



ARIZONA HOUSE OF REPRESENTATIVES

57th Legislature, 2nd Regular Session

Majority Research Staff

House: JUD DPA 8-0-1-0 | Third Read 52-0-8-0-0

Senate: FED DPA 4-3-0-0 | Third Read 28-1-1-0

HB 2995: domestic relations; domestic violence

Sponsor: Representative Fink, LD 27

Senate Engrossed

Overview

Overhauls the domestic violence framework used in legal decision-making and parenting time (custody) cases by prioritizing domestic violence findings over competing presumptions, expanding what qualifies as domestic violence, and requiring detailed written findings.

History

[A.R.S. § 25-403.03](#) directs family courts to treat domestic violence and child abuse as strongly weighing against a parent's request for legal decision-making; in cases of significant domestic violence or a significant history of domestic violence, it prohibits awarding joint legal decision-making. Statute requires courts to prioritize the safety and well-being of the child and the domestic-violence victim and specifies types of evidence the court may consider, including court findings, police and medical records, shelter records, school records, and witness testimony. A rebuttable presumption is established that awarding sole or joint legal decision-making to a parent who committed an act of domestic violence is contrary to the child's best interests (unless both parents committed domestic violence). If domestic violence is found, the offending parent must prove parenting time will not endanger the child or significantly impair the child's emotional development, and the court may impose protective conditions on parenting time including supervised visitation, treatment requirements, substance restrictions, fee shifting, limits on overnights, bonds and confidentiality measures. Statute also bars ordering joint counseling between a victim and perpetrator and allows the court to involve the Department of Child Safety when abuse or neglect may be at issue.

Provisions

1. Repeals substantially the current statute governing domestic violence and child abuse in child custody cases. (Sec. 1)
2. Establishes that in any custody matter, domestic violence is contrary to the best interests of the child. (Sec. 1)
3. Mandates the court assign primary importance to the safety and well-being of both the child and domestic violence victim. (Sec. 1)
4. Instructs that if a conflict arises, between this Act's provisions on abuse and custody cases and any other part of the marital statutes, then this Act takes priority. (Sec. 1)
5. Orders the court to make detailed findings and explanations on the record about various outlined factors in any custody matter involving domestic violence. (Sec. 1)

Prop 105 (45 votes) Prop 108 (40 votes) Emergency (40 votes) Fiscal Note

6. Directs that, on appeal, the legal sufficiency of each finding and explanation be reviewed de novo. (Sec. 1)
7. Prescribes that claims of domestic violence are to be established by a preponderance of the evidence and do not require corroboration from exhibits or witness testimony. (Sec. 1)
8. Outlines various kinds of evidence the court must consider in evaluating a claim of domestic violence, including reports from law enforcement, medical records, domestic violence shelter records and witness testimony. (Sec. 1)
9. Outlines various factors that the court must consider when making determinations in a custody matter where domestic violence occurred. (Sec. 1)
10. Outlines how the court is to evaluate collateral acts of domestic violence, including that the court may not refuse evidence on the basis it could have been litigated at another time or place. (Sec. 1)
11. Establishes a mandatory rebuttable presumption that awarding custody to the parent who committed domestic violence is contrary to the child's best interests. (Sec. 1)
12. Prohibits the court, in a domestic violence case, from requiring the victim or child to prove that custody would harm the child. (Sec. 1)
13. Stipulates that a rebuttable presumption does not arise if mutual acts of domestic violence occurred. (Sec. 1)
14. Prohibits the court from describing domestic violence as mutual unless the evidence establishes that both parents had the same motive for their actions, lacked justification to similar degrees and inflicted comparable harm. (Sec. 1)
15. Outlines procedures and factors the court must cover to determine whether the parent who committed domestic violence has rebutted the presumption that awarding custody is contrary to the child's best interests, including items such as:
 - a. that the child's absence at the time of the domestic violence is not relevant;
 - b. that the child's preference is not relevant;
 - c. if the parent attended a domestic violence treatment program; and
 - d. if the aforesaid treatment program was relevant to the person, in consideration of the criteria outlined in the Arizona administrative code that governs treatment standards for misdemeanor domestic violence offenders. (Sec. 1)
16. Outlines procedures the court must follow when a parent who committed domestic violence does not overcome the aforesaid presumption, including items such as:
 - a. not granting legal decision-making authority to that parent;
 - b. imposing restrictions on that parent's interactions with the child;
 - c. designating a person to supervise parenting time; and
 - d. suspending access to the child until a domestic violence treatment program has been completed. (Sec. 1)
17. Prohibits the court from ordering a victim of domestic violence to join the parent who committed domestic violence in any treatment or counselling program. (Sec. 1)
18. Specifies that for any temporary orders relating to custody, if there are allegations of domestic violence, the court must make the same written findings as established in this Act. (Sec. 2)

19. Specifies that for any modifications of a custody order, if there are allegations of domestic violence, such allegations must be a primary factor in the court's consideration of modifying the custody order. (Sec. 3)
20. Mandates the court allow a parent to present evidence of domestic violence that occurred prior to the existing legal decision-making or parenting time order. (Sec. 3)
21. Cites this legislation as the *Alec and Lydia Act*. (Sec. 4)
22. Defines pertinent terms. (Sec. 1)
23. Makes technical and conforming changes. (Sec. 1, 2, 3)

Senate Amendments

1. Makes it the declared public policy of this state to consider domestic violence, including child abuse, as contrary to a child's best interests.
2. Makes the safety and well-being of the child and domestic violence victim the highest priority in custody matters.
3. Modifies what must be included in the court's findings and explanations on the record, requiring the findings to address:
 - a. what evidence justified or prevented a finding of domestic violence;
 - b. why the parent did or did not rebut the presumption; and
 - c. why the court's chosen precautions are in the child's best interests.
4. Removes language requiring the legal sufficiency of each domestic violence finding and explanation to be reviewed de novo on appeal.
5. Revises the kinds of evidence the court must consider in cases of domestic violence, including striking language related to *collateral acts* and instead folding relevant *other acts* into the general evidence list.
6. Prohibits the court from requiring the victim to prove that the domestic violence was severe or frequent enough to justify restrictions and from describing domestic violence as mutual unless both parents lacked justification to a similar degree and inflicted similar injury.
7. Revises the mandatory rebuttable presumption and factors to be considered by the court for a parent to rebut the presumption.
8. Adds evidentiary thresholds for granting custody, providing that a parent restricted by the rebuttable presumption may not receive:
 - a. sole or joint legal decision-making unless the parent overcomes the presumption by clear and convincing evidence;
 - b. unsupervised parenting time unless the parent overcomes the presumption by clear and convincing evidence; and
 - c. supervised parenting time unless the parent overcomes the presumption by a preponderance of the evidence.
9. Modifies the outlined procedures the court must follow when a parent who committed domestic violence does not overcome the presumption.
10. Specifies that if a parent failed to rebut the presumption, the parent remains subject to the same presumption in later custody modification proceedings.

11. Removes the requirement that the court, in a modification of a custody order, decide a new allegation of domestic violence by applying the same public policy, priorities, procedures and definitions prescribed pursuant to statutory requirements for considering an allegation of domestic violence.
12. Revises the requirements for awarding a modification of a custody order when there is an allegation of domestic violence.
13. Adds an emergency clause.
14. Modifies the definitions of *domestic violence* and *coercive control*.