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To: All Attorneys and Other Interested Parties

From: Don Reisig

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Subject: Senate Bill 1244, now 2000 Public Act 422; Amendment to the Child Custody Act Pertaining to Parental Movement of More than 100 Miles

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The above referenced act, which was given immediate effect, and approved by the Governor on January 8, 2001, has sparked increased discussion and speculation concerning its impact upon the development of orderly and logical family law practices and procedures. Unfortunately, in analysis of the enactment, there is little pertinent legislative history. I am advised that neither the **Michigan Judges Association** nor the **State Friend of the Court's Association** presented any formal position in the matter (although the Act is clearly a "judicial work-maker"), and the Family Law Section of the State Bar of Michigan had only limited impact upon its development – although many objections were raised to the enactment by the private bar.

The act raises a number of immediate issues that may need addressing. Some of those problems are as follows:

1. **Retroactivity**. The Act itself is "silent" upon the issue of retroactivity, i.e., does it reach back" and impact upon either judgment entered before it was enacted, cases pending at the time of its enactment, or to amendments to past judgments, where the issue is not specifically addressed.

Clearly the application of the 100 mile language to past judgments poses retrospective issues which the legislature should and could have contemplated. The lack of inclusion of language with reference to the legislative intent on the issue of retroactivity is, at least, one strong indication that the legislature did not intend to provide retroactive application. Thus, it would appear a strong argument can be made that 2000 PA 422 does not impact upon any judgment providing for child custody entered prior to January 8, 2001.

2. **Statutory Language.** The language of the statute itself [Section 11 (5)] dictates specific statutory language to be included in each future order "determining or modifying custody or parenting time of a child". The statutory language is as follows:

"A parent whose custody or parenting time of a child is governed by this Order shall not change the legal residence of the child, except in compliance with Section 11 of the "Child Custody Act of 1970,1970 PA 91, MCL 722.31".

Unfortunately, even with the inclusion of this statutory language, there is little indication given to the lay person of the nature and impact of Act 422, i.e., that it restricts parental movement of more than 100 miles without permission of the Court. The following "explanatory" language could be added to the judgment, helping to explain the significance of Section 11:

> "If joint legal custody has been granted to the parties, any party seeking to move the residence of the child(ren) more than 100 miles from the residence of the child(ren) at the time the judgment of divorce was entered must seek the prior permission of the court.

3. **Judicial Burden.** Section 4 of the Act, setting forth the factors to be considered in granting a "legal residence change", though apparently "self explanatory", has the potential of opening the door to a number of contentious issues, and increasing the family court's workload. The issues framed by the legislature, i.e., improvement of quality of life for both the child and the re-locating parent, past utilization of parenting time, possible desire to defeat or frustrate parenting time, possibility of modification of parenting time, opposing parties motivation to secure a financial advantage and domestic violence, are all issues clearly within the court's decisional prerogative.

REFERRAL OF THESE MATTERS ROUTINELY TO AN ALREADY OVERBURDENED FRIEND OF THE COURT'S OFFICE (WITH NO ADDITIONAL LEGISLATIVE APPROPRIATION FOR THIS NEW "MANDATE") WOULD APPEAR TO ONLY PLACE AN ADDITIONAL BURDEN UPON THAT OFFICE, AND NOT OF GREAT ASSISTANCE TO THE COURT. THE TIME INVOLVED ALONE TO COMPLETE THE INVESTIGATION WOULD OFTEN THWART THE OPPORTUNITY FOR THE MOVING PARTY TO CHANGE EMPLOYMENT, I.E., ACCEPT A NEW JOB, MAKE ARRANGEMENTS TO MOVE, ETC. (Note that the increased burden upon the courts is not met with any additional appropriation to the judicial system to fund either the Friend of the Court's Investigation, or the Judge's extra work. Note also that no additional funding has been made available to legal service agencies such as Legal Aid of Central Michigan, to pursue these matters on behalf of clients, even though the Act, by its very nature, will cause the instigation of more motions to change custody, more hearings, etc., the bulk of costs will be borne by either the parties or the public.)

4. **Burden Upon Custodial Parent.** It is readily apparent upon review of this legislation that the major burden falls upon the custodial parent, not the non-custodial parent, even though the Act is drawn to purportedly apply to both. Why, in most instances, would the custodial parent particularly be concerned whether or not the non-custodial parent moves more than 100 miles from the child' residence at the time that the order was filed? Will the courts deny the non-custodial parent the right to improve his/her financial status? Yes, there will be some custodial parents who sincerely want the other parent to continue the relationship with the child on a regular basis. But in most instances, it will be the non-custodial parent who will more likely routinely object to the custodial parent's moving, raising both legitimate and vexatious concerns which the court must resolve.

5. **Impediment to Joint Legal Custody.** What the legislature has done is make it far less "conducive" for the parties to agree to joint legal custody, which up until this point in time has become the "practice" in most divorce cases. Rather than to agree to "joint legal custody", except in cases where one or the other parent has, in essence, sacrificed that prerogative, parties will now be arguing about joint legal custody just to ensure that they will have the right to move sometime in the future if they obtain "sole legal custody". Thus, a matter which has not been an issue in most cases, has the potential of becoming an issue in every case.

6. **Agreements.** The Act Provides in Subsection 5 that "Each order determining or modifying custody or parenting time shall include a provision stating the parent's agreement as to how a change in either the child's legal residences will be handled. The Act does not say, however, how to deal with situations where one parent is in default, and has not responded to the complaint. Can this be judicially constructed as an "agreement"? Should the court superimpose its own viewpoint if the party entering the default requests sole legal custody?

7. **Social and Economic Realities.** The Act fails to recognize the economic and social realities of modern society. Statistically, because of an ever changing job market, and the "shrinking" of the county, our population has never been more mobile. Job movement, including new jobs and promotions, relocation of employers, are a reality that anyone actively on the job market must deal with. Though these comments go the "merits" of the legislation, they also provide a rationale for both its "repeal" and for recognition that job change and movement are a reality in modern society and should not be quickly denied.

8. **Effect on those never married to each other.** The act, by its sweeping terms, treats the custody issues the same for those who have been married to each other and those who have not been married to each other. In essence, it fails to recognize that custody provisions amongst the unmarried did not grow out of stable, permanent, and legally recognized relationships and perhaps an unmarried custodian of the child should not be held to the same standard as one who had been married to the other parent..

9. **Enforceability.** Today, in an era when the Court's are seeing a vastly increased number of persons attempting to obtain judicial relief without the benefit of counsel (while at the same time, in an ever-decreasing availability of funds for legal service agencies) the court and the judicial system will be burdened with additional actions, motions, petitions, investigations, and hearings on the vexatious issues caused by the Act. **This is not in the best interests of an already overburdened Family Court, nor is it in the interests of the children.**