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# MICHIGAN FATHER'S RIGHTS & MEN'S DIVORCE GUIDE



**Written By: Goldman & Associates Attorneys**

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## CHAPTER 1: CHILD CUSTODY: WE ARE DEDICATED TO YOU

Because we understand how hard and how important a divorce and custody is, we take each case from each client seriously. We dedicate ourselves to ensuring each client gets the best possible outcome. Clients can also expect empathy and understanding from an attorney who also wants to make this ordeal as painless as humanly possible.

We won't stop fighting and you can count on us to have the skills, knowledge, and professionalism to get you through this painful but important milestone in your life and to help ensure the happiest and most successful future possible for you and your family.

### **Child custody: The most important fight of your life**

Every divorce case will typically involve money and the monetary value of varied assets. By contrast, custody of your children is literally priceless. Even if you have the ability to contest or modify a child custody decision, it will still be months of irreplaceable time lost before you will be able to set things right.

As such, it is essential that your attorney understands how priceless custody is, and does not treat it as simply another item on the divorce agenda. He or she needs to be absolutely committed to getting the best and most just custody arrangement the first time around.

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## CHAPTER 2: CHILD CUSTODY

Whether you married the other parent or not, the vast majority of parents love their children very much. As such, you most likely have a deep and abiding desire to care for your child and have them in your lives in one way or another. This chapter and others like it are intended to give you a thorough understanding of all the legal issues regarding the way Michigan family courts determine who has custody over a child.

### **Will the court automatically give custody to the mother?**

Technically no. The court will avoid any explicit gender preference. However, as a rule, the court prefers to give custody to the parent who was the primary caregiver. In practice, this usually results in the mother getting physical custody because many families still follow the classic model of male breadwinner/ female caretaker. However, an increasing number of households have moved to two working parents, the courts tend to give joint custody in this situation.

### **How does the court decide which parent(s) get custody of the children?**

There are two types of custody a parent has under the law. The first is legal custody, which is the right of every parent to make major decisions in their child's life and to be able to visit and have contact with them. Both parents generally retain legal custody even after the divorce is concluded. Usually, the only way you lose legal custody is if you lose your parental rights or the court makes a rare decision to grant sole legal custody to the other parent.

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The second form of custody is physical custody. Physical custody is where you actually keep the child in your home, under your roof. When you change houses, so does the child. This form of custody is usually only given to one of the parents but can sometimes be shared between both. This is the form of custody that ex-spouses commonly dispute over during a divorce case.

The core rule the court uses when determining custody is “the best interest of the child.” The interests of the parents themselves are strictly secondary. The court will consider a variety of factors which could affect the child’s wellbeing. There are twelve factors in total:

- Maintaining the relationships of love and affection shared between parent and child.
- The capability of the parents to provide that love and affection
- The ability of the parent to provide necessities such as food, clothing, shelter, and medical care
- Maintaining and continuing the stable environment the child has grown up with (including living with siblings) (family courts firmly believe that children need consistency and stability)
- The court will try its best to keep the child in their current home, which is why the court almost always gives the family residence to the custodial parent
- The moral fitness of either parent (including criminal records or the child knowing that one of the parents had an extramarital affair) (parents set a moral example for their children to follow)
- The mental and physical wellbeing of the parents (without discriminating against certain disabilities)
- The child’s school, home, and community records
- Child’s reasonable preference: if the child is old enough, then the court will conduct an in-person interview, and any reasonable preference will be taken into consideration
- The willingness of either parent to facilitate the child’s relationship with the other parent (Actions taken to shield a child from domestic violence or sexual assault may not be counted against this factor)
- Any history of domestic violence

Please note that custody can be given to someone who is not a biological parent. This is rare, but the court will also apply these factors in reference to an aunt, uncle, grandparent, or even a non-relative.

### **How does the court decide which parent is a primary caregiver?**

The family court will typically look at which parent spends more time with the children. It will also look at the following responsibilities:

- Bathing/grooming/dressing
- Buying clothes
- Buying groceries and preparing meals

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- Ensuring proper healthcare
- Facilitating social activities and participation in extracurricular activities
- Teaching and helping with homework
- Attending parent-teacher meetings and other activities involving the child's education
- Playing with the child and other leisure activities

Based on these standards it is still possible to be considered the primary caregiver despite spending relatively fewer hours and minutes with the children if you undertake the majority of the caregiving responsibilities.

### **How can I get joint custody?**

Any family law attorney will tell you that this is a tricky question with no definite answer. Joint custody often involves moving the child/children between residences constantly. This can be disruptive and unstable for a child, so courts can sometimes be reluctant to grant it. They will, however, heavily consider it by evaluating the following factors:

- The fitness of either parent
- The parent's agreement to joint custody
- The ability of the ex-spouses to work together and communicate for the sake of the child's wellbeing
- The child's reasonable preference
- The involvement of either parent with the child's life
- How closely the two parents live to each other
- The similarities and differences between the two homes
- The effect of any decision on the child's psychological development
- The physical ability of the parents to carry out the joint custody arrangement

It should be noted that certain state courts take a novel approach to joint custody known as "Bird's nest" custody. Under this arrangement, they have the child/children remain in one home while the parents take turns living there with the children. This approach is highly advantageous towards the factors listed above and makes the court far more likely to award joint custody. The court generally will not grant this arrangement unless the parents specifically ask for it. However, if you think that both of you can handle maintaining a shared home and separate individual homes, then you should definitely consider "bird's nesting".

### **Under joint custody, who gets to make the day to day decisions?**

Whether you are switching between houses or bird's nesting, the parent who is currently living in the same house as the children can make normal everyday decisions without having to consult with their spouse. Both

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parents must be involved in major decisions. Common examples are medical procedures, education, extracurricular activities, operating motor vehicles, etc.

### **Does the non-custodial parent still have access to the child's records (medical, school, etc.)?**

Yes. Under both Michigan and federal law, any parent (custodial or otherwise) who still retains their parental rights has access to such records unless there is a court order saying otherwise.

### **What can I do to make sure that I get the child custody arrangement that I want? Can I include it in a premarital agreement?**

That depends on what you want in terms of a custody arrangement and what you are willing to give up in exchange. Primary physical custody typically goes to the primary caregiver, so a serious compromise of your family/career balance would be required to set the stage for you to be relatively certain to be granted primary physical custody. Otherwise, the relative balance of a joint custody arrangement will largely depend on your relative involvement in caring for your children. Think long and hard about what balance you are willing to strike and commit to it for the duration of your marriage.

The short and simple answer regarding custody in premarital agreements is “no”. A family court will never deviate from the “best interest of the child standard” even if an accord is reached in a premarital agreement between the parents.

### **How does the court determine the custody of an out of wedlock child?**

The court will automatically recognize the one who gave birth to the child as the mother. After that any man who meets one of the requirements/conditions for the recognition of parenthood/paternity shall be given parental rights equal to the mother. Physical custody will still be based on the best interest of the child.

### **Does the court appoint someone to represent the child/children when custody is being argued in court?**

Often yes. If the court comes to believe that the child's interest is not being adequately represented, the court will appoint a “guardian ad litem”. This person will visit the parents and their homes and will thoroughly investigate the child's life. They will take these investigations and give recommendations to the court about what kind of arrangement will be best for the child/children. The court may charge the parents fees for this service if they are found to be able to pay.

### **Will the court split up siblings when determining custody?**

Siblings will only be split up under extreme or unusual circumstances. Family courts generally prefer to keep siblings together for the sake of stability and maintaining that healthy familial relationship.

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## How does the court enforce custody orders?

The family court takes the violation of custody orders very seriously. Divorce is hard enough for a child without their parents breaking the rules, arguing in front of them, or even outright kidnapping them. When custody orders are violated, the court may bring contempt proceedings or habeas corpus proceedings.

Contempt proceedings are the most common enforcement tool. It typically involves the custodial parent bringing a contempt case against the other spouse. If they succeed, they could be awarded full custody, reduce the other parent's visitation rights, impose supervision on future parenting time, or even expose the other parent to criminal charges.

A Habeas Corpus proceeding is used to restore immediate custody to the custodial parent or guardian in the event of a wrongful taking or detention by another person. It cannot be used to impose any of the other consequences associated with civil or criminal contempt. Furthermore, under Michigan law, the court is not required to grant a writ of habeas corpus if the one who took the child was also a legal parent or guardian. When you file a motion for habeas corpus, explain who you are, who your child is, and your grounds for concluding that the child was wrongfully taken.

If your former spouse does anything which violates the custody order handed down by the family court, do not hesitate to call the police.

## What if my spouse violates the custody arrangement and goes to another state?

The Parental Kidnapping Prevention Act (PKPA) ensures full faith and credit for all custody and visitation orders in all fifty states. In the past, it was not uncommon for one of the parents to go to another state and have the court issue a custody order that was more favorable to them. With the passage of the PKPA, state courts will now know which custody orders are legitimate, when they are permitted to issue custody orders or changes of their own, and when to enforce the custody orders of another state.

A court should not enforce orders from states which lack the proper jurisdiction. They should enforce orders originating from the state that has proper jurisdiction.

## How do I know which state court to bring my case in?

The jurisdiction of interstate custody cases is governed by the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA). The Michigan Court will have jurisdiction in the following scenarios:

- It is or was the child's home state within the last six months, and a parent or guardian still lives in Michigan
- There is no valid home state, or the home state has declined to hear the case. Also, there must either be personal connections between the child and the state or evidence relevant to the custody case
- Both of the above declined and stated that this state is the best one to hear the case

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- None of the above took the case

Also note that the Michigan courts can assume temporary emergency jurisdiction of the case if the child is present in Michigan and is abandoned or in danger.

### **Can Child Custody be modified?**

Yes. The parent petitioning for the modification must prove a “change in circumstances”. Even if both parents agree to the modification, the petition must still be brought before a judge who will make a determination based on that standard.

The change in circumstances standard is used in order to minimize disruptions and create as much stability in the child’s life as possible when living with divorced parents. This is aimed at preventing parents, whether genuine or petty, from making constant frivolous claims to gain a better custody arrangement.

### **What can I do to make sure that the modification process yields a favorable outcome?**

Whether you are the party seeking modification, or the other spouse seeking to block or mitigate the modification, the steps you must take are the same. Since you won’t be able to protect or bolster your case with a premarital or postmarital agreement, you will have to understand the rules and standards that are used to make modification decisions. Once you understand that modification depends on a change in circumstances which causes such a modification to be in the best interest of the child, you can then figure out what you can do to make your case more compelling. An important step to take is to document relevant aspects of your domestic situation. If your former spouse is making assertions about the situation involving your children that you know to be false, then you can use documentary evidence to disprove those lies.

Having solid proof of your family situation is also very helpful if you are asking for a very generous custody order (such as sole custody) that the judge might not be willing to grant if they had to just take your word for it.

In theory, it is also possible to intentionally alter your own circumstances in order to trigger a change in the custody arrangement, but the same issues may arise that you were faced with in the initial custody determination and then some. Not only do you have to carefully consider the costs and benefits of altering the balance between your career and your relationship with your children, but you also have to take into consideration the cost in time and money of going through a whole new custody determination.

### **Is there a difference between “best interest” and “change in circumstances”? Is “best interest” considered at all when deciding to modify child custody?**

Do not allow the varied terminology to trick you into thinking that the best interest standard is abandoned when seeking modification of the child custody arrangement. Unlike the modification of spousal support, the court uses more specific rules and standards when dealing with child custody. Any change of circumstance being used to justify a change in custody must be directly related to the child’s best interest and well-being. Examples of such a change might be drug abuse, violence, or neglect by the current custodial parent.

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Furthermore, the court will explicitly reject the use of certain changes in circumstances such as:

- The current custodial parent's financial situation, if the problem could be rectified by increasing the non-custodial parent's child support payments
- The normal changes in needs and desires associated with a child growing up and maturing
- The child's expressed desire (relevant to initial custody, but is not considered relevant when it changes)

### **If I petition to modify child custody, will I get the same judge?**

It depends. Child custody orders are typically modified by the judge who originally made the order. It helps that the judge from the prior case is aware of the facts and circumstances surrounding the original custody order, and is therefore in a better position to determine whether or not a change in circumstances justifies a modification of a custody arrangement.

### **What is the difference between custody and parenting time?**

Physical custody refers to the legal right to have that child in their lives and for that child to live with them. Parenting time is a specific privilege of a parent to spend time with the child at a designated time and place. When only one parent has physical custody, any visitation is parenting time. In a joint custody arrangement, each parent share an allotment of parenting time.

### **How do courts decide parenting time?**

If one parent is given sole physical custody, then the other parent has the right to reasonable visitation or "parenting time". This right cannot be denied because of unpaid child support. The court considers the following factors when deciding how long, how often, and under what circumstances the parenting time will take place:

- The special needs and circumstances of the child/children (the first priority of the custody issue)
- Whether the child is an infant (less than 1) and/or nursing (makes the mother a more suitable custodial parent).
- The probability of abuse or neglect during the visit (weighs against the abusive parent)
- The likelihood of abuse or neglect as a result of the visit
- How traveling will impact the wellbeing of the child (if both parents live far apart, the court might disfavor a joint custody arrangement)
- Whether or not the visiting parent is reasonably likely to be able to exercise parenting time in compliance with the court order (The court will not set up an arrangement if it does not think it will succeed. The last thing the court wants to do is create ongoing examples of rule breaking by their parents)

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- How frequently (if at all) the parent has missed parenting time (Makes a more favorable arrangement less likely for the deficient parent)
- The danger of one parent concealing or hiding the child from the other parent (the court will not abet kidnapping)
- Any other factor relevant to the child's wellbeing

Parenting time can involve the visiting parent visiting their spouse's house or at some neutral location. However, it is much more common for the custodial spouse to drop the child off at the other spouse's house. This often involves the child staying overnight.

### **How can I modify the parenting time arrangement?**

The court will only modify parenting time if the person seeking the modification can prove by "clear and convincing" evidence that the change is in the best interest of the child. The parent seeking modification must also show a "change in circumstances". The court insists on a change in circumstances before changing the custody arrangement because it considers consistency and stability to be among the core elements of a child's best interest.

### **My ex-spouse behaves badly during parenting time, can I restrict or deny their visitation?**

The court might limit visitation by ordering that all visits be supervised. However, outright denial of parenting time is extremely rare. The court might also decide to reduce the amount of parenting time depending on the circumstances and if doing so is deemed to be in the best interest of the child.

### **My ex-spouse has physical custody and wants to leave the state and take the children far away. Is there anything I can do to stop him/her?**

If the parent with physical custody wants to relocate out of state or more than 100 miles away from the other parent, they need to get court approval first. While you (the non-custodial parent) cannot outright stop them from moving, the Michigan family courts will do their best to make sure that the move is actually in the children's best interest. The court uses a five-prong test to make this determination:

- Whether the move will improve the quality of life for both the moving parent and the child
- Whether the move was explicitly intended to interfere with the other parent's access to the children (permission will likely be denied)
- Whether the court will be able to modify the parenting time arrangement in order to preserve the relationship with the other parent, as well as the likelihood of both parents complying with the new arrangement (not necessarily a deal breaker).
- Whether the other parent (i.e. you) is trying to oppose the move for the sole purpose of gaining an advantage regarding child support payments
- Any history of domestic violence seen by or directed against the children

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Please note that this test will not be applied at all if you (the non-custodial parent) do not have legal custody of the children (i.e. not joint custody).

It should be noted that where there is no joint custody, there is no need to give the non-custodial parent notice, ask permission, nor will the court consider the above factors in order to decide whether or not to allow the move.

### **My ex-spouse is denying me parenting time? What can I do?**

The main remedy for violating parenting time orders is contempt. A pattern of parenting time denial can result in a change in custody. Recall that preserving the relationship with both parents was one of the factors the court uses to decide physical custody. However, merely denying parenting time probably won't be enough unless the court was already close to giving you custody at the original hearing. The key is that the factors previously considered in addition to the other parent's misbehavior now tips the "best interest" scale in your favor.

### **How to responsibly co-parent during and after the divorce:**

1. Minimize the exposure of your children to fighting between you and your former spouse
2. Resolve any conflicts without actively involving your children or using them as bargaining chips
3. Do not disparage or insult your former spouse (the other parent) in front of your children
4. Try to keep activities and discipline consistent in your household regardless of the upheaval being experienced by the whole family
5. Don't try to micromanage your kids' activities with their other parent
6. Try to be civil and willing to communicate with the other parent

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## CHAPTER 3: CHILD CUSTODY PROCEDURE

### What is the Custody process during a divorce?

When a couple with children gets divorce, the subject of divorce might be mentioned in the initial complaints and answers. Aside from that, the court will approach that issue for the first time during the Early Intervention Conference (EIC) that is held 56 days after the initial complaint is filed. This is where the parents will get an overview of the friend of the court, the process of determining custody, and is also intended to resolve any temporary issues regarding any of the children that are younger than 18.

Following the EIC, there may be additional hearings dealing with custody during the 180 day (minimum) divorce process. In the end, the judge will either render his own divorce judgement or adopt the one agreed to by the spouses, and this agreement will contain the final order regarding custody unless it is altered in a later proceeding.

### What will happen after the divorce?

Again, this varies with each divorce. Additional hearings are usually reserved for situations where the court feels the need to periodically assess the welfare of the children or where the former spouses seek to modify the custody or parenting time arrangement.

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## **What if we want a custody order without a divorce? What if we were never married to begin with?**

You can seek a custody case with the family court without getting a divorce. If the parents of the child are not married, then they must establish paternity. A good way to accomplish this is for both parents to sign and file an affidavit of parentage. If you sign this affidavit, you waive your right to a paternity test later.

Following the filing of the affidavit, the family court will typically give initial custody to the mother until a custody proceeding is initiated and final custody is decided.

If neither parent agrees to sign the affidavit, then the court may order a paternity test. Depending on the result, either parent (or child) may initiate a paternity case to determine child support, parenting time, etc.



## CHAPTER 4: THE EFFECT OF DIVORCE ON CHILD CUSTODY

### **Will I lose custody of my children if I get a divorce?**

That depends on the circumstances, although it is extremely unlikely that you will lose all custody. Michigan family courts typically prefer joint custody arrangements. Under such an arrangement, the two parents would share physical custody as much as possible. However, if such an arrangement is not feasible, then custody will go to the spouse who is the primary caretaker. If your family is a traditional breadwinner-caretaker household, you will likely lose physical custody and will have to rely on parenting time.

There is also the possibility of a joint custody arrangement, especially if both you and your former spouse work full time. This is a great way to have both a career and a relationship with your children.

### **Is it okay that my former spouse hires a babysitter for half of the time that they have the kids?**

Absolutely. If they are a custodial parent with physical custody, then they can do anything that they could have done while they were still married to you, with the exception of major decisions that might require your input as the other parent. Hiring a babysitter is absolutely within their discretion during whatever period of custody that they have. You can do the same if you so choose.

The only limitation is if the use of the babysitter raises concerns with the court about the child's best interest, in which case the decision might be used as the basis to modify the custody arrangement. This is highly unlikely to occur because it is perfectly reasonable for a parent to also have a career.

**What if I am the non-custodial parent, could I hire a babysitter for part or all of my parenting time?**

Absolutely not, even if it's overnight in your home. Parenting time is time set aside specifically so that the non-custodial parent can maintain their relationship with the child. If it's just the child being looked after by someone else, they can do that with their custodial parent. If the non-custodial parent cannot be physically present at a certain time, then parenting time must be scheduled at another time when they are available. This is why parenting time is typically scheduled for times when that parent is not working or otherwise engaged.

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## CHAPTER 5: THE EFFECT OF CHILD CUSTODY ON PROPERTY DISTRIBUTION

**Is the spouse that receives primary physical custody likely to receive more, less, or the same amount of property when the marital property is distributed?**

The same amount, but the answer to that question is a bit complicated. The only reason why the custodial spouse would be given more property than they would have otherwise would be to compensate for the increased expense of caring for the children. However, that is what child support is for, so there is absolutely no reason to involve that issue in the property division process.

The only exception (if you can call it that) is the family home. If the house is marital property, then it is highly likely that physical ownership and possession of that house will go to the primary custodial parent, so that the children can continue to live in that home. The other spouse will typically be compensated for their share of the house's value. In that sense, the non-custodial parent will end up with more cash and personal property, while the other parent will have more real estate. However, the overall relative distribution of that property will still be the same as if the two spouses didn't have children.

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## CHAPTER 6: HOW ANNULMENTS AND LEGAL SEPARATIONS HANDLE CHILD CUSTODY

### Is child custody handled differently in a legal separation or annulment then it would be in a divorce?

When it comes to child custody, legal separation is identical to divorce. This makes sense given that separations are either a preliminary step before a divorce or an identical alternative to one. The only difference being that the parties are technically still legally married, which has no bearing on child custody issues.

As for annulment, the answer is mostly the same with a few minor complications. Annulment does not change the fact that child custody is not affected by the relationship status of the parents, so there is nothing that says that the rules are different for an annulment. The only wrinkle is that the court has certain practices when it comes to the paternity status of the alleged father of a child.

Family courts presume that the husband of the mother is the father of the child. However, annulment means that the marriage never existed so the male partner is not actually her husband. This is a very easy issue to resolve because the courts will also accept the father acknowledging himself as the legal father, to say nothing of DNA tests. Once a valid form of fatherhood is established, then both legal parents possess the same rights as any other mother and father, married or otherwise.

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## Does annulment make a difference when it comes to grandparental rights?

Surprisingly yes. Both marriage and divorce give comparatively little deference to grandparents when it comes to visitation or custody. This is because family courts give strong deference and priority to married parents. However, when annulment renders the marriage nonexistent, this opens the door to grandparents being granted visitation or even custody if it is deemed to be in the best interest of the child.

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## CHAPTER 7: CHILD SUPPORT

While married, the parents of a child share the physical and financial burden of caring for that child. Once separated, however, the parent who has physical custody no longer has the resources of the other parent to help them. Child support is a payment ordered by the court to help remedy that situation and ensure that the non-custodial parent is living up to their responsibility to support their child.

### **Is the father always the one responsible for paying child support?**

Not necessarily. While they are married, both spouses share the responsibility of providing for and supporting their children. Once they are divorced, that support is no longer certain. The objective of a child support order is to ensure that the children of the marriage receive roughly the same level of support that they enjoyed while their parents were still married. The court assumes that the custodial parent is still providing this support. They then order the non-custodial parent to make regular payments to make up for no longer having the children under their roof.

### **How does the court determine how much the non-custodial parent must pay?**

Michigan courts will use certain statutory guidelines to determine how much to order in child support payments. These guidelines direct the court to use the following factors.

- Financial resources of the parents

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- The size of the family
- The ages of the children
- The cost of childcare and education
- The cost of healthcare and dental care
- Other factors such as other support payments being made by that parent or other family obligations.

Michigan family courts utilize the Michigan Child Support Formula. This formula is publicly available and is relatively complex. The most important factor in the formula is the parent's net income. Net income is calculated by taking the gross income (the money in wages, profits, etc.) minus a number of deductions permitted by the court. Income taxes are deducted from net income, as is child support for children from a different relationship. Pensions, subsidies, and tips are all included in income. Nonmonetary benefits and perks are also included. If you cover certain expenses such as health insurance premiums, that will be deducted from your support amount.

The gross income (which is then deducted from to get the net income) also consists of (but is not limited to) the following items:

- Overtime pay, commissions, and bonuses
- Earnings generated from a business, self-employment, or rental
- Profits from profit sharing, pensions, insurance contract, trust fund, Social security, and certain other social welfare programs
- Losses from a business might not be counted if they are deemed to be a tax strategy rather than a legitimate loss
- Tips, gratuities, and royalties
- Interest payments and dividends
- Casino and lottery winnings will be counted if they represent regular income or are used to generate regular income via investment
- Capital gains will be counted if they occur in recurring transactions, result from a single identifiable event, or when the parent has insufficient cash
- A portion of the adoption subsidy
- The market value of some perks provided to employees such as housing, food stipends, and personal use of a company vehicle. This does not include benefits such as tuition reimbursements or health savings accounts
- Income that has been reduced or deferred unnecessarily (to prevent that parent from hiding their income).
- Certain tax deductions might be added back to the parent's income for child support purposes

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- Income from spousal support from someone other than the other parent
- The potential income of a voluntarily unemployed or underemployed parent
- Does not usually include inheritance or other one-time gifts

Net income will be calculated by deducting certain items (such as those listed below) from the parent's gross income:

- Alimony/spousal support paid to someone other than the other parent
- Income and Medicare taxes
- Any mandatory payment that is a condition of employment (such as union dues)
- Premiums for any life insurance of which the shared child/children are a beneficiary
- The costs of any care or services associated with a case service or permanency plan associated with a CPS or juvenile delinquency case
- The cost of the parent's mandatory healthcare expenses

Your child support amount will be slightly decreased depending on how much parenting time you have. The rationale behind this is that if the child is living under your roof, then you are supporting them yourself during that time. Please note that this only includes the number of nights where the child stayed overnight.

Unlike some states, Michigan will still take the wages from a second job into consideration when determining ability to pay.

### **Will the court always stick to these factors?**

Quite often, but not always. A court might deviate from these factors if it is necessary to avoid a decision that would be unjust, unfair, or fail to provide the children with their previous level of support. The court will still stick to the formula as closely as possible and will only deviate from the specific parts of the formula which create the unfairness.

### **What can I do to get the best possible child support arrangement?**

Whether you are the paying parent or the receiving parent, it is completely natural to want to get the most advantageous support arrangement for both you and your children. Just be sure to remember that, unlike spousal support, these payments are not meant for the benefit of the receiving spouse.

It is also important to remember that premarital and post-marital agreements are generally not effective methods of determining what the child support and custody arrangements will be given the court's commitment to the best interest of the child.

It is always a good idea to keep detailed and adequate documentation of all factors relevant to a child support determination such as: income, finances, other payments which are deductible from your gross income, child

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care expenses, and evidence regarding your role in raising the children as well as what the parenting time arrangement will be when the divorce is concluded.

It is also important to think about how you would like to prioritize the various factors of a child support/custody arrangement. Keep in mind, that you can reduce your child support obligation by simply taking more parenting time. However, it might very well be the case that by taking more time to work, you would end up making more money than you would pay in additional child support. At that point, it comes down to how you would weigh the monetary benefit against having more time with your children. Make sure that you discuss this thoroughly with your attorney in preparation for any hearings and mediation regarding child support and custody.

### **What if my former spouse moves far away? Can travel costs be included in my child support?**

Yes, such an item can be included in a child support order, but is not included automatically. The court's decision will likely depend on the reasons for the move and how far the distance is.

### **How is child support collected and paid out?**

In the old days, you would have to mail a check to the FOC, who would then mail their own check to the recipient parent. Electronic banking has changed all that. Now Michigan uses the Michigan State Disbursement unit (MiSDU). Under this system, the amount of the paying parent's child support is automatically withheld from their paychecks and will be deposited in the other parent's bank account within 24 hours.

If the recipient parent does not have a bank account, then MiSDU will provide them with a debit card. If the paying parent does not receive their income in the form of paychecks, then they will have to mail checks to MiSDU.

### **Do we have to utilize FOC and MiSDU to handle our child support?**

No, you and your former spouse may opt out of those services at any time. However, in doing so you waive the use of any of those services and must now make and receive child support payments directly. Furthermore, you may not call upon the court to settle any further disputes regarding support, custody, or parenting time (you'll have to settle those out of court). If you still want the court to settle those disputes for you, you must opt back in to FOC services. It is an all or nothing deal.

Please be advised that some courts are so strict that they will refuse to hear or settle any dispute that arises during an "opt out" period, so you should think very carefully before opting out.

Even if these services are voluntary, it is highly recommended that you use them rather than simply making the payments directly, because doing so pretty much eliminates the risk of the receiving parent wrongfully accusing you of failing to pay child support.

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### **My ex is delinquent on their child support payments, can I deny them parenting time for that?**

Absolutely not, parenting is completely independent of the child support obligation. Every parent has a right to pursue and maintain a loving relationship with their child. That right can never be abridged for the failure to pay child support. Parenting time might be withheld for other reasons such as mistreatment or a failure to show up for scheduled parenting time sessions.

### **My Former spouse hasn't gotten a job in order to avoid paying child support, what can I do?**

If the court determines that the paying spouse is voluntarily remaining unemployed or underemployed, they will most likely use his earning potential rather than his actual income to determine his monthly support obligation. The technical term for this is "imputing" income.

This is actually a very poor strategy on the part of the delinquent former spouse, because they will never lose all of their paycheck to child support payments, and will always make some money from working.

### **Am I responsible for the child support of my step-child? Does remarrying affect child support obligations?**

No to the first question, yes to the second. Michigan does not use step-parent child support. However, it will "impute" the step-parent's income to the new spouse. In other words, if the non-paying spouse marries somebody, then the paying spouse will be asked to pay less because the other parent now has the help of the new spouse. On the other hand, if the paying spouse remarries, they might be asked to pay more based on the additional income of their new spouse. This is also meant to compensate for the fact that remarrying will often cause spousal support to be discontinued.

### **When can I stop paying child support?**

The child support obligation typically ends when the child dies, gets married, turns 18, or is otherwise emancipated. This also occurs if your rights as a parent are terminated (parental rights and child support go hand in hand). The obligation also ends when you (the supporting parent) dies. The government will not extract child support from your estate.

However, if a child is severely disabled, the child support obligation might continue for the rest of that child's life. Also, if your child fails to graduate high school at age 18, this will continue until that child reaches the age of 19 and a half, but only if that child remains a full time high-school student

### **If we get an annulment or a legal separation instead of a divorce, will child support be handled differently?**

No, it will not. Whether it is a separation, annulment or a divorce, child support will be handled in the same way.

This is true even if the court found it to be a void marriage that was invalid from the beginning. The children

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of a void marriage are still considered “legitimate” children and are still owed care and support by their parents.

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## CHAPTER 8: MODIFYING CHILD SUPPORT

### What is child support modification?

Modification is when one or both parents petition the court to change the terms of a child support order that has already been made.

### Can I modify my child support payments?

Child support orders can only be modified when there is a “substantial” change in circumstances (more significant than for modifying spousal support). This change must effect the needs of the child or the ability of the paying parent to provide for these needs (i.e. ability to pay). A number of factors will be considered when determining whether or not to grant modification. These are just a few examples:

- The paying parent changes jobs
- The child growing older
- Inflation
- Change in paying parent’s income
- Paying parent retires
- Paying parent becomes permanently injured or sick

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## What is the procedure for modifying child support?

In Michigan, there are two methods for securing a modification of child support. You can either make a request to the FOC (Friend of the Court) office to review the support order, or you can file a motion directly with the family court.

You are limited to one modification request to the FOC every 36 months (3 years) for any reason. You can request modification sooner if you can persuade the FOC that there has been a sufficient change in circumstances. If they agree that the change in circumstances is significant enough, then they will file a motion with the family court. The FOC and the family court usually define “significant change” as 10% or greater change in income (either reduction or increase), or something analogous to that. From the moment the modification request is made, the whole process generally takes about 180 days (six months). Filing directly with the court will generally only take 90 days (three months) but is significantly more expensive (going through the FOC is free).

If you experience a change in financial circumstances such as the loss of a job, you are required to report that to the FOC in writing before you can get your support payments modified. If you fail to request modification immediately you will incur substantial and unnecessary arrears (see relevant section of this guide).

## What steps can I take to ensure the best outcome from a child support modification hearing?

The most important thing for you to do is to understand and remember what the legal basis for a support modification is. The court will only grant a modification if there has been a substantial change in circumstances which would cause such a modification to be in the best interest of the child or otherwise affects the ability of the paying parent to pay their child support obligation. With that in mind, you need to figure out how to prove this on court. Documents which show income and expenses are a great way to do this. Having documents make any claims and assertions you make or rebut more persuasive, especially if such assertions are particularly convenient and beneficial to you. Furthermore, it gives you a countermeasure if the other spouse tries to make a claim that is either exaggerated or untrue.

Please keep in mind that you will not be able to resolve this issue using premarital agreements for a couple of reasons. First, the courts will never enforce any contractual clause which deals with issues of child custody or support. They will only ever use the best interest of the child to determine that. Furthermore, enshrining it in a written agreement would do nothing at all to invalidate the issue of changed circumstances, even if the court were receptive to such an agreement.

Speaking of agreements, it is absolutely vital that you avoid relying on any “handshake deals” with the other parent. Unless a court order has officially modified your support obligation, the only thing such an ad hoc agreement will net you is contempt of court and unnecessary arrears.

## If I become incarcerated and lose my job as a result, how can I get my payments modified?

You must inform the FOC as soon as possible. If you do, the FOC is required to review the support order within 14 days. Otherwise, there is nothing they can do to help, and your payments will remain the same.

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## **My ex has moved out of state, should I worry about his child support payments?**

There is no need to worry unless he/she already had a habit of not paying. Congress passed a law called the Full Faith and Credit for Child Support Order Act, which applies the full faith and credit clause to all child support orders. Without giving you a lecture on the constitution, this just means that every court in all fifty states will enforce a child support order from any other state.

## **Does Child Support modification apply retroactively?**

No, the modification only applies to all payments due after the modification is granted. Please see the following section to learn how this works in conjunction with overdue payments.

## **I just got the child support order modified, and my ex has some overdue payments, are those now modified as well?**

Yes, those modifications apply retroactively, but only for payments that became due after the petition to modify was filed. The reason for this is that any change of circumstances would (presumably) only have taken place at that time.

## **My ex still has a lot of overdue child and spousal support payments, is there anything I can do about it? Can the court help?**

Failure to pay child support is a felony punishable by at least four years in prison and/or fines of up to \$2000. Beyond that, the court may also hold the delinquent ex-spouse in contempt of court. Contempt can also be a crime, but is usually civil. The court may also impose one or more of the following sanctions.

- A court judgement for overdue payments
- Garnishing wages of the delinquent parent
- Seizure of real estate
- Awarding attorney's fees to the receiving parent
- Suspension of state issued occupational or driver's licenses
- Automatically withholding wages on tax returns (child support only)

## **My ex is out of state, and has not paid child or spousal support, what can I do?**

Congress has you covered. They passed the Uniform Interstate Family Support act (UIFSA) to address problems like this. This law provides guidelines for other states to follow when enforcing the support order from your state. The order can be mailed to either the paying spouse's employer or to the support enforcement agency of their state. The employer will automatically withhold wages unless there is an objection from the paying spouse. You can also request that the court of your state send the order to the state where your ex-spouse resides. That state will treat the order the same as if it had been ordered in that state's court.

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This statute also empowers states to modify out of state. However, this only works if both parties no longer live in the state where the order was first made, or both parties consent to giving the paying spouse's state jurisdiction to modify the order.

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## CHAPTER 9: DEFINITIONS AND EXPLANATIONS OF DIFFERENT MODELS OF CHILD SUPPORT

This chapter is meant to help you understand Michigan's child support laws via direct definition as well as a helpful comparison to other such models.

### **What is an income shares model?**

Under such a model, the intent is that the child should receive the same portion of the parental income that they would have received if the two parents had stayed married. This figure is arrived at by pooling the income of both parents and then assessing what portion of that would have been spent on the child. It is presumed that the custodial parent will spend their portion of that amount by themselves, so the non-custodial parent (paying) parent will only have to pay their portion.

### **What is a percentage of income model?**

This model defines the support obligation as a set percentage of the paying parent's income. The income of the non-paying custodial parent is never taken into account. There are two variants of this: flat percentage and varying percentage. A flat percentage assesses the same percentage regardless of how high the paying parent income is. A varying percentage model will assume that as income grows, that proportionally less of their income will be spent on child care expenses while married. As such the percentage of income that is assessed

for child care payments will reduce as income grows.

### **What is the Melson formula?**

The Melson formula is a slightly more complex version of the income shares model. It takes into account several policy judgements in order to ensure that a child's basic needs are met. To start with, the paying parent is allowed to retain enough of their income to meet their own basic needs. After that, the paying parent is not permitted to keep any more of their income for themselves until the needs of all of their children are met. Even after the material needs of all dependents are met, those same dependents are still entitled to a percentage of any additional income so that they may benefit from the non-custodial parent's higher standard of living.

### **What do all of these models have in common?**

Aside from having the same overall goal to ensure children receive the same amount of support they would have received had their parents remained married, most (if not all) child support models have a few things in common. For starters, most models have a "self-support reserve" that ensures that the paying parent will always be able to provide for their own basic needs. All models take imputed income into account. Imputed income is money saved because the person in question doesn't have to pay for a service that they are providing themselves. All models also take healthcare expenses into

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## CHAPTER 10: HOW CHILD CUSTODY EFFECTS CHILD AND SPOUSAL SUPPORT

### **If my ex gets generous spousal support, does that mean I can ask to pay less in Child Support?**

That depends (find conclusive answer), some states allow support obligations to be treated as part of net income. The increase of the recipient's income and the accompanying expense to the other spouse often results in a decrease in the amount of the other type of support. However, this only applies once. For the sake of fairness, one form of support will be decided based on the income of both spouses (sans support payments) and the other form of support will typically take the payments from the first into account.

That being said, spousal support payments will never be a direct substitute for child support obligations. All child support payments are presumed to be used on the child, while the spousal support is meant to ensure that your ex can meet their own needs.

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## CHAPTER 11: CHILD SUPPORT ARREARS

Like with many other financial obligations, sometimes child support payments are missed or insufficient. Family courts have processes for dealing with these missed or overdue payments in order to ensure that the obligation is met to the greatest extent possible.

### **What does arrears mean?**

Arrears or arrearage is the technical term for past due child support. Basically it is a debt you owe to either your former spouse or to the government.

### **Wait, how could I owe child support debt to the government?**

This might occur if you received public assistance from the government while you had child support obligations. It can also happen if your child's household receives public assistance. The rationale behind it is that you should be covering those expenses as the parent paying support, not the state government.

### **What could happen if I don't pay my arrears?**

Unpaid arrears can result in a number of unpleasant consequences such as:

- Withholding money from your paycheck



- Liens on personal possessions and real estate
- Garnishing your tax returns
- Suspension of state issued drivers, occupational, and recreational (hunting/fishing) licenses
- Revocation or denial of your passport
- Getting charged with contempt resulting in imprisonment and further fines

### **What if I can't afford to pay my arrears?**

Then you have two options. You can ask for forgiveness (discharge) of your debt, or you can ask for a payment plan. There is no method for completing erasing the overdue child support that you owe the other parent.

### **What does discharge entail?**

You may only seek a discharge debts owed to the state. If you are granted a discharge, it will erase your arrearage debt completely. You must file your request with the Friend of the Court (FOC) of the county that granted the support order in the first place. In your request you must explain why you had a good reason to not pay or how you are unable to pay. If you owe back child support in multiple counties, you will have to file separate requests in each of those FOC offices. The FOC office(s) will decide whether or not to discharge the debts.

If you also owe money to your spouse, then you must get a payment plan

### **What does the payment plan entail?**

Under a payment plan, the court will allow you to pay back a certain amount per month for a number of months. In the end, you will pay less than the full amount owed and the rest will be discharged.

If you owe debt to a spouse, you must obtain their voluntary consent in order to engage in a payment plan.



## CHAPTER 12: THE RIGHTS OF FATHERS

While some of this information is also covered in other chapters dealing with child custody, would still be helpful to aggregate and summarize it here. This section is for readers specifically concerned about their rights in terms of children when getting a divorce.

### **What are my rights as a father?**

As a biological or adoptive father, your rights are in no way distinctive from a mother's. The only distinction is that if you are not married to the mother, then you will have to prove paternity (see the chapter on paternity and non-marital children). However, as the father, you are statistically more likely to be the non-custodial parent (i.e. the ex-wife has physical custody). Therefore, this section serves more as a summary of the rights of a non-custodial parent.

While the custodial parent is largely responsible for making the day to day decisions regarding the children, you (the non-custodial parent) still have the legal right to have a say in any major life decisions affecting your child including their education and medical care.

All parents also have the right to see and interact with their children even if they do not have physical custody. Unless your parental rights have been terminated for some reason, you have a legal right to visitation or "parenting time" with your children. Parenting time will often be one of the issues addressed in the final divorce decree. Any parent may take more parenting time than is mandated in the final agreement. However,

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the legal rights of a parent prevent their former spouse from permitting less than the agreed upon parenting time. They are likewise prohibited from intentionally sabotaging the relationship between you and your child. If you suspect that your former spouse is doing either of these things then you may be facing a case of “parental alienation”. If the situation is dire enough, it may be prudent to call the police. A parent who violates the parenting time agreement may be charged with contempt of court.

### **What is parental alienation? At what point should I involve the police?**

Parental alienation is any intentional act by one parent designed to undermine the relationship that the other parent shares with their child. Sometimes this is a means of taking petty revenge. Often, it is intended to convince the child and, by extension, the court that the alienated parent should have reduced or no contact with the child. Alienation can be anything from lying to the child to poison their mind against the former spouse, or even wrongfully denying that spouse the parenting time they are legally entitled to. If you are the victim of a campaign of parental alienation, it is strongly advised that you keep fighting and try to keep a cool head. Any loss of emotional control will only make you look less stable and will further the alienating parent’s agenda. A provable campaign of alienation is proof that you are the more mentally sound parent. By definition, it is contrary to the best interest of the child and can be grounds for physical custody to be transferred to you.

If the non-custodial parent refuses to return the child after the allotted parenting time, or if the custodial parent takes the children far way in violation of Michigan law, then the alienation has devolved into a case of parental kidnapping. In which case, you (the other parent) should call the police.

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## CHAPTER 13: PARENTS, CHILDREN, AND THE GOVERNMENT

**My dumb underage kid bought a car that he won't be able to pay for, is there any way for him to get out of it.**

Yes, there is. Minors are allowed to own and convey property as well as bind themselves to a contract. However, in recognition of their immaturity, the law generally allows a minor to “disaffirm” that contract until (and even shortly after) they turn 18. Before this point, that minor can freely enforce that contract against the other party. However, once it is disaffirmed, the contract is void.

**Minors can be pretty dumb in general, is there anything else I should be worried about?**

Possibly. While minors are not allowed to consent to medical procedures. However, an exception is made for abortions, birth control, and treating STD's. This is just another reason why it is important to teach your children about safe sex. It should also be noted that even if you deny consent to a medical procedure, a court might override that in order to prevent irreparable harm.

Minors can't make valid wills, so you won't have to worry about any greedy and predatory relatives.

Children can still be sued for torts, but courts tend to be more lenient towards them. They may also assess

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liability to the parents instead. Children who commit crimes are usually prosecuted in juvenile court.

**Am I legally required to take care of my children? Will they have to look after me when I am old?**

Yes and yes. Parents have a duty to support children which is reciprocated when they reach old age.

**My child doesn't want to go to school, and I don't really care either way, is that a problem?**

Yes, it is. Michigan law requires all children to receive some kind of education. That being said you do not have to send them to a public, private, or charter school. You are allowed to homeschool them if you so choose.

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## CHAPTER 14: ADOPTION

Sometimes an individual or couple wants to raise a child without conceiving one of their own, and sometimes there are children who are no longer in the care of their birth parents. Adoption can help bring these people together to form loving makeshift families that can be just as close as biological ones.

### **What is adoption?**

Adoption is a legal process which terminates the legal relationship between a child and its biological parents and creates a new relationship with adoptive parents. The adopted child's birth certificate will be altered to show the adoptive parents as the child's true mother and father. There are statutes in Michigan which govern this process. An unmarried person or a married couple can adopt either a minor or an adult. However, an unmarried couple cannot adopt as a couple, only one of them would be the adoptive parent.

### **Where should I file the adoption petition?**

Michigan law requires the petition to be filed either at the location of the petitioner (you) or the child being adopted. If both live outside of Michigan, then it is filed at the location where the child's biological parents had their rights terminated.

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## **Do you need the permission of the biological parents to adopt the child?**

Usually, you do. If the natural parents still have their parental rights, then their consent is needed. If the father is not married to the mother, his consent might not be required. However, if the state has already terminated parental rights, then permission is unnecessary.

Also, the court might waive the consent requirement if the biological parents are being unreasonable with their denial of consent and are not acting in the best interests of the child. Even if consent is waived, the biological parent still has a right to notice and a hearing about the adoption.

Also, the permission of an unmarried biological parent might still be required under certain circumstances. This hinges on the father's level of involvement in the child's life. Does he live with the child? Does he care for it? Does he visit the child regularly? Has he admitted paternity and/or paid child support? If the child is an infant, the court will look for "manifestations of parental responsibility". In the absence of these things, the non-marital father has no right to prior notice before his child is adopted.

## **Do you need a child's permission before you adopt them?**

Only if the child is older than 14 years of age, otherwise, no consent is needed.

## **Will the state/court do anything to investigate the home of someone adopting a child?**

Yes, a full investigation and approval by the court of the adoptive home is mandatory. The courts take the safety of all children in their care very seriously.

## **Can I pay the birth parents to choose me as the adoptive parent?**

Absolutely not. Other than pregnancy related medical costs, you are forbidden by law to pay money to the birth parents. Most states try to avoid running the risk of developing a market for adopting kids.

## **What happens if someone violates one of the statutes regulating adoption?**

Breaking adoption statutes is usually a crime. The first violation is a misdemeanor. The second is a felony.

## **What happens if the adoption is successful?**

A new birth certificate will be issued. The new certificate will list the adoptive parents as the mother and father. This completely severs any right, claim, or obligation the birth parents had with the child and transfers them to the adoptive parents. Sometimes a birth parent will terminate their own parental rights so that they can jointly adopt their child with their new spouse.

## **What if I do not want to adopt, but cannot have children of my own?**

Then you should consider surrogacy. There are two types of surrogacy to choose from:

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- Traditional surrogacy: The surrogate's egg is fertilized with the prospective father's sperm, making him and the surrogate the biological parents.
- Gestational surrogacy: The egg of a woman other than the surrogate (usually the father's wife) is fertilized and implanted in the surrogate's womb. Depending on how biological parenthood is defined, all three parties might be considered biological parents.

Whichever surrogacy method you choose, there are some things you should know before arranging a surrogacy in Michigan. For starters, paid (commercial) Surrogacy is illegal in Michigan. Violation of that law carries penalties of up to \$50,000 and/or up to 5 years in prison. Furthermore, the courts will not enforce any surrogacy contract. Even if the surrogacy is altruistic (uncompensated). It is also incredibly important to know that violation of the law against commercial surrogacy will most likely result in the participants losing custody of any child that results from that surrogacy.

This is quite important because a surrogacy contract is about more than just getting some woman to carry the baby to term. They also contain provisions giving custody to the parents who appointed the surrogate. This helps avoid messy disputes and renegeing on the surrogacy. It might not seem like such a big deal considering that most surrogate children have zero genetic relation to the surrogate mother. However, a surrogate mother might still be able to apply for physical custody over the child. In which case the court will apply a "best interest of the child" analysis.

Due in part to the uncertainty created by this system, the Michigan legislature is currently considering legislation that might reform surrogacy law.

### **I am a grandparent who wants to see their grandchildren, but my son's/daughter's ex-spouse never lets me see them. What can I do?**

Unfortunately, the United States Supreme has given the parents a great deal of authority to do just that. The current rule is that a parent's decision about grandparent access must be given great weight by the court. A judge can't override that just because it seems more fair or kind. Even if allowing access is in the child's best interest, the custodial parent's decision can still prevail. However, Michigan has passed a law allowing for a grandparenting time order if one or more of the following circumstances are met:

- The parents are divorced, legally separated, or annulled
- Your child (one of the parents) is deceased
- The parents were never married, do not live together, paternity has been confirmed, and the father provides regular support/care
- Someone other than the biological parents has legal custody of the child
- The grandparent has provided a home-like environment for the child even if they do not have court ordered custody

The court presumes that the biological parents are suitable parents and that their decision to deny grandparental access is not harmful. You must prove, with evidence in court, that their decision risks mental,

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physical, or emotional harm to the child.

However, even if you can prove with evidence that biological parent(s) are not acting in the child's best interest, the court must still decide if ordering grandparenting time is in the best interest of the child. The court will rely on the following factors:

- The love and emotional relationship between grandparent(s) and grandchild
- The length and depth of the pre-existing relationship between grandparent and grandchild, the role of the grandparent, and existing emotional ties
- The moral character of the grandparent(s)
- The mental and physical condition of the grandparent(s)
- The reasonable preferences of a sufficiently old child
- The detrimental effect on the child of any hostility between the parent(s) and the grandparent(s)
- Barring the willingness of the grandparent(s) to have a close relationship with their grandchild
- Any history of emotional, sexual, or physical abuse or neglect of any child by the grandparent(s)
- Whether the parent was denying access to grandparents for the child's well being or was for another reason
- Any other factor pertaining to the child's wellbeing

Please be advised that if both parents sign an affidavit saying that they don't want the grandparents to have contact with the children, the court will automatically deny any motion or order for grandparenting time. They won't even consider any of the above factors.

### **I don't trust my child's former spouse, can I get custody of my grandchildren?**

Only if you can show that both living biological parents are unfit to raise the child.



## CHAPTER 15: CUSTODY AND SURROGACY

### **How is the custody of a child born from surrogacy determined?**

As mentioned in the previous section on surrogacy, the laws of custody and surrogacy in MI are a mess. Due to the fact that all surrogacy contracts (even for legal altruistic surrogacy) are unenforceable, there is no legal way to guarantee that the family who commissioned the surrogacy will get custody. If the surrogate mother petitions for custody, she has just as much of a shot as anyone else under the Michigan system which seeks the best interest of the child.





## CHAPTER 16: NON-MARITAL CHILDREN AND PATERNITY

### **I am married, but I do not believe the child is mine, do I still have to support this child?**

If a woman is married, the court will presume that her children are the offspring of her husband so long as they were married within a certain time period of her pregnancy. Confirming the paternity of the actual father is the only effective countermeasure.

### **The government is discriminating against my children because they were born out of wedlock, can it do that?**

While not as strongly protected as other vulnerable groups, non-marital children still enjoy some protection from government discrimination. The government must show that the discrimination is substantially related to an important government purpose (intermediate scrutiny).

That said, federal courts will not uphold any legislation whose sole purpose is to punish non-marital children. Laws which deny inheritance, deny child support, denial of government benefits, or even barring them from wrongful death suits for the deaths of their other parent will not be upheld. The courts have also struck down statutes of limitation on paternity suits. The only such law that has been allowed to stand is one which granted immigration preference to marital children.

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**I am an unmarried father, and my son was killed in an accident, can I sue the person responsible?**

Possibly. An unmarried mother is always able to file such a lawsuit. However, the unmarried father will not be able to do so if he has not legally recognized the child as his before the accident.

**I am unmarried, and my child was born on foreign soil, is that child still a U.S. citizen?**

If you are an American woman, the government and the courts will automatically grant and recognize your child's citizenship. However, an unmarried American man will have to take certain steps to prove his child's citizenship.

**We are an unmarried couple with a child. However, we are now separating, how will we determine the custody of this child?**

Michigan has a law called the Acknowledgement of Parentage Act for just such an occasion. If both of you sign a document acknowledging that both of you are the parents of this child, the initial custody will go to the mother. However, this does not in any way hurt the father's chances at gaining ultimate custody. Final custody will be decided by either the court or an agreement between the parents.

**I am not married to the mother of my children, but she is keeping me from seeing them. Is there anything I can do?**

Michigan family law will still protect an unmarried father's due process right to have a relationship with his children. However, this only applies if he has actually helped raise the child and has shown that he is committed to the responsibilities and obligations of fatherhood. Does he supervise the child daily? Has he helped at all with the child's education?

If the child is an infant, the father must have demonstrated a willingness to assume sole custody of the child if that ever becomes necessary. He cannot simply prevent others from adopting in the case of the mother's death. The court will also consider whether or not he has publicly acknowledged the child as his and whether he has helped pay any of the expenses from the pregnancy or birth.

**I am not married to the mother of my child, do I have legal custody over that child?**

Not automatically. The mother, by virtue of giving birth, is automatically given maternity and legal custody of the child. Unless you married her soon after she gave birth, you're going to have to work a little harder to get legal custody. You can hold the child out as your biological child, put your name on the birth certificate, or formally acknowledge paternity. The same result will also occur if there is a successful suit to establish paternity.

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## The family court rendered a paternity order against me. I know I am not the father, what can I do?

The Revocation of Paternity Act gives you a remedy. This act grants Michigan courts the power to set aside a paternity order. However, it only applies if the paternity order was made under the following circumstances

- An acknowledgement of parentage (by you)
- Evidence of conduct by another man who could have been the father
- Another court order relating to a potential father
- A presumption that another man who is married to the child's mother is the child's father.

You, the mother, or a prosecuting attorney can file an action under this act. The burden of proof is on the person trying to revoke paternity. They must prove non-paternity with clear and convincing evidence. There is also a statute of limitations which requires the suit to be filed no later than three years after the birth of the child or one year after you acknowledged paternity in the first place. If you can show a mistake of fact, evidence of fraud by the mother, duress, or newly discovered evidence; then the court might be willing to grant you an extension.

The court can do more than just set aside the paternity order. They can also assign paternity to the man who was shown to be the actual father. Furthermore, you can sue that man for any child support you have already paid.

However, the court might also refuse to set aside the order if it finds that doing so is not in the best interest of the child. They will do this even if there is strong evidence that you are not the father. It will make this determination based on the following factors.

- Whether or not the father has been prevented from denying paternity because of prior conduct: (i.e., the issue of paternity was never explored)
- How long this person was aware that he might not be the actual father (the longer he waits, the more likely it is the court will reject)
- The type of evidence that led to the idea that he was not the father
- The relationship between this person and the child. (The stronger the current relationship, the less likely it is that the court will break it up)
- The age of the child
- Possible harm to the child
- Other issues of fairness arising from disrupting the father-child relationship
- Any other factor the court deems relevant

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## CHAPTER 17: THE EFFECT OF CHILD CUSTODY AND SUPPORT ON TAXES

### How will child support payments affect my taxes?

Unlike spousal support, child support payments do not count as income for the receiving parent. Likewise, they are not deductible from your (the paying parent's) taxable income. This is mainly because those payments are not meant for the benefit of the receiving parent (it's for the child) and is considered an obligation of the paying parent. Although on the surface it may look like this rule favors the receiving parent (usually the mother), this is not really the correct way to view child support.

### How will child custody affect my taxes?

Having physical custody of a child allows you to claim them as dependents when filing taxes. Claiming dependents has the following tax benefits:

- Allows you to file as a head of household
- Allows you to claim the child tax credit or \$500 non-refundable Dependent tax credit
- Allows you to claim the credit for child and dependent care expenses
- Allows you to claim a higher earned income tax credit

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- Allows you to exclude dependent care benefits from your taxable income

Once again, this looks like a substantial benefit to the parent that gets physical custody. However, it should still be noted that the parent is incurring expenses to care for the needs of those children. However, if that parent were able to find ways to reduce the expenses for providing for the children in their custody without undermining the wellbeing of said children, then the associated tax benefits might prove to be profitable.

### **What if we share joint custody? Can we still claim dependents and the associated tax benefits?**

You can both claim the children as dependents as long as you both file jointly. Unfortunately, a divorce couple may only file jointly for the last year that you were still married. After that only one of you will be able to claim the children as dependents. If both of you attempt to do so, the IRS will only allow the parent who has spent the most time with the children to claim the dependents and the associated tax credits.

This is a rather unfortunately designed system that is set up in a way that creates economic tension between the parents and result in competitive or adversarial behavior. A better system would somehow split the benefits between the parents but that is not the system we have now. It would be highly advisable for any parents with joint custody to acknowledge this disparity and strive to come to a private arrangement that shares the benefits of the tax system and promotes harmony between them for the good of their children.

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## CHAPTER 18: MILITARY CHILD CUSTODY

### **What happens if I am overseas during a divorce when I have children?**

Then you are protected by the Military Child Custody Act (MCCA). The MCCA disallows courts from making a final custody order while the military parent is overseas. A temporary order can be made for the best interest of the child, but it will be revoked and the status quo be restored the moment the military parent returns home. After that, the court can decide the matter properly.

### **If I have physical custody, who takes care of my children when I'm deployed?**

All service members with children are required to establish a Military Family Care Plan to address the care of their children during a deployment. Typically this involves assigning a guardianship. A Family Plan will not control a custody case.

### **Which state court will hear my case?**

Military families relocate frequently, so it pays to familiarize yourself with the UCCJEA (see section on 'child custody'), or to hire an attorney who has.

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## **What happens if someone tries to violate my custody while my child and I are on foreign soil?**

Your child is protected by The Hague convention, which commands the prompt return of any wrongfully removed or retained child. It also establishes rules governing when removal is wrongful as well as exceptions to those rules.

The Michigan Child Custody act prohibits parenting time from being exercised in a country that is not a party to the Hague convention on child custody unless both parents give their written consent.

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## CHAPTER 19: TEN THINGS TO CONSIDER BEFORE DIVORCING WITH CHILDREN

### Is it a good idea to get a divorce when I have children?

If you share children with your spouse, then you must be absolutely certain that you want a divorce. The presence of children adds a number of complicating factors that might cause you to reconsider if you were aware of them beforehand. Here are ten factors you should be aware of before pursuing a divorce with children

1. If your former spouse gets a job out of state, they will most likely be able to take the children with them if they have physical custody. Given that they are moving for work, you will have little or no ability to prevent the move. This will greatly restrict your contact with your children.
2. If you pursue a new relationship after the divorce, your former spouse can restrict your new partner's contact with the children. This is especially true if the two of you are unmarried, family courts have historically been open to arguments that exposure to an unmarried, cohabiting couple is “immorality” which children must be protected from. If you are the non-custodial parent, this can greatly complicate your personal life and relationships.
3. If the custodial parent develops alcoholism or any other sort of dangerous behavioral problem, then you (the non-custodial parent) will be very limited in your ability to intervene and protect your children.

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4. Even if there are no other harmful factors, any divorce can be traumatizing to your children. It is common for children who experience their parent's divorce to develop behavioral and psychological problems as a result. As a parent, it is up to you to take your child's interest into account before making such a life-altering decision. Please consider whether or not you might be willing to wait until after your children are living on their own before getting a divorce.
5. A divorce involving children is likely to be even more contentious. Nothing else involved in the divorce will cause quite so much flared tempers and bad blood as custody and child support disputes. Such conflicts run the risk of causing unnecessary damage to your relationships with your former spouse, children, and extended family.
6. A divorce with minor children runs the risk of interfering with the relationships between that minor and their grandparents and extended family. Custodial parents reserve the right to restrict the contact between such relative and the children in their custody. It is not unheard of for grandparents and uncles to become proxies in disputes between former spouses. Once your children become adults, those relationships will become self-sustaining. Furthermore, living in one household creates more opportunities to interact with extended families, especially during the holidays.
7. Divorcing with children is expensive. You will lose all of the savings you would enjoy from sharing expenses with your spouse, not to mention the loss of tax and other benefits. In addition to this loss, you might end up paying child support. In theory, child support is meant to be equivalent to the support your child would have received if you had stayed married. In practice, if you are the non-custodial parent, then your "in-person" support as a parent is being replaced by money payments. You will likely end up paying more for your child than you did while married.
8. A divorce with children will take at least three times as long as a childless divorce. This is required by Michigan law in order to ensure the wellbeing of the children. The whole divorce process is never pleasant, but waiting until the children move out can make it go a lot faster.
9. This lengthening of the process makes the whole divorce process more expensive. You will end up paying way more in court and attorney's fees if the divorce involves child custody and support. Furthermore, the involvement of children means that the court will continue to be involved even after finalizing the divorce.
10. There are often alternatives to divorce. There may also be some means by which you can temporarily or permanently mend the relationship between you and your spouse. When there are no children involved, these alternatives may not seem worthwhile. But all of the inconveniences of a divorced life when there are children shared by the former spouses can make these alternatives more attractive. It would be wise to consider these options before subjecting you and your family to split holidays, disrupted lives, emotional trauma, and the financial burden that would accompany a divorce. At the very least, consider whether it might be worth keeping it together until your children are grown up and out of the house.

### Child preparation

Regardless of the emotional tenor of the divorce or any other factor, the wellbeing of your children is and should be your top priority. As such, it is imperative that you are responsible with the way you break the news of the divorce and prepare your child for this life-altering event.

Do as much as possible to avoid laying blame on your spouse and generally try to minimize negativity. To that end, you should absolutely avoid weaponizing your children against your former spouse. When making your case in court, emphasize what you are doing right as a parent as opposed to what your spouse did wrong. Not only is this a great way to minimize negativity, but it makes it far more likely that you will end up with a joint custody arrangement. It is also important to back up these positive claims with documentation.

### **A father's fight for custody ends in victory: experience is essential in your child custody case**

Just ask any of our attorneys to regale you with the tales of all of the successes they have achieved in child custody cases for our clients. We've experienced everything from the most civil divorce to the most violent, so know what it takes to get the best possible outcome for you and your children.

In the vast majority of divorce cases, the opposing side will also have a lawyer who is committed to winning for their client. Therefore the only major difference (aside from facts that unequally favor one of the parties) is the relative skill and experience of that attorney. That's why it is essential that you choose a lawyer you trust to be able to deliver you victory.

### **How will my criminal record affect the determination of child custody?**

Prior criminal activity is highly relevant to a person's suitability as a parent and has huge implications for a child's wellbeing. Criminal history falls squarely under the "moral fitness" factor utilized by the court. That being said, having a criminal record will not automatically disqualify you from getting physical custody. A violent or drug-related crime might cause a court to presume that you are a less suitable or unsuitable parent. Failing a drug test during the divorce proceedings can pretty much preclude you from getting physical custody. A sufficiently heinous crime can even result in you having all of your parental rights terminated.

### **What if one parent killed the other, could they still get custody of the children?**

While a conviction for the death of the other parent is not an automatic disqualifier for receiving physical custody, it would be utterly inconceivable for that parent to ever receive physical custody of the children. For starters, a long term of imprisonment would completely prevent that parent from having custody. Even if that parent somehow avoided having their parental rights terminated completely, the presumption against their moral fitness would be nearly impossible to rebut.

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