

2019 STATE OF WYOMING

Working Draft 0.5

**DRAFT ONLY NOT APPROVED FOR INTRODUCTION**

HOUSE BILL NO. [BILL NUMBER]

Guardianship terminations and orders.

Sponsored by: Joint Judiciary Interim Committee

A BILL --- The state has a compelling interest in preserving a child's right to a safe and stable home environment. The state has a compelling interest in preserving a child's right to continue parent-like relationships and to enact laws which reasonably protect a child from detriment and harm, focusing on the safety and well-being of a child placed in guardianship.

for

1 AN ACT relating to guardianships in which the biological parent  
has been deemed "unfit"; providing for the  
2 termination of guardianships as specified; authorizing court  
3 orders related to the termination of guardianships as  
4 specified; making conforming amendments; specifying  
5 applicability; and providing for an effective date.

6

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

8

9 Section 1. W.S. 3-3-1107 is created to read:

10

11 3-3-1107. Termination of guardianships; factors to  
12 consider; orders; appointment of guardian ad litem.

13

1 [Bill Number]

1 (a) Upon the filing of a petition for termination of a  
2 guardianship by a parent, the court shall consider the best  
3 interests of the child. In determining the best interests of  
4 the child, the court shall consider, but is not limited to,  
5 the following factors:

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7 (i) The relative competency and fitness of the  
8 parent;

9

10 (ii) The current physical and mental ability of the  
11 parent and the guardian to care for the child;

12

13 (iii) The facts and circumstances of any parental  
14 absence leading to the guardianship: including the following  
15 special factors: child abandonment; abuse or neglect; history of  
16 mental illness; history of perpetration of domestic violence;  
17 criminal activity, particularly as it relates to habitual drug  
18 use and addiction.

15

16 (iv) The amount of involvement the parent had with  
17 the child during the guardianship;

18

19 (v) The length of time the child has resided with  
20 the guardian, and the extent to which a close and substantial  
21 relationship has been established between the child and the  
22 guardian. For purposes of this paragraph, "close and  
23 substantial relationship" means a relationship where the

1 guardian and child have formed an emotional bond and created  
2 a parent-child type relationship;

3 (vi) The impact of modifying the guardianship on the child,  
4 including the harm or detriment to the child if the guardianship  
5 is terminated. For purposes of this paragraph, "harm or  
6 detriment" means significant adverse effects on the child's  
7 physical, emotional and or psychological well-being.

8 ~~vii(vi)~~ The quality of the relationship the child has  
9 with both the parent and the guardian;

10

11 ~~viii(vii)~~ The ability of the parent and the guardian to  
12 meet the child's physical, emotional, developmental,  
13 educational and special needs;

14

15 ~~ix(viii)~~ The ability of the parent and guardian to  
16 provide adequate care for the child, including arranging for  
17 the child's care by others as needed;

18

19 ~~x(ix)~~ The parent's and guardian's willingness to  
20 accept all responsibilities of parenting;

21

22 ~~xi(x)~~ How the child interacts and communicates with  
23 the parent and the guardian;

24

25 ~~xii(xi)~~ The need for stability and continuity in the  
26 child's education, family life and community life;

27

1 ~~xiii(xii)~~ Geographic distance between the guardian's  
2 residence and the parent's residence;

3

4 Move this to under "may" section ~~(xiii)~~ The well reasoned  
5 preference of the child,¶

6 ~~based on the child's age, experience, maturity and judgment,~~

7

8 (xiv) Any other factor the court deems necessary

9 and relevant.

10

11 (b) The court may consider the factors in subsection (a)  
12 of this section without first making a finding of parental  
13 fitness or a finding that the guardianship is no longer  
14 necessary.

15 (c) The court may consider the well-reasoned preference of  
16 the child, based on the child's age, experience, maturity and  
17 judgment;

18 ~~d(e)~~ The court may enter any order necessary to facilitate  
19 or modify any termination of a guardianship that is in the  
20 child's best interests, including:

21

22 (i) Establishing an integration plan for the  
23 child's return to the parent upon the termination of the  
24 guardianship, including a graduated visitation schedule for  
25 the parent;

26

27 [Bill Number]

1 (ii) Granting the guardian visitation rights;

2

3 (iii) Requiring the child's parent to attend a  
4 parenting class or other appropriate education or **specific**  
5 treatment designed to address **identified** problems that  
6 contributed to the necessity for a guardianship and to pay  
7 all or part of the cost of the class, education or treatment in  
8 accordance with the court's determination of the parent's  
9 ability to pay.

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10 (d) Upon the filing of a petition for termination of a  
11 guardianship the court may appoint a guardian ad litem in  
12 accordance with the Wyoming Rules of Civil Procedure to  
13 exercise and represent the child's rights in the termination  
14 proceeding.

15 (e) **The burden of proof shall be upon the moving party to  
16 prove a substantial change of circumstances since the entry of  
17 the guardianship, demonstrating that termination of the  
18 guardianship is in the best interest of the child in the context  
19 of the child's physical, emotional and psychological well-being.**¶

20 ~~f(e)~~ After a petition for termination is filed, all  
21 proceedings are governed by the Wyoming Rules of Civil  
22 Procedure and the Wyoming Rules of Evidence, **except as  
23 otherwise expressly provided herein.**¶

19

20 Section 2. W.S. 3-3-1101(a)(v) and 3-3-1105(b) and by  
21 creating a new subsection (c) are amended to read:

22 **Because the biological parent has lost the 'presumption of  
23 fitness', the burden of proof of 'fitness' shall be by clear and**

convincing evidence.

**23 3-3-1101. Cause for termination.**

5 [Bill Number]

1

2 (a) A guardianship shall cease, and a conservatorship  
3 shall terminate, upon the occurrence of any of the following  
4 circumstances:

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6 (v) Upon determination by the court that the  
7 conservatorship or guardianship is no longer necessary for  
8 any other reason and, for a guardianship, after the court  
9 considers the factors listed in W.S. 3-3-1107(a).

10

11 3-3-1105. Petition to terminate.

12

13 (b) If any petition for termination of guardianship or  
14 conservatorship is denied, no other petition for termination  
15 may be filed by the ward until six (6) months have elapsed  
16 since the denial of the former petition.

17

18 (c) A guardianship may be modified or terminated at any  
19 time upon the petition of any party to the petition for a  
20 guardianship.

21

6 [Bill Number]

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1 Section 3. This act shall apply to petitions to terminate  
2 guardianships filed on or after the effective date of this  
3 act.

4

5 Section 4. This act is effective July 1, 2019.

6

7 (END)

7 [Bill Number]