

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:¹

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

- Determine whether either party or the child still live in that state. If so, Michigan may enforce but does not likely have jurisdiction to modify the order. See *White v Harrison-White*, 280 Mich App 383 (2008).
- If there is a prior custody order *and* the court that issued the order had subject-matter jurisdiction over the case, a Michigan court must give the other state's order full faith and credit under the US Constitution.² US Const, art IV, § 1. The jurisdiction of that state remains until a court of this state or another state obtains exclusive, continuing jurisdiction. See [MCL 722.1202](#).
- If there is no prior custody order *or* the court that issued the initial child-custody determination lacked subject-matter jurisdiction, then Michigan has jurisdiction under the UCCJEA if:
 - a petition has been filed that requests an initial custody determination and
 - Michigan is the *home state*³ of the child on the date the proceeding is commenced; OR
 - Michigan is the *home state* of the child within 6 months before the proceeding was commenced and the child is absent from Michigan but a parent/person acting as a parent lives in Michigan;⁴ OR
 - a court of another state does not have jurisdiction under [MCL 722.1201\(1\)\(a\)](#), or a court of the child's home state has declined to exercise jurisdiction

¹Ensure 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\(1\)](#).

²A 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).

³ For purposes of the UCCJEA, *home state* is defined in [MCL 722.1102\(g\)](#).

⁴ "[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.").

because Michigan is the more appropriate forum under [MCL 722.1207](#) (inconvenient forum) or [MCL 722.1208](#) (unjustifiable conduct), and the court finds that:

- the child and parents, or the child and one parent/person acting as a parent has a *significant connection* with Michigan⁵; OR
- no other court has jurisdiction or all other courts with jurisdiction have declined to exercise it because Michigan is the more appropriate forum under [MCL 722.1207](#) (inconvenient forum) or [MCL 722.1208](#) (unjustifiable conduct). [MCL 722.1201\(1\)](#).
- temporary emergency jurisdiction exists because a child is present in Michigan and
 - has been abandoned (left without provision for reasonable and necessary care or supervision), OR
 - needs protection that is necessary and emergent because the child or the child's sibling or parent is subjected to or threatened with mistreatment or abuse, see [MCL 722.1204\(1\)](#).⁶
- A court of this state that has made a child-custody determination consistent with [MCL 722.1201](#) or [MCL 722.1203](#) has exclusive, continuing jurisdiction over the child-custody determination until either of the following occurs:
 - a court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships.
 - a court of this state or a court of another state determines that neither the child, nor a parent of the child, nor a person acting as the child's parent presently resides in this state. [MCL 722.1202\(1\)](#).

⁵"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).

⁶ "[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).

- A court of this state that has exclusive, continuing jurisdiction under [MCL 722.1202](#) may decline to exercise its jurisdiction if the court determines that it is an inconvenient forum under [MCL 722.1207](#). [MCL 722.1202\(2\)](#).
- A court of this state that has made a child-custody determination and that does not have exclusive, continuing jurisdiction under [MCL 722.1202](#) may modify that child-custody determination only if it has jurisdiction to make an initial child-custody determination under [MCL 722.1201](#). [MCL 722.1202\(3\)](#).
- If a petition has been filed that requests a modification to an out-of-state custody/parenting time order and it appears that the issuing state has lost jurisdiction, then:
 - Michigan has jurisdiction necessary to make an initial child-custody determination if Michigan determines it is the *home state*⁷ or has a *significant connection* to the child and parent(s), and either:
 - the court of the other state determines it no longer has continuing, exclusive jurisdiction *or* that a Michigan court would be a more convenient forum; OR
 - a Michigan court or a court of the other state determines that neither the child, nor a parent of the child, nor a person acting as a parent presently resides in the other state. [MCL 722.1203](#).
- Determine whether jurisdiction is proper, [MCL 722.1201](#). If jurisdiction is proper, determine whether it may be exercised:
 - EXERCISE jurisdiction if *no* child-custody proceeding was commenced in another state at the time this proceeding was commenced. [MCL 722.1206\(1\)](#).
 - EXERCISE jurisdiction if a child-custody proceeding was commenced in another state at the time this proceeding was commenced, *but* the proceeding was subsequently terminated or has been stayed by the other court because Michigan is a more convenient forum. [MCL 722.1206\(1\)](#).
 - EXERCISE temporary emergency jurisdiction (the child is in Michigan and is abandoned or needs protection that is necessary and emergent because the child or the child's sibling or parent is subjected to or threatened with mistreatment or abuse) until the court with proper

⁷ For purposes of the UCCJEA, *home state* is defined in [MCL 722.1101\(g\)](#).

jurisdiction under [MCL 722.1201-MCL 722.1203](#) exercises same. [MCL 722.1204\(1\)](#);⁸ [MCL 722.1206\(1\)](#).

DECLINE jurisdiction if jurisdiction exists *only* because the person invoking it has engaged in unjustifiable conduct, provide a remedy (if desired) to ensure the safety of the child and prevent repetition of the unjustifiable conduct, and assess the party with necessary and reasonable expenses⁹ (unless party shows assessment to be clearly inappropriate). [MCL 722.1208](#).

EXERCISE jurisdiction despite the unjustifiable conduct IF:

Parents/all persons acting as parents have acquiesced to the exercise of jurisdiction.

The other state's court (with jurisdiction) has determined Michigan a more appropriate forum.

No other state's court has jurisdiction. [MCL 722.1208\(1\)\(a\)-\(c\)](#).

DECLINE jurisdiction if the court determines it is an inconvenient forum under the circumstances and a court of another state is a more appropriate forum. [MCL 722.1202\(2\)](#); [MCL 722.1207\(1\)](#). If the question of inconvenient forum is raised by a party, the court's own motion, or by another state, the court should:

determine whether it is appropriate for a court of another state to exercise jurisdiction by allowing the parties to submit information and by considering all relevant facts, including:

whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child.

the length of time the child has resided outside this state.

the distance between the court in this state and the court in the state that would assume jurisdiction.

⁸ "[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).

⁹ 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.*

- the parties' relative financial circumstances.
- an agreement by the parties as to which state should assume jurisdiction.
- the nature and location of the evidence required to resolve the pending litigation, including the child's testimony.
- the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.
- the familiarity of the court of each state with the facts and issues of the pending litigation. [MCL 722.1207\(2\)](#). **Note** that these factors "are not an exclusive list." *Veneskey*, 338 Mich App at 549, 550 n 7.
- if the court determines it is an inconvenient forum and another state is a more appropriate forum,
 - STAY the proceedings on the condition that the child-custody proceeding be promptly commenced in another designated state, and
 - impose any other condition that is just and proper. [MCL 722.1207\(3\)](#).
- may DECLINE jurisdiction if the child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding. [MCL 722.1207\(4\)](#).
- If a party's presence is desired for a custody/modification/enforcement hearing, the court may:
 - if the party is in Michigan: order the party to appear, with or without the child. [MCL 722.1210\(1\)](#).
 - if the party is outside of Michigan: order that notice to the party include a statement directing the party to appear personally, with or without the child, and declare failure to appear may result in a decision adverse to the party. [MCL 722.1210\(2\)](#).
 - May require another party to pay reasonable and necessary travel and other expenses for the out-of-state party's appearance. [MCL 722.1210\(4\)](#).
 - if the party is the child who is in Michigan and is under the physical custody or control of another person:¹⁰ order the

- person to appear physically with the child. [MCL 722.1210\(1\)](#).
- Enter any order necessary to ensure the safety of the child or of a person ordered to appear. [MCL 722.1210\(3\)](#).
 - Communication MAY be made with the court of another state concerning the proceedings. [MCL 722.1110\(1\)](#).
 - Promptly notify the parties of the communication (unless the communication pertained to schedules, calendars, court records, and similar matters). [MCL 722.1110\(2\)](#); [MCL 722.1110\(3\)](#).
 - Allow the parties to participate in the communication OR permit the parties to present facts and legal arguments before a decision on jurisdiction is made. [MCL 722.1110\(2\)](#).
 - Record¹¹ of the communication MUST be made and the parties MUST be granted access to the record (unless the communication pertained to schedules, calendars, court records, and similar matters). [MCL 722.1110\(3\)](#); [MCL 722.1110\(4\)](#).
 - Communication MUST be made with the court of another state if:
 - the court has temporary emergency jurisdiction and has been asked to make a child-custody determination under a temporary emergency jurisdiction AND there is a child-custody proceeding that has been commenced in or made by a court of a state having jurisdiction to issue an initial child-custody determination or modify an out-of-state child-custody determination. [MCL 722.1204\(4\)](#).
 - The court must *immediately* communicate with the court of the other state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.¹² [MCL 722.1204\(4\)](#).

¹⁰ For purposes of the UCCJEA, *person* is defined in [MCL 722.1102\(f\)](#).

¹¹ For purposes of [MCL 722.1110](#), *record* is defined in [MCL 722.1110\(5\)](#).

¹² 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](#).