



Arizona State Senate *Issue Brief*

August 9, 2007

Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

CHILD CUSTODY AND PARENTING TIME

When parents separate or divorce, the term “custody” refers to the person or persons assigned responsibility for the care and protection of the minor children. Physical custody refers to the daily care of the children. Legal custody involves making decisions that affect their interests, such as medical, educational and religious decisions.

Sole custody means that one parent, the custodial parent, has physical and legal custody of a child and the second or noncustodial parent is entitled to reasonable parenting time unless the court finds that parenting time would seriously endanger the child’s physical, mental, moral or emotional health. Unless otherwise provided by court order or law, both parents are entitled to equal access to documents and other information concerning the child’s education and physical, mental, moral and emotional health.

Arizona case law established in 1936 that the court could divide custody for definite periods of time if the best interests of the child would be served by doing so. This divided or joint custody means that the parents share in the responsibility for the child, although it does not necessarily mean they share substantially equal parenting time.

DETERMINING CUSTODY

Arizona statute prohibits a presumption in favor of one custody arrangement over another, or a preference for one parent as custodian because of that parent’s sex. The court is required to consider all relevant factors in determining custody in accordance with the best interests of the child, including specific factors listed in statute.

Evidence of domestic violence or conviction of a drug offense, murder or sexual offense requiring registration creates a presumption that sole or joint custody by that person is contrary to the best interests of the child. Additionally, if, after a custody or parenting time order is in effect, a parent is charged with a dangerous crime against children, child molestation or act of

domestic violence in which the victim is a minor, the other parent may petition for an expedited hearing. The court may suspend parenting time or change custody awaiting the hearing.

A person may not request modification of a custody decree earlier than one year after the date of decree, unless the court finds that the child's present environment may seriously endanger the child's physical, mental, moral or emotional health.

PARENTING TIME

Parents are required to submit to the court a proposed parenting plan for the child to spend a significant portion of time with each parent, according to the parents' schedules and housing arrangements. If the parents cannot agree on an element of a parenting plan, the court will determine that element. Parenting plans become part of the court order for joint physical custody of a child.

Parenting plans contain several basic elements: a schedule of the time each parent spends with the child; a designation of decision-making responsibilities regarding the child; and a method of dispute resolution. A voluntary parenting plan may also contain provisions about future changes in physical custody, relocating the child out-of-state and child support.

If the court finds that a parent has refused without good cause to cooperate with a parenting time court order, there are remedies specified in statute that include civil and criminal penalties; ordering education, counseling or mediation; and making up missed parenting time. The court may order a local social service agency to exercise continuing supervision over a case to assure that the custodial or parenting time terms of a court order are carried out.

RELOCATION OF CHILD

If both parents are entitled to custody or parenting time and reside in Arizona, at least 60 days' advance written notice to the other parent is required before a person may relocate the

child outside the state or relocate the child more than 100 miles within the state. The nonmoving parent may petition the court to prevent the relocation within 30 days of receiving the notice.

Pending court determination on relocation, a parent with sole custody or primary physical custody may temporarily relocate with the child if circumstances of health, safety or employment of that parent or that parent's spouse requires relocation in less than 60 days. A parent with joint custody and substantially equal parenting time may temporarily relocate with the child only if both parents execute a written agreement to permit relocation.

The court determines whether to allow relocation of the child in accordance with the best interests of the child, with the burden of proof on the parent seeking relocation and a rebuttable presumption that any provision in the parenting plan is in the child's best interest. Additionally, the court must consider certain statutory factors when determining the child's best interest with regard to relocation.

INTERSTATE AND INTERNATIONAL JURISDICTION

Arizona, along with a majority of other states, has enacted statutes to conform to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL). All states that have not enacted the UCCJEA have enacted the Uniform Child Custody Jurisdiction Act, an older version of uniform statutes drafted by the NCCUSL that contains similar provisions. The purpose of UCCJEA is to address jurisdictional problems arising in interstate child custody proceedings and to promote cooperation between the courts of different states.

In determining jurisdiction, courts consider the domicile, home state, presence, and best interests of and state connections to the child. Both "domicile" and "home state" refer to the physical presence of the child for the six-month period preceding commencement of the action. Initial jurisdiction over child custody is given 1) to the home state of the child or 2) if there is no state where the child has resided for six months,

to a state with significant connections (other than physical presence) to the child and one or both parents. Once a state court has made a child custody determination under the initial jurisdiction guidelines, that state has exclusive, continuing jurisdiction over the determination unless either: 1) the court of that state determines that a significant connection no longer exists or 2) a court of any state determines that the child no longer resides in that state. If either of these two determinations is made, another state court may modify the child custody order.

Arizona statute requires Arizona courts to treat a foreign country as if it were another state in the United States for the purposes of child custody jurisdiction and enforcement. However, Arizona courts are not required to apply the provisions of UCCJEA to a child custody order from a foreign country that violates fundamental principles of human rights.

MILITARY DEPLOYMENT

The United States Armed Services requires a family care plan (plan) for military personnel who are: 1) single parents; 2) a military couple responsible for nonmilitary family members who physically reside in their household; or 3) people with special circumstances determined by their commander. The plan is used to ensure that adequate care arrangements are made for the military personnel's family in the event of a permanent change in station or temporary duty. The plan designates a person to care for family members when a member of the military is absent fulfilling a military obligation. In addition, the plan outlines the legal, medical, housing, educational, monetary and religious arrangements for the care of the military member's family members.

When considering a petition to modify a child custody order, if a custodial parent is a member of the U.S. military, the court must consider the terms of the plan to determine what is in the child's best interest during the custodial parent's military deployment. However, military deployment of a custodial parent is not a change in circumstances that materially affects the welfare of the child if the custodial parent has

filed a plan with the court at a previous custody proceeding and if the military deployment is less than six months.

A custody decree or order made in contemplation of, or during, the military deployment of a custodial parent outside of the U.S. must specifically reference the deployment and include provisions governing the custody of the child after the deployment ends. Either parent is allowed to file a petition after the deployment ends to modify the decree or order, and the court must hold a hearing or conference on such a petition within 30 days. Arizona remains the home state of a child during the military deployment of the child's custodial parent outside the U.S. under certain circumstances.

ADDITIONAL RESOURCES

- Arizona Judicial Branch (includes forms, booklets and the current child support calculator)
www.supreme.state.az.us
- Child Custody and Parenting Time Statutes: Arizona Revised Statutes, Title 25, Chapter 4
- Uniform Child Custody Jurisdiction and Enforcement Act: Arizona Revised Statutes, Title 25, Chapter 8