

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/SB 2184

INTRODUCER: Judiciary Committee and Senator Campbell

SUBJECT: Parental Relocation with a Child

DATE: March 31, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Maclure	JU	Fav/CS
2.	_____	_____	CF	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill requires a parent who wishes to relocate with a child to provide advance notice to the other parent. If the other parent does not object, the relocation can proceed. If the other parent objects, a court must evaluate a number of factors to determine whether the proposed relocation can proceed.

This bill creates section 61.13001, Florida Statutes. The bill also amends s. 61.13, F.S.

II. Present Situation:

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., requires a court 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.^{1 2}

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

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 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 noncustodial 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

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 (quoting *Flint v. Fortson*, 744 So. 2d 1217, 1218 (Fla. 4th DCA 1999)).

[sic] enough away to effectively deny visitation to the non-custodial parent, and leave the noncustodial 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 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.

III. Effect of Proposed Changes:

This bill requires a parent who wishes to relocate with a child to provide advance notice to the other parent. If the other parent does not object, the relocation can proceed. If the other parent objects, a court must evaluate a number of factors to determine whether the proposed relocation can proceed.

Notification Procedure

A primary residential parent must serve a Notice of Intent to Relocate and a Certificate of Filing a Notice of Intent to Relocate on the other parent and/or other persons entitled to visitation at least 30 days before the proposed relocation. The notice must describe the proposed new residence, its address, the reasons for the proposed relocation, and a proposed visitation schedule. If an objection is filed within 30 days with the court, the relocation may not be made without permission from the court. The objection must state a reason for objecting to the relocation. The objection must also describe the objecting person's participation in the life of the child and identify any orders governing relocation which conflict with the provisions of the bill.

If no objection to the proposed relocation is filed, the relocation is permitted automatically. However, the court will enter an order approving the relocation.

The bill does not clearly identify whether the proposed relocation is authorized after the expiration of 30 days after service on the non-residential parent or after entry of a court order. The entry of the order appears to be ministerial in the absence of an objection. As such, the Legislature may wish to clearly provide that relocation is authorized after the expiration of 30 days.

Factors to Evaluate a Proposed Relocation

Under the bill, as in existing law, no presumption exists favoring or opposing a proposed relocation. The court must evaluate the proposed relocation based on several factors. A number of the factors are similar to those in existing law.⁴ The factors also require the court to address issues not expressly addressed under existing statutes. The factors in the bill require the court to consider:

- The child's relationships;
- The age and developmental stage of the child;
- The feasibility of alternative arrangements to foster the relationship between the non-relocating parent and the child;
- The child's preferences regarding the proposed relocation;
- Whether the proposed relocation will enhance the quality of life for the parent and child;
- The reasons for relocation and the reason for objections to the relocation;
- Whether the relocation is necessary to improve the economic circumstances of the parent seeking relocation;
- Whether the relocation is sought in good faith and whether the objecting parent has complied with his or her obligations to the other parent;
- The career opportunities available to the objecting parent;
- Whether either parent has a history or substance abuse or domestic violence; and
- Any other factor affecting the best interest of the child.

Applicability

The provisions of the bill apply:

- To orders in existence before July 1, 2006, not governing the relocation of a child;
- To orders, issued after July 1, 2006, governing the residence of a child or visitation;
- To relocations or proposed relocations of a child during pending proceedings involving residence or visitation;

The provisions of the bill apply to orders, but only to the extent that there is no conflict between the order and the provisions of this bill. It is the understanding of committee staff that orders in

⁴ The Family Law Section of The Florida Bar has also represented to committee staff that some of the factors were adapted from a proposal by the American Academy of Matrimonial Attorneys.

conflict with the provisions of the bill may arise when parties negotiate an agreement governing relocation and that agreement is incorporated into an order. The Legislature may wish to expressly state in this bill that such agreements are permissible and that the provisions of the bill are default restrictions and procedures.

Other Provisions

Other provisions of the bill:

- Provide that a court may enter an order to prevent the disclosure of location information if that information is protected under a public records exemption;
- Permit a court to enter temporary preliminary orders allowing or restraining the proposed relocation;
- Authorize the imposition of penalties on a parent who fails to comply with the provisions of the bill;
- Authorize the court to order contact between a child and an objecting parent through the internet, web-cam, telephone, or other arrangements; and
- Permit a court to specify how transportation costs will be allocated.

Effective Date

The bill takes effect on July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The provisions of this bill generally will prohibit residential parents from relocating with a child without notice to the other parent.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 61.13001(10)(a), F.S., states in part,

(a) The provisions of this section apply:

1. Before July 1, 2006, if the existing order providing for custody, primary residence, and visitation does not expressly govern the relocation of the child.

The Legislature may wish to revise subparagraph 1. to state:

To orders existing before July 1, 2006, if the order providing for custody, primary residence, and visitation does not expressly govern the relocation of the child.

VII. Related Issues:

The bill seems to be designed to allow a primary residential parent to relocate with a child without notice to the non-custodial parent if the relocation is more convenient for the non-custodial parent. The bill, in effect, provides that a relocation is more convenient for a nonresidential parent if a new residence is closer to the nonresidential parent. Closer, however, may not always be convenient, especially if a move is from a distant city with a major airport to a distant, yet closer rural area away from airports and highways. The Legislature may wish to revise the bill to account for such scenarios.

The bill provides, “[f]or purposes of encouraging amicable resolution of the relocation issue, a copy of the Notice of Intent to Relocate shall initially not be filed with the court” The Legislature may wish to describe the procedural steps the parties may take to resolve a relocation issue. The Legislature may also wish to state when the Notice of Intent to Relocate must be filed in court.

The bill requires a parent proposing relocation to serve a Certificate of *Filing* Notice of Intent to Relocate on others. The bill, however, does not require the filing of any document. As such, the Legislature may wish to rename the “Certificate of Filing” as a “Certificate of Serving”

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
