

Substantive Law Workgroup
Steve Wolfson, Chairperson

Court Procedures Workgroup
Dr. Brian Yee, Chairperson

DOMESTIC RELATIONS COMMITTEE
Agenda

September 1, 2011
12:00 – 2:00 p.m.
Arizona State Courts Building
1501 W. Washington St., Conference Room 230
Phoenix, Arizona 85007

- 1. Welcome and Announcements**.....*Chairman Steve Wolfson*
Chairman Dr. Brian Yee

Action Item/Vote: _____ Approval of 07-29-11 minutes
_____ Approval of 08-19-11 minutes

- 2. Review and discuss custody drafts***Chairmen*

- Judge Hyatt’s version
- Tom Alongi’s versions 3 and 4
- Legislative Council’s version
- Other requested changes / proposals

Action Item/Vote: _____

- 3. Discuss and vote on coercion and control language**.....*Chairmen*

Action Item/Vote: _____

- 4. Discuss and vote on including language to distinguish between situational and classic domestic violence***Chairmen*

Action Item/Vote: _____

- 3. 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.

- 4. Adjourn** Next Meeting: TBD

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

Substantive Law/Court Procedures Workgroup

Minutes

Date: July 29, 2011	Time: 11:30 AM – 1:00 PM	Location: Conference Room 230
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Minute Taker: Tama Reily

Members Attending:

A	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	X	William Fabricius	X	Donnalee Sarda	A	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	A	Laura Sabin Cabanillas		

Staff/Admin. Support: Kathy Sekardi; Tama Reily

Guests: Joi Davenport, Ariel Serafin, Joshua Eisenstein

Matters Considered:

I. Welcome and Announcements

DRC member Sid Buckman facilitated today’s Substantive Law / Court Procedures Workgroup (SLCP) meeting. The meeting was called to order by Mr. Buckman at 11:39 a.m. Members and guests were welcomed.

II. Approval of Minutes

The May 13th, June 24th, and July 15th, 2011 draft meeting minutes were not presented for approval at this time due to lack of a quorum.

III. Review of Comments Received

- Members discussed comments received by Bill Fabricius regarding A.R.S. § 25-432 wherein he suggested adding a section “c” that would specify a parenting plan. Additionally, Mr. Fabricius proposed the language of section 25-432 could be added to the Temporary Orders section. Upon discussion, members agreed that the Temporary Orders section did not fall under the workgroup’s charge. One member commented that although an enormous amount of work has gone into the rewrite, they feel as though the workgroup has gotten away from original goal of looking at the current custody statutes, cleaning up the language for consistency, and to make the statutes easier to follow and understand. Furthermore, it was suggested that repeated comments, such as the rewrite is too complicated and lengthy, is valid criticism that should be reflected in this workgroup’s recommendations to the DRC.
- Comments from Ellen Seaborne – *Item tabled*
- Comments from the Committee on the Impact of Domestic Violence and the Courts (CIDVC) – *Item tabled.*

IV. Review of Proposed Custody Rewrite

Without a quorum present, members agreed to table discussion regarding the coercive control provision in A.R.S. § 25-441. Instead, Judge Carey Hyatt shared a summary of responses she received from the family court judiciary regarding the draft rewrite. Reaction primarily concerned the complexity of the process and the length of the entire draft. The judges commented that the statutes were confusing to them and if they viewed the statute as convoluted, then self-represented individuals would certainly find it challenging to understand and navigate through the custody statutes. Members considered forming a task force to work on simplifying the statute. There was additional discussion about developing a flow chart of the rewrite and the current statutes in order to compare them and clarify the process. Workgroup staff, Kathy Sekardi, will discuss these suggestions with the co-chairs

and inform members of the plan of action.

VI. Call to the Public

No comments were submitted by the general public.

Meeting adjourned at 1:00 p.m.

Next Meeting

August 19, 2011

12:00pm – 1:30pm

Arizona State Courts Building

1501 W. Washington

Conference Room 119 B

DRAFT

Substantive Law/Court Procedures Workgroup

Minutes

Date: August 19, 2011	Time: 12:00 PM – 2:00 PM	Location: Conference Room 119B
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Minute Taker: Tama Reily

Members Attending:

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

Staff/Admin. Support: Kathy Sekardi; Tama Reily

Guests: Sheri Fetzer, Joi Davenport, Rena Selden, Josh Eisenstein, Molly Moffett, Larkin Riley

Matters Considered:

I. Welcome and Announcements

The August 19, 2011, meeting of the Substantive Law / Court Procedures (SLCP) Workgroup was called to order by Dr. Brian Yee, co-chair, at 12:15 p.m. Members and guests were welcomed.

II. Approval of Minutes

The minutes of the May, June, and July 2011, meetings of the SLCP Workgroup were presented for approval.

MOTION: To approve the minutes of the May 13, 2011, SLCP Workgroup meeting as presented. Motion seconded. Passed unanimously

MOTION: To approve the minutes of the June 24, 2011, SLCP Workgroup meeting as presented. Motion seconded. Passed unanimously.

MOTION: To approve the minutes of the July 15, 2011, SLCP Workgroup meeting as presented. Motion seconded. Passed unanimously.

III. Process Review

According to feedback received from the public and the family law bench in Maricopa, the current draft of the statute is thought to be too complicated, lengthy, and non-user-friendly. Co-chair, Dr. Yee, pointed to the challenge of having a workable draft to present to the Domestic Relations Committee (DRC) by its September meeting. He reiterated the alternatives considered at the last workgroup meeting, including the option of drafting a completely new revised version. At this juncture, he suggested the workgroup could opt to continue its work on the current draft until a completed product is ready for presentation to the DRC, or to proceed by increments, presenting the sections to the DRC as they are completed. Several members conveyed support for the incremental approach; although it was stressed that careful attention would be required to avoid a “patchwork” type of finished product.

IV. Request for Comments Regarding Draft

- **Judge Hyatt’s Version**

Judge Hyatt related that her proposed modifications were focused on simplifying the statute with

the exception of section 25-404.03, where she significantly expanded upon domestic violence and child abuse. Members debated the replacement of *coercive control* in section (F), with *intimate partner violence* (IPV) as well as the inclusion of the phrase “an act” of IPV versus “a pattern,” and how recent a single act of IPV needs to be in order to be considered by the court.

- **Tom Alongi’s Version**

Mr. Alongi presented his revised version, noting that it significantly reduces the size of the statute by eliminating all presumptions and rebuttals. He proposed that *family violence* and *child abuse* be included as best interest factors, in order to more readily bring the issues to the attention of the court. After extensive discussion on the topic, Mr. Alongi volunteered to draft another version prior to the next workgroup meeting, taking into account the concerns workgroup members expressed today.

- **Legislative Council’s Version**

Item tabled.

Members did not reach consensus as to the placement of IPV, therefore, Mr. Wolfson, co-chair, advised that the workgroup begin the next meeting with a vote on the issue. He also recommended that they focus on the language that distinguishes between situational domestic violence and the classic form of domestic violence.

VI. **Call to the Public**

Member of the public, Rena Selden, spoke regarding what she feels is too general a reference to Title 13 domestic violence statutes in the current draft. She expressed her belief that Title 13 is unconstitutional because it allows the court to determine whether a person might commit acts of domestic violence in the future. Additionally, she stated she takes issue with “presumptions” as she has seen too many domestic violence allegations in court that are invalid.

Member of the public, Joi Davenport, commented on Mr. Alongi’s draft proposal. On page 6, item 7, in the last paragraph, specifically, “...to protect the child from witnessing or suffering,” she suggested the term should be *experiencing* rather than *suffering*. Also, on page 10, under the definition of coercive control, she recommended including the language “consistent pattern” at the beginning of the definition. She also touched on the opposition voiced by some regarding the inclusion of coercive control in the statute. She believes the courts have trivialized or ignored it outright simply because there is no physical evidence. Having experienced this type of domestic violence herself, she argued that its effects are significant and long lasting – not only for the victim, but for the children as well.

Meeting adjourned at 1:57

Next Meeting

August 26, 2011
12:00pm – 1:30pm
Arizona State Courts Building
1501 W. Washington
Conference Room 119 B

COLOR LEGEND –

RED = explanation

GREEN = things I added/modified from previous Ad Hoc work product

BLUE = Tom's/Ad Hoc work product I stole from the current Leg Council version

BLACK = current statute

(renumbered as 25-403 and modified)

~~25-401. Jurisdiction; commencement of proceedings~~

~~———— A. Jurisdiction for child custody proceedings is governed by chapter 8 of this title.~~

~~———— B. A child custody proceeding is commenced in the superior court:~~

~~———— 1. By a parent, by filing a petition for either of the following:~~

~~———— (a) Dissolution or legal separation.~~

~~———— (b) Custody of a child born out of wedlock if there has been a prior establishment of maternity or paternity.~~

~~———— 2. By a person other than a parent, by filing a petition for custody of the child in the county in which the child is permanently resident or found, but only if the child is not in the physical custody of one of the child's parents.~~

~~———— 3. At the request of any person who is a party to a maternity or paternity proceeding pursuant to chapter 6, article 1 of this title.~~

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.

5. "PARENTING TIME" MEANS A PARENT'S PHYSICAL ACCESS TO A CHILD AT SPECIFIED TIMES AND, WHILE THE CHILD REMAINS IN THAT PARENT'S CARE, PROVIDING THE CHILD WITH FOOD, CLOTHING AND SHELTER AND ACTIVELY PARTICIPATING IN THE

CHILD'S ACTIVITIES IN A POSITIVE MANNER. PARENTING TIME INCLUDES MAKING ROUTINE DECISIONS REGARDING THE CHILD'S CARE THAT DO NOT CONTRADICT DECISIONS MADE BY A PARENT WHO HAS BEEN GRANTED LEGAL PARENTAL DECISION-MAKING BY A COURT.

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

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

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

~~9.~~ 8. "VISITATION" MEANS THAT A PARENT HAS THE SAME RIGHTS AND RESPONSIBILITIES AS A PARENT WHO HAS BEEN AWARDED PARENTING TIME.

~~25-402. Definitions~~

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

- ~~1. "Joint custody" means joint legal custody or joint physical custody, or both.~~
- ~~2. "Joint legal custody" means the condition under which both parents share legal custody and neither parent's rights are superior, except with respect to specified decisions as set forth by the court or the parents in the final judgment or order.~~
- ~~3. "Joint physical custody" means the condition under which the physical residence of the child is shared by the parents in a manner that assures that the child has substantially equal time and contact with both parents.~~
- ~~4. "Parenting time" means the condition under which a parent has the right to have a child physically placed with the parent and the right and responsibility to make, during that placement, routine daily decisions regarding the child's care consistent with the major decisions made by a person having legal custody.~~
- ~~5. "Sole custody" means the condition under which one person has legal custody.~~

~~25-402. Policy regarding parental decision-making and parenting time (duplicates/expands current 25-103 state policy without removing or affecting 25-103)~~

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

- A. SHARE PARENTAL DECISION-MAKING CONCERNING THEIR CHILD.
- B. HAVE SUBSTANTIAL, FREQUENT, MEANINGFUL AND CONTINUING PARENTING TIME WITH THEIR CHILD.
- C. DEVELOP A MUTUALLY AGREEABLE PARENTAL DECISION-MAKING AND PARENTING TIME PLAN.

~~25-403. Jurisdiction (renumbered and modified from current 25-401)~~

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

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

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

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

25-404 ~~25-403~~. Custody Parental Decision-Making and Parenting Time; best interests of child

A. The court shall determine **parental decision-making and parenting time custody**, either originally or on petition for modification, in accordance with the best interests of the child. The court shall consider all relevant factors, including:

1. The wishes of the child's parent or parents as to **parental decision-making custody**.
2. The wishes of the child as to **parenting time the custodian**.
3. The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.
4. The child's adjustment to home, school and community.
5. The mental and physical health of all individuals involved.
6. Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent. This paragraph does not apply if the court determines that a parent is acting in good faith to protect the child from witnessing an act of domestic violence or being a victim of domestic violence or child abuse.
7. Whether one parent, both parents or neither parent has provided primary care of the child.
8. The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding **parental decision-making and/or parenting time custody**.
9. Whether a parent has complied with chapter 3, article 5 of this title.
10. Whether either parent was convicted of an act of false reporting of child abuse or neglect under section 13-2907.02.
11. Whether there has been domestic violence or child abuse as defined in section 25-403.03.

B. In a contested **custody** case, the court shall make specific findings on the record about all relevant factors and the reasons for which the decision is in the best interests of the child.

25-404.01. ~~25-422~~. Parental decision-making; shared, final or sole (replaces former 25-403.01 crossed out below)

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

- 1. THE AGREEMENT OR LACK OF AN AGREEMENT BY THE PARENTS REGARDING THE PARENTAL DECISION-MAKING PLAN.**
- 2. WHETHER A PARENT'S LACK OF AGREEMENT IS UNREASONABLE OR INFLUENCED BY AN ISSUE NOT RELATED TO THE BEST INTERESTS OF THE CHILD.**
- 3. WHETHER AN AWARD OF FINAL OR SOLE PARENTAL DECISION-MAKING WOULD BE ABUSED.**
- 4. THE PAST, PRESENT AND FUTURE WILLINGNESS AND ABILITY OF THE PARENTS TO COOPERATE IN DECISION-MAKING ABOUT THE CHILD.**
- 5. WHETHER THE PARENTAL DECISION-MAKING PLAN IS LOGISTICALLY POSSIBLE.**

Sole and joint custody

- ~~— A. In awarding child custody, the court may order sole custody or joint custody. This section does not create a presumption in favor of one custody arrangement over another. The court in determining custody shall not prefer a parent as custodian because of that parent's sex.~~
- ~~— B. The court may issue an order for joint custody over the objection of one of the parents if the court makes specific written findings of why the order is in the child's best interests. In~~

determining whether joint custody is in the child's best interests, the court shall consider the factors prescribed in section 25-403, subsection A and all of the following:

- ~~1. The agreement or lack of an agreement by the parents regarding joint custody.~~
 - ~~2. Whether a parent's lack of agreement is unreasonable or is influenced by an issue not related to the best interests of the child.~~
 - ~~3. The past, present and future abilities of the parents to cooperate in decision-making about the child to the extent required by the order of joint custody.~~
 - ~~4. Whether the joint custody arrangement is logistically possible.~~
- ~~C. The court may issue an order for joint custody of a child if both parents agree and submit a written parenting plan and the court finds such an order is in the best interests of the child. The court may order joint legal custody without ordering joint physical custody.~~

25-404.02. ~~25-421.~~ Parenting plans (replaces former 25-403.02 crossed out below)

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

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.

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

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

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

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

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

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

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

7. A PROCEDURE FOR PERIODIC REVIEW OF THE PLAN.

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

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

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

Parenting plans

~~— A. Before an award is made granting joint custody, the parents shall submit a proposed parenting plan that includes at least the following:~~

~~— 1. Each parent's rights and responsibilities for the personal care of the child and for decisions in areas such as education, health care and religious training.~~

~~— 2. A schedule of the physical residence of the child, including holidays and school vacations.~~

~~— 3. A procedure by which proposed changes, disputes and alleged breaches may be mediated or resolved, which may include the use of conciliation services or private counseling.~~

~~— 4. A procedure for periodic review of the plan's terms by the parents.~~

~~— 5. A statement that the parties understand that joint custody does not necessarily mean equal parenting time.~~

~~— 6. A statement that each party has read, understands and will abide by the notification requirements of section 25-403.05, subsection B.~~

~~— B. If the parents are unable to agree on any element to be included in a parenting plan, the court shall determine that element. The court may determine other factors that are necessary to promote and protect the emotional and physical health of the child.~~

25-404.03. Domestic violence and child abuse (Family Violence???) (replaces and significantly expands former 25-403.03 with much of Tom Alongi's work)

A. 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.

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

8. "FAMILY VIOLENCE" MEANS/CAN ENCOMPASS EITHER AN ACT OF DOMESTIC VIOLENCE OR AN ACT OF INTIMATE PARTNER VIOLENCE OR BOTH.

~~A-~~ B. Notwithstanding subsection D of this section, **parental decision-making joint custody** shall not be awarded if, **by a preponderance of the evidence presented**, the court makes a finding of the existence of significant domestic violence pursuant to section 13-3601 or if the court finds ~~by a preponderance of the evidence~~ that there has been a significant history of domestic violence.

~~B-~~ C. The court shall consider evidence of (domestic violence **or intimate partner violence or do we just call this family violence to encompass both?**) as being contrary to the best interests of the child. The court shall consider the safety and well-being of the child and of the victim of the act of (domestic violence **or intimate partner violence or family violence**) to be of primary importance. The court shall consider a perpetrator's history of causing or threatening to cause physical harm to another person.

~~C-~~ D. To determine if a person has committed an act of (domestic violence **or intimate partner violence or family violence**) the court, subject to the rules of evidence, shall consider all relevant factors including the following:

1. Findings from another court of competent jurisdiction.
2. Police reports.
3. Medical reports.
4. Child protective services records.
5. Domestic violence shelter records.
6. School records.
7. Witness testimony.

~~D-~~ E. If the court determines that a parent who is seeking **parental decision-making custody** has committed an act of (domestic violence **or intimate partner violence or family violence**) against the other parent, there is a rebuttable presumption that an award of **parental decision-making custody** to the parent who committed the act of (domestic violence **or intimate partner violence or family violence**) is contrary to the child's best interests. This presumption

does not apply if both parents have committed an act of domestic violence. For the purposes of this subsection, a person commits an act of domestic violence if that person does any of the following:

1. ~~Commits or attempts to commit any act(s) enumerated in A.R.S. §13-3601. Intentionally, knowingly or recklessly causes or attempts to cause sexual assault or serious physical injury.~~
2. ~~Places a person in reasonable apprehension of imminent serious physical injury to any person.~~
3. 2. Engages in a pattern of behavior for which a court may issue an ex parte order to protect the other parent who is seeking child custody or to protect the child and the child's siblings.
Commits intimate partner violence on
3. ~~Exercised coercive control of the other parent during their relationship, as prescribed described in subsection E of this section.~~

~~§ F. FOR THE PURPOSES OF DETERMINING IF A PARENT HAS COERCIVELY CONTROLLED COMMITTED INTIMATE PARTNER VIOLENCE ON ANOTHER PARENT, THE COURT SHALL DETERMINE IF THE PARENT HAS INFLICTED ONE OR MORE A PATTERN OF CONTROLLING BEHAVIORS AGAINST THE OTHER PARENT, ALONG WITH THE SEVERITY OF EACH, AND WHO HAS ALSO SUFFERED INTIMATE PARTNER VIOLENCE BY THAT PARENT. WITH REGARD TO EACH BEHAVIOR, THE COURT SHALL CONSIDER ITS SEVERITY, WHETHER IT COMPRISES PART OF A WIDER PATTERN OF CONTROLLING CONDUCT. AND THE PARENT'S MOTIVATION SPECIFICALLY, THE COURT SHALL CONSIDER WHETHER THE OFFENDING PARENT HAS:~~

1. ~~PERSISTENTLY ENGAGED IN DEMEANING, DEGRADING OR OTHER VERBALLY ABUSIVE CONDUCT TOWARD THE VICTIM.~~
2. ~~CONFINED THE VICTIM OR OTHERWISE RESTRICTED THE VICTIM'S MOVEMENTS.~~
- 9: 3. ~~ENGAGED IN A COURSE OF CONDUCT DELIBERATELY CALCULATED TO JEOPARDIZE THE VICTIM'S EMPLOYMENT. OR 16: FORBADE OR PREVENTED THE VICTIM FROM ACHIEVING THE VICTIM'S EDUCATIONAL OR CAREER OBJECTIVES.~~
- 14: 4. ~~OPENED FINANCIAL OR CREDIT ACCOUNTS IN THE VICTIM'S NAME WITHOUT THE VICTIM'S CONSENT, FORGED THE VICTIM'S SIGNATURE OR OTHERWISE APPROPRIATED THE VICTIM'S IDENTITY WITHOUT THE VICTIM'S AUTHORITY.~~
- 3: 5. ~~ATTEMPTED OR THREATENED SUICIDE.~~
6. ~~THREATENED TO CONCEAL OR REMOVE CHILDREN FROM THE VICTIM'S CARE OR ATTEMPTED TO UNDERMINE THE VICTIM'S RELATIONSHIP WITH A CHILD.~~
7. ~~RESTRICTED OR HINDERED THE VICTIM'S COMMUNICATIONS, INCLUDING ATTEMPTS BY THE VICTIM TO REPORT DOMESTIC VIOLENCE, CHILD ABUSE OR OTHER CRIMINAL BEHAVIOR TO LAW ENFORCEMENT, MEDICAL PERSONNEL OR OTHER THIRD PARTIES.~~
8. ~~EAVESDROPPED ON THE VICTIM'S PRIVATE COMMUNICATIONS OR INTERNET ACTIVITIES, INTERRUPTED OR CONFISCATED THE VICTIM'S MAIL OR ACCESSED THE VICTIM'S FINANCIAL, ELECTRONIC MAIL OR INTERNET ACCOUNTS WITHOUT PERMISSION.~~
- 15: 9. ~~RESTRICTED THE VICTIM'S PARTICIPATION IN SOCIAL ACTIVITIES OR ACCESS TO FAMILY, FRIENDS OR ACQUAINTANCES.~~
- 19: 10. ~~ENGAGED IN ANY OTHER CONTROLLING BEHAVIOR CONSISTENT WITH THE CONDUCT DESCRIBED IN THIS DEFINITION.~~

E. G. To determine if the parent has rebutted the presumption **against an award of parental decision-making**, the court shall consider all of the following:

1. Whether the parent has demonstrated that being awarded **shared, final or sole decision-making** ~~custody or joint physical or legal custody~~ is in the child's best interests.

~~2. 2. COMPLETED A BATTERER'S INTERVENTION PROGRAM IN CASES INVOLVING (DOMESTIC OR INTIMATE PARTNER VIOLENCE OR FAMILY VIOLENCE) AND HAS ALSO DISCLOSED AND SUBMITTED INTO EVIDENCE A COMPLETE SET OF TREATMENT RECORDS PROVING AN ACCEPTABLE LEVEL OF REHABILITATION. A CERTIFICATE OF COMPLETION DOES NOT BY ITSELF PROVE REHABILITATION. THE TREATMENT RECORDS MUST DOCUMENT ACTIVE INVOLVEMENT AND POSITIVE STEPS BY THE OFFENDING PARENT DURING THERAPY.~~

~~3. 3. COMPLETED A COUNSELING PROGRAM FOR ALCOHOL OR OTHER SUBSTANCE ABUSE IF THE EVIDENCE ESTABLISHES THAT SUBSTANCE ABUSE CONTRIBUTED TO INTIMATE PARTNER VIOLENCE OR CHILD ABUSE.~~

~~4. 4. REFRAINED FROM FURTHER BEHAVIOR THAT WOULD CONSTITUTE A CRIMINAL OFFENSE UNDER FEDERAL OR STATE LAW, INCLUDING NEW ACTS OF (DOMESTIC OR INTIMATE PARTNER VIOLENCE OR FAMILY VIOLENCE) OR CHILD ABUSE.~~

~~5. 5. DEMONSTRATED SINCERE REMORSE AND ACCEPTANCE OF PERSONAL RESPONSIBILITY BY WORDS AND CONDUCT FOLLOWING THE CONFIRMED ACT(S) OF (DOMESTIC OR INTIMATE PARTNER VIOLENCE OR FAMILY VIOLENCE) OR CHILD ABUSE.~~

~~2. Whether the parent has successfully completed a batterer's prevention program.~~

~~3. Whether the parent has successfully completed a program of alcohol or drug abuse counseling, if the court determines that counseling is appropriate.~~

~~4. Whether the parent has successfully completed a parenting class, if the court determines that a parenting class is appropriate.~~

~~5. If the parent is on probation, parole or community supervision, whether the parent is restrained by a protective order that was granted after a hearing.~~

~~6. Whether the parent has committed any further acts of domestic violence.~~

F. H. If the court finds that a parent has committed an act of **(domestic or intimate partner violence or family violence)**, that parent has the burden of proving to the court's satisfaction that **unrestricted** parenting time will not endanger the child or significantly impair the child's emotional development. **In determining whether the parent has met this burden, the court shall consider all of the criteria listed in sections 25-403.03, subsections D, E, and F.** If the parent **fails to** meet this burden to the court's satisfaction, the court shall place conditions on parenting time that best protect the child and the other parent from further harm. The court may:

1. Order that an exchange of the child must occur in a protected setting as specified by the court.

2. Order that an agency specified by the court must supervise parenting time. If the court allows a family or household member to supervise parenting time, the court shall establish conditions that this person must follow during parenting time. **WHEN DECIDING WHOM TO SELECT, THE COURT SHALL ALSO CONSIDER THE SUPERVISOR'S ABILITY TO PHYSICALLY INTERVENE IN AN EMERGENCY, WILLINGNESS TO PROMPTLY REPORT A PROBLEM TO THE COURT OR OTHER APPROPRIATE AUTHORITIES AND READINESS TO APPEAR IN FUTURE PROCEEDINGS AND TO TESTIFY.**

3. ORDER THE COMPLETION OF A BATTERER'S INTERVENTION PROGRAM AND ANY OTHER COURT-ORDERED COUNSELING. ~~3. Order the parent who committed the act of domestic violence to attend and complete, to the court's satisfaction, a program of intervention for perpetrators of domestic violence and any other counseling the court orders.~~

4. Order the parent who committed the act of (domestic violence or intimate partner violence or family violence) to abstain from possessing or consuming alcohol or controlled substances during parenting time and at any other time the court deems appropriate for twenty-four hours before parenting time.

5. Order the parent who committed the act of domestic violence to pay a fee to the court to defray the costs of supervised parenting time.

6. Prohibit overnight parenting time.

7. Require the posting of a cash bond from the parent who committed the act of (domestic violence or intimate partner violence or family violence) for the child's safe return.

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

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

10. Suspend parenting time for a prescribed period.

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

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

~~¶~~ I. The court shall not order joint counseling between a victim and the perpetrator of (domestic violence intimate partner violence or family violence). The court may refer a victim to appropriate counseling and shall provide a victim with written information about available community resources related to domestic violence.

~~¶~~ J. The court may request or order the services of the division of children and family services in the department of economic security if the court believes that a child may be the victim of child abuse or neglect as defined in section 8-201.

~~¶~~ K. In determining whether the absence or relocation of a parent shall be weighed against that parent in determining custody or parenting time, the court may consider whether the absence or relocation was caused by an act of (domestic violence or intimate partner violence or family violence) by the other parent.

- i. **Title:** CHILD CUSTODY – SIMPLIFIED INITIATIVE
- ii. **Authors:** Thomas P. Alongi
Senior Staff Attorney, Community Legal Services
- iii. **Version:** 23
- iv. **Meeting Date:** August ~~19~~26, 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) with a more restrictive definition. 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.

At the workgroup’s recommendation, the new concept of “coercive control” has been moved from its original location (as a balancing consideration tied to proof of intimate partner violence) into the list of “best interests” factors as an independent consideration. However, both the definition and illustrative examples have been tightened in an effort to forestall abuses by litigants for whom the concept of coercive control was never intended.

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).

Lastly, miscellaneous reforms already adopted by the AHCW were moved and unified into Section 25-423. They include instructions on the proper consideration of outcomes from criminal and DVPO proceedings, a prohibition against using a parent’s shelter residency as “evidence of instability,”

clarifications on ADR and counseling in IPV situations, and a preservation of current ARS 25-403.05(B) (concerning access of sex offenders to children).

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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.

2. “*Legal parent*” means a biological or adoptive parent whose parental rights have not been terminated. It does not include a person whose paternity has not been established under Section 25-812 or 25-814.

3. “*Parental decision-making*” refers to a parent’s legal right and responsibility to make major life decisions affecting the health, welfare and education of a child, including, for example, schooling, religion, daycare, medical treatment, counseling, commitment to alternative long-term facilities, authorizing powers of attorney, granting or refusing parental consent where legally required, entitlement to notifications from third parties on behalf of the child, employment, enlistment in the Armed Forces, passports, licensing and certifications, and blood donation. For purposes of interpreting or applying any international treaty, federal law, uniform code or other state statute, “parental decision-making” shall mean the same as “legal custody.”

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

(b) “*Final parental decision-making*” means that one parent ultimately exercises the authority described in this section, but must reasonably consult with the other before doing so.

(c) “*Sole parental decision-making*” means that one parent exclusively exercises the authority described in this section, and is not required to consult with the other before doing so.

1 4. “*Parenting time*” refers to a parent’s physical access to a child at specified times, and
2 while the child remains in that parent’s care, providing the child with food, clothing and shelter,
3 and actively participating in the child’s activities in a positive manner. It also includes making
4 routine decisions regarding the child’s care that do not contradict decisions made by a parent
5 who has been granted parental decision-making authority.

6 5. “*Visitation*” means the same as parenting time when exercised by someone other than a
7 legal parent.

8 **§ 25-402. Policy regarding parental decision-making and parenting time**

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

11 A. Share parental decision-making concerning their child;

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

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

15 **§ 25-403. Jurisdiction**

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

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

24 1. A parent, in any proceeding for marital dissolution, legal separation, paternity or
25 modification of an earlier decree:

26 2. By a person other than a parent, by filing a petition for third-party rights under Section
27 **[x]** in the county in which the child permanently resides.

1 **Article 2. Parenting Plans**

2
3 **§ 25-421. Parenting Plans**

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

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

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

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

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

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

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

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

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

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

24 8. A statement that each party has read, understands and will abide by the notification
25 requirements of Section 25-423(F), pertaining to access of sex offenders to a child.

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

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

1 § 25-422. Court proceedings; best interests of child; family violence; judicial findings;
2 appellate review

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

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

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

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

9 4. The interaction and relationship between the child and the child's siblings and any
10 other person who may significantly affect the child's best interests.

11 5. The extent to which one parent coercively controlled the other during their
12 relationship, as defined in Section 25-424(3).

13 65. The mental health, physical condition, and criminal, delinquent or otherwise harmful
14 behavior of the child, parents and any other person present in the child's household.

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

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

21 98. The practicality of any proposed or agreed parenting plan.

22 109. Whether a parent has complied with the educational program prescribed in Sections
23 25-351 through -353.

24 B. The court shall not award any level of parental decision-making or unrestricted parenting
25 time to a parent who has committed one or more acts of family violence, unless the court finds
26 from clear and convincing evidence that other statutory factors substantially outweigh the history
27 of that violence. When ~~making that comparison~~ determining the relative strength of those
28 competing factors, the court shall consider:

29

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

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

7 ~~3~~2. In cases of mutual violence not amounting to legal justification, as defined in
8 Sections 13-404 through -408, the motivation of each parent for the violence, the level of force
9 used by each parent, and their respective injuries.

10 ~~4~~3. Whether the offending parent continues to minimize or deny responsibility for the
11 history of violence, or blame it on unrelated issues.

12 ~~5~~4. Whether the offending parent failed to comply with the mandatory disclosure
13 requirements of Family Law Rules 49(B)(2) – (4) or reasonable discovery requests for records
14 associated with treating intimate partner violence or child abuse.

15 ~~6~~5. In cases involving intimate partner violence, whether the offending parent has
16 completed a batterer’s intervention program, as defined in Section 25-424(1), and has also
17 disclosed and submitted into evidence a complete set of treatment records proving an acceptable
18 level of productive participation in the rehabilitation process. A certificate of completion alone
19 does not prove rehabilitation.

20 6. The remoteness of the last act of family violence, and reasons for the absence of
21 renewed violence over the passage of time.

22 C. When conducting the analysis described in Subsection (B), the court ~~should~~ shall
23 ~~recognize that intimate partner violence is frequently characterized by an effort of one parent to~~
24 ~~control the other through the use of abusive patterns of behavior that operate at a variety of levels~~
25 ~~—emotional, psychological and physical. The court should~~ always consider a history of ~~intimate~~
26 ~~partner~~ family violence as contrary to the best interests of the child, irrespective of whether a
27 child personally witnessed a particular act of violence. When deciding both parental decision-
28 making and parenting time, the court shall assign primary importance to the physical safety and
29 emotional health of the child and the non-offending parent.

30 D. When deciding whether to grant parenting time to a parent who has committed one or
31 more acts of family violence, the court ~~should~~ shall specifically contemplate whether that
32 parent’s access to a child will:

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

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

6 **E.** If a parent who has committed ~~one or more acts of~~ family violence does not present clear
7 and convincing evidence of ~~suitability~~ eligibility for unrestricted parenting time as required in
8 Subsection (B), the court shall then place conditions on parenting time that best protect the child
9 and the other parent from further harm. With respect to the offending parent, the court may:

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

11 2. Order that a person or agency specified by the court must supervise parenting time. If
12 the court allows a family or household member or other person to supervise the offending
13 parent’s parenting time, the court shall establish conditions that this supervisor must follow.
14 When deciding whom to 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 court or other
16 appropriate authorities, and readiness to appear in future proceedings and testify truthfully.

17 3. Order the completion of a batterer’s intervention program, as defined by Section 25-
18 424(1), and any other counseling the court orders.

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

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

22 6. Prohibit overnight parenting time.

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

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

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

27 10. Suspend parenting time for a prescribed period.

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

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

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

8 G. The Arizona Court of Appeals shall review *de novo* any superior court determination that
9 evidence of family violence was outweighed by other considerations. Any other trial judgment
10 concerning parental decision-making or parenting time shall be reviewed only for an abuse of
11 discretion.

12 **§ 25-423. Family violence; miscellaneous provisions**

13 A. A criminal conviction for an act of family violence shall constitute adequate proof of
14 family violence under Section 25-422(A)(1). No person so convicted may claim in proceedings
15 under this chapter that the crime of conviction did not occur. However, either party may
16 introduce evidence of facts related to the incident, either as a means of contending that other best
17 interests considerations in Section 25-422(A) outweigh the importance of the adjudicated family
18 violence, or to prove that the offender’s conduct was actually worse than the crime of conviction
19 suggests. Nothing in this subsection prevents an alleged victim from proving family violence by
20 means other than a criminal conviction.~~Evidence that a parent previously consented to deferred~~
21 ~~prosecution or diversion from criminal charges for an act of family violence shall constitute~~
22 ~~adequate proof that such parent committed the act or acts alleged in the criminal complaint later~~
23 ~~dismissed pursuant to the diversion or deferred prosecution. Nothing in this subsection prevents~~
24 ~~either parent from introducing additional evidence related to the event in question in support of~~
25 ~~that parent’s case.~~

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

31 ~~BC. For purposes of this section, n~~No judgment resulting from protective order proceedings
32 under Section 13-3602(I) shall be considered conclusive evidence that family violence did or did
33 not occur.

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

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

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

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

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

28 **§ 25-424. Family violence; definitions**

29 In this article, unless the context otherwise requires:

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

32 (a) emphasizes personal responsibility;

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

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

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

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

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

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

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

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

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

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

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

17 **3. “Coercive control”** refers to a discernible pattern one or more of controlling behaviors
18 inflicted by one parent against another, ~~when the latter has also suffered intimate partner~~
19 ~~violence by that parent.~~ With regard to these behaviors, the court shall consider ~~the actor’s~~
20 ~~motivation, and whether the behaviors appeared in tandem as part of a continuing pattern of~~
21 ~~controlling conduct during the parties’ relationship. Specifically, the court shall contemplate~~
22 ~~whether the offending parent has~~ the frequency of these behaviors, their remoteness in time, the
23 psychological injury they inflicted on the victim and other household members, the degree to
24 which they influenced the victim’s daily life, and the extent to which one or more behaviors
25 were, in truth, attributable to some other condition or motivation. Specifically, the court shall
26 consider whether the offending parent:

27 (a) ~~Persistently e~~Engaged in exceptionally demeaning, ~~sexually degrading,~~ or ~~other~~
28 ~~verbally emotionally~~ abusive conduct toward the victim;

29 (b) ~~Physically confined the victim, or otherwise~~ Unreasonably restricted the victim’s
30 freedom of movement;

1 (c) Unreasonably restricted ~~or hindered~~ the victim’s educational or financial activities
2 without consent, or maliciously jeopardized the victim’s employment or financial ~~welfare~~
3 credit~~without good cause~~;

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

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

7 (f) Unreasonably ~~T~~ threatened to conceal or remove a child from the victim’s care as a
8 means of coercing that person’s compliance with the offender’s wishes, ~~for reasons other than a~~
9 ~~legitimate concern for the child’s physical or emotional welfare, attempted to undermine the~~
10 ~~victim’s relationship with a child~~, or used a child to facilitate either criminal conduct against the
11 victim or one or more controlling behaviors described in this subsection;

12 (g) ~~Restricted or hindered~~ Impeded the victim’s attempts to report ~~intimate partner~~
13 ~~violence, child abuse~~ family violence or other criminal behavior to law enforcement, medical
14 personnel or other third parties by means of duress or coercion;

15 (h) Eavesdropped on the victim’s private ~~communications or~~ Internet activities,
16 telephone conversations, or other communications, or accessed the victim’s electronic,
17 password-protected accounts without permission; ~~interrupted or confiscated the victim’s mail, or~~
18 ~~accessed the victim’s financial, electronic mail or Internet accounts without permission~~;

19 (i) Unreasonably ~~R~~ restricted ~~or hindered~~ the victim’s public activities, or the victim’s
20 interaction with family or social acquaintances; or

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

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

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

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

1 7. “Intimate partner violence” means any of the following acts when inflicted against an
2 intimate partner: (a) physical or sexual violence; (b) assaultive behavior not resulting in physical
3 contact that places the victim in reasonable apprehension of immediate bodily harm; (c) any
4 other conduct that would constitute a felony listed in Section 13-3601(A); or (d) any violation of
5 a domestic violence protective order or harassment injunction. ~~any act that would meet the~~
6 ~~definition of Section 13-3601(A), as well as any other act of physical or sexual violence~~
7 ~~constituting a felony, where inflicted by a person against an intimate partner.~~ This definition
8 also includes any attempt, conspiracy, or solicitation of another to commit such act. It does not
9 include any behavior that would constitute legal justification as defined by Sections 13-404
10 through -408.

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

13 § 25-425. Sanctions for Litigation Misconduct

14 A. The court shall sanction a litigant for costs and reasonable attorney fees incurred by
15 an adverse party if the court finds, by clear and convincing evidence, that the litigant has done
16 any one or more of the following:

17 1. intentionally presented a claim under Section 422(A) with full knowledge that
18 the claim was false;

19 2. intentionally accused an adverse party of making a false claim under Section
20 422(A) with full knowledge that the claim was actually true; or

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

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

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

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

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

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

- i. Title:** CHILD CUSTODY – SIMPLIFIED INITIATIVE
- ii. Drafter:** Tom Alongi
- iii. Contributions:** Leslie Satterlee & Chris Rike
- iv. Version:** 4
- v. Meeting Date:** August 26, 2011
- vi. Statute:** A.R.S. Title 25, Chapter 4

COMMENT:

This initiative strives to simplify the final product offered by the Ad Hoc Custody Workgroup (AHCWG) in March 2011, while still preserving its core priorities.

Elimination of Rebuttable Presumptions & Special Circumstances. All “special circumstances” provisions (including statutory presumptions and rebuttal sections) have been deleted. Issues previously governed by sections dealing with substance abuse and felons are incorporated into New 25-408(A)(6). 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 New 25-408(A)(1) with a more restrictive definition in New 25-404(6).

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 New 25-408(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 decision that prioritizes competing “best interests” factors over proven family violence. See New 25-410(A) and (B).

Parenting Plans. Concepts dealing with the feasibility of a parenting plan are unified into New 25-408(A)(9), and the concern over a parent’s abuse of sole PDM is merged into the “friendly parent” provision of New 25-408(A)(8). 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. Restrictions on parenting time that were formerly specified only in cases of domestic violence (see ARS 25-403.03(F)) are now made available for all circumstances where restrictions would be appropriate, but still include the revised list of factors previously recommended by the AHCW. See New 25-409(A).

Coercive Control. At the workgroup’s recommendation, the new concept of “coercive control” has been moved from its original location (as a balancing consideration tied to proof of intimate partner violence) into the list of “best interests” factors as an independent consideration. See New 25-408(A)(5). However, both the definition and illustrative examples have been tightened in an effort to forestall abuses by litigants for whom the concept of coercive control was never intended. See New 25-404(2).

Miscellaneous. Prior legislative declarations (see ARS 25-403.03(B)) about the harm inflicted by IPV are preserved and transferred to New 25-408(C). However, statements about the “primary importance” of protecting victims of family violence were deleted as needless in light of the designation of that circumstance as a leading “best interests” factor that would already be entitled to elevated consideration.

Lastly, miscellaneous reforms already adopted by the AHCW were moved and unified into New 25-411. They include instructions on the proper consideration of outcomes from criminal and DVPO proceedings, a prohibition against using a parent’s shelter residency as “evidence of instability,” clarifications on ADR and counseling in IPV situations, and a preservation of current ARS 25-403.05(B) (concerning access of sex offenders to children).

Definitions. In an effort to accommodate both: (1) the introduction of coercive control as a consideration independent of family violence, with (2) previously-expressed fears over mixing definitions, this Version 4 introduces “Definitions; general application” (applicable to all cases), followed immediately by “Special Definitions” (applicable only to cases involving family violence and coercive control). See New 25-403 and -404.

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

Article 1. GENERAL PROVISIONS

§ 25-401. 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.

§ 25-402. 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 25-412 in the county in which the child permanently resides.

§ 25-403. Definitions; general application

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.

1 2. “*Legal parent*” means a biological or adoptive parent whose parental rights have not been
2 terminated. It does not include a person whose paternity has not been established under Section
3 25-812 or 25-814.

4 3. “*Parental decision-making*” refers to a parent’s legal right and responsibility to make
5 major life decisions affecting the health, welfare and education of a child, including, for
6 example, schooling, religion, daycare, medical treatment, counseling, commitment to alternative
7 long-term facilities, authorizing powers of attorney, granting or refusing parental consent where
8 legally required, entitlement to notifications from third parties on behalf of the child,
9 employment, enlistment in the Armed Forces, passports, licensing and certifications, and blood
10 donation. For purposes of interpreting or applying any international treaty, federal law, uniform
11 code or other state statute, “parental decision-making” shall mean the same as “legal custody.”

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

15 (b) “*Final parental decision-making*” means that one parent ultimately exercises the
16 authority described in this section, but must reasonably consult with the other before doing so.

17 (c) “*Sole parental decision-making*” means that one parent exclusively exercises the
18 authority described in this section, and is not required to consult with the other before doing so.

19 4. “*Parenting time*” refers to a parent’s physical access to a child at specified times, and
20 while the child remains in that parent’s care, providing the child with food, clothing and shelter,
21 and actively participating in the child’s activities in a positive manner. It also includes making
22 routine decisions regarding the child’s care that do not contradict decisions made by a parent
23 who has been granted parental decision-making authority.

24 5. “*Visitation*” means the same as parenting time when exercised by someone other than a
25 legal parent.

26 **§ 25-404. Special definitions; family violence and coercive control**

27 In this article, unless the context otherwise requires:

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

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

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

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

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

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

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

4 2. “*Coercive control*” refers to a discernible pattern of controlling behaviors inflicted by one
5 parent against another. With regard to these behaviors, the court shall consider the frequency of
6 these behaviors, their remoteness in time, the psychological injury they inflicted on the victim
7 and other household members, the degree to which they influenced the victim’s daily life, and
8 the extent to which one or more behaviors were, in truth, attributable to some other condition or
9 motivation. Specifically, the court shall consider whether the offending parent:

10 (a) Engaged in exceptionally demeaning or emotionally abusive conduct toward the
11 victim;

12 (b) Unreasonably restricted the victim’s freedom of movement;

13 (c) Unreasonably restricted the victim’s educational or financial activities without
14 consent, or maliciously jeopardized the victim’s employment or financial credit;

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

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

18 (f) Unreasonably threatened to conceal or remove a child from the victim’s care as a
19 means of coercing that person’s compliance with the offender’s wishes, or used a child to
20 facilitate either criminal conduct against the victim or one or more controlling behaviors
21 described in this subsection;

22 (g) Impeded the victim’s attempt to report family violence or other criminal behavior to
23 law enforcement, medical personnel or other third parties by means of duress or coercion;

24 (h) Eavesdropped on the victim’s private Internet activities, telephone conversations or
25 other communications, or accessed the victim’s electronic, password-protected accounts without
26 permission;

27 (i) Unreasonably restricted the victim’s public activities, or the victim’s interaction with
28 family or social acquaintances; or

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

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

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

9 **5.** “*Family violence*” means child abuse or intimate partner violence, as both are defined in
10 this section.

11 **6.** “*Intimate partner violence*” means any of the following acts when inflicted against an
12 intimate partner: (a) physical or sexual violence, or any threat to commit the same; (b) assaultive
13 behavior not resulting in physical contact that places the victim in reasonable apprehension of
14 immediate bodily harm; (c) any other conduct ~~that would constitute a felony~~ listed in Section 13-
15 3601(A) that would also constitute a felony under the laws of this State; or (d) any violation of a
16 domestic violence protective order or harassment injunction. This definition also includes any
17 attempt, conspiracy, or solicitation of another to commit an act described above~~such act~~. It does
18 not include any defensive behavior that would ~~constitute~~ qualify as legal justification ~~as defined~~
19 by~~under~~ Sections 13-404 through -408.

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

22 **8.** “*Offender treatment program*” means an individual or group treatment program for
23 intimate partner violence offenders that:

24 (a) emphasizes personal responsibility;

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

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

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

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

1 **Article 2. PARENTING PLANS**

2
3 **§ 25-405. Shared Parental Decision-Making and Parenting Time**

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

8 **§ 25-406. Proposed Plans**

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

13 **B.** A parenting plan must include at least the following:

14 1. A designation of the parental decision-making plan as either shared, final or sole, as
15 defined in Section 403(3).

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

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

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

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

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

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

25 8. A statement that each party has read, understands and will abide by the notification
26 requirements of Section 25-411(G), pertaining to access of sex offenders to a child.

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

1 § 25-407. **Alternative dispute resolution; preliminary duty**

2 If two parents already share parental decision-making by prior court order, each must consult
3 with the other about child-related decisions, and attempt to resolve disputes outside of court
4 through conciliation services or private mediation before seeking formal judicial intervention.

5 **Article 3. COURT PROCEEDINGS**

6
7 § 25-408. **Best interests of child; family violence; judicial findings; appellate review**

8 **A.** The court shall determine both parental decision-making and parenting time in
9 accordance with the best interests of the child. The court shall consider all factors relevant to the
10 child's physical safety and emotional welfare, including:

- 11 1. Whether a parent has committed family violence, as defined in Section 25-404(5).
- 12 2. The historical, current and potential relationship between the parent and the child.
- 13 3. The child's adjustment to home, school and community.
- 14 4. The interaction and relationship between the child and the child's siblings and any
15 other person who may significantly affect the child's best interests.
- 16 5. The extent to which one parent coercively controlled the other during their
17 relationship, as defined in Section 25-404(2).
- 18 6. The mental health, physical condition, and criminal, delinquent or otherwise harmful
19 behavior of the child, parents and any other person present in the child's household.
- 20 7. The child's own viewpoint and wishes, if possessed of suitable age and maturity,
21 along with the basis for those wishes.
- 22 8. Whether one parent is more likely to encourage the child's relationship with the other,
23 and respect parental decision-making rules. This paragraph does not apply if the court
24 determines that a parent is acting in good faith to protect the child from witnessing or suffering
25 an act of intimate partner violence or child abuse.
- 26 9. The practicality of any proposed or agreed parenting plan.
- 27 10. Whether a parent has complied with the educational program prescribed in Sections
28 25-351 through -353.

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

1 of that violence. When determining the relative strength of those competing factors, the court
2 shall consider:

3 1. The extent to which the offending parent inflicted intimate partner violence or child
4 abuse against the same or some other person in the past, or has recently done so with a new
5 intimate partner or child, especially after having already received related counseling on past
6 occasions.

7 2. In cases of mutual violence not amounting to legal justification, as defined in Sections
8 13-404 through -408, the motivation of each parent for the violence, the level of force used by
9 each parent, and their respective injuries.

10 3. Whether the offending parent continues to minimize or deny responsibility for the
11 history of violence, or blame it on unrelated issues.

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

15 5. In cases involving intimate partner violence, whether the offending parent has
16 completed ~~a batterer's intervention~~ an offender treatment program, as defined in Section 25-
17 404(8), and has also disclosed and submitted into evidence a complete set of treatment records
18 proving an acceptable level of productive participation in the rehabilitation process. A certificate
19 of completion alone does not prove rehabilitation.

20 6. The remoteness of the last act of family violence, and reasons for the absence of
21 renewed violence over the passage of time.

22 C. When conducting the analysis described in Subsection (B), the court shall always
23 consider a history of family violence as contrary to the best interests of the child, irrespective of
24 whether a child personally witnessed a particular act of violence. ~~When deciding both parental
25 decision-making and parenting time, the court shall assign primary importance to the physical
26 safety and emotional health of the child and the non-offending parent.~~

27 **§ 25-409. Parenting time; restrictions and special considerations**

28 A. If a parent ~~who has committed family violence~~ does not ~~present~~ appear ~~clear and~~
29 ~~convincing evidence of eligibility suitable~~ for unrestricted parenting time ~~as required in~~
30 ~~Subsection (B)~~ based on evidence presented at trial, the court shall then place conditions on
31 parenting time that best protect the child and the other parent from further harm. With respect to
32 the ~~offending restricted~~ parent, the court may:

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

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

8 3. Order the completion of ~~a batterer’s intervention~~ an offender treatment program, as
9 defined by Section 25-~~424(1)~~404(8), ~~and or~~ any other counseling the court ~~orders~~ considers
10 necessary.

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

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

14 6. Prohibit overnight parenting time.

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

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

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

19 10. Suspend parenting time for a prescribed period.

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

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

24 **B.** When deciding whether to grant parenting time to a parent who has committed one or
25 more acts of family violence, the court shall specifically contemplate whether that parent’s
26 access to a child will:

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

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

1 **§ 25-410. Judicial findings; appellate review**

2 **A.** After any evidentiary hearing involving parental decision-making, parenting time, or
3 visitation [by a third party](#), the court shall make specific findings on the record, or in its written
4 order, concerning all relevant factors [in Section 25-408\(A\)](#). The court shall also provide specific
5 findings to justify any decision to grant parental decision-making or unrestricted parenting time
6 to a parent who has committed family violence. Those findings shall identify which competing
7 statutory factors outweighed the significance of the offending parent’s violence, and shall also
8 thoroughly explain why the court believed that those competing factors were more relevant to the
9 child’s best interests.

10 **B.** The Arizona Court of Appeals shall review *de novo* any superior court determination that
11 evidence of family violence was outweighed by other considerations. Any other trial judgment
12 concerning parental decision-making or parenting time shall be reviewed only for an abuse of
13 discretion.

14 **§ 25-411. Family violence; miscellaneous provisions**

15 **A.** A criminal conviction for an act of family violence shall constitute adequate proof of
16 family violence under Section 25-408(A)(1). No person so convicted may claim in proceedings
17 under this chapter that the crime of conviction did not occur. However, either party may
18 introduce evidence of facts related to the incident, either as a means of contending that other best
19 interests considerations in Section 25-408(A) outweigh the importance of the adjudicated family
20 violence, or to prove that the offender’s conduct was actually worse than the crime of conviction
21 suggests. Nothing in this subsection prevents an alleged victim from proving family violence by
22 means other than a criminal conviction.

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

28 **C.** No judgment resulting from protective order proceedings under Section 13-3602(I) shall
29 be considered conclusive evidence that family violence did or did not occur.

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

34 **E.** The court shall not order joint counseling between a perpetrator of intimate partner
35 violence and the victim under any circumstances. The court may refer a victim to appropriate

1 counseling, and provide a victim with written information about available community resources
2 related to intimate partner violence or child abuse.

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

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

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

22 **Article 4. THIRD PARTIES**
23

24 **§ 25-412. Third-party rights; decision-making and visitation by grandparents, parental**
25 **figures & other third parties** [SUBJECT TO JUDGE COHEN’S SUGGESTED EDIT]

26 **A.** Consistent with Section 402(B)(2), a person other than a legal parent may petition the
27 superior court for decision-making authority over a child. The court shall summarily deny a
28 petition unless it finds that the petitioner has established that all of the following are true in the
29 initial pleading:

- 30 1. The person filing the petition stands in loco parentis to the child.
- 31 2. It would be significantly detrimental to the child to remain, or be placed in the care of,
32 either legal parent who wishes to keep or acquire parental decision-making.
- 33 3. A court of competent jurisdiction has not entered or approved an order concerning
34 parental decision-making within one year before the person filed a petition pursuant to this
35 section, unless there is reason to believe the child’s present environment may seriously endanger
36 the child’s physical, mental, moral or emotional health.

1 4. One of the following applies:

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

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

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

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

13 **C.** Consistent with Section 25-402(B)(2), a person other than a legal parent may also petition
14 the superior court for visitation with a child. The superior court may grant visitation rights
15 during the child's minority on a finding that the visitation is in the child's best interests and that
16 any of the following is true:

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

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

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

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

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

30 1. The child's legal parents.

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

1 3. The child’s guardian or guardian ad litem.

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

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

5 **E.** When deciding whether to grant visitation to a third party, the court shall give special
6 weight to the legal parents’ opinion of what serves their child’s best interests, and then consider
7 all relevant factors, including:

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

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

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

11 4. The quantity of visitation time requested and the potential adverse impact that
12 visitation will have on the child’s customary activities.

13 5. If one or both of the child’s parents are deceased, the benefit in maintaining an
14 extended family relationship.

15 **F.** If logistically possible and appropriate, the court shall order visitation by a grandparent or
16 great-grandparent to occur when the child is residing or spending time with the parent through
17 whom the grandparent or great-grandparent claims a right of access to the child.

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

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

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27 **Article 5. TEMPORARY ORDERS, MODIFICATION & RELOCATION**

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29 **§ 25-413. Temporary orders**

30 **§ 25-414. Modification of existing decree**

31 **§ 25-415. Relocation of a child**

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Article 6. RECORDS & SANCTIONS

§ 25-416. Access to records

§ 25-417. Sanctions for litigation misconduct

A. The court shall sanction a litigant for costs and reasonable attorney fees incurred by an adverse party if the court finds, by clear and convincing evidence, that the litigant has done any one or more of the following:

- 1. intentionally presented a claim under Section 25-408(A) with full knowledge that the claim was false;
- 2. intentionally accused an adverse party of making a false claim under Section 25-408(A) with full knowledge that the claim was actually true; or
- 3. violated a court order compelling disclosure or discovery under Rule 65 of the Arizona Rules of Family Law Procedure, unless the court finds that the failure to obey the order was substantially justified, or that other circumstances make an award of expenses unjust.

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

- 1. impose additional financial sanctions on behalf of an aggrieved party who can demonstrate economic loss directly attributable to the litigant’s misconduct;
- 2. institute civil contempt proceedings on its own initiative, or on request of an aggrieved party, with proper notice and an opportunity to be heard; or
- 3. modify parental decision-making or parenting time, if that modification would also serve the best interests of the child.

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

ARTICLE 7. MISCELLANEOUS

- 25-418. Statutory Priority
- 25-419. Agency Supervision
- 25-420. Identification of Primary Caretaker
- 25-421. Fees & Resources
- 25-422. Child Interviews by Court & Professional Assistance
- 25-423. Investigations & Reports
- 25-424. Child Support & Parenting Time Fund
- 25-425. Domestic Relations Education & Mediation Fund

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COMMENT:

This initiative strives to simplify the final product offered by the Ad Hoc Custody Workgroup (AHCWG) in March 2011, while still preserving its core priorities.

Elimination of Rebuttable Presumptions & Special Circumstances. All "special circumstances" provisions (including statutory presumptions and rebuttal sections) have been deleted. Issues previously governed by sections dealing with substance abuse and felons are incorporated into New 25-408(A)(6). Sex crimes involving children have been transferred into the expanded definition of "child abuse." Behavior constituting either child abuse or domestic violence (DV) is now unified into "family violence," and appears as a best interests factor at New 25-408(A)(1) with a more restrictive definition in New 25-404(6).

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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 domestic violence offender, unless the offender offers clear and convincing evidence that other "best interest" factors significantly outweigh the act(s) of violence. See New 25-408(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 decision that prioritizes competing "best interests" factors over proven family violence. See New 25-410(A) and (B).

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Parenting Plans. Concepts dealing with the feasibility of a parenting plan are unified into New 25-408(A)(9), and the concern over a parent's abuse of sole PDM is merged into the "friendly parent" provision of New 25-408(A)(8). 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. Restrictions on parenting time that were formerly specified only in cases of domestic violence (see ARS 25-403.03(F)) are now made available for all circumstances where restrictions would be appropriate, but still include the revised list of factors previously recommended by the AHCW. See New 25-409(A).

Coercive Control. At the workgroup's recommendation, the new concept of "coercive control" has been moved from its original location (as a balancing consideration tied to proof of domestic violence) into the list of "best interests" factors as an independent consideration. See New 25-408(A)(5). However, both the definition and illustrative examples have been tightened in an effort to forestall abuses by litigants for whom the concept of coercive control was never intended. See New 25-404(2).

Deleted: intimate partner violence

Miscellaneous. Prior legislative declarations (see ARS 25-403.03(B)) about the harm inflicted by DV are preserved and transferred to New 25-408(C). However, statements about the "primary importance" of protecting victims of family violence were deleted as needless in light of the designation of that circumstance as a leading "best interests" factor that would already be entitled to elevated consideration.

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Lastly, miscellaneous reforms already adopted by the AHCW were moved and unified into New 25-411. They include instructions on the proper consideration of outcomes from criminal and DVPO proceedings, a prohibition against using a parent's shelter residency as "evidence of instability," clarifications on ADR and counseling in DV situations, and a preservation of current ARS 25-403.05(B) (concerning access of sex offenders to children).

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Definitions. In an effort to accommodate both: (1) the introduction of coercive control as a consideration independent of family violence, with (2) previously-expressed fears over mixing definitions, this Version 4 introduces "Definitions; general application" (applicable to all cases), followed immediately by "Special Definitions" (applicable only to cases involving family violence and coercive control). See New 25-403 and -404.

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

6 **Article 1. GENERAL PROVISIONS**

7 **§ 25-401. Policy regarding parental decision-making and parenting time**

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

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

14 **§ 25-402. Jurisdiction**

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

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

- 23 1. A parent, in any proceeding for marital dissolution, legal separation, paternity or
24 modification of an earlier decree;
25 2. By a person other than a parent, by filing a petition for third-party rights under Section
26 25-412 in the county in which the child permanently resides.

27 **§ 25-403. Definitions; general application**

28 In this article, unless the context otherwise requires:

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

1 2. “*Legal parent*” means a biological or adoptive parent whose parental rights have not been
2 terminated. It does not include a person whose paternity has not been established under Section
3 25-812 or 25-814.

4 3. “*Parental decision-making*” refers to a parent’s legal right and responsibility to make
5 major life decisions affecting the health, welfare and education of a child, including, for
6 example, schooling, religion, daycare, medical treatment, counseling, commitment to alternative
7 long-term facilities, authorizing powers of attorney, granting or refusing parental consent where
8 legally required, entitlement to notifications from third parties on behalf of the child,
9 employment, enlistment in the Armed Forces, passports, licensing and certifications, and blood
10 donation. For purposes of interpreting or applying any international treaty, federal law, uniform
11 code or other state statute, “parental decision-making” shall mean the same as “legal custody.”

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

15 (b) “*Final parental decision-making*” means that one parent ultimately exercises the
16 authority described in this section, but must reasonably consult with the other before doing so.

17 (c) “*Sole parental decision-making*” means that one parent exclusively exercises the
18 authority described in this section, and is not required to consult with the other before doing so.

19 4. “*Parenting time*” refers to a parent’s physical access to a child at specified times, and
20 while the child remains in that parent’s care, providing the child with food, clothing and shelter,
21 and actively participating in the child’s activities in a positive manner. It also includes making
22 routine decisions regarding the child’s care that do not contradict decisions made by a parent
23 who has been granted parental decision-making authority.

24 5. “*Visitation*” means the same as parenting time when exercised by someone other than a
25 legal parent.

26 **§ 25-404. Special definitions; family violence and coercive control**

27 In this article, unless the context otherwise requires:

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

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

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

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

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

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

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

4 2. “*Coercive control*” refers to a discernible pattern of controlling behaviors inflicted by one
5 parent against another. With regard to these behaviors, the court shall consider the frequency of
6 these behaviors, their remoteness in time, the psychological injury they inflicted on the victim
7 and other household members, the degree to which they influenced the victim’s daily life, and
8 the extent to which one or more behaviors were, in truth, attributable to some other condition or
9 motivation. Specifically, the court shall consider whether the offending parent:

10 (a) Engaged in exceptionally demeaning or emotionally abusive conduct toward the
11 victim;

12 (b) Unreasonably restricted the victim’s freedom of movement;

13 (c) Unreasonably restricted the victim’s educational or financial activities without
14 consent, or maliciously jeopardized the victim’s employment or financial credit;

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

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

18 (f) Unreasonably threatened to conceal or remove a child from the victim’s care as a
19 means of coercing that person’s compliance with the offender’s wishes, or used a child to
20 facilitate either criminal conduct against the victim or one or more controlling behaviors
21 described in this subsection;

22 (g) Impeded the victim’s attempt to report family violence or other criminal behavior to
23 law enforcement, medical personnel or other third parties by means of duress or coercion;

24 (h) Eavesdropped on the victim’s private Internet activities, telephone conversations or
25 other communications, or accessed the victim’s electronic, password-protected accounts without
26 permission;

27 (i) Unreasonably restricted the victim’s public activities, or the victim’s interaction with
28 family or social acquaintances; or

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

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

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

9 5. “Family violence” means child abuse as defined in this section and/or domestic violence,
10 as both are defined in this section.

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11 6. “Domestic violence” means any of the following acts when inflicted against an intimate
12 partner: (a) physical or sexual violence, or any threat to commit the same; (b) assaultive
13 behavior not resulting in physical contact that places the victim in reasonable apprehension of
14 immediate bodily harm; (c) any other conduct listed in Section 13-3601(A) that would also
15 constitute a felony under the laws of this State; or (d) any violation of a domestic violence
16 protective order or harassment injunction. This definition also includes any attempt, conspiracy,
17 or solicitation of another to commit an act described above. It does not include any defensive
18 behavior that would qualify as legal justification under Sections 13-404 through -408.

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19 7. “

Deleted: Intimate partner” means a person whose relationship with another qualifies under Section 13-3601(A)(1), (2), (3) or (6).

20 8. “Offender treatment program” means an individual or group treatment program for
21 domestic violence offenders that:

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22 (a) emphasizes personal responsibility;

23 (b) clearly identifies domestic violence as a means of asserting power and control over
24 another individual;

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

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

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

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2 **Article 2. PARENTING PLANS**
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4 **§ 25-405. Shared Parental Decision-Making and Parenting Time**

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

9 **§ 25-406. Proposed Plans**

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

14 **B.** A parenting plan must include at least the following:

15 1. A designation of the parental decision-making plan as either shared, final or sole, as
16 defined in Section 403(3).

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

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

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

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

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

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

26 8. A statement that each party has read, understands and will abide by the notification
27 requirements of Section 25-411(G), pertaining to access of sex offenders to a child.

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

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§ 25-407. Alternative dispute resolution; preliminary duty

If two parents already share parental decision-making by prior court order, each must consult with the other about child-related decisions, and attempt to resolve disputes outside of court through conciliation services or private mediation before seeking formal judicial intervention.

Article 3. COURT PROCEEDINGS

§ 25-408. Best interests of child; family violence; judicial findings; appellate review

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

1. Whether a parent has committed family violence, as defined in Section 25-404(5).
2. The historical, current and potential relationship between the parent and the child.
3. The child’s adjustment to home, school and community.
4. The interaction and relationship between the child and the child’s siblings and any other person who may significantly affect the child’s best interests.
5. The extent to which one parent coercively controlled the other during their relationship, as defined in Section 25-404(2).
6. The mental health, physical condition, and criminal, delinquent or otherwise harmful behavior of the child, parents and any other person present in the child’s household.
7. The child’s own viewpoint and wishes, if possessed of suitable age and maturity, along with the basis for those wishes.
8. Whether one parent is more likely to encourage the child’s relationship with the other, and respect parental decision-making rules. This paragraph does not apply if the court determines that a parent is acting in good faith to protect the child from witnessing or suffering an act of ~~domestic violence~~ or child abuse.
9. The practicality of any proposed or agreed parenting plan.
10. Whether a parent has complied with the educational program prescribed in Sections 25-351 through -353.

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

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1 of that violence. When determining the relative strength of those competing factors, the court
2 shall consider:

3 | 1. The extent to which the offending parent inflicted domestic violence or child abuse
4 against the same or some other person in the past, or has recently done so with a new intimate
5 partner or child, especially after having already received related counseling on past occasions.

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6 2. In cases of mutual violence not amounting to legal justification, as defined in Sections
7 13-404 through -408, the motivation of each parent for the violence, the level of force used by
8 each parent, and their respective injuries.

9 3. Whether the offending parent continues to minimize or deny responsibility for the
10 history of violence, or blame it on unrelated issues.

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

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14 | 5. In cases involving domestic violence, whether the offending parent has completed an
15 offender treatment program, as defined in Section 25-404(8), and has also disclosed and
16 submitted into evidence a complete set of treatment records proving an acceptable level of
17 productive participation in the rehabilitation process. A certificate of completion alone does not
18 prove rehabilitation.

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19 | 6. The length of time since the last act of family violence, and reasons for the absence of
20 renewed violence over the passage of time.

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21 C. When conducting the analysis described in Subsection (B), the court shall always
22 consider a history of family violence as contrary to the best interests of the child, irrespective of
23 whether a child personally witnessed a particular act of violence.

24 § 25-409. Parenting time; restrictions and special considerations

25 A. If a parent does not appear suitable for unrestricted parenting time based on evidence
26 presented at trial, the court shall then place conditions on parenting time that best protect the
27 child and the other parent from further harm. With respect to the restricted parent, the court
28 may:

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

30 2. Order that a person or agency specified by the court must supervise parenting time. If
31 the court allows a family or household member or other person to supervise the restricted
32 parent's parenting time, the court shall establish conditions that this supervisor must follow.
33 When deciding whom to select, the court shall also consider the supervisor's ability to physically
34 intervene in an emergency, willingness to promptly report a problem to the court or other

1 appropriate authorities, and readiness to appear in future proceedings and testify truthfully about
2 that supervisor’s observations and actions.

3 3. Order the completion of an offender treatment program, as defined by Section 25-
4 404(8), or any other counseling the court considers necessary.

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

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

8 6. Prohibit overnight parenting time.

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

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

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

13 10. Suspend parenting time for a prescribed period.

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

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

18 **B.** When deciding whether to grant parenting time to a parent who has committed one or
19 more acts of family violence, the court shall specifically contemplate whether that parent’s
20 access to a child will:

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

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

26 **§ 25-410. Judicial findings; appellate review**

27 **A.** After any evidentiary hearing involving parental decision-making, parenting time, or
28 visitation by a third party, the court shall make specific findings on the record, or in its written
29 order, concerning all relevant factors in Section 25-408(A). The court shall also provide specific
30 findings to justify any decision to grant parental decision-making or unrestricted parenting time
31 to a parent who has committed family violence. Those findings shall identify which competing

1 statutory factors outweighed the significance of the offending parent’s violence, and shall also
2 thoroughly explain why the court believed that those competing factors were more relevant to the
3 child’s best interests.

4 **B.** The Arizona Court of Appeals shall review *de novo* any superior court determination that
5 evidence of family violence was outweighed by other considerations. Any other trial judgment
6 concerning parental decision-making or parenting time shall be reviewed only for an abuse of
7 discretion.

8 **§ 25-411. Family violence; miscellaneous provisions**

9 **A.** A criminal conviction for an act of family violence shall constitute adequate proof of
10 family violence under Section 25-408(A)(1). No person so convicted may claim in proceedings
11 under this chapter that the crime of conviction did not occur. ~~Either party may introduce~~
12 evidence of facts related to the incident, ~~to show that~~ considerations in Section 25-408(A)
13 outweigh the importance of the ~~conviction~~, or to prove that the offender’s conduct was actually
14 worse than the crime of conviction suggests. Nothing in this subsection prevents an alleged
15 victim from proving family violence by means other than a criminal conviction.

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

21 **C.** No judgment resulting from protective order proceedings under Section 13-3602(I) shall
22 be considered conclusive evidence that family violence did or did not occur.

23 **D.** A parent’s residency in a shelter for victims of domestic violence shall not constitute
24 grounds for denying that parent any degree of decision-making authority or parenting time. For
25 purposes of this section, “shelter” means any facility meeting the definitions of Sections 36-
26 3001(6) and 36-3005.

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27 **E.** The court shall not order joint counseling between a perpetrator of domestic violence and
28 the victim under any circumstances. The court may provide a victim with written information
29 about available community resources related to family violence.

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30 **F.** A victim of domestic violence may opt out of alternative dispute resolution (‘ADR’)
31 imposed under Family Law Rule 67 or 68 to the extent that a suggested ADR procedure requires
32 the parties to meet and confer in person. The court shall notify each party of this right before
33 requiring their participation in the ADR process. As used in this subsection only, “victim of
34 domestic violence” means: (1) a party who has acquired a protective order against the other
35 parent pursuant to Section 13-3602; (2) a party who was previously determined by a civil or

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1 | family court to have suffered ~~domestic violence~~ by the other parent; or (3) a party who was the
2 | named victim in a criminal case that resulted in the conviction, diversion or deferred prosecution
3 | of the other parent for an act of ~~domestic violence~~.

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

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

14 | **Article 4. THIRD PARTIES**

15 | **§ 25-412. Third-party rights; decision-making and visitation by grandparents, parental** 16 | **figures & other third parties** [SUBJECT TO JUDGE COHEN'S SUGGESTED EDIT]

17 | **A.** Consistent with Section 402(B)(2), a person other than a legal parent may petition the
18 | superior court for decision-making authority over a child. The court shall summarily deny a
19 | petition unless it finds that the petitioner has established that all of the following are true in the
20 | initial pleading:
21 |

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

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

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

29 | 4. One of the following applies:

30 | (a) One of the legal parents is deceased.

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

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

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

7 **C.** Consistent with Section 25-402(B)(2), a person other than a legal parent may also petition
8 the superior court for visitation with a child. The superior court may grant visitation rights
9 during the child’s minority on a finding that the visitation is in the child’s best interests and that
10 any of the following is true:

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

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

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

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

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

24 1. The child’s legal parents.

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

27 3. The child’s guardian or guardian ad litem.

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

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

31 **E.** When deciding whether to grant visitation to a third party, the court shall give special
32 weight to the legal parents’ opinion of what serves their child’s best interests, and then consider
33 all relevant factors, including:

1
2 **§ 25-417. Sanctions for litigation misconduct**

3 **A.** The court shall sanction a litigant for costs and reasonable attorney fees incurred by an
4 adverse party if the court finds, by clear and convincing evidence, that the litigant has done any
5 one or more of the following:

- 6 1. intentionally presented a claim under Section 25-408(A) with full knowledge that the
7 claim was false;
- 8 2. intentionally accused an adverse party of making a false claim under Section 25-
9 408(A) with full knowledge that the claim was actually true; or
- 10 3. violated a court order compelling disclosure or discovery under Rule 65 of the
11 Arizona Rules of Family Law Procedure, unless the court finds that the failure to obey
12 the order was substantially justified, or that other circumstances make an award of
13 expenses unjust.

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

- 15 1. impose additional financial sanctions on behalf of an aggrieved party who can
16 demonstrate economic loss directly attributable to the litigant's misconduct;
- 17 2. institute civil contempt proceedings on its own initiative, or on request of an aggrieved
18 party, with proper notice and an opportunity to be heard; or
- 19 3. modify parental decision-making or parenting time, if that modification would also
20 serve the best interests of the child.

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

23 **ARTICLE 7. MISCELLANEOUS**

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- 25 25-418. Statutory Priority
- 26 25-419. Agency Supervision
- 27 25-420. Identification of Primary Caretaker
- 28 25-421. Fees & Resources
- 29 25-422. Child Interviews by Court & Professional Assistance
- 30 25-423. Investigations & Reports
- 31 25-424. Child Support & Parenting Time Fund
- 32 25-425. Domestic Relations Education & Mediation Fund

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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 AWARDED 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.

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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.

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September 1, 2011

Custody Workgroup
Domestic Relations Committee
Phoenix, Arizona

Attention: Steve Wolfson, Chair

Dear Mr. Wolfson and Workgroup Members:

Please consider the following thoughts regarding drafts currently being considered, as to modification of Arizona custody laws. These comments address general concerns regarding the custody process and also regarding the substance of statutes under consideration.

1. Simplicity versus complexity

The great majority of Family Court cases do not involve attorneys on both sides, and many do not involve attorneys on one side. Many people cannot afford attorneys. The proposals under consideration seem like they might be overwhelming to people trying to represent themselves. Judge Hyatt's proposals are considerably more user-friendly than are Mr. Alongi's. However, I would like to encourage even more simplification and less detail, where the substance permits.

2. Extreme emphasis on domestic violence issues

Any modification of the statutes in the area of domestic violence should be just sufficient to address any specific points where the Bench believes that current statutes do not suffice. If controlling behavior may be considered as a best interests consideration in the Family Court context, this could be addressed very briefly. It seems that both drafts devote extensive language to this issue, and in fact, might encourage more conflict as litigants begin to see the strategic benefits

of making allegations. The Court calendar could be very negatively impacted by a volume of cases generated by this incredible emphasis.

3. Burdens of proof – who bears the burden, when they bear the burden, and what burden should be met.

It seems that the drafts allow the making of allegations without specifying a burden of proof by the proponent of the allegations, while alternatively requiring the defendant of the allegations to either meet no specified burden, a preponderance burden, or a clear and convincing burden. As noted in earlier testimony, there have been far too many unsubstantiated claims leading to often unfair deprivation of rights given to persons having to defend these allegations. I have seen orders granted for absurd reasons. I submit that the Bench is often so afraid of not granting an order, and having something happen, that there is an epidemic of flimsy and/or exaggerated allegations. It seems that it would be prudent to note that these allegations must be substantial. Proponents of limits on parenting time and decision-making authority should be required to show evidence of past involvement in parenting, and what has specifically and recently changed to justify limitation on these constitutionally protected rights.

The trend seems to be to allow unfounded and unsubstantial allegations to be blown out of proportion – and then in some cases to make the defendant of the allegations meet an unreasonable burden of proof to overcome the label of “abuser”.

I submit that the Bench should neither be encouraged nor intimidated by new statutory emphases, to give extraordinary weight to minor, insignificant, untimely, and/or vindictive allegations.

4. False allegations

The consequences of false allegations often extend way beyond the adjudication of custody matters in Family Court. People are labeled as abusers, and in the Internet world, this can affect their employment, credit, ability to get insurance, and personal reputation. The mere issuance of an order of protection or an injunction against harassment can result in an entry in criminal data bases. I submit that any and all forms related to domestic violence should have cautions against making false allegations, and that there should be Family Court, Civil Court, and Criminal Court consequences for making false allegations – which are, in the Court context, perjury.

While the statutes in Title 13 are not presently before this workgroup, I submit that there should be a workgroup to look at these statutes and consider modifications.

5. Presumptions

Any reference to presumptions should be made clear, as to when a presumption will arise, and when and how it may be rebutted.

6. Custody terminology

I agree with the Executive Council of the Family Law Section, that the use of the "custody" label would avoid misunderstandings in reference to interstate cases and also as to parental expectations. This term could be help, while also clarifying physical custody and decision making roles within the scope of that term.

I would like to see clarification that final parental decision-making can be allocated at times, to different parents, as to different types of decisions.

7. Judicial responsibility

Over the years there has been a very large increase of delegation of tasks from the Bench to third parties, who must be paid by the litigants, and sometimes to Court staff, who conduct status conferences. This seems to be in contradiction to the goal of a few years ago, to have early intervention by the Bench in cases, to help expedite resolution of conflicts. It seems that the lack of early and direct involvement of the Bench does not reduce caseloads, but rather drags cases out and potentially results in multiple hearings that could have been avoided. I submit that the times that cases take are a burden on families, and that the comments of the Executive Council as to involvement of third parties are worthy of consideration and refocusing on this goal.

8. Judicial discretion

Limitations on judicial discretion should be very carefully scrutinized and eliminated whenever possible. Judges must be able to review the evidence and use the skills that put them on the bench.

9. De novo review

Before de novo review is to be statutorily mandated, a sub-committee should carefully analyze the use of de novo review in appellate matters – the circumstances where it is available, where it is mandated, and the requirements in the record for de novo review.

10. Findings of fact and conclusions of law

Any language regarding a requirement for findings of fact and conclusions of law should be very clear.

Prerequisites to Court intervention

I submit that any requirement of mediation before approaching the Court is unreasonable and potentially dangerous. As the Executive Council notes, the Bench might see far more emergency hearing requests. It would be far better to educate the public about mediation as an option, and to enhance the provision of these services by the Court.

12. Preclusion of mediation in any case where domestic violence issues have been raised

Again, education as to safety issues in mediation and giving people choices should be considered, rather than rejecting these cases absolutely.

13. Rules of evidence

There is a reference in Paragraph 25-404.03 D to "rules of evidence". It seems that these rules are rarely observed, especially with reference to domestic violence issues. Has any consideration been given, to address a real requirement of adherence to the Rules of Evidence in Family Court.

14. Intervention programs

The emphasis in Mr. Alongi's drafts on proof of benefit from an intervention program would drive up the costs of such programs and not be really effective. It is up to the Bench to determine the truth of whether an alleged perpetrator has learned anything.

15. Gender biases

There seems to be a lack of communication about men as victims, both as to Title 13 violations, and as to "controlling behaviors". The Court's communications about these issues should make clear that both genders can be affected by these actions and behaviors.

16. Allegations of domestic violence, convictions for domestic violence, and speculation as to potential future domestic violence.

If domestic violence factors are going to be given more consideration in Family Court, it seems that there should be clarification and differentiation between allegations, convictions, and potential actions.

17. Typos, sequential lettering, and use of "sex" rather than "gender"

Perhaps staff could fix typos, correct errors in sequential lettering, and replace "sex" with "gender".

Thank you for your consideration.

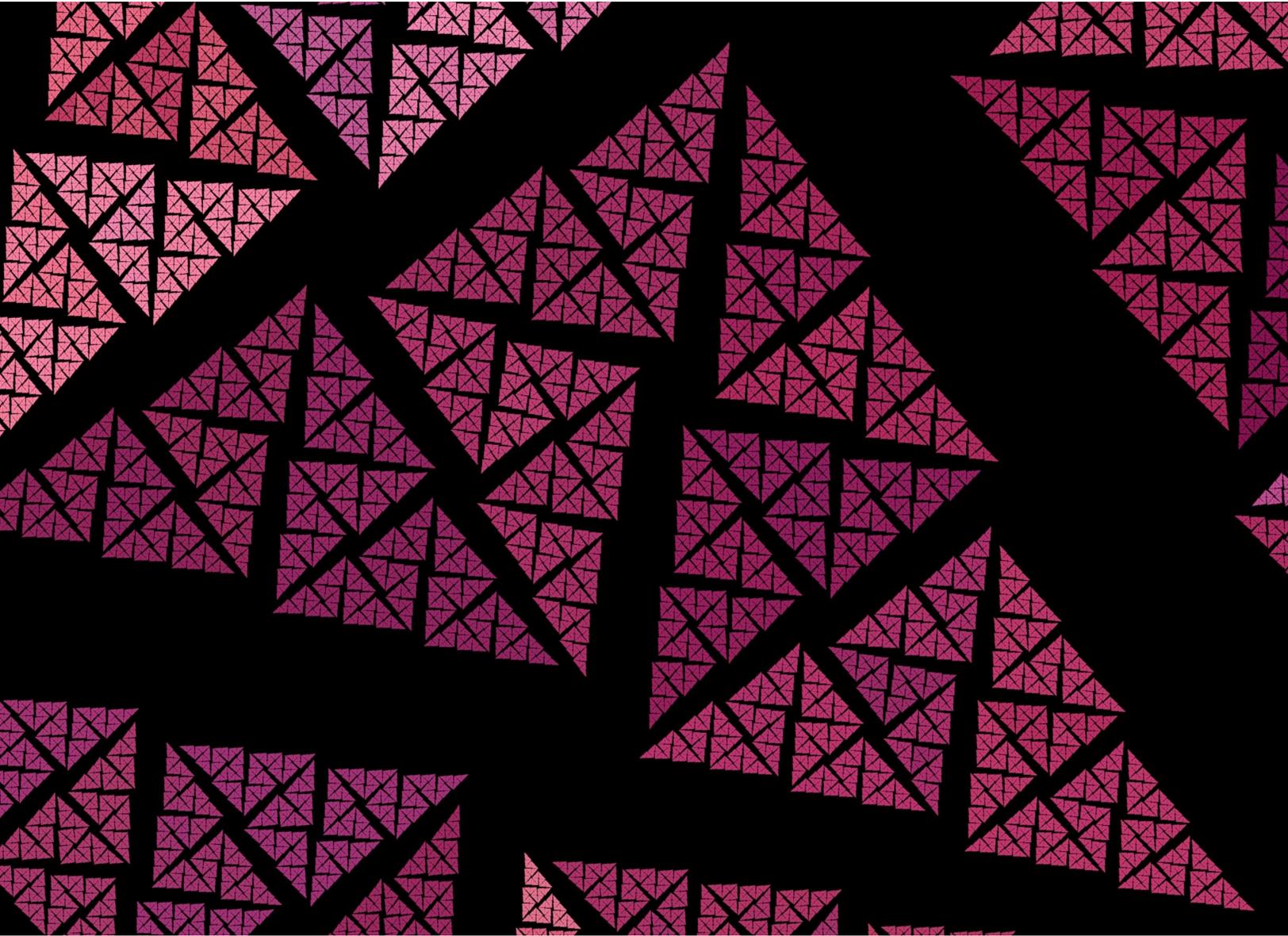
Respectfully submitted,

Rena Selden
Attorney at law

Consumer Rights Screening Tool

for

Domestic Violence Advocates and Lawyers



Leah A. Plunkett, National Consumer Law Center &
Erika A. Sussman, Center for Survivor Agency and Justice

ACKNOWLEDGEMENTS:

We are extremely grateful to the survivors, advocates, and attorneys who contributed their experiences and insights to the drafting of this document. Many individuals and programs across the nation are engaging in innovative, exciting consumer rights work in partnership with domestic violence survivors, and we benefitted greatly from their perspective.

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Sincerely,

Center for Survivor Agency and Justice
National Association of Consumer Advocates

National Consumer Law Center
National Network to End Domestic Violence

ABOUT THE AUTHORS:

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Consumer Rights Screening Tool *for* Domestic Violence Advocates and Lawyers

*Leah A. Plunkett, National Consumer Law Center &
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Attorneys and advocates who work with survivors of domestic violence face a monumental task: partnering with survivors to strategize for their safety.² Due to pressing concerns about physical and sexual violence, attorneys and advocates often focus on addressing immediate safety issues through such avenues as restraining orders and emergency shelter accommodations. However, there can be no safety for survivors without economic security; and there can be no economic justice for survivors without careful attention to survivors' safety and privacy concerns.

To provide effective legal representation and advocacy, attorneys and advocates for domestic violence survivors must have an understanding of the common types of consumer problems faced by survivors, as well as the skills and resources necessary to gather a complete picture of their clients' risks, including their economic risks. This screening tool aims to: 1) provide a general overview of common consumer issues with which survivors grapple and 2) offer concrete guidance on how to identify these issues in the course of one's client work.

This tool is *not* meant to assist with assessment of legal claims or legal strategizing. Rather, it is intended to serve as an *issue spotting tool* that enhances consumer advocacy for domestic violence survivors. Domestic violence lawyers and advocates should consult with or make referrals to their counterparts in the consumer rights field as appropriate. Coordination is critical to ensuring that consumer law efforts take place within the context of a survivor's broader safety plan and that domestic violence related representation supports the desired consumer advocacy strategies.³ Such a collaborative approach will foster partnership between—as well as enhanced capacities within—the consumer law and domestic violence communities as each group gains more familiarity with the crucial issues addressed by the other.

The Role of Economic Abuse in Domestic Violence

Domestic violence leads to poverty, and poverty in turn leads to increased vulnerability to violence.⁴ The interconnection between economics and domestic violence is clear. For example, women receiving public benefits report high rates of domestic violence. Nine to 23% of public benefits recipients report that they experienced violence in the past year. Over 50% of public benefits recipients report that they experienced physical abuse as an adult.⁵ Domestic violence is the leading cause of homelessness nationally. Between 22% and 57% of homeless women report that domestic or sexual violence was the immediate cause of their homelessness, depending on the region and type of study.⁶

While a great deal of research to date has documented the prevalence and consequences of physical, emotional, and sexual violence, economic abuse has received far less attention. “Economic abuse involves behaviors that control a woman’s ability to acquire, use, and maintain economic resources, thus threatening her economic security and potential for self-sufficiency.”⁷

Abusers often *sabotage their partners’ efforts to obtain and maintain employment* by preventing them from working outside the home, inflicting injuries the night prior to a job interview, or stalking them at their workplace.⁸ Abusers frequently interfere with their partners’ attempts to further their education by destroying homework assignments, assaulting them before an important test, or refusing to provide childcare.

In addition, abusers often prevent women from *using resources* that they already have. Abusers commonly hide jointly earned money and withhold or lie about shared assets and finances in general.⁹

Lastly, batterers *exploit their partners’ resources* as a tactic for intentionally limiting their financial and life options.¹⁰ Abusers may steal survivors’ identities by taking their personal information and fraudulently creating credit accounts in their names or incurring substantial credit card or other debt for which survivors may be jointly or solely liable. Batterers may also *steal* their partners’ earnings or convert their partners’ assets into their own possession.¹¹ They may refuse to pay rent or make mortgage payments, with significant consequences for survivors. They may keep all the assets in their ownership, while forcing their partners to have all the credit cards/debts in their names only.

Batterers use these and other tactics against their partners to terrorize them and impress upon them the devastating consequences for failing to comply with their demands. Oftentimes, batterers use these economic abuse tactics to control, isolate, and foster dependence.

Establishing economic security for survivors is fundamental to their long-term safety. Access to economic resources is the most likely predictor of whether a survivor will be able to separate permanently from her¹² abuser.¹³ Such access involves working with survivors to maximize their income, minimize their expenses, and protect their assets. This screening tool will focus on expense minimization and asset protection, as they are the areas in which consumer rights advocacy has the most to offer.¹⁴

Common Consumer Rights Issues for Survivors

This section identifies some of the consumer challenges survivors frequently face as well as potential avenues to address them. Neither the list of issues nor the suggested remedies are comprehensive. Rather, they offer domestic violence advocates and attorneys an introduction to common consumer problems to look out for and where to seek potential solutions.

When assisting survivors with consumer issues, be mindful of the boundaries of your role. If you are not an attorney, be careful not to engage in the unauthorized practice of law. If you are an attorney, be vigilant about having the necessary competence in an area before venturing into its practice. Advocates and attorneys should, of course, always address clients' needs, consumer or otherwise, in compliance with the applicable rules of professional conduct.

Managing Household Income & Expenses

Survivors of domestic violence face hurdles with economic management for many reasons. As discussed above, batterers inflict enormous financial harms, and the impact of those harms is so substantial that it often takes years to repair. In addition, survivors may find themselves with less household income and higher expenses if they have left an abuser who was the primary or a significant wage-earner. Similarly, batterers often continue to perpetrate economic abuse against survivors following separation. Also, survivors may grapple with additional costs that arise in the course of establishing a new, safe home environment, such as moving costs or the expense of obtaining new locks.

Budgets—both as a finished product and as a process—are essential tools for economic survival. Establishing a budget assists a survivor in taking stock of all of her sources of income and obligations. For survivors pursuing family law cases (involving spousal support, child support, and property division), a budget assists in determining and demonstrating the need for the amounts sought. In the course of budgeting, the survivor should think comprehensively and creatively about her financial circumstances, as there may well be both assets to which she is legally entitled (such as joint bank accounts with the abuser or any asset which may be in the abuser's name but is marital in nature) as well as liabilities that exist in her name of which she is unaware. Of course, budgeting alone cannot address any such problems, but the brainstorming process may help with their identification and lead to future strategizing.¹⁵

Formulating a budget is also essential for becoming and remaining financially secure. Developing a manageable plan, including a safety net, will help the survivor cover her expenses and avoid turning to exorbitantly priced loan products if crises arise. With the help of an advocate, she may identify ways in which to minimize her current expenses, while still meeting her basic needs.

For a survivor whose expenses exceed her ability to pay, budgeting may be particularly daunting, but it may be even more critical. After completing a budget, the survivor will be able to prioritize which debts to pay by putting her financial resources toward what is

most important for her household. While each person's situation is different, some general principles exist, such as paying first for necessities.¹⁶ The survivor should also explore whether any of her income is exempt from collection under state or federal law, such as Social Security benefits or child support, as this could affect her decisions regarding debt repayment.¹⁷

Credit Reporting

Knowing what information is contained in one's credit history should be part of everyone's regular financial maintenance. For survivors who remain in contact with their abusive partners, credit reports are critical tools for accessing the financial resources needed to create options for safety. For survivors who no longer reside with their abusers, credit reports are essential tools for setting up separate, safe lives and households away from their abusers. A variety of people and institutions look at credit reports for different reasons, including creditors for loan decisions; landlords for rental agreement decisions; potential employers for hiring decisions; and insurance companies for coverage and rate decisions. Because of the range of important purposes for which credit reports are used, negative, false, or incomplete information on credit reports can have serious adverse consequences.

There are many reasons why survivors might have such information on their credit reports. For example, a survivor might have little or no credit history because all financial transactions were in the abuser's name. She might have been forced to change her identity to escape the abuser and thus has no record attached to the new name. She might have a negative credit history if the abuser took on credit in her name by placing her under duress or without her consent (which is identity theft, a criminal act)¹⁸ or added her to an account and handled the credit product badly. She might have agreed to carry all the debts, as the abuser had a poor credit history or no credit history.

Federal law entitles everyone to one free credit report each year from each of the big three credit bureaus.¹⁹ Looking at these reports is a necessary first step to assess what negative or inaccurate information might need to be addressed. Consumers can dispute such information with the reporting credit bureau.²⁰ Note that requesting a credit report may present privacy concerns for survivors because the address will appear on the report. Advocates should work with survivors to identify a strategy for accessing the credit report that minimizes the safety risks; this will vary from person to person.

Debt Collection

Survivors might be subject to debt collection harassment for debts they owe, either in actuality or because an abuser has taken on credit in their name and failed to pay. One unfortunate consequence of prioritizing expenses may be harassment (calls and letters) from collectors on debts that have been left unpaid.

There are steps a survivor can take to shield herself from collectors' strong arm tactics.²¹ The best case scenario is to prevent debt collection before it begins: if a survivor knows she will be unable to pay a debt, she should try to work out a payment plan directly with

the creditor before she is delinquent and the debt is turned over to a collector. She should be careful to avoid working with unscrupulous debt settlement companies, which purport to help consumers negotiate debts with creditors but generally just take consumers' money without resolving the debt issues.²²

If a collector does pursue the survivor, she can send the collector a written request to stop contacting her. The federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692 *et seq.*, then requires the collector to stop most calls and letters. She should also be aware of the many restrictions the FDCPA imposes on collectors. These include a prohibition on calling her at inconvenient times or places (such as work, if personal calls are not allowed) and making false statements about the amount owed. If the FDCPA prohibitions are violated, she can explore taking legal action against the collector.

Attorneys also play an important role in defending against debt collection suits brought by creditors. For instance, an attorney may be able to use state and federal exemption laws to keep a creditor from being able to seize a survivor's property for satisfaction of a court judgment against a survivor for an unpaid debt. **Many government benefits, such as Social Security, are exempt from collection in almost all circumstances. An attorney can also force the creditor to prove that it is entitled to the amount claimed, and help the survivor defend against junk fees and inflated charges.**

Foreclosure & Eviction

When resources are scarce, a survivor who has remained in her home is at risk of falling behind in mortgage payments and facing foreclosure or falling behind in rent payments and facing eviction. In addition, survivors are often wrongfully evicted from their homes due to the destruction of the premises and disruption to the other tenants caused by their partner's physical abuse. Others are evicted due to their abusive partner's failure to pay rent. Clearly, all of these outcomes can jeopardize the future safety of survivors.

Various legal strategies offer paths to helping a survivor stay in her home.²³ For example, a survivor who owns her home might explore filing a Chapter 13 bankruptcy; she will get some immediate relief through the automatic stay on any foreclosure proceedings and long term relief through an approved bankruptcy plan that allows her to pay off her debts over time.

In the rental context, a survivor threatened with eviction from public housing, housing rented with a Section 8 voucher, or project-based Section 8 developments due to domestic violence is protected from the eviction by the federal Violence Against Women Act, 42 U.S.C. §§ 13981 *et seq.* A survivor threatened with eviction from private housing may have a defense under the federal Fair Housing Act, 42 U.S.C. 3601 *et seq.* If the owner seeks to evict the survivor because of the domestic violence she has experienced. State law defenses to both types of evictions as well as foreclosure might also be available.

Lawyers who practice landlord/tenant law may be able to assist even where the eviction is not a direct result of the domestic violence, although some states have specific statutory

protections for survivors in their housing laws. For example, a survivor facing eviction from a rental property that has been foreclosed on can avail herself of protections under the federal Protecting Tenants at Foreclosure Act, 12 U.S.C. §§ 5201 *et seq.*, as well as state laws in some jurisdictions.²⁴ Strategies to maximize the survivor's income are also critical where eviction is threatened because the survivor is unable to afford the rent without the partner's income.

Utility Access

Utility access is a basic necessity for all households. For survivors, it is often vital due to safety planning. For example, access to a landline phone may make all the difference in an emergency. Telephone service can also be essential for finding a job and for reliable access to advocacy services. A survivor seeking to establish a new household will need to be able to set up utility service in her name. This may be difficult if the survivor owes money for an unpaid bill on service to a previous residence. The survivor might not even be aware that she owes this money if the abuser kept her from handling accounts when they were living together. The survivor should make sure she is removed from any accounts from a prior household. If back bills in the survivor's name stand in the way of establishing new service, a simple call to the utility company, explaining the situation, may lead to a solution.

Another common scenario in which it may be difficult for the survivor to set up new utility service is when the abuser has an unpaid bill for the previous residence and the utility company seeks to hold the survivor responsible. The customer of record, in whose name utility service was established and billed, is generally responsible for paying any delinquent balance. Therefore, a utility should not deny new service to the survivor based on the abuser's failure to pay a bill if the survivor was not also a customer of record. If service is denied on that basis, the survivor can formally or informally complain to the state public utility commission. The state attorney general might also have a division dealing with utility issues.

Even after the survivor has utility service in place, non-payment—either by the survivor, the abuser, or a landlord who is responsible for making payments pursuant to the terms of the tenancy—can still result in termination. Advocates should familiarize themselves with the protections against termination that may be available in their state, such as a prohibition on termination at certain times of year.²⁵

Credit Cards and High Cost Credit

Survivors who need cash to make ends meet might turn to predatory small dollar loans or services, such as fee-based overdraft, account advance, payday, auto-title, tax refund anticipation loans, rent to own contracts, or check-cashing services. Fee-based overdraft plans and account advance products are offered by some banks and credit unions, while the others are typically accessed through storefront or internet lenders. Fee-harvester credit cards issued by credit card companies also offer small amounts of credit at very high Annual Percentage Rates (APRs).

Although all these credit products work somewhat differently, they pose the same underlying threat to consumers: the cost of credit is so exorbitant that it is difficult—if not impossible—to pay the loan back in the time allotted. Thus, consumers find themselves trapped in a cycle of repeat borrowing to meet the needs for which they borrowed in the first place as well as the interest and fees they now must pay on the borrowed funds.

It is important for survivors to be educated about the dangers of these products, as well as where to find safe, affordable alternatives.²⁶ Local credit unions are often a good place to start, although some credit union products contain predatory features.²⁷

Student Loan Debt

Continuing education is often essential for survivors who are looking to obtain the skills and credentials necessary to get jobs to support themselves and their families. However, student loan problems can prevent a survivor from being able to go back to school. If a survivor is delinquent or in default on loans for a program she has previously attended, it might be difficult for her to obtain the funding necessary to begin a new course of study.²⁸

In addition, if she has defaulted on student loans owed to the federal government, there are a number of means through which the government can collect the loans, including interception of the survivor's tax refund, garnishment of a certain amount of the survivor's wages with no court order required, or offset of federal benefits, such as Social Security. These tools can easily deprive a survivor of income sources upon which she relies.

Advocates and attorneys should explore with survivors partial or whole solutions that may be available for their specific situation. For example, a survivor who has defaulted on her federal student loans might be able to obtain a discharge of the debt through the Department of Education or in bankruptcy, although the latter is extremely difficult. A survivor with a defaulted loan who is not eligible for a discharge may be able to obtain a forbearance that reduces or postpones loan payments. She may also be able to get out of default through consolidation or rehabilitation and then select an affordable payment plan.²⁹

Auto Access & Ownership

Most households need a car in order to participate in essential activities and services due to limited public transportation in many places across the country. For survivors, having access to a car is particularly important, as it facilitates their independence from abusers. Survivors need safe, reliable vehicles in order to get to jobs, school, medical care, child care, and other necessities of daily life. Abusers frequently exert control over survivors by limiting a survivor's access to a shared vehicle or to a survivor's own vehicle or by damaging or destroying the vehicle, especially when a survivor is trying to leave the abuser.

In addition to the obstacles to car access and ownership that may be posed by the abuser, the survivor who is setting up a separate household from the abuser faces hurdles when she goes to buy her own car. Survivors with limited means are likely to be purchasing

from used-car dealers. It is important for survivors to be aware of the abuses in sales and financing that may occur. For example, dealers may attempt to sell vehicles with undisclosed serious damage from collision, flooding, or other incidents or with odometer readings that fraudulently misrepresent the vehicle's true mileage. Dealers often arrange the financing for vehicles they sell, and they may offer survivors high-cost loans with less favorable loan terms than could be obtained from third party lenders, such as credit unions. Survivors should familiarize themselves with strategies for used car shopping, such as having an independent mechanic and body shop technician inspect a car before the survivor agrees to buy it or working with a trusted lender to set up financing at fair, reasonable terms.³⁰

Identifying Your Client's Consumer Issues

The goal of effective advocacy often will be best served by encouraging the survivor to tell her story with minimal direction from you. Allowing the client to describe her situation conveys your respect for her and builds trust. This approach also enables you to learn the entire context that is relevant to the individual survivor's advocacy needs. No one knows the client's circumstances better than she does. Giving her a protected space in which to narrate her story and articulate her priorities increases the likelihood that you will provide survivor-centered advocacy, which meets her individual and comprehensive needs.³¹

The questions set forth below are not meant to serve as a script but as points of entry into complex conversations. You should employ your professional judgment and experience in deciding how and when to incorporate these screening questions into your client work.

Keep in mind that financial issues are often stressful for people for a variety of reasons. They may be concerned that they don't have enough money. They may feel foolish, guilty or blameworthy (and therefore judged) due to their belief that they have made poor financial choices. Survivors, like all people, make expensive mistakes. Survivors also report "feeling stupid" for trusting a partner; in truth, many people in committed relationships trust their partners with financial issues.

Economic issues can be particularly loaded for survivors of domestic violence because problematic financial information, such as a negative entry on a credit report, is often a result of their partner's abuse. What might seem to some like a straightforward discussion of dollars and cents may feel to the survivor like examining scars or even open wounds. This may be the first time the survivor has made the connection between the abuser's actions and her financial situation. Reactions may range from sadness and grief to extreme anger. Advocates can help survivors by normalizing their experience and offering assistance.³²

Explain to your client why you are asking these questions. Consider framing the conversation explicitly against the backdrop of the ways in which abuse may be perpetrated through economic issues, including denying access to financial resources, damaging credit history, or refusing to continue to help make mortgage payments on a

jointly owned home. If the client understands that you are in essence asking about ways in which the abuser used finances to coerce, intimidate, threaten and otherwise control her, she will be better able to provide you with relevant information.

All advocacy for survivors of domestic violence (including advocacy in the consumer law realm) must take place within the context of the survivor's broader safety plan. For example, attorneys and advocates seeking financial information that is in the abuser's possession must strategize with the survivor about how such information can be safely obtained. The strategies, of course, will depend upon the particular circumstances of an individual's life. Safety planning must be done in partnership with the survivor. Creativity is critical.³³

General Screening Questions

These questions are designed to inform your advocacy by helping you obtain background information about your client's overall financial health. Answers to these questions will help you assess whether she has faced economic abuse resulting in consumer problems and, if so, point you toward the areas in which these problems may have manifested.³⁴ You can then follow up with the issue specific questions set forth in the following sections to home in on the particular problems.

It is by no means necessary to ask all of these questions or to ask them using the precise language set forth below. Indeed, a barrage of questions may feel more like a cross-examination than an attempt to offer advocacy. Simply have a conversation with your client, using lay language that is easily accessible and facilitates open dialogue. Advocates should use their best judgment to determine when in the course of individual advocacy it is appropriate to address these topics. Wherever possible, try to begin with open-ended questions and probe further with clarifying follow-up questions (e.g., "tell me more about that," or "when you mentioned X, what specifically happened?").

- In general, who controls your household finances?
 - You, your partner, someone else?
- How does your partner react if you bring-up financial topics?
 - Has he ever used financial matters to threaten or intimidate you, such as withholding funds from your use or refusing to pay household bills?
- Do you know where your money is?
- Have you been having trouble getting your money? Is any of your money missing?
- Has your partner ever made you sign financial documents without explaining what they were for or that you knew were false? Has he ever forged your signature?
- Has your partner ever taken out a loan or credit product (e.g., credit card) in your name without your consent?

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- How do you cash your checks—through a bank, check casher, or other type of financial institution? Do you have to pay any fees?
 - What kind of account(s) do you have at the bank or other financial institution—checking, savings, money market, etc.?
 - Who has access to this account—just you, you and your partner, or you and someone else?
 - If someone else has access in addition to you, do you know what type of access it is? For example, is it a joint account, in which case account-holders generally have equal access and responsibilities?
 - If someone other than you, have you ever had difficulty getting information about your household’s finances, either from the person in control or from a company you tried to contact?
 - Do you have your own debit card for all of your bank accounts? Do you have your own credit card?
 - Did/does your partner give you an allowance, monitor your spending, or ask for receipts?

Issue-Specific Questions

The following questions offer some starting points for identifying the common consumer issues discussed above. In-depth assessment and case strategizing are beyond the scope of this document. Upon concluding that your client has a specific consumer problem, additional steps—such as further research on the topic, consultation with or a referral to an attorney or advocate who specializes in the issue at hand—will likely be warranted, as individual circumstances require.

Managing Household Income & Expenses

- Are you aware of what your financial situation looks like?
- Are you able to pay your bills on time?
- Are you able to pay your bills in full?
- Do you have money set aside in case of emergencies?
- Do you think there might be debts in your name that you don’t know about?
- Does anyone owe you money?

Credit Reporting

- Have you had difficulty getting or been denied any financial products you’ve applied for recently, like a credit card, student loan, or auto insurance?
 - If yes, were you given a reason for the difficulty or denial?
 - Did the reason have to do with your credit history or score?

- Have you recently looked at your credit report?
 - If yes, were you able to understand the credit report?
 - Do you know whether the credit report contains information that is incomplete or false?
- Have you ever received calls or correspondence about a credit account that you didn't open?
- Have you had to pay a deposit for a utility to be turned on?

Debt Collection

- Are you getting calls or letters about debts that someone says you owe?
- How often are you getting these calls or letters?
- Where and when are the calls happening?
- Have you asked the collector to stop contacting you?
- Are you familiar with the debt the collector says you owe?
- Is the debt for a medical bill or the result of an accident or injury?
- Is the debt for taxes or owed to any other government agency?
- Do you think you owe the debt?
- Have you received papers asking you to go to court regarding a debt? What do the papers say?
- Have any of your accounts been frozen?

Foreclosure and Eviction

- Do you live with your partner right now?
- Do you want to keep living there?
- Do you rent or own the place? Is the place in your name, your partner's name, both your names, or someone else's name?
- Are you able to keep up with rent/mortgage payments?
- Who pays the rent/mortgage?
 - Are you paying the mortgage/rent by yourself?
 - If not, who is contributing? Are you comfortable with that arrangement?
- Have you received any notice of past due mortgage or rent from your mortgage company/servicer or landlord?
- Have you ever received an eviction notice from your landlord or any paperwork saying that your landlord has started eviction proceedings against you?

Utilities

- Does your electricity work? Heat? Water? Phone service? Cable or internet?
- Are you able to keep up with your electric, heat, etc. payments?
 - If not, how far behind are you?
- Do any utility companies claim you owe them money for previous utility service?
 - If yes, do you think you owe it? Was it for an account in your name or the name of your partner?
- Whose name is your phone or cellphone in? Who gets the bill and who has access to it?

Credit Cards and High-Cost Credit

- Do you have any credit cards?
- Have you taken out any loans where you had to give the lender a post-dated check, electronic access to your bank account, or the title your car? If you've given over the title to your car, was it a loan to buy the car or did you already own the car when you took out the loan?
- Do you have any loans that are hard for you to pay back? How many?
- Who is the lender(s) or creditor(s)?
- Is the loan(s) or credit card(s) only in your name or did your partner or someone else take out the loan(s) or credit card(s) with you?
- If you had a credit card that is just in your name, is your partner an authorized user?
- If someone else is on the loan(s) or credit card(s) with you, how are payments made—just by you, just by him, by both of you, etc.?
- Are you able to keep up with your loan payments?
- Do you have any amounts past due?
- Do you or your partner have any checking or savings accounts? Do you keep money in any other place, such as your home?
- Are any of your bank accounts overdrawn? Has a bank ever closed your account because it was overdrawn? Do you overdraw or take advances against your account at your bank/credit union?
- Do you owe a payday loan?
- Do you owe a rent to own item?

Student Loan Debt

- Have you ever borrowed money to go to school?
 - What type of school was it?
 - Whom did you borrow the money from—federal government, private lender, or not sure?
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- Do you still owe the lender any money? How much total? How much each month?
- Are you able to keep up with your loan payments?
- Do you have any amounts past due? How much and when was the last time you paid?
- Has the lender tried to get money from you for any past due amounts? What has the lender done to try to get it?
- Do you want to go back to school?
- What type of school?
- Have you tried to get loans to go back?
- Have you signed or co-signed for someone else to go back to school?

Auto Access & Ownership

- Do you have a car (or cars)?
- Where is the car(s) now? Do you currently have access to it?
- Is the car(s) insured?
- Who owns the car(s)—you, your partner, both of you, or someone else?
- Who signed the paperwork when you bought the car? Did the same person (people) sign all the paperwork?
- Is any money owed to any lenders for the car(s)? How much total and how much each month?
- Do you have any amounts past due?
- Has the lender threatened or attempted to repossess the car(s)?
- Have you ever had a car repossessed in the past? Does the lender claim you still owe money on that car?

Further Resources and Referrals

If you are working with a survivor who has consumer advocacy needs, you may want to offer resources so she can learn more about her options.

The Consumer Rights for Domestic Violence Survivors Initiative (CRDVSI) aims to enhance consumer rights and economic justice for domestic violence survivors. CRDVSI does so by building the capacity of and developing collaborative partnerships between domestic violence and consumer law attorneys. Funded by the Office for Victims of Crime, CRDVSI is a partnership of the Center for Survivor Agency and Justice, the National Consumer Law Center, the National Network to End Domestic Violence, and the National Association of Consumer Advocates. The Initiative offers national conferences, national webinar trainings, individualized technical assistance, an array of advocacy tools, website resources, and a listserve. To access resources on consumer rights for domestic violence survivors, you may go the partners' websites at:

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- Center for Survivor Agency and Justice
<http://www.csaj.org>
 - National Consumer Law Center:
<http://www.nclc.org/special-projects/domestic-violence-survivors.html>
 - National Network to End Domestic Violence:
<http://www.nnedv.org/resources/economicjustice.html>
 - National Association of Consumer Advocates:
<http://www.naca.net/domestic-violence-survivors/>

To obtain individual technical assistance on cases that involve the consumer rights of domestic violence survivors, contact the Center for Survivor Agency and Justice by submitting a request at <http://www.csaj.org>. To join the Consumer Rights for Domestic Violence Survivors Initiative listserv, comprised of practitioners across the nation concerned with consumer rights for domestic violence survivors, go to: <http://lists.nclc.org/>

In addition, NCLC has a set of manuals on consumer law topics available for purchase at <http://www.nclc.org>. For consumer law attorneys to refer your client to or consult with, visit <http://www.naca.net> (National Association of Consumer Advocates). Your client's needs might also be addressed by lawyers with a focus in other areas, such as landlord-tenant or tax law.

Consult the Center for Survivor Agency and Justice, <http://www.csaj.org>, to be connected with legal services organizations and domestic violence service providers around the country that offer representation and advocacy for survivors. Your state domestic violence coalition can connect you with its member programs, and your local or state bar association might also be able to make attorney referrals.

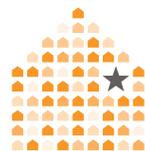
References

- 2 *See generally* Jill Davies, Eleanor Lyon, & Diane Monti-Catania, *Safety Planning with Battered Women: Complex Lives/Difficult Choices* (1998).
- 3 *See generally* Erika Sussman, Center for Survivor Agency and Justice, *Building Partnerships for Economic Justice Guidebook, Consumer Rights for Domestic Violence Survivors Initiative* (forthcoming 2011), available at <http://csaj.org/library.php>.
- 4 *See* Jill Davies, *Policy Blueprint on Domestic Violence and Poverty, Building Comprehensive Solutions to Domestic Violence, Publication #15* (2002), available at http://www.vawnet.org/Assoc_Files_VAWnet/BCS15_BP.pdf.
- 5 Eleanor Lyon, *Welfare, Poverty, and Abused Women: New Research and its Implications, Building Comprehensive Solutions to Domestic Violence, Publication #10, National Resource Center on Domestic Violence* (2000), available at http://www.vawnet.org/Assoc_Files_VAWnet/BCS10_POV.pdf.
- 6 *See* National Law Center on Homelessness and Poverty, “Some Facts on Homelessness, Housing, and Violence Against Women,” available at <http://www.nlchp.org/content/pubs/Some%20Facts%20on%20Homeless%20and%20DV.pdf>.
- 7 Adrienne E. Adams, Cris M. Sullivan, Deborah Bybee Megan R. Greeson, *Development of the Scale of Economic Abuse*, 14(5) *Violence Against Women Journal* 563 (2008).
- 8 *See Adams et al.*, *Scale of Economic Abuse*, at 565-66; Katie Von DeLinde, *How Are Domestic Violence Programs Meeting the Economic Needs of Battered Women in Iowa? An Assessment and Recommendations*, National Resource Center on Domestic Violence (2002), available at http://new.vawnet.org/assoc_files_vawnet/bcs16_en.pdf; Tolman, Richard M. Wang, Hui Chen, *Domestic Violence and Women’s Employment: Fixed Effects Models of Three Waves of Women’s Employment Study Data*, 36 *American Journal of Community Psychology* 147-158 (2005).
- 9 *See Adams et al.*, *Scale of Economic Abuse* at 566; Brewster, M.P., *Power and Control Dynamics in Prestalking and Stalking Situations*, 18 *Journal of Family Violence* 207-217 (2003).
- 10 *See Adams et al.*, *Scale of Economic Abuse* at 567; M.A. Anderson, P.M. Gillig, M. Sitaker, K McCloskey, K. Malloy, & N. Grigsby, “Why Doesn’t She Just Leave?” A Descriptive Study of Victim Reported Impediments to Her Safety, 18 *Journal of Family Violence*, 151- 155 (2003).
- 11 *See Adams et al.*, *Scale of Economic Abuse* at 567; Anderson *et al.*, “Why Doesn’t She Just Leave?” A Descriptive Study of Victim Reported Impediments to Her Safety at 151-55.
- 12 Both women and men can be survivors of domestic violence; however, as women are disproportionately impacted by abuse, the individual survivor is referred to throughout this tool as “she.”
- 13 *See* Edward Gondolf & Ellen R. Fischer, *Battered Women as Survivors: An Alternative to Treating Learned Helplessness* 95 (1988).
- 14 Expense minimization occurs through such avenues as improving a survivor’s credit history and score so she can borrow money on better terms or establishing a budget for a survivor’s household so she can monitor and control expenditures. Asset protection is effectuated by such means as defending a survivor against foreclosure, eviction, or debt collection. Income maximization is generally addressed with other tools, such as better employment or further education or job training.
- 15 Sample budget forms are available at Appendix C of NCLC’s *Guide to Consumer Rights for Domestic Violence Survivors* (2006). This Guide is referenced throughout the Screening Tool as a general resource on many issues. Please note that it was written several years ago, so practitioners are encouraged to consult more up-to-date resources, such as NCLC’s practice manuals, to ensure they obtain the most current substantive legal information.
- 16 *See* *Consumer Rights for Domestic Violence Initiative, Prioritizing Your Expenses Brochure*, available at both: http://www.nclc.org/images/pdf/domestic_violence/debtbrochure.pdf and <http://www.csaj.org/documents/402.pdf>.
- 17 As noted above, consumer law remedies tend to focus on expense minimization rather than income maximization. However, it is critical for advocates to help not only with exploring expense reduction, but also with increasing survivors’ income. Options to increase regular income and/or patch income temporarily might include: employment (looking for a formal job opportunities, asking for a raise, requesting more hours); personal resources (drawing on the survivor’s skills) and looking for opportunities; and community resources (public assistance, state emergency relief, community programs to cover move-in expenses, groceries, etc.).
- 18 *See* Federal Trade Commission, *Guide for Assisting Identity Theft Victims*, available at <http://www.idtheft.gov/probono>.

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- 19 These reports can be accessed through <http://www.annualcreditreport.com> (be on the lookout for similar sounding websites that are actually for-profit ventures), by calling (877) 322-8228, or by mailing the Annual Credit Report Request Form to Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281.
 - 20 For more information about this and other steps to assist survivors with credit reporting issues, please see NCLC's Guide to Consumer Rights for Domestic Violence Survivors ch. 12 (2006) and Credit Reporting and Repair for Domestic Violence Survivors Training, available at http://www.nclc.org/images/pdf/domestic_violence/credit-reporting.pdf, and Sheila Fazio, Teleconference PowerPoint: Understanding Credit—Its Impact on Battered Women and How You Can Help! available at <http://www.csaj.org/documents/52.pdf>. A resource for survivors is Building and Repairing Your Credit History Brochure, available at both: http://www.nclc.org/images/pdf/domestic_violence/creditbrochure.pdf and <http://www.csaj.org/documents/401.pdf>.
 - 21 For more information about assisting survivors with debt collection issues, please see NCLC's Guide to Consumer Rights for Domestic Violence Survivors chs. 4 & 5 (2006).
 - 22 For additional information about the debt settlement industry, please visit the Center for Responsible Lending, available at <http://www.responsiblelending.org/other-consumer-loans/debt-settlement>.
 - 23 For more information about defending survivors against foreclosure, please see NCLC Reports, Special Issue: Foreclosures and Domestic Violence Survivors (2009), available at http://www.nclc.org/images/pdf/domestic_violence/nclc-rpts-bankr-jan-feb-2009.pdf, Foreclosure Advocacy for Domestic Violence Survivors, CSAJ Teleconference Powerpoint, July 23, 2009, at <http://www.csaj.org/documents/403.pdf>, and Center for Survivor Agency and Justice, Coordinating Domestic Relations and Foreclosure Cases: A Handout, available at <http://www.csaj.org/documents/404.pdf>. For general information about housing rights for domestic violence survivors go to <http://www.csaj.org/library/php> and search "Category->Economic Justice" and Subcategory->"Housing"; for more information about defending survivors against eviction, please visit the National Housing Law Project's Resource Center on Housing Protections for Survivors of Violence, available at <http://nhlp.org/resourcecenter?tid=62>.
 - 24 For more information, please visit the National Housing Law Project's Resource Center, available at <http://nhlp.org/resourcecenter?tid=62>.
 - 25 For details about this and other tools available to a survivor struggling with utilities issues, please consult NCLC's Guide to Consumer Rights for Domestic Violence Survivors ch. 7, Appx. F (2006). See generally NCLC's Access to Utility Service (4th ed. 2008 & Supp. 2010).
 - 26 Details about high cost credit as well as strategies for assisting survivors with high cost credit issues can be found at NCLC's Guide to Consumer Rights for Domestic Violence Survivors ch. 20 (2006).
 - 27 For more information about the criteria for good alternatives to payday loans, as well as some institutions that offer them, please consult NCLC's report Stopping the Payday Loan Trap: Alternatives That Work, Ones That Don't (June 2010), available at http://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/report-stopping-payday-trap.pdf.
 - 28 Survivors should exercise caution when considering programs at proprietary schools. These programs are often expensive and often fail to equip their students with the marketable skills promised.
 - 29 For details about ways to assist a survivor struggling with student loan debt, please consult NCLC's Student Loan Law (3d ed. 2006 & Supp. 2009) and NCLC's Student Loan Borrower Assistance Project, available at <http://www.studentloanborrowerassistance.org>. For information on student loan advocacy geared toward the needs of domestic violence survivors, see <http://www.csaj.org/library.php> and search "Category->Economic Justice" and "Subcategory->Student Loans."
 - 30 For details about ways to help a survivor avoid used car fraud, please consult NCLC's Guide to Consumer Rights for Domestic Violence Survivors ch. 16 (2006).
 - 31 For additional information, please see the Center for Survivor Agency and Justice, Performing an Initial Interview: Learning a Survivor's Story (2007), available from CSAJ or at <http://www.csaj.org/library.php> and the conference materials for CSAJ's 2009 "Survivor Centered Advocacy Institute: Critical Skills for Advocates and Lawyers," available at <http://www.csaj.org/library.php> by searching "Category->CSAJ Materials" and "Subcategory->Survivor Centered Advocacy 2009." For more on the importance of survivor-defined advocacy, see Nicole E. Allen, Deborah I. Bybee, & Cris M. Sullivan, Battered Women's Multitude of Needs: Evidence Supporting the Need for Comprehensive Advocacy, 10(9) Violence Against Women 1015, 1019 (2004).
 - 32 See Katie Ciorba VonDeLinde, Budgeting and Debt Prioritization: Self Determination and Safety for Survivors, Powerpoint (Nov. 11, 2010), available at <http://www.csaj.org/documents/405.pdf>.
 - 33 Sullivan *et al.*, Battered Women's Multitude of Needs: Evidence Supporting the Need for Comprehensive Advocacy at 1019.
 - 34 See Adams *et al.*, Scale of Economic Abuse at 576 (providing a quantitative tool geared toward identifying "economic control" and "economic exploitation").
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