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## Time to Move On?

### The International State of Affairs with Respect to Child Relocation Law

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#### 1. Introducing the problem of child relocation

In today's increasingly mobile society, it is not uncommon that – after separation – parents want to relocate with their child for better job or educational opportunities or to live with a new partner. In these circumstances it is crucial that parents know what the rules are with respect to relocation: unfamiliarity with the question of whether and under which circumstances it is allowed to relocate could lead to child relocation that violates the law and as a consequence can be labelled as child abduction.<sup>1</sup>

Despite the importance of clear and understandable relocation law, its existence is not self-evident: not every jurisdiction appears to acknowledge the importance of having relocation law. The United States of America seems to be the country where the issue of relocation is highest on the agenda. Three American organizations have published non-binding law regarding child relocation and at least 39 American states have adopted relocation law. In Australia and Europe the issue of relocation is also a topic of debate.<sup>2</sup> In addition to these national and regional developments, international developments can also be observed. In 2009 and 2010 at least three conferences were held to address the issue of relocation.<sup>3</sup> Various countries worldwide were involved, among which also European countries, including European Union Member States. The fact that EU Member States were internationally involved, reflects that child relocation is also in focus in European Union Member States. However, the European Union as an umbrella body is conspicuous by its absence. To date, in the European Union the issue of child relocation has not been addressed. This is remarkable because the European Union *has* addressed many other aspects of child-related issues, in particular with respect to cross-border relocations.

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1 Child abduction is usually defined as the wrongful removal or retention of the child outside his or her state of residence, see K. Boele-Woelki et al., *Principles of European Family Law Regarding Parental Responsibilities*, 2007, p. 138.

2 The Australian Family Law Council has published recommendations regarding relocation that are used by courts when determining relocation disputes. In Europe, the Commission of European Family Law (CEFL) and the Council of Europe have addressed the issue of child relocation.

3 In 2009 the International Family Justice Judicial Conference for Common Law and Commonwealth Jurisdictions was held in Windsor, England. In 2010 the International Judicial Conference on Cross-border Family Relocation addressed the issue of relocation by publishing the Washington Declaration on International Family Relocation. Fourteen jurisdictions throughout the world were involved in the drafting process, of which four countries were European jurisdictions. Additionally, three months later in June 2010 a Conference on International Child Abduction, Forced Marriage and Relocation was held in London, England. Eighteen jurisdictions were represented, seven of which were European jurisdictions.

Considering the lack of relocation law at European Union level, it seems reasonable to conclude that the European Union as an umbrella body lags behind compared to other jurisdictions. However, this arrear is not justified, because child relocation is also likely to affect a large and growing proportion of citizens in the European Union. Immigration numbers in the European Union are substantial. In 2008, EU Member States received 3.8 million immigrants.<sup>4</sup> In addition, at least 2.3 million emigrants were reported to have left one of the Member States.<sup>5</sup> This high mobility results – among other things – in more and more international couples.<sup>6</sup> As a consequence, the number of international marriages and divorces is noteworthy. In 2007 13% of all marriages celebrated in the European Union had an international dimension.<sup>7</sup> At the same time, 13% of all EU divorces had an international element.<sup>8</sup> From these data it could be deduced that many children in the European Union may become involved in international relocation disputes.<sup>9</sup>

This state of affairs requires the development of harmonized relocation law to meet the European Union's objective of maintaining and developing the Union as an area of freedom, security and justice, in which the free movement of persons is assured and litigants can assert their rights, enjoying facilities equivalent to those they enjoy in the courts of their own country (Article 2 of the Treaty on European Union). In addition, harmonized relocation law brings legal certainty, which has been recognized as one of the general principles of European Union law by the European Court of Justice since 1961.<sup>10</sup> For these purposes it is necessary to search for the common element to solve the problem of child relocation. Therefore, the different solutions provided by the family law systems of various jurisdictions and by different legal organizations need to be surveyed.

This contribution tries to give an overview of (statutory) provisions on relocation law by surveying binding law in civil and common law jurisdictions and non-binding law produced by national, regional and international organizations.<sup>11</sup> The goal of analyzing (solely) written law is to gain more insight in the developments with respect to child relocation law. Case law has not been addressed since it exceeds the limits of this contribution. It is well known that written law has more influence in civil law systems than in common law systems. It can thus be argued that only surveying written law of the common law countries does not do justice to the common law system, where case law plays an important role in applying and interpreting the law. However, it is still possible to solely address written law in common law systems because in these jurisdictions also statutory law, which is based on case law, gives insight in developments with respect to relocation law. Moreover, from a 'civil law perspective', it is indeed possible to solely study written law. Especially because of the number of jurisdictions included in this research, the analysis of written law in the common law countries is valuable and an essential complement to the analysis of written relocation law worldwide, although case law is not addressed.<sup>12</sup>

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4 'Total immigration/emigration to/from the EU Member States' has to be distinguished from 'total immigration/emigration to/from the EU as a whole'; the former also includes international migration between the EU Member States. <[http://epp.eurostat.ec.europa.eu/portal/page/portal/product\\_details/publication?p\\_product\\_code=KS-SF-11-001](http://epp.eurostat.ec.europa.eu/portal/page/portal/product_details/publication?p_product_code=KS-SF-11-001)> (last visited 4 July 2011).

5 <[http://epp.eurostat.ec.europa.eu/portal/page/portal/product\\_details/publication?p\\_product\\_code=KS-SF-11-001](http://epp.eurostat.ec.europa.eu/portal/page/portal/product_details/publication?p_product_code=KS-SF-11-001)> (last visited 4 July 2011).

6 <[http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2011/sec\\_2011\\_0327\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2011/sec_2011_0327_en.pdf)>, p. 9 (last visited 19 June 2011).

7 26% of these international marriages were between EU citizens, 48% between a national and a third-country citizen, 21% between two foreign nationals and 4% between other unknown nationals. <[http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2011/sec\\_2011\\_0327\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2011/sec_2011_0327_en.pdf)>, p. 68 (last visited 19 June 2011).

8 <[http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2011/sec\\_2011\\_0327\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2011/sec_2011_0327_en.pdf)>, p. 71 (last visited 19 June 2011).

9 'Relocation is emerging as an important issue in the context of European integration and the free movement of persons and is likely to lead to many disputes, as it has already done in the United States of America (...)', see K. Boele-Woelki et al., *Principles of European Family Law Regarding Parental Responsibilities*, 2007, p. 141.

10 Cases 42/59 and 49/59, *SNUPAT v. High Authority*, [1961] ECR 109; see D. Chalmers, *European Union law: text and materials*, 2010, p. 411.

11 This article is part of a PhD thesis addressing child relocation. This article only contains an overview of worldwide child relocation law. An analysis of the findings presented in this article will take place in the PhD thesis.

12 Because of the remarkable volume of relocation law that has been produced in the United States of America, leading or recent American cases are also presented in Appendix B. This Appendix B is based on the case law as presented in: D.M. Cottter, 'Relocation of the custodial parent; a state by state survey', 2006 *Divorce Litigation*, no. 6, pp. 90-112; L.D. Elrod, 'States Differ on Relocation; A Panorama of Expanding Case Law', 2006 *Family Advocate*, no. 4, pp. 8-11; J. Atkinson, 'Relocation: The Debate – Overview of Law of Relocation in the 50 states', CLE Conference, Washington D.C., 2006, available at <<http://www.ncdsv.org/images/Overview%20of%20Relocation%20in%20the%2050%20States.pdf>> (last visited 15 December 2011).

It is impossible to group relocation law into precisely delineated categories. Nevertheless, an attempt is made to categorize different topics that have concerned legislators.<sup>13</sup> The following issues are discussed: 1) what is understood by child relocation, 2) notification to be given by the relocating party to the non-relocating party, 3) the factors that the court should take into account when granting or restricting relocation, and 4) which party has the burden of proof.

In Section 2 binding relocation law of respectively the United States of America, Canada, New Zealand, Australia, South Africa, Switzerland, the United Kingdom, Norway, France, Spain, Denmark and the Council of Europe is described. Non-binding law created by international, American, Australian and European organizations is analyzed in Section 3. After a comparison of binding law and non-binding law in Section 4, Section 5 discusses what can be learned from the current state of affairs with respect to worldwide relocation law.

## 2. Binding law

In this section, binding relocation law in twelve different jurisdictions is discussed. Only jurisdictions that were found to have statutory provisions on relocation were selected. In Section 2.1 binding relocation law in North America is described: relocation law in the United States of America in Section 2.1.1 and Canadian relocation law in Section 2.1.2. In Section 2.2, two jurisdictions in Oceania are discussed: New Zealand in Section 2.2.1 and Australia in Section 2.2.2. South African relocation law is described in Section 2.3. Subsequently, Europe is addressed: relocation law in Switzerland (Section 2.4.1), the United Kingdom (Section 2.4.2), Norway (Section 2.4.3), France (Section 2.4.4), Spain (Section 2.4.5), Denmark (Section 2.4.6) and the relocation provision of the Council of Europe (Section 2.4.7) are discussed.<sup>14</sup> In Section 2.5 relocation law in the different jurisdictions is compared. An attempt is made to formulate an answer to the question which similarities and differences can be detected in worldwide binding relocation law.

### 2.1. North America

At least two countries in North America have codified law addressing child relocation: the United States of America and Canada.

#### 2.1.1. The United States of America<sup>15</sup>

There appear to be four categories of American states with respect to child relocation law: 1) states that (only) use case law to assess a relocation dispute,<sup>16</sup> 2) states that deal with relocation issues through their general modification statutes,<sup>17</sup> 3) states with specific relocation provisions<sup>18</sup> and 4) states with lengthy relocation statutes<sup>19</sup> (often copied from non-binding law).<sup>20</sup>

What is child relocation?

What is understood by child relocation differs from state to state. Time and geographic limitations are used. Time limitations refer to situations where a change of residence that falls within a given time period, does not fall within the scope of relocation law. In California, for example, a resident parent is allowed to relocate with a child if the child returns home within 30 days. For relocations exceeding 30 days,

13 The Honourable Peter J. Messitte, 'Relocation of children: law and practice in the United States', 2010, pp. 26-32 2010 *The Judges Newsletter*, no 1, pp. 26-32, available at <[http://www.hcch.net/upload/jn\\_special2010.pdf](http://www.hcch.net/upload/jn_special2010.pdf)> (last visited 22 July 2011).

14 Appendix A contains an overview of relocation law discussed in Sections 2.4. through 2.4.7.

15 For other articles that address child relocation law in the United States of America see (e.g.) Cottter, supra note 12; Elrod, supra note 12; Atkinson, supra note 12.

16 E.g. Arkansas, Hawaii, Idaho, Mississippi, Nebraska, New York, Rhode Island, Vermont.

17 E.g. Alaska, Idaho, Kentucky. Of course, case law will also be relevant.

18 California, Georgia, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Utah, Virginia, Wyoming.

19 Alabama, Arizona, Colorado, Connecticut, Florida, Louisiana, Michigan, Minnesota, Missouri, Oklahoma, Tennessee, Washington, West Virginia, Wisconsin.

20 Appendix B contains relocation law of categories 1 and 2. Appendix C contains relocation law of categories 3 and 4. The following articles were used while making Appendices B and C: Cottter, supra note 12; Elrod, supra note 12; Atkinson, supra note 12.

the relocation statute applies.<sup>21</sup> At least 10 states have time limitations, varying from 30 days in California to 90 days in e.g. Kansas and Missouri.

Geographic limitations refer to residence changes of a child within a certain geographic limit, in which case the relocation does not fall within the scope of the relocation provision. In Florida, for example, a relocating parent is allowed to relocate with a child if the new home lies within 50 miles from the old home. Relocating more than 50 miles from the old home is subject to relocation law. In at least 14 states, the law contains geographical limitations, varying from 50 miles in Florida to 150 miles in e.g. Iowa and Louisiana. Some state law includes geographic as well as time limitations.<sup>22</sup> Some relocation law explicitly stipulates that it applies to movements out of the state,<sup>23</sup> within the state<sup>24</sup> or both within and out of the state.<sup>25</sup>

At least in one American state, Wisconsin, state law explicitly stipulates that national as well as international cases fall within the scope of the relocation provision.

## Notice

Most state law includes specific time spans in which the relocating party must give notice of the planned relocation to the other person with custodial responsibilities or visitation rights. The state law of Ohio is an exception and stipulates that the relocating party must notify the court: the court shall inform the non-relocating party.<sup>26</sup> Notification requirements in the American states vary from 30,<sup>27</sup> 45,<sup>28</sup> 60<sup>29</sup> to 90<sup>30</sup> days. Some state law prescribes a reasonable time to give notice<sup>31</sup> or only that the notice must be given in advance.<sup>32</sup> A minority of states does not address notification in their statutes.<sup>33</sup>

When the non-relocating party opposes the proposed relocation, this person should object to the relocation. If the non-relocating party does not object, in principle, the relocation is permitted.<sup>34</sup> Most states have no provisions to regulate the period within which the non-relocating person must object to a proposed relocation. A minority of states have objection periods, ranging from 15,<sup>35</sup> 30,<sup>36</sup> 60<sup>37</sup> to 90<sup>38</sup> days. Other states require the person seeking to relocate with the child to first obtain permission of either the other person with custodial responsibilities or the court before carrying out the plan to relocate.<sup>39</sup>

## Factors for the court to consider

It is considered necessary to assess certain factors, since this guides judicial discretion and helps focus the relevant evidence.<sup>40</sup> It is thus desirable that courts weigh several factors when assessing a relocation case. The question arises which factors should be decisive. It is striking that most state law does not include any factors in their written law; case law is leading.<sup>41</sup> Other states have comprehensive lists of codified

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21 In New Hampshire the time limitation of 150 days is used in a different way. In this state, a change of the residence where the child resides at least 150 days each year falls within the scope of the relocation statute, see N.H. Rev. Stat. § 461-A:12 (II).

22 E.g. Alabama, Florida, Kansas, Louisiana.

23 E.g. Illinois, Maine, Massachusetts, Minnesota, Missouri, Nevada, North Carolina, North Dakota, Pennsylvania, Tennessee.

24 Louisiana.

25 E.g. Maryland, Wisconsin.

26 Ohio Rev. Code § 3109.051 (G).

27 E.g. Georgia, Kansas, Maine, Montana, New Mexico, Virginia, Wyoming.

28 E.g. Alabama, California, Maryland, South Dakota.

29 E.g. Arizona, Louisiana, Missouri, New Hampshire, Oklahoma, Tennessee, Utah, Washington, West Virginia, Wisconsin.

30 E.g. Indiana.

31 E.g. Colorado, Oregon.

32 E.g. Illinois, Nevada.

33 E.g. Connecticut, Kentucky, Iowa, Massachusetts, Michigan, Minnesota, New Jersey, North Dakota, North Dakota, Pennsylvania.

34 Ala. Code § 30-3-169; Ariz. Rev. Stat. 25-408(D); Ind. Code § 31-17-2.2-5(a); Mo. Rev. Stat. § 452.377(7); S.D. Cod. Laws § 25-4A-19; Wash. Code § 26.09.500. These states have the same regulation at this point as the American Academy of Matrimonial Lawyers' Proposed Model Relocation Act.

35 E.g. Wisconsin.

36 E.g. Alabama, Arizona, Florida, Louisiana, Missouri, Montana, Oklahoma, South Dakota, Tennessee, Washington.

37 E.g. Indiana.

38 E.g. New Jersey.

39 E.g. Nevada, New Jersey, North Dakota.

40 L.D. Elrod, 'National and International Momentum builds for more child focus in relocation disputes', 2010 *Family Law Quarterly* 44, no. 3, pp. 341-374.

41 E.g. California, Georgia, Iowa, Kentucky, Maine, Maryland, Missouri, Montana, Nevada, New Hampshire, New Mexico, North Carolina,

factors for the court to consider, varying from 3 factors in Kansas to 17 factors in Alabama. Factors that are often assessed are for example: 1) the quality of the relationship and frequency of contact between the child and each relevant person, 2) the reasons for seeking and opposing relocation, 3) domestic violence, 4) the views of the child, 5) history of thwarting the relationship with the other parent and 6) the impact on the child. Some state law prescribes that the court must consider different factors for persons who exercise equal custodial responsibility than for persons where one person exercises the majority of custodial responsibility. Tennessee, for example, stipulates 11 factors for the court to consider for persons who exercise equal custodial responsibility and 3 factors when one person exercises the majority of custodial responsibility.<sup>42</sup>

Some state law mentions factors that the court must not consider when assessing relocation disputes. For example, the Washington state legislature has regulated that the court must not weigh 1) whether the person seeking to relocate with the child will forego his or her own relocation if the relocation is not permitted and 2) whether the person opposing relocation will also relocate if the relocation is permitted. These factors also exist in other states.<sup>43</sup> In three states the court must not consider the existence of electronic communication when assessing a relocation dispute.<sup>44</sup>

### Burden of proof

With respect to the burden of proof in relocation cases, five approaches of American state law can be distinguished. The first group consists of American states that have no statute on the burden of proof.<sup>45</sup> The second approach of state law gives the burden of proof to the relocating person,<sup>46</sup> whereas the third group of states gives the burden to the non-relocating party.<sup>47</sup> The states of Alabama, Florida, Indiana, New Hampshire and Oklahoma form the fourth category. In these states, persons are confronted with a rebuttable burden of proof. This means that the relocating person has the primary burden of proof and when this burden is met, the burden shifts to the non-relocating person. State law that stipulates a different burden for persons who exercise equal custodial responsibility than for persons who exercise unequal custodial responsibility, constitute the fifth approach.<sup>48</sup>

### 2.1.2. Canada

The second country in North America that has provisions on child relocation is Canada. Chapter 16 Sections (1), (6), (7) and (8) of the Canadian Divorce Act 1985 came into force on 1 June 1987 and address child relocation. No burden of proof is codified.

#### What is relocation?

Under the Canadian Divorce Act 1985 no specific definition of child relocation is given. However, from Chapter 16(7) of the Divorce Act 1985 it can be learned that child relocation is understood to mean 'a change in the place of residence'.

#### Notice

Canadian law includes a time period for notification. Section 16(7) of the Canadian Divorce Act 1985 stipulates that the relocating parent has to notify any other person who is granted access to the child of the change of residence at least 30 days before the planned relocation.

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North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Virginia, Wyoming.

42 See also West Virginia: 1 factor when parents exercise equal custodial responsibility and 4 factors when one parent exercises the majority of custodial responsibility.

43 E.g. Louisiana, New Hampshire, Oklahoma. In Oklahoma, the court also must not give undue weight to a temporary relocation decision.

44 This factor is mentioned in Illinois, North Carolina, Wisconsin.

45 California, Colorado, Georgia, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Montana, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Utah, Virginia, Wyoming.

46 E.g. Arizona, Connecticut, Illinois, Louisiana, Minnesota, Missouri, New Jersey.

47 E.g. South Dakota, Washington, Wisconsin.

48 West Virginia and Wisconsin also distinguish between persons that exercise equal and unequal custodial responsibility.

## Factors for the court to consider

Canadian courts are guided by Section 16(8) of the Canadian Divorce Act 1985 that prescribes that the court should take the best interest of the child as their paramount consideration when deciding cases involving parental responsibility. In case of child relocation the best interest of the child is therefore also leading. Furthermore, in Section 16 of the Divorce Act 1985, a factor that the court must not consider is stipulated: the past conduct of any person unless it is relevant to the ability of that person to act as a parent.

## **2.2. Oceania**

In Oceania, at least two countries were found that have codified provisions regarding child relocation: New Zealand and Australia.

### *2.2.1. New Zealand*

Section 16(2)(b) of the Care of Children Act 2004 entered into force on 1 July 2005. This section addresses child relocation. No notice requirements, factors for the court to consider or burden of proof are stipulated.

#### What is relocation?

Changes to the child's place of residence (including – without limitation – changes of that kind arising from travel by the child) that may affect the child's relationship with his or her parents and guardians fall under the scope of the relocation provision of the Care of Children Act 2004.

### *2.2.2. Australia*

According to Section 65DAC of the Family Law Act 1975, which came into force on 1 July 2006 by the Family Law Amendment (Shared Responsibility) Act 2006, persons who share parental responsibility for a child<sup>49</sup> and who want to make a decision about a major long-term issue in relation to the child,<sup>50</sup> need to consult the other person in relation to the decision to be made about that issue<sup>51</sup> and make a genuine effort to come to a joint decision about that issue.<sup>52</sup> According to Subdivision 4 of the Family Law Act 1975 child relocation falls within the scope of major long-term issues. In the Australian Family Law Act 1975, no notice requirements, factors for the court to consider or burden of proof are stipulated.

#### What is relocation?

It can be learned from Subdivision 4 of the Family Law Act 1975 that 'changes to the child's living arrangements that make it significantly more difficult for the child to spend time with a parent' can be labelled as child relocation.

## **2.3. South Africa**

In Africa, the country of South Africa has enacted relocation law: Section 18(3)(iii) of the Children's Act 2005 came into force on 1 July 2007. No notice requirements, no factors for the court to consider or burden of proof are codified.

#### What is relocation?

A '*departure or removal from the Republic*' falls within the scope of the South African relocation provision (Section 18(3)(c)(iii) of the Children's Act 2005).

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49 Section 65DAC (1)(a) Family Law Act 1975.

50 Section 65DAC (1)(b) Family Law Act 1975.

51 Section 65DAC (3)(a) Family Law Act 1975.

52 Section 65DAC (3)(b) Family Law Act 1975.

Section 18(3)(c)(iii) of the Children's Act 2005 regulates that a parent or other person who acts as a guardian can give or refuse consent to the child's departure or removal from the Republic. Only international child relocation is thus addressed in this provision.

## 2.4. Europe

At least seven European jurisdictions have codified a provision addressing child relocation. Enacted relocation provisions in these jurisdictions are described in the following paragraphs.<sup>53</sup>

### 2.4.1. Switzerland

Article 301 §3 of the Swiss Civil Code addresses child relocation and entered into force on 1 January 1978. The provision states that the child may not leave the parental household without the parents' consent.<sup>54</sup> No notice requirements are codified, and no factors for the court to consider or burden of proof are stipulated.

What is relocation?

Under Swiss law, relocation means to 'leave the parental household' (Article 301 §3 of the Swiss Civil Code).

### 2.4.2. The United Kingdom

The United Kingdom<sup>55</sup> enacted relocation law on 14 October 1991, codified in Section 13(2) of the Children Act 1989. No notice requirements or factors for the courts to consider are mentioned, nor is a burden of proof codified.

What is relocation?

Section 13 of the Children Act 1989 contains a time limitation: it only applies to changes in the residence of a child that exceed the duration of one month. For movements with a child for longer than one month, the consent of the other parent with parental responsibility must be obtained if a residence order is in force.<sup>56</sup> In case only one parent has parental responsibility, that parent is – in principle – allowed to relocate with the child.<sup>57</sup>

Section 13 of the Children Act 1989 only mentions international relocation cases.

### 2.4.3. Norway

Child relocation is addressed in Sections 37 and 40 of the Norwegian Children Act (implemented on 1 January 1998). No definition is given, no notice requirements are stipulated, no factors for the court to consider are codified and no burden of proof is stipulated.

What is child relocation?

It seems that the Norwegian provisions address both national and international child relocation. Section 37 of the Children Act stipulates that the parent with whom the child lives may make decisions concerning important aspects of the child's care, such as where in Norway the child shall live (national relocation).<sup>58</sup> Section 40 of the Children Act stipulates that when parents have joint parental responsibil-

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53 Appendix A contains binding relocation law of the countries described in Sections 2.4 through 2.4.7.

54 H. Hausheer et al., 'Swiss Report concerning the CEFL Questionnaire on Parental Responsibilities', <<http://www.ceflonline.net/Reports/pdf2/Switzerland.pdf>> (last visited 23 July 2011).

55 The United Kingdom consists of four jurisdictions: England, Northern Ireland, Scotland and Wales.

56 When no residence order is in force and both parents have parental responsibility for the child, the other parent's permission is needed to remove the child from the jurisdiction for any period of time. M. Freeman, *Relocation: the reunite research*, 2009, p. 4, <<http://www.reunite.org/edit/files/Library%20%20reunite%20Publications/Relocation%20Report.pdf>> (last visited 23 August 2011).

57 M. Freeman, *Relocation: the reunite research*, 2009, p. 4, <<http://www.reunite.org/edit/files/Library%20%20reunite%20Publications/Relocation%20Report.pdf>> (last visited 23 August 2011).

58 This also applies when both parents have parental responsibility (Section 37 of the Children Act).

ity, both of them must consent to the child moving abroad (international relocation). However, if one of the parents has sole parental responsibility, the other parent cannot object to the child moving abroad.

#### 2.4.4. France

In the Act of 4 March 2002 on Parental Authority child relocation is addressed.<sup>59</sup> Article 373-2 of the French Civil Code regulates the change of residence of a child. The consent of both parents is required.<sup>60</sup> The French Civil Code does not stipulate a burden of proof.

What is relocation?

The relocation law applies to ‘any change of residence of one of the parents, where it modifies the terms of exercise of parental authority’.<sup>61</sup>

Notice

French law regulates notice. Notice of a proposed relocation to the other person should be given previously and in due time. Hence, the time period is not specified.<sup>62</sup>

Factors for the court to consider

The French Civil Code does not stipulate any specific factors that the court should consider when assessing relocation. However, it is stipulated that the court shall grant or refuse change of residence of the child according to ‘what the welfare of the child requires’.<sup>63</sup> This is therefore an element for consideration. In addition to this, the factors that apply to any other decisions regarding parental responsibility also apply to relocation cases.<sup>64</sup>

#### 2.4.5. Spain

Article 158 of the Spanish Civil Code was introduced in a law dealing with Child Abduction. It must therefore be seen as a measure to prevent child abduction.<sup>65</sup> The Spanish Civil Code does not mention notice requirements, burden of proof, or factors for the court to consider.

What is relocation?

Regardless of the fact that no specific definition for child relocation is given, from Article 158 (3)(c) of the Spanish Civil Code it can be deduced that child relocation is understood to mean ‘a change of domicile’ of the child.

Article 158 of the Spanish Civil Code stipulates that the court shall order necessary measures to prevent the abduction of underage children by one of the parents or by third parties, by the prohibition to exit national territory with underage children without prior judicial authorization (Article 158 (3)(a) of the Spanish Civil Code) or submission to prior judicial authorization of any change of domicile of the minor (Article 158 (3)(c) of the Spanish Civil Code). Article 158 of the Spanish Civil Code therefore seems to apply to national as well as international child relocation (any change of domicile).

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59 N. Sauvage, ‘Parental authority and relocation in French law’, 2010 *The Judges Newsletter*, no. 1, pp. 92-93, available at <[http://www.hcch.net/upload/jn\\_special2010.pdf](http://www.hcch.net/upload/jn_special2010.pdf)> (last visited 22 July 2011).

60 See K. Boele-Woelki et al., *Principles of European Family Law Regarding Parental Responsibilities*, 2007, p. 139.

61 Art. 373-2 of the French Civil Code.

62 Art. 373-2 of the French Civil Code.

63 Art. 373-2 French Civil Code.

64 N. Sauvage, ‘Parental authority and relocation in French law’, 2010 *The Judges Newsletter*, no. 1, pp. 92-93, available at <[http://www.hcch.net/upload/jn\\_special2010.pdf](http://www.hcch.net/upload/jn_special2010.pdf)> (last visited 9 July 2011).

65 C. González Beilfuss, ‘Spanish Report concerning the CEFL Questionnaire on Parental Responsibilities’, p. 23, <<http://www.ceflonline.net/Reports/pdf2/Spain.pdf>> (last visited 23 July 2011).

#### 2.4.6. Denmark

Child relocation is addressed in Danish law since 1 October 2007, when the Act on Parental Responsibility entered into force.<sup>66</sup> No factors for the court to consider nor a burden of proof are codified.

What is relocation?

The Danish relocation provisions apply to national as well as to international relocation cases. According to Article 3 sub 1 of the Act on Parental Responsibility a resident parent is allowed to move within Denmark, excluding the territories of Greenland and the Faeroe Islands, in case the parents have joint parental authority.<sup>67</sup> Only if the parents agree or the court has approved the relocation is the resident parent allowed to relocate outside the jurisdiction (Article 17 sub 1 Act on Parental Responsibility).

Notice

With respect to relocation within the jurisdiction, the relocating parent has to notify the other parent who has custody six weeks before the planned relocation.<sup>68</sup> Also in case of international child relocation, the relocating parent has to notify the other parent.

#### 2.4.7. The Council of Europe's proposed European Convention on Family Status

The organization

The Council of Europe, based in Strasbourg (France), was established in May 1949. It currently has 47 members. The main objective of the Council of Europe is to develop common European principles based on human rights, democracy and the rule of law.<sup>69</sup> To date, more than 200 treaties have been drawn up on economic, social, cultural, scientific, legal and administrative issues.<sup>70</sup>

In 2009 the Committee of experts on family law of the Council of Europe published a report of their study into the rights and legal status of children being brought up in various forms of marital or non-marital partnerships and cohabitation. Relocation was also addressed.

The instrument

Article 45 of the proposed European Convention on Family Status regulates relocation of children. No definition is codified, no notice requirements are codified and no burden of proof is stipulated.

What is child relocation?

Article 45 sub 1 of the Proposed European Convention on Family Status stipulates that if a joint holder of parental responsibilities wishes to change the child's residence within or outside the jurisdiction, he or she should inform any other holder of parental responsibilities in advance. Hence, national as well as international child relocation cases are addressed.

Factors for the court to consider

The proposed Convention specifies five factors to rely on when deciding cases regarding child relocation: 1) the right of the child to maintain personal relationships with the other holders of parental responsibilities, 2) the ability and willingness of the holders of parental responsibilities to cooperate with each other, 3) the personal situation of the holders of parental responsibilities, 4) the geographical distance and accessibility, and 5) the free movement of persons.

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66 See C.G. Jeppesen de Boer, 'Parental Relocation. Free movements rights and joint parenting', 2008 *Utrecht Law Review* 4, no. 2, p. 80.

67 However, 'the Explanatory Notes to the Act specify that the relocation may provide a reason for changing the child's residence and the non-resident parent may consequently request a change of the child's residence', see C.G. Jeppesen de Boer, 'Parental Relocation. Free movements rights and joint parenting', 2008 *Utrecht Law Review* 4, no. 2, p. 80.

68 This provision applies to both parents, whether or not holding parental authority and whether or not the child resides with this parent (Article 18 of the Act on Parental Responsibility).

69 <[www.coe.int](http://www.coe.int)>.

70 K. Boele-Woelki, *Unifying and Harmonizing Substantive Law and the Role of Conflict of Laws*, 2010, p. 49.

## 2.5. Comparison

The issue of child relocation is addressed in various parts of the world. As far as the author knows, to date (2011), at least 39 American states have enacted some sort of relocation law, varying from one sentence in – for example – the New Mexico Code<sup>71</sup> or two sentences in the New Jersey Code<sup>72</sup> to twenty sections listed in the Alabama Code. Additionally, in Canada, New Zealand, Australia, South Africa, Switzerland, the United Kingdom, Norway, France, Spain, Denmark and the Council of Europe child relocation law exists. However, the provisions of the latter countries or European legislators are less comprehensive than in (some) American states. While American state legislatures have enacted lengthy relocation regulations on a large scale, other countries have only enacted short provisions regarding child relocation. The United States of America therefore seems leading with respect to relocation law. It must further be noted that it seems that more binding relocation law exists in common law countries, compared to civil law countries.<sup>73</sup> This is remarkable because – in general – written law has more influence in civil law systems than in common law systems.

What is relocation?

In a minority of jurisdictions a time limitation is codified (the United Kingdom and nine American states<sup>74</sup>). These time limitations vary from 30 days, e.g. in California, to 150 days in New Hampshire. Geographic limitations are exclusive for the United States of America. They exist in 12 American states<sup>75</sup> and vary from 50<sup>76</sup> to 150<sup>77</sup> miles.

Two out of these 12 jurisdictions only restrict international relocation in their law.<sup>78</sup> Five legislators have chosen to address national as well as international cases.<sup>79</sup> It seems that for the remaining jurisdictions, there is no difference between the rules that apply to national and international relocation cases, at least this cannot be deduced from the written law in these jurisdictions.<sup>80</sup>

Notice

Notification requirements exist in Canada, France, Denmark and 28 American states. Six categories of notification requirements can be distinguished: 1) jurisdictions that have no notice requirements,<sup>81</sup> 2) jurisdictions with notice requirements but no time period<sup>82</sup> and jurisdictions with 3) 30,<sup>83</sup> 4) 45,<sup>84</sup> 5) 60 or 6) 90-day notice requirements.<sup>85</sup> Only in the United States of America are legal objection periods codified. They vary from 15,<sup>86</sup> 30,<sup>87</sup> 45,<sup>88</sup> 60<sup>89</sup> to 90<sup>90</sup> days. Other jurisdictions have not stipulated objection periods in their law.

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71 New Mexico Code, § 40-4-9.1 (4) (a).

72 New Jersey Code, § 9:2-2.

73 However, this may also be because these provisions are better available for the author because – generally – the language that is spoken in common law countries is English.

74 Alabama, California, Florida, Kansas, Louisiana, Oklahoma, Missouri, New Hampshire, Wisconsin.

75 (In miles) 50: Florida; 60: Alabama, Maine, Oregon; 75: Oklahoma; 100: Arizona, Michigan, Tennessee; 150: Iowa, Louisiana, Utah, Wisconsin.

76 E.g. Florida.

77 E.g. Iowa, Louisiana.

78 South Africa and the United Kingdom.

79 Spain, Norway, Council of Europe, Wisconsin (United States of America) and Denmark.

80 However, this is not explicitly mentioned in the various provisions.

81 New Zealand, Australia, South Africa, Switzerland, the United Kingdom, Norway and Spain.

82 France.

83 Canada.

84 Denmark.

85 The American notice requirements of the states fall within all 6 categories.

86 Wisconsin.

87 Alabama, Arizona, Florida, Louisiana, Missouri, Montana, Oklahoma, South Dakota, Tennessee, Washington.

88 Maryland.

89 Indiana.

90 New Jersey.

### Factors for the court to consider

A list of factors for the court to consider is exclusively stipulated in law in various American states<sup>91</sup> and in Article 45 of the proposed European Convention on Family Status (Council of Europe). Factors that are frequently listed are: 1) the quality of the relationship and frequency of contact between the child and each relevant person, 2) the reasons for seeking and opposing relocation, 3) domestic violence, 4) the views of the child, 5) existence of a history of thwarting or promoting the relationship with the other parent, 6) the impact on the child and 7) domestic violence. Only the proposed European Convention on Family Status includes the right of freedom of movement. Canada and France both stipulate one factor (the best interest of the child), but this factor is not specific for relocation cases; it applies in all cases involving parental responsibility. The law in seven American states and in Canada mentions factor(s) that the court should not consider when assessing a relocation case.<sup>92</sup>

### Burden of proof

The relocation law surveyed in this article does not prescribe which party has the burden of proof, with the exception of American relocation law. Although a (small) majority of 22 American states still has no provision that addresses which person has the burden of proof in a relocation case,<sup>93</sup> a big minority of 18 states does have a provision on the burden of proof. The states that have a provision on the burden of proof can be divided into four categories: 1) the relocating person has the burden of proof,<sup>94</sup> 2) the non-relocating person has the burden of proof,<sup>95</sup> 3) there is a rebuttable burden of proof<sup>96</sup> and 4) different burdens of proof for parents that have equal and unequal custodial responsibility.<sup>97</sup>

### 3. Non-binding law

In the past 15 years at least six organizations worldwide have developed standards for assessing relocation issues. The American Academy of Matrimonial Lawyers addressed the issue by priority in 1997 with their Model Relocation Act. The organization that has most recently produced relocation standards is the Hague Conference on Private International Law (2010). Standards produced by the aforementioned bodies can be characterized as non-binding law since they are not developed by the legislature, but by international or regional organizations or by private initiatives of legal scholars.<sup>98</sup> For non-binding law, a legislative act is required in order to obtain binding effect. However, non-binding law can have considerable influence on the realization of binding law and can be leading for courts when assessing disputes. It is thus crucial to also survey non-binding law to get a complete picture.

In this paragraph the organizations that have developed non-binding law regarding relocation are discussed.<sup>99</sup> First, in Section 3.1, the Hague Conference on Private International Law and its legal instrument ‘the Washington Declaration’ is described. In Section 3.2 the American organizations are discussed. The organizations and the legal instruments/provision on relocation of respectively the American Academy of Matrimonial Lawyers (Section 3.2.1), the American Law Institute (Section 3.2.2) and the Uniform Law Commission (Section 3.2.3) are surveyed. Furthermore, the organizations and the instruments of the Australian Family Law Council (Section 3.3) and the Commission on European Family Law

91 E.g. Alabama, Arizona, Colorado, Florida, Louisiana, Minnesota, Tennessee, Washington.

92 In Canada the factor ‘past conduct’ is stipulated in Section 16 of the Divorce Act 1985, which Section applies in all cases involving parental responsibilities.

93 California, Colorado, Georgia, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Montana, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Utah, Virginia, Wyoming.

94 Arizona, Connecticut, Illinois, Louisiana, Minnesota, Missouri, New Jersey.

95 South Dakota, Washington, Wisconsin.

96 This means that the relocating parent has the primary burden of proof and when this burden is met, the burden shifts to the non-relocating parent. A rebuttable burden of proof exists in Alabama, Florida, Indiana, New Hampshire and Oklahoma.

97 Tennessee, West Virginia, Wisconsin.

98 ‘Soft law’ is another term used to describe ‘non-binding law’, see e.g. K. Boele-Woelki, *Unifying and Harmonizing Substantive law and the role of Conflicts of Laws*, 2010, p. 72. However, in this article the term ‘soft law’ is not used because the term is defined in many different ways by different legal scholars. E.g. in the United States of America the term ‘soft law’ is used to clarify the difference between (among others) state vs. federal law, discretionary vs. rules-based law, case law vs. statute or code law. [With many thanks to the anonymous referee of this contribution.]

99 Appendix D contains non-binding law as discussed in Section 3.

(CEFL) (Section 3.4) are discussed. In Section 3.5, the non-binding law instruments and provisions of the different organizations are compared. What are the similarities and differences in non-binding law? And does non-binding law produced in America resemble non-binding law in other jurisdictions? Have the American organizations copied each other or do they all have different ideas of how to deal with relocation disputes?

### ***3.1. The Hague Conference on Private International Law: The Washington Declaration on International Family Relocation***

More than 60 years after the first meeting of the Hague Conference on Private International Law in 1893, the conference became a permanent inter-governmental organization (1955). It currently has 72 members representing all continents. Every four years, at the Plenary Session, the Conference meets to negotiate and adopt conventions and to choose prospective work. The mission of the Conference is 'to work for the progressive unification of private international rules.'<sup>100</sup> For this purpose, the Conference develops international legal instruments to serve worldwide needs.

The Conference is also concerned with child relocation. In March 2010 the Conference co-organized the International Judicial Conference on Cross-border Family Relocation in Washington (USA). More than 50 judges and other experts from 14 different countries,<sup>101</sup> including experts from the Hague Conference on Private International Law and the International Centre for Missing and Exploited Children, met to discuss international child relocation. The participants agreed on Principles Regarding Relocation Issues and Child Abduction, which were laid down in the Washington Declaration. The Declaration consists of 13 sections; the first 7 sections address child relocation. No burden of proof is stipulated.

What is child relocation?

No specific definition of child relocation is stipulated in the Washington Declaration. According to Section 6 of the Declaration, the factors are primarily directed at international relocation. However, the factors can also be used in national cases.

Notice

The relocating party should give reasonable notice before commencing proceedings or before relocation takes place.<sup>102</sup> The Declaration does not specify within what period notification should be given to the other party.

Factors for the court to consider

Article 4 of the Declaration formulates thirteen factors that should assist the court in deciding cases involving relocation of children. The list is not meant to be exhaustive. Some of the factors mentioned are: 1) the right of the child to maintain personal relations and direct contact with both parents, 2) the views of the child, 3) parties' proposals for the practical arrangements for relocation,<sup>103</sup> 4) reasons for seeking or opposing the relocation, 5) domestic violence and 6) the impact on the child.

### ***3.2. The United States of America***

To date, at least three American organizations have developed relocation standards. This indicates that serious efforts have been made to encourage the development of standards to make the treatment of child relocation more uniform. In the following paragraphs three American organizations and their legal instruments are described.

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100 See <[http://www.hch.net/index\\_en.php?act=text.display&tid=26](http://www.hch.net/index_en.php?act=text.display&tid=26)> (last visited 10 August 2011).

101 Argentina, Australia, Brazil, Canada, France, Egypt, Germany, India, Mexico, New Zealand, Pakistan, Spain, United Kingdom and the United States of America.

102 Art. 2 of the Washington Declaration.

103 It concerns practical arrangements regarding accommodation, schooling and employment of the child.

### 3.2.1. *The American Academy of Matrimonial Lawyers' Model Relocation Act*

There are great inter-state differences in the United States of America with respect to assessing child relocation disputes. As a consequence, legal uncertainty is apparent. The problem of legal uncertainty in the United States of America in general was first recognized in 1892 by the Uniform Law Commission.<sup>104</sup> However, the pioneer in drafting uniform relocation law is the American Academy of Matrimonial Lawyers, which has addressed the issue of child relocation by priority.

#### The organization

The American Academy of Matrimonial Lawyers (AAML) was founded in 1962. Its goal is 'to provide leadership that promotes the highest degree of professionalism and excellence in the practice of family law'.<sup>105</sup> Currently, the AAML has almost 1,600 members in all 50 states. Members are generally recognized by judges and attorneys as preeminent family law practitioners with a high level of knowledge, skills and integrity.<sup>106</sup> To become a member of the AAML, one must meet strict requirements.<sup>107</sup>

The members of the AAML do more than represent and advise individuals in matrimonial matters; they have also drafted model acts and model statutes on various matrimonial subjects, including child relocation.<sup>108</sup>

#### The instrument

The Model Relocation Act was drafted in 1997 and published in 1998.<sup>109</sup> The principle aim of the act is to serve as a template for jurisdictions desiring a statutory solution to the relocation quandary.<sup>110</sup> The Model Relocation Act consists of 4 articles with 22 paragraphs. The Model Relocation Act does not stipulate whether it applies to national and/or international relocation cases.

#### What is relocation?

Article 1 of the Model Relocation Act provides for the general provisions and definitions. Paragraph 101(5) of the Act defines relocation as follows: 'a change in the principal residence of a child for a period of 60 days or more, but does not include a temporary absence from the principal residence'. Also residence changes within a state or a relatively short distance can be classified as relocation. Furthermore, the Act applies to cases when either a non-custodian parent or the child relocates.<sup>111</sup>

#### Notice

Article 2 of the Act addresses notification. Notification should be given on the 60<sup>th</sup> day before the date of the proposed relocation. Not only the relocating party should notify a proposed relocation,<sup>112</sup> but also the

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104 In 1892 the National Conference of Commissioners on Uniform State Laws (currently known as the Uniform Law Commission) was founded to work for the uniformity of state laws in each region of the United States, including the District of Columbia, the Commonwealth of Puerto Rico and the US Virgin Islands. See § 3.2.3.

105 <<http://www.aaml.org/about-aaml>>.

106 <<http://www.aaml.org/about-aaml>>.

107 The requirements are: 1) to be recognized by the bench and bar in his or her jurisdiction as an expert practitioner in matrimonial law, 2) admitted to the bar for 10 years, 75 percent specialization in matrimonial law, but subject to exception in certain geographic areas and other exceptional circumstances, 3) have state family law certification if it exists, 4) where it does not exist, must have completed 15 hours of continuing legal education in each of previous five years, 5) pass oral and/or written examination on wide-ranging issues pertaining to matrimonial and family law, 6) be interviewed by a state board of examiners as well as be recommended by other matrimonial law practitioners in the state, 7) aspire to the ethical standards set forth in the "Bounds of Advocacy" as well as state bar rules of professional conduct, 8) demonstrate involvement in study or improvement of matrimonial law, such as publishing articles or continuing education presentations. See: <<http://www.aaml.org/about-aaml>> (last visited 23 July 2011).

108 The AAML is a membership organization of lawyers and only its members are bound by its ethics code.

109 American Academy of Matrimonial Lawyers, 'Proposed Model Relocation Act: An Act relating to the relocation of the principal residence of a child', 1998 *Journal of the American Academy of Matrimonial Lawyers* 15, no. 1, pp. 1-24. For more information about the drafting of the Act, reference is made to the Introductory Comment of the Act and to B.E. Handschu, 'The making of a model relocation act: A committee member's perspective', 1998 *Journal of the American Academy of Matrimonial Lawyers* 15, no. 1, pp. 25-32.

110 American Academy of Matrimonial Lawyers, 'Proposed Model Relocation Act: An Act relating to the relocation of the principal residence of a child', 1998 *Journal of the American Academy of Matrimonial Lawyers* 15, no. 1, Introductory comment.

111 Comment on Model Act § 101.

112 Model Act § 201.

person entitled to visitation with the child.<sup>113</sup> Article 3 of the Act stipulates the objection to the relocation. The resident party may relocate with the child if the non-resident party has not filed proceedings to prevent the relocation within 30 days after receiving the notice of a planned relocation.

#### Factors for the court to consider

Article 4 of the Act determines how to assess relocation. Section 405 of the Act specifies which factors a court shall consider in determining propriety or impropriety of relocation. Examples of factors that are stipulated are: 1) the relationship of the child with the parents and other significant persons, 2) the impact on the child, 3) history of promoting or thwarting the relationship with the other parent, 4) the reasons for seeking or opposing relocation and 5) the child's preference.<sup>114</sup>

The Model Relocation Act also defines two factors that should not be taken into account.<sup>115</sup> A temporary relocation order or whether the relocating parent has declared not to relocate if the relocation is denied are factors that must not be considered by the court when deciding a relocation case.

#### Burden of proof

The committee of the AAML could not reach consensus on the burden of proof. Therefore the Act gives the following three options and leaves the final decisions to the individual states: a) the relocating person has the burden of proof, b) the non-relocating person has the burden of proof or c) the burden of proof shifts to the non-relocating person after the burden of proof of the relocating person has been met.<sup>116</sup>

### 3.2.2. *The American Law Institute's Principles of the Law in Family Dissolutions*

#### The organization

The American Law Institute (ALI) was established in 1923 after a study conducted by the committee on the establishment of a permanent organization for the improvement of the law, which consisted of American judges, lawyers and teachers.<sup>117</sup> Currently, the ALI consists of 4,000 highly qualified lawyers, judges and law professors.<sup>118</sup> These legal scholars are chosen based on professional achievement and demonstrated interest in improving the law. The institute's goal is 'to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work'.<sup>119</sup>

One of the tasks – among many others – of the institute is to examine and analyze legal areas thought to need reform. This type of study may result in recommendations for change of law and may then be published as principles of the law. The Principles of the Law of Family Dissolution is an example. It also regulates relocation.

#### The instrument

The Principles of the Law of Family Dissolution were adopted by the American Law Institute in 2000.<sup>120</sup> The Principles contain many of the significant issues regarding family law and express the view that the best interest of the child is more closely tied to the parent that clearly exercises the greater part of custodial responsibility.<sup>121</sup> Furthermore, the parent's rights to choose his or her place of residence should be respected.<sup>122</sup> Paragraph 2.17 of the Principles addresses child relocation and consists of 4 sections. The

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113 Model Act § 202.

114 Model Act § 405.

115 Model Act § 406.

116 Model Act § 407.

117 American Law Institute, <<http://www.ali.org>> (last visited 12 May 2011).

118 American Law Institute, <<http://www.ali.org>> (last visited 12 May 2011).

119 American Law Institute; <<http://www.ali.org>> (last visited 12 May 2011).

120 The Principles of the Law of Family Dissolution have been heavily criticized, see R. Fretwell Wilson, *Reconceiving the Family: Critique on the American Law Institute's Principles of the Law of Family Dissolution*, 2006.

121 Paragraph 2.17 Comment, p. 357 Principles of the Law of Family Dissolution.

122 Paragraph 2.17 Comment, p. 361 Principles of the Law of Family Dissolution.

Principles do not describe factors that a court should consider when granting or refusing relocation, nor is it stipulated whether they apply to national and/or international relocation cases.

What is relocation?

A relocation that significantly impairs either parent's ability to exercise the responsibilities that the parent has been exercising or attempting to exercise under the parenting plan is a relocation that constitutes a substantial change in circumstances.<sup>123</sup>

Notice

According to Paragraph 2.17 Section 2 of the Principles, the relocating parent should give notice at least 60 days before the planned relocation.

Burden of proof

The relocating parent that has clearly been exercising the greater part of custodial responsibility<sup>124</sup> for the child should be given permission to relocate when that parent proves that the relocation is for a valid purpose, in good faith and to a location that is reasonable in light of the purpose.<sup>125</sup> In that case, the court cannot rule that the relocation is not in the best interest of the child, even when the court believes it is. It is sufficient that the parent has shown the valid purpose, the good faith and the reasonable location.<sup>126</sup> According to Paragraph 2.17(4)(b) of the Principles, the court should apply the best interest standard when the party that has clearly been exercising the greater part of custodial responsibility fails to demonstrate that the relocation is valid, in good faith and to a location that is reasonable in light of the purpose. If neither person clearly exercises the greater part of custodial responsibility, the court should also apply the best interest of the child-test.<sup>127</sup> A person who clearly exercises the smaller part of custodial responsibility may only relocate with a child when it is shown that the relocation is necessary to prevent harm to the child.

### 3.2.3. *The Uniform Law Commission's Uniform Relocation of Children Act*

The organization

The Uniform Law Commission was founded in 1892.<sup>128</sup> Its main objective is 'to study and review the law of the states, to determine which areas of law should be uniform and drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable'.<sup>129</sup>

Members of the Uniform Law Commission are practising lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the US Virgin Islands. They do research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.<sup>130</sup>

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123 Paragraph 2.17 (1) Principles of the Law of Family Dissolution.

124 Custodial responsibility means: exercising continuing care and responsibility for a child: see Paragraph 2.17, Principles of the Law of Family Dissolution, p. 356.

125 Paragraph 2.17(4) (a) Principles of the Law of Family Dissolution.

126 The following purposes are recognized as valid: to be close to significant family or other sources of support; to address significant health problems; to protect the safety of the child or another member of the child's household from a significant risk of harm; to pursue a significant employment or educational opportunity; to be with one's spouse or domestic partner who lives in or is pursuing a significant employment or educational opportunity in the new location; to significantly improve the family's quality of life. If the relocating party has other reasons to relocate, he or she must prove that these reasons are also valid (see Paragraph 2.17(4)(a)(ii) Principles of the Law of Family Dissolution). When the purpose can be achieved without relocating or by relocating to a location that is less disruptive to the other party's relationship to the child, the relocation for a valid purpose is not reasonable (see Paragraph 2.17(4)(a)(iii) Principles of the Law of Family Dissolution).

127 Paragraph 2.17(4)(c) Principles of the Law of Family Dissolution.

128 The Uniform Law Commission was formerly known as the national conference of commissioners on uniform state laws.

129 <<http://www.nccusl.org>>.

130 <<http://www.nccusl.org>>.

## The instrument

The Study Committee on Relocation of Children started to draft the Relocation of Children Act in 2005. However, the drafting process ended because of budgetary reasons. In 2010, the incoming chair of the American Bar Association Family Law Section appointed a committee to pick up the Uniform Law Commission draft and continue with a Model Act on Relocation.<sup>131</sup> To the author's knowledge, the drafting process has not been finished yet.

The goal of the latest Draft of the Uniform Relocation of Children Act of the Uniform Law Commission is to provide a uniform set of procedures, factors and burden of proof to assist in deciding cases involving relocation of children.<sup>132</sup> The Draft Act consists of 16 sections.

## What is relocation?

Under the latest Draft of the Uniform Relocation of Children Act, child relocation is defined as 'a change of residence'.<sup>133</sup>

## Notice

According to Section 4 of the latest Draft of the Uniform Relocation of Children Act the relocating parent has to give notice to other persons with rights of custody, visitation or access to the child at least 60 days before the planned relocation. The non-relocating party needs to object to the proposed relocation within 30 days after receipt of the notice by filing an objection with the court or initiate an alternative dispute resolution process with a court-affiliated programme.<sup>134</sup>

## Factors for the court to consider

The court should take various factors into account before deciding in favour or against relocation.<sup>135</sup> The Draft Act lists 16 factors for the court to consider. Some factors that are mentioned are: 1) the relationship of the child with both of the parents, 2) the impact on the child, 3) the reasons for seeking or opposing relocation, 4) domestic violence and 5) views of the child.

## Burden of proof

Section 8 of the latest Draft of the Uniform Relocation of Children Act regulates the burden of proof. Both parties bear the burden of proof to determine whether relocation is in the best interest of the child.

### ***3.3. Australia: The Family Law Council's Recommendations on Relocation***

#### The organization

The Family Law Council is a statutory authority that was founded in 1976 under Section 115 of the Family Law Act 1975. The Family Law Council consists of a Chairperson and 8 to 10 other members, usually appointed by the Attorney-General in consultation with the Prime Minister and Cabinet. Membership of at least one judge of the Family Court or a Federal Magistrate is required. Other legal scholars, such as other judges, lawyers, social workers, relationship counsellors, Australian government and state employees may also become a member of the Family Law Council.

The Family Law Council advises and makes recommendations to the Attorney-General concerning 1) the working of the Family Law Act and other legislation relating to family law, 2) the working of legal aid in relation to family law and 3) any other matters relating to family law.<sup>136</sup> Child relocation was addressed in 2006.

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131 L.D. Elrod. 'National and International Momentum Builds for More Child Focus in Relocation Disputes', 2010 *Family Law Quarterly* 44, no. 3, p. 346.

132 Prefatory note Uniform Relocation of Children Act.

133 Section 2(5) Uniform Relocation of Children Act.

134 Section 5(a) Uniform Relocation of Children Act.

135 Section 9 Uniform Relocation of Children Act.

136 <<http://www.ag.gov.au/flc>>.

### The instrument

In 2006, the Family Law Council published a report regarding relocation to advise the Attorney-General.<sup>137</sup> The report analyses the current law on relocation in Australia and discusses relocation law in other countries. Furthermore, the report makes recommendations for amendments to the Family Law Act to make specific provisions for relocation cases. The recommendations were aimed at giving the court more factors to consider in relocation disputes.<sup>138</sup> The Family Law Council made four recommendations regarding relocation. The recommendations do not stipulate a definition of child relocation, notice requirements, nor a burden of proof.

### Factors for the court to consider

The Family Law Council recommends that the court must consider various factors in a relocating decision. Some factors that are mentioned are: 1) the relationship of the child with both parents, 2) whether it is reasonable and practicable for the non-relocating parent to move closer to the child if the relocation were to be permitted, 3) the impact on the child and 4) the reason to relocate for the relocating person. Further, the court should consider the freedom of movement of persons between states within Australia, as regulated in Section 92 of the Australian Constitution, when making a relocation decision. However, parents' rights are subordinate to the best interest of the child.<sup>139</sup>

### **3.4. Europe: The Commission on European Family Law's Principles Regarding Parental Responsibilities**

#### The organization

The Commission on European Family Law (CEFL) was founded in 2001. It currently consists of 28 legal scholars from 26 European countries.<sup>140</sup> The CEFL's goal is 'to launch a pioneering theoretical and practical exercise in relation to the harmonization of family law in Europe' by drafting Principles of European Family Law.<sup>141</sup> The Principles cover different issues of family law. In the Principles of European Family Law regarding Parental Responsibilities a principle dealing with child relocation has been introduced 'in order to respond to an ever increasing mobility in European society'.<sup>142</sup>

#### The instrument

The Principles of European Family Law regarding Parental Responsibilities were published in 2007.<sup>143</sup> The Preamble of the Principles states that the view of the drafters is the desire to contribute to common European values regarding the child's rights and welfare and to the harmonization of family law in Europe and to further facilitate the free movement of persons within Europe. Child relocation is addressed in Principle 3:21 of the Principles of European Family Law regarding Parental Responsibilities. A burden of proof is not stipulated.

#### What is child relocation?

No specific definition of child relocation is stipulated. Since Principle 3:21 applies regardless of whether the change is within or outside the jurisdiction, it addresses national as well as international relocation cases.<sup>144</sup>

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137 A report to the Attorney-General prepared by the Family Law Council, p. 2.

138 P. Parkinson, 'Freedom of Movement in an Era of Shared Parenting: The Differences in Judicial Approaches to Relocation', 2008 *Federal Law Review* 36, no. 2, p. 170.

139 A report to the Attorney-General prepared by the Family Law Council, p. 2.

140 For more information see <<http://www.ceflonline.net>> (last visited 23 July 2011).

141 K. Boele-Woelki, *Unifying and Harmonizing Substantive Law and the Role of Conflict of Laws*, 2010, pp. 69-70.

142 K. Boele-Woelki et al., *Principles of European Family Law Regarding Parental Responsibilities*, 2007, p. 141.

143 For more information see <<http://www.ceflonline.net>> (last visited 23 July 2011).

144 K. Boele-Woelki et al., *Principles of European Family Law Regarding Parental Responsibilities*, 2007, p. 141.

## Notice

According to Principle 3:21(1) of the Principles of European Family Law regarding Parental Responsibilities, the relocating party should inform any other holder of parental responsibilities in advance of a proposed relocation. It is not stipulated what time frame should be taken into account.

## Factors for the court to consider

Principle 3:21(1) specifies six factors to consider when deciding cases involving child relocation.<sup>145</sup> These factors are: 1) the age and opinion of the child, 2) the right of the child to maintain personal relationships with the other holders of parental responsibilities, 3) the ability and willingness of the holders of parental responsibilities to cooperate with each other, 4) the personal situation of the holders of personal responsibilities, 5) the geographical distance and accessibility and 6) the free movement of persons.

### **3.5. Comparison**

Most non-binding law addressing child relocation has been developed in the United States of America, where three organizations have published non-binding law on child relocation, followed by Europe and Australia with both one organization that has published non-binding law on relocation.<sup>146</sup> Non-binding law in the United States of America is detailed and lengthy, followed by Australia and then Europe where non-binding law is less detailed and lengthy. A major difference between the United States of America and Australia on the one hand and Europe on the other hand is that the American organizations and the Australian Family Law Council are well-established and influential,<sup>147</sup> while in Europe the influence of the CEFL has been – to date – limited.

## What is relocation?

In the area of non-binding law, only the Model Relocation Act (AAML) and the latest Draft of the Uniform Relocation of Children Act (ULC) give a specific definition of child relocation. Both Acts define child relocation as a change of the residence of the child. The Model Relocation Act additionally requires that the residence change must exceed the period of 60 days before relocation law applies. Geographic limitations do not exist in non-binding law as discussed in this article.

Two of the six organizations that have produced non-binding law specify whether the relocation law applies to national or international relocation cases, or both. The European CEFL has produced non-binding law that applies to relocation cases within and outside its jurisdiction. The Washington Declaration primarily addresses international relocation law. The American organizations and the Australian Family law Council do not address this issue.

## Notice

Three categories of notification requirements can be distinguished in non-binding law as surveyed in this article: 1) non-binding law that has no notice requirements (Recommendations on Relocation, Australia), 2) non-binding law that prescribes notification, but does not include a time period (Principles Regarding Parental Responsibilities (CELF) and the Washington Declaration (HCCH)) and 3) non-binding law that requires a 60-day notice (Model Relocation Act (AAML), Principles of the Law in Family Dissolution (ALI) and the latest Draft of the Uniform Relocation of Children Act (ULC)). A minority of non-binding law provides for a period to object to the relocation for the non-relocating person: the Model Relocation Act (AAML) and the Uniform Relocation of Children Act (ULC) prescribe that the non-relocating person should object within 30 days after notification.

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<sup>145</sup> Principle 3:21(3) of the Principles Regarding Parental Responsibilities.

<sup>146</sup> It must be noted that the Principles of the Law in Family Dissolution (ALI) and the Principles Regarding Parental Responsibilities (CEFL) address many more family law topics than only child relocation: child relocation is only regulated in a single article.

<sup>147</sup> At least the American Law Institute and the National Conference of Commissioners on Uniform State Laws are respected rule-making bodies, see K. Boele-Woelki, 'What comparative family law should entail', 2008 *Utrecht Law Review* 4, no. 2, p. 22.

### Factors for the court to consider

The factors that the court must consider when granting or refusing relocation vary from 13 factors in the Washington Declaration to no factors in the ALI principles. Some factors that are recurrent and can therefore be found in various non-binding law instruments are: reasons for seeking and opposing relocation, the quality of the relationship with and frequency of contact between the child and each parent and other significant persons, views of the child and domestic violence. Only two organizations<sup>148</sup> mention the freedom of movement. Factors that the court should not consider are only mentioned in the Model Relocation Act (AAML).<sup>149</sup>

### Burden of proof

Only the American organizations address the burden of proof. The Principles (ALI) first give the burden of proof to the relocating party, the Model Relocation Act (AAML) leaves the decision to the legislator and in the Relocation of Children Act (ULC) both parties bear the burden of proof.

## 4. Similarities and differences between binding law and non-binding law regarding child relocation

It seems that, worldwide, with respect to child relocation, non-binding law is much more detailed and further developed than binding law. An exception is the United States of America, where binding relocation law is also detailed and further developed. It is remarkable that written relocation law is more extensive in a common law country like the United States of America than in the civil law countries described in this article, since statutory law is normally less influential in common law countries.<sup>150</sup>

After the publication of the Model Relocation Act of the American Academy of Matrimonial Lawyers in 1998, codification of relocation law in the United States of America was boosted. More and more law regarding relocation has been adopted since then. Some American states have even adopted non-binding law. American non-binding law therefore seems to be the most influential, since it can be observed that it has affected development and enactment of binding law in the United States of America. Australian non-binding law also seems influential, since courts can use the recommendations of the Family Law Council when deciding a relocation case. In other jurisdictions the influence of non-binding law is less apparent. European non-binding law is limited to a single article in one regulation and no influence on the adoption of binding law can be noted.<sup>151</sup> Internationally, one detailed instrument has been drafted: the Washington Declaration on International Family Relocation. Influence of this international instrument on the enactment of binding law has not been observed yet.

### What is relocation?

Most binding law gives a definition of relocation or it can be deduced from the relocation provision or regulations what is meant by child relocation. Some definitions are: 'change the place of residence',<sup>152</sup> 'leaving the country'<sup>153</sup> or 'leave the parental household'.<sup>154</sup> These definitions do not vary much from the definitions given in non-binding law, where 'change in the principal residence of a child'<sup>155</sup> and 'change of residence'<sup>156</sup> are used to describe child relocation. A minority of binding law stipulates whether the

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148 CEFL and the Family Law Council.

149 These factors are 1) a temporary relocation order and 2) whether the relocating parent has declared not to relocate if the relocation is denied (Model Act § 406).

150 The expectation was that the written law in civil law countries would be further developed, but the results are completely the opposite.

151 Some influence of European non-binding law can be observed in Dutch case law: Principle 3:21 was referred to in a petition and in an Advocate-General's opinion (Dutch Supreme Court 24 April 2008, LJN: BC5901).

152 Canada.

153 Denmark.

154 Switzerland.

155 AAML.

156 ULC.

relocation law applies to national or international relocation cases, or both.<sup>157</sup> This is the same for non-binding law.<sup>158</sup>

Further, what is understood by child relocation can be restricted by time and/or geographic limitations. Time limitations are frequently included in binding law, especially in the American states, and vary from 30 days in California to 150 days in New Hampshire. In non-binding law, only the AAML and the ALI mention a time limitation, respectively 60 and 90 days. Hence, binding law includes more variation regarding time limitations. Geographic limitations only exist in binding law.

#### Notice

Binding law has more variety when it comes to notification requirements than non-binding law. Binding law notification requirements can be divided into six categories, where notification requirements in non-binding law can be divided into three categories.

#### Factors for the court to consider

The greater part of binding relocation law does not list any factors for the court to consider. The law regarding child relocation in the United States of America forms an exception: a minority of 18 states have codified factors for the court to consider. By contrast, most non-binding law, with the exception of the Principles of the American Law Institute, lists factors for the court to assess a challenged relocation.<sup>159</sup> In a substantial number of cases, American states<sup>160</sup> have copied factors mentioned in the Model Relocation Act of the American Academy of Matrimonial Lawyers.

#### Burden of proof

With respect to binding law as well as non-binding law, only in the United States of America is it stipulated which party has the burden of proof. Other relocation provisions in binding and non-binding law that are surveyed in this study do not stipulate which party has the burden of proof.

### **5. What can we learn from all this?**

Europe, and in particular the European Union, is lagging behind compared to the United States of America, since the problem of child relocation has received less attention in Europe than across the ocean. Legal guidance from the regional legislator on how (international) relocation disputes should be decided upon is on-existent.<sup>161</sup> Some European jurisdictions have relocation law, limited to one single provision. It is therefore likely that in Europe many different solutions exist regarding how to act in cases of child relocation. European uniformity is lacking. This is likely to lead to legal uncertainty and inequality within the Union as regards cross-border cases. As a consequence, more relocation litigation is to be expected, which is undesirable.<sup>162</sup> The scope of the problem might increase, since legal uncertainty with respect to relocation law may have a negative impact on child abduction.<sup>163</sup> It therefore seems time to change this (European) situation with respect to child relocation law.

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157 Only law in Norway, Denmark, South Africa, United Kingdom and some American states (Alabama and Wisconsin) address this issue. The Council of Europe addresses national and international child relocation.

158 Only the CEFL, Council of Europe, Washington Declaration address this issue.

159 Only the American Law Institute does not give factors for the court to consider when granting or restricting relocation.

160 E.g. factors in Alabama, Florida, Louisiana, Oklahoma closely resemble the factors mentioned in the Model Relocation Act of the American Academy of Matrimonial Lawyers.

161 Brussels II-bis gives some guidance and regulates the jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. However, it does not contain procedural rules on how to handle a(n) (international) relocation case. This might be one of the recommendations after evaluating the application of the Brussels II-bis Regulation in the Member States. The evaluation report, which should also include recommendations, is to be expected in late 2012.

162 See e.g. the Advocate-General's opinion in Dutch Supreme Court 24 April 2008, LJN: BC590, which states that litigation with respect to relocation in the Netherlands is increasing.

163 It is said that restrictions on international relocation can sometimes be a significant factor in international child abduction <[http://www.londonmet.ac.uk/fms/MRSite/acad/Igri/CFLP/The%20London%20Conclusions%20and%20Resolutions%20\(PDF%20MF\).pdf](http://www.londonmet.ac.uk/fms/MRSite/acad/Igri/CFLP/The%20London%20Conclusions%20and%20Resolutions%20(PDF%20MF).pdf)> (last visited 9 July 2011).

Moreover, the current state of affairs with respect to the issue of child relocation in the European Union disregards citizens' rights as protected by EU- and international law. The EU Member States must ensure that a child shall not be separated from his or her parents against their will (Article 9 sub 1 of the UN Convention on the Rights of the Child) and that the right of parents to have contact with their children is protected (Article 8 European Convention for the Protection of Human Rights and Fundamental Freedoms). In addition, the freedom of movement and residence (Article 21 of the Treaty on the Functioning of the European Union) and the right of children to express their views freely and have contact on a regular basis with both of their parents (Article 24 of the Charter of Fundamental Rights of the European Union) must be protected. It is doubtful whether these rights are sufficiently protected when deciding a relocation case, considering the current uncertainty and diversity that exists with respect to child relocation law in Europe.

A possible solution for the current state of affairs with respect to the issue of child relocation in Europe and the European Union could be harmonization. A European or international non-binding law instrument, e.g. 'Principles on Relocation', that addresses both national and international relocation cases could be a first step in the harmonization process of child relocation law. The law in other countries could be leading in drafting such a non-binding law instrument on relocation. Because of the higher levels of development with respect to child relocation in common law countries, relocation law in these countries should be further analyzed to detect trends and outcomes in relocation cases. However, it is also valuable to more profoundly analyze relocation law in civil law countries to find the shared solution for the problem of child relocation. For this purpose, not just written law, but also case law should be analyzed.

**Appendix A: Relocation law as enacted in various countries worldwide**

Country	Law (effective in)	What is relocation?	National/ international relocation?	Time limitations (days)	Geographic limitations (miles)	Notice (days)	Objection	Burden of proof	Consideration	Number of factors
Switzerland	Article 301 § 3 Swiss Civil Code (1978)	leave the parental household	--	--	--	--	--	--	--	--
Canada	Chapter 16 (1), (6), (7) and (8) Canadian Divorce Act 1985 (1987)	change the place of residence	--	--	--	30	--	--	^	1 1
United Kingdom	Section 13(2) Children Act 1989 (1991)	remove from the United Kingdom for more than 1 month	##	1 month	--	--	--	--	--	--
Norway	Sections 37 and 40 of the Children Act (1998)	- moving abroad - where the child shall live	###	--	--	--	--	--	--	--
France	Article 373-2 Civil Code (2002)	any change of residence of one of the parents, where it modifies the terms of exercise of parental authority	--	--	--	Yes	--	--	--	--
Spain	Article 158 Civil Code (2002)	change of domicile	--	--	--	--	--	--	--	--
New Zealand	Section 16(2)(b) Care of Children Act 2004 (2005)	changes to the child's place of residence (including, without limitation, changes of that kind arising from travel by the child) that may affect the child's relationship with his or her parents and guardians	--	--	--	--	--	--	--	--
Australia	Section 65DAC of the Family Law Act 1975(2006)	changes to the child's living arrangements that make it significantly more difficult for the child to spend time with a parent	--	--	--	--	--	--	--	--
South Africa	Section 18 (3) (iii) of the Children's act 2005 (2007)	departure or removal from the Republic	##	--	--	--	--	--	--	--
Denmark	Articles 3 and 17 Act on Parental Responsibility (2007)	--	##	--	--	45	--	--	--	--
Council of Europe	Proposed European Convention on Family Status (2009)	--	###	--	--	yes	--	no presumption	^	5

^ Best interest of the child. # National relocation. ## International relocation. ### National and international relocation. -- No specific provision.

**Appendix B: Recent or significant case law with respect to relocation in the regions of the United States of America and American states that use general custody statutes to deal with relocation disputes**

	<b>General custody regulation</b>	<b>Case law<sup>1</sup></b>
Alaska	Alaska Stat. § 25.24.150	Chesser-Witmer v. Chesser, 117 P.3d 711 (Alaska 2005); Veselsky v. Veselsky, 113 P.3d 629 (Alaska 2005); Moeller-Prokosch v. Prokosch, 99 P.3d 531 (Alaska 2004);
Arkansas	--	Blivin v. Weber, 354 Ark. 483, 126 S.W.3d 351 (2003); Durham v. Durham, 82 Ark. App. 562, 120 S.W.3d 129 (2003); Hollandsworth v. Knyzeweski, 353 Ark. 470, 109 S.W.3d 653 (2003)
Hawaii	--	Tetreault v. Tetreault, 99 Haw. 352, 55 P.3d 845 (Ct. App. 2002); Maeda v. Maeda, 8 Haw. App. 139, 794 P.2d 268, cert. denied, 71 Haw. 668, 833 P.2d 900 (1990)
Idaho	Idaho Code § 32-717	Aguiar v. Aguiar, 142 Idaho 331, 127 P.3d 234 (Ct. App. 2005); Weiland v. Ruppel, 139 Idaho 122, 75 P.3d 176 (2003); Roberts v. Roberts, 138 Idaho 401, 64 P.3d 327 (2003)
Kentucky	KY. Rev. Stat. § 403.270 & 403.340	Maria Regina Frances v. Bobby Gene Frances, 2007-SC-000076-DGE 10/23/2008; Christopher Pennington v. Heather M. Marcum (f/k/a Miles), 2006-SC-000642-DG 10/23/2008
Mississippi	--	Elliott v. Elliott, 877 So. 2d 450 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 66 (Miss. 2004); Lambert v. Lambert, 872 So. 2d 679 (Miss. Ct. App. 2003), cert. denied, 873 So. 2d 1032 (Miss. 2004); Spain v. Holland, 483, So. 2d 318 (Miss. 1986)
Nebraska	--	Wild v. Wild, 13 Neb. App. 495, 696 N.W.2d 886 (2005); Gartner v. Hume, 12 Neb. App. 741, 686 N.W.2d 58 (2004); Tremain v. Tremain, 264 Neb. 328, 646 N.W.2d 661 (2002); Curtis v. Curtis, 759 N.W.2d 269 (Neb. Ct App. 2008)
New York	--	Smith v. Hoover, 24 A.D.3d 1096, 805 N.Y.S.2d 715 (3d Dep't 2005) ; Paul v. Pagnillo, 13 A.D.3d 971, 786 N.Y.2d 727, 665 N.E.2d 145, 642 N.Y.S.2d 757 (1996) ; Tropea v. Tropea, 87 N.Y.2d 727, 739, 642 N.Y.S.2d 575, 665 N.E.2d 145 (1996)
Rhode Island	--	Dupre v. Dupre, 857 A.2d 242 (R.I 2004)
South Carolina	--	Latimer v. Farmer, 360 S.C. 375, 602 S.E.2d 32
Texas	--	Echols v. Olivarez, 85 S.W.3d 475 (Tex. App. 2002); Bates v. Tesar, 81 S.W.3d 411 (Tex. App. 2002); Long v. Long, 144 S.W.3d 64 (Tex. App. 2004)
Vermont	--	Root v. Root, 2005 VT 93, 882 A.2d 1202 (2005); Hawkes v. Spence, 178 Vt. 161, 878 A.2d 273 (2005)

<sup>1</sup> This Appendix is based on the case law as presented in: D.M. Cottler, 'Relocation of the custodial parent; a state by state survey', 2006 *Divorce Litigation*, no. 6, pp. 90-112; L.D. Elrod, 'States Differ on Relocation; A Panorama of Expanding Case Law', 2006 *Family Advocate*, no. 4, pp. 8-11; J. Atkinson, 'Relocation: The Debate – Overview of Law of Relocation in the 50 states', CLE Conference, Washington D.C., 2006, available at <<http://www.ncdsv.org/images/Overviiew%20of%20Relocation%20in%20the%2050%20States.pdf>> (last visited 15 December 2011).

Appendix C: Relocation law as enacted in the regions of the United States of America

	Regulation	Out of state/ Within state	National/ International relocation?	Time limitations (days)	Geographic limitations (miles)	Notice (days)	Objection	Burden of proof	Consideration	Number of factors
Alabama	Ala. Code § 30-3-161 - 30-3-169.10	++	--	45	60	45	30	**	^	17
Arizona	Ariz. Rev. Stat. § 25-408	++	--	--	100	60	30	*	^	7 + 11 <sup>1</sup>
California	Cal. Fam. Code § 3024 & 7501	--	--	30	--	45	--	***	--	--
Colorado	Colo. Rev. Stat. Ann. §14-10-129 & § 14-10-124	--	--	--	substantial change	reasonable	--	--	^	12 + 11 <sup>2</sup>
Connecticut	Conn. Gen. Stat. Ann. § 46b-56c & § 46b-56d	--	--	--	--	--	--	*	^^^	5
Delaware	Del. Code Ann. tit. 13 § 722 & 729	--	--	--	--	--	--	--	--	--
Florida	Fla. Stat. Ann. § 61.13001	--	--	60	50	--	20	**	^	11+13 <sup>3</sup>
Georgia	Ga. Code. Ann. § 19-9-3	--	--	--	--	30	--	--	--	--
Illinois	750 Ill. Comp. Stat. Ann § 5/609	+	--	--	--	in advance	--	*	^	-- 1
Indiana	Ind. Code. Ann. § 31-17-2-2-1 to § 31-17-2-2-6	--	--	--	--	90	60	**	^^^	7 1
Iowa	Iowa Code Ann. § 598.21D	--	--	--	150	--	--	--	--	--
Kansas	Kan. Stat. Ann. § 60-1610; & § 60-1620	++	--	90	--	30	--	--	^	3
Louisiana	La. Rev. Stat. Ann 9:355.1 - 9:355.17	++	--	60	150	60	30	*	^*	12 2
Maine	Me. Rev. Stat. Ann. Tit. 19-A, §§ 1653 (14) & 1657	++	--	--	60	30	--	--	--	--
Maryland	MD.Code Ann., Family Law § 9-106	++	--	--	--	90	20	--	--	--
Massachusetts	Mass. Gen. Laws Ann. Ch. 208, § 30	+	--	--	--	--	--	--	--	--
Michigan	Mich. Comp. Laws Ann. § 722.31	--	--	--	100	--	--	--	--	5
Minnesota	Minn. Stat. Ann. § 518.175 subd. 3	+	--	--	--	--	--	*	^	8
Missouri	Mo. Rev. Stat. § 452.377 & § 452.411	+	--	90	--	60	30	*	^*	--
Montana	Mont. Code Ann. § 40-4-217	--	--	--	--	30	30	--	--	--
Nevada	Nev. Rev. Stat. § 125C.200	+	--	--	--	in advance	--	--	--	--

1 11 best interest factors as mentioned in Ariz. Rev. Stat. § 25-403.

2 11 best interest factors as mentioned in Colo. Rev. Stat. Ann. § 14-10-124 (1) (a).

3 13 best interest factors as mentioned in Fla. Stat. Ann. § 61.13.

	<i>Regulation</i>	<i>Out of state/ Within state</i>	<i>National/ International relocation?</i>	<i>Time limitations (days)</i>	<i>Geographic limitations (miles)</i>	<i>Notice (days)</i>	<i>Objection</i>	<i>Burden of proof</i>	<i>Consideration</i>	<i>Number of factors</i>
New Hampshire	N.H. Rev. Stat. § 461-A:12	--	--	150	--	60	--	**	^^^	--
										2
New Jersey	N.J. Stat. Ann. § 9:2-2	--	--	--	--	--	--	--	--	--
New Mexico	N.M. Stat. Ann. § 40-4-9.1	++	--	--	--	30	----	--	--	--
North Carolina	N.C. Gen Stat § 50.13.2	--	--	--	--	--	--	--	--	--
										1
North Dakota	N.D. Cent. Code Ann. §14-09-07	++	--	--	50	--	--	*	--	--
Ohio	Ohio Rev. Code § 3109.051 (G)	--	--	--	--	to court	--	--	^	--
Oklahoma	Okl. Stat. Ann Tit. 43 § 112.3	--	--	60	75	60	30	**	^*	8
										2
Oregon	Or. Rev. Stat Ann. § 107.159	--	--	--	60	reasonable	--	--	--	--
Pennsylvania	23 PA Cons. Stat. Ann. § 5308	+	--	--	--	--	--	--	--	--
South Dakota	S.D. Codified Laws § 25-5-13; 25-4A-17-19	--	--	--	--	45	30	--	--	--
Tennessee	Tenn. Code. Ann. § 36-6-108	++	--	--	100	60	30	equal time: no presumption	^	11
								relocating person greater part of custodial responsibility: ***	--	3
Utah	Utah Code Ann. § 30-3-37	--	--	--	150	60	--	--	--	4
Virginia	VA. Code Ann. § 20-124.5	--	--	--	--	30	--	--	--	--
Washington	Wash. Rev. Code. Ann. § 26.09.405 - 560	+	--	--	--	60	30	***	^	11
										2
West Virginia	W.VA. Code § 48-9-403	--	--	90	--	60	--	equal time: --	equal time: ^	
								greater part of custodial responsibility: *	greater part of custodial responsibility: ^^*	

	<i>Regulation</i>	<i>Out of state/ Within state</i>	<i>National/ International relocation?</i>	<i>Time limitations (days)</i>	<i>Geographic limitations (miles)</i>	<i>Notice (days)</i>	<i>Objection</i>	<i>Burden of proof</i>	<i>Consideration</i>	<i>Number of factors</i>
Wisconsin	Wis. Stat. Ann. § 767.481	++	# ##	90	150	60	15	equal time: * ***	^ and not reasonable	1 3
Wyoming	Wy. Stat. § 20-2-202	++	--	--	--	30	--	--	--	--

\* Relocating party has the burden of proof.

\*\* Rebuttable burden of proof; the relocating party has the burden of proof. When this is met, the burden of proof shifts to the non-relocating parent.

\*\*\* Non-relocating party has the burden of proof.

^ Best interest of the child.

^^^ Legitimate purpose and reasonable in light of that purpose, best interest of the child.

^\* Good faith and best interest of the child.

^^\* Good faith, legitimate purpose, location is reasonable.

# National relocation.

## International relocation.

### National and International relocation.

+ Out of state.

++ Out of state/Within state.

P Presumption for relocation.

-- No specific provision.

**Appendix D: Non-binding law on relocation in various jurisdictions**

<b>Organization</b>	<b>Where?</b>	<b>Instrument</b>	<b>Date</b>	<b>National/ International relocation?</b>	<b>Time limitations (days)</b>	<b>Geographic limitations</b>	<b>Notice</b>	<b>Objection</b>	<b>Freedom of movement</b>	<b>Burden of proof/ presumption</b>	<b>Consideration</b>	<b>Number of factors</b>
The American Academy of Matrimonial Lawyers	Unites States of America	Model Relocation Act	1997	--	60	--	60	30	--	* or ** or ***	^*	8
												2
American Law Institute	Unites States of America	Principles of the Law in Family Dissolution	2002	--	90	--	60	--	--	*	^^* and ^	0
Uniform Law Commission	Unites States of America	Uniform Relocation of Children Act	2008	--	--	--	60	30	--	* and ***	^	11 + 5
Family Law Council	Australia	Report	2006	--	--	--	--	--	yes	--	^	5
The Commission on European Family Law	Europe	Principles Regarding Parental Responsibilities	2007	###	--	--	yes		yes	--	^	6
The Hague Conference on Private International Law	international	Washington Declaration on International Family Relocation	2010	##	--	--	yes		--	--	^	13

\* Relocating party has the burden of proof.

\*\* Rebuttable burden; the relocating party has the burden of proof. When this is met, the burden of proof shifts to the non-relocating parent.

\*\*\* Non-relocating party has the burden of proof.

^ Best interest of the child.

^^ Not in the best interest of the child.

^^^ Legitimate purpose and reasonable in light of that purpose, in best interest of the child.

^\* Good faith and best interest of the child.

^^\* Good faith, legitimate purpose, location is reasonable.

# National relocation.

## International relocation.

### National and International relocation.

-- No specific provision.