

# States Differ on

# RELOCATION

## A panorama of expanding case law

BY LINDA D. ELROD

**L**awyers and judges have noticed the increase in the number of custody disputes in which relocation is an issue. The reasons are many: the steady high-divorce rate; the number of joint-custody and shared-residency arrangements; the shifting job market; remarriages; and the mobility of today's society. See *Kaiser v. Kaiser*, 23 P.3d 278, 284 (Okla. 2001) (noting that:

Ours is an increasingly mobile society...approximately one American in five changes residences each year. Economic necessity and remarriage account for the bulk of relocations. Because of the ordinary needs for both parents after a marital dissolution to secure or retain employment, pursue educational or career opportunities, or reside in the same location as a new spouse or other family or friends, it is unrealistic to assume that *divorced* parents will permanently remain in the same location after dissolution or to exert pressure on them to do so.

The outcome of any given case will depend on the type of parenting arrangement that exists and the attitudes of the judge who hears the motion. Some states have a well-developed case law on relocation; other states have little.

Among the considerations will be:

- If the request is being made at the time of the initial decree, what standard is to be applied?
- If this is postdecree, are there restrictions by statute, court decree, or agreement of the parties?
- What is the parenting arrangement? Regardless of label, are the parents coparenting or does one parent have most of the responsibility?
- Does statute, decree, or agreement require notice of intent to move? If so, how much?
- Is an intent to move a change of circumstances sufficient to reopen the custody issue?
- Is there a statutory or judicial presumption for or against allowing a move?
- What standard will be applied? Best interests of the child or endangerment?
- How will the child's quality of life be affected?
- What opportunities are there for the nonmoving parent and the child to maintain a close relationship

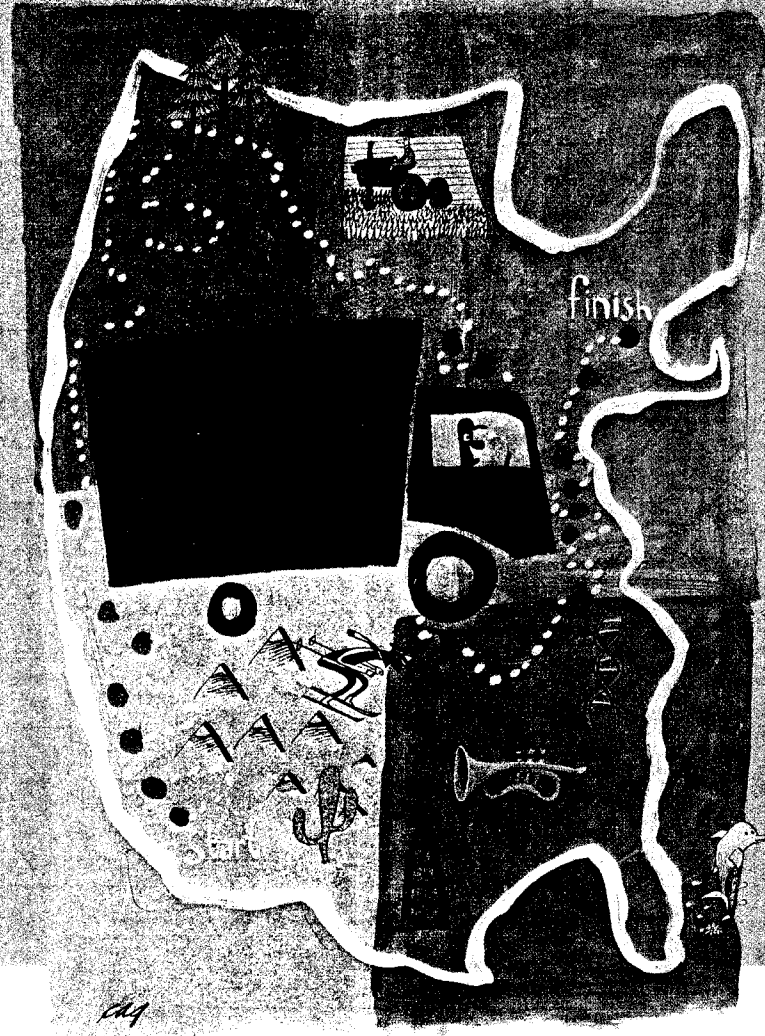
and how likely is the moving parent to comply with the new arrangement?

- Can the parties afford the new access arrangements?

Some courts balance the parents' fundamental right to the care, custody, and control of their children (*Troxel v. Granville*, 530 U.S. 57 (2000); *Santosky v. Kramer*, 455 U.S. 745 (1982), with the fundamental right of citizens of the United States to travel freely between states. *Shapiro v. Thompson*, 394 U.S. 618 (1969); *Jones v. Helms*, 452 U.S. 412 (1981); *Saenz v. Roe*, 526 U.S. 489 (1999), and the best interests of the child. See *In re Marriage of Ciesluk*, 113 P.3d 135 (Colo. 2005); *Braun v. Headley*, 750 A.2d 624 (Md. Ct. Spec. App. 2000), *cert. denied*; *Jaramillo v. Jaramillo*, 823 P.2d 299 (N.M. 1991). At least one court has indicated that changing a child's custody solely because the residential parent attempts to relocate infringes on the parent's right to travel. *Watt v. Watt*, 971 P.2d 608, 615-16 (Wyo. 1999), allowing mother to move 50 miles away to attend graduate school, stating:

[T]he right to travel enjoyed by a citizen carries with it the right of a custodial parent to have the children move with that parent. This right is not to be denied, impaired, or disparaged unless clear evidence before the court demonstrates another substantial and material change of circumstance and establishes the detrimental effect of the move upon the children.

If a parent wishes to move at the time of the initial custody proceeding, most courts use the same best interest of the child standard that applies in any custody dispute between fit parents. Linda D. Elrod, *Child Custody Practice and Procedure* § 4:35. See *Ford v. Ford*, 789 A.2d 1104, *cert. denied*, 796 A.2d 556 (Conn. 2002); *Stangel v. Stangel*, 355 N.W.2d 489, 490 (Minn. Ct. App. 1984), *rev. denied*; *Barney v. Barney*, 754 N.Y.S.2d 108 (App. Div. 2003); *Resor v. Resor*, 987 P.2d 146 (Wyo. 1999). The proposed relocation will be viewed as part of the best-interests analysis with one parent living in another jurisdiction. See *Ragghanti v. Reyes*, 20 Cal. Rptr. 3d 522 (Ct. App. 2004); *Davis v. Davis*, 588 S.E.2d 102 (S.C. 2003); *Pahl v. Pahl*, 87 P.3d 1250 (Wyo. 2004). The Colorado Supreme Court recently determined



**"Doesn't anybody stay in one place anymore...?"**

**— CAROLE KING**

that the court had no authority to dictate where either parent might live—the court could only take those parental choices as a given and fashion the best possible order based on the circumstances. *Spahmer v. Gullette*, 113 P.3d 158 (Colo. 2005).

Most cases, however, occur after the initial custody order. Several states have statutes requiring the moving parent to give notice to the other parent. These statutes vary as to when notice must be given, who is entitled to notice, the effect of notice, and the penalties for noncompliance. States generally use one of three basic approaches to dealing with relocation cases when the custodial or residential parent wishes to move.

**1. Relocation alone is not a change.** These states find that a proposed relocation alone is not a change in circumstances, resulting in a presumption in favor of relocation by the custodial or residential parent. *See Hollandsworth v. Kryzewski*, 109 S.W.3d 653, 657 (Ark. 2003); *Botterbusch v. Botterbusch*, 851 So. 2d 903 (Fla. Dist. Ct. App. 2003); *Evans v. Evans*, 530 S.E.2d 576 (N.C. 2000); *Latimer v. Farmer*, 602 S.E.2d 32 (S.C. 2004); *Watt v. Watt*, 971 P.2d 608, 616 (Wyo. 1999). *See also* Kan. Stat. Ann. 60-1604 (stating a proposed move *may be* a change).

**2. Relocation is a sufficient change for a hearing.** A move may be a material change of circumstances by statute (*see* Colo. Rev. Stat. Ann. § 14-10-129(2) (2004); Iowa Code Ann. § 598.21(8A) (2004); Me. Rev. Stat. Ann. tit. 19-A, § 1657 (2004); Mo. Ann. Stat. § 452.411 (2004)) or court decision, which requires a full hearing. *See Hamilton v. Hamilton*, 42 P.3d 1107, 1115 (Alaska 2002); *Fowler v. Sowers*, 151 S.W.3d 357 (Ky. Ct. App. 2004) (finding mother's proposed move to Alaska to be a change of circumstances); *In re Marriage of Syverson*, 931 P.2d 691 (Mont. 1997); *Gietzen v. Gietzen*, 575 N.W.2d 924 (N.D. 1998). If a hearing is held, the court may use shifting presumptions so the residential parent has the initial burden to show that the move is in good faith and is in the child's best interest; the burden then shifts to the nonresidential parent to show the move is not in the child's best interests. *See* N.H. Rev. Stat. Ann. § 458:23-a (2004).

**3. Relocation may be a change of circumstances, but both parents bear the burden of proving the child's best interests.** A move may be a change of circumstances, but the court uses no presumptions. Each party bears the burden of showing why being with him or her is in the child's best interests. *See* Fla. Stat. Ann. § 61.13 (2)(d) (2004) (no presumption shall arise in favor or against a relocation by primary residential parent); *In re Marriage of Ciesluk*, 113 P.3d 135 (Colo. 2005); *Fohey v. Knickerbocker*, 130 S.W.3d 730 (Mo. Ct. App. 2004). *See* Elrod, *Child Custody Practice and Procedure* § 17:28.

The following table on pages 10-11 gives the relevant state statute, the amount of notice required, whether the state appears to have a presumption for or against a move, and a representative case. **FA**



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# STATE Statutes *on* RELOCATION

STATE Statute	Notice	Presumption For/Against Relocation	Best Interests of Child Paramount	Recent or Significant Cases
<b>Alabama</b> ALA. CODE § 30-3-163	45 days	Against	X	Clements v. Clements, 906 So. 2d 952 (Ala. Civ. App. 2005)
<b>Alaska</b> ALASKA STAT. § 25.24.150			X	Chesser-Witmer v. Chesser, 117 P.3d 711 (Alaska 2005); Moeller-Prokosch v. Prokosch, 53 P.3d 152 (Alaska 2002)
<b>Arizona</b> ARIZ. REV. STAT. § 25-408	60 days	Burden on moving party	X	Woodworth v. Woodworth, 42 P.3d 610 (Ariz. App. 2002)
<b>Arkansas</b> ARK. CODE ANN. § 9-13-101		For	X	Hollandsworth v. Knyzewski, 109 S.W.3d 653 (Ark. 2003)
<b>California</b> CAL. FAM. CODE § 3406	45 days	For	X	
<b>Colorado</b> COLO. REV. STAT. ANN. § 14-10-129		Both parents must show BIOC	X	<i>In re</i> Marriage of Ciesluk, 113 P.3d 135 (Colo. 2005)
<b>Connecticut</b> CONN. GEN. STAT. ANN. § 46b-56		Initial burden on moving party	X	Brennan v. Brennan, 857 A.2d 927 (Conn. App. 2004)
<b>Delaware</b> 13 DEL. CODE §§ 728 & 729			X	Karen J.M. v. James W., 792 A.2d 1036 (Del. Fam. Ct. 2002)
<b>Florida</b> FLA. STAT. ANN. § 61.13(2)(d)			X	Jenson v. Jenson, 904 So. 2d 635 (Fla. Dist. Ct. App. 2005)
<b>Georgia</b> GA. CODE ANN. § 19-9-1	30 days		X	Hardin v. Hardin, 618 S.E.2d 169 (Ga. Ct. App. 2005)
<b>Hawaii</b> HAW. REV. STAT. § 571-46			X	Tetreault v. Tetreault, 55 P.3d 845 (Haw. Ct. App. 2002)
<b>Idaho</b> IDAHO CODE § 32-717		Initial burden on moving party	X	Weiland v. Ruppel, 75 P.3d 176 (Idaho 2003); Roberts v. Roberts, 64 P.3d 327 (Idaho 2003)
<b>Illinois</b> 750 ILL. COMP. STAT. ANN. § 5/609		Burden on party seeking modification	X	<i>In re</i> Marriage of Johnson, 815 N.E.2d 1283 (Ill. App. Ct. 2004)
<b>Indiana</b> IND. CODE ANN. § 31-17-2-23		Burden on noncustodial party	X	Bettencourt v. Ford, 822 N.E.2d 989 (Ind. Ct. App. 2005)
<b>Iowa</b> IOWA CODE ANN. § 598.21D		Burden on party seeking modification		<i>In re</i> Marriage of Theilges, 623 N.W.2d 232 (Iowa Ct. App. 2000)
<b>Kansas</b> KAN. STAT. ANN. § 60-1620	30 days		X	<i>In re</i> Marriage of Whipp, 962 P.2d 1058 (Kan. 1998)
<b>Kentucky</b> KY. REV. STAT. ANN. § 403.340		Burden on party seeking modification	X	Fowler v. Sowers, 151 S.W.3d 357 (Ky. Ct. App. 2004)
<b>Louisiana</b> LA. REV. STAT. ANN. § 9.355.1-17	60 days	Burden on moving party Presumption against	X	Peacock v. Peacock, 903 So. 2d 506 (La. Ct. App. 2005)
<b>Maine</b> ME. REV. STAT. ANN. tit. 19-A, §§ 1653 (14) & 1657	30 days	Burden on moving party	X	Fraser v. Boyer, 722 A.2d 354 (Me. 1998)
<b>Maryland</b> MD. CODE ANN., Family Law § 9-106		Burden on nonmoving party		Braun v. Headley, 750 A.2d 624 (Md. Ct. Spec. App. 2000)
<b>Massachusetts</b> MASS. GEN. LAWS ANN. ch. 208, § 30		"Upon cause shown" custodial parent may relocate	X	D.C. v. J.S., 790 N.E.2d 686 (Mass. App. Ct. 2003)
<b>Michigan</b> MICH. COMP. LAWS ANN. § 722.31		Burden on moving party if objected to	X	Grew v. Knox, 694 N.W.2d 772 (Mich. Ct. App. 2005)
<b>Minnesota</b> MINN. STAT. ANN. § 518.18(d)		Presumption for		<i>In re</i> Marriage of Geiger, 470 N.W.2d 704 (Minn. Ct. App. 1991); Auge v. Auge, 665 N.E.2d 145 (Minn. 1983)
<b>Mississippi</b> MISS. CODE ANN. § 93-5-23		Burden on party seeking modification	X	Lambert v. Lambert, 872 So. 2d 679 (Miss. Ct. App. 2004)

STATE Statute	Notice	Presumption For/Against Relocation	Best Interests of Child Paramount	Recent or Significant Cases
<b>Missouri</b> MO. ANN. STAT. § 452.377	60 days	Burden on moving party	X	Baxley v. Jarred, 91 S.W.3d 192 (Mo. Ct. App. 2002)
<b>Montana</b> MONT. CODE ANN. § 40-4-217	30 days	X		<i>In re</i> Marriage of Robison, 53 P.3d 1279 (Mont. 2002)
<b>Nebraska</b>		Shifting burden	X	Wild v. Wild, 647 N.W.2d 577 (Neb. 2005)
<b>Nevada</b> NEV. REV. STAT. § 125C.200		Burden on moving party	X	Potter v. Potter, 121 Nev. Adv. Rep. 60 (2005)
<b>New Hampshire</b> N.H. REV. STAT. ANN. § 458:23-a	60 days	Shifting burden; Initially on moving parent; shifts to NCP to prove not BIOC	X	<i>In re</i> Pfeuffer, 837 A.2d 311 (N.H. 2003)
<b>New Jersey</b> N.J. STAT. ANN. § 9:2-2		Burden on moving party		Baures v. Lewis, 770 A.2d 214 (N.J. 2001)
<b>New Mexico</b> N.M. STAT. ANN. § 40-4-9.1	30 days	Burden on moving party	X	Jaramillo v. Jaramillo, 823 P.2d 299 (N.M. 1991)
<b>New York</b> McKinney's DRL § 240, C240:25			X	Vega v. Pollack, 800 N.Y.S.2d 442 (App. Div. 2005); Tropea v. Tropea, 665 N.E.2d 146 (N.Y. 1996)
<b>North Carolina</b> N.C. GEN. STAT. ANN. § 50-13.2			X	Evans v. Evans, 530 S.E.2d 576 (N.C. 2000)
<b>North Dakota</b> N.D. CENT. CODE ANN. § 14-09-07	45 days	Burden on moving party	X	Schmidt v. Bakke, 691 N.W.2d 239 (SD 2005)
<b>Ohio</b> OHIO REV. CODE ANN. § 3109.04		Initial burden on moving party	X	Quint v. Lomakoski, 2005 Ohio 4603, 2005 Ohio App. LEXIS 4152 (Ohio Ct. App. Sept 2, 2005)
<b>Oklahoma</b> OKLA. STAT. ANN. tit. 10 § 19	60 days	For		Casey v. Casey, 58 P.3d 763 (Okla. 2003)
<b>Oregon</b> OR. REV. STAT. ANN. § 107.159			X	<i>In re</i> Marriage of Colson & Piel, 51 P.3d 607 (Or. Ct. App. 2002)
<b>Pennsylvania</b> 23 PA. CONS. STAT. ANN. § 5303		Initial burden on moving parent	X	Billhime v. Billhime, 869 A.2d 1031 (Pa. Super. Ct. 2005); Gruber v. Gruber, 583 A.2d 434 (Pa. Super. Ct. 1990)
<b>Rhode Island</b> R.I. GEN. LAWS ANN. § 15-5-16			X	Dupre v. Dupre, 857 A.2d 242 (R.I. 2004)
<b>South Carolina</b> S.C. CODE ANN. § 20-3-160	45 days	Against	X	Latimer v. Farmer, 602 S.E.2d 32 (S.C. 2004)
<b>South Dakota</b> S.D. CODIFIED LAWS § 25-5-13	45 days	For	X	Fossum v. Fossum, 545 N.W.2d 828 (S.D. 1996)
<b>Tennessee</b> TENN. CODE ANN. § 36-6-108	60 days	Depends on custodial parent's time w/child	X	Robinson v. Robinson, 2005 Tenn. App. LEXIS 383 (Tenn. Ct. App. 2005); Price v. Bright, 2005 Tenn. App. LEXIS 40 (Tenn. Ct. App. 2005)
<b>Texas</b> TEX. FAM. CODE § 156.101		Burden on moving parent	X	Echols v. Olivarez, 85 S.W.3d 475 (Tex. App. 2002); Bates v. Tesar, 81 S.W.3d 411 (Tex. App. 2002)
<b>Utah</b> UTAH CODE ANN. § 30-3-37	60 days			
<b>Vermont</b> VT. STAT. ANN. tit. 15, § 668		Burden on noncustodial party	X	Hawkes v. Spence, 878 A.2d 273 (Vt. 2005); Lacaille v. Hardaker, 878 A.2d 273 (Vt. 2005)
<b>Virginia</b> VA. CODE ANN. § 20-124.5	30 days			Riggins v. O'Brien, 538 S.E.2d 320 (Va. Ct. App. 2000)
<b>Washington</b> WASH. REV. CODE ANN. § 26.09.520		For	X	Ramirez v. Holland, 93 P.3d 951 (Wash. Ct. App. 2004); <i>In re</i> Marriage of Horner, 93 P.3d 124 (Wash. 2004)
<b>West Virginia</b> W. VA. CODE § 48-9-403	60 days		X	Cunningham v. Cunningham, 423 S.E.2d 638 (W. Va. 1992)
<b>Wisconsin</b> WIS. STAT. ANN. § 767.327	60 days	Rebuttable presumption for		Hughes v. Hughes, 588 N.W.2d 823 (Wis. Ct. App. 1998)
<b>Wyoming</b> WYO. STAT. ANN. § 20-2-204(c)		For	X	Harshberger v. Harshberger, 117 P.3d 1244 (Wyo. 2005)