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Jane Dee Hull
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CHAPTER 145

SENATE BILL 1216

AN ACT

AMENDING SECTIONS 12-281, 12-284, 12-305, 12-2460, 12-2462, 25-315, 25-317, 25-319, 25-324, 25-327, 25-330, 25-332, 25-337 AND 38-810, ARIZONA REVISED STATUTES; AMENDING TITLE 25, CHAPTER 3, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 25-340.01; RELATING TO DISSOLUTION OF MARRIAGE.

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

Section 1. Section 12-281, Arizona Revised Statutes, is amended to read:

12-281. Oath; bond; salary; prohibition

A. The clerk of the superior court~~, before he enters on the duties of his office,~~ shall take the oath of office and give a bond in the sum of five thousand dollars conditioned upon the faithful performance of the duties of ~~his~~ THAT office and the payment of all monies ~~which may come into his hands as clerk~~ to the person entitled to receive them. The bond is subject to approval by the presiding superior court judge.

B. In counties having a population of two hundred thousand or more persons, as determined by the latest preceding federal decennial census, the annual salary of the clerk of the superior court is ~~forty-two thousand dollars in 1992, 1993 and 1994 and~~ fifty thousand dollars ~~in 1995 and each year thereafter~~ until modified.

C. In counties having a population of less than two hundred thousand persons, as determined by the latest preceding federal decennial census, the annual salary of the clerk of the superior court is ~~thirty-seven thousand five hundred dollars in 1992, 1993 and 1994 and~~ forty-five thousand dollars ~~in 1995 and each year thereafter~~ until modified.

D. ~~Beginning in 1993,~~ The annual salary of the clerk of the superior court shall be reviewed by the commission on salaries for elective state officers pursuant to section 41-1903.

E. The clerk of the superior court and ~~his~~ THE CLERK'S deputies are prohibited from practicing law or forming a partnership with an attorney-at-law. THIS SUBSECTION DOES NOT PROHIBIT THE CLERK OR THE CLERK'S EMPLOYEES FROM PROVIDING TO THE PUBLIC, INCLUDING LITIGANTS, INFORMATION REGARDING DOCUMENTS ROUTINELY FILED WITH THE CLERK.

Sec. 2. Section 12-284, Arizona Revised Statutes, is amended to read:

12-284. Fees

A. Except as otherwise provided by law, the clerk of the superior court shall receive fees classified as follows:

Class	Description	Fee
A	Initial case filing fee	
	Tax case	$75.00
	Filing complaint or petition	75.00
	Filing intervenor	75.00
	Additional plaintiffs	75.00
	Filing foreign judgment	75.00
	Ownership of real property becomes an issue	
	Plaintiff	75.00
	Appellant	75.00
	Change of venue to this county	75.00
	Petition for change of name	75.00
	Filing a process server application	75.00
B	Subsequent case filing fee	
	Filing answer or initial appearance	$40.00
	Additional defendants	40.00
	Notice of appeal to appellate courts	40.00
	Cross-appeal by appellee	40.00
	Ownership of real property becomes an issue defendant	40.00
	Jurisdiction exceeded appellee (within 20 days of filing)	40.00
	Response to show cause which does one or more of the following:	

	1. Request affirmative or counterrelief	
	2. Attacks process of proceedings	
	3. Takes other affirmative action	40.00
C	Initial case filing fee	
	Filing petition for annulment	$60.00
	Filing for dissolution/legal separation petition	60.00
	Petition in formal testacy or appointment proceeding	60.00
	Application for informal probate or informal appointment	60.00
	Petition for supervised administration petition to appoint guardian	60.00
	Petition to appoint conservator or make other protective order	60.00
	Opposing petition in testacy or appointment proceedings or appointment of guardian or conservator	60.00
	Single estate application or petition under title 14, chapter 3, section 14-3938	60.00
	Domestic relations case for which a fee is not specifically prescribed	60.00
D	Subsequent case filing fee	
	Filing answer to annulment	$30.00
	Filing for dissolution/legal separation answer	30.00
	Any person opposing contested petition if no prior payment made	30.00
	Post-adjudication petitions in domestic relations cases	30.00
	Post-judgment activities in probate cases	30.00

E	Minimum clerk fee	
	Filing power of attorney	$10.00
	Change of venue to another county transmittal fee	10.00
	Change of venue to another county on section 12-404, transmittal fee	10.00
	Filing transcript and docketing judgment from any courts	10.00
	Issuance of writs of: attachment, execution, possession, restitution, prohibition and enforcement of order of judgment-garnishment	10.00
	Certified copy or abstract of marriage application or license	10.00
	Filing oath and bond of notary public	10.00
	Certificate of correctness of copy of record	10.00
	Justice of peace certificate	10.00
	Notary public certificate	10.00
	Each certificate of clerk to any matter in clerk's record not specifically provided	10.00
	Filing any paper or performing any act for which a fee is not specifically prescribed	10.00
	Subpoena - (civil)	10.00
	Research in locating a document (per year or source researched)	10.00
	Exemplification (per certification)	10.00
	Authentication (per certification)	10.00
	Seal a court file	10.00
	Reopen a sealed court file	10.00
	Retrieve bank records	10.00
	Stop payment on check	10.00
	Reel of film alpha index per year (plus per page fee below)	10.00
	Payment history report	10.00

	Certification under one document certification	10.00
	Civil traffic appeal	10.00
F	Per page fee	
	Making copies (on appeal and on request) per page	$1.00
	Making extra copies per page	1.00
	Making photographic or photostatic copies per page	1.00
	Comparison fee of papers furnished by applicant per page	1.00
	Alpha index per page	1.00
G	Special fees	
	Filing adoption case	$20.00
	Contested adoption	10.00
	Small claim tax case	10.00
	Filing petition against harassment	10.00
	Domestic violence, order of protection pursuant to section 13-3602	5.00
	Alimony/child support payment (annual handling fee)	18.00
	Marriage license and return hereof	12.00
	Postage and handling	3.00
	Notary services	3.00

B. Except as provided in subsections C and D of this section, the clerk of the superior court shall receive the fees prescribed in subsection A of this section for the following services:

1. Making copies of papers and records required to be made by the clerk upon appeal, and copies of papers and records in his office made upon request in other cases, for each legal size page of original.

2. Making extra copies of the papers and records mentioned in paragraph 1 of this subsection, required or requested for each page of copy of such papers and records.

3. In a clerk's office, in which a photographic or photostatic method of recording is used or is available for use in cooperation with other public offices, preparing copies enumerated in paragraphs 1 and 2 of this subsection for each page of copy or fraction of a page of copy. Portions of several pages of records may be combined in one page of copy. The clerk may prepare an abstract of marriage in lieu of a reproduction of the recorded marriage

license. The fee shall apply to matters whether recorded in such office by longhand, typing, electronic, photographic or photostatic methods. The fees for copies are exclusive of the fees for certification or authentication.

4. Issuing a certificate as to official capacity of a notary public or justice of the peace and affixing a seal thereto.

5. Maintenance or child support payments, to cover the costs of handling and thereafter the same fee annually on the anniversary of the order for support or maintenance. The court shall order payment of the handling fee as part of the order for support or maintenance. The handling fee shall not be deducted from the support or maintenance portion of the payment. If an electronic method of processing payments is used or is available for use, the handling fee shall be deducted electronically from the payment after current monthly orders have been satisfied.

6. Each subpoena issued in a civil proceeding or filing any paper or performing any act for which a fee is not specifically prescribed by law, but the clerk shall not charge for his services in administering the oath in connection with any affidavit, petition, letters or other pleading or document which, after administration of the oath therefor, is promptly filed by the clerk and becomes a part of a case or matter of record in the office of the clerk.

C. In addition to the fees required by subsection A of this section, the clerk shall charge and collect for each marriage license and return of a marriage license, twenty dollars. The clerk shall monthly transmit the monies he collects pursuant to this subsection to the county treasurer who shall monthly transmit the monies to the state treasurer who shall transmit eighty per cent of the monies to the department of economic security for deposit in the domestic violence shelter fund established pursuant to section 36-3002 and twenty per cent of the monies to the department of economic security for deposit in the child abuse prevention fund established pursuant to section 8-550.01.

D. In addition to the fees required by subsection A of this section, the clerk shall charge and collect for each filing for an adoption a surcharge of thirty dollars. Adoptions where the child is a ward of the court and is in the care and custody of the department of economic security shall be exempt from the surcharge. The clerk shall monthly transmit the monies collected pursuant to this subsection to the county treasurer who shall monthly transmit the monies to the state treasurer who shall deposit the monies in the confidential intermediary fund established pursuant to section 8-135.

E. IN ADDITION TO THE FEES REQUIRED BY SUBSECTION A OF THIS SECTION, THE CLERK SHALL CHARGE AND COLLECT A SURCHARGE OF FIFTEEN DOLLARS FOR EACH FILING OF A POST-ADJUDICATION PETITION IN A DOMESTIC RELATIONS CASE FOR WHICH A FEE PRESENTLY IS CHARGED UNDER CLASS D OF SUBSECTION A OF THIS SECTION. THE SURCHARGE SHALL BE USED EXCLUSIVELY TO FUND DOMESTIC RELATIONS EDUCATION

AND MEDIATION PROGRAMS ESTABLISHED PURSUANT TO SECTION 25-340.01. EACH MONTH THE CLERK SHALL TRANSMIT THE MONIES THE CLERK COLLECTS PURSUANT TO THIS SUBSECTION TO THE COUNTY TREASURER FOR DEPOSIT IN THE DOMESTIC RELATIONS EDUCATION AND MEDIATION FUND ESTABLISHED BY SECTION 25-340.01. THE SURCHARGE IS EXEMPT FROM SECTIONS 12-305 AND 38-810.

~~E.~~ F. Notwithstanding any other law, two per cent of all fees collected by the superior court in each county pursuant to this section, except fees deposited in the child support automation fund and the expedited child support and visitation fund, fees collected pursuant to the surcharge assessed under subsection D of this section, fees collected pursuant to the surcharge assessed pursuant to sections 12-115 and 12-116 and fees assessed pursuant to section 13-901, shall be deposited into the drug and gang enforcement account established pursuant to section 41-2402. The clerk shall monthly transmit the monies he collects pursuant to this subsection to the county treasurer who shall monthly transmit the monies to the state treasurer who shall transmit the monies to the Arizona criminal justice commission for deposit in the drug and gang enforcement account established pursuant to section 41-2402 for the purposes of section 41-2402, subsection H.

~~F.~~ G. In garnishment matters:

1. No fee shall be charged for filing an affidavit seeking only the release of exempt wages.

2. No fee shall be charged for filing a garnishee's answer, for filing a judgment against the garnishee or for the issuance or return of process incident to such a judgment.

3. For any contest relating to or any controversion of a garnishment matter, unless the contesting party has paid an appearance fee in that cause, the required appearance fee shall be paid, except that no clerk's fee shall be paid by the garnishee.

~~G.~~ H. No appearance fee shall be charged to a person cited to appear and defend an order to show cause. Such person may stipulate to or consent to the entry of an order without the payment of an appearance fee. An appearance fee shall be paid when such person is present in person or by an attorney and does one or more of the following:

1. Requests affirmative relief or counterrelief.

2. Attacks the sufficiency of process or the proceedings.

3. Takes other affirmative action.

~~H.~~ I. Each month the clerk shall transmit the monies collected for subsequent case filing fees for post-decree petitions in dissolution cases under subsection A of this section to the county treasurer for deposit in the expedited child support and visitation fund established pursuant to section 25-340.

~~I.~~ J. Notwithstanding any law to the contrary, each month the clerk shall transmit fifty per cent of the monies the clerk's office collects for child support handling fees under subsection B, paragraph 5 of this section

to the county treasurer for deposit in the child support automation fund established under section 12-2462.

Sec. 3. Section 12-305, Arizona Revised Statutes, is amended to read:

12-305. Law library fund

A. There shall be set apart to a county law library fund twenty-five per cent of the first twenty thousand dollars and ten per cent of all amounts above twenty thousand dollars of all fees collected by the clerk of the superior court in each county except for fees deposited in the expedited child support and visitation fund AND SURCHARGES COLLECTED AND DEPOSITED IN THE DOMESTIC RELATIONS EDUCATION AND MEDIATION FUND PURSUANT TO SECTION 12-284, SUBSECTION E. The fees set apart to any county law library fund shall be deposited in such fund on a monthly basis.

B. The county law library fund shall be used for the purchase of books for a county law library under the direction of a judge of the superior court in the county. The monies in the fund shall be paid out only upon the order of the judge directed to the county treasurer.

C. When the county law library fund at the close of the fiscal year exceeds three thousand dollars, the board of supervisors may by resolution adopted by vote of the members, and with the concurrence of the judge of the superior court in the county, transfer the surplus of the fund in excess of three thousand dollars to a fund known as the building repair fund. Monies so transferred shall be expended only for additions, alterations and repairs to the courthouse. The fund shall be subject to provisions of law relating to advertising and calling for bids.

Sec. 4. Section 12-2460, Arizona Revised Statutes, is amended to read:

12-2460. Employer cooperation

A. UNLESS OTHERWISE PROVIDED BY COURT ORDER OR BY LAW, on written request delivered by certified mail to an employer, payor ~~of funds~~ or self-employed person by the state or ~~a person entitled to receive~~ EITHER PARTY TO AN ORDER FOR support or maintenance, the employer, payor ~~of funds~~ or self-employed person to whom the request is directed, within twenty days of delivery, shall notify the requesting party of the following information that the employer, payor ~~of funds~~ or self-employed person possesses concerning the person ~~who owes support or who is alleged to owe support~~ IDENTIFIED IN THE REQUEST:

1. Complete name.
2. Social security number.
3. Date and place of birth.
4. Present and past employment status.
5. Earnings, income, entitlements or other monies without regard to source.
6. Current or last known address.
7. Assets.

8. Availability and description of present or previous health insurance coverage for a dependent child.

9. Health insurance benefits paid or applied for under a health insurance policy for a dependent child.

B. If any legal action is necessary for the requesting party to obtain the information requested pursuant to subsection A, the requesting party is entitled to receive costs and attorney fees from the employer, payor ~~of funds~~ or self-employed person who fails to cooperate as prescribed in subsection A.

C. A PERSON SHALL NOT REQUEST OR RECEIVE ADDRESS INFORMATION PROTECTED BY AN ORDER OF PROTECTION, AN INJUNCTION AGAINST HARASSMENT OR ANY OTHER COURT ORDER IN A DOMESTIC VIOLENCE MATTER. THE EMPLOYER, PAYOR OR SELF-EMPLOYED PERSON SHALL NOT BE REQUIRED TO DETERMINE WHETHER AN ORDER OF PROTECTION, AN INJUNCTION AGAINST HARASSMENT OR ANY OTHER COURT ORDER IN A DOMESTIC VIOLENCE MATTER EXISTS BEFORE RELEASING THE INFORMATION REQUESTED PURSUANT TO SUBSECTION A OF THIS SECTION.

D. A PARTY OTHER THAN THIS STATE MAY MAKE A REQUEST FOR INFORMATION PURSUANT TO THIS SECTION NOT MORE THAN ONCE IN ANY TWELVE MONTH PERIOD.

Sec. 5. Section 12-2462, Arizona Revised Statutes, is amended to read:

12-2462. Child support automation fund; use; nonreversion

A. The child support automation fund is established in each county treasury consisting of monies received under section 12-284, subsection ~~I~~ J. The presiding judge of the superior court in each county shall administer the fund and shall expend fund monies subject to the board of supervisor's approval.

B. The clerk of the superior court shall use fund monies to improve, maintain and enhance computer hardware, software and automation systems used to collect court ordered child support.

C. The clerk of the superior court shall annually submit to the presiding judge the amount of revenues the clerk projects shall be available in the fund for the next fiscal year. If necessary, the presiding judge may withhold fund monies until a sufficient amount is available to cover automation costs.

D. Fund monies supplement and do not supplant monies otherwise allocated by the county for fund purposes.

E. Unexpended and unencumbered monies remaining in the fund at the end of the fiscal year remain in the fund and do not revert to the county general fund.

Sec. 6. Section 25-315, Arizona Revised Statutes, is amended to read:

25-315. Temporary order or preliminary injunction; effect

A. In all actions for the dissolution of marriage or for legal separation, the clerk of the court shall pursuant to order of the superior court issue a preliminary injunction in the following manner:

1. The preliminary injunction shall be directed to each party to the action and contain the following orders:

(a) That both parties are enjoined from transferring, encumbering, concealing, selling or otherwise disposing of any of the joint, common or community property of the parties except ~~in~~ IF RELATED TO the usual course of business, ~~or for~~ the necessities of life~~,~~ OR COURT FEES AND REASONABLE ATTORNEY FEES ASSOCIATED WITH AN ACTION FILED UNDER THIS ARTICLE, without the written consent of the parties or the permission of the court.

(b) That both parties are enjoined from molesting, harassing, disturbing the peace of or committing an assault or battery on the person of the other party or any natural or adopted child of the parties.

(c) That both parties are enjoined from removing any natural or adopted child of the parties then residing in Arizona from the jurisdiction of the court without the prior written consent of the parties or the permission of the court.

2. The preliminary injunction shall include the following statement:

"Warning

This is an official court order. If you disobey this order the court may find you in contempt of court. You may also be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order.

You or your spouse may file a certified copy of this order with your local law enforcement agency. A certified copy may be obtained from the clerk of the court that issued this order. If you are the person that brought this action, you must also file evidence with the law enforcement agency that this order was served on your spouse.

This court order is effective until a final decree of dissolution or legal separation is filed or the action is dismissed."

3. The preliminary injunction shall be effective against the petitioner upon filing the petition and against the respondent upon service of a copy of the order. In the event of service by registered mail under the rules of civil procedure, the order shall be effective upon receipt of the order. The order shall remain effective until further order of the court or the entry of a decree of dissolution or legal separation.

4. At the time of filing the petition for dissolution or legal separation, the copies of the preliminary injunction shall be issued to the petitioner or the agent, servant or employee filing the petition for dissolution or legal separation. The petitioner shall be deemed to have accepted service of the petitioner's copy of the preliminary injunction and to have actual notice of the contents thereof by filing or causing to be filed a petition for dissolution or legal separation. The petitioner shall cause a copy of the preliminary injunction to be served upon the respondent together with a copy of the summons and petition for dissolution or legal separation.

5. The preliminary injunction shall have the force and effect of an order of the superior court signed by a judge and shall be enforceable by all remedies made available by law, including contempt of court. The provisions of rules 65(a)(1) and 65(e) of the rules of civil procedure shall not be applicable to the preliminary injunction.

B. In a proceeding for dissolution of marriage, for legal separation or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child, natural or adopted, common to the parties entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

C. As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary restraining order or preliminary injunction for any of the following relief:

1. Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm may otherwise result.

2. Providing other injunctive relief proper in the circumstances.

D. The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed. No bond shall be required unless the court deems it appropriate.

E. On the basis of the showing made, and in conformity with sections 25-318 and 25-319, the court may issue a preliminary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstances. The court may also make temporary orders respecting the property of the parties, as may be necessary.

F. A temporary order or preliminary injunction:

1. Does not prejudice the rights of the parties or any child which are to be adjudicated at the subsequent hearings in the proceeding.

2. May be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under section 25-327 and as provided in rule 65 of the rules of civil procedure.

3. Terminates when the final decree is entered or when the petition for dissolution or legal separation is dismissed.

G. A person who disobeys or resists an injunction issued pursuant to subsection A, paragraph 1, subdivision (b) or subsection C, paragraph 1 of this section is subject to arrest and prosecution for interference with judicial proceedings pursuant to section 13-2810 and the following procedures apply:

1. Any party may cause a certified copy of the injunction and return of service on the other party to be registered with the sheriff having jurisdiction of the area in which the party resides. The party originally registering the injunction shall register any changes or modifications of the injunction with such sheriff. For enforcement by arrest and prosecution for interference with judicial proceedings, a certified copy of the injunction, whether or not registered with such sheriff, is presumed to be a valid existing order of the court until a final decree of dissolution or legal separation is entered or the action for dissolution or legal separation is dismissed.

2. A peace officer may, with or without a warrant, arrest a person if he has probable cause to believe that an offense under this subsection has been committed and he has probable cause to believe that the person to be arrested has committed the offense, whether such offense is a felony or a misdemeanor and whether such offense was committed within or without the presence of the peace officer. The release procedures available under section 13-3883, paragraph 4 and section 13-3903 are not applicable to arrests made pursuant to this subsection.

3. A peace officer making an arrest pursuant to this subsection is not civilly or criminally liable for the arrest if the officer acts upon probable cause and without malice.

4. A person arrested pursuant to this subsection may be released from custody in accordance with the rules of criminal procedure or other applicable statute. An order for release, with or without an appearance bond, shall include pretrial release conditions necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide additional conditions which the court deems appropriate, including participation in any counseling programs available to the defendant.

5. The remedies provided in this subsection for enforcement of the preliminary injunction are in addition to any other civil or criminal remedies available, including civil contempt of court. The use of one remedy does not prevent the simultaneous or subsequent use of any other.

Sec. 7. Section 25-317, Arizona Revised Statutes, is amended to read:

25-317. <u>Separation agreement; effect</u>

A. To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody and visitation of their children. A SEPARATION AGREEMENT MAY PROVIDE THAT ITS MAINTENANCE TERMS SHALL NOT BE MODIFIED.

B. In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for

the support, custody and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unfair.

C. If the court finds the separation agreement unfair as to disposition of property or maintenance, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property or maintenance.

D. If the court finds that the separation agreement is not unfair as to disposition of property or maintenance, and that it is reasonable as to support, custody and visitation of children, the separation agreement shall be set forth or incorporated by reference in the decree of dissolution or legal separation and the parties shall be ordered to perform them. If the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement as incorporated by reference and state that the court has found the terms as to property disposition and maintenance not unfair and the terms as to support, custody and visitation of children reasonable.

E. Terms of the agreement set forth or incorporated by reference in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt.

F. Except for terms concerning the maintenance of either party and the support, custody or visitation of children, entry of the decree shall thereafter preclude the modification of the terms of the decree and the property settlement agreement, if any, set forth or incorporated by reference ~~therein~~.

G. NOTWITHSTANDING SUBSECTION F, ENTRY OF A DECREE THAT SETS FORTH OR INCORPORATES BY REFERENCE A SEPARATION AGREEMENT THAT PROVIDES THAT ITS MAINTENANCE TERMS SHALL NOT BE MODIFIED PREVENTS THE COURT FROM EXERCISING JURISDICTION TO MODIFY THE DECREE AND THE SEPARATION AGREEMENT REGARDING MAINTENANCE, INCLUDING A DECREE ENTERED BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION.

Sec. 8. Section 25-319, Arizona Revised Statutes, is amended to read:

25-319. Maintenance; computation factors

A. In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse for any of the following reasons if it finds that the spouse seeking maintenance:

1. Lacks sufficient property, including property apportioned to ~~such~~ THE spouse, to provide for his or her reasonable needs.

2. Is unable to support himself or herself through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home or

lacks earning ability in the labor market adequate to support himself or herself.

3. Contributed to the educational opportunities of the other spouse.

4. Had a marriage of long duration and is of an age which may preclude the possibility of gaining employment adequate to support himself or herself.

B. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant factors, including:

1. The standard of living established during the marriage.

2. The duration of the marriage.

3. The age, employment history, earning ability and ~~the~~ physical and emotional condition of the spouse seeking maintenance.

4. The ability of the spouse from whom maintenance is sought to meet his or her needs while meeting those of the spouse seeking maintenance.

5. The comparative financial resources of the spouses, including their comparative earning abilities in the labor market.

6. The contribution of the spouse seeking maintenance to the earning ability of the other spouse.

7. The extent to which the spouse seeking maintenance has reduced his or her income or career opportunities for the benefit of the other spouse.

8. The ability of both parties after the dissolution to contribute to the future educational costs of their mutual children.

9. The financial resources of the party seeking maintenance, including marital property apportioned to such party, and such party's ability to meet his or her needs independently.

10. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and whether such education or training is readily available.

11. Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

C. IF BOTH PARTIES AGREE, THE MAINTENANCE ORDER AND A DECREE OF DISSOLUTION OF MARRIAGE OR OF LEGAL SEPARATION MAY STATE THAT ITS MAINTENANCE TERMS SHALL NOT BE MODIFIED.

~~C.~~ D. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION OR SECTION 25-317, SUBSECTION G, the court shall maintain continuing jurisdiction over the issue of maintenance for the period of time maintenance is awarded.

Sec. 9. Section 25-324, Arizona Revised Statutes, is amended to read:

25-324. Attorney's fees

The court from time to time, after considering the financial resources of both parties AND THE REASONABLENESS OF THE POSITIONS EACH PARTY HAS TAKEN THROUGHOUT THE PROCEEDINGS, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceeding under this chapter. For the purpose of this section costs and

expenses may include attorney's fees, deposition costs and ~~such~~ other reasonable expenses as the court finds necessary to the full and proper presentation of the action, including any appeal. The court may order all ~~such~~ amounts paid directly to the attorney, who may enforce the order in ~~his~~ THE ATTORNEY'S name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

Sec. 10. Section 25-327, Arizona Revised Statutes, is amended to read:

25-327. Modification and termination of provisions for maintenance, support and property disposition

A. Except as otherwise provided in section 25-317, ~~subsection F~~ SUBSECTIONS F AND G, the provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to notice of the motion for modification to the opposing party and only upon a showing of changed circumstances which are substantial and continuing. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state. Modifications are effective on the first day of the month following the filing of the petition for modification unless the court, for good cause shown, orders the change to become effective at a later date.

B. Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated ~~upon~~ ON the death of either party or the remarriage of the party receiving maintenance.

C. Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a minor child are not terminated by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of future support may be modified, revoked or commuted to a lump sum payment to the extent just and appropriate in the circumstances and shall have priority equal to the right for family allowance in section 14-2404. Past due support shall have priority equal to claims provided for in section 14-3805, subsection A, paragraph 6.

Sec. 11. Section 25-330, Arizona Revised Statutes, is amended to read:

25-330. Employer cooperation

~~A. On written request delivered by registered mail to an employer by a person or agency that is entitled to receive~~ EITHER PARTY TO AN ORDER FOR support or maintenance or ~~by~~ an agency that has obtained a judgment in its favor in a paternity action or an action to establish child support MAY REQUEST INFORMATION FROM AN EMPLOYER, PAYOR OR SELF-EMPLOYED PERSON PURSUANT TO SECTION 12-2460. ~~, the employer within twenty days of delivery shall notify the requesting party of any information that the employer possesses concerning the present or last known residence and business addresses of the employee or former employee who is obligated to the requesting party and, on request, shall inform the requesting party of the employee's or former employee's periodic earnings. The requesting party shall furnish to the~~

~~employer evidence that the party is the person entitled to receive support or maintenance, which may include a copy of the court order or judgment authorizing the support or maintenance. A requesting agency that has obtained a judgment in its favor in a paternity action or an action to establish child support shall furnish evidence to the employer that the agency has obtained a judgment in its favor in a paternity action or an action to establish support, which may include a copy of the judgment.~~

~~B. If any legal action is necessary for the requesting party to obtain information requested pursuant to subsection A, the requesting party is entitled to receive costs and attorney fees from the employer who fails to cooperate as prescribed in subsection A.~~

Sec. 12. Section 25-332, Arizona Revised Statutes, is amended to read:

25-332. Custody; best interests of child; joint custody; modification of decree; fees; children and family services

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

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

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

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

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

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

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

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

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

B. The court shall consider evidence of domestic violence as being contrary to the best interests of the child. If the court finds that domestic violence has occurred, the court shall make arrangements for visitation that best protect the child and the abused spouse from further harm. The person who has committed an act of domestic violence has the burden of proving that visitation will not endanger the child or significantly impair the child's emotional development.

C. IF THE COURT DETERMINES THAT A PARENT OR A PERSON SEEKING CUSTODY HAS BEEN CONVICTED OF ANY DRUG OFFENSE UNDER TITLE 13, CHAPTER 34 OR ANY VIOLATION OF SECTION 28-692 OR 28-697 WITHIN TWELVE MONTHS BEFORE THE PETITION OR THE REQUEST FOR CUSTODY, THERE IS A REBUTTABLE PRESUMPTION THAT SOLE OR JOINT CUSTODY OF THE CHILD BY THAT PERSON IS CONTRARY TO THE BEST

INTERESTS OF THE CHILD. IN MAKING THIS DETERMINATION THE COURT SHALL STATE ITS:

1. FINDINGS OF FACT THAT SUPPORT ITS DETERMINATION THAT THE PERSON WAS CONVICTED OF THE OFFENSE.

2. FINDINGS THAT THE CUSTODY OR VISITATION ARRANGEMENT ORDERED BY THE COURT APPROPRIATELY PROTECTS THE CHILD.

D. TO DETERMINE IF THE PERSON HAS REBUTTED THE PRESUMPTION ESTABLISHED UNDER SUBSECTION C OF THIS SECTION, AT A MINIMUM THE COURT SHALL CONSIDER THE FOLLOWING EVIDENCE:

1. THE ABSENCE OF ANY CONVICTION OF ANY OTHER DRUG OFFENSE DURING THE PREVIOUS FIVE YEARS.

2. RESULTS OF RANDOM DRUG TESTING FOR A SIX MONTH PERIOD THAT INDICATE THAT THE PERSON IS NOT USING DRUGS AS PROSCRIBED BY TITLE 13, CHAPTER 34.

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

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

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

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

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

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

4. Whether the joint custody arrangement is logistically possible.

~~F.~~ H. Joint custody shall not be awarded if the court makes a finding of the existence of significant domestic violence pursuant to section 13-3601 or if the court finds by a preponderance of the evidence that there has been a significant history of domestic violence. In determining the existence of domestic violence, the court shall consider, subject to the rules of evidence, all relevant factors, including, but not limited to, the following:

1. Findings from another court of competent jurisdiction.

2. Police reports.

3. Medical records.

4. Child protective services records.

5. Domestic violence shelter records.
6. School records.
7. Witness testimony.

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

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

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

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

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

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

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

~~I.~~ K. Unless otherwise provided by court order or law, ON REASONABLE REQUEST both parents are entitled to have equal access to DOCUMENTS AND OTHER INFORMATION CONCERNING THE CHILD'S EDUCATION AND PHYSICAL, MENTAL, MORAL AND EMOTIONAL HEALTH INCLUDING medical, school, POLICE, COURT and other records ~~of the child~~ directly from the custodian of the records or from the other parent. A PERSON WHO DOES NOT COMPLY WITH A REASONABLE REQUEST SHALL REIMBURSE THE REQUESTING PARENT FOR COURT COSTS AND ATTORNEY FEES INCURRED BY THAT PARENT TO FORCE COMPLIANCE WITH THIS SUBSECTION. A PARENT WHO ATTEMPTS TO RESTRICT THE RELEASE OF DOCUMENTS OR INFORMATION BY THE CUSTODIAN UNDER THIS SUBSECTION WITHOUT A PRIOR COURT ORDER IS SUBJECT TO APPROPRIATE LEGAL SANCTIONS.

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

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

~~L.~~ N. No motion to modify a custody decree may be made earlier than one year after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may seriously endanger the child's physical, mental, moral or emotional health. At any time after a joint custody order is entered, a parent may

petition the court for modification of the order on the basis of evidence that domestic violence pursuant to section 13-1201 or 13-1204, spousal abuse or child abuse occurred since the entry of the joint custody order. Six months after a joint custody order is entered, a parent may petition the court for modification of the order based on the failure of the other parent to comply with the provisions of the order. A motion or petition to modify a custody order shall meet the requirements of sections 25-337 and 25-339.

~~M.~~ O. Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

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

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

~~P.~~ R. The court shall not request or order the services of the division of children and family services in the department of economic security unless it believes that a child may be the victim of child abuse ~~and~~ OR neglect as defined in section 8-546.

Sec. 13. Section 25-337, Arizona Revised Statutes, is amended to read:

25-337. Rights of noncustodial parent; visitation; exception; enforcement; access to records; suspension of visitation

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

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

C. IF BY WRITTEN AGREEMENT OR COURT ORDER BOTH PARENTS ARE ENTITLED TO CUSTODY OR VISITATION AND BOTH PARENTS RESIDE IN THE STATE, AT LEAST SIXTY DAYS ADVANCE WRITTEN NOTICE SHALL BE PROVIDED TO THE OTHER PARENT BEFORE A PARENT MAY DO EITHER OF THE FOLLOWING:

1. RELOCATE THE CHILD OUTSIDE THE STATE.

2. RELOCATE THE CHILD MORE THAN ONE HUNDRED MILES WITHIN THE STATE. HOWEVER, IF BOTH PARENTS RESIDE IN THE SAME METROPOLITAN AREA, THEN NEITHER PARENT MAY MOVE THE CHILD MORE THAN ONE HUNDRED MILES OUTSIDE THE METROPOLITAN AREA.

D. SUBSECTION C OF THIS SECTION DOES NOT APPLY WHERE PROVISION FOR RELOCATION OF A CHILD HAS BEEN MADE BY ORDER GRANTED PURSUANT TO SECTION 12-843, SUBSECTION B, A DECREE OF DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION, OR WRITTEN AGREEMENT OF THE PARTIES.

E. A PARENT WITH SOLE CUSTODY OR A PARENT WITH JOINT CUSTODY AND PRIMARY PHYSICAL CUSTODY WHO IS REQUIRED TO RELOCATE IN LESS THAN SIXTY DAYS AFTER WRITTEN NOTICE HAS BEEN GIVEN TO THE OTHER PARENT MAY RELOCATE WITH THE CHILD NOTWITHSTANDING THAT THE OTHER PARENT HAS FILED A PETITION TO ENJOIN THE RELOCATION. A PARENT WHO SHARES JOINT CUSTODY AND EQUAL PHYSICAL CUSTODY WHO IS REQUIRED TO RELOCATE IN LESS THAN SIXTY DAYS AFTER WRITTEN NOTICE HAS BEEN GIVEN TO THE OTHER PARENT MAY RELOCATE WITH THE CHILD ONLY IF BOTH PARENTS EXECUTE A WRITTEN AGREEMENT TO PERMIT RELOCATION OF THE CHILD.

F. IN DETERMINING WHETHER TO PERMIT THE CHILD TO RELOCATE, THE COURT SHALL CONSIDER WHETHER THE RELOCATION IS IN THE BEST INTERESTS OF THE MOVING PARENT AND THE CHILD. WHERE THE COURT FINDS THAT THE RELOCATION OF THE CHILD IS IN THE BEST INTEREST OF THE MOVING PARENT AND IS NOT SIGNIFICANTLY UNDESIRABLE FOR THE CHILD, THE COURT MAY PERMIT THE CHILD TO MOVE WITH THE CUSTODIAL PARENT. IF THE NON-MOVING PARENT HAS HAD VISITATION WITH THE CHILD, THE COURT SHALL ONLY PERMIT THE CHILD TO PERMANENTLY MOVE WITH THE PARENT WHERE THERE ARE APPROPRIATE VISITATION ARRANGEMENTS FOR THE FUTURE.

~~C.~~ G. The court shall assess attorney fees and court costs against either parent if the court finds that the parent has unreasonably denied, restricted or interfered with court-ordered visitation.

~~D.~~ H. PURSUANT TO SECTION 25-332, SUBSECTION K, the noncustodial parent is entitled to have access to ~~the~~ DOCUMENTS AND OTHER INFORMATION ABOUT ~~medical and school records of~~ the child ~~directly from the custodian of the records or from the custodial parent~~ unless the court finds that ~~such~~ access would endanger seriously the child's or the custodial parent's physical, mental, moral or emotional health.

~~E.~~ I. Notwithstanding section 25-339, if after a custody or visitation order is in effect one of the parents is charged with a dangerous crime against children as defined in section 13-604.01, child molestation AS DEFINED IN SECTION 13-1410 or an act of domestic violence as defined in section 13-3601 in which the victim is a minor, the other parent may petition the court for an expedited hearing. Pending the expedited hearing, the court may suspend visitation or change custody ex parte.

1 Sec. 14. Title 25, chapter 3, article 3, Arizona Revised Statutes, is
2 amended by adding section 25-340.01, to read:
3 25-340.01. Domestic relations education and mediation fund;
4 report
5 A. EACH COUNTY TREASURER SHALL ESTABLISH IN THE COUNTY TREASURY A
6 DOMESTIC RELATIONS EDUCATION AND MEDIATION FUND CONSISTING OF MONIES RECEIVED
7 PURSUANT TO SECTION 12-284, SUBSECTION E.
8 B. THE PRESIDING JUDGE SHALL USE FUND MONIES TO ESTABLISH, MAINTAIN
9 AND ENHANCE PROGRAMS DESIGNED TO EDUCATE PERSONS ABOUT IMPACTS ON CHILDREN
10 OF DISSOLUTION OF MARRIAGE, LEGAL SEPARATION AND RESTRUCTURING OF FAMILIES
11 AND PROGRAMS FOR MEDIATION OF VISITATION OR CUSTODY DISPUTES UNDER THIS
12 CHAPTER OR TITLE 12, CHAPTER 7, ARTICLE 3.
13 C. THE COUNTY TREASURER SHALL DISBURSE MONIES FROM THE FUND ONLY AT
14 THE DIRECTION OF THE PRESIDING JUDGE OF THE SUPERIOR COURT.
15 D. ON NOTICE OF THE PRESIDING JUDGE, THE COUNTY TREASURER SHALL INVEST
16 MONIES IN THE FUND AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE
17 FUND.
18 E. MONIES THAT ARE EXPENDED FROM THE FUND SHALL BE USED TO SUPPLEMENT,
19 AND NOT SUPPLANT, ANY STATE OR COUNTY APPROPRIATIONS THAT WOULD OTHERWISE BE
20 AVAILABLE FOR PROGRAMS DESCRIBED IN SUBSECTION A OF THIS SECTION.
21 F. ON OR BEFORE AUGUST 10 OF EACH YEAR, THE COUNTY TREASURER SHALL
22 SUBMIT A REPORT TO THE PRESIDING JUDGE THAT SHOWS THE AMOUNT OF MONIES IN THE
23 DOMESTIC RELATIONS EDUCATION AND MEDIATION FUND.
24 Sec. 15. Section 38-810, Arizona Revised Statutes, is amended to read:
25 38-810. Contributions
26 A. Each member shall contribute to the fund an amount equal to seven
27 per cent of his gross salary. Contributions of members shall be made by
28 payroll deductions. Every member is deemed to consent to these deductions.
29 Payment of a member's compensation, less these payroll deductions,
30 constitutes a full and complete discharge and satisfaction of all claims and
31 demands by the member relating to remuneration for his services rendered
32 during the period covered by the payment, except with respect to the benefits
33 provided under the plan.
34 B. Notwithstanding any other statute, twenty-five per cent of the
35 first twenty thousand dollars and thirty-eight per cent of the amounts above
36 twenty thousand dollars of all fees, except fees deposited in the expedited
37 child support and visitation fund, fees collected pursuant to the surcharge
38 assessed pursuant to sections 12-115 and 12-116, SURCHARGES COLLECTED AND
39 DEPOSITED IN THE DOMESTIC RELATIONS EDUCATION AND MEDIATION FUND PURSUANT TO
40 SECTION 12-284, SUBSECTION E and fees assessed as a condition of probation
41 pursuant to section 13-901, collected by the clerk of the superior court in
42 each county, thirty-six per cent of all fees paid to the clerk of each
43 division of the court of appeals except those fees paid pursuant to sections
44 12-115 and 12-116 and thirty-six per cent of all fees paid to the clerk of

1 the supreme court except those fees paid pursuant to sections 12-115 and
2 12-116 shall be set aside monthly to the credit of the fund in the fund
3 manager's office of the system. The fees set apart to the credit of the fund
4 shall be deposited in the fund on a monthly basis, and there shall be a
5 complete accounting of the determination of these fees made to the system.
6 C. As determined by actuarial valuations performed by the plan's
7 actuary, each employer shall make level per cent compensation contributions
8 sufficient under the actuarial valuation to meet both the normal cost plus
9 the actuarially determined amount required to amortize the unfunded accrued
10 liability over a period of not more than forty years. Amounts paid in
11 accordance with subsection B of this section shall be used to reduce the
12 contributions required of state and county employers only. Employers that
13 entered the system under a joinder agreement shall also contribute an amount
14 equal to the unfunded accrued liability for that employer. The unfunded
15 liability for each new employer shall be actuarially determined by the plan's
16 actuary as of the effective date of participation of each employer and shall
17 be payable on the effective date of participation.
18 D. The department of administration and the treasurer of each county
19 and participating city and town shall transfer to the fund manager the
20 contributions provided for in subsections A and C of this section within ten
21 working days after each payroll date. The department of administration, the
22 treasurer of each county or the clerk of each court shall transfer the fees
23 provided for in subsection B of this section to the fund manager within ten
24 working days after the last day of each calendar month. Contributions and
25 fees transferred after these dates shall include a penalty equal to the net
26 effective yield of the fund as published in the latest annual report for each
27 day the payments are late. Delinquent payments due under this subsection,
28 together with interest charges as provided in this subsection and court
29 costs, may be recovered by action in a court of competent jurisdiction
30 against the person or persons responsible for the payments or may, at the
31 request of the fund manager, be deducted from any other monies including
32 excise revenue taxes payable to a political subdivision by any department or
33 agency of this state.
34 E. The employer shall pay the member contributions required of members
35 on account of compensation earned after August 7, 1985. The paid
36 contributions shall be treated as employer contributions for the purpose of
37 determining tax treatment under the United States internal revenue code. The
38 effective date of the employer payment shall not be before the date the
39 retirement plan has received notification from the United States internal
40 revenue service that pursuant to section 414(h) of the United States internal
41 revenue code the member contributions paid will not be included in gross
42 income for income tax purposes until the paid contributions are distributed
43 by refund or pension payments. The employer shall pay the member
44 contributions from monies established and available in the retirement

1 deduction account, which monies would otherwise have been designated as
2 member contributions and paid to the retirement plan. Member contributions
3 paid pursuant to this subsection shall be treated for all other purposes, in
4 the same manner and to the same extent, as member contributions made before
5 August 7, 1985.

APPROVED BY THE GOVERNOR APRIL 10, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 1996.