

DOMESTIC VIOLENCE AS A FACTOR TO BE CONSIDERED IN CUSTODY/VISITATION DETERMINATIONS*

*This chart depicts states where domestic violence is given extra weight under the best interest of the child (BIC) factors and states where there is a domestic violence exception to considering certain best interest of the child (BIC) factors.

STATE	STATUTE	DOMESTIC VIOLENCE GIVEN EXTRA WEIGHT IN BIC ANALYSIS	DOMESTIC VIOLENCE EXCEPTION TO CONSIDERING CERTAIN BIC FACTORS
Alabama**	§ 30-3-131 § 30-3-132	<p>§ 30-3-131 = Notwithstanding the provisions regarding the rebuttable presumption, judges must also take into account what, if any, impact the domestic violence had on the child.</p> <p>.....</p> <p>§ 30-3-132 = In addition to other factors that a court is required to consider in a proceeding in which the custody of a child or visitation by a parent is at issue and in which the court has made a finding of domestic or family violence, the court shall consider each of the following: the safety and well being of the child and of the parent who is the victim of family or domestic violence and the</p>	If a parent is absent or relocates because of an act of domestic or family violence by the other parent, the absence or relocation may not be a factor that weights against the parent in determining the custody or visitation. (§ 30-3-132)

**Rebuttable presumption state.

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		perpetrator’s history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault to another person.	
Alaska**	§ 25.24.150	No.	The court may not consider the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child if one parent shows that the other parent has sexually assaulted or engaged in domestic violence against the parent or a child, and that a continuing relationship with the other parent will endanger the health and safety of either the parent or the child.
Arizona**	§ 25-403.03	The court shall consider evidence of domestic violence as being contrary to the best interests of the child. The court shall consider the	In determining whether the absence or relocation of a parent shall be weighed against that parent in determining custody or parenting time, the court may consider

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		safety and well-being of the child and of the victim of the act of domestic violence to be of primary importance. The court shall consider a perpetrator’s history of causing or threatening to cause physical harm to another person.	whether the absence or relocation was caused by an act of domestic violence by the other parent.
Arkansas**	§ 9-13-101 § 9-15-215	<p>§ 9-13-101 = The circuit court must consider the effect of domestic violence upon the best interests of the child, whether or not the child was physically injured or personally witnessed the abuse, together with such facts and circumstances as the circuit court deems relevant in making a direction pursuant to this section.</p> <p>.....</p> <p>§ 9-15-215 = In addition to other</p>	If a parent is absent or relocates because of an act of domestic or family violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation. (§ 9-15-215)

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		factors the circuit court shall consider in a proceeding in which the temporary custody of a child or temporary visitation by a parent is at issue and in which the court has made a finding of domestic or family violence, the court shall consider: as primary the safety and well-being of the child and of the parent who is the plaintiff of domestic or family violence and the defendant’s history of causing physical harm, bodily injury, assault or causing reasonable fear of physical harm, bodily injury, or assault to another person.	
California**	Fam. Code § 3044	No.	The preference for frequent and continuing contact with both parents may not be used to rebut the presumption, in whole or in part.

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Colorado	§ 14-10-124	If the court makes a finding of fact that one of the parties has been a perpetrator of spouse abuse, then it shall not be in the best interest of the child to allocate mutual decision-making responsibility over the objection of the other party or the representative of the child, unless the court finds that the parties are able to make shared decisions about their children without physical confrontation and in a place and manner that is not a danger to the abused party or the child.	If a party is absent or leaves home because of spouse abuse by the other party, such absence or leaving shall not be a factor in determining the best interests of the child.
Delaware**	tit. 13 § 706A tit. 13 § 705A	Any evidence of a past or present act of domestic violence, whether or not committed in the presence of the child, is a relevant factor that must be considered by the court in	No.

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		determining the legal custody and residential arrangements in accordance with the best interests of the child.	
Florida**	§ 61.13	<p>The court shall consider evidence of domestic violence or child abuse as evidence of detriment to the child.</p> <p>.....</p> <p>If the court accepts evidence of prior or pending actions regarding domestic violence, the court must specifically acknowledge in writing that such evidence was considered when evaluating the best interests of the child.</p>	No.
Georgia	§ 19-9-3	In addition to other factors that a court may consider in a proceeding in which the custody of a child or	If a parent is absent or relocates because of an act of domestic violence by the other parent, such absence or relocation for a

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		visitation by a parent is at issue and in which the court has made a finding of family violence: the court shall consider as primary the safety and well-being of the child and of the parent who is the victim of family violence and the perpetrator’s history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault to another person.	reasonable period of time in the circumstances shall not be deemed an abandonment of the child or children for the purposes of a custody determination.
Guam	tit. 19 § 8404	In addition to other factors that a court may consider in a proceeding in which the custody of a child or visitation by a parent is at issue and in which the court has made a finding that family violence occurred: the court shall consider as primary the safety and well-	If a parent or guardian is absent or relocates because of an act of family violence by the other parent, the absence or relocation is not a factor that weighs against the parent or guardian in determining custody or visitation, so long as the child(ren) are not removed from Guan without prior court authorization.

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		being of the child(ren) and of a parent or guardian who is the victim of family violence and the perpetrator’s history of causing or attempting to cause bodily injury to another family or household member; or placing a family or household member in fear of bodily injury.	
Hawaii**	§ 571-46	In addition to other factors that a court shall consider in a proceeding in which the custody of a child or visitation by a parent is at issue, and in which the court has made a finding of family violence by a parent: the court shall consider as the primary factor the safety and well-being of the child and of the parent who is the victim of family violence and the perpetrator’s	<p>If a parent is absent or relocates because of family violence by the other parent, the absence or relocation shall not be a factor that weighs against the parent in determining custody or visitation.</p> <p>.....</p> <p>Each parent’s cooperation in developing and implementing a plan to meet the child’s ongoing needs, interests and schedule; provided that this factor shall not be considered in any case where the</p>

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		<p>history of causing physical harm, bodily injury, or assault or causing reasonable fear of physical harm, bodily injury, or assault to another person.</p> <p>A court may award visitation to a parent who has committed family violence only if the court finds that adequate provision can be made for the physical safety and psychological well-being of the child and for the safety of the parent who is a victim of family violence</p>	<p>court has determined that family violence has been committed by a parent.</p> <p>.....</p> <p>Each parent’s actions demonstrating that they allow the child to maintain family connections through family events and activities; provided that this factor shall not be considered in any case where the court has determined that family violence has been committed by a parent.</p>
Indiana	§ 31-17-2-8.3	No.	Creates a rebuttable presumption that the court shall order supervised parenting time if a court finds that a noncustodial parent has been convicted of a crime involving domestic or family violence that

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			was witnessed or heard by the noncustodial parent's child.
Iowa	§ 598.41	A finding by the court that a history of domestic abuse exists, as specified in subsection 3, paragraph “j”, which is not rebutted, shall outweigh consideration of any other BIC factor in the determination of the awarding of custody under this subsection.	If a history of domestic abuse exists as determined by a court and if a parent who is a victim of such domestic abuse relocates or is absent from the home based upon the fear of or actual acts or threats of domestic abuse perpetrated by the other parent, the court shall not consider the relocation or absence of that parent as a factor against that parent in the awarding of custody or visitation.
Kentucky	§ 403.270	No.	The abandonment of the family residence by a custodial party shall not be considered where said party was physically harmed or was seriously threatened with physical harm by his or her spouse, when such harm or threat of harm was causally related to the abandonment.

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Maine	Tit. 19-A, § 1653	No.	The court may not consider departure from the family residence as a factor in determining parental rights and responsibilities with respect to a minor child when the departing parent has been physically harmed or seriously threatened with physical harm by the other parent and that harm or threat of harm was causally related to the departure, or when one parent has left the family residence by mutual agreement or at the request or insistence of the other parent.
Massachusetts**	ch. 208, § 31A	In issuing any temporary or permanent custody order, the probate and family court shall consider evidence of past or present abuse toward a parent or child as a factor contrary to the best interest of the child.	No.
Minnesota**	§ 257.025	In any proceeding where two or	No.

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		more parties seek custody of a child the court shall consider and evaluate all relevant factors in determining the best interests of the child, including... the effect on the child of the actions of an abuser, if related to domestic abuse as defined in section 518B.01, that has occurred between the parents or the parties.	
Missouri	§ 452.375	Custody and visitation rights shall be ordered in a manner that best protects the child and any other child or children for whom the parent has custodial or visitation rights, and the parent or other family or household member who is the victim of domestic violence from any further harm.	No.
Montana	§ 452.375	If the court finds that a pattern	No.

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		of domestic violence has occurred, and, if the court also finds that awarding custody to the abusive parent is in the best interest of the child, then it shall enter written findings of fact and conclusions of law. Custody and visitation rights shall be ordered in a manner that best protects the child and any other child or children for whom the parent has custodial or visitation rights, and the parent or other family or household member who is the victim of domestic violence from any further harm	
New Hampshire	§ 461-A:6	The court will consider any evidence of abuse, and the impact of the abuse on the child and on the relationship between the child and the abusing parent.	No.

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North Carolina	§ 50-13.2	All relevant factors including 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 and shall make findings accordingly.	If a party is absent or relocates with or without the children because of an act of domestic violence, the absence or relocation shall not be a factor that weighs against the party in determining custody or visitation.
North Dakota**	§ 14-09-06.2	No.	The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent residential responsibility.
Oklahoma**	Tit. 43, §109 Tit. 43, §. 109.3	The court shall consider, as a primary factor, the safety and well-being of the child and of the parent who is the victim of domestic violence or stalking behavior, in addition to other facts regarding the best interest of the child.	If a parent is absent or relocates as a result of an act of domestic violence by the other parent, the absence or relocation shall not be a factor that weighs against the parent in determining custody or visitation.

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Pennsylvania	§ 5328	No.	A party's effort to protect a child from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.
Rhode Island	§ 15-5-16	The court shall consider as primary the safety and well-being of the child and of the parent who is the victim of domestic or family violence.	The fact that a parent is absent or relocates because of an act of domestic or family violence by the other parent shall not weigh against the relocating or absent parent in determining custody and visitation
South Carolina	§ 63-15-40 § 63-15-50	A court may award visitation to a person who has been found to have committed domestic violence only if the court finds that adequate provision for the safety of the child and the victim of domestic violence can be made.	The absence or relocation from the home by a person, against whom an act of domestic violence has been perpetrated, if that person is not the primary aggressor, must not be considered by the court to be sufficient cause, absent other factors, to deny custody of the minor child to that person.
Tennessee**	§ 36-6-106	No.	The court shall consider all relevant

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			factors, including... The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment; provided, that, where there is a finding... of child abuse... or child sexual abuse... by one parent, and that a nonperpetrating parent or caregiver has relocated in order to flee the perpetrating parent, that the relocation shall not weigh against an award of custody.
Virginia	§ 20-124.3	No.	If the court finds a history of family or sexual abuse, the court may disregard the BIC factor regarding 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.
West Virginia	§ 48-9-209	No.	The parent found to have engaged in the

**Rebuttable presumption state.

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DOMESTIC VIOLENCE AS A FACTOR TO BE CONSIDERED IN CUSTODY/VISITATION DETERMINATIONS*

*This chart depicts states where domestic violence is given extra weight under the best interest of the child (BIC) factors and states where there is a domestic violence exception to considering certain best interest of the child (BIC) factors.

STATE	STATUTE	DOMESTIC VIOLENCE GIVEN EXTRA WEIGHT IN BIC ANALYSIS	DOMESTIC VIOLENCE EXCEPTION TO CONSIDERING CERTAIN BIC FACTORS
			domestic violence has the burden of proving that an allocation of custodial responsibility or decision-making responsibility to that parent will not endanger the child or the other parent
Wyoming	§ 20-2-201	The court shall consider evidence of spousal abuse or child abuse as being contrary to the best interest of the children.	No.

**Rebuttable presumption state.

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