



LEGAL RESOURCE MANUAL FOR ABUSE AND NEGLECT PROCEEDINGS

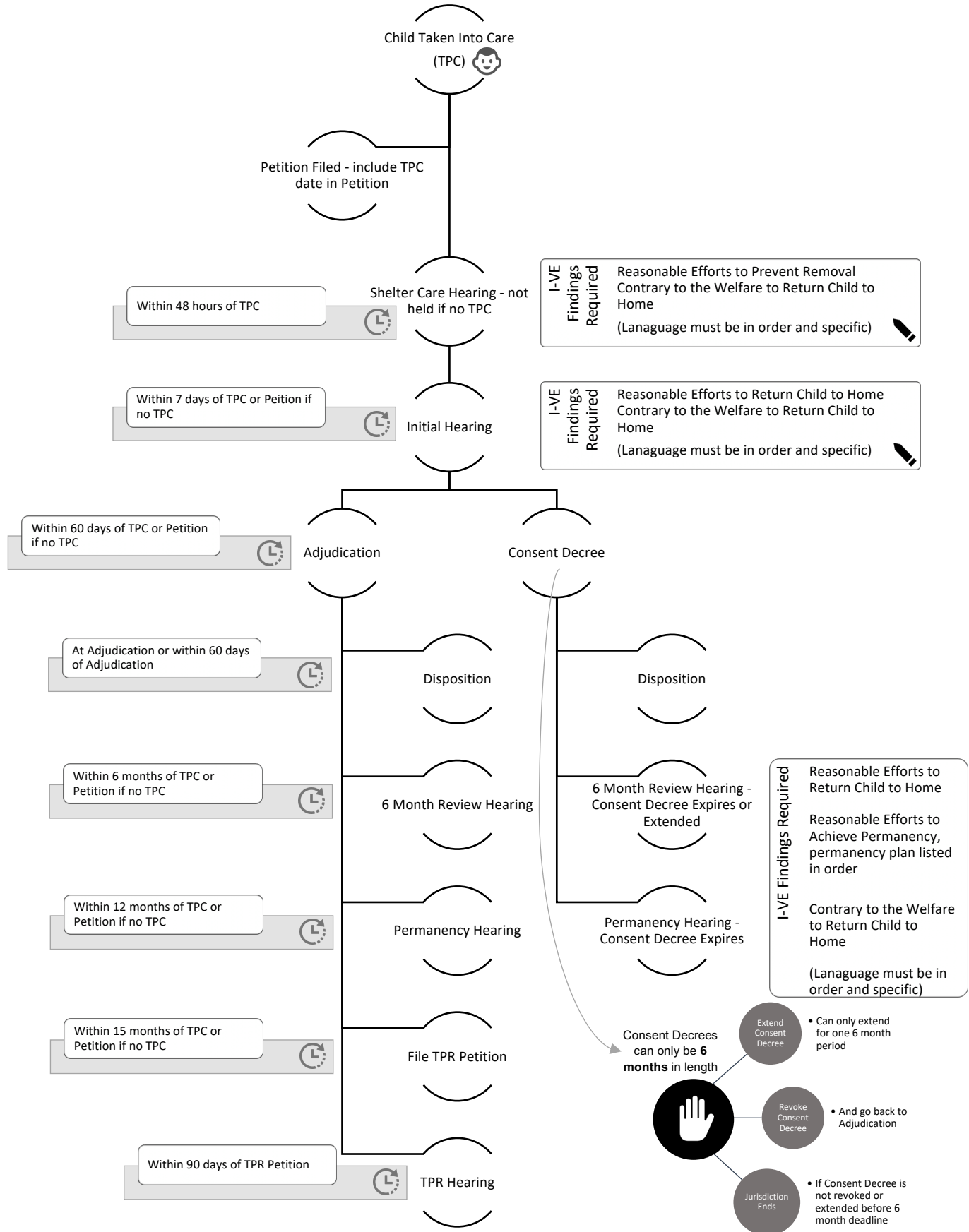
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**CHILDREN'S
JUSTICE PROJECT**

A Project of the Wyoming Supreme Court

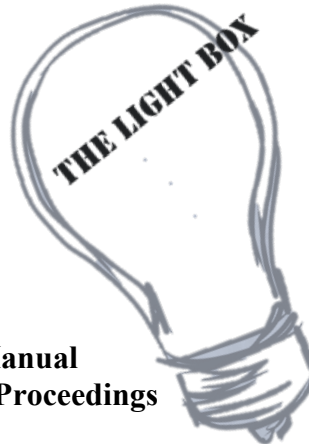
WYOMING JUVENILE COURT TIMELINE



THE LIGHT BOX: Children's Justice Project Publications
Shining a Light on Wyoming Juvenile Court

Resources to capture ideas, guidelines, and best practices to help children and families in Wyoming's Juvenile Courts.

This publication is part of



**Legal Resource Manual
For Abuse and Neglect Proceedings**

First Edition (November 2018)

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For more information about the Wyoming Children's Justice Project (CJP) or to download additional copies visit our webpage at <https://www.courts.state.wy.us/childrens-justice-project/>.

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This publication and all hearing checklists are meant for all legal stakeholders in an abuse and neglect proceeding.

1 Roles & Responsibilities

1.1 Parties & Representation

Abuse and neglect cases involve multiple parties beyond the usual prosecutor-defense attorney combination. It is important to understand which parties are involved in these cases.

District Attorney	<p>WYO. STAT. § 14-3-424(a)</p> <p>WYO. STAT. § 8-1-102(a)(x)</p> <p>WYO. STAT. § 9-1-801</p>	<p>The district attorney represents the state. The district attorney presents evidence in support of the petition and represents the “state,” not the Department of Family Services (DFS). "District attorney" includes a county and prosecuting attorney in a county where the office of district attorney has not been created. (District attorneys are only appointed in counties with populations over 60,000 or when a majority of county commissioners creates such an office – currently Laramie and Natrona Counties.)</p>
Guardian Ad Litem	<p>WYO. STAT. § 14-3-211(a)</p> <p>WYO. STAT. § 14-3-416</p> <p>WYO. STAT. § 14-3-434(b)(vi)</p> <p>IN THE INTEREST OF MN, S(E)N, S(H)N V. LARAMIE COUNTY DFS, 171 P.3D 1077 (WYO. 2007)</p> <p>M.F.B., 860 P.2d 1140 (Wyo. 1993)</p> <p>"H" CHILDREN., 79 P.3d 997 (Wyo. 2003)</p>	<p>The court must appoint the child a Guardian Ad Litem (GAL). Any child alleged to be abused or neglected is entitled to a GAL in court proceedings. The GAL is supervised by the GAL Division at the Wyoming Office of the Public Defender. The GAL is paid for by the county and state.</p> <p>The Court found Wyo. Stat. Ann. 14-3-312 is an unambiguous mandatory statute that requires the district court in a parental rights termination action to either appoint a GAL or make a finding that no GAL is necessary because the petitioner or another party to the action will adequately represent the interest of the child or children, and the interest of the child or children are not adverse to that party.</p> <p>In the M.F.B. case, the Wyoming Supreme Court stated: “[W]e would remind all members of the bar serving in this capacity that the guardian ad litem fulfills an essential duty. In appointing a guardian ad litem, the juvenile court has determined that either the child has no parent, guardian, or custodian appearing in its behalf or that the interest of the parents, guardian, or custodian are adverse to the best interests of the child. Therefore, the guardian ad litem must act with reasonable diligence in the role of an advocate for the child and participate as necessary in all phases of the process, including subsequent appeals, to insure the rights of the client are protected [citations omitted].”</p> <p>Wyoming has adopted a hybrid role for GALs. GALs can act as an agent of the court in seeking to uphold the best interests of the child and also as a child's attorney, advocating for the child's preferences. In this regard, the Rules of Professional Conduct apply to GALs and GALs may not appear as factual witnesses in cases.</p>

<p>IN THE INTEREST OF LL, AL, ML AND NC: ML V. LARAMIE COUNTY DFS, 2007 WY 92, 159 P.3d 499 (WYO. 2007)</p>	<p>A GAL may be permitted to testify as a lay witness at the termination of parental rights hearings if the GAL is not testifying in a representative capacity.</p>
<p>IN THE MATTER OF GAC, 396 P. 3D 411 (WYO. 2017)</p>	<p>The Wyoming Supreme Court held that the GAL for the child was entitled to fully participate in proceedings. Also, the guardian ad litem did not fail to inform jury of child's wish to remain with mother or improperly ask jury to decide case based on child's best interests rather than statutory factors. In addition, the Department did not fail to comply with discovery rule governing disclosure of expert witnesses with respect to mother's mental health providers because they were not specially retained or employed to provide expert testimony. Finally, the testimony was properly allowed over Mother's claim of privilege because the information had previously been disclosed pursuant to valid releases and was statutorily excepted from the privilege.</p>
<p>WYOMING GUARDIAN AD LITEM PROGRAM RULES AND REGULATIONS, §2(A) (2008)</p>	<p>A GAL considers the child's wishes and preferences. A GAL is required to consider the child's wishes and preferences when deciding the child's best interests. However, the GAL is not bound by the child's wishes or preferences.</p>
<p><i>Parent Attorneys</i> WYO. STAT. § 14-3- 422(a) WYO. R. P. JUV. CT. 5 WYO. STAT. § 14-3- 422(b) WYO. STAT. § 14-3- 434(b)(v)</p>	<p>Parents have a right to counsel. The parents, guardian, or custodian have a right to be represented at every stage of a child protection proceeding, including appeal. They also have a right to employ counsel of their own choice.</p> <p>The court may appoint an attorney if the parent is unable to afford one. The parents, guardian, or custodian must be without sufficient money, property, assets, or credit to hire an attorney. They must request appointment and verify their financial condition under oath, by affidavit, or in sworn testimony. The county pays reasonable compensation for any court-appointed counsel in abuse and neglect cases.</p> <p>Appointed counsel must provide quality services. Counsel who are court appointed are bound by the same ethical standards of practice as retained counsel and must provide the same quality of service to their clients as they would to private clients.</p> <p>Every court has its own procedure as to how attorneys are appointed to represent parents in abuse and neglect proceedings. Counsel should be familiar with the local practice regarding appointment to represent parents in abuse and neglect matters.</p>
<p>WYO. STAT. § 7-6-107 WYO. R. P. JUV. CT. 5(d)</p>	<p>Parents may waive the right to counsel. If a parent waives his or her right to counsel, the court must find that the person has acted with full awareness of his or her rights and of the consequences of a waiver and if the waiver is otherwise made according to law.</p>

C.C., 102 P.3d 890
(Wyo. 2004)

In the C.C. case, the father, BSC requested an attorney at the termination hearing. The district court found the request untimely and denied. The Wyoming Supreme Court agreed. The court noted that Wyo. Stat. 14-2-318(a) allows, but does not require the court to appoint an attorney for an indigent parent in a termination hearing. The court agreed with the district court's finding that BSC's request for counsel was procedurally defective as he did not complete an affidavit of indigency. The court found that since the father had filed several pleadings in the case, this showed he could understand the legal requirements and was without excuse for the late request.

Court Appointed Special Advocates (CASA) is a nationwide organization that provides lay advocates for children. These advocates are volunteers who go through a basic introductory training regarding advocating for abused and neglected children. Some judicial districts in Wyoming have CASA programs, while others do not.

WYO. R. JUV. CT. 8(c)

Juvenile Courts may appoint CASAs to cases. All CASAs must be sworn in by the Juvenile Court before beginning their duties. The CASA volunteer shall not act as the legal representative or Guardian Ad Litem of any child in any appointed case. The CASA serves until the case is concluded or the court enters an order for removal.

WYO. R. P. JUV. CT. 8(d)

CASAs have the following duties and rights:

- Serve the best interests of the child in abuse proceeding, neglect proceeding, or both;
- Provide independent, factual information including, but not limited to, a written report to each party regarding the case;
- Submit a written report to the parties at least five business days prior to each dispositional or other post-adjudicatory hearing;
- Be allowed to observe all depositions, pretrial conferences, and hearings;
- Have access to review and make copies of all DFS records, court file in the judicial district court, and other records as allowed and ordered by the court;
- Receive notice from the DFS of changes in placement, school, or any other change of circumstances affecting the child;
- Assure that the terms of the court's orders are fulfilled and timely permanency for the child is achieved; and
- Ascertain the wishes of the child and assist in making the wishes known to the parties.

1.2 Role of Parties

Counsel who represent parties in abuse and neglect cases are met with numerous issues regarding their role in representing their clients. Counsel must know their role and ensure that their role is clearly explained to their clients.

Partner	WYO. R. PROF. CONDUCT 1.2(a)	<p>One of the most important responsibilities of counsel is to serve as a partner to the client. Counsel and the client should work in conjunction to establish a mutual relationship of confidence, trust, and openness.</p> <p>Counsel should ensure that both counsel and client clearly understand the client’s objectives and how they will be achieved. Even if counsel does not agree with the client’s decision, it is counsel’s ethical obligation to work in partnership with the client to carry out the directives of the client.</p>
Advocate	WYO. R. PROF. CONDUCT 1.2(a)	<p>Counsel also serves as the advocate for the parent. As an advocate, counsel ensures that the parent’s interests always come first. Advocacy is action, and counsel should continually advocate for the client’s position through active participation in the case process, both in and out of court, including attendance at multidisciplinary team meetings, case planning meetings, and any other events in which the client’s rights may be at stake. Advocacy also includes working with other attorneys who represent the client in related proceedings to ensure that information, which may affect the parent in multiple legal proceedings, is disseminated as necessary.</p> <p>Counsel is obligated to advocate for the client’s interest regardless of personal belief. In many abuse and neglect cases, counsel will be required to advocate for the return of the children to the home even when counsel does not think it is appropriate. Counsel may also be required to defend clients whose actions they do not agree with.</p>
Counselor	WYO. R. PROF. CONDUCT 2.1	<p>It is the role of counsel to advise the client of the consequences of every decision, and to actively work to advise and influence the client to make the best decision possible. Counsel must not use undue influence to force the client to take action that is not in their best interest.</p> <p>Counsel must explain to the client the limitations of the representation. While clients in abuse and neglect proceedings may have a variety of different legal proceedings occurring at the same time as the abuse and neglect proceeding, appointed counsel must only represent the client within the scope of the abuse and neglect proceeding. However, counsel should also advise the client of the possibility of other related legal matters, such as criminal charges or administrative sanctions, that may arise from the same set of circumstances that led to the abuse and neglect proceeding.</p> <p>Counsel must also advise the client of non-legal matters related to the legal proceedings. Clients may have personal issues which they need to discuss with someone, and frequently that person is their attorney. It is the role of counsel to maintain strict confidence in these matters and to advise and direct the client as to the best course of action.</p>

Counsel is obligated to be truthful with their clients, even when the client is not going to like what he or she is being told. Initially, client may have a reasonable basis not to trust or believe you. While clients may not appreciate directness and frankness at the time, such tactics will ultimately strengthen the attorney-client relationship.

Scope

WYO. R. PROF.
CONDUCT 1.2

One of the first items counsel should address with a client is defining the scope of representation. Counsel who are appointed by the court to represent the parent are only appointed to represent the parent in the abuse and neglect proceedings. Clients will often have other legal proceedings contemporaneous to the abuse and neglect proceeding and may expect counsel to represent or advise him or her in those matters as well. For this reason, the scope of representation must clearly be defined at the beginning of the representation.

1.3 Ethical Obligations

Confidentiality

WYO. R. PROF.
CONDUCT 1.6(a)

Counsel shall not reveal confidential information relating to the representation of a client unless the client gives informed consent, or the disclosure is impliedly authorized in order to carry out the representation. Counsel shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, confidential information relating to the representation of a client.

WYO. R. PROF.
CONDUCT 1.6(b)

A attorney may reveal such information to the extent the attorney reasonably believes it necessary:

- To prevent the client from committing a criminal act;
- To prevent the client from committing a fraud;
- To prevent, mitigate or rectify substantial injury to the financial interests or property of another;
- To secure legal advice about the attorney's compliance with the confidentiality rule;
- To establish a claim or defense on behalf of the attorney in a controversy between the attorney and the client;
- To comply with other law or a court order;
- To detect and resolve conflicts of interest arising from the attorney's change of employment; or
- To protect the best interests of an individual when the attorney has been appointed to act as a Guardian Ad Litem.

WYO. R. PROF.
CONDUCT 1.6(c)(12)

Counsel should treat a child client as any other adult client. If there is a safety concern or if it is in the child's best interest that the privileged information be shared with the DFS worker or team, counsel should make an attempt to get permission from the client to share the information, or try to get the information from another source.

Competency	WYO. PRACTICE GUIDELINE 1.2	<p>The right to counsel includes the right to effective counsel. Competence includes having the necessary legal knowledge and skills to effectively represent a client. Competent counsel will stay current on changes in the law and practice, attend trainings and educational programs, and comply with State Continuing Legal Education (CLE) requirements.</p> <p>Competence includes thorough preparation at every stage of the proceeding. This includes interviewing witnesses, reviewing records, and working with other attorneys.</p>
Conflict of Interest	WYO. R. PROF. CONDUCT 1.7(a)	A attorney shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if the representation of one client will be directly adverse to another client; or there is a significant risk that the representation of a client will be materially limited by the attorney's responsibilities to another client, a former client, a third person, or by a personal interest of the attorney.
	WYO. R. PROF. CONDUCT 1.7(b) GAL Division Policy D	<p>A conflict of interest may be waived if the attorney reasonably believes he or she will be able to provide competent representation, the representation is not prohibited by law, the representation does not involve a claim by one client against another represented by the attorney in the same proceedings, and the client gives informed consent in writing and is signed.</p> <p>There are a few situations during GAL representation where a conflict of interest can arise, including representation of siblings. Representing siblings is not automatically a conflict, but counsel must be aware that one can arise at the beginning, middle, or end of a case. It must be watched, and if a conflict does arise, counsel needs to ask the judge to appoint an additional GAL to represent the other sibling(s).</p> <p>As a diminished capacity client, whether or not the child can make an informed decision to waive a conflict of interest is troublesome. Counsel should make every effort to avoid this situation, as it is unlikely that a child would truly understand the dilemma and the legal consequences of the waiver.</p>
	WYO. R. PROF. CONDUCT 1.9	Clients in abuse and neglect proceedings can be particularly sensitive to even the appearance of a conflict of interest. Counsel should clearly communicate and explain the relationship among parties in the proceedings.
	WYO. PRACTICE GUIDELINE 1.4(a)	Another conflict of interest situation can arise when the court directs an attorney to represent both parents in an abuse and neglect proceeding. While not common, this practice does occur in Wyoming. Counsel should take all efforts to avoid being appointed to represent both parents in an abuse and neglect proceeding, as there are inherent conflicts of interest in doing so.
	WYO. R. PROF. CONDUCT 1.9(b)	Issues related to former clients should also be considered, especially in small communities. A attorney who has formerly represented a client in a matter must not represent another person in the same matter in

which that person's interests are materially adverse to the interests of the former client.

Communication

WYO. PRACTICE
GUIDELINE 1.3

Counsel for parents in abuse and neglect proceedings have the ethical duty of rendering adequate communication. Counsel should communicate regularly with the client and in advance of each hearing to assess whether the client is performing as he or she should. In abuse and neglect proceedings, the case can change very quickly. Counsel should maintain contact with the client at least weekly to keep apprised of issues that may have arisen in the case.

In order to maintain communication with the client, counsel should instruct the client of the importance of keeping counsel apprised of current contact information. Counsel may wish to ask the client for the name and contact information of an individual they can contact in the event that counsel is not able to locate the client.

WYO. PRACTICE
GUIDELINE 1.3(f)

In the event that counsel cannot locate the client, counsel should take whatever action is deemed ethical in the situation, including filing of a motion to withdraw if appropriate.

Due Diligence

WYO. R. PROF. CONDUCT
1.3

Counsel for parents in abuse and neglect proceedings have the ethical duty of due diligence to act with reasonable diligence and promptness in representing a client. Due diligence encompasses numerous responsibilities, including:

- Maintaining a reasonable caseload that allows adequate care and attention to each case;
- Conveying settlement offers and negotiations to the client in a reasonable time frame;
- Reviewing and monitoring court orders;
- Maintaining contact with the client;
- Keeping the client reasonably informed about matters;
- Providing enough information to the client to allow them to make an informed decision;
- Facilitating client participation in the matter;
- Discussing case developments with the client; and,
- Protecting the client's right to notice and participation.

Candor to the Court

WYO. R. PROF. CONDUCT
3.3(a)

Counsel also owes a duty of candor to the court. A attorney shall not knowingly:

- Make a false statement of fact or law to a tribunal or fail to correct a false statement;
- Fail to disclose legal authority known to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- Offer evidence that the attorney knows to be false.

WYO. R. PROF. CONDUCT
3.3(c)

Abuse and neglect proceedings are emotionally charged, and parents may be willing to do whatever it takes to secure the return of their children. If at any time a client advises counsel that they intend to lie

in court, counsel should immediately explain the consequences of that action to the client. Furthermore, as abuse and neglect proceedings are not criminal proceedings, counsel may refuse to call the client as a witness if the attorney believes the client is going to testify falsely on the stand.

The duty of candor continues to the conclusion of the proceeding, and applies even if compliance requires disclosure of information otherwise protected by the rules of confidentiality.

Billing

WYO. R. PROF. CONDUCT
1.5

Counsel should be aware of the ethical standards of practice regarding billing. As most counsel are court-appointed, each court may have their own additional rules of practice regarding billing. Counsel should familiarize themselves with the local rules of practice.

For child abuse and neglect proceedings counsel shall keep an accurate record of time. Counsel shall file a motion with an itemized bill or submit a bill to the designated office in the county. Attorney’s time shall be efficiently spent. The description of a specific task shall contain sufficient detail to allow the client or judge to measure the nature and merit of the task. Counsel shall exercise such judgment to fulfill the ethical obligation to charge only those fees that are “reasonable.”

WYO. STAT. § 1-14-
126(b)

In civil actions for which an award of attorney's fees is authorized, the court in its discretion may award reasonable attorney's fees to the prevailing party without requiring expert testimony.

Working with Other Parties

WYO. PRACTICE
GUIDELINE 1.1(a)

In the course of representation of a client, counsel will have numerous opportunities and obligations to interact with other parties, both professional and nonprofessional. Counsel should maintain a high level of professionalism and respect at all times in dealing with other parties.

WYO. R. PROF. CONDUCT
3.4

A attorney shall not do any of the following: obstruct another party’s access to evidence, falsify evidence, disobey a rule of the tribunal, make frivolous discovery requests, allude to irrelevant matters in trial, or request that a person other than a client refrain from voluntarily giving relevant information to another party.

WYO. R. PROF. CONDUCT
4.1

In the course of representing a client a attorney shall not knowingly make a false statement of material fact or law to a third person; or fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

WYO. R. PROF. CONDUCT
4.3

During the course of parent representation, there may be a situation in which a client’s significant other opts not to have legal representation. Counsel may be required to interact with this unrepresented party, such as when the client comes in for an appointment and brings the unrepresented party with them. Counsel should take great care at these times to clarify their role and explain to the unrepresented party that counsel can offer them no legal advice whatsoever.

Termination of the Attorney Client Relationship	WYO. R. PROF. CONDUCT 4.2	At times, however, a similar situation can occur where a client comes in for an appointment with their significant other, and the significant other <i>is</i> represented. Counsel should not speak to a represented party without first obtaining permission from that party’s attorney.
	WYO. PRACTICE GUIDELINE 1.4 WYO. R. PROF. CONDUCT 1.16	In the course of representing parents in abuse and neglect proceedings, there may be times when counsel needs to withdraw from representation. If, in the course of representation, counsel believes that he or she needs to withdraw from representation, counsel should follow the procedures as established by the Wyoming Rules of Professional Conduct.
	UNIF. R. DIST. CT. 102(c)	Until the court has issued an order allowing withdraw, they continue to be the attorney for the client and are bound by all of the ethical duties and responsibilities that come with that relationship. The court may deny the request for withdrawal, and counsel must continue to represent the client to the best of his or her abilities.
Representing the Non-Offending Parent	WYO. STAT. § 14-3-208(a)(iii)	<p>Counsel can be appointed to represent the non-offending parent. The non-offending parent has the same rights as the offending parent. The non-offending parent, while having committed no wrong, is still subject to the jurisdiction of the court and is in a position where an adjudication against the other parent can place his or her parental rights in jeopardy.</p> <p>If appointed to represent a non-offending parent, counsel should immediately advocate for the child to be placed in the custody of the non-offending parent. If it is in the best interest of the child, DFS may place the child with a non-offending parent upon conducting a background check to ensure the individual has not committed a crime involving serious harm to a child and has not been placed on the central child abuse registry.</p> <p>Once an adjudication is entered, the non-offending parent can be ordered to complete any of the requirements the offending parent is ordered to complete, and, in some cases, the non-offending parent may face more restrictive requirements in order to secure custody of his or her child. Counsel should advocate for the least restrictive requirements possible for the non-offending parent and argue that the non-offending parent did not abuse or neglect the child.</p>
	WYO. R. PROF. CONDUCT 1.14	<p>Some of the hardest representation issues that counsel will deal with will arise when representing a client with diminished capacity. As abuse and neglect proceedings are civil in nature, the client has no right to a finding of competency to proceed. Raising issues of competency can actually be detrimental to the client if the State argues that the parent is not competent to parent the child.</p> <p>When a client's capacity to make decisions is in question, counsel shall, as far as reasonably possible, maintain a normal client-attorney relationship with the client. When counsel reasonably believes that the client has diminished capacity counsel may take reasonably necessary</p>

protective action, including consulting with individuals that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian.

Protecting and Advising of Rights

WYO. R. PROF. CONDUCT
2.1

Counsel has a duty to advise their clients of their rights and ensure that their client’s rights are protected. Parents have a fundamental right to raise their children as they see fit within the limits of the law. Both the United States and Wyoming Constitutions provide that a citizen may not be deprived of life, liberty, or property without due process of law. When the State intervenes in the parent-child relationship, it must ensure that a parent receives due process of the law and that the rights of the parents are protected.

Matter of SAJ, 942 P.2d
407, 409 (Wyo.1997)

Actions infringing upon the parent-child relationship may affect fundamental rights, thereby entitling parents to due process. Termination of parental rights (TPR), for instance, requires clear and convincing evidence. Child neglect, on the other hand, need only be shown by a preponderance of the evidence. When a child is removed or not returned to the home in the dispositional phase it must be by clear and convincing evidence.

WYO. STAT. § 14-3-409

The Wyoming Child Protection Act also gives parents many statutory rights. Parents have the right to counsel in abuse and neglect proceedings. They have a right to notice of all of the allegations against them. Parents have the right to confront and cross-examine witnesses, to present their own witnesses and evidence, and to have court process issued to compel witness attendance and production of evidence. If they follow the proper statutory procedure, they have a right to a jury trial. They have the right to appeal adverse decisions. They are also entitled to certain statutory protections related to the confidentiality of the proceedings.

Represented Parties

WYO. R. PROF. CONDUCT
4.2

If other parties in the case are represented by an attorney, counsel must get permission from their attorney to speak to them or have their attorney present. This also applies to children represented by counsel.

1.4 Rules & Policies

Rules of Procedure for Juvenile Courts

WYO. R. P. JUV. CT.

There are ten Rules of Procedure specific to juvenile proceedings. These rules govern the practice and procedure in the trial Courts in all Juvenile Court actions: abuse and neglect, delinquency, and Child in Need of Supervision (CHINS). The rules were adopted in 2007 and incorporate current amendments.

WYO. R. P. JUV. CT. 1

Rule 1 outlines the title, scope, and definitions of the Rules and specifies that the Wyoming Rules of Evidence apply to juvenile proceedings.

WYO. R. P. JUV. CT. 2	Rule 2 governs the presence of the child in Court, the presence and limits of the foster parent or other out-of-home placement, the exclusion of the general public, and notice to foster parents, pre-adoptive parents, or relative caregivers that they may have the opportunity to be heard.
WYO. R. P. JUV. CT. 3	Rule 3 dictates discovery and compliance by the State, outlines matters not subject to discovery, prescribes discovery by other parties, delineates the procedure and timelines under which discovery must be furnished, dictates the continuing duty to disclose, speaks to protective orders to restrict discovery, allows that other orders may entered which aid discovery, and requires timely disclosure.
WYO. R. P. JUV. CT. 4	Rule 4 establishes the five business days prior to hearing time in which any report offered for consideration must be filed and served upon the parties.
WYO. R. P. JUV. CT. 5	Rule 5 establishes the right to counsel for respondents in juvenile actions (including in proceedings subject to the Indian Child Welfare Act and subject to Tribal Court jurisdiction), whether they are a juvenile, guardian, or parent. The rule governs notice and advisement of the right to counsel.
WYO. R. P. JUV. CT. 6	Rule 6 gives authority to the Courts to define procedures for conducting pretrial conferences.
WYO. R. P. JUV. CT. 7	Rule 7 allows the parties to stipulate to any matter. It requires the Court to accept stipulations to adjudication and disposition only if it determines the parties understand their rights and had sufficient opportunity to consult with counsel. Lastly, specific rules for stipulations in ICWA child cases are outlined.
WYO. R. P. JUV. CT. 8	Rule 8 provides the general requirements, qualifications, appointment, and duties of a CASA. They must be trained in accordance with National CASA Standards and appointed by the Court. They can only serve in abuse and neglect proceedings.
WYO. R. P. JUV. CT. 9	Rule 9 allows for agreements or plea-bargains whereby the parties agree that information gleaned by the state from a parent or respondent juvenile during the multi-disciplinary or case-planning process will not be admissible in subsequent criminal proceeding arising from the same episode. Additionally, the rule allows that a juvenile's admissions or incriminating statement to a professional in the course of treatment will not be admitted into evidence in any criminal or delinquency case without the juvenile's permission, excepting statements regarding future conduct.
WYO. R. P. JUV. CT. 10	Rule 10 prohibits juvenile proceedings to be delayed pending criminal proceedings in District or Circuit Court and requires that all juvenile cases proceed pursuant to statutory timelines set forth in the various articles of Title 14 of the Wyoming Statutes.

Additional Court Rules

WYO. STAT. § 14-3-409(e)

WYO. STAT. § 14-3-426

WYO. R. P. JUV. CT. 1(d)

WYO. R. CIV. P. 1

WYO. R. CRIM. P. 1(a), 54(b)

While the Wyoming Rules of Evidence apply to adjudications in juvenile proceedings, there are some specific exceptions as to what evidence may be received and considered by the Court in abuse or neglect proceedings:

- In shelter care or dispositional hearings, all material and relevant evidence helpful in determining questions may be received by the Court and relied upon for probative value. The parties or their counsel have the opportunity to examine and challenge written reports received as evidence and cross-examine persons making reports.
- Adjudicatory hearings require that only competent, relevant, and material evidence shall be admissible to determine the truth of the allegations. The Wyoming Rules of Evidence and Civil Procedure apply to adjudications.
- The Wyoming Rules of Criminal Procedure apply to CHINS and delinquency proceedings when consistent with the Juvenile Court Act.

2 Pre-Adjudication

2.1 Mandatory Reporting

Mandatory Reporting

WYO. STAT. § 14-3-201 – 214 Anyone who knows a child is abused or neglected must report it to Department of Family Services (DFS) or law enforcement immediately. This includes anyone who has reasonable cause to believe or suspect child abuse or neglect. It also includes anyone who observes a child subject to conditions that would reasonably result in abuse or neglect. Reports must be made to local law enforcement or DFS. Reporters acting in good faith are immune from civil and criminal liability. Good faith is presumed.

2.2 Investigation & Assessment

Warrant & Application

WYO. STAT. § 14-3-418(a) A search warrant application must be supported by affidavit. It must include an affidavit of at least one adult.

WYO. STAT. § 14-3-418(a) & (c) Both judges and commissioners can issue search warrants. A search warrant allows law enforcement to search a particular place or premises.

WYO. STAT. § 14-3-410(b) Upon application, the judge may issue a warrant if a child appears to be neglected, unlawfully detained, or physically abused. The child's health or welfare must require the child be taken into immediate custody.

WYO. STAT. § 14-3-418(d) The officer may use force if necessary to enter the place or premises if it is necessary to remove the children or obtain evidence that the child is being neglected, unlawfully detained, or physically abused. The officer serves a copy of the search warrant on the person in possession of the premises. After the search, the officer returns the original warrant to the court showing the officer's actions on the premises.

Access to Child

WYO. STAT. § 14-3-204(a)(iii) If the parent denies DFS reasonable access to the child, DFS may request a court order, either ex parte or at a hearing, requiring access to the child.

DFS Investigations

WYO. STAT. § 14-3-204(a)(ii) - (vii) DFS investigates reports of child abuse or neglect. If the case does not meet the standard for investigations, an assessment may be conducted instead. DFS must begin its investigation within twenty-four hours of receiving the report. DFS must cooperate, coordinate, and assist with law enforcement and the prosecuting attorney. DFS must make reasonable efforts to contact the noncustodial parent of the child and inform the parent of substantiated abuse or neglect.

WYO. STAT. § 14-3-206(c) Photos and x-rays of the child may be taken during the investigation to the extent allowed by law. A DFS investigator or anyone examining or treating suspected child abuse or neglect may take photographs or x-rays of visible areas of trauma on the child. These must be sent to DFS. They must be properly labeled. Any photos or x-rays taken during the

		investigation or copies of these are admissible in child protection proceedings.
	WYO. STAT. § 14-3-202(a)(x) & (xi) WYO. STAT. § 14-3-206(a)	DFS determines whether the report of a child abuse or neglect is substantiated or unsubstantiated. A report is substantiated if, after investigation, it is supported by a preponderance of evidence of alleged abuse or neglect after investigation. A report is unsubstantiated if it is not supported by a preponderance of evidence of abuse or neglect.
	WYO. STAT. § 14-3-204(a)(iv)	If a report is substantiated, DFS initiates services. These services are to assist the family in resolving the problems that lead to or caused the child abuse or neglect.
	WYO. STAT. § 14-3-204(a)(vii) WYO. STAT. § 14-3-202(a)(v)	If it is in the best interest of the child, DFS contacts the district attorney to begin child protection proceedings. If the district attorney declines to file a petition, DFS may request the court appoint the child a Guardian Ad Litem (GAL) to act in the best interest of the child. The GAL may petition the court to direct the district attorney to show cause why a child protection proceeding should not be brought.
	WYO. STAT. § 14-3-213(a), (d), & (e)	Substantiated reports and reports “under investigation” are maintained in a central registry. Reports under investigation must be substantiated within six months unless the state agency is notified of an open criminal investigation or prosecution.
Discovery	WYO. STAT. § 14-3-417	Any party may apply to the court or commissioner for subpoenas requiring the attendance and testimony of witnesses and for the production of records, documents, or other tangible evidence at any hearing. The court may issue subpoenas on its own motion.
	WYO. STAT. § 14-3-214(a) & (d)	All reports and records of child abuse and neglect are confidential. Violations are punishable by a fine and jail. A person who is legally entitled to access these records may not make any information public except as required for court proceedings.
	WYO. STAT. § 14-3-214(b) & (c) WYO. STAT. § 14-3-427(e) WYO. STAT. § 14-3-214(b)(viii)	Who may access DFS Records: <ul style="list-style-type: none"> ■ DFS; ■ Law Enforcement; ■ GAL; ■ Child protection team; ■ Attorney for the subject of the report; ■ Child’s treating physician or surgeon; ■ Person deciding whether to take the child into temporary protective custody; ■ Person responsible for the child’s welfare; ■ Court or grand jury to determine an issue (limited to in camera inspection unless the court finds public disclosure is necessary); ■ Court personnel investigating child abuse or neglect; ■ Physician or institution head who made the report; and

- Education or mental health professional deemed appropriate by DFS to provide necessary educational or mental health intervention.

WYO. STAT. § 14-3-214(h)

Disclosure of information, including recorded interviews of a child, to any civil proceeding not related to an abuse or neglect case brought under the Child Protective Services Act, unless by court order, is prohibited. The Court can conduct in camera review prior to issuing a protective order for the release of information and, if the information is released, appropriate protections must be in place to ensure against further dissemination.

WYO. R. P. JUV. CT. 2(a)
Wyo. Stat. § 14-3-424(b)
Wyo. Stat. § 14-3-431

A child who is not of a suitable age to understand or participate in the hearing does not need to be present unless the court orders the child's presence. If the child is of a suitable age, the court may excuse the presence of the child if attendance would be detrimental to the child.

WYO. STAT. § 42-2-111

The court may subpoena confidential DFS records and require DFS staff to testify in any proceedings involving the custody, welfare, or interests of a child receiving social services or public assistance.

25 U.S.C. § 1912(c)

If the Indian Child Welfare Act (ICWA) applies, the tribe and Indian custodian may access court records. Once they intervene as parties, they are entitled to all reports and other documents filed with the court upon which any decision will be based.

WYO. R. P. JUV. CT. 3

The Wyoming Rules of Procedure for Juvenile Courts provide detailed information on discovery in abuse and neglect, delinquency, and Child in Need of Supervision (CHINS) cases.

IN THE INTEREST OF MM:
MM V. THE STATE OF WYO., DFS, 2009 WY 28, 202 P.3D 409 (WYO. 2008)

In the MM case, the court held that the district court did not abuse its discretion in ordering the production of exculpatory evidence one day before trial and it did not violate the father's due process in refusing to dismiss the case. As long as disclosure is made before it is too late for the defendant to make use of the evidence, due process is satisfied.

IN THE INTEREST OF MC,
HC AND CC, MINOR CHILDREN. DL, APPELLANT V. STATE OF WYO., DFS, APPELLEE, 299 P.3D 75 (WYO. 2013)

In the MC case, Mother alleged that the State had failed to comply with Rule 3 of the W.R.P.J.C. She contended that the State failed to timely provide exculpatory evidence consisting of a negative urinalysis (UA) conducted on CC. Appellant also claimed that the State failed to provide a witness list before the hearing. The Court determined Mother had a number of options to address any prejudice claimed to have resulted from the discovery issues such as motions to compel, to continue, or for other appropriate relief. Because these motions were never made, the trial court had no opportunity to address the problems now claimed to have arisen and the court did not abuse its discretion.

<i>Predisposition Study</i>	WYO. STAT. § 14-3-427(a) WYO. R. P. JUV. CT. 4	After the petition is filed, the Court shall order that a predisposition study and report be completed and set a deadline for such completion. Factors and information DFS must include in the predisposition report include: social history, environment, and present condition of the child and family; the child’s performance in school, including any special education services; the presence of child abuse and neglect histories, learning or cognitive disabilities, physical impairments, and past acts of violence or domestic violence; the presence of any mental health or substance abuse risk factors, including current participation in counseling, therapy, or treatment; and other matters relevant to treatment of the child or proper disposition of the case.
<i>Case Plan</i>	WYO. STAT. § 14-3-427(k)	If a parent chooses not to comply with or participate in the case plan developed by DFS, the parent cannot later object or complain about the services provided.
 2.3 Protective Custody		
<i>Protective Custody</i>	WYO. STAT. § 14-3-405	Wyoming statute governs who can take a child into the protective custody of the State and under what circumstances. <ul style="list-style-type: none"> ■ Law enforcement: If there is reasonable grounds to believe that the child is abandoned, lost, suffering from an illness or injury, or would be seriously endangered by self or surroundings. ■ Physician, physician assistance, and nurse practitioner: If there is reasonable cause to believe an imminent danger to the child’s life, health or safety exists. ■ Court: The Court may issue an order of protection as a result of a petition filed by the prosecuting attorney, DFS, law enforcement, the administrator of a hospital in which a child is being treated, or a medical practitioner if the Court finds that there is reasonable cause to believe the child has been abused or neglected and that continuation in the care and custody of the parent would place the child in imminent danger of life, health, or safety.
<i>Temporary Protective Custody</i>	WYO. STAT. § 14-3-208	Temporary protective custody cannot exceed forty-eight hours, excluding weekends and legal holidays. When DFS accepts physical custody of the child, DFS must make efforts to inform the parents (including locating and notifying the non-custodial parent, also known as a “diligent search”), initiates an investigation, assesses the child’s mental and physical health needs, arranges for the child’s education, and arranges for the care of the child in the most appropriate and least restrictive setting necessary to meet the child’s needs.
	WYO. STAT. § 14-3-208	DFS may place the child with a non-custodial parent, extended family, a foster home, or other certified childcare facility. Prior to placing a child with a non-custodial parent or extended family member, DFS must determine whether anyone in the home has been convicted of a crime

involving serious harm to children or has been “substantiated” for abuse and neglect.

WYO. STAT. § 14-3-407(c)

When a child is taken into protective custody, DFS is required to notify the district attorney as soon as possible.

WYO. STAT. § 14-3-408(a)

WYO. STAT. § 14-3-408(b)

The district attorney then determines whether the protective custody should continue or be released. If released, no case in juvenile court is filed.

2.4 Jurisdiction & Petition

✓ Shelter Care and Initial Hearing Checklist

Timely Hearing

Date Child Removed: _____

Note: The Shelter Care Hearing shall be held within 48 hours of child’s removal, excluding weekends and legal holidays.

Date of Shelter Care Hearing: _____

Date of Initial Hearing: _____

Notice of Hearing

Determine if written notice of time, place, and purpose of the Shelter Care and Initial Hearing was issued to:

Child’s mother and attorney

Child’s father and attorney

Child’s guardians or custodians and attorney

Foster Parent(s)

Child and GAL or attorney

Tribe (If ICWA applies).

Ask district attorney and DFS to detail efforts made to notify and locate absent parents.

If inadequate notice given, reset hearing. Date of rescheduled hearing: _____

Order district attorney and DFS to locate and notify absent parents of next hearing.

Who Should be Present

Judge

County or District Attorney

Mother

Father

Guardians or Custodians

Parents’ Attorneys

DFS Caseworker

Age Appropriate Children

Law Enforcement

Guardian Ad Litem

Child’s Attorney

CASA

Spouse of Child, if any

Court Reporter

Service Providers

Probation Officer

Other Witnesses

Security Personnel

Foster Parents

Procedure

- Explain the purpose of the proceeding and give advisement of rights.
- Receive all relevant and material evidence to determine need for shelter care.
- Receive all material and relevant evidence helpful to determine placement, reasonable efforts, visitation, support, and education.
- Allow parties or counsel to examine and contest written reports received as evidence and cross-examine persons making the reports.
- Give foster or relative care giver an opportunity to be heard.
- Appoint a Multidisciplinary Team within ten days of filing the petition and order DFS to prepare a *Predisposition Study and Report*. If the child is to be placed in residential treatment, there are additional requirements for the report.
- Make contrary to the welfare and reasonable efforts findings.
- Make findings as to whether shelter care was necessary or still is necessary to keep the child safe.
- Ask questions needed to determine whether the Indian Child Welfare Act (ICWA) applies.

Advisement of Rights and Purpose of Proceedings

- Advise of contents of petition and nature of allegations.
- Right to legal counsel.
- Right to confront and cross-examine witnesses.
- Right to present witnesses and introduce evidence.
- Right to issuance of subpoenas by the Court.
- Right to jury trial.
- Right to appeal.
- Advise of liability for the costs of treatment and services.
- Advise that Petition to Terminate may be filed after fifteen of most recent twenty-two months.

Note: There are exceptions to the fifteen out of twenty-two rule requirement.

- Advise parents they can be punished for contempt of court for failing to abide by court order.

Admissions

- Give parents, custodians, or guardians opportunity to admit or deny allegations.
- Determine competency of admitting party.
- Determine which allegations of the petition have been admitted.
- Receive factual basis under oath and on the record.

Placement Options

- Ask DFS to provide details of child's proposed placement. See permanency goals below.
- Determine whether the placement proposed by DFS is the least disruptive and least restrictive and most family-like setting that meets the needs of the child.
- Determine if paternity has been established in order to determine possible placement with noncustodial parent.

Choose one of the following placement options:

- Leave child in the home without DFS supervision and without services.
- Leave child in the home with DFS supervision.
- Remove/continue removal of the child and place/continue to place child with DFS.

- Remove/continue removal of the child and place/continue to place with someone other than DFS.
- Return child to the home.

Child's Well-being & Family Services

Services

- Ask DFS to address services that will allow the child to remain/return safely at home.
- If services are not available that will allow the child to remain safely in the home, ask DFS to address what services the child and family need.
- Determine whether the parent(s), prior to adjudication, will voluntarily agree to participate in such services.
- Confirm that a child placed outside of the home has the opportunity to participate in age appropriate and developmentally appropriate activities and experiences.
- Address whether the child needs any physical and mental examinations.
- Address whether releases need to be signed by parent(s) to allow access to records of child/parent(s).
- Order restraining or no contact orders.

Visitation

- Determine if DFS has a proposed visitation plan.
- If not, order DFS to address visitation between child and parents and siblings.
- Determine whether visitation should be supervised or unsupervised or left to the discretion of DFS.
- Advise parent(s) that timely appearance and sobriety is expected and to contact DFS if unable to make visit.
- Determine if all parties are in agreement of proposed visitation plan.

Educational issues

- Determine which school and grade the child is enrolled in.
- Determine whether there are problems with absences, truancies, or suspensions.
- Determine whether the child has physical, emotional or mental health issues that impair his or her ability to learn, attend, or interact appropriately.
- Determine whether the child has an Individual Education Plan, Individual Family Service Plan, or 504 Plan.
- Determine whether the child has been evaluated for special education eligibility.
- Determine who will ensure that the child's educational needs are met.
- If any of the above issues are not known, order DFS to gather the information about the child's educational history and educational needs.

Contrary to the Welfare and Reasonable Efforts Findings

Note: Contrary to the welfare and reasonable efforts findings must be detailed and child specific.

- Ask DFS to detail efforts made to avoid protective placement of child.
- Determine whether continuation in the home would be contrary to the child's welfare:

Note: This finding shall be made at the first court hearing authorizing the child's removal.

Reasonable efforts findings (Choose one of the following three options)

- DFS made reasonable efforts to prevent or eliminate the need for placement, including: _____
- The lack of efforts by DFS to prevent or eliminate need for removal was reasonable due to the following emergency circumstances: _____
- DFS has NOT made reasonable efforts to prevent or eliminate the need for placement because: _____

Note: For an Indian child and ICWA case, DFS must show "active efforts" to prevent placement.

Reasonable efforts not required

Reasonable efforts are not required when the court finds clear and convincing evidence that the parent has committed certain crimes or abandoned the child.

Permanency Goals

- Has the child been in foster care sixty days or, if less than sixty days, has a permanency goal been established? If either answer is “yes” assess the case.
- What are the permanency goals and were all goals in effect during period under review implemented in a timely manner?
- Were the permanency goals appropriate?

ICWA

Does ICWA apply? If so, see the ICWA checklist in Chapter 5 below.

Schedule Next Hearing

Initial Hearing Date: _____

Note: If the Shelter Care and Initial Hearing are not held simultaneously, it is best practice to hold the Initial Hearing within 7 days of the Shelter Care Hearing.

Adjudicatory Hearing Date: _____

Note: §14-3-409(c) requires the hearing to be held within sixty days of denial of allegations, unless there is a finding of good cause to delay the hearing. In no case shall the court hold the adjudicatory hearing more than ninety (90) days after the date the petition is filed.

Disposition Hearing Date: _____

Note: The Dispositional Hearing must be held within sixty days of adjudication.

Permanency Hearing Date: _____

Note: §14-3-440(g) requires a Permanency Hearing be held within thirty days of the Court’s determination that reasonable efforts to preserve and reunify the family are not needed under §14-2-309(a)(vi), (b) or (c), otherwise the hearing must be held within twelve months of child’s removal from the home.

Jurisdiction

WYO. STAT. § 14-3-403(a)

The juvenile court has jurisdiction over child protection proceedings. As part of these proceedings, the juvenile court has the authority to:

- Determine the child's legal custody;
- Order any party to perform any acts, duties, or responsibilities the court deems necessary, and
- Order any party to refrain from any act or conduct the court deems detrimental to the child's best interests or welfare or essential to the disposition order.

Child Protection Jurisdiction	
Juvenile Court	Exclusive jurisdiction
District Court	Concurrent jurisdiction
Tribal Court	Jurisdiction over Indian children
UCCJA	Interstate jurisdiction

WYO. STAT. § 14-3-403(b)

The district court retains jurisdiction to determine questions of custody, parental rights, guardianship, or other issues involving minors if the

questions are incidental to suits in or transferred to the district court. If a petition regarding the same child is pending in juvenile court or if the case was previously in juvenile court, the district court may ask the juvenile court to address custody questions and make recommendations regarding guardianship or custody.

WYO. R. P. JUV. CT. 10

There may also be concurrent criminal proceedings. The same incident that gives rise to child protection proceedings may also result in criminal charges. However, the juvenile case shall not be delayed or stayed pending a criminal proceeding.

25 U.S.C. § 1911(a)
25 U.S.C. § 1922

Tribal court has exclusive jurisdiction over children on its reservation. This includes children who reside or are domiciled on the reservation and any wards of tribal court regardless of where they live. However, the Indian Child Welfare Act allows state courts to make emergency removals of Indian children temporarily off the reservation to prevent their imminent physical damage or harm.

25 U.S.C. § 1911(b) & (c)

A juvenile court case involving an Indian child is subject to transfer to tribal court. A parent, Indian custodian, or the tribe may petition to transfer a case involving an Indian child living off the reservation to tribal court. The judge only has discretion to deny the transfer to tribal court if:

- Either parent opposes it;
- The tribe declines jurisdiction; or
- There is good cause to retain state jurisdiction.

WYO. STAT. § 20-5-306
WYO. STAT. § 20-5-202(iv)

The Uniform Child Custody Jurisdiction Act (UCCJA) governs interstate custody cases. The goals of the UCCJA are to avoid disputes between states over child custody jurisdiction and to ensure the state with which the child has the closest connections makes custody decisions. The custody proceedings covered by the UCCJA include child protection cases.

WYO. STAT. § 14-5-104

Under the UCCJA, a state may take jurisdiction over child custody only in specific circumstances. The child’s physical presence in the state alone is not enough for jurisdiction, except in an emergency. Physical presence is also not a prerequisite to jurisdiction. The judge must make specific findings on the basis for jurisdiction.

Basis for Jurisdiction under UCCJA	
Home State	The “home state” is where the child has resided for the last six months. Alternatively, it is where the child resided for six months before being removed by a person claiming custody as long as one parent remains in that state.
Significant Connections	The child and at least one parent have significant connections with the state and there is substantial relevant evidence in the state regarding the child’s current or future care.
Emergency Circumstances	The child is in the state and in need of emergency protection from abuse or neglect. The child has been abandoned in the state.
Other State Jurisdiction	No other state has jurisdiction under these guidelines. The child’s home state has declined jurisdiction. In either

	situation, it must be in the child’s best interests for the state to assume jurisdiction.
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Venue

WYO. STAT. § 14-3-404

Venue for child protective proceedings is the county:

- Where the child is living; or
- Where the child is present when the petition is filed.

The juvenile court may transfer venue or change the judge as allowed under the Wyoming Rules of Civil Procedures.

Petition

WYO. STAT. § 14-3-411

All allegations of neglect are reviewed by the district attorney. The district attorney determines if a juvenile court action is in the child’s best interest. If the district attorney determines that a juvenile court case is in the child’s best interest, the district attorney prepares and files a petition alleging that the child has been abused or neglected.

WYO. STAT. § 14-3-412(a)

A child protection proceeding in juvenile court is commenced by filing a petition with the clerk of the court. There is no filing fee.

WYO. STAT. § 14-3-434(a)

25 U.S.C. § 1912

The petition should state if the child is an Indian child. If so, it should name the child's tribe, parents, and any Indian custodian

WYO. STAT. § 14-3-413

After the petition is filed, the court must issue an order to appear to the respondents in the petition as well as any noncustodial parents or putative fathers.

In re JM, 334 P.3d 568, 2014 WY 114 (Wyo. 2014)

The compulsory attendance statute creates duties as to children, parents, and school districts, not DFS. When a child is habitually truant there may be an action against the parents in criminal court, and there may be another action involving the child under the Juvenile Justice Act. Those procedures, however, do not apply when DFS receives a report that a child is neglected. A district attorney can file and prosecute a neglect action without the need for compliance with the compulsory attendance statute.

Notice

WYO. STAT. § 14-3-413(a)(iii) & (iv), (d)

After the petition is filed, the Court shall issue an order to appear. The order is served on:

- The child, if age 14 or older;
- The child's parents, guardian, or custodian;
- The child's spouse, if any;
- Any other person the court deems necessary; and
- A noncustodial parent or putative father of a child whose parental rights have not been removed.

WYO. R. P. JUV. CT. 2(B)

A foster parent is entitled to be heard at any hearing. However, the court may limit the foster parent's presence if it is in the child's best interest or necessary to protect privacy of the parties.

WYO. R. P. JUV. CT. 2(D)

Prior to each hearing, the district attorney is to provide written notice, including the right to be heard, of the hearing to the foster parents and relative caregivers or a designated party.

WYO. STAT. § 14-3-413	<p>Notice to a noncustodial parent or putative father whose rights have not been removed and who is not a subject of a petition is to include:</p> <ul style="list-style-type: none"> ■ Petition filed; ■ Noncustodial parent or putative father was named in the petition; ■ Failure to respond to notice or appear or participate in case may result in TPR; and ■ May be considered for possible placement of the child. <p>Noncustodial parent or putative father served with notice shall:</p> <ul style="list-style-type: none"> ■ Respond and appear at the hearing; ■ Admit or deny being a noncustodial parent or a putative father; ■ Submit to the court's jurisdiction; and ■ Provide information and abide by the court's order. <p>If a parent or putative father is served and fails to respond, he or she cannot later assert parental rights opposing a permanency plan unless for good cause shown.</p>
WYO. STAT. § 14-3-402(a)(xiv)	<p>Parties in child protection proceeding include:</p> <ul style="list-style-type: none"> ■ Child; ■ Parents, guardian, or custodian; ■ State of Wyoming; and ■ Any person ordered to appear or named as a party by the juvenile court.
M.K.M., 792 P.2d 1369 (Wyo. 1990)	<p>In the <i>M.K.M.</i> case, the father was charged with sexual abuse after his divorce from the mother. Later, the child made allegations of sexual abuse against the mother's new husband. Given the acrimony between the parents, the unresolved charges, and the child's need for stability, the court ordered the child into the custody of the paternal grandmother. The mother appealed, arguing the grandmother could not be a "party" to the proceedings. The Wyoming Supreme Court affirmed the order, holding that an interested relative of a neglected child may become a party by filing a motion to intervene.</p>
WYO. STAT. § 1-22-108(d)	<p>A putative father has no right to assert paternity in a child protective proceeding unless:</p> <ul style="list-style-type: none"> ■ He is known or identified by the mother or DFS; or ■ He lived with or married the mother after the child's birth and before an adoption petition was filed. <p>He must also acknowledge the child as his own by affirmatively asserting his paternity or by registering as a putative father with the putative father registry before an adoption petition is filed.</p>
25 U.S.C. § 1911(c)	<p>The child's tribe and Indian custodian have the right to intervene at any point in the child protection proceeding. According to the ICWA, this right applies to any foster care or termination proceeding (both voluntary and involuntary) involving an Indian child.</p>
25 U.S.C. § 1912	<p>The child protection petition must be served on the Indian child's tribe. Parents and any Indian custodians must also be given notice of the proceeding by registered mail. The judge cannot hold a hearing until at</p>

		least ten days after the parent or Indian custodian and the tribe or the Secretary of the Interior receive notice. The judge must grant another twenty days to prepare if requested.
	WYO. STAT. § 14-3-414(a)	An order to appear is served by the sheriff or an undersheriff, deputy, or a responsible adult who is not a party to the proceedings appointed by the clerk.
	WYO. STAT. § 14-3-414(b)	In-state parents must be personally served with the petition and order to appear. Both parents may be served by delivering two copies to one parent. The child is served by delivering a copy to the child's parents, guardian, custodian, other adult with physical custody and control of the child, GAL, or attorney.
	WYO. STAT. § 14-3-414(c)	Out-of-state parents may be personally served outside the state or by certified mail with return receipt requested signed by addressee only.
	WYO. STAT. § 14-3-414(c)	If DFS has custody of the child, it must file an affidavit explaining its efforts to locate the parents. If the parents cannot be found with reasonable diligence, the court appoints a GAL to represent the child and receive service.
	WYO. STAT. § 14-3-414(f)	Constructive service or service by publication can be made if a person's residence is unknown.
	WYO. STAT. § 14-3-434(a) & (b)(iii)	No fee is charged for service of process in child protective cases by law enforcement in this state. The county pays the costs of service of process or certified mail notice. These costs must be approved and certified by the court to the county treasurer.
	WYO. STAT. § 14-3-414(d)	Service is complete upon delivery. The date of service is the date the petition and order to appear are delivered to the person to be served. This includes both in-state and out-of-state parties. For service by certified mail, service is complete on the date the clerk receives the return receipt signed by the addressee.
	WYO. STAT. § 14-3-414(e)	When personal service of order to appear is made within the state, service shall be completed not less than two days before the hearing and when made outside the state, service shall be completed not less than five days before the hearing. Even if service is not completed, the court may place the child in shelter care.
	WYO. STAT. § 14-3-413(c)	Parties may waive service either in writing or by voluntary appearance at the hearing. A child may only waive service with the consent of the child's parents, guardian, custodian, GAL, or counsel.

2.5 Shelter Care & Initial Hearing

Removal	WYO. STAT. § 14-3-402(a)(xvii)	Shelter care means the temporary care of the child pending disposition or execution of a placement or commitment order. For children in child protection proceedings, shelter care must be in a physically unrestricted setting.
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WYO. STAT. § 14-3-406(a)

A child shall not be placed in shelter care without a court order unless it is necessary to:

- Protect the child;
- Prevent the child from being removed from the court's jurisdiction; and
- Provide the child with care because the child is without a parent, guardian, custodian, or other responsible adult.

Once a child has been removed from the home pursuant to statute, DFS policy requires DFS to consider relatives and all other appropriate placement resources for the child.

WYO. STAT. § 14-3-405(a)

Law enforcement officers may take a child into protective custody. The officer does not need a warrant, court order, or parental or guardian consent if there are reasonable grounds to believe the child is:

- Abandoned;
- Lost;
- Suffering from an illness or injury;
- Seriously endangered by the child's surroundings;
- Seriously endangered by their own conduct or behavior; and
- Immediate custody appears necessary for the child's protection.

WYO. STAT. § 14-3-208(a) & (c)

WYO. STAT. § 14-3-405(b) & (d)

Physicians, nurse practitioners, or physician's assistants may take temporary protective custody of a child if there is reasonable cause to believe the child's life or safety is in imminent danger and there is no time to apply for a court order. The doctor or staff member must notify DFS as soon as possible. DFS must begin an investigation and make every reasonable effort to notify the parent (or person responsible for the child's welfare) that the child has been taken into temporary protective custody. Temporary protective custody may not exceed forty-eight hours.

WYO. STAT. § 14-3-208(b) & (c)

WYO. STAT. § 14-3-405

The court may issue a temporary protective custody order if the judge finds that the child's life or safety is in danger. This order may be requested by:

- DFS;
- Law enforcement;
- The administrator for the hospital where the child is being treated;
- The physician, nurse practitioner, or physician's assistant treating the child; or
- District attorney.

A temporary protective custody order may be requested whether or not the child requires additional medical treatment. The court may order medical, mental health, and substance abuse care, notwithstanding the absence of a prior finding of abuse or neglect. DFS must be notified of the protective custody order. Temporary protective custody may not exceed forty-eight hours.

WYO. STAT. § 14-3-413(b)

The court may order removal after a child protection petition is filed. The district attorney must attach an affidavit to the petition stating facts based on actual knowledge or information and belief to support the grounds for

WYO. STAT. § 14-3-405(a), (b) & (c)

removal. The court may direct the person serving the order to appear to take the child into immediate custody and bring the child before the court.

25 U.S.C. § 1915(b)

For an Indian child, DFS must follow tribal placement preferences. Under ICWA, preference for foster care placement must be given, in the absence of good cause to the contrary, to:

- Extended family members;
- Foster homes approved by the tribes;
- Licensed Indian foster homes; and
- Indian-approved institutions.

WYO. STAT. § 14-3-406(b)

WYO. STAT. § 14-3-208

After Removal Without a Court Order	
Responsibility	Action
Person who removed the child	Notify the parents, guardian, or custodian
Person who removed the child	Notify the court
Person who removed the child	Notify the district attorney
District Attorney	Determine if shelter care is necessary
District Attorney	File a child protection petition
District Court	Hold a shelter care hearing within forty-eight hours

The parent must be notified if the child is taken into protective custody. The person taking the child into custody must notify the child's parent, guardian, or custodian as soon as possible. Unless shelter care is necessary or ordered by the court, the child must be released to the parent, guardian, custodian, or other responsible adult upon that person's written promise to bring the child to court upon request.

WYO. STAT. § 14-3-407(a) & (c)

If shelter care is necessary, the court must be notified. The child should be delivered to the court or taken to a DFS facility as soon as possible. DFS must promptly notify the court and the DA of any child being cared for without a court order. The child must be delivered to the court upon request.

WYO. STAT. § 14-3-408(a) & (b)

WYO. STAT. § 14-3-407(c)

The district attorney must also be notified of protective custody without delay. As soon as possible, the person taking protective custody must file a written statement about the facts surrounding the removal and the reason the child was not released. DFS must also promptly notify the district attorney of any child being cared for by DFS without a court order.

WYO. STAT. § 14-3-408(b)

Once notified, the district attorney must immediately review the need for shelter care. The district attorney may order the child released unless the court orders shelter care or it is necessary as defined by the statute.

WYO. STAT. § 14-3-409(a)

Once a child is taken into protective custody without a court order, DFS must request the district attorney to file a child protection petition.

WYO. STAT. § 14-3-409(a)

The court must hold a shelter care hearing within forty-eight hours after protective custody. If the judge is unavailable or unable to conduct the shelter care hearing, the district court commissioner in the county where the child is being held may hear it.

Notice

WYO. STAT. § 14-3-409(a)

Written notice of the shelter care hearing must be given to the child and the child's parents, guardian, or custodian.

WYO. STAT. § 14-3-414(e)

Determine if notice was served. The court may order the child be held in shelter care even if service is not completed.

WYO. STAT. § 14-3-409(f)

If the parents did not receive notice, the matter must be reheard without delay. This is required if:

- The child is not released;
- It appears by sworn statement that the parents, guardian, or custodian did not receive notice; or
- The parents, guardian, or custodian did not waive notice and appearance at the hearing.

Hearing

Statutory Definitions for Shelter Care Hearing		
Term	Definition	Citation
Imminent Danger	A threat, statement, over act, condition, or status that represents an immediate and substantial risk of physical or mental injury or sexual abuse	WYO. STAT. § 14-3-202(a)(ii)(D)
Substantial Risk	A strong possibility, as opposed to a remote or insignificant possibility	WYO. STAT. § 14-3-202(a)(ii)(C)
Physical Injury	Any harm to the child, including disfigurement, impairment of any bodily organ, skin bruising (inconsistent with minimal corporal punishment), bleeding, burns, fractures of any bone, subdural hematoma, or substantial malnutrition	WYO. STAT. § 14-3-202(a)(ii)(B)
Mental Injury	An injury to the child's psychological capacity or emotional stability shown by an observable or substantial impairment of the child's ability to function within a normal range of performance and behavior, giving due regard to the child's culture	WYO. STAT. § 14-3-202(a)(ii)(A)
Sexual Abuse	Committing or allowing the commission of a sexual offense against a child	WYO. STAT. § 14-3-202(a)(ii)

WYO. STAT. § 14-3-426

The parents have an opportunity to admit or deny the allegations in the petition. If they admit the allegations, the court should make appropriate adjudication and proceed to a disposition. If the case proceeds to a dispositional hearing, the court must have a Pre-Dispositional Report (PDR) and Multidisciplinary Team (MDT) recommendations. If the parent(s) deny the allegations, an adjudicatory hearing must be set within sixty days. The hearing can be set up to ninety days after the petition is filed for good cause shown.

	<p>IN THE INTEREST OF DRT, A MINOR. JET V. THE STATE OF WYO., DFS, 2010 WY 137, 241 P.3D 489 (WYO. 2010)</p>	<p>Juvenile court is vested with discretion when considering whether to grant a motion to withdraw a voluntary admission of neglect, even if respondent suffers from a mental illness.</p>
	<p>WYO. STAT. § 14-3-409(e) WYO. STAT. § 14-3-426 WYO. R. EVID. 1101(b)(3)</p>	<p>All relevant and material evidence is admissible at the shelter care and initial hearings. All relevant and material evidence may be used to make shelter care decisions, even if it would not be competent in an adjudicatory hearing on the allegations. The parties and their attorneys may examine and controvert written reports received as evidence and may cross-examine those who made the reports. The Wyoming Rules of Evidence do not apply to shelter care or initial hearings.</p>
	<p>IN THE INTEREST OF DSB: JA V. STATE OF WYO., DFS, 2008 WY 15, 176 P.3D 633 (WYO. 2008)</p>	<p>The ninety-day statutory requirement for an adjudicatory hearing does not result in the termination of subject matter jurisdiction by the juvenile court if the ninety-day period is exceeded. The proper remedy is dismissal without prejudice and allow the District Attorney the opportunity to re-file the charge.</p>
<p>Contrary to Welfare</p>	<p>42 U.S.C. § 672(a)(2)</p>	<p>At the shelter care hearing or at a hearing on a request to remove a child from the home, the Court determines whether it is contrary to the child’s welfare to remain in, or return to, the child’s home. This requirement does <i>not</i> affect the authority to protect or remove a child. It does affect DFS’ ability to get federal funding for the placement.</p>
	<p>45 C.F.R. § 1356.21(c) & (d)</p>	<p>If the child is removed with a court order, this finding should be included in the temporary protective custody order. If the child is removed without a court order, this finding should be made at the shelter care hearing and included in the order following that hearing. If the “contrary to the welfare” finding is not made at the first hearing following removal, the child’s “stay in care” is ineligible for federal funding. In other words, it cannot be remedied by a finding at a later hearing, unless the child has returned home and a new placement in foster care is necessary.</p>
	<p>45 C.F.R. § 1356.21(c) & (d)</p>	<p>A contrary to welfare finding must be detailed. It must be in the court order or hearing transcript. Affidavits, <i>nunc pro tunc</i> orders, or orders simply referring to a state law requiring such findings for removal do not meet this requirement. A court order that refers to specific facts in a sustained petition, affidavit, or court report is acceptable. A finding that remaining in or returning to the child’s home is not in the child’s best interest is sufficient to satisfy the “contrary to the welfare” finding requirement.</p>

Reasonable Efforts

WYO. STAT. § 14-3-440(a)(i), (b), & (f)
 42 U.S.C. § 671(a)(15)
 45 C.F.R. § 1356.21(b)

To prevent unnecessary separation of children from their families, the court monitors whether "reasonable efforts" were made. In every case in which a child is removed from the parents, guardian, or custodian, the judge must determine and document in the court order whether reasonable efforts to prevent or eliminate the need for placement were made. Reasonable efforts are only required if they are consistent with the child's safety. This requirement does not affect the authority to protect or remove a child. It does affect DFS' ability to get federal funding for the placement. This finding must be made within sixty days of removal.

Reasonable Efforts Findings
DFS made reasonable efforts to prevent the child's removal.
DFS did not make reasonable efforts to prevent the child's removal.
The lack of efforts was reasonable because of an emergency situation.

45 C.F.R. § 1356.21(b)(1)

If the judge finds services should have been offered to prevent removal but were not, the Court can find that reasonable efforts were not made. The judge may still remove the child, but DFS loses federal funding for the child's entire placement.

45 C.F.R. § 1356.21(b)

Reasonable efforts to prevent removal are not required in an emergency. If a child is removed without efforts to prevent the placement, the judge may find it was reasonable under emergency circumstances to protect the child.

25 U.S.C. § 1912(d)

For an Indian child, DFS must show "active efforts" to prevent placement outside the home. Under ICWA, the state must satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs to prevent the breakup of Indian families and that these efforts have proved unsuccessful before removing an Indian child to foster care.

WYO. STAT. § 14-3-204

DFS shall make reasonable efforts to determine if a person responsible for a child's welfare in a suspected case of child abuse or neglect is a member of the armed forces or if the child is enrolled in the defense enrollment eligibility reporting system of the United States Department of Defense.

Order

WYO. STAT. § 14-3-409(d)

The judge should determine whether continued shelter care is required. This determination should be made whether the allegations are admitted or denied.

WYO. STAT. § 14-3-409(d)

If the judge finds full-time shelter care is not required, the judge may:

- Place the family under the supervision of DFS or another organization or individual approved by the court; or
- Impose any terms and conditions on the child's release reasonably necessary to protect the child and ensure the child will be brought to subsequent hearings.

WYO. STAT. § 14-3-426(f)

The judge may reconsider a shelter care order at any time before the disposition. The judge may also reconsider conditions on release of the child.

Advisement

WYO. STAT. § 14-3-426(a)

The initial hearing may be held after a shelter care hearing or at the same time. If the parents, guardian, or custodian were present at the shelter care hearing and advised of their rights, the judge does not need to hold a separate initial hearing.

WYO. STAT. § 14-3-426(a)

At the initial hearing, the parties should be advised of their rights. Parents should be advised that they may be liable for treatment or services costs.

WYO. STAT. § 14-3-423(b)

In the Interest of NP, a Minor Child, 2017 WY 18 (Wyo. 2017)

The party against whom the petition is filed has a right to a jury trial. The demand for a jury trial must be made within ten days after the party is advised of the right to a jury trial. No deposit for jury fees is required. Failure to demand a jury trial is a waiver of this right. The district attorney may also request a jury trial.

WYO. STAT. § 14-3-426(a)

The parents should have an opportunity to admit or deny the allegations in the petition. The parents, guardian, or custodian should be advised of the specific allegations against them. The district attorney is *not* required to establish probable cause that the petition allegations are true at the initial hearing.

WYO. STAT. § 14-3-426(b)

If the parents deny the allegations, the judge may immediately hold the adjudicatory hearing. The judge may also set the adjudicatory hearing for a later date, but it must be set within sixty days. The hearing can be set within ninety days of the date the petition was filed for good cause shown.

2.6 Pretrial

TRO

WYO. STAT. § 14-3-403(a)(ii) & (iii)

The judge may issue a temporary restraining order (TRO). The judge is authorized to do so at any time in a child protection proceeding. The judge may require any party to perform any acts, duties, or responsibilities the court deems necessary, and may also require any party to refrain from any act or conduct the court deems detrimental to the child's best interests or welfare or essential to the court's order.

Examinations

WYO. STAT. § 14-3-419
WYO. STAT. § 14-3-410(b)

The judge may order physical and mental examinations of the child. After the petition is filed, the district attorney, parents, guardian, custodian, attorney, or the court may file a motion for an examination. Both judges and commissioners may make these orders. The judge may order the child be examined to help determine the child's physical and mental condition. The judge may order it be done by any of the following licensed and qualified professionals.

WYO. STAT. § 14-3-419

Professionals for Examination	
Physician	
Surgeon	
Psychiatrist	
Psychologist	
Mental health professional	

WYO. STAT. § 14-3-419

The examination must be done on an outpatient basis. However, if necessary, the judge may commit the child to a suitable medical facility or institution. The commitment may not exceed fifteen days.

	WYO. STAT. § 14-3-421	The person who performs the examination must provide the court with written and signed results. The judge may not consider the report before the adjudication, but the judge may use it at the disposition. Copies of the report go to the child's parents, guardian, custodian, or attorney upon request.
	WYO. STAT. § 14-3-434(b)(iv)	The county pays for court-ordered examinations. In child protective cases, the county pays these costs if the court approves and certifies them to the county treasurer. A child in DFS custody is eligible for medical services through Medicaid.
Treatment	WYO. STAT. § 14-3-420 WYO. STAT. § 14-3-410(b)	The judge may authorize emergency medical, surgical, or dental treatment for the child. This may be done before or after a petition is filed for a child taken into custody. The judge may order treatment based on the opinion of a licensed and qualified physician or surgeon that the child is suffering from a serious physical condition or illness that requires prompt treatment. The judge may also order treatment if a doctor believes a prompt examination is necessary to preserve evidence of neglect.
	WYO. STAT. § 14-3-420	The judge may order medical and mental health assessments and ordinary and emergency care for the child if necessary for the child's best interests or welfare. A child protection adjudication is not required.
	WYO. STAT. § 14-3-434(b)(iv)	The county pays for court-ordered treatment. In child protective cases, the county pays these costs if the court approves and certifies them to the county treasurer. A child in DFS custody is eligible for medical services through Medicaid.
Placement and Visitation	Adoptions and Safe Families Act of 1997(H.R. 867)	Immediate and frequent visitation between the child and his or her caretaker or parent helps maintain the child's identity and reduces trauma. It also influences future safety decision-making. The parties should avoid "cookie-cutter" visitation plans as these often place needless restrictions or barriers on parent-child contact and delay reunification. The parties should always keep in mind why the child was removed in determining a visitation plan. The Adoption Assistance and Child Welfare Act of 1980 (AACWA) as well as the Adoption and Safe Family Act (ASFA) mandates that "reasonable efforts" be made to reunify children with their parents. As such, a solid visitation plan should be developed immediately to increase the likelihood of reunification by disrupting the bond or relationship between the child and caregiver as little as possible.
	WYO. STAT. § 14-3-429(H)	DFS may change the placement of a child without a court order if the child is moved to a similar or less restrictive placement.

Out of Home Care

Adoptions and Safe Families Act of 1997(H.R. 867)

There are levels of out-of-home care that are thought to be less disruptive to children. Before placing a child out of the home, however, first consider whether the child can be left in the home with or without DFS supervision as to avoid removal of the child. If removal is necessary, consider placing the child with a suitable relative or adult caretaker with whom the child is familiar with. If there is no suitable relative or adult available, the child should be placed in a foster home. Please see other sections with regards to residential or psychiatric treatment facility placements.

Continuance

WYO. STAT. § 14-3-426

Abuse and neglect proceedings move quickly through the court system. Parties may receive short notice of hearings and small time frames in which to prepare. This short time frame may also make it difficult to obtain discovery. This may lead to a party requesting a continuance. As a general practice, continuances should not be requested.

WYO. PRACTICE GUIDELINE 1.3(d)

There is an ethical duty to expedite litigation and avoid unreasonable continuances by any party. If it is necessary to request a continuance on behalf of client or that a continuance would materially benefit client’s case, file a written motion for a continuance that clearly states good cause or compelling reasons.

2.7 Consent Decree

Consent Decree

WYO. STAT. § 14-3-428(A)

At any time before adjudication, the judge may issue a consent decree. A consent decree holds the proceedings in abeyance based on the parties' agreement to specific terms, conditions, and stipulations. The judge cannot enter a consent decree without the consent of the district attorney, child's Guardian Ad Litem, and the parents.

WYO. STAT. § 14-3-428(E)

If a consent decree is in place and the child is in placement, the court shall hold review hearings as provided by WYO. STAT. § 14-3-431.

WYO. STAT. § 14-3-428(c) & (d)

If a child is placed out of the home, a consent decree can only be six months in length with one six-month extension. If a child is placed in the home, the parties may agree to length, and no maximum limit is set.

WYO. STAT. § 14-3-428(f)

If consent decree conditions are not met, the judge may reinstate the proceedings. If the parents or guardian fail to fulfill the terms and conditions of the consent decree, and there was not an admittance with the consent decree, the judge will set an adjudicatory hearing. The judge may also reinstate the proceedings if a new child protection petition is filed.

WYO. STAT. § 14-3-428(g)

If the case is not reinstated before the consent decree expires, the petition is dismissed. If the consent decree is completed, another child protection petition on the same misconduct may not be filed. The dismissal does not affect concurrent criminal charges.

In Re CDR, 2015 WY 79, 351 P.3d 264 (2015)

Consent decrees should be enforced as a contract in accordance with the parties’ intent. In CDR, the consent decree had not expired prior to the State moving to terminate it and reinstate the neglect proceedings and, therefore, the court did not lose jurisdiction.

In RE CRA, 368 P.3d
294, 2016 WY 24
(Wyo. 2016)

The juvenile court properly dismissed the CRA case without a hearing when the district attorney filed a motion to dismiss after finding that the custodial parent complied with the terms of the consent decree and completed the case plan.

In re DJS-Y, 394 P. 3d
467, 2017 WY 54
(Wyo 2017)

The Supreme Court determined whether a juvenile court has the authority to extend a Consent Decree after six (6) months had lapsed which was inconsistent with the Decree's terms. The State filed a petition alleging that Mother had neglected her children, and the juvenile court entered a consent decree providing that "if no further action is taken in this matter, it shall expire and be deemed dismissed on the six (6) month anniversary date of this Consent Decree." The consent decree had been in effect for six months, the State had not taken any action, and the mother filed a motion to dismiss. The juvenile court denied the motion, granted the State 15 days to file an amended neglect petition, and extended the decree for another six months. Upon appeal, the Supreme Court determined that the court lacks the authority to modify and extend a consent decree for good cause after it expired by its own terms with no action having been taken in the matter.

3 Adjudications & Dispositions

3.1 Stipulation

Stipulation

WYO. R. P. JUV. CT. 7

The respondent can stipulate that the child can be adjudicated abused or neglected. Stipulation means the respondent agrees that the state has enough evidence to prove the abuse or neglect. If a stipulation is made and accepted, the child is adjudicated abused or neglected and the case proceeds to the disposition.

3.2 Adjudication

√ Adjudicatory Hearing Checklist			
<p>Timely Hearing:</p> <p><input type="checkbox"/> Date child removed: _____</p> <p><input type="checkbox"/> Date of Adjudicatory Hearing: _____</p> <p><i>Note: The Adjudicatory Hearing shall be held within sixty days of the denial of the allegations in the petition. Allow continuances for good cause only for ninety total days following the filing of the petition.</i></p> <p>Notice of Hearing:</p> <p>Determine if written notice of time, place, and purpose of the adjudicatory hearing was issued to child and child's:</p> <p><input type="checkbox"/> Mother and attorney</p> <p><input type="checkbox"/> Father and attorney</p> <p><input type="checkbox"/> Guardians or custodians and attorney</p> <p><input type="checkbox"/> GAL or attorney</p> <p><input type="checkbox"/> Foster Parent(s)</p> <p><input type="checkbox"/> Tribe (If ICWA applies)</p> <p><input type="checkbox"/> If a party is not present and not properly served, reset adjudicatory hearing as to the absent party.</p> <p><input type="checkbox"/> Proceed with adjudicatory hearing as to parent/party who had proper notice.</p> <p><input type="checkbox"/> Determine efforts are being made by DFS and district attorney to locate and notify absent parent(s).</p> <p>Who Should Be Present:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Judge <input type="checkbox"/> County or District Attorney <input type="checkbox"/> Mother <input type="checkbox"/> Father <input type="checkbox"/> Guardians or Custodians <input type="checkbox"/> Parents' Attorneys <input type="checkbox"/> DFS Caseworker <input type="checkbox"/> Age Appropriate Children <input type="checkbox"/> Law Enforcement <input type="checkbox"/> Foster or Pre-adoptive Parents </td> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Children <input type="checkbox"/> Guardian Ad Litem <input type="checkbox"/> Child's Attorney <input type="checkbox"/> CASA <input type="checkbox"/> Spouse of Child, if any <input type="checkbox"/> Court Reporter <input type="checkbox"/> Service Providers <input type="checkbox"/> Probation Officer <input type="checkbox"/> Other Witnesses <input type="checkbox"/> Security Personnel </td> </tr> </table> <p>Procedure:</p> <p><input type="checkbox"/> If not previously done, advise the parent(s) of his or her rights.</p>		<input type="checkbox"/> Judge <input type="checkbox"/> County or District Attorney <input type="checkbox"/> Mother <input type="checkbox"/> Father <input type="checkbox"/> Guardians or Custodians <input type="checkbox"/> Parents' Attorneys <input type="checkbox"/> DFS Caseworker <input type="checkbox"/> Age Appropriate Children <input type="checkbox"/> Law Enforcement <input type="checkbox"/> Foster or Pre-adoptive Parents	<input type="checkbox"/> Children <input type="checkbox"/> Guardian Ad Litem <input type="checkbox"/> Child's Attorney <input type="checkbox"/> CASA <input type="checkbox"/> Spouse of Child, if any <input type="checkbox"/> Court Reporter <input type="checkbox"/> Service Providers <input type="checkbox"/> Probation Officer <input type="checkbox"/> Other Witnesses <input type="checkbox"/> Security Personnel
<input type="checkbox"/> Judge <input type="checkbox"/> County or District Attorney <input type="checkbox"/> Mother <input type="checkbox"/> Father <input type="checkbox"/> Guardians or Custodians <input type="checkbox"/> Parents' Attorneys <input type="checkbox"/> DFS Caseworker <input type="checkbox"/> Age Appropriate Children <input type="checkbox"/> Law Enforcement <input type="checkbox"/> Foster or Pre-adoptive Parents	<input type="checkbox"/> Children <input type="checkbox"/> Guardian Ad Litem <input type="checkbox"/> Child's Attorney <input type="checkbox"/> CASA <input type="checkbox"/> Spouse of Child, if any <input type="checkbox"/> Court Reporter <input type="checkbox"/> Service Providers <input type="checkbox"/> Probation Officer <input type="checkbox"/> Other Witnesses <input type="checkbox"/> Security Personnel		

- Explain purpose of the proceedings.
- Provide opportunity to admit or deny allegations.
- Give foster or relative care giver an opportunity to be heard.

If parent(s) admit:

- Determine competency.
- Determine which allegation(s) of the petition will be admitted.
- Receive factual basis under oath on the record.

If the parent(s) deny:

- Allow opening statements.
- Take oath of witnesses.
- Receive evidence.
- Determine which allegations of the petition have been proven if bench trial or enter jury verdict.
- Determine if MDT and predisposition reports have been filed. If yes, may proceed immediately to disposition hearing.

Child’s Well-Being & Family Services:

Placement:

- Determine the child’s placement prior to disposition. See permanency goals below.
- Ask DFS to evaluate relatives and friend of the family as possible caregivers.

Note: Determine if paternity has been established and father evaluated as potential placement option.

Services:

- If disposition is to be set at a later time, ask DFS to address what services can be given to the parent(s) prior to disposition.
- Order services appropriate to the family that will allow child to remain or reunify with the family.
- Confirm that a child placed outside of the home has the opportunity to participate in age appropriate and developmentally appropriate activities and experiences.
- Address whether the child needs any physical or mental examinations prior to disposition.

Visitation:

- Determine if DFS visitation plan is in the best interest of the child and if parties are in agreement with the plan.
- Advise parent(s) that timely appearance and sobriety is expected and to contact DFS if unable to make visit.

Educational issues:

- Determine if the child’s educational needs are being met.

Contrary to the Welfare and Reasonable Efforts Findings:

Contrary to the welfare and reasonable effort findings shall be detailed & child specific.

- Ask DFS to detail efforts made to avoid protective placement of child.
- Determine whether continuation in the home would be contrary to the child’s welfare.

Note: This finding shall be made at the first court hearing authorizing the child’s removal.

Reasonable efforts findings (Choose one of the following three options):

- DFS made reasonable efforts to prevent or eliminate the need for placement, including:
- The lack of efforts by DFS to prevent or eliminate need for removal was reasonable due to the following emergency circumstances: _____
- DFS has NOT made reasonable efforts to prevent or eliminate the need for placement because:

ICWA:

Does ICWA apply? If so, see the ICWA checklist in Chapter 5 below.

Schedule Next Hearing:

Disposition Hearing Date: _____

Note: The Hearing shall be held within sixty days of adjudication.

Six-Month Review Hearing Date: _____

Permanency Hearing Date: _____

Jury vs. Nonjury Trials

WYO. STAT. § 14-3-409(c)

"Adjudication" is a court or jury finding as to the truth of the facts alleged in the petition. An adjudicatory hearing must be held within sixty days of the initial hearing. In no event shall the adjudication hearing be held more than ninety days after the petition date.

WYO. STAT. § 14-3-426(b)

WYO. STAT. § 14-3-425(a), (b)

A party has a right to a jury trial. If no jury is demanded, the hearing should be held in an informal but orderly manner. The proceedings must be held separate from other matters.

WYO. STAT. § 14-3-424(b)

42 U.S.C. § 671(a)(8)

WYO. R. P. JUV. CT. 2(C)

The general public should be excluded from child protection hearings. Only the parties, their attorneys, jurors, witnesses, and others found relevant by the court may be present. The child should be included unless it is otherwise in the child's best interest.

WYO. STAT. § 14-3-415(a) & (c)

The court must ensure the presence of the child's parents, guardian, or custodian at each child protection hearing. When appropriate, a bench warrant may be issued.

WYO. STAT. § 14-3-415(b)

Any person properly served with an order to appear who fails to appear without reasonable cause may be held in contempt of court.

WYO. STAT. § 14-3-438

WYO. STAT. § 14-3-426(c)

If the parents admit the allegations, the court should enter a decree. The decree must state the jurisdictional facts upon which it is based. The disposition will follow and must be held within sixty days.

WYO. STAT. § 14-3-424(a)

Contested adjudicatory hearings must be recorded.

WYO. STAT. § 14-3-424(d)

A hearing may be continued or deferred. Deferment may be done by the court or motion of a party.

A.B., 839 P.2D 386 (WYO.1992)

In the *A.B.* case, the juvenile court judge denied the mother's request for a continuance of the adjudicatory hearing. The date of the hearing had been arranged with counsel in advance. There was no significant change in the contested issues. The mother's attorney had cross-examined witnesses and presented evidence on the mother's behalf before request the delay.

		The Wyoming Supreme Court found no error. Granting or denying a continuance is within the discretion of the trial court.
	IN THE INTEREST OF NP, 389 P. 3D 787, 2017 WY 18 (WYO. 2017)	The Supreme Court determined the issues of whether a mother waived her right to a jury trial when she failed to timely file a jury demand and whether there was sufficient evidence to determine that NP was neglected. The Supreme Court concluded that the mother waived her right to a jury trial when she failed to file a written demand within the ten-day time frame required by statutes. Additionally, the Court found evidence, when viewed in the light most favorable to the State, that the mother failed to provide adequate care and supervision necessary for NP's well-being and was neglectful.
Proof	WYO. STAT. § 14-3-425(a)	The standard of proof is "a preponderance of the evidence."
	25 U.S.C. § 1912(e)	If the child is an Indian child, a higher standard of proof is applied.
	WYO. STAT. § 14-3-426(b)	Only competent, relevant, and material evidence is admissible. Only such evidence may be used to determine the truth of the allegations in the petition. The court shall not consider any report or recommendation without the consent of the child and the child's parents, guardian, or custodian at this stage of the proceedings. The Wyoming Rules of Evidence apply to adjudicatory hearings. Any photos or x-rays (or copies thereof) taken during the investigation are admissible. The court-ordered examination reports, the predisposition report, and multidisciplinary team (MDT) recommendations may not be considered before adjudication.
	WYO. STAT. § 14-3-206(c)	
	WYO. STAT. § 14-3-421	
	WYO. STAT. § 14-3-427(h)	
	WYO. R. EVID. 1101(b)(3)	
	<i>M.F.B.</i> , 860 P.2D 1140 (WYO.1993)	In the <i>M.F.B</i> case, the father challenged the juvenile court's admission of evidence of events that occurred after the child entered DFS custody. In particular, he challenged the testimony of a child psychiatrist that his two-year-old daughter suffered from Post-Traumatic Stress Disorder due to the disappearance of her mother. The petition alleged the child was neglected because the father failed to provide the child with necessary psychological treatment. The Wyoming Supreme Court ruled that it was proper of the court to admit such evidence. It was admissible because the child suffered the initial trauma in the father's custody. A child's statements and other out-of-court statements may be admitted under hearsay exceptions.
	WYO. R. P. JUV. CT. 9	Upon agreement by the State and the parent or juvenile, evidence or information derived from a parent during the MDT or case planning process or from a juvenile in a delinquency or CHINS case is not admissible in a subsequent criminal proceeding which involves the same episode. A law enforcement officer can independently gather evidence of the episode.
	WYO. R. P. JUV. CT. 9	A juvenile's admission or incriminating statement to a professional made during treatment ordered by juvenile court are confidential unless the juvenile waives consent. This privilege shall not apply to future misconduct.

Blake v. State, 933 P.2d 474 (Wyo. 1997)

A child's age is not a bar to testifying. The child's age and personal characteristics go toward the weight of the testimony rather than its admissibility.

Alicea v. State, 13 P.3d 693 (Wyo. 2000)

The court determines if the child is competent to testify. If any party challenges the child's competency to testify, the judge must make an independent examination to determine competency. Evaluate the child's reasonable ability to

- Observe
- Understand
- Recall
- Communicate

Cook v. State, P.3d 53 (Wyo. 2000).

In *Cook v. State*, the court rejected the defendant's objection to the admission of prior consistent statements because they were made after the victim had a reason to fabricate them. The defense alleged she made sexual abuse allegations against her stepfather so she could continue to live with her grandmother. The Wyoming Supreme Court held that post-motive consistent statements are admissible in Wyoming to evaluate the witness' credibility.

WYO. STAT. § 14-3-210
WYO. STAT. § 33-27-123
WYO. STAT. § 1-12-101(a)(i) & (ii)
WYO. STAT. § 1-12-116

Privileges in Child Protection Proceedings	
Privilege	Waived?
Attorney-Client	No
Clergy-Penitent	No
Physician-Patient	No
Husband-Wife	Yes
Psychologist-Patient	Yes
Family Violence Advocate-Victim	Yes
Sexual Assault Advocate-Victim	Yes
Other Privileged Communication	Yes

C.P., 965 P.2d 1155 (Wyo. 1998)

In the *C.P.* case, the mother failed to give her 15-month-old son his prescribed medication after he was released from the hospital with pneumonia. DFS offered the mother help but took the child into protective custody when she again failed to get the medication. The Court adjudicated the child "neglected" and transferred custody to the father. On appeal, the Wyoming Supreme Court held that expert testimony was not required in this case to prove medical neglect. Specialized knowledge was not necessary for the court to conclude that a seriously ill child needed the medication his doctor prescribed.

Neglected Child

WYO. STAT. § 14-3-202(a)(vii)

A child is a "neglected child" if the child's custodian has failed or refused to provide adequate care, maintenance, supervision, education, or medical, surgical, or any other care necessary for the child's well-being.

J.L., 989 P.2d 1268 (Wyo. 1999)

In the *J.L.* case, the court found neglect due to the parent's inadequate care, maintenance, and supervision of the three children. The family's trailer was filthy—full of garbage and dirty clothes. The children often arrived at day care smelling of urine. Dangerous medications were left in the children's reach. Violence occurred frequently in the home, including inappropriate physical punishment of the children. The children had

Abuse

serious behavioral problems. The oldest girl was diagnosed with reactive attachment disorder stemming from neglect and abuse.

C.F., 110 P.3d 283 (Wyo. 2005) In *C.F.*, court found sufficient evidence of mother’s failure to act, where she discredited and failed to respond to a statement that her daughter was being sexually abused by her stepfather who had admitted having “inappropriate thoughts” about daughter, because the source and eyewitness was intoxicated at the time.

J.L., 989 P2d 1268 (Wyo. 1999) In the *J.L.*, case, the court found all three children neglected. Even though only the two older siblings were alleged to be abused, the youngest was clearly exposed to a dangerous environment. The Wyoming Supreme Court held that the court may come to the aid of an abused or neglected child before there is an actual manifestation of danger.

WYO. STAT. § 14-3-202(a)(vii) Spiritual treatment alone is not neglect. A neglect finding cannot be founded on the basis that the child is being treated in good faith through prayer by a duly accredited practitioner in accordance with the tenets and practices of a recognized church or religious denomination.

IN THE INTEREST OF JB AND TLW, MINOR CHILDREN, 2017 WY 26 (WY 2017) In the *JB and TLW* case, the juvenile court adjudicated *TW* a neglectful parent to his two children, *JB* and *TLW*. *TW* appealed the decision, arguing that he could not be neglectful because he did not have physical custody or control of the children at the time the State alleged the neglectful behavior occurred. The court held that the applicable statutes do not require that a parent or noncustodial parent have actual physical custody or control of the children in order to be found to have neglected the children.

WYO. STAT. § 14-3-202(a)(ii)

"Abuse" means inflicting or causing:

- Physical abuse;
- Sexual abuse;
- Emotional abuse;
- Abandonment;
- Corporal Punishment;
- Malnutrition; or
- Excessive or unreasonable corporal punishment.

WYO. STAT. § 14-3-202(a)(ii)(B)

Physical abuse means any harm to the child including, but not limited to, the injuries in the following chart.

Physical Injury	
Disfigurement	Fractures of any bone
Impairment of any bodily organ	Subdural hematoma
Bleeding	Substantial malnutrition
Burns	Skin bruising

WYO. STAT. § 14-3-202(a)(ii)

Sexual abuse is committing or allowing the commission of a sexual offense against a child. It is tied to criminal code definitions.

WYO. STAT. § 6-2-314 to 318

Sexual Abuse of a Minor	
Sexual abuse (1st degree)	WYO. STAT. § 6-2-314
Sexual abuse (2nd degree)	WYO. STAT. § 6-2-315
Sexual abuse (3rd degree)	WYO. STAT. § 6-2-316
Sexual abuse (4th degree)	WYO. STAT. § 6-2-317

WYO. STAT. § 6-4-402	It is a felony for any person to knowingly commit sexual intrusion or contact with an ancestor, descendant, brother, or sister of whole or half blood.
WYO. STAT. § 6-4-303	It is a felony for any person to knowingly use a child in child pornography or in any explicit sexual conduct. It is also a felony to create, disseminate, or possess child pornography.
WYO. STAT. § 6-4-403(b)(ii) & (iii).	It is a misdemeanor for any person to knowingly have a child present in a place of prostitution or to use the child as a prostitute. It is also a misdemeanor for any person to commit any indecent or obscene act in front of a child.
C.H., 699 P.2d 830 (Wyo. 1985)	In the <i>C.H.</i> case, the mother was found to have neglected her child because her boyfriend sexually abused the child over several years. The mother challenged the statute as “unconstitutionally vague,” saying since she was not the perpetrator of the abuse she could not be found to have neglected the child. The Wyoming Supreme Court disagreed. It found that the statutory definition did not require the action or inaction to be on the part of the custodian. It implicitly requires that custodians do what is within their means to alleviate any conduct that they knew or should have known constituted neglect. The statute gives sufficient notice to a person of ordinary intelligence that allowing her boyfriend to live with her after catching him in bed several times with her daughter is “neglect.”
C., 638 P.2d 165 (Wyo. 1981)	In the <i>C.</i> case, three children, age 1 to 7, were present when their 14-year-old sister-in-law had intercourse with their father, was photographed in the nude, and engaged in sexual acts with their mother. The parents were arrested and the children were placed in care. The Wyoming Supreme Court found sufficient evidence to affirm a neglect finding.
WYO. STAT. § 6-2-308	If the crime depends on the victim being under age sixteen, it is an affirmative defense that the person reasonably believed the victim was sixteen or older. If the crime depends on the victim being under age fourteen or twelve, there is no defense that the person believed the victim was older.
WYO. STAT. § 6-2-312	Evidence of the victim’s prior sexual conduct or reputation is admissible in a sexual assault trial only if the defendant submits an offer of proof showing its relevancy at least ten days before the trial. If the judge finds the offer of proof sufficient, then the victim is questioned in chambers.
WYO. R. EVID. 404(b) <i>Griswold v. State</i> , 994 P.2d 920 (Wyo. 1999)	In a sexual abuse case, testimony of prior victims of the alleged perpetrator for a proper purpose may be admitted. Evidence may be used to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.
WYO. STAT. § 14-3-202(a)(ii)(A)	Emotional abuse is inflicting or causing mental injury, harm, or imminent danger to the child's mental health or welfare by other than accidental means. "Mental injury" means an injury to the child's psychological capacity or emotional stability. It must be shown by an observable or substantial impairment of the child's ability to function within a normal range of

<p>GIFFORD V. STATE/TIBBETS, 2017 WY 93 (WYO. 2017)</p>	<p>performance and behavior. In deciding what is normal, give due regard to the child's culture.</p> <p>Defendants were convicted of child abuse by reason of mental injury. Mental injury requires conscious disregard to a substantial and unjustifiable risk that the harm he is accused of causing will occur, and the harm results. Defendants argued that they did not perceive and consciously disregard the risk of mental injury as they truly did not understand the risk of harm from their parenting style. The court disagreed and held that (1) the evidence supported a finding of recklessness required for convictions, and (2) the evidence supported a finding that risk of injury to children was a substantial and unjustifiable risk, as required for convictions.</p>
<p>WYO. STAT. § 6-4-403(a)</p> <p>WY SF0138 (2011) In the Interest of ANO: SLB, 2006 WY 74; 136 P3d 797 (Wyo. 2006).</p>	<p>Abandonment is when a parent, guardian, or custodian of a child abandons a child without just cause.</p> <p>In the SLB case, the Wyoming Supreme Court held that custody orders assigning custody to one parent precludes a finding of abandonment by the non-custodial parent. The holding was relevant under W.S. 14-2-309 which allows parental-child relationships to be terminated where a child has been left in the care of another person for a period of at least one year. The Wyoming legislature adds language to W.S. 14-2-309 stating that, "a court order of custody shall not preclude a finding that a child has been left in the care of another person."</p>
<p>WYO. STAT. § 14-3-202(a)(ii)</p>	<p>Corporal punishment is defined as excessive or unreasonable. Malnutrition may be caused by intentional or unintentional neglect.</p>
<p>Order</p> <p>WYO. STAT. § 14-3-426(b)</p>	<p>After the hearing, the Court determines whether the child is a "neglected child." If not, the petition is dismissed and the child, if placed outside of the home, is released from shelter care.</p>
<p>WYO. STAT. § 14-3-426(c)</p>	<p>If the child is neglected, the court should enter a decree. The decree must state the jurisdictional facts upon which it is based. Disposition must be held within sixty days.</p>
<p>WYO. STAT. § 14-3-440(f)</p>	<p>A reasonable efforts determination made at the adjudicatory hearing must be documented in the court order.</p>

3.3 Disposition

√ Disposition Hearing Checklist
<p>Timely Hearing:</p> <p><input type="checkbox"/> Date of Disposition Hearing: _____</p> <p><i>Note: The dispositional hearing shall occur within sixty days of adjudication.</i></p>
<p>Notice of Hearing:</p> <p><input type="checkbox"/> Determine if written notice of time, place, and purpose of the disposition hearing was issued to child and child's:</p> <p><input type="checkbox"/> Mother and attorney</p> <p><input type="checkbox"/> Father and attorney</p> <p><input type="checkbox"/> Guardians or custodians and attorney</p>

- GAL or attorney
- Foster Parent(s)
- Tribe (If ICWA applies)
- Determine status of any absent parent(s)/parties.

Who Should Be Present:

- | | |
|---|--|
| <input type="checkbox"/> Judge | <input type="checkbox"/> Children |
| <input type="checkbox"/> County or District Attorney | <input type="checkbox"/> Guardian Ad Litem |
| <input type="checkbox"/> Mother | <input type="checkbox"/> Child's Attorney |
| <input type="checkbox"/> Father | <input type="checkbox"/> CASA |
| <input type="checkbox"/> Guardians or Custodians | <input type="checkbox"/> Spouse of Child, if any |
| <input type="checkbox"/> Parents' Attorneys | <input type="checkbox"/> Court Reporter |
| <input type="checkbox"/> DFS Caseworker | <input type="checkbox"/> Service Providers |
| <input type="checkbox"/> Age Appropriate Children | <input type="checkbox"/> Probation Officer |
| <input type="checkbox"/> Law Enforcement | <input type="checkbox"/> Other Witnesses |
| <input type="checkbox"/> Foster or Pre-adoptive Parents | <input type="checkbox"/> Security Personnel |

Procedure:

- Explain purpose of the disposition hearing.
- Advise of possibility of TPR if child is in foster care for fifteen of the most recent twenty-two months.
- Determine if DFS Predisposition Report and MDT recommendations have been filed with the court and reviewed by the parties.
- Give foster or relative care giver an opportunity to be heard.

Receive evidence, receive recommendations, and accept reports from:

- | | | |
|---------------------------------|--|--|
| <input type="checkbox"/> DFS | <input type="checkbox"/> District Attorney | <input type="checkbox"/> Guardian Ad Litem or CASA |
| <input type="checkbox"/> Parent | <input type="checkbox"/> Service Providers | <input type="checkbox"/> Others _____ |

- Before placing a child outside of the home, determine if there is "clear and convincing evidence" that to return the child to the child's home would not be in the best interest of the child despite efforts that have been made.
- Determine if DFS' case and permanency plan and MDT recommendations reasonably address the problems and needs of the family.
- Make reasonable efforts findings.
- Order the appropriate disposition of the child.

Predisposition Report (PDR), MDT Report, Permanency Plan:

Review statutorily required subject areas set out in the PDR including:

- Child's educational needs, performance of the child in school, social history, environment and present condition of the child and his family, child abuse and neglect histories, learning disabilities, physical impairments.
- Past acts of violence.
- Presence of any mental health or substance abuse history, including current participation in mental health counseling, therapy, or treatment.
- Other matters relevant to treatment of child or proper disposition of the case.
- Review MDT recommendations.
- Review DFS' proposed permanency or concurrent plan for the child.

Evaluate and Determine Placement Options For Child:

Clear and convincing evidence is the standard that shall be met in order to place a child out of the home. See permanency goals below.

- Ask DFS to describe the child's current placement.
- Determine if the child is safe, healthy, and happy.
- Determine if removal was or is necessary to protect the child.
- Determine what risks of harm or neglect are to the child if returned to the home.
- Determine if the parent(s) can appropriately and safely care for the child.

Choose one of the following five placement options:

- Permit the child to remain/return with the parent(s) without protective supervision but subject to court's terms and conditions.
- Place the child under protective supervision of DFS.
- Transfer temporary legal custody to a relative or other suitable and qualified adult with or without supervision subject to the court's terms and conditions.
- Transfer temporary legal custody to DFS.
- Out-of-state placement.

Child's Well-being & Family Services:

Services:

- Ask DFS to address services that will allow the child to remain/return safely home.
- If services are not available that will allow the child to remain/return safely in the home, ask DFS to address what services the child and family need.
- Address whether the child needs a physical and mental examination.
- Address whether the parent(s) need any evaluations.
- Order services that are appropriate to the family's circumstances.
- Address whether the parent(s) need to sign a release to allow access to records.
- Assess costs for classes, education, or treatment.
- Confirm that a child placed outside of the home has the opportunity to participate in age appropriate and developmentally appropriate activities and experiences.
- Impose any other elements, requirements, limitations, and restrictions.
- Order restraining orders or no contact orders expelling an allegedly abusive parent(s) from the home, limiting associations, or limiting travel.

Visitation:

- Review DFS' visitation plan and determine if any changes need to be made.

Educational issues:

- Determine if the child's educational needs are being met.

Financial Support, Paternity:

- Address financial support of the child.
- If paternity is an issue, review paternity statutes and report to child support.

Contrary to the Welfare and Reasonable Efforts Findings:

Adoption and Safe Families Act Requirement:

Note: Contrary to the welfare and reasonable efforts findings need to be detailed and child specific.

- Ask DFS to detail efforts made to avoid protective placement of child.

Determine if the child should remain out of the home OR if the child remains in the home if it is contrary to the child's welfare because _____

Note: This finding shall be made at the first court hearing authorizing the child's removal and must be detailed and child specific: _____

Reasonable efforts findings (Choose one of the following three options):

- DFS made reasonable efforts to prevent or eliminate the need for placement, including: _____
- The lack of efforts by DFS to prevent or eliminate need for removal was reasonable due to the following emergency circumstances: _____
- DFS has NOT made reasonable efforts to prevent or eliminate the need for placement because: _____

Note: For an Indian child and ICWA case, DFS shall show "active efforts" to prevent placement.

Reasonable efforts not required:

- Reasonable efforts are not required when the court finds clear and convincing evidence that the parent has committed certain crimes or abandoned the child.

Permanency Goals:

- Has the child been in foster care sixty days or, if less than sixty days, has a permanency goal been established? If either answer is "yes" assess the case.
- What are the permanency goals and were all goals in effect during period under review implemented in a timely manner?
- Were the permanency goals appropriate?

ICWA:

- Does ICWA apply? If so, see Section 5.1 below.

Schedule Next Hearing:

- Six Month Review Hearing Date: _____

Note: §14-3-431(c) requires the court to hold a six-month review hearing for all children placed in out-of-home placement within six months of child's removal.

- Permanency Hearing Date: _____

Note: §14-3-440(g) requires that a permanency hearing be held within thirty days of the court's determination that reasonable efforts to preserve and reunify the family are not needed under §14-2-309(a)(v), (b) or (c) and §14-3-431(c), otherwise the hearing must be held within twelve months of the child's removal from the home.

Disposition Hearing

WYO. STAT. § 14-3-426(c)

If there is a decree finding the child neglected, the court will hold a disposition hearing. The disposition hearing may be held at the same time as the adjudicatory hearing or within sixty days of adjudication.

WYO. STAT. § 14-3-426(d)

WYO. R. EVID. 1101(b)(3)

All relevant and material evidence is admissible. Competent evidence is admissible if helpful in making a disposition and relied on for its probative value. The Wyoming Rules of Evidence do not apply at the disposition hearing.

WYO. STAT. § 14-3-429(a)(i)

The court must review the predisposition report, recommendations of the MDT, case plan, and other court ordered reports or evaluations. The court

Reasonable Efforts

WYO. STAT. § 14-3-427(h)

must indicate on the record what materials were considered in reaching the disposition. The court may not consider any report or recommendation without the consent of the child and the parents, guardian, or custodian.

WYO. STAT. § 14-3-421

The court may admit reports on court-ordered examinations. The person who performed the examination must provide the court with the results in writing and signed.

WYO. STAT. § 14-3-426(e)

A disposition hearing may be continued, and may not to exceed sixty days following the adjudication hearing. A continuance may be necessary to receive reports and other evidence bearing on the disposition. Shelter care may be altered during the continuance subject to the court’s terms.

WYO. STAT. § 14-3-424(a)

Disposition hearings in contested proceedings must be recorded.

WYO. STAT. § 14-3-429(a)(iv)

After removal, reasonable efforts are required to reunite the family. If the child is being removed at disposition, the court must determine whether

WYO. STAT. § 14-3-440(a)(ii)

DFS made reasonable efforts to prevent the placement. A reasonable efforts finding is also required for all residential treatment orders.

WYO. STAT. § 21-13-315(j)

42 U.S.C. § 671(a)(15)

Reasonable Efforts Findings
DFS made reasonable efforts to reunify the family
DFS did not make reasonable efforts to reunify the family
Reasonable efforts are waived in this case

45 C.F.R. § 1356.21(b)(1)

Negative reasonable efforts finding may be made if services to reunify were not offered.

WYO. STAT. § 14-3-440(a) & (g)

Reasonable efforts to reunify the family are not required if the parent has been convicted of certain crimes or if other aggravating circumstances exist.

WYO. STAT. § 14-2-309(b)

Aggravating circumstances are:

42 U.S.C. § 671(a)(15)

- Parental rights of the parent to any other child have been involuntarily terminated;
- The parent abandoned, chronically abused, tortured or sexually abused the child;
- The parent has been convicted of committing one or more of the following crimes against the child or another child of the parent: sexual assault under W.S. 6-2-302 through 6-2-304, sexual battery under W.S. 6-2-313, or sexual abuse of a minor under W.S. 6-2-314 through 6-2-317;
- The parent is required to register as a sex offender pursuant to W.S. 7-19-302 if the offense involved the child or another child of that parent; or
- Other aggravating circumstances exist indicating that there is little likelihood that services to the family will result in successful reunification.

<p>WYO. STAT. § 14-3-440(g)</p> <p>WYO. STAT. § 14-2-309(a)(vi)</p>	<p>Reasonable efforts to reunify the family may not be required if there is clear and convincing evidence that the parent abandoned a child under one year old for at least six months or with no means of identification for three months.</p>
<p>IN THE INTEREST OF NDP V. STATE OF WYO., DFS, 2009 WY 28, 2009 WL 15131560 (WYO. 2009)</p>	<p>DFS may discontinue reunification efforts so long as the state proves by a preponderance of the evidence that such efforts would be futile.</p>
<p>IN THE INTEREST OF DRS, NJL AND KDL, MINOR CHILDREN. RH, APPELLANT V. THE STATE OF WYO., DFS, APPELLEE, 261 P.3D 697, 2011 WY 128 (WYO. 2011)</p>	<p>Reasonable efforts are determined on a case-by-case basis. In the <i>DRS</i> case, the juvenile court held a two-day evidentiary hearing where, after hearing numerous witnesses testify, it issued detailed findings of fact and conclusions of law. Mother's arguments were not only heard but she was also given the opportunity to dispute the State's evidence. The juvenile court made 72 findings of fact to support its conclusions that both elements of § 14-3-429(a)(iv) were met.</p>
<p>WYO. STAT. § 14-3-440(g)</p> <p>42 U.S.C. § 671(a)(15)</p>	<p>If reasonable efforts to reunify the family are found not to be required, a permanency hearing must be held within thirty days at which the statutory permanency hearing findings are made. DFS must make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the child's permanent placement. A TPR petition must be filed within sixty days.</p>
<p>WYO. STAT. § 14-3-440(e) & (f)</p> <p>45 C.F.R. § 1356.21(d)</p>	<p>The reasonable efforts finding must be documented in the court order. It must include whether the services to the family have been accessible, available, and appropriate.</p>
<p>25 U.S.C. § 1912(d)</p> <p><i>Suter v. Artist M.</i>, 503 U.S. 347 (1992)</p>	<p>For an Indian child, DFS must show "active efforts" to prevent placement. The federal reasonable efforts requirements gives state courts an opportunity to affect DFS funding when it fails to use services to avert placement or reunite families. This remedy is especially important since the U.S. Supreme Court has held there is no private right of action for the state's failure to make reasonable efforts.</p>
<p>WYO. STAT. § 14-3-440(c)</p> <p>42 U.S.C. § 671(a)(15)(F)</p>	<p>DFS may do concurrent planning for children in care. This means that DFS works toward family reunification while developing an alternative permanency plan, such as adoption or guardianship.</p>

Services

WYO. STAT. § 14-3-429(d)

- The following services may be included in a disposition order:
- Order the child, parents, or both to undergo evaluation and indicated treatment or another program to address problems that contributed to adjudication;
 - Require the child's parents or guardian to attend parenting classes or other appropriate education or treatment and to pay all or part of the cost of the classes, education, or treatment based on their ability to pay;
 - Impose any demands, requirements, limitations, restrictions, or restraints on the child that the parents might reasonably and lawfully do under similar circumstances;
 - Order that child support be established in a separate civil action; or
 - Require child's parent or guardian and the child to participate in a court supervised drug treatment program.

Order of Protection

WYO. STAT. § 14-3-430(a) & (b)

An order of protection may be issued to restrain or otherwise control the conduct of the parents, guardian, or custodian. It may also be issued against any party that encouraged, caused, or contributed to the acts and conditions that supported the adjudication.

WYO. STAT. § 14-3-430(b)

Order of Protection Provisions	
	Perform any legal obligation of support
	Not contact the child or the child's abode
	Permit reasonable visitation under specified conditions and terms
	Give proper attention to care of the home
	Refrain from conduct detrimental to the child and home environment

Placement

WYO. STAT. § 14-3-429(b)

Dispositional Alternatives	
Parental Custody	Permit the child to remain in the legal custody of the parents, guardian, or custodian without protective supervision and subject to the court's terms and conditions
Protective Supervision	Place the child under the protective supervisions of DFS
Relative Custody	Transfer legal custody to a relative or other suitable adult that is qualified to care for the child, with or without protective supervision and subject to the court's terms and conditions
Placement	Transfer temporary legal custody to DFS or another public agency responsible for the care and placement of neglected children

WYO. STAT. § 14-3-429(a)(iv)

Before placing the child outside of the home, there must be clear and convincing evidence that to return the child home would not be in the child's best interests despite the efforts that have been made.

M.F.B., 860 P.2d 1140 (Wyo. 1993)

In the *M.F.B.* case, a two-year-old suffered from Post-Traumatic Stress Disorder due to the disappearance of her mother. Her father failed to provide the child with necessary psychological treatment. The child also told the counselors she was afraid of her father, alleging her father had something to do with her mother's disappearance. The Wyoming Supreme Court ruled that this constituted clear and convincing evidence that granting DFS temporary legal custody was in the child's best interest.

<p>WYO. STAT. § 14-3-429(a)(iii) & (g) 42 U.S.C. § 675(5)(A)</p>	<p>In determining placement, the court should give primary consideration to the child's needs and welfare. The child should be placed in the least restrictive environment consistent with:</p> <ul style="list-style-type: none"> ■ What is best suited to the public interest of preserving families; ■ The child's physical, mental, moral, and religious development; and ■ The actual facilities presently available when the decree is entered.
<p>42 U.S.C. § 675(5)(A)</p>	<p>If a child is placed a substantial distance from their parents' home, the Court should make a finding detailing why the placement is in the child's best interests.</p>
<p>WYO. STAT. § 14-3-429(b)(iv)</p>	<p>A neglected child may not be placed in a delinquency facility. The child cannot be committed to the Wyoming Boy's School or Wyoming Girl's School. Also, a neglected child may not be placed at the Wyoming State Hospital.</p>
<p>42 U.S.C. § 671(a)(19)</p>	<p>To maintain family ties, relatives are preferred as temporary caregivers. Placement with a relative who meets all DFS standards is preferred over placement in a foster home.</p>
<p>WYO. STAT. § 14-3-429(g)</p>	<p>When possible, a placement should consistent with the child's religious beliefs. If the parents have different faiths, the placement can be based on the child's religion. If the child's religion cannot be ascertained, a placement can be based on the faith of either parent.</p>
<p>25 U.S.C. § 1915(b)</p>	<p>For an Indian child, DFS must follow tribal placement preferences. Under ICWA, preference for foster care placement must be given, in the absence of good cause to the contrary, to:</p> <ul style="list-style-type: none"> ■ Extended family members; ■ Foster homes approved by the tribes; ■ Licensed Indian foster homes; and ■ Indian-approved institutions.
<p>WYO. STAT. § 14-3-429(a)(v) 42 U.S.C. § 675(5)(A)</p>	<p>Limit out-of-state placement unless in-state placement is not available and the out-of-state placement is in the child's best interest:</p> <ul style="list-style-type: none"> ■ Evidence has been presented on the comparative cost of out-of-state and in-state placements and on the availability of in-state placements; ■ Make an affirmative finding on the record that no in-state placement can provide adequate treatment or services for the child; ■ State on the record why no in-state placement is available; and ■ Out-of-state placements should be made only if there are written findings that it is in the child's best interests.
<p>WYO. STAT. § 14-5-101 to 108</p>	<p>The Interstate Compact for Placement of Children (ICPC) allows children to be placed in another state. The purpose of the ICPC is to encourage cooperation between states in interstate placements. Through the ICPC, the court can place children with out-of-state foster and adoptive homes as well as in group care facilities. The sending state agency retains jurisdiction over the child's custody, supervision, care, treatment, and disposition. Jurisdiction ends if the child:</p> <ul style="list-style-type: none"> ■ Is adopted;

		<ul style="list-style-type: none"> ■ Reaches majority; ■ Becomes self-supporting; or ■ Is discharged by agreement of both the sending agency and receiving state.
	42 U.S.C. § 675(1)(G)	Placement decisions should ensure educational stability. This includes ensuring the educational setting meets the child's needs. DFS must also ensure that the child remains in their school of origin unless it is not in their best interests.
	WYO. STAT. § 14-3-429(c)(i)	Every three months DFS must recommend to the court whether the placement order should continue.
Visitation	WYO. STAT. § 14-3-430(b)(ii) & (iii)	If an order of protection has been entered, the Court may permit a parent reasonable visitation under specified conditions and terms. It also may prohibit a person from contacting the child or the child's abode.
Support	WYO. STAT. § 14-3-435(a) WYO. STAT. § 14-3-429(c)(ii), (iii) WYO. STAT. § 14-3-430(b)(i) 42 U.S.C. § 671(a)(17) WYO. STAT. § 20-2-304	If the child is placed outside of the home, the Court may, after notice and a hearing, order the parents or other legally obligated person to pay a reasonable sum for the child 's support and treatment while the disposition order is in force. If support is not ordered, the court should state the reason. Child support is established in a separate civil action and based on the presumptive child support guidelines.
Costs	WYO. STAT. § 14-3-434(a) & (b) WYO. STAT. § 14-3-434(c)	In child protection cases, the county pays court costs. The Court should determine the parent’s ability to pay court costs. If a Guardian Ad Litem or attorney is appointed, the court should determine whether the parent, guardian, custodian, or another person responsible for the child’s support can pay all or part of the representation costs.
Disposition Order	WYO. STAT. § 14-3-429(a)(ii) WYO. STAT. § 21-13-315(a) WYO. STAT. § 21-13-315(a)(ii) & (iii) WYO. STAT. § 14-3-431(a) & (b)	If the DFS or MDT recommendation for disposition is rejected, the Court must enter on the record the specific findings of facts relied on to support the Court’s decision to deviate from the recommended disposition. An order placing a child in an out-of-state residential facility, must include an affirmative finding on the record that no placement can be made in a Wyoming facility that can provide the child with adequate treatment or services. A disposition order remains in force indefinitely. The order may be terminated once the purpose of the order is achieved. All child protection orders terminate when the child reaches age eighteen. Unless the judge

orders services to continue until the youth reaches twenty-one years of age if the order is entered prior to the child's eighteenth birthday.

Relinquishment

A relinquishment frees the child for adoption. It shows the court that the person or agency with custody and control of the child before the adoption has relinquished the child to the petitioners for adoption.

WYO. STAT. § 1-22-104(c)(ii)

WYO. STAT. § 1-22-109(a) & (b)

Required Signatures for Relinquishments
Both parents, if living
Surviving parent
Mother and putative father if the putative father's name is known
Mother alone if she does not know the putative father's name
Child's legal guardian if both parents are dead or have had their parental rights judicially terminated
Head of the agency to whom the child has been relinquished for adoption
Person with exclusive legal custody by court order
Legally appointed guardian of any parent or putative father adjudged to be mentally incompetent

WYO. STAT. § 14-3-402(a)(xvi)(B)

"Residual parental rights and duties" are those rights a parent retains after custody, guardianship, or both have been vested in another person, agency, or institution. These include the right to consent to adoption. Only a parent whose parental rights have been terminated loses this right. Note that in Wyoming, only legally established fathers have legal rights to the child. Legal establishment of paternity is statutory, as is who is required to consent to adoption.

WYO. STAT. § 1-22-109(a)(viii)

WYO. STAT. § 3-1-101 to 111

If the parent is found to be incompetent, a guardian should be appointed. A legally appointed guardian of any parent or putative father adjudged to be mentally incompetent may consent to the relinquishment.

Putative Fathers

Wisconsin v. Yoder, 406 U.S. 205 (1972)
Quillioin v. Walcott, 434 U.S. 246 (1978)

A married father has constitutionally-protected parental rights. Like the mother, he has a fundamental liberty interest in the care, custody, and management of his child.

R.S.C., 837 P.2d 1089 (Wyo.1992)

In the *R.S.C.* case, the mother gave birth to the child while she was married to the presumptive father. After their divorce, the court awarded the presumptive father custody. The mother remarried. When the child was four years old, her new husband filed a petition to adopt the child with only the biological father's consent. The presumptive father objected. The court denied the adoption petition. The mother was foreclosed from declaring the presumptive father was not the child's biological father because she had not done so in a timely manner.

Stanley v. Illinois, 405 U.S. 645 (1972)
Caban v. Mohammed, 441 U.S. 380 (1979)

An unmarried father involved in his child's life also has these rights. If an unmarried father lives with, supports, and maintains regular contact with his child and holds himself out as the child's father, he has the same rights as a married Father.

<p>Lehr v. Robertson, 463 U.S. 248 (1983)</p> <p>Michael H. v. Gerald D., 491 U.S. 110 (1989)</p>	<p>An unmarried father with no substantial relationship does not have rights. If an unmarried father does not live with, support, or see the child and does not seek to establish paternity within a reasonable time after the child's birth, he does not have constitutionally-protected parental rights.</p>
<p>WYO. STAT. § 1-22- 101(a)(iv)</p> <p>WYO. STAT. § 1-22- 109(a)(iii) & (iv)</p>	<p>If the child is born out of wedlock, the putative father must consent to adoption. A "putative father" means the alleged or reputed father of a child born out of wedlock, whether or not paternity has been judicially determined. If the name of the putative father is known, his consent is required. If the mother signs an affidavit stating she does not know the putative father's name, his consent is not required.</p>
<p>WYO. STAT. § 1-22- 109(a)(iv)</p> <p>C.A.M., 861 P.2d 1102 (Wyo. 1993)</p>	<p>If there is a man registered as the child's father in the Putative Father Registry, the judge must require he be given notice of an adoption.</p> <p>In the <i>C.A.M.</i> case, the mother's husband adopted the child after the mother's substance abuse left her unable to care for her son. The boy's natural father, who was the mother's prior husband, had visited the child regularly until the mother's new husband was stationed overseas. The adoptive father had met the natural father in another state and had visited some of the natural father's relatives. He notified the natural father by publication. His only search efforts were to ask the mother for the natural father's address and looking in his local phone book. After learning of the adoption, the natural father challenged it. The court overturned the adoption because the adoptive father did not exercise due diligence in giving notice to the natural father.</p>
<p>M.S.V.W., 965 P.2d 1158 (Wyo. 1998)</p>	<p>In the <i>M.S.V.W.</i> case, the mother's husband petitioned to adopt the child. The mother stated she did not know the name or whereabouts of the natural father. A notice was published and a friend of the putative father sent him the notice. He contacted the court, stating the mother did know he was the father but that he was waiving his rights to the child. He later signed a relinquishment. Two years later, he sought to revoke. The court denied his revocation. He waived any defects in service by failing to raise the issue in earlier contact with the court. His attendance at the adoption hearing was not required because, at that point, he did not object. Finally, his request to revoke was not timely.</p>
<p>WYO. STAT. § 1-22- 108(d)</p>	<p>A putative father has no right to assert paternity in a child protection, TPR, or adoption proceedings unless:</p> <ul style="list-style-type: none"> ■ He is known or identified by the mother or DFS; or ■ He lived with or married the mother after the child's birth and before the petition was filed. <p>He must also acknowledge the child as his own by affirmatively asserting his paternity in an objection to the adoption petition or by registering as a putative father with the Putative Father Registry before an interlocutory adoption decree is entered.</p>
<p>WYO. STAT. § 14-2- 823</p>	<p>Paternity may be challenged if no genetic testing was performed at the time of the adjudication and the petition is filed within two years of</p>

		adjudication or acknowledgment of after the petitioner knew or should have known that the paternity of the child is at issue.
	WYO. STAT. § 1-22-108(c)	A putative father may not object to the mother's relinquishment. He may object at the adoption hearing if he acknowledges paternity. If the putative father's objection is granted, the judge may allow the mother to withdraw her consent and relinquishment.
	WYO. STAT. § 1-22-109(d)	
	25 U.S.C. § 1912(a)	A putative father is not entitled to ICWA procedural rights. The ICWA definition of "parent" specifically excludes unmarried fathers who have not acknowledged or established paternity.
	25 U.S.C. § 1903(9)	
	WYO. STAT. § 14-2-602(c)	Before the mother and alleged father sign an acknowledgment of paternity, they must be provided with oral and written notice of the legal consequences that will arise from signing.
Procedure	WYO. STAT. § 1-22-109(c) & (e)	Relinquishment requires a signed document. The consent to adoption and relinquishment of custody of a child for adoption may be contained in a single document. A consent to adoption may be signed any time after the child's birth.
	WYO. STAT. § 1-22-109(c)(i)	The relinquishment must be acknowledged by: <ul style="list-style-type: none"> ■ Person authorized to take acknowledgments; ■ DFS representative; or ■ Representative of the certified agency to whom the child is being relinquished.
	WYO. STAT. § 1-22-109(c)(ii)	If the consent is not acknowledged, the court may approve it. The person giving consent must appear before the court in an informal hearing in court chambers. The judge must find the consent to be knowingly and voluntarily given.
	25 U.S.C. § 1913	For an Indian child, the relinquishment and consent must be signed before a judge. The judge must certify that the terms and consequences of the consent were explained in detail and were fully understood by the parent. This certificate must note whether the document was explained in English or was interpreted into another language the parent understood. Any consent given before or within ten days after the Indian child's birth is invalid.
Revocation	WYO. STAT. § 1-22-109(d)	Relinquishments are irrevocable unless obtained by fraud or duress. However, if the judge grants a putative father's objection to the adoption, the judge may allow the mother to withdraw her consent and relinquishment. A minor parent's consent may not be revoked solely because of minority.

J.K., 5 P.3d 782
(Wyo. 2000)

In the *J.K.* case, a 17-year-old putative father attempted to revoke his consent and relinquishment. He stated that he signed the relinquishment believing that he had six months to revoke his consent because of statement of a Colorado social worker. He also alleged he was pressured to sign the papers because the infant would be considered abandoned if it remained in the hospital more than 48 hours after birth. Evidence also showed he had many discussions with the mother and family members during the two days after the child's birth. He met with the adoption worker twice and went to the agency to turn over the baby. He also helped to select the adoptive family after reviewing several profiles and signed an agreement requiring the adoptive parents to send them annual photographs of the child. Based on this evidence, the Wyoming Supreme Court found there was neither duress nor fraud. The father may have acted on a mistaken belief of his right to revoke, but mistake is insufficient for revocation of a relinquishment. His minor status also did not justify revocation.

25 U.S.C. § 1913

An Indian child's parent may revoke a relinquishment. ICWA provisions are summarized in the following chart.

Revocation of Relinquishment of Indian Child		
If an Indian child's adoption:	Then the parent or Indian custodian may:	And the court must:
Is not yet final	Revoke the consent at any time	Return the child to the parent or Indian custodian.
Has been final less than two years	Revoke the consent if it was obtained through fraud or duress	Return the child to the parent or Indian custodian.
Has been final for at least two years	Never revoke the consent	Reject requests to revoke.
Is set aside or vacated	Petition for return of the child	Grant the petition unless there is a showing that it would not be in the child's best interests.

4 Case Progression

4.1 Case Planning & Service Delivery

Case Planning	<p>WYO. STAT. § 14-3-427(k)</p> <p>WYO. PRACTICE GUIDELINE 2.7</p> <p>In the Interest of HP and NP, minor children, 93 P.3d 982 (Wyo. 2004)</p>	<p>A case plan is often referred to in Wyoming as the family service plan. It is a plan for change, which should identify strategies for change while maintaining a controlled safety plan. Federal law requires the agency to develop a case plan within sixty days from the time a child is removed from the parents' home. Parents, guardians, and youth are entitled to participate in developing the case plan. The case plan should clearly outline roles and responsibilities of each party, as well as expectations and guidelines.</p> <p>The parent should be advised to take every step necessary to accomplish the goals outlined in the case plan, as well as to follow the directives of the court's orders. If a parent takes substantial steps towards accomplishing the goals of the case plan between adjudication and disposition, it is likely that the case will close quickly. However, if disposition arrives with little effort by the parent, the court is likely to impose stricter conditions on the parent. DFS is then obligated to provide services consistent with the case plan (i.e. reasonable efforts to reunify the family).</p> <p>There was sufficient evidence for the juvenile court to find that Mother has failed to comply with the case plan which meant that progress was not being made toward alleviating or mitigating the causes necessitating placement outside the home.</p>
Concurrent Planning	<p>Adoptions and Safe Families Act of 1997(H.R. 867)</p>	<p>DFS may also ask the parent for a concurrent placement. A concurrent placement is a designation of who the child should go to if the parent is unable to secure reunification. Concurrent planning is required and should be developed as a "plan b" if the child is unable to be reunified with their parents. This is best done by working with the parents to identify what options they have available.</p>
Permanency Planning	<p>WYO. PRACTICE GUIDELINE 2.7</p>	<p>As part of the case plan, DFS will develop a permanency plan with the parent. In most circumstances (except those specified by law), the permanency plan should be reunification of the child with the parent. The case should be continually monitored to ensure DFS is making reasonable efforts towards reunification. If there is reason to believe that DFS is not making reasonable efforts, the parent attorney should consider filing a motion with the court for a finding that DFS is not making reasonable efforts.</p>

4.2 Post Disposition

Contempt	WYO. STAT. § 14-3-438	A person may be held in contempt for violating a court order. A contempt order may be issued per motion of the court, motion of the district attorney, country attorney, or Guardian Ad Litem (GAL). The person must willfully violate, neglect, or refuse to obey or perform any order or statutory requirement.
	WYO. STAT. § 6-4-404	There are criminal penalties for violating a temporary order of protection. Any person who willfully violates a restraining order is guilty of a misdemeanor.
	WYO. STAT. § 14-3-424(b)	Contempt hearings may be open to the public unlike other child protection proceedings.
	Bickerstaff, 950 P.2d 46 (Wyo. 1997)	In the <i>Bickerstaff</i> case, the mother agreed to a consent decree. The consent decree order required her to not take her child outside of the state. She took her child out of state in violation of the order. The court issued a bench warrant and the child was taken into protective custody. The mother appealed the contempt finding against her by alleging the consent decree order was "unlawful" because the father refused to sign it. The Wyoming Supreme Court held that whether or not the order is "lawful" is irrelevant to a contempt finding. If the mother felt the order was unlawful, her remedy was to appeal it-not violate it.
	Brown v. State of Wyoming, 393 P. 3d 1265, 2017 WY 45 (Wyo. 2017)	The juvenile court had jurisdiction over a criminal contempt action brought against a juvenile's mother for violating a juvenile court order. The Supreme Court held that the district court had concurrent jurisdiction over criminal contempt action brought against juvenile's mother for violating the juvenile court order. In addition, the Supreme Court held that the district court's deficient order to show cause and subsequent failure to grant mother's motion for access to juvenile court file violated her due process right to notice of the charges against her.
Placement Reviews	WYO. STAT. § 14-3-429(h) & (j) WYO. STAT. § 14-6-229(m-p)	DFS can make placement changes absent a contrary order. At least ten days before a placement change, DFS must give notice to the court, child, parents, GAL, district attorney, and the current placement provider by personal service or certified mail. The placement may be made without court approval if no party files an objection within ten days of notice and if the court does not set a hearing on its own motion. Where a court order requires approval for placement changes, a change will be approved if the court does not set the matter for a hearing within fifteen days of notice.
	42 U.S.C. § 675(5)(A) WYO. STAT. § 14-3-429(a)(v)	If a proposed change will result in placement a substantial distance from the parents' home or out-of-state, the court shall make a finding as to why the placement is in the child's best interests. For out-of-state placements findings regarding cost are also required.

42 U.S.C. § 675(1)(G)	Placement decisions should ensure educational stability.	
WYO. STAT. § 14-5-101 to 108	The ICPC allows placement of children in out-of-state foster and adoptive homes as well as in group care facilities.	
42 U.S.C. § 671(a)(19)	To maintain family ties, relatives are preferred as temporary caregivers.	
42 U.S.C. § 671(a)(31)	Reasonable efforts should be made to place siblings in the same home, unless it would be contrary to their safety or well-being. If siblings are not placed together, ensure frequent contact.	
42 U.S.C. § 671(a)(18)	Race, color, or national origin of a child may not be used to delay or deny placement for adoption or foster care. Cases involving Indian children are an exception.	
42 U.S.C. § 1996b		
25 U.S.C. § 1915(a) & (b)		
25 U.S.C. § 1916(b)	The Indian Child Welfare Act (ICWA) controls any transfers of placement involving Indian children.	
25 U.S.C. § 1915(b)		
Transition Reviews	WYO. STAT. § 14-3-431(b) & (q)	At least six months before a child turns eighteen, a hearing should be held to review plans to transition the child from foster care to independent living. During the ninety-day period before a child turns eighteen, DFS should provide the child with personalized assistance and support that includes information regarding housing, health insurance, education, mentoring, support services, work force supports, and employment services.
	42 U.S.C. § 675(5)(C), (G) & (H)	
	42 U.S.C. § 677	

4.3 Review Hearings

√ Six Month Review Hearing Checklist
<p>Timely Hearing:</p> <p><input type="checkbox"/> Date Child Removed: _____</p> <p><input type="checkbox"/> Date of Six Month Review: _____</p> <p><i>Note: The Six Month Review Hearing shall be held within 6 months of child's removal and every six months thereafter. Permanency Hearing shall be held within 12-months of the child's removal and every 12 months thereafter.</i></p> <p>Notice of Hearing:</p> <p><i>Determine if the proper parties were notified of the time, place, and purpose of the Six Month Review Hearing:</i></p> <p><input type="checkbox"/> Mother and attorney</p> <p><input type="checkbox"/> Child's father and attorney</p> <p><input type="checkbox"/> Guardians or custodian and attorney</p> <p><input type="checkbox"/> Child, GAL or attorney</p> <p><input type="checkbox"/> Tribe (If ICWA applies)</p>

Foster parents, pre-adoptive parents, or relative caretakers

Who Should Be Present:

- | | |
|---|--|
| <input type="checkbox"/> Judge | <input type="checkbox"/> Child(ren) |
| <input type="checkbox"/> County or District Attorney | <input type="checkbox"/> GAL |
| <input type="checkbox"/> Mother | <input type="checkbox"/> Child's Attorney |
| <input type="checkbox"/> Father | <input type="checkbox"/> CASA |
| <input type="checkbox"/> Guardians or Custodians | <input type="checkbox"/> Spouse of Child, if any |
| <input type="checkbox"/> Parents' Attorneys | <input type="checkbox"/> Court Reporter |
| <input type="checkbox"/> DFS Caseworker | <input type="checkbox"/> Service Providers |
| <input type="checkbox"/> Age appropriate children | <input type="checkbox"/> Adult or Juvenile Probation Officer |
| <input type="checkbox"/> Law Enforcement | <input type="checkbox"/> Other Witnesses |
| <input type="checkbox"/> Foster or Pre-adoptive parents | <input type="checkbox"/> Security Personnel |

Procedure:

- Explain purpose of the proceeding.
- Advise parent(s) of possibility of TPR if child has been in foster care for fifteen of twenty-two months.
- Receive all material and relevant evidence helpful to determine parental compliance with case plan, child's placement, reunification efforts, and proposed permanency or concurrent plan.

Note: The evidence may be relied upon for probative value.

- Allow parties the opportunity to testify, present evidence, present arguments, and cross-examine witnesses.
- Give foster or relative caregiver an opportunity to be heard.
- Receive and admit evidence, recommendations, and reports from:
 - DFS
 - GAL, CASA, or service providers
- Make findings of reasonable efforts.

Review Hearing Issues:

- Review the proposed permanency or concurrent plan recommended by DFS. See permanency goals below.
- Determine if all parties are in agreement on proposed plan.
- Determine if the child is safe, healthy, and happy.
- Determine the child's wishes concerning permanency through input from the child or, if the child is not present, a GAL or representative.
- Determine the continuing necessity and appropriateness for the placement and whether it is still the least restrictive.
- Determine the appropriateness of the case plan.
- Determine if progress has been made toward alleviating or mitigating the causes necessitating placement outside the home and the extent of that progress.
- Determine the date the child is expected to be returned to the home or placed for adoption or legal guardianship.
- Determine the reasonableness of efforts made to reunify the family and the consistency of those efforts with the case plan.
- Review well-being issues.
- Review paternity and child support.

Prioritized Preferences/Options for Permanency

- Reunification. The child is to be returned home on this date: _____
- Adoption/TPR.
- Permanent guardianship.
- Another planned permanent living arrangement.

Child's Well-being and Family Services:

Services:

- Determine whether the services set forth in case plan and responsibilities of the parent(s) need to be clarified or modified.
- Impose any other elements, requirements, limitations, and restrictions on the family to move case toward successful completion.

Visitation:

- Review visitation plan and determine if any modifications need to be made.
- Order DFS to make appropriate visitation changes addressed during hearing.

Educational issues:

- Ask DFS to provide a status report on child's education services and determine if education needs are being met.

Reasonable Efforts Findings:

Ask DFS to prepare an affidavit outlining their reasonable efforts or make finding on record. This will assist the court in making detailed and child specific findings.

- If reunification is the permanency goal, make a finding as to whether DFS is making reasonable efforts to reunify the family.
- If reunification is not the permanency goal, make a finding as to whether DFS is making reasonable efforts to finalize a permanent home.

Note: See Disposition Checklist for statutory requirements in waiving reasonable efforts.

Permanency Goals:

- Has the child been in foster care sixty days or, if less than sixty days, has a permanency goal been established? If either answer is "yes" assess the case.
- What are the permanency goals and were all goals in effect during period under review implemented in a timely manner?
- Were the permanency goals appropriate? The Permanency Goals shall be stated in the Order.

ICWA:

- Does ICWA apply? If so see the ICWA checklist in Chapter 5 below.

Schedule Next Hearing:

- Permanency hearing date: _____
- If a TPR has been filed, hearing date: _____

Review Hearings	<p>WYO. STAT. § 14-3-431(c) - (h) 42 U.S.C. § 675(5)(B) & (C)</p>	<p>At the review hearing, the Court must determine the following:</p> <ul style="list-style-type: none"> ■ The health and safety of the child; ■ The continuing necessity for placement; ■ The reasonableness of reunification efforts and whether those efforts are consistent with the case plan; ■ The appropriateness of the case plan and the extent of compliance with the case plan; ■ Whether progress has been made toward alleviating or mitigating the causes necessitating placement outside the home and the extent of that progress; and ■ The date the child is expected to be returned home or placed for adoption or guardianship. <p>Review hearings are conducted six months after the child's removal and every six months thereafter.</p>												
Notice	<p>42 U.S.C. § 675(5)(G) WYO. R. P. JUV. CT. 2(D)</p>	<p>Give the parties and the child's caregiver notice. The child's foster or pre-adoptive parents or relative caregivers are entitled to notice and the right to be heard at the review hearing.</p>												
Determinations	<p>42 U.S.C. § 675(5)(c)</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #333; color: white;"> <th colspan="2" style="text-align: center;">Permanency Plans</th> </tr> </thead> <tbody> <tr> <td style="padding: 2px;">Return Home</td> <td style="padding: 2px;">Send the child home to a parent or guardian</td> </tr> <tr> <td style="padding: 2px;">Adoption</td> <td style="padding: 2px;">Free the child for adoption</td> </tr> <tr> <td style="padding: 2px;">Guardianship</td> <td style="padding: 2px;">Appoint the child a guardian</td> </tr> <tr> <td style="padding: 2px;">Relative Placement</td> <td style="padding: 2px;">Keep the child in a stable and monitored placement</td> </tr> <tr> <td style="padding: 2px;">Another Planned Permanent Living Arrangement</td> <td style="padding: 2px;">A compelling reason exists to not pursue other permanency options and the child is at least sixteen years old</td> </tr> </tbody> </table>	Permanency Plans		Return Home	Send the child home to a parent or guardian	Adoption	Free the child for adoption	Guardianship	Appoint the child a guardian	Relative Placement	Keep the child in a stable and monitored placement	Another Planned Permanent Living Arrangement	A compelling reason exists to not pursue other permanency options and the child is at least sixteen years old
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Relative Placement	Keep the child in a stable and monitored placement													
Another Planned Permanent Living Arrangement	A compelling reason exists to not pursue other permanency options and the child is at least sixteen years old													
	<p>42 U.S.C. § 1396d(r)</p>	<p>The court should determine whether the child's medical needs are being met. The Medicaid Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services law requires comprehensive health services for Medicaid eligible youth, including those in foster care.</p>												
Reasonable Efforts	<p>WYO. STAT. § 14-3-440 42 U.S.C. § 671(a)(15) WYO. STAT. § 14-3-440(d)</p>	<p>Make a reasonable efforts determination. Reunification efforts may be waived with a finding, by clear and convincing evidence, of conviction of certain crimes or "aggravating circumstances." DFS must also make reasonable efforts to finalize a permanent home.</p>												

4.4 Permanency Hearings

√ Permanency Hearing Checklist
<p>Timely Hearing:</p> <p><input type="checkbox"/> Date Child Removed: _____</p> <p><input type="checkbox"/> Date of Permanency Hearing: _____</p>

Notice of Hearing:

Determine if the proper parties were notified of the time, place, and purpose of the permanency hearing:

- Mother and attorney
- Child’s father and attorney
- Guardians or custodian and attorney
- Child, GAL or attorney
- Tribe (If ICWA applies)
- Foster parents, pre-adoptive parents, or relative caretakers

Who Should Be Present:

- | | |
|---|--|
| <input type="checkbox"/> Judge | <input type="checkbox"/> Child(ren) |
| <input type="checkbox"/> County or District Attorney | <input type="checkbox"/> GAL |
| <input type="checkbox"/> Mother | <input type="checkbox"/> Child’s Attorney |
| <input type="checkbox"/> Father | <input type="checkbox"/> CASA |
| <input type="checkbox"/> Guardians or Custodians | <input type="checkbox"/> Spouse of Child, if any |
| <input type="checkbox"/> Parents’ Attorneys | <input type="checkbox"/> Court reporter. |
| <input type="checkbox"/> DFS Caseworker | <input type="checkbox"/> Service Providers |
| <input type="checkbox"/> Age Appropriate Children | <input type="checkbox"/> Adult or Juvenile Probation Officer |
| <input type="checkbox"/> Law Enforcement | <input type="checkbox"/> Other Witnesses |
| <input type="checkbox"/> Foster or Pre-Adoptive Parents | <input type="checkbox"/> Security Personnel |

Procedure:

- Explain the purpose of the hearing.
- Advise the parent(s) of possibility of TPR if child has been in foster care for fifteen of twenty-two months.
- Give foster or relative care giver an opportunity to be heard.
- Receive all material and relevant evidence helpful to determine parental compliance with the case plan, reasonable efforts to finalize the permanency plan, and the best permanent plan for the child.

Note: The evidence may be relied upon for probative value.

- Allow parties the opportunity to testify, present evidence, present arguments, and cross-examine witnesses.
- Receive evidence, recommendations, and review reports from:
 - DFS (i.e. permanency plan), district attorney
 - GAL, CASA, or service providers and parent(s)
- Admit written reports on the status of the family into evidence.
- Make final determination of the child’s permanency plan. Seek input from the child or child’s GAL or representative.
- Make findings of reasonable efforts.

Permanency Hearing Issues:

- Determine if the child is safe, healthy, and happy.
- Determine the child’s wishes concerning permanency. See permanency goals below.
- Determine the continuing necessity or appropriateness for the placement and whether it is still the least restrictive.
- Determine the appropriateness of the case plan including the permanent placement of the child.
- Determine whether the child is given the opportunity to participate in age appropriate and developmentally appropriate activities and experiences.
- Determine if progress has been made toward alleviating or mitigating the causes necessitating placement outside the home and the extent of that progress.
- Determine the date the child is expected to be returned to the home or placed for adoption or legal guardianship.

- Determine the reasonableness of efforts made to reunify the family and the consistency of those efforts with the case plan.
- Finalize the permanency plan for the child after reviewing all permanency options with DFS.
- Review child's well-being.
- Review paternity and child support.

Prioritized Preferences/Options for Permanency

Make a final determination as to the permanent plan for the child:

The court determines that the child's permanency plan should be (ASFA prioritizes permanency options as stated below):

- Reunification. Date of expected return home: _____
- Placement for adoption.
- Referral for permanent guardianship.
- Another permanent planned living arrangement because the following compelling reasons exist making return home, adoption, and guardianship not in the child's best interests: _____

Note: Any other permanent planned living arrangement that does not fit reunification, adoption, guardianship, or placement with relative, shall still have aspects that are planned and permanent for the child.

Reunification:

- Determine why reunification is the best plan.
- How have the conditions or circumstances leading to the removal of the child been corrected?
- Determine the plan for the child's safe return home and follow-up supervision after family reunification.
- Expected Date of Reunification: _____

Adoption:

- Determine why reunification is not appropriate and adoption is the best plan for the child.
- Determine DFS' plan to place the child for adoption.
- Schedule a hearing to review the status of whether a petition for adoption has been filed and steps are actively being made to achieve permanency plan.

Guardianship:

- Determine why reunification and adoption are not appropriate and guardianship is the best plan for the child.
- Determine if there is an appropriate guardianship resource.
- Determine when the child will be placed with the guardianship resource.

Another Permanent Planned Living Arrangement (APPLA):

DFS must have a compelling reason for this option and it can only be a permanency option for youth sixteen and older.

- Determine why reunification, adoption, and guardianship is not the best plan for the child.
- Document ongoing and unsuccessful efforts to avoid APPLA, including the use of social media.
- Determine if DFS has a transition plan for the child.

Reasonable Efforts Findings:

If family reunification is NOT the plan, choose one of the following:

- DFS made reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the child’s permanent placement, including: _____
- DFS has NOT made reasonable efforts to place the child in a timely manner in accordance with the permanency plan to complete whatever steps are necessary to finalize the child’s permanent placement because: _____
- Implement procedures to ensure that the court or administrative body conducting the permanency hearing asks the child about his or her desired permanency outcome and makes a judicial determination at each permanency hearing that APPLA is the best permanency plan for the child and compelling reasons why it is not in the best interest of the child to be placed permanently with a parent, relative, or guardianship or adoptive placement.

Permanency Goals:

- Has the child been in foster care sixty days or, if less than sixty days, has a permanency goal been established? If either answer is “yes” assess the case.
- What are the permanency goals and were all goals in effect during period under review implemented in a timely manner?
- Were the permanency goals appropriate?

ICWA:

- Does ICWA apply? If so, see the ICWA checklist in Chapter 5 below.

Schedule Next Hearing Date:

- Review hearing date: _____
- If TPR is required to effectuate the permanency goal, date of TPR trial: _____
- If APPLA is permanency goal, set twelve month review hearing date: _____

Permanency Hearing

WYO. STAT. § 14-3-431(d)

The court must conduct a permanency hearing no later than twelve months after the child’s removal from the home, and at least every twelve months thereafter. A permanency hearing is also required within thirty days of a determination by the court that reasonable efforts are not required. Ensure that the proper evidence is presented at a permanency hearing. At the permanency hearing, DFS shall present to the court:

- The efforts made to effectuate the permanency plan for the child;
- Address the options for permanency;
- Examine the reasons for excluding permanency options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the permanency plan; and
- If the recommended permanency plan is something other than reunification, adoption, or legal guardianship, DFS must present to the court a compelling reason therefor.

WYO. STAT. § 14-3-431(k) At the permanency hearing the Court shall determine whether the permanency plan is in the child’s best interest and whether DFS has made reasonable efforts to finalize the plan. The Court shall also ask the child, the child’s GAL, or other legal representative about his or her desired permanency outcome. If the permanency plan is another planned permanent living arrangement, the Court shall make a judicial determination as to why this is best for the child.

WYO. STAT. § 14-3-431(e) If the Court determines that reasonable efforts to preserve and reunify the family are not required, a permanency hearing may be held within 30 days.

IN RE GC, 351 P.3D 235, 2015 WY 73 (WYO. 2015) The parent has a right to request an evidentiary permanency hearing if the State is recommending to cease efforts at reunification and change the permanency plan to adoption. Failure to request an evidentiary hearing is a waiver of such right.

IN THE INTEREST OF DT AND NT, MINOR CHILDREN, 391 P.3D 1136, 2017 WY 36 (WYO. 2017) The Court determined whether a juvenile court must determine prior to a hearing whether children should be present at a permanency hearing, according to Wyo. Stat. 14-3-431(k)(iii), (iv). The Court found a presumption that the statute on permanency hearings requires the children be present at the permanency hearing unless the Court makes determination that they should not be present prior to the hearing. However, the Supreme Court found no plain error in this case for not having made that determination prior to the hearing. The Court found the mother was not denied due process by the children not being present at the hearing. Finally, the Court found that the permanency determination was supported by sufficient evidence.

Noti § 42 U.S.C. § 675(5)(G) The child’s foster or pre-adoptive parent or relative caregiver is entitled to notice and the right to be heard at the review hearing.
 WYO. R. P. JUV. CT. 2(D)
 WYO. R. P. JUV. CT. 4 A party offering a report in court shall file the report and give a copy of the report to all parties at least five days before the hearing.

Determinations 42 U.S.C. § 675(5)(C) The goal of the review hearing is to decide if the child can safely go home. If the child cannot return home, determine another option unless there is a compelling reason to not pick an option. Where age appropriate, consult the child regarding the permanency plan.
 WYO. STAT. § 14-3-431(c)

42 U.S.C. § 675(5)(C)

Permanency Plans	
Return Home	Send the child home to a parent or guardian
Adoption	Free the child for adoption
Guardianship	Appoint the child a guardian
Relative Placement	Keep the child in a stable and monitored placement
Another Planned Permanent Living Arrangement	Because a compelling reason exists to not pursue other permanency options

<p>42 U.S.C. § 675(1)(e) & (5)(C) 45 C.F.R. § 1356.21(h)(3) WYO. STAT. § 14-3-431(j)</p>	<p>Reunification should be likely within the next three months. Another planned permanent living arrangement (APPLA) should not be considered unless DFS documents a compelling reason not to return the child home and that adoption, guardianship, and relative placement are not in the child’s best interest.</p>	
<p>Wyo. Stat. § 14-13-102 WY HB0118 (2016)</p>	<p>A child in out-of-home placement is entitled to engage in, to the greatest extent possible, age appropriate or developmentally appropriate activities and experiences. When allowing participation in activities, caregivers shall consider the parent or custodian’s wishes along with the child’s age, maturity, development, wishes, and best interest to encourage emotional and developmental growth while providing a family-like experience.</p>	
<p>In the Interest of: JW and BJ, Jr., Minor Children: LW v. The State of Wyo., DFS, 2010 WY 28; 226 P.3d 873 (Wyo. 2010)</p>	<p>There is a compelling preference that what is “best” for a child in a permanency hearing is placement with nuclear or extended family members.</p>	
<p>In the Matter of the Parental Rights to DH, AP, and JK: KH v. Wyo., DFS, 2007 WY 196, 173 P.3d 365 (Wyo. 2007)</p>	<p>In the <i>DH, AP, and JK</i> case, DFS’s decision to not place children with grandmother was not in violation of its policy to attempt to place children with relatives prior to placing them in non-relative foster care. DFS took reasonable steps to institute family placement.</p>	
<p><i>Reasonable Efforts</i></p>	<p>WYO. STAT. § 14-3-440(d) 42 U.S.C. § 671(a)(15)(C)</p>	<p>DFS must make reasonable efforts to finalize a permanency plan. If family reunification is no longer the goal, DFS must make reasonable efforts to find the child another permanent placement and complete steps to finalize it.</p>
<p>45 C.F.R. § 1356.21(b)(1)</p>	<p>The court may find that the lack of efforts was <i>not</i> reasonable. If the court finds that efforts have not been made to achieve the permanency plan, the court may make a negative reasonable efforts finding. If a negative finding is found, the child remains in care but DFS loses federal funding for the child’s placement until reasonable effort findings are found.</p>	
<p>In the Interest of FM: BA v. Laramie County DFS, 2007 WY 128, 163 P.3d 844 (Wyo. 2007)</p>	<p>In the <i>FM</i> case, the State failed to meet its burden of proving by clear and convincing evidence that DFS made reasonable efforts toward reunification and that mother was unfit for custody. The case plan not only contained tasks for Mother, but also tasks for the DFS to assist in the reunification process. No evidence was introduced as to any services provided by the DFS to Mother with regards to finding housing, employment, or completing other tasks set out in the case plan.</p>	

Order

WYO. STAT. § 14-3-440(d)
42 U.S.C. § 671(a)(15)(C)

Permanency hearing order shall include:

- Permanency plan;
- Reasons for plan;
- Date the permanency plan will be achieved;
- Case plan review determinations; and
- Reasonable efforts findings.

4.5 Multidisciplinary Team

Multidisciplinary Team (MDT)

WYO. STAT. § 14-3-427

A MDT must be appointed within ten days of the petition being filed. MDTs must meet quarterly and provide a written report with recommendation to the court prior to each review hearing. DFS shall provide MDT members with a brief summary of the case including allegations in a petition.

MDT Members	
Mandatory	Discretionary
Child’s parent, parents, or guardian	Substance abuse specialist
School representative who knows the child	Child
DFS representative	Relative
Child’s psychologist or mental health professional	Other professionals with a particular knowledge relating to the child or expertise in children’s services
District attorney or designee	DOH representative if child has special needs
GAL or child’s attorney if appointed by the court	
Volunteer law advocate if appointed by the court	
Foster parent	

WYO. STAT. § 14-3-427(f)

Before the first MDT meeting, DFS must provide specific information to the team. At the first MDT meeting, the team formulates reasonable and attainable recommendations for the court outlining parental goals and objectives. At each subsequent MDT meeting, the team is to evaluate the parent and child’s progress. The MDT should recommend the least restrictive means of attaining the goal(s) and then closely monitor the progress in subsequent meetings to ensure success by the family.

WYO. STAT. § 14-3-427(e), (f), & (g)

The MDT makes case planning recommendations. It bases these recommendations on the child’s personal and family history and on school, mental health, and DFS records, along with other pertinent information. It considers the child’s best interest, family’s best interest, most appropriate and least restrictive case planning options, and costs of care. To make good court recommendations, the MDT should include family members and professionals who have particular

knowledge of the child and family. All MDT records and proceedings are confidential.

- WYO. STAT. § 14-3-427(f) If a parent chooses not to comply with or participate in a case plan, the parent is prohibited from later objecting about services that were provided to the child and family.
- WYO. STAT. § 14-3-247(f) After each MDT, the coordinator shall prepare a summary of the MDT for each member of the team and the court. The report should describe the recommendations and include the goals and objectives for returning the child home or closing the case. If the recommendations have changed, the summary is to include an explanation and reason for the change.
- WYO. STAT. § 14-3-427(h) The court shall not consider MDT reports or recommendations before adjudication unless the child and parents, guardian, or custodian consent to pre-adjudication review.

5 Federal Laws

5.1 Indian Child Welfare Act

The Indian Child Welfare Act (ICWA) protects tribal ties of Indian children. Congress passed ICWA in 1978 to address the misuse of state child protection power to remove Indian children and place them in non-Indian homes. Before ICWA was passed, Indian children were placed in foster care at two or three times the rate of non-Indian children.

√ ICWA Checklist

Shelter Care and Initial Hearing:

ICWA Inquiries for the Court:

- Is the child an "Indian child" making ICWA applicable?
- Does the child either reside or is domiciled on a reservation or is the child a ward of tribal court? If so, the Court does not have jurisdiction.
- Is a resident or domiciled child temporarily off the reservation? If so, the Court may order emergency removal from parent or Indian custodian to prevent imminent physical damage or harm.
- Has DFS mailed proper notice to the child's putative father, including a father who has acknowledged paternity, even if he has not legally established paternity?
- Was proper notice and inquiry mailed to all tribes in which the child may be eligible for membership, including a family chart or genogram to facilitate the tribe's membership determination or, if the tribe is not known, was notice sent to the U.S. Secretary of the Interior?
- Has DFS made efforts to identify extended family, other tribal members, or Indian families through creation of a family chart or genogram or assistance from neighbors, family, or members of the Indian community for placement if necessary?
- Is the parent able to read and understand English? If not, what efforts were made to ensure understanding of the proceedings?
- Is it in the best interest of the child to appoint counsel for the child and, if so, will funds through the U.S. Secretary of the Interior be requested?
- In assessing placement options, has DFS relied upon the social and cultural standards of the parents' or extended families' Indian community?
- Are additional efforts needed to ensure the child is placed with extended family or within his or her tribal community?
- Will parties voluntarily agree to participate in services and, if so, what culturally relevant services are necessary?
- What are the terms and conditions of visitation by parents or Indian custodian, and are there measures in place to allow the child to attend significant cultural and familial events?

Notice and Advise ment of Rights:

- Have the parents and Indian custodian been advised of their right to a court-appointed attorney if indigent and their right to be full parties to the case?
- Have the parents been advised of the content of the petition, their right to examination of the report and other documents, and their right to request an additional twenty days to prepare for the hearing (the tribe has this right too)?
- Was a notice of the next scheduled hearing and a copy of the petition and advisement of rights sent by registered mail with a return receipt to the child's parents, Indian custodian, or tribe if not present at the hearing?

Note: no out-of-home placement proceeding may be held until at least ten days after receipt of notice.

- Were active efforts made to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family?

- No foster care placement order may be entered unless there is clear and convincing evidence, including testimony of a qualified expert witness, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
- For foster care and pre-adoptive placement, does the placement meet ICWA's priority placement preferences?

Adjudicatory Hearing:

ICWA Inquiries for the Court:

- Is the child an "Indian child" making ICWA applicable?
- Does the child either reside or is domiciled on a reservation or is the child a ward of tribal court? If so, the court does not have jurisdiction.
- Was the child in the custody of an Indian custodian at the time of removal?
- Was proper notice and inquiry mailed to all tribes in which the child may be eligible for membership, including a family chart or genogram, to facilitate the tribe's membership determination or, if the tribe is not known, was notice sent to the U.S. Secretary of the Interior?
- Is the parent able to read and understand English? If not, what efforts were made to ensure the parent understands the proceedings?
- Determine the child's tribe and whether the child's tribe or Indian custodian seek to intervene in the proceedings.

Notice and Advisement of Rights:

- Have the parents and Indian custodian been advised of their right to a court-appointed attorney if indigent and their right to be full parties to the case?
- Advise the parents/Indian custodian/child's tribe of the content of the petition, their right to examination of the report and other documents, and their rights to request an additional twenty days to prepare for a hearing.
- Was a notice of the next scheduled hearing and a copy of the petition and advisement of rights sent by registered mail with a return receipt to the child's parents/Indian custodian/ tribe if not present at the hearing? Note that no out-of-home placement proceeding may be held until at least ten days after receipt of notice.
- Were active efforts made to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family?
- No foster care placement order may be entered unless there is clear and convincing evidence, including testimony of a qualified expert witness, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child?
- For foster care and pre-adoptive placement, does the child's placement meet ICWA's priority placement preferences?

Disposition Hearing:

Foster Care Placement Recommendations:

- Were active efforts made to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family?
- If services were unsuccessful, was there an explanation for why the child cannot be protected from identified problems through services?
- Were active efforts made to contact the child's tribe, extended family, and other local Indian families about providing appropriate placement?
- Were arrangements made to ensure visitation with extended family or other tribal members to support a cultural connection and attendance at important familial events?

Court Findings:

- If placement or services were not agreed to by the parties, was the legal basis specified?
- Does the case plan address the child's needs and needs of the parent(s) or Indian custodian?

- Is the parent able to understand the proposed case plan and, if not, what efforts were made to ensure the parent(s) understands?
- Is removal necessary to prevent serious emotional or physical damage to the child?
- For foster care and pre-adoptive placement, does the child's placement meet ICWA's priority placement preferences?
- For adoption, does the child meet ICWA's priority placement preferences?
- Comply with the placement preference unless there is good cause to deviate or a tribal resolution re-ordering the placement preference.
- Do the visitation terms need modification?
- Determine the long-term plan for the child's placement including necessary court orders and time frame to achieve reunification or other permanent plan.
- No foster care placement order may be entered unless there is clear and convincing evidence, including testimony of a qualified expert witness, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
- No TPR order may be entered unless there is evidence beyond a reasonable doubt, including testimony of a qualified expert witness, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Notice and Advisement of Rights:

- Was a notice of the next scheduled hearing and a copy of the petition and advisement of rights sent by registered mail with a return receipt to the child's parents, Indian custodian, or tribe if not present at the hearing? Note, no out-of-home placement proceeding may be held until at least ten days after receipt of notice.

Six-Month Review Hearing:

Foster Care Placement Recommendations:

- Were active efforts made to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family?
- If services were unsuccessful, was there an explanation for why the child cannot be protected from identified problems through services?
- Were active efforts made to contact the child's tribe, extended family, and other local Indian families about providing appropriate placement?
- Were arrangements made to ensure visitation with extended family or other tribal members to support a cultural connection and attendance at important familial events?

Court Findings:

- If placement or services were not agreed to by the parties, was the legal basis specified?
- Does the case plan address the child's needs and parent(s) or Indian custodian and is there a need for modification?
- Is the parent able to understand the proposed case plan and, if not, what efforts were made to ensure the parent(s) understands?
- Is there still a need for continued placement of the child to prevent serious emotional or physical damage to the child?
- For foster care and pre-adoptive placement, does the child's placement meet ICWA's priority placement preferences?
- For adoption, does the child meet ICWA's priority placement preferences?
- Comply with the placement preference unless there is good cause to deviate or a tribal resolution re-ordering the placement preference.
- Do the visitation terms need modification?
- Determine the long-term plan for the child's placement including necessary court orders and time frame to achieve reunification of another permanent plan.

No foster care placement order may be entered unless there is clear and convincing evidence, including testimony of a qualified expert witness, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

No TPR order may be entered unless there is evidence beyond a reasonable doubt, including testimony of a qualified expert witness, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Notice and Advise ment of Rights:

Has the child's tribe been identified and, if so, afforded an opportunity to participate?

Was a notice of the next scheduled hearing and a copy of the petition and advise ment of rights sent by registered mail with a return receipt to the child's parents, Indian custodian, or child's tribe if not present at the hearing?

Note that no out-of-home placement proceeding may be held until at least ten days after receipt of notice.

Permanency Hearing:

Are the conditions that lead to removal remedied and, if so, how?

Were active efforts made to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family?

Frequency and impact on child of recent visitations.

TPR:

Active efforts to coordinate with the child's tribe or Indian organization in assisting the Indian parents or custodian with services needed to avoid termination.

Explanation of why the child cannot be protected from identified problems at home and agency's understanding of the tribe's position for permanency.

Explanation of active efforts made to contact the child's tribe, extended family, and other local Indian organizations for appropriate placement.

Efforts for arrangements made to ensure visitation with extended family or other tribal members to support a cultural connection and attendance at important familial events.

No TPR order may be entered unless there is evidence beyond a reasonable doubt, including testimony of a qualified expert witness, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Permanency plan is ordered. Ensure the parent(s) understand.

Will the child be legally freed for adoption?

For adoption, does the child meet ICWA's priority placement preferences including a member of the Indian child's extended family, other members of the Indian child's tribe, or other Indian families?

Comply with the placement preference unless there is good cause to deviate or a tribal resolution re-ordering the placement preference.

TPR (Uncontested):

Describe the conditions under which parental consent to termination was obtained.

Certify that either the parent or Indian custodian fully understood the explanation of the terms and consequences of the consent to termination in English or via interpreter.

Certify that consent to termination was not given prior to or within ten days after the birth of the child.

Determine the consent was voluntary and informed, and not obtained through fraud or duress, and that alternatives to termination were explained.

APPLA:

Description of why the planned permanent living arrangement is in the best interest of the child and the tribe's position regarding the permanency plan.

Explanation of active efforts made to contact the child's tribe, extended family, and other local Indian organizations for appropriate placement.

- If the child is not placed with an extended family member, another tribal member, or another Indian family, an explanation of why the child cannot be moved to a placement that meets the ICWA preferences.
- Were arrangements made to ensure visitation with extended family or other tribal members to support a cultural connection and attendance at important familial events?
- Permanency Plan is ordered. Ensure the parent(s) understand.

Active Effort Affidavit:

- Description of active efforts to reunify the family since the last disposition or review hearing and whether the efforts were successful.
- Description of efforts made to coordinate with the child's tribe or any Indian organization in assisting the Indian parent or custodian with services to avoid placement and an explanation as to why the services were unsuccessful.
- Explanation of why the child cannot be protected from serious emotional damage if the child remains home even with services.
- Explanation of active efforts made to contact the child's tribe, extended family, and other local Indian organizations for appropriate placement.
- Efforts for arrangements made to ensure visitation with extended family or other tribal members to support a cultural connection and attendance at important familial events?

Court Findings:

- Has the child's tribe been identified and, if so, afforded an opportunity to participate?
- Was a notice of the hearing and a copy of the petition and advisement of rights sent by registered mail with a return receipt to the child's parents, Indian custodian, or child's tribe if not present at the hearing?

Note that no out-of-home placement proceeding may be held until at least ten days after receipt of notice.

- Can the child return home safely on a specific date?

When ICWA Applies

25 U.S.C. § 1902	ICWA seeks to preserve Indian families. It mandates preventive services before removal. An Indian child who must be removed should be placed in an available and safe home that reflects the unique values of Native American culture.
25 U.S.C. § 1903(1)	ICWA controls "child custody proceedings" involving an Indian child, which includes foster care placement, TPR, pre-adoptive placements, and adoptive placements.
25 U.S.C. § 1903(3) & (4)	<p>An "Indian child" is defined as any unmarried person who is under age eighteen and is either:</p> <ul style="list-style-type: none"> ■ A member of an Indian tribe; or ■ Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. <p>If the court determines that the child is, or may be, an Indian child, the State must notify the child's tribe (or to more than one tribe if the child may be a member of multiple tribes). If tribal affiliation is unknown, the State must provide notice to the Secretary of the Interior.</p>

Jurisdiction

25 U.S.C. § 1911(a) 25 U.S.C. § 1903(12)	Tribal court has exclusive jurisdiction over a child who resides or is domiciled on its reservation. This includes children who reside or are domiciled on the reservation. Tribal court jurisdiction also extends to children who are wards of tribal court regardless of where they live. A "tribal court" means: <ul style="list-style-type: none">■ A court of Indian offenses;■ A court established under a tribe's code or custom; or■ Any tribal administrative body vested with child custody jurisdiction.
23 C.F.R. § 23.2	An Indian child's domicile is that of the parent, custodial parent (if the parents are unmarried), Indian custodian, or guardian.
Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989)	A parent's actions cannot defeat the tribal court's jurisdiction. The U.S. Supreme Court held that the state did not have jurisdiction over a child whose Indian parents lived on the reservation but gave birth and relinquished custody off the reservation.
25 U.S.C. § 1922	The court has jurisdiction for emergency protection of Indian children. Emergency removal of an Indian child temporarily off the reservation may be made to prevent imminent physical danger or harm.
25 C.F.R. § 23.113	Emergency removals should not last longer than thirty days unless the court makes certain determinations.
25 U.S.C. § 1911(b)	Any Indian child's case is subject to transfer to tribal court. A parent, Indian custodian, or the tribe may petition to transfer a case involving an Indian child living off the reservation to tribal court. The court has discretion to deny the transfer to tribal court for any of the following reasons: <ul style="list-style-type: none">■ Either parent opposes it;■ The tribe declines jurisdiction; or■ There is good cause to retain state jurisdiction.
25 U.S.C. § 1911(d)	State courts must give "full faith and credit" to tribal court decisions to the same extent as other entities. Tribal courts must also give full faith and credit to other tribal court orders.
25 C.F.R. § 23.107	State courts must inquire in every emergency, involuntary, and voluntary child custody proceeding if the participant knows or has reason to know that the child is an Indian child.

Notice

25 U.S.C. § 1912(a) 25 C.F.R. § 23.2 25 U.S.C. § 1903(5)	If the child is an Indian child or there is reason to know the child is an Indian child, the child's tribe must be given notice of any involuntary foster care or termination proceeding. Involuntary proceeding means a child-custody proceeding in which the parent does not consent to the foster-care, pre-adoptive, adoptive placement, or TPR. If the child is a member or eligible to be a member in more than one tribe, notify all possible tribes.
Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989)	ICWA allows tribes to intervene in involuntary placements, TPR, voluntary placements, and relinquishments.

25 U.S.C. § 1912(a) 25 U.S.C. § 1903(9)	Parents must be given notice. "Parent" is defined as the birth parent or adoptive Indian parent of an Indian child. The definition excludes unmarried fathers who have not acknowledged or established paternity.	
25 U.S.C. § 1912(a) 25 U.S.C. § 1903(6)	Any Indian custodians must be given notice. An "Indian custodian" is any Indian person with legal custody of an Indian child under tribal law or custom, under state law, or by agreement of the parents.	
25 C.F.R. § 23.13	Copies of the notices must be provided to the Regional Director in each corresponding Bureau of Indian Affairs (BIA) Regional office where the proceedings are taking place and the BIA will provide assistance in locating the Indian child's parents and tribe.	
25 U.S.C. § 1912(a)	Notice must be by registered or certified mail. It must include the petition and a notice of the tribe's right to intervene. If the identity or location of a parent or Indian custodian and the tribe is unknown, notify the Secretary of the Interior. The Secretary has fifteen days after receipt to provide notice to the parent or Indian custodian and the tribe.	
25 U.S.C. § 1912(a)	No foster care or TPR proceeding may be held until notice is made. A hearing cannot be held until at least ten days after the parent or Indian custodian and the tribe (or the Secretary) receive notice. An additional twenty days may be granted if requested by the parent or tribe.	
C.H., 510 N.W.2d 119 (S.D. 1993)	<p>In the <i>C.H.</i> case, the South Dakota Department of Social Services (DSS) alleged in their TPR petition that ICWA might apply because the mother said she was one-half Choctaw Indian. DSS served the petition on the mother by personal service and on the Mississippi branch of the Choctaw tribe by registered mail, return receipt requested. The Mississippi branch replied that the parent and child were not enrolled but suggested contacting the Oklahoma branch of the Choctaw tribe. DSS did so, but not by registered mail.</p> <p>On the TPR appeal, the South Dakota Supreme Court held that notice was inadequate under ICWA because the letter to the Oklahoma branch should have been by registered mail. It also required notice to the Secretary of the Interior by registered mail. However, it did not overturn the TPR. It remanded the case for proper notice, but stated that if there was a subsequent finding by the lower court that ICWA did not apply, the TPR was affirmed.</p>	
Procedural Rights	25 U.S.C. § 1911(c)	The tribe and Indian custodian have rights to intervene. This right applies to any foster care or TPR proceeding (both voluntary and involuntary). They may request to intervene at any point in the proceeding.
	25 U.S.C. § 1912(b)	Parents and the Indian custodian have rights to counsel. The court must appoint them attorneys if they are indigent.
	25 U.S.C. § 1912(c)	The tribe and Indian custodian may access court records. Once they intervene as parties, they are entitled to all reports and other documents filed with the court upon which any decision will be based.
	25 U.S.C. § 1921	If federal or state law provides a higher standard of protection of rights for a parent, Indian child, or Indian custodian than ICWA, those rights apply.

Involuntary Proceedings

25 U.S.C. § 1912(e) & (f)
25 C.F.R. § 23.112

Under ICWA, an Indian child cannot be placed in foster care and a parent cannot have their rights terminated unless continuing custody with the parent or Indian custodian would result in serious emotional or physical damage to the child. A qualified expert witness must testify. The Indian child’s tribe may designate a qualified expert witness and a state social worker assigned to the Indian child may not serve as a qualified expert witness. Proof must be made by clear and convincing evidence for foster care placement. Proof must be beyond a reasonable doubt for TPR.

25 U.S.C. § 1912(d)

DFS must show "active efforts" to prevent placement or termination. Before removing an Indian child to foster care or terminating the parent's rights, the state must satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs to prevent the breakup of Indian families and that these efforts have proved unsuccessful.

Voluntary Proceedings

25 U.S.C. § 1913

Voluntary placement and relinquishments require judicial safeguards. For an Indian child:

- The consent of a parent or Indian custodian must be in writing;
- It must be signed before a judge;
- The judge must certify that the terms and consequences of the consent were explained in detail and fully understood by the parent or Indian custodian;
- This certificate must note whether the document was explained in English or was interpreted into another language the parent or Indian custodian understood; and
- Any consent given before or within ten days after the Indian child's birth is invalid.

25 U.S.C. § 1913

A parent or Indian custodian may revoke consent to voluntary placement at any time. Once consent is withdrawn, the child must be returned. Revocation of consent to adoption is summarized in the following chart.

Revocation of Relinquishment		
If an Indian child’s adoption:	Then the parent or Indian custodian may:	And the court must:
Is not yet final	Revoke the consent at any time	Return the child to the parent or Indian custodian
Has been less than two years	Revoke the consent if it was obtained through fraud or duress	Return the child to the parent or Indian custodian
Has been final for two years	Never revoke the consent	Reject requests to revoke
Is set aside or vacated	Petition for return of the child	Grant the petition unless there is a showing that it would not be in the child’s best interest

Plc

§ 25 U.S.C. § 1915

There is a preference for placing an Indian child in an Indian home. An Indian child must be placed in the least restrictive setting and within a

	reasonable proximity to the child's home, taking into account the child's special needs. Every time a child changes placement, except when returned home, the ICWA placement preferences apply.
25 U.S.C. § 1915(b)	For foster care or pre-adoptive homes, preference must be given, in the absence of good cause to the contrary, to: <ul style="list-style-type: none"> ■ Extended family members; ■ Foster homes approved by the tribe; ■ Licensed Indian foster homes; and ■ Indian-approved institutions.
25 C.F.R. § 23.2	Indian foster homes are defined as a foster home where one or more of the licensed or approved foster parents is an "Indian" as defined in 25 U.S.C. 1903(3).
25 U.S.C. § 1915(a)	For adoptive homes, preference must be given, in the absence of good cause to the contrary, to: <ul style="list-style-type: none"> ■ Extended family members; ■ Tribal members; and ■ Other Indian families.
25 C.F.R. § 23.132(b)	The party seeking departure from the placement preferences bears the burden of proving by clear and convincing evidence that there is "good cause" to depart from the placement preferences.
25 C.F.R. § 23.132(c)	A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and should be based on one or more of the following considerations: <ul style="list-style-type: none"> ■ The request of one or both of the Indian child's parents that comply with the order of preference; ■ The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made; ■ The presence of a sibling attachment; ■ The extraordinary physical, mental, or emotional needs of the Indian child; or ■ The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located.
25 U.S.C. § 1903(2)	The tribe's law or custom defines an "extended family member." If there is no law or custom, it includes any adult grandparent, aunt, uncle, sister, brother, sister-in-law, brother-in-law, niece, nephew, first or second cousin, or stepparent.
25 U.S.C. § 1915(c)	The tribe may also establish its own placement preferences. If it does, the state must follow them as long as the placement is the least restrictive setting appropriate to the child's needs. Consider the preferences of the parent and child where appropriate. If a parent wishes anonymity, give this weight when applying preferences.
25 U.S.C. § 1915(d)	Prevailing Indian social and cultural standards apply. In meeting the preference requirement, follow the standards of the Indian community

		where the parent or extended family member resides or maintains social and cultural ties.
	25 U.S.C. § 1915(e)	The state must maintain records of its compliance with the placement preferences. The tribe or Secretary of the Interior may request these records at any time.
	25 C.F.R. § 23.129	The court, where appropriate, must consider the Indian child's parents' preferences in foster care, pre-adoptive, and adoptive placements.
Sanctions	25 U.S.C. § 1917	Adult adoptees are entitled to information on their Indian heritage. Adopted Indian children who reach age eighteen may petition the court that entered the adoption decree for information on their Indian heritage. The court must inform them of their tribal affiliation. It must also give them any other information necessary to protect any rights flowing from the tribal relationship.
	25 U.S.C. § 1914	If the state fails to comply with ICWA, court orders are voidable. The parent, Indian custodian, or tribe may petition to invalidate a foster care placement or TPR.

5.2 Interstate Compact on the Placement of Children

The Interstate Compact on the Placement of Children (ICPC) allows placement of children in another state. The purpose of the ICPC is to encourage cooperation between states in interstate placements and establish uniform legal and administrative procedures governing the interstate placement of foster children.

Applicability	WYO. STAT. § 14-5-101 Art. I	ICPC applies to placements across state lines for foster care, preliminary adoption, or group care including residential treatment. <i>Placement</i> means the arrangement for the care of a child in a family-free or boarding home or in a child-caring agency or institution. Placement does not include any institution caring for the mentally ill, mentally defective or epileptic, any institution primarily educational in character, or a hospital or other medical facility.
	WYO. STAT. § 14-5-101 Art. VII	ICPC does not apply to placements made by and between close relatives when the court has not assumed jurisdiction.
	Dept. of Health & Human Servs. v. Jones, 248 S.W.3d 507 (Ark. App. 2007)	If the court is making the placement the ICPC applies. If the court merely ratifies the placement decision made by the family, ICPC does not apply. For example, in <i>Dept. of Health & Human Servs. v. Jones</i> , ICPC did not apply where the court declined to take protective custody of child and allowed grandparents, who had previously received custody by agreement of the parents, to retain custody out of state.
	In re Alexis O., 959 A.2d 176 (N.H. 2008) In re John M., 47 Cal.Rptr.3d 28 1 (Cr. App. 2006)	ICPC does not apply to placements with non-custodial parents where the court has no evidence they are unfit and releases jurisdiction. Most states require ICPC compliance for placements with parents when the court retains jurisdiction. Some states have concluded that these placements are not placements in "foster care" or "preliminary to adoption" and ICPC does not apply.

	In re: Rholetter, 592 S.E.2d 237 (N.C. App. 2004)	
	I.C.P.C. Regulation 9	ICPC does not apply to visits. A visit is distinguished from a placement by its purpose and duration.
	WYO. STAT. § 14-5-101 Art. I(d)	ICPC does not apply to children admitted to hospitals or other medical facilities for acute care. Long-term treatment for chronic conditions is considered substitute parental care and must have ICPC approval.
	I.C.P.C. Regulation 4	<p>ICPC does not apply to facilities that are primarily educational in nature. While many residential treatment facilities do provide educational services, if a facility provides services for non-educational needs, it is an ICPC placement.</p> <p>Other placement where ICPC applicability can prove difficult include those involving:</p> <ul style="list-style-type: none"> ■ Tribal lands (does not usually apply); ■ Other countries (does not usually apply); ■ A mother who is not in her home state at the time of a child's birth; or ■ The residency of military personnel.
Placement	I.C.P.C. Regulation .01	When seeking to place a Wyoming child out-of-state, DFS makes a written request for a home study to the receiving state. DFS needs the court order showing custody or other authority to make an ICPC request.
Timeframes	42 U.S.C. § 671(a)(26)(A)	ICPC home studies should be complete within sixty days of the receipt of the request in the receiving state, though federal law indicates a “timely” home study will be complete in thirty.
	42 U.S.C. § 673(c) I.C.P.C. Regulation 7	An expedited request can be made in some cases. Regulation seven studies have strict requirements for processing and should result in a completed home study within thirty days.
Jurisdictions	WYO. STAT. § 14-5-101 Art. IV	<p>The sending state retains jurisdiction over the child while they are in the receiving state. Sending state jurisdiction may only be terminated if the child:</p> <ul style="list-style-type: none"> ■ Is adopted; ■ Reaches majority; or ■ Becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state.

5.3 Child Abuse Protection and Treatment Act

CAPTA

Pub. L. No. 111-320

The Child Abuse Prevention and Treatment Act (CAPTA) provides states a mechanism to access federal funding to assist in responding to cases of child maltreatment. CAPTA includes numerous requirements that a state must meet to receive federal funds including a system of mandated reporting for suspected child abuse/neglect, assessments to determine which reports of suspected child abuse/neglect are valid, and responses that are appropriate based on the level of risk to the child. Of particular importance is CAPTA's requirement that a GAL be appointed to represent a child when judicial intervention is necessary. Although CAPTA does not require that the GAL be an attorney, it does require that the GAL receive training in the role of a GAL. The role of the GAL is to "obtain first-hand, a clear understanding of the situation and the needs of the child" and "make recommendations to the court concerning the best interest of the child." CAPTA also establishes requirements for DFS worker training and disclosure of information to government entities, requires mandatory child abuse reporting, and provides minimum standards for defining physical child abuse, neglect, and sexual abuse. Wyoming's statutory definitions of child abuse and neglect conform to these minimum standards.

5.4 Adoption Assistance and Child Welfare Act

AACWA

Pub. L. No. 96-272

The Adoption Assistance and Child Welfare Act (AACWA) has two primary goals:

- Reduce the number of children entering the foster care system; and
- Reduce the length of time children remain in the foster care system.

Title IV-B requires states to develop a plan to prevent and respond to child abuse/neglect cases in order to receive federal funding. Title IV-E provides federal funding to assist in offsetting the costs of foster care when children are removed from their homes. These titles also provide federal adoption subsidies for special needs children.

In order to receive IV-E funding, specific requirements must be met.

Requirement	Timeline
The Court must find that it is contrary to the welfare of the child to remain in, or return to, the child’s home.	Finding must be made in the first court order following the removal of the child from the home.
Case Plan	Must be developed within sixty days of the date the child was removed from the home.
Reasonable Efforts to Prevent Removal	Must be made within sixty days of the date the child was removed from the home.
Six-Month Periodic Review	Every six months after the child enters foster care (Wyoming Statutes require these hearings every six months from the date of the actual removal. WYO. STAT. § 14-3-431).
Reasonable Efforts to Finalize Permanency Plan	Every twelve months after the child enters foster care (Wyoming Statutes require these hearings every six months from the date of the actual removal. WYO. STAT. § 14-3-431).
Mandatory Filing of a Petition to Terminate Parental Rights	Child in foster care for fifteen of the last twenty-two months

5.5 Adoption and Safe Families Act

ASFA

45 C.F.R. § 1356

The Adoption and Safe Families Act (ASFA) is an extensive federal law that provides specific requirements for states when developing child welfare law practices. ASFA’s provisions lay the groundwork. ASFA provides funding to support family preservation and reunification through the provision of reasonable efforts. However, ASFA made clear that “in determining reasonable efforts to be made with respect to a child . . . the child’s health and safety shall be the paramount concern.”

ASFA requires that, in most circumstances, reasonable efforts must be provided to facilitate family reunification. Although “reasonable efforts” is not defined, ASFA requires that the state agency establish a written case plan that details the child’s placement, school, medical, and other information, and the services that will be provided to assist in reunification or, if reunification is not the goal, the services that will be provided to reach the alternate permanency goal.

WYO. STAT. § 14-3-431(m)

ASFA also established the oft-quoted “fifteen of twenty-two” rule, requiring a state agency to seek TPR when a child has been in foster care for fifteen of the most recent twenty-two months, unless one of the enumerated exceptions applies. The purpose of this rule is to ensure children do not “linger” in the foster care system without progress toward permanency.

WYO. STAT. § 14-2-309(c)

ASFA also clarified that reasonable efforts toward reunification may not be required in cases in which the harm done to the child is significant and, in some situations, even mandates immediate TPR proceedings.

ASFAs focus on permanency for children is also evident in its expansion of alternate permanency options to include permanent guardianships and APPLA and its increased adoption subsidies and incentives.

5.6 Multi-Ethnic Placement Act & Interethnic Adoption Provisions

MEPA-IEP

42 U.S.C. § 671(a)(18) The Multi-Ethnic Placement Act & Interethnic Adoption Provisions (MEPA-IEP) seeks to eliminate the consideration of race, color, or national origin when licensing foster parents and when making decisions for foster care or adoptive placements. The MEPA-IEP requires that DFS make diligent efforts to recruit foster and adoptive parents “that reflect the ethnic and racial diversity of children in the state for whom foster and adoptive homes are needed.” The MEPA-IEP prohibits delay in placement in order to place in a racially congruent home, and prohibits the use of race, color, or national origin to deny eligibility for foster care or adoption or to become a foster or adoptive parent.

Race, color, or national origin can be considered in very restricted circumstances, such as when an older child wishes to be placed with a family of a particular race, or has a special need to be placed with a particular race. MEPA-IEP does not apply to any child who qualifies as an Indian Child under ICWA.

5.7 Chafee Act- Foster Care Independence Act

Chafee Act

Pub. L. No. 106-169 The Chafee Act was established to assist children remaining in foster care until the age of eighteen (or twenty-one) to transition into independence. The Chafee Act authorizes the provision of independent living services including educational services (vocational training, assistance in obtaining a diploma or post-secondary education), employment services (job placement assistance), self-care services (financial assistance, housing assistance, counseling), and Medicaid eligibility (the Act authorizes states to extend Medicaid eligibility to former foster youth to age twenty-one). The Chafee Act mandates that a portion of federal funding be used to assist former foster youth to the age of twenty-one.

The Chafee Educational and Training Vouchers was added to the Chafee Act in 2000 to provide federal funds (up to \$5,000 per-year per-youth) for former foster youth to help pay for post-secondary education or vocational education.

5.8 Fostering Connections Act

Fostering Connections Act

Pub. L. No. 110–351

The Fostering Connections Act allows states to continue to provide foster care services to youth up to the age of twenty-one, as long as those youth are participating in one of the following:

- Completing a secondary education program or program leading to an equivalent credential;
- Enrolled in an institution which provides post-secondary or vocational education;
- Participating in a program or activity designed to promote, or remove barriers to, employment;
- Employed for at least 80 hours per month; or
- Incapable of doing any of the above activities due to a medical condition, which is supported by regularly updated information in the case plan of the child.

Children over the age of eighteen may also continue to be eligible for foster care services if they are living independently, but in a supervised setting. Finally, the Fostering Connections Act also provides funding for relatives who take guardianship of children in foster care. This law also requires children to stay in their home school if at all possible.

5.9 Child & Family Services Improvement Act

CFSIA

Pub. L. No. 112 - 34

The Child and Family Services Improvement Act (CFSIA) requires the court to consider the wishes of older and transitioning youth when making permanency decisions or developing transition plans. The court must consult with the youth in an age-appropriate manner.

5.10 Individuals with Disabilities Act

IDEA

20 U.S.C. § 1400-1466

The Individuals with Disabilities Act (IDEA) is applicable to all children who have a disability that impairs their ability to benefit from a free and appropriate education. This includes being able to attend school, get from classroom to classroom, use technology, and more. IDEA requires an evaluation if a child is suspected of having a disability to determine whether the child has a disability that requires special services for the child to learn effectively. If special services are necessary, a team is developed to draft a written Individualized Education Plan (IEP) detailing the child's academic and functioning levels, the services necessary, the child's goals, etc. A parent or guardian should advocate for the child's needs during the IEP process and is required when a child is in state custody. The biological parent and the guardian can both consent to the evaluation or for services to be provided. IDEA sets forth specific restrictions on the IEP process, including provisions for dispute resolution and enforcement, and complaint procedures.

5.11 Preventing Sex Trafficking and Strengthening Families Act

PSTSFA

Pub. L. No. 113-183

This law focuses on identifying and finding services for children at risk of, or who are victims of, sex trafficking. It also requires the state agency to report on these victims. Subtitle B of the Act focuses on permanency - one of the biggest changes being that APPLA can only be used as a permanency goal in limited circumstances. The Act also requires children to have appropriate documentation when they age out of foster care, including copy of their birth certificate, Social Security card, health insurance information, copy of medical records, and a driver's license.

5.12 Patient Protection and Affordable Care Act

PPACA

Pub. L. No. 111-148

The Patient Protection and Affordable Care Act (PPACA), commonly called the Affordable Care Act (ACA), is a United States federal statute signed into law on March 23, 2010. The ACA was enacted with the goals of increasing the quality and affordability of health insurance, lowering the uninsured rate by expanding public and private insurance coverage, and reducing the costs of healthcare for individuals and the government. It includes mandates, subsidies, and insurance exchanges with the goal of increasing coverage and affordability.

5.13 Uniform Child Custody Jurisdiction and Enforcement Act and Parental Kidnapping Prevention Act

UCCJEA & PKPA

WYO. STAT. § 20-5-201, et. seq.

The purpose of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is to avoid jurisdictional competition and conflict between courts of different states in child custody matters.

The purpose of the Parental Kidnapping Prevention Act (PKPA) is to determine which custody decrees are entitled to full faith and credit.

UCCJEA	PKPA
Primarily determines which state shall proceed with exercising jurisdiction and which shall abstain	Primarily determines which custody decrees are entitled to full faith and credit
Treats emergencies separately	Treats emergencies as the third tier
Applies internationally	Does not apply internationally
Contains provisions on enforcement of out-of-state custody orders	

6 Collateral Proceedings

6.1 Guardianship

Guardianship

WYO. STAT. § Title 3,
Chapters 1 and 2

A guardianship proceeding may arise out of the juvenile court proceeding in order to effectuate permanency. Many times, guardianships are separate court actions. Guardianships can be filed within the juvenile court action. Beware that the family taking guardianship of the child may qualify for subsidies, if needed, especially if the child has significant health needs or is an older youth.

IN THE MATTER OF THE
GUARDIANSHIP OF MEO:
KO V. LDH AND BJH AND
THE STATE OF WYO.,
2006 WY 87, 138 P.3D
1145 (WYO. 2006)

In an involuntary guardianship proceeding, a finding of parental unfitness shall be made prior to determining the child's best interests.

IN THE MATTER OF THE
GUARDIANSHIP OF MKH,
A MINOR CHILD, 2016
WY 103 (WYO. 2016)

The district court entered an *Order Appointing Guardian* prior to the birth of a child. The Court determined a guardian may not be appointed for an unborn child because an unborn child is not a minor per the statutory definition and there is no evidence of legislative intent to include an unborn child in the definition of a minor. However, the Court determined that an error in the effective date of a guardianship appointment does not rise to the level of a jurisdictional defect and, therefore, the district court had jurisdiction to act on the 2005 petition that resulted in the *Order Appointing Guardian*, but erred in its exercise of that jurisdiction. Subsequent to the *Order Appointing Guardian*, the district court entered an *Order Extending Guardianship* after the child's birth. The Court found the subsequent order acted as a new order appointing the guardian and the district court's decision declaring the 2005 and 2006 orders void is reversed.

6.2 Termination of Parental Rights

TPR

WYO. STAT. § 14-3-431

A termination of parental rights (TPR) is a balance of three competing interests: a parent's fundamental right to parent their child, the child's right to safety and permanency, and the state's interest in protecting the child. Parents, guardians or legal custodians, or DFS (through the district attorney or Attorney General Child Permanency Unit) may file a petition for TPR. Once the petition for TPR has been filed, the court will appoint a GAL to represent the child.

WYO. STAT. § 14-2-206

A parent's right to the care, custody, and control of their child is fundamental. The State shall not infringe on the parental right without demonstrating that the interest of the government applied to the parent or child is a compelling state interest addressed by the least restrictive means.

WYO. STAT. § 14-3-431(m)

When a child has been in foster care under the responsibility of the state for fifteen of the most recent twenty-two months, the state is required to file a petition to terminate parental rights. There are a few exceptions to this mandatory rule. The state can choose not to file a petition to terminate parental rights if:

- The child has been in the care of a relative;
- There is a compelling reason for determining that TPR is not in the child's best interest; or
- DFS has not provided reasonable efforts to return the child to the home.

WYO. STAT. § 14-2-309(a)

In Wyoming, there are eight separate grounds for a TPR:

- (i) The child has been left in the care of another person without provision for the child's support and without communication from the absent parent for a period of at least one year. In making the above determination, the Court may disregard occasional contributions, or incidental contacts and communications. For purposes of this paragraph, a court order of custody shall not preclude a finding that a child has been left in the care of another person;
- (ii) The child has been abandoned with no means of identification for at least three months and efforts to locate the parent have been unsuccessful;
- (iii) The child has been abused or neglected by the parent and reasonable efforts by an authorized agency or mental health professional have been unsuccessful in rehabilitating the family or the family has refused rehabilitative treatment, and it is shown that the child's health and safety would be seriously jeopardized by remaining with or returning to the parent;
- (iv) The parent is incarcerated due to the conviction of a felony and a showing that the parent is unfit to have the custody and control of the child;
- (v) The child has been in foster care under the responsibility of the state of Wyoming for fifteen of the most recent twenty-two months, and a showing that the parent is unfit to have custody and control of the child;
- (vi) The child is abandoned at less than one year of age and has been abandoned for at least six months;
- (vii) The child was relinquished to a safe haven provider in accordance with Wyoming Statute Section 14-11-101 through 14-11-109, and neither parent has affirmatively sought the return of the child within three months from the date of relinquishment; and
- (viii) The parent is convicted of murder or homicide of the other parent of the child under Wyoming Statute Section 6-2-101 through 6-2-104.

IN THE INTEREST OF RAA, AMA, AND CMA, MINOR

In the RAA case, the Court determined the issue of whether a father's communications to his children were merely incidental as to allow termination of his parental rights pursuant to Wyo. Stat. Ann. § 14-2-

CHILDREN, 2016 WY
117 (WYO. 2016)

309(a)(i). The Court concluded that to terminate parental rights, three conditions must be satisfied: 1) the children were left in the care of another; 2) without provision for support; and 3) without communication from the absent parent. In this case, the father consistently sent letters and cards to his children during his time in prison and attempted to initiate communication through visitation upon his release. Thus, the father did enough to satisfy the statute's requirements.

WYO. STAT. § 14-2-
309(b)

Proof that a parent has been convicted of these crimes may be grounds for terminating the parent-child relationship and stopping reasonable efforts. Note that more than one ground may be alleged, but only one must be proven by clear and convincing evidence:

- Cases in which a parent has killed another of his or her children; or
- Certain other egregious situations as defined by statute.

IN THE MATTER OF
TERMINATION OF
PARENTAL RIGHTS TO
WDW, A MINOR CHILD:
JLW V. CAB, 2010 WY
9, 224 P.3D 14 (WYO.
2010)

When considering a petition for termination of parental rights, a court may take into consideration respondent's voluntarily waiver of objection the timeliness of statutory requirements and respondent's pattern of behavior over time.

IN THE INTEREST OF LB,
BO, KO, MINORS, STATE
OF WYO., DFS V. DH AND
CB, APPELLEES AND
STATE OF WYO., 2014
WY 10, (WYO. 2014)

Regardless of whether DFS has actual custody of a child, DFS has the authority to file a petition to terminate parental rights per Wyo. Stat. Ann. 14-2-310(a)(iii).

IN THE MATTER OF THE
PARENTAL RIGHTS OF
KLS, MINOR CHILD: RS,
APPELLANT V. DFS,
SHERIDAN COUNTY,
WYOMING, APPELLEE, 94
P.3D 1025 (WYO. 2004)

In the KLS case, the district court fully considered all of the evidence and provided detailed and thorough findings on each of the elements required by the statute for termination of Father's parental rights. Clear and convincing evidence proved Father subjected KLS to continuing abuse and neglect, and her safety and well-being required permanent removal.

IN THE INTEREST OF SIJ
AND ERJ, II, MINOR
CHILDREN: SLJ,
APPELLANT V. THE STATE
OF WYO., DFS, ALBANY
COUNTY FIELD OFFICE,
104 P.3D 74 (WYO.
2005)

The use of juvenile court records in termination proceedings is appropriate. Section 14-3-214(b)(vi) authorizes the use of records concerning child abuse or neglect investigations by courts upon a showing that access to the records is necessary for determination of an issue.

IN THE MATTER OF THE
TERMINATION OF
PARENTAL RIGHTS TO TS:
LS AKA LA V. JOHNSON
COUNTY DFS, 2006 WY

DFS is not required to provide transportation to a parent after the termination phase of the proceeding has commenced.

130, 143 P.3D 918
(WYO. 2006)

IN THE MATTER OF THE
PARENTAL RIGHTS TO:
AD, DD, AND KD, CL V.
WYO., DFS, 2007 WY
23, 151 P.3D 1102
(WYO. 2007)

The district court properly considered DFS' efforts to reunify this family and Mother's efforts to rehabilitate herself over the entire three year period these children were in foster care, and the district court reasonably concluded the interests of the children in a safe and stable home outweighed Mother's rights as a parent.

IN THE MATTER OF THE
TERMINATION OF
PARENTAL RIGHTS TO
L.A.: RLA v. DFS, 2009
WY 109, 215 P.3D 266
(WYO. 2009)

DFS sought termination per Wyo. Stat. Ann. § 14-2-309(a)(iv) because Father was incarcerated on a felony conviction and was unfit to have custody and control of Child. The Court previously held that DFS is required to show it made reasonable reunification efforts and its rehabilitation efforts were unsuccessful only when it requests termination under § 14-2-309(a)(iii). The other provisions of § 14-2-309(a), including subsection (iv), do not require DFS to make reasonable reunification efforts.

The determination of whether a parent is unfit to have care and custody of a child must be made within the context of a particular case and will depend upon the situation and attributes of the specific parent and child. Looking at our cases, we are able to extrapolate that fitness includes the ability to meet the ongoing physical, mental and emotional needs of the child.

IN THE MATTER OF THE
TERMINATION OF
PARENTAL RIGHTS TO AE
AND DE, MINOR
CHILDREN: JD AND SE V.
STATE OF WYO., DFS,
2009 WY 78, 208 P.3D
1323 (WYO. 2009)

Evidence of past behavior is relevant in determining current parental fitness.

IN THE MATTER OF THE
TERMINATION OF
PARENTAL RIGHTS TO:
ATE, KOE, ETE, ME,
FTE, DFS v. TWE, III,
2009 WY 155, 222
P.3D 142, 215 P.3D 266
(WYO. 2009)

The district court's findings, if supported by evidence in the record, are subject to strict scrutiny when considering a petition to terminate parental rights. The State shall prove by clear and convincing evidence that returning children to the parent would be a risk to their health or safety, or that the parent is unfit. Here, the State failed to demonstrate that the father's continued use of marijuana jeopardized his children's health and safety. Furthermore, evidence of poverty requiring State assistance does not make a parent unfit. The district court's decision not to terminate parental rights was affirmed.

IN THE INTEREST OF NDP,
JAP, ANP AND ICP,
MINOR CHILDREN, CP V.
THE STATE OF WYO.,
DFS, 2009 WY 73, 208
P.3D 614 (WYO. 2009)

In neglect proceedings, the State has the burden of proving the allegations by a preponderance of the evidence. The preponderance of the evidence standard requires DFS to make reasonable efforts to reunify the family. Nevertheless, the statute also recognizes that the children's health and safety is paramount, timely placement of children in accordance with a permanency plan may take precedence over family reunification, and reunification efforts inconsistent with the permanency plan may be discontinued. The juvenile court considered DFS's efforts to reunify the

IN THE MATTER OF THE
TERMINATION OF
PARENTAL RIGHTS TO
KMJ AND JDAJ, MINOR
CHILDREN, AJJ v. THE
STATE OF WYO., DFS,
2010 WY 142, 242
P.3D 968 (WYO. 2010)

children with Mother and found them to be sufficient but ultimately unsuccessful. The court remarked that the case had been on-going for more than a year and expressed frustration with Mother's lack of progress on her case plans. It noted that Mother had failed to follow many of the court's orders, including completing substance abuse treatment.

Court can examine relevant factors in parent's history when determining current parental fitness. Such factors include past child abuse conviction, criminal history, inability to care for the special needs of his children, and failure to participate in counseling or parenting education.

IN THE MATTER OF THE
TERMINATION OF
PARENTAL RIGHTS TO
KMO, DMO, CMO,
AKO, DKO, MTO, ABO,
EEO AND JBO, MINOR
CHILDREN, 280 P.3D
1203 (WYO. 2012)

Mother contends DFS failed to file the termination petition within 60 days of the juvenile court's determination that reunification was no longer the permanency plan. However, neither the Child Protection Act nor the termination statutes impose a filing deadline applicable to the grounds on which the petition was filed against Mother in this case. Mother also argued that the fifteen of the twenty-two month timeline is "tolled" if a child is placed with a relative. This is incorrect. DFS proved by clear and convincing evidence that Mother was "unfit to have custody and control" of the children based on the facts in the record. Use of a special verdict form treating all children alike was justified because no evidence was presented otherwise.

IN THE MATTER OF THE
TERMINATION OF
PARENTAL RIGHTS TO
KAT, SAT, AND JGS,
MINOR CHILDREN, NLT,
APPELLANT v. THE STATE
OF WYO., DFS, APPELLEE,
288 P.3D 1217 (WYO.
2012)

It is appropriate for a district court to consider a parent's history and pattern of behavior over time in determining whether rights should be terminated. Here the Court found there was clear and convincing evidence to terminate parental rights.

IN THE MATTER OF THE
TERMINATION OF
PARENTAL RIGHTS TO
SMH, KDH, MJH AND
APH, MINOR CHILDREN.
HMH, AKA HM AND HB,
APPELLANT v. STATE OF
WYO., DFS, APPELLEE,
290 P.3D 1104 (WYO.
2012)

The district court further concluded that (1) DFS had made reasonable efforts towards family reunification, which had not been successful, (2) that Mother had failed in her rehabilitative efforts, and (3) that the children's health and safety would be seriously jeopardized by returning to Mother's care. The Mother appealed; however, the Supreme Court found sufficient clear and convincing evidence to terminate Appellant's parental rights pursuant to Wyo. Stat. Ann. 14-2-309(a)(iii) and (a)(v).

IN THE MATTER OF THE
TERMINATION OF
PARENTAL RIGHTS TO HLL

The Court held that the plain language of the termination statutes makes it clear that the W.R.C.P. apply to termination proceedings, that termination proceedings are civil cases, and that an entry of default can be entered by

AND KGS, MINOR CHILDREN, 2016 WY 43 (WYO. 2016)

the clerk pursuant to W.R.C.P. 55(a). The Court further held that in termination proceedings, before judgment of a default can be entered, the court can only proceed to disposition on the default when the Department establishes at a hearing the requisite factors for termination by clear and convincing evidence.

IN THE MATTER OF THE TERMINATION OF PARENTAL RIGHTS TO KGS, A MINOR CHILD, 2017 WY 2 (WYO. 2017)

The Supreme Court determined the issue of whether a father's parental rights were wrongly terminated pursuant to Wyo. Stat. Ann. § 14-2-309(a)(iii) and (v). After finding the father has had little contact with KGS throughout her life, that he abused KGS, has an inadequate living situation, and has an extensive criminal record, the Supreme Court found there was clear and convincing evidence to terminate appellant's rights. The Supreme Court also found the father was provided notice and his due process rights were not violated.

IN THE MATTER OF THE TERMINATION OF PARENTAL RIGHTS TO: ARLEB AND RCW, 2017 WY 107 (WYO. 2017)

In the *ARLeB* case, Mother raises two issues: (i) was there sufficient evidence to support termination of Mother's parental rights, and (ii) did the district court err in closing the termination proceedings to the public. On the first issue, the Wyoming Supreme Court found that there was sufficient evidence supporting the termination of Mother's parental rights. The court determined that the mother was unfit to have control over her children based on several factors supported by the evidence. On the second issue, the Court held the closure of the Mother's trial was not reversible error. When a trial is closed to the public, there must be a compelling reason and the limitations must be narrowly tailored to serve the competing interest. The Court held that closing the trial to the public was not sufficiently narrow to protect confidentiality and was an abuse of discretion. However, this error did not justify overturning the lower court's ruling, because the Mother could not show how she was harmed by the error.

IN THE INTEREST OF L-MHB, 2017 WY 110 (WYO. 2017)

In April 2014, the Court placed the minor child in the custody of DFS shortly after birth. In January 2016, the court held a permanency hearing. In July 2016, at a review hearing, the State and Mother's attorney brought up the permanency plan for the child and both made arguments. The State argued to change the permanency plan to adoption. Mother's Attorney argued to change the permanency plan to guardianship with the former foster parents. In October 2016, the court issued an order on permanency setting the permanency plan to adoption. At a review hearing in November 2016, both the GAL and mother's attorney indicated they had not received the court's permanency order. The court responded that although Mother had not received the physical order, it should have been clear to the parties from the July hearing that if the mother did not make efforts towards reunification, the permanency plan would be adoption. Mother's attorney then voiced support for the adoption, but Mother has a right to consent and participate in the adoption. The issues are (i) whether the juvenile court violated Mother's right to due process of law in the way it ordered a change in permanency, and (ii) whether there was an abuse of discretion because the juvenile court failed to make the findings required to support the permanency change. The Wyoming Supreme Court ruled (i) Mother waived her due process when she advocated the same change in

permanency as the state argued in the November hearing, and (ii) because determination of the adoptive parents is a matter for a separate proceeding, there was no abuse of discretion in the juvenile court’s refusal to designate the adoptive parents in the permanency order.

6.3 Adoption

Adoption

WYO. STAT. § 14-3-431

Adoption may arise out of the juvenile court proceeding in order to effectuate permanency for the child. Many times, adoptions are separate court actions. However, adoptions and guardianships can be filed within the juvenile court action. Either way, be aware of these and track the proceedings progress to ensure they are completed timely. Also, be aware that the family adopting or taking guardianship of the child may qualify for subsidies, if needed, especially if the child has significant health needs or is an older youth.

IN THE MATTER OF THE TERMINATION OF PARENTAL RIGHTS TO CW AND CW: LJC V. HMW AND IN THE MATTER OF THE ADOPTION OF CW AND CW: TLC AND LJC V. HMW, 2008 WY 50, 182 P.3D 501 (WYO. 2008)

When considering a petition for adoption, the district court may find that the best interests of the child are valid grounds for denial, even if the statutory factors have been met.

IN THE INTEREST OF SO, A MINOR CHILD, 2016 WY 99 (WYO. 2016)

The district court did not abuse its discretion when it denied the “Motion for Placement of a Minor Child with Grandparents” based upon the grandparents’ assertion that the child should be placed with them because they are a familial relation. After reviewing the facts of the case, the Court determined that preference for family placement should not prevail over the “paramount concern” for the best interests of the child, and it was in this child’s best interest to remain with the foster family.

6.4 Private Child Custody

Custody

WYO. STAT. § 20-5-201, et. seq.

The parents could be involved in any number of private actions including establishment of paternity, child support, child custody, divorce, or a private termination action. Sometimes, it is the finalization of a private custody proceeding that needs to occur before the juvenile court case can close. If this is the case, and the family cannot afford an attorney, refer them to the Wyoming Center for Legal Aid or the Wyoming State Bar.

6.5 Child Support

Child Support

Wyo. DFS Policy 2.5.1

Civil custody and child support proceedings can be impacted by abuse and neglect proceedings. In cases where the parents no longer reside together, it is important to ascertain who has primary custody and whether paternity has been established. When the custodial parent has abused or neglected the child, the non-custodial parent may file for a change in custody. Or, in some cases, there is no custody order and the parents will have to file for custody.

If the child is placed in State custody, the parent is obligated to pay child support. DFS will refer the matter to the local child support enforcement office if it is anticipated that the child will remain in foster care longer than sixty days. Parents are required to pay child support while their child is in State custody, and if they don't, it may be used against them in permanency hearings and termination proceedings. If the child is in care and paternity is not established, DFS will also refer the matter to child support enforcement to establish paternity.

6.6 Contempt

Contempt

WYO. STAT. § 14-3-438

Parents who fail to comply with the requirements of the court orders in an abuse and neglect proceeding may face criminal charges for indirect contempt of court.

Contempt actions must be prosecuted in accordance with Wyoming Rules of Criminal Procedure Rule 42(c).

Swain v. State, 220 P.3d 504 (Wyo. 2009)

Additionally, contempt actions must be filed as separate criminal proceedings.

In some jurisdictions, counsel who represent parents in abuse and neglect proceedings will also be appointed to represent the parent in a contempt action. If counsel is appointed in a contempt action, they should follow normal criminal procedural process.

6.7 Appeals

Appeals

WYO. STAT. § 14-3-432(a) WYO. R. APP. P. 2.01	An appeal subjects the entire case, including the facts and the law, to review by a higher court. Note that any party to any juvenile court case can appeal, including a GAL.
WYO. STAT. § 14-3-432(a) WYO. R. APP. P. 2.01	Any party may appeal a final order, judgment, or decree of the juvenile court. A notice of appeal must be filed within thirty days of the entry of the appealable order. The appeal follows the requirements of the Wyoming Rules of Appellate Procedure.
WYO. STAT. § 14-3-432(b) WYO. R. APP. P.2.05	The request for transcripts must be filed concurrently with the notice of appeal. If the court determines that a child's parents, guardian, or custodian cannot afford a court transcript and a transcript is necessary for their appeal, it will be provided at no cost or reduced cost, paid for by county funds.
WYO. STAT. § 14-3-433(b)	Orders transferring legal custody may be stayed pending appeal. However, a suitable provision must be made for the child's placement pending appeal.
WYO. STAT. § 14-3-433(a)	<p>Appeals from support orders may also be stayed. The juvenile court or Wyoming Supreme Court may stay an order requiring a money payment if the issue is under appeal. The court may require the appellant to deposit all or part of the payment with the court clerk, give bond for the amount, or comply with other terms and conditions to secure payment after the appeal is resolved. The court may also issue an order to restrain the appellant from dissipating assets pending appeal.</p> <p>Initial stay requests should be filed in the trial court. Whether the stay is granted is dependent on:</p> <ul style="list-style-type: none">■ The likelihood of hardship or harm to the child if the stay is denied;■ Whether the appeal has merit and is taken in good faith;■ The harm to the nonmoving party if a stay is granted; and■ Other considerations. <p>Temporary stays can be requested while the stay request is pending. If a stay is denied, the petitioner may seek a stay in the appellate court.</p> <p>The court must be informed of any subsequent events that may cause an appeal to become moot. Evidence of these events may be presented to the court in the following ways:</p> <ul style="list-style-type: none">■ Motion to take judicial notice;■ Motion to take additional evidence; or■ Motion to dismiss appeal.
J.L., 989 P.2d 1268 (Wyo. 1999)	The Wyoming Supreme Court accepts the successful party's evidence as true and leaves out the unsuccessful party's conflicting evidence. It gives the successful party's evidence every favorable inference that may fairly and reasonably be drawn from it.

6.8 Administrative

Administrative Proceedings

WYO. STAT. § 14-3-213

When DFS receives reports of possible abuse and neglect, it begins an internal administrative process pursuant to statute. While separate from abuse and neglect proceedings, administrative proceedings can have a lasting impact on the parent. DFS conducts an investigation into the allegations to determine if abuse and neglect occurred. If DFS substantiated abuse or neglect, the person substantiated will be placed on the central registry.

If a parent is substantiated against and placed on the central registry, the parent may be disqualified in the future from obtaining employment in certain areas such as child and elder care. Even if there is not an adjudication in the abuse and neglect proceedings, the parent may still be substantiated and placed on the central registry by DFS. Many parents may disregard notices received from DFS regarding administrative proceedings. It is important to advise the parent that administrative proceedings should be taken just as serious as abuse and neglect proceedings.

DFS Rule § 6(b)(i), (ii)

An allegation is substantiated when credible evidence of abuse or neglect is determined. Furthermore, DFS must substantiate all reports where a court has accepted a criminal plea of guilty or *nolo contendere* or a civil, juvenile, or criminal court has made a finding that the alleged perpetrator committed certain acts that constitute abuse or neglect under these rules. Parents are given the opportunity to dispute the substantiation finding through an administrative process outside of any juvenile court proceedings.

6.9 Criminal

Criminal Proceedings

WYO. STAT. § 6-4-402(d)

WYO. STAT. § 6-4-403(g) & (k)

It is important to be aware of any criminal proceedings that are pending against the parent. Many abuse and neglect cases will be associated with criminal proceedings. While confidentiality laws prohibit the disclosure of confidential information from abuse and neglect proceedings, statements made by the child in the abuse and neglect proceeding could negatively affect the parent's criminal proceedings. However, a minor's identifying information shall remain confidential in the criminal proceeding unless minor waives the right.

In many cases, an adjudicatory hearing may give the State the opportunity to pre-try the criminal case in which the parent could be subject to a significant period of incarceration. In cases such as these, discuss the benefits and detriments of submitting to the jurisdiction of the juvenile court. In some counties, prosecutors may offer more lenient criminal sentences if the parent has taken substantial steps to address his or her needs within the abuse and neglect case.

It is important to be aware of the parent's bond conditions. If the parent is on bond in his or her criminal matter, the parent may be

subject to “no contact” requirements that could cause barriers to visitation with the child. For example, a parent may be required not to have contact with the other parent of the child. If this is the case, a third party must be contacted to facilitate exchanges of the child for visitation.

WYO. R. P. JUV. CT. 10

Juvenile cases cannot be delayed because the parties want to determine what is going to happen to the parent in criminal proceedings.

Communication with the parent’s criminal attorney is key to ensuring that the parent’s rights are protected in both the juvenile and criminal proceedings. Counsel for the parent should consult with the parent’s criminal attorney when necessary, while keeping in mind the confidential requirements of child abuse and neglect proceedings.

6.10 CHINS and Delinquency

CHINS

WYO. STAT. § 14-6-401

The CHINS Act allows the State to intervene in the family relationship when a child has not reached his eighteenth birthday who is habitually truant or has run away from home or habitually disobeys reasonable and lawful demands of his parents, guardian, custodian, or other proper authority or is ungovernable and beyond control.

CHINS cases mirror the process of abuse and neglect proceedings. A child may be taken into shelter care or a petition may be filed. The child appears in court and is advised of his or her rights. The child may admit the allegations, at which time the child is adjudicated a CHINS. The child may also deny the allegations, at which time the matter is set for an adjudicatory hearing. If the child is adjudicated as a CHINS, the matter then proceeds to disposition. Once there is an adjudication, the child and his or her family are subject to the orders of the court and required to work with DFS to address the concerns that brought the child to the attention of the State.

A child is entitled to direct counsel and the Court may, if proper showing is made, appoint a GAL to act in the best interest of the child. The Court may appoint a GAL if the child has no parent or guardian or if the interests of the parent or guardian are averse to that of the child and it is in the best interest of the child to do so.

Delinquency

WYO. STAT. § 14-6-201(a)(x)

In Wyoming, families may also become subject to the jurisdiction of the court under the Juvenile Justice Act. These proceedings are called delinquency proceedings. A child is alleged to be a delinquent child when they have committed an act punishable as a criminal offense or contempt of court, or an act violating the terms and conditions of any court order which resulted from the criminal conviction of any child but does not include a status offense.

Like CHINS cases, delinquency proceedings mirror abuse and neglect proceedings in how they progress through the juvenile court system. Delinquent children are given the same rights related to trial as are adults charged with criminal acts. After adjudication, children in both CHINS and delinquency cases may be placed on probation.

WYO. STAT. § 14-6-203

The district attorney is the single point of entry for all minors alleged to have committed a crime. The district attorney establishes objective criteria and screening and assessment procedures for determining the appropriate court for disposition of juvenile matters.

7 Social Services and Knowledge of Ancillary Issues Needed for Adequate Legal Representation and Case Judgement

7.1 Child Development

Attachment

A solid and healthy attachment with a primary caregiver appears to be associated with healthy relationships, while poor attachment with the mother or primary caregiver appears to be associated with a host of emotional and behavioral problems later in life. This early relationship is known as the attachment bond.

- An attachment bond is an enduring emotional relationship with a specific person;
- The relationship brings safety, comfort, soothing, and pleasure; and
- Loss or threat of loss of the person evokes intense distress.

Moving a child from his or her home to foster home, moving to multiple foster homes, and the trauma of abuse and neglect at a young age can all cause attachment and bonding issues. It is important to keep this in mind with a child of a young age and there is discussion on moving the young child to foster care or to a new foster home.

Child Development and Abuse and Neglect Cases

It is important to have a basic understanding of child development, as many of the critical issues within an abuse and neglect case regard a child's failure to meet developmental milestones. In many cases, children will be referred for developmental screenings as part of the court case. Furthermore, childhood abuse and neglect can have long-lasting effects on a child's emotions and behaviors, causing issues that should be addressed within the context of abuse and neglect proceedings. It is important to understand and explain to parents' issues related to child development. Furthermore, sometimes the "system" can do more harm than good to a child, so be prepared to use developmental principals to argue for children to return to or remain in the home.

7.2 Mental Health and Substance Abuse

Screening & Diagnosis

It is important to understand when a child or parent must be screened for mental health or substance abuse disorders. Expertise in this area is not necessary, but rather, familiarity with the concepts is needed in order to advocate for a child or parent.

The child and/or parent may see a mental health provider for routine treatment, or they may be ordered by the court to obtain a specific assessment. These assessments can include psychiatric evaluations, psychological evaluations, psychosexual evaluations, counseling, or mental health needs assessments, among others.

Mental, behavioral, or emotional disorders are screened to determine whether they meet diagnostic criteria specified within the current *Diagnostic and Statistical Manual (DSM)*. The DSM sets forth the criteria used by mental health providers to determine the specific mental health disorders a child or parent is presenting with at the time of evaluation. Diagnosis of a child or parent is subjective, and it is

possible to have different providers determine different diagnoses. Because of this, it is important to locate a trustworthy mental health provider.

Children with Mental Health Issues

More children in juvenile court have these issues than are usually diagnosed, so if there is any question, be sure the child is screened.

There are several mental health and mental health resources in Wyoming for children, including the following:

- Medicaid;
- Wrap-Around Services;
- UPLIFT;
- Care Management Entity (CME);
- Community Mental Health and Substance Abuse Centers (CMHSACs);
- Family Treatment Courts (Wyoming Statute Section 7-13-1601-1615);
- Department of Family Services (DFS) contracts with child care facilities and substitute care providers (Wyoming Statute Section 14-4-101); and
- Psychiatric Residential Treatment Facilities (PRTFs).

To ensure availability of Medicaid funds for the services provided in PRTFs the State Medicaid Agency must assure federal requirements for certification of the medical services are met for each child. The child must have a psychiatric evaluation (conducted by a physician or psychiatrist) prior to placement.

It is important to ensure that appropriate transition planning is done prior to discharge, including the filing of motions to ensure community services are in place prior to discharge. Available tools include “Re-entry Team Meetings” or requiring a facility to provide the court with a transition plan prior to discharge to ensure this is done.

No court shall order an out of state placement unless:

- Evidence has been presented to the court regarding the costs of the out of state placement being ordered together with evidence of the comparative costs of any suitable alternative in-state treatment program or facility, as determined by DFS pursuant to paragraph (d)(vii) of this section, whether or not placement in the in-state program or facility is currently available;
- The court makes an affirmative finding on the record that no placement can be made in an in-state institution or in a private residential treatment facility or group home located in Wyoming that can provide adequate treatment or services for the child; and
- The court states on the record why no in-state placement is available. WYO. STAT. § 21-13-315.

Parents with Mental Health and Substance Abuse Disorders

Some parents who are involved in abuse and neglect proceedings are struggling with some sort of mental health issue, such as temporary depression as a result of having their child removed from the home or another mental health diagnosis. Many of these parents have never received or are not currently receiving medical, psychological, or psychiatric treatment for these issues. In the course of the proceedings, it is likely that the parents will be required to take some steps to address these issues.

Some courts may order that the parent submit to substance abuse testing prior to adjudication. It is important to ensure that this testing is narrowly tailored to the issue of protecting the welfare of the child. The parent should also be advised that missed and failed tests may result in contempt charges and may also be considered by DFS as a failed test.

The Department of Child Protection Services will enforce substance abuse testing if there is a valid court order. If the parent is not ordered to submit to substance abuse testing, the parent should be advised

that they are not required to submit to testing at the request of the Department. However, if the parent is willing and able to provide a clean test, it may benefit the parent to voluntarily submit to testing. If the parent has tested positive for controlled substances, it is important ensure that the proper protocol for collection of the sample was followed.

7.3 Domestic Violence

Dynamics

Clinical observations form the primary basis for current beliefs and understanding about the dynamics of domestic violence. Adequate legal representation requires understanding of contemporary views of child abuse and domestic violence dynamics, and have the ability to ask informed questions throughout the process. Domestic violence in the home in which a child lives has long lasting effects on children. Witnessing this violence against a parent can be traumatic, although all children are affected differently, and the impact to the child depends on the severity and frequency of the abuse, and other supports available to the child. It is also important as visitation and other aspects of co-parenting between the parents, as one parent could be put at risk of harm or even death. Yet, on the other hand, do not make the assumption that the child should be taken out of the home immediately just because of domestic violence.

It is difficult to gather statistics on child maltreatment and domestic violence because many parents are reluctant to discuss or report abuse in the home. Nationwide, domestic violence may be the single major precursor to child maltreatment and neglect. Instances of child abuse in homes where domestic violence is present occur at much higher rates than homes without domestic violence. It is critical to protect abused parents as a means of protecting the children, as it significantly reduces the risk of the children becoming abusers themselves.

Co-Occurrence

Many risk factors may occur simultaneously and place children at a greater threat for maltreatment. There is growing evidence that various forms of maltreatment on children tend to co-occur. Types of overlapping concurrent abuse often include sexual, physical, psychological, and witnessing violence. It is important to keep the concurrent risk in mind when completing a domestic violence screening, or evaluating threats of danger in the child's home. It is important to remember that in many homes where child abuse occurs, domestic violence against a parent, oftentimes the mother, is also occurring.

Key Points to Keep in Mind:

- 50% of men who frequently assault their wives also abuse their children;
- Men who abuse their partners seek sole physical custody of their children two times more often than non-violent men;
- Perpetrators of domestic violence who were abused as children are more likely to physically harm their children;
- Battered women were half as likely as men to abuse their children; and
- Witnessing violence may put children at risk for aggressive, anti-social, or fearful behavior.

Screening

Domestic violence screening is used to help determine whether a person may be involved in an abusive relationship that needs attention. When possible, the following questions should be addressed with the referring agency or individual about domestic violence:

- Has anyone else in the family been hurt or assaulted? If so, describe the assault or harm (what and when)? If so, who is the victim? Who is the perpetrator?

- Is anyone using economic coercion or emotional abuse to control another family member?
- Are drugs or alcohol present?
- Have there been any threats of suicide or detailed threats to cause harm to a family member?
- Has anyone in the family made threats to hurt or kill another family member or themselves? If so, describe what happened. Do you know who is the intended victim? Do you know who is the perpetrator?
- Do you know if weapons have been used to threaten or to harm a family member? If so, what kind of weapons? Are the weapons still present?
- Have the police ever been called to the house to stop assaults against adults or children? Have arrests ever been made?
- Has anyone threatened to take the children?
- Has any family member stalked another family member? As anyone ever taken a family member hostage?
- Do you know who is currently protecting the child?

It is important to remain calm, and convey that these are routine questions asked in all cases. When responses are vague or confusing, additional clarifying questions should be asked to ensure clear understanding of the facts. Survival strategies by victims are often overlooked and the victims are instead blamed for allowing the children to be abused. It's important to understand that abusers undermine the parental authority of the victim, which can lead children to have less respect for the victim because they see the victim as "weak".

Safety in Homes with Domestic Violence

It is important to be aware of circumstances that present harm to the child, and possibilities for reducing that risk to a safe level. A threat of danger is a specific family situation or behavior, emotion, motive, perception, or capacity of a family member that meets each of the following criteria:

- It is specific and can be observed or described;
- It is out of control;
- It is immediate or likely to happen soon; and
- It has severe consequences.

The following are six background questions that should guide safety in each case:

- What is the nature and extent of the maltreatment?
- What circumstances accompany the maltreatment?
- How does the child function day-to-day?
- How does the parent discipline the child?
- What are the overall parenting practices?
- How does the parent manage their own life?

By collecting answers to the six safety questions, the court should learn which threats of danger are present. Identifying domestic violence is critical to the safety of children. It is important to remember community resources for victim safety and perpetrator accountability, including, victim advocacy and support services, schools, DFS staff, and effective criminal justice responses to domestic violence. Advocates are an especially valuable resource to keep both the adult victim and child protected from violence. Oftentimes, the best way to keep the children safe is to keep them safely with the non-offending parent.

Impacts & Symptoms

Long-term consequences of child abuse and maltreatment can be profound, and may endure long after the abuse or neglect occurs. Trauma effects can appear in childhood, and may affect various aspects of development, including; physical, cognitive, psychological, and behavioral.

These effects range in consequence from minor physical injuries, low self-esteem, attention disorders, and poor peer relations, to severe brain damage, violent behavior, and death. While maltreated children pose a greater risk for these negative effects, many children are resilient in the face of adversity.

Battered Child Syndrome is an accepted medical diagnosis, and is used when a child has sustained repeated or serious injuries by non-accidental means. Battered Child Syndrome may occur at any age; however, the majority of affected children are younger than three years. In some instances, the clinical manifestations are limited to those resulting from a single episode of trauma, but more often the child's general health is below normal, and they show evidence of neglect, including poor skin hygiene, multiple soft tissue injuries, and malnutrition.

7.4 Health Issues

Healthcare

Healthcare for children in the juvenile court system is essential for their well-being. This includes applying for Medicaid coverage if the child does not already have access to health insurance and medical care. This also includes understanding what Early and Periodic Screening, Diagnostic and Treatment (EPSDT) is and why it is important. Finally, if the child is on Medicaid, as most children in juvenile court are, it is important to know the basics of what this covers for the child's health care needs.

Developmental Disabilities in Foster Care

Youth in foster care have a higher rate of developmental disability (DD) than other children. DDs include the cognitive, emotional, or physical impairment, especially one related to abnormal sensory or motor development that appears in infancy or childhood, and involves a failure or delay in progressing through the normal developmental stages of childhood.

Screening

If a child or youth may have a DD, the child or youth should be assessed by a medical professional for the potential of a DD. However, preliminary screening should be done by a Primary Care Physician, as part of the EPSDT services.

In order to be eligible for the DD waiver, a licensed psychologist must render an opinion in writing, specifically answering the referral question for clinical eligibility, by confirming or denying a diagnosis of mental retardation, IQ of seventy or below, or DD due to a related condition.

Once the psychological evaluation confirms that the person has a diagnosis of mental retardation or DD due to a related condition, the Behavioral Health Division will arrange for the ICAP evaluation to see if the individual meets the functional criteria for eligibility. If the psychological evaluation does not contain a written opinion statement confirming this diagnosis, the applicant will not be clinically eligible for the adult or children's DD waiver.

Specialized Federal and State Disabilities Programs

There are a number of specialized federal and state programs available to help children with disabilities gain access to needed assistance, including financial and medical resources.

Supplemental Security Income (SSI) is a federally-administered program available to children with disabilities. The monthly cash payment provided under this program is used to meet the basic food, clothing, and shelter needs of aged, blind, and disabled people who have limited income. A child

younger than eighteen years can qualify for benefits through the Social Security Administration (SSA) if he or she:

- Meets the medical qualifications for disability; and
- Meets the income and resource qualifications.

There are two Medicaid waivers available for youths with disabilities. The first of these is the Child Development Disabilities Home and Community-Based Waiver (DD Waiver), offered by WDH. This waiver, administered by the Developmental Disabilities Division, allows eligible youths with developmental disabilities to receive services that are not typically covered under the Wyoming State Medicaid Plan. The waiver provides home and community-based care that allows children to stay in the local community rather than being institutionalized.

Children from birth to twenty years old are eligible for the DD Waiver if they have been diagnosed with mental retardation or a related condition. They must also meet the level of care for an intermediate care facility for individuals with mental retardation (ICF/MR).

7.5 Early Periodic Screening, Diagnosis, and Treatment

The EPSDT benefit provides comprehensive and preventive health care services for children under age twenty-one who are enrolled in Medicaid. EPSDT is key to ensuring that children and adolescents receive appropriate preventive, dental, mental health, developmental, and specialty services. Identify if children and youth being served have received the appropriate healthcare services to support children's best interest. This may include ensuring the child is referred to the correct provider or is matched up to a PCP.

7.6 Education

School Stability

The classroom environment allows children to feel stable when other components of their lives may not be stable. Children may find a sense of familiarity, stability, and connection through their education. Because of this, protecting education as a child's source of stability is important.

For youth in foster care, maintaining this source of stability is especially challenging. Poor coordination between child welfare and school personnel can result in delays in enrollment when moving to a new school, ultimately resulting in time not spent in the classroom. When youth in foster care experience difficulties transferring their records, they are often required to repeat courses or grade levels. Moving to a new school may also cause anxiety. All of these complications can result in these youth falling behind their peers and dropping out of school.

7.7 Safety

Safety Making Decisions

There are three factors that must be considered when determining whether children are unsafe.

- Threats of danger exist within the family;
- Children are vulnerable to such threats; and
- Parents have insufficient protective capacities to manage or control threats.

In addition, the answers to these six questions will help the court determine whether a child is unsafe:

- What is the nature and extent of the maltreatment?
- What circumstances accompanied the maltreatment?

- How does the child function day-to-day?
- How does the parent discipline the child?
- What are the overall parenting practices?
- How does the parent manage his or her own life?

Safety Plans

A safety plan is put in place when a child is unsafe, based on the presence of the three criteria above. In this situation, the DFS worker decides what actions and tasks will replace the parents' capacity to control threats to the children in the least intrusive manner.

It is important to note that safety plans are not the same as case plans. Case plans describe what must change to be successful. The effect of a case plan may also occur over time, whereas safety plans are in place to mitigate immediate threats.

7.8 Immigration

Special Immigrant Juvenile Status

Special Immigrant Juvenile Status (SIJS) provides an avenue for youth to obtain legal permanent residence status in the United States. SIJS provides a green card to allow youth to remain in the U.S. permanently, and gives eligibility for employment authorization, student financial assistance, and places the youth on a path to citizenship.

If U.S. Citizenship and Immigration Services (USCIS) are denied, it is possible that the youth may be referred for deportation, so it is recommended to seek assistance of an immigration attorney before this application is made.

In order to file for SIJS in the U.S., the Juvenile Court must make the following three determinations:

- The child has been "declared dependent on a Juvenile Court" or the child has been "legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or Juvenile Court located in the United States."
- The child's "reunification with [one] or both of the [child's] parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law."
- It "would not be in the [child's] best interest to be returned to the [child's] or parent's previous country of nationality or last habitual residence."

Violence Against Women Act

Violence Against Women Act (VAWA) provides domestic violence protective orders and allows certain non-citizens to file for immigration relief when they have been battered, or subject to extreme mental cruelty, by a parent or spouse who is a U.S. citizen or lawful permanent resident. A successful VAWA applicant first receives notice of approval of her prima facie case, then approval of the VAWA petition. Receipt of both approvals permits a status adjustment to become a lawful permanent resident.

Immigration relief under VAWA can offer qualified recipients the following services:

- Provide waivers to previous bars to benefits;
- Forms of public assistance;
- Derivative status to stabilize immigration status and maintain family integrity;
- Protective orders;
- Allow school, medical, counseling, and welfare records to remain confidential; and
- Prohibits further dissemination of released records.

As with SIJS, careful screening by an immigration attorney is warranted.

“U Visas”

The U Visa provides authorization to remain in the U.S. with employment authorization for up to four years. However, the recipient may qualify to adjust his or her status to lawful permanent resident after completing three years on the U Visa status. The U Visa is also the most generous in immigration law and may permit extension of U Visa status to qualifying family members. U Visas are available under one of the following conditions:

- Noncitizens who have suffered substantial physical or mental abuse as a result of a qualifying criminal activity that occurred in the U.S. or violated U.S. law;
- Possess information concerning substantial physical or mental abuse as a result of a qualifying criminal activity that occurred in the U.S. or violated U.S. law; and
- Have been helpful, are being helpful, or are likely to be helpful to the investigation or prosecution of the criminal activity.

“T Visas”

Like the U Visa, the T Visa is authorized by Congress through the Trafficking Victims Assistance Program (TVPA). The T Visa is distinguished by the fact it is available to a person who is in the U.S. as a “victim of a severe form of human trafficking” and meets all cooperation criteria with law enforcement.

Commercial sex trafficking of children is considered to be a severe form of trafficking in persons under TVPA. A severe form of human trafficking is defined as:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion;
- The person induced to perform such act has not attained eighteen years of age; or
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

In most cases, persons who qualify for the U Visa will likely also qualify for the T Visa. As with the U Visa, recipients of the T Visa can qualify for some forms of public assistance, and can provide waivers to bars of benefits that apply to persons who achieve permanent resident status through other immigration relief avenues.

7.9 Bias

Cultural Sensitivity

Children who are removed from their birth families can lose touch with their culture of origin. Attention to the cultural context of a child increases the likelihood that the services provided will positively resolve cases and protect the child’s safety and well-being.

It is important to be aware of both *explicit* and *implicit* bias, understand the difference, and develop a safe environment for the youth. Explicit bias is a conscious preference (positive or negative) for a social category. Implicit bias is a preference (positive or negative) for a social category that operates outside of awareness.

Components of bias include:

- Stereotypes: generalizations about the perceived “typical” characteristics of a social category (cognitive component);
- Prejudice: how one feels about members of a given social category (affective component); and
- Discrimination: how one acts toward members of a given social category (behavioral component).

Poverty

The majority of child welfare cases across the United States involve people who live at or below the poverty line. It is important to remember that child maltreatment is not confined to one or several racial, religious, or economic groups, but is defined by each person's unique circumstance.

LGBTQ

Lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth are in America's child welfare and juvenile justice systems in disproportionate numbers. One's sexual orientation does not define them as a person, nor frame the needs they may have in the system. Like all young people in care, LGBTQ youth have the right to be safe and protected.

It is important to ask about the child's orientation, because it could play a significant role in their child welfare system experience. The Child Welfare League of America (CWLA) and Lambda Legal are additional resources, and offer a Tool Kit of information, including, but not limited to:

- Basic Facts About Being LGBTQ;
- Information for LGBTQ Children in Care;
- Families Supporting an LGBTQ Child;
- Caseworkers with LGBTQ Children;
- Foster Parents Caring for LGBTQ Children;
- Attorneys, Guardians ad Litem & Advocates Representing LGBTQ Children;
- Working with Transgender Children; and
- LGBTQ Child Resources.

7.10 Transitioning & Independent Living Services

Independent Living Services

Independent Living Services (ILS) extends assistance to foster youth up to age twenty-one, and helps prepare older youth as they age out of the system. It is imperative to ensure foster youth aging out of the system start planning for this transition early and access these ILS services to assist them. ILS offers assistance in the following areas:

- Help to obtain a high school diploma;
- Vocational training;
- Job placement services;
- Substance abuse prevention;
- Preventive health activities (includes smoking avoidance, nutrition education, and pregnancy prevention);
- Preparation to enter postsecondary training and education institutions; and
- Personal and emotional support through mentors and the promotion of interactions with dedicated adult(s).

Planning for The Transition

A permanency pact creates a formalized, facilitated process, which connects foster care youth with a supportive adult to help them transition out of the system. A permanency pact provides:

- Structure and a safety net for the youth;
- A defined and verbalized commitment by both parties to a long term supportive relationship; and
- Clarity regarding the expectations of the relationship.

The Child and Family Services Improvement Act of 2006 requires that the court consider the wishes of older and transitioning youth when making permanency decisions or developing transition plans. The court must consult with the youth about these decisions in an age-appropriate manner.

7.11 Incarcerated Parents

Reasonable Efforts

Incarceration alone is not a ground for TPR. In order to terminate rights the parent must be incarcerated due to the conviction of a felony and the parent must be unfit to have the custody and control of the child.

Federal law has long required state agencies to demonstrate that “reasonable efforts” have been made to provide assistance and services to prevent the unnecessary removal of a child from his or her home. Reasonable efforts must be made with parents who are incarcerated until the court relieves DFS of this responsibility.

Reasonable efforts are not required when determination by the court by clear and convincing evidence shows that the:

- Parent has been convicted of crimes, including murder or voluntary manslaughter of another child of the parent or aiding and abetting, attempting, conspiring to commit, or soliciting such a crime; or
- Commission of a felony assault which results in serious bodily injury (defined in Wyoming Statute Section 6-1-104) to a child of the parent; or
- Parental rights of the parent to any other child have been terminated involuntarily; or
- Parent abandoned, chronically abused, tortured or sexually abused the child; or
- Other aggravating circumstances exist indicating that there is little likelihood that services to the family will result in successful reunification.

In addition, incarcerated parents shall continue to be involved with case planning, to the extent possible. The following should be done in relation to incarcerated parents:

- Involve incarcerated parents in DFS case planning;
- Engage in exceptional communication (early and ongoing) by all stakeholders;
- Provide clear and timely documentation by all stakeholders;
- Provide immediate assessment of problems that have brought the child and family to attention;
- Be aware of services available to inmates; and
- Provide ongoing support.

8 Resources

8.1 Definitions

Abuse: “means inflicting or causing physical or mental injury, harm or imminent danger to the physical or mental health or welfare of a child other than by accidental means, including abandonment, unless the abandonment is a relinquishment substantially in accordance with WYO. STAT. § 14-11-101 through 14-11-109, excessive or unreasonable corporal punishment, malnutrition or substantial risk thereof by

reason of intentional or unintentional neglect, and the commission or allowing the commission of a sexual offense against a child as defined by law[.]” WYO. STAT. Ann. § 14-3-202(a)(ii).

Adjudication: “means a finding by the court or the jury, incorporated in a decree, as to the truth of the facts alleged in the petition[.]” *Id.* § 14-3-402(a)(i).

Initial Hearing: “means a hearing held in accordance with WYO. STAT. § 14-3-426[.]” *Id.* § 14-3-402(a)(xxi).

Legal Custody: “means a legal status created by a court order which vests in a custodian the right to have physical custody of a minor, the right and duty to protect, train and discipline a minor, the duty to provide him with food, shelter, clothing, transportation, ordinary medical care, education and in an emergency, the right and duty to authorize surgery or other extraordinary medical care.” *Id.* § 14-3-402(a)(x).

Mental Injury: “means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in his ability to function within a normal range of performance and behavior with due regard to his culture[.]” *Id.* § 14-3-202(a)(ii)(A).

Neglect: “means a failure or refusal by those responsible for the child’s welfare to provide adequate care, maintenance, supervision, education or medical, surgical or any other care necessary for the child’s well-being. Treatment given in good faith by spiritual means alone, through prayer, by a duly accredited practitioner in accordance with the tenets and practices of a recognized church or religious denomination is not child neglect for that reason alone[.]” *Id.* § 14-3-202(a)(vii).

Neglected Child: “means a child [w]ho has been subjected to neglect as defined in WYO. STAT. § 14-3-202(a)(vii); [or] [w]ho has been subjected to abuse as defined in WYO. STAT. § 14-3-202(a)(ii).” *Id.* § 14-3-402(a)(xii).

Parties: “the child, his parents, guardian or custodian, the state of Wyoming and any other person made a party by an order to appear, or named by the juvenile court[.]” *Id.* § 14-3-402(a)(xiv).

Physical Injury: “means any harm to a child including but not limited to disfigurement, impairment of any bodily organ, skin bruising if greater in magnitude than minor bruising associated with reasonable corporal punishment, bleeding, burns, fracture of any bone, subdural hematoma or substantial malnutrition[.]” *Id.* § 14-3-202(ii)(B).

Protective Supervision: “means a legal status created by court order following an adjudication of neglect, whereby the child is permitted to remain in his home subject to supervision by the department of family services, a county or state probation officer or other qualified agency or individual the court may designate[.]” *Id.* § 14-3-402(a)(xv).

Shelter Care: “means the temporary care of a child in physically unrestricting facilities pending court disposition or execution of a court order for placement or commitment[.]” *Id.* § 14-3-402(a)(xvii).

Shelter Care Hearing: “means a hearing held in accordance with WYO. STAT. § 14-3-409[.]” *Id.* § 14-3-402(a)(xxii).

Temporary Protective Custody: “means a legal status created prior to a shelter care hearing when a court, law enforcement officer, physician, physician’s assistant or nurse practitioner takes a child into protective custody pursuant to WYO. STAT. § 14-3-405. Temporary protective custody vests in a custodian the duty to protect the child and arrange for the provision of food, shelter, clothing, transportation, ordinary medical care and education. Temporary protective custody shall be transferred from the law enforcement officer, physician, physician’s assistant or nurse practitioner to the local child protection agency as soon as practicable to facilitate such care. Temporary protective custody divests the parent or custodian of his right to the custody and control of the child[.]” *Id.* § 14-3-402(a)(xix).

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