

Child Relocation Law in Spain and in the United States

An Analysis of the Current Legal Regulation of Child Relocation Disputes in Catalonia
and in the United States' Jurisdictions

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*Abstract*¹

The aim of this study is to analyze the legal regulation of child relocation law in Catalonia, Spain (as Catalonia has its own Civil Code) and in the United States by comparing and contrasting the main similarities and differences between the regulations of both legal systems. For this reason, I will analyze the statutory law of the United States' jurisdictions in order to provide a general overview of the regulation of child relocation in the United States as a whole.

In order to compare the approaches to this issue in both legal systems, it is necessary to understand what is meant by child relocation in Catalonia and in the United States, whether the relocating party has to notify the non-relocating party, if and how the latter should be notified, the consequence of a lack of notification, which parent has the burden of proof, and the factors the court should take into consideration when assessing relocation disputes. Therefore, I will substantially base my research on statutory law, and complement my research with case law in the instances where statutory law is lacking.

Título: Regulación legal del cambio de domicilio del menor en España y en Estados Unidos. Análisis comparado de la regulación legal de los conflictos relativos al cambio de domicilio del menor en Cataluña y en los Estados de los EE.UU.

Keywords: child relocation, family law, notice, objection, burden of proof, factors, child abduction

Palabras clave: cambio de domicilio, menores, derecho de familia, notificación, objeción, carga de la prueba, factores, sustracción de menores

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1. *Introduction*

The aim of this paper is to analyze child relocation law in Catalonia, Spain, and in the United States of America, comparing and contrasting both legal systems' approaches in order to determine their main similarities and differences regarding this issue.

Regarding the practical importance of child relocation, custody relocation disputes are difficult for courts to resolve. Although courts should resolve taking into account the best interests of the child [CARMODY (2007)], in many cases both parents have been actively involved in their child's life prior to their divorce or legal separation and, therefore, courts must take into account conflicting interests. Thus, in many cases, the best interests principle in and of itself is insufficient to allow courts to decide on a case-by-case basis. On the one hand, the relocating parent wishes to be granted his or her freedom of movement while maintaining the existing custody rights on the child. On the other hand, the non-relocating party, based on the wish to maintain the existing visiting rights, opposes the move in order to preserve a relationship with the child [GLENNON (2008)]. Thus, courts need some sort of pattern in order to decide on relocation issues. This, in turn, provides the parents with an understanding of the reasons upon which the court has based its decision [DUGGAN (2007)]. With more divorces between parents of different nationalities and a more mobile society, the practical importance of these disputes are enhanced nowadays, and child relocation disputes are bound to rise. These disputes pose greater problems in child abduction cases in which a child is removed from his or her country by the relocating parent without notifying the non-relocating party, or receiving his or her consent.

The specific objectives of this research can be summarized as the following:

1. **Child relocation:** What is the law regarding child relocation in Catalonia and in the United States? How is child relocation defined in their statutory laws?
2. **Notice:** Should the relocating parent notify the non-relocating parent? If so, what type of notice should the relocating parent provide and when should this notice be given? Can the custodial parent unilaterally change the minor's place of residence or does he or she need the other parent's consent? Which should prevail, a person's constitutional right to travel or the fundamental right of parenting?
3. **Objection:** Can the non-custodial parent object to the proposed relocation? If so, when should such an objection take place?
4. **Burden of proof:** Does statutory law regulate which parent has the burden of proof to show that the proposed relocation is or is not in the child's best interests?
5. **Factors:** What factors, if any, should the court consider in order to rule on the proposed relocation? Are there any factors the court should not take into account?

6. **Child abduction:** What are the consequences of not notifying the non-relocating party and unilaterally changing the child's place of residence? How do courts resolve when presented with this issue?²

As for the structure of the work, I will first analyze the existing child relocation law in Catalonia and in the jurisdictions of the United States, and address each of the above-mentioned objectives. I will then analyze if there is statutory law on child abduction in Spain (since Spanish law, rather than Catalan law, regulates this matter) and in the United States. I will complement this research with case law when Spain and the United States are the requesting and requested state, and vice-versa. To conclude, I will compare the main similarities and differences on child relocation law in both legal systems, with a reference to child abduction law and case law.

In summary, the sources that I will be using throughout this paper consist of the current law of child relocation in Catalonia and child abduction in Spain, and both child relocation and child abduction in the jurisdictions of the United States. In addition, I will refer to case law on child abduction in Spain and in the United States, and the existing academic literature on child relocation and child abduction in both legal systems.

2. Child Relocation Law in Catalonia

2.1. Definition of Child Relocation

Catalan law does not explicitly define child relocation³; however, from the legal regulation of child abduction, child relocation can be interpreted to mean any change of domicile of the minor [BÉRÉÑOS (2012)]. Principle 3:21 of the Principles of European Family Law Regarding Parental Responsibilities (referred to from now on as PEFL)⁴, published by the Commission on European Family Law (CEFL), defines relocation as “the change of a child's residence within or outside the jurisdiction”.

2.2. Exercise of Parental Responsibilities (Patria Potestad) after Annulment of Marriage, Divorce or Legal Separation

Article 236-1 of the Catalan Civil Code (also referred to as CCCat) establishes that the exercise of parental responsibilities, or “*patria potestad*”, over the unemancipated minor children will be, as a general rule, joint and compulsory [MARTÍNEZ (2013)]. Therefore, parents having parental

² International abduction of children in Spain and in the U.S. is analyzed in Section 4 of this paper in order to give a general overview of the consequences of a parent unilaterally changing the child's place of residence and not notifying this change to the other parent, or without having received his or her consent. However, the in-depth analysis of child abduction exceeds the aspirations of this work.

³ See Appendix 1 for Laws in Spain regarding parental responsibilities.

⁴ PEFL available online at: <http://ceflonline.net/wp-content/uploads/Principles-PR-English.pdf> (last visited May 25, 2014).

responsibilities should have an equal right and duty to exercise such responsibilities and whenever possible they should exercise them jointly (Principle 3:11, PEFL).

Parental responsibility is defined in Principle 3:1, PEFL as a “collection of rights and duties aimed at promoting and safeguarding the welfare of the child”. These rights and duties include the care, protection and education of the child (also referred to in Principle 3:19), the maintenance of personal relationships, the determination of residence, the administration of the child’s property and the child’s legal representation. These duties are also incorporated into Article 236-17 of the Catalan Civil Code.

The annulment of marriage, divorce, or legal or factual separation between the parents does not alter their responsibilities towards their children and, consequently, these responsibilities retain their shared nature. Thus, where possible, parental responsibilities must be exercised jointly (Principle 3:10, PEFL and Article 233-8.1, CCCat). According to Article 234-7, CCCat, the same legal rules, i.e. Articles 233-8 to 233-13, CCCat, apply to unmarried couples who separate, in regards to the exercise of child custody and personal relations.

Nonetheless, annulment, divorce and legal separation usually entail that the holders of parental responsibilities do not live together. Therefore, certain necessary measures will have to be taken regarding the exercise of parental responsibilities, regardless of whether there was previous cohabitation [GONZÁLEZ (2013)].

A proposed parenting plan must be submitted by the parents in order to determine how parental responsibilities should be exercised (Article 233-8.2 CCCat). The content of the parenting plan is provided by Article 233-9 of the CCCat, and should include matters that affect the daily life of the minor, such as “the place or places where the children normally live” (Article 233-9.2.a CCCat). In the cases where there is no agreement or if the agreement is not approved, the court, taking into account the joint nature of parental responsibilities, must determine how custody should be exercised. However, certain matters, such as the change of residence of a minor, are excluded from the content of the parenting plan as they constitute more serious deliberations [NAVAS (2012)].

Only exceptionally will the exercise of parental responsibilities correspond to one of the parents. Firstly, when parents agree that one of them shall exercise parental authority with the consent of the other or that they shall both exercise it with a distribution of duties (Principles 3:13 and 3:15 PEFL and Article 236-9.1 CCCat). Secondly, when a parent is discharged of parental responsibilities because of having been pronounced guilty in a final judgment for acts of domestic or sexist violence suffered directly or indirectly against the children, whether or not they were actually carried out (Article 233-11.3 CCCat). Thirdly, when a parent is unavailable, incapable or absent (Article 236-10 CCCat). Fourthly, when parenthood is established only for one parent or if there is a single-person adoption, permissible under Article 235-30 CCCat. Fifthly, when parental responsibility is granted to one parent because the other had opposed the legal responsibility of parenthood in a judicial procedure, or because the parenthood of the child

results from a sexual crime. And, lastly, when a parent is declared absent or dead (Principle 3:31 PEFL).

2.3. Notice

a. What sort of notice of a proposed relocation, if any, must a relocating parent give to a non-relocating parent?

As a general rule, parental responsibilities over children are exercised jointly by both parents. If a parent wishes to change his or her place of residence, the relocating parent will most likely want the child's place of residence to change as well. It is necessary, therefore, in these situations to determine if a relocating parent can unilaterally change the child's place of residence or if he or she needs either the consent of the non-relocating parent, or a judicial authorization if the non-relocating parent opposes the move.

Principle 3:21 PEFL regulates relocation and establishes that if parental responsibilities are exercised jointly and one of the holders wishes to change the child's residence within or outside the jurisdiction, he or she should inform the other holder of parental responsibilities in advance. Therefore, some sort of notification is required, although a notification period is not established either in the PEFL or in the Catalan Civil Code.

Catalan law also refers to the necessity of a holder of parental responsibilities to inform the other parent when there exists an act of extraordinary administration. In these cases, parents must decide together or, if acting individually, they must obtain the express consent of the other parent. Acts of extraordinary administration are defined as those requiring court approval (Article 236-8.2.b CCCat) and, in accordance with the interpretation of the European Family Law Principles, include the child's change of residence. Thus, a parent has the duty to inform the other holder of parental responsibilities in light of any "important event" regarding the care of the child (Article 236-12.1 CCCat).

Article 236-11.6 CCCat, which applies in the case of parents living apart, states that when one parent wishes to change the place of residence of the child, he or she needs the express or implied consent of the non-relocating parent if the change of address sets the child apart from his or her usual environment. The notice must be duly attested in order to obtain such a consent.

Therefore, only with acts of ordinary administration is notice not required (Article 238-8.2.a CCCat). These acts include those of urgent need, such as urgent health decisions, or daily matter decisions which are usually performed by one person alone (Article 236-8.2.a CCCat and Principle 3:12 PEFL). In these events, each parent is presumed to be acting with the consent of the other.

b. Academic positions on the requirement of notice

Controversies arise when parents have not previously legally regulated the issue of the possible change of the child's residence, or when there has not been a judicial decision on this matter. When such controversies arise, there are two main academic positions on this matter [RABADÁN (2011)].

The first, and prevalent position, holds that it is part of the exercise of parental responsibilities to determine the minor's place of residence. Since, as a general rule, both parents hold parental responsibilities, a mutual consent is required. Thus, a parent's constitutional right to choose his or her place of residence is limited. If a parent wishes to change the minor's place of residence, the other parent's visitation rights and the minor's education will be duly affected.

The second, and minority position, considers that, given that a person has the constitutional right to choose where to live (Article 19, Spanish Constitution), the custodial parent does not need either the non-custodial parent's consent or a judicial authorization to change his or her place of residence and, consequently, the child's residence. The custodial parent must inform the move to the non-custodial parent in order to adapt the non-custodial's visitation rights. However, when the child's change of residence substantially varies the initial circumstances that the holders of parental responsibilities had agreed upon, the non-custodial parent can seek a change of custody. Some authors argue that, in any case, the best interests of the children must always be taken into account.

The determination of the minor's place of residence is, thus, considered an extraordinary act as it is a decision of great importance which affects a minor's life. If a change of residence takes place, the minor may have adaptation problems that could impact the non-relocating parent's visitation rights. Therefore, a relocation can potentially impact the relationship of the child with the non-relocating parent. When the relocating parent wishes to change the place of residence of the minor to a foreign country for labor or personal reasons, controversies acquire greater relevance.

In a recent, 2012, decision of Spain's Superior Court (*Rec. N° 1238/2011*),⁵ the Supreme Court set aside an *Audiencia Provincial* order which allowed a mother, who had relocated to New York in order to seek employment opportunities, to unilaterally change the child's place of residence from Spain, where the father resided, to New York. The Supreme Court held that the consent of both holders of parental responsibilities was required. Therefore, even though each person has the fundamental right to decide where to live (Article 19, Spanish Constitution), this right has limitations when it affects a minor. The court stated that in the case where parents cannot reach an agreement, the court will intervene, taking into account the minor's best interests. The court held that the minor's stability and balance could be affected by a change of residence, as it is one of the most significant decisions that can affect a child's life.

⁵ See Appendix 2 for Spanish case law on a child's change of residence.

c. What are the consequences of a lack of notification?

If one of the parents unilaterally changes the child's place of residence to a foreign country without either notifying this decision to the other parent or receiving his or her consent, the child will be thought of as being wrongfully retained or removed, and the legal issue of International Abduction of Children is applied⁶. Article 225 bis of the Spanish Criminal Code defines abduction as transporting a child from his place of residence without the consent of the custodial parent or the persons or institutions to whom his or her safekeeping or custody is entrusted.

Article 158.3 of the Spanish Civil Code regulates child abduction by establishing that the Judge, *ex officio*, or at the request of the child, any relative, or the Public Prosecutor (*Ministerio Fiscal*), must order the necessary measures in order to prevent the abduction of underage children by one of the parents or by third parties. Such measures include the prohibition to exit national territory unless a prior judicial authorization has been granted, the prohibition to issue a passport to the minor or removal thereof if one has already been issued, and the submission to prior judicial authorization of any change of domicile of the minor.

2.4. Objection

If the non-relocating parent disagrees on the change of residence that the relocating parent proposes, he or she may object to the child's change of residence and apply to the competent authority for a decision (Principle 3:21 PEFL and Article 236-13 CCCat). Catalan Law gives parents the possibility to submit disagreements to mediation. The judicial authority can also refer them to an informative session for the same purpose (Article 236-13.3).

Article 236-11.6 of the CCCat, which regulates the exercise of parental responsibilities in the case of parents living apart, establishes that the parent who is exercising parental responsibilities requires the express or implied consent of the other parent to decide on the child's change of residence if this change implies that the child will be separated from his or her common surroundings. As for objection requirements, Article 236-11.6 adds that the consent is understood to be implied if within thirty days from the duly attested notification made in order to obtain such consent, the non-relocating parent has not expressed his disagreement as provided for by Article 236-13.

2.5. Burden of Proof

Catalan law does not mention burden of proof requirements. However, parents can provide psychological reports in order to help the court determine the form of exercise of parental responsibilities. The psychological reports in this matter are regulated in the Catalan Civil Code's *Disposició Adicional Sexta* (DOGC number 5686, of August 5th). The aim of these reports is to adequately understand the existing personal relationships in the minor's environment. These experts' opinions can be equivalent to the ones elaborated by the technical team supporting the

⁶ International abduction of children in Spain and in the U.S. will be analyzed later in this paper.

judicial authority when the expert has been designed by a professional association and the expert's objectivity, impartiality and technical capacity has been guaranteed. The court can ask for a psychological report when the evidence presented by the parties is deemed insufficient.

2.6. Factors for the Court to Consider

Principle 3:21, PEFL and Article 233-11.1, CCCat establish a list of factors the competent authority should take into account when parents do not agree on the relocation of the child. Factors in Principle 3:21 include the age and opinion of the child (also mentioned in Article 233-11.1 CCCat), the right of the child to maintain personal relationships with the other holder of parental responsibilities, the ability and willingness of the holders of parental responsibilities to cooperate with each other (also mentioned in Article 233-11.1 CCCat as "the attitude of each parent to cooperate with each other"), the personal situation of the holders of parental responsibilities, the geographical distance and accessibility (also mentioned in Article 233-11.1 CCCat as "the location of the homes of the parents and the schedules and activities for children and parents"), and the free movement of persons.

Article 233-11.1 CCCat adds other factors for the court to consider, such as the emotional bond between the child and each parent, the relationships established with the other people living in their respective homes, the ability of the parents to ensure the welfare of the child and the possibility to provide him or her an age-appropriate environment, the time devoted by each parent to the care of the child before the breakdown, the tasks which had been effectively exercised by the parents to ensure the welfare of the child, and the agreements in anticipation of the breakdown or those entered into outside the separation agreement before commencing the proceedings.

Article 233-11.2 of the Catalan Civil Code also specifies that the custody award cannot separate siblings, unless specific circumstances require them to be separated.

According to Article 211-6 CCCat, the guiding principle for any decision affecting the child is his or her best interests. Other legal texts establishing that, in all matters concerning parental responsibilities, the best interests of the child should be the primary consideration are Principle 3:3 PEFL, Articles 3 and 18 of the United Nations Convention on the Rights of the Child (UNCRC), ratified by Spain in 1990, Article 2.1 of the *Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor* (LOPM), and Article 5 of the *Llei 14/2010, de 27 de maig, dels Drets i Oportunitats en la Infància i l'Adolescència* (LDOIA).

Children have a right to be informed when a decision is taken that directly affects their person or property (Article 211-6.2 CCCat, Article 7 LDOIA and Article 9 LOPM). Furthermore, Article 211-6.2 CCCat establishes that a minor older than 12 must be consulted in all cases which concern him or her. If a child is younger but shows a sufficient degree of maturity, the minor should also be consulted. Principle 3:6 PEFL also states the necessity to give due weight to the views expressed by the child, taking into account his or her age and maturity.

In case law, courts give absolute prevalence to the minor's best interests and, thus, take into account the minor's relationship with the holders of parental responsibilities and the psychological impact the change of residence might have on him or her, the child's opinion if he or she shows sufficient degree of maturity, his or her possibilities of adapting to a new location, and whether and how the change of residence can emotionally impact the minor.

For instance, in a 2012 decision of the *Audiencia Provincial* of Valencia (AC/2012/1696), a judicial request was brought up from the non-custodial parent to take the minor with him to Syria. The request was dismissed, as neither the interest of the minor in the trip nor its necessity was proven. To reach this conclusion, the court took into account the child's best interests. In this case, the court did not detect any necessary reason for the minor to travel abroad. The request lacked relevant information, such as the relationship of the minor with the relatives he was going to visit, the dates and characteristics of the trip, or the circumstances which made the trip beneficial for the child. It was also not established the possibility of those relatives to come to Spain instead and, therefore, the necessity of the child to travel to Syria. Neither was it proven whether the child wished to travel abroad. Thus, the court considered that the minor's interest in the trip and its necessity were not proven.

In a Spanish Supreme Court decision of December 18th, 2012 (Rec. 2248/2011), the Supreme Court held that the child's best interests is the principle which must preside. To this extent, the court argued that the child in question had established a strong affective bond with the mother, with whom he had lived in the United States for most of his life and, thus, that he was fully integrated to all aspects of life in the United States, such as social habits and friendships. The Supreme Court thus concluded that a change of the child's place of residence to Spain was not recommendable. If the change were to take place, the minor would most likely suffer a negative psychological impact due to the change of custody to a parent whom he practically did not know, enhancing the child's difficulty to adapt to a new country.

3. *Child Relocation Law in the United States of America*

Judicial child relocation disputes are increasing in the United States. This may be due to the high and increased mobility of U.S. citizens. The U.S. Census Bureau announced that in 2012 approximately 36.5 million people relocated that year, as opposed to 35.1 million in 2011. Of these 36.5 million people, 64.4% (around 23.5 million) moved within the same county. Around 11.8 million moved to another county, but 40% of those relocations were 50 miles or less.⁷ Approximately 1.3 million people moved to a different country [GLENNON (2008)]⁸.

⁷ U.S. Census Bureau Data can be found online at: http://www.census.gov/newsroom/releases/archives/mobility_of_the_population/cb12-240.html (last visited May 5, 2014).

⁸ GLENNON (2008) in turn cites: U.S. Census Bureau, Geographical Mobility, 2005-06, Current Population Survey, March, 2006, Table 1.

The relocation of many American families is affected by divorce, remarriage, and new employment, all of which pose economic factors that a parent must take into consideration when wishing to change his or her residence as well as the place of residence of the child [TERRY *et al.* (1998)].

In fact, because of the increase of relocation disputes, non-governmental bodies in the United States have proposed Model Child Relocation statutes. For instance, the American Academy of Matrimonial Lawyers proposed in 1998 a Model Relocation statute⁹. In 2005, the Uniform Law Commission (ULC) attempted to draft a Relocation of Children Act that included a provision with “Factors to be Considered”, but the ULC gave up on that effort in 2009 because of budgetary reasons and due to the concern that any act drafted by the ULC on child relocation would not be enacted in a significant number of states [MESSITTE (2010)]. In 2002, the American Law Institute (ALI) published its “Principles of the Law of Family Dissolution: Analysis and Recommendations” (also referred to as Principles of Family Dissolution)¹⁰, which was drafted after a decade of work on the legal consequences of marital dissolution, and took into account the substantial literature on relocation law, the relocation statutes in the United States’ jurisdictions and case law. Nearly everything in the Principles can be found in the current law of some states.

3.1. Definition of Child Relocation

In the United States’ federal system, the majority of states have their own statutory laws regulating child relocation. U.S. Courts, including the Supreme Court, have determined that states are competent in domestic relations law and, thus, have the competence to determine the custody and visitation rights of a parent [MESSITTE (2010)].

When a dispute on child relocation arises after divorce or legal separation, U.S. Courts must take into consideration American citizens’ right to travel, on the one hand, and a parent’s fundamental right to parenting, on the other. To try to solve this legal issue, to date, 38 American states have adopted statutes on relocation law¹¹ [BÉRÉNOS (2012)]. Alaska, Arkansas, Hawaii, Idaho, Kentucky, Mississippi, Nebraska, New York, Rhode Island, South Dakota, Texas and Vermont constitute the 12 states that have no statute on this matter¹².

The state of Alabama, for instance, defines relocation as a change in the principal residence of a child and adds that the term does not include a temporary absence from the primary residence, or an absence necessary to escape domestic violence.

⁹ The American Academy of Matrimonial Lawyers Proposed Model Relocation Act (1998) can be found online at: <http://www.aaml.org/sites/default/files/model%20relocation%20act-article.pdf> (last visited May 5, 2014).

¹⁰ Paragraph §2.17 of the ALI Principles addresses the ‘Relocation of a Parent’, and will be referred to throughout this essay.

¹¹ See Appendix 3 for a summary table on relocation law in jurisdictions of the United States of America.

¹² See Appendix 4 for a summary table of states that have statutes on child relocation.

In the Principles of Family Dissolution, the relocation of a parent constitutes a substantial change in circumstances only when the relocation impairs either parent's ability to exercise responsibilities that he or she has been exercising or attempting to exercise under the parenting plan (Paragraph §2.17-1).

In statutory law, child relocation is also defined through time and geographic limitations. Time limitations determine the minimum period of time (in days) a parent may change the residence of the child in order for the change of residence to constitute relocation and, thus, for the statute of relocation to be applied. The Principles of Family Dissolution establish a 90-day time limitation period (Paragraph §2.17-2). Out of the 38 states that have a statute on child relocation, 10 establish time limitations. These vary from 30 to 150 days, being 30 in California, 45 in Alabama, 60 in Florida, Louisiana and Oklahoma, 90 in Kansas, Missouri, West Virginia and Wisconsin and 150 in New Hampshire¹³.

Geographic limitations have also been used by states to define relocation. In this context, relocation refers to a change in the principal residence of a child when this change exceeds a minimum distance (in miles) from the domicile of the other parent. To date, 13 states have established geographic limitations, which vary from 50 to 150 miles. A distance of 50 miles or more is established in Florida and North Dakota, 60 miles in Alabama, Maine and Oregon, 75 miles in Louisiana and Oklahoma, 100 miles in Arizona, Michigan and Tennessee, and 150 miles in Iowa, Utah and Wisconsin¹⁴.

3.2. Notice

a. What sort of notice of a proposed relocation, if any, must a relocating parent give to a non-relocating parent?

Notice is regulated in relocation statutes by establishing the minimum amount of days in advance a relocating party must notify the non-relocating one before the move takes place. The Principles of Family Dissolution establish a 60 days' advance notice, or the earliest notice practicable under the circumstances (Paragraph §2.17-2).

To date, 23 states have established notice requirements. Notice requirements vary from 30 to 90 days. 7 states (Georgia, Kansas, Maine, Montana, New Mexico, Virginia and Wyoming) require the relocating party to notify the other parent in a period of at least 30 days before the relocating parent intends to relocate with the child. Alabama, California and South Dakota establish that notification must take place at least 45 days before the move. 11 states (Arizona, Louisiana, Missouri, New Hampshire, Oklahoma, Pennsylvania, Tennessee, Utah, Washington, West Virginia and Wisconsin) establish a minimum 60 day notification period, and 2 states (Indiana and Maryland) determine notification must take place at least 90 days before the move¹⁵.

¹³ See Appendix 5 for a summary table on time limitations.

¹⁴ See Appendix 6 for a summary table on geographic limitations.

¹⁵ See Appendix 7 for a summary table on days of notice.

22 states regulate some form of notice. Around half of them (Alabama, Arizona, California, Indiana, Maryland, Pennsylvania, South Dakota, Tennessee and Wisconsin) establish notice must take place by certified mail. Other forms of notice states require include notice by restricted mail (Kansas), by mail (Oklahoma and Washington), to court (Ohio), signed under oath or affirmation under penalty of perjury (Florida), in writing or written notice (Georgia, Missouri, New Mexico, Utah, Virginia and Wyoming) or within reasonable notice (New Hampshire)¹⁶.

17 states go into further detail and establish which information must be included with the notice¹⁷. The information requirements vary from 1 (Georgia) to 11 (Pennsylvania). In Pennsylvania, for instance, notice must include the address of the intended new residence, the mailing address —if it is not the same as the address of the intended new residence—, the names and ages of the individuals in the new residence —including individuals who intend to live in the new residence—, the home telephone number of the intended new residence if available, the name of the new school district and school the child is planning to attend, the date of the proposed relocation, the reasons for the proposed relocation, and a proposal for a revised custody schedule. Notice should also include any other information which the party proposing the relocation deems appropriate, a counter-affidavit which can be used to object to the proposed relocation and the modification of a custody order, and, lastly, a warning to the non-relocating party that if he or she does not file an objection to the proposed relocation with the court within 30 days after receipt of the notice, that party shall be foreclosed from objecting to the relocation.¹⁸

The Comments set alongside Paragraph §2.17-2 of the Principles of Family Dissolution establish that “every parent must be notified, even one whose custodial responsibility would not be significantly impaired, since the question of significant impairment cannot fairly be determined unless the parent has the chance to present evidence on the issue”. Furthermore, notice requirements apply even to a parent who intends to relocate without the child.

b. What are the consequences of a lack of notification and of unilaterally changing the child’s place of residence?

As in the case of Spain, if one of the parents unilaterally changes the place of residence of a child to a foreign country without notifying this decision to the non-relocating parent or receiving his or her consent, the child will be considered to be wrongfully removed and the legal issue of International Abduction of Children will be enacted¹⁹.

¹⁶ See Appendix 8 for a summary table on forms of notice.

¹⁷ See Appendix 9 for a summary table on notice requirements.

¹⁸ 23 PA Cons. Stat. Ann. § 5337.C3.

¹⁹ International abduction of children in Spain and in the U.S. will be later analyzed in this paper.

Paragraph §2.17-2 of the Principles of Family Dissolution states that a parent may only be exempted from notice requirements if good cause is shown in very restricted situations, such as failure to give notice due to an emergency flight from domestic violence.

3.3. Objection

Statutory law regulates whether a non-relocating parent can object to the proposed relocation and in what circumstances he or she can do so. The Principles of Family Dissolution do not address objection requirements. Most statutes on child relocation warn the non-relocating party that if he or she does not file with the court an objection to the proposed relocation in an established period of time (in days) from the receipt of notice, it will be understood that he or she has implicitly consented to the proposed relocation. Objection varies from 15 days (Wisconsin) from the receipt of notice to 60 days (Indiana). A 20 day objection period is established in 2 states (Florida and Maryland), and 10 states (Alabama, Arizona, Louisiana, Missouri, Montana, Oklahoma, Pennsylvania, South Dakota, Tennessee and Washington) establish a 30 day objection period²⁰.

3.4. Burden of Proof

Statutory law regulating the burden of proof can be classified in four categories. In the first category, the relocating party has the burden of proof. In the second, it is the non-relocating party who has the burden of proof. In the third category, there is a rebuttal burden of proof, and in the fourth category there is no presumption²¹.

Of the 38 states that have a statute on child relocation, 18 address which party has the burden of proof. The relocating party has the burden of proof in 10 states (Arizona, Connecticut, Illinois, Louisiana, Minnesota, Missouri, North Dakota, Pennsylvania, West Virginia and Wisconsin). In California it is established that the non-relocating party has the burden of proof.

In the states of Tennessee, West Virginia and Wisconsin, the burden of proof varies depending upon whether parents are spending a substantially equal interval of time with the child or not. In West Virginia, when parents do not spend substantial equal intervals of time with the child, the relocating party has the burden of proof. However, in Tennessee and in Wisconsin it is the non-relocating party who has the burden of proof in this case. When parents spend substantial equal intervals of time with the child, both in Tennessee and in West Virginia there is no presumption in favor or against the proposed relocation. In Wisconsin, however, the relocating parent has the burden of proof when the time spent with the child is substantially equal.

A rebuttal presumption is established in 6 states (Alabama, Florida, Indiana, New Hampshire, Oklahoma and Washington). The rebuttable presumption consists of the following: the party seeking a change of principal residence of a child has the initial burden of proof on the issue by

²⁰ See Appendix 10 for a summary table on days to object to a proposed relocation.

²¹ See Appendix 11 for a summary table on burden of proof.

showing through a preponderance of the evidence that relocation is in the best interests of the child. If that burden of proof is met, the burden of proof then shifts to the non-relocating party to show by a preponderance of the evidence that the proposed relocation is not in the best interests of the child.

The Principles of Family Dissolution propose a regulation of child relocation that takes into account the amount of custodial responsibility that the relocating parent has been exercising. Three different situations can occur.

First, that the relocating parent has been exercising the clear majority of custodial responsibility for the child. The American Law Institute considers a clear majority of custodial responsibility when the percentage falls within 60 and 70 percent. In this case, the ALI proposes that a parent should be allowed to relocate with the child without a specific demonstration of the benefits to the child as long as the relocation is for a valid purpose, such as being close to significant family, addressing significant health problems or pursuing a significant employment. The relocation must also be characterized as being in good faith, and to a location that is reasonable in light of the purpose. In this case, the party resisting the relocation should prove either that the valid purpose can be substantially achieved without moving, or that there is the possibility to move to a location that would be substantially less disruptive of the non-relocating parent's relationship to the child²².

Second, if parents have been sharing custodial responsibility more or less equally, the ALI proposes that the court should reassess the custodial arrangements under the best-interests test and, thus, that it should consider all relevant factors²³.

Third, if the relocating parent has been exercising substantially less custodial responsibility for the child than the other parent, the ALI's proposal is to set as a general rule that the relocating parent may not relocate with the child unless it is demonstrated that the relocation is necessary to prevent harm to the child²⁴.

3.5. Factors for the Court to Consider

a. What factors, if any, should the court consider with respect to the proposed relocation?

The Principles of Family Dissolution do not establish a list of factors for courts to consider in relocation disputes. However, out of the 38 states that have a statute on child relocation, the majority (26) establish, in greater or less detail, a list of factors a court should consider when deciding on a proposed relocation. Some states establish as few as 2 factors, while others regulate

²² Paragraph §2.17 (4)(a).

²³ Paragraph §2.17 (4)(c).

²⁴ Paragraph §2.17 (4)(d).

as many as 18²⁵. The main factors a court should consider are similar, and do not vary substantially from one state to another. The difference is mainly on the number of factors the legislator of each state has decided to include.

In the state of Alabama, for instance, a court must take into account 17 factors affecting the child, but may take into account additional factors as well. These 17 factors are the following:

- the nature, quality, extent of involvement, and duration of the child's relationship with the parent proposing to relocate with the child and with the non-relocating parent, siblings, and other significant persons or institutions in the child's life;
- the age, developmental stage, needs of the child, and the likely impact the change of principal residence of a child will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;
- the increase in travel time for the child created by the change in principal residence of the child or a parent entitled to custody of or visitation with the child;
- the availability and cost of alternate means of communication between the child and the non-relocating party;
- the feasibility of preserving the relationship between the non-relocating parent and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties;
- the preference of the child, taking into consideration his or her age and maturity;
- the degree to which a change or proposed change of the principal residence of the child will result in uprooting the child as compared to the degree to which a modification of the custody of the child will result in uprooting the child;
- the extent to which custody and visitation rights have been allowed and exercised;
- whether there is an established pattern of conduct of the parent seeking to change the principal residence of a child, either to promote or thwart the relationship of the child and the non-relocating parent;
- whether the parent seeking to change the principal residence of a child, once out of the jurisdiction, is likely to comply with any new visitation arrangements and the disposition of that person to foster a joint parenting arrangement with the non-relocating party;

²⁵ See appendix 12 for a summary table on the number of factors a court should consider in child relocation disputes.

- whether the relocation of the child will enhance the general quality of life for both the custodial party seeking the change of principal residence of the child and the child, including, but not limited to, financial or emotional benefit or educational opportunities;
- whether or not a support system is available in the area of the proposed new residence of the child, especially in the event of an emergency or disability to the parent having custody of the child;
- whether or not the proposed new residence of a child is to a foreign country whose public policy does not normally enforce the visitation rights of non-custodial parents, which does not have an adequately functioning legal system, or which otherwise presents a substantial risk of specific and serious harm to the child;
- the stability of the family unit of the parents entitled to custody of and visitation with a child;
- the reasons of each parent for seeking or opposing a change of principal residence of a child;
- evidence relating to a history of domestic violence or child abuse;
- any other factors that in the opinion of the court are relevant to the general issue or otherwise provided by law²⁶.

b. What factors should be considered in opposition to the proposed relocation?

A minority of states (3) establish a couple of factors which the court should not take into account.²⁷ In the state of Louisiana, the court must not consider whether the parent seeking relocation of the child may relocate without the child if relocation is denied or whether the parent opposing relocation may also relocate if relocation is allowed. In Oklahoma and Washington, their statutes add that a court must not give undue weight to temporary relocation as a factor in reaching its final decision if the court has issued a temporary order authorizing a party seeking to relocate a child to move before final judgment is issued.

c. The child's best interests

All states establish that a court's decision should be based on the child's best interests. For this reason, some statutes (such as the statutes of Arizona, Florida, Michigan, Minnesota, or New Hampshire) not only establish factors a court should take into account in a custody dispute, but also detail a list of factors which aid the court to determine the child's best interests.

²⁶ Ala. Code § 30-3-169.2.

²⁷ See appendix 12 for a summary table on the number of factors a court should not consider in child relocation disputes.

In Florida, for instance, the legislator goes into great detail regarding the best interests of the child, establishing 20 relevant factors to be considered and evaluated by the court. These 20 circumstances include, but are not limited to, the following:

- the demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required;
- the anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties;
- the demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent;
- the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- the geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan. This factor does not create a presumption for or against relocation of either parent with a child;
- the moral fitness of the parents;
- the mental and physical health of the parents;
- the home, school, and community record of the child;
- the reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference;
- the demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the child, including, but not limited to, the child's friends, teachers, medical care providers, daily activities, and favorite things;
- the demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime;
- the demonstrated capacity of each parent to communicate with and keep the other parent informed of issues and activities regarding the child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child;
- evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action relating to those issues has been

brought. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was considered when evaluating the best interests of the child;

- evidence that either parent has knowingly provided false information to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect;
- the particular parenting tasks customarily performed by each parent and the division of parental responsibilities before the institution of litigation and during the pending litigation, including the extent to which parenting responsibilities were undertaken by third parties;
- the demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities;
- the demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse;
- the capacity and disposition of each parent to protect the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child;
- the developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs;
- any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule²⁸.

4. Child Abduction Law in Spain and in the United States

4.1. Unilateral Change of Residence of the Child

If a parent unilaterally changes the place of residence of a child without the other parent's consent, the Hague Convention on the Civil Aspects of International Child Abduction of October 25th, 1980 will be applied. The Hague Convention is a multilateral treaty that seeks to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the country of their habitual residence, as well as to secure protection for rights of access (Article 1). The Hague Convention assumes that

²⁸ Fla. Stat. Ann. § 61.13001.

courts will settle custodial issues and visitation rights and will base their decision on the best interests of the child [DALLMANN (1994)].

A removal or retention of the child is to be considered wrongful when a breach of rights of custody attributed to a person (Article 3) or a breach of the rights of access (Article 5) takes place. Article 7 establishes that central authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children.

Both Spain and the United States are signatories of the Hague Convention. Spain signed it on February 7th, 1986 and ratified on June 16th, 1987. The United States signed it on December 23d, 1981 and ratified on April 29th, 1988.

Thus, when a parent unilaterally changes the child's place of residence to another country signatory of the Hague Convention, both American and Spanish parents can obtain assistance through the reciprocal mechanisms established in the Hague Convention in order for the child to be returned to his or her original residence [DALLMANN (1994)].

4.2. Child Abduction Case Law in Spain and in the United States

Case Law on child abduction will be analyzed in this Section. In child abduction cases, the State to which the child was abducted is the requested state, and the requesting state is the State from which the child was abducted.

The studied case law has been divided into two categories. The first category consists of three cases where the United States is the requested state and Spain the requesting state, and the second category includes two cases where the requested state is Spain and the requesting state the United States²⁹.

a. Facts

In all five cases, the children were younger than 16 (requisite in Article 4 in order for the Hague Convention to apply). In *Navarro v. Bullock*³⁰ the children had lived in Spain for the majority of their lives and had gone, under the father's consent, to California for a one-month holiday and had not returned. Previously, the mother had already wrongfully taken the children to the U.S. for approximately a year and a half. Similar events occurred in *Caro v. Sher*³¹, where the children

²⁹ See Appendixes 13 and 14 for a summary table on child abduction case law in Spain and in the United States.

³⁰ *Navarro v. Bullock*, 15 Fam. L. Rep. (B.N.A.) 1576 (Cal Super. Ct. 1989). Facts, ruling and legal basis of decision available online at: <http://www.incadat.com/index.cfm?act=search.detail&cid=207&lng=1&sl=2> (last visited April 30, 2014).

³¹ *Caro v. Sher*, 296 N.J. Super. 594, 687 A.2d 354 (Ch. Div. 1996). Facts, ruling and legal basis of decision available online at: <http://www.incadat.com/index.cfm?act=search.detail&cid=100&lng=1&sl=2> (last visited April 30, 2014).

had also lived in Spain all of their lives and the mother, after taking the children on vacation to the U.S., notified the father that they would not return. In *Schroeder v. Vigil-Escalera Perez*³², the child was only 1 year old of age when the alleged wrongful retention took place. The mother, after having lived during three months in Spain, took the child to the U.S. to visit her family and did not return. In the *Auto del Juzgado de Familia N° 6 de Zaragoza (Spain)*³³, the mother wrongfully removed the child to Spain and a return order was issued. However, the mother refused to comply voluntarily with this order and enforcement was prevented when the mother went into hiding with the child for eight years.

b. Ruling

The ruling of the courts in the majority of the analyzed cases coincide in ordering the return of the children to Spain (in the cases where the United States is the requested state) and to the United States (in the cases where Spain is the requested state), as the children had been wrongfully removed or retained (Article 12 of the Hague Convention). Such a decision was reached in *Restitución de Menores 534/1997 AA (Spain)*³⁴. In *Schroeder v. Vigil-Escalera Perez*, however, the application return request was dismissed, as the child was not habitually a resident of Spain at the relevant date. Hence, he was not wrongfully retained in Ohio, as the United States had become the child's habitual place of residence. In the *Auto del Juzgado de Familia N°6 de Zaragoza (Spain)*, although the court had originally ordered a return of the child to the United States, the subsequent concealment of the child for eight years made the enforcement of the original return order impossible. Therefore, the court held that necessary measures were to be adopted in order to restart an adequate relationship between the child and his father.

c. Legal basis

In the analyzed cases where the retention was considered to be wrongful, the courts argued that Article 13 of the Hague Convention had not been proven by the opposing party. Article 13 establishes that a requested state is not bound to order the return of the child if the person which opposes his or her return establishes one of three situations: first, that the person having the care of the child was not actually exercising the custody rights at the time of removal or retention; second, that the former had consented to or subsequently acquiesced in the removal or retention (Article 13.a); and third, that there is a grave risk that the child's return would expose him or her to physical or psychological harm (Article 13.b).

³² *Schroeder v. Vigil-Escalera Perez*, 76 Ohio Misc. 2d 25, 664 N.E.2d 627 (Ohio Com. Pl. 1995). Facts, ruling and legal basis of decision available online at: <http://www.incadat.com/index.cfm?act=search.detail&cid=154&lng=1&sl=2> (last visited April 30, 2014).

³³ *Auto Juzgado de Familia N°6 de Zaragoza (España)*, Expediente N° 1233/95-B. Facts, ruling and legal basis of decision available online at: <http://www.incadat.com/index.cfm?act=search.detail&cid=899&lng=1&sl=2> (last visited April 30, 2014).

³⁴ *Restitución de Menores 534/1997 AA*. Facts, ruling and legal basis of decision available online at: <http://www.incadat.com/index.cfm?act=search.detail&cid=908&lng=1&sl=2> (last visited April 30, 2014).

All courts coincided that in these cases, the courts of the children's original habitual place of residence were an appropriate forum to determine what was in the children's best interests, and that the harm which would be suffered by the children would not amount to the level required under Article 13. As was determined in *Caro v. Sher*, the court's duty is not to decide on traditional custody matters, but rather to determine which jurisdiction applies so that it can make custody decisions.

In *Navarro v. Bullock*, the court initially considered the psychologist's evaluation as to whether there was a potential psychological harm for the children and if their views should be taken into account, but the court determined that it was not bound by the psychologist's evaluation. Furthermore, in all cases the Petitioner did not prove the wrongful retention by preponderance of evidence. Courts also argued that the love of both parents is vital for a child's psychological and emotional growth and stability.

In *Schroeder v. Vigil-Escalera Perez*, however, the court applied Article 3 of the Hague Convention to determine that the child's habitual place of residence was the United States and not Spain. The court established that the United States was the place where the child had been physically present for an amount of time sufficient for acclimatization. Furthermore, the court was convinced that it was the mutual intention of both parties that the child was to live with the mother in Ohio for an indefinite period of time.

5. Conclusions

Taking into account each legal system's child relocation law, there is a significant difference in the detail into which Catalonia and the United States address child relocation disputes. While in the United States the majority of states have adopted statutory law which specifically regulates child relocation—defining child relocation with time and geographical limitations, regulating notice in great detail, establishing objection and burden of proof requirements, as well as compiling a list of factors for the courts to consider to determine the child's best interests—, Catalonia addresses child relocation in its Civil Code within the section dedicated to parental responsibilities. Even though Catalonia does not currently have a law which solely addresses child relocation as the U.S., Catalan law does establish in which situations notice shall be required (although it does not specify when notice should take place), as well as regulating objection requirements, and establishing a list of factors for the court to consider. The regulation of child relocation law in Catalonia coincides with, and is complemented by, the Commission of European Family Law's Principles.

To this extent, both the United States and Catalonia share in common the harmonization efforts of different organisms—the American Law Institute, mainly, in the U.S. and the Commission of European Family Law in Catalonia— through the publication of Principles which address Family Law and include the regulation of parental responsibilities and child relocation with the aim of being consistent with the modern view of divorce.

Taking into consideration the data released by the U.S. Census Bureau, one reason for the greater number of child relocation statutory laws in the United States may be the high mobility of divorced parents in the same country for various reasons, ranging from personal matters in order to live closer to family and relatives, to changes of residence due to employment opportunities and other professional matters. Therefore, because there seem to be more child relocation disputes in the United States than in Catalonia, it may be more important, at least for now, for the U.S. to regulate in greater detail these disputes.

As far as child abduction is concerned, both Spain and the United States have signed on The Hague Convention on Child Abduction. Because both countries apply the same legal text, I have found that there are no substantial differences on how both countries solve child abduction disputes.

As we have seen, the child's best interests principle in practice is insufficient for courts to decide on a child relocation dispute, as in many occasions both parents are involved in the child's life and the interests of both parents are justified. Although it would seem that in a civil law system such as that of Catalonia, there would be a greater amount of statutory law on child relocation, it is the United States, a common law system country, which has clearly regulated child relocation in greater detail.

Based on increased divorce-rates and of marriages between people of different nationalities, it would appear that child relocation disputes will continue to rise. For this reason, it would also seem necessary for States to adopt statutory law on child relocation, and for organizations in the United States and in Europe to continue their harmonization efforts in Family Law.

Even though in practice courts will still be presented with intractable problems to be solved and the result may still be imperfect, by regulating child relocation disputes and specifying time and geographical limitations, notice, objection, burden of proof requirements, and other factors for the court to consider, parents will be better able to understand how the court has reached its decision and, thus, legal certainty of the parties involved in child relocation disputes may increase.

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Fuensanta RABADÁN SÁNCHEZ-LAFUENTE (2011), *Ejercicio de la Patria Potestad Cuando los Padres No Conviven*, Aranzadi, pp. 22-31 & 91-95.

Edwin J. TERRY *et al.* (1998), "Relocation: Moving Forward or Moving Backward?", *Texas Tech Law Review*, Vol. 31, pp. 983-1041.

7. *Appendixes*

Appendix 1: Laws Applied by Catalonia Regulating Parental Responsibilities

<i>Laws and Principles on Parental Responsibilities</i>
Llei 25/2010, del 29 de juliol, del Llibre Segon del Codi Civil de Catalunya, relatiu a la Persona i la Família
Llei 14/2010, del 27 de maig, dels Drets i Oportunitats en la Infància i l'Adolescència (LDOIA)
Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor
United Nations Convention on the Rights of the Child, ratified by Spain in 1990.
Principles of European Family Law Regarding Parental Responsibilities by the Commission on European Family Law

Appendix 2: Spanish Case Law on Child Relocation

Spanish Supreme Court

<i>Section & Date</i>	<i>Reference</i>	<i>Reporting Judge</i>
1st, 26.10.2012	Rec. 1238/2011	José Antonio Seijas Quintana
1st, 18.12.2012	Rec. 2248/2011	José Antonio Seijas Quintana

Audiencia Provincial

<i>Place, Section & Date</i>	<i>Reference</i>	<i>Reporting Judge</i>
Valencia, 10th, 21.05.2012	AC/2012/1696	Ana Delia Muñoz Jiménez
Madrid, 24th, 24.05.2012	JUR/2012/271881	Francisco Javier Correas González

Appendix 3: Relocation Law in the Jurisdictions of the United States of America

States	Statutory Law	Days (time limitations)	Miles (geographic limitations)	Days of notice	Form of notice	Does regulation include which information must be included with the notice?	Days to object	Burden of proof	Number of factors for the court to consider	Consideration
Alabama (AL)	Ala. Code § 30-3-160 to § 30-3-169.10	45 (30-3-16)	60 (30-3-162)	45 (30-3-165)	by certified mail (30-3-165)	8 requirements (30-3-165)	30 (30-3-169)	rebuttable presumption (30-3-169.4)	17 (30-3-169.3)	best interests of the child
Alaska (AK)	No statute on child relocation. There is a general custody statute which regulates the judgments for custody: AS § 24.24.150 (c).	-	-	-	-	-	-	-	-	best interests of the child
Arizona (AZ)	Ariz. Rev. Stat. § 25-408	-	100 (25-408.a)	60 (25-408.a)	by certified mail (25-408.b)	-	30 (24-408.c)	relocating party (24-408.f)	8 (24.408.h) + 11 (25-403)	best interests of the child
Arkansas (AR)	No statute on child relocation. But there is a statute on International Child Abduction: Ark. Code § 9-13-401 to § 9-13-407	-	-	-	-	-	-	-	-	best interests of the child
California (CA)	Cal. Fam. Code § 3024 & § 7501	30 (3024)	-	45 (3024)	by certified mail (3024)	-	-	non-relocating party (7501)	-	best interests of the child
Colorado (CO)	Colo. Rev. Stat. § 14-10-124 & § 14-10-129	-	substantial change (14-10-124.1.a.II)	as soon as practicable (14-10-124.1.a)	-	4 requirements (14-10-124.1.a)	-	-	9 (14-10-124.1.a)	best interests of the child
Connecticut (CT)	Conn. Gen. Stat. Ann § 46b-56d	-	-	-	-	-	-	relocating party (46b-56d.a)	5 (46b-56d.b)	best interests of the child
Delaware (DE)	Del. Code Ann. tit. 13 § 722 & § 729	-	-	-	-	-	-	-	8 (722)	best interests of the child
Florida (FL)	Fla. Stat. Ann. § 61.13001	60 (61.13001.1.e)	50 (61.13001.1.e)	-	signed under oath or affirmation under penalty of perjury (61.13001.3.a)	7 requirements (61.13001.3.a)	20 (61.13001.3.a)	rebuttable presumption (61.13001.6)	11 (61.13001) + 20 (61.13)	best interests of the child
Georgia (GA)	Ga. Code Ann § 19-9-3	-	-	30 (19-9-3.f.3)	in writing (19-9-3.f.2)	street address of the new location for pickup and delivery (19-9-3.f.2)	-	-	17 (19-9-3.3)	best interests of the child
Hawaii (HI)	No statute on child relocation.	-	-	-	-	-	-	-	-	-
Idaho (ID)	No statute on child relocation.	-	-	-	-	-	-	-	-	-
Illinois (IL)	750 Ill. Comp. Stat. Ann. 5/602 & 5/604.5 & 5/609 & 5/611	-	-	reasonable time (5/604.5)	-	-	-	relocating party (5/609.a)	10 (5/602) + 1 (5/604.5)	best interests of the child
Indiana (IN)	Ind. Code. Ann. § 31-17-2.2-1 to § 31-17-2.2-6	-	-	90 (31-17-2.2.3)	by registered or certified mail (31-17.2.2.3)	7 requirements (31-17.2.2.3)	60 (31-17.2.2.5)	rebuttable presumption (31-17.2.2.5)	6 (31-17-2.2.1)	best interests of the child
Iowa (IA)	Iowa Code § 598.21D	-	150 (598.21D)	-	-	-	-	-	-	-
Kansas (KS)	Kan. Stat. Ann. § 23-3222	90 (23-3222.a)	-	30 (23-3222.a)	by restricted mail	-	-	-	3 (23-3222.c)	best interests of the child
Kentucky (KY)	No statute on child relocation. There is a statute which regulates the judgments for custody: Ky. Rev. Stat. Ann. § 25.403.270	-	-	-	-	-	-	-	9 (25.403.270.2)	best interests of the child

States	Statutory Law	Days (time limitations)	Miles (geographic limitations)	Days of notice	Form of notice	Does regulation include which information must be included with the notice?	Days to object	Burden of proof	Number of factors for the court to consider	Consideration
Louisiana (LA)	La. Rev. Stat. Ann. § 9:355.1- 9:355.17	60 (9:355.1.2)	75 (9: 355.2.b)	60 (9:355.5.a.1)	by certified mail (9:355.5.a)	8 requirements (9:355.5.b)	30 (9:355.7)	relocating party (9:355.10)	12 (to consider) + 2 (to not consider) (9:355.14)	best interests of the child
Maine (ME)	Me. Rev. Stat. Ann. Tit. 19A, § 1653 (14) & § 1657	-	60 (1657.2.A-1)	30 (1653.14)	-	-	-	-	18 (1653.3)	best interests of the child
Maryland (MD)	Md. Code. Ann., Family Law § 9-106	-	-	90 (9-106.A.1)	by certified mail (9-106.a-3)	-	20 (9-106.a-4)	-	-	-
Massachusetts (MA)	Mass. Gen. Laws Ann. Ch. 208 § 30	-	-	-	-	-	-	-	-	-
Michigan (MI)	Mich. Comp. Laws Ann. § 722.23 & § 722.31	-	100 (722.31)	-	-	-	-	-	5 (722.31) + 12 (722.23)	best interests of the child
Minnesota (MN)	Minn. Stat. Ann. § 518.17 & §518.175 Subd. 3	-	-	-	-	-	-	relocating party (518.175.3-c)	8 (518.175.3) + 18 (518.17)	best interests of the child
Mississippi (MS)	No statute on child relocation.	-	-	-	-	-	-	-	-	-
Missouri (MO)	Mo. Rev. Stat. § 452.377.1 & § 452.385 & § 452.411	90 (422.377.1)	-	60 (452.377.2)	written notice (452.377.2)	5 requirements (452.377.2)	30 (452.377.7)	relocating party (452.377.9)	-	best interests of the child
Montana (MT)	Mont. Code Ann.§ 40-4-212 & § 40-4-217	-	-	30 (40-4-217.2)	by certified mail (40-4-217.2)	-	30 (40-4-217.2)	-	18 (40-4-212.1)	best interests of the child
Nebraska (NE)	No statute on child relocation.	-	-	-	-	-	-	-	-	-
Nevada (NV)	Nev. Rev. Stat. § 125.248 & § 125C.200	-	-	as soon as possible and before the planned move (25C.200)	-	-	before the custodial parent leaves the State with the child (25C.200)	-	12 (125.248)	best interests of the child
New Hampshire (NH)	N.H. Rev. Stat. § 461-A:6 & § 461-A:12	150 (461-A:12.II)	-	60 (461-A:12.III)	reasonable notice (461-A:12.III)	-	-	rebuttable presumption (461-A:12.VI)	2 (461-A:12.V) + 12 (461-A:6)	best interests of the child
New Jersey (NJ)	N.J. Stat. Ann. § 9:2-2	-	-	-	-	-	-	-	-	-
New Mexico (NM)	N.M. Stat. Ann. § 40-4-9.1	-	-	30 (40-4-9.1.b)	in writing (40-4-9.1.b)	2 requirements (40-4-9.1.b)	-	-	-	-
New York (NY)	No statute on child relocation.	-	-	-	-	-	-	-	-	-
North Carolina (NC)	N.C. Gen. Stat. § 50-13.2	-	-	-	-	-	-	-	-	-
North Dakota (ND)	N.D. Century Code Ann. § 14-06.2 & § 14-09-07	-	50 (14-09-07.3)	-	-	-	-	relocating party (14-09-07.1)	13 (14-09-06.2.1)	best interests of the child
Ohio (OH)	Ohio Rev. Code § 3109.04 & §3109.051	-	-	-	to court (3109.051)	-	-	-	10 (3109.04)	best interests of the child
Oklahoma (OK)	Okla. Stat. Ann. Tit. 43 § 112.2A & § 112.3	60 (112.3.5)	75 (112.3.5)	60 (112.3.5.C1b)	by mail (112.3.5.C1a)	7 requirements (112.3.5.C2)	30 (112.3.5.G1)	rebuttable presumption (112.3.5.K)	8 (to consider) + 2 (to not consider) (112.3.5.J1&2)	best interests of the child
Oregon (OR)	Or. Rev. Stat. Ann. § 107.159	-	60 (107.159.1)	reasonable (107.159.1)	-	-	-	-	-	-
Pennsylvania (PA)	23 PA Cons. Stat. Ann. § 5337	-	-	60 (5337.C2)	by certified mail (5337.C2)	11 requirements (5337.C3)	30 (5337.D2)	relocating party (5337.I1)	10 (5337.H)	best interests of the child

States	Statutory Law	Days (time limitations)	Miles (geographic limitations)	Days of notice	Form of notice	Does regulation include which information must be included with the notice?	Days to object	Burden of proof	Number of factors for the court to consider	Consideration
Rhode Island (RI)	No statute on child relocation.	-	-	-	-	-	-	-	-	-
South Carolina (SC)	No statute on child relocation.	-	-	-	-	-	-	-	-	-
South Dakota (SD)	S.D. Codified Laws § 25-5-13; 25-4A-17-18-19	-	-	45 (25-4A-17)	by certified mail (25-4A-17)	4 requirements (25-4A-18)	30 (25-4A-19)	-	-	-
Tennessee (TN)	Tenn. Code Ann. § 36-6-108	-	100 (36-6-108.a)	60 (36-6-108.a)	by certified mail (36-6-108.a)	4 requirements (36-6-108.a)	30 (36-6-108.c)	equal time: no presumption (36-6-108.c)	11 (36-6-108.c)	best interests of the child
							30 (36-6-108.d)	relocating person greater part of custodial responsibility: non-relocating party has the burden of proof (36-6-108.d)	3 (36-6-108.d)	
Texas (TX)	No statute on child relocation. But the best interest of the child is regulated in Tx Family Code § 153.002	-	-	-	-	-	-	-	-	best interests of the child
Utah (UT)	Utah Code Ann. § 30-3-37	-	150 (30-3-37.1)	60 (30-3-37.1)	written notice (30-3-37.1)	2 requirements (30-3-37.1)	-	-	4 (30-3-37.3)	best interests of the child
Vermont (VT)	No statute on child relocation.	-	-	-	-	-	-	-	-	-
Virginia (VA)	Va. Code § 20-124.5	-	-	30 (20-124.5)	written notice (20-124.5)	-	-	-	-	-
Washington (WA)	Wash. Rev. Code Ann. § 26.09.405 to 26.09.560	-	-	60 (26.09.440.1)	by personal service or any form of mail requiring a return receipt (26.09.440.1)	3 requirements (26.09.440)	30 (26.09.480)	rebuttable presumption (26.09.520)	11 (to consider) + 1 (to not consider)(26.09.520 & 530)	best interests of the child
West Virginia (WV)	W.V.A. Code § 48-9-403	90 (48-9-403.b)	-	60 (48-9-403.b)	-	5 requirements (48-9-403.b)	-	equal time: no presumption (48-9-403.D2)	-	best interests of the child
								great part of custodial responsibility: relocating party (48-9-403.D1)		
Wisconsin (WI)	Wis. Stat. Ann. § 767.481	90 (767.481.A1.3)	150 (767.481.A1.2)	60 (767.481.A1)	by certified mail (767.481.b)	3 requirements (767.481.b)	15 (767.481.2A)	equal time: relocating party (767.481.B2)	2 (767.481.B2)	best interests of the child
								great part of custodial responsibility: non-relocating party (767.481.A3)	2 (767.481.A3)	
Wyoming (WY)	Wy. Stat. § 20-2-202	-	-	30 (20-2-202.A3)	written notice (20-2-202.A3)	2 requirements (20-2-202.A3)	-	-	-	-

The information in these appendixes has been enhanced and updated as of April 2014 and takes reference on the works presented by ATKINSON, "Relocation: The Debate - Overview of Law of Relocation in the 50 states", CLE Conference, Washington D.C., available at: <http://www.ncdsv.org/images/Overviiew%20of%20Relocation%20in%20the%2050%20States.pdf> (last visited April 16, 2014) and by BÉRENOS, "Time to Move On? The International State of Affairs with Respect to Child Relocation Law".

Appendixes 4-12: Comparison of Relocation Law in the Jurisdictions of the United States

Appendix 4: Regulation of relocation law

States that do not have a statute regulating relocation law	12 states (AK, AR, HI, ID, KY, MS, NE, NY, RI, SC, TX, VT)
States that have a statute regulating relocation law	38 remaining states

Appendix 5: Days (time limitations)

30	1 state (CA)
45	1 state (AL)
60	3 states (FL, LA, OK)
90	4 states (KS, MO, WV, WI)
150	1 state (NH)
States that establish time limitations	10
States that do not establish time limitations	28 (only counting 38 states that have a statute on child relocation)

Appendix 6: Miles (geographic limitations)

50	2 states (FL, ND)
60	3 states (AL, ME, OR)
75	2 states (LA, OK)
100	3 states (AZ, MI, TN)
150	3 states (IA, UT, WI)
States that establish geographic limitations	13
States that do not establish geographic limitations	25 (only counting 38 states that have a statute on child relocation)

Appendix 7: Days of notice

30	7 states (GA, KS, ME, MT, NM, VA, WY)
45	3 states (AL, CA, SD)
60	11 states (AZ, LA, MO, NH, OK, PA, TN, UT, WA, WV, WI)
90	2 states (IN, MD)
States that address days of notice	23
States that do not address days of notice	15 (only counting 38 states that have a statute on child relocation)

Appendix 8: Form of notice

By certified mail	10 states (AL, AZ, CA, IN, MD, MT, PA, SD, TN, WI)
By restricted mail	1 state (KS)
By mail	2 states (OK, WA)
To court	1 state (OH)
Signed under oath or affirmation under penalty of perjury	1 state (FL)
In writing/written notice	6 states (GA, MO, NM, UT, VA, WY)
Reasonable notice	1 state (NH)
States that address form of notice	22
States that do not address form of notice	16 (only counting 38 states that have a statute on child relocation)

Appendix 9: Does regulation include which information must be included with the notice?

11 requirements	1 state (PA)
8 requirements	2 states (AL, LA)
7 requirements	3 states (FL, IN, OK)
5 requirements	2 states (MO, WV)
4 requirements	3 states (CO, SD, TN)
3 requirements	2 states (WA, WI)
2 requirements	3 states (NM, UT, WY)
1 requirement	1 state (GA)
States that establish what information must be included with the notice	17
States that do not establish what information must be included with the notice	21 (only counting 38 states that have a statute on child relocation)

Appendix 10: Days to object

15	1 state (WI)
20	2 states (FL, MD)
30	10 states (AL, AZ, LA, MO, MT, OK, PA, SD, TN, WA)
60	1 state (IN)
States that address objection	14
States that do not address objection	24 (only counting 38 states that have a statute on child relocation)

<i>Appendix 11: Burden of proof</i>	
Relocating party	10 states (AZ, CT, IL, LA, MN, MO, ND, PA, WV*, WI*) *WV: when parents are not spending substantially equal intervals of time with the child. *WI: when parents are spending substantially equal intervals of time with the child.
Non-relocating party	3 states (CA, TN*, WI*) *TN & WI when parents are not spending substantially equal intervals of time with the child.
Rebuttable presumption	6 states (AL, FL, IN, NH, OK, WA)
No presumption	2 states (TN*, WV*) – *if parents are spending substantially equal intervals of time with the child.
States that address burden of proof	18
States that do not address burden of proof (only counting 38 states that have a statute on child relocation)	20

<i>Appendix 12: Number of factors for the court to consider</i>	
18	2 states (ME, MT)
17	2 states (AL, GA)
13	1 state (ND)
12	1 state (LA, NV)
11	4 states (FL*, IL, TN*, WA) *Florida’s statute also establishes 20 factors to determine the child’s best interest. *TN: if parents are spending substantially equal intervals of time with the child.
10	2 states (OH, PA)
9	2 states (CO, KY)
8	4 states (AZ*, DE, MN*, OK) * Arizona’s statute also establishes 11 factors to determine the child’s best interest. Minnesota’s statute establishes 18 factors.
6	1 state (IN)
5	2 states (CT, MI*) - *Michigan’s statute also establishes 12 factors to determine the child’s best interest.
4	1 state (UT)
3	2 states (KS, TN*) – *TN: if parents are not spending substantially equal intervals of time with the child.
2	2 states (NH*, WI*) *New Hampshire’s statute also establishes 12 factors to determine the child’s best interest. *WI: 2 factors if parents are spending substantially equal intervals of time with the child and 2 if they are not.
Factors to not consider	3 states (LA, OK, WA) – LA&OK: 2 factors; WA: 1 factor.
States that establish factors for the court to consider	26
States that do not establish factors for the court to consider (only counting 38 states that have a statute on child relocation)	12

Appendix 13: Case Law on Child Abduction when the U.S. is the Requested State and Spain the Requesting State

First Instance

<i>Date</i>	<i>Reference</i>	<i>Reporting Judge</i>	<i>Country</i>
1.09.1989	Navarro v. Bullock, 15 Fam. L. Rep. (B.N.A.) 1576 (Cal. Super. Ct. 1989) (INCADAT site: HC/E/USs 207)	James D. Garbolino	United States (state jurisdiction)
9.11.1995	Schroeder v. Vigil-Escalera Perez, 76 Ohio Misc. 2d 25, 664 N.E.2d 627 (Ohio Com. Pl. 1995) (INCADAT site: HC/E/USs 154)	J. Karner	United States (state jurisdiction)
30.10.1996	Caro v. Sher, 296 N.J., Super. 594, 687 A.2d 354 (Ch. Div. 1996) (INCADAT site: HC/E/USs 100)	J. Hayser	United States (state jurisdiction)

Appendix 14: Case Law on Child Abduction when Spain is the Requested State and the U.S. the Requesting State

Spanish Supreme Court

<i>Section & Date</i>	<i>Reference</i>	<i>Reporting Judge</i>	<i>Country</i>
1st, 26.10.2012	Rec. 1238/2011 (INCADAT site: HC/E/ES 1199)	Juan Antonio Xiol Ríos	Spain

Appellate Court

<i>Place, Section & Date</i>	<i>Reference</i>	<i>Reporting Judge</i>	<i>Country</i>
Zaragoza, 6th, 20.04.2004	Auto Juzgado de Familia, Expediente 1233/95-B (INCADAT site: HC/E/ES 899)	Francisco Javier Forcada Miranda	Spain

First Instance

<i>Place, Section & Date</i>	<i>Reference</i>	<i>Reporting Judge</i>	<i>Country</i>
Málaga, 5th, 25.03.1998	Restitución de Menores 534/1997 AA (INCADAT site: HC/E/ES 908)	José Luis Ultrera Gutiérrez	Spain