

MIBFN

Michigan Breastfeeding Network

CHILD CUSTODY



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SYSTEM CHANGER'S GUIDE TO CHILD CUSTODY

www.mibreastfeeding.org/child-custody



BREASTFEEDING IS GOOD FOR EVERYONE

Breastfeeding is not a lifestyle choice: it is a public health imperative for families in our society and recognized as the optimal method for feeding and nurturing children. It is biologically normal to breastfeed infants and children. The American Academy of Pediatrics recommends exclusive breastfeeding for the first six months of life and the World Health Organization recommends breastfeeding until at least two years of age with continuation of breastfeeding as long as mutually desired by mother and child. Recent estimates show that over 800,000 child lives and 20,000 maternal lives could be saved each year if every child were exclusively breastfed for the first six months of life. Additionally, associated medical cost differences equaled a savings of \$40.2 million per year (Breastfeeding Medicine, December 2017). Breastfeeding provides valuable protection against illnesses such as diarrhea, pneumonia, and upper respiratory infections in addition to protection against Sudden Infant Death Syndrome (SIDS), particularly during the first year of life (Pediatrics, October 2017). Breastfeeding also provides lasting health benefits with lower incidences of allergy, asthma, high blood pressure, and obesity as breastfed infants enter into childhood and adolescence. Breastfeeding also promotes socio-emotional development, contributing to positive

maternal self-image while developing a stable, nurturing maternal-infant relationship. The emotional protection and warmth developed within the breastfeeding relationship promotes an early and secure attachment for the child, which is central to subsequent development. Breastfeeding affects children's cognitive and social functioning with typical IQ gains of two to five points in healthy infants and up to eight points for low birthweight babies, which significantly impacts school readiness and participation (Currie, J., "Health Disparities and Gaps in School Readiness," *The Future of Children*, Spring 2005). In addition to these benefits for infants and children, breastfeeding helps to improve the health of mothers by lowering the risk of postpartum depression and decreasing their lifetime incidence of cardiovascular disease, type II diabetes, osteoporosis, and breast and ovarian cancers.



CHILD CUSTODY IS A DIFFICULT TIME FOR EVERYONE

Parents often find negotiating custody and visitation arrangements difficult and stressful. When a child is breastfeeding, the situation becomes even more complicated. This can be a frightening and emotional time for everyone involved. Although the health evidence highlighting the value and importance of breastfeeding is well documented, the community and our legal system may not be well informed about these benefits. A breastfeeding mother may find it necessary to educate members of the court about why maintaining the breastfeeding relationship is so important. In addition, breastfeeding mothers may have to explain to a judge or a lawyer the challenges, both physical and emotional, that can happen when they are separated from their breastfeeding child. Judges and lawyers should recommend custody arrangements that support both the non-breastfeeding parent's visitation rights while also working to protect the breastfeeding relationship.

CHILD WELFARE IS THE NUMBER ONE PRIORITY

Child custody, support, and visitation decisions are based on what is in the best interest of the child. Finding a solution that supports the needs of the child is the judge's first priority. The short- and long-term impact of the separation from the primary caregiver on a young child must be weighed more heavily than the needs of the adults involved in the custody agreement. During the first year of life, the infant bonds with the primary caregiver and the quality of this attachment affects right brain growth and emotional development. From an emotional standpoint, the most essential task of the first first three years is the creation of a secure attachment between the infant and its primary caregiver (Haiman, P., "Effects of Separation on Young Children, 2018). The primary caregiver during this time is usually the mother and breastfeeding further develops this bond. Conversely, children who are subjected to disruptive separation at an early age lack this brain development and secure attachment.

BREASTFEEDING IS MORE THAN A FOOD SOURCE

Breastfeeding provides more than optimal nutrition for a child; breast milk provides immunological and emotional benefits as well. The closeness it creates has been found to improve bonding and attachment, which are important to the child's emotional and psychological well-being. During breastfeeding, the child is very dependent on the mother. Developing a custody plan that preserves the successful continuation of breastfeeding is the ultimate goal. A custody plan that encourages and supports the non-breastfeeding parent's bonding time with the child without extended periods of separation from the breastfeeding caregiver is the ideal solution.



EMOTIONAL BENEFITS OF BREASTFEEDING FOR INFANTS

Newborns benefit from the physical closeness of breastfeeding as infants adjust to their new world. Breastfeeding promotes a growing attachment between mother and baby that will continue to play an important role in the child's development for years to come (American Academy of Pediatrics, 2011). The human brain grows more during infancy than at any other time, doubling its volume and reaching approximately 60 percent of its adult size by one year of age. One of the most powerful enhancers of brain development is breastfeeding. Breastfeeding provides the skin-to-skin contact that helps babies' developing brains. The positive effects of breastfeeding extend throughout childhood and well into adulthood. The bond babies develop with their mothers during breastfeeding leads to better emotional development and stability than in infants who were not breastfed. As the breastfed baby grows into toddlerhood, the emotionally secure baby is more adept at the individuation, exploration, and learning that occurs at this stage of development. The consistent emotional availability

of the mother provides trust and helps to develop the child's growing sense of independence. In short, breastfeeding does not just enable the baby to grow but also to thrive as an emotionally secure individual.

PARENTING STYLES MAY BE AT ODDS

Negotiating custody between parents often highlights differences in parenting styles and beliefs. Both parents may not be on the same page when it comes to the importance of breastfeeding their child. The non-breastfeeding parent may feel breastfeeding is an excuse to keep them away from their child for extended periods of time and that formula is equal to breastmilk. Additionally, they may not want to handle breast milk in a bottle during visitation or may feel bottle feeding is challenging because the child prefers breastfeeding to a bottle. Based on the many benefits of breastfeeding, it is clearly not in the best interest of the child's health or well-being to stop or limit breastfeeding in order to accommodate custody requests that interfere with breastfeeding. Working to understand the importance that breastfeeding plays in a child's life is an important step in the process for the non-breastfeeding parent. Ensuring the health of their infant or child should be the shared goal of both parents during custody negotiations.



NON-BREASTFEEDING PARENTS ARE PARTNERS IN BREASTFEEDING SUCCESS

Children benefit most when both parents are involved in their care. Creating a custody plan that will develop and sustain strong bonds over a lifetime between each parent and the child is ideal. The non-breastfeeding parent's role in a child's life is critical and should be honored and valued. Non-breastfeeding parents sometimes report they feel less important during the breastfeeding phase of their child's life. These feelings should be openly addressed. When non-breastfeeding parents show they value the importance of breastfeeding for their child by being flexible during custody arrangements, they play an important role in the health of their child.

FORMULA IS NOT A SUBSTITUTE FOR BREAST MILK

Human milk cannot be duplicated. It is species specific and each mother's breast milk is tailor-made for her individual infant. Breast milk contains more than 200 components, including enzymes, cells, antibodies, and hormones along with many others. Infant formula is made from cow's milk, mass produced in factories, and includes many artificial ingredients that do not aid in the growth and development of human infants and children. Additionally, feeding expressed milk from a bottle is not the same as breastfeeding and poses problems in its own right if the child has difficulty switching back and forth between bottle and breast. Human milk is the gold standard of nutrition and is the optimal feeding method for all infants and children. Breast milk is food and nutrition, protection from disease and infection, and has an impact on the human microbiome over multiple generations.

RESPECTING THE COMMITMENT TO BREASTFEED

Breastfeeding provides short- and long-term benefits to a child and child custody rulings should reflect the importance breastfeeding has on infant and maternal health. Mothers who breastfeed commit to giving their children the best health benefits available to them. Stressful situations can make breastfeeding very challenging, but breastfeeding also offers the child great comfort during an unsettling life transition. When both the courts and the non-breastfeeding parent respect the commitment to breastfeed, the whole family wins. When all parties work together to protect breastfeeding, it eases the burden of the child, minimizing potential emotional harm during the custody process.



MICHIGAN CUSTODY LAW LACKS SUBSTANTIVE PROTECTION FOR BREASTFEEDING

Only a few states currently have custody protection laws that consider a breastfeeding child when they make custody decisions. The Michigan Custody Parenting Law requires that one factor a judge must consider in family law cases when determining allocation of parenting time is whether a child is breastfeeding. The law is part of the Child Custody Act of 1970.

The law reads:

MCLS § 722.27a, Parenting time.

(7) The court may consider the following factors when determining the frequency, duration, and type of parenting time to be granted: ...

(b) Whether the child is a nursing child less than 6 months of age, or less than 1 year of age if the child receives substantial nutrition through nursing.

<https://breastfeedinglaws.uslegal.com/state-laws/michigan-breast-feeding-laws/>

While the law requires that breastfeeding must be considered, it does not make specific recommendations for how the judge should rule. As stated, current Michigan law lacks substantial protection of the breastfeeding relationship.

RECOMMENDATIONS: FROM THE PRACTICAL TO THE SYSTEMIC

Custody orders try to create the best situation for the child in order to develop and sustain a strong bond with both parents over a lifetime. There are many successful examples of shared custody and continued breastfeeding. Equitable solutions must keep the well-being of the child at the forefront of the decision as well as recognizing the importance of both parents.

Evidence-based breastfeeding information and resources for distribution to families through Friend of the Court (FOC):

FOC is a court-appointed mediator that is brought in by the court to help the parents make decisions about custody, parenting time, and child support. Breastfeeding is a crucial part of this decision and the FOC can provide information that is useful to the court when finalizing custody agreements, serving as a gatekeeper for accurate breastfeeding information. The FOC makes recommendations to the judge and ensures that the parents obey the court orders while helping the parents to settle disputes during and after their case.

**Comprehensive breastfeeding education for judges and court employees and staff:**

Courts are the institutions that interpret and enforce laws and judges are responsible for making court orders. Judges rule on custody, parenting time, and child support issues. Judges, lawyers, and legal staff and employees need evidence-based breastfeeding information in order to understand the numerous ways breastfeeding benefits children, families, and society as a whole. Education should provide details on the breastfeeding process, making it easier for judges to recognize that simply weaning a child or providing expressed breast milk are not always viable solutions. Education will also help to continue normalization efforts and promote cultural acceptance of breastfeeding. The judicial system must be one of the organizational systems within our society that promotes and supports breastfeeding.

Child custody laws that protect the breastfeeding relationship for at least the first two years of life and extend beyond as long as breastfeeding is maintained:

When breastfeeding is mentioned as a factor for consideration in custody orders, oftentimes a time restraint exists, limiting the course of the breastfeeding relationship. World Health Organization guidelines recommend breastfeeding for a minimum of two years of age and further research states “there is no upper limit to the duration of breastfeeding and no evidence of psychological or developmental harm from breastfeeding into the third year of life or longer” (“Breastfeeding and the Use of Human Milk,” Pediatrics, March 2012). Experts have described the natural age of weaning to be anywhere from about 2.5 years to around 7 years old. It is important to remember that breastfeeding a toddler is normal and arbitrary age restrictions on breastfeeding should not be included in custody decisions. For toddlers going through enormous changes, some of which are very frustrating, breastfeeding is very important in the life of a child.

National tiered child custody law that takes into account child development and age:

A law is needed at the federal level that recognizes early childhood development as critical to a child’s ultimate emotional health and development. Younger infants and toddlers have a great need for continuous contact with the primary caregiver who provides a sense of security, nurturing, and predictability. These plans deem scheduled parenting time in infancy be minimally disruptive to the infant’s schedule. Indiana Parenting Time Guidelines, as issued by the Indiana Rules of Court, has a tiered system that emphasizes frequency versus duration and safeguards night time care routines based on the parent who has provided regular hands-on care for the child prior to separation, which includes breastfeeding. Parenting time guidelines are divided into separate provisions depending on the age of the child: 1) birth through age four months; 2) age five months through age nine months; 3) age 10 months through age 12 months; 4) age 13 months through age 18 months; 5) age 19 months through 36 months.



LOOKING AHEAD: A NEW BREASTFEEDING LANDSCAPE

We believe that breastfeeding is directly relevant when determining child custody orders. All families deserve a judicial system that recognizes breastfeeding as the cultural norm and supports evidence-based rulings that will safeguard breastfeeding for the children of Michigan. All families, regardless of structure, economic status, and ethnicity, deserve these same protections. Advocating for breastfeeding to continue throughout child custody negotiations and preserving the breastfeeding relationship when establishing custody orders helps to alleviate the stress of this oftentimes difficult situation. Custody orders that do not limit, restrict, or prevent breastfeeding are the ideal.