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**SFA**



**BILL ANALYSIS**

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Senate Bill 1244 (as enrolled)  
Sponsor: Senator Bill Bullard, Jr.  
Senate Committee: Families, Mental Health and Human Services  
House Committee: Family and Civil Law

**PUBLIC ACT 422 of 2000**

Date Completed: 1-22-01

### **RATIONALE**

In cases in which the custody of a child is under court jurisdiction, a court order typically will prevent the custodial parent from relocating across state lines without the other parent's consent or the approval of the court. This restriction reportedly is often applied without regard to the distance from a proposed new residence to the child's current home or to a noncustodial parent who may have parenting time rights; movement within Michigan typically has been unencumbered, however. For instance, a parent living in Monroe, Michigan, could be prevented from moving 15 miles or so to Toledo, Ohio, without court approval or consent from the other parent, but could move 620 miles to Ironwood, Michigan. Some people believe that, in situations in which parents have dual legal custody, both parents' homes should be designated as the child's legal residence, and changing the child's legal residence should be subject to a restriction based on a reasonable and consistent distance.

### **CONTENT**

**The bill amended the Child Custody Act to specify that, for purposes of the bill, a child whose parental custody is governed by court order has a legal residence with each parent. The bill also prohibits a parent of such a child from changing the child's legal residence to a location more than 100 miles from the child's legal residence at the time of the commencement of the action in which the custody order was issued.**

The restriction on relocation does not apply, however, if the other parent consents to, or the court permits, the residence change. The bill does not apply if the custody order grants sole legal custody to one parent; if the child's two residences were more than 100 miles apart at the time of the commencement of the action in which the custody order was issued; or if the residence change results in the child's two legal residences being closer than before the change.

Before permitting a change of a legal residence to a location more than 100 miles away, the court must consider each of the following factors, with the child as the primary focus:

- Whether the legal residence change has the capacity to improve the quality of life for both the child and the relocating parent.
- The degree to which each parent has complied with, and used his or her time under, a court order governing parenting time with the child, and whether the parent's plan to change the child's residence is inspired by that parent's desire to defeat or frustrate the parenting time schedule.
- The degree to which the court is satisfied that, if the court permits the residence change, it is possible to order a modification of the parenting time schedule and other arrangements governing the child's schedule in a manner that can provide an adequate basis for preserving and fostering the relationship between the child and each parent and whether each parent is likely to comply with the modification.
- The extent to which the parent opposing the legal residence change is motivated by a desire to secure a financial advantage with respect to a support obligation.
- Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

Each order determining or modifying custody or parenting time, must state the parents' agreement as to how a change in either of the child's legal residences will be handled. If such a provision is included in the order and a child's legal residence is changed in compliance with the provision, the bill does not apply. If the parents do not agree on that provision, the court must include in the order a provision that prohibits a parent from changing the child's legal residence except in compliance with the bill.

If the bill applies to a change of a child's legal residence and the parent seeking to move needs to

seek a safe location from the threat of domestic violence, the parent may move with the child until the court makes a determination under the bill.

MCL 722.31

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The bill prevents a parent from moving his or her residence more than 100 miles simply to disrupt the other parent's custody of, or parenting time with, their child. Too often a child can become a pawn in one parent's attempt to thwart the other's interest and participation in the rearing of their child. By establishing that both parents' residences are a child's legal residence, and restricting a change of the child's legal residence, the bill focuses on the interests of children and emphasizes their need for a stable environment. Unlike proposals in past legislative sessions, the bill's restriction applies to either parent and specifically refers to changing the *child's* legal residence. The bill will help to provide stability in the lives of children who otherwise could become victims of antagonism between their divorced parents.

### **Supporting Argument**

In many cases, one parent might move his or her child's residence without any ill-will toward the other parent, but simply because the relocation would serve the moving parent's own interests. Regardless of the motivation of the parent who relocates, a considerable geographic distance between the child and the other parent can damage their relationship. The child might be denied the parenting he or she needs from both a mother and a father, and the nonrelocating parent might be denied the opportunity to exercise his or her right to parenting time or shared physical custody. In order to protect the child's interests, the bill establishes a standard 100-mile restriction on changes of residence and requires a court to consider specific factors, similar to those previously established in case law for an interstate change of residence, in determining whether to permit one parent to move farther away. These requirements also will protect the interests and rights of the nonrelocating parent.

### **Opposing Argument**

The bill has dangerous implications for domestic violence victims who might want and need to escape their abusers. A change of residence by a violence survivor often comes at a crucial and dangerous time for that individual. A victim who decides to flee a

dangerous domestic situation might reasonably want to relocate far from the abuser. Indeed, in some rural parts of the State, the nearest shelter providing a safe haven for domestic violence victims may be more than 100 miles away. Even in more densely populated areas, a victim's support system of family or friends may exist far from the current residence. By creating a new layer of legal procedure for a domestic violence victim to escape the abuser, the bill gives a tool to the abuser to continue to control the victim. This might eliminate what often is a vital option for that person's survival.

**Response:** The bill explicitly states that if a parent is seeking to move in order to find safety from the threat of domestic violence, he or she may move with the child while the court considers whether to approve relocation beyond 100 miles. In addition, the bill's restriction is not absolute. A court may permit a change of residence beyond the 100-mile standard after considering certain factors, including domestic violence.

### **Opposing Argument**

The bill may cause problems for parents struggling to deal with welfare reform measures or improve their life situation in other ways. Recipients of cash assistance can be penalized for rejecting certain job opportunities. Sometimes, the best way for a parent to accept employment and escape public assistance is to move closer to the location of the job. If that parent has to secure the consent of the other parent or the court in order to make that move, the employment opportunity may be lost in the meantime. Requiring consent also gives one parent a measure of control over the other's employment and educational opportunities, regardless of whether it is a public assistance situation. The 100-mile restriction may even give one parent the opportunity to interfere with the other's desire to remarry and relocate to the new spouse's home.

**Response:** The factors that a court must consider in deciding whether to permit an otherwise restricted move include the capacity to improve the quality of life of both the child and the relocating parent as well as the motivation for the other parent's opposition to relocation.

### **Opposing Argument**

The bill's major impact will be to further clog already crowded family court dockets. It gives courts too much reason to intervene and interfere. Also, in terms of time and money, the burden placed on postdivorce families will be heavy. Reportedly, filing a motion in an ongoing custody case can result in a six- to 12-month wait for a hearing. By the time a court actually considers the factors outlined in the bill, the opportunity that precipitated the move may no longer apply and the parties will have incurred considerable legal fees.

**Response:** There should be few contested

cases that will require court action. Under the bill, that each custody and parenting time order must contain the parents' agreement as to how a change in either residence will be handled. If the parents reach such an agreement and comply with it, the bill does not apply. The bill's relocation prohibition and court intervention only apply if the parents do not agree on or comply with a provision in the custody order that addresses relocation.

### **Opposing Argument**

Rather than imposing a strict 100-mile standard, the bill should be more flexible as to travel time and traffic conditions. For instance, a relocation from Saginaw to Gaylord would exceed the 100-mile limit, but is a fairly easy drive straight up I-75. Traveling from Mt. Clemens to Canton, however, is well within the 100-mile standard but could be a long and difficult trip, especially during rush hour.

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

The bill will have an indeterminate fiscal impact on local Friend of the Court offices. The extent to which additional investigations and referee hearings may be required cannot be estimated.

Fiscal Analyst: B. Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.