

- i. Version Number: 1
- ii. Date of version: August 25, 2010
- iii. Current section number and short title: ARS § 25-409 Visitation rights of grandparents and great-grandparents, and ARS § 25-415 Custody by nonparent; presumption; grounds; definitions
- iv. Names of members: Bruce Cohen
- v. Purpose: To resolve redundancies and restructure the two statutes that apply to third party rights to custody and visitation.

Summary of Statutory Flow:

- A. In Loco Parentis Custody
- B. Presumption
- C. Visitation by Third Party
- D. Notice
- E. Factors
- F. Limitations
- G. Filing of Action
- H. Termination
- I. Definitions

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Title (to be determined): *In Loco Parentis* Custody, Grandparents and Third-Party Visitation OR Custody and Visitation by Non-Parents

A. In addition to section 25-401, a child custody proceeding may be commenced in the superior court by a person other than a legal parent by filing a verified petition, or by filing a petition supported by an affidavit, in the county in which the child is permanently resident or is found. The petition shall include detailed facts supporting the petitioner's right to file the petition. The petitioner shall provide notice as required by subsection D of this section. Notice shall include a copy of the petition and any affidavits. The court shall summarily deny a petition unless it finds that the petitioner by the pleadings established that all of the following are true:

1. The person filing the petition stands in loco parentis to the child.
2. It would be significantly detrimental to the child to remain or be placed in the custody of either of the child's living legal parents who wish to retain or obtain custody.
3. A court of competent jurisdiction has not entered or approved an order concerning the child's custody within one year before the person filed a petition pursuant to this section, unless there is reason to believe the child's present environment may seriously endanger the child's physical, mental, moral or emotional health.
4. One of the following applies:

- (a) One of the legal parents is deceased.
- (b) The child's legal parents are not married to each other at the time the petition is filed.
- (c) There is a pending proceeding for dissolution of marriage or for legal separation of the legal parents at the time the petition is filed.

B. If a person other than a child's legal parent is seeking custody there is a rebuttable presumption that it is in the child's best interest to award custody to a legal parent because of the physical, psychological and emotional needs of the child to be reared by the child's legal parent. To rebut this presumption that person must show by clear and convincing evidence that awarding custody to a legal parent is not in the child's best interests.

C. A grandparent, a great-grandparent or a person who stands in loco parentis to a child may bring a proceeding for visitation rights with a child by filing a verified petition in the county in which the child is permanently resident or is found. The superior court may grant visitation rights during the child's minority on a finding that the visitation is in the child's best interests and that any of the following is true:

- 1. One of the legal parents is deceased or has been missing at least three months. For the purposes of this paragraph, a parent is considered to be missing if the parent's location has not been determined and the parent has been reported as missing to a law enforcement agency.
- 2. The child was born out of wedlock and the child's legal parents are not married to each other at the time the petition is filed.
- 3. For grandparent or great-grandparent visitation, the marriage of the parents of the child has been dissolved for at least three months.
- 4. For in loco parentis visitation, there is a pending proceeding for dissolution of marriage or for legal separation of the legal parents at the time the petition is filed.

D. Notice of a custody or visitation proceeding filed pursuant to this section shall be served pursuant to the Arizona Rules of Family Law Procedure to all of the following:

- 1. The child's parents.
- 2. A person who has court ordered custody or visitation rights.
- 3. The child's guardian or guardian ad litem.
- 4. A person or agency that has physical custody of the child or that claims to have custody or visitation rights.

5. Any other person or agency that has previously appeared in the action.

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

1. The historical relationship, if any, between the child and the person seeking visitation.
2. The motivation of the requesting party in seeking visitation.
3. The motivation of the person denying visitation.
4. The quantity of visitation time requested and the potential adverse impact that visitation will have on the child's customary activities.
5. If one or both of the child's parents are dead, the benefit in maintaining an extended family relationship.

F. If logistically possible and appropriate the court shall order visitation by a grandparent or great-grandparent to occur when the child is residing or spending time with the parent through whom the grandparent or great-grandparent claims a right of access to the child. If a parent is unable to have the child reside or spend time with that parent, the court shall order visitation by a grandparent or great-grandparent to occur when that parent would have had that opportunity.

G. A grandparent or great-grandparent seeking to obtain visitation rights under this section shall petition for these rights in the same action in which the parents had their marriage dissolved or in which the court determined paternity or maternity, or by a separate action in the county where the child resides if no action has been filed or the court entering the decree of dissolution or determination of paternity or maternity no longer has jurisdiction.

H. All visitation rights granted under this section automatically terminate if the child has been adopted or placed for adoption. If the child is removed from an adoptive placement, the court may reinstate the visitation rights. This subsection does not apply to the adoption of the child by the spouse of a natural parent if the natural parent remarries.

I. For the purposes of this chapter:

1. "In loco parentis" means a person who has been treated as a parent by the child and who has formed a meaningful parental relationship with the child for a substantial period of time.
2. "Legal parent" means a biological or adoptive parent whose parental rights have not been terminated.