MEMORANDUM

TO: Drafting Committee for the Non-Parental Child Custody and Visitation Act

FROM: Jeff Atkinson, Reporter

DATE: February 28, 2017

RE: Research on issues pertaining to the Non-Parental Child Custody and Visitation Act

Accompanying this memo is a revised draft of Non-Parental Child Custody and Visitation Act. The revised draft is in two formats: (1) a copy of the act with comments and (2) a document, comparing the October 2016 draft with the new draft (also including comments).

The new draft reflects changes made at the October 2016 Drafting Committee meeting and changes suggested by our Style Committee Liaison, Deborah Behr. Thanks also to David Biklen (who is a member of the Style Committee as well as our committee), who provided informal input on issues of style.

This memo presents research on three issues we will be discussing at our Drafting Committee March 24 & 25 in Washington, D.C. (at the Watergate Hotel):

I. Current state family laws applying a burden of clear and convincing evidence;

II. Number of states giving rights to de facto parents (using that term or a similar term);

III. State laws governing disputes between two or more non-parents.

I also include notes on two issues of style.

I. Current State Family Laws Applying a Burden of Clear and Convincing Evidence

Case Law

The Colorado Supreme Court has held that the burden of proof in a grandparent visitation case is clear and convincing evidence – even though the state's grandparent visitation statute did not explicitly require that. In *In re Adoption of C.A.*, 137 P.3d 318, 328 (Col. 2006), the court held under principles of Due Process, "The grandparent bears the ultimate burden of proving by clear and convincing evidence that the parental determination is not in the child's best interests

and the visitation schedule grandparent seeks is in the child's best interests."

Similarly, the Montana Supreme Court held, "The close scrutiny that we apply to any infringement on a person's right to parent a child, . . . requires that the petitioning grandparent prove by clear and convincing evidence that it is in the child's best interest to have contact with the grandparent, and, in the case of an objecting fit parent, that the presumption in favor of the parent's wishes has been rebutted." P*olasek v. Omura*, 2006 MT 103, ¶ 15, 332 Mont. 157, 162, 136 P.3d 519, 523 (2006) (citations omitted). *See also Jones v. Jones*, 2005 PA Super 337, ¶ 12, 884 A.2d 915, 918 (2005), *appeal denied* (Pa. 2006) ("The burden of proof is not evenly balanced, as the parents have a *prima facie* right to custody, which will be forfeited only if convincing reasons appear that the child's best interest will be served by an award to the third party.")

Statutes

Statutes in 19 states apply a burden of clear and convincing evidence to de facto parents or other third parties seeking custody or visitation. [The Washington State statute, which was held unconstitutional, is not included in this count.] Copies of the statutes are in Appendix A. The following is a summary of the issues for which clear and convincing evidence applies in these states (and D.C.).

1. Best interests of the child to have visitation (or custody) by non-parent – 11 states (AL, GA, IA, ME, MI, MN, MT, NV, NB, UT, VA)

2. Status a de facto parent (or parent-like relationship) – 10 states (CT, DC, ID, IN, KY ME, MN, MT, SC, UT).

3. Rebutting presumption in favor of parent – 6 states (DC, IA, MN, OK, OR, RI)

4. Harm (or detriment) to child if visitation (or custody) is not granted – 6 states (AL, CT, GA, MN, OK, UT)

5. Existence of substantial relationship – 3 states (AL, IA, NB)

II. NUMBER OF STATES GIVING RIGHTS TO DE FACTO PARENTS (USING THAT TERM OR A SIMILAR TERM)

At least 26 (and the District of Columbia) give rights to seek custody or visitation to de facto parents using that term or similar terms. The terms are used in statutes and in case law. (For an alphabetical list by state, see Appendix B.)

13 states use the term "de facto parent."

7 states use the term "in loco parentis."

3 states use the term "psychological parent."

Other terms used include "child-parent relationship," "parent-like relationship," and "functional parent."

III. STATE LAWS GOVERNING DISPUTES BETWEEN TWO OR MORE NON-PARENTS

Several state family law statutes cover custody disputes between two or more non-parents (*see., e.g.,* statutes of CA, CO, GA, MA, and PA). (When I say "family law," I am referring to statutes that cover issues of marriage, divorce, and parentage.) The typical statute in this group provides a hierarchy for granting custody, with a presumption for parents being at the top of the hierarchy. Lower in the hierarchy (if parents are not available or suitable custodians) are non-parents. These statutes generally do not deal with the issue of the degree to which the parents' preferences regarding custody of children should be honored in the event parents are not able to have custody.

Pennsylvania is the only state of which I am aware in which the family law statute specifically deals with the issue of presumptions when the parties are two or more non-parents. Pa. Stat., tit. 23, § 5327(c) provides: "In any action regarding the custody of the child between a nonparent and another nonparent, there shall be no presumption that custody should be awarded to a particular party."

The issue of the degree to which a parent's preferences will be honored when the child will be in the custody of a non-parent is covered in probate and guardianship laws. For example, Section 5-105 of the Uniform Guardianship and Protective Proceedings Act (1998) (which is part of the Uniform Probate Code) provides: "A parent or a guardian of a minor or incapacitated person, by a power of attorney, may delegate to another person, for a period not exceeding six months, any power regarding care, custody or property of the minor or ward, except the power to consent to marriage or adoption." Sections 5-202 - 5-205 of the Guardianship Act allow parents to appoint a guardian by will or other writing and set procedures for minors or others to object to the appointment.

TWO NOTES ON ISSUES OF STYLE

Use of hyphen for "Non-Parent." The current draft of the act uses a hyphen for "Non-Parent" (and "Non-Parental)." The Drafting Committee (and I) believe the act is easier to understand and read when a hyphen is used. Our Style Committee Liaison, Deborah Behr, has

advised me that the Style Committee prefers that a hyphen not be used. I have researched the matter further, and am sorry to report that "nonparent" with no hyphen seems to be the more common usage. No hyphen is used in the statutes for "nonparent" in the statutes of California, Nevada, Pennsylvania, and Washington – and the ULC's own Deployed Parents Custody and Visitation Act.

Best Interests of the Child (singular or plural). The current draft of the act uses the phrase "best interests of the child" (not the singular "best interest of the child"). The Style Committee prefers use of singular nouns. (ULC Drafting Rules, Rule 103(c)). I prefer the plural – "best interests" – viewing it as a term of art. Use of "best interests" is the majority rule, as reflected in state family law statutes, but it is not a universal rule. Here is the data I gathered (while updating the non-parental custody and visitation statutes of the 50 states and D.C. -- a somewhat tedious undertaking):

> "Best interests:" 20 states. *See also* A.L.I., Principles of the Law of Family Dissolution § 2.02 – "Objectives; Best Interests of the Child Defined" (2016).
>
> "Best interest:" 16 states
>
> Both "best interests" and "best interest" – sometimes in the same statutory section(!): 14 states

APPENDIX A

Use of Clear and Convincing Evidence in Family Law Cases Involving Non-Parental Rights (Citations are to 2017 editions of statutes)

Alabama: Ala. Code § 31-3-4.2 -- Definition of "harm:" "A finding by the court, by clear and convincing evidence, that without court-ordered visitation by the grandparent, the child's emotional, mental, or physical well-being has been, could reasonably be, or would be jeopardized." In addition, the petitioner must prove by clear and convincing evidence "a significant and viable relationship with the child" and that "[v]isitation is in the best interest of the child." The proof of a significant and viable relationship" has multiple subparts that also must be proven by clear and convincing evidence.

Connecticut: Ct. Gen. Stat. § 46b-59(b) – "the court shall grant the right of visitation with any minor child to any person if the court finds after hearing and by clear and convincing evidence that a parent-like relationship exists between the person and the minor child and denial of visitation would cause real and significant harm."

Colorado: *In re Adoption of C.A.*, 137 P.3d 318, 328 (Col. 2006) -- holding under principles of Due Process, "[t]he grandparent bears the ultimate burden of proving by clear and convincing evidence that the parental determination is not in the child's best interests and the visitation schedule grandparent seeks is in the child's best interests" – even though the legislature did not impose that burden.

D.C.: D.C. Code § 16-831.03(b) – "An individual who establishes that he or she is a de facto parent by clear and convincing evidence shall be deemed a parent for the purposes of §§ 16-911, 16-914, 16-914.01, and 16-916, and for the purposes of this chapter if a third party is seeking custody of the child of the de facto parent." D.C. Code § 16-831.06(b) – " The third party seeking custody shall bear the burden of rebutting the parental presumption by clear and convincing evidence."

Georgia: Ga. Code § 19-7-3(c) -- "the court may grant any family member of the child reasonable visitation rights if the court finds by clear and convincing evidence that the health or welfare of the child would be harmed unless such visitation is granted and if the best interests of the child would be served by such visitation."

Idaho: Idaho Code § 32-1704(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."

Illinois: 750 Ill. Comp. Stat.5/602.9(d)(2) – evidence for modification of non-parental visitation orders.

Indiana: Ind. Code 31-17-2-8.5(a) – Regarding giving rights to de facto custodians, "This section applies only if the court finds by clear and convincing evidence that the child has been cared for by a de facto custodian."

Iowa: Iowa Code § 600C.1 – multiple elements of proof, including subparts. The elements of proof include best interest to grant visitation; substantial relationship; and presumption overcome.

Kentucky: Kan. Rev. Stat. §§ 403.270 & 403.280 – person meets definition of de facto parent.

Maine: Maine Rev. Stat. tit. 19-A, § 1891(3): "The court shall adjudicate a person to be a de facto parent if the court finds by clear and convincing evidence that the person has fully and completely undertaken a permanent, unequivocal, committed and responsible parental role in the child's life. Such a finding requires a determination by the court that:
A. The person has resided with the child for a significant period of time;
B. The person has engaged in consistent caretaking of the child;
C. A bonded and dependent relationship has been established between the child and the person, the relationship was fostered or supported by another parent of the child and the person and the

other parent have understood, acknowledged or accepted that or behaved as though the person is a parent of the child;
D. The person has accepted full and permanent responsibilities as a parent of the child without expectation of financial compensation; and
E. The continuing relationship between the person and the child is in the best interest of the child."

Michigan: Mich. Comp. Laws § 722.25(1) – "If the child custody dispute is between the parent or parents and an agency or a third person, the court shall presume that the best interests of the child are served by awarding custody to the parent or parents, unless the contrary is established by clear and convincing evidence."

Minnesota: Minn. Stat. 257C.03

Subd 6. The court shall adjudicate a person to be a de facto parent if the court finds by clear and convincing evidence that the person has fully and completely undertaken a permanent, unequivocal, committed and responsible parental role in the child's life. Such a finding requires a determination by the court that:
A. The person has resided with the child for a significant period of time;
B. The person has engaged in consistent caretaking of the child;
C. A bonded and dependent relationship has been established between the child and the person, the relationship was fostered or supported by another parent of the child and the person and the other parent have understood, acknowledged or accepted that or behaved as though the person is a parent of the child;
D. The person has accepted full and permanent responsibilities as a parent of the child without expectation of financial compensation; and
E. The continuing relationship between the person and the child is in the best interest of the child.

"If the child custody dispute is between the parent or parents and an agency or a third person, the court shall presume that the best interests of the child are served by awarding custody to the parent or parents, unless the contrary is established by clear and convincing evidence."

(a) To establish that an individual is a de facto custodian, the individual must:
(1) show by clear and convincing evidence that the individual satisfies the provisions of section 257C.01, subdivision 2 [definition of de facto custodian]; and
(2) 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.

(b) The following factors must be considered by the court in determining a parent's lack of demonstrated consistent participation for purposes of section 257C.01, subdivision 2:
(1) the intent of the parent or parents in placing the child with the de facto custodian;
(2) the amount of involvement the parent had with the child during the parent's absence;
(3) the facts and circumstances of the parent's absence;
(4) the parent's refusal to comply with conditions for retaining custody set forth in previous court orders;

(5) whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence; and
(6) whether a sibling of the child is already in the petitioner's care.

(c) In determining the best interests of the child, the court must apply the standards in section 257C.04.

Subd. 7. Interested third party; burden of proof; factors. (a) To establish that an individual is an interested third party, the individual must:
(1) show by clear and convincing evidence that one of the following factors exist:
(i) the parent has abandoned, neglected, or otherwise exhibited disregard for the child's well-being to the extent that the child will be harmed by living with the parent;
(ii) placement of the child with the individual takes priority over preserving the day-to-day parent-child relationship because of the presence of physical or emotional danger to the child, or both; or
(iii) other extraordinary circumstances;
(2) prove by a preponderance of the evidence that it is in the best interests of the child to be in the custody of the interested third party; and
(3) show by clear and convincing evidence that granting the petition would not violate section 518.179.

(b) The following factors must be considered by the court in determining an interested third party's petition:
(1) the amount of involvement the interested third party had with the child during the parent's absence or during the child's lifetime;
(2) the amount of involvement the parent had with the child during the parent's absence;
(3) the presence or involvement of other interested third parties;
(4) the facts and circumstances of the parent's absence;
(5) the parent's refusal to comply with conditions for retaining custody set forth in previous court orders;
(6) whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence;
(7) whether a sibling of the child is already in the care of the interested third party; and
(8) the existence of a standby custody designation under chapter 257B.

(c) In determining the best interests of the child, the court must apply the standards in section 257C.04."

Montana: Mont. Code § 40-4-228(2) – "A court may award a parental interest to a person other than a natural parent when it is shown by clear and convincing evidence that:
(a) the natural parent has engaged in conduct that is contrary to the child-parent relationship; and
(b) the nonparent has established with the child a child-parent relationship, as defined in 40-4-211, and it is in the best interests of the child to continue that relationship." § 40-9-102 provides: "(3) Grandparent-grandchild contact may be granted over the objection of a parent determined by the court pursuant to subsection (2) to be unfit only if the court also determines by clear and convincing evidence that the contact is in the best interest of the child. (4) Grandparent-

grandchild contact granted under this section over the objections of a fit parent may be granted only upon a finding by the court, based upon clear and convincing evidence, that the contact with the grandparent would be in the best interest of the child and that the presumption in favor of the parent's wishes has been rebutted." *See also Polasek v. Omura*, 2006 MT 103, ¶ 15, 332 Mont. 157, 162, 136 P.3d 519, 523 (2006) ("The close scrutiny that we apply to any infringement on a person's right to parent a child, . . . requires that the petitioning grandparent prove by clear and convincing evidence that it is in the child's best interest to have contact with the grandparent, and, in the case of an objecting fit parent, that the presumption in favor of the parent's wishes has been rebutted.") (Citations omitted).

Nevada: Nev. Rev. Stat. § 125C.050(4) – "If a parent of the child has denied or unreasonably restricted visits with the child, there is a rebuttable presumption that the granting of a right to visitation to a party seeking visitation is not in the best interests of the child. To rebut this presumption, the party seeking visitation must prove by clear and convincing evidence that it is in the best interests of the child to grant visitation."

New Hampshire: N.H. Rev. Stat. 461-A:6(II) – "If the court finds by clear and convincing evidence that a minor child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature minor child as to the determination of parental rights and responsibilities. Under these circumstances, the court shall also give due consideration to other factors which may have affected the minor child's preference, including whether the minor child's preference was based on undesirable or improper influences."

Nebraska: Neb. Stat. § 43-1802(2) – " Reasonable rights of visitation may be granted when the court determines by clear and convincing evidence that there is, or has been, a significant beneficial relationship between the grandparent and the child, that it is in the best interests of the child that such relationship continue, and that such visitation will not adversely interfere with the parent-child relationship."

Oklahoma: 43 Okla. Stat. 109.109.4 – A grandparent may be granted visitation if "there is a showing of parental unfitness, or the grandparent has rebutted, by clear and convincing evidence, the presumption that the fit parent is acting in the best interests of the child by showing that the child would suffer harm or potential harm without the granting of visitation rights to the grandparent of the child . . . ."

Oregon: Or. Stat. § 109.119 -- Note two different burdens, depending on nature of action:

"(2)(a) In any proceeding under this section, there is a presumption that the legal parent acts in the best interest of the child.

(3)(a) If the court determines that a child-parent relationship exists and if the court determines that the presumption described in subsection (2)(a) of this section has been rebutted by a preponderance of the evidence, the court shall grant custody, guardianship, right of visitation or other right to the person having the child-parent relationship, if to do so is in the best interest of the child. The court may determine temporary custody of the child or temporary visitation rights under this paragraph pending a final order.

(b) If the court determines that an ongoing personal relationship exists and if the court determines that the presumption described in subsection (2)(a) of this section has been rebutted by clear and convincing evidence, the court shall grant visitation or contact rights to the person having the ongoing personal relationship, if to do so is in the best interest of the child. The court may order temporary visitation or contact rights under this paragraph pending a final order."

Rhode Island: R.I. Gen. Laws § 15-5-24.3(a)(2)(v) -- For grandparent visitation, the court must find: "That the petitioner, by clear and convincing evidence, has successfully rebutted the presumption that the parent's decision to refuse the grandparent visitation with the grandchild was reasonable." §§ 15-5-24.3(b)(2)(v) & 15-5-24.4(a)(5) have parallel provisions for sibling visitation.

South Carolina: S.C. Code § 63-15-60 – "(A) For purposes of this section, 'de facto custodian' means, unless the context requires otherwise, a person who has been shown by clear and convincing evidence to have been the primary caregiver for and financial supporter of a child who:
(1) has resided with the person for a period of six months or more if the child is under three years of age; or
(2) has resided with the person for a period of one year or more if the child is three years of age or older.
Any period of time after a legal proceeding has been commenced by a parent seeking to regain custody of the child must not be included in determining whether the child has resided with the person for the required minimum period. . . .
(C) The family court may grant visitation or custody of a child to the de facto custodian if it finds by clear and convincing evidence that the child's natural parents are unfit or that other compelling circumstances exist.

Utah: Utah Code § 30-5a-103(2) – "A court may find the presumption in Subsection (1) rebutted and grant custodial or visitation rights to a person other than a parent who, by clear and convincing evidence, has established all of the following:
(a) the person has intentionally assumed the role and obligations of a parent;
(b) the person and the child have formed an emotional bond and created a parent-child type relationship;
(c) the person contributed emotionally or financially to the child's well being;
(d) assumption of the parental role is not the result of a financially compensated surrogate care arrangement;
(e) continuation of the relationship between the person and the child would be in the child's best interests;
(f) loss or cessation of the relationship between the person and the child would be detrimental to the child; and
(g) the parent:
(i) is absent; or
(ii) is found by a court to have abused or neglected the child."

Virginia: Va. Code § 20-124.2(B) – "The court shall give due regard to the primacy of the

parent-child relationship but may upon a showing by clear and convincing evidence that the best interest of the child would be served thereby award custody or visitation to any other person with a legitimate interest. The court may award joint custody or sole custody."

Washington: Wash. Code 26.09.240(3) (held unconstitutional) – " A petition for visitation or a motion to intervene pursuant to this section shall be dismissed unless the petitioner or intervenor can demonstrate by clear and convincing evidence that a significant relationship exists with the child with whom visitation is sought."

West Virginia: W. Va. Code § 48-10-702(b) – "If a petition is filed pursuant to section 10-402, there is a presumption that visitation privileges need not be extended to the grandparent if the parent through whom the grandparent is related to the grandchild has custody of the child, shares custody of the child, or exercises visitation privileges with the child that would allow participation in the visitation by the grandparent if the parent so chose. This presumption may be rebutted by clear and convincing evidence that an award of grandparent visitation is in the best interest of the child."

* * *

Compare the following statutes which explicitly apply a preponderance of the evidence standard:

N.J. Stat. 9:2-7.1(a) – "A grandparent or any sibling of a child residing in this State may make application before the Superior Court, in accordance with the Rules of Court, for an order for visitation. It shall be the burden of the applicant to prove by a preponderance of the evidence that the granting of visitation is in the best interests of the child." The statute was held unconstitutional as applied in *Wilde v. Wilde*, 341 N.J. Super.381 (App. Div. 2001).

Tex. Fam. Code § 153.433(a) – "The court may order reasonable possession of or access to a grandchild by a grandparent if: . . . (2) the grandparent requesting possession of or access to the child overcomes the presumption that a parent acts in the best interest of the parent's child by proving by a preponderance of the evidence that denial of possession of or access to the child would significantly impair the child's physical health or emotional well-being . . . ."

W. Va. Code § 48-10-701— "If a motion for grandparent visitation is filed in a pending action for divorce, custody, legal separation, annulment or establishment of paternity pursuant to section 21-401, the grandparent shall be granted visitation if a preponderance of the evidence shows that visitation is in the best interest of the child and that:
(1) The party to the divorce through which the grandparent is related to the minor child has failed to answer or otherwise appear and defend the cause of action; or
(2) The whereabouts of the party through which the grandparent is related to the minor child are unknown to the party bringing the action and to the grandparent who filed the motion for visitation."

APPENDIX B*

States Giving Rights to De Facto Parents in Family Law Statutes and Cases (also includes states that use similar terms, such as "in loco parentis")

Alaska: Carter v. Brodrick, 644 P.2d 850 (Alaska 1982) (allowing a stepparent to pursue a claim for visitation under a theory of "in loco parentis")

Arizona: Ariz. Rev. Stat. § 25-401 – "in loco parentis"

Arkansas: *Bethany v. Jones*, 2011 Ark. 67, 14, 378 S.W.3d 731, 739 (2011) ("in loco parentis")

Delaware: Del. Code, tit. 13, § 8-201 (part of Parentage Act)

D.C. D.C. Code § 16-831.01 – 16-831.08

Hawaii: Haw. Rev. Stat. § 571-46(a)(2)

Idaho: Idaho Code §§ 32-1701 – 32-1705

Indiana: Ind. Code §§ 31-17-2-8(8), 31-17-2-8.5, 32-1703

Kentucky: Ky. Rev. Stat. §§ 403.270 & 403.280, 405.020. *See* also Mullins v. Picklesimer, 317 S.W.3d 569 (Ky. 2010)

Maine: Maine Rev. Stat. tit. 19-A, § 1891

Maryland: *Conover v. Conover*, 450 Md. 51, 85, 146 A.3d 433, 453 (2016) ("We hold that de facto parents have standing to contest custody or visitation and need not show parental unfitness or exceptional circumstances before a trial court can apply a best interests of the child analysis").

Massachusetts: *E.N.O. v. L.M.M.*, 711 N.E.2d 886, 891 & n.6 (Mass. 1999)

Minnesota: Minn. Stat. § 257C.03. *See also Soohoo v. Johnson*, 731 N.W.2d 815 (Minn. 2007)

Mississippi: *Logan v. Logan*, 730 So. 2d 1124, 1126 (Miss. 1998) (court had authority to grant custody to stepfather under theory of "in loco parentis")

Montana: Mont. § 40-4-228 ("child-parent relationship" and "in loco parentis"). *See also Kulstad v. Maniaci*, 2009 MT 326, 352 Mont. 513, 530, 220 P.3d 595 (2009)

Nebraska: *Latham v. Schwerdtfeger*, 282 Neb. 121, 130, 802 N.W.2d 66, 73 (2011) ("in loco parentis")

New Jersey: *V.C. v. M.J.B.*, 748 A.2d 539, 553–54 (N.J. 2000) ("psychological parent")

North Carolina: *Mason v. Dwinnell*, 190 N.C. App. 209, 227, 660 S.E.2d 58, 70 (2008) (affirming custody to domestic partner "whom [the mother] transformed into a parent")

North Dakota: McAllister v. McAllister, 2010 ND 40, ¶ 27, 779 N.W.2d 652, 662 (2010) (granting visitation to stepfather since he was "psychological parent")

Ohio: *Cf. In re Bonfield*, 2002 Ohio 6660, 97 Ohio St. 3d 387, 396, 780 N.E.2d 241, 249 (2002) (holding that the juvenile court had jurisdiction to enter a "shared custody agreement" sought by two same-sex partners)

Oregon: Or. Stat. § 109.119(3) ("the court determines that a child-parent relationship exists")

Pennsylvania: Pa. Stat. tit. 23, § 5324(2) ("in loco parentis"). *See also Jones v. Jones*, 884 A.2d 915, 917 (2005).

Rhode Island: *Rubano v. DiCenzo*, 759 A.2d 959, 974-75 (R.I. 2000)

South Carolina: S.C. Code § 63-15-60. *See also Middleton v. Johnson*, 633 S.E.2d 162, 168 (S.C. 2006)

Texas: *Cf.* Tex. Fam. Code § 102.003(9) (granting standing to "a person, other than a foster parent, who has had actual care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition")

Utah: Utah Code § 30-51-103(2)(a) ("the person has intentionally assumed the role and obligations of a parent")

Washington: *In re Parentage of L.B.*, 155 Wash. 2d 679, 708 (2005) (de facto parent stands in parity with legal parent)

West Virginia: *In re Clifford K.*, 217 W. Va. 625, 619 S.E.2d 138 (2005) (partner of deceased mother had standing as "psychological parent" to seek custody of child)

Wisconsin: *In re Custody of H.S.H.-K.*, 193 Wis. 2d 649, 694, 533 N.W.2d 419, 435 (1995) ("a parent-like relationship with the child")

* To prepare this appendix regarding rights of de facto parents, I used memos by Cathy Sakimura, Shannon Mintner, and Emily Haan, all of the National Center for Lesbian Rights (NCLR), as well as my own research.