

ASSESSING DV IN FAMILY COURT PARENTING CASES:

Deconstructing ARS § 25-403.03

RELEVANCE

Whether there has been domestic violence (DV) is always relevant in determining legal decision-making and parenting time. ARS § 25-403(a)(8).

- ARS § 25-403(A)(8) requires the court to assess whether there has been DV.
- If DV has been alleged, ARS § 25-403.03 applies.
- Evidence of DV is contrary to the best interests of a child (ARS § 25-403.03(B)).
- In assessing DV issues, the “court shall consider a perpetrator’s history of causing or threatening to cause physical harm to others.” (ARS § 25-403.03(B))

LEGAL DECISION-MAKING DETERMINATIONS: THREE CATEGORIES OF DV IN FAMILY LAW

1. Significant Domestic Violence ARS § 25-403.03(A)

- What constitutes?
 - An act defined by ARS § 13-3601; and
 - A finding that the act was “significant.”
- If found to exist, there is an **irrebuttable preclusion from** awarding joint legal decision-making.

2. Significant History of Domestic Violence - ARS § 25-403.03(A)

- What constitutes?
- NOT specifically defined by statute
 - May, but is not limited to, acts that are defined to be DV in ARS § 13-3601.
 - Is based upon a course of conduct over time. Often involves a pattern of behavior that exerts control over a party, invokes fear or causes harm, or deprives a party of personal and financial independence.
- If found to exist by a preponderance of the evidence, there is an **irrebuttable preclusion from** awarding joint legal decision-making.



3. An Act of Domestic Violence - ARS § 25-403.03(D)

- A person commits an act of DV 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 other parent who is seeking child custody or to protect the child and the child's siblings.
- If found to exist, DV impacts legal decision-making.
 - Creates a **rebuttable presumption against** the court awarding sole or joint legal decision-making to the parent who has committed the act of domestic violence.
 - The presumption does not apply if both parents have committed an act of DV.
 - The determination of whether the presumption has been rebutted is based upon the factors detailed under ARS § 25-403.03(E)(1)-(6).

PARENTING TIME: CONSIDERATIONS REQUIRED WHEN DV IS FOUND TO EXIST

ARS § 25-403.03(F)

- *The parent who committed the DV* has the burden to prove 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 the burden, conditions can be placed on parenting time, as detailed in subsections 1-9.

EVIDENCE TO CONSIDER- ARS § 25-403.03(C)

- In determining whether DV has occurred, the court must consider relevant factors that include: findings from another court, police reports, medical reports, DCS records, DV shelter records, school records, and witness testimony.
- **CAVEAT:** The existence of any of the records may be indicia that DV has occurred. **HOWEVER**, the lack of any such records is not indicia that DV has not occurred for many reasons, including the following:
 - DV is underreported to outside agencies and medical providers.
 - It is most frequently privately engaged behavior.
 - Perpetrators often threaten DV survivors with further harm if the DV is reported.
- Witnessing DV can cause children the same types of severe long-term physical and mental health problems as experiencing abuse directly. (U.S. Dept. of Health and Human Services)

