



**CHILDREN'S  
JUSTICE PROJECT**

A Project of the Wyoming Supreme Court

# Juvenile Court Law Update 2004-2022



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## Introduction

This document provides an update on juvenile court legislation, rules, and case law beginning in 2004. Each section begins with an update of legislative action followed by a section on case law. Beginning in 2007, Wyoming adopted Rules of Procedure for Juvenile Courts and rule amendments. The abbreviated information in this document may not be sufficient in dealing with a particular legal problem. Lawyers or others using this information should do so with the understanding that the information should not be relied upon as a substitute for independent legal research to original sources of authority, the advices of a lawyer, or both.

## 2004 Legislation, Rules, & Case Law

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### Legislation

#### SF0005

Interstate Compact for Juveniles: Repeals the Interstate Compact on Juveniles and enacts a new version of the Interstate Compact for Juveniles. The Act creates and specifies the powers and duties of the Interstate Commission for Juveniles and specifies obligations and duties of compacting states. It also provides procedures for dispute resolution, withdrawal, and re-entry of a compacting state for the dissolution of the Company.<sup>1</sup>

#### SF0008

Title 14 Revisions: The Act amends various provisions relating to child protection, the Juvenile Court Act, and the Children in Need of Supervision Act. Specifically, it authorized an intensive supervision program for juveniles; amends timelines for temporary protective custody, detention and adjudicatory hearings; clarifies procedures for consent decrees; clarifies rights of juveniles and families and duties of the state; grants rulemaking authority; and confirms provisions.

#### HB0116

Execution of Acknowledgment of Paternity: Provides for notice to be provided prior to the signing of an acknowledgment of paternity affidavit. Per this Act, before the mother and alleged father may sign an acknowledgment of paternity affidavit, they must be provided with oral and written notice of the legal consequences that will arise from signing.

#### HB0033

Children and Family Initiatives: Authorizes a study and development of a plan to address the needs of children and families. The Act authorizes the Department of Family Services (DFS) to develop a comprehensive plan to improve the lives and futures of children and families. It also requires DFS to collaborate with a wide variety of public and private entities in developing the plan; specifies what the plan shall include; requires DFS to widely disseminate requests for public participation in development of the plan; requires DFS to submit a plan with recommendations for legislation to the Joint Labor, Health, and Social Services Interim Committee by November 1, 2004 and a final plan by October 1, 2005; and provides an appropriation of \$200,000 to DFS for the study and plan.

### Case Law

#### *In the Interest of HP and NP, minor children, 93 P.3d 982, 2004 WY 82 (Wyo. 2004)*

The Court held there was sufficient evidence for the juvenile court to find by a preponderance of the evidence that the children were neglected inasmuch as Mother failed to provide adequate care. The Court also determined there was sufficient evidence

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<sup>1</sup> All Act summaries were taken from the Wyoming Legislative Service Office's website located at <http://legisweb.state.wy.us/LSOWEB/SessionArchives.aspx>



for the district court to order DFS to begin termination proceedings and the mother's fundamental rights were not violated by the MDT's decision to recommend terminating her parental rights.

***In the Matter of the Parental Rights of KLS, Minor Child: RS, Appellant v. Department of Family Services, Sheridan County, Wyoming, Appellee, 94 P.3d 1025, 2004 WY 87 (Wyo. 2004)***

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 requires permanent removal.

## **2005 Legislation, Rules, & Case Law**

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### **Legislation**

#### **SF0039**

Child Protection Amendments: The Act amends provision relating to child protection, Juvenile Court Act, and Children in Need of Supervision. Specifically, the Act establishes an interagency children's collaborative comprised of officials in the major state agencies dealing with juveniles and a Governor's appointee to provide a general review of cases and review statewide availability of resources for children in state custody. In addition, the Act requires DFS to adopt rules, with advice from the Departments of Health (DOH), Education and Workforce Services. It amends the composition and duties of multi-disciplinary teams (MDTs) and requires child protection teams to identify and develop community resources; requires DFS to ensure caseworks are properly trained; requires social workers to advise individuals subject to allegations of child abuse or neglect of the allegation and their rights; requires DFS to refer a child under six (6) years of age who is alleged to be abused to the DOE for developmental screening and assessment; requires that reports of suspected abuse or neglect are immediately reported; limits who may take a child into temporary protective custody and amends notification procedures; authorizes a child to be placed with the noncustodial parent or the child's extended family when it is in the best interest of the child, or to be kept in a hospital if necessary; allows the district attorney to file emergency petitions; authorizes a court to enter a protective order upon a finding that reasonable cause exists that a child has been abused or neglected; limits temporary protective custody to 48 hours, exclusive of weekends and holidays; and establishes timelines for MDTs and child protective teams to provide reports to courts.

#### **SF0050**

Soliciting Minors: Amends elements of the crime of soliciting minors to engage in illicit sexual relations. An adult who solicits, procures or knowingly encourages any person under the age of 16 to engage in illicit sexual penetration or sexual intrusion, or encourages someone else, is guilty of a felony. The Act also amends the definition of child pornography to include a visual depiction of explicit sexual conduct involving a child or an individual virtually indistinguishable from a child, or a visual depiction that has been created, adapted, or modified to depict such conduct involving a child or an individual virtually indistinguishable from a child.

#### **SF0137**

Disestablishment of paternity: The Act allows a challenge to an adjudication of paternity if no genetic testing was performed at the time of an adjudication and the petition is filed within 2 years of adjudication or acknowledgement or after the petitioner knew or should have known that the paternity of the child is at issue. The Act also specifies that a paternity determination in a foreign jurisdiction, or where genetic testing was done and the results do not exclude the alleged father, may not be challenged. The Act also gives specifies procedures for a petition for disestablishment of paternity and for payment of related costs; requires the court to appoint a guardian ad litem and specifies the factors

the court shall consider in determining the best interests of the child in the matter; allows the court to dismiss the action even if the genetic testing excludes the adjudicated father as the biological father if dismissal of the action is in the best interests of the child and if other specified conditions are present; allows the court to order genetic testing and to grant relief upon a finding that the relief is in the best interests of the child, the genetic testing upon which the relief is granted was properly conducted, the adjudicated father has not adopted the child, the child is not a child whose paternity is a result of assisted reproduction and the adjudicated father did not act to prevent the biological father from asserting his paternal rights; allows the court to enter an order providing that the adjudicated father is not the biological father, terminating his paternal responsibilities, requiring that the birth certificate of the child be amended, providing that the adjudicated father is still responsible for child support due or owing prior to the entry of the order, and providing that the adjudicated father has no right of reimbursement of past child support paid by him; limits the participation of DFS; and allows a man presumed to be the father without adjudication of paternity to petition for an adjudication of paternity.

#### **HB0120**

Repealed Section 5 of the CHINS Act: The Act repeals the sunset provision for CHINS, thereby allowing the Act to continue until the legislature acts affirmatively to repeal the Act.

#### **HB0314**

Guardian ad litem: Creates a program to reimburse guardians ad litem. The Act authorizes a program under the Wyoming Supreme Court to reimburse guardians ad litem for the legal representation of children; requires rulemaking to establish reimbursement methods and establish standards for the legal representation of juveniles by guardians ad litem; establishes a process whereby counties opt into a program that provides funding for the legal representation of children by guardians ad litem; requires counties to provide matching funds as a condition of participation in the program; requires the Supreme Court to report annually by November 1 on the results of the program; and appropriates \$2.1 million to the Supreme Court and authorizes 1 additional position to assist in the implementation of the reimbursement program.

#### **HB0076**

Central Registry of Child Protection Cases: Amends requirements for the operation of the central registry of child protection cases; establishes a crime for sanctioning an employee for reporting child abuse or neglect (a misdemeanor punishable by up to six months in jail and \$750 fine); establishes a crime for filing false reports (a misdemeanor punishable by up to six months in jail and \$750 fine); amends definitions for the types of reports maintained by DFS; and authorizes access to records in the central registry to educational or mental health professionals if necessary for the provision of services as specified.

#### **HB0237**

Child Protection: Modifies the review hearing dates and requirements for permanency hearings regarding permanent placement of the child outside the home. Requires the court to conduct a permanency hearing no later than 12 months from the date the child is removed from the home and not less than once every 12 months after that. The Act also

requires the court to conduct a permanency hearing within 30 days of a determination that reasonable efforts to preserve and reunify the family are not required; allows the court to combine a permanency hearing with any other hearing; requires the court to determine if the permanency plan is in the best interest of the child and whether DFS has made reasonable efforts to finalize the plan; and relocates a provision of current law requiring a petition to terminate parental rights to be filed within 60 days of the judicial determination that reasonable efforts to reunify the child and parent are not required. With the relocation, the old provision, W.S. 14-3-440(h), is repealed.

## **HB0060**

Minor victims-release of names: This Act requires a court to restrict the disclosure or publication of information that is reasonably likely to identify the minor victim, if an information or indictment has been filed in a criminal matter, unless the minor victim or another acting on behalf of the minor request the release of the identifying information.

## **Case Law**

***In the Interest of SIJ and ERJ, II, minor children: SLJ, Appellant v. The State of Wyoming, Department of Family Services, Albany County Field Office, 104 P.3d 74, 2005 WY 3 (Wyo. 2005)***

The district court correctly concluded that SLJ had limited, sporadic contact with the children and this was supported by sufficient evidence. The Court also held that DFS was not required under the circumstances of this case to make reasonable efforts to reunify the family prior to terminating SLJ's parental rights. Finally, the Court held that the use of juvenile court records in the termination proceedings was entirely appropriate.

## 2006 Legislation, Rules, & Case Law

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### Legislation

None

### Case Law

***In the Matter of the Guardianship of MEO: KO v. LDH and BJH and The State of Wyoming, 138 P.3d 1145, 2006 WY 87 (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 Termination of Parental Rights to CS: LS aka LA v. Johnson County Department of Family Services, In the Matter of the Termination of Parental Rights to TS: LS aka LA v. Johnson County Department of Family Services, 143 P.3d 918, 2006 WY 130 (Wyo. 2006)***

Abuse and neglect established by clear and convincing evidence of mother's conduct; DFS is not required to provide transportation to a parent after the termination phase of the proceeding has commenced.

## 2007 Legislation, Rules, & Case Law

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### Legislation

None

### Rules Adopted

#### Rule 5

Effective July 1, 2007, Wyoming adopted Rules of Procedure for Juvenile Courts.

### Case Law

***In the Matter of the Parental Rights to: AD, DD, and KD, CL v. Wyoming Department of Family Services, 151 P.3d 1102, 2007 WY 23 (Wyo. 2007)***

Termination of a mother's parental rights was supported by clear and convincing evidence and the parental rights were outweighed by the children's right to permanency.

***In the Interest of LL, AL, ML and NC: ML v. Laramie County Department of Family Services, 159 P.3d 499, 2007 WY 92 (Wyo. 2007)***

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.

***In the Interest of FM: BA v. Laramie County Department of Family Services, 163 P.3d 844, 2007 WY 128 (Wyo. 2007)***

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.

***In the Interest of MN, S(e)N, S(h)N v. Laramie County DFS, 171 P.3d 1077, 2007 WY 189 (Wyo. 2007)***

A mother's parental rights were terminated without the appointment of a guardian ad litem and the mother appealed arguing Wyo. Stat. Ann. 14-2-312 was violated. 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 guardian ad litem (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.

***In the Matter of the Parental Rights to DH, AP, and JK: KH v. Wyoming Department of Family Services, 173 P.3d 365, 2007 WY 196 (Wyo. 2007)***

DFS's decision to not place children with grandmother was not in violation of the Family Service Manual and DFS took reasonable steps to institute family placement.

## 2008 Legislation, Rules, & Case Law

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### Legislation

#### SF0064

Valid Court Orders: The Act clarifies conditions that may apply to a child who is returned to court for violations of a court order as specified. Wyoming has not adopted all provisions of the federal Juvenile Justice and Delinquency Prevention Act (JJDP). One requirement of the JJDP not completely adopted in Wyoming law is that certain procedures must be followed, including procedures for a "valid court order," before a juvenile may be detained for violation of such order. Most of the valid court order procedures are already present in Wyoming law. This bill further amends Wyoming law to incorporate other procedures necessary for a valid court order by: requiring the court, in child protection, juvenile delinquency and child in need of supervision (CHINS) actions, to explain the terms of a court order to the child, his parents, guardian or other necessary persons; requiring an interview of the child by the Department of Family Services or its designee within 24 hours, along with a report to the court containing an assessment of the immediate needs of the child and recommendations for placement pending disposition of the violation; amending definitions to include status offenders within provisions providing due process to juveniles; and clarifying the prohibition against placing a child in need of supervision in a jail facility.

### Rule Update

#### Rule 2

Effective July 1, 2008, Rule 2 was amended to not require children's presence at court hearings in abuse and neglect actions. Note, this was changed in 2018.

#### Rule 2

Effective July 1, 2008, Rule 3 was amended to include the guardian ad litem.

### Case Law

#### ***In the Interest of DSB: JA v. State of Wyoming Department of Family Services, 176 P.3d 633, 2008 WY 15 (Wyo. 2008)***

The 90-day statutory requirement for an adjudicatory hearing does not result in the termination of subject matter jurisdiction by the juvenile court.

#### ***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, 182 P.3d 501, 2008 WY 50 (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.

## **2009 Legislation, Rules, & Case Law**

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### **Legislation**

#### **HB0235**

Child Protection Case Planning: The Act specifies new duties of MDTs in child protection and delinquency cases. The Act requires that members of the MDT in a child protection or a delinquency case receive a summary with specified information from DFS before the first MDT meeting; requires the MDT to formulate reasonable and attainable goals and objectives for parents to meet to effect the return of the child to the home or to close the case; requires the submission of a summary to MDT members and the court after each MDT meeting describing the recommendations of the goals and objectives decided upon at the meeting and a detailed explanation of any changes to the goals and objectives previously established; and authorizes the court to require the parents or guardian to attend classes designed to address problems that contributed to the adjudication.

#### **SF0107**

Court Supervised Treatment Program Act: This Act authorizes a court to require a child's parents or guardian to participate in a court supervised treatment program under specified provision of Title 14 under certain condition.

#### **SF0129**

Juvenile Justice Amendments: Authorizes a district attorney to establish objective criteria, screening and assessment procedures for determining which court is appropriate for disposition of a juvenile matter. The Act establishes the district attorney as the single point of entry for all minors alleged to have committed a crime; authorizes a district attorney to establish objective criteria, screening and assessment procedures for determining which court is appropriate for disposition of a juvenile matter; requires that all charging documents, reports or citations be forwarded to the district attorney prior to the filing of the charge, report or citation in municipal or city court; and prohibits the disclosure of information, reports or records or contents thereof in juvenile matters except to specified persons, including a person designated by the district attorney in determining the appropriate court pursuant to a single point of entry assessment under W.S. 14-6-203.

#### **SF0103**

Child Abuse and Neglect Amendments: The Act authorizes the transfer of jurisdiction from district court to juvenile court in specified actions. The Act authorizes a transfer of specified actions from district court relating to custody, adoption or appointment of a guardian to juvenile court when both courts have jurisdictions over the same parties for different matters; authorizes a party to a proceeding to file a petition for adoption or appointment of a guardian in an underlying juvenile court action, rather than file a petition with a district court. The Act also amends the definition of "neglect" for purposes of child protection statutes to include a failure to comply with or refusal to participate in a case plan developed by DFS; provides for service of process in a child protective proceeding to a noncustodial parent or putative father who has not had custody of a child removed by a court and who is not alleged to have abused or neglected the child; requires

the noncustodial parent or putative father who has been served to respond and appear before the court, to cooperate with DFS, provide information required by the court and pay all child support that may be ordered by the court; a parent or putative father who fails to respond to the court as required may not thereafter assert parental rights as specified; authorizes constructive service or service by publication if a person is a nonresident in a child abuse or neglect case; provides that 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; and provides that, if a court determines that reasonable efforts to preserve and reunify the family are not required, a permanency hearing may be held within 30 days.

## Case Law

***In the Interest of MM: MM v. The State of Wyoming, Department of Family Services, 202 P.3d 409, 2009 WY 28 (Wyo. 2008)***

The district court did not abuse its discretion in ordering the production of exculpatory evidence one (1) day before trial and did not violate Father's due process in refusing to dismiss the case.

***In the Interest of NDP, JAP, ANP and ICP, Minor Children, CP v. The State of Wyoming, Dep't of Family Services, 208 P.3d 614, 2009 WY 73 (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 also applies to the juvenile court's determination that reunification efforts have not been successful.

***In the Matter of the Termination of Parental Rights to AE and DE, Minor Children: JD and SE v. State of Wyoming, Dep't of Family Servs., 208 P.3d 1323, 2009 WY 78 (Wyo. 2009)***

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

***In the Interest of DMW and ALW, minors: AW and LW v. TLW, 214 P.3d 996, 2009 WY 106 (Wyo. 2009)***

Guardianship statutes mandate that the district court protect the children's best interests.

***In the Matter of the Termination of Parental Rights to L.A.: RLA v. Dep't of Family Services, 215 P.3d 266, 2009 WY 109 (Wyo. 2009)***

State shall prove by clear and convincing evidence that parent was unfit for custody and control of child.

***In the Matter of the Termination of Parental Rights to: ATE, KOE, ETE, ME, FTE, Dep't of Family Services v. TWE, III, 222 P.3d 142, 2009 WY 155 (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.

## 2010 Legislation, Rules, & Case Law

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### Legislation

#### HB0012

Juvenile detention facilities-admissions criteria: The Act requires a risk assessment for alleged delinquent minors to determine the level of detention that should be imposed until the minor is required to appear before a court. The Act requires the person taking an alleged delinquent minor into custody to conduct a risk assessment to determine placement of the child pending an appearance before a court, unless the minor will be released to the custody of the minor's parents, guardian or custodian; requires sheriffs to develop a uniform risk assessment instrument that shall be used when taking a minor into custody; and defines "hardware secure facility," "staff secure facility" and "shelter care" for purposes of detaining a minor who is not released to the custody of the minor's parents, guardian or custodian. The Act also prohibits a minor under age 11 years to be held in a hardware secure facility and requires the person taking the minor into custody to inform the minor's parents, guardian or custodian within 24 hours of taking the minor into custody.

#### HB0075

Loss of parental rights: The Act provides for termination of the parent-child relationship if the parent is convicted of murder or homicide in the first or second degree of the other parent of the child.

### Case Law

#### ***In the Matter of Termination of Parental Rights to WDW, a minor child: JLW v. CAB, 224 P.3d 14, 2010 WY 9 (Wyo. 2010)***

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

#### ***In the Interest of: JW and BJ, Jr., Minor Children: LW v. The State of Wyoming, Dep't of Family Services, 226 P.3d 873, 2010 WY 28 (Wyo. 2010)***

There is a compelling preference that what is "best" for a child in a permanency hearing is placement with nuclear or extended family members.

#### ***In the Interest of DRT, a Minor. Jet v. The State of Wyoming, Department of Family Services, 241 P.3d 489, 2010 WY 137 (Wyo. 2010)***

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.

#### ***In the Matter of the Termination of Parental Rights to KMJ and JDAJ, Minor Children, AJJ v. The State of Wyoming, Department of Family Services, 242 P.3d 968, 2010 WY 142 (Wyo. 2010)***



Court can examine relevant factors in parent's history when determining current parental fitness.

## 2011 Legislation, Rules, & Case Law

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### Legislation

#### HB0028

Child Protection Shelter Care and Initial Hearing: Advisements given by a court at a hearing when a child is taken into protective custody. The Act deals with shelter care hearings. Shelter care hearings must be provided within 48 hours of taking a child who may have been abused or neglected into temporary protective custody. Under current law, the court is required to advise parents at the shelter care hearing that they could admit or deny allegations of abuse or neglect. This Act clarifies that the court may give this advisement at a later initial hearing. The court has the option, however, of holding a shelter care hearing in conjunction with an initial hearing where allegations of neglect are admitted or denied.

#### SF0011

CHINS Administrative Change of Placement: The Act changes the law to allow DFS, without court order, to change the placement of a child. DFS can move the child to a similar or less restrictive placement.

#### SF0138

Child Custody Orders-Abandonment: This Act is intended to respond to the Wyoming Supreme Court's decision in *In the Interest of ANO*: SLB, 2006 WY 74; 136 P3d 797 (Wyo. 2006). In that case, the Supreme Court held that custody orders assigning custody to one parent preclude 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. This Act 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."

### Case Law

***In the Interest of DRS, NJL and KDL, Minor Children. RH, Appellant v. The State of Wyoming, Department of Family Services, Appellee, 261 P.3d 697, 2011 WY 128 (Wyo. 2011)***

The Court found no abuse of discretion in the juvenile court's order temporarily maintaining the placement of the children with their grandparents and father, respectively. Wyo. Stat. Ann. 14-3-429(a)(iv) provides the correct framework for the court, as it designates the structure for disposition of children who are adjudicated as neglected. The Court concluded that the statutory requirements were met for children to be placed outside the home.

## 2012 Legislation, Rules, & Case Law

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### Legislation

#### SF0099

Guardian ad litem Program: Establishing the guardian ad litem program within Wyoming statutes. The guardian ad litem program was initially authorized by 2005 Wyoming Session laws, Chapter 237 and placed with the Supreme Court. The program was transferred from the Supreme Court to the state public defender's office by the budget bill in 2008. This Act establishes the program in Wyoming statutes within the public defender's office. The Act also provides for appointment of an administrator of the program by the state public defender; specifies that the program is to provide legal representation as guardians ad litem in cases and appeals involving child protection, children in need of supervision, delinquency cases and termination of parental rights actions; provides for appointment of and reimbursement of attorneys to act as guardians ad litem through contracts with the state public defender's office or directly with counties. Further provides that the court shall appoint the program to provide services when appointing a guardian ad litem in all participating counties; and provides that participating counties in the guardian ad litem program shall reimburse the program for not less than 25% of the costs for expenses incurred in the operation of the program in the county. Nonparticipating counties are responsible for the full cost of all guardian ad litem legal fees. In addition, the Act provides that all guardians ad litem shall be paid fees as provided by the program except that counties may compensate guardians ad litem at a higher rate; requires that the counties provide office space or a monthly stipend for guardians ad litem under contract or assigned to the county; and provides that guardians ad litem shall be considered state employees for purposes of the Governmental Claims Act and the State Self-Insurance Program.

### Case Law

#### ***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, 2012 WY 99 (Wyo. 2012)***

Mother appeals the district court's order terminating her parental rights based on the sufficiency of the evidence, the appropriateness of the special verdict and the constitutionality of the termination statute. The Court affirmed and found the evidence supported that the mother was unfit to have custody and control of her children and the special verdict form did not mislead or confuse the jury. Finally, the mother argued the "clear and convincing" standard set forth in 14-2-309 violated her due process and equal protection rights and a "beyond a reasonable doubt" is the appropriate standard. The Court disagreed.

#### ***In the Matter of the Termination of Parental Rights to KAT, SAT, and JGS, Minor Children, NLT, Appellant v. The State of Wyoming, Department of Family Service, Appellee, 288 P.3d 1217, 2012 WY 150 (Wyo. 2012)***

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 Wyoming, Department of Family Services, Appellee, 290 P.3d 1104, 2012 WY 164 (Wyo. 2012)***

There was sufficient clear and convincing evidence to terminate Appellant's parental rights pursuant to Wyo. Stat. Ann. 14-2-309(a)(iii) and (a)(v).

## **2013 Legislation, Rules, & Case Law**

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### **Legislation**

#### **HB0119**

Department of Family Services Programs: The Act provides miscellaneous updates to the DFS statutes. The Act replaces “food stamp” with “Supplemental Nutrition Assistance Program”. It also provides in the Juvenile Justice Act and in state institutions statutes that children be placed in a suitable certified hospital or appropriate acute placement facility rather than specifying referral to the Wyoming State Hospital.

#### **HB0153**

Representation of Children in Company Proceedings: Authorizing public defenders and guardian ad litem representation of fugitive juveniles. The Act entitles fugitive juveniles to be represented by a public defender in a proceeding under the Interstate Compact for Juveniles if the juvenile requests the representation. This Act also authorizes the office of public defender to appoint a guardian ad litem in proceedings under the Interstate Compact for Juveniles if the juvenile requests the representation.

#### **HB0175**

Juvenile Citations-Notification by Law Enforcement: The Act provides that notice shall be provided to parents when citations are issued to a child. The Act requires that parents be notified when a child receives a citation for violating the law. Notice must be given if a fine or jail may be imposed. The law enforcement agency must take reasonable action to notify the child’s parent or guardian.

#### **HB0086**

Child Placement Orders: Prohibits referral to a specific psychiatric residential treatment facility in a judges’ child placement order. Under the Medicaid program, if a child is placed in a specific psychiatric residential treatment facility (PRTF) by a judge’s order, the placement is presumed to be punitive, not medically necessary, and therefore, not reimbursable by Medicaid. Placements made by a medical provider or MDTs are reimbursable by Medicaid. This Act provides that placement orders of children under the Child Protection Act, the Children in Need of Supervision Act and the Juvenile Justice Act shall not specify a PRTF or level of care.

#### **SF0146**

Termination of Parental rights: Reunification of child with family in child protection proceedings. In general, when a child is removed from a home in a child protection proceeding, attempts must be made to reunify the child with his family. This Act expands the exceptions to this general rule. Under this Act, the State of Wyoming, through DFS, is not required to attempt reunification efforts when the parent: has been convicted of specified sexual crimes involving the child or another child of the parent and/or is required to register as a sex offender because the parent committed an offense involving the child or another child of the parent.

#### **SF0117**

**Confidentiality of Domestic Abuse Victim Information:** Court orders allowing for nondisclosure of information relating to victims of domestic abuse. This Act creates a procedure to allow for an order in any court proceeding in the State of Wyoming to keep the address, city and state of residence or any other information identifying the residence of a victim of domestic abuse confidential during the court proceedings. The order shall be issued if: the victim of domestic abuse has been granted a protective order against a household member; or the court finds by a preponderance of the evidence that the person is a victim of domestic abuse and without the confidentiality order the person may be subject to additional acts of domestic abuse. The Act allows DFS, Child Support Enforcement Division, to disseminate information protected by a confidentiality order to comply with federal law including the Child Support Enforcement Act and the Uniform Interstate Family Support Act in limited circumstances as specified in the Act. The Act further makes conforming amendments to statutes currently providing for confidentiality in court proceedings or requiring disclosure of information identifying a domestic victim's residence. A confidentiality order issued under this Act applies only to the court action in which it is granted and for additional purposes specified by law.

### **SF0115**

**Protective Services Investigation Amendments:** Investigating reports regarding child and adult protective services. The legislation changes the language used to describe the investigations required after a report is made to a local child or adult protective service. The new language requires an investigation or assessment “to verify” every report and requires that agencies cooperate during the “assessment or” investigation. The legislation also changes the definition of “substantiated report.” The old definition defined a substantiated report as a report that was determined upon investigation to establish the existence of credible evidence of the alleged conduct. Under this legislation, a substantiated report is a report that is determined upon investigation to establish the alleged conduct by a preponderance of the evidence.

### **Case Law**

***In the Interest of MC, HC and CC, Minor Children. DL, Appellant v. State of Wyoming, Department of Family Services, Appellee, 299 P.3d 75, 2013 WY 43 (Wyo. 2013)***

Appellant was found to have neglected her three children and the Court did not abuse its discretion in dealing with the claimed discovery violations, that Appellant received due process, and that the evidence was sufficient to support a finding of neglect.

## 2014 Legislation, Rules, & Case Law

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### Legislation

#### HB0033

Jury Pool Selection-Archaic Language: Jury Selection Process. This Act updates and amends archaic provisions relating to the selection of juries. The bill requires the Supreme Court to compile a base jury list for each county; the base jury lists will be compiled from voter lists and may include names from Wyoming driver's license lists; and district courts and circuits courts will select jury panels from the base jury list using a random method of selection.

#### HB0043

Children In Need of Supervision Age: CHINS applicability. Under current law, a juvenile court has jurisdiction to do the following: determine questions concerning the right to legal custody of a minor in need of supervision; order any party to the proceedings to perform any acts, duties and responsibilities the court deems necessary; and order any party to the proceedings to refrain from any act or conduct the court deems detrimental to the best interest and welfare of the minor or essential to the enforcement of any lawful order of disposition made by the court. Prior to HB0043, the juvenile court could exercise jurisdiction over children in need of supervision only until the child reached the age of seventeen. This Act extends that jurisdiction to when a child reaches the age of eighteen.

#### HB0128

Juvenile Courts-Sanctions: Juvenile Court Authority. Prior to HB0128, conditions of release from Wyoming boys' school and Wyoming girls' school were imposed by Wyoming DFS. This Act clarifies that those conditions of release are imposed by the juvenile court.

### Rule Update

#### Rule 5

Effective May 13, 2014, Rule 5 was amended to allow an out-of-state attorney to enter his appearance and participate in cases only after admittance per Rule 8 of the Rules Governing the Wyoming State Bar and Authorized Practice of Law.

### Case Law

***In the Interest of LB, BO, KO, Minors, State of Wyoming, Department of Family Services v. DH and CB, Appellees and State of Wyoming, 316 P.3d 1184, 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 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 county or district attorney can file and prosecute a neglect action without the need for compliance with the compulsory attendance statutes.

## 2015 Legislation, Rules, & Case Law

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### Legislation

#### HB0180

Child Interviews: Abuse and Neglect Cases. The bill prohibits 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. The bill also authorizes the court to conduct in camera review of a recorded interview 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.

#### HB0243

Child Abuse: Torture and Cruel Confinement. The Act adds torture or cruel confinement of a child as a basis for child abuse. The Act increases the penalty from not more than 5 years to not more than 10 years imprisonment for a person who is not responsible for the child's welfare and intentionally or recklessly inflicts abuse on a child under age 16. The Act also increases the penalty from not more than 5 years to not more than 10 years imprisonment for a person who is responsible for the child's welfare and intentionally or recklessly inflicts abuse on a child under age 18. The Act specifies that aggravated child abuse, punishable by imprisonment for not more than 25 years, may include the intentional infliction of substantial mental or emotional injury upon a child by the torture or cruel confinement of the child.

### Case Law

#### *In re GC*, 351 P.3d 236, 2015 WY 73 (Wyo. 2015)

While due process may require an evidentiary hearing when the permanency plan is changed from family reunification to termination of parental rights, the Appellant did not raise the issue in the lower court and, therefore, did not establish plain error. In addition, the juvenile court did not abuse its discretion when it changed the permanency plan to adoption due to failure to comply with the case plan. A parent can request an evidentiary permanency hearing, but if they do not request one, the parent waives his or her right to such a hearing.

#### *In re CDR*, 351 P.3d 264, 2015 WY 79 (Wyo. 2015)

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 addition, the consent decree did not impose the condition on the Appellant that she not consume alcohol and, thus, her relapse following treatment was not dispositive of the neglect case. The juvenile court has broad jurisdiction over the parties.

## 2016 Legislation, Rules, & Case Law

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### Legislation

#### HB0118

Foster Care and Permanency: Additional Requirements. The Act restricts the use of the APPLA permanency plan for children under age sixteen (16). The Act also establishes and defines the reasonable and prudent parent (RPP) standard and related provisions regarding foster care decision-making. The Act provides definitions; specifies the role of caregivers; seeks to ensure that a child placed in foster care has the opportunity to participate in age appropriate or developmentally appropriate activities and experiences; limits liability on caregivers following RPP when allowing participation in activities; and requires caregivers to 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. The Act requires DFS to establish standards and trainings for the RPP standard and imposes additional requirements on DFS and the court during permanency plan reviews. Per the Act, 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.

#### HB0130

Juvenile Detention Facility: Definition. The Act specifies that a "juvenile detention facility" does not include any residential treatment facility that is operated for the primary purpose of providing treatment to a child.

### Case Law

#### ***In re CRA*, 368 P.3d 294, 2016 WY 24 (Wyo. 2016)**

The juvenile court properly dismissed the case without a hearing when the county 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 the Matter of the Termination of Parental Rights to HLL and KGS, Minor Children*, 372 P.3d 185, 2016 WY 43 (Wyo. 2016)**

The Court held that the plain language of the termination statutes makes it clear that the Wyoming Rules of Civil Procedure (W.R.C.P.) apply to termination proceedings, that termination proceedings are civil cases, and that an entry of default can be entered by 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 Interest of SO, a Minor Child*, 382 P.3d 51, 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.

***In the Matter of the Guardianship of MKH, a Minor Child, 382 P.3d 1096, 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.

***In the Interest of RAA, AMA, and CMA, Minor Children, 384 P.3d 1156, 2016 WY 117 (Wyo. 2016)***

The Supreme 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. § 14-2-309(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.

## 2017 Legislation, Rules, & Case Law

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### Legislation

#### **HB0018**

Child Protection for Military Families. 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.

#### **HB0041**

Cost of Court Ordered Placement. The Act amends age restricts related to court ordered placements, inserts missing cross references, and provides for an effective date. The Act amends the applicable age to children who are at least five (5) years of age as of September 15 of the applicable school year, but who are under twenty-one (21) years of age.

#### **HB0153**

Parental Rights. 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.

#### **HB0159**

Homeless Minors. The Act allows un-emancipated minors to enter into certain legally binding contracts as well as obtain birth certificates from the Department of Health, provided the minor is 1) at least sixteen (16) years of age; 2) willingly living separate and apart from his or her parents who consent to or acquiesce in the separate living arrangement; 3) is homeless; 4) is managing his or her own affairs; and 5) submits a notarized affidavit that is signed and sworn to by the minor and includes certain information. The Act specifies that adults witnessing an affidavit shall not assume any legal responsibility or liability under a contract entered into by a minor. The Act also specifies that contracts are binding if accepted in good faith reliance on affidavits submitted by a minor. Finally, existing law requires any person who knows or has reasonable cause to believe or suspect child abuse or neglect to report to the child protection agency or local law enforcement agency. The Act specifies that the fact a minor is homeless is not sufficient basis for reporting abuse or neglect.

#### **SF0063**

Department of Family Services Statutory Amendments. The Act amends central registry requirements related to child and adult protection reports including who has access to central registry reports. Employers or entities whose employees or volunteers may have unsupervised access to children or vulnerable adults in the course of their employment or service may request a report from the applicable central registry. Also, any person may request a report on themselves. The Act repeals the Skills Training Center Pilot Program; makes the operation of adult student financial aid programs contingent upon funding;

specifies income limitations for participants in the Low Income Home Energy Assistance Program; specifies circumstances where DFS must report suspected Medicaid fraud; and amends the eligibility verification processes related to public welfare benefits and shortens the time for a benefit applicant or recipient to respond to a request for information concerning a discrepancy or change in circumstances which may impact eligibility.

## **Case Law**

### ***In the Matter of the Termination of Parental Rights to KGS, a Minor Child, 386 P.3d 1144, 2017 WY 2 (Wyo. 2017)***

The Supreme Court determined 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 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 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.

### ***In the Interest of JB and TLW, 390 P.3d 357, 2017 WY 26 (Wyo. 2017)***

The juvenile court adjudicated TW a neglectful parent to his two children, JB and TLW. TW appeals 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 found 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.

### ***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 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 termination was supported by sufficient evidence.

### ***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.

***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 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.

***In the Interest of BFW, 395 P.3d 184, 2017 WY 64 (Wyo. 2017)***

The Supreme Court affirmed an adjudication that the child had been neglected. The appellants did not adhere to the Wyoming Rules of Appellate Procedure and failed to present a cogent argument or pertinent authority to support their claims of error.

***In the Matter of GAC, 396 P.3d 411, 2017 WY 65 (Wyo. 2017)***

The Wyoming Supreme Court held that the guardian ad litem 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, although testimony was during the first trial, the mental health providers were permitted to testify about privileged communications because the mother had revoked her earlier authorizations for disclosure of confidential information.

***Gifford v. State/Tibbets, 399 P.3d 1240, 2017 WY 93 (Wyo. 2017)***

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 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.

***In the Matter of the Termination of Parental Rights To: ARLeB and RCW, 401 P.3d 932, 2017 WY 107 (Wyo. 2017)***

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, 401 P.3d 949, 2017 WY 110 (Wyo. 2017)***

Immediately after being born, the child was placed in protective custody due to fears that the mother was a danger to the child and was unable to care for her. The juvenile court held timely shelter care, initial, and adjudicatory hearings, but there were inordinate delays in the issuance of adjudication, disposition, and permanency orders. The mother appealed the court's permanency order claiming the order violated her due process rights, made inadequate findings, and was not supported by sufficient evidence. The Supreme Court found that the mother waived her due process and other claims relating to the change in permanency from reunification to adoption when she advocated for the same change in permanency. Additionally, the Court found that there was no abuse of discretion in the juvenile court's refusal to designate the adoptive parents in the permanency order as determination of the adoptive parents is a matter for a separate proceeding.

***In the Interest of EHD, Minor Child, 405 P.3d 222, 2017 WY 134 (Wyo. 2017)***

The grandparents in this case moved to intervene in custody proceeding related to their granddaughter. The district court denied their motions to intervene. The grandparents appealed to the Supreme Court claiming that the district court abused its discretion in denying their motion and that the district court erred in denying their requests to be appointed to the multidisciplinary team and to have the grandchild placed with them. The Supreme Court reasoned that because the grandparents were aware of the pending action, failed to satisfy the requirements of foster parents for the grandchild, and failed to intervene until over 19 months after the case was initiated, the juvenile court did not abuse its discretion in denying the motion to intervene. Finally, the Supreme Court found that the grandparents did not have standing to raise the remaining issues because they were not a party to the action.

***In the Matter of the Adoption of SSO: RB, 406 P.3d 723, 2017 WY 142 (Wyo. 2017)***

The parental rights of an unknown father were terminated and the child's foster parents petitioned to adopt the child. The biological father then entered an appearance in the adoption case, objecting to the child being adopted by the foster parents. The district



court struck the biological father's entry of appearance and objection to the adoption and granted the foster parents' petition for adoption. The biological father appealed raising the issue of whether he had standing to challenge the adoption of the child. The Supreme Court held that the district court properly struck the father's appearance in the adoption action, and due to termination of his parental rights, the father had no standing to object to or participate in the adoption.

## 2018 Legislation, Rules, & Case Law

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### Legislation

#### SF0021

Required Reports in Adoptions. A report of adoption must accompany every adoption petition to adopt a minor. The report shall include the name of the child prior to adoption, sex of the child, date of birth, place of birth, birth certification number, natural mother's full maiden name, and natural father's full name. Reports must be forwarded monthly to the registrar of vital records.

### Rule Update

#### Rule 2

Effective June 1, 2018, all abuse and neglect, delinquency, and child in need of supervision proceedings shall be initiated by the filing of a petition; a child shall be present at the permanency hearing unless the court orders prior to the permanency hearing that the child need not be present; notice of hearings must be provided to custodial and non-custodial parents, guardians, custodians, foster parents, pre-adoptive parents or relative caregivers; and the county or district attorney, guardian ad litem, and/or respondent counsel shall request the setting of timely hearings.

#### Rule 3

Effective June 1, 2018, the Department of Family Services must supplement or correct all disclosures and responses provided to the State, guardian ad litem, and respondent in a timely manner and in no even less than 5 business days prior to any MDT meeting or hearing.

### Case Law

#### ***In the Matter of the Termination of Parental Rights to ASA, Minor Child: ASA, 408 P.3d 791, 2018 WY 5 (Wyo. 2018)***

A father appealed his termination of parental rights to the Supreme Court raising two issues. The first issue raised was whether there was sufficient evidence to support the jury's finding that the statutory requirements for the termination of parental rights were satisfied. The second issue raised was whether the district court abused its discretion when it denied the father's motion for judgment as a matter of law? The Supreme Court recognized that the right to associate with one's family is fundamental, but found that the evidence was clear and convincing, thus allowing the jury to reasonably find the father an unfit parent under Wyo. Stat. Ann. § 14-2-309(a)(iv). Additionally, the Court concluded that DFS's failure to comply with Chapter 2, Section 7(f) of the DFS Rules and Regulations was harmless and that the district court did not err when it denied the father's motion for judgment as a matter of law.

#### ***In the Interest of JW and TLW, Minor Children, 411 P.3d 422, 2018 WY 22 (Wyo. 2018)***

The State of Wyoming filed a petition alleging neglect of JW and TLW. The juvenile court found that returning to the home was not in the children's best interest and, after a

permanency hearing, changed the permanency plan to termination of parental rights and adoption. The father appealed to the Supreme Court raising the issue of whether the district court abused its discretion when it determined that DFS made reasonable but unsuccessful efforts to reunify the family and changed the permanency plan to adoption. The Supreme Court concluded that the juvenile court's determination was supported by the record and that the father did not avail himself to services offered that might have enhanced his chance at reunification.

***In the Matter of the Termination of Parental Rights to EMM, MRM, GRM, Minor Children, 414 P.3d 1157, 2018 WY 36 (Wyo. 2018)***

A petition was filed in district court to terminate the mother's parental rights to EMM, MRM, and GRM. The district court entered a default against the mother and subsequently denied the mother's motion to set aside the entry of default. The mother appealed raising the issue of whether the district court abused its discretion when it determined the mother had not shown good cause to set aside the entry of default. The Supreme Court concluded that the three-factor test of (1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default, applied. The test is properly applied in civil actions to determine a motion to set aside the entry of default judgment in proceedings to terminate parental rights. Further, the district court did not abuse its discretion when it applied that test, weighed the factors, and decided to deny the mother's motion to set aside the default.

***In the Matter of the Termination of Parental Rights to BMW, MEW, and SFW, Minor Children, 415 P.3d 1288, 2018 WY 44 (Wyo. 2018)***

District court granted a petition to terminate parental rights and parents appealed. The parents court-appointed appellate attorneys moved to withdraw pursuant to *Anders v. California*, 386 U.S. 738, which allows court-appointed attorneys to file a motion to withdraw on the belief that an appeal is frivolous. The Court held that granting the motions to withdraw was warranted.

***In the Matter of the Adoption of MMM, a Minor Child, 419 P.3d 490, 2018 WY 60 (Wyo. 2018)***

Father and stepmother petitioned to allow stepmother to adopt child without mother's consent. The district court denied the petition. Father and stepmother appealed. The Supreme Court held that the evidence presented by father and stepmother failed to establish mother willfully abandoned child, and that the evidence presented by father and stepmother was insufficient to establish mother willfully failed to pay child support.

***In the Matter of the Termination of Parent Rights to AM-LR and TCG, Minor Children, 421 P.3d 551, 2018 WY 76 (Wyo. 2018)***

Mother appealed after her rights were terminated in a bench trial. The Court held that mother could not collaterally attack the juvenile court's permanency order by appealing the district court's order.

***In the Interest of ECH, Minor Child, 423 P.3d 295, 2018 WY 83 (Wyo. 2018)***

Appeal from a permanency order in an abuse and neglect case where the permanency plan was changed from reunification to adoption. Father appealed. Court held that the father, a

non-custodial and non-offending parent, should have been advised of his right to counsel and appointed counsel at his first appearance.

***In the Interest of VS, Minor Child, 429 P.3d 14, 2018 WY 119 (Wyo. 2018)***

Father appealed juvenile court's order changing the permanency plan from reunification to adoption, alleging violations of due process at the permanency hearing by the juvenile court when the court proceeded without father being present, took judicial notice of the juvenile court case file, and allowed the presentation of information by offer of proof. Father did not raise the issues in the juvenile court, thus the Supreme Court reviewed under a plain error analysis. The Court found that father was afforded the opportunity to appear but didn't. Judicial notice of the file was appropriate as the rules of evidence do not apply to juvenile proceedings, except adjudicatory hearings, so the juvenile court may consider hearsay evidence, such as multi-disciplinary team reports, in making the permanency decision. Also, father had the opportunity to present his own offer of proof, and his attorney acquiesced to the procedure set out by the juvenile court. Father also argued that reasonable efforts were not made to reunify him with the child. The Supreme Court found that reasonable efforts were made to reunify the family; however, father had never met the child and Department of Family Service's primary legal obligation was to reunify the existent family.

***In the Matter of the Adoption of L-MHB, a Minor Child, 431 P.3d 560, 2018 WY 140 (Wyo. 2018)***

Former foster parents filed a petition to adopt their former foster child. The Department of Family Services (DFS) moved to dismiss alleging deficiencies with the petition. DFS argued that the petition was filed without any written consents and relinquishments, either from the parent or from DFS; that the child was not in the petitioner's home when the petition was filed; and that no medical report was filed with the petition. The district court dismissed the petition. The Supreme Court upheld the determination of the district court, finding that the petitioners failed to substantially comply with the adoption statutes. The Court further held that the petitioners did not have statutory standing because the child did not live in their home when they filed the petition. The Court also held that because DFS had exclusive legal custody of the child through a juvenile court proceeding, DFS's relinquishment of the child was necessary for the adoption to proceed.

## **2019 Legislation, Rules, & Case Law**

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### **Legislation**

#### **SF0060**

The Act provide that a doctor who examines a child and has reasonable cause to believe that the child is a victim of abuse or neglect and who has reasonable cause to believe that the other children in the same household may also be victims must report to law enforcement. Law enforcement may then take in any children residing in the same home for a medical examination that must take place within twenty-four (24) hours.

#### **HB0044**

The Act amended various provisions pertaining to expungement of records relating to a juvenile: adding provisions allowing the state to file a petition for expungement; adding provisions for expungement of records relating to a diversion case; adding provisions for expungement of records of an arrest or charges resulting in a dismissal or declined prosecution; adding a definition of “expungement”; and, adding provisions allowing an agency to maintain records for federal reporting requirements.

#### **HB0107**

The Act authorizes the termination of parental rights if a child was conceived as a result of a sexual assault and the parent was convicted of the sexual assault. Reasonable efforts are not required. However, this bill does not apply if the parents cohabitated for two (2) or more years immediately after the birth of the child.

#### **HB0155**

This Act allows a court to consider the best interest of a child when a parent files a petition to terminate a guardianship, but requires the court to give deference to the rebuttable presumption that a fit parent is entitled to custody of their child. When a parent was found unfit at the time a guardianship was ordered, the parent may seek termination of the guardianship and return of the child, and if successful, the court may establish a reintegration plan including visitation, education classes or treatment to address the cause of the unfitness, and any other provisions the court finds necessary.

#### **HB0157**

The Act allows biological or adoptive grandparents who care for a grandchild in their home for one (1) year or more to petition a court to terminate the parental rights of the grandchild’s parents, so long as the placement is not under the direction of a juvenile court or the Department of Family Services.

#### **HB0170**

The Act amended requirements for training of child protection workers in W.S. §14-3-203(v), adding the requirement for training on the Family First Prevention Services Act.

#### **HB0216**

The Act amended statutory provisions relating to the Wyoming Children’s Trust Fund, including creating a Wyoming children’s income account.

## **Rule Update**

### **Rule 1**

Effective January 1, 2019, all documents filed shall be on 8 ½ by 11-inch white paper, single-sided, unless (1) the original of the document or written instrument is another size paper and/or double-sided and (2) the law requires the original document or written instrument be filed with the Court, as in the case of wills or other documents.

### **Rule 1.15A of the Rules of Professional Conduct**

Effective September 1, 2019, counsel in juvenile cases shall retain a client's file for five years after the later of the completion of the representation or the conclusion of all direct appeals, but in no event longer than the life of the client.

### **Rule 1 of Rules for Fees and Costs for District Court**

Effective July 1, 2019, filing fees for appeals and writs were increased.

### **Rule 40.1 of the Rules of Civil Procedure**

Effective July 1, 2019. Changed the time periods to file a motion to peremptorily disqualify a judge in a district court action.

### **Rules of Appellate Procedure**

Effective August 1, 2019, Rules 3.05, 7.01 and 12.07 were amended in areas relating to designation of record, and the form the clerk of court is to prepare the record to send to the appellate court.

### **Rule 5 and 26 of the Rules of Civil Procedure**

Effective December 1, 2019, Rule 5 relating to service was amended in areas relating to sending documents by electronic means, removing the provision allowing for service by electronic means if the person consented in writing. Rule 26 relating to protective orders and depositions, and providing that an objecting party, attorney or witness is not required to appear at a deposition to which a motion for protective order is directed until the motion has been ruled upon.

### **Rules of Evidence**

Effective August 1, 2019, Rules 701, 702, 703, 704, 705, 803 and 902 of the rules of evidence were amended. Rules 701 through 705 were amended relating to the testimony of lay witnesses and expert witnesses. The amendments to Rules 803 and 902 relate to certification of records.

## Case Law

### ***In the Matter of the Termination of Parental Rights to: LCH, BLH, and KAGH, Minor Children, 434 P.3d 100, 2019 WY 13 (Wyo. 2019)***

Mother appeals the termination of parental rights and the Supreme Court affirmed finding the children were in foster care for fifteen of the most recent twenty-two months and the mother was unfit to have custody at the time of trial. The children were in State custody for fifty months and the mother admitted she was unfit at the time of trial but argued the State should invest more time and resources to, perhaps, make her fit. Parents do not have unlimited time to rehabilitate and reunite, and children should not be held prisoner to the rights of others.

### ***In the Matter of the Termination of Parental Rights to: KCS and MRH, Minor Children, 433 P.3d 892, 2019 WY 15 (Wyo. 2019)***

Mother appeals the termination of parental rights and the Supreme Court affirmed finding the children were in foster care for fifteen of the most recent twenty-two months and the mother was unfit to have custody at the time of trial. MRH was in foster care for 62 months and KCS was in foster care for 55 months. Regarding fitness, past behavior is relevant, and the record provides ample, clear and convincing evidence to support the jury's verdict including lack of contact and lack of a safe, nurturing environment.

### ***In the Matter of the Termination of Parental Rights to: BAD, CMS, and ACS, minor children, 446 P.3d 222, 2019 WY 83 (Wyo. 2019)***

The Court addressed whether the district court properly found clear and convincing evidence to support termination of parental rights under Wyo. Stat. Ann. 14-3-309(a)(v). Wyo. Stat. Ann. 14-3-309(a)(v) requires evidence that a child has been in foster care for fifteen of the most recent twenty-two months and the parent is unfit to have custody and control of the child. Mother concedes the children were in care for more than fifteen of the last twenty-two months, but she asserts fitness. The statute requires a finding of unfitness at the time of the termination proceedings, but a court can also look at evidence of previous unfitness. The Court found clear and convincing evidence in support of the district court's finding of unfitness.

### ***In the Interest of: BG, minor child, RH, 451 P.3d 1161, 2019 WY 116 (Wyo. 2019)***

The Court addressed the issue of whether a juvenile court lost jurisdiction over BG when BG turned 18 years old. The Court found jurisdiction over BG terminated when she reached eighteen years of age because the juvenile court did not meet the requirements of Wyo. Stat. Ann. 14-3-431(b). The plain language of the statute states all orders terminate when a child reaches the age of 18 unless the procedures outlined in Wyo. Stat. Ann. 14-3-431(b) are followed. The procedure requires the juvenile court to hold a review hearing at least six months prior to the child reaching the age of eighteen to decide whether, and for how long, care or services should continue after the age of 18. That did not occur and jurisdiction lapsed on BG's 18th birthday.

***In the Matter of the Termination of Parental Rights to: LDB, TJB, and JCB, 2019 WY 127 (Wyo. 2019)***

The mother appeals two issues. First, the mother asserts the district court abused its discretion when it failed to equalize peremptory challenges by either giving Mother additional challenges or requiring the Department of Family Services (DFS) and guardian ad litem (GAL) to share challenges. The Court found that the district court did abuse its discretion in allocating the peremptory challenges because DFS's and the GAL's interests aligned requiring the parties to share the challenges. However, the error was not reversible because the mother failed to show prejudice. Second, the mother claims the district court abused its discretion when it admitted evidence of the children's sexual abuse allegations and excluded evidence of unsubstantiated allegations in violation of Wyoming Rules of Evidence 404(b) and 403. The Court found no error.

## **2020 Legislation, Rules, & Case Law**

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### **Legislation**

#### **SF0120**

The Act creates the Office of the Guardian ad Litem as a separate operating agency, taking the guardian ad litem program out of the Public Defender's office, with provisions for appointment of a Director.

#### **HB0011**

The Act amended various provisions in the Child Protection Act, the Juvenile Justice Act, and the Child in Need of Supervision Act, to provide requirements for Qualified Residential Treatment Programs, and requirements for courts in placing children in those programs.

### **Rule Update**

#### **Rule 1 of Rules for Fees and Costs for District Court**

Effective July 1, 2020, filing fees for appeals and writs were increased.

#### **Rule 3 of Rules of the Supreme Court**

Effective July 1, 2020 the fee for docketing an appeal was raised to \$140.00.

#### **Rule 4 of Rules for Fees and Costs for District Court**

Effective December 7, 2020 the Rule was amended to include email transmissions in the types of electronic transmissions that clerks shall charge \$1.00 per page to transmit or receive.

#### **Rule 203 of the Uniform Rules for District Courts**

Effective December 7, 2020, a provision was added to the Rule allowing for possible dismissal or striking of pleadings for any document that was filed by electronic means and payment not made within 10 days of the electronic filing.

#### **Rule 4, 5 and 39 of the Rules of Civil Procedure**

Effective December 7, 2020, Rule 4 was amended to allow for service by publication in a guardianship action. Rule 5 was amended to include provisions to allow a clerk to refuse a paper that does not obviously comply with various other rules, including email filings. The Rule was also amended to provide which pleadings may be filed by electronic transmission, including email, and to provide for the forms of signature allowed on documents filed by electronic transmission, and changing the page length from 10 pages to 50 pages for electronic transmissions, but each separate pleading is required to be a separate PDF. Rule 39 relating to jury trials was amended to allow a court to determine that there is no right to a jury trial on certain issues.

## Case Law

### ***In the Matter of the Termination of Parental Rights to: L-MHB, Minor Child, \_\_\_P.3d \_\_, 2020 WY 1 (Wyo. 2020).***

Mother appealed the termination of her parental rights and argued that the district court abused its discretion when it allowed privileged information into evidence through the testimony of one of her former physicians and through a medical record exhibit. The Supreme Court determined little purpose would be served by tracing the complicated history of releases, revocation of releases and claims of waiver and privilege because even if the district erred in admitting the evidence, Mother showed no prejudice. Mother had the burden of proving the admission prejudiced her, and based on the other evidence presented in the case, the jury's conclusion was unassailable. The Court found ample evidence to uphold the termination without the objected to testimony and record and no reasonable probability the verdict would have been more favorable to Mother in the absence of the testimony and exhibit.

### ***In the Matter of the Termination of Parental Rights to: DKS and ACH, Minor Children, \_\_\_P.3d \_\_, 2020 WY 12 (Wyo. 2020).***

Mother appeals from a termination matter tried to a jury. She asserts three issues: 1) the district court should have denied the Department of Family Services' motion to amend the petition to add another ground; 2) the district court should not have allocated separate preemptory challenges to the Department and the Guardian ad Litem; and, 3) sufficiency of the evidence.

The Supreme Court held that it was within the district court's discretion to grant the motion to amend and found no abuse of discretion. Mother's counsel stated he could not claim undue surprise and had adequate time to prepare for trial on the new ground.

The Court further held that on the issue of preemptory challenges that Mother failed to preserve the issue for appeal; there was no objection at trial and no showing on appeal who Mother would have had on the jury if they had not been challenged.

The Court finally held there was sufficient evidence to terminate her parental rights under W.S. 14-2-309(a)(v). The Court found that there was clearly evidence that Mother was unfit at the time of trial to have the care and custody of the children. Both children exhibited significant mental health issues and educational problems; Mother lacked contact with the children while they were in the Department's custody; Mother could not meet the children's needs due, in part, to her employment and living situation; and, Mother had not addressed her own mental and physical concerns.

### ***In the Matter of the Adoption of: ZEM, Minor Child, JEG and RJG v. BCB, \_\_\_P.3d \_\_, 2020 WY 17 (Wyo. 2020).***

Stepfather filed a petition for adoption, which the district court denied. The petition alleged failure to pay support under 1-22-110(a)(iv) and that the best interest of the child supported adoption. The district court found the adoption could be granted without Father's consent, but determined under 1-22-111 that the best interest of the child did not support adoption. Stepfather appealed on the best interest of the child basis. The Supreme Court held the

district court did not abuse its discretion in determining that the child would lose the emotional benefit of having her father in her life if the adoption was granted.

***In the Matter of the Adoption of: CJML and KDL, Minor Children, \_\_\_P.3d \_\_, 2020 WY 23 (Wyo. 2020).***

Stepparent petitioned to adopt stepchildren and Mother objected. The district court determined that Mother's failure to pay 70% of court-ordered support for a 2 year period was not willful and denied the petition. Stepparent appealed asserting the district court abused its discretion. The Supreme Court affirmed, holding that it could not find the district court abused its discretion when it found the stepparent failed to prove by clear and convincing that Mother's failure to pay support was willful for the entire two year period.

***In the Matter of the Termination of Parental Rights to: IRS, Minor Child, \_\_\_P.3d \_\_, 2020 WY 48 (Wyo. 2020).***

Mother appealed the termination of her parental rights. Her appellate attorney filed a Brief Pursuant to *Anders v. California*, 386 U.S. 738 (1967), asserting there were no issues for appeal. The Supreme Court requested a second *Anders* brief, then reviewed the record. The Court allowed appellate counsel to withdraw and affirmed the termination of parental rights.

***In the Matter of the Termination of Parental Rights to: GGMC and CSC, Minor Children, \_\_\_P.3d \_\_, 2020 WY 50 (Wyo. 2020).***

Father appeals a jury's decision to terminate his parental rights to his two children. He asserts the district court erred in admitting evidence pertaining to Mother and Mother's other children, and argues that without that evidence, the jury had insufficient evidence to terminate. The Court found evidence concerning the half-siblings to be admissible and relevant. Evidence of Father's past behavior, his relationship with Mother and his relationship with his children's half-siblings was relevant to the question of his current fitness to parent. The evidence assisted the jury in understanding Father's history and pattern of behavior, a matter that was plainly relevant in determining his current parental fitness.

During testimony in the case, Mother, who was not a current party to the proceedings, raised a 5<sup>th</sup> Amendment right. The Court found that the district court's instruction to the jury that Mother's assertion of her 5<sup>th</sup> Amendment right permitted the jury to "draw an adverse inference from that assertion" was erroneous because it was not clear that the adverse inference could only be drawn against Mother, not Father.

***In the Matter of the Paternity of AAAE, Minor Child, \_\_\_P.3d \_\_, 2020 WY 117 (Wyo. 2020).***

The Department of Family Services filed a termination action which included a presumptive father and an alleged father. Alleged Father filed a paternity action within the termination, then when that was objected to, filed a separate paternity action and sought joinder of that action with the termination proceeding, which was granted. Alleged Father requested the district court order genetic testing; the Department objected. The district court ordered the genetic testing and then entered an order establishing paternity in Alleged Father, to which the Department objected. The district court vacated the order establishing

paternity, finding that an evidentiary hearing was required. After trial on the paternity matter, in which only the Department and Alleged Father participated, as Mother and Presumptive Father had relinquished their parental rights, the district court found that Alleged Father had not timely filed his petition to establish paternity and denied the petition.

Alleged Father appealed, asserting that the Department could not challenge paternity as they were not an appropriate party to the proceeding; and further asserting that W.S. 14-2-817 required the district court issue an order establishing paternity once genetic testing is completed.

The Supreme Court found the Department was not a party to the paternity action, notwithstanding service of the action on the Department by Alleged Father. The Court determined the Department had no right to participate in the paternity action. The Court also held that W.S. 13-2-817 does not afford the district court the discretion to deny a petition to establish paternity once the district court had ordered genetic testing, and the testing results met the threshold established by statute; the district court was required to enter an order adjudicating paternity in Alleged Father.

***In the Matter of the Termination of Parental Rights to: NRAE, Minor Child, \_\_\_P.3d \_\_, 2020 WY 121 (Wyo. 2020).***

The Department filed a motion for summary judgment in a termination action against father. At the hearing on the summary judgment motion no party provided arguments as to whether it would be in the best interest of the child to grant the termination. The district court granted the summary judgment, but the order did not include findings on the best interest of the child. The Department filed a motion requesting a best interest finding and asked the district court to rely on the evidence presented in favor of summary judgment to make the finding. The district court entered an order eight days later, terminating parental rights and making the best interest finding.

Father appealed asserting his due process rights were violated when the district court determined the best interests of the child without an evidentiary hearing. The Supreme Court held that a termination action is a two part process. First the Department must establish the termination grounds by clear and convincing evidence. Second, the district court must determine whether termination is in the best interests of the child (this determination is not a statutory requirement, but comes from case law). Separate hearings are not required for the termination grounds and the best interest finding.

In this case, the Court determined that Father was not afforded time to respond to the Department's motion requesting a best interest finding and was denied the opportunity to be heard on best interests. The Court found that the termination of Father's parental rights before he had an opportunity to respond to the Department's motion, to present evidence, or to examine, explain or rebut evidence on the child's best interests was a denial of fundamental fairness guaranteed by Wyoming law.

***In the Matter of the Adoption of: MAJB f/k/a ZJC, Minor Child, \_\_\_P.3d \_\_, 2020 WY 157 (Wyo. 2020).***

Unopposed appeal, and a matter of first impression for the Supreme Court. Petitioners adopted a child from China in 2016 and received a U.S. Department of State Hague

adoption certificate. Medical testing determined the documented age of the child was incorrect. Petitioners then filed a petition for adoption in 2020, and requested the district court enter an order of adoption that recognized the medically established age of the child and direct issuance of a Wyoming birth certificate with the correct age. The district court dismissed the petition for lack of subject matter jurisdiction and finding that the Hague adoption was final under federal law.

The Supreme Court determined that district courts have subject matter jurisdiction in proceedings for verification of inter country adoptions, because the legislature has not expressly limited the district courts jurisdiction and no other court is charged with jurisdiction over adoption proceedings.

On a second question of whether the district court had statutory authority to approve a Hague Convention adoption and issue a Wyoming decree of adoption, the Court found that the relief requested is clearly within the spirit or reason of Wyoming adoption law where the best interest of the child and the child's need for permanency are central considerations.

## 2021 Legislation, Rules, & Case Law

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### Legislation

#### HB0048

The Act relates to community juvenile services block grants, and subjects the administration of the community juvenile services block grant program to the availability of funds.

#### HB0049

The Act authorizes the Department of Family Services to set the fee for central registry applications.

### Rule Update

#### Rule 5 of Rules Governing Access to Court Records

Effective December 1, 2021, the Rule allows, when authorized by the Supreme Court, a vendor who provides remote access to charge fees for remote access at rates not exceeding those fixed by contract between the vendor and the Supreme Court.

#### Rule 5 and 28 of Rules of Civil Procedure

Effective September 1, 2021, amending Rule 5 to provide documents received after 11:59:59 p.m. will be considered submitted on the next business day, and documents received on weekends and holidays will be considered submitted on the next business day. The amendment to Rule 28 adds provisions relating to interstate depositions and discovery.

### Case Law

#### *In the Interest of AA, Minor Child, \_\_\_ P.3d \_\_, 2021 WY 18 (Wyo. 2021).*

Father appealed from an order relieving the Department of Family Services from making reasonable efforts to reunify with him. Father argued the juvenile court order violated his due process rights because he did not get notice and an opportunity to be heard in the early stages of the juvenile court neglect proceeding. The Supreme Court reversed.

Because Father did not raise the issue in the juvenile court, the Court did a plain error review. The Court held that the child protection act clearly requires a non-custodial parent be given notice of the juvenile court proceedings and an opportunity to be heard regarding the placement of the child. The child protection act expresses the clear and unequivocal rule of law that the juvenile court shall involve the non-custodial parent in the proceedings at the earliest possible time. The Court held that Father's due process rights were violated by numerous failures to follow the child protection act.

The Court also held that the juvenile court erred in ceasing reunification efforts with Father under the provisions of W.S. 14-2-309 (c) (v). The Court included a discussion of what is meant by "other aggravating circumstances" in the statute, and concluded that "other aggravating circumstances" must be something different than those circumstances that are contained in the other provisions of W.S. 14-2-309(c), but those circumstances must be of the same level of severity as what is contained in those other provisions. The Court

determined that the facts of the case did not establish severe misconduct toward the child which would warrant relieving the Department of efforts to reunify.

***BJ v. KM and CM*, \_\_\_P.3d \_\_, 2021 WY 37 (Wyo. 2021).**

BJ filed a petition to establish paternity. He alleged that he was the father of the child. KM and CM were married at the time of the birth of the child, so CM was the presumed father of the child. The district court held that BJ lacked standing and dismissed the case. The Supreme Court reversed, holding that both W.S. 14-2-802(a)(iii) and W.S. 14-2-807 are clear and unambiguous and W.S. 14-2-802(a)(iii) gives standing with the language “or another individual.”

***Carroll v. Gibson*, \_\_\_P.3d \_\_, 2021 WY 59 (Wyo. 2021).**

Child support case where Father, for the second time on a WRCP 60(b) motion, alleged that W.S. 20-2-304(b) (2011) (repealed in 2018) was unconstitutional due to conflicts with federal law. Father failed to directly appeal his 2012 child support order. The Court discussed the difference between void and voidable orders and determined that even if the statute was unconstitutional, the order is only voidable. An unconstitutional statute does not relieve a district court of jurisdiction.

***In the Matter of the Adoption of: ATWS, Minor Child*, \_\_\_P.3d \_\_, 2021 WY 62 (Wyo. 2021).**

The district court denied an unopposed petition for adoption by a former stepparent to a child because the former stepparent was remarried, and the district court, strictly construing the adoption statutes, determined he was not a “single adult” under W.S. 1-22-104(b). The Supreme Court, in a split decision, reversed the district court.

The Court, in the majority opinion, found the term “single” to be ambiguous and held that the intent of the adoption statutes means W.S. 1-22-103 and W.S. 1-22-104(b) should be read in harmony to allow one person (i.e., a single individual) to adopt a child even if married, and the spouse was not adopting.

The dissent asserted that the Court “must not give a statute a meaning that will nullify its operation if it is susceptible of another interpretation.” In considering the word “single” giving due consideration to the arrangement and connection of “single” to the other words in the sentence, the dissent found it clear that “single” in the statute refers to one’s marital status.

***In the Interest of: FP, SP, TP and XP, Minor Children*, \_\_\_P.3d \_\_, 2021 WY 77 (Wyo. 2021).**

Mother appeals various orders from the juvenile court, including its order dismissing the juvenile court action because permanency had been achieved through reunification with the fathers of the children. The State argued the Supreme Court lacked jurisdiction because Mother failed to timely appeal certain orders, and certain orders were unappealable.

The Court found it did have jurisdiction but summarily affirmed because Mother’s brief misstated the record and failed to comply with the WRAP. The Court provided a discussion of what types of orders are appealable in a juvenile court neglect case, found four of the orders Mother appealed from to be interlocutory and not appealable until the final

appealable order was entered. The Court determined it could look at all past orders that did not have the effect of an adjudication or disposition or serve as a basis for changing a permanency plan. The Court found the order dismissing the case to be a final appealable order because it met the three requirements for a final appealable order: 1) it affected a substantial right; 2) it determined the merits of the controversy; and 3) it resolved all outstanding issues in the case.

***In the Interest of SW, CW, HW, and NW, Minor Children, \_\_\_P.3d \_\_, 2021 WY 81 (Wyo. 2021).***

Mother and Father appeal the juvenile court order changing the permanency plan from reunification to adoption. Both parents assert the juvenile court abused its discretion in finding reasonable efforts had been made because specialized services were not provided to them.

The Supreme Court held sufficient evidence supported the finding of reasonable efforts, and no further efforts were required, despite the potential for additional psychiatric or psychological care. The Court further held that the parents were unwilling to take direction from those who attempted rehabilitation services; Mother was working against change, and Father lacked motivation for change. The children did not have the luxury of time and at some point in time, the needs of the children rise above the needs of the parent.

***In the Interest of RR, KR, and RR, Minor Children, \_\_\_P.3d \_\_, 2021 WY 85 (Wyo. 2021).***

Father appeals from both the adjudication order and the order changing the permanency plan from reunification to adoption. Father argued that the juvenile courts failure to assure his presence at the initial and adjudicatory hearing deprived the juvenile court of subject matter jurisdiction to rule on permanency and deprived him of due process.

The Supreme Court determined there was no need to interpret the scope of a juvenile court's obligation to ensure the presence of a parent at a hearing under the Child Protection Act, as **even if** the juvenile court were required to take certain steps to ensure a parent's presence, that requirement is not jurisdictional. held that there is no unequivocal expression in the statute that violation of the statute results in a loss of subject matter jurisdiction. In addressing Father's due process claims, the Court held that it has jurisdiction to review his claims relating to the initial hearing as the initial hearing order was interlocutory. While the adjudicatory order was a final appealable order, the Court determined it could review his due process claims through a collateral attack, but his claims regarding the admission of evidence at the adjudication hearing were not reviewable. The review of these claims was limited to plain error as Father had not raised the issue in the juvenile court.

The Court determined that as to Father's due process claims in the initial hearing, the juvenile court violated its clear and unequivocal obligation to advise Father of his rights. But the Court found no prejudice to Father, and therefore no plain error. As to his due process claims in the adjudicatory hearing, the Court held that Father had waived those claims.

The Court included a footnote in this case cautioning appointed counsel to proceed with care when relying on substitute counsel.

***In the Matter of the Termination of Parental Rights to: JPL, Minor Child, \_\_\_ P.3d \_\_, 2021 WY 94 (Wyo. 2021).***

Mother and Father appeal the termination of their parental rights. The Supreme Court affirmed the termination under the ground contained in W.S. 14-2-309(a)(v). The parents argued that the district court did not have subject matter jurisdiction to terminate because in the underlying juvenile neglect action, law enforcement did not have authority to take protective custody of the minor child.

The Court held that the district court has subject matter jurisdiction in termination proceedings under the Wyo. Const., Article 5, §10, and the Termination of Parental Rights Act. Shelter care placement is a separate issue. The Court also found the district court had sufficient evidence to terminate parental rights under W.S. 14-2-309(a)(v), and provide a detailed discussion of the requirements to prove unfitness and the evidence presented at trial which showed the parent's current unfitness to have the care and custody of the minor child.

***O'Roake v. State ex rel Department of Family Services, Child Support Enforcement Division, \_\_\_ P.3d \_\_, 2021 WY 98 (Wyo. 2021).***

Father appealed a child support order requiring him to pay post-majority support for a child while the child attended college as a full time student. The district court found that the child was disabled and in need of support.

The Supreme Court reversed, finding an abuse of discretion on the part of the district court because of inconsistencies in its findings and conclusions. The district court ordered the Father to pay only if the child was enrolled full time in college, which the Court found contradicted the finding that the child was incapable of self-support. The Court held that either the child is or is not capable of self-support, so a support order cannot be conditioned upon his attendance in college.

***In the Matter of the Guardianship of ARB, Minor Child, \_\_\_ P.3d \_\_, 2021 WY 102 (Wyo. 2021).***

Mother moved to terminate a voluntary guardianship to her minor child, and the guardians (grandparents) objected. The district court terminated the guardianship with a transition plan. Grandparents appealed, arguing exceptional circumstances warranted continuation of the guardianship. The Supreme Court affirmed, holding that Mother was fit to parent and no exceptional circumstances existed. The guardianship was controlled exclusively by statute. If there has never been an adjudication of unfitness, and a parent establishes the guardianship is no longer necessary, then the parental preference principle applies (parent is presumed to be the child's guardian. The guardians then have the burden to rebut the presumption. The Court recognized narrow exceptions to the principle such as exceptional circumstances or compelling reasons mainly focused on child's "real family unit" or parents' failure to accept parental responsibility, but found no such exceptions in this case.

***In the Interest of AM, NM and IM, Minor Children, \_\_\_ P.3d \_\_, 2021 WY 119 (Wyo. 2021).***

Mother appealed a change in permanency from a concurrent plan of reunification and adoption to a plan of adoption. In the order changing the permanency plan, the juvenile

court also relieved the Department from any further efforts at reunification. Mother asserted that the juvenile court erred in ordering no further efforts at reunification and also erred in allowing the admission of an exhibit.

The Supreme Court affirmed, holding that the juvenile court is not required to provide support for a decision to discontinue reasonable efforts towards reunification after the permanency plan changes to adoption. The Court further held that although it agreed that the production of the exhibit prior to trial was untimely, the untimeliness did not deny Mother due process. The information in the exhibit was mostly contained in documentation Mother already had access to and Mother had the opportunity to cross examine the caseworker and call other witnesses.

***In the Matter of the Guardianship of DEP, Minor Child, \_\_\_ P.3d \_\_, 2021 WY 122 (Wyo. 2021).***

Mother joined a petition to establish a voluntary guardianship. Six months later Mother took the child and left the state with the maternal grandparents. The guardians filed a motion for return of the child, and Mother responded and moved to terminate the guardianship. The district court terminated the guardianship. The Supreme Court applied the parental preference principle in affirming the district court, finding nothing in the record to support the guardian's position. The Court reiterated the obligation of an Appellant to bring an appropriate record to the appellate court.

## **2022 Legislation, Rules, & Case Law**

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### **Legislation**

#### **HB0037**

The Act transferred responsibility for the juvenile justice information system to the Department of Family Services, requiring the Department to create and maintain a database for a juvenile justice information system.

#### **SF0031**

The Act amended various statutes relating to education and children, to include in the definition of neglect that neglect for purposes of education includes “willful absenteeism”; to include a definition of “willful absenteeism” in the education statutes, and provisions allowing the district attorney the discretion to initiate a proceeding either under the CHINS provisions or under the Child Protection Act. The provision also included language as to the process if the child was an Indian Child, under the Indian Child Welfare Act.

### **Rule Update**

#### **Rule 903 of Uniform Rules for District Court**

Effective May 1, 2022. Revises the provision covering retrieval or disposition of exhibits; providing the court will only retain standard exhibits, and sensitive and bulky exhibits will remain at all times in the custody of the party.

#### **Rule 2.09 of the Rules of Appellate Procedure**

Effective April 15, 2022. A notice of appeal may be filed, signed or verified by electronic means.

#### **Rule 8.01 of the Rules of Appellate Procedure**

Effective June 1, 2022. Under exceptional circumstances the Supreme Court may allow oral argument by videoconferencing. Motion to appear by videoconferencing must be made 20 days before the scheduled argument, unless inclement weather or other unforeseen circumstances arise after that date.

#### **Rule 3 of the Rules of Civil Procedure**

Effective June 1, 2022. Rule covering commencement of an action is amended to reflect Wyoming’s saving statute, W.S. 1-3-118. When an action has been dismissed pursuant to Rule 4(w) and a new action is filed, it is commenced by filing a complaint with the court if service is obtained within 90 days of the applicable statute of limitations.

#### **Rules of Appellate Procedure**

Effective January 1, 2022. Various amendments to the Rules of Appellate Procedure

#### **Wyoming Rules for Electronic Filing and Service in District Court**

Effective August 29, 2022. New rules covering the procedure for electronic filing and service in district courts for attorneys.

## Case Law

### ***In the Interest of SMD and SND, Minor Children, \_\_\_ P.3d \_\_, 2022 WY 24 (Wyo. 2022).***

Appeal by both Mother and Father of juvenile court order changing permanency plan from reunification to adoption. The parents argue the juvenile court abused its discretion by ordering a permanency plan of adoption rather than guardianship. Mother also argued the juvenile court abused its discretion by not ordering a concurrent plan of reunification and by ordering that efforts at reunification were no longer necessary.

The Supreme Court held that the juvenile court had a preponderance of the evidence to support that the parents had made little progress over a two year time frame, further that the rights and needs of the children rise above the rights and needs of the parents.

The Court also held that guardianship provides less stability. In a footnote, the Court stated that guardianship is not an alternate route for parents who have not been able to comply with their case plan. The Court held it was within the district court's discretion to determine that adoption is in the child's best interest because of stability. Finally, the Court held that reasonable efforts are no longer necessary because the plan no longer aims to reunify the family.

### ***In the Interest of MA, KA and GA, Minor Children, \_\_\_ P.3d \_\_, 2022 WY 29 (Wyo. 2022).***

Mother appealed from a permanency order changing the permanency plan from reunification to adoption. The Supreme Court reversed the juvenile court order, finding there was a failure to prove reasonable efforts towards reunification by a preponderance of the evidence.

The opinion includes a detailed discussion of what is required for reasonable efforts to reunify a family, including what is required by the Department and what is required by the juvenile court. The Court held that efforts must go beyond mere matters of form so as to include real genuine help, and one list of providers and a handful of reminders cannot be considered tailored, appropriate or otherwise genuinely helpful. The Court held the Department must do more than provide a parent with a list and then leave the parent to obtain services on their own. "The law requires reasonable flexibility on the part of the Department to assist parents in overcoming impediments to their case objectives." The Court also held that it could not ignore the juvenile court's failure to maintain oversight of the case.

### ***In the Interest of RH v. State, \_\_\_ P.3d \_\_, 2022 WY 33 (Wyo. 2022).***

A juvenile filed for expungement of the juvenile record and the underlying court denied the petition. The issue was whether W.S. 14-6-241 allows for expungement of a juvenile record where the juvenile petition was dismissed but the delinquent act charged was a violent felony. The juvenile in question received a deferred prosecution, completed the requirements and the matter was dismissed. The Supreme Court, in interpreting W.S. 14-6-241(a), (d), and (e), held that the "violent felony" language in 14-6-241(a) describes a category of records which may be expunged, rather than a limitation on expungement as used in subsections (d) and (e). The Court held the district court erred in its interpretation of the statute.

***Ailport v. Ailport*, \_\_\_ P.3d \_\_\_, 2022 WY 43 (Wyo. 2022).**

Grandparents filed an action for grandparent visitation rights against two of their children. The district court held that the grandparents did not prove they had a right to visitation under the statute, using an “enhanced best interests test”. Grandparents appealed and the Supreme Court affirmed on somewhat different grounds.

The Court found that the language from W.S.20-7-101 respect the role of parents by requiring any court-ordered grandparent visitation “not substantially impair the rights of the parent.” The Court interpreted this language to require proof the parents are unfit or the parent’s visitation decision is harmful to the child, this ensuring “special weight” to the parent’s decision. The Court found that only after this determination is made does a court then consider what visitation will serve the best interest of the child. A district court must include detailed findings of fact and conclusions of law when granting grandparent visitation. The Court held that parental decisions about grandparent visitation are presumed to be in a child’s best interest and are entitled to deference unless the parents are not fit or the evidence established the parent’s decision would be harmful to the child.

***In the Interest of MM, Minor Child*, \_\_\_ P.3d \_\_\_, 2022 WY 73 (Wyo. 2022).**

Mother appealed from various juvenile court orders, including permanency and review orders. The Supreme Court dismissed the appeal, finding that none of the orders appealed from were appealable orders. The Court determined that none of the orders appealed from affected Mother’s substantial rights in that they did not change the permanency plan in a way that affected those rights.

***In the Interest of BC-K v. State*, \_\_\_ P.3d \_\_\_, 2022 WY 80 (Wyo. 2022).**

A juvenile appealed an adjudication hearing 153 days after the State filed a delinquency petition, arguing that the juvenile court lost subject matter jurisdiction. The Supreme Court affirmed the adjudication of delinquency. Although the statutes in question, W.S. 14-6-209(c) and 14-6-226(b) require a hearing to be held within 90 days after a petition is filed, the Court held the statutory language contained no unequivocal expression that the deadline is jurisdictional, and thus the juvenile court did not lose jurisdiction. The juvenile’s remedy was to demand a timely hearing and if the hearing was not held, petition for writ of habeas corpus.

***In the Interest of JP v. State*, \_\_\_ P.3d \_\_\_, 2022 WY 94 (Wyo. 2022).**

A juvenile appealed an adjudication order, asserting that he received ineffective assistance of counsel when his attorney failed to timely demand a jury trial. The Supreme Court affirmed. The Court held that the juvenile must meet a two part test showing that counsel’s performance was deficient and that the deficient performance prejudiced the defense.

The Court further held that the juvenile had a statutory right, not a constitutional right, to a jury trial and that he waived that right by failing to request a jury within the statutory time frame. The juvenile failed to affirmatively prove prejudice, which doomed his ineffective assistance of counsel claim.

***In the Matter of the Guardianship of: GAP, EJM and MCM, Minor Children, \_\_\_ P.3d \_\_\_, 2022 WY 97 (Wyo. 2020).***

Guardians appeal the termination of a guardianship. The Supreme Court applied a two part test. 1) parent has the burden of showing the guardianship is no longer necessary, if shown, the parental preference applies. The parental preference is a rebuttable presumption that the best interests of the child are served by reuniting with the parent. 2) The guardian then has the burden to rebut the presumption by proving by a preponderance that the parent is unfit.

Then, under W.S. 3-3-1107(a), a best interest analysis is completed. This case is the first time the Court interpreted and applied 3-3-1107. Under the statute, a court is required to consider the best interest of the child while giving deference to the parental preference principle. The Court held that in order to show it is in the child's best interest to continue a guardianship under 3-3-1107, the guardian has the burden to show that termination of a guardianship will be harmful to the child.

***In the Interest of MBP v. State, \_\_\_ P.3d \_\_\_, 2022 WY 114 (Wyo. 2022).***

Juvenile adjudicated of a delinquency based on charge of fighting in public appealed both the adjudication order, under a sufficiency of the evidence argument, and the disposition order. The Supreme Court held sufficient evidence existed that the juvenile fought in public with another by agreement.

The State argued the matter was moot because the juvenile had completed probation. The Court determined an exception to mootness applied and considered the merits of the issue to provide guidance to juvenile courts and state agencies. The juvenile argued the juvenile court, by statute, must impose a specific number for a term of probation (the juvenile court in this case gave the juvenile three to six months of probation). The Court reaffirmed that the sanctions listed in the Juvenile Justice Act "are merely guidelines and the juvenile court is free to impose any sanction it deems appropriate to meet the specific needs of the juvenile before the court."

***In the Interest of BP and CS, Minor Children, NP v. State, \_\_\_ P.3d \_\_\_, 2022 WY 128 (Wyo. 2022).***

Mother appealed a change in the permanency plan from reunification to adoption, arguing the Department of Family Services did not make reasonable efforts to reunify. During the juvenile proceeding, Mother was incarcerated and also at the Wyoming State Hospital. The Supreme Court held that it appeared that the Department provided all the services that it could, given Mother's incarceration, her hospitalization and the children's status. The Court further held that what is reasonable must take into account Mother's incarceration and what services are available under the circumstances. Within the context of Mother's long history with child protective services in Colorado and Wyoming, and her incarceration, the juvenile court did not abuse its discretion in finding reasonable efforts towards reunification had been made.

***In the Interest of BN and DN, Minor Children, NP v. State, \_\_\_ P.3d \_\_, 2022 WY 146 (Wyo. 2022).***

This case involved the same Mother as 2022 WY 128, set out above. Mother again appealed the permanency plan change to adoption for two of her minor children, arguing that the Department failed to specifically tailor their efforts to her mental health needs.

The Court stated in a footnote that the reasonable efforts the Department is required to make do not extend to ensuring a mental health diagnosis and treatment. The Court held that a court cannot look at parents in isolation, but must consider them in the context of their unique circumstances. Mother in this case also did not cooperate with the Department or the juvenile court. The Court again reiterated “a parent’s failure to take advantage of available services or to meaningfully participate in a case plan developed by DFS with [her] input is persuasive evidence that reasonable rehabilitative efforts have been unsuccessful.”

***In the Matter of the Termination of Parental Rights to: RVR, KAR, and RLR, Minor Children, \_\_\_ P.3d \_\_, 2022 WY 153 (Wyo. 2022).***

Father appeals the termination of his parental rights, and asserts that he received ineffective assistance of counsel and that the district court abused its discretion in failing to set aside the default entered against him. The Supreme Court affirmed.

Father argued that W.S. 14-2-318(a) secures his right to counsel and this right includes effective assistance of counsel. The Court held that the statute uses “may” not “shall”, and there is no mandatory requirement to appoint counsel in a termination action, the appointment is left to the discretion of the district court. The Court also stated that Father cited no authority holding that a litigant has a statutory right to effective assistance of counsel in a civil case. Because there is no mandatory right to counsel, there is no statutory right to effective assistance of counsel in a termination case. Father did not make a constitutional argument. With respect to the entry of default, the Court held that even if Father had made an oral motion to set aside the default, Father did not meet his burden as he did not discuss whether setting aside the default would prejudice the Department and he did not provide any argument that he had a meritorious defense to the allegations in the termination petition.