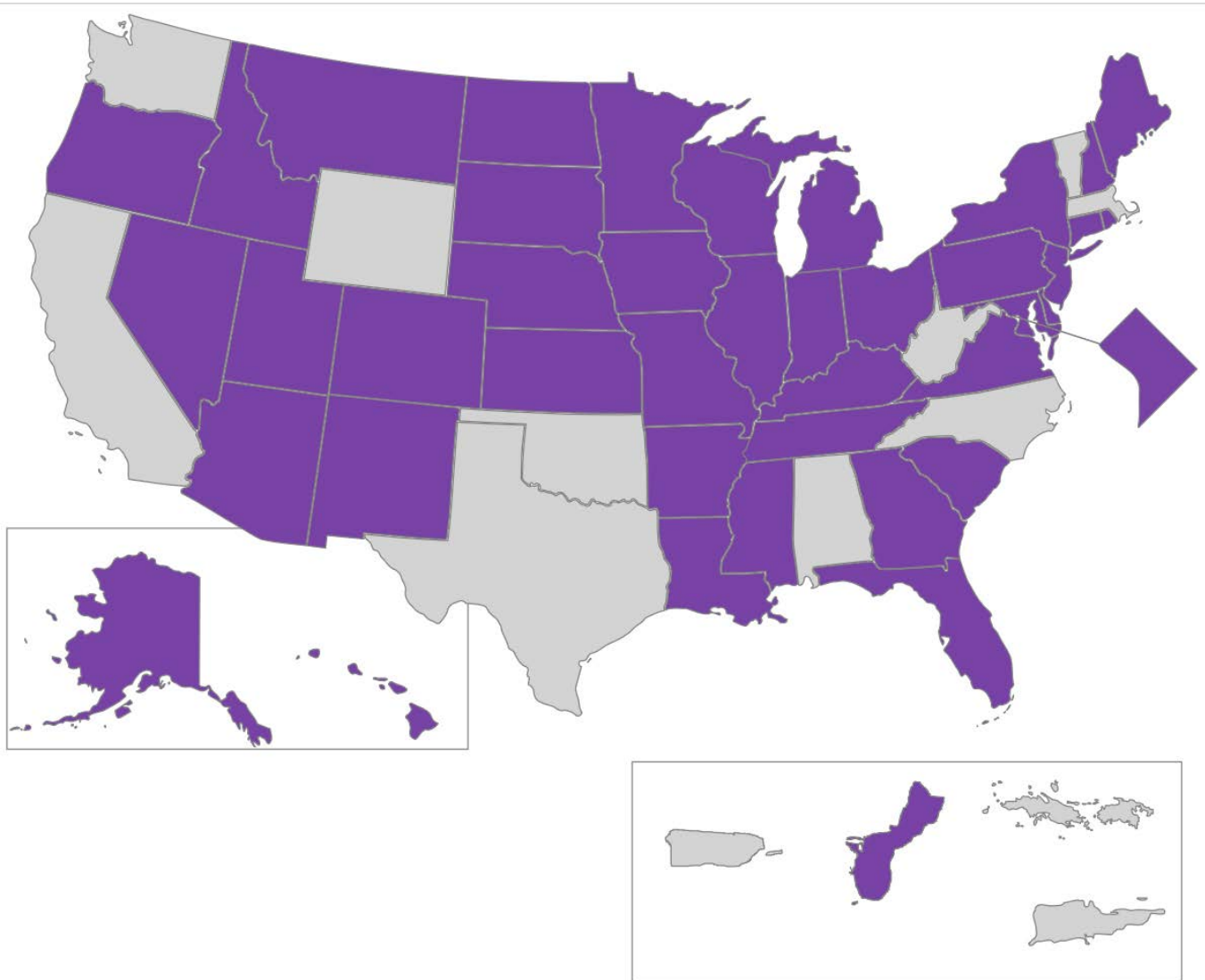


# Best Interests of the Child – Child’s Wishes Factor<sup>1</sup>

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

**Disclaimer:** The Statute Analysis Map and reports can be powerful resources and training tools, but do not remove the responsibility of each and every lawyer to engage in original analysis and research, including by taking into consideration the facts relevant to a particular client’s circumstances. Reports are labeled with the date of last update. If you reach a conclusion that conflicts with the material herein, you can contribute to our knowledge by sending an email to the Morgan Lewis Knowledge Management and Training Team at [knowledgemanagement@morganlewis.com](mailto:knowledgemanagement@morganlewis.com).

**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.



<sup>1</sup> This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.  
National Immigrant Women’s Advocacy Project (NIWAP, pronounced new-app) American University, Washington College of Law 4300 Nebraska Avenue NW · Washington, D.C. 20016 (o) 202.274.4457 · [info@niwap.org](mailto:info@niwap.org) · [wcl.american.edu/niwap](http://wcl.american.edu/niwap) · <http://niwaplibrary.wcl.american.edu/>

<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>• preference of child (if of suitable age and capacity)</li> </ul>
American Samoa	No	N/A
Arizona	Yes	Ariz. Rev. Stat. Ann. § 25-403: <ul style="list-style-type: none"> <li>• preference of child (assuming age and capacity)</li> </ul>
Arkansas	Yes	Ark. Code. Ann. § 9-13-101: <ul style="list-style-type: none"> <li>• preference of child if child has reached sufficient age and capacity</li> </ul>
California	No	N/A
Colorado	Yes	Colo. Rev. Stat. Ann. § 14-10-124: <ul style="list-style-type: none"> <li>• preference of child (if reasoned and able to express)</li> </ul>
Connecticut	Yes	Conn. Gen. Stat. Section 46b-56: <ul style="list-style-type: none"> <li>• informed preferences of child and relevant information obtained from child</li> </ul>
Delaware	Yes	13 Del. C. § 722: <ul style="list-style-type: none"> <li>• wishes of child as to custody and residential arrangements</li> </ul>
District of Columbia	Yes	D. C. Code Section 16-831.08: <ul style="list-style-type: none"> <li>• wishes of the child</li> </ul>
Florida	Yes	Fl. St. 61.13(3): <ul style="list-style-type: none"> <li>• wishes of child (if reasonable)</li> </ul>
Georgia	Yes	O.C.G.A. 19-9-3 (a) (3): <ul style="list-style-type: none"> <li>• consideration of child's wishes varies depending on age</li> </ul>
Guam	Yes	GU ST T. 19, §8404: <ul style="list-style-type: none"> <li>• child's wishes (if of sufficient age and capacity to reason)</li> </ul>
Hawaii	Yes	HI. Rev. Statutes Section 571-46: <ul style="list-style-type: none"> <li>• child's wishes (if of sufficient age and capacity)</li> </ul>

Jurisdiction	Governed by Statute	Factors a court will consider:
Idaho	Yes	ID Statutes 32-717: <ul style="list-style-type: none"> <li>wishes of child as to his or her custodian</li> </ul>
Illinois	Yes	750 Ill. Comp. Stat. Ann. 5/602.7: <ul style="list-style-type: none"> <li>child's wishes (taking into account the child's maturity and ability to express a reasoned and independent opinion)</li> </ul>
Indiana	Yes	Ind. Code Ann. § 31-14-13-2; 31-14-13-2.5: <ul style="list-style-type: none"> <li>wishes of child, with more consideration given to the child's wishes if the child is at least 14 years old</li> </ul>
Iowa	Yes	Iowa Code Ann. § 598.41: <ul style="list-style-type: none"> <li>whether the custody arrangement is in accord with the child's wishes or whether the child has strong opposition, taking into consideration the child's age and maturity</li> </ul>
Kansas	Yes	Kan. Stat. Ann. § 23-3203: <ul style="list-style-type: none"> <li>desires of child</li> </ul>
Kentucky	Yes	Ky. Rev. Stat. Ann. § 403.270 (2): <ul style="list-style-type: none"> <li>wishes of child as to his custodian</li> </ul>
Louisiana	Yes	La. Civ. Code Ann. art. 134: <ul style="list-style-type: none"> <li>wishes of child, if the court deems the child to be of sufficient age to express a preference</li> </ul>
Maine	Yes	ME ST T. 19-A § 1653: <ul style="list-style-type: none"> <li>preference of child (if of sufficient age and capacity)</li> </ul>
Maryland	Yes	MD Family § 5-323(d): <ul style="list-style-type: none"> <li>preference of child (if of sufficient age and capacity)</li> </ul>
Massachusetts	No	N/A
Michigan	Yes	MI ST 722.23, Sec. 3: <ul style="list-style-type: none"> <li>preference of child if court considers child to be of sufficient age</li> </ul>
Minnesota	Yes	MN ST § 257C.04:

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> <li>• preference of child, if the court deems the child to be of sufficient age</li> </ul>
Mississippi	Yes	<i>Albright v. Albright</i> , 437 So.2d 1003, 1005 (Miss. 1983): <ul style="list-style-type: none"> <li>• preference of child (if of sufficient age and capacity)</li> </ul>
Missouri	Yes	Mo. Stat. Ann. § 452.375.2: <ul style="list-style-type: none"> <li>• wishes of child</li> </ul>
Montana	Yes	Mont. Code Ann. § 40-4-212(1) (West 2017): <ul style="list-style-type: none"> <li>• wishes of child</li> </ul>
Nebraska	Yes	Neb. Rev. Stat. Ann. § 43-2923: <ul style="list-style-type: none"> <li>• wishes of child if of age of comprehension and wishes based on sound reasoning</li> </ul>
Nevada	Yes	Nev. Rev. Stat. Ann. § 125C.0035: <ul style="list-style-type: none"> <li>• wishes of child, if child is of sufficient age and capacity</li> </ul>
New Hampshire	Yes	N.H. Rev. Stat. Ann. § 461-A:6: <ul style="list-style-type: none"> <li>• preference of child when child is of sufficient age</li> </ul>
New Jersey	Yes	N.J.S.A. § 9.2-4: <ul style="list-style-type: none"> <li>• preference of child when of sufficient age</li> </ul>
New Mexico	Yes	N.M. Stat. Ann. § 40-4-9: <ul style="list-style-type: none"> <li>• wishes of child</li> </ul>
New York	Yes	N.Y. Domestic Relations Law § 240: <ul style="list-style-type: none"> <li>• wishes of child</li> </ul>
North Carolina	No	N/A
North Dakota	Yes	N.D.C.C. § 14-09-06.2: <ul style="list-style-type: none"> <li>• preference of mature child</li> </ul>
Northern Mariana Islands	No	N/A
Ohio	Yes	31 Ohio Rev. Code Ann. § 3109.4(F):

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> <li>wishes of child</li> </ul>
Oklahoma	No	N/A
Oregon	No	N/A
Pennsylvania	Yes	23 Pa.C.S. § 5328: <ul style="list-style-type: none"> <li>well-reasoned preference of child, based on the child's maturity and judgment</li> </ul>
Puerto Rico	No	N/A
Rhode Island	Yes	<i>Pettinato v. Pettinato</i> , 582 A.2d 909, 913-14 (R.I. 1990): <ul style="list-style-type: none"> <li>the reasonable preference of child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference</li> </ul>
South Carolina	Yes	S.C. Code Ann. § 63-15-240(B): <ul style="list-style-type: none"> <li>preferences of each 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>if child is of a sufficient age to form an intelligent preference, the court may consider that preference in deciding custody</li> </ul>
Tennessee	Yes	Tenn. Code Ann. § 36-6-106(a): <ul style="list-style-type: none"> <li>reasonable preference of child if 12 years of age or older (the court may hear the preference of a younger child upon request)</li> </ul>
Texas	No	N/A
U.S. Virgin Islands	No	N/A
Utah	Yes	Utah Code 30-3-10(2): <ul style="list-style-type: none"> <li>preference of child</li> </ul>
Vermont	No	N/A
Virginia	Yes	Va. Code Ann. 20.124-3:

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> <li>reasonable preference of child, if the court deems the child to be of reasonable intelligence, understanding, age and experience to express such a preference</li> </ul>
Washington	No	N/A
West Virginia	No	N/A
Wisconsin	Yes	Wis. Stat. Section 767.41(5)(am): <ul style="list-style-type: none"> <li>wishes of child</li> </ul>
Wyoming	No	N/A

© 2017 - Morgan, Lewis and Bockius LLP