

Child Custody Dispute (Third Person Involved) Checklist

A dispute over a minor child’s custody may be raised as an original action under the Child Custody Act (CCA), [MCL 722.21 et seq.](#), or incident to another action, so make this determination early to ensure appropriate procedures have been followed.¹ See [MCL 722.27\(1\)](#); [MCR 3.204](#); [MCR 3.205](#).

Although the CCA distinguishes between physical custody and legal custody, caselaw has indicated since 2003 that “custody” logically refers to both physical custody and legal custody. *Merecki v Merecki*, 336 Mich App 639, 647 (2021). There is no distinction between the legal standard required to change physical custody and the standard to change legal custody. *Id.* See *Vodvarka v Grasmeyer*, 259 Mich App 499, 509-514 (2003).

In all actions that involve a dispute over a minor child’s custody, the court must declare the child’s inherent rights and establish the rights and duties as to the child’s custody, support, and parenting time in accordance with the CCA. [MCL 722.24\(1\)](#). If paternity has not been established, refer to the Paternity Act, [MCL 722.711 et seq.](#)

All child custody disputes have precedence for hearing and assignment for trial over other civil actions. [MCL 722.26\(1\)](#).

The court may refer the case to the Friend of the Court (FOC) for an investigation and recommendation on custody. See [MCL 552.505\(1\)\(d\)](#). After reviewing the recommendation, the court then makes the ultimate custody decisions after applying the law to all relevant evidence.

¹ “[A] circuit court has jurisdiction to consider a motion to change the domicile of a minor child established by a custody award in a divorce judgment while that underlying judgment is pending on appeal”; [“MCL 722.27\(1\) authorizes the continuing jurisdiction of a circuit court to modify or amend its previous judgments or orders and is an exception to MCR 7.208\(A\) ‘otherwise provided by law.’”](#) *Safdar v Aziz*, 501 Mich 213, 215, 219 (2018) (“[MCL 722.27\(1\)\(c\)](#) specifically permits the circuit court to modify or amend its orders when proper cause is shown or when there has been a change of circumstances,” and “[i]ts sole limiting principle is that the modification be in the best interests of the child”; accordingly, “it would be contrary to the plain language of the [Child Custody Act, [MCL 722.21 et seq.](#)] to require a court to wait for the conclusion of an appeal to address a change in circumstances that would affect the interests of the child.”)

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

- Determine who the parties are.
- Understand the scope and application of the best interests factors throughout the proceeding.
- Take preliminary steps related to service, proper cause/change of circumstances, and appointing a lawyer-guardian ad litem (LGAL) if necessary.
- Make findings regarding the established custodial environment, if any.
- Settle the child custody dispute, which could include ordering sole/joint custody, child support, reasonable parenting time, modifying previous judgments/orders, and/or taking any other action necessary.

Parties Involved

If a dispute over a minor child's custody is raised, inquire and determine the following:

- Whether the dispute involves a third person (someone other than a parent). See [MCL 722.22\(k\)](#); [MCL 722.26c\(1\)](#).
 - If not and the child custody dispute is between the child's parents, refer to the Michigan Judicial Institute's [Child Custody Dispute Between Parents Checklist](#).
 - If not and the child custody dispute involves an agency, refer to the Michigan Judicial Institute's [Child Custody Dispute \(Agency Involved\) Checklist](#).
 - If not and the child custody dispute involves a guardian or limited guardian, refer to the Michigan Judicial Institute's [Child Custody Dispute \(Guardian/Limited Guardian Involved\) Checklist](#).
- Ensure the third person has standing to bring an action for custody under the CCA. Third person HAS standing to bring action *if* the court finds:
 - the child was placed for adoption with the third person, the placement order is still in effect at the time the action was filed, and the child has resided with the third person for at least six months after the placement; OR
 - the child's biological parents never married each other, the child's custodial parent dies or is missing and the noncustodial parent does not have legal custody under court order, and the third person is related to the child within the fifth degree by marriage, blood, or adoption. [MCL 722.26c\(1\)](#).
- Ensure third person filing an action also included:
 - an affidavit setting out facts relative to the existence of the prerequisites required under [MCL 722.26c\(1\)](#), AND
 - notice of a defense or objection to the third person's right to bring an action based on an affirmative defense or lack of standing. [MCL 722.26c\(2\)](#).
 - In an action filed by a third person, MAY appoint an attorney for a parent, order necessary and reasonable amount of money to reimburse court for party's attorney,² and assess fees and costs for frivolous action or defense to action as provided for in [MCL 600.2591](#). [MCL 722.26e\(2\)](#).

Scope and Application of Best Interests Factors

- The *best interests of the child* control. [MCL 722.25\(1\)](#). See [MCL 722.23](#) for the *best interests of the child* factors.
- If child custody dispute is between parent(s) and a third person, presume the best interests of the child are served by awarding custody to the parent(s), UNLESS the contrary is established by clear and convincing evidence. [MCL 722.25\(1\)](#).

Service, Proper Cause/Change of Circumstances, and LGAL Requirements

- Ensure proper service. [MCR 3.203](#).
- Determine whether proper cause or a change of circumstances exists to warrant modification or amendment of previous judgments or orders; burden of proof is preponderance of the evidence. [MCL 722.27\(1\)\(c\)](#); *Vodvarka v Grasmeyer*, 259 Mich App 499, 509 (2003).
- At any time, determine whether the child's best interests are adequately represented; if not, MAY appoint a lawyer-guardian ad litem (LGAL) to represent the child. [MCL 722.24\(2\)](#). See also [MCR 3.204\(D\)](#).
 - LGAL may file a written report and recommendation, which the court may read, but is not admissible into evidence *unless* all parties stipulate to its admission. [MCL 722.24\(3\)](#).
 - The court may assess all or part of the costs and reasonable fees of the LGAL against one or more of the parties, after a determination of ability to pay. An LGAL must not be paid a fee unless it is received and approved by the court. [MCL 722.24\(4\)](#).

Established Custodial Environment

- Determine whether an established custodial environment exists:³ **do not** modify or amend any previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear

² Moving party must allege facts showing that the party is otherwise unable to bear the expense of the action, and the court must require the disclosure of attorney fees or other expenses paid. [MCL 722.26e\(2\)\(b\)](#).

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).

and convincing evidence that it is in the best interests of the child. [MCL 722.27\(1\)\(c\)](#).⁴ “Custody decisions require findings under all of the best interest factors.” *Shade v Wright*, 291 Mich App 17, 31 (2010).

- The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. [MCL 722.27\(1\)\(c\)](#).
- The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship must also be considered. [MCL 722.27\(1\)\(c\)](#).
- When a modification of custody would not change the established custodial environment**, determine whether the moving party has shown by a preponderance of the evidence that it is in the child’s best interests. *Pierron v Pierron*, 486 Mich 81, 92-93 (2010).

Settle Child Custody Dispute

- Determine the child custody dispute by doing one or more of the following for the best interests of the child:⁵
 - MAY award custody of the child to one or more of the parties involved or to others and provide for payment of support for the child until the child reaches 18 years of age.⁶ [MCL 722.27\(1\)\(a\)](#).
 - MAY provide for reasonable parenting time of the child by the parties involved, by the maternal/paternal grandparents, or by others, by general or specific terms and conditions. [MCL 722.27a](#) governs parenting time of the child by the parents. [MCL 722.27\(1\)\(b\)](#). Refer to the

⁴ “[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) (denying the application for leave to appeal the Court of Appeals’ judgment but taking the “opportunity to emphasize how critical it is that trial courts fully comply with [MCL 722.27\(1\)\(c\)](#) before entering an order that alters a child’s established custodial environment[]”).

⁵ See [MCL 722.23](#) for *best interests of the child* factors.

⁶ The court may require that support payments be made through the Friend of the Court (FOC), court clerk, or the state disbursement unit (SDU). [MCL 722.27\(1\)\(a\)](#). A judgment or order entered under the CCA providing for child support is governed by and is enforceable under the Support and Parenting Time Enforcement Act (SPTEA), [MCL 552.601 et seq.](#) [MCL 722.27\(2\)](#). For a checklist on issuing child support, including issuance of support after a child reaches 18 years of age, see the Michigan Judicial Institute’s [Issuance of Child Support Checklist](#).

Michigan Judicial Institute's *Establishing Parenting Time Checklist* for the procedures.

- MAY modify/amend previous judgments/orders (unless parent is on deployment)⁷ for *proper cause* shown or because of *change of circumstances* (available until the child reaches 18 years of age).⁸
 - Must NOT modify/amend previous judgments/orders or issue a new order so as to change the *established custodial environment* of a child *unless* clear and convincing evidence that it is in the best interests of the child is presented.
- MAY utilize a guardian ad litem or the community resources in behavioral sciences and other professions in the investigation and study of custody disputes and consider their recommendations for the resolution of the disputes.
- MAY take any other action considered to be necessary in a particular child custody dispute. [MCL 722.27\(1\)](#).

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](#).

⁷ Special procedures apply for a parent **on deployment**. [MCL 722.27\(1\)\(c\)](#); [MCL 722.27\(3\)](#); [MCL 722.27a\(16\)](#). For a checklist on changing child custody or parenting time while a parent is on deployment, see the Michigan Judicial Institute's *Changing Child Custody or Parenting Time While Parent on Deployment Checklist*. If a motion for change of custody or parenting time is filed **after** a parent returns from deployment, the court must NOT consider a parent's absence due to that deployment (or future deployments) in making a *best interests of the child* determination. [MCL 722.27\(4\)](#); [MCL 722.27a\(17\)](#).

⁸Subject to [MCL 552.605b](#), until the child reaches 19 years and 6 months of age.