

REFERENCE TITLE: *in loco parentis; third parties*

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SB 1588

Introduced by
Senator Wadsack

AN ACT

AMENDING SECTION 25-409, ARIZONA REVISED STATUTES; RELATING TO IN LOCO PARENTIS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 25-409, Arizona Revised Statutes, is amended to
3 read:

4 25-409. Third party rights

5 A. Pursuant to section 25-402, subsection B, paragraph 2, a person
6 other than a legal parent may petition the superior court for legal
7 decision-making authority or placement of the child. The court shall
8 summarily deny a petition unless it finds that the petitioner's initial
9 pleading establishes that all of the following are true:

10 1. The person filing the petition stands in loco parentis to the
11 child.

12 2. It would be significantly detrimental to the child to remain or
13 be placed in the care of either legal parent who wishes to keep or acquire
14 legal decision-making.

15 3. A court of competent jurisdiction has not entered or approved an
16 order concerning legal decision-making or parenting time within one year
17 before the person filed a petition pursuant to this section, unless there
18 is reason to believe the child's present environment may seriously
19 endanger the child's physical, mental, moral or emotional health.

20 4. One of the following applies:

21 (a) One of the legal parents is deceased.

22 (b) The child's legal parents are not married to each other at the
23 time the petition is filed.

24 (c) A proceeding for dissolution of marriage or for legal
25 separation of the legal parents is pending at the time the petition is
26 filed.

27 (d) THE CHILD HAS ONLY ONE LEGAL PARENT.

28 (e) THE PARENTAL RIGHTS OF ONE OF THE CHILD'S LEGAL PARENTS HAVE
29 BEEN TERMINATED.

30 (f) THE PATERNITY OF THE CHILD HAS NOT BEEN ESTABLISHED.

31 B. Notwithstanding subsection A of this section, it is a rebuttable
32 presumption that awarding legal decision-making to a legal parent serves
33 the child's best interests because of the physical, psychological and
34 emotional needs of the child to be reared by a legal parent. A third
35 party may rebut this presumption only with proof showing by clear and
36 convincing evidence that awarding legal decision-making to a legal parent
37 is not consistent with the child's best interests.

38 C. Pursuant to section 25-402, subsection B, paragraph 2, a person
39 other than a legal parent may petition the superior court for visitation
40 with a child. The superior court may grant visitation rights during the
41 child's minority on a finding that the visitation is in the child's best
42 interests and that any of the following is true:

43 1. One of the legal parents is deceased or has been missing at
44 least three months. For the purposes of this paragraph, a parent is

1 considered to be missing if the parent's location has not been determined
2 and the parent has been reported as missing to a law enforcement agency.

3 2. The child was born out of wedlock and the child's legal parents
4 are not married to each other at the time the petition is filed.

5 3. For grandparent or great-grandparent visitation, the marriage of
6 the parents of the child has been dissolved for at least three months.

7 4. For in loco parentis visitation, **EITHER OF THE FOLLOWING:**

8 (a) A proceeding for dissolution of marriage or for legal
9 separation of the legal parents is pending at the time the petition is
10 filed.

11 (b) **THE MARRIAGE OF THE PARENTS OF THE CHILD HAS BEEN DISSOLVED FOR**
12 **AT LEAST THREE MONTHS.**

13 **5. THE PARENTAL RIGHTS OF ONE OF THE CHILD'S LEGAL PARENTS HAVE**
14 **BEEN TERMINATED.**

15 D. A petition filed under subsection A or C of this section must be
16 verified or supported by affidavit and must include detailed facts
17 supporting the petitioner's claim. The petitioner must also provide
18 notice of this proceeding, including a copy of the petition and any
19 affidavits or other attachments, and serve the notice pursuant to the
20 Arizona rules of family law procedure to all of the following:

21 1. The child's legal parents.

22 2. A third party who possesses legal decision-making authority over
23 the child or visitation rights.

24 3. The child's guardian or guardian ad litem.

25 4. A person or agency that possesses physical custody of the child
26 or claims legal decision-making authority or visitation rights concerning
27 the child.

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

30 E. In deciding whether to grant visitation to a third party, the
31 court shall give special weight to the legal parents' opinion of what
32 serves their child's best interests and consider all relevant factors,
33 including:

34 1. The historical relationship, if any, between the child and the
35 person seeking visitation.

36 2. The motivation of the requesting party seeking visitation.

37 3. The motivation of the person objecting to visitation.

38 4. The quantity of visitation time requested and the potential
39 adverse impact that visitation will have on the child's customary
40 activities.

41 5. If one or both of the child's parents are deceased, the benefit
42 in maintaining an extended family relationship.

43 F. If logistically possible and appropriate, the court shall order
44 visitation by a grandparent or great-grandparent if the child is residing

1 or spending time with the parent through whom the grandparent or
2 great-grandparent claims a right of access to the child.

3 G. A grandparent or great-grandparent seeking visitation rights
4 under this section shall petition in the same action in which the family
5 court previously decided legal decision-making and parenting time or, if
6 no such case existed, by separate petition in the county of the child's
7 home state, as defined in section 25-1002.

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

13 I. For the purposes of this section, a child who is adopted may be
14 treated as if born in lawful wedlock only if the child is adopted jointly
15 by parents who are married to one another as provided in section 8-103,
16 subsection A.