

Determine/Modify Interstate Child-Custody Dispute Checklist (Hearing)

A child-custody determination made by a Michigan court with jurisdiction under the UCCJEA binds all persons who were properly served and notified or who submitted to the court's jurisdiction, and were given an opportunity to be heard. The child-custody determination is conclusive as to all decided issues of law and fact (unless modified). [MCL 722.1106](#).

For purposes of the UCCJEA, *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\(3\)](#).

During the child-custody hearing, ensure that each party entitled to notice was given proper notice and an opportunity to be heard before a child custody determination is made. [MCL 722.1108\(1\)](#); [MCL 722.1205\(1\)](#).

If the court has:

temporary emergency jurisdiction because 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, [MCL 722.1204\(1\)](#),¹ AND

there is NO previous child-custody determination that is entitled to be enforced under the UCCJEA² *and*

¹ "[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).

²A custody order entered by a state not having subject-matter jurisdiction over the matter is not entitled to enforcement under the UCCJEA. *Nock v Miranda-Bermudez*, ___ Mich App ___, ___ (2023).

a child-custody proceeding has NOT been commenced in a court of a state having jurisdiction to issue an initial child-custody determination or modify an out-of-state child-custody determination,

ISSUE a temporary child-custody determination,

include a provision (if desired) that the determination will become a final child-custody determination if Michigan becomes the home state³ and a child-custody proceeding has not been or is not commenced in 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\(2\)](#).

there IS a previous child-custody determination that is entitled to be enforced under the UCCJEA, then a Michigan court must give the other state's order full faith and credit under the US Constitution.⁴ US Const, art IV, § 1. In those cases, 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 emergency order.⁵ [MCL 722.1204\(4\)](#).

ISSUE a temporary emergency order that specifies a period of time the court deems adequate to allow a person to seek an order from the state that has jurisdiction to modify the child-custody determination. [MCL 722.1204\(3\)](#); [MCL 722.1309\(1\)](#).

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

⁴ 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).

⁵ 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, in *Thornhill*, 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 ___.

- a child-custody proceeding HAS BEEN commenced in a court of a state having jurisdiction to issue an initial child-custody determination or modify an out-of-state child-custody determination,
 - 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 emergency order.⁶ [MCL 722.1204\(4\)](#).
 - ISSUE a temporary emergency order that specifies a period of time the court deems adequate to allow a person to seek an order from the state that has jurisdiction to issue an initial child-custody determination or modify the child-custody determination. [MCL 722.1204\(3\)](#).
- jurisdiction to *issue* or *modify* a child-custody determination,
 - Verify a UCCJEA Affidavit was filed. [MCR 3.206\(B\)](#).
 - Remind the parties of their continuing duty to inform the court of a proceeding in this or another state that could affect the current child-custody proceeding. [MCL 722.1209\(4\)](#).
 - Permit testimony of out-of-state party or witness by deposition or testifying by telephone, audiovisual means, or other electronic means. [MCL 722.1111\(1\)](#); [MCL 722.1111\(2\)](#).
 - May order testimony of out-of-state person. [MCL 722.1111\(2\)](#).
 - Documentary evidence transmitted from another state by technological means that do not produce an original writing may NOT be excluded from evidence on an objection based on the means of transmission. [MCL 722.1111\(3\)](#).

⁶A 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, in *Thornhill*, 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 ___.

- Determine whether to request the court of another state to:
 - hold an evidentiary hearing.
 - order a person to produce or give evidence or give evidence under procedures of that state.
 - order an evaluation be made with respect to the custody of a child involved in a pending proceeding.
 - forward a certified copy of the transcript of the record of the hearing to this court, the evidence otherwise presented, and an evaluation prepared in compliance with the request.
 - order a party to a child-custody proceeding or a person having physical custody of the child to appear in the proceeding with or without the child. [MCL 722.1112\(1\)](#).

Note: Travel and other necessary and reasonable expenses incurred may be assessed against the parties. [MCL 722.1112\(3\)](#).

- Issue a child custody determination (judgment, decree, or other court order) or modification order that provides for legal custody, physical custody, or parenting time with respect to the child that becomes binding on all persons who were properly served and notified (or submitted to the court's jurisdiction), and were given an opportunity to be heard. [MCL 722.1102\(c\)](#); [MCL 722.1106](#).

Note: The child-custody determination is conclusive as to all decided issues of law and fact (unless modified). [MCL 722.1106](#).

- Preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to the child-custody proceeding until the child attains 18 years of age. [MCL 722.1112\(4\)](#).
- Forward a certified copy of the records if a court or law enforcement official of another state appropriately requests. [MCL 722.1112\(4\)](#).

Court maintains exclusive, continuing jurisdiction over the child-custody determination. Once the court makes an initial child-custody determination OR modifies an out-of-state child-custody determination,

the court has exclusive, continuing jurisdiction over the child-custody determination until:

- the court 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; OR
- the court 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\(1\)](#).

Duration of temporary child-custody order. A temporary child-custody determination issued under the court's temporary emergency jurisdiction remains in effect until:

- an order is obtained from a court of a state having jurisdiction to issue an initial child-custody determination or modify an out-of-state child-custody determination, OR
- it becomes a final child-custody determination IF:
 - that is what the temporary child-custody order provides,
 - Michigan becomes the child's home state,⁷ AND
 - a child-custody proceeding has not been or is not commenced in 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\(2\)](#).

Duration of temporary emergency order. A temporary emergency order issued under the court's temporary emergency jurisdiction remains effective until an order is obtained from the other state within the period specified in the order (court order must specify a period of time that is adequate to allow the person seeking an order to obtain an order from the state having jurisdiction to issue an initial child-custody determination or modify the child-custody determination) OR the period expires. [MCL 722.1204\(3\)](#).

Duration of temporary enforcement order. A temporary order to enforce another state's parenting time provision that does not provide for a specific parenting time schedule remains in effect until an order is obtained from another court within the period specified in the order (court order must specify a period of time that is adequate to allow the

⁷ For purposes of the UCCJEA, *home state* is defined in [MCL 722.1102\(g\)](#).

petitioner to obtain an order from a court having jurisdiction to modify the child-custody determination) OR the period expires. [MCL 722.1302\(3\)](#).

If a question of 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](#).