

MEMORANDUM OF LAW REGARDING RELOCATION OF CHILDREN

Tennessee Code Annotated §36-6-108, known as the "Parent Relocation Statute," sets out the course of action for divorced parents when one parent wishes to relocate the child (or children) outside the state or more than one hundred (100) miles from the other parent within the state. The relocating parent is required to send written notice to the non-relocating parent no later than sixty (60) days prior to the move. The non-relocating parent then has thirty (30) days after receiving the notice to object to the court. If the non-relocating parent does not object within thirty (30) days, he or she may not be able to object later.

The statute differentiates between parents who spend substantially equal amounts of time with the child and those who do not.

The statute does not require for the time spent with the child to be exactly equal between the parents, only for it to be substantially equal. The Tennessee Court of Appeals, in *Monroe v. Robinson*, held that the parents spent substantially equal amounts of time with the child when the father had possession of the child for approximately 43% of the time and the mother had possession of the child for approximately 57% of the time. The court, however, concluded in *Connell v. Connell*, that the parents did not spend substantially equal amount of time with the child when the father had the child for approximately 40% of the time. These decisions demonstrate the individuality of the circumstances in each case. Because neither the statute nor Tennessee case law specifically set out what constitutes substantially equal intervals of time, the court must examine the particularities of the case to determine whether the parents spend substantially equal amounts of time with the child.

If the court finds that the parents spend substantially equal amounts of time with the child, no presumption in favor or against the request for relocation shall arise. Instead, the court determines whether or not to permit relocation of the child based upon the child's best interests. The statute sets out a list of factors which can be used to determine whether the relocation would be in the child's best interest. Some of these factors are: the extent to which visitation rights have been allowed and exercised; whether the primary residential parent, once out of the jurisdiction, is likely to comply with any new visitation arrangement; the love, affection and emotional ties existing between the parents and child; the stability of the family unit of the parents.

The statute, however, designates a different procedure for parents who do not spend substantially equal amounts of time with the child. If the parent proposing the relocation spends the greater amount of time with the child, the relocation will not be prevented unless it does not have a reasonable purpose; it would pose a threat of serious or specific harm to the child; or the relocating parent's motive for relocating the child is vindictive as in to defeat the non-relocating parent's right to visitation. The non-relocating parent has the burden of proving that one of these three factors exists. If one of the three listed factors is present, the court will determine whether the relocation is in the child's best interest. The court will consult the factors listed in the previous paragraph to ascertain what is in the child's best interest.

The intent behind the "Parent Relocation Statute" is to prevent one parent from packing up and moving the child without the consent of the non-relocating parent and the court. The statute aims to keep the child's best interest as the most important priority when determining whether relocation is appropriate. The relocation of one of the parents may affect child support and may lead the court to assess the costs of transporting the child for visitation.

The "Parent Relocation Statute," T.C.A. § 36-6-108 (2004), reads as follows:

(a) If a parent who is spending intervals of time with a child desires to relocate outside the state or more than one hundred (100) miles from the other parent within the state, the relocating parent shall send a notice to the other parent at the other parent's last known address by registered or certified mail. Unless excused by the court for exigent circumstances, the notice shall be mailed not later than sixty (60) days prior to the move. The notice shall contain the following:

- (1) Statement of intent to move;
- (2) Location of proposed new residence;

(3) Reasons for proposed relocation; and

(4) Statement that the other parent may file a petition in opposition to the move within thirty (30) days of receipt of the notice.

(b) Unless the parents can agree on a new visitation schedule, the relocating parent shall file a petition seeking to alter visitation. The court shall consider all relevant factors, including those factors enumerated within subsection (d). The court shall also consider the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent. The court shall assess the costs of transporting the child for visitation and determine whether a deviation from the child support guidelines should be considered in light of all factors including, but not limited to, additional costs incurred for transporting the child for visitation.

(c) If the parents are actually spending substantially equal intervals of time with the child and the relocating parent seeks to move with the child, the other parent may, within thirty (30) days of receipt of notice, file a petition in opposition to removal of the child. No presumption in favor of or against the request to relocate with the child shall arise. The court shall determine whether or not to permit relocation of the child based upon the best interests of the child. The court shall consider all relevant factors including the following where applicable:

(1) The extent to which visitation rights have been allowed and exercised;

(2) Whether the primary residential parent, once out of the jurisdiction, is likely to comply with any new visitation arrangement;

(3) The love, affection and emotional ties existing between the parents and child;

(4) The disposition of the parents to provide the child with food, clothing, medical care, education and other necessary care and the degree to which a parent has been the primary caregiver;

(5) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

(6) The stability of the family unit of the parents;

(7) The mental and physical health of the parents;

(8) The home, school and community record of the child;

(9) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preferences of older children should normally be given greater weight than those of younger children;

(10) Evidence of physical or emotional abuse to the child, to the other parent or to any other person; and

(11) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child.

(d) If the parents are not actually spending substantially equal intervals of time with the child and the parent spending the greater amount of time with the child proposes to relocate with the child, the other parent may, within thirty (30) days of receipt of the notice, file a petition in opposition to removal of the child. The other parent may not attempt to relocate with the child unless expressly authorized to do so by

the court pursuant to a change of custody or primary custodial responsibility. The parent spending the greater amount of time with the child shall be permitted to relocate with the child unless the court finds:

- (1) The relocation does not have a reasonable purpose;
- (2) The relocation would pose a threat of specific and serious harm to the child which outweighs the threat of harm to the child of a change of custody; or
- (3) The parent's motive for relocating with the child is vindictive in that it is intended to defeat or deter visitation rights of the non-custodial parent or the parent spending less time with the child.

Specific and serious harm to the child includes, but is not limited to, the following:

- (1) If a parent wishes to take a child with a serious medical problem to an area where no adequate treatment is readily available;
- (2) If a parent wishes to take a child with specific educational requirements to an area with no acceptable education facilities;
- (3) If a parent wishes to relocate and take up residence with a person with a history of child or domestic abuse or who is currently abusing alcohol or other drugs;
- (4) If the child relies on the parent not relocating who provides emotional support, nurturing and development such that removal would result in severe emotional detriment to the child;
- (5) If the custodial parent is emotionally disturbed or dependent such that the custodial parent is not capable of adequately parenting the child in the absence of support systems currently in place in this state, and such support system is not available at the proposed relocation site; or
- (6) If the proposed relocation is to a foreign country whose public policy does not normally enforce the visitation rights of non-custodial parents, which does not have an adequately functioning legal system or which otherwise presents a substantial risk of specific and serious harm to the child.

(e) If the court finds one (1) or more of the grounds designated in subsection (d), the court shall determine whether or not to permit relocation of the child based on the best interest of the child. If the court finds it is not in the best interests of the child to relocate as defined herein, but the parent with whom the child resides the majority of the time elects to relocate, the court shall make a custody determination and shall consider all relevant factors including the following where applicable:

- (1) The extent to which visitation rights have been allowed and exercised;
- (2) Whether the primary residential parent, once out of the jurisdiction, is likely to comply with any new visitation arrangement;
- (3) The love, affection and emotional ties existing between the parents and child;

(4) The disposition of the parents to provide the child with food, clothing, medical care, education and other necessary care and the degree to which a parent has been the primary caregiver;

(5) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

(6) The stability of the family unit of the parents;

(7) The mental and physical health of the parents;

(8) The home, school and community record of the child;

(9) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preferences of older children should normally be given greater weight than those of younger children;

(10) Evidence of physical or emotional abuse to the child, to the other parent or to any other person; and

(11) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child.

The court shall consider the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent. The court shall assess the costs of transporting the child for visitation, and determine whether a deviation from the child support guidelines should be considered in light of all factors including, but not limited to, additional costs incurred for transporting the child for visitation.

(f) Nothing in this section shall prohibit either parent from petitioning the court at any time to address issues, (such as, but not limited to visitation), other than a change of custody related to the move. In the event no petition in opposition to a proposed relocation is filed within thirty (30) days of receipt of the notice, the parent proposing to relocate with the child shall be permitted to do so.

(g) It is the legislative intent that the gender of the parent who seeks to relocate for the reason of career, educational, professional, or job opportunities, or otherwise, shall not be a factor in favor or against the relocation of such parent with the child.

Name: _____

Address: _____

City, state, and zip: _____

BY CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Date: _____

To: _____

Address: _____

City, state, and zip: _____

Re: NOTICE REGARDING PARENTAL RELOCATION

Dear _____:

1. I intend to move and relocate with our minor child(ren) to the city of _____, in the state of _____ when I am legally permitted to relocate. If I am legally required to wait 60 days or until an order of the Court has been entered, I will wait this amount of time since I intend to follow and fully comply with all laws.

2. My new proposed residence will be:

Address: _____

City, state, and zip: _____

3. The reasons for my proposed relocation are as follows:

(a) I have had the care of our minor child or children the majority of the time. I am the better-fit parent. The best interests of our minor child or children are best served by living most of the time with me in my new proposed location. I have a reasonable purpose in relocating which is as follows:

_____.

4. You may file a petition in opposition to my proposed move within thirty (30) days; however, I will be seeking attorney fees from you if you do.

5. I am willing to be reasonable and work with you in setting up a reasonable, new visitation schedule for you. I am willing to meet you half way regarding the issue of transportation for visitation for you.

Sincerely,
