



STATE STATUTES

CURRENT THROUGH SEPTEMBER 2023

Determining the Best Interests of the Child

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Courts make various decisions affecting children, including placement and custody determinations, safety and permanency planning, and proceedings for the termination of parental rights. Whenever a court makes such a determination, judges must weigh whether the decision will be in the "best interests" of the child.

A review of State laws indicates that all States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands have statutes describing the factors that must be considered to ensure that decisions regarding a child's custody or placement serve that child's best interests.

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DEFINING "BEST INTERESTS OF THE CHILD"

Most States have no standard definition of "best interests of the child." The only exceptions are Montana and Puerto Rico. In Montana, "best interests of the child" means the child's physical, mental, and psychological conditions and needs and any other factor the court considers to be relevant to the child. In Puerto Rico, the term "best interests of the child" is defined as the balance of different factors that may affect the safety; health; physical, mental, emotional, educational, and social well-being; or any other factor aimed at achieving the optimum development of the minor.

In other States, the term "best interests of the child" does not have a specific definition but is generally understood as a legal concept. It is used in laws and policies as a standard for making decisions regarding the placement and care of a child. A child's best interests guide the deliberation that courts undertake when deciding what type of services, actions, and orders will best serve the needs of a child as well as who is best suited to care for the child. "Best interests" determinations are generally made by considering many factors related to the child's circumstances and the parent or caregiver's circumstances and capacity to

parent, with the child's ultimate safety and well-being as the paramount concern.

GUIDING PRINCIPLES OF BEST INTERESTS DETERMINATIONS

State statutes frequently reference overarching goals, purposes, and objectives that shape the analysis in making best interests determinations. The following are among the most frequently stated guiding principles:

- The importance of family integrity and preference for avoiding removal of the child from their home (in approximately¹ 32 States, American Samoa, Guam, Puerto Rico, and the Virgin Islands)²
- The health, safety, and/or protection of the child (in 31 States and the Northern Mariana Islands)³
- Preserving and strengthening the child's ties to their family (in 20 States and American Samoa)⁴
- The importance of timely permanency decisions (in 22 States and the Virgin Islands)⁵
- The assurance that a child removed from their home will be placed in the least restrictive setting possible that will meet the child's needs (in 14 States and the Virgin Islands)⁶

¹ The word "approximately" is used to stress the fact that States frequently amend their laws and applies to all data in this publication. The information in this publication is current only through September 2023.

² Alabama, Alaska, Arkansas, California, Colorado, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Massachusetts, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Utah, Washington, Wisconsin, and Wyoming

³ Alaska, Arizona, Arkansas, Colorado, Georgia, Hawaii, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming

⁴ Alabama, Alaska, Arkansas, California, Colorado, Georgia, Idaho, Louisiana, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oklahoma, Pennsylvania, Utah, Vermont, West Virginia, and Wyoming

⁵ Alabama, Alaska, Arkansas, California, Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Nebraska, New Jersey, New Mexico, New York, North Carolina, Oklahoma, South Carolina, Texas, Vermont, Washington, and Wyoming

⁶ Alabama, California, Georgia, Illinois, Indiana, Iowa, Louisiana, Missouri, Nebraska, Oklahoma, South Carolina, South Dakota, Utah, and West Virginia

- The provision of services, treatment, and guidance that will assist the child in developing into a self-sufficient adult (in 18 States, American Samoa, and Guam)⁷

In New Mexico, agencies are required to provide children with services that are sensitive to their cultural needs and work to reduce the overrepresentation of minority children and families in the juvenile justice, family services, and abuse and neglect systems through early intervention, linkages to community support services, and the elimination of discrimination.

BEST INTERESTS FACTORS

Approximately 31 States and the District of Columbia list in their statutes specific factors for courts to consider in making determinations regarding the best interests of the child.⁸ While the factors vary considerably from State to State, some factors commonly required include the following:

- The emotional ties and relationships between the child and their parents, siblings, family, household members, or other caregivers (in 22 States and the District of Columbia)⁹
- The capacity of the parents to provide a safe home and adequate food, clothing, and medical care (in 12 States and Guam)¹⁰

- The mental and physical health needs of the child (in 15 States and the District of Columbia)¹¹
- The mental and physical health of the parents (in 12 States and the District of Columbia)¹²
- The presence of domestic violence in the home (in 12 States)¹³

Six States and Puerto Rico list factors that cannot be considered in best interests analyses, as follows:

- Connecticut law states that the determination of the best interests of the child shall not be based on the consideration of the socioeconomic status of the birth parent or caregiver.
- Delaware prohibits courts from assuming that one parent, because of gender, is better qualified than the other parent to act as a custodian or primary residential parent.
- Idaho does not permit discrimination based on a parent's disability.
- California laws state that the sex, gender identity, gender expression, or sexual orientation of a parent, legal guardian, or relative cannot be considered in determining the best interests of the child.

⁷ Alabama, Arkansas, California, Colorado, Georgia, Hawaii, Idaho, Kansas, Minnesota, Mississippi, New Hampshire, New Mexico, Oklahoma, Pennsylvania, Rhode Island, South Carolina, West Virginia, and Wyoming

⁸ Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin

⁹ Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Kansas, Maryland, Massachusetts, Michigan, Minnesota, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia, and Washington

¹⁰ Florida, Georgia, Hawaii, Illinois, Maryland, Michigan, New Mexico, North Dakota, South Carolina, Texas, Vermont, and Wisconsin

¹¹ Connecticut, Delaware, Florida, Georgia, Kansas, Maine, Michigan, Minnesota, Mississippi, Nevada, New Mexico, Pennsylvania, South Carolina, Utah, and Virginia

¹² Delaware, Georgia, Kentucky, Michigan, Nevada, New Mexico, North Dakota, South Carolina, South Dakota, Tennessee, Texas, and Virginia

¹³ Delaware, Georgia, Idaho, Kentucky, Michigan, Nevada, North Dakota, Oregon, South Carolina, Tennessee, Texas, and Virginia

- Iowa and Minnesota prohibit the consideration of race, color, or national origin when making placement decisions.
- Puerto Rico requires that consideration of a child's best interests be free from any discrimination motivated by origin, race, color, birth, political or religious beliefs, disabilities, sex, or socioeconomic or cultural status.

OTHER CONSIDERATIONS

Other factors courts commonly take into consideration in making best interests determinations include the following:

- **Federal and/or State constitution protections.** Laws in 17 States and Puerto Rico affirm that child protective responses, the provision of services, and custody decisions must be carried out within a judicial framework that recognizes a person's parental rights and other constitutional and legal rights.¹⁴
- **The importance of maintaining sibling and other close family bonds.** Laws in 32 States, the District of Columbia, and the Virgin Islands recognize the importance of frequent, regular, and reasonable visitation with parents and family members when a child has been removed from the home.¹⁵

- **The child's wishes.** Laws in 22 States and the District of Columbia require courts to consider the child's wishes when deciding their best interests.¹⁶ In making this determination, the court determines whether the child is of an age and level of maturity to express a reasonable preference.

In 11 States,¹⁷ a determination of best interests for an American Indian/Alaska Native child must include steps to maintain Tribal relationships and preserve the child's unique Tribal culture and values. When out-of-home care is needed, the child must be placed, whenever possible, with a member of the child's Tribe or a family that can help the child maintain these connections, as required by the Federal Indian Child Welfare Act (P.L. 95-608).

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.

¹⁴ California, Georgia, Missouri, Montana, New Hampshire, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, and Wisconsin

¹⁵ Alaska, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, Vermont, Virginia, West Virginia, Washington, and Wisconsin as well as the District of Columbia and the U.S. Virgin Islands.

¹⁶ Alaska, Arkansas, California, Delaware, Florida, Georgia, Idaho, Illinois, Maine, Massachusetts (when the child is age 12 or older), Michigan, Minnesota, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Utah, Virginia, Washington, and Wisconsin

¹⁷ California, Iowa, Michigan, Minnesota, Montana, Nebraska, New Mexico, Oregon, Washington, Wisconsin, and Wyoming

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Administration for Children and Families
Administration on Children, Youth and Families
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