

Issuance of Support Order Under Family Support Act Checklist

The Family Support Act (FSA), [MCL 552.451 et seq.](#), confers jurisdiction on the court to issue, in certain cases, a support order for a custodial parent and child(ren) or for child(ren).

Time Guidelines ([Administrative Order No. 2013-12](#)): *Divorce With Children.* 85% should be adjudicated within 301 days from the date of case filing and 95% within 364 days.

A complaint must not be filed and a summons must not be issued if divorce or separate maintenance proceedings are pending between the petitioner and his/her spouse, [MCL 552.451](#), or if parties have an existing case, e.g., paternity, pre-existing support, etc.

If another complaint is filed relating to the same child at a later time, consolidate the two files.

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

- [Ensure proper venue.](#)
- [Ensure proper filing.](#)
- [Identify whether any party is a minor.](#)
- [Ensure defendant meets certain requirements.](#)
- [Verify that each child for whom support is requested meets certain requirements.](#)
- [Ensure plaintiff's verified complaint meets certain requirements.](#)
- [Hold hearing and decide issues.](#)
- [Determine amount of support.](#)
- [Enter judgment and support order.](#)

To make sure all the proper procedures have been followed:

Ensure proper venue:

- The matter must be filed in a court with a pending action, or a prior action and continuing jurisdiction, involving the custody, child support, or parenting time of the same child. [MCR 3.204\(A\)](#). If more than one court has an existing case involving the same parents, see [MCR 3.204\(B\)](#).
- The matter should be filed in the court with a prior case for the support, custody, or parenting time of a different child of the same parents, if the circuit court for that county has jurisdiction over the new action.
 - Note:** the new case must be assigned to the same judge as the previous action. [MCR 3.204\(A\)](#). If more than one court has an existing case involving the same parents, see [MCR 3.204\(B\)](#).
- If no prior court has jurisdiction under [MCR 3.204](#), matters filed by a parent, guardian, or adult child may be filed in the county where the custodial parent or the noncustodial parent resides. See [MCL 552.451](#) or [MCL 552.451a](#).
- If no prior court has jurisdiction under [MCR 3.204](#), agency complaints (signed by the Department of Health and Human Services (DHHS) director or designee) may be filed in the county where the custodial parent or child(ren) reside. [MCL 552.451b](#).

Ensure proper filing:

- When filed in a court with an existing case involving the custody, support, or parenting time of the same child, a new action is filed as a motion in that case if the relief sought would have been available in the original. [MCR 3.204\(A\)](#).
 - If the relief sought was not available in the original action involving custody, support, or parenting time of the same child, or a different child of the same parents, the new action must be filed as a new complaint. [MCR 3.204\(A\)](#).
 - If there was no prior action involving the same child or a different child of the same parents, a complaint for support must be filed.
- Identify whether any party is a minor** (and take the appropriate action)¹:
- No minors.

- Emancipated minor: an emancipated minor may sue and be sued in his/her own name, as provided in [MCL 722.4e\(1\)\(b\)](#). [MCR 3.202\(B\)](#).
- Minor with conservator: actions may be brought and must be defended by the conservator on behalf of minor. [MCR 2.201\(E\)\(1\)\(a\)](#).
- Minor plaintiff without conservator: if a minor does not have a conservator to represent the person as plaintiff, the court must appoint a competent and responsible person to appear as next friend on his/her behalf. [MCR 2.201\(E\)\(1\)\(b\)](#).
- Minor defendant without conservator: if minor does not have a conservator to represent the person as defendant, the action may not proceed until the court appoints a guardian ad litem. [MCR 2.201\(E\)\(1\)\(c\)](#). It is unnecessary to appoint a representative for a minor accused of a civil infraction. *Id.*

Note: [MCL 722.714\(11\)](#) provides that “[i]t is unnecessary in any proceedings under [the Paternity Act, [MCL 722.711 et seq.](#)] commenced by or against a minor to have a next friend or guardian ad litem appointed for the minor unless required by the circuit judge. A minor may prosecute or defend any proceedings in the same manner and with the same effect as if he or she were of legal age.” [MCL 722.714\(11\)](#). Additionally, the Court of Appeals has held that “the Paternity Act, the Acknowledgment of Parentage Act, and the Child Custody Act, which serve interrelated purposes, must be interpreted consistently with each other and read in *pari materia*.” *Aichele v Hodge*, 259 Mich App 146, 161 (2003).

- If a minor is known to be subject to the prior continuing jurisdiction of a Michigan court, plaintiff or other initiating party must send notice of proceedings in the subsequent court to the clerk or register of the prior court, and the appropriate official of the prior court. [MCR 3.205\(B\)\(2\)](#).
- Upon receipt of the notice required by [MCR 3.205\(B\)](#), the appropriate official of the prior court must provide the subsequent court with copies of all relevant orders then in effect and copies of relevant records and reports, and may appear in person at proceedings in the subsequent court, as the welfare of

¹“A default judgment may not be entered against a minor . . . unless the person is represented in the action by a conservator or other representative, except as otherwise provided by law.” [MCR 3.210\(B\)\(5\)\(b\)](#).

the minor and the interests of justice require. [MCR 3.205\(D\)\(1\)](#).

- Upon request of the prior court, the appropriate official of the subsequent court must notify the appropriate official of the prior court of all proceedings in the subsequent court, and must send copies of all orders entered in the subsequent court to the attention of the clerk or register and the appropriate official of the prior court. [MCR 3.205\(D\)\(2\)](#).
- If a circuit court awards custody of a minor under [MCL 722.26b](#), the circuit court clerk must send a copy of the judgment or order of disposition to the probate court that has prior or continuing jurisdiction of minor as a result of the guardianship proceedings, regardless whether there is a request. [MCR 3.205\(D\)\(3\)](#).
- Upon receipt of an order from the subsequent court, the appropriate official of the prior court must take the steps necessary to implement the order in the prior court. [MCR 3.205\(D\)\(4\)](#).

Ensure all of the following apply to defendant:

- Is subject to the court's personal jurisdiction because he/she is either:
 - A Michigan resident; or
 - A non-resident subject to the court's long arm jurisdiction under [MCL 552.2201](#).
- Is the parent of each child, by
 - Birth (when defendant is mother).
 - Marital presumption (conceived or born during marriage to child's mother).
 - Legitimated under the law of this or another state (Acknowledgment of Parentage Act, [MCL 722.1001 et seq.](#); Genetic Parentage Act, [MCL 722.1461 et seq.](#); Paternity Act, [MCL 722.711 et seq.](#)).
 - Adoption.
- Lives separate and away from child(ren), or if considering spousal support, away from the custodial parent and child(ren). [MCL 552.451](#).

- Has refused to provide necessary shelter, food, care, and clothing for the child(ren) despite being of sufficient financial ability to provide the assistance. [MCL 552.451](#).
- Verify each child for whom support is requested is:**
 - A minor; or
 - Between age 18 and 19 years 6 months, and (1) regularly attends high school on a full-time basis, (2) has a reasonable expectation of completing sufficient credits to graduate from high school, and (3) resides on a full-time basis with the recipient of support (could be emancipated child when child brings action) or at an institution. [MCL 552.605b](#).
- Ensure plaintiff has verified in their complaint that they are one of the following:**
 - A parent who is married to the noncustodial parent, and lives with the child(ren) for whom support is being sought. [MCL 552.451](#).
 - A custodial parent of the child(ren). [MCL 552.451a](#).
 - Minor child(ren)'s guardian. [MCL 552.451a](#).
 - An emancipated minor child.
 - An adult between age 18 and 19 years and 6 months.
 - The State Department of Health and Human Services (DHHS) director (or designated representative), or the county DHHS director (or designated representative) from the county of residence of the custodial parent of child(ren), who are supported, wholly or in part by public assistance under the Social Welfare Act, [MCL 400.1 et seq.](#) [MCL 552.451b](#).
- Verify that the case initiating document provides specified case information in the form and manner established by the State Court Administrative Office, other applicable rules, and provides the name, an address for service, an e-mail address, and a telephone number of every party, and either of the following statements, if known:
 - There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person[s] who [is/are] the subject of the complaint or petition, or.

- There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family members of the person[s] who [is/are] subject of the complaint or petition. Attached is a completed case inventory listing those cases. [MCR 1.109\(D\)\(2\)\(b\)](#); [MCR 3.206\(A\)\(1\)](#).
- Ensure that a completed case inventory list of known pending or resolved family division cases existing between the parties was filed with the complaint.^{2, 3} [MCR 3.206\(A\)\(3\)](#).
- Determine if any other state has issued a support order for this obligor to pay support to any child(ren) in this case.
 - If another state's tribunal has previously issued a support order for the same obligor and child, afford it full faith and credit and do not issue a competing order. To prevent issuing a void order, do not establish a new support order if one already exists. [28 USC 1738B](#).
 - If an existing support order needs enforcement, it should be registered under the Uniform Interstate Family Support Act (UIFSA), [MCL 552.2102 et seq.](#), in a court with jurisdiction over the obligor or the obligor's property.
 - If the order needs modification, it can be registered with a court with jurisdiction over respondent or in the jurisdiction where the parties agree in a writing filed in the issuing court.
- Hold hearing and decide issues:**
 - Ensure that defendant was served with a complaint at least 21 days before, and given notice of hearing at least 7 days before hearing.
 - Place burden of proving an inability to pay on the noncustodial parent opposing entry of the support order on the ground that he/she is without sufficient financial ability to provide necessary shelter, food, care, clothing, and other support for his/her spouse and child(ren). [MCL 552.452\(1\)](#).

² "This does not apply to outgoing requests to other states and incoming registration actions filed under the Revised Uniform Reciprocal Enforcement of Support Act, [MCL 780.151 et seq.](#) and the Uniform Interstate Family Support Act, [MCL 552.2101 et seq.](#)" [MCR 3.206\(A\)\(3\)](#). See also [MCR 1.109\(D\)\(2\)](#).

³ For "guidance on which cases should be included on the case inventory", see the SCAO Memorandum, [Family Division Case Inventory Form](#).

- If permitted by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), [MCL 722.1101](#) *et seq.*, determine custody and parenting time schedule.
- Make findings on the record.
- When the custody of a minor is contested, hold a hearing on the matter within 56 days after the court orders, or after the filing of notice that a custody hearing is requested. [MCR 3.210\(C\)\(1\)](#). Enter a decision within 28 days after the hearing. [MCR 3.210\(C\)\(3\)](#).
- If there is no dispute regarding a child's custody, include in an order for support issued under the FSA specific provisions governing custody of and parenting time for the child in accordance with the Child Custody Act (CCA), [MCL 722.21](#) *et seq.* [MCL 552.452\(4\)](#).
- If there is a dispute regarding custody of and parenting time for the child, include in an order for support issued under the FSA specific temporary provisions governing custody of and parenting time for the child. [MCL 552.452\(4\)](#).
- Pending a hearing on or other resolution of the dispute, the court may refer the matter to the Friend of the Court (FOC) for a written report and recommendation as provided in [MCL 552.505](#). [MCL 552.452\(4\)](#).
- In a dispute regarding custody of and parenting time for a child, the prosecuting attorney is not required to represent either party regarding the dispute. [MCL 552.452\(4\)](#).
- Determine amount of child support:**
 - Using the [Michigan Child Support Formula Manual](#) (MCSF), make findings regarding both parent's incomes, determine the number of overnights that each parent will likely provide care for the child(ren), and which parent to order to provide health care insurance.
 - Using the net incomes and number of overnights, apply the MCSF to calculate the base support obligation, figure payments for medical support obligations and child care expenses, and which parent to order to provide health care insurance coverage for the children.
 - If it is determined that based on the particular facts in the case, the result of applying the MCSF has an unjust or inappropriate result, or if the parties agree to deviate from those results, deviation is permissible:

- Set out in writing or on the record: (1) the amount determined by the MCSF; (2) how the support ordered deviates from the MCSF; (3) if applicable, the value of property or other support awarded in lieu of the MCSF amounts; and (4) the reasons that explain why the MCSF would produce an unjust or inappropriate result. [MCL 552.452\(1\)](#); [MCL 552.605\(2\)-\(3\)](#).
- When ordering support that deviates, the Uniform Child Support Order must indicate that deviation occurred and include a completed deviation addendum that records the statutorily required findings. [MCR 3.211\(D\)](#).
- Determine whether to include the cost of genetic testing, or any necessary medical expenses incurred in connection with the mother's pregnancy or the birth of the child. Where incurred, determine the necessary amount to be repaid and order repayment as permitted under [MCL 722.712](#). [MCL 552.452\(1\)-\(2\)](#).
- Determine amount of spousal support if the parties are married and complaint states that spouse refused financial assistance necessary to provide shelter, food, care, and clothing for the child(ren) despite being of sufficient financial ability to provide the assistance. [MCL 552.451](#).
- Determine whether to order that support continue post majority for a child, and set date certain for support to end. [MCL 552.605b](#).
- Consider whether the support order should:
 - include expenses of medical, dental, and other health care, child care, and education, necessary medical expenses incurred in connection with the mother's pregnancy or the birth of the child, and the expense of genetic testing. [MCL 552.452\(1\)](#).
 - require defendant to pay filing fee, order or stenographer's fees, service costs, or attorney fees. [MCL 552.458](#).
- Make child support obligation retroactive to the date that the complaint for support was filed, UNLESS:
 - defendant was avoiding service of process,
 - defendant threatened or coerced through domestic violence or other means complainant not to file a proceeding under the FSA, OR

defendant otherwise delayed the imposition of a support obligation. [MCL 552.452\(1\)](#).

Enter judgment and support order

Within the final judgment or incorporated by reference, an order that includes specific provisions for custody of and a parenting time schedule with any unemancipated minor child(ren), as the court determines is in the best interest of the child(ren).

Enter final judgment and Uniform Support Order.

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](#).

