

LEGISLATIVE CHANGES IMPACTING THE FAMILY LAW PRACTITIONER IN 2018

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The 2018 legislative session made some major changes to statutes which affect family law practitioners on a daily basis. The first and most significant includes changes to the child support laws found in House Bill 0017. In the past, under W.S. § 20-2-304(c), the parent responsible for paying child support would only get a discount on their child support obligation if they had the child(ren) overnight for more than 40% of the year. In a practical sense in order to meet that 40% criteria the parent obligated to pay child support would need to have the child(ren) on average 3 nights per week. As many of you know, this is hard to accomplish in the traditional every-other-weekend schedule that the courts so often impose. However, in a recent case I tried to the court the schedule, which was ordered, included the father receiving the child every other weekend. This period began after school on Thursdays and concluded when he returned the child to school on Monday mornings. In that case scenario the father will have the child 28% of the time based upon a 4-week rotation and would now qualify for a decrease in his child support obligation after July 1, 2018. That is a significant impact based upon the changes to the child support laws enacted in the 2018 legislative session. The following is the newly adopted law, which includes editing to show the old and new language:

202304. Presumptive child support.

(c) When each parent keeps the children overnight for more than ~~forty percent (40%)~~ **twenty five percent (25%)** of the year and both parents contribute substantially to the expenses of the children in addition to the payment of child support, a ~~joint presumptive~~ **shared responsibility** child support obligation shall be determined by ~~use of the tables multiplying the parents' total child support obligation as derived from subsection (a) of this section by one hundred fifty percent (150%).~~ After the ~~joint presumptive~~ **shared responsibility** child support obligation is ~~derived from column three of the tables determined,~~ that amount shall be divided between the parents in proportion to the net income of each. The proportionate share of the total obligation of each parent shall then be multiplied by the percentage of time the children spend with the other parent to determine the theoretical support obligation owed to the other parent. The parent owing the greater amount of child support shall pay the difference between the two (2) amounts as the net child support obligation.

The following are some practical tips based upon changes to W.S. § 20-2-304(c):

- Advise your clients who meet the 25% criteria to file for a modification of child support on or after July 1, 2018.
- Remember the 25% is calculated on a yearly basis, so be sure to figure in summer time and holiday visits in addition to the routine monthly visits to meet the required percentage.
 - Serve the opposing party as soon as possible after filing because the Court can only retroactively

modify child support once that party is served notice. See W.S. § 20-2-311(d)(ii).

- Remember that the party who pays child support will only qualify for the reduction in child support if he/she meets the 25% criteria **and** also "contribute[s] substantially to the expenses of the children in addition to the payment of child support..." Evidence that would be helpful to meet this criteria would include, but not be limited to paying for health insurance, sharing daycare costs, sharing in school clothes, sharing in school lunch fees, sharing in extra-curricular activity fees and costs, etc. For supporting case law on "substantial contributions" see *Lee v. Lee*, 303 P.3d 1128 (Wyo. 2013), and *Loran v. Loran*, 343 P.3d 400 (Wyo. 2015).

Another significant change made by the 2018 legislature which impacts family law practitioners relates to changes in the domestic violence and stalking protection order statutes. Senate File 0022 and House Bill 0008, made the following highlighted changes to protection orders:

- Increases the duration of domestic violence, sexual assault, and stalking orders to 3 years. Previously it was only 1 year for stalking and domestic violence orders, and 6 months for sexual assault orders.
- Now allows a person who substantially fears for the safety or the safety of another person to allege stalking. Previously the other person had to be a family member.
- Now allows an allegation of stalking if a person fears for the destruction of their property.
- Adds significant jurisdiction over acts of stalking that occur outside the state but causes harm in Wyoming. Intended to include electronic and social media.
- Increases criminal penalty for stalking up to 1 year, previously was only 6 months.
- Increases criminal probation terms for stalking up to 3 years, previously it was only 1 year.

Below are the relevant portions of the new law which includes highlights of the new and old language:

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62506. Stalking; penalty.

(a) As used in this section:

(ii) "Harass" means to engage in a course of conduct, including but not limited to verbal threats, written threats, lewd or obscene statements or images, vandalism or nonconsensual physical contact, directed at a specific person ~~or the family of a specific person, which~~ **that** the defendant knew or should have known would cause:

(A) A reasonable person to suffer substantial emotional distress; ~~and which does in fact seriously alarm the person toward whom it is directed.~~

(B) A reasonable person to suffer substantial fear for their safety or the safety of another person; or

(C) A reasonable person to suffer substantial fear for the destruction of their property.

(d) Except as provided under subsection (e) of this section, stalking is a misdemeanor punishable by imprisonment for not more than

~~six (6) months~~ **one (1) year**, a fine of not more than seven hundred fifty dollars (\$750.00), or both.

If a person sentenced under this subsection is placed on probation, the court may, notwithstanding any other provision of law, impose a term of probation exceeding the maximum **one (1) year** imprisonment, provided the term of probation, including extensions, shall not exceed **three (3) years**.

(f) An offense under this section may be deemed to have been committed at the place where any:

(i) Act within the course of conduct that constitutes stalking was initiated; or

(ii) Communication within the course of conduct that constitutes stalking was received by the victim then present in Wyoming; or

(iii) Act within the course of conduct that constitutes stalking caused an effect on the victim then present in Wyoming.

(g) An act that indicates a course of conduct but occurs in more than one (1) jurisdiction may be used by any jurisdiction in which the act occurred as evidence of a continuing course of conduct.

73510. Service of order; duration and extension of order; violation; remedies not exclusive.

(b) An order of protection granted by the court under W.S. 73509 shall be effective for a fixed period of time as ~~provided in paragraphs (i) and (ii) of this subsection~~ **not to exceed three (3) years**.

35-21-106. Service of order; duration and extension of order; violation; remedies not exclusive.

(b) An order of protection granted by the court shall be effective for a fixed period of time not to exceed ~~one (1) year~~ **three (3) years**. ◊

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