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House Engrossed

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

HOUSE BILL 2259

AN ACT

AMENDING SECTION 25-403, ARIZONA REVISED STATUTES; RELATING TO PARENTING PLANS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1

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

2 Section 1. Section 25-403, Arizona Revised Statutes, is amended to
3 read:

4 25-403. Parenting plans; best interests of child; domestic
5 violence; modification of decree; fees

6 ~~A. The court shall determine custody, either originally or on petition~~
7 ~~for modification, in accordance with the best interests of the child. The~~
8 ~~court shall consider all relevant factors, including:~~

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

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

11 ~~3. The interaction and interrelationship of the child with the child's~~
12 ~~parent or parents, the child's siblings and any other person who may~~
13 ~~significantly affect the child's best interest.~~

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

15 ~~5. The mental and physical health of all individuals involved.~~

16 ~~6. Which parent is more likely to allow the child frequent and~~
17 ~~meaningful continuing contact with the other parent.~~

18 ~~7. If one parent, both parents or neither parent has provided primary~~
19 ~~care of the child.~~

20 ~~8. The nature and extent of coercion or duress used by a parent in~~
21 ~~obtaining an agreement regarding custody.~~

22 ~~9. Whether a parent has complied with chapter 3, article 5 of this~~
23 ~~title.~~

24 ~~B. In awarding child custody, the court may order sole custody or~~
25 ~~joint custody. This section does not create a presumption in favor of one~~
26 ~~custody arrangement over another. The court in determining custody shall not~~
27 ~~prefer a parent as custodian because of that parent's sex.~~

28 ~~C. The court may issue an order for joint custody of a child if both~~
29 ~~parents agree and submit a written parenting plan and the court finds such an~~
30 ~~order is in the best interests of the child. The court may order joint legal~~
31 ~~custody without ordering joint physical custody.~~

32 ~~D. The court may issue an order for joint custody over the objection~~
33 ~~of one of the parents if the court makes specific written findings of why the~~
34 ~~order is in the child's best interests. In determining whether joint custody~~
35 ~~is in the child's best interests, the court shall consider the factors~~
36 ~~prescribed in subsection A of this section and all of the following:~~

37 ~~1. The agreement or lack of an agreement by the parents regarding~~
38 ~~joint custody.~~

39 ~~2. A parent's lack of agreement is unreasonable or is influenced by an~~
40 ~~issue not related to the best interests of the child.~~

41 ~~3. The past, present and future abilities of the parents to cooperate~~
42 ~~in decision-making about the child to the extent required by the order of~~
43 ~~joint custody.~~

44 ~~4. Whether the joint custody arrangement is logistically possible.~~

1 ~~E. Notwithstanding subsection N of this section, joint custody shall~~
2 ~~not be awarded if the court makes a finding of the existence of significant~~
3 ~~domestic violence pursuant to section 13-3601 or if the court finds by a~~
4 ~~preponderance of the evidence that there has been a significant history of~~
5 ~~domestic violence.~~

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

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

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

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

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

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

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

23 A. THE COURT SHALL DETERMINE CUSTODY AND SHALL ADOPT A WRITTEN
24 PARENTING PLAN FOR EACH PROCEEDING BROUGHT PURSUANT TO THIS ARTICLE.

25 B. THE PARENTS MAY SUBMIT A PARENTING PLAN ON WHICH BOTH PARENTS ARE
26 IN AGREEMENT. IF THE PARENTS ARE UNABLE TO AGREE ON THE PARENTING PLAN OR
27 ANY ELEMENT OF A PARENTING PLAN, EACH PARENT MAY SUBMIT A SEPARATE PARENTING
28 PLAN OR ELEMENTS OF A PARENTING PLAN FOR THE COURT'S CONSIDERATION. A
29 PARENTING PLAN MUST INCLUDE AT LEAST THE FOLLOWING ELEMENTS:

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

33 2. A SCHEDULE OF THE CHILD'S PHYSICAL RESIDENCE, INCLUDING HOLIDAYS
34 AND SCHOOL VACATIONS.

35 3. APPROPRIATE PROVISIONS FOR CONTACT BETWEEN THE CHILD AND EACH
36 PARENT.

37 4. A PROCEDURE BY WHICH THE PARENTS SHOULD ATTEMPT TO RESOLVE
38 DISPUTES, ALLEGED BREACHES AND DISAGREEMENTS ABOUT PROPOSED CHANGES OUTSIDE
39 OF COURT. THESE PROCEDURES MAY INCLUDE, FOR EXAMPLE THE USE OF CONCILIATION
40 SERVICES, MEDIATION OR PRIVATE COUNSELING.

41 5. A PROCEDURE FOR PERIODIC REVIEW OF THE PLAN BY THE PARENTS. THE
42 EXISTING PARENTING PLAN REMAINS IN EFFECT UNTIL SUCH TIME AS THE COURT GRANTS
43 A MODIFICATION. THE COURT MAY CONSIDER THE CHANGING DEVELOPMENTAL NEEDS OF A
44 CHILD AS A SUFFICIENT SUBSTANTIAL AND CONTINUING CHANGE OF CIRCUMSTANCES.

1 C. THE COURT SHALL DETERMINE CUSTODY AND SHALL ADOPT THE TERMS OF THE
2 PARENTING PLAN EITHER ORIGINALLY OR ON PETITION FOR MODIFICATION ACCORDING TO
3 THE CHILD'S BEST INTERESTS. IN ADOPTING THE PARENTING PLAN, THE COURT SHALL
4 NOT PREFER A PARENT BECAUSE OF THAT PARENT'S SEX. THE COURT SHALL CONSIDER
5 ALL RELEVANT FACTORS, INCLUDING:

- 6 1. THE WISHES OF THE CHILD'S PARENT OR PARENTS.
- 7 2. THE CHILD'S WISHES.
- 8 3. THE INTERACTION AND INTERRELATIONSHIP OF THE CHILD WITH THE CHILD'S
9 PARENT OR PARENTS, THE CHILD'S SIBLINGS AND ANY OTHER PERSON WHO MAY
10 SIGNIFICANTLY AFFECT THE CHILD'S BEST INTERESTS.
- 11 4. THE CHILD'S ADJUSTMENT TO HOME, SCHOOL AND COMMUNITY.
- 12 5. THE MENTAL AND PHYSICAL HEALTH OF ALL PERSONS INVOLVED.
- 13 6. WHICH PARENT IS MORE LIKELY TO ENCOURAGE THE CHILD'S FREQUENT AND
14 MEANINGFUL CONTINUING CONTACT WITH THE OTHER PARENT. ABSENT GOOD CAUSE, THE
15 COURT SHALL CONSIDER INTERFERING WITH OR DISCOURAGING THE CHILD'S FREQUENT
16 AND MEANINGFUL CONTACT WITH THE OTHER PARENT AS CONTRARY TO THE CHILD'S BEST
17 INTERESTS.
- 18 7. WHICH PARENT IS MORE LIKELY TO PROMOTE A CIVIL AND ACCOMMODATING
19 RELATIONSHIP WITH THE OTHER PARENT TO PROTECT THE CHILD FROM THE HARMFUL
20 EFFECTS OF PARENTAL CONFLICT.
- 21 8. WHICH PARENT'S BEHAVIOR WITH REGARD TO THE OTHER PARENT, SUCH AS
22 REFRAINING FROM MAKING DEROGATORY STATEMENTS TO THE CHILD ABOUT THE OTHER
23 PARENT, IS MORE LIKELY TO PROMOTE A HEALTHY ADJUSTMENT IN THE CHILD.
- 24 9. THE WILLINGNESS AND ABILITY OF EACH PARENT TO PROVIDE OR TO LEARN
25 TO PROVIDE FOR THE CHILD'S CARE.
- 26 10. THE NATURE AND EXTENT OF COERCION OR DURESS USED BY A PARENT IN
27 OBTAINING AN AGREEMENT REGARDING CUSTODY.
- 28 11. WHETHER A PARENT HAS COMPLIED WITH CHAPTER 3, ARTICLE 5 OF THIS
29 TITLE.

30 D. IN A CONTESTED CASE, IN DETERMINING CUSTODY AND THE PROVISIONS OF A
31 PARENTING PLAN, THERE IS A REBUTTABLE PRESUMPTION THAT IT IS IN THE CHILD'S
32 BEST INTERESTS THAT:

- 33 1. EACH PARENT MAKE DECISIONS REGARDING THE DAY-TO-DAY CARE AND
34 CONTROL OF THE CHILD WHILE THE CHILD IS RESIDING WITH THAT PARENT.
- 35 2. THE PARENTS SHARE DECISION MAKING AUTHORITY IN AREAS SUCH AS
36 EDUCATION, HEALTH CARE AND RELIGIOUS TRAINING.
- 37 3. THE PARENTS RESOLVE DISPUTES PURSUANT TO THE PROCEDURE REQUIRED
38 PURSUANT TO SUBSECTION B, PARAGRAPH 4 OF THIS SECTION.
- 39 4. THE CHILD IS ENTITLED TO A SUBSTANTIAL AND SUFFICIENT AMOUNT OF
40 PARENTING TIME WITH EACH PARENT SO AS TO CONTINUE TO DEVELOP A RELATIONSHIP
41 WITH EACH PARENT AND TO AFFORD EACH PARENT THE OPPORTUNITY TO BE INVOLVED IN
42 THE CHILD'S LIFE UNLESS THE COURT DETERMINES THAT AN ACT OF DOMESTIC VIOLENCE
43 HAS BEEN COMMITTED PURSUANT TO SUBSECTION K OF THIS SECTION.

44 ~~H.~~ E. Unless otherwise provided by court order or law, on reasonable
45 request both parents are entitled to have equal access to documents and other

1 information concerning the child's education and physical, mental, moral and
2 emotional health including medical, school, police, court and other records
3 directly from the custodian of the records or from the other parent. A
4 person who does not comply with a reasonable request shall reimburse the
5 requesting parent for court costs and attorney fees incurred by that parent
6 to force compliance with this subsection. A parent who attempts to restrict
7 the release of documents or information by the custodian under this
8 subsection without a prior court order is subject to appropriate legal
9 sanctions.

10 ~~I.~~ F. The court may specify one parent as the primary caretaker of
11 the child and one home as the primary home of the child for the purposes of
12 defining eligibility for public assistance. This finding does not diminish
13 the rights of either parent and does not create a presumption for or against
14 either parent in a proceeding for the modification of a custody order.

15 ~~J.~~ G. In a contested custody case, the court shall make specific
16 findings on the record about all relevant factors and the reasons for which
17 the decision is in the best interests of the child.

18 ~~K.~~ H. If the court determines that a parent has been convicted of any
19 drug offense under title 13, chapter 34 or any violation of section 28-1381,
20 28-1382 or 28-1383 within twelve months before the petition or the request
21 for custody is filed, there is a rebuttable presumption that sole or joint
22 custody by that parent is not in the child's best interests. In making this
23 determination the court shall state its:

24 1. Findings of fact that support its determination that the parent was
25 convicted of the offense.

26 2. Findings that the custody or parenting time arrangement ordered by
27 the court appropriately protects the child.

28 ~~L.~~ I. To determine if the person has rebutted the presumption
29 established under subsection ~~K.~~ H of this section, at a minimum the court
30 shall consider the following evidence:

31 1. The absence of any conviction of any other drug offense during the
32 previous five years.

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

35 ~~M.~~ J. The court shall consider evidence of domestic violence as being
36 contrary to the best interests of the child. The court shall consider the
37 safety and well-being of the child and of the victim of the act of domestic
38 violence to be of primary importance. The court shall consider a
39 perpetrator's history of causing or threatening to cause physical harm to
40 another person.

41 ~~N.~~ K. If the court determines that a parent who is seeking custody
42 has committed an act of domestic violence against the other parent, there is
43 a rebuttable presumption that an award of custody to the parent who committed
44 the act of domestic violence is contrary to the child's best interests. This
45 presumption does not apply if both parents have committed an act of domestic

1 violence. For the purposes of this subsection, a person commits an act of
2 domestic violence if that person does any of the following:

3 1. Intentionally, knowingly or recklessly causes or attempts to cause
4 sexual assault or serious physical injury.

5 2. Places a person in reasonable apprehension of imminent serious
6 physical injury to any person.

7 3. Engages in a pattern of behavior for which a court may issue an ex
8 parte order to protect the other parent who is seeking child custody or to
9 protect the child and the child's siblings.

10 ~~O~~ L. To determine if the parent has rebutted the presumption the
11 court shall consider all of the following:

12 1. Whether the parent has demonstrated that being awarded sole custody
13 or joint physical or legal custody is in the child's best interests.

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

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

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

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

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

26 ~~P~~ M. If the court finds that a parent has committed an act of
27 domestic violence, that parent has the burden of proving to the court's
28 satisfaction that parenting time will not endanger the child or significantly
29 impair the child's emotional development. If the parent meets this burden to
30 the court's satisfaction, the court shall place conditions on parenting time
31 that best protect the child and the other parent from further harm. The
32 court may:

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

35 2. Order that an agency specified by the court must supervise
36 parenting time. If the court allows a family or household member to
37 supervise parenting time, the court shall establish conditions that this
38 person must follow during parenting time.

39 3. Order the parent who committed the act of domestic violence to
40 attend and complete, to the court's satisfaction, a program of intervention
41 for perpetrators of domestic violence and any other counseling the court
42 orders.

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

- 1 5. Order the parent who committed the act of domestic violence to pay
2 a fee to the court to defray the costs of supervised parenting time.
3 6. Prohibit overnight parenting time.
4 7. Require a bond from the parent who committed the act of domestic
5 violence for the child's safe return.
6 8. Order that the address of the child and the other parent remain
7 confidential.
8 9. Impose any other condition that the court determines is necessary
9 to protect the child, the other parent and any other family or household
10 member.
- 11 ~~Q.~~ N. In determining whether the absence or relocation of a parent
12 shall be weighed against that parent in determining custody or parenting
13 time, the court may consider whether the absence or relocation was caused by
14 an act of domestic violence by the other parent.
- 15 ~~R.~~ O. The court shall not order joint counseling between a victim and
16 the perpetrator of domestic violence. The court may refer a victim to
17 appropriate counseling and shall provide a victim with written information
18 about available community resources related to domestic violence.
- 19 ~~S.~~ P. To determine if a person has committed an act of domestic
20 violence, the court, subject to the rules of evidence, shall consider all
21 relevant factors including the following:
- 22 1. Findings from another court of competent jurisdiction.
 - 23 2. Police reports.
 - 24 3. Medical reports.
 - 25 4. Child protective services records.
 - 26 5. Domestic violence shelter records.
 - 27 6. School records.
 - 28 7. Witness testimony.
- 29 ~~T.~~ Q. A person shall not make a motion to modify a custody decree
30 earlier than one year after its date, unless the court permits it to be made
31 on the basis of affidavits that there is reason to believe the child's
32 present environment may seriously endanger the child's physical, mental,
33 moral or emotional health. At any time after a joint custody order is
34 entered, a parent may petition the court for modification of the order on the
35 basis of evidence that domestic violence pursuant to section 13-1201 or
36 13-1204, spousal abuse or child abuse occurred since the entry of the joint
37 custody order. Six months after a joint custody order is entered, a parent
38 may petition the court for modification of the order based on the failure of
39 the other parent to comply with the provisions of the order. A motion or
40 petition to modify a custody order shall meet the requirements of sections
41 25-408 and 25-411.
- 42 ~~U.~~ R. The court shall assess attorney fees and costs against a party
43 seeking modification if the court finds that the modification action is
44 vexatious and constitutes harassment.

1 ~~V.~~ S. In a proceeding regarding sole custody or joint custody, either
2 party may request attorney fees, costs and expert witness fees to enable the
3 party with insufficient resources to obtain adequate legal representation and
4 to prepare evidence for the hearing. If the court finds there is a financial
5 disparity between the parties, the court may order payment of reasonable
6 fees, expenses and costs to allow adequate preparation.

7 ~~W.~~ T. For any custody order entered under this section, the court
8 shall determine an amount of child support in accordance with section 25-320
9 and guidelines established pursuant to that section. An award of joint
10 custody does not diminish the responsibility of either parent to provide for
11 the support of the child.

12 ~~X.~~ U. The court shall not request or order the services of the
13 division of children and family services in the department of economic
14 security unless it believes that a child may be the victim of child abuse or
15 neglect as defined in section 8-201.

16 Sec. 2. Effective date

17 Section 25-403, Arizona Revised Statutes, as amended by this act is
18 effective from and after December 31, 2002.