

REFERENCE TITLE: parenting time; court-ordered supervisors.

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

SB 1467

Introduced by
Senators Griffin: Murphy; Representatives Gowan, Stevens

AN ACT

AMENDING SECTIONS 13-3620, 25-403.02, 25-403.03, 25-403.04, 25-410, 25-411, 41-619.51, 41-1758 AND 41-1758.07, 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. 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, A christian science
20 practitioner or A 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. A PERSON WHO IS AUTHORIZED BY THE COURT TO SUPERVISE PARENTING TIME
41 PURSUANT TO TITLE 25, CHAPTER 4, ARTICLE 1.

42 ~~5-~~ 6. Any other person who has responsibility for the care or
43 treatment of the minor.

44 B. A report is not required under this section for conduct prescribed
45 by sections 13-1404 and 13-1405 if the conduct involves only minors who are

1 fourteen, fifteen, sixteen or seventeen years of age and there is nothing to
2 indicate that the conduct is other than consensual.

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

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

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

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

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

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

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

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

1 judicial or administrative proceeding or investigation resulting from a
2 report required or authorized under this section.

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

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

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

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

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

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

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

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

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

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

44 2. Information regarding specific diagnosis or treatment of a
45 psychiatric condition, if the attending psychiatrist certifies in writing

1 that release of the information would be detrimental to the patient's health
2 or treatment.

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

10 O. A person who violates this section is guilty of a class 1
11 misdemeanor, except if the failure to report involves a reportable offense,
12 the person is guilty of a class 6 felony.

13 P. For the purposes of this section:

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

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

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

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

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

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

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

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

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

26 25-403.02. Parenting plans

27 A. If the child's parents cannot agree on a plan for legal
28 decision-making or parenting time, each parent must submit a proposed
29 parenting plan.

30 B. Consistent with the child's best interests in section 25-403 and
31 sections 25-403.03, 25-403.04 and 25-403.05, the court shall adopt a
32 parenting plan that provides for both parents to share legal decision-making
33 regarding their child and that maximizes their respective parenting time.
34 The court shall not prefer a parent's proposed plan because of the parent's
35 or child's gender.

36 C. Parenting plans shall include at least the following:

37 1. A designation of the legal decision-making as joint or sole as
38 defined in section 25-401.

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

42 3. A practical schedule of parenting time for the child, including
43 holidays and school vacations.

44 4. A procedure for the exchanges of the child, including location and
45 responsibility for transportation.

1 5. 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 6. A procedure for periodic review of the plan's terms by the parents.

5 7. A procedure for communicating with each other about the child,
6 including methods and frequency.

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

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

16 E. Shared legal decision-making does not necessarily mean equal
17 parenting time.

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 legal
22 decision-making shall not be awarded if the court makes a finding of the
23 existence of significant domestic violence pursuant to section 13-3601 or if
24 the court finds by a preponderance of the evidence that there has been a
25 significant history of 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 sole or joint
43 legal decision-making has committed an act of domestic violence against the
44 other parent, there is a rebuttable presumption that an award of sole or
45 joint legal decision-making to the parent who committed the act of domestic

1 violence is contrary to the child's best interests. This presumption does
2 not apply if both parents have committed an act of domestic violence. For
3 the purposes of this subsection, a person commits an act of domestic violence
4 if that person does any of the following:

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

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

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

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

14 1. Whether the parent has demonstrated that being awarded sole or
15 joint legal decision-making or substantially equal parenting time is in the
16 child's best interests.

17 2. Whether the parent has successfully completed a batterer's
18 prevention program.

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

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

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

27 6. Whether the parent has committed any further acts of domestic
28 violence.

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

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

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

44 3. Order the parent who committed the act of domestic violence to
45 attend and complete, to the court's satisfaction, a program of intervention

1 for perpetrators of domestic violence and any other counseling the court
2 orders.

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

6 5. Order the parent who committed the act of domestic violence to pay
7 a fee for the costs of supervised parenting time.

8 6. Prohibit overnight parenting time.

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

11 8. Order that the address of the child and the other parent remain
12 confidential.

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

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

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

24 I. In determining whether the absence or relocation of a parent shall
25 be weighed against that parent in determining legal decision-making or
26 parenting time, the court may consider whether the absence or relocation was
27 caused by an act of domestic violence by the other parent.

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

30 25-403.04. Substance abuse

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

38 1. Findings of fact that support its determination that the parent
39 abused drugs or alcohol or was convicted of the offense.

40 2. Findings that the legal decision-making or parenting time
41 arrangement ordered by the court appropriately protects the child.

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

44 1. The absence of any conviction of any other drug offense during the
45 previous five years.

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

3 3. Results of alcohol or drug screening provided by a facility
4 approved by the department of health services.

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

9 Sec. 5. Section 25-410, Arizona Revised Statutes, is amended to read:
10 25-410. Judicial supervision

11 A. Except as otherwise agreed by the parties in writing at the time of
12 the legal decision-making or parenting time order or divorce decree, the
13 parent designated as sole legal decision-maker may determine the child's
14 upbringing, including the child's education, care, health care and religious
15 training, unless, on motion by the other parent, the court, after a hearing,
16 finds that in the absence of a specific limitation of the parent designated
17 as the sole legal decision-maker's authority, the child's physical health
18 would be endangered or the child's emotional development would be
19 significantly impaired.

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

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

34 Sec. 6. Section 25-411, Arizona Revised Statutes, is amended to read:
35 25-411. Modification of legal decision-making or parenting
36 time; affidavit; contents; military families

37 A. A person shall not make a motion to modify a legal decision-making
38 or parenting time decree earlier than one year after its date, unless the
39 court permits it to be made on the basis of affidavits that there is reason
40 to believe the child's present environment may seriously endanger the child's
41 physical, mental, moral or emotional health. At any time after a joint legal
42 decision-making order is entered, a parent may petition the court for
43 modification of the order on the basis of evidence that domestic violence
44 involving a violation of section 13-1201 or 13-1204, spousal abuse or child
45 abuse occurred since the entry of the joint legal decision-making order. Six

1 months after a joint legal decision-making order is entered, a parent may
2 petition the court for modification of the order based on the failure of the
3 other parent to comply with the provisions of the order. A motion or
4 petition to modify an order shall meet the requirements of this section.
5 Except as otherwise provided in this section, if a parent is a member of the
6 United States armed forces, the court shall consider the terms of that
7 parent's military family care plan to determine what is in the child's best
8 interest during that parent's military deployment.

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

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

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

24 1. A military parent who has legal decision-making or parenting time
25 pursuant to an existing court order has received notice from military
26 leadership that the military parent will deploy or mobilize in the near
27 future.

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

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

39 F. The court shall hear motions for modification because of deployment
40 as expeditiously as possible.

41 G. If a military parent receives military temporary duty, deployment,
42 activation or mobilization orders that involve moving a substantial distance
43 away from the military parent's residence or that otherwise have a material
44 effect on the military parent's ability to exercise parenting time, at the
45 request of the military parent, for the duration of the military parent's

1 absence the court may delegate the military parent's parenting time, or a
2 portion of that time, to a child's family member, including a stepparent, or
3 to another person who is not the child's parent but who has a close and
4 substantial relationship to the minor child, if the court determines that is
5 in the child's best interest. The court shall not allow the delegation of
6 parenting time to a person who would be subject to limitations on parenting
7 time. The parties shall attempt to resolve disputes regarding delegation of
8 parenting time through the dispute resolution process specified in their
9 parenting plan, unless excused by the court for good cause shown. A court
10 order pursuant to this subsection does not establish separate rights to
11 parenting time for a person other than a parent.

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

16 I. A decree or order that a court enters in contemplation of or during
17 the military deployment of a parent outside of the continental United States
18 shall specifically reference the deployment and include provisions governing
19 the legal decision-making or parenting time arrangements, or both, of the
20 minor child after the deployment ends. Either parent may file a petition
21 with the court after the deployment ends to modify the decree or order, in
22 compliance with subsection L of this section. The court shall hold a hearing
23 or conference on the petition within thirty days after the petition is filed.

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

32 K. If after a legal decision-making or parenting time order is in
33 effect one of the parents is charged with a dangerous crime against children
34 as defined in section 13-705, child molestation as defined in section 13-1410
35 or an act of domestic violence as prescribed in section 13-3601 in which the
36 victim is a minor, the other parent may petition the court for an expedited
37 hearing. Pending the expedited hearing, the court may suspend parenting time
38 or change legal decision-making ex parte.

39 L. To modify any type of legal decision-making or parenting time order
40 a person shall submit an affidavit or verified petition setting forth
41 detailed facts supporting the requested modification and shall give notice,
42 together with a copy of the affidavit or verified petition, to other parties
43 to the proceeding, who may file opposing affidavits. The court shall deny
44 the motion unless it finds that adequate cause for hearing the motion is

1 established by the pleadings, in which case it shall set a date for hearing
2 on why the requested modification should not be granted.

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

6 N. Subsection L of this section does not apply if the requested relief
7 is for the modification or clarification of parenting time and not for a
8 change of legal decision-making.

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

11 41-619.51. Definitions

12 In this article, unless the context otherwise requires:

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

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

20 3. "Central registry exception" means notification to the department
21 of economic security or the department of health services, as appropriate,
22 pursuant to section 41-619.57 that the person is not disqualified because of
23 a central registry check conducted pursuant to section 8-804.

24 4. "Expedited review" means an examination, in accordance with board
25 rule, of the documents an applicant submits by the board or its hearing
26 officer without the applicant being present.

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

29 6. "Person" means a person who is required to be fingerprinted
30 pursuant to this article or who is subject to a central registry check and
31 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 8-804.
- 37 (f) Section 8-804.01.
- 38 (g) Section 15-183.
- 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 25-403.03.
- 45 ~~(m)~~ (n) Section 26-103.

- 1 ~~(n)~~ (o) Section 32-2108.01.
- 2 ~~(o)~~ (p) Section 32-2123.
- 3 ~~(p)~~ (q) Section 32-2371.
- 4 ~~(q)~~ (r) Section 36-207.
- 5 ~~(r)~~ (s) Section 36-411.
- 6 ~~(s)~~ (t) Section 36-425.03.
- 7 ~~(t)~~ (u) Section 36-446.04.
- 8 ~~(u)~~ (v) Section 36-594.01.
- 9 ~~(v)~~ (w) Section 36-594.02.
- 10 ~~(w)~~ (x) Section 36-882.
- 11 ~~(x)~~ (y) Section 36-883.02.
- 12 ~~(y)~~ (z) Section 36-897.01.
- 13 ~~(z)~~ (aa) Section 36-897.03.
- 14 ~~(aa)~~ (bb) Section 36-3008.
- 15 ~~(bb)~~ (cc) Section 41-619.53.
- 16 ~~(cc)~~ (dd) Section 41-1964.
- 17 ~~(dd)~~ (ee) Section 41-1967.01.
- 18 ~~(ee)~~ (ff) Section 41-1968.
- 19 ~~(ff)~~ (gg) Section 41-1969.
- 20 ~~(gg)~~ (hh) Section 41-2814.
- 21 ~~(hh)~~ (ii) Section 46-141, subsection A.
- 22 ~~(ii)~~ (jj) Section 46-321.

23 Sec. 8. Section 41-1758, Arizona Revised Statutes, is amended to read:
24 41-1758. Definitions

25 In this article, unless the context otherwise requires:

26 1. "Agency" means the supreme court, the department of economic
27 security, the department of education, the department of health services, the
28 department of juvenile corrections, the department of emergency and military
29 affairs, the department of transportation, the state real estate department,
30 the board of fingerprinting or the board of examiners of nursing care
31 institution administrators and assisted living facility managers.

32 2. "Division" means the fingerprinting division in the department of
33 public safety.

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

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

- 38 (a) Section 8-105.
- 39 (b) Section 8-322.
- 40 (c) Section 8-509.
- 41 (d) Section 8-802.
- 42 (e) Section 15-183.
- 43 (f) Section 15-503.
- 44 (g) Section 15-512.
- 45 (h) Section 15-534.

- 1 (i) Section 15-782.02.
 - 2 (j) Section 15-1330.
 - 3 (k) Section 15-1881.
 - 4 (l) SECTION 17-215.
 - 5 (m) SECTION 25-403.03.
 - 6 ~~(n)~~ (n) Section 26-103.
 - 7 ~~(m)~~ (o) Section 32-2108.01.
 - 8 ~~(n)~~ (p) Section 32-2123.
 - 9 ~~(o)~~ (q) Section 32-2371.
 - 10 ~~(p)~~ (r) Section 36-207.
 - 11 ~~(q)~~ (s) Section 36-411.
 - 12 ~~(r)~~ (t) Section 36-425.03.
 - 13 ~~(s)~~ (u) Section 36-446.04.
 - 14 ~~(t)~~ (v) Section 36-594.01.
 - 15 ~~(u)~~ (w) Section 36-594.02.
 - 16 ~~(v)~~ (x) Section 36-882.
 - 17 ~~(w)~~ (y) Section 36-883.02.
 - 18 ~~(x)~~ (z) Section 36-897.01.
 - 19 ~~(y)~~ (aa) Section 36-897.03.
 - 20 ~~(z)~~ (bb) Section 36-3008.
 - 21 ~~(aa)~~ (cc) Section 41-619.52.
 - 22 ~~(bb)~~ (dd) Section 41-619.53.
 - 23 ~~(cc)~~ (ee) Section 41-1964.
 - 24 ~~(dd)~~ (ff) Section 41-1967.01.
 - 25 ~~(ee)~~ (gg) Section 41-1968.
 - 26 ~~(ff)~~ (hh) Section 41-1969.
 - 27 ~~(gg)~~ (ii) Section 41-2814.
 - 28 ~~(hh)~~ (jj) Section 46-141, subsection A.
 - 29 ~~(ii)~~ (kk) Section 46-321.
- 30 5. "Vulnerable adult" has the same meaning prescribed in section
31 13-3623.
- 32 Sec. 9. Section 41-1758.07, Arizona Revised Statutes, is amended to
33 read:
- 34 41-1758.07. Level I fingerprint clearance cards; definitions
- 35 A. On receiving the state and federal criminal history record of a
36 person who is required to be fingerprinted pursuant to this section, the
37 fingerprinting division in the department of public safety shall compare the
38 record with the list of criminal offenses that preclude the person from
39 receiving a level I fingerprint clearance card. If the person's criminal
40 history record does not contain any of the offenses listed in subsections B
41 and C of this section, the fingerprinting division shall issue the person a
42 level I fingerprint clearance card.
- 43 B. A person who is subject to registration as a sex offender in this
44 state or any other jurisdiction or who is awaiting trial on or who has been
45 convicted of committing or attempting, soliciting, facilitating or conspiring

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

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

- 1 15. Fraudulent use of a credit card.
- 2 16. Possession of any machinery, plate or other contrivance or
3 incomplete credit card.
- 4 17. False statement as to financial condition or identity to obtain a
5 credit card.
- 6 18. Fraud by persons authorized to provide goods or services.
- 7 19. Credit card transaction record theft.
- 8 20. Misconduct involving weapons.
- 9 21. Misconduct involving explosives.
- 10 22. Depositing explosives.
- 11 23. Misconduct involving simulated explosive devices.
- 12 24. Concealed weapon violation.
- 13 25. Misdemeanor possession and misdemeanor sale of peyote.
- 14 26. Felony possession and felony sale of peyote if committed more than
15 five years before the date of applying for a level I fingerprint clearance
16 card.
- 17 27. Misdemeanor possession and misdemeanor sale of a vapor-releasing
18 substance containing a toxic substance.
- 19 28. Felony possession and felony sale of a vapor-releasing substance
20 containing a toxic substance if committed more than five years before the
21 date of applying for a level I fingerprint clearance card.
- 22 29. Misdemeanor sale of precursor chemicals.
- 23 30. Felony sale of precursor chemicals if committed more than five
24 years before the date of applying for a level I fingerprint clearance card.
- 25 31. Misdemeanor possession, misdemeanor use or misdemeanor sale of
26 marijuana, dangerous drugs or narcotic drugs.
- 27 32. Felony possession, felony use or felony sale of marijuana,
28 dangerous drugs or narcotic drugs if committed more than five years before
29 the date of applying for a level I fingerprint clearance card.
- 30 33. Misdemeanor manufacture or misdemeanor distribution of an imitation
31 controlled substance.
- 32 34. Felony manufacture or felony distribution of an imitation
33 controlled substance if committed more than five years before the date of
34 applying for a level I fingerprint clearance card.
- 35 35. Misdemeanor manufacture or misdemeanor distribution of an imitation
36 prescription-only drug.
- 37 36. Felony manufacture or felony distribution of an imitation
38 prescription-only drug if committed more than five years before the date of
39 applying for a level I fingerprint clearance card.
- 40 37. Misdemeanor manufacture or misdemeanor distribution of an imitation
41 over-the-counter drug.
- 42 38. Felony manufacture or felony distribution of an imitation
43 over-the-counter drug if committed more than five years before the date of
44 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, [25-403.03](#), 36-207, 36-594.01,
19 36-594.02, 36-882, 36-883.02, 36-897.01, 36-897.03, 41-619.52, 41-619.53,
20 41-1964, 41-1967.01, 41-1968, 41-1969 or 46-141.

21 (b) Subsection 0 of this section.

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