

CHAPTER 12

LEAVING MASSACHUSETTS

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Introduction 374

Can I Leave the State with My Child? 374

Does this Law Apply to Me? 374

What If I Want to Move from One Part of Massachusetts to Another?..... 375

What Do I Need to Do Before I Can Leave the State with My Child? 375

 Permission from the Other Parent..... 375

 Permission from the Court..... 376

How Do I Ask the Court for Permission to Leave the State with My Child? 376

 If You Are Getting Ready to File a Case 376

 If You Have Already Filed a Case 376

 If the Other Parent Has Filed a Case 376

 If Your Case Is Already Over..... 377

When Will the Judge Hear My Request to Leave the State with My Child? 377

Under What Circumstances Can I File a Motion to Request Permission
to Remove My Child from the State? 377

How Will the Judge Decide Whether I Can Leave the State with My Child?..... 378

What if We Share Physical Custody or My Child Spends a Lot of Time with
the Other Parent?..... 378

What if There Are No Formal Custody Orders?..... 379

How Can I Convince the Judge to Allow Me to Leave the State with My Child?.... 379

 How Do I Present My Case to the Judge? 380

What Will Happen to Me If I Leave the State with My Child Without Getting
Permission First?..... 381

What If I Want to Prevent the Other Parent from Leaving the State with
My Child? 381

Child Support 382

Restraining Orders 382

CHECKLIST 12.1—Issues to Consider When Thinking About Leaving
Massachusetts with Minor Children 383

EXHIBIT 12A—Sample Consent to Remove the Minor Children to
Another State 384

EXHIBIT 12B—Sample Complaint for Authorization to Remove Minor Child
from the Commonwealth Under G.L. c. 208, § 30 385

EXHIBIT 12C—Sample Affidavit in Support of Plaintiff’s Removal Request 387

INTRODUCTION

There are many reasons that a parent may have for wanting to leave Massachusetts after a breakup with his or her child's other parent. If you have been or are currently involved in litigation over custody of or parenting time rights for your children, you should not simply pack up and leave. Even if you have never been to court and there are no court orders regarding the child, it may not be wise to leave without taking the appropriate steps. In most instances, there are certain procedures you must follow to obtain permission to leave the state or to have your court orders enforced in a new state. This chapter covers leaving the state with a minor child, and enforcing child support orders and restraining orders. A checklist and some legal documents are also provided to assist you as you think about leaving the Commonwealth.

CAN I LEAVE THE STATE WITH MY CHILD?

Even if you are not currently involved in a legal case with the other parent of your child involving custody of that child, you probably need to get permission either from the other parent or the court before you can leave the state and move to another state or country with your child. You are always free to move to another state or country by yourself without the permission of the court or the other parent. The issue is whether or not you will be permitted to move your child to another state or country. If the other parent of the child does not object to the child moving, you do not need permission from the court. However, it might be wise to obtain a court order, or modify an existing court order, that incorporates any agreement you may have with other parent.

The law commonly refers to the act of leaving the state of Massachusetts with your child as “removal.” The specific law that deals with this issue is found in G.L. c. 208, § 30. It states that a minor child of divorced parents who is a native of, or who has resided five years within, Massachusetts and who is under the jurisdiction of the court cannot be “removed” from Massachusetts if under the age of consent without either an agreement of both parents or an order of the court.

The purpose of the removal law is to “preserve the rights of the noncustodial parent and the child to maintain and develop their familial relationships, while balancing those rights with the right of the custodial parent to seek a better life for himself or herself in another State or country.” *Yannas v. Frondistou-Yannas*, 395 Mass. 704, 712 (1985).

Caution

While the law may appear to apply only in limited situations, there has been extensive case law interpreting and expanding removal law, and it applies to situations where the parents of a child were never married. It is critical when preparing for removal litigation that you examine not only the statutory law, but the case law as well.

DOES THIS LAW APPLY TO ME?

It may appear that the law only applies to people who are already divorced. However, the law applies to you if your child was either born in Massachusetts or has lived here for five years. It does not matter who filed the complaint or lawsuit, nor does it matter whether the judge has already granted you custody of your child.

Even though the law appears only to apply to parents who have already gotten divorced, courts have applied the law to parties who have not yet divorced. Similarly, even though the law appears only to apply to parents who have gotten married, it also applies to parties who are not married and are involved in paternity or custody cases. That is because a child of unmarried parents is entitled to the same rights and protections as a child of married parents. G.L. c. 209C, § 1; *Wakefield v. Hegarty*, 67 Mass. App. Ct. 772 (2006). The only circumstances where the law does not apply where the parents are not married *and* the other parent did not sign the birth certificate. In such a case, the child is considered to have only one legal parent and, as such, does not need permission from the other parent or the court to move out of Massachusetts. *Smith v. McDonald*, 458 Mass. 540 (2010).

If you are married and there is no custody order from a court, you and your spouse each have equal custody of your child. This means that either one of you has the right to take your child out of the state.

Practice Note

It is always a good idea to get a custody order and permission to leave the state with your child before you move. If you leave without permission, the other parent has the right to file a complaint for custody within six months of the removal of the child. This is because Massachusetts retains jurisdiction over custody of the child for six months from the date you moved. It is possible that you will be ordered to return to Massachusetts and bring the child with you. In addition, you may not be able to obtain a permanent custody order in any other state until the child has resided in the new state for six months. However, you may be able to make an argument that the court in your new state should hear the custody case because all of the child's significant contacts are in the new state, even though the child has not lived there for six months. This is a difficult argument to make. It also requires the judge in the officially recognized home state to talk to the judge in the other state, and the judges will decide which court should hear the custody matter.

Caution

It is a good idea to talk to an attorney before you decide to leave the state with your child, no matter what your situation is. It is also a good idea to talk to an attorney even if you are only planning on relocating to a different part of Massachusetts. If a move within Massachusetts would cause "significant disruption" of the noncustodial parent's parenting time, the court will consider the same factors it does when you are moving out of state. *D.C. v. J.S.*, 58 Mass. App. Ct. 351 (2003). Even though the law does not technically apply in that situation, it can be very helpful to at least obtain temporary custody of your child before you leave, for the reason explained above.

If you are a victim of domestic violence, you may need to quickly leave the state, or at least your area, with your child in order to be safe. If it is at all possible, you should still consult with an attorney before you leave. You may be able to obtain temporary custody quickly through a restraining order under G.L. c. 209A. See "Restraining Orders," below.

WHAT IF I WANT TO MOVE FROM ONE PART OF MASSACHUSETTS TO ANOTHER?

Even though the law does not appear to apply to a move within Massachusetts, the court has considered the relocation law in the context of a move from eastern to western Massachusetts. *D.C. v. J.S.*, 58 Mass. App. Ct. 351 (2003). Regardless of whether the relocation law applies to these situations, an in-state move of some distance is likely to have an impact upon the other parent's parenting time schedule. Whether or not the removal law technically applies to these situations, you will have to deal with the issue of parenting time. If you move to another part of the state and are unable to honor the parenting time or order as a result, you risk being held in contempt of court.

WHAT DO I NEED TO DO BEFORE I CAN LEAVE THE STATE WITH MY CHILD?

If the law applies to you, you must get permission either from the other parent or the court before you can leave the state with your child.

Permission from the Other Parent

If you can get permission from the other parent to leave the state with your child, you do not need the court's permission also. Therefore, you will probably want to talk to the other parent first. It is a good idea to prepare in advance your explanation of why you want to move.

Specifically, think about how moving would affect the other parent's parenting time schedule with your child, and how you might make up for any time he or she might lose. This is likely to be the other parent's concern. If you and the other parent are on good terms, you might consider talking to a mediator in order to reach an agreement about moving and working out a new parenting time schedule. You may also want to include statements about how information about the child's health and welfare will be shared—e.g., school report cards and medical information.

If the other parent agrees, you should put that agreement in writing in order to protect yourself against claims that you never got his or her permission. The other parent should sign the agreement in front of a notary. You should then file the original agreement with the court and keep a copy for yourself. An example of such an agreement is included as **Exhibit 12A**.

If moving will change a parenting time schedule, you should also put that into writing, sign and notarize it, and file it with the court. Keep a copy of this agreement, too.

Practice Note

An agreement signed by a notary and filed in court does *not* have the force of law. To be especially careful, you could file a joint complaint for modification and ask the court to enter the agreement as a judgment of the court. See chapter 16 on modifications in this book.

Caution

If you were verbally, physically, financially, emotionally, or otherwise abused by the other parent, or there is a clear power imbalance between you and the other parent, it is probably not a good idea to go to a mediator. It may not be safe for you to talk to the other parent yourself, either. This is a particularly good time to talk to an attorney. He or she will be able to communicate your wishes to the other parent for you, so that your safety is not put at risk.

Permission from the Court

If the other parent does not give you permission to leave the state with your child, you need to ask the court for permission to do so.

Practice Note

If at any point during your case the other parent changes his or her mind, you can always file an agreement with the court which you can ask to be made a formal court order or judgment.

HOW DO I ASK THE COURT FOR PERMISSION TO LEAVE THE STATE WITH MY CHILD?

If You Are Getting Ready to File a Case

If you are filing a case and you already know that you want to leave the state with your child, you should put that request in your complaint. On every complaint, there is a section where you check off what you would like the court to do. The last box in this section is for anything additional. You can check off this box and write on the lines next to the box: “grant plaintiff [you are the plaintiff] permission to permanently remove the minor child(ren) from the Commonwealth.”

If You Have Already Filed a Case

If you have already filed your case and then decide that you want to leave the state with your child, you can always amend (change) your complaint. In order to do this, you must file a motion to amend your complaint. See chapter 2, Overview of the Probate and Family Court, for more information about motions. The judge will probably let you amend your complaint. However, be aware that just because the judge allows you to amend the complaint does not mean that he or she is also giving you permission to leave the state with your child. The court will decide that at another time. Once the judge allows you to amend your motion, you need to file a new complaint. See “If You Are Getting Ready to File a Case,” above.

If the Other Parent Has Filed a Case

If the other parent has filed a case, you should file an answer to his or her complaint. In that answer, you may file a counterclaim, which is like a complaint of your own. In this counterclaim, you have the opportunity to ask the court for what you would like, including permission to take your child out of state. See “If You are Getting Ready to File a Case,” above. See also chapter 2, Overview of the Probate and Family Court.

If Your Case Is Already Over

If the judge has already made a final decision in your case and you have a judgment, you will need to file a complaint to modify (change) the final judgment (see **Exhibit 16A**, Complaint for Modification) or a complaint for authorization to remove the minor child from the Commonwealth (see **Exhibit 12B**), or a petition for removal. Check with the clerk's office at the courthouse where your case was previously heard to see which complaint your particular court requires.

Practice Note

You should always file an affidavit (sworn statement) that explains your reasons for wanting or needing to leave the state (see **Exhibit 12C**).

Practice Note

Sometimes a tactic of the other parent who is fighting the move is to file a responsive complaint requesting that there be a change in custody because of the request to move. The court must consider that request separately from the request to relocate. If the request for custody change is made after the case was resolved, the parent must demonstrate that there has been a material and substantial change in circumstances other than the request for the move, and that a change in custody is in the child's best interests, in order to succeed at this tactic. Note that the court may not change custody if the only reason given for the request is that you are moving.

WHEN WILL THE JUDGE HEAR MY REQUEST TO LEAVE THE STATE WITH MY CHILD?

Generally, the judge will not hear your request to leave the state with your child right away when you file a motion. The judge needs to hear a lot about your situation and why you want to leave before he or she can make a decision. The other parent must also have a chance to tell the judge why he or she does not want your child to leave the state. The court will give you a date for a hearing or a trial to hear your case and make a decision.

It can be difficult to wait for a hearing date when you are anxious to start a new life with your child somewhere else. Sometimes the wait can be long, especially if your court is very busy. In most cases, the court will not allow you to present your case any earlier than the date they give you. However, in certain situations, you may be able to file a motion to request permission to remove the minor child from the Commonwealth. A judge can sometimes hear a motion as soon as ten days after you file it. The other parent will still need to be notified about your motion and will have an opportunity to tell his or her side of the story. See chapter 2, Overview of the Probate and Family Court, for information about motions.

Caution

Even if the court hears your motion and allows you to leave the state with your child, it will probably only be on a temporary basis. You will still need to come back to court for the final hearing or trial and then the judge will make a final decision. If the final decision is to prohibit your move, you will have to return to Massachusetts with the child.

UNDER WHAT CIRCUMSTANCES CAN I FILE A MOTION TO REQUEST PERMISSION TO REMOVE MY CHILD FROM THE STATE?

You must have a very good reason why you must leave right away and why you cannot wait for a full hearing. Some good reasons may include the following:

- it is near the beginning of a school year,
- you have a job opportunity that cannot wait,
- your extended family has relocated, or
- there is an excellent opportunity for you or your child in the new state.

HOW WILL THE JUDGE DECIDE WHETHER I CAN LEAVE THE STATE WITH MY CHILD?

How the judge will decide whether you can move out of Massachusetts (or far enough away that parenting time will be affected) depends on what kind of custody order you currently have. *Miller v. Miller*, __ Mass. App. Ct. __, SJC-1229 (2018). If you do not have a formal custody or judgment, the judge will look at all the relevant facts of the case to determine, based on your respective parenting responsibilities, whether your situation resembles a sole custody situation or a shared parenting situation. *Miller v. Miller*, __ Mass. App. Ct. __, SJC-1229 (2018).

If you have a court order or judgment that gives you sole physical custody of your child, the judge will let you remove your child from the state if he or she decides there is a “real advantage” to your move *and* that the move is in the “best interests” of your child. *Yannas v. Frondistou-Yannas*, 395 Mass. 704 (1985).

The judge will want to know the following things:

- Why you want to move. The judge needs to know that you have “good, sincere reasons” for wanting to relocate. The judge will want to hear how the relocation will benefit you and your child emotionally, economically, and socially. If the move is good for you, or what the court refers to as a “real advantage” to you, the custodial parent of your child, the judge will assume that the move will also be good for your child.
- That you are not moving in order to keep the other parent from seeing your child. The judge needs to know that your reason for moving is not to keep the other parent from seeing your child. If the judge believes that this is the real reason you want to leave, he or she will probably not allow you to do so.
- If the judge decides that there is a “real advantage” to the move and that you have a “good, sincere reason” for wanting to move, he or she will then balance the interests of both parents and the child to determine whether a move is in the child’s best interests. *Schechter v. Schechter*, 88 Mass. App. Ct. 239 (2015). If the noncustodial parent is not exercising his or her rights to parenting time, the resolution of the matter in favor of a move is less difficult. *Rosenwasser v. Rosenwasser*, 89 Mass. App. Ct. 57 (2016).

Practice Note

A parent’s sincere desire to relocate to be with a new spouse will be considered a good and sufficient reason to move that will result in a legal conclusion that it is a real advantage to that parent to move. *Pizzino v. Miller*, 67 Mass. App. Ct. 865 (2006). The court will not, however, consider the interests of the new spouse. *Dickenson v. Cogswell*, 66 Mass. App. Ct. 442 (2006). Other reasons include relocating to develop emotional support or the opportunity to improve the custodial parent’s financial situation. *Rosenwasser v. Rosenwasser*, 89 Mass. App. Ct. 577 (2016).

Practice Note

While a judge can deny permission if he or she thinks you are leaving to deprive the other parent of parenting time, the fact that parenting time may be different once you move is not a reason to deny permission. *Yannas v. Frondistou-Yannas*, 395 Mass. at 711.

WHAT IF WE SHARE PHYSICAL CUSTODY OR MY CHILD SPENDS A LOT OF TIME WITH THE OTHER PARENT?

If you have a court order or judgment that gives you shared physical custody with the other parent, or if the noncustodial parent has an active and involved role in the child’s life, the judge will evaluate a request to remove the child based on what is in the child’s “best interest.” *Mason v. Coleman*, 477 Mass. 177 (2006); *Dickenson v. Cogswell*, 66 Mass. App. Ct. 442 (2006). Unlike the sole physical custody cases where the focus is on whether moving would give the custodial parent “real advantage” in improving their circumstance, joint physical custody cases focus on what is best for the child. It will likely be more difficult to get permission from the court to move if you share physical custody of your child with the other parent, or the other parent spends substantial time with the child. Because the child has a strong relationship with both parents in this situation, the fact that it is a real advantage to you to move out of state is no longer as important to the court. Instead, the court will lean in favor of protecting the child’s relationship with both parents. Because of this, it will likely be significantly easier to obtain

permission to relocate if your new state is not terribly far from Massachusetts and therefore the move will not have a major impact upon the other parent's relationship with the child.

On the other hand, if the court order or judgment calls for joint physical custody but, in reality, one parent is clearly exercising more parental responsibility and/or the other parent is really not involved in the child's life, the court may evaluate the request to remove as if it were a sole physical custody situation. *Miller v. Miller*, __ Mass. App. Ct. __, SJC-1229 (2018).

WHAT IF THERE ARE NO FORMAL CUSTODY ORDERS?

Often parents sever their relationship and live apart before any court action is taken or even considered. The parties may work out an informal parenting time arrangement or one parent may exercise most parental responsibilities while the other parent only interacts with the child infrequently, or the parties may have an arrangement somewhere in between. Custody orders are granted only after the filing of a divorce or custody complaint and a hearing scheduled to make temporary orders. How the parties actually parent the child will have an impact on what kind of custody order the court may make.

When the matter is first heard in court in these situations, the judge will perform a "functional analysis" of the parties' respective parenting responsibilities to determine whether the parenting situation actually looks like sole or shared physical custody. The judge will consider the individual facts of each case. Once that determination is made, the judge will apply either the "real advantage" standard (sole physical custody) or the "best interests of the child" standard (shared physical custody). *Miller v. Miller*, __ Mass. App. Ct. __, SJC-1229 (2018) (the "real advantage" evaluation applied where the terms of the parties' informal agreement indicated the parents had "shared custody," but, in practice, more closely resembled sole custody; mother was the primary caretaker and provided all the day-to-day care, father traveled often and did not actually spend much time with the child).

Practice Note

It can be helpful to keep a record of the day-to-day parenting time activities so that you will be able to show the court each parents' actual time with the child.

HOW CAN I CONVINCING THE JUDGE TO ALLOW ME TO LEAVE THE STATE WITH MY CHILD?

The judge needs to hear specific details about why you want to move and how it will be good for you and your child. Good reasons for moving can include the following:

- you have a good job offer or you know the job opportunities in the new state are better than they are in Massachusetts;
- the move will be financially advantageous for you and, therefore, for your child;
- your current employer wants you (or is ordering you) to transfer to the new state;
- you have a good educational opportunity in the new state (i.e., you have been accepted by a school in that state);
- your child has a good educational opportunity in the new state (i.e., a particular school that is superior to the school that he or she is attending in Massachusetts, or a school that meets the special needs of your child);
- you have a supportive community in the other state, including family, friends, social service programs, religious institution, etc. (especially if you do not have a supportive community in Massachusetts);
- your family and friends in the new state are ready and able to take care of you and your child (including emotional support and child care);
- moving provides a chance for your child to get to know and spend time with your child's extended family (i.e., aunts, uncles, grandparents, nieces, nephews);
- you have a home or apartment waiting for you in the other state;

■ CHAPTER 12: LEAVING MASSACHUSETTS

- you lived in the other state most of your life and all of your contacts are there (especially if you only moved to Massachusetts because of your child's other parent);
- there are good medical reasons for moving to the other state (e.g., you are moving to Florida because your pediatrician told you your child would be healthier in a warmer climate); and
- you are remarrying and your new spouse lives out of state.

You also must convince the judge that you are not moving in order to deny the other parent contact with your child. In order to do so, you must do the following:

- document your willingness to allow parenting time in the past and your willingness to facilitate continuing contact between the child and the other parent after you move;
- come up with another parenting time plan that will give the other parent as much time with your child as possible (e.g., offer the other parent school and summer vacations to make up for losing weekend and weeknight visits);
- offer to contribute to the cost of travel expenses for parenting time if you can afford it, offer to help the children call the other parent on a regular basis, and offer to pay for those calls if you can afford it; and
- arrange for your child to have access to the Internet to communicate with the other parent regularly via platforms such as Skype and FaceTime.

Practice Note

Perhaps the other parent was not given any parenting time rights by the court or is not using his or her rights. If this is the case, questions of contact and parenting time may not be as relevant. In any case, it is best to focus on the good reasons you are leaving, and not why the other parent is not a good parent or does not deserve to have parenting time. However, if the other parent does not have parenting time because of domestic violence or child abuse, it may be important for the judge to know that. If you have documents that show that the other parent has been violent, you may want to show them to the court.

You must also convince the judge that moving is a well-thought-out plan. It may help the judge to decide in your favor if he or she realizes you are very serious about this move. Specifically, the judge will want to make sure your child is not going to be moving around a lot and that he or she will have stability in the new state. You can show this by doing research and providing the judge with detailed information about your plans and what you have arranged.

How Do I Present My Case to the Judge?

In addition to telling the judge all of the reasons you want to leave, you can also prepare witnesses and documents to present to the judge:

- testimony or affidavits from family, friends, clergy, or social service providers that tell the court they are prepared to help support you and your child in the new state;
- information about housing possibilities (e.g., listings from local housing authorities or local real estate and rental agencies, deed to a home);
- a copy of your job offer or notice of employment transfer;
- notification of acceptance into a school;
- documentation from the school that your child will attend if you move;
- testimony or affidavits from your therapist, counselor, or social worker saying that moving will be good for you; and
- testimony or affidavits from your child's therapist, counselor, or social worker saying that moving will be good for your child or that your child is excited about the possibility of moving.

Caution

Be aware that the judge probably will not accept affidavits in lieu of live testimony in court if you are having a trial on the issues. Affidavits will probably be accepted if you are proceeding by motion.

Practice Note

Consider whether you should tell your child that you are thinking about moving. Your decision may depend on his or her age and whether you think this will be hard for your child to accept. In any case, do not make any promises (either to yourself or your child) that you cannot keep. Be realistic—make plans and arrangements to leave, but do not promise your child you are leaving until you actually obtain permission from either the other parent or the court to do so.

WHAT WILL HAPPEN TO ME IF I LEAVE THE STATE WITH MY CHILD WITHOUT GETTING PERMISSION FIRST?

It is never a good idea to ignore the law. If it seems that the law applies to you, you should go through the process of obtaining permission to leave. If you are unsure of what you should do, consult an attorney.

These are some of the risks you take by leaving without getting permission. For example, the other parent could get an emergency order for you to return to Massachusetts “forthwith” (i.e., immediately) with the child and an order not to leave until the court makes a decision about whether you can move. As a result, you would lose custody (at least temporarily) of your child, and your child would be forced to return to Massachusetts. In some cases, a sheriff or a constable could come and get your child from wherever you are. This could be upsetting to your child. The other parent could also bring a complaint for contempt against you or could file parental kidnapping charges against you. See chapter 9, Child Custody. Although judges are not supposed to change custody solely on the fact that you moved without permission, he or she might do that on a temporary basis.

Caution

If you are leaving Massachusetts because you are fleeing domestic abuse and need to be safe, consider obtaining an abuse prevention order in the state where you go, unless that would alert the abuser to your whereabouts and be dangerous for you. If you find yourself in this situation, you can contact a local domestic violence services agency for emergency assistance and counseling and, possibly, shelter for you and your child. See chapter 20, Resources.

WHAT IF I WANT TO PREVENT THE OTHER PARENT FROM LEAVING THE STATE WITH MY CHILD?

If you are the noncustodial parent and you want to prevent the custodial parent from taking your child out of state, you may consider filing a complaint to restrain the removal of the minor child. You could include the following statements in your complaint, if they are true in your situation:

- you have a court order that gives you joint legal and/or physical custody;
- at all times, you have exercised your parenting time rights and cooperated with the other parent to make important decisions regarding the child;
- you have a close relationship with your child;
- you participate fully in the child’s extracurricular activities and general caretaking;
- it is in the best interests of your child that he or she continue to have frequent and close contact with both parents; if your child leaves the state, parenting time will be severely restricted;
- your child has neither expressed a preference for nor consented to the relocation;
- your child is currently enrolled in school here; he or she is performing well academically and is involved in extracurricular activities;
- your child has many friends and relatives in Massachusetts; the move would severely restrict contact with those friends and relatives;
- should your child be taken out of state, you would be unable to effectively exercise your responsibilities as joint legal and/or physical custodian;
- taking your child out of state will force him or her to undergo substantial social and educational changes that would not be in his or her best interests; and

- the custodial parent has neither sought nor been given permission by the court or you, the noncustodial parent, to remove your child from the state.

You may also include these statements as a part of your response in opposition to the custodial parent's petition or complaint to remove the minor child from the Commonwealth.

CHILD SUPPORT

Many families need and depend on regular child support payments. You and your children are still entitled to support payments if you decide to leave the Commonwealth and have the permission of either the court or the child's other parent. There is a federal law that makes it easier to obtain and enforce child support orders across state lines. You can read more about this law in chapter 8, Child Support. This law is complicated and difficult to understand and follow without legal assistance. Every state receives federal money to help people obtain support or collect support; this money is used to fund a child support enforcement agency in each state. These agencies are often referred to as the "IV-D agency" (pronounced "4-D"), after the section of the federal law that covers child support matters. These agencies can assist you in collecting or enforcing your child support order. These services are often free for low- or moderate-income families.

If you have a current child support order with a wage assignment payable to the Department of Revenue Child Support Enforcement Division, you should notify DOR of your new address. They will continue to monitor the wage assignment and forward the support directly to you. You may also request that the agency keep your address confidential if there are issues of safety for you and your child.

Finally, be aware that the noncustodial parent can ask the court to reduce support payments if you move out of state. The court will consider the reduction particularly if the noncustodial parent has to pay additional expenses in order to maintain contact with the children. However, the noncustodial parent cannot unilaterally reduce the support award, and must give you notice of the request to modify the support order.

RESTRAINING ORDERS

The Violence Against Women Act of 1994 requires that valid restraining orders issued by the court of one state must be enforced by the courts of the second state as if those orders had been issued in the second state. This concept is called "according full faith and credit" to the first state's order. An order is considered valid if due process requirements have been met in issuing the order. The person against whom the restraining order is issued must have been given notice of the request for an order and an opportunity to be heard. It does not matter if the person refused to appear at the hearing.

Mutual restraining orders are not entitled to the same level of protection unless there were cross-complaints and the judge found an independent basis to issue each restraining order.

Under this federal law, victims of domestic violence who have valid restraining orders can use these orders as the basis for protection in the other states. The federal law does not require registration of the original restraining order in the new state, as the order should provide continuous protection. However, it is a good idea to check with your new state to see if there is a registration process for out-of-state restraining orders. Doing so will likely increase the chance of having your order enforced by the local police department without your having to go to court first. In any case, consider giving a copy of your restraining order to the local police department in your new location.

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✓ CHECKLIST 12.1

Issues to Consider When Thinking About Leaving Massachusetts with Minor Children

The following is a list of basic issues that you should consider if you are thinking about leaving Massachusetts with minor children. This list is intended to be quite general. You should use it as a tool or guideline of issues to think about before approaching the other parent or court with a request to move out of state.

- What impact will the move have on the minor children (particularly school or medical care)?
- Are there opportunities in the new location that are not available here (e.g., better employment, educational, or housing opportunities)?
- Where are you moving? How far away is it from the other parent?
- What are the housing conditions for the children? Do you have a place to live? Is it more affordable?
- Do you have support systems in place in the new location (e.g., close family members or people you know from when you lived somewhere else)? Describe them.
- What will the impact be on the other parent's parenting time? How can you rearrange the parenting time schedule to continue your child's relationship with the other parent?
- Do the children have any other significant relationships that may be affected by the relocation (e.g., grandparents who have provided care or otherwise had significant contact with the children)?
- Has there been a history of violence? Is this move necessary to avoid further violence? Are there safeguards in place to protect you and your children?
- Will the other parent consent to the move?
- Are you receiving regular and adequate child support payments?

EXHIBIT 12A—Sample Consent to Remove the Minor Children to Another State

COMMONWEALTH OF MASSACHUSETTS

[insert county here], DIVISION

Probate and Family Court Dept.
Docket No.

[YOUR NAME],)
 Plaintiff)
v.)
[OTHER PARTY’S NAME],)
 Defendant)
_____)

**CONSENT TO REMOVE THE MINOR CHILD(REN)
TO THE STATE OF [_____]**

Now comes [DEFENDANT], the [MOTHER/FATHER] of the above minor child, [CHILD’S NAME], and hereby states that [HE/SHE] is aware that [YOUR NAME] intends to remove the minor child from the Commonwealth of Massachusetts to the State of [_____] and that [HE/SHE] consents to the removal as stated. This consent is given under G.L. c. 208, § 30 **optional:** but shall be limited to removal of said minor child from the Commonwealth to the State of [_____] and to no other state].

[DATE]

[SIGNATURE OF DEFENDANT]

CERTIFICATE OF SERVICE

[insert county here], ss.

[DATE]

Before me personally appeared [DEFENDANT] and acknowledged [HIS/HER] execution of the foregoing Consent to be [HIS/HER] free act and deed.

Notary Public
My commission expires:

EXHIBIT 12B—Sample Complaint for Authorization to Remove Minor Child from the Commonwealth Under G.L. c. 208, § 30

COMMONWEALTH OF MASSACHUSETTS

[*insert county here*], DIVISION

Probate and Family Court Dept.
Docket No.

_____)
[YOUR NAME],)
 Plaintiff)
v.)
[OTHER PARTY’S NAME],)
 Defendant)
_____)

COMPLAINT FOR AUTHORIZATION TO REMOVE MINOR CHILD FROM THE COMMONWEALTH

1. The plaintiff, who resides at [ADDRESS], Massachusetts, has a judgment of [divorce] [custody] [paternity] [separate support] involving my children with defendant, who resides at [ADDRESS], entered by this court on [DATE]. The parties are the parents of minor child[ren], namely [CHILD(REN) NAMES AND DATES OF BIRTH].
2. This court entered a judgment of [divorce] [custody] [paternity] [separate support] which provided, among other things, that the plaintiff have [sole/joint/physical] custody of the minor child(ren), and [sole/joint legal custody of the minor child(ren)]with the following parenting time to the defendant: [enter terms of parenting time here].
3. Since the judgment of [divorce] [custody] [paternity] [separate support], the plaintiff has formed a good faith intent to relocate his/her residence to [CITY] in the state of [STATE].
4. The relocation is necessary because [_____].
5. The relocation of the minor child is in his/her best interests, and constitutes “cause” within the meaning of G.L. c. 208, § 30.
6. The relocation of the minor child will allow him/her to have greater interaction/develop a relationship with [RELATIVES], who live in [CITY], [STATE].
7. There are [suitable/better] schools available for the minor children to attend in [CITY], [STATE].
8. The minor child has expressed a preference to remain with the plaintiff and to relocate to [CITY], [STATE] with him/her.
9. The minor child’s therapist has indicated that this relocation will be in the child’s best interests.
10. The plaintiff has made arrangements to [rent/purchase] suitable housing for [himself/herself] and the minor child in [CITY], [STATE].
11. There is a real advantage to the minor child in relocating to [CITY], [STATE].
12. The plaintiff is willing and able to insure adequate contact between the child and his/her other parent as follows: [insert your parenting plan details here which can include extended periods of parenting time in Massachusetts during school and summer vacations] and/or parenting time in [CITY], [STATE] as the court may direct or the parties agree.

■ **CHAPTER 12: LEAVING MASSACHUSETTS**

WHEREFORE, the plaintiff prays that the court authorize the removal of the minor child of the parties to [CITY], [STATE], pursuant to G.L. c. 208, § 30, and to enter such temporary and final orders as it deems appropriate to promote the best interests of the parties.

[DATE]

[YOUR SIGNATURE]

EXHIBIT 12C—Sample Affidavit in Support of Plaintiff’s Removal Request

COMMONWEALTH OF MASSACHUSETTS

[insert county here], DIVISION

Probate and Family Court Dept.
Docket No.

<hr/>		
Jane Doe,)	
)	Plaintiff
v.)	
John Doe,)	
)	Defendant
<hr/>		

AFFIDAVIT OF JANE DOE

Jane Doe, being first duly sworn hereby, deposes and states as follows:

1. John Doe is my ex-husband/the father of our child. We have one child together, namely Jessica Doe, age 10. [I have sole legal and physical custody of Jessica.] [We share joint physical custody of Jessica] [I have sole physical custody of Jessica and we share legal custody].
2. I would like to be able to relocate with Jessica to Seattle, Washington.
3. Most of my family, including my parents (Jessica’s grandparents), my sisters, uncles, aunts and cousins, live in the Seattle area. My sister has offered for us to stay with her until we find an apartment or house.
4. Moving to Seattle will help Jessica rebuild a relationship with her extended family. We all lived in Seattle until September of 2002, so Jessica spent a lot of her life in Seattle.
5. My family is looking forward to us returning to Seattle. They will provide us with a support system that we don’t have in Massachusetts (see attached letters from my family).
6. I have been offered a job in my field (computer technology) in Seattle by Microsoft (see attached job offer from Microsoft).
7. I have looked into transferring Jessica into school in Seattle. I have contacted the school where she would attend (see attached letter).
8. I am in touch with the Queen Anne Unitarian Church, the church that Jessica and I belonged to before we moved to Massachusetts. Mary Daly, the minister there, is looking forward to our return and is willing and able to provide support services for Jessica and me (see attached letter).
9. I have begun looking for housing in Seattle and have a number of leads (see attached apartment and house listings).
10. Jessica has been seeing a therapist named Sigmund Freud from the Center for Family Services since September 2003. Mr. Freud believes that moving to Seattle will be in Jessica’s best interests (see attached affidavit).
11. In lieu of Mr. Doe’s weekend and weeknight parenting time, I am willing to pay for Jessica to fly back to Massachusetts during all of her school vacations and for the months of July and August to visit with her father. I will also help Jessica call, Skype, or FaceTime her father as often as she wishes.

■ **CHAPTER 12: LEAVING MASSACHUSETTS**

12. I am asking that the Court grant permission for Jessica and me to move to Seattle now, so that Jessica may get adjusted to her new home before school starts in September. This way, she will not have to be taken out of school in the middle of the term.

Sworn to under the pains and penalties of perjury this 1st day of February, 2017.

Jane Doe