

# When You Are Divorced, What Happens to Child Custody if a Parent Moves?



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In today's world it is hardly a rare occurrence that after a divorce one parent might move to another location. What happens then? What are the courts likely to do? This is perhaps the most difficult area of custody law.

First, the court order that is already in place will remain enforceable until it is changed by another judicial order. There is a federal law and a widely enacted uniform state law, both promulgated to combat child abduction and forum shopping. Generally, if you do not like the court's custody order in your home state, you *cannot* run to another state and hope for a more favorable result there. With only limited exceptions (for dire emergency situations affecting the child's safety and well-being, for example), the second state's judge will not even hear the case if that state is not the "home state" of the child. And even if there is a hearing, the judge in the second state will consider, and is required to enforce, the order of the original home state. (Yes, there can be exceptions. That's how lawyers stay in business.)

In the more usual case, when one parent simply wants to relocate, first choice is to try to resolve what is to happen through agreement. But, failing that, if the case goes to court, do you remember rule number one? The welfare of the child will control. If the move is to Baghdad or New Jersey, the court may say, "It's too dangerous. You can go, but the child stays here." An adult American can live just about anywhere. The problem arises when children will be there too.

The court considers how relocation will affect the child and the motivations for the move. If the move is a mile away, the fallout may be minimal. Forty-five minutes away will often mean a new school district, new playmates, new childcare providers and a 90-minute round-trip for visitation. That round-trip, going and coming, can pretty much wipe out Wednesday evening visitation or an 8:00 a.m. school drop-off.

And if the move is 3,000 miles away, everything changes. Visitation periods will have to be less frequent and perhaps for more extended periods. Transportation becomes an issue. A three-year-old cannot fly alone. A coast-to-coast plane ride costs money. It is not unusual for a judge to impose those costs on the parent who moved away.

If you move just to spite your spouse, the court won't like it. If, however, your relocation is for legitimate reasons, you increase your chances of having a judge approve the move. The relocation must be to a suitable environment: a decent abode, a bedroom for each kid, a good neighborhood, access to healthcare and recreational facilities, and good schools.

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Don't expect a judge to find that the schools in your new location are better than the schools in the county, town, or city where the judge resides, unless you can present some convincing evidence. There are services that do school comparisons.

If a parent moves to get another job, he or she had better be able to prove that comparable employment was not available in the former location.

There are cases in which one parent remarries and moves away because the new hubby/wife has a job, home and family elsewhere. You can anticipate the argument that the parent is preferring the new spouse over the best interests of the children.

The burden of proof incumbent upon the parent who moves is to affirmatively show that the move is in the children's best interest. If the parent who moves away has been the primary caretaker, the children prefer that parent, and the new neighborhood is a good one, the move is more likely to be permissible.

The parent who first moves away might very well find himself or herself responsible for transportation costs for the children (and where necessary, a chaperone), with all, or virtually all, summer, spring, and winter school breaks going to the other parent.

The relocation issue can be addressed in advance through an agreement between the parties. But remember, agreements affecting the rights of children can always be reviewed by the court if circumstances change.

Assuming that you or your spouse are not intending to move into a war zone, what about the preferences of the child? If the child is a teenager, that child's expressed preference will have great weight. (Have you ever tried to tell a teenager what to do? I rest my case.) But notice that I said "expressed preferences." Your child has to be willing to speak up about his or her preference. Obviously, this can tempt a parent to proselytize the children: "Choose me. I'll give you a car," or "If you ever left me, it would kill me." This kind of thinking cannot possibly be in the best interests of the child. But, sad to say, even if you take the high road, your spouse might not. If it comes to the attention of a judge that a parent has tried to poison the well in this way, it certainly will not be considered favorably.

It also must be said that the preferences of younger children may not have quite the weight that those of an older child do.

If you intend to relocate, you must consult with an attorney. The court decisions in Virginia are quite varied, and they probably are elsewhere too. The attorney is probably going to advise you to get your ducks in a row and be prepared to prove to a court that you have selected a great location for a great reason and it is in the children's best interest to relocate.