

Things You Should Know About

# Custody and Parenting Time



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

# Contained in this Booklet

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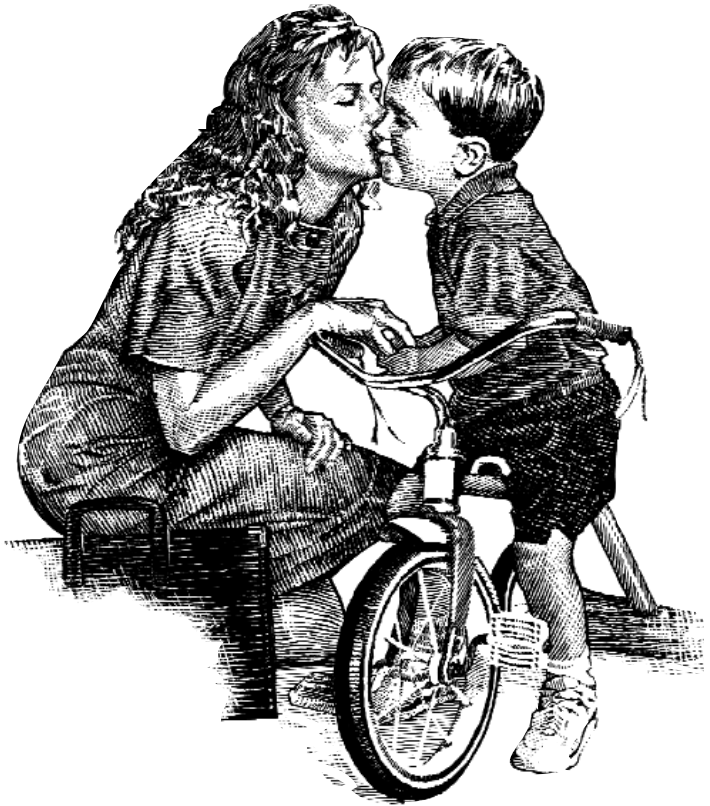
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# Custody and Parenting Time

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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 parenting time. In each case, the court's decision is based on the child's best interests.



# Questions & Answers

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NOTE: This booklet is intended to provide general information about custody or parenting time. It is not a complete nor 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 parenting time. Questions about specific situations should be discussed with an attorney.

**Other available booklets in this series include:**

- Child Support Modification
- Covenant Marriage
- Child Support Payments in Arizona
- Divorce in Arizona
- Establishing Paternity for Your Child in Arizona
- Parent Education Class
- Protective Orders

**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 parenting time.**

**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 (for example, decisions about education, health care and religious training). The parent with custody is often called the "custodial parent." In many cases, the child resides with the custodial parent most of the time. The law does not favor one form of custody over another, nor do they base their decision on the sex of the parent

# Questions & Answers

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**Q.** What is parenting time?

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

**Q.** When do custody and parenting time issues arise?

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

**Q.** Who decides custody and parenting time?

**A.** Parents may agree between themselves about custody or parenting time; however, if the parents cannot agree and 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.

# Questions About Custody

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**Q. What is meant by "sole custody"?**

**A.** This means that one person has sole legal custody of a child. In this situation, the court orders that one parent be responsible for making the 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 final decisions in the event the parents do not agree.

**Q. What is meant by "joint custody"?**

**A.** This means joint legal custody or joint physical custody or both. In most cases, in order to obtain an order for joint custody, both parents must agree to and submit a written parenting plan to the court.

**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 "legal custody"?**

**A.** Legal custody is the status where one or both parents are responsible for making the major decisions regarding the child's care or welfare. When legal custody is awarded to one parent, it is called "sole legal custody." The law does not favor one form of custody over another.

# Questions About Custody

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**Q.** What is “joint legal custody”?

**A.** When the court grants joint legal custody, each of the parents has the same rights to make decisions about the child’s care and welfare and neither parent’s rights are superior to those of the other parent. In the best interest of the child, the court may direct that certain decisions be made by only one parent, even when joint legal custody is granted. The court may order joint legal custody without ordering joint physical custody.

**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 or equal parenting time (see section 25-403, Arizona Revised Statutes).

**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 in situations where parents share joint legal custody or when one parent is granted sole custody.

# Questions About Custody

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

**A.** Arizona law does not favor one form of custody 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.

When a parent starts a court case for legal separation or divorce and the parents cannot agree about child custody, custody automatically becomes an issue for the court to decide. These court decisions are made in temporary orders hearings and in final trial if the parties are unable to reach agreement. After a decree of legal separation or divorce has been granted, the court still has authority to change (modify) an earlier custody order.



# Questions About Custody

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**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 Clerk of the Superior Court 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 a form of 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 date the last order was granted. 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.

**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 internal 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

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agree on custody, the court will decide for them. Sometimes the court seeks professional advice from outside experts who 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 based on a determination of 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 on decisions about raising children after a legal separation or divorce. The court usually accepts the parents' mutual decision, but the court's decision about custody must be made in the best interests of the child. After review of the agreement's terms, the duty imposed on the court by law may require that the court not accept the parents' agreement.

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

**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, the child's wishes, how the child interacts with each parent and any other children in the family, the health of each person involved, the child's adjustment to home, school and community, which par-

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ent 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. The court will presume that an award of custody to a parent who committed an act of domestic violence is contrary to the child's best interests.

**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

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**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, by each parent, 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 parenting time). 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 Custody

**Q.** How can a parent obtain school, medical and other records of their child after divorce?

**A.** No matter which form of custody is ordered, both parents are entitled to the same access to all records pertaining to their child unless the release of such information would place the child or one of the parents in danger (see section 25-403, Arizona Revised Statutes).

**Q.** When may a parent with custody move from Arizona with the child?

**A.** If both parents live in Arizona, the parent with physical custody desiring to move with the child must give 60 days' notice to the other parent before the child may be moved more than 100 miles from the other parent or from the state. The 60-day period gives sufficient time to the non-moving parent to request a hearing to stop the move.

**Q.** What if my job requires an immediate transfer in less than 60 days?

**A.** A parent who is required to relocate in less than 60 days must be a parent with joint physical custody and have the agreement of both parents or a court order allowing the move of the child. If agreement cannot be reached in the situation of required relocation in less than 60 days, the moving parent must file a request with the court.

# Questions About Parenting Time

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**Q.** Why is parenting time 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 parenting time rights does a parent have?

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

**Q.** What amount of parenting time 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 parenting time with a newborn child, although more frequent shorter visits may be appropriate. Some counties (Coconino, Maricopa, Mohave, Pima, Pinal and Yavapai) have established guidelines to help parents and the courts decide how much parenting time is important to the child. The Arizona Supreme Court has also published Model Parenting Time Plans to assist parents in establishing age-related parenting time schedules; however, it is important to remem-

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ber that guidelines do not apply to all family situations or to all children. If the parents cannot agree on a schedule, the court decides parenting time on a case by case basis (see listing at the back of this booklet for information on obtaining a copy of the Model Parenting Time Plans).

## **Q.** What is reasonable parenting time?

**A.** The term "reasonable parenting time" means time spent with a child that is average for most cases. Although the term has sometimes been used in parenting plans and even in court orders, parenting time decisions depend on the circumstances of each family, considering the child's age and development. When parenting time is described only as "reasonable," it is difficult to predict when or for how long parenting time periods should occur.

When preparing an agreement or parenting plan, it is recommended that parents specifically decide when and for how long parenting time periods will be, including how to handle and allocate special occasions like vacations, school breaks, birthdays and holidays so that both parents are considered. Guidelines available in some counties and the Model Parenting Time Plans may be useful to parents in making these decisions. The parenting time order should be written specifically enough to enable the court to enforce the order if the order is not followed and one parent files a request for

# Questions About Parenting Time

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enforcement.

**Q. Are parenting time and custody related?**

**A.** Yes. Arizona law provides that in most cases a parent not granted custody of the child is entitled to reasonable parenting time 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 parenting time 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 parenting time schedule should be ordered.

**Q. Do I have to start a court case to have parenting time?**

**A.** Parents are free to agree on the best parenting time plan for their child. If parents cannot agree, or if their agreement is not working, court action may be necessary. Remember, only the Superior Court can decide parenting time matters and issue an order that can be enforced if disagreements arise or if one parent does not honor the parenting time schedule.

**Q. How do I obtain a legal order for parenting time?**

**A.** As with custody, the court may grant a parenting time order only in certain kinds of cases. Most frequently, parenting time is determined when the



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parents are seeking a legal separation or divorce, or when parents are asking the court to change a parenting time decision that was made in an earlier separation or divorce case. Parenting time may also be ordered when one parent starts a court case to decide paternity (or maternity) of a child or after a voluntary acknowledgment of paternity.

When a parent starts a court case for legal separation or divorce, child custody and parenting time 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 parenting time order. Either parent may request in writing that the court decide what parenting time should be. The request is filed with the Clerk of the Superior Court and a filing fee is charged.

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

**A.** If there is a dispute about parenting time, the court sometimes refers the parents to court mediation services. This process gives the parents an opportunity to reach an agreement regarding parenting time and related issues. However, if the parties are unable to agree on parenting time, the court must decide for them. Sometimes the court seeks professional advice to evaluate the family situation or offer an opinion about parenting time. When making its decision, the

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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, the child's school schedule and the suitability of living conditions in each parent's home.

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

**A.** If one parent violates a parenting time order, the other parent cannot deny parenting time, stop paying support or take other self-created 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 for enforcement with the Clerk of the Superior Court and pay a filing fee. A hearing before the court may be necessary if the matter cannot be resolved.

**Q. What can the court do if a parenting time order is disobeyed?**

**A.** When a parent files a request for help in enforcing a parenting time order, state law requires the court to take quick action. There are several remedies the court can use to deal with the violating parent. Some of these remedies may include ordering parenting time to make up for missed sessions, ordering the violating parent to attend education classes

# Questions About Parenting Time

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or counseling and finding the violating parent in contempt of court and ordering monetary fines (see section 25-414, Arizona Revised Statutes).

**Q.** Can a person other than a parent have parenting time?

**A.**

Yes. In certain circumstances, Arizona law permits grandparents and great-grandparents to have parenting time rights if it is in the best interests of the child. In order to request parenting time rights by a non-parent, 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 parenting time. 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).

**Q.** What is supervised parenting time?

**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 or a mental

# Questions About Parenting Time

health professional be involved with a family to be sure parenting time (and even custody) orders are followed. In this situation, the court may order the agency or another party to supervise or oversee the parenting time periods. In some cases, the exchange of the child is supervised by a third party to diminish the conflict between the parents to which the child would be exposed without supervised exchanges.

**Q.** What if a court decision regarding custody, child support or parenting time needs to be made before the end of the case if the parents cannot agree?

**A.** If the parents cannot agree in connection with any or all of these issues at the beginning of the case, one or both parents may file a request with the court for temporary orders. Temporary orders are short-term decisions made by the judge which remain in effect until a final court order is entered in the case. The Preliminary Injunction is the first temporary order issued in a suit for dissolution. In addition, either party may file a petition for temporary orders for child related issues such as child custody, child support and parenting time. If no agreement is reached after proper request is made, a hearing must be requested and held before the court, including witness testimony and presentation of evidence.

# Custody & Parenting Time When Parents Are Not Married

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

**A.**

Parents are free to make decisions about custody or parenting time on their own. When parents are unmarried and no order has been entered to establish parental rights, the biological father has no legal right to either custody or parenting time until paternity is established. He also has no legal obligation to pay child support to the mother until an order of paternity is entered. In Arizona, paternity can be legally established through the Superior Court, the Department of Health Services or the Department of Economic Security (see the Supreme Court booklet in this series titled Things You Should Know About Establishing Paternity for Your Child).

**Q.** After legal paternity has been established, how are custody and parenting time decided?

**A.**

As with other cases, custody and parenting time can only be legally decided by the Superior Court. The court must decide custody and parenting time based on the best interests of the child. If a court case to establish paternity has been started in the Superior Court, the court automatically decides custody and parenting time matters. If paternity has been established by voluntary process through the court, the Arizona Department of Health

# Custody & Parenting Time When Parents Are Not Married

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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 parenting time 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 with whom the child has lived for most of the six-month period before paternity is decided. Of course, when the court decides custody or parenting time, the decision is always based on the best interests of the child. Accordingly, 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

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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, parenting time or child support. Parents of minor children may also be ordered to attend the program if, after determining paternity or obtaining a divorce or a legal separation, disputes regarding custody, parenting time 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.

# A Note About the Parent Education Program

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The program lasts up to four hours in length and a fee may be charged to each participant based on the best interests of the child. Accordingly, the court may order that either or both parents have custody if it is in the child's best interests.



# Words & Definitions

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## **Child Support Guidelines -**

Guidelines that are adopted by the Arizona Supreme Court pursuant to 42 United States Code Sections 651 through 669B. The guidelines provide instruction for evaluating each parent's income and child-related expenses in order for each parent to contribute, by court order, their proportionate share of the total child support amount.

## **Custodial Parent -**

The parent who has been granted authority by the court to make major parental decisions about a child's care and welfare. These decisions may include disciplinary, educational, medical, or dental matters and may include the authority to determine the child's primary residence. The Arizona Child Support Guidelines define custodial parent as the parent who has custody of the children for the greater part of the year.

## **Custody -**

The right of a person to make parental decisions about the care and welfare of a child.

## **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.

# Words & Definitions

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## **Joint Custody -**

Joint legal custody or joint physical custody, or both.

## **Joint Legal Custody -**

Each of the parents generally has the same right to make decisions about the child's care and welfare; also refers to the conditions under which both parents share legal custody and neither parent's rights are superior, except with respect to specified rights of decision-making set forth by the court or the parents in the final order. Joint legal custody is not the same as joint physical custody.

## **Joint Physical Custody -**

The condition under which the physical residence of the child is shared by the parents in a manner that assures that the child has substantially equal time and contact with both parents.

## **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 to spend time with the child, so that the child can spend time with that parent.

# Words & Definitions

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## **Parent Education Program -**

Formally called the Domestic Relations Education on Children's Issues Program, this is an educational program designed to 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.

## **Parenting time -**

Means the condition under which a parent has the right to periodically have a child physically placed with the parent and the right and responsibility to make, during those placement times, routine daily decisions regarding the child's care, consistent with the major decisions made by the person having legal custody.

## **Sole Custody -**

Means the condition under which one person has legal custody.

# Clerks of the Superior Court

## Apache County

Clerk of the Superior Court  
70 West 3rd South  
St. Johns, AZ 85936  
(928) 337-4364

## Cochise County

Clerk of the Superior Court  
County Courthouse  
100 Quality Hill  
Bisbee, AZ 85603  
(928) 432-8571

## Coconino County

Clerk of the Superior Court  
100 E. Birch  
Flagstaff, AZ 86001  
(928) 779-6535

## Gila County

Clerk of the Superior Court  
1400 E. Ash  
Globe, AZ 85501  
(928) 425-3231

## Graham County

Clerk of the Superior Court  
800 Main St.  
Safford, AZ 85546  
(928) 428-3100

## Greenlee County

Clerk of the Superior Court  
County Courthouse  
5th & Webster  
Clifton, AZ 85533  
(928) 865-4242

## La Paz County

Clerk of the Superior Court  
1316 Kofa Ave., Suite 607  
Parker, AZ 85344  
(928) 669-6131

## Maricopa County

Clerk of the Superior Court  
201 W. Jefferson  
Phoenix, AZ 85003  
(602) 506-3676

## Mohave County

Clerk of the Superior Court  
County Courthouse  
401 E. Spring St.  
Kingman, AZ 86402-7000  
(928) 753-0713

# Clerks of the Superior Court

Navajo County  
Clerk of the Superior Court  
County Courthouse  
100 E. Carter Road  
Holbrook, AZ 86025  
(928) 524-4188

Pima County  
Clerk of the Superior Court  
110 W. Congress  
Tucson, AZ 85701  
(520) 740-3210

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

Santa Cruz County  
Clerk of the Superior Court  
County Courthouse  
2150 N. Congress Dr.  
Nogales, AZ 85621  
(520) 375-7700

Yavapai County  
Clerk of the Superior Court  
County Courthouse  
Prescott, AZ 86301  
(928) 771-3312

Yuma County  
Clerk of the Superior Court  
168 S. 2nd Ave.  
Yuma, AZ 85364  
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*Presented by the  
Arizona Supreme Court  
Administrative Office of the Courts  
Court Services Division  
Court Programs Unit*

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