

REFERENCE TITLE: domestic violence; child custody

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

## **SB 1432**

Introduced by  
Senator Leff

AN ACT

AMENDING SECTIONS 25-403 AND 25-403.03, ARIZONA REVISED STATUTES; RELATING TO  
CHILD CUSTODY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 25-403, Arizona Revised Statutes, is amended to  
3 read:

4 25-403. Custody; best interests of child

5 A. The court shall determine custody, either originally or on petition  
6 for modification, in accordance with the best interests of the child. The  
7 court shall consider all relevant factors, including:

8 1. The wishes of the child's parent or parents as to custody.

9 2. The wishes of the child as to the custodian.

10 3. The interaction and interrelationship of the child with the child's  
11 parent or parents, the child's siblings and any other person who may  
12 significantly affect the child's best interest.

13 4. The child's adjustment to home, school and community.

14 5. The mental and physical health of all individuals involved.

15 6. Which parent is more likely to allow the child frequent and  
16 meaningful continuing contact with the other parent. THIS PARAGRAPH DOES NOT  
17 APPLY IF THE COURT DETERMINES THAT A PARENT IS ACTING IN GOOD FAITH TO  
18 PROTECT THE CHILD FROM WITNESSING AN ACT OF DOMESTIC VIOLENCE OR BEING A  
19 VICTIM OF DOMESTIC VIOLENCE OR CHILD ABUSE.

20 7. Whether one parent, both parents or neither parent has provided  
21 primary care of the child.

22 8. The nature and extent of coercion or duress used by a parent in  
23 obtaining an agreement regarding custody.

24 9. Whether a parent has complied with chapter 3, article 5 of this  
25 title.

26 10. Whether either parent was convicted of an act of false reporting of  
27 child abuse or neglect under section 13-2907.02.

28 B. In a contested custody case, the court shall make specific findings  
29 on the record about all relevant factors and the reasons for which the  
30 decision is in the best interests of the child.

31 Sec. 2. Section 25-403.03, Arizona Revised Statutes, is amended to  
32 read:

33 25-403.03. Domestic violence and child abuse

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

39 B. The court shall consider evidence of domestic violence as being  
40 contrary to the best interests of the child. The court shall consider the  
41 safety and well-being of the child and of the victim of the act of domestic  
42 violence to be of primary importance. The court shall consider a  
43 perpetrator's history of causing or threatening to cause physical harm to  
44 another person.

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

- 4 1. Findings from another court of competent jurisdiction.
- 5 2. Police reports.
- 6 3. Medical reports.
- 7 4. Child protective services records.
- 8 5. Domestic violence shelter records.
- 9 6. School records.
- 10 7. Witness testimony.

11 D. If the court determines that a parent who is seeking custody has  
12 committed an act of domestic violence against the other parent, there is a  
13 rebuttable presumption that an award of custody to the parent who committed  
14 the act of domestic violence is contrary to the child's best interests. This  
15 presumption does not apply if both parents have committed an act of domestic  
16 violence. **THE PRESUMPTION MAY BE REBUTTED BY CLEAR AND CONVINCING EVIDENCE.**  
17 For the purposes of this subsection, a person commits an act of domestic  
18 violence if that person does any of the following:

- 19 1. Intentionally, knowingly or recklessly causes or attempts to cause  
20 sexual assault or serious physical injury.
- 21 2. Places a person in reasonable apprehension of imminent serious  
22 physical injury to any person.
- 23 3. Engages in a pattern of behavior for which a court may issue an ex  
24 parte order to protect the other parent who is seeking child custody or to  
25 protect the child and the child's siblings.

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

- 28 1. Whether the parent has demonstrated that being awarded sole custody  
29 or joint physical or legal custody is in the child's best interests.
- 30 2. Whether the parent has successfully completed a batterer's  
31 prevention program.
- 32 3. Whether the parent has successfully completed a program of alcohol  
33 or drug abuse counseling, if the court determines that counseling is  
34 appropriate.
- 35 4. Whether the parent has successfully completed a parenting class, if  
36 the court determines that a parenting class is appropriate.
- 37 5. If the parent is on probation, parole or community supervision,  
38 whether the parent is restrained by a protective order that was granted after  
39 a hearing.
- 40 6. Whether the parent has committed any further acts of domestic  
41 violence.

42 F. If the court finds that a parent has committed an act of domestic  
43 violence, that parent has the burden of proving to the court's satisfaction  
44 that parenting time will not endanger the child or significantly impair the  
45 child's emotional development. If the parent meets this burden to the

- 1 court's satisfaction, the court shall place conditions on parenting time that  
2 best protect the child and the other parent from further harm. The court  
3 may:
- 4 1. Order that an exchange of the child must occur in a protected  
5 setting as specified by the court.
  - 6 2. Order that an agency specified by the court must supervise  
7 parenting time. If the court allows a family or household member to  
8 supervise parenting time, the court shall establish conditions that this  
9 person must follow during parenting time.
  - 10 3. Order the parent who committed the act of domestic violence to  
11 attend and complete, to the court's satisfaction, a program of intervention  
12 for perpetrators of domestic violence and any other counseling the court  
13 orders.
  - 14 4. Order the parent who committed the act of domestic violence to  
15 abstain from possessing or consuming alcohol or controlled substances during  
16 parenting time and for twenty-four hours before parenting time.
  - 17 5. Order the parent who committed the act of domestic violence to pay  
18 a fee to the court to defray the costs of supervised parenting time.
  - 19 6. Prohibit overnight parenting time.
  - 20 7. Require a bond from the parent who committed the act of domestic  
21 violence for the child's safe return.
  - 22 8. Order that the address of the child and the other parent remain  
23 confidential.
  - 24 9. Impose any other condition that the court determines is necessary  
25 to protect the child, the other parent and any other family or household  
26 member.
  - 27 G. The court shall not order joint counseling between a victim and the  
28 perpetrator of domestic violence. The court may refer a victim to  
29 appropriate counseling and shall provide a victim with written information  
30 about available community resources related to domestic violence.
  - 31 H. The court shall not request or order the services of the division  
32 of children and family services in the department of economic security unless  
33 it believes that a child may be the victim of child abuse or neglect as  
34 defined in section 8-201.
  - 35 I. In determining whether the absence or relocation of a parent shall  
36 be weighed against that parent in determining custody or parenting time, the  
37 court may consider whether the absence or relocation was caused by an act of  
38 domestic violence by the other parent.