Abstract

In the United States, the "best interests of child" is the standard by which legal and physical custody of a child is awarded. Such a standard places paramount emphasis on the holistic well-being of the child in question. Indiana Code § 31-14-13-2 lays out eight factors a judge must consider in their decision. One of the criteria considered by the Indiana judiciary is the sex of the child, making Indiana one of only two states to consider said criterion. While most states simply do not have it listed statutorily, some states, (e.g., Arizona, Arkansas, California, Nebraska, Texas, and Vermont) specifically prohibit sex from being a factor weighed. Still others (e.g., Alabama, Iowa, and New York) have ruled such considerations unconstitutional. This paper seeks to determine whether the sex of a child should be a factor deliberated by synthesizing empirical research on gender/sex difference with legal research on context surrounding the "best interests of the child" standard.

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