

First Love, Then Marriage, Then a Baby Carriage?

By

Jane Ross

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Graduate Supervisory Committee:

John Johnson, Chair
John Hepburn
Judith Stinson

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ABSTRACT

Above all else, this project is about parentage in the modern American legal system and culture. Advanced reproductive technologies require our courts to reconsider the long-standing presumption that a child has only one female mother and one male father. We now have children of choice, rather than chance. Assisted Reproductive Technology and its widespread availability and use and changed the landscape of parentage maybe forever. And the children of such efforts remain largely unprotected by our current legal system that favors reproduction by chance within a recognized marriage or at the least, a traditional two-parent paradigm. However, assisted reproduction calls into question the current legal framework for determinations of parentage based in marriage and/or biology.

Based on a long and convoluted history, our current legal system conflates marriage and parentage. Moreover, in many circumstances the law restricts both the number and gender of the parties to a marriage or possible parents. One of the more compelling historical and still salient justifications for doing so is to accord the “Best Interest of the Child” standard which purports to underpin all such determinations. Unfortunately, that standard cannot best be met when weighed in a balance against a constitutionally protected exclusive right to parent vested in an adult either by a determination of a genetic link to the child or marriage to another parent. Children of choice, who result from the affirmative

and purposive engagement in assisted reproduction, should be entitled to the same protections as children of chance born to a man and woman who are married.

Once we look beyond marriage and biology as determiners of parentage, a better way for our legal system to serve the best interests of children, and their parents, is to identify and protect those adult relationships that are parental in nature and that benefit the child irrespective of a marriage between parents or genetic links to the child. Fortunately, the tools to accomplish this paradigm shift already are in existence.

The expansion of our commonly used definitions and broader view of our current statutes will allow the legal system to better protect both children of choice and children of chance by making better parentage determinations. To that end, this project also takes on the ambitious task of praxis; of applying the theories to the law as it stands and demonstrating how the new paradigm might look as it is implemented with all of its far-reaching tentacles.

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First comes love, then comes marriage, then comes Mommy with a baby carriage.

CHAPTER 1: Introduction

So goes the children's rhyme, but today's experiences do not support it. It is no longer, if it was ever, the norm. Infertility among the married, failed birth control among the passionate unwed, and modern advances in reproductive technology among other things might all be to blame. In today's reality, the arrival of the baby carriage is just as likely to precede marriage and sometimes even love. Parenthood by chance? The result of a biological "accident" and parenthood by choice – the result of a thoughtful process of reconciling deep emotions with reasonable choices to come to a purposeful life-long commitment, both happen regularly but not necessarily like the rhyme suggests. Be that as it may, the children's rhyme suggests and this dissertation assumes, such a deliberate commitment. Parenthood by choice? Likely is better but, at the very least, is just as good for children as parenthood by biological chance. And that has some serious implications for our current family law paradigm.

It stands to reason that if a person chooses to be a parent in advance of becoming a parent, that person stands a better chance of being a successful parent than one who becomes a parent by chance, suddenly. This is not to say that those who engage in parenthood by chance will not rise to the occasion. But a child does not care how it happened that he or she was created, or by whom. From a child's perspective, the ownership of the egg and sperm that were joined in his or

her creation makes very little difference regarding a parentage determination. But it does. It matters in our current legal regime. Parentage by chance within a marriage produces two legal parents, a mother and a father. Unfortunately, parentage by choice may not. Because the difference does not matter to the child, my goal is to reconcile parentage by choice and by chance and set forth a legal framework for parentage determinations that are based entirely in a child's best interest. Currently such determinations are made by weighing a child's best interest against an adult's, or the adult's right(s) regarding his or her genetic progeny. Make no mistake; my project is about children's interests with regard to legal parentage determinations without much regard for those of their biological progenitors. The "Best Interest of the Child" standard is a long-standing and ubiquitous doctrine of family law.

Family law is of critical concern to me, in part, because family law is where our legal system most often touches the ground. Determinations of parentage are routinely made in our family courts and based in family law. Most people will never be criminal defendants or civil litigants and most traffic violations are handled in courts of lesser jurisdiction. Most of us will get married though, and of those, about half get divorced.¹ Likewise, most of us will reproduce; so our family courts are where most of us have our limited experiences and glean our perspectives of the law and of our judicial system.

¹ According to our government, our current marriage rate is 6.8 per 1,000 total population and the divorce rate is half of that, 3.4 per 1,000 total population. See <http://www.cdc.gov/nchs/fastats/divorce.htm>.

Family law is strictly a concern of state law, not federal law. Federal law applies in the same way in every state across the United States. But state law is unique to each state and a version of family law is available in each of the 50 states. Amazingly, every single one of them purports to hold to the Best Interest of the Child standard as its greatest goal and its greatest measure of achievement. Unfortunately, a focus on the relationships between adults and the controlling interests of those adults over their genetic material – even after that genetic “material” has become a separate and distinct person with rights and interests of its own. This focus continues to dominate family law and undermine the interests of the children.

A genetic link to a child does not make an adult a better parent. Successful adoptive parents, undoubtedly, and rightly so, would be outraged by the suggestion. Teenagers, adults who do not know each other very well and adults who take on the obligations of parenthood by chance (due to a misplaced sense of loyalty to antiquated notions of duty and integrity) often are not the best parents. Our daily news is filled with examples of such people behaving badly. Put simply, a biological progenitor does not make a parent.

When determining the best interests of the child, not only is a genetic link between the child and its’ parent(s) an unnecessary factor but, whether or not the parents are married to each other, whether or not the parents are of the same or of opposite sexes, and even the number of parents a child has does not seem to matter anymore. Children are being raised in a myriad of familial groups

including single parents and, more and more frequently, same-sex parents.² What matters is whether or not each child has at least one adult who is committed, willing, and able to be a successful parent. It is my goal to convince you that if two is better than one, maybe even more is better, so long as there remains a successful parental unit where “successful parental unit” is defined as a parental unit which is beneficial to the child.

Our current parentage determinations are shaped, and wrongly so, on an outdated allegiance to marriage as well as genetics. I argue for a better application of our existing family law structures to better protect the best interests of children in determining their parentage. To do this, we need to take a long, measured look at not only biological reproduction but also familial connections. More specifically, the institution of marriage as it relates to parentage.

Parentage determinations based on marriage, whether by intent or not, continue to be a means of providing for and protecting children by determining their parents and those adults that are responsible. But this method falls short as demonstrated by the recent re-emergence of the debate over the proper parameters of marriage. Marriage fails to protect children fully because it is focused on the relationships of the adults rather than focusing directly on the relationships of the children with the adults. As illogical as it sounds, we hope the interests of the

² As of 2000, one-third of all lesbian couples and about one-fourth of all male couples were raising at least one child. See Monica K. Miller, *How Judges Decide Whether Social Parents Have Parental Rights: A Five Factor Typology*, 49 Ass'n. Fam. & Conciliation Cts. Fam. Ct. Rev. 72, 73-74 (2011).

children will be best served by focusing on the relationships of the adults. It does not appear to be working. Child poverty is on the rise. The most recent census data shows that nearly 16 million children are living in poverty.³ It is not unexpected that this is a bad thing.

Our courts still are making parentage determinations where children are created by both choice and chance based in a reliance on genetic links and marriage. This has failed to serve our children's best interests. These shortcomings can be overcome, and without drastic changes to our current structure. My project will present the myriad reasons for, and a model of, new legislation with which better parentage determinations can be made. I start with the presupposition that a child's best interest lies in having parents, or at least a parent. Unfortunately, a discussion of parentage necessarily is bound up with a discussion of marriage; or at least their conflation.

There are many situations where an adult functions as a parent, even if only part-time, and a child benefits from that relationship but, legal recognition and protection of that beneficial relationship is uncertain. Among these uncertain relationships are the children of married and unmarried, same sex and opposite sex, couples where only one spouse is a biological progenitor of the child, despite a deliberate choice by the progenitor and another to co-parent the child. Other uncertain relationships include parents who are not recognized simply because they are not married to each other, or may be married to another or others when a

³ See <http://www.census.gov/hhes/www/poverty>.

child is born. Incidentally, another uncertainty exists, though it is not the major focus of this dissertation - where a biological progenitor has made a deliberate choice *not* to be a parent. The point here is simply that marriage historically creates a strong presumption for a finding of parentage.

The massive break-down of marriages, about half at last count, demonstrates the competency of our family law courts to assign make parentage determinations thereby determining the rights of children to parents. These rulings are subject to human error. It is certainly clear that such judgments can be made and are being made every day. This means that the structure of the laws and the procedures needed for making such decisions, and protecting children already are in place.

Family law courts determine whether individual adults are parents when they dissolve a marriage from which children have resulted, when they adopt children within or without a marriage, and even where no marriage existed but progenitors of a child are known to each other and at least one of them wants to enforce parental duties on another. The courts approve adoptions and even remove children from parents when they find that the children are at risk. Our family courts routinely determine parentage, custody, visitation, support and daily care-giving duties. Family law courts even give rights to individuals who are not “legally” related to a child in order to provide a child with loving, nurturing adults to care for him or her. I take the position that with a little critical consideration, it can be better done. We need to reconfigure the existing institutions so that they

better function in light of certain scientific and social realities. More children can be better protected by addressing the scientific and social realities of reproduction and child-rearing today.

Failure to address our now-existing scientific and social realities leads to instability in familial relationships, undermines children's interests, and maybe even violates their rights⁴ by leaving them without legal parents. In fact, many of those who tout marriage equality and support same-sex marriage do so because they believe it will better protect children. It certainly is the responsibility of adults to create institutions that protect children, but marriage is no longer working. Recall that half of marriages end in divorce anyway. The needs of children for emotional and financial security will not be met by merely extending the right of marriage to more couples regardless of their composition as straight, gay, or otherwise. I do not argue against the fact that it would benefit many, but marriage is not a panacea. It is not a one-size-fits all solution. But, marriage is where this story begins.

CHAPTER 2: Marriage

I'm not sure what qualifications a person should have in order to have something to say about marriage. My parents have achieved, I think, seven

⁴ Tonya Washington argues that, State action –enactment of placement bans—that categorically forecloses the most beneficial placement option for children violates their substantive due process rights by depriving them of the placement option that research identifies as serving their best interests.” See Tanya Washington, *Suffer Not the Little Children: Prioritizing Children's Rights in Constitutional Challenges to “Same-Sex Adoption Bans,”* 39 Cap. U. L. Rev. 231 (2011).

marriages between them, as I recall (and I applaud them both)! This is significant because, as a society we understand marriage generally, as a one-time deal, a promise made for life so most people do not have either the opportunity or the interest to bother to think too much about it. Those that have and do think about it, mostly academics and religious fanatics⁵ make some rather fervent, if not compelling, arguments about how we all should think about marriage. This is helpful given the current state of question into which the institution of marriage has fallen. Even though almost half of all marriages in America end in dissolution, bitter rhetorical battles are being fought over who has a right to marry; as if marriage is the best thing since sliced bread!

A: The Marriage Debate

The voices in the marriage debate are diverse. They are the voices of legal scholars and social scientists, theologians and philosophers. More importantly, more and more frequently, that list includes the average American voter. I think the most interesting aspect of the ever-present and recently-blossoming discourse on marriage is that after pondering quite a lot about what has been said, I think that they all are correct. Yes, you read correctly: none of them seem to be dead wrong. Stripped of their rhetoric, each provides a useful and meaningful piece of the bigger picture which, taken as a whole, suggests a new way of thinking about the questions and therefore a new possibility for answers to the obvious starting

⁵ I do not use this term in any sort of pejorative way but, more in the sense of a baseball fanatic or history fanatic.

point, the grand old question, “What is Marriage?” Therefore, I will investigate the marriage debate in an attempt to shed some light on marriage is and maybe even what it is not. Surely someone who wants to tell us what marriage ought to be must know what it is.

Among the diverse voices of the marriage debate there are some commonalities upon which we can begin to build a common definition. Most would agree that there is some essential good to human bonding, in the philosophical sense of a good, in and of itself. Whether, “It Takes a Village”⁶ or if the modern notion of the nuclear family is sufficient, surely we must all agree that, we are a communal species. We live in groups. Maybe the best evidence of this is the often unspoken question we all entertain upon learning of a hermit who shuns society and segregates himself to the point of little or no human interaction, “What’s wrong with him?” we say. Some might even say, “What went wrong with his childhood?”

Human bonding must be normal, in some sense, and may even be essential. We know that human infants need human interaction to thrive.⁷

⁶ See HILLARY RODHAM CLINTON, *IT TAKES A VILLAGE: AND OTHER LESSONS CHILDREN TEACH US* (1996).

⁷ See <http://psychclassics.yorku.ca/Harlow/love.htm>. (an experiment involving babies who were fed and had their diapers changed by mechanical devices rather than actual humans.) See also <http://www.fordham.edu/halsall/source/salimbene1.html>, the 12th century studies by Holy Roman Emperor Frederick II who had children raised by wet nurses but otherwise not spoken to in an attempt to find humanity’s “original language.” The children died of neglect. In his *Chronicles*, the monk Salimbene di Adam

Clearly, if human bonding is good and helps us to thrive, thereby promising, or even better, facilitating survival of our species, then it should be encouraged. In particular, it seems most prudent to encourage such bonding that leads to successful reproduction and flourishing of the species. Thus, our proclivity to encourage, or privilege, human bonding that leads to, or promises to lead to, successful reproduction seems reasonable; even rational and self-interested in a good way.⁸ Marriage can rightly be seen as a means of encouraging successful reproduction; a mechanism or tool of social regulation bent on the survival of the species. In fact, marriage rules, and therefore family law, are so culturally significant that we even can identify their creation as such at a specific point in time.⁹

Marriage, as a social institution, can be found in every human culture in some manner or another. Although the forms and rules may differ, sometimes

wrote that Frederick bade "foster-mothers and nurses to suckle and bathe and wash the children, but in no ways to prattle or speak with them; for he would have learnt whether they would speak the Hebrew language (which had been the first), or Greek, or Latin, or Arabic, or perchance the tongue of their parents of whom they had been born. But he labored in vain, for the children could not live without clapping of the hands, and gestures, and gladness of countenance, and blandishments."

⁸ John Rawls developed what is called the "Veil of Ignorance" thought experiment. He posited that any number of people operating under a veil of ignorance, *i.e.*, without knowing anything about their own personal situation, would choose to act based on his theory of justice: "The good is the satisfaction of rational desire." See JOHN RAWLS, A THEORY OF JUSTICE (1971); *see also* AYN RAND, THE FOUNTAINHEAD (1968) (theory of Rational Egoism).

⁹ See DAVID BLANKENHORN, THE FUTURE OF MARRIAGE (2009).

dramatically, marriages, or whatever such unions are called, always involve some form of socially legitimized pairing of reproductive partners.¹⁰ The point to take here is that the encouragement, in human cultures, and legitimizing and/or regulating reproductive relationships as well as attempting to encourage, establish, and enforce long-term bonds between the reproducing partners, is ubiquitous. Given the diversity of human cultures, that fact in itself is remarkable. It also must be evidence that such bonding, if we call it marriage or not, is somehow essential, or at least beneficial, to our survival and triumph as a species and maybe its encouragement should be continued.

Marriage, in another sense, is what John Austin¹¹ called “a speech act.”¹² Austin asserts, it is a thing that had no existence prior but springs into existence suddenly if and when the proper words are spoken by a proper authority and recognized by a proper audience;¹³ *e.g.*, a priest asks you, within the jurisdiction of his granted authority, in front of proper witnesses who acknowledge it, if you want to be married and you respond affirmatively, “I do,” therefore it’s something we speak into existence; purely manufactured by us; created as if out of whole cloth. This is an important perspective because if it is only what we’ve made it,

¹⁰ *Id.*

¹¹ See JOHN L. AUSTIN, *HOW TO DO THINGS WITH WORDS* (1975).

¹² See JOHN L. AUSTIN, *PHILOSOPHICAL PAPERS* (Geoffrey J. Warnock and J. O. Urmson eds. Oxford 1990) (1961).

¹³ See also 7 JOHN R. SEARLE, "A TAXONOMY OF ILLOCUTIONARY ACTS," *LANGUAGE, MIND, AND KNOWLEDGE* (K. Günderson ed. 1975).

we could re-make it in whatever manner we may choose so long as enough of us could be convinced to choose to do so. We might even choose to do away with it altogether should we find it archaic, obsolete or otherwise no longer useful. In fact, if enough of us were to be convinced that, in addition to no longer serving a useful purpose, marriage has become harmful in some way we could, and should, eliminate it altogether. At first blush this may seem ambitiously irreverent but the proponents of this position also make some compelling arguments.

Yet marriage, in still another sense, is a legal contract, or a legal status, or maybe both. There are those who cannot decide.¹⁴ Be that as it may, it looks a little different if we inspect marriage exclusively through the lens of the law. Most who view marriage this way understand it as a set of promises that, once made, create certain legal entitlements.¹⁵ Whether the legal recognition causes or

¹⁴ In many societies marriage was a means to convey property and title. Two families negotiated and formed the contract of marriage. In modern societies, the individuals formed the contract. With the rise of industrialization, land/wealth transfer was less central to marriage, but common provisions of the contract entail sexual monogamy (at least by the woman and publicly) to acknowledge the children born to the woman, and a promise of formality in ending the relationship. The status conveyed by marriage often is public recognition of having reached adulthood with the creation of a new unit of “family.”

¹⁵ Among the legal benefits of marriage are the ability to inherit from a spouse and include him or her on health insurance policies without tax penalties, take federally protected family medical leave from a job to care for the spouse or the spouse’s parent and return to a job, the right to make medical decisions for one’s spouse without having to make additional legal provisions, the right to inherit the spouse’s property if the spouse dies without a will, being able to adopt children together and both be legally recognized as the children’s parents, the right to collect Social Security benefits based on the others’ employment, the right to sue for wrongful death benefits in lawsuits, and numerous others. *See*

affects the social institution or vice-versa is an interesting question and it is significant within the legal perspective on marriage because the law treats status and contract issues in very different ways,¹⁶ but that particular question is not salient to this investigation at this point. What is the difference and why it matters is interesting in and of itself but a digression of no significant import here.¹⁷

So far, I have defined marriage as an essential bond between reproductive counterparts, a social institution with strong religious underpinnings, a social construction such that we made it and could change it if we so choose, and a legal event that may be the equivalent of a contract or status, or both, but either way, entitles the participants to certain treatment by both society and the government. You will see, if we take all of these definitions as possible correct answers to the grand old question, “What is marriage?” none of them seem so utterly ridiculous as to deserve to be rejected out of hand. It also seems to me that none of them necessarily are mutually exclusive yet, remarkably, the proponents of the various positions seem to treat them as such. Below, we will look more closely at the

<http://www.nolo.com/legal-encyclopedia/marriage-rights-benefits-30190.html>.

¹⁶ In criminal law, *e.g.*, it is unconstitutional to criminalize the status of “drug user” and racial profiling is criticized as a method of wrongly attributing a certain status (illegal alien) to racial characteristics thereby connecting the status of a person with attributes. In civil law we allow a remedy for a breach of a contract for personal services but we do not force specific performance if it smacks of servitude. The promises made by the parties to a marriage share that flavor. *See generally*, E. ALLAN FARNSWORTH, *CONTRACTS* (4th ed. 2004).

¹⁷ Almost twenty years ago, Carl Schneider put forward the notion that law supports but does not create social institutions. *See* Carl E. Schneider, *The Channeling Function in Family Law*, 20 Hofstra L. Rev. 495 (1992).

current marriage debate with an eye toward sorting the issues out, at least enough to further answer our Grand Question.

In *MARRIAGE, SEXUALITY, AND GENDER*, Robin West divided the marriage debaters into three broad camps; “marriage defenders,’ ‘marriage-enders,’ and ‘marriage benders’ (or if you prefer, ‘marriage menders’)” and suggests they all “concur we are at a real decisional crossroads.”¹⁸ I agree emphatically. Because West’s framework seems to be helpful in making sense of the cacophony that is the current marriage debate respectfully, but without her permission, I will borrow her helpful framework.

“Marriage Defenders” are those who believe marriage is an essential, even sacred, bond between reproductive counterparts and believe it is a necessary social and or religious, even divinely ordained, institution. They like things the way they are and do not want change. They do not want marriage ended or extended beyond its current, traditional parameters; i.e., one man and one woman. Those who believe marriage is simply something humanly constructed and therefore it can be changed or dismantled would be the “Marriage Enders.” They take the position that marriage is a legal myth that we may, if not must, change should we discover or determine that it creates harm or even an undesirable result. Those who advocate that we retain marriage because it is either essentially or scientifically proven to be a good thing, but in a different form than the religious-based, reproduction-themed institution we currently have are the “Marriage

¹⁸ See ROBIN WEST, *MARRIAGE, SEXUALITY AND GENDER*, 2.1 (2007).

Menders” and/or the “Marriage Benders.” Some members of this group advocate extending marriage beyond the one man and one woman paradigm to include same-sex couples, poly-amorous couples, and even persons with no expectation whatsoever toward sexual relations and/or reproduction, but who see marriage simply as a valuable business decision or estate plan. Because West’s classification system fits so well, I will employ it further and thank her for it. Still, a closer inspection of the understanding of each of these camps remains necessary to answer the question, “What is marriage?” because thus far, I am not entirely satisfied, much less impressed.

Before I delve any further into our grand question, there is yet another perspective to consider that helps to shed light on our inquiry. Catherine MacKinnon¹⁹ postulated the notion that perhaps we are not really as highly civilized as we think we are and that all sexual behavior is driven primarily by instinct, maybe even by biophysical determiners, like pheromones and hormones, and we have socially constructed everything else we think we know about sex and reproduction. In other words, romance, seduction, love, and marriage may have been socially constructed to allow us to believe, or even convince us that, we are engaging in something more sophisticated and emotionally profound than just an instinctual or biophysical urge to reproduce.²⁰

¹⁹ See http://web.law.umich.edu/_facultybiopage/facultybiopagenew.asp?id=219.

²⁰ See generally CATHERINE MACKINNON, *FEMINISM UNMODIFIED* (1988).

Ms. MacKinnon's is a fascinating theory. Just try to imagine how different our world might be if we entertained it fully. Sex might be seen as just another natural bodily function. Maybe it would be a distasteful one like voiding waste and we would devise methods for doing it outside of the view of others. Perhaps it would be tolerated in public and nobody would think any more or less of it than we do when we see people coughing, scratching an itch, or even kissing each other in view of others. What if humans shared the same attitudes about sexual relations and reproduction as the duck community in your local pond? They do not have marriages and they seem to reproduce and survive successfully.

But we humans are different. Our offspring are born much more vulnerable and for a much longer time than are the duck's, any other mammal. David Blankenhorn says that rearing a human infant to adulthood has got to be the hardest job on the planet.²¹ Given the reproductive consequences of such unnoticed and unregulated sexual couplings, like those ducks, who will care for the children that are produced from these unregulated encounters? This is a challenge because of the extreme incapacity of human infants and the degree of care they require to survive and to mature into adulthood. Human infants need much more care than a baby duck. The duckling is ambulatory, can feed himself so long as food is available, and needs no additional clothing or protection from the elements beyond that with which he is born. In contrast, someone must

²¹ David Blankenhorn is founder and president of the Institute for American Values and the author of *THE FUTURE OF MARRIAGE* (2009) and *FATHERLESS AMERICA* (1995).

provide for and care for the human mother so that she can provide for and care for the infant. Our mothers need more help than the duck mothers need. This is monumentally important and you'll see why later.²²

Try to imagine how the marriage debate might be different if our immense reproductive vulnerabilities were eliminated. What if a human being could simply choose to reproduce alone and accomplish the task without rendering herself dependent upon others in doing so? Would there still be a marriage debate, or even marriage? I think so because I am loathe believing that "Love"²³ is merely a social construction supported by a child's rhyme. I also think once we discovered that copulation leads to reproduction we would want to control it. We would realize what is at stake; literally survival of our species, and we would

²² See *Understanding Ardi*,

http://www.dispatch.com/live/content/science/stories/2009/10/11/Sci_Ardi.ART_ART_10-11-09_G1_VKFALPV.html. The finding of a four million year old skeleton suggests that bipedalism is what separates us from the other animals. It is possible bipedalism developed because humans needed arms to carry food back to the mother and infant so we had to walk upright to do so. Bipedalism may well have been the catalyst of the evolutionary process that separates us from the other animals.

²³ "Love" is capitalized to invoke Plato's notion of Love as a Form. A "Form" is a perfect sample. Plato believed that we cannot know anything about "x" until we can answer the question, "what is x?" From this, he determined that there must be some unambiguous example of those things because even though we cannot explicitly define them, somehow we know them. Plato's theory of these perfect examples, his Forms, is that we are born into this world with dim recollections of the Forms, such as Love, Justice, Beauty, and that is why we have some conception of them and can find examples but yet not be able to easily answer questions such as, "What is Justice?" or "What is Love?" See 7 PLATO, REPUBLIC (Francis M. Cornford trans. Oxford University Press 1941).

want to regulate it. That just makes sense. The obvious way to regulate reproduction is to regulate mating activity. Some think that is a good thing and others find it overly restrictive, but I think we all would concur that, in fact, marriage regulates, or may even be intended [whether by a god, natural science, biological nature or something else is still open for debate] to regulate reproductive conduct in some way. And I think that all of the camps in the marriage debate would have to agree that marriage, whatever else it may or may not be and whether or not it was intended to do so imposes order on reproductive conduct.

Marriage orders sexual relations in the same way that enforceable laws generally order human behavior; it defines who may do what without risking negative repercussions. Even if only as in the so-called “animal world” of our imaginary duck pond, there are at least rules of engagement as to who mates with whom. In MacKinnon’s world we could presume we would have at least those sorts of rules as well. If MacKinnon is correct, it makes sense that we may even have constructed belief systems, such as romance, seduction, and “love everlasting,” in order to regulate it. After all, we do have a long history of trying to control mating and reproduction.²⁴ Is it possible that marriage, at its bottom,

²⁴ One such example was the scheme of the State of Virginia forbidding marriage between “whites” and “coloreds” to prevent “mongrel breeds.” The law was found to violate due process and equal protection in Loving v. Virginia, 388 U.S. 1 (1967). Other examples of attempts to control reproduction are compulsory sterilization programs legislatively enforced by various states beginning with Indiana in 1907. Those required by law to be sterilized included criminals, the

may be simply a socially-constructed means of regulating mating and reproduction? If so, *arguendo*, one of those rules might be to engage in reproductive conduct/acceptable mating rituals in which you must employ techniques such as romance and seduction rather than physical force or intimidation. Moreover, if the mating produces offspring, the male progenitor must remain with the female who gives birth to his child until the child reaches a stage of development such that the child is not totally dependent upon the female. To do this, the two of you will rear the child together in hopes that it survives to become a productive adult and does not become a burden on society.

This answer to the grand old question, “What is Marriage?” is attractive in its simplicity but, grossly unattractive if we fully admit all of its far-reaching implications.²⁵ Among those unattractive possibilities is a social structure constructed along lines of entitlement that differentiate between those who can breed and those who cannot. But this is a digression I have to leave aside and return to what the marriage defenders, enders, and mender-benders would teach

mentally retarded, epileptics, the deaf, the blind, the mentally ill and the physically deformed. See DANIEL KEVLES, *IN THE NAME OF EUGENICS GENETICS AND THE USE OF HUMAN HEREDITY* (1985). Sterilization for criminals was found to be unconstitutional in *Skinner v. Oklahoma*, 316 U.S. 513 (1942), but continued into the 1970s for others. See Paul Lombardo, “*Eugenic Sterilization Laws*,” <http://www.eugenicsarchive.org/html/eugenics/essay8text.html>.

²⁵ For a diverse discussion of the history of laws regarding marriage, legitimacy, bastardy and public policy, See Leslie J. Harris, *The Basis for Legal Parentage and the Clash Between Custody and Child Support*, 42 IND. L. REV. 611 (2009).

us with an ever watchful eye toward the ambitious goal of distilling, “what is marriage?”

The Marriage Defenders take a fairly straight path through history (no pun intended) so I will begin with their platform and take up the others in turn. Here I find it useful to return to the work of Robin West,²⁶ who, like all good legal scholars, excels in the arts of examination and classification. She breaks down the marriage defenders camp even further; into three more sub-groups: the “neonatural lawyers” the “social utilitarians” and the “virtue theorists.” I have different monikers for them but I draw largely the same distinctions, albeit in broad strokes. What she calls the neonatural lawyers, I call traditionalists and/or religious fanatics.

The traditionalists believe that marriage is divinely ordained and inspired,²⁷ related to reproduction and child-rearing, and therefore rightly limited to reproductive pairs of one man and one woman. They view marriage as not

²⁶ Robin West is a professor of Law at Georgetown University Law Center where she teaches in the areas of constitutional law and jurisprudence, among others. Among her published works are RE-IMAGIING JUSTICE: PROGRESSIVE INTERPRETATIONS OF FORMAL EQUALITY, RIGHTS, AND THE RULE OF LAW (2003); RIGHTS (2000); CARING FOR JUSTICE (1997); PROGRESSIVE CONSTITUTIONALISM: RECONSTRUCTING THE FOURTEEN AMENDMENT (1994); NARRATIVE, AUTHORITY, AND LAW (LAW, MEANING, AND VIOLENCE) (1993).

²⁷ Genesis is a book of the Christian Bible that tells us that Adam and Eve were the first of God’s people and one was a man and one was a woman and they were married by God and reproduced. *Genesis* 2:18-24. The Wedding of Cana is a New Testament reference for the biblical basis of marriage as one of the seven (7) Sacraments for Roman Catholics. *See John* 2:1-11.

only necessary but also sufficient to order human reproductive conduct. For them, marriage is worthy of celebration and protection because it is sacred, has always been that way, and therefore should continue. Put shortly, it's not broken and does not need to be fixed.

West's Utilitarian's are "my" social scientists. They study the grand old question, "What is marriage?" by examining human behavior as if analyzing subjects in a laboratory. They have determined simply that marriage works. It's good for us. It increases the overall well-being of its participants making them happier, healthier and wealthier than their non-married counterparts.²⁸ Because of its clear-cut utility, marriage should be encouraged. Some of the members of this camp even go so far as to suggest that if it works for one man and one woman there is no reason why it will not also work for two women or two men or even some sort of polyamorous group of people. After all, if two is good, maybe more is better? Of course, there are others in this camp that believe their compatriots are running amok and that marriage works so well, at least in part if not essentially, because it is limited to reproductive pairs. Reproduction is a sort of built-in biological foundation for the coupling and part of why it works for us.

West's virtue theorists are "my" philosophers. Like all good philosophers, they have investigated our grand question by looking at the human self and whether or not marriage enhances or deteriorates that human self. They hold to

²⁸ See LINDA WAITE AND MAGGIE GALLAGHER, *THE CASE FOR MARRIAGE: WHY MARRIED PEOPLE ARE HAPPIER, HEALTHIER, AND BETTER OFF FINANCIALLY* (2000).

the position that marriage is worthy of defending because it helps to create a heightened sense of commitment and responsibility to an “other” human being. This commitment entails a like-kind commitment to a larger societal or social group, which in turn helps to stave off, or at least suppress, the ultra-selfish, ultra-individualist self. This is good because the completely self-interested and socially unconnected individualist self is detrimental to the virtuous self, by definition. The virtuous self should be encouraged in all of us because it is good, in and of itself.

These subgroups of Marriage Defenders have very different agendas and commitments; sometimes even conflicting ones. Yet, it seems to me, that they all fit neatly into the defenders camp because they all see marriage as worthy of not only our protection, but also our celebration. (Strange bed-fellows indeed!) The oddness of this coalition should not be lost on us. It is as complex as the tension in India between the cultural groups that venerate the cow and those that eat beef as a food source. They both want the cow to remain around, albeit for very different and mutually exclusive ends. The Marriage Enders camp is just as diverse.

Among the Marriage Enders is the sub-group I call constitutional theorists. They believe that marriage, as both a social and legal institution is infirm when measured against some of our most treasured constitutional precepts. For instance, the United States Constitution calls for a separation of church and State. There can be no mistake that marriage survived for much of our human history as

a device of, and under the control of, churches and as a matter of Canon law. Only by a few accidents of history was the Canon law merged with the English common law from which our own law developed. A viable argument exists that our constitutional promise of a separation of church and State entails that we must correct this mistake and give marriage back to the church. After all, the separation of church and state was so desirable to our constitutional founders because it was designed to protect the State from the church; to keep the church from imposing its own rule.

Just because the U.S. Supreme Court has determined that marriage is a “fundamental right” albeit, even if only for one heterosexual mating pair, does not mean it is correct. That same judicial body has condoned slavery,²⁹ and the

²⁹ See Dredd Scott v. Sandford, 60 U.S. 393 (1857), which held that slaves imported into states where slavery was outlawed by their owners did not gain freedom, despite the fact that the states where they now resided did not legally recognize that one human being could own another. The court specifically held that the plaintiff, a man held in slavery but moved to a free state, had no standing to sue because he was not a “person” under the law. Dredd Scott has never been expressly overruled, but the Fourteenth Amendment has nullified most of the decision’s holding. See U.S. CONST. amend. XIV.

internment of U.S. citizens without due process of law,³⁰ and later changed its tune.³¹

Another constitutional argument for the end of marriage, and one that, unlike the separation of church and state argument above, may have a little more vigor, is that marriage, as it is currently construed, violates our beloved Equal Protection clauses.³² The Equal Protection promise of the U.S. Constitution, and of most state constitutions, is that persons who are similarly situated must be treated similarly under the law. A law that treats different classes of people differently, where the classifications are either irrational or based in malignant bias, does not make constitutional muster and must be struck down as infirm.

³⁰ See Korematsu v. United States, 323 U.S. 214 (1944), which upheld the constitutionality of the executive order permitting the seizing of property and internment of Americans of Japanese descent – regardless of age, place of birth, and military service – during the Second World War. No charges were brought against any of the interred; none were given any due process rights. Korematsu has not been expressly overturned but it has been disavowed information came to light in 1983 that the Government had submitted false information to the court.

³¹ Compare Plessy v. Ferguson, 163 U.S. 537 (1896) (holding that people of color could lawfully be segregated from whites. In this case a man with one great-grandparent of African descent was arrested for refusing to vacate a train car for “white only passengers—because the court found the racially separate train cars are not to be a “badge of inferiority.”) with Brown v. Bd. Educ., 347 U.S. 483 (1954) (finding that “separate educational facilities are inherently unequal” and insisting on the desegregation of public schools with “deliberate speed.”)

³² The Fifth Amendment and the Fourteenth Amendment to the U.S. Constitution both offer the same promise, due process. See U.S. CONST. amends. V and XIV. There are two due process clauses because the Fifth Amendment is applicable only to the Federal government, while the Fourteenth Amendment applies the principle to the various State governments. *Id.*

It is clear that married people are treated differently by the government. They receive greater benefits than do unmarried people.³³ Is this distinction appropriate or does it somehow violate the equal protection promise? For the distinction to be sustainable, at the least there must be a rational governmental basis for benefiting marriage. All I can come up with for reasons to privilege marriage is the regulation of reproduction. But that is a big one. Be that as it may, this important question is much more complex than it may seem at first so it too will be set aside as a diversion because there are more marriage Enders to be sorted out.

Another sub-group within the “enders” camp is the feminist voice. These advocates, most notably among them Martha Fineman,³⁴ suggest that marriage must be ended because it holds in place a long-standing misogynistic system that

³³ A 1996 government study found that there are at least 1,049 protections, rights, and responsibilities that come with marriage under federal law alone. These protections include access to health care and medical decision making for a partner and children, parenting and immigration rights, inheritance, taxation, Social Security and other government benefits, rules for ending a relationship while protecting both parties and the ability to pool resources to buy or transfer property without adverse tax consequences. *See* <http://www.drummajorinstitute.org/library/article.php?ID=5518>. Section 3 of DOMA provides that marriage is defined as the union between a man and a woman for all federal-law purposes, of which there are 1,138. *See* <http://hdl.loc.gov/loc.uscongress/legislation.104hr3396>.

³⁴ Martha A. Fineman is law professor at Emory University. She is founder and director of the Feminism and Legal Theory Project. Her books include *THE AUTONOMY MYTH: A THEORY OF DEPENDENCY* (2004) and *THE NEUTERED MOTHER, AND THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995).

disadvantages women. Ending marriage will create three clear social benefits: it will end the violence we have come to know as “domestic violence,”³⁵ it will put the State out of the business of policing sexual behavior between consenting adults,³⁶ and it will remove the wall of privatization around care-giving and the impoverishment that care-giving can cause.³⁷ Recall here those sturdy little ducklings as compared to the ever-so-vulnerable human infants. Upon inspection, those all actually seem to be laudable goals and again, not necessarily mutually exclusive ones either. The important point here is that once again very different points of view about marriage seem to fit together quite nicely when we look through a large enough lens. Staying with this big picture, the final collective camp in the marriage debate is the marriage mender-benders camp.

The mender-benders would have us imagine marriage as an egalitarian, or at least communitarian, enterprise between consenting adults, such that the labor of care-giving is equitably divided. Indeed, this is compelling. Under this perspective, marriage encourages the bonding of individuals, generally, whether for the purpose of future reproduction and care of the young, for the present care of the partners, or for the future shared care of their families. In their view, although marriage is a good thing, it should be fixed so as to be more inclusive of

³⁵ See Martha A. Fineman, “*Why Marriage?*,” Va. Soc. Pol. and Law 9, 262 (2001).

³⁶ *Id.* at 263.

³⁷ *Id.* at 267.

additional, non-traditional, reproductive couples. Marriage for the mutual care of family fortunes might even be acceptable. The tangible benefits, including the financial entitlements that flow from marriage, are real and should be available to all of us just like any other benefit society has to offer and that is regulated by the promise of equal protection. Marriage is a good thing that just needs to be allocated or distributed more justly. It just needs to be modernized so it sits a little further from its religious and patriarchal underpinnings in order to continue to serve our social needs of today.

With all of the camps accounted for, let's again recount what we have learned about the grand old question. Marriage is not only necessary, and maybe sufficient, to order human reproductive behavior but also worthy of celebration and protection for several reasons. It increases the overall well-being of its participants making them happier, healthier and wealthier than their non-married counterparts. It creates a heightened sense of commitment and responsibility to an "other" human being which entails larger commitments to the family of the "other" and therefore to a larger sense of kinship and community. But it may also be an archaic institution that holds in place and masks certain known evils like misogynistic violence. It may be a mechanism that allows the State to be the morality police in contravention of some of our most dearly loved constitutional principles of individual liberty. It may hinder, rather than aid, our survival and prosperity as a species because it devalues the care-giving that is left out of public view. It may, by its very definition, mandate inequality of the sexes due to the

different physical roles the sexes play in reproduction. So, the question remains whether these problems may be subject to some other, better remedy.

We humans survived the Dark Ages and two world wars. Surely, as a species, we could survive the reform of a single social institution such as marriage? It seems that, for all their fervor, the voices of the current marriage debate have not given us a complete and sufficient answer to the grand old question, “What is Marriage?” so that we might pick a winner. For that matter, the debate still rages so there must be more work to be done. I simply will not accept that there is a social dilemma that is irresolvable by human ingenuity and/or invention. Doing so might entail that civilization as we know it is doomed to fail and that humans might not remain the dominant species on this planet. I simply will not admit that, not yet anyway. Perhaps an historical and/or anthropological perspective will serve us better. Let’s look further back for our answer. Maybe history will shine a light for us? From where did marriage come?

B: A Brief History of Marriage

In ancient Greek and Roman history, wherein all of western civilization is alleged to have its roots, marriage is more fundamental than the State.³⁸ It grows from, “a natural feeling, for nature has made man even more of a pairing than a political animal.”³⁹ A Roman, Lucretius, believed that “male and female learnt to

³⁸ See 1 THE POLITICS OF ARISTOTLE, ch. 2 (Ernest Barker trans. Oxford Univ. Press 1962).

³⁹ *Id.*

live together in a stable union and to watch over their joint progeny.”⁴⁰ Later, John Locke tells us that the “first society” was between a man and a woman, as his wife, and defines marriage as, “a Communion and Right in one another’s bodies, as is necessary to its chief end, Procreation.”⁴¹ But, Locke further allows that “the ends” of marriage is, “procreation and mutual Support and Assistance.”⁴² And later yet, Frederick Engels thought that marriage is the, “world historic defeat of the female sex” in that the “mother-right” of reproduction was overcome by obsessions with private property and capitalism and, “the woman was degraded, enthralled, the slave of the man’s lust, a mere instrument for breeding children.”⁴³ As contrary or controversial as these definitions may be, they have in common that they equate marriage, in some way, with reproduction, or more specifically, the biology of reproduction.

Is there necessarily an inextricable link between marriage and reproduction? Marriage might be what anthropologists call, “pair-bonding,”⁴⁴ the establishment of a stable, long-term reproductive relationship, with a single

⁴⁰ See THE NATURE OF THE UNIVERSE (Lucretius trans. Latham 1994).

⁴¹ See JOHN LOCKE, TWO TREATISES OF GOVERNMENT, 318-19 (1680-1690).

⁴² *Id.* at 321-22.

⁴³ See FREDERICK ENGLS, THE ORIGIN OF THE FAMILY, PRIVATE PROPERTY, AND THE STATE, 68-69 (1884).

⁴⁴ Claude Levi-Strauss first observed this phenomenon. See BERNARD CHAPAIS, PRIMEVAL KINSHIP: HOW PAIR-BONDING GAVE BIRTH TO HUMAN SOCIETY (2008).

spouse. Peter J. Wilson describes the process of human kinship as beginning with, “the copulation of two adults of opposite sex.”⁴⁵ It seems there is an undeniable link between marriage and reproduction. Marriage, at least as a social institution, must in some way, have been constructed to address human reproduction. Given that reproduction entails care-giving necessary to see an extremely fragile and vulnerable infant survive to adulthood it is indeed an awe-inspiring task that may very well require more than one of us to accomplish well. At least that’s how it looks if we look to where marriage first appears in recorded history; in the Tigris-Euphrates and Nile River valleys.

Before then, throughout prehistory, it appears as though humans understood that the female body is the point of production of babies. We have art and other artifacts that confirm, from about 40,000 years ago, that there was no long-term bonding of male-female couples and little or no evidence of social fatherhood.⁴⁶ The mysterious ability of the female to create a new life was powerful. Religion took on a female-centered focus. This Mother-Goddess culture is evidenced in ancient burials. The earliest human burials found did not include men.⁴⁷

⁴⁵ See PETER J. WILSON, *MAN THE PROMISING PRIMATE*, 55 (1983).

⁴⁶ See MARIJA GIMBUTAS, *THE CIVILIZATION OF THE GODDESS: THE WORLD OF OLD EUROPE*, 342 (1992).

⁴⁷ *Id.* at 283-331.

But something changed. None of us can be sure but, if we listen to Engels and Gimbutas we might be lead to the proposition that men discovered the part they play in reproduction and set out to control it. It might be attributable to evolutionary changes in our bodies. As our brains got larger, our heads got bigger, and infants had to born earlier so that they could be born at all given an understanding of the physical limitations of natural birth. Maybe not, but either way, the important point here is that something changed. Marriage came into existence.

Indeed, one of the remarkable contributions of the ancient Mesopotamians and Egyptians was the institution of marriage. Civilization means, if anything, the creation of social institutions. Social institutions are social processes held in place by sets of rules that are believed to apply to all members of the society for the benefit of the society as a whole. Marriage may have been one of the greatest of these institutions. For the first time, in what has been called the world's first city, Eridu, located on the west bank of the Euphrates River in lower Mesopotamia, archaeologists found burial plots that not only contained women and children of related bloodlines, but also men, presumably fathers/husbands.⁴⁸ Here is where we can look for the development of social rules that bind the mating couple, or reproductive pair, together. Here is where we find the birth of marriage as a social institution.

⁴⁸ See GWENDOLYN LEICK, *MESOPOTAMIA: THE INVENTION OF THE CITY*, 13-14 (2001).

Indeed, one of the earliest legal codes, The Laws of Lipit-Ishtar, who ruled that area of the world around 1900 BCE, includes a prologue wherein the king describes his many great feats. Not the least of them is having, “established justice in the lands” because, “[he] made the father support his children.”⁴⁹ In fact, about a third of the known laws of Lipit-Ishtar relate to what we would today call family law. Indeed, they dealt with the same types of problems we still grapple with. For instance, in terms of caring for his children, a man was bound to “provide grain, oil, and clothing” even for the “harlot” who had borne him children. But, if he was married “the harlot shall not live in the house with his wife.” Further, “the children which the harlot has borne him shall be his heirs” so long as his wife has borne him no children.⁵⁰ A clear example of family.

Dadusha, who ruled Eshnunna, near what is now Bagdad, in about 1800 BCE, adds to our understanding of early marriage by dictating that it be voluntary. Importantly, those who had to voluntarily agree to the marriage did not include the bride. Marriage required a contract between the man and the

⁴⁹ See MARTHA T. ROTH, *LAW COLLECTIONS FROM MESOPOTAMIA AND ASIA MINOR*, 25 (1997).

⁵⁰ See *Code of Lipit-Ishtar* 27 (1870-1860 BCE).

parents of the girl before she could be considered the groom's wife.⁵¹ Here, the contract was a promise to provide gifts over time. Some people have interpreted this as an early description of a dowry or a bride-price: money or goods paid to a man for the maintenance of a daughter who is to become his wife. Incidentally, this is often where those who say marriage is about a contract to transfer property will point. However, it is just as logical and reasonable to understand this gesture not in strictly economic terms, but as a conjoining of the two families in social and financial responsibility with each other. The latter perspective is more reasonable when we understand the gifts were obligatory on both families and expected to be of essentially equal value. This joining of families to extend the circle of social responsibility through marriage sounds like a laudable goal to me.

Perhaps the most widely known source of ancient law today is the famous Code of Hammurabi. It dates from Babylonia, about 1750 BCE. Of the 275 laws of this code about 65 relate to family law. Hammurabi's Code includes provisions relating to cohabitation, adultery, divorce, and even a husband who has been taken captive in war.⁵² It also contains provisions for contracts, bride-prices, dowry, and the support of children and their mothers. It is important to note here that the rights of a wife were closely linked to whether or not she bore children

⁵¹ See LAW COLLECTIONS FROM MESOPOTAMIA AND ASIA MINOR, *supra* note 50, at 63 (Laws of Eshnunna).

⁵² See LAW COLLECTIONS FROM MESOPOTAMIA AND ASIA MINOR, *supra* note 50, at 205 (Laws of Eshnunna).

during the marriage; another clear link between marriage and reproduction. Hammurabi's Code also changed the role of males with regard to reproduction, from one of inseminator to one of provider, by instituting and/or enforcing the rules of marriage and of parentage. Unfortunately, this conflation, of marriage and parentage, may have solved a problem at the time but, maybe more than we need; like egg-salad at a picnic; if you make more than you need, the rest will sit around and poison someone later. It is this conflation of marriage and parentage that is at the crux of the modern marriage debate; and the source of tension between children and their rights to parents and adults and their rights to their children. Many who tout the extension of marriage to gays and lesbians do so because it will legitimate the children being raised by gay and lesbian parents.⁵³

What have the arguments shown us in terms of an answer to the grand old question, "What is marriage?" The origins of marriage seem to be the same as any other social institution: We made it up. We created it and spoke it into existence. We did so to ensure that children and their mothers would be provided for and that society would flourish. By marrying the male progenitor to the female progenitor we are better able to ensure that reproduction is successful such that the mother and child will survive and become a productive member of, but not be a burden on, the group.

⁵³ See Professor Nancy Polikoff, *The New "Illegitimacy": Revisiting Why Parentage Should Not Depend on Marriage*, Conference at American University Washington College of Law (March 25-26, 2011).

The emergence of marriage as a social institution and laws to regulate it signal the change from a female-centered model of reproduction to a male-centered one. As if it suddenly occurred to us, collectively, that either males play a part in reproduction and therefore they too have a responsibility to society or, that something was to be gained from controlling reproduction and ensuring that females, and the children they bear, are, in some way, the responsibility of a male progenitor. Marriage was a means of widespread enforcement of that new idea. Marriage was a necessary social institution, needed to sort out which man is responsible for which women and which children. So marriage very much is about reproduction and the rearing of children but, more importantly, it's about assuring a provider, for children and their mothers, of the social benefits of civilization. Marriage must have something to do with providing for the offspring who are the result of reproductive conduct that leaves the female less able to care for herself as she is then relegated to the incubating, gestating, birthing, and continued survival of the children.

Some would say that the notion of legitimacy is integral to the notion of marriage. Illegitimacy is the legal status of a child having no legal father. This changes the focus from "father" to "legal father." A legal father is one who can be forced to acknowledge and provide for the child. Logically, a "legal father" must be one that is "recognized" or "acknowledged" or even "established" or "documented," all of which seem to indicate a criteria of distinction wherein an authority, presumably the State in today's society, may impose a duty. Of course,

that rule is marriage and it is imposed by the government and enforced through law. A male is a legal father only once our laws or courts recognize him as such. Any healthy adult male may be a biological progenitor of a child but only our laws or courts can pronounce him a father and bestow upon him the corresponding bundle of rights and obligations regarding a child. Under our laws, the husband of a woman who gives birth to a child is presumed to be the legal father of the child.⁵⁴

Is that it? Have we discovered the essence of marriage? What we have discovered is that marriage is a rule, or set of rules, that ensure a man will provide for his children and the woman who bears them. Is that enough? Surely it will not silence all the voices in the marriage debate, if it would silence any. So, there still must be more. Leaving history behind, I'll look next to the current legal treatment of marriage for further enlightenment. Much of the current marriage debate swirls around the legal treatment of the distinction between married and not married. Being married entails different treatment from the State and now, only some may marry while others may not. Because marriage, as a social institution works, it survived and evolved. In fact, it still may be evolving. That would help explain the on-going disharmony. Today's marriage debate is not new, only a new emergence of long-standing issues.

Clearly marriage has come a long way from requiring a man to give oil and grain to the harlot who bears his child as the result of their sexual encounters.

⁵⁴ See generally Michael H. v. Gerald D., 491 U.S. 110 (1989).

Still, a contemporary legal analysis of marriage undoubtedly still is deeply concerned with rights and responsibilities to each other and to shared progeny, just as it was at the beginnings of marriage. Many legal determinations, not just parentage, turn on whether or not one is married. One of the most obvious, of course, is who is entitled to file a “joint” tax return. Most Americans are required by law to file a tax return with the Internal Revenue Service every year. There is a financial benefit to filing a “joint” return but only “married couples” may file such a return and, therefore, are entitled to the financial benefit. We encourage marriage by doling out benefits. Because of those benefits that marriage has become the battleground upon which we fight over what sorts of relationships it can accommodate; but again, I digress.

The first and simplest contemporary definition of marriage is that it is a contract. A contract is a set of promises between two (or more!) people such that a failure to perform the promise entails a remedy of some kind to make the receiver of the broken promise again whole.⁵⁵ At first blush, this seems simple enough, but marriage as a contract requires further analysis. If marriage is a contract, we ought to be able to discern the promises made by each party, what constitutes a failure to perform them, and the remedy required should such a failure be proven.

⁵⁵ A contract is “an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.” *See* BLACK’S LAW DICTIONARY 322 (6th ed. 1991).

Proceeding as any reasonable legal analysis should, we must ask, “what are the terms of a marriage contract?” A legal contract requires an offer of express terms, acceptance of the offer, and a bargained for exchange of something of value between the parties, called consideration. We require consideration because a promise alone is not a contract; *i.e.*, our courts do not enforce all promises, just the ones that are bargained for in an exchange of some kind of value.⁵⁶ This is an important foundational concept so I will spend a few more words explaining it.

If I promise you I will wash your car someday, you will not get a court to enforce my bare promise. My promise is a unilateral promise and you did not give me anything in exchange for it. However, if I promise you I will wash your car if you will clean my garage and you have cleaned my garage, then a court will force me to see that your car gets washed. Our traded labor is the bargained-for exchange that makes our mutual promises an enforceable contract. This is a bilateral contract because both parties have bargained for the promise of the other.

There is another important definition of contract; a unilateral contract. This is a contract where there is a promise on one side only and that promise becomes enforceable by its own conditions. For instance, if I tell you that I will make you lunch if you mow my yard, I am not obligated to make you lunch unless or until you mow my yard. In fact, until you start mowing, I can withdraw

⁵⁶ The value can be as small as a single peppercorn, but it must have value to the parties.

my offer and no contract has been made. Without a contract, promises are unenforceable by the courts. Now, if you're thinking what I am, application of this notion of a bilateral contract to the institution of marriage raises more questions than it answers.

All marriages begin with a set of promises. Traditionally, the parties to a marriage, at the least, promise that the marriage will endure "until death do we part" meaning it is meant to be a promise that will last for an entire lifetime. Other promises are so well-known that most of us can recite them; "for better or worse, in sickness and in health," we promise to "love, honor, and cherish" or in some cases, "love, honor and obey." Some more contemporary marriage promises include more specific behaviors or conduct chosen by the marriage partners but it seems that the historical roots of the traditional marriage promises can be found in the ancient codes of Mesopotamia. Obligations to a particular woman that once were forced upon a man who begat a child with her are now promises made even before anyone is begotten. Clearly some connection between the ancient code and the modern promises is indisputable. In a marriage ceremony promises are exchanged and that takes marriage a step closer to being a contract between individuals.

It also seems that there are consequences for breaking such promises. The ending of the marriage, its legal dissolution through the courts, brings with it the potential end of the benefits. If the marriage was of long duration, or under certain other circumstances, not only the husband but the wife could find herself

or himself obligated to continue to provide support for a spouse after dissolution of the marriage and even whether or not the marriage produced offspring.⁵⁷

These rules have changed dramatically in recent history. We now allow no-fault divorces where one party may simply change his or her mind about wanting to be married and the court will grant a divorce even if the other party has not breached any of the marital promises. “No-fault” divorce is a relatively new development and divorces for cause still exist. Marriage is a set of promises that, if breached, will afford the non-breaching party a remedy.

What then is the final requirement for a marriage contract—consideration. Consideration is the bargained for exchange that makes the promise(s) enforceable as a legal contract. Recall that in the very earliest times of marriage the exchange was economic, mandated, and public. The families of the bride and groom were required to exchange gifts; *i.e.* things that held value in their culture. In many cultures it was not the bride and groom who decided who would marry but rather it was a bargain struck by their parents.

⁵⁷ Alimony is the support of a former spouse after the dissolution of a marriage. It was first provided in both the Code of Hammurabi and the Justinian Code of the later Roman Empire. Historically it was paid to “innocent” women, that is, those who were abandoned, because women were unable to earn a respectable living and legal disabilities prevented women from owning property. Awarding alimony also mirrored the view that marriage was a lifetime commitment. Increasingly, fault, such as an act of adultery, is no longer considered in allocating alimony. Neither is gender. Since the holding in *Orr v. Orr*, 440 U.S. 268 (1979), states have had to consider an ex-husband’s right to support equally with an ex-wife’s. For an article on the growing trend of men receiving alimony see Anita Raghaven, *Men Receiving Alimony Want a Little Respect; Modern Males Say Living Off the Ex-Wife is No Cause for Shame*, WALL ST. J., April 1, 2008; *see also* <http://online.wsj.com/article/sb120700651883978623.html>.

In some cultures, this practice survives even today. In fact, it is commonly dealt with in our courts. Lawyers argue that certain gifts (family heirloom jewelry) given by the groom's family to the bride during a traditional Hindi wedding ceremony are not actually given to her as gifts of her own to keep or dispose of at her discretion, but rather are intended for the offspring she is expected to bear with her husband and she only held them in trust for the husband's family heirs. If she has not produced such offspring and is divorcing the man such that no offspring will be possible, she must return the gifts, but not to the husband, to his parents.

Others have argued or suggested that over time there are other places to look for the bargained for exchange needed to deem marriage a contract. Some look to the nature of the relationship of the parties. The American traditional marriage arrangement of the middle of the last century we could decide that the exchange was purely economic but between the parties, not their parents. Moreover, the bargain was sexual submission and caretaking (homemaking, child-rearing, elder-care, etc.) from the bride in exchange for housing, food, clothing, medicine from the groom. These items were physical necessities of survival in civilized industrial society that she could not provide for herself. An

argument has been proffered that marriage is little more than prostitution which is an economic bargained for exchange of sex for money.⁵⁸

Therefore it appears after this cursory examination, that there is evidence to hold that contemporary marriage could rightly be seen as a contract. But what of those naysayers who urge instead that contemporary marriage is a status? They teach us that “married” is a noun; a label that conveys meaning and understanding that a certain set of entitlements, duties, liabilities, or more is connected to the label. For instance, the legal status of “landlord” implies certain obligations and entitlements relating to a “tenant.”

At first blush this notion of marriage as a legal status seems to help answer our grand old question in that we now have comparisons. However, upon further examination, even though these comparisons answer some questions, like “can there be a wife without a husband?” it raises more questions than it answers. For instance, what precisely are the parameters of the status? Are the responsibilities and entitlements of the status universal? Is the status exclusive of all others? Even more problematic for making a thorough comparison, some legal statuses are not necessarily voluntary, or mutable: race and gender come to mind.⁵⁹

⁵⁸ “Marriage is for woman the commonest mode of livelihood, and the total amount of undesired sex endured by women is probably greater in marriage than in prostitution.” BERTRAND RUSSELL, *MARRIAGE AND MORALS* (1970).

⁵⁹ Here, I include gender because I believe that gender and sex are fully distinguishable categories of human identity. Sex exists on a continuum between male and female while gender’s continuum runs from masculine through feminine. They are not dependent on each other. The assumption that it is

Be that as it may, the bigger problem I have with this perspective is that the so-called social status of being married is not at all clear. Although I can see where marriage may appear to be a transactional status; *i.e.*, these two people have entered into a contract to marry and therefore acquire the status of “spouses.” that still seems to me like the status change is relational to the parties to the contract. No contract means no status. This suggests that it is really the marriage contract that matters and marriage is just the state of being bound by the contract -- or not. If this perspective is accurate then the entire body of rules we commonly refer to as family law might rightly be viewed simply as exemptions from the law regulating interactions between strangers such tort, contract, and property law.

If family law is viewed as a set of exemptions to the ordinary rules of human interactions, such as tort, contract and property law, there must a status to be achieved that affords one the opportunity to claim the exemption. And the exemption must be as a desired or desirable benefit. If I agree to take on the status of being your “husband” and you take on status of my “wife” then we have obligated ourselves to each other under the law. We now are beholden to the State to conduct ourselves within certain parameters or risk punishment. Is this somehow different or even better than the set of rules to which we could have bound ourselves if instead we entered into what looks more like a business, rather

“correct” or “natural” for sex and gender to coincide in a predictable set, such as male/masculine, stems from a misguided and unwitting dependence on the social constructions of gender.

than personal, status? Why not, “landlord” and “tenant” or “employer” and “employee” status? Because the status is not based on the transaction between us, it is based on the relationship between us.

Marriage is a unique type of status in precisely this way. It is not based on a transaction (read here: contract), rather it is based on the personal relationship between us and the State’s need and authority to regulate that relationship. Why does the State regulate relationships? We have a need to regulate reproduction; in an effort to prevent relegating the female to a position of either inability or decreased ability to provide for her own needs and those of her children by deriving support from the male progenitor. We’ve come full circle. Recall Lipit-Ishtar’s pride in announcing his great feat of forcing a man to provide for his children and their mother(s)? So, if marriage is a status, the status is that of potential breeder, not necessarily just as a contractor with a duty to perform certain duties and an entitlement to receive certain benefits. In this way, and *only* this way, marriage, as a status, makes sense.⁶⁰

We must not lose sight of the grand old question, “What is marriage?” What progress can we now announce in answering it? Marriage is a social and legal institution with a ubiquitous long-standing history. It is a contract-like bond between spouses, and possibly their families, that achieves for the individuals the

⁶⁰ This sits squarely with the current marriage laws of most states; *i.e.*, Arizona forbids a marriage between first cousins unless one of them is at least 65 years old or they prove to a judge that one of them cannot reproduce. *See* ARIZ. REV. STAT. ANN. § 25-101B (1996).

status of potential breeders thereby regulating reproduction and helping to ensure the successful rearing of offspring and survival of the species. Surely we have not yet discovered an answer to the grand question that will help us determine a correct path to silence the current marriage debate. It still seems as though maybe all the voices in the cacophony are right, in at least some way. There must be more to this puzzle and religion has yet to offer up her bounty of knowledge on the topic.

C: Religion and Marriage

In part because I am a product of my culture, I will focus primarily on the Christian religion.⁶¹ I also choose this focus because Catholicism is an essential Christian religion and Catholic leaders have been most vociferous about sharing publicly the Catholic view.⁶² Recall that Lipit-Ishtar, Hammarabi, and Dadusha ruled mankind about 1500 years before the Christian Era; *i.e.*, before the birth of Jesus Christ and the Christian religion(s). The birth of Jesus Christ and his followers propelled the spread of monotheism outside the Fertile Crescent and

⁶¹ In using “Christian religion,” I mean to include the entire Judeo-Christian religious world. In my opinion this encompasses Islam as well because, as I understand it, Muslims, like Jews and Christians, recognize themselves as receiving the promise of the single God of Abraham and consider themselves his descendents through his son Ishmael. Jews and Christians are understood as his descendents through Abraham’s son Isaac.

⁶² I understand that due diligence, if nothing else, requires an equal look at the world’s other leading religions but here I have neither the time nor the pages to spare to do it now. Therefore, I rely on my cultural and personal upbringing and biases in producing this text.

Nile Valley. It marks a significant shift in human belief systems and introduces an era of widespread belief in a single omniscient and omnipotent god who takes an active role in ordering each of our lives and to whom we owe, individually and collectively, duties of allegiance and obedience, as if to a parent. Viola' God the Father is born into our culture.

The earliest Christian writings, including the Bible, tell us stories of people and things already ancient to them. They tell us of Mesopotamian kings, Babylonia, ancient Egypt and the Persian Empire, though often with noticeable contempt for the people they thought of as godless neighbors.⁶³ Despite the disdain, the discussion of marriage in the Old Testament clearly reflects ideas in common with their Near East neighbors, although the early Israelites put their own religious slant on it. They believed that marriage was a god-given way of ensuring that their faith was passed on for later generations. It's a small and simple step in logic to go from assuring future generations to assuring future generations of Israelites.

So, although there is evidence of our ordering of human reproductive activities far earlier than the Christian era, the early Christians clearly embraced the idea and even enforced it with religious conviction. The notion thereby was

⁶³ These Old Testament stories were recorded originally by Jewish scribes as part of the people's history, antedating the founding of Christianity. Christians adopted the Old Testament, as the first Christians were Jews. The prejudices of the Old Testament are those of the period in which the books were written, reflecting the audiences they intended to teach and tell us as much about the writers as about their subjects.

preserved and expanded in the political and social structures that developed along with the religion. This is another station in our whistle-stop review of human history bent on answering the grand old question, “what is marriage?” I see how we got from the origins of the written history of marriage to the origins of Christianity, but how does that add to our understanding? Put bluntly, all that we have now added to our definition of marriage is that it is divinely inspired. God wants us to be fruitful and multiply and wants us to do it through marriage, like Adam and Eve, Abraham and Sarah, and Mary and Joseph. This is an overt connection between marriage and reproduction. The religions emanating from the early Christian era either cleared up any ambiguity as to the question or overtly established for the first time that marriage is about regulating sexual behavior. That is how marriage, in the ancient Judeo Christian era, became a cornerstone of social life: sex matters.

Then the world gets bigger again. Plato was an ancient Greek living on the other side of the Mediterranean from 427-347 BCE. He was the student of Socrates and the teacher of Aristotle who, in turn, was the teacher of Alexander the Great. Plato did not care for the rambunctious and ill-behaved gods of Olympus but he was not clearly a Christian either; his writings seem to show some deference to monotheistic beliefs. For instance, he sometimes capitalizes, “God.”⁶⁴ Although Plato lived before the historical Jesus, “his philosophy has

⁶⁴ See PETER COLEMAN, *CHRISTIAN ATTITUDES TO MARRIAGE: FROM ANCIENT TIMES TO THE THIRD MILLENNIUM*, 58 (Michael Langford ed. SCM Press London

proved more important in Christian history than it ever was in Greece.”⁶⁵ “His argument for the existence of an ultimate reality beyond human knowing eventually opened the way through Stoicism and Neo-Platonism for Greeks and Christians to compare notes and seek some measure of harmonization; this was crucial to the progress of early Christianity.”⁶⁶ Without Plato’s philosophy, the Greeks and Christians may not have found common ground and Christianity may not have survived the battle among religions and philosophies.

Interestingly, Plato gives us another ancient perspective to consider in *The Republic*. Plato’s Republic takes as its goal the definition of Justice and the creation of the perfectly just society. However, in his perfectly conceived republic, marriage is not an enjoyment or entitlement of all members of his perfect society. The Guardians and the Philosopher-Kings are not permitted to marry and not permitted to have “a family,” by which he clearly meant, “children” that they claimed as their own. Children of the Guardians and Philosopher-Kings were produced via mating rituals such that no child could claim his or her progenitors and no adult could claim his or her progeny.⁶⁷

2004).

⁶⁵ *Id.*

⁶⁶ *Id.* at 56 (citing Acts 17.23, Paul’s speech on the Areopagus, as an example).

⁶⁷ I say, “his or her” here because Plato did not exclude women from the ruling class. There is significant debate regarding the correctness of categorizing Plato as a feminist but it is clear that he afforded women equal opportunities, at least in theory.

Children were educated communally and the position in society for which each was best suited is the position for which they would be trained and ultimately take. The nuclear family certainly is not an essential element in Plato's *Republic*. Be that as it may, many social features suggested by Plato in his *Republic* can be found today in our so-called modern social structure.⁶⁸

Plato provided a platform for the survival and prosperity of Christianity and along with Christianity came the sacrament of marriage; now transformed from a requirement of mere kings to an institution with divine imagery. From a feminist perspective, this shift might signal a move toward a new and improved version of marriage because it was now ordained by an omniscient, omnipotent, and beneficent god. It was an arrangement of progenitors for the benefit of the offspring and therefore society as a whole. Soon the Catholic Church emerged as one of the most powerful supporters and promoters of the Christian worldview.⁶⁹ Until relatively recently in human history the Catholic Church held sway over all matters relating to marriage and family. It was the Church that determined who was married, who was not, and what that meant. The church exercised exclusive

⁶⁸ Education is an example. Plato believed that each person in a just society was entitled to the appropriate amount and kind of education needed to allow him or her to take the place for which he or she was best suited based on the Myth of the Metals. See 7 PLATO, *REPUBLIC* (Francis M. Cornford trans. Oxford University Press 1941).

⁶⁹ The Great Schism dividing the Roman and Eastern rite churches occurred in 1054, primarily on geographical, linguistic, political and some doctrinal and theological issues. The term Catholic Church refers to the Holy Roman Catholic Church.

jurisdiction over offenses against God and morality, marriage, and the property of the dead. That did not change until the Reformation.

The Reformation was a religious movement in Western Europe in the sixteenth century, which was originally aimed at enhancing the spiritual legitimacy, and thus the authority of the Church but actually led to a revolt against its power and an abandonment of many foundational Catholic Christian beliefs. This ultimately afforded an opportunity for the provinces of Canon law (Church law) to be subsumed by the growing and strengthening civil courts that ultimately replaced the Church of England. Marriage became a matter of law rather than religion. Be that as it may, marriage clearly has retained many of its religious underpinnings. It remains a deeply religious act for many people with religious convictions.

Although the State requires marriage-hopefuls to obtain a license for legal recognition of a marriage, the ceremony that creates the marriage still commonly is performed in a church by a religious leader. At the very least, the most common vows of the marriage still retain divine references.⁷⁰ As a society, we still hold to the notion that reproduction is divinely inspired and divinely ordained; that God⁷¹ wants us to reproduce and rear our young in married couples, like the first couple, Adam and Eve.⁷²

⁷⁰ “Let that which God hath put together let no man tear asunder.” *Matthew* 19:6.; *Mark* 10:9.

⁷¹ This is true not just of the Christian God but is common to all of the Gods of

Moving forward again in time, and painting history with very broad strokes, American law finds its origins in that of Old England and the English common law. An intense part is marriage, steeped in Christian religious mythology. Our government allows marriages to be performed by members of the clergy and judiciary despite the fact that clergy are not state officials and that our Constitution mandates a separation of religion and government. When a person with the proper authority, including religious clergy, speaks the proper words before the proper audience, marriage happens. Marriage remains a social institution based in Christian theology and morality and enforced by secular laws to benefit the offspring of reproductive pairs, and thereby society as a whole. The problem is that our law too is now steeped in Christian theology; the common law subsumed the church law so the secular laws now embody ideals that emanate from pre-Christian Mesopotamia through Western civilization picking up momentum and substance as they travel.

So now what do we know of marriage and our grand old question?

Marriage is a social and legal institution with a ubiquitous and long-standing history steeped in Christian theology. It is also a contract-like legal bond between participants, and possibly their families, that achieves for them the status (and

the major monotheistic religions.

⁷² Compare and contrast the earlier creation myth/story told in Plato's dialogue on love, by Aristophanes, about how the male, female, and hermaphrodite were split into halves to seek "their other half" for eternity. *See* PLATO, THE SYMPOSIUM (Frisbee C. C. Sheffield ed., M. C. Howatson trans. Cambridge University Press 2008).

therefore the benefits) of spouses whose proper reproductive conduct is either rewarded or punished by the State; this, in turn, determines who may engage in reproductive conduct so as to ensure, for society's sake, the successful and responsible rearing of offspring. This definition would appear to satisfy the contemporary feminist voices in the marriage debate that find themselves squarely in the Marriage Enders' camp.

Many would have us believe marriage is about men controlling women because only women can have babies. Thus, in order to control reproduction, men use marriage laws as a means to exert control over women. Surely it is not that simple. Marriage cannot really only be about men's desires to control women's reproductive conduct because we're still left with the issue of "who's going to raise the children?" That problem could be solved more easily than with the invention and replication of the institution of marriage. Plato solved it without marriage and/or the nuclear family. Marriage and a nuclear family were appropriate only for the Craftsmen class, not the Guardians and Philosopher-Kings. Now we must consider that reproduction may not be *all* of what marriage is about but, at this point it is safe to say that reproduction certainly is an important, and likely essential, aspect of what is marriage.

If marriage essentially is about reproduction we should find some evidence of that in our laws regarding marriage. This is the body of law commonly known today as family law or sometimes as Domestic Relations law. Oddly, it does appear as though this is an area of law carved out as an exception

to the world of public law, those bodies of law that regulate interactions between all members of the society. Generally, family law or domestic relations law regulates the interactions of those of us engaged in reproductive conduct. This fact, too, mitigates in favor of believing that marriage is a set of rules contemplated to regulate reproductive conduct. Family law is about two things: how the property of the married couple is divided and, more importantly, who will take care of any children produced by the marriage. In fact, the first issue addressed in any family law case is whether or not there are minor children involved.⁷³ Thus, there is a clear correlation between marriage and parenting.

In fact, although I've been skirting around it a little thus far it is starting to seem like marriage, along with all of its social mores and legal and social recognition, still defines who is responsible for any children that may result from the relationship. This speaks to the essence of marriage. Marriage allows us to determine which man is obligated to support a woman and her children. Marriage creates a status and the obligations that come with that status. A contemporary male found to be the progenitor of a child is given the responsibilities and obligations of helping the mother care for herself and the offspring because

⁷³ In the Arizona Superior Court, Maricopa County the case number assigned to a family law action identifies the nature of the action as including children or not. For example, FC indicates a case with children while a FN designation at the beginning of a case number refers to no children. *See* <http://www.superiorcourt.maricopa.gov/search/index.asp?q=FC> (Superior Court of Arizona Family Court Cover Sheet for use with minor children only).

without such care they are not as likely to survive. Marriage saved us humans from extinction by defining parentage.

If so, then a subsequent set of logical questions arises. Do we still need to be saved from extinction by the social institution of marriage? Or, in other words, maybe the marriage enders are right that we no longer seem to be in danger of not surviving as a species. Indeed we may have quite the opposite problem. Have we overpopulated our environment so marriage as it currently exists is no longer necessary? Has marriage, in fact outlived its usefulness entirely and become a danger? Before we declare the Enders victorious, we will have to determine first if we really are saved or if we still need such protection from the possibility of extinction based on the biophysical vulnerabilities of our reproductive efforts.

CHAPTER 3: Parentage

Scientific technology has advanced so much in the recent past that we now take for granted many things that we once thought of only as science fiction and the early Mesopotamians likely never thought of at all. We now have the luxury of such things as automobiles, computers, and assistive reproductive technology.⁷⁴ Just as we are only now beginning to realize the full impact of computers and cars on our environment, ourselves, and our progeny, we once

⁷⁴ Among the advances in human reproduction are “test tube babies,” ova donors, sperm donors, and hormone treatments for both men and women to facilitate either the production of sperm or the release of ova.

again are forced to contemplate due to new reproductive technologies the question: who is a parent?

Since the turn of the last century human reproduction has been achieved with increasing success through various means other than coitus. Back in the, “good old days” parentage was a fairly easy determination to make. We knew who was a mother because we knew who gave birth and we could know who was a father because we could determine who was, or should be, married to the woman who gave birth. Now, because marriage has fallen into such disfavor, not only do we have trouble identifying legal fathers but because of the new reproductive technologies we have the new challenge of identifying mothers. Marriage is no longer solving the problems for us. This could very well explain why we now are embroiled once again in a hotly contested debate over the proper construction of marriage.

The first recorded instance of alternative insemination took place in the 1880s.⁷⁵ In 1985, Judith Lynn Bick Rice argued that the long-time use and recent growth of alternative methods of insemination and reproduction gave rise to the need to regulate such activities on behalf of the rights of donors, mothers, and their husbands. New technologies and their exceedingly widespread usage give rise to the need to regulate such activities on behalf of the children that result from these transactions.

⁷⁵ See Judith L. B. Rice, *The Need for Statutes Regulating Artificial Insemination by Donors*, 46 Ohio St. L. J. 1055, 1056 (1985).

The number of families affected by assisted reproduction technologies (“ART”) has steadily and significantly increased since the 1980s prompting several states to adopt the Uniform Parentage Act.⁷⁶ The Parentage Act instructs us how to determine those who are to be acknowledged as the parents of a child created through ART. This is a critical determination because, as we now know and understand why, it comes with legal obligations that can be enforced through the law. Interestingly, such determinations of parentage are made with respect to the status of the parties as married to each other or not. Incidentally, this is yet another clear piece of evidence demonstrating that marriage and parentage are legally linked and bundled together, as we determine one with regard to the other.

In its simplest biological essence, during alternative insemination, sperm are injected into a woman’s reproductive tract during ovulation to combine with her eggs in order to induce pregnancy. In more complicated procedures, eggs and sperm are collected, combined outside the woman's body, and then injected into a female's reproductive tract in hopes of causing pregnancy. In cases where surrogacy is involved, the collected genetic material is inserted into the reproductive tract of a woman who does not want or intend to parent the resulting child. The eggs and sperm may both, or either, be collected from donors or from the intended parent(s).

A preferred neutral term to denote the procedure of introducing semen into a woman’s uterus or reproductive tract by a method other than coitus for the

⁷⁶ See UNIFORM PARENTAGE ACT § 5, 9B U.L.A. 301 (1987 & Supp. 1999).

purpose of inducing pregnancy is “alternative insemination.” “Artificial” means “imitation, [or] sham.”⁷⁷ “Alternative” means “an opportunity for deciding between two or more courses or propositions”⁷⁸

This technology commonly is employed to achieve pregnancy without coitus or sexual intimacy between the progenitors. ART obviously is preferable between relative strangers, where the intimacy of coitus is not desired or deemed appropriate, perhaps because one or both of the participants to the reproduction may already be married to someone else or even deceased. Now, given these definitions, it is easy to see how these new reproductive technologies have thrown our notions of marriage and parentage into a quagmire of uncertainty and debate. It is entirely possible under our current laws for a child to be born with no legal parents. The sperm and eggs are donated and gestated in a surrogate for the benefit of another, or others, who contracted to create the child but are not otherwise legally related in any way to, nor have they given birth to, the child.

The Uniform Parentage Act⁷⁹ and the Children of Assisted Conception Act⁸⁰ are attempts at a resolution to the age-old problem of determining parentage. Unfortunately, the legislation is so limited in scope that its offerings

⁷⁷ See MERRIAM WEBSTER’S COLLEGIATE DICTIONARY 66 (10th ed. 1994).

⁷⁸ *Id.* at 34.

⁷⁹ *Supra* note 77.

⁸⁰ UNIFORM STATUS OF CHILDREN OF ASSISTED CONCEPTION ACT, 9B U.L.A. 135 (1987 & Supp. 1999).

fall well short of the need it was intended to fill. In most circumstances, the laws only apply to married women or couples and require the participation health care professionals and executed consent forms.

Section Five of the Parentage Act addresses alternative insemination. Because the driving concern behind the Act was legitimacy, recall the need here is to provide for the children and their mothers so it is no surprise that the law's concern is one of legitimacy, the provisions of the Act pertain exclusively to married heterosexual couples wherein the wife is inseminated with semen other than her husband's. In the Comment following Section Five, the drafters urge further consideration of other practices and uses of alternative or assisted reproduction. Clearly, the authors were aware of the relatively widespread use of such techniques in circumstances beyond the scopes of marriage and legitimacy.⁸¹

The Act provides that if the insemination is done under the supervision of a licensed physician and with the consent of the inseminated woman's legal husband, the inseminated woman and her legal husband are the "natural parents" of the resulting child. Further, the husband's consent must be in writing and signed by both the husband and wife. The semen donor who is the biological progenitor is afforded no parental rights or obligations whatsoever. This clearly covers only a very limited application of the practice of alternative or assisted reproduction since logistically, a licensed physician, a legal husband, and his consent are not elements necessary to the ultimate success of the procedure, or

⁸¹ See UNIFORM PARENTAGE ACT, *supra* note 80.

reproductive conduct. Insemination can be (and often is) accomplished at home or in private with nothing more technical than a syringe or even a turkey-baster.⁸²

The other important piece of model legislation applicable to the practice of alternative insemination is the Children of Assisted Conception Act (Conception Act).⁸³ In the Conception Act, “assisted conception” is defined as “a pregnancy resulting from (1) fertilizing an egg of a woman with sperm of a man by means other than sexual intercourse or (2) implanting an embryo. But the term “assisted conception” does not include the pregnancy of a wife resulting from fertilizing her egg with the sperm of her husband.” It is made clear in the Comment to this section, this exclusion is purposeful so as not to interfere with determinations that otherwise could be made under the Parentage Act. The Conception Act contains sections on maternity, assisted conception by a married woman, and the parental status of donors, as well as two alternative sections concerning gestational carriers. The options, of course, are acceptance of the validity of surrogacy agreements or a declaration that surrogacy agreements are void. In the latter, a woman is the mother of a child to whom she gives birth and her husband, if a party to the agreement, is the father. If the gestational carrier is not married, or if her husband is not a party to the agreement, parentage is governed by the Uniform Parentage Act.

⁸² See Anne R. Schiff, *Frustrated Intentions and Binding Biology: Seeking AID in the Law*, 44 Duke L. J. 524, 525 n.1 (1994).

⁸³ See UNIFORM STATUS OF CHILDREN OF ASSISTED CONCEPTION ACT, *supra* note 81.

In all, 34 states have adopted legislation pertaining to alternative insemination, assisted conception, or both.⁸⁴ The statutes in 16 of those states are applicable only where the donee is married.⁸⁵ Although the statutes of the other 18 states contemplate, on their face, an unmarried donee, case law indicates that in many situations, the rights of an unmarried donee are neither settled nor guaranteed. Once again marriage and parentage have become essential parts of each other and are intertwined, but not inextricably.

A: The Marriage Debate Revisited

The foregoing statutes were supposed to be the resolution to the again complicated process of making parentage determinations but, because they are

⁸⁴ See ALA. CODE § 26-17-21 (1992); ALASKA STAT. § 25.20.045 (1993); ARIZ. REV. STAT. ANN. § 12-2451 (1994); ARK. CODE ANN. § 9-10-201 (1993); CAL. FAM. CODE § 7613 (Deering 1994); CONN. GEN. STAT. § 45A-771F (1993); FLA. STAT. ch. 742.11 (1994); GA. CODE ANN. § 19-7-21 (Michie 1991); IDAHO CODE § 39-5405 (1993); ILL. ANN. STAT. ch. 40, para. 1-3 (Smith-Hurd 1993); KAN. STAT. ANN. § 23-129 (1995); LA. CIV. CODE ANN. art. 188 (West 1993); MD. CODE ANN., EST. & TRUSTS § 1-206(b) (1991); MASS. GEN. LAWS ANN. ch. 46, § 4B (West 1994); MICH. COMP. LAWS § 700.111 (1995); MINN. STAT. § 257.56 (1998); MO. ANN. STAT. § 210.824 (Vernon 1996); MONT. CODE ANN. § 40-6-106 (1999); NEV. REV. STAT. § 126.061 (1997); N.H. REV. STAT. ANN. § 168-B:3(II) (1994); N.J. STAT. ANN. § 9:17-44 (West 1993); N.M. STAT. ANN. § 40-11-6 (Michie 1994); N.Y. DOM. REL. LAW § 73 (McKinney 1988); N.C. GEN. STAT. § 49A-1 (1984); OHIO REV. CODE ANN. § 3111-37 (Anderson 1989); OKLA. STAT. tit. 10, § 552 (1991); OR. REV. STAT. § 677.365 (1993); OR. REV. STAT. § 109.239, .243, .247 (1993); TENN. CODE ANN. § 68-3-306 (1996); TEX. FAM. CODE ANN. § 151.101 (West 1996); VA. CODE ANN. § 20-158A (Michie 1995); WASH. REV. CODE ANN. § 26.26.050 (West 1997); WIS. STAT. ANN. § 891.40 (West 1997); WYO. STAT. § 14-2-103 (1999).

⁸⁵ See Alabama, Alaska, Arizona, Florida, Georgia, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New York, North Carolina, and Tennessee.

bound up with notions of marriage and legitimacy they fall short of achieving the goal. Because of the new technology, we will either have to make parentage determinations outside of and without respect to marriage or we will have to amend our notions of marriage to accommodate the needs of parents and their children, or maybe both. Scientific advances have once again brought us to a need to reconsider social ordering and obligations related to reproduction. Here we are back to the bases of the contemporary marriage debate and the many voices attempting to define, redefine, or otherwise influence others' views, and therefore treatments of, marriage.

Recall the Marriage Defenders, Enders, and Mender-Benders. What if they all are right? What if there are aspects of the institution of marriage that should be defended, some that should be ended, and some that should be mended? That does not seem to be insurmountable task and with the brain trust involved in the debate surely a resolution should have emerged years ago. But, it has not. And it does not seem forthcoming yet so now we must consider why that might be. It is suggested this is because they cannot hear each other over their own cacophony of rhetorical dissonance. We all intuitively understand what is at stake and that the stakes are perhaps the highest; maybe even the continued survival or superiority of our species on this planet.

What if, from the dawn of organization of human beings into societies, a marriage: the joining of individuals (and possibly their families) sanctioned by the chief, priest, rabbi, judge, king was simply a license to breed and a set of

instructions for doing so responsibly such that the rest of us could be somewhat assured that the reproductive conduct would result in a healthy, productive, adult member of society? Assuming, *arguendo*, the affirmative, do we still need this marital structure? We license drivers of vehicles on public roadways ostensibly because we all recognize that we are interdependent upon and incredibly vulnerable to each other, especially when we engage in dangerous activities, like hurling ourselves along a freeway at seventy-five miles an hour in vehicles that we know are not likely to save our lives if we collide. Are not we also engaging in a very dangerous activity that requires the utmost of responsible behavior to the community when we breed; just like when we drive? Obviously it takes a lot longer to see the effects of bad parenting than it does the effects of bad driving but the result nevertheless can be the same: death and destruction to self and/or others. When we learn of a serial killer, rapist, or other predator who among us does not ask, even if only to themselves, “what went wrong with his childhood?”

We now know that marriage predates Christianity, as a legal institution. Marriage could then be just like some of the other religious restrictions and/or requirements that we now understand as quite practical and credit with having ensured the survival of our species in some way. There were restrictions, enforced through religion, forbidding the eating of the flesh of cloven-hoofed animals (pigs); and fewer people suffered from food-borne afflictions such as trichinosis that sickened and often killed those who ate the forbidden. Another early religious doctrine required circumcision of males. We now understand this

practice as having saved many males from an early death due to a general lack of an adequate genital hygiene regimen available at the time. It is not absurd to suggest that marriage was such an expedient and necessary set of rules/laws to maintain order over the ultimately dangerous act of breeding and rearing new members into the community.

And now we have technology that has exceeded the necessity of those old rules. We have refrigeration that allows us to preserve the meat of the cloven-hoofed animal safely so that we do not contract trichinosis. Still, some people will not eat pork for religious reasons. We have warm running water, antibacterial soap and an understanding of hygiene that obviates circumcision, yet some people still insist circumcision is necessary; even if they cannot give you a tenable secular reason, personal or otherwise, for that belief. These practices have become part of our worldview. It makes sense that marriage falls into this category of early edifices that once served both a practical and noble purpose. But, even if it is correct that marriage is one of these archaic practical regulations, it does not necessarily follow that it is one that no longer serves a necessary or sufficient purpose and that it can, or should be, discarded, or even dramatically altered (no pun intended), without serious impact.

Besides the fact that they cannot hear each other over all the rhetoric, maybe the marriage debate is so bound up with that rhetoric that the debaters have not yet correctly identified the purpose of the debate. Mediating the marriage debate has shown such work to be a promising possibility for resolution. We

have discovered that marriage once was a very good solution to a very serious problem – keeping the most vulnerable members of our society safe and ensuring the propagation and survival of our species. However, our scientific progress has caused us, unwittingly or otherwise, to reinvent the problem and so now we are reconsidering reinventing marriage as the solution. It’s not necessarily the definition of marriage that needs to change. The parentage determinations that are so tightly conflated with, or determined by the definition of marriage have become problematic in light of our new reproductive capabilities. This is why the marriage debate has failed so far and this discussion may be able to help simply by redirecting the conversation. This allows us to move from “What is Marriage?” toward, “What is a mother? and What is a father?”

As the practice of assisted reproduction has evolved socially, the problems left in the wake of that evolution have yet to be resolved fully and satisfactorily by our courts. It has been stated that the marriage debate, in significant part, either would subside or be tremendously changed if not largely obviated if parentage determinations were no longer problematic. Recall that most of the voices in the marriage debate express at least some concern over the question, “who will care for the children?” This warrants a closer, more detailed look at the practice.

Reproductive conduct is any behavior or course of conduct that leads to the production of a human infant.” This is a simple, easy to apply, and universally applicable definition. It is simple because it includes all fathomable conduct or behavior that produces a similar result. As such, it subsumes the

notion of intentional conduct and its alternative, unintentional conduct. For this, any nature of conduct will do. Its application is easy since the threshold is clear: an infant must be produced. And it is universally applicable because it encompasses conduct and behavior without regard to the sex, gender, or marital status of the perpetrator.

Reproductive conduct, in its simplest form is the injection of semen into a woman's reproductive tract resulting in pregnancy, the birth of the child, and a determination of parentage for the biological progenitors. Within this context, the arguments that warrant a distinction between women and men with respect to reproduction are required.

When ART is utilized so that a female may produce a child, the extent of the male's contribution is sperm. The production and ejaculation is a simple and painless part to play in human reproduction. The female, however, must still carry the fetus through childbirth. Thus, ART may produce a child that requires an extensive physical and emotional contribution from a female that far outweighs a sperm donation. She not only maybe donated her own genetic material,⁸⁶ in effect, she leases or maybe licenses her body, her energy, her very existence as a human being to become an incubator for the fetus at substantial risk to her own

⁸⁶ There are cases wherein the gestational female does not donate genetic material. Instead, she serves as an incubator for an already existing fetus implanted in her womb for gestation. It is argued that even in such cases, the contribution of the gestational female to the reproductive effort greatly outweighs that of either of the genetic donors.

physical and emotional health and well-being. To produce a child, her existence as a female is exploited as a means to end.

If there were no other issues involved, the fact that the gestational female's participation in the reproductive project is the greatest should-be reason enough to declare surrogacy contracts void and declare the female who gives birth the sole legal parent of the child, at least at a beginning. And to the extent that a gestational female becomes a means to someone's end, all of ART may run contrary to a long-lived and celebrated theory of moral philosophy. Immanuel Kant teaches us that the use of a human being as a means to an end and not an end in himself⁸⁷ is the ultimate immoral act.⁸⁸ Attention-grabbing as it may be, this conversation would require in depth discourse on the connections between law and morality; a subject that has dominated philosophers and other thinkers for at least the greater part of the last century forward. Such an ambition cannot be satisfied within the boundaries of this dissertation.

Another reproductive conduct differs greatly between male and female is that the male who contributes only sperm, or the female who contributes only

⁸⁷ Casting aside politically correct gender-neutral language, I purposely re-use the masculine pronoun as did Kant. I see no good to come from re-writing history as I am less than convinced the practice will appropriately affect the present or cure the future.

⁸⁸ Immanuel Kant argued, in the "Grounding for the Metaphysics of Morals" and in the "Metaphysical Principles of Virtue," that the ultimate law of morality is the "categorical imperative" which he interpreted to mandate that all human beings be treated as an end in themselves and never as a means to an end. *See* IMMANUEL KANT, *ETHICAL PHILOSOPHY*, 2 (James W. Ellington trans. 2d ed. 1994).

eggs and may do so anonymously if he or she so chooses. A path of anonymity is much more difficult, if not impossible, for a gestational female since her contribution to the reproductive effort is that of incubating and giving birth to a living, albeit incredibly vulnerable and needy, human infant. This is how her contribution is the greatest. One who provides only genetic material may never know for certain if he or she has, in fact, been a party to the creation of a child through the use of his or her sperm or egg by others. Additionally, a gestational female may have absolutely no means of identifying anonymous donors of genetic material after the fact. Conversely, it is extraordinarily difficult for a woman to experience pregnancy and birth secretly. Her path to anonymous participation is much more challenging. Because it is not reasonable to presume that a female can endure pregnancy and childbirth without at least being aware that these events have occurred, she is certainly aware of whether or not she, in fact, contributed to the creation of a child. The fact that the child may have been born sickly and did not survive birth or long after may be kept from her through the use of "modern medicine,"⁸⁹ but the knowledge that she has been pregnant

⁸⁹ I use this phrase in quotations to show deference to a secret organization of female midwives who hold, generally, that men's encroachment into the areas of medicine historically and traditionally controlled by women -obstetrics and gynecology - is not a modern advancement at all but rather a regressive, opportunistic political movement bent on gaining control over and dominating the one aspect of womanhood that not only separates women from men but keeps men from relegating women to an undisguised and unfettered slavery. In other words, it is men's need for children that curtails the widespread misogyny that develops in a patriarchy. These women assert it is no coincidence that the formation of the American Medical Association, the criminalization of midwifery,

reasonably cannot be kept from her if she has even a rudimentary understanding of human reproduction.

The most significant difference is that the sperm and egg contributions are not comparable in any way to the infant a gestational female contributes. A living female's body currently is the only means we have of gestating a human infant. Without her body there would be no infant. Therefore, it is both correct and reasonable to view the infant as her contribution.⁹⁰ The contribution of the genetic material is not even comparable to the donation of a living organ such as a kidney or liver for transplantation in order to preserve an already existing life. Human genetic material now is available for use by others than those who produce it. Indeed, reliance on genetic connections to determine parentage is not required.

These differences, between the contributions of male vs. female and donors vs. gestational carriers, spell concern for males who want to have children without the on-going involvement of a female. For instance, if the traditional

and the widespread enactment of anti-abortion laws correspond in time to the public emergence of a theory of justice based on what is now more commonly referred to as radical feminist biological determinism.

⁹⁰ Of course, if mechanical incubators were available such that reproduction could be achieved artificially, I suggest that the woman's contribution to the effort would still outweigh the man's. I base this assertion on the nature of the invasive procedure necessary to harvest human eggs from a woman compared to the production and ejaculation of sperm by a man. The only situation in which a man's and woman's contribution to the reproductive effort could be equalized is where the entire process could be accomplished without the physical involvement of either.

constitutional protections afforded individuals in making decisions related to family and children⁹¹ are extended to male couples, the current law pertaining to gestational carriers and gestational contracts will necessarily be called into question. Although ART has eliminated female's needs for a males in begetting a child, the converse is not yet true.

A marriage between two men who want children will necessarily entail the use of a gestational female. Considering the dominant social attitudes regarding children and their need for mothers,⁹² the current state of the law respecting gestational motherhood,⁹³ and the intense emotional and physical disturbance endured by a woman who carries and gives birth to a child, it seems reasonable to assume that women will not be waiting in line for the opportunity to provide children to these couples. Where state laws prohibit "surrogacy" contracts outright or even where only "surrogacy" contracts for significant profit are prohibited, the interests of males wanting to parent without females will be

⁹¹ See Carey v. Population Services Int'l, 431 U.S. 678 (1977).

⁹² Under the Tender Years Doctrine, in custody disputes courts generally award custody of young children to their mothers unless the mother is declared unfit. Also, where the parenting abilities of both parents are considered equal, courts will resolve the dispute in favor of the mother based on this doctrine. See BLACK'S LAW DICTIONARY 1024 (6th ed. 1991).

⁹³ Most states still prohibit "surrogate " contracts wherein a woman is paid a monetary fee for relinquishing her rights to the child she produced. This is especially true when the contract does not include a provision by which the woman can change her mind and assert her rights and status as the child's natural mother. See, e.g., In re Baby M, 537 A.2d 1227 (N.J. 1988); Doe v. Kelley, 307 N.W.2d 438 (Mich. Ct. App. 1981).

seriously curtailed if not effectively denied. Clearly, any efforts to regulate reproduction should take account of, and be taken into account by, the current marriage debate. Legal marriages between males afforded the same constitutional consideration as all others marriages and will necessarily relegate at least some women to the role of brood mares. The children they produce will be treated as yet another commodity exchanged according to the whim and fancy of wealthy men.

Of course, there are many differences of opinion regarding what the future may hold. My position, put simply, is that men and women are not similarly situated with respect to reproduction and this is where the effort to regulate reproduction begins. There is good reason, based on her contribution to the reproductive effort, that disputes regarding parentage begin with her who gives birth. When this emphasis is rightly placed, it may entail unequal treatment for some males and some females in parentage decisions. But the plain facts are that we are not all created equally. Some of us are born with a penis and others with a uterus. Some of them are in good working order and others are not. That is a simple fact of life. We must recognize that the unequal treatment of males and females is a controversial and unpopular position to take but, I am not the first, nor will I be the last, to take it up.⁹⁴

⁹⁴ *See generally* MARY DALY, *GYN/ECOLOGY: THE METAETHICS OF RADICAL FEMINISM* (1978); SUSAN GRIFFIN, *WOMAN AND NATURE: THE ROARING INSIDE HER* (1978); SUSAN OKIN, *JUSTICE, GENDER AND THE FAMILY* (1989). For a

B: The Cases

The following cases demonstrate how our current laws fall well short of offering the guidance that is needed to address the myriad reproductive conduct known to us. As I have used the term “reproductive conduct” several times now, a few words spent in explicating precisely what I mean by it are in order. I will use actual cases to demonstrate the failures of our current legal marriage/parentage determination system. I am compelled to begin the discussion of reproductive conduct with a look at the infamous *Baby M.* case.

In the late 1980's, local and national headlines were flooded with reports of the case of "Baby M."⁹⁵ Around the world, eager listeners were bombarded with the intimate details of two couples involved in a joint effort of reproduction. Both couples were heterosexual and married at the time.⁹⁶

William and Elizabeth Stern were a childless couple who, based on a belief that pregnancy would be extremely detrimental to Elizabeth's health, decided to employ alternative insemination of another female under contract to deliver the resulting infant to the Sterns, thereby allowing the Sterns to become its parents. The Sterns chose this method because it was important to them that the

concise discourse on the topic of feminist biological determination *see* ALLISON JAGGER, *FEMINIST POLITICS AND HUMAN NATURE* (1983).

⁹⁵ *See In re Baby M.*, 537 A.2d 1227 (1988).

⁹⁶ Before the controversy was finally settled, Mr. and Mrs. Whitehead divorced and Mrs. Whitehead, the gestational mother, remarried and had another child with her new husband. *Id.* at 1261 n.18.

child have a genetic link to Mr. Stern. Most of his family had been destroyed in the Holocaust and as he was the only survivor it was deemed important to continue his bloodline.⁹⁷

Both parties to this case responded to an advertisement of the Infertility Center of New York (ICNY). The Sterns' response was the culmination of a long-standing decision to become parents.⁹⁸ Mrs. Whitehead's response was the result of her family's financial difficulties, and her desire to give another couple the "gift of life."⁹⁹ Irrespective of the sensitive and intimate nature of the contract into which they entered,¹⁰⁰ both parties believed it was "right" and "constructive."¹⁰¹

Mrs. Whitehead even had previously been involved as a potential gestational female in the reproductive efforts of another couple. That effort was abandoned after several unsuccessful insemination attempts. These events occurred prior to any involvement by the Sterns in the ICNY. After several

⁹⁷ *Id.* at 1235.

⁹⁸ *Id.* at 1236.

⁹⁹ *Id.* The amount Mrs. Whitehead was to receive in addition to expenses was \$10,000. *Id.*

¹⁰⁰ *Id.* The court stated, "Both parties, undoubtedly because of their own self-interest, were less sensitive to the implications of the transaction than they might otherwise have been. Mrs. Whitehead, for instance, appears not to have been concerned about whether the Sterns would make good parents for her child. The Sterns,...while conscious of the obvious possibility that surrendering the child might cause grief to Mrs. Whitehead, overcame their qualms because of their desire for a child."

¹⁰¹ *Id.*

insemination attempts with Mr. Stern's semen, Mrs. Whitehead became pregnant, experienced an uneventful pregnancy and on March 27, 1986 delivered a healthy baby girl.¹⁰²

Because the Whitehead's did not want news of the "surrogacy" disseminated widely through the hospital, they acted as if the new-born was their own. Her birth certificate showed her name to be Sara Elizabeth Whitehead and Richard Whitehead was named as her father.¹⁰³ Accommodating the Whitehead's wishes, the Stern's visited the nursery to see the baby unannounced and unnoticed.¹⁰⁴ Mrs. Whitehead seemed to know from nearly the moment of birth that she would not be able to give up the child. She indicated that she had bonded with the child during pregnancy and that the baby looked very much like her older daughter.¹⁰⁵

Her first communication of these feelings to the Sterns came on the occasion of the Sterns telling the Whiteheads what they intended to name the baby.¹⁰⁶ In spite of her strong reservations, and against all of her instincts, Mrs.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 1237.

¹⁰⁶ *Id.*

Whitehead delivered the baby to the Sterns on March 30, three days after her birth.¹⁰⁷

Later that night, Mrs. Whitehead became, "deeply disturbed, disconsolate, [and] stricken with unbearable sadness."¹⁰⁸ The next morning she went back to the Stern's home, told them how much she was suffering, that she, "could not live without her baby" and must have her company even if only for one week after which time she would return the infant to them. Based on their fear and concern that Mrs. Whitehead would commit suicide, and believing that Mrs. Whitehead would keep her promise, they turned the infant back over to MaryBeth Whitehead.¹⁰⁹ Thus, this is when the parentage and custody battle began.

Mrs. Whitehead refused to return the child to the Sterns and Mr. Stern filed a complaint seeking enforcement of the contract between himself and Mrs. Whitehead. A process server, accompanied by the police and the Sterns, went to the Whitehead's home to execute an order to return the infant to the Sterns. Mrs. Whitehead delayed the group with a dispute over the child's correct name while Mr. Whitehead fled with the infant who was handed to him through an open window.¹¹⁰ The Whiteheads fled to Florida with the baby and hid out with

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* This is the court's finding with regard to Mrs. Whitehead's emotional condition immediately following her delivery of the infant to the Sterns.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 1228.

relatives and in hotels for the next three months. The Sterns commenced proceedings in Florida that ultimately were enforced by local police and the child was returned to them in New Jersey.¹¹¹ The nation was glued to our news sources by both the sensational nature of it all and the deeply disconcerting underlying question:¹¹² Who are this child's rightful parents?

Based largely on the fact that the court believed the "surrogacy" contract to be enforceable and Mrs. Whitehead seemed at the time to be irrational, custody of the infant was awarded to the Sterns pending final resolution of the controversy.¹¹³ Later, after thirty-two days of trial, the court enforced the "surrogacy" contract, awarded sole custody to Mr. Stern without visitation for Mrs. Whitehead, and entered an order immediately allowing Mrs. Stern to adopt the infant.¹¹⁴

While holding that the contract was valid, the trial court directed a sizeable portion of its opinion to the question of the baby's best interests.¹¹⁵ The court correctly adhered to the standard that the controlling interest in making these types of decisions – the best interest of the child. Indeed, the contract stated on its face, well prior to the conception of the child, that the best interests of the

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

resulting child would be served by awarding sole custody to Mr. Stern. The court's reasoning was that although the contract was valid, it could not be enforced if contrary to the child's interests.¹¹⁶ The trial court boldly stated, "beyond the question of the child's best interests, '[all] other concerns raised by counsel constitute commentary.'"¹¹⁷ Applying the simple principle properly proffered, the baby have been placed with to Mrs. Whitehead pending a determination of Mr. Stern's, Mrs. Stern's, and Mr. Whitehead's rights individually as potential parents.

Instead, the Supreme Court of New Jersey held that the contract was not valid and the best interests of the child warranted leaving the child with the Sterns. Mrs. Whitehead was awarded visitation.¹¹⁸ This holding was likely because by the time the controversy was finally resolved, baby M was walking, had cut her first teeth, recognized and responded affectionately to the Sterns whom she perceived as her parents, and was looking forward to her second birthday. For all practical purposes, she seemed to be a happy and well-adjusted child.¹¹⁹ The court did not see it in the child's best interest to have her

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 1227.

¹¹⁹ *Id.* at 1245.

environment so violently altered as to move her from the people she had grown to love regardless of a genetic connection.

In this limited way, I think the New Jersey courts got it right. Once the wrong was done, doing another one by removing the child again would not make things better. In this way, the child's interest held sway over the rights of the adults in her life. The important thing to take from this is that the court was forced to balance the child's interests against the rights and interests of her purported parents.

The New Jersey court invalidated the contract between the Sterns and MaryBeth Whitehead because under New Jersey law, "There is no doubt that a contractual provision purporting to constitute an irrevocable agreement to surrender custody of a child for adoption is invalid."¹²⁰ A contract that does not allow the gestational female to retain parental rights runs contrary to public policy. The court stated, "[t]his is the sale of a child, or, at the very least, the sale of a mother's right to her child, the only mitigating factor being that one of the purchasers is the father. Almost every evil that prompted the prohibition on the payment of money in connection with adoptions exists here."¹²¹

The Baby M case demonstrates the court's commitment to taking a correct first step in honoring a gestational female's right as a parent of the child to which

¹²⁰ *Id.* at 1245-46.

¹²¹ *Id.* at 1248.

she gives birth, if that's what she wants. The court declared that any such relinquishment of those rights must be revocable for a reasonable time after birth. In fact, the court's decision on custody/parentage did not turn on Mrs. Whitehead's unstable and unpredictable behavior. The court recognized this lamentable course of events but correctly reasoned that such decisions cannot rightly be based on what the child's best interests would be or would have been if different facts had existed. It seems clear that if Melissa had been in the Whitehead's custody during this time they would have been awarded custody and the Stern's would have only visitation.

In this clear-cut case of parentage by choice, privileging the gestational female's intentions just makes sense. The next step in taking our parentage determination formula for a test drive is to determine in what circumstances those rights are to be shared with or transferred to others. Should not Mr. Stern be able to assert his parentage at some point? After all, he is the paternal progenitor. He also should be allowed to parent the child since he also engaged in reproductive conduct that resulted in the production of a child. Further, Mrs. Stern and Mr. Whitehead also had a part to play in this little reproductive drama. Mrs. Stern expected to become a mother. And, Mr. Whitehead ostensibly cared for and nurtured his wife through the pregnancy and delivery. This fact is where the rubber hits the road so to speak. We, therefore, must look to more cases for more rules and their application. An early case involving a lesbian couple using the donated sperm of a friend to become pregnant and later parents is instructive.

Thomas S. v. Robin Y.¹²² involves a struggle for parentage within the context of conception through non-physician-assisted alternative insemination of genetic material from a known donor sperm. In Thomas S. v. Robin Y., Thomas was a gay man who, twelve years earlier, donated sperm to Robin who wanted to bear a child and become a mother. Robin, after several attempts, successfully inseminated herself with Thomas's genetic material and became the mother of the resulting child, Ry.¹²³ At birth, Ry was given Robin's last name hyphenated with that of Robin's partner and consequently Ry's second mother, Sandra. Thomas was not listed on the birth certificate and all expenses, including the trials and tribulations of pregnancy and birth were met by Robin and Sandra without contribution or concern from Thomas.¹²⁴ Thomas was not present at the birth but after being notified of the birth subsequently sent flowers to the women. Ry lived with Robin and Sandra and an older sister, Cade,¹²⁵ as she had since birth. Ry considered this her family unit, as did all the other members of the family.¹²⁶ Thomas even shared this view until July of 1990 when he asked for and was

¹²² Thomas S. v. Robin Y., 618 N.Y.S.2d 356 (1994).

¹²³ *Id.* at 358.

¹²⁴ *Id.*

¹²⁵ Cade is the birth child of Sandra and also the culmination of artificial insemination with donated genetic material. Her donor is unknown to us and irrelevant to this controversy. At birth, Cade also was given a last name comprised of the hyphenated names of the two women she considers her mothers, Sandra and Robin. *See* 618 N.Y.S.2d 356, *supra* note 123.

¹²⁶ *Id.* at 358.

denied permission to take both girls to meet his parents and siblings and their children.¹²⁷ For the first time in nearly ten years, Thomas had manifested an intent to become a parent.

When Robin and Sandra denied Thomas's request to take the children on the trip without them, Thomas initiated a paternity proceeding. The trial court ordered a blood test that confirmed Thomas was Ry's paternal progenitor, a point to which both parties had already agreed.¹²⁸ The fact that the court felt it was necessary to prove conclusively the genetic relationship even after the parties had both admitted it is a clear indication that this court was taking such a connection very seriously.

Also, pursuant to the Court's instructions, Ry was evaluated by a psychiatrist. This evaluation revealed Ry's belief that, under the circumstances created by the paternity proceeding, any further contact with Thomas would threaten or disrupt her concept of and relationship with her family.¹²⁹ Ry's concept of her family unit included herself, her sister, Cade, and mothers, Robin

¹²⁷ *Id.* The opinion states that the mothers were not invited because Thomas would be uncomfortable introducing the women to his parents. *Id.* It seems to this author that a single gay man also should be uncomfortable introducing to his parents for the first time a nine year old child that he claims is his! Clearly, the existence of the children's mother(s) would be an axiomatic presumption and her absence then would be cause for questioning that might also be uncomfortable.

¹²⁸ The court ordered a blood test pursuant to § 418 and § 532 of Article 5 of the New York Family Court Act to confirm what the parties stipulated to as fact. *Id.*

¹²⁹ *Id.* at 359.

and Sandra. Because she did not consider Thomas her parent after 10 years "a declaration of paternity would be a statement that her family is other than what she knows it to be" and therefore "would not be in her best interests."¹³⁰ Based on this finding, the Family Court refused to grant Thomas's request for a paternity order.¹³¹

Nevertheless, based on the same facts, the appellate division reversed the decision of the Family Court holding that paternity, defined as biological paternity, is the only criteria to be met in granting the requested order and that a finding of paternity is separate from and not dispositive of an action for support, visitation, or custody of the child. However, a declaration of paternity alone without a determination of the extent of the rights and responsibilities that flow from that declaration seems to frustrate the desires of the parties. Neither party disputed the fact that Thomas was Ry's paternal progenitor. Their controversy stems from Thomas's change of heart regarding his parental status. These parties needed to know precisely what rights and responsibilities flow from the fact that Thomas donated genetic material that was used by Robin to create a child.

The appellate court stated, "[i]t is appropriate to begin with the observation that the effect of the Family Court's order is to cut off the rights of a man who is conceded by all concerned - the child, the mother and the court - to be

¹³⁰ *Id.* at 358.

¹³¹ Thomas S. v. Robin Y., 599 N.Y.S.2d 377 (N.Y. Fam. Ct. 1993).

the biological father."¹³² The court demonstrated a fundamental misconception of the contested issues. Thomas brought the proceeding as the first step in his pursuit of visitation rights.¹³³ The appellate court's characterization of the dispute as one simply of paternity is puzzling. This decision becomes an even greater enigma when we are left to contemplate the court's impetus for allowing the parties to withdraw before the matter was appealed to a higher court and thus finally settled.¹³⁴

The appellate court represented the legal question as "whether the legal rights of a biological parent are to be terminated."¹³⁵ By framing the question in such a way, the court became pre-occupied with preserving rights that have not yet been created.¹³⁶ The court analyzed the controversy in terms of preserving

¹³² *Id.*

¹³³ *Id.* at 357.

¹³⁴ See Thomas S. v. Robin Y., 86 N.Y.2d 779 (1995) (Appeal dismissed on consent of the parties).

¹³⁵ *Id.* at 359.

¹³⁶ The court cites to Matter of Ricky Ralph M., 56 N.Y.2d 77, 81 (citing Santosky v. Kramer; 455 U.S. 745 (1981)) for the proposition that termination of parental rights outside of strict adherence to statutory provisions violates well established standards of due process. However, Ricky M. was about an unwed father's right to veto the adoption decision of the mother and take custody of the child without her consent, while Santosky was about the termination of the rights of both parents pursuant to a finding of permanent neglect. The decisions, based on their facts, are of little relevance or assistance in formulating a decision on the facts in Thomas S. v. Robin Y. The court's decision to frame the issue as one of termination of parental rights allowing it to draw analogies to the cited cases and, thus, assert their relevance is untenable at best. Filiation proceedings have as

Thomas's rights when the purpose of the proceeding was to establish those rights in the first place. Perhaps the dissenters in the case stated it best, "Until it can be established that petitioner has some parental rights, the very relief sought in this proceeding, the question of a 'termination' of petitioner's rights never arises...."¹³⁷

Even if this case were not a filiation proceeding seeking an order of paternity, such that it would have been appropriate to consider Thomas's pre-existing parental rights, he does not fit the profile of those parents whose interests have warranted the courts' protection.¹³⁸ He was never involved in the on-going care, support and nurturing, and decision-making processes which characterize

their purpose the creation of parental rights, not termination. When an order of filiation is denied no new parental rights and responsibilities are created and something which does not exist logically cannot be terminated.

¹³⁷ *Supra* note 123, 618 N.Y.S.2d at 364.

¹³⁸ See *In re T.J., M.D. & C.J.*, 1995 WL 555106 (D.C. App. 1995) (holding that the parent whose rights have not yet been terminated has a right to decide which, of multiple acceptable adoptive homes, is to be the one allowed to adopt her child); *In re D. Children*, 576 N.Y.S.2d 136 (1991) (holding that the adoptive decision of the parent is to be given priority even over the objection of a "blood relative" who stands ready to adopt); *Freeman v. Chaplic*, 446 N.E.2d 1369 (Mass. 1983) (holding that a parent has the right to decide which of the available and ready grandparents should be awarded custody); *Alison D. v. Virginia M.*, 77 N.Y.2d 651 (1991) (holding that allowing a third person visitation, a limited form of custody, would necessarily impair the parents' right to custody and control of their child); *Caban v. Mohammed*, 441 U.S. 380 (1979) (holding that a New York statute which allows an unwed mother to block the adoption of her children but does not afford the same right to the unwed father is a violation of the equal protection clause); *Stanley v. Illinois*, 405 U.S. 645 (1972) (holding that a denial of unwed fathers of a hearing on fitness to parent accorded to other parents whose custody of their children is challenged by the State is a denial of equal protection and due process of the law).

parenthood.¹³⁹ His absence from those duties and joys was the result of his own preference, not circumstances beyond his control. Just as it is inappropriate for a court to assign parental rights to an outsider without the consent of the legal parent or the prior termination of his or her rights,¹⁴⁰ it was inappropriate for the court to have assigned parental rights to Thomas, regardless of his status as a biological progenitor.

The more appropriate analysis would have been the best interests of the child. The court unfortunately placed a determination of the best interests of the child beyond its reach when it incorrectly characterized the question as one of the appropriateness of terminating parental rights outside of statutory authority.

Neither party argued that it was in Ry's best interests to create parental rights for Thomas. Indeed, Ry's psychiatric evaluation indicated the contrary. The lower court findings assure us that Ry was living in a loving, supportive, and healthy family environment. Thomas did not even raise the pretense that his petition was prompted by concerns for Ry's continued well-being. Rather, he asserted his own interests to the exclusion of hers because it had become inconvenient for him to abide by his choice to donate genetic material as a non-

¹³⁹ See Stanley v. Illinois, 405 U.S. 645 (1972) (setting out a clear statement regarding the criteria and procedures necessary for establishing parental fitness).

¹⁴⁰ See Alison D. v. Virginia M., 77 N.Y.2d 651 (1991). In In re Baby M, *supra* note 96, a now famous gestational surrogacy case where custody of the child was ultimately awarded to the biological father, the court unambiguously held that termination of parental rights must proceed along statutory guidelines irrespective of an agreement between biological parents.

parent. The appellate court should have been more sensitive to Ry's best interests and to Robin's status as Ry's mother, as was the lower court, and in doing so would likely have reached a more satisfactory decision.

This case demonstrates that Thomas agreed to donate his genetic material without becoming a parent and also to make himself available to the resulting child in some other capacity should the child's parent(s), at some future time, determine it to be appropriate or beneficial. As an already existing fit parent, Robin is in the position of determining what that is. Even if the best interests test had suggested that a continuing relationship with Thomas was in some way beneficial to Ry, her fit parent(s) should be free to disregard such a determination. So long as a parent is found to be a fit parent,¹⁴¹ his or her parenting decisions should control.

Thomas and Robin engaged in reproductive conduct. They agreed, in doing so, that Robin would parent the child and that Thomas would not. The fact that Thomas provided the genetic material did not, and should not, make him a parent. There is a world of difference between a biological progenitor and a parent. The existence of adults who are parenting children created through the use of someone else's genetic material is undeniable.

¹⁴¹ Needless to say, this author's opinion concerning what the legal definition of a "fit" parent ought to be differs greatly from the definition currently in use. But, that is another essay in its own right. The reforms suggested herein may be contingent upon the adoption of a new definition of "fit parent."

This clarifies further that a “parent” need not be a “biological progenitor” and vice versa. Would any of us argue that an adoptive parent is any less a parent than is a biological progenitor? Of course not. The difference is legal recognition of the parental relationship between the parent and the child. One way to become a parent is to knowingly use, or allow the use of your genetic material, to create a child, by choice. Another is to have a court tell you that you are, by chance. The challenge arises when one is functioning as a parent but is not recognized as one by our courts.

A parent is an adult who undertakes and performs a fiduciary duty regarding a child, decisional authority over a child, and daily care-giving/nurturing duties with respect to the child. This simple yet ubiquitous definition is important because, as we will see later, commonly, not all of these undertakings are assumed by a single person. Often, in real life, they are sorted out into smaller, if not individual, obligations, duties, and authorities. Like any other important job, delegation makes it easier. Now we can have a better look at how our courts define parentage.

Nancy S. v. Michele G.¹⁴² is a nice example of the way our courts are limited in dealing with a parent who is not a biological progenitor. Michele and Nancy had been a couple for eleven years when they decided to become parents together. Being a lesbian couple, they needed sperm. They chose a donor and via

¹⁴² Nancy S. v. Michele G., 279 Cal. Rptr. 212 (Ct. App. 1991), *overruled by* Elisa B. v. Superior Ct., 117 P.3d 660 (Cal. 2005).

insemination Nancy gave birth to two children. The children were given Michele's surname and Michele was listed on their birth certificates as "father." After parenting the children together, Nancy and Michele split up but they were able to share the parenting of the children for about another three years. Then, Nancy wanted to change the arrangements and Michele objected. Nancy brought a suit under the Parentage Act asking the court to declare that Michele was not a parent and that only Nancy was entitled to any sort of parental recognition. She won.

Applying the Parentage Act, the trial court determined that Nancy was the mother of the children because she had given birth to them and that Michele was not their mother because she had not. Based on such a judgment, only Nancy was entitled to sole legal and physical custody and any further contact between Michele and the children would be only with Nancy's consent. However, it seems that Michele had in fact undertaken the fiduciary obligations of a parent, the decisional authority of a parent, and the daily nurturing duties of a parent with regard to these children. Moreover, she participated in the reproductive conduct that created the children: the insemination. She appealed the judgment to a higher court.

Michele appealed and tried valiantly to convince the court that she was a parent worthy of their recognition. She argued that she stood *in loco parentis* to the children; that the doctrine of estoppels prevented Nancy from denying Michele's parentage, that she was a *de facto* parent to the children, and that she

was a functional parent to the children. Although the appellate court agreed with the trial court and denied parental recognition for her, Michele's arguments were the only logical arguments made. They are worthy of some explanation.

The notion of estoppel is an interesting one. Although the word sounds like it could have a foundation in Latin, this term comes from the Old French *estoupail* (or variation), which meant "stopper plug", referring to placing a halt on the imbalance of the situation. The term is related to the verb "estop" which comes from the Old French term *estopper*, meaning "stop up, impede"¹⁴³ But that's not the interesting part. Abiding the notion that we learned the really important things we need to know in childhood, estoppel the rule of "no take-backs." Once something has been said, or done, and someone else has relied on it, it simply cannot be undone. The doctrine of estoppel stops the undoing. Here, Michele wants it to stop Nancy from taking the position she Michele is not a parent because she has already encouraged and supported Michele as being a parent. The court did not apply estoppel to a claim of parentage.

In loco parentis is a borrowed Latin phrase used to describe a person who is not a parent but stands in the shoes of a parent. This concept becomes especially problematic now that we have unhinged the concept of parent from biological progenitor. In other words, it means that even though someone actually

¹⁴³ There are those who believe that the law is riddled with obscure Latin phrases and other linguistic oddities purposely by lawyers bent on maintaining the inaccessibility of the law to laymen.

may be parenting, i.e., stands in the shoes of a parent; he or she is not a parent unless they also are a biological progenitor. Of course, we can leave aside adoptive parents because their parentage has been established by the court. So, under this doctrine, a person who has standing under the doctrine of *in loco parentis* is a person who is parenting but will not be recognized as a parent. Does not it make you ask, “but why not?” If someone is parenting a child successfully, why should not they be recognized as a parent if doing so will benefit the child? That was the crux of Michele’s other arguments.

De facto is another borrowed Latin phrase. It means, “in fact.” Michele argued to the court that she was, in fact, a parent to the children. They called her “Mom,” they shared her last name, she was listed on their birth certificates, and she raised them and held them out to all the world as her own children since their birth. Most importantly, they thrived in her care. Even this, however, was not enough to sway the court. The court held that, even as a *de facto* parent, Michele would only be entitled to some deference if Nancy, the biological mother, consents. Therefore the objection to Michele’s claim based on functional parenthood failed as well. The court reasoned that such a “novel” idea should come from the legislature.

It is axiomatic that when males want to procreate, they need a female for gestation, not just an egg for fertilization. Males necessarily need much more involvement from females than is necessary for them and this may account for the lower number of parenting couples among men. Nevertheless, a male couple that

wants to parent faces the same challenges as does the lesbian couple with respect to our courts' penchant for biological connections. At best, only one of them, the biological progenitor, may be a parent. The other may suffer the same fate as Michele, if they are no longer parenting together, yet both want to continue parenting and cannot agree on how it should be done. In fact, there even are challenges for same-sex couples that do not separate.

In Adar v. Smith,¹⁴⁴ adoptive parents (both equally recognized by the court as parents) asked the State of Louisiana to issue a new birth certificate for their son, born in Louisiana, naming them as his parents. The attorneys for the clerk who was asked to issue the birth certificate refused. Oren Adar and Ricky Smith sued Darlene Smith, as the state Registrar for Louisiana, for not issuing the birth certificate they sought. The clerk refused, stating that Louisiana did not recognize adoption by unmarried parents. She relied on a determination by the Louisiana attorney general that she did not have to respect an adoption from another state that Louisiana would not have granted under Louisiana law if the couple had lived and adopted there.

The District Court informed the clerk she had to issue the birth certificate. An appeal followed. The United States Fifth Circuit Court of Appeals held that there was no private cause of action that can be brought directly in the federal courts to remedy the failure to accord the full faith and credit clause of the U. S.

¹⁴⁴ Adar v. Smith, 622 F.3d 426 (5th Cir. 2010).

Constitution.¹⁴⁵ The court stated that the men were required to bring an action in Louisiana state court and when, upon exhaustion of their state remedies, the proper recourse would be to the U.S. Supreme court under its authority to hear state court appeals. The matter could not be brought in the federal courts directly.

The U.S. Supreme Court only hears those cases it wants to hear. They are allowed to reject cases, called denying *certiorari*. And, that is what happened in Adar v. Smith. Accordingly, the ruling handed down by the Fifth Circuit Court of Appeals remained in place. Although Louisiana had to recognize the men as the child's parents, it did not have to alter its vital records to reflect this fact.

Whenever the family travels there are likely to be questions regarding parentage that would be easily answered with a birth certificate. Now, the child's birth certificate will muddy the waters. A birth certificate is needed to enroll the child in school. These parents will be required to show more. They both will have to authenticate the adoption to prove parentage. This is tantamount to proving, over and over, that they are parents because that they are not biological progenitors. We can take from this a rule that only biological progenitors, when known, are to be listed on birth certificates.

That would be an acceptable rule if only biological progenitors were parents. But that's not the reality we live in. Many different connections can be found between today's parents and the children they are parenting: step-parents, adoptive parents, same-sex parents, grand-parents, and even other relatives.

¹⁴⁵ See U.S. CONST. art IV, § 1.

There is a family when a brother and sister live together and raise their nieces and nephews together because their sister and her husband were both killed suddenly leaving the four children without parents. There is no doubt in my mind that the children's aunt and uncle became their parents, though they do not hold the title of mother and father. Oren and Mickey wanted to replace their child's biological progenitors. What is important here the legal recognition of the parental relationship; the ability of the adults acting as parents to validate and assert their authority to do so.

But should the children's birth certificates be re-issued to indicate the reality of the child's environment? Or, like Oren and Mickey, should they be satisfied to prove parentage via the adoption records? What is the significant difference? It can only be the relationship between the two sets of parents. One set is comprised of siblings; the other set is an otherwise unrelated, romantically bound couple. That difference need not be reflected in the issuance of the children's birth certificates. Neither would need a new birth certificate so long as the rest of us agreed that parents are parents regardless of their status as biological progenitors. That is the important point here.

Not all of the current case law is wrong. Elisa B. v. Superior Court¹⁴⁶ was a step in the right direction. Elisa and Emily became a couple in 1993 and soon began living together as a family. They both wanted children and both wanted to

¹⁴⁶ Elisa B. v. Superior Court, 117 P.3d 660 (Cal. 2005).

give birth. They both became pregnant by insemination with donated genetic material. They used the same donor from the same bank because they wanted the children to be “biological brothers and sisters.”¹⁴⁷ They attended each other’s doctor appointments and pre-birth classes. They acted as each other’s birth coach and they shared the responsibility and joy of cutting of the children’s umbilical cords at their births. They chose the children's names together and gave all three a surname that was both of their hyphenated together. Elisa gave birth to Chance and Emily gave birth to twins, Ry and Kaia. Ry was diagnosed with Down’s Syndrome and required a heart surgery.

Elisa claimed all three children as her dependents on her tax returns and obtained a life insurance policy on herself naming Emily as the beneficiary so that if "anything happened" to her, all three children would be "cared for." Elisa believed the children would be considered both of their children. Elisa was the bread-winner of the family earning a comfortable salary from full-time employment. Emily became a stay-at-home mom. They considered themselves to be in a committed familial relationship.¹⁴⁸

Like all of the sad stories that reach our family courts for resolution, Elisa and Emily subsequently separated. When finances became difficult due to the loss of Elisa’s job, there was strife and the two of them disagreed about who

¹⁴⁷ *Id.* at 663.

¹⁴⁸ *Id.*

should support the children. The court decided that they had clearly chosen to raise the children together as a couple and “acted in all respects as a family.”¹⁴⁹ Thus, the court found that, “a person who uses reproductive technology is accountable as a *de facto* legal parent for the support of that child. Legal parentage is not determined exclusively by biology.”¹⁵⁰ Based on those findings, the court ordered Elisa to continue financially supporting the twins by applying the equitable doctrine of estoppel:

The need for the application of this doctrine is underscored by the fact that the decision of Respondent to create a family and desert them has caused the remaining family members to seek County assistance. One child that was created has special needs that will require the remaining parent or the County to be financially responsible of those needs. The child was deprived of the right to have a traditional father to take care of the financial needs of this child. Respondent chose to step in those shoes and assume the role and responsibility of the “other” parent. This should be her responsibility and not the responsibility of the taxpayer.¹⁵¹

The court recognized the need to acknowledge that parenthood is not necessarily derived exclusively from genetics. The Court realized that a parent is an adult who has acted by choice to become a parent regardless of sex. The court then to recognize the rights of the children to keep all of the parents they may have and the on-going obligation of those parents to remain in a beneficial relationship to the children. The court's analysis was done without reference to a

¹⁴⁹ *Id.* at 664.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

marriage between the parents because their intentions were easily discerned from their conduct. When Elisa and Emily decided to act together to engage in reproductive conduct that resulted in three children, they became accountable for their conduct. In effect, parents' actions speak louder than any words or marriage vow.

Keep in mind here that the intentions of these parties were clear. That is not always the case. Sometimes such agreements can be demonstrated with a written document such as a co-parenting agreement that alleges joint reproductive conduct. Or even one that alleges parentage should attach based on an agreement to do so regarding an already existing child by a person who had no part in his or her creation? Recall that many view marriage as a contract. It is memorialized in writing by the issuance and signing of a license issued by the State but it is indeed a set of promises that will be upheld and for which a remedy can be had for its breach. A bargain is a bargain and it should not matter what evidence there is to support the claim of it. A traditional marriage is not the only mechanism with which we bind together those who reproduce for the benefit of their progeny.

Another interesting development in this area of the law is a case named *In re E. L. M. C.*¹⁵² In fact, that court stated that, “This case illustrates the evolving

¹⁵² *In re E. L. M. C.*, 100 P.3d 546 (Colo. Ct. App. 2004). The term *in re* is a Latin phrase meaning "in the matter of." See BLACK'S LAW DICTIONARY 793 (6th ed. 1991).

nature of parenthood.”¹⁵³ It does so by recognizing that it is harmful to children to lose a parent, even if that parent is not biologically related or ordained by the marriage of his parents or a court order of adoption. This case acknowledges the doctrine of psychological parenthood¹⁵⁴ and finds it is harmful to children who are separated from such a parent. Here, parentage is not supported by the intent of the parties to engage together in reproductive conduct. It is almost as if the court recognized an agreement for adoption between the parties that was not ordered by a court. Better, this court, like the court in Elisa B. v. Superior Court, agreed that parentage need not rest on a relationship between the parties, or even a joint reproductive act so long as the intent to do so was established. This child was born in China, adopted, and not biologically related to either parent.

CHAPTER 4: The Family Law Paradigm

Of the foregoing cases, some have been decided correctly for the wrong reasons and some were decided wrongly or the wrong reasons. The point here is that advanced reproductive technology has out paced the law. Marriage is no longer a good solution to the problem because it is no longer able to help us sort

¹⁵³ See In re E. L. M. C., *supra* note 154, at 548.

¹⁵⁴ A psychological parent is found by application of a four-pronged test. First the legal parent must have consented to and fostered the relationship. Second, the non-parent and the child must have lived together in the same household (*i.e.* familial unit). Third, the non-parent must have actually assumed the obligations of parenthood by taking significant responsibility for the support of the child without expectation of reward. Finally, the non-parent must have established a bonded parental relationship with the child. See V.C. v. M.J.B., 748 A.2d 539 (N.J. 2000).

out parents and parenting responsibilities. The marriage debate is critically important because we need to determine who is responsible for which children so we need to take a new critical look at family law. We do not necessarily a new set of rules but rather, a new way of interpreting our existing rules. We need expanded definitions that stem from today's technological challenges. We still need to manage the familial relationships that have persisted since the dawn of our history and that continue to evolve alongside our technology. We need to admit that reproduction is no longer based simply in biology and therefore parentage and marriage can no longer be codependent on each other.

All of these cases show that the evolution of family has fallen short of alleviating our dilemma. Even those that come to the right conclusions have not bestowed on non-married, non-biological parents the full plethora of parental rights. This fact may appear to be a challenge but, like all of the voices of the marriage debate, actually is quite helpful. As any good philosopher believes, the answer often is found in the question.

The courts have not bestowed a full assortment of parental rights on those who seek them outside of genetics and marriage, at least in part, because they did not have to. They did not have to because the assortment of parental rights and responsibilities is easily broken up into its concomitant parts and the parts can be disbursed to separate individuals as needed to achieve the child's best interests. If the role an adult plays in a child's life is that of provider then the courts should protect the relationship. But even though that person is a provider, he or she may

not be the nurturer or the one responsible for daily care-giving duties. Often such parental responsibilities are separated and either shared or delegated between parents. This is the next step the courts need to take. The courts need to recognize that the full assortment of parental rights and responsibilities (easily) can be broken down easily into separate tasks that can be delegated among as many individual adults as any child may have available to him or her.

This entails an argument in favor of recognizing multiple parents. After all, if marriage and genetics are not the exclusive and controlling parameters with which to make parentage determinations, then neither is the number of parents. The number is constricted by the notion of marriage which in turn is constricted by the notion of reproductive pairs and tops out at two. Based on today's technology and the reality of today's parentage determinations, such a limit is neither necessary nor sufficient. Put simply, lots of kids have multiple parents now and for lots of reasons. The best interests of children will be best served when the law recognizes and supports all of the beneficial relationships a child develops.

This position is not original. Professor Bartlett¹⁵⁵ argued that an intact nuclear family unit should be protected but where it has failed a multiple parent

¹⁵⁵ See Katherine T. Bartlett, *Rethinking Parenthood as an Exclusive Status: The Need for Legal Alternative When the Premise of the Nuclear Family has Failed*, 70 Va. L. Rev. 879 (1984).

model should be supported if it is found. Professor Young¹⁵⁶ rejects unique considerations or protections for the nuclear family model and suggests that parenting is organized around a “core family unit” or “core” parent(s). Professor Kavanagh¹⁵⁷ rejects the notion of a “core” and instead claims the family should be recognized as organized around a “care-based” and “child-centered” model.¹⁵⁸ The important point in all of their positions is that in reality lots of people are parenting children in lots of different ways and all of them should be recognized,¹⁵⁹ and protected by our courts so long as they are beneficial to the children.

Collaborative parenting means cooperative parenting by multiple adults.

This is neither a theoretical invention nor a novel concept at all. The existing models for it are joint custody, open adoption, foster parenting, and the

¹⁵⁶ *Id.* at 944.

¹⁵⁷ See Alison H. Young, *Preconceiving the Family: Challenging the Paradigm of the Exclusive Family*, 6 Am. U. J. Gender & L. 505, 518 (1998).

¹⁵⁸ See Matthew M. Kavanagh, *Rewriting the Legal Family: Beyond Exclusivity to a Care-Based Standard*, 16 Yale J. L. & Feminism 83, 85 (2004).

¹⁵⁹ This is not a novel notion to children either. My own daughter, now in high school, began referring to my partner and I as her “parental unit.” I immediately liked both the notion and the moniker and now consider myself a founding partner of her parental unit. This title could be shortened in daily usage to “parent.” In fact, any title appropriate to any member of any child’s “parental unit” could be shortened in daily usage to “parent.” Do not you love the simplicity? So long as the members of the parental unit understand and fulfill their individual responsibilities and share in the joys of the job there is no need to distinguish legally, or publicly, between them. The challenge here is overcoming a societal presumption of the exclusivity of parentage.

recognition of visitation, custody, and adoption rights for third parties.¹⁶⁰ When such collaboration is involved I think it is right to state that it comprises a parental unit. Notice how easily “parent” has been replaced with “parental unit.” A parental unit is any number of adults of either sex acting alone or together to fulfill the parental needs of a child or children. The definition does not require, nor does it forbid, the adults from being the biological progenitor(s) of the child or children. Even a single parent is a parental unit worthy of recognition and protection so long as it benefits the child.

A: The Call for Reform

The worst of these decisions was predicated on passé notions of the family unit; notions that for the most part began with genetic links and ended with marriage. These notions catered to concerns that generally no longer apply to the institution of family as it exists today and demonstrate the need for mechanisms that better protect a child's best interests, that in having a functioning parental

¹⁶⁰ Some jurisdictions allow what is commonly referred to as second-parent adoption. This process recognizes the addition of a new parent without terminating or essentially limiting the rights of an already existing parent. The following cases represent about a dozen jurisdictions where third-party parental rights have been recognized: *In re E. L. M. C.*, 100 P. 3d 546 (Colo. Ct. App. 2004); *King v. S.B.*, 837 N.E.3d 965 (Ind. 2005); *S.F. v. M. D.*, 751 A.2d 9 (Md. Ct. Spec. App. 2000); *E.N.O. v. L.M.M.*, 711 N.E.2d 886 (Mass. 1999); *T.B. v. L.R.M.*, 76 A.2d 913 (Pa. 2001); *In re H.S.H.K.*, 533 N.W.2d 419 (Wisc. 1995); *Thomas v. Thomas*, 49 P.3d 306 (Ariz. Ct. App. 2002); *LaChappelle v. Mitten*, 607 N.W.2d 151 (Minn. Ct. App. 2000); *A.C. v. C. B.*, 829 P 2d 660 (N.M. Ct. App. 1992); *Laspina-Williams v. Laspina-Williams*, 742 A.2d 840 (Conn. Super. Ct. 1999); *Coons-Andersen v. Andersen*, 104 S.W.3d 630 (Tex. Ct. App. 2003); *Clifford K v. Paul S*, 619 S.E.2d 138 (W. Va. 2005).

unit. The courts need not put themselves to the task of playing Solomon.¹⁶¹ Family courts should not be in the business of settling custody disputes by weighing the rights of the so-called parents as independent from and/or equal to the interest of the child in having parents. Rather, they should make parentage determinations on the basis of those relationships that are beneficial to the child. The interests of children are frustrated by Solomon-like decisions that award only a genetic parent or a married parent a stake in the child with less regard for the consequences to the child.

Working within the current paradigm, courts have prevented a biological progenitor from obtaining an order of parentage because the child's mother was married to another man and the child already had a stable and secure parental unit.¹⁶² In some jurisdictions,¹⁶³ a biological progenitor's capacity to be a parent is terminated without regard for whether or not the child has a functional parental unit.¹⁶⁴ Our court's adherence to antiquated rules of dependence on genetics and/or marriage ignores the possibility of successful parental units that exist

¹⁶¹ *KINGS* 3:16-28 (King Solomon is said to have settled a dispute between "two harlots" concerning which of them was the mother of a certain baby. His decision was to cut the baby in half and give half to each woman, assuming that the real mother would relinquish her half rather than allow the baby to be harmed. Indeed, he gave the baby to the woman who relinquished her half of the baby.)

¹⁶² See Michael H. v. Gerald D., 491 U.S. 110 (1989).

¹⁶³ Here I am considering only those jurisdictions that do not require the mother to be married as a precondition to the extinguishment of any rights of the donor.

¹⁶⁴ See, e.g., OR. REV. STAT. § 677.365 (1993).

outside the current definitions. Now that we have restated the definition of a parent and defined a parentage principle that is not conflated with marriage much of the work has been done toward reaching a better paradigm of family law.

B: Defining the Parent/Child Relationship

In order to protect children's best interests we have to protect their parental relationships to the same degree that those relationships are established. The models for multiple member parental units hold out lessons for how to do this. Joint custody as well as adoption, custody, and visitation rights for third parties are particularly good examples of where the three major functions of parenting are distilled into separable tasks and the duties can be delegated and shared.

Joint custody generally is the result of a divorce between married parents. It is two adults living in separate households sharing the responsibility of meeting the needs of their shared children. Sharing means just that; some is for me and some is for you. Recall that we learned everything that was really important, like sharing, in childhood along with the rhyme that brought us here. Custody is further distilled into legal custody (decisional authority) and physical custody (daily care-giving duties). Decisional authority can be and often is distilled into individual decision-making categories; such education or as we saw earlier, religion. There have been court orders determining which days of the week a child will take golf lessons and which parent will pay for the lessons. The division of parental responsibilities maintains the cohesiveness of a parental unit for the benefit it provides the child by maintains the child's beneficial

relationships to adults that provide for him or her. Extending such recognition to other beneficial adults can only extend the benefits to children.

Third party parental rights include visitation, custody, and in the case of adoption, legal recognition on par with, and entitled to the same protection as, a natural parent. These third-parties are adults that are functioning as parents but are not progenitors. Essentially, this is court ordered protection of the relationships of a parental unit that exceeds the reproductive progenitors. These third parties are step parents, same-sex parents, or any other adults who in fact can show that their relationship with a child or children is worthy of protection because it benefits the child. So you see, protection of the parental unit has already begun.

C: Statutory Determinations

What is left to do is present a statutory regime that recognizes today's realities and is not bound by the antiquated assumptions that parentage is rightly based in genetics or marriage. Several attempts have been made.¹⁶⁵ I now undertake the ambitious task of presenting a parentage statute for the State of Arizona. The choice is important because Arizona possibly has the worst record for recognizing beneficial parental units. Arizona does not recognize same-sex marriage, does not allow multi-parent adoption, and has an *in loco parentis* statute

¹⁶⁵ The A.L.I. model parentage statute, the new Uniform Parentage Act, and the recent Washington, D.C. parentage statute stand out as examples.

that leaves a child with no support from the non-parent who nevertheless gets visitation thereby playing a part in the child's parental unit.

Arizona's parentage statutes are found in the Arizona Revised Statutes at Title 25: Marital and Domestic Relations (Chapters 1 - 9). Some of them required only minor adjustments, such as moving an apostrophe to indicate plurality and possession but others needed a total makeover. The re-draft of this statute should convince the reader that the task is simpler than it sounds. We have come too far protecting children's interests by recognizing their parental units to ever go back to the dark ages of family law where children are treated differently based on the configuration of their parental unit. A realization that we must protect all of the beneficial relationships of children in order to serve their best interests may be one of the most important steps our courts can take in safeguarding the essential resource for our survival, our children.

To achieve these lofty goals, below are my proposed newly revised Arizona revised statutes. Excluded from my proposed redraft are those sections of existing Arizona statutory law that are mostly satisfactory as currently written. In these unchanged sections, only the masculine and feminine discriminations between parents should be changed, as well as the singular to plural to accommodate the more dramatic adjustments proposed in other sections.

CHAPTER 5: The Newly Revised Arizona Revised Statutes

A: Marriage

Marriage had not been done away with simply because, as we saw earlier, there are several good things about it as all of the voices in the marriage debate tell us so. But for the same reasons that marriage has always been worthy of protection, it remains so today. We may each bear allegiance to one or another reason without recognizing the validity of others, however, all but the minority comprised of the marriage-enders still like it. And I hope this argument will convince them to join the marriage-menders by showing what has gone changed and how we can, and should, adapt.

As marriage does work, a new statute should allow any adult who wants to promise his or her allegiance in marriage to another, or multiple others, is afforded an opportunity to do so. After all, if familial associations are good and marriage helps create those associations then marriage is good. And those who make such promises will be held to them. Remedies will continue to be applied through divorce rules.

Because those who chose to marry and those who chose to procreate are not always the same people, parentage determinations will have little to do with marriage. The diminutive dispositive influence that remains is a presumption based on marital status that may be easily rebutted by evidence of a different intent on the part of the adults who engaged in the reproductive conduct that resulted in a child or children.

As before, parenting time and support obligations are dispensed based on the actual indicia of parentage each parent evidences. Parentage, seen this way, is easily broken into its composite components relating to fiduciary responsibility, decisional authority, and daily care-giving duties. Fiduciary responsibility includes an obligation of financial support. Decisional-authority requires an adult to make the best possible decisions regarding the best interests of the child or children. Daily care-giving duties entail a little of all three categories but most importantly it includes the physical custody of the child or children. The others may not include daily physical custody or even periodic face-to-face interactions. Some parents can be held to an obligation of support only; and that obligation can be shared among multiple adults. After all by contract, by production and donation of genetic material, and simply by biological chance one can engage in reproductive conduct. The law will allow us to determine not only who among us are parents but among them who should have what responsibilities to the child.

Because the purpose of marriage is create families and families are a good thing as we are communal animals, any adult can marry any other or others. Reproduction is not the basis of marriage under the new statute. In fact, it no longer has anything to do with marriage. Marriage provides a benefit from the State. It should be shared equally by those who want to share in it. The only reason to disallow a marriage to any person is if the marriage is entered into in order to commit fraud in some way related to the benefits of marriage.

Marriage by minors also is not forbidden but remains restricted by the consent of the parents (or a guardian) of a minor. Recall that we all are not equal. We mature, both physically and emotionally, at varying rates. Some of us may feel compelled to take on the responsibility of marriage, unwavering familial obligations to others, while our parents still are responsible for us. In that case, it seems reasonable that the parents should consent.

The new statute also retains the requirements of a State-issued license and several indicia of formality such as who may perform the ceremonies that create a marriage. This is necessary because marriage is a status that entitles the parties to State benefits, like joint tax returns. In order to maintain the integrity of the system of distribution of the benefits, the State must have a way of certifying such status. The requirement of a license seems an easy and practical way to do it. The statute also continues to allow, but does not require, various religious leaders to perform such ceremonies simply because it matters to some people. So long as the regulations are applied equally to secular and non-secular figures it makes no difference to the system.

Article 1: Marriage (§§101-103)

§101- Void Marriages – A marriage entered into for the purpose of, or with the intent to, perpetrate a fraud in any way is void.

§102 – Marriage of Minors

A. Persons under eighteen years of age shall not marry without the consent of their parental unit. Persons under sixteen years of age shall not marry without the consent of their parental unit and the approval of a superior court judge in the state.

B. Before authorizing the marriage of a person who is under sixteen years of age, the court:

1. Shall require both parties to the marriage to complete premarital counseling.

2. Must find that the minor is entering into the marriage voluntarily.

3. Must find that the marriage is in the best interests of the minor.

C. A marriage shall not take place under this section if it is prohibited by the law relating to void marriages.

Article 2: Validity of Marriages (§§111-112)

§111 - Requirements

A. A marriage shall be contracted by agreement with or without a marriage ceremony.

B. A marriage contracted within this state is not valid unless all of the following occur:

1. A license is issued as provided in this title.

2. The marriage is solemnized by a person authorized by law to solemnize marriages or by a person purporting to act in such capacity and believed in good faith by at least one of the parties to be so authorized.

3. The marriage is solemnized before the expiration of the marriage license.

§112 – Marriages from other jurisdictions

A. Marriages valid by the laws of the place where contracted are valid in this state.

B. Marriages solemnized in another state or country by parties intending at the time to reside in this state shall have the same legal consequences and effect as if solemnized in this state.

C. Parties residing in this state may not evade the laws of this state relating to marriage by going to another state or country for solemnization of the marriage.

Article 3: License, Ceremony and Record (§§121-130)

§121 – Application and affidavit

A. Persons shall not be joined in marriage in this state until a license has been obtained for that purpose from the clerk of the superior court in any county of this state.

B. Persons who wish to marry shall apply to the clerk of the superior court for a license and shall complete and sign under oath an affidavit provided by the clerk that states each applicant's name, age and residential address. The applicants shall provide their social security numbers to the clerk separately from the affidavit. The affidavit shall be filed by the clerk who shall then issue to the applicants a license directed to the persons authorized by law to solemnize marriage and shall collect the fee prescribed by section 12-284. The license is sufficient authority for any authorized person to solemnize the marriage. The marriage license shall state that the marriage license expires one year from the date of issuance of the license.

C. Except for release to the department of economic security for the purpose of child support enforcement, the social security number provided to the clerk of the superior court pursuant to subsection B of this section for an applicant's marriage license shall not be released to any person or entity unless the applicant requests in writing that the information be released. The provisions of this subsection shall appear in each application for a marriage license.

§122 - Consent for minor

The clerk of the superior court shall not issue a license to a person who is under eighteen years of age without the consent required pursuant to section 25-102.

§123 - Recording; return; lost licenses

A. The clerk of the superior court shall maintain a record of all marriage licenses issued.

B. The person solemnizing the rites of matrimony shall endorse the act of solemnization on the license and shall return the license to the clerk within thirty days after the solemnization. The returned marriage license shall be recorded by the clerk.

C. If a marriage license is lost before the endorsement of solemnization, the persons who wish to marry shall reapply to the clerk for a marriage license pursuant to section 25-121 and pay a fee pursuant to section 12-284.

D. If the license that bears the endorsement of solemnization is lost, the clerk shall issue a replacement license that must be signed by the person who solemnized the marriage, the persons who married and two of the witnesses to their marriage ceremony. The signed replacement license shall be returned to the clerk who shall record the license. If the persons married are unable to obtain all of the required signatures, either of them or their representative may apply to the superior court for an order to authorize the issuance of a duplicate endorsed marriage license. The application shall be by a sworn statement that describes the circumstances of the marriage ceremony and that contains the notarized signatures of the applicant and, if possible, both persons married, the person who solemnized the marriage and at least two witnesses to the marriage ceremony. If the application is submitted by a representative, the court shall determine if the representative is an appropriate requesting party. Pursuant to a court order, the clerk shall issue and record a duplicate endorsed marriage license. The court shall not charge a fee for the application or for issuing or recording the duplicate endorsed marriage license.

§124 - Persons authorized to perform marriage ceremony; definition

A. The following are authorized to solemnize marriages between persons who are authorized to marry:

1. Duly licensed or ordained clergymen.
2. Judges of courts of record.
3. Municipal court judges.
4. Justices of the peace.
5. Justices of the United States supreme court.
6. Judges of courts of appeals, district courts and courts that are created by an act of Congress if the judges are entitled to hold office during good behavior.
7. Bankruptcy court and tax court judges.
8. United States magistrate judges.

9. Judges of the Arizona court of military appeals.

B. For the purposes of this section, "licensed or ordained clergymen" includes ministers, elders or other persons who by the customs, rules and regulations of a religious society or sect are authorized or permitted to solemnize marriages or to officiate at marriage ceremonies.

§125 - Ceremony; official; witnesses; marriage license;

A. A valid marriage is contracted by persons with a proper marriage license who participate in a ceremony conducted by and in the presence of a person who is authorized to solemnize marriages and at which at least two witnesses who are at least eighteen years of age participate.

B. A marriage license shall be signed by all parties to the marriage, two of the witnesses to the marriage ceremony and the person who solemnized the marriage, who shall return the signed marriage license to the clerk of the superior court for recording.

§126 - Application to justice of the peace

A. A justice of the peace whose office is located five miles or more from the county seat of the county in which the office is located may be designated by the clerk of the superior court to receive applications for and issue marriage licenses in that county. The applications for a marriage license shall be made on forms conforming to section 25-121, which shall be provided by the clerk of the superior court.

B. If requested by the justice of the peace designated pursuant to subsection A of this section, the clerk of the superior court shall issue in blank licenses as requested and charge them against the justice of the peace. A justice of the peace who has possession of marriage license forms as provided in this section shall account for these forms as required by the clerk of the superior court.

C. The justice of the peace designated pursuant to subsection A of this section shall report to the clerk the issuance of each license and shall transmit the fee prescribed by section 12-284 at the same time. Intentional failure to transmit the report and fee or the use of the authority granted by this section by the justice of the peace for personal gain is a class 2 misdemeanor.

§127 – Application to Town or City clerk

A. If a city or town is more than four miles from the county seat, the clerk of the superior court may allow the clerk of the city or town or the city or town

court clerk to issue marriage licenses. The clerk of the superior court may take this action only at the request of the local clerk.

B. The local clerk shall only use marriage license application forms and licenses provided by the clerk of the superior court. The clerk of the superior court shall provide the local clerk with these documents on request.

C. The local clerk shall account for all forms and blank licenses in the local clerk's possession as required by the clerk of the superior court.

D. The local clerk shall collect the fee prescribed under section 12-284 and transmit it to the clerk of the superior court. The local clerk may retain one dollar fifty cents from the fee prescribed under section 12-284.

§128 - Unlawful acts of person authorized to solemnize marriages

A. It is unlawful for any person who is authorized to solemnize marriages to:

1. Knowingly participate in or by his presence sanction the marriage of a person under the age of eighteen years who obtained a marriage license without consent in writing of their parental unit or other guardian lawfully entitled to give consent.

2. Solemnize a marriage without first being presented with a marriage license as required by the laws of this state.

3. Fail to file the marriage license with the act of solemnization endorsed on the marriage license within thirty days of the ceremony.

4. Knowingly make a false return of a marriage or pretended marriage to the clerk of the superior court.

B. A violation of this section is a class 2 misdemeanor.

§129 - Unlawful acts of person authorized to issue marriage license or make marriage records; classification

A. It is unlawful for a clerk of the superior court to knowingly issue a marriage license to a person under the age of eighteen years without the consent in writing of the parental unit or guardian lawfully entitled to give consent.

B. It is unlawful for any person to knowingly make a false record of a marriage return.

C. A violation of this section is a class 2 misdemeanor.

§130 - Abstract of marriage in lieu of reproducing marriage license

The clerk of the superior court may produce an abstract of marriage in lieu of a reproduction of the recorded marriage license. An abstract of marriage shall include the legal names of parties prior to the marriage, their names after the marriage, the date of the marriage and the date on which the marriage license was recorded.

B: Marital Property Rights

Marriage is a contract between private parties regarding the responsibilities and obligations of family. Those responsibilities and obligations have to do with finances. As such, the property and contract rights of married partners still need to be spelled out. This Chapter of the “revised” statute addresses this rights. The proposed revised statute addresses premarital agreements, contracts that alter the ordinary application and presumptions of marriage property law. Because marriage is a contract between private parties, they should have the option of modifying the contract to fit their individual goals. This is what premarital contracts accomplish. This section of the statute defines the scope, application, and treatment of those individual contracts that modify the general marriage contract. In defining the capacity to modify the general marriage contract it also defines the parameters of any separate, non-marital property and its management and control.

This chapter used to contain a section regarding contracts for reproductive conduct or reproductive contracts, called surrogacy contracts. This section has been modified and moved to the chapter addressing parentage determinations.

After all, those sorts of contracts help determine who is a parent much more so that who is married. Logically and logistically it just does not belong in this section.

Article 1: Arizona Uniform Premarital Agreement Act (§§201 - 205)

§201 - Definitions

In this article, unless the context otherwise requires:

1. "Premarital agreement" means an agreement between prospective spouses that is made in contemplation of marriage and that is effective on marriage.

2. "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

§202 Enforcement of premarital agreements; exception

A. A premarital agreement must be in writing and signed by all parties. The agreement is enforceable without consideration.

B. The agreement becomes effective on marriage of the parties.

C. The agreement is not enforceable if anyone against whom enforcement is sought proves either of the following:

1. The person did not execute the agreement voluntarily.

2. The agreement was unconscionable when it was executed and before execution of the agreement that person or persons:

(a) Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party or parties.

(b) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party or parties beyond the disclosure provided.

(c) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party or parties.

D. If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes a party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the others to provide support to the extent necessary to avoid that eligibility.

E. An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

F. If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

§203 - Scope of agreement

A. Parties to a premarital agreement may contract with respect to:

1. The rights and obligations of each of the parties in any of the property of any of them whenever and wherever acquired or located.
2. The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign or create a security interest in, mortgage, encumber, dispose of or otherwise manage and control property.
3. The disposition of property on separation, marital dissolution, death or the occurrence or nonoccurrence of any other event.
4. The modification or elimination of spousal support.
5. The making of a will, trust or other arrangement to carry out the provisions of the agreement.
6. The ownership rights in and disposition of the death benefit from a life insurance policy.
7. The choice of law governing the construction of the agreement.
8. Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

B. The right of a child to support may not be adversely affected by a premarital agreement.

§204 - Amendment or revocation of agreement

After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

§205 - Limitation of actions

A statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to any party.

Article 2: Property Rights and Contract Powers (§§211 - 218)

§211 - Property acquired during marriage as community property; exceptions; effect of service of a petition

A. All property acquired by any party during the marriage is the community property of the married partners except for property that is:

1. Acquired by gift, devise or descent.

2. Acquired after service of a petition for dissolution of marriage, legal separation or annulment if the petition results in a decree of dissolution of marriage, legal separation or annulment.

B. Notwithstanding subsection A, paragraph 2, service of a petition for dissolution of marriage, legal separation or annulment does not:

1. Alter the status of preexisting community property.

2. Change the status of community property used to acquire new property or the status of that new property as community property.

3. Alter the duties and rights of either spouse with respect to the management of community property except as prescribed pursuant to section 25-315, subsection A, paragraph 1, subdivision (a).

§213 - Separate property

A. A spouse's real and personal property that is owned by that spouse before marriage and that is acquired by that spouse during the marriage by gift, devise or descent, and the increase, rents, issues and profits of that property, is the separate property of that spouse.

B. Property that is acquired by a spouse after service of a petition for dissolution of marriage, legal separation or annulment is also the separate property of that spouse if the petition results in a decree of dissolution of marriage, legal separation or annulment.

C. Notwithstanding subsection B of this section and section 25-214, subsection C, a mortgage or deed of trust executed by a spouse who acquires the real property encumbered by that mortgage or deed of trust after service of a petition for dissolution of marriage, legal separation or annulment shall be enforceable against the real property if the petition does not result in a decree of dissolution of marriage, legal separation or annulment.

D. A contribution to an irrevocable trust that has or will have as its principal asset life insurance on the person making the contribution is a contribution of the insured's separate property if a spouse of the insured is the primary beneficiary of the trust.

§214 - Management and control

A. Each spouse has the sole management, control and disposition rights of his or her separate property.

B. The spouses have equal management, control and disposition rights over their community property and have equal power to bind the community.

C. Any spouse separately may acquire, manage, control or dispose of community property or bind the community, except that joinder of all spouses is required in any of the following cases:

1. Any transaction for the acquisition, disposition or encumbrance of an interest in real property other than an unpatented mining claim or a lease of less than one year.

2. Any transaction of guaranty, indemnity or suretyship.

3. To bind the community, irrespective of any person's intent with respect to that binder, after service of a petition for dissolution of marriage, legal separation or annulment if the petition results in a decree of dissolution of marriage, legal separation or annulment.

§215 - Liability of community property and separate property for community and separate debts

A. The separate property of a spouse shall not be liable for the separate debts or obligations of any other spouse, absent agreement of the property owner to the contrary.

B. The community property is liable for the premarital separate debts or other liabilities of a spouse, incurred after September 1, 1973 but only to the extent of the value of that spouse's contribution to the community property which would have been such spouse's separate property if not married.

C. The community property is liable for a spouse's debts incurred outside of this state during the marriage which would have been community debts if incurred in this state.

D. Except as prohibited in section 25-214, any spouse may contract debts and otherwise act for the benefit of the community. In an action on such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall be satisfied: first, from the community property, and second, from the separate property of the spouse contracting the debt or obligation.

§217 - Ownership of property acquired after moving into state

Marital rights in property which is acquired in this state during marriage by persons married without the state who move into the state shall be controlled by the laws of this state.

C: Dissolution of Marriage

If we are to retain marriage we must also retain divorce. Logically, it must be this way; it is also required by the feminist voices in the marriage debate. If these voices are taken seriously, the best way to assuage their concerns is to make divorce as easy as marriage. In other words, it must be just as easy to get out of a marriage as it is to get into one if the harms of marriage, as they see them, are to be cured. Marriage must be a matter of informed and continued consent by the parties.

However, because religious concerns are no longer controlling in family law, annulments are not necessary and reference to such and procedures for such have been eliminated. Currently, there is no significant difference to the State between annulment and divorce. Since the proposed new statute denies the ability of church and state to hold sway over one another in familial legal determinations and annulment is more significant to religious concerns it has been eliminated as superfluous.

Sections 351-355 of Chapter 3, Article 5 relating to education remains. This section requires anyone coming into contact with the family courts to engage in a specific certified program of education. The program is intended to impress upon its participants the importance, to all of us, of good parenting and how to achieve it. The program will continue to be developed and certified by the State and will ensure that all participants in any family law proceeding involving children will be reminded of the impact of their decisions on the young lives they influence so greatly and how that in turn will affect society. After all, those who accept parentage by chance may not have had the time or taken the opportunity to educate themselves. Those who engage in parentage by choice may not think they have anything left to learn. Both may be mistaken and because parenting is so critical to our shared future, it matters.

The section on reconciliation has also been retained. It seems to me that if familial obligations are important enough for us to maintain through civil law then some effort ought to be made in actually maintaining them rather than simply

providing a means for a peaceful dissolution of them when it does work out. Conciliation courts give the parties another opportunity, and some important resources, with which to maintain these ever-so-important interpersonal connections. Recall that they are important because they order society and provide support and care-giving duties that otherwise might fall to the society at large.

Article 2: Dissolution of Marriage (§§311 – 331)

§ 311 - Jurisdiction; form of petition; award of decree

A. The superior court is vested with original jurisdiction to hear and decide all matters arising pursuant to this chapter and pursuant to chapter 4, article 1 of this title.

B. A proceeding for dissolution of marriage or legal separation shall be entitled, "in re the marriage of (the parties to the marriage)" A custody or child support proceeding shall be entitled, "in re the (custody) (support) of (the child or children)."

C. The initial pleading in all proceedings under this chapter and under chapter 4, article 1 of this title shall be denominated a petition. A responsive pleading shall be denominated a response.

D. A decree of dissolution or of legal separation, if made, shall not be awarded to one of the parties but shall provide that it affects the status previously existing between all parties in the manner decreed.

§312 - Dissolution of marriage; findings necessary

The court shall enter a decree of dissolution of marriage if it finds each of the following:

1. That one of the parties, at the time the action was commenced, was domiciled in this state, or was stationed in this state while a member of the armed services, and that in either case the domicile or military presence has been maintained for ninety days prior to filing the petition for dissolution of marriage.

2. The marriage is irretrievably broken.

3. To the extent it has jurisdiction to do so, the court has considered, approved and made provision for child custody, the support of any child common to the parties of the marriage entitled to support, the maintenance of any spouse and the disposition of property.

§313 - Decree of legal separation; findings necessary

The court shall enter a decree of legal separation if it finds each of the following:

1. That one of the parties at the time the action was commenced was domiciled in this state or was stationed in this state while a member of the armed services.

2. The conciliation provisions of section 25-381.09 and the provisions of article 5 of this chapter either do not apply or have been met.

3. The marriage is irretrievably broken or any of the parties desire to live separate and apart and sever the community between them.

4. The other party or parties do not object to a decree of legal separation. If another party objects to a decree of legal separation, on one of the parties meeting the required domicile for dissolution of marriage, the court shall direct that the pleadings be amended to seek a dissolution of the marriage.

5. To the extent it has jurisdiction to do so, the court has considered, approved or made provisions for child custody, the support of any child common to the parties of the marriage entitled to support, the maintenance of any spouse and the disposition of the property.

§314 - Pleadings; contents; defense; joinder of parties; confidentiality

A. The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken or that at least one of the parties desire to live separate and apart, and shall set forth:

1. The birth date, occupation and address of each party and the length of domicile in this state.

2. The date of the marriage and the place at which it was performed.

3. The names, birth dates and addresses of all living children common to the parties and whether any spouse currently is pregnant.

4. The details of any agreements between the parties as to support, custody and parenting time of the children and maintenance of a spouse.

5. The relief sought.

B. Any party to the marriage may initiate the proceeding.

C. The only defense to a petition for the dissolution of a marriage or legal separation is that the marriage is not irretrievably broken.

D. The court may join additional parties necessary for the exercise of its authority.

E. This section does not require a victim of domestic violence or a resident of a domestic violence shelter as defined in section 36-3001 to divulge the person's address, except that a means of communicating with the resident, such as a post office box or address of the person's attorney, must be disclosed.

§315 - Temporary order or preliminary injunction; effect; definition

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

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

(a) That all parties are enjoined from transferring, encumbering, concealing, selling or otherwise disposing of any of the joint, common or community property of the parties except if related to the usual course of business, the necessities of life or court fees and reasonable attorney fees associated with an action filed under this article, without the written consent of the parties or the permission of the court.

(b) That all parties are enjoined from:

(i) Molesting, harassing, disturbing the peace of or committing an assault or battery on the person of another party or any child of the parties.

(ii) Removing any child of the parties then residing in Arizona from the jurisdiction of the court without the prior written consent of the parties or the permission of the court.

(iii) Removing or causing to be removed another party or the children of the parties from any existing insurance coverage, including medical, hospital, dental, automobile and disability insurance.

(c) That the parties shall maintain all insurance coverage in full force and effect.

2. The preliminary injunction shall include the following statement:

Warning:

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

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

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

The preliminary injunction is effective against the petitioner when the petition is filed and against the respondent(s) on service of a copy of the order or on actual notice of the order, whichever is sooner. If service is by registered mail under the Arizona rules of family law procedure, the order is effective on receipt of the order. The order remains effective until further order of the court or the entry of a decree of dissolution, legal separation or annulment.

At the time of filing the petition for dissolution, legal separation or annulment, the copies of the preliminary injunction shall be issued to the petitioner or the agent, servant or employee filing the petition for

dissolution, legal separation or annulment. The petitioner is deemed to have accepted service of the petitioner's copy of the preliminary injunction and to have actual notice of its contents by filing or causing to be filed a petition for dissolution, legal separation or annulment. The petitioner shall cause a copy of the preliminary injunction to be served on the respondent(s) with a copy of the summons and petition for dissolution, legal separation or annulment.

The preliminary injunction has the force and effect of an order of the superior court signed by a judge and is enforceable by all remedies made available by law, including contempt of court.

B. In a proceeding for dissolution of marriage, for legal separation, for annulment or for maintenance or support following dissolution of the marriage by a court that lacked personal jurisdiction over an absent spouse, any party may move for an order for equal possession of the liquid assets of the marital property, temporary maintenance or temporary support of a child common to the parties entitled to support. The court shall provide for an order for equitable possession of the liquid assets of the marital property that existed as of the date the petition for dissolution or legal separation or annulment was served, unless the court finds that there is good cause not to divide those assets. The court's division of liquid assets held by financial institutions does not invalidate applicable law or any provision of an account agreement that assesses penalties against the account holder for premature or unscheduled withdrawals of account funds. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested and, if appropriate, the liquid assets of the parties. An order for equal possession of the liquid assets of the marital property does not prejudice any final division of the marital community. This subsection does not eliminate the application of the preliminary injunction.

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

1. Excluding a party from the family home or from the home of another party on a showing that physical or emotional harm may otherwise result.
2. Providing other injunctive relief proper in the circumstances.

D. The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is

issued until the time for responding has elapsed. A bond is not required unless the court deems it appropriate.

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

F. A temporary order or preliminary injunction:

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

2. May be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under section 25-327.

3. That provided for equitable possession of liquid assets of the marital property does not prejudice any other party's claim for temporary maintenance, child support or attorney fees.

4. Terminates when the final decree is entered or when the petition for dissolution, legal separation or annulment is dismissed.

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

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

2. A peace officer, with or without a warrant, may arrest a person if the peace officer has probable cause to believe that an offense under this subsection has been committed and has probable cause to believe that the

person to be arrested has committed the offense, whether the offense is a felony or a misdemeanor and whether such offense was committed within or without the presence of the peace officer. The release procedures available under section 13-3883, subsection A, paragraph 4 and section 13-3903 are not applicable to arrests made pursuant to this subsection.

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

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

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

H. For the purposes of this section, "liquid assets" means:

1. Cash.
2. Traveler's checks.
3. Cash in financial institutions or bank investments convertible to cash.
4. Lottery winnings.

§316 - Irretrievable breakdown; finding

A. If any party by petition or otherwise states under oath or affirmation that the marriage is irretrievably broken or if one of the parties so states and the others does not deny it, the court shall make a finding as to whether or not the marriage is irretrievably broken.

B. If one of the parties denies under oath or affirmation that the marriage is irretrievably broken, the court shall hold a hearing to consider all relevant factors as to the prospect of reconciliation and shall do either of the following:

1. Make a finding as to whether or not the marriage is irretrievably broken.

2. Continue the matter for further hearing, not more than sixty days later. At the request of any party or on its own motion, the court may order a conciliation conference. At the next hearing the court shall make a finding as to whether or not the marriage is irretrievably broken.

C. A finding that the marriage is irretrievably broken is a determination that there is no reasonable prospect of reconciliation.

§317 - Separation agreement; effect

A. To promote amicable settlement of disputes between parties to a marriage attendant on the separation or dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by any of them, maintenance of any of them, and support, custody and parenting time of their children. A separation agreement may provide that its maintenance terms shall not be modified.

B. In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody and parenting time of children, are binding on the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unfair.

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

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

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

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

G. Notwithstanding subsection F, entry of a decree that sets forth or incorporates by reference a separation agreement that provides that its maintenance terms shall not be modified prevents the court from exercising jurisdiction to modify the decree and the separation agreement regarding maintenance, including a decree entered before July 20, 1996.

§318 - Disposition of property; retroactivity; notice to creditors; assignment of debts; contempt of court

A. In a proceeding for dissolution of the marriage, or for legal separation, or in a proceeding for disposition of property following dissolution of the marriage by a court which previously lacked personal jurisdiction over an absent spouse or previously lacked jurisdiction to dispose of the property, the court shall assign each spouse's sole and separate property to such spouse. It shall also divide the community, joint tenancy and other property held in common equitably, though not necessarily in kind, without regard to marital misconduct. For the purposes of this section only, property acquired by any spouse outside this state shall be deemed to be community property if the property would have been community property if acquired in this state.

B. In dividing property, the court may consider all debts and obligations that are related to the property, including accrued or accruing taxes that would become due on the receipt, sale or other disposition of the property. The court may also consider the exempt status of particular property pursuant title 33, chapter 8.

C. This section does not prevent the court from considering all actual damages and judgments from conduct that resulted in criminal conviction of any spouse in which another spouse or a child was the victim or excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

D. The community, joint tenancy and other property held in common for which no provision is made in the decree shall be from the date of the decree held

by the parties as tenants in common, each possessed of an undivided equal interest.

E. The court may impress a lien on the separate property of any party or the marital property awarded to any party in order to secure the payment of:

1. Any interest or equity another party has in or to the property.
2. Community debts that the court has ordered to be paid by the parties.
3. An allowance for child support or spousal maintenance, or both.
4. All actual damages and judgments from conduct that resulted in criminal conviction of a spouse in which another spouse or a child was the victim.

F. The decree or judgment shall specifically describe by legal description any real property affected and shall specifically describe any other property affected.

G. This section applies through both prospective and retrospective operation to property without regard to the date of acquisition.

H. In all actions for the dissolution of marriage or legal separation, the court shall require the following statement in the materials provided to the petitioner and to be served on all respondent(s):

Notice

In your property settlement agreement or decree of dissolution or legal separation, the court may assign responsibility for certain community debts to one spouse or the other. Please be aware that a court order that does this is binding on the spouses only and does not necessarily relieve any spouse from responsibility for these community debts. These debts are matters of contract between the community and its creditors (such as banks, credit unions, credit card issuers, finance companies, utility companies, medical providers and retailers).

Since the creditors are not parties to this court case, they are not bound by court orders or any agreements reached in this case. On request, the court may impose a lien against the separate property of a spouse to secure payment of debts that the court orders that spouse to pay.

You may want to contact any creditors to discuss your debts as well as the possible effects of your court case on any debts. To assist you in identifying creditors, you may obtain a copy of a spouse's credit report by making a written request to the court for an order requiring a credit reporting agency to release the report to you. Within thirty days after receipt of a request from a spouse who is party to a dissolution of marriage or legal separation action, which includes the court and case number of the action, creditors are required by law to provide information as to the balance and account status of any debts for which the requesting spouse may be liable to the creditor. You may wish to use the following form, or one that is similar, to contact your creditors:

Creditor notification:

Date: _____

Creditor name and

Address: _____

Within thirty days after receipt of this notice, you are requested to provide the balance and account status of any debt identified by account number for which the requesting party may be liable to you.

Name: _____

Address: _____

Signature: _____

(printed name)

I. On the written request of any party to a pending dissolution of marriage or legal separation action, the court, except for good cause shown, shall issue an order requiring any credit reporting agency to release the credit report as to a spouse of the requesting party on payment by the requesting party of any customary fee for providing the credit report.

J. On the request of any party and except for good cause shown, the court shall require the parties to submit a debt distribution plan that states the following:

1. How community creditors will be paid.

2. Whether any agreements have been entered into between the parties as to responsibility for the payment of community debts, including what, if any, collateral will secure the payment of the debt.

3. Whether the parties have entered into agreements with creditors through which a community debt will be the sole responsibility of any particular party or parties.

K. The following form may be used to verify agreements with creditors:

Agreement with creditor

The parties to this agreement include _____ who are parties to a dissolution of marriage action filed in _____ county superior court, Arizona, case number _____; and _____ who is a duly authorized representative of _____ (creditor).

The undersigned parties agree that the debt owed by the parties to _____ (creditor) is to be disposed of as follows (check one):

___ The debt is the joint responsibility of the parties, with payment to be made on the following terms: _____

___ The balance of the debt is the responsibility of _____ and the creditor releases _____ from any further liability for that debt, with payment to be made on the following terms:

___ The debt has been paid in full as of this date.

We the undersigned acknowledge this agreement.

Dated: _____

Debtor(s)

Creditor's representative

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public

L. If the parties are not able to agree to a joint debt distribution plan pursuant to subsection J, the court may order each party to submit a proposed debt distribution plan to the court. In its orders relating to the division of property, the court shall reflect the debt distribution plan approved by the court and shall confirm that any community debts that are made the sole responsibility of one of the parties by agreement with a creditor are the sole responsibility of that party.

M. An agreement with a creditor pursuant to subsection K that assigns or otherwise modifies repayment responsibility for community debts secured by real property located in this state shall include all of the following:

1. A legal description of the real property.
2. A copy of the note and recorded security instrument, the repayment of which is to be assigned or modified by the agreement with a creditor.
3. A written and notarized acknowledgment that is executed by all parties to the debt, including the lender, and that states one of the following:
 - (a) The terms for the repayment of the debt remain unchanged.
 - (b) The terms for the repayment of the debt have been modified and, beginning on the date of the execution of the acknowledgment, the creditor has agreed that _____ assumes exclusive responsibility for the debt and that the other debtor(s) is released from any further liability on the debt.
 - (c) The debt is paid in full and all parties to the debt are released from any further liability.

N. An agreement executed pursuant to subsection M shall be recorded by any party in the county in which the real property is located.

O. After an agreement is recorded pursuant to subsection N, any party may request that on payment of the title company's fees for the document a title

company authorized to do business in this state provide the requesting party with a lien search report or other documentary evidence of liens and other agreements of record in the title to the property.

P. If a party fails to comply with an order to pay debts, the court may enter orders transferring property of that spouse to compensate another party. If the court finds that a party is in contempt as to an order to pay community debts, the court may impose appropriate sanctions under the law. A party must bring an action to enforce an order to pay a debt pursuant to this subsection within two years after the date in which the debt should have been paid in full.

Q. Within thirty days after receipt of a written request for information from a spouse who is a party to a dissolution of marriage or legal separation action, which includes the court and case number of the action, a creditor shall provide the balance and account status of any debts of any spouse(s) identified by account number for which the requesting spouse may be liable to the creditor.

R. If any part of the court's division of joint, common or community property is in the nature of child support or spousal maintenance, the court shall make specific findings of fact and supporting conclusions of law in its decree.

§318.01 - Military retirement benefits; disability related waiver

In making a disposition of property pursuant to section 25-318 or 25-327, a court shall not do any of the following:

1. Consider any federal disability benefits awarded to a veteran for service-connected disabilities pursuant to 38 United States Code chapter 11.
2. Indemnify the veteran's spouse or former spouse for any prejudgment or postjudgment waiver or reduction in military retirement or retainer pay related to receipt of the disability benefits.
3. Award any other income or property of the veteran to a veteran's spouse or former spouse for any prejudgment or post-judgment waiver or reduction in military retirement or retainer pay related to receipt of the disability benefits.

§319 - Maintenance; computation factors

A. In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court that lacked personal jurisdiction over an absent spouse, the court may grant a

maintenance order for any spouse for any of the following reasons if it finds that the spouse seeking maintenance:

1. Lacks sufficient property, including property apportioned to the spouse, to provide for that spouse's reasonable needs.

2. Is unable to be self-sufficient through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home or lacks earning ability in the labor market adequate to be self-sufficient.

3. Contributed to the educational opportunities of another spouse.

4. Had a marriage of long duration and is of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.

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

1. The standard of living established during the marriage.

2. The duration of the marriage.

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

4. The ability of the spouse(s) from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance.

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

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

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

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

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

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

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

12. The cost for the spouse who is seeking maintenance to obtain health insurance and the reduction in the cost of health insurance for the other spouse(s) from whom maintenance is sought if the spouse(s) from whom maintenance is sought is able to convert family health insurance to employee health insurance after the marriage is dissolved.

13. All actual damages and judgments from conduct that results in criminal conviction of any spouse in which another spouse or child was the victim.

C. If both parties agree, the maintenance order and a decree of dissolution of marriage or of legal separation may state that its maintenance terms shall not be modified.

D. Except as provided in subsection C of this section or section 25-317, subsection G, the court shall maintain continuing jurisdiction over the issue of maintenance for the period of time maintenance is awarded.

§320 - Child support; factors; methods of payment; additional enforcement provisions; definitions

A. In a proceeding for dissolution of marriage, legal separation, maintenance or child support, the court may order any of the parents owing a duty of support to a child, born to or adopted by the parents, to pay an amount reasonable and necessary for support of the child, without regard to marital misconduct.

B. If child support has not been ordered by a child support order and if the court deems child support appropriate, the court shall direct, using a retroactive application of the child support guidelines to the date of filing a dissolution of marriage, legal separation, maintenance or child support proceeding, the amount that the parents shall pay for the past support of the child and the manner in which

payment shall be paid, taking into account any amount of temporary or voluntary support that has been paid. Retroactive child support is enforceable in any manner provided by law.

C. If the parties lived apart before the date of the filing for dissolution of marriage, legal separation, maintenance or child support and if child support has not been ordered by a child support order, the court may order child support retroactively to the date of separation, but not more than three years before the date of the filing for dissolution of marriage, legal separation, maintenance or child support. The court must first consider all relevant circumstances, including the conduct or motivation of the parties in that filing and the diligence with which service of process was attempted on the obligor spouse(s) or was frustrated by the obligor spouse(s). If the court determines that child support is appropriate, the court shall direct, using a retroactive application of the child support guidelines, the amount that the parents must pay for the past support of the child and the manner in which payments must be paid, taking into account any amount of temporary or voluntary support that has been paid.

D. The supreme court shall establish guidelines for determining the amount of child support. The amount resulting from the application of these guidelines is the amount of child support ordered unless a written finding is made, based on criteria approved by the supreme court, that application of the guidelines would be inappropriate or unjust in a particular case. The supreme court shall review the guidelines at least once every four years to ensure that their application results in the determination of appropriate child support amounts. The supreme court shall base the guidelines and criteria for deviation from them on all relevant factors, including:

1. The financial resources and needs of the child.
2. The financial resources and needs of the custodial parent.
3. The standard of living the child would have enjoyed had the marriage not been dissolved.
4. The physical and emotional condition of the child, and the child's educational needs.
5. The financial resources and needs of the noncustodial parent(s).
6. The medical support plan for the child. The plan should include the child's medical support needs, the availability of medical insurance or services provided by the Arizona health care cost containment system and whether a cash medical support order is necessary.

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

8. The duration of parenting time and related expenses.

E. Even if a child is over the age of majority when a petition is filed or at the time of the final decree, the court may order support to continue past the age of majority if all of the following are true:

1. The court has considered the factors prescribed in subsection D of this section.

2. The child is severely mentally or physically disabled as demonstrated by the fact that the child is unable to live independently and be self-supporting.

3. The child's disability began before the child reached the age of majority.

F. If a child reaches the age of majority while the child is attending high school or a certified high school equivalency program, support shall continue to be provided during the period in which the child is actually attending high school or the equivalency program but only until the child reaches nineteen years of age unless the court enters an order pursuant to subsection E of this section. Notwithstanding any other law, a parent paying support for a child over the age of majority pursuant to this section is entitled to obtain all records related to the attendance of the child in the high school or equivalency program.

G. If a personal check for support payments and handling fees is rightfully dishonored by the payor bank or other drawee, the person obligated to pay support shall make any subsequent support payments and handling fees only by cash, money order, cashier's check, traveler's check or certified check. If a person required to pay support other than by personal check demonstrates full and timely payment for twenty-four consecutive months, that person may pay support by personal check if these payments are for the full amount, are timely tendered and are not rightfully dishonored by the payor bank or other drawee.

H. Subsection G of this section does not apply to payments made by means of an assignment.

I. If after reasonable efforts to locate the obligee the clerk or support payment clearinghouse is unable to deliver payments for the period prescribed in section 25-503 due to the failure of the person to whom the support has been

ordered to be paid to notify the clerk or support payment clearinghouse of a change in address, the clerk or support payment clearinghouse shall not deliver further payments and shall return the payments to the obligor consistent with the requirements of section 25-503.

J. An order for child support shall assign responsibility for providing medical insurance for the child who is the subject of the support order to one of the parents and shall assign responsibility for the payment of any medical costs of the child that are not covered by insurance according to the child support guidelines. Each parent shall provide information to the court regarding the availability of medical insurance for the child that is accessible and available at a reasonable cost. In title IV-D cases, the parent responsible pursuant to court order for providing medical insurance for the child shall notify the child support enforcement agency in the department of economic security if medical insurance has been obtained or if the child is no longer covered under an insurance plan.

K. If the court finds that no parent has the ability to obtain medical insurance for the child that is accessible and available at a reasonable cost, the court shall:

1. In a title IV-D case, in accordance with established title IV-D criteria, establish a reasonable monthly cash medical support order to be paid by the obligor(s). If medical assistance is being provided to a child under title XIX of the social security act, cash medical support is assigned to the state pursuant to section 46-407. On verification that the obligor(s) has obtained private insurance, the cash medical support order terminates by operation of law on the first day of the month after the policy's effective date or on the date the court, or the department in a title IV-D case, is notified that insurance has been obtained, whichever is later. If the private insurance terminates, the cash medical support order automatically resumes by operation of law on the first day of the month following the termination date of the policy.

2. Order a parent to provide medical insurance when it becomes accessible and available at a reasonable cost.

3. Order that medical costs in excess of the cash medical support amount shall be paid by each parent according to the percentage assigned for payment of uninsured costs.

L. In a title IV-D case, if the court orders a noncustodial parent to obtain medical insurance the court shall also set an alternative cash medical support order to be paid by that parent if the child is not covered under an insurance plan within ninety days after entry of the order or if the child is no longer covered by

insurance. The court shall not order the custodial parent to pay cash medical support.

M. In title IV-D cases the superior court shall accept for filing any documents that are received through electronic transmission if the electronically reproduced document states that the copy used for the electronic transmission was certified before it was electronically transmitted.

N. The court shall presume, in the absence of contrary testimony, that a parent is capable of full-time employment at least at the applicable state or federal adult minimum wage, whichever is higher. This presumption does not apply to noncustodial parents who are under the age of eighteen and who are attending high school.

O. An order for support shall provide for an assignment pursuant to sections 25-504 and 25-323.

P. Each licensing board or agency that issues professional, recreational or occupational licenses or certificates shall record on the application the social security number of the applicant and shall enter this information in its database in order to aid the department of economic security in locating parents or their assets or to enforce child support orders. This subsection does not apply to a license that is issued pursuant to title 17 and that is not issued by an automated drawing system. If a licensing board or agency allows an applicant to use a number other than the social security number on the face of the license or certificate while the licensing board or agency keeps the social security number on file, the licensing board or agency shall advise an applicant of this fact.

Q. For the purposes of this section:

1. "Accessible" means that insurance is available in the geographic region where the child resides.

2. "Child support guidelines" means the child support guidelines that are adopted by the state supreme court pursuant to 42 United States Code sections 651 through 669B.

3. "Date of separation" means the date the married parents ceased to cohabit.

4. "Reasonable cost" means an amount that does not exceed the higher of five per cent of the gross income of the obligated parent or an income-based numeric standard that is prescribed in the child support guidelines.

5. "Support" has the same meaning prescribed in section 25-500.

6. "Support payments" means the amount of money ordered by the court to be paid for the support of the minor child or children.

§320.02 - Self-employed parent; tax practitioner; definition

A. On request of any parent or on the court's own motion, before the court enters an order for child support pursuant to section 25-320, the court may order the parents to meet with a federally authorized tax practitioner if at least one of the parents is self-employed. The federally authorized tax practitioner shall review the accuracy of any self-employed parent's records and submit a written report to the court to help it determine the child support obligation.

B. Each parent may submit to the court the names of not more than two federally authorized tax practitioners. If the parents cannot agree on a federally authorized tax practitioner to conduct the review, the court shall make this choice from a list of names submitted by the parents.

C. The court shall determine which parent(s) shall pay for the cost of the federally authorized tax practitioner or determine each parent's share of this cost.

D. For the purposes of this section, "federally authorized tax practitioner" has the same meaning prescribed in section 42-2069.

§321 - Representation of child by counsel; fees

The court may appoint an attorney to represent the interests of a minor or dependent child with respect to the child's support, custody and parenting time. The court may enter an order for costs, fees and disbursements in favor of the child's attorney. The order may be made against any parents.

§322 - Payment of maintenance or support; records; disclosure

A. Except as provided in section 46-441, the court shall order that maintenance or support payments be made to the support payment clearinghouse for remittance to the person entitled to receive the payments unless the parties agree otherwise.

B. The clerk of the court or the support payment clearinghouse shall maintain records listing the amount of payments, the date payments are required to be made, the names and addresses of the parties affected by the order and the name and address of the employer or employers of the party or parties ordered to pay support or spousal maintenance.

C. Unless the court has ordered otherwise the parties affected by the order shall inform the clerk of the court or the support payment clearinghouse in writing on entry of the order of their residential address and within ten days of any change of address. A party ordered to pay support or maintenance shall also inform the clerk or the support payment clearinghouse in writing of the name and address of that person's employer or employers and within ten days of any change of employment. If a person fails to notify the clerk of the court or the support payment clearinghouse of a change in residential address or employment the court may hold the person in contempt of court.

D. If the person obligated to pay support has left or is beyond the jurisdiction of the court, any party may institute any other proceeding available under the laws of this state for enforcement of the duties of support and maintenance.

E. On application by any person entitled to receive child support or spousal maintenance and for good cause shown, the superior court may direct an agency or officer of this state to disclose information and documents in the agency's or officer's possession that may assist the applicant or the court to determine the obligor's income, residence, place of employment, assets and debts, except that the residence and place of employment shall not be disclosed if the court finds the obligor has been the victim of domestic violence.

§323 - Assignments

A. Pursuant to the requirements of section 25-504, in any proceeding in which the court orders a person to pay support as defined in section 25-500 the court shall, and in any proceeding in which the court orders a person to pay spousal maintenance the court may, assign to the person or agency entitled to receive the support or spousal maintenance that portion of that person's earnings, income, entitlements or other monies without regard to source as necessary to pay the amount ordered by the court.

B. The court may also issue an ex parte order of assignment pursuant to section 25-504 for support as defined in section 25-500, spousal maintenance or arrearages of or interest on a judgment for spousal maintenance.

C. The court may terminate or adjust orders of assignment pursuant to section 25-504.

§323.01 - Child support committee; membership; duties; report

A. The child support committee is established consisting of the following members:

1. The director of the department of economic security or the director's designee.
2. The assistant director of the division of child support enforcement of the department of economic security.
3. A division or section chief from the office of the attorney general, or the division or section chief's designee, who has knowledge of or experience in child support enforcement and related issues and who is appointed by the attorney general.
4. The director of the administrative office of the supreme court or the director's designee.
5. Two presiding judges from the domestic relations division of the superior court who are appointed by the chief justice of the supreme court. One judge shall be from an urban county and one judge shall be from a rural county.
6. A title IV-D court commissioner who is appointed by the chief justice of the supreme court.
7. A clerk of the superior court who is appointed by the chief justice of the supreme court.
8. One county attorney who is appointed by the director of the department of economic security and who is from a county that is currently contracting with the state to provide child support enforcement services.
9. An executive assistant from the office of the governor who is appointed by the governor.
10. One person who is knowledgeable in child support issues and who is a noncustodial parent and one person who is knowledgeable in child support issues and who is a custodial parent. The president of the senate shall appoint these members.
11. One person who is knowledgeable in child support issues and who is a noncustodial parent and one person who is knowledgeable in child support issues and who is a custodial parent. The speaker of the house of representatives shall appoint these members.

12. One parent who is knowledgeable in child support issues, who has joint custody and who is appointed jointly by the president of the senate and the speaker of the house of representatives.

13. One person from the executive committee of the family law section of the state bar of Arizona who is appointed by the chief justice of the supreme court.

14. One person from the business community who is appointed jointly by the president of the senate and the speaker of the house of representatives.

15. Two members of the senate from different political parties. The president of the senate shall appoint the members and designate one of the members as the co-chairperson.

16. Two members of the house of representatives from different political parties. The speaker of the house of representatives shall appoint the members and designate one of the members as the co-chairperson.

B. The committee shall prepare an annual written report on its work, findings and recommendations regarding child support guidelines, enforcement and related issues. The committee shall submit this report to the governor, the president of the senate, the speaker of the house of representatives and the chief justice of the supreme court on or before December 31 of each year and shall provide a copy of this report to the secretary of state and the director of the Arizona state library, archives and public records. Beginning July 1, 2011, the report shall be submitted electronically.

C. Nonlegislative members of the committee are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

§323.02 - Domestic relations committee; membership; duties; pilot programs; report

A. The domestic relations committee is established consisting of the following members:

1. Two noncustodial parents who are knowledgeable in domestic relations issues and who are not judges or commissioners. The president of the senate and the speaker of the House of Representatives shall each appoint one of these members.

2. Two custodial parents who are knowledgeable in domestic relations issues and who are not judges or commissioners. The president of the senate and the speaker of the House of Representatives shall each appoint one of these members.

3. Two parents who have joint custody, who are knowledgeable in domestic relations issues and who are not judges or commissioners. The president of the senate and the speaker of the House of Representatives shall each appoint one of these members.

4. Two parents who are knowledgeable in domestic relations issues, who are not judges or commissioners and who are appointed by the governor.

5. Two active or retired judges or commissioners, or both, from the domestic relations department of the superior court who are appointed by the chief justice of the Supreme Court. One of these members shall be from an urban county and one member shall be from a rural county.

6. One domestic relations attorney who is appointed by the governor.

7. One clerk of the superior court who is appointed by the chief justice of the Supreme Court.

8. A professional domestic relations mediator who is appointed by the president of the senate.

9. A psychologist who is experienced in performing child custody evaluations and who is appointed by the speaker of the House of Representatives.

10. A domestic relations educator who is experienced in matters relating to parenting or divorce classes and who is appointed by the governor.

11. A representative of a statewide domestic violence coalition who is appointed by the president of the senate.

12. A representative of a conciliation court who is appointed by the chief justice of the Supreme Court.

13. A marriage and family therapist who is knowledgeable in domestic relations issues and who is appointed by the speaker of the House of Representatives.

14. A representative from a faith-based organization who is knowledgeable in domestic relations issues and who is appointed by the governor.

15. An administrative officer of the Supreme Court who is appointed by the chief justice of the Supreme Court or the officer's designee.

16. A member of a law enforcement agency in this state who is appointed by the speaker of the House of Representatives.

17. A member of an agency that advocates for children who is appointed by the president of the senate.

18. One member of the family law section of the state bar of Arizona who is appointed by the chief justice of the Supreme Court.

19. Four members of the senate, not more than two of whom are members of the same political party. The president of the senate shall appoint these members and shall designate one of them as the co-chairperson.

20. Four members of the House of Representatives, not more than two of whom are members of the same political party. The speaker of the House of Representatives shall appoint these members and designate one of them as the co-chairperson.

B. The committee shall prepare an annual written report regarding recommended changes to the domestic relations statutes, rules and procedures and other related issues designed to lead to a reform of the state's domestic relations statutes. The committee shall submit this report to the governor, the president of the senate, the speaker of the house of representatives and the chief justice of the supreme court on or before December 31 of each year and shall provide a copy of the report to the secretary of state and the director of the Arizona state library, archives and public records. Beginning July 1, 2011, the report shall be submitted electronically.

C. The committee shall develop minimum training standards on domestic violence and child abuse issues for persons conducting an investigation or preparing a report concerning child custodial arrangements pursuant to section 25-

406. The committee shall approve the standards. The committee may modify the standards on or before December 31 of each year.

E. Non-legislative members of the committee are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

323.03 Forms; alternative forms

A. The petition or request for assignment, order for assignment, notices to obligor and employer, request for hearing and motion to quash or request to stop or modify the order of assignment shall be on forms prescribed by the supreme court and shall be furnished by the clerk of the superior court as required by law or on request of any obligor, payee or employer.

B. Any party to a proceeding for assignment may use documents other than those provided pursuant to this section if the documents are substantially similar to those prescribed by the Supreme Court pursuant to this section.

§324 - Attorney fees

A. The court from time to time, after considering the financial resources of all parties and the reasonableness of the positions each party has taken throughout the proceedings, may order a party to pay a reasonable amount to another party for the costs and expenses of maintaining or defending any proceeding under this chapter or chapter 4, article 1 of this title. On request of a party or another court of competent jurisdiction, the court shall make specific findings concerning the portions of any award of fees and expenses that are based on consideration of financial resources and that are based on consideration of reasonableness of positions. The court may make these findings before, during or after the issuance of a fee award.

B. If the court determines that a party filed a petition under one of the following circumstances, the court shall award reasonable costs and attorney fees to the other party:

1. The petition was not filed in good faith.
2. The petition was not grounded in fact or based on law.
3. The petition was filed for an improper purpose, such as to harass the other party, to cause an unnecessary delay or to increase the cost of litigation to the other party.

C. For the purpose of this section, costs and expenses may include attorney fees, deposition costs and other reasonable expenses as the court finds necessary to the full and proper presentation of the action, including any appeal.

D. The court may order all amounts paid directly to the attorney, who may enforce the order in the attorney's name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

§325 - Decree; finality; restoration of maiden name

A. A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree that dissolves the marriage beyond the time for appealing from that provision, and the parties may remarry pending appeal. An order directing payment of money for support or maintenance of a spouse or a minor child or children shall not be suspended or the execution of the order stayed pending the appeal.

B. Any party to a decree of legal separation may file a petition for dissolution of marriage in accordance with the requirements of section 25-314. The petition shall be filed under the same case number as the legal separation but shall be considered and shall proceed as a new and separate action with service of process in accordance with rule 40 of the Arizona rules of family law procedure. The court may enter a decree of dissolution of marriage in the new action in accordance with section 25-312 on terms that are just and without regard to section 25-327, subsection A, except that the provisions as to property disposition in the decree of legal separation or any property settlement agreement approved by the court may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

C. On request by a party at any time before the signing of the decree of dissolution or annulment by the court, the court shall order that the party's requested former name be restored.

§326 - Independence of provisions of decree or temporary order; forms

A. If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the party or parties to make payments for support or maintenance or to permit parenting time is not suspended, but the other party or parties may petition or request the court to grant an appropriate order.

B. The petition or request shall be in a form prescribed by the Supreme Court, which shall be furnished by the clerk of the superior court on request of

any party. The party may use a document other than one provided pursuant to this section if the document is substantially similar to the one prescribed by the supreme court pursuant to this section.

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

A. Except as otherwise provided in section 25-317, subsections F and G, the provisions of any decree respecting maintenance or support may be modified or terminated only on a showing of changed circumstances that are substantial and continuing except as to any amount that may have accrued as an arrearage before the date of notice of the motion or order to show cause to modify or terminate. The addition of health insurance coverage as defined in section 25-531 or a change in the availability of health insurance coverage may constitute a continuing and substantial change in circumstance. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state. Modifications and terminations are effective on the first day of the month following notice of the petition for modification or termination unless the court, for good cause shown, orders the change to become effective at a different date but not earlier than the date of filing the petition for modification or termination.

B. Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated on the death of any of the parties, obligors or obliges, or the remarriage of the obligee receiving maintenance.

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

D. Notwithstanding any other law, pursuant to a petition filed pursuant to this section the court may suspend the imposition of future interest that accrues on a judgment for support issued pursuant to this article for the period of time that the party is incarcerated or physically or mentally disabled to the extent that the person is unable to maintain employment.

§328 - Sequence of trials when custody or parenting time is an issue

A. In all cases when custody or parenting time is a contested issue, the court shall first hear and decide all other issues including maintenance and child support if requested to do so by a party or the attorney of the child or children of the marriage. The request shall be in the form of a written demand filed with a motion to set or a controverting certificate.

B. On stipulation of the parties, the court shall first hear and decide custody or parenting time issues.

C. In the absence of a request or stipulation made pursuant to this section, the court may try any issue separately and in any sequence.

§ 329 - Waiting period

The court shall not consider a submission of a motion supported by affidavit or hold a trial or hearing on an application for a decree of dissolution of marriage or legal separation until thirty days after the date of service of process or the date of acceptance of process.

§330 - Employer cooperation

Any party to an order for support or maintenance or an agency that has obtained a judgment in its favor in an action to establish parentage or an action to establish child support may request information from an employer, payor or self-employed person pursuant to section 25-513.

§331 - Notification requirements

A. In all proceedings brought pursuant to this title, the court shall provide the following written notification to all parties:

You may request conclusions of fact and law on the following issues, if they are contested: the issues of child custody, relocation requests, spousal maintenance, community property, community debt and child support. To request conclusions of fact and law, you must file a written request with the court before the trial or the evidentiary hearing. If you make a written request before the trial or evidentiary hearing, the court will make conclusions of fact and law as part of the final decision.

B. The court shall provide the notification required by subsection A to all parties in the minute entry setting the case for a trial or evidentiary hearing.

Article 5: Domestic Relations Education on Children's Issues (§§351- 355)

§351 - Domestic relations education; plan; administration

A. The superior court in each county shall adopt and implement an educational program for the purpose of educating persons about the impact of divorce on adults and children.

B. The Supreme Court shall adopt minimum standards for educational programs. The presiding judge of the superior court in each county shall submit an educational program plan to the Supreme Court for approval. The plan shall be consistent with the minimum standards that are adopted by the Supreme Court, including the length and nature of the program, the qualifications of program providers and the means by which the program will be evaluated and maintained. Beginning January 1, 2013, these standards shall require that educational programs at a minimum include instruction related to all of the following:

1. The emotional, psychological, financial, physical and other short-term and long-term effects of divorce on adults and children.
2. Options available as alternatives to divorce.
3. Resources available to improve or strengthen marriage.
4. The legal process of divorce and options available for mediation.
5. Resources available after divorce.

C. Each program shall also include information regarding the notification requirements of section 25-403.05, subsection B.

D. The presiding judge of the superior court or a judge who is designated by the presiding judge shall administer the program in each county and may provide or contract with political subdivisions in this state or private entities to provide the program to participants who are required to attend.

§352 - Applicability of program; compliance

A. In an action for dissolution of marriage, legal separation or annulment that involves a minor, unemancipated, or disabled child who is common to the parties or in any parentage proceeding under chapter 6, article 1 of this title in which a party has requested that the court determine custody, specific parenting time or child support, the court shall order the parties to complete an educational program as prescribed by this article, unless any of the following applies:

1. On its own motion or the motion of either party the court determines that participation is not in the best interests of the parties or the child.

2. A party is or will be enrolled in an education program that the court deems comparable.

3. The court determines that a party previously has completed an educational program adopted pursuant to this article or a comparable program. The court may order a party to attend a program more than once.

B. In an action or proceeding involving child support or the modification or enforcement of parenting time or custody, the court may order a party to complete an educational program as prescribed by this article.

C. If the parties have a history of domestic violence as defined in section 13-3601 the court may enter appropriate orders that set forth the manner in which the parties shall participate in the program and shall make reasonable efforts to protect the safety of the participants.

D. Each party shall complete the educational program within the time ordered by the judge. The judge may extend the deadline for compliance.

§353 - Failure to comply

Unless the court excuses a party's participation, if a party fails to complete the educational program as ordered pursuant to section 25-352 the court may deny relief in favor of that party, hold that party in contempt of court or impose any other sanction reasonable in the circumstances.

§354 - Children's issues education fund; report

A. A children's issues education fund is established in each county treasury to implement an educational program as prescribed by this article. The presiding judge of the superior court in the county shall administer the fund.

B. The fund consists of monies collected pursuant to section 25-355.

C. The county treasurer shall disburse monies from the fund only at the direction of the presiding judge of the superior court.

D. On notice of the presiding judge of the superior court, the county treasurer shall invest monies in the fund and monies earned from investment shall be credited to the fund.

E. Monies that are expended from the fund shall be used to supplement, not supplant, any state or county appropriations that would otherwise be available for programs that are established pursuant to this article.

F. On or before August 10 of each year, the county treasurer shall submit a report to the presiding judge that shows the amount of monies in the children's issues education fund.

§355 - Fees; deferral or waiver

Each person who attends the educational program required by the court pursuant to section 25-352 may be required to pay to the clerk of the superior court a fee not to exceed fifty dollars that covers the cost of the program. The fee may be deferred or waived pursuant to section 12-302. Notwithstanding any other law, fees paid under this section shall be used exclusively for the purposes of domestic relations education programs that are established pursuant to section 25-351. The clerk shall transmit monthly the monies the clerk collects pursuant to this subsection to the county treasurer for deposit in the children's issues education fund established by section 25-354.

Article 7: Court of Conciliation (25-381.01 - 25-381.24)

§381.01 - Purposes of article

The purposes of this article are to promote the public welfare by preserving, promoting and protecting family life and the institution of marriage to protect the rights of children and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

§381.02 Definitions

In this article, unless the context otherwise requires: "Conciliation court" means a court of conciliation provided for in this article.

§381.03 Applicability of article; determination by superior court

The provisions of this article shall apply in every county where the superior court has by rule or order established a conciliation court. Such superior court shall thereafter have jurisdiction under the provisions of this article.

§381.04 Assignment of judges; number of sessions

In counties having more than one judge of the superior court, the presiding judge may annually, in the month of January, designate at least one judge to hear

all cases under this article. The judge or judges so designated shall hold as many sessions of the conciliation court in each week as are necessary for the prompt disposition of the business before the court.

§381.05 - Transfer of cases; reason; duties of transferee judge

The judge of the conciliation court may transfer any case before the conciliation court pursuant to this article to the presiding judge of the superior court for trial or other proceedings by another judge of the court whenever, in the opinion of the judge of the conciliation court, such transfer is necessary to expedite the business of the conciliation court or to insure the prompt consideration of the case. When any case is so transferred, the judge to whom it is transferred shall act as the judge of the conciliation court in the matter.

§381.06 - Court assistants; salaries; appointments

A. The superior court may appoint the following persons to assist the conciliation court in disposing of its business:

1. A competent person to act as director of conciliation.
2. Such associate directors, family counselors, social workers, investigators, stenographers and clerks as the court shall find necessary to carry out the work of the conciliation court.

B. The appointments provided for in this section shall be made by and may be terminated by the judge of the conciliation court and may be made in addition to all other appointments authorized by law. All of the employees provided for in this section shall be allowed actual traveling and necessary expenses incurred while engaged in the discharge of the duties of their office, and shall be paid salaries comparable to other personnel employed by the superior court in the discharge of its duties.

§381.07 - Director of conciliation; powers and duties

The director of conciliation shall, upon the order of the judge of the conciliation court:

1. Investigate the facts upon which to base warrants, subpoenas, orders or directions in action or proceedings filed in or transferred to the conciliation court pursuant to this article.

2. Hold conciliation conferences with parties to, and hearings in, proceedings under this article, and report the results of such proceedings to the judge of the conciliation court.

3. Provide such supervision in connection with the exercise of its jurisdiction as the judge of the conciliation court may order.

4. Cause the orders and findings of the judge of the conciliation court to be entered in the same manner as orders and findings are entered in domestic relations cases in superior court.

5. Cause such reports to be made, such statistics to be compiled, and such reports to be kept as the judge of the conciliation court may direct.

§381.08 - Jurisdiction

Whenever any controversy exists between spouses which may, unless a reconciliation is achieved, result in the legal separation, dissolution or annulment of the marriage or in the disruption of the household, and there is any minor child of the spouses or either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy, and over the parties thereto and all persons having any relation to the controversy, as further provided in this article.

§381.09 - Petition invoking jurisdiction or for transfer of action to conciliation court

Prior to the filing of any action for annulment, dissolution of marriage, or legal separation, any spouse may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a conciliation between the parties or for amicable settlement of the controversy between the spouses so as to avoid further litigation over the issues involved. In any case where an action for annulment, dissolution of marriage, or legal separation has been filed, any party thereto may by petition filed therein have the cause transferred to the conciliation court for proceedings in the same manner as though action had been instituted in the conciliation court in the first instance.

381.10 Petition; caption

The petition shall be captioned substantially as follows: In the Superior Court of the State of Arizona in and for the County of _____ Upon the petition of Petitioner for _____ conciliation (Petitioner) and

concerning under the Court _____ and of Conciliation
_____ respondents Law.

§381.11 - Petition; contents

The petition shall:

1. Allege that a controversy exists between the spouses and request the aid of the conciliation court to effect reconciliation or an amicable settlement of the controversy.

2. State the name and age of each minor child whose welfare may be affected by the controversy.

3. State the name and address of the parties.

4. If the petition is presented by one spouse only, name the other spouse(s) as a respondent(s) and state the address of the spouse(s).

5. Name as an additional respondent any other person who has any relation to the controversy and state the address of the person if known to the petitioner.

6. State such other information as the conciliation court may by rule require.

§381.12 - Blank forms; assistance in preparing and presenting petition

The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this article. The employees of the conciliation court shall assist any person in the preparation and presentation of any such petition when requested to do so.

§381.13 - Fees

No fee shall be charged for filing the petition, nor shall any fee be charged by any officer for the performance of any duty pursuant to this article.

§381.14 - Hearing; time; place; notice; citation; witnesses

The judge of the conciliation court shall fix a reasonable time and place for hearing on the petition, said hearing to be held within thirty days of the date of the filing of the petition, unless the court for good cause orders such hearing to be held within forty-five days from the date of filing the petition. The court shall cause notice of the filing of the petition and of the time and place of the hearing as

it deems necessary to be given to the respondents. The court may, when it deems it necessary, issue a citation to any respondent requiring him or her to appear at the time and place stated in the citation, and may require the attendance of witnesses as in other civil suits.

§381.15 - Time and place of holding hearings

Hearings pursuant to this article may be held at any time and place within the county, and may be held in chambers or otherwise, except that the time and place for hearing shall not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

§381.16 - Conduct of hearing; recommendations; aid of specialists; expense; confidential communications

A. A person designated by the judge of the conciliation court shall conduct an informal hearing as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues.

B. At the conclusion of the hearing the designated person shall submit a report to the director of conciliation who shall review it and shall report the results of the hearing to the judge of the conciliation court. The judge of the conciliation court may, and on request of one or both of the parties shall, order further hearings in pursuance of this article.

C. To facilitate and promote the purposes of this article, the court may, with the consent of the parties to the action, recommend or invoke the aid of appropriate resources such as physicians, psychiatrists, social agencies or other individuals or agencies including clergymen of the religious denomination to which the parties belong or may request. No reports of any such individual or agency available to the court shall be filed with or become a part of the records of the case. Any such aid shall not be at the expense of the court or of the county unless the county board of supervisors shall authorize such aid.

D. Hearings or conferences conducted pursuant to this article for the purpose of effecting a reconciliation of the spouses or an amicable adjustment or settlement of issues shall be held in private, and the court shall exclude all persons except the officers of the court, the parties, their counsel and witnesses. Hearings or conferences may be held with each party and counsel separately and, in the discretion of the judge, commissioner or counselor conducting the hearing or conference, counsel for one party may be excluded when an adverse party is present. All communications, verbal or written, from the parties to the judge,

commissioner or counselor in a proceeding under this article shall be deemed confidential communications, and shall not be disclosed without the consent of the party making such communication.

§381.17 - Orders; duration of effectiveness; reconciliation agreement

A. The judge of the conciliation court shall have full power to make, alter, modify, and enforce all orders or temporary orders, orders for custody of children, restraining orders, preliminary injunctions and orders affecting possession of property, as may appear just and equitable, but such orders shall not be effective for more than the period of the stay under section 25-381.18, unless the parties mutually consent to a continuation of such time.

B. Any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

§381.18 - Dissolution of marriage; legal separation; annulment; stay of right to file; jurisdiction for pending actions

A. During a period beginning on the filing of a petition for conciliation and continuing until sixty days after the filing of the petition for conciliation, no spouse shall file any action for annulment, dissolution of marriage or legal separation, and, on the filing of a petition for conciliation, proceedings then pending in the superior court are stayed and the case shall be transferred to the conciliation court for hearing and further disposition as provided in this article. All restraining, support, maintenance or custody orders issued by the superior court remain in full force and effect until vacated or modified by the conciliation court or until they expire by their own terms.

B. If any party wishes to extend the stay prescribed pursuant to subsection A, that party must file a petition with the court that states the basis for the extension and includes a plan for reconciliation or a counseling schedule. The court may grant a reasonable extension of up to one hundred twenty days if the moving party establishes good cause for the extension. The court shall not grant an extension if another party objects with good cause.

C. If, after the expiration of the period prescribed in subsection A and any extension granted pursuant to subsection B, the controversy between the spouses has not been terminated, any spouse may institute proceedings for annulment of marriage, dissolution of marriage or legal separation by filing in the clerk's office additional pleadings complying with the requirements relating to annulment of marriage, dissolution of marriage or legal separation, respectively, or either spouse may proceed with the action previously stayed, and the conciliation court

has full jurisdiction to hear, try and determine the action for annulment of marriage, dissolution of marriage or legal separation and to retain jurisdiction of the case for further hearings on decrees or orders to be made. The conciliation provisions of this article may be used in regard to post-dissolution problems concerning maintenance support, parenting time or contempt or for modification based on changed conditions in the discretion of the conciliation court.

D. On the filing of an action for annulment, dissolution of marriage or legal separation and after the expiration of sixty days from the service or the acceptance of service of process on or by the defendant, any spouse without the consent of the other may file a petition invoking the jurisdiction of the conciliation court, as long as the domestic relations case remains pending, unless it appears to the court that the filing will not delay the orderly processes of the pending action, in which event the court may accept the petition and the filing of the petition has the same effect as the filing of any such petition within such sixty days after the service or acceptance of process.

§381.19 - transfer of certain actions where minor child involved

Whenever any action for annulment of marriage, dissolution of marriage, or legal separation is filed in the superior court and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or any spouse whose welfare may be adversely affected by the dissolution or annulment of the marriage, legal separation or the disruption of the household, and there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy in accordance with the provisions of this article.

§381.20 - Procedure in actions where no child is involved; conciliation court may accept case

Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses or a contested action for annulment of marriage, dissolution of marriage, or legal separation, but there is no minor child whose welfare might be affected by the results of the controversy, and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved, and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this article in similar cases involving the welfare of children.

§381.21 - Construction of article

Except as specifically and expressly so provided, nothing in this article is intended or shall be construed to repeal, modify, or change in any respect whatsoever the laws relating to annulment of marriage, dissolution of marriage, or legal separation, and the court of conciliation shall, when application for such relief is made as provided in this article, apply such laws in the same manner as if action had been brought thereunder in the first instance in the superior court, but the conciliation procedures of the conciliation court shall be applied to arrive at an amicable settlement of all issues in controversy.

§381.22 - Subsequent petition filed within one year

Once a petition by any spouse has been filed as permitted by section 25-381.09, the filing of any subsequent petition under such section within one year thereafter by another of the spouses shall not stay any action for annulment, dissolution of marriage, or legal separation then pending nor prohibit the filing of such an action by another spouse. The filing of a subsequent petition by another spouse more than one year after the filing of any previous petition with such effect shall have the same effect toward staying any domestic relations action then pending and toward prohibiting the filing of any such action as provided in section 25-381.18.

§381.23 Option for mandatory conciliation

In those counties in which the superior court has by rule or order established a conciliation court, the judge or judges of the conciliation court may, by local rule, with the approval of the presiding judge of the superior court in that county, require one or more hearings or conferences at which the parties must attend in order to further the purposes of this article. The court may also grant exemptions from such a local and mandatory rule if to do otherwise would cause undue hardship.

§381.24 Counseling

The conciliation court, in counties having a population of less than two hundred thousand persons according to the most recent United States census, may contract with qualified counselors to provide counseling services.

D: Child Custody and Visitation

The proposed new chapter 4 retains most of the existing statutory scheme but with some important changes. The changes are not just semantics, as in

understanding the singular to include the plural and removing gendered pronouns. The changes allow this law to be applied to all kinds of parents—those who provide fiduciary support, daily care-taking duties, and decisional-authority. The changes provide varying degrees of custody and visitation based in the type of parenting each parent provides for each child and allows for multiple parents regardless of their sex. For instance, one man may be the biological progenitor (and therefore financial provider) of one child and the daily care-giver as well as financial provider for another. A woman may be a biological progenitor of a child but did so without any intention, and therefore obligations, regarding parentage of that child.

Article 1: Child Custody (§§401 - 415)

§401 - Jurisdiction; commencement of proceedings

A. Jurisdiction for child custody proceedings is governed by chapter 8 of this title.

B. A child custody proceeding is commenced in the superior court:

1. By filing a petition for either of the following:

(a) Dissolution or legal separation.

(b) Custody of a child for which there has been a prior establishment of parentage.

2. By a person other than a parent, by filing a petition for custody of the child in the county in which the child is permanently resides or is found, but only if the child is not in the physical custody of a parent.

3. At the request of any person who is a party to a parentage proceeding pursuant to chapter 6, article 1 of this title.

§402 - Definitions

In this article, unless the context otherwise requires:

1. "Joint custody" means shared legal custody or shared physical custody, or both.

2. "Joint legal custody" means the condition under which multiple parents share legal custody and no parent's rights are superior, except with respect to specified decisions as set forth by the court or the parents in the final judgment or order.

3. "Joint physical custody" means the condition under which the physical residence of the child is shared by the parents in a manner that assures that the child has substantially equal time and contact with the parents.

4. "Parenting time" means the condition under which a parent has the right to have a child physically with the parent and the right and responsibility to make, during that placement, routine daily decisions regarding the child's care consistent with the major decisions made by any parents having legal and/or physical custody.

5. "Sole custody" means the condition under which one person has exclusive legal and physical custody.

§403 - Custody; best interests of child

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

1. The wishes of the child's parents as to custody.
2. The wishes of the child as to the custodian.
3. The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.
4. The child's adjustment to home, school and community.
5. The mental and physical health of all individuals involved.

6. Which parent is more likely to allow the child frequent and meaningful continuing contact with other parents. This paragraph does not apply if the court determines that a parent is acting in good faith to protect the child from witnessing an act of domestic violence or being a victim of domestic violence or child abuse.

7. Which parent has provided primary care of the child.

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

9. Whether a parent has complied with chapter 3, article 5 of this title.

10. Whether a parent was convicted of an act of false reporting of child abuse or neglect under section 13-2907.02.

11. Whether there has been domestic violence or child abuse as defined in section 25-403.03.

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

§403.01 - Sole and joint custody

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

B. The court may issue an order for joint custody over the objection of one of the parents if the court makes specific written findings of why the order is in the child's best interests. In determining whether joint custody is in the child's best interests, the court shall consider the factors prescribed in section 25-403, subsection A and all of the following:

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

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

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

4. Whether the joint custody arrangement is logistically possible.

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

§403.02 – Parenting plans

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

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

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

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

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

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

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

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

§403.03 - Domestic violence and child abuse

A. Notwithstanding subsection D of this section, joint custody shall not be awarded if the court makes a finding of the existence of significant domestic

violence pursuant to section 13-3601 or if the court finds by a preponderance of the evidence that there has been a significant history of domestic violence.

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

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

1. Findings from another court of competent jurisdiction.
2. Police reports.
3. Medical reports.
4. Child protective services records.
5. Domestic violence shelter records.
6. School records.
7. Witness testimony.

D. If the court determines that a parent who is seeking custody has committed an act of domestic violence there is a rebuttable presumption that an award of custody to the parent who committed the act of domestic violence is contrary to the child's best interests. This presumption applies equally to all parents who have committed an act of domestic violence. For the purposes of this subsection, a person commits an act of domestic violence if that person does any of the following:

1. Intentionally, knowingly or recklessly causes or attempts to cause sexual assault or serious physical injury.
2. Places a person in reasonable apprehension of imminent serious physical injury to any person.
3. Engages in a pattern of behavior for which a court may issue an ex parte order to protect the parent who is seeking child custody or to protect the child and the child's siblings.

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

1. Whether the parent has demonstrated that being awarded sole custody or joint physical or legal custody is in the child's best interests.
2. Whether the parent has successfully completed a batterer's prevention program.
3. Whether the parent has successfully completed a program of alcohol or drug abuse counseling, if the court determines that counseling is appropriate.
4. Whether the parent has successfully completed a parenting class, if the court determines that a parenting class is appropriate.
5. If the parent is on probation, parole or community supervision, whether the parent is restrained by a protective order that was granted after a hearing.
6. Whether the parent has committed any further acts of domestic violence.

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

1. Order that an exchange of the child must occur in a protected setting as specified by the court.
2. Order that an agency specified by the court must supervise parenting time. If the court allows a family or household member to supervise parenting time, the court shall establish conditions that this person must follow during parenting time.
3. Order the parent who committed the act of domestic violence to attend and complete, to the court's satisfaction, a program of intervention for perpetrators of domestic violence and any other counseling the court orders.

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

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

6. Prohibit overnight parenting time.

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

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

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

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

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

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

§403.04 - Drug offenses

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

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

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

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

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

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

§403.05 - Sexual offenders; murderers; custody and parenting time; notification of risk to child

A. Unless the court finds that there is no significant risk to the child and states its reasons in writing, the court shall not grant a person sole or joint physical or legal custody of a child or unsupervised parenting time with a child if the person:

1. Is a registered sex offender.

2. Has been convicted of murder in the first degree and the victim of the murder was another parent of the child who is the subject of the order. In making its finding, the court may consider, among other factors, the following:

(a) Credible evidence that the convicted parent was a victim of domestic violence, as defined in section 13-3601, committed by the murdered parent.

(b) Testimony of an expert witness that the convicted parent suffered trauma from abuse committed by the murdered parent.

B. A child's parent or custodian must immediately notify another parent(s) or custodian(s) if the parent or custodian knows that a convicted or registered sex offender or a person who has been convicted of a dangerous crime against children as defined in section 13-705 may have access to the child. The parent or custodian must provide notice by first class mail, return receipt requested, by

electronic means to an electronic mail address that the recipient provided to the parent or custodian for notification purposes or by other communication accepted by the court.

§403.06 - Parental access to records

A. Unless otherwise provided by court order or law, on reasonable request all parents are entitled to have equal access to documents and other information concerning the child's education and physical, mental, moral and emotional health including medical, school, police, court and other records directly from the custodian of the records or from another parent(s).

B. A person who does not comply with a reasonable request shall reimburse the requesting parent for court costs and attorney fees incurred by that parent to force compliance with this section.

C. A parent who attempts to restrict the release of documents or information by the custodian without a prior court order is subject to appropriate legal sanctions.

§403.07 - Identification of a primary caretaker and public assistance

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

§403.08 - Resources and fees

A. In a proceeding regarding sole custody or joint custody, any party may request attorney fees, costs and expert witness fees to enable the party with insufficient resources to obtain adequate legal representation and to prepare evidence for the hearing.

B. If the court finds there is a financial disparity between the parties, the court may order payment of reasonable fees, expenses and costs to allow adequate preparation.

§403.09 - Child support

A. For any custody order entered under this article, the court shall determine an amount of child support in accordance with section 25-320 and guidelines established pursuant to that section.

B. An award of joint custody does not diminish the responsibility of another parent to provide for the support of the child.

§404 - Temporary orders

A. A party to a custody proceeding may move for a temporary custody order. This motion must be supported by pleadings as provided in section 25-411. The court may award temporary custody under the standards of section 25-403 after a hearing, or, if there is no objection, solely on the basis of the pleadings.

B. If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child require that a custody decree be issued.

C. If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order thereby is vacated.

§405 - Interviews by court; professional assistance

A. The court may interview the child in chambers to ascertain the child's wishes as to the child's custodian and as to parenting time.

B. The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and shall be made available by the court to counsel, on request, under such terms as the court determines. Counsel may examine as a witness any professional personnel consulted by the court, unless that right is waived.

§406 - Investigations and reports

A. In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by the court social service agency, the staff of the juvenile court, the local probation or welfare department, or a private person. The report must include a written affirmation by the person completing the report that the person has met the training requirements prescribed in subsection C.

B. If an investigation or report is ordered pursuant to this section or if the court appoints a family court advisor, the court shall allocate cost based on the financial circumstances of the parties.

C. The court shall require any person who conducts an investigation or prepares a report pursuant to this section to receive training that meets the minimum standards prescribed by the domestic relations committee, established pursuant to section 25-323.02 as follows:

1. Six initial hours of domestic violence training.
2. Six initial hours of child abuse training.
3. Four subsequent hours of training every two years on domestic violence and child abuse.

D. A person that has completed professional training to become licensed or certified may use that training to completely or partially fulfill the requirements in subsection C if the training included at least six hours each on domestic violence and child abuse if the training meets the minimum standards prescribed by the domestic relations committee. Subsequent professional training in these subject matters may be used to partially or completely fulfill the training requirements prescribed in subsection C if the training meets the minimum standards prescribed by the domestic relations committee.

E. A physician who is licensed pursuant to title 32, chapter 13 or 17 is exempt from the training requirements prescribed in subsection C.

F. In preparing a report concerning a child, the investigator may consult any person who may have information about the child or the child's potential custodial arrangements.

G. The court shall mail the investigator's report to counsel at least ten days prior to the hearing. The investigator shall make available to counsel the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call for examination of the investigator and any person consulted by the investigator.

§407 - Custody hearings; priority; costs; record

A. Custody proceedings shall receive priority in being set for hearing.

B. The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interest of the child.

C. The court, without a jury, shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

D. If the court finds that to protect the child's welfare, the record of any interview, report, investigation, or testimony in a custody proceeding should be kept secret, the court may then make an appropriate order sealing the record.

§408 - Rights of noncustodial parent; parenting time; relocation of child; exception; enforcement; access to records

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

B. If by written agreement or court order all parents are entitled to custody or parenting time and all parents reside in the state, at least sixty days' advance written notice shall be provided to another parent(s) before a parent may do either of the following:

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

C. The notice required by this section shall be made by certified mail, return receipt requested, or pursuant to the Arizona rules of family law procedure. The court shall sanction a parent who, without good cause, does not comply with the notification requirements of this subsection. The court may not impose a sanction that will affect custody or parenting time unless it also is in accordance with the child's best interests on separate grounds.

D. Within thirty days after notice is made the nonmoving parent may petition the court to prevent relocation of the child. After expiration of this time any petition or other application to prevent relocation of the child may be granted only on a showing of good cause. This subsection does not prohibit a parent who is seeking to relocate the child from petitioning the court for a hearing, on notice

to another parent, to determine the appropriateness of a relocation that may adversely affect another parents' custody or parenting time rights.

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

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

1. A parent with sole custody or a parent with joint custody and primary physical custody who is required by circumstances of health or safety or employment to relocate in less than sixty days after written notice has been given to another parent may temporarily relocate with the child.

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

G. The court shall determine whether to allow the parent to relocate the child.

§409 - Visitation

A. The superior court may grant reasonable visitation rights to a child during the child's minority only upon a finding that the visitation would be in the best interests of the child and any of the following is true if the petitioner enjoys and maintains a position as a beneficial member of the child's parental unit.

B. In determining the child's best interests the court shall consider all relevant factors, including but not limited to:

1. The historical relationship, if any, between the child and the person seeking visitation.
2. The motivation of the requesting party in seeking visitation.
3. The motivation of the person(s) denying visitation.

4. The quantity of visitation time requested and the potential adverse impact that visitation will have on the child's customary activities.

5. The benefit in maintaining an extended familial relationship.

C. All visitation granted under this section automatically terminates if the child has been adopted or is placed for adoption. This subsection does not apply to the adoption of the child by the spouse of a parent or another member of the child's parental unit.

§410 – Judicial supervision

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

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

§411 Modification of custody decree; affidavit; contents; military families

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

L. To modify any type of custody order a person shall submit an affidavit or verified petition setting forth detailed facts supporting the requested modification and shall give notice, together with a copy of the affidavit or verified petition, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the

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

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

§412 - Expedited child support and parenting time fund

A. Each county treasurer shall establish an expedited child support and parenting time fund consisting of monies received pursuant to section 12-284, subsection D.

B. The presiding judge of the superior court shall use fund monies to establish, maintain and enhance programs designed to expedite the processing of petitions filed pursuant to section 25-326 and to establish, enforce and modify court orders involving children.

C. The county treasurer may invest monies in the fund and shall deposit interest earned in the fund.

D. Monies received from this fund shall be used to supplement and not supplant monies allocated by the county.

§413- Domestic relations education and mediation fund; report

A. Each county treasurer shall establish a domestic relations education and mediation fund consisting of monies received pursuant to section 12-284, subsection C.

B. The presiding judge of the superior court shall use fund monies to establish, maintain and enhance programs designed to educate persons about impacts on children of restructuring of families and programs for mediation of visitation or custody disputes under this chapter or chapter 6 of this title.

C. The county treasurer shall disburse monies from the fund only at the direction of the presiding judge of the superior court.

D. On notice of the presiding judge, the county treasurer shall invest monies in the fund and monies earned from investment shall be credited to the fund.

E. Monies that are expended from the fund shall be used to supplement, and not supplant, any state or county appropriations that would otherwise be available for programs described in subsection B of this section.

F. On or before August 10 of each year, the county treasurer shall submit a report to the presiding judge that shows the amount of monies in the domestic relations education and mediation fund.

§414 - Violation of visitation or parenting time rights; penalties

A. If the court, based on a verified petition and after it gives reasonable notice to an alleged violating parent and an opportunity for that person to be heard, finds that a parent has refused without good cause to comply with a visitation or parenting time order, the court shall do at least one of the following:

1. Find the violating parent in contempt of court.
2. Order visitation or parenting time to make up for the missed sessions.
3. Order parent education at the violating parent's expense.
4. Order family counseling at the violating parent's expense.
5. Order civil penalties of not to exceed one hundred dollars for each violation. The court shall transmit monies collected pursuant to this paragraph each month to the county treasurer. The county treasurer shall transmit these monies monthly to the state treasurer for deposit into the alternative dispute resolution fund established by section 12-135.
6. Order all parents to participate in mediation or some other appropriate form of alternative dispute resolution at the violating parent's expense.
7. Make any other order that may promote the best interests of the child or children involved.

B. Within twenty-five days of service of the petition the court shall hold a hearing or conference before a judge, commissioner or person appointed by the court to review noncompliance with a visitation or parenting time order.

C. Court costs and attorney fees incurred by a nonviolating parent associated with the review of noncompliance with a visitation or parenting time order shall be paid by a violating parent. In the event the custodial parent prevails,

the court in its discretion may award court costs and attorney fees to the custodial parent.

§415 - Custody by nonparent; presumption; grounds; definitions

A. In addition to section 25-401, a child custody proceeding may be commenced in the superior court by a person other than a legal parent by filing a verified petition, or by filing a petition supported by an affidavit, in the county in which the child is permanently a resident or is found. The petition shall include detailed facts supporting the petitioner's right to file the petition. The petitioner shall provide notice as required by subsection E of this section. Notice shall include a copy of the petition and any affidavits. The court shall summarily deny a petition unless it finds that the petitioner by the pleadings established that all of the following are true:

1. The person filing the petition stands *in loco parentis* to the child.

2. It would be significantly detrimental to the child to remain alienated from the Petitioner.

3. A court of competent jurisdiction has not entered or approved an order concerning the child's custody within six months of the filing of a petition pursuant to this section, unless there is reason to believe the child's present environment may seriously endanger the child's physical, mental, moral or emotional health.

4. One of the following applies:

(a) The child's current parental unit consists of a single parent.

(b) There is a pending proceeding to determine parentage at the time the petition is filed.

B. If a person other than a member of the child's parental unit is seeking custody there is a rebuttable presumption that it is in the child's best interest to award custody to a legal parent. To rebut this presumption that person must show by clear and convincing evidence that awarding custody to a legal parent is not in the child's best interests.

C. Notice of a custody or visitation proceeding filed pursuant to this section shall be served pursuant to the Arizona rules of family law procedure to all of the following:

1. The child's parents.
2. A person who has court ordered custody or visitation rights.
3. The child's guardian or guardian ad litem.
4. A person or agency that has physical custody of the child or that claims to have custody or visitation rights.
5. Any other person or agency that has previously appeared in the action.

D. A person shall file proceedings for custody or visitation under this chapter in the same action in which a previous custody order has been entered regarding the child.

E. For the purposes of this chapter:

1. "*In loco parentis*" means a person who has been treated as a parent by the child and who has formed a meaningful parental relationship with the child for a substantial period of time.

2. "Legal parent" means a parent whose parental rights have been recognized by a court of competent jurisdiction.

E: Family Support Duties

The duties outlined in this section are largely unchanged except to adjust the language to tolerate multiple payors and, receivers as needed, of support for a child. In other words, both the biological progenitor and the former spouse of an adult now raising a child on his own may need to contribute to the support of child. Two of four parents may be required to pay support to two others. The important point here is that one may have a greater obligation than another but, one adult's obligation to a child does not obviate that of another adult. Because the changes here are, for the most part, changes in language to allow for broader

application of the rules but not necessarily a dramatic change in the rules themselves, I have included the entirety of this chapter as an appendix.

F: Parentage

This chapter provides the rules and criteria for determining parentage. It supplies a framework within which courts can decide who is responsible for a child or children and precisely in what way. Recall that recognition of reproductive conduct beyond coitus entails recognition of parents in varying degrees. Recall also that the 3 overall functions of a parent can be satisfied by any number of adults and their sex and relationships to each other remain insignificant relative to their ability to be parents to a child.

The changes in this chapter are not insignificant and not largely semantic so this chapter is included, as rewritten, here in its entirety.

Article 1: Parentage Proceedings (§§801 - 818)

§801 - Jurisdiction

The superior court has original jurisdiction in proceedings to establish parentage. All such proceedings shall be civil actions.

§802 - Venue

Proceedings to establish parentage may be originated in the county where the child or children that are the subject of the action are found. The fact that the petitioner or child or both are not, or never have been, residents of Arizona does not bar the proceeding.

§803 – Reproductive contracts; prohibition; custody; definition

A. Any agreement to intended to result in the creation of a child is a reproductive contract.

B. A woman who gestates and gives birth to a child under such a contract is presumed a legal parent of that child. This presumption is rebuttable by reaffirmation of a contract to allow others to become the parent(s) of the child.

C. The spouses of a woman who gestates and gives birth to a child under such contract also are presumed the parents of the resulting child. This presumption is rebuttable by reaffirmation of a contract to allow others to become the parent(s) of the child.

§803 - Persons who may originate proceedings; custody; parenting time; conciliation court

A. Proceedings to establish the parentage of a child or children and to compel support under this article may be commenced by any of the following:

1. A biological progenitor or other adult who stands *in loco parentis* to the child or children.

3. The guardian, conservator or guardian ad litem of a child or children.

4. A public welfare official or agency of the county where the child or children reside or may be found.

5. The state pursuant to section 25-509.

B. An adult may bring an action to establish the adult's biological parent.

C. Any party to a proceeding under this article other than the state may request that custody and specific parenting time be determined as a part of the proceeding. When parentage is established the court may award custody and parenting time as provided in section 25-408. The attorney general or county attorney shall not seek or defend any ancillary matters such as custody or parenting time.

D. In any case in which parentage is established the parent with whom the child has resided for the greater part of the last six months shall have legal custody unless otherwise ordered by the court.

E. The services of the conciliation court may be used in regard to disputed matters of custody and parenting time.

§804 Time for instituting proceedings

Proceedings to establish parentage of the child may be instituted during gestation or after the birth of the child. For purposes of establishing a duty to pay support or past support, the proceedings must be instituted before the child's eighteenth birthday.

§805 - Effect of death, absence or insanity of plaintiff

If after the petition is filed the petitioner dies, becomes insane, departs the state or fails to litigate the issue, the proceedings do not abate but may be continued, with the state as petitioner, as to any child in the legal custody of any state agency, or as to any child who is the beneficiary of any state or federal financial assistance.

§806 - Petition

A. Parentage proceedings are commenced by the filing of a verified petition that alleges that the respondent is a parent of the child or children.

B. The procedure on the filing of the petition shall be as in other civil cases.

C. If the respondent does not file a response or if the respondent files a written response admitting parentage, the court may immediately enter a judgment of parentage. If other relevant issues are raised in the petition or response or in a separate petition filed after entry of a parentage judgment, the court shall proceed to resolve all relevant issues in the case pursuant to the rules of procedure applicable to family law cases.

D. A trial held pursuant to this section shall be made to the court.

§807 - Precedence of parentage proceedings; delay for DNA tests; court order; evidentiary use; alternative tests; out-of-state orders; immunity

A. Proceedings to establish parentage have precedence over other civil proceedings. The case shall be set for trial within sixty days from the filing of an answer by the respondent.

B. A delay in determining parentage in an action commenced before the birth of the child shall be granted until after the birth of the child for purposes of DNA tests if any party to the proceedings requests.

C. The court, on its own motion or on motion of any party to the proceedings, shall order the parents, the child or children and the alleged parents to submit to genetic testing and shall direct that inherited physical characteristics to determine parentage, including blood and tissue type, be determined by appropriate testing procedures conducted by an accredited laboratory. If a parent is unavailable or fails to cooperate by refusing to submit to genetic testing, testing of the alleged parent and child or children may be appropriate. An expert duly qualified as an examiner of genetic markers shall be agreed on by the parties or appointed by the court to analyze and interpret the results and report to the court.

D. If the results of the genetic tests indicate that the likelihood of the alleged parent's parentage is ninety-five per cent or greater, the alleged parent is presumed to be the parent of the child and the party opposing the establishment of the alleged parentage shall establish by clear and convincing evidence that the alleged parent is not a parent of the child.

E. The examiner's report shall be admitted at trial unless a timely written challenge to the examiner's report is filed with the court within twenty days of the date the report was filed with the court. If the results of the examiner's report have been challenged and on the reasonable request of a party, the court shall order an additional test to be made by the same laboratory or an independent laboratory at the expense of the party requesting additional testing.

F. If a timely written challenge is not filed pursuant to subsection E, the examiner's report is admissible in evidence without the need for foundation testimony or other proof of authenticity or accuracy.

G. The court, on application of either party, shall determine the proportion and time in which the initial test costs shall be paid.

H. On motion of a party to the proceedings, the court may order that experts perform alternative or additional tests including medical, scientific and genetic tests.

I. Either party may apply for summary judgment on the issue of parentage.

J. A state or local agency in this state, including the department of economic security, the state department of corrections and any other correctional facility that has custody of a person who is the subject of the genetic testing order, shall treat a genetic testing order issued in another state that appears to be in good order as if it were issued by a court of this state.

K. Notwithstanding any other law, an agency, agency employee or agency contractor that acts in good faith to cooperate in obtaining genetic testing samples under this section is not subject to civil or criminal liability.

§ 809 Judgment

A. Except as provided in section 25-501, subsection F, if a respondent admits parentage or if the issue is decided in the affirmative in an action instituted during the child's minority, the court shall direct, subject to applicable equitable defenses and using a retroactive application of the current child support guidelines, the amount, if any, the parties shall pay for the past support of the child and the manner in which payment shall be made.

B. The court shall enter an order for support determined to be due for the period between the commencement of the proceeding and the date that current child support is ordered to begin. The court shall not order past support retroactive to more than three years before the commencement of the proceeding unless the court makes a written finding of good cause after considering all relevant circumstances, including:

1. The circumstances, conduct or motivation of the party who claims entitlement to past support in not seeking an earlier establishment of or parentage.
2. The circumstances, conduct or motivation of the party from whom past support is sought in impeding the establishment of parentage.
3. The diligence with which service of process was attempted on the respondent.

C. The court shall also direct the amount a parent shall pay for the actual costs of the pregnancy, childbirth and any genetic testing and other related costs subject to production of billing statements or other documentation. This documentation is prima facie evidence of amounts incurred and is admissible in evidence without the need for foundation testimony or other proof of authenticity or accuracy.

D. In any proceeding under this article the court shall order any parent to pay any monies reasonable and necessary for the support of the minor unemancipated child until the child reaches the age of majority or is emancipated. In determining the amount of support for the child, the court shall apply the child support guidelines pursuant to section 25-320, subsection D. If a child reaches the age of majority while the child is attending high school or a certified high school

equivalency program, support shall continue to be provided while the child is actually attending high school or the equivalency program but only until the child reaches nineteen years of age unless the court enters an order pursuant to subsection F of this section.

E. The court may modify an order of support pursuant to section 25-503.

F. Even if a child is over the age of majority when a petition is filed or at the time of the final decree, the court may order support to continue past the age of majority if all of the following are true:

1. The court has considered the factors prescribed in subsection D of this section.

2. The child is severely mentally or physically disabled as demonstrated by the fact that the child is unable to live independently and be self-supporting.

3. The child's disability began before the child reached the age of majority.

G. After considering the financial resources of the parties and the reasonableness of the positions each party has taken throughout the proceedings, the court may order a party to pay a reasonable amount another other party for the costs and expenses of maintaining or defending any proceeding under this article. The court may order the party to pay these amounts directly to the attorney. The attorney may enforce the order in the attorney's name with the same force and effect and in the same manner as if the order had been made on behalf of any party to the action. For the purposes of this subsection, "costs and expenses" includes attorney fees, deposition costs, appellate costs and other reasonable expenses the court determines were necessary.

H. The court has contempt powers to enforce its orders.

I. The parties may terminate an action brought under this article by agreement and compromise only if the court has approved the terms of the agreement and compromise.

§810 - Liability of parents if putative parent is a minor; periodic payments

A. Except as provided pursuant to section 25-501, subsection F, a parent or parents having custody or control of a putative parent may be joined as respondents in the action if the putative parent is a minor or was a minor at the

time the action was commenced. The parents may be held jointly and severally liable with the minor until the minor reaches the age of majority.

B. The court may order that a judgment made against a parent pursuant to this section be satisfied through periodic payments as other child support orders.

C. In addition to the enforcement of support remedies provided pursuant to section 25-508, an order made pursuant to this section that provides for periodic payments shall be enforced pursuant to this chapter.

§812 - Voluntary acknowledgment of parentage; action to overcome parentage

A. This state or a parent of a child may establish the parentage of a child by filing one of the following with the clerk of the superior court, the department of economic security or the department of health services:

1. A notarized or witnessed statement that contains the social security numbers of the parents and that is signed by the parents acknowledging parentage or separate substantially similar notarized or witnessed statements acknowledging parentage. If the voluntary acknowledgment is filed with the court, the filing party must redact any social security numbers and file them separately pursuant to section 25-501, subsection G. If another person is presumed to be the child's parent pursuant to section 25-814, an acknowledgment of parentage is valid only with the presumed parent's written consent or as prescribed pursuant to section 25-814. A statement that is witnessed by an employee of the department of economic security or the department of health services or by an employee of a hospital must contain the printed name and residential or business address of the witness. A statement that is witnessed by any other person must contain the printed name and residential address of the witness. If the acknowledgment of parentage is witnessed, the witness must be an adult who is not related to any parent by blood or by marriage.

2. An agreement by the parents to be bound by the results of genetic testing including any genetic test previously accepted by a court of competent jurisdiction, or any combination of genetic testing agreed to by the parties, and an affidavit from a certified laboratory that the tested parent has not been excluded.

B. On filing a document required in subsection A of this section with the clerk of the superior court, the clerk or authorized court personnel shall issue an order establishing parentage, which may amend the name of the child or children, if requested by the parents. The clerk shall transmit a copy of the order of

parentage to the department of health services and the department of economic security.

C. On entry of an order by the clerk of the superior court, the parentage determination has the same force and effect as a judgment of the superior court. In a non-title IV-D case, the clerk shall transmit a copy of an order granted under this subsection to the state title IV-D agency. The case filing fee prescribed by section 12-284 shall not be charged to any person who, in the same county, initiates or responds to a proceeding to establish child support or to obtain an order for custody or parenting time within ninety days after an order establishing parentage is issued under subsection B of this section.

D. A voluntary acknowledgment of parentage executed pursuant to subsection A, paragraph 1 of this section may be filed with the department of economic security, which shall provide a copy to the department of health services. A voluntary acknowledgment of parentage made pursuant to this section is a determination of parentage and has the same force and effect as a superior court judgment.

E. Pursuant to rule 85(c) of the Arizona rules of family law procedure, a parent, or a party to the proceeding on a rule 85(c) motion, may challenge a voluntary acknowledgment of parentage established in this state at any time after the sixty day period only on the basis of fraud, duress or material mistake of fact, with the burden of proof on the challenger and under which the legal responsibilities, including child support obligations of any signatory arising from the acknowledgment shall not be suspended during the challenge except for good cause shown. The court shall order the parents, child or children and the alleged parent to submit to genetic testing and shall direct that appropriate testing procedures determine the inherited characteristics, including blood and tissue type. If the court finds by clear and convincing evidence that demonstrate that the established parent is not the biological father of the child, the court shall vacate the determination of parentage and terminate the obligation of that party to pay ongoing child support. An order vacating the determination of parentage operates prospectively only and does not alter the obligation to pay child support arrearages or, unless otherwise ordered by the court, any other amount previously ordered to be paid pursuant to section 25-809.

F. Before signing a voluntary acknowledgment of parentage pursuant to this section, the parties shall be provided notice of the alternatives to, the legal consequences of and the rights and responsibilities that arise from signing the acknowledgment.

G. The department of economic security shall notify the department of health services of all parentage determinations and rescissions.

H. A parent may rescind the acknowledgment of parentage within the earlier of:

1. Sixty days after the last signature is affixed to the notarized acknowledgment of parentage that is filed with the department of economic security, the department of health services or the clerk of the court.

2. The date of a proceeding relating to the child, including a child support proceeding in which the parent is a party.

I. A rescission authorized pursuant to subsection H of this section must be in writing and a copy of each rescission of parentage shall be filed with the department of economic security. The department of economic security shall mail a copy of the rescission of parentage to other parent(S) and to the department of health services.

J. Voluntary acknowledgments of parentage and rescissions of parentage filed pursuant to this section shall contain data elements in accordance with the requirements of the United States secretary of health and human services.

§813 - Default order of parentage

In an action to establish parentage, the court shall enter an order of parentage if either:

1. The service of summons is complete and the respondent fails to appear or otherwise answer.

2. An order for genetic or blood testing has been entered and the respondent fails to appear without cause for an appointment to take a blood or genetic test or fails to take a blood or genetic test.

§814 - Presumption of parentage

A. A person is presumed to be a parent of the child if:

1. He or she and another parent of the child were married at any time, in the ten months immediately preceding the birth, or the child is born within ten months after the marriage is terminated by death, annulment, declaration of invalidity or dissolution of marriage or after the court enters a decree of legal separation.

2. Genetic testing affirms at least a ninety-five per cent probability of parentage.

3. A birth certificate is signed by the parents of a child at or near birth.

4. A notarized or witnessed statement is signed by the parents acknowledging parentage or separate substantially similar notarized or witnessed statements are signed by the parents acknowledging parentage.

B. If another person is presumed to be the child's parent under subsection A, paragraph 1, an acknowledgment of parentage may be effected only with the written consent of the presumed parent or after the presumption is rebutted. If the presumed parent has died or cannot reasonably be located, parentage may be established without written consent.

C. Any presumption under this section may be rebutted by clear and convincing evidence. If two or more presumptions apply, the presumption that the court determines, on the facts, is based on weightier considerations of policy and logic will control. A court decree establishing parentage of the child by another rebuts the presumption.

§815 - Parentage; full faith and credit

If parentage has been established in another state by a court or administrative order or voluntary acknowledgment, the determination of parentage has the same force and effect in this state as if the determination of parentage was granted by a court in this state.

§816 Title IV-D child support; parentage establishment; genetic testing

A. On receipt of a sworn statement by a parent or the alleged parent alleging parentage and setting forth the facts establishing a reasonable possibility of the requisite reproductive conduct of the parties, the department of economic security or its agent may order the parent, her child or children and the alleged parent to submit to the drawing of blood or tissue samples for genetic testing of a type generally acknowledged as reliable by accreditation bodies. If a parent cannot be located the department or its agent may order the caretaker of the child or children to present the child or children for genetic testing. The order shall be served by first class mail or delivered at least ten business days before the genetic testing. The department or its agent shall pay the costs of the test subject to repayment from the parents if paternity is established. An order of genetic testing issued by the department or its agent has the same force and effect as a superior court order.

B. If the results of the genetic testing indicate that the likelihood of the alleged parent's parentage is ninety-five per cent or greater, the alleged parent is presumed to be the parent of the child and the party opposing the establishment of the alleged parent's parentage shall establish by clear and convincing evidence that he is not a parent of the child.

C. A person who is tested pursuant to this section may contest the test results in writing to the department or its agent within thirty days after the department or its agent mails the results to that person. If the original test results are contested in a timely manner, on request and advance payment by the requesting party, the department or its agent shall order a second genetic test pursuant to subsection A.

§817 Temporary orders; presumption of parentage

A. Pending a judicial determination of parentage, the court shall issue a temporary order of support, and may issue a temporary order regarding custody and parenting time, if any of the following applies:

1. Genetic testing affirms at least a ninety-five per cent probability of parentage.

2. A notarized or witnessed statement is signed by the parents acknowledging parentage or separate substantially similar notarized or witnessed statements are signed acknowledging parentage and filed with the department of health services pursuant to section 36-334 or filed with the department of economic security.

3. The respondent admits or does not deny parentage in a written response filed with the clerk of the court.

B. A temporary order issued pursuant to this section does not prejudice the rights of a person or child that are adjudicated at subsequent hearings in the proceeding.

C. A temporary order issued pursuant to this section may be revoked or modified and terminates when the final support, custody or parenting time order is entered or when the petition for support, custody or parenting time is dismissed.

§818 - Parentage registry; acknowledgments and parentage orders; recording requirements

A. The department of economic security shall maintain a parentage case registry for this state. Public and private entities that obtain or receive a voluntary

acknowledgment of parentage shall promptly transmit the original signed and completed acknowledgment to the department of economic security. This requirement does not apply to the superior court.

B. The department of economic security may dispose of an original voluntary acknowledgment of parentage not sooner than one year after the date of the last signature on the acknowledgment and only after it makes an electronic copy of the original acknowledgment.

C. The clerk of the superior court shall transmit a copy of each order of parentage to the department of economic security.

D. The department of economic security shall maintain automated records regarding the parents and any child whose name is stated in a voluntary acknowledgment of parentage or an order of parentage.

E. The clerk of the superior court, the department of economic security and the department of health services shall cooperate to ensure that the state registrar of vital records receives a copy of a voluntary acknowledgment of parentage or order of parentage relating to any child born in this state.

G: Uniform Child Custody Jurisdiction and Enforcement Act and Uniform Interstate Family Support Act

Chapters 8 and 9 are similar to chapter 5 in that the changes needed are largely semantic or linguistic. Again I changed the singular to include the plural to accommodate more than two parents and changed the gendered pronouns to account for any combination of sexes of the adults involved in the reproductive conduct.

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APPENDIX B

CHAPTER 5 OF TITLE 25 OF THE NEWLY REVISED ARIZONA REVISED
STATUTES

Chapter 5: Family Support Duties (Article 1 - 5)

The duties outlined in this Chapter 5 are largely unchanged except to adjust the language to tolerate multiple payors and, receivers as needed, of support for a child. In other words, both the biological progenitor and the former spouse of an adult now raising a child on his own may need to contribute to the support of child. Two of four parents may be required to pay support to two others. The important point here is that one may have a greater obligation than another but, one adult's obligation to a child does not obviate that of another adult. Because the changes here are, for the most part, changes in language to allow for broader application of the rules but not necessarily a dramatic change in the rules themselves, I have included the entirety of this chapter as an appendix.

Article 1: General Provisions (§§500 - 530)

§ 500 - Definitions

In this chapter, unless the context otherwise requires:

1. "Arrearage" means the total unpaid support owed, including child support, past support, spousal maintenance and interest.
2. "Business day" means a day when state offices are open for regular business.
3. "Child support guidelines" means the child support guidelines that are adopted by the state supreme court.
4. "Child support subpoena" means a subpoena issued pursuant to section 25-520.
5. "Department" means the department of economic security.
6. "Income" means any form of payment owed to an individual, regardless of source, including wages, salaries, commissions, bonuses, workers' compensation, disability payments, payments pursuant to a pension or retirement program and interest.
7. "Obligee" means a person or agency entitled to receive support.
8. "Obligor" means a person obligated to pay support.
9. "Support" means the provision of maintenance or subsistence and includes medical insurance coverage, or cash medical support, and

uncovered medical costs for the child, arrearages, interest on arrearages, past support, interest on past support and reimbursement for expended public assistance. In a title IV-D case, support includes spousal maintenance that is included in the same order that directs child support.

10. "Support payment clearinghouse" means the clearinghouse established pursuant to section 46-441.

11. "Title IV-D" means title IV-D of the social security act.

§501 - Duties of support; exemption

A. Except as provided in subsection F of this section, every person has the duty to provide all reasonable support for that person's unemancipated children, regardless of the presence or residence of the child in this state. In the case of mentally or physically disabled children, if the court, after considering the factors set forth in section 25-320, subsection D, deems it appropriate, the court may order support to continue past the age of majority. If a child reaches the age of majority while the child is attending high school or a certified high school equivalency program, support shall continue to be provided while the child is actually attending high school or the equivalency program but only until the child reaches nineteen years of age unless the court enters an order pursuant to section 25-320, subsection E.

B. A child who is born as the result of Assisted Reproductive Technology is entitled to support from all of the adults who engaged in the reproductive conduct.

C. The child support guidelines shall be used in determining the ability to pay child support and the amount of payments. The obligation to pay child support is primary and other financial obligations are secondary.

D. All duties of support as prescribed in this chapter may be enforced by all civil and criminal remedies provided by law.

E. Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law.

F. The court may determine that a biological progenitor is not obligated to contribute to the support of a resulting child if parentage is the result of:

1. the reproductive conduct of others and the biological progenitor has agreed to provide genetic material to others without an intention to become a parent.

2. sexual contact with a person who, as a result of that contact, has been found guilty of sexual conduct with a minor under section 13-1405 or sexual assault under section 13-1406. The court may also apply this exemption to the parent's parents or legal guardian.

G. In any action filed pursuant to this title, if a duty of support for another person exists or may exist the parties shall file the social security numbers of each party and any affected children in the record of the proceeding in a manner that is consistent with the requirements of the Arizona rules of family law relating to sensitive data. The court shall include this information in the state case registry and shall maintain this information in a manner that is consistent with the requirements of the Arizona rules of family law relating to sensitive data.

§502 - Jurisdiction, venue and procedure; additional enforcement provisions

A. The superior court has original jurisdiction in proceedings brought by the department, its agents, a person having physical custody of a child or a party to the case to establish, enforce or modify the duties of support as prescribed in this chapter. All such proceedings are civil actions except as provided in section 25-511. Proceedings to enforce the duties of support as prescribed in this chapter may be originated in the county of residence of the respondent or the petitioner or of the child or children who are the subject of the action.

B. A proceeding to establish support must originate in the county where the child resides or, if the child resides out of state, the county of this state where the party filing the petition to establish support resides, if either of the following applies:

1. An action does not exist under this title.

2. Parentage was established without a court order pursuant to section 36-334.

C. A person or the department or its agent must file a petition to establish or modify a child support order in the superior court in the county of the last order issued under this title if an order exists in this state. If a person wishes the case transferred to the county of this state where the child resides or, if the child resides out of state, the county of this state where the party requesting the transfer resides, the person must file a request for transfer with the clerk of the superior court that issued the last order.

D. A request for transfer pursuant to subsection C of this section must include a petition or motion regarding support, a statement of payments in default,

if applicable, and the transmittal fee prescribed in section 12-284. The responding party may object to the transfer by filing an objection and affidavit within twenty days after service of the request to transfer.

E. If the clerk does not receive an objection and affidavit pursuant to subsection D of this section, the clerk shall issue the transfer order and transfer the proceeding and all related court files to the other county within thirty days after service of the request to transfer. If the clerk receives an objection and affidavit within the time prescribed in subsection D of this section, the clerk shall notify all parties of the date of the hearing at least ten days before the hearing date. The court may hear evidence relevant only to the issue of the transfer. If after that hearing the court orders the transfer, the clerk shall transfer the proceeding and court files within ten days after the order. The county to which the transfer is made retains the court files and venue for all purposes and the transferring county shall not retain a copy of those files.

F. The county to which a transfer is made pursuant to subsection D or E of this section shall proceed as if the proceeding was brought in that county originally. A judgment from that county has the same effect and may be enforced or modified as a judgment from the original county.

§503 - Order for support; methods of payment; modification; termination; statute of limitations; judgment on arrearages; notice; security

A. In any proceeding in which there is at issue the support of a child, the court may order any or all parents to pay any amount necessary for the support of the child. If the court order does not specify the date when current support begins, the support obligation begins to accrue on the first day of the month following the entry of the order. If a personal check for support payments and handling fees is rightfully dishonored by the payor bank or other drawee, any subsequent support payments and handling fees shall be paid only by cash, money order, cashier's check, traveler's check or certified check. The department may collect from the drawer of a dishonored check or draft an amount allowed pursuant to section 44-6852. Pursuant to sections 35-146 and 35-147, the department shall deposit monies collected pursuant to this subsection in a child support enforcement administration fund. If a party required to pay support other than by personal check demonstrates full and timely payment for twenty-four consecutive months, that party may pay support by personal check if these payments are for the full amount, are timely tendered and are not rightfully dishonored by the payor bank or other drawee. On a showing of good cause, the court may order that the party or parties required to pay support give reasonable security for these payments. If the court sets an appearance bond and the obligor fails to appear, the bond is forfeited and credited against any support owed by the party required to pay

support. This subsection does not apply to payments that are made by means of a wage assignment.

B. On a showing that an income withholding order has been ineffective to secure the timely payment of support and that an amount equal to six months of current support has accrued, the court shall require the obligor to give security, post bond or give some other guarantee to secure overdue support.

C. In title IV-D cases, and in all other cases subject to an income withholding order issued on or after January 1, 1994, after notice to the party entitled to receive support, the department or its agent may direct the party obligated to pay support or other payor to make payment to the support payment clearinghouse. The department or its agent shall provide notice by first class mail.

D. The obligation for current child support shall be fully met before any payments under an order of assignment may be applied to the payment of arrearages. If a party is obligated to pay support for more than one family and the amount available is not sufficient to meet the total combined current support obligation, any monies shall be allocated to each family as follows:

1. The amount of current support ordered in each case shall be added to obtain the total support obligation.
2. The ordered amount in each case shall be divided by the total support obligation to obtain a percentage of the total amount due.
3. The amount available from the obligor's income shall be multiplied by the percentage under paragraph 2 of this subsection to obtain the amount to be allocated to each family.

E. Any order for child support may be modified or terminated on a showing of changed circumstance that is substantial and continuing, except as to any amount that may have accrued as an arrearage before the date of notice of the motion or order to show cause to modify or terminate. The addition of health insurance coverage as defined in section 25-531 or a change in the availability of health insurance coverage may constitute a continuing and substantial change in circumstance. Modification and termination are effective on the first day of the month following notice of the petition for modification or termination unless the court, for good cause shown, orders the change to become effective at a different date but not earlier than the date of filing the petition for modification or termination. The order of modification or termination may include an award of attorney fees and court costs to the prevailing party.

F. On petition of a person who has been ordered to pay child support pursuant to a presumption of parentage established pursuant to section 25-814, the court may order the petitioner's support to terminate if the court finds based on clear and convincing evidence that parentage was established by fraud, duress or material mistake of fact. Except for good cause shown, the petitioner's support obligations continue in effect until the court has ruled in favor of the petitioner. The court shall order the petitioner, each child who is the subject of the petition and the child's progenitors or parents to submit to genetic testing and shall order the appropriate testing procedures to determine the child's inherited characteristics, including blood and tissue type. If the court finds that the petitioner is not the child's biological father, the court shall vacate the determination of parentage and terminate the support obligation. Unless otherwise ordered by the court, an order vacating a support obligation is prospective and does not alter the petitioner's obligation to pay child support arrearages or any other amount previously ordered by the court. If the court finds that it is in the child's best interests, the court may order the biological father to pay restitution to the petitioner for any child support paid before the court ruled in favor of the petitioner pursuant to this subsection.

G. Notwithstanding subsection E of this section, in a title IV-D case a party, or the department or its agent if there is an assignment of rights under section 46-407, may request every three years that an order for child support be reviewed and, if appropriate, adjusted. The request may be made without a specific showing of a changed circumstance that is substantial and continuing. The department or its agent shall conduct the review in accordance with the child support guidelines of this state. If appropriate, the department shall file a petition in the superior court to adjust the support amount. Every three years the department or its agent shall notify the parties of their right to request a review of the order for support. The department or its agent shall notify the parties by first class mail at their last known address or by including the notice in an order.

H. If a party in a title IV-D case requests a review and adjustment sooner than three years, the party shall demonstrate a changed circumstance that is substantial and continuing.

I. The right of a party entitled to receive support or the department to receive child support payments as provided in the court order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law. The department or its agent or a party entitled to receive support may also file a request for written judgment for support arrearages.

J. If the obligee, the department or their agents make efforts to collect a child support debt more than ten years after the emancipation of the youngest child subject to the order, the obligor may assert as a defense, and has the burden to prove, that the obligee or the department unreasonably delayed in attempting to collect the child support debt. On a finding of unreasonable delay a tribunal, as defined in section 25-1202, may determine that some or all of the child support debt is no longer collectible after the date of the finding.

K. Notwithstanding any other law, any judgment for support and for associated costs and attorney fees is exempt from renewal and is enforceable until paid in full.

L. If a party entitled to receive child support or spousal maintenance or the department or its agent enforcing an order of support has not received court ordered payments, the party entitled to receive support or spousal maintenance or the department or its agent may file with the clerk of the superior court a request for judgment of arrearages and an affidavit indicating the name of the party obligated to pay support and the amount of the arrearages. The request must include notice of the requirements of this section and the right to request a hearing within twenty days after service in this state or within thirty days after service outside this state. The request, affidavit and notice must be served pursuant to the Arizona rules of family law procedure on all parties including the department or its agents in title IV-D cases. In a title IV-D case, the department or its agent may serve all parties by certified mail, return receipt requested. Within twenty days after service in this state or within thirty days after service outside this state, a party may file a request for a hearing if the arrearage amount or the identity of the person is in dispute. If a hearing is not requested within the time provided, or if the court finds that the objection is unfounded, the court must review the affidavit and grant an appropriate judgment against the party obligated to pay support.

M. If after reasonable efforts to locate the obligee the clerk or support payment clearinghouse is unable to deliver payments for a period of one hundred twenty days after the date the first payment is returned as undeliverable due to the failure of a party to whom the support has been ordered to be paid to notify the clerk or support payment clearinghouse of a change in address, the clerk or support payment clearinghouse shall return that and all other unassigned payments to the obligor unless there is an agreement of the obligor to pay assigned arrears and other debts owed to the state.

N. If the obligee of a child support order marries the obligor of the child support order, that order automatically terminates on the last day of the month in which the marriage takes place and arrearages do not accrue after that date. However, the obligee or the state may collect child support arrearages that

accrued before that date. The obligee, the obligor or the department or its agent in a title IV-D case may file a request or stipulation to terminate or adjust any existing order of assignment, pursuant to section 25-504 or section 25-505.01.

O. For the purposes of this chapter, a child is emancipated:

1. On the date of the child's marriage.

2. On the child's eighteenth birthday.

3. When the child dies.

4. On the termination of the support obligation if support is extended beyond the age of majority pursuant to section 25-501, subsection A or section 25-320, subsections E and F.

§503.01 - Self-employed parent; monies held as security for payment of support

A. On a showing of good cause, the court may order that a self-employed parent who is required to make child support payments forward an amount equal to not more than six months of child support to the department to hold as security. The department shall release these monies to compensate an obligee for missed current child support payments.

B. This section does not apply unless the self-employed parent is in arrears for three months or more.

C. This section does not limit other remedies available to an obligee, the department or its agents.

D. If a self-employed parent who is required to forward monies to the department pursuant to this section demonstrates full and timely support payments for twenty-four consecutive months, the department shall release to that self-employed parent any monies that remain.

§504- Order of assignment; ex parte order of assignment; responsibilities; violation; termination

A. In a proceeding in which the court orders a person to pay support the court shall, and in a proceeding in which the court orders a person to pay spousal maintenance the court may, assign to the person or agency entitled to receive the support or spousal maintenance that portion of the person's income necessary to pay the amount ordered by the court. In a proceeding in which spousal

maintenance is ordered to be paid the court shall order the assignment on either party's request.

B. A person who is obligated by an order to pay support or spousal maintenance, the person to whom support or spousal maintenance is ordered to be paid or the department or its agent in a title IV-D case may file a verified request with the clerk of the superior court requesting the clerk to issue an ex parte order of assignment for support or spousal maintenance. The ex parte order of assignment may include a payment for current support and any other support, current spousal maintenance, spousal maintenance arrearages and interest on spousal maintenance arrearages. A request filed by the department or its agent need not be verified. The request shall state:

1. The name of the person or agency entitled to receive support or spousal maintenance.
2. The monthly amount of any current support and the monthly amount of any spousal maintenance ordered by the court.
3. The specific amount requested for any support arrearages, spousal maintenance arrearages or interest.
4. The name and address of the payor to whom it is requested the order of assignment be directed and the name of the person obligated to pay support or spousal maintenance.

C. After receipt of a request for an ex parte order of assignment the clerk of the superior court, without a hearing or notice to the person obligated to pay support or spousal maintenance, shall issue an order of assignment of that portion of the person's income as is sufficient to pay the amount requested to the person or agency entitled to receive the support or spousal maintenance. The order of assignment shall include the social security number of the obligated person. On issuance of an ex parte order of assignment, the clerk shall issue a notice directed to the obligor in substantially the following form, which shall also be in Spanish:

Notice

To: The obligor (the person ordered to pay support or spousal maintenance)

This is to notify you that part of your income or other monies is being taken away by the enclosed order of assignment that was issued on a request for an order of assignment that also is enclosed. The order of assignment has been issued for currently accruing child support or spousal

maintenance, or both, based on the requesting party's claim that you are obligated to pay this. In addition, the requesting party may be claiming a right to collect other support, as defined in section 25-500, Arizona Revised Statutes, arrearages on spousal maintenance or interest on a judgment for unpaid spousal maintenance.

If you believe the enclosed order of assignment is improper or unlawful, that your property is exempt by law or that your employer or other payor is withholding more than is permitted by law, you may request a hearing before the superior court. You must file a request to terminate or adjust the order of assignment on forms provided by the clerk of the court within seven days after your receipt of the order for assignment, request for an order of assignment and this notice. If you request a hearing, it will be held no more than ten days after you file your request with the court.

Here are some other important things you should know:

The order of assignment is effective immediately on service of the order on your employer or another payor. The first employer or payor served shall not withhold or deduct amounts specified in the ex parte order of assignment for fourteen calendar days from the date of service to allow you, the obligor, an opportunity to contest the order of assignment as provided in section 25-504, Arizona Revised Statutes. A future employer or payor may begin deductions sooner than the fourteen day period after the order of assignment is received.

If you request a hearing, the court, after considering the financial resources of both parties and the reasonableness of the positions each party has taken, may order a party to pay a reasonable amount to the other for the attorney fees and costs of filing or defending the request.

Under state law (section 33-1131, Arizona Revised Statutes) no more than one-half of your disposable earnings for any pay period may be taken to satisfy an order issued for support or spousal maintenance. The amount of disposable earnings exempt from the order of assignment must be paid to you when due. Disposable income means the remaining portion of your wages, salary or compensation for personal services, including bonuses and commissions, or otherwise, and includes payments pursuant to a pension or retirement program or a deferred compensation plan, after deducting from such earnings the amounts required by law to be withheld.

An employer or other payor who receives the order of assignment may deduct from amounts due to you one dollar for each pay period, but not more than four dollars per month, for costs. The employer or payor also

must deduct a monthly amount for the support payment handling fee required by state law (section 25-510, Arizona Revised Statutes).

The employer or other payor on whom the order of assignment is served will continue to withhold the amount set in the order and will forward the payment to the support payment clearinghouse until you file with the clerk one of the following:

1. A verified request to adjust the order of assignment, and the court adjusts the order of assignment because there has been a change of circumstances since the time of the issuance of the order or there is other good cause to do so.

2. A verified request for a hearing to terminate the order of assignment and, after a hearing, the court terminates the order of assignment if all obligations have been satisfied or will be satisfied within ninety days.

3. A notarized stipulation stating that the obligation to pay support or spousal maintenance has ended and that all arrearages either have been satisfied or have been waived, and the clerk terminates the order of assignment.

An employer may not refuse to hire, may not discharge or may not otherwise discipline you as a result of the order of assignment. If you are wrongfully refused employment, discharged or otherwise disciplined you may recover damages suffered, plus reinstatement if appropriate, plus reasonable attorney fees and costs incurred against the employer.

Unless a court has expressly ordered otherwise, you must notify the clerk of the court or the support payment clearinghouse in writing of the address of your residence and of your employment and, within ten days, of a change in either one. Your failure to do so may subject you to sanctions for contempt of court, including reasonable attorney fees and costs pursuant to state law (section 25-504, subsection R, Arizona Revised Statutes). Official notices will be delivered to you at the most recent addresses you have provided to the clerk or support payment clearinghouse.

D. Any order of assignment shall be issued only for support, spousal maintenance, spousal maintenance arrearages, interest on spousal maintenance arrearages and handling fees. The order of assignment shall state the total amount that the payor shall withhold. The order of assignment also shall specify the monthly amount of current support and any other payment ordered for support,

the monthly amount of any current spousal maintenance, the monthly amount of any spousal maintenance arrearages and any monthly interest payment. If the obligor's disposable earnings from the primary employer or other payor do not meet the support obligation, the court shall issue an order of assignment to a secondary employer or other payor of the obligor in order to meet the full support obligation.

E. An order of assignment shall be served on any employer or other payor by first class mail, electronic transmission or personal delivery or pursuant to the Arizona rules of family law procedure. The order of assignment is effective immediately on receipt by any employer or other payor and any future employer or future payor. Any employer or other payor of monies shall begin withholding no later than fourteen days after receipt of an order of assignment. The employer or other payor, if feasible, may begin withholding sooner than the fourteen day period if a payment to the obligor is due sooner.

F. Two copies of an ex parte order of assignment and of the request for an order of assignment, together with a copy of the notice required by this section, shall be served on any employer or other payor in the same manner as other orders of assignment under this section. Within five days after receipt, the employer or payor shall serve by personal delivery or by registered mail one copy of the ex parte order of assignment and of the request and the notice on the employee or other payee. The ex parte order of assignment is effective on any employer or other payor, and as an assignment by operation of law is effective on any future employers or other future payors, immediately on receipt. The first employer or other payor served shall not withhold or deduct amounts specified in the ex parte order of assignment for fourteen calendar days to allow the obligor an opportunity to contest the order of assignment as provided in this section. Any future employers or future payors shall begin withholding not later than fourteen days after receipt of an ex parte order of assignment but, if feasible, may begin withholding sooner than fourteen days if a payment to the obligor is due sooner.

G. After service of an ex parte order of assignment on the employer or payor that initially receives the order of assignment, an obligor may request a hearing to contest the ex parte order of assignment. The request shall be made in writing, and the obligor shall state under oath the specific reason for the request. The request shall be filed with the court together with a notice of hearing form. The court shall hold a hearing within ten days after the request and notice of hearing form is filed. Immediately on the scheduling of the hearing, the obligor shall serve a copy of the request for and notice of hearing on the person entitled to receive support, and in a title IV-D case to the department. If the obligor files a request for hearing within seven days after receipt of the order of assignment, the court may order the support payment clearinghouse not to disburse any monies

received pursuant to the order of assignment until further order of the court. The obligor may contest the withholding for any of the following reasons:

1. There is an error in the identity of the obligor.
2. There is an error in the amount of support or spousal maintenance.
3. Invalidity of the order for support or spousal maintenance.
4. Current support or spousal maintenance is no longer owed, if the order of assignment includes a payment for current support or spousal maintenance.
5. Arrearages are not owed if the order of assignment includes a payment for arrearages.

H. Any employer or other payor who has received any order of assignment shall withhold the amount specified in the order of assignment, together with the handling fee as provided in section 25-510, from the income of the person obligated to pay support or spousal maintenance and shall transmit the withheld monies to the support payment clearinghouse within two business days after the obligor is paid or after the payment to the obligor is due. The handling fee shall be deducted and transmitted monthly. For the cost of compliance the employer or payor may also withhold and retain an additional one dollar per payment but not more than four dollars per month for each obligor. An employer or payor may combine in a single payment withheld monies for more than one obligor, shall separately identify the portion of the remittance that is attributable to each obligor and shall include each obligor's social security number. An employer or payor shall notify the clerk or support payment clearinghouse in writing when the obligor is no longer employed or the right to receive income or other monies has been terminated. The employer or payor shall also notify the clerk or support payment clearinghouse in writing of the obligor's social security number and last known address and the name and address of the obligor's new employer, if known, within ten days. In a non-title IV-D case, within ten days after receiving this information the support payment clearinghouse shall notify the clerk of the superior court in the county where the support or maintenance order was issued. If within ninety days of the last payment, the employer or other payor reemploys the obligor or becomes obligated to pay the obligor, the employer or payor is again bound by the order of assignment and is required to perform as required by this section. In a title IV-D case the order of assignment may be reinstated pursuant to section 25-505.01. An employer or payor who fails without good cause to comply with the terms of an order of assignment is liable for amounts not paid to the clerk or support payment clearinghouse pursuant to the order of assignment and

reasonable attorney fees, costs and other expenses incurred in procuring compliance and may be subject to contempt.

I. If a person is obligated to pay child support for more than one family and the amount available for withholding is not sufficient to meet the total combined current child support obligation, any monies withheld from the obligor's income shall be allocated to each family by the employer or payor as follows:

1. The amount of current child support ordered in each case shall be added together to obtain the total current child support obligation.

2. The amount of current child support ordered in each case shall be divided by the total current child support obligation to obtain the percentage of the total current child support obligation to be allocated to each case.

3. The amount withheld from the obligor shall be multiplied by the percentage for each case to obtain the amount to be allocated to each case.

J. The person or agency entitled to receive support or spousal maintenance shall notify the clerk of the superior court or support payment clearinghouse in writing of any change of residential address and of any other information required pursuant to section 46-443, within ten days of any change. If after reasonable efforts to locate the obligee the clerk or support payment clearinghouse is unable to deliver payments under an order of assignment for the period prescribed in section 25-503 due to the failure of an obligee to comply with the notice requirement of this subsection, the clerk or support payment clearinghouse shall not make further payment under the order of assignment and shall return payments to the obligor as prescribed in section 25-503. Under these circumstances the court, clerk or department or its agent shall order the release of the employer or payor from the order of assignment on request of the employer, the payor, the department or its agent or on the clerk's own initiative. Any order of assignment from which an employer or payor has been released may be reinstated by following the procedures for obtaining an ex parte order of assignment pursuant to this section or, in a title IV-D case, an administrative income withholding order pursuant to section 25-505.01.

K. Unless a court has ordered otherwise, the person ordered to pay support or spousal maintenance shall notify the clerk of the superior court or the support payment clearinghouse in writing of the obligor's residential address and the name and address of any employer, and within ten days of any change. Failure to do so may subject the person to sanctions for contempt of court, including reasonable attorney fees and costs.

L. Any order of assignment may be adjusted if there has been a change of circumstances since the date the order of assignment was issued or for good cause. The department or its agent or a person obligated to pay or entitled to receive support or spousal maintenance shall file with the clerk of the superior court a request to adjust the order of assignment and a proposed order of assignment. The request shall specify the adjustment sought and the reason for the request. A copy of the request shall be served pursuant to the Arizona rules of family law procedure, or by the department or its agent in a title IV-D case by first class mail, on all other parties and on the state if the department is providing title IV-D support services or has a claim for arrearages. The party receiving the request and proposed order may request a hearing within twenty days or within thirty days if service is made outside this state. On proof of service and if a hearing has not been requested within the time allowed, the clerk shall issue the order of assignment as appropriate. Within two business days after the date the order of assignment is issued, the clerk shall transmit a copy of the order of assignment to the employer or payor, the department or its agent and all parties. Unless ordered otherwise by the court, in a title IV-D case any order of assignment may be adjusted pursuant to section 25-505.01.

M. The department or its agent or a person obligated to pay or entitled to receive support or spousal maintenance may file a request to terminate any order of assignment if the obligation to pay support or spousal maintenance has ended or will end within ninety days after the filing of the request and if all arrearages either have been paid or will be paid within the period or have been waived. The request shall state the reason why termination is requested and shall contain the name and address of the employer or payor of the person obligated to pay support. A copy of the request shall be served pursuant to the Arizona rules of family law procedure, or by the department or its agent in a title IV-D case by first class mail, on all other parties and on the state if the department is providing title IV-D support services or has a claim for arrearages. A party receiving this notice may request a hearing within twenty days or within thirty days if service is made outside this state. On proof of service and if a hearing has not been requested within the time allowed, the clerk shall issue an order terminating the order of assignment as appropriate. Within two business days after the date the order is issued, the clerk shall transmit a copy of the order terminating the order of assignment to the employer or payor and to the department or its agent. If a hearing is requested, the court shall set the hearing within twenty days after receiving the request and shall issue an appropriate order. A person who is ordered to pay support may request the court to terminate an order of assignment at any time if an employer is making deductions on multiple assignments for an obligation for the same minor children. Notwithstanding any law to the contrary, the clerk shall not charge a fee to a person who files a request to terminate an

order of assignment if an employer is making deductions on multiple assignments for an obligation for the same minor children.

N. If a request to adjust or terminate an order of assignment is filed, the court in its discretion may order that the clerk of the superior court or support payment clearinghouse not disburse any monies in dispute until further order of the court.

O. The clerk of the superior court shall issue an order terminating the order of assignment if the parties, including the department or its agent in a title IV-D case, file a notarized stipulation with the clerk that all obligations of support or spousal maintenance have been satisfied and that the obligor is no longer obligated to pay support or spousal maintenance. The stipulation shall state that the current obligation of support or spousal maintenance no longer exists and that all arrearages either have been satisfied or waived. The stipulation shall also contain the name and address of the employer or payor of the person obligated to pay support or spousal maintenance. Within five business days after the date the stipulation is filed, the clerk shall transmit a copy of the order terminating the order of assignment to the employer or payor and to the department or its agent. Notwithstanding any law to the contrary, the clerk shall not charge a fee to a party who files a stipulation pursuant to this subsection.

P. An assignment ordered pursuant to this section has priority over all other executions, attachments or garnishments. An obligation for current child support shall be fully met before any payments pursuant to an order of assignment may be applied to any other support obligation. An assignment ordered under this section does not apply to amounts made exempt under section 33-1131 or any other applicable exemption law.

Q. Any employer or other payor shall not refuse to hire a person and shall not discharge or otherwise discipline an obligor because of service of an order of assignment authorized by this section. An employer or payor who refuses to hire a person or who discharges or otherwise disciplines an employee or obligor because of service of an order of assignment is subject to contempt and sanctions as may be ordered by the court. A person who is wrongfully refused employment, wrongfully discharged or otherwise disciplined is entitled to recover damages sustained by the prohibited conduct, reinstatement, if appropriate, and attorney fees and costs incurred.

R. In any proceeding under this section the court, after considering the financial resources of the parties and the reasonableness of the positions each party has taken, may order a party to pay a reasonable amount to another party for the costs and expenses, including attorney fees, of maintaining or defending the proceeding.

§505 - Limited income withholding orders; definition

A. The department or its agent may issue a limited income withholding order to any employer, payor or other holder of a nonperiodic or lump sum payment that is owed or held for the benefit of an obligor. The department or its agent shall serve the order in the same manner as prescribed in section 25-505.01 for service of income withholding orders. The employer, payor or holder shall deliver or mail by first class mail a copy of the order to the obligor within ten days after service on the employer, payor or holder.

B. The limited income withholding order shall state the amount of current support and any arrearages owed by an obligor and shall direct the employer, payor or holder to withhold and pay to the support payment clearinghouse the amount specified in the order and not otherwise exempt by law.

C. The limited income withholding order shall include a notice to the obligor of the right to an administrative review pursuant to section 25-522. The obligor, employer, payor or holder may contest the limited income withholding order in the same manner prescribed in section 25-505.01 to contest an income withholding order.

D. Notwithstanding sections 23-351 through 23-355, the employer, payor or holder who receives an income withholding order pursuant to section 25-505.01 or an order of assignment pursuant to section 25-504 shall withhold the amount specified and transmit that amount to the support payment clearinghouse immediately.

E. For the purposes of this section, "lump sum payment" includes:

1. Severance pay.
2. Sick pay.
3. Vacation pay.
4. Bonuses.
5. Insurance settlements.
6. Commissions.
7. Stock options.
8. Excess proceeds.

9. Retroactive disability proceeds.

10. Personal injury awards.

§ 05.01 - Administrative income withholding order; notice; definition

A. In a title IV-D case, if a person is obligated to pay support, the department or its agent, without prior notice to the obligor, shall issue an income withholding order using the format prescribed by the United States secretary of health and human services. The order shall include the obligor's social security number. The withholding order shall include payment for current child support or spousal maintenance and may include an installment payment for arrearages pursuant to subsection B of this section or any other support. A withholding order under this section does not apply to amounts exempt under section 33-1131, subsection C or any other applicable exemption law. The withholding order shall direct the holder of the monies to withhold and pay to the person or agency entitled to receive the support the amount ordered by the department. The withholding order shall be accompanied by a written notice of withholding as prescribed in this section.

B. In addition to current support an income withholding order may include an installment for arrearages or any other support if:

1. At the time of issuance, the arrearage is an amount equal to at least two months but not more than six months of the obligor's current support obligation, the income withholding order shall include an additional amount equal to twenty-five per cent of the current support obligation.

2. At the time of issuance, the arrearage is an amount equal to more than six months of the obligor's current support obligation, the income withholding order shall include an additional amount equal to thirty-three per cent of the current support obligation.

3. At the time of issuance, the arrearage is an amount equal to one year or more of the obligors's support obligation, an income withholding order may include an additional amount that exceeds thirty-three per cent of the support obligation.

C. If the obligor does not owe current support but arrearages remain unpaid, the department or its agent may issue or adjust an income withholding order only for arrearages. The income withholding order shall be in the amount of the most recent current support order or the most recent order regarding the payment on arrearages, whichever is greater.

D. The department shall serve the order and notice on an employer or payor by first class mail or by electronic means. Service by mail as authorized in this section is complete as to the employer or payor when the mailing is received. Service by electronic means is complete on transmission to the employer or payor. The income withholding order shall direct the employer or payor to deliver or mail by first class mail a copy of the income withholding notice and order to the obligor within ten days after service on the employer or payor.

E. The income withholding order is an assignment and is binding fourteen days after receipt on an existing and future employer or payor of the person ordered to pay support or spousal maintenance on whom a copy of the income withholding order and notice of withholding is served. The employer or payor shall withhold the amount specified in the order from the income of the person obligated to pay support and shall transmit that amount to the support payment clearinghouse within two business days after the date the employee is paid. The employer or payor shall advise the support payment clearinghouse of the date the monies were withheld, may combine withheld amounts for several employees in a single payment and shall separately identify the portion of the payment that is attributable to each employee. The employer or other payor may also withhold and retain for application to the employer's or payor's cost of compliance an additional one dollar per pay period or four dollars per month.

F. If the obligor's disposable income from the primary employer or payor does not meet the support obligation, the department shall issue an income withholding order to a secondary employer of the obligor in order to meet the full support obligation.

G. Any obligor, employer or other payor may challenge the income withholding order issued by the department or its agent by filing a written request for administrative review with the department or its agent within ten days after receipt of the notice of income withholding order from the employer or payor. The administrative review shall be conducted pursuant to section 25-522. On receipt of a request for administrative review the department or its agent shall delay implementation of the income withholding order.

H. A change in income withholding pursuant to subsection B of this section is not a sufficient basis for a modification of the current support order.

I. Notwithstanding section 25-504, in a title IV-D case, if all obligations of support have been satisfied and the person obligated to pay support is no longer obligated and if the parties, including the department or its agent in a title IV-D case, submit a stipulation that the current obligation of support no longer exists and that all arrearages either have been satisfied or waived, the department or its agent shall issue an order terminating the income withholding order. The order

shall state that the current obligation of support no longer exists and that all arrearages either have been satisfied or waived. The stipulation shall also contain the name and address of the employer or payor of the person obligated to pay support. Within five business days after the date the stipulation is submitted, the department or its agent shall send by first class mail a copy of the order terminating the income withholding order to the employer or payor, the parties and the clerk of the court.

J. Notwithstanding section 25-504, in a title IV-D case, the department or its agent on its own initiative, or the parties to a child support proceeding on request to the department, may terminate an income withholding order issued pursuant to this section or section 25-504, if the obligation to pay support has ended or will end within ninety days after the date the request is submitted and if all arrearages either have been paid or will be paid within the period or have been waived. The request shall include a statement of why the termination is requested, supporting documentation and the name and address of the employer and person obligated to pay support. The requesting party shall notify each party by first class mail of the request to terminate the order. The employer or payor shall continue to withhold and transmit support or spousal maintenance until otherwise ordered. On receipt of a request to terminate an income withholding order the department or its agent may suspend disbursements until a determination is issued. A party that receives notice of a request to terminate an income withholding order may object to the request and provide the department or its agent with the basis for the objection and supporting documents within ten days after receipt of the notice. Within forty-five days after the request the department or its agent shall issue a determination to all parties based on the information available. On a determination to terminate an income withholding order, the department or its agent within two business days shall send by first class mail a copy of the order terminating or adjusting the order to the employer or payor and to the support payment clearinghouse.

K. The employer or payor shall notify the support payment clearinghouse in writing when the person ordered to pay support or spousal maintenance is no longer employed by the employer or the right to receive income has been terminated. The employer shall notify the support payment clearinghouse in writing of the former employee's last known address and the name and address of the new employer, if known. If the employer or payor is again obligated to pay income to a person ordered to pay support within ninety days after termination of this right, the employer or payor is again bound by the income withholding order and is required to perform pursuant to this section.

L. The obligation for current child support shall be fully met before any payments under an order of assignment may be applied to payments of arrearages.

If a person is obligated to pay child support for more than one family and the amount available for withholding is not sufficient to meet the total combined child support obligation, any monies withheld from the obligor's income shall be allocated to each family by the employer or payor as follows:

1. The amount of current child support ordered in each case shall be added to obtain the total child support obligation.

2. The ordered amount in each case shall be divided by the total child support obligation to obtain a percentage of the total amount due.

3. The amount available from the obligor's income shall be multiplied by the percentage under paragraph 2 of this subsection to obtain the amount to be allocated to each family.

M. An income withholding order shall include a statement that an employer shall not refuse to hire a person or shall not discharge or otherwise discipline an employee as a result of an income withholding order authorized by this section, and an employer who refuses to hire a person or who discharges or otherwise disciplines an employee as a result of the income withholding order is subject to contempt and fines as established by the court. Any person wrongfully refused employment or an employee wrongfully discharged or otherwise disciplined is entitled to recovery of damages suffered, reinstatement if appropriate, plus attorney fees and costs incurred. Any employer or other payor who fails without good cause to comply with the terms of the income withholding order may be liable for amounts not paid to the support payment clearinghouse pursuant to the income withholding order, reasonable attorney fees and costs incurred and may be subject to contempt. The department may initiate an action in superior court to enforce this subsection.

N. On issuance of an income withholding order the department or its agent shall issue a notice of withholding directed to the person ordered to pay support. The notice shall advise the obligor that:

1. An income withholding order has been issued against the obligor's income for payment of currently accruing child support or spousal maintenance, or both.

2. The income withholding order may include an amount for child support arrearages, or any other support.

3. The obligor may file a written request for administrative review with the department pursuant to section 25-522 within ten days after receipt of this notice if the obligor believes that:

(a) The income withholding order is improper or unlawful.

(b) The obligor's property is exempt by law.

(c) The employer or other payor is withholding more than permitted by law.

4. An income withholding order made pursuant to this section becomes binding on the employer or payor or any future employers or future payors fourteen days after receipt of a copy of the order and notice of withholding.

5. The employer or payor shall withhold the amount specified in the order from the income of the person obligated to pay support.

6. Not more than one-half of the obligor's disposable income for any period may be taken to satisfy an income withholding order issued for the support of any person.

7. The amount of disposable income exempt from the income withholding order must be paid to the obligor on the regular payday for the pay period in which income is earned.

8. The employer or other payor shall continue to withhold the amount set forth in the order each pay period and shall forward the amount to the child support payment clearinghouse until either:

(a) The obligor files a request for administrative review with the department or its agent and after review the department or its agent modifies or terminates the income withholding order.

(b) The obligor files a petition with the court and, after a hearing, the court modifies or terminates the income withholding order.

9. An employer may not refuse to hire, may not discharge or may not otherwise discipline the obligor as a result of this income withholding order. If the obligor is wrongfully refused employment, discharged or otherwise disciplined, the obligor may recover damages suffered, reinstatement of employment if appropriate and reasonable attorney fees and costs incurred against the employer.

10. Unless ordered otherwise, the obligor has a duty to notify the support payment clearinghouse in writing of the address of the obligor's

residence and employment and, within ten days, of a change in either one. The department or its agent shall use these addresses to notify the obligor of all subsequent actions to enforce support. Failure of the obligor to advise the department of changes in residential or employment address may subject the obligor to sanctions for contempt of court, including reasonable attorney fees and costs.

O. An income withholding order issued pursuant to this section has the same force and effect as an order of the superior court, has priority over all other attachments, executions, garnishments or assignments and may be enforced against the obligor and employer in superior court.

P. For purposes of this section, "arrearages" means past due support, including interest.

§506 - Order for assignment; foreign support order

A. A petition for an ex parte order for assignment may be filed by an agency based on an order for support issued by a court or an agency in a state other than this state. The petition shall include the information required by section 25-504 and the following documents:

1. A certified copy of the support order with all modifications.
2. A certified copy of an income withholding order, if any, still in effect.
3. A copy of the income withholding law of the jurisdiction that issued the support order.
4. A sworn statement of arrearages.
5. The assignment of support rights, if any.

B. On receipt of a petition pursuant to subsection A of this section, the clerk of the court shall enter an order for ex parte assignment. The order for wage assignment is binding on any employer or payor who is doing business in this state and who employs or is obligated to make periodic payments to the person owing child support or spousal maintenance and is subject to this section. Participation in a proceeding under this subsection does not confer jurisdiction on a court over any of the parties to the proceeding in any other proceeding. If an obligor does not have periodic earnings, income or entitlements, the court shall order an assignment against any monies owed to the obligor or held for the benefit of the obligor. The order of assignment shall direct the holder of the monies to

withhold and pay to the person or agency entitled to receive the child support the amount necessary to pay the amount ordered by the court.

C. If the obligor seeks to quash the assignment, the attorney general or county attorney shall immediately notify the petitioning state of the date, time and place of the hearing and of the obligee's right to attend. The only bases for the obligor to contest the withholding are that:

1. The withholding is not proper because of a mistake of fact that is not *res judicata*.
2. The court or agency that issued the support order lacked personal jurisdiction over the obligor.
3. The order was obtained by fraud.
4. The statute of limitations precludes enforcement of all or a part of the arrearages.

D. The court, on request of any party, shall continue the hearing on the motion to quash to permit evidence relative to the defense to be adduced by either party.

E. On a motion to quash, the court, for good cause, may quash the portion of an assignment order relating to arrearages without prejudice to the petitioner.

F. The obligation for current child support shall be fully met before any payments under an order of assignment may be applied to the payment of arrearages. If a person is obligated to pay child support for more than one family and the amount available for withholding is not sufficient to meet the total combined child support obligation, any monies withheld from the obligor's earnings, income, entitlements or other monies shall be allocated to each family by the employer or payor as follows:

1. The amount of current child support ordered in each case shall be added to obtain the total child support obligation.
2. The ordered amount in each case shall be divided by the total child support obligation to obtain a percentage of the total amount due.
3. The amount withheld from the obligor's earnings, income, entitlements or other monies shall be multiplied by the percentage under paragraph 2 of this subsection to obtain the amount to be allocated to each family.

§507 - Forms; alternative forms

A. The request for assignment, order of assignment, notices to obligor and employer, request for hearing and request to adjust or terminate the order of assignment shall be on forms prescribed by the supreme court and shall be furnished by the clerk of the superior court as required by law or on request of any obligor, payee or employer.

B. Any party may use documents other than those provided pursuant to this section if the documents are substantially similar to those prescribed by the supreme court pursuant to this section.

§508 - Enforcement of support orders; fee prohibition

A. Any judgment, order or decree, whether arising from a dissolution, divorce, separation, annulment, custody determination, parentage determination or dependency proceeding or from a uniform interstate enforcement of support act proceeding and any interlocutory support award in any such proceeding or in any other proceeding regarding support that provides for alimony, spousal maintenance or child support may be enforced as a matter of right by lien, execution, attachment, garnishment, levy, appointment of a receiver, provisional remedies or any other form of relief provided by law as an enforcement remedy for civil judgments. An affidavit regarding all payments in default under the support order, along with a copy of the underlying support order, shall be filed with the clerk of the superior court along with the appropriate writ, application, petition or motion.

B. Notwithstanding any law to the contrary, a department of this state or its political subdivisions shall not charge the department or its agents a fee for performing an act necessary to enforce a support order as provided by this section.

§509 - Representation by attorney general or county attorney;
modification of order by attorney general or county attorney

A. The attorney general or county attorney on behalf of this state may initiate an action or intervene in an action to establish, modify or enforce a duty of child support, including medical support, regardless of the welfare or nonwelfare status of the person to whom the duty of support is owed. The attorney general or county attorney may establish, modify or enforce such a duty of support by all means available, including all civil and criminal remedies provided by law. An attorney-client relationship does not exist between the attorney and an applicant or recipient of child support enforcement services.

B. This state may initiate an action or may intervene in an action involving child support. Intervention by the state in an existing action is by unconditional right and is accomplished by the state filing an entry of appearance.

C. The attorney general or county attorney shall not seek or defend any ancillary matters, such as custody or parenting time, raised in these proceedings. The attorney general or county attorney may petition for modification of child support or medical support for children.

§510 - Receiving and disbursing support and maintenance monies; arrearages; interest

A. The support payment clearinghouse established pursuant to section 46-441 shall receive and disburse all monies, including fees and costs, applicable to support and maintenance unless the court has ordered that support or maintenance be paid directly to the party entitled to receive the support or maintenance. Within two business days the clerk of the superior court shall transmit to the support payment clearinghouse any maintenance and support payments received by the clerk. Monies received by the support payment clearinghouse in cases not enforced by the state pursuant to title IV-D of the social security act shall be distributed in the following priority:

1. Current child support or current court ordered payments for the support of a family when combined with the child support obligation.

2. Current spousal maintenance.

3. The current monthly fee prescribed in subsection D of this section for handling support or spousal maintenance payments.

4. Past due support reduced to judgment and then to associated interest.

5. Past due spousal maintenance reduced to judgment and then to associated interest.

6. Past due support not reduced to judgment and then to associated interest.

7. Past due spousal maintenance not reduced to judgment and then to associated interest.

8. Past due amounts of the fee prescribed in subsection D of this section for handling support or spousal maintenance payments.

B. In any proceeding under this chapter regarding a duty of support, the records of payments maintained by the clerk or the support payment clearinghouse are prima facie evidence of all payments made and disbursed to the person or agency to whom the support payment is to be made and are rebuttable only by a specific evidentiary showing to the contrary.

C. At no cost to the clerk of the superior court, the department shall provide electronic access to all records of payments maintained by the support payment clearinghouse, and the clerk shall use this information to provide payment histories to all litigants, attorneys and interested persons and the court. For all non-title IV-D support cases, the clerk shall load new orders, modify order amounts, respond to payment inquiries, research payment related issues, release payments pursuant to orders of the court and update demographic and new employer information. The clerk shall forward orders of assignment to employers for non-title IV-D support orders. Within five business days the clerk shall provide to the department any new address, order of assignment or employment information the clerk receives regarding any support order. The information shall be provided as prescribed by the department of economic security in consultation with the administrative office of the courts.

D. The support payment clearinghouse shall receive a monthly fee for handling support and maintenance payments. The director, by rule, may establish this fee. The court shall order payment of the handling fee as part of the order for support or maintenance. The handling fee shall not be deducted from the support or maintenance portion of the payment.

E. In calculating support arrearages not reduced to a final written money judgment, interest accrues at the rate of ten per cent per annum beginning at the end of the month following the month in which the support payment is due, and interest accrues only on the principal and not on interest. A support arrearage reduced to a final written money judgment accrues interest at the rate of ten per cent per annum and accrues interest only on the principal and not on interest.

F. Past support reduced to a final written money judgment before September 26, 2008 and pursuant to section 25-320, subsection C or section 25-809, subsection B accrues interest at the rate of ten per cent per annum beginning on entry of the judgment by the court and accrues interest only on the principal and not on interest. Past support reduced to a final written money judgment beginning on September 26, 2008 and pursuant to section 25-320, subsection C or section 25-809, subsection B does not accrue interest for any time period.

G. Any direct payments not paid through the clearinghouse or any equitable credits of principal or interest permitted by law and allowed by the court after a hearing shall be applied to support arrearages as directed in the court order.

The court shall make specific findings in support of any payments or credits allowed. If the court order does not expressly state the dates the payments or credits are to be applied, the payments or credits shall be applied on the date of the entry of the order that allows the payments or credits. In a title IV-D case, if a court order does not indicate on its face that the state was either represented at or had notice of the hearing or proceeding where the payments or credits were determined, the court order shall not reduce any sum owed to the department or its agent without written approval of the department or its agent.

H. Any credit against support arrearages, other than by court order, shall be made only by written affidavit of direct payment or waiver of support arrearages signed by the person entitled to receive the support or by that person and the person ordered to make the support payment. The affidavit of direct payment or waiver of support arrearages shall be filed directly with the clerk of the court, who shall enter the information into the statewide case registry. Any credits against support arrearages shall be applied as of the dates contained in the affidavit or the date of the affidavit if no other date is specified in the affidavit. In a title IV-D case, the affidavit of direct payment or waiver of support arrearages shall not reduce any sum owed to the department or its agent without written approval of the department or its agent.

I. An arrearage calculator may be developed by a government agency using an automated transfer of data from the clearinghouse and the child support registry. The arrearage figure produced by this calculator is presumed to be the correct amount of the arrearage.

§511 - Failure of parent to provide for child; classification

A. Except as provided in section 25-501, subsection F, any parent of a minor child who knowingly fails to furnish reasonable support for the parent's child is guilty of a class 6 felony.

B. It is an affirmative defense to a charge of a violation of subsection A of this section that the defendant has complied with a valid court order that was in effect for the time period charged and that set forth an amount of support for the minor child or was unable to furnish reasonable support. Inability to furnish reasonable support is not a defense if the defendant voluntarily remained idle, voluntarily decreased his income or voluntarily incurred other financial obligations.

C. The trier of fact, in determining whether the defendant has failed to furnish reasonable support, shall consider all assets, earnings and entitlements of the defendant and whether the defendant has made all reasonable efforts to obtain the necessary funds. On a showing of previous employment or lack of a physical

or mental disability precluding employment, the trier of fact may infer that the defendant is capable of full-time employment at least at the federal adult minimum wage. This inference does not apply to noncustodial parents who are under the age of eighteen and who are still attending high school.

§511 - 01 Spousal maintenance order; violation; classification

A person who is obligated to pay spousal maintenance pursuant to an order issued by a court of competent jurisdiction is guilty of a class 1 misdemeanor if the person has notice of the order and willfully and without lawful excuse fails to comply with the terms of that order.

§512 - Consumer credit reports; use of child support or spousal maintenance obligation information

A. A consumer reporting agency as defined in title 44, chapter 11, article 6 shall include as part of a consumer report information regarding:

1. A court order or judgment obligating a person to pay child support or spousal maintenance.

2. A court order for assignment under section 25-323 or 25-504.

3. An income withholding order issued by the department of economic security or its agent pursuant to section 25-505.01.

B. The state or a person entitled to receive support or spousal maintenance may provide a consumer reporting agency with a copy of a court order or judgment described in this section.

C. The department or its agent may provide a consumer reporting agency with electronic or documentary information that an order or judgment for support or spousal maintenance exists.

D. The department shall report to a consumer reporting agency the name of an obligor who is delinquent in the payment of support and the amount of the support owed.

E. The department shall provide written notice to an obligor that it shall report the amount of the support owed by the obligor to a consumer reporting agency. The department shall provide this notice by first class mail at the obligor's current address, or after a reasonable attempt to ascertain the obligor's location, at the obligor's last known address. The notice shall state the following:

1. The obligor's name and the amount of the arrearage.
2. The address and telephone number of the department or its agent.
3. That the obligor may make a written request to the department or its agent for an administrative review pursuant to section 25-522 to contest the arrearages within fifteen days after the date of mailing of the notice.
4. That if the obligor requests an administrative review the department shall not release the report to the consumer reporting agency until a final determination has been made at the administrative review.
5. That if an obligor requests an administrative review, the issues at the administrative review shall be limited to whether the obligor is required to pay child support, whether the obligor is in arrears and the amount of current support and arrears.
6. That if the obligor does not respond to the notice, the department shall send the report to the consumer reporting agency.

§513 - Employer cooperation; violation; classification

A. On written request delivered to an employer, payor or self-employed person by the department or its agent or the child support enforcement entity of any other state or its agent that administers a child support enforcement program as required by title IV-D of the social security act or by either party to a proceeding for support or maintenance, the employer, payor or self-employed person to whom the request is directed within twenty days of delivery shall notify the requesting party of the following information that the employer, payor or self-employed person possesses concerning the person who is obligated to pay support or maintenance or against whom this obligation is sought or to whom this obligation is owed:

1. Complete name.
2. Social security number.
3. Date and place of birth.
4. Present and past employment status.

5. Earnings, income, entitlements or other monies without regard to source.

6. Current or last known address.

7. Assets.

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

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

10. Other benefits, including disability payments or payments made pursuant to a pension or retirement program.

B. The information required pursuant to subsection A, paragraphs 5, 7, 8, 9 and 10 shall not be requested or provided unless parentage has been established.

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

D. A party shall not request or receive address information protected by an order of protection, an injunction against harassment or any other court order in a domestic violence matter. The employer, payor or self-employed person is not required to determine whether an order of protection, an injunction against harassment or any other court order in a domestic violence matter exists before releasing the information requested pursuant to subsection A.

E. A party other than the department or its agent or the child support enforcement entity of any other state or its agent that administers a child support enforcement program as required by title IV-D of the social security act may make a request for information pursuant to this section not more than once in any three month period.

F. The department or its agent or the child support enforcement entity of any other state or its agent that administers a child support enforcement program as required by title IV-D of the social security act may deliver the request allowed in subsection A electronically. On request of the department, an employer shall provide its last known electronic contact information.

G. A party may request and obtain information pursuant to subsection A only for the following purposes:

1. To identify and locate a person who is under an obligation to pay support.
2. To identify and locate a person against whom an obligation is sought.
3. To identify and locate a person to whom an obligation is owed.
4. To identify and locate information pursuant to subsection A, paragraphs 5, 7, 8, 9 and 10 relating to a person who is obligated to pay support.

H. A party who requests or obtains information pursuant to subsection A for purposes other than those prescribed in subsection G is guilty of a class 1 misdemeanor.

§514 - Priority of action and judgments

Except as otherwise provided by statute, actions pursuant to this article shall be given priority over all other civil actions. Except for judgments foreclosing or enforcing prior recorded mortgages, deeds of trust, contracts or conveyance of real property, security agreements, or other liens or encumbrances upon real or personal property created by the property owner a judgment resulting from an action brought for enforcement of child support has priority over all other judgments. Such priority shall not arise until a certified copy of the child support judgment is recorded with the county recorder.

§516 - Lien; notice; priority; recording; reciprocity

A. Notwithstanding section 25-514, in a title IV-D case if a person obligated to pay child support is in arrears for an amount equal to at least two months' child support, the unpaid amounts constitute a lien by operation of law on all property presently owned and later acquired by the obligor. The department may perfect a lien by filing a notice of lien with the county recorder in the county in which the obligor has property or with a state agency or a political subdivision of this state that files personal property liens for recording on its official record. The notice of lien recorded under this section shall specify the nature of the debt, the amount, and the name and last known address of the obligor. A liquidated judgment is not required to establish a lien. Recordation is constructive notice of the lien to the creditors of the owner or subsequent purchasers, against the personal or real property presently owned or later acquired. The lien has priority

over other liens against this property except for liens arising from mortgages, deeds of trust, contracts, conveyances or security agreements created by the property owner and previously recorded or filed.

B. The department shall notify an obligor who is at least two months in arrears in making child support payments, periodic payments on a support arrearage or periodic payments pursuant to a court order of support that a notice of lien may be filed against the obligor. The department shall notify the obligor by first class mail at the obligor's current address, or after a reasonable attempt to ascertain the obligor's location, at the obligor's last known address. The notice shall state the following:

1. The obligor is at least two months in arrears in making child support payments.
2. The obligor may request in writing an administrative review to contest the arrears pursuant to section 25-522.
3. The obligor may request in writing an administrative review within fifteen days from the date of mailing of the notice.
4. If the obligor requests an administrative review, the department shall stay further action until a determination has been made at the administrative review.
5. If the obligor fails to respond to the notice, the department shall file a notice of lien against the obligor.
6. The address and telephone number of the department.
7. The obligor may request a copy of the order.

C. If an obligor fails to respond to the notice within fifteen days from the date of mailing, the department shall send the obligor a second notice by first class mail. The second notice shall include the information under subsection B of this section and shall state the following:

1. If the obligor fails to contact the department within fifteen days from the date of mailing of the second notice, a notice of lien shall be filed against the obligor.
2. This is the final notice the obligor will receive.

D. If the obligor requests an administrative review pursuant to this section, the department shall determine whether to proceed with filing the notice of lien based on whether the obligor is required to pay child support, whether the obligor is in arrears, and any other information relevant to the case. The decision of the department shall be in writing, and the department shall provide a copy to the obligor.

E. If the department determines that the obligor is at least two months in arrears and determines at the administrative review to record a notice of lien against the property of the obligor or if the obligor fails to respond to the second notice, a notice of lien shall be recorded and a copy sent to the obligor by certified mail.

F. The department may, at any time, release the property subject to the lien from the lien. Notice by the department to the effect that the property had been released from the lien is conclusive evidence that the property had been released. If any lien imposed pursuant to this section is satisfied and a notice of lien has been recorded, the department shall issue a release of the lien to the obligor against whom the lien was claimed. The department shall record the lien release in any county, agency or political subdivision where the original lien was recorded.

G. This state shall give a lien recorded in another state full faith and credit if the state agency, party or other entity seeking to enforce the lien complies with the notice requirements of this section and records the lien pursuant to the applicable laws of this state.

§517 - Title IV-D agency; license suspension; notice; administrative review or hearing

A. The department or its agent shall notify an obligor who is at least six months in arrears in making child support payments, periodic payments on a support arrearage or periodic payments pursuant to a court order of support that the obligor may be referred to court for a hearing to suspend or deny the obligor's driver license or recreational license. The department or its agent shall notify the obligor by first class mail at the obligor's current address, or after a reasonable attempt to ascertain the obligor's location, at the obligor's last known address. The notice shall state the following:

1. The obligor has willfully failed to pay child support, willfully continues to do so and is at least six months in arrears in making child support payments.

2. The obligor may request in writing an administrative review conducted pursuant to section 25-522 to contest the matter within fifteen days from the date of mailing of the notice.

3. If the obligor requests an administrative review, the department or its agent shall stay the action to refer the obligor to court for the suspension or denial of the obligor's recreational or driver license.

4. If the obligor fails to respond to the notice, the department or its agent shall refer the obligor to court for license suspension or denial pursuant to section 25-518.

5. The address and telephone number of the department.

6. The obligor may request a copy of the child support order.

B. If an obligor requests an administrative review pursuant to this section, the issues at the review shall be limited to whether the obligor is required to pay child support and has willfully failed to pay. The department or its agent shall not refer the obligor to court unless the department or its agent determines that the obligor is at least six months in arrears and has willfully failed to pay. The department or its agent shall make this decision in writing and shall provide a copy to the obligor.

C. If the department or its agent determines that the obligor is at least six months in arrears and has willfully failed to pay, the department shall refer the obligor to court for license suspension pursuant to section 25-518.

D. Notwithstanding the requirements of this section, if an obligor is at least six months in arrears in making child support payments, periodic payments on a support arrearage or periodic payments pursuant to a court order of support, the title IV-D agency or its agent may issue a notice to the obligor that the obligor's professional or occupational license may be suspended. The title IV-D agency or its agent shall notify the obligor by first class mail at the obligor's current address, or after a reasonable attempt to ascertain the obligor's location, at the obligor's last known address. The notice shall state that the obligor has willfully failed to pay child support, willfully continues to do so and is at least six months in arrears in making child support payments. The notice shall also state that within fifteen days after the notice is mailed the obligor may make a written request for an administrative review pursuant to section 25-522 to contest the matter.

E. If the obligor does not respond to the notice prescribed in subsection D of this section, the title IV-D agency or its agent shall issue an administrative

order of noncompliance to the board or agency to order the suspension of the obligor's professional or occupational license. If the obligor requests an administrative review, the title IV-D agency or its agent shall stay further action until a determination has been made at the administrative review. The issues at the review are limited to whether the obligor is required to pay child support and has willfully failed to pay. The department or its agent shall make this decision in writing and shall provide a copy to the obligor. If the obligor disagrees with the final determination, the obligor has a right to a hearing before the suspension of the obligor's professional or occupational license. The title IV-D agency or its agent must receive a request for a hearing on the determination of noncompliance within fourteen days after the date of the determination.

F. The title IV-D agency or its agent shall notify the office of administrative hearings of a request for a hearing pursuant to subsection E of this section within five business days after receipt of the request. The office of administrative hearings shall hold a hearing pursuant to title 41, chapter 6, and article 10. The issues at the hearing are limited to whether the obligor is required to pay child support and has willfully failed to pay. If the administrative law judge upholds the department's determination, the title IV-D agency or its agent shall issue an administrative order of noncompliance to the board or agency ordering it to suspend the obligor's professional or occupational license.

§518 - Child support arrearage; license suspension; hearing

A. A court shall send a certificate of noncompliance to the board or agency ordering the suspension or denial of a driver license or recreational license if the court finds from the evidence presented at a hearing to enforce a child support order that the obligor has willfully failed to pay child support, continues after notice pursuant to section 25-517, subsection A to willfully fail to pay child support and is at least six months in arrears.

B. If the obligor has complied with the support order since the suspension or denial, the obligor may petition the court for a hearing. If the obligor establishes at the review hearing that the obligor is in compliance with the support order or a court ordered plan for payment of arrearages, the court shall send a certificate of compliance to the board or agency. Except for licenses issued under title 17, the obligor may then apply for license reinstatement and shall pay all applicable fees.

C. In a title IV-D case, the department or its agent may file with the clerk of the superior court an affidavit indicating that the obligor is in compliance with the support order or the child support obligation. Within five business days after the affidavit is filed, the clerk shall send a notice of compliance to the obligor by

first class mail. The clerk shall send a copy of the notice of compliance to the department and the licensing board or agency.

D. Except for licenses issued under title 17, the board or agency shall suspend or deny the license of the licensee within thirty days after receiving the notice of noncompliance from the court. The board or agency shall not lift the suspension until the board or agency receives a certificate of compliance from the court. Notwithstanding section 41-1064, subsection C and section 41-1092.11, subsection B, the board or agency is not required to conduct a hearing. The board or agency shall notify the department in writing or by any other means prescribed by the department of all suspensions within ten days after the suspension. The information shall include the name, address, date of birth and social security number of the licensee and the license category.

E. A certificate of noncompliance without further action invalidates a license to take wildlife in this state and prohibits the obligor from applying for a license issued by an automated drawing system under title 17. The court shall send a copy of the certificate of noncompliance to the department of economic security, and the department of economic security shall notify the Arizona game and fish department of all obligors against whom a notice of noncompliance has been issued and who have applied for a license issued by an automated drawing system.

F. Notwithstanding this section, the title IV-D agency or its agent may send a certificate of noncompliance to a board or agency to order it to suspend an obligor's professional or occupational license if the obligor:

1. Has willfully failed to pay child support, continues after notice pursuant to section 25-517, subsection D to willfully fail to pay child support and is at least six months in arrears.

2. Requested an administrative review and the determination confirms that the obligor is required to pay child support and has willfully failed to pay and that either the obligor did not request a hearing on the determination or the determination was upheld after a hearing.

3. Failed to respond to the notice pursuant to section 25-517, subsection D.

G. If the obligor has paid all arrearages or if the obligor has entered into a written agreement with the title IV-D agency or its agent, the title IV-D agency shall issue a notice of compliance to the licensing board or agency.

§519 - Regulatory entities; suspension of license

The following are subject to the requirements of section 25-518:

1. All boards established under title 32.
2. The superintendent of financial institutions.
3. The registrar of contractors.
4. The department of public safety.
5. Boards and agencies that provide occupational, recreational and professional licenses or certificates pursuant to titles 3, 4, 5, 6, 8, 15, 17, 20, 36 and 41 and title 28, chapter 8.

§520 - Child support enforcement; administrative subpoena; civil penalty

A. In a title IV-D case the department or its agent may issue a subpoena to a person or entity believed to have information needed for the establishment of parentage or the establishment, modification or enforcement of a child support order, requiring appearance before the department or its agent and the production of all records or documents related to an investigation or child support proceeding.

B. The subpoena shall be served in the manner provided under applicable law or rules of procedure for the service of subpoenas in a civil action.

C. A person or entity that, without reasonable cause, fails to comply with the subpoena or that willfully gives false information is subject to a civil penalty of not more than two hundred fifty dollars for each violation.

D. A civil penalty imposed by the department pursuant to subsection C of this section is subject to court review if the person or entity requests a review within fifteen business days after the department imposes the penalty.

E. A civil penalty imposed by the department on an obligor pursuant to this section may be referred to credit reporting agencies for up to seven years after the date of the order that imposed the penalty or until collected. The department shall not take this action until the time for a court review pursuant to subsection D of this section has elapsed.

F. A civil penalty imposed by the department operates as a final judgment without further action by the department. The department may collect the penalty

through all available civil remedies. A civil judgment accrues interest pursuant to section 44-1201.

G. The department shall deposit, pursuant to sections 35-146 and 35-147, monies collected under this section in the state general fund.

§521 - Levy; seizure of property for collection of support debt; definitions

A. If there is a court ordered judgment or if the obligor is in arrears in an amount equal to twelve months of support, the department may issue a levy and collect the amount owed by the obligor by levy on all property and rights to property not exempt under federal or state law.

B. The levy extends only to property possessed and obligations existing at the time of service or within twenty-one days thereafter, except as to an account held in a financial institution in which case the levy extends only to property possessed and obligations existing at the time of service. On receipt of a notice of levy, a person in possession of property or an interest in property subject to levy shall seize and hold nonexempt property until that person receives from the department a notice of surrender of property or a notice of release of levy. Within three days after receipt, the person served with the notice of levy shall notify the obligor and any other individual or entity known or believed to have an interest in the property that a levy has occurred. The notice shall specify the amount demanded and shall contain, in the case of a seizure of personal property, an account of the property levied on, and in the case of real property, a description with reasonable certainty of the property levied on. The person served with the levy, the obligor or other persons known or believed to have an interest in the property may make a written request for an administrative review to contest the levy within fifteen days after the date of mailing of the notice. The administrative review shall be conducted pursuant to section 25-522, subsection D. The administrative review shall include a determination of the interest of the obligor in the property subject to levy, including the obligor's contributions to any property held by the community. If the request for administrative review is based on a mistake in identity, the department shall conduct the review within two business days. The administrative review shall be conducted pursuant to section 25-522, subsection E.

C. Any person in possession of property, or obligated with respect to property or rights to property subject to levy, on which a levy has been made, on demand by the department shall surrender the property or right to property to the department.

D. A person who fails or refuses to surrender any property or rights to property, subject to levy, on demand by the department, is liable in an amount

equal to the value of the property or rights to property not surrendered, but not exceeding the amount of the past due support for which the levy has been made.

E. If any property or right to property on which a levy has been made under subsection A of this section is not sufficient to satisfy the claim of the department, the department, as often as necessary, may proceed to levy in like manner on any other property subject to levy of the obligor owing support, until the amount due is paid in full.

F. In any case in which the department may levy on property or rights to property, the department may seize and sell the property or rights to the property whether real or personal, tangible or intangible in the manner prescribed by law. Except as otherwise provided by this section, the notice of sale and sale of property seized by the department shall be conducted in the manner and the time provided in title 12, chapter 9, article 7, relating to the sale of property under execution. Real property may be redeemed in the manner provided by title 12, chapter 8, article 11. The department shall notify the obligor of the date, time and location of the sale. The notice shall be given in person, left at the dwelling or usual place of business of the obligor or sent by first class mail to the obligor's last known address, at least ten days before the day of the sale. If the property or right to property is perishable, the department shall give notice of the sale to the obligor in the manner and within the time limits that are reasonable considering the character and condition of the property.

G. A person who is in possession of or obligated with respect to property or rights to property subject to levy on which a levy has been made and who, on demand by the department, surrenders the property or rights to property to the department is discharged from any obligation or liability to the obligor with respect to the property or rights to property from the surrender on payment.

H. A levy issued pursuant to this section has the same force and effect as a writ of garnishment, execution or attachment issued by the superior court.

I. For purposes of this section:

1. "Account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account or money market mutual fund account.

2. "Levy" includes the power to restrain and seize by any legal means.

3. "Person" includes an individual or an officer, employee or agent of a corporation, an officer, employee or elected official of this state or its

political subdivisions, or any agency or instrumentality of this state or the federal government or its political subdivisions, or a member or employee of a partnership, who as such officer, employee, agent, elected official or member is under a duty to surrender the property or rights to property, or to discharge the obligation.

§522 - Administrative review; notice; determination; judicial review; definitions

A. An obligor may contest an enforcement action by the department or its agent by filing a request for administrative review. An obligee may contest the distribution or disbursement of support payments by the department or its agent by filing a request for administrative review. The obligor, the obligee or the caretaker may contest the disbursement of support to a noncustodial person other than the state by filing a request for administrative review pursuant to section 46-444. The request shall be in writing, shall be signed by the requesting party, shall include a residential and mailing address and may be transmitted electronically. The request shall state the basis for the dispute and shall include any relevant information to assist the department or its agent, including a copy of any order issued, documentation of support payments made and any notice sent by the department or its agent.

B. Within ten business days after receipt of the request for review, the department or its agent shall send a notice of acknowledgment of receipt of request for administrative review to the person filing the request and shall specify any additional information the department or its agent requires to complete the review. The department or its agent on its own initiative may also request any other additional information it deems necessary to make its determination. The department or its agent shall also notify the obligee of the obligor's request for review of enforcement actions.

C. Except for obligee complaints made under section 46-408 as to distribution of support, the department or its agent shall issue a written determination within forty-five business days after sending the notice of acknowledgment of receipt of request for administrative review, or if additional information is required, forty-five business days after receipt of this information. If additional information is not received from the requesting party or another person within thirty business days after the date of the department's or the agent's request for additional information, the department shall issue a final written determination within ten business days after the due date for receipt of the additional information based on the available information. The final determination shall be in writing, and a copy shall be served on all parties by first class mail or

may be delivered electronically if electronic contact information is included in the request for administrative review.

D. Notwithstanding subsections B and C of this section, if the basis for the request for review is issuance of an income withholding order by the department pursuant to section 25-505.01 or a levy made pursuant to section 25-521, the department shall review the request and issue a final determination within ten business days after it receives the request for review. The department shall send a copy of the final determination by first class mail to all parties.

E. Notwithstanding subsections B, C and D of this section, if the basis for the request for review is a mistake in identity pursuant to section 25-521, the department shall issue a final determination by first class mail to all parties within two business days after the receipt of the request. The request shall include adequate documentation to affirm the mistake in identity.

F. A department determination made pursuant to this section is subject to judicial review under title 12, chapter 7, article 6, except that an appeal by an obligee of a department determination made pursuant to this section regarding the distribution of support payments shall be made pursuant to title 41, chapter 14, article 3.

§523 - Financial institutions data match; nonliability; prohibited disclosure; liability; civil liability; definition

A. The department shall enter into agreements with financial institutions that conduct business in this state to develop and operate a data match system to assist the department in the establishment, modification and enforcement of child support orders. The data match system shall use automated data exchange procedures to the maximum extent possible.

B. Data exchanges between financial institutions and the department shall occur quarterly and shall include the name, record address, social security number or other taxpayer identification number and any other identifying information for each obligor who maintains an account at the institution and who owes past due support as identified by the department by name and social security number or other taxpayer identification number.

C. Notwithstanding any law to the contrary, a financial institution is not subject to civil liability for disclosing to the department or its agent a person's financial record pursuant to this section or any acts of omission that are inadvertent and made in good faith.

D. The department and its agent and any state, its agent or political subdivision that administers a child support enforcement program pursuant to title IV-D of the social security act and that obtains a person's financial records may disclose this information only as is necessary to establish, modify or enforce the person's child support obligation.

E. An employee of the department, its agent or any state or political subdivision that administers a child support enforcement program pursuant to title IV-D of the social security act, who knowingly or negligently discloses a person's financial records in violation of subsection D is subject to civil liability in an amount equal to the greater of either:

1. One thousand dollars for each act of unauthorized disclosure of a financial record with respect to which the defendant is found liable.

2. The sum of the actual damages sustained by the plaintiff as a result of the unauthorized disclosure and, in the case of a willful disclosure or a disclosure that is the result of gross negligence, punitive damages, including costs and attorney fees.

F. The department may pay a reasonable fee to a financial institution for conducting a data match. The fee shall not exceed the actual costs incurred by the financial institution.

G. For purposes of this section "financial institution" means state and federally chartered banks, trust companies, federal and state savings and loan associations, federal and state credit unions, consumer lenders, international banking facilities and financial institution holding companies, insurance companies, benefit associations, safe deposit companies, money market mutual funds and similar institutions authorized to do business in this state and any party affiliated with these financial institutions.

§524 - Financial institutions; surrender of assets; nonliability

A. On receipt of a notice of lien or levy a financial institution shall encumber or surrender, as appropriate, assets held by the institution on behalf of an obligor.

B. Notwithstanding any law to the contrary, a financial institution is not subject to civil liability for encumbering or surrendering any assets held by the financial institution in response to a notice of lien or levy issued by the department or for any action taken in good faith to comply with this section.

C. The remedy provided in this section is limited to collection of past due support.

§525 - Administrative enforcement; interstate cases; definition

A. The department or its agent shall respond promptly to a request made by a title IV-D agency in another state to enforce a support order. The department shall use high volume automated administrative enforcement to the same extent as used for intrastate cases in response to a request made by a title IV-D agency in another state to enforce support orders and shall promptly report the results of the enforcement procedure to the requesting state.

B. The department or its agent may transmit a request to a title IV-D agency in another state for assistance, by electronic or other means, in a child support case involving the enforcement of a support order by high volume automated administrative enforcement. The department shall include information necessary to enable the state to which the request is transmitted to compare the case information with information contained in that state's data base. The department's request shall constitute a certification of the amount of arrears under the support order and a certification that the department has complied with all procedural due process requirements in the case.

C. If the department or its agent provides assistance to a title IV-D agency in another state pursuant to this section, the department shall not consider the case to be transferred to the caseload of the other state.

D. The department shall maintain records of the number of requests for assistance received by the department or its agent, the number of cases for which the department or its agent collects support and the amount of support collected in cases pursuant to this section.

E. For the purposes of this section, "high volume automated administrative enforcement" means the use of automatic data processing to search various state data bases to determine if information is available regarding a parent who owes a child support obligation.

§526 - Child support enforcement information; internet posting

The department of economic security division of child support enforcement shall post information on the internet on a quarterly basis that identifies no fewer than ten non-payers of child support on whom arrest warrants have been issued pursuant to section 25-681. The information shall include a photograph of each of these persons.

§527 - Child support; overpayment; reimbursement

A. An obligor whose obligation to pay support has terminated may file a request for reimbursement against the obligee for support payments made in excess of the amount ordered. The obligor must file the request with the clerk of the superior court within twenty-four months after the termination of the obligation.

B. The court may enter a judgment for reimbursement against the obligee if the court finds that the obligor's obligation to pay support has terminated and that all arrearages and interest on arrearages have been satisfied. The court shall send a copy of the judgment to the department or its agent for title IV-D cases.

C. The obligee must pay the judgment directly to the obligor and not through the clerk of the superior court or the support payment clearinghouse.

D. A judgment entered pursuant to this section does not constitute a support judgment and is enforceable only in the same manner as a civil judgment.

§528 - Title IV-D recipients; fee

A. If a recipient of title IV-D services receives at least five hundred dollars of support in a federal fiscal year and the recipient has never received assistance under a state or tribal title IV-A program, the department shall charge an annual fee of twenty-five dollars to the recipient of title IV-D services. The department shall retain the fee from future collections of support once the threshold of five hundred dollars has been met. If, after the threshold of five hundred dollars has been met, no further support collections are received or less than twenty-five dollars is received, the department may charge the fee to the recipient of services after notice advising the recipient of the deadline for payment of the fee. If the recipient does not pay the fee by the deadline, the department may retain the fee from future collections of support.

B. Notwithstanding subsection A of this section, if a foreign country has requested enforcement of a support order in any title IV-D case, the department shall charge the annual fee of twenty-five dollars to the obligor.

C. The department shall transmit to the federal government its portion of each fee withheld pursuant to subsections A and B of this section and shall deposit, pursuant to sections 35-146 and 35-147, the remainder in a child support enforcement administration fund.

§529 - Title IV-D cases; alternative medical insurance coverage

The director of the department of economic security may disseminate information provided by the department of insurance regarding individual medical insurance plans and may enter into agreements with a consortium of other states to offer medical insurance coverage to children in title IV-D cases.

§530 - Spousal maintenance; veterans' disability benefits

In determining whether to award spousal maintenance or the amount of any award of spousal maintenance, the court shall not consider any federal disability benefits awarded to the other spouse for service-connected disabilities pursuant to 38 United States Code chapter 11.

Article 2: Child Medical Support (531 - 535)

§531 - Definitions

In this article, unless the context otherwise requires:

1. "Court or administrative order" means a court or administrative agency ruling that requires a parent to provide support for that parent's child.

2. "Health insurance coverage" means fee for service, health maintenance organization, preferred provider organization and other types of coverage under which medical services could be provided to the dependent children of a noncustodial parent.

3. "State IV-D agency" means the department or any other agency that is authorized to administer services of the child support enforcement program pursuant to the requirements of title IV-D of the social security act.

§532 - Enrollment of child

A. An insurer shall not deny a child enrollment under the health plan of the child's parent for any of the following reasons:

1. The child was born out of wedlock.
2. The child is not claimed as a dependent on the parent's federal or state tax return.

3. The child does not reside with the parent or in the insurer's service area. If the child resides in another state the insurer may vary the premium and policy provisions to account for benefit levels and experience in that state.

B. If the child has health coverage through an insurer of a noncustodial parent the insurer shall:

1. Provide any information to a custodial parent that may be necessary for the child to obtain benefits through the custodial parent's insurer.

2. Permit a custodial parent or the provider with the custodial parent's approval to submit claims for covered services without the approval of a noncustodial parent.

3. Make payments on claims that are submitted pursuant to paragraph 2 of this subsection directly to the custodial parent, the provider or the state IV-D agency.

§533 - Insurer obligations

A. If a court or administrative order requires a parent to provide health coverage for a child and the parent is eligible for family coverage, the insurer shall:

1. Permit the parent to enroll the child under the family coverage if the child is otherwise eligible for the coverage without regard to any enrollment season restrictions.

2. If the parent is enrolled in family coverage but fails to enroll the child, enroll the child under the family coverage on the application of the child's other parent or the state IV-D agency.

3. Not refuse to enroll or terminate the coverage of the child unless the insurer receives satisfactory written evidence that one of the following applies:

(a) The court or administrative order is no longer in effect.

(b) The child will be enrolled in comparable health coverage through another insurer and that coverage will take effect not later than the effective date of the termination of coverage.

(c) The employer has eliminated family health coverage for all of its employees.

(d) Nonpayment of premium.

B. An insurer shall not impose any additional requirements on state agencies or another parent that are different from the requirements the insurer imposes on all other agents or assignees. An insurer shall provide the state or other parent with enrollment information and shall process the claims from and make payments to the state, another parent or another parent's provider.

§534 - Employer obligations

A. If a court or administrative order requires a parent to provide health insurance coverage that is available through an employer doing business in this state, the employer shall:

1. Allow that parent to enroll the child in the family coverage if the child is otherwise eligible for that coverage without regard to any enrollment season restrictions.

2. If the parent is enrolled in family coverage but fails to enroll the child, enroll the child under the family coverage on the application of the child's other parent, the child's legal guardian or the state IV-D agency.

3. Not allow the employee to refuse to enroll or to terminate the coverage of the child unless the employee provides the employer with written proof that the court or administrative order is no longer in effect or that the child is enrolled in comparable health insurance coverage and that coverage will take effect not later than the effective date of the termination of coverage.

4. Withhold the employee's share, if any, of health insurance premiums from the employee's compensation and pay those premiums to the insurer. The amount withheld from the employee's compensation shall not exceed the maximum amount permitted pursuant to section 33-1131.

B. If the employer offers more than one plan, the child shall be enrolled in the plan in which the child's parent is enrolled or, if the parent is not enrolled in a plan, in the least costly plan that is otherwise available to the parent.

C. During the time that the medical support order is in effect, a parent's employer shall release to the state IV-D agency or on request from another parent any necessary information relating to the health insurance coverage of the parent,

including the name and address of the insurer, the policy number and the names of the insured.

D. Notwithstanding any other law, any information that is reported pursuant to this section for the enforcement of an order for medical insurance coverage shall be released to the state IV-D agency or another parent.

E. If an order for medical insurance coverage is in effect and the employment or insurance coverage is terminated or the carrier is changed, within ten days after the change the employer shall notify the state IV-D agency and another parent of the change and of the last day on which health insurance coverage is effective and of any conversion privileges that may be available.

§535 - Enforcement of health insurance coverage; medical support notice; administrative review; service

A. In a title IV-D case, a parent who is required by an administrative or court order to provide health insurance coverage for a child shall provide the department or its agent with the name of the health insurance coverage plan under which the child is covered, the effective date of the coverage, a description of the coverage, the name of the employer and any other necessary information, forms or documents related to the health insurance coverage as provided to all new members within thirty days after the support order is established.

B. If an administrative or court order requires a parent to obtain health insurance coverage for the parent's child, the department or its agent may deliver by first class mail or electronic means to the obligated parent's employer a medical support notice to enroll the child in an insurance program as prescribed by that order. The department or its agent shall use the medical support notice to enroll prescribed by the United States secretary of health and human services pursuant to 42 United States Code §651. The employer shall deliver or mail by first class mail or by electronic means a copy of the medical support notice to enroll to the obligated parent within ten days after the employer receives the notice. The notice serves to enroll the child in the obligated parent's health insurance coverage plan. That parent may contest the notice by filing a written request for an administrative review within ten days after the parent receives a copy of the notice from the employer. The department shall conduct an administrative review pursuant to section 25-522. If a parent contests the notice, the department or its agent shall notify the employer by first class mail or electronic means that the parent has contested the medical support notice to enroll. The employer shall send the employee contributions until the department notifies the employer to cease withholding. An administrative review is limited to determining if:

1. Medical support is unlawful or inconsistent with an administrative or court order.
2. A mistaken identity exists.
3. The responsible party pursuant to the order provides alternative coverage.
4. Another parent is already providing medical insurance for the child pursuant to court order.
5. The cost of the insurance coverage is reasonable as prescribed pursuant to section 25-320, subsection J.

C. If an employee on whom an income withholding order or order of assignment and notice is served is a new employee who is entered into the state directory of new hires pursuant to section 23-722.01, the department or its agent shall provide the medical support notice to enroll to the obligated parent's employer within two days after the date of entry in the state directory of new hires unless the responsible party pursuant to the order provides alternative coverage.

D. If the obligated parent who is required by a court or an administrative order to obtain health insurance coverage changes employment and the new employer is known to the department or its agent, the department or its agent shall use the medical support notice to enroll to transfer notice to the new employer. Within thirty days after the obligated parent changes employment the obligated parent shall provide the department or its agent with the name of the health insurance coverage plan under which the child is covered, the effective date of the coverage, a description of the coverage, the name of the employer and any other necessary information, forms or documents related to the health insurance coverage as provided to all new members. Within twenty business days after it receives the medical support notice to enroll the employer shall transfer the notice to the appropriate health insurance plan that provides coverage for which the child is eligible.

E. A medical support notice to enroll has the same effect as an enrollment application that is signed by the parent.

F. If the employer does not have existing dependent coverage when it receives the medical support notice to enroll, the employer is not required to create this coverage. The employer shall notify the department or its agent of this fact within ten days after receiving the medical support notice to enroll.

G. Service by mail as authorized in this section is complete as to the employer when the mailing is received. Service by electronic means as authorized in this section is complete on transmission to the employer.

Article 3: Spousal Maintenance Enforcement (§§551 - 553)

§551 - Clerk of the court

The clerk of the court may provide services to assist a person to collect spousal maintenance. These services may include providing information regarding collection and enforcement procedures, intercepting a taxpayer's state income tax refund for collection purposes, providing assistance in the preparation of forms and instructions necessary to initiate an enforcement action and providing information and referrals regarding services related to spousal maintenance and debt collection and enforcement.

§552 - Jurisdiction; priority of action

A. The superior court has original jurisdiction in proceedings brought by this state or a person who is owed spousal maintenance to establish, enforce or modify a spousal maintenance obligation.

B. Notwithstanding any other statute, actions pursuant to this article have priority over all other civil actions except for child support actions pursuant to section 25-514 or judicial authorization pursuant to section 36-2152.

§553 - Request for arrearages; deadline

A. The person to whom the spousal maintenance obligation is owed may file a request for judgment for spousal maintenance arrearages not later than three years after the date the spousal maintenance order terminates. In that proceeding there is no bar to establishing a money judgment for all of the unpaid spousal maintenance arrearages.

B. Notwithstanding any other law, formal written judgments for spousal maintenance and for associated costs and attorney fees are exempt from renewal and are enforceable until paid in full.

C. If termination of the spousal maintenance order is disputed, this section shall be liberally construed to effect its intention of diminishing the limitation on the collection of spousal maintenance arrearages.

§681 - Child support arrest warrant; definition

A. In any action or proceeding pursuant to section 25-502, on motion of a party or on its own motion the court may issue a child support arrest warrant if the court finds that all of the following apply to the person for whom the warrant is sought:

1. The person was ordered by the court to appear personally at a specific time and location.

2. The person received actual notice of the order, including a warning that the failure to appear might result in the issuance of a child support arrest warrant.

3. The person failed to appear as ordered.

B. The judicial officer shall order the child support arrest warrant and the clerk shall issue the warrant. The warrant shall contain the name of the person to be arrested and other information required to enter the warrant in the Arizona criminal justice information system. The warrant shall command that the named person be arrested and either remanded to the custody of the sheriff or brought before the judicial officer or, if the judicial officer is absent or unable to act, the nearest or most accessible judicial officer of the superior court in the same county. A warrant that is issued pursuant to this section remains in effect until it is executed or extinguished by the court.

C. The court shall determine and the warrant shall state the amount the arrested person shall pay in order to be released from custody.

D. For the purposes of this article, "child support arrest warrant" means an order that is issued by a judicial officer in a noncriminal child support matter and that directs a peace officer in this state to arrest the person named in the warrant and bring the person before the court.

§682 - Time and manner of execution; information

A. A child support arrest warrant is executed by the arrest of the person named in the warrant. The warrant may be executed at any time.

B. When making an arrest pursuant to a child support arrest warrant, the arresting officer shall inform the person named in the warrant that the arresting officer has a child support arrest warrant unless:

1. The named person flees or forcibly resists before the arresting officer has an opportunity to inform the named person.

2. Providing this information will imperil the arrest.

C. In order to execute a child support arrest warrant, the arresting officer may use reasonable force to enter any building in which the person named in the warrant is or is reasonably believed to be.

D. The arresting officer does not have to possess the warrant at the time of the arrest. If after the arrest the arrested person requests to see the warrant, the arresting officer shall show the arrested person a copy of the warrant as soon as practicable.

E. The arrested person shall be brought before the issuing judicial officer as soon as possible or, if that judicial officer is absent or unable to act, the nearest or most accessible judicial officer of the superior court in the same county. In any event, the arrested person shall be brought before a judicial officer of the superior court in the issuing county or the county of arrest within twenty-four judicial business hours of the execution of the warrant. If the person is arrested in a county other than the county in which the warrant was issued, the arresting officer shall notify the sheriff and the local title IV-D agency, if applicable, in the county in which the warrant was issued that the person has been arrested. As soon as practicable, the sheriff of the county in which the warrant was issued shall take custody of and transport the arrested person to the issuing judicial officer or a judicial officer of the superior court in the county in which the warrant was issued. If the arrested person is not taken into custody and transported within seventy-two hours after arrest, the arrested person shall be released and issued a written notice directing the arrested person to appear at a specified date and time in the superior court in the county in which the warrant was issued. The notice shall have the same force and effect as an order of the superior court. The notice shall state that if the arrested person fails to appear as directed a child support arrest warrant may be issued. A copy of this notice shall be sent to the court and the local title IV-D agency, if applicable, in the county in which the warrant was issued.

§683 - Procedure after arrest; payment for release from custody

A. When a person who is arrested pursuant to a child support arrest warrant is brought before the court, the judicial officer shall advise the arrested person of the nature of the proceedings and shall set a date for the next court appearance. The arrested person may be released from custody pending the hearing if the arrested person pays the amount set by the court pursuant to section 25-681 or a larger amount as the court determines. The court shall not reduce the

amount ordered to be paid. The arrested person shall not be released from custody without paying the amount unless the court finds in writing or on the record that a compelling reason exists to release the arrested person. Monies received pursuant to this subsection shall be deposited and credited pursuant to section 25-502, subsection I.

B. If the arrested person pays the full amount set forth in the warrant before the arrested person is brought before a judicial officer, the arrested person may be released after receiving a notice to appear in the superior court in the county in which the warrant was issued pursuant to the procedure prescribed in section 25-682, subsection E. If the arrested person fails to appear as directed, a child support arrest warrant may be issued.

C. The arresting agency shall forward all amounts that are paid by the arrested person for release pursuant to this subsection to the clerk of the superior court in the county in which the warrant was issued or the support payment clearinghouse for deposit and credit pursuant to section 25-502, subsection I.

§684 - Preexisting warrants

A civil arrest warrant that is issued before the effective date of this section for the failure to appear in a child support enforcement proceeding under this chapter or chapter 3 of this title automatically becomes a child support arrest warrant after the effective date of this section. This article applies to all procedures under the warrant, unless the agency that is responsible for child support enforcement in a county elects not to convert warrants issued in that county.

§685 - Entry into criminal information system

Child support arrest warrants shall be entered in the wanted person file of the Arizona criminal justice information system.

APPENDIX C

CHAPTER 8 OF TITLE 25 OF THE NEWLY REVISED ARIZONA REVISED
STATUTES

Article 1: General Provisions (§§1001 - 1013)

§1001 Short title

This chapter may be cited as the Uniform Child Custody Jurisdiction and Enforcement act.

§ 1002 Definitions

In this chapter, unless the context otherwise requires:

1. "Abandoned" means left without provision for reasonable and necessary care or supervision.

2. "Child" has the same meaning prescribed in section 1-215.

3. "Child custody determination":

(a) Means any judgment, decree or other order of a court, including a permanent, temporary, initial and modification order, for legal custody, physical custody or visitation with respect to a child.

(b) Does not include an order relating to child support or any other monetary obligation of an individual.

4. "Child custody proceeding":

(a) Means a proceeding, including a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, parentage, termination of parentage and protection from domestic violence, in which legal custody, physical custody or visitation with respect to a child is an issue or in which that issue may appear.

(b) Does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under article 3 of this chapter.

5. "Commencement" means the filing of the first pleading in a proceeding.

6. "Court" means an entity authorized under the law of a state to establish, enforce or modify a child custody determination.

7. "Home state" means:

(a) The state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding, including any period during which that person is temporarily absent from that state.

(b) If a child is less than six months of age, the state in which the child lived from birth with a parent or person acting as a parent, including any period during which that person is temporarily absent from that state.

8. "Initial determination" means the first child custody determination concerning a particular child.

9. "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.

10. "Issuing state" means the state in which a child custody determination is made.

11. "Modification" means a child custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

12. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, or public corporation or any other legal or commercial entity.

13. "Person acting as a parent" means a person, other than a recognized parent, who meets both of the following requirements:

(a) Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding.

(b) Has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

14. "Physical custody" means the physical care and supervision of a child.

15. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

16. "Tribe" means an Indian tribe or band or Alaskan native village that is recognized by federal law or formally acknowledged by a state.

17. "Visitation" includes parenting time as defined in section 25-402.

18. "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

§1003 Proceeding governed by other law

This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

§1004 - Application to Indian tribes

A. A child custody proceeding that pertains to an Indian child as defined in the Indian child welfare act (25 United States Code section 1903) is not subject to this chapter to the extent that it is governed by the Indian child welfare act.

B. A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying this article and article 2 of this chapter.

C. A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under article 3 of this chapter.

§1005 - International application of chapter

A. A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying this article and article 2 of this chapter.

B. Except as otherwise provided in subsection C, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under article 3 of this chapter.

C. A court of this state is not required to apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.

§1006 - Effect of child custody determination

A child custody determination made by a court of this state that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this state or notified pursuant to section 25-1008 or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

§1007 - Priority

If a question of existence or exercise of jurisdiction under this chapter is raised in a child custody proceeding, on request of a party, the question must be given priority on the calendar and handled expeditiously.

§1008 - Notice to persons outside this state

A. Notice required for the exercise of jurisdiction if a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

B. Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

C. Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

§1009 - Appearance and limited immunity

A. A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

B. A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party who is present in this state and who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

C. The immunity granted by subsection A does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter and committed by an individual while present in this state.

§1010 - Communication between courts; definition

A. A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.

B. The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

C. Communication between courts on schedules, calendars, court records and similar matters may occur without informing the parties. A record need not be made of the communication.

D. Except as otherwise provided in subsection C, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

E. For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in any electronic or other medium and that is retrievable in perceivable form.

§1011 - Taking testimony in another state

A. In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms on which the testimony is taken.

B. A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

C. Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing shall not be excluded from evidence on an objection based on the means of transmission.

§1012 - Cooperation between courts; preservation of records

A. A court of this state may request the appropriate court of another state to:

1. Hold an evidentiary hearing.
2. Order a person to produce or give evidence pursuant to procedures of that state.
3. Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding.
4. Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented and any evaluation prepared in compliance with the request.
5. Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

B. On request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection A.

C. Travel and other necessary and reasonable expenses incurred under subsections A and B may be assessed against the parties according to the law of this state.

D. A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations and other pertinent records with respect to a child custody proceeding until the child attains eighteen years of age. On appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

§1013 - Military deployment; home state

Notwithstanding section 25-1002, if this state is the home state of a child at the time of the military deployment of that child's custodial parent outside of the United States and the child is relocated outside of the United States during the deployment, this state remains the home state of the child until the deployment ends.

Article 2: Jurisdiction (§§1031 - 1040)

§1031 Initial child custody jurisdiction

A. Except as otherwise provided in section 25-1034, a court of this state has jurisdiction to make an initial child custody determination only if any of the following is true:

1. This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

2. A court of another state does not have jurisdiction under paragraph 1 or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 25-1037 or 25-1038 and both of the following are true:

(a) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.

(b) Substantial evidence is available in this state concerning the child's care, protection, training and personal relationships.

3. All courts having jurisdiction under paragraph 1 or 2 have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under section 25-1037 or 25-1038.

4. A court of any other state would not have jurisdiction under the criteria specified in paragraph 1, 2 or 3.

B. Subsection A of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

C. Physical presence of or personal jurisdiction over a party or a child is not necessary or sufficient to make a child custody determination.

§1032 Exclusive continuing jurisdiction

A. Except as otherwise provided in section 25-1034, a court of this state that has made a child custody determination consistent with section 25-1031 or 25-1033 has exclusive, continuing jurisdiction over the determination until either of the following is true:

1. A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships.

2. A court of this state or a court of another state determines that the child, the child's parents and any person acting as a parent do not presently reside in this state.

B. A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 25-1031.

§1033 - Jurisdiction to modify determination

Except as otherwise provided in section 25-1034, a court of this state shall not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under section 25-1031, subsection A, paragraph 1 or 2 and either of the following is true:

1. The court of the other state determines that it no longer has exclusive, continuing jurisdiction under section 25-1032 or that a court of this state would be a more convenient forum under section 25-1037.

2. A court of this state or a court of the other state determines that the child, the child's parents and any person acting as a parent do not presently reside in the other state.

§1034 - Temporary emergency jurisdiction

A. A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

B. If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under section 25-1031, 25-1032 or 25-1033, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under section 25-1031, 25-1032 or 25-1033. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under section 25-1031, 25-1032 or 25-1033, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

C. If there is a previous child custody determination that is entitled to be enforced under this chapter or a child custody proceeding has been commenced in a court of a state having jurisdiction under section 25-1031, 25-1032 or 25-1033, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under section 25-1031, 25-1032 or 25-1033. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

D. A court of this state that has been asked to make a child custody determination under this section, on being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under section 25-1031, 25-1032 or 25-1033, shall immediately communicate with the other court. A court of this state that exercises jurisdiction pursuant to section 25-1031, 25-1032 or 25-1033, on being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section, shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child and determine a period for the duration of the temporary order.

§1035 - Notice; opportunity to be heard; joinder

A. Before a child custody determination is made under this chapter, notice and an opportunity to be heard pursuant to section 25-1008 must be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated and any person having physical custody of the child.

B. This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

C. The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the law of this state as in child custody proceedings between residents of this state.

§1036 Simultaneous proceedings

A. Except as otherwise provided in section 25-1034, a court of this state shall not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under section 25-1037.

B. Except as otherwise provided in section 25-1034, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 25-1039. If the court determines that a child custody proceeding has been commenced in a court in another state that has jurisdiction substantially in accordance with this chapter, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

C. In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may do any of the following:

1. Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying or dismissing the proceeding for enforcement.
2. Enjoin the parties from continuing with the proceeding for enforcement.
3. Proceed with the modification under conditions it considers appropriate.

§1037 - Inconvenient forum

A. A court of this state that has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if

it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised on motion of a party, the court's own motion or request of another court.

B. Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors including:

1. Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child.
2. The length of time the child has resided outside this state.
3. The distance between the court in this state and the court in the state that would assume jurisdiction.
4. The relative financial circumstances of the parties.
5. Any agreement of the parties as to which state should assume jurisdiction.
6. The nature and location of the evidence required to resolve the pending litigation, including testimony of the child.
7. The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.
8. The familiarity of the court of each state with the facts and issues in the pending litigation.

C. If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings on condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

D. A court of this state may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

§1038 - Jurisdiction declined by reason of conduct

A. Except as otherwise provided in section 25-1034, if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless any of the following is true:

1. The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction.

2. A court of the state otherwise having jurisdiction under section 25-1031, 25-1032 or 25-1033 determines that this state is a more appropriate forum under section 25-1037.

3. A court of any other state would not have jurisdiction under the criteria specified in section 25-1031, 25-1032 or 25-1033.

B. If a court of this state declines to exercise its jurisdiction pursuant to subsection A of this section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under section 25-1031, 25-1032 or 25-1033.

C. If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection A of this section, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court shall not assess fees, costs or expenses against this state unless authorized by law other than this chapter.

§1039 - Information to be submitted to court

A. In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

1. Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the

child and, if so, shall identify the court, the case number and the date of the child custody determination, if any.

2. Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, shall identify the court, the case number and the nature of the proceeding.

3. Knows the names and addresses of any person who is not a party to the proceeding and who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

B. If the information required by subsection A is not furnished, the court, on motion of a party or on its own motion, may stay the proceeding until the information is furnished.

C. If the declaration as to any of the items described in subsection A, paragraph 1, 2 or 3 is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

D. Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

E. If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or child and determines that the disclosure is in the interest of justice.

§1040 Appearance of parties and child

A. In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

B. If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to

section 25-1008 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

C. The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

D. If a party to a child custody proceeding who is outside this state is directed to appear under subsection B of this section or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

Article 3: Enforcement (§§1051 - 1067)

§105 - Definitions

In this article, unless the context otherwise requires:

1. "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague convention on the civil aspects of international child abduction or enforcement of a child custody determination.

2. " Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague convention on the civil aspects of international child abduction or enforcement of a child custody determination.

§1052 - Enforcement under Hague convention

Under this article a court of this state may enforce an order for the return of the child made under the Hague convention on the civil aspects of international child abduction as if it were a child custody determination.

§1053 - Duty to enforce

A. A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

B. A court of this state may use any remedy available under any other law of this state to enforce a child custody determination made by a court of another state. The remedies provided in this article are cumulative and do not affect the availability of other remedies to enforce a child custody determination

§1054 - Temporary visitation

A. A court of this state that does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

1. A visitation schedule made by a court of another state.

2. The visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

B. If a court of this state makes an order under subsection A, paragraph 2, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in article 2 of this chapter. The order remains in effect until an order is obtained from the other court or the period expires.

§1055 - Registration of child custody determination

A. A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate court in this state all of the following:

1. A letter or another document requesting registration.

2. Two copies, including one certified copy, of the determination sought to be registered and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified.

3. Except as otherwise provided in section 25-1039, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

B. On receipt of the documents required by subsection A of this section, the registering court shall:

1. Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form.

2. Serve notice on the persons named pursuant to subsection A, paragraph 3 of this section and provide them with an opportunity to contest the registration in accordance with this section.

C. The notice required by subsection B, paragraph 2 of this section must state that:

1. A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state.

2. A hearing to contest the validity of the registered determination must be requested within twenty days after service of notice.

3. Failure to contest the registration shall result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

D. A person seeking to contest the validity of a registered order must request a hearing within twenty days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes any of the following:

1. The issuing court did not have jurisdiction under article 2 of this chapter.

2. The child custody determination sought to be registered has been vacated, stayed or modified by a court having

3. The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of section 25-1008, in the proceedings before the court that issued the order for which registration is sought.

E. If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

F. Confirmation of a registered order, whether by operation of law or after notice and a hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

§1056 - Enforcement of registered determination

A. A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.

B. A court of this state shall recognize and enforce, but shall not modify, except in accordance with article 2 of this chapter, a registered child custody determination of a court of another state.

§1057 - Simultaneous proceedings

If a proceeding for enforcement under this article is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under article 2 of this chapter, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

§1058 - Expedited enforcement of child custody determination

A. A petition under this article must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

B. A petition for enforcement of a child custody determination must state:

1. Whether the court that issued the determination identified the jurisdictional basis it relied on in exercising jurisdiction and, if so, what the basis was.
2. Whether the determination for which enforcement is sought has been vacated, stayed or modified by a court whose decision must be enforced under this chapter and, if so, shall identify the court, the case number and the nature of the proceeding.
3. Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic

violence, protective orders, termination of parental rights and adoptions and, if so, shall identify the court, the case number and the nature of the proceeding.

4. The present physical address of the child and the respondent, if known.

5. Whether relief in addition to the immediate physical custody of the child and attorney fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought.

6. If the child custody determination has been registered and confirmed under section 25-1055, the date and place of registration.

C. On the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of the hearing at the request of the petitioner.

D. An order issued under subsection C of this section must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs and expenses under section 25-1062 and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that either of the following is true:

1. The child custody determination has not been registered and confirmed under section 25-1055 and that any of the following is true:

(a) The issuing court did not have jurisdiction under article 2 of this chapter.

(b) The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court having jurisdiction to do so under article 2 of this chapter.

(c) The respondent was entitled to notice, but notice was not given in accordance with section 25-1008, in the proceedings before the court that issued the order for which enforcement is sought.

2. The child custody determination for which enforcement is sought was registered and confirmed under section 25-1054, but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under article 2 of this chapter.

§1059 - Service of petition and order

Except as otherwise provided in section 25-1061, the petition and order must be served on the respondent and any person who has physical custody of the child by any method authorized by this state.

§1060 - Hearing and order

A. Unless the court issues a temporary emergency order in accordance with section 25-1034, on a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that either of the following is true:

1. The child custody determination has not been registered and confirmed under section 25-1053 and that any of the following is true:

(a) The issuing court did not have jurisdiction under article 2 of this chapter.

(b) The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court of a state having jurisdiction to do so under article 2 of this chapter.

(c) The respondent was entitled to notice, but notice was not given in accordance with section 25-1008, in the proceedings before the court that issued the order for which enforcement is sought.

2. The child custody determination for which enforcement is sought was registered and confirmed under section 25-1055 but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under article 2 of this chapter.

B. The court shall award the fees, costs and expenses authorized under section 25-1062, may grant additional relief, including a request for the assistance of law enforcement officials, and may set a further hearing to determine whether additional relief is appropriate.

C. If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

D. A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child shall not be invoked in a proceeding under this article.

§1061 - Warrant to take physical custody of child

A. On the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this state.

B. If on the testimony of the petitioner or any other witness, the court finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by section 25-1058, subsection B.

C. A warrant to take physical custody of a child must do all of the following:

1. Recite the facts on which a conclusion of imminent serious physical harm or removal from the jurisdiction is based.
2. Direct law enforcement officers to take physical custody of the child immediately.
3. Provide for the placement of the child pending final relief.

D. The respondent must be served with the petition, warrant and order immediately after the child is taken into physical custody.

E. A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

F. The court may impose conditions on placement of a child to ensure the appearance of the child and the child's custodian

§1062 - Costs, fees and expenses

A. The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award is clearly inappropriate.

B. The court shall not assess fees, costs or expenses against a state unless authorized by law other than this chapter.

§1063 - Recognition and enforcement

A court of this state shall accord full faith and credit to an order that is issued by another state, that is consistent with this chapter and that enforces a child custody determination by a court of another state unless the order has been vacated, stayed or modified by a court having jurisdiction to do so under article 2 of this chapter.

§1064 - Appeals

An appeal may be taken from a final order in a proceeding under this article in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under section 25-1034, the enforcing court shall not stay an order enforcing a child custody determination pending appeal.

§1065 - Role of attorney general

A. In a case that arises under this chapter or that involves the Hague convention on the civil aspects of international child abduction, the attorney general may take any lawful action, including resorting to a proceeding under this article or any other available civil proceeding, to locate a child, obtain the return of a child or enforce a child custody determination if there is any of the following:

1. An existing child custody determination.
2. A request to do so from a court in a pending child custody proceeding.

3. A reasonable belief that a criminal statute has been violated.

4. A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague convention on the civil aspects of international child abduction.

B. The attorney general acting pursuant to this section acts on behalf of the court and shall not represent any party.

§1066 Role of law enforcement

At the request of the attorney general who acts pursuant to section 25-1065, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party to assist the attorney general.

§1067 - Costs and expenses

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the attorney general and law enforcement officers who act pursuant to section 25-1065 and 25-1066.

APPENDIX D

CHAPTER 9 OF TITLE 25 OF THE NEWLY REVISED ARIZONA REVISED
STATUTES

Chapter 9 Uniform Interstate Family Support Act (Article 1 - 8)

Article 1: General Provisions (§§1201 - 1204)

§ 1201 Short title

This chapter may be cited as the Uniform Interstate Family Support Act.

§ 1202 Definitions

In this chapter, unless the context otherwise requires:

1. "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent(s) or who is or is alleged to be the beneficiary of a support order directed to the parent.

2. "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

3. "Duty of support" means an obligation imposed or imposed by law to provide support for a child, spouse or former spouse, including an unsatisfied obligation to provide support.

4. "Home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing a petition or a comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six month or other period.

5. "Income" includes earnings or other periodic entitlements to money from any source including any other property subject to withholding for support under the laws of this state.

6. "Income withholding order" means an order or other legal process directed to an obligor's employer or other debtor to withhold support from the income of the obligor.

7. "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this chapter or a law or procedure substantially similar to this chapter.

8. "Initiating tribunal" means the authorized tribunal in an initiating state.

9. "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

10. "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

11. "Law" includes decisional and statutory law and rules and regulations having the force of law.

12. "Obligee" means any of the following:

(a) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered.

(b) A state or political subdivision to which the rights under a duty of support or support order have been assigned or that has independent claims based on financial assistance provided to an individual obligee.

(c) An individual who seeks a judgment determining parentage of the individual's child.

13. "Obligor" means an individual or the estate of a decedent that meets any of the following conditions:

(a) Owes or is alleged to owe a duty of support.

(b) Is alleged but has not been adjudicated to be a parent of a child.

(c) Is liable under a support order.

14. "Person" has the same meaning prescribed in section 1-215.

15. "Petition" includes a complaint.

16. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form.

17. "Register" means to file a support order or judgment determining parentage in superior court.

18. "Registering tribunal" means a tribunal in which a support order is registered.

19. "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this chapter or a law substantially similar to this chapter.

§1204 - Remedies cumulative

A. Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law, including the recognition of a support order of a foreign country or political subdivision on the basis of comity.

B. This chapter does not:

1. Provide the exclusive method of establishing or enforcing a support order under the laws of this state.

2. Grant a tribunal of this state jurisdiction to render judgment or issue an order relating to access and parenting times in a proceeding under this chapter.

Article 2: Jurisdiction (§§1221 - 1231)

§1221 - Bases for jurisdiction over nonresident

A. In a proceeding to establish or enforce a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if any of the following is true:

1. The individual is personally served within this state.

2. The individual submits to the jurisdiction of this state by consent, by entering a general appearance or by filing a responsive document having the effect of waiving any contest to personal jurisdiction.

3. The individual resided with the child in this state.

4. The individual resided in this state and provided prenatal expenses or support for the child.

5. The child resides in this state as a result of the acts or directives of the individual.

6. The individual engaged in reproductive conduct in this state and the child may have been conceived by that act or conduct.

7. The individual asserted parentage on a birth certificate filed in this state.

8. There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

B. The bases of personal jurisdiction prescribed in subsection A of this section or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of this state to modify a child support order of another state unless the requirements of section 25-1311 or 25-1315 are met.

§1222 - Duration of personal jurisdiction

Personal jurisdiction acquired by a tribunal of this state in a proceeding under this chapter or another law of this state relating to a support order continues as long as the tribunal of this state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order pursuant to sections 25-1225, 25-1226 and 25-1231

§1223 - Initiating and responding tribunal of state

Under this chapter, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

§1224 - Simultaneous proceedings

A. A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a pleading is filed in another state only if all of the following are true:

1. The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state.

2. The contesting party timely challenges the exercise of jurisdiction in the other state.

3. If relevant, this state is the home state of the child.

B. A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if all of the following are true:

1. The petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state.
2. The contesting party timely challenges the exercise of jurisdiction in this state.
3. If relevant, the other state is the home state of the child.

§1225 - Continuing, exclusive jurisdiction to modify child support order

A. A tribunal of this state that has issued a support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child support order if the order is the controlling order and either:

1. At the time of the filing of a request for modification this state is the residence of the obligor, the individual obligee or the child for whose benefit the support order is issued.
2. If this state is not the residence of the obligor, the individual obligee or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

B. A tribunal of this state that has issued a child support order consistent with the law of this state shall not exercise continuing, exclusive jurisdiction to modify the order if either:

1. All of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction.

2. Its order is not the controlling order.

C. If a tribunal of another state has issued a child support order pursuant to the uniform interstate family support act or a law substantially similar to that act and that modifies a child support order of a tribunal of this state, tribunals of this

state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

D. A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

E. A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

§1226 - Continuing jurisdiction to enforce child support order

A. A tribunal of this state that has issued a child support order consistent with the laws of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

1. The order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the uniform interstate family support act.

2. A money judgment for arrears of support and interest on the order accrued before a determination that an order of another state is the controlling order.

B. A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

§1227 - Determination of controlling child support order

A. If a proceeding is brought under this chapter and only one tribunal has issued a child support order, the order of that tribunal is controlling and shall be recognized.

B. If a proceeding is brought under this chapter and two or more child support orders have been issued by tribunals in this state or another state with regard to the same obligor and the same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls:

1. If only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal is controlling and shall be recognized.

2. If more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child is controlling. If an order has not been issued in the current home state of the child, the order most recently issued is controlling.

3. If none of the tribunals would have continuing exclusive jurisdiction under this chapter, the tribunal of this state shall issue a child support order that is controlling.

C. If two or more child support orders have been issued for the same obligor and the same child, on request of a party that is an individual or a support enforcement agency, a tribunal of this state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under subsection B of this section. The request may be filed with a registration for enforcement or registration for modification pursuant to article 6 of this chapter.

D. A request to determine which is the controlling order must be accompanied by a copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

E. The tribunal that issued the order that is recognized as controlling under subsection A, B or C of this section has continuing jurisdiction to the extent provided pursuant to section 25-1225 or 25-1226.

F. A tribunal of this state that determines the order that is the controlling child support order under subsection B, paragraph 1 or 2 of this section or subsection C of this section or that issues a new controlling child support order under subsection B, paragraph 3 of this section shall state in that order:

1. The basis on which the tribunal made its determination.

2. The amount of prospective support, if any.

3. The total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited pursuant to section 25-1229.

G. Within thirty days after issuance of an order determining the controlling order, the party obtaining the order shall file a certified copy of the order in each tribunal that had issued or registered an earlier order of child support. A party or support enforcement agency that obtains the controlling order

but fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

H. An order that has been determined to be the controlling order or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this chapter.

§1228 - Child support orders for two or more obligees

In responding to registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of this state shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this state

§1229 - Credit for payments

A tribunal of this state shall credit amounts collected for a particular period pursuant to any child support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of this state or any other state.

§1230 - Application of chapter to nonresident subject to personal jurisdiction

A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under this chapter or other laws of this state relating to a support order, or recognizing a support order of a foreign country or political subdivision on the basis of comity, may receive evidence from another state pursuant to section 25-1256, communicate with a tribunal of another state pursuant to section 25-1257 and obtain discovery through a tribunal of another state pursuant to section 25-1258. In all other respects, articles 3 through 7 of this chapter do not apply and the tribunal shall apply the procedural and substantive law of this state.

§1231 - Continuing, exclusive jurisdiction to modify spousal support order

A. A tribunal of this state issuing a spousal support order consistent with the laws of this state has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation.

B. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the laws of that state.

C. A tribunal of this state that has continuing, exclusive jurisdiction over a spousal support order may serve as either:

1. An initiating tribunal of another state to enforce the spousal support order issued in that state.
2. A responding tribunal to enforce or modify its own spousal support order.

Article 3: Civil Provisions of General Application (§§1241 - 1259)

§1241 - Proceedings under this chapter

A. Except as otherwise provided in this chapter, this article applies to all proceedings under this chapter.

B. An individual petitioner or a support enforcement agency may initiate a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state that has or can obtain personal jurisdiction over the respondent.

§1242 - Proceeding by minor parent

A minor parent or a guardian or other legal representative of a minor parent may maintain a proceeding on behalf of or for the benefit of the minor's child.

§1243 - Application of law of state

Except as otherwise provided by this chapter, a responding tribunal of this state shall:

1. Apply the procedural and substantive law generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings.
2. Determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

§1244 - Duties of initiating tribunal

A. On the filing of a petition authorized by this chapter, an initiating tribunal of this state shall forward the petition and its accompanying documents either:

1. To the responding tribunal or the appropriate support enforcement agency in the responding state.

2. If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that the petition be forwarded to the appropriate tribunal and that receipt be acknowledged.

B. If requested by the responding tribunal, a tribunal of this state shall issue any certificate or other document and may make findings required by the law of the responding state. If the responding state is a foreign country or political subdivision, on request the tribunal shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding state.

§1245 - Duties and powers of responding tribunal

A. When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to section 25-1241, subsection B, it shall file the petition or pleading and notify the petitioner of where and when it was filed.

B. A responding tribunal of this state, to the extent not prohibited by other law, may do one or more of the following:

1. Issue or enforce a support order, modify a child support order, determine the controlling child support order or determine parentage.

2. Order an obligor to comply with a support order, specifying the amount and the manner of compliance.

3. Order income withholding.

4. Determine the amount of any arrearages and specify a method of payment.

5. Enforce orders by civil or criminal contempt, or both.

6. Set aside property for satisfaction of the support order.

7. Place liens and order execution on the obligor's property.

8. Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment and telephone number at the place of employment.

9. Issue a civil arrest warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the civil arrest warrant in any local and state computer systems for criminal warrants.

10. Order the obligor to seek appropriate employment by specified methods.

11. Award reasonable attorney fees and other fees and costs.

12. Grant any other available remedy.

C. A responding tribunal of this state shall include in a support order issued under this chapter or in the documents accompanying the order the calculations on which the support order is based.

D. A responding tribunal of this state may not condition the payment of a support order issued under this chapter on compliance by a party with provisions for visitation.

E. If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

F. If requested to enforce a support order, arrears or judgment or modify a support order stated in a foreign currency, a responding tribunal of this state shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

§1246 - Inappropriate tribunal

If a petition or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner where and when the pleading was sent.

§1247 - Duties of support enforcement agency

A. A support enforcement agency of this state, on request, shall provide services to a petitioner in a proceeding under this chapter.

B. A support enforcement agency of this state that is providing services to the petitioner shall:

1. Take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent.

2. Request an appropriate tribunal to set a date, time and place for a hearing.

3. Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties.

4. Within two days, exclusive of Saturdays, Sundays and other legal holidays, after receipt of a written notice in a record from an initiating, responding or registering tribunal, send a copy of the notice by first class mail to the petitioner.

5. Within two days, exclusive of Saturdays, Sundays and other legal holidays, after receipt of a written communication in a record from the respondent or the respondent's attorney, send a copy of the communication by first class mail to the petitioner.

6. Notify the petitioner if jurisdiction over the respondent cannot be obtained.

C. A support enforcement agency of this state that requests registration of a child support order in this state for enforcement or for modification shall make reasonable efforts to either:

1. Ensure that the order to be registered is the controlling order.

2. If two or more child support orders exist and the identity of the controlling order has not been determined, ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

D. A support enforcement agency of this state that requests registration and enforcement of a support order, arrears or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the

equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

E. A support enforcement agency of this state shall request a tribunal of this state to issue a child support order and an income withholding order that redirect payment of current support, arrears and interest if requested to do so by a support enforcement agency of another state pursuant to section 25-1259.

F. This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

§1248 - Duty of the attorney general

A. If the attorney general determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties under this chapter or may provide those services directly to the individual.

B. The attorney general may determine that a foreign country or political subdivision has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination.

§1249 - Private counsel

An individual may employ private counsel to represent the individual in proceedings authorized by this chapter.

§1250 - Duties of department of economic security

A. The department of economic security is the state information agency under this chapter.

B. The department shall:

1. Compile and maintain a current list, including addresses, of the tribunals in this state that have jurisdiction under this chapter and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state.

2. Maintain a register of tribunals and support enforcement agencies received from other states.

3. Forward to the appropriate tribunal in the county in this state in which the obligee or the obligor resides or in which the obligor's property

is believed to be located all documents concerning a proceeding under this chapter received from an initiating tribunal or the state information agency of the initiating state.

4. Obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification, federal or state locator services, examination of telephone directories, requests for the obligor's address from employers and examination of governmental records, including to the extent not prohibited by other law those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver licenses and social security.

§1251 - Pleadings and accompanying documents

A. In a proceeding under this chapter, a petitioner seeking to establish a support order, determine parentage or register and modify a support order of another state must file a petition. Unless otherwise ordered under section 25-1252, the petition or accompanying documents shall provide, as far as known, the name, residential address and social security number of the obligor and the obligee and the name, sex, residential address, social security number and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Any social security numbers may be redacted and filed separately pursuant to section 25-501, subsection G. Unless filed at the time of registration, the petition must be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

B. The petition shall specify the relief sought. The petition and accompanying documents shall conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

§1252 - Nondisclosure of information in exceptional circumstances

If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and shall not be disclosed to the other party or to the public. After a hearing in which a tribunal takes into consideration the health, safety or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

§1253 - Costs and fees

A. The petitioner shall not pay a filing fee or other costs.

B. If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney fees, other costs and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal shall not assess fees, costs or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

C. The tribunal shall order the payment of costs and reasonable attorney fees if it determines that a hearing was requested primarily for delay. In a proceeding under article 6 of this chapter for the enforcement and modification of a support order after registration, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

§1254 - Limited immunity of petitioner

A. Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

B. A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this chapter.

C. The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while present in this state to participate in the proceeding.

§1255 - Nonparentage as defense

A party whose parentage of a child has been previously determined by or pursuant to law shall not plead nonparentage as a defense to a proceeding under this chapter.

§1256 - Special evidence and procedure

A. The physical presence of a nonresident party who is an individual in a tribunal proceeding of this state is not required for the establishment, enforcement or modification of a support order or the rendition of a judgment determining parentage.

B. An affidavit, a document substantially complying with federally mandated forms or a document incorporated by reference in any affidavit or mandated form that would not be excluded under the hearsay rule if given in person is admissible in evidence if given under penalty of perjury by a party or witness residing in another state.

C. A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

D. Copies of bills for testing for parentage and for prenatal and postnatal health care of the parent and child furnished to the adverse party at least ten days before trial are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary and customary.

E. Documentary evidence transmitted from another state to a tribunal of this state by telephone, fax or other means that do not provide an original record shall not be excluded from evidence on an objection based on the means of transmission.

F. In a proceeding under this chapter, a tribunal of this state shall permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

G. If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

H. A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.

I. The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.

J. A voluntary acknowledgment of parentage, certified as a true copy, is admissible to establish parentage of the child.

§1257 - Communications between tribunals

A tribunal of this state may communicate with a tribunal of another state or a foreign country or political subdivision in a record or by telephone or other means to obtain information concerning the laws, the legal effect of a judgment, decree or order of that tribunal and the status of a proceeding in the other state or the foreign country or political subdivision. A tribunal of this state may furnish similar information by similar means to a tribunal of another state or a foreign country or political subdivision.

§1258 - Assistance with discovery

A tribunal of this state may:

1. Request a tribunal of another state to assist in obtaining discovery.
2. On request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

§1259 - Receipt and disbursement of payments

A. A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

B. If neither the obligor, the obligee who is an individual nor the child resides in this state, on request from the support enforcement agency of this state or another state, a tribunal of this state shall:

1. Direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services.
2. Issue and send to the obligor's employer a conforming income withholding order or an administrative notice of change of payee, reflecting the redirected payments.

C. The support enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to subsection B shall

furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

Article 4: Establishment of Support Order (§1271)

§1271 - Petition to establish support order

A. If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this state may issue a support order if either:

1. The individual seeking the order resides in another state.
2. The support enforcement agency seeking the order is located in another state.

B. The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

1. A presumed parent of the child.
2. Petitioning to have parentage adjudicated.
3. Identified as a parent of the child through genetic testing or rebuttal to such.
4. An alleged father who has declined to submit to genetic testing.
5. Shown by clear and convincing evidence to be a parent of the child.
6. An acknowledged parent as provided pursuant to section 36-322.
7. The parent of the child.
8. An individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

C. On finding, after notice and an opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to section 25-1245.

Article 5: Enforcement of Order of Another State without Registration (§§ 1281 - 1287)

§1281 - Employer's receipt of income withholding order of another state

An income withholding order issued in another state may be sent by or on behalf of the obligee or by the support enforcement agency to the person defined as the obligor's employer under the income withholding laws of this state without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

§1282 - Employer's compliance with income withholding order of another state

A. On receipt of an income withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

B. The employer shall treat an income withholding order issued in another state that appears regular on its face as if it had been issued by a tribunal of this state.

C. Except as provided by subsection D of this section and section 25-1283, the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order that specify:

1. The duration and the amount of periodic payments of current child support, stated as a sum certain.

2. The person designated to receive payments and the address to which the payments are to be forwarded.

3. Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment.

4. The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal and the obligee's attorney, stated as sums certain.

5. The amount of periodic payments of arrears and interest on arrears, stated as sums certain.

D. The employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

1. The employer's fee for processing an income withholding order.
2. The maximum amount permitted to be withheld from the obligor's income.
3. The time within which the employer shall implement the withholding order and forward the child support payment.

§1283 Employer's compliance with two or more income withholding orders

If the obligor's employer receives two or more orders to withhold support from the earnings, income, entitlements or other monies of the same obligor, the employer is deemed to have satisfied the terms of the orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for two or more child support obligees.

§1284 Immunity from civil liability

An employer who complies with an income withholding order issued in another state in accordance with this article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

§1285 - Penalties for noncompliance

An employer who willfully fails to comply with an income withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

§1286 - Contest by obligor

A. An obligor may contest the validity or enforcement of an income withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order as provided in article 6 of this chapter or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state.

B. The obligor shall give notice of the contest to:

1. A support enforcement agency providing services to the obligee.
2. Each employer that has directly received an income withholding order.
3. The person designated in the income withholding order to receive payments, or if no person is designated, to the obligee.

§1287 - Administrative enforcement of orders

A. A party or support enforcement agency seeking to enforce a support order or an income withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state.

B. On receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the laws of this state to enforce a support order or an income withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter.

Article 6: Registration, Enforcement and Modification of Support Order (25-1301 - 25-1315)

§1301 - Registration of order for enforcement

A support order or an income withholding order issued by a tribunal of another state may be registered in this state for enforcement.

§1302 - Procedure to register order for enforcement

A. A support order or income withholding order of another state may be registered in this state by sending the following documents and information to the appropriate tribunal in this state:

1. A letter of transmittal to the tribunal requesting registration and enforcement.

2. Two copies, including one certified copy, of the order to be registered, including any modification of the order.

3. A sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage.

4. The name of the obligor and, if known:

(a) The obligor's address and social security number. The obligor's social security number may be redacted and filed separately pursuant to section 25-501, subsection G.

(b) The name and address of the obligor's employer and any other source of income of the obligor.

(c) A description and the location of property of the obligor in this state not exempt from execution.

5. Except as otherwise provided in section 25-1252, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

B. On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

C. If two or more orders are in effect, the person requesting registration shall:

1. Furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section.

2. Specify the order alleged to be the controlling order, if any.

3. Specify the amount of consolidated arrears, if any.

D. A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

§1303 - Effect of registration for enforcement

A. A support order or income withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.

B. A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

C. Except as otherwise provided in this article, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

§1304 - Choice of law

A. Except as otherwise provided in subsection D, the law of the issuing state governs:

1. The nature, extent, amount and duration of current payments under a registered support order.

2. The computation and payment of arrearages and accrual of interest on the arrearages under the order.

3. The existence and satisfaction of other obligations under the support order.

B. In a proceeding for arrears under a registered support order, the statute of limitation of this state or of the issuing state, whichever is longer, applies.

C. A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state registered in this state.

D. After a tribunal of this or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state issuing the controlling order, including its law on interest on arrears, on current and future support and on consolidated arrears.

§1305 - Notice of registration of order

A. When a support order or income withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. Notice shall be given by first class or registered mail or by any means of personal service authorized by the law of this state. The notice shall be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

B. A notice shall inform the nonregistering party:

1. That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state.

2. That a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after the date of mailing or personal service of the notice.

3. That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted.

4. Of the amount of any alleged arrearages.

C. If the registering party asserts that two or more orders are in effect, a notice must also:

1. Identify the two or more orders and the order alleged by the registering person to be the controlling order and the consolidated arrears, if any.

2. Notify the nonregistering party of the right to a determination of which is the controlling order.

3. State that the procedures provided in subsection B of this section apply to the determination of which is the controlling order.

4. State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

D. On registration of an income withholding order for enforcement, the registering tribunal shall serve the obligor's employer with a wage assignment subject to the provisions of section 25-504 or 25-506.

§1306 Procedure to contest validity or enforcement of registered order

A. A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 25-1307.

B. If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

C. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for a hearing and give notice to the parties by first class mail of the date, time and place of the hearing.

§1307 - Contest of registration or enforcement

A. A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

1. The issuing tribunal lacked personal jurisdiction over the contesting party.
2. The order was obtained by fraud.
3. The order has been vacated, suspended or modified by a later order.
4. The issuing tribunal has stayed the order pending appeal.
5. There is a defense under the law of this state to the remedy sought.
6. Full or partial payment has been made.

7. The statute of limitation applicable under section 25-1304 precludes enforcement of some or all of the arrearages.

8. The alleged controlling order is not the controlling order.

B. If a party presents evidence establishing a full or partial defense under subsection A of this section, a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the laws of this state.

C. If the contesting party does not establish a defense under subsection A of this section to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

§1308 - Confirmed order

Confirmation of a registered order, whether by operation of law or after notice and a hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

§1309 - Procedure to register child support order of another state for modification

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner as provided in this article if the order has not been registered. A petition for modification may be filed at the same time as a request for registration or later. The pleading shall specify the grounds for modification.

§1310 - Effect of registration for modification

A tribunal of this state may enforce a child support order of another state registered for purposes of modification in the same manner as if the order had been issued by a tribunal of this state, but the registered order may be modified only if the requirements of section 25-1311, 25-1313 or 25-1315 of this section have been met.

§1311 - Modification of child support order of another state

A. If section 25-1313 does not apply and except as provided in section 25-1315, on petition, a tribunal of this state may modify a child support order issued

in another state that is registered in this state if, after notice and a hearing, it finds that any of the following is true:

1. The following requirements are met:

(a) Neither the child, the obligee who is an individual nor the obligor resides in the issuing state.

(b) A petitioner who is a nonresident of this state seeks modification.

(c) The respondent is subject to the personal jurisdiction of the tribunal of this state.

2. This state is the state of residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state, and all of the parties who are individuals have filed consents in the record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

B. Modification of a registered child support order is subject to the same requirements, procedures and defenses that apply to the modification of an order issued by a tribunal of this state, and the order may be enforced and satisfied in the same manner.

C. Except as otherwise provided in section 25-1315, a tribunal of this state may not modify any aspect of a child support order that may not be modified under the laws of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child support orders for the same obligor and child, the order that is controlling and recognized under section 25-1227 establishes the aspects of the support order that are nonmodifiable.

D. In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

E. On issuance of an order by a tribunal of this state modifying a child support order issued in another state, the tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.

§1312 - Recognition of order modified in another state

If a child support order issued by a tribunal of this state is modified by a tribunal of another state that assumed jurisdiction pursuant to the uniform interstate family support act, a tribunal of this state:

1. May enforce the order that was modified only as to arrears and interest accruing before the modification.
2. May provide appropriate relief for violations of its order that occurred before the effective date of the modification.
3. Shall recognize the modifying order of the other state, on registration, for the purpose of enforcement.

§1313 - Jurisdiction to modify child support order of another state if individual parties reside in this state

A. If all of the individual parties reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and modify the issuing state's child support order in a proceeding to register that order.

B. A tribunal of this state exercising jurisdiction as provided in this section shall apply the provisions of this article and articles 1 and 2 of this chapter to the enforcement or modification proceeding. Articles 3, 4, 5, 7 and 8 of this chapter do not apply, and the tribunal shall apply the procedural and substantive laws of this state.

§1314 - Notice to issuing tribunal of modification

Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order and in each tribunal in which the party knows the earlier order has been registered. A party that obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal of continuing, exclusive jurisdiction.

§1315 Jurisdiction to modify child support order of foreign country or political subdivision

A. If a foreign country or political subdivision that is a state will not or may not modify its order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether or not the consent to modification of a child support order otherwise required of the individual pursuant to section 25-1311 has been given or whether the individual seeking modification is a resident of this state or of the foreign country or political subdivision.

B. An order issued pursuant to this section is the controlling order.

Article 7: Determination of Parentage (25-1331)

§1331 - Proceeding to determine parentage

A court of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage.

Article 8: Interstate Rendition (§§1341 - 1342)

§1341 - Grounds for rendition

A. The governor of this state may:

1. Demand that the governor of another state surrender an individual found in the other state that is charged criminally in this state with having failed to provide for the support of an obligee.

2. On the demand of the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

B. A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled from that state.

§1342 - Conditions of rendition

A. Before making a demand that the governor of another state surrender an individual, the governor of this state may require a prosecutor of this state to demonstrate that at least sixty days previously the obligee had initiated

proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

B. If under this chapter or a law substantially similar to this chapter, the uniform reciprocal enforcement of support act or the revised uniform reciprocal enforcement of support act, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

C. If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

REFERENCES

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