

(S. B. 742)

**(No. 102-2018)**

(Approved May 15, 2018)

## **AN ACT**

To establish the “Uniform Custodial Parent Relocation Guide,” in order to provide the requirements that Judges shall consider in these matters; and for other related purposes.

### **STATEMENT OF MOTIVES**

At present, the Specialized Family Courts of the Courts of First Instance of Puerto Rico are hearing child custody proceedings on a daily basis due to the relocation of one of the parents outside of the jurisdiction of Puerto Rico. This brings in different scenarios: on the one hand, there is the parent entitled to move on with his life and seek a better quality of life or new opportunities; on the other hand, there is a parent equally entitled to spend time with his child and be informed of his whereabouts and living conditions; and last but not least, there is the child right in the middle of his parents dispute about his future.

Custodial parents’ motives to relocate may vary on a case-by-case basis. Certainly, most of them are seeking a new beginning based on new job opportunities, a better quality of life, or simply a change. However, even if the reasons of the custodial parent are justified, the truth is that oftentimes parents enter into a dispute that ends up in our courts for a judge to decide whether or not said relocation proceeds, given the non-custodial parent’s undisputable right to spend time with his child.

Due to the present financial situation of the Island, many persons have decided to move to other jurisdictions in search for a better future. As a result, the number of these cases in our courts is on the rise, and the courts' caseload is increasing accordingly. With this legislation, our courts shall be provided with more and better tools to operate more effectively.

Furthermore, despite the existence of such a delicate social situation on the Island, the courts do not have at present uniform criteria to enable judges to issue a fair determination. For such reason, this legislation seeks to safeguard the principle that governs minors' affairs in Puerto Rico: the wellbeing of minors.

In addition, it is a well-known fact that parental presence is critical for a child's development. However, there are times where circumstances prevent it, and the child ends up living with one of the parents and, on occasion, with his grandparents. For such reason, this legislation seeks to protect the parent-child relationship that should be present in the child's development, without prejudice to the right of custodial parents to rebuild their lives.

It is worth noting that, for several years now, different jurisdictions, such as Arizona, Illinois, Nevada, Ohio, Hawaii, New Jersey, Minnesota, Nebraska, and New York have been enacting this type of legislation to address the lack of uniformity in these matters, an issue that also exists in the courts of Puerto Rico.

In sum, this Legislative Assembly deems it necessary and convenient to adopt this measure in order to address this situation and provide judges with the necessary tools so as to allow them to make decisions that foster healthy parent-child relationships.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.- Title.

This Act shall be known as the “Uniform Custodial Parent Relocation Guide.”

Section 2.- Definitions.

For purposes of this Act:

- (a) “Minor” – Means any person under the age of eighteen (18).
- (b) “Custodial Parent” – Means a parent with legal custody who has been given permanent physical custody of a minor. It may be given to one or both parents.
- (c) “Non-custodial Parent” – Means a parent with legal custody who has visitation rights but does not have physical custody of the minor.
- (d) “Principal Residence” – Means a location designated by court order, or agreed to by the parties, where the minor shall reside permanently.
- (e) “Relocation” – Means a change in the principal residence of the minor for a period exceeding ninety (90) days.
- (f) “Guardian” – Person designated by Will, Law, or a competent Court, to watch after the minor and manage his assets.
- (g) “Interested Party” – Means a person entitled to visitation as provided in the Civil Code of Puerto Rico.

Section 3.- Notice.

A custodial parent or guardian who wishes to relocate with a child shall give notice of his intent to relocate to the non-custodial parent entitled to visitation and the court. Said notice shall be given in writing and be served by certified mail within not less than thirty (30) calendar days prior to his relocation. A copy of said notice shall be filed with the Court through a motion to such effect, simultaneously with the mailing thereof. The notice may only be filed outside of the term provided in this Section in emergency cases, by reason of work, education, or any other reason deemed appropriate by the court. The custodial parent or guardian shall obtain the sworn

consent of the non-custodial parent establishing a detailed parenting time schedule; in addition, it shall meet the requirements of this Act. Said sworn consent shall be signed by both parents or interested parties. If the consent is not obtained, the custodial parent shall resort to the court and request an authorization for relocation.

This Section shall apply in those cases in which parenting time has been previously established by the court.

Section 4.- Content of the Notice.

The notice shall include:

1. The intent to relocate;
2. The street address of the new principal residence of the custodial parent and the minor;
3. The reasons for the relocation;
4. The specific school the minor shall attend and full information about the school, to wit; address, telephone number, the name of the minor's teacher, and the name of the school principal;
5. If the minor has not reached school age, the name and full information of the day care facility shall be provided. If the child is to be cared for by a specific caregiver, the information of said caregiver shall be provided;
6. The custodial parent or guardian's place of work, name, and general information: telephone, address, and employer's name;
7. The information of other individuals, apart from the custodial parent or legal guardian, who shall be living with the minor, if any;
8. The landlord's information, if the residence is rented; and
9. The employment or education certification.

### Section 5.- Consequences of the Failure to Give Notice.

If a custodial parent or guardian relocates without previously notifying or obtaining the authorization from the non-custodial parent and/or the court, the non-custodial parent or person entitled to visitation may bring an action to modify custody, if it can be proven that the relocation was in violation of these provisions. The custodial parent or guardian may be found in contempt, if he has deprived the non-custodial parent or person entitled to visitation of the parenting time previously established.

The Court, in its discretion, may apply in these cases the provisions of Section 121 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code of 2012.”

### Section 6.- Relocation.-

A. A relocation shall be authorized if it is proven that:

1. It is not intended to thwart the relationship of the minor with the non-custodial parent or interested party;
2. There is a valid and specific reason for relocation; and
3. It shall enhance the quality of life for both the custodial parent or guardian and the minor.

B. Factors to be considered when determining the best interest of the minor:

1. The minor’s preference if he is entitled to be heard;
2. The minor’s relationship with the non-custodial parent;
3. The minor’s relationship with the interested parties and the manner in which they exercise their visitation rights;
4. Length of time that the minor has been living in the principal residence and the emotional attachment to it;

5. The opportunities for emotional, physical, and educational development;
6. The impact the relocation shall have on his development;
7. The willingness of the custodial parent or guardian to allow the non-custodial parent or interested party to exercise his visitation rights, to spend time with the minor, and to share custody, if applies;
8. Prospective change in the life of the custodial parent or guardian and the minor;
9. The financial circumstances of the non-custodial parent or interested party to exercise his visitation rights and spend time with the minor;
10. The responsibility shown by the non-custodial parent or interested party in meeting his obligations to the minor;
11. The Court may order a social report of the area where the minor is to be relocated. This study shall include an analysis of the criminal activity in the intended area, among others;
12. The name and full information of the school the minor shall attend, to wit; address, telephone number, the name of the minor's teacher, and the name of the school principal;
13. If the minor has not reached school age, the full name and information of the day care facility shall be provided. If the child is to be cared for by a specific caregiver, the information of said caregiver shall be provided;
14. The custodial parent or guardian's place of work, name, and general information: telephone, address, and employer's name;
15. The information of other individuals, apart from the custodial parent or legal guardian, who shall be living with the minor, if any;

16. The landlord's information, if the residence is rented; and
17. The employment or education certification.
18. The recommendation of the social worker about the effect of the relocation on the minor shall be taken into account;
19. The minor's health insurance plan; and
20. Any other factor deemed necessary by the judge taking into account the principle of equity between the parties.

Section 7.- Duties of the Non-custodial Parent or Parents with Joint Custody.

Once the non-custodial parent receives the notice of intent to relocate, he shall file his response by certified mail within a term not to exceed twenty (20) calendar days, stating his position about the relocation.

Section 8.- Out-of-Court Agreement.

If there are no parenting time proceedings pending in court, and the parents or interested party have reached an out-of-court agreement regarding parenting time, they shall state so in an affidavit signed by both parents with joint legal custody. The affidavit shall contain the information required under Section 4 of this Act. In addition, it shall include a detailed parenting time schedule.

Section 9.- Severability.

If any provision of this Act were held to be unconstitutional or null by a competent court, the holding to such effect shall not affect, impair, or invalidate the remainder of this Act. The effect of such holding shall be limited to the paragraph, subsection, or section thereof thus held to be unconstitutional.

Section 10.- Effectiveness.

This Act shall take effect sixty (60) days after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 102-2018 (S. B. 742)** of the **3<sup>rd</sup> Regular Session** of the **18<sup>th</sup> Legislative Assembly of Puerto Rico**:

**AN ACT** to establish the “Uniform Custodial Parent Relocation Guide,” in order to provide the requirements that Judges shall consider in these matters; and for other related purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 6<sup>th</sup> day of December, 2018.

Orlando Pagán-Ramírez  
Director