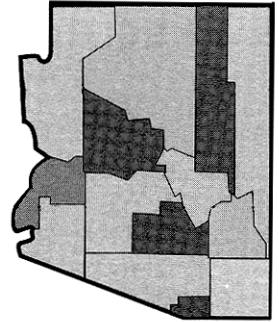




Association of Family and Conciliation Courts



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# The Newsletter

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Summer 2004

Arizona Chapter

## *AZ AFCC President's Message*

*By Judge Mark W. Armstrong*

Let me begin by saying that I am proud to serve as a chapter president of this outstanding multidisciplinary organization. In my seven years as a Family Court judge, I have repeated many times that the AFCC and National Council of Juvenile and Family Court Judges are the premier organizations serving our nation's family and juvenile courts.

Unfortunately, we have not been as successful as we would have liked in keeping you up to date with a regular newsletter. We hope to remedy that. In these pages, you can read about upcoming events as well as topical articles. I invite each of you to provide a topical article that you think might interest our members and prospective members. Submit an article to Sidney Buckman at [Master1@npgcable.com](mailto:Master1@npgcable.com).

I'm going to begin what I hope to be a parade of topical articles by devoting this column to the subject of therapeutic justice. As you know, AFCC is an *international* and *interdisciplinary* Association of Family and Conciliation Courts dedicated to the constructive resolution of family disputes. The organization was founded in 1963 for the following purposes:

- To provide an interdisciplinary forum for the exchange of ideas and the development of procedures to assist families in conflict.
- To encourage the development of courts and court procedures emphasizing constructive methods of dispute resolution.
- To develop and improve parent education, mediation, custody evaluation and other processes to aid families in resolving their disputes.
- To protect the interests of children in relation to all aspects of family law, child protection proceedings and other legal actions affecting children.

In my opinion, these purposes are very consistent with the principles of therapeutic jurisprudence or therapeutic justice, about which I would like to share my views with you.

### *Therapeutic Justice in Family Court*

The terms "therapeutic jurisprudence" or "therapeutic justice," as I prefer, have been heard more and more often recently in the halls of the family court. Unfortunately, the notion of therapeutic justice in family court strikes fear in the hearts of some family law attorneys. Some predict an end to due process as we know it. Some fear for their very livelihoods. Yet others have proposed that therapeutic justice should constitute the very foundation of any family court system. To them, it represents a profound change of attitude underlying the family court, with an emphasis on alternative (sometimes called "appropriate") dispute resolution.

Part of the controversy arises from the close ties between the concept of therapeutic jurisprudence and Professor David Wexler of the University of Arizona College of Law, who first coined the term. Professor Wexler has written extensively about the concept although not in the context of family law. While I have read and been influenced by Professor Wexler's work, I believe similar concepts have developed in the area of family law independently of his work. Nevertheless, I have borrowed the term from Professor Wexler because I think it manages to incorporate all related notions in one term.



## Arizona Chapter Executive Committee

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Is therapeutic justice the pancea seen by its most ardent supporters? Only time will tell. Are the fears expressed its most vocal opponents justified? I think not. Just what does the concept of therapeutic justice stand for then? I can only tell you my side of it. In doing so, however, I hope to remove some of the heat from the subject and also to allay some of the fears that have been expressed.

Therapeutic justice is an interdisciplinay approach to resolving cases. In family court, it means using the law and agents of the law to promote the psychological and physical well being of the parties to a family law dispute, including their children. Therapeutic justice means something a little different for each player in the system. Judges may more effectively promote therapeutic justice by being informed about relevant social science literature, including child development and family dynamics. They might also contribute by explaining their decisions in understandable language, and using language that encourages cooperation between the parties. Court staff, including judges, should treat all people who come before them with dignity and respect. The family court as a whole could exercise therapeutic justice by improving and increasing access to the court, and by making a real commitment to early intervention and appropriate dispute resolution.

For family lawyers, the concept of therapeutic justice is no where better stated than in the Voluntary Code of Conduct of the American Academy of Matrimonial Lawyers, The Bounds of Advocacy 22, Rules 2.15, 2.23, 2.25 AND 2.27: (1) A Lawyer should encourage the settlement of marital disputes through negotiation, mediation, or arbitration to prevent the detrimental effects on the children of protracted, adversarial proceedings between the spouses; (2) A lawyer should consider the welfare of the children; (3) A lawyer should not contest child custody or visitation for either financial leverage or vindictiveness; and (4) A lawyer should refuse to assist in vindictive conduct toward a spouse or third person and should not do anything to increase the emotional level of the dispute. If lawyers follow these guidelines, they will be practicing therapeutic justice at its best.

For all participants in the family court, therapeutic justice should be aimed at reducing conflict between the parties in most cases. Many mental health and court professionals believe, for instance, that persistent parental conflict is the foremost indicator of divorce outcomes for children. Such conflict has been associated with a much higher risk of self-destructive behavior, depression, delinquency, and diminished academic performance in children. Whatever we can do to reduce parental conflict will benefit the children in most cases. Generally, the most effective means to reduce conflict is by alternative dispute resolution, such as mediation, arbitration, and settlement conferences. Alternative dispute resolution provides the parties with the tools to resolve their disputes sooner and gives them a greater sense of involvement in the process, which often renders the resolution more durable and longer lasting. We must always be cognizant, of course, that there are certain cases where alternative dispute resolution is not appropriate, particularly in cases of domestic violence, abuse or severe neglect.

In the end, I do not believe that therapeutic justice will spell the end of either family law practice or due process. Indeed, one of my priorities is to enhance the status of both family law practice or due process. Indeed, one of my priorities is to enhance the status of both family law and family law practice. I believe family law attorneys bring unique knowledge, experience and perspective to the system. They will play an increasingly important role in the family court in advising and counseling their clients, in case preparation, in alternative dispute resolution, and if that is unsuccessful, in trials to the court. There is absolutely no intent on my part to do away with trials in appropriate family court cases. But then again, bitterly contested trials should be a last resort. I would urge family law attorneys and other court-connected professionals to join me in embracing the concept of therapeutic justice for the benefit of the familys and children served by the family court.

\*Judge Armstrong is the former Presiding Judge of the Family Court Department in Maricopa County Superior Court

**2004 ARIZONA STATE LEGISLATIVE REPORT**  
**BY MEGAN HUNTER**  
**JUNE 2004**

During the 2004 Legislative Session, Arizona's lawmakers debated family law-related bills that originated from legislative committees, advocacy groups, the mortgage industry, state agencies, lawyers, psychologists, parents.....the list goes on. Some sailed through with little controversy while others were hotly debated through the process with a few battle scars but will hopefully serve to improve the system.

Several proposals met their demise. One such bill would have allowed parties represented by counsel in a family law case to mutually agreed to have a judge pro tem hear their case. The parties would pay for the judge pro tem. While the bill died at the Legislature, the Superior Court in Maricopa County agrees to implement a pilot project to test the concept. Another proposal would have significantly impacted Arizona's custody laws by presuming shared parenting in separation and divorce cases. This proposal was originally developed by the Legislature's Domestic Relations Committee where it was eventually defeated, but later picked up and introduced by a legislator not on the Domestic Relations Committee.

Many would prefer a temporary moratorium on changes to family law statutes. While it seems that laws are constantly evolving, the results generally improve the system for those we serve.

The general effective date is August 25, 2004, unless otherwise designated. Bills with family law significance are outlined below. Should you wish to review actual language, the new laws can be found at [www.azleg.state.az.us](http://www.azleg.state.az.us) by clicking on *Session Summary* and looking at *Chaptered* bills.

**Ch. 195SB 1156**

***RETROACTIVE CHILD SUPPORT (Sen. Brotherton, et al)***

Current law allows child support to be ordered retroactively to the filing date of a petition for dissolution of marriage, legal separation, spousal maintenance or child support, regardless of the amount of time prior to the time the parents lived apart.

The new law permits child support to be ordered retroactively to the date of separation in cases where the parties lived apart before the filing date. The court may order that it be paid retroactively to the date the parties separated, up to a maximum of three years before the date of filing. The term *date of separation* is defined as the date the married parents ceased to cohabitate. After considering all relevant circumstances, if the court determines that child support is appropriate, a retroactive application of the child support guidelines will be performed, taking into account any temporary or voluntary support that has already been paid.

**Ch. 186SB 1332**

***UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA)***  
***(Sen. Waring, Brotherton)***

Existing UIFSA law in A.R.S. Title 25 governs interstate child support case processing as required by the federal Social Security Act. Arizona adopted the existing UIFSA laws in 1996.

In 2001, the National Conference of Commissioners on Uniform State Laws in coordination with the federal Office of Child Support Enforcement recommended amendments to UIFSA with the approval of the American Bar Association. The amendments supplement and enhance the existing law.

The new law repeals existing statutes in A.R.S. Title 25, Chapter 5, Article 4 and relocates the amended laws to A.R.S. Title 25, Chapter 9.

Of particular importance, the new law outlines guidelines for orders from a foreign country or political subdivision, specifies the duration of personal jurisdiction, clarifies that a court of Arizona that issues a spousal support order has continuing, exclusive jurisdiction over that order, establishes a procedure when two or more orders are in effect, and requires the courts of this state to allow out-of-state parties to testify or be deposed by phone.

Overall, the changes enhance existing laws and should ease the complicated interstate process. Before the Act goes into effect, the state child support agency must apply for a waiver from a federal law that required states to adopt the 1996 laws. Because the federal Office of Child Support Enforcement encouraged states to adopt the amendments, the waiver will likely be granted. The law will go into effect immediately upon receipt of the federal waiver or August 25, 2004, whichever occurs first.

### ***TAXPAYER INFORMATION FOR CHILD SUPPORT (Rep. Tully)***

Current law requires the Department of Revenue to notify the state child support agency if a match is made with a taxpayer who owes child support arrearages.

The new law will require the Department of Revenue to also notify the Court and Clerk of Court if a match is made with a taxpayer who has spousal maintenance arrearages. Spousal maintenance will be added to the definition of overdue support.

### ***CHILD SUPPORT OVERPAYMENT (Sen. Waring, Brotherton)***

No remedy exists in current law to address the overpayment of child support. In some cases, the paying parent is not aware that the child support order has terminated. This typically occurs when a wage assignment is in place and the paying parent fails to request the court to stop the wage assignment upon termination of the child support order and full payment of arrearages and interest.

A new section of law (A.R.S. §25-527) was created, allowing the paying parent to obtain a civil judgment for child support overpayments if: 1) the obligation to pay child support has terminated, 2) the paying parent files for reimbursement with the Clerk of the Superior Court within 24 months after the obligation terminates, and 3) all arrearages and interest on arrearages have been satisfied.

The judgment for reimbursement is enforceable in the same manner as any civil judgment. It is important to note that any payments resulting from the judgment are to be paid directly between the parents; payments will not pass through the Support Payment Clearinghouse.

### ***HOMESTEAD EXEMPTION (Rep. Biggs, et al)***

Under existing law, a homestead exemption protects a fixed amount of equity in a person's dwelling from attachment, execution and forced sale. The exemption applies to a person's house and land, condominium or cooperative or mobile home and land. A person or married couple may only claim one homestead exemption and must reside in the dwelling or home for which the exemption is claimed. Currently, the exemption amount is \$100,000.

Equity in a property is determined by subtracting the amount of any mortgages on the property from the fair market value of the property.

The new law increases the homestead exemption from \$100,000 to \$150,000.

### ***BOARD OF PSYCHOLOGIST EXAMINERS; COMPLAINTS (Sen. Leff)***

The Board of Psychologist Examiners is a panel established by the State to protect the health, safety and welfare of Arizona citizens by regulating the psychology profession. The panel investigates and acts on complaints received about licensed psychologists. The Board investigates reports of complaints against any psychologist to determine if he or she is unable to safely engage in the practice of psychology. In the family law area, custody evaluators who are licensed psychologists are subject to this complaint procedure.

Under existing law, the Board's investigation includes informal interviews with the psychologist and public hearings. The Board may dismiss the complaint, issue a letter of concern or decree of censure, prescribe a period of probation, restrict licenses, levy a civil penalty, or suspend or revoke licenses. All Board action is a matter of public record, including investigations that are dismissed without merit.

The new law sets up a 3-member complaint screening committee to review all complaints. After reviewing the complaint, the committee may dismiss the complaint without merit or refer the complaint to the full Board for further review. The committee's meetings are subject to Open Meeting Laws, but complaints that have been dismissed are prohibited from being disclosed via telephone inquiry or on the Board's website.

## ***DISSOLUTION OF MARRIAGE; COMMUNITY PROPERTY*** ***(Rep. Reagan, Thompson)***

Current marital relations statutes classify property acquired during a marriage as community property, with both parties having equal management, control and disposition rights to the community property. Property and other assets that were acquired by one party before marriage or during the marriage by gift, inheritance, or the increase, rents or profits of the property is the separate property of that party. When a petition for dissolution of marriage, legal separation or annulment is filed, both parties are instructed to refrain from encumbering the community property. If a party purchases real property after the petition is filed, the property is the separate property of that party.

The new law stipulates that if a spouse purchases real property after a petition is filed for dissolution of marriage, legal separation or annulment, the property remains separate even if the petition does not result in a decree of dissolution of marriage, legal separation or annulment.

### Ch. 320HB 2348

## ***DISSOLUTION OF MARRIAGE; CRIMINAL CONDUCT (Rep. Johnson et al)***

**1. Criminal Conviction.** Under current law, courts cannot consider marital misconduct when dividing community, joint tenancy and other property held in common. The court can consider excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

The new law permits the court to consider actual damages and judgments from conduct that results in criminal conviction of either spouse in which the other spouse or child was the victim when:

- a. determining disposition of property;
- b. impressing a lien on the separate property of either party or the marital property awarded to either party;
- c. awarding spousal maintenance.

**2. Sexual Offenders; Murderers; Custody and Parenting Time.** No language exists.

Unless the court finds, in writing, that there is no significant risk to a child, the new law prohibits courts from granting sole or joint physical or legal custody, or unsupervised parenting time to a person who:

- a. is a registered sex offender;
- b. has been convicted of murder in the first degree and the victim was the other parent of the child who is subject to the order.

The new law permits the court to consider evidence that the convicted parent suffered trauma due to domestic violence, as defined in A.R.S. § 13-3601, at the hands of the murdered parent. Testimony from an expert witness to the same may also be considered.

**3. Domestic Relations Committee.** The Committee currently has a membership of 27. Two additional senators and two additional representatives (previously 2 senators and 2 representatives) are added to the Committee.

The Committee studies and makes recommendations at the direction of the State Legislature. The new law requires the Committee to develop minimum training standards on domestic violence and child abuse for custody evaluators by December 31, 2004 and allows the Committee to modify the standards on or before December 31 of each year.

The new law also requires anyone conducting investigations or preparing reports concerning custodial arrangements for children in contested custody proceedings to provide written affirmation that they have received six initial hours of domestic violence training, six hours of child abuse training and four subsequent hours in those areas every two years. Those who have completed this type of training for their professional licensing or certification may use that training to satisfy these training requirements. The law exempts physicians from the training requirements. These provisions go into effect on July 1, 2006.

The court must base the allocation of costs for an investigation, report or appointment of a family court advisor on the financial circumstances of both parties.

*Arizona Association of Family and Conciliation Courts*

*2004 Conference*

*February 6-8, 2004 Sedona, Arizona*

The Arizona Chapter of the Association of Family and Conciliation Courts 2004 Conference, Childhood Interrupted, focused on children and how they are affected by family law disputes. In the opening plenary session on Friday evening, Dr. Irwin Sandler, director of the Arizona State University Prevention Research Center, presented encouraging information about resilience in children and how it can be taught effectively.

Saturday morning began with the second plenary session, Out of the Mouths of Babes. Professor Barbara Atwood of the University of Arizona College of Law discussed her extensive research and writing in the area of ascertaining children's wishes in custody and parenting time disputes. A panel of experts including a child's attorney, family law judge, mediator, and custody evaluator commented on professor Atwood's work and shared their own views. A lively audience discussion followed.

Following the plenary, nine workshops were available to attendees. Topics ranged from developmental issues in parenting plans and crafting parenting plans for disabled children to determining the parameters of significant domestic violence and its impact on children. One workshop featured the results of current research in the area of mother-daughter relationships following dissolution. The workshops Look Who's Talking I and II involved representing and interviewing children in family law cases.

The final day of the conference was devoted to ethical issues, beginning with a plenary session on multi-disciplinary ethical issues presented by Chick Arnold, Esq. Mr. Arnold has worked extensively with the Codes of Ethics for both lawyers and mental health professionals. After the plenary session, there were separate ethics workshops for lawyers and mental health professionals.

*Be sure to attend the  
AZAFCC Conference February 4-6, 2005 Sedona, Arizona*

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Association of Family & Conciliation Courts

