

CUSTODY AND PARENTING TIME INVESTIGATION MANUAL

2024

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I. Introduction

[MCL 552.505\(1\)\(g\)](#) provides, “The friend of the court is to investigate all relevant facts and make a written report and recommendation to parents and to the court regarding child custody or parenting time or both...” If custody has been established by court order, the court shall order an investigation only if the court first finds that proper cause has been shown or that there has been a change of circumstances.”¹

This manual provides friend of the court (FOC) investigators with resources to assist them in making court recommendations regarding custody and parenting time. In addition to custody and parenting time investigations, the manual addresses established custodial environment, change of residence, change of domicile, third party custody, grandparenting time, alternative dispute resolution summary reports, parenting time enforcement reports, and supervised parenting time. There are also sections dedicated to gathering information and additional recommendations.

This manual is a guide to help the investigator apply the legal requirements necessary to complete a report and recommendation.

Organization of the Manual

The manual has the following sections:

1. Each factor from the Child Custody Act and statutory considerations (e.g., established custodial environment, third party custody, change of domicile).
2. Interpretation –The information explaining each topic is drawn from appellate court decisions and Michigan law. Unless a court decision or statute has directly addressed the topic, the manual will not interpret the topic further. Appellate courts normally review a case giving deference to the findings of fact made by the lower court.
3. Practice Tips – Practice tips are recommendations to help an investigator gather information necessary to complete an investigation. Many practice tips are questions to ask or tasks necessary to retrieve information.

What is a Friend of the Court Investigation?

The purpose of a FOC investigation is to inquire, examine, consider, summarize information, and make a recommendation to the court. The investigator’s responsibility to the court, parties, and children is to accurately perform those duties. The court makes the ultimate decisions after applying the law to all relevant evidence.

Early in the process, the investigator should inform the child, who is of sufficient age, parents, attorneys, and any other involved parties of the purpose, nature, and method of the investigation.

[Appendix IV](#) provides a checklist of tasks to complete before initiating a custody or parenting time investigation.

¹ [MCL 552.505\(1\)\(g\)](#); [Bowling v McCarrik](#), 318 Mich App 568 (2017).

Custody Report Preparations

The following are recommendations to prepare for a custody and parenting time investigation.

1. Be Familiar with Types of Custody.

Joint Custody: At the request of either parent, the court must consider ordering joint custody.²

[MCL 722.26a\(7\)](#) defines joint custody to include either or both, alternating physical custodial arrangements and joint decision-making authority. “In order for joint custody to work, parents must be able to agree with each other on basic issues in child rearing including health care, religion, education, day to day decision-making and discipline and they must be willing to cooperate with each other in joint decision-making.”³ However, ability to cooperate is not the sole factor in determining whether parents should have joint custody. Even if parents cannot cooperate, if they *can* provide different strengths to compliment each other in raising the child and they can agree on basic child rearing issues, joint custody is an appropriate option. In the event joint custodians are unable to agree on important matters affecting the child, the court must decide those matters using the child custody factors to determine the best interests of the child.

If the parents agree on joint custody, the court must order it unless the court determines joint custody is not in the best interests of the child.⁴ If the court does not award joint custody under these circumstances, it must state its reasons on the record.⁵ The court may also consider joint custody without a parent’s request. Although the trial court must consider an award of joint custody, there is no presumption in favor of this custody arrangement.⁶

Sole Custody: There is no legal definition for sole custody. For this manual, sole custody means when one parent provides most of the day-to-day care for a child and has the exclusive right to make major decisions for the child.⁷ If the court believes the parents cannot work together for the benefit of their child, the court usually grants sole custody to one parent. The other parent may be given parenting time as the court determines. If parenting time is ordered, the parent exercising parenting time is responsible for making routine⁸ decisions for the child during parenting time.

2. Decide What to Include.

Before writing the report, the investigator should be mindful of the requirements of an investigation report. Custody investigation reports should include established custodial environment, an evaluation of all statutory factors, express

² [MCL 722.26a\(1\)](#).

³ *Fisher v Fisher*, 118 Mich App 227 (1982); [MCL 722.26a\(1\)\(b\)](#).

⁴ [MCL 722.26a\(2\)](#).

⁵ *Arndt v Kasem*, 156 Mich App 706 (1986).

⁶ *Wellman v Wellman*, 203 Mich App 277 (1994).

⁷ It is unclear what role the division of time plays in a definition of sole custody. The statute speaks in terms of alternating time with each parent without setting a minimum period of time.

⁸ [MCL 722.27a](#)

consideration of joint custody, issues that the parents have and have not agreed to, and custody and parenting time recommendations.⁹

- 3. Gather the information.** The investigator should review all information gathered from interviews with parents, children, third parties (e.g., teachers, coaches, counselors) and all relevant documents. The investigator should be aware of what information the court needs to make decisions to create the court order.

While reviewing the pleadings and questionnaires, the investigator should attempt to identify any indications of domestic violence as well as other issues related to the best interests of the child. "Domestic violence" means the occurrence of any of the following acts by an individual that is not an act of self-defense:

- Causing or attempting to cause physical or mental harm to a family or household member.
- Placing a family or household member in fear of physical or mental harm.
- Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.
- Engaging in activity toward a family or household member that would cause a reasonable individual to feel terrorized, frightened, intimidated, threatened, harassed, or molested.¹⁰

If there are indications (e.g., in complaints for divorce, pleadings, sworn statements, or personal protection orders between parties) of domestic violence, the investigator should take the necessary steps to ensure the safety of the parties, the children, and court staff. However, information from domestic violence screening protocols should not be used in the report. Please refer to [Section XIII](#) for addition information on domestic violence screening.

An investigator should be aware of any previous custody orders.

When the investigator meets with parents, the investigator should request references and ask the parents to complete release forms. References should be individuals who have seen the parent or parents interact with the child (e.g., childcare providers, teachers, coaches). The investigator may use release forms to gather information from individuals who have been professionally involved with the family (e.g., doctors, counselors, teachers, etc.) but who may not release information without approval from the parents. Please see [Appendix II](#) for sample release form.

- 4. Evaluate the Best Interest.** The Child Custody Act ([MCL 722.27a](#)) includes a legal presumption that having a strong parental bond with both parents is in the best interest of a child. This presumption should guide the investigator in all custody and parenting time investigations. During the investigation, the investigator should form an opinion regarding child's custody and parenting time.

⁹ FOC offices may decide to include the parenting time factors ([MCL 722.27a](#)) in their custody and parenting time reports. However, the parenting time factors found in MCL 722.27a are permissive and are not required to be addressed by the court in a custody and parenting time hearing. See [Section IV](#).

¹⁰ [MCL 400.1501](#)

- 5. Change of Circumstances.** Given the different standards of proof involved when there is a postjudgment custody dispute, the question concerning the proper role of the investigator arises. Unfortunately, there is no clear legal authority for whether an investigative report should encompass making custody recommendations based on the twelve factors alone or also consider the sufficiency of the information to satisfy the burden of proof imposed on the case. Normally, decisions concerning burden of proof are for the court. However, a report that does not clarify whether it considered the burden of proof may not be of much use to the court or to the parties.

A parent seeking to modify a child custody order must first establish proper cause or a change of circumstances, specifically, a significant circumstance regarding one or more of the best interest factors that has the potential for a significant effect on the well-being of the child.¹¹ The court found no clear legal error or palpable abuse of discretion on the trial court's part for modifying the consent judgment of divorce without consideration of the [Uniform Child Abduction Prevention Act \(UCAPA\)](#) or best-interest factors from the Child Custody Act because the modification did not impact custody or parenting time.¹² Therefore, an investigator should determine how the trial judge wants the issue about the change of circumstances included in the report.

- 6. Cite your Sources.** An investigator should divulge all sources of information in the report as well as any conflicting information (the exception would be after the interview with the child). The report should explain which version of the information was granted more weight and why. The investigation process should result in a report to the court; however, the written report may have an alternate use outside of providing information and a written recommendation. Because parents receive copies of the investigation report, a well-written report has the added benefit of potentially sparking discussions between the parents during alternative dispute resolution or general case negotiations and can lead to the parents reaching a mutually beneficial agreement concerning custody and parenting time without the court's intervention.
- 7. Prepare an Objective Report.** With all investigations, it is important to give your report credibility by accurately reporting both positive and negative information concerning the parents and the child. Reasons articulated for assigning an advantage to one parent over another should not be limited to the positive information about the favored parent nor to the negative information about the other parent. However, the investigator should set aside some time after the investigation process, but before writing the report, to review and potentially reevaluate all the information. Investigators are encouraged to determine the relevance, interpretation, and weight of information before making a conclusion. Where the investigator is in doubt or unable to form a firm belief about an issue that has been raised but believes that the issue still needs to be reported, the report should be written in a way to impartially (fairly to all parents) describe the issue and information gathered.
- 8. The Completed Report.** The investigator should present the information in a well-organized manner so that the reader knows how the information relates to the established custodial environment, statutory factors, and the custody and parenting time

¹¹ [Merecki v Merecki](#), 336 Mich App 639 (2021).

¹² [Kostreva v Kostreva](#), 937 Mich App 648 (2021).

recommendation. The information should be presented so the reader can understand how the investigator came to the conclusions reported. Once the report is completed copies should be sent to the court, attorneys, and the parties.¹³ It is recommended that the report be sent out at least seven days before the hearing.¹⁴ This will allow the court, the attorneys, and the parents to review the report before the hearing or for the parties to negotiate a settlement. The copy sent to the court should not be placed in the court file that the public has access to. If the parents dispute any information in the report, the court must make an independent determination based on evidence and testimony presented at the hearing or any subsequent hearing.

¹³ [MCL 552.505\(1\)\(g\)](#), and [MCL 552.507a](#).

¹⁴ [MCR 3.210\(C\)](#): When the custody of a minor is contested, a hearing on the matter must be held within 56 days. For the court, attorneys, and parents to review the report before the hearing the custody and parenting time investigation should be completed within 49 days (seven days before the hearing is held).

II. Established Custodial Environment

The court shall not change the established custodial environment of a child unless there is clear and convincing evidence that it is in the best interest of the child. 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.¹⁵ However, investigators should be aware that Child Custody Act factors alone do not determine the established custodial environment.¹⁶ Investigators should verify with their court if the investigator is responsible for addressing the established custodial environment in custody and parenting time reports.

Interpretation:

A court order does not establish a custodial environment; rather one may be in existence within the family relationships.¹⁷ “Such an environment depend[s] instead upon a custodial relationship of a significant duration in which [the child is] provided the parental care, discipline, love, guidance and attention appropriate to his age and individual needs; an environment in both the physical and psychological sense in which the relationship between the custodian and the child is marked by qualities of security, stability, and permanence.¹⁸”

Before making a custody determination, the court is required to analyze whether an established custodial environment exists with one or more of the parties.¹⁹ The primary focus of the inquiry is whether an established custodial environment exists, not the circumstances that allowed the custodial environment to be established.²⁰

Before an initial custody order is entered, the court may order temporary custody if the evidence supports a finding that the best interests of the child are served by doing so. Once custody has been established in an order, the court must determine whether an established custodial environment exists with a parent before considering whether custody should be changed.²¹ If an established custodial environment does not exist, the requirements are the same as cases in which a custody order has not yet been entered.²² If an established custodial environment with a party exists, the court may modify the custody arrangement only if there is clear and convincing evidence of a compelling reason for change in custody according to the child’s best interests based on the Child Custody Factors.²³

An established custodial environment can exist in more than one home simultaneously,²⁴ thus, a determination of an established custodial environment is not necessarily a choice

¹⁵ [MCL 722.27\(1\)\(c\)](#).

¹⁶ [Berger v Berger](#), 277 Mich App 700 (2008); [Moser v Moser](#), 184 Mich App 111 (1990)

¹⁷ [Blaskowski v Blaskowski](#), 115 Mich App 1 (1982); [Hayes v Hayes](#), 209 Mich App 385 (1995).

¹⁸ [Berger v Berger](#), 277 Mich App 700 (2008).

¹⁹ [Kubicki v Sharpe](#), 306 Mich App 525 (2014).

²⁰ [Moser v Moser](#), 130 Mich App 97 (1983).

²¹ [Baker v Baker](#), 411 Mich 567 (1981).

²² *Id.*

²³ [Carson v Carson](#), 156 Mich App 291 (1986).

²⁴ [Foskett v Foskett](#), 247 Mich App 1 (2001).

between parties. An established custodial environment can also exist in the home of a person who is not a parent or party to the case.²⁵

When an established custodial environment simultaneously exists, neither party's established custodial environment can be disrupted except on a showing by clear and convincing evidence that such a disruption is in the child's best interests.²⁶ Clear and convincing evidence is not necessary to alter the terms of a custody order when a change in those terms will not change the established custodial environment.

An established custodial environment does not exist without parental care, love, guidance, and attention appropriate to the child's age. Thus, a mother who was frequently away from home leaving her child to the care of baby-sitters, or a father's extensive work and involvement with other activities²⁷ may keep the parent from establishing a custodial environment; however, the fact that a parent uses babysitters does not in and of itself preclude that parent from establishing a custodial environment.²⁸ The effects of substance abuse on a parent's ability to provide guidance may also be considered.²⁹

Similarly, an established custodial environment did not exist at mother's home when the mother's relationship with the child was marked by tension and the mother's extremely close relationship with the maternal grandmother interfered with the mother's interactions with the child, such that the child looked primarily to the father for guidance and discipline. To determine the existence of an established custodial environment, the circumstances surrounding the care of the child immediately preceding the trial can be examined to determine what interaction the child has had with the parents.³⁰

The time spent with the child is not the only factor to be considered. The maintenance of a home in the same area, continuation of participation in the child's extracurricular activities, attendance at the same church, regular trips to extended family, financial contributions to the child's well-being, and the child's response to the parent's requests all were found to support the existence of an established custodial environment.³¹

An expectation of permanency in the relationship should also be considered as part of an established custodial environment. A lack of permanency can prevent the establishment of a custodial environment. Thus, when the parents had an upcoming custody hearing, there could be no expectation of permanency of the arrangement that had been established by a temporary order.³² Once an established custodial environment exists, it can be destroyed by shifting the child back and forth between custodial homes.³³ However, when the court found that there was an established custodial environment with both the mother and father and that the mother had voluntarily relinquished custody temporarily in order to attend school pursuant to an agreement between the parties, the

²⁵ [*Heltzel v Heltzel*](#), 248 Mich App 1 (2001); [*Greer v Alexander*](#), 248 Mich App 259 (2001).

²⁶ [*La Fleche v Ybarra*](#), 242 Mich App 692 (2000).

²⁷ [*Zuziak v Zuziak*](#), 169 Mich App 741 (1988).

²⁸ [*Treutle v Treutle*](#), 197 Mich App 690 (1992).

²⁹ [*Bowers v Bowers*](#), 198 Mich App 320 (1993).

³⁰ [*Schwiesow v Schwiesow*](#), 159 Mich App 548 (1987).

³¹ [*Duperon v Duperon*](#), 175 Mich App 77 (1989).

³² [*Bowers v Bowers*](#), 198 Mich App 320 (1993).

³³ [*Baker v Baker*](#), 411 Mich 567 (1981).

burden was on the father to establish by clear and convincing evidence that the custodial environment should be changed to him.

Practice Tip:

Try to identify specific examples of when the child looked to a parent for guidance, discipline, attention, the necessities of life, and parental comfort.

- Is it readily apparent the child looks to one parent for stability, security, and permanence?
- Who does the child go to for advice?
- Who does the child go to for comfort? What are some examples of that comfort?
- What is the age of the child³⁴?
- Does either parent provide love, guidance, and attention appropriate to the child's age?
- Is the parent not available because the parent works an excessive number of hours?
- Does either parent have an over-reliance on childcare providers?
- Has the child moved frequently between the parents' homes?
- Who provides for the child's physical needs, shelter, food, and clothing?

Practice Tip:

When the investigator meets with parents, the investigator should request references and ask the parents to complete release forms.

- References should be individuals who have seen the parent or parents interact with the child (e.g., childcare providers, teachers, coaches).
- The investigator may use release forms to gather information from individuals who have been professionally involved with the family (e.g., doctors, counselors, teachers, etc.) but who may not release information without approval from the parents. Please see [Appendix II](#) for sample release form.

³⁴ [MCL 722. 27](#): Based on the age of the child guidance, discipline, and comfort may be different. For example, a younger child may need different guidance than an older child.

III. Child Custody Factors

If a child custody dispute is between the parents, between agencies, or between third persons, the best interests of the child control. If the child custody dispute is between the parent or parents and an agency or a third person, the court shall presume that the best interests of the child are served by awarding custody to the parent or parents, unless the contrary is established by clear and convincing evidence.³⁵ If a child custody dispute involves a child who is conceived as the result of acts for which one of the child's biological parents is convicted of criminal sexual conduct or is found by clear and convincing evidence in a hearing to have committed acts of nonconsensual sexual penetration, the court shall not award custody to that biological parent.³⁶

Most information for the custody and parenting time investigation will come from addressing the Child Custody Factors [MCL 722.23](#) with the parents and the child. The investigator must address Child Custody Factors for both custody and parenting time investigations. This section briefly describes the twelve Child Custody Act Factors (often referred to as the best interest factors). The Parenting Time Investigations, [Section IV](#) of this manual, explains the application of the Child Custody Factors for parenting time investigations.

The Child Custody Factors address the best interests of the child and require the investigator to evaluate the parents on twelve criteria. The court does not need to make the custody determination "...on the basis of a mathematical calculation and may assign differing weights to the various best-interest factors."³⁷

In conducting the investigation, the investigator may consider the same information under different factors. Although information may fit under different factors, the investigator should not use the information under different factors when the information clearly fits under one factor and has only a minor impact under another factor.³⁸ An investigator should try to separate these factors when information is available.

The factors are not necessarily equal. When the parents consider a factor major, it is appropriate to consider that factor as more important. While one factor may offset some of the factors found in favor of one of the parents, it should not completely offset all the other information when the other parent either prevails or is equal.

The following section of the Manual will provide interpretation and practice tips for the 12 Child Custody Factors.

Factor (a)

The love, affection, and other emotional ties existing between the parties involved and the child.³⁹

³⁵ [MCL 722.25\(1\)](#).

³⁶ [MCL 722.25\(2\)](#).

³⁷ [Berger v Berger](#), 277 Mich App 700 (2008).

³⁸ [Carson v Carson](#), 156 Mich App. 291 (1986).

³⁹ [MCL 722.23\(a\)](#).

Interpretation:

Factor (a) examines the mutual relationship between the parent and child. This factor must be determined by analyzing which parent has bonded more closely with the child, not solely on a determination of which parent is more loving.⁴⁰ It would be wrong to find that the child is more closely bonded with a parent under this factor if the bonding is the result of an inappropriate relationship between the parent and child.⁴¹

It is appropriate to find that this factor favors a parent because the child primarily has love and respect for only one of the parents.⁴² It is proper to find the parents are equal because the parents love their child and the child loves both parents.⁴³ When a parent willingly fails to exercise parenting time with the child on a regular basis, the trial court can find that the other parent has the better capacity and disposition of the parties involved to give the child love and affection.⁴⁴

Practice Tip

Determine which parent the child goes to when in need of sympathy or consolation or to share a victory or an accomplishment.

- How does each parent interact with the child?
- Which parent is more readily available to attend to the child's needs?
- What are the work schedules of both parents?
- Historically, which parent has provided the day-to-day care for the child?
- Is there any evidence that either parent shares problems with the child, demonstrating an inappropriate parent-child relationship?
- What are each parent's strengths and weaknesses related to parenting the child?
- What is each parent's self-described parenting style?
- What is the current emotional bond between the parents and the child? How was the bond formed?
- Does the child show more respect to one parent than the other?
- Which parent gives priority to the child, placing the child ahead of hobbies, work, or other activities?
- Which parent tries to listen to what is really going on with the child (the reality of the situation)?
- With whom does the child consult with regarding personal problems or questions?
- Does one parent show kindness and courtesy toward the child?
- What is each parent's relationship with the child?
- Try to measure how the parents show affection towards the child. For example, is one parent able to outwardly display signs of affection more than the other (e.g., verbal affirmation, hugging, and other nonverbal signs of affection)? Does the more reserved parent show affection to the child in other ways?

⁴⁰ [*Baker v Baker*](#), 411 Mich 567 (1981).

⁴¹ [*Brewer v Brewer*](#), unpublished opinion per curiam of the Court of Appeals, issued August 2001 (Docket No. 221521).

⁴² [*Kurtz v Kurtz*](#), 32 Mich App 366 (1971).

⁴³ [*Eigner v Eigner*](#), 79 Mich App 189 (1977).

⁴⁴ [*Duncan v Booth*](#), unpublished opinion per curiam of the Court of Appeals, issued June 15, 2017 (Docket No. 318714).

- How does each parent communicate love to the child? Is it verbally communicated? Shown in actions?
- How does each parent describe the relationship between the other parent and the child?
- What are the strengths and weaknesses of the other parent's relationship with the child?
- Who disciplines the child historically?
- Who comforts the child?
- Who does the child go to for advice?
- With whom does the child consult with personal problems or questions?

Practice Tip:

Determine which parent the child goes to when in need of affection.

- Who comforts the child?
- What role did each parent play in the household relationship?
- Look for issues indicating that a parent is not involved.
- Does the child go to one parent over the other for sympathy, consolation, or to share in a victory? Is it because of interference by the other parent?
- How do they express their love to each other?

Practice Tip

Determine which parent the child may have emotional ties to, if not both.

- Who does the child go to for advice?
- Is there a readily apparent difference in the bond existing between each parent and the child?
- Are facts present in the case that may confuse the child's emotional ties and bonding with other issues?
- What is each parent's relationship with the child?
- Does one parent show greater kindness and courtesy toward the child?

Factor (b)

The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.⁴⁵

Interpretation:

Factor (b) examines both the willingness and the ability of the parents to provide the child with love, affection, and guidance. This includes whether each parent will continue the child's education and raising the child in the child's religion or creed, if any. This factor considers the *parents'* involvement in the child's education in contrast to factor (h) which focuses on the *child's* involvement in his or her own education. In evaluating the capacity and disposition of the parents to provide education and guidance, it may be necessary to examine which parent is involved more with the child's academic affairs and whom the child asks questions about personal matters.⁴⁶

⁴⁵ [MCL 722.23\(b\)](#).

⁴⁶ [Fletcher v Fletcher](#), 447 Mich. 871 (1994).

The effectiveness of the discipline techniques the parents use to keep the child within bounds is an appropriate consideration in determining the parents' capacity and disposition to provide guidance.⁴⁷ Accordingly, when one parent's ineffective discipline results in the child being awake very late on weeknights and habitually late for school, the other parent should prevail on this factor.⁴⁸

A parent's willingness to allow a child to obtain guidance or comfort through religion when the child so desires can be considered in evaluating this factor.⁴⁹ Similarly, when one parent stops attending the church of the denomination in which the child was raised and instead attends an alternative home church, this factor could be weighed in favor of the other parent.⁵⁰ Religious participation by itself may not be a sufficient basis to allow a parent to prevail on this factor.⁵¹ Rather, the question is whether the parents have instilled, or are likely to instill, a solid religious foundation in the child's life. Thus, even though a parent is involved in the child's religion, the fact that the parent's lifestyle is contrary to the doctrines of that religion may be considered in determining which parent should prevail on this factor.⁵²

Practice Tip:

Instead of assessing this entire factor, it may be useful to separate it into ability and willingness to:

- 1. Appropriately cultivate an emotional bond (e.g., providing love, affection, and guidance) to the child.**
 - Is either parent engaged in activities that would impair his or her ability to exercise good judgment?
 - Does one parent more effectively discipline the child?
 - Is either parent unable to get the child to bed at a reasonable time relative to the child's age?
 - Do the parents have physical or emotional impairments that may affect each parent's ability to provide love, affection, and guidance?
 - Is the parent able to give priority to the child's welfare over the parent's personal activities?
 - Does one parent put the child's best interest above the parent's own interest more than the other parent?
 - Does the parent have the ability to show the child love, affection, and guidance?
 - How willing and able is each parent to be present for the minor child emotionally, physically, and spiritually?
- 2. Promote the child's education.**
 - If the child is of school age is the child regularly on time for school, or are tardy or absent more than normal?
 - How is the child performing in school?

⁴⁷ [Harper v Harper](#), 199 Mich App 409 (1993).

⁴⁸ *Id.*

⁴⁹ [West v Smallman](#), unpublished opinion per curiam of the Court of Appeals, issued June 2001 (Docket No. 223163).

⁵⁰ [McCain v McCain](#), 229 Mich App 123 (1998).

⁵¹ [Carson v Carson](#), 156 Mich App 291 (1986).

⁵² [Ulvund v Ulvund](#), unpublished opinion per curiam of the Court of Appeals, issued August 2000 (Docket No. 224566).

- Does the parent help the child complete homework or review it?
 - Have both parents attended parent-teacher conferences?
 - Is the parent involved with academic or extracurricular activities that benefit the child (e.g., PTA, scouts, clubs, sports, etc.)?
- 3. Promote and continue the child's religious practices or spiritual training.**
- Is the child currently attending religious services?
 - Does each parent plan on having the child attend the same religious services in the future.
 - Do the child and the parent share the same religious practices.

Practice Tip:

Discuss each parent's ability and willingness to promote the child's education both with the child and teachers. Determine whether the child arrives for school on time, prepared, and appropriately dressed. Ask each parent to describe his or her involvement with the child's education, if any.

- Who assists the child with homework?
- Who attends conferences or communicates with the teacher(s) regarding the child's education?
- Who goes to school events/conferences/extra-curriculars? Participates in hobbies.

Practice Tip:

Look for each parent's routines or rituals (discussing daily activities when tucking into bed, having a weekly game night, etc.) that foster interaction with the child.

- Which parent established and maintained daily routines and rituals (e.g., reading to the child, preparing the child for bed, participating in games with the child)?
- Who bathes and dresses the child? Prepares meals?
- Who stays home with the child when sick?
- Does the child have special needs and how do the parents handle them?
- Who takes the child to doctor appointments?
- If the child is of school age, is one parent responsible for waking the child, feeding the child, and making sure the child arrives to school on time?

Practice Tip:

Historically, family practices may have been different from the child's current religious practices. Find out the child's established religious practices. Will both parents assure the continuation of the child's religious practices? Ask each parent to describe his or her involvement with the child's religious practices, if any.

- Does the child regularly attend religious services or other activities?
- Is one parent primarily responsible for the child's participation in religious activities?
- Do religious activities influence the parents' parenting styles?
- Does the parent facilitate the child's practice of the child's religious beliefs?

Practice Tip:

Find out if each parent gives priority to the relationship with the child. Determine whether a parent routinely invests time in vocations, hobbies, interests, or adult friends over spending time with the child.

Factor (c)

The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care and other material needs.⁵³

Interpretation:

There are two principal aspects of factor (c):

- 1) The parents' ability or capacity to provide for the basic needs of the child; and
- 2) The parents' willingness to provide those basic needs.

A parent with a greater household income compared to the other's minimal earnings can be considered to have a greater capacity to provide for the child's basic needs.⁵⁴

Similarly, a parent who has voluntarily accepted a reduction in income below the parent's earning capacity may be considered to lack the disposition to provide for the child's basic needs.⁵⁵ A parent who has demonstrated an excellent employment history but who has recently become self-employed may still be considered to have a greater capacity than a parent who has a less successful employment history and whose earnings in the most recent position depend on future sales.⁵⁶

The amount of income is not the sole basis for determining the capacity of a parent to provide for the needs of a child. The extent to which the disparity in incomes will be counterbalanced by child support may be considered as an offsetting factor.⁵⁷ A disparity in the debt a parent has incurred will also be a consideration for this factor.⁵⁸

Notwithstanding a parent's earning capacity, the parent must be willing to use income for the benefit of the child. A parent who had sufficient income to provide secure and adequate housing was found to be lacking in this factor when the parent decided to save money by sharing an apartment with an adult couple who had negative aspects to their relationship and where the child slept on a sofa bed or cot.⁵⁹ Another parent was found to lack a disposition to provide for the child's necessities when the parent chose to participate in extracurricular activities instead of providing for the child's medical care.⁶⁰

⁵³ [MCL722.23\(c\)](#).

⁵⁴ [Carson v Carson](#), 156 Mich App 291 (1986); [Mazurkiewicz v Mazurkiewicz](#), 164 Mich App 492 (1987).

⁵⁵ [McCain v McCain](#), 229 Mich App 123 (1998).

⁵⁶ [Harper v Harper](#), 199 Mich App 409 (1993).

⁵⁷ [LaFleche v Ybarra](#), 242 Mich App 692 (2000).

⁵⁸ [Schuiteboer v Schuiteboer](#), unpublished opinion *per curiam* of the Court of Appeals, issued October 2000 (Docket No. 224020).

⁵⁹ [Fletcher v Fletcher](#), 229 Mich App 19 (1998).

⁶⁰ [Moser v Moser](#), 184 Mich App 111 (1990).

Parents have also been considered to lack a disposition to provide for a child's necessities by acting in ways that make it more difficult for their child to have access to income or benefits available to that parent. Parents have been found lacking by taking on the support of another individual and that individual's child,⁶¹ and in failing to inform the other parent that medical insurance coverage was available for their child.⁶²

Practice Tip:

In addition to individual income and exercising the parents' earning potential, given an appropriate payment of support from the other parent, consider whether each parent would be able to provide for the child's physical and medical needs.

- Is one parent's ability to provide for the child impacted because of a mental or physical disability?
- Is the parents' education or training sufficient to prepare each to earn a wage that provides for the child's needs?
- Do the parents have an ability to earn a stable income?
- Did one of the parents recently begin a new job, and what is the likelihood that income will continue?
- Is either parent earning less than that parent is capable of earning?
- Is either parent earning less because of recent self-employment and does that parent have capacity to earn more?
- Does either parent have a large debt that may prevent that parent from providing for the physical needs of the child?
- Has the parent used his or her income for the benefit of the child since the separation (e.g., adequate housing, medical care, food, clothing)?
- Does either parent's income go to support another individual (present boyfriend, girlfriend, present spouse, someone else's child) instead of the parent's own child?
- Have the parents provided appropriate medical care or its equivalent for the child?
- If a parent was ordered to pay support or maintain medical coverage, what is the likelihood that the parent will not pay or will try to avoid maintaining coverage?
- Have both parents shared medical coverage information that would benefit the child?
- Does a parent have outside financial assistance (e.g., family, friend, etc.)?
- Is one of the parents currently a stay-at-home parent? If so, what is the stay-at-home parent's plan for future income?
- What are each parent's childcare arrangements?

Practice Tip:

Determine each parent's willingness to provide for the child's needs.

- If a parent were to receive support payments, what is the likelihood that parent would use it for purposes other than the care of the child?

⁶¹ *Williams v Williams*, unpublished opinion per curiam of the Court of Appeals, issued September 2000 (Docket No. 220488).

⁶² *Bowers v Bowers*, 198 Mich App 320 (1993).

- Did either parent offer financial assistance to the other parent for the benefit of the child before being ordered by the court to do so?
- Is a parent seeking custody in order to obtain an economic benefit?
- Which parent buys clothes/food/necessities for the child?
- Has either parent had a history of using his or her income for the parent as opposed to using the income for the benefit of the child?
- Which parent has provided for the special needs of the child?

Practice Tip:

If the child has special needs, consider whether either parent may be more willing or able to assist the child with those needs.

- Does the child have a significant medical or behavioral condition? If so, does the parent properly treat the child's significant medical or behavioral condition?
- Does each parent's home provide for the special needs of the child?
- Can the child's special needs be better met by living in a home with more than one adult and does either parent live in such a home?
- If the child has special needs, does one parent have the training necessary to provide for those needs? Are the parents willing to receive the necessary training to provide for the special needs of the child.

Factor (d)

The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.⁶³

Interpretation:

Factor (d) examines the stability of the child's home. For instance, a stable environment is not demonstrated when a parent moves several times, remarries and divorces in the short time since the parents divorced, and now plans on marrying her boyfriend.⁶⁴

Frequent moves by themselves do not conclusively demonstrate a lack of a stable environment. Where the evidence demonstrates that the child is relatively unaffected by the mother's frequent moves and considers home to be wherever he/she and her mother reside, the court may find that the moves do not weigh this factor in favor of the father.⁶⁵

Although a stable environment may currently exist, if a parent plans to change that environment under circumstances that may lead to instability, it may be necessary to consider the environment unstable.⁶⁶

Practice Tip:

Frequent relocation alone does not conclusively prove a lack of a stable environment. When attempting to determine the stability of a child's environment, identify the length of key relationships, predictability, and structured activity.

- Where has the child resided since the separation?

⁶³ [MCL 722.23\(d\)](#).

⁶⁴ [Hilliard v Schmidt](#), 231 Mich App 316 (1998); [Riley v Downs](#), unpublished opinion per curiam of the Court of Appeals, issued December 2000 (Docket No. 224314).

⁶⁵ [Phillips v Jordan](#), 241 Mich App 17 (2000).

⁶⁶ [Bowers v Bowers](#), 198 Mich App 320 (1993).

- Does either parent's home offers the child a place of comfort, stability, and a settled atmosphere?
- Are there multiple people living in the home? What is the relationship the child has with those living in the home?

Practice Tip:

Determine where the child finds a sense of belonging and comfort. Compare the relative security that the child finds in each parent's household.

- Does either parent intend on moving soon? Would the move cause undue or burdensome instability in the child's life?
- What are the plans for the marital home?
- Who resides in each parent's home, either on a regular or sporadic basis?
- Are there multiple people living in the home?
- What is the relationship the child has with those living in the home?
- Has either parent had numerous live-in relationships?
- Has either parent had numerous divorces?
- Does either parent frequently leave the child alone without adult supervision?
- Does either parent frequently leave the child alone with inappropriate supervision?
- Does either parent frequently leave the child alone without any structured activities?
- What are the future housing plans for each parent?

Practice Tip:

Causes of instability may include evictions, foreclosures, erratic behavior (substance abuse, mental illness, abuse, etc.) within the household, broken relationships, frequent changes in caretakers, lack of supervision, and unreliability of a parent, etc. Try to identify events in the child's life that may have caused instability and what impact this has had on the child (dramatic shift in grades, negative change in personal relationships, etc.).

- Has either parent moved frequently because of evictions, foreclosures, or broken relationships? If so, what impact has this had on the child?
- Is the parent continuously changing the community where the child resides?
- How far away is the parent moving from the other parent?

Practice Tip:

Determine if the move of the parent is prejudgment or post judgment. If the move is a complete shift from the child's status quo, investigators will want to evaluate the impact of the move on the child under this factor.

- Is either parent going to remain in the marital home?
- Is there a change in school or school district for the child upon moving?

Practice Tip:

Consult local Census data, community websites, and local and state police departments to assist in gathering community information.

Factor (e)

The permanence as a family unit of the existing or proposed custodial home or homes.⁶⁷

Interpretation:

The focus of this factor is the child's prospects for a stable family environment, not the acceptability of the home in which the child will live.⁶⁸ Consider all information that indicates which of the parents can provide the child with benefits of a custodial home marked by permanence as a family unit. The fact that one of the parents is single should not preclude a finding that there is a stable family environment.⁶⁹

However, it is appropriate to consider a parent's social interests outside the home coupled with frequent use of babysitting, which could affect the permanence and continuity of the custodial family unit.⁷⁰ The fact that a person has had multiple relationships within a short period is also an appropriate consideration under this factor.⁷¹

Practice Tip:

Stability of a family unit is demonstrated by the strength of key relationships, reliability of each member, and likelihood of continuing the existing or proposed structure.

- Are there indications the current families of each parent will not remain together?
- Does the child have a relationship with siblings (biological, step, or adopted) in either of the parent's homes?
- Are there currently many nonfamily members residing in the home? In the past?
- Is the stability of the child's life impacted by the frequent use of childcare providers?
- Is it evident that a parent's multiple relationships, including marriages, have impacted the stability in the life of the child?
- What type of relationship does the child have with his or her mother or father's significant other?
- How long has the parent and his or her significant other been together? When was the child introduced to the parent's significant other?
- Who constitutes each parent's family unit?
- Is the parent's significant other living in the home with the child? How does that impact the child?
- Does either parent often rely on childcare or frequent use of babysitters?

⁶⁷ [MCL 722.23\(e\)](#).

⁶⁸ [Fletcher v Fletcher](#), 200 Mich App 505, (1993) rev'd on other grounds, 447 Mich. 871 (1994).

⁶⁹ [Zuziak v Zuziak](#), 169 Mich App 741 (1988).

⁷⁰ [Mazurkiewicz v Mazurkiewicz](#), 164 Mich App 492 (1987).

⁷¹ [Hilliard v Schmidt](#), 231 Mich App 316 (1998).

Factor (f)

The moral fitness of the parties involved.⁷²

Interpretation:

This factor examines the parents' relative moral fitness. Information gathered should not focus on who is the morally superior adult, but how does the parent's decision making and conduct impact the parent's ability to care for the child?

Case law concerning this factor is rare.⁷³ Cases that do exist indicate that immorality alone is not sufficient to find in favor of one of the parents on this factor.⁷⁴

For example, unmarried cohabitation by itself does not show a lack of moral fitness for the purposes of the [Child Custody Act](#), rather the immorality must have a bearing on the person's ability to function as a parent.⁷⁵ Thus, a father who had two Operating Under the Influence of Liquor convictions, was verbally abusive and threatening to the other parent in front of the child, lied about his past alcohol record, lived with the child's babysitter, and allowed the child to drink from his beer evidenced immorality exceeding that of the mother who allowed her boyfriend to occasionally spend the night.⁷⁶

Practice Tip:

Consider if either parent may have any substance abuse issues.

- Is either parent engaged in the use of an illegal substance?
- Does either parent routinely or excessively consume alcohol?
- Does either parent routinely abuse any controlled substance?
- Are there indications that either parent provided an illegal substance or alcohol to a child?

Practice Tip:

Gather information about either parent's criminal activity.

- Does either parent promote or rationalize criminal behavior to the child?
- Has either parent verbally abused or threatened the other parent in the presence of the child?
- Has either parent been prosecuted or convicted of a violent crime?
- Has either parent been prosecuted or convicted of a non-violent crime?
- Is there any indication that either parent abused the child (e.g., physically, sexually, emotionally, or verbally)?
- Has Child Protective Services investigated either parent for child abuse or neglect?
- Has either parent been convicted of child abuse or neglect?

⁷² [MCL 722.23\(f\)](#).

⁷³ Most of the case law centers on a claim that one or both parents had engaged in some form of sexual misconduct (unmarried cohabitation or adultery).

⁷⁴ [Williamson v Williamson](#), 122 Mich App 667 (1982).

⁷⁵ [Fletcher v Fletcher](#), 447 Mich 871 (1994).

⁷⁶ [Bowers v Bowers](#), 198 Mich App 320 (1993).

Practice Tip:

Request Michigan Department of Health and Human Services (MDHHS) Child Protective Services (CPS) reports.

- Develop a list of professionals at MDHHS that be contacted to retrieve information from MDHHS CPS.
- Develop contacts within your own county and the state for gathering information about criminal activity (e.g., local law enforcement, prosecutor's office, other court agencies).
- Considering the following resources to gather child abuse or neglect information:
 - [ICHAT](#)⁷⁷
 - Local court records
 - [Offender Tracking Information System \(OTIS\)](#)
 - Law Enforcement Information Network (LEIN)
- For additional information on gathering information see [Section XI](#).

Practice Tip:

Try to identify who will reside with or have frequent contact with the child. Ask the parents what affect the conduct of the frequent contact individuals would have on the child.

- Does either parent reside with someone who has been prosecuted or convicted of a crime?
- Does either parent reside with someone who has been convicted of child abuse or neglect?
- Does either parent reside with someone who has been investigated by CPS?
- Does either parent reside with someone who is involved in the use of an illegal substance?
- Does either parent reside with an individual who routinely and excessively consumes alcohol?
- Does either parent allow another individual to threaten or abuse that parent in the presence of the child?
- Has either parent allowed the child to be threatened or abused by another individual?
- Has either parent been involved with multiple partners?
- Is the child's development impacted by the cohabitation of a parent with another individual?
- Does either parent allow the child to interact with an individual with a criminal record?

⁷⁷ ICHAT allows the search of public criminal history record information maintained by the Michigan State Police, Criminal Justice Information Center

**Factor (g):
The mental and physical health of the parties.⁷⁸**

Interpretation:

This factor concerns whether the parents have physical or emotional health problems that would interfere with their ability to care for the child.⁷⁹ In evaluating this factor, it must be decided if the parents' mental or physical health poses a potential threat to the child's health and well-being.⁸⁰ For instance, evidence of a person's drinking problems and outbursts against the other parent may be an indication of poor mental health.⁸¹ The overriding focus on the parents' mental and physical health is on the ability to parent the child.

While a person's physical disability and its effect on the child's ability to develop must be considered, it is also necessary to consider whether there can be alternative ways of assisting the child's development. Any investigation must follow the Americans with Disabilities Act. Thus, where a parent's deafness may have impaired the child's oral communication development, the fact that other means of obtaining verbal language stimulation were available made removing the child from that parent's custody inappropriate.⁸²

In 2008, the Michigan Legislature enacted the "Michigan Medical Marihuana Act."⁸³ The Act states that a person shall not be denied custody or visitation of a minor if medical marihuana is used under the Act unless the person's behavior creates an unreasonable danger to the minor that can be clearly articulated and substantiated. Past marihuana use alone with no evidence of current use should not be considered when evaluating a person's ability to function as a parent.⁸⁴ Under this factor, the investigator should only evaluate a parent's use of doctor-prescribed medical marihuana if the use poses a potential threat to the child's health or well-being.⁸⁵

In 2018 the Michigan Regulation and Taxation of Marihuana Act was signed into law. The Act legalized the recreational use of marihuana as with the use of medical marihuana a person shall not be denied custody of or visitation with a minor for conduct that is permitted by this act, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated use of marihuana.⁸⁶

⁷⁸ [MCL 722.23\(g\)](#).

⁷⁹ *Cf. Wilson v Upell*, 119 Mich App 16 (1982).

⁸⁰ *Harper v Harper*, 199 Mich App 409 (1993).

⁸¹ *Bowers v Bowers*, 198 Mich App 320 (1993).

⁸² *Bednarski v Bednarski*, 141 Mich App 15 (1985).

⁸³ [MCL 333.26424](#).

⁸⁴ *Demski v Petlick*, 309 Mich App 404 (2015).

⁸⁵ Depending on the facts of each individual case, the investigator may find it more applicable to discuss a parent's use of medical marihuana under factor (f), the moral fitness of a parent. Situations that may warrant the medical marihuana discussion in factor (f) may be (but are not limited to): the abuse of medical marihuana, evidence that the prescription is invalid or improperly obtained, or the child's accessibility and potential use of the drug.

⁸⁶ [MCL 333.27955](#).

Practice Tip:

Have each parent sign a release form at the beginning of the investigation. Most health care and mental health care professionals will not discuss or release patient information without a release.

Practice Tip:

Ask each parent if either parent suffers from any physical or psychological condition that could directly affect the parents' ability to care for the child. If so, ask for details about these conditions.

- Does either parent have a physical or emotional health condition that would impact that parent's ability to parent? If so, should a credentialed professional in that field conduct an evaluation?
- Does the parent follow doctor's recommendations for treatment? Does the parent take prescribed medication?
- Would the energy of the child overwhelm the parent, given the health issues?
- If under the care of a doctor or therapist, does the parent follow recommended treatments and take all prescribed medications?
- Does either parent reject treatment of diagnosed disorders?
- Does either parent show outbursts of anger or other inappropriate behavior toward others?
- Does either parent have a history of substance abuse problems? Are there any current substance abuse problems?
- If either parent has a disability, does that parent have means available to assist in raising the child (family, friends, outside service providers, etc.)?

Factor (h)

The home, school, and community record of the child.⁸⁷

Interpretation:

This factor examines a child's progression and development in three areas: home, school, and community. There are times when it may not be possible to measure this factor, especially when the child is too young to have developed a home, school, or community record,⁸⁸ or when the parents would each continue the child in the same church, school, and community.⁸⁹ However, there may be a difference in the child's record when the child is with each of the parents.⁹⁰ When a child does poorly in one parent's care, this factor may favor the other parent. Similarly, it would be appropriate to find in favor of one parent if there are indications that child showed improvement in school while residing with that parent⁹¹ or when the other parent failed to make preparations necessary for the child's education.⁹²

Information to consider in examining the community record includes long-term community contacts evidenced by: attendance at the same school, contact with the same

⁸⁷ [MCL 722.23\(h\)](#).

⁸⁸ [Wellman v Wellman](#), 203 Mich App 277 (1994).

⁸⁹ [Harper v Harper](#), 199 Mich App 409 (1993).

⁹⁰ [Moser v Moser](#), 184 Mich App 111 (1990).

⁹¹ [Hall v Hall](#), 156 Mich App 286 (1986).

⁹² [McCain v McCain](#), 229 Mich App 123 (1998).

friends or playmates, visits to relatives in the community, and participation in sports programs.⁹³ The parent's proposed childcare arrangements may also be an appropriate consideration under this factor.⁹⁴

Practice Tip:

Regarding the child's home environment.

- Does the child have a healthy relationship with siblings, stepparents, stepsiblings, half-siblings, and others in each parent's home?
- Is the child respectful to other members of each parent's household?
- Do both parents provide appropriate care for the child?
- Is the child being cared for in a developmentally appropriate way?
- Does the child have any chores or responsibilities at home?
- Is the child able to see friends at home?

Practice Tip:

Regarding the child's school environment.

- Does the child show greater academic progress when with one parent?
- Does the child have lower school attendance when with one parent?
- Is the child's homework completed more often when with one parent?
- Has the child been in trouble at school? How did each parent respond?
- How involved is each parent with the child's education?
- Which parent attends parent-teacher conferences?
- Does each parent encourage the child to become involved in school-sponsored activities?
- Does the child participate in extracurricular activities? Are the parents involved?
- Has the child been in trouble in the community at the parent's house?

Practice Tip:

Secure a release of a confidential information form signed by both parents at the beginning of every investigation. Certain school officials will not discuss or release student information without a release.

- Does each parent encourage the child to become involved with community or extracurricular activities?
- How does each parent support the child's community and extracurricular activities?
- If the parents reside in different communities, does either community offer the child interaction with friends and relatives?
- Has the child been in trouble in the community at the parent's house?

⁹³ [*Baker v Baker*](#), 411 Mich 567 (1981).

⁹⁴ [*Ireland v Smith*](#), 451 Mich 457 (1996).

Factor (i)

The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.⁹⁵

Interpretation:

The child's preference must be taken into account if the child is old enough to express a preference.⁹⁶ The exact point at which a child is old enough to express a preference is dependent on the child's age and maturity and is different for each child. Thus, it was proper to find this factor was inapplicable for children who were ages six-and-a-half months and two-and-a-half years,⁹⁷ but it was improper not to interview a seven-year-old to determine whether the child was capable of expressing a preference.⁹⁸

While it is generally necessary to speak to a child to determine the child's preference, the preference may be determined in other ways such as when the parents acknowledge that the child has a preference for one of them and that preference is reasonable based on other information.⁹⁹ Similarly, even when a child has expressed a preference, that preference may be disregarded when the child's motivation for the preference is inappropriate¹⁰⁰ or based on undue influence by a parent.¹⁰¹

In a child custody dispute, the parents and attorneys must be informed of whether a custody preference expressed by the child was considered by the court, but the parents or attorneys must not be informed of the preference expressed by the child.¹⁰² As an employee of the court, the investigator must not inform the parents of the child's preference and should not state that preference in the report.

Practice Tip:

Investigators should inform both parents that the interview with the child would be kept confidential and held in a neutral location (FOC Office, school, etc.).

- Does either parent acknowledge that the child has a preference?
- A failure of the court to interview the child could mean reversal of the decision.
- Besides interviews with the child and parents, are facts present that indicate the child's preference?
- Is the child of an age and maturity to freely express a preference?
- Look for the reason behind the child's preference. If the parents do not produce the child for the interview, it may not count against the parents.

Practice Tip:

Investigators should attempt to create the most comfortable environment possible for the child to encourage honest responses during the interview.

⁹⁵ [MCL 722.23\(i\)](#).

⁹⁶ [Stevens v Stevens](#), 86 Mich App 258 (1978).

⁹⁷ [Wellman v Wellman](#), 203 Mich App 277 (1994).

⁹⁸ [Flaherty v Smith](#), 87 Mich App 561 (1978).

⁹⁹ [Fletcher v Fletcher](#), 200 Mich App 505 (1993) rev'd on other grounds, 447 Mich. 871 (1994).

¹⁰⁰ [Hall v Hall](#), 156 Mich App 286 (1986).

¹⁰¹ [Baker v Baker](#), 411 Mich 567 (1981).

¹⁰² [Fletcher v Fletcher](#), 200 Mich App 505 (1993) rev'd on other grounds, 447 Mich. 871 (1994).

- Is the child aware that the child's choice alone is not the only factor the court will consider in determining the outcome?
- Has the child been pressured by either parent to make a decision regarding the child's preference or other decisions the child must make?
- Has either parent attempted to influence the child's preference?
- Is the child's preference honest and sincere?
- Try and determine what the child wants regarding custody and parenting time?
- If there are multiple children in the matter, and they express different preferences, the factor can weigh in different ways as well.
- A change in preference does not automatically mean a change in custody.
- Coaching will color the child's preference and should be weighed when considering this factor.
- "The minor child was interviewed and a preference was expressed, which shall remain confidential." *No weight given in recommendation. *

Practice Tip:

During the interview with the child, the investigator should determine if the child feels safe with each parent. Keep in mind the interview of the child is to determine the preference of the child. The child should not be used as a witness against either parent.

- Do any of the child's preferences come out of concern for what will happen to a parent if the child does not live with the parent?
- Are any expressed preferences due to loyalty to a parent, fear of a parent, or what a parent might do?

Practice Tip:

Try to determine each child's reasoning for any preferences given. Try to determine if the preference is reasonable.

- Try and determine what does the child want.
- May want to ask the child, "do you know why you're here?"
- Try and ask the child, "What is it like at Mom's house? What is it like at Dad's house?"
- Try and ask the child, "What do you want the schedule to be?"

Practice Tip:

For additional information about interviewing a child, please refer to the following Appendixes: [Appendix V – Interviewing Child Ages Birth to Six](#); [Appendix VI – Interviewing Children ages 7 to 13](#); and [Appendix VII – Interviewing Children ages 14 to 18](#).

Factor (j)

The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, or the child and the parents. A court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.¹⁰³

¹⁰³ [MCL 722.23\(j\)](#).

Interpretation:

The focus of this factor is whether each parent has the ability and willingness to encourage a close relationship between the child and the other parent. When a parent has demonstrated such vindictive behavior that it is likely an attempt to destroy the other parent's relationship with the child, this factor was weighed against that parent.¹⁰⁴

Lesser actions, such as a parent's reluctance to allow parenting time in the early stages of a divorce action, have also been found to make it less likely that the parent would encourage a close relationship between the child and the other parent.¹⁰⁵ Other circumstances that find against a parent for this factor are a parent's uncooperative attitude toward parenting time,¹⁰⁶ allowing the child to make other plans for weekends when the other parent is scheduled to have parenting time,¹⁰⁷ or berating the other parent in the child's presence. On the other hand, a parent who seeks the other parent's input before making decisions involving the child would be more likely to prevail on this factor.¹⁰⁸

In determining whether a parent has acted sufficiently for this factor to be weighed against the parent, it is important to determine the parent's motivation for acting as the parent did. Thus, it was permissible not to weigh this factor against a parent who denied parenting time on the advice of a psychologist.¹⁰⁹ A parent who continuously and severely interferes with another parent's relationship with the children may lose physical and legal custody and be prohibited from any unsupervised contact.¹¹⁰

Practice Tip:**Look for ways either parent hinders the relationship between the child and the other parents:**

- Does either parent insult or berate the other parent in the presence of the child?
- Does either parent deny the other parent parenting time?
- Does one parent allow the child to make plans during the other parent's scheduled time without consulting with the other parent first?
- Before the court order, did each parent allow the other access to the child?
- Does one parent show an uncooperative attitude toward parenting time?
- Does one parent allow other adults to interfere with the relationship between the other parent and the child?
- Is it apparent that each parent seeks input from the other about decisions regarding the child?
- Historically, did one parent have legitimate reasons for denying parenting time (e.g., recommendation of a mental health professional; the child was extremely ill; history of domestic violence)?
- Does the parent speak about the other parent in a respectful manner?

¹⁰⁴ [*McCain v McCain*](#), 229 Mich App 123 (1998).

¹⁰⁵ [*Wellman v Wellman*](#), 203 Mich App 277 (1994).

¹⁰⁶ [*Barringer v Barringer*](#), 191 Mich App 639 (1991).

¹⁰⁷ [*Bowers v Bowers*](#), 198 Mich App 320 (1993).

¹⁰⁸ [*Fletcher v Fletcher*](#), 229 Mich App 19 (1998).

¹⁰⁹ [*Hillard v Schmidt*](#), 231 Mich App 316 (1998).

¹¹⁰ [*Martin v Martin*](#), 331 Mich App 224 (2020).

- When talking about the other parent, does the parent use “we” or “I” statements?
- Is the parent sympathetic to the child’s conflict in choosing a parent?
- Does the parent involve the child with information specific to the child custody case?
- Does the parent involve the child with information specific to adult matters in general?
- How do the parents handle situations where other adults speak badly about the other parent?
- Do the parents have difficulty communicating and cooperating with each other?
- Does either parent demonstrate frustration, anger, bickering, or physical or verbal fighting behavior toward the other parent? Does this occur in the presence of the child?
- Ask each parent to describe the co-parenting relationship with the other parent.
- Does each parent think both will be able to work together for the best interests of their child in the future?

Practice Tip:

Are there indications that the parent is not encouraging a close and continuing parent-child relationship between the child and the other parent, because of child abuse or neglect, domestic violence or other issues.

- Does the parent have a history of child abuse or neglect.
- Does either parent have a personal protection order against the other parent?
- Are there indications of domestic violence between the parents?
- Does either parent have a history of mental illness that causes that parent to be violent?
- Does either parent have substance abuse issues?
- Are there indications that an act of physical violence was committed by the parent against another individual?
- Has either parent been prosecuted for a violent crime?
- Has either parent been convicted of a violent crime?

Practice Tip:

The investigator needs to identify legitimate reasons why the parent is not encouraging a close continuing parent-child relationship between the child and the other parent or the child and the parents. The investigator should review CPS reports, police reports, mental health records, and court records to determine if the parent poses a potential threat to the child.

- Has the child made statements that he or she does not feel safe with the parent or a member of the parent’s household?

Factor (k)

Domestic violence, regardless of whether the violence was directed against or witnessed by the child.¹¹¹

Interpretation:

Very few appellate cases have addressed this factor. Those cases that address domestic violence were decided before this factor became a separate statutory consideration, so domestic violence was addressed under other factors.

The fact that one parent struck and shoved the other many times, attempted to force her way into his truck, and reached through the truck window to slap him may be weighed against that parent.¹¹²

In the same case, there was testimony that the parent threatened to slash her wrists with a razor blade if her stepdaughter would not say she loved her.¹¹³ The court has also found that the father insulting, berating, and threatening the mother could be weighed against the father.¹¹⁴

The domestic violence factor was neutral for both parents where the mother testified to alleged acts of domestic violence and the father testified to a different version of the same event.¹¹⁵ However, when there was evidence that there was at least one incident of domestic violence in the home perpetrated by the father against the mother, and a criminal conviction for domestic violence against the father, the domestic violence factor weighed in favor of the mother.¹¹⁶

In situations where the parents argue with each other in isolated instances, the domestic violence factor is not a consideration.¹¹⁷

Where both parents admitted to spanking the child, but the child also witnessed his mother physically attacking his father, and child was previously punished by the mother by being locked in his room overnight with a can in which to relieve himself, the factor of domestic violence was properly weighed in favor of the child's father.¹¹⁸

Similarly, where a parent used corporal punishment to discipline the child and evidence was presented that the parent abused the family pet, the factor of domestic violence weighed against the parent.¹¹⁹

¹¹¹ [MCL 722.23\(k\)](#).

¹¹² [Harper v Harper](#), 199 Mich App 409 (1993).

¹¹³ *Id.*

¹¹⁴ [Bowers v Bowers](#), 198 Mich App 320 (1993).

¹¹⁵ [Kessler v Kessler](#), 295 Mich App 54 (2011).

¹¹⁶ [McIntosh v McIntosh](#), 282 Mich App 481 (2009).

¹¹⁷ [Wynn v Wynn \(Wynn I\)](#), 234 Mich App 255 (1999).

¹¹⁸ [MacIntyre v MacIntyre](#), 267 Mich App 449 (2005).

¹¹⁹ [Brown v Brown](#), 332 Mich App 1 (2020).

Practice Tip:

Look into any type of domestic violence that may have been in the home.

- Are there indications that an act of physical violence was committed by either parent against another individual?
- Are facts present that either parent verbally, mentally, or emotionally abused (e.g., tormented, berated, threatened) the other parent or another family member including the minor child, live-in relationships, or stepchildren?
- Does one parent have a personal protection order against the other?
- Does one parent have a history of being a perpetrator or victim of domestic violence in a previous relationship?
- Does a parent have a history of child abuse or neglect?

Practice Tip:

The investigator should consider any violence that the child witnessed or that causes emotional trauma to the child. A common form of domestic violence is the emotional abuse inflicted upon a child while residing in an environment where a violent act may occur. The emotional abuse is a result of the fear that a child endures while awaiting the next abusive episode.¹²⁰

Practice Tip:

For questions regarding domestic violence issues, please refer to [Section XIII, Domestic Violence Screening](#). Click on the following link for additional information about domestic violence: [Michigan Domestic Violence and Sexual Prevention and Treatment Board](#) or phone (517) 897-5426.

Factor (I)

Any other factor considered by the court to be relevant to a particular child custody dispute.¹²¹

Interpretation:

This factor examines any other issues that relate to the best interests of the child that were not addressed in the previous 11 factors.

An appropriate consideration under this factor is the relationship between the parents and their families. Thus, the fact that the parents have had difficulty in communicating and cooperating could be considered in determining whether to order joint custody.¹²²

This factor has been weighed in favor of a parent when custody with that parent could keep a child together with a sibling.¹²³ However, if the best interests of the individual child will be better served by separate custody of the child, that custody arrangement should prevail.¹²⁴

¹²⁰ [Friend of the Court Domestic Violence Resource Guide](#)

¹²¹ [MCL 722.23\(1\)](#).

¹²² [Wellman v Wellman](#), 203 Mich App 277 (1994).

¹²³ [Helms v Helms](#), 185 Mich App 680 (1990).

¹²⁴ [Wiechmann v Wiechmann](#), 212 Mich App 436 (1995).

The ability of the parents to consider the interests of the child is also important. When a parent has exhibited a willingness to defer to the best interests of the child by previously relinquishing custody, that fact may be weighed in her favor under this factor.¹²⁵ On the other hand, when a mother's anger toward the father interfered with her ability to consider the needs of her child and when she tended to blame others, including the child for her problems, this factor may be weighed against her.¹²⁶

The special needs of a child and the way each parent's home can satisfy those needs may be considered. Thus, it is permissible to find that a two-parent home is preferable to a single-parent home when a child had special needs that were better met with the permanence and stability offered by that home.¹²⁷ Childcare arrangements are also a relevant consideration.¹²⁸

While it is appropriate to consider several issues under this factor, it is inappropriate to interject a personal philosophy when it contravenes public policy. Therefore, in weighing this factor, it is impermissible to consider a parent's association with a person of another race.¹²⁹

Practice Tip:

What are other topics that need to be further discussed which may not have fallen under any of the other factors.

- Is it readily apparent that the children should be kept together?
- Did one parent voluntarily relinquish custody because it was in the child's best interest?
- How cooperative and credible has the parent been throughout the investigation?
- Are there issues related to other children in the home? Are there other relationships in the home that the court should be made aware?
- Is there anything else from the investigation that poses a concern or requires further information-gathering?
- Reports from other professionals such as mental health professionals.

¹²⁵ [*Zuziak v Zuziak*](#), 169 Mich App 741 (1988).

¹²⁶ [*Hilliard v Schmidt*](#), 231 Mich App 316 (1998).

¹²⁷ [*Mogle v Sriver*](#), 241 Mich App 192 (2000).

¹²⁸ [*Ireland v Smith*](#), 451 Mich 457 (1996).

¹²⁹ [*Edel v Edel*](#), 97 Mich App 266 (1980).

IV. Parenting Time Investigations

Generally, parenting time must be granted unless the court finds by clear and convincing evidence that it would endanger the child’s physical, mental, or emotional health.¹³⁰ If the parents agree to a schedule, the court will order it barring clear and convincing evidence to do otherwise.¹³¹

There appears to be a split in the courts as to which best interest factors need to be addressed; some case law points to all factors being considered, and more recent case law indicates that the court must consider only the contested best interest factors.¹³²

Specific parenting time shall be granted at any time if requested by one of the parties.¹³³ Parenting time cannot be exercised in a non-Hague Convention articles-participating country.¹³⁴ The parent exercising parenting time gets to make routine decisions for the child during the parent's parenting time.¹³⁵

Parenting time shall be granted in accordance with the best interests of the child. It is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents.¹³⁶ The law requires the court to consider the best interest factors set forth in [MCL 722.23](#),¹³⁷ but the court *may* also consider the parenting time factors set forth in [MCL 722.27a\(7\)](#). Accordingly, in any type of parenting time investigation, the investigator will need to consider the best interest factors as outlined in [MCL 722.23](#).

For parenting time investigations, the FOC investigator is required:

“To investigate all relevant facts, and to make a written report and recommendation to the parties and to the court regarding child custody or parenting time, or both, if there is a dispute as to child custody or parenting time, or both, if ordered to do so by the court.”¹³⁸

Thus, the statute requires the FOC to complete parenting time investigations either at the same time the custody investigation takes place or on its own. The investigator will need to make sure

¹³⁰ [MCL 722.27a\(3\)](#). See [Rozek v Rozek](#), 203 Mich App 193 (1993) (noting that there are a multitude of terms and conditions that can be attached to parenting time to best serve the interests of, and protect, a child).

¹³¹ [Shade v Wright](#), 291 Mich App 17 (2010).

¹³² [Hoffman v Hoffman](#), 119 Mich App 79 326 (1982): “In [Dowd v Dowd](#), 97 Mich App 276, 278-279 (1980), a panel of this Court squarely held that ‘[t]he trial court must evaluate each of the factors to determine the best interests of the child before deciding a custody or visitation rights dispute.’ Although we agree with the [Dowd](#) court that the trial court must make specific findings with respect to each factor before deciding a custodial dispute, we decline to impose such a requirement in the context of controversies involving only visitation rights. We hold that the trial court in a visitation rights case need not evaluate each of the statutory factors but may focus solely upon the contested issues.”

¹³³ [MCL 722.27a\(8\)](#).

¹³⁴ [Safdar v Aziz](#), 327 Mich App 252 (2019).

¹³⁵ [MCL 722.26a\(4\)](#).

¹³⁶ [MCL 722.27a\(3\)](#).

¹³⁷ [Terry v Affum](#) (*Terry II*), 237 Mich App 522 (1999); [Stevens v Stevens](#), 86 Mich App 258 (1978).

¹³⁸ [MCL 552.505\(1\)\(g\)](#).

that there is clear direction from the court on which factors to address in the report if the court is only interested in the contested Child Custody factors.¹³⁹

The investigator will need to follow many of the same procedures required for a custody investigation when completing a parenting time investigation, including:

- Sending out contact letters and questionnaires: The contact letters should indicate the date and time the parents are to appear for their appointment with the investigator.
- Reviewing the pleadings and questionnaires.
- Screening the case for domestic violence.
- Identify and concentrate on those issues that are in dispute and spend less time on those where it appears there is agreement.
- Except as limited by the court, address the 12 best interest factors of the Child Custody Act.¹⁴⁰
- Interview the child or children, if appropriate.
- Secure signed release forms from both parents (see [Appendix II](#) for samples of release form).

The following section will review the nine parenting time factors of the Child Custody Act.¹⁴¹

Factor (a)

The existence of any special circumstances or needs of the child.¹⁴²

Interpretation:

In examining this factor, consider both the child's emotional and physical needs. The fact that a child was emotionally sensitive and the possibility that the father's belated involvement might traumatize the child was an appropriate consideration in denying any parenting time to the father.¹⁴³ When the child suffered from an illness that caused the child to be underweight, hyperactive, hyper-allergic to many substances, and to have an abnormal disease immunity, the court was required to recognize the health needs of the child in fashioning a parenting time schedule.¹⁴⁴

When addressing this factor, consider any special circumstances that may affect parenting time. For example, a court erred when it did not determine before entering a parenting time order whether a child with cerebral palsy was able to cope with a dual custody environment.¹⁴⁵

¹³⁹ The court's order can be specific to one or more custody factors or could generally direct the investigator to consider all relevant custody factors.

¹⁴⁰ [MCL 722.23](#).

¹⁴¹ [MCL 722.27a\(7\)](#).

¹⁴² [MCL 722.27a\(7\)\(a\)](#).

¹⁴³ *Stevenson v Stevenson*, 74 Mich App 656 (1977).

¹⁴⁴ *Lorenz v Lorenz*, 70 Mich App 356 (1976).

¹⁴⁵ *Stevens v Stevens*, 86 Mich App 258 (1978). See also [Michigan Parenting Time Guideline](#) for suggestions concerning a child's medical needs, age issues, extracurricular activities, and safety issues.

Practice Tip:

Determine any special needs of the child(ren) and if either parent is lacking the ability to meet those needs.

- How long has it been since the child spent significant time with the parent?
- Does the parent have the capacity and disposition to accommodate the special needs of the child during parenting time?
- Are there any special physical or emotional needs of the child? Is the parent prepared to assist the child with these needs?
- Is the parent aware of any medications the child is taking? Does the parent know the medication schedule and dosage?

Practice Tip:

It is necessary to determine if the parent is familiar with the child's needs (both physical and emotional). This would include whether the parent's home is adequately equipped for the needs of the child.

Factor (b)

Whether the child is a nursing child less than six months of age, or less than one year of age if the child receives substantial nutrition through nursing.¹⁴⁶

Interpretation:

As of publication, there were no published appellate cases that addressed this factor.

Practice Tips:

Consider if the child(ren) are nursing and what special arrangements need to be made around that possible need.

- Is the child nursing?
- What is the age of the child?
- Can the child's nutritional needs be met if a parenting time schedule is implemented?
- Can the child's nutritional needs be met by means other than nursing during parenting time (e.g., the use of formula, mother's milk provided to the other parent)?
- Can parenting time be arranged around the child's nursing schedule?

Practice Tip:

Ask the parents about the child's nursing schedule and if there has been parenting time during the nursing schedule. For additional information about child's nursing and parenting time see the [Michigan Parenting Time Guidelines](#).

¹⁴⁶ [MCL 722.27a\(7\)\(b\)](#).

Factor (c)

The reasonable likelihood of abuse or neglect of the child during parenting time.¹⁴⁷

Interpretation:

This parenting time factor examines possible physical, emotional, or psychological abuse of the child by the noncustodial parent or third parties during parenting time. [MCL 722.27a\(3\)](#) states: “A child has a right to parenting time with a parent unless it is shown on the record by clear and convincing evidence that it would endanger the child’s physical, mental, or emotional health.”

The court may place other conditions on parenting time necessary to protect a child. [MCL 722.27a\(9\)\(c\)](#) allows restrictions on the presence of third persons during parenting time. It is reasonable for the court to restrict parenting time to five hours every other Saturday afternoon and to forbid the use of alcohol or cursing in the noncustodial parent’s home during parenting time.¹⁴⁸ Supervised parenting time is proper if there is evidence of physical abuse or excessive physical discipline¹⁴⁹ by the parent or a third party who is present during parenting time.¹⁵⁰

Practice Tip:

Determine if there has been any history of domestic violence or neglect in the home.

- Are there indications that an act of physical violence was ever committed by an individual who will have contact with the child?
- Are there any indications that the parent or third party ever physically abused the child?
- Is information available that indicates that the parent or third party verbally, mentally, or emotionally abused (e.g., tormented, berated, threatened) the child, another family member, live-in relationships, or a stepparent or stepchild?
- Has there ever been a personal protection order issued against the parent or a third party who has contact with the child?
- Has CPS ever investigated the parent or third party who has access to the child for child abuse or neglect?
- Has the parent left the child unattended for an extended period?
- Is the child properly fed and clothed during parenting time?
- Are there indications that the parent failed to provide a safe environment for the child?
- Has the parent allowed another individual to threaten or abuse the child?
- Has the parent or third party berated or threatened the other parent in the presence of the child during parenting time?
- Can parenting time be ordered (e.g., supervised parenting time, agency parenting time) that would reduce the risk of the child being abused?

¹⁴⁷ [MCL 722.27a\(7\)\(c\)](#).

¹⁴⁸ [Van Koevering v Van Koevering](#), 144 Mich App 404 (1985).

¹⁴⁹ [Booth v Booth](#), 194 Mich App 284 (1992).

¹⁵⁰ See [the Michigan Parenting Time Guideline](#) for additional information about supervised parenting time.

Practice Tip:

Inquire if there are threats to the child’s safety during parenting time. If the child’s safety is a concern, determine what steps need to be taken to ensure the child’s safety.

Factor (d)

The reasonable likelihood of abuse of a parent resulting from the exercise of parenting time.¹⁵¹

Interpretation:

This factor concerns the risk that either parent could suffer some form of abuse during parenting time. Thus, it was appropriate that the parenting time schedule require twelve-hours advance notice for the exercise of parenting time when the relationship between the parents was filled with animosity and strife.¹⁵² Michigan statutes provide for alternative parenting time arrangements to guard against such abuse.¹⁵³ In order to provide appropriate safeguards when violence is a potential issue, all parenting time exchanges should occur in a public place, at a designated neutral exchange site, or be supervised or conducted by a third party.

Practice Tip:

If there has been any history of domestic violence, determine the likelihood of any further concerns that may occur during exercised parenting time.

- Does either parent or a third-party insult or berate the other parent during parenting time?
- Does either parent or a third party threaten the other parent during parenting time?
- Does either parent or a third party emotionally or psychologically abuse the other parent during parenting time?
- Has there been a history of conflict between the parents or a third party during the parenting time?
- Is there evidence that an act of physical violence was committed by either parent or a third party towards the other?
- Has either parent or a third party who has contact with the child been prosecuted for a violent crime?
- Has either parent or a third party who has contact with the child been convicted of a violent crime?
- Is there, or has there been, a personal protection order issued against the parent?
- Is it possible for the parents to exchange the child in a manner that would eliminate any possibility of abuse, such as in a public place?

Practice Tip:

Determine if there are concerns for the safety of either parent during parenting time. It is necessary to identify if contact between the parents or a third party and a parent poses a threat to either person. If so, then

¹⁵¹ [MCL 722.27a\(7\)\(d\).](#)

¹⁵² *Thames v Thames*, 191 Mich App 299 (1991).

¹⁵³ [MCL 722.27a\(7\)\(d\).](#)

safeguards should be put in place that would protect both parents and the child from harm.¹⁵⁴

Factor (e)

The inconvenience to, and burdensome impact or effect on, the child traveling for purposes of parenting time.¹⁵⁵

Interpretation:

This factor considers the impact traveling will have on the child. For example, it was considered error not to take into account the impact traveling between Nebraska and Michigan for parenting time would have upon the health of the child.¹⁵⁶

Practice Tip:

Determine the length of the travel for parenting time and the effect that will have on the child(ren).

- Will traveling between the parents' homes have an impact on the child's physical and mental health?
- Can the parents afford the traveling costs for the child and parent to have parenting time? Who is responsible for the costs?
- Is the age of the child appropriate for the travel required?
- Is the age of the child appropriate for the duration of travel?
- Is the age of the child appropriate for the means of transportation?
- If the parent cannot transport the child, can someone who the child and parties feel comfortable with transport the child?
- Does the child have special needs that must be considered for transportation purposes?
- Would the means of transportation for parenting time cause the child anxiety or stress (e.g., airplane, bus, train)?
- Will traveling disrupt the child's school schedule or interfere with the child's extracurricular activities?

Practice Tip:

For purposes of parenting time, this factor examines the impact traveling will have on the child. Try to identify difficulties the child may have when traveling between the parents' homes and how parenting time can be structured to eliminate those difficulties.¹⁵⁷

Factor (f)

Whether a parent can reasonably be expected to exercise parenting time in accordance with the court order.¹⁵⁸

Interpretation:

This factor examines whether the proposed parenting time order is reasonable under the circumstances. The parenting time schedule should be one with which the parents can

¹⁵⁴ For additional information safety precautions during parenting time see [the Michigan Parenting Time Guidelines](#).

¹⁵⁵ [MCL 722. 27a\(7\)\(e\)](#)

¹⁵⁶ [Lorenz v Lorenz](#), 70 Mich App 356 (1976).

¹⁵⁷ See the [Michigan Parenting Time Guidelines](#) for additional information about long-distance parenting time.

¹⁵⁸ [MCL 722. 27a\(7\)\(f\)](#).

reasonably comply. Consequently, the court found it was necessary to require parenting time during the Sabbath day of the child's religion because other options would disrupt the father's work schedule.¹⁵⁹

Practice Tip:

Determine what barriers may exist in potential parenting time.

- What circumstances have changed that prevent the parent from exercising parenting time (e.g., new job, health conditions, second family)?
- Is there a change in circumstances that has resulted in the parent being late when picking up or dropping off the child?
- Is the child significantly older since the most recent court order for parenting time?
- Is the child involved with more school and extracurricular activities now than when the order was entered or modified?
- Has the parent moved, and the move created a greater distance for the parent to travel for parenting time?
- Has the parent developed a physical or mental disability that makes it more difficult for that parent to exercise parenting time?

Practice Tip:

It may be necessary to determine if circumstances have changed that make it difficult for the parent to spend time with the child. It may also be necessary to determine if it is likely the parent will be able to exercise his or her parenting time.

Factor (g)

Whether a parent has frequently failed to exercise reasonable parenting time.¹⁶⁰

Interpretation:

This factor reviews how consistent a parent has been in exercising the court-ordered parenting time. For example, parenting time for the noncustodial parent would be inappropriate where the request was made after a period of abandonment of the child and in response to recent attempts to collect child support.¹⁶¹ Likewise, when the parent did not exercise the parent's previous parenting time rights with any regularity, the court could conclude that the parent was not entirely earnest in his or her desire to modify the court's custody, parenting time, and support orders.¹⁶²

Practice Tip:

If there currently is a court order for parenting time, determine if the parent has failed to exercise his or her court-ordered parenting time. If there is not a court order, determine if the parent exercised due diligence in attempting to see the child.

- Has the parent been consistent in exercising his or her parenting time?
- Has the parent routinely canceled parenting time at the last minute?

¹⁵⁹ [*Deal v Deal*](#), 197 Mich App 739 (1993).

¹⁶⁰ [MCL 722.27a\(7\)\(g\)](#).

¹⁶¹ [*Stevenson v Stevenson*](#), 74 Mich App 656 (1977).

¹⁶² [*Lorenz v Lorenz*](#), 70 Mich App 356 (1976).

- Has the parent gone long periods with no attempts to contact the child?
- Does the parent routinely invest time in hobbies, interests, or adult friends over spending time with the child?
- Does the parent raise parenting time issues only during child support enforcement proceedings?
- Is there any indication the parent has interfered with the other parent's time with the child?
- How much time does the parent spend with the child?
- Does the parent make a sincere effort to be involved with the child during the parent's parenting time?
- Is there an over-reliance on the use of a childcare provider or third party to watch the child during parenting time?

Practice Tip:

Try to identify how consistent the parent has been in exercising his or her parenting time with the child. It is critical that the investigator distinguish unexercised parenting time opposed to situations where parenting time was denied. The investigator should check with CPS regarding any concerns about child abuse and neglect.

Factor (h)

The threatened or actual detention of the child with the intent to retain or conceal the child from the other parent or from a third person who has legal custody. A custodial parent's temporary residence with the child in a domestic violence shelter shall not be construed as evidence of the custodial parent's intent to retain or conceal the child from the other parent.¹⁶³

Interpretation:

The court must examine the likelihood that the child will be improperly detained and order reasonable conditions on parenting time. For example, it was appropriate for a court to impose restrictions on parenting time of a resident of Ireland that included surrender of the father's passport and a bonding requirement.¹⁶⁴ When the threat of a violation has passed, continued restrictions may not be necessary. For example, the court properly reviewed and rejected an attempt to prevent parenting time for a parent who had previously detained the child but had subsequently fully abided by the court orders regarding custody and parenting time for approximately two years.¹⁶⁵

Practice Tip:

Determine if there could be any concerns about potential parenting time violations or if either parent may withhold the child from the other parent.

- Have both parents demonstrated an effort to cooperate regarding access to the child?
- Has the parent ever withheld the child from the other parent?
- Have there been multiple parenting time complaints filed with the FOC?

¹⁶³ [MCL 722.27a\(7\)\(h\)](#).

¹⁶⁴ [Farrell v Farrell](#), 133 Mich App 502 (1984).

¹⁶⁵ [Mauro v Mauro](#), 196 Mich App 1 (1992).

- Is the child returned to the other parent in compliance with the court order (on time, at correct location, etc.)?
- Has either parent ever been charged with parental kidnapping?
- Has either parent ever abducted the child from the other parent's home, the child's school, or childcare providers?
- Has either parent ever made threats to take the child to another state or country and not return?
- Does a parent refuse to provide the other parent with information regarding vacation plans (e.g., location, dates, phone numbers, address)?

Practice Tip:

It is necessary to determine if the parent has any history of concealing the child from the other parent. Try to look for examples of reluctance to return the child or statements made by the parent that indicate a legitimate threat.

Factor (i)

Any other relevant factors.¹⁶⁶

Interpretation:

This factor examines any other issues that were not addressed in the previous eight parenting time factors of the [Child Custody Act](#). Among the circumstances that may be considered are the disruption to the child's stable home environment.¹⁶⁷ and the child's need to have more time with one of the parents.¹⁶⁸

Practice Tip:

Look for issues that are unique to the family or those that have not been addressed in the previous eight parenting time factors before making a parenting time recommendation.

- Should parenting time be structured so the child has consistent contact with siblings and stepsiblings?
- Is the child involved with community and school activities that may interfere with parenting time?
- Is each parent able to discuss the parenting time schedule with the other parent?
- Does the parent have the opportunity to spend time with the child (e.g., afford transportation, money for activities)?
- Is the parent likely to exercise parenting time if the court orders it?
- What impact, if any, does the distance between the parents' homes have on parenting time?
- Is there any other issue that has not been addressed that may interfere with the parent spending time with the child?

¹⁶⁶ [MCL 722.27a\(7\)\(i\)](#).

¹⁶⁷ [Stevenson v Stevenson](#), 74 Mich App 656 (1977).

¹⁶⁸ [Deal v Deal](#), 197 Mich App 739 (1993).

V. Third Party Custody Investigations

When a dispute is between the parent or parents and a third person or agency, it is presumed that the best interests of the child are served by awarding custody to the parent(s). To overcome the parental presumption, the court must find by clear and convincing evidence that the best interest factors indicate custody should be granted to the third person.¹⁶⁹

Interpretation:

When a custody dispute arises between a child's parents and a third party, the court must presume that giving one of the natural parents custody is in the child's best interest. The term 'natural parent' is elastic enough to include a parent who has no genetic connection to her children, but is instead related to the children by giving birth to the children under an agreement that both women would be the children's parents.¹⁷⁰ A "third party" is defined as anyone other than the child's biological or adoptive parents.¹⁷¹ Consequently, in order to overcome the presumption in favor of parental custody, it is necessary to find that when all the best interest factors are collectively considered, the third party has clearly and convincingly established that the best interests of the child require custody with the nonparent.¹⁷² This is true even though there may be an established custodial environment with the third party.¹⁷³ In addition to the presumption in favor of parental custody, public policy considerations also favor returning custody to a parent who voluntarily relinquishes custody to a third party to resolve difficulties the parent is having.¹⁷⁴

NOTE: For more information on changes in custody, please review [Section II "Established Custodial Environment"](#) of this Manual. The report should address the [12 Child Custody Factors](#), a recommendation and report should be submitted to the court, attorneys, and parties.

Practice Tip:

The investigator should thoroughly examine the relationship between the child and the third party.

- Are there clear and convincing reasons why the third party should be granted custody of the child?
- Was the child ever abused (emotionally, physically, sexually, or psychologically) by either or both parents?
- Has either parent ever abandoned the child?
- Are there indications of neglect by either parent?
- What is the relationship or bond between the child and the third party?

¹⁶⁹ [MCL 722.25\(1\)](#).

¹⁷⁰ [LeFever v Matthews](#), 336 Mich App 651 (2021).

¹⁷¹ Only certain third parties may bring forward an original action for custody. [MCL 722.26c\(a\)](#). Both of the following: (1) the child was placed for adoption with the third person under the adoption laws of this or another state, and the placement order is still in effect at the time the action is filed and (2) after the placement, the child has resided with the third person for a minimum of 6 months. [MCL 722.26c\(b\)](#) Or all the following: (1) the child's biological parents have never been married to one another, (2) the child's parent who has custody of the child dies or is missing and the other parent has not been granted legal custody under court order, or (3) the third person is related to the child within the fifth degree by marriage, blood, or adoption.

¹⁷² [Eldred v Ziny](#), 246 Mich App 142 (2001).

¹⁷³ [Heltzel v Heltzel](#), 248 Mich App 1 (2001).

¹⁷⁴ [Straub v Straub](#), 209 Mich App 77 (1995).

VI. Changing the Child's Legal Residence or Domicile

Investigators should ask for clear direction from the court when ordered to conduct a change of legal residence or change of domicile investigation. This may include a recommendation for parenting time if the court grants the change of legal residence or domicile. The FOC does not have the authority to decide if a person can leave the state or change the legal residence of the child 100 miles or more (these are legal determinations by the court).

Change of Legal Residence (100 miles)

The Child Custody Act, states, “A child whose parental custody is governed by court order has, for the purposes of this section, a legal residence with each parent. Except as otherwise provided in this section, a parent of a child whose custody is governed by court order shall not change a legal residence of the child to a location that is more than 100 miles from the child’s legal residence at the time of the commencement of the action in which the order is issued.”¹⁷⁵

Change of Domicile

According to Michigan Court Rule, [MCR 3.211\(C\)\(1\)](#), “A judgment or order awarding custody of a minor must provide that 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.”

Interpretation:

[MCR 3.211\(C\)\(1\)](#) requires that a parent who has custody of a child may not change the child’s domicile or residence without approval of the judge who awarded custody. [MCR 3.211\(C\)\(3\)](#) provides that a parent whose custody or parenting time is governed by a court order may not change the child’s legal residence except in compliance with [MCL 722.31](#).

A parent who has joint custody must request the court’s permission to change a child’s legal residence of 100 miles or more when:

- 1) That parent moves 100 miles or more from his or her current residence; or
- 2) The move by either parent creates 100 miles or more distance between the two parents’ homes.¹⁷⁶

There is no requirement for court approval for a move to another place within Michigan when:¹⁷⁷

- the move is less than 100 miles;
- the other parent agrees to the move;
- the judge orders sole legal custody to one of the child’s parents;
- the parents were already living 100 miles apart when the judge decided custody; or
- the move results in the child’s two legal residences being closer to each other than before the move.

¹⁷⁵ [MCL 722.31\(1\)](#).

¹⁷⁶ [Bowers v Vandermeulen-Bowers](#), 278 Mich App 287 (2008). The 100 miles is measured by radial miles, not road miles.

¹⁷⁷ [MCL 722.31\(2\) and \(3\)](#).

Once the court has determined that the moving party has shown by a preponderance of the evidence that a change in residence is warranted and there is an established custodial environment, the court must then determine whether the change in residence would cause a change in the established custodial environment.¹⁷⁸

If the custodial parent wants to move the child to another state, even to a location closer than 100 miles from the other parent’s residence, the court must approve the move.¹⁷⁹

Historically, only changing the child’s domicile to another state required court permission. In 2001, the Legislature changed that to require court permission to change a child’s residence more than 100 miles. The rules for change of domicile and change of residence are different. The change in domicile test addresses the effects of the move on the family, while the change in residence focuses on the effects on the child. The change in residence test contains an additional factor involving domestic violence. The change in residence uses the term “relocating parent” rather than “custodial parent.” Appellate cases have been moving toward applying the change in residence test in both change in domicile and change in residence cases. Because the factors for change of residence and change of domicile are similar, they are discussed together below.¹⁸⁰:

1. Whether the prospective move has the capacity to improve the quality of life for both the child and the relocating parent.¹⁸¹

This factor does not require proof that an actual improvement in the quality of life will occur; rather, the potential for improvement is all that is necessary.¹⁸² Under this factor, an appropriate consideration is the financial benefit of a move,¹⁸³ including the attendant ability of a parent to cut back on work hours and spend more time with the child,¹⁸⁴ or the ability to further a parent’s career.¹⁸⁵ However, financial aspects of the move are not an exclusive measure of the potential for improvement of the life of the child and parent. When a prospective move presented the custodial parent with a larger salary, less demanding hours, increased educational opportunities, and allowed the child to attend a larger school, more church activities, violin lessons, and a longer skiing season, the court found that the day-to-day presence and relationship with the child’s father outweighed the added enticements of a move to Colorado.¹⁸⁶

Practice Tip:

Consider the effects the move will have on the child and the child’s relationship with each parent.

¹⁷⁸ [Rains v Rains](#), 301 Mich App 313 (2013).

¹⁷⁹ [MCR 3.211\(C\)\(1\)](#).

¹⁸⁰ There are still differences in the two. The court still must approve a change in domicile even when the party changing domicile has sole custody because a change in domicile effectively changes jurisdiction over the child’s custody. In most cases, the two tests would likely not have different results.

¹⁸¹ The corresponding change of domicile factor is: “whether the prospective move has the capacity to improve the quality of life for both the custodial parent and the child.”

¹⁸² [Phillips v Jordan](#), 241 Mich App 17 (2000).

¹⁸³ [Scott v Scott](#), 124 Mich App 448 (1983).

¹⁸⁴ [Anderson v Anderson](#), 170 Mich App 305 (1988); [Mills v Mills](#), 152 Mich App 388 (1986); [Phillips v Jordan](#), 241 Mich App 17 (2000).

¹⁸⁵ [Overall v Overall](#), 203 Mich App 450 (1994).

¹⁸⁶ [Dick v Dick](#), 147 Mich App 513 (1985).

- How would the child benefit from the move?
- Has the parent not requesting the move been actively involved with the child?
- What relationship does the parent not requesting the move have with the child? Has the parent not requesting the move exercised his or her court-ordered parenting time?

Practice Tip:

Ask if the moving parent has already secured a new place of residence.

- Ask the parent requesting the move about potential housing.
- If the parent has housing, ask the parent requesting the move the address of the new residence.

Practice Tip:

Consult local census data, community websites, and local and state police departments to assist in gathering the below information.

- What are the characteristics of the new city (school metrics, parks in the area, community resources, crime rates, etc.)?

Practice Tip:

Verify the income change if the move is granted by the court.

Practice Tip:

Ask the moving party what benefits the move would provide to the party and to the child. The move may not be financially motivated but could still provide an improvement to the quality of life for the parent and child.

- Ask the parent requesting the move other than financial advantages what quality of life improvements, would there be if the court were to grant the move.
- Will there be family members in the area near the new residence?
- Will the financial situation of the requesting party change in a positive way?

2. **The degree to which each parent has complied with, and utilized his or 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.**¹⁸⁷

The fact that the parents cooperate and are willing to encourage an ongoing relationship between the other parent and child is sufficient to indicate that the parent is not attempting to defeat or frustrate the parenting time schedule with the proposed move.¹⁸⁸

¹⁸⁷ The change in domicile factor is: “whether the move is inspired by that parent’s desire to defeat or frustrate the parenting time schedule and whether the custodial parent is likely to comply with the substitute parenting time orders where he or she is no longer subject to the court’s jurisdiction.” It is unclear whether the change in residence requirement expands on the change in domicile test or merely codifies part of the third factor sometimes omitted in quoting the *D’Onofrio* test, “the integrity of the noncustodial parent’s motives in resisting the removal.”

¹⁸⁸ *Mills v Mills*, 152 Mich App 388 (1986).

Similarly, a mother demonstrated good faith by her willingness to pay expenses that would be incurred in returning the child to Michigan for parenting time.¹⁸⁹

Practice Tip:

Review the FOC file for the current court order.

- What is the current court ordered parenting time schedule?
- Have there been parenting time complaints filed? What has been the outcome of those complaints?
- Have there been multiple motions filed for change of custody by either parent? What was the outcome of those complaints?

3. 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. (e.g., “I’ll agree to the move if you lower my child support.”).¹⁹⁰

Only the focus on securing a financial advantage aspect of this factor has been referenced in recent court cases.

Practice Tip:

Verify consistency of child support payments and if any child support enforcement procedures have been taken against the paying parent.

- How consistent is the parent with paying child support?
- Would the child support obligation change if the move is granted by the court? For example, the number of overnights or the moving parent’s income.
- Is the parent who opposes the move doing so to reduce his or her child support obligation?

4. The degree to which the court is satisfied that, if the court permits the 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.¹⁹¹

The requirement is that there be a realistic opportunity for preserving and fostering the parental relationship. The amended and previous parenting time arrangements need not be equal in all respects.¹⁹² However, substituting two or more months per year plus frequent mail and telephone communication was not considered to be an adequate substitute for alternating weekends and mid-week visits when the father was also

¹⁸⁹ [*Bielawski v Bielawski*](#), 137 Mich App 587 (1984).

¹⁹⁰ The corresponding change in domicile test is: “the integrity of the noncustodial parent’s motives in resisting the removal and the extent to which, if at all, the opposition is intended to secure a financial advantage in respect of continuing support obligations.

¹⁹¹ The corresponding change in domicile test is: “the court must be satisfied that there will be a realistic opportunity for parenting time in lieu of the weekly pattern which can provide an adequate basis for preserving and fostering the parental relationship with the noncustodial parent if removal is allowed.”

¹⁹² [*Mills v Mills*](#), 152 Mich App 388 (1986).

involved with the child in other extracurricular activities.¹⁹³ In order to allow a move, a court may fashion orders to facilitate the parenting time. Thus, a court could enter an order requiring the parties to share the cost of transportation.¹⁹⁴

Practice Tip:

Determine the practicality and details of the proposed parenting time schedules.

- What are the parties' proposed parenting time schedules?
- What form of transportation will be utilized to facilitate the parenting time schedule?
- Who will be financially responsible for transportation? Do the parents have the financial ability to pay for transportation?
- Do the parents and child have access to other modes of communication (virtual parenting time)?

Practice Tip:

If virtual parenting time methods will increase under the proposed change in parenting time, the investigator may ask about internet availability, zoom, Facetime, Facebook, phone data usage, and associated costs.

Practice Tip:

Review the current parenting time schedule and determine whether the parent can have the same relationship or involvement with the child if the move is granted.

5. Domestic violence, regardless of whether the violence was directed against or witnessed by the child.¹⁹⁵

If a parent seeking to change legal residence needs to find a safe location from the threat of domestic violence, the parent may move to such a location with the child until the court makes the determination.¹⁹⁶

Practice Tip:

Check the court pleadings for indications of domestic violence, as well as checking other accessible databases. No cases have yet been decided concerning domestic violence in relation to a change in legal residence; however, the best interest factors for child custody discuss domestic violence in factor (k). Investigators can use this factor's considerations and practice tips as reference.

- Have there been any incidences of domestic violence, either directed at the child or witnessed by the child, by either parent?

¹⁹³ [Dick v Dick](#), 147 Mich App 513 (1985).

¹⁹⁴ [Scott v Scott](#), 124 Mich App 448 (1983).

¹⁹⁵ There is no corresponding factor for change in domicile. However, should domestic violence have been an issue in a desire to move or oppose a move, it could have been considered in the other four factors.

¹⁹⁶ [MCL 722.31\(6\)](#).

VII. Grandparenting Time Investigations

There is no statutory requirement for an FOC to conduct a grandparenting time investigation. However, on occasion the FOC may be ordered to conduct such an investigation and provide information for the court's use in determining grandparenting time.

Before initiating a grandparenting time investigation, it may be helpful for investigators to know how a grandparent can seek a grandparenting time court order.

Where a grandparent would file for grandparenting time: A grandparent seeking a grandparenting time order shall commence an action for grandparenting time, as follows:

- 1) If the circuit court has continuing jurisdiction over the child, the child's grandparent shall seek a grandparenting time order by filing a motion with the circuit court in the county where the court has continuing jurisdiction.¹⁹⁷
- 2) If the circuit court does not have continuing jurisdiction over the child, the child's grandparent shall seek a grandparenting time order by filing a complaint in the circuit court for the county where the child resides.¹⁹⁸

In addition to the requirements listed above [MCL 722.27b\(1\)](#) provides that a grandparent may seek a grandparenting time order under 1 or more of the following circumstances:

- (a) an action for divorce, separate maintenance, or annulment involving the child's parents is pending before the court;
- (b) the child's parents are divorced, separated under a judgment of separate maintenance, or have had their marriage annulled;
- (c) if the child's parent who is a child of the grandparents is deceased;¹⁹⁹
- (d) the child's parents have never been married, they are not residing in the same household, and paternity has been established;²⁰⁰
- (e) legal custody of the child has been given to a person other than the child's parent or the child is placed outside of and does not reside in the home of a parent.²⁰¹;
- (f) in the year preceding the commencement of the action for grandparenting time, the grandparent provided an established custodial environment for the child, whether or not the grandparent had custody under a court order.²⁰²

[MCL 722.27b\(2\)](#) provides the following: the parents were never married, and the father has signed an acknowledgement of paternity or the court has determined the father to be the father and the father provided substantial and regular support for the child.²⁰³

[MCL 722.27b\(4\)\(b\)](#) also created a presumption that a fit parent's decision to deny grandparenting time does not create a substantial risk of harm to the child's mental, physical, or emotional health. To rebut the presumption, a grandparent must prove by a preponderance of the evidence that the parent's decision to deny grandparenting time creates a substantial risk of harm

¹⁹⁷ [MCL 722.27b\(3\)](#).

¹⁹⁸ [MCL 722.27b\(3\)](#).

¹⁹⁹ [Keenan v Dawson](#), 275 Mich App 671 (2007).

²⁰⁰ [Varran v Granneman](#), 312 Mich App 591 (2015).

²⁰¹ [Book-Gilbert v Greenleaf](#), 302 Mich App 538 (2013).

²⁰² [Varran v Granneman](#), 312 Mich App 591 (2015).

²⁰³ [MCL 722.27b\(2\)](#).

to the child's mental, physical, or emotional health. If the grandparent does not overcome the presumption, the court will dismiss the action. If two fit parents oppose an order for grandparenting time and sign an affidavit, the court must dismiss the grandparenting time request.²⁰⁴ ²⁰⁵

If the court finds that a grandparent has met the standard for rebutting the presumption, the court will consider whether it is in the best interest of the child to order grandparenting time. In determining the best interest of the child, the court must consider the best interest factors in [MCL 722.27b\(6\)](#).²⁰⁶

The following information is for grandparent investigations that require the FOC to address the grandparenting time best interest factors found in [MCL 722.27b](#) and make a recommendation to the court for grandparenting time.

Practice Tip:

Before interviewing the grandparent(s) and parents the FOC may want to seek the following information:

- Is there a grandparenting time order?
- Who are the parties involved in the dispute (e.g., both parents, maternal grandparents, paternal grandparents)?
- Is there a current parenting time court order for either parent?
- Has either parent or grandparent who is seeking grandparenting time been involved in a child abuse or neglect case?
- Have the parties of the grandparenting time dispute been referred to alternative dispute resolution?
- Is there evidence of domestic violence between the parents or between the grandparents and the parents?²⁰⁷

Factor (a)

The love, affection, and other emotional ties existing between the grandparent and the child.²⁰⁸

Practice Tip:

Questions to ask the parent(s).

- Describe the relationship and bond that the grandparent has with the child.
- Describe how the grandparent shows kindness, love, and affection, towards the child.
- Describe the rituals or routines that foster interaction between the child and the grandparent.
- How does the child feel about his or her grandparent?
- Does anyone interfere with the relationship between the grandparent and the child?

²⁰⁴ [MCL 722.27b\(5\)](#).

²⁰⁵ [Geering v King](#), 320 Mich App 182 (2017).

²⁰⁶ [Varran v Granneman](#), 312 Mich App 591 (2015).

²⁰⁷ If the FOC intends on interviewing both parents, staff should make sure appropriate domestic violence screening has occurred and provide for the safety of both parents and court staff.

²⁰⁸ [MCL 722.27b\(6\)\(a\)](#)

Practice Tip:

Questions to ask the grandparent.

- Describe the relationship and bond you have with the child.
- Describe how you show kindness, love, and affection, towards the child.

Practice Tip:

Have the grandparent describe a recent activity between the grandparent and the child.

- Describe the rituals or routines that foster interaction between you and the child.
- How do you believe the child feels about you?

Practice Tip:

Ask the grandparent(s) if they have any problems seeing their grandchild.

- Does anyone interfere with the relationship between you and the child?

Factor (b)

The length and quality of the prior relationship between the child and the grandparent, the role performed by the grandparent, and the existing emotional ties of the child to the grandparent.²⁰⁹

Practice Tip:

Questions to ask the parent(s).

- From the child's birth to present, describe the time spent with the grandparent and the child.
- Describe the grandparent's role and the frequency of contact between the child and the grandparent.
- What has been the grandparent's role in the child's life?
- Identify the grandparent's strengths and weaknesses as a grandparent.

Questions to ask the grandparent.

- From the child's birth to present, describe the time you have spent with your grandchild.
- Describe your role and the frequency of contacts between the child and yourself.
- What has been your role in the child's life?
- Describe your current ties to the child; has it changed suddenly, and why?
- Identify your strengths and weaknesses as a grandparent.

Factor (c)

The grandparent's moral fitness.²¹⁰

Practice Tip:

Questions to ask the parent.

- Do you know if the grandparent has ever been convicted of a crime?
- Has the grandparent ever been prosecuted for a crime?

²⁰⁹ [MCL 722.27b\(6\)\(b\)](#)

²¹⁰ [MCL 722.27b\(6\)\(c\).](#)

- Has there ever been a personal protection order placed against the grandparent?
- Does the grandparent currently use illegal drugs or consume excessive amounts of alcohol?
- Do you know if your child has ever witnessed violent acts by the grandparent?

Practice Tips:

Questions to ask the grandparent.

- Have you ever been convicted of any crime? If so, please describe your arrest history.
- Have you ever been prosecuted for a crime?
- Have you ever had a personal protection order issued against you?
- Do you currently use illegal drugs or consume excessive amounts of alcohol?
- Have your grandchildren witnessed you commit a violent act?
- Have you ever been investigated by Child Protective Services?

Factor (d)

The grandparent's mental and physical health.²¹¹

Practice Tip:

Questions to ask the parent(s).

- Do you know what the grandparent's current health status?
- Do you know if the grandparent follows recommended treatments and takes all prescribed medications from a doctor?
- Do you know if there are any side effects of any medications that the grandparent currently takes, and will the side effects influence the care of the child?
- Do you know if the grandparent has untreated ailments that could affect grandparenting time?
- Do you know if there are any issues with the grandparent's mental health history (e.g., cognitive, psychiatric), including history of mental illness, psychiatric hospitalizations, or suicide attempts.

Practice Tip:

Questions to ask the grandparent.

- What is the status of your health?
- What prescribed medications are you using, if any, and why?
- Could you provide a list of health care and mental health professionals that we could contact to inquire about any health or mental health issues?

Practice Tip:

Investigators should make sure to ask the grandparent about all medications the grandparent takes for both physical and mental illnesses.

²¹¹ [MCL 722.27b\(6\)\(d\).](#)

Practice Tip:

Secure a release form from the grandparent at the beginning of the investigation. Most health care and mental health care professionals will not discuss or release patient information without being provided with a copy of the release.

- Do you have any health conditions that could impact your grandparenting time with the child? For example, being on a medication that affects your physical or mental well-being.
- Do you follow recommended treatments and take all prescribed medications from a doctor?
- If you do take medications, are there any side effects?
- Do you have untreated ailments that could impact your grandparenting time? If so, please explain (e.g., lack of resources or in the process of securing resources, no action advised by physician).
- Do you currently have or have you previously had any mental health issues including history of mental illness, psychiatric hospitalizations, or suicide attempts.
- Are you currently under any treatment plan or receiving any therapeutic services recommended by a medical professional?

Factor (e)

The child's reasonable preference, if the court considers the child to be of sufficient age to express a preference.²¹²

Practice Tip:

Questions to ask the parent(s).

- Do you believe the child is of an age to freely express a preference for spending time with his or her grandparent.

Practice Tip:

Try to determine the child's reasoning for any preference and if the preference is reasonable.

Questions to ask the parent(s).

- Do you think the child wants to see his or her grandparent? Explain the reasons.
- Has anyone influenced the child in terms of his or her preference? If yes, who?
- Do you believe the child has been honest about his or her preference about visiting his or grandparent?
- Do you believe the child is of an age to freely express a preference?
- Do you think the child wants to see you? Explain the reasons.

²¹² [MCL 722.27b\(6\)\(e\).](#)

Factor (f)

The effect on the child of hostility between the grandparent and the parent of the child.²¹³

Practice Tip:

Questions to ask the parent(s).

- Are there hostile interactions between you and the grandparent? If so, who initiates the hostile interaction?
- Do you make any disparaging remarks about the other party or the other party's family in front of the child?
- Is the child used as a means of communication between the parent and grandparent because the parties cannot communicate directly with each other?

Practice Tip:

Questions to ask the grandparent.

- Are there hostile interactions between you and the parent(s)? If so, who initiates the hostile interaction?
- Do you believe the parent speaks negatively about you around the child?
- Do you make any disparaging remarks about the parent or the other parent's family in front of the child?
- Is the child used as a means of communication between the parent and grandparent because the parties cannot communicate directly with each other?

Factor (g)

The willingness of the grandparent, except in the case of abuse or neglect, to encourage a close relationship between the child and the parent or parents of the child.²¹⁴

Practice Tip:

Questions to ask the parent(s).

- Does the grandparent encourage a close relationship between the child and the parent?
- Describe your current relationship with the other parent.
- Does the grandparent do anything to interfere in the relationship between you and your child?

Practice Tip:

Questions to ask the grandparent.

- Do you encourage a close relationship between the child and the parent?
- Describe your current relationship with the other parent (not your son or daughter).
- Do you do anything to interfere in the relationship between the parents and the child?

²¹³ [MCL 722.27b\(6\)\(f\).](#)

²¹⁴ [MCL 722.27b\(6\)\(g\).](#)

Factor (h)

Any history of physical, emotional, or sexual abuse or neglect of any child by the grandparent.²¹⁵

Practice Tip:

Questions to ask the parent(s).

- Do you know if the grandparent has ever been reported for child abuse or neglect of any child (e.g., child, stepchild, grandchild, nonrelative child)?
- Have any of the child abuse or neglect allegations been substantiated by CPS?
- Do you know if the grandparent has ever been prosecuted for violent crime?
- Do you know of any violent behavior exhibited by the grandparent (e.g., threats of violence against another individual)?

Questions to ask the grandparent.

- Have you ever been reported to CPS for child abuse or neglect regarding any child.
- Have any of the child abuse or neglect allegations been substantiated by CPS?

Practice Tip:

Verify with CPS and other law enforcement agencies if any child abuse or neglect allegations were made against the grandparents.

Practice Tip:

Verify with law enforcement agencies, and review court records to determine whether grandparents have ever been arrested for any violent acts.

Factor (i)

Whether the parent's decision to deny, or lack of an offer of, grandparenting time is related to the child's well-being or is for some other unrelated reason.²¹⁶

Practice Tip:

Questions to ask the parent(s).

- Why do you think the grandparent should not have grandparenting time with your child? What are your biggest concerns about the grandparent having grandparenting time?
- Do you believe your child would suffer emotionally if the court were to order grandparenting time?
- Is your child being treated by a mental health professional because of the relationship between the child and grandparent?
- Have there been recent changes in the frequency and duration the of contact between you and the child? Do you know the reasons for these changes?
- How would you describe the grandparent's parenting skills?

²¹⁵ [MCL 722.27b\(6\)\(h\).](#)

²¹⁶ [MCL 722.27b\(6\)\(i\).](#)

Practice Tip:

Questions to ask the grandparent.

- Is the parent denying you access to your grandchild? If so, why?
- Do you think your grandchild would suffer emotionally if grandparenting time were denied?
- How would you describe your parenting skills?
- Have there been recent changes in the frequency and duration of contact between you and your grandchild? Do you know the reasons for these changes?

Practice Tip:

Have the parent sign a release form to obtain any of the child’s mental health reports and records.

Practice Tip:

Review the response to the motion or complaint requesting grandparenting time to determine if there are other reasons why the parent is objecting to grandparenting time.

Factor (j)

Any other factors relevant to the physical and psychological well-being of the child.²¹⁷

Practice Tip:

Questions to ask the parent(s).

- Are there any other concerns relevant to the grandparent and child’s relationship?
- Are there any other reasons you feel are important for the court to know that are not addressed in the factors?
- Does the child have special needs, and if so, can the grandparents provide for those special needs?
- Has either of the parents’ rights to the child been terminated?²¹⁸
- Do you have concerns about the other parent being around your child during grandparenting time?

Practice Tip:

Questions to ask the grandparent.

- Are there any other issues you feel are important to share?
- Are there any other reasons you feel are important for the court to know that are not addressed in the factors?
- Does the child have special needs, and can you provide for those needs?
- Can you provide for the physical needs of the child (such as food)?
- Do you know if either of the parents’ rights to the child have been terminated?
- Has your child (the parent of the child in question) been convicted of abuse/neglect against the child? If so, will that parent be present during grandparenting time?

²¹⁷ [MCL 722.27b\(6\)\(j\).](#)

²¹⁸ [MCL 722.27b\(10\).](#)

VIII. Report and Recommendation to Resolve Parenting Time Complaint

MCL 552.641

When a friend of the court office receives a written parenting time complaint, [MCL 552.641](#) allows the office to file a motion with the court for a modification of the parenting time order.²¹⁹ [MCL 552.517d](#) requires the FOC office to investigate regarding the issues to be decided and prepare a written report and recommendation.²²⁰ The report and recommendation must be sent to the parents along with a notice that states: A party may object to the office of the friend of the court's recommendation for modification of the parenting time order. If a party does not object to the recommendation within 21 days after this notice was sent to the party, the friend of the court office may submit to the court a parenting time order that incorporates the recommendation. A hearing must be scheduled if one or both parties object to the recommendation.

The report must address the 12 Child Custody Factors in [MCL 722.23](#) that are in dispute. It is recommended that the report also include an analysis of the parenting time factors found in [MCL 722.27a\(7\)](#). The report should also include the following:

- the current parenting time schedule;
- issues that parents have agreed to, and issues where there is disagreement;
- parents' work schedules;
- the child's extra-curricular activities;
- where the child attends school;
- if the complaining parent has pursued his or her parenting time consistently, and
- any other issues that FOC employee believes the court should be made aware of.

The report should include a recommendation that will attempt to resolve the parenting time dispute. For example, if the pick-up and drop-of times are no longer feasible for the non-custodial parent to exercise his or her parenting time, the recommendation should include alternate times that would be more suitable for that parent to secure his or her parenting time. It is important that the report and proposed order does not recommend a change in the established custodial environment or a change in custody.

Please see the SCAO's [Parenting Time Guidelines](#) for additional information when completing the report and making a parenting time recommendation to the court.

²¹⁹ [MCL 552.641](#): In response to a custody or parenting time complaint, the friend of the court may “[f]ile a motion with the court under section 17d of the friend of the court act, [MCL 552.517d](#), for a modification of existing parenting time provisions to ensure parenting time, unless contrary to the best interests of the child.”

²²⁰ [MCL 552.517d\(1\)](#): “After a final judgment containing a parenting time order is entered in a domestic relations matter for which there is an open friend of the court case, if there is an unresolved dispute as to parenting time, the office may file a motion with the court for a modification of the parenting time order.”

IX. Facilitative and Information-Gathering Conferences and Joint Meeting Summary Reports

[MCR 3.224](#) requires Friends of the Court (FOCs) to submit a Summary Report ([FOC 125 Summary Report](#)) to the court, parties, and attorneys at the completion of a Facilitative and Information Gathering (FIG) Conference or a Joint Meeting when proposed orders are prepared. Although FIG Conferences and Joint Meetings are considered alternative dispute resolution (ADR), FOC staff who conduct these processes are expected to gather sufficient information and submit a summary report that would allow the court to make an independent determination that the accompanying proposed order is in the child's best interest. The summary report is not considered an FOC report entitled to be considered under [MRE 1101\(b\)\(9\)](#). In any contested hearing, the court may use the report to decide the contested matter to the extent the parents do not dispute the issues or facts in the report or to the extent that the contested issues and facts are not material to the court's decision. If the parents dispute any issues or facts in the report, the court must make an independent determination based on evidence and testimony presented at a hearing.

The following are recommendations to complete the [FOC 125 Summary Report](#):

- The summary report and the proposed order must be submitted to the court, the attorneys, and the parents within seven days from the date of the FIG Conference or Joint Meeting. The date the ADR session was held must be stated on the [FOC 125 Summary Report](#). FOC staff may recommend the court order a custody and parenting time investigation if they believe that the time to gather information for the summary report will exceed seven days as required by [MCR 3.224](#).
- The summary report must provide the action taken by the FOC. Those actions are listed in [MCR 3.224\(F\)\(2\)\(a\)\(i-iii\)](#) and [\(H\)\(1\)\(d\)](#). If necessary, the FOC can recommend that the court take a specific action to resolve the remaining contested issues, such as to order a custody and parenting time investigation, order mediation, or for the court to hold a hearing. It is critical that the FOC inform the court of contested issues that might require the court's immediate attention such as possible child abuse or neglect, the FOC case is not appropriate for ADR, or indications that one parent may leave the State of Michigan.
- The report should state if the parties reached a complete agreement on custody, parenting time, and support. If the parties did not reach a complete agreement, then the report should identify the issues that the parties have agreed to and issues they failed to agree to. For example, it should be stated in the report that the parents agreed to weekend parenting time but did not agree on the times to pick-up or drop-off the child.
- Other information needs to be included in the report such as where the child resides, where the child attends school, the parents' work schedules, contact the parties have had with the child, and domestic violence issues. This information assists the court in approving the parents' agreement or, providing the court with enough information to decide to sign the proposed order.
- The summary report should indicate other issues the court should be aware of and/or action for the court's consideration.
- Information collected should be provided for each best interest factor of the Child Custody Act if each factor is in dispute, and if each factor was weighted in favor of the plaintiff, defendant, equally, or not at all.

X. Supervised/Therapeutic/Agency Parenting Time

[MCL 722.27a](#) states:

“Parenting time shall be granted in accordance with the best interests of the child. It is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents. Except as otherwise provided in this section, parenting time shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time.”

Supervised parenting time is when a third party or agency oversees parenting time. In most instances of court-ordered supervised parenting time, it is ordered because of concern for the safety or well-being of the child during parenting time. There are two objectives of a supervised parenting time order. The primary objective of supervised parenting time is to provide a safe environment, whether safety is a concern for the child, the other parent, or both. The secondary objective is to move the supervised parenting time toward an unsupervised plan if certain objectives are achieved.²²¹

There may be, on occasion, custody and/or parenting time investigations where concerns may arise about the safety or welfare of the children during one or both parents’ parenting time. In those situations, supervised parenting time can assist in managing and facilitating the contact between the parent and the child. It can also be used to observe the development of the relationship between the parent and the child.

Practice Tip:

Determine if there are any signs of abuse or neglect.

- Have you interviewed the child and are there any signs of child abuse issues with the parents and child?
- Has either parent made child abuse or neglect allegations against the other parent?
- Is there any individual living with either parent that has abused or neglected the child?
- Is either parent or any individual living with either parent currently being investigated by CPS for child abuse or neglect?
- Were there any previous CPS reports of abuse or neglect involving the parents and children?
- Was there a CPS finding that indicated child abuse or neglect occurred based on a preponderance of the evidence?
- Was there ever an emergency removal of a child from this family because of abuse or neglect?
- Was there ever a situation where a court took jurisdiction on a petition while the child continued to reside in his or her own home under the supervision of the Michigan Department of Health and Human Services (MDHHS)?
- Was a child ever removed from the home by CPS?
- Was there a CPS finding that any circumstances jeopardized the child’s safety?

²²¹ [Michigan Parenting Time Guidelines.](#)

- Did CPS initiate an investigation but found no preponderance of evidence of abuse and neglect?
- Has there been a long period of time where the parent did not visit the child?
- Does the child have any medical conditions that require the other parent to have supervised parenting time?
- Is there any indication of domestic violence?
- Are there any substance abuse issues?
- Are there mental health or cognitive health issues for either the child or parent?
- Is there a strained relationship between child and parent?

Practice Tips:

Therapeutic Parenting Time: At times investigators may want to recommend therapeutic parenting time. Therapeutic parenting time is used in complex or reunifying cases where intervention focuses on strengthening the relationship between parent and child. Some examples may include when a parent and child have not had contact for an extended period, when the relationship has deteriorated to the point where the child is refusing to see the parent, or to help resolve past conflicts. See [Michigan Parenting Time Guidelines](#).

Practice Tips:

Agency parenting time: At times investigators may want to recommend agency parenting time. Although designed primarily for protection, agency supervision may be used along with therapy or parenting skills training to provide the parent with skills to move into an unsupervised setting. An agency may also be used in domestic violence cases when other types of supervision (such as supervision by a relative of the abusive parent) may not be appropriate or safe. See [Michigan Parenting Time Guidelines](#).

XI. Gathering Information

[MCL 552.505\(1\)\(g\)](#) provides that the FOC is, “to investigate all relevant facts, and to make a written report and recommendation to the parties and to the court regarding child custody or parenting time, or both....” To complete a thorough report, it is necessary to gather information and to verify the information. The investigator should review the pleadings and other statements of the parents to determine what information is likely to be needed in the investigation.²²² After obtaining the release forms, the investigator should carefully consider who to interview and what agencies to contact to complete the investigation.

Practice Tip:

Home inspections are primarily comparative studies. An investigator’s function is to weigh the merits and deficiencies of physical environments proposed by each competing parent and give the advantage on that basis.

- Is it necessary to schedule a home inspection? Home inspections should be conducted only for cases where there is a question of whether one or both homes do not meet the minimum standards of health and safety necessary to maintain the child.

Practice Tip:

Gathering documents and interviewing individuals outside the family helps verify information the parents provided. It is critical that you secure a release from each parent and then identify what sources of information would be most beneficial to the court.

- Interviews should be conducted with individuals who have had direct observation of the child and the parent’s interactions. Some examples include but are not limited to teachers, school officials, coaches, day care providers, neighbors, scout leaders, counselors, doctors, church youth group leaders, and family friends.
- Investigators should secure reports and documents that provide information useful to complete the report. Some examples: school records, child protective service reports, police reports (with a criminal history), court records, income verification (copies of paychecks, tax returns, and child support payment histories), medical records, and counseling records.
- If either parent has another FOC case, should that case be reviewed for additional information (e.g., indications of abuse, denial of parenting time)?

²²² Not every issue will need to be investigated with the same zeal. See [McCain v McCain](#), 229 Mich App 123 (1998). (Where the parties thought a particular issue had a significant magnitude, it was proper to give the issue more weight).

XII. Guidelines for Interviewing Children about Custody

Factor (i) of the best interest factors considers, “the reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.”²²³ In a child custody dispute, the parents must be informed of whether a custody preference expressed by the child was considered, evaluated, and determined by the court, but the parents or attorneys must not be informed of the preference expressed by the child.²²⁴ As an employee of the court, this nondisclosure requirement also applies to the investigator.

Should the child be interviewed?

Unless it is obvious the child is too young to be interviewed, the FOC investigator should make every effort to interview the child. The following information will assist the FOC investigator when interviewing children involved in a custody or parenting time dispute.

Practice Tip:

- Before interviewing the child: Obtaining information about the child before the interview will help the investigator develop a rapport with the child and assist with asking the child appropriate questions. Before conducting the interview, the investigator should complete the following tasks:
 - Review the verified statement for the ages and residence of the children.²²⁵
 - Determine if the child has ever been involved with a Child Protective Services (CPS) investigation. If so, review the CPS reports.
 - Interview the parents before interviewing the child.
 - Review any psychological or medical reports for the child and the parents.²²⁶
 - Review school, community, and home records of the child.²²⁷
- Plan to interview the child in a location that is neutral and where the child feels comfortable and safe. Schedule the appointment so that both parents can be with the child immediately before and immediately after the interview.
- Plan to observe the child and parent interactions. Investigators may want to arrange to have colleagues of the same sex as the child present when interviewing the children.
- The investigator should try to gain the child’s trust. This will increase the likelihood that the child will be honest and open with the investigator. The investigator may want to start with questions about school, activities, toys, or chores, which are less anxiety-producing. Then, the investigator may want to move to questions about people (e.g., relationships with parents, siblings, grandparents). The investigator can wind down the interview by returning to “safer” topics, answering questions, and reassuring the child that it is the judge who will make the custody decision. See Appendices,

²²³ [MCL-722.23\(i\)](#)

²²⁴ [Fletcher v Fletcher](#), 200 Mich App 505, 518 (1993) rev’d on other grounds, 447 Mich. 871 (1994).

²²⁵ [MCR 3.206\(C\)\(1\)](#)

²²⁶ The investigator should make sure the parents have signed release forms.

²²⁷ The investigator should make sure the parents have signed release forms.

[V](#), [VI](#), and [VII](#) for examples of questions to ask a child involved in a custody and parenting time investigation.

Practice Tip:

Be aware of non-verbal concerns from the child during the interview.

- Are there any indications that the child has been influenced about what to say by either or both parents? For example, does the child use language that reflects absolutes (e.g., “always” “never”)?
- How well is the child functioning physically, emotionally, and mentally?
- What is the relationship between the child and each parent?
- For each age level, preschool (birth to 6 years), school age (7 years to 13 years), and adolescence (14 years to 18 years), developmental considerations, interview guidelines, and suggested questions can be viewed in the appropriate appendixes. The investigator should adapt questions to the investigator’s own interviewing style and comfort level and should ask open-ended questions, and if necessary, ask specific, but nonleading questions. **Do not directly ask the child where the child wants to live.**

XIII. Domestic Violence Screening

Before starting a custody or parenting time investigation, the FOC should screen the case for domestic violence. Confidentiality and disclosure of answers to the screening is an issue that may affect a party's willingness to disclose information. Parents should be informed that information derived from the domestic violence screening will not be shared with the other parent unless the court orders it. It is recommended that it is best to contact the parents before the investigation interview to determine if holding a joint interview is beneficial. If the initial screening discloses domestic violence, a joint interview should not be scheduled. Contacting the parents before the investigation interview also allows the investigator to gauge the parent's responses to domestic violence screening questions.

There is no rule making domestic violence screening documents confidential for custody and parenting time investigations. In part this is because they are not case records but safety planning records and, therefore, may not fall under the definition of "records" under [MCR 3.218](#). Notes taken during the screening should be considered staff notes and thus would be considered confidential. [MCR 3.218\(A\)\(3\)\(a\)](#). Because of the multi-faceted nature of the domestic violence screening and the potential harm its release may cause, the FOC should refuse to provide the domestic violence screening materials. A person who wants to see them may then file a motion under [MCR 3.218\(F\)](#) and, if the court grants the motion it can provide safeguards to protect a party. The court can also act in advance to protect the screening material by ordering that the domestic violence screening material is confidential – making it confidential under [MCR 3.218\(A\)\(3\)\(f\)](#). Domestic violence issues for the custody or parenting time investigations are gathered separately and in more detail.

If there are indications of domestic violence, precautions should be taken to ensure the safety of the parties and court staff.

The investigator's responsibilities to the court are to investigate all relevant information, write a report with custody and parenting time recommendations, and to distribute the report to the parties, attorneys, and to the court. If the investigator finds during the investigation that there is a history of domestic violence or if the investigator believes there is a current or future risk of domestic violence, that information must be reported to the court. Domestic violence information should come from a variety of sources, such as the interviews with the parties, a review of the court records, and a review of other nonjudicial records. Because the purpose of the domestic violence screening is to determine if a joint interview is proper and to encourage full disclosure of all information by the parties, the SCAO recommends that investigators **not** use the information gathered from the domestic violence screening in the written report. Investigators should discuss any domestic violence concerns raised during the interview in the report under the Child Custody Factors, especially under factor "k."

Practice Tip

Before the interviews with the parties, the FOC should complete the following tasks:

- The FOC should check court records; including but not limited to personal protection orders in Michigan or other states, no-contact orders issued in any criminal case concerning either party, and for past or present civil

child protection cases. Potential resources for indications of domestic violence and child abuse include, but are not limited to:²²⁸

- ICHAT,
- VINE Database,
- Judicial Data Warehouse,
- Criminal and Civil records within the court’s jurisdiction,
- Medical records,
- Review of divorce pleadings for allegations of domestic abuse (if applicable),
- School records of children, and
- The parties’ social media.

Practice Tip

- **Investigators should inform both parents that the purpose of the domestic violence screening is to determine if the parents can have a joint interview. The investigator should tell the parties that the domestic violence screening is not a means to gather information for the custody and parenting time report. It should also be made clear to both parents that information shared during the screening will not be shared with the other party or the court. Fully informing the parents of the purpose of the screening may encourage the parents to share relevant information without fear of the investigator’s disclosure and allow a parent to make a safety plan if a disclosure is likely to incite retaliatory violence.**

Practice Tip

- **FOC staff should also be aware that a limited use of the screening avoids unnecessary intrusions into client privacy. Parents may be more willing to disclose their exposure to domestic violence if the parent does not have to divulge unnecessary details about the abuse.**

Practice Tip

- **Investigators should ask questions about matters that are in the public record.²²⁹ These matters are less likely to result in retaliatory violence against the abused parent because the matters have already been placed in a publicly accessible format.**

Practice Tip

- **Inform both parents that all cases are screened for domestic violence. If the abuse perpetrator knows that every case consists of a domestic violence screening, the perpetrator may be less likely to engage in retaliatory violence. Investigators should review the [FOC 124](#) for examples of questions that an investigator could ask during a domestic violence screening.**

²³⁹ More information on domestic violence referral services can be found on the [Michigan Domestic and Sexual Violence Prevention and Treatment Board’s website](#).

²⁴⁰ “Matters in the public record” can include personal protection orders, court orders restricting contact between the parties and/or the children, court orders to suppress personal addresses, and past or present civil child protection cases. These cases and court orders can be from a Michigan court or other jurisdictions.

Beginning the Custody and Parenting Time Interviews

Investigators should review the following practice tips at the start of the custody and parenting time interview:

Practice Tip

- **The scope and purpose of the investigator's report should be explained to all parties, including that any information provided during the interview may be used in the report. Investigators should also advise both parties who will receive copies of the report and explain that the report itself is not confidential.**

Practice Tip

- **Parents should be informed of approximately when the report will be sent out, so that if the party has concerns about how the other parent will react, he or she may have time to take extra safety precautions.**

Practice Tip:

- **It should be made clear to all parties that the investigator is gathering information on the current situation and will be making a custody and parenting time recommendation to the court and that the investigator is not advocating for, or representing, either parent in the custody and parenting time matter before the court.**

Practice Tip:

- **If domestic violence concerns are raised during a joint interview the investigator should end the interview, separate the parents, and schedule separate interviews. The investigator should consider if safety arrangements are immediately necessary and make the arrangements before officially concluding the interview. This can be done with other FOC staff assistance.**

Practice Tip:

- **The investigator should speak to the repercussions of nondisclosure of domestic violence to the parents, if appropriate. If there is a domestic violence issue that it is not evident in the interview process and the child is later abused, the non-abusing parent could be held liable for abuse.**

XIV. Uniform Child Custody Jurisdiction and Enforcement Act

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) governs procedures for resolving child custody disputes when one or both parties do not reside in the same state. It also regulates enforcement of out-of-state custody court orders and sets forth the circumstances when modification of a foreign order is permitted. Like all uniform laws, each state must take the initiative to adopt the UCCJEA as a state statute. Michigan adopted the UCCJEA in 2002.

Michigan can only make an initial child custody determination if one of the following apply:

- Michigan is the home state of the child.
- Michigan was the home state of the child six months before the start of the proceeding and the child is now absent from this state, but a parent continues to reside in Michigan.
- There is no other court with home state jurisdiction, or the home state declines jurisdiction and the child and at least one party has a significant connection with this state with substantial evidence concerning the child's care, protection, training, and personal relationships.
- All other courts lack jurisdiction or have declined jurisdiction.

Once a court establishes jurisdiction and makes a custody determination, that court retains exclusive, continuing jurisdiction to modify that custody order. However, another court can later assume exclusive, continuing jurisdiction over that order in certain circumstances. Moreover, a Michigan court could find that the Michigan court, "presents an inconvenient forum for the custody determination," and decline jurisdiction.

There is an exemption to the home state priority. The UCCJEA allows a state to obtain jurisdiction temporarily when the child is present in the state and is abandoned or needs protection because the child, sibling, or parent of the child is subject to abuse. [MCL 722.1204\(1\)](#). The UCCJEA permits a court without jurisdiction to issue a warrant for physical custody of a child if it is likely that the child will suffer serious imminent harm or be imminently removed from the state.

There must be an emergency, which requires the court to act without jurisdiction. The child must be present in the state. If a custody proceeding has been commenced or a custody determination made in another state court, the court without jurisdiction must immediately communicate with the other court to resolve the jurisdiction issue. Generally, a call is held where the judges from the different courts communicate and decide which state/court has jurisdiction.

FOC investigators may receive a court order to conduct a custody and parenting time investigation, simply a request to assist the court if Michigan is determined to be the home state, or if their court takes temporary emergency jurisdiction.

The FOC can assist with enforcement if Michigan does not have exclusive continuing jurisdiction but the order has been registered for enforcement. FOC offices should avoid enforcement procedures that could potentially modify the registered custody and parenting time order.

Practice Tip:

- **Certain domestic relations cases may be more likely to have jurisdiction concerns. If an investigator discovers another state court has jurisdiction, the investigator should ask the FOC director for guidance on handling the case. Before initiating a custody and parenting time investigation, the investigator should review the UCCJEA affidavit for information about jurisdiction. The investigator should review the Orders and Registration. A party may register an out of state order in any state but this does not give it any effect until and unless the party requests modification or enforcement of the order. The investigator may check with the state's IV-D intergovernmental unit in the state where the parent resides to verify that there is not an open domestic relations case.**

Practice Tip:

- **As a result of a Michigan court taking temporary emergency jurisdiction, an investigator may be asked to gather and provide information quickly to the court. As soon as possible the investigator should identify why the court was asked to take temporary emergency jurisdiction and what information the court may need. Investigators should be prepared to contact agencies from the other state for the information. If investigators receive a request from another state to assist in information gathering or to conduct a home visit on behalf of another state, they should verify that the state has jurisdiction.**

XV. Custody and Parenting Time Investigators as Mandated Reporters of Child Abuse and Neglect

Introduction

During custody and parenting time investigations, FOC investigators may encounter allegations of child abuse and neglect. The following recommendations will assist investigators with reporting child abuse and neglect and sharing information with Child Protective Services (CPS).

Who is a Mandated Reporter?

[MCL 722.623](#) requires any person employed in a “professional capacity” in any FOC office to report suspected child abuse and neglect to CPS. A court may determine that the statute covers employees who are not officially designated by the court and, therefore, they may be subject to the failure-to-report sanctions contained in [MCL 722.633](#).

Reporting Child Abuse and Neglect

When there is reasonable cause to suspect abuse and neglect, the investigator must report it. There is no statutory definition of what it means to find, “reasonable cause to suspect child abuse or neglect.” Mandated reporters (other than those employed by CPS) are not required to determine whether child abuse or neglect has *actually* occurred. The State Court Administrative Office (SCAO) recommends the investigator report child abuse or neglect when his or her rational observations, professional training, experience, or any other factor causes the investigator to suspect child abuse or neglect has occurred.²³⁰ A mandated reporter does not satisfy the legal obligation to file a report with CPS by simply having a conversation with an MDHHS employee; a report must be filed to meet the statutory requirement ([MCL 722.623](#)).

How to Report Suspected Child Abuse or Neglect to Child Protective Services

When an investigator has reasonable cause to suspect child abuse or neglect, the investigator must *immediately* make an *oral* report by telephone to 855-444-3911.²³¹ CPS intake personnel will want the following information, if available:²³²

- Name(s) and address of primary caretaker (parent and/or guardian).
- Names and identifying information for all household members, including the alleged victim and perpetrator.
- Birth date and race of all members of the household.
- Whether the alleged perpetrator lives with the child.
- Address where the alleged incident happened if different from the home address.
- Summary of the child’s disclosure and its context if the child disclosed the incident.
- History of the child’s behavior (any background information the mandated reporter knows related to the report that is being filed).
- Reasons why child abuse or neglect is suspected.

²⁴¹ See [Lee v Detroit Medical Center](#), 285 Mich App 51 (2009).

²⁴² Mandated reporters of child abuse and neglect are considered “mandated” at all times, even when they are not working.

²³² CPS will accept a referral even if all the information cannot be provided.

Within 72 hours after making the oral report, the investigator must file a written report (DHS-3200) with CPS. The written report must include as much of the following information that is known:

- Name, birth date, social security number, sex, and race of the child, mother, and father.
- Child's address.
- Name of the alleged perpetrator of abuse or neglect and relationship to child.
- Person(s) the child was living with when the abuse or neglect occurred.
- Address, city, and zip code where the abuse or neglect occurred.
- Injury or conditions and reason for suspicion of abuse or neglect.
- Source of the complaint.
- Reporting person's name, organization, and address.

The written report should be faxed to 616-977-1154, or 616-977-8900, or 616-977-8050, or mailed to Centralized Intake for Abuse and Neglect at 5321 28th St. Court, SE, Grand Rapids, MI 49546, or sent by e-mail to DHS-CPS-CIGroup@michigan.gov within 72 hours of submission of the oral report.

Investigators should file a written report using the DHS-3200 Form found at: [DHS-3200, Report of Actual or Suspected Child Abuse or Neglect \(fcnp.org\)](http://DHS-3200_Report_of_Actual_or_Suspected_Child_Abuse_or_Neglect(fcnf.org)).

If an investigator is dissatisfied with the response by MDHHS, the investigator may contact the Mandated Reporter Hotline at 877-277-2585. Before calling the hotline, the investigator must first attempt to talk with the local MDHHS office director about the investigator's concerns.

Investigators are not required by [MCL 722.623\(1\)](#) to provide a copy of the mandated report to the FOC director. However, the SCAO recommends that a copy of the report be maintained.

Include Child Abuse and Neglect Information in the Investigative Report

Any information regarding allegations or concerns of child abuse and neglect should be included in the custody and parenting time investigative report under factor (k), "regardless of whether the violence was directed against or witnessed by the child." The investigator may also want to request the court adjourn the custody and parenting time hearing until CPS has completed its investigation.

CPS Reporting Investigation Results to Mandated Reporters

After an investigator submits a written report of suspected child abuse or neglect, CPS must inform the investigator in writing about CPS's investigative results of the case, including:

- What determination CPS made after its investigation and the rationale for any decision made.
- Whether legal action was commenced and, if so, the nature of that action.
- Notification that the information being conveyed is confidential.

Provide Information to the Court and Attorneys of Record

If the FOC receives notice [as required by [MCL 722.628\(21\)](#)] from CPS regarding a child involved in an open FOC case, the FOC office should inform the court (e.g., the domestic relations referee, the family division judge assigned to the court case) and the attorneys of record about the CPS notification.

Friend of the Court Reporting Procedural Developments

[MCL 552.520](#) requires that if the FOC office receives notice from CPS regarding a child abuse investigation, the office must notify CPS of procedural developments in the FOC case until a final order regarding the pending custody or parenting time dispute order is entered.

[MCL 552.520](#) does not define “procedural developments.” If the FOC office has received a notice from CPS, the SCAO recommends the FOC forward to CPS any custody or parenting time notices sent in the FOC case, motions that are filed to establish or modify custody or parenting time, or any orders that are issued in the case.²³³ The SCAO also recommends that FOC offices make a note in the MiCSES system of the documents (e.g., copies of motions, court orders) sent to CPS, and the date the documents were transmitted.

Child Protective Services Must Notify the Friend of the Court of Investigations and Dispositions

[MCL 722.628\(20\)-\(23\)](#) imposes several notice and information requirements on CPS. This information may be critical for custody and parenting time investigations. CPS must determine if there is an open FOC case.²³⁴ regarding a child who is suspected of being abused or neglected. If there is an open FOC case, and if the CPS investigation results in one or more of the following findings or actions, then CPS must notify the local FOC office of:

- A CPS finding that indicates child abuse or neglect occurred, based on a preponderance of the evidence.
- An emergency removal of the child because of abuse or neglect.
- The court taking jurisdiction on a petition while the child continues to reside in his or her own home but under the supervision of MDHHS.
- Removal of one or more children residing in the home while one or more children remain in the home.
- A CPS finding that any other circumstances jeopardized the child’s safety.

In certain situations, CPS may determine there is no preponderance of the evidence regarding abuse and neglect, and the investigator may not have been the mandated reporter of the abuse and neglect. The SCAO recommends that the investigator check with CPS and inquire about all CPS investigations involving the family, before initiating any custody and parenting time investigation, including those where no abuse and neglect was determined.

FOCs Notifying CPS

If the FOC office receives notice from CPS as required above, the FOC office must notify CPS of procedural developments in the FOC case until a final order is entered regarding the pending custody or parenting time dispute.

Penalties for a Mandated Reporter’s Failure to Report Child Abuse or Neglect; Immunity from Making a Report

Because there are penalties for failure to report, it is important for the investigator to report child abuse and neglect when the investigator has reasonable cause to suspect it. Mandated reporters who fail to file a required report of suspected abuse or neglect may be subject to both civil and

²⁴⁴ Although abuse and neglect complaints are centrally processed, FOC offices should forward custody and parenting time notices, motions, and court orders to the MDHHS office in the county where the child resides.

²³⁴ CPS intends to determine whether an open FOC case exists by asking the parent if the parent has an open FOC case. If either parent identifies an open FOC case, CPS will send the required notifications to the FOC office.

criminal liability. In a civil action, the mandated reporter may be held liable for all damages that any person suffers due to the failure to file a report. In a criminal action, a mandated reporter may be found guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both ([MCL 722.633](#)). A mandated reporter does not satisfy the legal obligation to file a report with CPS by notifying only the investigator's supervisor or some other administrator within the same agency ([MCL 722.623](#)). A person acting in good faith who makes a report, cooperates in an investigation, or assists in any other statutory requirement is immune from civil or criminal liability ([MCL 722.625](#)).

APPENDIX I —Authorization Release Cover Letter

[FOC LETTERHEAD]

[DATE]

[NAME]

[TITLE]

[ADDRESS]

[CITY, STATE, ZIP]

Re: Information Requested for Custody/Parenting Time Investigation

Dear [Name],

The Friend of the Court (FOC) for [County Name] County is conducting a custody and parenting time investigation for the [Court Number] Circuit Court regarding the following parties and children:

[Plaintiff Name], [Plaintiff relation to child], [Plaintiff Date of Birth]
[Defendant Name], [Defendant relation to child], [Defendant Date of Birth]
[Minor 1 Name], [Minor 1 Date of Birth]
[Minor 2 Name], [Minor 2 Date of Birth]

To aid in our investigation, [County Name] FOC is requesting the following information regarding the above parties and children:

[Information Requested Here]

Please mail the requested information to the [Insert County Name] FOC within 15 calendar days. If you have any questions or concerns regarding this request for information, please feel free to contact me, [Investigator Name] by telephone at [Investigator Phone Number] or by email at [Investigator Email Address]. If for some reason you are unable or are unwilling to provide the requested information, please mail a written response indicating the reason you are unwilling or unable to provide such information to the [Insert County Name] FOC within 15 calendar days.

All responses can be mailed to:

[County FOC Address]

Thank you for your assistance in this investigation.

Best Regards,

[Investigator Printed Name]

[Investigator Title]

Enclosures: Release Authorization [Report Name]

APPENDIX II — Authorization for Release of Information

[FOC LETTERHEAD]

To: Physician, Surgeon, Hospital, Medical Records, Librarian, Psychiatrist, Counselor, School, Childcare Provider, or Designee. Other: _____

In re:

Plaintiff

vs

Defendant

Case No.

I authorize the release of information for me and/or the following dependent(s):

- 1. _____ (dob _____)
- 2. _____ (dob _____)
- 3. _____ (dob _____)
- 4. _____ (dob _____)

to the _____ County Friend of Court, or representative thereof. Information includes all records regarding drug and alcohol abuse, psychological records, counseling reports, any and all academic/behavioral school records, communications made by me/my child to a social worker, counselor, psychologist or psychiatrist.

I understand that this information is for the purpose of a custody, support, or parenting time investigation. I understand and agree that information obtained from this release may be made available to the parties and/or attorneys of record in my domestic relations case, as well as to the Family Division of the _____ County Circuit.

This authorization is valid for one year from the date of authorization unless I revoke it in writing before that date.

I agree that this release, or the information to be released, may be faxed or photocopied.

_____	_____	_____	_____
Date	Signature	Date	Signature

Print Name: _____

Print Name: _____

Date

Witness/FOC Representative

The requested information is to be sent to: _____

Address:

Email:

FAX:

APPENDIX III — Education/Childcare Investigation Form

EDUCATION INVESTIGATION FORM

This Investigation form is for the minor child(ren), [CHILD(REN)S NAMES]. Please type or print all requested information except signatures. If more space is needed, use additional blank pages. Please answer the following to the best of your knowledge and return to [COUNTY NAME] County Friend of the Court within 15 calendar days.

1. Describe the child(ren)'s general appearance (check one):

Excellent Good Fair Poor

Explain: _____

2. Describe the child(ren)'s general adjustment at the school/childcare (check one):

Excellent Good Fair Poor

Explain: _____

3. Does the child exhibit any specific difficulties or problems? (check one)

Yes No

Explain: _____

4. Does the child(ren) appear to be in good health? (check one)

Yes No

Explain: _____

5. Please describe the child(ren)'s emotional state: _____

Please answer items 6. – 12. if known and appropriate.

6. Who drops the child(ren) off at childcare/school/appointments? _____

7. Who picks the child(ren) up from childcare/school/appointments? _____

8. Does the child(ren) have a regular schedule for childcare/school/appointments. If so, what is that current schedule? _____

9. Does the child(ren) fail to attend many days at childcare/school/appointments?

10. Is the child(ren) toilet trained?

Yes No

Explain: _____

11. Can the child(ren) dress him/herself?

Yes No

Explain: _____

12. Please provide any further information or comments you believe helpful for the child custody and parenting time investigation. (Use additional pages as necessary.)

Questions 13. – 16. specific to children attending school.

13. Please provide the child(ren)'s current grade(s): _____

14. Is the school public or private? _____

15. What is the child(ren)'s estimated completion date? _____

16. Attendance for last general adjustment at the school (check one):

Number of Absences:	Current Period:	Last Completed Period:
Number of Unexcused Absences:	Current Period:	Last Completed Period:
Number of Times Tardy:	Current Period:	Last Completed Period:

Number of Classes Left in Current Marking Period: _____.

BY SIGNING THIS FORM, I ASSERT THAT ALL STATEMENTS MADE ARE TRUE TO THE BEST OF MY KNOWLEDGE.

Signature	Date
Name (<i>print</i>)	Title

APPENDIX IV — Custody and Parenting Time Investigation Checklist and Filing the Report

- Does the investigator know when the custody and parenting time report is due? ²³⁵
- Has the defendant been served with the complaint and summons?
- Has the investigator reviewed the pleadings?
- Has the case been screened for domestic violence?
- Has CPS been contacted to verify if the family has a CPS case?
- Has a criminal background check been completed for both parties?
- Has the investigator reviewed the UCCJEA affidavit?
- Have the parties submitted the required questionnaires?
- Have the parties signed the appropriate release forms?
- Have appointments been made with the parties?
- Have appointments with the children been scheduled?
- Has information been gathered from outside resources (e.g., teachers, coaches)?
- Have arrangements been made if domestic violence is an issue?
- Have wage and health disclosure forms been sent out?
- Has the FOC 39 been sent?

Filing the Custody and Parenting Time Report

The procedure by which a custody investigation is delivered to the court is a matter that should be considered carefully. The report is **not** a public record in contrast to pleadings, responses, and orders. Therefore, the report should be delivered to the referee or judge in a manner so that it will not be placed with other documents in the court file.

It is recommended that the report be brought to the court sealed and labeled for placement in a temporary file. In the alternative, a note should be attached to the report indicating that it should not be placed in the court file.

A copy of the report should be retained in the FOC file. The statute requires that the report is made available to the parties and their counsel. The report to the court should always be complete and should be accompanied by supporting documents (e.g., psychological reports).²³⁶ Although the report and recommendation must be made available to the parties, notes used in preparing the report are confidential information.²³⁷ A parent who wishes to view those notes must obtain a court order to do so.

²³⁵ [MCR 3.210\(C\)](#) requires that the court hold a hearing on a contested child custody matter within 56 days from the orders or after filing of notice that a custody hearing is scheduled. The report should be submitted to the court, parties, and attorneys at least seven days before the hearing. This would mean that the custody and parenting time investigation would have to be completed within 49 days.

²³⁶ [MCL 552.507a](#)

²³⁷ [MCR 3.218\(A\)\(3\)\(a\)](#): confidential FOC records includes staff notes.

APPENDIX V — Interviewing Children Ages Birth to Six

I. Development Considerations

- The most important person to a child at this age level is the one who provides physical care daily as well as love, comfort, stimulation, and nurturing.
- The most significant relationship at this age is with the primary caregiver, whether it is the mother, father, or another caregiver.
- This relationship lays the groundwork for relationships in future developmental stages and affects the child’s degree of self-esteem, confidence, independence, trust, and self-control.

The need for continuity in the relationship with the primary caregiver is greatest at this age. Disruption of this relationship may cause stress, feelings of deprivation, and difficulties with future relationships. This need for continuity effects custody and parenting time recommendations.

II. Interview Guidelines

- To assess the parenting skills and the bonding relationships of a child at this developmental stage, the child should be observed interacting with each parent at home; the parents should be interviewed privately as well.
- The interviewer must have a strong understanding of developmental stages and be able to identify concerns regarding speech, hearing and cognitive development when listening to responses from questioning.

III. Suggested Questions to Ask the Preschool Child

1. Know the child’s name and introduce yourself.
2. How old are you?
3. When is your birthday?
4. Do you have any brothers or sisters? How old are they?
5. Tell me about who lives with you at your father’s/mother’s house and what you think about those people.
6. Who takes care of you during the day? At night?
7. Who gets you breakfast, lunch, dinner?
8. Who helps you get dressed?
9. Who gives you a bath, washes your hair, cuts your nails?
10. What do you and mommy like to play together? What do you and daddy like to play together?
11. Who puts you to bed?
12. What is your favorite food, toy, TV program?

IV. Suggested Questions to Ask the Parent of the Preschool Child

1. Who gets your child’s breakfast, lunch, dinner?
2. Who feeds your child?
3. Who bathes and dresses your child?
4. Who purchases your child’s clothes, toys, other equipment?

Appendix V – Interviewing Children Ages Birth to Six

5. Who arranges for and takes your child to doctor and dentist appointments?
6. Who stays home from work when your child is sick? Why is that the parent to stay home (work schedule flexibility, sick days easier to get off, etc.)?
7. Who arranges for baby-sitters and childcare?
8. Who arranges for nursery school enrollment, religious education?
9. How are these decisions made with the other parent?
10. Who puts your child to bed?
11. How do you teach your child manners? How does the other parent?
12. How do you discipline your child? How does the other parent?
13. What are your child's favorite foods, TV program, story, toy?
14. What is this child's relationship to other sibling(s)?
15. How would you describe your child's relationship with you? With the other parent?
16. How has your child been affected by the marital separation? (Adjust question if the parents were never married.)
17. How would you go about correcting how your child has been affected by the marital separation? (Adjust question if the parents were never married.)
18. Describe a typical day with your child.

APPENDIX VI — Interviewing Children Ages 7 to 13

I. Developmental Considerations

- Daily caretaking is still important but less so than at an earlier age. The child grows more independent although the continuity of having a caregiver, routines, and schedules are important. Disruption may cause rebellious behavior, depression, or an “I don’t care” attitude.
- There is a growing awareness of blood-tie relationships and what it means (having a father vs. a stepfather).
- Extracurricular involvement with friends and participation in school, church, or sports activities become important. Disruption of these during parenting time may cause behavior problems. There is an increasing mastery of language, but most thinking is still concrete rather than abstract.

II. Interview Guidelines

- Observe interaction between the child and each parent, when possible, and interview the child privately at school or at your office.
- Inform the child that the judge makes the decisions about custody and parenting time and that the judge wants to know how the child feels.
- Ask the child very specific questions to elicit more detail.

III. Suggested Questions to Ask the School Age Child

1. Know the child’s name and introduce yourself. (Ask what the child likes to be called and use that name.)
2. When is your birthday?
3. What grade are you in? At what school? Favorite subject?
4. How do you get to and from school? At what time do you go to school and come home?
5. Who helps you with homework? How are you doing in school?
6. What do you do after school? On weekends? With friends?
7. Tell me about who lives with you at your father’s/mother’s house and what you think about those people.
8. Who gets your breakfast? What do you like to eat?
9. Who fixes your lunch to take to school? What do you eat for lunch?
10. Who makes dinner at night?
11. Who washes your clothes?
12. What chores do you have?
13. Describe a typical school day.
14. Describe a typical weekend day.
15. Who do you play with? At school? At home?
16. Do you celebrate Christmas/Hanukkah/Kwanza? When do you open your presents? What do you do on Thanksgiving? On other holidays?
17. I understand you have been spending the school nights at one parent’s house and weekends at the other parent’s home. What is it that you like the best about your mom’s house? What is it that you like the best about your dad’s house?

Appendix VI – Interviewing Children Ages 7 to 13

18. If you accidentally broke a window/a flower vase/your brother's toy/etc., what would your mom do? What would your dad do?
19. If you fell and hurt yourself, who would take care of you?
20. When you are too sick to go to school, who stays home with you?
21. When you go to the doctor or to the dentist, who takes you?
22. If you were home alone all afternoon with your mom, what do you think you would do? If you were home alone all afternoon with your dad, what would you do?
23. Have you ever taken a vacation trip? With whom? Where did you go?
24. What do you want to be when you grow up? Who is your hero or who would you like to be like when you grow up?
25. Did anyone tell you I might be coming to see you today? What did they say about it?
26. Do you know what divorce is?
27. What do you think is going on between your parents?
28. How did you learn about what is going on between your parents? Who told you about the divorce? How do you feel about it?
29. How does your mom feel about your wanting to see your dad? How does your dad feel about you wanting to see your mom?
30. If the judge says you should live with your mom, how would you feel? If the judge says you should live with your dad, how would you feel?
31. Is there anything that we have talked about that you do not want your mom or dad to know about?
32. Is there anything special you would like the judge to know?
33. Do you have any questions you would like to ask me?

APPENDIX VII — Interviewing Children Ages 14 to 18

I. Developmental Considerations

- The most significant issue is independence - free of parental control. Emotional ties to parents are no longer as important as they were earlier.
- A child at this age has a full awareness of blood-tie relationships and what that means (e.g., biological parents vs. stepparents and others).
- This age wants creature comforts - food, clothing, cash, and a car and admits to needing very little else from parents.
- Peer group is of primary significance and may outweigh parents' or adult authority.
- The preference of some adolescents is paramount. Their reality is what they perceive it to be. For other adolescents, there is great relief upon learning that the decision is not theirs to make.

II. Interview Guidelines

- The adolescent should be interviewed privately.
- Inform the adolescent that it is the judge who makes the decisions about custody and parenting time after considering a variety of factors, including how the adolescent feels.
- Discuss confidentiality.
- Ensure use of proper pronouns with the youth for both the parents and the youth. Questions will need to be reworded if there are two moms or dads as parents.

III. Suggested Questions to Ask the Adolescent

1. Know the adolescent's name, birthday, address, name of school, and grade level. Knowing this information in advance shows the adolescent that you are competent and enhances your confidence during "small talk" and the introductory period of your interview. (Ask what the adolescent likes to be called and use that name.)
2. Ask about extracurricular activities.
3. Does either parent participate as a coach or manager of a team, or attend events such as team games, school plays, field trips, parent-teacher conferences?
4. Who do you spend time with socially, how would you describe those social relations?
5. What are your favorite classes in school? Are you achieving at the level you would want?
6. What do you see yourself doing in the future?
7. If something goes wrong (adolescent is mouthy, violates family's curfew, etc.), what happens? How does your mom react? How does your dad react?
8. What is the one thing your mom does that upsets you the most? What is the one thing your dad does that upsets you the most?
9. Are there problems you can talk more easily about with your mom than with your dad? Are there problems you can talk more easily about with your dad than

Appendix VII – Interviewing Children Ages 14 to 18

with your mom?

10. When you are sick, who takes care of you?
11. Who takes you to the doctor or to the dentist?
12. Who buys the groceries, pays the bills, and does the laundry?
13. What chores do you have at home? Do you have any chores at your other parent's home?
14. What do you like best about your mom? What do you like best about your dad?
15. Tell me about who lives with you at your father's/mother's house and what you think about those people.
16. Did anyone tell you I might be speaking with you today? What did they say?
17. What do you think is going on between your parents?
18. How did you learn about what is going on between your parents? Who told you about the court action? What do you think about it?
19. How does your mom feel about your wanting to be with your dad? How does your dad feel about your wanting to be with your mom?
20. How would you feel if the judge says you will live with your mom? How would you feel if the judge says you will live with your dad?
21. Is there anything you would like the judge to know?
22. Do you have any questions?

APPENDIX VIII —Case Law

Introduction

This manual provides both published and unpublished family law cases. Unpublished cases are not binding precedent but are included here to illustrate how the Court of Appeals has addressed certain issues.

Child Custody – General

Cases referenced in this section via footnote:

***Arndt v Kasem*, 156 Mich App 706 (1986).** The trial court was reversed because its custody and parenting time decisions were made without looking at the best interests of the child.

***Bowling v McCarrik*, 318 Mich App 568 (2016).** The Court vacated the trial court’s order changing physical custody of the parties’ son from the plaintiff-mother to the defendant-father and remanded because the decision relied on a conciliator’s report before considering whether there was proper cause or a change of circumstances sufficient to justify a change in custody.

***Fisher v Fisher*, 118 Mich App 227 (1982).** The father's exercise of his religious beliefs regarding how his children were raised was not more important than the interest in the welfare of the minor children. Therefore, the trial court properly denied joint custody, and the court properly declined to order that mother continue the Christian training that the father wanted for the children.

***Kostreva v Kostreva*, 937 Mich App 648 (2021).** Neither of the standards for changing custody or parenting time applied to the court’s determination to change which parent retained custody of the child’s passport because it did not change the established custodial environment, nor was possession of the passport a condition of parenting time.

***Merecki v Merecki*, 336 Mich App 639 (2021).** The court held that the trial court erred in treating legal and physical custody differently for purposes of the *Vodvarka* standard, and by failing to make factual findings whether proper cause or a change of circumstances (COC) had occurred.

***Wellman v Wellman*, 203 Mich App 277 (1994).** When a parent is reluctant to allow parenting time in the early stages of a divorce action, it has been found to make it less likely that the parent would encourage a close relationship between the child and the other parent.

Relevant published cases not referenced in footnote:

***Rettig v Rettig*, 322 Mich App 750 (2018).** If the parties present the court with an agreement regarding child custody and parenting time, the court can accept the agreement

without expressly reviewing each of the best interest factors, as implicit in the court’s acceptance of the parties’ agreement is its determination that the arrangement is in the child’s best interest.

***Griffin v Griffin*, 323 Mich App 110 (2018).** The trial court erred by applying the preponderance of the evidence standard instead of clear and convincing evidence standard to the best interest determination under [MCL 722.23](#) when the child had an established custodial environment even though both parties had an equal burden of proof each having filed motions to change custody.

***Sims v Verbrugge*, 322 Mich App 205 (2017).** Because the parties’ Acknowledgement of Parentage (AOP) was not a judicial determination, no judgment or order regarding *legal* custody existed, and the trial court therefore erred by requiring the defendant-father to demonstrate by a preponderance of the evidence proper cause or a change in circumstances to modify or amend the AOP’s grant of initial custody to the mother. The trial court also erroneously reasoned that the mother should be granted sole *legal* custody of a child determined as “illegitimate” by [MCL 722.1](#) and [MCL 722.2](#), as this interpretation was at odds with [MCL 722.1004](#) mandate that a child who is the subject of an AOP is treated as a child born in wedlock and not as illegitimate.

Relevant unpublished cases not referenced in footnote:

***Atkinson v Atkinson*, unpublished opinion of the Court of Appeals, released January 27, 2022 (Docket No. 357466).** When the father was unwilling to compromise or alter his demands for parenting time exchanges unless he obtained the custody arrangement he wanted, the court correctly found that the parents could not cooperate in exercising joint legal custody and did not err in awarding the mother sole legal custody.

***In re Baby Boy Doe*, unpublished opinion of the Court of Appeals, released August 26, 2021 (Docket No. 353796).** Concluding that petitioner’s complaint for divorce, which sought custody of the then-unborn child (Doe), constituted a timely filed petition for custody under [MCL 712.10\(1\)](#), the court held that the trial court erred in terminating his parental rights as a non-surrendering parent under the Safe Delivery of Newborns Law.

Established Custodial Environment

Cases referenced in the section via footnote:

***Baker v Baker*, 411 Mich 567 (1981).** Repeated custodial changes and geographical moves, along with the accompanied emotional implications, destroyed the previously established custodial environment. There was no appreciable time where the minor child naturally looked to his father alone for the necessities of life, guidance, discipline, and parental comfort in a settled atmosphere.

***Berger v Berger*, 277 Mich App 700 (2008).** Having Child Custody Act factors (d) [The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.] and (e) [The permanence as a family unit of the

existing or proposed custodial home or homes.] weigh in a single party’s favor does not necessarily mean that that party also has an established custodial environment.

***Blaskowski v Blaskowski*, 115 Mich App 1 (1982).** Courts should avoid determining the existence of an established custodial environment based on a temporary custody order because of a potential for unfairness to noncustodial parents.

***Bofysil v Bofysil*, 332 Mich App 232 (2020).** Where an unmarried couple separated, and the unemployed stay at home parent, defendant, moved two hours away with the child, the court erred in awarding sole physical custody to the defendant because it incorrectly determined finding that the child’s established custodial environment was with the defendant alone and was biased against plaintiff as the working parent.

***Bowers v Bowers*, 198 Mich App 320 (1993).** When the parents had an upcoming custody trial, there could be no expectation that the arrangement established by a temporary order would be permanent.

***Brewer v Brewer*, unpublished per curiam opinion of the Court of Appeals, issued August 21, 2001 (Docket No. 221521).** The Court upheld the trial court’s finding that there was no established custodial environment. The ECE had been destroyed in the years leading up to the divorce due to the contentious relationship between the parties. During this time, neither party was caring for the children’s needs or safety as related to a custodial environment.

***Carson v Carson*, 156 Mich App 291 (1986).** The trial court correctly found that there was an established custodial environment in the home of one parent. Thus, the trial court was precluded from modifying the custody order unless the other parent presented clear and convincing evidence that a change was in the minor child’s best interest.

***Duperon v Duperon*, 175 Mich App 77 (1989).** An established custodial environment is not necessarily a choice between parties because an established custodial environment can exist in more than one home simultaneously.

***Foskett v Foskett*, 247 Mich App 1 (2001).** An established custodial environment can exist in more than one home simultaneously; thus, neither the mother’s nor the father’s established custodial environment could have been disrupted except upon a showing by clear and convincing evidence that such a disruption was in the children’s best interests.

***Hayes v Hayes*, 209 Mich App 385 (1995).** Whether an established custodial environment exists is a question of fact for the trial court to resolve based on statutory criteria. It makes no difference whether the environment was created by a court order, without a court order, in violation of a court order, or by a court order that was subsequently reversed.

***Heltzel v Heltzel*, 248 Mich App 1 (2001).** Although an established custodial environment existed with the child’s grandparents, in light of the United States Supreme Court ruling in *Troxel v Granville*, 530 U.S. 57 (2000), the court should have required

clear and convincing evidence that not awarding custody to the parent was in the child’s best interests.

***Kubicki v Sharpe*, 306 Mich App 525 (2014).** The trial court found that the child’s established custodial environment was with either the mother or both parents. The appellate court remanded the case with instructions to explicitly state its finding of an established custodial environment and to support it with reference to pertinent facts.

***La Fleche v Ybarra*, 242 Mich App 692 (2000).** When an established custodial environment exists, it cannot be disrupted except on a showing by clear and convincing evidence that such a disruption is in the child’s best interests.

***Moser v Moser*, 130 Mich App 97 (1983).** Where an established custodial environment existed with one parent, the court correctly found that physical custody should not be changed absent clear and convincing evidence that the custodial change was in the best interests of the children.

***Treutle v Treutle*, 197 Mich App 690 (1992).** The father’s utilization of a babysitter while he was at work did not undermine the fact that the father had an established custodial environment that was “marked by qualities of security, stability and permanence.”

***Schwiesow v Schwiesow*, 159 Mich App 548 (1987).** Where the mother was absent from the home for a significant part of the five years, it was proper for the court to consider the interaction between the children and parents to determine whether there was a disruption in the established custodial environment.

***Vodvarka v Grasmeyer*, 259 Mich App 499 (2003).** Before the trial court can consider whether there is an established custodial environment and conduct a review of the best interest factors, the movant has the burden of proving by a preponderance of the evidence that either proper cause or a change of circumstance exists.

***Zuziak v Zuziak*, 169 Mich App 741 (1988).** A father working second shift with extensive involvement with union and community activities may preclude him from establishing a custodial environment.

Relevant published cases not referenced in footnote:

***Greer v Alexander*, 248 Mich App 259 (2001).** Where a fit natural mother seeks a change of custody from an established custodial environment with third persons, the court must give the mother’s fundamental interest in childrearing appropriate consideration (see Heltzel, *infra*).

***Mills v Mills*, 152 Mich App 388 (1986).** Clear and convincing evidence is not necessary to change the terms of a custody order when a change in those terms will not change the established custodial environment.

***Yachcik v Yachcik*, 319 Mich App 24 (2017).** Because the child had an established custodial environment with both parents, the trial court erred in adopting a new parenting time arrangement that granted defendant primary physical and legal custody and changed the established custodial environment upon plaintiff's change in domicile without considering if the arrangement was in the best interests of the child.

Relevant unpublished cases not referenced in footnote:

***Keinath v Keinath*, unpublished opinion of the Court of Appeals, released April 7, 2022 (Docket No. 358548).** Although the parents shared responsibility for raising the children during the majority of their marriage, the trial court did not err in finding that as a result of the parties' separation, the children had an established custodial environment only with plaintiff where during the period of separation plaintiff resided with the children in their home, handled their entire daily routines and appointments, and was involved in their schooling; in contrast, defendant spent time with the children for three afternoons per week.

***Massey v Verazain*, unpublished opinion of the Court of Appeals, released December 28, 2021 (Docket No. 356015).** The trial court correctly determined that the children had an established custodial environment with only the plaintiff mother when since at least May 2016, she had provided for the children's emotional, religious, education, and medical needs, as well as love and guidance and that plaintiff had been a stay-at-home parent and home-schooled the children, while defendant's relationship with the children had been "one of distance with visitation since 2016."

***Harmon v Harmon*, unpublished opinion of the Court of Appeals, released November 23, 2021 (Docket No. 357227).** Where the trial court held that the established custodial environment existed solely with plaintiff, and because a change of the minor children's domicile to Virginia did not alter that established custodial environment, it was unnecessary for the trial court to assess the best interest factors.

***Harrison v Jenkins*, unpublished opinion of the Court of Appeals, released July 1, 2021 (Docket No. 354584).** Although the trial court incorrectly found that the children did not have an established custodial environment (ECE) with either party when the evidence was clear that the children had an ECE with both parents, no remand was necessary because the court did not change the ECE, meaning only a preponderance of the evidence was needed to support its decision.

Child Custody Factors

FACTOR (a): The love, affection, and other emotional ties existing between the parties involved and the child.

Cases referenced in the section via footnote:

***Baker v Baker*, 411 Mich 567 (1981).** Preference in custody goes to the parent who has had a major impact in raising the child.

***Carson v Carson*, 156 Mich App 291 (1986).** “While it is true that, in this case, the minor child's preference for living with her father is influenced by her desire to live with her stepsister Heidi and her preference for her father's neighborhood, we do not believe that it is possible to entirely separate a child's emotional attachment to her father from her preference for his circumstances. In any case, we are inclined to affirm the trial court's finding on the amorphous factor of love and emotional ties in the absence of significant contrary evidence in the record.”

***Duncan v Booth*, unpublished per curiam opinion of the Court of Appeals, issued June 15, 2017 (Docket No. 318714).** The trial court could properly find that the lack of time defendant spent with his other daughter and particularly his failure to exercise summer parenting time with her was a factor in determining plaintiff had the better capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion.

***Eigner v Eigner*, 79 Mich App 189 (1977).** It was proper for the court to find the parents equal on this factor because the parents loved their child and the child loved both parents.

***Kurtz v Kurtz*, 32 Mich App 366 (1971).** Where one parent provides sole continued stability of the children for five years and the children indicate they only have love and respect for that parent, the court will not be inclined to grant the other parent's motion to change custody.

Relevant published cases not referenced in footnote:

***Barringer v Barringer*, 191 Mich App 639 (1991).** Defendant's abandonment of plaintiff prior to children's birth was not held against defendant for purposes of factor (a).

***Bowers v Bowers*, 198 Mich App 320 (1993).** Despite that the trial court determined factor (a) favored plaintiff based on defendant acting more out of obligation and plaintiff more out of love, factor (a) does not favor either party.

***Helton v Beaman*, 304 Mich App 97 (2014).** Where defendants have raised the child from birth and plaintiff has little meaningful interaction with child, factor (a) favors defendants.

***MacIntyre v MacIntyre*, 267 Mich App 449 (2005).** Where plaintiff receives a negative psychological exam but both parties put their own interests ahead of the child's, factor (a) favors neither party.

***Rains v Rains*, 301 Mich App 313 (2013).** Plaintiff and defendant were equal where both parties provided the child's necessities although plaintiff handles all of child's medical needs.

FACTOR (b): The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.

Cases referenced in the section via footnote:

***Carson v Carson*, 156 Mich App. 291 (1986).** Religious participation by itself may not be a sufficient basis to allow a parent to prevail on this factor.

***Fletcher v Fletcher*, 447 Mich 871 (1994).** The court can consider the parents' involvement in the academic affairs and extracurricular activities of the children and the children's reliance on the parents for answers regarding sexual maturation when evaluating this factor.

***Harper v Harper*, 199 Mich App 409 (1993).** When both parties equally provide for the child, the court may favor one parent's disciplinary techniques over the other parent to determine who satisfies this factor.

***McCain v McCain*, 229 Mich App 123 (1998).** When one parent stops attending the church of the denomination in which the child was raised and instead attends an alternative home church, this factor could be weighed in favor of the other parent.

***Ulvund v Ulvund*, unpublished per curiam opinion of the Court of Appeals, issued August 2000 (Docket No. 224566).** Even though a parent is involved in the child's religion, the fact that the parent's lifestyle is contrary to the doctrines of that religion may be considered in determining which parent should prevail on this factor.

***West v Smallman*, unpublished per curiam opinion of the Court of Appeals, issued June 2001 (Docket No. 223163).** In evaluating this factor, the court can consider a parent's willingness to allow a child to obtain guidance or comfort through religion when the child so desires.

Relevant unpublished cases not referenced in footnote:

***Weeks v McFarlin*, unpublished opinion of the Court of Appeals, released November 18, 2021 (Docket No. 356527).** As it appears that plaintiff was not opposed to the child's involvement in defendant's religion – in which the child was both schooled and attended church, and there was no evidence that plaintiff desired to educate the child in the belief system in which plaintiff was raised, the finding that child custody factor (b), which includes raising the child in a religion or creed, favored defendant slightly was not against the great weight of the evidence.

FACTOR (c): The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

Cases referenced in the section via footnote:

***Bowers v Bowers*, 198 Mich App 320 (1993).** Factor (c) favors both parties equally where mother and father are both employed and able to provide medical insurance.

***Carson v Carson*, 156 Mich App. 291 (1986).** A parent with a greater household income compared to the other's minimal earnings can be considered to have a greater capacity to provide for the child's basic needs.

***Fletcher v Fletcher*, 229 Mich App 19 (1998).** Where both parents had sufficient earning capacity to provide secure and adequate housing, but one parent decided to save money by sharing an apartment with an adult couple who had negative aspects to their relationship and the child slept on a sofa bed and cot, it was proper for the court to find this factor favored the other parent.

***Harper v Harper*, 199 Mich App 409 (1993).** A parent who has demonstrated an excellent employment history but who has recently become self-employed may still be considered to have a greater capacity than a parent who has a less successful employment history and whose earnings in her most recent position depend on future sales.

***LaFleche v Ybarra*, 242 Mich App 692 (2000).** The court can consider the extent to which an income disparity would be counterbalanced by child support in evaluating this factor.

***McCain v McCain*, 229 Mich App 123 (1998).** A parent who has voluntarily accepted a reduction in income below the parent's earning capacity may be considered to lack the disposition to provide for the child's basic needs.

***Moser v Moser*, 184 Mich App 111 (1990).** Where each parent had the earning capacity to provide for the child, but one parent chose to participate in extracurricular activities instead of providing for the child, it was proper for the court to find this factor favored the other parent.

***Schuiteboer v Schuiteboer*, unpublished per curiam opinion of the Court of Appeals, issued October 2000 (Docket No. 224020).** In evaluating this factor, the court can consider one parent incurring less debt than the other.

***Williams v Williams*, unpublished per curiam opinion of the Court of Appeals, issued September 2000 (Docket No. 220488).** Where a parent is frequently unemployed and fails to maintain a standard of living within the parent's means but takes on the support of another individual and that individual's child, the court may find this factor favors the other parent.

Relevant published cases not referenced in footnote:

***Barringer v Barringer*, 191 Mich App 639 (1991).** Plaintiff argues that the trial court improperly emphasized defendant's earning capacity in finding that factor (c) favored him and that that emphasis placed her, a homemaker, at a disadvantage. However, the court noted that the parties' disposition for providing for their children's material needs was equal, and it did not appear that the court placed undue emphasis on defendant's higher salary.

***Berger v Berger*, 277 Mich App 700 (2008).** Factor (c) does not contemplate which party earns more money; it is intended to evaluate the parties' *capacity* and *disposition* to provide for the children's material and medical needs. Thus, this factor looks to the future, not to which party earned more money at the time of trial, or which party historically has been the family's main source of income.

***MacIntyre v MacIntyre*, 267 Mich App 449 (2005).** The trial court properly weighed factor (c) in plaintiff's favor considering defendant's evasive testimony regarding her reasons for discontinuing the child's therapy sessions.

***Mazurkiewicz v Mazurkiewicz*, 164 Mich App 492 (1987).** The court may weigh this factor in favor of the parent who has a more stable and better work history than the other party if the court does not place an undue amount of reliance on the fact that one parent used to be a homemaker.

***Rains v Rains*, 301 Mich App 313 (2013).** Factor (c) favors both parties equally although defendant would generally defer to plaintiff's medical decisions as plaintiff was a pharmaceutical representative.

Relevant unpublished cases not referenced in footnote:

***Marsh v Harness*, unpublished opinion of the Court of Appeals, released January 26, 2023 (Docket # 362204).** The trial court's finding that factor (c) favored both parties was not against the great weight of the evidence because although defendant had not paid child support, hospital bills, or other bills associated with the minor child at the time of the hearing, his testimony that he brought diapers, toys, and clothing to parenting time and the fact that plaintiff's decision to exclusively breast-feed the minor child precluded defendant from providing him with food, supported defendant's disposition to provide support.

FACTOR (d): The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

Cases referenced in the section via footnote:

***Bowers v Bowers*, 198 Mich App 320 (1993).** Factor (d) favors neither party when defendant's roommates change often and plaintiff intends to move, possibility out of state, has frequent job changes, and a drinking problem.

***Hilliard v Schmidt*, 231 Mich App 316 (1998).** Although the mother plans on marrying her boyfriend, a stable environment is not demonstrated when a parent moves several times and remarries and divorces in the short time since the parents divorced.

***Phillips v Jordan*, 241 Mich App 17 (2000).** Where the evidence demonstrates that the child is relatively unaffected by the mother's frequent moves and considers her home to be wherever she and her mother reside, the court may find that the moves do not weigh this factor in favor of the father.

***Riley v Downs*, unpublished per curiam opinion of the Court of Appeals, issued December 2000 (Docket No. 224314).** Where one parent has remained in a stable marriage and has worked at the same job for five years while the other parent has lived with multiple romantic partners since the divorce, it is proper for the court to weigh this factor in favor of the first parent.

Relevant published cases not referenced in footnote:

***Helton v Beaman*, 304 Mich App 97 (2014).** Factor (d) favors defendants who have raised the child from birth where plaintiff had little to no meaningful interaction with the child.

***Kessler v Kessler*, 295 Mich App 54 (2011).** Factor (d) favors plaintiff who had a specific plan regarding children’s home and school in Florida while defendant was uncertain about whether he would be able to afford school tuition and the marital home in Michigan.

***MacIntyre v MacIntyre*, 267 Mich App 449 (2005).** Factor (d) favors plaintiff where defendant intentionally interfered with plaintiff’s belongings or projects in the home, often in the child’s presence.

***Sinicropi v Mazurek*, 273 Mich App 149 (2006).** The trial court did not err in finding factor (d) favored the party who lived where the child had ties to the party and his extended family.

FACTOR (e): The permanence, as a family unit, of the existing or proposed custodial home or home.

Cases referenced in the section via footnote:

***Fletcher v Fletcher*, 200 Mich App 505 (1993).** The focus of factor (e) is whether the family unit will remain intact, not the acceptability of the home in which the child will live.

***Hilliard v Schmidt*, 231 Mich App 316 (1998).** The fact that a parent has had multiple relationships within a short period of time is an appropriate consideration under this factor despite that parent’s stated intention to marry her boyfriend when no definite plans have been made to that end.

***Mazurkiewicz v Mazurkiewicz*, 164 Mich App 492 (1987).** Where the mother was inclined to develop inappropriate social interests outside after her marriage and frequently used babysitters, it was proper for the court to find that this factor favored the father.

***Zuziak v Zuziak*, 169 Mich App 741 (1988).** The fact that one of the parents is single should not preclude a finding that there is a stable family environment where that parent provides a positive nourishing environment.

Relevant published cases not referenced in footnote:

***Ireland v Smith*, 451 Mich 457 (1996).** The focus of factor (e) is the child’s prospects for a stable family environment rather than the physical home itself.

***Kessler v Kessler*, 295 Mich App 54 (2011).** Factor (e) favors neither party where plaintiff is planning to move to Florida and defendant is uncertain that he will be able to maintain the marital home.

***MacIntyre v MacIntyre*, 267 Mich App 449 (2005).** Factor (e) favors neither party where plaintiff intended to remain in the marital home if granted custody while defendant intended to sell the home and split the proceeds.

***Rains v Rains*, 301 Mich App 313 (2013).** Finding that factor (e) favored defendant when plaintiff essentially had two custodial homes was not against great weight of the evidence.

FACTOR (f): The moral fitness of the parties involved.

Cases referenced in the section via footnote:

***Bowers v Bowers*, 198 Mich App 320 (1993).** A father who had two Operating Under the Influence of Liquor convictions, was verbally abusive and threatening to the other parent in front of the child, lied about his past alcohol record, lived with the child’s babysitter, and allowed the child to drink from his beer evidenced immorality exceeding that of the mother who allowed her boyfriend to occasionally spend the night.

***Fletcher v Fletcher*, 447 Mich 871 (1994).** Where a party had an affair, but the children had no knowledge of it, the affair by itself did not weigh against the party under this factor.

***Williamson v Williamson*, 122 Mich App 667 (1982).** Immorality alone is not sufficient to find in favor of one of the parents on this factor. Without evidence that immorality has an impact on the children, a determination that this factor weighs in one party’s favor is against the great weight of the evidence.

Relevant published cases not referenced in footnote:

***Demski v Petlick*, 309 Mich App 404 (2015).** Past marihuana use alone with no evidence of current use should not be considered when evaluating a person’s ability to function as a parent.

FACTOR (g): The mental and physical health of the parties involved.

Cases referenced in the section via footnote:

***Bednarski v Bednarski*, 141 Mich App 15 (1985).** Where a parent’s deafness may have impaired the child’s oral communication development but other means of obtaining

verbal language stimulation were available, removing the child from that parent’s custody was found to be inappropriate.

***Bowers v Bowers*, 198 Mich App 320 (1993).** When the father has a history of drinking and outbursts against the mother, they were relevant to his mental health and the factor favored the mother, not the father.

***Wilson v Upell*, 119 Mich App 16 (1982).** A parent’s weaker physical and emotional health, evidenced by two periods of hospitalization – one for the overuse of prescription drugs – can weigh against that parent.

***Demski v Petlick*, 309 Mich App 404 (2015).** The plaintiff’s medical (for pain) marihuana card expired, and plaintiff had no plans to renew the card. Even if a medical marihuana card indicated unfitness under Factor (g), when there was no evidence that plaintiff would suffer from serious pain or use marihuana when he parented the child in the future, the court did not err in finding the parties equal for this factor.

***Harper v Harper*, 199 Mich App 409 (1993).** Although the court found both parents had difficulties, it found the mother’s mental health inferior to the father’s because she “displayed some serious lapses of judgment, which posed potentially serious threats to the children’s health and safety” due to her borderline personality disorder.

Relevant unpublished cases not referenced in footnote:

***Gittler v Gittler*, unpublished opinion of the Court of Appeals, released September 23, 2021 (Docket No. 356034).** The trial court erred when it removed safety restrictions related to plaintiff’s mental health, which, though they might not be currently necessary, the plaintiff had unilaterally disregarded, demonstrating she may again fail to follow medical advice.

FACTOR (h): The home, school, and community record of the child.

Cases referenced in the section via footnote:

***Baker v Baker*, 411 Mich 567, 582 (1981).** Information to consider in examining the community record includes long-term community contacts evidenced by: attendance at the same school, contact with the same friends or playmates, visits to relatives in the community, and participation in sports programs. However, the court is not required to touch on every matter of evidence introduced at trial in its determination of this factor.

***Hall v Hall*, 156 Mich App 286 (1986).** Where a child showed improvement in school and began counseling under the father’s care, it was proper to find this factor favored the father.

***Harper v Harper*, 199 Mich App 409 (1993).** This factor may not be determinative when both parents would continue the child in the same church, school, and community.

Ireland v Smith, 451 Mich 457 (1996). The parent’s proposed childcare arrangements may be an appropriate consideration under this factor.

McCain v McCain, 229 Mich App 123 (1998). Where the actions of one parent reflect poor judgment on educational matters, it is proper to find this factor favors the other parent.

Moser v Moser, 184 Mich App 111 (1990). Where the father’s job took him away for extended periods of time, but the children had poor attendance and school records when with the mother, it was proper to find this factor favored the father.

Wellman v Wellman, 203 Mich App 277 (1994). Examination of this factor is not applicable when the child is too young to have developed a home, school, or community record.

Relevant published cases not referenced in footnote:

Kessler v Kessler, 295 Mich App 54 (2011). When the children are doing well in school and the father has a more flexible work schedule than the mother to transport the children to school and daycare, finding this factor slightly favors father is proper.

MacIntyre v MacIntyre, 267 Mich App 449 (2005). When the mother rearranges the child’s room and damages his belongings after the child and father worked together to clean the room, and the child’s grades and behavior at school subsequently decline, finding this factor favors father is proper.

Sinicropi v Mazurek, 273 Mich App 149 (2006). When the child does very well in school and receives an award for turning his homework in on time for the entire year, a finding that this factor favors the custodial party is proper.

FACTOR (i): The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

Cases referenced in the section via footnote:

Baker v Baker, 411 Mich 567 (1981). Where a child has expressed a preference that is based on undue influence by a parent and is inconsistent with the child’s best interest, that preference may be disregarded.

Flaherty v Smith, 87 Mich App 561 (1978). It was improper to decline to interview a seven-year-old child to ascertain whether he had a custodial preference between his maternal grandmother and his stepfather.

Fletcher v Fletcher, 200 Mich App 505, 518 (1993) rev’d on other grounds, 447 Mich 871 (1994). While it is generally necessary to speak to a child to determine the child’s preference, the preference may be determined in other ways such as when the parents acknowledge that the child has a preference for one of them and that preference is reasonable based on other information. Parents must be informed of whether a custody

preference expressed by the child was considered by the court, but parents cannot be informed of the preference expressed by the child.

***Hall v Hall*, 156 Mich App 286 (1986).** When a child has expressed a preference, that preference may be disregarded when the child’s motivation for the preference is inappropriate.

***Stevens v Stevens*, 86 Mich App 258 (1978).** The child’s preference must be taken into account if the child is old enough to express a preference.

***Wellman v Wellman*, 203 Mich App 277 (1994).** The exact point at which a child is old enough to express a preference is dependent on the child’s age and maturity and is different for each child. Where the children were too young to have a home, school, or community record or to express a preference between the parents, it was proper to find this factor inapplicable.

Relevant published cases not referenced in footnote:

***Bowers v Bowers*, 198 Mich App 320 (1993).** Children as young as six years old can express a preference, and a trial court's failure to conduct an interview is error requiring reversal. Additionally, where one child expresses a weak preference for one parent and the other child refuses to express a preference, a finding that this factor favors one parent for both children is against the great weight of the evidence. In such a case, this factor favors one party regarding one child but favors neither party regarding the other child.

***MacIntyre v MacIntyre*, 267 Mich App 449 (2005).** The court does not need to violate the child’s confidence by revealing the child’s preference on the record.

***Pierron v Pierron*, 486 Mich 81 (2010).** This factor does not insist a child’s preference “be accompanied by detailed thought or critical analysis,” but the standard does exclude “preferences that are arbitrary or inherently indefensible.”

***Sinicropi v Mazurek*, 273 Mich App 149 (2006).** A trial court’s failure to consider the reasonable preference of the child is harmless error where it is evident the child’s preference would not have changed the trial court’s ruling.

Relevant unpublished cases not referenced in footnote:

***Hanshue v Hanshue*, unpublished opinion of the Court of Appeals, released August 27, 2020 (Docket No. 350658).** Although the trial court was not required to interview the child, the trial court plainly erred by relying on the parties’ opinions of the child’s preference, rather than determining whether the child had the capacity to form a preference, what school placement the child preferred, and whether that preference was reasonable.

FACTOR (J): The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents. A court may not consider negatively for the purposes of this

factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.

Cases referenced in the section via footnote:

***Barringer v Barringer*, 191 Mich App 639 (1991).** When the mother continuously interferes with the father's visitation, finding this factor favors the father is not an error.

***Bowers v Bowers*, 198 Mich App 320 (1993).** When the father insults, berates, and threatens the mother in front of the children, and allows the sons to make other plans for weekends when they are supposed to be with the mother but refuses to allow the daughter to make plans for weekends she is supposed to be with the father, finding this factor equal between the parties is against the great weight of the evidence and should be found to favor the mother.

***Fletcher v Fletcher*, 229 Mich App 19 (1998).** The court's finding for plaintiff on this factor was supported by evidence that the plaintiff was more inclined to seek defendant's input before making decisions involving the children and that defendant's statement that she would encourage the children to visit plaintiff if she was awarded custody was inconsistent with her actions in the past. There was also evidence that defendant remained hostile toward plaintiff, made decisions about their children without informing plaintiff, and actively undermined his attempts to maintain discipline.

***Hillard v Schmidt*, 231 Mich App 316 (1998).** Where a parent denied parenting time on the advice of a psychologist, it was proper not to weigh this factor against that parent.

***Martin v Martin*, 331 Mich App 224 (2020).** Over a nine-year period, plaintiff denigrated defendant to their three children. The trial court found that defendant was controlling and misused corporal punishment in times of anger. During a four-year period during which plaintiff effectively prevented any parenting time, defendant engaged in extensive counseling and showed marked improvement. Even so, plaintiff continued to obstruct her children's counseling and parent-child reunification efforts, adding to the strain on defendant's relationship with his children. After several less drastic attempted measures failed, the court awarded defendant sole physical and legal custody of the couple's only remaining minor child. The court found that plaintiff's anger and behavior alienated the children from defendant and weighted this factor in favor of defendant.

***McCain v McCain*, 229 Mich App 123 (1998).** Where a parent demonstrated such vindictive behavior that it was likely an attempt to destroy the other parent's relationship with the child, this factor would weigh against the parent exhibiting the vindictive behavior.

***Wellman v Wellman*, 203 Mich App 277 (1994).** When a parent is reluctant to allow parenting time in the early stages of a divorce action, the trial court could properly find that the factor slightly favored the other parent.

Relevant published cases not referenced in footnote:

***MacIntyre v MacIntyre*, 267 Mich App 449 (2005).** When the mother denigrates the father in front of the child and a doctor, interferes with the father’s parenting time, and the child tells the doctor that father does not verbally attack the mother and allows the child to stay with the mother when he has to go out of town during his scheduled parenting time, a finding that this factor favors the father is not an error.

***Rains v Rains*, 301 Mich App 313 (2013).** When the parties have a clearly contentious relationship, the father is making significant improvements in his relationship with the mother but mother has not similarly improved. The father has failed to use court-ordered parenting services and does not attend the child’s counseling as frequently as the mother. But the mother appears to want to move the child away from the father and believes she is being harassed by the father. A finding that this factor favors neither party is not against the great weight of the evidence.

***Sinicropi v Mazurek*, 273 Mich App 149 (2006).** When mother moves the child to a town 90 miles away, but the father testifies the mother and child love each other and he makes sure the child calls the mother when important events occur during his parenting time, finding this factor favors neither party is not an error.

Relevant unpublished cases not referenced in footnote:

***Cummings v Cummings*, unpublished opinion of the Court of Appeals, released March 10, 2022 (Docket No. 358295).** The court did not err in finding factor j (the willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents) favored plaintiff when, despite the alleged demanding tone of plaintiff’s text messages concerning parenting time, defendant failed to respond to the text messages and admitted to the Friend of the Court that at times he was not willing to commit to responding to plaintiff.

FACTOR (k): Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

Cases referenced in the section via footnote:

***Bowers v Bowers*, 198 Mich App 320 (1993).** When a father insulted, berated, and threatened the mother in the presence of the child, it was proper to weigh this factor against the father.

***Brown v Brown*, 332 Mich App 1 (2020).** Where the court questioned the plaintiff’s use of corporal punishment, the court was found not to have erred by relying on evidence of plaintiff’s abusive treatment of family pets as furthering its conclusion that that plaintiff’s use of corporal punishment constituted domestic violence under this factor.

***Harper v Harper*, 199 Mich App 409 (1993).** The fact that the mother struck and shoved the father many times, attempted to force her way into his truck, and reached through the truck window to slap him can be weighed against the mother.

***Kessler v Kessler*, 295 Mich App 54 (2011).** Factor (k) favors neither party where the mother testified to alleged acts of domestic violence and the father testified to a different version of the same event.

***MacIntyre v MacIntyre*, 267 Mich App 449 (2005).** When both parties admit to spanking the child, but the child has witnessed the mother physically attack the father, and the mother’s testimony of the father’s violence is found to be incredible, finding this factor favors the father is not an error.

***McIntosh v McIntosh*, 282 Mich App 471 (2009).** When the father is an alcoholic, there was a conviction for domestic violence, the mother testifies the father has been abusive throughout their marriage, the eldest son shows signs of being traumatized, and their father admits he was “probably” physically assaultive toward the mother on two occasions although the mother had once thrown a glass at him, finding this factor favors mother is not an error.

***Wynn v Wynn (Wynn I)*, 234 Mich App 255 (1999).** The Court held that in situations where the parents argue with each other in isolated instances, the domestic violence factor is not a consideration.

Relevant published cases not referenced in footnote:

***Rains v Rains*, 301 Mich App 313 (2013).** When the trial court is aware of several previous PPOs against the father and knows the court has set aside a PPO against him after determining it had no basis, finding the record does not support mother’s claims of domestic violence is not against the great weight of the evidence.

FACTOR (l): Any other factor considered by the court to be relevant to a particular child custody dispute.

Cases referenced in the section via footnote:

***Edel v Edel*, 97 Mich App 266 (1980).** It is clear legal error to consider a parent’s association with a person of another race when deciding custody.

***Helms v Helms*, 185 Mich App 680 (1990).** This factor has been weighed in favor of a parent when custody with that parent could keep a child together with a sibling.

***Hilliard v Schmidt*, 231 Mich App 316 (1998).** Where the mother did not take responsibility for the child enduring emotional pressure by being caught between the two parties, the mother’s anger toward the father interfered with her ability to consider the needs of her children, and the mother tended to blame others for her problems, the court properly concluded the evidence weighed in favor of the father.

***Ireland v Smith*, 451 Mich 457 (1996).** Factor I is a catch-all provision which encompasses “any other factor considered by the court to be relevant to a particular child custody dispute.” This includes childcare arrangements which the trial court should examine and decide based on the best interests of the child.

***Mogle v Scriver*, 241 Mich App 192 (2000).** Where a child had special needs that were better met with the permanence and stability offered by a two-parent home, it was permissible to find that the two-parent home was preferable to a single-parent home.

***Wellman v Wellman*, 203 Mich App 277 (1994).** The fact that parents have had difficulty in communicating and cooperating could be considered in determining a custody award, and the fact that the father left the mother with one child while she was pregnant with another could be weighed against him.

***Wiechmann v Wiechmann*, 212 Mich App 436 (1995).** If the best interests of the individual child will be better served by separate custody of the child with one parent while custody of other children remain with the other, a separate custody arrangement should prevail.

***Zuziak v Zuziak*, 169 Mich App 741 (1988).** This factor may weigh in favor of a parent who exhibited a willingness to defer to the best interests of the child by previously relinquishing custody.

Relevant unpublished cases not referenced in footnote:

***Nordhielm v Dapena-Baron*, unpublished opinion of the Court of Appeals, released November 14, 2017 (Docket No. 335877).** The trial court could properly place particular emphasis on this factor. It explained that it had obtained the impression that plaintiff could under no circumstances admit any fault or part of the devolution of this relationship, nor in any other area of her life. The trial court noted that plaintiff had been unable to control herself at trial, which gave the impression that "she could not tolerate any theory wherein she was at fault for anything." She was also "hard pressed" to identify anything about defendant that was positive and described defendant as someone who "merely piggy backed on" plaintiff's successful business.

Parenting Time- General

Cases referenced in the section via footnote:

***Hoffman v Hoffman*, 119 Mich App 79 326 (1982).** This court held that the trial court must make specific findings with respect to each factor before deciding a custodial dispute, however, in the context of controversies involving only visitation rights, this was not required. In a visitation rights case, the court need not evaluate each of the statutory factors but may focus solely upon the contested issues.

***Rozek v Rozek*, 203 Mich App 193 (1993).** This court noted that there are a multitude of terms and conditions that can be attached to parenting time to best serve the interests of, and protect, a child).

***Safdar v Aziz*, 327 Mich App 252 (2019).** The trial court properly denied defendant’s motion to change minor child’s domicile to Pakistan because a court cannot enter a parenting time order allowing for exercise of parenting time in a country not a party to the Hague Convention.

***Shade v Wright*, 291 Mich App 17 (2010).** In a modified order, each party was required to transport the child from Ohio to Michigan so that defendant could exercise his parenting time with the child. The court held that in a case where a modification of parenting time does not alter the established custodial environment, the fact that a child has begun high school and wants to become more involved in social and extracurricular activities constitutes a change of circumstances sufficient to modify parenting time.

***Stevenson v Stevenson*, 74 Mich App 656 (1977).** Where a father had been absent for eight years and sought a parenting time modification in response to the mother’s attempt to collect delinquent child support payments, it was proper for the court to find that the father failed to meet his burden of proof to justify the modification.

***Terry v Affum (Terry II)*, 237 Mich App 522 (1999).** This court held that by failing to conduct a hearing to determine the best interests of the child pursuant to the guidelines of [MCL 722.23](#) the circuit court erred in repeatedly entering orders granting slightly modified parenting time arrangements. While the court, may consider the parenting time factors for modifying parenting time plans, it must conduct a hearing to determine the best interests of the child.

Parenting Time Factors

Parenting Time Factor (a): The existence of any special circumstances or needs of the child.

Cases referenced in the section via footnote:

***Lorenz v Lorenz*, 70 Mich App 356 (1976).** When the child suffered from an illness that caused the child to be underweight, hyperactive, hyper-allergic to many substances, and to have an abnormal disease immunity, it was proper for the court to consider the health needs of the child in fashioning a parenting time schedule.

***Stevens v Stevens*, 86 Mich App 258 (1978).** When determining parenting time, it is proper for a court to consider whether a child with cerebral palsy could cope with a dual custody environment.

***Stevenson v Stevenson*, 74 Mich App 656 (1977).** Where a father had been absent for eight years and sought a parenting time modification in response to the mother’s attempt

to collect delinquent child support payments, it was proper for the court to find that the father failed to meet his burden of proof to justify the modification.

PARENTING TIME FACTOR (b): Whether the child is a nursing child less than six months of age, or less than one year of age if the child receives substantial nutrition through nursing.

- No relevant cases.

PARENTING TIME FACTOR (c): The reasonable likelihood of abuse or neglect of the child during parenting time.

Cases referenced in the section via footnote:

Booth v Booth, 194 Mich App 284 (1992). Supervised parenting time is proper if there is evidence of physical abuse or excessive physical discipline by the parent or a third party who is present during parenting time.

Van Koevering v Van Koevering, 144 Mich App 404 (1985). In balancing the mother's visitation interest and the father's right to direct the upbringing of the children, it was reasonable for the court to restrict parenting time to five hours every other Saturday afternoon and to forbid the use of alcohol and cursing in the noncustodial parent's home during parenting time.

Relevant published cases not referenced in footnote:

Sturgis v Sturgis, 302 Mich App 706 (2013). The Court of Appeals strongly disagreed with the trial court's implicit finding that there was "not a reasonable likelihood of abuse or neglect of the child during parenting time" where defendant's daughter drew sexually explicit pictures at school and his son (12) wrote letters stating that he was sexually active and liked to watch pornographic films. The mother also reported to the police that defendant's other daughter (11) asked his son to touch her breast.

PARENTING TIME FACTOR (d): The reasonable likelihood of abuse of a parent resulting from the exercise of parenting time.

Cases referenced in the section via footnote:

Thames v Thames, 191 Mich App 299 (1991). When the relationship between the parents consisted of animosity and strife, it was appropriate that the parenting time schedule require twelve hours advance notice of the exercise of parenting time.

PARENTING TIME FACTOR (e): The inconvenience to, and burdensome impact or effect on, the child traveling for purposes of parenting time.

Cases referenced in the section via footnote:

Lorenz v Lorenz, 70 Mich App 356 (1976). It was error not to allow a parent additional time to present medical evidence of the impact traveling between Nebraska and Michigan for parenting time would have upon the health of the children.

Relevant published cases not referenced in footnote:

Shade v Wright, 291 Mich App 17 (2010). In a modified order, each party was required to transport the child from Ohio to Michigan so that defendant could exercise his parenting time with the child. The court held that in a case where a modification of parenting time does not alter the established custodial environment, the fact that a child has begun high school and wants to become more involved in social and extracurricular activities constitutes a change of circumstances sufficient to modify parenting time.

PARENTING TIME FACTOR (f): Whether a parent can reasonably be expected to exercise parenting time in accordance with the court order.

Cases referenced in the section via footnote:

Deal v Deal, 197 Mich App 739 (1993). The Court found it was necessary to require parenting time during the Sabbath day of the child’s religion because other options would disrupt the father’s work schedule.

Relevant published cases not referenced in footnote:

Van Koevering v Van Koevering, 144 Mich App 404 (1985). To prevent a parent from interfering with the other parent’s visitation rights, the court may include a provision that orders a parent not to tell the child what to say to the other parent during parenting time.

PARENTING TIME FACTOR (g): Whether a parent has frequently failed to exercise reasonable parenting time.

Cases reference in the section via footnote:

Lorenz v Lorenz, 70 Mich App 356 (1976). When the parents did not exercise their previous parenting time rights with any regularity, the Court could conclude that the parents were not entirely earnest in their desire to modify the court’s custody, parenting time, and support orders.

Stevenson v Stevenson, 74 Mich App 656 (1977). Where a request for parenting time was made after a period of abandonment and in response to recent attempts to collect child support, granting the request for parenting time would be inappropriate.

PARENTING TIME FACTOR (h): The threatened or actual detention of the child with the intent to retain or conceal the child from the other parent or from a third person who has legal custody. A custodial parent’s temporary residence with the child in a domestic violence shelter shall not be construed as evidence of the custodial parent’s intent to retain or conceal the child from the other parent.

Cases referenced in the section via footnote:

***Farrell v Farrell*, 133 Mich App 502 (1984).** It was appropriate for a court to impose restrictions on parenting time of a resident of Ireland that included surrender of the father’s passport and a bonding requirement.

***Mauro v Mauro*, 196 Mich App 1 (1992).** The court properly reviewed and rejected an attempt to prevent parenting time for a parent who had previously detained the child when that parent had subsequently fully abided by the court orders regarding custody and parenting time for approximately two years.

Relevant published cases not referenced in footnote:

***Diez v Davey*, 307 Mich App 366 (2014).** Where plaintiff’s allegations that defendant may take the children to the Philippines were unfounded, factor (h) favors neither party; however, the trial court ordered that neither party shall take the children to a country that is not a party to the Hague Convention without other party’s consent.

PARENTING TIME FACTOR (i): Any other relevant factors.

Cases referenced in the section via footnote:

***Deal v Deal*, 197 Mich App 739 (1993).** The trial court did not abuse its discretion in modifying the father’s visitation days and dates because Sunday-only parenting time would not have provided enough time for the child to stay with the father, and allowing the child to stay until Monday would disrupt the child’s schooling and the father’s work schedule.

Relevant published cases not referenced in footnote:

***Lieberman v Orr*, 319 Mich App 68 (2017).** A motion for a change in parenting time that reduced the primary custodian’s overnights from 225 nights to 140 nights a year effectively changed the physical custody of the child from defendant to plaintiff and should have been analyzed under the legal standards set forth in *Vodvarka* to determine if there was a proper cause or change in circumstances to reopen a custody case.

***Safdar v Aziz*, 327 Mich App 252 (2019).** The trial court properly denied defendant’s motion to change minor child’s domicile to Pakistan because a court cannot enter a parenting time order allowing for exercise of parenting time in a country not a party to the Hague Convention.

Relevant unpublished cases not referenced in footnote:

***Fatteh v Fatteh*, unpublished opinion of the Court of Appeals, released July 30, 2020 (Docket No. 351182).** The trial court did not err in finding that plaintiff’s requested change to a week-on week-off parenting time schedule would be in the best interests of the children when defendant was subjecting the children to unnecessary medical

appointments and treatments and failing to provide plaintiff with accurate information for both medical and school appointments.

Third Party Custodians

Cases referenced in the section via footnote:

***LeFever v Matthews*, 336 Mich App 651 (2021).** Holding that the trial court improperly interpreted the term “parent” as defined by the Child Custody Act as requiring a genetic connection, and misapplied the Surrogate Parenting Act, the court vacated the trial court’s custody order and remanded.

***Eldred v Ziny*, 246 Mich App 142 (2001).** When the maternal grandmother seeks custody and the father is deemed unfit due to his inability to provide the minor child with medical and dental care, the lack of stability and permanency while the child lived with him, the unsatisfactory home environment the defendant provided, and the defendant’s criminal record, it was proper to award custody to the maternal grandmother who was the court appointed guardian.

***Heltzel v Heltzel*, 248 Mich App 1 (2001).** Although an established custodial environment existed with the child’s grandparents, in light of the United States Supreme Court ruling in *Troxel v Granville*, 530 U.S. 57 (2000), the case was remanded because the trial court failed to consider the mother’s fundamental interest in raising the child.

***Straub v Straub*, 209 Mich App 77 (1995).** Where the mother voluntarily and temporarily relinquished custody of the minor child to her paternal grandparents during a divorce proceeding, it was good public policy to return custody to the parent when the difficulty was resolved.

Relevant published cases not referenced in footnote:

***Schaiberger v Peiffer*, unpublished opinion of the Court of Appeals, released October 22, 2019 (Docket No. 347494).** The trial court did not err when it found by clear and convincing evidence that physical custody of the children should be awarded to the petitioners (maternal grandparents) when the parents had not complied with the terms of the guardianship placement plans; including having drug relapses, lack of honesty with healthcare providers, and their decision not to start substance abuse counseling earlier.

***Shook & Thomas v Mikulenas*, unpublished opinion of the Court of Appeals, released March 18, 2021 (Docket No. 354455).** The trial court erred when it granted grandparenting time without first questioning defendant’s fitness as a parent and without then requiring the intervening grandparent to rebut by a preponderance of the evidence the fit-parent presumption that defendant’s decision to deny or limit the grandparent’s time with the children did not create a substantial risk of harm to the children’s mental, physical, or emotional health.

Changing the Child’s Legal Residence

Cases referenced in the section via footnote:

***Bowers v Vandermeulen-Bowers*, 278 Mich App. 287 (2008).** When a parent with joint legal custody wants to change a child’s residence to 100 or more miles from the child’s current residence or 100 or more miles from the other parent, the 100 miles must be measured in radial miles, not road miles.

Relevant published cases not referenced in footnote:

***Eickelberg v Eickelberg*, 309 Mich. App. 694 (2015).** The Court of Appeals held that father was required to seek court approval, or the mother's consent, before making the move to new residence more than 100 miles from the children's legal residence within the state of Michigan at the time of the commencement of the action. The court noted that the 100-mile policy must be applied to the child’s legal residence at the time the action commenced and not the father’s previous residence.

Relevant unpublished cases not referenced in footnote:

***Matthews v Trudell*, unpublished opinion from the Michigan Court of Appeals, released April 5, 2017 (Docket # 334911).** Plaintiff was moving to Grand Rapids, over 100 miles away from the child’s previous legal residence. There was a better support structure with a stable house, better schooling, and more career opportunities for the plaintiff. The defendant was extremely involved in the child’s life and contested the move as it would disrupt normal parenting time. The court denied the change of legal residence as the best interest factors were not satisfied by moving the child hours away from the child’s original home and coparent. The original parenting time order remained in effect.

Changing the Child’s Domicile

Cases referenced in the section via footnote:

***Anderson v Anderson*, 170 Mich App 305 (1988).** Where the mother sought permission to move the child out of state to Arizona, she had to prove by a preponderance of the evidence that the move would improve the quality of life for the child and the entire family. The court stated the extended periods of parenting time during the child’s vacation would “foster, not hinder, an even closer father-child relationship.” Finally, when changing jobs would increase income and allow the mother to cut back on her work hours to spend more time raising the children, it is proper to weigh this factor in favor of the mother.

***Bielawski v Bielawski*, 137 Mich App 587 (1984).** Where the mother was offered a job in Texas that would substantially improve her finances and provide her financial security and the mother was willing to pay travel expenses to transport the child to Michigan to assure the father had visitation rights, it was proper for the court to grant the mother’s

petition. Additionally, the mother exhibited good faith by her willingness to pay expenses incurred in transporting the child for parenting time.

***Dick v Dick*, 147 Mich App 513 (1985).** Where a prospective move from Michigan to Colorado presented the mother with a larger salary, less demanding hours, increased educational opportunities, and allowed the child to attend a larger school, more church activities, violin lessons, and a longer skiing season but changed the father’s visitation schedule to two months per year and letters and phone calls, it was proper for the court to find that the established day-to-day presence and relationship with the father outweighed the added enticements of the change in domicile.

***Gagnon v Glowacki*, 295 Mich. App. 557 (2012).** The mother requested changing child’s domicile to Windsor, Canada. In Canada, mother had job, healthcare, and vehicle which she lacked in the United States. The mother agreed to subject herself to the jurisdiction of Michigan court while in Canada, and as such, the Michigan Courts would be able to ensure compliance with its orders. Although the move was less than 100 miles, it was beyond Michigan state borders. The mother met the burden of proof to show the best interest factors were satisfied for the child.

***Mills v Mills*, 152 Mich App 388 (1986).** It was proper to allow a mother to change the child’s domicile from Michigan to New York when the findings showed the move was in the child’s best interest and the child’s quality of living would be improved. Instead of having the child for three weekends a month and six weeks during the summer, the father would have the child for eleven weeks during the summer, a three-day weekend in October, alternate Thanksgivings, a week each Christmas on even years, each spring vacation, a three-day weekend each May, and any other times as agreed by the parties.

***Overall v Overall*, 203 Mich App 450 (1994).** Where a move from Michigan to Georgia was prompted by the father’s new job and would improve the child’s general quality of life while still enabling the mother to preserve and foster her relationship with the child, it was proper for the court to grant the father’s petition.

***Phillips v Jordan*, 241 Mich App 17 (2000).** When a move from Michigan to California involved a career change that would allow the mother to work part-time, enabling her to fit her schedule around the child’s school schedule, it was proper to find that the move had the potential to improve both the child’s and mother’s quality of life.

***Rains v Rains*, 301 Mich. App. 313 (2013).** The plaintiff was moving 200 miles away from Grand Blac to Traverse City. The Court of Appeals affirmed the trial court decision denying the plaintiff’s request to change domicile. The court determined a change in domicile would alter the established custodial environment. Thus, the change of domicile was denied as to protect the child’s best interests in their current residence.

***Scott v Scott*, 124 Mich App 448 (1983).** Where the mother’s desire to change the child’s domicile to Ohio was prompted in part by prospects of developing her career and the court considered that the father only had 16 weeks of custody throughout the year and the mother had family and better employment opportunities in Ohio, it was proper to find that the move would not negatively impact the relationship between the father and the

child. This move was over 100 miles and across Michigan state lines. Where one party is slightly more burdened as a practical matter in seeing the children, it might be proper for the court to order the parties to share the cost of the children’s transportation.

***Sulaica v Rometty*, 308 Mich. App. 568 (2014).** The father who had sole legal custody sought to change legal domicile to Florida. The court of appeals found that the trial court erred when it only considered that the father had sole legal custody and approved of the move. The court of appeals stated that the evaluation should consider the best interest factors for the child regardless of the legal status of the birth parents.

***Yachcik v Yachcik*, 319 Mich. App. 24 (2017).** The mother filed motion to move child’s domicile to Pennsylvania. The Court affirmed the trial court’s decision that moving the child out of state, away from established school, friends, and families, was against their best interest. The trial court had failed to consider the best interests of the child when establishing new parenting time arrangements, such considerations are necessary when a parent moves out of state.

Relevant unpublished cases not referenced in footnote:

***Travis v Jacobs*, unpublished opinion of the Court of Appeals, released January 13, 2022 (Docket No. 357940).** Where a change of domicile would not improve the quality of life for plaintiff and the child because plaintiff’s unstable employment and a move would cause a long distance between the child and the defendant, the trial court did not abuse its discretion in denying plaintiff-mother’s motion.

***Moore v Forbers*, unpublished opinion of the Court of Appeals, released January 20, 2022 (Docket No. 357296).** The trial court erred in finding that plaintiff’s proposed change in domicile did not have the capacity to improve the plaintiff’s and the child’s life when it believed she could find employment despite her testimony that immediately after losing her job, she began looking for another job, applying for at least 50, and up to 100 additional positions as an attorney, as well as paralegal positions and used ziprecruiter.com and careerbuilder.com to look for employment, and she submitted an exhibit that listed all of the jobs that she had applied for.

***Waters v Stalter*, unpublished opinion from the Michigan Court of Appeals, released May 11, 2023 (Docket # 363955).** It was incumbent on defendant to show that the disruptions to the child’s life from a change in domicile would be outweighed by improvements to the child’s life and the trial court did not err in finding that she did not do so considering there is value in maintaining a child’s bond with extended family and ties to an existing location, and moving to Texas could break the existing bond the child has with her family in Michigan.

Grandparenting Time

Cases referenced in the section via footnote:

***Book-Gilbert v Greenleaf*, 302 Mich App 538 (2013).** The trial court erred by allowing the child’s guardian to utilize the fit parent presumption of [MCL 722.27b\(4\)\(b\)](#) to deny grandparent visitation.

***Geering v King*, 320 Mich App 182 (2017).** The Court of Appeals interpreted the term "fit" in the grandparenting statute that allows two fit parents to prevent the grandparent from pursuing grandparenting time as a parent who "adequately cares for his or her children" and found the trial court erred in finding the parents were unfit. The circuit court's analysis focused on the parents' failure to resolve various parenting issues during the contentious proceedings that took place both before and after the parents' divorce. The circuit court pointed to the parents' inconsistency in discipline, in communication, inconsistency in co-parenting, and not fostering the relationship with the other parent. However, the record reflected that there was improvement between them, they were starting to mature and get established, and the children were doing well academically and emotionally and have witnessed their parents being respectful and pleasant for each other. Additionally, CPS conducted several investigations during the custody proceedings, and none of the primary allegations were substantiated.

***Keenan v Dawson*, 275 Mich App 671 (2007).** The trial court found on the basis of the testimony of medical professionals that the child is and will be subject to emotional harm and turmoil in light of his mother's death and that a two-year-old child will have no lasting memory of persons in his or her life and, therefore, the child would have no memory of his mother. The trial court's conclusion, that visitation with the maternal grandparents will help reduce the substantial risk of emotional harm and suffering the child will experience as he grows older, was not clearly erroneous.

***Varran v Granneman*, 312 Mich App 591 (2015).** The child said he felt as though he merely exists until the next time, he gets to see his Grandparents and is very sad about losing his Grandparents. He had grown up referring to his Grandparents as “Mom” and “Pop” and felt as though he had lost the only home he had known. He stated that being required to live with his father made him feel like he had been kidnapped. He said he is afraid of not being able to see his Grandparents; that sometimes he is homesick and lonely; that Grandparents' house feels like home, and that is where he belongs and is most welcome; and that, if he could not see Grandparents anymore, his life would be horrible, he would be sad, angry, and depressed, and he would not have much to look forward to. The evidence showed that the child lived with his Grandparents for numerous years and that the Grandparents raised him as their own child. The child’s statements support that he saw his Grandparents as parental figures and show that he wanted to spend time with them and he would be angry, sad, and depressed if he could not. Under these circumstances, the evidence did not clearly preponderate against the trial court's finding that a denial of grandparenting time would create a substantial risk of harm to A's mental and emotional health.

Relevant published cases not referenced in footnote:

***Zawilanski v Marshall*, 317 Mich App 43 (2016).** Because the respondent agreed that petitioner should have grandparenting time and proposed a grandparenting-time schedule, albeit one that included less grandparenting time than petitioner was currently enjoying,

rebutted the proposition that the respondent denied grandparenting time. Therefore, in order to overcome the fit-parent presumption given that plaintiff was denying some, but not all, grandparenting time, petitioner had to show that plaintiff's denial of the amount of grandparenting time exceeding plaintiff's proposal created a substantial risk of harm to the child. See [MCL 722.27b\(4\)\(b\)](#). No evidence was presented on this question. The Court of Appeals concluded that the referee committed clear legal error, and the trial court confirmed that error by failing to apply the fit-parent presumption to plaintiff's grandparenting-time decision and by failing to require that petitioner rebut the presumption that plaintiff's proposed grandparenting-time schedule would not create a substantial risk of harm to the minor. [MCL 722.27b\(4\)\(b\)](#). The referee deprived plaintiff of the benefit of the fit-parent presumption not only by ignoring the fact that plaintiff had agreed to grandparenting time and had offered petitioner a grandparenting-time schedule, but also by concluding against the great weight of the evidence that petitioner had rebutted the fit-parent presumption.

Gathering Information

Cases referenced in the section via footnote:

McCain v McCain, 229 Mich App 123 (1998). Where the parties thought a particular issue had a significant magnitude, it was proper to give the issue more weight.

Guidelines for Interviewing Children

Cases referenced in the section via footnote:

Fletcher v Fletcher, 200 Mich App 505, 518 (1993) rev'd on other grounds, 447 Mich. 871 (1994). While it is generally necessary to speak to a child to determine the child's preference, the preference may be determined in other ways, such as when the parents acknowledge that the child has a preference for one of them and that preference is reasonable based on other information. Parents must be informed of whether a custody preference expressed by the child was considered by the court, but parents cannot be informed of the preference expressed by the child.

Maier v Maier, 311 Mich. App. 218, 224–225 (2015). Generally, a court must consider the reasonable preference of a child under [MCL 722.23\(i\)](#), if a preference exists, and a child over the age of six is presumed to be capable of forming a reasonable preference. The Court noted that not every child over six years old has the capacity to form a preference, and a child's presumed capacity can be compromised by surrounding circumstances such as where a child has been coached or has been subjected to influence, in which situation a court does not err in declining to find a preference.

Uniform Child Custody Jurisdiction and Enforcement Act

Cases referenced in the section via footnote:

***Veneskey v Sulier*, 338 Mich App 539 (2021).** The court held that plaintiffs-maternal grandparents’ removal of the child from her North Carolina residence and her stepfather’s care after her mother’s death “did not prevent the North Carolina court from satisfying the jurisdictional requirements of” [MCL 722.1201\(1\)](#), part of the UCCJEA. Further, the trial court did not abuse its discretion in ruling that Michigan was “an inconvenient forum for this child custody dispute,” under MCL 722.1207.

Relevant published cases not referenced in footnote:

***Smith v Schafer*, No. 366473, 2023 WL 8101275 (Mich. Ct. App. Nov. 21, 2023)** Both the parties and child live in Michigan. Georgia entered a joint custody order that gave one parent decision-making authority when the parties disagree – a provision inconsistent with Michigan law. Michigan entered a modified joint custody order eliminating the tiebreaking provision and had jurisdiction to do so because Michigan is now the parties home state and no party, nor the child, live in Georgia.

***Hernandez v Mayoral-Martinez*, 329 Mich. App. 206 (2019).** Although the child lived in Mexico with the child’s grandmother, it was not the child’s home state because the child was not living with someone “acting as a parent” because the grandmother did not have legal custody. The Court held “the fact that the child was born in Michigan, as well [as] her parents’ continued presence here” evidences “a sufficient connection to the state for purposes of [MCL 722.1201\(1\)\(b\)](#),” and because “there is substantial evidence of [the best-interests] factors in Michigan,” and “both parents have resided in Michigan for some time, it would seem that there is sufficient evidence here for the circuit court to make such a determination.”

***Ramamoorthi v Ramamoorthi*, 323 Mich App 324 (2018).** The focus of the UCCJEA concerns a child’s actual presence in a location, not his or her intent to remain in that location. Therefore, when the children had lived in India for several years after leaving Michigan, India was the children’s home state even though plaintiff may have wanted to return to Michigan.

***Nadimpali v Byrraju*, 326 Mich App 73 (2018).** The Court did not abuse its discretion by entering an order vacating its prior registration of a California child-custody determination. Michigan did not have authority to modify the order in any way because it lacked jurisdiction. Michigan was never the child’s home state, California courts determined that neither the child nor the parent of the child resided in California, and India had become the child’s home state and modified the order. Therefore, the California child-custody determination was no longer enforceable in Michigan.

Relevant unpublished cases not referenced in footnote:

***Carpenter v Harris*, unpublished opinion of the Court of Appeals, released October 14, 2021 (Docket No. 356342).** The trial court did not err in rejecting defendant’s argument that because plaintiff was the party who chose to move from Florida to Michigan, the UCCJEA should favor jurisdiction in Florida. [MCL 722.1207\(2\)\(c\) and \(d\)](#) requires consideration of distance between the states and the parties’ financial

circumstances but does not require the trial court to penalize a party for returning to a previous state.

***Lorenz v Lorenz*, unpublished opinion of the Court of Appeals, released May 20, 2021 (Docket No. 355973).** Although plaintiff and the children left Germany and returned to Michigan, the children had lived in Germany for at least six consecutive months before the Michigan proceeding commenced, and because one of the parties (the defendant) still lived there, it remained the children’s home state under the UCCJEA.

Custody and Parenting Time Investigators as Mandated Reporters of Child Abuse and Neglect

Cases referenced in the section via footnote:

Lee v Detroit Medical Center, 285 Mich App 51 (2009). The Court held that a person who suspects abuse even if the person does not believe it occurred must report the suspected abuse and failing to do so could be liable for damages.

APPENDIX IX— RESOURCES FOR CUSTODY, PARENTING TIME, ADR PROVIDERS

Custody and Parenting Time Investigations

Court Ordered Investigations: [MCL 552.505\(1\)\(g\)](#)
Providing Reports and Summaries: [MCL 552.507a](#)
Established Custodial Environment [MCL 722.27](#)
Child Custody Factors: [MCL 722.23](#)
Parenting Time Factors: [MCL 722.27a](#)
Joint Custody: [MCL 722.26a\(7\)](#)
Dissemination of Professional Report: [MCR 3.219](#)
Reports Submitted as Evidence: [MRE 1101\(b\)\(9\)](#)

Custody and Parenting Time Enforcement

Submitting Complaints: [MCL 552.511b](#)
Friend of the Court Domestic Relations Mediation: [MCL 552.513](#)
Friend of the Court Employees Restrictions After Conducting Mediation: [MCL 552.515](#)
Motion to Modify Parenting Time: [MCL 552.517d](#)
Enforcement Options: [MCL 552.641](#)
Joint Meetings: [MCL 552.642a](#)
Civil Contempt for Parenting Time: [MCL 552.644](#)
Civil Contempt for Make-Up Parenting Time and Modification of Court Order: [MCL552.645](#)

Friend of the Court ADR Court Rule

Friend of the Court ADR Court Rule: [MCR 3.224](#)
Facilitative and Information-Gathering Court Rule: [MCR 3.224\(F\)](#)
Friend of the Court Domestic Relations Mediation Court Rule: [MCR 3.224\(G\)](#)
Joint Meeting Court Rule: [MCR 3.224\(H\)](#)

SCAO Custody, Parenting Time, and ADR Resources

Parenting Time Guidelines: [Guidelines](#)
SCAO Friend of the Court ADR Policy: [SCAO Administrative Memorandum 2019-05](#)
Friend of the Court ADR FAQ: [FAQ 2021-1](#)
Friend of the Court ADR Waiver Form: [Waiver](#)
Standards for Charging Friend of the Court Investigation Expenses: [2010-05 SCAO Administrative Memorandum](#)
Friend of the Court Reporting Child Abuse and Neglect Policy: [2012 SCAO Memorandum](#)
Parenting Time Coordinator Policy: [2017/parentingcoordinators.pdf](#)
Friend of the Court Domestic Relations Mediation Checklist: [Checklist](#)
Facilitative and Information-Gathering Checklist: [Checklist](#)
Joint Meeting Checklist: [Checklist](#)

Appendix IX – Resources for Custody, Parenting Time, and ADR Providers

SCAO Custody, Parenting Time, and ADR Forms

Friend of the Court Domestic Violence Screening: [FOC 124](#)

Friend of the Court Alternative Dispute Resolution Summary Report: [FOC 125](#)

Order Regarding Custody and Parenting Time Following Alternative Dispute Resolution [FOC 89a](#)

Mediation Status Report: [MC 280](#)

Michigan Judicial Institute Trainings

Friend of the Court Trainings: [Friend of the Court Webinars and Videos](#).