

# CUSTODY AND PARENTING TIME INVESTIGATION MANUAL

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# TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>1</b>
A.	ORGANIZATION OF THE MANUAL .....	1
B.	WHAT IS A CUSTODY OR PARENTING TIME INVESTIGATION? .....	2
C.	FIRST STEPS IN THE INVESTIGATION PROCESS .....	2
D.	REPORT PREPARATIONS .....	2
E.	THE COMPLETED REPORT .....	3
<b>II.</b>	<b>CHILD CUSTODY .....</b>	<b>4</b>
A.	TYPES OF CUSTODY .....	5
1.	<i>Joint Custody:</i> .....	5
2.	<i>Sole Custody:</i> .....	6
<b>III.</b>	<b>CHILD CUSTODY FACTORS.....</b>	<b>7</b>
<b>IV.</b>	<b>ESTABLISHED CUSTODIAL ENVIRONMENT.....</b>	<b>27</b>
<b>V.</b>	<b>THIRD PARTY CUSTODY INVESTIGATIONS .....</b>	<b>30</b>
<b>VI.</b>	<b>CHANGING THE CHILD’S LEGAL RESIDENCE OR DOMICILE.....</b>	<b>32</b>
A.	CHANGE OF LEGAL RESIDENCE (100 MILES) .....	32
B.	CHANGE OF DOMICILE .....	32
<b>VII.</b>	<b>INTRODUCTION FOR PARENTING TIME INVESTIGATIONS.....</b>	<b>38</b>
<b>VIII.</b>	<b>GRANDPARENTING TIME INVESTIGATIONS .....</b>	<b>47</b>
<b>IX.</b>	<b>SUPERVISED PARENTING TIME.....</b>	<b>57</b>
<b>X.</b>	<b>GATHERING INFORMATION.....</b>	<b>58</b>
<b>XI.</b>	<b>GUIDELINES FOR INTERVIEWING CHILDREN ABOUT CUSTODY.....</b>	<b>60</b>
<b>XII.</b>	<b>DOMESTIC VIOLENCE SCREENING.....</b>	<b>62</b>
A.	PRE-INTERVIEW .....	62
B.	DUTY TO SCREEN AND PROTECT INFORMATION .....	63
C.	BEGINNING THE CUSTODY AND PARENTING TIME INTERVIEWS .....	64
D.	WRITING THE REPORT.....	65
<b>XIII.</b>	<b>UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT.....</b>	<b>66</b>
<b>XIV.</b>	<b>CUSTODY AND PARENTING TIME INVESTIGATORS AS MANDATED REPORTERS OF CHILD ABUSE AND NEGLECT .....</b>	<b>68</b>
A.	WHO IS A MANDATED REPORTER? .....	68
B.	REPORTING CHILD ABUSE AND NEGLECT .....	68
C.	HOW TO REPORT SUSPECTED CHILD ABUSE OR NEGLECT TO CHILD PROTECTIVE SERVICES ....	68
	<b>APPENDIX I — GENERAL INVESTIGATION FORMS.....</b>	<b>72</b>
	<b>APPENDIX II — EDUCATIONAL INVESTIGATION FORMS.....</b>	<b>77</b>
	<b>APPENDIX III — DAY CARE REPORT.....</b>	<b>86</b>
	<b>APPENDIX IV — HEALTH CARE AUTHORIZATIONS .....</b>	<b>90</b>

<b>APPENDIX V — TEMPLATE FOR INVESTIGATIVE REPORT .....</b>	<b>96</b>
<b>APPENDIX VI — CUSTODY AND PARENTING TIME INVESTIGATION CHECKLIST AND FILING THE REPORT .....</b>	<b>105</b>
<b>APPENDIX VII — INTERVIEWING CHILDREN AGES BIRTH TO SIX .....</b>	<b>106</b>
<b>APPENDIX VIII — INTERVIEWING CHILDREN AGES 6 TO 13 .....</b>	<b>108</b>
<b>APPENDIX IX — INTERVIEWING CHILDREN AGES 13 TO 18 .....</b>	<b>111</b>
<b>APPENDIX X —CASE LAW .....</b>	<b>113</b>
<b>APPENDIX XI — GLOSSARY OF TERMS.....</b>	<b>162</b>

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## **I. Introduction**

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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....” This manual provides friend of the court (FOC) investigators with resources to assist them in making court recommendations regarding the amount of contact and decision-making authority parents will have with their child. In addition to custody and parenting time investigations, this manual addresses established custodial environment, change of residence, change of domicile, third party custody, and grandparenting time investigations. There are also sections dedicated to gathering information and additional recommendations.

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

### **A. Organization of the Manual**

The manual has the following sections:

- 1) A factor from the Child Custody Act or a statutory consideration (e.g., established custodial environment, third party custody, change of domicile).
- 2) Interpretation – an explanation of the factor or legal consideration drawn from appellate court decisions.
- 3) Considerations – issues an investigator may wish to consider to help make a determination concerning the factor.
- 4) Practice Tips – suggestions to assist the investigator in obtaining information.

With the exception of the section on third party custody investigations, this manual uses the term “parent” to represent parties in a domestic relations case.

The reader should be aware of the following in each section:

#### **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. Therefore, the information presented in this manual usually indicates whether it is permissible to consider a fact or to arrive at a conclusion.

#### **Considerations**

Considerations are issues relating to the child custody factors an investigator should contemplate when gathering information relevant to the custody or parenting time investigation.

## **Practice Tips**

Practice tips are recommendations to help an investigator gather information necessary to complete an investigation. Practice tips are questions to ask or tasks necessary to retrieve information.

### **B. What is a Custody or Parenting Time Investigation?**

The purpose of a custody or parenting time 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 custody and parenting time decisions after applying the law to all relevant evidence.

Early in the process, the investigator should inform the child, parents, attorneys, and any other involved parties of the purpose, nature, and method of the child custody or parenting time investigation.

### **C. First Steps in the Investigation Process**

The investigator should review the pleadings and questionnaires before interviewing the parents. This step will allow the investigator to identify and concentrate on disputed issues and spend less time on issues where the parents agree.

While reviewing the pleadings and questionnaires, the investigator should attempt to identify any indications of domestic violence<sup>1</sup> as well as other issues related to the best interests of the child. If there are indications (e.g., complaints for divorce, pleadings, sworn statements, personal protection orders between parties) of domestic violence, the investigator should refer to office policy on screening domestic violence cases and take the appropriate steps.<sup>2</sup>

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

### **D. Report Preparations**

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

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<sup>1</sup> This manual uses the definition of “domestic violence” in MCL 400.1501, which governs the Michigan Domestic Violence Prevention and Treatment Board.” [T]he occurrence of any of the following acts by a person 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; and/or engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.”

<sup>2</sup> See the State Court Administrative Office – Office of Dispute Resolution *Domestic Violence Screening Protocol* at <http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/odr/Domestic%20Violence%20Screening%20Protocol.pdf>.

custody. The report should identify the issues that the parties have agreed to, note any issues that are contested, and a discussion of the contested child custody factors.

The investigator should review all information gathered from interviews with parents, children, third parties (e.g., teachers, coaches, counselors) and documents. The investigator should be aware of what information the court needs to make decisions to create the custody and parenting time order. The investigator should present the information in a well-organized manner so that the reader knows how the information relates to the statutory factors, the established custodial environment, or the custody and parenting time recommendation. The information should be presented so the reader can understand how the investigator came to the conclusions reported.

The child custody statute 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 forms an idea as to the resolution of the custody determination of the child. However, the investigator should set aside some time after the investigation process, but before writing the report, to review and potentially reevaluate all of the data. Investigators are encouraged to determine the relevance, interpretation, and weight of each piece of evidence 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 parties) describe the issue and facts gathered.

The report should be fair and should not advocate for either party. The report should be objective and not be limited to only providing positive information about the favored parent and only negative information about the other parent.

An investigator should divulge all sources of information in the report as well as any conflicting information. 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 a written recommendation. Because parties receive copies of the investigation report, a well-written report has the added benefit of potentially sparking discussions between the parties during mediation or general case negotiations, and can lead to the parties reaching a mutually beneficial agreement concerning parenting time and custody without the court's intervention.

#### **E. The Completed Report**

The completed report should be sealed, labeled, and placed in a secure location until the parties or court requests to review the report itself. The friend of the court can retain a copy and its supporting documents in the friend of the court file, but should not keep a copy in the court file.

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## II. Child Custody

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Most information for the investigation will come from addressing the Child Custody Act with the parents and child. The investigator must address factors of the Child Custody Act for both custody and parenting time investigations. This section briefly describes the twelve Child Custody Act factors. The *Introduction for Parenting Time Investigations* explains the application of the Child Custody Act to parenting time investigations.

The Child Custody Act addresses the best interests of the child and requires the investigator to evaluate the parties 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.”<sup>3</sup> If the parents present the court with an agreement regarding child custody and parenting time, the court can accept the agreement without expressly reviewing each best interest factor, as it is implied by the court’s entry of the agreement that the arrangement is in the child’s best interest.<sup>4</sup>

An investigator should be aware of any previous custody agreements and should be prepared to state how those agreements were reached. Where an affidavit of parentage (AOP) is in place, a mother has initial legal custody of the child by operation of law. However, because that custody determination is not a judicial custody determination, a father has standing to move for a custody determination without having to demonstrate proper cause or change in circumstances.<sup>5</sup>

In conducting the investigation, the investigator may consider the same facts under different factors. For instance, “the factors have some natural overlap in that a child’s stated preference to live with one parent may be indicative of greater emotional ties with that parent.”<sup>6</sup> Although facts may fit under different factors, the investigator should not use the facts under different factors when the facts clearly fit under one factor and have only a minor impact under another factor.

The factors are not necessarily equal. When the parents consider a factor major, it is appropriate to consider that factor as more important.<sup>7</sup> While one factor may offset some of the factors found in favor of one of the parents, it should not completely offset all of the other findings when the other parent either prevails or is equal.<sup>8</sup>

When there is more than one child in a case, the investigator should make a separate determination for each child.<sup>9</sup>

When the investigator meets with parents, the investigation 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

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<sup>3</sup> *Berger v Berger*, 277 Mich. App. 700 (2008).

<sup>4</sup> *Rettig v. Rettig*, \_\_\_ Mich App \_\_\_ (2018).

<sup>5</sup> *Sims v. Verbrugge*, \_\_\_ Mich App \_\_\_ (2017).

<sup>6</sup> *Carson v Carson*, 156 Mich App 291 (1986).

<sup>7</sup> *McCain v McCain*, 299 Mich App 23 (1998).

<sup>8</sup> *McCain*, *supra*.

<sup>9</sup> *Wiechmann v Weichmann*, 212 Mich App 436 (1995).

with the family (e.g., doctors, counselors, teachers, etc.) but who may not release information without approval from the parents. [Section IX](#) of this manual covers gathering information.

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.

## **A. Types of Custody**

The following are descriptions of possible custody arrangements that may be helpful to understand before referring to other sections in this manual.

### **1. Joint Custody:**

At the request of either parent, the court must consider ordering joint custody.<sup>10</sup>

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.<sup>11</sup> If the court does not award joint custody under these circumstances, it must state its reasons on the record.<sup>12</sup> 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.<sup>13</sup>

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."<sup>14</sup> 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 supplement each other in raising the child and they can agree on basic child rearing issues, joint custody is an appropriate option.<sup>15</sup> 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.<sup>16</sup>

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<sup>10</sup> MCL 722.26a(1).

<sup>11</sup> MCL 722.26a(2).

<sup>12</sup> *Arndt v Kasem*, 156 Mich App 706 (1986).

<sup>13</sup> *Wellman v Wellman*, 203 Mich App 277 (1994).

<sup>14</sup> *Fisher v Fisher*, 118 Mich App 227 (1982); MCL 722.26a(1)(b).

<sup>15</sup> *Nielsen v Nielsen*, 163 Mich App 430 (1987).

<sup>16</sup> *Lombardo v Lombardo*, 202 Mich App 151 (1993).



## **2. Sole Custody:**

There is no legal definition for sole custody. For the purpose of this manual, sole custody is 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.<sup>17</sup> 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 routine<sup>18</sup> decisions for the child during parenting time.

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<sup>17</sup> 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.

<sup>18</sup> MCL 722.27(a).

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### III. Child Custody Factors

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#### Factor (a)

**The love, affection, and other emotional ties existing between the parties involved and the child.<sup>19</sup>**

**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.<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup> It is proper to find the parents are equal because the parents love their child and the child loves both parents.<sup>23</sup> 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.<sup>24</sup>

There is a natural overlap between some of the factors. For example, it may not be possible to separate a child's emotional attachment to a parent from the child's preference or other factors examined under the Child Custody Act.<sup>25</sup> An investigator should make an effort to separate these factors when evidence is available.

#### **Considerations for the Investigator:**

- Does one parent show respect, love, affection, and warmth toward the child more than the other parent?
- With whom does the child consult with personal problems or questions?
- Does one parent show kindness and courtesy toward the child more than the other parent?

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<sup>19</sup> MCL 722.23(a).

<sup>20</sup> *Baker v Baker*, 411 Mich 567 (1980).

<sup>21</sup> *Brewer v Brewer*, unpublished opinion per curiam of the Court of Appeals, issued August 2001 (Docket No. 221521).

<sup>22</sup> *Kurtz v Kurtz*, 32 Mich App 366 (1971).

<sup>23</sup> *Eigner v Eigner*, 79 Mich App 189 (1977).

<sup>24</sup> *Duncan v. Booth*, unpublished opinion per curiam of the Court of Appeals, issued June 15, 2017 (Docket No. 318714).

<sup>25</sup> *Carson v Carson*, 156 Mich App. 291 (1986).

### **Practice Tip**

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

- Is there a readily apparent difference in the bond existing between each parent and the child?
- How does the other parent interact with the child?
- Why 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?
- What role did each parent play in the household relationship? Who is the disciplinarian?
- 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?
- 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?
- Is there any evidence that one parent shares problems with the child, demonstrating an inappropriate parent-child relationship?
- Are facts present in the case that may confuse the child's emotional ties and bonding with other issues?
- What are each parent's strengths and weaknesses?
- What is each parent's self-described parenting style?

### **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.<sup>26</sup>**

#### **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.<sup>27</sup> The effects of substance abuse on a parent's ability to provide guidance may also be considered.<sup>28</sup>

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

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<sup>26</sup> MCL 722.23(b).

<sup>27</sup> *Fletcher v Fletcher*, 447 Mich. 871 (1994).

<sup>28</sup> *Bowers v Bowers*, 198 Mich App 320 (1993).

to provide guidance.<sup>29</sup> 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.<sup>30</sup>

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.<sup>31</sup> 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.<sup>32</sup> Religious participation by itself may not be a sufficient basis to allow a parent to prevail on this factor.<sup>33</sup> 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.<sup>34</sup>

### **Considerations for the Investigator:**

- Try to measure how the parents show affection. 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?
- How does each parent communicate love to the child? Is it verbally communicated? Shown in actions?
- Does the parent have the ability to show the child love, affection, and guidance?
- How was the parent shown love and affection from his or her own parents?

### **Practice Tip:**

**Instead of assessing this factor as a whole, it may be useful to separate it into several parts – ability and willingness to:**

- (1) Appropriately cultivate an emotional bond (e.g., providing love, affection, and guidance) to the child.
- (2) Promote the child's education:
  - If the child is of school age, is the child on time for school, tardy, or absent more than normal?
  - How is the child performing in school? Does the parent help the child complete homework or review it?

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<sup>29</sup> *Harper v Harper*, 199 Mich App 409 (1993).

<sup>30</sup> *Id.*

<sup>31</sup> *West v Smallman*, unpublished opinion per curiam of the Court of Appeals, issued June 2001 (Docket No. 223163).

<sup>32</sup> *McCain v McCain*, 229 Mich App 123 (1998).

<sup>33</sup> *Carson v Carson*, 156 Mich App 291 (1986).

<sup>34</sup> *Ulvund v Ulvund*, unpublished opinion per curiam of the Court of Appeals, issued August 2000 (Docket No. 224566).

- Is the parent involved with academic or extracurricular activities that benefit the child (e.g., conferences, PTA, scouts, clubs, etc.)?
- (3) Promote and continue the child's religious practices or spiritual training. It may be necessary to ask each parent to describe the bond each has with the child.

**Practice Tip:**

**Discuss each parent's ability and willingness to promote the child's education both with the child and teachers. Look for who assists the child with homework, attends conferences, or communicates with the teacher(s) regarding the child's education. Determine whether the child arrives for school on time, prepared, and appropriately dressed. Ask each parent to describe their involvement with the child's education and religious practices, if any.**

- 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 on time?
- 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?

**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.**

- 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:**

**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?**

- Does the child have any special needs? If so, is it evident each parent recognizes this and can act on it? Does each parent believe the other parent can also do this?

**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.<sup>35</sup>**

### **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.<sup>36</sup>

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.<sup>37</sup> 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.<sup>38</sup>

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.<sup>39</sup> A disparity in the debt load a parent has incurred will also be a consideration for this factor.<sup>40</sup>

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 she 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 and cot.<sup>41</sup> Another parent was found to lack a disposition to provide for the child's necessities when she chose to participate in extracurricular activities instead of providing for her child's medical care.<sup>42</sup>

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

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<sup>35</sup> MCL722.23(c).

<sup>36</sup> *Carson v Carson*, 156 Mich App 291 (1986); *Mazurkiewicz v Mazurkiewicz*, 164 Mich App 492 (1987).

<sup>37</sup> *McCain v McCain*, 229 Mich App 123 (1998).

<sup>38</sup> *Harper v Harper*, 199 Mich App 409 (1993).

<sup>39</sup> *LaFleche v Ybarra*, 242 Mich App 692 (2000).

<sup>40</sup> *Schuiteboer v Schuiteboer*, unpublished opinion *per curiam* of the Court of Appeals, issued October 2000 (Docket No. 224020).

<sup>41</sup> *Fletcher v Fletcher*, 229 Mich App 19 (1998).

<sup>42</sup> *Moser v Moser*, 184 Mich App 111 (1990).

of another individual and that individual's child,<sup>43</sup> and in failing to inform the other parent that medical insurance coverage was available for their child.<sup>44</sup>

### **Considerations for the Investigator: Ability or Capacity to Provide**

- Is one parent's ability to provide for the child impacted because of a mental or physical disability?

#### **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 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 one of the parents deliberately earning less than that parent is capable of earning?
- Is one of the parents 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?
- 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?
- If a parent was ordered to pay support or maintain medical coverage, what is the likelihood that parent will not pay or will try to avoid maintaining coverage?
- Have both parents shared medical coverage information that would benefit the child?
- 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?
- If the child has special needs, does one parent have the training necessary to provide for those needs? Is either parent willing to receive the necessary training to provide for the special needs of the child?
- Does a parent have outside financial assistance (family, friend, etc.)?

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<sup>43</sup> *Williams v Williams*, unpublished opinion per curiam of the Court of Appeals, issued September 2000 (Docket No. 220488).

<sup>44</sup> *Bowers v Bowers*, 198 Mich App 320 (1993).

- 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?
- 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 two-parent home, and does either parent live in a two-parented home?
- What are each parent's childcare arrangements?

### **Considerations for the Investigator: Willingness to Provide**

- 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?
- Has one parent been responsible for the child's clothes being appropriate, clean, and in good repair?
- 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?

### **Factor (d)**

#### **The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.<sup>45</sup>**

##### **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.<sup>46</sup>

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 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.<sup>47</sup> 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.<sup>48</sup>

### **Considerations for the Investigator:**

- Has either parent moved frequently because of evictions, foreclosures, or broken relationships? If so, what impact has this had on the child?

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<sup>45</sup> MCL 722.23(d).

<sup>46</sup> *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).

<sup>47</sup> *Phillips v Jordan*, 241 Mich App 17 (2000).

<sup>48</sup> *Bowers v Bowers*, 198 Mich App 320 (1993).



**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?
- Does either parent's home offer the child a place of comfort, stability, and a settled atmosphere?

**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?
- Who resides in each parent's home, either on a regular or sporadic basis?
- 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 (adult) supervision?
- Does either parent frequently leave the child alone without any structured activities?

**Practice Tip:**

**Causes of instability may include evictions, foreclosures, and erratic behavior (substance abuse, mental illness, abuse, etc.) within the household, broken relationships, frequent changes in caretakers, lack of supervision, 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.).**

- 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 postjudgment. 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.**

**Practice Tip:**

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

- Is there a change in school or school district for the child upon moving?

## Factor (e)

### The permanence as a family unit of the existing or proposed custodial home or homes.<sup>49</sup>

#### **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.<sup>50</sup> 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.<sup>51</sup>

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.<sup>52</sup> The fact that a person has had multiple relationships within a short period is also an appropriate consideration under this factor.<sup>53</sup>

#### **Considerations for the Investigator:**

- 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 either 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?

#### **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.**

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<sup>49</sup> MCL 722.23(e).

<sup>50</sup> *Fletcher v Fletcher*, 200 Mich App 505, (1993) rev'd on other grounds, 447 Mich. 871 (1994).

<sup>51</sup> *Zuziak v Zuziak*, 169 Mich App 741 (1988).

<sup>52</sup> *Mazurkiewicz v Mazurkiewicz*, 164 Mich App 492 (1987).

<sup>53</sup> *Hilliard v Schmidt*, 231 Mich App 316 (1998).

## Factor (f)

### The moral fitness of the parties involved.

#### **Interpretation:**

This factor examines the parents' relative moral fitness. Case law concerning this factor is rare.<sup>54</sup> Cases that do exist indicate that immorality alone is not sufficient to find in favor of one of the parents on this factor.<sup>55</sup>

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.<sup>56</sup> 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.<sup>57</sup>

#### **Considerations for the Investigator:**

- Is either parent engaged in the use of an illegal substance?
- Does either parent routinely and excessively consume alcohol?
- Are there indications that either parent provided an illegal substance or alcohol to a child?
- 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?
- Is there any indication that either parent abused the child (physically, sexually, emotionally, or verbally)?
- Does one parent blame the child for the parent's own problems?

#### **Practice Tip:**

**Check the records of Child Protective Services (CPS) and the Michigan Department of Health and Human Services (MDHHS) Central Registry for parents' interactions with other children and people. Asking CPS or MDHHS to search a parent's name in the databases will bring up all cases involving that parent.**

#### **Practice Tip:**

**Contact law enforcement agencies, protective service agencies, and court offices for information about criminal activity.**

- Does either parent reside with someone who is involved in the use of an illegal substance?

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<sup>54</sup> 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).

<sup>55</sup> *Williamson v Williamson*, 122 Mich App 667 (1982).

<sup>56</sup> *Fletcher v Fletcher*, 447 Mich 871 (1994).

<sup>57</sup> *Bowers v Bowers*, 198 Mich App 320 (1993).

- 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?

**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. Should the parent allow or limit the contact between the child and any of these individuals?**

**Factor (g):**

**The mental and physical health of the parties.<sup>58</sup>**

**Interpretation:**

This factor concerns whether the parents have physical or emotional health problems that would interfere with their ability to care for the child.<sup>59</sup> 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.<sup>60</sup> For instance, evidence of a person's drinking problems and outbursts against the other parent may be an indication of poor mental health.<sup>61</sup> 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 be in compliance with 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.<sup>62</sup>

In 2008, the Michigan Legislature enacted the "Michigan Medical Marijuana Act."<sup>63</sup> The Act states that a person shall not be denied custody or visitation of a minor if medical marijuana is used under the Act unless the person's behavior creates an unreasonable

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<sup>58</sup> MCL 722.23(g).

<sup>59</sup> *Cf. Wilson v Upell*, 119 Mich App 16 (1982).

<sup>60</sup> *Harper v Harper*, 199 Mich App 409 (1993).

<sup>61</sup> *Bowers v Bowers*, 198 Mich App 320 (1993).

<sup>62</sup> *Bednarski v Bednarski*, 141 Mich App 15 (1985).

<sup>63</sup> MCL 333.26424.

danger to the minor that can be clearly articulated and substantiated. Past marijuana use alone with no evidence of current use should not be considered when evaluating a person's ability to function as a parent.<sup>64</sup> Under this factor, the investigator should only evaluate a parent's use of doctor-prescribed medical marijuana if the use poses a potential threat to the child's health or well-being.<sup>65</sup>

### **Considerations for the Investigator:**

- 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?

#### **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.**

- How does the mental health of the parties affect the parents' ability to parent?
- How does the physical health of the parties affect the parents' ability to parent?

#### **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.**

- 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.<sup>66</sup>**

##### **Interpretation:**

This factor examines a child's progression and development in three areas: home, school,

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<sup>64</sup> *Demski v Petlick*, 309 Mich App 404 (2015).

<sup>65</sup> Depending on the facts of each individual case, the investigator may find it more applicable to discuss a parent's use of medical marijuana under factor (f), the moral fitness of a parent. Situations that may warrant the medical marijuana discussion in factor (f) may be (but are not limited to): the abuse of medical marijuana, evidence that the prescription is invalid or improperly obtained, or the child's accessibility and potential use of the drug.

<sup>66</sup> MCL 722.23(h).

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<sup>67</sup> or when the parents would each continue the child in the same church, school, and community.<sup>68</sup> However, there may be a difference in the child's record when the child is with each of the parents.<sup>69</sup> 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 the child showed improvement in school while residing with that parent<sup>70</sup> or when the other parent failed to make preparations necessary for the child's education.<sup>71</sup> However, evidence of normal parental struggles with a child's hygiene and homework do not rise to the level of a material change of circumstance that would warrant a change in custody.<sup>72</sup>

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.<sup>73</sup> The parent's proposed childcare arrangements may also be an appropriate consideration under this factor.<sup>74</sup>

### **Considerations for the Investigator:**

#### Home

- 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?

#### School

- 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?

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<sup>67</sup> *Wellman v Wellman*, 203 Mich App 277 (1994).

<sup>68</sup> *Harper v Harper*, 199 Mich App 409 (1993).

<sup>69</sup> *Moser v Moser*, 184 Mich App 111 (1990).

<sup>70</sup> *Hall v Hall*, 156 Mich App 286 (1986).

<sup>71</sup> *McCain v McCain*, 229 Mich App 123 (1998).

<sup>72</sup> *Walker v. Walker*, unpublished opinion per curiam of the Court of Appeals, issued April 13, 2017 (Docket No. 334752).

<sup>73</sup> *Baker v Baker*, 411 Mich 567 (1981).

<sup>74</sup> *Ireland v Smith*, 451 Mich 457 (1996).

**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.**

**Community**

- 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 with law enforcement or in trouble with other organizations (school, etc.)?

**Factor (i)**

**The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.<sup>75</sup>**

**Interpretation:**

The child's preference must be taken into account if the child is old enough to express a preference.<sup>76</sup> 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,<sup>77</sup> but it was improper not to interview a seven-year-old to determine whether he was capable of expressing a preference.<sup>78</sup>

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.<sup>79</sup> Similarly, even when a child has expressed a preference, that preference may be disregarded when the child's motivation for the preference is inappropriate<sup>80</sup> or based on undue influence by a parent.<sup>81</sup>

In a child custody dispute, the parents must be informed of whether a custody preference expressed by the child was considered by the court, but the parents must not be informed of the preference expressed by the child.<sup>82</sup> As an employee of the court, the investigator may not inform the parents of the child's preference.

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<sup>75</sup> MCL 722.23(i).

<sup>76</sup> *Stevens v Stevens*, 86 Mich App 258 (1978).

<sup>77</sup> *Wellman v Wellman*, 203 Mich App 277 (1994).

<sup>78</sup> *Flaherty v Smith*, 87 Mich App 561 (1978).

<sup>79</sup> *Fletcher v Fletcher*, 200 Mich App 505 (1993) rev'd on other grounds, 447 Mich. 871 (1994).

<sup>80</sup> *Hall v Hall*, 156 Mich App 286 (1986).

<sup>81</sup> *Baker v Baker*, 411 Mich 567 (1981).

<sup>82</sup> *Fletcher v Fletcher*, 200 Mich App 505 (1993) rev'd on other grounds, 447 Mich. 871 (1994).

### **Considerations for the Investigator:**

- Does either parent acknowledge that the child has a preference?
- Is the child aware that the child's choice alone is not the only factor the court will consider in determining the outcome?
- Is the child of an age and maturity to freely express a preference? Has the child been pressured by either parent to make a decision regarding the child's preference or other decisions the child must make?
- Besides interviews with the child and parents, are facts present that indicate the child's preference?
- Do you see any indication that either parent has attempted to influence the child's preference?
- Do you believe the child's preference is honest and sincere?

#### **Practice Tip:**

**Investigators should inform both parents that the interview with the child would be kept confidential and held in a neutral location (home visit, school, etc.). Investigators should attempt to create the most comfortable environment possible for the child to encourage honest responses during the interview.**

- 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 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.**

#### **Practice Tip:**

**For additional information about interviewing a child, please refer to Section XI, page 57, for "Guidelines for Interviewing Children about Custody."**

### **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.<sup>83</sup>**

#### **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

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<sup>83</sup> MCL 722.23(j).



such vindictive behavior that they would likely attempt to destroy the other parent's relationship with the child, this factor was weighed against that parent.<sup>84</sup>

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.<sup>85</sup> Other circumstances that allow a finding against a parent for this factor are a parent's uncooperative attitude toward parenting time,<sup>86</sup> allowing the child to make other plans for weekends when the other parent is scheduled to have parenting time,<sup>87</sup> 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.<sup>88</sup>

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.<sup>89</sup>

**Considerations for the investigator when determining if a parent is trying to encourage a close and continuing parent-child relationship between the child and the other parent, or the child and the parents.**

- Does either parent insult or berate the other parent in the presence of the child?
- Does one parent allow the child to make plans during the other parent's scheduled time without consulting with the other parent first?
- Prior to a 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?
- 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?

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<sup>84</sup> *McCain v McCain*, 229 Mich App 123 (1998).

<sup>85</sup> *Wellman v Wellman*, 203 Mich App 277 (1994).

<sup>86</sup> *Barringer v Barringer*, 191 Mich App 639 (1991).

<sup>87</sup> *Bowers v Bowers*, 198 Mich App 320 (1993).

<sup>88</sup> *Fletcher v Fletcher*, 229 Mich App 19 (1998).

<sup>89</sup> *Hillard v Schmidt*, 231 Mich App 316 (1998).

- Do the parents have difficulty communicating and cooperating with each other?

**Practice Tip:**

**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?**

- 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?
- Is there any evidence that one parent shares problems with the child, demonstrating an inappropriate parent-child relationship?
- Are facts present in the case that may confuse the child's emotional ties and bonding with other issues?

**Practice Tip:**

**Effective August 1, 2016: Considerations for the investigator when the parent is not encouraging a close and continuing parent-child relationship between the child and the other parent, or the child and the parents but is doing so to protect the child or the parent.**

- Does the parent have a history of child abuse or neglect or 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?
- Does either parent have substance abuse issues?
- Are there indications that an act of physical violence was committed by the parent against another individual?

**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?

**Practice Tip:**

**During the interview with the child, the investigator should determine if the child feels safe with each parent. See [Section XI](#) Guidelines for Interviewing Children about Custody.**

**Practice Tip:**

The investigator should consider any violence that the child witnesses 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.<sup>90</sup>

**Factor (k)**

**Domestic violence, regardless of whether the violence was directed against or witnessed by the child.**<sup>91</sup>

**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 can be weighed against that parent.<sup>92</sup>

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.<sup>93</sup> The court has also found that the father insulting, berating, and threatening the mother could be weighed against the father.<sup>94</sup>

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.<sup>95</sup> 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.<sup>96</sup>

In situations where the parents argue with each other in isolated instances, the domestic violence factor is not a consideration.<sup>97</sup>

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.<sup>98</sup>

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<sup>90</sup> Friend of the Court Domestic Violence Resource Book Revised Edition (2014), Section 4.1, page 4-3.

<https://mjieducation.mi.gov/documents/other-publications-2/8-foc-dv/file>.

<sup>91</sup> MCL 722.23(k).

<sup>92</sup> *Harper v Harper*, 199 Mich App 409 (1993).

<sup>93</sup> *Id.*

<sup>94</sup> *Bowers v Bowers*, 198 Mich App 320 (1993).

<sup>95</sup> *Kessler v. Kessler*, 295 Mich App 54 (2011).

<sup>96</sup> *McIntosh v. McIntosh*, 282 Mich App 481 (2009).

<sup>97</sup> *Wynn v. Wynn (Wynn I)*, 234 Mich App 255 (1999).

<sup>98</sup> *MacIntyre v. MacIntyre*, 267 Mich App 449 (2005).

## Considerations for the Investigator:

- 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:**

For questions regarding domestic violence issues, please refer to [Section XI, Domestic Violence Screening on page 67](#). Contact information for the Michigan Domestic Violence and Sexual Prevention and Treatment Board can be found at: [http://www.michigan.gov/dhs/0,4562,7-124-7119\\_7261-15002--,00.html](http://www.michigan.gov/dhs/0,4562,7-124-7119_7261-15002--,00.html), phone 517-373-8144.

## Factor (I)

**Any other factor considered by the court to be relevant to a particular child custody dispute.**<sup>99</sup>

### **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.<sup>100</sup>

The fact that a father left his wife with one child while she was pregnant with another could be weighed against him.<sup>101</sup> This factor has been weighed in favor of a parent when custody with that parent could keep a child together with a sibling.<sup>102</sup> However, if the best interests of the individual child will be better served by separate custody of the child, that custody arrangement should prevail.<sup>103</sup>

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.<sup>104</sup> On the

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<sup>99</sup> MCL 722.23(1).

<sup>100</sup> *Wellman v Wellman*, 203 Mich App 277 (1994).

<sup>101</sup> *Id.*

<sup>102</sup> *Helms v Helms*, 185 Mich App 680 (1990).

<sup>103</sup> *Wiechmann v Wiechmann*, 212 Mich App 436 (1995).

<sup>104</sup> *Zuziak v Zuziak*, 169 Mich App 741 (1988).

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.<sup>105</sup>

The special needs of a child and the manner in which 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.<sup>106</sup> Childcare arrangements are also a relevant consideration.<sup>107</sup>

While it is appropriate to consider a number of 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.<sup>108</sup>

### **Considerations for the Investigator:**

- 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?

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<sup>105</sup> *Hilliard v Schmidt*, 231 Mich App 316 (1998).

<sup>106</sup> *Mogle v Scriver*, 241 Mich App 192 (2000).

<sup>107</sup> *Ireland v Smith*, 451 Mich 457 (1996).

<sup>108</sup> *Edel v Edel*, 97 Mich App 266 (1980).

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## IV. Established Custodial Environment

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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.<sup>109</sup> However, investigators should be aware that Child Custody Act factors alone do not determine the established custodial environment.<sup>110</sup> 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.<sup>111</sup> “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.”<sup>112</sup>

Before making a custody determination, the court is required to analyze whether an established custodial environment exists with one or more of the parties.<sup>113</sup> This analysis does not relieve the court of analyzing the twelve best interest factors.<sup>114</sup> The primary focus of the inquiry is whether an established custodial environment exists, not the circumstances that allowed the custodial environment to be established.<sup>115</sup>

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.<sup>116</sup> 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.<sup>117</sup> 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 factors.<sup>118</sup>

An established custodial environment can exist in more than one home simultaneously;<sup>119</sup> thus, a determination of an established custodial environment is not necessarily a choice between parties.

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<sup>109</sup> MCL 722.27(c).

<sup>110</sup> *Berger v Berger*, 277 Mich App 700 (2008).

<sup>111</sup> *Blaskowski v Blaskowski*, 115 Mich App 1 (1982); *Hayes v Hayes*, 209 Mich App 385 (1995).

<sup>112</sup> *Baker v Baker*, 411 Mich 567 (1981).

<sup>113</sup> *Kubicki v Sharpe*, 306 Mich App 525 (2014).

<sup>114</sup> *Vodvarka v Grasmeyer*, 259 Mich App 499 (2003).

<sup>115</sup> *Moser v Moser*, 130 Mich App 97 (1983).

<sup>116</sup> *Baker v Baker*, 411 Mich 567 (1981).

<sup>117</sup> *Id.*

<sup>118</sup> *Carson v Carson*, 156 Mich App 291 (1986).

<sup>119</sup> *Duperon v Duperon*, 175 Mich App 77 (1989); *Foskett v Foskett*, 247 Mich App 1 (2001).

An established custodial environment can also exist in the home of a person who is not a parent or party to the case.<sup>120</sup> When an established custodial environment simultaneously exists, a party's established custodial environment cannot be disrupted except on a showing by clear and convincing evidence that such a disruption is in the child's best interests.<sup>121</sup> 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.<sup>122</sup>

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 considering the sufficiency of the evidence 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. Therefore, an investigator should determine how the trial judge wants the issue of the established custodial environment handled in the report.

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,<sup>123</sup> or a father's extensive work and involvement with other activities<sup>124</sup> 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.<sup>125</sup>

Similarly, an established custodial environment did not exist 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.<sup>126</sup>

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.<sup>127</sup>

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<sup>120</sup> *Heltzel v Heltzel*, 248 Mich App 1 (2001); *Greer v Alexander*, 248 Mich App 259 (2001). See also *Eldred v Ziny*, 246 Mich App 142 (2001) where the court applied the parental presumption without finding an established custodial environment.

<sup>121</sup> *La Fletche v Ybarra*, 242 Mich App 692 (2000).

<sup>122</sup> *Mills v Mills*, 152 Mich App 388 (1986).

<sup>123</sup> *Mazurkiewicz v Mazurkiewicz*, 164 Mich App 492 (1987).

<sup>124</sup> *Zuziak v Zuziak*, 169 Mich App 741 (1988).

<sup>125</sup> *Treutle v Treutle*, 197 Mich App 690 (1992).

<sup>126</sup> *Schwiesow v Schwiesow*, 159 Mich App 548 (1987).

<sup>127</sup> *Zuziak v Zuziak*, 169 Mich App 741 (1988); *Duperon v Duperon*, 175 Mich App 77 (1989).

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 trial, there could be no expectation of permanency of the arrangement that had been established by a temporary order.<sup>128</sup> Once an established custodial environment exists, it can be destroyed by the shifting back and forth of a child between custodial homes.<sup>129</sup> 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 burden was on the father to establish by clear and convincing evidence that the custodial environment should be changed to him.<sup>130</sup>

### **Considerations for the Investigator:**

- Are there indications the child looks to one parent for guidance, discipline, attention, the necessities of life, and parental comfort?

#### **Practice Tip:**

**Try to identify specific examples 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?
- What is the age of the child?
- Does either parent provide love, guidance, and attention appropriate to the child's age?
- Does either parent frequently work an excessive amount of hours?
- Does either parent have an over-reliance on childcare providers?
- Has the child moved frequently between the parent's homes?
- Has the child lived in the same community for an extended period of time?
- Has the child participated in the same extracurricular activities and attended the same religious services for an extended period of time in the same community?
- Does the child have a relationship with extended family members in one community?
- Has either parent contributed financially to the child's well-being?

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<sup>128</sup> *Bowers v Bowers*, 198 Mich App 320 (1993).

<sup>129</sup> *Baker v Baker*, 411 Mich 567 (1981).

<sup>130</sup> *Heltzel v Heltzel*, 248 Mich App 1 (2001).



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## V. Third Party Custody Investigations

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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.<sup>131</sup>

### **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. A "third party" is defined as anyone other than the child's biological or adoptive parents.<sup>132</sup> Consequently, in order to overcome the presumption in favor of parental custody, it is not sufficient that the evidence is clear and convincing in establishing an advantage with the nonparent. Rather, it is necessary to find that when all of 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.<sup>133</sup> This is true even though there may be an established custodial environment with the third party.<sup>134</sup>

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 in order to resolve difficulties the parent is having.<sup>135</sup>

**NOTE:** For more information on changes in custody, please review [Section IV, "Established Custodial Environment"](#) of this Manual. The Michigan Custody Guideline, published by the State Court Administrative Office, also addresses third-party custody situations.

### **Considerations for the Investigator:**

- Are there clear and convincing reasons 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?

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<sup>131</sup> MCL 722. 25(1).

<sup>132</sup> Only certain third parties may bring forward an original action for custody: prospective adoptive parents (MCL 722.26c), persons related to the child where the parents did not marry and the other parent has not been granted legal custody and the custodial parent is dead or missing (MCL 722.26c), an equitable parent [*Atkinson v Atkinson* Mich App 601, 408 NW2d (1987)], and full guardians and limited guardians when the parents have not substantially complied with the limited guardianship placement (MCL 722.26b).

<sup>133</sup> *Eldred v Ziny*, 246 Mich App 142 (2001).

<sup>134</sup> *Heltzel v Heltzel*, 248 Mich App 1 (2001).

<sup>135</sup> *Straub v Straub*, 209 Mich App 77 (1995).

**Practice Tip:**

**It is necessary to identify clear and convincing reasons a third party should be granted custody over a parent before a recommendation can be made that a third party receive custody.**

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## VI. Changing the Child's Legal Residence or Domicile

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Investigators should ask for clear direction from the court when asked to conduct a change of legal residence or change of domicile investigation. The FOC does not have the authority to decide if a person can leave the state or change the legal residence of the child of 100 miles to another residence more than 100 miles away (these are legal determinations by the court).

If a party files a motion for change in residence (the 100-mile rule)<sup>136</sup> the court will address four statutory factors (generally called the *D'Onofrio*<sup>137</sup> factors<sup>138</sup>), and will review the potential and past record of domestic violence between the parties. However, if a party files a motion for a change of domicile, then the court will only address the first four factors. The following information will assist those investigators who are required to address the *D'Onofrio* factors and any domestic violence issues in their change of domicile, or change of legal residence investigative reports.

### A. 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."<sup>139</sup>

### B. 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 legal 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

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<sup>136</sup> MCL 722.31.

<sup>137</sup> *D'Onofrio v D'Onofrio*, 144 N.J. Super. 200 (1976).

<sup>138</sup> While still referred to as the *D'Onofrio* factors, it is important to note that the statutory language in MCL 722.31 is slightly different than the language presented in the *D'Onofrio* case.

<sup>139</sup> MCL 722.31(1).

- 2) The move by either parent creates 100 miles or more distance between the two parents' homes.<sup>140</sup>

There is no requirement for court approval for a move to another place in Michigan when:<sup>141</sup>

- 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.
- The move results in the child's two legal residences being closer to each other than before the move.

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 consider the statutory factors under MCL 722.21 and must expressly approve the move.<sup>142</sup>

Because the factors for change of residence and change of domicile are similar, they are discussed together below:

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

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.<sup>143</sup> Under this factor, an appropriate consideration is the financial benefit of a move,<sup>144</sup> including the attendant ability of a parent to cut back on work hours and spend more time with the child,<sup>145</sup> or the ability to further a parent's career.<sup>146</sup> 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 their father outweighed the added enticements of a move to Colorado.<sup>147</sup>

**Considerations for Investigator**

- Where are the parent and child going to live?

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<sup>140</sup> *Bowers v Vandermeulen-Bowers*, 278 Mich App 287 (2008). The 100 miles is measured by radial miles, not road miles.

<sup>141</sup> MCL 722.31(2) and (3).

<sup>142</sup> MCR 3.211(C)(1).

<sup>143</sup> *Phillips v Jordan*, 241 Mich App 17 (2000).

<sup>144</sup> *Scott v Scott*, 124 Mich App 448 (1983).

<sup>145</sup> *Anderson v Anderson*, 170 Mich App 305 (1988); *Mills v Mills*, 152 Mich App 388 (1986); *Phillips v Jordan*, 241 Mich App 17 (2000).

<sup>146</sup> *Overall v Overall*, 203 Mich App 450 (1994).

<sup>147</sup> *Dick v Dick*, 147 Mich App 513 (1985).

**Practice Tip:**

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

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

**Practice Tip:**

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

- 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?

**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.**

- Has there been a history of domestic violence between the parties or the party and child?

**(2) 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.<sup>148</sup>**

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.<sup>149</sup> 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.<sup>150</sup>

**Considerations for Investigator:**

- Have there been multiple parenting time complaints filed?

**Practice Tip:**

**Review past parenting time complaints and subsequent outcomes.**

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<sup>148</sup> The statutory language for change of residence adds, "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." It is unclear whether this is an additional requirement or merely a codification of 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."

<sup>149</sup> *Mills v Mills*, 152 Mich App 388 (1986).

<sup>150</sup> *Bielawski v Bielawski*, 137 Mich App 587 (1984).

- What is the current court ordered parenting time schedule?

**Practice Tip:**

**Review the FOC file for the current court order.**

- Does the other parent utilize his or her parenting time?
- Has the parent encouraged a close relationship between the child and the other parent?

**(3) The integrity of the noncustodial parent’s motives in resisting the removal and the extent to which, if at all, the opposition 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.”)**

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

**Considerations for Investigator:**

- How consistent is the parent with paying child support?

**Practice Tip:**

**Verify any child support enforcement procedures taken against the paying parent.**

- If the move is granted by the court, does either party believe the child support obligation should change?
- Is the parent who opposes the move doing so as a means to pressure the other parent to reduce the child support obligation?
- Has there been a history of domestic violence between the parties or between the parties and the child?

**(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.**

The requirement is that there be a realistic opportunity for preserving and fostering the parental relationship. The new and old parenting time arrangements need not be equal in all respects.<sup>151</sup> 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 every Wednesday evening when the father was also involved with the child in other extracurricular activities.<sup>152</sup> In order to allow a move, a court may fashion orders to

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<sup>151</sup> *Id.*; *Mills v Mills*, 152 Mich App 388 (1986).

<sup>152</sup> *Dick v Dick*, 147 Mich App 513 (1985).

facilitate the parenting time. Thus, a court could enter an order requiring the parties to share the cost of transportation.<sup>153</sup>

### **Considerations for Investigator:**

- What are the parties' proposed parenting time schedules?
- What form of transportation will be utilized to facilitate the parenting time/custody 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, phone data usage, and associated costs.**

- Has the current parenting time schedule been followed by the nonmoving parent?

#### **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.**

### **Change in Legal Residence – Additional Factor**

When court-ordered to conduct a change in a legal residence investigation, the investigator should take into considering the four previous factors<sup>154</sup> and the following additional factor, “domestic violence, regardless of whether the violence was directed against or witnessed by the child.”

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.<sup>155, 156</sup>

### **Consideration for the Investigator:**

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

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<sup>153</sup> *Scott v. Scott*, 124 Mich App 448 (1983).

<sup>154</sup> With the exception of the addition of a domestic violence factor, the factors are similar but worded differently in the statute. The most striking difference between the wording of the statute and case law requires the consideration of “...(t)he 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.”

<sup>155</sup> MCL 722.31(6).

<sup>156</sup> 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.

**Practice Tip:**

**Check the court pleadings for indications of domestic violence, as well as checking other accessible databases. Please refer to the Manual's domestic violence screening section for additional information.**



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## VII. Introduction for Parenting Time Investigations

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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, and domestic relations mediation is refused by either party or is unsuccessful, or if ordered to do so by the court.”<sup>157</sup>

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.

When a dispute exists concerning the custody of a child, the court may provide for reasonable parenting time of the child by the parties, the grandparents, or others.<sup>158</sup> The law requires the court to consider the best interest factors set forth in MCL 722.23,<sup>159</sup> but the court *may* also consider the parenting time factors set forth in MCL 722.27(a). Accordingly, in any type of parenting time investigation, the investigator will need to consider the best interest factors as outlined in MCL 722.23.

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.<sup>160</sup>

The investigator will need to make sure that there is clear direction from the bench on which factors to address in the report if the court is only interested in the contested factors.<sup>161</sup>

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 parties 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.

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<sup>157</sup> MCL 552.505(1)(g).

<sup>158</sup> MCL 722.27(1).

<sup>159</sup> *Terry v Affum*, 237 Mich App 522 (1999); *Stevens v Stevens*, 86 Mich App 258 (1978).

<sup>160</sup> *Hoffman v. Hoffman*, 119 Mich. App. 79, 326 N.W.2d 136 (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.”

<sup>161</sup> 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.

- Except as limited by the court, address the 12 best interest factors of the Child Custody Act.<sup>162</sup>
- Interview the child or children, if appropriate.
- Secure signed release forms from both parents (see Appendix I for samples of release forms).

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.<sup>163</sup> For example, a court did not abuse its discretion in denying a father all parenting time rights when the father had abandoned the child for eight years, had only requested parenting time in response to an attempt to collect delinquent support, and the proposed parenting time would change the child's established custodial environment.<sup>164</sup>

The following section will review the nine parenting time factors of the Child Custody Act.<sup>165</sup> The term "parent" refers to the parent seeking parenting time in the Considerations and Practice Tips sections following the factors.

## **Factor (a)**

### **The existence of any special circumstances or needs of the child.**<sup>166</sup>

#### **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.<sup>167</sup> 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.<sup>168</sup>

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.<sup>169</sup>

#### **Considerations for the Investigator:**

- What emotional impact will the proposed parenting time have on the child?
- How long has it been since the child spent significant time with the parent?

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<sup>162</sup> MCL 722.23.

<sup>163</sup> 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).

<sup>164</sup> *Stevenson v Stevenson*, 74 Mich App 656 (1977).

<sup>165</sup> Contained in MCL 722.27a(6).

<sup>166</sup> MCL 722.27a (6)(a).

<sup>167</sup> *Stevenson v Stevenson*, 74 Mich App 656 (1977).

<sup>168</sup> *Lorenz v Lorenz*, 70 Mich App 356 (1976).

<sup>169</sup> *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.

- 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. It may also be necessary to consider agency, third party, or therapeutic parenting time. Therapeutic parenting time provides for a gradual establishment of a relationship between the child and the parent with the goal of moving towards a more standard form of 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.<sup>170</sup>**

**Interpretation:**

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

**Considerations for the Investigator:**

- 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.**

**Factor (c)**

**The reasonable likelihood of abuse or neglect of the child during parenting time.<sup>171</sup>**

**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,

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<sup>170</sup> MCL 722.27a(6)(b).

<sup>171</sup> MCL 722.27a(6)(c).

mental, or emotional health.”

The court may place other conditions on parenting time necessary to protect a child. MCL 722.27a(8)(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.<sup>172</sup> Supervised parenting time is proper if there is evidence of physical abuse or excessive physical discipline<sup>173</sup> by the parent or a third party who is present during parenting time.

### **Considerations for the Investigator:**

- 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 the parent or third party ever physically abused the child?
- Is information available that indicates 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 third party?
- Has Child Protective Services (CPS) ever investigated the parent or third party for child abuse or neglect?
- Has the parent or third party left the child unattended for an extended period?
- Is the child properly fed and clothed during parenting time?
- Are there indications the parent or third party 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 that would eliminate any risks of the child being abused?
- Should there be 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.**

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<sup>172</sup> *Van Koevering v Van Koevering*, 144 Mich App 404 (1985).

<sup>173</sup> *Booth v Booth*, 194 Mich App 284 (1992).

## **Factor (d)**

**The reasonable likelihood of abuse by a parent resulting from the exercise of parenting time.**<sup>174</sup>

### **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 replete with animosity and strife.<sup>175</sup> Michigan statutes provide for alternative parenting time arrangements to guard against such abuse.<sup>176</sup> 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.

### **Considerations for the Investigator:**

- 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 been prosecuted or convicted of a violent crime?
- 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 parents poses a threat to either person. If so, then safeguards should be put in place that would protect both parents and the child from harm.**

## **Factor (e)**

**The inconvenience to, and burdensome impact or effect on, the child traveling for purposes of parenting time.**<sup>177</sup>

### **Interpretation:**

This factor considers the impact traveling will have on the child. For example, it was

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<sup>174</sup> MCL 722.27a(6)(d).

<sup>175</sup> *Thames v Thames*, 191 Mich App 299 (1991).

<sup>176</sup> MCL 722.27a(8)(f) and MCL 722.27a(8)(c).

<sup>177</sup> MCL 722.27a(6)(e).

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.<sup>178</sup>

**Considerations for the Investigator:**

- Will traveling between the parent's homes have an impact on the child's physical and mental health?
- 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)?

**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.**

**Factor (f)**

**Whether a parent can reasonably be expected to exercise parenting time in accordance with the court order.<sup>179</sup>**

**Interpretation:**

This factor examines whether the proposed parenting time order is reasonable under the circumstances. When the circumstances indicate that a parent might not comply with the order, the court may impose conditions to ensure compliance. For example, the court may include a provision that one parent cannot tell the child what to say to the other parent during parenting time.<sup>180</sup> The parenting time schedule should be one with which the parents can 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.<sup>181</sup>

**Considerations for the Investigator:**

- Has the parent ever withheld the child from the other parent?
- Have there been multiple parenting time complaints filed with the FOC?
- What circumstances have changed that prevents the parent from exercising parenting time (e.g., new job, health conditions, second family)?

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<sup>178</sup> *Lorenz v Lorenz*, 70 Mich App 356 (1976).

<sup>179</sup> MCL 722. 27a(6)(f).

<sup>180</sup> *Van Koevering v Van Koevering*, 144 Mich App 404 (1985).

<sup>181</sup> *Deal v Deal*, 197 Mich App 739 (1993).

- 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?
- Does the child make plans that interfere with parenting time?

**Practice Tip:**

**It may be necessary to determine if circumstances have changed that make it impossible for the parent to spend time with the child. It may also be necessary to determine if it is likely the parent will obey the court order.**

**Factor (g)**

**Whether a parent has frequently failed to exercise reasonable parenting time.<sup>182</sup>**

**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.<sup>183</sup> Likewise, 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.<sup>184</sup>

**Considerations for the Investigator:**

Is there currently a court order for parenting time? If so, are there indications that the parent has failed to exercise his or her court-ordered parenting time? If there is not a court order, has the parent exercised due diligence in attempting to see the child?

- Has the parent routinely contacted the child at the last minute to cancel plans?
- 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 actually spend with the child?
- Does the parent make a sincere effort to be involved with the child during the parent's parenting time?

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<sup>182</sup> MCL 722.27a(6)(g).

<sup>183</sup> *Stevenson v Stevenson*, 74 Mich App 656 (1977).

<sup>184</sup> *Lorenz v Lorenz*, 70 Mich App 356 (1976).

- 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 spending time with the child. It is critical that you distinguish unexercised parenting time opposed to situations where parenting time was denied.**

**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.**<sup>185</sup>

**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.<sup>186</sup> 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.<sup>187</sup>

**Considerations for the Investigator:**

- Have both parents demonstrated an ability to cooperate regarding access to the child?

**Practice Tip:**

**Determine if a parent has tried to sabotage the other parent's time with the child. For example, does the other parent make plans for the child during the other parent's parenting time? Is one parent making continuous phone calls to interrupt parenting time?**

- 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?

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<sup>185</sup> MCL 722.27a(6)(h).

<sup>186</sup> *Farrell v Farrell*, 133 Mich App 502 (1984).

<sup>187</sup> *Mauro v Mauro*, 196 Mich App 1 (1992).



- Does either 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.**<sup>188</sup>

**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<sup>189</sup> and the child's need to have more time with the father.<sup>190</sup>

**Considerations for the Investigator:**

- 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 parent's 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?

**Practice Tip:**

**Look for issues that are unique to the family that the court should be aware of before making a parenting time decision.**

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<sup>188</sup> MCL 722.27a(6)(i).

<sup>189</sup> *Stevenson v Stevenson*, 74 Mich App 656 (1977).

<sup>190</sup> *Deal v Deal*, 197 Mich App 739 (1993).

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## VIII. Grandparenting Time Investigations

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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.

In 2005, MCL 722.27b was amended<sup>191</sup> and provides that a grandparent may seek grandparenting time if:

- (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) the child's parent who is a child of the grandparents is deceased;
- (d) the child's parents have never been married, they are not residing in the same household, and paternity has been established;
- (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; or
- (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.

The amendment to MCL 722.27b 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 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, the court must dismiss the grandparenting time request.<sup>192</sup>

The court may also dismiss the action if two fit parents sign an affidavit stating that they both oppose a grandparenting time court order.<sup>193</sup>

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

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<sup>191</sup> Prior to 2003, a grandparent in Michigan could seek a grandparenting time court order under certain circumstances as long as the court determined grandparenting time was in the best interests of the child. In 2003, the Michigan Supreme Court found Michigan's then-existing grandparenting time statute unconstitutional.

<sup>192</sup> *Geering v King*, 320 Mich App 182 (2017).

<sup>193</sup> MCL 722.27b(5).

determining the best interest of the child, the court must consider the best interest factors in MCL 722.27b(6).

Before initiating a grandparenting time investigation, the investigator should seek the following information:

- Is the court requiring the best interest factors in MCL 722.27b in the written report?<sup>194</sup>
- Is the court requiring a recommendation for grandparenting time?
- Is there an existing grandparenting time order?
- Has the court determined if the grandparent has overcome the parental presumption?
- Are both parents opposing grandparenting time?<sup>195</sup>
- 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 been involved in a child abuse or neglect case?
- Has it been more than two years since the grandparent who is seeking grandparenting time requested a grandparenting time court order?<sup>196</sup>
- Have the parties of the grandparenting time dispute been referred to alternative dispute resolution?<sup>197</sup>
- If the parents were not married:
  - has an acknowledgment of paternity been signed, or
  - has an order of filiation been entered, or
  - has the father been determined to be the father by a court?<sup>198</sup>
- Is there evidence of domestic violence between the parents or between the grandparents and the parents?<sup>199</sup>

The following information is for grandparent investigations that require the FOC to address the best interest factors.

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<sup>194</sup> There is no statutory requirement for the FOC to address the best interest factors when conducting a grandparenting time investigation.

<sup>195</sup> If two fit parents sign an affidavit stating they both oppose an order for grandparenting time, the court must dismiss a grandparenting time complaint or motion unless one of the fit parents is a stepparent who adopted the child and the grandparent is the natural or adoptive parent of the child's parent who is deceased or whose parental rights have been terminated.

<sup>196</sup> A grandparent may not file more than once every two years unless there is good cause. If the court finds there is good cause, the court must consider the complaint or motion.

<sup>197</sup> If the complaint or motion is referred for alternative dispute resolution and no settlement is reached, the complaint or motion will be heard by the court.

<sup>198</sup> A parent of a father who has never been married to the child's mother cannot seek an order for grandparenting unless the father has completed an acknowledgment of parentage, an order of filiation has been entered, or the court has determined the father's parentage. The parent of a putative father cannot seek an order for grandparenting time unless the putative father has provided substantial and regular support or care within his ability to do so.

<sup>199</sup> 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.

## Factor (a)

**The love, affection, and other emotional ties existing between the grandparent and the child.<sup>200</sup>**

### **Considerations for the Investigator:**

#### Parent

- Describe the relationship and bond that the grandparent has with the child.
- Describe how the grandparent shows kindness, love, affection and courtesy 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?

#### Grandparent

- Describe the relationship and bond that you have with the child.
- Describe how you show kindness, love, affection and courtesy 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 does the child feel about you?

#### **Practice Tip:**

**Ask the grandparents how they would like to improve the relationship between grandparent and child.**

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

#### **Practice Tip:**

**Ask the grandparents if they have ever been denied access to the grandchild. If so, by whom?**

## 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.<sup>201</sup>**

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<sup>200</sup> MCL 722.27(b)(6)(a).

<sup>201</sup> MCL 722.27(b)(6)(b).

### **Considerations for the Investigator:**

#### Parent

- 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.

#### 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.<sup>202</sup>**

### **Considerations for the Investigator:**

#### Parent

- Has the grandparent ever been convicted of a crime?
- Has the grandparent had any involvement in any matter considered criminal?
- Has there ever been a personal protection order placed against the grandparent?
- Does the grandparent ever routinely or excessively use illegal drugs or consume excessive amounts of alcohol?
- Have your children witnessed violent acts by the grandparent?

#### Grandparent

- Have you ever been convicted of any crime? If so, please describe your arrest history.
- Have you had any involvement in any matter considered criminal?
- Have you ever had a personal protection order issued against you?
- Do you ever routinely or excessively use illegal drugs or consume excessive amounts of alcohol?
- Have your grandchildren witnessed you commit a violent act?

### **Factor (d)**

#### **The grandparent's mental and physical health.<sup>203</sup>**

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<sup>202</sup> MCL 722.27(b)(6)(c).

<sup>203</sup> MCL 722.27(b)(6)(d).

## Considerations for the Investigator:

### Parent

- What is the grandparent's current health status?
- Does the grandparent follow recommended treatments and take all prescribed medications from a doctor?
- What are the side effects of any medications that the grandparents currently take, and will the side effects influence the care of the child?
- Does the grandparent have untreated ailments that could affect grandparenting time?
- Describe any issues with the grandparent's mental health history (e.g. cognitive, psychiatric), including history of mental illness, psychiatric hospitalizations, or suicide attempts.

### Grandparent

- What is the current status of your health? What prescribed medications are you using, if any, and why?

### **Practice Tip:**

**Investigators should make sure grandparents indicate all medications the grandparent takes for both physical and mental illnesses.**

### **Practice Tip:**

**Secure a release of a confidential information form signed by 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 form. See Appendix IV, page 88, for examples of release forms.**

- 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 well-being.
- Do you follow recommended treatments and take all prescribed medications from a doctor?
- What are the side effects of any medications that you currently take, and will the side effects have an impact on the care of the child?
- Do you have untreated ailments that could impact your grandparenting time? If so, please explain (lack of resources or in the process of securing resources, no action advised by physician).
- Describe any mental health issues you may have 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.**<sup>204</sup>

### Considerations for the Investigator:

#### Parent

- Do you believe the child is of an age and maturity to freely express a preference?

#### **Practice Tip:**

**Besides interviews with the parties and the child, the investigator should look for facts that indicate the child's preference.**

#### **Practice Tip:**

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

#### Parent

- 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?
- Is there a reason why the child would not be completely honest with his or her stated preference as to visiting the grandparent?

#### Grandparent

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

## Factor (f)

**The effect on the child of hostility between the grandparent and the parent of the child.**<sup>205</sup>

### Considerations for the Investigator:

#### Parent

- Have there been any arguments between you and the grandparent in front of the child?
- Are there hostile interactions between you and the grandparent? If so, who initiates the hostile interaction?
- Do you believe the other party speaks negatively about you around the child?
- Do you make any disparaging remarks about the other party or the other party's family? Are any of these remarks shared with the child(ren)?
- Is the child used as a means of communication between the parent and

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<sup>204</sup> MCL 722.27(b)(6)(e).

<sup>205</sup> MCL 722.27(b)(6)(f).

grandparent because the parties cannot communicate directly with each other?

Grandparent

- Have there been any arguments between you and the parent(s) held in front of the child?
- Are there hostile interactions between you and the parent(s)? If so, who initiates the hostile interaction?
- Do you believe the other party speaks negatively about you around the child?
- Do you make any disparaging remarks about the other party or the other party's family? Are any of these remarks shared with 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.**<sup>206</sup>

**Considerations for the Investigator:**

Parent

- What does the grandparent do to encourage a close relationship between the child and the parent?
- Does the grandparent have confidence in your parenting skills? If so, how does the grandparent demonstrate that confidence?
- Describe your current relationship with the other party.
- Does the grandparent do anything to interfere in the relationship between you and your child?

Grandparent:

- What do you do to encourage a close relationship between the child and the parent?
- Do you have confidence in the parent's parenting skills? How do you demonstrate that confidence?
- Describe your current relationship with the other party.
- Do you do anything to interfere in the relationship between the parent and the child?

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<sup>206</sup> MCL 722.27(b)(6)(g).



## Factor (h)

**Any history of physical, emotional, or sexual abuse or neglect of any child by the grandparent.<sup>207</sup>**

### Considerations for the Investigator:

#### Parent

- 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 have any knowledge of any prosecutable violent acts committed by the grandparent?
- Do you have any knowledge of any violent behavior exhibited by the grandparent (e.g. excessive discipline, aggressive personality)?

#### Grandparent

- Have you ever been reported for child abuse or neglect to CPS for any child (e.g., child, stepchild, grandchild, nonrelative 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 grandparent.**

- Have you ever committed any violent acts for which a person could be prosecuted?

#### **Practice Tip:**

**Verify with law enforcement agencies if grandparents have ever been arrested for any violent acts.**

- Have you ever demonstrated any violent behavior (e.g. excessive discipline, aggressive personality)?

## 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.<sup>208</sup>**

### Considerations for the Investigator:

#### Parent

- 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?

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<sup>207</sup> MCL 722.27(b)(6)(h).

<sup>208</sup> MCL 722.27(b)(6)(i).

- 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 as a result of the relationship between the child and grandparent?
- Have there been recent changes in the amount and frequency of contact between the child and grandparent? If, so why?
- How would you describe the grandparent's parenting skills?

#### Grandparent

- Why do you believe the parent is denying you access to your grandchild? What do you think are the parent's biggest concerns about you having grandparenting time?
- Do you think your grandchild would suffer emotionally if grandparenting time were denied?
- How would you describe your parenting skills?

#### **Practice Tip:**

**Investigators should determine if the child is being treated by a mental health professional because the child is being forced to see the grandparents or because the child is being denied the opportunity to see the grandparents.**

#### **Practice Tip:**

**Have the parent sign a release form to obtain any of the child's mental health reports and records. See [Appendix IV](#), for sample release forms.**

#### **Practice Tip:**

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

- Have there been recent changes in the amount and frequency of contact between the child and grandparent? If, so why?

### **Factor (j)**

**Any other factors relevant to the physical and psychological well-being of the child.<sup>209</sup>**

#### **Considerations for the Investigator:**

##### Parent

- 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?

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<sup>209</sup> MCL 722.27(b)(6)(j).

- Does the child have special needs and can the grandparents provide for those special needs?
- Will the grandparents be physically present during grandparenting time?
- Has either of the parent's rights to the child been terminated?

#### 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 the grandparents provide for those special needs?
- Can the grandparents provide for the physical needs of the child (such as food)?
- Will you be physically present during grandparenting time?
- Is either of the parent's rights to the child 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 physically present during grandparenting time?

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## **IX. Supervised Parenting Time**

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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.

There may be on occasion custody investigations where concerns may arise about the safety or welfare of the children during one or both parents’ parenting time. In those situations, different forms of supervised parenting time can assist in managing and facilitating the contact between the parent and children.”

Supervised parenting time can also serve as a means to measure the development of the relationship between the parent and the child.

The following are considerations for recommending supervised parenting time:

- Are there any signs of child abuse issues with the parents and child?
- 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 of 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?
- 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 and cognitive health issues for either the child or parent?
- Is there a strained relationship between child and parent?

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## X. Gathering Information

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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 from multiple sources and to verify the information provided. The investigator should review the pleadings and other statements of the parents to determine what information is likely to be needed in the investigation.<sup>210</sup> For instance, the investigation that follows from a pleading alleging a child is exposed to controlled substances with one parent may be quite different from one alleging a child is not being raised in his faith. The investigator should immediately secure the signatures on the proper release forms from the parents. Examples of release forms can be viewed in the [Appendices I, II, III, IV, and V](#). After obtaining signatures on the release forms, the investigator should carefully consider who to interview and what agencies to contact to complete the investigation.

### Considerations for the Investigator:

- Is it necessary to schedule a home call? 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:**

**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.**

- Interviews should be conducted with individuals who have had direct observation of the child and the parent’s interactions. Some examples include but 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 will 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.
- Is it necessary to schedule a time to observe the interactions between the child and the parent?
- If either parent has another FOC case, should that case be reviewed for additional information (e.g., indications of abuse, denial of parenting time)?

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<sup>210</sup> 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).

**Practice Tip:**

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

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## **XI. Guidelines for Interviewing Children about Custody**

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Much of the information used for this section of the Custody and Parenting Time Investigation Manual was provided by the Honorable Bruce A. Newman prior to his passing.

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.”<sup>211</sup> 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 must not be informed of the preference expressed by the child.<sup>212</sup> As an employee of the court, this nondisclosure requirement also applies to the investigator.

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

Obtaining information about the child before the interview will help the investigator develop a rapport with the child and assist with asking the child the 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.<sup>213</sup>
- Determine if the child has ever been involved with a CPS investigation. If so, review the CPS reports.
- Interview the parents before interviewing the child.
- Review any psychological or medical reports for the child or the parents.<sup>214</sup>
- Review school, community, and home records of the child.<sup>215</sup>
- Make arrangements 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 prior to and immediately after the interview.
- Make arrangements to observe the child and parent interactions.
- Investigators may want to make arrangements to have colleagues of the same gender 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 on to questions about people (relationships, feelings). 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.

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<sup>211</sup> MCL 722. 23(i).

<sup>212</sup> *Fletcher v. Fletcher*, 200 Mich App 505, 518 (1993) rev’d on other grounds, 447 Mich. 871 (1994).

<sup>213</sup> MCR 3.206(B)(1)(g).

<sup>214</sup> The investigator should make sure the parents have signed release forms.

<sup>215</sup> The investigator should make sure the parents have signed release forms.

### Considerations for the Investigator:

- 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 5 years), school age (6 years to 12 years), and adolescence (13 years to 18 years), developmental considerations, interview guidelines, and suggested questions are presented below and can be viewed in the appropriate appendix. The investigator should adapt questions to the investigator’s own interviewing style and comfort level and should ask open-ended questions, and then if necessary, ask specific, but nonleading questions. Do not directly ask the child where the child wants to live.

In addition, investigators can reference the *Forensic Interviewing Guide* produced by the State of Michigan’s Governor’s Task Force on Child Abuse and Neglect, and the Michigan Department of Health and Human Services. The goal of the *Forensic Interviewing Guide* is, “...to obtain a statement from a child, in a developmentally-sensitive, unbiased, and truth-seeking manner, that will support accurate and fair decision-making in the criminal justice and child welfare systems.”<sup>216</sup>

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<sup>216</sup> *Forensic Interviewing Guide*, page 1 [http://www.michigan.gov/documents/dhs/DHS-PUB-0779\\_211637\\_7.pdf](http://www.michigan.gov/documents/dhs/DHS-PUB-0779_211637_7.pdf).



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## **XII. Domestic Violence Screening**

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Research submitted to the U.S. Department of Justice<sup>217</sup> cites a high rate of domestic violence existing in families<sup>218</sup> referred for child custody investigations. The same study shows how domestic violence is frequently undetected in custody cases across the country, and concludes that more in-depth, stringent screening protocols must be used prior to a custody or parenting time investigation.

Prior to the initiation of a custody or parenting time investigation, all FOC cases should be properly screened for domestic violence. Confidentiality and disclosure of answers to the screening is an issue that may impact a party's willingness to disclose information. There are several ways in which the FOC can ensure that the information is either confidential or not available through disclosure.<sup>219</sup> SCAO recommends that it is best to contact the parties prior to the investigation interview to determine if holding a joint investigation meeting is beneficial.

First, the parties are contacted prior to the investigation interview for the investigator to gauge the party's responses to domestic violence screening questions. The office may consider the investigator's notes recording the screening tool answers as "staff notes" under the court rule (thereby making the notes confidential and not subject to disclosure to a party).

Second, if the document is mailed and filled out by the party, and the case is under litigation, the office could treat the document as a record that the FOC did not create (MCR 3.218(E)), thereby allowing the office to refuse disclosure because parties have the right to engage in discovery between them.

Finally, and the recommended approach, the court could ensure confidentiality of the screening by having the screening document recorded as confidential and/or not subject to disclosure as part of a LAO (MCR 3.218(G)).

If there are indications of domestic violence, precautions should be taken to ensure the safety of the parties and court staff. The following are domestic violence screening recommendations for FOC cases when the court has ordered an investigation.

### **A. Pre-Interview**

Prior to 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

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<sup>217</sup> *Child Custody Evaluator's Beliefs About Domestic Abuse Allegations; Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge and Custody-Visitation Recommendations*, by D. Saunders, Kathleen Faller, and R. Tolman, June 2012, <https://www.ncjrs.gov/pdffiles1/nij/grants/238891.pdf>.

<sup>218</sup> A "family member" is defined in MCL 750.81 as, "A spouse or former spouse, an individual with whom the person has or has had a dating relationship, an individual with whom the person is or has engaged in a sexual relationship, an individual to whom the person is related or was formerly related by marriage, and an individual with whom the person has a child in common, and a minor child of any of the individuals previously listed."

<sup>219</sup> Because MCR 3.218 "Friend of the Court Records Access" does not list domestic violence screening documents as confidential information, SCAO recommends that the office and court work together to ensure that the practice employed will protect the information shared through answering the screening document.

criminal case concerning either party, and for past or present civil child protection cases. Potential resources for indications of domestic violence and child abuse<sup>220</sup> include, but are not limited to:

- 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
- Appointment letters for interviews with dates and times should be sent to both parties as soon as the appointment is scheduled by the office. In the event the FOC conducts joint interviews, the letters should state that both parties would be in attendance at the same interview session. If either party has an issue in attending the scheduled meeting, and the FOC agrees that the issue is substantive, the party can contact the investigator and request the interview be rescheduled. The letter should also state if rescheduling is not possible for both parties, the interviews may take place separately on two different dates.

This language provides a possible reason for the cancellation of the joint interview outside of abuse allegations.

**Practice Tip:**

**If the FOC is aware of domestic violence concerns prior to the interview, a letter should be sent to the alleged victim asking if he or she would feel safe during a joint interview or would like to schedule a separate interview. The joint interview should not take place without the informed consent of the alleged victim.**

**Practice Tip:**

**The investigator can make 30-minute appointments for each party prior to the scheduled interview. These 30-minute appointments will give the party time to meet with the investigator and complete the domestic violence-screening tool.**

**B. Duty to Screen and Protect Information**

Investigators should inform both parties that the purpose of the domestic violence screening is to determine if the parties can meet jointly without issue. 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 parties that information shared during the screening will not be shared with the other party.<sup>221</sup> Fully informing the parties of the purpose of the screening may encourage the parties to share

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<sup>220</sup> More information on domestic violence referral services can be found on the Michigan Domestic and Sexual Violence Prevention and Treatment Board's website at: [http://www.michigan.gov/dhs/0,4562,7-124-7119\\_7261---,00.html](http://www.michigan.gov/dhs/0,4562,7-124-7119_7261---,00.html).

<sup>221</sup> See footnote 206 regarding MCR 3.218.

relevant information without fear of the investigator's disclosure, and allow a party to make a safety plan if a disclosure is likely to incite retaliatory violence.

FOC staff should also be aware that a limited use of the screening avoids unnecessary intrusions into client privacy. Parties may be more willing to disclose his or her exposure to domestic violence if the party does not have to divulge unnecessary details about the abuse.

Investigators should ask questions about matters that are in the public record.<sup>222</sup> These matters are less likely to result in retaliatory violence against the abused party because the matters have already been placed in a publically accessible format.

Sometimes questions about domestic violence can cause abuse perpetrators to suspect that the abused party has disclosed violence to the person asking the question. This may result in retaliatory violence against the abused party. 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 SCAO Domestic Violence Screening Protocol for examples of questions that an investigator could ask during a domestic violence screening.

### **C. Beginning the Custody and Parenting Time Interviews**

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

- The scope and purpose of the investigator's report should be explained to all parties, including that any information provided during the interview maybe used in the report. Investigators should also advise both parties as to who will receive copies of the report, and explain that the report itself is not confidential.
- Parties should be informed approximately when the report will be sent out, so that if the party has concerns about how the other party will react, he or she may have time to take extra safety precautions.
- It should be made clear to all parties that the investigator is gathering information on the current situation and will be making a recommendation to the court as to custody and parenting time of the children. The investigator is not advocating for, or representing, either party in the custody and parenting time matter before the court.

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<sup>222</sup> "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.

**Practice Tip:**

**If during a joint interview domestic violence concerns are raised, the investigator should end the interview, separate the parties, 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.**

- Investigators should continue to monitor the case for domestic violence concerns through the completion of the investigation report.
- The investigator should speak to the repercussions of nondisclosure of domestic violence to the parties, if appropriate. If there is a domestic violence issue present 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.

**D. Writing the Report**

The investigator's responsibilities to the court is to investigate all relevant facts, write a report with custody and parenting time recommendations, and to distribute the report to the parties and to the court. If the investigator finds during the investigation that there is a history of domestic violence between the parties, 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 reported to the court 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 meeting is proper and to encourage full disclosure of all information by the parties, SCAO recommends that investigators not use the information gathered from the domestic violence screening in the written report. Because of the party's responses to some or all of the domestic violence screening questions, the investigator may have concerns about domestic violence. Investigators should discuss those concerns in the report under the child custody factors, especially under factor "K," Domestic Violence.

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### **XIII. Uniform Child Custody Jurisdiction and Enforcement Act**

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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:

- Michigan is the home state<sup>223</sup> 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<sup>224</sup> with this state with substantial evidence concerning the child's care, protection, training, and personal relationships.
- All other courts do not have jurisdiction or have declined jurisdiction.<sup>225</sup>

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.<sup>226</sup>

There is an exemption to the home state priority. The UCCJEA does allow 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. 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.

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

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<sup>223</sup> "Home state" is defined in the UCCJEA as "...the state in which a child lived with a parent or person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with a parent or person acting as a parent. A period of temporary absence of a parent or person acting as a parent is included as part of this period."

<sup>224</sup> "Significant connection" must be more than being present in the state. MCL 722.1201(b)(i).

<sup>225</sup> MCL 722.1201.

<sup>226</sup> MCL 722.1202.

The FOC can assist with enforcement if Michigan does not have continuing exclusive 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.<sup>227</sup>

### **Consideration for Investigator**

- Certain domestic relations cases may be more likely to have jurisdiction concerns.<sup>228</sup>  
If investigators discover another state court has jurisdiction, they should ask the FOC director for guidance on handling the domestic relations case.

#### **Practice Tip:**

**The investigator should review the UCCJEA affidavit prior to initiating a custody and parenting time investigation for information about jurisdiction concerns.**

#### **Practice Tip**

**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.**

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.<sup>229</sup> 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.

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<sup>227</sup> MCL 552.641(1)(c) permits the FOC to file a motion with the court for a modification of existing parenting time order.

<sup>228</sup> A divorce with minor children [DM] and contested custody cases [DC] where one of the parties does not live in Michigan are cases that should be carefully screened for jurisdiction issues.

<sup>229</sup> The investigator may be asked to gather information if the child was abandoned or there are indications the child, sibling, or parents were threatened with mistreatment or abuse. MCL 722. 1204.

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## **XIV. Custody and Parenting Time Investigators as Mandated Reporters of Child Abuse and Neglect**

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### **Introduction**

Often during custody and parenting time investigations, FOC investigators will encounter allegations of child abuse and neglect. The following recommendations will assist investigators with reporting child abuse and neglect and sharing information with CPS.

#### **A. 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.

#### **B. 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. SCAO recommends the investigator report child abuse or neglect when rational observations, professional training, experience, or any other factor causes the investigator to suspect child abuse or neglect has occurred.<sup>230</sup> SCAO recommends the investigator report the abuse and neglect as soon as possible and make the report within 24 hours. A mandated reporter does not satisfy the legal obligation to file a report with CPS by simply having a conversation with a MDHHS employee; a report must be filed to meet the statutory requirement (MCL 722. 623).

#### **C. How to Report Suspected Child Abuse or Neglect to Child Protective Services**

When investigators have reasonable cause to suspect child abuse or neglect, they must *immediately* make an *oral* report by telephone to 855-444-3911.<sup>231</sup> CPS intake personnel will want the following information, if available:<sup>232</sup>

- 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.

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<sup>230</sup> See *Lee v Detroit Medical Center*, 285 Mich App 51 (2009) (finding that any person, including a child, who has reasonable cause to suspect child abuse or neglect may report the matter to the department or a law enforcement agency).

<sup>231</sup> Mandated reporters of child abuse and neglect are considered “mandated” at all times, even when they are not working.

<sup>232</sup> CPS will accept a referral even if all the information cannot be provided.

- 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.

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 616-977-1158, 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](mailto: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 [http://www.michigan.gov/documents/dhs/DHS-3200\\_224934\\_7.pdf](http://www.michigan.gov/documents/dhs/DHS-3200_224934_7.pdf).

If an investigator is dissatisfied with the response by MDHHS, the investigator may contact the Mandated Reporter Hotline at 877-277-2585. Prior to 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, SCAO recommends that a copy of the report be maintained.

#### 1. 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.



## 2. 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.

## 3. Provide Information to the Court and Attorneys of Record

If the FOC receives notice (as required by MCL 722.628) 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.

## 4. 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, 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.<sup>233</sup> 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.

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

MCL 722.628(18)-(21) 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<sup>234</sup> 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.

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<sup>233</sup> 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.

<sup>234</sup> CPS intends to determine whether an open FOC case exists by asking the parent if they have an open FOC case. If either parent identifies an open FOC case, CPS will send the required notifications to the FOC office.

- 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. SCAO recommends that the investigator check with CPS and inquire about all CPS investigations involving the family, prior to initiating any custody and parenting time investigation, including those where no abuse and neglect was determined.

#### 6. 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.

#### 7. 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 criminal liability. In a civil action, the mandated reporter may be held liable for all damages that any person suffers due to the failure of filing 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. 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 that 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 — General Investigation Forms

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[DATE]

[NAME]

[TITLE]

[ADDRESS]

[CITY, STATE, ZIP]

Re: Information Requested for Custody/Parenting Time Investigation

Dear **[Insert Name Here]**,

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

**[Insert Party Name, Date of Birth]**

**[Insert Party Name, Date of Birth]**

**[Insert Minor Name, Date of Birth]**

**[Insert Minor Name, Date of Birth]**

To aid in our investigation and ultimate custody and parenting time recommendations, **[Insert County Name]** FOC is requesting the following information regarding the above:

**[Insert Information Requested Here]**

Other: \_\_\_\_\_  
\_\_\_\_\_

Please mail the requested information to the **[Insert County Name]** FOC within 15 calendar days. 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.

Thank you for your assistance in this investigation. If you have any questions regarding this request for information, please feel free to contact the **[Insert County Name]** FOC by telephone at **[Insert Phone Number]**, by email at **[Insert Email Address]**, or by mail at:

**[Insert County FOC Address Here]**

Best Regards,

**[Insert Investigator Signature and Name Here]**

Enclosures:    ☐    **[Insert Release Authorization Here]**    ☐    **[Insert Report Name]**

**AUTHORITY TO DISCLOSE INFORMATION RELEVANT TO INVESTIGATION**  
Child Custody, Parenting Time, and Support Investigations

Plaintiff	v.	Defendant	Case No.:
-----------	----	-----------	-----------

**Directions:** Type or print all requested information except signatures. If more space is needed, use appendixes.

Individual's Name			
Street Address			Date of Birth  / /
City	State	ZIP Code	Phone ( )

Minor Child's Name			
Street Address (if different named individual)			Date of Birth  / /
City	State	ZIP Code	Individual's Relation to Child

Minor Child's Name			
Street Address (if different named individual)			Date of Birth  / /
City	State	ZIP Code	Individual's Relation to Child

Minor Child's Name			
Street Address (if different named individual)			Date of Birth  / /
City	State	ZIP Code	Individual's Relation to Child

**I AUTHORIZE THE FOLLOWING CLASSES OF PERSONS AND ORGANIZATIONS TO DISCLOSE INFORMATION KNOWN ABOUT ME OR THE LISTED CHILDREN:**

*Check All That Apply*

- ☐ Neighbors
- ☐ Friends
- ☐ Extended Family Members
- ☐ Social and Extracurricular Groups
- ☐ Government Agencies
- ☐ Coaches and Sporting Teams
- ☐ Athletic Associations
- ☐ Daycare Providers
- ☐ Babysitters
- ☐ Religious Institutions and Staff
- ☐ Any Other Relevant Person or Organization

Exceptions (Please Specify): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**I AUTHORIZE THE FOLLOWING PERSONS AND ORGANIZATIONS TO RECEIVE INFORMATION ABOUT ME OR THE LISTED CHILDREN:**

Investigator Name		Phone (      )	
County FOC			State
FOC Street Address		City	ZIP Code
Court	Judge Name	Referee Name	
Court Street Address (if different from FOC)		City	ZIP Code

**I AUTHORIZE THE ABOVE PARTIES TO DISCLOSE, RECEIVE, AND USE  
ALL KNOWN INFORMATION RELEVANT TO A CUSTODY, PARENTING TIME,  
OR SUPPORT INVESTIGATION.**

**I understand that the investigator may seek, but is not limited to, the following information:**

--

**I do not authorize the disclosure of the following information:**

--

1. ***I do not have to sign this authorization.***
2. The authorized information will be disclosed, received, and used for the purpose of conducting investigations regarding custody, parenting time, and support for the listed minor parties and making recommendations to the appropriate legal authorities.
3. I have a right to request copies of all documents disclosed.
4. I have authorized the listed parties to disclose information.
5. ***I may request a copy of this signed authorization*** by submitting a written request to the County Friend of the Court office listed on this authorization.
6. ***I may revoke this authorization at any time*** by submitting a written request to the Circuit Friend of the Court office authorized to receive protected health information. A revocation of this authorization is not effective to the extent that any person or entity has acted in reliance upon this authorization or to the extent that information has already been disclosed, received, or used in accordance with this authorization.
7. If not previously revoked, this authorization will expire upon entry of a final custody, support, or parenting time order by the appropriate legal authority

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

**Office Use Only**

Signature of Individual or Legal Representative		Date  /   /
Name of Individual or Legal Representative	Legal Representative's Relationship to Individual	
This authorization was revoked:		
_____ Signature		_____ Date

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## **APPENDIX II — EDUCATIONAL INVESTIGATION FORMS**

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**AUTHORIZATION TO DISCLOSE PROTECTED EDUCATION INFORMATION**  
 Child Custody, Parenting Time, and Support Investigations  
 (As Required Under 45 USC 1)

Plaintiff	v.	Defendant	Case No.:
-----------	----	-----------	-----------

***Directions:** Type or print all requested information except signatures. If more space is needed, use appendixes.*

Individual's Name			
Street Address			Date of Birth  / /
City	State	ZIP Code	Phone ( ) -

Minor Child's Name			
Street Address (if different named individual)			Date of Birth  / /
City	State	ZIP Code	Individual's Relation to Child

Minor Child's Name			
Street Address (if different named individual)			Date of Birth  / /
City	State	ZIP Code	Individual's Relation to Child

Minor Child's Name			
Street Address (if different named individual)			Date of Birth  / /
City	State	ZIP Code	Individual's Relation to Child

**I AUTHORIZE THE FOLLOWING EDUCATIONAL INSTITUTIONS TO DISCLOSE  
PROTECTED EDUCATION INFORMATION:**

*Please provide information for all schools that you or the minor children listed are currently attending.*

School Name		Public or Private?
Street Address		
City	State	ZIP Code
Name of Attendee	Grade	Estimated Completion Date  /   /

**I AUTHORIZE THE FOLLOWING PERSONS AND ORGANIZATIONS TO RECEIVE  
PROTECTED EDUCATIONAL INFORMATION:**

Investigator Name		Phone (      )      -	
County FOC			State
FOC Street Address		City	ZIP Code
Court	Judge Name	Referee Name	
Court Street Address (if different from FOC)		City	ZIP Code

**I AUTHORIZE THE ABOVE PARTIES TO DISCLOSE, RECEIVE, AND  
USE RECORDS PERTAINING TO THE FOLLOWING PROTECTED EDUCATIONAL  
INFORMATION FOR ALL PAST, PRESENT AND FUTURE PERIODS  
OF EDUCATION FOR ALL LISTED PARTIES:**

*Check All That Apply*

- |  |   |
|--|---|
| <input type="checkbox"/> Course Schedules      | <input type="checkbox"/> Extracurricular Activities       |
| <input type="checkbox"/> Transcripts           | <input type="checkbox"/> Student Organization Involvement |
| <input type="checkbox"/> Discipline            | <input type="checkbox"/> Athletics                        |
| <input type="checkbox"/> Attendance            | <input type="checkbox"/> Directory Information            |
| <input type="checkbox"/> Assignment Completion | <input type="checkbox"/> Opinions of Teachers and Staff   |
| <input type="checkbox"/> Enrollment Status     |   |

**All Other Information Relevant to Custody, Parenting Time, or Support Investigations**

Exceptions (Please Specify the Student and Type of Record Excepted from Disclosure):

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**BY SIGNING THIS FORM, I UNDERSTAND THAT:**

1. ***I do not have to sign this authorization.***
2. The authorized protected health information will be disclosed, received, and used for the purpose of conducting investigations regarding custody, parenting time, and support for the listed minor parties and making recommendations to the appropriate legal authorities.
3. Treatment, payment, enrollment, or eligibility for benefits for any parties listed on this authorization is not conditional on signing this authorization.
4. Unless permitted under state or federal law, an authorization to receive substance abuse information does not allow the recipient to re-disclose that information to parties not listed on this authorization. Other information received may be re-disclosed to parties not named in this authorization as state and federal law allow.
5. Authorizing the disclosure of a complete health record without exceptions authorizes the disclosure of information regarding behavioral and mental health records, communicable diseases, and substance abuse treatment.
6. ***I may request a copy of this signed authorization*** by submitting a written request to the County Friend of the Court office listed on this authorization.
7. ***I may revoke this authorization at any time*** by submitting a written request to the County Friend of the Court office authorized to receive protected health information. A revocation of this authorization is not effective to the extent that any person or entity has acted in reliance upon this authorization or to the extent that information has already been disclosed, received, or used in accordance with this authorization.
8. If I have not previously revoked this authorization, this authorization will expire upon the entry of a final custody, support, or parenting time order by the appropriate legal authority.

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

**Office Use Only**

Authority: This form constitutes a valid authorization under the Family Educational Rights and Privacy Act, 20 USC 1232(g).

Signature of Individual or Legal Representative		Date / /
Name of Individual or Legal Representative	Legal Representative's Relationship to Individual	

This authorization was revoked:	
_____ Signature	_____ Date

**Additional Minor Children Information**

*Please use this appendix as additional space for minor children information provided on Page 1. Including a minor child in this appendix authorizes listed educational institutions to disclose protected educational information pertaining to that child.*

Minor Child's Name			
Street Address (if different named individual)			Date of Birth  /      /
City	State	ZIP Code	Individual's Relation to Child

Minor Child's Name			
Street Address (if different named individual)			Date of Birth  /      /
City	State	ZIP Code	Individual's Relation to Child

Minor Child's Name			Social Security Number
Street Address (if different named individual)			Date of Birth  /      /
City	State	ZIP Code	Individual's Relation to Child

Minor Child's Name			
Street Address (if different named individual)			Date of Birth  /      /
City	State	ZIP Code	Individual's Relation to Child

**Additional Educational Institution Information**

*Please use this appendix as additional space for educational institution information provided on Page 2. Including an educational institution in this appendix authorizes that institution to disclose protected educational information.*

School Name		Public or Private
Street Address		
City	State	ZIP Code
Name of Attendee	Grade	Estimated Completion Date / /

School Name		Public or Private
Street Address		
City	State	ZIP Code
Name of Attendee	Grade	Estimated Completion Date / /

School Name		Public or Private
Street Address		
City	State	ZIP Code
Name of Attendee	Grade	Estimated Completion Date / /

**SCHOOL REPORT**  
 Child Custody, Parenting Time, and Support Investigations  
*FOC Office Use Only*

Plaintiff	v.	Defendant	Case No.:
-----------	----	-----------	-----------

Investigator Name:			Phone	
County FOC				State
FOC Street Address		City		ZIP Code
Court	Judge Name		Referee Name	
Court Street Address (if different from FOC)		City	State	ZIP Code

***Please complete the following and return to FOC within 15 calendar days.***

School Name			
Street Address			
City		State	Zip
Name of Attendee		Grade	Estimated Completion Date

*Please answer the following to the best of your knowledge.*

**A. Describe the child's general appearance (check one):**

☐ Excellent

☐ Good

☐ Fair

☐ Poor

Explain:

**B. Describe the child's general adjustment at the school (check one):**

☐ Excellent

☐ Good

☐ Fair

☐ Poor

Explain:

**C. 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:** \_\_\_\_\_.

**D. Does the child exhibit any specific difficulties or problems which might hinder achievement?**

☐ Yes

☐ No

Explain:

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

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

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



---

## **APPENDIX III — Day Care Report**

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## DAY CARE REPORT

Child Custody, Parenting Time, and Support Investigations

### *FOC Office Use Only*

Plaintiff	v.	Defendant	Case No.:
Investigator Name			Phone (      )
County FOC			State
FOC Street Address		City	ZIP Code
Court	Judge Name		Referee Name
Court Street Address (if different from FOC)		City	ZIP Code

***Please Complete the Following and Return to FOC within 15 Calendar Days.***

**Submit One Form for Each Child in Your Care.**

Day Care Name			
Street Address			
City		State	ZIP Code
Name of Attendee		Age	Date of Enrollment /      /

*Please Answer the Following to the Best of Your Knowledge*

**A. Describe the child's general appearance (check one)"**

☐ Excellent

☐ Good

☐ Fair

☐ Poor

Explain:

**B. Describe the child's general adjustment at the school (check one):**

☐ Excellent

☐ Good

☐ Fair

☐ Poor

Explain:

**C. Please describe the child's emotional state:**

**D. Does the child exhibit any specific difficulties or problems?**

☐ Yes

☐ No

Explain:

**E. Is the child toilet trained?**

☐ Yes

☐ No

Explain:

**F. Can the child dress him/herself?**

☐ Yes

☐ No

Explain:

**G. Does the child appear to be in good health?**

☐ Yes

☐ No

Explain:

**H. Who drops the child off at day care?  
Who picks the child up from day care?**

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

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

Signature	Date  / /
Name	

**APPENDIX IV —  
Health Care Authorizations**

---

**AUTHORIZATION TO DISCLOSE PROTECTED EDUCATION INFORMATION**

Child Custody, Parenting Time, and Support Investigations

(As Required Under 45 CFR 160, 164)

Plaintiff	v.	Defendant	Case No.:
-----------	----	-----------	-----------

*Directions: Type or print all requested information except signatures. If more space is needed, use appendixes.*

Individual's Name			
Street Address			Date of Birth / /
City	State	ZIP Code	Phone ( ) -
Minor Child's Name			
Street Address (if different named individual)			Date of Birth / /
City	State	ZIP Code	Individual's Relation to Child
Minor Child's Name			
Street Address (if different named individual)			Date of Birth / /
City	State	ZIP Code	Individual's Relation to Child
Minor Child's Name			
Street Address (if different named individual)			Date of Birth / /
City	State	ZIP Code	Individual's Relation to Child

**I AUTHORIZE THE FOLLOWING CLASSES OF PERSONS AND ORGANIZATIONS  
TO DISCLOSE MY PROTECTED HEALTH INFORMATION:**

*Check All That Apply*

All Medical Service Sources and Health Care Providers

All Medical Service Sources and Health Care Providers Except for (check all that apply):

- ☐ Health Insurance Companies
- ☐ Health Care Professionals
- ☐ Hospitals and Care Facilities
- ☐ Mental Health Care Providers
- ☐ Other (Please Specify): \_\_\_\_\_

**I AUTHORIZE THE FOLLOWING PERSONS AND ORGANIZATIONS TO RECEIVE  
PROTECTED HEALTH INFORMATION REGARDING:**

*Check All That Apply*

- ☐ Myself
- ☐ The Minor Children Listed on this Authorization

Except \_\_\_\_\_  
\_\_\_\_\_

Investigator Name		Phone (     )     -	
County FOC			State
FOC Street Address		City	ZIP Code
Court	Judge Name		Referee Name
Court Street Address (if different from FOC)		City	ZIP Code

**I AUTHORIZE THE ABOVE PARTIES TO DISCLOSE, RECEIVE, AND USE THE FOLLOWING PROTECTED HEALTH INFORMATION FOR ALL PAST, PRESENT AND FUTURE PERIODS OF HEALTH CARE:**

*Check All That Apply*

The complete health record for the listed parties (including records relating to behavioral and mental health, communicable diseases, substance abuse, and financial records relating to health services).

The complete health record for the listed parties except the following information (check all that apply):

Behavioral and Mental Health Records

Communicable Disease Records (including HIV/AIDS)

Alcohol/Drug Abuse Treatment Records

Other (please specify): \_\_\_\_\_

**BY SIGNING THIS FORM, I UNDERSTAND THAT:**

1. ***I do not have to sign this authorization.***
2. The authorized protected health information will be disclosed, received, and used for the purpose of conducting investigations regarding custody, parenting time, and support for the listed minor parties and making recommendations to the appropriate legal authorities.
3. Treatment, payment, enrollment, or eligibility for benefits for any parties listed on this authorization is not conditional on signing this authorization.
4. Unless permitted under state or federal law, an authorization to receive substance abuse information does not allow the recipient to re-disclose that information to parties not listed on this authorization. Other information received may be re-disclosed to parties not named in this authorization as state and federal law allow.
5. Authorizing the disclosure of a complete health record without exceptions authorizes the disclosure of information regarding behavioral and mental health records, communicable diseases, and substance abuse treatment.
6. ***I may request a copy of this signed authorization*** by submitting a written request to the County Friend of the Court office listed on this authorization.
7. ***I may revoke this authorization at any time*** by submitting a written request to the County Friend of the Court office authorized to receive protected health information. A revocation of this authorization is not effective to the extent that any person or entity has acted in reliance upon this authorization or to the extent that information has already been disclosed, received, or used in accordance with this authorization.
8. If I have not previously revoked this authorization, this authorization will expire upon the entry of a final custody, support, or parenting time order by the appropriate legal authority.



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

Signature of Individual or Legal Representative		Date
Name of Individual or Legal Representative	Legal Representative's Relationship to Individual	

**Office Use Only**

This authorization was revoked:	
_____ Signature	_____ Date

**AUTHORITY:** This form constitutes a valid authorization under the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR 160, 164.

**Additional Minor Children Information**

*Please use this appendix as additional space for minor children information provided on Page 1. Including a minor child in this appendix authorizes listed institutions to disclose protected information pertaining to that child.*

Minor Child's Name			
Street Address (if different named individual)			Date of Birth  / /
City	State	ZIP Code	Individual's Relation to Child

Minor Child's Name			
Street Address (if different named individual)			Date of Birth  / /
City	State	ZIP Code	Individual's Relation to Child

Minor Child's Name			
Street Address (if different named individual)			Date of Birth  / /
City	State	ZIP Code	Individual's Relation to Child

Minor Child's Name			
Street Address (if different named individual)			Date of Birth  / /
City	State	ZIP Code	Individual's Relation to Child

## APPENDIX V — Template for Investigative Report

---

STATE OF MICHIGAN  
IN THE CIRCUIT COURT Enter Court FOR THE COUNTY OF FAMILY DIVISION

---

Enter name,  
Plaintiff

FILE NO.: FILE

vs.

REPORT FROM THE FRIEND OF THE  
COURT REGARDING CUSTODY,  
PARENTING TIME, AND SUPPORT

Enter name,  
Defendant

---

### **BACKGROUND INFORMATION**

The Plaintiff and the Defendant were married on Enter date in Enter location. They have No of children minor children together:

Name of Child	Date of Birth

## **STATEMENT OF THE PLAINTIFF**

Plaintiff was interviewed at the Friend of the Court office on Enter Date, and provided the following information:

## **STATEMENT OF THE DEFENDANT**

Defendant was interviewed at the Friend of the Court office on Enter Date and provided the following information.

## **ISSUES AGREED TO BY THE PARTIES**

Issues Agreed

## **ISSUES THE PARTIES DO NOT AGREE TO**

Issues Not Agreed

## **REFERENCES/OTHER CONTACTS**

The following were considered in preparation for this report:

- ☐ Reference questionnaires were received and reviewed from the following:
  - ☐ E-Mail correspondence with the following:
  - ☐ Telephone interviews with the following:
  - ☐ School records:
  - ☐ Letters of reference: -
  - ☐ Other documents:
-

## **EVALUATION OF CUSTODY FACTORS**

**Factor A:** "The love, affection and other emotional ties existing between the competing parties and the children."

Factor A not in dispute

**Factor B:** "The capacity and disposition of competing parties to give the children love, affection and guidance, and the continuation of education and raising of the child in their religion or creed, if any."

Factor B not in dispute

**Factor C:** "The capacity and disposition of competing parties to provide the children with food, clothing, medical care, other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs."

Factor C not in dispute

**Factor D:** "The length of time the children have lived in a stable, satisfactory environment and the desirability of maintaining continuity."

Factor D not in dispute

**Factor E:** "The permanence, as a family unit, of the existing or proposed custodial home."

Factor E not in dispute

**Factor F:** "The moral fitness of the competing parties."

Factor F not in dispute

**Factor G:** "The mental and physical health of the competing parties."

Factor G not in dispute

**Factor H:** "The home, school, and community record of the children."

Factor H not in dispute

**Factor I:** "The reasonable preference of the children, if the court deems the children to be of sufficient ages to express preferences."

Factor I not in dispute

**Factor J:** "The willingness and ability of each of the parties to facilitate and encourage a close relationship between the children and the other parent."

Factor J not in dispute

**Factor K:** "Domestic Violence, regardless of whether the violence was directed against or witnessed by the children."

Factor K not in dispute

**Factor L:** "Any other factor considered by the Court to be relevant to a particular child custody dispute."

Factor L not in dispute

**Consideration of Joint Custody:**

For the purpose of this custody and parenting time report joint custody was considered by the worker.

**ESTABLISHED CUSTODIAL ENVIRONMENT**

This worker is providing the following information for consideration of the established custodial environment.

**CONCLUSIONS AND RECOMMENDATIONS**

Therefore, based on the information provided above, the following recommendations are made regarding custody and parenting time:

<b>HOLIDAY</b>	<b>START TIME</b>	<b>END TIME</b>	<b>ODD YEARS</b>	<b>EVEN YEARS</b>
President's Day 3 <sup>rd</sup> Monday of February	6 pm day school recesses	6 pm Monday	Father	Mother
Easter	6 pm day school recesses	6 pm Sunday	Mother	Father
Memorial Day	6 pm Friday	6 pm Monday	Father	Mother
4 <sup>th</sup> of July	6 pm July 3 <sup>rd</sup>	6 pm July 5 <sup>th</sup>	Mother	Father
Thanksgiving	6 pm day school recesses	5 pm Sunday	Father	Mother
Christmas First Segment	6 pm day school recesses	9 am Christmas Day	Mother	Father
Christmas Second Segment	9 am Christmas Day	Noon the day before school resumes	Father	Mother
Spring Break	6 pm day school recesses	6 pm day before school resumes	Mother	Father
Mother's Day	6 pm Friday	6 pm Sunday	Mother	Mother
Father's Day	6 pm Friday	6 pm Sunday	Father	Father

It is recommended that PLAINTIFF/DEFENDANT contribute monthly child support as follows:

Children supported	1 child	2 children	3 children	4 children	5 children or more
Base support: (includes support plus or minus premium adjustment for health-care insurance)					
Support:					
Premium adjust:					
<b>Subtotal:</b>	<b>\$1.00</b>	<b>\$2.00</b>	<b>\$3.00</b>	<b>\$4.00</b>	<b>\$5.00</b>
Ordinary medical:					
Childcare:					
Other:					
SS benefit credit:					
<b>Total:</b>	<b>\$1.00</b>	<b>\$2.00</b>	<b>\$3.00</b>	<b>\$4.00</b>	<b>\$5.00</b>
<input type="checkbox"/> Support includes a parental-time offset using XX overnights for the Plaintiff and XX overnights for the Defendant. The above ordered support provisions <input type="checkbox"/> do <input type="checkbox"/> do not      follow the child support formula.					

It is recommended that each parent provide health insurance for the minor children if it is available at a reasonable cost through his/her employer.

It is further recommended that the Plaintiff pay % and the Defendant pay % of uninsured health care expenses for the children exceeding the annual ordinary health care amount of \$357.00 for one child and \$714.00 for two children.

Date Report Completed:

\_\_\_\_\_  
Custody Investigator



## **PROOF OF SERVICE**

I certify that on this date I mailed a copy of this report to the parties (and their attorney(s)) by ordinary mail at their last known addresses.

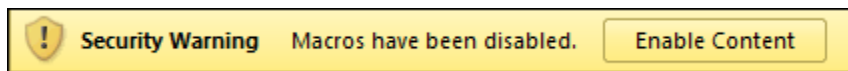
\_\_\_\_\_  
Date

# Using the FOCB Report Template

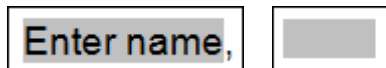
This file is a MS Word report template with macros (indicated by the file extension of **.dotm**) and form fields. In order to move through the fields, the template is protected. This allows you to use your **tab** key and move through the fields. Most of the fields are text fields but you will also see check box fields and drop-down form fields.


Below are the steps and suggestions for using this template.

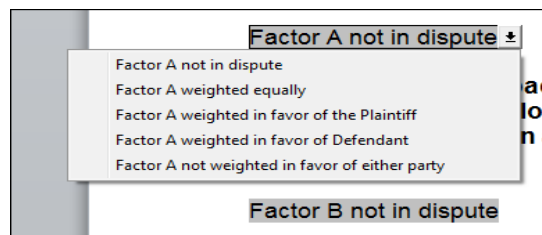
1. **Save** the file on your computer.
2. **Double-click** the file when you are ready to use it. Double-clicking the file should create a new document based off the template.
3. If you see a **Security Warning** like the one shown below, click the **Enable Content** button to enable the macros.



4. **Save** and **name** the file.
5. Use your **tab** key to move the form fields. You may use **Shift+Tab** to move backwards through the fields.
  - a. The majority of the fields are text fields that simply appear as gray shaded boxes. Some of the text fields have default text such as **Enter name** or **Enter date** to give the end-user of the template some guidance as to what to enter. As soon as you begin typing, the default text disappears. There is no limit on the amount of text you may enter.

Two gray shaded rectangular text input fields. The first field contains the text "Enter name," and the second field is empty.

- b. On page 2, there are **check box** fields.  You may **left click** the box to indicate a **“yes”** answer or you may also use your **spacebar** to check and uncheck the boxes.
- c. On page 2, there are **drop-down** form fields where you may **click** the drop-down arrow and make a selection or you may use your **F4** function key to view the choices. The drop-down arrow **will not appear** until you tab onto the field.

A screenshot of a drop-down menu. The menu is open, showing a list of options: "Factor A not in dispute", "Factor A weighted equally", "Factor A weighted in favor of the Plaintiff", "Factor A weighted in favor of Defendant", and "Factor A not weighted in favor of either party". The text "Factor A not in dispute" is also visible above the menu, and "Factor B not in dispute" is visible below it.

6. This template contains a **custom toolbar** that will appear at the end of the Quick Access Toolbar. There are three buttons.



- a. The **first** button is for adding an additional row/child to the table on page 1 where you are entering the names and birth dates of the children. You must **position your cursor in the table** before clicking the **Add Child** button.

Name of Child		Date of Birth	

- b. The **second** button is called “**Protect**” and the **third** button is called “**Unprotect.**” The template is protected. If you need to edit text **outside of the form fields**, you will need to turn **off** the Protection. Turning off protection allows you to edit any area of the document. Turning on the protection returns you to tabbing through the form fields. When protection is turned on, you may only enter text in the form fields.

**Note:** Hitting the tab key in the last cell of a table will automatically add a new row.

## **APPENDIX VI — Custody and Parenting Time Investigation Checklist and Filing the Report**

---

- Does the investigator know when the custody and parenting time report is due? <sup>235</sup>
- 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 Child Protective Services (CPS) been contacted to verify if the family has a CPS case?
- Has the investigator reviewed the UCCJEA affidavit?
- Have the parties submitted the required questionnaires?
- Have the parties signed the appropriate release forms?
- Have appointments with the children been scheduled?
- Have arrangements been made if domestic violence is an issue?
- Have wage and health disclosure forms been sent out?

### **Filing of 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. Judges may consider custody, parenting time, or child-support investigation reports submitted by the FOC as evidence. The report is not 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 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 it should not be placed in the court file.

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

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<sup>235</sup> 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. That means the office has a much shorter period to complete its investigation (56 days minus the time it takes the office to receive notification of the order and initiate the investigation, less the time provided for the parties and the court to review the report before the hearing).

## **APPENDIX VII — Interviewing Children Ages Birth to Six**

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### **I. Development Considerations**

- The most important person to a child at this age level is the one who provides physical care on a daily basis 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 impacts 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.

A preschool child is generally considered too young to express a reasonable preference. Verbal skills may imply more comprehension than actually exists.

### **III. Suggested Questions to Ask the Preschool Child**

- Know the child's name and introduce yourself.
- How old are you?
- What is your birthday?
- Do you have any brothers or sisters? How old are they?
- Tell me about who lives with you at your father's/mother's house and what you think about those people.
- Who takes care of you during the day? At night?
- Who gets you breakfast, lunch, dinner?
- Who helps you get dressed?
- Who gives you a bath, washes your hair, cuts your nails?
- What do you and mommy like to play together? What do you and daddy like to play together?

- Who puts you to bed?
- 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?
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?
17. How would you go about correcting how your child has been affected by the marital separation?
18. Describe a typical day with your child.

## **APPENDIX VIII — Interviewing Children Ages 6 to 13**

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### **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 is 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 they mean (having a father vs. a stepfather).
- Extracurricular involvement with friends and participation in school, church, or sports activities become important. Disruption of these on parenting time weekends may cause behavior problems. There is an increasing mastery of the 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.
2. What 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. Whom 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 your mom's house and weekends at your dad's. What is the best thing about your mom's house? What is the best thing about your dad's house?
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 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 IX — Interviewing Children Ages 13 to 18**

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### **I. Developmental Considerations**

- The most significant issue is independence—working on being 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 (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.

### **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.
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. If something goes wrong (adolescent is mouthy, violates family’s curfew, etc.), what happens? How does your mom react? How does your dad react?
5. 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?

6. 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 your mom?
7. When you are sick, who takes care of you?
8. Who takes you to the doctor or to the dentist?
9. Who buys the groceries, pays the bills, and does the laundry?
10. What chores do you have at home? Do you have any chores at your other parent's home?
11. What do you like best about your mom? What do you like best about your dad?
12. Tell me about who lives with you at your father's/mother's house and what you think about those people.
13. Did anyone tell you I might be coming to see you today? What did they say?
14. What do you think is going on between your parents?
15. How did you learn about what is going on between your parents? Who told you about the divorce? What do you think about it?
16. 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?
17. 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?
18. Is there anything you would like the judge to know?
19. Is there anything we have talked about that you do not want your mom or dad to know about?
20. Do you have any questions?

## APPENDIX X —Case Law

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### CHILD CUSTODY – GENERAL

UPDATES THROUGH JANUARY 31, 2018

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#### Cases in the Manual:

- ***Rettig v. Rettig*, 322 Mich App 750 (2018).** If the parties present the court with an agreement regarding child custody and visitation, the court can accept the agreement without expressly reviewing each of the best interest factors, as it is implicit in the court's acceptance of the parties' agreement is its determination that the arrangement is in the child's best interest.
- ***Sims v. Verbrugge*, 322 Mich App 205 (2017).** MCL 722.1006 provides that the grant of initial custody through the execution of an affidavit of parentage (AOP) 'shall not, by itself, affect the rights of either parent in a proceeding to seek a court order for custody or parenting time.' Because the parties' AOP was not a judicial determination, no existing judgment or order regarding *legal* custody existed, and the trial court 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 an existing judgment or order under MCL 722.27(1)(c). 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's mandate that a child that is the subject of an AOP is treated as a child born in wedlock and not as illegitimate.

#### OTHER EXAMPLES:

- ***Williams v. Cannon*, unpublished per curiam opinion of the Court of Appeals, released October 24, 2017 (Docket No. 335922).** The trial court did not err in its consideration of the friend of the court's written report and recommendation regarding custody and parenting time because the court also, through an evidentiary hearing, conducted its own best-interest analysis and made its own independent findings of fact and conclusions of law.

### CHILD CUSTODY FACTORS BY FACTOR

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

#### Cases in the Manual:

- ***Baker v. Baker*, 411 Mich 567 (1980).** In determining who gets custody of the child, the court uses the criteria found in the Child Custody Act. Preference in custody goes to the parent who has had a major impact in raising the child.

- ***Brewer v. Brewer*, unpublished per curiam opinion of the Court of Appeals, issued August 21, 2001 (Docket No. 221521).** Although the court-appointed expert concluded defendant's interaction with children was problematic, plaintiff is not favored because his relationship with his daughter is not necessarily the sort the statute seeks to credit.
- ***Carson v. Carson*, 156 Mich App 291 (1986).** The factors have some natural overlap, and it may not be possible to separate a child's emotional attachment to one parent from her preference for that parent's circumstances. As long as there is no significant contrary evidence, the trial court's finding will be upheld.
- ***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.

#### Other Examples:

- ***Alholinna v. Alholinna*, unpublished per curiam opinion of the Court of Appeals, issued May 30, 2012 (Docket No. 307012).** Where plaintiff's living arrangement is temporary and plaintiff has since found adequate housing, defendant's claim that living conditions indicated a lack of emotional ties is entirely speculative.
- ***Barringer v. Barringer*, 191 Mich App 639 (1991).** Defendant's abandonment of plaintiff prior to children's birth not held against defendant for purposes of factor (a).
- ***Bombrys v. Zecchini*, unpublished per curiam opinion of the Court of Appeals, issued April 20, 2010 (Docket No. 293276).** Parties equal where psychologist testifies that plaintiff was a good parent worthy of custody and defendant had a significant emotional bond with child.
- ***Boots v. Vogel-Boots*, unpublished per curiam opinion of the Court of Appeals, issued Feb 5, 2013 (Docket No. 309265).** Factor (a) favors primary caregiver where other parent has not had more than five overnights with child in a given two-week period in the last five years.
- ***Bowers v. Bowers*, 198 Mich App 320 (1993).** Despite trial court determined factor (a) favored plaintiff based on defendant acting more out of obligation and plaintiff more out of love, Court of Appeals finds factor (a) does not favor either party.
- ***Brandolino v. Brandolino*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2013 (Docket No. 311366).** Where plaintiff does not testify regarding son's emotional needs, court favors defendant as the more nurturing parent.
- ***Callico v. Callico*, unpublished per curiam opinion of the Court of Appeals, issued June 21, 2005 (Docket No. 259237).** Trial court did not err in determining factor (a) weighed equally despite defendant's mother-in-law's testimony as she had little opportunity to observe the children.
- ***Copeland v. Mitchell*, unpublished per curiam opinion of the Court of Appeals, issued August 5, 2010 (Docket No. 290381).** Parties can be found equal on factor (a) despite

defendant's claim that plaintiff did not take an interest in children until it was in plaintiff's financial interest to do so.

- ***Deaunee v. Estrada*, unpublished per curiam opinion of the Court of Appeals, issued May 13, 2003 (Docket No. 240636).** Factor (a) favors defendant because of her long-term-attachment to child.
- ***Ekdahl v. Ekdahl*, unpublished per curiam opinion of the Court of Appeals, issued September 22, 2011 (Docket No. 302029).** Where both parties have good relationship with child, defendant's military absence cannot be held against him.
- ***Gates v. Kadoguchi*, unpublished per curiam opinion of the Court of Appeals, issued November 14, 2013 (Docket No. 313829).** A trial court is not required to observe plaintiff and children interacting and may rely on reports and testimony evidenced at hearing.
- ***Harrer v. Brown*, unpublished per curiam opinion of the Court of Appeals, issued October 23, 2003 (Docket No. 246960).** Where defendant excluded plaintiff from major life decisions regarding child, parties equal in factor (a) despite evidence that the child was detached from plaintiff.
- ***Harris v. Harris*, unpublished per curiam opinion of the Court of Appeals, issued December 18, 2012 (Docket No. 310215).** Where daughter testifies to defendant's emotional abuse and trial court finds both children have a problematic relationship with defendant, Court defers to trial court's finding that factor (a) favored plaintiff.
- ***Helton v. Beaman*, 304 Mich App 97 (2014).** Where defendants have raised child from birth and plaintiff has little meaningful interaction with child, factor (a) favors defendants.
- ***Henry v. Henry*, unpublished per curiam opinion of the Court of Appeals, issued December 22, 2011 (Docket No. 303065).** Contrary to plaintiff's contention, the relative amount of time spent by each party with the children is not determinative of the degree of "love, affection, and other emotional ties existing" between the parties and their children.
- ***Herrera v. Herrera-Pina*, unpublished per curiam opinion of the Court of Appeals, issued February 20, 2014 (Docket No. 317365).** Trial court credits plaintiff's testimony that she had stronger bond with child as primary caregiver.
- ***Hume v. Hume*, unpublished per curiam opinion of the Court of Appeals, issued January 17, 2013 (Docket No. 307696).** Plaintiff claims trial court's decision was based solely on overnight visitation. The trial court found that defendant spent more time with the child, the child's primary residence was with defendant, and the emotional tie with defendant was stronger.
- ***Jackson v. Jackson*, unpublished per curiam opinion of the Court of Appeals, issued December 18, 2012 (Docket No. 312234).** Defendant's attempt to eliminate plaintiff from children's lives does not relate to factor (a).
- ***Juntunen v. Juntunen*, unpublished per curiam opinion of the Court of Appeals, issued December 3, 2002 (Docket No. 239203).** Where the living arrangements of children favored plaintiff's bond with children, factor (a) favor's plaintiff.
- ***Kreh v. Kreh*, unpublished per curiam opinion of the Court of Appeals, issued January 29, 2013 (Docket No. 309618).** Whether a report is outdated goes to the weight of the

evidence. Factor favors defendant where there exists evidence that plaintiff placed her needs before child's and child and plaintiff were bonded over the theme of illness.

- ***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.
- ***Mason v. Mason*, unpublished per curiam opinion of the Court of Appeals, issued April 14, 2005 (Docket No. 256885).** Where defendant worked long hours and plaintiff is more involved with children, factor (a) favors plaintiff.
- ***Rains v. Rains*, 301 Mich App 313 (2013).** Plaintiff and defendant equally weighed where both parties provide necessities for the child although plaintiff handles all of child's medical needs.
- ***Strampel v. Sarkar*, unpublished per curiam opinion of the Court of Appeals, issued March 11, 2014 (Docket No. 318714).** Trial court did not err in determining that out-of-state move improved child's quality of life when move allowed plaintiff to accept full-time employment and benefits and establish her own household.
- ***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.

**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 in the Manual:**

- ***Bowers v. Bowers*, 198 Mich App 320 (1993).** Court of Appeals overturns trial court's finding in favor of plaintiff where plaintiff is convicted of a second OUIL despite his testimony at trial that he had his drinking problems under control.
- ***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.

#### **OTHER EXAMPLES:**

- ***Alholinna v. Alholinna*, unpublished per curiam opinion of the Court of Appeals, issued May 30, 2012 (Docket No. 307012).** Court finds defendant's assertions of plaintiff's lack of capacity or disposition to give the children love, affection, and guidance is entirely speculative and predicated on a predisposition to presume such a conclusion.
- ***Arutoff v. Arutoff*, unpublished per curiam opinion of the Court of Appeals, issued June 23, 2011 (Docket No. 300351).** Despite plaintiff's contention that defendant verbally abused children, where plaintiff exposed children to an abusive partner, yelled at children, and needed parenting training, factor (b) does not favor plaintiff.
- ***Bombrys v. Zecchini*, unpublished per curiam opinion of the Court of Appeals, issued April 20, 2010 (Docket No. 293276).** Plaintiff unsuccessful in challenging trial court's finding that factor (b) favored both parties equally where plaintiff didn't control his anger, attempted to control plaintiff, was a sex addict, had an affair with child's caregiver and allowed a "pedophile" to frequent the residence in child's presence.
- ***Boots v. Vogel-Boots*, unpublished per curiam opinion of the Court of Appeals, issued February 5, 2013 (Docket No. 309265).** While plaintiff is involved with the minor child's activities, factor (b) slightly favors defendant who plays more of a role in initiating the minor child's participation in school and activities and encouraging his interests.
- ***Brandolino v. Brandolino*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2013 (Docket No. 311366).** The trial court's emphasis on the child's education rather than child's discipline was reasonable given the purpose of the trial was to determine the location of the kindergarten in which he would enroll.
- ***Brewer v. Brewer*, unpublished per curiam opinion of the Court of Appeals, issued August 21, 2001 (Docket No. 221521).** Factor (b) favors plaintiff where defendant lacks the restraint necessary to show love and affection in a way that benefits the children rather than exposing them to situations that can harm them emotionally.
- ***Callico v. Callico*, unpublished per curiam opinion of the Court of Appeals, issued June 21, 2005 (Docket No. 259237).** Neither party was favored where plaintiff took part in children's church activities and defendant volunteered as Girl Scout leader.
- ***Copeland v. Mitchell*, unpublished per curiam opinion of the Court of Appeals, issued August 5, 2010 (Docket No. 290381).** Factor (b) favors plaintiff, although plaintiff is not committed to raising the child Catholic, where defendant is unable to create a stable home environment and child is doing better educationally while in plaintiff's care than while previously under defendant's care.



- ***Diez v. Davey*, 307 Mich App. 366 (2014).** Court of Appeals defers to trial court's credibility determinations and upholds trial court's finding that factor (b) favored stay-at-home caretaker.
- ***Edge v. Edge*, unpublished per curiam opinion of the Court of Appeals, issued August 23, 2011 (Docket No. 300668).** Factor (b) favors plaintiff where the rage exhibited by defendant towards plaintiff, defendant's need to escalate conflict, his controlling nature and the exaggeration of benign incidents shows that defendant is not leading by example.
- ***Edwards v. Edwards*, unpublished per curiam opinion of the Court of Appeals, issued December 6, 2012 (Docket No. 308393).** Factor (b) slightly favors plaintiff where defendant does not attend church, pulls daughter out of school, and lies to plaintiff in children's presence.
- ***Ekdahl v. Ekdahl*, unpublished per curiam opinion of the Court of Appeals, issued September 22, 2011 (Docket No. 302029).** Where plaintiff's mother contradicts plaintiff's testimony that plaintiff takes the child to church, circuit courts finding that factor (b) favors both parties equally is not against great weight of evidence.
- ***Garrity v. Janger*, unpublished per curiam opinion of the Court of Appeals, issued May 17, 2012 (Docket No. 306956).** Where plaintiff works long hours and knows her schedule is hard on the children, plaintiff does not have the disposition to give the children love and guidance.
- ***Gates v. Kadoguchi*, unpublished per curiam opinion of the Court of Appeals, issued November 14, 2013 (Docket No. 313829).** Trial court finds factor (b) favors defendant where plaintiff has difficulty controlling and disciplining children though neither party was capable of guiding the children spiritually or in a relationship with the other parent.
- ***Harrer v. Brown*, unpublished per curiam opinion of the Court of Appeals, issued October 23, 2003 (Docket No. 246960).** Factor (b) favors plaintiff where defendant's rigidity, anger, and uncooperativeness in lessening the minor child's stress ran contrary to child's best interests and undermined his relationship with plaintiff.
- ***Harris v. Harris*, unpublished per curiam opinion of the Court of Appeals, issued December 18, 2012 (Docket No. 310215).** Factor (b) favors plaintiff where defendant's "authoritarian approach to parenting" caused conflicts and "negatively impacted his relationship with the children."
- ***Henry v. Henry*, unpublished per curiam opinion of the Court of Appeals, issued December 22, 2011 (Docket No. 303065).** Factor (b) favors neither party where the parties differ on educational objectives but both seek to procure a good education for the children.
- ***Herrera v. Herrera-Pina*, unpublished per curiam opinion of the Court of Appeals, issued February 20, 2014 (Docket No. 317365).** Although both parties had capacity to provide educational and religious guidance, factor (b) favors primary caregiver who had a greater capacity to give child love and affection.
- ***Howard v. Dohring*, unpublished per curiam opinion of the Court of Appeals, issued November 29, 2012 (Docket No. 311483).** Despite plaintiff's contention that defendant allows child to socialize with dangerous individuals, where defendant is concerned with the child's social interaction and plaintiff disregards the school schedule, factor (b) favors defendant.

- ***Hume v. Hume*, unpublished per curiam opinion of the Court of Appeals, issued January 17, 2013 (Docket No. 307696).** Factor (b) favors both parties who are actively involved in the child’s education.
- ***Jackson v. Jackson*, unpublished per curiam opinion of the Court of Appeals, issued December 18, 2012 (Docket No. 312234).** Trial court finds factor (b) favors neither party where both parties have capacity and disposition to provide love and affection and are involved in school activities.
- ***Kessler v. Kessler*, 295 Mich App 54 (2011).** Trial court does not err by only considering religion in factor (b); trial court need not consider “every piece of evidence entered and argument raised by the parties” when it states its factual findings and conclusions on each of the best interest factors.
- ***Kreh v. Kreh*, unpublished per curiam opinion of the Court of Appeals, issued January 29, 2013 (Docket No. 309618).** Factor (b) favored defendant where plaintiff continually denied defendant parenting time, failed to give defendant information on child’s activities, and put her own needs before those of the child.
- ***MacIntyre v. MacIntyre*, 267 Mich App 449 (2005).** Factor (b) favors plaintiff as “rule giver” where the child tells psychologist that defendant provides little support, direction, and discipline.
- ***McLaughlan v. Bunting*, unpublished per curiam opinion of the Court of Appeals, issued September 27, 2011 (Docket No. 301060).** Trial court found factor (b) equal where plaintiff raises three other children and defendant raises the child in issue and one other child while working and going to school.
- ***Rains v. Rains*, 301 Mich App 313 (2013).** Despite plaintiff's contentions regarding a past dispute, defendant's failure to pay camp and school fees, and defendant's unwillingness to assist with the altar serving, the trial court's finding that both parties should be equally credited is not against the great weight of the evidence.
- ***Weide v. Weide*, unpublished per curiam opinion of the Court of Appeals, issued September 20, 2011 (Docket No. 301943).** The trial court acknowledged that plaintiff-father undoubtedly possessed the capacity identified in the factor, but concluded that his largely untreated drinking issues impaired his ability to provide for the minor child's emotional and psychological needs.
- ***Winters v. James*, unpublished per curiam opinion of the Court of Appeals, issued August 31, 2010 (Docket No. 295369).** Defendant’s involvement with children in church where plaintiff is not involved leads factor (b) to slightly favor defendant.

**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 in the Manual:

- ***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.
- ***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 as long as the court does not place an undue amount of reliance on the fact that one parent used to be a homemaker.
- ***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.

## OTHER EXAMPLES:

- ***Alholinna v. Alholinna*, unpublished per curiam opinion of the Court of Appeals, issued May 30, 2012 (Docket No. 307012).** Plaintiff's calling defendant for medical assistance and the fact that there was a medical incident with the child does not evince a failure to attend to the children's medical needs.

- ***Arutoff v. Arutoff*, unpublished per curiam opinion of the Court of Appeals, issued June 23, 2011 (Docket No. 300351).** Factor (c) favors defendant where the daughter's self-destructive behaviors occur in plaintiff's care, plaintiff fails to inform defendant of the seriousness of daughter's condition, and defendant seeks to undertake counseling with the children to rectify the situation.
- ***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.
- ***Bombrys v. Zecchini*, unpublished per curiam opinion of the Court of Appeals, issued April 20, 2010 (Docket No. 293276).** Factor (c) favors defendant where, although plaintiff may have a slightly better capacity to meet child's material needs, defendant has superior capacity and disposition to meet the child's medical needs and plaintiff failed to obtain professional care for his older daughter after she intentionally cut herself.
- ***Brady v. Brady*, unpublished per curiam opinion of the Court of Appeals, issued September 22, 2015 (Docket No. 236396).** In evaluating whether a change of circumstances exists through an analysis of factor (c), plaintiff's alcohol abuse while on anti-epileptic medication is relevant to plaintiff's ability to care for minor children and thus constitutes a change in circumstances to revisit a custody order.
- ***Brandolino v. Brandolino*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2013 (Docket No. 311366).** Trial court finds factor (c) favors defendant where a four-year-old child is cared for by plaintiff's elderly mother while plaintiff is at work and in such care "takes care of himself, feeds himself, and puts his own pajamas on at bedtime." The trial court determined that this factor favored defendant.
- ***Brewer v. Brewer*, unpublished per curiam opinion of the Court of Appeals, issued August 21, 2001 (Docket No. 221521).** Plaintiff fails to provide any authority holding that a family court must presume, on the basis of past job insecurity alone, that a parent will again be fired, jeopardizing that parent's abilities to provide for the children's material needs.
- ***Chakkour v. Chakkour*, unpublished per curiam opinion of the Court of Appeals, issued December 20, 2012 (Docket No. 309854).** Factor (c) does not favor the mother where the mother files false CPS reports against the father, lacks stability and self-control, and has other mental health concerns.
- ***Cochrane v. Cochrane*, unpublished per curiam opinion of the Court of Appeals, issued February 14, 2013 (Docket No. 312572).** Factor (c) favors plaintiff where child was obese while living with defendant but consistently lost weight in plaintiff's care.

- ***Copeland v. Mitchell*, unpublished per curiam opinion of the Court of Appeals, issued August 5, 2010 (Docket No. 290381).** Factor (c) slightly favors plaintiff who has maintained steady employment while defendant's testimony regarding employment and income was confusing.
- ***Edge v. Edge*, unpublished per curiam opinion of the Court of Appeals, issued (Docket No. 300668).** Court of Appeals defers to trial court's credibility determinations on clothing and medical issues.
- ***Edwards v. Edwards*, unpublished per curiam opinion of the Court of Appeals, issued December 6, 2012 (Docket No. 308393).** Factor (c) favors parties equally although defendant has previously resisted taking daughter to counseling and has smoked around asthmatic child.
- ***Ekdahl v. Ekdahl*, unpublished per curiam opinion of the Court of Appeals, issued September 22, 2011 (Docket No. 302029).** Factor (c) favors defendant where he receives substantial monthly compensation and has one child in his care, whereas plaintiff is in substantial child support arrears to her first husband and has five children in her care.
- ***Garrity v. Janger*, unpublished per curiam opinion of the Court of Appeals, issued May 17, 2012 (Docket No. 306956).** Factor (c) "somewhat favors" defendant where the court is concerned about plaintiff's money management.
- ***Harrer v. Brown*, unpublished per curiam opinion of the Court of Appeals, issued October 23, 2003 (Docket No. 246960).** Factor (c) favors plaintiff where defendant delayed medical treatment, overruled plaintiff's medical decisions, and failed to disclose pertinent medical information.
- ***Harris v. Harris*, unpublished per curiam opinion of the Court of Appeals, issued (Docket No. 310215).** The court favored plaintiff based on defendant's "inflexibility and denial of the children's medical needs."
- ***Henry v. Henry*, unpublished per curiam opinion of the Court of Appeals, issued December 22, 2011 (Docket No. 303065).** The trial court favored defendant on this factor because of his consistent level of employment and plaintiff's failure to make plans or seek options to support herself and the children.
- ***Herrera v. Herrera-Pina*, unpublished per curiam opinion of the Court of Appeals, issued February 20, 2014 (Docket No. 317365).** Factor (c) favors plaintiff despite the fact that defendant had the same medical condition as the child, where the record reveals that defendant was not involved in the child's medical care to the same degree as was plaintiff.
- ***Howard v. Dohring*, unpublished per curiam opinion of the Court of Appeals, issued November 29, 2012 (Docket No. 311483).** Trial court's determination of factor (c) is not against the great weight of evidence where plaintiff was unemployed, did not seek employment, relied on his mother, girlfriend, and college fund for support, and relied on others to provide for the minor child.
- ***Hume v. Hume*, unpublished per curiam opinion of the Court of Appeals, issued January 1, 2013 (Docket No. 307696).** Plaintiff claims defendant's testimony regarding a job offer is incredible, however, credibility issues are left to the trial court and thus trial court's determination on factor (c) stands.

- ***Jackson v. Jackson*, unpublished per curiam opinion of the Court of Appeals, issued December 18, 2012 (Docket No. 312234).** Factor (c) favors plaintiff who provides for the children's medical care when defendant is on unemployment compensation although defendant was the primary wage-earner prior to going on unemployment.
- ***Kreh v. Kreh*, unpublished per curiam opinion of the Court of Appeals, issued January 29, 2013 (Docket No. 309618).** In the context of child custody proceedings, the bankruptcy of a parent indicates poor financial judgment when determining the capacity and disposition of the parent to provide for the child's material needs.
- ***MacIntyre v. MacIntyre*, 267 Mich App 449 (2005).** Trial court weighed factor (c) in plaintiff's favor in light of defendant's evasive testimony regarding her reasons for discontinuing the child's therapy sessions.
- ***McLaughlan v. Bunting*, unpublished per curiam opinion of the Court of Appeals, issued September 27, 2011 (Docket No. 301060).** Where both parties provide health insurance –although plaintiff's share is provided through his wife's insurance – and both agree on methods of treatment, factor (c) favors both parties equally.
- ***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.
- ***Urban v. Briggs*, unpublished per curiam opinion of the Court of Appeals, issued March 6, 2012 (Docket No. 306307).** Factor (c) favors plaintiff where plaintiff has secured employment capable of supporting the children while, when in defendant's care, the children have been without health insurance at times, defendant has driven them in an uninsured car, defendant has not paid child support, and defendant has not complied with the court's order to obtain employment.
- ***Aguilar v. Aguilar*, unpublished per curiam opinion of the Court of Appeals, issued January 26, 2017. (Docket No. 331514).** The trial court properly considered as unfavorable that the substantially higher earning defendant had no support order following the parties' divorce for several years and refused to agree to pay support until the court ordered it under custody factor (c), along with defendant's refusing to pay a share of uninsured medical bills.
- ***Tallman v. Skiver*, unpublished per curiam opinion of the Court of Appeals, issued December 20, 2016 (Docket No. 333348).** When both parents are addressing the child's changes in hearing ability, lazy eye and vision issues, and increased anxiety and bed-wetting, those issues did not meet the threshold for a proper cause or change in circumstance that justified reevaluating the child's custodial situation because they were normal life changes.
- ***Tuttle v. Chesney*, unpublished per curiam opinion of the Court of Appeals, issued March 21, 2017 (Docket No. 335081).** Plaintiff's previous statements about denial of moral obligation to assist in the responsibility of caring for and raising the child, plaintiff's struggle with basic parenting tasks, and plaintiff's interest in "winning" the child warranted finding in favor of awarding sole physical custody to defendant.
- ***Kelley v. Johnson*, unpublished per curiam opinion of the Court of Appeals, issued February 21, 2017 (Docket No. 334144).** Where dental hygiene issues were the result of

- both parties inaction, the court correctly found that there was no sufficient change in circumstances to warrant a change in custody.
- ***Malish v Marcelli*, unpublished per curiam opinion of the Court of Appeals, issued September 19, 2017 (Docket No. 337990).** Given that defendant's allegations relating to changes that occurred after the judgment of divorce were limited to issues that were normal life changes (medical and dental issues) or would not have a significant effect on the child's wellbeing (teacher's strike), the trial court's finding that there was not proper cause or a change of circumstances was not against the great weight of the evidence.

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

#### **Cases in the Manual:**

- ***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.

#### **Other Examples:**

- ***Alholinna v. Alholinna*, unpublished per curiam opinion of the Court of Appeals, issued May 30, 2012 (Docket No. 307012).** Given that plaintiff's housing situation appeared to be temporary, the trial court's finding was not against the great weight of evidence.
- ***Arutoff v. Arutoff*, unpublished per curiam opinion of the Court of Appeals, issued June 23, 2011 (Docket No. 300351).** Factor (d) favors defendant where defendant's home is larger, with separate bedrooms for each child, the children have spent significant time there during the summer, and defendant has one live-in partner where plaintiff has had multiple live-in partners.
- ***Brandolino v. Brandolino*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2013 (Docket No. 311366).** Factor (d) favors defendant when plaintiff moves in with 72-year-old mother whose medical condition makes her an inappropriate caregiver.

- ***Brewer v. Brewer*, unpublished per curiam opinion of the Court of Appeals, issued August 21, 2001 (Docket No. 221521).** Where there is little continuity in either parent's home situation, factor (d) favors neither party and evidence of planned future moves is moot.
- ***Edwards v. Edwards*, unpublished per curiam opinion of the Court of Appeals, issued December 6, 2012 (Docket No. 308393).** Factor (d) favors plaintiff who has lived in the marital home with children since April 2010 while defendant moved out of the home in May 2010 and has since lived in several locations.
- ***Evans v. Dickson*, unpublished per curiam opinion of the Court of Appeals, issued December 27, 2012 (Docket No. 311119).** Factor (d) favored defendant because of concerns with plaintiff's work schedule, which required frequent travel and late nights, and concerns with the child's behavior and education that did not occur while the child was in plaintiff's care.
- ***Ekdahl v. Ekdahl*, unpublished per curiam opinion of the Court of Appeals, issued September 22, 2011 (Docket No. 302029).** Factor (d) favors defendant due to the bond the child has with her half-siblings, who are in defendant's care.
- ***Garrity v. Janger*, unpublished per curiam opinion of the Court of Appeals, issued May 17, 2012 (Docket No. 306956).** Trial court did not base finding on irrelevant factor in concluding it was not desirable to maintain the home environment because plaintiff failed to accept the son's "real problems" and would use babysitters to parent the children.
- ***Gates v. Kadoguchi*, unpublished per curiam opinion of the Court of Appeals, issued November 14, 2013 (Docket No. 313829).** Factor (d) favors defendant where plaintiff could not control children, was separated from her spouse, moved several times, and used profanity in front of the children.
- ***Harrer v. Brown*, unpublished per curiam opinion of the Court of Appeals, issued October 23, 2003 (Docket No. 246960).** Factor (d) favors plaintiff where defendant had issues with violence and anger, the conflict over the child was escalating to the detriment of minor child's relationship with plaintiff and emotional health, and defendant systematically excluded plaintiff.
- ***Harris v. Harris*, unpublished per curiam opinion of the Court of Appeals, issued December 18, 2012 (Docket No. 310215).** Factor (d) favors neither party where children have lived with both parents since birth with plaintiff taking primary caregiver role and defendant taking primary wage-earner role.
- ***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.
- ***Henry v. Henry*, unpublished per curiam opinion of the Court of Appeals, issued December 22, 2011 (Docket No. 303065).** Where children were removed from home and residing with grandparent, parties were on equal footing given the need to re-establish a satisfactory living environment and continuity of day-to-day interaction for the children and factor (d) favors neither party.
- ***Herrera v. Herrera-Pina*, unpublished per curiam opinion of the Court of Appeals, issued February 20, 2014 (Docket No. 317365).** Factor (d) favors neither party. Although plaintiff moved child out of family home, defendant spent a significant time away from the



family home preceding that event and both parties changed the child's daycare without warning.

- ***Howard v. Dohring*, unpublished per curiam opinion of the Court of Appeals, issued November 29, 2012 (Docket No. 311483).** Factor (d) favors neither party when both parties have moved frequently over the last three years and plaintiff, who lives with his mother, does not maintain mother's residence as his own at all times.
- ***Hume v. Hume*, unpublished per curiam opinion of the Court of Appeals, issued January 17, 2013 (Docket No. 307696).** Although plaintiff argues that defendant's home was disgusting and not equal to plaintiff's home, factor (d) favors both parties equally.
- ***Hutchins v. Hutchins*, unpublished per curiam opinion of the Court of Appeals, issued May 31, 2012 (Docket No. 302747).** Trial court states that it will not consider further factor (d) where the trial court finds that the first consideration of the factor, the length of time the child has lived in a stable, satisfactory environment, favored defendant, but finds that the second consideration, the desirability of maintaining continuity, did not favor defendant. Consequently, the trial court stated that it was not going to further consider this factor.
- ***Jackson v. Jackson*, unpublished per curiam opinion of the Court of Appeals, issued December 18, 2012 (Docket No. 312234).** Factor (d) favors neither party where there was alternating parenting time for four years and both parties' environments experienced changes.
- ***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, often in the child's presence.
- ***McLaughlan v. Bunting*, unpublished per curiam opinion of the Court of Appeals, issued September 27, 2011 (Docket No. 301060).** The parties' inability to communicate and work together is not dissociated from the child's home environment, and the parties' constant litigation injects instability into the child's life. The parties' behavior speaks to the child's environment and whether his environment is stable and desirable.
- ***Sandel v. Shining Water Eagle*, unpublished per curiam opinion of the Court of Appeals, issued July 17, 2012 (Docket No. 306994).** Trial court found that the children's home environment was unstable based on defendant's coaching or fostering of the sexual abuse allegations.
- ***Sinicropi v. Mazurek*, 273 Mich App 149 (2006).** Mazurek takes issue with the trial court's finding regarding factor (d) because it allegedly found in favor of a city, not a person. However, the trial court did not mention school, and its reference to Jackson was in the context of discussing the child's ties to the party and his extended family. Although the trial court did not expressly state that the factor favored the party, it is clear from the court's comments that it viewed the factor in favor of the party.

- ***Urban v. Briggs*, unpublished per curiam opinion of the Court of Appeals, issued March 6, 2012 (Docket No. 306307).** Factor (d) favors plaintiff where, although plaintiff lost the marital home to foreclosure, defendant could have prevented that loss at no additional cost by signing a loan-modification document.
- ***Winters v. James*, unpublished per curiam opinion of the Court of Appeals, issued August 31, 2010 (Docket No. 295369).** The trial court did not err by declining to consider the several years during which plaintiff previously had primary physical custody of the children properly confined its analysis under factor (d) to the children's then-existing living environment with plaintiff.

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

#### **Cases in the Manual:**

- ***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.
- ***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.
- ***Mazurkiewicz v. Mazurkiewicz*, 164 Mich App 492 (1987).** Where the mother had an inclination to develop inappropriate social interests outside her marriage and frequently used babysitters, it was proper for the court to find 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.

#### **Other Examples:**

- ***Arutoff v. Arutoff*, unpublished per curiam opinion of the Court of Appeals, issued June 23, 2011 (Docket No. 300351).** Factor (e) favors defendant where plaintiff has moved repeatedly and her home environment is crowded and chaotic as compared to the environment and living arrangements in defendant's home.
- ***Bombrys v. Zecchini*, unpublished per curiam opinion of the Court of Appeals, issued April 20, 2010 (Docket No. 293276).** Frequent moves, live-in romantic partners, and a succession of roommates may undermine the stability of the child's home.
- ***Boots v. Vogel-Boots*, unpublished per curiam opinion of the Court of Appeals, issued February 5, 2013 (Docket No. 309265).** Trial court commits clear error by focusing on the continuity of child's relationship with nanny rather than with his family unit in determining factor (e).
- ***Brandolino v. Brandolino*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2013 (Docket No. 311366).** Trial court's finding that factor (e) favored

neither party where both parties' future plans were uncertain was not against great weight of the evidence.

- ***Callico v. Callico*, unpublished per curiam opinion of the Court of Appeals, issued June 21, 2005 (Docket No. 259237).** Factor (e) favors plaintiff who maintained a permanent residence for children with no live-in guests over defendant who had moved several times within the year and gave contradictory evidence about her living arrangements with her ex-husband.
- ***Copeland v. Mitchell*, unpublished per curiam opinion of the Court of Appeals, issued August 5, 2010 (Docket No. 290381).** Factor (e) favors plaintiff who lives by himself and has had the same girlfriend for five years over defendant who has cohabited with a number of men contrary to the parties consent agreement that provides for no cohabitation with a member of the opposite sex unless married.
- ***Edwards v. Edwards*, unpublished per curiam opinion of the Court of Appeals, issued December 6, 2012 (Docket No. 308393).** Factor (e) favors neither party where plaintiff is settled in the marital home and defendant is moving from an apartment to a permanent home.
- ***Ekdahl v. Ekdahl*, unpublished per curiam opinion of the Court of Appeals, issued September 22, 2011 (Docket No. 302029).** Plaintiff's relationship with her three other children – and her giving their custody to the father – is directly related to the permanence of the family unit as it relates to the stability for the parties' child. It is evidence of the potential for this child's family unit to be destroyed if plaintiff makes a similar choice in the future.
- ***Garrity v. Janger*, unpublished per curiam opinion of the Court of Appeals, issued May 17, 2012 (Docket No. 306956).** Plaintiff makes no argument that the evidence showed that the stability of the home environment proposed by defendant was any less stable than her home environment. Accordingly, plaintiff has not shown that the trial court's finding on factor (e) was against the great weight of the evidence.
- ***Gates v. Kadoguchi*, unpublished per curiam opinion of the Court of Appeals, issued November 14, 2013 (Docket No. 313829).** Factor (e) favors neither party where plaintiff was remarried, but separated from current spouse and defendant has lived alone since divorced.
- ***Harris v. Harris*, unpublished per curiam opinion of the Court of Appeals, issued December 18, 2012 (Docket No. 310215).** Factor (e) favors plaintiff who intended to live in the marital home for at least two years over the defendant who intended to stay at his brother's home until he could afford a home of his own.
- ***Herrera v. Herrera-Pina*, unpublished per curiam opinion of the Court of Appeals, issued February 20, 2014 (Docket No. 317365).** Factor (e) favors neither party where plaintiff moved out of the marital home and became pregnant shortly after the parties' separation and defendant sought employment outside of the state and considered moving to a new school district if he stayed in Michigan.
- ***In re Burns*, unpublished per curiam opinion of the Court of Appeals, issued September 22, 2011 (Docket No. 302623).** Factor (e) favor's respondent-father over respondent-mother who has been unable to maintain stability and permanency in her family environment due to the ongoing domestic violence between herself and her live-in partner.

- ***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.
- ***Lowe v. Lowe*, unpublished per curiam opinion of the Court of Appeals, issued December 14, 2010 (Docket No. 298052).** Whether plaintiff speaks English has no bearing on the “child’s prospects for a stable family environment.”
- ***MacIntyre v. MacIntyre*, 267 Mich App 449 (2005).** Factor (e) favors neither party where plaintiff intended to remain in marital home if granted custody while defendant intended to sell the home and split the proceeds.
- ***McLaughlan v. Bunting*, unpublished per curiam opinion of the Court of Appeals, issued September 27, 2011 (Docket No. 301060).** Factor (e) favors neither party where plaintiff was involved in an extra-marital affair with defendant causing marital problems and defendant had an on-and-off relationship with the father of another of her children.
- ***Raczkowski v. Correll*, unpublished per curiam opinion of the Court of Appeals, issued November 14, 2013 (Docket No. 313423).** Court of Appeals reverses the trial court and finds that factor (e) favors the plaintiff where the defendant frequently moves, has impermanent relationships, and is exposed to further DHHS scrutiny due to her relationship with her boyfriend in the wake of a DHHS investigation regarding the death of the child’s half-sibling.
- ***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.
- ***Winters v. James*, unpublished per curiam opinion of the Court of Appeals, issued August 31, 2010 (Docket No. 295369).** Factor (e) favors defendant, who had been remarried for several years, over plaintiff, who had a live-in boyfriend and no permanent commitment other than his gift to her of a promise ring.

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

**Cases in the Manual:**

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

## OTHER EXAMPLES

- ***Steinbrink v. Noreyko*, unpublished per curiam opinion of the Court of Appeals, issued March 21, 2017 (Docket No. 333115).** Trial court did not err in awarding sole physical and legal custody of the children to plaintiff and suspending defendant's parenting time, as record showed that children feared the defendant, defendant killed the family cat in front of the children, and the children did not get along with defendant's girlfriend.
- ***Kenzie v. Kenzie*, unpublished per curiam opinion of the Court of Appeals, issued August 8, 2017 (Docket No. 335873).** An award of sole legal and physical custody to plaintiff with conditional gradually increasing joint custody to the defendant – dependent upon his continued negative drug testing – was appropriate considering defendant's recent behavior including: engaging in domestic violence and stalking the plaintiff, drug use, and evidence of an unstable mental state, but acknowledging his long committed and loving relationship with the children.

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

### Cases in the Manual:

- ***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, it should be determined that this factor favors the mother, not the father.
- ***Cf. 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 over use of prescription drugs – can weigh against that parent.
- ***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.

### OTHER EXAMPLES:

- ***Barringer v. Barringer*, 191 Mich App 639 (1991).** When allegations of father engaging in sexual abuse are unsubstantiated and mother's testimony lacks credibility, a determination that this factor is equal between the parties is not an error.
- ***Brewer v. Brewer*, unpublished per curiam opinion of the Court of Appeals, issued August 21, 2001 (Docket No. 221521).** When father turns to his young daughter for emotional support as if she were an adult, involves the children in confrontations with the mother, and makes irrelevant claims regarding the mother's mental health, a determination that this factor favors mother is not an error.
- ***Dailey v. Kloenhamer*, 291 Mich App 660 (2011).** When the mother suffers from temporary ocular migraines affecting her ability to parent, finding this factor in favor of father is proper.

- ***Dubin v. Fincher*, unpublished per curiam opinion of the Court of Appeals, issued June 19, 2014 (Docket Nos. 318076, 319177).** A psychologist indicates mother's bipolar disorder is a chronic illness and expresses concerns about risk for relapse due to past noncompliance with medication, finding this factor in favor of father is proper.
- ***Edwards v. Edwards*, unpublished per curiam opinion of the Court of Appeals, issued December 6, 2012 (Docket No. 308393).** When there is no mention at trial of the mother's anxiety, counseling, or prescription drug use, and the father uses a prescription for opiate addiction assistance instead of the management of his remission from Hodgkin's Lymphoma, the evidence shows this factor favors the mother, not both parties equally. Additionally, the father's history of illegal drug use is relevant under this factor, even though he has been clean since 2007.
- ***Ekdahl v. Ekdahl*, unpublished per curiam opinion of the Court of Appeals, issued September 22, 2011 (Docket No. 302029).** When the court finds that father's testimony is credible concerning the mother being suicidal when they lived together and that he talked her out of harming herself on numerous occasions, then a finding that this factor favors the father is not an error.
- ***Evans v. Dickson*, unpublished per curiam opinion of the Court of Appeals, issued December 27, 2012 (Docket No. 311119).** When the mother's own testimony establishes that she has struggled with mental health issues in the past and that those issues were related in part to the child's desire to live with the father, and when there is a concern that there might be a reoccurrence of the mother's depression, a finding that this factor slightly favors father is proper.
- ***Garrity v. Janger*, unpublished per curiam opinion of the Court of Appeals, issued May 17, 2012 (Docket No. 306956).** Mother's Generalized Personality Disorder diagnosis could exacerbate the child's anxieties, and although the father's mental health is only marginally better, a finding that this factor favors the father is proper.
- ***Harris v. Harris*, unpublished per curiam opinion of the Court of Appeals, issued December 18, 2012 (Docket No. 310215).** When the father has a herniated disk that does not stop him from parenting and takes medication for trouble with sleeping and anxiety or stress, a determination that this factor favors neither party is not an error.
- ***Henry v. Henry*, unpublished per curiam opinion of the Court of Appeals, issued December 22, 2011 (Docket No. 303065).** Even though the father is introverted, when testimony establishes concern with mother's thought processes and inflexibility, a determination that this factor favors the father is not an error.
- ***Husen v. Campbell*, unpublished per curiam opinion of the Court of Appeals, issued October 1, 2009 (Docket No. 289918).** Expert testimony is not always required for a court to find a party's mental illness negatively impacts her ability to parent.
- ***Hutchins v. Hutchins*, unpublished per curiam opinion of the Court of Appeals, issued May 31, 2012 (Docket No. 302747).** When the mother takes prescribed medications for her lack of a thyroid, arthritis, cholesterol, asthma, depression, anxiety, and insomnia, a determination by the trial court that these facts impacted her ability to parent, therefore finding the factor favors father is not an error.

- ***In re Burns*, unpublished per curiam opinion of the Court of Appeals, issued September 22, 2011 (Docket No. 302623).** Where the mother relies on others to meet her needs, has been in turbulent relationships, has impaired judgment, poor hindsight into family issues, and a history of being a victim of domestic violence by her partner in the presence of the children. Taking all of this into consideration, a finding that this factor favors father is proper.
- ***Kreh v. Kreh*, unpublished per curiam opinion of the Court of Appeals, issued January 29, 2013 (Docket No. 309618).** When mother has issues with anxiety and depression that could possibly affect the child’s development and put the child at risk for developing those issues herself, a finding that this factor favors father is not an error.
- ***Lowe v. Lowe*, unpublished per curiam opinion of the Court of Appeals, issued December 14, 2010 (Docket No. 298052).** When there is evidence that mother suffers from borderline personality disorder and has exhibited suicidal tendencies and that father suffers from alcohol dependence and narcissistic personality disorder, a determination that this factor favors neither party is not an error.
- ***MacIntyre v. MacIntyre*, 267 Mich App 449 (2005).** When the record contains several instances of the mother’s uncontrollable and inappropriate displays of anger in the child’s presence, even though the father may have instigated one of the encounters, determining this factor favors the father is consistent with the weight of the evidence.
- ***McLaughlan v. Bunting*, unpublished per curiam opinion of the Court of Appeals, issued September 27, 2011 (Docket No. 301060).** When the mother is 15 years younger than the father, is working and furthering her education, and is not suffering from any health problems and the father is collecting SSI and suffering from a degenerative disc disease and arthritis, finding that this factor favors the mother is not an error.
- ***Sinicropi v. Mazurek*, 273 Mich App 149 (2006).** When the father has depression that does not appear to interfere with his ability to effectively parent, a determination that this factor favors both parties equally is not an error.
- ***Streicher v. Streicher*, 128 Mich App 5 (1983).** Finding the parents are equal with regard to mental health is against the great weight of the evidence when testimony against defendant includes examples of her erratic, irrational behavior and emotional instability, and plaintiff’s mental stability was never in question.
- ***Weide v. Weide*, unpublished per curiam opinion of the Court of Appeals, issued September 20, 2011 (Docket No. 301943).** It is not in error to find for the mother under this factor when the father has a drinking problem and stress-related mental health episodes and obtained treatment by seeking an evaluation and was following the physician’s orders.
- ***Wright v. Wright*, 279 Mich App 291 (2008).** A psychologist confirmed the defendant had a mild and treatable form of depression. The plaintiff tried to influence a therapist into reporting defendant’s behavior as child abuse and plaintiff demonstrated “unusual patterns of thought.” The trial court properly found that these conditions did not inhibit their ability to parent under this factor.
- ***Waterman v. Waterman*, unpublished per curiam opinion of the Court of Appeals, issued December 20, 2016 (Docket No. 332537).** An arbitrator correctly applied the best interest factors in accordance with Michigan Law when he rejected the accusations of plaintiff’s moral unfitness and requests for random drug and alcohol testing due to the lack

of credible evidence that any type of infidelity or substance abuse adversely affected the child's best interests.

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

**Cases in the Manual:**

- ***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.
- ***Walker v. Walker*, unpublished per curiam opinion of the Court of Appeals, issued April 13, 2017 (Docket No. 334752).** A material change of circumstances significant enough to warrant a change in custody and/or parenting time must be greater than normal parenting struggles with children's hygiene and homework.
- ***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.

**OTHER EXAMPLES:**

- ***Arutoff v. Arutoff*, unpublished per curiam opinion of the Court of Appeals, issued June 23, 2011 (Docket No. 300351).** When the father has never handled school or community related activities with the children because he only has custody during the summer months, and the children suffer in school while in the mother's care, a finding that this factor favors the father is against the great weight of the evidence.
- ***Blackburn v. Grenquist*, unpublished per curiam opinion of the Court of Appeals, issued December 6, 2012 (Docket No. 309921).** When the child attends pre-school but the parties live in separate towns and an educational record for the child has yet been established, the factor favors the custodial parent where the child resides.



- ***Bombrys v. Zecchini*, unpublished per curiam opinion of the Court of Appeals, issued April 20, 2010 (Docket No. 293276).** When the parties live in separate cities and the child has only attended school for one year, just started participating in a local church and tee-ball league, and has extended family in both cities, finding this factor equal between the parties is proper.
- ***Brandolino v. Brandolino*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2013 (Docket No. 311366).** When the mother views an alleged bullying incident more seriously than the father and seeks a recommendation from the child's teacher about whether the child is ready for kindergarten, finding this factor favors mother is proper.
- ***Copeland v. Mitchell*, unpublished per curiam opinion of the Court of Appeals, issued August 5, 2010 (Docket No. 290381).** When both parties have the children involved in extracurricular activities, the children are doing well in school, and the mother or the caretaker she uses are occasionally late in picking up the children from school or fail to pick them up completely, a finding that this factor slightly favors the father is proper.
- ***Diez v. Davey*, unpublished per curiam opinion of the Court of Appeals, issued October 23, 2014 (Docket No. 318910).** When the mother has the primary responsibility for the children's education and the father was not active in the children's preschool and did not frequently attend parent-teacher conferences, a finding that this factor favors the mother is proper.
- ***Edge v. Edge*, unpublished per curiam opinion of the Court of Appeals, issued August 23, 2011 (Docket No. 300668).** When the father is hostile and tries to increase conflict, while the child is thriving at home, school, and in extracurricular activities under the mother's care, finding this factor favors the mother is proper.
- ***Edwards v. Edwards*, unpublished per curiam opinion of the Court of Appeals, issued December 6, 2012 (Docket No. 308393).** When a child is having trouble adjusting to the divorce but there is no evidence that this is the fault of either party and the parties live close enough for the children to stay in their current school district, finding this factor favors one party over the other is against the great weight of the evidence.
- ***Ekdahl v. Ekdahl*, unpublished per curiam opinion of the Court of Appeals, issued September 22, 2011 (Docket No. 302029).** When the parties live in different states and the child does well in both daycares, finding this factor equal between the parties is proper.
- ***Evans v. Dickson*, unpublished per curiam opinion of the Court of Appeals, issued December 27, 2012 (Docket No. 311119).** When the child has poor grades, behavior, and attendance issues while living with the mother but does well when living with the father, finding this factor favors the father is proper.
- ***Garrity v. Janger*, unpublished per curiam opinion of the Court of Appeals, issued May 17, 2012 (Docket No. 306956).** When there is conflicting evidence as to the child's behavior, a finding that the child's behavior has not consistently improved is proper.
- ***Gates v. Kadoguchi*, unpublished per curiam opinion of the Court of Appeals, issued November 14, 2013 (Docket No. 313829).** The father is not involved in the children's schooling and all but one of the children is doing well in school. In the children's home, the record shows the mother had called the police claiming two of the children abused her. A finding that this factor slightly favors the father is proper.

- ***Harrer v. Brown*, unpublished per curiam opinion of the Court of Appeals, issued October 23, 2003 (Docket No. 246960).** Although a child may be chronically tardy, this factor properly favors the custodial parent when the child is performing well in school.
- ***Hume v. Hume*, unpublished per curiam opinion of the Court of Appeals, issued January 17, 2013 (Docket No. 307696).** When the stress of going back and forth between parents is partially causing the child's problems in school, the mother signs the child up for tutoring, religious education classes, and Brownies, and the mother's testimony is found to be more credible than the father's, a finding that this factor favors the mother is proper.
- ***Hutchins v. Hutchins*, unpublished per curiam opinion of the Court of Appeals, issued May 31, 2012 (Docket No. 302747).** When, in the mother's custody, the child has a terrible academic record, refuses to do his class work and homework, and engages in disruptive behavior in the classroom, finding this factor against the mother is proper.
- ***Jackson v. Jackson*, unpublished per curiam opinion of the Court of Appeals, issued December 18, 2012 (Docket No. 312234).** When neither party testifies regarding how the children are doing in school after a custody change, finding this factor favors neither party is proper.
- ***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.
- ***Kreh v. Kreh*, unpublished per curiam opinion of the Court of Appeals, issued January 29, 2013 (Docket No. 309618).** When the mother is primarily responsible for the child's attendance at school, the child's attendance and tardiness show the mother's inability to place the proper importance on schooling. Therefore, finding this factor favors father is proper.
- ***Lasley v. Miller*, unpublished per curiam opinion of the Court of Appeals, issued November 3, 2011 (Docket No. 303060).** When there is no evidence the child is having problems at home or in the community, this factor does not favor one party over the other.
- ***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.
- ***McLaughlan v. Bunting*, unpublished per curiam opinion of the Court of Appeals, issued September 27, 2011 (Docket No. 301060).** When the father enrolls the child in preschool and the mother is unaware of the enrollment, making the child's attendance minimal and causing him to struggle socially, a finding that this factor favors both parties is not an error.
- ***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.

- ***Selby v. Lister*, unpublished per curiam opinion of the Court of Appeals, issued April 4, 2017 (Docket No. 334612).** A child's unclear absentee and tardiness to school, coupled with unsubstantiated CPS investigations and "other irregularities" in the child's life will not rise to the level of having a "significant" effect on the child's well-being if the trial court conducted a throughout analysis of all evidence presented.
- ***Shimel v McKinley*, unpublished per curiam opinion of the Court of Appeals, issued April 27, 2017 (Docket No. 334571).** The trial court need not consider all factors under MCL 722.27a (7) in determining whether to modify parenting time; only those factors that are relevant.
- ***Gray v. Gray*, unpublished per curiam opinion of the Court of Appeals, issued December 20, 2016 (Docket No. 330929).** After continually increasing defendant's parenting time due to concerns over plaintiff's lifestyle and home, the trial court properly granted a change in custody to defendant where defendant established a change in circumstances through evidence that plaintiff's house was unstable, she was unemployed, the child was frequently late to or missed school, and plaintiff continuously exposed the child to registered sex offenders.
- ***Gauthier v. Whitley*, unpublished per curiam opinion of the Court of Appeals, issued December 29, 2016 (Docket No. 333258).** Where the record reflected that the child was struggling with his behavior and academics at school and allegedly engaging in potentially risky behaviors with his peers, it was not an abuse of discretion for the trial court to prohibit the child from using his electronic devices or to undergo counseling.

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

#### **Cases in the Manual:**

- ***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.

#### OTHER EXAMPLES:

- ***Arutoff v. Arutoff*, unpublished per curiam opinion of the Court of Appeals, issued June 23, 2011 (Docket No. 300351).** When a judge says, "These children love both of their parents. These children are confused. These children need help. I'll consider that in my decision," a finding that this factor ultimately favors one party over the other is not an error.
- ***Bowers v. Bowers*, 198 Mich App 320 (1993).** Children as young as six years old are capable of expressing 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.
- ***Callico v Callico*, unpublished per curiam opinion of the Court of Appeals, issued June 21, 2005 (Docket No. 259237).** Where the trial court interviews the children to determine their ability to state a preference without revealing their statements and finds the oldest child barely able to express a preference, this factor's importance is minimal and not decisive.
- ***Copeland v. Mitchell*, unpublished per curiam opinion of the Court of Appeals, issued August 5, 2010 (Docket No. 290381).** A court satisfies the in-camera interview requirements when it states in its opinion that the children were able to express a reasonable preference and that it considered their preference in its decision.
- ***Edge v. Edge*, unpublished per curiam opinion of the Court of Appeals, issued August 23, 2011 (Docket No. 300668).** The trial court did not err by failing to conduct an *in camera* interview with a child after stating a five-year-old is typically too young to state a preference and observing nothing in the case supporting an exception.
- ***Evans v. Dickson*, unpublished per curiam opinion of the Court of Appeals, issued December 27, 2012 (Docket No. 311119).** Relying on the testimony of the friend of the court investigator to determine the child's preference when his testimony relays the child's preference and speaks to the child's maturation is not an error.
- ***Harrer v. Brown*, unpublished per curiam opinion of the Court of Appeals, issued October 23, 2003 (Docket No. 246960).** Evidence suggesting the child would say anything to please one parent, thus determining the child's preference is rehearsed and the child is incapable of expressing a preference, is not against the great weight of the evidence.
- ***In re Burns*, unpublished per curiam opinion of the Court of Appeals, issued September 22, 2011 (Docket No. 302623).** It is a harmless error when the court fails to consider the child's preference but the child's preference would not have changed the court's ruling.

- ***In re Hartsell*, unpublished per curiam opinion of the Court of Appeals, issued March 16, 1999 (Docket No. 211281).** Where a child struggles to express a preference and the court therefore decides not to consider this factor in its determination, this is not an error in exercising proper discretion.
- ***Jackson v. Jackson*, unpublished per curiam opinion of the Court of Appeals, issued December 18, 2012 (Docket No. 312234).** The court's failure to interview children who are at least six years old is reversible error.
- ***MacIntyre v. MacIntyre*, 267 Mich App 449 (2005).** When the mother alleges the child is physically ill over the idea of living with the father but there is no record evidence supporting this contention, the court does not need to violate the child's confidence by revealing the child's preference on the record.
- ***McLaughlin v. Bunting*, unpublished per curiam opinion of the Court of Appeals, issued September 27, 2011 (Docket No. 301060).** A child's preference is only one of many factors to be considered in determining the child's best interests, and it does not outweigh the other factors. It is within the court's discretion to decide if the child is of sufficient age to express a preference. Even if the court's decision not to interview the child was in error, it is a harmless error if the ultimate determination would not have been different.
- ***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.
- ***Winters v. James*, unpublished per curiam opinion of the Court of Appeals, issued August 31, 2010 (Docket No. 295369).** When a judge meets with the children and considers their expressed preferences, the court must only state on the record that the children's preference was considered. The court need not violate the children's confidence by disclosing their choice.

**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.**

**Cases in the Manual:**

- ***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).** A parent who seeks the other parent's input before making decisions involving the child would more likely prevail on this factor.
- ***Hillard v. Schmidt*, 231 Mich App 316 (1998).** Where a parent denied parenting time on the advice of a psychologist, it was proper to not weigh this factor against that parent.
- ***McCain v. McCain*, 229 Mich App 123 (1998).** Where a parent demonstrated such vindictive behavior that they were likely to 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, it has been found to make it less likely that the parent would encourage a close relationship between the child and the other parent.

#### OTHER EXAMPLES:

- ***Blackburn v. Grenquist*, unpublished per curiam opinion of the Court of Appeals, issued December 6, 2012 (Docket No. 309921).** When father has an open disdain for the mother and her family that would negatively impact the father's facilitation and encouragement of a close relationship between the mother and the child while the mother facilitated parenting time between the father and the child after she moved further away, finding this factor favors the mother is not an error.
- ***Bombrys v. Zecchini*, unpublished per curiam opinion of the Court of Appeals, issued April 20, 2010 (Docket No. 293276).** Court of Appeals reverses trial court and finds that factor (j) should favor neither party when the father feigned an excuse to keep child from the mother and the mother refused to allow the father to see the child for 20 days and refused to allow the father a few extra hours parenting time so the child could play tee-ball.
- ***Boots v. Vogel-Boots*, unpublished per curiam opinion of the Court of Appeals, issued February 5, 2013 (Docket No. 309265).** When the father moves out of the marital home, continues to pay marital bills, encourages the child's relationship with the mother, and goes along with the mother's proposed parenting time schedule for the child's benefit while the mother encourages the relationship between the child and father, talks with the child about the father and has pictures of the father throughout the house, has the child call the father, tells the child that father is coming over, encourages the child's visits with father, and does not speak negatively about the father in the child's presence, a finding that this factor favors both parties is not an error.
- ***Brady v. Brady*, unpublished per curiam opinion of the Court of Appeals, issued September 22, 2015 (Docket No. 236396).** Where the plaintiff engages in parental alienation by not allowing defendant to visit the child during the child's hockey games, tells the child that the defendant beat plaintiff and cheated on her, and refuses to meet the defendant at his car when he drops the children off, trial court's determination that factor (j) weighs against plaintiff is not against great weight of evidence.
- ***Brandolino v. Brandolino*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2013 (Docket No. 311366).** When the father has evidence of his attempts to communicate with the mother but the mother believes his attempts are motivated by the custody trial and not a genuine desire to communicate, a finding that this factor favors neither parent is not an error.

- ***Brewer v. Brewer*, unpublished per curiam opinion of the Court of Appeals, issued August 21, 2001 (Docket No. 221521).** When the mother refuses to allow the children to participate in softball because the father would have been their coach and shows a grudging willingness to allow the father to spend time with his children, and the father exposes the children to his extreme actions and statements disparaging the mother, interrogates the children about the mother's actions, and records their conversations with her, a finding that this factor favors the mother is not an error.
- ***Callico v. Callico*, unpublished per curiam opinion of the Court of Appeals, issued June 21, 2005 (Docket No. 259237).** When the mother and paternal grandmother behave inappropriately and are unable to put aside their animosity to facilitate a good relationship between the children and the other parent and the record evidence shows the court could have weighed this factor more heavily against the mother, a finding that this factor favors neither party is not an error.
- ***Copeland v. Mitchell*, unpublished per curiam opinion of the Court of Appeals, issued August 5, 2010 (Docket No. 290381).** When there is evidence that both parties accuse each other of making disparaging remarks to the children and lack the ability to communicate regarding the children but are in counseling in the hope of improving their ability to communicate, a finding that this factor favors neither party is not an error.
- ***Edge v. Edge*, unpublished per curiam opinion of the Court of Appeals, issued August 23, 2011 (Docket No. 300668).** Where the trial court's analysis is fully supported by the record, the father has sent vicious emails, and his testimony reflects he is unwilling and unable to facilitate and encourage a relationship between the mother and child, a finding that this factor favors the mother is not an error.
- ***Edwards v. Edwards*, unpublished per curiam opinion of the Court of Appeals, issued December 6, 2012 (Docket No. 308393).** When the father calls the mother names in front of the children, tells the mother in front of the child that the mother does not love her family, and accuses the mother of staging photos showing him with drug paraphernalia within reach of the children and both parties accuse the other of being late to parenting time to intentionally interfere with their schedules, finding this factor favors neither party is not an error.
- ***Ekdahl v. Ekdahl*, unpublished per curiam opinion of the Court of Appeals, issued September 22, 2011 (Docket No. 302029).** When the mother shows an unwillingness to compromise and communicate with the father over parenting time, the mother and child are frequently unavailable for their weekly webcam sessions, the mother coaches the child during the webcam sessions that do occur, and the mother will not let the child answer father's questions, a finding that this factor favors father is not an error.
- ***Garrity v. Janger*, unpublished per curiam opinion of the Court of Appeals, issued May 17, 2012 (Docket No. 306956).** When mother has no evidence showing father will not follow the parenting plan, allow mother to have regular Skype and telephone conversations with the children, or consult with mother on important decisions regarding the children, and there is no evidence suggesting father deliberately prevents mother from having regular contact with the children, finding this factor equal is not against the great weight of the evidence.
- ***Gates v. Kadoguchi*, unpublished per curiam opinion of the Court of Appeals, issued November 14, 2013 (Docket No. 313829).** Factor (j) favors neither party when father

questions children about mother, calls mother names in front of children, and tells children they do not have to listen to mother while mother does not tell father about medical appointments until hours before the appointment, refuses to speak with father on the phone or hangs up on him, and tries not to speak at all about father with the children.

- ***Harrer v. Brown*, unpublished per curiam opinion of the Court of Appeals, issued October 23, 2003 (Docket No. 246960).** When father excludes mother from decisions concerning the child's health and education needs, withholds information or purposefully gives mother misinformation, and is unable to comprehend the impact of his actions on the child's emotional health, finding this factor favors mother is not an error.
- ***Harris v. Harris*, unpublished per curiam opinion of the Court of Appeals, issued December 18, 2012 (Docket No. 310215).** When the parties give conflicting testimony, father admits to monitoring mother's and children's activities and puts the children in the middle, and mother believes father takes advantage of the time frame for taking the children to counseling and does not bring the children directly back, finding this factor favors mother is not an error.
- ***Henry v. Henry*, unpublished per curiam opinion of the Court of Appeals, issued December 22, 2011 (Docket No. 303065).** When father admits he would have difficulty working with mother, mother verbally indicates a willingness to work with father but shows no indication of a true commitment to reciprocity or communication, and there is clear acrimony between the parties, finding this factor favors neither party is not an error.
- ***Herrera v. Herrera-Pina*, unpublished per curiam opinion of the Court of Appeals, issued February 20, 2014 (Docket No. 317365).** Factor favors neither party where father makes unsubstantiated allegations that the mother abuses or neglects child and mother refuses to tell father where the child is living and refuses to allow parenting time when father shows up late to parenting time exchange.
- ***Hume v. Hume*, unpublished per curiam opinion of the Court of Appeals, issued January 17, 2013 (Docket No. 307696).** When father refuses to return the child even after CPS tells him to, finding this factor slightly favors mother is not an error.
- ***Hutchins v. Hutchins*, unpublished per curiam opinion of the Court of Appeals, issued May 31, 2012 (Docket No., 302747).** When mother has a pattern of not sharing information with father, finding this factor favors father is not against the great weight of the evidence.
- ***Jackson v. Jackson*, unpublished per curiam opinion of the Court of Appeals, issued December 18, 2012 (Docket No. 312234).** When the parties have completely conflicting testimony but mother testifies the children have been "thriving" for the past two years and there is no evidence to the contrary, finding this factor favors mother is not an error.
- ***Lowe v. Lowe*, unpublished per curiam opinion of the Court of Appeals, issued December 14, 2010 (Docket No. 298052).** When mother sought father's help with the child during the marriage but father was indifferent, mother and fathers' parents yell at each other during exchanges, and there is a "no contact" order in place due to the domestic violence committed by father, a finding that this favors mother is not an error.
- ***MacIntyre v. MacIntyre*, 267 Mich App 449 (2005).** When the mother denigrates the father in front of the child, and a doctor interferes with father's parenting time while the child tells the doctor that father does not verbally attack mother and allows the child to



stay with the mother when she has to go out of town during her scheduled parenting time, a finding that this factor favors the father is not an error.

- ***Matz v. Matz*, unpublished per curiam opinion of the Court of Appeals, issued January 18, 2011 (Docket No. 298424).** When mother has contributed to the children's negative view of father but has attempted to improve her behavior, has apologized to the children for her role in the collapse of the family, reprimands the children when they speak negatively about father, encourages the children to give their father a chance, and invites father to accompany the family on outings while father refuses to accompany the family on outings, makes disparaging remarks about mother in front of the children, and has a history of bullying behavior, a finding that this factor favors neither party is not an error.
- ***McLaughlan v. Bunting*, unpublished per curiam opinion of the Court of Appeals, issued September 27, 2011 (Docket No. 301060).** When father photographs mothers' home in an attempt to use the photos against her at trial and start a CPS investigation, teaches the child a song about not wanting to go to mother's house, and testifies he will continue to file complaints if mother violates court orders and mother testifies father is good to the child but that his behavior toward her inhibits their level of communication, finding this factor favors mother is not against the great weight of the evidence.
- ***Rains v. Rains*, 301 Mich App 313 (2013).** When the parties have a clearly contentious relationship, father is making significant improvements in his relationship with mother but mother has not similarly improved, father has failed to use court-ordered parenting services and does not attend the child's counseling as frequently as mother but mother appears to want to move the child away from father and believes she is being harassed by 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 father testifies the mother and child love each other and he makes sure the child calls mother when important events occur during his parenting time, finding this factor favors neither party is not an error.
- ***Winters v. James*, unpublished per curiam opinion of the Court of Appeals, issued August 31, 2010 (Docket No. 295369).** When mother alleges father makes no attempt to foster a relationship between the children and mother and does not communicate with father; but father testifies that the mother limits his visits with the children, wishes to only communicate via text message, and would not respond to requests to make a parenting time schedule during the summer the children lived with the mother, finding this factor favors neither party is not an error.
- ***Aguilar v. Aguilar*, unpublished per curiam opinion of the Court of Appeals, issued January 26, 2017 (Docket No. 331514).** The trial court properly considered as unfavorable, that the substantially higher earning defendant had no support order following the parties' divorce for several years and refused to agree to pay support until the court ordered it under custody factor (c) (capacity and disposition to provide the child with food, clothing, medical care or other remedial care) and also under factor (j) (willingness or ability to facilitate a close relationship between the children and other parent)(along with defendant's refusing to pay a share of uninsured medical bills, forcing the plaintiff to file a motion to allow the children to get a passport for a family trip, and filing a motion to force the children to change to a school closer to defendant).

- ***Curtis v. Norman*, unpublished per curiam opinion of the Court of Appeals, issued September 13, 2016 (Docket No. 332477).** Father’s poor communication with mother and uncivil behavior at meet-ups could be weighed against him, while mother’s substance abuse was not weighed against her given her rigorous use of treatment and six month sobriety at trial. Trial court did not abuse its discretion by denying plaintiff’s motion to change custody.
- ***Santoro v. Santoro*, unpublished per curiam opinion of the Court of Appeals, issued March 28, 2017 (Docket No. 332553).** The parties’ animosity, their accusations and disagreements over property and financial matters throughout the proceedings, their disagreements concerning the children’s schooling, counseling, and dental care, and their inability to agree on fostering the children’s participation in important extra-curricular activities, supported the trial court’s determination that the parties were unable to agree and cooperate concerning important decisions affecting the children’s welfare sufficient for the court to order joint legal custody.
- ***Crall v. Prisk*, unpublished per curiam opinion of the Court of Appeals, issued May 16, 2017 (Docket No. 335755).** In determining whether a change in custody was in the child’s best interest, the trial court did not err in awarding primary custody to the father. The mother had clearly coached the child to lie about abuse and alienated the children from the father.
- ***Delekta v. Delekta*, unpublished per curiam opinion of the Court of Appeals, issued December 20, 2016 (Docket No. 331981).** When the children’s anxiety was neither new nor attributable to the current custody situation, but rather attributable to the parent’s acrimonious relationship, it did not establish proper cause or a change of circumstances sufficient to warrant a change of physical custody.
- ***McRoberts v. Ferguson*, \_\_\_ Mich App \_\_\_ (2017).** The trial court had proper cause to modify the existing child custody order after finding that mother continuously violated the parenting time order by not allowing phone calls between child and father, delivering the child for scheduled parenting time, nor allowed the child to call her father “dad.” The father addressed medical issues for the child, provided a counselor for the child, and helped to greatly improve child’s recognition of sight words, in addition to father’s new living situation (land-based military duty, instead of deployment at sea). Finally, the trial court did not err by finding that father proved by clear and convincing evidence that granting him sole legal and physical custody was in the child’s best interests where there were legitimate concerns with mother’s care of the child including untreated cavities and numerous unexcused absences from school, mother’s repeated acts of contempt relative to parenting time, and mother’s inability to facilitate and encourage a close and continuing parent-child relationship between father and daughter.

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

#### **Cases in the Manual:**

- ***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.

- ***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.

#### OTHER EXAMPLES:

- ***Arutoff v. Arutoff*, unpublished per curiam opinion of the Court of Appeals, issued June 23, 2011 (Docket No. 300351).** When father threatened to burn the house down, screamed at mother at the shopping mall, threw his shopping bags at her, and then left her at the mall with the children in the winter forcing them to walk four miles to their home, while mother has repeatedly yelled at the children and exposed them to an abusive relationship, finding this factor equal between the parties is not against the great weight of the evidence.
- ***Conner v. Conner*, unpublished per curiam opinion of the Court of Appeals, issued December 5, 2013 (Docket No. 314436).** When there is evidence mother would not give up an abusive relationship until the child and father insisted, finding this factor favors father is not an error.
- ***Dubin v. Fincher*, unpublished per curiam opinion of the Court of Appeals, issued June 19, 2014 (Docket Nos. 318076, 319177).** When mother engaged in conduct against father that could be seen as physical domestic violence but classic dynamics of domestic violence are not present, the court deciding to give mother the benefit of the doubt by finding this factor favors neither party is not an error.
- ***Edwards v. Edwards*, unpublished per curiam opinion of the Court of Appeals, issued December 6, 2012 (Docket No. 308393).** When the police have made runs to the home, father has pushed mother in front of the children, father is verbally and mentally abusive, and father kicked a bedroom door in, finding this factor favors mother is not against the great weight of the evidence.
- ***Harrer v. Brown*, unpublished per curiam opinion of the Court of Appeals, issued October 23, 2003 (Docket No. 246960).** This factor does not require that an “incident of domestic violence” include only “charged” instances of abuse. Finding this factor favors the party not facing allegations of domestic violence is not an error.
- ***Harris v. Harris*, unpublished per curiam opinion of the Court of Appeals, issued December 18, 2012 (Docket No. 310215).** When father swears at mother and calls her names and there is evidence of both parties engaging in domestic violence, finding this factor favors mother is an error. The trial court could have found factor (l) favored mother based on the name calling
- ***Jackson v. Jackson*, unpublished per curiam opinion of the Court of Appeals, issued December 18, 2012 (Docket No. 312234).** When father has inadmissible evidence regarding mother’s husband not being allowed to see his own children due to domestic violence, a finding that there is no evidence of domestic violence is not an error.
- ***Joyce v. Joyce*, unpublished per curiam opinion of the Court of Appeals, issued July 19, 2011 (Docket No. 301865).** When mother admits to a therapist that she was emotionally abused by father, the children tell the therapist that father is verbally and

physically abusive, and father testifies that he believes in physical discipline based on the Bible to a certain extent, finding this factor favors mother is not against the great weight of the evidence.

- ***Kzeski v. Kzeski*, unpublished per curiam opinion of the Court of Appeals, issued March 25, 2014 (Docket No. 315529).** When father and the children resort to a domestic violence shelter after mother threatens to harm the children, father has a PPO against mother, and there are two substantiated CPS complaints against mother, finding this factor favors father is not an error.
- ***Lagueux v. Lagueux*, unpublished per curiam opinion of the Court of Appeals, issued May 10, 2012 (Docket No. 305456).** When testimony regarding the sole alleged incident of domestic violence is conflicting, the fact finder is to determine the credibility and weight of trial testimony. If the evidence does not clearly preponderate against the trial court's findings, then finding this factor not applicable is not against the great weight of the evidence.
- ***Lowe v. Lowe*, unpublished per curiam opinion of the Court of Appeals, issued December 14, 2010 (Docket No. 298052).** Evidence of a conviction of domestic violence by father, not including additional testimonies of verbal and physical abuse by father, is enough to find this factor favors mother.
- ***MacIntyre v. MacIntyre*, 267 Mich App 449 (2005).** When both parties admit to spanking the child but the child has witnessed mother physically attack father and mother's testimony of father's violence is found to be incredible, finding this factor favors father is not an error.
- ***Manssur v. Manssur*, unpublished per curiam opinion of the Court of Appeals, issued June 10, 2014 (Docket No. 319330).** When father is controlling, spit on mother's face, and threw items at her, mother has placed five calls to the police about domestic violence in six years, and the children witnessed the incidents, finding this factor favors mother is not an error.
- ***McIntosh v. McIntosh*, 282 Mich App 471 (2009).** When father is an alcoholic, there was a conviction for domestic violence, mother testifies father has been abusive throughout their marriage, the eldest son shows signs of being traumatized, and father admits he was "probably" physically assaultive toward mother on two occasions although mother had once thrown a glass at him, finding this factor favors mother is not an error.
- ***Rains v. Rains*, 301 Mich App 313 (2013).** When the trial court is aware of several previous PPOs against father and knows the court has set aside a PPO against father 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.
- ***Salatka-Belcovson v. Belcovson*, unpublished per curiam opinion of the Court of Appeals, issued June 16, 2009 (Docket No. 289686).** When mother offers examples of father's assaultive behavior but the trial court finds father's testimony to be more credible than mother's and mother offers no persuasive reason for rejecting the trial court's determinations, finding this factor favors neither party is not an error.
- ***Sinicropi v. Mazurek*, 273 Mich App 149 (2006).** The trial court's statement that it did not find any evidence of domestic violence does not mean it did not consider the evidence.

- ***Snyder v. Snyder*, unpublished per curiam opinion of the Court of Appeals, issued January 2, 2014 (Docket No. 314832).** When father had physically attacked mother and mother obtained a PPO, but four years had since passed without any allegations of abuse, finding this party favors neither party is not an error when the trial court determines there is no evidence suggesting a pattern of domestic violence.
- ***Weide v. Weide*, unpublished per curiam opinion of the Court of Appeals, issued September 20, 2011 (Docket No. 301943).** When mother hit father and threw objects before they were married but not after and father pushed mother on one occasion, finding this factor equal between the parties is not an error. The trial court's finding that the parties had engaged in heated exchanges that did not amount to domestic violence demonstrates that it exercised its ability to weigh the credibility of the evidence.
- ***Steinbrink v. Noreyko*, unpublished per curiam opinion of the Court of Appeals, issued March 21, 2017 (Docket No. 333115).** Trial court did not err in awarding sole physical and legal custody of the children to plaintiff and suspending defendant's parenting time when defendant's basis for objecting to the trial court's findings is defendant's own testimony and unsupported speculation regarding abuse by plaintiff.

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

#### **Cases in the Manual:**

- ***Bowers v. Bowers*, 198 Mich App 320 (1993).** If the best interests of the individual child will be better served by separate custody of the child, that custody arrangement should prevail.
- ***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," including childcare arrangements.
- ***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, 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.

#### OTHER EXAMPLES:

- ***Pieper v. Pieper*, unpublished per curiam opinion of the Court of Appeals, issued March 21, 2017 (Docket No. 334685).** Trial court did not err in granting plaintiff sole physical custody of children, as record showed defendant's part-time jobs and poor financial management reflected a questionable ability to provide for the children, and defendant's multiple violations of the court orders and tendency to leave children with unapproved third-parties, including his father who was accused of sexual misconduct were relevant considerations under factor (I).
- ***McCoy v. Main*, unpublished per curiam opinion of the Court of Appeals, issued April 11, 2017 (Docket No. 334659).** The trial court is free to adopt the custody investigator's recommendation provided that the court indicates on the record that it makes an independent determination that the findings in the investigator's report were correct and proper.
- ***Landry-Chan v. Chan*, unpublished per curiam opinion of the Court of Appeals, issued April 20, 2017 (Docket No. 331977).** The trial court could properly limit evidence related to the best interest factors to events after the last custody order had entered because the court had already considered the best interest factors for entry of that order.
- ***Leagon v. Leagon*, unpublished per curiam opinion of the Court of Appeals, issued July 11, 2017 (Docket No. 334922).** The Court of Appeals could find no authority to support plaintiff's argument that only moral transgressions that occurred after filing a motion to change custody should be considered in the best interests analysis.
- ***Kimball v. Pearson*, unpublished per curiam opinion of the Court of Appeals, issued July 25, 2017 (Docket No. 335639).** Generally a trial court does not abuse its discretion in denying a motion for reconsideration that rests on evidence that could have been presented in the original motion; however this principle must yield to the primary goal of securing custody decisions that are in the best interests of the child.
- ***Miller v. Johnson*, unpublished per curiam opinion of the Court of Appeals, issued August 8, 2017 (Docket No. 336083; 337055).** Because the trial court considered two motions to change custody – Johnson's motion to change physical custody and Miller's motion to change legal custody – it was required to determine separately whether each party could establish proper cause or change of circumstances sufficient to reopen the custody issues.
- ***Bridge v. Bridge*, unpublished per curiam opinion of the Court of Appeals, issued August 15, 2017 (Docket No. 335453).** The trial court did not err in finding that a balancing of the factors justified joint legal custody when although the parties had difficulty cooperating in a natural way, they were able to use a computer program called Our Family Wizard to communicate and resolve issues involving the children.

- ***Nordhielm v Dapena-Baron***, unpublished opinion of the Court of Appeals, released November 14, 2017. (Docket No. 335877). The trial court did not err in its finding that sharing joint legal and physical custody would not be in the child's best interests due to the ongoing conflict between the parties.

## ESTABLISHED CUSTODIAL ENVIRONMENT

### Cases in the Manual:

- ***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) and (e) 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.
- ***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.
- ***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.
- ***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 is proper to award custody to the maternal grandmother.
- ***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.
- ***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.

- ***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 case was remanded because the trial court failed to consider the mother’s fundamental interest in raising the child.
- ***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.
- ***Mazurkiewicz v. Mazurkiewicz*, 164 Mich App 492 (1987).** Where the husband was the primary caretaker prior to divorce, maintained a stable income, and visited the children while the mother was not frequently in the home, it was proper for the court to find there was no established custodial environment and to grant custody to the father.
- ***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.
- ***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.



- ***Griffin v. Griffin*, \_\_\_ Mich App \_\_\_ (2018).** The trial court erred by applying the preponderance of the evidence standard instead of clear and convincing evidence standard to the best interests determination under MCL 722.23 when the parties and the court all agreed that maintaining the current custodial arrangement was not in the child's best interests and both parties moved for a change in custody.

#### **OTHER EXAMPLES:**

- ***Ballo v. Branstrom*, 2009 WL 1067565 (2009).** Where children's time is split between two homes in the same state, and exchanges of the children were regular and planned, creating certainty in the children's lives and building expectations of permanency, it may be proper to find an established custodial environment exists with both parents.
- ***Pierron v. Pierron*, 486 Mich 81 (2010).** Where a move to a new school would not modify the established custodial environment, and would result in only minor adjustments to parenting time, the burden is a preponderance of the evidence that the move is in the best interest of the child.
- ***Corbin v. Boulton*, unpublished per curiam opinion of the Court of Appeals, issued October 13, 2016 (Docket No. 332049).** The change in custody, which granted the Defendant sole physical custody of the child, was justified because the child established a custodial environment with the defendant, while the plaintiff's parenting time was infrequent, varied, and short in duration.
- ***Sherman v. Sherman*, unpublished per curiam opinion of the Court of Appeals, issued October 6, 2016 (Docket No. 331622).** Under MCL 722.27(1)(c), joint established custodial environment existed since both parents provided the children with love, affection, guidance, and the necessities of life.
- ***Anderson v. Anderson*, unpublished per curiam opinion of the Court of Appeals, issued November 1, 2016 (Docket No. 329133).** Parenting time change did not interfere with the custodial environment of the child because the short amount of time the defendant spent with the child was "appreciable" compared to the time the plaintiff spent with the child. The case was remanded to the trial court to determine the best interests of the child.
- ***Hazen v. Phillis*, unpublished opinion of the Court of Appeals, released November, 2017 (Docket No. 337106).** The trial court erred in modifying the existing custody order without first establishing proper cause or a change of circumstances to warrant modification.
- ***Joslyn v. Scott*, unpublished opinion of the Court of Appeals, released November 21, 2017 (Docket No. 337809).** Although the trial court erred in failing to determine whether an established custodial environment (ECE) existed before making a custody determination, the record supports the trial court's belated assertion that an ECE existed with both parties, and therefore the trial court needed only to find by a preponderance of the evidence that remaining in the current shared custodial environment was in the child's best interests.

## PARENTING TIME

- ***Emmons v. Vancourt*, unpublished per curiam opinion of the Court of Appeals, issued May 4, 2017 (Docket No. 335703).** Because the trial court's order modifying parenting time decreased the mother's parenting time by approximately eleven weeks, there was a change in the established custodial environment. Thus, the trial court erred in not determining whether there was proper cause or a change in circumstance when conducting a parenting-time analysis.
- ***Yacheik v. Yacheik*, 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.
- ***Duhl v. Ladomer*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2017 (Docket No. 334307).** Where, over time, the children began to experience normal life changes that no longer made the defendant's seven out of fourteen overnights appropriate but the defendant could still exercise his established custodial environment while having four out of fourteen overnights during the school year, the proper standard was a preponderance of the evidence that the change was in the children's best interests.
- ***Enos v. Langworthy*, unpublished per curiam opinion of the Court of Appeals, issued May 11, 2017 (Docket No. 336422).** The trial court erred when it granted the motion regarding parenting time without determining whether an established custodial environment existed with one or both parents and whether there was a change in circumstances or proper cause.
- ***Anderson v. Anderson*, unpublished per curiam opinion of the Court of Appeals, issued November 1, 2016 (Docket No. 329133).** Parenting time change did not interfere with the custodial environment of the child because the short amount of time the defendant spent with the child was "appreciable" compared to the time the plaintiff spent with the child. The case was remanded to the trial court to determine the best interests of the child.
- ***Rozen v. Rozen*, unpublished per curiam opinion of the Court of Appeals, issued March 23, 2017 (Docket No. 333250).** A finding on the threshold determination of proper cause or change in circumstances to determine whether to change custody was unnecessary when custody order was a temporary order.
- ***Fargo v. Fargo*, unpublished per curiam opinion of the Court of Appeals, issued December 20, 2016 (Docket No. 332242).** When an established custodial environment exists only with one parent, the court must still determine if awarding joint legal custody will impact the established custodial environment and apply the appropriate standard.
- ***Nasser v. Yafai*, unpublished per curiam opinion of the Court of Appeals, issued February 21, 2017 (Docket No. 330362).** A trial court may not modify a custody order, determine an established custodial environment, and make a best interest determination solely on the basis of guardian ad litem reports.
- ***Bluemle v. Carr*, unpublished per curiam opinion of the Court of Appeals, issued February 21, 2017 (Docket No. 334651).** Trial court erred in ruling that there could not

be an established custodial environment with either party due to the parties' joint physical custody arrangement; the court must make a finding based on evidence whether the child has an established custodial environment with one, both, or neither of the parents.

- ***Duhl v. Ladomer*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2017 (Docket No. 334307).** Where over time, the children began to experience normal life changes that no longer made the defendant's seven out of fourteen overnights appropriate but the defendant could still exercise his established custodial environment while having four out of fourteen overnights during the school year, the proper standard was a preponderance of the evidence that the change was in the children's best interests.
- ***Daly v. Ward*, unpublished per curiam opinion of the Court of Appeals, issued April 18, 2017 (Docket No. 333425).** It was irrelevant whether the trial court's temporary order changing custody was proper; once a new established custodial environment exists –regardless of how it came to exist – it cannot be changed absent clear and convincing evidence that a change is in the child's best interests.
- ***Fante v. Nova*, unpublished per curiam opinion of the Court of Appeals, issued June 29, 2017 (Docket Nos. 334735; 336085).** The trial court improperly "placed" the children with their father under what the trial court called a temporary order pending the conclusion of a child protective services investigation of mother. Because the order amounted to a change in custody, the court should have first determined whether an established custodial environment existed and whether an analysis of the best interest factors supported a change.
- ***Bauer v. Waidelick*, unpublished per curiam opinion of the Court of Appeals, issued July 25, 2017 (Docket No. 336876).** The trial court did not err in finding insufficient evidence of a change in circumstances where the alleged change was likely a result of the parents' continuous hostile behavior rather than a separate event.
- ***Russian v. Porter and intervener Rebeaud*, unpublished per curiam opinion of the Court of Appeals, issued August 22, 2017 (Docket No. 337168).** The Revocation of Paternity Act does not require an analysis of whether an established custodial environment exists in connection with an analysis of the best interests of the child under MCL 722.1443(4).
- ***Roe v. Roe*, unpublished per curiam opinion of the Court of Appeals, issued August 22, 2017 (Docket No. 336452).** Although a change in the defendant's availability to care for his children may be a normal life change, the *Vodvarka* standard requiring more than – normal life changes to justify a change in circumstances refers to changes in the child's life rather than the custodian's life.
- ***d'Itri v. Bollinger*, unpublished per curiam opinion of the Court of Appeals, issued September 19, 2017 (Docket No. 337815).** During a custody proceeding when facts were disputed which were relevant to determining whether the threshold proper cause or change in circumstances burden has been met, the trial court erred by not holding an evidentiary hearing.
- ***Wilson v. Haney*, unpublished per curiam opinion of the Court of Appeals, issued October 10, 2017 (Docket No. 338738).** Although the referee erroneously considered the factors for a change in domicile when the plaintiff had sole legal custody of the minor

child, the trial court corrected the error in the de novo hearing and correctly considered whether the change in domicile would modify an established custodial environment notwithstanding the child's legal custody.

- ***Goetz v. Frandle*, unpublished per curiam opinion of the Court of Appeals, issued October 12, 2017 (Docket No. 338142).** Although the child lived entirely with her mother, the parties' contentious divorce, the mother's exclusion of the father during her pregnancy and the child's birth, and the need for court intervention for the father to see the child supported the trial court's determination that the child's environment was insufficiently stable to constitute an established custodial environment with the mother.
- ***Espinoza v. Espinoza*, unpublished per curiam opinion of the Court of Appeals, issued October 12, 2017 (Docket No. 338145).** Although the trial court stated that if defendant secured housing in the children's school district it would consider alternating weeks of parenting time and establish a review hearing in three months to further consider the children's custody, the trial court was still required to consider whether the children had an established custodial environment and whether there was a change in circumstances before changing the current custody order.
- ***Adkins v. Piechan*, unpublished per curiam opinion of the Court of Appeals, released November 21, 2017 (Docket No. 337745).** The trial court erred in determining that evidence of defendant's relationships with numerous high-school-aged children could have a significant effect on the children's well-being did not meet the burden of proof for proper cause or change in circumstances warranting a change in custody and parenting time.
- ***Russian v. Porter*, unpublished per curiam opinion of the Court of Appeals, released January 18, 2018 (Docket No. 339288).** The trial court did not err in granting joint custody and equal parenting time of the parties' 8-month-old child when evidence presented affirmed that the child was thriving on a diet of both breast milk and formula, and that the child was well cared for and in a stable environment with both parties.
- ***Dubin v. Fincher*, unpublished per curiam opinion of the Court of Appeals, released January 30, 2018 (Docket No. 339175).** The trial court's denial of defendant's motion for expanded parenting time and a reunification plan does not "affect custody" for purposes of MCR 7.202(6)(a)(iii), and, therefore, defendant does not have an appeal of right over which the Court of Appeals could exercise jurisdiction pursuant to MCR 7.203(A)(1).

### THIRD PARTY CUSTODIANS

#### Cases in the Manual:

- ***Eldred v. Ziny*, 246 Mich App 142 (2001).** When the father has an emotional bond with the child but is found to be unfit due to his inability to provide for the child and the grandmother is found to provide a stable and secure home for the child, it is proper for the court to award custody to the grandmother.
- ***Heltzel v. Heltzel*, 248 Mich App 1 (2001).** When the grandparents have established a custodial environment over several years, the mother must prove by a preponderance of the evidence that the child's placement with her is in the child's best interest.

- ***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.

#### OTHER EXAMPLES:

- ***Bahr v. Bahr*, 60 Mich App 354 (1975).** If the clear and convincing evidence establishes that the best interest of the child is served by awarding custody to the third party, the natural parent presumption is rebutted. Rebuttal does not require proof of parental unfitness, neglect, or abandonment.
- ***Sinicropi v. Mazurek*, 273 Mich App 149 (2006).** An order of filiation cannot be entered if a proper acknowledgment of parentage has not been revoked. *Eldred* does not say that the rights of a biological father are greater than the rights of a man who signs an Acknowledgment of Paternity and obtains custody to that child.
- ***Department of Health and Human Services v. Birmingham*, unpublished per curiam opinion of the Court of Appeals, issued May 30, 2017 (Docket No. 336553).** Although the Child Custody Act allows certain designated third-parties to initiate an action for custody of a child and allows the trial court to award custody to other third-parties when the court is already engaged in a custody determination, a Family Support Action designating a great-uncle of the child as the child’s custodian was for purposes of determining that he had the right to seek support and did not create a custody dispute sufficient to give the trial court authority to entertain a motion to grant custody to him.
- ***Block v. Galbraith*, unpublished per curiam opinion of the Court of Appeals, issued September 5, 2017 (Docket No. 335874).** The trial court erred by attempting to award custody in a guardianship proceeding without complying with the Child Custody Act, which is the exclusive act governing custody determinations.

#### CHANGING THE CHILD’S LEGAL RESIDENCE OR DOMICILE

##### Cases in the Manual:

- ***Anderson v. Anderson*, 170 Mich App 305 (1988).** Where the mother sought permission to move the child from Michigan 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. Instead of having the child on alternate weekends and other impromptu times, the father would have the child for six weeks during the summer, the entirety of the Christmas vacation, alternate spring vacations, and other times as the parties desired. The court confirmed this was a valid change and even suggested the extended periods of visitation 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.

- ***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 their current residence or 100 or more miles from the other parent, the 100 miles must be measured in radial miles, not road miles.
- ***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, and 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.
- ***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.

The court found this was a reasonable alternative to the prior arrangement. Finally, where the parents cooperated and were willing to encourage an ongoing relationship between the other parent and child, it was proper for the court to find that the petitioning parent was not trying to defeat or frustrate the parenting time schedule by moving.

- ***Overall v. Overall*, 203 Mich App 450 (1994).** Where a move from Michigan to New York 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.
- ***Scott v. Scott*, 124 Mich App 448 (1983).** Where the mother's desire to change the child's domicile to another state 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 the other state, it was proper to find that the move would not negatively impact the relationship between the father and the child. 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.
- ***Safdar v. Aziz*, 321 Mich App 219 (2017).** A trial court has authority to consider a motion for change of domicile that would impact custody and modify a judgment of divorce, even if this action occurs while an appeal is pending

## Other Examples

- ***Matthew v. Trudell*, unpublished per curiam opinion of the Court of Appeals, issued April 5, 2017 (Docket No. 334911).** A petitioner seeking to change the residence of a child 100+ miles away is not required to quantify with specific accuracy the degree of improvement that would occur if the move is permitted, but must provide some substantiated evidence that the move will meet the *D’Onofrio* test.
- ***Blanchard v. Covell*, unpublished per curiam opinion of the Court of Appeals, issued March 23, 2017 (Docket No. 334495).** In a change of domicile case, where the move would benefit the parent but not necessarily the children’s lives, the nonmoving parent’s parenting time and relationship with the children would be affected, and the children were flourishing in their current environment and connected to friends and extended family, it was proper for the court to deny the motion to change domicile.
- ***Hund v. Hund*, unpublished per curiam opinion of the Court of Appeals, issued July 6, 2017 (Docket No. 334313).** In considering a request to change a child’s domicile, the court is not limited to evidence of how the change would improve the child’s life from the current situation but may consider a former better situation made worse by voluntary changes such as, in this case, the mother’s voluntary temporary move to her parent’s house to be nearer to her desired location.
- ***Johnson v. Johnson*, unpublished per curiam opinion of the Court of Appeals, issued August 8, 2017 (Docket No. 336827).** When plaintiff was granted a change of domicile to move the parties’ children out of state to Virginia, it was appropriate for plaintiff to bear the burden of travel expenses to accommodate defendant’s holiday and summer parenting time in Michigan, while the travel expenses for defendant’s optional school-year weekend parenting time in Virginia are defendant’s burden.

## Parenting Time Factor (a): The existence of any special circumstances or needs of the child.

### Cases in the Manual:

- ***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.

### OTHER EXAMPLES:

- ***Demski v. Petlick*, 309 Mich App 404 (2015).** Mother and her husband argued that because the child was timid around strangers and had a history of serious illness, it would be dangerous to put the child in an environment where mother was not present. The court

found that the trial court's grant of supervised parenting time to father was not a palpable abuse of discretion because plaintiff had the capacity and disposition to provide the child with love, affection and guidance, as well as food, clothing, medical care, and other material needs.

- ***Kristianti v. Karppinen*, unpublished per curiam opinion of the Court of Appeals, issued August 31, 2017 (Docket No. 332676).** Trial courts must consider facts including the relative income of the parties, the needs of the child, and any other particular circumstances of the case before determining if deviation from the child support formula is warranted.

**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.**

- None

**PARENTING TIME FACTOR (c): The reasonable likelihood of abuse or neglect of the child during parenting time.**

#### **Cases in the Manual:**

- ***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 or cursing in the noncustodial parent's home during parenting time.

#### **Other Cases:**

- ***Chakkour v. Chakkour*, unpublished per curiam opinion of the Court of Appeals, issued December 20, 2012 (Docket No. 309854).** Court denies mother parenting time based on finding that mother had anger management problems, even after completing a court-ordered anger management program, and mother wreaked vengeance on the children for misbehaving.
- ***Kzeski v. Kzeski*, unpublished per curiam opinion of the Court of Appeals, issued March 25, 2014 (Docket No. 315529).** The court found that suspension of defendant's parenting time was in the children's best interests. Where plaintiff testified that the children were afraid of defendant and wanted no contact with her; a counselor testified that the children started "twitching" in their seats and looked "absolutely horrified" when presented with the idea of parenting time.
- ***Rackowski v. Correll*, unpublished per curiam opinion of the Court of Appeals, issued November 14, 2013 (Docket No. 313423).** Although the trial court determined that defendant's boyfriend did not deliberately cause the death of the minor child ("HH"), the court failed to address whether his previous actions, including having assaulted his ex-girlfriend's partner and his failure to obtain medical care for HH, created a safety risk for



the other minor child (“OR”). The court reversed and remanded for a new best interest hearing.

- ***Shenkenberg v. Shenkenberg*, unpublished per curiam opinion of the Court of Appeals, issued December 18, 2014 (Docket No. 321384).** Finding plaintiff’s allegations that defendant sexually and physically abused one of the minor children credible, the trial court limited defendant to two supervised parenting time sessions each week. The reports from supervised parenting time showed that the minor child frequently exposed her genital area to defendant during visits and engaged in sexual gestures aimed toward defendant.
- ***Sturgis v. Sturgis*, 302 Mich App 706 (2013).** The court 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. 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 in the Manual:**

- ***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 in the Manual:**

- ***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.

**OTHER EXAMPLES:**

- ***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.
- ***Sharpe v. Sharpe*, unpublished per curiam opinion of the Court of Appeals, issued November 19, 2013 (Docket No. 310526).** Court of Appeals affirmed trial court’s award that child live primarily with plaintiff but defendant could exercise parenting time any time he was in Michigan with two weeks’ notice and under plaintiff’s supervision based on a finding that defendant lacked insight into the burden and hardship that the minor child would suffer in travelling between Michigan and Georgia.

**PARENTING TIME FACTOR (f): Whether a parent can reasonably be expected to exercise parenting time in accordance with the court order.**

**Cases in the Manual:**

- ***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.
- ***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.

**OTHER EXAMPLES:**

- ***Gates v. Kadoguchi*, unpublished per curiam opinion of the Court of Appeals, issued February 07, 2017 (Docket No. 330778).** While the trial court may order a parent and children to go to family therapy while parenting time is suspended, the court should review the progress under therapy more frequently than every 18 months to ensure that the parent's parenting time is not being effectively denied through delayed review hearings.

**PARENTING TIME FACTOR (g): Whether a parent has frequently failed to exercise reasonable parenting time.**

**Cases in the Manual:**

- ***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 in the Manual:**

- ***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.

#### OTHER EXAMPLES:

- ***Diez v. Davey*, 307 Mich App 366 (2014).** Where plaintiff casted slurs on defendant's character, specifically, that she may take the children to the Philippines as she did with her children from a previous relationship. 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 in the Manual:

- ***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.
- ***Stevenson v. Stevenson*, 74 Mich App 656 (1977).** Where the child considered his stepfather to be his real father and his half-brothers to be true brothers, and where the father's "late intervention" could have traumatized the young boy, the court properly found that the father failed to meet his burden of proof to justify modification of the established custodial environment.

#### OTHER EXAMPLES:

- ***Knieper v. Dumas-Knieper*, unpublished per curiam opinion of the Court of Appeals, issued March 16, 2010 (Docket No. 293494).** The court held that the trial court properly considered the parents' inability to communicate in formulating a parenting time schedule under the catch-all exceptions of MCL 722.23(1) and MCL 722.27a(6)(i). The trial court minimized the amount of disruption to the minor child by gradually increasing plaintiff's amount of parenting time, which would allow for plaintiff and defendant to build up a level of trust between the two of them.
- ***Emmons v. Vancourt*, unpublished per curiam opinion of the Court of Appeals, issued May 4, 2017 (Docket No. 335703).** When a change in parenting time would bring plaintiff's annual overnights from 265 down to 182.5, the change would necessarily impact the child's established custodial environment. As such, the trial court should have required defendant to show proper cause or a change of circumstances to change custody and then show by clear and convincing evidence that the parenting time modification is in the best interest of the child.
- ***Burmeister v. Cole*, unpublished per curiam opinion of the Court of Appeals, issued September 27, 2016 (Docket No. 329899).** Trial court found plaintiff did not undergo substance abuse assessment which was court ordered her motion to modify parenting time was denied. The court found the trial court failed to consider the best interest factors [MCL 722.27a(6)] and the relationship between the child and mother.
- ***Underhill v. Underhill*, unpublished per curiam opinion of the Court of Appeals, issued November 1, 2016 (Docket No. 33187).** The parenting time for the plaintiff was merely extended before the conclusion of the hearing to account for a possible custody

change and the start of school, but no official change of custody was mentioned until the hearing was completed.

- ***Vial v. Flowers*, unpublished per curiam opinion of the Court of Appeals, issued September 22, 2016 (Docket No. 332549).** Parties' mediation agreement on custody and parenting time was binding and because the trial court failed to make an independent examination of the best-interest factors before entering the parenting time agreement as an order the case was remanded.
- ***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.
- ***Lessard v. Londo*, unpublished per curiam opinion of the Court of Appeals, issued June 13, 2017 (Docket No. 336156).** The trial court did not err by gradually increasing parenting time from a limited, supervised schedule and not allowing a more liberal parenting time schedule as suggested by articles plaintiff introduced because it was required to determine a parenting time schedule based on the facts of the case and not on a hypothetical child.
- ***Marchese v. Marchese*, unpublished per curiam opinion of the Court of Appeals, issued June 22, 2017 (Docket No. 330925; 331560).** Evidence of a parent intentionally withholding the other parent's court-ordered parenting time until some other condition is met (in this case, sale of the parties' cottage to the custodial parent's mother) is a clear violation of that parenting time order and grounds for a contempt ruling against the violator.
- ***Campean v. Campean*, unpublished per curiam opinion of the Court of Appeals, issued July 27, 2017 (Docket No. 335861).** Normal life changes such as employment schedule, housing relocation, and remarriage do not amount to change of circumstances warranting modification of parenting time as significant as a custody change when the life changes focused on the parent and not on their impact to the child's environment, behavior, and well-being.

## APPENDIX XI — Glossary of Terms

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**Agency Parenting Time:** Agency parenting time is parenting time which occurs in a supervised setting to ensure protection of the child(ren). Examples of the type of cases where an agency may be used are child abuse cases, substance abuse cases and domestic abuse cases. Common examples of agencies that may provide supervised parenting time include: the friend of the court office, family and children's services offices, counseling centers, substance abuse or other treatment centers and programs available through domestic violence agencies.

**Domestic Relations Mediation:** Domestic relations mediation is a nonbinding process in which a neutral third party facilitates communication between parties to promote settlement. If the parties so request, and the mediator agrees to do so, the mediator may provide a written recommendation for settlement of any issues that remain unresolved at the conclusion of a mediation proceeding.

**Change of Domicile:** Domicile refers to the place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.<sup>236</sup>

**Change of Legal Residence:** Residence refers to the place where one actually lives, as distinguished from a domicile. A person may have more than one residence at a time but only one domicile.<sup>237</sup>

**Child Custody Best Interests Factors:** A standard by which a court determines what arrangements would be to a child's greatest benefit.<sup>238</sup> In Michigan, "[B]est interests of the child" means the sum total of the Child Custody Best Interest factors to be considered, evaluated, and determined by the court.

**Custodial Parent:** The parent awarded physical custody of a child in a domestic relations case.

**Established Custodial Environment:** 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. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered.<sup>239</sup>

**Grandparenting Time (Grandparent Visitation):** A grandparent's court-approved access to a child. The Supreme Court recently limited a grandparent's right to have visitation with his or her grandchild if the parent objects, citing a parent's fundamental right to raise his or her child and to make all decisions concerning the child free from state intervention absent a threat to the child's health and safety.<sup>240</sup>

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<sup>236</sup> Black's Law Dictionary.

<sup>237</sup> Black's Law Dictionary.

<sup>238</sup> Black's Law Dictionary.

<sup>239</sup> MCLA 722.27(1)(c).

<sup>240</sup> Black's Law Dictionary.

**Joint Legal Custody:** An arrangement by which both parents share the decision-making authority over the children.

**Joint Physical and Legal Custody:** An arrangement by which both parents share the responsibility for and authority over the child at all times. Parents consult and share equally in the child's upbringing and in decision-making about upbringing. In a joint-custody arrangement, the rights, privileges, and responsibilities are shared.

**Joint Physical Custody:** An arrangement by which both parents share the caregiving authority over the children.

**Mandated Reporter:** An occupation that is listed in MCL 722.623 that is required to report suspected child abuse and neglect to the Michigan Department of Health and Human Services.

**Non-custodial Parent:** In the child-custody laws of some states, a parent without the primary custody rights of a child; i.e., the parent not awarded physical custody of a child in a divorce.

**Parenting Time (Visitation):** A noncustodial parent's period of access to a child.<sup>241</sup>

**Parenting Time Factors:** 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 to have a strong relationship with both or his or her parents. With exceptions, 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. 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.

**Sole Custody:** An arrangement by which one parent has full control and sole decision-making responsibility – to the exclusion of the other parent – on matters such as health, education, religion, and living arrangements.

**Supervised Parenting Time:** In some cases, concern arises about the safety or well-being of the child(ren) during parenting time. For these cases, supervised parenting time can assist in managing and facilitating the contact between the parent and child(ren). Given the presumption in favor of parenting time, supervised parenting time should occur only when other, less restrictive methods of ensuring a child(ren)'s well-being during parenting time cannot be implemented. The primary purpose of supervised parenting time is to provide for the safety of the child(ren). The welfare of the child(ren) is the paramount consideration in determining the manner in which supervision is provided.

**Therapeutic Parenting Time:** Therapeutic parenting time is the process of attaining a predetermined achievable parenting time goal through the assistance of therapy.

**Third Party Supervised Parenting Time:** Third-party supervised parenting time is parenting time supervised by a friend, relative or other individual selected by the court. Third-party supervision may be recommended in cases where circumstances indicate that monitoring is warranted, but agency intervention is not required.

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<sup>241</sup> Black's Law Dictionary.

**Parental Kidnapping (MCL 750.350a):** An adoptive or natural parent of a child shall not take that child, or retain that child for more than 24 hours, with the intent to detain or conceal the child from any other parent or legal guardian of the child who has custody or parenting time rights under a lawful court order at the time of the taking or retention, or from the person or persons who have adopted the child, or from any other person having lawful charge of the child at the time of the taking or retention.

**Parental Alienation:** Parental alienation was a theory originally developed as parental alienation syndrome. According to Black's Law Dictionary (10th ed. 2014) parent-alienation syndrome is a situation in which one parent has manipulated a child to fear or hate the other parent; a condition resulting from a parent's actions that are designed to poison a child's relationship with the other parent. Some mental health specialists deny that this phenomenon amounts to a "psychological syndrome."