

WITHDRAWN

RESOLUTION

1 RESOLVED, That the American Bar Association adopts the ABA Model Relocation of Children
2 Act, dated February 2012, and urges its adoption by state, territorial, tribal, and local legislative
3 bodies.

ABA MODEL RELOCATION OF CHILDREN ACT**(February 2012)****TABLE OF CONTENTS**

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3 **PREFATORY NOTE**

4 The law governing relocation of children is a timely and important topic affecting millions of
5 families in the United States and around the world. The goal of this act is to provide legislatures
6 and other policy-makers with a uniform set of procedures, factors, and a rule regarding
7 presumptions to assist in deciding cases involving relocation of children.

8 The act applies to relocation of children in connection with divorce, separation, and parentage.
9 When preparing drafts of this act, the reporter reviewed: (1) Current state statutes on the subject
10 of relocation; (2) Case law on relocation; (3) The American Academy of Matrimonial Lawyers
11 Proposed Model Relocation Act (1997); (4) The American Law Institute Principles of the Law of
12 Family Dissolution, § 2.17 (2002); (5) The “Declaration on International Family Relocation,”
13 which was issued at an “International Judicial Conference on Cross-Border Family Relocation”
14 held in Washington D.C., March 23 - 25, 2010; and (6) Articles from mental health
15 professionals, sociologists, and law professors on the subject of relocation.

16
17 Thirty-seven states have enacted statutes on the subject. The statutes range from quite brief [e.g.,
18 a single section with two sentences, Mass. Gen. Laws ch. 208, § 30 (2008)] to highly detailed
19 [e.g., twenty sections with seventeen factors listed in Ala. Code §§ 30-3-160 – 30-3-169.10
20 (2008)]. For description of the law of relocation, see Jeff Atkinson, The law of relocation of
21 children, *Behavioral Sciences & the Law*, 28: 563–579. doi: 10.1002/bsl.944 [July/August 2010];
22 Jeff Atkinson, *Modern Child Custody Practice* (LexisNexis, 2nd edn, 2010), chapter 7 (in
23 Volume 1). An appendix to the chapter (§ 7.14) presents the law in each state. *See also* Linda
24 Elrod, ‘States Differ on Relocation [–] A panorama of expanding case law,’ 28 *Family Advocate*
25 8 - 11 (Spring 2006).

26
27 The U.S. Census Bureau reports that the typical person in the U.S. will move 11.7 times in his or
28 her life. U.S. Census Bureau, *Geographic Mobility/Migration [–] Calculating Migration*
29 *Expectancy*. Available online at: [http://www.census.gov/population/www/socdemo/migrate/cal-](http://www.census.gov/population/www/socdemo/migrate/cal-mig-exp.html)
30 [mig-exp.html](http://www.census.gov/population/www/socdemo/migrate/cal-mig-exp.html) (accessed May 2, 2011). According to Census data, 13.9 percent of children
31 between the ages of 1 and 17 move during a one-year period. U.S. Census Bureau,
32 *Geographical Mobility: 2008 to 2009, Table 1, General Mobility, by Race and Hispanic Origin,*
33 *Region, Sex, Age, Relationship to Householder, Educational Attainment, Marital Status, Nativity,*
34 *Tenure, and Poverty Status: 2008 to 2009* (calculations based on data in table). Available online
35 at: <http://www.census.gov/population/www/socdemo/migrate/cps2009.html> (accessed May 5,
36 2011).

61 (6) “Domestic violence” is defined by [insert citation to definition of “domestic violence”
62 in state’s civil statutes].

63 (7) “Parent” means (a) a natural parent, (b) an adoptive parent, or (c) a person acting as a
64 parent, other than a parent, who (i) has physical custody of the child or has had physical custody
65 for a period of six consecutive months, including any temporary absence, within one year
66 immediately before the commencement of proceeding under this act; and (ii) has been awarded
67 legal custody by a court or claims a right to legal custody under the law of this State.

68 (8) “Parenting time” means the time a parent spends with a child, regardless of the
69 custodial designation regarding the child.

70 (9) “Petition” includes a motion or its equivalent.

71 (10) “Relocate” means a change of residence made in connection with or following a
72 child-custody determination when the change of residence: (a) will be out of state, (b) will be
73 outside the geographic restriction set forth in the existing court order; (c) will be more than [50]
74 driving miles from the residence of the other parent; or [(d) will substantially affect the nature
75 and quality of the parent-child relationship.]

76 (11) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
77 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
78 the United States. The term includes a federally recognized Indian tribe or nation.

79 **Comment**

80
81 The definitions of “child,” “child-custody determination,” “court,” “petition,” and “state”
82 are based on the definitions used in the Uniform Child Abduction Prevention Act, which, in turn,
83 are similar to definitions in the Uniform Child Custody Jurisdiction and Enforcement Act
84 (UCCJEA), with the exception “petition” which is not defined in the UCCJEA. The definition of
85 “parent” includes the UCCJEA’s definition of a “person acting as parent.” The Model Relocation

86 Act includes the more modern term of “parenting time” as part of the definition of “child-
87 custody determination.”

88

89 The definitions of “child abuse,” “child neglect,” and “domestic violence” make
90 reference to the state’s existing definitions of those terms in order to avoid inconsistent
91 application of those terms within a state.

92

93 The definition of “parenting time” is the same used in Minn. Stat. Ann. § 518.003(5)
94 (2010). “Parenting time” is a more modern term which encompasses traditional concepts of
95 “custody,” “visitation, and “access” exercised by a parent, but seeks to avoid the negative tone
96 that some associate with those words.

97

98 “Relocate” means “a change of residence made in connection with or following a child-
99 custody determination. . . .” The act, thus covers cases in which there has already been court
100 involvement, including a child-custody determination. The act does not cover relocations made
101 before a child-custody determination. However, if a child is relocated and a party secures a
102 child-custody determination, the court then would have power under this act to provide remedies,
103 including ordering return of a child. The definition of “relocation” specifies four trigger-events
104 that would invoke the provisions of the act. The first three are precise: an out-of-state move, a
105 move that is outside the geographic restriction set forth in the existing court order, and a move
106 that will be more than [50] driving miles from the residence of the other parent. The mileage
107 limit in the third trigger-event is in brackets, thus indicating a state may wish to substitute a
108 different mileage limit. The fourth trigger-event (“a move that “will substantially affect the
109 nature and quality of the parent-child relationship”) also is in brackets, indicating that its
110 inclusion in the act is optional. The Drafting Committee believed this was an important factor,
111 but also believed that its application was less precise than the other three factors.

112

113

114 **SECTION 3. JURISDICTION.** A petition objecting to relocation of a child or seeking

115 permission to relocate a child under Section 7 may be filed only in a court that has jurisdiction

116 under [insert citations to the Uniform Child Custody Jurisdiction and Enforcement Act or the

117 Uniform Child Custody Jurisdiction Act pertaining to initial custody determinations and

118 modifications of custody].

119

Comment

120

121 Since the primary remedies under this act are related to parenting time (or custody of or
122 visitation with a child), jurisdiction is governed by the Uniform Child Custody Jurisdiction and
123 Enforcement Act (UCCJEA), or by the Uniform Child Custody Jurisdiction Act (UCCJA) if a
124 state has not adopted the UCCJEA. The citations to the UCCJEA (or UCCJA) should be to the

125 provisions related to initial custody determinations or modifications of custody – not to
126 emergency jurisdiction.

127
128 When this act is used in connection with establishing or modifying a financial obligation,
129 other laws govern jurisdictional issues. Section 10 of this act lists financial remedies and
130 provides the court may utilize them “[i]f the court has jurisdiction.” Financial remedies include:
131 establishing or modifying child support, ordering payment of a child’s travel expenses, ordering
132 the relocating party to provide security in order to guarantee return of child, or awarding
133 attorneys’ fees.

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136 **SECTION 4. INDIVIDUALS ENTITLED TO NOTICE; TIME OF NOTICE.**

137 (a) Unless excused by an emergency, other exigent circumstances, or section 5(b), if
138 either parent plans to relocate or to relocate with the child, the parent planning to relocate shall
139 notify the other parent and any other individual with rights of custody, visitation, or parenting
140 time at least [45] days before the proposed relocation.

141 (b) Notice under this section may be excused or modified by the court for good cause.
142 Good cause includes a finding by the court that the safety of the child or party will
143 be endangered by the notice.

144

Comment

145 Of the thirty-seven states with relocation statutes (as of 2009), nineteen states
146 have specific periods of time in which the party seeking to relocate must give notice
147 in advance of the relocation. Those time periods are: 30 days (five states); 45 days
148 (four states); 60 days (nine states); and 90 days (one state). Jeff Atkinson, 1 *Modern*
149 *Child Custody Practice — Second Edition*, § 7-14 (LexisNexis 2008). 45 days was
150 chosen as a reasonable time for a party to receive notice, consider options, discuss the
151 situation with the other party, and obtain legal assistance, if necessary. A longer
152 period of notice was considered, but was viewed as unrealistic since, in many
153 situations, a prospective employer may not give a parent more than 45 days notice
154 before the new job begins.

155

156 This section excuses 45 days notice in cases of “an emergency, other exigent
157 circumstances, or [as provided in] section 5(b).” The circumstances in which notice
158 is excused is intended to be somewhat flexible. Those circumstances could include
159 an urgent need to change a job, a natural disaster, or (as provided in Section 5(b) “a

160 finding by the court that the safety of the child or party will be endangered by the
161 notice.”

162
163

164 **SECTION 5. CONTENTS OF NOTICE.**

165 (a) Subject to subsection (b), notice given under Section 4 shall be a written
166 document or petition containing the following information when available:

- 167 (1) the intended new residence, including street address,
- 168 (2) the telephone numbers, if any, of the parent and child who are relocating,
- 169 (3) the intended date of the relocation [;
- 170 (4) a statement of the specific reasons for the relocation, and
- 171 (5) a proposed revised schedule for parenting time or visitation with the child].

172 (b) If a party alleges in an affidavit or a pleading under oath that the health,
173 safety, or liberty of a party or child would be jeopardized by disclosure of identifying
174 information, the information must be sealed and may not be disclosed to the other
175 party or the public unless the court orders the disclosure to be made after a hearing in
176 which the court takes into consideration the health, safety, or liberty of the party or
177 child and determines that the disclosure is in the interest of justice.

178 (c) If any information specified in subsection (a) is not known at the time
179 notice is given or if the information changes after the notice is given, the new
180 information shall be provided not later than 72 hours after receipt of the information.

181 **Comment**

182 Section 5(a) lists five items of information which should be contained in the
183 notice. The first three, which are listed without brackets, are considered to be the
184 most basic, and, thus, would be provided in all cases, unless excused for exigent
185 circumstances, such a case of domestic violence or child abuse in which revealing the
186 information would pose a danger to the parent or child. The three basic items of

187 information are: (1) the intended new residence, including the street address, (2) the
188 new telephone number, if any, of the parent and child who are relocating, and (3) the
189 intended date of the relocation.
190

191 The fourth and fifth items of information are in brackets, indicating their
192 inclusion in the statute's "Contents of Notice" provision is more optional: "(4) a
193 statement of the specific reasons for the relocation, and (5) a proposed revised
194 schedule for parenting time or visitation with the child." Such information generally
195 should be provided if requested by the person to whom notice is given. These items
196 of information are of particular relevance if the proposed relocation will substantially
197 affect the child's established pattern of access to the other parent. Information
198 provided under the fifth item should include a parent's plans for transportation of the
199 child. Section 7(c) provides that if a parent files a petition objecting to relocation or a
200 parent files a petition seeking permission to relocate, the parent must specify the
201 reasons for the objection or request and the relief sought, including a proposed
202 revised schedule for parenting time with the child, if applicable.
203

204 Section 5(b) provides an exception to notice pertaining to danger to a party or
205 the child. The language of section 5(b) is taken from Section 209(e) of the Uniform
206 Child Custody Jurisdiction and Enforcement Act (UCCJEA).
207

208 Section 5(c) recognizes that in some cases, a party may not have all of the
209 specified information available at the time the initial notice is given, in which case,
210 the party is obliged to update the notice within 72 hours of when the information is
211 received. If a party provides complete information within the time limits of the act,
212 or earlier than the time limits of the act, that will be evidence of the party acting in
213 good faith.
214

215 **SECTION 6. METHODS OF NOTICE.**

216 (a) Notice of the planned relocation given under Section 4 must be by:
217

218 (1) certified mail, return-receipt requested to the last known address of the
219 individual entitled to notice, and first class mail, to the last known address of the
220 individual entitled to notice;
221

222 (2) hand delivery, with signed receipt for delivery;

223 (3) service of process;

224 (4) commercially reasonable delivery service to the last known address of the
225 individual entitled to notice; or

226 (5) electronic means reasonably calculated to provide actual notice.

227 (b) The parties may agree in writing to a means of notice to be used in lieu of or
228 in addition to methods of notice specified in subsection (a).

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Comment

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This section specifies five methods of notice. The first method (directing use of both certified mail, return-receipt requested, and First Class Mail) was chosen in order to attempt to provide proof of actual service through a return-receipt, while recognizing that a significant number of people do not sign for or pick up return-receipt mail. The second method (hand delivery) is permissible, but it also requires a signed receipt. The third method (service of process) is, of course, a reliable and traditional method of service. The fourth method (commercially reasonable delivery service) includes well-established delivery services, such as Federal Express, UPS, and DHL. The fifth method of service (electronic means) includes e-mail and fax. Section 6(b) allows parties to agree in writing to alternate methods of notice which could be used instead of, or in addition to, other methods of notice.

244 **SECTION 7. PETITION OBJECTING TO OR REQUESTING RELOCATION.**

245 (a) Except as otherwise provided in this section, a parent who objects to a
246 proposed relocation of the child or a revised parenting plan may, not later than [30] days
247 after receipt of notice, file a petition objecting to the relocation. If, however, the parties
248 participate in an alternate dispute resolution process, and the process does not result in an
249 agreement, the objecting parent may file a petition objecting to the relocation not later
250 than [30] days after conclusion of the alternative dispute resolution process.

251 (b) A parent seeking permission to relocate with the child may file a petition with
252 the court seeking permission at any time.

253 (c) A petition filed under this section must specify the reasons for the objection or
254 request to relocate with the child and the relief sought, including a proposed revised
255 schedule for parenting time with the child, if applicable.

256 (d) If a non-relocating parent does not file a petition objecting to relocation with
257 the court or initiate an alternative dispute resolution process within [30] days of receipt of
258 notice, the parent who gave notice may relocate with the child.

259 (e) If a parent has been subject to domestic violence or if a child has been subject
260 to child abuse or neglect, the parent shall not be required to participate in alternative
261 dispute resolution.

262 **Comment**

263
264 States statutes that allow a parent to relocate with a child in the event that the
265 other parent does not file an objection with the court include: Ala. Code § 30-3-169; Mo.
266 Rev. Stat. § 452.377(7); OK. Stats. Ann. Tit. 43, § 112.3, S.D. Cod. Laws § 25-4A-19;
267 Wash. Code § 26.09.500. See also American Academy of Matrimonial Lawyers Proposed
268 Model Relocation Act § 301 (1997).

269
270 An alternative approach is to require the parent seeking to relocate with the child
271 to obtain permission of either the other parent or the court. *See Nev. Rev. Stat. §*
272 *125C.200; N.J. Stat. § 9:2-2; N.D. Cent. Code § 14-09-07* (although the North Dakota
273 rule does not apply if the noncustodial parent has not exercised visitation for one year or
274 has moved to another state and is more than 50 miles from the residence of the custodial
275 parent).

276
277 The Servicemembers Civil Relief Act, Pub. L. 108-189, 117 Stat 2825 (2003),
278 amending the Soldiers' and Sailors's Relief Act, 50 U.S.C. App. §§ 501-594, provides for
279 stays of proceedings for active service members. Courts have held, however, that the act
280 does not preclude entering temporary custody orders in favor of the non-service member
281 parent while the service member is on active duty. *Lenser v. McGowan*, 358 Ark. 423,
282 191 S.W.3d 506 (2004). *See also Diffin v. Towne*, 3 Misc.3d 1107(A), 787 N.Y.S.2d 677
283 (Table), (N.Y.Fam.Ct.) (granting temporary custody to the father when mother was on
284 active duty, although mother had asked for stay of proceedings and wanted primary
285 custody of the child be with her current husband).

286

287 Under this section, a parent objecting to relocation of a child, must file his or her
 288 objection with the court 30 days after receipt of notice of the relocation or 30 days after
 289 conclusion of an alternative dispute resolution process if such a process is used. The
 290 reference to 30 days is bracketed. So, a state could substitute a different number of days if
 291 that suited the state's needs.

292
 293 Section 7(b) allows the parent seeking to relocate to file a petition seeking to
 294 relocate, rather than merely giving notice of intent to relocate and waiting to see if the
 295 other parent will object. This procedure might be used if the desire to relocate is urgent
 296 and the parent wishes to expedite proceedings.

297
 298 Under Section 7(e), if a parent has been subject to domestic violence or if a child
 299 has been subject to child abuse or neglect, the parent shall not be required to participate
 300 in alternative dispute resolution over parent's objection.

301
 302
 303 **SECTION 8. BEST INTERESTS; NO PRESUMPTION IN FAVOR OF OR**
 304 **AGAINST RELOCATION.**

305
 306 (a) On petition, the court must determine whether relocation is in the best interests
 307 of the child.

308 (b) No presumption shall be in favor of or against relocation of the child.

309
 310 **Comment**

311
 312 Presumptions in favor of or against relocation are the most controversial issues
 313 regarding the law of relocation. This act takes a middle-ground approach and directs that
 314 there will be no presumption in favor of or against the relocation. In the early years of
 315 relocation law, it was common to apply a presumption in favor of allowing the custodial
 316 parent to relocate with the child. In more recent years, many states placed the burden of
 317 proof on party seeking to move with the child. Several states follow the approach of this
 318 act and declare an equal burden of proof between the parents or direct that there be no
 319 presumption in favor of or against relocation. Courts, regardless of the burden or
 320 presumption applied, generally emphasize that relocation cases need to be decided on the
 321 facts of each case.

322
 323 The modern view is reflected by New York's Court of Appeals (the state's
 324 highest court) which held: "[W]e hold that each relocation request must be considered on
 325 its own merits with due consideration of all the relevant facts and circumstances and with
 326 predominant emphasis being placed on what outcome is most likely to serve the best
 327 interests of the child. . . . [I]t serves neither the interests of the children nor the ends of

328 justice to view relocation cases through the prisms of presumptions and threshold tests
329 that artificially skew the analysis in favor of one outcome or another.” *In re Tropea*, 87
330 N.Y.2d 727, 739-40, 665 N.E.2d 145, 150-51 (1996) (Vito Titone, Judge). Other cases
331 since the mid-1990s reflecting the trend toward examining the facts of each case without
332 a strong presumption for or against relocation include: *In re Marriage of Ciesluk*, 113
333 P.3d 135 (Colo. 2005); *Bodne v. Bodne*, 277 Ga. 445, 588 S.E.2d 728 (2003); *In re*
334 *Marriage of Smith*, 172 Ill. 2d 312, 665 N.E.2d 1209, 1213 (1996); and *Latimer v.*
335 *Farmer*, 360 S.C. 375, 602 S.E.2d 32 (2004).

336

337 For a description of the law of relocation in each state, see the articles and treatise
338 cited in the Prefatory Note.

339

340 The approach taken in this act to apply no presumption in favor of or against
341 relocation is consistent with a “Declaration on International Family Relocation,” which
342 was issued at an “International Judicial Conference on Cross-Border Family Relocation”
343 held in Washington D.C., March 23 - 25, 2010. The declaration stated: “In all
344 applications concerning international relocation the best interests of the child should be
345 the paramount (primary) consideration. Therefore, determinations should be made
346 without any presumptions for or against relocation.” The conference was organized by
347 the Hague Conference on Private International Law and the International Centre for
348 Missing and Exploited Children with the support of United States Department of State.
349 The declaration is available online at:
350 [http://www.icmec.org/en_X1/icmec_publications/Washington_Declaration__English_.pd](http://www.icmec.org/en_X1/icmec_publications/Washington_Declaration__English_.pdf)
351 [f](http://www.icmec.org/en_X1/icmec_publications/Washington_Declaration__English_.pdf)

352

353 Although the burden of proof regarding whether relocation is in the best interests
354 of the child is placed equally on both parents, the parent who has filed the action has the
355 burden of going forward (sometimes referred to as the burden of production). Thus, a
356 parent who objects to the relocation has the initial obligation to present evidence
357 regarding why relocation is not in the child’s best interests. The parent who seeks to
358 relocate would then present evidence regarding why relocation is in the child’s best
359 interests, and the court would decide the issue by a preponderance of the evidence.
360 Similarly, if the parent who seeks to relocate has filed the action, that parent would
361 present his or her evidence first, and the other parent would respond. An analogy
362 regarding the burden of proof can be made to an initial determination of custody in which
363 both parents have an equal burden of proof, and the court decides custody by a
364 preponderance of the evidence.

365

366 SECTION 9. FACTORS CONSIDERED.

367 When making any determination under this act, the court must consider the best

368 interests of the child and:

369 (1) the quality of relationship and frequency of contact between the child and each
370 parent;

371 (2) the likelihood of improving or diminishing the quality of life for the child,
372 including the impact on the child’s educational, physical, and emotional development;

373 (3) the views of the child, having regard to the child’s age and maturity;

374 (4) the child’s ties to the current and proposed community and to extended family
375 members;

376 (5) the parents’ reasons for seeking or opposing relocation and whether either
377 parent is acting in bad faith;

378 (6) a history of or threat of domestic violence, child abuse, or child neglect;

379 (7) the willingness and ability of each parent to respect and appreciate the bond
380 between the child and the other parent and to allow for a continuing relationship between
381 the child and the other parent, unless the court finds that the other parent has sexually
382 assaulted or engaged in domestic violence against the parent or a child, and that a
383 continuing relationship with the other parent will endanger the health or safety of either
384 the parent or the child;

385 (8) the degree to which one or both parents have relied on a prior agreement or
386 order of the court regarding relocation;

387 (9) the degree to which the parties’ proposals for contact after relocation are
388 feasible, having particular regard to the cost to the family and the burden to the child; and

389 (10) any other relevant factor affecting the best interests of the child.

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Comment

The list of factors for the court to consider seeks to provide a comprehensive list of relevant factors without overloading the court with issues to weigh. Some states have longer lists of factors – e.g., Ala. Code § 30-3-169.3(a) (17 factors); La. Rev., Stat. § 9:355.12 (12 factors). *See also* Fla. Stat. Ann. § 61.13001(7) (2008) (11 factors); Tenn. Code § 36-6-108(c) (11 factors); Wash. Code § 26-09-520 (11 factors). The additional factors generally are sub-categories of the factors listed here.

A seminal case in the development of the law of relocation is *D’Onofrio v. D’Onofrio*, 144 N.J. Super. 200, 206-07, 365 A.2d 27, 30 (Ch. Div. 1976), *aff’d*, 144 N.J. Super. 352, 365 A.2d 716 (App. Div. 1976), which listed four factors for consideration: [1] “the prospective advantages of the move in terms of its likely capacity for improving the general quality of life for both the custodial parent and the children”; [2] “the integrity of the motives of the custodial parent in seeking the move in order to determine whether the removal is inspired primarily by the desire to defeat or frustrate visitation by the noncustodial parent, and whether the custodial parent is likely to comply with substitute visitation orders when she is no longer subject to the jurisdiction of the courts of this State”; [3] “the integrity of the noncustodial parent’s motives in resisting the removal and consider the extent to which, if at all, the opposition is intended to secure a financial advantage in respect of continuing support obligations”; and [4] whether “there will be a realistic opportunity for visitation in lieu of the weekly pattern which can provide an adequate basis for preserving and fostering the parental relationship with the noncustodial parent if removal is allowed.”

In the decades since *D’Onofrio* was decided, most states have adopted a list of factors similar to those used in *D’Onofrio*. Generally, a single factor is not determinative. Courts must weight multiple factors to decide whether to allow or restrain relocation of the child.

The first factor (“the quality of relationship and frequency of contact between the child and each parent”) is a threshold consideration. Generally, a party seeking to prevent the relocation must have actively and routinely participated in the child’s life prior to the proposed move. This factor can support relocation or a restraint on relocation, depending on the comparative strength of the child’s relationship with each parent.

The second factor is “the likelihood of improving the quality of life for the child, including the impact on child’s educational, physical, and emotional development” If relocation of the child will provide the child with significant educational, health, or social benefits, those would be factors in support of relocation. If the facts show that the child’s quality of life would not improve or would diminish as a result of relocation, those would be factors against relocation.

436 The third factor (“the views of the child, having regard to the child’s age and
437 maturity”) is a traditional factor in cases involving custody. The word “views” was
438 chosen instead of “preferences” in order to broaden the inquiry and to potentially place
439 less pressure on the child to make a choice if the child does not wish to express a specific
440 preference about the relocation. The phrasing of this factors is the same as used in the
441 “Declaration on International Family Relocation,” which was issued at an “International
442 Judicial Conference on Cross-Border Family Relocation” held in Washington D.C.,
443 March 23 - 25, 2010. The conference was organized by the Hague Conference on Private
444 International Law and the International Centre for Missing and Exploited Children with
445 the support of United States Department of State. The declaration is available online at:
446 [http://www.icmec.org/en_X1/icmec_publications/Washington_Declaration__English_.pd](http://www.icmec.org/en_X1/icmec_publications/Washington_Declaration__English_.pdf)
447 [f](http://www.icmec.org/en_X1/icmec_publications/Washington_Declaration__English_.pdf)
448 For a psychologists’ perspective on assessing the child’s views, see Richard Warshak,
449 *Payoffs and Pitfalls of Listening to Children*, 52 *Family Relations*, 373-84 (2003) (Vol.
450 52, no. 4).

451
452 The fourth factor is “the child’s ties to the current and proposed community and to
453 extended families members.” This factor directs the court to compare the benefits and
454 drawbacks of the current and proposed communities. The factor would include
455 consideration the child’s ties to schools, friends, and recreational activities as well as
456 extended family members. This factor may be of increasing importance as the child
457 grows older.

458
459 The fifth factor is “the parents’ reasons for seeking or opposing relocation and
460 whether either parent is acting in bad faith.” In many states, the reason of the parent
461 seeking to relocate may be a threshold consideration. The party seeking to relocate
462 usually must have a good faith reason for the relocation. Common good faith reasons
463 include: pursuit of a new employment or better economic circumstances, accompanying a
464 spouse to new location, or a desire to be near family members. Regarding pursuit of new
465 employment, courts often will consider whether relocation for employment is truly
466 necessary or if the party who seeks employment in a new location could obtain
467 comparable employment in the current location. A bad faith reason for relocation would
468 be to undermine the child’s relationship with the other parent. If that appears to be the
469 reason for relocation, courts usually will deny permission to relocate. The reasons of the
470 parent opposing relocation also deal with the issue of good faith and bad faith. If a party
471 opposing the relocation has been actively involved in the child’s life and has regularly
472 exercised his or her parenting time or visitation with the child, the motives for opposing
473 relocation will be considered in good faith. If, on the other hand, the party opposing
474 relocation has not spent much time with the child and appears to be opposing relocation
475 as a means of harassment or to gain advantage on another issue, the opposition to
476 relocation will not be considered to be in good faith.

477
478 The sixth factor (“a history of or threat of domestic violence, child abuse, or child
479 neglect”) would support a request to relocate if the party or child has been subject to

480 abuse or the child has been subject to neglect. The weight of the factor could depend on
481 the recency of the abuse or neglect and the impact of abuse on the party who presents
482 evidence of the factor.
483

484 The seventh factor is “the willingness and ability of each parent to respect and
485 appreciate the bond between the child and the other parent and to allow for a continuing
486 relationship between the child and the other parent, unless the court finds that the other
487 parent has sexually assaulted or engaged in domestic violence against the parent or a
488 child, and that a continuing relationship with the other parent will endanger the health or
489 safety of either the parent or the child.” This factor is commonly used in initial custody
490 determinations and modifications, and it also applies to relocation cases. The willingness
491 of each parent to support the child’s relationship with the other parent is an important
492 factor, although it would not apply in cases of family violence in which there is an
493 ongoing danger to a parent or child. The wording for this factor is based on statutes in
494 Alaska and Oregon. Alaska Stat. § 25.20.090(6)(E) (2011); Or. Rev. Stat. § 107.137(f)
495 (2009).
496

497 The eighth factor is “the degree to which one or both parents have relied on a
498 prior agreement or order of the court regarding relocation.” Although the act contains no
499 presumption in favor of or against relocation, the existence of a prior agreement order can
500 be a significant factor in a relocation case, particularly if the parties have acted in reliance
501 on the order. If, for example, a prior order explicitly allowed a parent to relocate with the
502 child, and the parent soon thereafter proceeded to accept employment and buy a house in
503 a new location, the relocation generally should be allowed to proceed, absent unusual
504 circumstances. Conversely, if the prior court order restricted relocation of the child and a
505 parent made housing and employment decisions based on such restriction, that would be
506 a factor against allowing the relocation.
507

508 The ninth factor is “the degree to which the parties’ proposals for contact after
509 relocation are feasible, having particular regard to the cost to the family and the burden to
510 the child.” This factor includes consideration of the costs and logistics of travel and the
511 degree to which the parties can afford the travel arrangements. This factor also
512 encompasses consideration of the child’s age and developmental needs. Louisiana’s
513 statute – La. Rev. Stat. 9:355.12(2) – lists as a factor: “The age, developmental stage,
514 needs of the child, and the likely impact the relocation will have on the child’s physical,
515 educational, and emotional development, taking into consideration any special needs of
516 the child.” The wording for this factor in the Model Act is taken from the “Declaration on
517 International Family Relocation,” which was issued at an “International Judicial
518 Conference on Cross-Border Family Relocation.” For citation to the declaration, see
519 discussion of the third factor, above.
520

521 The tenth and final factor (“any other relevant factor affecting the best interest of
522 the child”) gives the court explicit flexibility to consider factors not listed.
523

524 SECTION 10. REMEDIES.

525
526 The court may:

527 (1) permit or prohibit relocation of the child on a temporary or permanent basis;

528 (2) order return of a child who was relocated without compliance with this act;

529 (3) modify custody, access, visitation, or parenting time under the provisions of

530 [insert citations to state’s existing statutory law regarding modification of custody,

531 visitation, and parenting time];

532 (4) order either party to provide security in order to guarantee return of the child;

533 (5) allocate payment of attorneys’ fees and cost between the parties [after

534 consideration of the factors set forth in Section 9];

535 (6) allocate transportation costs or modify child support, if the court has

536 jurisdiction to do so under the Uniform Interstate Family Support Act.

537
538 Comment

539
540 This section lists remedies available under the act. The first three remedies
541 require jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act
542 (UCCJEA) or the Uniform Child Custody Jurisdiction Act (UCCJA), if the state is one of
543 the few states that have not adopted the UCCJEA.

544
545 The fourth and fifth remedies (providing security and allocating attorney’s fees)
546 could be viewed as incident to the court’s jurisdiction under the UCCJEA / UCCJA as
547 well as having jurisdictional basis under other law. The requirement of providing security
548 requires good cause, such as a finding that the parent who seeks to relocate has interfered
549 with the other parent’s access to the child or that the relocating parent may not have
550 sufficient funds to facilitate return of the child. Among the statutes that specifically
551 allow the court to require posting of a bond or other security are: 750 Ill. Comp. Stat.
552 5/609(a); Iowa Code § 598.21D; La. Rev. Stat. § 9:355.14; N.C. Gen. Stat. 50-13.2(c).

553
554 Failure to provide proper notice under the act would be among the factors that
555 could be considered in allocating fees between the parties.

556

557 The sixth remedy (allocation of transportation costs or modification of child
558 support) requires jurisdiction under the Uniform Interstate Family Support Act (UIFSA).
559

560 Remedies concerning possible abduction of a child are contained in the Uniform
561 Child Abduction Prevention Act. This act is reproduced online at:
562 http://www.law.upenn.edu/bll/archives/ulc/ucapa/2006_finalact.htm (accessed May 4,
563 2011).
564

565 To the extent available in other family law cases, courts have discretion to order:
566 (1) mediation, (2) appointment of an attorney for the child, a guardian ad litem for the
567 child, or other representative of the child's interests; or (3) evaluation by mental health
568 professionals or social service professionals.
569

570 The court also may order the parties to submit additional proposed revised
571 schedules for parenting time with the child. The act requires submission of proposed
572 schedules with each parents' initial pleadings. Additional proposed schedules could be
573 helpful when a court has made a determination regarding whether relocation will be
574 allowed or not allowed, and the court would like additional input from the parents
575 regarding how to implement that decision.
576

577
578 **SECTION 11. PRIORITY FOR HEARINGS.** A hearing on a petition
579 objecting to relocation or seeking permission to relocate shall be set within [30] days
580 upon request of a party.

581 **Comment**

582
583 This provision is modeled after Fla. Stat. Ann. § 61.13001(10) (2010) and La.
584 Rev. Stat. 9:355.9 (2010). Since a request to relocate may be urgent, hearings on such
585 requests should receive priority. Circumstances involving an urgent need for resolution
586 include the need to begin new employment or the start of the school year for a child. If
587 the safety of a parent or child is at issue, the need for priority on the court's docket will
588 be heightened. Section 11 specifies that the hearing shall be set within 30 days of the
589 request of a party, although the number is in brackets so that states may set time limits to
590 meet local needs. The level of priority beyond that will be within the court's discretion
591 and may depend on other urgent matters on the court's docket, including emergency
592 hearings on other family law issues.
593

594
595 **SECTION 12. UNIFORMITY OF APPLICATION AND**
596 **CONSTRUCTION.** In applying and construing this model act, consideration must be

597 given to the need to promote uniformity of the law with respect to its subject matter
598 among states that enact it.

599
600

601 **SECTION 13. EFFECTIVE DATE.** This [act] takes effect on

602

603 **SECTION 14. REPEALS.** The following statutes, or parts there of are hereby

604 repealed: [current statutes pertaining to relocation of child].

605

606 **SECTION 15. TRANSITIONAL PROVISION.** A motion or other request for
607 relief regarding relocation of a child which was commenced before the effective date of
608 this [Act] is governed by the law in effect at the time the motion or other request was
609 made.

