

Changing Child Custody or Parenting Time While Parent on Deployment Checklist

If a motion for change of custody or parenting time is filed under the Child Custody Act (CCA), [MCL 722.21 et seq.](#), while a parent is on deployment,¹ a parent may file an application for stay. See [MCL 722.27\(3\)](#); [MCL 722.27a\(16\)](#). The application for stay or extension of a stay is sufficient if it is a signed, written statement, certified to be true under penalty of perjury. [MCL 722.27\(3\)](#); [MCL 722.27a\(16\)](#).

The parent may file an application for stay or otherwise request a stay of the proceedings or file an application for an extension of a stay at ANY stage BEFORE final judgment in the proceeding, and the court MUST entertain the application. [MCL 722.27\(3\)](#); [MCL 722.27a\(16\)](#). The parent and the custodial child are not required to be present to consider the application for stay or extension of stay. [MCL 722.27\(3\)](#); [MCL 722.27a\(16\)](#).

The court should make the following inquiries and determinations:

- Ensure proper service. [MCR 3.203](#).
- Determine if there is a prior judgment or order establishing custody.
 - If SO, determine whether this court has continuing jurisdiction over the child to modify the judgment or order.
 - If this court does NOT have continuing jurisdiction over the child, the action must “be submitted to the circuit court of the county where the child resides or may be found” [MCL 722.26\(2\)](#).

¹ [MCL 722.22\(e\)](#) defines *deployment* as “the movement or mobilization of a servicemember to a location for a period of longer than 60 days and not longer than 540 days under temporary or permanent official orders as follows: (i) That are designated as unaccompanied[;] (ii) For which dependent travel is not authorized[;] (iii) That otherwise do not permit the movement of family members to that location[;] (iv) The servicemember is restricted from travel.”

- Ensure petitioner has filed appropriate affidavit that:
 - states whether the respondent is in military service and shows the necessary facts to support the affidavit; OR
 - if the petitioner is unable to determine the respondent's military status, states that the petitioner is unable to determine whether the respondent is in military service. See [50 USC app § 521\(b\)\(1\)](#).
- Using petitioner's affidavit, determine whether the respondent is in military service *and deployed*. See [50 USC app § 521\(b\)\(2\)](#).
 - If the respondent is not in military service, do not use this checklist.**
 - If you cannot determine whether the respondent is in military service, before entering judgment, require petitioner to file a bond. See [50 USC app § 521\(b\)\(3\)](#).
- If it appears the respondent IS in military service, appoint an attorney for the servicemember. See [50 USC app § 521\(b\)\(2\)](#).
- Order a stay of proceedings for at least 90 days (on application by counsel or on court's own motion) IF:
 - there may be a defense to the action and it cannot be presented without the respondent's presence, [50 USC app § 521\(d\)\(1\)](#); OR
 - after due diligence, counsel has been unable to contact the respondent or otherwise determine if a meritorious defense exists, [50 USC app § 521\(d\)\(2\)](#).
- Do NOT enter an order modifying/amending a previous judgment/order, or issue a new order, that:
 - changes the child's established custodial environment without first holding an evidentiary hearing to determine whether clear and convincing evidence exists to support the order. [MCR 3.210\(C\)\(1\)](#). The hearing must be held within 56 days, *id.*, or within 21 days of the entry of an ex parte order issued under [MCR 3.207\(B\)\(1\)](#), [MCR 3.207\(C\)\(1\)\(b\)](#).
 - changes the child's placement that existed on the date the parent was called to deployment, except that the court may enter a *temporary custody order* IF there is clear and convincing evidence that it is in the *best interests of the child*.² [MCL 722.27\(3\)](#).

- A temporary order may not be issued without a hearing, unless the parties agree otherwise or fail to file a written objection or motion as provided in [MCR 3.207\(B\)\(5\)](#). [MCR 3.207\(C\)\(2\)](#).
- The deployed parent's duration of deployment must NOT be considered in making a best interest of the child determination. [MCL 722.27\(3\)](#).
- changes the parenting time of the child that existed on the date the parent was called to deployment (court MUST presume that the *best interests of the child*³ are served by not modifying, amending, or issuing a new parenting time order or judgment), except that a *temporary parenting time order* may be entered IF the contrary is established by clear and convincing evidence. [MCL 722.27a\(16\)](#).
- A temporary order may not be issued without a hearing, unless the parties agree otherwise or fail to file a written objection or motion as provided in [MCR 3.207\(B\)\(5\)](#). [MCR 3.207\(C\)\(2\)](#).
- If a *temporary custody or parenting time order* is issued, the temporary order:
 - MAY include a limit on the period of time the temporary order remains in effect. [MCL 722.27\(3\)](#); [MCL 722.27a\(16\)](#). MUST state its effective date and whether its provisions may be modified retroactively by a subsequent order. [MCR 3.207\(C\)\(4\)](#).
 - MUST include a provision that:
 - the parents *agreed* with how a change in either of the child's legal residences would be handled and a child's legal residence change done in compliance with that agreement does not raise the 100-mile rule; OR
 - if the parents did *not* agree on how a change in either of the child's legal residences would be handled, INCLUDE the following provision in the temporary order:

"A parent whose custody or parenting time of a child is governed by this order shall not change the legal residence of the child except in compliance with [MCL 722.31](#)[(100-mile rule)]." [MCL](#)

² See [MCL 722.23](#) for *best interests of the child* factors.

³ See [MCL 722.23](#) for *best interests of the child* factors.

722.31(5)REMAINS in effect until modified or until the entry of the final judgment or order. MCR 3.207(C)(5).

- ❑ On notification of a parent's deployment end date (parent must inform court of deployment end date before or within 30 days after that deployment end date), REINSTATE the custody or parenting time order in effect immediately preceding that period of deployment. MCL 722.27(4); MCL 722.27a(17).

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](#).