

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1047 Parental Relocation with a Child
SPONSOR(S): Stargel
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2184

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Shaddock	Bond
2) Future of Florida's Families Committee			
3) Justice Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

Current law requires that a parent who has primary residential custody of a child, where the judgment awarding primary residence restricts relocation, must seek court permission for the move.

This bill creates a procedure that all primary residential parents must follow when seeking to relocate with a child or children. The primary residential parent must give 45 days notice to all persons entitled to visitation rights with the child or children. If there is no objection, the move is automatically authorized. If an objection is filed, the bill sets criteria for the court to use in determining whether to grant or deny permission to move.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families -- This bill may affect the process for obtaining court permission to move a minor child of an unmarried (or estranged) couple.

B. EFFECT OF PROPOSED CHANGES:

Current Law

A primary residential parent's attempt to relocate is addressed in two ways; with only one provided for in statute. When a residency restriction clause is provided in the final judgment of divorce, a framework exists in the statutes for what a court is to consider when reviewing a primary residential parent's petition for relocation. That framework, found in s. 61.13(2)(d), F.S., provides that a court is to consider the following factors to determine whether the primary residential parent should be permitted to relocate with the child:

1. Whether the move would be likely to improve the general quality of life for both the residential parent and the child.
2. The extent to which visitation rights have been allowed and exercised.
3. Whether the primary residential 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 and the secondary residential parent.
5. Whether the cost of transportation is financially affordable by one or both parties.
6. Whether the move is in the best interests of the child.¹²

Section 61.13(2)(d), F.S. is explicit that "[n]o 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 essence, the existing statute "imposes a fact-specific framework that allows the trial court to base a relocation decision 'on what is best for the child, even though a result may not be best for the primary residential parent seeking to relocate.'"³

¹ Section 61.13(2)(d), F.S.

² Section 61.13(2)(d), F.S. was enacted to overrule a line of cases as this excerpt from *Berrebbi v. Clarke*, 870 So. 2d 172, 173-74 (Fla. 2d DCA 2004) explains:

Section 61.13(2)(d) overrules a presumption previously adopted by the *Mize v. Mize*, 621 So.2d 417 (Fla.1993), and *Russenberger v. Russenberger*, 669 So.2d 1044 (Fla.1996), line of cases that a request for relocation should be favored when the request is made in good faith. *Borchard v. Borchard*, 730 So.2d 748 (Fla. 2d DCA 1999); *Flint [v. Fortson]*, 744 So.2d 1217 [(Fla. 4th DCA 1999)]. Instead, the statute imposes a fact-specific framework that allows the trial court to base a relocation decision "on what is best for the child, even though a result may not be best for the primary residential parent seeking to relocate."

³ *Berrebbi*, 870 So. 2d at 174 (citing *Flint v. Fortson*, 744 So.2d 1217, 1218 (Fla. 4th DCA 1999)).

The existing statute is effective when a petition for relocation by a primary residential parent has been filed. However, in the absence of a residency restriction clause in the final judgment, many times the primary residential parent simply moves without authorization. The following excerpt from the Fourth District Court of Appeal, in *Leeds v Adamse*, 832 So.2d 125, 127-28 (Fla. 4th DCA 2002), describes this scenario which it described as a "catch 22."

The "catch 22" scenario unfolds as follows. Absent a residency restriction clause, the custodial parent is free to move the children without the consent of, or even notice to, the non-custodial parent. A trial court is prohibited from including a residency restriction clause in a final judgment unless the custodial parent seeks to relocate. An intent to relocate is often first revealed when the move takes place. At that point, the non-custodial parent's only option is to seek a modification of custody. However, to secure a modification of custody, he or she must show a substantial change of circumstances, and that the modification will be in the best interest of the children. [Section] 61.13(1)(a) Fla. Stat (2001). Until recently, relocation of the children without notice or consent was not a substantial change of circumstances that would support modification of the custody provisions of a final judgment. The non-custodial parent is up the custody creek without the proverbial paddle.

This "catch 22" scenario has been reduced by the recent amendment of section 61.13. It now provides that refusal to honor a non-custodial parent's visitation rights without just cause will support a modification of custody. But, the non-custodial parent must still show that the modification is in the best interest of the children. [Section] 61.13(4)(c)5 Fla. Stat. (2001). Boiled down to its essentials, under existing law, a custodial parent can conceal his or her intent to relocate the children, then after entry of the final judgment relocate to a place for [*sic*] enough away to effectively deny visitation to the non-custodial parent, and leave the non-custodial parent with the uphill battle.

At that point, much has changed, and an element of greatly increased hostility has been injected into the case. The judge's role is transformed from a thoughtful consideration of statutory criteria before the move to a fragile balancing act. The court must consider the significant economic factors inherent in a relocation, such as the purchase/sale of a residence, rent and utility deposits, school enrollment, and many other expenditures made by the custodial parent who relocates. The court must also consider the additional disruption of the children's lives that will occur if the court orders the custodial parent to return, or, by modifying custody, orders the children to be relocated a second time, this time without the presence and support of the parent with whom the children have lived. The longer the relocated parent can delay resolution of the issue, the greater the impact on the children of an additional relocation. In many cases, consideration of these factors, particularly those relating to disruption of the children's lives, actually bolsters the position of the relocated parent. The circumstances to be reviewed have already altered the pre-existing status quo.

For a non-custodial parent to be guaranteed of notification before a relocation takes place, a residency restriction clause must be in existence by agreement or order. All that an inclusion of such a provision will do to is allow the parties to either agree to the move or request leave of court to relocate. This will allow the trial court to review the factors outlined in section 61.13(2)(d), Florida Statutes (2001), in an objective and thoughtful manner instead of having to address these sensitive issues after the fact. It will prevent the infamous flights in the night that

send families into the land of panic, chaos, and hostility, and which cause such disruption in the lives of children.⁴

Effect of Bill

The bill creates s. 63.13001, F.S., to provide a mechanism for a court to determine the appropriateness of any relocation by a primary residential parent before the relocation. The bill defines the following terms:

- Change of residence address means the relocation of a child to a primary residence more than 50 miles away from his or her current primary place of residence, unless the move places the primary residence of the minor child less than 50 miles from the nonresidential parent.
- Child means any person who is under the jurisdiction of a state court pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act or is the subject of any order granting to a parent or other person any right to residential care, custody, or visitation as provided under state law.
- Court means the circuit court in an original proceeding which has proper venue and jurisdiction in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, the circuit court in the county in which either parent and the child reside, or the circuit court in which the original action was adjudicated.
- Other person means an individual who is not the parent and who, by court order, maintains the primary residence of a child or has visitation rights with a child.
- Parent means any person so named by court order or express written agreement that is subject to court enforcement or a person reflected as a parent on a birth certificate and in whose home a child maintains a primary or secondary residence.
- Person entitled to be the primary residential parent of a child means a person so designated by court order or by an express written agreement that is subject to court enforcement or a person seeking such a designation, or, when neither parent has been designated as primary residential parent, the person seeking to relocate with a child.
- Principal or primary residence of a child means the home of the designated primary residential parent. When rotating custody is in effect, each parent shall be considered to be the primary residential parent.
- Relocation means a change in the principal residence of a child for a period of 60 consecutive days or more but does not include a temporary absence from the principal residence for purposes of vacation, education, or the provision of health care for the child.

A primary residential parent must notify the other parent and every other person entitled to visitation with the child of the proposed relocation. No later than 45 days before the proposed move, the primary residential parent must file a "Certificate of Filing Notice of Intent to Relocate" ("Certificate") of the parent's intention to relocate with the child.

The Certificate must be personally served on the other parent and on every person entitled to visitation.⁵ In cases where personal service is impossible, service will be permitted by publication.⁶ If there is a pending action or proceeding in which service of process has already been made, service of

⁴ *Leeds v Adamse*, 832 So.2d 125, 127-28 (Fla. 4th DCA 2002)(internal citations omitted).

⁵ The service must comply with the requirements of ch. 48, F.S..

⁶ Service by publication must be in accordance with s. 49.021, F.S.

process may occur in accordance with Rule 1.080, Florida Rules of Civil Procedure,⁷ and is a valid service of the Certificate.

A Notice of Intent to Relocate ("Notice") must be served with the Certificate. The Notice lists the details of the proposed move, and it must provide:

- If known, a description of the location of the new residence, including the state, city, and specific physical address.
- If known, the mailing address, if not the same as the physical address.
- If known, the home telephone number of the intended new residence.
- The date of the intended move.
- A detailed statement of the specific reasons for the proposed relocation of the child. If one of the reasons for the move is based on a written job offer, that written job offer must be attached.
- A proposal for a revised post-relocation schedule of visitation with the child.
- A warning to the non-relocating parent or other person that an objection to the relocation must be made in writing, filed with the court, and served on the relocating person within 30 days after service of the Certificate along with the Notice. Without an objection the relocation will be permitted. If an objection is timely filed, the burden shifts to the parent or person seeking to relocate to initiate court proceedings to obtain court permission to relocate prior to doing so.
- The mailing address of the parent or other person seeking to relocate to which an objection should be sent.

The Notice must be signed under oath under penalty of perjury. The contents of the Notice are not privileged; however, the Notice is not initially filed with the court. Instead, the Notice is served upon the non-relocating parent and other persons entitled to visitation with the child. A primary residential parent required to give Notice, has a continuing duty to provide current and updated information in the Notice.

If a parent relocates a child without complying with the Notice procedure, that action subjects a parent to contempt and other proceedings to compel the return of the child. Further, the parent's failure to follow this procedure may be taken into account by a court in any action seeking a determination or modification of residence, custody, or visitation with the child as:

- A factor in making a determination regarding the relocation of a child.
- A factor in determining whether residence or contact, access, visitation, and time-sharing arrangements should be modified.
- A basis for ordering the temporary or permanent return of the child.
- Sufficient cause to order the parent seeking to relocate the child to pay reasonable expenses and attorney's fees incurred by the objecting party.
- For the award of reasonable attorney's fees and costs, including interim travel expenses incident to visitation or securing the return of the child.

⁷ Rule 1.080, Florida Rules of Civil Procedure provides for when service is required and how service is to be accomplished.

As the Notice warns, if after 30 days after service, no written objection is filed, the relocation is deemed authorized and may occur. If an objection is filed, the objection must include the specific factual basis for seeking a prohibition of the relocation, including a statement of the amount of participation or involvement the objecting party currently has or has had in the life of the child.

The court may grant a temporary order restraining the relocation of a child. The court may also order the return of the child, if a relocation has previously taken place, or other appropriate relief. But to require such action, the court must find:

- The Notice was not timely provided.
- The child was already relocated without Notice, written agreement or court approval.
- Based upon the evidence presented at a preliminary hearing, there is a likelihood that after a final hearing the court will not approve the relocation.

On the other hand, the court may grant a temporary order permitting the relocation. But the court must find the Notice was timely provided, and the evidence presented at a preliminary hearing demonstrates that there is a likelihood that after a final hearing the court will approve the relocation.⁸

If the court issues a temporary order authorizing a relocation before a final judgment is rendered, the court may not give any weight to the temporary relocation in reaching its final decision.

If temporary relocation of a child is permitted, the court may require the relocating parent to provide reasonable security, financial or otherwise, and guarantee that the court-ordered contact with the child will not be interrupted or interfered with by the relocating parent.

No presumption will arise in favor of or against a request to relocate with the child when a primary residential parent seeks to move and the move will materially affect the current schedule of contact, access, and time-sharing with the non-relocating parent. In reaching its decision regarding a proposed temporary or permanent relocation, the court must evaluate all of the following factors:

- The nature, quality, extent of involvement, and duration of the child's relationship with the parent proposing to relocate with the child and with the non-relocating parent, other persons, siblings, half-siblings, and other significant persons in the child's life.
- The age and developmental stage of the child, the needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child.
- The feasibility of preserving the relationship between the nonrelocating parent or other person and the child through substitute arrangements that take into consideration the logistics of contact, access, visitation, and time-sharing, as well as the financial circumstances of the parties; whether those factors are sufficient to foster a continuing meaningful relationship between the child and the nonrelocating parent or other person; and the likelihood of compliance with the substitute arrangements by the relocating parent once he or she is out of the jurisdiction of the court.
- The child's preference, taking into consideration the age and maturity of the child.

⁸ Section 61.13001(5)(b)(2); these findings must be supported by the same factual basis as would be necessary to support the permitting of relocation in a final judgment.

- Whether the relocation will enhance the general quality of life for both the parent seeking the relocation and the child, including, but not limited to, financial or emotional benefits or educational opportunities.
- The reasons of each parent or other person for seeking or opposing the relocation.
- The current employment and economic circumstances of each parent or other person and whether or not the proposed relocation is necessary to improve the economic circumstances of the parent or other person seeking relocation of the child.
- That the relocation is sought in good faith, the extent to which the objecting parent has fulfilled his or her financial obligations to the parent or other person seeking relocation, including child support, spousal support, and marital property and marital debt obligations.
- The career and other opportunities available to the objecting parent or objecting other person if the relocation occurs.
- A history of substance abuse or domestic violence as defined in s. 741.28 or which meets the criteria of s. 39.806(1)(d) by either parent, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation.
- Any other factor affecting the best interest of the child or as set forth in s. 61.13.⁹

The parent or other person seeking to relocate has the burden of proof if an objection is filed and must then initiate a proceeding seeking court permission for relocation. The initial burden is on the parent or person wishing to relocate to prove by a preponderance of the evidence that relocation is in the best interest of the child. If that burden is met, the burden shifts to the nonrelocating parent or other person to show by a preponderance of the evidence that the proposed relocation is not in the best interest of the child.

If relocation is permitted, the court may, in its discretion, order contact with the nonrelocating parent, including access, visitation, time-sharing, telephone, Internet, web-cam, and other arrangements sufficient to ensure that the child has frequent, continuing, and meaningful contact with the nonrelocating parent or other persons. This is only if that contact is financially affordable and in the best interest of the child.

Moreover, if applicable, the court must specify how the transportation costs will be allocated between the parents and other persons entitled to contact with the child(ren). And the court may adjust the child support award, as appropriate, considering the costs of transportation and the respective net incomes of the parents in accordance with state child support guidelines.

An evidentiary hearing or nonjury trial on a pleading seeking temporary or permanent relief filed pursuant to this section must be accorded priority on the court's calendar.

The provisions of this section apply in the following manner. Before July 1, 2006, if the existing order defining custody, primary residence, and visitation or a written agreement does not expressly govern the relocation of the child. To an order, whether temporary or permanent, regarding primary residence of a child or visitation with a child issued after July 1, 2006. To any relocation or proposed relocation, whether permanent or temporary, of a child during any pending proceeding wherein residence of or visitation with a child is an issue.

In situations involving domestic violence, a court may limit the amount of identifying information. On a finding by the court, pursuant to Rule 2.051(c), Florida Rules of Judicial Administration,¹⁰ that the

⁹ Section 61.13, F.S. pertains to custody and support of children. .

health, safety, or liberty of a person or a child would be unreasonably put at risk by the disclosure of the required identifying information in conjunction with a proposed relocation of the child, the court may ex parte:

- Order that the specific residence address and telephone number, including the identity or location of any domestic violence shelter, of the child, the parent, or other person and other identifying information must not be disclosed in the notice, pleadings, other documents filed in the proceeding, or the final order, except for an in camera disclosure;
- Order the Notice be modified to the extent necessary to protect confidentiality and the health, safety, or liberty of a parent, other person, or child;
- Impose any other remedial action that the court considers necessary to facilitate the legitimate needs of the parties and the best interest of the child; or
- At the request of a parent, other person, or child, appoint an attorney ad litem upon whom the objection to the Notice may be served.

To the extent that a provision of this section conflicts with an existing order or enforceable written agreement signed by both parents, this section does not apply to the terms of that order or agreement that govern relocation of the child or a change in the principal residence address of a parent.

C. SECTION DIRECTORY:

Section 1 creates s. 61.13001 relating to parental relocation of children.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

¹⁰ Rule 2.051(c), Florida Rules of Judicial Administration provides for confidentiality of court records.

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Public Records Law

Article I, s. 24(a), of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of the government.

In general, "all court records are presumed open."¹¹ Subject to the rulemaking power of the Florida Supreme Court, as provided by art. V, s. 2, of the Florida Constitution, the public shall have access to all records of the judicial branch of government and its agencies, except as otherwise provided.¹² Various court records are presently deemed confidential by court rule, by Florida Statutes, and by prior case law of the state.¹³

The Legislature may provide for the exemption of records from the requirements of Art. I, s. 24, by passage of a general law. The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in s. 119.07(1), F.S., which guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995, s. 119.15, F.S., provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet one of the following public purposes: 1) allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2) protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety, although only the individual's identity may be exempted under this provision; or 3) protecting trade or business secrets.

It appears that the portion of this bill dealing with the disclosure requirements in the case of domestic violence, s. 61.13001(3), may be an attempt to create a public records exception outside of the requirements of the Constitution. Specifically, the bill provides that upon a finding by the court, that the health, safety, or liberty of a person or a child would be unreasonably put at risk by the disclosure of the required identifying information in conjunction with a proposed relocation of the child, the court may ex parte order that the specific residence address and telephone number, including the identity or location of any domestic violence shelter, of the child, the parent, or other person and other identifying information not be disclosed in the notice, pleadings, other documents filed in the proceeding, or the final order, except for an in camera disclosure.

¹¹ *Times Publishing Co. v. Ake*, 660 So. 2d 255, 257 (Fla. 1995).

¹² *In re Amendments to Rule of Judicial Administration 2.051—Public Access to Judicial Records*, 651 So. 2d 1185, 1188 (Fla. 1995).

¹³ *Id.* at 1189; Rule of Judicial Administration 2.051(c)(9).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section (6) appears to be in conflict with s. 61.13(2)(d), F.S., which also gives criteria regarding parental relocation of a child.

The bill defines a number of terms "as used in this section, unless the context otherwise requires." It is unclear why the language "unless the context otherwise requires" is included.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

n/a