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Best Interest of the Child

Supplemental to the report Child Welfare System

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Best Interest of the Child

Conclusion

Our review of literature for best interest of the child highlighted inconsistencies in the ways that states are defining and applying the term in determinations under both family and juvenile law. One potential reason for these inconsistencies is the number of different situations in which the best interest of the child standard has been cited. These situations may include adoption agreements, changing a child's name, child support agreements, custody and visitation rights, healthcare decisions for the child, relocation of a parent to another state, social worker caseloads, termination of parental rights, and preserving a child's tribal identity and culture.

Although the vague nature of the best interest of the child definitions allows courts to take each unique case into consideration, it also leaves much to the interpretation of individual judges and provides no guidance around what factors to prioritize. The American Law Institute (ALI) concluded that changing the way the courts litigate by making custody determinations more quickly, imposing greater control over the use of expert witnesses, requiring better appellate review, and enhancing the trial skills of lawyers is likely more beneficial than changing the best interest standard.

A review of class action lawsuits and consent decrees offers additional recommendations for changes in policy and practice to improve state child welfare systems of care. These recommendations include the following:

- Developing Adoption Resource Teams to speed up the adoption process
- Enhancing foster care standards
- Establishing a child abuse and neglect reporting hotline
- Improving assessment and screening of potential cases
- Increasing employment qualifications for child welfare workers
- Increasing staffing at child welfare agencies
- Developing individualized strengths-based approaches and case planning
- Providing basic services (e.g., housing, food, cash assistance) instead of removing the child from the home
- Providing legal representation
- Providing respite care
- Providing post-adoptive services
- Reducing social worker caseloads
- Retraining staff
- Hosting frequent family meetings

Using flexible funds¹

Improvements to the child welfare systems may be more impactful when made to program, practice, and policy improvements rather than operationalizing best interest of the child.

History

The phrase “best interest of the child” is used to determine custody of children in two primary places in legislation: family law and juvenile law. “All states...have statutes requiring that the child’s best interests be considered whenever specified types of decisions are made for a child’s custody, placement, or other critical life issues.”²

Although both the family and juvenile courts make decisions regarding parental responsibility for children and consider children’s safety to be a top priority, the two serve different purposes, have different histories, and offer different definitions of best interest. For example, “Family court was designed to provide litigants with a forum in which to resolve the issues relating to the custody, care, and control of children. Juvenile court was created to protect children from parental abuse or neglect.”³ The juvenile court’s definition of best interest focuses on evaluating allegations of abuse and neglect by a preponderance of evidence. After evidence is obtained, the courts follow the continuum of placements outlined in the Adoption and Safe Families Act (see page 10) to determine the best environment for the child. The juvenile courts prioritize family preservation and reunification.

States determine the relationship between family and juvenile courts, including the processes and procedures for investigating abuse and neglect allegations that originate in family court proceedings. The family law system is a civil system whereas the juvenile court system includes components of the criminal justice system. This difference in systems means that the family and juvenile courts consider different factors despite using the same phrase—best interest of the child. The sections that follow describe the history and definitions of best interest of the child under both family law and juvenile law to contextualize the topic and highlight the lack of consensus and clarity of the term. However, it is important to note that child welfare references the definition under juvenile law rather than family law when making foster care and adoption determinations.

Family Law

The origin of best interest of the child in family law dates back to pre-19th century English law in which children were considered to be property of their fathers and the courts granted custody

¹ A. Kosanovich, R. M. Joseph, and K. Hasbargen, *Child Welfare Consent Decrees: Analysis of Thirty-Five Court Actions from 1995 to 2005* (2005), http://thehill.com/sites/default/files/consentdecrees_0.pdf.

² US Department of Health and Human Services, Children’s Bureau, Child Welfare Information Gateway, *Determining the Best Interests of the Child* (Washington, DC: 2016).

³ L. P. Edwards, “The Relationship of Family and Juvenile Courts in Child Abuse Cases,” *Santa Clara Law Review*, 27(2): 201–278 (1987), <http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1856&context=lawreview>.

accordingly. Historically fathers were also the primary breadwinners of the family so the courts ruled that they were better able to provide for their children. A shift toward preference for mothers occurred in the early 20th century under the tender years doctrine. This doctrine was grounded on attachment theory and the belief that children are more emotionally attached to and involved with their mothers. As more women entered the workforce, making them increasingly able to support their children financially, the 20th century saw more gender-neutral decision-making and placements.^{4,5}

Today, all states use the best interest standard when determining child custody under family law. Although this practice should seemingly be gender-neutral, given the court's established criteria for determining best interest, multiple examples exist in which the courts continue to implement the tender years doctrine, favoring the mother in best interest decisions.⁶ For example, a study of judges' decision-making suggests "continued endorsement of gender differences despite the current gender-neutral best interests of the child standard."⁷

Over time, each state has identified the factors to be considered when determining what is in the best interest of the child. For example, North Carolina included language about best interest of the child for custody determinations in 1979. Contrastingly, the best interest factors considered in New Hampshire were established in 2005 and are a result of work conducted by its Task Force on Family Law. The task force was a 21-member interdisciplinary committee established by statute in 2002 with the goal of creating a nonadversarial approach to divorce and custody proceedings.⁸

Juvenile Law

The history of best interest of the child under juvenile law includes the 1974 Child Abuse and Prevention Treatment Act, the 1989 United Nations' Convention on the Rights of the Child, and the 1997 Adoption and Safe Families Act. For example, the Convention on the Rights of the Child outlines protections countries should take on behalf of children. Articles 3, 19, and 20 are the most relevant when determining the best interest of the child and cover rights such as protections from violence, neglect, and maltreatment. Other articles state that provisions should be made to maintain contact with both parents, the child should have a say in what is in their

⁴ A. Schepard, "Best Interests of the Child," <http://childcustodyproject.org/essays/best-interests-of-the-child/>.

⁵ J. Carbone, "Legal Applications of the 'Best Interest of the Child' Standard: Judicial Rationalization or a Measure of Institutional Competence?" *Pediatrics*, 134 (Supp. 2): 111–120, doi: 10.1542/peds, 2014-1394G (2014).

⁶ A. Roth, "The Tender Years Presumption in Child Custody Disputes," *Journal of Family Law* 15: 423–462 (1976–77).

⁷ J. E. Artis, "Judging the Best Interests of the Child: Judges' Accounts of the Tender Years Doctrine," *Law & Society Review* 38(4): 769–806 (2004).

⁸ New Hampshire Task Force on Family Law, *Report of the Task Force on Family Law* (2004), <https://www.nhbar.org/uploads/pdf/TaskForce-FamilyLaw-2004-Report.pdf>.

interests if they are of a given age and maturity, and efforts should be taken to preserve the child's cultural background.⁹

Much of the legislation around best interest of the child in juvenile law predates the state electronic databases, making specific legislative history of the definitions difficult to identify. Some states like New Jersey have established a task force to consider such topics as best interest of the child. New Jersey's Governor's Task Force on Child Abuse and Neglect was established in 1983 by executive order and reauthorized by statute in 1996 as the New Jersey Task Force on Child Abuse and Neglect. The 30-member interdisciplinary committee is charged with coordinating statewide efforts to prevent child maltreatment.¹⁰ Although the task force's website and description include only recent minutes and do not mention establishing a standard for best interest, the 2010–2011 annual report indicates that the group discussed best interest of the child. The report describes the importance of allowing children to remain in their preplacement school, conducting best interest assessments, and working with educational liaisons to determine what is in the best interest of the child. Furthermore, the New Jersey Task Force on Child Abuse and Neglect has established standards for child maltreatment prevention programs.

Definitions

Research suggests that there is no dispute about the need and importance of acting in the best interest of the child. Despite this consensus, no universal operational definition exists for best interest of the child. Rather, each state is left to determine what guiding principles, factors, policies, practices, and evidence will be used to define best interest of the child under both family law and juvenile law.^{11,12}

We selected a sample of 11 states to better understand how states define best interest of the child under family law and juvenile law. We separated the 11 states into three categories, which are more thoroughly discussed in appendices A–C. Appendix A outlines statutes for states that were named top performing child welfare systems by the Foundation for Government Accountability: Florida, Idaho, New Hampshire, New Jersey, and North Carolina. Appendix B summarizes statutes for states that are geographically and demographically similar to Idaho: Montana, Utah, and Wyoming. Appendix C outlines statutes for three states that are demographically and politically different from Idaho: California, Oregon, and New York. We outlined our criteria for selecting comparison states in appendix D.

⁹ The United Nations, Office of the High Commissioner, *Convention on the Rights of the Child* (1989), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

¹⁰ New Jersey Department of Children and Families, New Jersey Task Force on Child Abuse and Neglect (2017), <http://www.nj.gov/dcf/providers/boards/njtfcan/>.

¹¹ M. Skivenes, "Judging the Child's Best Interests: Rational Reasoning or Subjective Presumptions." *Acta Sociologica* 53(4): 339–354 (2010), doi: 10.1177/0001699310379142.

¹² A. Charlow, "Awarding Custody: The Best Interests of the Child and Other Fictions," *Yale Law & Policy Review*, 5(2): 267–290 (1996).

Family Law

When we used the search term “best interest of the child,” the results overwhelmingly identified state statutes and family law literature of child custody in divorce proceedings rather than child welfare decisions under juvenile law. As shown in appendix E, the most commonly cited factors included in state statutes used to determine what is in the best interest of the child during divorce custody proceedings (family law) are as follows:

- Evidence of abuse (n=8)
- Wishes of the child (n=7)
- Interaction and interrelationship of the child with parents and siblings (n=7)
- Need to promote continuity and stability in the life of the child (n=6)
- Wishes of the child’s parent(s) (n=5)
- Interaction and communication between the parents (n=5)
- Child’s developmental needs (n=5)
- Child’s adjustment to his or her home, school, and community (n=4)
- Character and circumstances of all individuals involved (n=4)
- Any other additional factors (n=4)
- Geographic location of the parents (n=4)
- Parents’ mental and physical health (n=4)

Juvenile Law

During child protection proceedings in the United States, the courts are typically the entity that determines what is considered to be in the best interest of the child. Although most of the 11 states used the phrase best interest of the child in juvenile law for child abuse and neglect proceedings, the term was often not defined in legislation. As shown in appendix F, only 6 of the 11 states gave definitions of best interest of the child or listed factors to be considered under juvenile law: California, Florida, Idaho, Montana, New Jersey, and North Carolina. In these states, eight factors were most often considered:

- Child’s preference (n=3)
- Parents’ ability to provide for the mental and physical needs of the child (n=3)
- Any other relevant factors (n=2)
- Bond between the child and parents (n=2)
- Parents’ ability to provide for the basic needs of the child (n=2)
- Potential for permanency (n=2)
- Quality of the relationship between the child and parental substitute (n=2)
- Social, cultural, and educational needs of the child (n=2)

These findings are consistent with a 2016 literature review conducted by the Children’s Bureau that examined state statutes regarding best interest of the child and child welfare. The Children’s Bureau found that four guiding principles were most commonly cited:¹³

- Maintaining family integrity and preference
- Protecting the health and safety of the child
- Making timely permanence decisions
- Assuring that children are provided with the resources needed to become self-sufficient adults

The Children’s Bureau also identified the most commonly cited factors in state statutes to determine the best interest of the child:

- Relationship between the child and family
- Parents’ capacity to provide for the child
- Parents’ and child’s mental and physical health
- Presence of domestic violence

In addition to outlining what should be considered when determining what is in the best interest of the child, the Children’s Bureau found that “three states also list factor(s) that should not be considered in the best interest analysis. For example, 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 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.”¹⁴ Furthermore, California and Iowa statutes have provisions to protect the Tribal and cultural background of Indian children.

Comparing Family Law and Juvenile Law

We identified nine overlapping factors when comparing the best interest of the child definitions under family and juvenile law (see appendix G):

- Wishes of the child
- Interaction and interrelationship of the child with parents and siblings
- Child’s developmental needs
- Any other additional factors
- Child’s relationship with other nonparental individuals
- Need to provide a substance-free environment for the child
- Ability of the parents to provide adequate resources for the child
- Length of time the child has lived in a stable situation
- Age and number of children

¹³ US Department of Health and Human Services, Children’s Bureau, Child Welfare Information Gateway, *Determining the Best Interests of the Child* (Washington, DC: 2016).

¹⁴ Ibid.

Best Interest of the Child Standard: Critiques

As can be seen from the review of best interest of the child under family law and juvenile law, it is clear that no universal operational definition for best interest of the child exists. Rather, each state is left to determine what guiding principles, factors, policies, practices, and evidence will be used to define and determine what is in the best interest of the child.^{15,16} Because of this lack of consistency, ALI raised “three primary objections to the notion of a best interest standard. These three factors fall under family law and include [the following]:

The standard is indeterminate and unpredictable.

The standard is impossible to adjudicate.

The standard is unjust.”¹⁷

In response to the previously mentioned critiques, ALI proposed three alternatives to the best interest standard: a sex-based standard, a primary caretaker preference, and the least detrimental alternative standard. Each of the three alternatives is described in more detail below.

Sex-Based Standard

As described in the history of best interest of the child section of this report, the sex-based standard grants custody solely based on the parent’s sex. In early history, fathers were granted custody as they were the sole providers for the family. Later mothers were granted custody under the tender years doctrine as women were viewed to have a stronger emotional bond with their children. Today the courts have deemed a sex-based standard as outdated and unconstitutional. However, some evidence suggests that judges may still give mothers preference during court proceedings.

Primary Caretaker Preference

The primary caretaker preference “relies predominantly on the past allocation of parenting responsibilities in awarding custody.”¹⁸ This preference is based on the belief that parent-child attachment correlates with time spent together. Both Minnesota and West Virginia adopted the primary caretaker preference as law. Findings from implementation in Minnesota suggest that adopting the primary caretaker preference actually increased custody litigation. Additionally, the lack of a common definition of primary caretaking made the standard difficult to uphold and

¹⁵ M. Skivenes, “Judging the Child’s Best Interests: Rational Reasoning or Subjective Presumptions.” *Acta Sociologica* 53(4): 339–354 (2010), doi: 10.1177/0001699310379142.

¹⁶ A. Charlow, “Awarding Custody: The Best Interests of the Child and Other Fictions,” *Yale Law & Policy Review*, 5(2): 267–290 (1996).

¹⁷ S. N. Peskind, *Determining the Undeterminable: The Best Interest of the Child Standard as an Imperfect Necessary Guidepost to Determine Child Custody* (2005), <http://heinonline.org/HOL/LandingPage?handle=hein.journals/niulr25&div=22&id=&page=>.

¹⁸ *Ibid*, 8.

adjudicate. Lastly, courts noted that, like the tender years doctrine, the primary caretaker preference had an inherent bias toward women.

Least Detrimental Alternative

The least detrimental alternative is a concept that was introduced by Goldstein, Freud, and Solnit in their 1973 book, *Beyond the Best Interest of the Child*. Goldstein, Freud, and Solnit suggest that children and families are products of their environments and cannot avoid harm altogether. Thus, the court's focus should be to prioritize children's needs and interests to foster their growth and development. Goldstein wrote, "Under such a legislative mandate to use 'least detrimental' rather than 'best interest,' courts as well as child care agencies are more likely to confront the detriments inherent in each child placement decision without getting enmeshed in the hope and magic associated with 'best' in a way which often misleads decision makers into believing they have more power for 'good' than for 'bad' in what they may decide."¹⁹ The least detrimental alternative provides little guidance for implementation, so "critics have challenged the standard as having no more determinacy than a best interest standard."²⁰

After reviewing implementation of these three alternative standards, ALI concluded that each alternative was flawed and that there was "no better alternative to the existing best interest standard."²¹ ALI also noted that the very indeterminacy that critics of the best interest standard have challenged was what allowed the courts to consider the uniqueness of each family's situation when determining custody and placement decisions.

Appel and Boyer (1995) also point out that the vagueness of the best interest of the child standard allows for the courts to make individualized decisions. However, Appel and Boyer raised additional critiques, noting that when applied to juvenile law:

The standard does not provide guidelines for when the courts should step in, for example, when adoption should be considered as a placement and permanency decision.

Research, including longitudinal research, has not produced solid evidence about predicting child welfare outcomes.

Inherent biases are involved in the decision making process, including those about poverty and lifestyle.

The standard does not provide guidance on how to prioritize different factors according to the child's age and developmental stage.²²

¹⁹ J. Goldstein, "Finding the Least Detrimental Alternative: The Problem for the Law of Child Placement," *Hitotsubashi Journal of Law and Politics* 7: 29–39, doi: 10.15057/8238 (1974).

²⁰ S. N. Peskind, *Determining the Undeterminable: The Best Interest of the Child Standard as an Imperfect Necessary Guidepost to Determine Child Custody* (2005), 10, <http://heinonline.org/HOL/LandingPage?handle=hein.journals/niulr25&div=22&id=&page=>.

²¹ *Ibid*, 10.

²² A. R. Appell and B. A. Boyer, "Parental Rights vs. Best Interests of the Child: A False Dichotomy in the Context of Adoption," *Duke Journal of Gender Law & Policy* 2: 63–83 (1995).

Despite the fact that ALI found no feasible alternative to the best interest standard, the lack of consistency for definition and implementation remain the primary critique of the standard. Rather than changing the standards, ALI suggested changing the way the courts litigate by making custody determinations more quickly, imposing greater control over the use of expert witnesses, requiring better appellate review, and enhancing the trial skills of lawyers.”²³

Field Perspectives

We conducted a search to examine how the perspectives and definitions of best interest of the child differ by field in juvenile law and child protection. Specific fields we included in our search were developmental psychology, social work, law, and policy. Our literature review produced very few results that explicitly address how the understanding of best interest of the child differs by field.

Articles that discuss differences in interpretations by field noted that mental health fields such as psychology, psychiatry, and applied mental health professions are concerned solely with the psychological and psychiatric wellbeing of the child, which is only one small part of the many factors used in legal determinations of best interest of the child. The fields of law and policy use other nonpsychological factors when determining the best interest of the child.^{24,25,26,27} Miller (1993) wrote the following:

“Psychologically, the determination of best interest depends on the emotional life of the child, especially present and future intimate relationships. Legally, best interests include moral, financial, and multiple other factors in addition to psychological aspects. Moreover, mental health professionals tacitly consider best interests as the ultimate principal in placement whereas the law considers other principles to be prior to best interest (e.g., equal protection of parents or society’s needs). Opinion of mental health workers is limited to psychological considerations, which are not decisive in determining the legal best interests of the child.”²⁸

²³ S. N. Peskind, *Determining the Undeterminable: The Best Interest of the Child Standard as an Imperfect Necessary Guidepost to Determine Child Custody* (2005),

<http://heinonline.org/HOL/LandingPage?handle=hein.journals/niulr25&div=22&id=&page=>

²⁴ P. Rankin, “Protecting the Best Interests of the Child: Some Issues and Solutions,” *IUC Journal of Social Work Theory and Practice*: 4 (2002),

http://www.bemidjistate.edu/academics/publications/social_work_journal/issue04/articles/rankin.html.

²⁵ M. Banach, “The Best Interests of the Child: Decisions-making Factors,” *Families in Society* 79(3): 331–340 (1998).

²⁶ G. H. Miller, “The Psychological Best Interest of the Child,” *Journal of Divorce & Remarriage* 19(1/2): 21–36 (1993).

²⁷ G. H. Miller, “The Psychological Best Interest of the Child Is Not the Legal Best Interest,” *Journal of the American Academy of Psychiatry and the Law* 30: 196–200 (2002).

²⁸ G. H. Miller, “The Psychological Best Interest of the Child,” *Journal of Divorce & Remarriage* 19(1/2): 21–36 (1993).

In another study, focus groups were conducted to better understand social workers' and attorneys' understanding of their role in child abuse and neglect cases. Participants from the two professions came to a consensus about their purpose of "providing permanent homes for children as soon as possible" but not about their role in implementation. Social workers prioritize the care of the children while attorneys prioritize the legal rights of the children. Similarly, there are linguistic differences between social workers and lawyers. "Social workers use a 'helping' language, while lawyers' language is one of 'rights.' The language of social work stresses interdependence and relationship whereas the language of lawyers is focused on individualism and the vindication of individual positions."²⁹ The two professions have a different understanding of what constitutes evidence and risk of harm, which may impact court proceedings and recommendations for what is in the best interest of the child.³⁰

Our literature review also examined the use of expert witnesses across different fields in best interest of child determinations. For example, three articles raised the question of whether and how often mental health professionals make judgments about what is in the best interest of the child using information and claims that are outside the scope of their training and expertise.^{31,32,33} One article elaborated further, criticizing the use of expert witnesses during best interest of child determinations, stating that these witnesses often have varying levels of professional credentials and provide "questionable scientific testimony," and citing causal and predictive relationships which have not been established in the literature.³⁴

Adoption and Safe Families Act

To further understand how the definition of best interest of the child relates to child abuse and neglect, we looked to the Adoption and Safe Families Act of 1997 (ASFA).³⁵ The ASFA outlines the continuum of placements to be used in court determinations in order of placement preference:



²⁹ M. K. Kisthardt, "Working in the Best Interest of Children: Facilitating the Collaboration of Lawyers and Social Workers in Abuse and Neglect Cases," *Rutgers Law Record* 30(1) (2006), <https://ssrn.com/abstract=1290612>.

³⁰ *Ibid.*

³¹ G. H. Miller, "The Psychological Best Interest of the Child," *Journal of Divorce & Remarriage* 19(1/2): 21–36 (1993).

³² G. H. Miller, "The Psychological Best Interest of the Child Is Not the Legal Best Interest," *Journal of the American Academy of Psychiatry and the Law* 30: 196–200 (2002).

³³ S. N. Peskind, *Determining the Undeterminable: The Best Interest of the Child Standard as an Imperfect Necessary Guidepost to Determine Child Custody* (2005), [http://heinonline.org/HOL/LandingPage?handle=hein.journals/niulr25&div=22&id=&page=.](http://heinonline.org/HOL/LandingPage?handle=hein.journals/niulr25&div=22&id=&page=)

³⁴ *Ibid.*

³⁵ Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat (2115), <https://www.gpo.gov/fdsys/pkg/PLAW-105publ89/pdf/PLAW-105publ89.pdf>.

Family Reunification: Statistics

The Adoption and Safe Families Act established family preservation and reunification as its primary goals for what is in the best interest of the child.³⁶ Data from the Adoption and Foster Care Analysis and Reporting System (AFCARS) indicates that family reunification was the goal or reality for over 50 percent of children who were in or exited foster care during fiscal year 2015:

Of 427,910 children in foster care on September 30, 2015, reunification accounted for 55 percent of the case plan goals and adoption was 25 percent.

Of 427,910 children in foster care on September 30, 2015, 30 percent of placements were in kinship care and 45 percent were with a nonrelative.

Of 243,060 children who exited foster care in fiscal year 2015, 51 percent were reunified with their parents or primary caretakers, 22 percent were adopted, 9 percent were emancipated, 9 percent were given guardianship, 6 percent were living with other relatives, and 2 percent were transferred to another agency.³⁷

The Administration for Children and Families had adopted national standards for reunification and adoption. Its goal for reunification was 76.2 percent of children are reunified in less than 12 months, and its goal for adoption was at least 32 percent of children exit foster care in less than 24 month.³⁸ “Despite the policy support for reunification and permanency, many children remain in foster care for extended periods of time. As of 2005, approximately 37 percent of children in foster care had stays of 2 years or longer.”³⁹

Family Reunification: Factors

Factors associated with family reunification are family engagement, assessment, case planning, and service delivery.⁴⁰ More details for each of these factors are listed below:

Family engagement. Frequent interaction with the caseworker, regular parent-child visitation, involvement of foster parents, engagement of a peer advocate

³⁶ National Conference of State Legislators, *The Child Welfare Placement Continuum: What’s Best for Children?* (2016), <http://www.ncsl.org/research/human-services/the-child-welfare-placement-continuum-what-s-best-for-children.aspx>.

³⁷ US Department of Health and Human Services, Children’s Bureau, *The AFCARS Report* (2016), <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport23.pdf>.

³⁸ Administration for Children and Families, *Background Paper: Child and Family Services Reviews National Standards*, https://www.acf.hhs.gov/sites/default/files/cb/cfsr_background_paper.pdf.

³⁹ J. L. Bellamy, “Behavioral Problems Following Reunification of Children in Long Term Foster Care,” *Child Youth Services Review* 30(2): 216–228 (2008).

⁴⁰ US Department of Health and Human Services, Children’s Bureau, Child Welfare Information Gateway, *Family Reunification: What the Evidence Shows* (Washington, DC: 2011), https://www.childwelfare.gov/pubPDFs/family_reunification.pdf.

Assessment and case planning. Standardized tools such as the North Carolina Family Assessment Scales for Reunification or the Structured Decision Making Reunification Reassessment

Service delivery. Tangible resources (food, transportation, housing), substance abuse treatment, intensive case management, social supports, home-based service delivery

The Child Welfare Information Gateway notes that “laws in all States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands require that child welfare agencies make reasonable efforts to provide services that will help families remedy the conditions that brought the child and family into the child welfare system.”⁴¹ However, reasonable efforts toward reunification are not required when a parent has committed murder, voluntary manslaughter, or has a felony assault injuring a child. Some states have also outlined additional conditions where reasonable efforts are not required. For example, additional provisions in Idaho include the parent having abandoned the child and the parent being convicted of trafficking.⁴²

Family Reunification: Mixed Outcomes

The Adoption and Safe Families Act of 1997 established family preservation and reunification as its two primary goals. The act was developed with the underlying belief that children will have better developmental outcomes when living with their family of origin. Additional reasons include “attachment issues that result from multiple placements (Shireman, 2003), an increase in cost to the child welfare system, and an increased risk that children will ‘age out’ of the foster care system without adequate supports (Atkinson, 2008).”⁴³ Although preservation and reunification are the two primary goals of the act, the impacts of family reunification on children are varied and complex.

A longitudinal study found that youth who were reunified with their families initially saw a decrease in behavioral problems but demonstrated more internalizing and externalizing behavioral problems, increased substance use, more legal problems and poorer educational outcomes six years later than youth who were not reunified.⁴⁴ The data also suggested that these “reunified children were exposed to a variety of risk factors for maladjustment, including heightened exposure to violence, more maternal health problems, poorer family functioning, and lower levels of parental social support.”⁴⁵ Another study found that reunification does not

⁴¹ US Department of Health and Human Services, Children’s Bureau, Child Welfare Information Gateway, *Reasonable efforts to preserve or reunify families and achieve permanency for children* (Washington, DC: 2016), <https://www.childwelfare.gov/pubPDFs/reunify.pdf>.

⁴² Ibid

⁴³ S. M. Saunders-Adams, “Reunification and Reentry in Child Welfare: A Systematic Review and Meta-analysis” (doctoral dissertation, Ohio State University) (2011), https://etd.ohiolink.edu/rws_etd/document/get/osu1299287934/inline.

⁴⁴ H. N. Taussig, R. B. Clymen, and J. Landsverk, “Children Who Return Home from Foster Care: A 6-year Prospective Study of Behavioral Health Outcomes in Adolescence,” *Pediatrics* 108(1): 1–7 (2001).

⁴⁵ A. S. Lau, A. J. Litrownik, R. R. Newton, and J. Landsverk, “Going Home: The Complex Effects of Reunification on Internalizing Problems among Children in Foster Care,” *Journal of Abnormal Child Psychology* 31: 345–358 (2003).

cause adverse outcomes and children who are reunified with their families are, in fact, less socially isolated than children who are not reunified.⁴⁶

Additionally, some studies suggest that child characteristics impact the likelihood of reunification, with children who exhibit more behavioral problems being less likely to be reunified. Still others have found that children who remain in foster care demonstrate more behavior problems than those who are reunified.⁴⁷ Given these mixed findings, it is likely that reunification outcomes are indicative of other socioeconomic risk factors and unresolved family conflicts. Thus, recommendations for successful reunification strategies include thorough assessment and case planning as well as providing intensive services and supports that address the structural and systemic factors that originally contributed to the removal of the child from the home.

⁴⁶ Ibid, 355.

⁴⁷ J. L. Bellamy, "Behavioral Problems Following Reunification of Children in Long Term Foster Care," *Child Youth Services Review* 30(2): 216–228 (2008).

Appendix A: Statutes of States with Top Performing Child Welfare Systems

The 2012 Right for Kids Rankings report by the Foundation for Government Accountability ranked child welfare systems in all 50 states. Our use of the Right for Kids Rankings is in no way an indication of state child welfare systems' actual performance nor is it an endorsement of the report's findings. Rather, the report was used as a starting point to identify and group comparison states regarding best interest of the child because it was the only text found that ranked child welfare systems across the states.

The rankings in the Right for Kids Rankings report were based on more than 50 metrics and “evaluated state child welfare systems based on their performance to respond quickly to allegations of abuse; ensure abused children are transitioned to safe and permanent homes as quickly as possible; place children in foster care in supportive, home-like settings that are safe; maintain stable foster placements, so children who are in foster care are not moved from foster home to foster home; and work to reduce the overall incidence of abuse and neglect.”⁴⁸ Idaho was among the top five states; other states were Florida, New Hampshire, New Jersey, and North Carolina.⁴⁹ Summaries of the definitions of best interest of the child for each state are included below.

Idaho

The only place in Idaho statute that enumerates factors to be considered in making decisions in the best interest of children is IDAHO CODE § 32-717, which discusses custody in divorce actions.⁵⁰ This section lists the factors that “shall” be considered:

- Wishes of the child's parents
- Wishes of the child
- Interaction and interrelationship of the child with parents and siblings
- Child's adjustment to his or her home, school, and community
- Character and circumstances of all individuals involved
- Need to promote continuity and stability in the life of the child
- History of domestic violence

In addition to outlining factors that should be considered during determinations, the statute prohibits discrimination based on a parent's disability.

⁴⁸ Idaho Department of Health and Welfare, *Idaho Child Welfare System Rated Best in the Nation* (June 29, 2012), <http://healthandwelfare.idaho.gov/AboutUs/Newsroom/tabid/130/ctl/ArticleView/mid/3061/articleId/1652/Idaho-Child-Welfare-System-Rated-Best-in-Nation.aspx>.

⁴⁹ Foundation for Government Accountability, *Right for Kids Ranking* (2012).

⁵⁰ IDAHO CODE § 32-717, custody of children—best interest.

For child welfare, the Idaho Child Protective Act repeatedly uses best interest of the child, particularly in conjunction with court-ordered placement decisions (e.g., IDAHO CODE § 16-1610(2)(i)(ii), § 16-1613(3), § 16-1615(4)(e), § 16-1619–1622, § 16-1629). Although the phrase is not explicitly defined, the Idaho Child Protective Act takes the following into consideration:

- Wishes of the child
- Potential for permanency
- Social, cultural, and educational needs of the child

Outside of the Child Protective Act, the best interest of the child is used as a guiding criterion for custody proceedings, child witness testimony methods, guardian ad litem appointments, adoption, and termination of parental rights.

Florida

Florida outlines its best interest of the child standard under family law in FLA. STAT. § 61.13(3).⁵¹ It includes the following factors used in determinations of best interest of the child and custody:

- Wishes of the child
- Child's adjustment to his or her home, school, and community
- Child's developmental needs
- Need to promote continuity and stability in the life of the child
- Character and circumstances of all individuals involved
- Need to provide a substance free environment for the child
- Length of time the child has lived in a stable situation
- Geographic location of the parents
- Parents' mental and physical health
- History of domestic violence
- Evidence of other forms of abuse, abandonment, and neglect
- Evidence of a parent falsifying information given to the court
- Any other additional factors

Florida has a different definition of best interest of the child under juvenile law (FLA. STAT. § 39.810, manifest best interests of the child). The statute considers the following factors:

- Potential for permanency
- Ability of the parents to provide for the basic needs of the child
- Ability of the parents to provide for the mental and physical needs of the child
- Emotional ties between the child, parent, siblings, and relatives
- Likelihood of adoption
- Child's ability to form a relationship with a parental substitute
- Quality of the relationship between the child and a parental substitute
- Length of time the child has lived in a stable environment
- Child's preference

⁵¹ FLA. STAT. § 61.13(3), dissolution of marriage, support, time-sharing.

Recommendations from the child’s guardian ad litem or legal representative

The Florida Legislature provides an electronic history of Senate and House bills for regular sessions from 1998 to 2017. A search of the House and Senate bills proposed and enacted during this time period that include the phrase “manifest best interest” suggests that both FLA. STAT. § 61.13(3) and FLA. STAT. § 39.810 predate 1998. Therefore, additional information on the history of these statutes is not available.

New Hampshire

New Hampshire outlines its best interest of the child standard under N.H. REV. STAT. § 461-a:6, determination of parental rights and responsibilities; best interest.⁵² The statute lists the following for consideration:

- Wishes of the child
- Interaction and interrelationship of the child with parents
- Child’s adjustment to his or her home, school, and community
- Ability of the parents to provide adequate resources for the child
- Child’s developmental needs
- Interaction and communication between the parents
- Child’s relationship with other nonparental individuals
- Evidence of abuse
- Current incarceration of the parents
- Any other additional factors

The New Hampshire statute also states that “the court shall not apply a preference for one parent over the other because of the sex of the child, the sex of a parent, or the financial resources of a parent.”⁵³ The law was established in 2005 under House Bill 640-FN, which was the first time that “criteria for determining the best interest of the child” was outlined in New Hampshire legislation. The bill states that it was “a request of the task force on family law established in 2002.”^{54,55}

For child welfare, the New Hampshire Child Protection Act lists its primary purpose as preventing child abuse and neglect and promoting the best interest of the child. However, nowhere in Chapter 169-C was a definition provided about what factors should be considered.⁵⁶

⁵² N.H. REV. STAT. § 461-a:6, determination of parental rights and responsibilities; best interest.

⁵³ *Ibid.*

⁵⁴ H.B. 640-FN, An Act Relative to Parental Rights and Responsibilities (N.H. 2005), http://gencourt.state.nh.us/SofS_Archives/2005/senate/HB640S.pdf.

⁵⁵ New Hampshire Task Force on Family Law, *Report of the Task Force on Family Law* (2004), <https://www.nhbar.org/uploads/pdf/TaskForce-FamilyLaw-2004-Report.pdf>.

⁵⁶ New Hampshire Child Protection Act (1979), <http://www.gencourt.state.nh.us/rsa/html/XII/169-C/169-C-mrg.htm>.

The Child Protection Act was signed into law in 1979, which predates the New Hampshire General Court bill status system, so additional history on this act is unavailable.

New Jersey

New Jersey outlines its best interest of the child standard under the Juvenile and Domestic Relations Courts in statute (N.J. STAT. ANN. § 9:2-4(c), custody of child; rights of both parents considered). During determinations for best interest of the child and custody, “the [New Jersey] court shall consider but not be limited to the following factors:”

- Wishes of the child
- Needs of the child
- Need to promote continuity and stability in the life of the child
- Character and circumstances of all individuals involved
- Age and number of children
- Geographic location of the parents
- Interaction and communication between the parents
- Relationship with other nonparental individuals
- History of domestic violence
- Evidence of other forms of abuse

Further information on the origin of the New Jersey statute is unavailable online given that the New Jersey Permanent Statute Database does not provide the history of bills dated before 1996.

North Carolina

North Carolina outlines its best interest of the child standard under family law in N.C. GEN. STAT. § 50-13.2.⁵⁷ The statute says “the court shall consider all relevant factors” to evaluate and determine what “will best promote the interest and welfare of the child.” However, all relevant factors that could be considered are not listed in the statute. The following factors are the only ones listed:

- Interest and welfare of the child
- Child’s safety
- Relationship with other nonparental individuals
- History of domestic violence

The statute also states that a parent’s past or future deployment may not be the sole determining factor for custody of the child. This statute originated in 1957, but it was not until 1979 when Senate Bill 922 introduced text requiring that “an order awarding custody must contain findings

⁵⁷ N.C. GEN. STAT. § 50-13.2, who entitled to custody; terms of custody, visitation rights of grandparents; taking child out of state.

of fact which support the determination by the judge of the best interest of the child.”⁵⁸ In 2013 House Bill 139 provided examples of factors determining best interest of the child such as “acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party.”⁵⁹

North Carolina also outlines a definition for best interest of the child in Juvenile Code (N.C. GEN. STAT. § 7B-1110, determination of best interests of the juvenile). The statute takes the following into account:

- Age of the child
- Likelihood of adoption
- Whether termination of parental rights will help with a permanency plan
- Bond between the child and parents
- Quality of the relationship between the child and parents or guardian
- Any other relevant factors

Chapter 7B of the Juvenile Code on Abuse, Neglect, and Dependency was enacted in 1998 under Senate Bill 1260.⁶⁰ However, the determination of best interests of the juvenile section, which included factors to be considered, was not proposed and enacted until 2005 under House Bill 1150.^{61,62}

⁵⁸ S.B. 922 (N.C. 1979), <http://www.ncleg.net/EnactedLegislation/SessionLaws/PDF/1979-1980/SL1979-967.pdf>.

⁵⁹ H.B. 139 (N.C. 2013), <http://www.ncleg.net/EnactedLegislation/SessionLaws/PDF/2013-2014/SL2013-27.pdf>.

⁶⁰ S.B. 1260 (N.C. 1997), <http://www.ncleg.net/EnactedLegislation/SessionLaws/PDF/1997-1998/SL1998-202.pdf>.

⁶¹ H.B. 1150 (N.C. 2005), <http://www.ncleg.net/EnactedLegislation/SessionLaws/PDF/2005-2006/SL2005-398.pdf>.

⁶² Ibid.

Appendix B: Statutes of States That Have Geographic Proximity to Idaho

Idaho is bordered by six states: Montana, Nevada, Oregon, Utah, Washington, and Wyoming. After comparing the population, geographic, and political characteristics of each of these states, we found three to be most similar to Idaho to use as comparisons for Idaho's statutes. These three states are Montana, Utah, and Wyoming. See appendix E for factors used in determining state similarities and differences.

Montana

Montana outlines its best interest of the child standard in family law in MONT. CODE ANN. § 40-4-212. The statute states that the “court shall consider all relevant parenting factors, which may include but are not limited to [the following]:”

- Wishes of the parents
- Wishes of the child
- Interaction and interrelationship of the child with parents
- Child's adjustment to his or her home, school, and community
- Need to promote continuity and stability in the life of the child
- Child's developmental needs
- Child's mental and physical health
- Parents' mental and physical health
- Need to provide a substance free environment for the child
- Parents' history of financial support of the child
- History of abuse

Similar to North Carolina, the Montana statute states that a parent's past or future deployment may not be the sole determining factor for custody of the child.

In child abuse and neglect proceedings, MONT. CODE ANN. § 41-3-102 defines best interest of the child as “the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.”⁶³ A definition for best interest of the child in adoption proceedings can be found in MONT. CODE ANN. § 42-5-107.

Utah

Utah enumerates factors to be considered in determining the best interest of the child under family law (UTAH CODE § 30-3-10.2 and § 30-3-10). The following factors are included in best interest of the child determinations:

- Wishes of the parents

⁶³ MONT. CODE ANN. § 41-3-102, <http://leg.mt.gov/bills/mca/41/3/41-3-102.htm>.

- Wishes of the child
- Character and circumstances of all individuals involved
- Interaction and interrelationship of the child with parents
- Child's developmental needs
- Ability of the parents to provide for the child
- Whether the parents have exposed the child to pornography
- Geographic location of the parents
- Interaction and communication between the parents
- History of abuse
- Potential for kidnapping
- Any other additional factors

Utah statute explicitly indicates that it does not take the sex of the parent into consideration during best interest of the child determinations.

Utah also discusses best interest of the child in the juvenile court (UTAH CODE § 78A-6-503, judicial process for termination, parent unfit or incompetent, best interest of child) and when discussing adoption proceedings under (UTAH CODE § 78B-6-102, legislative intent and findings, best interest of child, interests of each party). However, neither of these sections defines best interest beyond placement with the child's biological parents.^{64,65}

Wyoming

Wyoming statute (WYO. STAT. § 20-2-201) outlines the factors to be considered in making decisions in the best interest of children in family law and discusses custody in divorce actions. Wyoming statute says that when determining the best interest of the child, "the court shall consider, but is not limited to, the following factors:"

- Interaction and interrelationship of the child with parents
- Fitness and competency of the parents
- Ability of the parents to care for the child
- Interaction and communication between the parents
- Geographic location of the parents
- Mental and physical health of the parents
- History of abuse
- Any other additional factors

⁶⁴ UTAH CODE ANN. § 78A-6-503, judicial process for termination—parent unfit or incompetent—best interest of child, <https://le.utah.gov/xcode/Title78A/Chapter6/78A-6-S503.html>.

⁶⁵ UTAH CODE ANN. § 78B-6-S102, legislative intent and findings—best interest of child—interests of each party, <https://le.utah.gov/xcode/Title78B/Chapter6/78B-6-S102.html>.

Although the phrase best interest of the child was used throughout WYO. STAT. § 14-3-201 to § 14-3-216 (the statutes that address the protection of children through child protective services), no definition was provided.⁶⁶

⁶⁶ WYO. STAT. ANN. § 20-2-201, <http://legisweb.state.wy.us>. Margaret suggests using this URL: <http://legisweb.state.wy.us/LSOWEB/StatutesDownload.aspx>.

Appendix C: Statutes of States That Are Different from Idaho

We chose three states to compare with Idaho because they vary in geographic, demographic, and political characteristics as well as population size. These three states are California, New York, and Oregon.

California

California is a large state with a smaller percentage of rural population and significantly more racial and ethnic diversity than Idaho. California's politics lean Democratic, while Idaho's are more Republican. California outlines its best interest of the child standard under CAL. FAM. CODE § 3011, which considers the following:⁶⁷

- Wishes of the parents
- Health, safety, and welfare of the child
- History of abuse
- Nature and amount of contact with the parents
- Use of illegal substances or abuse of alcohol

California juvenile court law also lists factors in determining the best interest of the child when placement outside of the home is deemed necessary because of child abuse and neglect. The following factors are to be considered:⁶⁸

- Placement with a relative
- Placement of siblings
- Nature of contact between the child and guardian
- Child's physical and medical needs
- Child's emotional and psychological needs
- Social, cultural, and educational needs of the child
- Child's desires if over the age of 12

New York

New York is a medium-sized state with a smaller percentage of rural population and significantly more racial and ethnic diversity than Idaho. Additionally, New York leans Democratic politically. N.Y. DOM. REL. § 240 outlines the factors to be considered in determining the best interests of the child:⁶⁹

- Wishes of the child
- Need to promote continuity and stability in the life of the child

⁶⁷ CAL. FAM. CODE § 3011, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM§ionNum=3011

⁶⁸ CAL. WELF. & INST. CODE § 366, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=WIC§ionNum=366.

⁶⁹ N.Y. DOM. REL. LAW § 240, <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>.

- Interaction and interrelationship of the child with parent(s) and siblings
- Quality of the home environment
- Ability of the parents to provide for the child's emotional and developmental needs
- Length of time the current arrangement has been in effect

We did not find additional definitions for best interest of the child in child welfare or child protective services statutes in the New York laws database.

Oregon

Although Oregon is similar to Idaho in terms of geographic location, gender distribution, age distribution, and racial and ethnic background of residents, it has a smaller percentage of rural population and falls on the other side of the political spectrum as strongly Democratic. OR. REV. STAT. § 107.137 lists the factors to be considered in determining the best interests of the child:⁷⁰

- Wishes of the parents
- Emotional ties between the child and other family members
- Interest of the parties in and attitude toward the child
- Desirability of continuing an existing relationship
- Interaction and communication between the parents
- History of abuse

The Oregon statute also states that the courts may not isolate any of the previous factors when determining what is in the best interest of the child nor may the court consider a parent's disability in the decisions. The statute also states that "the court shall consider the conduct, marital status, income, social environment, or lifestyle of either party only if it is shown that any of these factors are causing or may cause emotional or physical damage to the child." Additionally, Oregon statute explicitly states that there is no custody preference assigned based on the sex of the parent.

We did not find additional definitions for best interest of the child in the juvenile code in Oregon law.

⁷⁰ OR. REV. STAT. § 107.137,
<https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/SB0467/Introduced>.

Appendix D: Factors Used to Determine Comparison States

Appendix D summarizes the factors used to determine the comparison states described in appendices B–C.

	ID	WY	MT	UT	CA	NY	OR
Population							
% Rural	29.4%	35.2%	44.1%	9.4%	5.1%	12.1%	19.0
Age							
< 5 years	7.1%	6.7%	6.0%	8.8%	6.5%	6.0%	5.9%
< 18 years	26.6%	23.8%	22.1%	30.9%	23.9%	21.6%	21.8%
< 65 years	86.2%	86.5%	83.8%	90.3%	87.5%	85.7%	84.6%
65+ years	13.8%	13.5%	16.2%	9.7%	12.5%	14.3%	15.4%
Gender							
Female	49.9%	49.0%	49.7%	49.7%	50.3%	51.5%	50.5%
Race & Ethnicity							
White	91.7%	91.0%	89.2%	87.6%	61.8%	64.6%	85.1%
Black	0.6%	1.1%	0.5%	1.1%	5.9%	15.6%	1.8%
American Indian	1.3%	2.2%	6.5%	1.1%	0.7%	0.4%	1.2%
Asian	1.3%	0.9%	0.7%	2.2%	13.7%	8.0%	4.0%
Native Hawaiian	0.1%	0.1%	0.1%	0.9%	0.4%	0.0%	0.4%
Two or More	2.6%	2.7%	2.5%	2.6%	4.5%	2.9%	4.1%
Hispanic/Latino	11.8%	9.6%	3.3%	13.4%	38.4%	18.4%	12.3%
Non-Hispanic/Latino	88.2%	90.4%	96.7%	86.6%	61.6%	81.6%	87.7%
Political Affiliation							
2016 Pres. Election	R	R	R	R	D	D	D
Governor	R	R	D	R	D	D	D
State Senate	R	R	R	R	D	R	D
State House	R	R	R	R	D	D	D
Senior US Senator	R	R	D	R	D	D	D
Junior US Senator	R	R	R	R	D	D	D
US House	R	R	R	R	D	D	D

Appendix E: Summary of Best Interest of the Child Factors in Family Law

Appendix E summarizes the best interest of the child factors in family law outlined in the 11 states described in appendices A–C.

Best Interest of the Child Factor – Family Law	ID	NH	NC	FL	NJ	MT	UT	WY	CA	NY	OR	Sum
Evidence of abuse		x		x	x	x	x	x	x		x	8
Wishes of the child	x	x		x	x	x	x			x		7
Interaction and interrelationship of the child with parents and siblings	x	x				x	x	x		x	x	7
Need to promote continuity and stability in the life of the child	x			x	x	x				x	x	6
Wishes of the child's parents	x					x	x		x		x	5
Interaction and communication between the parents		x			x		x	x			x	5
Child's developmental needs		x		x		x	x			x		5
Child's adjustment to his or her home, school, and community	x	x		x		x						4
Character and circumstances of all individuals involved	x			x	x		x					4
Any other additional factors		x		x			x	x				4
Geographic location of the parents				x	x		x	x				4
Parents mental and physical health				x		x		x		x		4
History of domestic violence			x	x	x							3
Child's relationship with other nonparental individuals		x	x		x							3
Need to provide a substance-free environment for the child				x		x			x			3
Ability of the parents to provide for the child							x	x		x		3
Interest and welfare of the child			x						x			2
Child's safety			x						x			2
Ability of the parents to provide adequate resources for the child		x								x		2
Length of time the child has lived in a stable situation				x						x		2

Best Interest of the Child Factor – Family Law	ID	NH	NC	FL	NJ	MT	UT	WY	CA	NY	OR	Sum
Nature and amount of contact with the parents									x	x		2
Current incarceration of the parents		x										1
Evidence of a parent falsifying information given to the court				x								1
Needs of the child					x							1
Age and number of children					x							1
Child's mental and physical health						x						1
Parents history of financial support of the child						x						1
Whether the parents have exposed the child to pornography							x					1
Potential for kidnapping							x					1
Fitness and competency of the parents								x				1

Appendix F: Summary of Best Interest of the Child Factors in Juvenile Law

Appendix F summarizes the best interest of the child factors in juvenile law outlined in the 11 states described in appendices A–C.

Best Interest of the Child Factor – Juvenile Law	ID	NH	NC	FL	NJ	MT	UT	WY	CA	NY	OR	Sum
Child's preference	x			x					x			3
Parents' ability to provide for the mental and physical needs of child				x		x			x			3
Any other relevant factors				x		x						2
Bond between the child and parents			x	x								2
Parents' ability to provide for the basic needs of the child				x		x						2
Potential for permanency	x		x									2
Quality of the relationship between the child and parental substitute				x					x			2
Social, cultural, and educational needs of the child	x								x			2
Age of the child			x									1
Child's ability to form a relationship with a parental substitute				x								1
Length of time the child has lived in a stable environment				x								1
Likelihood of adoption			x									1
Placement of siblings									x			1
Placement with a relative									x			1
Quality of relationship between the child and parents or guardian			x									1
Recommendations from the guardian ad litem or legal representative				x								1

Appendix G: Comparison of Best Interest of the Child Factors

Appendix G compares and contrasts the best interest of the child factors considered under family law and juvenile law. The factors are ordered by frequency under family law. Factors shaded in gray indicate those mentioned in both family law and juvenile law.

Best Interest of the Child Factor	Family Law	Juvenile Law
Evidence of abuse	8	0
Wishes of the child	7	3
Interaction and interrelationship of the child with parents and siblings	7	2
Need to promote continuity and stability in the life of the child	6	0
Wishes of the child's parents	5	0
Interaction and communication between the parents	5	0
Child's developmental needs	5	2
Child's adjustment to his or her home, school, and community	4	0
Character and circumstances of all individuals involved	4	0
Any other additional factors	4	2
Geographic location of the parents	4	0
Parents' mental and physical health	4	0
History of domestic violence	3	0
Child's relationship with other nonparental individuals	3	2
Need to provide a substance-free environment for the child	3	3
Ability of the parents to provide for the child	3	0
Interest and welfare of the child	2	0
Child's safety	2	0
Ability of the parents to provide adequate resources for the child	2	2
Length of time the child has lived in a stable situation	2	1

Best Interest of the Child Factor	Family Law	Juvenile Law
The nature and amount of contact with the parents	2	0
Current incarceration of the parents	1	0
Evidence of a parent falsifying information given to the court	1	0
Needs of the child	1	0
Age and number of children	1	1
Child's mental and physical health	1	0
Parents' history of financial support of the child	1	0
Whether the parents have exposed the child to pornography	1	0
Potential for kidnapping	1	0
Fitness and competency of the parents	1	0
Potential for permanency	0	2
Child's ability to form a relationship with a parental substitute	0	1
Likelihood of adoption	0	1
Placement of siblings	0	1
Placement with a relative	0	1
Recommendations from the guardian ad litem or legal representative	0	1

