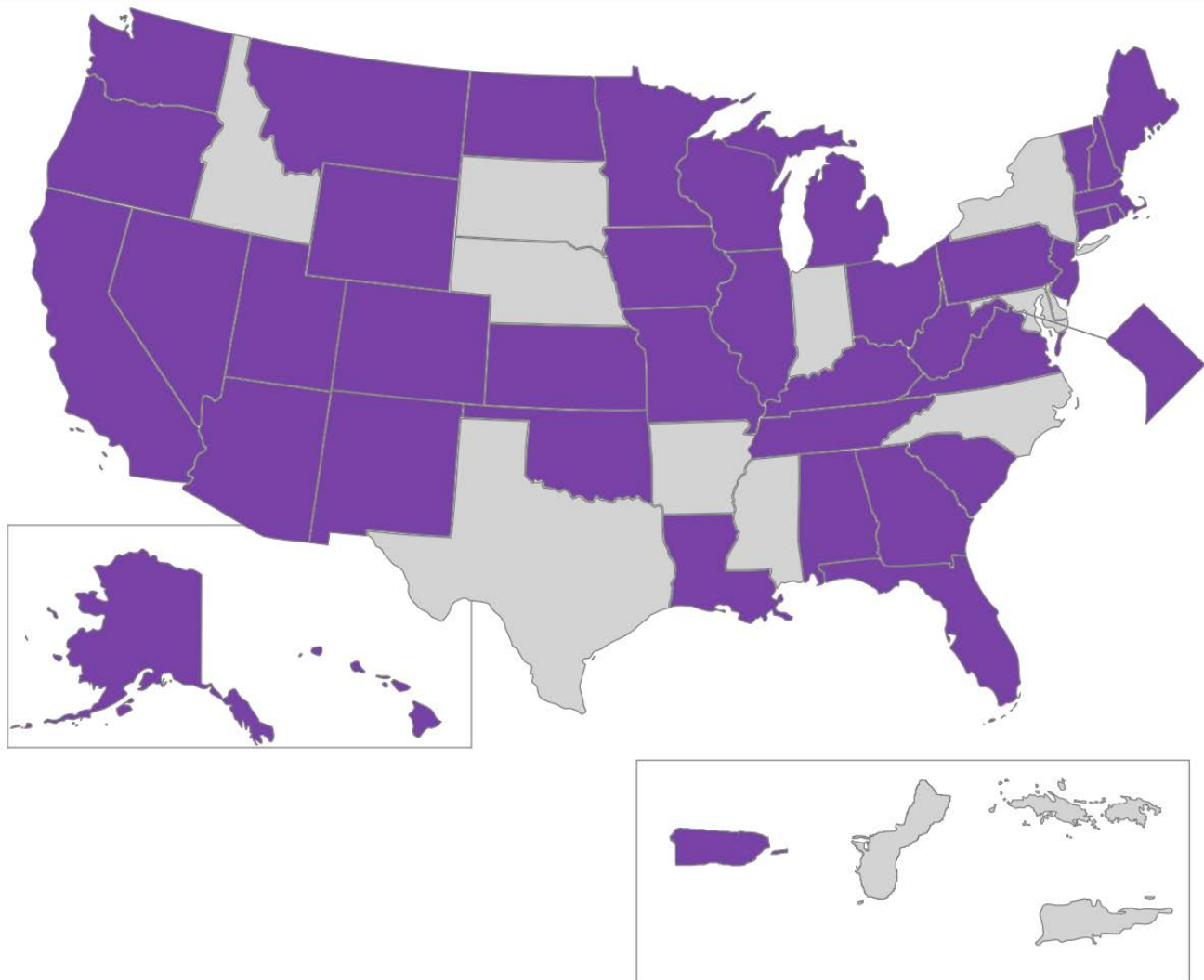


# Best Interests of the Child - Parental Cooperation & Conflict Factor<sup>1</sup>

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	Yes	Ala. Code § 30-3-152: <ul style="list-style-type: none"> <li>• capacity of each parent to cooperate in child care and make decisions jointly</li> <li>• capacity of parents to encourage sharing of love, affection, and contact between the child and other parent</li> <li>• agreement or lack of agreement of parents on joint custody</li> </ul>
Alaska	Yes	Alaska Stat. § 25.24.150, Alaska Stat. § 25.20.090: <ul style="list-style-type: none"> <li>• capacity of each parent to allow and encourage close and continuing contact between the child and the other parent (unless there has been sexual assault or domestic abuse against parent or child)</li> </ul>
American Samoa	No	N/A
Arizona	Yes	Ariz. Rev. Stat. Ann. § 25-403: <ul style="list-style-type: none"> <li>• capacity of each parent to allow frequent and continuing contact between the child and the other parent (absent good faith attempt of parent to protect child from domestic violence)</li> <li>• potential that parent will mislead court or increase costs to influence court to give him/her preference</li> <li>• use of coercion or duress to come to agreement</li> </ul>
Arkansas	No	N/A
California	Yes	Cal. Fam. Code § 3011: <ul style="list-style-type: none"> <li>• nature and amount of contact (unless there is domestic violence)</li> </ul>
Colorado	Yes	Colo. Rev. Stat. Ann. § 14-10-124: <ul style="list-style-type: none"> <li>• ability to cooperate and make joint decisions</li> </ul>
Connecticut	Yes	Conn. Gen. Stat. Section 46b-56: <ul style="list-style-type: none"> <li>• ability of each parent to facilitate and encourage parent-child relationship with the other parent</li> <li>• coercive behavior of the parents in an effort to involve the child in parents' dispute</li> </ul>
Delaware	No	N/A

Jurisdiction	Governed by Statute	Factors a court will consider:
District of Columbia	Yes	D. C. Code Section 16-914: <ul style="list-style-type: none"> <li>• capacity of the parents to communicate and reach shared decisions affecting the child’s welfare</li> <li>• willingness of the parents to share custody</li> </ul>
Florida	Yes	Fl. St. 61.13(3): <ul style="list-style-type: none"> <li>• capacity of each parent to facilitate close and continuing parent-child relationship</li> <li>• demonstrated capacity of parent to communicate with other parent</li> <li>• disposition of parent to protect child from ongoing litigation</li> <li>• division of parental duties</li> <li>• evidence that either parent provided false information to a court</li> </ul>
Georgia	Yes	O.C.G.A. 19-9-3 (a) (3): <ul style="list-style-type: none"> <li>• parent's willingness and ability to facilitate close relationship with other parent</li> </ul>
Guam	No	N/A
Hawaii	Yes	HI. Rev. Statutes Section 571-46: <ul style="list-style-type: none"> <li>• parent’s actions that allow child to maintain family connections; absent family violence</li> <li>• parent’s cooperation in developing/implementing plan to meet child’s ongoing needs; absent family violence</li> <li>• areas and levels of conflict present within the family</li> <li>• parent’s prior willful misuse of the protection from abuse process to gain a tactical advantage in any proceeding involving the custody determination of a minor</li> <li>• promotion of frequent, continuing and meaningful contact of each parent with the child</li> </ul>
Idaho	No	N/A
Illinois	Yes	750 Ill. Comp. Stat. Ann. 5/602.7: <ul style="list-style-type: none"> <li>• parent’s ability and willingness to foster a relationship between the child and the other parent</li> </ul>

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> <li>• parent’s ability to cooperate in the arrangement</li> <li>• prior agreements or course of conduct related to the caretaking functions</li> </ul>
Indiana	No	N/A
Iowa	Yes	Iowa Code Ann. § 598.41: <ul style="list-style-type: none"> <li>• whether each parent can support the other parent’s relationship with the child</li> <li>• whether the parents can communicate with each other regarding the child's needs</li> </ul>
Kansas	Yes	Kan. Stat. Ann. § 23-3203: <ul style="list-style-type: none"> <li>• willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent</li> </ul>
Kentucky	Yes	Ky. Rev. Stat. Ann. § 403.270 (2): <ul style="list-style-type: none"> <li>• intent of the parent or parents in placing the child with a de facto custodian</li> </ul>
Louisiana	Yes	La. Civ. Code Ann. art. 134: <ul style="list-style-type: none"> <li>• willingness and ability of each party to facilitate and encourage a close and continuing relationship between the child and the other party</li> </ul>
Maine	Yes	ME ST T. 19-A § 1653: <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>• methods for assisting parental cooperation and resolving disputes</li> <li>• motivation and capacity of the parties involved to care for the child</li> </ul>

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> <li>• effect on child if one parent has sole authority</li> <li>• one parent's prior misuse of the protection from abuse process to gain a tactical advantage in determining parental rights</li> </ul>
Maryland	No	N/A
Massachusetts	Yes	MA ST 208 section 32 and 209C section 10: <ul style="list-style-type: none"> <li>• history of cooperation between the parties</li> </ul>
Michigan	Yes	MI ST 722.23, Sec. 3: <ul style="list-style-type: none"> <li>• willingness of each party to facilitate a relationship between non-custodial parent(s) (excluding protecting child from sexual assault or domestic violence)</li> </ul>
Minnesota	Yes	MN ST § 257C.04(a): If joint custody is sought: <ul style="list-style-type: none"> <li>• ability of parties to cooperate in child rearing methods for resolving disputes of major decisions</li> </ul>
Mississippi	No	N/A
Missouri	Yes	Mo. Ann. Stat. § 452.275.2: <ul style="list-style-type: none"> <li>• proposed parenting plan submitted by both parties</li> <li>• which parent is more likely to allow the child frequent, continuing and meaningful contact with the other parent</li> <li>• ability and willingness of parents to actively perform their functions as mother and father for the needs of child</li> </ul>
Montana	Yes	Mont. Code Ann. § 40-4-212(1) (West 2017): <ul style="list-style-type: none"> <li>• vexatious parenting plan amendment actions</li> </ul>
Nebraska	No	N/A
Nevada	Yes	Nev. Rev. Stat. Ann. § 125.0035: <ul style="list-style-type: none"> <li>• level of conflict between parents</li> <li>• ability of parents to cooperate to meet child's needs</li> </ul>

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> <li>parent more likely to allow frequent association and continued relationship with other parent</li> </ul>
New Hampshire	Yes	N.H. Rev. Stat. Ann. § 461-A:6: <ul style="list-style-type: none"> <li>ability, disposition, and support of each parent to facilitate contact, communication and a relationship between parents and between child and other parent</li> </ul>
New Jersey	Yes	N.J.S.A. § 9.2-4: <ul style="list-style-type: none"> <li>parents' ability to agree, communicate and cooperate in matters relating to the child</li> <li>parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse</li> </ul>
New Mexico	Yes	N.M. Stat. Ann. § 40-4-9.1 (West 2017): <ul style="list-style-type: none"> <li>parents' ability to allow each other to provide care without intrusion, and to communicate and cooperate regarding child's needs</li> <li>suitability of parenting plan to allow joint custody</li> </ul>
New York	No	<i>Eschbach v. Eschbach</i> , 56 N.Y.2d 167, 171-72, 451 N.Y.S.2d 658, 436 N.E.2d 1260 (1982): <ul style="list-style-type: none"> <li>prior agreement of the parties</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>making of false allegations</li> <li>willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child</li> </ul>
Northern Mariana Islands	No	N/A
Ohio	Yes	31 Ohio Rev. Code Ann. § 3109.4(F): <ul style="list-style-type: none"> <li>ability of parents to cooperate and make decisions jointly</li> </ul>

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> <li>parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights and history of honoring same</li> </ul>
Oklahoma	Yes	Okla. Stat. tit. 43 §§ 109, 112, 112.5: <ul style="list-style-type: none"> <li>which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent</li> </ul>
Oregon	Yes	ORS § 107.137: <ul style="list-style-type: none"> <li>willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child</li> </ul>
Pennsylvania	Yes	23 Pa.C.S. § 5328: <ul style="list-style-type: none"> <li>level of conflict between the parties and the willingness and ability of the parties to cooperate with one another (except in cases of domestic violence)</li> <li>party more likely to encourage and permit frequent and continuing contact between the child and another party</li> </ul>
Puerto Rico	Yes	P.R. Leyes An. tit. 32 § 3185: <ul style="list-style-type: none"> <li>capability and willingness of parents to assume responsibility of raising children jointly</li> <li>ability of parent to communicate directly or by using alternative mechanisms</li> </ul>
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 willingness and ability of each parent to facilitate a close and continuous parent-child relationship between the child and the other parent</li> </ul>
South Carolina	Yes	S.C. Code Ann. § 63-15-240(B): <ul style="list-style-type: none"> <li>actions of each parent to encourage the continuing parent-child relationship between the child and the other parent, as is appropriate, including compliance with court orders</li> <li>effort by one parent to disparage the other parent in front of the child</li> </ul>

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> <li>manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute</li> </ul>
South Dakota	No	N/A
Tennessee	Yes	Tenn. Code Ann. § 36-6-106(a): <ul style="list-style-type: none"> <li>the willingness and ability of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents.</li> </ul>
Texas	No	N/A
U.S. Virgin Islands	No	N/A
Utah	Yes	Utah Code 30-3-10(2) 2017: <ul style="list-style-type: none"> <li>ability of parents to cooperate</li> <li>parents prioritizing child's welfare and reaching shared decisions</li> <li>capability of each parent of encouraging and accepting a positive relationship between the child and the other parent</li> </ul> Utah Code 30-3-10(1)(a)(ii) 2017: <ul style="list-style-type: none"> <li>allowing frequent and continuing contact with the noncustodial parent</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 the parents to communicate, cooperate with each other, and make joint decisions concerning the children where parental rights and responsibilities are to be shared or divided</li> <li>ability and disposition of each parent to foster a positive relationship and frequent and continuing contact with the other parent, including physical contact, except where contact will result in harm to the child or to a parent</li> </ul>
Virginia	Yes	Va. Code Ann. 20.124-3 : <ul style="list-style-type: none"> <li>propensity of each parent to actively support the child's contact and relationship with the other parent, including</li> </ul>



Jurisdiction	Governed by Statute	Factors a court will consider:
		<p>whether a parent has unreasonably denied the other parent access to or visitation with the child</p> <ul style="list-style-type: none"> <li>• relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child, and the ability of each parent to cooperate in and resolve disputes regarding matters affecting the child</li> </ul>
Washington	Yes	<p>Wash. Rev. Code § 26.09.002:</p> <ul style="list-style-type: none"> <li>• a parent withheld from the other parent access to the child for a protracted period without good cause</li> </ul>
West Virginia	Yes	<p>W.V. Code Section 48-9-102 (2017):</p> <ul style="list-style-type: none"> <li>• expeditious, predictable decision-making and avoidance of a prolonged uncertainty respecting arrangements for a child's care and control</li> <li>• parental planning and agreement about the child's custodial arrangements and upbringing</li> </ul>
Wisconsin	Yes	<p>Wis. Stat. Section 767.41(5)(am):</p> <ul style="list-style-type: none"> <li>• cooperation and communication between parties</li> <li>• whether each party can support the other party's relationship with the child</li> </ul>
Wyoming	Yes	<p>Wyo. Stat. Ann. 20-2-201:</p> <ul style="list-style-type: none"> <li>• ability and willingness of each parent to allow the other to provide care without intrusion, respect the other parent's right and responsibilities, including the right to privacy</li> </ul>