



CHILD CUSTODY AND CHILD SUPPORT

(A.R.S. §§ 25-401-685)

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I. Legal Decision-Making

Legal decision-making refers to the rights and relationships between the parents and the children after the divorce decree. The court can order sole legal decision-making or joint legal decision-making. Child support is a separate issue from legal decision-making.

Legal decision-making allows one to make major decisions in a child's life such as what school or church they will attend, or whether or not they will get braces.

A. Sole Legal Decision-Making

Sole legal decision-making is a term that means one parent has legal custody of a child and is able to make important decisions regarding the child's upbringing. These decisions include education, religion, discipline, and driving permission. Sole legal decision-making does not mean that the other parent does not have parenting time rights.

B. Joint Legal Decision-Making

Joint legal decision-making is a term used to describe a situation where the parents enjoy shared legal decision-making for the child. As a general rule, legal services practitioners advise against joint legal decision-making unless:

1. The parents have a history of cooperation, have similar values concerning their children, and have both been caretakers for the children; or
2. A stipulation to joint custody is the only way the parent will retain any rights to the children.

Joint legal decision-making means the parents will work together to make important decisions regarding the child's education and religious upbringing and when giving permission for things such as sleepovers, summer camps, driving, and dating. Neither parent is the primary decision maker except where conditions specified by the court are concerned. Joint legal decision-making does not ensure that both parents have equal parenting time with the child.

Joint legal decision-making and parenting time means that both parents have equal rights and responsibilities in raising their child and work together when making important decisions regarding the child's upbringing. The parents share an equitable amount of time with the child. Parents who desire joint decision-making and parenting time should file a written parenting plan signed by both parents. The parenting plan is a legal document that each parent must understand and agree to. Parents must include at least the following information in a parenting plan:

1. A designation of the legal decision-making as joint or sole;
2. Each parent's rights and responsibilities for the care of the child and decisions in areas such as education, health care, and religious training;
3. A schedule of the physical residence of the child, including holidays and school vacations;

4. A procedure for the exchanges of the child, including location and responsibility for transportation;
5. Procedures for resolving proposed changes and disputes regarding the parenting plan,
6. Procedures for periodic review of the plan's terms by the parents; and
7. A procedure for communicating with each other about the child, including methods and frequency.

If the parents cannot agree on specific details of the plan, the court will make the decision for them.

C. Arrangements

The court determines legal decision-making and parenting time in accordance with the best interests of the child. The court considers several factors when it determines the best interests of the child, including:

1. The past, present, and potential future relationship between the parent and the child.
2. The interaction of the child with parents, siblings, and others in the child's best interest.
3. The child's adjustment to home, school, and community.
4. If the child is of suitable age and maturity, the wishes of the child.
5. The mental and physical health of all individuals involved.
6. Which parent is more likely to allow the child frequent, meaningful, and continuing contact with the other parent. Not applicable if parent is acting in good faith to protect the child.
7. Whether one parent intentionally misled the court to cause an unnecessary delay, to increase the cost of litigation, or to persuade the court to give preference to that parent.
8. Whether there has been domestic violence or child abuse.
9. The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding legal decision-making or parenting time.
10. Whether a parent has complied with requisite parenting classes.
11. Whether either parent was convicted of an act of false reporting of child abuse or neglect.

The court does not automatically favor or prefer one parent over the other simply because of gender. The court may order joint legal custody without ordering joint physical custody.

D. Modification

A parent may file for a modification at any time on the basis of evidence of spousal or child abuse, or if there is reason to believe that the child's present environment may endanger the child's physical or mental health.

A parent's military deployment is NOT a change in circumstances that materially affects the welfare of the child so long as the parent has filed a military family care plan with the court and the deployment is LESS THAN SIX MONTHS. If the deployment is longer than six months, the court will examine the military family care plan to determine what is in the best interest of the child.

F. Special Military Issues

Issues of child custody may become complex for a military member receiving an overseas assignment or deployment orders. Discuss these issues ahead of time with an attorney so they are addressed in the court decree.

EXAMPLE: Sgt Black is awarded custody of his child, John, at the time of his divorce. The child custody order dictates he will allow visitation to John's mother at his expense for four weeks during summer vacations. Sgt Black receives orders to PCS to Korea for two years. The cost of a plane ticket from Korea to the states is over \$2,000. If Sgt Black does not spend the \$2,000 to send John home for the required four week visit, he is in violation of the court order.

If a court has awarded either joint custody or parenting time to both parents and both parents reside in Arizona, a parent must provide 60 days' written notice to the other parent before moving out of state with the child. The other parent may petition the court to prevent relocation of the child. The parent that is moving may be able to temporarily relocate the child pending a court determination. Please contact the legal office for further information.

II. Parenting Time Guidelines

Parent time is ordered so that the parent who does not maintain primary custody of the child may see the child. The court will order reasonable parenting time according to the age of the child. However, parenting time can vary by agreement between the parents. A judge cannot make a parent visit a child if the parent does not want to.

A parent may also request supervised parenting time. Under supervised parenting time, the non-custodial parent can visit the child only when another person is present. Supervised parenting time is ordered in cases where the non-custodial parent abuses drugs or alcohol, or is violent or abusive. Supervised parenting time is not intended to punish the parent, but to protect the child.

The court does not generally allow a custodial parent to completely prevent the other parent from visiting the child on a regular basis. If the non-custodial parent has seriously harmed or abused the child, or is otherwise a serious danger to the child's emotional and/or physical health, the court may severely restrict parenting time rights.

A court may also grant the grandparents and great-grandparents of the child reasonable parenting time rights on a finding that the parenting time rights would be in the best interests of the child.

A. Parenting Time Guidelines

The following basic guidelines are published by local courts to help parents settle visitation and child access issues.

1. FACTORS THE COURT EXAMINES

The plans for basic and optional access are designed to allow parents, and the court if necessary, to select a proper parenting plan depending upon family circumstances. Basic access is designed to be just that, a minimum level of access which would apply to a large number of families without further modification. Courts consider the same factors regarding for both parenting time and legal decision making.

Arizona law establishes certain criteria for joint custody. Optional access which approaches an award of joint custody requires compliance with the statutory joint custody criteria.

2. BASIC AND OPTIONAL PLANS

Arizona has a Planning for Parenting Time booklet with parenting time options. These are not the sole options available to parents, but provide a starting point for parents and the court. The pamphlet may be found at <http://www.azcourts.gov/selfservicecenter/Booklets>. The plan adjusts the parenting time based on the child's age.

B. Child Care

When one parent will be absent from the home for an extended period of time, the child should spend that period with the other parent, assuming such plan is appropriate for the child. This also assumes that geographic location of both parents, the child's age, outside activities, and the parent's work schedules accommodate the arrangement. This allows additional access between parent and child and has the additional advantage of eliminating expense for extended care baby-sitters.

C. Holidays

Holidays are to be alternated or shared between the parents.

D. Extended Access/Vacation

Infants and children up to school age should be permitted to have extended access to the other parent on an increasing time basis. It is important to note that children up to three years of age should not be deprived of contact with the primary parent for more than one week at a time. For children aged three years to school age, they ordinarily should not be deprived of access to the other parent for more than two consecutive weeks. For children six years and older, the basic vacation access should be in the range of two to four weeks with optional access extending up to ten weeks or so.

Each parent is entitled to two uninterrupted weeks for out-of-town travel. Except for the two weeks of out-of-town travel, the parent exercising the vacation access time is to allow the other parent the equivalent parent/child access that the vacationing parent enjoys during the remainder of the year. The child should return from vacation at least one week prior to the start of school.

E. PARENT/CHILD ACCESS-LONG DISTANCE

Children under age five should not travel alone unless appropriate travel arrangements have been made. Access, including overnights, should be allowed when a parent is traveling to the community in which the child resides, provided a minimum of 48 hours notice is given to the other parent. If the parent and child travel to the other parent's community, similar access should be arranged. During periods of long distance, access shall be given the other parent.

When parents live far apart, there should be a minimum of four blocks of parenting time between the child and parent each year. Blocks of time should occur over the summer, winter break, spring break, and at least one other block of time. For age specific recommendations refer to the Arizona Planning for Parenting Time booklet.

III. Child Support

A. Introduction

Child support refers to payments made by one parent to the other for needs of the child. Child support may be paid to either parent of a minor, regardless of the parents' marital status. In Arizona, child support is intended to assist in meeting a child's reasonable needs, including food, clothing, education, and child care. There is a direct correlation between parenting time and child support.

The amount of child support is determined by combining the income of both parents and is awarded based on the child's needs, not the parent's needs. There are guidelines to determine the appropriate amount of child support. The guidelines provide factors the court uses to determine child support amounts, and include a chart to determine the appropriate amount of support. See guidelines at the end of this pamphlet.

Child support must be paid in money, not in clothes or gifts. Child support must be paid through the Clerk of the Court if there is a court order for support.

Child support orders apply to any child under the age of 18, or a child who is still attending high school or an equivalency program. Also, if a child is mentally or physically handicapped, then the judge may order that support payments continue indefinitely past the age of 18.

B. Medical Insurance

Medical insurance is considered part of child support. If the parent who is ordered to make the child support payment is the same person who pays the child's medical insurance premium, then the child support order is lowered to account for the cost of the medical insurance. Alternatively, if the parent who receives the child support payment is the same person who pays the child's medical insurance premium, then the child support order is usually raised.

C. Other Information

A temporary child support order can be entered before the divorce is final to help with financial needs of the child during the period it takes to obtain the divorce.

Child support payments ordered when the family receives Temporary Assistance to Needy Families (TANF) or Welfare are processed through the Clerk of Superior Court. AFDC does not relieve or lessen the responsibility of a parent to pay court-ordered child support.

D. Arizona Child Support Guidelines

Local courts use the five-step formula below to determine a parent's child support obligation. However, the court may set aside the application of these guidelines if the guidelines are inappropriate or unjust in a particular case.

The Support Calculator and Guidelines may be found at:
<http://www.azcourts.gov/familylaw/>

The Air Force requires all members to provide adequate support for their families even in

the absence of court-ordered child support. This obligation may be enforced not only through the civil courts but through the military justice system.

E. Modification

According to Arizona law, either parent may ask the court to modify a child support order upon a showing of a substantial and continuing change of circumstance, including: changes in employment and income of either parent, disability, basic need or when one party is contesting paternity.

F. Enforcement

Child support obligations and orders can be enforced through civilian courts. Military members who fail to meet their support obligations may also be disciplined by the military. A court may garnish a person's military or retirement pay if the military member or retiree fails to make the required child support payments. For information on how to directly garnish military or retirement pay, call the Defense Finance and Accounting Service at (888) 332-7411.

IV. Additional Resources

- Arizona Child Support Guidelines
<http://www.azcourts.gov/familylaw/>
- Maricopa County Superior Court Family Law Forms
<https://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter/Forms/FamilyCourt/index.asp>
- DFAS and Garnishment
<http://www.dfas.mil/garnishment.html>

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