



## Family Court Guidelines for Parenting Time of Children During the COVID-19 Pandemic

These are challenging and stressful times for everyone. During the COVID-19 pandemic, the Court knows you may be seeking additional direction as to parenting time. We have, therefore, put together a list of guidelines<sup>1</sup> that may help you navigate these waters.

The goal of these guidelines is to encourage you to follow your existing parenting plan as closely as possible.<sup>2</sup> Doing so will ensure a level of consistency and stability, which is in your children's best interests.

The guidelines are adopted to assist the parents and the court, however the facts of any given case shall dictate the result. In all cases, the court must determine the best interest of the child in resolving contested issues.

We want to assure you, that, if needed, the Court remains available to hear essential matters, including entering new orders in emergency situations. However, the Court strongly encourages all parents to first attempt to work together to resolve any issues, even if coordinating parenting time or making adjustments to exchange locations becomes more challenging in the days and weeks to come.

If you both agree to modify your parenting plan, you are encouraged to put your agreement in writing and sign it, if possible. If both parents cannot decide on a revised parenting time plan, and one of you believes an adjustment is

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<sup>1</sup> These guidelines were based upon a review of various courts' approaches to the pandemic, and rely heavily upon the Oregon Statewide Family Law Advisory Committee (SFLAC) Recommendations for Oregon Courts: Information for Parents sharing Custody or Parenting Time of Children During the COVID-19 Pandemic, available [here](#).

After initial publication of these guidelines, they were reviewed with counterparts in Maricopa County, and a few, but important, additions were made. We thank them for their input.

<sup>2</sup> These guidelines recognize Arizona's declared public policy and practices of assuring minor children's frequent and continuing contact with parents, encouraging parents to share in the rights and responsibilities of raising their children which include developing their own parenting plan within legal confines and considering the best interest of children and safety of all in developing the parenting plan. A.R.S. §§1-601, 25-403, and 25-403.02.



necessary, you may consider filing a request for temporary modification with the Court under [Rule 48, ARFLP](#).<sup>3</sup>

Finally, in cases where a parent or child must self-quarantine or access is restricted, parents should permit liberal telephone or videoconference visits.

## GUIDELINES

### PARENTING TIME ORDERS

**Parents must comply with any existing parenting time orders unless they agree otherwise, or until the orders are modified.**

A parent who refuses without good cause to comply with a parenting time order is subject to legal penalties, which may include being held in contempt of court, fines, and sanctions.

- A parent currently exercising parenting time/physical custody who is not entitled to it under the court-ordered parenting schedule must immediately return the children to the permitted parent.
- The Court reminds parents that “[a]n order for sole legal decision-making does not allow the parent designated as sole legal decision-maker to alter unilaterally a court-ordered parenting time plan.” A.R.S. §25-403.01(C).
  - The same applies to a parent who has final decision-making authority under a legal decision-making order.

Self-help is not an acceptable course of action. If both parents cannot agree on a modified parenting time plan and one of you believes an adjustment is necessary, you may consider filing a request for temporary modification with the Court under [Rule 48, ARFLP](#).

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<sup>3</sup> Chief Justice Brutinel of the Arizona Supreme Court issued Administrative Order [2020-59](#) on April 3, 2020. This order allows a party to seek orders for temporary relief related to or arising primarily from COVID-19 issues without also having to file an underlying petition to modify the long-term parenting plan or child support orders.



If there are no orders in place and unless otherwise ordered, legal parents are entitled to co-equal, but not exclusive, physical custody of children, and A.R.S. §13-1302(A)(2) forbids “either parent from hiding a child from the other.”<sup>4</sup>

Third-party visitation orders, including grandparent visitation, shall remain in effect unless modified by the court consistent with these guidelines. All parties are encouraged to confer before seeking court intervention, to achieve the best interest of the child.

### **DENIAL OF PARENTING TIME**

The COVID-19 pandemic is not generally a reason to deny parenting time.

- Unless otherwise ordered by the Court, parents are considered fit to care for their children and make decisions regarding day-to-day aspects of parenting while children are in their care.
  - This day-to-day care includes following federal, state, and local directives regarding social distancing and safety-related measures (such as frequent handwashing).

### **DEFINITION OF SPRING BREAK, SUMMER BREAK/VACATION OR HOLIDAYS**

While schools are closed, parenting time should continue as if the children are still attending school under the school calendar of the relevant district.

- ‘Spring break,’ ‘summer break/vacation,’ ‘fall break,’ and other designated breaks/holidays/vacation mean the regularly calendared breaks/holidays/vacations in the school district where the children are attending school (or would attend school if they were school-aged).
- The closure of the school for public health purposes will not be considered an extension of any break/holiday/vacation period or weekend.

### **POSITIVE COVID-19 DIAGNOSIS**

First and foremost, understand that self-quarantine is for the protection of all parties, especially if they are included in the group of people most adversely affected by COVID-19.

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<sup>4</sup> *State v. Wood*, 198 Ariz. 275, 279, 8 P.3d 1189, 1193 (App. 2000). *See also Gutierrez v. Fox*, 242 Ariz. 259, 270, 394 P.3d 1096, 1107 (App. 2017).



Parents should consider agreeing to modify existing orders temporarily including whether to **suspend parenting time for a period of 14 days** for any person who:

- Tests positive for COVID-19 or shares a household with someone who tests positive for COVID-19;
- Has been advised by governmental officials that the parent, or someone with whom the parent shares a household, has been exposed to COVID-19, and has been directed by government officials to self-quarantine; or
- Has traveled internationally within the last 14 days, consistent with the [CDC's Global COVID-19 Pandemic Notice](#).

If parenting time is temporarily suspended, the parent affected should be allowed liberal virtual contact with the children via videoconference or telephone.

The Court may order that suspended parenting time be made up, when requested and when appropriate.

#### **PARENTING TIME IN PUBLIC PLACES**

If your parenting plan states that parenting time will occur in a public place, it should continue at locations permitted under the applicable government orders. See State of Arizona [Executive Order 2020-18](#).

- **Public places such as parks, where people routinely touch common-contact surfaces (play equipment, picnic tables, railings) should be avoided.**
  - Outings and activities where parents and children can maintain social distancing and avoid common-contact surfaces are encouraged.
  - If that is not possible, parenting time should be conducted virtually, via videoconferencing or telephone.

#### **SUPERVISED PARENTING TIME**

If supervised parenting time is ordered and the supervisor is unavailable for any reason, parents should work collaboratively to ensure parenting time continues to occur in a manner that promotes the children's safety and wellbeing, such as finding an alternative supervisor.



- If that is not possible, parenting time should be conducted virtually via videoconferencing or by telephone.
  - The primary residential parent may supervise virtual contact.

### **EXECUTIVE/GOVERNMENT ORDERS RE TRAVEL RESTRICTIONS**

In Arizona, all schools are closed for the remainder of the Spring 2020 semester.

As of April 1, 2020, there are no executive orders that limit travel for parenting time exchanges. Governor Ducey's [Executive Order 2020-18](#) includes the following as an essential activity for which travel is permitted under that Order: “[e]ngaging in activities essential for the health and safety of family, household members and pets. . . .” Executive Order 2020-18, ¶4(b). Parenting time orders provide for the best interests and essential well-being of children, and travel for exchanges facilitates those orders.

Parents being on the road for the purpose of transporting children under a parenting plan does not violate Governor Ducey's order. Pursuant to section 2e of Governor Ducey's Executive Order, no person will be required to provide documentation to support their essential activities.

**If a government order is issued that specifically restricts travel for parenting time and exchanges, parents must comply with that order.**

- Unless otherwise directed, parents should continue to follow their parenting plan as written.
- If a government order restricts travel for parenting time exchanges, parents should work together to encourage children's contact with both parents and keep the arrangements as normal as possible.

### **EXCHANGES**

During the exchange of children, parents should follow the [CDC guidelines](#) and State of Arizona [Executive Order 2020-18](#) for limiting the spread of the virus. Parents may wish to consider the following:

- An alternative location for the exchange, where fewer people congregate or touch public objects may be necessary.
- If an exchange location is closed, the parents should choose an alternative location nearby that remains open.



- For ongoing safety considerations, exchanges should occur in a neutral setting such as at a fire or police station.

If the children's exchange under the parenting plan includes long distance or **air travel**, parents should review the [CDC travel guidelines](#) and discuss whether ground transportation for the exchange is preferable or possible. If the parenting plan includes long distance parenting time to be exercised at a location that is disproportionately impacted by the COVID-19 virus, the parents are encouraged to confer to determine alternative options. If the parents cannot agree, the parties shall seek direction from the court.

**For supervised exchanges**, parents should continue to follow the parenting plan and use the designated exchange agency or supervisor.

- If that is not possible, parents should work collaboratively to find an alternative exchange agency or supervisor, which can include an agreed-upon friend or family member.
  - If that is not possible, parenting time should be conducted virtually via videoconferencing or by telephone.

## **TRANSPARENCY**

Unless restrained from communicating, parents are encouraged to talk honestly and openly about precautions they are taking to slow the spread of COVID-19. Parents should ensure that, unless otherwise ordered, both parents have current contact information for the children's doctor(s).

- A parent is not permitted to deny parenting time based upon the other parent's unwillingness to discuss precautionary measures taken, or belief that the other parent's precautions are insufficient.

## **MAKEUP PARENTING TIME**

If parenting time is missed due to COVID-19-related issues or government orders, parents are encouraged to work collaboratively to schedule makeup parenting time that promotes their children's safety and wellbeing. Makeup parenting time during these extraordinary times may not be logistically possible. A parent may seek and the Court may order makeup parenting time when appropriate.



## **FIRST RESPONDERS / SAFETY-RELATED ISSUES / HEALTH PROTOCOLS**

First responders must remain available for actual emergencies and support related to the COVID-19 outbreak.

- Please do not call first responders for parenting-related disputes, but only in circumstances where your reasons are real, immediate, significant, and safety-related, or if you or a child are in imminent danger.

## **ADDITIONAL RESOURCES**

General recommendations and guidelines published by the American Academy of Matrimonial Lawyers (AAML) and the Association of Family and Conciliation Courts (AFCC) can be found [here](#). Additional materials from AFCC can be found [here](#).