

**Association of  
Family and Conciliation Courts,  
Arizona Chapter**

**2018 Summit Project**



**ARIZONA COMMUNITY MENTAL HEALTH  
GUIDEBOOK FOR FAMILY LAW:**

**A Resource for Judicial Officers, Attorneys,  
and Mental Health Practitioners**



## Summit Project

The Association of Family and Conciliation Courts, Arizona Chapter (AZAFCC), is a multidisciplinary organization comprised of behavioral health professionals, judicial officers, attorneys, mediators, and others engaged in the family law process. The mission statement of the AZAFCC includes improving the lives of families through the resolution of conflict. The AZAFCC Board of Directors endorsed proceeding with an annual project (The Summit Project), to address fundamental issues in the area of family court.

The 2018 Summit Project, *Arizona Community Mental Health Guidebook for Family Law: A Resource for Judicial Officers, Attorneys and Mental Health Practitioners*, is to be used by professionals or litigants as a resource on mental health-related information and services offered through family courts. Often, there is confusion resulting from lack of information and unfamiliarity with the family court process.

The 2018 Summit Project was created to help delineate the referral process by explaining the various services available and this report is meant to be used as a resource. Guidelines and recommendations herein may communicate expectations that exceed those established by law or regulation. Where conflicts exist, applicable law, court rules, regulations, and agency requirements supersede any guidelines or recommendations within this resource.

The recommendations and guidelines are not comprehensive or meant as authoritative works, do not carry legal weight, and are not endorsed by any organization, entity, or institution, including the Association of Family and Conciliation Courts (AFCC), or the individual members of the AZAFCC Summit Project Committee. This report does not reflect the views of any particular individual, organization, entity, or organization.

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## **Family Court Acronyms:**

ADR	Alternative Dispute Resolution
AFI	Affidavit of Financial Information
ARFLP	Arizona Rules of Family Law Procedure
BIA	Best Interests Attorney
CAA	Court-Appointed Advisor
CFE	Comprehensive Family Evaluation (formerly, Custody Evaluation, also known as Comprehensive Family Assessment)
CS	Child Support
CSW	Child Support Worksheets
CSO	Child Support Order
DCS	Department of Child Safety (formerly, Child Protective Services)
ERC	Early Resolution Conference
EVH	Evidentiary Hearing
FA	Focused Assessment ( <i>see also</i> LFA)
FPPT	Family Preservation
IAC	Inactive Calendar
J & O	Judgment and Order
LDM	Legal Decision-Making (formerly, Legal Custody)
LFA	Limited Family Assessment ( <i>see also</i> FA)
OPDS	Office of Public Defense Services
PSA	Property Settlement Agreement
PT	Parenting Time (formerly, Physical Custody or Visitation)
RMC	Resolution Management Conference
SM	Spousal Maintenance
STC	Status Conference
TI	Therapeutic Interventionist or Therapeutic Intervention
TO	Temporary Orders
UCCJEA	Uniform Child Custody Jurisdiction and Enforcement Act
UIFSA	Uniform Interstate Family Support Act

## **Forensically-Informed Providers<sup>1</sup>:**

A forensically-informed provider is a professional trained to provide information relative to a Court case. The provider is a neutral mental health professional who tries to verify the information supplied by the client through various collateral sources of information. The client in a forensic case is typically the Court or an attorney, and therefore, there is no patient-provider privilege.

When interviewing the client, the interviews are considered forensic in nature. Forensic interviews are typically more structured than non-forensic interviews and are designed to answer psycho-legal questions, such as whether contact between a parent and child should be supervised or deciding which parent should be the primary custodian.

In contrast, non-forensic providers attempt to form a supportive and collaborative relationship with clients and advocate for the client. There are many issues that can arise when non-forensic providers offer information to the Court. These issues may include, but are not limited to, making recommendations about family members that they have never met, relying only on data provided by their client, creating potential bias in a view of the circumstances, and negatively interfering with current or future treatment goals. In addition, non-forensic providers may lack an understanding of the judicial system and are typically unaware of the dynamics and manipulation that can occur in high-conflict families.

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<sup>1</sup> Greenberg, S. A. and Shuman, D.W. (1997), Irreconcilable conflict between therapeutic and forensic roles. *Professional Psychology: Research and Practice*, 28(1), 50-57.

Grossman, N.S. (2002), Forensically Informed Treatment in Divorce Cases. In, Grossman, N. S., & Okun, B. *New and emerging roles at the intersection of family psychology and law*. Symposium presented at the 110th Annual Convention of the American Psychological Association, Chicago.

Grossman, N.S. & Okun B.R. (2007), A systems understanding of the legal system-further discussions. *The Family Psychologist*, 23(1) 26-27.

## **Focused Assessment:**

The Focused Assessment (FA) is designed to address specific issues for which the Court needs additional information. An FA is a less exhaustive evaluation than a Comprehensive Family Evaluation (CFE), as described below. An FA is appropriate when a specific question, issue, or problem requires examination and an expert opinion. Unlike the CFE, the FA evaluator focuses on a defined set of referral questions to answer only a few pressing issues in a case. The FA is tailored to be a cost-effective way to answer the limited number of questions.

For example, the Court may only desire that the evaluator conduct an assessment focused on one factor within A.R.S. § 25-403. Considering that not all statutory factors are addressed, FAs should not result in parenting time or legal decision-making recommendations. These issues, in addition to more complex referrals such as relocation, should be addressed through a CFE.

An FA may be used post-decree to review previously collected data, such as when the previously established parenting plan needs to be revised due to the changing developmental needs of the child. It may be appropriate to use the same evaluator to conduct the FA given the evaluator's experience with the case.

Some questions that may prompt the need for an FA could involve:

- 1) Assessing whether a parent has a substance abuse problem and how that issue may impact their ability to parent;
- 2) Determining an appropriate parenting time arrangement to suit a child with special needs;
- 3) Evaluating the relationship between a parent or stepparent and a child;
- 4) Interviewing a child to assess his/her request for a specific parenting time arrangement or identifying a child's wishes in relation to the family; or
- 5) Assessing the potential impact on a child's emotional stability by potential relocation.

The licensed behavioral health professional conducting the FA often uses the same components as those utilized during a CFE. These components may include psychological testing, interviews with collateral sources, and interviews with the parties and the children. Typically, documents reviewed are more contained and are selected by the evaluator. The fact-finding focus is placed on addressing the specific referral questions for the Court and opinions or recommendations about ultimate issues are precluded.

## **Comprehensive Family Evaluation:**

A Comprehensive Family Evaluation (CFE) is broad in scope and methodology. It is conducted by a psychologist, psychiatrist, or certified/licensed behavioral health practitioner. The CFE is requested when the Court is faced with complex behavioral health issues or high-risk factors such as domestic violence, substance abuse, serious mental illness, contentious parents, child abuse, or relocation. Complex cases may also include allegations of a history of abduction, severe parental polarization, estrangement, or incompetence.

The CFE is intended to assess allegations made related to parenting time, legal decision-making, and the best interests of the children. Because these evaluations are likely to involve broader and more in-depth assessments than are required in a focused assessment, it is likely to be more time-consuming and expensive.

The evaluation would include a range of recommendations, including information about the ultimate issues such as parenting time and legal decision-making. The recommendations are intended to be a guide for the Court, with the ultimate decisions to be made by the Judge.<sup>2</sup>

The CFE is comprised of various components including clinical interviews, psychological testing, home visits, parent-child observations, collateral interviews, and extensive data collection (*e.g.*, records from the police, mental health providers, medical doctors, DCS, *etc.*). The components employed depend on the case parameters, referral questions, and allegations.

The CFE usually lasts a number of months. It may involve sequential monitoring of behavior over time, referral for other modes of assessment, and in-depth analysis of allegations and other parental and systemic concerns. The report often contains comprehensive summaries of mental status issues, psychiatric symptoms, academic/learning issues, developmental issues, and statutory issues, such as abuse or violence. It also includes an analysis of the degree to which data are consistent or inconsistent with specific allegations, collateral reports, or other case concerns.

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<sup>2</sup> *DePasquale v. Superior Court*, 181 Ariz. 333, 890 P.2d 628 (App. 1995).



## **Child Forensic Interview:**

A child forensic interview is a developmentally sensitive and legally sound method of gathering factual information regarding allegations of child maltreatment. These interviews are in contrast to an interview that may occur through another process such as through Conciliation Services. These are not specifically forensic interviews, although the interviews are designed to identify information such as the child's wishes as to parenting time and legal decision-making, pursuant to A.R.S. § 25-403.

The interviewer should have knowledge and training in child development, child trauma theories, theories of parental alienation, inappropriate or appropriate gatekeeping, children's language skills, and the dynamics of child abuse.

### **Forensic Interviews in Family Court:**

Family Court Judges and investigators are often left in the difficult position of deciding whether children should be re-interviewed. For example, there may be cases where law enforcement investigators and child protection workers have already interviewed children and have closed the case due to insufficient substantiating evidence that abuse occurred. It may be that the child failed to disclose or failed to disclose enough information during the investigative interview.<sup>3</sup> The interviewer may desire to review any video recordings of the forensic interviews conducted by law enforcement, DCS workers, or others as it may provide helpful information to assist the Court in determining whether additional child interviews should be conducted.

In Family Law cases, the child typically has had a forensic interview through law enforcement or the DCS and the child made no

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<sup>3</sup> Many children may not disclose abuse during interviews out of reluctance or fear. Reluctant children are often not forthcoming with information during the initial rapport-building phase of the interview. Family Court Judges and investigators may want to consider additional interviews in cases where children were demonstratively reluctant, anxious, or uncooperative during the law enforcement/DCS investigative interviews.

disclosure or a partial disclosure. Often, this leaves the Family Court with inadequate information to protect the child or to appoint a behavioral health professional to reunify the family safely. To gather the requisite data, Family Court Judges typically appoint the behavioral health professional to conduct an extended interview. The child is transported to the interviews by neutral transport.

Referral Questions/Goals for Inclusion in Order Appointing the Child Forensic Interviewer:

1. Identify hypotheses for the child's behavior and/or statements;
2. Does the family require child and/or family therapeutic interventions;
3. Identify treatment goals to be completed prior to family reunification; and
4. Provide rules for family boundaries and privacy.

When the Court orders a child forensic interview, it is important that the Court order DCS and law enforcement to provide an **unredacted**, complete set of records to the child forensic interviewer on the same Minute Entry.

## **Parenting Conference:**

### Purpose

To assist the Court in determining the best interest of the child(ren) and in developing orders regarding legal decision-making and/or parenting time and to assist the parties in resolving their disputes.

### Referral

The Judge orders the parties to attend a Parenting Conference if the Parenting Conference is done in the Court. There is no Self-Service form available for a Parenting Conference. Parties/attorneys can submit a Motion requesting that the Judge refer the parties for a Parenting Conference.

### Process

The Court Conciliator typically meets with the parties together for about three hours. The Court might order the children to be interviewed or the Court Conciliator might choose to do so. The Court Conciliator gathers information regarding the best interests of the children and assesses parental disputes and fitness concerns. The Court Conciliator receives copies of DCS and police reports. Once the interview and assessment have been completed, a report is sent to the Court, parties and/or attorneys, typically within 30 days of the date the Judge ordered the service. The Court Conciliator will also help the parties to reach agreements regarding legal decision-making and/or parenting time, and if so, will draft the agreement for party signature and will provide the Court with a copy of their agreement.

### Costs

The fee is \$300.00 per party. If a party is unable to pay the entire conference fee, the Court might find him/her eligible to make monthly payments. If a party does not appear for the Parenting Conference he/she might be required to pay an additional no-show fee of \$100.00. They may also be required to pay the fee of the other parent if that parent appeared.

## **Forensic Home Study:**

A forensic home study is a screening of the home when there may be concerns about the living conditions of one or both parents that could affect a child. The home study is completed by a forensically-informed provider. Often, home studies include an in-person interview and home visit of the parent and others residing in the home. Factors that may be considered include the cleanliness and condition of the home, safety measures, sanitation, nearby amenities, and the well-being of the neighborhood where the home is located.

## **Safe Harbor Therapy/Safe Haven Therapy:**

Safe Harbor therapy is a form of Court-involved intervention. Safe Harbor is not itself a law. Instead, it is a process developed by mental health professionals for use with a child pursuant to A.R.S. § 12-2293(B).<sup>4</sup> The focus of Safe Harbor therapy is to allow a child a therapeutic environment in which to feel safe discussing issues. The expectation is that children in a high conflict divorce will likely focus on issues that the child would prefer not to have revealed to the parents.

The concept was created to provide the child with the same expectation of privacy that the parents have when communicating with mental health care providers. Adult clients of a mental health professional have some expectation that the process will remain confidential unless there is a legal basis to release the adult's records. Privacy rights allow adults to participate in treatment with the comfort that records are confidential unless the adult authorizes their release or there is legal intervention during which the Court allows for the release of records. Children do not have the same procedural benefits. Rather by statute, if a parent seeks to obtain his/her child's record, the parent is permitted to do so. In theory, Safe Harbor therapy should create a restriction for the child that is similar to legal restrictions allowed for adults.

Based on the medical records statute, a child's therapist would typically have the ability to restrict a parent's access to records if such a release is reasonably likely to cause substantial harm to the child.<sup>5</sup> Safe

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<sup>4</sup> Per A.R.S. § 12-2293(B):

A health care provider may deny a request for access to or copies of medical records or payment records if a health professional determines that either:

1. Access by the patient is reasonably likely to endanger the life or physical safety of the patient or another person.
2. The records make reference to a person other than a health professional and access by the patient or the patient's health care decision maker is reasonably likely to cause substantial harm to that other person.
3. Access by the patient's health care decision maker is reasonably likely to cause substantial harm to the patient or another person.
4. Access by the patient or the patient's health care decision maker would reveal information obtained under a promise of confidentiality with someone other than a health professional and access would be reasonably likely to reveal the source of the information.

<sup>5</sup> See A.R.S. §12-2293(B)(3).

Harbor therapy is based on that statute, with an assumption that the child will discuss divorce issues and parental behavior during the child's treatment process. Particularly in high conflict cases, harm can be caused to the child, a parent or parents, or to the parent-child relationship by disclosure of certain information from the child.

If there are disagreements between parents, providers, attorneys, or the Court about what information the Safe Harbor therapist should be providing, the Court may desire to appoint a Best Interests Attorney (BIA) to provide a position on what should be released.<sup>6</sup> The Court may desire to review the records *in camera* and determine if the statutory prohibition applies.

Importantly, Safe Harbor therapy is a protection for children, but it is not a protection for providers. As such, providers are still expected to develop a process as they normally would, beyond the Safe Harbor's process, allowing for the protection of a child's records. The provider is expected to participate in litigation, notwithstanding the restrictions of records. Providers are expected to testify or sit for deposition and to participate and collaborate with other providers. However, they are limited in producing information provided by the children in context of therapy, without agreement or Court order.<sup>7</sup>

Providers should identify the best therapeutic process for the child's treatment just as any provider would do, including how parents can be involved. This role is particularly important during a high conflict case when parents may seek to use treatment for his/her own purposes, making the improvement of the child's mental health a secondary focus. Parents should not be eliminated altogether from the process, but included in a way that can be beneficial for all family members. Parents should not expect the provider to communicate or accept communications at all times. The Safe Harbor therapist should set clear rules with parents about how to communicate concerns.

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<sup>6</sup> The Court should note that if the parties agree the information is protected by Safe Harbor provisions, the records are protected relative to all parties including the Best Interests Attorney. There are significant due process concerns not addressed in this section, which may cause the Court to be reluctant to order Safe Harbor without express agreement by the parties that outlines the terms of any potential disclosure.

<sup>7</sup> It is important to review any order on Safe Harbor to see the limitations set on disclosure.

If there are other professionals involved with family members, the therapist should collaborate in a way as to maximize treatment effectiveness for all clients. For example, if there is a mental health professional working with the mother, the child's Safe Harbor therapist is encouraged to collaborate with that therapist. Without such collaboration, the cause of dysfunction for the child (*e.g.*, mother's behavior and environment) is unlikely to improve. As such, it is considered anti-therapeutic to not collaborate when appropriate.

In terms of communication with the parents, it is noted that the medical records statute exception for the release of information, still requires the release of an explanation about the denial for release.<sup>8</sup> As such, the Safe Harbor therapist is expected to provide a periodic treatment summary to parents who request records.

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<sup>8</sup> "If the health care provider denies a request for access to or copies of the medical records or payment records, the health care provider must note this determination in the patient's records and provide to the patient or the patient's health care decision maker a written explanation of the reason for the denial of access. The health care provider must release the medical records or payment records information for which there is not a basis to deny access under subsection B of [A.R.S. § 12-2293]." *See* A.R.S. § 12-2293(D).

## **Parental Alienation:**

Parental alienation is a form of emotional abuse against a child where one parent denigrates a parent-child relationship either through words or behaviors. The conduct is intended to destroy, minimize, or otherwise negatively impact the relationship between the child and the alienated parent. When genuine parental abuse and/or neglect has been present, the child's hostility may be justified, and the term parental alienation would not be applicable. Where the alienation is serious enough that the parent-child relationship is negatively impacted, the Court may consider the appointment of a Therapeutic Interventionist (TI), described below, to provide reunification therapy.

### **Examples of alienating behaviors by a parent:**

- Badmouthing the other parent to the child or within the child's hearing.
- Making litigation related paperwork available to the child .
- Asking the child to spy on the other parent.
- Telling the child the targeted parent is dangerous or insinuating they are unsafe by making statements such as "be brave" prior to parenting time with the targeted parent.
- Not including the other parent in medical appointments/schooling/activities involving the child.
- Interrogating the child about time spent with the other parent.
- Withdrawing love if the child discusses having fun or loving the other parent.
- Asking the child to keep secrets from the targeted parent.
- Including the child in discussions about Court or having adult conversations with the child (*e.g.*, about their divorce, legal processes, *etc.*).
- Limiting contact with the targeted parent.
- Forcing the child to choose between parents.
- Telling the child that the targeted parent does not love them.
- Referring to the targeted parent by first name.
- Changing the child's name.
- Undermining targeted parent's authority (overriding rules).



## **Examples of behaviors of a child who may be alienated from a parent:**

- Speaks in a denigrating way against the targeted parent and acts hateful and fearful toward the parent.
- Creates weak and illogical rationalizations for the devaluation of the targeted parent.
- Believes that the targeted parent is “all bad” while the other parent is “all good” (compared to the average child who exhibits ambivalence about both parents and realizes that each have their own strengths and weaknesses).
- Strong assertions that their decision to reject the other parent is his or her own idea.
- The absence of guilt about the treatment of the targeted parent.
- Unwavering support for the alienating parent and no attempt to be impartial when included in parental conflict. The child has no interest in hearing the targeted parent’s perspective. Nothing that the targeted parent says or does makes any difference to the child.
- The child’s accusations are often similar to those made by the alienating parent and the same phrasing may be used when describing the targeted parent. Often times these accusations cannot be supported with detail.
- The animosity of the targeted parent spreads to his or her extended family who the child also begins to reject.<sup>9</sup>

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<sup>9</sup> Baker, A.J. & Sauber, S.R. (2013) *Working with Alienated Children and Families: A Clinical Guidebook*. New York: Routledge Taylor and Francis Group.

## **Therapeutic Intervention and Related Services:**

Therapeutic Intervention is a combination of clinical interventions developed for use in Family Court. Interventions vary to address a range of referral issues such as reunification, relocation, estrangement, child maltreatment, parental substance abuse, *etc.* The need for interventions arose when clinicians noticed that Judges and attorneys were frequently utilizing traditional psychotherapy to gather information for use in legal proceedings. Therapists increasingly supplied information to the Courts and were practicing out of their scope, which crossed boundaries between therapy and the forensic arena.

Given the issues above, forensically informed interventionists are appointed as experts with hybrid forensic-clinical responsibilities. They treat and manage cases with a specific scope of authority and prescribed duties. The Court-appointed therapist's primary responsibility is to advise the Judge in matters involving the family. The Court identifies the issues to be addressed by the appointee, with an expectation that the Court be periodically updated as to the treatment progress with the family.

Interventionists' roles include 1) gathering data and informing the Court regarding family dynamics and functioning; 2) providing relevant psycho-education; 3) facilitating desired change in individuals and families; 4) recommending other ancillary services needed for the family such as psychological evaluations, individual counseling, *etc.*; and 5) informing the Court on whether a change in parenting time is needed, which would be addressed through a hearing.

Notably, Courts are not bound by Interventionists' recommendations. In fact, without agreements of the parties as to such services, Courts may not adopt recommendations. Instead, they may only act after an evidentiary hearing is conducted on an open petition. Interventionists may not make specific recommendations on a change in parenting time, although the parties are free to reach such agreements. Furthermore, Courts should be appointing interventionists during proceedings under A.R.S. § 25-406 for advisory positions. Without an agreement, appointments at the end of the case are questionable under current case law.<sup>10</sup>

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<sup>10</sup> *Paul E. v. Courtney F.*, 244 Ariz. 464, 18 P.3d 413 (App. 2018)

There are a variety of sub-roles that the interventionist can be appointed to perform, including, but not limited to the following:

**Individual therapy:** assists individuals with issues in relation to specific goals (*e.g.*, drug use, domestic violence, communication, mental health concerns, healthy boundaries, *etc.*). The Interventionist assists an individual by working with him/her and, if necessary, collaborating with the individual's treating therapist about specific goals, such as those noted above. This type of appointment could allow the interventionist to involve the family to ensure the individual is meeting treatment goals.

**Reunification:** is aimed at supporting a renewed relationship, usually between a parent or caretaker and a child, which is typically designed for cases of polarization or estrangement. Reunification can include any other significant relationship with the child.

**Supervised Parenting Intervention:** visits are supervised with the goal of ensuring the child's physical and emotional safety. Supervised visitation may also involve some level of intervention, such as teaching a parent how to be more skillful. The Interventionist's authority allows a referral to other qualified mental health professionals.

**Co-parent Intervention:** assists parents to improve co-parenting, conflict resolution, and communication.

**Family Intervention:** assists individuals within the family dynamic (*e.g.*, Mother, Father, children, Stepparents, Grandparents, nanny, care providers, *etc.*) with goals related to improving family interactions.

## **Psychological Evaluation vs. Psychiatric Evaluation:**

**Psychological Evaluation:** Conducted to identify a mental health diagnosis and provide recommendations for treatment. A way of assessing a person's behavior, personality, and emotional and cognitive (intellectual) functioning by conducting a clinical interview and administering standardized testing. These types of assessments are completed by psychologists who collect multiple data points such as evaluating behavioral observations, testing, record reviews, and interviews by the client and collateral sources.

**Psychiatric Evaluation:** Useful to assess the need for psychotropic medication. Completed by a medical doctor with a specialty in psychiatry. This type of evaluation is medical in nature. The psychiatrist may gain information about the physical, behavioral, and cognitive histories by having the patient complete blood tests or other appropriate exams. The psychiatrist evaluates mood, reality testing, and mental status to arrive at a psychiatric diagnosis.

## **Mental Health Diagnoses<sup>11</sup>:**

Regardless of one's area of practice, there are times that judges, attorneys, and mental health providers will need to interact with those suffering from mental illness. One in five adults experience some form of a mental health condition each year. One in 17 adults is diagnosed with a serious mental illness such as Schizophrenia or Bipolar Disorder. Mental illness may affect a person's ability to make decisions, may impact moods, and can lead to erratic feelings and behaviors. Approximately 75% of mental health conditions develop by age 24. It is important to keep in mind that there are multiple causes for mental health conditions, including genetics, trauma, stress, as well as brain structure and function that can impact one's ability to parent and co-parent.

In contested parenting time and legal decision-making cases, A.R.S. § 25-403(A)(5) requires the Court to consider the factors that are relevant to a child's physical and emotional well-being including, "[t]he mental and physical health of all individuals involved." When observing behaviors or hearing testimony related to someone's conduct, there may be an indication that mental health may be an issue and certain questions may need to be explored. While there is no litmus test for determining whether specific observations or verbalizations are associated directly to mental illness as opposed to a personality trait, there are a number of factors to consider in evaluating mental status as follows:

- Appearance (trembles or shakes, multiple layers of clothing in the summer)
- Cognition (seems confused or disoriented)
- Attitude (is belligerent or disrespectful or not attentive)
- Affect/Mood (does not make eye contact, switches emotions abruptly)
- Speech (speaks too quickly, too slowly, or has word salad)
- Thought Patterns and Logic (seems to respond to voices, expresses bizarre thoughts)

The Court's response to someone who is suffering from mental illness may assist in immediate situation management. The Court should consider speaking slowly and clearly without use of legalese or terminology that is difficult to understand. Explaining what is happening in clear language will increase the

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<sup>11</sup> National Alliance on Mental Illness, [www.nami.org](http://www.nami.org), *Scientists Move Closer to Understanding Schizophrenia's Cause*, By Benedict Carey, January 28, 2016, The New York Times <https://csgjusticecenter.org/wp-content/uploads/2016/09/Judges-guide-to-mental-illnesses-in-the-Courtroom.pdf>

likelihood that the party feels more grounded to the here and now. Using empathy and motivational interviewing skills may diffuse any conflict, perceived or real, that the party is experiencing.

In dependency cases, the Court routinely orders psychological evaluations of the parents as part of myriad services designed to support a reunification case plan. With a firm diagnosis, Judges may be able to enter orders that outline a treatment protocol, lead to recovery and stability, and in turn, allow for safe parenting and gainful employment. In Family Court, having such information assists in designing the most appropriate parenting plan. Unfortunately, resources are limited in Family Court and the ability to obtain a psychological evaluation can be very limited.

A judicial officer, attorney, or mental health professional may see the following types of mental illnesses (this list is not exhaustive):

### **Anxiety Disorders**

Anxiety disorders are the most common mental health concern in the United States. Approximately 18% of adults in the U.S. have a diagnosed anxiety disorder. Symptoms include feelings of apprehension, dread, tension, or jumpiness. A person may experience accelerated heart rate, shortness of breath, sweating, tremors, an upset stomach, and twitches.

There are many types of anxiety disorders: Generalized Anxiety Disorder (exaggerated worry about everyday life), Social Anxiety Disorder (intense fear about social interactions), Panic Disorder (feelings of sudden terror which strike without warning), and Phobias (strong, irrational fear about a place, event, or object).

### **Depression**

It is estimated that 16 million American adults suffer from a depressive episode on an annual basis. 30% of people with substance abuse problems also suffer from depression. Depression impairs the ability to function on a daily basis and often lasts more than two weeks. Symptoms include an excessively low mood for most of the day nearly every day, a lack of pleasure in activities, change in sleep, major fluctuations in appetite, inability to concentrate, low energy, feelings of hopelessness, physical discomfort, and suicidal thoughts.

### **Bipolar Disorder**

This is a mood disorder which causes dramatic shifts in a person's moods and his/her ability to think clearly and logically. People with bipolar disorder experience extreme highs and lows.

The highs are referred to as mania and may manifest in an extraordinary amount of energy being placed into a specific project at the expense of all other aspects of life. During periods of mania, people will behave impulsively (*e.g.*, making excessive purchases with a credit card), make reckless decisions (*e.g.*, deciding to move to a foreign country), and take unusual risks.

The lows are referred to as depression and can be so debilitating that a person is unable to get out of bed. Minor decisions, like what to wear or what to eat for breakfast, can become overwhelming. During this cycle, a person can become obsessed with feelings of loss or helplessness. Thoughts of suicide are common.

In severe cases, a person with Bipolar Disorder may experience psychotic symptoms such as hallucinations or delusions.

## **Schizophrenia**

This is a thought disorder that interferes with a person's ability to think clearly, manage emotions properly, make decisions, and relate to others. Onset is usually in the early 20s for men and the late 20s to 30s for women. It is often difficult to diagnose as the first signs may be a decrease in grades, sleep problems and irritability, isolation, and withdrawing from activities that were once enjoyed. These symptoms are not, by themselves, initially uncommon for a young person. If prolonged, however, it is essential to receive a comprehensive medical evaluation.

If left untreated, Schizophrenia eventually leads to a loss of functioning. A person may hear voices, see things, or smell things that others cannot perceive. The voices are critical, threatening, and even hateful. Delusions, or false beliefs, may dominate a person's thinking process. A person may have great difficulty remembering simple things and be unable to start or follow through with routine activities. Someone with this illness often presents as having a lack of insight into his/her conduct. Disorganized speech, sometimes called "word salad," is another symptom. Negative symptoms are those characteristics that diminish a person's abilities. They can include being emotionally flat or speaking in a dull, disconnected manner.

## **Schizoaffective Disorder**

This disorder is both a thought and a mood disorder. Symptoms include hallucinations and delusions in addition to mania and depression. This diagnosis is seen in only 0.03% of the population. A person will present with the symptoms of both Bipolar Disorder and Schizophrenia.

## **Posttraumatic Stress Disorder (PTSD)**

PTSD is caused by exposure to a traumatic, life-threatening event such as a natural disaster, military combat, an accident, or being the victim of a crime. It affects about 8 million Americans.

During a life-threatening event, the body's flight versus fight instincts are activated. These instincts can be life-saving in the moment, but can leave a person with ongoing symptoms. PTSD is a means by which humans respond to trauma. PTSD can occur at any age. Symptoms include recurring, intrusive, and distressing thoughts and flashbacks. A person may feel worried, depressed, or even numb.

## **Dissociative Disorder**

This diagnosis is most often linked to exposure to long-term physical, sexual, or emotional abuse. Women are more likely to have this diagnosis. This illness is a way the human body copes with trauma. Symptoms include memory loss, out-of-body experiences, depression, anxiety, suicidal ideation, and a lack of self-identity. Some people may present as having what was formerly called "Multiple Personality Disorder." If a person has more than one identity, he/she may have unique names for each personality. Each personality may have a different voice or different physical mannerisms. Each personality may even speak different languages.

## **Treatments**

Treatment for each mental illness varies, but often includes psychotherapies such as Cognitive Behavioral Therapy, Dialectical Behavioral Therapy, Eye Movement Desensitization and Reprocessing, stress and relaxation techniques, medications, exercise, brain stimulation therapies, including electroconvulsive therapy, and education. With access to medical and mental health care, consistent treatment, and medication management, most people diagnosed with a mental illness are able to live meaningful, productive, and functioning lives.



## **Best Interests Attorney and Child's Attorney:**

Rule 10 of the ARFLP governs the appointment of a Child's Attorney and Best Interests Attorney (BIA). In Family Court, the court may appoint a BIA, who is a legal representative advocating on behalf of the child. The BIA's duty is to represent the minor child's best interest and the BIA does not testify as a witness. Importantly, the BIA is the one court-appointed professional who has the ability to file a dependency action in juvenile court if there are fitness issues with both parents.

Under ARFLP Rule 10(e), every BIA "must participate in the proceeding to the same extent as an attorney for any party." Therefore, the BIA attends and participates at trial and at evidentiary hearings, offers evidence, and examines witnesses while focusing on what is in the best interests of the child. The BIA may also interview the parties and the children, may conduct home visits, review records, speak to other interested parties, and take other actions as allowed by the applicable rule. BIAs, do not, however, make recommendations. The BIA provides legal services for the sole purpose of protecting a child's best interests, and is not bound by the child's objectives or intentions, but takes positions that the BIA believes are in the best interest of the child. *Aksamit v. Krahn*, 224 Ariz. 68 (App. 2010).

By comparison, the Child's Attorney provides independent legal counsel for a child and owes the same duties, responsibilities, confidentiality, and competent representation as are due the parents. A Child's Attorney is a lawyer representing the minor child and is bound by the child's objectives or intentions.

## **Court-Appointed Advisor:**

A Court-Appointed Advisor (CAA) is an investigator for the Court who ultimately files a report addressing specific concerns. The CAA does not act as an attorney in the case, cannot call witnesses, examine witnesses on the stand, and is subject to cross-examination.<sup>12</sup> The CAA typically does not address the ultimate decision, such as the best interest of the child(ren), but instead, provides information/facts relevant to the Court's concern for such determination.<sup>13</sup> A CAA is governed under Rule 10.1 of the ARFLP. The Court may appoint a CAA for "any reason the Court deems appropriate."<sup>14</sup>

The Order of Appointment must clearly state the terms of appointment, including duration and reason for the appointment, rights of access as provided by the rule, and compensation. CAA appointments are typically paid for by the county through an appropriate office, such as the Office of Public Defense Counsel, if the Court makes a finding that the parties are indigent and the child may be subject to abuse and/or neglect. Alternatively, CAA appointments can be by agreement of the parties or Order of the Court, for which the parties would pay the costs.

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<sup>12</sup> This is in contrast to the appointment of a BIA under Rule 10(a), ARFLP, who is able to call witnesses, cross-examine witnesses, and so on. BIAs however do not make recommendations. BIAs take positions that they believe are in the best interest of the child. *Aksamit v. Krahn*, 224 Ariz. 68 (App. 2010). Both, however, may interview the parties and the children, may conduct home visits, review records, speak to other interested parties, and otherwise as allowed by the applicable rule.

<sup>13</sup> There are conflicting positions among CAAs as to whether they are able to make recommendations on legal decision-making and/or parenting time. Regardless, no recommendations of providers should simply be adopted as the Judge's position; Judges must hear evidence and make decisions based on evidence, and as set forth in 403 findings.

<sup>14</sup> See Rule 10.1, ARFLP. The previous Rule 10 allowed the appointment only if the Court made one of the following findings:

- There is an allegation of abuse or neglect of a child.
- The parents are persistently in significant conflict with one another.
- There is a history of substance abuse by either parent, or family violence.
- There are serious concerns about the mental health or behavior of either parent.
- The child is an infant or toddler.
- The child has special needs or,
- Any other reason deemed appropriate by the Court.

## **Parenting Coordinator:**

A Parenting Coordinator (PC) is most typically appointed by the Court after a Legal Decision-Making or Parenting Time order has been entered, to assist the parents in resolving parenting issues. PCs are governed under Rule 74 of the ARFLP.

A PC cannot be appointed unless both parents agree either in writing or on the Court's record.<sup>15</sup> The recommendations made by the PC are binding as long as those recommendations do not exceed the scope of the PC's authority, as set forth below. In addition, the appointment is for one (1) year, unless the parents and PC agree to a longer term.

The PC's scope of authority is determined by the Court's order appointing the PC. A PC's scope includes the potential of:

- A. Addressing disputed issues, reducing misunderstandings, clarifying priorities, exploring compromise, developing methods of collaboration in parenting, and ensuring compliance with legal decision-making authority and parenting time orders.
- B. Making decisions regarding implementation, clarification, and minor adjustments to parenting time orders.
- C. Making decisions regarding parenting challenges not specified in the parenting plan that are disputed. Examples include disagreements about pick-up and drop off locations, dates and times, holiday scheduling, discipline, health issues, personal care issues, school and extra-curricular activities, choice of schools, and managing problematic behaviors.
- D. Interviewing and requesting documentation from anyone who has relevant information necessary to resolve a matter currently before a PC. And,

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<sup>15</sup> The agreement whether on the record or in writing should be clear to set forth all of the requirements under the Rule or it should not be accepted.

- E. Recommending the Court order the parents or child to participate in ancillary services, to be provided by the Court or third party, including but not limited to, physical or psychological examination or assessment, counseling, and alcohol or drug monitoring, and testing.

PCs **cannot** make decisions that will:

1. Affect child support, spousal maintenance, or the allocation or property or debt;
2. Change legal decision-making authority; or
3. Substantially change parenting time.

**Confidentiality:** The PC process is not confidential.

**PC Reports:** The PC must file a report with recommendations in a timely manner. If a PC acted within the scope of an appointment, the PC's decisions are binding. However, a parent can file an objection to the report within 20 days of the report being filed. The objection must explain in detail the reasons the parent believes the PC exceeded the scope of authority and whether a hearing is requested on the parent's objection.

## **Mediation and Open Negotiation** **(Pre- and Post-Decree):**

### **Purpose:**

To assist the parties in resolving disputes over legal decision-making and/or parenting time or third-party visitation.

### **Referral:**

Parties may submit a Petition for Mediation with the Court or the Court may order the parties to attend. Parties can be married parents, non-married parents, grandparents, third parties seeking visitation, and those who have acted like parents (*in loco parentis*).

Parties can choose to use a Court mediator (Conciliation Services) or pay a private mediator who does not work for the Court.

### **Process:**

The Court mediator conducts a one-time, two-hour session with the parties. Private mediators set their own timelines, depending on the issues. The mediator helps the parties reach agreements on the issues. Mediation is confidential. The only document that is sent to the Court is the parties' agreement. There is a 30-day objection period if the parties are represented. Open Negotiation is similar to Mediation, but is not confidential. The Court conciliator informs the Court of the areas of settlement and of those remaining in dispute, providing a very short report with that information.

### **Cost:**

If Mediation and Open Negotiation are conducted through Conciliation Services there is no cost in a pre-decree case. The cost per party for post-decree mediation is \$100.00 per party. Private mediators set their own fees.

## **Conciliation Court Services:**

### **Conciliation Court:**

In 1962, the Arizona Legislature created a Conciliation Court statute (A.R.S. § 25-381) authorizing Superior Court Judges in each county, at their discretion, to establish a Court of Conciliation.<sup>16</sup> The Conciliation Court movement began in California and grew out of the need for an interdisciplinary approach to help families experiencing marital discord. According to A.R.S. § 25-381.01: "The purposes of this article are to promote the public welfare by preserving, promoting and protecting family life and the institution of matrimony, to protect the rights of children, and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies." The resulting service is Conciliation Court Services, which is further governed by Rule 68, ARFLP.

A party may submit a Petition for Conciliation Court Services prior to or during an action for annulment, legal separation, or dissolution. This can also be done without any legal action having been filed. The Court may also order the parties to participate services through the Conciliation Court. A petition for Conciliation Court Services puts a stay or hold on the case for up to 60 days and petitions for annulment, dissolution of marriage, or legal separation cannot be filed during that time period. If such an action was filed prior to the Petition for Conciliation, the case may not be advanced until the 60-day period has expired. There is no cost for this service.

Conciliation Court is a brief, short-term, confidential service conducted by a mental health professional usually employed at Family Court. The professional assists parties (those with or without children) in making informed and thoughtful decisions regarding their marriage and learning how to communicate through their separation and about their children. The professional does not make any recommendations to the Court as to whether the parties should divorce. Parties may be provided resources for further assistance. It is important to note that Conciliation Court Services is NOT counseling.

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<sup>16</sup> Not all counties offer Conciliation Court Services.

## **What happens if there is a pending motion for temporary orders?**

The Conciliation Court can hear a motion for temporary orders during this time. However, in larger counties, such hearings are heard before the Judge who handles Conciliation Petitions.

The Family Courts in the following Arizona counties have established a Conciliation Court:

- Cochise
- Coconino
- Maricopa
- Mohave
- Pima
- Pinal
- Yavapai
- Yuma

Over the years, the needs of the Court changed and other services were added, such as:

- Mediation
- Open Negotiation
- Evaluation Services
- Child interviews
- Parent Information Program (PIP)
- Classes for high conflict families

All of the above-mentioned Family Courts offer conciliation services and mediation. Some offer additional services. The respective departments have different names. In most counties, the presiding Family Court judge oversees Conciliation Court.

## **Parent Information Program:**

### **Purpose:**

To help parents understand the needs of their children when the parents do not live together and to help parents co-parent effectively.

### **Referral:**

Arizona law requires all individuals to complete the Parent Information Program (PIP) class when involved in new divorces, legal separations, and annulments, and in any paternity proceeding in which a party has requested that the Court determine legal decision-making, specific parenting time, or child support. Approved PIP classes are offered by a number of community-based providers at various locations throughout Maricopa County. The provider list may be obtained from the Self-Service Center, Conciliation Services, or the Court's web site:

<http://www.superiorCourt.maricopa.gov/SuperiorCourt/FamilyCourt/Services/ConciliationServices/ParentInformationProgram/providersList.asp>.

### **Process:**

The parents attend a four-hour class separately. They will learn how to help their children adjust to living in two homes. They will also learn information on how to co-parent with the other parent. The Certificate of Completion/Attendance is filed by the provider directly with the Court.

### **Costs:**

The fee is \$50.00 per parent.



## **Parental Conflict Resolution/High Conflict Class:**

### **Purpose:**

To help reduce severe chronic parental conflict, parental access disputes, and parental alienation.

### **Referral:**

The Judge orders the parties to attend. Parties may also register without a Court order. Parties can register by calling Conciliation Services at (602) 506-3296. In the near future, parties will be able to enroll on-line via the Court's self-service website.

### **Process:**

In the four-hour class, the parents will learn about how ongoing conflict between parents has a negative impact on the child(ren)'s emotional well-being. They will also learn methods they can use to reduce the conflict with the other parent. Parents are required to attend separate classes. The parents are provided a Certificate of Completion/Attendance.

### **Costs:**

The fee is \$50.00

## **Supervised Exchanges/Visitation/ Therapeutic Supervision:**

In certain cases, supervision and/or therapeutic supervision of exchanges, parenting time, or third-party visitation is necessary. Supervision of visitation and exchanges allows a parent who presents a risk to the children an opportunity to continue to have parent-child contact while ensuring the children are in a safe environment.

### **Supervised exchanges:**

Supervised exchanges may be ordered when the parents have a history of conflict and there is risk of this conflict occurring in front of the children during an exchange. Exchanges of the children should not involve discussions between the parties, particularly when parents have difficulty regulating their emotions and communicating effectively with one another. When the parents have difficulty communicating, the presence of a third party at the exchange can help reduce the chances of conflict in front of the children.

Furthermore, when domestic violence has been an issue in the family, a supervised exchange can provide safety for the children and the adult victim.

It is important to carefully consider the location of the supervised exchange and the person who will provide the supervision of the exchange. In certain situations, parents may choose or request for the exchange to occur at a police station in order to add to their safety. Sometimes, such a location is necessary. However, this location should be chosen carefully due to the potential fear a police station exchange may invoke in the children. If it is possible to choose a more neutral and potentially less-triggering location, such a location is preferred.

Furthermore, the third party supervising the exchange should also be a neutral and non-triggering party to both parents. If both parents do not agree to the third party or if one parent has negative feelings toward that third party, the choice of supervisor can also add to the conflict at the exchanges.

### **Supervised parenting time:**

Parenting time supervision provides a safe space for the children to visit with the supervised parent and keeps the children safe from abuse, witnessing domestic violence, or being exposed to alcohol or substance abuse situations.

A Court may order supervised parenting time as a part of a graduated parenting plan, for example when a parent has had limited contact and rekindling a relationship is necessary. It may also be used as a means for maintaining a relationship when a parent has been determined to be potentially unsafe for the children, such as when substance abuse, mental health concerns, or domestic violence is present. It can also be used as a method to gain additional data during an evaluative process when concerns are raised about a parent. Evaluators and therapists may use supervised parenting time over the course of a period of time in order to gain data to confirm or reject certain concerns.

Supervised parenting time may occur in various settings, including at a Court-approved facility or other agreed-upon facility, in the home, or in a public location. The supervision may be conducted by a Court-approved supervisor, a family member, or friend.

### **Therapeutic Supervision:**

This form of supervision applies a therapeutic component to parenting time. This process is used when a parent may need to strengthen parenting skills or is in need of therapeutic change in other areas. The therapeutic supervision can provide a safe environment for the parent and the child to express themselves, to learn additional communication skills and, if needed, to process a history of unpleasant events. Therapeutic supervision can also occur in a graduated process as a way to gain skills while creating a safe environment for children when a variety of concerns may be present, including abuse, neglect, domestic violence, or substance abuse.

The cost for all of the above supervised services is borne by the parties in some way, as allocated by the Court. In Juvenile proceedings, the Court most often has resources to assist in supervision services.

## **Co-Parenting Classes/Counseling:**

The purpose of Co-Parenting Classes and Counseling is to assist the parties in reducing conflict and increasing cooperation between them with the hope of reducing the risk of future litigation and emotional harm to the children. Parties will ideally learn to accept personal responsibility for their actions and contribution to the conflict, and gain skills to better manage their emotions relative to the other parent. They also learn skills to communicate and resolve conflicts with the other parent more effectively so as to reduce the negative impact of ongoing parental conflict onto their children.

Parties may voluntarily sign up for co-parenting classes or the Court may order them to attend. The duration and cost of the classes vary, depending on the provider. Parties are often required to attend co-parenting classes at separate times. Typically, there are multiple sessions. Some classes are offered on-line while others require the parties to attend in person.

In comparison to Co-Parenting Classes, Co-Parenting Counseling allows parents an opportunity to attend sessions together. In this neutral setting they can discuss parenting and co-parenting issues involving their children and gain insight and skills specific to their situation. Some parents are hesitant to attend Co-Parenting Counseling sessions together. However, they can be surprised to find that they are capable of working through difficult issues in order to facilitate a more effective co-parenting relationship. The Court might order a specific number of Co-Parenting Counseling sessions or the parents might attend for as long as they deem necessary. The cost of Co-Parenting Counseling varies by provider. The Court might also allocate each parent's financial responsibility for the service.

## **Statutory Definitions:**

The Arizona Revised Statutes ("A.R.S.") provide statutory definitions of domestic violence, child abuse, and substance abuse.

### **Domestic Violence:**

Title 25 differentiates "significant" domestic violence by defining such domestic violence as that which falls under the criminal code definition of domestic violence in A.R.S. § 13-3601. However, A.R.S. § 25-403.03, titled "Domestic violence and child abuse," defines an act of domestic violence as when a person:

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 other parent who is seeking child custody or to protect the child and the child's siblings.

A.R.S. § 13-3601 defines what Title 25 deems "significant" domestic violence as any act that is a dangerous crime against children as defined in section 13-705 [dangerous crime against children] or an offense prescribed in section 13-1102 [negligent homicide], 13-1103 [manslaughter], 13-1104 [second degree murder], 13-1105 [first degree murder], 13-1201 [endangerment], 13-1202 [threatening or intimidating], 13-1203 [assault], 13-1204 [aggravated assault], 13-1302 [custodial interference], 13-1303 [unlawful imprisonment], 13-1304 [kidnapping], 13-1406 [sexual assault], 13-1425 [unlawful disclosure of images depicting states of nudity or specific sexual activities], 13-1502 [third degree criminal trespass], 13-1503 [second degree criminal trespass], 13-1504 [first degree criminal trespass], 13-1602 [criminal damage] or 13-2810 [judicial interference], section 13-2904 [disorderly conduct], subsection A, paragraph 1, 2, 3 or 6, section 13-2910 [cruelty to animals], subsection A, paragraph 8 or 9, section 13-2915 [preventing use of telephone in emergency], subsection A, paragraph 3 or section 13-2916 [use of an electronic communication to terrify, intimidate, threaten or harass], 13-2921 [harassment], 13-2921.01 [aggravated harassment], 13-2923

[stalking], 13-3019 [surreptitious photographing, videotaping, filming or digitally recording or viewing], 13-3601.02 [aggravated domestic violence] or 13-3623 [child or vulnerable adult abuse; emotional abuse], if any of the following applies:

1. The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or having resided in the same household.

2. The victim and the defendant have a child in common.

3. The victim or the defendant is pregnant by the other party.

4. The victim is related to the defendant or the defendant's spouse by blood or Court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.

5. The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant.

6. The relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship. The following factors may be considered in determining whether the relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship:

(a) The type of relationship.

(b) The length of the relationship.

(c) The frequency of the interaction between the victim and the defendant.

(d) If the relationship has terminated, the length of time since the termination.

A.R.S. § 13-705 provides the following definitions:

1. "Dangerous crime against children" means any of the following that is committed against a minor who is under fifteen years of age:

- (a) Second degree murder.
- (b) Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.
- (c) Sexual assault.
- (d) Molestation of a child.
- (e) Sexual conduct with a minor.
- (f) Commercial sexual exploitation of a minor.
- (g) Sexual exploitation of a minor.
- (h) Child abuse as prescribed in section 13-3623, subsection A, paragraph 1.
- (i) Kidnapping.
- (j) Sexual abuse.
- (k) Taking a child for the purpose of prostitution as prescribed in section 13-3206.
- (l) Child sex trafficking as prescribed in section 13-3212.
- (m) Involving or using minors in drug offenses.
- (n) Continuous sexual abuse of a child.
- (o) Attempted first degree murder.
- (p) Sex trafficking.

(q) Manufacturing methamphetamine under circumstances that cause physical injury to a minor.

(r) Bestiality as prescribed in section 13-1411, subsection A, paragraph 2.

(s) Luring a minor for sexual exploitation.

(t) Aggravated luring a minor for sexual exploitation.

(u) Unlawful age misrepresentation.

(v) Unlawful mutilation.

2. "Predicate felony" means any felony involving child abuse pursuant to section 13-3623, subsection A, paragraph 1, a sexual offense, conduct involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, or a dangerous crime against children in the first or second degree.

It is also important to note that A.R.S. §25-403.03 (A) refers to both "significant domestic violence" or "significant history of domestic violence" whereas A.R.S. §25-403.03 (D) only refers to "domestic violence" without any reference to "significant" or "significant history" and refers to "an act of" domestic violence.

Also, section (D) only refers to Domestic Violence "against the other parent." In contrast, section (A) does not specifically limit against whom the Domestic Violence was committed. Thus, arguably, under (A) the Domestic Violence is not just limited to the other parent and could be Domestic Violence against anyone (as long as it is either significant Domestic Violence or a significant history of Domestic Violence). For example, under section (A), Parent A may be precluded from having joint legal decision-making if the Court finds that Parent A committed significant Domestic Violence against a prior spouse even if the Court finds that Parent A has not committed any Domestic Violence against his current spouse (the one in the pending divorce case).



## **Child Abuse:**

Title 8, regarding Child Safety, defines “abuse” as “the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual who has the care, custody and control of a child.” A.R.S. § 8-201(2). The following examples of abuse are provided:

(a) Inflicting or allowing sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child prostitution pursuant to section 13-3212.

(b) Physical injury that results from permitting a child to enter or remain in any structure or vehicle in which volatile, toxic or flammable chemicals are found or equipment is possessed by any person for the purpose of manufacturing a dangerous drug as defined in section 13-3401.

(c) Unreasonable confinement of a child.

*Id.*

## **Substance Abuse:**

A.R.S. § 25-403.04, titled “Substance abuse,” provides a circular definition of substance abuse in that it defines the term by simply stating it means a parent who has abused drugs or alcohol, but also a parent who “has been convicted of any drug offense under title 13, chapter 34 [drug offenses] or any violation of section 28-1381 [DUI], 28-1382 [extreme DUI] or 28-1383 [aggravated DUI] within twelve months before the petition or the request for legal decision-making or parenting time is filed.”