

State of Arizona  
Senate  
Fiftieth Legislature  
Second Regular Session  
2012

# SENATE BILL 1176

AN ACT

AMENDING SECTIONS 13-3620, 25-403.02, 25-403.03, 25-403.04, 25-410, 25-411 AND 41-619.51, ARIZONA REVISED STATUTES; AMENDING SECTION 41-1758, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2011, CHAPTER 177, SECTION 2 AND CHAPTER 203, SECTION 3; REPEALING SECTION 41-1758, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2011, CHAPTER 190, SECTION 32; AMENDING SECTION 41-1758.07, ARIZONA REVISED STATUTES; BLENDING MULTIPLE ENACTMENTS; 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. Section 13-3620, Arizona Revised Statutes, is amended to  
3 read:

4 13-3620. Duty to report abuse, physical injury, neglect and  
5 denial or deprivation of medical or surgical care or  
6 nourishment of minors; medical records; exception;  
7 violation; classification; definitions

8 A. Any person who reasonably believes that a minor is or has been the  
9 victim of physical injury, abuse, child abuse, a reportable offense or  
10 neglect that appears to have been inflicted on the minor by other than  
11 accidental means or that is not explained by the available medical history as  
12 being accidental in nature or who reasonably believes there has been a denial  
13 or deprivation of necessary medical treatment or surgical care or nourishment  
14 with the intent to cause or allow the death of an infant who is protected  
15 under section 36-2281 shall immediately report or cause reports to be made of  
16 this information to a peace officer or to child protective services in the  
17 department of economic security, except if the report concerns a person who  
18 does not have care, custody or control of the minor, the report shall be made  
19 to a peace officer only. A member of the clergy, christian science  
20 practitioner or priest who has received a confidential communication or a  
21 confession in that person's role as a member of the clergy, A christian  
22 science practitioner or a priest in the course of the discipline enjoined by  
23 the church to which the member of the clergy, christian science practitioner  
24 or priest belongs may withhold reporting of the communication or confession  
25 if the member of the clergy, christian science practitioner or priest  
26 determines that it is reasonable and necessary within the concepts of the  
27 religion. This exemption applies only to the communication or confession and  
28 not to personal observations the member of the clergy, christian science  
29 practitioner or priest may otherwise make of the minor. For the purposes of  
30 this subsection, "person" means:

31 1. Any physician, physician's assistant, optometrist, dentist,  
32 osteopath, chiropractor, podiatrist, behavioral health professional, nurse,  
33 psychologist, counselor or social worker who develops the reasonable belief  
34 in the course of treating a patient.

35 2. Any peace officer, member of the clergy, priest or christian  
36 science practitioner.

37 3. The parent, stepparent or guardian of the minor.

38 4. School personnel or domestic violence victim ~~advocate~~ **ADVOCATES** who  
39 develop the reasonable belief in the course of their employment.

40 5. Any other person who has responsibility for the care or treatment  
41 of the minor.

42 B. A report is not required under this section for conduct prescribed  
43 by sections 13-1404 and 13-1405 if the conduct involves only minors who are  
44 fourteen, fifteen, sixteen or seventeen years of age and there is nothing to  
45 indicate that the conduct is other than consensual.

1 C. If a physician, psychologist or behavioral health professional  
2 receives a statement from a person other than a parent, stepparent, guardian  
3 or custodian of the minor during the course of providing sex offender  
4 treatment that is not court ordered or that does not occur while the offender  
5 is incarcerated in the state department of corrections or the department of  
6 juvenile corrections, the physician, psychologist or behavioral health  
7 professional may withhold the reporting of that statement if the physician,  
8 psychologist or behavioral health professional determines it is reasonable  
9 and necessary to accomplish the purposes of the treatment.

10 D. Reports shall be made immediately by telephone or in person and  
11 shall be followed by a written report within seventy-two hours. The reports  
12 shall contain:

13 1. The names and addresses of the minor and the minor's parents or the  
14 person or persons having custody of the minor, if known.

15 2. The minor's age and the nature and extent of the minor's abuse,  
16 child abuse, physical injury or neglect, including any evidence of previous  
17 abuse, child abuse, physical injury or neglect.

18 3. Any other information that the person believes might be helpful in  
19 establishing the cause of the abuse, child abuse, physical injury or neglect.

20 E. A health care professional who is regulated pursuant to title 32  
21 and who, after a routine newborn physical assessment of a newborn infant's  
22 health status or following notification of positive toxicology screens of a  
23 newborn infant, reasonably believes that the newborn infant may be affected  
24 by the presence of alcohol or a drug listed in section 13-3401 shall  
25 immediately report this information, or cause a report to be made, to child  
26 protective services in the department of economic security. For the purposes  
27 of this subsection, "newborn infant" means a newborn infant who is under  
28 thirty days of age.

29 F. Any person other than one required to report or cause reports to be  
30 made under subsection A of this section who reasonably believes that a minor  
31 is or has been a victim of abuse, child abuse, physical injury, a reportable  
32 offense or neglect may report the information to a peace officer or to child  
33 protective services in the department of economic security, except if the  
34 report concerns a person who does not have care, custody or control of the  
35 minor, the report shall be made to a peace officer only.

36 G. A person who has custody or control of medical records of a minor  
37 for whom a report is required or authorized under this section shall make the  
38 records, or a copy of the records, available to a peace officer or child  
39 protective services worker investigating the minor's neglect, child abuse,  
40 physical injury or abuse on written request for the records signed by the  
41 peace officer or child protective services worker. Records disclosed  
42 pursuant to this subsection are confidential and may be used only in a  
43 judicial or administrative proceeding or investigation resulting from a  
44 report required or authorized under this section.

1 H. When telephone or in-person reports are received by a peace  
2 officer, the officer shall immediately notify child protective services in  
3 the department of economic security and make the information available to  
4 ~~them~~ CHILD PROTECTIVE SERVICES. Notwithstanding any other statute, when  
5 child protective services receives these reports by telephone or in person,  
6 it shall immediately notify a peace officer in the appropriate jurisdiction.

7 I. Any person who is required to receive reports pursuant to  
8 subsection A of this section may take or cause to be taken photographs of the  
9 minor and the vicinity involved. Medical examinations of the involved minor  
10 may be performed.

11 J. A person who furnishes a report, information or records required or  
12 authorized under this section, or a person who participates in a judicial or  
13 administrative proceeding or investigation resulting from a report,  
14 information or records required or authorized under this section, is immune  
15 from any civil or criminal liability by reason of that action unless the  
16 person acted with malice or unless the person has been charged with or is  
17 suspected of abusing or neglecting the child or children in question.

18 K. Except for the attorney client privilege or the privilege under  
19 subsection L of this section, no privilege applies to any:

20 1. Civil or criminal litigation or administrative proceeding in which  
21 a minor's neglect, dependency, abuse, child abuse, physical injury or  
22 abandonment is an issue.

23 2. Judicial or administrative proceeding resulting from a report,  
24 information or records submitted pursuant to this section.

25 3. Investigation of a minor's child abuse, physical injury, neglect or  
26 abuse conducted by a peace officer or child protective services in the  
27 department of economic security.

28 L. In any civil or criminal litigation in which a child's neglect,  
29 dependency, physical injury, abuse, child abuse or abandonment is an issue, a  
30 member of the clergy, a christian science practitioner or a priest shall not,  
31 without his consent, be examined as a witness concerning any confession made  
32 to him in his role as a member of the clergy, a christian science  
33 practitioner or a priest in the course of the discipline enjoined by the  
34 church to which he belongs. ~~Nothing in~~ This subsection ~~discharges~~ DOES NOT  
35 DISCHARGE a member of the clergy, a christian science practitioner or a  
36 priest from the duty to report pursuant to subsection A of this section.

37 M. If psychiatric records are requested pursuant to subsection G of  
38 this section, the custodian of the records shall notify the attending  
39 psychiatrist, who may excise from the records, before they are made  
40 available:

41 1. Personal information about individuals other than the patient.

42 2. Information regarding specific diagnosis or treatment of a  
43 psychiatric condition, if the attending psychiatrist certifies in writing  
44 that release of the information would be detrimental to the patient's health  
45 or treatment.

1 N. If any portion of a psychiatric record is excised pursuant to  
2 subsection M of this section, a court, ~~upon~~ ON application of a peace officer  
3 or child protective services worker, may order that the entire record or any  
4 portion of the record that contains information relevant to the reported  
5 abuse, child abuse, physical injury or neglect be made available to the peace  
6 officer or child protective services worker investigating the abuse, child  
7 abuse, physical injury or neglect.

8 O. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, SCHOOL PERSONNEL ARE  
9 NOT REQUIRED TO REPORT A NONACCIDENTAL PHYSICAL INJURY TO A MINOR THAT IS  
10 CAUSED BY ANOTHER MINOR ON SCHOOL PROPERTY IF ALL OF THE FOLLOWING APPLY:

11 1. THE INJURY IS NOT A SERIOUS PHYSICAL INJURY.

12 2. THE MINORS ARE PUPILS WHO ARE ENROLLED IN THE SAME SCHOOL.

13 3. A SCHOOL REPRESENTATIVE PROMPTLY ADVISES THE PARENT OR GUARDIAN OF  
14 THE INJURED MINOR OF THE INJURY AND THE NAME OF THE PUPIL WHO ALLEGEDLY  
15 CAUSED THE INJURY.

16 P. NOTWITHSTANDING ANY LAW TO THE CONTRARY, A LAW ENFORCEMENT AGENCY  
17 OR SCHOOL DISTRICT SHALL EXPUNGE ANY RECORDS REGARDING A NONACCIDENTAL  
18 PHYSICAL INJURY TO A MINOR THAT WAS CAUSED BY ANOTHER MINOR ON SCHOOL  
19 PROPERTY AND WHERE THE INJURY WAS NOT A SERIOUS PHYSICAL INJURY, THE MINORS  
20 ARE PUPILS WHO ARE ENROLLED IN THE SAME SCHOOL, THE PARENT OR GUARDIAN OF THE  
21 INJURED MINOR WAS PROMPTLY ADVISED OF THE INJURY AND THE NAME OF THE PUPIL  
22 WHO ALLEGEDLY CAUSED THE INJURY AND THAT DID NOT RESULT IN A CRIMINAL  
23 COMPLAINT.

24 ~~O.~~ Q. A person who violates this section is guilty of a class 1  
25 misdemeanor, except if the failure to report involves a reportable offense,  
26 the person is guilty of a class 6 felony.

27 ~~P.~~ R. For the purposes of this section:

28 1. "Abuse" has the same meaning prescribed in section 8-201.

29 2. "Child abuse" means child abuse pursuant to section 13-3623.

30 3. "Neglect" has the same meaning prescribed in section 8-201.

31 4. "Reportable offense" means any of the following:

32 (a) Any offense listed in chapters 14 and 35.1 of this title or  
33 section 13-3506.01.

34 (b) Surreptitious photographing, videotaping, filming or digitally  
35 recording ~~of~~ OR VIEWING a minor pursuant to section 13-3019.

36 (c) Child prostitution pursuant to section 13-3212.

37 (d) Incest pursuant to section 13-3608.

38 Sec. 2. Section 25-403.02, Arizona Revised Statutes, is amended to  
39 read:

40 25-403.02. Parenting plans

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

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

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

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

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

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

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

11           B. If the parents are unable to agree on any element to be included in  
12 a parenting plan, the court shall determine that element. The court may  
13 determine other factors that are necessary to promote and protect the  
14 emotional and physical health of the child. **IF THE COURT ORDERS THAT AN  
15 AGENCY SPECIFIED BY THE COURT MUST SUPERVISE PARENTING TIME, THE COURT SHALL  
16 REQUIRE PERSONS WHO SUPERVISE PARENTING TIME FOR COMPENSATION TO HAVE A VALID  
17 FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO SECTION 41-1758.07.**

18           Sec. 3. Section 25-403.03, Arizona Revised Statutes, is amended to  
19 read:

20           **25-403.03. Domestic violence and child abuse**

21           A. Notwithstanding subsection D of this section, joint custody shall  
22 not be awarded if the court makes a finding of the existence of significant  
23 domestic violence pursuant to section 13-3601 or if the court finds by a  
24 preponderance of the evidence that there has been a significant history of  
25 domestic violence.

26           B. The court shall consider evidence of domestic violence as being  
27 contrary to the best interests of the child. The court shall consider the  
28 safety and well-being of the child and of the victim of the act of domestic  
29 violence to be of primary importance. The court shall consider a  
30 perpetrator's history of causing or threatening to cause physical harm to  
31 another person.

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

- 35           1. Findings from another court of competent jurisdiction.
- 36           2. Police reports.
- 37           3. Medical reports.
- 38           4. Child protective services records.
- 39           5. Domestic violence shelter records.
- 40           6. School records.
- 41           7. Witness testimony.

42           D. If the court determines that a parent who is seeking custody has  
43 committed an act of domestic violence against the other parent, there is a  
44 rebuttable presumption that an award of custody to the parent who committed  
45 the act of domestic violence is contrary to the child's best interests. This

1 presumption does not apply if both parents have committed an act of domestic  
2 violence. For the purposes of this subsection, a person commits an act of  
3 domestic violence if that person does any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

36 2. Order that an agency specified by the court must supervise  
37 parenting time. If the court allows a family or household member to  
38 supervise parenting time, the court shall establish conditions that this  
39 person must follow during parenting time. **THE COURT SHALL REQUIRE PERSONS  
40 WHO SUPERVISE PARENTING TIME FOR COMPENSATION TO HAVE A VALID FINGERPRINT  
41 CLEARANCE CARD ISSUED PURSUANT TO SECTION 41-1758.07.**

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

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

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

6           6. Prohibit overnight parenting time.

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

9           8. Order that the address of the child and the other parent remain  
10 confidential.

11           9. Impose any other condition that the court determines is necessary  
12 to protect the child, the other parent and any other family or household  
13 member.

14           G. The court shall not order joint counseling between a victim and the  
15 perpetrator of domestic violence. The court may refer a victim to  
16 appropriate counseling and shall provide a victim with written information  
17 about available community resources related to domestic violence.

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

22           I. In determining whether the absence or relocation of a parent shall  
23 be weighed against that parent in determining custody or parenting time, the  
24 court may consider whether the absence or relocation was caused by an act of  
25 domestic violence by the other parent.

26           Sec. 4. Section 25-403.04, Arizona Revised Statutes, is amended to  
27 read:

28           25-403.04. Drug offenses

29           A. If the court determines that a parent has been convicted of any  
30 drug offense under title 13, chapter 34 or any violation of section 28-1381,  
31 28-1382 or 28-1383 within twelve months before the petition or the request  
32 for custody is filed, there is a rebuttable presumption that sole or joint  
33 custody by that parent is not in the child's best interests. In making this  
34 determination the court shall state its:

35           1. Findings of fact that support its determination that the parent was  
36 convicted of the offense.

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

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

41           1. The absence of any conviction of any other drug offense during the  
42 previous five years.

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

1 C. IF THE COURT ORDERS THAT AN AGENCY SPECIFIED BY THE COURT MUST  
2 SUPERVISE PARENTING TIME, THE COURT SHALL REQUIRE PERSONS WHO SUPERVISE  
3 PARENTING TIME FOR COMPENSATION TO HAVE A VALID FINGERPRINT CLEARANCE CARD  
4 ISSUED PURSUANT TO SECTION 41-1758.07.

5 Sec. 5. Section 25-410, Arizona Revised Statutes, is amended to read:  
6 25-410. Judicial supervision

7 A. Except as otherwise agreed by the parties in writing at the time of  
8 the custody decree, the custodian may determine the child's upbringing,  
9 including the child's education CARE, health, care and religious training,  
10 unless, on motion by the noncustodial parent, the court, after a hearing,  
11 finds that in the absence of a specific limitation of the custodian's  
12 authority, the child's physical health would be endangered or the child's  
13 emotional development would be significantly impaired.

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

24 C. IF THE COURT ORDERS THAT AN AGENCY SPECIFIED BY THE COURT MUST  
25 SUPERVISE PARENTING TIME, THE COURT SHALL REQUIRE PERSONS WHO SUPERVISE  
26 PARENTING TIME FOR COMPENSATION TO HAVE A VALID FINGERPRINT CLEARANCE CARD  
27 ISSUED PURSUANT TO SECTION 41-1758.07.

28 Sec. 6. Section 25-411, Arizona Revised Statutes, is amended to read:  
29 25-411. Modification of custody decree; affidavit; contents;  
30 military families

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

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

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

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

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

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

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

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

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

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

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

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

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

17 J. The court may modify an order granting or denying parenting time  
18 rights whenever modification would serve the best interest of the child, but  
19 the court shall not restrict a parent's parenting time rights unless it finds  
20 that the parenting time would endanger seriously the child's physical,  
21 mental, moral or emotional health. IF THE COURT ORDERS THAT AN AGENCY  
22 SPECIFIED BY THE COURT MUST SUPERVISE PARENTING TIME, THE COURT SHALL REQUIRE  
23 PERSONS WHO SUPERVISE PARENTING TIME FOR COMPENSATION TO HAVE A VALID  
24 FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO SECTION 41-1758.07.

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

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

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

1 N. Subsection L of this section does not apply if the requested relief  
2 is for the modification or clarification of visitation and not for a change  
3 of joint custody, joint legal custody, joint physical custody or sole  
4 custody.

5 Sec. 7. Section 41-619.51, Arizona Revised Statutes, is amended to  
6 read:

7 41-619.51. Definitions

8 In this article, unless the context otherwise requires:

9 1. "Agency" means the supreme court, the department of economic  
10 security, the department of education, the department of health services, the  
11 department of juvenile corrections, the department of emergency and military  
12 affairs, the department of transportation, the state real estate department  
13 or the board of examiners of nursing care institution administrators and  
14 assisted living facility managers.

15 2. "Board" means the board of fingerprinting.

16 3. "Expedited review" means an examination, in accordance with board  
17 rule, of the documents an applicant submits by the board or its hearing  
18 officer without the applicant being present.

19 4. "Good cause exception" means the issuance of a fingerprint  
20 clearance card to an employee pursuant to section 41-619.55.

21 5. "Person" means a person who is required to be fingerprinted  
22 pursuant to this article and any of the following:

- 23 (a) Section 8-105.
- 24 (b) Section 8-322.
- 25 (c) Section 8-509.
- 26 (d) Section 8-802.
- 27 (e) Section 15-183.
- 28 (f) Section 15-534.
- 29 (g) Section 15-782.02.
- 30 (h) Section 15-1330.
- 31 (i) Section 15-1881.
- 32 (j) Section 17-215.
- 33 (k) SECTION 25-403.02.
- 34 (l) SECTION 25-403.03.
- 35 (m) SECTION 25-403.04.
- 36 (n) SECTION 25-410.
- 37 (o) SECTION 25-411.
- 38 ~~(k)~~ (p) Section 26-103.
- 39 ~~(j)~~ (q) Section 32-2108.01.
- 40 ~~(m)~~ (r) Section 32-2123.
- 41 ~~(n)~~ (s) Section 32-2371.
- 42 (t) SECTION 36-207.
- 43 ~~(o)~~ (u) Section 36-411.
- 44 ~~(p)~~ (v) Section 36-425.03.
- 45 ~~(q)~~ (w) Section 36-446.04.

- 1       ~~(r)~~ (x) Section 36-594.01.
- 2       ~~(s)~~ (y) Section 36-594.02.
- 3       ~~(t)~~ (z) Section 36-882.
- 4       ~~(u)~~ (aa) Section 36-883.02.
- 5       ~~(v)~~ (bb) Section 36-897.01.
- 6       ~~(w)~~ (cc) Section 36-897.03.
- 7       ~~(x)~~ (dd) Section 36-3008.
- 8       ~~(y)~~ (ee) Section 41-619.53.
- 9       ~~(z)~~ (ff) Section 41-1964.
- 10      ~~(aa)~~ (gg) Section 41-1967.01.
- 11      ~~(bb)~~ (hh) Section 41-1968.
- 12      ~~(cc)~~ (ii) Section 41-1969.
- 13      ~~(dd)~~ (jj) Section 41-2814.
- 14      ~~(ee)~~ (kk) Section 46-141, subsection A.
- 15      ~~(ff)~~ (ll) Section 46-321.

16       Sec. 8. Section 41-1758, Arizona Revised Statutes, as amended by Laws  
17 2011, chapter 177, section 2 and chapter 203, section 3, is amended to read:  
18 41-1758. Definitions

19       In this article, unless the context otherwise requires:

20       1. "Agency" means the supreme court, the department of economic  
21 security, the department of education, the department of health services, the  
22 department of juvenile corrections, the department of emergency and military  
23 affairs, **THE DEPARTMENT OF TRANSPORTATION**, the state real estate department,  
24 the board of fingerprinting or the board of examiners of nursing care  
25 institution administrators and assisted living facility managers.

26       2. "Division" means the fingerprinting division in the department of  
27 public safety.

28       3. "Good cause exception" means the issuance of a fingerprint  
29 clearance card to an employee pursuant to section 41-619.55.

30       4. "Person" means a person who is required to be fingerprinted  
31 pursuant to any of the following:

- 32       (a) Section 8-105.
- 33       (b) Section 8-322.
- 34       (c) Section 8-509.
- 35       (d) Section 8-802.
- 36       (e) Section 15-183.
- 37       (f) Section 15-503.
- 38       (g) Section 15-512.
- 39       (h) Section 15-534.
- 40       (i) Section 15-782.02.
- 41       (j) Section 15-1330.
- 42       (k) Section 15-1881.
- 43       (l) **SECTION 17-215.**
- 44       (m) **SECTION 25-403.02.**
- 45       (n) **SECTION 25-403.03.**

1 (o) SECTION 25-403.04.  
2 (p) SECTION 25-410.  
3 (q) SECTION 25-411.  
4 ~~(r)~~ (r) Section 26-103.  
5 ~~(m)~~ (s) Section 32-2108.01.  
6 ~~(n)~~ (t) Section 32-2123.  
7 (u) SECTION 32-2371.  
8 ~~(o)~~ (v) Section 36-207.  
9 ~~(p)~~ (w) Section 36-411.  
10 ~~(q)~~ (x) Section 36-425.03.  
11 ~~(r)~~ (y) Section 36-446.04.  
12 ~~(s)~~ (z) Section 36-594.01.  
13 ~~(t)~~ (aa) Section 36-594.02.  
14 ~~(u)~~ (bb) Section 36-882.  
15 ~~(v)~~ (cc) Section 36-883.02.  
16 ~~(w)~~ (dd) Section 36-897.01.  
17 ~~(x)~~ (ee) Section 36-897.03.  
18 ~~(y)~~ (ff) Section 36-3008.  
19 ~~(z)~~ (gg) Section 41-619.52.  
20 ~~(aa)~~ (hh) Section 41-619.53.  
21 ~~(bb)~~ (ii) Section 41-1964.  
22 ~~(cc)~~ (jj) Section 41-1967.01.  
23 ~~(dd)~~ (kk) Section 41-1968.  
24 ~~(ee)~~ (ll) Section 41-1969.  
25 ~~(ff)~~ (mm) Section 41-2814.  
26 ~~(gg)~~ (nn) Section 46-141, subsection A.  
27 ~~(hh)~~ (oo) Section 46-321.  
28 5. "Vulnerable adult" has the same meaning prescribed in section  
29 13-3623.  
30 Sec. 9. Repeal  
31 Section 41-1758, Arizona Revised Statutes, as amended by Laws 2011,  
32 chapter 190, section 32, is repealed.  
33 Sec. 10. Section 41-1758.07, Arizona Revised Statutes, is amended to  
34 read:  
35 41-1758.07. Level I fingerprint clearance cards; definitions  
36 A. On receiving the state and federal criminal history record of a  
37 person who is required to be fingerprinted pursuant to this section, the  
38 fingerprinting division in the department of public safety shall compare the  
39 record with the list of criminal offenses that preclude the person from  
40 receiving a level I fingerprint clearance card. If the person's criminal  
41 history record does not contain any of the offenses listed in subsections B  
42 and C of this section, the fingerprinting division shall issue the person a  
43 level I fingerprint clearance card.  
44 B. A person who is subject to registration as a sex offender in this  
45 state or any other jurisdiction or who is awaiting trial on or who has been

1 convicted of committing or attempting, soliciting, facilitating or conspiring  
2 to commit one or more of the following offenses in this state or the same or  
3 similar offenses in another state or jurisdiction is precluded from receiving  
4 a level I fingerprint clearance card:

- 5 1. Sexual abuse of a vulnerable adult.
- 6 2. Incest.
- 7 3. Homicide, including first or second degree murder, manslaughter and  
8 negligent homicide.
- 9 4. Sexual assault.
- 10 5. Sexual exploitation of a minor.
- 11 6. Sexual exploitation of a vulnerable adult.
- 12 7. Commercial sexual exploitation of a minor.
- 13 8. Commercial sexual exploitation of a vulnerable adult.
- 14 9. Child prostitution as prescribed in section 13-3212.
- 15 10. Child abuse.
- 16 11. Felony child neglect.
- 17 12. Abuse of a vulnerable adult.
- 18 13. Sexual conduct with a minor.
- 19 14. Molestation of a child.
- 20 15. Molestation of a vulnerable adult.
- 21 16. Dangerous crimes against children as defined in section 13-705.
- 22 17. Exploitation of minors involving drug offenses.
- 23 18. Taking a child for the purpose of prostitution as prescribed in  
24 section 13-3206.
- 25 19. Neglect or abuse of a vulnerable adult.
- 26 20. Sex trafficking.
- 27 21. Sexual abuse.
- 28 22. Production, publication, sale, possession and presentation of  
29 obscene items as prescribed in section 13-3502.
- 30 23. Furnishing harmful items to minors as prescribed in section  
31 13-3506.
- 32 24. Furnishing harmful items to minors by internet activity as  
33 prescribed in section 13-3506.01.
- 34 25. Obscene or indecent telephone communications to minors for  
35 commercial purposes as prescribed in section 13-3512.
- 36 26. Luring a minor for sexual exploitation.
- 37 27. Enticement of persons for purposes of prostitution.
- 38 28. Procurement by false pretenses of person for purposes of  
39 prostitution.
- 40 29. Procuring or placing persons in a house of prostitution.
- 41 30. Receiving earnings of a prostitute.
- 42 31. Causing one's spouse to become a prostitute.
- 43 32. Detention of persons in a house of prostitution for debt.
- 44 33. Keeping or residing in a house of prostitution or employment in  
45 prostitution.

- 1           34. Pandering.
- 2           35. Transporting persons for the purpose of prostitution, polygamy and
- 3 concubinage.
- 4           36. Portraying adult as a minor as prescribed in section 13-3555.
- 5           37. Admitting minors to public displays of sexual conduct as prescribed
- 6 in section 13-3558.
- 7           38. Any felony offense involving contributing to the delinquency of a
- 8 minor.
- 9           39. Unlawful sale or purchase of children.
- 10          40. Child bigamy.
- 11          41. Any felony offense involving domestic violence as defined in
- 12 section 13-3601 except for a felony offense only involving criminal damage in
- 13 an amount of more than two hundred fifty dollars but less than one thousand
- 14 dollars if the offense was committed before June 29, 2009.
- 15          42. Any felony offense in violation of title 13, chapter 12 if
- 16 committed within five years before the date of applying for a level I
- 17 fingerprint clearance card.
- 18          43. Felony drug or alcohol related offenses if committed within five
- 19 years before the date of applying for a level I fingerprint clearance card.
- 20          44. Felony indecent exposure.
- 21          45. Felony public sexual indecency.
- 22          46. Terrorism.
- 23          47. Any offense involving a violent crime as defined in section
- 24 13-901.03.
- 25          C. A person who is awaiting trial on or who has been convicted of
- 26 committing or attempting, soliciting, facilitating or conspiring to commit
- 27 one or more of the following offenses in this state or the same or similar
- 28 offenses in another state or jurisdiction is precluded from receiving a level
- 29 I fingerprint clearance card, except that the person may petition the board
- 30 of fingerprinting for a good cause exception pursuant to section 41-619.55:
- 31           1. Any misdemeanor offense in violation of title 13, chapter 12.
- 32           2. Misdemeanor indecent exposure.
- 33           3. Misdemeanor public sexual indecency.
- 34           4. Aggravated criminal damage.
- 35           5. Theft.
- 36           6. Theft by extortion.
- 37           7. Shoplifting.
- 38           8. Forgery.
- 39           9. Criminal possession of a forgery device.
- 40           10. Obtaining a signature by deception.
- 41           11. Criminal impersonation.
- 42           12. Theft of a credit card or obtaining a credit card by fraudulent
- 43 means.
- 44           13. Receipt of anything of value obtained by fraudulent use of a credit
- 45 card.

- 1 14. Forgery of a credit card.
- 2 15. Fraudulent use of a credit card.
- 3 16. Possession of any machinery, plate or other contrivance or  
4 incomplete credit card.
- 5 17. False statement as to financial condition or identity to obtain a  
6 credit card.
- 7 18. Fraud by persons authorized to provide goods or services.
- 8 19. Credit card transaction record theft.
- 9 20. Misconduct involving weapons.
- 10 21. Misconduct involving explosives.
- 11 22. Depositing explosives.
- 12 23. Misconduct involving simulated explosive devices.
- 13 24. Concealed weapon violation.
- 14 25. Misdemeanor possession and misdemeanor sale of peyote.
- 15 26. Felony possession and felony sale of peyote if committed more than  
16 five years before the date of applying for a level I fingerprint clearance  
17 card.
- 18 27. Misdemeanor possession and misdemeanor sale of a vapor-releasing  
19 substance containing a toxic substance.
- 20 28. Felony possession and felony sale of a vapor-releasing substance  
21 containing a toxic substance if committed more than five years before the  
22 date of applying for a level I fingerprint clearance card.
- 23 29. Misdemeanor sale of precursor chemicals.
- 24 30. Felony sale of precursor chemicals if committed more than five  
25 years before the date of applying for a level I fingerprint clearance card.
- 26 31. Misdemeanor possession, misdemeanor use or misdemeanor sale of  
27 marijuana, dangerous drugs or narcotic drugs.
- 28 32. Felony possession, felony use or felony sale of marijuana,  
29 dangerous drugs or narcotic drugs if committed more than five years before  
30 the date of applying for a level I fingerprint clearance card.
- 31 33. Misdemeanor manufacture or misdemeanor distribution of an imitation  
32 controlled substance.
- 33 34. Felony manufacture or felony distribution of an imitation  
34 controlled substance if committed more than five years before the date of  
35 applying for a level I fingerprint clearance card.
- 36 35. Misdemeanor manufacture or misdemeanor distribution of an imitation  
37 prescription-only drug.
- 38 36. Felony manufacture or felony distribution of an imitation  
39 prescription-only drug if committed more than five years before the date of  
40 applying for a level I fingerprint clearance card.
- 41 37. Misdemeanor manufacture or misdemeanor distribution of an imitation  
42 over-the-counter drug.
- 43 38. Felony manufacture or felony distribution of an imitation  
44 over-the-counter drug if committed more than five years before the date of  
45 applying for a level I fingerprint clearance card.

- 1           39. Misdemeanor possession or misdemeanor possession with intent to use  
2 an imitation controlled substance.
- 3           40. Felony possession or felony possession with intent to use an  
4 imitation controlled substance if committed more than five years before the  
5 date of applying for a level I fingerprint clearance card.
- 6           41. Misdemeanor possession or misdemeanor possession with intent to use  
7 an imitation prescription-only drug.
- 8           42. Felony possession or felony possession with intent to use an  
9 imitation prescription-only drug if committed more than five years before the  
10 date of applying for a level I fingerprint clearance card.
- 11           43. Misdemeanor possession or misdemeanor possession with intent to use  
12 an imitation over-the-counter drug.
- 13           44. Felony possession or felony possession with intent to use an  
14 imitation over-the-counter drug if committed more than five years before the  
15 date of applying for a level I fingerprint clearance card.
- 16           45. Misdemeanor manufacture of certain substances and drugs by certain  
17 means.
- 18           46. Felony manufacture of certain substances and drugs by certain means  
19 if committed more than five years before the date of applying for a level I  
20 fingerprint clearance card.
- 21           47. Adding poison or other harmful substance to food, drink or  
22 medicine.
- 23           48. A criminal offense involving criminal trespass and burglary under  
24 title 13, chapter 15.
- 25           49. A criminal offense under title 13, chapter 23, except terrorism.
- 26           50. Misdemeanor offenses involving child neglect.
- 27           51. Misdemeanor offenses involving contributing to the delinquency of a  
28 minor.
- 29           52. Misdemeanor offenses involving domestic violence as defined in  
30 section 13-3601.
- 31           53. Felony offenses involving domestic violence if the offense only  
32 involved criminal damage in an amount of more than two hundred fifty dollars  
33 but less than one thousand dollars and the offense was committed before June  
34 29, 2009.
- 35           54. Arson.
- 36           55. Felony offenses involving sale, distribution or transportation of,  
37 offer to sell, transport or distribute or conspiracy to sell, transport or  
38 distribute marijuana, dangerous drugs or narcotic drugs if committed more  
39 than five years before the date of applying for a level I fingerprint  
40 clearance card.
- 41           56. Criminal damage.
- 42           57. Misappropriation of charter school monies as prescribed in section  
43 13-1818.
- 44           58. Taking identity of another person or entity.
- 45           59. Aggravated taking identity of another person or entity.

1           60. Trafficking in the identity of another person or entity.  
2           61. Cruelty to animals.  
3           62. Prostitution, as prescribed in section 13-3214.  
4           63. Sale or distribution of material harmful to minors through vending  
5 machines as prescribed in section 13-3513.  
6           64. Welfare fraud.  
7           65. Any felony offense in violation of title 13, chapter 12 if  
8 committed more than five years before the date of applying for a level I  
9 fingerprint clearance card.  
10          66. Kidnapping.  
11          67. Robbery, aggravated robbery or armed robbery.  
12          D. A person who is awaiting trial on or who has been convicted of  
13 committing or attempting to commit a misdemeanor violation of section  
14 28-1381, 28-1382 or 28-1383 in this state or the same or a similar offense in  
15 another state or jurisdiction within five years from the date of applying for  
16 a level I fingerprint clearance card is precluded from driving any vehicle to  
17 transport employees or clients of the employing agency as part of the  
18 person's employment. The division shall place a notation on the level I  
19 fingerprint clearance card that indicates this driving restriction. This  
20 subsection does not preclude a person from driving a vehicle alone as part of  
21 the person's employment.  
22          E. Notwithstanding subsection C of this section, on receiving written  
23 notice from the board of fingerprinting that a good cause exception was  
24 granted pursuant to section 41-619.55, the fingerprinting division shall  
25 issue a level I fingerprint clearance card to the applicant.  
26          F. If the fingerprinting division denies a person's application for a  
27 level I fingerprint clearance card pursuant to subsection C of this section  
28 and a good cause exception is requested pursuant to section 41-619.55, the  
29 fingerprinting division shall release, on request by the board of  
30 fingerprinting, the person's criminal history record to the board of  
31 fingerprinting.  
32          G. A person shall be granted a level I fingerprint clearance card  
33 pursuant to this section if either of the following applies:  
34            1. An agency granted a good cause exception before August 16, 1999 and  
35 no new precluding offense is identified. The fingerprint clearance card  
36 shall specify only the program that granted the good cause exception. On the  
37 request of the applicant, the agency that granted the prior good cause  
38 exception shall notify the fingerprinting division in writing of the date on  
39 which the prior good cause exception was granted, the date of the conviction  
40 and the name of the offense for which the good cause exception was granted.  
41            2. The board granted a good cause exception and no new precluding  
42 offense is identified.  
43          H. The licensee or contract provider shall assume the costs of  
44 fingerprint checks conducted pursuant to this section and may charge these  
45 costs to persons required to be fingerprinted.

1 I. A person who is under eighteen years of age or who is at least  
2 ninety-nine years of age is exempt from the level I fingerprint clearance  
3 card requirements of this section. At all times the person shall be under  
4 the direct visual supervision of personnel who have valid level I fingerprint  
5 clearance cards.

6 J. The fingerprinting division may conduct periodic state criminal  
7 history records checks for the purpose of updating the clearance status of  
8 current level I fingerprint clearance cardholders pursuant to this section  
9 and may notify the board of fingerprinting and the agency of the results of  
10 the records check.

11 K. The fingerprinting division shall revoke a person's level I  
12 fingerprint clearance card on receipt of a written request for revocation  
13 from the board of fingerprinting pursuant to section 41-619.55.

14 L. The fingerprinting division shall not issue a level I fingerprint  
15 clearance card to an applicant if the division cannot determine, within  
16 thirty business days after receipt of the person's state and federal criminal  
17 history record information, whether the person is awaiting trial on or has  
18 been convicted of committing any of the offenses listed in subsection B or C  
19 of this section. If the division is unable to make the determination  
20 required by this section and does not issue a level I fingerprint clearance  
21 card to a person, the person may request a good cause exception pursuant to  
22 section 41-619.55.

23 M. If after conducting a state and federal criminal history records  
24 check the fingerprinting division determines that it is not authorized to  
25 issue a level I fingerprint clearance card to an applicant, the division  
26 shall notify the agency that the fingerprinting division is not authorized to  
27 issue a level I fingerprint clearance card. This notice shall include the  
28 criminal history information on which the denial was based. This criminal  
29 history information is subject to dissemination restrictions pursuant to  
30 section 41-1750 and Public Law 92-544.

31 N. The fingerprinting division is not liable for damages resulting  
32 from:

33 1. The issuance of a level I fingerprint clearance card to an  
34 applicant who is later found to have been ineligible to receive a level I  
35 fingerprint clearance card at the time the card was issued.

36 2. The denial of a level I fingerprint clearance card to an applicant  
37 who is later found to have been eligible to receive a level I fingerprint  
38 clearance card at the time issuance of the card was denied.

39 O. Notwithstanding any law to the contrary, an individual may apply  
40 for and receive a level I fingerprint clearance card pursuant to this section  
41 to satisfy a requirement that the person have a valid fingerprint clearance  
42 card issued pursuant to section 41-1758.03.

43 P. Notwithstanding any law to the contrary, except as prescribed  
44 pursuant to subsection Q of this section, an individual who receives a  
45 level I fingerprint clearance card pursuant to this section also satisfies a

1 requirement that the individual have a valid fingerprint clearance card  
2 issued pursuant to section 41-1758.03.

3 Q. Unless a cardholder commits an offense listed in subsection B or C  
4 of this section after June 29, 2009, a fingerprint clearance card issued  
5 pursuant to section 41-1758.03 before June 29, 2009 and its renewals are  
6 valid for all requirements for a level I fingerprint clearance card except  
7 those relating to the requirements of section 8-105 or 8-509. A fingerprint  
8 clearance card issued before June 29, 2009 to meet the requirements of  
9 section 8-105 or 8-509 and its renewals are valid after June 29, 2009 to meet  
10 all requirements for a level I fingerprint clearance card, including the  
11 requirements of section 8-105 or 8-509, if the cardholder has been certified  
12 by the court to adopt or has been issued a foster home license before June  
13 29, 2009.

14 R. The issuance of a level I fingerprint clearance card does not  
15 entitle a person to employment.

16 S. For the purposes of this section:

17 1. "Person" means a person who is fingerprinted pursuant to:

18 (a) Section 8-105, 8-509, 8-802, [25-403.02](#), [25-403.03](#), [25-403.04](#),  
19 [25-410](#), [25-411](#), 36-207, 36-594.01, 36-594.02, 36-882, 36-883.02, 36-897.01,  
20 36-897.03, 41-619.52, 41-619.53, 41-1964, 41-1967.01, 41-1968, 41-1969 or  
21 46-141.

22 (b) Subsection 0 of this section.

23 2. "Renewal" means the issuance of a fingerprint clearance card to an  
24 existing fingerprint clearance cardholder who applies before the person's  
25 existing fingerprint clearance card expires.