

Modification of Parenting Time Checklist

Consolidated contempt and parenting time modification hearings **MUST** be held if the parent files a motion to modify parenting time *within 21 days* of receiving the notice of the contempt hearing for a parenting time violation **UNLESS** good cause is shown on the record to keep the hearings separate. **If hearings are held separately, the modification hearing MUST be held before the contempt hearing.**¹ See [MCL 552.645\(3\)](#).

A request for modification of parenting time may be raised by:

- A party to the parenting time order. See [MCL 552.517d\(3\)](#); [MCL 552.645\(3\)](#).

Party Objects to Friend of the Court's (FOC) Recommendation.

The party may file an objection *within 21 days* of receiving the FOC's recommended modification. See [MCL 552.517d\(3\)](#). If a timely objection is filed, a hearing must be scheduled. *Id.*

Party Received Notice of Contempt Hearing for Parenting Time Violation.

The party may file a motion to modify parenting time *within 21 days* of receiving a notice of a contempt hearing for a parenting time violation. [MCL 552.645\(3\)](#).

- The FOC filing a motion to modify the existing parenting time provisions to ensure parenting time in response to the receipt of an alleged custody or parenting time violation. See [MCL 552.641\(1\)\(c\)](#).
- The FOC, following entry of a final judgment containing a parenting time order, and finding an unresolved parenting time dispute, submitting a proposed parenting time order for the court's adoption that incorporates a modified recommendation. See [MCL 552.517d\(1\)](#); [MCL 552.517d\(3\)](#). Proper notice must be provided to the parties. See [MCL 552.517d\(1\)](#).

Hold evidentiary hearing on best interests (before holding evidentiary hearing, see *Lieberman v Orr*, 319 Mich App 68 (2017)):

¹ For a checklist on a contempt for parenting time violation, see the Michigan Judicial Institute's [Contempt for Custody or Parenting Time Violation Checklist](#).

Consider the gravamen of the motion by reading the document as a whole and ensure the request is actually seeking modification of *parenting time* and does not entail a request that affects *custody*.² See *Lieberman*, 319 Mich App at 68. If the motion affects custody, see the Michigan Judicial Institute’s [Child Custody Dispute Between Parents Checklist](#).

Determine if the proposed change in parenting time alters the current established custodial environment.³ “[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). “[T]he dispositive inquiry is not whether an established custodial environment existed prior to separation; rather, it is whether such an environment continues to exist, or a new one exists, at the time of the trial court’s custody determination.” *Sabatine v Sabatine*, ___ Mich ___ (2024).

If so, determine, under the legal framework of *Vodvarka v Grasmeyer*, 259 Mich App 499 (2003), whether proper cause or change in circumstances exists to modify parenting time.

If not, determine, under the legal framework of *Shade v Wright*, 291 Mich App 17 (2010), whether proper cause or change in circumstances exists to modify parenting time. See also [MCL 722.27\(1\)\(c\)](#); *Lieberman*, 319 Mich App at 83.

If proper cause/change in circumstances exists, schedule an evidentiary hearing.⁴ The court may, at this time, order the FOC to conduct an investigation and produce a recommendation on the

² “Parenting time is the time a child spends with each parent. ‘Whereas the primary concern in child custody determinations is the stability of the child’s environment and avoidance of unwarranted and disruptive custody changes, the focus of parenting time is to foster a strong relationship between the child and the child’s parents.’” *Lieberman v Orr*, 319 Mich App 68, 80 (2017), quoting *Shade v Wright*, 291 Mich App 17, 28-29 (2010).

³ “[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). “For an established custodial environment to exist, the custodial relationship must endure for ‘an appreciable time,’ and ‘the inclination of the custodian and the child as to the permanency of the relationship shall also be considered.’” *Sabatine v Sabatine*, ___ Mich ___, ___ (2024), quoting [MCL 722.27\(1\)\(c\)](#). “Thus, . . . the relevant question to determine whether the ‘proper cause and change of circumstances’ framework [from [MCL 722.27\(1\)\(c\)](#)] applies is whether the modification to parenting time will ‘change whom the child naturally looks to for guidance, discipline, the necessities of life, and parental comfort[.]’” *Sabatine*, ___ Mich at ___, quoting *Pierron v Pierron*, 486 Mich 81, 86 (2010).

⁴ “Because a modification to parenting time is distinct from a change in custody, only if a change in parenting time results in a change in the established custodial environment should the court apply the proper cause and change of circumstances framework from [MCL 722.27\(1\)\(c\)](#) to a proposed change in parenting time.” *Sabatine*, ___ Mich at ___ (cleaned up). “Minor modifications that leave a party’s parenting time essentially intact do not change a child’s established custodial environment, but significant changes do.” *Barretta v Zhitkov*, ___ Mich App ___, ___ (2023) (cleaned up).

proposed parenting time modification. *Bowling v McCarrick*, 318 Mich App 568, 571-572 (2016).

- If the proposed modification only alters a condition of parenting time, the moving party must demonstrate proper cause or a change in circumstances that would justify a trial court's determination that the condition in its current form no longer serves the child's best interests. *Kaeb v Kaeb*, 309 Mich App 556, 571-572 (2015).

Procedures to follow during the evidentiary hearing:

- Confirm proof of service.
- If there was an FOC recommendation, and a party objected to the recommendation, the court may admit a statement of fact from the FOC's written report or recommendation as evidence to prove a fact relevant to the proceeding if no other evidence is presented concerning the fact, and the parties agree or no objection is made to the admission of the statement of fact. [MCL 552.517d\(4\)](#).
- Determine whether a response to the motion was filed.
- If modification WILL affect the child's established custodial environment**, "the proposal is essentially a change in custody, and *Vodvarka* governs." *Lieberman*, 319 Mich App at 84. *Vodvarka*, 259 Mich App at 499, requires a movant to prove by clear and convincing evidence that modification is in the child's best interest by considering, evaluating, and determining each of the best interests factors listed in [MCL 722.23](#). See also [MCL 722.27\(1\)\(c\)](#). If the motion affects custody, see the Michigan Judicial Institute's *Child Custody Dispute Between Parents Checklist*.

Best Interests Factors Under [MCL 722.23](#)

- The love, affection, and other emotional ties existing between the parties involved and the child.
- The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
- The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
- The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- The permanence, as a family unit, of the existing or proposed custodial home or homes.
- The moral fitness of the parties involved.
- The mental and physical health of the parties involved.
- The home, school, and community record of the child.
- The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
- The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents. A court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.
- Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
- Any other factor considered by the court to be relevant to a particular child custody dispute.

- If modification will NOT affect the child’s established custodial environment:** Determine whether the movant has proved by a preponderance of the evidence that modification is in the best interests of the child, considering only those factors relevant to the case under [MCL 722.23](#) (see above) and/or [MCL 722.27a](#). See [MCL 722.27a\(7\)](#); *Lieberman*, 319 Mich App at 83-84; *Shade*, 291 Mich App at 31-32.

Factors to Consider Under [MCL 722.27a](#)

- The existence of any special circumstances or needs of the child.
- Whether the child is a nursing child less than 6 months of age, or less than 1 year of age if the child receives substantial nutrition through nursing.
- The reasonable likelihood of abuse or neglect of the child during parenting time.
- The reasonable likelihood of abuse of a parent resulting from the exercise of parenting time.
- The inconvenience to, and burdensome impact or effect on, the child of traveling for purposes of parenting time.
- Whether a parent can reasonably be expected to exercise parenting time in accordance with the court order.
- Whether a parent has frequently failed to exercise reasonable parenting time.

Consider whether a parent is deployed, and follow proper procedures. [MCL 722.27a\(16\)-\(18\)](#).

Unless both parents provide written consent, do NOT modify parenting time if the modification permits a parent to exercise parenting time in a country that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction.⁵ *Safdar v Aziz*, 327 Mich App 252, 257 (2019), citing [MCL 722.27a\(10\)](#).

Orders concerning parenting time must be affirmed on appeal unless the trial court’s findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue. *Shade*, 291 Mich App at 20-21.

⁵ 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*, 327 Mich App 252, 266 (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\(10\)](#)”).

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](#).