Child Welfare Information Gateway

PROTECTING CHILDREN ■ STRENGTHENING FAMILIES

STATE STATUTES

Current Through March 2010

Determining the Best Interests of the Child: Summary of State Laws

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

All States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands have statutes requiring that the child's best interests be considered whenever specified types of decisions are made regarding a child's custody, placement, or other critical life issues.

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Best Interests Definition

Although there is no standard definition of "best interests of the child," the term generally refers to the deliberation that courts undertake when deciding what type of services, actions, and orders will best serve a child as well as who is best suited to take care of a child. "Best interests" determinations are generally made by considering a number of factors related to the circumstances of the child and the circumstances and capacity of the child's potential caregiver(s), 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 his/her home (approximately 24 States, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands)[1]
- The health, safety, and/or protection of the child (16 States and the Northern Mariana Islands)[2]
- The importance of timely permanency decisions (16 States and the U.S. Virgin Islands)[3]
- The assurance that a child removed from his/her home will be given care, treatment, and guidance that will assist the child in developing into a self-sufficient adult (9 States, American Samoa, and Guam)[4]

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[1] In Alabama, Alaska, California, Colorado, Georgia, Idaho, Indiana, Kansas, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, Utah, Washington, West Virginia, and Wyoming. The word *approximately* is used to stress the fact that States frequently amend their laws. This information is current as of March 2010.

[2] In Arizona, Arkansas, Idaho, Kansas, Louisiana, Massachusetts, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma, Pennsylvania, Washington, West Virginia, and Wyoming.

[3] In Alabama, Alaska, California, Hawaii, Idaho, Iowa, Kansas, Nebraska, New Mexico, New York, North Carolina, Oklahoma, South Carolina, Vermont, Washington, and West Virginia.

[4] In Alabama, Colorado, Georgia, Idaho, Kansas, Mississippi, Oklahoma, South Carolina, and West Virginia.

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Best Interests Factors

Approximately 16 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.[5] While the factors vary considerably from State to State, some factors commonly required include:

- The emotional ties and relationships between the child and his or her parents, siblings, family and household members, or other caregivers (13 States and the District of Columbia)[6]
- The capacity of the parents to provide a safe home and adequate food, clothing, and medical care (eight States)[7]
- The mental and physical health needs of the child (five States and the District of Columbia)[8]
- The mental and physical health of the parents (six States and the District of Columbia)[9]
- The presence of domestic violence in the home (eight States)[10]

In six of these States and the District of Columbia, all the factors listed in the statute must be considered.[11] For example, Illinois law provides a list of the factors that, within the context of the child's age and developmental needs, "shall be considered" in determining best interests. Similarly, the District of Columbia requires that courts consider each factor listed in its best interests statute in making such decisions. In the remaining eight States whose statutes list best interests factors, courts making best interests determinations are directed to consider all relevant factors, not only those specifically listed in the statute.[12]

Three States also list factor(s) that should not be considered in the best interests analysis. For example, Connecticut law states that the determination of the best interests of the child shall

[5] Connecticut, Delaware, Florida, Illinois, Kentucky, Maryland, Massachusetts, Michigan, North Dakota, Ohio, Oregon, Tennessee, Texas, Vermont, Virginia, and Wisconsin.
[6] Connecticut, Delaware, Florida, Illinois, Maryland, Massachusetts, Michigan, North Dakota, Ohio, Oregon, Tennessee, Vermont, and Virginia.
[7] Florida, Illinois, Maryland, Michigan, North Dakota, Texas, Vermont, and Wisconsin.
[8] Connecticut, Delaware, Florida, Michigan, and Virginia.
[9] Delaware, Kentucky, Michigan, North Dakota, Texas, and Virginia.
[10] Delaware, Kentucky, Michigan, North Dakota, Oregon, Tennessee, Texas, and Virginia.
[11] Illinois, Maryland, Michigan, Oregon, Vermont, and Virginia.
[12] Connecticut, Delaware, Florida, Massachusetts, North Dakota, Ohio, Tennessee, and Wisconsin.

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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 his or her sex, is better qualified than the other parent to act as a custodian or primary residential parent. Idaho does not permit discrimination on the basis of a parent's disability.

Statutes in the remaining 34 States, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands provide more general guidance and give more discretion to the courts to make best interests determinations.[13] Under Alabama law, for example, courts are provided with a set of goals to "facilitate the care, protection, and discipline of children" who come within their jurisdiction. South Dakota law vests the court with discretion to determine "the suitable disposition of a child according to the least restrictive alternative available in keeping with the child's best interests and with due regard to the rights and interests of the parents, guardian, custodian, the public, and the State."

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

- **Federal and/or State Constitution protections.** For example, New Hampshire law provides that its processes related to reports of child abuse or neglect are to be carried out within a judicial framework that recognizes and enforces the constitutional and other rights of the parties involved. Pennsylvania's statute states that it shall be interpreted so as to provide a means through which parties are afforded a fair hearing and assured the recognition of their constitutional and legal rights.[14]
- **The importance of maintaining sibling and other close family bonds.** For example, Alaska law notes the importance of frequent, regular, and reasonable visitation with parents and family members when a child has been removed from

[13] In Alabama, Alaska, Arizona, Arkansas, California, Colorado, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Washington, West Virginia, and Wyoming.

[14] Other States that address the issue of parent and/or child rights within their best interests statutes include Missouri, Montana, New Mexico, New York, North Carolina, Oklahoma, South Dakota, Tennessee, Washington, West Virginia, and Puerto Rico.

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the home. Florida considers the love, affection, and other emotional ties between the child and his or her parents, siblings, and other relatives to be important in determining the manifest interests of the child.[15]

- **The child's wishes.** Approximately 11 States and the District of Columbia require courts to consider the child's wishes when making a determination of best interests.[16] In making this determination, the court will consider whether the child is of an age and level of maturity to express a reasonable preference.

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.

[15] Other States that address the importance of maintaining family and sibling relationships include California, Colorado, Connecticut, Illinois, Kansas, Maryland, Minnesota, Missouri, Montana, New Hampshire, Ohio, Oklahoma, Oregon, Pennsylvania, Vermont, Virginia, West Virginia, and Wisconsin, as well at the District of Columbia and the U.S. Virgin Islands.

[16] Delaware, Florida, Illinois, Maine (when the child is age 12 or older), Massachusetts (when the child is age 12 or older), Michigan, North Dakota, Ohio, Rhode Island, Virginia, and Wisconsin.

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Alabama

Ala. Code § 12-15-101 (LexisNexis through Acts 2010, No. 10-27)

The purpose of this chapter is to facilitate the care, protection, and discipline of children who come within the jurisdiction of the juvenile court, while acknowledging the responsibility of the juvenile court to preserve the public peace and security. In furtherance of this purpose, the following goals have been established for the juvenile court:

- To preserve and strengthen the child's family whenever possible, including improvement of home environment
- To remove the child from the custody of his or her parents only when it is judicially determined to be in his or her best interests or for the safety and protection of the public
- To reunite a child with his or her parents as quickly and as safely as possible when the child has been removed from the custody of his or her parents unless reunification is judicially determined not to be in the best interests of the child
- To secure for any child removed from parental custody the necessary treatment, care, guidance, and discipline to assist him or her in becoming a responsible, productive member of society
- To promote a continuum of services for children and their families from prevention to aftercare, considering wherever possible, prevention, diversion, and early intervention
- To achieve the foregoing goals in the least restrictive setting necessary, with a preference at all times for the preservation of the family and the integration of parental accountability and participation in treatment and counseling programs

This chapter shall be liberally construed to the end that each child coming within the jurisdiction of the juvenile court shall receive the care, guidance, and control, preferably in his or her own home, necessary for the welfare of the child and the best interests of the State.

Alaska

Alaska Stat. § 47.05.065(4)-(5) (LexisNexis through 2009 1st Spec. Sess.)

It is in the best interests of a child who has been removed from the child's own home for the State to apply the following principles in resolving the situation:

- The child should be placed in a safe, secure, and stable environment.
- The child should not be moved unnecessarily.
- A planning process should be followed to lead to permanent placement of the child.
- Every effort should be made to encourage psychological attachment between the adult caregiver and the child.
- Frequent, regular, and reasonable visitation with the parent or guardian and family members should be encouraged.
- Parents and guardians must actively participate in family support services to facilitate the child's being able to remain in the home. When children are removed from the home, the parents and guardians must actively participate in family support services to make return of their children to the home possible.

Numerous studies establish that:

- Children undergo a critical attachment process before the time they reach 6 years of age.
- A child who has not attached with an adult caregiver during this critical stage will suffer significant emotional damage that frequently leads to chronic psychological problems and antisocial behavior when the child reaches adolescence and adulthood.
- It is important to provide an expedited placement procedure to ensure that all children, especially those under age 6, who have been removed from their homes are placed in permanent homes expeditiously.

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Alaska Stat. § 47.10.082 (LexisNexis through 2009 1st Spec. Sess.)

In making its dispositional order, the court shall keep the health and safety of the child as the court's paramount concern and consider:

- The best interests of the child
- The ability of the State to take custody and to care for the child to protect the child's best interests
- The potential harm to the child caused by removal of the child from the home and family environment

American Samoa

A.S. Code Ann. § 45.0102 (A.S. Bar through March 2010)

The Legislature declares that the purposes of this title are to:

- Secure for each child subject to these provisions such care and guidance, preferably with his or her own family, as will best serve his or her welfare and the interests of Samoan society
- Preserve and strengthen aiga [extended family] ties whenever possible
- Remove a child from the custody of his of her parents only when his or her welfare and safety or the protection of the public would otherwise be endangered
- Secure for any child removed from the custody of his or her parents the necessary care, guidance, and discipline to assist him or her in becoming a responsible and productive member of society

To carry out these purposes, the provisions of this title shall be liberally construed.

Arizona

Ariz. Rev. Stat. § 8-847(C) (LexisNexis through 1-8-2010)

At any periodic review hearing, the court shall consider the health and safety of the child as a paramount concern.

Arkansas

Ark. Code Ann. § 9-27-102 (LexisNexis through 2009 Reg. Sess.)

The General Assembly recognizes that children are defenseless and that there is no greater moral obligation upon the General Assembly than to provide for the protection of our children, and our child welfare system needs to be strengthened by establishing a clear policy of the State that the best interests of the children must be paramount and shall have precedence at every stage of juvenile court proceedings.

The best interests of the child shall be the standard for recommendations made by the employees of the Department of Human Services and for juvenile court determinations as to whether a child should be reunited with his or her family or removed from or remain in a home wherein the child has been abused or neglected.

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California

Cal. Welf. & Inst. Code § 16000 (LexisNexis through 2010 Reg. Sess.)

It is the intent of the Legislature to preserve and strengthen a child's family ties whenever possible, removing the child from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public. If a child is removed from the physical custody of his or her parents, preferential consideration shall be given whenever possible to the placement of the child with a relative as required by law. If the child is removed from his or her own family, it is the purpose of this chapter to secure as nearly as possible for the child the custody, care, and discipline equivalent to that which should have been given to the child by his or her parents. It is further the intent of the Legislature to reaffirm its commitment to children who are in out-of-home placement to live in the least restrictive, most familylike setting and to live as close to the child's family as possible. Family reunification services shall be provided for expeditious reunification of the child with his or her family, as required by law. If reunification is not possible or likely, a permanent alternative shall be developed.

It is further the intent of the Legislature to ensure that all pupils in foster care and those who are homeless as defined by the Federal McKinney-Vento Homeless Assistance Act have the opportunity to meet the challenging State pupil academic achievement standards to which all pupils are held. In fulfilling their responsibilities to pupils in foster care, educators, county placing agencies, care providers, advocates, and the juvenile courts shall work together to maintain stable school placements, ensure that each pupil is placed in the least restrictive educational programs, and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions must be based on the best interests of the child.

Colorado

Colo. Rev. Stat. Ann. § 19-1-102(1), (1.5) (LexisNexis through 2009 Sess.)

The General Assembly declares that the purposes of this title are:

- To secure for each child subject to these provisions such care and guidance, preferably in his or her own home, as will best serve his or her welfare and the interests of society
- To preserve and strengthen family ties whenever possible, including improvement of the home environment
- To remove a child from the custody of his or her parents only when his or her welfare and safety or the protection of the public would otherwise be endangered and, in either instance, for the courts to proceed with all possible speed to a legal determination that will serve the best interests of the child
- To secure for any child removed from the custody of his or her parents the necessary care, guidance, and discipline to assist him or her in becoming a responsible and productive member of society

The General Assembly declares that it is in the best interests of the child who has been removed from his or her own home to have the following guarantees:

- To be placed in a secure and stable environment
- To not be indiscriminately moved from foster home to foster home
- To have assurance of long-term permanency planning

Connecticut

Conn. Gen. Stat. Ann. § 45a-719 (LexisNexis through 2009 Reg. Sess.)

'Best interests of the child' shall include, but not be limited to, a consideration of the age of the child, the nature of the relationship of the child with his or her caregiver, the length of time the child has been in the custody of the caregiver, the nature of the relationship of the child with the birth parent, the length of time the child has been in the custody of the birth parent, any relationship that may exist between the child and siblings or other children in the caregiver's household, and the psychological and medical needs of the child. The determination of the best interests of the child shall not be based on a consideration of the socioeconomic status of the birth parent or the caregiver.

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Delaware

Del. Code Ann. Tit. 13, § 722 (LexisNexis through 2-12-10)

The court shall determine the legal custody and residential arrangements for a child in accordance with the best interests of the child. In determining the best interests of the child, the court shall consider all relevant factors including:

- The wishes of the child's parent or parents as to his or her custody and residential arrangements
- The wishes of the child as to his or her custodian(s) and residential arrangements
- The interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabiting in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests
- The child's adjustment to his or her home, school, and community
- The mental and physical health of all individuals involved
- Past and present compliance by both parents with their rights and responsibilities to their child
- Evidence of domestic violence
- The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense

The court shall not presume that one parent, because of his or her sex, is better qualified than the other parent to act as a joint or sole legal custodian for a child or as the child's primary residential parent, nor shall it consider conduct of a proposed sole or joint custodian or primary residential parent that does not affect his or her relationship with the child.

District of Columbia

D.C. Code Ann. § 16-2353 (LexisNexis through 10-22-09)

A judge may enter an order for the termination of the parent and child relationship when the judge finds from the evidence presented, after giving due consideration to the interests of all parties, that the termination is in the best interests of the child. In determining whether it is in the child's best interests that the parent and child relationship be terminated, a judge shall consider each of the following factors:

- The child's need for continuity of care and caretakers and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages
- The physical, mental, and emotional health of all individuals involved to the degree that such affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child
- The quality of the interaction and interrelationship of the child with his or her parent, sibling, relative, and/or caretakers, including the foster parent
- Whether the child was left by his or her parent, guardian, or custodian in a hospital located in the District of Columbia for at least 10 calendar days following the birth of the child, despite a medical determination that the child was ready for discharge from the hospital, and the parent, guardian, or custodian of the child has not taken any action or made any effort to maintain a parental, guardianship, custodial relationship, or contact with the child
- To the extent feasible, the child's opinion of his or her own best interests in the matter
- Evidence that drug-related activity continues to exist in a child's home environment after intervention and services have been provided by law

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Florida

Fla. Stat. Ann. § 39.810 (LexisNexis through 1-13-10)

For the purpose of determining the manifest best interests of the child, the court shall consider and evaluate all relevant factors, including, but not limited to:

- Any suitable permanent custody arrangement with a relative of the child
- The ability and disposition of the parent(s) to provide the child with food, clothing, medical care, or other remedial care, and other material needs of the child
- The capacity of the parent(s) to care for the child to the extent that the child's safety, well-being, and physical, mental, and emotional health will not be endangered upon the child's return home
- The present mental and physical health needs of the child and such future needs of the child to the extent that such future needs can be ascertained based on the present condition of the child
- The love, affection, and other emotional ties existing between the child and the child's parent(s), siblings, and other relatives, and the degree of harm to the child that would arise from the termination of parental rights and duties
- The likelihood of an older child remaining in long-term foster care upon termination of parental rights due to emotional or behavioral problems or any special needs of the child
- The child's ability to form a significant relationship with a parental substitute and the likelihood that the child will enter into a more stable and permanent family relationship as a result of permanent termination of parental rights and duties
- The length of time that the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity
- The depth of the relationship existing between the child and the present custodian
- The reasonable preferences and wishes of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference
- The recommendations for the child provided by the child's guardian *ad litem* or legal representative

The availability of a nonadoptive relative placement may not receive greater consideration than any other factor weighing on the manifest best interests of the child.

Georgia

Ga. Code Ann. § 15-11-1 (LexisNexis through 2009 Reg. Sess.)

This chapter shall be liberally construed to the end:

- That children whose well-being is threatened shall be assisted, protected, and restored, if possible, as secure law-abiding members of society
- That each child coming within the jurisdiction of the court shall receive, preferably in his or her own home, the care, guidance, and control that will be conducive to the child's welfare and the best interests of the State
- That when a child is removed from the control of his or her parents the court shall secure for the child care as nearly as possible equivalent to that which his or her parents should have given the child

Ga. Code Ann. § 15-11-94(a) (LexisNexis through 2009 Reg. Sess.)

In considering the termination of parental rights, the court shall first determine whether there is clear and convincing evidence of parental misconduct or inability. If there is clear and convincing evidence of such parental misconduct or inability, the court shall then consider whether termination of parental rights is in the best interests of the child, after considering the physical, mental, emotional, and moral condition and needs of the child who is the subject of the proceeding, including the need for a secure and stable home.

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Guam

Guam Code Ann. Tit. 19, § 5129 (LexisNexis through 11-27-09)

This chapter shall be liberally construed to the end that each child within the jurisdiction of the court shall receive such care, guidance, and control, preferably in his or her home, as will enhance the child's welfare and be in the best interests of the territory; then when such child is removed from the control of his or her parents the court shall secure such care as nearly as possible equivalent to that which should have been given to him or her by the parents.

Hawaii

Haw. Rev. Stat. § 587-73(a)(3) (LexisNexis through 2009 Spec. Sess.)

At the permanent plan hearing, the court shall consider fully all relevant prior and current information pertaining to the safe family home guidelines, as set forth in § 587-25, including, but not limited to, the report or reports submitted pursuant to § 587-40, and determine whether there exists clear and convincing evidence that the proposed permanent plan will assist in achieving the goal that is in the best interests of the child, provided that the court shall presume that:

- It is in the best interests of a child to be promptly and permanently placed with responsible and competent substitute parents and families in safe and secure homes.
- The presumption increases in importance proportionate to the youth of the child upon the date that the child was first placed under foster custody by the court.

Idaho

Idaho Code § 16-1601 (LexisNexis through 2009 Reg. Sess.)

The policy of the State of Idaho is hereby declared to be the establishment of a legal framework conducive to the judicial processing, including periodic review of child abuse, abandonment, and neglect cases and the protection of any child whose life, health, or welfare is endangered. At all times, the health and safety of the child shall be the primary concern.

Each child coming within the purview of this chapter shall receive, preferably in his or her own home, the care, guidance, and control that will promote his or her welfare and the best interests of the State of Idaho; and if he or she is removed from the control of one or more of his or her parents, guardian, or other custodian, the State shall secure adequate care for him or her, provided, however, that the State of Idaho shall, to the fullest extent possible, seek to preserve, protect, enhance, and reunite the family relationship.

Nothing in this chapter shall be construed to allow discrimination on the basis of disability. This chapter seeks to coordinate efforts by State and local public agencies, in cooperation with private agencies and organizations, citizens' groups, and concerned individuals, to:

- Preserve the privacy and unity of the family whenever possible
- Take such actions as may be necessary and feasible to prevent the abuse, neglect, abandonment, or homelessness of children
- Take such actions as may be necessary to provide the child with permanency, including concurrent planning
- Clarify for the purpose of this act the rights and responsibilities of parents with joint legal or joint physical custody of children at risk

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Illinois

705 Ill. Comp. Stat. Ann. 405/1-3(4.05) (LexisNexis through 2009 Sess.)

Whenever a 'best interests' determination is required, the following factors shall be considered in the context of the child's age and developmental needs:

- The physical safety and welfare of the child, including food, shelter, health, and clothing
- The development of the child's identity
- The child's background and ties, including familial, cultural, and religious
- The child's sense of attachments, including:
  - » Where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel love, attachment, and a sense of being valued)
  - » The child's sense of security
  - » The child's sense of familiarity
  - » Continuity of affection for the child
  - » The least disruptive placement alternative for the child
- The child's wishes and long-term goals
- The child's community ties, including church, school, and friends
- The child's need for permanence, which includes the child's need for stability and continuity of relationships with parent figures, siblings, and other relatives
- The uniqueness of every family and child
- The risks attendant to entering and being in substitute care
- The preferences of the persons available to care for the child

Indiana

Ind. Code Ann. § 31-34-19-6 (LexisNexis through 2009 Spec. Sess.)

If consistent with the safety of the community and the best interests of the child, the juvenile court shall enter a dispositional decree that:

- Is in the least restrictive (most familylike) and most appropriate setting available
- Is close to the parents' home, consistent with the best interests and special needs of the child
- Least interferes with family autonomy
- Is least disruptive of family life
- Imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian
- Provides a reasonable opportunity for participation by the child's parent, guardian, or custodian

Iowa

Iowa Code Ann. § 232.104(1)(c) (LexisNexis through 9-10-09)

During the [permanency] hearing, the court shall consider the child's need for a secure and permanent placement in light of any permanency plan or evidence submitted to the court and the reasonable efforts made concerning the child. Upon completion of the hearing, the court shall enter written findings and make a determination based on identifying a primary permanency goal for the child.

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Kansas

Kan. Stat. Ann. § 38-2201(b) (LexisNexis through 11-19-09)

The code shall be liberally construed to carry out the policies of the State, which are to:

- Consider the safety and welfare of a child to be paramount in all proceedings under the code
- Provide that each child who comes within the provisions of the code shall receive the care, custody, guidance, control, and discipline that will best serve the child's welfare and the interests of the State, preferably in the child's home and recognizing that the child's relationship with such child's family is important to the child's well-being
- Make the ongoing physical, mental, and emotional needs of the child decisive considerations in proceedings under this code
- Acknowledge that the time perception of a child differs from that of an adult and to dispose of all proceedings under this code without unnecessary delay
- Encourage the reporting of suspected child abuse and neglect
- Investigate reports of suspected child abuse and neglect thoroughly and promptly
- Provide for the protection of children who have been subject to physical, mental, sexual, or emotional abuse or neglect
- Provide preventative and rehabilitative services, when appropriate, to abused and neglected children and their families so, if possible, the families can remain together without further threat to the children
- Provide stability in the life of a child who must be removed from the home of a parent
- Place children in permanent family settings, in the absence of compelling reasons to the contrary

Kentucky

Ky. Rev. Stat. Ann. § 620.023 (LexisNexis through 2009 1st Ex. Sess.)

Evidence of the following circumstances, if relevant, shall be considered by the court in all proceedings in which the court is required to render decisions in the best interests of the child:

- Mental illness or mental retardation of the parent, as attested to by a qualified mental health professional, that renders the parent unable to care for the immediate and ongoing needs of the child
- Acts of abuse or neglect toward any child
- Alcohol and other drug abuse that results in an incapacity by the parent or caretaker to provide essential care and protection for the child
- A finding of domestic violence and abuse, whether or not committed in the presence of the child
- Any other crime committed by a parent that results in the death or permanent physical or mental disability of a member of that parent's family or household
- The existence of any guardianship or conservatorship of the parent pursuant to a determination or disability or partial disability

In determining the best interests of the child, the court may consider the effectiveness of rehabilitative efforts made by the parent or caretaker intended to address circumstances in this section.

Louisiana

La. Children's Code Ann. Art. 675(A) (LexisNexis through 2009 Reg. Sess.)

The case plan shall be designed to achieve placement in the least restrictive, most familylike, and most appropriate setting available, and in close proximity to the parents' homes, consistent with the best interests and special needs of the child. The health and safety of the child shall be the paramount concern in the development of the case plan.

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Maine

Me. Rev. Stat. Ann. Tit. 22, § 4055(2)-(3) (LexisNexis through 2009 1st Reg. Sess.)

In deciding to terminate parental rights, the court shall consider the best interests of the child, the needs of the child, including the child's age, the child's attachments to relevant persons, periods of attachment and separation, the child's ability to integrate into a substitute placement or back into the parent's home, and the child's physical and emotional needs.

The court shall consider, but is not bound by, the wishes of a child age 12 or older in making an order under this section.

Maryland

Md. Code Ann. Fam. Law § 5-525(f)(1) (LexisNexis through 2009 Reg. Sess.)

In developing a permanency plan for a child in an out-of-home placement, the local department shall give primary consideration to the best interests of the child, including consideration of both in-State and out-of-State placements. The local department shall consider the following factors in determining the permanency plan that is in the best interests of the child:

- The child's ability to be safe and healthy in the home of the child's parent
- The child's attachment and emotional ties to the child's natural parents and siblings
- The child's emotional attachment to the child's current caregiver and the caregiver's family
- The length of time the child has resided with the current caregiver
- The potential emotional, developmental, and educational harm to the child if moved from the child's current placement
- The potential harm to the child by remaining in State custody for an excessive period of time

Massachusetts

Mass. Gen. Laws Ann. Ch. 119, § 1 (LexisNexis through 2010 Sess.)

The health and safety of the child shall be of paramount concern and shall include the long-term well-being of the child.

In all matters and decisions by the department, the policy of the department, as applied to children in its care and protection or children who receive its services, shall be to define best interests of the child as that which shall include, but not be limited to, considerations of precipitating factors and previous conditions leading to any decisions made in proceedings related to the past, current, and future status of the child; the current state of the factors and conditions together with an assessment of the likelihood of their amelioration or elimination; the child's fitness, readiness, abilities, and developmental levels; the particulars of the service plan designed to meet the needs of the child within his or her current placement whether with the child's family or in a substitute care placement, and whether such service plan is used by the department or presented to the courts with written documentation; and the effectiveness, suitability, and adequacy of the services provided and of placement decisions, including the progress of the child or children therein. The department's considerations of appropriate services and placement decisions shall be made in a timely manner in order to facilitate permanency planning for the child.

In all department proceedings that affect the child's past, current, and future placements and status, when determining the best interests of the child, there shall be a presumption of competency that a child who has attained age 12 is able to offer statements on his or her own behalf and shall be provided with timely opportunities and access to offer such statements, which shall be considered by the department if the child is capable and willing. In all matters relative to the care and protection of a child, the ability, fitness, and capacity of the child shall be considered in all department proceedings.

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Michigan

Mich. Comp. Laws Ann. § 722.23 (LexisNexis through 2010 Sess.)

As used in the act, 'best interests of the child' means the sum total of the following factors to be considered, evaluated, and determined by the court:

- The love, affection, and other emotional ties existing between the parties involved and the child
- The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any
- The capacity and disposition of the parties involved to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this State in place of medical care, and other material needs
- The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity
- The permanence, as a family unit, of the existing or proposed custodial home or homes
- The moral fitness of the parties involved
- The mental and physical health of the parties involved
- The home, school, and community record of the child
- The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference
- The willingness of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and parents
- Domestic violence, regardless of whether the violence was directed against or witnessed by the child
- Any other factor considered by the court to be relevant to a particular child custody dispute

Minnesota

Minn. Stat. Ann. § 260C.193, Subd. 3 (LexisNexis through 2009 Reg. Sess.)

The policy of the State is to ensure that the best interests of children in foster or residential care are met by requiring individualized determinations of the needs of the child and of how the selected placement will serve the needs of the child in foster care placements.

The court shall review whether the responsible social services agency made efforts as required under § 260C.212 and made an individualized determination as required. If the court finds the agency has not made efforts as required, and there is a relative who qualifies to be licensed to provide family foster care, the court may order the child placed with the relative consistent with the child's best interests.

If the child's birth parent or parents explicitly request that a relative or important friend not be considered, the court shall honor that request if it is consistent with the best interests of the child.

If the child's birth parent or parents express a preference for placing the child in a foster or adoptive home of the same or similar religious background to that of the birth parent or parents, the court shall order placement of the child with an individual who meets the birth parent's religious preference.

Placement of a child cannot be delayed or denied based on race, color, or national origin of the foster parent or child.

Whenever possible, siblings should be placed together unless it is determined not to be in the best interests of a sibling. If siblings are not placed together, the responsible agency shall report to the court the efforts made to place the siblings together and why the efforts were not successful. If the court is not satisfied with the agency's efforts to place siblings together, the court may order the agency to make further efforts. If siblings are not placed together, the court shall review the responsible social services agency's plan for visitation among siblings required as part of the out-of-home placement plan.

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Mississippi

Miss. Code Ann. § 43-21-103 (LexisNexis through 2009 3rd Ex. Sess.)

This chapter shall be liberally construed to the end that each child coming within the jurisdiction of the youth court shall become a responsible, accountable, and productive citizen, and that each such child shall receive such care, guidance, and control, preferably in such child's own home, as is conducive toward that end and is in the State's and the child's best interests. It is the public policy of this State that the parents of each child shall be primarily responsible for the care, support, education, and welfare of such children; however, when it is necessary that a child be removed from the control of such child's parents, the youth court shall secure proper care for such child.

Missouri

Mo. Ann. Stat. § 211.443 (LexisNexis through 2009 1st Reg. Sess.)

The provisions of this section shall be construed to promote the best interests and welfare of the child as determined by the juvenile court in consideration of the following:

- The recognition and protection of the constitutional rights of all parties in the proceedings
- The recognition and protection of the birth family relationship when possible and appropriate
- The entitlement of every child to a permanent and stable home

Montana

Mont. Code Ann. § 41-3-101 (LexisNexis through 2009 Spec. Sess.)

It is the policy of the State of Montana to:

- Provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection
- Achieve these purposes in a family environment and preserve the unity and welfare of the family whenever possible
- Ensure that there is no forced removal of a child from the family based solely on an allegation of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of harm
- Recognize that a child is entitled to assert the child's constitutional rights
- Ensure that all children have a right to a healthy and safe childhood in a permanent placement
- Ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate

It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the State to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

Whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child, place the child with the child's noncustodial birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, when placement with the extended family is approved by the department, prior to placing the child in an alternative protective or residential facility. Prior to approving a placement, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

In implementing this policy, the child's health and safety are of paramount concern.

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Nebraska

Neb. Rev. Stat. Ann. § 43-533 (LexisNexis through 2009 1st Sess.)

The following principles shall guide the actions of State government when involved with families and children in need of assistance or services:

- Prevention, early identification of problems, and early intervention shall be guiding philosophies when the State plans or implements services for families or children when such services are in the best interests of the child.
- When families or children request assistance, State and local government resources shall be utilized to complement community efforts to help meet the needs of such families. The State shall encourage community involvement in the provision of services to families and children, in order to encourage and provide innovative strategies in the development of services for families and children.
- The State shall develop methods to coordinate services and resources for families and children. Every child-serving agency shall recognize that the jurisdiction of such agency serving children with multiple needs is not mutually exclusive.
- When children are removed from their home, permanency planning shall be the guiding philosophy. It shall be the policy of the State:
  - » To make reasonable efforts to reunite the child with his or her family in a timeframe appropriate to the age and developmental needs of the child as long as the best interests of the child--the health and safety of the child being of paramount concern--and the needs of the child have been given primary consideration in making a determination whether reunification is possible
  - » When a child cannot remain with parents, to give preference to relatives as a placement resource
  - » To minimize the number of placement changes for children in out-of-home care as long as the needs, health, safety, and best interests of the child in care are considered
- When families cannot be reunited and when active parental involvement is absent, adoption shall be aggressively pursued. Absent the possibility of adoption, other permanent settings shall be pursued. In either situation, the health, safety, and best interests of the child shall be the overriding concerns. Preference shall be given to relatives for the permanent placement of the child.

Nevada

Nev. Rev. Stat. Ann. § 128.005(2)(c) (LexisNexis through 5-22-09)

The Legislature finds that the continuing needs of a child for proper physical, mental, and emotional growth and development are the decisive considerations in proceedings for termination of parental rights.

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New Hampshire

N.H. Rev. Stat. Ann. § 169-C:2(I) (LexisNexis through 2009 Sess.)

It is the purpose of this chapter, through the mandatory reporting of suspected instances of child abuse or neglect, to provide protection to children whose life, health, or welfare are endangered and to establish a judicial framework to protect the rights of all parties involved in the adjudication of child abuse or neglect cases. Each child coming within the provisions of this chapter shall receive, preferably in his or her own home, the care, emotional security, guidance, and control that will promote the child's best interests; and, if the child should be removed from the control of his or her parents, guardian, or custodian, adequate care shall be secured for the child. This chapter seeks to coordinate efforts by State and local authorities, in cooperation with private agencies and organizations, citizens' groups, and concerned individuals, to:

- Protect the safety of the child
- Preserve the unity of the family whenever possible
- Provide assistance to parents to deal with and correct problems in order to avoid removal of children from the family
- Take such action as may be necessary to prevent abuse or neglect of children
- Provide protection, treatment, and rehabilitation, as needed, to children placed in alternative care

N.H. Rev. Stat. Ann. § 169-C:2(II) (LexisNexis through 2009 Sess.)

This chapter shall be liberally construed to the end that its purpose may be carried out, as follows:

- To encourage the mental, emotional, and physical development of each child coming within the provisions of this chapter, by providing him or her with the protection, care, treatment, counseling, supervision, and rehabilitative resources that he or she needs and has a right to receive
- To achieve the foregoing purposes and policies, whenever possible, by keeping a child in contact with his or her home community and in a family environment by preserving the unity of the family and separating the child from his or her parents only when the safety of the child is in danger or when it is clearly necessary for his or her welfare or the interests of public safety, and when it can be clearly shown that a change in custody and control will plainly be better for the child
- To provide effective judicial procedures through which the provisions of this chapter are executed and enforced and that recognize and enforce the constitutional and other rights of the parties and assures them a fair hearing

New Jersey

N.J. Stat. Ann. § 30:4C-11.1(a) (LexisNexis through 2009 Sess.)

In accordance with the provisions of § 30:4C-11.1(b)-(d), when determining the reasonable efforts to be made and when making the reasonable efforts, the child's health and safety shall be of paramount concern.

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New Mexico

N.M. Stat. Ann. § 32A-1-3 (LexisNexis through 2009 1st Spec. Sess.)

The Children's Code shall be interpreted and construed to effectuate the following legislative purposes:

- First, to provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this code, and then to preserve the unity of the family whenever possible
- To provide judicial and other procedures through which the provisions of the Children's Code are executed and enforced and in which the parties are assured a fair hearing, and their constitutional and other legal rights are recognized and enforced
- To provide a continuum of services for children and their families from prevention to treatment, considering, whenever possible, prevention, diversion, and early intervention, particularly in the schools
- To provide children with services that are sensitive to their cultural needs
- To provide for the cooperation and coordination of the civil and criminal systems for investigation, intervention, and disposition of cases, to minimize interagency conflicts and to enhance the coordinated response of all agencies to achieve the best interests of the child victim
- To provide continuity for children and families appearing before the family court by assuring that, whenever possible, a single judge hears all successive cases or proceedings involving a child or family

The child's health and safety shall be the paramount concerns. Permanent separation of the child from the child's family, however, would especially be considered when the child or another child of the parent has suffered permanent or severe injury or repeated abuse. It is the intent of the Legislature that, to the maximum extent possible, children in New Mexico shall be reared as members of a family unit.

N.M. Stat. Ann. § 32A-4-28(A) (LexisNexis through 209 1st Spec. Sess.)

In proceedings to terminate parental rights, the court shall give primary consideration to the physical, mental, and emotional welfare and needs of the child, including the likelihood of the child being adopted if parental rights are terminated.

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New York

N.Y. Soc. Serv. Law § 384-b(1) (LexisNexis through 12-15-09)

The legislature recognizes that the health and safety of children are of paramount importance. To the extent it is consistent with the health and safety of the child, the legislature further finds that:

- It is desirable for children to grow up with a normal family life in a permanent home and that such circumstance offers the best opportunity for children to develop and thrive.
- It is generally desirable for the child to remain with or be returned to the birth parent because the child's need for a normal family life will usually best be met in the home of its birth parent, and that parents are entitled to bring up their own children unless the best interests of the child would be thereby endangered.
- The State's first obligation is to help the family with services to prevent its breakup or to reunite it if the child has already left home.
- When it is clear that the birth parent cannot or will not provide a normal family home for the child, and when continued foster care is not an appropriate plan for the child, then a permanent alternative home should be sought for the child.

The legislature further finds that many children who have been placed in foster care experience unnecessarily protracted stays in such care without being adopted or returned to their parents. Such unnecessary stays may deprive these children of positive, nurturing family relationships and have deleterious effects on their development into responsible, productive citizens. Provision of a timely procedure for the termination of the rights of the birth parents, in appropriate cases, could reduce such unnecessary stays.

It is the intent of the legislature to provide procedures not only assuring that the rights of the birth parent are protected, but also, where positive, nurturing parent-child relationships no longer exist, furthering the best interests, needs, and rights of the child by terminating parental rights and freeing the child for adoption.

N.Y. Soc. Serv. Law § 358-a(3)(c) (LexisNexis through 12-15-09)

For the purpose of this section, in determining reasonable efforts to be made with respect to a child, and in making such reasonable efforts, the child's health and safety shall be the paramount concerns.

North Carolina

N.C. Gen. Stat. Ann. § 7B-507(d) (LexisNexis through 2009 Reg. Sess.)

In determining reasonable efforts to be made with respect to a juvenile and making such reasonable efforts, the juvenile's health and safety shall be the paramount concerns.

N.C. Gen. Stat. Ann. § 7B-100 (LexisNexis through 2009 Reg. Sess.)

This subchapter shall be interpreted and construed to implement the following purposes and policies:

- To provide procedures for the hearing of juvenile cases that assure fairness and equity and that protect the constitutional rights of juveniles and parents
- To develop a disposition in each juvenile case that reflects consideration of the facts, the needs and limitations of the juvenile, and the strengths and weaknesses of the family
- To provide services for the protection of juveniles by means that respect both the right to family autonomy and the juveniles' needs for safety, continuity, and permanence
- To provide standards for the removal, when necessary, of juveniles from their homes and for the return of juveniles to their homes consistent with preventing the unnecessary or inappropriate separation of juveniles from their parents
- To provide standards, consistent with the Adoption and Safe Families Act of 1997, P.L. 105-89, for ensuring that the best interests of the juvenile are of paramount consideration by the court and that when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a safe, permanent home within a reasonable amount of time

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North Dakota

N.D. Cent. Code Ann. § 14-09-06.2(1)(i)-(j) (LexisNexis through 2009 Sess.)

If the court finds by clear and convincing evidence that a child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature child. The court also shall give due consideration to other factors that may have affected the child's preference, including whether the child's preference was based on undesirable or improper influences.

In determining parental rights and responsibilities, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence that resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded residential responsibility for the child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that the parent have residential responsibility.

N.D. Cent. Code Ann. § 14-09-06.2(1) (LexisNexis through 2009 Sess.)

The best interests and welfare of the child are determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:

- The love, affection, and other emotional ties existing between the parents and child and the ability of each parent to provide the child with nurture, love, affection, and guidance
- The ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment
- The child's developmental needs and the ability of each parent to meet those needs, both in the present and in the future
- The sufficiency and stability of each parent's home environment, the impact of extended family, the length of time the child has lived in each parent's home, and the desirability of maintaining continuity in the child's home and community
- The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child
- The moral fitness of the parents, as that fitness impacts the child
- The mental and physical health of the parents, as that health impacts the child
- The home, school, and community records of the child and the potential effect of any change
- Evidence of domestic violence
- The interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests
- The making of false allegations not made in good faith, by one parent against the other, of harm to a child
- Any other factors considered by the court to be relevant to a particular parental rights and responsibilities dispute

Northern Mariana Islands

N.M.I. Commonwealth Code Tit. 6, § 5311 (2009)

This chapter seeks to:

- Ensure that each abused child and the child's family receive such care, preferably in their own home, as will serve the emotional, mental, and physical welfare of the minor and the best interests of the Commonwealth
- Require reporting of child abuse incidents so such children and their families may be identified and given any treatment and assistance deemed to be in the best interests of the child and the Commonwealth

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Ohio

Ohio Rev. Code Ann. § 2151.414(D)(1) (LexisNexis through 2-26-10)

In determining the best interests of a child at a hearing, the court shall consider all relevant factors including, but not limited to, the following:

- The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers, and out-of-home providers, and any other person who may significantly affect the child
- The wishes of the child, as expressed directly by the child or through the child's guardian *ad litem*, with due regard for the maturity of the child
- The custodial history of the child, including whether the child has been in the temporary custody of one or more public children's services agencies or private child-placing agencies for 12 or more months of a consecutive 22-month period ending on or after March 18, 1999
- The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency
- Whether any of the factors in § 2151.414(E)(7)-(11) apply in relation to the parents and child

Oklahoma

Okla. Stat. Ann. Tit. 10A, § 1-1-102(A) (LexisNexis through 2009 1st Reg. Sess.)

For the purposes of the Oklahoma Children's Code, the Legislature recognizes that:

- Parents have a natural, legal, and moral right, as well as a duty, to care for and support their children, and such rights are protected by State and Federal laws as well as the Constitution. To that end, it is presumed that the best interests of a child are ordinarily served by leaving the child in the custody of the parents, who are expected to have the strongest bond of love and affection and to be best able to provide a child those needed qualities that make a child's life safe and secure. Nevertheless, this presumption may be rebutted where there is evidence of abuse and neglect or threat of harm.
- A child has a right to be raised by the mother and father of the child as well as a right to be raised free from physical and emotional abuse or neglect. When it is necessary to remove a child from a parent, the child is entitled to a permanent home and to be placed in the least restrictive environment to meet the needs of the child.
- Because the State has an interest in its present and future citizens as well as a duty to protect those who, because of age, are unable to protect themselves, it is the policy of this State to provide for the protection of children who have been abused or neglected and who may be further threatened by the conduct of persons responsible for the health, safety, and welfare of such children. To this end, where family circumstances threaten the safety of a child, the State's interest in the welfare of the child takes precedence over the natural right and authority of the parent to the extent that it is necessary to protect the child and assure that the best interests of the child are met.

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Okla. Stat. Ann. Tit. 10A, § 1-1-102(B) (LexisNexis through 2009 1st Reg. Sess.)

It is the intent of the Legislature that the Oklahoma Children's Code provides the foundation and process for State intervention into the parent-child relationship whenever the circumstances of a family threaten the safety of a child and to properly balance the interests of the parties stated herein. To this end, it is the purpose of the laws relating to children alleged or found to be deprived to:

- Intervene in the family only when necessary to protect a child from harm or threatened harm
- Provide expeditious and timely judicial and agency procedures for the protection of the child
- Preserve, unify, and strengthen the family ties of the child whenever possible when in the best interests of the child to do so
- Recognize that the right to family integrity, preservation, or reunification is limited by the right of the child to be protected from abuse and neglect
- Make reasonable efforts to prevent or eliminate the need for the removal of a child from the home and make reasonable efforts to return the child to the home unless otherwise prescribed by the Oklahoma Children's Code
- Recognize that permanency is in the best interests of the child
- Ensure that when family rehabilitation and reunification are not possible, the child will be placed in an adoptive home or other permanent living arrangement in a timely fashion
- Secure for each child the permanency, care, education, and guidance as will best serve the spiritual, emotional, mental, and physical health, safety, and welfare of the child

Okla. Stat. Ann. Tit. 10A, § 1-1-102(C)-(E) (LexisNexis through 2009 1st Reg. Sess.)

Whenever it is necessary for a child to be placed outside the home pursuant to the Oklahoma Children's Code, it is the intent of the Legislature that:

- Each child shall be assured the care, guidance, and supervision in a permanent home or foster home that will serve the best interests of the child including, but not limited to, the development of the moral, emotional, spiritual, mental, social, educational, and physical well-being of the child.
- When a child is placed in foster care, the foster parent shall be allowed to consider the child as part of the family.
- Whenever possible siblings shall be placed together, and when it is not possible, efforts shall be made to preserve the relationships through visitation and other methods of communication.
- Permanent placement is achieved as soon as possible.

A foster parent has a recognizable interest in the familial relationship that the foster parent establishes with a foster child and shall therefore be considered an essential participant with regard to decisions related to the care, supervision, guidance, rearing, and other foster care services to the child.

It is the intent of the Legislature that the paramount consideration in all proceedings within the Oklahoma Children's Code is the best interests of the child.

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Oregon

Or. Rev. Stat. Ann. § 107.137(1) (LexisNexis through 11-13-09)

In determining the custody of a minor child, the court shall give primary consideration to the best interests and welfare of the child. In determining the best interests and welfare of the child, the court shall consider the following relevant factors:

- The emotional ties between the child and other family members
- The interest of the parties in and attitude toward the child
- The desirability of continuing an existing relationship
- The abuse of one parent by the other
- The preference of the primary caregiver of the child, if the caregiver is deemed fit by the court
- The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child

The court may not consider such willingness and ability if one parent shows that the other parent has sexually assaulted or engaged in a pattern of behavior of abuse against the parent or a child and that a continuing relationship with the other parent will endanger the health or safety of either parent or the child.

Pennsylvania

Pa. Cons. Stat. Tit. 42, § 6301(b)(1), (1.1), (3), (4) (LexisNexis through 2009 Reg. Sess.)

This chapter shall be interpreted and construed as to effectuate the following purposes:

- To preserve the unity of the family whenever possible or to provide another alternative permanent family when the unity of the family cannot be maintained
- To provide for the care, protection, safety, and wholesome mental and physical development of children coming within the provisions of this chapter
- To achieve the foregoing purposes in a family environment whenever possible, separating the child from parents only when necessary for his or her welfare, safety, or health, or in the interests of public safety
- To provide means through which the provisions of this chapter are executed and enforced and in which the parties are assured a fair hearing, and their constitutional and other legal rights recognized and enforced

Puerto Rico

P.R. Laws Ann. Tit. 1, § 421 (LexisNexis through Dec. 2007)

The public policy of the Government of Puerto Rico seeks to uphold and guarantee the rights of children and the respect of their dignity. By so providing, we hereby take into account the variable degree of vulnerability to which children are subject during their process of development and socialization, until they attain full legal standing, and the State's responsibility to provide the means and resources needed to safeguard their interests and advance their welfare.

All measures concerning children as well as all interventions of the State involving the powers and authority germane to *patria potestas* or guardianship, shall have as their guiding principle the protection of the family as an institution, and the best interests and welfare of children, taking into consideration the degree of development of their capabilities, and free from any discrimination motivated by origin, race, color, birth *[sic]*, political or religious beliefs, disabilities, sex, socioeconomic or cultural status of the children, or for any other personal consideration. The State recognizes that the parents or guardians are primarily responsible for the control, supervision, and guidance of their children.

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Rhode Island

R.I. Gen. Laws § 15-7-7(c) (LexisNexis through Jan. 2009 Sess.)

In considering the termination of rights, the court shall give primary consideration to the physical, psychological, mental, and intellectual needs of the child insofar as that consideration is not inconsistent with other provisions of this chapter.

The consideration shall include the following: If a child has been placed in foster family care, voluntarily or involuntarily, the court shall determine whether the child has been integrated into the foster family to the extent that the child's familial identity is with the foster family and whether the foster family is able and willing to permanently integrate the child into the foster family; provided, that in considering integrating into a foster family, the court should consider:

- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child
- The reasonable preference of the child, if the court determines that the child has sufficient capacity to express a reasonable preference

South Carolina

S.C. Code Ann. § 63-1-20(D) (LexisNexis through 2009 Reg. Sess.)

For children in need of services, care, and guidance, the State shall secure those services as are needed to serve the emotional, mental, and physical welfare of children and the best interests of the community, preferably in their homes or the least restrictive environment possible. When children must be placed in care away from their homes, the State shall insure that they are protected against any harmful effects resulting from the temporary or permanent inability of parents to provide care and protection for their children. It is the policy of the State to reunite the child with his or her family in a timely manner, whether or not the child has been placed in the care of the State voluntarily. When children must be permanently removed from their homes, they shall be placed in adoptive homes so that they may become members of a family by legal adoption or, absent that possibility, other permanent settings.

S.C. Code Ann. § 63-1-30 (LexisNexis through 2009 Reg. Sess.)

This article shall be liberally construed to the end that families whose unity or well-being is threatened shall be assisted, protected, and restored, if possible, as secure units of law-abiding members; and that each child coming within the jurisdiction of the court shall receive, preferably in his or her own home, the care, guidance, and control that will conduce to his or her welfare and best interests of the State, and that when he or she is removed from the control of his or her parents, the court shall secure for him or her care as nearly as possible equivalent to that which they should have given him or her.

South Dakota

S.D. Codified Laws § 26-7A-56 (LexisNexis through 2009 Sess.)

Except as otherwise provided in this chapter and related chapters 26-8A, 26-8B, and 26-8C, the rules of civil procedure and the rules of evidence apply to adjudicatory hearings. All other hearings shall be conducted under rules prescribed by the court. The rules may be designed by the court to inform the court fully of the exact status of the child and to ascertain the history, environment, and the past and present physical, mental, and moral condition of the child and the child's parents, guardian, and custodian, as may be necessary or appropriate to enable the court to determine suitable disposition of the child according to the least restrictive alternative available in keeping with the child's best interests and with due regard to the rights and interests of the parents, guardian, custodian, the public, and the State.

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Tennessee

Tenn. Code Ann. § 36-1-101(d) (LexisNexis through 2010 1st Ex. Sess.)

In all cases, when the best interests of the child and those of the adults are in conflict, such conflict shall always be resolved to favor the rights and the best interests of the child, which interests are hereby recognized as constitutionally protected, and, to that end, this part shall be liberally construed.

Tenn. Code Ann. § 36-1-113(i) (LexisNexis through 2010 1st Ex. Sess.)

In determining whether termination of parental or guardianship rights is in the best interests of the child pursuant to this part, the court shall consider, but is not limited to, the following:

- Whether the parent or guardian has made such adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interests to be in the home of the parent or guardian
- Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible
- Whether the parent or guardian has maintained regular visitation or other contact with the child
- Whether a meaningful relationship has otherwise been established between the parent or guardian and the child
- The effect a change of caregivers and physical environment is likely to have on the child's emotional, psychological, and medical condition
- Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional, or psychological abuse, or neglect toward the child or another child or adult in the family or household
- Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner
- Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child
- Whether the parent or guardian has paid child support consistent with the child support guidelines

Texas

Tex. Fam. Code Ann. § 263.307(a), (c) (LexisNexis through 12-15-09)

In considering the factors established by this section, the prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interests.

In the case of a child age 16 or older, the following guidelines should be considered by the court in determining whether to adopt the permanency plan submitted by the department:

- Whether the permanency plan submitted to the court includes the services planned for the child to make the transition from foster care to independent living
- Whether this transition is in the best interests of the child

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Tex. Fam. Code Ann. § 263.307(b) (LexisNexis through 12-15-09)

The following factors should be considered in determining whether the child's parents are willing and able to provide the child with a safe environment:

- The child's age and physical and mental vulnerabilities
- The frequency and nature of out-of-home placements
- The 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 by the department or other agency
- Whether the child is fearful of living in or returning to the child's home
- The results of psychiatric, psychological, or developmental evaluations of the child, the child's parents, other family members, or others who have access to the child's home
- Whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home
- Whether there is a history of substance abuse by the child's family or others who have access to the child's home
- Whether the perpetrator of the harm to the child is identified
- The willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision
- The willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time
- Whether the child's family demonstrates adequate parenting skills, including providing the child and other children under the family's care with:
  - » Minimally adequate health and nutritional care
  - » Care, nurturance, and appropriate discipline consistent with the child's physical and psychological development
  - » Guidance and supervision consistent with the child's safety
  - » A safe home environment
  - » Protection from repeated exposure to violence even though the violence may not be directed at the child
  - » An understanding of the child's needs and capabilities
- Whether an adequate social support system consisting of an extended family and friends is available to the child

Utah

Utah Code Ann. § 78A-6-503(2) (LexisNexis through 2009 1st Spec. Sess.)

Wherever possible, family life should be strengthened and preserved, but if a parent is found, by reason of his or her conduct or condition, to be unfit or incompetent based upon any of the grounds for termination described in this part, the court shall then consider the welfare and best interests of the child of paramount importance in determining whether termination of parental rights shall be ordered.

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Vermont

Vt. Stat. Ann. Tit. 33, § 5114 (LexisNexis through 2009 Spec. Sess.)

At the time of a permanency review, a modification hearing, or at any time a petition or request to terminate all residual parental rights of a parent without limitation as to adoption is filed by the commissioner or the attorney for the child, the court shall consider the best interests of the child in accordance with the following:

- The interaction and interrelationship of the child with his or her parents, siblings, foster parents, if any, and any other person who may significantly affect the child's best interests
- The child's adjustment to his or her home, school, and community
- The likelihood that the parent will be able to resume or assume parental duties within a reasonable period of time
- Whether the parent has played and continues to play a constructive role, including personal contact and demonstrated emotional support and affection, in the child's welfare

Except in cases where a petition or request to terminate all residual parental rights of a parent without limitation as to adoption is filed by the commissioner or the attorney for the child, the court shall also consider whether the parent is capable of playing a constructive role, including demonstrating emotional support and affection, in the child's welfare.

Vt. Stat. Ann. Tit. 15A, § 3-504(c) (LexisNexis through 2009 Spec. Sess.)

At the time of the hearing under this section, the court shall consider the best interests of the child in accordance with the following criteria:

- The likelihood that the respondent will be able to assume or resume his or her parental duties within a reasonable period of time
- The child's adjustment to his or her home, school, and community
- The interaction and interrelationship of the child with his or her parents, siblings, and any other person who may significantly affect the child's best interests
- Whether the parent or alleged parent has played and continues to play a constructive role, including personal contact and demonstrated love and affection, in the child's welfare

Virgin Islands

V.I. Code Ann. Tit. 5, § 2501(e) (LexisNexis through 2009 Reg. Sess.)

When children or their families request help, Federal and territorial government resources shall be utilized to complement community efforts to help meet the needs of children by aiding in the prevention and resolution of their problems. The territory shall direct its efforts first to strengthen and encourage family life as the most appropriate environment for the care and nurturing of children. To this end, the territory shall assist and encourage families to utilize all available resources. For children in need of services, care, and guidance, the territory shall attempt to secure those services needed to serve the emotional, mental, and physical welfare of children and the best interests of the community, preferably in their homes or in the least restrictive environment possible.

When children must be placed in care away from their homes, the territory shall attempt to ensure that they are protected against harmful effects resulting from the temporary or permanent inability of parents to provide care and protection of their children. It is the policy of this territory to reunite children with their families in a timely manner, whether or not the child has been voluntarily placed in the care of a department. When children must be permanently removed from their homes, they shall, if practicable, be placed in adoptive homes so that they may become members of a family by legal adoption or, absent that possibility, they shall be placed in other permanent settings.

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Virginia

Va. Code Ann. § 20-124.3 (LexisNexis through 2009 Sess.)

In determining the best interests of a child for purposes of determining custody or visitation arrangements including any *pendente lite* orders pursuant to law, the court shall consider the following:

- The age and physical and mental condition of the child, giving due consideration to the child's changing developmental needs
- The age and physical and mental condition of each parent
- The relationship existing between each parent and each child, giving due consideration to the positive involvement with the child's life, the ability to accurately assess and meet the emotional, intellectual, and physical needs of the child
- The needs of the child, giving due consideration to other important relationships of the child, including, but not limited to, siblings, peers, and extended family members
- The role that each parent has played and will play in the future, in the upbringing and care of the child
- The propensity of each parent to actively support the child's contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child
- The 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
- The reasonable preference of the child, if the court deems the child to be of reasonable intelligence, understanding, age, and experience to express such a preference
- Any history of family abuse as that term is defined in § 16.1-228 or sexual abuse
- Such other factors as the court deems necessary and proper to the determination

If the court finds a history [of abuse], the court may disregard the factors above [regarding a parent's willingness to support the child's relationship with the other parent].

Washington

Wash. Rev. Code Ann. § 13.34.020 (LexisNexis through 2-23-10)

The legislature declares that the family unit is a fundamental resource of American life that should be nurtured. Toward the continuance of this principle, the legislature declares that the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized. When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail. In making reasonable efforts under this chapter, the child's health and safety shall be the paramount concern. The right of a child to basic nurturing includes the right to a safe, stable, and permanent home and a speedy resolution of any proceeding under this chapter.

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West Virginia

W. Va. Code Ann. § 49-1-1(a)(1)-(a)(8), (b) (LexisNexis through 2009 4th Ex. Sess.)

The purpose of this chapter is to provide a coordinated system of child welfare and juvenile justice for the children of this State that has goals to:

- Assure each child care, safety, and guidance
- Serve the mental and physical welfare of the child
- Preserve and strengthen the child's family ties
- Recognize the fundamental rights of children and parents
- Adopt procedures and establish programs that are family-focused rather than focused on specific family members, except where the best interests of the child or the safety of the community are at risk
- Involve the child and his or her family or caregiver in the planning and delivery of programs and services
- Provide services that are community-based and in the least restrictive settings that are consonant with the needs and potentials of the child and his or her family
- Provide for early identification of the problems of children and their families, and respond appropriately with measures and services to prevent abuse and neglect or delinquency

In pursuit of these goals, it is the intention of the legislature to provide for removing the child from the custody of his or her parents only when the child's welfare or the safety and protection of the public cannot be adequately safeguarded without removal; and when the child has to be removed from his or her family, to secure for the child custody, care, and discipline consistent with the child's best interests and other goals herein set out. It is further the intention of the legislature to require that any reunification, permanency, or preplacement preventative services address the safety of the child.

Wisconsin

Wis. Stat. Ann. § 48.426(2)-(3) (LexisNexis through 1-29-10)

The best interests of the child shall be the prevailing factor considered by the court in determining the disposition of all proceedings under this subchapter. In considering the best interests of the child under this section the court shall consider, but not be limited to, the following:

- The likelihood of the child's adoption after termination
- The age and health of the child, both at the time of the disposition, and, if applicable, at the time the child was removed from the home
- Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships
- The wishes of the child
- The duration of the separation of the parent from the child
- Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements, and the results of prior placements

Wyoming

Wyo. Stat. Ann. § 14-3-201 (LexisNexis through 2009 Sess.)

The purpose of §§ 14-3-201 through 14-3-216 is to delineate the responsibilities of the State agency, other governmental agencies or officials, professionals, and citizens to intervene on behalf of a child suspected of being abused or neglected, to protect the best interests of the child, to further offer protective services when necessary in order to prevent any harm to the child or any other children living in the home, to protect children from abuse or neglect that jeopardize their health or welfare, to stabilize the home environment, to preserve family life whenever possible, and to provide permanency for the child in appropriate circumstances. The child's health, safety, and welfare shall be of paramount concern in implementing and enforcing this article.

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