

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

# SENATE BILL 1038

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 CHANGE IN RESIDENTIAL ADDRESS TO A LOCATION OUTSIDE THIS STATE.

37 ~~6.~~ 7. "Sole legal decision-making" means one parent has the legal  
38 right and responsibility to make major decisions for a child.

39 ~~7.~~ 8. "Visitation" means a schedule of time that occurs with a child  
40 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 E. IF A PARTY'S CHANGE IN RESIDENTIAL ADDRESS WILL RESULT IN A  
2 SIGNIFICANT IMPACT TO A COURT ORDER REGARDING LEGAL DECISION-MAKING OR  
3 PARENTING TIME, THE PARTY SEEKING TO CHANGE RESIDENTIAL ADDRESS MUST FILE AND  
4 SERVE, AT LEAST FORTY-FIVE DAYS BEFORE ANY CHANGE TO THE PARTY'S RESIDENTIAL  
5 ADDRESS, EITHER A PETITION FOR MODIFICATION PURSUANT TO SECTION 25-411 OR A  
6 STIPULATED ORDER SIGNED BY THE PARTIES THAT MEETS THE REQUIREMENTS OF SECTION  
7 25-403.02, SUBSECTION C. THE PETITION MUST INCLUDE THE REASON THE PARTY IS  
8 PROPOSING TO CHANGE THE PARTY'S RESIDENTIAL ADDRESS. A STIPULATION SHALL  
9 STATE THE FOLLOWING:

10 1. THE MOVING PARTY PROVIDED ALL RELEVANT INFORMATION TO THE NONMOVING  
11 PARTY TO ALLOW THE NONMOVING PARTY TO ENTER INTO THE STIPULATION.

12 2. IF EXISTING COURT ORDERS MUST BE MODIFIED, ALL MODIFICATIONS TO  
13 WHICH THE PARTIES HAVE AGREED.

14 3. IF EXISTING COURT ORDERS DO NOT NEED TO BE MODIFIED, THAT THE  
15 PARTIES AGREE THAT MODIFICATION IS NOT NEEDED.

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

21 1. BOTH PARTIES EXECUTE A WRITTEN AGREEMENT.

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

24 3. THE CHANGE IN RESIDENTIAL ADDRESS WILL NOT HAVE A SIGNIFICANT  
25 IMPACT TO A COURT ORDER REGARDING LEGAL DECISION-MAKING OR PARENTING TIME.

26 G. IF A CHANGE IN RESIDENTIAL ADDRESS WILL REQUIRE A CHANGE IN THE  
27 PARENTING PLAN OR VISITATION, THE COURT, TO THE EXTENT PRACTICABLE, SHALL  
28 ADJUST THE PARENTING PLAN OR VISITATION ARRANGEMENT TO MINIMIZE THE LOSS OF  
29 LEGAL DECISION-MAKING, PARENTING TIME OR VISITATION FOR THE PARTY WHO IS NOT  
30 CHANGING RESIDENTIAL ADDRESS.

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

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

37 J. THERE IS A REBUTTABLE PRESUMPTION THAT A CHANGE OF RESIDENTIAL  
38 ADDRESS OF LESS THAN FIVE MILES DOES NOT RESULT IN A SIGNIFICANT IMPACT ON  
39 LEGAL DECISION-MAKING, PARENTING TIME OR VISITATION, UNLESS THE CHANGE IN  
40 RESIDENTIAL ADDRESS WILL RESULT IN A CHANGE TO THE SCHOOL THE CHILD WILL  
41 ATTEND AFTER THE MOVE, IF THE MOVING PARTY DOES NOT HAVE SOLE LEGAL  
42 DECISION-MAKING AUTHORITY REGARDING EDUCATION.

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

2           25-411. Modification of legal decision-making or parenting  
3           time; affidavit; contents; military families

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

11           B. At any time after a joint legal decision-making order is entered, a  
12 parent may petition the court for modification of the order on the basis of  
13 evidence that domestic violence involving a violation of section 13-1201 or  
14 13-1204, spousal abuse or child abuse occurred since the entry of the joint  
15 legal decision-making order.

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

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

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

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

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

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

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

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

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

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

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

34           ~~I.~~ L. A decree or order that a court enters in contemplation of or  
35 during the military deployment of a parent outside of the continental United  
36 States shall specifically reference the deployment and include provisions  
37 governing the legal decision-making or parenting time arrangements, or both,  
38 of the minor child after the deployment ends. Either parent may file a  
39 petition with the court after the deployment ends to modify the decree or  
40 order, in compliance with subsection ~~L.~~ Q of this section. The court shall  
41 hold a hearing or conference on the petition within thirty days after the  
42 petition is filed.

43           M. IF THE PETITION FOR MODIFICATION IS FILED PURSUANT TO SECTION  
44 25-408, SUBSECTION E, THE FOLLOWING APPLY:

1           1. IF THE COURT FINDS, BASED ON A CONSIDERATION OF ALL THE EVIDENCE,  
2 THAT THE MOVE WILL HAVE A SIGNIFICANT IMPACT ON ANY EXISTING ORDER REGARDING  
3 LEGAL DECISION-MAKING, PARENTING TIME OR VISITATION, THE COURT SHALL  
4 DETERMINE ANY MODIFICATION TO LEGAL DECISION-MAKING, PARENTING TIME OR  
5 VISITATION IN ACCORDANCE WITH THE BEST INTERESTS OF THE CHILD. IN MAKING  
6 THIS DETERMINATION, THE COURT SHALL CONSIDER ALL FACTORS THAT ARE RELEVANT TO  
7 THE CHILD'S PHYSICAL AND EMOTIONAL WELL-BEING, INCLUDING:

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

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

12           (c) THE LIKELIHOOD THAT THE PARTY WITH WHOM THE CHILD WILL RESIDE  
13 AFTER THE MODIFICATION WILL COMPLY WITH PARENTING TIME ORDERS.

14           (d) WHETHER THE MODIFICATION WILL ALLOW A REALISTIC OPPORTUNITY FOR  
15 SUBSTANTIAL, FREQUENT, MEANINGFUL AND CONTINUING PARENTING TIME WITH EACH  
16 PARTY, INCLUDING WHETHER IT WILL RESULT IN AN INCREASE IN TRAVEL TIME THAT  
17 SIGNIFICANTLY DECREASES A CHILD'S TIME WITH EITHER PARTY.

18           (e) THE EXTENT TO WHICH THE MODIFICATION WILL AFFECT THE CHILD'S  
19 STABILITY AND EMOTIONAL, PHYSICAL OR DEVELOPMENTAL NEEDS.

20           (f) WHETHER A PARTY'S PRIMARY MOTIVE IN REQUESTING OR OPPOSING THE  
21 MODIFICATION IS TO GAIN A FINANCIAL ADVANTAGE REGARDING CONTINUING CHILD  
22 SUPPORT OBLIGATIONS.

23           (g) WHETHER TRAVEL COSTS WILL MATERIALLY LIMIT THE NONMOVING PARTY'S  
24 ABILITY TO EXERCISE PARENTING TIME OR VISITATION.

25           2. IF THE COURT FINDS, BASED ON A CONSIDERATION OF ALL THE EVIDENCE,  
26 THAT THE MOVE WILL NOT HAVE A SIGNIFICANT IMPACT ON ANY EXISTING COURT ORDER  
27 REGARDING LEGAL DECISION-MAKING, PARENTING TIME OR VISITATION, THE COURT  
28 SHALL EXPLAIN ITS REASON FOR FINDING THAT THE MOVE WILL NOT HAVE A  
29 SIGNIFICANT IMPACT. THE COURT IS NOT REQUIRED TO MAKE ANY ADDITIONAL  
30 FINDINGS PURSUANT TO PARAGRAPH 1 OF THIS SUBSECTION.

31           3. THE COURT MAY DENY THE RELIEF REQUESTED BY EITHER PARTY UNLESS THE  
32 COURT FINDS THAT ADEQUATE CAUSE FOR HEARING THE MATTER IS ESTABLISHED BY THE  
33 PLEADINGS.

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

37           5. THE COURT SHALL NOT DEVIATE FROM A PROVISION OF THE CURRENT  
38 COURT-ORDERED PARENTING PLAN IN WHICH THE PARTIES HAVE SPECIFICALLY AGREED TO  
39 ALLOW OR PROHIBIT A PARTY TO CHANGE RESIDENTIAL ADDRESS UNLESS THE COURT  
40 FINDS THE PROVISION IS NO LONGER IN THE CHILD'S BEST INTERESTS.

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



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

6           ~~K.~~ P. If after a legal decision-making or parenting time order is in  
7 effect one of the parents is charged with a dangerous crime against children  
8 as defined in section 13-705, child molestation as defined in section 13-1410  
9 or an act of domestic violence as prescribed in section 13-3601 in which the  
10 victim is a minor, the other parent may petition the court for an expedited  
11 hearing. Pending the expedited hearing, the court may suspend parenting time  
12 or change legal decision-making ex parte.

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

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

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

27           Sec. 6. Effective date

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