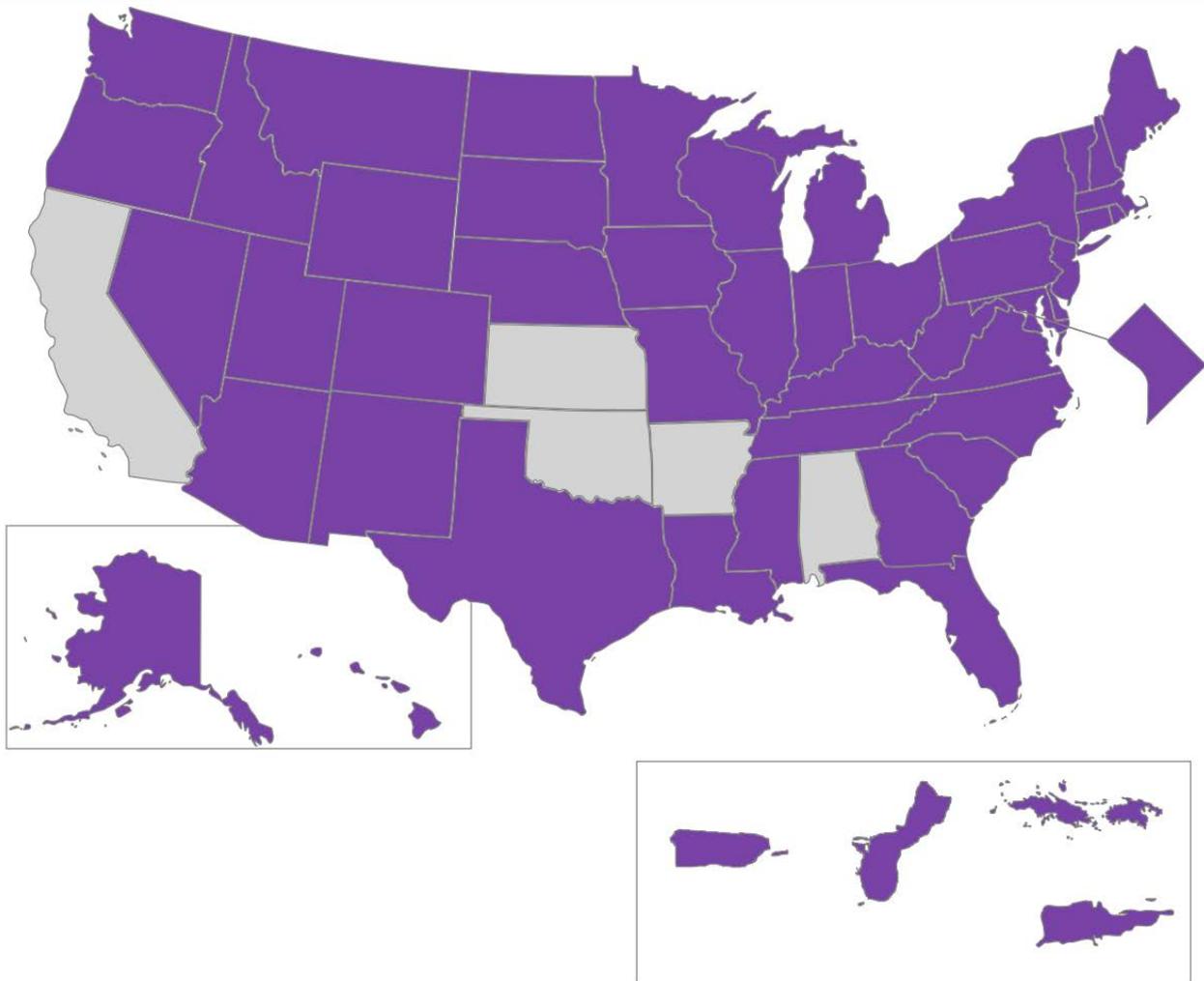


# Best Interests of the Child - Parental Fitness Factor<sup>1</sup>

By Morgan Lewis and Bockius LLP<sup>2</sup> – December 29, 2017

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**Purple states have a relevant factor for determining a child’s best interests in a custody dispute.** Please note that many states provide additional or different factors for determining a child’s best interests in other circumstances (e.g., adoption, visitation, or termination of parental rights). See “Factors in State Laws” for comprehensive information on child’s best interests statutes.



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<sup>2</sup> Developed for the National Immigrant Women’s Advocacy Project, American University, Washington College of Law

Jurisdiction	Governed by Statute	Factors a court will consider:
Alabama	No	N/A
Alaska	Yes	Alaska Stat. § 25.24.150, Alaska Stat. § 25.20.090: <ul style="list-style-type: none"> <li>• capability and desire of parent to meet physical, emotional, mental, religious, and social needs of the child and the capability and desire of each parent to meet these needs</li> </ul>
American Samoa	No	N/A
Arizona	Yes	Ariz. Rev. Stat. Ann. § 25-403: <ul style="list-style-type: none"> <li>• mental and physical health of all individuals involved</li> </ul>
Arkansas	No	N/A
California	No	N/A
Colorado	Yes	Colo. Rev. Stat. Ann. § 14-10-124: <ul style="list-style-type: none"> <li>• ability to place needs of child first, including capacity of each parent to encourage love, affection, and contact</li> <li>• past practice demonstrating system of values, time commitment, and mutual support</li> <li>• mental and physical health</li> </ul>
Connecticut	Yes	Conn. Gen. Stat. Section 46b-56: <ul style="list-style-type: none"> <li>• ability of parent to be actively involved in child's life</li> <li>• mental and physical health of all individuals involved</li> <li>• parents' capacity to understand and meet needs of child</li> <li>• participation in a parenting education program established pursuant to state law</li> </ul>
Delaware	Yes	13 Del. C. § 722: <ul style="list-style-type: none"> <li>• mental and physical health of all individuals involved</li> <li>• past and present compliance by both parents with their rights and responsibilities to their child</li> </ul>
District of Columbia	Yes	D.C. Code Section 16-831.08:

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> <li>• physical, mental, and health of all individuals involved, particularly the child</li> <li>• impact on assistance for needy families</li> <li>• demands of parents' jobs</li> <li>• parent's ability to financially support a joint custody arrangement</li> </ul>
Florida	Yes	<p>Fl. St. 61.13(3):</p> <ul style="list-style-type: none"> <li>• developmental stages/needs of child and parent's ability to meet child's developmental needs</li> <li>• division of parental duties, including the extent to which parenting responsibilities were undertaken by third parties</li> <li>• mental and physical health of the parents</li> <li>• moral fitness of the parents</li> <li>• parental delegation of responsibilities to third parties</li> <li>• demonstrated capacity of parent to provide consistent routine for child, such as discipline, and daily schedules for homework, meals, and bedtime</li> <li>• demonstrated parental knowledge to be informed of the circumstances of the minor child</li> <li>• parent's efforts to participate and be involved in the child's school and extracurricular activities</li> <li>• parent's capacity to act upon needs of child as opposed to needs of parent</li> </ul>
Georgia	Yes	<p>O.C.G.A. 19-9-3 (a) (3):</p> <ul style="list-style-type: none"> <li>• capacity and disposition of each parent to give the child love, affection, guidance and to continue education of child</li> <li>• capacity and disposition of parent to provide child with food, clothing, medical care</li> <li>• home environment of parent considering nurturance and safety of child rather than superficial or material factors</li> </ul>

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> <li>• mental and physical health of each parent</li> <li>• parent's involvement, or lack thereof, in child's educational, social, and extracurricular activities</li> <li>• parent's knowledge and familiarity of child and child's needs</li> <li>• parent's past performance and abilities for future performance of parenting responsibilities</li> <li>• stability of family unit of each parent and presence or absence of parent's support systems</li> <li>• parent's employment schedule and related flexibility of a parent to care for the child</li> </ul>
Guam	No	N/A
Hawaii	Yes	HI. Rev. Statutes Section 571-46: <ul style="list-style-type: none"> <li>• Parent with de facto custody in stable wholesome home who is fit and proper person</li> <li>• history of caregiving of each parent prior/subsequent to marital or other type of separation</li> <li>• mental health of each parent</li> <li>• parent's actions demonstrating that they separate the child's needs from the parent's needs</li> </ul>
Idaho	Yes	ID Statutes 32-717: <ul style="list-style-type: none"> <li>• character and circumstances of all individuals involved</li> </ul>
Illinois	Yes	750 Ill. Comp. Stat. Ann. 5/602.7 (West 2016): <ul style="list-style-type: none"> <li>• parent's willingness and ability to place the needs of the child ahead of his or her own needs</li> <li>• mental and physical health of all individuals involved</li> <li>• amount of time the parent spent performing caretaking functions within the 24 months prior to the petition (or since the child's birth if less than 24 months old)</li> <li>• terms of parent's military care plan if parent is being deployed by US Armed forces</li> </ul>

Jurisdiction	Governed by Statute	Factors a court will consider:
Indiana	Yes	Ind. Code Ann. § 31-14-13-2; 31-14-13-2.5: <ul style="list-style-type: none"> <li>• evidence that the child has been cared for by a de facto custodian, the de fact custodian’s wishes, the extent to which the child has been cared for by that de facto custodian, the parent’s intent in placing the child with the de facto custodian, and the circumstances under which the child was allowed to remain in the custody of the de facto custodian</li> <li>• mental and physical health of all individuals involved</li> </ul>
Iowa	Yes	Iowa Code Ann. § 598.41: <ul style="list-style-type: none"> <li>• whether a parent has allowed a person control over or unsupervised access to a child after knowing such person is required to register as a sex offender</li> <li>• whether the parent would be a suitable custodian for the child</li> <li>• whether the parent has actively cared for the child</li> </ul>
Kansas	No	N/A
Kentucky	Yes	Ky. Rev. Stat. Ann. § 403.270 (2): <ul style="list-style-type: none"> <li>• extent to which the child has been cared for, nurtured, and supported by any de facto custodian</li> <li>• mental and physical health of all individuals involved</li> </ul>
Louisiana	Yes	La. Civ. Code Ann. art. 134: <ul style="list-style-type: none"> <li>• capacity of each party to give the child love, affection, and spiritual guidance and to continue the education and rearing of the child</li> <li>• capacity of each party to provide the child with food, clothing, medical care, and other material needs</li> <li>• person’s role in rearing the child</li> <li>• mental and physical health of each party</li> <li>• moral fitness of each party</li> </ul>
Maine	Yes	ME ST T. 19-A § 1653:

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> <li>• capacity of each parent to allow frequent and continuing contact between the child and the other parent</li> <li>• capacity of each parent to cooperate in child care</li> <li>• co-inhabitants of parent</li> <li>• motivation and capacity of the parties involved to care for the child</li> </ul>
Maryland	Yes	MD Family § 5-323(d): <ul style="list-style-type: none"> <li>• character reputation of the parties</li> <li>• fitness of the parents</li> <li>• whether there was any prior voluntary abandonment or surrender of custody of child</li> </ul>
Massachusetts	Yes	MA ST 208 section 32 and 209C section 10: <ul style="list-style-type: none"> <li>• exercise of parental responsibilities</li> <li>• desertion of the child</li> </ul>
Michigan	Yes	MI ST 722.23, Sec. 3: <ul style="list-style-type: none"> <li>• capacity of parties to give child love, affection, and guidance, education and raising the child in his/her religion or creed</li> <li>• capacity of parties to provide child with food, clothing, and medical care</li> <li>• mental and physical health of parties involved</li> <li>• moral fitness of parties involved</li> </ul>
Minnesota	Yes	MN ST § 257C.04: <ul style="list-style-type: none"> <li>• capacity and disposition of parties to give child love, affection, and guidance</li> <li>• capacity and disposition of parties to continue raising child in the child's culture and religion or creed, if any</li> <li>• mental and physical health of all individuals involved</li> <li>• child's primary caregiver</li> </ul>

Jurisdiction	Governed by Statute	Factors a court will consider:
Mississippi	Yes	<p><i>Albright v. Albright</i>, 437 So.2d 1003, 1005 (Miss. 1983):</p> <ul style="list-style-type: none"> <li>• factors relevant to the parent-child relationship, including a determination of which potential custodian has the best parenting skills, moral fitness of parent, emotional ties of parent and child</li> <li>• employment of parent</li> <li>• physical and mental health and age of parent</li> </ul>
Missouri	Yes	<p>Mo. Ann. Stat. § 452.375.2 (West 2017):</p> <ul style="list-style-type: none"> <li>• mental and physical health of all involved</li> <li>• ability and willingness of parents to actively perform their functions as mother and father for the needs of the child</li> </ul>
Montana	Yes	<p>Mont. Code Ann. § 40-4-212(1) (West 2017):</p> <ul style="list-style-type: none"> <li>• mental and physical health of all involved</li> <li>• failure to provide financial support including birth-related costs</li> </ul>
Nebraska	Yes	<p><i>Schrag v. Spear</i>, 858 N.W.2d 865, 877 (2015):</p> <ul style="list-style-type: none"> <li>• age, sex, and health of parents and child</li> <li>• environments offered by each parent</li> <li>• moral fitness and character of parents, including parents sexual conduct</li> <li>• parents' capacity to provide physical and educational care</li> </ul>
Nevada	Yes	<p>Nev. Rev. Stat. Ann. § 125C.0035 (West 2017):</p> <ul style="list-style-type: none"> <li>• mental and physical health of parents</li> </ul>
New Hampshire	Yes	<p>N.H. Rev. Stat. Ann. § 461-A:6 (West 2017):</p> <ul style="list-style-type: none"> <li>• parents' ability to meet child's developmental needs</li> <li>• ability of each parent to provide nurture, love, affection, and guidance, and food, clothing, shelter, medical care, and safety</li> </ul>
New Jersey	Yes	<p>N.J.S.A. § 9.2-4:</p>

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> <li>• the parents' employment responsibilities</li> <li>• gross immorality or unfitness to be entrusted with care and education of the child</li> <li>• neglect to provide the child with proper protection, maintenance and education</li> <li>• habits that endanger the welfare of the child such that the child may become a public charge</li> <li>• parental fitness</li> <li>• time spent with the child prior to or subsequent to the separation</li> </ul>
New Mexico	Yes	<p>N.M. Stat. Ann. §§ 40-4-9; 40-4-9.1 (West 2017):</p> <ul style="list-style-type: none"> <li>• ability of each parent to provide adequate care</li> <li>• mental and physical health of all individuals involved</li> <li>• parents' willingness to accept parenting responsibilities</li> </ul>
New York	Yes	<p><i>Jacobs v. Jacobs</i>, 117 A.D. 2d 709, 498 N.Y.S. 2d 852 (2nd Dept. 1986); <i>Matter of FF v. FF</i>, 37 A.D. 2d 893, 325 N.Y.S. 2d 291 (3rd Dept. 1971):</p> <ul style="list-style-type: none"> <li>• military service</li> <li>• parental employment and availability to care for child</li> </ul> <p><i>Matter of Louise E.W. v. W. Stephen S.</i>, 64 N.Y. 2d 946, 488 N.Y.S. 2d 637, 477 N.E. 2d 1091 (1985):</p> <ul style="list-style-type: none"> <li>• ability to provide for the child's emotional and intellectual development, the quality of the home environment, and the parental guidance to be provided</li> </ul> <p><i>King v. King</i>, 243 A.D. 780, 277 N.Y.S. 653 (2nd Dept. 1935); <i>Janus v. Janus</i>, 239 A.D. 2d 712, 657 N.Y.S. 2d 256 (3rd Dept. 1997):</p> <ul style="list-style-type: none"> <li>• parent's mental and physical health</li> </ul> <p>See, e.g., <i>Church v. Church</i>, 238 A.D. 2d 677, 656 N.Y.S. 2d 416 (3rd Dept. 1997); <i>Wallinger v. Wallinger</i>, 96 A.D. 2d 988, 466 N.Y.S. 2d 826 (3rd Dept. 1983); <i>McIntosh v. McIntosh</i>, 87 A.D. 2d 968, 451 N.Y.S. 2d 200 (3rd Dept. 1982); <i>Salk v. Salk</i>, 89 Misc. 2d 883, 393</p>

Jurisdiction	Governed by Statute	Factors a court will consider:
		<p>N.Y.S. 2d 841 (Sup. Ct. N.Y. County 1975), affirmed, 53 A.D. 2d 558, 385 N.Y.S. 2d 1015 (1st Dept. 1976):</p> <ul style="list-style-type: none"> <li>• each parent’s credibility, conduct, stability, lifestyle, morality, financial status, professional achievements, and personal associations</li> </ul>
North Carolina	Yes	<p>N.C.G.S.A. § 50-13.2:</p> <ul style="list-style-type: none"> <li>• impact on child of military service</li> </ul>
North Dakota	Yes	<p>N.D.C.C. § 14-09-06.2:</p> <ul style="list-style-type: none"> <li>• impact on child of a military service or parent’s possible future deployment</li> <li>• ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment</li> <li>• existing ties between parent and child and ability to provide the child with nurture, love, affection, and guidance</li> <li>• moral fitness of the parents, as that fitness impacts the child</li> <li>• mental and physical health of the parents, as that health impacts the child</li> </ul>
Northern Mariana Islands	No	N/A
Ohio	Yes	<p>31 Ohio Rev. Code Ann. § 3109.4:</p> <ul style="list-style-type: none"> <li>• ability of parent to encourage the sharing of love, affection, and contact between child and parent</li> <li>• whether the parent is required to be separated from the child due to military service</li> <li>• willful failure, refusal or neglect to contribute to support of child</li> <li>• physical custody left to non-parent</li> <li>• health of all the parties</li> </ul>

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> <li>• history of child support payment</li> </ul>
Oklahoma	No	N/A
Oregon	Yes	ORS § 107.137: <ul style="list-style-type: none"> <li>• interest of the parties in and attitude toward the child</li> <li>• preference for the primary caregiver of the child, if the caregiver is deemed fit by the court</li> </ul>
Pennsylvania	Yes	23 Pa.C.S. § 5328: <ul style="list-style-type: none"> <li>• availability to care for the child or ability to make appropriate child-care arrangements</li> <li>• mental and physical condition of a party or member of a party's household</li> <li>• parental duties performed by each party on behalf of the child</li> <li>• party more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child and to maintain a loving, consistent and nurturing relationship with child</li> </ul>
Puerto Rico	Yes	P.R. Leyes An. tit. 32 § 3185 (2017): <ul style="list-style-type: none"> <li>• level of responsibility or moral integrity shown by each parent</li> <li>• capacity of each parent to satisfy emotional, financial, and moral needs of child</li> <li>• background of each parent with respect to their children before the divorce, dissolution, or separation of an unmarried couple</li> <li>• mental health of all involved</li> </ul> P.R. Leyes An. tit. 32 § 3187 (2017): <ul style="list-style-type: none"> <li>• acts and omissions of a parent that could potentially corrupt the child</li> </ul>

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> <li>parent's suffering of a physical or intellectual disability that prevents adequate care of child</li> </ul>
Rhode Island	Yes	Pettinato v. Pettinato, 582 A.2d 909, 913-14 (R.I. 1990): <ul style="list-style-type: none"> <li>mental and physical health of all individuals involved</li> <li>moral fitness of the child's parents</li> </ul>
South Carolina	Yes	S.C. Code Ann. § 63-15-240(B): <ul style="list-style-type: none"> <li>ability of each parent to be actively involved in the life of the child</li> <li>capacity and the disposition of the parents to understand and meet the needs of the child</li> <li>mental and physical health of all individuals involved (except that a disability of a proposed custodial parent or other party, in and of itself, must not be determinative of custody unless the proposed custodial arrangement is not in the best interest of the child)</li> </ul>
South Dakota	Yes	<i>Fuerstenberg v. Fuerstenberg</i> , 1999 SD 35, N.W.2d 798, 1999 S.D. Lexis 43 (S.D. 1999): <ul style="list-style-type: none"> <li>which parent is better equipped to provide for the child's temporal, mental and moral welfare</li> <li>commitment to and involvement in parenting the child</li> </ul>
Tennessee	Yes	Tenn. Code Ann. § 36-6-106(a): <ul style="list-style-type: none"> <li>each parent's employment schedule</li> <li>moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the child</li> <li>refusal to attend a court ordered parent education seminar</li> <li>degree to which a parent has been the primary caregiver (defined as the parent who has taken the greater responsibility for performing parental responsibilities)</li> <li>parent's or caregiver's past and potential for future performance of parenting responsibilities</li> </ul>

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> <li>• disposition of each parent to provide the child with food, clothing, medical care, education, and other necessary care</li> </ul>
Texas	Yes	<p>V.T.C.A., Family Code § 263.307:</p> <ul style="list-style-type: none"> <li>• whether the child’s family demonstrates adequate parenting skills, including providing the child and other children under the family's care with:               <ul style="list-style-type: none"> <li>○ minimally adequate health and nutritional care</li> <li>○ care, nurturance, and appropriate discipline consistent with the child’s physical and psychological development</li> <li>○ willingness and ability of the child’s family to seek, accept and complete counseling services and to cooperate with and facilitate an appropriate agency’s close supervision</li> <li>○ willingness and ability of the child’s family to effect positive environmental and personal changes within a reasonable period of time</li> <li>○ results of psychiatric, psychological or developmental evaluations of the child, the child’s parents, other family members, or others who have access to the child’s home</li> <li>○ guidance and supervision consistent with the child’s safety</li> <li>○ a safe physical home environment</li> <li>○ protection from repeated exposure to violence even though the violence may not be directed at the child</li> <li>○ an understanding of the child’s needs and capabilities</li> </ul> </li> </ul>
U.S. Virgin Islands	Yes	<p><i>Madir v. Daniel</i>, 53 V.I.623 (V.I. 2010); <i>James v. Faust</i>, 65 V.I. 349 (V.I. 2016):</p> <ul style="list-style-type: none"> <li>• ability of each parent to nurture the child, including the degree to which each parent has acted as primary caretaker</li> </ul>

Jurisdiction	Governed by Statute	Factors a court will consider:
Utah	Yes	Utah Code 30-3-10(2) 2017: <ul style="list-style-type: none"> <li>• parents prioritizing child’s welfare and reaching shared decision</li> <li>• past conduct and demonstrated moral standards of each of the parties</li> <li>• maturity of parents and their willingness to protect the child</li> <li>• which parent is most likely to act in best interest of child</li> </ul>
Vermont	Yes	Vt. Stat. Ann. tit. 15 § 665(b)(1)-(9) (2017): <ul style="list-style-type: none"> <li>• ability and disposition of each parent to assure that the child receives adequate food, clothing, medical care, other material needs, and a safe environment</li> <li>• ability and disposition of each parent to meet the child's present and future developmental needs</li> <li>• relationship of the child with each parent and the ability and disposition of each parent to provide the child with love, affection, and guidance</li> </ul>
Virginia	Yes	Va. Code Ann. 20.124-3 (2017): <ul style="list-style-type: none"> <li>• relative willingness and demonstrated ability of each parent to maintain a close and continuous relationship with the child</li> <li>• age and physical and mental condition of each parent</li> <li>• role that each parent has played and will play in the future, in the upbringing and care of the child</li> </ul>
Washington	Yes	Wash. Rev. Code Section 26.09.002 (2017): <ul style="list-style-type: none"> <li>• a parent’s neglect or substantial nonperformance of parenting functions</li> <li>• long term emotional or physical impairment which interferes with the performance of parenting functions</li> <li>• ability to protect the child from physical, mental or emotional harm</li> </ul>

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> <li>ability to maintain a child’s emotional growth, health and stability and physical care</li> </ul>
West Virginia	Yes	<p>W.V. Code Section 48-9-102 (2017):</p> <ul style="list-style-type: none"> <li>caretaking relationship by adults who love the child, know how to provide a child's needs and who place a high priority on doing so</li> </ul>
Wisconsin	Yes	<p>Wis. Stat. Section 767.41(5)(am) (2017):</p> <ul style="list-style-type: none"> <li>amount and quality of time each parent has spent with the child in the past and necessary changes to the parents’ custodial roles and reasonable lifestyle changes suggested by a parent so parent can spend time with the child</li> <li>whether the mental or physical health of a party, minor child or other person living in a proposed custodial household regularly affects the child</li> </ul>
Wyoming	Yes	<p>Wyo. Stat. Ann. 20-2-201 (2017):</p> <ul style="list-style-type: none"> <li>ability and willingness of each parent to provide adequate care for each child throughout each period of responsibility, including arranging for each child's care by others as needed</li> <li>current physical and mental ability of each parent to care for each child</li> <li>relative competency and fitness of each parent</li> </ul>