any party to a proceeding under this article other than the state
43 may request that custody and specific parenting time be determined as a part
44 of the proceeding. When paternity is established the court may award custody
45 and parenting time as provided in section 25-408. The attorney

1 general or county attorney shall not seek or defend any ancillary matters
2 such as custody or parenting time.

3 D. In any case in which paternity is established the parent with whom
4 the child has resided for the greater part of the last six months shall have
5 legal custody unless otherwise ordered by the court.

6 E. The services of the conciliation court may be used in regard to
7 disputed matters of custody and parenting time.

8 Sec. 7. Section 25-1002, Arizona Revised Statutes, is amended to read:

9 **25-1002. Definitions**

10 In this chapter, unless the context otherwise requires:

11 1. "Abandoned" means left without provision for reasonable and
12 necessary care or supervision.

13 2. "Child" has the same meaning prescribed in section 1-215.

14 3. "Child custody determination":

15 (a) Means any judgment, decree or other order of a court, including a
16 permanent, temporary, initial and modification order, for legal custody,
17 physical custody or visitation with respect to a child.

18 (b) Does not include an order relating to child support or any other
19 monetary obligation of an individual.

20 4. "Child custody proceeding":

21 (a) Means a proceeding, including a proceeding for divorce,
22 separation, neglect, abuse, dependency, guardianship, paternity, termination
23 of parental rights and protection from domestic violence, in which legal
24 custody, physical custody or visitation with respect to a child is an issue
25 or in which that issue may appear.

26 (b) Does not include a proceeding involving juvenile delinquency,
27 contractual emancipation or enforcement under article 3 of this chapter.

28 5. "Commencement" means the filing of the first pleading in a
29 proceeding.

30 6. "Court" means an entity authorized under the law of a state to
31 establish, enforce or modify a child custody determination.

32 7. "Home state" means:

33 (a) The state in which a child lived with a parent or a person acting
34 as a parent for at least six consecutive months immediately before the
35 commencement of a child custody proceeding, including any period during which
36 that person is temporarily absent from that state.

37 (b) If a child is less than six months of age, the state in which the
38 child lived from birth with a parent or person acting as a parent, including
39 any period during which that person is temporarily absent from that state.

40 8. "Initial determination" means the first child custody determination
41 concerning a particular child.

42 9. "Issuing court" means the court that makes a child custody
43 determination for which enforcement is sought under this chapter.

44 10. "Issuing state" means the state in which a child custody
45 determination is made.

1 11. "Modification" means a child custody determination that changes,
2 replaces, supersedes or is otherwise made after a previous determination
3 concerning the same child, whether or not it is made by the court that made
4 the previous determination.

5 12. "Person" means an individual, corporation, business trust, estate,
6 trust, partnership, limited liability company, association, joint venture,
7 government, governmental subdivision, agency or instrumentality, or public
8 corporation or any other legal or commercial entity.

9 13. "Person acting as a parent" means a person, other than a parent,
10 who meets both of the following requirements:

11 (a) Has physical custody of the child or has had physical custody for
12 a period of six consecutive months, including any temporary absence, within
13 one year immediately before the commencement of a child custody proceeding.

14 (b) Has been awarded legal custody by a court or claims a right to
15 legal custody under the law of this state.

16 14. "Physical custody" means the physical care and supervision of a
17 child.

18
19
20 15. "State" means a state of the United States, the District of
21 Columbia, Puerto Rico, the United States Virgin Islands or any territory
22 or insular possession subject to the jurisdiction of the United States.

23 16. "Tribe" means an Indian tribe or band or Alaskan native village
24 that is recognized by federal law or formally acknowledged by a state.

25 17. "Visitation" includes parenting time as defined in section ~~25-402~~
26 ~~25-401~~.

27 18. "Warrant" means an order issued by a court authorizing law
28 enforcement officers to take physical custody of a child.

- i. Title:** CHILD CUSTODY – SIMPLIFIED INITIATIVE
- ii. Authors:** Thomas P. Alongi
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- iii. Version:** 1
- iv. Date:** August 19, 2011
- v. Statute:** A.R.S. Title 25, Chapter 4

Comment:

This initiative strives to unify the twin goals of simplifying the child custody statute while preserving important protections for victims of child abuse and intimate partner violence.

To that end, all “special circumstances” provisions (including presumptions and rebuttal sections) have been deleted. Issues previously governed by sections dealing with substance abuse and felons are incorporated into Section 25-422(A)(5). Sex crimes involving children have been transferred into the expanded definition of “child abuse.” Behavior constituting either child abuse or intimate partner violence (IPV) is now unified into “family violence,” and appears as a best interests factor at Section 25-422(A)(1). Concepts dealing with the feasibility of a parenting plan are unified into Section 25-422(A)(8), and the concern over a parent’s abuse of sole PDM is merged into the “friendly parent” provision of Section 25-422(A)(7). The reader will also notice that, because there was considerable overlap between parental decision-making (PDM) and parenting time (PT), one “best interests” list now governs both PDM and PT.

As a tradeoff for deletion of the mandatory presumption now codified at ARS 25-403.03(D), the new initiative simply instructs the court not to award PDM or unrestricted PT to a proven child abuser or intimate partner violence offender, unless the offender offers clear and convincing evidence that other “best interest” factors significantly outweigh the act(s) of violence. *See* Section 25-422(B). If the court adopts the offender’s proposal, it must cite the statutory factors that ultimately prevailed, and explain why a focus on them better served the child’s interests. The initiative also provides for de novo appellate review from any trial judgment granting PDM or unrestricted PT to a proven offender. *See* Section 25-422(E) and (F).

Prior legislative declarations (*see* ARS 25-403.03(B)) about the harm inflicted by IPV and its primary importance in any child custody calculation are preserved and transferred to Section 25-422(C). Similarly, the new concept of “coercive control” is preserved from the AHCW’s final draft, and still tied to a requirement of proof that assaultive behavior also occurred. But it now simply appears in a list of factors relevant to the court’s duty to weigh the existence of family violence against competing factors. *See* Section 25-422(B)(1)-(6). Parenting time considerations are also preserved, and transferred from current ARS 25-403.03(F) to Section 25-422(D). They still include the revised list of factors sponsored by the 2010-11 Ad Hoc Custody Workgroup (AHCW).

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

Article 1. General Provisions

§ 25-401. Definitions

In this article, unless the context otherwise requires:

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

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(a) *“Shared parental decision-making”* means that both parents equally share the burdens and benefits of the authority described in this section, with neither parent possessing superior authority over the other.

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§ 25-402. Policy regarding parental decision-making and parenting time

The State of Arizona finds that, absent evidence to the contrary, it serves a child’s best interests when both legal parents:

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

§ 25-403. Jurisdiction

A. Before conducting any proceeding concerning parental decision-making or parenting time, including any proceeding scheduled to decide the custody or visitation of a non-parent, a court in this State must first confirm its authority to do so to the exclusion of any other State, Native American tribe or foreign nation by complying with the Uniform Child Custody Jurisdiction and Enforcement Act, Parental Kidnapping Prevention Act, and any applicable international treaty concerning the wrongful abduction or removal of children.

B. The following persons may request parental decision-making or parenting time under the following circumstances:

- 1. A parent, in any proceeding for marital dissolution, legal separation, paternity or modification of an earlier decree:
- 2. By a person other than a parent, by filing a petition for third-party rights under Section [x] in the county in which the child permanently resides.

Article 2. Parenting Plans

§ 25-421. Parenting Plans

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 that maximizes each parent’s parenting time. The court shall not prefer one parent over the other due to the gender of either parent or the child.

B. If a child’s parents cannot agree to a plan for parental decision-making or parenting time, each parent must submit to the court a detailed, proposed parenting plan. The court may consider other factors not raised by the parties in order to best promote and protect the emotional and physical health of the child.

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2 C. A parenting plan must include at least the following:

3 1. A designation of the parental decision-making plan as either shared, final or sole, as
4 defined in Section 401(3).

5 2. Each parent’s additional rights and responsibilities for parental decision-making.

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

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

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

19 E. If parents share parental decision-making, each must consult with the other about child-
20 related decisions, and attempt to resolve disputes outside of court before seeking judicial
21 intervention.

22 **§ 25-422. Court proceedings; best interests of child; family violence; judicial findings;**
23 **appellate review**

24 A. The court shall determine both parental decision-making and parenting time in
25 accordance with the best interests of the child. The court shall consider all factors relevant to the
26 child’s physical safety and emotional welfare, including:

27 1. Whether a parent has committed family violence, as defined in Section 25-424(6).

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

29 3. The child’s adjustment to home, school and community.

30 4. The interaction and relationship between the child and the child’s siblings and any
31 other person who may significantly affect the child’s best interests.

1 5. The mental health, physical condition, and criminal, delinquent or otherwise harmful
2 behavior of the child, parents and any other person present in the child’s household.

3 6. The child’s own viewpoint and wishes, if possessed of suitable age and maturity,
4 along with the basis for those wishes.

5 7. Whether one parent is more likely to encourage the child’s relationship with the other,
6 and respect parental decision-making rules. This paragraph does not apply if the court
7 determines that a parent is acting in good faith to protect the child from witnessing or suffering
8 an act of intimate partner violence or child abuse.

9 8. The practicality of any proposed or agreed parenting plan.

10 9. Whether a parent has complied with the educational program prescribed in Sections
11 25-351 through -353.

12 **B.** The court shall not award any level of parental decision-making or unrestricted parenting
13 time to a parent who has committed one or more acts of family violence, unless the court finds
14 from clear and convincing evidence that other statutory factors substantially outweigh the history
15 of that violence. When making that comparison, the court shall consider:

16 1. The extent to which the offending parent coercively controlled the other parent during
17 their relationship, as defined in Section 25-424(3).

18 2. The extent to which the offending parent inflicted intimate partner violence or child
19 abuse against the same or some other person in the past, or has recently done so with a new
20 intimate partner or child, especially after having already received related counseling on past
21 occasions.

22 3. In cases of mutual violence not amounting to legal justification, as defined in Sections
23 13-404 through -408, the motivation of each parent for the violence, the level of force used by
24 each parent, and their respective injuries.

25 4. Whether the offending parent continues to minimize or deny responsibility for the
26 history of violence, or blame it on unrelated issues.

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

30 6. In cases involving intimate partner violence, whether the offending parent has
31 completed a batterer’s intervention program, as defined in Section 25-424(1), and has also
32 disclosed and submitted into evidence a complete set of treatment records proving an acceptable
33 level of productive participation in the rehabilitation process. A certificate of completion alone
34 does not prove rehabilitation.

1 **C.** When conducting the analysis described in Subsection (B), the court should recognize
2 that intimate partner violence is frequently characterized by an effort of one parent to control the
3 other through the use of abusive patterns of behavior that operate at a variety of levels –
4 emotional, psychological and physical. The court should always consider a history of intimate
5 partner violence as contrary to the best interests of the child, irrespective of whether a child
6 personally witnessed a particular act of violence. When deciding both parental decision-making
7 and parenting time, the court shall assign primary importance to the physical safety and
8 emotional health of the child and the non-offending parent.

9 **D.** When deciding whether to grant parenting time to a parent who has committed one or
10 more acts of family violence, the court should specifically contemplate whether that parent’s
11 access to a child will:

12 1. Expose the child to poor role-modeling as the child grows older and begins to develop
13 his or her own intimate relationships, irrespective of whether the offending parent poses a direct
14 physical risk to the child; or

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

17 **E.** If a parent who has committed one or more acts of family violence does not present clear
18 and convincing evidence of suitability for unrestricted parenting time, the court shall then place
19 conditions on parenting time that best protect the child and the other parent from further harm.
20 With respect to the offending parent, the court may:

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

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

28 3. Order the completion of a batterer’s intervention program, as defined by Section 25-
29 424(1), and any other counseling the court orders.

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

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

33 6. Prohibit overnight parenting time.

1 7. Require the posting of a cash bond from the offending parent to assure the child’s safe
2 return to the other parent.

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

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

5 10. Suspend parenting time for a prescribed period.

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

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

10 **F.** After any evidentiary hearing involving parental decision-making, parenting time or
11 visitation, the court shall make specific findings on the record, or in its written order, concerning
12 all relevant factors. The court shall also provide specific findings to justify any decision to grant
13 parental decision-making or unrestricted parenting time to a parent who has committed family
14 violence. Those findings shall identify which competing statutory factors outweighed the
15 significance of the offending parent’s violence, and shall also thoroughly explain why the court
16 believed that those competing factors were more relevant to the child’s best interests.

17 **G.** Any appeal from a final decision to grant parental decision-making or unrestricted
18 parenting time to a parent who has committed family violence shall be reviewed de novo by the
19 Arizona Court of Appeals.

20 **§ 25-423. Family violence; miscellaneous provisions**

21 **A.** Evidence that a parent previously consented to deferred prosecution or diversion from
22 criminal charges for an act of family violence shall constitute adequate proof that such parent
23 committed the act or acts alleged in the criminal complaint later dismissed pursuant to the
24 diversion or deferred prosecution. Nothing in this subsection prevents either parent from
25 introducing additional evidence related to the event in question in support of that parent’s case.

26 **B.** For purposes of this section, no judgment resulting from protective order proceedings
27 under Section 13-3602(I) shall be considered conclusive evidence that family violence did or did
28 not occur.

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

1 **D.** The court shall not order joint counseling between a perpetrator of intimate partner
2 violence and the victim under any circumstances. The court may refer a victim to appropriate
3 counseling, and provide a victim with written information about available community resources
4 related to intimate partner violence or child abuse.

5 **E.** A victim of intimate partner violence may opt out of alternative dispute resolution
6 (‘ADR’) imposed under Family Law Rule 67 or 68 to the extent that a suggested ADR procedure
7 requires the parties to meet and confer in person. The court shall notify each party of this right
8 before requiring their participation in the ADR process. As used in this subsection only, “victim
9 of intimate partner violence” means: (1) a party who has acquired a protective order against the
10 other parent pursuant to Section 13-3602; (2) a party who was previously determined by a civil
11 or family court to have suffered intimate partner violence by the other parent; or (3) a party who
12 was the named victim in a criminal case that resulted in the conviction, diversion or deferred
13 prosecution of the other parent for an act of intimate partner violence.

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

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

24 **§ 25-424. Family violence; definitions**

25 In this article, unless the context otherwise requires:

26 **1.** “*Batterer’s intervention program*” means an individual or group treatment program for
27 intimate partner violence offenders that:

28 (a) emphasizes personal responsibility;

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

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

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

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

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

7 (a) Endangerment, as defined in Section 13-1201

8 (b) Threatening or intimidating, as defined in Section 13-1202(A)

9 (c) Assault, as defined in Section 13-1203(A)

10 (d) Aggravated assault, as defined in Section 13-1204(A)(1) – (5)

11 (e) Child abuse, as defined in Section 13-3623

12 (f) A dangerous crime against children, as defined in Section 13-705(P)(1).

13 3. “*Coercive control*” refers to one or more controlling behaviors inflicted by one parent
14 against another, when the latter has also suffered intimate partner violence by that parent. With
15 regard to these behaviors, the court shall consider the actor’s motivation, and whether the
16 behaviors appeared in tandem as part of a continuing pattern of controlling conduct during the
17 parties’ relationship. Specifically, the court shall contemplate whether the offending parent has:

18 (a) Persistently engaged in demeaning, sexually degrading, or other verbally abusive
19 conduct toward the victim;

20 (b) Physically confined the victim, or otherwise restricted the victim’s freedom of
21 movement;

22 (c) Unreasonably restricted or hindered the victim’s educational or financial activities, or
23 jeopardized the victim’s employment or financial welfare without good cause;

24 (d) Appropriated the victim’s identity, as defined in Section 13-2008;

25 (e) Attempted or threatened suicide, or injured or threatened to injure other persons or
26 household pets, as a means of coercing the victim’s compliance with the offender’s wishes;

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

1 (g) Restricted or hindered the victim’s attempts to report intimate partner violence, child
2 abuse or other criminal behavior to law enforcement, medical personnel or other third parties by
3 means of duress or coercion;

4 (h) Eavesdropped on the victim’s private communications or Internet activities,
5 interrupted or confiscated the victim’s mail, or accessed the victim’s financial, electronic mail or
6 Internet accounts without permission;

7 (i) Restricted or hindered the victim’s public activities, or the victim’s interaction with
8 family or social acquaintances; or

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

12 **4.** “*Conviction*” means any criminal conviction resulting from: (a) a guilty verdict entered
13 by a judge or jury; and (b) any formal plea entered by a defendant regardless of the form of that
14 plea.

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

20 **6.** “*Family violence*” means child abuse or intimate partner violence, as both are defined in
21 this section.

22 **7.** “*Intimate partner violence*” means any act that would meet the definition of Section 13-
23 3601(A), as well as any other act of physical or sexual violence constituting a felony, where
24 inflicted by a person against an intimate partner. This definition also includes any attempt,
25 conspiracy, or solicitation of another to commit such act. It does not include any behavior that
26 would constitute legal justification as defined by Sections 13-404 through -408.

27 **8.** “*Intimate partner*” means a person whose relationship with another qualifies under
28 Section 13-3601(A)(1), (2), (3) or (6).

- i. Title:** CHILD CUSTODY – SIMPLIFIED INITIATIVE
- ii. Authors:** Thomas P. Alongi
Senior Staff Attorney, Community Legal Services
- iii. Version:** 2
- iv. Meeting Date:** August 19, 2011
- v. Statute:** A.R.S. Title 25, Chapter 4

Comment:

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2 MINOR CHILDREN: PARENTAL DECISION-MAKING,
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24 accordance with the best interests of the child. The court shall consider all factors relevant to the
25 child’s physical safety and emotional welfare, including:

26 1. Whether a parent has committed family violence, as defined in Section 25-424(6).

27 2. The historical, current and potential relationship between the parent and the child.

28 3. The child’s adjustment to home, school and community.

29 4. The interaction and relationship between the child and the child’s siblings and any
30 other person who may significantly affect the child’s best interests.

1 5. The mental health, physical condition, and criminal, delinquent or otherwise harmful
2 behavior of the child, parents and any other person present in the child’s household.

3 6. The child’s own viewpoint and wishes, if possessed of suitable age and maturity,
4 along with the basis for those wishes.

5 7. Whether one parent is more likely to encourage the child’s relationship with the other,
6 and respect parental decision-making rules. This paragraph does not apply if the court
7 determines that a parent is acting in good faith to protect the child from witnessing or suffering
8 an act of intimate partner violence or child abuse.

9 8. The practicality of any proposed or agreed parenting plan.

10 9. Whether a parent has complied with the educational program prescribed in Sections
11 25-351 through -353.

12 **B.** The court shall not award any level of parental decision-making or unrestricted parenting
13 time to a parent who has committed one or more acts of family violence, unless the court finds
14 from clear and convincing evidence that other statutory factors substantially outweigh the history
15 of that violence. When making that comparison, the court shall consider:

16 1. The extent to which the offending parent coercively controlled the other parent during
17 their relationship, as defined in Section 25-424(3).

18 2. The extent to which the offending parent inflicted intimate partner violence or child
19 abuse against the same or some other person in the past, or has recently done so with a new
20 intimate partner or child, especially after having already received related counseling on past
21 occasions.

22 3. In cases of mutual violence not amounting to legal justification, as defined in Sections
23 13-404 through -408, the motivation of each parent for the violence, the level of force used by
24 each parent, and their respective injuries.

25 4. Whether the offending parent continues to minimize or deny responsibility for the
26 history of violence, or blame it on unrelated issues.

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

30 6. In cases involving intimate partner violence, whether the offending parent has
31 completed a batterer’s intervention program, as defined in Section 25-424(1), and has also
32 disclosed and submitted into evidence a complete set of treatment records proving an acceptable
33 level of productive participation in the rehabilitation process. A certificate of completion alone
34 does not prove rehabilitation.

1 **C.** When conducting the analysis described in Subsection (B), the court should recognize
2 that intimate partner violence is frequently characterized by an effort of one parent to control the
3 other through the use of abusive patterns of behavior that operate at a variety of levels –
4 emotional, psychological and physical. The court should always consider a history of intimate
5 partner violence as contrary to the best interests of the child, irrespective of whether a child
6 personally witnessed a particular act of violence. When deciding both parental decision-making
7 and parenting time, the court shall assign primary importance to the physical safety and
8 emotional health of the child and the non-offending parent.

9 **D.** When deciding whether to grant parenting time to a parent who has committed one or
10 more acts of family violence, the court should specifically contemplate whether that parent’s
11 access to a child will:

12 1. Expose the child to poor role-modeling as the child grows older and begins to develop
13 his or her own intimate relationships, irrespective of whether the offending parent poses a direct
14 physical risk to the child; or

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

17 **E.** If a parent who has committed one or more acts of family violence does not present clear
18 and convincing evidence of suitability for unrestricted parenting time, the court shall then place
19 conditions on parenting time that best protect the child and the other parent from further harm.
20 With respect to the offending parent, the court may:

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

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

28 3. Order the completion of a batterer’s intervention program, as defined by Section 25-
29 424(1), and any other counseling the court orders.

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

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

33 6. Prohibit overnight parenting time.

1 7. Require the posting of a cash bond from the offending parent to assure the child’s safe
2 return to the other parent.

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

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

5 10. Suspend parenting time for a prescribed period.

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

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

10 **F.** After any evidentiary hearing involving parental decision-making, parenting time or
11 visitation, the court shall make specific findings on the record, or in its written order, concerning
12 all relevant factors. The court shall also provide specific findings to justify any decision to grant
13 parental decision-making or unrestricted parenting time to a parent who has committed family
14 violence. Those findings shall identify which competing statutory factors outweighed the
15 significance of the offending parent’s violence, and shall also thoroughly explain why the court
16 believed that those competing factors were more relevant to the child’s best interests.

17 **G.** The Arizona Court of Appeals shall review *de novo* any superior court determination that
18 evidence of family violence was outweighed by other considerations. Any other trial judgment
19 concerning parental decision-making or parenting time shall be reviewed only for an abuse of
20 discretion. ~~Any appeal from a final decision to grant parental decision-making or unrestricted~~
21 ~~parenting time to a parent who has committed family violence shall be reviewed de novo by the~~
22 ~~Arizona Court of Appeals.~~

23 **§ 25-423. Family violence; miscellaneous provisions**

24 **A.** Evidence that a parent previously consented to deferred prosecution or diversion from
25 criminal charges for an act of family violence shall constitute adequate proof that such parent
26 committed the act or acts alleged in the criminal complaint later dismissed pursuant to the
27 diversion or deferred prosecution. Nothing in this subsection prevents either parent from
28 introducing additional evidence related to the event in question in support of that parent’s case.

29 **B.** For purposes of this section, no judgment resulting from protective order proceedings
30 under Section 13-3602(I) shall be considered conclusive evidence that family violence did or did
31 not occur.

32 **C.** A parent’s residency in a shelter for victims of intimate partner violence shall not
33 constitute grounds for denying that parent any degree of decision-making authority or parenting

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

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

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

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

23 **G.** The court may request or order the services of the Division of Children and Family
24 Services in the Department of Economic Security if it believes that a child may be the victim of
25 abuse or neglect as defined in Section 8-201.

26 **§ 25-424. Family violence; definitions**

27 In this article, unless the context otherwise requires:

28 **1.** “*Batterer’s intervention program*” means an individual or group treatment program for
29 intimate partner violence offenders that:

30 (a) emphasizes personal responsibility;

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

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

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

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

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

9 (a) Endangerment, as defined in Section 13-1201

10 (b) Threatening or intimidating, as defined in Section 13-1202(A)

11 (c) Assault, as defined in Section 13-1203(A)

12 (d) Aggravated assault, as defined in Section 13-1204(A)(1) – (5)

13 (e) Child abuse, as defined in Section 13-3623

14 (f) A dangerous crime against children, as defined in Section 13-705(P)(1).

15 **3. “Coercive control”** refers to one or more controlling behaviors inflicted by one parent
16 against another, when the latter has also suffered intimate partner violence by that parent. With
17 regard to these behaviors, the court shall consider the actor’s motivation, and whether the
18 behaviors appeared in tandem as part of a continuing pattern of controlling conduct during the
19 parties’ relationship. Specifically, the court shall contemplate whether the offending parent has:

20 (a) Persistently engaged in demeaning, sexually degrading, or other verbally abusive
21 conduct toward the victim;

22 (b) Physically confined the victim, or otherwise restricted the victim’s freedom of
23 movement;

24 (c) Unreasonably restricted or hindered the victim’s educational or financial activities, or
25 jeopardized the victim’s employment or financial welfare without good cause;

26 (d) Appropriated the victim’s identity, as defined in Section 13-2008;

27 (e) Attempted or threatened suicide, or injured or threatened to injure other persons or
28 household pets, as a means of coercing the victim’s compliance with the offender’s wishes;

29 (f) Threatened to conceal or remove a child from the victim’s care for reasons other than
30 a legitimate concern for the child’s physical or emotional welfare, attempted to undermine the

1 victim's relationship with a child, or used a child to facilitate either criminal conduct against the
2 victim or one or more controlling behaviors described in this subsection;

3 (g) Restricted or hindered the victim's attempts to report intimate partner violence, child
4 abuse or other criminal behavior to law enforcement, medical personnel or other third parties by
5 means of duress or coercion;

6 (h) Eavesdropped on the victim's private communications or Internet activities,
7 interrupted or confiscated the victim's mail, or accessed the victim's financial, electronic mail or
8 Internet accounts without permission;

9 (i) Restricted or hindered the victim's public activities, or the victim's interaction with
10 family or social acquaintances; or

11 (j) Engaged in any other controlling behavior that is consistent with the conduct
12 described in this definition, or that society would recognize as a violation of the victim's legal or
13 fundamental human rights.

14 **4.** "*Conviction*" means any criminal conviction resulting from: (a) a guilty verdict entered
15 by a judge or jury; and (b) any formal plea entered by a defendant regardless of the form of that
16 plea.

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

22 **6.** "*Family violence*" means child abuse or intimate partner violence, as both are defined in
23 this section.

24 **7.** "*Intimate partner violence*" means any act that would meet the definition of Section 13-
25 3601(A), as well as any other act of physical or sexual violence constituting a felony, where
26 inflicted by a person against an intimate partner. This definition also includes any attempt,
27 conspiracy, or solicitation of another to commit such act. It does not include any behavior that
28 would constitute legal justification as defined by Sections 13-404 through -408.

29 **8.** "*Intimate partner*" means a person whose relationship with another qualifies under
30 Section 13-3601(A)(1), (2), (3) or (6).