

Arizona Family Law – Jurisdiction and Service of Process

By Morgan, Lewis & Bockius LLP – March 31, 2021

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Custody Determination -Jurisdiction

Initial Custody Determination

AZ. St. 25-1031

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.

Temporary Emergency Jurisdiction

AZ St. 25-1034

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 § 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 § 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 §

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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 § 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 § 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 § 25-1031, 25-1032 or 25-1033 , shall immediately communicate with the other court. A court of this state that exercises jurisdiction pursuant to § 25-1031, 251032 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.

Custody Determination — Service/Notification Requirements

AZ St. 25-1035

- A. Before a child custody determination is made under this chapter, notice and an opportunity to be heard pursuant to § 25-1008 must be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated and any person having physical custody of the child.
- B. This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.
- C. The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the law of this state as in child custody proceedings between residents of this state.

Paternity and Child Support Proceeding —Jurisdiction

Proceeding to Establish, Enforce, Modify Support Order or Determine Parentage

AZ St. 25-801

Proceedings to establish maternity or paternity may be originated in the county of residence of the respondent or the petitioner or the child or children the subject of the action. The fact that the petitioner parent or child or both are not, or never have been, residents of Arizona does not bar the proceeding.

Paternity and Child Support Proceeding —Service/Notification Requirements

AZ St. 25-806.

- C. The procedure on the filing of the petition shall be as in other civil cases, except that a party who has been served pursuant to § 8-106, subsection G must serve the mother with a copy of the verified petition and summons within thirty days after completion of service of notice as prescribed by that subsection.

Child Abuse/Neglect Proceeding —Jurisdiction

No independent statute identified.

Child Abuse/Neglect Proceeding — Service/Notification Requirements

No independent service/notification requirements identified.

Divorce and Legal Separation —Jurisdiction

AZ St. 25-312

The court shall enter a decree of dissolution of marriage if it finds each of the following:

1. That one of the parties, at the time the action was commenced, was domiciled in this state, or was stationed in this state while a member of the armed services, and that in either case the domicile or military presence has been maintained for ninety days prior to filing the petition for dissolution of marriage.

Divorce and Legal Separation —Service/Notification Requirements

See Divorce and Legal Separation —Jurisdiction Section.

Adoption Proceeding — Jurisdiction

AZ St. 8-104

A petitioner may begin adoption proceedings in the court in the county where the prospective adoptive parent resides or, if applicable, in the county where the child is a ward.



Adoption Proceeding — Service/Notification Requirements
AZ St. 8-111

After a petition to adopt has been filed, the clerk of the superior court shall set a time and place for a hearing by the court. Notice shall be as provided for the service of process in civil actions to:

1. The petitioner.
2. The agency, if any.

3. The person or agency conducting the social study required by § 8-112.
4. Any person or agency required to give consent by § 8-106 unless consent with a waiver of notice of hearing has been filed before the hearing.
5. Any person who has initiated a paternity action pursuant to title 25, chapter 6, article 1

Domestic Violence —Jurisdiction
AZ St. 35-403.03

A. Notwithstanding subsection D of this section, joint legal decision-making shall not be awarded if the court makes a finding of the existence of significant domestic violence pursuant to § 13-3601 or if the court finds by a preponderance of the evidence that there has been a significant history of domestic violence.

B. The court shall consider evidence of domestic violence as being contrary to the best interests of the child. The court shall consider the safety and well-being of the child and of the victim of the act of domestic violence to be of primary importance. The court shall consider a perpetrator's history of causing or threatening to cause physical harm to another person.

C. To determine if a person has committed an act of domestic violence the court, subject to the rules of evidence, shall consider all relevant factors including the following:

1. Findings from another court of competent jurisdiction.
2. Police reports.
3. Medical reports.
4. Records of the department of child safety.
5. Domestic violence shelter records.
6. School records.
7. Witness testimony.

D. If the court determines that a parent who is seeking sole or joint legal decision-making has committed an act of domestic violence against the other parent, there is a rebuttable presumption that an award of sole or joint legal decision-making to the parent who committed the act of domestic violence is contrary to the child's best interests. This presumption does not apply if both parents have committed an act of domestic violence. For the purposes of this subsection, a person commits an act of domestic violence if that person does any of the following:

1. Intentionally, knowingly or recklessly causes or attempts to cause sexual assault or serious physical injury.
2. Places a person in reasonable apprehension of imminent serious physical injury to any person.
3. Engages in a pattern of behavior for which a court may issue an ex parte order to protect the other parent who is seeking child custody or to protect the child and the child's siblings.

E. To determine if the parent has rebutted the presumption the court shall consider all of the following:

1. Whether the parent has demonstrated that being awarded sole or joint legal decision-making or substantially equal parenting time is in the child's best interests.
2. Whether the parent has successfully completed a batterer's prevention program.
3. Whether the parent has successfully completed a program of alcohol or drug abuse counseling, if the court determines that counseling is appropriate.

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4. Whether the parent has successfully completed a parenting class, if the court determines that a parenting class is appropriate.
5. If the parent is on probation, parole or community supervision, whether the parent is restrained by a protective order that was granted after a hearing.
6. Whether the parent has committed any further acts of domestic violence.

F. If the court finds that a parent has committed an act of domestic violence, that parent has the burden of proving to the court's satisfaction that parenting time will not endanger the child or significantly impair the child's emotional development. If the parent meets this burden to the court's satisfaction, the court shall place conditions on parenting time that best protect the child and the other parent from further harm. The court may:

1. Order that an exchange of the child must occur in a protected setting as specified by the court.
2. Order that an agency specified by the court must supervise parenting time. If the court allows a family or household member to supervise parenting time, the court shall establish conditions that this person must follow during parenting time.
3. Order the parent who committed the act of domestic violence to attend and complete, to the court's satisfaction, a program of intervention for perpetrators of domestic violence and any other counseling the court orders.
4. Order the parent who committed the act of domestic violence to abstain from possessing or consuming alcohol or controlled substances during parenting time and for twenty-four hours before parenting time.
5. Order the parent who committed the act of domestic violence to pay a fee for the costs of supervised parenting time.
6. Prohibit overnight parenting time.
7. Require a bond from the parent who committed the act of domestic violence for the child's safe return.
8. Order that the address of the child and the other parent remain confidential.
9. Impose any other condition that the court determines is necessary to protect the child, the other parent and any other family or household member.

G. The court shall not order joint counseling between a victim and the perpetrator of domestic violence. The court may provide a victim with written information about available community resources related to domestic violence.

H. The court may request or order the services of the department of child safety if the court believes that a child may be the victim of child abuse or neglect as defined in § 8-201.

I. In determining whether the absence or relocation of a parent shall be weighed against that parent in determining legal decision-making or parenting time, the court may consider whether the absence or relocation

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was caused by an act of domestic violence by the other parent.

Domestic Violence— Service/Notification Requirements

See Domestic Violence Jurisdiction Proceeding Section.

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