## Determine/Modify Interstate Child-Custody Dispute Checklist (Preliminary Matters)

The Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 et seq., prescribes the court's powers and duties in a child-custody proceeding that involves this state and a proceeding or party outside of this state. An Indian tribe and foreign country must be treated as a state of the United States for purposes of the UCCJEA. See MCL 722.1104(2); MCL 722.1105(1). For a checklist specific to enforcement of an interstate, international, or tribal child-custody determination, refer to the Michigan Judicial Institute's Request for Enforcement of Child-Custody Determination Checklist (Preliminary Matters) and Request for Enforcement of Child-Custody Determination Checklist (Hearing).

The first assessment the court must make is to determine whether a child custody proceeding has been commenced in another jurisdiction.

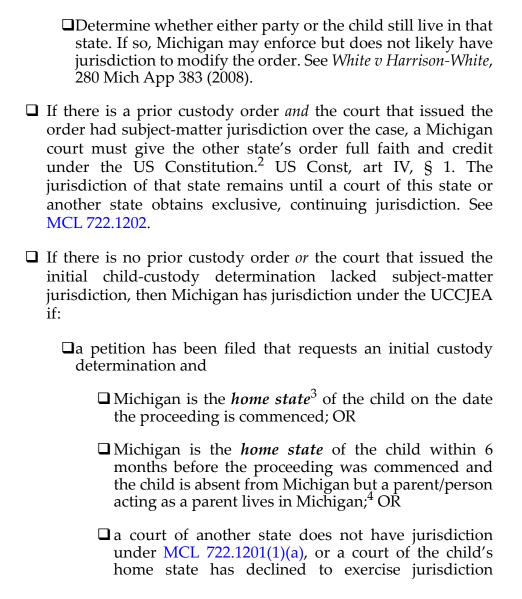
For purposes of the UCCJEA, a *child-custody proceeding* is defined in MCL 722.1102(d).

For purposes of the UCCJEA, a *child-custody determination* is defined in MCL 722.1102(c).

"Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child-custody determination." MCL 722.1201(3).

To make sure all the proper procedures have been followed leading up to a child-custody hearing, the court should make the following inquiries and determinations:<sup>1</sup>

☐ Determine whether a child custody order exists in any jurisdiction.

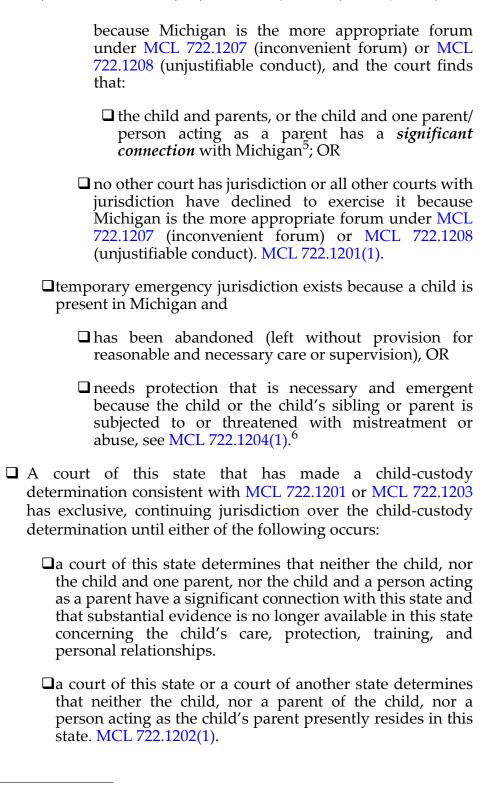


<sup>&</sup>lt;sup>1</sup>Ensure the case is not excluded from UCCJEA proceedings because the case is an adoption proceeding, or the case pertains to authorizing emergency medical care for the child, MCL 722.1103. Determine whether the child is an Indian child OR or whether the court has reason to believe the child is an Indian child. If so, ensure the provisions of the Indian Child Welfare Act (ICWA), 25 USC 1901 et seq., and the Michigan Indian Family Preservation Act (MIFPA), MCL 712B.1 et seq, are being followed. MCL 722.1104(1).

<sup>&</sup>lt;sup>2</sup>A Michigan trial court is not required to afford full faith and credit to another state's child-custody order when the other state lacked subject-matter jurisdiction over the case under the UCCJEA. *Nock v Miranda-Bermudez*, \_\_\_\_ Mich App \_\_\_\_, \_\_\_ (2023) (California lacked subject-matter jurisdiction over a custody dispute when the defendant filed for custody in California more than six months after the plaintiff moved the children with her to Michigan, making Michigan the home state for purposes of the UCCJEA and authorizing the Michigan trial court to issue orders concerning custody of the parties' children).

<sup>&</sup>lt;sup>3</sup> For purposes of the UCCJEA, home state is defined in MCL 722.1102(g).

<sup>&</sup>lt;sup>4</sup> "[T]he focus of the UCCJEA concerns a child's actual presence [in a location], not his or her intent to remain [in that location]." *Ramamoorthi v Ramamoorthi*, 323 Mich App 324, 339 (2018) ("regardless of whether the children properly could be considered residents of Michigan because they intended to return there, the trial court erred when it found that it had jurisdiction over the parties' custody dispute under the UCCJEA" because "the children had 'lived with' a parent in India for more than six consecutive months . . . immediately before [the] plaintiff filed [the] action" and thus India, not Michigan, "qualifie[d] as the children's home state [as defined in MCL 722.1102(g)] under the UCCJEA.").

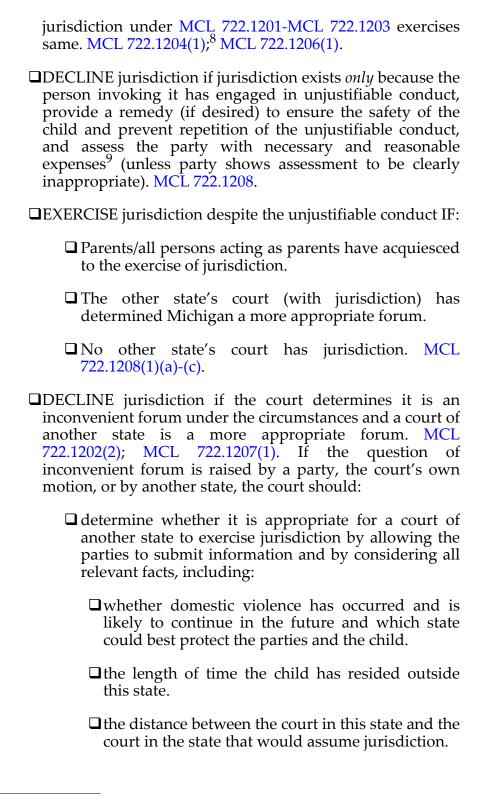


<sup>&</sup>lt;sup>5</sup>"For Michigan to obtain 'significant connections' jurisdiction, there must be no other state with jurisdiction as the home state, and the court must find that: (1) the child and the child's parents have a significant connection with this state other than mere physical presence, and (2) substantial evidence is available in this state addressing the child's care, protection, training, and personal relationships." *Veneskey v Sulier*, 338 Mich App 539, 547 (2021).

<sup>&</sup>lt;sup>6</sup> "MCL 722.1204(1) provides . . . for emergency jurisdiction under certain circumstances, but . . . requires that a child be 'present in this state' for it to apply." *Ramamoorthi v Ramamoorthi*, 323 Mich App 324, 336 (2018).

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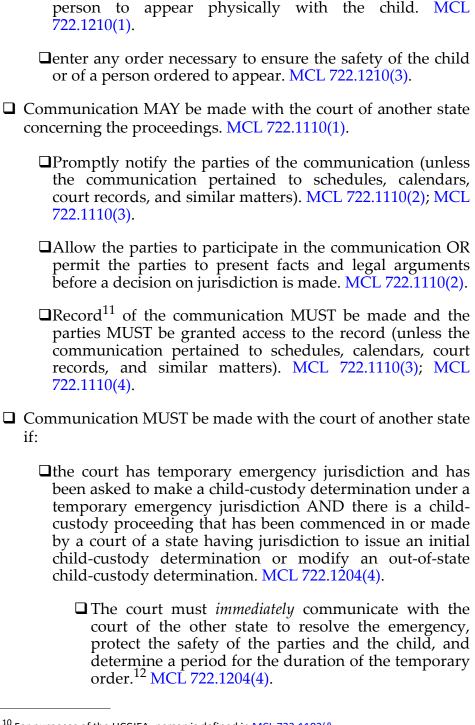
<sup>&</sup>lt;sup>7</sup> For purposes of the UCCJEA, *home state* is defined in MCL 722.1101(g).



<sup>&</sup>lt;sup>8</sup> "MCL 722.1204(1) provides . . . for emergency jurisdiction under certain circumstances, but . . . requires that a child be 'present in this state' for it to apply." *Ramamoorthi v Ramamoorthi*, 323 Mich App 324, 336 (2018).

<sup>&</sup>lt;sup>9</sup> Assessment of necessary and reasonable expenses includes "costs, communication expenses, attorney fees, investigative fees, witness expenses, travel expenses, and child care expenses during the course of the proceedings[.]" MCL 722.1208(3). Note, however, that the court may not "assess fees, costs, or expenses against this state unless authorized by law other than this act." *Id.* 

□ if the party is the child who is in Michigan and is under the physical custody or control of another person: <sup>10</sup> order the



<sup>&</sup>lt;sup>10</sup> For purposes of the UCCJEA, person is defined in MCL 722.1102(I).

<sup>&</sup>lt;sup>11</sup> For purposes of MCL 722.1110, record is defined in MCL 722.1110(5).

<sup>&</sup>lt;sup>12</sup>A Michigan court must engage in this communication before the Michigan court may decline to exercise jurisdiction over the child. *In re J Thornhill*, \_\_\_ Mich \_\_\_, \_\_\_ (2023). Without having communicated with another state involved with a child's custody before deciding against exercising temporary emergency jurisdiction, "the court lacked sufficient knowledge to make a meaningful determination as to whether to exercise emergency jurisdiction in light of the abuse in Michigan." *Id.* at \_\_\_. Specifically, the Michigan court "did not know whether the emergency was over or ongoing [and it] did not know . . . whether [the other state's] courts intend[ed] to exercise jurisdiction over the minor child in light of the abuse in Michigan or whether they believe[d] that Michigan [was] the more appropriate forum for any proceedings." *Id.* at \_\_\_.

- □at the time of the commencement of proceedings, the court determines that a child-custody proceeding has been commenced in a court in another state, the court *must* STAY its proceeding and communicate with the court of the other state. MCL 722.1206(2).
  - □ DISMISS the child-custody proceeding IF it is determined that this court is not the appropriate forum.
- ☐ Hold a child-custody hearing.

If a question of the existence or exercise of jurisdiction under the UCCJEA is raised, on a party's request, the question MUST be given priority on the court calendar and handled expeditiously. MCL 722,1107.

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.