

Senate Engrossed

State of Arizona  
Senate  
Forty-seventh Legislature  
First Regular Session  
2005

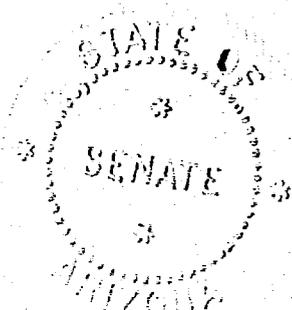
CHAPTER 45

# SENATE BILL 1045

AN ACT

REPEALING SECTIONS 25-403 AND 25-411, ARIZONA REVISED STATUTES; RENUMBERING SECTION 25-403.01, ARIZONA REVISED STATUTES, AS SECTION 25-403.05; AMENDING TITLE 25, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 25-403 AND 25-411 AND SECTIONS 25-403.01, 25-403.02, 25-403.03, 25-403.04, 25-403.06, 25-403.07, 25-403.08 AND 25-403.09; AMENDING SECTION 25-408, ARIZONA REVISED STATUTES; RELATING TO CHILD CUSTODY.

(TEXT OF BILL BEGINS ON NEXT PAGE)



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

2 Section 1. Scope and effect of act

3 This act recodifies several sections of title 25, chapter 4, article 1,  
4 Arizona Revised Statutes, as follows:

5 1. New section 25-403, Arizona Revised Statutes, consists of former  
6 section 25-403, Arizona Revised Statutes, subsections A and J.

7 2. New section 25-403.01, Arizona Revised Statutes, consists of former  
8 section 25-403, Arizona Revised Statutes, subsections B, C and D.

9 3. New section 25-403.02, Arizona Revised Statutes, consists of former  
10 section 25-403, Arizona Revised Statutes, subsections F and G.

11 4. New section 25-403.03, Arizona Revised Statutes, consists of former  
12 section 25-403, Arizona Revised Statutes, subsections E, M, N, O, P, Q, R, S  
13 and Y.

14 5. New section 25-403.04, Arizona Revised Statutes, consists of former  
15 section 25-403, Arizona Revised Statutes, subsections K and L.

16 6. New section 25-403.06, Arizona Revised Statutes, consists of former  
17 section 25-403, Arizona Revised Statutes, subsection H.

18 7. New section 25-403.07, Arizona Revised Statutes, consists of former  
19 section 25-403, Arizona Revised Statutes, subsection I.

20 8. New section 25-403.08, Arizona Revised Statutes, consists of former  
21 section 25-403, Arizona Revised Statutes, subsection W.

22 9. New section 25-403.09, Arizona Revised Statutes, consists of former  
23 section 25-403, Arizona Revised Statutes, subsection X.

24 10. New section 25-411, Arizona Revised Statutes, consists of former  
25 section 25-403, Arizona Revised Statutes, subsections T, U and V, former  
26 section 25-411, subsections A and B and section 25-408, Arizona Revised  
27 Statutes, subsections B and M.

28 Sec. 2. Repeal

29 Sections 25-403 and 25-411, Arizona Revised Statutes, are repealed.

30 Sec. 3. Renumber

31 Section 25-403.01, Arizona Revised Statutes, is renumbered as section  
32 25-403.05.

33 Sec. 4. Title 25, chapter 4, article 1, Arizona Revised Statutes, is  
34 amended by adding a new section 25-403 and sections 25-403.01, 25-403.02,  
35 25-403.03, 25-403.04, 25-403.06, 25-403.07, 25-403.08 and 25-403.09, to read:

36 25-403. Custody; best interests of child

37 A. THE COURT SHALL DETERMINE CUSTODY, EITHER ORIGINALLY OR ON PETITION  
38 FOR MODIFICATION, IN ACCORDANCE WITH THE BEST INTERESTS OF THE CHILD. THE  
39 COURT SHALL CONSIDER ALL RELEVANT FACTORS, INCLUDING:

40 1. THE WISHES OF THE CHILD'S PARENT OR PARENTS AS TO CUSTODY.

41 2. THE WISHES OF THE CHILD AS TO THE CUSTODIAN.

42 3. THE INTERACTION AND INTERRELATIONSHIP OF THE CHILD WITH THE CHILD'S  
43 PARENT OR PARENTS, THE CHILD'S SIBLINGS AND ANY OTHER PERSON WHO MAY  
44 SIGNIFICANTLY AFFECT THE CHILD'S BEST INTEREST.

45 4. THE CHILD'S ADJUSTMENT TO HOME, SCHOOL AND COMMUNITY.



1 5. THE MENTAL AND PHYSICAL HEALTH OF ALL INDIVIDUALS INVOLVED.  
2 6. WHICH PARENT IS MORE LIKELY TO ALLOW THE CHILD FREQUENT AND  
3 MEANINGFUL CONTINUING CONTACT WITH THE OTHER PARENT.

4 7. WHETHER ONE PARENT, BOTH PARENTS OR NEITHER PARENT HAS PROVIDED  
5 PRIMARY CARE OF THE CHILD.

6 8. THE NATURE AND EXTENT OF COERCION OR DURESS USED BY A PARENT IN  
7 OBTAINING AN AGREEMENT REGARDING CUSTODY.

8 9. WHETHER A PARENT HAS COMPLIED WITH CHAPTER 3, ARTICLE 5 OF THIS  
9 TITLE.

10 10. WHETHER EITHER PARENT WAS CONVICTED OF AN ACT OF FALSE REPORTING OF  
11 CHILD ABUSE OR NEGLECT UNDER SECTION 13-2907.02.

12 B. IN A CONTESTED CUSTODY CASE, THE COURT SHALL MAKE SPECIFIC FINDINGS  
13 ON THE RECORD ABOUT ALL RELEVANT FACTORS AND THE REASONS FOR WHICH THE  
14 DECISION IS IN THE BEST INTERESTS OF THE CHILD.

15 25-403.01. Sole and joint custody

16 A. IN AWARDING CHILD CUSTODY, THE COURT MAY ORDER SOLE CUSTODY OR  
17 JOINT CUSTODY. THIS SECTION DOES NOT CREATE A PRESUMPTION IN FAVOR OF ONE  
18 CUSTODY ARRANGEMENT OVER ANOTHER. THE COURT IN DETERMINING CUSTODY SHALL NOT  
19 PREFER A PARENT AS CUSTODIAN BECAUSE OF THAT PARENT'S SEX.

20 B. THE COURT MAY ISSUE AN ORDER FOR JOINT CUSTODY OVER THE OBJECTION  
21 OF ONE OF THE PARENTS IF THE COURT MAKES SPECIFIC WRITTEN FINDINGS OF WHY THE  
22 ORDER IS IN THE CHILD'S BEST INTERESTS. IN DETERMINING WHETHER JOINT CUSTODY  
23 IS IN THE CHILD'S BEST INTERESTS, THE COURT SHALL CONSIDER THE FACTORS  
24 PRESCRIBED IN SECTION 25-403, SUBSECTION A AND ALL OF THE FOLLOWING:

25 1. THE AGREEMENT OR LACK OF AN AGREEMENT BY THE PARENTS REGARDING  
26 JOINT CUSTODY.

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

29 3. THE PAST, PRESENT AND FUTURE ABILITIES OF THE PARENTS TO COOPERATE  
30 IN DECISION-MAKING ABOUT THE CHILD TO THE EXTENT REQUIRED BY THE ORDER OF  
31 JOINT CUSTODY.

32 4. WHETHER THE JOINT CUSTODY ARRANGEMENT IS LOGISTICALLY POSSIBLE.

33 C. THE COURT MAY ISSUE AN ORDER FOR JOINT CUSTODY OF A CHILD IF BOTH  
34 PARENTS AGREE AND SUBMIT A WRITTEN PARENTING PLAN AND THE COURT FINDS SUCH AN  
35 ORDER IS IN THE BEST INTERESTS OF THE CHILD. THE COURT MAY ORDER JOINT LEGAL  
36 CUSTODY WITHOUT ORDERING JOINT PHYSICAL CUSTODY.

37 25-403.02. Parenting plans

38 A. BEFORE AN AWARD IS MADE GRANTING JOINT CUSTODY, THE PARENTS SHALL  
39 SUBMIT A PROPOSED PARENTING PLAN THAT INCLUDES AT LEAST THE FOLLOWING:

40 1. EACH PARENT'S RIGHTS AND RESPONSIBILITIES FOR THE PERSONAL CARE OF  
41 THE CHILD AND FOR DECISIONS IN AREAS SUCH AS EDUCATION, HEALTH CARE AND  
42 RELIGIOUS TRAINING.

43 2. A SCHEDULE OF THE PHYSICAL RESIDENCE OF THE CHILD, INCLUDING  
44 HOLIDAYS AND SCHOOL VACATIONS.

1 3. A PROCEDURE BY WHICH PROPOSED CHANGES, DISPUTES AND ALLEGED  
2 BREACHES MAY BE MEDIATED OR RESOLVED, WHICH MAY INCLUDE THE USE OF  
3 CONCILIATION SERVICES OR PRIVATE COUNSELING.

4 4. A PROCEDURE FOR PERIODIC REVIEW OF THE PLAN'S TERMS BY THE PARENTS.

5 5. A STATEMENT THAT THE PARTIES UNDERSTAND THAT JOINT CUSTODY DOES NOT  
6 NECESSARILY MEAN EQUAL PARENTING TIME.

7 B. IF THE PARENTS ARE UNABLE TO AGREE ON ANY ELEMENT TO BE INCLUDED IN  
8 A PARENTING PLAN, THE COURT SHALL DETERMINE THAT ELEMENT. THE COURT MAY  
9 DETERMINE OTHER FACTORS THAT ARE NECESSARY TO PROMOTE AND PROTECT THE  
10 EMOTIONAL AND PHYSICAL HEALTH OF THE CHILD.

11 25-403.03. Domestic violence and child abuse

12 A. NOTWITHSTANDING SUBSECTION D OF THIS SECTION, JOINT CUSTODY SHALL  
13 NOT BE AWARDED IF THE COURT MAKES A FINDING OF THE EXISTENCE OF SIGNIFICANT  
14 DOMESTIC VIOLENCE PURSUANT TO SECTION 13-3601 OR IF THE COURT FINDS BY A  
15 PREPONDERANCE OF THE EVIDENCE THAT THERE HAS BEEN A SIGNIFICANT HISTORY OF  
16 DOMESTIC VIOLENCE.

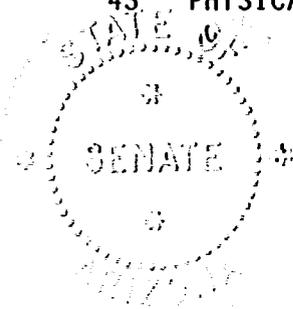
17 B. THE COURT SHALL CONSIDER EVIDENCE OF DOMESTIC VIOLENCE AS BEING  
18 CONTRARY TO THE BEST INTERESTS OF THE CHILD. THE COURT SHALL CONSIDER THE  
19 SAFETY AND WELL-BEING OF THE CHILD AND OF THE VICTIM OF THE ACT OF DOMESTIC  
20 VIOLENCE TO BE OF PRIMARY IMPORTANCE. THE COURT SHALL CONSIDER A  
21 PERPETRATOR'S HISTORY OF CAUSING OR THREATENING TO CAUSE PHYSICAL HARM TO  
22 ANOTHER PERSON.

23 C. TO DETERMINE IF A PERSON HAS COMMITTED AN ACT OF DOMESTIC VIOLENCE  
24 THE COURT, SUBJECT TO THE RULES OF EVIDENCE, SHALL CONSIDER ALL RELEVANT  
25 FACTORS INCLUDING THE FOLLOWING:

- 26 1. FINDINGS FROM ANOTHER COURT OF COMPETENT JURISDICTION.
- 27 2. POLICE REPORTS.
- 28 3. MEDICAL REPORTS.
- 29 4. CHILD PROTECTIVE SERVICES RECORDS.
- 30 5. DOMESTIC VIOLENCE SHELTER RECORDS.
- 31 6. SCHOOL RECORDS.
- 32 7. WITNESS TESTIMONY.

33 D. IF THE COURT DETERMINES THAT A PARENT WHO IS SEEKING CUSTODY HAS  
34 COMMITTED AN ACT OF DOMESTIC VIOLENCE AGAINST THE OTHER PARENT, THERE IS A  
35 REBUTTABLE PRESUMPTION THAT AN AWARD OF CUSTODY TO THE PARENT WHO COMMITTED  
36 THE ACT OF DOMESTIC VIOLENCE IS CONTRARY TO THE CHILD'S BEST INTERESTS. THIS  
37 PRESUMPTION DOES NOT APPLY IF BOTH PARENTS HAVE COMMITTED AN ACT OF DOMESTIC  
38 VIOLENCE. FOR THE PURPOSES OF THIS SUBSECTION, A PERSON COMMITS AN ACT OF  
39 DOMESTIC VIOLENCE IF THAT PERSON DOES ANY OF THE FOLLOWING:

- 40 1. INTENTIONALLY, KNOWINGLY OR RECKLESSLY CAUSES OR ATTEMPTS TO CAUSE  
41 SEXUAL ASSAULT OR SERIOUS PHYSICAL INJURY.
- 42 2. PLACES A PERSON IN REASONABLE APPREHENSION OF IMMINENT SERIOUS  
43 PHYSICAL INJURY TO ANY PERSON.



1           3. ENGAGES IN A PATTERN OF BEHAVIOR FOR WHICH A COURT MAY ISSUE AN EX  
2 PARTE ORDER TO PROTECT THE OTHER PARENT WHO IS SEEKING CHILD CUSTODY OR TO  
3 PROTECT THE CHILD AND THE CHILD'S SIBLINGS.

4           E. TO DETERMINE IF THE PARENT HAS REBUTTED THE PRESUMPTION THE COURT  
5 SHALL CONSIDER ALL OF THE FOLLOWING:

6           1. WHETHER THE PARENT HAS DEMONSTRATED THAT BEING AWARDED SOLE CUSTODY  
7 OR JOINT PHYSICAL OR LEGAL CUSTODY IS IN THE CHILD'S BEST INTERESTS.

8           2. WHETHER THE PARENT HAS SUCCESSFULLY COMPLETED A BATTERER'S  
9 PREVENTION PROGRAM.

10          3. WHETHER THE PARENT HAS SUCCESSFULLY COMPLETED A PROGRAM OF ALCOHOL  
11 OR DRUG ABUSE COUNSELING, IF THE COURT DETERMINES THAT COUNSELING IS  
12 APPROPRIATE.

13          4. WHETHER THE PARENT HAS SUCCESSFULLY COMPLETED A PARENTING CLASS, IF  
14 THE COURT DETERMINES THAT A PARENTING CLASS IS APPROPRIATE.

15          5. IF THE PARENT IS ON PROBATION, PAROLE OR COMMUNITY SUPERVISION,  
16 WHETHER THE PARENT IS RESTRAINED BY A PROTECTIVE ORDER THAT WAS GRANTED AFTER  
17 A HEARING.

18          6. WHETHER THE PARENT HAS COMMITTED ANY FURTHER ACTS OF DOMESTIC  
19 VIOLENCE.

20          F. IF THE COURT FINDS THAT A PARENT HAS COMMITTED AN ACT OF DOMESTIC  
21 VIOLENCE, THAT PARENT HAS THE BURDEN OF PROVING TO THE COURT'S SATISFACTION  
22 THAT PARENTING TIME WILL NOT ENDANGER THE CHILD OR SIGNIFICANTLY IMPAIR THE  
23 CHILD'S EMOTIONAL DEVELOPMENT. IF THE PARENT MEETS THIS BURDEN TO THE  
24 COURT'S SATISFACTION, THE COURT SHALL PLACE CONDITIONS ON PARENTING TIME THAT  
25 BEST PROTECT THE CHILD AND THE OTHER PARENT FROM FURTHER HARM. THE COURT  
26 MAY:

27           1. ORDER THAT AN EXCHANGE OF THE CHILD MUST OCCUR IN A PROTECTED  
28 SETTING AS SPECIFIED BY THE COURT.

29           2. ORDER THAT AN AGENCY SPECIFIED BY THE COURT MUST SUPERVISE  
30 PARENTING TIME. IF THE COURT ALLOWS A FAMILY OR HOUSEHOLD MEMBER TO  
31 SUPERVISE PARENTING TIME, THE COURT SHALL ESTABLISH CONDITIONS THAT THIS  
32 PERSON MUST FOLLOW DURING PARENTING TIME.

33           3. ORDER THE PARENT WHO COMMITTED THE ACT OF DOMESTIC VIOLENCE TO  
34 ATTEND AND COMPLETE, TO THE COURT'S SATISFACTION, A PROGRAM OF INTERVENTION  
35 FOR PERPETRATORS OF DOMESTIC VIOLENCE AND ANY OTHER COUNSELING THE COURT  
36 ORDERS.

37           4. ORDER THE PARENT WHO COMMITTED THE ACT OF DOMESTIC VIOLENCE TO  
38 ABSTAIN FROM POSSESSING OR CONSUMING ALCOHOL OR CONTROLLED SUBSTANCES DURING  
39 PARENTING TIME AND FOR TWENTY-FOUR HOURS BEFORE PARENTING TIME.

40           5. ORDER THE PARENT WHO COMMITTED THE ACT OF DOMESTIC VIOLENCE TO PAY  
41 A FEE TO THE COURT TO DEFRAY THE COSTS OF SUPERVISED PARENTING TIME.

42           6. PROHIBIT OVERNIGHT PARENTING TIME.

43           7. REQUIRE A BOND FROM THE PARENT WHO COMMITTED THE ACT OF DOMESTIC  
44 VIOLENCE FOR THE CHILD'S SAFE RETURN.

1           8. ORDER THAT THE ADDRESS OF THE CHILD AND THE OTHER PARENT REMAIN  
2 CONFIDENTIAL.

3           9. IMPOSE ANY OTHER CONDITION THAT THE COURT DETERMINES IS NECESSARY  
4 TO PROTECT THE CHILD, THE OTHER PARENT AND ANY OTHER FAMILY OR HOUSEHOLD  
5 MEMBER.

6           G. THE COURT SHALL NOT ORDER JOINT COUNSELING BETWEEN A VICTIM AND THE  
7 PERPETRATOR OF DOMESTIC VIOLENCE. THE COURT MAY REFER A VICTIM TO  
8 APPROPRIATE COUNSELING AND SHALL PROVIDE A VICTIM WITH WRITTEN INFORMATION  
9 ABOUT AVAILABLE COMMUNITY RESOURCES RELATED TO DOMESTIC VIOLENCE.

10           H. THE COURT SHALL NOT REQUEST OR ORDER THE SERVICES OF THE DIVISION  
11 OF CHILDREN AND FAMILY SERVICES IN THE DEPARTMENT OF ECONOMIC SECURITY UNLESS  
12 IT BELIEVES THAT A CHILD MAY BE THE VICTIM OF CHILD ABUSE OR NEGLECT AS  
13 DEFINED IN SECTION 8-201.

14           I. IN DETERMINING WHETHER THE ABSENCE OR RELOCATION OF A PARENT SHALL  
15 BE WEIGHED AGAINST THAT PARENT IN DETERMINING CUSTODY OR PARENTING TIME, THE  
16 COURT MAY CONSIDER WHETHER THE ABSENCE OR RELOCATION WAS CAUSED BY AN ACT OF  
17 DOMESTIC VIOLENCE BY THE OTHER PARENT.

18           25-403.04. Drug offenses

19           A. IF THE COURT DETERMINES THAT A PARENT HAS BEEN CONVICTED OF ANY  
20 DRUG OFFENSE UNDER TITLE 13, CHAPTER 34 OR ANY VIOLATION OF SECTION 28-1381,  
21 28-1382 OR 28-1383 WITHIN TWELVE MONTHS BEFORE THE PETITION OR THE REQUEST  
22 FOR CUSTODY IS FILED, THERE IS A REBUTTABLE PRESUMPTION THAT SOLE OR JOINT  
23 CUSTODY BY THAT PARENT IS NOT IN THE CHILD'S BEST INTERESTS. IN MAKING THIS  
24 DETERMINATION THE COURT SHALL STATE ITS:

25           1. FINDINGS OF FACT THAT SUPPORT ITS DETERMINATION THAT THE PARENT WAS  
26 CONVICTED OF THE OFFENSE.

27           2. FINDINGS THAT THE CUSTODY OR PARENTING TIME ARRANGEMENT ORDERED BY  
28 THE COURT APPROPRIATELY PROTECTS THE CHILD.

29           B. TO DETERMINE IF THE PERSON HAS REBUTTED THE PRESUMPTION, AT A  
30 MINIMUM THE COURT 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           25-403.06. Parental access to records

36           A. UNLESS OTHERWISE PROVIDED BY COURT ORDER OR LAW, ON REASONABLE  
37 REQUEST BOTH PARENTS ARE ENTITLED TO HAVE EQUAL ACCESS TO DOCUMENTS AND OTHER  
38 INFORMATION CONCERNING THE CHILD'S EDUCATION AND PHYSICAL, MENTAL, MORAL AND  
39 EMOTIONAL HEALTH INCLUDING MEDICAL, SCHOOL, POLICE, COURT AND OTHER RECORDS  
40 DIRECTLY FROM THE CUSTODIAN OF THE RECORDS OR FROM THE OTHER PARENT.

41           B. A PERSON WHO DOES NOT COMPLY WITH A REASONABLE REQUEST SHALL  
42 REIMBURSE THE REQUESTING PARENT FOR COURT COSTS AND ATTORNEY FEES INCURRED BY  
43 THAT PARENT TO FORCE COMPLIANCE WITH THIS SECTION.

1 C. A PARENT WHO ATTEMPTS TO RESTRICT THE RELEASE OF DOCUMENTS OR  
2 INFORMATION BY THE CUSTODIAN WITHOUT A PRIOR COURT ORDER IS SUBJECT TO  
3 APPROPRIATE LEGAL SANCTIONS.

4 25-403.07. Identification of a primary caretaker and public  
5 assistance

6 THE COURT MAY SPECIFY ONE PARENT AS THE PRIMARY CARETAKER OF THE CHILD  
7 AND ONE HOME AS THE PRIMARY HOME OF THE CHILD FOR THE PURPOSES OF DEFINING  
8 ELIGIBILITY FOR PUBLIC ASSISTANCE. THIS FINDING DOES NOT DIMINISH THE RIGHTS  
9 OF EITHER PARENT AND DOES NOT CREATE A PRESUMPTION FOR OR AGAINST EITHER  
10 PARENT IN A PROCEEDING FOR THE MODIFICATION OF A CUSTODY ORDER.

11 25-403.08. Resources and fees

12 A. IN A PROCEEDING REGARDING SOLE CUSTODY OR JOINT CUSTODY, EITHER  
13 PARTY MAY REQUEST ATTORNEY FEES, COSTS AND EXPERT WITNESS FEES TO ENABLE THE  
14 PARTY WITH INSUFFICIENT RESOURCES TO OBTAIN ADEQUATE LEGAL REPRESENTATION AND  
15 TO PREPARE EVIDENCE FOR THE HEARING.

16 B. IF THE COURT FINDS THERE IS A FINANCIAL DISPARITY BETWEEN THE  
17 PARTIES, THE COURT MAY ORDER PAYMENT OF REASONABLE FEES, EXPENSES AND COSTS  
18 TO ALLOW ADEQUATE PREPARATION.

19 25-403.09. Child support

20 A. FOR ANY CUSTODY ORDER ENTERED UNDER THIS ARTICLE, THE COURT SHALL  
21 DETERMINE AN AMOUNT OF CHILD SUPPORT IN ACCORDANCE WITH SECTION 25-320 AND  
22 GUIDELINES ESTABLISHED PURSUANT TO THAT SECTION.

23 B. AN AWARD OF JOINT CUSTODY DOES NOT DIMINISH THE RESPONSIBILITY OF  
24 EITHER PARENT TO PROVIDE FOR THE SUPPORT OF THE CHILD.

25 Sec. 5. Section 25-408, Arizona Revised Statutes, is amended to read:

26 25-408. Rights of noncustodial parent; parenting time;  
27 relocation of child; exception; enforcement; access  
28 to records

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

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

39 ~~C.~~ B. If by written agreement or court order both parents are  
40 entitled to custody or parenting time and both parents reside in the state,  
41 at least sixty days' advance written notice shall be provided to the other  
42 parent before a parent may do either of the following:

43 1. Relocate the child outside the state.

44 2. Relocate the child more than one hundred miles within the state.

1       ~~D.~~ C. The notice required by this section shall be made by certified  
2 mail, return receipt requested, or pursuant to the Arizona rules of civil  
3 procedure. A parent who does not comply with the notification requirements  
4 of this subsection is subject to court sanction. The court may impose a  
5 sanction that will affect custody or parenting time only in accordance with  
6 the child's best interests.

7       ~~E.~~ D. Within thirty days after notice is made the nonmoving parent  
8 may petition the court to prevent relocation of the child. After expiration  
9 of this time any petition or other application to prevent relocation of the  
10 child may be granted only on a showing of good cause. This subsection does  
11 not prohibit a parent who is seeking to relocate the child from petitioning  
12 the court for a hearing, on notice to the other parent, to determine the  
13 appropriateness of a relocation that may adversely affect the other parent's  
14 custody or parenting time rights.

15       ~~F.~~ E. Subsection ~~G.~~ B of this section does not apply if provision for  
16 relocation of a child has been made by a court order or a written agreement  
17 of the parties that is dated within one year of the proposed relocation of  
18 the child.

19       ~~G.~~ F. Pending the determination by the court of a petition or  
20 application to prevent relocation of the child:

21           1. A parent with sole custody or a parent with joint custody and  
22 primary physical custody who is required by circumstances of health or safety  
23 or employment of that parent or that parent's spouse to relocate in less than  
24 sixty days after written notice has been given to the other parent may  
25 temporarily relocate with the child.

26           2. A parent who shares joint custody and substantially equal physical  
27 custody and who is required by circumstances of health or safety or  
28 employment of that parent or that parent's spouse to relocate in less than  
29 sixty days after written notice has been given to the other parent may  
30 temporarily relocate with the child only if both parents execute a written  
31 agreement to permit relocation of the child.

32       ~~H.~~ G. The court shall determine whether to allow the parent to  
33 relocate the child in accordance with the child's best interests. The burden  
34 of proving what is in the child's best interests is on the parent who is  
35 seeking to relocate the child. To the extent practicable the court shall  
36 also make appropriate arrangements to ensure the continuation of a meaningful  
37 relationship between the child and both parents.

38       ~~I.~~ H. The court shall not deviate from a provision of any parenting  
39 plan or other written agreement by which the parents specifically have agreed  
40 to allow or prohibit relocation of the child unless the court finds that the  
41 provision is no longer in the child's best interests. There is a rebuttable  
42 presumption that a provision from any parenting plan or other written  
43 agreement is in the child's best interests.

44       ~~J.~~ I. In determining the child's best interests the court shall  
45 consider all relevant factors including:

1 1. The factors prescribed under section 25-403.

2 2. Whether the relocation is being made or opposed in good faith and  
3 not to interfere with or to frustrate the relationship between the child and  
4 the other parent or the other parent's right of access to the child.

5 3. The prospective advantage of the move for improving the general  
6 quality of life for the custodial parent or for the child.

7 4. The likelihood that the parent with whom the child will reside  
8 after the relocation will comply with parenting time orders.

9 5. Whether the relocation will allow a realistic opportunity for  
10 parenting time with each parent.

11 6. The extent to which moving or not moving will affect the emotional,  
12 physical or developmental needs of the child.

13 7. The motives of the parents and the validity of the reasons given  
14 for moving or opposing the move including the extent to which either parent  
15 may intend to gain a financial advantage regarding continuing child support  
16 obligations.

17 8. The potential effect of relocation on the child's stability.

18 ~~K.~~ J. The court shall assess attorney fees and court costs against  
19 either parent if the court finds that the parent has unreasonably denied,  
20 restricted or interfered with court-ordered parenting time.

21 ~~L.~~ K. Pursuant to section ~~25-403~~, subsection ~~H~~ 25-403.06, the  
22 noncustodial parent is entitled to have access to documents and other  
23 information about the child unless the court finds that access would endanger  
24 seriously the child's or the custodial parent's physical, mental, moral or  
25 emotional health.

26 ~~M. Notwithstanding section 25-411, if after a custody or parenting~~  
27 ~~time order is in effect one of the parents is charged with a dangerous crime~~  
28 ~~against children as defined in section 13-604.01, child molestation as~~  
29 ~~defined in section 13-1410 or an act of domestic violence as defined in~~  
30 ~~section 13-3601 in which the victim is a minor, the other parent may petition~~  
31 ~~the court for an expedited hearing. Pending the expedited hearing, the court~~  
32 ~~may suspend parenting time or change custody ex parte.~~

33 Sec. 6. Title 25, chapter 4, article 1, Arizona Revised Statutes, is  
34 amended by adding a new section 25-411, to read:

35 25-411. Modification of custody decree; affidavit; contents

36 A. A PERSON SHALL NOT MAKE A MOTION TO MODIFY A CUSTODY DECREE EARLIER  
37 THAN ONE YEAR AFTER ITS DATE, UNLESS THE COURT PERMITS IT TO BE MADE ON THE  
38 BASIS OF AFFIDAVITS THAT THERE IS REASON TO BELIEVE THE CHILD'S PRESENT  
39 ENVIRONMENT MAY SERIOUSLY ENDANGER THE CHILD'S PHYSICAL, MENTAL, MORAL OR  
40 EMOTIONAL HEALTH. AT ANY TIME AFTER A JOINT CUSTODY ORDER IS ENTERED, A  
41 PARENT MAY PETITION THE COURT FOR MODIFICATION OF THE ORDER ON THE BASIS OF  
42 EVIDENCE THAT DOMESTIC VIOLENCE PURSUANT TO SECTION 13-1201 OR 13-1204,  
43 SPOUSAL ABUSE OR CHILD ABUSE OCCURRED SINCE THE ENTRY OF THE JOINT CUSTODY  
44 ORDER. SIX MONTHS AFTER A JOINT CUSTODY ORDER IS ENTERED, A PARENT MAY  
45 PETITION THE COURT FOR MODIFICATION OF THE ORDER BASED ON THE FAILURE OF THE

1 OTHER PARENT TO COMPLY WITH THE PROVISIONS OF THE ORDER. A MOTION OR  
2 PETITION TO MODIFY A CUSTODY ORDER SHALL MEET THE REQUIREMENTS OF THIS  
3 SECTION. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION B OF THIS SECTION, IF A  
4 CUSTODIAL PARENT IS A MEMBER OF THE UNITED STATES ARMED FORCES, THE COURT  
5 SHALL CONSIDER THE TERMS OF THAT PARENT'S MILITARY FAMILY CARE PLAN TO  
6 DETERMINE WHAT IS IN THE CHILD'S BEST INTEREST DURING THE CUSTODIAL PARENT'S  
7 MILITARY DEPLOYMENT.

8 B. FOR THE PURPOSES OF A MOTION TO MODIFY A CUSTODY DECREE, THE  
9 MILITARY DEPLOYMENT OF A CUSTODIAL PARENT WHO IS A MEMBER OF THE UNITED  
10 STATES ARMED FORCES IS NOT A CHANGE IN CIRCUMSTANCES THAT MATERIALLY AFFECTS  
11 THE WELFARE OF THE CHILD IF THE CUSTODIAL PARENT HAS FILED A MILITARY FAMILY  
12 CARE PLAN WITH THE COURT AT A PREVIOUS CUSTODY PROCEEDING AND IF THE MILITARY  
13 DEPLOYMENT IS LESS THAN SIX MONTHS.

14 C. THE COURT MAY MODIFY AN ORDER GRANTING OR DENYING PARENTING TIME  
15 RIGHTS WHENEVER MODIFICATION WOULD SERVE THE BEST INTEREST OF THE CHILD, BUT  
16 THE COURT SHALL NOT RESTRICT A PARENT'S PARENTING TIME RIGHTS UNLESS IT FINDS  
17 THAT THE PARENTING TIME WOULD ENDANGER SERIOUSLY THE CHILD'S PHYSICAL,  
18 MENTAL, MORAL OR EMOTIONAL HEALTH.

19 D. IF AFTER A CUSTODY OR PARENTING TIME ORDER IS IN EFFECT ONE OF THE  
20 PARENTS IS CHARGED WITH A DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN  
21 SECTION 13-604.01, CHILD MOLESTATION AS DEFINED IN SECTION 13-1410 OR AN ACT  
22 OF DOMESTIC VIOLENCE AS DEFINED IN SECTION 13-3601 IN WHICH THE VICTIM IS A  
23 MINOR, THE OTHER PARENT MAY PETITION THE COURT FOR AN EXPEDITED  
24 HEARING. PENDING THE EXPEDITED HEARING, THE COURT MAY SUSPEND PARENTING TIME  
25 OR CHANGE CUSTODY EX PARTE.

26 E. TO MODIFY ANY TYPE OF CUSTODY ORDER A PERSON SHALL SUBMIT AN  
27 AFFIDAVIT OR VERIFIED PETITION SETTING FORTH DETAILED FACTS SUPPORTING THE  
28 REQUESTED MODIFICATION AND SHALL GIVE NOTICE, TOGETHER WITH A COPY OF THE  
29 AFFIDAVIT OR VERIFIED PETITION, TO OTHER PARTIES TO THE PROCEEDING, WHO MAY  
30 FILE OPPOSING AFFIDAVITS. THE COURT SHALL DENY THE MOTION UNLESS IT FINDS  
31 THAT ADEQUATE CAUSE FOR HEARING THE MOTION IS ESTABLISHED BY THE PLEADINGS,  
32 IN WHICH CASE IT SHALL SET A DATE FOR HEARING ON WHY THE REQUESTED  
33 MODIFICATION SHOULD NOT BE GRANTED.

34 F. THE COURT SHALL ASSESS ATTORNEY FEES AND COSTS AGAINST A PARTY  
35 SEEKING MODIFICATION IF THE COURT FINDS THAT THE MODIFICATION ACTION IS  
36 VEXATIOUS AND CONSTITUTES HARASSMENT.

37 G. SUBSECTION E OF THIS SECTION DOES NOT APPLY IF THE REQUESTED RELIEF  
38 IS FOR THE MODIFICATION OR CLARIFICATION OF VISITATION AND NOT FOR A CHANGE  
39 OF JOINT CUSTODY, JOINT LEGAL CUSTODY, JOINT PHYSICAL CUSTODY OR SOLE  
40 CUSTODY.

APPROVED BY THE GOVERNOR APRIL 11, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 2005.

Passed the House April 4, 20 05

by the following vote: 55 Ayes,

0 Nays, 5 Not Voting

[Signature]  
Speaker of the House

[Signature]  
Chief Clerk of the House

Passed the Senate January 27, 20 05

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

[Signature]  
President of the Senate

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this  
5th day of April, 2005

at 2:15 o'clock P. M.

[Signature]  
Secretary to the Governor

Approved this 11 day of  
April, 2005,

at 10<sup>00</sup> o'clock A. M.

[Signature]  
Governor of Arizona

S.B. 1045

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State  
this 11 day of April, 2005,

at 1:35 o'clock P. M.  
[Signature]  
Secretary of State