

## **Child Custody and Removal in Massachusetts**

It is not uncommon after (or even during) a divorce, a parent seeks to move outside of Massachusetts with the couple's children. Not only does this impact the custody arrangement between parents, but it can impact the relationship between the children and both parents as well.

Because the impact such a move can have between children and parents, the Massachusetts Probate and Family Court does not take such a move lightly. In typical custody cases, where both parents live near one another, the court applies the legal standard of the "best interests of the child." This means the court considers what is best for the child when it comes to custody and a parenting plan.

However, when one parent seeks to move out of state with the parties' children, there is a higher legal burden on that parent than just the "best interests" standard. In such cases, pursuant to M.G.L. c. 208 §30, a parent must either obtain the consent of the other parent to move out of state with the children, or obtain the approval of the court. Where court intervention is required, the court applies the "Real Advantage Test." This is a much more difficult test to apply and prove in court.

In the Real Advantage Test, the court looks at four different categories of information: 1) is there a good, sincere reason for wanting to remove to another jurisdiction; 2) the interests of the child; 3) the interests of the custodial parent wanting to move; and 4) the interests of the noncustodial parent remaining in Massachusetts.

Within each of these categories, the court considers additional information. First, the court considers if the parent who wishes to move, wants to move for a sincere reason, and not a reason to spite the other parent.

Next the court considers the interests of the child. Within this category, the court will consider the following factors:

- whether the quality of the child's life may be improved by the change
- the extent to which moving or not moving will affect the emotional, physical, or developmental needs of the child
- whether the child has a good educational opportunity in the new state (i.e., a particular school that is superior to the school that he or she is attending in Massachusetts, or a school that meets the special needs of the child)
- the child's pediatrician told the custodial parent that the child would be healthier in a warmer climate

In considering the interests of the custodial parent, the court will consider the following factors:

- relative advantages to the custodial parent from the move
- the soundness of the reason for moving

- the presence or absence of a motive to deprive the noncustodial parent of reasonable visitation
- A parent's sincere desire to relocate to be with a new spouse
- A good job offer or the job opportunities in the new state are better than they are in Massachusetts;
- The move will be financially advantageous for the custodial parent and the child;
- The custodial parent's current employer wants him/her (or is ordering him/her) to transfer to the new state;
- The custodial parent has a good educational opportunity in the new state (i.e., the custodial parent has been accepted by a school in that state);
- The custodial parent has a supportive community in the other state, including family, friends, social service programs, religious institution, etc. (especially if the custodial parent does not have a supportive community in Massachusetts);
- The custodial parent family and friends in the new state are ready and able to take care of the custodial parent and the child (including emotional support and child care);
- Moving provides a chance for the child to get to know and spend time with the child's extended family (i.e., aunts, uncles, grandparents, nieces, nephews);
- The custodial parent has a home or apartment waiting for him/her in the other state;
- The custodial parent lived in the other state most of his/her life and all of the custodial parent's contacts are there (especially if the custodial parent only moved to Massachusetts because of your child's other parent);
- There are good medical reasons for moving to the other state.

In considering the interests of the noncustodial parent, the court will consider the following factors:

- The reasonableness of alternative visitation arrangements should be assessed.
- The fact that visitation by the noncustodial parent will be changed to his or her disadvantage cannot be controlling.
- Possible adverse effect of the elimination or curtailment of the child's association with the noncustodial parent

The Real Advantage Test is a very intricate test, and no one factor or category is controlling. Removal cases are very often fact-specific, and there is no clear answer. If a parent is considering moving out of Massachusetts with their children, they should consult a lawyer who specializes in family law before they make the move.