

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1244 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Bill Bullard, Jr.
Committee: Families, Mental Health and Human Services

Date Completed: 6-23-00

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 might be unencumbered, however. For instance, a parent who lived 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 would amend the Child Custody Act to specify that a child whose parental custody was governed by court order would have a legal residence with each parent. The bill also would prohibit 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 would not apply, however, if the other parent consented to, or the court permitted, the residence change. The bill also would not apply if the custody order granted sole legal custody to one parent; if the child's two legal 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 resulted in the child's two legal residences being closer than they were previously.

Before permitting a change of residence to a location

more than 100 miles away, the court would have to consider each of the following factors, with the child as the primary focus:

- Whether the residence change had the capacity to improve the quality of life for both the child and the relocating parent.
- The degree to which each parent had 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 was inspired by that parent's desire to defeat or frustrate the parenting time schedule.
- The degree to which the court was satisfied that, if the court permitted the residence change, it was possible to order a modification of the parenting time schedule and other arrangements governing the child's residence in a manner that could provide an adequate basis for preserving and fostering the relationship between the child and each parent and whether each parent was likely to comply with the modification.
- The extent to which the parent opposing the residence change was 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, would have to state the parents' agreement as to how a change in either of the child's legal residences would be handled. If such a provision were included in the order and a child's residence were changed in compliance with the provision, the bill would not apply. If the parents did not agree on that provision, the court would have to include in the order a provision that would prohibit a parent from changing the child's legal residence except in compliance with the bill.

Proposed 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 would prevent 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 would be a child's legal residence, and restricting a change of the child's legal residence, the bill would focus on the interests of children and emphasize their need for a stable environment. Unlike proposals in past legislative sessions, the bill's restriction would apply to either parent and specifically refers to changing the *child's* legal residence. The bill would help to provide stability in the lives of children who otherwise may 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 could 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 interests of the child, the bill would establish a standard 100-mile restriction on changes of residence and would require 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 would 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

A9900s1244a

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.

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 would give a tool to the abuser to continue to control the victim. This could eliminate what often is a vital option for that person's survival.

Response: The bill's restriction would not be absolute. A court could permit a change of residence beyond the proposed 100-mile standard after considering certain factors. One of these is domestic violence.

Opposing Argument

The bill could cause problems for a parent who was struggling to deal with welfare reform measures or improve his or her 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 had to secure the consent of the other parent or the court in order to make that move, the employment opportunity could be lost in the meantime. Requiring consent also would give one parent a measure of control over the other's employment and educational opportunities, regardless of whether it was a public assistance situation. The 100-mile restriction could 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 would have to consider in deciding whether to permit an otherwise restricted move would 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.

Legislative Analyst: P. Affholter

FISCAL IMPACT

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

Fiscal Analyst: B. Bowerman