

SENATE, No. 3252

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED NOVEMBER 16, 2015

Sponsored by:

Senator PETER J. BARNES, III

District 18 (Middlesex)

SYNOPSIS

Codifies standards for court to consider in determining application for removal of child of divorced or separated persons from jurisdiction.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning removal of unemancipated minor child by
2 custodial parent and supplementing Title 9 of the New Jersey
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. This act shall be known and may be cited as the “New Jersey
9 Relocation of Children Act.”

10
11 2. As used in this act, the following words shall have the
12 following meaning:

13 “Child” means an unemancipated individual who is younger than
14 18 years of age.

15 “Child-custody determination” means a judgment, decree, or
16 other order, whether permanent, temporary, initial or otherwise
17 providing for the legal custody, physical custody, parenting time, or
18 visitation with respect to a child. A “child custody determination”
19 does not include an order relating to child support or other
20 monetary obligation of an individual.

21 “Court” means an entity authorized under the law to establish,
22 enforce, or modify a determination of child custody or parenting
23 time.

24 “Domestic violence” shall have the same meaning as set forth in
25 subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19), the
26 "Prevention of Domestic Violence Act of 1991."

27 “Parent” means: a. a natural parent; b. an adoptive parent; or c. a
28 person acting as a parent, other than a parent, who: (1) has physical
29 custody of the child or has had physical custody for a period of six
30 consecutive months, including any temporary absence, within one
31 year immediately before the commencement of proceeding under
32 this act; and (2) has been awarded legal custody by a court or
33 claims a right to legal custody under the law of this State.

34 “Parenting time” means the time a parent spends with a child,
35 regardless of the custodial designation regarding the child.

36 “Motion” means a request for relief, including any and all non-
37 dissolution applications seeking the relief described herein.

38 “Relocate” means a permanent move out of the State of New
39 Jersey and specifically excludes intrastate moves.

40
41 3. Jurisdiction.

42 The Superior Court of New Jersey shall have jurisdiction to
43 address a parent’s motion requesting to relocate with a child as well
44 as any objections to such a motion.

45
46 4. Motion objecting to or requesting relocation.

47 a. Unless there is consent to the relocation by the non-
48 relocating parent, a parent seeking permission to relocate with a

1 child shall file a motion with the court seeking permission, prior to
2 the relocation, and remain in New Jersey with the child unless and
3 until that parent receives permission to relocate.

4 b. A motion filed by a parent seeking to relocate must specify
5 the reasons for the proposed relocation with the child and a
6 proposed revised parenting time schedule with the child. The
7 burden of proof shall be on the parent seeking to relocate to prove,
8 by a preponderance of the evidence, that the relocation is in the best
9 interest of the child and will not unreasonably adversely impact the
10 relationship between the child and the non-relocating parent.

11 c. A parent who objects to a proposed relocation of a child or a
12 revised parenting plan may file a motion or cross motion objecting
13 to the relocation. The motion must specify the reasons for the
14 objection. This provision shall not be interpreted as placing the
15 burden of proof in a relocation matter on the non-relocating party.
16 The burden of proof shall be on the relocating parent, as detailed
17 hereafter.

18 d. If a parent has been subject to domestic violence or if a child
19 has been subject to child abuse or neglect, the parent shall not be
20 required to participate in alternative dispute resolution.

21

22 5. Best interests; no presumption in favor of or against
23 relocation.

24 a. The court must determine whether relocation is in the best
25 interests of the child. The burden to prove this shall be on the parent
26 seeking to relocate.

27 b. No presumption shall be made in favor of or against
28 relocation of the child.

29

30 6. Factors considered.

31 When making a determination whether to grant an application for
32 removal pursuant to R.S.9:2-2, the court shall consider the best
33 interests of the child, and in doing so, shall consider the following
34 factors:

35 a. The right of the child to maintain personal relations and
36 direct contact with both parents on a regular basis in a manner
37 consistent with the child's development, except if the contact is
38 contrary to the child's best interests;

39 b. The views of the child regarding relocation if the child is of
40 appropriate age and maturity;

41 c. The parties' proposals for the practical arrangements for
42 relocation, including accommodation, schooling, and employment;

43 d. The reasons for seeking or opposing relocation;

44 e. Any history of domestic violence or abuse, whether physical
45 or psychological;

46 f. The history of the family and particularly the continuity and
47 quality of past and current care and contact arrangements, including
48 any prior relocation;

- 1 g. Pre-existing custody and parenting time determinations;
 - 2 h. The impact of granting or refusing relocation of the child,
3 paying particular attention to the child's extended family,
4 education, and social life;
 - 5 i. The nature of the inter-parental relationships and the
6 commitment of the applicant to support and facilitate the
7 relationship between the child and the noncustodial parent after
8 relocation;
 - 9 j. Whether the parties' proposals for parenting time after
10 relocation are realistic, with particular attention given to the cost to
11 the family and the burden to the child;
 - 12 k. The enforceability of parenting time provisions ordered as a
13 condition of relocation in the state of destination;
 - 14 l. The issues of mobility for family members, both seeking and
15 opposing relocation;
 - 16 m. The economic impact of relocation on both parents;
 - 17 n. Any special medical, mental or educational needs of the
18 child and the likelihood that those needs can be met at the same or
19 better level in the state of destination than in the state of New
20 Jersey; and
 - 21 o. Any other factor as the court may deem relevant under the
22 circumstances.
23
- 24 7. Remedies. In determining an application for removal the
25 court shall have the following options:
- 26 a. Permit or prohibit the removal application on a temporary or
27 permanent basis after a fact-finding plenary hearing;
 - 28 b. Order the return of a child who was removed without
29 authorization of the court pursuant to the provisions of this section;
 - 30 c. Modify custody, visitation, or parenting time under the
31 provisions of R.S.9:2-4;
 - 32 d. Order either party to provide reasonable security at the
33 court's discretion in order to guarantee the return of the child;
 - 34 e. Allocate the reasonable actual or projected costs incurred by
35 the noncustodial parent to exercise parenting time with the child;
 - 36 f. Allocate payment of attorneys' fees and costs, and any
37 experts' fees and costs between the parties;
 - 38 g. Appoint an expert as may be appropriate;
 - 39 h. Allocate transportation costs or modify child support; and
 - 40 i. Such other relief as the court may deem just and equitable
41 under the circumstances.
42
- 43 8. Priority for case management. A case management
44 conference on a motion seeking permission to relocate or objecting
45 to relocation shall be set within 30 days upon the conclusion of the
46 hearing on the motion for relocation or objection to relocation.

1 9. This act shall take effect immediately and shall apply to any
2 application for removal filed on or after the effective date.

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5 STATEMENT

6 R.S.9:2-2, referred to in case law as the removal statute, governs
7 the custody of children of divorced or separated parents, and their
8 removal from the state by a custodial parent seeking to relocate to
9 another jurisdiction. In Baures v. Lewis, 167 N.J. 91 (2001), the
10 New Jersey Supreme Court enumerated twelve factors for a court to
11 consider in establishing whether the plaintiff, in seeking to relocate
12 with the child, has met the burden of proving a good faith intent in
13 pursuing the move, and that the move will not be harmful to the
14 child's interest. These factors in turn, evolved out of case law
15 development which established that any sincere, good faith reason
16 advanced by a petitioner for the move would suffice, and that
17 removal should not be denied as long as no adverse effect would
18 inure to the child as a result of the move. It is the intention of this
19 bill to modify the Buares factors by placing greater emphasis on the
20 needs of the child. The factors proposed by this bill are as follows:

21 a. The right of the child to maintain personal relations and
22 direct contact with both parents on a regular basis in a manner
23 consistent with the child's development, except if the contact is
24 contrary to the child's best interests;

25 b. The views of the child regarding relocation if the child is of
26 appropriate age and maturity;

27 c. The parties' proposals for the practical arrangements for
28 relocation, including accommodation, schooling, and employment;

29 d. The reasons for seeking or opposing relocation;

30 e. Any history of domestic violence or abuse, whether physical
31 or psychological;

32 f. The history of the family and particularly the continuity and
33 quality of past and current care and contact arrangements, including
34 any prior relocation;

35 g. Pre-existing custody and parenting time determinations;

36 h. The impact of granting or refusing relocation of the child,
37 paying particular attention to the child's extended family,
38 education, and social life;

39 i. The nature of the inter-parental relationships and the
40 commitment of the applicant to support and facilitate the
41 relationship between the child and the noncustodial parent after
42 relocation;

43 j. Whether the parties' proposals for parenting time after
44 relocation are realistic, with particular attention given to the cost to
45 the family and the burden to the child;

46 k. The enforceability of parenting time provisions ordered as a
47 condition of relocation in the state of destination;

- 1 l. The issues of mobility for family members, both seeking and
2 opposing relocation;
- 3 m. The economic impact of relocation on both parents;
- 4 n. Any special medical, mental or educational needs of the
5 child and the likelihood that those needs can be met at the same or
6 better level in the state of destination than in the state of New
7 Jersey; and
- 8 o. Any other factor as the court may deem relevant under the
9 circumstances.