

## Removal Basics (Out-of-State Relocation)

"Removal" is the legal term of art lawyers use to describe the situation where a divorced parent with custody or joint custody of minor children wants to move out of state and take the kids with him / her. Removal cases can be quite easy. They can also be very difficult – it depends largely on the way the case is prepared. Our advice is to begin working with an attorney very early on – certainly well before the relocation is finalized. Don't wait to the last minute to do what needs to be done in court. Start early so that our skilled and experienced attorneys have time to address any unconsidered factors that may possibly prevent the move. Perhaps more importantly, start your removal case early enough to account for a slow court system that could delay the move beyond a critical deadline.

**Out-of-State Vacations and Temporary Removal:** Illinois law requires a parent to inform the other parent (or his or her attorney) of the location (including a phone number) of where the child will be staying and the duration of the absence from Illinois.<sup>1</sup>

When a divorce case is first filed, a restraining order is automatically imposed on both parents to not remove the children from Illinois for any reason – including vacations – without first obtaining written consent from the other parent or a court order authorizing the trip.<sup>2</sup> Once your divorce case is concluded this shouldn't be much of a problem.<sup>3</sup> At the time of the initial filing, however, this little section of law can prove most helpful to attorneys facing cases where one parent will flee to another jurisdiction with the child. The law allows courts to get a good firm handle on a case and calm the parties down before things get too out of hand.

**Security for the Return of Child and Visitation Compliance:** The assured return to Illinois of the child is a concern raised in many removal cases – especially cases of temporary removal where the divorce case is still being fought before the court. Consider the situation, for example, where one parent is a foreign national and, during the divorce case, wants to travel with the children to visit family in the old country. How can we guarantee the safe return of the children? Illinois law<sup>4</sup> provides a method for dealing with such situations. Essentially, the court sometimes needs to ensure that once the child is beyond Illinois' borders, the removing parent will continue to adhere to visitation and other court requirements. The posting of a bond, a bank account, and even the signing over of the removing parent's assets (including real estate and business interests) into escrow have all been used by courts to ensure that the removing parent will not turn into an international child abductor, but will instead return the children safely and timely.

A word to the wise: work with an attorney when dealing with the issue of removal, and especially when crafting these "removal-security agreements." There are many cases that demonstrate that the smallest mistake can result in huge and irreparable damage.<sup>5</sup>

**History:** It used to be that an unmarried parent with custody of a child could remove the child from Illinois without regard to the other parent's objections and without having to go to court. Those days are gone. Prior to 2003, Illinois' law for unmarried parents did not incorporate the part of the divorce law that deals with removing children from Illinois. So, Illinois only "removal" law applied to divorcing parents, but not to parents who never married. Instead, the noncustodial parent could petition for modification of custody or visitation.

**The Current Law:** In 2003, the legislature amended the Parentage Act to specifically address removal. In particular, the legislature amended section 14 of the Parentage Act, pertaining to judgments, to provide that "[i]n determining custody, joint custody, **removal**, or visitation, the court shall apply the relevant standards of the [Marriage Act], **including Section 609.**"

The Parentage Act, also says that the court may modify an order allowing removal and that any such modifications are to be governed by the factors specified in the divorce law.

**Injunctions:** When it revamped the law in 2003, the legislature also gave courts the power to prohibit an unmarried parent from fleeing Illinois at the outset of a case:

- (a) In any action brought under this Act for the initial determination of custody or visitation of a child or for modification of a prior custody or visitation order, the court, upon application of any party, may

enjoin a party having physical possession or custody of a child from temporarily or permanently removing the child from Illinois pending the adjudication of the issues of custody and visitation. When deciding whether to enjoin removal of a child, the Court shall consider the following factors, including, but not limited to:

1. the extent of previous involvement with the child by the party seeking to enjoin removal;
2. the likelihood that parentage will be established; and
3. the impact on the financial, physical, and emotional health of the party being enjoined from removing the child.

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This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or [info@illinoisdivorce.com](mailto:info@illinoisdivorce.com).