

# Risk Reduction Interventions in the Child Custody Relocation Case

William G. Austin

**ABSTRACT.** When a custodial parent chooses to relocate to a new community, the child of divorce faces a life transition that is potentially even more traumatic than the parental break-up. Recent developments in Relocation Law have guided courts to generally allow the custodial parent to move away with the child. Divorce effects research and a recent model of risk assessment for relocation suggest factors that predict potential harm or protection for the child. Family mediators and psychotherapists have important roles to play in reducing the risk. These tasks are described and six aspirational principles of risk reduction for relocation suggested. *[Article copies available for a fee from The Haworth Document Delivery Service: 1-800-342-9678. E-mail address: <getinfo@haworthpressinc.com> Website: <<http://www.haworthpressinc.com>>]*

**KEYWORDS.** Child custody relocation, child custody mediation, move-away child custody cases

One of the most challenging situations faced by the legal and mental health professions is how to respond when a custodial parent wants to move away with the child. This problem presents the family system, courts, custody evaluators, and psychotherapists with a principal dilemma: how to reinforce stability in the new custodial parent-child family unit in its attempt to move forward with post-divorce life while trying to preserve continuity and involvement by the noncustodial parent? To try to prevent the custodial parent from moving away is to

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disallow the parent's right to geographical mobility and to seek economic and social advantages. Courts have showed a strong inclination to allow the custodial parent to move away because of a social policy to encourage the new family unit and seeing the interests of child and parent as generally isomorphic (*Gruber v. Gruber*, 1990; *Tropea v. Tropea*, 1996; *In re Marriage of Burgess*, 1996; *In re Marriage of Francis*, 1996; *In re Marriage of Littlefield*, 1997). To disallow the relocation of the child would require the custodial parent not to move or to order a change in custody to the noncustodial parent.

The standards for relocation law vary with some states requiring a substantial change in circumstances (*Tropea v. Tropea*, 1996) or a presumption in favor of the custodial parent that must be overcome (*In re Marriage of Burgess*, 1996) before applying a best interests of the child standard. Other states use a presumption against relocation that can be easily overcome by showing a sensible reason for the move (*Cerminara v. Cerminara*, 1996). A higher standard is used in a few states where the noncustodial parent must show the likelihood of endangerment to the physical health of the child or emotional impairment before being able to oppose the relocation (*In re Marriage of Francis*, 1996; *Silbaugh v. Silbaugh*, 1996). All states attempt to preserve the continuity in the parenting time for the noncustodial parent and if there is evidence of vindictive motives or lack of a sensible reason the move will be disallowed (*Russenberger v. Russenberger*, 1996; *Cooper v. Cooper*, 1984; *Cassady v. Signorelli*, 1996). All states allow for the exercise of judicial discretion so that under unusual circumstances the relocation may be denied and sometimes a change in custody ordered (*In re Marriage of Bradley*, 1995).

### RISK ASSESSMENT

When a child custody evaluation for relocation is ordered the clinical task differs from the approach to an original custody determination, which usually follows a best interests of the child legal standard. In the original case the evaluator needs to measure variables stipulated by state statute and other relevant factors important to the particular child and family (Gould, 1998; Stahl, 1994). General factors include the wishes of the children and both parents, psychological status of all parents and children, the relationship between all significant parties, the ability of each parent to encourage the relationship between the

child and the other parent, and any history of child or spousal abuse. Factors and parental behaviors which do not affect parenting should not be considered (Uniform Marriage and Divorce Act, 1970).

In the relocation case the child custody evaluator is directed by legal precedent (*In re Marriage of Burgess*, 1994; *In re Marriage of Francis*, 1996; *In re Marriage of Littlefield*, 1997) and state statute (Colorado Revised Statutes, 1999; Washington Parenting Act, 1987) to take a different approach because one party is seeking to modify an original custody decree. Evaluators are directed to examine factors relevant to the reason for the move, viability of an alternative parenting time arrangement with relocation, and likelihood of potential harm to the child. Evaluators can assist courts as they perform the comparative legal calculus of balancing the relative benefits and costs associated with the move and staying with the custodial parent versus staying in the home community with one or other of the parents (*In re Marriage of Francis*, 1996; *Tropea v. Tropea*, 1996). Courts have suggested a number of guidelines for the trier of fact in relocation cases and pointed to factors to be considered. These include benefits from support and activities in the new and old communities, involvement by the noncustodial parent, and educational opportunities. Factors identified by courts as possibly associated with potential cost or harm have included geographical distance, mental illness of the custodial parent, fear of abuse, and aversive neighborhood conditions.

I have presented elsewhere a predictive model of risk assessment for the child custody relocation case (Austin, 1999). Extrapolating from the risk assessment model found in violence prediction (Heilbrun & Heilbrun, 1995) and the divorce effects research literature, the model uses risk factors of age of child, geographical distance, recency since divorce, child post-divorce adjustment, child individual resources, involvement by noncustodial parent, psychological status of both parents, involvement in old community, and conflict between parents to predict potential harm.

The inferential task for the evaluation is to predict the probability and degree of harm associated with one of three options: relocation with custodial parent, change in custody when relocation is denied and custodial parent actually moves, and no change in custody if custodial parent does not move if relocation is denied. It has been proposed that the issue of whether the custodial parent would move or stay, in the event relocation was disallowed, should be excluded from examina-

tion on the grounds of prejudice to this parent (American Academy of Matrimonial Lawyers, 1998). Since there is such a strong social policy component to judicial decision making on this issue (because of the preference to allow the custodial parent to enjoy the opportunity of mobility), the mental health expert witness can only have an opinion on the degree and probability of harm to the children, not on relocation per se. Courts are still defining the threshold of harm needed before a relocation will be denied.

### **RISK REDUCTION INTERVENTIONS**

Since courts appear predisposed to allow relocations, it is important for mental health experts to assist the court in suggesting interventions to reduce the potential risk to the child associated with relocation. There is also a more frequent need for psychotherapists and family mediators to assist the parents with achieving the goal of promoting the child's healthy adjustment to the change of relocation. Interventions can be viewed as risk reduction strategies, or as means to lower the probability of harm to the child. Effective interventions can also enhance the ability of the parents to cope with the stress of relocation. Just as the child's adjustment to divorce can be viewed as a problem of coping with a crisis (Kelley, 1998) or negative life transition event (Felner, Terre, & Rowland, 1988), the relocation presents a similar destabilizing pressure in the life of the child and family. The relocation may be potentially more difficult to cope with than the divorce since there may be more losses involved (Wallerstein & Tanke, 1996).

*Role of the mediator.* The mediator can assist parents in conflict resolution over relocation issues and to keep the matter out of court. This challenge will vary depending on the ages of the children and geographical distance of the move. Knowledge of any special needs of the children is important. With the encouragement of attorneys who can give practical advice that the move by the residential parent probably will be allowed, there is a need to help the parents through this transition without exposing the child to conflict and to accomplish several tasks. First, the parent's need for assistance in working out an alternative and satisfactory parenting time agreement may be the most beneficial function of the mediator. This agreement will act as the primary risk reduction strategy by redefining the practical dimensions in the noncustodial parent-child pattern of contact. There is likely to

be more acceptance and satisfaction by the parties if they participate in this agreement rather than having it imposed by the court (Lind & Tyler, 1984). Second, there is a need for education on the effects of conflict on the child (Johnston & Campbell, 1998) and the need for cooperation. Working out an agreement on how to resolve future differences can help build trust between the parties (Lemmon, 1985). Third, the mediator can try to sensitize the parents to the idea that the child's needs change over time and the parenting time arrangement may need to be changed in the future. This may help the noncustodial parent with emerging feelings of helplessness as the child departs. Mediation may not be a viable intervention when there is a history of domestic violence, substance abuse, or overt attempt to alienate the children from the other parent.

*Role of the therapist.* The stress that accompanies relocation challenges the therapist of any and all family members to help the client deal with this potentially negative life transition event (Felner et al., 1988). A small research literature shows that children from divorced families have more adjustment problems following change including a residential move (Stolberg & Anker, 1983). Potential clinical problems for the child's psychotherapist, who may be in the old or new community, include, first, issues of separation and loss from the noncustodial parent, extended family, friends, school, and extracurricular activities. Second, adjustment to the new environment and locating new friends and activities may be problematic for the young school age child or the adolescent with issues of fitting in with a new peer group. Third, dealing with anger in the older child who may have been opposed to the move and developmental regressions with younger children will be common.

The therapist for the noncustodial parent can be expected to face issues of loss and grief, anger management, issues of fairness, and depression. Reframing the relocation as an opportunity to find connectedness with the child through different channels and an opportunity to have a larger block of parenting time in the summer months may help with these adult transition issues. Challenging the parent to find a way to be a success at parenting with a relocation may trigger positive coping behaviors. It may be necessary to redefine for the client the importance of achieving emotional health during this time as a means to maintain effective parenting behavior. The identity of a long-distance parent may be a difficult transition to make.

### ASPIRATIONAL RISK REDUCTION PRINCIPLES

The following principles for successful coping with relocation are extrapolated from divorce effects research and recent clinical monographs. They are suggested as guidelines for practitioners in their work with a relocated family system. They may also prove useful to researchers who study how relocated children adjust to their new circumstances.

*Principle 1: When the relocation issue is being negotiated, parents need to avoid developing a competitive or adversarial mind-set about custody and parenting time.* This hypothesis is based on the robust empirical finding that inter-parental conflict predicts child maladjustment to divorce (Heatherington, Bridges, & Insabella, 1998; Emery, 1998; Johnson & Roseby, 1997). Langer (1989) anecdotally uses the example of a custody dispute to demonstrate the concept of mindlessness where parents fall into the cognitive trap of thinking the amount of love their child has to give is a fixed commodity and they play out a zero sum game where everyone may become the loser. Therapists and mediators have an important role to play in helping diffuse this type of process with education and reframing so the opportunity exists to minimize harm to the child and avoid the lose-lose outcome (Isaacs, Montalvo, & Abelson, 1986). It can be presented that the family system will be different with a relocation, or change in custody if relocation was denied by the court, but it does not have to be a destructive future.

*Principle 2: Parenting schedules need to be revised to reflect the developmental stage and specific needs of the child.* This recommendation is based upon research on childhood competence and resiliency (Masten & Coatsworth, 1998), developmental stages and developmental tasks (Havighurst, 1972; Klaczynski, 1990), and Attachment Theory (Ainsworth, 1979; Sroufe, 1979). Practitioners have translated these theories into recommended visitation schedules for children of divorce (Stahl, 1994; Baris & Garrity, 1988). The appropriate schedule for a pre-schooler is different from the teenager who is expected to express his or her preference on visitation. The therapist may want to encourage the noncustodial parent to consider following the child to the new community. This possibility may not seem fair to the parent, but it may be what is best for the child.

*Principle 3: The parents need to establish an atmosphere of open communication after the relocation to minimize harm to the child.* When there is an interstate and very long distance situation the therapist/mediator can help facilitate creative ways to maintain contact in

between visits (e.g., video tape, audio cassette, e-mail) and to make child exchanges work smoothly.

*Principle 4: Both parents need to take a proactive approach towards the goal of encouraging the relationship of the child with the other parent.* This recommendation is based on the divorce conflict literature. When there has been a strong relationship with the noncustodial parent, it is proposed that the custodial parent must put any negative feelings aside and encourage the relationship for the child to successfully cope with relocation. Conversely, the same recommendation applies to the noncustodial parent when he or she has extended parenting time with the child. The therapist/mediator can serve the best interests of the child by acting as an advocate for a Solomonic mind-set. This advice applies to any divorced family context (Reppucci, 1984), but the feelings stirred up by relocation and the geographical separation intensify the necessity to put the child's needs to the forefront and control conflict (Johnston & Campbell, 1988; Felner et al., 1988).

*Principle 5: Parents in a relocation context need to anticipate conflict over child issues and agree in advance to a means to resolve differences and avoid conflict.* It will be helpful to the family if attorneys and mental health practitioners will encourage the formalization of such procedures as mediation, or even binding arbitration, to help the parents resolve differences on issues such as scheduling visits or participation in decision making in the case of joint legal custody.

*Principle 6: Parents need to agree to take responsibility to share in the physical transportation involved in the new parenting schedule.* This concession by the move-away parent will help foster trust and communication. When there has been domestic violence or high conflict, a general rule is to avoid direct contact during the parenting time exchanges (Johnston & Roseby, 1997).

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