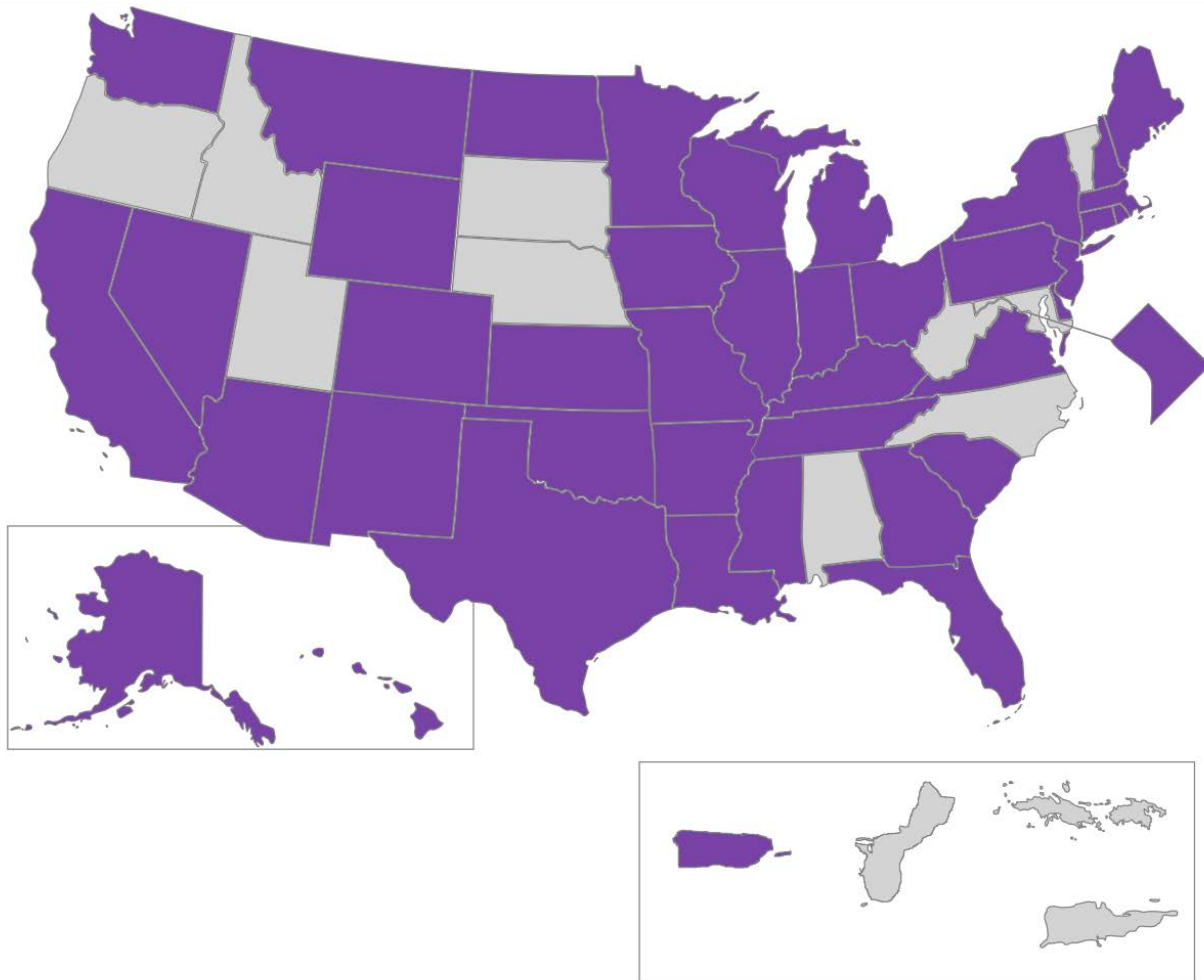


Best Interests of the Child - Substance Abuse, Mental Illness, and Criminal History Factor¹

By Morgan Lewis and Bockius LLP² – 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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² 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"> • substance abuse affecting the child
American Samoa	No	N/A
Arizona	Yes	Ariz. Rev. Stat. Ann. § 25-403: <ul style="list-style-type: none"> • mental and physical health of all individuals involved
Arkansas	Yes	Ark. Code. Ann. § 9-13-101: <ul style="list-style-type: none"> • ex offender status
California	Yes	Cal. Fam. Code § 3011: <ul style="list-style-type: none"> • substance abuse
Colorado	Yes	Colo. Rev. Stat. Ann § 14-10-124: <ul style="list-style-type: none"> • mental and physical health of all individuals involved
Connecticut	Yes	Conn. Ge. Stat. Section 46b-56: <ul style="list-style-type: none"> • mental and physical health of all individuals involved
Delaware	Yes	13 Del. C. § 722: <ul style="list-style-type: none"> • criminal history of any party or any other member of household • mental and physical health of all individuals in household
District of Columbia	Yes	D. C. Code Section 16-831.08: <ul style="list-style-type: none"> • mental and physical health of all individuals involved
Florida	Yes	Fl. St. 61.13(3): <ul style="list-style-type: none"> • parent's efforts to maintain a substance-abuse-free environment for child • mental and physical health of the parents
Georgia	Yes	O.C.G.A. 19-9-3(a)(3): <ul style="list-style-type: none"> • evidence of family violence or abuse or criminal history of either parent

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> evidence of substance abuse by either parent mental and physical health of the parents
Guam	No	N/A
Hawaii	Yes	HI. Rev. Statutes Section 571-46: <ul style="list-style-type: none"> mental health of each parent evidence of past or current drug or alcohol abuse by a parent
Idaho	No	N/A
Illinois	Yes	750 Ill. Comp. Stat. Ann. 5/602.7 (West 2016): <ul style="list-style-type: none"> mental health of all involved parent's conviction as a sex offender or parent living with a convicted sex offender, and what if any treatment the offender has successfully participated in
Indiana	Yes	Ind. Code Ann. § 31-14-13-2; 31-14-13-2.5: <ul style="list-style-type: none"> mental health of all individuals involved
Iowa	Yes	Iowa Code Ann. § 598.41: <ul style="list-style-type: none"> whether a history of domestic abuse exists
Kansas	Yes	Kan. Stat. Ann. § 23-3203: <ul style="list-style-type: none"> sex offender registration status of parent (or person residing with parent)
Kentucky	Yes	Ky. Rev. Stat. Ann. § 403.270 (2): <ul style="list-style-type: none"> mental health of all individuals involved
Louisiana	Yes	La. Civ. Code Ann. art. 134: <ul style="list-style-type: none"> mental and physical health of each party
Maine	Yes	ME ST T. 19-A § 1653: <ul style="list-style-type: none"> criminal history of parent and co-inhabitants of parent
Maryland	No	N/A
Massachusetts	Yes	MA ST 208 section 32 and 209C section 10:

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> family drug or alcohol abuse
Michigan	Yes	MI ST 722.23, Sec. 3: <ul style="list-style-type: none"> mental and physical health of parties involved
Minnesota	Yes	MN ST § 257C.04(a): <ul style="list-style-type: none"> mental health of all individuals involved
Mississippi	Yes	Albright v. Albright, 437 So.2d 1003, 1005 (Miss. 1983): <ul style="list-style-type: none"> physical and mental health of parent
Missouri	Yes	Mo. Ann. Stat. § 452.375.2 (West 2017): <ul style="list-style-type: none"> mental and physical health of all involved
Montana	Yes	Mont. Code Ann. § 40-4-212(1) (West 2017): <ul style="list-style-type: none"> chemical dependency or abuse mental and physical health of all involved conviction of certain crimes, such as homicide, sexual assault, endangering child's welfare
Nebraska	No	N/A
Nevada	Yes	Nev. Rev. Stat. Ann. § 125C.0035 (West 2017): <ul style="list-style-type: none"> mental and physical health of parents history of kidnapping history of abduction of child or any child
New Hampshire	Yes	N.H. Rev. Stat. Ann. § 461-A:6 (West 2017): <ul style="list-style-type: none"> incarceration of parent and related issues
New Jersey	Yes	N.J.S.A. Section 9.2-4: <ul style="list-style-type: none"> person convicted of sexual assault or endangering the welfare of a child
New Mexico	Yes	N.M. Stat. Ann. §§ 40-4-9; 40-4-9.1 (West 2017): <ul style="list-style-type: none"> mental and physical health of all individuals involved
New York	Yes	N.Y. Domestic Relations Law § 240 (McKinney 2016):

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> conviction of one or more sexual offenses, including rape in the first or second degree, course of sexual conduct against a child in the first degree, or predatory sexual assault conviction of murder (unless victim of domestic violence, or murder related to domestic violence) <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"> parent’s mental health
North Carolina	No	N/A
North Dakota	Yes	N.D.C.C. § 14-09-06.2: <ul style="list-style-type: none"> mental health of the parents, as that health impacts the child
Northern Mariana Islands	No	N/A
Ohio	Yes	31 Ohio Rev. Code Ann. § 3109.4(F): <ul style="list-style-type: none"> mental and physical health of all the parties
Oklahoma	Yes	Okla. Stat. Tit. 43, §§ 109, 112, 112.5: <ul style="list-style-type: none"> alcohol and drug dependency sex offender registration (or registration of someone living with parent) criminal conviction of certain specified crimes (or conviction of person living with parent)
Oregon	No	N/A
Pennsylvania	Yes	23 Pa.C.S. § 5328: <ul style="list-style-type: none"> history of drug or alcohol abuse of a party or member of a party’s household mental and physical condition of a party or member of a party’s household
Puerto Rico	Yes	P.R. Leyes An. tit. 32 § 3187 (2017): <ul style="list-style-type: none"> addiction to drugs or alcohol

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • mental health of all involved • parent’s suffering of an intellectual disability that prevents adequate care of child • imprisonment
Rhode Island	Yes	<i>Pettinato v. Pettinato</i> , 582 A. 2d 909, 913-14 (R.I. 1990): <ul style="list-style-type: none"> • mental and physical health of all involved
South Carolina	Yes	S.C. Code Ann. § 63-15-240(B): <ul style="list-style-type: none"> • mental 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)
South Dakota	No	N/A
Tennessee	Yes	Tenn. Code Ann. Section 36-6-106(a): <ul style="list-style-type: none"> • physical, mental and emotional fitness of each parent
Texas	Yes	V.T.C.A., Family Code § 263.307: <ul style="list-style-type: none"> • history of substance abuse by the child’s family or others who have access to the child’s home • results of psychiatric, psychological, or developmental evaluations of the child’s parents other family members, or others who have access to the child’s home
U.S. Virgin Islands	No	N/A
Utah	No	N/A
Vermont	No	N/A
Virginia	Yes	Va. Code Ann. 20.124-3 (2017): <ul style="list-style-type: none"> • physical and mental condition of each parent and child
Washington	Yes	Wash. Rev. Code Section 26.09.002 (2017): <ul style="list-style-type: none"> • long-term emotional or physical impairment

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • long term impairment resulting from drug, alcohol, or other substance abuse
West Virginia	No	N/A
Wisconsin	Yes	<p>Wis. Stat. Section 767.41(5)(am) (2017):</p> <ul style="list-style-type: none"> • whether either party has or had a significant problem with alcohol or drug abuse • whether the mental health of a party, minor child or other person living in a proposed custodial household regularly affects the child • whether a person who the parent is dating or a person who may reside in the home has a criminal record
Wyoming	Yes	<p>Wyo. Stat. Ann. 20-2-201 (2017):</p> <ul style="list-style-type: none"> • current physical and mental ability of each parent to care for each child