

Family Law



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Family Law

Marriage

Male and female. In Wyoming, marriage is defined as a civil contract between a male and a female, both of whom must be capable of entering into a contract. **W.S. 20-1-101.** Wyoming does not recognize same-sex marriage.

Age requirement. In order to get a marriage license, the parties must be at least sixteen (16) years of age and the county clerk must have the consent of the minor's father, mother, guardian or person having the care and control of the minor, unless a Wyoming judge approves the marriage and authorizes the county clerk to issue a license. **W.S. 20-1-102.**

Foreign marriages. All marriage contracts which are valid by the laws of the country in which contracted are valid in Wyoming. **W.S. 20-1-111.**

No common law marriage. Wyoming does not recognize "common law" marriages. The fact that you consider yourself married, or the fact that you have lived together for a certain number of years, does not mean that you will be considered "married" under Wyoming law. But, if the state where you came from recognizes common law marriage and your relationship qualifies there, then Wyoming law will recognize your common law marriage.

General requirements. In order to become legally married in Wyoming, you need to:

- Get a marriage license from the County Clerk in the county where you are getting married.
- Have the marriage "solemnized," meaning performed by a district or circuit court judge, district court commissioner, supreme court justice, justice of the peace, magistrate, licensed or ordained minister of the gospel, bishop, priest, or rabbi, or other qualified person acting in accordance with the traditions or rites for the solemnization of marriage of any religion, denomination or religious society. **W.S. 20-1-106.** In the solemnization of marriage

no particular form is required, except that the parties shall solemnly declare in the presence of the person performing the ceremony and at least two (2) attending witnesses that they take each other as husband and wife.

- Get a signed Certificate of Marriage from the authorized person who performs the marriage and signed by your 2 witnesses.
- Record the Certificate of Marriage in the Office of the County Clerk within 1 month after receipt. **W.S. 20-1-107.**

Requirements for marriage license. W.S. 20-1-103. In order to get a marriage license from the County Clerk, you need to be:

- At least 16 years of age, and
- If you are a minor, have the consent of your father, mother, guardian or person having care and control of you, and
- Competent to enter into a marriage contract, and
- Single, i.e., you cannot already have a living spouse, and
- Marrying someone who is of the opposite sex, and
- Marrying someone who is not your parent or child, grandparent or grandchild, brother or sister of half or whole blood, uncle or niece, aunt or nephew, or first cousin, regardless of whether either party is illegitimate. **W.S. 20-2-101(a)(iii).**
- The county clerk shall ascertain by the testimony of a competent witness and the applicant, the names, the social security numbers of the parties who have valid social security numbers, residences and ages of the parties and whether there is any legal impediment to the parties entering into the marriage contract according to the laws of the state of their residence.

You may apply to a district court judge for issuance of a license without compliance with one or more of the above requirements. Any marriage that does not meet the above requirements without legal waiver, i.e., the County Clerk did not know you or your intended did not meet these requirements and issued a license, is automatically void without any decree of divorce. In other



words, the marriage would not be considered valid in the first place.

Affirmation of Marriage

If the validity of your marriage is denied by your spouse, then you may file a petition to affirm the marriage. Upon due proof of the validity thereof, it shall be declared valid by a decree of the court which is conclusive upon all persons concerned. **W.S. 20-2-103.**

Children Born During Marriage— Issues of Paternity

All children born during a marriage are presumed to be “legitimate,” meaning that a woman’s husband is presumed to be the biological father of a child born during the marriage. **W.S. 14-2-504 and W.S. 20-1-113.**

When a woman becomes pregnant by a man other than her husband, there are very specific laws that apply to establish paternity for the child. A hospital will not allow a man, other than the woman’s husband to be put on the birth certificate as the father unless there is a valid **Acknowledgement of Paternity** (W.S. 14-2-601) from the other man and a valid **Denial of Paternity** (W.S. 14-2-603) from the husband. In the event that something like this happens, it is recommended that the parties seek the advice of lawyers as there are strict time lines in addition to child support and medical support obligations that kick in.

Husband not father to child born during marriage— Five (5) year challenge limit:

For instance, any action to establish paternity of a child with a **presumed** father shall be commenced within a reasonable time after obtaining knowledge of relevant facts, but in no event later than **five (5) years after the child's birth**. **W.S. 14-2-807(a).**

Husband not father to child born during marriage— no time limit to challenge:

However, a proceeding seeking to disprove the father-child relationship between a child and the child's presumed father may be maintained **at any time** if the court

determines that:

- (i) The presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; **and**
- (ii) The presumed father never openly held out the child as his own.

W.S. 14-2-807(b).

**Husband not father to child born during marriage—
Two (2) year time limit for third party challenge to
acknowledgment or adjudication.** If a child is born to a woman who is married, and the husband signs a denial of paternity and another man signs an affidavit of paternity or if a court makes a finding that someone other than the husband is the actual, biological father, then an individual, other than the child, who is neither a signatory to the acknowledgment of paternity (mother and person claiming to be the biological father at the time) nor a party to the adjudication and who seeks an adjudication of paternity of the child shall commence a proceeding **not later than two (2) years** after the effective date of the acknowledgment or adjudication. **W.S. 14-2-809(b).**

Disestablishment of Paternity. Other laws pertaining to disestablishing paternity are beyond the scope of this chapter and can be found at **W.S. 14-2-823**. It is recommended that you seek the advice of an attorney if you have questions about this topic.

Real and Personal Property Ownership During Marriage

In Wyoming, property is equitably distributed upon divorce. However, **during the marriage**, everything you have when you begin a marriage belongs to you if you do not transfer it somehow to your spouse. Any property you obtain during your marriage which is acquired in good faith from any person by descent or otherwise during your marriage, together with all rents, issues, increases and profits is your sole and separate property during the marriage. You have complete control over your property and you may hold, own, possess and en-



joy the property as though you are a single person. **W.S. 20-1-201.**

Your property is not subject to the disposal, control or interference of a spouse and is exempt from execution or attachment for the debts of a spouse, so long as the property was not conveyed to that person by a spouse in fraud of creditors. **W.S. 20-1-201.**

Necessary expenses of the family and the education of children are chargeable upon the property of both husband and wife, or either of them, for which they may be sued jointly or separately. **W.S. 20-1-201.**

Any married person may transfer his separate property in the same manner and to the same extent as if they were unmarried and they may make contracts and incur obligations and liabilities, all of which may be enforced against them to the same extent and in the same manner as if they were unmarried. **W.S. 20-1-202.**

Any person may, while married, sue and be sued in all matters having relation to property, person or reputation, in the same manner as if that person were single. **W.S. 20-1-202.**

When a married person sues or is sued alone, proceedings shall be had and judgment rendered and enforced as if that person were unmarried. The separate property and estate is liable for any judgment against the person, but the person is entitled to the benefit of all exemptions for heads of families. **W.S. 20-1-202.**

When any person against whom liabilities exist marries and has or acquires lands, judgment on the liability may be rendered against that person, to be levied on the lands only. **W.S. 20-1-202.**

A person is not liable for the debts and liabilities a spouse contracted for *before* marriage, unless there is something in writing that states otherwise. **W.S. 20-1-202.**

Legal or Judicial Separation

You may ask for a legal separation instead of a divorce when circumstances are such that grounds for a divorce exist. A legal separation is much like a divorce but the

remedy you are seeking is to live separate from each other. The court may make orders it feels necessary for child custody, child support, alimony, restraint of property disposition, and restraint of one or both spouses during the proceeding. The court may impose a time limitation on the order or render a perpetual separation. The parties may, at any time, move the court to be discharged from the order or if the proper grounds exist, to turn the separation into a divorce action. **W.S. 20-2-106.** Since legal separation is not a divorce, you cannot remarry.

While you and your spouse may agree to a separation without court order, a legal separation can provide you with some financial security and provisions for child custody and support that an informal agreement may not.

Void Marriages

A void marriage is one that *legally* never occurred. To end a void marriage, you do not have to get an annulment or a divorce, because the law does not recognize the marriage in the first place. The situations in which a marriage is void and does not require a decree of divorce are:

- (i) When either party has a husband or wife living at the time of contracting the marriage;
- (ii) When either party is mentally incompetent at the time of contracting the marriage;
- (iii) When the parties stand in the relation to each other of parent and child, grandparent and grandchild, brother and sister of half or whole blood, uncle and niece, aunt and nephew, or first cousins.

W.S. 20-2-201.

Annulment

Legal annulments of marriage are granted under only very limited circumstances, including

Under age of legal consent. An action to annul a marriage may be brought

- (i) when either party was under the age of legal consent unless a judge gave consent,



- (ii) if they separated while still a minor and did not live together afterwards, or
- (iii) if the consent of one (1) of the parties was obtained by force or fraud and there was no subsequent voluntary cohabitation of the parties. An action to annul a marriage on the ground that one of the parties was under the age of legal consent may be filed by the parent or guardian entitled to the custody of the minor. The marriage may not be annulled on the application of a party who was of the age of legal consent at the time of the marriage nor did when it appears that the parties, after they had attained the age of consent, had freely lived together as husband and wife.

Mental incompetency. An action to annul a marriage on the grounds of mental incompetency may be commenced on behalf of a mentally incompetent person by her guardian or someone else on her behalf. A mentally incompetent person restored to competency may maintain an action of annulment, but no decree may be granted if the parties freely cohabited as husband and wife after restoration of competency.

Physical incapacity. An action to annul a marriage on the grounds of physical incapacity may only be maintained by the injured party against the party whose incapacity is alleged and may only be commenced within two (2) years from the solemnization of the marriage.

An action to annul a marriage is filed with the district court. Decrees of annulment issued by the court may include provisions for the custody and support of children and for the division of property. **W.S. 20-2-101.**

Divorce

Residency requirement. In order to file for a divorce in Wyoming, you must be a resident of the state for at least sixty (60) days immediately preceding the time of filing or if you were married in Wyoming and have been married less than 60 days, you must have been a resident of the state since you got married. **W.S. 20-2-107(a).**

Where to file. A divorce action may be filed in the county where either party resides. **W.S. 20-2-104.**

Grounds for divorce. Wyoming is considered a modified “no fault” divorce state. The only grounds necessary for a divorce are “irreconcilable differences.” The statute also refers to an “aggrieved party” and that person is the person most likely to be granted the divorce in the event both parties ask the court for a divorce. **W.S. 20-2-104.**

A divorce may also be granted when either party has become incurably insane and the insane person has been confined in a mental hospital of this state or another state or territory for at least 2 years immediately preceding the commencement of the action for divorce. **W.S. 20-2-105.**

Restoration of wife’s previous name in a divorce action. The wife may resume her previous name in a divorce action. This is the wife’s choice only; the husband cannot demand that his wife’s name be changed or not.

Divorce Decree. In Wyoming, a divorce decree may not be entered less than twenty (20) days from the date the complaint is filed. **W.S. 20-2-108.**

Alimony During Proceedings

Allowance for prosecution or defense of divorce action. During the proceedings of a divorce, the court may require either party to pay any sum necessary to enable the other to carry on or defend the action and for support and the support of the children while the case is pending. **W.S. 20-2-111.**

Temporary Visitation and Custody During Proceedings

Either party may ask the court to award the temporary care and custody of the minor children of the parties and for temporary child support while the case is pending. **W.S. 20-2-112.**

Required information for child custody proceeding. In a child custody proceeding each party in its first



pleading or in an attached affidavit shall give information, if reasonably ascertainable, under oath as to:

- the child's present address or whereabouts,
- the places where the child has lived during the last five (5) years and the names and present addresses of the persons with whom the child has lived during that period.

The pleading or affidavit shall state whether the party:

- Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child, and if so, the pleading or affidavit shall identify the court, the case number and the date of the child custody determination, if any;
- Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions, and if so, the pleading or affidavit shall identify the court, the case number and the nature of the proceeding; and
- Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child, and if so, the pleading or affidavit shall list the names and addresses of those persons. **W.S. 20-5-309.**

If the information required above is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

Confidentiality for safety purposes. If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information shall be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or child and determines that the disclosure is in the interest of justice. **W.S. 20-5-309.**

Must keep the court updated on information. Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

Domestic violence and child abuse. The court shall consider evidence of spouse abuse or child abuse as being contrary to the best interest of the children. If the court finds that family violence has occurred, the court shall make arrangements for visitation during temporary custody that best protect the children and the abused spouse from further harm. **W.S. 20-2-112(b).**

See sections on Custody and Visitation for final disposition of children and visitation rights.

Restraining Orders During Proceedings

If, after filing a complaint for divorce, it appears probable to the court that either party is about to do any act that would defeat or render less effective any order which the court might ultimately make concerning property or pecuniary interests, an order shall be made for the prevention thereof and such process issued as the court deems necessary or proper. This procedure most often requires the filing of a sworn affidavit setting forth the reasons the court should be concerned that one of the parties may do something to the property or money that would complicate the divorce proceedings (i.e. empty a joint account, sell real or personal property that may be subject to distribution in the divorce, etc.). **W.S. 20-2-109.**

Mutual restraint of property disposition means that both you and your spouse are prevented from doing anything with property that could affect how the court might ultimately order the property divided pursuant to legal separation or divorce.

Restraint applying to you or your spouse means that if you request it, the court may prohibit your spouse from imposing any restraint on your personal liberties during the proceeding. Your spouse may make the same request and some courts make the orders automatically mutual.



Property Distribution

In granting a divorce, the court shall make such disposition of the property of the parties as appears *just and equitable*, having regard for the respective merits of the parties and the condition in which they will be left by the divorce, the party through whom the property was acquired and the burdens imposed upon the property for the benefit of either party and children. The Wyoming Supreme Court has determined that equitable does not necessarily mean equal.

Alimony/Spousal Support

The court may decree to either party reasonable alimony having regard for the other's ability to pay and may order so much of the other's real estate or the rents and profits thereof as is necessary be assigned and set out to either party for life, or may decree a specific sum be paid by either party. **W.S. 20-2-114.**

After a decree for alimony is entered, the court may from time to time, on the petition of either of the parties, revise and alter the decree respecting the amount of alimony. This statute does not specify that termination of alimony is automatic upon remarriage. **W.S. 20-2-116.**

A party seeking modification of alimony must establish that there has been a material and substantial change of circumstances which outweighs the interest of society in applying the doctrine of res judicata. The party seeking the termination of alimony must demonstrate that there has been a substantial change of circumstances from the time of the divorce to the time of the peti-

tion to modify. *Maheer v. Maheer*, 2004 WY 62, 90 P.3d 739 (Wyo. 2004).

Child Custody

See also "Required Information in Child Custody Proceeding" above.

"Child custody proceeding" means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue, including a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights or protection from domestic violence in which the issue may appear. "Child custody proceeding" shall not include a proceeding involving juvenile delinquency, contractual emancipation or child support enforcement. **W.S. 20-5-202(a)(iv).**

Authority to decide a child custody case in Wyoming. A court of this state has jurisdiction to make an *initial* child custody determination only if:

- (i) This state is the *home state* of the child on the date of the commencement of the proceeding, or was the home state of the child *within six (6) months* before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;
- (ii) A court of *another state does not have jurisdiction* under a provision of law from that state that is in substantial conformity with paragraph (i) of this subsection, or a court of the *home state of the child has declined to exercise jurisdiction* on the ground that this state is the more appropriate forum under a
 - (iv) The individual resided in this state and provided prenatal expenses or support for the child;
 - (v) The child resides in this state as a result of the act or directives of the individual;
 - (vi) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
 - (vii) The individual asserted parentage in this state pursuant to W.S. 14 2 401 through 14 2 907;
 - (viii) There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

'20 4 142. Basis for jurisdiction over nonresident.

- (a) In a proceeding to establish or enforce a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:
 - (i) The individual is personally served with notice within the state;
 - (ii) The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
 - (iii) The individual resided with the child in this state;



provision of law from that state that is in substantial conformity with **W.S. 20-5-307 or 20-5-308**, *and*:

- (A) The child and the child's parents, or the child and at least one (1) parent or a person acting as a parent, have a ***significant connection*** with this state other than mere physical presence; and
- (B) ***Substantial evidence*** is available in this state concerning the child's care, protection, training and personal relationships.
- (iii) All courts of another state having jurisdiction have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child; *or*
- (iv) No court of any other state would have jurisdiction under the criteria specified in paragraph (i), (ii) or (iii) of this subsection.

NOTE: While a person need only be a resident of this state for sixty (60) days before filing a divorce complaint, if there are children, they must have resided in Wyoming for at least six (6) months immediately preceding the filing of the action for the court to have jurisdiction to make a custody determination and separate requirements apply for the court to make a child support order as part of the divorce.¹ Therefore, absent an emergency situation, if a woman with children of the marriage relocates to Wyoming, she may have to wait at least six (6) months before she may file a complaint for divorce.

Best Interest of Child Rule. In granting a divorce, separation, or annulment of a marriage, or upon the establishment of paternity, the court may order any disposition (custody) of the children that appears most expedient and in the ***best interests*** of the children.

Custody may include any combination of joint, shared or sole custody, though when custody is contested, it is highly unlikely a court will order joint or shared custody in Wyoming as the courts recognize that such an arrangement requires the parties to work together. *Gurney v. Gurney*, 899 P.2d 52 (Wyo. 1995).

Factors the Court Considers

In determining the best interests of the child, the court shall consider, but is not limited to, the following factors:

- The quality of the relationship each child has with each parent.
- The ability of each parent to provide adequate care for each child throughout each period of responsibility, including arranging for each child's care by others as needed.
- The relative competency and fitness of each parent.
- Each parent's willingness to accept all responsibilities of parenting, including a willingness to accept care for each child at specified times and to relinquish care to the other parent at specified times.
- How the parents and each child can best maintain and strengthen a relationship with each other.
- How the parents and each child interact and communicate with each other and how such interaction and communication may be improved.
- The ability and willingness of each parent to allow the other to provide care without intrusion, respect the other parent's rights and responsibilities, including right to privacy.
- Geographic distance between the parents' residences.
- The current physical and mental ability of each parent to care for each child.
- Any other factors the court deems necessary and relevant.

W.S. 20-2-201(a).

Domestic Violence and Child Abuse Not in Child's Best Interest

The court shall consider evidence of domestic violence or child abuse as being contrary to the best interest of the children. If the court finds that family violence has occurred, the court shall make arrangements for visitation that best protects the children and the abused spouse from further harm. **W.S. 20-2-201(c).**



If there is a concern that your child(ren) may be harmed by the other parent physically and/or emotionally, you should seek advice from someone familiar with parenting and child development issues, as well as the dynamics of domestic violence. There may be an organization in your community that can help facilitate visitation between the children and you or the other parent. You can also contact the facilitators of any parenting classes in your community for ideas or additional resources.

Gender of parent not controlling. The court cannot prefer one parent as custodian solely on the basis of gender.

Parenting classes. The court may also require you or your spouse to attend parenting classes, including, but not limited to, parenting classes to lessen the effects of divorce on children. Some courts have their own orders listing the names of individuals or agencies that conduct parenting classes in your community. Both parents are generally required to attend classes when they are ordered.

W.S. 20-2-201(f).

Visitation

Specificity required. Depending on the type of custody order the court issues, visitation may be ordered. The court may order visitation only when it deems it to be in the best interests of the children. Visitation must set out in enough detail to promote understanding and compliance, therefore, stating “reasonable visitation” is not enough.

Transportation costs. The court may also provide for the allocation of the costs of transporting each child for purposes of visitation.

Relocation. The court may require either parent who plans to change their home city or state of residence, to give written notice thirty (30) days prior to the move, both to the other parent and to the clerk of district court stating the date and destination of the move. There may be other issues surrounding the relocation of a parent, including the necessity of modifying the terms of visitation.

W.S. 20-202(a)(iii). Each party is required to notify the Clerk of Court in writing within fifteen (15) days of any change in address or employment. **W.S. 20-2-309(c).**

The Wyoming Supreme Court has held that courts should look “closely at balancing the continued rights of the parties with the best interests of the children as established at the time of divorce” in relocation cases. So long as the court is satisfied with the motives of the custodial parent in seeking the move and reasonable visitation is available to the remaining parent, removal should be granted. *Love v. Love*, 851 P.2d 1283 (Wyo. 1993).

Third party visitation. Non-custodial parents, grandparents, and primary caregivers may all be awarded visitation rights to a child. Visitation rights may be raised during a custody proceeding, (see Custody section above) or an original action may be brought to court against the custodial parent in order to obtain visitation rights. **W.S. 20-7-101 and 20-7-102.**

Child Support

Presumptive child support guidelines. Child support orders are issued by the court in actions for divorce, annulment, paternity, support, out-of-home placement and any other action requiring the maintenance or support of children. The court must determine the specific dollar amount that is the monthly obligation of each parent. The court determines the total child support obligation based on the combined income of both parents; each parent’s obligation is calculated by multiplying the total child support obligation by the same proportion each parent’s income is to the total combined income of both parents. **W.S. 20-2-304.** Wyoming’s child support tables are also available on line at <http://legisweb.state.wy.us/statutes/titles/title20/c02a03.htm>.

Definitions

- a. **"Obligor"** means a person who owes a duty of support for a child;
- b. **"Payor"** means any employer or other person who pays income to an obligor and who has or provides health care coverage to employees;
- c. **"Arrearage"** means past due child support, past due medical support, past due spousal support,



attorneys fees, guardian *ad litem* fees, costs, interest and penalties, but, does not include property settlements.

- d. **"Income"** means *any* form of payment or return in money or in kind to an individual, regardless of source. Income includes, but is not limited to wages, earnings, salary, commission, compensation as an independent contractor, temporary total disability, permanent partial disability, permanent total disability, worker's compensation payments, unemployment compensation, disability, annuity and retirement benefits and any other payments made by any payor.
- e. **The following is not "income":** Means tested sources of income such as Pell Grants, aid under the personal opportunities with employment responsibilities (POWER) program, food stamps and supplemental security income (SSI) shall not be considered as income.
- f. **"Net" income** is the gross income minus total mandatory deductions. **Mandatory deductions:** federal income tax withheld, social security tax (FICA) withheld, state income tax withheld, and other deductions required by law, such as required disability contributions and/or required retirement contributions.
- g. **"Imputed income"** can be used when either parent is voluntarily unemployed or underemployed. In such case the child support shall be computed based upon the potential earning capacity (imputed income) of the unemployed or underemployed parent. In making that determination the court shall consider:
 - 1) Prior employment experience and history;
 - 2) Educational level and whether additional education would make the parent more self sufficient or significantly increase the parent's income;
 - 3) The presence of children of the marriage in the parent's home and its impact on the earnings of that parent;
 - 4) Availability of employment for which the parent is qualified;
 - 5) Prevailing wage rates in the local area;
 - 6) Special skills or training; and

7) Whether the parent is realistically able to earn imputed income.

- h. **"Age of majority"** means a person eighteen (18) years of age, *except* for purposes of child support obligations, a parent's legal obligation for the support of his or her children, whether natural or adopted, continues past the age of majority in cases where the children are: (i) mentally or physically disabled and thereby incapable of self support; or (ii) between the age of majority and twenty (20) years and attending high school or an equivalent program as full time participants.

Relevant Child Support Laws

- a. **Recipients of certain public benefits.** Those recipients of aid under the personal opportunities with employment responsibilities (POWER) program who, as a condition of eligibility under federal law, are required to assign their rights to support to, and cooperate with, the department of family services in the establishment of parentage and the establishment, enforcement and modification of support obligations. If you or your children receive public benefits, contact your Department of Family Services Caseworker or local child support enforcement office as receipt of or modification of child support may have an impact on your benefits. **W.S. 20-6-105.**
- b. **Military Personnel:** Military regulations specify that military duty will not be used as a basis for avoiding family support obligations, but setting the level of support is a civilian matter. It is most common to set the support obligation based on basic military pay. You can go to **www.dfas.mil** for updates on military pay and many other issues. If military pay and benefits are an issue in your child support case, you may want to contact an attorney for assistance. The following is also a helpful website: <http://www.acf.hhs.gov/programs/cse/fct/militaryguide2000.htm#determine>.
- c. **Overtime compensation:** Overtime compensation is not counted in the "net income" unless the court, after considering all overtime earnings derived in



the preceding twenty-four (24) month period, determines the overtime earnings can reasonably be expected to continue on a consistent basis. **W.S. 20-2-303(a)(iii).**

- d. **Entry of income withholding order.** An income withholding order (IWO) enables an employer to take child support out of the pay of the parent obligated to pay. The court always enters an IWO which takes effect immediately, unless the parties agree otherwise, or unless one (1) of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding. When the parties agree to an alternative arrangement, the arrangement shall be in writing, signed by the parties and reviewed and entered in the record by the court. The court shall include in the record its findings of good cause, including a statement explaining why implementation of immediate income withholding would not be in the best interests of the child and, in cases involving modification of child support, proof of timely payments.
- e. **Limits on amounts withheld:** The total amount that can be withheld from any employee's paycheck is limited by the Consumer Credit Protection Act (CCPA). The limits provided in the CCPA are fifty percent (50%) of disposable earnings if the parent who pays child support has a second family and sixty percent (60%) if there is no second family. These limits are each increased by five percent (5%) if payments are in arrears for a period equal to twelve (12) weeks or more.
- f. **Social security or veteran's benefits.** If your children receive part of a parent's social security or veteran benefits, you might want to contact an attorney or legal services program for assistance with child support calculation. If a proportion of a support obligor's (person who is supposed to pay child support) social security or veteran's benefit is paid directly to the custodian (parent or guardian with custody of the children) of the obligor's children who are the subject of the child support order, the total amount of the social security or veteran's benefit, including the amounts paid to the obligor and custodian under the child support order, shall be counted as gross income to the obligor (count the amount the children receive as income to the parent who has to pay support). Figure out child support and subtract the amount of the social security or veteran's benefit sent directly to the custodial parent from the noncustodial (obligor's) parent's share of presumptive support. If the subtraction of the social security or veteran's benefit sent directly to the custodian results in a negative dollar amount, the support amount shall be set at zero. The child support obligation shall be offset by the amount of the social security or veteran's benefit sent directly to the custodian, beginning from the time the custodian began receiving the social security or veteran's benefit. **W.S. 20-2-304(e).**
- g. **When income withholding order becomes effective.** An income withholding order which did not become effective immediately upon entry, becomes effective upon the earliest of the following: (i) The date the parent paying requests withholding commence; or (ii) child support becomes delinquent in payment of an amount equal to one (1) month's support obligation under the support order.
- h. **Date new amount of child support begins.** An order for child support is not subject to retroactive modification except: (i) Upon agreement of the parties; or (ii) The order may be modified with respect to any period during which a petition for modification is pending, but only from the date notice of that petition was served on the respondent. **W.S. 20-2-311(d).**
- i. **When the child support obligation ends.** An on-going child support obligation terminates when the:
 - (i) Parents marry or remarry *each other* (After the remarriage of the parents to each other, the court may eliminate all child support arrearage existing between the parents except those assigned to the state of Wyoming);
 - (ii) Child dies;
 - (iii) Child is legally emancipated; or
 - (iv) Child attains the age of majority. (See definition above)



General Provisions

Confidential Financial Affidavits required. The court will not establish a child support order until confidential financial affidavits, on a form approved by the Wyoming Supreme Court, are received which fully disclose the financial status of both parents or the court has held a hearing and testimony has been received or an affidavit of imputed income filed. **W.S. 20-2-308.**

Required documentation. Financial affidavits must be supported with documentation of both current and past earnings. Suitable documentation of current earnings includes, but is not limited to, pay stubs, employer statements, or receipts and expenses if self-employed. Documentation of current earnings must be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period.

The court may require the parents to exchange financial information, at most once per year, for the purpose of analyzing the propriety of the established child support.

Presumptive amount. The child support guidelines are presumed to be the correct amount and must be followed except in limited circumstances. The court will use the presumed child support amounts to review the adequacy of child support agreements negotiated by the parties. If the agreed amount departs from the presumed child support, the parties shall furnish statements of explanation which shall be included with the forms and shall be filed with the court. The court shall review the agreement and inform the parties whether or not additional or corrected information is needed, or that the agreement is approved or disapproved.

Deviations from presumptive child support guidelines. Deviations from the presumptive amounts may be approved by the court and have to be made on a specific finding that the application of the presumptive child support would be unjust or inappropriate in that particular case. In determining whether to deviate from the presumptive child support established by statute, the court must consider the following factors:

- The age of the child;
- The cost of necessary child day care;

- Any special health care and educational needs of the child;
- The responsibility of either parent for the support of other children, whether court ordered or otherwise;
- The value of services contributed by either parent;
- Any expenses reasonably related to the mother's pregnancy and confinement for that child, if the parents were never married or if the parents were divorced prior to the birth of the child;
- The cost of transportation of the child to and from visitation;
- The ability of either or both parents to furnish health, dental and vision insurance through employment benefits;
- The amount of time the child spends with each parent;
- Any other necessary expenses for the benefit of the child;
- Whether either parent is voluntarily unemployed or underemployed. In such case the child support shall be computed based upon the potential earning capacity (imputed income) of the unemployed or underemployed parent.

In making that determination the court shall consider:

- Prior employment experience and history;
- Educational level and whether additional education would make the parent more self-sufficient or significantly increase the parent's income;
- The presence of children of the marriage in the parent's home and its impact on the earnings of that parent;
- Availability of employment for which the parent is qualified;
- Prevailing wage rates in the local area;
- Special skills or training; and
- Whether the parent is realistically able to earn imputed income.
- Whether or not either parent has violated any provisions of the divorce decree, including visitation provisions, if deemed relevant by the court; and
- Other factors deemed relevant by the court.

The party seeking to deviate from the presumptive child support amount may be required to pay reason-



able attorney fees and court costs to the other party, if the party seeking to deviate fails in its argument to the court. **W.S. 20-2-307(c).**

There are NO DEVIATIONS from the presumed support allowed UNLESS the court CHOOSES to deviate from the set amount because the amount was unjust or inappropriate in the particular case.

The Court must include the specific reasons for deviation in the Decree of Divorce. **W.S. 20-2-307(b).**

NO AGREEMENTS FOR LESS THAN THE PRESUMED SUPPORT CAN BE APPROVED IF GOVERNMENT OR STATE BENEFITS (SUCH AS TITLE 19) ARE BEING PROVIDED ON BEHALF OF ANY CHILD. W.S. 20-2-307(d).

You CANNOT agree that no support will be paid. The statutes allow for a reduced amount of support when you agree on shared physical custody.

Minimum amount of child support. Where the combined *net monthly* income of *both* parents is less than eight hundred and thirty three dollars (\$833.00), the non-custodial parent has to pay twenty-five percent (25%) of his/her net income, but the minimum amount of child support a person has to pay can not be less than fifty dollars (\$50.00) per month for each family unit in which there are children to whom the noncustodial parent owes a duty of support.

A parent cannot get out of paying child support by relinquishing parental rights in a divorce. Termination of parental rights cannot be accomplished in a divorce case.

Contents of court order. The court order for support must:

- Include the names, addresses, dates of birth and places of birth of the parties.
- Name and address of each party's employer.
- Be accompanied by a confidential statement containing social security numbers of each party and each child.
- Be expressed in a specific dollar amount.
- Be based on combined income of both parents.

There is a "presumptive" support obligation resulting from the tables in the Wyoming statutes that is divided between the parents in proportion to the net income of each. If the support amount deviates from the presumptive amount, the court must make findings in the decree presumptive child support would be unjust or inappropriate in that particular case. **W.S. 20-2-307.**

Payments to Clerk of District Court. The non-custodial parent's share is paid to the custodial parent through the Clerk of District Court or the State Distribution Unit (SDU).

Child support abatements. If a non-custodial parent has physical custody of a child for 15 or more consecutive days, the support payments may be reduced by one-half for each day the non custodial parent has physical custody, unless otherwise ordered by the court. A claim must be filed with the clerk of court within 30 days. The custodial parent may object within 30 days of being notified.

Both request and objection must be accompanied by a \$10.00 fee to the clerk of court. The clerk of court must mail a copy of the objection. **W.S. 20-2-305.**

Medical Support

The law requires that medical support for the child(ren) be included as part of any child support order. The court shall order either or both of the parents to provide medical support, if insurance can be obtained through an employer or other group carrier, or if it is otherwise reasonably available. This may include dental, optical or other health care needs for the child(ren). In addition, the court will order that any medical expenses not covered by insurance and any deductible amount on the required insurance coverage be paid by one or both parents. If both parents are ordered to pay for expenses not covered by insurance, the court will specify the proportion for which each parent is responsible (for example 50 percent to mother and 50 percent to father). **W.S. 20-2-401.**

When provided through an employer, the employer must permit the parent to enroll the child, without re-



gard to any enrollment restrictions, or permit the other parent, Department of Health or Department of Family Services to enroll the child if the responsible parent fails to do so.

The employer is also required to withhold from the employee's compensation the employee's share, if any, of premiums and not to drop the child from the rolls, unless:

- The employee is no longer insured by the employer's plan, or
- The employer is presented with written evidence that the support order is no longer in effect, or
- The child is to be covered by a different plan, with no lapse in coverage, or
- The employer has eliminated family coverage for all employees, or
- The employee is no longer working for the employer.

Paternity and Divorce Decree

A valid divorce decree that expressly identifies a child as a "child of the marriage," "issue of the marriage," or similar words indicating that the husband is the father of the child; **or** provides for support of the child by the husband is considered to be an enforceable adjudication that the husband is the biological father, **unless** paternity is specifically disclaimed in the divorce decree. **W.S. 14-2-823(c).**

Enforcement of Child Support Orders

Child Support Enforcement (CSE) is a division of the Department of Family Services and is responsible for enforcing child support orders in cooperation with the federal government pursuant to Title IV-D and other federal regulations. CSE administers the DFS child support enforcement program. **W.S. 20-4-109 et seq.** The DFS program must provide the following services in both intrastate and interstate situations:

- The establishment, enforcement and modification of an obligor's obligation to support dependent children;

- The establishment, enforcement and modification of an obligor's obligation to provide medical support in all cases and medical insurance coverage for dependent children when available at a reasonable cost;
- The location of an obligor or putative parent, obligee or child for purposes of establishing, enforcing or modifying the child support and medical support obligations and enforcing the Parental Kidnapping Prevention Act;
- The monitoring and process of an obligor's child support payments;
- Providing applications, information and intake services to all eligible persons pursuant to law or upon request;
- The location of persons, upon request of the non-custodial parent, in cases of denial or interference with court ordered visitation or in cases in which the custodial parent has removed the child from the state and failed to give notice of change of address in violation of a court order;
- When an obligor is required to provide medical insurance coverage through the employer's health plan pursuant to a court order, the notification to an employer unless the obligor contests the notification and establishes good cause why the notice should not be provided; and
- The establishment of paternity for out of wedlock children.

The Department of Family Services (DFS) provides child enforcement services to people who meet standards established by the Department. A reasonable fee may be charged as well as reimbursement of reasonable expenses. The Department may waive or defer any fee upon a showing of necessity.

Agreements between obligees and obligors purporting to relieve the obligor of any duty of support or to settle past, present or future support or obligations either as settlement or prepayment is invalid unless the department has consented to the agreement in writing or unless it has been approved by the court with notice to DFS.



Paying the State back. The Department shall be paid back for money spent on behalf of a child. The amount that may be ordered to be paid back extends to the amounts paid by the Department in public assistance, including medical support provided by other state entities.

Professional, occupational or hunting or fishing license. Wyoming law does allow for DFS to petition a court for an order to withhold, suspend or restrict any professional, occupational or hunting or fishing license, certificate or permit issued to an obligor who is in arrears in a child support obligation. **W.S. 20-6-112.**

Modification of Child Support Order

Sufficient change of circumstances to modify/adjust child support **W.S. 20-2-311.**

Time requirements. [Must fit one of the following categories]

1. **Twenty (20%) percent change in support amount/six (6) months.** Any child support order that was entered more than six (6) months prior to the petition or which has not been adjusted within *six (6) months* from the date of filing of the petition may be reviewed and adjusted if the court finds that the support amount would *change by twenty percent (20%) or more* per month from the amount of the existing order.
2. **Substantial change of circumstances.** A modification based on a *substantial change of circumstances* may be brought at *any time*. The commencement of aid under the personal opportunities with employment responsibilities (POWER) program, medical benefits under Title XIX of the Social Security Act, food stamps and supplemental security income (SSI) shall be considered a substantial change of circumstances requiring modification of child support. Other changes, including custody modifications, may also be sufficient.
3. **Every three (3) years,** upon request, the court shall review and, if appropriate, adjust the order in accordance with the guidelines established

pursuant to this article. There is no need for a showing of a change of circumstances if it has been at least three years since the previous order.

Family Violence Option: If the Child Support Enforcement Agency is seeking to establish a support order on your child(ren)'s behalf, and you or your child(ren) are victims of domestic violence, request information regarding the Family Violence Option as a possible way to keep certain information confidential.

Modification or Enforcement of a Custody or Visitation Order

If you need to modify or enforce a custody or visitation order, the court where the original action was entered maintains continuing, exclusive jurisdiction to modify and enforce it. You may apply to the court that issued the original order, subject to the Uniform Child Custody Enforcement Jurisdiction Act. **W.S. 20-5-201 et seq. (updated in 2005).** If neither you nor your child's other parent resides in the county of the district court that issued the custody or visitation order, you may apply in the office of the clerk of district court of any county in the state in which either you or the other parent of your children resides. If neither you, your child nor the other parent resides in the state that entered the initial custody determination, and action may be filed in the child's *home state*. See also "Child Custody" section above.

Material change in circumstances: A court may modify an order concerning the care, custody and visitation of the children if there is a showing by either parent of a material change in circumstances since the entry of the order in question and that the modification would be in the best interests of the children pursuant to Wyoming law. (**W.S. 20-2-201(a)**). A condition which existed when the custody order was entered is not a substantial or material change of circumstances.

Burden of proof: It is up to the person trying to modify or change the custody arrangement of the earlier order/decreed to establish that a material and



substantial change in circumstances has occurred, following the entry of the initial order.

Relocation: moving away, by itself, is not a substantial or material change in circumstances sufficient to justify a change in custody order. *Gurney v. Gurney*, 899 P.2d 52, 55 (Wyo. 1995) (citing *Love*, 851 P.2d at 1288-89). The court will consider the attributes and characteristics of the parents and children and how the children have fared under the original custody and visitation arrangement. The court will also consider whether the relocating parent's motives for proposing the move are legitimate, sincere, in good faith, and whether reasonable visitation is possible for the remaining parent. *Watt v. Watt*, 1999 WY 4, 971 P.2d 608 (Wyo. 1999).

The court should not refuse to support the efforts of the custodial parent to maintain and enhance their standard of living, even if it means moving away. So long as the court is satisfied with the motives of the custodial parent in seeking the move and reasonable visitation is available to the remaining parent, the courts have held that being able to move away with the children is allowable.

Judges have broad decision-making authority: Custody, visitation, child support, and alimony are all committed to the sound discretion of the district court. The welfare and needs of the children are to be given paramount consideration. The determination of the best interests of the child is a question for the judge. A judge's decision is very hard to overturn.

Joint custody: because parents must work closely together in joint custody arrangements, it may be easier to reopen an order which contains a joint custody provision and change it so that one person has primary custody and the other parent has visitation.

Child Snatching / Interference with Custody

Wyoming will decline to exercise jurisdiction if petitioner has wrongfully taken the child from another state.

The court will not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the custodial parent, has improperly removed the child from physical custody.

Interference with custody is a felony punishable by imprisonment. **W.S. 6-2-204.**

A person is guilty of interference with custody if, having no privilege to do so, they knowingly:

- Take or entice a minor from the custody of the minor's parent, guardian or other lawful custodian; or
- Fail or refuse to return a minor to the person entitled to custody.

Grandparents' Rights

Grandparents' rights generally apply to two issues: visitation privileges and custody of a grandchild.

Grandparents' Visitation

A grandparent may obtain visitation rights to a minor grandchild, under certain circumstances. Because an adoption completely terminates the legal relationship between the child and the birth parents, no action to establish visitation rights may be brought by a grandparent if the minor grandchild has been adopted and neither adopting parent is a natural parent of the child. **W.S. 20-7-101(c).**

The court may grant visitation rights if it finds that visitation would be in the best interest of the child, and that the rights of the child's parents are not substantially impaired. The court will not grant grandparent visitation if it will endanger the child's physical health or impair the child's emotional development.

Once visitation rights have been granted, however, the custodial parent or guardian may petition the court to revoke or amend the visitation rights granted to the grandparent, for good cause. **W.S. 20-7-101.**

If a guardian ad litem is appointed to represent the child's best interests, the grandparent shall be responsible for all fees and expenses associated with the appointment.



For more information, you can contact:

The Grandparent Information Center

AARP 601 E Street, N.W.
Washington, D.C. 20049

For information on grandparent's rights in Wyoming, see

AARP's website

<http://www.aarp.org/states/wy/wy-grandparent/Articles/a2004-05-24-wy-grandparents-directory.html>

Wyoming Kinship Advocacy

Email: terrykenny@casalc.org

Phone: (307) 638-1151 ext. 104

Primary Caregiver's Visitation

Visitation rights may be awarded to any person who has been the primary caregiver for a child for at least 6 months within the previous 18 months prior to a custody proceeding. The primary caregiver may obtain visitation rights, except when the child has been adopted and neither parent is a natural parent of the child. When bringing an original court action, the primary caregiver needs to notify, or make a reasonable effort to notify, the non-custodial parent of the child regarding the action to gain visitation rights. **W.S. 20-7-102.**

The court may grant visitation if the court finds that visitation would be in the best interest of the child, and that the rights of the child's parents are not substantially impaired. Once visitation rights have been granted, however, the custodial parent or guardian may petition the court to revoke or amend for good cause the visitation rights granted.

Representing Yourself or Hiring a Lawyer

If you are thinking of a divorce, one of the first questions you will have to decide is whether or not to hire a lawyer. Representing yourself is an alternative if the divorce decision is mutual and you and your spouse are able to communicate well and can work out such things as the division of property, who will pay the outstanding bills, and whether any spousal maintenance (alimony)

will be paid. You might want to hire a mediator to help you and your spouse resolve any disputes or conflicts before you decide you must hire a lawyer in order to get your disagreements resolved.

Pro Se divorce packets. The District Court Clerks in all Wyoming counties have "*pro-se*" divorce packets to help people negotiate a divorce without retaining a lawyer. The packets are also expected to be available on the Wyoming Supreme Court website.

You should seriously consider hiring a lawyer to help you through the process if:

- You have children;
- You and your spouse have too many disagreements about the terms of the divorce (e.g., custody of the children, distribution of property, responsibility for debts, etc.);
- Your spouse has hired a lawyer or is a lawyer;
- There are substantial assets to be divided; or
- There has been physical or emotional abuse in the relationship.

If you decide to hire a lawyer, you may talk to several until you find one you like. Choosing a lawyer is highly personal. If there are serious disputes in the divorce, you should make sure that you are hiring a lawyer who understands you and your needs. You should discuss how much the lawyer will charge you (fees) and how you will be billed. Most lawyers charge an hourly rate, require a down payment (a retainer), and are not able to give you an estimate of how much the whole divorce process will cost. However, it is important to learn what the charge will be based on, to put the agreement in writing and to work out a payment schedule, if necessary.

Resources

Wyoming State Bar Pro Bono Coordinator
Attorney Referral Services
500 Randall Avenue, PO Box 109
Cheyenne, WY 82003-0109
(307) 632-9061



Wyoming Coalition Against Domestic Violence
and Sexual Assault, Legal Assistance to Victims
PO Box 236
Laramie, WY 82073
(307) 755- 0992
Casper Office: (307) 265-6260

University of Wyoming DV Legal Assistance
Project
1000 East University Avenue, Dept. 3010
College of Law
Laramie, WY 82071
(307) 766-3747

University of Wyoming Legal Services Program
1000 East University Avenue, Dept. 3010
College of Law
Laramie, WY 82071
(307) 766-2104

University of Wyoming ASUW Student Legal
Services
1000 East University Avenue, Dept. 3010
College of Law
Laramie, WY 82071
(307) 766-4360

Lawyers and Advocates for Wyoming
PO Box 548
Jackson, WY 83001
(307) 733-7290

Wyoming Legal Services, Inc.
PO Box 1160
Lander, WY 82520
(307) 332-6626
(800) 442-6170

Casper Office
152 N. Durbin St., Suite 220
Casper, WY 82601
(307) 237-5266
(888) 737-5266

Cheyenne Office
1603 Capitol Ave., Suite 405
Cheyenne, WY 82001
(307) 634-1566
(888) 634-1566

Wind River Indian Reservation Office
PO Box 247
Fort Washakie, WY 82514