

RELOCATION: THE DEBATE

**AMERICAN BAR ASSOCIATION SECTION OF FAMILY LAW
2006 SPRING CLE CONFERENCE
WASHINGTON, D.C.**

**THURSDAY, MAY 4, 2006
(Materials updated June 28, 2006)**

OVERVIEW OF LAW OF RELOCATION IN THE 50 STATES*

**By Jeff Atkinson
Copyright, 2006, by Jeff Atkinson**

I. TREND IN THE LAW

The trend in the law is toward making decisions about relocation of children based on the facts of each case rather than by application of strong, automatic presumptions for or against relocation. Examples of cases in the last ten years reflecting this trend:

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

GA: *Bodne v. Bodne*, 277 Ga. 445, 588 S.E.2d 728 (2003);

IL: *In re Marriage of Smith*, 172 Ill. 2d 312, 665 N.E.2d 1209, 1213 (1996);

NY: *In re Tropea*, 87 N.Y.2d 727, 740-41, 665 N.E.2d 145, 151-52 (1996);

SC: *Latimer v. Farmer*, 360 S.C. 375, 602 S.E.2d 32 (2004).

See also: CA: *In re Marriage of Lamusga*, 32 Cal.4th 1072, 88 P.3d 81, 12 Cal. Rptr. 3d 356 (2004).

II. PRESUMPTIONS AND BURDEN OF PROOF

[States can be in more than one category, and there is some overlap between categories. For citations to statutes and cases, see appendix to these materials.]

1. Presumption in favor of relocation: 5 states (AR, MN, OK, SD, WA)
2. Burden of proof on party opposing relocation: 5 states (AR, CA, KY, MT, WY)
3. Presumption against relocation: 1 state (AL)
4. Burden of proof on party seeking relocation: 7 states (AZ, ID, IL, LA, MO, NB, WV)
5. Split burden of proof (generally requiring party who seeks to move to show good faith reason for move; burden then shifts to party opposing move to show why the move is not in the child's best interests): 6 states (AL, CT, NV, NH, NJ, PA)
6. Presumption based on amount of time with child (generally presuming that move is permissible if there is a primary custodian, but the presumption does not apply if child spends approximately equal time with both parents): 3 states (TN, WV, WI)
7. No presumptions or directing equal burden of proof (explicit statement in statute or case law): 6 (or more) states (CO, FL, GA, NM, NY, SC)

III. NOTICE REQUIREMENTS

In the 33 states with statutes on the issue of relocation, 18 state statutes explicitly require the parent seeking to relocate give notice to the other parent.

A notice period of 30 to 60 days is common. Notice usually is by certified mail; return receipt requested.

There also may be a duty to update information if relocation plans change.

Common elements of notice include:

- Address of intended relocation;
- Date of planned move;
- Reason for move;
- Proposed revised parenting time schedule;
- Rights of other parent to object to relocation.

Courts may waive or modify notification requirements in exceptional circumstance, such as cases involving a threat to the safety of the parent or child.

IV. FACTORS CONSIDERED IN DECIDING WHETHER OR NOT TO PERMIT RELOCATION (WITH SOME OVERLAP BETWEEN FACTORS)

- Motives of the parent seeking to move;
- Motives of the parent opposing the move;
- The quality of relationship and frequency of contact between the child and each parent;
- History or threats of domestic violence;
- Likelihood of improving quality of life for child;
- Likelihood of improving quality of life for custodial parent and the degree to which benefit to custodial parent will provide benefit to child (States vary regarding the degree to which a benefit to the custodial parent will be presumed to be a benefit to the child);
- The feasibility of restructuring parenting time (visitation) in order to preserve the relationship between the child and the parent without primary custody if the move is allowed.

V. REMEDIES OF THE COURT

- Allowing or not allowing parent to move with the child;
- Adjusting parenting time / visitation, including modification of custody;
- Allocating transportation costs; adjusting child support (deviating from guidelines);
- Ordering parties to keep each other advised regarding addresses and telephone of residence and other places child will be;
- Ordering relocating party to provide security (e.g., post a bond) in order to guarantee return of child; ordering surrender of passport;
- Allocation of attorneys fees;
- Ordering mediation and evaluations.

VI. DEVELOPING STANDARDS FOR RELOCATION

- 1.. **A Proposed Model Relocation Act drafted by the American Academy of Matrimonial Lawyers (AAML) and approved by the Academy in 1997.** The model act has 22 sections and covers notice, procedures for objection, factors considered, and remedies. Regarding the burden of proof, the model act offered three alternatives: (A) “The relocating person has the burden of proof that the proposed relocation is made in good faith and in the best interest of the child”; (B) “The non-relocating person has the burden of proof that the objection to the proposed relocation is made in good faith and that relocation is not in the best interest of the child”; and (C) “The relocating person has the burden of proof that the proposed relocation is made in good faith. If that burden of proof is met, the burden shifts to the non-relocating person to show that the proposed relocation is not in the best interest of the child.”

The AAML model act is available online at:

http://aaml.org/files/public/Model_Relocation_Act.htm

2. **The American Law Institute's Principles of the Law of Family Dissolution (2000)**, which advocate allowing the primary custodian to move with child if primary custodian shows valid purpose for move and good faith in seeking move. For a website describing the project, see: http://akfamilylaw.org/principles_ali.htm

3. **National Conference of Commissioners on Uniform State Laws (NCCUSL)**. In 2005, the National Conference of Commissioners on Uniform State Laws appointed a Study Committee on Relocation of Children to make a recommendation regarding whether a uniform act on relocation should be drafted. Judge Debra Lehrmann is chair of the Study Committee; Jeff Atkinson is reporter for the Study Committee – <http://nccusl.org/Update/DesktopDefault.aspx?tabindex=1&tabid=40> (Website describing the Study Committee).

APPENDIX

RELOCATION LAWS IN THE 50 STATES

By Jeff Atkinson

Copyright, 2006, by Jeff Atkinson

Updated: June 28, 2006

- Alabama:** Ala. Code, §§ 30-3-160 - 30-3-169.10 (2006) (requiring 45 days notice; rebuttable presumption that change of residence is not in child's best interest; initial burden on party seeking change; if burden is met, burden shifts to non-relocating party; factors listed); *Ex parte McLendon*, 455 So. 2d 863 (Ala. 1984).
- Alaska:** No statute; *House v. House*, 779 P.2d 1204 (Alaska 1989) (consider best interest of child, including whether party who seeks to move has legitimate reason for the move).
- Arizona:** Ariz. Rev. Stat. § 25-408 (2006) (requiring 60 days notice; rebuttable presumption that agreement between parties is in child's best interests; factors listed); *Bloss v. Bloss*, 711 P.2d 663 (Az. Ct. App. 1985) (burden of proof on party who seeks to move).
- Arkansas:** No statute; *Blivin v. Weber*, 126 S.W.3d 351 (Ark. 2003) (presumption in favor of relocation; burden of proof on non-relocating party).
- California:** No statute; *In re Marriage of Lamusga*, 32 Cal. 4th 1072, 88 P.3d 81, 12 Cal. Rptr. 3d 356 (2004) (holding that "[T]he noncustodial parent bears the initial burden of showing that the proposed relocation of the children's residence would cause detriment to the children" and that "[T]he 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")
- Colorado:** Colo. Rev. Stat. § 14-10-129 (2006) (requiring notice of relocation and listing factors to be considered); *In re Marriage of Ciesluk*, 113 P.3d 135 (Colo. 2005) (holding that under a new statute, the former presumption in favor of relocation was eliminated and that "both parents share equally the burden of demonstrating what arrangement will serve the child's best interests"). In *Spahmer v. Gullette*, 113 P.3d 158, 159 (Colo.2005), the court held that under Colo. Rev. Stat. § 14-10-124(1.5) (2004): "in an

initial determination to allocate parental responsibilities, a court has no statutory authority to order a parent to live in a specific location. Rather, the court must accept the location in which each party intends to live, and allocate parental responsibilities accordingly in the best interests of the child.”

- Connecticut:** No statute; *Ireland v. Ireland*, 246 Conn. 413, 717 A.2d 676 (1998) (holding custodial parent bears initial burden to prove to show legitimate reason for move, and then burden shifts to noncustodial parent to show relocation would not be in best interest of child).
- Delaware:** No statute; *Karen J.M. v. James W.*, 792 A.2d 1036 (Del. Fam. Ct. 2002) (finding factors listed in the American Academy of Matrimonial Lawyers’ Model Relocation Act to be persuasive, although act was not adopted by legislature).
- Dist. of Columbia:**
- Florida:** Fla. Stat. § 61.13(2)(d) (2006) (no presumption in favor of or against relocation; factors listed).
- Georgia:** Ga. Code § 19-9-1 (2006) (requiring 30 days notice); *Bodne v. Bodne*, 277 Ga. 445, 588 S.E.2d 728 (2003) (holding there is no presumption for or against relocation).
- Hawaii:** No statute; *Tetreault v. Tetreault*, 99 Haw. 352, 55 P.3d 845 (Inter. Ct. App. 2002), *cert denied* (Haw. 2002) (affirming custody award to the mother which allowed the mother to move to Naperville, Illinois with the children; trial court found the move would be in the children’s best interests); *Maeda v. Maeda*, 8 Haw. App. 139, 794 P.2d 268 (1990) (affirming a family court order that gave custody to the mother, but would automatically change custody to the father if the mother effectuated her plan to move to the mainland).
- Idaho:** No statute; *Roberts v. Roberts*, 138 Idaho 401, 64 P.3d 327 (2003) (“the best interests of the children is always the paramount concern. . . . [T]he moving parent has the burden of proving relocation would be in the best interests of the child before moving in violation of a previous custody arrangement.”)
- Illinois:** 750 Ill. Comp. Stat. 5/609 (2006) (burden of proof on party seeking to move); 750 Ill. Comp. Stats 5/611 (2006) (enforcement provisions for orders prohibiting removal); 750 Ill. Comp. Stats. 43/13.5 (allowing court to enjoin removal in parentage action); *In re Marriage of Eckert*, 119 Ill. 2d 316, 518 N.E.2d 1041 (1988) (burden on party who seeks to move;

factors listed); *In re Marriage of Smith*, 172 Ill. 2d 312, 665 N.E.2d 1209, 1213 (1996) (“A determination of the best interests of the child[ren] cannot be reduced to a simple bright-line test, but rather must be made on a case-by-case basis, depending, to a great extent, upon the circumstances of each case” (quoting *Eckert* and affirming decision denying mother permission to relocate); *In re Marriage of Collingbourne*, 204 Ill. 2d 498, 731 N.E.2d 532 (2003) (stating that decisions “must be made on a case-by case basis,” including consideration of benefits to custodial parent and child).

Indiana: Ind. Stat. §§ 31-17-2-4 & 31-17-2-23 (2006) (requiring notice if intent to move outside of Indiana or at least 100 miles from residence specified in pleadings); *Lamb v. Wenning*, 600 N.E.2d 96 (Ind. 1992) (holding that relocation may or may not be change of circumstances sufficient to modify custody).

Iowa: Iowa Code § 598.21D (2006) (court may consider relocation to be a substantial change of circumstances; cash bond can be required if finding of interference).

Kansas: Kan. Stat. § 60-1620 (2006) (requiring 30 days notice; providing that relocation can be considered a material change of circumstance).

Kentucky: No statute; *Fenwick v. Fenwick*, 114 S.W.3d 767, 786 (Ky 2003) (“[A] non-primary residential custodian parent who objects to the relocation can only prevent the relocation by being named the sole or primary residential custodian, and to accomplish this re-designation would require a modification of the prior custody award. He or she must therefore show that ‘[t]he child’s present environment endangers seriously his physical, mental, moral, or emotional health, *and* the harm likely to be caused by a change of environment is outweighed by its advantages [.]’” (sub-quotation from Ky. Rev. Stat. § 403.340(2) (as originally enacted, 1972 Ky. Acts ch. 182, §§ 24) (court’s emphasis).

- Louisiana:** La. Rev. Stat. §§ 9:355.1- 9:355.17 (2006) (requiring 60 days notice if relocation will be outside the state or more than 150 miles from other parent; stating that providing notice shall not constitute a change of circumstance warranting change of custody, but failing to provide notice can constitute a change of circumstance warranting modification of custody; burden of proof on party who seeks to relocate; factors listed).
- Maine:** Maine Rev. Stat. tit. 19A, §§ 1653(14) & 1657 (2006) (requiring 30 days notice, or notice as soon as possible, and providing that relocation can constitute substantial change in circumstances).
- Maryland:** Md. Family Law § 9-106 (2006) (requiring 45 days notice, except if child or party would be exposed to abuse); *Domingues v. Johnson*, 23 Md. 486, 593 A.2d 1133 (1991) (relocation can be a sufficient change in circumstances to warrant modification of custody).
- Massachusetts:** Mass. Gen. Laws ch. 208, § 30 (2006) (“A minor child of divorced parents who is a native of or has resided five years within this commonwealth and over whose custody and maintenance a probate court has jurisdiction shall not, if of suitable age to signify his consent, be removed out of this commonwealth without such consent, or, if under that age, without the consent of both parents, unless the court upon cause shown otherwise orders. The court, upon application of any person in behalf of such child, may require security and issue writs and processes to effect the purposes of this and the two preceding sections.”); *Rosenthal v. Maney*, 51 Mass. Ct. App. 257, 745 N.E.2d 350 (2001) (consider best interests of child and interests of custodial parent).
- Michigan:** Mich. Comp. Laws § 722.31 (2006) (requiring permission of non-relocating parent or court and consideration of multiple factors).
- Minnesota:** No statute; *Auge v. Auge*, 334 N.W.2d 393 (Minn. 1983) (presumption in favor of allowing custodial parent to move with child).
- Mississippi:** No statute; *Spain v. Holland*, 483 So.2d 318 (Miss. 1986) (affirming trial court’s decision allowing child to be moved out of country).

- Missouri:** Mo. Rev. Stat. § 452.377.1 - 452.411 (2006) (requiring 60 days notice; burden of proof on party seeking relocation to show good faith and that move is in best interest of child; change of residence is change of circumstances which would allow court to modify visitation or custody); *Stowe v. Spence*, 41 S.W.3d 468 (Mo. 2001) (citing statutory requirements and remanding case).
- Montana:** Mont. Code Ann. § 40-4-217 (2005) (requiring 30 days notice); *In re Marriage of Cole*, 729 P.2d 1276 (Mont. 1986) (allowing relocation and stating “we require the parent requesting the travel restriction to provide sufficient proof that a restriction is, in fact, in the best interests of the child”); *In re Marriage of Robison*, 311 Mont. 246, 53 P.3d 1279 (2002) (affirming restriction mother’s travel).
- Nebraska:** No statute, *Tremain v. Tremain*, 264 Neb. 328, 646 N.W.2d 661, 665 (2002) (“In order to prevail on a motion to remove a minor child to another jurisdiction, the custodial parent must first satisfy the court that he or she has a legitimate reason for leaving the state. . . . After the custodial parent satisfies the court that he or she has a legitimate reason for leaving the state, the custodial parent must demonstrate that it is in the child’s best interests to continue living with him or her.”)
- Nevada:** Nev. Rev. Stat. § 125C.200 (2006) (before relocation, consent of noncustodial parent or court approval required). *Flynn v. Flynn*, 92 P.3d 1224 (Nev. 2004): “Once the custodial parent makes the threshold good faith showing, the district court should then apply the factors outlined in *Schwartz* [812 P.2d 1268 (1991)] to determine ‘whether the custodial parent has demonstrated that an actual advantage will be realized by both’ the parent and the child by moving to the new location.’ . . . Under current law, if [mother] shows a good faith reason for relocating and that reasonable alternative visitation is possible, ‘[t]he burden shifts to the noncustodial parent to show that the move is not in the best interests of the children. Such a showing must consist of concrete, material reasons why the move is inimical to the children’s best interests.’” *Potter v. Potter*, 119 P.3d 1246, 1249-50 (Nev. 2005) held that Nev. Rev. Stat. § 125C.200 does not apply to cases where parents have joint physical custody and further held that: “When a parent with joint physical custody of a child wishes to relocate outside of Nevada with the child, the parent must move for primary physical custody for the purposes of relocating. . . . The district court must consider the motion for primary custody under the best interest of the child standard established for joint custody situations in NRS 125.510 The moving party has the burden of establishing that it is in the child’s best interest to reside outside of Nevada with the moving parent as the primary physical custodian. The issue is whether it is in the

best interest of the child to live with parent A in a different state or parent B in Nevada.”

New Hampshire: N.H. Rev. Stat. § 461-A:12 (2006) (requiring 60 days notice; initial burden on parent seeking permission to move to show legitimate purpose for move; burden then shifts to other parent to show by preponderance of the evidence that proposed relocation is not in best interest of child”).

New Jersey: N.J. Stat. § 9:2-2 (2006) (“When the Superior Court has jurisdiction over the custody and maintenance of the minor children of parents divorced, separated or living separate, and such children are natives of this State, or have resided five years within its limits, they shall not be removed out of its jurisdiction against their own consent, if of suitable age to signify the same, nor while under that age without the consent of both parents, unless the court, upon cause shown, shall otherwise order. The court, upon application of any person in behalf of such minors, may require such security and issue such writs and processes as shall be deemed proper to effect the purposes of this section.”); *Baures v. Lewis*, 167 N.J. 91, 770 A.2d 214 (2001) (party seeking to move has burden of going forward to show prima facie case of good faith reason for move and that move will not be inimical to child’s interests; burden then shifts to party opposing move to produce evidence that move is not in good faith or that move is inimical to child’s interests).

New Mexico: No statute; *Jaramillo v. Jaramillo*, 113 N.M. 57, 823 P.2d 299, 309 (1991) (“neither parent will have the burden to show that relocation of the child with the removing parent will be in or contrary to the child’s best interests. Each party will have the burden to persuade the court that the new custody arrangement or parenting plan proposed by him or her should be adopted by the court, but that party’s failure to carry this burden will only mean that the court remains free to adopt the arrangement or plan that it determines best promotes the child’s interests.”)

New York: No statute; *In re Tropea*, 87 N.Y.2d 727, 740-41, 665 N.E.2d 145, 151-52 (1996) (“it serves neither the interests of the children nor the ends 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 another. . . . In the end, it is for the court to determine, based on all of the proof, whether it has been established by a preponderance of the evidence that a proposed relocation would serve the child’s best interests.”).

- North Carolina:** N.C. Gen. Stat. § 50-13.2 (2006)(c) (2006) (allowing court to enter order to remove child from state, and stating that court can order bond or other security for return of child).
- North Dakota:** N.D. Century Code § 14-09-07 (2006) (providing that residence of child cannot be changed to another state without consent of other parent or court, unless visitation rights have not been exercised for one year).
- Ohio:** Ohio Rev. Code § 3109.051(G) [§§ 3109.05.051(G)] (2006) (requiring notice, with waiver of notice possible in cases of family violence).
- Oklahoma:** Okla. Stat. tit. 10, § 19 (2006) (“A parent entitled to the custody of a child has a right to change his residence, subject to the power of the district court to restrain a removal which would prejudice the rights or welfare of the child.”); *Casey v. Casey*, 58 P.3d 763, 771 (2002) (“we determine that, under the facts presented--where the custodial parent is recognized as a fit repository for custody and where no real and specific harm to the children is identified, the mother may not be restricted from relocating out of state under peril of losing custody of her children . . .”).
- Oregon:** Or. Rev. Stat. § 107.159 (2006) (requiring “reasonable notice” before relocation to “a residence more than 60 miles further distant from the other parent,” unless “good cause” to suspend notice requirement).
- Pennsylvania:** Pa. Cons. Stats. tit. 23, § 5308 (2006) (“If either party intends to or does remove himself or the child from this Commonwealth after a custody order has been made, the court, on its own motion or upon motion of either party, may review the existing custody order.”); *Gruber v. Gruber*, 400 Pa. Super. 174, 583 A.2d 434, 440 (1990) (“When a custodial parent seeks to relocate at a geographical distance and the non-custodial parent challenges the move, the custodial parent has the initial burden of showing that the move is likely to significantly improve the quality of life for that parent and the children. In addition, each parent has the burden of establishing the integrity of his or her motives in either desiring to move or seeking to prevent it. The custodial parent must convince the court that the move is not sought for whimsical or vindictive reasons. Likewise, the non-custodial parent must show that resistance to the move stems from concern for the children and his or her relationship to them. The court must then consider . . . the feasibility of creating substitute visitation arrangements to ensure a continuing, meaningful relationship between the children and the non-custodial parent. Once again, we reiterate that a move sought to secure substantial advantage for the custodial parent and children will not be disallowed simply because visitation cannot continue in the existing pattern. Sensitive case-by-case balancing is required to

ensure that all interests are treated as equitably as possible.”)

- Rhode Island:** No statute regulating relocation, other than R.I. § 15-5-16(g)(6) (2006) (“The fact that a parent is absent or relocates because of an act of domestic or family violence by the other parent shall not weigh against the relocating or absent parent in determining custody and visitation”); *Dupre v. Dupre*, 857 A.2d 242, 254 (R.I. 2004) (holding that relocation cases must be decided according to “the best interests of the child” and that the parent who seeks to move does not need to establish a “compelling-reason” for the move).
- South Carolina:** No statute; *Latimer v. Farmer*, 360 S.C. 375, 602 S.E.2d 32 (2004) (abolishing former presumption against relocation and stating: “In all child custody cases, including relocation cases, the controlling considerations are the child’s welfare and best interests. The presumption against relocation is a meaningless supposition to the extent a custodial parent’s relocation would, in fact, be in the child’s best interest.”)
- South Dakota:** S.D. Codified Laws §§ 25-4A-17 - 25-4A-19; 25-5-13 (2006) (requiring 45 days notice and allowing objecting parent 30 days from notice to request a hearing; also providing “A parent entitled to the custody of a child has the right to change his residence, subject to the power of the circuit court to restrain a removal which would prejudice the rights or welfare of the child.”); *Berens v. Berens*, 689 N.W.2d 207 (S.D. 2004) (affirming a finding that it was not in the children’s best interest to move to Oregon and granting primary custody to the father who was remaining in South Dakota),
- Tennessee:** Tenn. Code § 36-6-108 (2006) (requiring notice; no presumption in favor or against relocation if parents are spending substantially equal intervals of time with child; parent spending greater amount of time with child permitted to relocate with child unless certain findings made; factors listed).
- Texas:** No statute; *Lenz v. Lenz*, 79 S.W.3d 10, (Tex. 2002) (relocation cases governed by determination of best interest of child; in this case, the Texas Supreme Court found evidence supported jury verdict to allow mother to relocate to Germany).
- Utah:** Utah Code § 30-3-37 (2006) (requiring 60 days notice “if possible” . . . “[w]hen either parent decides to move from the state of Utah or 150 miles or more from the residence specified in the court’s decree”; providing minimum parenting time requirements for school-age children; providing

rules for payment of travel expenses).

- Vermont:** No statute; *Hawkes v. Spence*, 878 A.2d 273, 277 (Vt. 2005) (adopting ALI standards and stating: “although a custodial parent’s relocation, by itself, does not automatically satisfy the threshold showing of changed circumstances, neither does relocation alone automatically preclude the family court from finding changed circumstances just because the relocating party is the custodial parent. . . . Rather, whether a relocation or other change is substantial enough to meet the threshold must be determined in the context of all the surrounding circumstances, keeping in mind that the effect on the child is what makes a change substantial.”)
- Virginia:** Va. Code § 20-124.5 (2006) (requiring 30 days notice unless good cause shown); *Parish v. Spaulding*, 26 Va. App. 566, 496 S.E.2d 91, 94 (1998) (“the custodial parent’s voluntary relocation of the children does not bar that parent from thereafter seeking modification of the trial court’s order of custody; nor does the custodial parent’s action bar a motion seeking approval of the relocation retroactively”).
- Washington:** Wash. Code §§ 26.09.405 - 26.09.560 (2006) (requiring 60 days notice unless party moving did not reasonably know of relocation; exceptions to notice requirement in cases of domestic violence; allowing temporary orders restraining or authorizing relocation; rebuttable presumption that the intended relocation will be permitted; factors listed); *In re Marriage of Horner*, 151 Wash.2d 884, 93 P.3d 124 (Wash. 2004) (“We . . . hold that trial courts must determine whether the ‘detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person.’ RCW 26.09.520. We further require that trial courts must consider each of the child relocation factors. These requirements will ensure that trial courts consider the interests of the child and the relocating person within the context of the competing interests and circumstances required by the [child relocation act].”).
- West Virginia:** W. Va. Code § 48-9-403 (2006) (requiring 60 days notice and providing: “A parent who has been exercising a significant majority of the custodial responsibility for the child should be allowed to relocate with the child so long as that parent shows that the relocation is in good faith for a legitimate purpose and to a location that is reasonable in light of the purpose. The percentage of custodial responsibility that constitutes a significant majority of custodial responsibility is seventy percent or more. A relocation is for a legitimate purpose if it is to be close to significant family or other support networks, for significant health reasons, to protect

the safety of the child or another member of the child's household from significant risk of harm, to pursue a significant employment or educational opportunity or to be with one's spouse who is established, or who is pursuing a significant employment or educational opportunity, in another location. The relocating parent has the burden of proving of the legitimacy of any other purpose. A move with a legitimate 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.”)

Wisconsin: Wis. Stat. § 767.327 (2006) (requiring 60 days notice; opportunity to object within 15 days; factors listed; and providing: “There is a rebuttable presumption that continuing the current allocation of decision making under a legal custody order or continuing the child’s physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child. This presumption may be overcome by a showing that the move or removal is unreasonable and not in the best interest of the child.”)

Wyoming: No statute; *Watt v. Watt*, 971 P.2d 608, 616-17 (Wyo. 1999) (“[T]he non-custodial parent in this situation, was required to carry the burden of demonstrating that a material and substantial change of circumstances had occurred, sufficient to justify the trial court in ordering a change in custody. . . . The custodial parent’s right to move with the children is constitutionally protected, and a court may not order a change in custody based upon that circumstance alone. Some other change of circumstances, together with clear evidence of the detrimental effect of the other change upon the children, is required.”)

* These materials are based on the author’s own research. The author consulted the online resources of Laura Morgan of Family Law Consulting, Charlottesville, VA, to help locate materials and double-check the results of his research. Ms. Morgan’s materials are at: <http://www.famlawconsult.com/reader.html>

About the Author

Jeff Atkinson teaches at DePaul University College of Law, Chicago, Illinois. Professor Atkinson has taught a variety of subjects, including family law, health care law, and ethics. He also serves as a professor-reporter for the Illinois Judicial Conference, responsible for training Illinois judges in family law and legal ethics. He is the author of a two-volume treatise entitled *Modern Child Custody Practice – Second Edition*, published by LexisNexis, San Francisco, CA (updated annually). He also is the author of *The American Bar Association Guide to Marriage*,

Divorce and Families (published by Random House; release date of April 11, 2006). Professor Atkinson's writings on family law and other subjects have been cited by the United States Supreme Court and the supreme courts of eleven states. Professor Atkinson serves as a reporter and advisor to the National Conference of Commissioners on Uniform State Laws, an organization which drafts laws for the states on family law issues and other topics. He is admitted to the bars of the State of Illinois and the United States Supreme Court and has practiced law since 1977. Jeff Atkinson lives in Wilmette, Illinois. His e-mail address is: JAtkin747@aol.com