

REFERENCE TITLE: parenting time; child relocation

State of Arizona
Senate
Fifty-first Legislature
Second Regular Session
2014

SB 1038

Introduced by
Senator Barto

AN ACT

AMENDING SECTIONS 25-401 AND 25-403.02, ARIZONA REVISED STATUTES; REPEALING SECTION 25-408, ARIZONA REVISED STATUTES; AMENDING TITLE 25, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 25-408; AMENDING SECTION 25-411, ARIZONA REVISED STATUTES; RELATING TO CHILD CUSTODY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 25-401, Arizona Revised Statutes, is amended to
3 read:

4 25-401. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "In loco parentis" means a person who has been treated as a parent
7 by a child and who has formed a meaningful parental relationship with a child
8 for a substantial period of time.

9 2. "Joint legal decision-making" means both parents share
10 decision-making and neither parent's rights or responsibilities are superior
11 except with respect to specified decisions as set forth by the court or the
12 parents in the final judgment or order.

13 3. "Legal decision-making" means the legal right and responsibility to
14 make all nonemergency legal decisions for a child including those regarding
15 education, health care, religious training and personal care decisions. For
16 the purposes of interpreting or applying any international treaty, ANY
17 federal law, a uniform code or the statutes of other jurisdictions of the
18 United States, legal decision-making means legal custody.

19 4. "Legal parent" means a biological or adoptive parent whose parental
20 rights have not been terminated. Legal parent does not include a person
21 whose paternity has not been established pursuant to section 25-812 or
22 25-814.

23 5. "Parenting time" means the schedule of time during which each
24 parent has access to a child at specified times. Each parent during ~~their~~
25 THAT PARENT'S scheduled parenting time is responsible for providing the child
26 with food, clothing and shelter and may make routine decisions concerning the
27 child's care.

28 6. "SIGNIFICANT IMPACT" MEANS A CHANGE IN RESIDENTIAL ADDRESS THAT MAY
29 RESULT IN A MATERIAL CHANGE OF CIRCUMSTANCES AFFECTING THE BEST INTERESTS OF
30 THE CHILD, INCLUDING A MOVE THAT RESULTS IN ANY OF THE FOLLOWING:

31 (a) A CHANGE TO THE SCHOOL THE CHILD WILL ATTEND AFTER THE MOVE,
32 UNLESS THE MOVING PARTY HAS SOLE LEGAL DECISION-MAKING AUTHORITY REGARDING
33 EDUCATION.

34 (b) A SIGNIFICANT DECREASE IN THE CHILD'S TIME WITH ANY PARTY BECAUSE
35 OF THE SIGNIFICANT INCREASE IN TRAVEL TIME.

36 (c) A SIGNIFICANT EFFECT ON THE CHILD'S ESTABLISHED ROUTINE IN THE
37 CHILD'S HOME, SCHOOL OR COMMUNITY.

38 (d) A CHANGE IN RESIDENTIAL ADDRESS TO A LOCATION OUTSIDE THIS STATE.

39 ~~6-~~ 7. "Sole legal decision-making" means one parent has the legal
40 right and responsibility to make major decisions for a child.

41 ~~7-~~ 8. "Visitation" means a schedule of time that occurs with a child
42 by someone other than a legal parent.

1 Sec. 2. Section 25-403.02, Arizona Revised Statutes, is amended to
2 read:

3 25-403.02. Parenting plans

4 A. If the child's parents cannot agree on a plan for legal
5 decision-making or parenting time, each parent must submit a proposed
6 parenting plan.

7 B. Consistent with the child's best interests in section 25-403 and
8 sections 25-403.03, 25-403.04 and 25-403.05, the court shall adopt a
9 parenting plan that provides for both parents to share legal decision-making
10 regarding their child and that maximizes their respective parenting time.
11 The court shall not prefer a parent's proposed plan because of the parent's
12 or child's gender.

13 C. Parenting plans shall include at least the following:

14 1. A designation of the legal decision-making as joint or sole as
15 defined in section 25-401.

16 2. Each parent's rights and responsibilities for the personal care of
17 the child and for decisions in areas such as education, health care and
18 religious training.

19 3. A practical schedule of parenting time for the child, including
20 holidays and school vacations.

21 4. A procedure for the exchanges of the child, including location and
22 responsibility for transportation.

23 5. A procedure by which proposed changes, **INCLUDING CHANGES IN THE**
24 **CHILD'S RESIDENTIAL ADDRESS**, disputes and alleged breaches may be mediated or
25 resolved, which may include the use of conciliation services or private
26 counseling.

27 6. A procedure for periodic review of the plan's terms by the parents.

28 7. A procedure for communicating with each other about the child,
29 including methods and frequency.

30 8. A statement that each party has read, understands and will abide by
31 the notification requirements of section 25-403.05, subsection B.

32 **9. A STATEMENT THAT EACH PARTY HAS READ, UNDERSTANDS AND WILL ABIDE BY**
33 **THE RESIDENTIAL CHANGE OF ADDRESS REQUIREMENTS OF SECTION 25-408.**

34 D. If the parents are unable to agree on any element to be included in
35 a parenting plan, the court shall determine that element. The court may
36 determine other factors that are necessary to promote and protect the
37 emotional and physical health of the child.

38 E. Shared legal decision-making does not necessarily mean equal
39 parenting time.

40 Sec. 3. Repeal

41 Section 25-408, Arizona Revised Statutes, is repealed.

1 PARTY'S RESIDENTIAL ADDRESS, EITHER A PETITION FOR MODIFICATION PURSUANT TO
2 SECTION 25-411 OR A STIPULATED ORDER SIGNED BY ALL PARTIES THAT MEETS THE
3 REQUIREMENTS OF SECTION 25-403.02, SUBSECTION C. THE PETITION MUST INCLUDE
4 THE REASON THE PARTY IS PROPOSING TO CHANGE THE PARTY'S RESIDENTIAL ADDRESS.

5 F. A PARTY WHO IS REQUIRED TO RELOCATE IN FEWER THAN FORTY-FIVE DAYS
6 AFTER WRITTEN NOTICE HAS BEEN GIVEN TO THE OTHER PARTY BECAUSE OF
7 CIRCUMSTANCES RELATED TO HEALTH, SAFETY, EMPLOYMENT OR AN INVOLUNTARY CHANGE
8 OF RESIDENCE OF THAT PARTY OR OF THAT PARTY'S SPOUSE MAY TEMPORARILY MOVE
9 WITH THE CHILD IF ONE OF THE FOLLOWING APPLIES:

10 1. BOTH PARTIES EXECUTE A WRITTEN AGREEMENT.

11 2. THE PARTY OBTAINS A COURT ORDER PURSUANT TO THE ARIZONA RULES OF
12 FAMILY LAW PROCEDURE.

13 3. THE CHANGE IN RESIDENTIAL ADDRESS WILL NOT HAVE A SIGNIFICANT
14 IMPACT.

15 G. IF A CHANGE IN RESIDENTIAL ADDRESS WILL REQUIRE A CHANGE IN THE
16 PARENTING PLAN OR VISITATION, THE COURT, TO THE EXTENT PRACTICABLE, SHALL
17 ADJUST THE PARENTING PLAN OR VISITATION ARRANGEMENT TO MINIMIZE THE LOSS OF
18 LEGAL DECISION-MAKING, PARENTING TIME OR VISITATION FOR THE PARTY WHO IS NOT
19 CHANGING RESIDENTIAL ADDRESS.

20 H. PURSUANT TO SECTIONS 25-324 AND 25-415, THE COURT SHALL SANCTION A
21 PARTY WHO WITHOUT GOOD CAUSE DOES NOT COMPLY WITH THE REQUIREMENTS OF THIS
22 SECTION OR WHO WITHOUT GOOD CAUSE OPPOSES A CHANGE IN RESIDENTIAL ADDRESS.

23 I. THE COURT MAY IMPOSE A SANCTION THAT WILL AFFECT LEGAL
24 DECISION-MAKING, PARENTING TIME OR VISITATION ONLY IN ACCORDANCE WITH THE
25 CHILD'S BEST INTERESTS.

26 J. IF THE COURT FINDS THAT THE PARTY WHO IS CHANGING RESIDENTIAL
27 ADDRESS DID NOT FILE A PETITION TO MODIFY LEGAL DECISION-MAKING, PARENTING
28 TIME OR VISITATION PURSUANT TO SECTION 25-411 OR A STIPULATED ORDER SIGNED BY
29 ALL PARTIES THAT FULFILLS THE REQUIREMENTS OF SECTION 25-403.02, SUBSECTION
30 C, AND LACKED A GOOD FAITH BASIS FOR NOT FILING A PETITION TO MODIFY OR A
31 STIPULATED ORDER, THE COURT SHALL AWARD COSTS AND ATTORNEY FEES TO THE OTHER
32 PARTY.

33 K. THERE IS A REBUTTABLE PRESUMPTION THAT A CHANGE OF RESIDENTIAL
34 ADDRESS OF LESS THAN TWO MILES DOES NOT RESULT IN A SIGNIFICANT IMPACT ON
35 LEGAL DECISION-MAKING, PARENTING TIME OR VISITATION.

36 Sec. 5. Section 25-411, Arizona Revised Statutes, is amended to read:

37 25-411. Modification of legal decision-making or parenting
38 time; affidavit; contents; military families

39 A. A person shall not ~~make~~ FILE a motion to modify a legal
40 decision-making or parenting time decree earlier than one year after its
41 date, unless the court permits it to be made on the basis of affidavits that
42 there is reason to believe the child's present environment may seriously
43 endanger the child's physical, mental, moral or emotional health OR THE
44 MOTION IS FILED PURSUANT TO SECTION 25-408, SUBSECTION E RELATING TO A CHANGE
45 IN RESIDENTIAL ADDRESS.

1 B. At any time after a joint legal decision-making order is entered, a
2 parent may petition the court for modification of the order on the basis of
3 evidence that domestic violence involving a violation of section 13-1201 or
4 13-1204, spousal abuse or child abuse occurred since the entry of the joint
5 legal decision-making order.

6 C. Six months after a joint legal decision-making order is entered, a
7 parent may petition the court for modification of the order based on the
8 failure of the other parent to comply with the provisions of the order. A
9 motion or petition to modify an order shall meet the requirements of this
10 section.

11 D. Except as otherwise provided in this section, if a parent is a
12 member of the United States armed forces, the court shall consider the terms
13 of that parent's military family care plan to determine what is in the
14 child's best interest during that parent's military deployment.

15 ~~B.~~ E. If the parent with whom the parent's child resides a majority
16 of the time receives temporary duty, deployment, activation or mobilization
17 orders from the United States military that involve moving a substantial
18 distance away from the parent's residence a court shall not enter a final
19 order modifying parental rights and responsibilities and parent-child contact
20 in an existing order until ninety days after the deployment ends, unless a
21 modification is agreed to by the deploying parent.

22 ~~C.~~ F. The court shall not consider a parent's absence caused by
23 deployment or mobilization or the potential for future deployment or
24 mobilization as the sole factor supporting a real, substantial and
25 unanticipated change in circumstances pursuant to this section.

26 ~~D.~~ G. On motion of a deploying or nondeploying, mobilizing or absent
27 military parent, the court, after a hearing, shall enter a temporary order
28 modifying parental rights and responsibilities or parent-child contact during
29 the period of deployment or mobilization if:

30 1. A military parent who has legal decision-making or parenting time
31 pursuant to an existing court order has received notice from military
32 leadership that the military parent will deploy or mobilize in the near
33 future.

34 2. The deployment or mobilization would have a material effect on the
35 military parent's ability to exercise parental rights and responsibilities or
36 parent-child contact.

37 ~~E.~~ H. On motion of a deploying parent, if reasonable advance notice
38 is given and good cause is shown, the court shall allow that parent to
39 present testimony and evidence by electronic means with respect to parenting
40 time or parent-child contact matters instituted pursuant to this section if
41 the deployment of that parent has a material effect on that parent's ability
42 to appear in person at a regularly scheduled hearing. For the purposes of
43 this subsection, "electronic means" includes communication by telephone or
44 video teleconference.

1 ~~F.~~ I. The court shall hear motions for modification because of
2 deployment as expeditiously as possible.

3 ~~G.~~ J. If a military parent receives military temporary duty,
4 deployment, activation or mobilization orders that involve moving a
5 substantial distance away from the military parent's residence or that
6 otherwise have a material effect on the military parent's ability to exercise
7 parenting time, at the request of the military parent, for the duration of
8 the military parent's absence the court may delegate the military parent's
9 parenting time, or a portion of that time, to a child's family member,
10 including a stepparent, or to another person who is not the child's parent
11 but who has a close and substantial relationship to the minor child, if the
12 court determines that is in the child's best interest. The court shall not
13 allow the delegation of parenting time to a person who would be subject to
14 limitations on parenting time. The parties shall attempt to resolve disputes
15 regarding delegation of parenting time through the dispute resolution process
16 specified in their parenting plan, unless excused by the court for good cause
17 shown. A court order pursuant to this subsection does not establish separate
18 rights to parenting time for a person other than a parent.

19 ~~H.~~ K. All temporary modification orders pursuant to this section
20 shall include a specific transition schedule to facilitate a return to the
21 predeployment order within ten days after the deployment ends, taking into
22 consideration the child's best interests.

23 ~~I.~~ L. A decree or order that a court enters in contemplation of or
24 during the military deployment of a parent outside of the continental United
25 States shall specifically reference the deployment and include provisions
26 governing the legal decision-making or parenting time arrangements, or both,
27 of the minor child after the deployment ends. Either parent may file a
28 petition with the court after the deployment ends to modify the decree or
29 order, in compliance with subsection ~~L.~~ Q of this section. The court shall
30 hold a hearing or conference on the petition within thirty days after the
31 petition is filed.

32 M. IF THE PETITION FOR MODIFICATION IS FILED PURSUANT TO SECTION
33 25-408, SUBSECTION E, THE FOLLOWING APPLY:

34 1. THE COURT SHALL DETERMINE ANY MODIFICATION TO LEGAL
35 DECISION-MAKING, PARENTING TIME OR VISITATION IN ACCORDANCE WITH THE BEST
36 INTERESTS OF THE CHILD. IN MAKING THIS DETERMINATION, THE COURT SHALL
37 CONSIDER ALL FACTORS THAT ARE RELEVANT TO THE CHILD'S PHYSICAL AND EMOTIONAL
38 WELL-BEING, INCLUDING:

39 (a) THE FACTORS PRESCRIBED UNDER SECTION 25-403.

40 (b) WHETHER THE MODIFICATION IS BEING MADE OR OPPOSED IN GOOD FAITH
41 AND NOT TO INTERFERE WITH OR TO FRUSTRATE THE RELATIONSHIP BETWEEN THE CHILD
42 AND THE OTHER PARTY OR THE OTHER PARTY'S RIGHT OF ACCESS TO THE CHILD.

43 (c) THE PROSPECTIVE ADVANTAGE OF THE MODIFICATION FOR IMPROVING THE
44 GENERAL QUALITY OF LIFE FOR THE CHILD.

1 (d) THE LIKELIHOOD THAT THE PARTY WITH WHOM THE CHILD WILL RESIDE
2 AFTER THE MODIFICATION WILL COMPLY WITH PARENTING TIME ORDERS.

3 (e) WHETHER THE MODIFICATION WILL ALLOW A REALISTIC OPPORTUNITY FOR
4 SUBSTANTIAL, FREQUENT, MEANINGFUL AND CONTINUING PARENTING TIME WITH EACH
5 PARTY, INCLUDING WHETHER IT WILL RESULT IN AN INCREASE IN TRAVEL TIME THAT
6 SIGNIFICANTLY DECREASES A CHILD'S TIME WITH EITHER PARTY.

7 (f) THE EXTENT TO WHICH THE MODIFICATION WILL AFFECT THE CHILD'S
8 STABILITY AND EMOTIONAL, PHYSICAL OR DEVELOPMENTAL NEEDS, INCLUDING WHETHER
9 IT SIGNIFICANTLY AFFECTS THE CHILD'S ESTABLISHED ROUTINE IN THE CHILD'S HOME,
10 SCHOOL OR COMMUNITY.

11 (g) WHETHER A PARTY'S PRIMARY MOTIVE IN REQUESTING OR OPPOSING THE
12 MODIFICATION IS TO GAIN A FINANCIAL ADVANTAGE REGARDING CONTINUING CHILD
13 SUPPORT OBLIGATIONS.

14 (h) THE EXTENT TO WHICH THE NONMOVING PARTY HAS FULFILLED THAT PARTY'S
15 FINANCIAL OBLIGATIONS TO THE PARTY WHO SEEKS TO RELOCATE A CHILD, INCLUDING
16 CHILD SUPPORT, SPOUSAL MAINTENANCE AND OBLIGATIONS RELATED TO MARITAL
17 PROPERTY AND MARITAL DEBT. THE COURT SHALL ALSO CONSIDER THE IMPACT THAT
18 COMPLIANCE OR NONCOMPLIANCE WITH THOSE FINANCIAL OBLIGATIONS HAS ON THE PARTY
19 WHO SEEKS TO RELOCATE, INCLUDING OTHER RESOURCES THAT ARE AVAILABLE TO
20 PROVIDE SUPPORT FOR THE PARTY WHO SEEKS TO RELOCATE A CHILD.

21 (i) WHETHER TRAVEL COSTS WILL MATERIALLY LIMIT THE NONMOVING PARTY'S
22 ABILITY TO EXERCISE PARENTING TIME OR VISITATION.

23 2. THE COURT MAY DENY THE RELIEF REQUESTED BY EITHER PARTY UNLESS THE
24 COURT FINDS THAT ADEQUATE CAUSE FOR HEARING THE MATTER IS ESTABLISHED BY THE
25 PLEADINGS.

26 3. THE BURDEN OF PROOF IS ON THE PARTY WHO IS CHANGING RESIDENTIAL
27 ADDRESS TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT THE MODIFICATION
28 PURSUANT TO SECTION 25-408, SUBSECTION E IS IN THE CHILD'S BEST INTERESTS.

29 4. THE COURT SHALL NOT DEVIATE FROM A PROVISION OF THE CURRENT
30 COURT-ORDERED PARENTING PLAN IN WHICH THE PARTIES HAVE SPECIFICALLY AGREED TO
31 ALLOW OR PROHIBIT A PARTY TO CHANGE RESIDENTIAL ADDRESS UNLESS THE COURT
32 FINDS THE PROVISION IS NO LONGER IN THE CHILD'S BEST INTERESTS.

33 N. IF THE PROPOSED MODIFICATION AFFECTS CHILD SUPPORT, EITHER PARENT
34 MAY ALSO FILE FOR A MODIFICATION OF CHILD SUPPORT PURSUANT TO SECTION 25-320,
35 EITHER SIMULTANEOUSLY WITH THE MODIFICATION PURSUANT TO SECTION 25-408,
36 SUBSECTION E OR AS A SEPARATE MATTER.

37 ~~J.~~ O. The court may modify an order granting or denying parenting
38 time rights whenever modification would serve the best interest of the child,
39 but the court shall not restrict a parent's parenting time rights unless it
40 finds that the parenting time would endanger seriously the child's physical,
41 mental, moral or emotional health.

42 ~~K.~~ P. If after a legal decision-making or parenting time order is in
43 effect one of the parents is charged with a dangerous crime against children
44 as defined in section 13-705, child molestation as defined in section 13-1410
45 or an act of domestic violence as prescribed in section 13-3601 in which the

1 victim is a minor, the other parent may petition the court for an expedited
2 hearing. Pending the expedited hearing, the court may suspend parenting time
3 or change legal decision-making ex parte.

4 ~~Q.~~ ~~Q.~~ To modify any type of legal decision-making ~~or parenting time~~
5 order a person shall submit an affidavit or verified petition setting forth
6 detailed facts supporting the requested modification and shall give notice,
7 together with a copy of the affidavit or verified petition, to other parties
8 to the proceeding, who may file opposing affidavits. The court shall deny
9 the motion unless it finds that adequate cause for hearing the motion is
10 established by the pleadings, in which case it shall set a date for hearing
11 on why the requested modification should not be granted.

12 ~~M.~~ ~~R.~~ The court shall assess attorney fees and costs against a party
13 seeking modification if the court finds that the modification action is
14 vexatious and constitutes harassment.

15 ~~N.~~ ~~S.~~ Subsection ~~Q~~ of this section does not apply if the requested
16 relief is for the modification or clarification of parenting time and not for
17 a change of legal decision-making.

18 Sec. 6. Effective date

19 This act is effective from and after December 31, 2014.