

The Holley factors and statutory guidelines for best interest analysis

The Holley factors and statutory guidelines for best interest analysis provide the CASA with a road map of the evidence that needs to be brought out in court to ensure that the best interests of the child are addressed by the court.

A CASA appointed as GAL is charged with the responsibility “to represent the best interests of the child.” Family Code § 107.001(5). A CASA may carry out these duties by testifying in court concerning the “best interest of the child.” Family Code § 107.002(e).

The courts commonly look to a set of guidelines, called the “Holley factors”, in evaluating the best interest of a child.

Those factors include:

- (1) the desires of the child;
- (2) the emotional and physical needs of the child now and in the future;
- (3) the emotional and physical danger to the child now and in the future;
- (4) the parental abilities of the individuals seeking custody;
- (5) the programs available to assist these individuals to promote the best interest of the child;
- (6) the plans for the child by these individuals or by the agency seeking custody;
- (7) the stability of the home or proposed placement;
- (8) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and
- (9) any excuse for the acts or omissions of the parent.

This list of relevant considerations is not exhaustive; other factors may be considered when appropriate. ...Likewise, a fact finder is not required to consider all of the listed factors. (citations omitted).”

The Family Code also provides specific “factors” to be considered in determining best interest in a CPS case.

§ 263.307. Factors in Determining Best Interest of Child

- (a) 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 interest
- (b) The following factors should be considered by the court, the department, and other authorized agencies in determining whether the child’s parents are willing and able to provide the child with a safe environment:

- (1) the child’s age and physical and mental vulnerabilities;

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- (2) the frequency and nature of out-of-home placements;
- (3) the magnitude, frequency, and circumstances of the harm to the child;
- (4) whether the child has been the victim of repeated harm after the initial report and intervention by the department or other agency;
- (5) whether the child is fearful of living in or returning to the child's home;
- (6) 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;
- (7) 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; 7
- (8) whether there is a history of substance abuse by the child's family or others who have access to the child's home;
- (9) whether the perpetrator of the harm to the child is identified;
- (10) 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;
- (11) the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time;
- (12) whether the child's family demonstrates adequate parenting skills, including providing the child and other children under the family's care with:
 - (A) minimally adequate health and nutritional care;
 - (B) care, nurturance, and appropriate discipline consistent with the child's physical and psychological development;
 - (C) guidance and supervision consistent with the child's safety;
 - (D) a safe physical home environment;
 - (E) protection from repeated exposure to violence even though the violence may not be directed at the child; and
 - (F) an understanding of the child's needs and capabilities; and
- (13) whether an adequate social support system consisting of an extended family and friends is available to the child.

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

- (1) 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; and
- (2) whether this transition is in the best interest of the child.

Note: the above section was added to the Family Code in 1995 and has never been amended.

A CASA is in a unique position to testify about the “best interest” factors the court must consider.

First, with respect to the Holley factors, **the CASA should have first-hand information about**

- the desires of the child,
- the emotional and physical needs of the child now and in the future,
- the emotional and physical danger to the child now and in the future,
- programs available to assist individuals that might be granted custody to promote the best interest of the child,
- plans for the child by these individuals or by the agency seeking custody, and
- the stability of the home or proposed placement.

Second, the CASA should review the statutory factors in Section 263.307 (and may have to point out the statute to counsel and the court) in order to establish a proposed resolution of the case that would be most likely to result in “the prompt and permanent placement of the child in a safe environment,” which is presumed to be in the child’s best interests. Texas Family Code 263.307(a). See page one.

Judges have a great deal of discretion in determining best interest on a case by case basis. That discretion is not, however, without guiding precedent. In 1976, the Texas Supreme Court decided the case of Holley v. Adams, a suit for termination of parental rights. Holley v. Adams, 544 S.W.2d 367 (Tex. 1976). The Court set out what have come to be known as the “Holley factors,” a non-exclusive list that courts use to determine the best interest of a child.