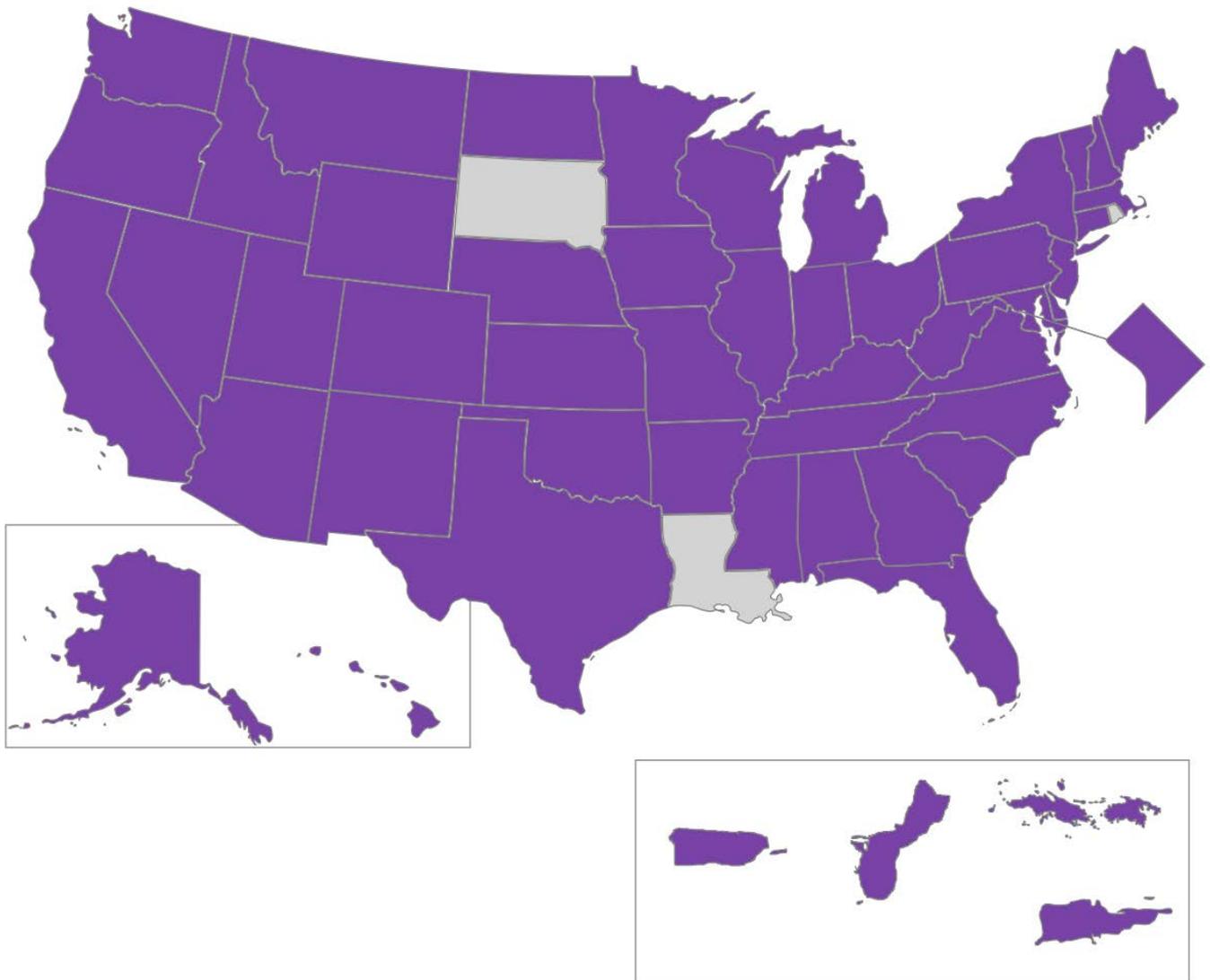


Best Interests of the Child - Family Violence¹

By Morgan Lewis and Bockius LLP² – 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.

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.



¹ 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 · wcl.american.edu/niwap · <http://niwaplibrary.wcl.american.edu/>

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	Yes	Ala. Code § 30-3-152: <ul style="list-style-type: none"> • history of or potential, for child/spousal abuse, or kidnapping
Alaska	Yes	Alaska Stat. § 25.24.150, Alaska Stat. § 25.20.090: <ul style="list-style-type: none"> • domestic violence, child abuse, or child neglect, history of violence between parents • criminal history of parent (sexual abuse, domestic violence, child neglect)
American Samoa	Yes	A.S.C.A. 47.0302: <ul style="list-style-type: none"> • history of causing physical harm, injury, assault, or causing reasonable fear of physical harm, injury or assault to another person • safety and well-being of child and parent (if parent is domestic violence victim) • court operates under the presumption that it is detrimental to the child to be in the home of a perpetrator of family/domestic violence
Arizona	Yes	Ariz. Rev. Stat. Ann. § 25-403: <ul style="list-style-type: none"> • existence of domestic violence or child abuse
Arkansas	Yes	Ark. Code. Ann. § 9-13-101: <ul style="list-style-type: none"> • domestic violence
California	Yes	Cal. Fam. Code § 3011: <ul style="list-style-type: none"> • history of abuse by parent or person seeking custody against child, person with whom has any caretaking affinity, regardless of duration, other parent, cohabitant, or individual with dating relationship
Colorado	Yes	Colo. Rev. Stat. Ann. § 14-10-124: <ul style="list-style-type: none"> • child abuse or neglect, domestic violence, sexual assault (proved by a preponderance of the evidence)
Connecticut	Yes	Conn. Gen. Stat. Section 46b-56:

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • effects of child abuse and if domestic violence has occurred • whether child or sibling has been abused or neglected as defined in state law
Delaware	Yes	13 Del. C. § 722: <ul style="list-style-type: none"> • evidence of domestic violence
District of Columbia	Yes	D. C. Code Section 16-1001(8): <ul style="list-style-type: none"> • evidence of intrafamily offense as defined under state law
Florida	Yes	Fl. St. 61.13(3): <ul style="list-style-type: none"> • evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect
Georgia	Yes	O.C.G.A. 19-9-3 (a) (3): <ul style="list-style-type: none"> • evidence of family violence or abuse of either parent O.C.G.A. 19-9-3 (a) (4): <ul style="list-style-type: none"> • perpetrator's history of causing physical harm or causing reasonable fear of same • parent's absence due to violence from other parent is not an abandonment of the child for the purposes of custody determination • family violence can't be refused for consideration merely because there has been no previous finding of family violence
Guam	Yes	GU ST T. 19, § 8404: <ul style="list-style-type: none"> • family violence
Hawaii	Yes	HI. Rev. Statutes Section 571-46: <ul style="list-style-type: none"> • history of neglect or sexual, emotional, or physical abuse of a child by a parent
Idaho	Yes	ID Statutes 32-717: <ul style="list-style-type: none"> • domestic violence, whether or not in the presence of the child

Jurisdiction	Governed by Statute	Factors a court will consider:
Illinois	Yes	750 Ill. Comp. Stat. Ann. 5/602.7: <ul style="list-style-type: none"> • history of parent’s physical violence (or threat of violence) against the child or anyone else in the child’s household • abuse against the child or other member of the child’s household • whether a restriction on parenting is appropriate because a parent engaged in conduct that seriously endangered the child
Indiana	Yes	Ind. Code Ann. § 31-14-13-2; 31-14-13-2.5: <ul style="list-style-type: none"> • evidence of a pattern of domestic or family violence by the parent
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"> • whether a parent (or person residing with parent) has been convicted of abuse of a child • evidence of spousal abuse
Kentucky	Yes	Ky. Rev. Stat. Ann. § 403.270 (2): <ul style="list-style-type: none"> • evidence of domestic violence
Louisiana	No	N/A
Maine	Yes	ME ST T. 19-A § 1653: <ul style="list-style-type: none"> • existence of domestic abuse between the parents and how that may affect the child • any history of child abuse by a parent
Maryland	Yes	MD Family § 5-323(d): <ul style="list-style-type: none"> • abuse or neglect
Massachusetts	Yes	MA ST 208 section 32; MA ST 209C section 10: <ul style="list-style-type: none"> • abuse toward a parent or child as defined in under state law
Michigan	Yes	MI ST 722.23, Sec. 3:

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> domestic violence
Minnesota	Yes	MN ST § 257C.04: <ul style="list-style-type: none"> effect of domestic abuse on child as defined in state law
Mississippi	Yes	MS ST § 93-5-24(9)(a)(I): <ul style="list-style-type: none"> presumption against placing child in custody of parent with history of family violence
Missouri	Yes	Mo. Ann. Stat. § 452.375.2 (West 2017) <ul style="list-style-type: none"> any history of abuse
Montana	Yes	Mont. Code Ann. § 40-4-212(1) (West 2017): <ul style="list-style-type: none"> history of physical abuse or threat of physical abuse
Nebraska	Yes	Neb. Rev. Stat. Ann. Section 43-2923 (West 2017): <ul style="list-style-type: none"> history of abuse of any family member or domestic intimate partner
Nevada	Yes	Nev. Rev. Stat. Ann. § 125C.0035: <ul style="list-style-type: none"> history of parental abuse or neglect of the child or a sibling of the child any act of domestic violence against the child, a parent of the child or any other person residing with the child any act of abduction against the child or any other child a determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child creates a rebuttable presumption that sole or joint physical custody of the child by the perpetrator of the domestic violence is not in the best interest of the child
New Hampshire	Yes	N.H. Rev. Stat. Ann. § 461-A:6 (West 2017): <ul style="list-style-type: none"> history of abuse
New Jersey	Yes	N.J.S.A. § 9.2-4:

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> history of domestic violence
New Mexico	Yes	N.M. Stat. Ann. § 40-4-9.1 (West 2017): <ul style="list-style-type: none"> history of domestic abuse
New York	Yes	N.Y. Domestic Relations Law § 240 (McKinney 2016): <ul style="list-style-type: none"> effect of domestic violence
North Carolina	Yes	N.C.G.S.A. § 50-13.2: <ul style="list-style-type: none"> acts of domestic violence
North Dakota	Yes	N.D.C.C. § 14-09-06.2: <ul style="list-style-type: none"> evidence of domestic violence or sexual abuse as defined in state law
Northern Mariana Islands	Yes	8 N. Mar. I Code §§ 1931, 1932, 1933: <ul style="list-style-type: none"> domestic or family violence history of causing harm or fear to another
Ohio	Yes	31 Ohio Rev. Code Ann. § 3109.4(F): <ul style="list-style-type: none"> history of abuse, neglect, and domestic violence
Oklahoma	Yes	Okla. Stat. tit. 43, § 109: <ul style="list-style-type: none"> domestic violence, stalking, or harassment by a parent (or person living with parent)
Oregon	Yes	ORS § 107.137: <ul style="list-style-type: none"> abuse of one parent by the other sexual assault or abuse against parent or child
Pennsylvania	Yes	23 Pa.C.S. § 5328: <ul style="list-style-type: none"> domestic violence history of child abuse and involvement with protective services
Puerto Rico	Yes	P.R. Leyes An. tit. 32 § 3185 (2017): <ul style="list-style-type: none"> history of child abuse, domestic abuse, sexual abuse
Rhode Island	No	N/A

Jurisdiction	Governed by Statute	Factors a court will consider:
South Carolina	Yes	<p>S.C. Code Ann. § 63-15-240(B):</p> <ul style="list-style-type: none"> • whether the child or a sibling of the child has been abused or neglected • whether one parent has perpetrated domestic violence or child abuse or the effect on the child of the actions of an abuser if any domestic violence has occurred between the parents or between a parent and another individual or between the parent and the child
South Dakota	No	N/A
Tennessee	Yes	<p>Tenn. Code Ann. § 36-6-106(a):</p> <ul style="list-style-type: none"> • evidence of physical or emotional abuse to the child, to the other parent or to any other person
Texas	Yes	<p>V.T.C.A., Family Code § 263.307:</p> <ul style="list-style-type: none"> • history of abusive or assaultive conduct by the child’s family or others who have access to the child’s home • magnitude, frequency, and circumstances of the harm to the child • whether the child has been the victim of repeated harm after the initial report and intervention • whether the child is fearful of living in or returning to the child’s home • whether the child’s family demonstrates adequate parenting skills, including providing the child and other children under the family’s care with a safe physical home environment and protection from repeated exposure to violence even though the violence may not be directed at the child
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"> • domestic violence, sexual violence, child abuse, child neglect
Utah	Yes	<p>Utah Code 30-3-10(2) 2017:</p> <ul style="list-style-type: none"> • history of/potential for abuse, includes spousal • whether parent has exposed child to pornography

Jurisdiction	Governed by Statute	Factors a court will consider:
Vermont	Yes	Vt. Stat. Ann. tit. 15 § 665(b)(9) (2017): <ul style="list-style-type: none"> • evidence of abuse and the impact of the abuse on the child and on the relationship between the child and the abusing parent
Virginia	Yes	Va. Code Ann. 20.124-3 (2017): <ul style="list-style-type: none"> • history of family abuse or sexual abuse
Washington	Yes	WASH. REV. CODE § 26.09.002 (2017): <ul style="list-style-type: none"> • protect from exposure to physical or emotional harm • abusive use of conflict by the parent that which creates the danger of severe damage to the child’s psychological development
West Virginia	Yes	W.V. Code Section 48-9-102 (2017): <ul style="list-style-type: none"> • security from exposure to physical or emotional harm
Wisconsin	Yes	Wis. Stat. Section 767.41(5)(am) (2017): <ul style="list-style-type: none"> • whether there is evidence either party engaged in abuse of the child • whether there is evidence of interspousal battery or domestic abuse • whether there is evidence that a person who the parent is dating or a person who may reside in the home engaged in abuse or neglect of the child or any other child
Wyoming	Yes	Wyo. Stat. Ann. 20-2-201 (2017): <ul style="list-style-type: none"> • evidence of spousal abuse or child abuse