

REFERENCE TITLE: domestic relations; parenting plans

State of Arizona  
House of Representatives  
Forty-fifth Legislature  
First Regular Session  
2001

## **HB 2402**

Introduced by  
Representatives Anderson: Cooley, Gray, Hatch-Miller

AN ACT

AMENDING SECTION 25-351, ARIZONA REVISED STATUTES; REPEALING SECTION 25-403, ARIZONA REVISED STATUTES; AMENDING TITLE 25, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 25-403; RELATING TO PARENTING PLANS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 25-351, Arizona Revised Statutes, is amended to  
3 read:

4 25-351. Domestic relations education; plan; administration

5 A. ~~On or before January 1, 1997,~~ The superior court in each county  
6 shall adopt and implement an educational program for the purpose of educating  
7 persons about the impacts that divorce, the restructuring of families and  
8 judicial involvement have on children **AND ABOUT THE DEVELOPMENT OF PARENTING**  
9 **PLANS PURSUANT TO SECTION 25-403.**

10 B. The supreme court shall adopt minimum standards for educational  
11 programs. The presiding judge of the superior court in each county shall  
12 submit an educational program plan to the supreme court for approval. The  
13 plan shall be consistent with the minimum standards that are adopted by the  
14 supreme court, including the length and nature of the program, the  
15 qualifications of program providers and the means by which the program will  
16 be evaluated and maintained.

17 C. The presiding judge of the superior court or a judge who is  
18 designated by the presiding judge shall administer the program in each county  
19 and may provide or contract with political subdivisions in this state or  
20 private entities to provide the program to participants who are required to  
21 attend.

22 Sec. 2. Repeal

23 Section ~~25-403~~, Arizona Revised Statutes, is repealed.

24 Sec. 3. Title 25, chapter 4, article 1, Arizona Revised Statutes, is  
25 amended by adding a new section 25-403, to read:

26 25-403. Parenting plans

27 A. **FOR EACH ORIGINAL OR MODIFICATION PROCEEDING BROUGHT PURSUANT TO**  
28 **THIS ARTICLE, THE COURT SHALL ADOPT A PARENTING PLAN THAT IS IN THE CHILD'S**  
29 **BEST INTERESTS.**

30 B. **A PARENTING PLAN SHALL INCLUDE AT LEAST THE FOLLOWING:**

31 1. **EACH PARENT'S RESPONSIBILITIES FOR THE PERSONAL CARE OF THE CHILD**  
32 **AND FOR DECISION MAKING IN AREAS SUCH AS EDUCATION, HEALTH CARE AND RELIGIOUS**  
33 **TRAINING.**

34 2. **A SCHEDULE OF THE PHYSICAL RESIDENCE OF THE CHILD, INCLUDING**  
35 **HOLIDAYS AND SCHOOL VACATIONS.**

36 3. **PROVISION FOR COMMUNICATION BETWEEN THE CHILD AND A PARENT WHEN THE**  
37 **CHILD IS RESIDING WITH THE OTHER PARENT.**

38 4. **A PROCEDURE BY WHICH PROPOSED CHANGES, DISPUTES AND ALLEGED**  
39 **BREACHES MAY BE RESOLVED INCLUDING THE USE OF CONCILIATION SERVICES, PRIVATE**  
40 **COUNSELING, FAMILY COURT ADVISERS OR SPECIAL MASTERS.**

41 5. **A PROCEDURE FOR PERIODIC REVIEW OF THE PLAN'S TERMS BY THE PARENTS.**

42 C. **IN PROPOSING A PARENTING PLAN FOR THE COURT'S APPROVAL, THE PARENTS**  
43 **SHALL JOINTLY SUBMIT A PARENTING PLAN IF THEY AGREE ON ALL OF ITS PROVISIONS.**  
44 **IF THE PARENTS ARE UNABLE TO AGREE ON A PROVISION, THEY SHALL JOINTLY SUBMIT**

1 A PLAN THAT CONTAINS THE AGREED ON PROVISIONS AND EACH PARENT SHALL SUBMIT A  
2 SEPARATE PROPOSAL FOR THE CONTESTED PROVISIONS OF THE PLAN.

3 D. THE COURT SHALL APPROVE A JOINTLY PROPOSED PARENTING PLAN. IF ONLY  
4 ONE PARENT SUBMITS A PARENTING PLAN THE COURT SHALL ACCEPT THAT PLAN UNLESS  
5 IT FINDS THAT THE PLAN IS NOT IN THE CHILD'S BEST INTERESTS, ENTERS ITS  
6 SPECIFIC FINDINGS ON THE RECORD AND STATES THE REASONS FOR ITS DECISION. THE  
7 COURT MAY REQUIRE THE PARENTS TO RESUBMIT A JOINTLY AGREED ON PLAN, OR THE  
8 COURT MAY MODIFY THOSE PROVISIONS THAT IT DETERMINES ARE NOT IN THE CHILD'S  
9 BEST INTERESTS.

10 E. IN CHOOSING BETWEEN COMPETING PROVISIONS SUBMITTED PURSUANT TO  
11 SUBSECTION C OF THIS SECTION, THE COURT SHALL CHOOSE PROVISIONS THAT IT  
12 DETERMINES ARE IN THE CHILD'S BEST INTERESTS. THE COURT SHALL NOT BASE ITS  
13 DECISION ON A PARENT'S GENDER. THE COURT SHALL CONSIDER ALL OTHER RELEVANT  
14 FACTORS INCLUDING:

15 1. THE CHILD'S WISHES.

16 2. THE INTERACTION AND INTERRELATIONSHIP OF THE CHILD WITH THE CHILD'S  
17 PARENT OR PARENTS, THE CHILD'S SIBLINGS AND ANY OTHER PERSON WHO MAY  
18 SIGNIFICANTLY AFFECT THE CHILD'S BEST INTERESTS.

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

20 4. THE MENTAL AND PHYSICAL HEALTH OF ALL PERSONS INVOLVED.

21 5. WHICH PARENT IS MORE LIKELY TO ENCOURAGE THE CHILD'S FREQUENT,  
22 MEANINGFUL AND CONTINUING CONTACT WITH THE OTHER PARENT.

23 6. WHICH PARENT IS MORE LIKELY TO INTERFERE WITH OR DISCOURAGE THE  
24 CHILD'S CONTACT WITH THE OTHER PARENT.

25 7. WHICH PARENT IS MORE LIKELY TO PROMOTE AN ACCOMMODATING  
26 RELATIONSHIP WITH THE OTHER PARENT TO PROTECT THE CHILD FROM THE HARMFUL  
27 EFFECTS OF PARENTAL CONFLICT.

28 8. WHICH PARENT IS MORE LIKELY TO REFRAIN FROM MAKING DEROGATORY  
29 STATEMENTS ABOUT THE OTHER PARENT TO THE CHILD.

30 9. THE EXTENT TO WHICH EACH PARENT HAS PROVIDED PRIMARY CARE OF THE  
31 CHILD AND THE WILLINGNESS AND ABILITY OF EACH PARENT TO CARE FOR THE CHILD  
32 AND TO PROVIDE FOR THE CHILD'S FUTURE NEEDS.

33 10. WHETHER A PARENT HAS COMPLIED WITH CHAPTER 3, ARTICLE 5 OF THIS  
34 TITLE.

35 F. IN CHOOSING BETWEEN COMPETING PROVISIONS IN A PARENTING PLAN THERE  
36 IS A REBUTTABLE PRESUMPTION THAT IT IS IN THE CHILD'S BEST INTERESTS:

37 1. IF NEITHER PARENT IS PROVIDED WITH LESS THAN ONE-THIRD OF THE  
38 CHILD'S RESIDENTIAL TIME.

39 2. IF THE PARENTS SHARE IN MAKING MAJOR DECISIONS ON BEHALF OF THE  
40 CHILD IN AREAS SUCH AS EDUCATION, HEALTH CARE AND RELIGIOUS TRAINING.

41 3. THAT EACH PARENT SHALL SOLELY MAKE DECISIONS REGARDING THE  
42 DAY-TO-DAY CARE AND CONTROL OF THE CHILD WHILE THE CHILD IS RESIDING WITH  
43 THAT PARENT.

44 G. THE COURT SHALL CONSIDER EVIDENCE OF DOMESTIC VIOLENCE AS CONTRARY  
45 TO THE CHILD'S BEST INTERESTS. IF THE COURT FINDS THAT SIGNIFICANT DOMESTIC

1 VIOLENCE HAS OCCURRED, IT SHALL INCLUDE IN THE PARENTING PLAN PROVISIONS THAT  
2 BEST PROTECT THE CHILD AND THE ABUSED PERSON FROM FURTHER HARM. THE PERSON  
3 WHO HAS ENGAGED IN DOMESTIC VIOLENCE HAS THE BURDEN OF PROVING THAT CONTINUED  
4 CONTACT WITH THE CHILD WILL NOT ENDANGER OR IMPAIR THE CHILD OR THE ABUSED  
5 PERSON. IN DETERMINING THE EXISTENCE OF DOMESTIC VIOLENCE, THE COURT SHALL  
6 CONSIDER, SUBJECT TO THE RULES OF EVIDENCE, ALL RELEVANT FACTORS, INCLUDING:  
7 1. FINDINGS FROM ANOTHER COURT OF COMPETENT JURISDICTION.  
8 2. POLICE REPORTS.  
9 3. MEDICAL REPORTS.  
10 4. CHILD PROTECTIVE SERVICES RECORDS.  
11 5. DOMESTIC VIOLENCE SHELTER RECORDS.  
12 6. SCHOOL RECORDS.  
13 7. WITNESS TESTIMONY.  
14 H. IF THE COURT DETERMINES THAT A PARTY TO A PROCEEDING HAS BEEN  
15 CONVICTED OF A DRUG OFFENSE UNDER TITLE 13, CHAPTER 34 OR A VIOLATION OF  
16 SECTION 28-1381, 28-1382 OR 28-1383, WITHIN TWELVE MONTHS BEFORE THE REQUEST  
17 FOR ADOPTION OR MODIFICATION OF A PARENTING PLAN, THERE IS A REBUTTABLE  
18 PRESUMPTION THAT IT IS CONTRARY TO THE CHILD'S BEST INTERESTS FOR THAT PERSON  
19 TO SHARE IN THE DECISION MAKING ON BEHALF OF THE CHILD OR TO HAVE SUBSTANTIAL  
20 RESIDENTIAL TIME, OR BOTH. IN MAKING THIS DETERMINATION THE COURT SHALL  
21 STATE ITS FINDINGS OF FACT TO SUPPORT ITS DETERMINATION THAT THE PERSON WAS  
22 CONVICTED OF THE OFFENSE AND ITS FINDINGS THAT THE PARENTING PLAN ADOPTED BY  
23 THE COURT APPROPRIATELY PROTECTS THE CHILD.  
24 I. TO DETERMINE IF THE PERSON HAS REBUTTED THE PRESUMPTION ESTABLISHED  
25 BY THIS SECTION, THE COURT AT A MINIMUM SHALL CONSIDER THE FOLLOWING  
26 EVIDENCE:  
27 1. THE ABSENCE OF ANY CONVICTION OF ANY OTHER DRUG OFFENSE DURING THE  
28 PREVIOUS FIVE YEARS.  
29 2. THE RESULTS OF RANDOM DRUG TESTING FOR A SIX MONTH PERIOD THAT  
30 INDICATES THAT THE PERSON IS NOT USING DRUGS PROHIBITED UNDER TITLE 13,  
31 CHAPTER 34.  
32 J. UNLESS OTHERWISE PROVIDED BY COURT ORDER OR LAW, ON REASONABLE  
33 REQUEST BOTH PARENTS ARE ENTITLED TO HAVE EQUAL ACCESS DIRECTLY FROM THE  
34 CUSTODIAN OF THE RECORDS OR FROM THE OTHER PARENT TO DOCUMENTS AND OTHER  
35 INFORMATION CONCERNING THE CHILD'S EDUCATION AND PHYSICAL, MENTAL, MORAL AND  
36 EMOTIONAL HEALTH INCLUDING MEDICAL, SCHOOL, POLICE, COURT AND OTHER RECORDS.  
37 A PERSON WHO DOES NOT COMPLY WITH A REASONABLE REQUEST SHALL REIMBURSE THE  
38 REQUESTING PARENT FOR COURT COSTS AND ATTORNEY FEES INCURRED BY THAT PARENT  
39 TO ENFORCE THIS SUBSECTION. A PARENT WHO ATTEMPTS TO RESTRICT THE RELEASE OF  
40 DOCUMENTS OR INFORMATION BY THE CUSTODIAN UNDER THIS SUBSECTION WITHOUT A  
41 PRIOR COURT ORDER IS SUBJECT TO APPROPRIATE LEGAL SANCTIONS.  
42 K. THE COURT MAY SPECIFY ONE PARENT AS THE PRIMARY CARETAKER OF THE  
43 CHILD AND ONE HOME AS THE PRIMARY HOME OF THE CHILD FOR THE PURPOSES OF  
44 DEFINING ELIGIBILITY FOR PUBLIC ASSISTANCE. THIS FINDING DOES NOT DIMINISH  
45 THE RIGHTS OF EITHER PARENT AND DOES NOT CREATE A PRESUMPTION FOR OR AGAINST

1 EITHER PARENT IN A PROCEEDING FOR THE MODIFICATION OF AN EXISTING PARENTING  
2 PLAN.

3 L. IN A CONTESTED PROCEEDING, THE COURT SHALL MAKE SPECIFIC FINDINGS  
4 ON THE RECORD ABOUT ALL RELEVANT FACTORS AND THE REASONS WHY THE DECISION IS  
5 IN THE BEST INTERESTS OF THE CHILD.

6 M. A MOTION TO MODIFY AN EXISTING CUSTODY DECREE OR A PARENTING PLAN  
7 SHALL NOT BE MADE EARLIER THAN ONE YEAR AFTER ENTRY OF THE DECREE OR PLAN,  
8 UNLESS THE COURT PERMITS MODIFICATION BASED ON AFFIDAVITS THAT THERE IS  
9 REASON TO BELIEVE THE CHILD'S PRESENT ENVIRONMENT MAY SERIOUSLY ENDANGER THE  
10 CHILD'S PHYSICAL, MENTAL, MORAL OR EMOTIONAL HEALTH. AT ANY TIME AFTER A  
11 PARENTING PLAN IS ADOPTED, A PARENT MAY PETITION THE COURT FOR MODIFICATION  
12 OF THE PLAN ON THE BASIS OF EVIDENCE THAT DOMESTIC VIOLENCE PURSUANT TO  
13 SECTION 13-3601 OR 13-3601.01 OR CHILD ABUSE OCCURRED SINCE THE ENTRY OF THE  
14 PLAN. SIX MONTHS AFTER A PARENTING PLAN IS ENTERED, A PARENT MAY PETITION  
15 THE COURT FOR MODIFICATION OF THE PLAN BASED ON THE FAILURE OF THE OTHER  
16 PARENT TO COMPLY WITH THE PROVISIONS OF THE PLAN. A MOTION OR PETITION TO  
17 MODIFY A PARENTING PLAN SHALL MEET THE REQUIREMENTS OF SECTIONS 25-408 AND  
18 25-411.

19 N. THE COURT SHALL ASSESS ATTORNEY FEES AND COSTS AGAINST A PERSON WHO  
20 IS SEEKING THE MODIFICATION IF THE COURT FINDS THAT THE MODIFICATION ACTION  
21 IS VEXATIOUS AND CONSTITUTES HARASSMENT.

22 O. IN A PROCEEDING UNDER THIS ARTICLE, EITHER PERSON MAY REQUEST  
23 ATTORNEY FEES, COSTS AND EXPERT WITNESS FEES TO ENABLE THE PERSON WITH  
24 INSUFFICIENT RESOURCES TO OBTAIN ADEQUATE LEGAL REPRESENTATION AND TO PREPARE  
25 EVIDENCE FOR THE HEARING. IF THE COURT FINDS THERE IS A FINANCIAL DISPARITY  
26 BETWEEN THE PARTIES, THE COURT MAY ORDER PAYMENT OF REASONABLE FEES, EXPENSES  
27 AND COSTS TO ALLOW ADEQUATE PREPARATION.

28 P. FOR ANY ORDER ENTERED UNDER THIS SECTION, THE COURT SHALL DETERMINE  
29 AN AMOUNT OF CHILD SUPPORT IN ACCORDANCE WITH SECTION 25-320 AND GUIDELINES  
30 ESTABLISHED PURSUANT TO THAT SECTION. AN AWARD OF JOINT CUSTODY DOES NOT  
31 DIMINISH THE RESPONSIBILITY OF EITHER PARENT TO PROVIDE FOR THE SUPPORT OF  
32 THE CHILD.

33 Q. THE COURT SHALL NOT REQUEST OR ORDER THE SERVICES OF THE DIVISION  
34 OF CHILDREN AND FAMILY SERVICES IN THE DEPARTMENT OF ECONOMIC SECURITY UNLESS  
35 IT BELIEVES THAT A CHILD MAY BE THE VICTIM OF ABUSE OR NEGLECT AS DEFINED IN  
36 SECTION 8-201.

37 Sec. 4. Conforming legislation

38 The legislative council staff shall prepare proposed legislation  
39 conforming the Arizona Revised Statutes to the provisions of this act for  
40 consideration in the forty-fifth legislature, second regular session.