

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

SENATE FILE NO. [BILL NUMBER]

De Facto Custodian Act.

Sponsored by: SDraft Committee

A BILL

for

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

8

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

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

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CHAPTER 10

DE FACTO CUSTODIANS

3-10-101. Short title.

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

3-10-102. Purpose.

(a) The purpose of this act is to:

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

(ii) Subject to this constitutionally and statutorily required deference and in circumstances where the necessity arises due to lack of demonstrated consistent participation by a parent, meet the needs and best interests of children for caring and stable homes by providing a flexible method by which a third party who has cared for and supported a child may obtain legal and physical custody of

1 the child and where the custody provides stability and
2 continuity of care for the child and is in the child's best
3 interests.

4

5 **3-10-103. Definitions.**

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7 (a) As used in this act:

8

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

11

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

16

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

19

20 (iv) "This act" means W.S. 3-10-101 through
21 3-10-108.

22

23 **3-10-104. De facto custodian.**

1

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

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11 *****
 12 *****

13 STAFF COMMENT

14

15 Included in the staff comments in this bill draft are
 16 amendments to the 2018 De Facto Custodian Bill (2018 House
 17 Bill 0015) that were proposed during the 2018 Budget Session.
 18 Page and line numbers refer to the page and line numbers in
 19 this bill draft.

20

21 Page 4, line 2 After "person" insert "related to the
 22 child by blood".

23

24 *****
 25 *****

26

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

29

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

3

4 (b) In determining a lack of demonstrated consistent
5 participation under subsection (a) of this section, a court
6 may consider parent involvement in:

7

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

10

11 (ii) Creating a nurturing and consistent
12 relationship with the child for the child's physical, mental
13 or emotional health and development.

14

15 (c) In determining if a person is a de facto custodian
16 for the child, the court shall consider whether the child is
17 currently residing with the person and, if not, the period of
18 time since the child resided with the person.

19

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

22

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

4

5 *****
6 *****
7 STAFF COMMENT

8
9 Page 6, lines 1-3: Delete entirely.

10

11 *****
12 *****

13

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

16

17 *****
18 *****
19 STAFF COMMENT

20
21 Page 6, line 14: Delete "(ii)" and insert "(i)".

22

23 Page 6, after line 15: Insert:

24

25 "(ii) The parent is a member of the armed services
26 and has been called into active service outside of the state
27 of Wyoming."

28

29 If the Committee adopts the above amendment, it may want to
30 consider additional language to the new paragraph (ii), after
31 "Wyoming" by adding "and but for the active service outside
32 of the state of Wyoming the child would have resided with the
33 parent."

34

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36 *****

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1 **3-10-105. Commencement of proceedings; petition for**
2 **custody; motion for intervention.**

3

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

7

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

11

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

17

18 (b) A petition or motion filed under this section shall
19 state and allege:

20

21 (i) The name and address of the petitioner or
22 intervenor and any prior or other name used by the petitioner
23 or intervenor;

1

2 (ii) The name of the child's parents or, if one
3 has been appointed, the guardian and any prior or other name
4 used by the parents or guardian and known to the petitioner
5 or intervenor;

6

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

9

10 (iv) The relationship of the petitioner or
11 intervenor to each child;

12

13 (v) The basis for jurisdiction asserted by the
14 petitioner or intervenor;

15

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

1

2 (vii) Whether any parent is a member of the armed
3 services and whether that parent has been called into active
4 service outside of the state of Wyoming, if known to the
5 petitioner or intervenor;

6

7 (viii) Whether any child is an Indian child as
8 defined in the federal Indian Child Welfare Act and, if so,
9 a statement setting forth with particularity the notice
10 provided to the appropriate tribal court;

11

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

15

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

18

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

23

1 (xii) The reasons why it is in each child's best
2 interests for the petitioner or intervenor to have custody of
3 each child.

4

5 (c) The district court may transfer jurisdiction of a
6 petition for custody to the juvenile court if a child is under
7 the prior and continuing jurisdiction of the juvenile court.

8

9 **3-10-106. Notice of petitions and motions; governed by**
10 **rules of civil procedure.**

11

12 (a) Notice of filing a petition or motion under W.S.
13 3-10-105(a) and any hearings on the petition or motion shall
14 be served on:

15

16 (i) The parents of each child;

17

18 (ii) The guardian or legal custodian, if any, of
19 each child;

20

21 (iii) Each child who is at least twelve (12) years
22 of age;

23

1 (iv) Each child's tribe under federal law, if the
2 child is an Indian child as defined in the Indian Child
3 Welfare Act.

4

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

8

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

12

13 *****
14 *****
15 STAFF COMMENT

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17 Page 11, after line 11: Insert:

18
19 "(d) Any petition filed under W.S. 3-10-105 shall
20 contain a clear statement of the custodial and support
21 consequences if the respondent fails to answer."

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23 *****
24 *****

25
26 3-10-107. Hearing required; award of custody to de
27 facto custodian.

28

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

4

5 (b) In a hearing required by this section and before
6 the court considers whether custody with the de facto
7 custodian is in the child's best interests, the parties shall
8 stipulate to, or the court shall find, facts establishing by
9 clear and convincing evidence that the petitioner or
10 intervenor is a de facto custodian as provided in W.S.
11 3-10-104 and that there is a lack of demonstrated consistent
12 participation by the child's parent that creates a compelling
13 state interest sufficient to justify granting the petition or
14 motion.

15

16 (c) After a finding by the court or stipulation by the
17 parties that the petitioner or intervenor is a de facto
18 custodian, the petitioner or intervenor shall prove by a
19 preponderance of the evidence that it is in the child's best
20 interests to be in the custody of the de facto custodian.

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STAFF COMMENT

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The Committee may wish to include the words "and that there is a lack of demonstrated consistent participation by the parent" after "custodian" on line 18.

Another proposed amendment would replace subsection (c) (lines 16 through 20) with the following:

(c) After a finding by the court or stipulation by the parties that the petitioner or intervenor is a de facto custodian, the petitioner or intervenor shall prove by clear and convincing evidence that:

(i) It is in the child's best interests to be in the custody of the de facto custodian;

(ii) There is a compelling state interest sufficient to justify the granting of the petition; and

(iii) Granting the petition is necessary to avoid probable harm to the child.

The Committee may want to consider the overlap between the proposed paragraph (c)(ii) and the language in subsection (b) (page 12, lines 1 through 10).

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

STAFF COMMENT

1 Page 13, lines 32-33: Delete entirely and insert "the
2 elements listed in subsection (c) of this section:".

3
4 *****
5 *****
6

7 (i) The circumstances under which the child was
8 allowed to remain in the care of the de facto custodian,
9 including whether the child was placed with the de facto
10 custodian to allow the parent to seek work or to attend
11 school;

12
13 (ii) Whether the child is currently residing with
14 the de facto custodian and, if not, the length of time since
15 the petitioner or intervenor last functioned as the child's
16 de facto custodian;

17
18 (iii) Any other factor the court deems necessary
19 and relevant in determining whether it is in the child's best
20 interests to be in the custody of the de facto custodian.

21
22 **3-10-108. De facto custodian order; determination of**
23 **decision making authority; access to records; termination of**
24 **de facto custodianship.**

25

1 (a) A court may enter an order granting custody of a
2 child to a de facto custodian in the same manner as it would
3 grant custody to a parent. The court shall determine the
4 respective responsibilities of the de facto custodian and the
5 parent and shall make any necessary order, including orders
6 that address:

7

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

9

10 (ii) The respective authority of the de facto
11 custodian and parents to make nonemergency decisions for the
12 child, including those decisions regarding education, health
13 care, religious training and personal care;

14

15 (iii) Visitation and its terms including whether
16 it is supervised or unsupervised;

17

18 (iv) Child support as determined under W.S.
19 20-2-301 through 20-2-316;

20

21 (v) Any other matters reasonably affecting the
22 child's best interests.

23

1 (b) An order granting custody to a de facto custodian
2 is subject to the same continuing jurisdiction of the court
3 and is modifiable in the same manner as an order granting
4 custody to a parent.

5

6 (c) A de facto custodian who has been granted sole or
7 joint legal custody of a child shall have access to records
8 pertaining to the child who is the subject of the de facto
9 custodianship to the same extent as a parent would have access
10 pursuant to an order of legal custody.

11

12 (d) A party to a proceeding granting custody to a de
13 facto custodian under this act may move for the termination
14 of the custody order. A party moving for termination shall
15 show by a preponderance of the evidence that termination is
16 in the child's best interests. A motion for termination may
17 include a proposal for the continuing custody of the child.

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21 **STAFF COMMENT**

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23 **The Committee may wish to consider the language in subsection**
24 **(d) (lines 12 through 14) based on the testimony the Committee**
25 **received the Department of Family Services at the Committee's**
26 **meeting in May in Worland.**

27

1 *****
 2 *****
 3 *****

4 (e) A de facto custodian may move for permission to
 5 resign as the de facto custodian. A de facto custodian moving
 6 to resign shall show by a preponderance of the evidence that
 7 termination is in the child's best interests. A motion to
 8 resign may include a proposal for the continuing custody of
 9 the child.

10

11 (f) After notice and hearing on a motion under
 12 subsection (d) or (e) of this section, the court may terminate
 13 the custody of the de facto custodian and shall make any other
 14 appropriate orders that are in the child's best interests.

15

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

21

22 **Section 3.** This act is effective July 1, 2019.

23

24 (END)