

WHY “BEST INTERESTS”?

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What is the “Best Interests of the Child”?

“The best interests of the child doctrine is at once the most heralded, derided and relied upon standard in family law today. It is heralded because it espouses the best and highest standard; it is derided because it is necessarily subjective; and it is relied upon because there is nothing better.”

--Professor Lynne Marie Kohm



What is “Best Interests of the Child”?

- No standard definition
- Legal standard that governs judicial and agency decision-making
- Defines rights and duties of parent, child, and state
- Affords children both substantive and procedural protections
- Safety, well-being, and permanency of children are paramount

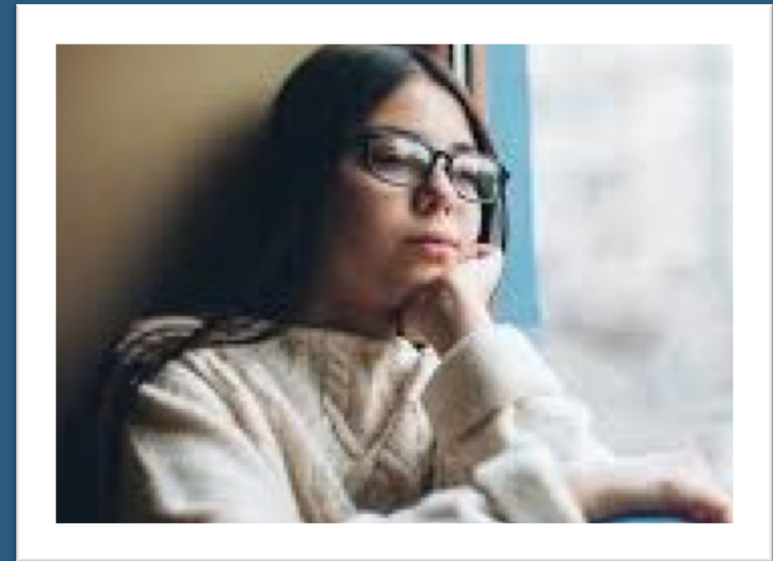
Where Did “Best Interests” Come From?

- Early notions of children and childhood
- English common law
- Paternal authority
- *Parens patriae*
- Tender years doctrine
- Best interests standard



Best Interests in Practice: Child Custody

- **Substantive law**
 - 17 mandatory “best interests” factors in DC statute
- **Procedural protections**
 - Court appoints Guardian ad litem in high conflict cases



“Best Interests” Factors in D.C. Child Custody Statute

- The wishes of the child as to his or her custodian, where practicable
- The interaction and interrelationship of the child with his or her parent or parents, his or her siblings
- The child’s adjustment to his or her home, school, and community
- The mental and physical health of all individuals involved
- The potential disruption of the child’s social and school life

Best Interests in Practice: Child Abuse and Neglect

- **Substantive law**

- 5 mandatory “best interests” factors applied at critical decision points (e.g., termination of parental rights)

- **Procedural protections**

- Right to court-appointed counsel for children and parents
- Mandatory hearings
- Mandatory timeframes for agency and court action



“Best Interests” Factors in D.C. Child Abuse and Neglect Statute

- The child’s need for continuity of care and timely integration into a stable and permanent home;
- The physical, mental, and emotional health of all individuals involved;
- The quality of the interaction and interrelationship of the child with his or her parent, siblings, relative, and/or caretakers, including the foster parent;
- To the extent feasible, the child’s opinion of his or her best interest in the matter; and
- Evidence that drug-related activity continues to exist in a child’s home environment after intervention and services have been provided.

Challenges with “Best Interests”

- Indeterminate and allows for too much judicial discretion
- Difficult to present all the factors in a manageable way



Why “Bests Interests”?



- Makes children visible
- Prescribes and guides decision-making and actions of judges, agencies, and advocates