

# **CUSTODIAL RELOCATION LAWS IN ARIZONA**

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## **CHILD RELOCATION: FACTORS CONSIDERED**

Most jurisdictions have promulgated lengthy lists of factors to be utilized in determining whether a custodial parent's proposed relocation should be permitted. In general, there is a substantial overlap among the jurisdictions, with many states using substantially similar factor lists.

The sheer number of factors that must be considered in relocation cases demonstrates the fact-specific nature of all such determinations. However, despite the long lists of factors in A.R.S. § 25-403 and A.R.S. § 25-408, in general these factors can be condensed into four primary categories:

1. each parent's motives for seeking or opposing relocation
2. the potential of the relocation to enhance the quality of life of the child and the custodial parent
3. the impact of the relocation on the noncustodial parent's relationship with the child
4. if relocation is permitted, whether a visitation schedule can be devised that will provide the noncustodial parent a realistic opportunity to maintain a relationship with the child and the likelihood that the Custodial parent will comply with this schedule.

In Arizona, the court must consider the following factors.

### **A. A.R.S. § 25-403**

#### **CUSTODY; BEST INTERESTS OF THE CHILD**

1. The wishes of the child's parent or parents as to custody.
2. The wishes of the child as to the custodian.
3. The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.
4. The child's adjustment to home, school and community.

5. The mental and physical health of all individuals involved.
6. Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent. This paragraph does not apply if the court determines that a parent is acting in good faith to protect the child from witnessing an act of domestic violence or being a victim of domestic violence or child abuse.
7. Whether one parent, both parents or neither parent has provided primary care of the child.
8. The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody.
9. Whether a parent has complied with chapter 3, article 5 of this title.
10. Whether either parent was convicted of an act of false reporting of child abuse or neglect under section 13-2907.02.
11. Whether there has been domestic violence or child abuse as defined in section 25-403.03.

**B. A.R.S. §25-408.**

**RIGHTS OF NONCUSTODIAL PARENT; PARENTING TIME;  
RELOCATION OF CHILD; EXCEPTION; ENFORCEMENT;  
ACCESS TO RECORDS**

1. The factors prescribed under section 25-403.
2. Whether the relocation is being made or opposed in good faith and not to interfere with or to frustrate the relationship between the child and the other parent or the other parent's right of access to the child.
3. The prospective advantage of the move for improving the general quality of life for the custodial parent or for the child.
4. The likelihood that the parent with whom the child will reside after the relocation will comply with parenting time orders.

5. Whether the relocation will allow a realistic opportunity for parenting time with each parent.
6. The extent to which moving or not moving will affect the emotional, physical or developmental needs of the child.
7. The motives of the parents and the validity of the reasons given for moving or opposing the move including the extent to which either parent may intend to gain a financial advantage regarding continuing child support obligations.
8. The potential effect of relocation on the child's stability.

With those principles in mind, in assessing whether to order removal, the court should look to all of the above.

The burden of proving the pertinent factors is upon the moving party.

**C. Generally speaking, the court will consider:**

1. the reasons given for the move;
2. the reasons given for the opposition;
3. the past history of dealings between the parties insofar as it bears on the reasons advanced by both parties for supporting and opposing the move;
4. the mental and physical health of the parents affecting their ability to care for the child's physical and emotional needs
5. whether the child will receive educational, health and leisure opportunities in their new home at least equal to what is available here;
6. any special needs or talents of the child that require accommodation and whether such accommodation or its equivalent is available in the new location;

7. whether a visitation and communication schedule can be developed that will allow the noncustodial parent to maintain a full and continuous relationship with the child;
8. the likelihood that the custodial parent will continue to foster the child's relationship with the noncustodial parent if the move is allowed;
9. the effect of the move on extended family relationships here and in the new location;
10. if the child is of age, his or her preference;
11. whether the noncustodial parent has the ability to relocate to the child's new location;
12. any other factor bearing on the child's interest.

**D. In reaching its decision regarding a proposed relocation, the court shall consider the following additional and/or overlapping factors as contained in A.R.S. § 25-403 and A.R.S. § 25-408**

1. The nature, quality, extent of involvement, and duration of the child's relationship with the parent proposing to relocate and with the non-relocating parent, siblings, and other significant persons in the child's life.
2. The age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child.
3. The feasibility of preserving a good relationship between the non-relocating parent and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties.
4. The child's preference, taking into consideration the age and maturity of the child.

5. Whether there is an established pattern of conduct of the parent seeking the relocation, either to promote or thwart the relationship of the child and the non-relocating party.
6. Whether the relocation of the child will enhance the general quality of life for both the custodial parent seeking the relocation and the child, including but not limited to financial or emotional benefit or educational opportunity.
7. The reasons of each parent for seeking or opposing the relocation.
8. The current employment and economic circumstances of each parent and/or their new spouse and whether or not the proposed relocation is necessary to improve the circumstances of the parent seeking relocation of the child.
9. The extent to which the objecting parent has fulfilled his or her financial obligations to the parent seeking relocation, including child support, spousal support, and community property obligations.
10. The feasibility of a relocation by the objecting parent.
11. Any history of substance abuse or violence by either parent, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation.
12. Any other factors affecting the best interest of the child.

#### **E. COURT FINDINGS – MANDATORY**

The court must make specific findings, on the record, about all relevant factors and the reasons for which the decision is in the best interest of the child. (*Owen v. Blackhawk* 206 Ariz. 418, 79 P.3d 667)

The court must elaborate or explain how it weighed any factor and cannot focus only on the child's relationship with the non-moving parent to the exclusion of their relevant considerations.

#### **F. OTHER ISSUES**

1. A Change of Physical Custody Order, designating one parent as primary residential parent, constitutes an order regarding physical custody which involves the child's residential placement as opposed to an order regarding parenting time and requires the court to consider and make specific findings pursuant to A.R.S. § 25-403 and A.R.S. § 25-408. (*id Owen v. Blackhawk*)
2. If the moving party intends to remain in Arizona and if the child cannot move with that party, the court cannot change physical custody unless:
  - a. change of custody is required even without the move;
  - b. appropriate evidence and findings accompany such change of custody. (*id Owen v. Blackhawk*)

None of the factors which the trial court should consider in deciding the best interest of the child when one parent wants to move to a new location are controlling and all of the factors should be weighed collectively. (*Pollock v. Pollock 181 Ariz. 275, 889 P.2d 633*)

## **G. JURISDICTION**

### **1. Home State**

#### **Pursuant to A.R.S. § 25-1002**

- a. The state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding, including any period during which that person is temporarily absent from that state.
- b. If a child is less than six months of age, the state in which the child lived from birth with a parent or person acting as a parent, including any period during which that person is temporarily absent from that state.

### **2. Initial Child Custody Jurisdiction**

#### **Pursuant to A.R.S. § 25-1031**

This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

**3. Exclusive Continuing Jurisdiction  
Pursuant to A.R.S. § 25-1032B**

A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 25-1031.

**4. Jurisdiction to Modify Determination (of another state)  
Pursuant to A.R.S. § 25-1033**

**5. Temporary Emergency Jurisdiction  
Pursuant to A.R.S. § 25-1034A**

A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

A.R.S. § 25-103. Purposes of title; application of title

A. It is declared that the public policy of this state and the general purposes of this title are:

1. To promote strong families;
2. To promote strong family values.

B. It also is the declared public policy of this state and the general purpose of this title that absent evidence to the contrary, it is in a child's best interest:

1. To have substantial, frequent, meaningful and continuing parenting time with both parents.
2. To have both parents participate in decision-making about the child.

C. A court shall apply the provisions of this title in a manner that is consistent with this section.

A.R.S. § 25-403. Custody; best interests of child

A. The court shall determine custody, either originally or on petition for modification, in accordance with the best interests of the child. The court shall consider all relevant factors, including:

1. The wishes of the child's parent or parents as to custody.
2. The wishes of the child as to the custodian.
3. The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.
4. The child's adjustment to home, school and community.
5. The mental and physical health of all individuals involved.
6. Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent. This paragraph does not apply if the court determines that a parent is acting in good faith to protect the child from witnessing an act of domestic violence or being a victim of domestic violence or child abuse.
7. Whether one parent, both parents or neither parent has provided primary care of the child.
8. The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody.
9. Whether a parent has complied with chapter 3, article 5 of this title.
10. Whether either parent was convicted of an act of false reporting of child abuse or neglect under section 13-2907.02.
11. Whether there has been domestic violence or child abuse as defined in section 25-403.03.

- B. In a contested custody case, the court shall make specific findings on the record about all relevant factors and the reasons for which the decision is in the best interests of the child.

A.R.S. §25-408. Rights of noncustodial parent; parenting time; relocation of child; exception; enforcement; access to records

A. A parent who is not granted custody of the child is entitled to reasonable parenting time rights to ensure that the minor child has frequent and continuing contact with the noncustodial parent unless the court finds, after a hearing, that parenting time would endanger seriously the child's physical, mental, moral or emotional health.

B. If by written agreement or court order both parents are entitled to custody or parenting time and both parents reside in the state, at least sixty days' advance written notice shall be provided to the other parent before a parent may do either of the following:

1. Relocate the child outside the state.
2. Relocate the child more than one hundred miles within the state.

C. The notice required by this section shall be made by certified mail, return receipt requested, or pursuant to the Arizona rules of family law procedure. The court shall sanction a parent who, without good cause, does not comply with the notification requirements of this subsection. The court may impose a sanction that will affect custody or parenting time only in accordance with the child's best interests.

D. Within thirty days after notice is made the nonmoving parent may petition the court to prevent relocation of the child. After expiration of this time any petition or other application to prevent relocation of the child may be granted only on a showing of good cause. This subsection does not prohibit a parent who is seeking to relocate the child from petitioning the court for a hearing, on notice to the other parent, to determine the appropriateness of a relocation that may adversely affect the other parent's custody or parenting time rights.

E. Subsection B of this section does not apply if provision for relocation of a child has been made by a court order or a written agreement of the parties that is dated within one year of the proposed relocation of the child.

F. Pending the determination by the court of a petition or application to prevent relocation of the child:

1. A parent with sole custody or a parent with joint custody and primary physical custody who is required by circumstances of health or safety or employment of that parent or that parent's spouse to relocate in less than sixty days after written notice has been given to the other parent may temporarily relocate with the child.
2. A parent who shares joint custody and substantially equal physical custody and who is required by circumstances of health or safety or employment of that parent or that parent's spouse to relocate in less than sixty days after written notice has

been given to the other parent may temporarily relocate with the child only if both parents execute a written agreement to permit relocation of the child.

G. The court shall determine whether to allow the parent to relocate the child in accordance with the child's best interests. The burden of proving what is in the child's best interests is on the parent who is seeking to relocate the child. To the extent practicable the court shall also make appropriate arrangements to ensure the continuation of a meaningful relationship between the child and both parents.

H. The court shall not deviate from a provision of any parenting plan or other written agreement by which the parents specifically have agreed to allow or prohibit relocation of the child unless the court finds that the provision is no longer in the child's best interests. There is a rebuttable presumption that a provision from any parenting plan or other written agreement is in the child's best interests.

I. In determining the child's best interests the court shall consider all relevant factors including:

1. The factors prescribed under section 25-403.
2. Whether the relocation is being made or opposed in good faith and not to interfere with or to frustrate the relationship between the child and the other parent or the other parent's right of access to the child.
3. The prospective advantage of the move for improving the general quality of life for the custodial parent or for the child.
4. The likelihood that the parent with whom the child will reside after the relocation will comply with parenting time orders.
5. Whether the relocation will allow a realistic opportunity for parenting time with each parent.
6. The extent to which moving or not moving will affect the emotional, physical or developmental needs of the child.
7. The motives of the parents and the validity of the reasons given for moving or opposing the move including the extent to which either parent may intend to gain a financial advantage regarding continuing child support obligations.
8. The potential effect of relocation on the child's stability.

J. The court shall assess attorney fees and court costs against either parent if the court finds that the parent has unreasonably denied, restricted or interfered with court-ordered parenting time.

K. Pursuant to section 25-403.06, the noncustodial parent is entitled to have access to documents and other information about the child unless the court finds that access would endanger seriously the child's or the custodial parent's physical, mental, moral or emotional health.

## A.R.S. § 25-1002 DEFINITIONS

In this chapter, unless the context otherwise requires:

1. “Abandoned” means left without provision for reasonable and necessary care or supervision.

2. “Child” has the same meaning prescribed in § 1-215.

3. “Child custody determination”:

(a) Means any judgment, decree or other order of a court, including a permanent, temporary, initial and modification order, for legal custody, physical custody or visitation with respect to a child.

(b) Does not include an order relating to child support or any other monetary obligation of an individual.

4. “Child custody proceeding”:

(a) Means a proceeding, including a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence, in which legal custody, physical custody or visitation with respect to a child is an issue or in which that issue may appear.

(b) Does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under article 3 of this chapter.

5. “Commencement” means the filing of the first pleading in a proceeding.

6. “Court” means an entity authorized under the law of a state to establish, enforce or modify a child custody determination.

7. “Home state” means:

(a) The state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding, including any period during which that person is temporarily absent from that state.

(b) If a child is less than six months of age, the state in which the child lived from birth with a parent or person acting as a parent, including any period during which that person is temporarily absent from that state.

8. “Initial determination” means the first child custody determination concerning a particular child.

9. “Issuing court” means the court that makes a child custody determination for which enforcement is sought under this chapter.

10. “Issuing state” means the state in which a child custody determination is made.

11. “Modification” means a child custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

12. “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, or public corporation or any other legal or commercial entity.

13. “Person acting as a parent” means a person, other than a parent, who meets both of the following requirements:

(a) Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding.

(b) Has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

14. “Physical custody” means the physical care and supervision of a child.

15. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

16. "Tribe" means an Indian tribe or band or Alaskan native village that is recognized by federal law or formally acknowledged by a state.

17. "Visitation" includes parenting time as defined in § 25-402.

18. "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

A.R.S. §25-1031. Initial child custody jurisdiction

A. Except as otherwise provided in section 25-1034, a court of this state has jurisdiction to make an initial child custody determination only if any of the following is true:

1. This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

2. A court of another state does not have jurisdiction under paragraph 1 or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 25-1037 or 25-1038 and both of the following are true:

(a) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.

(b) Substantial evidence is available in this state concerning the child's care, protection, training and personal relationships.

3. All courts having jurisdiction under paragraph 1 or 2 have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under section 25-1037 or 25-1038.

4. A court of any other state would not have jurisdiction under the criteria specified in paragraph 1, 2 or 3.

B. Subsection A of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

C. Physical presence of or personal jurisdiction over a party or a child is not necessary or sufficient to make a child custody determination.

A.R.S. §25-1032. Exclusive continuing jurisdiction

A. Except as otherwise provided in section 25-1034, a court of this state that has made a child custody determination consistent with section 25-1031 or 25-1033 has exclusive, continuing jurisdiction over the determination until either of the following is true:

1. A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships.

2. A court of this state or a court of another state determines that the child, the child's parents and any person acting as a parent do not presently reside in this state.

B. A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 25-1031.

A.R.S. §25-1033. Jurisdiction to modify determination

Except as otherwise provided in section 25-1034, a court of this state shall not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under section 25-1031, subsection A, paragraph 1 or 2 and either of the following is true:

1. The court of the other state determines that it no longer has exclusive, continuing jurisdiction under section 25-1032 or that a court of this state would be a more convenient forum under section 25-1037.
2. A court of this state or a court of the other state determines that the child, the child's parents and any person acting as a parent do not presently reside in the other state.

A.R.S. §25-1034. Temporary emergency jurisdiction

A. A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

B. If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under section 25-1031, 25-1032 or 25-1033, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under section 25-1031, 25-1032 or 25-1033. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under section 25-1031, 25-1032 or 25-1033, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

C. If there is a previous child custody determination that is entitled to be enforced under this chapter or a child custody proceeding has been commenced in a court of a state having jurisdiction under section 25-1031, 25-1032 or 25-1033, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under section 25-1031, 25-1032 or 25-1033. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

D. A court of this state that has been asked to make a child custody determination under this section, on being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under section 25-1031, 25-1032 or 25-1033, shall immediately communicate with the other court. A court of this state that exercises jurisdiction pursuant to section 25-1031, 25-1032 or 25-1033, on being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section, shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child and determine a period for the duration of the temporary order.