

Moving Out of State with Child during Divorce

Over the years, we've had numerous clients in the [divorce process](#) express a desire to relocate away from their spouse while taking one or more of the kids with them. We're not talking about packing up and moving into an apartment within the same town or state, but major distances – often outside the US or to other states within the country. Depending upon many factors including timing, custody orders, the state of the relationship between the parents and [the ages of the kids](#) (to name a few), the act of relocation can range from no issue to going against California Family Law. Each situation is unique and it's best not to rely solely on the information in this article. Feel free to [contact us for a free consultation](#) to find out your rights as a parent looking to relocate, or, conversely, if your spouse is planning on moving with the kids against your desire.

Timing Implications

Moving out of State with Child before the Divorce

After a divorce petition is filed and served, certain [automatic temporary restraining orders](#) (known as "ATRO's") go into effect. These prevent a parent from removing a child from the state without written consent from the other parent (or the court). So, if you've just been served with divorce papers, and you want to move, it's best to place your plans on hold until you've consulted with an attorney.

Let's assume that you are the Petitioner, and served your spouse with the divorce petition. If you have a hunch that your spouse is planning on taking the kids and moving, it's best not to rely solely on these automatic orders. In this scenario, it's important to contact an experienced family law attorney ASAP. They can assist you with the proper steps, including emergency court orders and if necessary, involvement of the authorities. During this stressful time, it's part of their job to help manage and alleviate some of the burden that you're undoubtedly feeling.

Child Custody and Moving Out of State

We'll fast forward a bit: Your divorce case is five months in, and you and your spouse have each retained an attorney. You've been offered a job out of state, and you feel that your child would benefit from moving out of California with you. What now? The answer largely depends on whether or not you have sole custody of the child, and whether it is in their best interest to relocate out of state with you.

If you've been granted sole custody: The parent that has sole custody of a child has the right to change the residence of the child, but the court has the power to prevent a move if it sees necessary. Although vague, the "necessary" part of the court's view will be tied to the relocation not fitting within the "best interests of the child" realm. A potential negative scenario: Your child is a sophomore in high school and received a "student athlete" nomination. They're heavily involved

with school clubs, extracurricular activities, and their social circle is deeply rooted in your current town. The court may see the idea of uprooting them and moving to another state as not being in their best interests, especially if the child is against it in the first place. Our guess, solely based on that example, is that you'd agree.

Custody cases involving a potential move can be very difficult and emotionally draining for all involved. Courts may use different standards in deciding whether or not you can move with the children, and it will depend upon specific circumstances of your case: Are you making your request as part of an initial custody determination (there are no prior orders regarding custody in effect)? Is the request to move going to require a modification to a temporary custody order? Or, is the request going to require a modification of a final custody order? The specifics of your situation will result in the court looking at different factors when arriving at a decision, but it will always focus on what is best for the children.