

M I C H I G A N

Friends



of the

Court

A Guide to Custody, Parenting Time and Support



Dear Friend,

Welcome to Michigan's Friend of the Court, a part of the circuit court family division supervised by the chief judge. The Friend of the Court assists the court administrator on issues of custody, parenting time and support, including medical and spousal. Throughout the years, the Friend of the Court office has undergone major legislative reform in order to strengthen child support and parenting time enforcement.

This booklet describes the basic duties and procedures of the Friend of the Court and should only serve as a guide and not a substitute to seeking legal advice or contacting your local Friend of the Court when facing issues of custody, parenting time and support.

I hope this information is helpful to you.

Information is accurate at the time of printing and provided in part by the Friend of the Court Bureau:

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Prepared by the Michigan Legislature

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Introduction

This handbook provides information about duties and procedures for the Friend of the Court (FOC), rights and responsibilities of parties in family law matters, and information about basic court procedures in domestic relations cases.

Family law matters can be difficult and painful. The family division of the circuit court is responsible for resolving the legal concerns which affect your family.

Family law matters can be difficult for children. Parents can help by establishing or maintaining children's regular routines, encouraging frequent and regular contact between the child(ren) and both parents, being supportive of the other parent's participation in the child(ren)'s school and other activities, and exchanging information regarding the child(ren)'s well-being.

Children need both parents. When you cooperate, you reassure your child(ren) that change will be positive. You also build the foundation for your new parental relationship and responsibilities. Your child(ren) will always want both of you to be part of their lives, to attend their high school or college graduations, to be at their weddings and the birth of their children, and to be part of other major life events. They want to be able to say that, despite what mom and dad may have felt toward one another, they always treated each other with courtesy and respect and never put their child(ren) in the middle of their dispute.

Rights and Responsibilities of the Parties

Each Party Has the Right to:

- Request a meeting with the Friend of the Court employee investigating a dispute about custody or parenting-time.
- Request the Friend of the Court to recommend whether a support or health insurance order should be modified.
- File a grievance with the Friend of the Court office concerning an employee or office procedure.
- Hire and consult with an attorney about any questions or concerns.
- Proceed in the case without Friend of the Court assistance (opt out) if agreed to by the other party and approved of by the court.

Each Party Has the Responsibility to:

- Inform the Friend of the Court, in writing, of the following information:
 - ★ current residential and mailing addresses,
 - ★ current employer or source of income's name, address, and telephone number,
 - ★ current telephone number (residential or mobile),
 - ★ any occupational or driver's license held, and the driver's license number,
 - ★ social security number, unless exempt by law from disclosing that number,
 - ★ current residence of child(ren),
 - ★ current information regarding health care coverage available as a benefit of employment or maintained by either party.
- Provide other information to assist the Friend of the Court in carrying out its duties as required by law.
- Obey all court orders.



Friend of the Court Duties

Michigan law created Friend of the Court offices in 1919. At least one office serves each circuit court's family division.

Friend of the Court offices have the following duties:

- When directed by the judge, the office investigates and makes recommendations to the court regarding:
 - ★ custody,
 - ★ parenting-time (which may include transportation),
 - ★ child support (including medical support, and sometimes spousal support).
- Offers alternative dispute resolution (ADR) services, to help settle disagreements about custody or parenting-time.
- In cooperation with Michigan State Disbursement Unit (MiSDU) the FOC collects, records, and distributes support payments as ordered by the court.
- Assists the court with enforcing orders on custody, parenting-time, and support.
- Provides forms that parties may use to file motions and responses regarding custody, parenting-time, support, change of domicile, and repayment plans.
- Informs the parties of the availability of joint custody.

The FOC has **no** authority to:

- Investigate criminal activity or abuse and neglect (but its employees in their professional capacity must report abuse and neglect).
- Change an order.
- Give legal advice.

Local FOC offices work with the Office of Child Support (OCS) and the Prosecuting Attorney's (PA) office to administer certain aspects of Michigan's child support program under the child support requirements of the federal Social Security Act.

Information in this handbook further describes general duties of the Friend of the Court. Specific procedures are established by local offices and may vary from office to office. Any questions regarding local procedures or requirements outlined in this handbook may be discussed with your local Friend of the Court, or with an attorney.

To become familiar with some legal terms, please refer to the glossary on page 22.

Opt Out of Friend of the Court Services

Parties who agree that they do not need the FOC's services do not have to use them in certain circumstances. They may file a joint motion to opt-out and, if the court approves the motion, the parties must then deal with each other directly. Before the court approves a motion to opt-out, the parties must file a document that shows they are voluntarily giving up FOC services.

If an opt-out motion is filed at the same time as the complaint that starts the case, the court must order the Friend of the Court not to open a case unless one or more of the following are true:

- A party is eligible for Title IV-D services of the Social Security Act, 42 U.S.C. § 301 et seq. (child support services) because a party is receiving or has applied for public assistance.
- A party has applied for Title IV-D services.
- A party has requested the Friend of the Court to open a case.
- There is evidence of domestic violence or bargaining inequality and the request is against the best interests of a party or the parties' child.

The parties also may file a motion requesting the court to order the Friend of the Court to close its case. The court will issue the order unless it determines one or more of the following are true:

- A party objects to the closure.
- A party is receiving public assistance.
- Within the previous 12 months an arrearage or custody or parenting-time violation has occurred in the case.
- Within the previous 12 months a party to the case has reopened the Friend of the Court case.
- There is evidence of domestic violence or bargaining inequality and the request is against the best interests of a party or the parties' child.
- The parties have not filed a jointly signed document with the court, that acknowledges the FOC services the parties are choosing to give up.

Closing a Friend of the Court case requires the parties to assume full responsibility for administration and enforcement of the court orders. To assure proper accounting of support payments and their consideration in future proceedings, the parties may choose to have support payments made through the MiSDU even after the Friend of the Court case is closed. If at any time a party applies for public assistance, requests any service from the FOC, or requests that a case be reopened, the FOC will reopen the case file. In these situations, the court may request that a party or the FOC prepare a written order to reopen the case.

Procedures of the Court

Starting a Court Case

Anyone who wants to start a court case must file the correct papers in the family division of the circuit court according to Michigan court rules and Michigan Law. The court cannot require a party to use an attorney, but the majority of people do. Cases may involve difficult questions and knowledge of Michigan and court proceedings.

Plaintiff's Complaint

Each case begins with the plaintiff (the person requesting the court's assistance) filing papers which ask the court to decide a dispute (a complaint) concerning another party (the defendant). The Plaintiff may ask the court to do any of the following:

- Grant a divorce.
- Order child support (including medical support) or spousal support.
- Establish paternity.
- Establish custody of a child with one (or both) parties.
- Establish parenting-time with a child.

Service

Michigan court rules state that the defendant must be given a copy of the summons and complaint within the time stated on the summons. The summons tells the defendant to answer the complaint. The summons and complaint must be delivered in a way that gives the defendant notice that a case has been started. A Friend of the Court informational handbook must be served with the complaint whenever minor children are involved or spousal support is ordered.

Defendant's Answer to Complaint

The defendant is allowed time to answer the complaint. If an answer is not filed within the time frame permitted (usually 21 days after service), the defendant may lose the right to have his or her concerns heard by the judge. The plaintiff may seek the entry of a default and default judgment. This could result in an order granting the plaintiff's requests.

Hearings

After the complaint and answer have been filed, either party or the Friend of the Court may file a motion asking for orders deciding custody, parenting-time and child support. The court gathers necessary information at a hearing to decide what should be ordered.

If a hearing is scheduled before a referee or judge, both parties must be notified of the time and place. This provides a parent with an opportunity to tell the judge or referee why a specific order should be made. The court is not bound by either parties' recommendations.

Court Orders

When a court makes a decision, someone must write it in the form of an order. This is usually done by the parties or their attorneys. An order is not valid until a judge signs it and it is filed with the county clerk. A referee may also recommend an order, but it is not valid until signed and entered by the judge.

If a party disagrees with an order, the party may file a motion for a rehearing (by the judge who issued the order) or file an appeal to a higher court. A party cannot change a court order by filing a grievance or by complaining to other government agencies.

Preliminary Orders

The court may enter a temporary order before the parties have had the opportunity to present all important evidence and arguments at a hearing.

Ex Parte Orders

(Orders Entered Without First Hearing from All Parties)

Sometimes a judge will immediately enter an ex parte order when he or she is shown that serious harm will occur if an order is not entered before the other party has the opportunity to respond.

Ex parte orders are usually intended to keep a situation stable until the judge can hear from both parties. A party who disagrees with an ex parte order may file a written objection to the order or file a motion asking the court to change or cancel the order; but the ex parte order will remain in effect until it is changed by the court.

When an ex parte order involves support, custody or parenting-time, the order must be served on the other party and also include a notice that a written objection or motion may be filed within 14 days. If a party files an objection and the Friend of the Court cannot help the parties settle the dispute, the Friend of the Court will provide forms and instructions for scheduling a hearing with the court.

Final Orders

After a motion has been fully considered, the court enters a final order. A final order ends activity on the motion, establishing requirements that the parties must follow.

A change can occur only if it is ordered by the court. Normally, a court will order a change if both parties have agreed to the change and signed an agreement (consent agreement). Otherwise, the court will only order a change if a motion is filed and a court hearing is held.

Parties' agreements are only recognized by the court and the Friend of the Court when they are signed by a judge that approves the agreement. Simply notifying a Friend of the Court employee or a Department of Human Services worker of an agreement does not change the court order.

Sometimes, the law requires the Friend of the Court to ask the court to change an order.

Referees

A referee is not a judge, but a person who holds hearings, examines witnesses and makes recommendations to the judge. The chief circuit court judge may appoint a referee to hear testimony and arguments on any issue, except an increase or decrease in spousal support.

A referee hearing is different than a hearing before a judge. The findings of a referee are only recommendations to the judge for an order. A referee's recommendation will become a court order if neither party files a written objection within specific time limits (or the court holds a hearing pursuant to an objection) and the judge signs an order containing the recommendation.

A party who disagrees with a referee's recommendation may request a new (de novo) hearing before the judge. The objection to the referee's recommendation, and a request for hearing, must be made in writing and filed with the circuit court clerk within 21 days from the time the recommendation is mailed or hand delivered. Pending the de novo hearing, the referee's recommended order may be presented to the court for entry as an interim order as provided by Michigan court rules.

Contact an attorney for more information on how an objection and request for hearing should be filed. Some Friend of the Court offices also have information concerning how an objection may be filed.

Reconciliations and Dismissals

Not every case ends with separated parents. If parties are trying to work out their differences and wish to have enforcement of their order stopped, they may file a motion asking the court not to enforce the order. Enforcement of a support obligation cannot be stopped except by court order.

If parties wish to stop all further actions on a case, they must file an order of dismissal with the court, and provide a copy to the Friend of the Court. The support payer must pay any past due support owed to the State of Michigan (which occurs when support is not paid while the custodial parent is receiving Temporary Assistance for Needy Families (TANF)), and any amounts owed to the court or the county.

Orders Where One of the Parents Leaves Michigan

Child support continues regardless of where you live, unless changed by a court order. There are serious legal consequences if orders are not followed.

Child support does not end when a parent leaves Michigan, even if the child lives in a different state from the support payer. Both parents must tell the Friend of the Court whenever they change where they live or work. The payer must continue to pay support through the Michigan State Disbursement Unit (MiSDU), and the Friend of the Court continues to be responsible for enforcing the court order.

If a support payer leaves Michigan and support payments are not timely, or stop altogether, there are laws to assure that payments are made. Each state now has a law called the "Uniform Interstate Family Support Act (UIFSA)."

UIFSA assists states in dealing with cases where a party or source of income is in another state. It replaces other interstate child support laws. Under UIFSA, only one state has the right to establish or modify support. This right can be given to another state only if certain conditions are met.

Some of the procedures available under UIFSA include interstate income withholding, registration of the order in the other state for enforcement, registration of the order in the other state for modification, and a request to have the other state assist with discovery.

Alternative Dispute Resolution (ADR)

If you are a party to an action and have a dispute that you cannot resolve with the other party or parties, you are encouraged to participate in alternative dispute resolution (ADR) outside of the court system. ADR may involve parents, grandparents, and even third parties. Parties often find this rewarding because they make the decisions, instead of the court. The court must still enter an order, but the court order will usually reflect the parties' agreement.

Mediation is a common type of ADR. When parties go to court, decisions affecting their family are made by the judge. The judge must decide based upon all available evidence and according to law. Mediation places the responsibility for settling issues upon parties, without the direct involvement of the court. Mediation provides parents the opportunity to communicate, cooperate, and, with the assistance of a neutral third party, resolve disputes regarding custody or parenting-time. Parties often find this rewarding, because they make the decisions instead of the court.

The following are types of alternative dispute resolution available in domestic relations proceedings. You may contact an attorney or the Friend of the Court office to determine the types of alternative dispute resolution methods available in your area.



Friend of the Court Domestic Relations Mediation

The Friend of the Court is required to provide formal mediation services for disputes regarding custody or parenting-time. These services can be provided by a Friend of the Court employee, or the Friend of the Court may contract to have a private mediator provide the services. The Friend of the Court may also provide informal mediation services. There is typically no cost for Friend of the Court mediation.

Friend of the Court domestic relations mediation of custody or parenting-time is voluntary; both parties must be willing to participate. If you reach an agreement, the mediator can put it into writing. You may review this agreement with your attorneys. If both parties agree, the agreement will be put in the form of a court order and signed by the judge.

Matters discussed during a formal mediation are confidential. A Friend of the Court employee who acts as a mediator in a case cannot share information about what happened during mediation, except for what is in the signed agreement of the parties. In addition, a Friend of the Court employee who acts as a mediator in a case cannot enforce, investigate, or serve as a referee regarding any issues of that case. Under the Mandated Reporters law, FOC mediators who suspect domestic violence, child abuse and/or neglect must report it to the proper authorities.

Court Rule Domestic Relations Mediation

The court may refer family matters to mediation under the Michigan Court Rules (MCR 3.216). This may occur when the parties agree to mediation, upon written motion of one of the parties, or upon the direction of the court. Court rule mediation is not necessarily voluntary and is not limited to only custody or parenting-time issues.

For mediation under the court rule, the parties may agree to have any person mediate. If they do agree to a mediator, the mediator must be a person who qualifies under the court rule.

Parties must attend the mediation sessions and may be accompanied by their attorneys. Any information shared with the mediator is considered privileged and the mediator may not disclose this information during any future proceedings or at trial.

If an agreement is reached during mediation, that agreement must be put in writing and signed by the parties and their attorneys. The parties must take the necessary steps to have the mediation agreement entered as an order of the court.

If an agreement is not reached during mediation and the parties have requested evaluative mediation (a special type of mediation), then the mediator must prepare a report to the parties setting forth the mediator's recommendations on the issues. If both parties accept the mediator's recommendation, the parties must take the necessary steps to have the recommendation entered as a court order.

If either party rejects the mediator's recommendation, even in part, the case will go to trial. The court may not consider the mediator's recommendation at trial.

An individual who performs court rule domestic relations mediation is entitled to reasonable fees, which are usually divided equally between the parties.

Conciliation

Conciliation is a process in which an FOC employee assists the parties, usually at the beginning of a case, to reach an agreement. Absent an agreement, the FOC employee may prepare a recommendation for a court order. Information gathered during conciliation may be used by the court later in other proceedings.

Joint Meeting

The Support and Parenting Time Enforcement Act allows the FOC to use joint meetings to resolve custody, parenting-time, and support disputes.

Joint meetings are similar to conciliation, but they occur *after* an order is entered to resolve a parenting-time complaint (usually when a parent is denied access to his or her child). Following a joint meeting, the FOC employee may recommend a court order, which the court may enter if neither party objects to it.

Information About Custody, Parenting Time and Support

Custody

A number of custody arrangements are possible. For any arrangement, the court must decide who will make the major decisions about each child. The court must also decide how the child's time will be shared between the parties.

Parents are encouraged to reach their own agreements regarding custody. When parents cannot agree, the court analyzes factors set forth in the Michigan Child Custody Act. See MCL 722.23. These factors will be considered at a hearing where the parents may present evidence and arguments about each factor.

At the request of either parent, the court must consider ordering joint custody. If the parents agree on joint custody, the court must order it unless the court determines that joint custody is not in the best interests of the child.

When deciding, the court must state on record its reasons for granting or denying the request. The court may consider joint custody without a parent's request. In addition to the normal factors considered when deciding custody, for joint custody the court must also consider whether the parents will be able to cooperate and generally agree concerning important decisions affecting the child's welfare.

If the court determines that a child's best interests are not adequately represented in the proceedings, the court may appoint a lawyer-guardian ad litem to represent the child. The court may require the parties to pay the lawyer-guardian ad litem's fees.



Custody Questions and Answers

How do I change an order for custody?

A motion must be filed to change a custody order. If both parents agree, they sign an agreement (stipulation and consent agreement) and obtain the judge's approval and signature on the new order before it takes effect. That agreement will then become the new custody order.

Can I file my own motion to change custody?

You may file your own motion. The office of the Friend of the Court will provide forms and instructions to file this type of motion. However, it is important to remember that the court will still hold you to the same rules to which an attorney would be held. There may be many complex issues in a custody case and you may wish to have an attorney represent you. The Friend of the Court office cannot file a motion for you, tell you what to say in a motion, or provide you with an attorney.

Is there any way the Friend of the Court can assist parties in reaching an agreement regarding custody?

The Friend of the Court will provide domestic relations mediation whenever there is a custody dispute and both parties agree to participate in mediation.

After a motion for custody has been filed, and we cannot reach our own agreement, what does the Friend of the Court do?

The Friend of the Court is required to:

- Offer ADR services to the parties; or
- If directed by the judge, conduct an investigation and file a written report and recommendation based upon the factors listed in the Michigan Child Custody Act.

Do I have the right to receive a copy of the Friend of the Court report and recommendation on custody?

Upon request, the Friend of the Court must give each party, or his/her attorney, a copy of the report, recommendation and supporting information (or a summary of the information) used in making the recommendation. This report must be provided before the court takes any action on the recommendation.

Is there a cost for the custody investigation?

The FOC office may charge parties in a dispute an amount for the expense of conducting an investigation and making a report if the party requests the investigation.

What happens if I have an order for custody and the other parent does not return the child to me as stated in the court order?

- You may contact the Friend of the Court and request enforcement.
- You may file a motion, with or without an attorney, and ask the court to enforce the order.
- If you have reason to believe the other parent does not intend to return the child, you may contact the police or the prosecuting attorney and request that parental kidnapping charges be filed.

How do I enforce my custody order if the other parent has taken the child to another country?

When a child of U.S. citizenship is illegally kept outside of the country, the State Department's Office of Children's Issues works with local U.S. embassies and foreign authorities to assist the custodial parent. If a child custody dispute cannot be settled, it often must be resolved by judicial proceedings in the country where the child and other parent are living. The State Department can assist parents in filing the appropriate documents with foreign authorities and monitor and report on foreign judicial or administrative proceedings.

The Child Custody Act requires that parenting-time orders prohibit exercising parenting-time in a nation that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction, unless both parents provide the court with their written consent.

How do I contact the Office of Children's Issues at the Department of State?

United States Department of State
Bureau of Consular Affairs
Office of Children's Issues, SA-29
2201 C Street, NW
Washington, DC 20502
Phone: (202) 501-4444
Toll-free: (888) 407-4747
travel.state.gov

Does the Friend of the Court investigate abuse or neglect?

The FOC does not have the authority to investigate abuse or neglect. However, FOC employees employed in a professional capacity are required to report suspected child abuse and neglect.

If you suspect abuse or neglect, you should immediately contact the Child Protective Services (CPS) division of the Department of Health and Human Services (DHHS) at 855-444-3911.

A judge may consider abuse or neglect when deciding custody or parenting-time. A party should inform the FOC of any concerns about abuse or neglect if the FOC is investigating custody or parenting-time. Both the judge and the FOC will rely on Child Protective Services to investigate and evaluate the abuse or neglect allegations.

Can my child enroll in the school district I live in, even though the child lives with the other parent most of the time?

Michigan law provides that a child may enroll in a school district where either parent resides, regardless of which parent has custody. When a child regularly resides in two school districts as a result of a joint custody order, the child may attend school in either district.

Parenting Time

A parenting-time order specifies when a child will spend time with each parent. The Michigan Child Custody Act [MCL 722.27a(1)-(3)] 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.

... [p]arenting 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.”

During a person’s parenting-time, that parent is responsible for all routine decisions affecting the child. The Michigan Child Custody Act (1970 PA 91) lists factors that the judge may consider when determining the frequency, duration and type of parenting-time to be granted [MCL 722.27a(6)].

For more information, contact:

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You should also contact your local Friend of the Court office to find out if there are county-specific parenting-time guidelines.

Parenting Time Enforcement

The Friend of the Court is required to provide enforcement services for parenting-time orders.

The Friend of the Court office initiates enforcement when it receives a written complaint stating specific facts which show a violation of the custody or parenting-time order. However, the Friend of the Court office may decline to respond to the alleged violation if: (1) it occurred more than 56 days before the complaint is made; (2) the complaining party has made two or more similar complaints found by the court to be unwarranted and has failed to pay costs assessed in those actions; or (3) the court order does not include an enforceable parenting-time provision.



The Friend of the Court initiates enforcement by sending a copy of the complaint to the other party within 14 days of when the office receives the complaint. If the Friend of the Court finds that the court's order has been violated, the Friend of the Court has the following options: (1) apply "makeup" parenting-time; (2) start an action requiring the party to show cause why the court should not find the party in contempt of its order; (3) file a motion for modification of existing parenting-time provisions; (4) schedule mediation depending on the type of ADR services available in your county; or (5) schedule a joint meeting with the parties.

Parenting Time Modification Actions Started by Parties

A party may file a motion for a change in the parenting-time order if the party can show proper cause or a change in circumstances. The Friend of the Court office will provide forms and instructions to any party who wishes to file this type of motion. A party may want to contact an attorney to prepare the forms and file the motion.

If both parents agree to change the parenting-time order in a way that benefits their child, they may sign an agreement. Once that agreement is put in the form of an order, signed by the judge, and filed with the county clerk, it will become an order of the court. Even if the parties have agreed to a change in parenting-time or custody, the current order remains in effect until the judge signs the new order and it is filed with the clerk.

Frequently Asked Questions About Parenting Time

My order for parenting-time states I have "reasonable" parenting-time. What does this mean?

As parents, you have a responsibility to arrange a schedule of parenting-time which is reasonable based upon the best interests of each child and your family situation.

If you cannot agree on a "reasonable parenting-time" schedule, you may:

- Ask the other parent to attend ADR with the Friend of the Court.
- Ask the Friend of the Court whether the order is specific enough to allow the office to help.
- File a motion on your own or contact an attorney.

I would like to change my parenting-time schedule. What can I do?

- First, ask the other parent to agree to the change. Remember that the agreement, by itself, is not enforceable; it must first be converted into a new court order.
- If no agreement is possible, you may file a motion asking the court to order a new schedule. You may file the motion on your own or have an attorney file it for you.

Child support payments are not being made. Do I have to allow parenting-time?

Yes. Parenting time and support are separate parts of a court order. Each has enforcement procedures to be used when that part of the order is disobeyed. Ask the FOC to enforce child support.

The other parent is not sending or returning clothes or other items our child uses during parenting-time. Is there anything the Friend of the Court can do?

The Friend of the Court can only enforce the written order of the court. If your court order does not address clothing or other items, try to work it out with the other parent. If that is unsuccessful, you may file a motion with the court requesting a new order to require the other parent to transfer clothes or other items along with the child.



The other parent is not following the parenting-time order. What can I do?

File a written complaint with the Friend of the Court.

Your complaint should state facts explaining how the other parent is not following the order. Some FOCs have a form to file a parenting-time complaint. Contact your local FOC to find out how to proceed.

It appears the other parent has been drinking or using drugs. Do I have to let the child(ren) go with that parent for parenting-time?

That is your decision as a parent. If you violate the court order in such a situation, you may have to explain to the court, at a "show cause" hearing, why you should not be held in contempt for your decision. This will include showing why your decision was in the best interests of the child(ren).

The other parent will not let me call, email or text my child(ren). What can the Friend of the Court do?

The Friend of the Court can only enforce the written order of the court. If your court order does not provide for telephone calls, emails or texting, try to work it out with the other parent or contact the Friend of the Court for more information. You may also file a motion asking the court to modify the order allowing you to be allowed to call, email or text your child(ren).

I think my child is being abused during parenting-time. What should I do?

Report your concerns to the DHHS Children's Protective Services (CPS) at 1-855-444-3911. In Wayne County, call 800-716-2234.

The FOC cannot investigate abuse or neglect allegations, nor can it remove child(ren) from a person; only CPS can do that.

My child doesn't want to spend time with the other parent. What can I do?

Parents are to obey court orders, regardless of the child's age and preferences. It is the parent's responsibility to promote a positive relationship with the child and the other parent. You may want to try the following options:

- Work out a different arrangement with the other parent.
- Seek counseling for your child, yourself, or the other parent.
- Contact the Friend of the Court and request ADR.
- File a motion with the court asking for a change in your parenting-time order.

The other parent refuses to see our child(ren). What can the Friend of the Court do?

The FOC cannot force a parent to see his or her child(ren). To promote a positive relationship with the child(ren) and the other parent, you may wish to consider counseling, ADR, or filing a motion for change of the parenting-time order.



Support

The Office of Child Support, the Prosecuting Attorney's office, and the Friend of the Court offices work together with both parents to establish and enforce child support orders. A support order is any court order that requires a party to pay:

- Child support.
- Spousal support (formally called "alimony").
- Payment of medical, dental and other health care for the child(ren).
- Payment of confinement/birthing expenses (these are the mother's costs related to the birth).
- Payment of child care expenses.
- Payment of educational expenses.

All support orders state an amount due on the first day of the month. When an order takes effect on a day other than the first day of a month, the support amount must be prorated for the partial month. Unless an order gives a specific end date, support will end on the last day of the month specified by the order. The last month of support will not be prorated to a certain date. Support is past due if it is not paid by the last day of the month in which it became due.

Support Investigations and Reports

The FOC must review child support orders automatically once every 36 months if the child or the parent receives public assistance. In other cases, the FOC conducts a review on a party's written request, but not more often than once every 36 months, unless the party proves a substantial change in circumstances. The court can also order the FOC to review support. After reviewing the support, the FOC will ask the court to change the order if a change is warranted. As part of its review, the FOC may request information such as a parent's earnings, details of any health care coverage, tax refunds, and job or education history.

The FOC will ask the court to change the support payment if the difference between the current support and the amount determined by the child support formula (using the party's most recent income data) is at least 10 percent or \$50.00 per month, whichever is greater. If the difference is less than the minimum threshold, the FOC is not required to request a change.

Merely notifying the FOC that one parent's financial situation has changed cannot automatically change the ordered support amount. A party who needs an immediate change in the support amount should file a court motion requesting the change. The FOC provides forms and instructions for this type of motion without the assistance of an attorney, but the FOC cannot complete the forms or motion for the party. A party may also hire an attorney to file a modification motion.

Child Support Formula

Federal and Michigan law requires that the child support formula be used to determine child support amounts. A different amount may be used if the Friend of the Court or the judge state the amount required by the formula and a clear reason in writing or on the record why using the formula is "unjust or inappropriate." For more information about the child support formula, see "Facts about the Michigan Child Support Formula" (PSA 24) on the Michigan Courts website, courts.mi.gov.

Support Payments

Unless otherwise ordered, support is paid through the Michigan State Disbursement Unit (MiSDU).

When support received by the MiSDU sufficiently identifies to whom the support should be paid, it must be forwarded to the recipient within two business days of receipt.

Support is normally paid through income withholding. If you are paying directly, please include your case number at the time of payment. Do not send cash through the mail.

Once a year, upon written request, the Friend of the Court will provide parties with a free statement of their account. Information regarding your support account is also available online through <https://micase.state.mi.us>, or by calling the FOC office that has the support order.

Statutory Service Fees

Michigan law requires the FOC to charge support payers a \$3.50 per month fee.

Surcharge on Overdue Support

Some overdue support cases have surcharges added. Before 2011, surcharges were automatic. These surcharges are fully enforceable as support. As of January 1, 2011, automatic surcharges stopped, but the court may order a surcharge as a sanction for failure to pay support.

Automatic Support Enforcement

The Friend of the Court is required to begin enforcement action when past due support reaches more than one month past due of support. This will be done without waiting for a complaint or request for enforcement. Some enforcement begins immediately, including income withholding and health insurance coverage.

Enforcement of Support

The Friend of the Court has many options to collect support. They include:

Immediate Income Withholding

Income withholding tells the payer's employer or other source of income to withhold support and send it to the MiSDU. The Friend of the Court may increase the amount to be collected for arrearage, but the Friend of the Court must first send the payer a notice of arrearage at which time the payer has a right to an administrative hearing. The withheld amount cannot exceed 50 percent of the payer's disposable earnings.

Support orders must provide for income withholding. In rare circumstances, the court may not require income withholding. The court must find that "good cause" exists for departing from the general rule. Good cause exists when all of the following exist:

- The court makes a specific written finding that income withholding is not in the best interests of the child(ren), and
- All previously ordered support has been paid on time, and
- The payer agrees to keep the Friend of the Court informed of the name, address, and telephone number of his/her current source of income, and specific information on any health care coverage available to him/her through employment, or that is being maintained.

Contempt of Court (Show Cause Hearing)

The FOC or a party may begin a civil contempt action against the payer who does not timely pay support. The court will order the payer to appear in court and "show cause" why the court should not find the payer "in contempt of court." The court may issue a warrant to arrest a payer who fails to attend a show cause hearing. The court may order any of the following for a person who is in contempt of court: a fine up to \$100.00, a suspended license, participation in a work activity or community corrections program, FOC supervision, lump sum or other payments, and/or a jail sentence of up to 45 days (90 days for a second offense) until the payer makes a payment.

Income Tax Intercept

The FOC may collect support from a payer's federal and/or state income tax refund. The payer must owe at least \$150 in past-due support to the state, or \$500 in past-due support to the family for federal tax offsets and \$150 (to the state or the family) for state tax offsets.

Federal tax refunds first pay any past-due child support owed to the state. This is because the family is currently receiving cash assistance, or has received cash assistance in the past. If the family never received cash assistance, or there is no past-due support owed to the state, then all collections from federal tax refunds pay past-due support owed to the family.

Other Enforcement Remedies

Several other remedies exist:

- Lien/Levy
- License Suspension
- Passport Denial
- National Medical Support Notice
- Pension Accounts
- Surcharges
- Credit Reporting

Criminal Non-Payment of Support/Felony Charges

Failure to pay child support is now a criminal offense according to federal and Michigan law. The Friend of the Court does not issue felony charges. Felony charges according to Michigan law are filed and prosecuted by county prosecutors or the Attorney General. Federal charges are prosecuted by the United States Attorney's office.

Child Support Division, Office of the Attorney General

The mission of the Child Support Division is to enforce child support orders by prosecuting those individuals who have a history of non-payment and have significant arrearages of at least \$10,000. The division focuses on those parents who have the ability to pay their court ordered obligation but fail to do so. If you have any questions, please call the Child Support Division Monday through Friday from 8:30 AM to 4:30 PM at (517) 373-1111.

Health Care Enforcement

One or both parents may be responsible for providing health care coverage for the child(ren). If a parent is required to provide coverage, has coverage available through employment, and fails to provide coverage, the Friend of the Court will send a medical support notice to the parent's employer. The employer then is required to enroll the child(ren) in the employee's health plan and deduct premiums for the coverage.

Not all health care expenses will be paid by a health care plan. Support orders require each parent to pay a percentage of remaining health care expenses. The Friend of the Court will assist in collecting the payments if the following four conditions are satisfied:

- The amount exceeds the annual ordinary amount in the order, or the requesting parent is the support payer.
- Requested payment from the other parent within 28 days of receiving an insurance payment or a determination that the expense is not covered.
- Payment was not made within 28 days of the request to the other party.
- The Friend of the Court's assistance is requested within one year of incurring the expense, within six months of denial of coverage of the expense, or within six months after the other parent fails to pay as required.

If the Friend of the Court receives a request for help which meets the requirements, the Friend of the Court must send a copy of the request to the other party, along with notice that, if no objection is filed within 21 days, the amount will become a support arrearage subject to any enforcement process. If an objection is filed, the Friend of the Court must schedule a hearing to decide how to pay the amount the health insurer did not pay.

If health insurance is not provided through the support order, coverage might be available through other programs. For more information, contact the Michigan Department of Health and Human Services at (855) 275-6424 or visit www.michigan.gov/mdhhs.

Intergovernmental Cases

An intergovernmental case is where the child and a parent live in different states, countries, or Tribal nations.

The obligation to pay child support does not end when a party no longer lives in Michigan. Both parents must notify the FOC whenever they relocate. The support payer must continue to pay support and the FOC must continue to enforce the court order.

If a support payer no longer resides in Michigan and stops paying as ordered, other states (and some foreign countries) may enforce the Michigan courts' support orders. Every state passed the Uniform Interstate Family Support Act (UIFSA) that allows a court in another state to withhold the payer's income, enforce the order, set or modify a support order, or help find the payer's assets. Several other countries have agreed to work together in child support matters.

Under UIFSA, the state that issues the original order is the only state that can change the order as long as one of the parties or a child still lives there. If no party or child still lives in the state that issued the order, the person who wants it changed must ask the state where the other parent lives to change it.

For more information, see *The Uniform Interstate Family Support Act (UIFSA)*.

Child Support Questions and Answers

How do I get an order for child support?

A complaint asking the court to establish a child support order must be filed with the court clerk. If both parties agree to establish support at the amount shown by the formula, they may sign an agreement (stipulation). Once that agreement is put in the form of a Uniform Support Order, signed by the judge, and filed with the court clerk, it will become a support order.

Do I need an attorney to get an order for support?

You are not required to have an attorney to file a motion for support, but you will be expected to understand court rules and state laws if you act on your own. You may find an attorney's help useful when filing papers and following specific rules.

Can I receive child support after my child reaches age 18?

Support may continue up to age 19½ if the child "is regularly attending high school on a full-time basis with a reasonable expectation of graduation while residing on a full-time basis with the payee of support." Support orders now include the specific date when support will end.

If I have been paying my child support and the other parent is not allowing me the order's parenting-time, do I have to keep paying support?

Yes. Parenting-time and support are separate parts of a court order. Each has enforcement procedures to be used when that part of the order is disobeyed.

The other parent is not paying support as ordered. What can I do?

Contact the Friend of the Court for enforcement help if the other parent is more than one month behind on support payments. You may also contact an attorney to start enforcement proceedings.

My court order states I am to pay support through the Michigan State Disbursement Unit. Can I pay the other parent directly?

No, you will not get credit for payments made directly to the other parent.

If I am receiving public assistance, do I still get child support?

The Friend of the Court must send some or all of your child support payments to the state while you are on public assistance in order to pay back some of the money the State provides to you and the child(ren).

Is the Friend of the Court responsible for making sure that child support money is being spent on the child(ren)?

No. The law does not let FOC investigate how child support payments are being spent. The court may change custody if you can show that the other parent neglects the child(ren).

Will support be modified if the payer is in jail or prison?

The Friend of the Court is required to review the order within 14 days of learning of a payer's incarceration or release from incarceration, and recommend any necessary support changes.

My license was suspended. How can I have it reinstated?

Upon showing you are in compliance with the court's orders (which may include paying off arrearages or setting up a payment plan), you must get a Compliance Certificate for License Reinstatement from the Friend of the Court, and pay a \$45.00 fee to the Clerk of the Court.

Questions Regarding Miscellaneous Issues

Change of Domicile/Change of Legal Residence

How do I get the court's approval to change the child(ren)'s residence?

If a party who has joint custody with the other parent and does not already live 100 miles from the other parent wishes to relocate over 100 miles away, the parties may agree to a change of domicile (residence) by signing an agreement (stipulation). Once this agreement is put in the form of an order and signed by the judge, it will become an order of the court.

If you and the other parent cannot agree upon a change of domicile, you may:

- Contact the other parent and see if he or she will agree to ADR; or
- File a motion on your own, or contact an attorney to help you file the motion.

Notifying the Friend of the Court or filing a motion does not allow you to move your child(ren).

You must obtain a court order approving the move.

Enforcement of Judge's Verbal Ruling

Why won't the Friend of the Court enforce what the judge said in court, even if it's not in the written order?

The court speaks through its written orders. The Friend of the Court can only enforce the written order.

If you think a court order is different from what the judge said, tell the person who prepared the order and request a change. You must file a motion with the court to correct the order.

Property Settlement

Can the Friend of the Court enforce the property settlement provisions in my judgment of divorce?

No, the Friend of the Court has no power to enforce court property orders.

Access to Friend of the Court Records

Can I review the Friend of the Court file for my case?

Parties and their attorneys are entitled to information in their Friend of the Court records. There may be exceptions for certain confidential documents. See Michigan Court Rule 3.218.

The Friend of the Court may charge a reasonable fee for copying any records.

If the Friend of the Court denies you access to records regarding your case, you may file a motion with the court for an order of access.

Can other persons see my Friend of the Court file?

An FOC file is not public information. However, MCR 3.218 (B)-(F) allows certain individuals or agencies access to FOC files.



Access to Other Records

Can I see school, medical, and other records if my child lives with the other parent?

Michigan law gives both parents the right to see certain records or information about his or her child regardless of the custody arrangement. Included are medical, dental, school records, day care provider records, and notification of meetings regarding the child's education.

The Friend of the Court has no authority to enforce this law. You may wish to consult an attorney if you are denied this right.

Adoptions, Marriages, and Other Acts of Emancipation

What happens to my child support order and any support that may be owed if my minor child is adopted, marries, or enters the military service?

Upon entry of a court order, child support will stop when children are adopted, marry, or enter the military service. Copies of adoption orders, marriage records, or military service records should be provided to the court.

Any amounts owed (arrearages) must still be paid. Contact the Friend of the Court to arrange to pay or collect any money owed.

Parent Locator

Will the Friend of the Court help to find a missing parent?

The state and federal governments have a parent locating service which can be used to locate a parent:

- to collect child support;
- to decide or enforce a child custody or parenting-time matter; or
- to enforce state or federal law with respect to the unlawful taking or restraint of a child.

To use the parent locator service, the following information is helpful:

- the full name, date of birth, and social security number of the missing parent; and
- the last known address of the missing parent.

Paternity Establishment

How do I establish my child's paternity (father)?

A father may establish his paternity by signing an acknowledgement of paternity or by entering a court order. The Michigan Department of Health and Human Services (MDHHS) and the Prosecuting Attorney's (PA) Office work together to establish paternity.

The Federal IV-D Child Support Program

Title Four, Part D of the Social Security Act (IV-D), establishes the federal child support program. The federal program sets requirements all states must meet to receive federal funding to find missing parents and their assets and to help parents establish paternity and child support. The federal program also: provides funding to help parents change orders when appropriate; enforce court orders for child support, medical support and child care expenses; works with other states to enforce support; and collects and processes child support payments. For more information please contact the office of child support at 866-540-0008 or your local DHHS office. You may also apply online at www.michigan.gov/michildsupport.

Citizen Advisory Committees

What is the citizen advisory committee and what does it do?

Each county's board of commissioners or county executive may appoint a citizen advisory committee (CAC). A CAC advises the county board and chief judge about the duties and performance of the office of the Friend of the Court and the community's needs relating to office services. To find out if your county has an active CAC, please contact your local Friend of the Court.

A CAC may review any filed grievances which complain about Friend of the Court office operations.

Complaints

Friend of the Court

How do I file a complaint about the Friend of the Court?

The Friend of the Court Act provides a grievance procedure for complaints about Friend of the Court operations or employees. A grievance may not be used to change a Friend of the Court recommendation, or to challenge a referee's recommendation or a judge's decision.

You can file a grievance in two ways:

- (1) File a grievance about office operations or employees with your Friend of the Court office by either:
 - (a) Submitting a grievance form, which you can get from your local Friend of the Court office or on the web at courts.mi.gov; or
 - (b) Writing a letter to the Friend of the Court clearly identifying your letter as a grievance.
- (2) File a grievance about office operations with the Citizen Advisory Committee (CAC).

Within 30 days, the Friend of the Court must investigate and respond or issue a statement explaining why a response is not possible within that time.

If you are not satisfied with the response of the Friend of the Court, you may file the same grievance with the chief circuit court judge.

- (a) Grievances filed with the CAC may only concern office operations. Since the committee's role is advisory only, it cannot decide the grievance.

However, CAC can review, investigate, and hold hearings on the grievance, reporting its findings on the performance of the Friend of the Court to the chief judge and the county board of commissioners.

The Friend of the Court grievance procedure ends with the processes just described.

Court Order

How do I complain about a court order?

Options include filing a motion for a rehearing or filing an appeal. If you are represented, discuss your legal options with your attorney.

Orders are not changed under the grievance procedure or by complaints to other government agencies.

Judge or Referee

How do I file a complaint about the conduct of a judge or referee?

The Judicial Tenure Commission reviews complaints of misconduct by judges or referees. Complaints concerning your court orders or referee recommendations should not be sent to the Judicial Tenure Commission. It cannot change the content of a court order or a referee's recommendation.

If you have a misconduct complaint, contact: Judicial Tenure Commission
Cadillac Place, Suite 8-450
3034 W. Grand Blvd. • Detroit, MI 48202
(313) 875-5110 • jtc.courts.mi.gov

Attorney

How do I file a complaint about my attorney?

The Attorney Grievance Commission investigates complaints of misconduct by Michigan attorneys.

If you have a complaint, contact: Attorney Grievance Commission
Buhl Building, Suite 1700
535 Griswold • Detroit, MI 48226
(313) 961-6585 • www.agcml.com

Additional Resources

Your FOC office may have a list of local human service organizations that can help you in ways that the FOC cannot. The list of agencies below may be able to assist you with your questions.

Department of Health and Human Services (DHHS)

235 S. Grand Ave., P.O. Box 30037

Lansing, Michigan 48909

www.michigan.gov/DHHS

Cash, Food, Medical or Home and Burial Assistance

1-855-275-6424 (1-855-ASK-MICH)

Reporting Abuse/Neglect

1-855-444-3911

Domestic Violence Hotline

1-800-799-7233

Office of Child Support

1-866-540-0008

(Automated System)

MiChildSupport (24-hour case access)

www.michigan.gov/michildsupport

Michigan State Disbursement Unit (MiSDU)

P.O. Box 30351

Lansing, Michigan 48909

www.misdu.com

Michigan Legal Help

michiganlegalhelp.org



Glossary of Frequently Used Terms

Adjournment—Postponing or putting off a case or session of court until another time or place.

Affidavit—A written statement of fact that is verified by oath or affirmation.

Alimony—See spousal support.

Arrearage—Money which is overdue and unpaid.

Bench Warrant—A court order for the arrest of a person, so that he or she may be brought before the court.

Chief Judge—In courts with two or more judges, one judge is selected as chief judge. The chief judge is the director of the administration of the court.

Department of Health and Human Services (DHHS)—The agency providing public assistance to families.

Domestic Relations Action—Any action involving divorce, paternity, custody, parenting-time, and support is considered a domestic relations action.

Domicile—The permanent home to which a person, when absent, always intends to return.

Evidence—Proof allowed at a hearing. Evidence may be presented through testimony of witnesses and by documents, records, and other material.

Family Division of Circuit Court—The division of the circuit court responsible for hearing cases about families and their child(ren). The family division hears domestic relations matters, as well as juvenile matters formerly heard by the probate court.

Friend of the Court—(1) An office of the family division; investigates and makes recommendations to the court in domestic relations actions involving minor children and enforces orders of the court. (2) A person; the director of the office.

Hearsay—A statement made by a person who is not in court, which is repeated in court to prove a fact. Most hearsay evidence is not allowed as evidence in court.

Joint Custody—An order of the family division which provides: (1) Parents will share in major decisions affecting their child(ren) (joint legal custody); or (2) Child(ren) will live with one parent part of the time and the other parent part of the time (joint physical custody).

Jurisdiction—The power of the court to decide cases before it. This power depends on the type of case and how closely connected the parties are to the county where the court is located.

Michigan State Disbursement Unit (MiSDU)—A state office which collects and distributes support payments in accordance with the court's orders.

Motion—A formal request made in writing to the court. A motion is sometimes called a petition.

Order—A decision of the court made in writing.

Party—A person legally involved in a particular action.

Payee—The person, or agency, to whom support is sent. Also known as recipient.

Payer—The person who is ordered to pay support. Also known as an obligor.

Petition—See motion.

Pleadings—Papers filed by a party in a lawsuit stating claims against the other party, or the other party's defenses to those claims.

Public Service Announcement (PSA)—As used in this handbook, these are brochures available to the public.

Reconciliation—When parties to a domestic relations action are attempting to work out their differences and remain as a family unit.

Show Cause Hearing—A court hearing which is held so that a person can present reasons why he or she should not be considered in violation of a specific court order. Also known as a "Contempt of Court" hearing.

Spousal Support—Money ordered to be paid permanently or for a specified period of time to support a spouse or former spouse.

Statute of Limitations—In civil matters, the time limit on the right to seek relief in court for damages.

Testimony—The statement of a witness under oath which is given as evidence.

Transcript—A word-for-word record of proceedings at a hearing.

Waive—To give up a right, claim, or privilege.

Witness—One who testifies to what (s)he has seen, heard, or otherwise observed.

*The information in this publication is available,
upon request, in an alternative, accessible format.*



For more information regarding the Michigan Legislature,
scan this QR code with your smartphone.