



## WYOMING GUARDIANS AS PROTECTORS

February 5, 2018

Dear Wyoming Representatives,

RE: HOUSE BILL NO. HB0015

HOUSE BILL NO. HB0015, Sponsored by the Judiciary Interim Committee, will be presented to you for a vote to move forward when the session begins. This is a bill relating to nearly 11,000 Wyoming children who are in third party (usually relative) care most often through legal guardianship proceedings. This number DOES NOT include the children currently in DFS custody.

The bill is referenced as the “De Facto Custody Law”.

Let’s discuss the 11,000 children in our state living with relatives, primarily grandparents. These are stats that are confirmed by our Laramie County Kinship Support data which comes from national data including AARP and other national organizations. It is estimated that over 90% of these Wyoming children are placed in 3<sup>rd</sup> party relative care AND remain in their custody, many for years, because of substance abuse and criminal behavior including incarceration associated with substance abuse...We’re talking methamphetamine and heroin. These are the facts. Most of the “parents” never married, just ‘hooked up’ during drug binges. With these numbers, we’re no longer talking about a “few grandparents” expressing their opinion. We’re now discussing a serious systemic issue in our own state.

We all are faced with a grave problem in Wyoming which requires action on the part of our elected Representatives. Wyoming’s current custody laws fail to protect children in guardianship. To date, they are NOT entitled to “Best Interest” standards as other children in our state rely on. Our courts are returning children to biological parents who have long-term, ongoing patterns of drug usage, which is often associated with other criminal behaviors, domestic violence and mental illness. Most of these parents are absent for years, with no contact and no support. Many of who had been incarcerated, return after years, show up in court, demanding their child back and ‘swearing’ they’re not on drugs anymore. Typically, these biological parents do not want to pay child support and if they gain ‘custody’ of their child, they of course receive food stamps, housing, cash assistance... true! How unfortunate for a child to be ripped away after years of living with a stable, loving home only to return to a life of hell. And we wonder why we have a problem with our Wyoming youth.

There are Wyoming judges who willfully, for whatever reason, refuse to hear evidence that discusses the “best interest of the child”, histories of the biological parents, directly harming the child. We have written documentation, written transcripts. The biological ‘parents’ backgrounds and histories, patterns of on-going drug use, all disregarded.

In one such recent Wyoming case, two children were returned to a biological mother after living with their aunt and uncle in a stable, loving home for more than eleven years. The mother had a long history of criminal associations, convictions, meth and heroin usage. She was still on probation when attending the court hearing, testifying she was “no longer using drugs.” The judge refused to hear any testimony discussing the “best interests” of the children. To make a long story, short...mom was still using drugs - meth, her drug of choice. She soon added heroin to the mix while the kids were in her custody. Within two months of her children being returned, the mother abandoned both children only to be arrested in Cheyenne this past November for *possession and delivery* of both methamphetamine and heroin. These children are irrevocably damaged. This example should sicken all our hearts.

Twenty-two states to date have enacted a law referred to as the “De Facto Custodian Law” – KS, IN, KY, ID, MT, OK, CO to name a few. Very simply put, a third party caregiver meets the requirements of the De Facto Custodian status if TWO things happen: 1) the child has been in the third party’s care for more than one year; and, 2) the caregiver has been the primary financial supporter of the child.

Now, the De Facto status, if met, in itself, does not automatically guarantee custody! What it DOES DO, IT DOES require the judge to NOW CONSIDER BEST INTEREST CLAIMS STANDARDS for the child just like any other child in a divorce settlement. If you were a judge and a set of parents divorcing stood in front of you...Would you place the child with the parent who has a long criminal record, including a pattern of ongoing drug use...mental illness and domestic violence? Or, would you place the child with the *other* ‘parent’ who does not have such a record. Why should it be any different for the most vulnerable children in guardianship, many of whom have already been traumatized prior to relative placement? Why are *these* children *denied* Best Interest?

The judiciary Committee overwhelmingly voted to pass the bill with only ONE exception. The particular Representative was concerned that the bill may somehow ‘punish’ the ‘good parents’. Let’s put that to rest.

**The De Facto Custody Law does not apply to “good parents”.** We are able to put to rest any reasonable person’s reservations. How is this done? Number one, Best Interest Standards should include the following:

- 1) **Under *what circumstances* was the child placed** with the De Facto custodian, what was the Intent of the biological parent?
- 2) The ***circumstances*** under which the **child was allowed to remain** with the De Facto custodian? *Was it because the biological parent went into the military, were they deployed, did they go to school, did they attend training, did they have a chronic illness, did they even go to rehab? MMM..or was it because they simply chose to abandon their ‘offspring’ for years to do drugs? And other criminal behavior, Etc...*  
**That will certainly clarify things!**
- 3) Unstable living situation related to employment and maintenance of a suitable home
- 4) Criminal records, particularly and primarily related to drug use, and patterns of ongoing drug use and alcoholism
- 5) Patterns of domestic violence
- 6) History of mental illness
- 7) Failure to financially support the child

## 8) Emotional bond between the parties and child and the impact of change

If these standards references were applied here in Wyoming, as in other similar states, then we all know the right decision without second guessing. Note: there are NO current objective *fit vs. unfit* standards for judges to follow. Thus, the above reference to common sense standards is necessary to assist judges when considering the future of children.

**With regard to the ‘Constitutionality’ of this bill...**The OK Supreme Court says this:

- “the interest of children in a wholesome environment has a constitutional dimension NO LESS compelling than that the parents have in the preservation of family “integrity”. In the hierarchy of constitutionally protected values BOTH interests rank as fundamental and hence shielded with equal vigor and solicitude.”
- “holding that a ‘parent’s’ right to the custody of a child is NOT like the right of property, an absolute and uncontrollable right. It will never be enforced where its enforcement will obviously destroy the happiness and well-being of the child.”

The De Facto Custody Law has been challenged. AND in **each and every state the States’ Supreme Courts have up held the De Facto Custody Law!** This can be confirmed by the attorneys in the Wyoming LSO.

The stories of Wyoming courts returning children to habitual drug users and felons are real with devastating results. We are keeping track. We hope and pray that our leaders listen to the silenced voices of our most vulnerable population and follow the lead of our surrounding states. We wholeheartedly thank our members of the Wyoming Judiciary Interim Committee for their overwhelming support, and time and willingness to recognize the need to change our laws to protect these children. We must acknowledge today’s societal issues. Whatever happens at the legislative level, we plan to persevere until *all Wyoming children* have the right to what’s in *their* “best interest”... a safe environment, provided by caring, responsible adults.

WE need to ask the question...How does our state, Wyoming, want to be regarded. As a state that provides common sense protective measures to ALL children...or...a state that turns a blind eye and fails to pass laws to protect the well-being of 11,000 + children?

In conclusion, “It is time that courts and legislators expressly recognize the child’s underlying fundamental constitutional right to preserve existing loving and nurturing parent-like relationships and **protect them by applying the “BEST INTEREST OF THE CHILD LEGAL STANDARD”** in **ALL** custody cases, including third –party.

## VOTE FOR HOUSE BILL 15

Respectfully,

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