

**REPORT OF THE JUDICIAL COUNCIL
FAMILY LAW ADVISORY COMMITTEE
December 6, 2018**

In May 2018, Representative Blaine Finch asked the Judicial Council to study and make recommendations about House Bill 2529 relating to a presumption of equal parenting time. House Bill 2529 is identical to Senate Bill 257, both of which were heard during the 2018 legislative session. The Judicial Council accepted the study request and assigned it to the Family Law Advisory Committee. Copies of the bills are attached to this report at pages 9 and 10. A copy of the study request is attached at page 11.

COMMITTEE MEMBERSHIP

The members of the Judicial Council Family Law Advisory Committee are:

Charles F. Harris, Co-Chair, Retired Attorney; Wichita.

Hon. Mike Keeley, Co-Chair, District Court Judge; Great Bend.

Hon. Steven Becker, State Representative and Retired District Court Judge; Buhler.

Sara S. Beezley, Practicing Attorney; Girard.

Prof. Gillian Chadwick, Clinical Professor at the Washburn University School of Law; Topeka.

Elizabeth Cohn, Program Attorney for Child Support Services, Department for Children and Families; Topeka.

Jamie Corkhill, Retired Attorney; Topeka.

Hon. Robert J. Frederick, District Court Judge; Garden City.

Joyce Grover, Executive Director for the Kansas Coalition Against Sexual and Domestic Violence; Topeka.

Ronald W. Nelson, Practicing Attorney; Shawnee Mission.

Cynthia Patton, Practicing Attorney; Topeka.

Hon. Bethany Roberts, District Court Judge; Lawrence.

Ardith R. Smith-Woertz, Practicing Attorney; Topeka.

Prof. Suzanne Valdez, Clinical Professor at the University of Kansas School of Law; Lawrence.

BACKGROUND

Senator Steve Fitzgerald sponsored SB 257, which was introduced in the Senate and referred to the Senate Judiciary Committee on January 8, 2018. A hearing on the bill was held in the Senate Judiciary Committee on January 30, 2018. A group of ten representatives sponsored HB 2529, which was introduced in the House and referred to the House Judiciary Committee on January 23, 2018. The bill was heard in the House Judiciary Committee on February 6, 2018.

As noted earlier, HB 2529 and SB 257 are identical. The bills propose amendments to K.S.A. 23-3202, which deals with parenting plans. The existing statute provides that a parenting plan that has been agreed to by the parties is presumed to be in the best interests of the child. The presumption can be overcome, and the court can enter a different order, provided the court makes specific findings of fact stating why the parties' agreed parenting plan is not in the best interests of the child.

The bills propose two amendments to the current language of K.S.A. 23-3202, which would now be subsection (a). First, the presumption that an agreed parenting plan is in the best interests of the child may be overcome only by clear and convincing evidence. The second proposed change ties the court's specific findings of fact that an agreed plan is not in the best interests of the child to consideration of all relevant factors under K.S.A. 23-3203.

The bills propose a new subsection (b), which applies if the parties have not entered into an agreed parenting plan. The new language creates a presumption, which can be overcome only by clear and convincing evidence, that a court order providing for a child's equal or approximately equal time with each parent is in the best interests of the child. An order that deviates from equal time must contain specific findings of fact why equal time with each parent is not in the best interests of the child when considering the relevant factors under K.S.A. 23-3203.

When SB 257 was heard on January 30, 2018, nine conferees spoke in favor of the bill, and nine additional people submitted written testimony in support. Five conferees spoke in opposition to the bill, with four people submitting written testimony against the bill. At the hearing on HB 2529 on February 6, 2018, six conferees spoke in support, and nine people submitted written testimony in favor of the bill. A total of 14 conferees spoke against the bill, with eight submitting written testimony opposing the bill.

Neither the Senate Judiciary Committee nor the House Judiciary Committee took any further action on the bills after the hearings. In May 2018, Representative Finch submitted to the Judicial Council a request that the Council study and make recommendations regarding HB 2529. In the request, Representative Finch also asked the Council to consider the approach taken by Arizona, which includes the following language: "Consistent with the child's best interests . . . , the court shall adopt a parenting plan that provides for both parents to share legal

decision-making regarding their child and that maximizes their respective parenting time. The court shall not prefer a parent's proposed plan because of the parent's or child's gender."

When the Judicial Council met on June 1, 2018, it considered and accepted Representative Finch's study request and assigned the study to the Family Law Advisory Committee.

METHOD OF STUDY

The Committee met four times between July and November 2018. In preparation for the discussion, the Committee reviewed HB 2529 and SB 257 and the following materials:

- Written testimony from the House Judiciary Committee hearing on HB 2529 and the Senate Judiciary Committee hearing on SB 257.
- Examples of preferences and presumptions regarding parenting time in various states' statutes.
- Letters from Dr. Bud Dale and Chris Batcheller.
- 11 emails from Ron Holm, with materials attached.
- Allen, Douglas W. and Brinig, Margaret, *Do Joint Parenting Laws Make Any Difference?*, 8(2) Journal of Empirical Legal Studies 304 (June 2011).
- Battered Women's Justice Project, *The Dangers of Presumptive Joint Physical Custody* (May 2010).
- Battered Women's Justice Project, *Practice Guides for Family Court Decision-Making in Domestic Abuse-Related Child Custody Matters* (2015).
- Brinig, Margaret F., Frederick, Loretta M., and Drozd, Leslie M., *Perspectives on Joint Custody Presumptions as Applied to Domestic Violence Cases*, 52(2) Family Court Review 271 (April 2014).
- DiFonzo, J. Herbie, *From the Rule of One to Shared Parenting: Custody Presumptions in Law and Policy*, 52 Fam. Ct. Rev. 213 (April 2014).
- Dinner, Deborah, *The Divorce Bargain: The Fathers' Rights Movement and Family Inequalities*, 102 Va. L. Rev. 79 (March 2016).
- Elrod, Linda, *Joint Legal Custody*, 2 Kan. Law & Prac., Family Law § 12:14 (November 2017 Update).
- Fabricius, William V., et al, *What Happens When There Is Presumptive 50/50 Parenting Time? An Evaluation of Arizona's New Child Custody Statute*, 59 Journal of Divorce & Remarriage 414 (April 2018).
- Nielsen, Linda, *Joint Versus Sole Physical Custody: Children's Outcomes Independent of Parent-Child Relationships, Income, and Conflict in 60 Studies*, 59(4) Journal of Divorce & Remarriage 247 (2018).
- Pruett, Marsha Kline and DiFonzo, J. Herbie, *Closing the Gap: Research, Policy, Practice, and Shared Parenting*, 52 Fam. Ct. Rev. 152 (April 2014).

- Tracy, Melissa A., *The Equally Shared Parenting Time Presumption – A Cure-All or A Quagmire For Tennessee Child Custody Law?*, 38 U. Mem. L. Rev. 153 (Fall 2007).

DISCUSSION

Clear and Convincing Evidence

The Committee reviewed the bill's proposed changes relating to the standard of proof required to overcome the legal presumptions outlined in the statute. The bill's proposed amendments to K.S.A. 23-3202 would require clear and convincing evidence to overcome: 1) the existing presumption that an agreed parenting plan is in the best interests of the child; and 2) a new presumption in subsection (b) that a court order providing for a child's equal or approximately equal time with each parent is in the best interests of the child.

The Committee discussed the use of presumptions in the law. Presumptions serve to establish that something is true with no burden to produce evidence to prove that fact. The burden shifts to the party who wishes to overcome the presumption by producing evidence that the presumed fact is not true. Presumptions of law are time-saving shortcuts based on stereotypes, common sets of facts, and universally accepted notions. A common example is that when a child is born to a married couple, the husband is presumed to be the child's father.

The Committee also discussed the standards of proof required to overcome a legal presumption. Generally, in civil cases, a "preponderance of the evidence" is required to overcome a legal presumption. A "preponderance of the evidence" means evidence showing the fact is more probably true than not true. In criminal cases, the presumption that a defendant is innocent may be overcome only with evidence that proves the defendant's guilt "beyond a reasonable doubt." The language proposed in HB 2529 and SB 257 states the presumptions in subsections (a) and (b) can be overcome only by "clear and convincing evidence." This standard is somewhere between a preponderance of the evidence and beyond a reasonable doubt and has been described by the Kansas Supreme Court as evidence that shows "the truth of the facts asserted is highly probable" *In re B.D.-Y.*, 286 Kan. 686, 187 P.3d 594 (2008).

Under current law, there are some civil proceedings that require clear and convincing evidence, such as establishing that a child is in need of care or that parental rights should be terminated. Use of the clear and convincing standard in family law originated with the United States Supreme Court case of *Santosky v. Kramer*, 455 U.S. 745 (1982), in which the court considered the appropriate standard of proof to be applied in a termination of parental rights proceeding. The court held that a preponderance of the evidence standard is insufficient when applied to a proceeding in which a person's fundamental liberty interest in parenting is not merely infringed, but ended. The Court also compared the termination of parental rights to a

criminal proceeding in that the parent is being accused of wrongdoing and is facing the power of the state as his or her adversary. The Committee does not believe the division of parenting time between two parents rises to that standard.

The Committee discussed the application of a clear and convincing evidence standard to cases involving domestic violence. The bill contains no exceptions for these cases. However, domestic violence usually takes place in the home and, unless the case involves such serious injury that there are medical records, it would be nearly impossible for a victim to meet the heightened evidentiary standard. Testimonial evidence would not be sufficient.

Presumption of Equal Time

The Committee discussed the bills' proposed presumption that a court order providing for a child's equal or approximately equal time with each parent is in the best interests of the child. The Committee considered the proponents' written testimony. Some conferees testified generally that it is in the best interests of a child for parenting to be shared and to have both parents actively involved in the child's life. Other conferees related fact-specific cases in which a parent had to spend years and large sums of money to get parenting time increased. While the Committee empathizes with these parents, it does not agree that creating a new legal presumption is appropriate.

As noted above, legal presumptions are based on common sets of facts. There is no common set of facts when determining an optimum parenting time schedule for a family. Each family is unique, having different numbers and ages of children, work, school, and activity schedules, distances between parent's homes, and distances from the parents' homes to the children's schools. These are just a few of the myriad of issues that must be considered when crafting an effective parenting plan that is in the best interests of the child. Although the Committee agrees with the assertion that it is in the best interests of a child to have both parents involved in the child's life, best interests does not necessarily mean "equal or approximately equal." Equal time may not even be possible when considering the schedules and logistics involved in a certain case. Yet, the proposed presumption requires the court to presume that equal time is in the best interests of the child, with no proof that it is good for the children or that such a parenting time plan could be realistically executed under the facts and circumstances of a given case.

The Committee unanimously agrees that the current statute, which requires the court to apply the relevant factors in K.S.A. 23-3203 when determining a parenting plan that is in the best interests of the child, offers the court maximum flexibility to take each case's unique facts into consideration. The proposed presumption that equal time is in the best interests of the child infringes on the court's discretion to apply the relevant factors and make an independent determination.

The Committee discussed the contention that there have been cultural changes that justify changes in the law. The Committee agrees that there have been cultural changes over the last several decades. However, Kansas law reflects and is consistent with those changes. There is no preference for young children to reside with the mother, the so-called “tender years” doctrine. In fact, K.S.A. 23-3204 specifically provides: “Neither parent shall be considered to have a vested interest in the custody or residency of any child as against the other parent, regardless of the age of the child, and there shall be no presumption that it is in the best interests of any infant or young child to give custody or residency to the mother.” In the Committee members’ experience, fathers are awarded more parenting time than in years past, and mothers are awarded less.

The Committee believes the current Kansas statutes implement the best possible approach by listing 18 nonexclusive factors for the court to consider when determining what is in the best interests of each child. It is understandable that proponents who wished they would have been awarded equal parenting time think that their case would have been different if the judge were forced by law to reach a certain conclusion. But this new presumption would be no better than the old standards of every Wednesday and every other weekend, because it is another “one size fits all” approach. No single solution will work for all families, and it is better to impose no legal presumptions that limit the court’s exercise of discretion.

The Committee also considered the substance of the proponent’s complaints about individual cases. The Committee doesn’t think these stories are evidence of a statutory problem – they are more likely instances of the law being incorrectly applied. The Committee found that judges around the state are currently ordering shared parenting in cases in which it is reasonable under the circumstances. A judge who always orders parenting time based on guidelines meant to demonstrate minimum standards may need judicial education in family law issues. Although the Committee acknowledges there could be judges who sometimes or always order established minimum guidelines rather than doing the work of crafting an individual plan that better suits the family, the Committee does not agree with the proponents that this is a widespread problem. In addition, the Committee believes it is a problem that cannot be legislated away. Judges are human, and sometimes they make mistakes. Parties are human, and some will be unhappy regardless of the law or how the court applies the law to their case. The Committee is in agreement that imposing a “one size fits all” presumption to fix a problem that is only present in a small percentage of cases is the wrong approach. The current statutes afford the court the flexibility to order equal parenting time if that result is in the best interests of the child.

The Committee discussed concerns about unintended consequences that could result from the bills. In addition to the concerns noted earlier about cases involving domestic violence, the Committee discussed concerns about increased litigation and a reduced incentive for parties to work together to create an agreed parenting plan. The Committee also discussed that the bills do not mention how or if the new presumption would be applied in parentage cases. K.S.A. 23-2215, which applies to parenting plans in parentage cases, is different from the statute governing

parenting plans under article 32 and does not refer to the factors in K.S.A. 23-3203. The Committee believes there are constitutional concerns with treating married and unmarried parents differently and believes these provisions should be harmonized. A panel of the Kansas Court of Appeals has applied the factors in a parentage action in an unpublished decision. *In the Matter of Chance and Chance*, No. 108,489, 2013 WL 1729272 (Kan. App. 2013). The application of a presumption of equal parenting time in a parentage action in which the child and father have not established a significant relationship is a possibility the proponents of the bill have not addressed.

As requested by Representative Finch, the Committee also discussed the Arizona approach, which does not impose a presumption regarding “equal” or “nearly equal” parenting time, but instead requires the court to maximize the parenting time of each parent. Although perhaps presenting problems lesser in scale than the language in HB 2529 and SB 257, this approach also has the potential to increase litigation and unnecessarily infringes on judicial discretion. The Committee does not support any statutory language that creates a preference or presumption that a certain quantity of parenting time is in the best interests of the child. A determination of a parenting plan that is in the best interests of the child is best reached through applying the statutory factors to the facts of each individual case.

RECOMMENDATION

The Committee has carefully considered the arguments for and against the amendments to K.S.A. 23-3202 contained in HB 2529 and SB 257 and concludes the proposed changes create more problems than they solve. Each case presents unique facts and circumstances and requires an individualized plan, which is the antithesis of a legal presumption. The current statutes provide courts with the flexibility to order equal parenting time if it is in the best interests of the child, and the Committee recommends against the passage of HB 2529 and SB 257.

HOUSE BILL No. 2529

By Representatives Pittman, Awerkamp, Blex, Elliott, Ellis, Eplee, Garber, Good, Highland and Williams

1-23

1 AN ACT concerning the Kansas family law code; relating to legal custody,
2 residency and parenting time; presumption in court determinations;
3 amending K.S.A. 2017 Supp. 23-3202 and repealing the existing
4 section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2017 Supp. 23-3202 is hereby amended to read as
8 follows: 23-3202. (a) If the parties have entered into a parenting plan, it
9 shall be presumed that the agreement is in the best interests of the child.
10 This presumption may be overcome *only by clear and convincing evidence*
11 and the court may make a different order if the court makes specific
12 findings of fact stating why the agreed parenting plan is not in the best
13 interests of the child *when considering all relevant factors pursuant to*
14 *K.S.A. 2017 Supp. 23-3203, and amendments thereto.*

15 (b) *If the parties have not entered into a parenting plan, it shall be*
16 *presumed that a court determination of legal custody, residency and*
17 *parenting time providing for a child's equal or approximately equal time*
18 *with each parent is in the best interests of the child. This presumption may*
19 *be overcome only by clear and convincing evidence and the court may*
20 *make a different determination if the court makes specific findings of fact*
21 *stating why equal or approximately equal time with each parent is not in*
22 *the best interests of the child when considering all relevant factors*
23 *pursuant to K.S.A. 2017 Supp. 23-3203, and amendments thereto.*

24 Sec. 2. K.S.A. 2017 Supp. 23-3202 is hereby repealed.

25 Sec. 3. This act shall take effect and be in force from and after its
26 publication in the statute book.

SENATE BILL No. 257

By Senator Fitzgerald

12-14

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2 residency and parenting time; presumption in court determinations;
3 amending K.S.A. 2017 Supp. 23-3202 and repealing the existing
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12 findings of fact stating why the agreed parenting plan is not in the best
13 interests of the child *when considering all relevant factors pursuant to*
14 *K.S.A. 2017 Supp. 23-3203, and amendments thereto.*

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20 *make a different determination if the court makes specific findings of fact*
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22 *the best interests of the child when considering all relevant factors*
23 *pursuant to K.S.A. 2017 Supp. 23-3203, and amendments thereto.*

24 Sec. 2. K.S.A. 2017 Supp. 23-3202 is hereby repealed.

25 Sec. 3. This act shall take effect and be in force from and after its
26 publication in the statute book.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

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RULES & JOURNAL
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TELECOMMUNICATIONS

BLAINE FINCH
59TH DISTRICT

May 9, 2018

Nancy Strouse, Executive Director
Kansas Judicial Council
301 SW 10th Avenue
Topeka, Kansas 66612

Dear Nancy:

I am writing to request Judicial Council study of a topic that arose during the consideration of legislation by the House Committee on Judiciary during the 2018 Session. After considering this bill, I believe that a more in-depth consideration of the issues raised by the legislation would be appropriate and desirable before advancing the legislation.

HB 2529 – Creating a presumption of child’s equal time with parents during court determination of legal custody, residency or parenting time

HB 2529 was introduced in 2018 by 10 individual legislators and was heard by the House Committee on Judiciary. Among other provisions, the bill would create a presumption, when parties have not entered into a parenting plan, that a determination of legal custody, residency, and parenting time providing for a child's equal or approximately equal time with each parent is in the best interests of the child. This presumption could be overcome only by clear and convincing evidence, and to make a different determination the court would be required to make specific findings of fact stating why equal or approximately equal time is not in the best interests of the child when considering all relevant factors required in statute.

The House Committee received extensive proponent, neutral, and opponent testimony at its hearing on HB 2529. One of the opponent conferees, the Hon. R. Wayne Lampson, speaking on behalf of the Kansas District Judges' Association, suggested that the House Committee, if it desired to advance the bill, consider adopting language similar to that recently adopted by Arizona instead of the language of the bill as introduced.

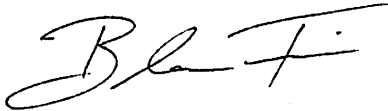
The Arizona language was added by that state's 2012 SB 1127 (attached) and stated, in relevant part: "Consistent with the child's best interests . . . , the court shall adopt a parenting plan that provides for both parents to share legal decision-making regarding their child and that maximizes their respective parenting time. The court shall not prefer a parent's proposed plan because of the parent's or child's gender."

I believe the Kansas Legislature and citizens of Kansas would benefit from the Judicial Council's study of and recommendation regarding the language of HB 2529 and whether it would be improved by modifying it to follow the approach taken by Arizona.

Please let me know if I can provide any further information or answer any questions regarding this request.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Blaine Finch". The signature is written in a cursive style with a large initial "B" and "F".

Representative Blaine Finch
Chairman, House Committee on Judiciary

HOUSE BILL No. 2529

By Representatives Pittman, Awerkamp, Blex, Elliott, Ellis, Eplee, Garber, Good, Highland and Williams

1-23

1 AN ACT concerning the Kansas family law code; relating to legal custody,
2 residency and parenting time; presumption in court determinations;
3 amending K.S.A. 2017 Supp. 23-3202 and repealing the existing
4 section.

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11 and the court may make a different order if the court makes specific
12 findings of fact stating why the agreed parenting plan is not in the best
13 interests of the child *when considering all relevant factors pursuant to*
14 *K.S.A. 2017 Supp. 23-3203, and amendments thereto.*

15 (b) *If the parties have not entered into a parenting plan, it shall be*
16 *presumed that a court determination of legal custody, residency and*
17 *parenting time providing for a child's equal or approximately equal time*
18 *with each parent is in the best interests of the child. This presumption may*
19 *be overcome only by clear and convincing evidence and the court may*
20 *make a different determination if the court makes specific findings of fact*
21 *stating why equal or approximately equal time with each parent is not in*
22 *the best interests of the child when considering all relevant factors*
23 *pursuant to K.S.A. 2017 Supp. 23-3203, and amendments thereto.*

24 Sec. 2. K.S.A. 2017 Supp. 23-3202 is hereby repealed.

25 Sec. 3. This act shall take effect and be in force from and after its
26 publication in the statute book.

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 39
SENATE BILL 1127

AN ACT

CHANGING THE DESIGNATION OF TITLE 25, CHAPTER 4, ARIZONA REVISED STATUTES, TO "LEGAL DECISION-MAKING AND PARENTING TIME"; CHANGING THE DESIGNATION OF TITLE 25, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, TO "LEGAL DECISION-MAKING AND PARENTING TIME"; REPEALING SECTIONS 25-401 AND 25-402, ARIZONA REVISED STATUTES; AMENDING TITLE 25, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 25-401 AND 25-402; AMENDING SECTION 25-403, ARIZONA REVISED STATUTES; REPEALING SECTION 25-403.01, ARIZONA REVISED STATUTES; AMENDING TITLE 25, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 25-403.01; AMENDING SECTIONS 25-403.02, 25-403.03, 25-403.04, 25-403.05, 25-403.07, 25-403.08, 25-403.09, 25-404, 25-406, 25-407 AND 25-408, ARIZONA REVISED STATUTES; REPEALING SECTION 25-409, ARIZONA REVISED STATUTES; AMENDING TITLE 25, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 25-409; AMENDING SECTIONS 25-410, 25-411 AND 25-413, ARIZONA REVISED STATUTES; REPEALING SECTION 25-415, ARIZONA REVISED STATUTES; AMENDING TITLE 25, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 25-415; AMENDING SECTIONS 25-803 AND 25-1002, ARIZONA REVISED STATUTES; RELATING TO LEGAL DECISION-MAKING AND PARENTING TIME.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Heading change

3 The chapter heading of title 25, chapter 4, Arizona Revised Statutes,
4 is changed from "CHILD CUSTODY AND VISITATION" to "LEGAL DECISION-MAKING AND
5 PARENTING TIME".

6 Sec. 2. Heading change

7 The article heading of title 25, chapter 4, article 1, Arizona Revised
8 Statutes, is changed from "CHILD CUSTODY" to "LEGAL DECISION-MAKING AND
9 PARENTING TIME".

10 Sec. 3. Repeal

11 Sections 25-401 and 25-402, Arizona Revised Statutes, are repealed.

12 Sec. 4. Title 25, chapter 4, article 1, Arizona Revised Statutes, is
13 amended by adding new sections 25-401 and 25-402, to read:

14 25-401. Definitions

15 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

16 1. "IN LOCO PARENTIS" MEANS A PERSON WHO HAS BEEN TREATED AS A PARENT
17 BY A CHILD AND WHO HAS FORMED A MEANINGFUL PARENTAL RELATIONSHIP WITH A CHILD
18 FOR A SUBSTANTIAL PERIOD OF TIME.

19 2. "JOINT LEGAL DECISION-MAKING" MEANS BOTH PARENTS SHARE
20 DECISION-MAKING AND NEITHER PARENT'S RIGHTS OR RESPONSIBILITIES ARE SUPERIOR
21 EXCEPT WITH RESPECT TO SPECIFIED DECISIONS AS SET FORTH BY THE COURT OR THE
22 PARENTS IN THE FINAL JUDGMENT OR ORDER.

23 3. "LEGAL DECISION-MAKING" MEANS THE LEGAL RIGHT AND RESPONSIBILITY TO
24 MAKE ALL NONEMERGENCY LEGAL DECISIONS FOR A CHILD INCLUDING THOSE REGARDING
25 EDUCATION, HEALTH CARE, RELIGIOUS TRAINING AND PERSONAL CARE DECISIONS. FOR
26 THE PURPOSES OF INTERPRETING OR APPLYING ANY INTERNATIONAL TREATY, FEDERAL
27 LAW, A UNIFORM CODE OR THE STATUTES OF OTHER JURISDICTIONS OF THE UNITED
28 STATES, LEGAL DECISION-MAKING MEANS LEGAL CUSTODY.

29 4. "LEGAL PARENT" MEANS A BIOLOGICAL OR ADOPTIVE PARENT WHOSE PARENTAL
30 RIGHTS HAVE NOT BEEN TERMINATED. LEGAL PARENT DOES NOT INCLUDE A PERSON
31 WHOSE PATERNITY HAS NOT BEEN ESTABLISHED PURSUANT TO SECTION 25-812 OR
32 25-814.

33 5. "PARENTING TIME" MEANS THE SCHEDULE OF TIME DURING WHICH EACH
34 PARENT HAS ACCESS TO A CHILD AT SPECIFIED TIMES. EACH PARENT DURING THEIR
35 SCHEDULED PARENTING TIME IS RESPONSIBLE FOR PROVIDING THE CHILD WITH FOOD,
36 CLOTHING AND SHELTER AND MAY MAKE ROUTINE DECISIONS CONCERNING THE CHILD'S
37 CARE.

38 6. "SOLE LEGAL DECISION-MAKING" MEANS ONE PARENT HAS THE LEGAL RIGHT
39 AND RESPONSIBILITY TO MAKE MAJOR DECISIONS FOR A CHILD.

40 7. "VISITATION" MEANS A SCHEDULE OF TIME THAT OCCURS WITH A CHILD BY
41 SOMEONE OTHER THAN A LEGAL PARENT.

42 25-402. Jurisdiction

43 A. BEFORE IT CONDUCTS A PROCEEDING CONCERNING LEGAL DECISION-MAKING OR
44 PARENTING TIME, INCLUDING A PROCEEDING TO DETERMINE THE LEGAL DECISION-MAKING
45 OR VISITATION OF A NONPARENT, A COURT IN THIS STATE FIRST MUST CONFIRM ITS
46 AUTHORITY TO DO SO TO THE EXCLUSION OF ANY OTHER STATE, INDIAN TRIBE OR

1 FOREIGN NATION BY COMPLYING WITH THE UNIFORM CHILD CUSTODY JURISDICTION AND
2 ENFORCEMENT ACT, THE PARENTAL KIDNAPPING PREVENTION ACT AND ANY APPLICABLE
3 INTERNATIONAL LAW CONCERNING THE WRONGFUL ABDUCTION OR REMOVAL OF CHILDREN.

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

6 1. A PARENT IN ANY PROCEEDING FOR MARITAL DISSOLUTION, LEGAL
7 SEPARATION, ANNULMENT, PATERNITY OR MODIFICATION OF AN EARLIER DECREE OR
8 JUDGMENT.

9 2. A PERSON OTHER THAN A PARENT, BY FILING A PETITION FOR THIRD PARTY
10 RIGHTS UNDER SECTION 25-409 IN THE COUNTY IN WHICH THE CHILD PERMANENTLY
11 RESIDES.

12 Sec. 5. Section 25-403, Arizona Revised Statutes, is amended to read:

13 25-403. Custody; best interests of child

14 A. The court shall determine ~~custody~~ LEGAL DECISION-MAKING AND
15 PARENTING TIME, either originally or on petition for modification, in
16 accordance with the best interests of the child. The court shall consider
17 all ~~relevant~~ factors THAT ARE RELEVANT TO THE CHILD'S PHYSICAL AND EMOTIONAL
18 WELL-BEING, including:

19 ~~1. The wishes of the child's parent or parents as to custody.~~

20 ~~2. The wishes of the child as to the custodian.~~

21 1. THE PAST, PRESENT AND POTENTIAL FUTURE RELATIONSHIP BETWEEN THE
22 PARENT AND THE CHILD.

23 ~~3.~~ 2. The interaction and interrelationship of the child with the
24 child's parent or parents, the child's siblings and any other person who may
25 significantly affect the child's best interest.

26 ~~4.~~ 3. The child's adjustment to home, school and community.

27 4. IF THE CHILD IS OF SUITABLE AGE AND MATURITY, THE WISHES OF THE
28 CHILD AS TO LEGAL DECISION-MAKING AND PARENTING TIME.

29 5. The mental and physical health of all individuals involved.

30 6. Which parent is more likely to allow the child frequent, ~~and~~
31 meaningful AND continuing contact with the other parent. This paragraph does
32 not apply if the court determines that a parent is acting in good faith to
33 protect the child from witnessing an act of domestic violence or being a
34 victim of domestic violence or child abuse.

35 ~~7. Whether one parent, both parents or neither parent has provided~~
36 ~~primary care of the child.~~

37 7. WHETHER ONE PARENT INTENTIONALLY MISLED THE COURT TO CAUSE AN
38 UNNECESSARY DELAY, TO INCREASE THE COST OF LITIGATION OR TO PERSUADE THE
39 COURT TO GIVE A LEGAL DECISION-MAKING OR A PARENTING TIME PREFERENCE TO THAT
40 PARENT.

41 8. WHETHER THERE HAS BEEN DOMESTIC VIOLENCE OR CHILD ABUSE PURSUANT TO
42 SECTION 25-403.03

43 ~~8.~~ 9. The nature and extent of coercion or duress used by a parent in
44 obtaining an agreement regarding ~~custody~~ LEGAL DECISION-MAKING OR PARENTING
45 TIME.

1 ~~9-~~ 10. Whether a parent has complied with chapter 3, article 5 of
2 this title.

3 ~~10-~~ 11. Whether either parent was convicted of an act of false
4 reporting of child abuse or neglect under section 13-2907.02.

5 ~~11. Whether there has been domestic violence or child abuse as defined~~
6 ~~in section 25-403.03.~~

7 B. In a contested ~~custody~~ LEGAL DECISION-MAKING OR PARENTING TIME
8 case, the court shall make specific findings on the record about all relevant
9 factors and the reasons for which the decision is in the best interests of
10 the child.

11 Sec. 6. Repeal

12 Section 25-403.01, Arizona Revised Statutes, is repealed.

13 Sec. 7. Title 25, chapter 4, article 1, Arizona Revised Statutes, is
14 amended by adding a new section 25-403.01, to read:

15 25-403.01. Sole and joint legal decision-making and parenting
16 time

17 A. IN AWARDING LEGAL DECISION-MAKING, THE COURT MAY ORDER SOLE LEGAL
18 DECISION-MAKING OR JOINT LEGAL DECISION-MAKING.

19 B. IN DETERMINING THE LEVEL OF DECISION-MAKING THAT IS IN THE CHILD'S
20 BEST INTERESTS, THE COURT SHALL CONSIDER THE FACTORS PRESCRIBED IN SECTION
21 25-403, SUBSECTION A AND ALL OF THE FOLLOWING:

22 1. THE AGREEMENT OR LACK OF AN AGREEMENT BY THE PARENTS REGARDING
23 JOINT LEGAL DECISION-MAKING.

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

26 3. THE PAST, PRESENT AND FUTURE ABILITIES OF THE PARENTS TO COOPERATE
27 IN DECISION-MAKING ABOUT THE CHILD TO THE EXTENT REQUIRED BY THE ORDER OF
28 JOINT LEGAL DECISION-MAKING.

29 4. WHETHER THE JOINT LEGAL DECISION-MAKING ARRANGEMENT IS LOGISTICALLY
30 POSSIBLE.

31 C. AN ORDER FOR SOLE LEGAL DECISION-MAKING DOES NOT ALLOW THE PARENT
32 DESIGNATED AS SOLE LEGAL DECISION-MAKER TO ALTER UNILATERALLY A COURT-ORDERED
33 PARENTING TIME PLAN.

34 D. A PARENT WHO IS NOT GRANTED SOLE OR JOINT LEGAL DECISION-MAKING IS
35 ENTITLED TO REASONABLE PARENTING TIME TO ENSURE THAT THE MINOR CHILD HAS
36 SUBSTANTIAL, FREQUENT, MEANINGFUL AND CONTINUING CONTACT WITH THE PARENT
37 UNLESS THE COURT FINDS, AFTER A HEARING, THAT PARENTING TIME WOULD ENDANGER
38 THE CHILD'S PHYSICAL, MENTAL, MORAL OR EMOTIONAL HEALTH.

39 Sec. 8. Section 25-403.02, Arizona Revised Statutes, is amended to
40 read:

41 25-403.02. Parenting plans

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

44 A. IF THE CHILD'S PARENTS CANNOT AGREE ON A PLAN FOR LEGAL
45 DECISION-MAKING OR PARENTING TIME, EACH PARENT MUST SUBMIT A PROPOSED
46 PARENTING PLAN.

1 B. CONSISTENT WITH THE CHILD'S BEST INTERESTS IN SECTION 25-403 AND
2 SECTIONS 25-403.03, 25-403.04 AND 25-403.05, THE COURT SHALL ADOPT A
3 PARENTING PLAN THAT PROVIDES FOR BOTH PARENTS TO SHARE LEGAL DECISION-MAKING
4 REGARDING THEIR CHILD AND THAT MAXIMIZES THEIR RESPECTIVE PARENTING TIME.
5 THE COURT SHALL NOT PREFER A PARENT'S PROPOSED PLAN BECAUSE OF THE PARENT'S
6 OR CHILD'S GENDER.

7 C. PARENTING PLANS SHALL INCLUDE AT LEAST THE FOLLOWING:

8 1. A DESIGNATION OF THE LEGAL DECISION-MAKING AS JOINT OR SOLE AS
9 DEFINED IN SECTION 25-401.

10 ~~1-~~ 2. Each parent's rights and responsibilities for the personal care
11 of the child and for decisions in areas such as education, health care and
12 religious training.

13 ~~2-~~ 3. A PRACTICAL schedule of ~~the physical residence of~~ PARENTING
14 TIME FOR the child, including holidays and school vacations.

15 4. A PROCEDURE FOR THE EXCHANGES OF THE CHILD, INCLUDING LOCATION AND
16 RESPONSIBILITY FOR TRANSPORTATION.

17 ~~3-~~ 5. A procedure by which proposed changes, disputes and alleged
18 breaches may be mediated or resolved, which may include the use of
19 conciliation services or private counseling.

20 ~~4-~~ 6. A procedure for periodic review of the plan's terms by the
21 parents.

22 ~~5- A statement that the parties understand that joint custody does not~~
23 ~~necessarily mean equal parenting time.~~

24 7. A PROCEDURE FOR COMMUNICATING WITH EACH OTHER ABOUT THE CHILD,
25 INCLUDING METHODS AND FREQUENCY.

26 ~~6-~~ 8. A statement that each party has read, understands and will
27 abide by the notification requirements of section 25-403.05, subsection B.

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

32 E. SHARED LEGAL DECISION-MAKING DOES NOT NECESSARILY MEAN EQUAL
33 PARENTING TIME.

34 Sec. 9. Section 25-403.03, Arizona Revised Statutes, is amended to
35 read:

36 25-403.03. Domestic violence and child abuse

37 A. Notwithstanding subsection D of this section, joint ~~eustody~~ LEGAL
38 DECISION-MAKING shall not be awarded if the court makes a finding of the
39 existence of significant domestic violence pursuant to section 13-3601 or if
40 the court finds by a preponderance of the evidence that there has been a
41 significant history of domestic violence.

42 B. The court shall consider evidence of domestic violence as being
43 contrary to the best interests of the child. The court shall consider the
44 safety and well-being of the child and of the victim of the act of domestic
45 violence to be of primary importance. The court shall consider a

1 perpetrator's history of causing or threatening to cause physical harm to
2 another person.

3 C. To determine if a person has committed an act of domestic violence
4 the court, subject to the rules of evidence, shall consider all relevant
5 factors including the following:

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

13 D. If the court determines that a parent who is seeking ~~custody~~ SOLE
14 OR JOINT LEGAL DECISION-MAKING has committed an act of domestic violence
15 against the other parent, there is a rebuttable presumption that an award of
16 ~~custody~~ SOLE OR JOINT LEGAL DECISION-MAKING to the parent who committed the
17 act of domestic violence is contrary to the child's best interests. This
18 presumption does not apply if both parents have committed an act of domestic
19 violence. For the purposes of this subsection, a person commits an act of
20 domestic violence if that person does any of the following:

- 21 1. Intentionally, knowingly or recklessly causes or attempts to cause
22 sexual assault or serious physical injury.
- 23 2. Places a person in reasonable apprehension of imminent serious
24 physical injury to any person.
- 25 3. Engages in a pattern of behavior for which a court may issue an ex
26 parte order to protect the other parent who is seeking child custody or to
27 protect the child and the child's siblings.

28 E. To determine if the parent has rebutted the presumption the court
29 shall consider all of the following:

- 30 1. Whether the parent has demonstrated that being awarded sole ~~custody~~
31 or joint ~~physical~~ LEGAL DECISION-MAKING or ~~legal-custody~~ SUBSTANTIALLY EQUAL
32 PARENTING TIME is in the child's best interests.
- 33 2. Whether the parent has successfully completed a batterer's
34 prevention program.
- 35 3. Whether the parent has successfully completed a program of alcohol
36 or drug abuse counseling, if the court determines that counseling is
37 appropriate.
- 38 4. Whether the parent has successfully completed a parenting class, if
39 the court determines that a parenting class is appropriate.
- 40 5. If the parent is on probation, parole or community supervision,
41 whether the parent is restrained by a protective order that was granted after
42 a hearing.
- 43 6. Whether the parent has committed any further acts of domestic
44 violence.

45 F. If the court finds that a parent has committed an act of domestic
46 violence, that parent has the burden of proving to the court's satisfaction

1 that parenting time will not endanger the child or significantly impair the
2 child's emotional development. If the parent meets this burden to the
3 court's satisfaction, the court shall place conditions on parenting time that
4 best protect the child and the other parent from further harm. The court
5 may:

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

8 2. Order that an agency specified by the court must supervise
9 parenting time. If the court allows a family or household member to
10 supervise parenting time, the court shall establish conditions that this
11 person must follow during parenting time.

12 3. Order the parent who committed the act of domestic violence to
13 attend and complete, to the court's satisfaction, a program of intervention
14 for perpetrators of domestic violence and any other counseling the court
15 orders.

16 4. Order the parent who committed the act of domestic violence to
17 abstain from possessing or consuming alcohol or controlled substances during
18 parenting time and for twenty-four hours before parenting time.

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

21 6. Prohibit overnight parenting time.

22 7. Require a bond from the parent who committed the act of domestic
23 violence for the child's safe return.

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

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

29 G. The court shall not order joint counseling between a victim and the
30 perpetrator of domestic violence. The court may ~~refer a victim to~~
31 ~~appropriate counseling and shall~~ provide a victim with written information
32 about available community resources related to domestic violence.

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

37 I. In determining whether the absence or relocation of a parent shall
38 be weighed against that parent in determining ~~custody~~ LEGAL DECISION-MAKING
39 or parenting time, the court may consider whether the absence or relocation
40 was caused by an act of domestic violence by the other parent.

41 Sec. 10. Section 25-403.04, Arizona Revised Statutes, is amended to
42 read:

43 25-403.04. Substance abuse

44 A. If the court determines that a parent HAS ABUSED DRUGS OR ALCOHOL
45 OR has been convicted of any drug offense under title 13, chapter 34 or any
46 violation of section 28-1381, 28-1382 or 28-1383 within twelve months before

1 the petition or the request for ~~custody~~ LEGAL DECISION-MAKING OR PARENTING
2 TIME is filed, there is a rebuttable presumption that sole or joint ~~custody~~
3 LEGAL DECISION-MAKING by that parent is not in the child's best interests.
4 In making this determination the court shall state its:

5 1. Findings of fact that support its determination that the parent
6 ABUSED DRUGS OR ALCOHOL OR was convicted of the offense.

7 2. Findings that the ~~custody~~ LEGAL DECISION-MAKING or parenting time
8 arrangement ordered by the court appropriately protects the child.

9 B. To determine if the person has rebutted the presumption, at a
10 minimum the court shall consider the following evidence:

11 1. The absence of any conviction of any other drug offense during the
12 previous five years.

13 2. Results of random drug testing for a six month period that indicate
14 that the person is not using drugs as proscribed by title 13, chapter 34.

15 3. RESULTS OF ALCOHOL OR DRUG SCREENING PROVIDED BY A FACILITY
16 APPROVED BY THE DEPARTMENT OF HEALTH SERVICES.

17 Sec. 11. Section 25-403.05, Arizona Revised Statutes, is amended to
18 read:

19 25-403.05. Sexual offenders; murderers; legal decision-making
20 and parenting time; notification of risk to child

21 A. Unless the court finds that there is no significant risk to the
22 child and states its reasons in writing, the court shall not grant a person
23 sole or joint ~~physical or legal custody~~ LEGAL DECISION-MAKING of a child or
24 unsupervised parenting time with a child if the person:

25 1. Is a registered sex offender.

26 2. Has been convicted of murder in the first degree and the victim of
27 the murder was the other parent of the child who is the subject of the order.
28 In making its finding, the court may consider, among other factors, the
29 following:

30 (a) Credible evidence that the convicted parent was a victim of
31 domestic violence, as defined in section 13-3601, committed by the murdered
32 parent.

33 (b) Testimony of an expert witness that the convicted parent suffered
34 trauma from abuse committed by the murdered parent.

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

43 Sec. 12. Section 25-403.07, Arizona Revised Statutes, is amended to
44 read:

45 25-403.07. Identification of a primary caretaker and public
46 assistance

1 The court may specify one parent as the primary caretaker of the child
2 and one home as the primary home of the child for the purposes of defining
3 eligibility for public assistance. This finding does not diminish the rights
4 of either parent and does not create a presumption for or against either
5 parent in a proceeding for the modification of a eustody LEGAL
6 DECISION-MAKING OR PARENTING TIME order.

7 Sec. 13. Section 25-403.08, Arizona Revised Statutes, is amended to
8 read:

9 25-403.08. Resources and fees

10 A. In a proceeding regarding sole eustody or joint eustody LEGAL
11 DECISION-MAKING OR PARENTING TIME, either party may request attorney fees,
12 costs and expert witness fees to enable the party with insufficient resources
13 to obtain adequate legal representation and to prepare evidence for the
14 hearing.

15 B. If the court finds there is a financial disparity between the
16 parties, the court may order payment of reasonable fees, expenses and costs
17 to allow adequate preparation.

18 Sec. 14. Section 25-403.09, Arizona Revised Statutes, is amended to
19 read:

20 25-403.09. Child support

21 A. For any eustody PARENTING TIME order entered under this article,
22 the court shall determine an amount of child support in accordance with
23 section 25-320 and guidelines established pursuant to that section.

24 B. An award of joint eustody LEGAL DECISION-MAKING OR A SUBSTANTIALLY
25 EQUAL PARENTING TIME PLAN does not diminish the responsibility of either
26 parent to provide for the support of the child.

27 Sec. 15. Section 25-404, Arizona Revised Statutes, is amended to read:

28 25-404. Temporary orders

29 A. A party to a eustody LEGAL DECISION-MAKING AND PARENTING TIME
30 proceeding may move for a temporary eustody order. This motion must be
31 supported by pleadings as provided in section 25-411. The court may award
32 temporary eustody LEGAL DECISION-MAKING AND PARENTING TIME under the
33 standards of section 25-403 after a hearing, or, if there is no objection,
34 solely on the basis of the pleadings.

35 B. If a proceeding for dissolution of marriage or legal separation is
36 dismissed, any temporary eustody LEGAL DECISION-MAKING OR PARENTING TIME
37 order is vacated unless a parent or the child's custodian moves that the
38 proceeding continue as a eustody LEGAL DECISION-MAKING OR PARENTING TIME
39 proceeding and the court finds, after a hearing, that the circumstances of
40 the parents and the best interest of the child require that a eustody LEGAL
41 DECISION-MAKING OR PARENTING TIME PLAN decree be issued.

42 C. If a eustody LEGAL DECISION-MAKING OR PARENTING TIME proceeding
43 commenced in the absence of a petition for dissolution of marriage or legal
44 separation is dismissed, any temporary custody order thereby is vacated.

45 Sec. 16. Section 25-406, Arizona Revised Statutes, is amended to read:

46 25-406. Investigations and reports

1 A. In contested ~~custody~~ LEGAL DECISION-MAKING AND PARENTING TIME
2 proceedings, and in other custody proceedings if a parent or the child's
3 custodian so requests, the court may order an investigation and report
4 concerning ~~custodial~~ LEGAL DECISION-MAKING OR PARENTING TIME arrangements for
5 the child. The investigation and report may be made by the court social
6 service agency, the staff of the juvenile court, the local probation or
7 welfare department, or a private person. The report must include a written
8 affirmation by the person completing the report that the person has met the
9 training requirements prescribed in subsection C.

10 B. If an investigation ~~or~~ AND report ~~is~~ ARE ordered pursuant to this
11 section or if the court appoints a family court advisor, the court shall
12 allocate cost based on the financial circumstances of both parties.

13 C. ~~Beginning on July 1, 2006,~~ The court shall require A COURT
14 APPOINTED ATTORNEY FOR A CHILD, A COURT APPOINTED ADVISOR OR any person who
15 conducts an investigation or prepares a report pursuant to this section to
16 receive training that meets the minimum standards prescribed by the domestic
17 relations committee, established pursuant to section 25-323.02 as follows:

18 1. Six initial hours of TRAINING ON domestic violence ~~training~~.

19 2. Six initial hours of child abuse training.

20 3. Four subsequent hours of training every two years on domestic
21 violence and child abuse.

22 D. A person ~~that~~ WHO has completed professional training to become
23 licensed or certified may use that training to completely or partially
24 fulfill the requirements in subsection C if the training included at least
25 six hours each on domestic violence and child abuse ~~if the training~~ AND meets
26 the minimum standards prescribed by the domestic relations committee.
27 Subsequent professional training in these subject matters may be used to
28 partially or completely fulfill the training requirements prescribed in
29 subsection C if the training meets the minimum standards prescribed by the
30 domestic relations committee.

31 E. A physician who is licensed pursuant to title 32, chapter 13 or 17
32 is exempt from the training requirements prescribed in subsection C.

33 F. In preparing a report concerning a child, the investigator may
34 consult any person who may have information about the child or the child's
35 potential ~~custodial~~ LEGAL DECISION-MAKING AND PARENTING TIME arrangements.

36 G. The court shall mail the investigator's report to counsel at least
37 ten days ~~prior to~~ BEFORE the hearing. The investigator shall make available
38 to counsel the names and addresses of all persons whom the investigator has
39 consulted. Any party to the proceeding may call for examination of the
40 investigator and any person consulted by the investigator.

41 Sec. 17. Section 25-407, Arizona Revised Statutes, is amended to read:

42 25-407. Legal decision-making and parenting time hearings;
43 priority; costs; record

44 A. ~~Custody~~ LEGAL DECISION-MAKING AND PARENTING TIME proceedings shall
45 receive priority in being set for hearing.

1 B. The court may tax as costs the payment of necessary travel and
2 other expenses incurred by any person whose presence at the hearing the court
3 deems necessary to determine the best interest of the child.

4 C. The court, without a jury, shall determine questions of law and
5 fact. If it finds that a public hearing may be detrimental to the child's
6 best interest, the court may exclude the public from a custody hearing, but
7 may admit any person who has a direct and legitimate interest in the
8 particular case or a legitimate educational or research interest in the work
9 of the court.

10 D. If the court finds that to protect the child's welfare, the record
11 of any interview, report, investigation, ~~or testimony~~ in a ~~custody~~ LEGAL
12 DECISION-MAKING OR PARENTING TIME proceeding should be kept secret, the court
13 may then make an appropriate order sealing the record.

14 Sec. 18. Section 25-408, Arizona Revised Statutes, is amended to read:

15 25-408. Rights of each parent; parenting time; relocation of
16 child; exception; enforcement; access to records

17 ~~A. A parent who is not granted custody of the child is entitled to~~
18 ~~reasonable parenting time rights to ensure that the minor child has frequent~~
19 ~~and continuing contact with the noncustodial parent unless the court finds,~~
20 ~~after a hearing, that parenting time would endanger seriously the child's~~
21 ~~physical, mental, moral or emotional health.~~

22 ~~B.~~ A. If by written agreement or court order both parents are
23 entitled to ~~custody~~ JOINT LEGAL DECISION-MAKING or UNSUPERVISED parenting
24 time and both parents reside in the state, at least sixty days' advance
25 written notice shall be provided to the other parent before a parent may do
26 either of the following:

- 27 1. Relocate the child outside the state.
- 28 2. Relocate the child more than one hundred miles within the state.

29 ~~C.~~ B. The notice required by this section shall be made by certified
30 mail, return receipt requested, or pursuant to the Arizona rules of family
31 law procedure. The court shall sanction a parent who, without good cause,
32 does not comply with the notification requirements of this subsection. The
33 court may impose a sanction that will affect ~~custody~~ LEGAL DECISION-MAKING or
34 parenting time only in accordance with the child's best interests.

35 ~~D.~~ C. Within thirty days after notice is made the nonmoving parent
36 may petition the court to prevent relocation of the child. After expiration
37 of this time any petition or other application to prevent relocation of the
38 child may be granted only on a showing of good cause. This subsection does
39 not prohibit a parent who is seeking to relocate the child from petitioning
40 the court for a hearing, on notice to the other parent, to determine the
41 appropriateness of a relocation that may adversely affect the other parent's
42 ~~custody~~ LEGAL DECISION-MAKING or parenting time rights.

43 ~~E.~~ D. Subsection ~~B.~~ A of this section does not apply if provision for
44 relocation of a child has been made by a court order or a written agreement
45 of the parties that is dated within one year of the proposed relocation of
46 the child.

1 ~~F~~ E. Pending the determination by the court of a petition or
2 application to prevent relocation of the child:

3 1. A parent with sole ~~custody~~ LEGAL DECISION-MAKING or a parent with
4 joint ~~custody~~ LEGAL DECISION-MAKING and primary ~~physical-custody~~ RESIDENCE OF
5 A CHILD who is required by circumstances of health or safety or employment of
6 that parent or that parent's spouse to relocate in less than sixty days after
7 written notice has been given to the other parent may temporarily relocate
8 with the child.

9 2. A parent who shares joint ~~custody~~ LEGAL DECISION-MAKING and
10 substantially equal ~~physical-custody~~ PARENTING TIME and who is required by
11 circumstances of health or safety or employment of that parent or that
12 parent's spouse to relocate in less than sixty days after written notice has
13 been given to the other parent may temporarily relocate with the child only
14 if both parents execute a written agreement to permit relocation of the
15 child.

16 ~~G~~ F. The court shall determine whether to allow the parent to
17 relocate the child in accordance with the child's best interests. The burden
18 of proving what is in the child's best interests is on the parent who is
19 seeking to relocate the child. To the extent practicable the court shall
20 also make appropriate arrangements to ensure the continuation of a meaningful
21 relationship between the child and both parents.

22 ~~H~~ G. The court shall not deviate from a provision of any parenting
23 plan or other written agreement by which the parents specifically have agreed
24 to allow or prohibit relocation of the child unless the court finds that the
25 provision is no longer in the child's best interests. There is a rebuttable
26 presumption that a provision from any parenting plan or other written
27 agreement is in the child's best interests.

28 ~~I~~ H. In determining the child's best interests the court shall
29 consider all relevant factors including:

- 30 1. The factors prescribed under section 25-403.
- 31 2. Whether the relocation is being made or opposed in good faith and
32 not to interfere with or to frustrate the relationship between the child and
33 the other parent or the other parent's right of access to the child.
- 34 3. The prospective advantage of the move for improving the general
35 quality of life for the custodial parent or for the child.
- 36 4. The likelihood that the parent with whom the child will reside
37 after the relocation will comply with parenting time orders.
- 38 5. Whether the relocation will allow a realistic opportunity for
39 parenting time with each parent.
- 40 6. The extent to which moving or not moving will affect the emotional,
41 physical or developmental needs of the child.
- 42 7. The motives of the parents and the validity of the reasons given
43 for moving or opposing the move including the extent to which either parent
44 may intend to gain a financial advantage regarding continuing child support
45 obligations.
- 46 8. The potential effect of relocation on the child's stability.

1 ~~I.~~ I. The court shall assess attorney fees and court costs against
2 either parent if the court finds that the parent has unreasonably denied,
3 restricted or interfered with court-ordered parenting time.

4 ~~K.~~ J. Pursuant to section 25-403.06, ~~the noncustodial~~ EACH parent is
5 entitled to have access to documents and other information about the child
6 unless the court finds that access would endanger seriously the child's or
7 ~~the custodial~~ A parent's physical, mental, moral or emotional health.

8 Sec. 19. Repeal

9 Section 25-409, Arizona Revised Statutes, is repealed.

10 Sec. 20. Title 25, chapter 4, article 1, Arizona Revised Statutes, is
11 amended by adding a new section 25-409, to read:

12 25-409. Third party rights

13 A. PURSUANT TO SECTION 25-402, SUBSECTION B, PARAGRAPH 2, A PERSON
14 OTHER THAN A LEGAL PARENT MAY PETITION THE SUPERIOR COURT FOR LEGAL
15 DECISION-MAKING AUTHORITY OR PLACEMENT OF THE CHILD. THE COURT SHALL
16 SUMMARILY DENY A PETITION UNLESS IT FINDS THAT THE PETITIONER'S INITIAL
17 PLEADING ESTABLISHES THAT ALL OF THE FOLLOWING ARE TRUE:

18 1. THE PERSON FILING THE PETITION STANDS IN LOCO PARENTIS TO THE
19 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 LEGAL
22 DECISION-MAKING.

23 3. A COURT OF COMPETENT JURISDICTION HAS NOT ENTERED OR APPROVED AN
24 ORDER CONCERNING LEGAL DECISION-MAKING OR PARENTING TIME WITHIN ONE YEAR
25 BEFORE THE PERSON FILED A PETITION PURSUANT TO THIS SECTION, UNLESS THERE IS
26 REASON TO BELIEVE THE CHILD'S PRESENT ENVIRONMENT MAY SERIOUSLY ENDANGER THE
27 CHILD'S PHYSICAL, 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 LEGAL DECISION-MAKING TO A LEGAL PARENT SERVES THE
36 CHILD'S 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 LEGAL DECISION-MAKING TO A LEGAL PARENT IS NOT CONSISTENT WITH
40 THE CHILD'S BEST INTERESTS.

41 C. PURSUANT TO SECTION 25-402, 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 LEGAL DECISION-MAKING AUTHORITY OVER
20 THE 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 LEGAL DECISION-MAKING AUTHORITY OR VISITATION RIGHTS CONCERNING THE
24 CHILD.

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

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

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

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

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

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

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

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

42 G. A GRANDPARENT OR GREAT-GRANDPARENT SEEKING VISITATION RIGHTS UNDER
43 THIS SECTION SHALL PETITION IN THE SAME ACTION IN WHICH THE FAMILY COURT
44 PREVIOUSLY DECIDED LEGAL DECISION-MAKING AND PARENTING TIME OR, IF NO SUCH
45 CASE EXISTED, BY SEPARATE PETITION IN THE COUNTY OF THE CHILD'S HOME STATE,
46 AS 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 Sec. 21. Section 25-410, Arizona Revised Statutes, is amended to read:
7 25-410. Judicial supervision

8 A. Except as otherwise agreed by the parties in writing at the time of
9 the ~~custody~~ LEGAL DECISION-MAKING OR PARENTING TIME ORDER OR DIVORCE decree,
10 the ~~custodian~~ PARENT DESIGNATED AS SOLE LEGAL DECISION-MAKER may determine
11 the child's upbringing, including the child's education, CARE, health— care
12 and religious training, unless, on motion by the ~~noncustodial~~ OTHER parent,
13 the court, after a hearing, finds that in the absence of a specific
14 limitation of the ~~custodian's~~ PARENT DESIGNATED AS THE SOLE LEGAL
15 DECISION-MAKER'S authority, the child's physical health would be endangered
16 or the child's emotional development would be significantly impaired.

17 B. If either parent requests the order, or if all contestants agree to
18 the order, or if the court finds that in the absence of the order the child's
19 physical health would be endangered or the child's emotional development
20 would be significantly impaired, and if the court finds that the best
21 interests of the child would be served, the court shall order a local social
22 service agency to exercise continuing supervision over the case to assure
23 that the custodial or parenting time terms of the decree are carried out. At
24 the discretion of the court, reasonable fees for the supervision may be
25 charged to one or both parents, provided that the fees have been approved by
26 the supreme court.

27 Sec. 22. Section 25-411, Arizona Revised Statutes, is amended to read:
28 25-411. Modification of legal decision-making or parenting
29 time; affidavit; contents; military families

30 A. A person shall not make a motion to modify a ~~custody~~ LEGAL
31 DECISION-MAKING OR PARENTING TIME decree earlier than one year after its
32 date, unless the court permits it to be made on the basis of affidavits that
33 there is reason to believe the child's present environment may seriously
34 endanger the child's physical, mental, moral or emotional health. At any
35 time after a joint ~~custody~~ LEGAL DECISION-MAKING order is entered, a parent
36 may petition the court for modification of the order on the basis of evidence
37 that domestic violence involving a violation of section 13-1201 or 13-1204,
38 spousal abuse or child abuse occurred since the entry of the joint ~~custody~~
39 LEGAL DECISION-MAKING order. Six months after a joint ~~custody~~ LEGAL
40 DECISION-MAKING order is entered, a parent may petition the court for
41 modification of the order based on the failure of the other parent to comply
42 with the provisions of the order. A motion or petition to modify ~~a-custody~~
43 AN order shall meet the requirements of this section. Except as otherwise
44 provided in this section, if a ~~custodial~~ parent is a member of the United
45 States armed forces, the court shall consider the terms of that parent's

1 military family care plan to determine what is in the child's best interest
2 during ~~the custodial~~ THAT parent's military deployment.

3 B. If the parent with whom the parent's child resides a majority of
4 the time receives temporary duty, deployment, activation or mobilization
5 orders from the United States military that involve moving a substantial
6 distance away from the parent's residence a court shall not enter a final
7 order modifying parental rights and responsibilities and parent-child contact
8 in an existing order until ninety days after the deployment ends, unless a
9 modification is agreed to by the deploying parent.

10 C. The court shall not consider a parent's absence caused by
11 deployment or mobilization or the potential for future deployment or
12 mobilization as the sole factor supporting a real, substantial and
13 unanticipated change in circumstances pursuant to this section.

14 D. On motion of a deploying or nondeploying, mobilizing or absent
15 military parent, the court, after a hearing, shall enter a temporary order
16 modifying parental rights and responsibilities or parent-child contact during
17 the period of deployment or mobilization if:

18 1. A military parent who has ~~custody~~ LEGAL DECISION-MAKING or
19 parenting time pursuant to an existing court order has received notice from
20 military leadership that the military parent will deploy or mobilize in the
21 near future.

22 2. The deployment or mobilization would have a material effect on the
23 military parent's ability to exercise parental rights and responsibilities or
24 parent-child contact.

25 E. On motion of a deploying parent, if reasonable advance notice is
26 given and good cause is shown, the court shall allow that parent to present
27 testimony and evidence by electronic means with respect to parenting time or
28 parent-child contact matters instituted pursuant to this section if the
29 deployment of that parent has a material effect on that parent's ability to
30 appear in person at a regularly scheduled hearing. For the purposes of this
31 subsection, "electronic means" includes communication by telephone or video
32 teleconference.

33 F. The court shall hear motions for modification because of deployment
34 as expeditiously as possible.

35 G. If a military parent receives military temporary duty, deployment,
36 activation or mobilization orders that involve moving a substantial distance
37 away from the military parent's residence or that otherwise have a material
38 effect on the military parent's ability to exercise parenting time, at the
39 request of the military parent, for the duration of the military parent's
40 absence the court may delegate the military parent's parenting time, or a
41 portion of that time, to a child's family member, including a stepparent, or
42 to another person who is not the child's parent but who has a close and
43 substantial relationship to the minor child, if the court determines that is
44 in the child's best interest. The court shall not allow the delegation of
45 parenting time to a person who would be subject to limitations on parenting
46 time. The parties shall attempt to resolve disputes regarding delegation of

1 parenting time through the dispute resolution process specified in their
2 parenting plan, unless excused by the court for good cause shown. A court
3 order pursuant to this subsection does not establish separate rights to
4 parenting time for a person other than a parent.

5 H. All temporary modification orders pursuant to this section shall
6 include a specific transition schedule to facilitate a return to the
7 predeployment order within ten days after the deployment ends, taking into
8 consideration the child's best interests.

9 I. A ~~custody~~ decree or order that a court enters in contemplation of
10 or during the military deployment of a ~~custodial~~ parent outside of the
11 continental United States shall specifically reference the deployment and
12 include provisions governing the ~~custody~~ LEGAL DECISION-MAKING OR PARENTING
13 TIME ARRANGEMENTS, OR BOTH, of the minor child after the deployment ends.
14 Either parent may file a petition with the court after the deployment ends to
15 modify the decree or order, in compliance with subsection L of this section.
16 The court shall hold a hearing or conference on the petition within thirty
17 days after the petition is filed.

18 J. The court may modify an order granting or denying parenting time
19 rights whenever modification would serve the best interest of the child, but
20 the court shall not restrict a parent's parenting time rights unless it finds
21 that the parenting time would endanger seriously the child's physical,
22 mental, moral or emotional health.

23 K. If after a ~~custody~~ LEGAL DECISION-MAKING or parenting time order is
24 in effect one of the parents is charged with a dangerous crime against
25 children as defined in section 13-705, child molestation as defined in
26 section 13-1410 or an act of domestic violence as prescribed in section
27 13-3601 in which the victim is a minor, the other parent may petition the
28 court for an expedited hearing. Pending the expedited hearing, the court may
29 suspend parenting time or change ~~custody~~ LEGAL DECISION-MAKING ex parte.

30 L. To modify any type of ~~custody~~ LEGAL DECISION-MAKING OR PARENTING
31 TIME order a person shall submit an affidavit or verified petition setting
32 forth detailed facts supporting the requested modification and shall give
33 notice, together with a copy of the affidavit or verified petition, to other
34 parties to the proceeding, who may file opposing affidavits. The court shall
35 deny the motion unless it finds that adequate cause for hearing the motion is
36 established by the pleadings, in which case it shall set a date for hearing
37 on why the requested modification should not be granted.

38 M. The court shall assess attorney fees and costs against a party
39 seeking modification if the court finds that the modification action is
40 vexatious and constitutes harassment.

41 N. Subsection L of this section does not apply if the requested relief
42 is for the modification or clarification of ~~visitation~~ PARENTING TIME and not
43 for a change of ~~joint custody, joint legal custody, joint physical custody or~~
44 ~~sole custody~~ LEGAL DECISION-MAKING.

45 Sec. 23. Section 25-413, Arizona Revised Statutes, is amended to read:
46 25-413. 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
3 section 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~~ PARENTING
8 TIME or ~~custody~~ LEGAL DECISION-MAKING disputes under this chapter or chapter
9 6 of this title.

10 C. The county treasurer shall disburse monies from the fund only at
11 the direction of the presiding judge of the superior court.

12 D. On notice of the presiding judge, the county treasurer shall invest
13 monies in the fund and monies earned from investment shall be credited to the
14 fund.

15 E. Monies that are expended from the fund shall be used to supplement,
16 and not supplant, any state or county appropriations that would otherwise be
17 available for programs described in subsection B of this section.

18 F. On or before August 10 of each year, the county treasurer shall
19 submit a report to the presiding judge that shows the amount of monies in the
20 domestic relations education and mediation fund.

21 Sec. 24. Repeal

22 Section 25-415, Arizona Revised Statutes, is repealed.

23 Sec. 25. Title 25, chapter 4, article 1, Arizona Revised Statutes, is
24 amended by adding a new section 25-415, to read:

25 25-415. Sanctions for litigation misconduct

26 A. THE COURT SHALL SANCTION A LITIGANT FOR COSTS AND REASONABLE
27 ATTORNEY FEES INCURRED BY AN ADVERSE PARTY IF THE COURT FINDS THAT THE
28 LITIGANT HAS DONE ANY ONE OR MORE OF THE FOLLOWING:

29 1. KNOWINGLY PRESENTED A FALSE CLAIM UNDER SECTION 25-403, 25-403.03
30 OR 25-403.04 WITH KNOWLEDGE THAT THE CLAIM WAS FALSE.

31 2. KNOWINGLY ACCUSED AN ADVERSE PARTY OF MAKING A FALSE CLAIM UNDER
32 SECTION 25-403, 25-403.03 OR 25-403.04 WITH KNOWLEDGE THAT THE CLAIM WAS
33 ACTUALLY TRUE.

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

38 B. IF THE COURT MAKES A FINDING AGAINST ANY LITIGANT UNDER SUBSECTION
39 A OF THIS SECTION, IT MAY ALSO:

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

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

1 3. MODIFY LEGAL DECISION-MAKING OR PARENTING TIME IF THAT MODIFICATION
2 WOULD ALSO SERVE THE BEST INTERESTS OF THE CHILD.

3 C. FOR THE PURPOSES OF THIS SECTION, A FALSE CLAIM DOES NOT MEAN A
4 CLAIM THAT IS MERELY UNSUBSTANTIATED.

5 D. THIS SECTION DOES NOT PREVENT THE COURT FROM AWARDING COSTS AND
6 ATTORNEY FEES OR IMPOSING OTHER SANCTIONS IF AUTHORIZED ELSEWHERE BY STATE OR
7 FEDERAL LAW.

8 Sec. 26. Section 25-803, Arizona Revised Statutes, is amended to read:

9 25-803. Persons who may originate proceedings; legal
10 decision-making; parenting time; conciliation court

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

14 1. The mother.

15 2. The father.

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

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

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

21 B. An adult may bring an action to establish the adult's biological
22 parent.

23 C. Any party to a proceeding under this article other than the state
24 may request that ~~custody~~ LEGAL DECISION-MAKING and specific parenting time be
25 determined as a part of the proceeding. When paternity is established the
26 court may award ~~custody and~~ LEGAL DECISION-MAKING AND parenting time as
27 provided in section 25-408. The attorney general or county attorney shall
28 not seek or defend any ancillary matters such as ~~custody~~ LEGAL
29 DECISION-MAKING or parenting time.

30 D. In any case in which paternity is established the parent with whom
31 the child has resided for the greater part of the last six months shall have
32 legal ~~custody~~ DECISION-MAKING unless otherwise ordered by the court.

33 E. The services of the conciliation court may be used in regard to
34 disputed matters of ~~custody~~ LEGAL DECISION-MAKING and parenting time.

35 Sec. 27. Section 25-1002, Arizona Revised Statutes, is amended to
36 read:

37 25-1002. Definitions

38 In this chapter, unless the context otherwise requires:

39 1. "Abandoned" means left without provision for reasonable and
40 necessary care or supervision.

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

42 3. "Child custody determination":

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

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

3 4. "Child custody proceeding":

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

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

11 5. "Commencement" means the filing of the first pleading in a
12 proceeding.

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

15 7. "Home state" means:

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

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

23 8. "Initial determination" means the first child custody determination
24 concerning a particular child.

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

27 10. "Issuing state" means the state in which a child custody
28 determination is made.

29 11. "Modification" means a child custody determination that changes,
30 replaces, supersedes or is otherwise made after a previous determination
31 concerning the same child, whether or not it is made by the court that made
32 the previous determination.

33 12. "Person" means an individual, corporation, business trust, estate,
34 trust, partnership, limited liability company, association, joint venture,
35 government, governmental subdivision, agency or instrumentality, or public
36 corporation or any other legal or commercial entity.

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

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

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

44 14. "Physical custody" means the physical care and supervision of a
45 child.

- 1 15. "State" means a state of the United States, the District of
2 Columbia, Puerto Rico, the United States Virgin Islands or any territory or
3 insular possession subject to the jurisdiction of the United States.
4 16. "Tribe" means an Indian tribe or band or Alaskan native village
5 that is recognized by federal law or formally acknowledged by a state.
6 17. "Visitation" includes parenting time as defined in section ~~25-402~~
7 25-401.
8 18. "Warrant" means an order issued by a court authorizing law
9 enforcement officers to take physical custody of a child.
10 Sec. 28. Effective date
11 This act is effective from and after December 31, 2012.

APPROVED BY THE GOVERNOR MAY 9, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2012.

