

Things You Should Know About

Custody and Visitation



This booklet is designed to give you general information about custody and visitation in domestic relations cases, and to let you know what you can expect when the court is involved in the process.

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Custody and Visitation

When parents separate or divorce, care for the children must continue. If the parents cannot agree on a plan for raising the children, the court will order a plan or decide matters concerning their health and welfare. Often this includes making decisions about how much time the child will spend with each parent and which parent will be the primary caregiver. In some situations, unmarried parents, relatives, or other persons also may ask the court for custody or visitation. In each case, the court's decision is based on the child's best interests.



Questions & Answers

NOTE: This booklet is intended to provide general information about custody or visitation. It is not a complete or authoritative review of these subjects and reflects the laws of the state of Arizona only as of the date of its publication. The booklet is not intended to be a guide to obtaining or changing legal custody or visitation. Questions about specific situations should be discussed with an attorney.

Although custody can be granted by the court to a person other than a parent, the following questions and answers assume parents are seeking custody or visitation.

Q. What is custody?

A.

Custody is a legal term referring to the right of a person to make decisions about the care and welfare of a child (including, for example, decisions about education, health care, and religious training). The parent with custody often is called the custodial parent. Usually, the child resides with the custodial parent most of the time.

Q. What is visitation?

A.

Visitation (also sometimes called "access" or "contact") is a legal term referring to the opportunity for the child to spend time with the parent who does not have legal custody. This parent often is called the "noncustodial parent."

Questions & Answers

Q. When do custody and visitation issues arise?

A.

Most often, disputes about custody and visitation arise when married parents ask the court for a dissolution of the marriage (divorce) or a legal separation. However, custody issues also may arise between parents who never have been married or who no longer reside together. In these situations, parents sometimes disagree about who makes decisions affecting the child's welfare, where the child resides, and how much visitation a parent will have when the child is not residing with that parent.

Q. Who decides custody and visitation?

A.

Parents may agree between themselves about custody or visitation. However, if the Arizona legal system becomes involved (for example, when a parent asks the court for a divorce), only the Superior Court may decide these issues by issuing a court order in certain kinds of cases.

Questions About Custody

Q. What is meant by "sole custody"?

A.

This means that one person has legal custody of a child. In this situation, the court orders that one parent be responsible for making major decisions regarding the child's care or welfare. Although both parents may discuss these matters, the parent designated by the court has authority to make a final decision.

Q. Can more than one parent be granted custody by the court?

A.

Yes. In addition to sole custody, the law allows the court to grant joint legal custody and joint physical custody, or both.

Q. What is joint legal custody?

A.

When the court grants joint legal custody, each of the parents has the same right to make decisions about the child's care and welfare. However, in the best interests of the child, the court may direct that certain decisions be made by only one parent, even when joint legal custody is granted.

Q. If parents have joint legal custody, does the child live with each of them for equal amounts of time?

A.

Not necessarily. Having joint legal custody does not mean that parents also have joint physical custody.

Questions About Custody

Q. **What is joint physical custody?**

A.

When the court grants joint physical custody, the place where the child lives (the child's physical residence) is shared between the parents in a way that the child will have essentially equal time and contact with both parents. Joint physical custody may be granted both when parents share joint legal custody or when one parent is granted sole custody.

Q. **Does the law favor joint custody or sole custody?**

A.

Arizona law does not presume that one form of custody is favored over another. Also, the court may not prefer a parent as a custodian because of that parent's sex.

Q. **What is the procedure for getting a custody order?**

A.

The court may grant a custody order only in certain kinds of cases. Most often, custody is determined when the parents are seeking a legal separation or divorce, or when parents are asking the court to change a custody decision that was made in an earlier separation or divorce case. Custody also may be ordered when one parent starts a court case to decide paternity (or maternity) of a child.

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Questions About Custody

When a parent starts a court case for legal separation or divorce and the parents can not agree about child custody, custody automatically becomes an issue for the court to decide. After a decree of legal separation or divorce has been granted, the court still has authority to change (modify) an earlier custody order.

Q. How can a court's custody order be changed?

A.

Either parent may request in writing that the court modify a custody order. To change an existing order it must be shown that the best interests of the child are served. The request is filed with the court clerk and a fee for filing is charged. However, there are limitations on requesting a modification. For example, a request may not be filed for one year from the date of the earlier order, unless there are special circumstances seriously endangering the child's physical, mental, emotional, or moral health. If joint custody has been ordered, a modification may be requested at any time if there is evidence that domestic violence, spousal abuse or child abuse has occurred since the order was granted. However, in a joint custody situation, a parent must wait six months before seeking a modification if the reason for the request is that one parent has failed to obey the court's custody order.

Questions About Custody

Q. How does the court make its decision about custody?

A.

If there is a dispute about custody, the court sometimes refers the parents to court mediation services. This process gives the parents an opportunity to reach an agreement regarding custody and related issues.

However, if the parents are unable to agree on custody the court must decide for them. Sometimes the court seeks professional advice to evaluate the family situation or offer an opinion about custody. In some situations, the court also may order an investigation by a social service or other agency. In every case, the court must decide custody according to the best interests of the child.

Q. What if the parents agree how custody should be decided?

A.

Usually it is best if parents can agree about raising children after a legal separation or divorce. The court usually accepts the parents' mutual decision. However, the court's decision about custody must be made in the best interests of the child. The duty imposed on the court may require that the court not accept the parents' agreement.

Questions About Custody

Q. What does the court consider when deciding what is in the child's best interests?

A.

State law provides guidance to the courts by listing factors that the court should consider. These include such things as the wishes of the parents and the child, how the child interacts with each parent and any other children in the family, the health of each person involved, which parent primarily has provided care for the child in the past, and which parent is more likely to allow the child to have frequent and meaningful contact with the other parent.

The court also must consider whether there has been domestic violence in the family, drug or alcohol use by a parent, or other circumstances that may endanger the child's physical, mental, emotional, or moral health.

Q. What if the parents want to have joint legal custody?

A.

If the parents request joint legal custody, they also must submit to the court a written plan (parenting plan) indicating how they will cooperate to raise and care for the child. The court may order joint legal custody without ordering joint physical custody. The court also may order joint legal custody even if one parent objects. The court's decision will be made in the best interests of the child.

Questions About Custody

Q. When custody is decided, how does a parent obtain child support?

A.

The law provides that when the court grants a custody order, it also must decide what amount of child support should be paid under the Arizona Child Support Guidelines. Joint custody does not mean that either parent is no longer responsible to provide for the support of the child.

Q. Can a person other than a parent have custody?

A.

Yes. The law provides that a person who stands in loco parentis to a child may ask the court for custody (or visitation). To be in loco parentis a person must have been treated as a parent by the child and have formed a meaningful parental relationship with the child for a substantial period of time. There are other requirements that must be met before a request may be made to the court. One of the child's parents must be deceased, the child's legal parents must be unmarried, or a court case for divorce or legal separation between the legal parents must be pending. (See section 25-415, Arizona Revised Statutes.)

Questions About Visitation

Q. Why is visitation important?

A. A child deserves to have a good relationship with both parents. When parents do not live together, the child should have the opportunity to spend time with each parent.

Q. What visitation rights does a parent have?

A. State law entitles a parent to reasonable rights of visitation to ensure that a child has frequent and continuing contact with the parent. However, visitation can be limited, or even denied, if the child's physical, mental, moral, or emotional health would be seriously endangered.

Q. What amount of visitation is right?

A. That depends on the child's age and stage of development. For example, it may not be appropriate to have lengthy periods of visitation with a newborn child, although more frequent shorter visits may be appropriate. Some counties (Cococino, Maricopa, Mohave, Pima, Pinal, and Yavapai), have established guidelines to help parents and the courts decide how much visitation is important to the child. However, it is important to remember that guidelines do not apply to all family situations or to all children.

Questions About Visitation

Q. **What is reasonable visitation?**

A.

The term "reasonable visitation" means time spent with a child that is average for most cases. Although the term sometimes has been used in parenting plans and even in court orders, visitation decisions depend on the circumstances of each family, considering the child's age and development. When visitation is described only as "reasonable" parents cannot predict when or for how long visitation should occur, sometimes leading to disputes or making disagreements about visitation difficult to resolve.

When preparing an agreement or parenting plan, it is recommended that parents specifically decide when and for how long visitation will be, including what to do about special occasions like vacations, school recesses, birthdays, and holidays. Guidelines available in Cococino, Maricopa, Mohave, Pima, Pinal, and Yavapai counties may be useful to parents in making these decisions.

Q. **Are visitation and custody related?**

A.

Yes. Arizona law provides that in most cases a parent not granted custody of the child is entitled to reasonable visitation rights to ensure that the child has frequent and continuing contact with that parent. As a part of its custody order, the court also will decide what amount of visitation is appropriate. Even if parents share joint legal custody, the child may live primarily with one parent or share residential time with both parents, making it important to decide what visitation should be ordered.

Questions About Visitation

Q. Do I have to start a court case to have visitation?

A.

Parents are free to agree on the best visitation plan for their child. But if parents cannot agree, or if their agreement is not working, court action may be necessary. Remember, only the Superior Court can decide legal visitation and issue an order that can be enforced if disagreements arise or if one parent doesn't honor the visitation schedule.

Q. How do I obtain a legal order for visitation?

A.

As with custody, the court may grant a visitation order only in certain kinds of cases. Most frequently, visitation is determined when the parents are seeking a legal separation or divorce, or when parents are asking the court to change a visitation decision that was made in an earlier separation or divorce case. Visitation also may be ordered when one parent starts a court case to decide paternity (or maternity) of a child.

When a parent starts a court case for legal separation or divorce, child custody and visitation automatically become issues for the court to decide if the parents cannot agree. After a decree of legal separation or divorce has been granted, the court still has authority to change (modify) an earlier visitation order. Either parent may request in writing that the court decide what visitation should be. The request is filed with the court clerk and a filing fee is charged.

Questions About Visitation

Q. **How does the court make its decision about visitation?**

A.

If there is a dispute about visitation, the court sometimes refers the parents to court mediation services. This process gives the parents an opportunity to reach an agreement regarding visitation and related issues. However, if the parties are unable to agree on visitation the court must decide for them. Sometimes the court seeks professional advice to evaluate the family situation or offer an opinion about visitation. When making its decision, the court will consider many factors, for example, the age and health of the child; the time each parent has available from work or other obligations, the distance between the parents' homes and the child's school schedule.

Q. **What if a parent disobeys a court order for visitation?**

A.

If one parent violates a court visitation order, the other parent can not deny visitation, stop paying support, or take other action to punish the violating parent. (To do so also would violate the court order.) Instead, the court should be asked for help. To do this, a parent must file a written request with the Court Clerk and pay a filing fee.

Questions About Visitation

Q. What can the court do if a visitation order is disobeyed?

A.

When a parent files a request for help, state law requires the court to take quick action. There are a several remedies the court can use to deal with the violating parent. Some of these include ordering make-up visitation time, ordering the violating parent to attend education classes or counseling, and finding the violating parent in contempt and ordering monetary fines.

Q. Can a person other than a parent have visitation?

A.

Yes. In certain circumstances, Arizona law permits grandparents and great-grandparents to have visitation rights if it is in the best interests of the child. To request visitation rights the child's parents must have been divorced for at least three months, one parent must be deceased or missing for three months or the child must have been born out of wedlock. (See section 25-409, Arizona Revised Statutes.) The law also provides that a person who stands in loco parentis to a child may ask the court for visitation. To be in loco parentis a person must have been treated as a parent by the child and have formed a meaningful parental relationship with the child for a substantial period of time. There are other requirements that must be met before this request may be made to the court. (See section 25-415, Arizona Revised Statutes.)

Questions About Visitation

Q. **What is supervised visitation?**

A.

Sometimes, to prevent harm to a child's health or emotional development, it is necessary for the court to order that a social service agency be involved with a family to be sure visitation (and even custody) orders are followed. In this situation, the court may order the agency or another party to supervise or oversee the visitation periods.

Custody & Visitation When Parents Are Not Married

Q. **Can custody and visitation be decided for parents who are not married?**

A.

Parents are free to make decisions about custody or visitation on their own. But when parents are unmarried, the biological father has no legal right to either custody or visitation until paternity is established. In Arizona, paternity can be legally established through the Superior Court, the Department of Health Services, or the Department of Economic Security. (See the booklet in this series titled *Things You Should Know About Establishing Paternity for Your Child.*)

Custody & Visitation When Parents Are Not Married

Q. After legal paternity has been established, how are custody and visitation decided?

A. As with other cases, custody and visitation can only be legally decided by the Superior Court. The court must decide custody and visitation based on the best interests of the child. If a court case to establish paternity has been started in the Superior Court, either parent may ask the court to decide custody and visitation. If paternity has been established by voluntary process through the court, the Arizona Department of Health Services or the Department of Economic Security hospital paternity program, one of the parents must file a specific request with the court to have custody or visitation legally decided.

Q. If the parents are not married, should the mother have custody?

A. Until legal paternity is decided, the law presumes that custody of a child should be with the mother. However, when a court legally establishes paternity, the law directs that unless the court orders otherwise, custody of the child should be with the parent that the child has lived with for most of the six-month period before paternity is decided. Most often this parent is the mother. Of course, when the court decides custody or visitation, the decision always is based on the best interests of the child. Thus, the court may order that either or both parents have custody if it is in the child's best interests.

A Note About the Parent Education Program

In 1996, the Arizona State Legislature established a Domestic Relations Education on Children's Issues Program, now offered in each Arizona county. This program sometimes is referred to as the parent education program or parent information program. Although the programs may differ somewhat in each county or even within counties, each is designed to offer education to parents about the impact that divorce, the restructuring of families, and judicial involvement have on children. The Arizona Supreme Court sets minimum standards for these programs, including the topics to be covered and qualifications of course presenters.

Parents who have a child in common who is less than eighteen years old, must attend the program when involved in a court case for dissolution of marriage (divorce) or for legal separation. Unmarried parents involved in an court case to establish paternity or maternity also must attend the program if the court has been asked to decide custody, visitation, or child support. Parents of minor children also may be ordered to attend the program if, after determining paternity or obtaining a divorce or a legal separation, disputes regarding custody, visitation, or child support are presented to the court. Parents who fail to attend the program as ordered may be refused any specific request for court action, may be held in contempt of court, or may have other penalties imposed.

The program lasts up to four hours in length and a fee of no more than \$35 may be charged to each participant.

Words & Definitions

Custodial Parent -

The parent that has been granted authority by the court to make major life decisions about a child's care and welfare.

In Loco Parentis -

A legal term referring to a person who, although not a legal or biological parent of the child, has been treated as a parent by the child and established a meaningful parental relationship over a substantial period of time.

Mediation -

A process by which persons attempt to reach mutually acceptable agreements, usually with the assistance of a trained professional who guides the discussion process.

Noncustodial Parent -

The parent who does not have custody of a child. This parent often has rights of visitation with the child, so that the child can spend time with that parent.

Parent Education Program -

Formally called the Domestic Relations Education on Children's Issues Program, this is an educational program designed help parents understand the impact on children that divorce, the restructuring of families, and judicial involvement have on children.

Parenting Plan -

A written document containing an agreement between parents indicating how a child will be raised and cared for after the parents separate or divorce. A written parenting plan is required whenever parents ask the court to order joint custody.

Clerks of the Superior Court

Apache County

Clerk of the Superior Court
70 West 3rd South
St. Johns, AZ 85936
(520) 337-4364

Cochise County

Clerk of the Superior Court
County Courthouse
Bisbee, AZ 85603
(520) 432-9364

Coconino County

Clerk of the Superior Court
100 E. Birch
Flagstaff, AZ 86001
(520) 779-6535

Gila County

Clerk of the Superior Court
1400 E. Ash
Globe, AZ 85501
(520) 425-3231

Graham County

Clerk of the Superior Court
800 Main St.
Safford, AZ 85546
(520) 428-3100

Clerks of the Superior Court

Greenlee County

Clerk of the Superior Court
County Courthouse
Clifton, AZ 85533
(520) 865-4242

La Paz County

Clerk of the Superior Court
1316 Kofa Ave., Suite 607
Parker, AZ 85344
(520) 669-6131

Maricopa County

Clerk of the Superior Court
201 W. Jefferson
Phoenix, AZ 85003
(602) 506-1900

Mohave County

Clerk of the Superior Court
County Courthouse
Kingman, AZ 86402-7000
(520) 753-0713

Navajo County

Clerk of the Superior Court
County Courthouse
Holbrook, AZ 86025
(520) 524-4188

Clerks of the Superior Court

Pima County

Clerk of the Superior Court
110 W. Congress
Tucson, AZ 85701
(520) 740-3296

Pinal County

Clerk of the Superior Court
County Courthouse
Florence, AZ 85232-2730
(520) 868-6309

Santa Cruz County

Clerk of the Superior Court
County Courthouse
Nogales, AZ 85628
(520) 761-7808

Yavapai County

Clerk of the Superior Court
County Courthouse
Prescott, AZ 86301
(520) 771-3312

Yuma County

Clerk of the Superior Court
168 S. 2nd Ave.
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