

# Child Custody Dispute Between Parents Checklist<sup>1</sup>

A dispute over a minor child’s custody may be raised as an original action under the Child Custody Act (CCA), [MCL 722.21 et seq.](#), or incident to another action, so make this determination early to ensure appropriate procedures have been followed.<sup>2</sup> See [MCL 722.27\(1\)](#); [MCR 3.204](#); [MCR 3.205](#). In all actions that involve a dispute over a minor child’s custody, the court must declare the child’s inherent rights and establish the rights and duties as to the child’s custody, support, and parenting time in accordance with the CCA. [MCL 722.24\(1\)](#). If paternity has not been established, refer to the Paternity Act, [MCL 722.711 et seq.](#)

*All child custody disputes have precedence for hearing and assignment for trial over other civil actions.* [MCL 722.26\(1\)](#).

The court may refer the case to the Friend of the Court (FOC) for an investigation and recommendation on custody. See [MCL 552.505\(1\)\(d\)](#). After reviewing the recommendation, the court then makes the ultimate custody decisions after applying the law to all relevant evidence.

## **Overview (click any of the steps below to get more information):**

- [Determine who the parties are.](#)
- [Understand the scope and application of the best interests factors throughout the proceeding.](#)

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<sup>1</sup> The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), [MCL 722.1101 et seq.](#), governs procedures for resolving child custody disputes when one or both parties do not reside in the same state, enforcing out-of-state custody court orders, and modifying a foreign order. See the Michigan Judicial Institute’s [Determine or Modify an Interstate Child-Custody Dispute Checklist](#) for more information.

<sup>2</sup> “[A] circuit court has jurisdiction to consider a motion to change the domicile of a minor child established by a custody award in a divorce judgment while that underlying judgment is pending on appeal”; [“MCL 722.27\(1\) authorizes the continuing jurisdiction of a circuit court to modify or amend its previous judgments or orders and is an exception to MCR 7.208\(A\) ‘otherwise provided by law.’”](#) *Safdar v Aziz*, 501 Mich 213, 215, 219 (2018) (“[MCL 722.27\(1\)\(c\)](#) specifically permits the circuit court to modify or amend its orders when proper cause is shown or when there has been a change of circumstances,” and “[i]ts sole limiting principle is that the modification be in the best interests of the child”; accordingly, “it would be contrary to the plain language of the [Child Custody Act, [MCL 722.21 et seq.](#)] to require a court to wait for the conclusion of an appeal to address a change in circumstances that would affect the interests of the child.”)

- Take preliminary steps related to service, proper cause/change of circumstances, and appointing a lawyer-guardian ad litem (LGAL) if necessary.
- Make findings regarding the established custodial environment, if any.
- Settle the child custody dispute, which could include ordering sole/joint custody, child support, reasonable parenting time, modifying previous judgments/orders, and/or taking any other action necessary.

### ***Parties Involved***

If a dispute over a minor child's custody is raised, inquire and determine the following:

- Whether the dispute is between the child's natural or adoptive parents.
  - If not and the child custody dispute involves an agency, refer to the Michigan Judicial Institute's [Child Custody Dispute \(Agency Involved\) Checklist](#).
  - If not and the child custody dispute involves a guardian or limited guardian, refer to the Michigan Judicial Institute's [Child Custody Dispute \(Guardian/Limited Guardian Involved\) Checklist](#).
  - If not and the child custody dispute involves a third person, which includes a grandparent, refer to the Michigan Judicial Institute's [Child Custody Dispute \(Third Person Involved\) Checklist](#).

### ***Scope and Application of Best Interests Factors***

- The *best interests of the child* control. [MCL 722.25\(1\)](#). See [MCL 722.23](#) for the *best interests of the child* factors.
  - If parties present the court with an agreement regarding child custody and visitation, the court is "empowered to accept it" and need not "expressly articulate each of the best interest factors. Implicit in the court's acceptance of the parties' agreement is its determination that the arrangement is in the child's best interest." *Rettig v Rettig*, 322 Mich App 750, 755, 756 (2018) (quotation marks and citation omitted).
  - Examine all the criteria in the ultimate light of the child's *best interests*; there is no requirement to mathematically assess equal weight to each of the statutory best interests factors. *McCain v McCain*, 229 Mich App 123, 130-131 (1998).
  - If more than one child, address *best interests* for each child; there may be differences between children of the same parties.
  - If child custody dispute involves a child who is conceived as a result of acts for which one of the child's biological parents is convicted of criminal sexual conduct (CSC) as provided in [MCL 750.520a–MCL 750.520e](#) and [MCL 750.520g](#) (or a substantially similar statute of another state

or the federal government), the court must *not award custody* to that biological parent UNLESS the biological parents cohabit and establish a mutual custodial environment for the child after the date of the conviction, or the date of the finding in a fact-finding hearing, and the child's other parent/guardian consents. [MCL 722.25\(2\)-\(3\)](#).

- If an individual is convicted of criminal sexual conduct (CSC) as provided in [MCL 750.520a–MCL 750.520e](#) and [MCL 750.520g](#), and the victim is the individual's child, the court must *not award custody* of that child or a sibling of that child to that individual unless both the child's other parent and the child or sibling (if the court considers the child or sibling to be of sufficient age to express his/her desires) consent to the custody. [MCL 722.25\(6\)](#).

### ***Service, Proper Cause/Change of Circumstances, and LGAL Requirements***

- Ensure proper service. [MCR 3.203](#).
- Determine whether proper cause or a change of circumstances exists to warrant modification or amendment of previous judgments or orders;<sup>3</sup> burden of proof is preponderance of the evidence. [MCL 722.27\(1\)\(c\)](#); *Vodvarka v Grasmeyer*, 259 Mich App 499, 509 (2003).
  - “To demonstrate proper cause to modify or amend a previous order, a movant must demonstrate that ‘one or more appropriate grounds that have or could have a significant effect on the child’s life to the extent that a reevaluation of the child’s custodial situation should be undertaken.’ While ‘[t]here is no hard or fast rule’ as to what grounds could fulfill this requirement, the trial court may rely on the best-interest factors enumerated in [MCL 722.23](#) to aid in this determination.” *Sims v Verbrugge*, 322 Mich App 205, 213-214 (2017), quoting *Vodvarka*, 259 Mich App at 511-512 (alteration in original).
  - “[T]o demonstrate a change in circumstances sufficient to justify the modification or amendment of a previous order, a movant must demonstrate that ‘since the entry of the last

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<sup>3</sup> “Courts cannot treat the legal custody granted by signing an [Acknowledgment of Parentage (AOP)] the same as a judicial determination because . . . [MCL 722.1006](#) provides that the grant of initial custody through the execution of an AOP ‘shall not, by itself, affect the rights of either parent in a proceeding to seek a court order for custody or parenting time.’” *Sims v Verbrugge*, 322 Mich App 205, 215 (2017) (“[b]ecause the parties’ AOP was not a judicial determination, no existing judgment or order regarding legal custody existed[; a]ccordingly, by requiring defendant to demonstrate by a preponderance of the evidence proper cause or change in circumstances—the standard required to modify or amend an existing judgment or order—the trial court erred, imposing a higher burden on defendant in violation of [MCL 722.1006](#)”) (internal citations omitted).

custody order, the conditions surrounding custody of the child, which have or could have a *significant* effect on the child's well-being, have materially changed.” *Sims*, 322 Mich App at 214, quoting *Vodvarka*, 259 Mich App at 513.

- ❑ At any time, determine whether the child's best interests are adequately represented; if not, MAY appoint a lawyer-guardian ad litem (LGAL) to represent the child. [MCL 722.24\(2\)](#). See also [MCR 3.204\(D\)](#).
- ❑ LGAL may file a written report and recommendation, which the court may read, but is not admissible into evidence *unless* all parties stipulate to its admission. [MCL 722.24\(3\)](#).
- ❑ The court may assess all or part of the costs and reasonable fees of the LGAL against one or more of the parties, after a determination of ability to pay. An LGAL must not be paid a fee unless it is received and approved by the court. [MCL 722.24\(4\)](#).

### ***Established Custodial Environment***

- ❑ Unless presented with an agreement between the parties,<sup>4</sup> determine whether an established custodial environment exists:<sup>5</sup> **do not** modify or amend any previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interests of the child. [MCL 722.27\(1\)\(c\)](#).<sup>6</sup> “Custody decisions require findings under all of the best interest factors.” *Shade v Wright*, 291 Mich App 17, 31 (2010).
- ❑ The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. [MCL 722.27\(1\)\(c\)](#).

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<sup>4</sup> “The requirement of making an express determination of whether there is an established custodial environment is as inapposite to effectuating an agreement reached by the parties as is the requirement of conducting intensive fact-finding.” *Rettig*, 322 Mich App at 757.

<sup>5</sup> “[A] trial court must not ‘presume an established custodial environment by reference only to’ the most recent custody order, but must ‘look into the actual circumstances of the case.’” *Marik v Marik*, 325 Mich App 353, 370 (2018).

<sup>6</sup> “[I]t is critical that trial courts, in the *first* instance, carefully and fully comply with the requirements of [MCL 722.27\(1\)\(c\)](#) before entering an order that alters a child's established custodial environment. Any error in this regard may have lasting consequences yet effectively be irreversible.” *Daly v Ward*, 501 Mich 897, 897-898 (2017) (denying the application for leave to appeal the Court of Appeals' judgment but taking the “opportunity to emphasize how critical it is that trial courts fully comply with [MCL 722.27\(1\)\(c\)](#) before entering an order that alters a child's established custodial environment”).

- The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship must also be considered. [MCL 722.27\(1\)\(c\)](#).
- When a modification of custody would not change the established custodial environment**, determine whether the moving party has shown by a preponderance of the evidence that it is in the child's best interests. *Pierron v Pierron*, 486 Mich 81, 92-93 (2010).

### *Settle Child Custody Dispute*

- ADVISE parents of joint custody. [MCL 722.26a\(1\)](#).
  - INFORM parents that joint custody is an order in which one or both of the following is specified:
    - Physical custody***: the child must reside alternatively for specific periods with each of the parents.
      - Do NOT award physical custody, without the other parent's consent, to a parent who resides in a country that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction.<sup>7</sup> *Elahham v Al-Jabban*, 319 Mich App 112, 127-128 (2017).
    - Legal custody***: the parents must share decision-making authority as to the important decisions affecting the child's welfare. See [MCL 722.26a\(7\)](#).
- DETERMINE the child custody dispute by doing one or more of the following for the best interests of the child:<sup>8</sup>
  - MAY award custody of the child to one or more of the parties involved or to others and provide for payment of support for the child until the child reaches 18 years of age.<sup>9</sup> [MCL 722.27\(1\)\(a\)](#).
  - Joint custody MUST be considered if either parent requests it; without a request, MAY be considered by court. [MCL 722.26a\(1\)](#).

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<sup>7</sup> To be a *party* to the Hague Convention, a ratifying state (the United States, for example) must accept the other country's accession to the Convention; if a country's accession is not accepted by a ratifying state, that other country "is not bound to all the benefits and obligations imposed by the Convention[.]" *Safdar v Aziz*, \_\_\_ Mich App \_\_\_, \_\_\_ (2019) (although Pakistan acceded to the Hague Convention, the United States never recognized the accession; accordingly, "Pakistan [was] not a 'party' to the Convention as contemplated by [MCL 722.27a\(10\)](#)").

<sup>8</sup> See [MCL 722.23](#) for *best interests of the child* factors.

- If BOTH parents agree to joint custody, *order* joint custody UNLESS, based on clear and convincing evidence, this court determines on the record that joint custody is not in the child's best interests. [MCL 722.26a\(2\)](#).
- Determine whether joint custody is in the best interests of the child by considering the *best interests of the child factors* set out in [MCL 722.23](#) AND whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child. [MCL 722.26a\(1\)](#).
- Expressly evaluate each best-interests factor and state reasons for granting or denying the custody request on the record. *Dailey v Kloenhamer*, 291 Mich App 660, 667 (2011).
- State on the record the reasons for granting or denying a request for joint custody. [MCL 722.26a\(1\)](#).
- If joint custody is *awarded*, MAY include in the award a statement regarding when the child must reside with each parent, *or* MAY provide that physical custody be shared by the parents in a manner to assure the child continuing contact with both parents.<sup>10</sup> [MCL 722.26a\(3\)](#).
- If there is a dispute regarding residency, state the basis for a residency award on the record or in writing. [MCL 722.26a\(5\)](#).
- MAY provide for reasonable parenting time of the child by the parties involved by general or specific terms and conditions. [MCL 722.27a](#) governs parenting time of the child by the parents. [MCL 722.27\(1\)\(b\)](#). Refer to the Michigan Judicial Institute's *Establishing Parenting Time Checklist* for the procedures.
- MAY modify/amend previous judgments/orders (unless parent is on deployment)<sup>11</sup> for *proper cause* shown or because of *change of circumstances* (available until the child reaches 18 years of age).<sup>12</sup>

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<sup>9</sup> The court may require that support payments be made through the Friend of the Court (FOC), court clerk, or the state disbursement unit (SDU). [MCL 722.27\(1\)\(a\)](#). A judgment or order entered under the CCA providing for child support is governed by and is enforceable under the Support and Parenting Time Enforcement Act (SPTEA), [MCL 552.601 et seq.](#) [MCL 722.27\(2\)](#). For a checklist on issuing child support, including issuance of support after a child reaches 18 years of age, see the Michigan Judicial Institute's *Issuance of Child Support Checklist*.

<sup>10</sup> Joint custody does NOT eliminate the responsibility for child support. [MCL 722.26a\(6\)](#).

- Must NOT modify/amend previous judgments/orders or issue a new order so as to change the ***established custodial environment*** of a child *unless* clear and convincing evidence that it is in the best interests of the child compared to the status quo. See *Griffin v Griffin*, 323 Mich App 110, 120-121 (2018).
- MAY take any other action considered to be necessary in a particular child custody dispute. [MCL 722.27\(1\)](#).
- MUST include a provision for each order that ***determines or modifies custody or parenting time*** of a child:
  - If the parents AGREED as to how a change in either of the child’s legal residences will be handled.
    - If such a provision is included in the order and a child’s legal residence is changed in compliance with that provision, the 100-mile rule does NOT apply.<sup>13</sup> [MCL 722.31\(5\)](#).
  - If the parents do NOT agree as to how a change in either of the child’s legal residences will be handled, the court *must* include in the order the following provision:

“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 [MCL 722.31\[\(100-mile rule\)\]](#).” [MCL 722.31\(5\)](#).

For court forms related to domestic relations actions, see the One Court of Justice [website](#).

For additional domestic relations resources, see the Friend of the Court Bureau [website](#).

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<sup>11</sup> Special procedures apply for a parent **on deployment**. [MCL 722.27\(1\)\(c\)](#); [MCL 722.27\(3\)](#); [MCL 722.27a\(16\)](#). For a checklist on changing child custody or parenting time while a parent is on deployment, see the Michigan Judicial Institute’s [Changing Child Custody or Parenting Time While Parent on Deployment Checklist](#). If a motion for change of custody or parenting time is filed **after** a parent returns from deployment, the court must NOT consider a parent’s absence due to that deployment (or future deployments) in making a *best interests of the child* determination. [MCL 722.27\(4\)](#); [MCL 722.27a\(17\)](#).

<sup>12</sup> Subject to [MCL 552.605b](#), until the child reaches 19 years and 6 months of age.

<sup>13</sup> For a checklist on the 100-mile rule, see the Michigan Judicial Institute’s [Changing Child’s Legal Residence \(100-Mile Rule\) Checklist](#).