

TITLE 32
DOMESTIC RELATIONS

CHAPTER 17
DE FACTO CUSTODIAN ACT

32-1701. SHORT TITLE. This chapter may be known and cited as the "De Facto Custodian Act."

[32-1701, added 2010, ch. 236, sec. 1, p. 609.]

32-1702. PURPOSE. The purpose of this act is to:

- (1) Give constitutionally required deference to the decisions of fit parents in custody actions brought by third parties;
- (2) Subject to such constitutionally required deference, meet the needs of children for caring and stable homes by providing a flexible method by which a third party who has cared for and supported a child may obtain legal and physical custody of the child where such custody is in the child's best interests.

[32-1702, added 2010, ch. 236, sec. 1, p. 609.]

32-1703. DE FACTO CUSTODIANS. (1) "De facto custodian" means an individual who:

- (a) Is related to a child within the third degree of consanguinity; and
- (b) Either individually or together with a copetitioner has been the primary caretaker and primary financial supporter of such child has resided with the individual without a parent present and with a lack of demonstrated consistent participation by a parent for a period of:
 - (i) Six (6) months or more if the child is under three (3) years of age; or
 - (ii) One (1) year or more if the child is three (3) years of age or older.
- (c) For purposes of the definition in this section, "lack of demonstrated consistent participation" by a parent means refusal or failure to comply with the duties imposed upon the parent by the parent-child relationship. When determining a "lack of demonstrated consistent participation," the court may consider parent involvement in providing the child necessary food, clothing, shelter, health care and education and in creating a nurturing and consistent relationship for the child's physical, mental or emotional health and development.
- (2) In determining if a petitioner or intervenor is a de facto custodian for the child, the court shall also take into consideration whether the child is currently residing with the petitioner or intervenor and, if not, the length of time since the child resided with the petitioner or intervenor.
- (3) Any period of time after the filing of a petition pursuant to this chapter shall not be included in determining whether the child has resided with the individual for the time period as provided in subsection (1) of this section.
- (4) An individual shall not be deemed a de facto custodian if a child has resided with the individual because:
 - (a) The child was placed in the individual's care through a court order or voluntary placement agreement under [title 16](#), Idaho Code; or

(b) The individual is or was cohabiting with, or is or was married to, a parent of the child.

[32-1703, added 2010, ch. 236, sec. 1, p. 609.]

32-1704. COMMENCEMENT OF PROCEEDINGS. (1) A child custody proceeding may be initiated in any court of this state with jurisdiction to determine child custody matters, by an individual:

(a) Filing a petition seeking a determination that he or she is a de facto custodian pursuant to section [32-1703](#), Idaho Code, and seeking custody of a child; or

(b) Filing a motion seeking permissive intervention pursuant to rule 24 of the Idaho rules of civil procedure, in a pending custody proceeding seeking a determination that he or she is a de facto custodian pursuant to section [32-1703](#), Idaho Code, and seeking custody of a child.

(2) A petition for custody or a motion to intervene based on the petitioners or intervenors alleged status as a de facto custodian, filed under this section, must state and allege:

(a) The name and address of the petitioner or intervenor and any prior or other name used by the petitioner or intervenor;

(b) The name of the respondent mother and father or guardian(s) and any prior or other name used by the respondent(s) and known to the petitioner or intervenor;

(c) The name and date of birth of each child for whom custody is sought;

(d) The relationship of the petitioner or intervenor to each child for whom custody is sought;

(e) The basis for jurisdiction asserted by the petitioner or intervenor;

(f) The current legal and physical custodial status of each child for whom custody is sought, whether a proceeding involving custody of the child, including a proceeding for an order or protection pursuant to section [39-6304](#), Idaho Code, is pending in a court in this state or elsewhere, and a list of all prior orders of custody, including temporary orders, if known to the petitioner or intervenor;

(g) Whether either parent is a member of the armed services, if known to the petitioner or intervenor;

(h) The length of time each child has resided with the petitioner or intervenor and the nature of the petitioners or intervenors role in caring for each child for whom custody is sought;

(i) The financial support provided by the petitioner or intervenor for each child for whom custody is sought;

(j) Whether physical and/or legal custody should be granted to and/or shared with the respondent(s); and

(k) The basis upon which the petitioner or intervenor is claiming that it is in the best interests of the child that the petitioner or intervenor have custody of the child.

(3) The petition or motion must be verified by the petitioner or intervenor.

(4) Written notice of a hearing on a petition or motion to intervene for custody of a child by a de facto custodian must be given to:

(a) The parent(s) of the child as defined in section [16-2002](#)(11) and (12), Idaho Code; and

(b) The guardian or legal custodian, if any, of the child; and

(c) The child's tribe pursuant to federal law, if the child is an Indian child as defined in the Indian child welfare act, 25 U.S.C. 1901, et seq.

(5) Written notice of a hearing on a petition for custody of a child by a de facto custodian must be given to the Idaho department of health and welfare if the petitioner has reason to believe that either parent receives public assistance, the petitioner receives public assistance on behalf of the child or either parent receives child support enforcement services from the Idaho department of health and welfare or applies for such public assistance or child support enforcement services after a petition under this section is filed. Notice to the Idaho department of health and welfare must include a copy of the petition.

(6) In an action for custody of a child by a de facto custodian, the parties must stipulate to, or the court must find, facts establishing by clear and convincing evidence that the petitioner or intervenor is a de facto custodian pursuant to the requirements of section [32-1703](#), Idaho Code, before the court considers whether custody with the de facto custodian is in the best interests of the child.

(7) Once a court has found facts supporting the qualification of the petitioner or intervenor as the de facto custodian of a child, the petitioner or intervenor must prove by a preponderance of the evidence that it is in the best interests of the child to be in the custody of the de facto custodian. In determining the best interests of the child, the court shall apply the standards as provided in section [32-717](#)(1), Idaho Code.

(8) In determining whether the petitioner or intervenor has established that it is in the best interests of the child to be in the custody of the de facto custodian, the court may also consider:

(a) The circumstances under which the child was allowed to remain in the care of the de facto custodian, including whether the child was placed with the de facto custodian to allow the parent to seek work or to attend school;

(b) Whether the child is currently residing with the de facto custodian and, if not, the length of time since the petitioner or intervenor last functioned as the child's de facto custodian.

[32-1704, added 2010, ch. 236, sec. 1, p. 609.]

32-1705. NATURE OF DE FACTO CUSTODIAN ORDER -- ACCESS TO RECORDS -- TERMINATION OF DE FACTO CUSTODIANSHIP. (1) A court may enter an order granting a de facto custodian sole or joint legal and/or physical custody as defined in section [32-717B](#)(1), (2) and (3), Idaho Code, in the same manner as it would grant such custody to a parent.

(2) An order granting custody to a de facto custodian is subject to the continuing jurisdiction of the court and is modifiable in the same manner as an order establishing parental custody pursuant to section [32-717](#), Idaho Code, or a similar provision.

(3) A de facto custodian who has been granted sole or joint legal custody of a child shall have access to records pertaining to the child who is the subject of the de facto custodianship to the same extent as a parent would have such access pursuant to an order of legal custody.

(4) Any party to the proceeding granting custody to a de facto custodian may move for the termination of the custody order. A de facto custodian may move for permission to resign as de facto custodian.

(a) A party moving for termination of the de facto custodian-child relationship must show by a preponderance of the evidence that termination of the relationship would be in the best interests of the child.

(b) A motion for termination or for resignation may, but need not, include a proposal for the continuing custody of the child.

(c) After notice and hearing on a motion for termination or resignation, the court may terminate the custody of the de facto custodian and may make any further orders that may be appropriate in the best interests of the child.

[32-1705, added 2010, ch. 236, sec. 1, p. 611.]