

STORAGE NAME: h1421a.flc

DATE: April 18, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FAMILY LAW AND CHILDREN
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1421

RELATING TO: Child custody

SPONSOR(S): Representatives Frankel and Wise

STATUTE(S) AFFECTED: Section 61.13 F.S.

COMPANION BILL(S): S 1092 (similar)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

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I. SUMMARY:

This bill will establish a legislative policy regarding relocation of children following separation or dissolution of marriage. It will establish standards for courts and litigants to follow to determine when a relocation is in the best interests of the children.

The bill is intended to promote the public policy stated in section 61.13(2)(b) F.S. that children should have "frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved." The bill is intended to promote the best interests of children by ensuring that both parents are physically available to spend quality time with their children. The bill is intended to discourage the alienation of noncustodial parents from their children's lives when the custodial parents' relocation is not in the best interests of the children.

The fiscal impact of the bill is indeterminate.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Florida statutes do not directly address the issue of when parents may relocate following divorce or separation. However, Florida does have a strong, stated policy of maintaining a close and continuing relationship between children and their parents. Section 61.13(2)(b) F.S. provides, "It is the public policy of this state to assure that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities and joys of childrearing."

Aside from this public policy, the law surrounding such relocations has been largely developed through the courts. The Florida Supreme Court has recognized different standards in addressing a parents' request to relocate depending on whether the parties have a restriction on relocation within their final judgment of dissolution of marriage.

1. When parties do not have a prior relocation restriction

When the parties have not yet litigated the issue of relocation, if the relocating parent can show that the move is being made in good faith, there is a presumption in favor of allowing such relocation. Russenberger v. Russenberger, 669 So.2d 1044 (Fla. 1996). This good faith has been described as a "well-intentioned reason and founded belief that the relocation is best for that parent's - and, it follows, the child's - well being, rather than from a vindictive desire to interfere with the visitation rights of the other parent." See Hill v. Hill, 548 So.2d 705 (Fla.3d DCA 1989)(Schwartz, J., concurring),

Upon proof of good faith, the burden then shifts to the non-relocating parent to show, by a preponderance of the evidence, that relocation is not in the best interests of the child. As stated in Mize v. Mize, 651 So.2d 417, 420 (Fla. 1993), the factors to be considered in determining when relocation is in the best interests of the child are as follows:

1. Whether the move would be likely to improve the general quality of life for both the primary residential spouse and the children.
2. Whether the motive for seeking the move is for the express purpose of defeating visitation.
3. Whether the custodial parent, once out of the jurisdiction, will be likely to comply with any substitute visitation arrangements.
4. Whether the substitute visitation will be adequate to foster a continuing meaningful relationship between the child or children and the noncustodial parent.
5. Whether the cost of transportation is financially affordable by one or both of the parents.
6. Whether the move is in the best interests of the child. (The court stated that the sixth requirement is a generalized summary of the previous five.)

According to the Russenberger, in approving this burden shifting approach, the Supreme Court was attempting to balance the strong policy of maintaining closer relationships between parents and children with a policy that allows parents to make good faith relocations.

b. Where parties have an existing relocation restriction

If a prior restriction on relocation exists, a residential parent seeking to relocate must show that the move is in the best interests of the child and that a substantial change in circumstances exists that overrides the existence of the prior relocation restriction. See, e.g. Mize v. Mize, 621 So.2d 417 (Fla. 1993).

The Florida Supreme Court has not yet decided what constitutes a substantial change in circumstances regarding relocation restrictions. In cases involving modification of alimony or child support, the Florida Supreme Court has determined that the substantial change of circumstances must be significant, material, permanent and **involuntary**. Pimm v. Pimm, 601 So.2d 534 (Fla. 1992). In a modification of custody, the burden has been described as "extraordinary." Smoak v. Smoak, 658 So.2d 568 (Fla. 1st DCA 1995).

It is as yet undetermined whether modification of a relocation restriction should be subject to such a stringent test. Recent case law implies that courts will overrule such a prior restriction based on a less demanding test. In Macconnell v. Cascante, 668 So.2d 668 (Fla. 4th DCA 1996) the district court held that a custodial parent's remarriage and opportunity to relocate to Costa Rica so that the new spouse could manage a farm there "unquestionably warranted" a finding of changed circumstances. In Card v Card, 659 So.2d 1228 (Fla. 5th DCA 1995) the court found changed circumstances when the subsequent spouse needed to relocate in order to maintain his employment. In Landingham v. Landingham, 22 Fla. L. Weekly D38 (Fla. 1st DCA 1996), the court also found that a move based on improved job opportunities was enough to be termed a substantial change in circumstances. According to some commentators, such case law overrules the effectiveness of relocation restrictions so long as such a move is made in good faith. See Judge James S. Moody, Jr. and Phillip S. Wartenberg, *The Birth of a Legal Presumption*, 70 Fla. B.J. 68 (November 1996) (stating that when courts use the move itself as enough to show a substantial change in circumstances, a prior restriction is easily overcome).

B. EFFECT OF PROPOSED CHANGES:

The bill will modify the state of the law regarding relocation of parents. As the law does now, the bill will allow courts to include a restriction on relocation when shared parental responsibility is ordered between the parties, but the new restriction will prohibit a parent from relocating without first obtaining the consent of the other parent or a court order when such relocation would unreasonably interfere with the other parent's access to the child or if the relocation would not be in the child's best interest. The bill specifically states that no presumption shall arise in favor of or against the relocation request.

When shared parental responsibility is ordered, the bill will require the relocating parent to file and serve notice of intent to relocate. The bill allows the non-relocating parent 20 days from receipt of the notice to file an objection. If the non-relocating fails to respond within 20 days, the non-relocating parent is deemed to have consented and the court

may approve the request based solely on the pleadings. If the non-relocating parent contests the request, the bill requires the court to hold an evidentiary hearing. At the hearing, the relocating parent will have the burden of proving that the relocation will promote the best interests of the child. If the court determines that the relocating parent has met this burden, the court must enter written findings in the order. Furthermore, on approving the request, the court must include with the order an access schedule that is consistent with the child's best interests.

The bill provides the following factors to be considered when determining when a relocation promotes the best interests of the child:

- The factors considered in section 61.13(3) for determining residential responsibility for the child;
- The history of each parent's involvement with the children;
- The history of each parent's financial responsibility to the child;
- The ability to establish access time with the nonresidential parent that promotes the public policy of this state without adversely impacting the requirements of shared parental responsibility;
- Whether the nonresidential parent will lose substantial rights, responsibilities and joys of child rearing if the child relocates;
- Whether the relocation would improve the child's general quality of life, giving due consideration to the disruption, if any, caused by the day-to-day relationship between the nonresidential parent and the child;
- Each parent's motive in seeking or opposing relocation;
- Whether the costs of transportation or revised access time is financially affordable by the parents;
- Whether relocation of nonresidential parent will cause undue burden on the residential parent;
- Access to extended family support;
- Whether there has been any history of domestic violence or child abuse; and
- The impact on the parent requesting relocation if the relocation is denied.

If the parent requesting relocation is the nonresidential parent, the bill provides that the court order may include other provisions that would be in the best interests of the child, such as:

1. Increasing child support in consideration of the additional financial burden or responsibility placed on the residential parent as a result of the residential parent spending less time with the child.
2. Giving the residential parent sole parental responsibility if relocation of the other parent would create an undue hardship in making joint decisions about the child.
3. Modifying the terms of joint responsibility.

The stated intent of the bill is:

- To promote the existing public policy of that parents have frequent and continuing contact with their children after parental separation or dissolution of marriage

- To promote the best interests of children by ensuring that both parents are physically available to spend quality time with their children
- To discourage alienating noncustodial parents from their children's lives by the children's geographical relocation when such relocating is not in the best interests of the children.
- To establish clear legislative policy regarding relocation of children following separation or dissolution, and to establish the proper analysis for courts and litigants to follow to determine whether a relocation is in the best interests of children.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

A parent seeking to relocate will be required to file and serve notice of such relocation.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

When parents have shared parental responsibility, the bill will restrict a parent's ability to relocate following separation or divorce.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

The courts.

- (2) Who makes the decisions?

The court may impose a relocation restriction when parties have shared parental responsibility. The court will determine when a relocation is in the best interests of the child, based on guidelines stated in the bill.

- (3) Are private alternatives permitted?

Parties will still be free to settle the issue of relocation out of court.

- (4) Are families required to participate in a program?

No.

- (5) Are families penalized for not participating in a program?

No.

- b. Does the bill directly affect the legal rights and obligations between family members?

The bill obligates a parent who shares parental responsibility with another parent to obtain that parents consent, or a court order, before relocating.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

This section need be completed only in the discretion of the Committee.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. **FISCAL COMMENTS:**

According to the Office of the State Courts Administrator, this bill will create a new court proceeding in relation to the relocation of children in shared parental responsibility situations. Such hearing will be not be needed if the non-custodial parent consents to the relocation. Since there are no statistics available on the number of such relocations, and there is no way to gauge the effect of the bill in relation to the overall issue of relocation (one effect of the bill may be to discourage relocation), an accurate assessment of the amount of court time requires is difficult to assess at this time. It would, however, appear that there will be an increased need for such court time.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

It is unclear whether the notice and hearing requirements in the bill would apply in all cases where the parents share parental responsibility, or only in cases where a prior relocation restriction exists.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Two amendments were adopted by the Committee on Family Law and Children on April 17, 1997.

Amendment #1: A strike everything amendment which provides that no presumption shall arise in favor of or against a request to relocate when a primary residential parent seeks to move the child and the move will materially affect the current schedule of contact and access with the secondary residential parent. In making a determination as to whether the primary residential parent may relocate with a child, the court must consider the following:

- a. Whether the move would be likely to improve the general quality of life for both the residential parent and the child.
- b. The extent to which visitation rights have been allowed and exercised.
- c. Whether the primary residential parent, once out of the jurisdiction will be likely to comply with any substitute visitation arrangements.
- d. Whether the substitute visitation will be adequate to foster a continuing meaningful relationship between the child and the secondary residential parent.
- e. Whether the cost of transportation is financially affordable by one or both parties.
- f. Whether the move is in the best interests of the child.

The amendment provides for an effective date of July 1, 1997.

Amendment #2: Creates s. 61.121, F.S. to provide that the court may order rotating custody if the court finds that rotating custody will be in the best interest of the child.

VII. SIGNATURES:

COMMITTEE ON FAMILY LAW AND CHILDREN:

Prepared by:

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