

# A Move in the Right Direction? Best Interests of the Child Emerging as the Standard for Relocation Cases

Linda D. Elrod

**SUMMARY.** Relocation cases have become more common in our increasingly mobile society. After a divorce the parent with primary residential custody of a minor child may seek to move to a new location for a new partner, spouse, job, or family. The nonmoving parent objects and the courts have to decide whether to allow the child to move. This article explores the various legal approaches taken by American courts in trying to solve these difficult custody cases. While some courts presume it is not in the best interests of a child to move, others presume that it is. The majority trend, however, appears to be toward a best interests of the child standard with no presumptions. doi:10.1300/J190v03n03\_03 [Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <docdelivery@haworthpress.com> Website: <<http://www.HaworthPress.com>> © 2006 by The Haworth Press, Inc. All rights reserved.]

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Portions of this article were taken from the author's manuscript for *A Lawyer's Guide to Handling Relocation Cases* (forthcoming ABA 2007). The chart is updated from Linda D. Elrod, *States Differ on Relocation: A Panorama of Expanding Case Law*, 28 (4) FAM. ADVOC. 8, 10-11 (2006).

[Haworth co-indexing entry note]: "A Move in the Right Direction? Best Interests of the Child Emerging as the Standard for Relocation Cases." Elrod, Linda D. Co-published simultaneously in *Journal of Child Custody* (The Haworth Press, Inc.) Vol. 3, No. 3/4, 2006, pp. 29-61; and: *Relocation Issues in Child Custody Cases* (ed: Philip M. Stahl, and Leslie M. Drozd) The Haworth Press, Inc., 2006, pp. 29-61. Single or multiple copies of this article are available for a fee from The Haworth Document Delivery Service [1-800-HAWORTH, 9:00 a.m. - 5:00 p.m. (EST). E-mail address: [docdelivery@haworthpress.com](mailto:docdelivery@haworthpress.com)].

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doi:10.1300/J190v03n03\_03

**KEYWORDS.** Relocation, change of circumstances, move away, best interests of the child, stability

*Across the country, applicable standards remain distressingly disparate.<sup>1</sup>*

Relocation cases “present some of knottiest and most disturbing problems.”<sup>2</sup> In the past ten years, the number of relocation cases has grown on trial and appellate court dockets as parents try to move themselves and their children across town, the country and even the world. Census data reveals that almost one half of Americans move in a five year period with an estimated one-fourth of custodial<sup>3</sup> mothers moving within four years of a divorce. The reasons for moving are as varied as the people—remarriage, corporate downsizing, job transfers, extended families, educational opportunities, or to put distance between an ex-spouse or partner. As early as 1992, one reporter summarized the problem as follows:

The pain of divorce wears new guises. . . . The simultaneous rise of the dual-career couple and the divorce rate in recent years has created crises for an unprecedented number of American parents and children. . . . Joint custody or visitation rights, difficult at best, can become a major problem when one parent is transferred or takes a job far away and the other is unable or unwilling to move, too. . . . So people with careers they care about are torn between staying close to their kids and working where the opportunity is. The options all have drawbacks. Children are shuttled hundreds of miles back and forth between parents. A distant parent fades from the children’s lives. A parent rejects a move in order to stay near the child and rues the sacrifice of career objectives.<sup>4</sup>

The relocation of the primary residential parent will fundamentally alter the child’s existing relationships and environment, including physical residence, school, and community. At the least, the parents or the court will have to adjust the existing parenting schedule. At the most, the nonmoving parent may seek, and sometimes receive, primary residential custody. Legislative and court approaches to parental requests for relocation vary from state to state. Uniformity is woefully lacking. In 1990, the Pennsylvania Supreme Court observed, “Our research has failed to reveal a consistent, universally accepted approach to the ques-

tion of when a custodial parent may relocate out-of-state over the objection of the non-custodial parent. . . .”<sup>5</sup>

Sixteen years, and hundreds of cases later, confusion and controversy remain over what are, and what should be, the legal standards to apply when a parent seeks to move away with a minor child. As the New Jersey Supreme Court observed in a relocation case:

. . . there is a clash between the custodial parent’s interest in self-determination and the noncustodial parent’s interest in the companionship of the child. There is rarely an easy answer or even an entirely satisfactory one . . . If the removal is denied, the custodial parent may be embittered by the assault on his or her autonomy. If it is granted, the noncustodial parent may live with the abiding belief that his or her connection to the child has been lost forever.<sup>6</sup>

Among the complex issues that need to be faced are the constitutional rights of both parents and children and whether the same standards used to modify existing custodial and residency arrangements should be applied in relocation cases. Courts and legislatures have experimented with burdens of proof, presumptions for and against relocation, and have developed lists of factors. The American Law Institute has developed principles which include a relocation provision<sup>7</sup> and the American Academy of Matrimonial Lawyers has developed standards for relocation cases.<sup>8</sup>

This article explores the constitutional issues raised by relocation cases; the use of geographical restrictions in initial custody orders; and provides an overview of the patchwork of statutory and court-made standards, presumptions and burdens applicable throughout the country. The article concludes that the current movement appears to be away from presumptions and towards applying a best-interests-of-the-child analysis using a variety of factors in relocation cases.

### ***THE CONSTITUTION AND RELOCATION***

The United States Supreme Court has recognized at least two fundamental rights that may compete in a relocation case. First, parents have a fundamental right to the care, custody and control of their children.<sup>9</sup> As between fit parents who are divorcing or do not live together, courts award custody and make residential provisions based on the “best inter-

est” of the child.<sup>10</sup> The second fundamental right is the right of citizens of the United States to travel freely between the states.<sup>11</sup> A citizen’s right to travel encompasses the right to migrate, resettle, find a new job and start a new life. The right to travel can be infringed upon only if there exists a compelling state interest.<sup>12</sup> Changing a child’s custody solely because the residential parent attempts to relocate would appear to infringe on the parent’s right to travel. The Wyoming Supreme Court stated:

...[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.<sup>13</sup>

Finding that neither the rights of a parent nor the duty of state courts to adjudicate custody justified restricting the right to travel under the United States and Wyoming Constitutions, the Wyoming Supreme Court found that a proposed relocation could not be a change of circumstances by itself to allow a court to reconsider a custodial placement.<sup>14</sup> The necessity for the nonmoving parent to prove a substantial change or circumstances *and* to prove that the move will have a detrimental effect on the child makes it easier for a custodial parent to move.

A couple of courts have avoided the constitutional argument by disingenuously finding that the parent is free to travel, but without the child.<sup>15</sup> The reality is that the “threat of losing custody makes the right to travel meaningless for many custodial parents who will not leave even in the face of few job prospects or a spouse living elsewhere.”<sup>16</sup> The nonresidential parent’s right to travel remains as no court approval is needed. One court found that a parent voluntarily waives the constitutional right to travel by agreeing to a geographical restriction.<sup>17</sup>

Minnesota elevates the child’s welfare to a compelling state interest, thereby eliminating the need to balance the parents’ competing constitutional rights. Therefore, the best interests of the child will trump the parents’ right to travel.<sup>18</sup> However, the Colorado Supreme Court explicitly rejected this view, finding that “in the absence of demonstrated harm to the child, the best interests of the child standard is insufficient to serve as a compelling state interest overruling the parents’ fundamental rights.”<sup>19</sup> The Court noted:

. . . from a practical standpoint, adopting the best interests of the child as a compelling state interest to the exclusion of balancing the parents' rights could potentially make divorced parents captives of Colorado. This is because a parent's ability to relocate would become subject to the changing views of social scientists and other experts who hold strong, but conflicting, philosophical positions as to the theoretical "best interests of the child."<sup>20</sup>

The Colorado Supreme Court chose to adopt the view of the courts in Maryland<sup>21</sup> and New Mexico<sup>22</sup> that places the burden equally on both parents to demonstrate under the state's statutory factors what is in the child's best interest.<sup>23</sup> The court must promote the best interests of the child while affording protection equally between the majority time parent's right to travel and the minority time parent's right to parent.<sup>24</sup>

### ***INITIAL ORDERS AND GEOGRAPHICAL RESTRICTIONS***

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 used in any custody dispute between fit parents.<sup>25</sup> The proposed relocation will be viewed as part of the best interests analysis with one parent living in another jurisdiction.<sup>26</sup>

Even if a move is not contemplated, some courts have inserted geographical restrictions in either the initial or a modified custody order.<sup>27</sup> Most parents determine their own parenting plan by a mediated or negotiated agreement, many of which contain geographical restrictions. Several states presume that the parents' agreement is in the best interests of the child.<sup>28</sup> The Arizona statute illustrates this:

The court shall not deviate from a provision of any parenting plan or other written agreement by which the parents specifically have agreed to allow or prohibit relocation of the child unless the court finds that the provision is no longer in the child's best interests. There is a rebuttable presumption that a provision from any parenting plan or other written agreement is in the child's best interests.<sup>29</sup>

Based on the circumstances, however, a court may find that an agreement containing a provision to remain in one community is contrary to the best interest of a particular child.<sup>30</sup> Several appellate courts have dis-

approved of self-executing geographical restrictions, i.e., those that provide for an automatic change of custody to the nonmoving parent if the restriction is violated.<sup>31</sup> These self-executing provisions amount to improper speculation concerning the possibility of future changed circumstances and are unenforceable.<sup>32</sup> As in other instances, the judge has the power to act to protect the best interests of the child, irrespective of the parties' stipulations.

### ***POST-DECREE RELOCATION***

The vast majority of relocation cases occur following an initial custody order. Before the enactment of the Uniform Child Custody Jurisdiction Act (UCCJA), the fear of losing jurisdiction caused many courts to deny relocations without the noncustodial parent's consent or without a showing of extraordinary circumstances.<sup>33</sup> The Parental Kidnapping Prevention Act, and the Uniform Child Custody Jurisdiction and Enforcement Act, now in 45 jurisdictions, use the concept of continuing exclusive jurisdiction which clarifies that jurisdiction remains in the decree state as long as one parent remains in the state and there is a basis for jurisdiction under the state's law. Therefore, the fear of loss of jurisdiction is no longer a factor in most relocation cases.

The typical case begins with the residential parent filing a motion for permission to relocate. Some cases, however, start when the nonmoving parent learns of the move, either by letter or official notice required by statute, and files a motion to modify the existing order. States vary as to the requirements that a moving parent must take and as to which parent bears the burden of proof. Some courts use the same standards for an intrastate and interstate move.<sup>34</sup>

#### ***Notice Requirements***

Since 1990, several states have enacted statutes requiring notice of an intent to move if the nonresidential parent does not consent. These statutes vary on when notice must be given, who is entitled to notice, the effect of notice and the penalties for noncompliance. In some states, notice is to be given not only to parents but also to others with court-ordered access, such as grandparents. Notice may not be required if the nonmoving parent has been convicted of any crime in which the child is the victim or if the reason for the move is fear of domestic violence. Times vary from "reasonable" to a specific number of days.<sup>35</sup> The

*AAML Standards* and *ALI Principles*, as well as several state statutes, require 60 days notice.<sup>36</sup> Some states require notice for any move.<sup>37</sup> In other states, parents need only give notice if the parent is moving out of state or a certain geographical distance.<sup>38</sup>

Many statutes leave the contents of the notice to local practice. The *ALI Principles* require the notice to include:

- a. the intended date of the relocation;
- b. the address of the intended new residence;
- c. the specific reasons for the intended relocation; and
- d. a proposal for how custodial responsibility should be modified, if necessary, in light of the intended move.<sup>39</sup>

The requirement for notice does not necessarily mean that the move is a change of circumstances.<sup>40</sup> It may, however, mean that the court will allow a hearing if the nonrelocating parent objects to the move. The failure to give notice may be relevant.<sup>41</sup> Generally, if the nonrelocating parent does not object within a certain time after receiving notice, the statute may allow the relocation without a return to the court.

### ***Presumptions and Burdens of Proof***

Most relocation cases require modifications to an original order. In most states, to encourage stability for the child, there is a presumption that the original order should stay in effect. A parent wishing to modify an existing custody order has the initial burden of showing that a material or substantial change of circumstances has occurred since the original decree that justifies a hearing on whether the child's custody should be changed.<sup>42</sup> If a hearing is granted, the person seeking modification must show that a change of the current arrangements is in the child's best interest. A few states use a variation of the Uniform Marriage and Divorce Act "endangerment" standard which requires a showing that "the child's present environment may endanger seriously his physical, mental, moral, or emotional health" before custody may be modified.<sup>43</sup>

Relocation cases in some states are handled as are other modification cases. In other states, there are either different or additional standards for relocation cases. There are basically three approaches:

1. a move alone is not a change in circumstances, resulting in a presumption in favor of relocation by the custodial or residential parent;

2. a move may be change of circumstances and the court may use shifting presumptions so the custodial or residential parent has the initial burden to show good faith and the move is in the child's best interest, then the burden shifts to the nonresidential parent to show the move is not in the child's best interests; and
3. no presumptions, where each party bears the burden of showing why the child's best interests is to be with one of them.

Jurisdictions are split as to whether the custodial parent's proposal to relocate is sufficient by itself to constitute a material change in circumstances that warrants a hearing on the best interests of the child. Whether the proposed move is a change of circumstances affects the burden of proof. If the relocation is not a change in circumstances, then the presumption is that the custodial parent can move. If the move is a change of circumstances, then both parents must put on evidence showing why the move is, or is not, in the child's best interests.

#### *Not a Change of Circumstances—Presumption for Relocation*

Several courts have found that the relocation of the primary residential parent does not necessarily constitute a change in circumstances.<sup>44</sup> These jurisdictions favor the child's stability (emotional as opposed to geographical) in the primary custodial relationship.<sup>45</sup> For example, the Oklahoma Supreme Court stated:

In a relocation case the noncustodial parent seeking to restrain the custodial parent from moving must meet the heavy burden to show that circumstances justify reopening the question of "custody."<sup>46</sup>

Some states find there no change of circumstances if the move is within the same state.<sup>47</sup> Most courts that do not find the proposed relocation itself to be a change of circumstances create a presumption which favors the moving parent. These courts give the residential parent the right to make decisions as to residence and put the burden on the nonmoving parent to show harm.<sup>48</sup> For example, the Arkansas Supreme Court stated:

. . . [T]oday, we hold that relocation alone is not a material change in circumstance. We pronounce a presumption in favor of relocation for custodial parents with primary custody. The noncustodial parent should have the burden to rebut the relocation presumption.

The custodial parent no longer has the obligation to prove a real advantage to herself or himself and to the children in relocating.<sup>49</sup>

Other states appear to have a presumption in favor of allowing a custodial parent to move either by statute<sup>50</sup> or by case law.<sup>51</sup> Such a presumption reduces litigation because it makes contesting a move more difficult. Only those nonresidential parents who are actively involved in the child's day to day life or have shared custody may feel they have enough evidence to overcome the presumption.

The *ALI Principles* favor relocation. The relocation of a parent constitutes a substantial change in circumstances only when the relocation significantly impairs either parent's ability to exercise responsibilities the parent has been exercising or attempting to exercise under the parenting plan. Even if the relocation constitutes a change of circumstances, the ALI would allow the parent who has been exercising the clear majority of custodial responsibility to relocate with the child if that parent shows that the relocation is for a valid purpose, in good faith, and to a location that is reasonable in light of the purpose.<sup>52</sup>

In the much publicized *Burgess* case,<sup>53</sup> the California Supreme Court allowed a mother to move forty miles away so she would not have to commute to her job and found that the statute stressing the importance of frequent contact with both parents did not require the court to impose a burden of proof on those wishing to relocate or alter its best interest analysis. In the more recent *LaMusga* case, the California Supreme Court reiterated that if there is an existing order, "a change of custody is not justified simply because the custodial parent has chosen, for any sound good faith reason, to reside in a different location, but only if, as a result of relocation . . . the child will suffer detriment. . . ."<sup>54</sup> The Court, however, went on to note:

. . . the noncustodial parent bears the initial burden of showing that the proposed relocation of the children's residence would cause detriment to the children, requiring a reevaluation of the children's custody. The likely impact of the proposed move on the noncustodial parent's relationship with the children is a relevant factor in determining whether the move would cause detriment to the children and, when considered in light of all of the relevant factors, may be sufficient to justify a change in custody. If the noncustodial parent makes such an initial showing of detriment, the court must perform the delicate and difficult task of determining whether a change in custody is in the best interests of the children.<sup>55</sup>

Therefore, while the relocation alone may not be a sufficient change of circumstances, a showing of harm to the children's relationship with the nonmoving parent may be a sufficient change in circumstances to allow a review of the children's best interests.<sup>56</sup> The California Supreme Court in *LaMusga* indicated that there may be additional factors which will make the proposed relocation a sufficient change to conduct an evidentiary hearing:

. . . [T]he likely consequences of a proposed change in the residence of a child, when considered in the light of all the relevant factors, may constitute a change of circumstances that warrants a change in custody, and the detriment to the child's relationship with the noncustodial parent that will be caused by the proposed move, when considered in light of all the relevant factors, may warrant denying a request to change the child's residence or changing custody.<sup>57</sup>

#### *Relocation Alone a Change in Circumstances*

In some states, either statutes<sup>58</sup> or judges require that the relocation of the custodial parent constitutes a material change in circumstances which requires a full evidentiary hearing.<sup>59</sup> If a hearing is held, most states require the relocating parent to initially bear the burden of proving that the proposed relocation is made in good faith (there is a legitimate reason for the move) and that it is in the child's best interests to continue living with him or her.<sup>60</sup> The burden then shifts to the nonmoving parent to show that the proposed relocation is not in the best interest of the child.<sup>61</sup> The New Hampshire statute illustrates this approach:

- V. The parent seeking permission to relocate bears the initial burden of demonstrating, by a preponderance of the evidence, that:
  - (a) The relocation is for a legitimate purpose; and
  - (b) The proposed location is reasonable in light of that purpose.
- VI. If the burden of proof . . . is met, the burden shifts to the other parent to prove, by a preponderance of the evidence, that the proposed relocation is not in the best interest of the child.<sup>62</sup>

The shifting burden of proof looks at the reality that the court has already entrusted the care of the child to one of the parents who makes the day to day decisions. If the relocating parent can show a good faith reason for the move, the non-custodial parent then has the burden of showing (with concrete, material reasons) why relocation is not in the child's best interest.<sup>63</sup>

Courts are more likely to find that a proposed relocation is a material change of circumstances in a true shared physical custody situation. If both parents are involved in the day to day care of the child, either the parents or the court will need to fashion a new parenting schedule.<sup>64</sup> The label attached to the custody/residency arrangement is less important than the actual parenting that is happening. Where the parents truly share both legal and physical custody, an application by one parent to relocate with the child to an out-of-state location is analyzed as an application for a change of custody.<sup>65</sup> Among the things that courts look at to determine if parents are sharing "primary custodial responsibilities" are (1) transporting the child to and from school; (2) attending the child's school activities and sporting events; (3) helping the child with homework; (4) preparing the child's meals; (5) caring for the child overnight; and (6) attending to the child's medical needs.<sup>66</sup>

#### *No Presumption Either Way*

The trend, however, is away from presumptions and toward using a best interests test.<sup>67</sup> Some courts handle relocation cases in cases in which the parents share custody, discussed *supra*, as initial custody orders, using the best interests rules, rather than requiring a change of circumstances.<sup>68</sup> In overturning the stringent standard requiring a custodial parent to show "exceptional circumstances" for a move, the New York Court of Appeals stated:

It serves neither the interest of the children nor the needs of justice to view relocation cases through the prisms of presumptions and threshold tests that artificially skew the analysis in favor of one outcome or the other.<sup>69</sup>

In Georgia, the Supreme Court, in changing from a presumption in favor of relocation to the best interest standard, stated:

[T]he primary consideration of the trial court in deciding custody matters must be directed to the best interests of the child involved

. . . any determination of the best interests of the child must be made on a case-by-case basis. This analysis forbids the presumption that a relocating custodial parent will always lose custody and, conversely, forbids any presumption in favor of relocation.<sup>70</sup>

Recently, the Colorado Supreme Court stated:

. . . each parent has the burden to persuade the court that the relocation of the child will be in or contrary to the child's best interests, or that the parenting plan he or she proposes should be adopted by the court. The focus of the court, however, should be the best interests of the child. The court may decide that it is not in the best interests of the child to relocate with the majority time parent. Then, if the majority time parent still wishes to relocate, a new parenting time plan will be necessary.

Alternatively, the court may decide that it is in the best interests of the child to relocate with the majority time parent. In that situation, the court must fashion a parenting time plan which protects the constitutional right of the minority time parent to care for and control the child. In either event, the court must thoroughly disclose the reasons for its decision and make specific findings with respect to each of the statutory factors.<sup>71</sup>

These cases, and others represent a clear trend toward using a case specific, fact sensitive, best interest analysis in every case.

#### ***FACTORS IN EVALUATING MOVE IN CHILD'S BEST INTEREST***

*. . . Sensitive case-by-case balancing is required to ensure that all interests—both parents' and children's are treated as equitably as possible.*<sup>72</sup>

As in other custody determinations between fit parents, the best interest of the child is not always clear.<sup>73</sup> Some state legislatures and courts have developed lists of factors for the court to consider in evaluating the child's best interests in custody cases; others have lists specific to relocation. Unfortunately, most statutes have no weight assigned to the importance of the factors. If the best interest of the child is truly the standard, then the focus should be on the individual child's age and de-

velopmental, physical, emotional, spiritual and educational needs. The judge then must evaluate if the child's needs are being met by an individual, such as the primary caregiver, by both parents, or by the larger community. However, many of the factors stress "parent" considerations such as the distance, cost and difficulty of visitation.

### ***Statutory Factors***

Statutory factors vary from state to state but contain many similarities. Louisiana enacted the factors developed by the American Academy of Matrimonial Lawyers which are among the most child-focused. These factors require consideration of:

- A. (1) The nature, quality, extent of involvement, and duration of the child's relationship with the person proposing to relocate and with the nonrelocating person, siblings, and other significant persons in the child's life;
- (2) The age, developmental stage, needs of the child, and likely impact of relocation on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;
- (3) The feasibility of preserving the relationship between the nonrelocating person and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties;
- (4) The child's preference, taking into consideration the age and maturity of the child;
- (5) Whether the person seeking relocation has an established pattern of conduct promoting or thwarting the nonrelocating person's relationship with the child;
- (6) Whether the relocation will enhance the general quality of life for both the custodial party seeking relocation and the child, including but not limited to financial or emotional benefit or educational opportunity;
- (7) The reasons each person seeks or opposes relocation; and
- (8) Any other factor affecting the best interest of the child.
- B. The court may not consider whether or not the person seeking relocation of the child will relocate without the child if relocation is denied or whether or not the person opposing relocation will also relocate if relocation is allowed.<sup>74</sup>

Colorado amended its statute in 2001 to require a court to consider twenty-one factors: those used to make the initial best interests determination, plus nine additional factors particularly relevant to relocation.<sup>75</sup> Several other states have lists of factors.<sup>76</sup>

### ***Court Enumerated Factors***

In the absence of a statute specifically tailored to relocation, appellate courts have set out factors to help trial judges evaluate the child's best interest in move away cases. A summary laundry list of the various factors that courts consider are:

1. The prospective advantages of the move in improving the moving parent's and the child's quality of life;
2. The integrity of the moving parent's motive for relocation, considering whether it is to defeat or deter visitation by the non-moving parent;
3. The integrity of the nonmoving parent's motives for opposing the move;
4. Whether there is a realistic opportunity for visitation which can provide an adequate basis for preserving and fostering the nonmoving parent's relationship with the child, and the likelihood that each parent will comply with such alternate visitation;
5. What was contemplated by the parties and the court at the time the original orders were entered;
6. The history of the relationship of the child and each party;
7. The input from the attorney for the minor child;
8. The family relations report;
9. The cost of visitation, considering the distance between the two cities, the cost of travel, and the ease of travel;
10. The impact of relocation on the child and the chance for improving the child's quality of life:
  - a. Emotional, physical and developmental needs of the children;
  - b. the children's opinion or preference as to where to live;
  - c. the extent to which the moving parent's income or employment will be enhanced;
  - d. the degree to which housing or living conditions would be improved;
  - e. the existence of educational, health and leisure opportunities at least equivalent to existing ones;

- f. the quality of the relationship between the children and each parent;
- g. the strength of the children's ties to the present community and extended family there;
- h. the likelihood that allowing or denying the move would antagonize hostilities between the two parties;
- i. any special needs or talents of the child that require accommodation and whether it is available in the new location;
- j. whether the child is a senior year in high school and should not which be moved until graduation without his or her consent; and
- k. any other factor bearing on the child's interest.<sup>77</sup>

### ***Using the Factors to Find the Best Interests of the Child***

*. . . Usually, in relocation cases, there is no good or right answer, especially for the child.*<sup>78</sup>

Although numerous factors are found in the statutes and cases, trial judges seem to concentrate on three major factors: the reasons for and against the move; whether the move will enhance the child's quality of life; and the availability of realistic substitute visitation schedule to maintain a relationship with the nonmoving parent. Several states have noted that when analyzing a situation in which one parent seeks to relocate with the minor children, the paramount need for continuity and stability in custody arrangements, and the harm that may result from disruption of established patterns of care and emotional bonds with the primary caretaker, weigh heavily in favor of maintaining ongoing custody arrangements. On the other hand, the attachment between the child and the non-relocating parent also will be an important consideration.<sup>79</sup>

### ***Motives Matter***

Courts have approved a number of reasons as valid for moving, with most relating to starting a new life and improving the overall economic condition of the custodial parent and the child.<sup>80</sup> The *ALI Principles* set out the following as valid reasons for a move:

- (1) to be close to significant family or other sources of support, (2) to address significant health problems, (3) to protect the safety of the child or another member of the child's household from a signifi-

cant risk of harm, (4) to pursue a significant employment or educational opportunity, (5) to be with one's spouse or domestic partner who lives in, or is pursuing a significant employment or educational opportunity in, the new location, (6) to significantly improve the family's quality of life. The relocating parent should have the burden of proving the validity of any other purpose. . . . The court should find that a move for a valid purpose is reasonable unless its purpose is shown to be substantially achievable without moving, or by moving to a location that is substantially less disruptive of the other parent's relationship to the child.<sup>81</sup>

These ALI reasons have been cited with approval in Rhode Island,<sup>82</sup> Vermont,<sup>83</sup> and West Virginia.<sup>84</sup>

Most courts have been sympathetic to a residential parent who wants to move because either the parent or a new spouse is being transferred, is getting a promotion or has better job opportunities.<sup>85</sup> A parent who is moving to take a new job may be required to show that he or she at the very least applied for a job or seriously looked for one in the area.<sup>86</sup> On the other hand, the parent is not required to apply for every job that might be available in the state if the parent has made a reasonable search.<sup>87</sup> Just because a parent has remarried or has a higher paying job offer does not ensure that the request to move will be allowed.<sup>88</sup>

Most often, there is not just one motive for the move, but several. For example, one mother wanted to move with a three year old because she was going to remarry, the new location had a lower cost of living than California, she would be able to stay home to care for the child, and she had family there.<sup>89</sup> Some courts have found a valid reason in the custodial parent's desire to move to an area in closer proximity to relatives<sup>90</sup> or to advance one's education.<sup>91</sup> However, a Nevada court denied a mother's request to move where she could obtain the same degree from the same college without relocating through either Internet classes, audio and video classes, or live classes through the college's extension campus.<sup>92</sup>

Courts have found the custodial parent's reasons inadequate when they seem to be not concrete or to frustrate the nonresidential parent's visitation. In the absence of abuse, the desire of one parent to distance the child from the other parent certainly will not be a sufficient reason.<sup>93</sup> For example, when a mother wanted to move from California to Florida to explore the possibility of a job as a parapsychologist, the court found the reason really to be to thwart the father's visitation.<sup>94</sup> A parent who "thinks" that the environment in another location may be better for their health may find the court rejecting the relocation for that reason.<sup>95</sup>

Courts have not been sympathetic to parents who unilaterally act in taking the children from the jurisdiction without the court or the other parent's permission. The court may change custody to the nonmoving parent.<sup>96</sup> If there is concern about parental alienation, a court may be reluctant to allow the parent and child to relocate.<sup>97</sup>

The motives of the nonresidential parent are important also. A parent who has not exercised visitation but just wants to keep the other parent from moving is not in a strong position. In one case, the court allowed the move where the father had been manipulative and controlling.<sup>98</sup> The court can look at the likelihood that allowing or denying the move would antagonize the hostilities between the two parties.<sup>99</sup>

### *Child's Quality of Life Issues*

The proposed relocation may justify a change in custody only if such a change is in the child's best interests. If the judge changes the child's custody to the noncustodial parent, even if staying in the same city, the child will experience a change. Therefore, the judge has to weigh carefully the two living arrangements, keeping in mind that it is the child, not the warring parents, whose interests need to be protected. As one judge noted:

. . . a child's development is not something with which courts should experiment and risk disruption. Although ideally a child would develop a close relationship with his loving and caring parents through an equal division of parenting time, the ideal is difficult to achieve when, as in this case, the child's parents elect to establish their homes in different communities. This problem is further compounded by the friction that often develops between ex-spouses as they move on with their lives after their divorce. . . . In ordering this change in custody the *trial court forgot that the paramount consideration in a child custody decision is the child's best interests, not those of his parents.*<sup>100</sup>

The child's quality of life may be tied to a large extent to the custodial/residential parent's quality of life. A child theoretically benefits from a custodial parent who has a stable relationship, more money, more time, and less conflict.<sup>101</sup> Where the proposed relocation provides education, emotional and economic benefits for the child, many courts feel the relocation should be granted.<sup>102</sup>

Courts have changed custody to the nonmoving parent where the reasons for the move and the quality of the new environment do not outweigh the adverse impact.<sup>103</sup> For example, when a mother who had sole custody moved to North Carolina before the court hearing, the court changed custody to the father. The court found that a relocation was not in child's best interest because both sets of child's grandparents lived where father resided, the child was familiar and happy in father's home and had lived there almost nine months at the time of the modification hearing and expressed a preference to live with the father.<sup>104</sup> A Missouri court found that it was not in the children's best interests to move 1,200 miles because the father lived only seven houses away and was an active participant in their daily lives.<sup>105</sup> In another case, where children had moved and were experiencing academic and attendance difficulties in addition to separation from their father, the court changed custody to the father during the school year.<sup>106</sup>

There is little valid research on whether it is in the best interests of a child to remain near to both parents.<sup>107</sup> Research does show that children suffer the most harm in high conflict cases.<sup>108</sup> To the extent that a relocation reduces the conflict between the parents, it could enhance the child's quality of life. Studies have shown that contact with both parents is best when the parents can cooperate.<sup>109</sup> Although one study purports to show that children of divorced parents who are separated from one parent due to either parent moving beyond an hour's drive are significantly less well off on many child mental and physical health measures compared to those children whose parents do not relocate,<sup>110</sup> this study has been severely criticized both for its methodology and for its conclusions.<sup>111</sup> More research needs to be done on the effects of relocation on children of different ages.

#### *Alternative Parenting Plans*

Almost every move to a distant relocation is going to adversely affect the nonmoving parent's visitation rights or parenting time.<sup>112</sup> That new arrangements have to be made that are more difficult or less convenient is not sufficient reason to deny the move.<sup>113</sup> The New York Court of Appeals stated:

Like Humpty Dumpty, a family, once broken by divorce, cannot be put back together in precisely the same way. The relationship between the parents and children is necessarily different after a divorce and, accordingly, it may be unrealistic in some cases to try to

preserve the noncustodial parent's accustomed close involvement in the children's everyday life at the expense of the custodial parent's efforts to start a new life or to form a new family unit.<sup>114</sup>

The key is to craft an alternate visitation schedule that continues and preserves the relationship between the child and the non-custodial parent without imposing all of the burdens of relocation on the child. The cases which are most successful in allowing a move have been those in which the moving parent has carefully considered and drafted plans that will minimize the adverse effect that the move will have on the parent-child relationship with the nonmoving parent.

Among the factors the court will consider are the distance between the two cities, the costs of travel, and the ease of travel. Restructuring visitation often means scheduling physical visitation for more time during the summer and school holidays. The result may be more actual days, but less frequency than the original order.

With today's modern methods of communication, there are more opportunities for maintaining contact with parents and others who do not live close to the child. Virtual visitation offers alternate ways for parents to have contact.<sup>115</sup> One court noted that "increased use of alternatives to normal physical visitation, such as phone calls, letters and even e-mail . . . are feasible."<sup>116</sup> Several other courts have recognized the advances in technology that have made possible contacts that would have been unheard of twenty years ago.<sup>117</sup> While the new technology will not substitute for personal contact, it can help maintain the parent-child connection.

### ***INTERNATIONAL MOVES***

A handful of states that has considered the issue have used the same standard for a contemplated international move as for an interstate move.<sup>118</sup> Relocation to a foreign country, however, may involve additional considerations. For example, there may be the introduction of cultural conditions far different from those experienced in the United States. The greater distance may make the additional costs of visitation prohibitive in many cases, although virtual visitation alternatives may exist.<sup>119</sup> In addition, there may be some concerns about enforcement of custody and visitation orders in another country. Alabama has a statute which considers as a factor whether the proposed relocation is to a foreign country which does not normally enforce the rights of noncustodial parents.<sup>120</sup>

### CONCLUSION

Statutes and court decisions on relocation have created a true hodge-podge of presumptions, burdens, factors and lists. There remains no universal standard. Within the past four years, it does appear clear that the emerging standard is the case-by-case best interests of the child approach. While it is hard to argue with a judge trying to do what is in a child's best interests, as we have seen in other areas, the child's best interests are hard to predict and the decision can be highly subjective. In addition, if the concern is for the child to maintain contact with both parents, there needs to be an avenue for a custodial parent to challenge a noncustodial parent's relocation which may not be in the child's best interests. The uncertainty inherent in a best interest test leads to often painful, expensive, and time-consuming litigation with inconsistent results. As one dissenting judge noted:

[R]eplacement of concrete standards with an amorphous best-interest-of-the-child standard will leave the trial courts free to consider any circumstance in a child's life as a potential reason to uproot the child . . . Without any guidance [in the form of presumptions] . . . every dissatisfaction a noncustodial parent has with the parenting of the custodial parent becomes a proper basis for re-litigating custody.<sup>121</sup>

Relocation cases are hard on the parents, the children, the lawyers and the judge. While a parent may think he or she has won a relocation case, if the child suffers loss of a strong parent-child relationship or has to fly across the country during every break, the child has lost something significant. On the other hand, if the courts truly focus on the needs of the child, rather than the demands and wishes of the parents, the best interest test may be the most equitable way to decide these troublesome cases. The outcome of any given case will depend upon the existence of a statute or case precedent making it easy or difficult for a parent to relocate with a child, the type of parenting arrangement or order that currently exists, and the attitudes of the judge who will be hearing the motion as to the best interests of any given child.<sup>122</sup>

## NOTES

1. Gruber v. Gruber, 583 A.2d 434, 437 (Pa. Super. Ct. 1990).
2. Tropea v. Tropea, 665 N.E.2d 145, 148 (N.Y. 1996).
3. While the majority of states still use the term “custodial” parent to designate the parent who has physical residency of the child, some states distinguish residency from custody; other states use “majority time” or “residential parent.”
4. JoAnne S. Lublin, *Cast Asunder: After Couples Divorce, Long-Distance Moves are Often Wrenching*, WALL STREET J., Nov. 20, 1992.
5. Gruber, 583 A.2d at 437.
6. Bauers v. Lewis, 770 A.2d 214, 217 (N.J. 2001).
7. ALI PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION § 2.17 (2002) [hereinafter ALI PRINCIPLES].
8. *American Academy of Matrimonial Lawyers Proposed Model Relocation Act*, 15 J. AM. ACAD. MATRIMONIAL LAWYERS 1 (1998) [hereinafter AAML Standards].
9. Troxel v. Granville, 530 U.S. 57 (2000); Santosky v. Kramer, 455 U.S. 745 (1982).
10. See generally LINDA D. ELROD, CHILD CUSTODY PRACTICE AND PROCEDURE, ch. 4 (West/Thomson 2004 and Supp. 2005).
11. *Id.* at § 17:26. See United States v. Guest, 383 U.S. 745 (1966); Shapiro v. Thompson, 394 U.S. 618 (1969); Jones v. Helms, 452 U.S. 412 (1981); Saenz v. Roe, 526 U.S. 489 (1999). See Arthur B. La France, *Child Custody and Relocation: A Constitutional Perspective*, 34 U. LOUISVILLE J. FAM. L. 1 (1996); Paula M. Raines, *Joint Custody and the Right to Travel: Legal and Psychological Implications*, 24 J. FAM. L. 625 (1985); Anne L. Spitzer, *Moving and Storage of Post-Divorce Children: Relocation, the Constitution and the Courts*, 1985 ARIZ. ST. L. J. 1 (1985).
12. Jones v. Helms, 452 U.S. at 415-16.
13. Watt v. Watt, 971 P.2d 608, 615-16 (Wyo. 1999).
14. *Id.*
15. See *In re Marriage of Johnson*, 660 N.E.2d 1370 (Ill. App. Ct. 1996); *In re C.R.O.*, 96 S.W.3d 442 (Tex. Ct. App. 2002). See Roger M. Baron, *Custody Relocation Restrictions: A Tool for Preventing Conflicts*, 17 FAIR\$HARE 5-6 (Apr. 1997)(arguing that parents’ constitutional rights to travel do “not include the freedom to ‘travel with the child.’”).
16. See Leslie Eaton, *Divorced Parents Move, and Custody Gets Trickier*, LAW WISE 5 (Feb. 2005)(discussing Colorado case in which judge denied mother’s move to Arizona for a job and another case of a mother who shuttles between her husband and son in California and her daughter from a first marriage who judge made stay in New York).
17. Tomasko v. DuBuc, 761 A.2d 407 (N.H. 2000).
18. See *LaChappelle v. Mitten*, 607 N.W.2d 151, 163 (Minn. Ct. App.), *cert. denied Mitten v. LaChappelle*, 531 U.S. 1011 (2000); *Weiland v. Ruppel*, 75 P.3d 176 (Idaho 2003). See also David M. Cotter, *Oh, The Place You’ll (Possibly) Go! Recent Case Law on Relocation of the Custodial Parent*, 16(9) DIVORCE LITIG. (Sept. 2004).
19. *In re Marriage of Ciesluk*, 113 P.3d 135, 145 (Colo. 2005).

20. *Id.*

21. *See* Braun v. Headley, 750 A.2d 624, 635 (Md. Ct. Spec. App. 2000), *cert. denied*, 755 A.2d 1139 (Md. 2000), *cert. denied*, 531 U.S. 1191 (2001) (finding no constitutional infirmity in giving *equal* status to the custodial parent's right to travel, and the benefit to be given the child from remaining with the custodial parent and the benefit from the non-custodial parent's exercise of his right to maintain close association and frequent contact with the child). *See also* *In re* D.M.G., 951 P.2d 1377 (Mont. 1998).

22. *See* Jaramillo v. Jaramillo, 823 P.2d 299, 307-09 (N.M. 1991).

23. *In re* Marriage of Ciesluk, 113 P.3d 135 (Colo. 2005).

24. Ciesluk, 113 P.3d at 142.

25. ELROD, CHILD CUSTODY, *supra* note 10, at § 4:35. *See* Spahmer v. Gullette, 113 P.3d 158 (Colo. 2005); 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); Landis v. Landis, 869 A.2d 1003 (Pa. Super. Ct. 2005); Resor v. Resor, 987 P.2d 146 (Wyo. 1999).

26. *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).

27. *See* Leeds v. Adamse, 832 So. 2d 125 (Fla. Dist. Ct. App. 2002); Ziegler v. Ziegler, 691 P.2d 773 (Idaho 1985); Carlson v. Carlson, 661 P.2d 833 (Kan. Ct. App. 1983).

28. *See* KAN. STAT. ANN. § 60-1610(a) (2005); MICH. COMP. L. ANN. § 722.31(5) (2004). *See* Pointer v. Bell, 719 So. 2d 222 (Ala. Civ. App. 1998). *See also* ELROD, *supra* note 10, at § 4.07.

29. ARIZ. REV. STAT. ANN. § 25-408 (2004).

30. *See* Godwin v. Balderamos, 876 So. 2d 1169 (Ala. Civ. App. 2003); Bell v. Bell, 572 So. 2d 841 (Miss. 1990); Zeller v. Zeller, 640 N.W.2d 53 (N.D. 2002); *In re* Duckett, 905 P.2d 1170 (Or. Ct. App. 1995).

31. *See* Scott v. Scott, 578 S.E.2d 876, 879 (Ga. 2003); Hovater v. Hovater, 577 So. 2d 461 (Ala. Ct. App. 1990); *In re* Marriage of Seitzinger, 77 N.E.2d 282 (Ill. App. Ct. 2002); *In re* Marriage of Thielges, 623 N.W.2d 232 (Iowa Ct. App. 2000); Wilson v. Wilson, 408 S.E.2d 578 (Va. Ct. App. 1991); Watt v. Watt, 971 P.2d 608 (Wyo. 1999).

32. *See In re* Marriage of Pape, 989 P.2d 1120 (Wash. 2000); Savage v. Morrison, 691 N.Y.S.2d 842 (App. Div. 1999); Grathwol v. Grathwol, 727 N.Y.S.2d 825 (App. Div. 2001).

33. *See generally* Connie Peterson, *Relocation of Children by the Custodial Parent*, 65 AM. JUR. TRIALS 127 (2004); Nadine E. Roddy, *Stabilizing Families in a Mobile Society: Recent Case Law on Relocation of the Custodial Parent*, 8 DIVORCE LITIG. 141 (Aug. 1996).

34. *See, e.g.,* Van Asten v. Costa, 874 So. 2d 1244 (Fla. Dist. Ct. App. 2004); Schulze v. Morris, 825 A.2d 1173 (N.J. Super. Ct. App. Div. 2003).

35. For example, Indiana requires no specific time; other states require thirty or forty-five days notice. *See* Chart in Appendix.

36. ALI PRINCIPLES, *supra* note 7; AAML STANDARDS, *supra* note 8. *See* Chart in Appendix.

37. KAN. STAT. ANN. § 60-1620(a)(Supp. 2004). *See also* AAML STANDARDS, *supra* note 8.

38. See, e.g., ARIZ. REV. STAT. ANN. § 25-408 (2004) (100 miles intrastate); MICH. COMP. LAWS ANN. § 722.31 (2004) (100 miles); OR. REV. STAT. § 107.159 (2004) (60 miles); UTAH CODE ANN. § 30-3-37 (2004) (150 miles).

39. ALI PRINCIPLES, *supra* note 7.

40. See LA. REV. STAT. 9:355.11 (providing notice of a proposed relocation of a child shall not constitute a change of circumstance warranting a change of custody); *Lamb v. Wenning*, 583 N.E.2d 745 (Ind. Ct. App. 1991).

41. See LA. REV. STAT. 9:355.11 (2004) (moving without prior notice or moving in violation of a court order may constitute a change of circumstances warranting a modification of custody); *Wright ex rel McBath v. Wright*, 129 S.W.3d 882 (Mo. Ct. App. 2004).

42. ELROD, *supra* note 10, at §§ 17:01, 17:29; JEFF ATKINSON, MODERN CHILD CUSTODY PRACTICE § 10-5 (2d ed. 2004).

43. See *Fenwick v. Fenwick*, 114 S.W.3d 767 (Ky. 2003); *Silbaugh v. Silbaugh*, 543 N.W.2d 639 (Minn. 1996); *Dehring v. Dehring*, 559 N.W.2d 59 (Mich. Ct. App. 1996); *Cook v. Cook*, 898 P.2d 702 (Nev. 1995); *Perry v. Perry*, 943 S.W.2d 884 (Tenn. Ct. App. 1996).

44. See *Hollandsworth v. Knyzewski*, 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. §60-1620(c) (2005) (stating a proposed move *may* be change).

45. See *In re Marriage of Burgess*, 913 P.2d 473 (Cal. 1996); *Ireland v. Ireland*, 717 A.2d 676 (Conn. 1998); *Ex Parte Murphy*, 670 So. 2d 51 (Ala. 1995); *Pollock v. Pollock*, 889 P.2d 633 (Ariz. Ct. App. 1995); *In re Duckett*, 905 P.2d 1170 (Or. Ct. App. 1995), *rev. denied* 912 P.2d 375 (1996); *Aaby v. Strange*, 924 S.W.2d 623 (Tenn. 1996). For a discussion of legal issues and social science considerations see Carol S. Bruch & Janet M. Bowermaster, *The Relocation of Children and Custodial Parents: Public Policy, Past and Present*, 30 FAM. L.Q. 245 (1996); Judith S. Wallerstein & Tony J. Tanke, *To Move or Not to Move—Psychological and Legal Considerations in the Relocation of Children Following Divorce*, 30 FAM. L.Q. 305 (1996); Richard Warshak, *Social Science and Children's Interest in Relocation Cases: Burgess Revisited*, 34 FAM. L.Q. 83 (2000).

46. *Kaiser v. Kaiser*, 23 P.3d 278, 286-87 (Okla. 2001).

47. See *Bednarek v. Velazquez*, 830 A.2d 1267 (Pa. Super. Ct. 2003); *In re Marriage of Seitzinger*, 775 N.E.2d 282 (Ill. App. Ct. 2002); *Watt v. Watt*, 971 P.2d 608 (Wyo. 1999). *But see* ME. REV. STAT. 19A § 1657.2.A-1 (moving more than 60 miles is presumed to disrupt the parent-child contact of nonmoving parent);

48. *Godwin v. Balderamos*, 876 So. 2d 1169 (Ala. Civ. App. 2003); *Casey v. Casey*, 58 P.3d 763, 771 (Okla. 2002); *Watt v. Watt*, 971 P.2d 608 (Wyo. 1999).

49. *Hollandsworth v. Knyzewski*, 109 S.W.3d 653, 663 (Ark. 2003).

50. See CAL. FAM. CODE § 7501(a) (2004); KY. REV. STAT. § 403.340 (2)(2004); TENN. CODE ANN. § 36-6-108 (2004); WASH. REV. CODE ANN. § 26.09.520 (2004); WIS. STAT. ANN. § 767.327(3) (2004).

51. See, e.g., *Klotz v. Klotz*, 747 N.E.2d 1187 (Ind. Ct. App. 2001); *Rutz v. Rutz*, 644 N.W.2d 489 (Minn. Ct. App. 2002); *Casey v. Casey*, 58 P.3d 763 (Okla. 2002);

Miller v. Miller, 2004 WL 1049158 (Ohio App. Ct. 2004); Fossum v. Fossum, 545 N.W.2d 828 (S.D. 1996); Habecker v. Giard, 820 A.2d 215 (Vt. 2003); *In re Marriage of Horner*, 93 P.3d 124 (Wash. 2004).

52 ALI PRINCIPLES, *supra* note 7.

53. *In re Marriage of Burgess*, 913 P.2d 473 (Cal. 1996). *See also* CAL. FAM. CODE § 7501(a) (2004) (codifying *Burgess*).

54. *In re Marriage of LaMusga*, 88 P.3d 81 (Cal. 2004) (citing *Burgess*).

55. *Id.* at 84-85.

56. *Id.* (clarifying that the best interest test was to be used when noncustodial parent shows harm to the parent-child relationship).

57. *Id.* *But see In re Marriage of Brown & Yana*, 127 P.3d 28 (Cal. 2006) (finding that while noncustodial parent could seek modification of custody order based on changed circumstances if custodial parent relocates, trial court had discretion to deny the modification request without holding an evidentiary hearing if the noncustodial parent fails to make a legally sufficient showing of detriment).

58. *See* COLO. REV. STAT. § 14-10-129(2) (2004); IOWA CODE ANN. § 598.21 (8A) (2004); ME. REV. STAT. ANN. tit. 19-A, § 1657 (2004); MO. REV. STAT. § 452.411 (2004).

59. *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).

60. *See* ARIZ. REV. STAT. ANN. § 25-408 (2004); 750 ILL. COMP. STAT. ANN. 5/609 (2004); MO. ANN. STAT. § 452.377 (2004). *See also* *Moeller-Prokosch v. Prokosch*, 27 P.3d 314 (Alaska 2001); *Roberts v. Roberts*, 64 P.3d 327 (Idaho 2003); *Brown v. Loveman*, 680 N.W.2d 432 (Mich. Ct. App.), *appeal denied*, 682 N.W.2d 86 (Mich. 2004); *Devore v. Devore*, 62 S.W.3d 59 (Mo. Ct. App. 2001); *McLaughlin v. McLaughlin*, 647 N.W.2d 577, 586 (Neb. 2002); *Schmidt v. Bakke*, 691 N.W.2d 239 (N.D. 2005).

61. *Ireland v. Ireland*, 717 A.2d 676, 682 (Conn. 1998); *Bauers v. Lewis*, 770 A.2d 214 (N.J. 2001); *Wild v. Wild*, 696 N.W.2d 886 (Neb. Ct. App. 2005).

62. N.H. REV. STAT. ANN. § 461-A:12 (2005); *In re Pfeuffer*, 837 A.2d 311 (N.H. 2003).

63. NEV. REV. STAT. ANN. § 125C.200.3 (2004). *Flynn v. Flynn*, 92 P.3d 1224 (Nev. 2004). *See also* *Ireland v. Ireland*, 717 A.2d at 682-83; *Weaver v. Kelling*, 53 S.W.3d 610 (Mo. Ct. App. 2001) (allowing mother's relocation because father failed to show how children's best interest would be served by transfer of custody). *But see* *Classick v. Classick*, 155 S.W.3d 842 (Mo. Ct. App. 2005); *In re Marriage of Colson*, 51 P.3d 607 (Or. App. Ct. 2002).

64. *O'Connor v. O'Connor*, 793 A.2d 810 (N.J. Super. Ct. App. Div. 2002). *See also* *Brody v. Kroll*, 53 Cal. Rptr. 2d 280 (Ct. App. 1996), *rev. denied*; *Ayers v. Ayers*, 508 N.W.2d 515 (Minn. 1993). *See also* ELROD, *supra* note 10, at §17:35.

65. *O'Connor*, 793 A.2d at 821-22.

66. *Id.* at 824 (finding shared custody a father who picked the child up from school several days a week, kept child evenings and overnights and during times mother traveled).

67. See FLA. STAT. § 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. App. 2004).

68. See *Lewellyn v. Lewellyn*, 93 S.W.3d 681 (Ark. 2002); *Farag v. DeLawter*, 743 N.E.2d 366 (Ind. Ct. App. 2001); *Landis v. Landis*, 869 A.2d 1003 (Pa. Super. Ct. 2005); *Graham v. Graham*, 2005 WL 1467878 (Tenn. Ct. App. June 22, 2005) (unpublished); *Hoover (Letourneau) v. Hoover*, 764 A.2d 1192 (Vt. 2000). See also TENN. CODE ANN. § 36-6-108 (2004) (where parents are spending substantially equal amounts of time with child, no presumption in favor of either parent arises when one parent seeks to relocate).

69. *Tropea v. Tropea*, 145, 151-52 (N.Y. 1996) (stating that “. . . bright line rules in this area are inappropriate; each case must be evaluated on its own merits.”).

70. *Bodne v. Bodne*, 588 S.E.2d 728 (Ga. 2003) (finding that physician father’s proposed move to Alabama to “leave behind” his predivorce life was putting his interests above his children and changing custody to the mother).

71. *In re Marriage of Ciesluk*, 113 P.3d 135 (Colo. 2005).

72. *Gruber v. Gruber*, 583 A.2d 434, 437 (Pa. Super. Ct. 1990). See also *In re Marriage of Stahl*, 810 N.E.2d 259 (Ill. App. Ct. 2004) (finding that a determination of the child’s best interests cannot be reduced to a “bright line rule” but requires a case by case analysis).

73. For criticisms of the best interests test, see Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950 (1979); Robert H. Mnookin, *Child-Custody Adjudication: Judicial Functions in the Face of Indeterminacy*, 39 LAW & CONTEMP. PROBS. 226 (1975); Jon Elster, *Solomonic Judgments: Against the Best Interest of the Child*, 54 U. CHI. L. REV. 1 (1987); Martha Fineman, *Dominant Discourse, Professional Language, and Legal Change in Child Custody Decisionmaking*, 101 HARV. L. REV. 727 (1988); Mary Ann Glendon, *Fixed Rules and Discretion in Contemporary Family Law and Succession Law*, 60 TULANE L. REV. 1365 (1986).

74. LA. REV. STAT. § 9:355.12 (2003). See also Gary A. Debele, *A Children’s Rights Approach to Relocation: A Meaningful Best Interests Standard*, 15 AM. ACAD. MATRIMONIAL L. J. 75 (1998).

75. COLO. REV. STAT. ANN. § 14-10-124(1.5)(a)(I)-(XI) (2004); COLO. REV. STAT. ANN. § 14-10-129 (I)-(IX) (2004).

76. See ARIZ. REV. STAT. ANN. § 25-408 (2004); FLA. STAT. ANN. § 61.13 (2004); KAN. STAT. ANN. § 60-1620(c) (2005); MICH. COMP. LAWS ANN. § 722.31 (2004); TENN. CODE ANN. § 36-6-108 (2004); UTAH CODE ANN. § 30-3-37 (2004); and WASH. REV. CODE ANN. § 26.09.520 (2004).

77. See *In re Marriage of Hamilton-Waller*, 2005 WL 294687 (Or. App. Nov. 9, 2005)(dissent) (citing Linda D. Elrod, *Current Trends in Custody Relocation* 10-11) (written materials from ABA Council of Appellate Staff Attorneys Seminar, July 30, 2005)(summarizing factors). See also *Baures v. Lewis*, 770 A.2d 214, 229-30 (N.J. 2001); *Hollandsworth v. Knyzewski*, 109 S.W.3d 653 (Ark. 2003); *In re Marriage of LaMusga*, 88 P.3d 81 (Cal. 2004); *Auge v. Auge*, 665 N.E.2d 145 (Minn. 1983); *McLaughlin v. McLaughlin*, 647 N.W.2d 577 (Neb. 2002); *Schwartz v. Schwartz*, 812

P.2d 1268 (Nev. 1991); *Stout v. Stout*, 560 N.W.2d 903 (N.D. 1997); *Gruber v. Gruber*, 583 A.2d 434 (Pa. Super. Ct. 1990).

78. *Bretherton v. Bretherton*, 805 A.2d 766, 770 (Conn. App. Ct. 2002).

79. *In re Marriage of LaMusga*, 88 P.3d 81 (Cal. 2004); *Dupre v. Dupre*, 857 A.2d 242 (R.I. 2004); *In re Marriage of Pape*, 989 P.2d 1120 (Wash. 2000).

80. *Bauers v. Lewis*, 770 A.2d 214, 217 (N.J. 2001) (noting that “. . . In our global economy, relocation for employment purposes is common. On a personal level, people remarry and move away . . .”).

81. ALI PRINCIPLES, *supra* note 7, at § 2.17(4)(a)(ii).

82. *Dupre v. Dupre*, 857 A.2d 242 (R.I. 2004).

83. *Hawkes v. Spence*, 878 A.2d 273 (Vt. 2005).

84. W. VA. CODE § 48-9-403(d)(1) (2004).

85. *See Hass v. Hass*, 44 S.W.3d 773 (Ark. Ct. App. 2001); *Botterbusch v. Botterbusch*, 851 So. 2d 903, 905 (Fla. Dist. Ct. App. 2003); *In re Marriage of Parr*, 802 N.E.2d 393 (Ill. App. Ct. 2003); *In re S.E.P.*, 35 S.W.3d 862 (Mo. Ct. App. 2001); *McLaughlin v. McLaughlin*, 647 N.W.2d 577 (Neb. 2002); *Long v. Long*, 675 N.Y.S.2d 673 (1998); *Tibor v. Tibor*, 598 N.W.2d 480 (N.D. 1999); *Keller v. Keller*, 584 N.W.2d 509 (N.D. 1998); *Perrott v. Perrott*, 713 A.2d 666 (Pa. Super. Ct. 1998).

86. *See Leach v. Santiago*, 798 N.Y.S.2d 242 (App. Div. 2005); *Levine v. Bacon*, 687 A.2d 1057 (N.J. Super. App. Div. 1997) (denying move where the father failed to look for a job in the current location); *Baldwin v. Baldwin*, 710 A.2d 610 (Pa. Super. Ct. 1998); *Sullivan v. Knick*, 568 S.E.2d 430 (Va. Ct. App. 2002).

87. *Dickson v. Dickson*, 634 N.W.2d 76 (N.D. 2001).

88. *See In re Marriage of Sale*, 808 N.E.2d 1125 (Ill. App. Ct. 2004); *Tremain v. Tremain*, 646 N.W.2d 661 (Neb. 2002); *Fohey v. Knickerbocker*, 130 S.W.3d 730 (Mo. Ct. App. 2004).

89. *See Hales v. Edlund*, 78 Cal. Rptr. 2d 671 (Ct. App. 1998); *Oliver v. Oliver*, 855 A.2d 1022 (Conn. App. Ct. 2004); *In re Marriage of Collingbourne*, 791 N.E.2d 532 (Ill. 2003); *Rosenthal v. Maney*, 745 N.E.2d 350 (Mass. App. Ct. 2001); *Caudill v. Foley*, 21 S.W.3d 203 (Tenn. Ct. App. 1999).

90. *See Reel v. Harrison*, 60 P.3d 480 (Nev. 2002); *Aziz v. Aziz*, 779 N.Y.S.2d 539 (App. Div. 2004); *Paulson v. Bauske*, 574 N.W.2d 801 (N.D. 1998).

91. *Geiger v. Yaeger*, 846 A.2d 691 (Pa. Super. Ct. 2004).

92. *Flynn v. Flynn*, 92 P.3d 1224 (Nev. 2004) (denying mother’s relocation to enroll in a Theology program when degree would not enhance earning ability, educational opportunities existed in area and child’s lifestyle would not be enhanced by the move).

93. *See Bodne v. Bodne*, 588 S.E.2d 728 (Ga. 2003); *Jones v. Jones*, 903 S.W.2d 277 (Mo. App. Ct. 1995); *Tishmack v. Tishmack*, 611 N.W.2d 204 (N.D. 2000).

94. *Cassady v. Signorelli*, 56 Cal. Rptr. 2d 545 (Ct. App. 1996).

95. *See Delgado v. Nazario* 677 N.Y.S.2d 336 (App. Div. 1998).

96. *See Dymitro v. Dymitro*, 927 P.2d 917 (Idaho Ct. App. 1996); *Shunk v. Walker*, 589 A.2d 1303 (Md. Spec. Ct. App. 1991); *In re Marriage of Cook*, 725 P.2d 562 (Mont. 1986); *Leach v. Santiago*, 798 N.Y.S.2d 242 (App. Div. 2005) (changing custody to father partly because of mother’s actions in leaving child with grandmother while she moved and not telling father).

97. *In re T.M.*, 831 N.E.2d 526 (Ohio App. 2005). For further discussion of parental alienation, see Janet R. Johnston, *Children of Divorce Who Reject a Parent and Refuse Visitation: Recent Research and Social Policy Implications for the Alienated Child*, 38 FAM. L. Q. 757 (2005); Carol S. Bruch, *Parental Alienation Syndrome and Parental Alienation: Getting It Wrong in Child Custody Cases*, 35 FAM. L.Q. 527 (2001).

98. *Tibor v. Tibor*, 598 N.W.2d 480 (N.D. 1999) (father had entered house to check messages and rummage through trash).

99. *Jack v. Clinton*, 609 N.W.2d 328 (Neb. 2000).

100. *Winn v. Winn*, 593 N.W.2d 662, 669 (Mich. Ct. App. 2000)(emphasis added).

101. *Frieze v. Frieze*, 692 N.W.2d 912 (N.D. 2005); *Winn v. Winn*, 593 N.W.2d 662, 669 (Mich. Ct. App. 2000).

102. *See Schmidt v. Bakke*, 691 N.W.2d 239 (N.D. 2005); *Aziz v. Aziz*, 779 N.Y.2d 539 (2nd Dep't 2004).

103. *See Hanks v. Arnold*, 674 N.E.2d 1005 (Ind. Ct. App. 1996); *Dale v. Pearson*, 555 N.W.2d 243 (Iowa Ct. App. 1996); *In re Marriage of Tade*, 938 P.2d 673 (Mont. 1997). *See Jay M. Zitter*, Annotation, *Custodial Parent's Relocation as Grounds for Change of Custody*, 70 A.L.R.5th 377 (1999).

104. *Brennan v. Brennan*, 857 A.2d 927 (Conn. App. Ct. 2004).

105. *Classick v. Classick*, 155 S.W.3d 842 (Mo. Ct. App. 2005).

106. *Hardin v. Hardin*, 618 S.E.2d 169 (Ga. Ct. App. 2005).

107. *See Joan B. Kelly & Michael E. Lamb*, *Using Child Development Research to Make Appropriate Custody and Access Decisions For Young Children*, 38 FAM. & CONCILIATION CTS. REV. 297, 309 (2000)(concluding that "[r]egardless of who has been the primary caretaker . . . children benefit from the extensive contact with both parents that fosters meaningful father-child and mother-child relationships"); Judith S. Wallerstein & Tony J. Tanke, *To Move or Not to Move: Psychological and Legal Considerations in the Relocation of Children Following Divorce*, 30 FAM. L.Q. 305, 318 (1996) (concluding that "[w]hen a child is de facto in the primary residential or physical custody of one parent, that parent should be able to relocate with the child, except in unusual circumstances").

108. *See High Conflict Custody Cases: Reforming the System for Children—Conference Report and Action Plan*, 34 FAM. L.Q. 589 (2001); Linda D. Elrod, *Reforming the System to Protect Children in High Conflict Custody Cases*, 28 WM. MITCHELL L. REV. 495, 515 (2001).

109. Paul Amato & Joan Gilbreth, *Non-resident Father's and Children's Well-Being: A Meta Analysis*, 61 J. MARRIAGE & FAMILY 557, 560 (1999) (" . . . contact with nonresident fathers following divorce is associated with positive outcomes among children when parents have a cooperative relationship but is associated with negative outcomes when parents have a conflicted relationship").

110. Sanford L. Braver, et al., *Relocation of Children After Divorce and Children's Best Interests: New Evidence and Legal Considerations*, 17 J. FAM. PSYCHOLOGY 206 (2003).

111. *See In re Marriage of Ciesluk*, 113 P.3d 135, 149 (Colo. 2005)(criticizing trial court reliance on Braver article); Brief of Dr. Judith Wallerstein in *In re Marriage of LaMusga*, 16-18 ( . . . the youngsters in the custody of their fathers when the mother moved or who moved with the father were the only young people who showed trou-

bled behavior). Trish Wilson, *Post-Divorce Relocating with Mothers Do Best: So Why Does the Braver Study Hide Its Own Results*, Pt. I, 9(1) DOM. VIOL. REP'T (2003); Pt. II, 9(2) DOM. VIOL. REP'T 19 (2004); Pt. III, 9(3) DOM. VIOL. REP'T 37 (2004) (showing that study shows that the children who fared best overall were those whose noncustodial fathers moved). Norval Glenn & David Blankenhorn, Institute for American Values, Sept. 11, 2003 (stating the "Braver study is a weak one that provides no credible evidence on the effects on children of moving away after divorce"). See also Carol S. Burch, Sound Research or Wishful Thinking in Child Custody Cases? Lessons from Relocation Law, 40 Fam. L.Q. (2006), 285.

112. *Landis v. Landis*, 869 A.2d 1003 (Pa. Super. Ct. 2005) (reversing trial judge who denied relocation because the existing shared custody arrangement could not stay in place but ignored the father's indirect criminal contempt conviction, the Protection from Abuse Order that was in place, and the criminal charges against father for weapons violations).

113. *Moeller-Prokosch v. Prokosch*, 27 P.3d 314 (Alaska 2001); *McCoy v. McCoy*, 764 A.2d 449 (N.J. Super. Ct. App. Div. 2001); *Billhime v. Billhime*, 869 A.2d 1031 (Pa. Super. Ct. 2005).

114. *Tropea v. Tropea*, 665 N.E.2d 145 (N.Y. 1996).

115. Kimberly R. Shefts, *Virtual Visitation: The Next Generation of Options for Parent-Child Communication*, 36 FAM. L.Q. 303 (2002); Sarah Gottfried, *Virtual Visitation: The Wave of the Future in Communication Between Children and Non-Custodial Parents in Relocation Cases*, 36 FAM. L.Q. 475 (2002). See also William C. Smith, *Just Wait Until Your Dad Logs On!*, 87 A.B.A. J. 24 (Sept. 2001).

116. *Rice v. Rice*, 517 S.E.2d 220, 227-28 (S.C. Ct. App. 1999).

117. See *In re Marriage of Thielges*, 623 N.W.2d 232 (Iowa Ct. App. 2000); *McGuinness v. McGuinness*, 970 P.2d 1074 (Nev. 1998); *Chen v. Heller*, 759 A.2d 873 (N.J. Super. Ct. App. Div. 2000); *Surma v. Surma*, 561 N.W.2d 290 (N.D. 1997).

118. *Arnold v. Arnold*, 847 A.2d 674 (Pa. Super. Ct. 2004). See *In re Marriage of Condon*, 62 Cal. Rptr. 2d 33 (Ct. App. 1998)(Australia); *Hayes v. Gallacher*, 972 P.2d 1138 (Nev. 1999)(Japan); *Goldfarb v. Goldfarb*, 861 A.2d 340 (Pa. Super. Ct. 2004).

119. *Lazarevic v. Fogelquist*, 668 N.Y.S.2d 320 (App. Div. 1997).

120. ALA. CODE 30-3-169.3 (2004).

121. *Bodne v. Bodne*, 588 S.E.2d 728 (Ga. 2003)(J. Benham, dissenting). See also Kimberly K. Holtz, *Note: Move Away Custody Disputes: The Implications of Case by Case Analysis and the Need for Legislation*, 45 SANTA CLARA L. REV. 319 (1994).

122. See *In re Marriage of Ciesluk*, 113 P.3d 135 (Colo. 2005); *Landis v. Landis*, 869 A.2d 1003 (Pa. Super. Ct. 2005); *Fowler v. Sowers*, 151 S.W.3d 357 (Ky. Ct. App. 2004); *Hawkes v. Spence*, 878 A.2d 273 (Vt. 2005).

doi:10.1300/J190v03n03\_03

**APPENDIX**  
**State Statutes on Relocation\*\***

<b>STATE</b>	<b>Notice</b>	<b>Presumption For/Against or Burdens</b>	<b>Best Interests of Child Paramount</b>	<b>Recent or Significant Case</b>
Alabama ALA. CODE § 30-3-160 -30-3-169.10	45 days	Against	X	Clements v. Clements, 906 So. 2d 952 (Ala. Civ. App. 2005)
Alaska 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)
Arizona ARIZ. REV. STAT. § 25-408	60 days	Burdens on moving party	X	Woodworth v. Woodworth, 42 P.3d 610 (Ariz. App. 2002)
Arkansas* ARK. CODE ANN. § 9-13-101		For	X	Hollandsworth v. Knyzewski, 109 S.W.3d 653 (Ark. 2003)
California CAL. FAM. CODE § 3406		For	X	<i>In re Marriage of LaMusga</i> , 88 P.3d 81 (Cal. 2004)
Colorado COLO. REV. STAT. Ann. § 14-10-129 & 14-10-124		Both parents must show BIOC	X	<i>In re Marriage of Ciesluk</i> , 113 P.3d 135 (Colo. 2005)
Connecticut* CONN. GEN. STAT. ANN. § 46b-56		Initial burden on moving party	X	Brennan v. Brennan, 857 A.2d 927 (Conn. App. 2004)
Delaware* 13 DEL. CODE §§ 728 & 729			X	Karen J.M. v. James W., 792 A.2d 1036 (Del. Fam. Ct. 2002)
District of Columbia				
Florida FLA. STAT. ANN. § 61.13(2)(d)			X	Jenson v. Jenson, 904 So. 2d 635 (Fla. Dist. Ct. App. 2005)

## APPENDIX (continued)

STATE	Notice	Presumption For/Against or Burdens	Best Interests of Child Paramount	Recent or Significant Case
Georgia GA. CODE ANN. § 19-9-1	30 days		X	Hardin v. Hardin, 618 S.E.2d 169 (Ga. Ct. App. 2005)
Hawaii* HAW. REV. STAT. § 571-46			X	Tetreault v. Tetreault, 55 P.3d 845 (Haw. Ct. App. 2002)
Idaho 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)
Illinois 750 ILL. COMP. STAT. ANN. § 5/609		Burden on party seeking modification	X	<i>In re Marriage of Johnson</i> , 815 N.E.2d 1283 (Ill. App. Ct. 2004)
Indiana IND. CODE ANN. § 31-17-2.2-1		Shifting Burden	X	Bettencourt v. Ford, 822 N.E.2d 989 (Ind. Ct. App. 2005)
Iowa IOWA CODE ANN. § 598.21D		Burden on party seeking modification		<i>In re Marriage of Theilges</i> , 623 N.W.2d 232 (Iowa Ct. App. 2000)
Kansas KAN. STAT. ANN. § 60-1620	30 days		X	<i>In re Marriage of Whipp</i> , 962 P.2d 1058 (Kan. 1998)
Kentucky* KY. REV. STAT. ANN. § 403.340		Burden on party seeking modification	X	Fowler v. Sowers, 151 S.W.3d 357 (Ky. Ct. App. 2004)
Louisiana 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)
Maine 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)
Maryland MD. CODE ANN., Family Law § 9-106	45 days	Burden on non-moving party		Braun v. Headley, 750 A.2d 624 (Md. Ct. Spec. App. 2000)

STATE	Notice	Presumption For/Against or Burdens	Best Interests of Child Paramount	Recent or Significant Case
Massachusetts 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)
Michigan 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)
Minnesota* MINN. STAT. ANN. § 518.18(d)		Presumption for		<i>In re Marriage of Geiger</i> , 470 N.W.2d 704 (Minn. Ct. App. 1991) <i>Auge v. Auge</i> , 665 N.E.2d 145 (Minn. 1983)
Mississippi MISS. CODE ANN. § 93-5-23		Burden on party seeking modification	X	<i>Lambert v. Lambert</i> , 872 So. 2d 679 (Miss. Ct. App. 2004)
Missouri MO. REV. STAT. § 452.377	60 days	Burden on moving party	X	<i>Baxley v. Jarred</i> , 91 S.W.3d 192 (Mo. Ct. App. 2002)
Montana MONT. CODE ANN. § 40-4-217	30 days	Burden on party opposing relocation	X	<i>In re Marriage of Robison</i> , 53 P.3d 1279 (Mont. 2002)
Nebraska		Shifting burden	X	<i>Wild v. Wild</i> , 696 N.W.2d 886 (Neb. 2005)
Nevada NEV. REV. STAT. § 125C.200		Shifting burden	X	<i>Potter v. Potter</i> , 119 P.3d 1246 (Nev. 2005)
New Hampshire* N.H. REV. STAT. ANN. § 461-A:12	60 days	Shifting burden	X	<i>In re Pfeuffer</i> , 837 A.2d 311 (N.H. 2003)
New Jersey N.J. STAT. ANN. §9:2-2		Shifting burden		<i>Baures v. Lewis</i> , 770 A.2d 214 (N.J. 2001)
New Mexico* N.M. STAT. ANN. §40-4-9.1		Equal burden	X	<i>Jaramillo v. Jaramillo</i> , 823 P.2d 299 (N.M. 1992)

## APPENDIX (continued)

STATE	Notice	Presumption For/Against or Burdens	Best Interests of Child Paramount	Recent or Significant Case
New York* 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)
North Carolina N.C. GEN. STAT. ANN. § 50-13.2			X	Evans v. Evans, 530 S.E.2d 576 (N.C. 2000)
North Dakota N.D. CENT. CODE ANN. § 14-09-07		Burden on moving party	X	Schmidt v. Bakke, 691 N.W.2d 239 (SD 2005)
Ohio OHIO REV. CODE § 3109.051	Required but no time specified	Initial burden on moving party	X	Rodkey v. Rodkey, 2006 WL 2441720 (Ohio App.)
Oklahoma OKLA. STAT. ANN. Tit. 43 § 1		For		Casey v. Casey, 58 P.3d 763 (Okla. 2003)
Oregon OR. REV. STAT. ANN. § 107.159			X	<i>In re Marriage of Colson &amp; Piel</i> , 51 P.3d 607 (Or. Ct. App. 2002)
Pennsylvania 23 PA CONS. STAT. ANN. § 5308		Shifting burden	X	Billhime v. Billhime, 869 A.2d 1031 (Pa. Super. Ct. 2005); Gruber v. Gruber, 583 A.2d 434 (Pa. Super. Ct. 1990)
Rhode Island R.I. GEN. LAWS ANN. § 15-5-16			X	Dupre v. Dupre, 857 A.2d 242 (R.I. 2004)
South Carolina* S.C. CODE ANN. § 20-3-160	45 days		X	Latimer v. Farmer, 602 S.E.2d 32 (S.C. 2004)
South Dakota S.D. CODIFIED LAWS § 25-5-13; 25-4A-17 - 19	45 days	For	X	Fossum v. Fossum, 545 N.W.2d 828 (S.D. 1996)

STATE	Notice	Presumption For/Against or Burdens	Best Interests of Child Paramount	Recent or Significant Case
Tennessee TENN. CODE ANN. §36-6-108	60 days	Depends on custodial parent's time spent w/ child	X	Kawatra v. Kawatra, 182 S.W.3d 800 (Tenn. 2005)
Texas* 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)
Utah UTAH CODE ANN. § 30-3-37	60 days			
Vermont* VT. STAT. ANN. Tit. 15, § 668		Burden on non-custodial party	X	Hawkes v. Spence, 878 A.2d 273 (Vt. 2005) Lacaillade v. Hardaker, 878 A.2d 273 (Vt. 2005)
Virginia VA. CODE ANN. § 20-124.5	30 days			Riggins v. O'Brien, 538 S.E.2d 320 (Va. Ct. App. 2000)
Washington WASH. REV. CODE ANN. § 26.09.520-.560		For	X	Ramirez v. Holland, 93 P.3d 951 (Wash. Ct. App. 2004) <i>In re Marriage of Horner</i> , 93 P.3d 124 (Wash. 2004)
West Virginia W. VA. CODE § 48-9-403	60 days	Based on amount of time spent with child	X	Cunningham v. Cunningham, 423 S.E.2d 638 (W. Va. 1992)
Wisconsin WIS. STAT. ANN. § 767.327	60 days	Rebuttable presumption for		Hughes v. Hughes, 588 N.W.2d 823 (Wis. Ct. App. 1998)
Wyoming* WYO. STAT. ANN. § 20-2-204(c)		For	X	Harshberger v. Harshberger, 117 P.3d 1244 (Wyo. 2005)

\*Denotes general custody statute

\*\*The author prepared an earlier version of this chart which appeared in *States Differ on Relocation: A Panorama of Expanding Case Law*, 28 (4) FAM. ADVOC. 8 (ABA 2006).