PCSing Again? Triggering Child Relocation and Custody Laws for Servicemembers and Their Families

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"*Applicable state laws and international treaties may prohibit a parent, even in the absence of a court order, from removing a child under certain circumstances from the state in which the child is residing without the permission of the other parent.*"[1]

I. Introduction

Military families represent the proverbial "Tip of the Spear" of American society in terms of constant interstate relocation.[2] Five, ten, or even fifteen moves in a Soldier's career are not uncommon. Unfortunately, military families also experience a higher than normal divorce rate, where children inevitably become prizes in highly contested custody battles.[3] These custody battles can easily continue for decades and jeopardize the servicemembers' readiness and even their careers. With each Permanent Change of Station (PCS)[4] move, military families cross state borders and become subject to a new set of state laws governing the parental rights to relocate a child. The laws of child relocation are unique to each state, reflecting their own forged stance in addressing custody and interstate movement of children. Many argue that the individual state laws on relocation are in complete "disarray,"[5] grossly "diverse,"[6] or as one experienced family court judge put it, simply "a mess,"[7] providing no uniformity and predictability over interstate child relocation.

Whether advising a servicemember with a child custody issue or a servicemember's spouse facing a custody battle over children of a prior relationship, either of which must PCS, our legal assistance attorneys must navigate the unpredictable waters of states' child relocation and custody laws: they need to know at a minimum the departing state's and the gaining state's laws and their legal predispositions for child relocation. This article analyzes the presumptions, burdens, and material factors that state courts and legislatures have developed to address competing parental constitutional interests involving interstate relocation of minor children. Second, this article and the accompanying appendix supply the legal assistance practitioner with every state's laws, factors, and notice requirements governing child relocation, roughly grouping most states into one of three general categories—presumption states, burden states, and modification states. Lastly, this article provides a checklist for the legal assistance practitioner in advising a servicemember or spouse facing PCS and a potential relocation or custody hearing.

II. Preliminary Questions to Shape the Relocation Law Analysis

Before researching the applicable state relocation laws, one should confront several threshold custody questions that focus research on the applicable child relocation or custody law. First and foremost, what type of custody exists? Child custody cases where a parent has sole custody of a child

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[1] U.S. DEP'T OF ARMY, REG. 608–99, FAMILY SUPPORT, CHILD CUSTODY, AND PATERNITY para. 2–10.a. (29 Oct. 2003) [hereinafter AR 608-99].

[2] *See* Haya El Nasser, *More Move, but Not Long Distance*, USA TODAY, May 11, 2010, *available at* http://www.usatoday.com/news/nation/census/2010-05-10-mobility_N.htm (interpreting data from the 2010 U.S. Census to note the share of job-related moves in the United States jumped from 34% in the middle of the decade to 46% in 2009 in a group of approximately 38 million persons changing address per year).

[3] Nat'l Ass'n for Uniformed Servs., *Military Divorce Rate Continues to Climb*, 34 UNIFORMED SERVICES J., no. 1, 2010 at 26, http://www.naus.org/documents/USJ/JanFebUSJ2010.pdf (referenced by Alaska House Representative Bill Thomas in his sponsor statement for H.B. 334, 26th Leg., 2d Reg. Sess. (Alaska 2010)).

[4] U.S. DEP'T OF ARMY, REG. 614-200, ENLISTED ASSIGNMENT AND UTILIZATION MANAGEMENT (11 Oct. 2011); U.S. DEP'T OF ARMY, REG. 614-100, OFFICER ASSIGNMENT POLICIES, DETAILS, AND TRANSFERS (10 Feb. 2006).

[5] Sally Adams, *Avoiding Round Two: The Inadequacy of Current Relocation Laws and a Proposed Solution,* 43 FAM. L.Q. 181, 182 (2009).

[6] Tetreault v. Tetreault, 55 P.3d 845, 851 (Haw. Ct. App. 2002).

[7] W. Dennis Duggan, *Rock-Paper-Scissors: Playing the Odds with the Law of Relocation*, 45 FAM. CT. REV. 193 (2007).

have a different fundamental meaning and application to relocation law than joint or shared physical custody.[8] In some states, a determination of joint or shared physical custody may eliminate a relocation presumption.[9] The divorce decree or settlement usually specifies the type of custody. It is important to view the state's statutory definitions of custody. Legal custody may often be shared, but usually only one parent retains physical custody, including the right to receive child support or the right to decide where the child goes to school.[10] In the past, this determination of primary physical custody made a significant difference in predicting whether a custodial parent may move. Yet equally divided physical custody or pure shared custody arrangements are gaining momentum in the United States.[11] When joint legal and physical custody exists, or when the child has an actively participating and involved non-custodial parent who exercises visitation zealously, the courts retreat to the "best interest of the child" (BIOC) standards in making relocation decisions.[12] Relocation becomes more complicated and may take longer for the custodial parent to accomplish. Obviously, a child being moved away from an involved non-custodial parent has more to lose when a nurturing emotional bond exist between them.

The second threshold custody question is whether or not the present custody agreement anticipates a geographical limitation which limits the ability of a parent to relocate: How was this geographical limitation created or negotiated—a settlement avoiding a trial or a court order imposed upon the parties as a result of trial? Some family courts have ruled in favor of previously agreed upon settlements with geographical limitations, while others have expressed a disdain for any provisions that lack flexibility, tying the court's hands from ensuring the BIOC are met.[13]

Third, which state court presently has jurisdiction over the child?[14] Jurisdiction over the child must be carefully resolved before advising any client on applicable state law. For servicemembers' children, jurisdiction can be very difficult to determine because they move constantly and military base residency alone may not confer jurisdiction to the state (or even country).[15] One must research and assess

[8] *See, e.g.*, CAL. FAM. CODE § 3007 (West 2012); IND. CODE ANN. § 31-17-2-8 (West 2012); Lewellyn v. Lewellyn, 93 S.W.3d 681, 687 (Ark. 2002); *In re* Marriage of Burgess, 913 P.2d 473 (Ca. 1996); Pennington v. Marcum, 266 S.W.3d 759 (Ky. 2008). *See generally* David M. Cotter, *Oh, The Places You'll (Possibly) Go! Recent Case Law on Relocation of the Custodial Parent*, 16 DIVORCE LITIG.152, 156 (Sept 2004).

[9] *See, e.g.*, TENN. CODE ANN. § 36-6-108(c) (West 2012).

[10] *See* ALA. CODE § 30-3-150 (2010); Blivin v. Weber, 126 S.W.3d 351 (Ark. 2003).

[11] *See, e.g.*, TEX FAM. CODE § 153.001(a) (West 2011) ("The public policy of this state is to: (1) assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child; . . . and (3) encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage."); Theresa Glennon, *Still Partners? Examining the Consequences of Post-Dissolution Parenting*, 41 FAM. L.Q. 105, 114–15 (2007) ("Now, most states permit joint custody, and twelve states and the District of Columbia have some form of presumption of joint custody. Joint legal custody is now the norm rather than the exception. Joint physical custody has also gained traction."). *But see* Gray v. Gray, 239 S.W.3d 26, 29 (Ark. Ct. App. 2006); Testerman v. Testerman, 193 P.3d 1141, 1145 (Wyo. 2008).

[12] TENN. CODE ANN. § 36-6-108(c) (West 2012); *In re* Marriage of LaMusga, 88 P.3d 81(Ca. 2004); Jaramillo v. Jaramillo, 823 P.2d 299, 303 (N.M. 1991); Altomare v. Altomare, 933 N.E.2d 170, 175 (Mass. App. Ct. 2010). *See generally*, Erinn R. Wegner, *Should the Standards in "Move-Away" Cases Be Different for Sole and Joint Physical Custody?*, 16 J. CONTEMP. LEGAL ISSUES 261 (2007).

[13] *See* Evans v. Evans, 530 S.E.2d 576, 579 (N.C. 2000); Malenko v. Handrahan, 979 A.2d 1269 (Me. 2009); Zeller v. Zeller, 640 N.W.2d 53 (N.D. 2002); Cotter, *supra* note 8, at 165−67; Scott v. Scott, 578 S.E.2d 876 (Ga. 2003) (disapproving a self-executing custody change provision that directed physical custody to be transferred to the non-custodial parent should the custodial parent leave a certain county of residence as a violation of the state's custody statute).

[14] *See generally* UNIF. CHILD CUSTODY JURISDICTION & ENFORCEMENT ACT § 202 (1997) (adopted and modified by forty-six states, this act vests exclusive and continuing jurisdiction for child custody litigation in the courts of the child's "home state," which is defined as the state where the child has lived with a parent for six consecutive months prior to the commencement of the proceeding); Russell v. Cox, 678 S.E.2d 460 (S.C. Ct. App. 2009) (determining that Georgia had jurisdiction, even though the mother, the father, or the child were no longer living in Georgia. The South Carolina court found jurisdiction was in Georgia because the father owned real estate in Georgia, was registered to vote there, held a Georgia driver's license, was paid as a Georgia resident, and paid Georgia state taxes); Kelly Gaines Stoner, *The Uniform Child Custody Jurisdiction & Enforcement Act (UCCJEA)—A Metamorphosis of the Uniform Child Custody Act (UCCJA)*, 75 N.D. LAW REV. 301 (1999); David V. Chipman & Mindy M. Rush, *The Necessity of the "Right to Travel" Analysis in Custodial Parent Relocation Cases,* 10 WYO. L. REV. 267, 283 (2010).

[15] *See* Brandt v. Brandt, 268 P.3d 406 (Colo. 2012) (Army Nurse and mother, who had joint custody, but primary physical custody awarded in Maryland, PCSed to another state and then deployed. Father kept child during her deployment, residing in Colorado. Father registered custody order and obtained jurisdiction in Colorado based on child living in Colorado for 6 months. Facts of the Colorado district court case involved a Maryland family court judge on teleconference with the Colorado district court arguing that Maryland had continuing exclusive jurisdiction under the UCCJEA—the Colorado Supreme Court agreed with the Maryland family court judge carefully defining the jurisdictional term "presently reside." The Colorado Supreme Court also noted that under both federal and Colorado law, the mother could not gain or lose residence for purposes of taxation and voting registration by virtue of her service in the armed forces.); Lieberman v. Tabachnik, 625 F. Supp. 2d 1109 (D. Colo. 2008) (application of Hague Convention on Civil Aspects of International Child Abduction and International Child Abduction Remedies Act (ICARA) on

multitudes of factors, requirements, and statutes before making this crucial jurisdictional determination.[16]

Fourth, what are the custodial parent's reasons for the move? Although the reason of a PCSing custodial military parent is apparent, motives of the custodial parent are important to the noncustodial military parent's attempt to prevent a custodial parent from relocating without a legitimate and defendable reason. Most family courts are reluctant to allow a custodial parent to move based on a whim, and if the proposed reason for the move is not legitimate, then it may be seen as an attempt to thwart the relationship of a non-custodial parent. One experienced family court judge concluded that a custodial parent's reasons to move are basically broken down into five main categories: (1) remarriage, (2) financial survival or improvement (to include attending a school), (3) creating distance from a non-custodial parent whether thwarting visitation or protecting the child's safety, (4) giving the child a chance to be closer to the custodial parent's extended family, or (5) "care for a disabled parent."[17]

Relocation motives must be determined prior to research or advisement. Each motive may have prior specific case law analysis justifying the move. For example, New York at one time distinguished between financial survival and necessity verses financial improvement and promotion before allowing a parent to move.[18] The American Law Institute's *Principles of Law on Family Dissolution* made an attempt to summarize what courts have consistently held to be legitimate reasons for a proposed relocation:

> (1) to be close to significant family or other sources of support;
> (2) to address significant health problems;
> (3) to protect the safety of a child or another member of the child's household from a significant risk of harm;
> (4) to pursue significant employment or educational opportunity;
> (5) to be with one's spouse who lives in, or is pursuing a significant opportunity in, the new location;
> (6) to significantly improve the family's quality of life.[19]

Regardless of the reason, these motives must be meshed with the standard BIOC factors, burdens, or presumptions of the particular state in formulating advice to the client.

III. The Best Interest of the Child Standard—The "Compelling State Interest"[20] and Guiding Principle of Custody and Relocation Law

After resolving the preliminary issues above, one must then understand the BIOC criteria in any child custody or relocation case. Almost every state court will use some form of the BIOC standard, either as the primary consideration or as one of several emphasized factors, in making determinations in relocation and custody modification cases.[21] State courts frequently ignore the Servicemembers' Civil Relief Act and its language on child custody proceedings asserting that the BIOC outweigh the federal statute's authority and interest.[22] Any family court can shield itself with this BIOC standard arguing that the state has to ensure that the defenseless child is not just a movable chattel. In *Palmore v. Sidoti*, the Supreme Court of the United States stated, "The State, of course, has a duty of the highest order to protect the interests of minor children, particularly those of tender years . . . . The goal of granting custody based on the best interests of the child is indisputably a substantial governmental interest for purposes of the Equal Protection Clause."[23]

Therefore it is crucial for the legal assistance practitioner to understand the BIOC standard's factual effect in a trial on child relocation or custody, while the states' crafting of burdens, presumptions, and other subservient

international aspects of jurisdiction where father seeks return of three children to Mexico following their removal by mother); *see also* Mark S. Guralnick, *Child Removal and Abduction in Military Families,* N.J. LAW., no. 246, 2007, at 39.

[16] *See, e.g.*, ALA. CODE § 30-3-169.9(b) (2012); GA. CODE ANN. § 19-9-3(f)(1) (West 2012); D.C. CODE § 16–914.01 (2012).

[17] Duggan, *supra* note 7, at 198 (2007).

[18] *See, e.g.*, Raybin v. Raybin, 205 A.D.2d 918, 919−20 (N.Y. App. Div. 1994) ("The emerging trend which justifies relocation requires proof that the move is necessitated by economic necessity rather than economic betterment or mere economic advantage. . . exceptional financial, educational, employment, or health considerations which necessitate or justify the move.").

[19] Linda D. Elrod, *National and International Momentum Builds for More Child Focus in Relocation Disputes*, 44 FAM. L.Q. 341, 359 (2010). The American Law Institute has offered these principles, and although most states have not adopted the principles per se, they still serve as reasons the custodial parents may use to justify a move. Other institutions have offered similar propositions, such as the American Academy of Matrimonial Lawyers' Model Relocation Act, which shadows many states' BIOC factors.

[20] LaChapelle v. Mitten, 607 N.W.2d 151, 163 (Minn. Ct. App. 2000).

[21] Major Janet Fenton, *Family Law Note: Relocation After Initial Custody Determination*, ARMY LAW., July 1998, at 58 ("Complicating the relocation issue, the petition to relocate often leads to an attempt to relitigate custody by way of a modification case. The standards for relocation and modification are different.").

[22] Lieutenant Colonel Jeffrey P. Sexton & Jonathan Brent, *Child Custody and Deployments: The States Step in to Fill the SCRA Gap*, ARMY LAW., Dec. 2008, at 9−10.

[23] 466 U.S. 429, 433 (1984).

factors simply shape minor advantages in the determination of where the child should reside. The BIOC standard focuses in on the fact-specific merits relevant to a child who did not initiate this adversarial process, but who will be affected the most by its decisions.[24] In *Poluhovich v. Pellerano*, a New Jersey court succinctly described how all states use the BIOC for relocation cases but not necessarily in a uniform manner, stating,

> There seems to be an underlying commonality that in all states, regardless of the particular standards which may be applied, there is typically a due process hearing where the parties are able to make their points known, ultimately addressed to the best interest of the children. The devil is always in the detail when it gets to the best interest because there the courts tend to vary in terms of what is in the best interest of the children. Some states believe that they should reside in their home state and never be moved, even though the parent with primary custody or . . . joint physical custody wished to move . . . . [I]t's just the perception of what is in the best interest of the children. That varies from state to state and what standards one uses to assess best interest.[25]

Advocates and opponents have debated the BIOC standard's effect and position in relocation cases for decades. Advocates state that the BIOC criteria focuses decision-making on what is good for the child, shifting away from the parent's relocation reasons, allowing judges flexibility and freedom to render decisions.[26] The BIOC standard "represents a willingness on the part of the court and the law to consider children on a case-by-case basis rather than adjudicating children as a class or a homogeneous grouping with identical needs and situations."[27]

The opponents argue that the unpredictable nature of BIOC standard thwarts custody negotiations and settlement attempts.[28] The BIOC standard grants too much discretion to a single judge who accidently may overemphasize any single BIOC factor for personal reasons.[29] It also reopens the door to expensive litigation where parents feel they have no choice but to fight for the continuation of their parent-child relationship, while antagonizing an already strained post-marital relationship—a relationship where parents are supposed to share important health and welfare decisions for their child.[30]

A. The BIOC as a Constitutional Heavyweight

The BIOC principle, as a compelling state interest, appears to have superseded custodial and non-custodial parents' constitutional rights in many factual scenarios. One case, *LaChapelle v. Mitten*, clearly articulates that the BIOC is a constitutional law trump card: "The deprivation of fundamental rights is subject to strict scrutiny and may only be upheld if justified by a compelling state interest. The compelling state interest in this case is the protection of the best interests of the child."[31] Maryland child relocation case law demands that both parents prove the BIOC in *Braun v. Headley*—where Maryland subordinated the competing constitutional rights of the parents to the BIOC.[32] Maryland's appellate court held that there would be no constitutional infringement of a parent's right to travel when deciding the BIOC; parents are free to travel anywhere in the United States, but not necessarily with their children.[33] Furthermore, in *Braun*, there is no claim of any constitutional infirmity that gives either parent an advantage, and both have an equal burden in claiming the BIOC.[34] *Braun* went even further to state that there are no "absolutes" in a relocation case except the BIOC standard.[35]

Colorado, a state rejecting presumptions on relocation, held that both parents must demonstrate what is in the child's best interest as the starting point.[36] Colorado disallowed the practice of presumptions, believing that they would infringe upon the reciprocal constitutional rights of

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[24] Rachel M. Colancecco, *A Flexible Solution to a Knotty Problem: The Best Interests of the Child Standard in Relocation Disputes*, 1 DREXEL L. REV. 573, 602−04 (2009).

[25] 861 A.2d 205, 226 (N.J. Super. Ct. App. Div. 2004).

[26] Colancecco, *supra* note 24, at 602−03.

[27] Joan B. Kelly, *The Best Interests of the Child: A Concept in Search of Meaning*, 35 FAM. & CONCILIATION CTS. REV. 377, 385 (1997).

[28] Colancecco, *supra* note 24, at 604.

[29] *Id.*

[30] *Id.*

[31] 607 N.W.2d 151, 163 (Minn. Ct. App. 2000).

[32] Braun v. Headley, 750 A.2d 624 (Md. 2000), *cert. denied*, 531 U.S. 1191 (2001); *see also* Momb v. Ragone, 130 P.3d 406 (Wash. Ct. App. 2006); Rowsey v. Rowsey, 329 S.E.2d 57 (W. Va. 1985). *But see* Watt v. Watt, 971 P.2d 608 (Wyo. 1999).

[33] Shapiro v. Thompson, 394 U.S. 618, 629 (1969) (constitutional right to travel); Troxel v. Granville, 530 U.S. 57, 65 (2000) (reiterating the fundamental liberty interest that parents have to association with their children).

[34] *Braun*, 750 A.2d at 635 (quoting Palmore v. Sidoti, 466 U.S. 429, 433 (1984)).

[35] *Id.* (quoting Jaramillo v. Jaramillo, 823 P.2d 299 (N.M. 1991)).

[36] COLO. REV. STAT. ANN. § 14-10-129 (1)(a)(II) (West 2012); *In re* Marriage of Ciesluk, 113 P.3d 135 (Colo. 2005).

the either parent.[37] Even though a parent could technically travel without the child, a presumption against relocation "chills the exercise of that parent's right to travel because, in seeking to relocate, that parent risks losing majority parent status. . . ."[38] In sum, creating a presumption for the custodial parent to move would infringe upon the non-custodial parent's competing constitutional right to associate with the child, while a presumption in favor of the non-custodial parent's right to associate in disallowing relocation would infringe upon the custodial parent's constitutional right to travel.[39]

B. The BIOC Factors

The BIOC standard, although tailored slightly differently in every state, has baseline factors seen in almost every state jurisdiction.[40] Thus, the BIOC factors exist in all three categorical groupings—presumption, burden, or modification states, discussed more in depth later. Usually, the state's custody statute delineates these applicable factors. For example, Virginia lists nine basic BIOC factors and then supplements these factors with one additional catch-all provision which allows the trial judge to consider as many relevant non-listed BIOC "factors as the court deems necessary and proper."[41] Other states, such as Georgia, list as many as twenty-three BIOC factors.[42] One family court judge's research actually derived thirty-six factors (including typical BIOC factors) that he has seen family courts across the nation consider in relocation case determinations.[43] Obviously, the variation in BIOC factors gives judges significant discretion and flexibility to interject their personal views.

IV. Three General Categories of States on Child Relocation or Custody Laws

Upon determining the preliminary matters and the state's BIOC factors, the legal assistance practitioner must then decide which category (or categories) the state in question falls under. As stated before, there are roughly three categories of states in child relocation laws: presumption states, burden states, and modification states. This categorization is a snapshot of the present status of relocation and custody laws of the fifty states and the District of Columbia. Within this generalized categorization, variations exist that reflect the uniqueness and unpredictability of these state laws.[44] The categorization should not be treated as conclusively definitive or absolute. As noted earlier, no state relocation laws are exactly alike, nor is there an accepted national standard.[45] Therefore, some states, such as North Carolina and California, may be referenced in multiple categories. Moreover, because of the fact-intensive nature of child relocation cases, an attorney should exercise caution in predicting, summarizing, or explaining a state's relocation or custody laws to the client.

A. Presumption States: Effect of Legal Presumptions on Relocation Statutes

Some states' laws provide for a relocation presumption[46] that either favors relocation or discourages it.[47] Presumptions may reduce a custodial parents' anxiety

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[37] *Shapiro*, 394 U.S. at 629; *Troxel* 530 U.S. at 65.

[38] Fredman v. Fredman, 960 So. 2d 52, 57–59 (Fla. Dist. Ct. App. 2007) (elaborating on *Ciesluk*, 113 P.3d at 142); *e.g.*, Aguiar v. Aguiar, 127 P.3d 234 (Idaho Ct. App. 2005). *See generally* Chipman & Rush, *supra* note 14.

[39] *Ciesluk*, 113 P.3d at 142.

[40] *See infra* Appendix A (listing each state's statute where all the state's "best interest of the child" (BIOC) factors are cited, whether used as part of an initial custody determination or as additional factors in a relocation case).

[41] VA. CODE ANN. § 20-124.3 (West 2012) ("1. The age and physical and mental condition of the child, giving due consideration to the child's changing developmental needs; 2. The age and physical and mental condition of each parent; 3. The relationship existing between each parent and each child, giving due consideration to the positive involvement with the child's life, the ability to accurately assess and meet the emotional, intellectual and physical needs of the child; 4. The needs of the child, giving due consideration to other important relationships of the child, including but not limited to siblings, peers and extended family members; 5. The role that each parent has played and will play in the future, in the upbringing and care of the child; 6. The propensity of each parent to actively support the child's contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child; 7. The relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child, and the ability of each parent to cooperate in and resolve disputes regarding matters affecting the child; 8. The reasonable preference of the child, if the court deems the child to be of reasonable intelligence, understanding, age and experience to express such a preference; 9. Any history of family abuse . . . ; and 10. Such other factors as the court deems necessary and proper to the determination.").

[42] GA. CODE ANN. §§ 19-9-3(a)(3)–(a)(6) (West 2012).

[43] Duggan, *supra* note 7, at 209.

[44] Adams, *supra* note 5, at 187.

[45] *Id.*

[46] *See* BLACK'S LAW DICTIONARY 1304 (9th ed. 2009) ("A legal inference or assumption that a fact exists, based on the known or proven existence of some other fact or group of facts."); *see also* Colancecco, *supra* note 24, at 585 ("The role of a presumption is to create a base line value judgment and to add predictability and consistency to the process of adjudication.").

[47] See, e.g., Moses v. King, 637 S.E.2d 97 (2006) (reviewing child custody in light most favorable to initial order). *But see* 27 C.J.S. DIVORCE § 1069 (May 2010) (distinguishing this relocation presumption from a separate family law presumption that serves the

about relocating by clarifying a state family court's attitude or predisposition toward the subject of interstate child relocation. Tactically, in the relocation context, the existence of such presumption operates to inform the parties which way the court leans prior to having a hearing or taking any facts into consideration. The parent opposing such presumption must produce evidence to overcome it.[48] Successful rebuttal of this presumption does not create an opposing presumption: it is simply overcome.[49] The presumption stays or dies with the parent who possesses it prior to entering the courtroom. In layman's terms, the parent with the presumption has a head start or the "home court advantage" when arriving at the contest.

Opponents of presumptions are gaining momentum as many states are shifting away from these procedural advantages in the courtroom.[50] They are advocating for a standard focused purely on the BIOC factors, making it a separate relocation standard.[51] They point out, "Employing presumptions in the context of relocation moves the court's inquiry away from the interest of the child and towards the interest of the favored parent. . . . [T]he interest of the unrepresented child are often overlooked."[52] On the other hand, advocates of presumptions argue that these procedures provide predictability and counteract judicial activism or judicial stereotypes prevalent when applying the BIOC standard.[53] They also argue that presumptions reduce litigation in family courts and reduce the complexity of each case which may consume judicial resources.[54]

States with relocation presumptions generally fall into three types.[55] The first type consists of nine states with presumptions initially favoring the custodial parent's desire to relocate.[56] The second type has only one state, Alabama, with a statutorily based rebuttable presumption favoring the non-relocating parent.[57] The third type consists of three states and bases relocation presumptions upon the amount of time a non-custodial parent spends with a child, also known as "approximation presumption." Thirty-seven other states have specifically rejected the practice of presumptions, whether they previously had them or never allowed them.[58]

1. Presumption Favoring Custodial Parent's Desire to Relocate

There are nine states that have presumptions, either statutorily or through case law, supporting the custodial parent's desire to relocate. In *Hollandsworth v. Knyzewski*, the Supreme Court of Arkansas ruled that, because of the existence of a relocation presumption, the custodial parent's remarriage out-of-state outweighed the noncustodial parent's right to association with the child.[59] This case, involving a mother who was moving due to her new servicemember-husband's PCS, held that she could relocate with the child of a previous marriage to be with her new husband at Fort Campbell. Simply put, the court declared that the custodial parent was not required to make an initial showing of an advantage to the child.[60] In support of this conclusion, the Court held that a non-statutory "presumption exists in favor of relocation for custodial parents with primary custody,

custodial parent "regarding the correctness or validity of the original custody disposition" in a proceeding to modify established custody).

[48] *See, e.g.*, FED. R. EVID. 301 ("[A] presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of non-persuasion, which remains throughout the trial upon the party on whom it was originally cast."). *See generally* 4 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURES § 5124 (2d ed. 1987).

[49] FED. R. EVID. 301; *see, e.g.*, WASH. REV. CODE ANN. § 26.09.520 (West 2012).

[50] Elrod, *supra* note 19, 356.

[51] Colancecco, *supra* note 24, at 602.

[52] *Id*. at 585.

[53] *Id*.

[54] *See* Tricia Kelly, *Presumptions, Burdens, and Standards, Oh My: In Re Marriage of Lamusga's Search for a Solution to Relocation Disputes,* 74 U. CIN. L. REV. 213, 221 (2005). *But see* Lyn R. Greenburg, Dianna J. Guold-Saltman & Robert Schnider, *The Problem with Presumptions—A Review and Commentary*, 3 J. CHILD CUSTODY 139, 146 (2006) (noting that no empirical evidence exist to support the notion that presumptions are reducing the volume of child relocation cases).

[55] Elrod, *supra* note 19, at 355.

[56] *See infra* Appendix A (Arkansas, California, Minnesota, New Mexico, Oklahoma, North Carolina, South Dakota, Washington, and Wyoming).

[57] ALA. CODE § 30-3-169.4 (2012) ("In proceedings under this article . . . there shall be a rebuttable presumption that a change of principal residence of a child is not in the best interest of the child. The party seeking a change of principal residence of a child shall have the initial burden of proof on the issue. If that burden of proof is met, the burden of proof shifts to the non-relocating party."); *see, e.g.*, Sankey v. Sankey, 961 So. 2d 896 (Ala. Ct. App. 2007) (holding that a custodial parent seeking to relocate to Texas to marry a servicemember failed to meet the statutory burden and awarding non-relocating parent the custody). *But see* Knight v. Knight, 53 So. 3d. 942, (Ala. Civ. App. 2010).

[58] See Appendix A for laws on the following states: Alaska, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, and the District of Columbia.

[59] 109 S.W.3d 653 (Ark. 2003).

[60] *Id.*

with the burden being on a noncustodial parent to rebut the presumption; therefore, a custodial parent is not required to prove a real advantage to herself or himself and to the children in relocating."[61]

From the facts of the case, the court determined that a custodial parent's remarriage, the child's relationship to half-siblings, and a distance of five hundred miles from the non-custodial parent were not harmful to the child's interest. Preserving the custodial parent's relationship to the child was integral to the Arkansas court's decision.[62] Even though the effect of this presumption seems harsh to the non-custodial parent in this case, the custodial mother had uncontested "primary physical custody." The non-custodial parent either did not aspire to maximize his time with the child, or failed to establish a strong bond with the child in the court's view.[63]

It should be noted that two states with relocation presumption favoring the custodial parent, California and Oklahoma, have recently diluted their relocation presumptions. Arguably, this weakening of the presumption reflects the new trend moving away from the use of presumptions.

In California, the case law weakened the presumption. Specifically mentioning the case of *In Re Marriage of Burgess* in the statute, California enacted a presumption favoring the custodial parent's right to relocate because of a child's need to maintain the present custody arrangement.[64] A subsequent California Supreme Court case, however, diminished the effect of this presumption.[65] Thus, California family courts now use a modified BIOC standard called a "changed circumstance" rule.[66]

Oklahoma's relocation presumption was diluted by a subsequent statute.[67] Oklahoma had a statutory presumption that its courts aggressively enforced upholding the custodial parent's right to move. Under the old statute, in *Casey v. Casey*,[68] the court stated that "absent prejudice to the rights or welfare of the child, the custodial parent's decision to change the child's residence was guaranteed by statute."[69] Then the state legislature enacted a subsequent statute that reduced but did not repeal that statutory presumption's effect.[70] The first case to grapple with the multi-statute dilemma was *Harrison v. Morgan*, which noted "our legislature made a policy determination that relocation is not to be automatically considered as being in the best interest of the child."[71] The Court further stated, "Considered together, these statutes continue to recognize a preference for allowing the custodial parent to place the residence of the children where he or she thinks best."[72]

2. Presumption Favoring the Non-Custodial Parent's Desire to Stop Relocation

Alabama is the only state that provides a statutorily based presumption opposing the relocation of a child. Its relevant code states, "In proceedings under this article . . . there shall be a rebuttable presumption that a change of principal residence of a child is not in the best interest of the child . . . . The party seeking a change of principal residence of a child shall have the initial burden of proof on the issue. If that burden of proof is met, the burden of proof shifts to the non-relocating party."[73] This statute not only provides a clear presumption against relocation, but also addresses which party has the initial burden at a trial.

This presumption was used in *Sankey v. Sankey*: a custodial parent was seeking to relocate to Texas because she planned to marry a servicemember who was to be stationed in Texas.[74] She failed to meet the statutory burden and even lost custody to the opposing parent.[75] The trial court found that: the moving mother failed to rebut the presumption by not presenting evidence on the quality of the school in Texas; both the paternal and maternal grandparents of the children were in Alabama; the children had developed a good relationship with the non-custodial stepmother; and, if custody was given to the non-relocating parent, the children would reside in the home that they had previous lived while the opposing parents were married.[76] The court

[61] *Id*. at 657.

[62] *Id.* at 664. *Contra* Sill v. Sill, 228 S.W.3d 538 (Ark. Ct. App. 2006) (holding that non-relocating parent rebutted the presumption because the custodial parent had thwarted visitation).

[63] *Hollandsworth*, 109 S.W.3d at 655.

[64] CAL. FAM. CODE § 7501 (West 2012) (effective Jan. 1, 2004); In re Marriage of Burgess, 913 P.2d 473 (Cal. 1996).

[65] *In re* Marriage of Brown & Yana, 127 P.3d 28, 33−34 (Cal. 2006) (discussing the affect of In re LaMusga limiting In re Burgess and CAL FAM. CODE § 7501 (West 2012)).

[66] *In re* Marriage of LaMusga, 88 P.3d 81, 91 (Cal. 2004); *see In re* Brown & Yana, 127 P.3d at 33−34 (modifying best interest test for relocation still giving weight to the prior court determination of custody in regards to the best interest analysis).

[67] OKLA. STAT ANN. tit. 43, § 112.3 (2012).

[68] Casey v. Casey, 58 P.3d 763, 770 (Okla. 2002).

[69] OKLA. STAT ANN. tit. 43, § 112.2A (2012) (renumbered from OKLA. STAT ANN. tit. 10 § 19 in 2009).

[70] *Id.* § 112.3.

[71] Harrison v. Morgan, 191 P.3d 617, 623 (Okla. 2008).

[72] *Id.* at 624.

[73] ALA. CODE § 30-3-169.4 (2012).

[74] 961 So. 2d 896 (Ala. Ct. App. 2007).

[75] *Id.* at 897.

[76] *Id*. at 902.

also found that the mother had thwarted visitation of the father several occasions and had misbehaved in front of a police officer displaying an unhealthy temperament at a handoff between the parents after a visitation.[77] The case is also interesting because of the jurisdiction matters addressed, whereby the state retains jurisdiction even after the child leaves the state.[78]

3. Approximation Presumption

The third and last type of presumption, the "approximation presumption," exists in only three states. This unique presumption in favor of a custodial parent hinges upon the amount of time the non-custodial parent spends with the child. For example, Tennessee has a strong presumption in favor of relocation unless the non-custodial parent is very involved with the child.[79] Tennessee law states, "[T]he custodial parent's happiness and well-being are crucial to the child's interests because the custodial parent has the responsibility of caring for the child on a daily basis."[80] The court only considers three ways to rebut this presumption: the custodial parent's vindictive motives to frustrate visitation of the non-custodial parent,[81] physical safety of the child, and the amount of time the non-custodial parent spends with the child. Thus, Tennessee's statutory presumption in favor of a relocating parent is removed if both parents spend approximately equal time with the child.[82]

This presumption, although facially simple, may be more difficult to apply when calculating the numerical percentages of quality time spent with the child, as Tennessee does.[83] This statute does not apply the traditional terms of custody and primary residence.[84] This statute could impact Soldiers who may have to spend less time with their child because of unusual training schedules and numerous deployments. West Virginia and Wisconsin are the other two states that use the approximation presumption, subject to nullification if a non-custodial parent shares equal residential time.[85]

So in these approximation states, the presumption is negated when custodial time, however determined, is approximately equal—depending on the state's calculation of "approximately."[86] Opponents of this presumption criticize the presumption's focus on actual time spent, rather than the quality of the relationship and emotional bond between the child and the noncustodial parent who is unable to spend the approximately equal time with the child.[87] The presumption assumes that the parent's emotional bond with the child may be weak if the parent is not spending much time with the child.

B. Burden States: Burdens of Proof under Relocation Statutes

Burden states force a parent to comply with a procedural threshold known as the "burden of proof"[88] when interpreting child relocation or custody statutes.[89] There are two main instances of carrying a burden, as referenced in Appendix A: carrying the burden in relocation cases and carrying the burden in custody modification cases. "Relocation burdens" are not the same as, or as predictable as, the more familiar burden in a modification case that almost always places the burden on the non-custodial parent. As the focal point, burdens in relocation cases arguably deserve separate analysis for two reasons: (1) like a presumption, they may hint at a state's predisposition and attitude on relocation, and (2) they establish a duty upon a parent to prove certain facts at the trial.

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[77] *Id*.

[78] *Id.* at 897 n.1 (quoting ALA. CODE § 30-3-169.9(b) (2012)).

[79] TENN. CODE ANN. § 36-6-108 (West 2012).

[80] Aaby v. Strange, 924 S.W.2d 623, 627 (Tenn. 1996) (holding that the child's best interests is "fundamentally interrelated" to the custodial parents' interests in relocation cases).

[81] As a non-BIOC factor in relocation case, vindictive motives of the custodial parent to thwart visitation are considered by every state court in the nation as having a significant negative effect on any relocation, moreover, custody.

[82] TENN. CODE ANN. § 36-6-108(c) (West 2012) ("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.").

[83] Kawatra v. Kawatra, 182 S.W.3d 800, 803 (Tenn. 2005).

[84] Perry v. Perry, 943 S.W.2d 884 (Tenn. Ct. App. 1996).

[85] W. VA CODE ANN. § 48-9-403 (West 2012) allows relocation of the custodial parent "exercising a significant majority of the custodial responsibility. . . . The percentage of custodial responsibility that constitutes a significant majority of custodial responsibility is seventy percent or more." WIS. STAT. ANN. § 767.481 (West 2012) has a presumption that is simply in favor of the parent that has "greater period of time." Yet, unlike West Virginia and Tennessee, it does not appear to calculate the exact amount of time the child has with each adult to a mathematical formula.

[86] *E.g.*, W. VA CODE ANN. § 48-9-403(d) (West 2012).

[87] Colancecco, *supra* note 24, at 599.

[88] BLACK'S LAW DICTIONARY 223 (9th ed. 2009) ("A party's duty to prove a disputed assertion or charge. . . . [It] includes both the 'burden of persuasion' and the 'burden of production.'").

[89] Adams, *supra* note 5, at 190−91. *See infra* Appendix A. Arizona, Connecticut, Illinois, Michigan, Nevada New Hampshire, Missouri and Louisiana place the burden on the custodial parent to justify the relocation.

It is logical to believe that burdens and presumptions accomplish the same result. Burdens, however, are procedural mechanisms and carry less weight, making them less forceful than the legislative intent of a relocation presumption. Nevertheless, burdens do appear to give an advantage to the party they benefit, i.e., the non-moving party.[90] Arguably, a parent who bears the responsibility to meet a burden must indirectly battle against a de facto presumption in favor of the opposing parent.[91] Thus, the allocation of the burden of proof affects the result of the relocation hearing, instead of placing both parents on equal ground at the outset of trial. Even though the court will usually consider individual BIOC factors, these burdens are similar to presumptions by giving a procedural advantage to one side.

Two opposing interests are revealed as a result of allocating relocation burdens. First, any burden of proof requiring the non-custodial parent to show that a child's future relocation destination is unhealthy or dangerous is a difficult burden to meet, having the effect of strongly favoring the custodial parent.[92] This type of burden ignores many factors of the BIOC standard. On the contrary, any burden placed on the custodial parent to justify a proposed relocation where the custodial parent is required to show the benefit to the child in moving, when such a move is not motivated for the child's benefit but for a parent's economic or personal reasons, strongly favors the non-relocating parent at trial.[93]

Three categories of relocation burdens exist, although scholars disagree about which states have these burdens.[94] First category is the burden on the relocating parents: ten states place the burden on the parents who want to relocate to justify their moves.[95] The moving parent has a duty to explain why the relocation would improve the child's life. Second category is the shifting relocating burden: once the relocating parent justifies the move, the non-relocating parent has the burden to prove the move will have negative effects on the child.[96] Third category is the burden on the non-relocating parent: the states place a burden on the non-relocating parent to oppose the relocation.[97] These states appear to be very relocation-friendly: if the non-relocating parent does not attempt to stop the relocation through court procedures, the relocation will be allowed.

Missouri places the burden on the relocating parent to show that the move is in the BIOC and that a proposed relocation is made in good faith.[98] In *Classick v. Classick*, the Missouri court denied the relocation request of a mother with physical custody of the children from moving to Ohio to be with her new husband.[99] The children had a good relationship with the non-custodial parent. The court bluntly stated that the newly remarried mother's husband could move to Springfield, Missouri, and get a job there because her request to move was merely to benefit the new husband's career.[100] Missouri's attitude on the effect of a custodial parent's remarriage on child relocation differs significantly from that of states which allow relocation of a parent to be with a new spouse.

In other states, such as California, which also has a presumption, the relocation burden is placed on the non-relocating parent to stop a move. This burden is considered substantial because the California courts presumptively favor preserving the custodial parent's continued custody as initially awarded.[101] Moreover, in rejecting a non-relocating parent's argument that a custodial parent must bear the burden of proving why the move is necessary, California allows the custodial parent to move as long as there is "any sound good faith reason" for the custodial parent to reside in a different location.[102] Furthermore, the noncustodial parent can only stop the relocation if the child will suffer some sort

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[90] Kelly, *supra* note 54, at 221.

[91] *Id*.

[92] Colancecco, *supra* note 24, at 581.

[93] Kelly, *supra* note 54, at 221.

[94] *See* Elrod, *supra* note 19, at 355. *But see* Adams, *supra* note 5, at 190. Both of these authors agree as to the types of burdens; however, they disagree which states require such burdens. Categorization is difficult in this situation because so many types of burdens exist. Arguably, in Alabama, where neither author notes a burden, the statute clearly delineates a burden to rebut a presumption, but that is not a burden to rebut specific factors unique to the case.

[95] *See* Elrod, *supra* note 19, at 355 (Arizona, Connecticut, Idaho, Illinois, Louisiana, Minnesota, Missouri, Nebraska, North Dakota, and West Virginia). *But see* Adams, *supra* note 5, at 190 (Illinois, Mississippi, Arizona, Louisiana, Michigan, and Nevada). *See generally infra* Appendix A (list of state statutes and cases).

[96] *See* Elrod, *supra* note 19, at 355 (Florida, Idaho, Massachusetts, Nevada, New Jersey, and Louisiana); *e.g.*, FLA. STAT. ANN. § 61. 13001(8) ("The parent or other person wishing to relocate has the burden of proving by a preponderance of the evidence that relocation is in the best interest of the child. If that burden of proof is met, the burden shifts to the non-relocating 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."). *But see* Adams, *supra* note 5, at 192 (Connecticut, New Hampshire, and New Jersey).

[97] *See* Elrod, *supra* note 19, at 355 (California, Kansas, Montana, and Wyoming). *But see*, Adams, *supra* note 5, at 190 (Maryland, Vermont, Indiana, Mississippi, and Idaho).

[98] MO. ANN. STAT. § 452.377(9) (West 2012); Classick v. Classick, 155 S.W.3d 842 (Mo. Ct. App. 2005).

[99] *Classick*, 155 S.W.3d at 843.

[100] *Id.* at 848.

[101] *In re* Marriage of LaMusga, 88 P.3d 81, 91 (Cal. 2004).

[102] *Id*. at 91.

of detriment rendering it "essential or expedient" for the child's welfare that there be a change in custody.[103]

C. Modification of Custody States: The Majority View

Many states do not have statutes with relocation presumptions or burdens that specifically address relocation after divorce, preferring to handle the matters through the traditional constructs of child custody.[104] At the initial child custody trial, all state family courts have already used the BIOC standard in making their original custodial determination.[105] Therefore, using the modification of custody standard, a non-custodial parent must seek to prevent relocation by either attempting to get primary physical custody of the child or having the custody order modified so that the child may not leave the state. This standard inevitably increases the custodial parents' risk of losing their custody when they seek to relocate.

Thus, using this common standard, these states emphasize BIOC factors because the courts are familiar with and feel comfortable using them. Not only do modification states gravitate toward the BIOC standard because of its familiarity, but the application of the BIOC also trumps the constitutional rights of the parent, as discussed earlier.[106] In addition, the use of this modification standard lets the courts avoid inflexible presumptions and allows more individual discretion to entertain facts in understanding the child's circumstances. Finally, the modification of custody standard aligns family courts with the states' trend toward using a BIOC-type analysis.[107]

Treating a relocation matter in the same manner as a request for modification of custody, these state courts apply a two-pronged approach: (1) require a showing of a "material" change in circumstances since the original award of custody, and (2) require the custodial parent to show that their interest in moving is in conformity with the BIOC.[108] With this standard, three different "modification burdens" lurk within these states, depending upon which state has jurisdiction. These modification burdens are not to be confused with relocation burdens discussed in the previous subsection.

First and foremost, in almost all of these modification states, custodial statutes or appellate decisions place a burden on the non-relocating parent to show a "material" or significant change in circumstances to justify a change in custody.[109] Jurisdictions are split as to whether the custodial parent's relocation automatically constitutes a material change in circumstances.[110] South Carolina and Virginia are divided over this issue as well.[111] Obviously, states that view relocation by the custodial parent not worthy of triggering a custody hearing lean toward being pro-relocation states. Other states that do consider a move sufficient to justify an evidentiary hearing and mandate BIOC analysis in those hearings are less receptive to a custodial parent wishing to relocate.

This primary burden for modifying custody usually stands with the non-custodial parent, even if the custodial parent has a separate and distinct burden to justify the proposed relocation.[112] As exemplified in states such as Virginia, separate burdens can exist in the same factual hearing depending on whether it is a custody or relocation hearing.[113] In other states, this secondary burden on the custodial parent can manifest to an even stricter third type of burden of justifying why they should not lose their custody by wanting to move.[114]

Twenty-six states subscribe to the modification custody standard which coincidently champions the BIOC criteria in

[103] *Id*.

[104] *See, e.g.*, Petry v. Petry, 589 S.E.2d 458, 462 (Va. Ct. App. 2003) ("No Virginia statute specifically addresses relocation of a custodial parent. Though sometimes treated as a special topic, with principles unique to it, the relocation issue is best understood under traditional constructs governing custody and visitation.").

[105] *See, e.g.*, Jennifer Gould, *California's Move-Away Law: Are Children Being Hurt by Judicial Presumptions That Sweep Too Broadly*?, 28 GOLDEN GATE U.L. REV. 527, 531 (1998).

[106] *See, e.g.*, Braun v. Headley, 750 A.2d 624 (Md. 2000), *cert. denied*, 531 U.S. 1191 (2001).

[107] Chipman & Rush, *supra* note 14, at 270.

[108] Cotter, *supra* note 8, at 170; Bell v. Squires, 845 A.2d 1019 (Vt. 2003) ("The burden for showing that the best interests of child require a change in custody remains on the moving party, and, due to the value of stability in a child's life, it is a heavy one.").

[109] The burden of proof here is separate from the type of burden under a relocation statute that may be placed on either parent discussed in *supra* Part IV.B.; thus, determining the burden to obtain custody is more simply understood as the non-custodial parent, wanting custody of the child, must move or convince the court to amend the prior custody order. Usually this requires a higher burden of proof as well.

[110] Cotter, *supra* note 8, at 170.

[111] *Compare* Latimer v. Farmer, 602 S.E.2d 32 (S.C. 2004), *with* Surles v. Mayer, 628 S.E.2d 563, 576 (Va. Ct. App. 2006).

[112] *See, e.g.*, *Surles*, 628 S.E.2d at 576.

[113] *Id*.

[114] *See, e.g.*, Wild v. Wild, 737 N.W.2d 882. 898 (Neb. Ct. App. 2007) ("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 clearing that threshold, the custodial parent must next demonstrate that it is in the child's best interests to continue living with him or her. Under Nebraska law, the burden has been placed on the custodial parent to satisfy this test."); Rodkey v. Rodkey, No. 86884, 2006 WL 2441720 (Ohio Ct. App. Aug. 24, 2006).

some form or fashion.[115] Three of those modification states outline unique factors specific to a relocation case that differ from the general BIOC analysis.[116] Because the custody modification standards vary as to what is "material," predictions on trial results are risky.

Instead of legislatures crafting a presumption in favor of relocation in support of the custodial parent, a state's use of the modification approach can accomplish the same result simply by making relocation alone insufficient to trigger a change in circumstances. Such a rule will preclude a non-custodial parent from challenging the child's relocation. This preclusion is also evident with the welfare and safety requirement that some states allow to challenge a move. North Carolina falls into this category, placing the burden on the non-custodial parent to show negative impact on the child's welfare or safety to challenge the move. Having a presumption[117] in favor of moves but no relocation statute, North Carolina courts found a way to favor the custodial parent in the modification context by stating that "a [non-custodial] party seeking modification of a child custody order bears the burden of proving the existence of a 'substantial' change in circumstances affecting the welfare of the child before reaching the best interest question in determining whether custody should be altered."[118] Again, what constitutes a material change of circumstances entitling a non-custodial parent to challenge custody is key, but a welfare and safety justification may prove to be a difficult standard for the non-custodial parent to overcome at a modification hearing.

Kentucky, which also places the burden of proof on the parent seeking to modify the custody award, is not as stringent as North Carolina's safety and welfare of the child threshold.[119] In Kentucky, a custodial parent's relocation alone is a qualifying change of circumstances justifying an evidentiary hearing.[120] In 2001, Kentucky modified its statute for a more liberal list of factors which allows a family court to entertain multiple reasons against moving a child.[121] In *Fowler v. Sowers*, a Kentucky court considered a custodial parent's move with her child to Alaska, a considerable distance from Kentucky, as a change in circumstances contemplated by its statute.[122] Interestingly, this case also dealt with a custodial parent who, in the three years since her separation from the non-custodial father, resided in no fewer than six different locations, had given birth to another child out-of-wedlock, and married a man, resulting in yet another child.[123] In its decision, the Kentucky court acknowledged that the multiple moves of a child was a factor that could potentially cause a negative impact on the child's best interest.[124]

V. Conclusion

In this specialized area of the law, marriages will sometimes disintegrate, causing relocation disputes, and there is no easy way to summarize the state of the law concerning relocation. In many states, long awaited and well deserved child custody protections have recently taken hold statutorily to protect a servicemember's custody arrangements when deploying to a war zone.[125] However, few statutory protections exist when a servicemember is required to move due to PCS orders. Even our previous Secretary of Defense, Robert Gates, initially against federal legislation on child custody, expressed his interest in legislation that provides servicemembers with a consolidated standard of protection in cases where military service is the sole factor involved in a child custody decision.[126]

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[115] Adams, *supra* note 5, at 192 (Alaska, Colorado, Delaware, Hawaii, Kentucky, Montana, New York, Oregon, New Mexico, North Carolina, Massachusetts, and Rhode Island.); *see also infra* Appendix A (including Iowa, Maine, Maryland, Mississippi, Nebraska, New Mexico, Ohio, South Carolina, Texas, Utah and Virginia).

[116] *Id*. at 193 (Florida, Kansas, Pennsylvania); *see also infra* Appendix A.

[117] A presumption in favor of relocation was first noted in 1954 in the case of *Griffith v. Griffith*, 81 S.E.2d 918, 921 (N.C. 1954). Forty-seven years later, in the state's landmark relocation case of *Evans v. Evans*, 530 S.E.2d 576, 579−80 (N.C. 2000), the court cites this 1954 case. *Evans* allowed relocation of a child even though a geographical limitation existed from the initial divorce decree. Furthermore, this presumption allowed relocation, stating that remarriage alone was not a factor stopping a custodial parent's relocation, much less justifying a change in custody.

[118] *Evans*, 530 S.E.2d at 579.

[119] Fowler v. Sowers, 151 S.W.3d 357 (Ky. Ct. App. 2004).

[120] *Id.* at 359.

[121] *Id.*; *see* KY. REV. STAT. ANN. § 403.340 (West 2012).

[122] *Fowler*, 151 S.W.3d at 358. See KY. REV. STAT. ANN. § 403.340(3)(c) (West 2012) which defers to the same factors to determine the initial custody under KY. REV. STAT. ANN. § 403.270(2) (West 2012).

[123] *Fowler*, 151 S.W.3d at 358.

[124] *Id.* at 359.

[125] Sexton & Brent, *supra* note 22, at 9; *see also* Barry Bernstein & David Guyton, *The Military Parent Equal Protection Act*, S.C. LAW., Mar. 2012, at 32 (explaining S.C. Code Ann. § 63-5-900 (2012) which places military parents on equal footing with non-military parents in family court when facing deployment issues).

[126] Karen Jowers, *Gates now supports law to protect child custody*, ARMY TIMES, Feb. 17, 2011, http://www.armytimes.com/news/2011/02/military-child-custody-gates-021711w/ (One recommendation that the states could consider would involve a BIOC analysis that does not discriminate against or use as a negative factor either the custodial or non-custodial parent's military service to the country. This would avoid cases that made custodial determinations against a servicemember simply for his service or, even worse, used re-marriage of a parent to a servicemember as a basis for denying custody. Using this standard, the national trend towards the

Unfortunately, no end state exists to this ongoing war between parents over their children's geographical residence until they reach the age of majority. If the federal government does not intervene to protect those servicemembers by mandating that the states refrain from drawing a negative inference against a custodial parent under their respective BIOC analyses when a custodial servicemember receives PCS orders, then potential servicemembers who want families or have children might not even consider joining the United States military.[127]

In the meantime, the legal assistance practitioner must guide the servicemember through this obstacle course in a timely manner as PCS orders are inflexible and often issued with short notice. Depending on the jurisdiction, the servicemember or the spouse with custody must provide timely notice to the non-custodial parents. The legal assistance attorney may need to review the letter being sent by the moving parent to ensure it meets the statutory requirements. Many custodial parent servicemembers are not aware of relocation laws, but instinctively know that an involved non-custodial parent may cause problems for their move. Some clients may just want to move with the child and bear the risk of not informing the non-custodial parents, naively hoping that the non-custodial parents will not exercise their respective legal rights in a state court. Some custodial parents have already moved several times with a child due to PCS orders without any complaint from an uninvolved non-custodial parent, being at a lower risk of a challenge to custody.

However, it is the legal assistance practitioner's responsibility to inform the client of the ramifications of the move in terms of the best and worst possible scenarios. It can be an emotionally charged meeting. Thus, attached are two Appendices that will arm the legal assistance attorney with state relocation laws and prepare them for initial client meetings. Appendix A will give the legal assistance attorney a significant head start on the statutes and case laws involved in the analysis. Appendix B (checklist) lays out a sample plan for the legal assistance attorney's initial meeting with the client to gather information that will affect the legal assistance attorney's legal analysis and research. Appendix B will also ensure that the legal assistance attorney does not miss other important steps of advisement and provide potential courses of action to the client. The legal assistance practitioner must also inform the servicemember that failure to move may subject them to the Uniform Code of Military Justice (UCMJ).[128] Also, the attorney should advise the Soldier-client to comply with the child custody requirements under the Army Regulation 608-99, Family Support, Child Custody and Paternity.[129] Failure to comply with the regulation may subject your client to civil penalties or prosecution as well as adverse administrative and UCMJ actions.[130]

Once armed with the laws on child relocation and potential courses of action, the parent will be armed with the rules of the game and aware of what a defeat in court may mean. Ultimately, by providing this preemptive research and legal analysis, the client will be ready for the reality and significance of her contemplated relocation and strongly consider what is in the best interest of their family and the child.

BIOC is also respected allowing the fact-intensive approach to determining what is best for the child, instead of using the inflexible presumption standards still prevalent in some states today).

[127] Karen Jowers, *Soldier's Deployment Spurs Multistate Custody Battle*, ARMY TIMES, Oct. 10, 2011 at 16 (Although attorneys constantly disagree on whether or not a federal law should address servicemember custody matters, retired Army Reserve Col. Mark Sullivan, who does not see a need for a federal law, still stated, "But the DoD needs to reflect on this . . . . If word gets around that . . . PCS orders can result in losing custody . . . you'll have some retention problems.").

[128] Uniform Code of Military Justice (UCMJ) art. 86 (2012) ("Absence Without Leave"); *id.* art. 87 ("Missing Movement"); *id.* art. 92 ("Failure to Obey Order or Regulation").

[129] AR 608-99, *supra* note 1, para. 2–10.b., 2-11.

[130] *Id.* at i (section c of Applicability); UCMJ art. 92 (2012) ("Failure to Obey Order or Regulation").

Appendix A

State Laws on Relocation of Children

State	Relocation Presumptions	Relocation & Modification Burdens	Modification of Custody /or/ BIOC Standard	BIOC & Relocation Factors	Notice Requirements & Time to Object	Geographical Limitations
Alabama	ALA. CODE § 30-3-169.4 (2012); Sankey v. Sankey, 961 So. 2d 896, (Ala. Civ. App. 2007); Knight v. Knight, 2010 WL 1837780 (Ala. Civ. App. 2010); Pepper v. Pepper, 2010 WL 4910868 (Ala. Civ. App. 2010)	ALA. CODE § 30-3-169.4 (2012)	ALA. CODE § 30-3-169.3(a) (2012)	ALA. CODE § 30-3-169.3(a) (2012)	45 days prior to location /&/ 30 days to object/	Out-of-state /or / 60 miles from residence of non-relocating parent
Alaska		Chesser-Witmer v. Chesser, 117 P.3d 711, 717 (Alaska 2005); Chesser v. Chesser-Witmer, 178 P.3d 1154 (Alaska 2008)	ALASKA STAT. ANN. § 25.20.110 (West 2012); Chesser-Witmer v. Chesser, 117 P.3d 711, 717 (Alaska 2005); Eniero v. Brekke, 192 P.3d 147 (Alaska 2008)	ALASKA STAT. ANN. § 25.24.150(c) (West 2012)		
Arizona		ARIZ. REV. STAT. ANN. § 25-408.G. (2012)†; Owen v. Blackhawk, 79 P.3d 667 (Ariz. 2003)	ARIZ. REV. STAT. ANN. §§ 25-408.I.2, 25-403.B. (2012); Owen v. Blackhawk, 79 P.3d 667 (Ariz. 2003)	ARIZ. REV. STAT. ANN. §§ 25-408.I.,† 25-403† (2012)	Notice prior to move 60 days /&/ 30 days to object	Out of state /or/ 100 miles in state
Arkansas	Sill v. Sill, 228 S.W.3d 538 (2006)	Hollandsworth v. Knyzewski, 109 S.W.3d 653 (Ark. 2003)	Gray v. Gray, 239 S.W.3d 26 (2006)	Hollandsworth v. Knyzewski, 109 S.W.3d 653 (Ark. 2003)		
California	CAL. FAM. CODE § 7501 (West 2012); *In re* Marriage of Burgess, 913 P.2d 473 (Cal. 1996)	*In re* Marriage of LaMusga, 88 P.3d 81 (Cal. 2004)	*In re* Marriage of Brown and Yana, 127 P.3d 28, 33-34 (Cal. 2006)	*In re* Marriage of Brown and Yana, 127 P.3d 28, 36 (Cal. 2006)	Notice prior to move 45 days	
Colorado		*In re* Marriage of Ciesluk, 113 P.3d 135 (Colo. 2005)	COLO. REV. STAT. ANN. § 14-10-129(1)(a)(II) (West 2012) *; *In re* Marriage of Ciesluk, 113 P.3d 135 (Colo. 2005)	COLO. REV. STAT. ANN. §§ 14-10-129(1)(b)(II), (2)(c) (West 2012)*	None, but case is given priority on court's docket	

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State	Relocation Presumptions	Relocation & Modification Burdens	Modification of Custody /or/ BIOC Standard	BIOC & Relocation Factors	Notice Requirements & Time to Object	Geographical Limitations
Connecticut		CONN. GEN. STAT. ANN. § 46b-56d (West 2012); Taylor v. Taylor, 990 A.2d 882 (Conn. Ct. App. 2010)	Noonan v. Noonan, 998 A.2d 231 (Conn. Ct. App. 2010)	CONN. GEN. STAT. ANN. § 46b-56d (b) (West 2012)		
Delaware		DEL. CODE ANN. tit. 13, § 729(c) (West 2012)	DEL. CODE ANN. tit. 13, § 729(c) (West 2012); Karen J.M. v. James W., 792 A.2d 1036 (Del. Fam. Ct. 2002); B.A.T. v. R.A.R. Jr., 2004 WL 2334718 (Del. Fam. Ct. 2004)	DEL. CODE ANN. tit. 13, § 722(a) (West 2012); and additional factors in Karen J.M. v. James W., 792 A.2d 1036 (Del. Fam. Ct. 2002)		
Florida		FLA. STAT. ANN. § 61.13001(8) (West 2012)	FLA. STAT. ANN. § 61.13 (West 2012); Fredman v. Fredman, 960 So. 2d 52 (Fla. Dist. Ct. App. 2007)	FLA. STAT. ANN. § 61.13001(7) (West 2012)		
Georgia			GA. CODE ANN. §§ 19-9-1, 19-9-3(a) (West 2012); Mitchum v. Spry, 685 S.E.2d 374 (Ga. Ct. App. 2009)	GA. CODE ANN. § 19-9-3(a) (West 2012)	30 days prior to relocation	
Hawaii		Tetreault v. Tetreault, 55 P.3d 845, 851 (Haw. Ct. App. 2002)	Fisher v. Fisher, 137 P.3d 355 (Haw. 2006)	HAW. REV. STAT. § 571-46* (West 2012)		
Idaho		Roberts v. Roberts, 64 P.3d 327 (Idaho 2003)	Roberts v. Roberts, 64 P.3d 327 (Idaho 2003); Allbright v. Allbright, 215 P.3d 472 (Idaho 2009); Markwood v. Markwood, 2012 WL 1301226 (Idaho Ct. App.)	IDAHO CODE ANN. § 32-717 (West 2012)		
Illinois		750 ILL. COMP. STAT. ANN. 5/609(a) (West 2012)*	*In re* Marriage of Matchen, 866 N.E.2d 683 (Ill. App. Ct. 2007)	*In re* Marriage of Collingbourne, 791 N.E.2d 532 (Ill. 2003)		
Indiana		IND. CODE ANN. § 31-17-2.2-5(c), (d) (West 2012)	Wolljung v. Sidell, 891 N.E.2d 1109 (Ind. Ct. App. 2008); Green v. Green, 843 N.E.2d 23 (Ind. Ct. App. 2006)	IND. CODE ANN. §§ 31-17-2-8* & 31-17-2.2-1(b)* (West 2012)	90 days prior to relocation /60 days after receipt to object	

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State	Relocation Presumptions	Relocation & Modification Burdens	Modification of Custody /or/ BIOC Standard	BIOC & Relocation Factors	Notice Requirements & Time to Object	Geographical Limitations
Iowa		*In re* Marriage of Thielges, 623 N.W.2d 232 (Iowa Ct. App. 2000)	IOWA CODE ANN. § 598.21D* (West 2012); *In re* Marriage of Larue, 682 N.W.2d 82 (table) (Iowa Ct. App. 2000); *In re* Marriage of Gerholdt, 771 N.W.2d 653 (table) (Iowa Ct. App. 2009).	IOWA CODE ANN. § 598.41(3)* (West 2012)		150 miles from child's residence
Kansas		*In re* Marriage of Grippin, 186 P.3d 852 (Kan. Ct. App. 2008)	*In re* Marriage of Godfrey, 222 P.3d 564 (table) (Kan. Ct. App. 2010)	KAN. STAT. ANN. §§ 23-3203,† 23-3222 (West 2012)	30 days prior to relocation	
Kentucky		KY. REV. STAT. ANN. § 403.320(3) (West 2012)	Fowler v. Sowers, 151 S.W.3d 357 (Ky. Ct. App. 2004); KY. REV. STAT. ANN. § 403.340 (West 2010) ; Pennington v. Marcum, 266 S.W.3d 759 (Ky. 2008)	KY. REV. STAT. ANN. §§ 403.270(2), 403.340(3), 403.340(4) (West 2012)		
Louisiana		LA. REV. STAT. ANN. § 9:355.13* (2011); Richardson v. Richardson, 25 So. 3d 203 (La. Ct. App. 2009)		LA. REV. STAT. ANN. § 9:355.12* (2011); Richardson v. Richardson, 25 So. 3d 203 (La. Ct. App. 2009); Cass v. Cass, 52 So. 3d 215(La. Ct. App. 2010)	60 days prior to relocation /&/ 30 days to object	Out of state or 150 miles from non-relocating parent
Maine		Villa v. Smith, 534 A.2d 1310 (Me. 1987)	Kelley v. Snow, 984 A.2d 1281 (Me. 2009); Smith v. Padolko, 955 A.2d 740 (Me. 2008)	ME. REV. STAT. ANN. tit. 19-A, §§ 1653(3),* 1657(2)(A), 1657(2)(A-1)* (2011)	30 days prior to relocation	Out of state or more than 60 miles
Maryland			Braun v. Headley, 750 A.2d 624, *cert. denied*, 531 U.S. 1191 (2001); MD. CODE ANN., FAM. LAW § 9-106 (West 2012)	Braun v. Headley, 750 A.2d 624, *cert. denied*, 531 U.S. 1191 (2001)	90 days prior to relocation /&/ 20 days to object	
Massachusetts		Rosenthal v. Maney, 745 N.E.2d 350 (Mass. App. Ct. 2001)	MASS. GEN. LAWS ANN. ch. 208, § 30 (West 2012); Altomare v. Altomare, 933 N.E.2d 170, 175 (Mass. App. Ct. 2010)	Rosenthal v. Maney, 745 N.E.2d 350 (Mass. App. Ct. 2001)		

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Michigan		Grew v. Knox, 694 N.W.2d 772 (Mich. 2005)	Rittershaus v. Rittershaus, 730 N.W.2d 262 (Mich. Ct. App. 2007)	MICH. COMP. LAWS ANN. §§ 722.31(4)* & 722.23* (West 2012)		100 miles from child's residence
Minnesota	Tarlan v. Sorensen, 702 N.W.2d 915 (Minn. Ct. App. 2005)	Tarlan v. Sorensen, 702 N.W.2d 915 (Minn. Ct. App. 2005)		MINN. STAT. ANN. § 518.17* (West 2012)		
Mississippi		T.K. v. H.K., 24 So. 3d 1055 (Miss. Ct. App. 2010)	T.K. v. H.K., 24 So. 3d 1055 (Miss. Ct. App. 2010); Elliot v. Elliot, 877 So. 2d 450 (Miss. Ct. App. 2003)	T.K. v. H.K., 24 So. 3d 1055 (Miss. Ct. App. 2010)		
Missouri		MO. ANN. STAT. § 452.377(9)* (West 2012); Classick v. Classick, 155 S.W.3d 842 (Mo. Ct. App. 2005)		MO. ANN. STAT. § 452.375* (West 2012)	60 days prior to relocation /&/ 30 days to respond	
Montana		MONT. CODE ANN. § 40-4-217 (2011); *In re* Marriage of Robison, 53 P.3d 1279 (Mont. 2002)	MONT. CODE ANN. §§ 40-4-211, 40-4-217 (2011)	MONT. CODE ANN. § 40-4-212 (2011)	30 days prior to relocation /&/ 30 days to object	
Nebraska		Wild v. Wild, 737 N.W.2d 882 (Neb. Ct. App. 2007)	Wild v. Wild, 737 N.W.2d 882 (Neb. Ct. App. 2007); Rosloniec v. Rosloniec, 773 N.W.2d 174 (Neb. Ct. App. 2009); Tirado v. Tirado, 2012 WL 882509 (Neb App.)	Wild v. Wild, 737 N.W.2d 882 (Neb. Ct. App. 2007)		
Nevada		NEV. REV. STAT. ANN. § 125C.200 (West 2011); Flynn v. Flynn, 92 P.3d 1224 (Nev. 2004)	Toppo v. Toppo, 238 P.3d 861 (table) Nev. 2008)	Schwartz v. Schwartz, 812 P.2d 1268 (Nev. 1991)	Written consent required	
New Hampshire		N.H. STAT. ANN. § 461-A:12 (2012); *In re* Heinrich, 7 A.3d 1158 (N.H. 2010)		N.H. STAT. ANN. §§ 461-A:12, 461-A:6* (2012)	60 days prior to relocation	

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State	Relocation Presumptions	Relocation & Modification Burdens	Modification of Custody /or/ BIOC Standard	BIOC & Relocation Factors	Notice Requirements & Time to Object	Geographical Limitations
New Jersey		N.J. STAT. ANN. § 9:2-2* (West 2012); Barblock v. Barblock, 890 A.2d 1005 (N.J. Super. Ct. App. Div. 2006); Baures v. Lewis, 770 A.2d 214 (N.J. 2001); Ryan v. Ryan, 2008 WL 3164072 (N.J. Super. Ct. App. Div. 2008).		Baures v. Lewis, 770 A.2d 214 (N.J. 2001)		
New Mexico	Jaramillo v Jaramillo, 823 P.2d 299 (N.M. 1991)	Jaramillo v. Jaramillo, 823 P.2d 299 (N.M. 1991)	Jaramillo v. Jaramillo, 823 P.2d 299 (N.M. 1991)	N.M. STAT. ANN. § 40-4-9(A) (West 2012)		
New York		Paul v. Pagnillo, 13 A.D.3d 971 (N.Y. App. Div. 2004); Tropea v. Tropea, 665 N.E.2d 145 (N.Y. 1996); Schneider v. Lascher, 72 A.D.3d 1417 (N.Y. App. Div. 2010)		Tropea v. Tropea, 665 N.E.2d 145 (N.Y. 1996)		
North Carolina	Evans v. Evans, 530 S.E.2d 576 (N.C. 2000)	Evans v. Evans, 530 S.E.2d 576 (N.C. 2000)	N.C. GEN. STAT. ANN. §§ 50-13.7, 50-13.7A(g) (West 2012); Evans v. Evans, 530 S.E.2d 576 (N.C. 2000); *In re* K.H.U.E., 672 S.E.2d 103 (table) (2009); Milliken v. Milliken, 412 S.E.2d 909 (N.C Ct. App. 1992); Ramirez-Barker v. Barker, 418 S.E.2D 675 (N.C. Ct. App. 1992) (overruled on other grounds)	Evans v. Evans, 530 S.E.2d 576 (N.C. 2000)		

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State	Relocation Presumptions	Relocation & Modification Burdens	Modification of Custody /or/ BIOC Standard	BIOC & Relocation Factors	Notice Requirements & Time to Object	Geographical Limitations
North Dakota		N.D. CENT. CODE ANN. § 14-09-07 (West 2011); Maynard v. McNett, 710 N.W.2d 369 (N.D. 2006); Graner v. Graner, 738 N.W.2d 9 (N.D. 2007)	Graner v. Graner, 738 N.W.2d 9 (N.D. 2007)	N.D. CENT. CODE ANN. § 14-09-06.2 (West 2011); Maynard v. McNett, 710 N.W.2d 369 (N.D. 2006)	Consent or court order subject to two exceptions in N.D. CENT. CODE ANN. § 14-09-07 (West 2011)	
Ohio		Williams v. Williams, 2004 WL 1713283 (Ohio Ct. App. 2004)	OHIO REV. CODE ANN. § 3109.04 (E)* (West 2011); Long v. Long, slip op., 2010 WL 3836168 (Ohio Ct. App. 2010)	OHIO REV. CODE ANN. § 3109.4 (F)* (West 2011)	30 days prior to relocation OHIO REV. CODE ANN. § 3109.04(G)* (West 2011)	
Oklahoma	OKLA. STAT. ANN. tit. 43, § 112.2A (West 2012); Kaiser v. Kaiser, 23 P.3d 278 (Okla. 2001)	OKLA. STAT. ANN. tit. 43, § 112.2A (West 2012); OKLA. STAT ANN. tit. 43, § 112.3 (West 2012); Harrison v. Morgan, 191 P.3d 617 (Okla. 2008)	OKLA. STAT. ANN. tit. 43, § 112.3 (West 2012); Harrison v. Morgan, 191 P.3d 617 (Okla. 2008)	OKLA. STAT. ANN. tit. 43, § 112.3 J.1. (West 2012)	60 days prior to relocation /&/ 30 days to object	75 miles
Oregon		*In re* Marriage of Colson, 51 P.3d 607 (Or. Ct. App. 2002); *In re* Marriage of Fedorov, 206 P.3d 1124 (Or. Ct. App. 2009)	*In re* Marriage of Cooksey, 125 P.3d 57 (Or. Ct. App. 2005)	OR. REV. STAT. ANN. §§ 107.102(3)(f), 107.102(4)(b), 107.137* (West 2012); In re marriage of Maurer, 262 O.3d 1175 (Or. Ct. App. 2011)		60 miles from residence of non-relocating parent
Pennsylvania		23 PA. CONS. STAT. ANN. § 5337 (West 2012); E.D.v. M.P., 33 A.3d 73 (Pa. Super. Ct. 2011);Klos v. Klos, 934 A.2d 724 (Pa. Super. Ct. 2007); Gruber v. Gruber, 583 A.2d 434 (Pa. Super. Ct. 1990)		23 PA. CONS. STAT. ANN. § 5337(h) (West 2012); J.P. v. S.P., 991 A.2d 904 (Pa. Super. Ct. 2010)	60 days prior to relocation /&/ 30 days to object	
Rhode Island		Valkoun v. Frizzle, 973 A.2d 566 (R.I. 2009)	Valkoun v. Frizzle, 973 A.2d 566 (R.I. 2009); Dupre v. Dupre, 857 A.2d 242 (R.I. 2004)	Valkoun v. Frizzle, 973 A.2d 566 (R.I. 2009)		

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State	Relocation Presumptions	Relocation & Modification Burdens	Modification of Custody /or/ BIOC Standard	BIOC & Relocation Factors	Notice Requirements & Time to Object	Geographical Limitations
South Carolina		Latimer v. Farmer, 602 S.E.2d 32 (S.C. 2004)	Latimer v. Farmer, 602 S.E.2d 32 (S.C. 2004)	S.C. CODE ANN. § 63-15-30 (2011); Moore v. Moore, 386 S.E.2d 456, 458 (1989)		
South Dakota	S.D. CODIFIED LAWS § 25-5-13 (2012)	Berens v. Berens, 689 N.W.2d 207 (S.D. 2004)	Hogen v. Pifer,757 N.W.2d 160 (S.D. 2008); Berens v. Berens, 689 N.W.2d 207 (S.D. 2004)	S.D. CODIFIED LAWS § 25-4-45 (2012)	45 days prior to relocation /&/ 30 days to object	
Tennessee	TENN. CODE ANN. § 36-6-108* (West 2012)	TENN. CODE ANN. § 36-6-108* (West 2012)	TENN. CODE ANN. § 36-6-108(c)* (West 2012); Mann v. Mann, 299 S.W.3d 69 (Tenn. App. Ct. 2009)	TENN. CODE ANN. § 36-6-108(c), (d), (e)* (West 2012)	60 days prior to relocation /&/ 30 days after receipt	Out of state or 100 miles from non-relocating parent
Texas		Bates v. Tesar, 81 S.W.3d 411 (Tex. App. 2002)	TEX. FAM. CODE ANN. §§ 153.001(a),* 153.002* (West 2011); *In re* Cooper, 2009 WL 3766428 (Tex. App. 2009); Bates v. Tesar, 81 S.W. 3d 411 (Tex. App. 2002)	Long v. Long, 144 S.W.3d 64 (Tex. App. 2004); Bates v. Tesar, 81 S.W.3d 411 (Tex. App. 2002)		
Utah		Doyle v. Doyle, 221 P.3d 888 (Utah Ct. App. 2009)	Hudema v. Carpenter, 989 P.2d 491 (Utah Ct. App. 1999); Doyle v. Doyle, 221 P.3d 888 (Utah Ct. App. 2009)	UTAH CODE ANN. §§ 30-3-10,† 30-3-10.2, 30-3-37(4),† (West 2012); Hudema v. Carpenter, 989 P.2d 491 (Utah Ct. App. 1999)	60 day prior to relocation	150 miles from residence specified in decree
Vermont		Hawkes v. Spence, 878 A.2d 273 (Vt. 2005)	VT. STAT. ANN. tit. 15, § 668 (West 2012); Hawkes v. Spence, 878 A.2d 273 (Vt. 2005); Heide v. Ying Ji, 2009 WL 2411561 (Vt. 2009)	VT. STAT. ANN. tit. 15, § 665* (West 2012)		
Virginia		Surles v. Mayer, 628 S.E.2d 563 (Va. Ct. App. 2006)	VA. CODE ANN. §§ 20-124.3, 20-108† (West 2012); Surles v. Mayer, 628 S.E.2d 563 (Va. Ct. App. 2006); Krusell v. Rayes, 2009 WL 3734098 (Va. Ct. App. 2009)	VA. CODE ANN. § 20-124.3† (West 2012)	30 days prior to relocation	

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State	Relocation Presumptions	Relocation & Modification Burdens	Modification of Custody /or/ BIOC Standard	BIOC & Relocation Factors	Notice Requirements & Time to Object	Geographical Limitations
Washington	WASH. REV. CODE ANN. §§ 26.09.430, .480, .520 (West 2012); *In re* Marriage of Horner, 93 P.3d 124 (Wash. 2004)	*In re* Marriage of Horner, 93 P.3d 124 (Wash. 2004); *In re* Marriage of Chua and Root, 202 P.3d 367 (Wash. 2009)	Bay v. Jensen, 196 P.3d 753 (Wash. Ct. App. 2008)	WASH. REV. CODE ANN. § 26.09.520 (1)-(11) (West 2012)	60 days prior to relocation /&/ 30 days to object	
West Virginia	W. VA. CODE ANN. § 48-9-403(d)(1)* (West 2012)	W. VA. CODE ANN. § 48-9-403(d)(1) *(West 2012)	Storrie v. Simmons, 693 S.E.2d 70 (W. Va. 2010)		60 days prior to relocation	
Wisconsin	WIS. STAT. ANN. § 767.481 (West 2012)	WIS. STAT. ANN. § 767.481 (West 2012)	Warner v. Warner, 756 N.W.2d 809 (table) (Wis. Ct. App. 2008)	WIS. STAT. ANN. § 767.481 (West 2012)	60 days prior to relocation /&/15 days to object	Out of state or 150 miles from non-relocating parent
Wyoming	Watt v. Watt, 971 P.2d 608 (Wyo. 1999)	Watt v. Watt, 971 P.2d 608 (Wyo. 1999)	WYO. STAT. ANN. § 20-2-204(c) (West 2012); Testerman v. Testerman, 193 P.3d 1141 (Wyo. 2008)	WYO. STAT. ANN. § 20-2-201* (West 2012)		
District of Columbia			D.C. CODE § 16–914 (West 2012); Samuel v. Person, 2010 WL 2627858 (Trial Order) (D.C.Super. 2010)	D.C. CODE § 16–914 (a)(3) (West 2012)		

† This statute has been amended by legislative action. In most instances, only one word or sentence of the statue has changed.
* This statute is subject to proposed legislation. In most instances, only one word or sentence of the statue is pending change.

Appendix B

Non-Exclusive Checklist on Child Relocation

PREMINARY QUESTIONS:

1. Factual Background.
    a. Legal Assistance Eligibility (i.e., Servicemember, Dependent-spouse, Dependent-child, former spouse, etc.).
    b. Family Relationships and Locations.
    c. History of the child(ren)'s residence.
    d. History of the relationship between the custodial parent and non-custodial parent.
    e. Relocation Timeline and evidence of intent to relocate (i.e., email, phone call, etc.).
    f. Whether domestic violence issue is involved.

2. Type of Custody.
    a. Documentation (i.e., court order, separation agreement, other child custody documentation).
    b. Applicable state(s)'s definitions.
    c. Geographic limitation clause or agreement.

3. Jurisdiction.
    a. Derive facts which assist in the clarification of which state presently has jurisdiction, not limited simply to laws of where divorce or custody decision initially occurred, or longevity of stay in present location.
    b. Review tax records, property ownership, recent litigation, etc.

4. Relocations Motives.
    a. Ask where and why does the parent want to relocate, to include past history of moves, reasons for moves, reasons for initial custody award, and probable attitude of opposing parent on relocation?
    b. Why do they believe the non-custodial parent doesn't want to move?

RESEARCH:

1. Determine the states with potential jurisdiction over the child(ren).
2. Review Appendix A to determine how each of the applicable states handles relocations (Presumptions for Relocation, Presumptions Against Relocation; Burdens for Relocation; Modifications of Child Custody).
3. Determine the Notification Requirements for each state.
4. Determine the state's BIOC factors in shaping a good faith attempt to relocate or prevent relocation.

ADVICE TO CLIENT:

1. Address the following:
    a. Probable states with jurisdiction.
    b. Particular states' views on Relocation.
    c. Procedural requirements (i.e., Days of Advance Notice, Custodial definitions, Presumptions or Burdens created by the state favoring a certain parent).
    d. The statutory BIOC standard and the state's non-BIOC mandatory factors as applied to the facts or motivations for the move.
    e. For servicemembers—address any service regulatory requirements (i.e., Legal Obligations under AR 608-99; AR 635-200 Involuntary separation due to parenthood and/or Voluntary separation due to dependency/hardship, etc.).
    f. Risks: Authority of this court and the possible consequences—Loss of custody, Child Support.
2. Provide potential courses of action:
    a. Obtain civilian counsel(s) for the applicable jurisdiction(s).
    b. Pro Se Representation.
    c. Provide military administrative guidance and options.