

# Changing Child's Legal Residence (100-Mile Rule) Checklist

If a parent files a motion seeking the court's permission to change a child's current legal residence, the court should inquire and determine the following:

- Determine whether the court's permission for the proposed change is needed:
  - YES, if the requesting parent is seeking to move more than 100 miles from the child's current legal residence, the child's two legal residences are currently less than 100 miles apart, the proposed move will make the child's legal residences farther apart, both parents share legal custody, AND the other parent is NOT consenting to the proposed change, or if the proposed residence is out of state. See [MCL 722.31\(1\)-\(2\)](#); [MCR 3.211\(C\)\(1\)](#).
  - NO, if the requesting parent's proposed change is *less than* 100 miles from the child's current legal residence. See [MCL 722.31\(1\)](#).
  - NO, if the other parent *consents* to the proposed change. See [MCL 722.31\(2\)](#).
  - NO, if the child custody order granted *sole legal custody* to one parent. See [MCL 722.31\(2\)](#).<sup>1</sup>

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<sup>1</sup>But see [MCR 3.211\(C\)](#), which, in addition to compliance with [MCL 722.31](#), requires that "[a] judgment or order awarding custody of a minor must provide that (1) the domicile or residence of the minor may not be moved from Michigan without the approval of the judge who awarded custody or the judge's successor . . ." [MCR 3.211\(C\)\(1\)](#), (3). Thus, if one parent has sole legal custody, [MCL 722.31](#) does not apply but [MCR 3.211\(C\)\(1\)](#) still does. See *Brecht v Hendry*, 297 Mich 732 (2012). Additionally, the court must consider if the proposed move will alter the child's established custodial environment. See *Sulaica v Rometty*, 308 Mich App 568 (2014).

- NO, if at the time the action determining the child custody order commenced, the child's legal residences were *already more than* 100 miles apart. See [MCL 722.31\(3\)](#).
- NO, if the proposed change in the child's legal residence would bring the child's two legal residences *closer together*. See [MCL 722.31\(3\)](#).
- Ensure proper service.
- 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\(2\)](#).
- Determine if the other parent filed a response to the request.
- Considering each of the following factors, determine (findings on the record as to each factor are not necessary) whether the requesting parent established by a preponderance of the evidence support for the motion to change residence:
  - that the proposed legal residence change has the capacity to improve the quality of life for both the child and the relocating parent.
  - the degree to which each parent has complied with, and utilized his/her time under, a court order governing parenting time with the child, and whether the parent's plan to change the child's legal residence is inspired by that parent's desire to defeat or frustrate the parenting time schedule.
  - the degree to which the court is satisfied that, if the court permits the proposed legal residence change, it is possible to order a modification of the parenting time schedule and other arrangements governing the child's schedule in a manner that can provide an adequate basis for preserving and fostering the parental relationship between the child and each parent; and whether each parent is likely to comply with the modification.
  - the extent to which the parent opposing the legal residence change is motivated by a desire to secure a financial advantage with respect to a support obligation.

- domestic violence exists, regardless of whether the violence was directed against or witnessed by the child. [MCL 722.31\(4\)](#); *Rains v Rains*, 301 Mich App 313, 325 (2013); *Yachcik v Yachcik*, 319 Mich App 24, 33-34 (2017).
- If the factors SUPPORT a change in legal residence, determine whether an established custodial environment exists. *Rains*, 301 Mich App at 325.
  - If NO, *may* issue the order.
  - If YES, determine whether the proposed change of legal residence would modify or alter that established custodial environment. *Rains*, 301 Mich App at 325.
    - If a change of legal residence would NOT modify or alter the child's established custodial environment, *may* issue the order.
    - If a change of legal residence WOULD modify or alter the child's established custodial environment, schedule an evidentiary hearing to determine whether the change in legal residence would be in the child's best interests by considering whether the *best interests of the child* factors in [MCL 722.23](#) have been established by clear and convincing evidence. *Rains*, 301 Mich App at 325; [MCR 3.210\(C\)\(1\)](#).
      - If NOT in the child's best interests, do *not* issue the order.
      - If a change of legal residence IS in the child's best interests, issue the order.
- If the order for change of domicile is contested, a hearing must be held within 56 days
  - after the court orders, or
  - after notice of a request for a hearing is filed unless the parties agreed to mediation—then the hearing must be held within 56 days of the last session of a failed mediation. See [MCR 3.210\(C\)\(1\)](#).
- If the order is issued, it MUST include a provision in the order that:
  - the parents AGREED as to how a change in either of the child's legal residences will be handled.
    - If such a provision is included in the order and a child's legal residence change is done in compliance

with that provision, the 100-mile rule does NOT apply. [MCL 722.31\(5\)](#).

- if the parents do NOT agree as to how a change in either of the child's legal residences will be handled, the court *must* include in the order the following provision:

“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 722.31\(5\)](#).

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](#).