

HOUSE BILL NO. HB0015

De Facto Custodian Act.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to children; providing standing for de
 2 facto custodians in custody, adoption and guardianship
 3 proceedings; specifying requirements and standards for
 4 awarding custody to a de facto custodian; specifying
 5 procedures; providing for de facto custody orders and
 6 termination of de facto custody; providing legislative
 7 purpose; and providing for an effective date.

8

9 *Be It Enacted by the Legislature of the State of Wyoming:*

10

11 **Section 1.** W.S. 3-10-101 through 3-10-108 are created
 12 to read:

13

14

CHAPTER 10

15

DE FACTO CUSTODIANS

16

1 **3-10-101. Short title.**

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3 This act shall be known and may be cited as the "De Facto
4 Custodian Act."

5

6 **3-10-102. Purpose.**

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8 (a) The purpose of this act is to:

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10 (i) Give constitutionally and statutorily
11 required deference to the decisions of fit parents in child
12 custody proceedings brought by third parties;

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14 (ii) Subject to this constitutionally and
15 statutorily required deference and in circumstances where
16 the necessity arises due to lack of demonstrated consistent
17 participation by a parent, meet the needs and best
18 interests of children for caring and stable homes by
19 providing a flexible method by which a third party who has
20 cared for and supported a child may obtain legal and
21 physical custody of the child and where the custody
22 provides stability and continuity of care for the child and
23 is in the child's best interests.

1

2 **3-10-103. Definitions.**

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4 (a) As used in this act:

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6 (i) "De facto custodian" means as provided in
7 W.S. 3-10-104;

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9 (ii) "Lack of demonstrated consistent
10 participation" means a parent's refusal or failure to
11 comply with the duties imposed upon the parent by the
12 parent-child relationship;

13

14 (iii) "Parent" means a person who has
15 established a parent-child relationship under W.S.
16 14-2-501;

17

18 (iv) "This act" means W.S. 3-10-101 through
19 3-10-108.

20

21 **3-10-104. De facto custodian.**

22

1 (a) A de facto custodian is a person who either
2 individually or together with another person has been the
3 primary caretaker and primary financial supporter of the
4 child who resides or had resided with the person without a
5 parent present and with a lack of demonstrated consistent
6 participation by both parents for one (1) of the following
7 time periods excluding any time after the filing of a
8 petition under this act:

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10 (i) Six (6) months or more if the child is less
11 than three (3) years of age; or

12

13 (ii) One (1) year or more if the child is three
14 (3) years of age or older.

15

16 (b) In determining a lack of demonstrated consistent
17 participation under subsection (a) of this section, a court
18 may consider parent involvement in:

19

20 (i) Providing the child necessary food,
21 clothing, shelter, health care and education;

22

1 (ii) Creating a nurturing and consistent
2 relationship for the child's physical, mental or emotional
3 health and development.

4

5 (c) In determining if a person is a de facto
6 custodian for the child, the court shall consider whether
7 the child is currently residing with the person and, if
8 not, the period of time since the child resided with the
9 person.

10

11 (d) A person shall not be deemed a de facto custodian
12 if a child has resided with the person because:

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14 (i) The child was placed in the person's care
15 through a guardianship appointment under title 3 of the
16 Wyoming statutes or other court order; or

17

18 (ii) The person is or was residing or cohabiting
19 with, or is or was married to, a parent of the child.

20

21 **3-10-105. Commencement of proceedings; petition for**
22 **custody; motion for intervention.**

23

1 (a) A person may initiate a child custody proceeding
2 under this act by filing one (1) of the following in the
3 district court where the minor child resides or is present:
4

5 (i) A petition seeking a determination that the
6 person is a de facto custodian and seeking custody of a
7 child;
8

9 (ii) A motion seeking permissive intervention
10 under rule 24 of the Wyoming rules of civil procedure, in a
11 pending guardianship, adoption or custody proceeding
12 seeking a determination that the person is a de facto
13 custodian and seeking custody of a child.
14

15 (b) A petition or motion filed under this section
16 shall state and allege:
17

18 (i) The name and address of the petitioner or
19 intervenor and any prior or other name used by the person;
20

21 (ii) The name of the child's parents or guardian
22 and any prior or other name used by the parents or guardian
23 and known to the petitioner or intervenor;

1

2 (iii) The name, age and address of each child
3 for whom custody is sought;

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5 (iv) The relationship of the petitioner or
6 intervenor to each child;

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8 (v) The basis for jurisdiction asserted by the
9 petitioner or intervenor;

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11 (vi) The current legal and physical custodial
12 status of each child, whether a proceeding involving
13 custody of the child, including a proceeding for an order
14 of protection under W.S. 14-3-430, 14-6-230 or 14-6-430, is
15 pending in a court in this state or elsewhere, and a list
16 of all prior orders of custody, parentage or guardianship,
17 including temporary orders, if known to the petitioner or
18 intervenor;

19

20 (vii) Whether either parent is a member of the
21 armed services and whether either parent has been called
22 into active service outside of the state of Wyoming, if
23 known to the petitioner or intervenor;

1

2 (viii) Whether the child is an Indian child as
3 defined in the federal Indian Child Welfare Act and, if so,
4 a statement setting forth with particularity the notice
5 provided to the appropriate tribal court;

6

7 (ix) The length of time each child has resided
8 with the petitioner or intervenor and the nature of the
9 petitioner's or intervenor's role in caring for each child;

10

11 (x) The financial support provided by the
12 petitioner or intervenor for each child;

13

14 (xi) Whether physical or legal custody, or both
15 should be granted solely to the petitioner or intervenor or
16 shared with any person who responds to a petition or motion
17 to intervene filed under subsection (a) of this section;

18

19 (xii) The reasons why it is in the child's best
20 interests for the petitioner or intervenor to have custody
21 of the child.

22

1 (c) The district court may transfer jurisdiction of a
2 petition for custody to the juvenile court if the child is
3 under the prior and continuing jurisdiction of the juvenile
4 court.

5

6 **3-10-106. Notice of petitions and motions; governed**
7 **by rules of civil procedure.**

8

9 (a) Notice of filing a petition or motion under W.S.
10 3-10-105(a)(i) and any hearings on the petition or motion
11 shall be served on:

12

13 (i) The parents of the child;

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15 (ii) The guardian or legal custodian, if any, of
16 the child;

17

18 (iii) The child, if the child is at least twelve
19 (12) years of age;

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21 (iv) The child's tribe under federal law, if the
22 child is an Indian child as defined in the Indian Child
23 Welfare Act.

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2 (b) In addition to the notice required under
3 subsection (a) of this section, notice shall be served on
4 any other person as ordered by the court.

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6 (c) Notice under this section shall be given in
7 accordance with the Wyoming Rules of Civil Procedure or as
8 ordered by the court.

9

10 **3-10-107. Hearing required; appointment of custody to**
11 **de facto custodian.**

12

13 (a) The court shall hold a hearing on any petition or
14 motion filed in accordance with W.S. 3-10-105(a) before
15 awarding custody of a child to a de facto custodian.

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17 (b) In a hearing required by this section and before
18 the court considers whether custody with the de facto
19 custodian is in the child's best interests, the parties
20 shall stipulate to, or the court shall find, facts
21 establishing by clear and convincing evidence that the
22 petitioner or intervenor is a de facto custodian as
23 provided in W.S. 3-10-104 and that there is a lack of

1 demonstrated consistent participation by the child's
2 parents that creates a compelling state interest sufficient
3 to justify granting the petition or motion.

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5 (c) After a finding by the court or stipulation by
6 the parties that the petitioner or intervenor is a de facto
7 custodian, the petitioner or intervenor shall prove by a
8 preponderance of the evidence that it is in the child's
9 best interests to be in the custody of the de facto
10 custodian.

11

12 (d) A court may consider any of the following in
13 determining whether the petitioner or intervenor has proved
14 that it is in the child's best interests to be in the
15 custody of the de facto custodian:

16

17 (i) The circumstances under which the child was
18 allowed to remain in the care of the de facto custodian,
19 including whether the child was placed with the de facto
20 custodian to allow the parent to seek work or to attend
21 school;

22

1 (ii) Whether the child is currently residing
2 with the de facto custodian and, if not, the length of time
3 since the petitioner or intervenor last functioned as the
4 child's de facto custodian;

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6 (iii) Any other factor the court deems necessary
7 and relevant in determining whether it is in the child's
8 best interests to be in the custody of the de facto
9 custodian.

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11 **3-10-108. De facto custodian order; determination of**
12 **decision making authority; access to records; termination**
13 **of de facto custodianship.**

14

15 (a) A court may enter an order granting custody of a
16 child to a de facto custodian in the same manner as it
17 would grant such custody to a parent. The court shall
18 determine the respective responsibilities of the de facto
19 custodian and the parents and shall make any necessary
20 order, including orders that address:

21

22 (i) The child's physical custody and residence;

23

1 (ii) The respective authority of the de facto
2 custodian and parents to make nonemergency decisions for
3 the child, including those decisions regarding education,
4 health care, religious training and personal care
5 decisions;

6

7 (iii) Visitation and its terms including whether
8 it is supervised or unsupervised;

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10 (iv) Child support as determined under W.S.
11 20-2-301 through 20-2-315;

12

13 (v) Any other matters reasonably affecting the
14 child's best interests.

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16 (b) An order granting custody to a de facto custodian
17 is subject to the same continuing jurisdiction of the court
18 and is modifiable in the same manner as an order granting
19 custody to a parent.

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21 (c) A de facto custodian who has been granted sole or
22 joint legal custody of a child shall have access to records
23 pertaining to the child who is the subject of the de facto

1 custodianship to the same extent as a parent would have
2 such access pursuant to an order of legal custody.

3

4 (d) A party to a proceeding granting custody to a de
5 facto custodian under this act may move for the termination
6 of the custody order. A party moving for termination shall
7 show by a preponderance of the evidence that termination is
8 in the child's best interests. A motion for termination may
9 include a proposal for the continuing custody of the child.

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11 (e) A de facto custodian may move for permission to
12 resign as the de facto custodian. A de facto custodian
13 moving to resign shall show by a preponderance of the
14 evidence that termination is in the child's best interests.
15 A motion to resign may include a proposal for the
16 continuing custody of the child.

17

18 (f) After notice and hearing on a motion under
19 subsection (d) or (e) of this section, the court may
20 terminate the custody of the de facto custodian and may
21 make any other orders that may be appropriate in the
22 child's best interests.

23

1 **Section 2.** A person who is seeking adjudication that
2 he is a de facto custodian may count any time period
3 including any time before the effective date of this act
4 where he was the primary caretaker and primary financial
5 supporter of the child for purposes of satisfying the
6 requirements of W.S. 3-10-104(a).

7

8 **Section 3.** This act is effective July 1, 2018.

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(END)