

CASE CLOSURE ORDERS: APPLYING FAMILY LAW PROCEDURES IN JUVENILE COURT

Webinar
April 16, 2021

CONTINUING EDUCATION

- Judicial Officers: .41 credits
 - List will be sent to Office of Judicial Education
 - Must attend entire webinar for credit
- Social Workers: 1.25 hours
 - Will be entered into WCWPDS account for you
- Attorneys: 1.5 credits
 - Applied for CLE (GAL minor & GAL family) credits
 - Search under "Live Webcast" for location

INTRODUCTIONS

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CASE CLOSURE ORDERS

Juvenile court judge may modify or enter a family court order for a child or juvenile subject to a CHIPS, JIPS or delinquency dispositional order

- Child is in a safe parental placement
- Pending or existing family court order involving the child

BACKGROUND

NEED FOR LEGISLATION

- Conflicting family court orders were delaying permanency for children placed with a safe and appropriate parent
- CHIPS, JIPS, or delinquency case could not be closed until parent went to family court to modify order
 - Follow through and process was taking a long time

CASE CLOSURE ORDER LEGISLATION

- 2015 Wisconsin Act 373
 - Created §§ 48.355(4g) & 938.355(4g)
 - Effective October 1, 2016
- Wisconsin Judicial Committee on Child Welfare (WJCCW) took lead drafting
- Modeled after California's "Exit Orders"

PURPOSE

- Allows for a quicker time to permanency where:
 - Juvenile court and agency involvement are no longer needed
 - BUT a family court order is pending, inconsistent with or does not address current family needs
- Increased efficiency allows court and child welfare agency to focus time and resources on other cases

RATIONALE

- Juvenile court jurisdiction is paramount in cases
 - See §§ 48.15 & 938.15
- Juvenile court judge is in a good position to determine placement and custody
 - Familiar with current family situation, reports, evaluations, etc.

OUTCOMES

- SAVES COURT TIME
- SAVES COUNTY RESOURCES AND MONEY
- REDUCES BURDEN ON FAMILIES
- INCREASES PERMANENCY

KEEP IN MIND

Juvenile Court has discretion to use!

- Case closure orders are not mandatory, it is a tool for parties, agency, and juvenile court

Orders should be well tailored to address what is best for the child

- Not all aspects of the family case need be addressed.
- Issues can be reserved for motion in the court of origin.

Juvenile court judge may want to contact judge/court commissioner in the family case

ISSUES IN IMPLEMENTATION

- Attorneys and stakeholders in juvenile court not familiar with family law (different group of attorneys)
 - Particularly drafting periods of physical placement and communication
 - Judges need to take lead role in crafting an effective order
- Whether it is available for family court orders in another county
- Remembering give TPR warnings if denying placement
- Trying to incorporate conditions of CHIPS case into family court order

CASE CLOSURE ORDER PROCEDURES

WHEN AVAILABLE?

Juvenile court may modify family court order and terminate CHIPS, JIPS or delinquency order when:

1. Child is in a safe parental placement
2. Disposition has been entered in CHIPS, JIPS or Delinquency (Did not want to have families circumvent family court, so adjudication required.)
3. Pending or existing family court order involving the child

FAMILY COURT ORDERS IN ANOTHER COUNTY

- Applies to family court cases originating in any county within the state
- Not explicitly addressed in statute, but it was intent of legislation
 - "An order under par. (a) may modify a preexisting order of a court exercising jurisdiction in an action affecting the family and shall remain in effect until modified or terminated by a court exercising that jurisdiction." §§ 48.355(4g)(e) & 938.355(4g)(e)

WHO MAY REQUEST

- Juvenile court
- Child
- Child's counsel or GAL
- Parent
- Guardian or custodian
- Agency responsible under dispositional order
- District attorney/corporation counsel

PROCEDURE

1. File the Request for Case Closure Order (JD-1814) with the court
2. Hold hearing in front of juvenile court judge (evidentiary rules are non binding § 48.299(4)(b))
3. Enter Case Closure Order (JD-1815)
 - Sealed in family court case
4. Enter Order Relating to Paternity/Legal Custody/Physical Placement/Visitation/Child Support/Health Care Expenses (FA-614)
 - Provided to family court and entered in case
5. Terminate CHIPS, JIPS or delinquency dispositional order

MODIFYING/ENTERING FAMILY COURT ORDER

- Can be a modification or original order
- Parenting plans, legal custody and physical placement studies, and mediation not required
- Court must follow the guidelines of Ch. 767 (Danielle will discuss.)
- Family court retains jurisdiction for enforcement and future modifications
 - Including all requirements and presumptions for modification in Ch. 767 (e.g., time limits, change in circumstances, etc.)

ISSUES THAT MAY BE ADDRESSED

- Paternity
- Legal custody
- Physical placement
- Visitation with others
- Child support & dependency exemption
- Health care expenses

APPELLATE CASE

- In the Interest of A.R.B., 2018AP546 (unpublished)
- Juvenile court judge in Marathon County modified a family court order in Outagamie County under a Case Closure Order
- If legal custody or physical placement is contested, a GAL must be appointed to fulfill the responsibilities and make recommendations pursuant to §767.407(4)

APPLYING FAMILY COURT PROCEDURES

JUVENILE LAW vs. FAMILY LAW

Juvenile Cases

- Paramount interest is always the "Best Interests of the Child"
- Dispositional orders drafted with intention of continued involvement of DHS and oversight by the Court
- DHS resources/services available to family

Family Cases

- Paramount interest is BIOC but Court guided by specific factors that must be addressed
- Orders drafted to avoid continued litigation- finality, more "hands off"
- Limited resources/services available to family

FAMILY CODE CONCEPTS

PATERNITY

- “Legal Parentage”
- Methods for Establishing Paternity:
 - Marital presumption (See Wis. Stat. § 891.41)
 - Voluntary Paternity Acknowledgment
 - Paternity action
- Legal parentage must be established in order to address legal custody and placement
- See Wis. Stats. §§ 767.80, 767.803, 767.804, 767.805, 767.89

LEGAL CUSTODY

- Right and responsibility to make “**major decisions**” concerning the child as defined in 767.001(2m), Wis. Stats.
 - “Major decisions” include, but are not limited to decisions regarding consent to marry, consent to enter the military service, consent to obtain a motor vehicle license, authorization for non-emergency health care, and choice of school and religion
- *Joint legal custody*: Both parents make major decisions regarding the child together; neither parent’s custody rights are superior
- *Sole legal custody*: One parent has the right and responsibility to make all major decisions regarding the child without having to consult with the other parent

PHYSICAL PLACEMENT

- “Periods of physical placement” are the times which a parent has the right to have the child physically placed with that parent, and during the placement, the right and responsibility to make routine daily decisions regarding the child. Wis. Stat. §767.001(5)
- *Primary Placement*: A schedule where the child resides with one parent more than 75% of the time
- *Shared Placement*: Any schedule where both parents have at least 25% of the time (or 92 overnights in a year)

THIRD PARTY VISITATION

- Court may grant reasonable visitation rights to a grandparent, great-grandparent, step-parent, or person who has maintained a relationship similar to a parent-child relationship with a child. Wis. Stat. §767.43

CHILD SUPPORT

- Financial obligation created by conception, adoption or adjudication to support a child, which continues until a child reaches age 18, or 19 if working towards a high school diploma or equivalent
- DCF 150 percentage standard determines amount both parents expected to contribute (<https://dcf.wisconsin.gov/cs/order/tools>)
- *Basic Support*: Food, shelter, clothing, transportation, personal care, and incidental recreational costs. DCF 150.02(3)
- *Variable Cost*: The reasonable costs above "basic support costs" incurred by or on behalf of a child including, but not limited to the cost of childcare, tuition, a child's special needs, and other activities that involve substantial costs. DCF 150.02(29)

STATUTORY REQUIREMENTS

STEP 1- REVIEW EXISTING FAMILY COURT CASE

- Wis. Stats. 48.355(4g)(d) and 938.355(4g)(d) requires the Juvenile Court to follow Chapter 767 procedure when analyzing all case closure requests
- Different burdens of proof apply depending upon whether prior orders have been entered and, if so, when those orders were entered
- Determine what issues require initial orders and what issues need to be considered for modification

INITIAL ORDER LEGAL CUSTODY

- Law starts with presumption that joint legal custody in BIOC. Wis. Stat. §767.41(2)(am).
- Exception: If Court finds one party engaged in pattern or serious incident of domestic abuse, then presumption that it is contrary to BIOC to award custody to that party, UNLESS
 - That party successfully completes batterer's treatment and is not abusing alcohol/drugs AND
 - BIOC that party be awarded joint or sole legal custody based on the other statutory factors.
- If both parties engaged in pattern or serious incident of domestic abuse, then presumption is against the primary aggressor.
- If no primary aggressor, standard presumption for JLC applies. See Wis. Stat. § 767.41(2)(d)

INITIAL ORDER LEGAL CUSTODY

- If DV exception does not apply, Court may order sole legal custody only if in the BIOC and:
 - Parties agree to SLC; or
 - Parties do not agree to SLC but one party requests it and Court finds any of the following:
 - One party not capable of performing parental duties OR does not wish to have an active role in raising child, OR
 - One or more conditions exist that would substantially interfere with JLC, OR
 - Parties will not be able to cooperate in future decision-making required for JLC. Wis. Stat. § 767.41(2)(b).
- Court may not give SLC to a parent who unreasonably refuses to cooperate with the other parent. Wis. Stat. §767.41(2)(c)

INITIAL ORDER *PHYSICAL PLACEMENT*

- No statutory presumption
- Placement schedule must allow child to have **regularly occurring, meaningful periods** of placement with each parent that **maximize** time the child spends with each parent, taking into account geographic separation and accommodations for different households. Wis. Stat. § 767.41(4)(a)
- Court must allocate placement time in best interest of child considering all factors under § 767.41(5)(am), Wis. Stats.

DOMESTIC VIOLENCE CONSIDERATIONS *PHYSICAL PLACEMENT*

- If the Court finds a party has engaged in a pattern or serious incident of domestic violence, the Court shall provide for the safety and well-being of the child and the safety of the parent victim in any placement order. Wis. Stat. § 767.41(6)(g)
- Must impose one or more of the following:
 - Exchange in protected area
 - Supervised placement
 - Completion of certified batterer's treatment
 - Denial of overnight placement
 - Require offender to post bond for the return and safety of child
 - Any other condition the Court deems necessary for the child's safety and well-being, including sobriety during periods of placement.

BEST INTEREST FACTORS

Wis. Stat. §767.41(5)(am)

- Wishes of the Parents
- Wishes of the Child
- Interaction and interrelationships of child with parents, siblings, other significant person
- Amount and quality time each parent spent with child in past, any necessary changes to parents' custodial roles, and any reasonable lifestyle changes parent proposes to make to be able to spend time with the child
- Child's adjustment to home, school, religion and community
- Age of child and child's developmental and educational needs
- Whether the mental or physical health of party, minor child, or others living in household negatively affect child's intellectual, physical, or emotional well-being

BEST INTEREST FACTORS

Wis. Stat. §767.41(5)(am)

- Need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for child
- Availability of public or private childcare services
- Cooperation and communication between parties and whether either party unreasonably refuses to cooperate with other
- Whether each party can support other's relationship with child, or whether one party is likely to unreasonably interfere with child's continuing relationship with other party
- Whether there is evidence of child abuse
- Whether a person with whom a parent of child has a dating relationship or resides with has a criminal record and if there is evidence they have engaged in abuse or neglect of a child

BEST INTEREST FACTORS

Wis. Stat. §767.41(5)(am)

- Whether there is evidence of interspousal battery or domestic abuse
- Whether either party has or had a significant problem with alcohol or drug abuse
- Reports of appropriate professionals if admitted into evidence
- Such other factors as the court may in each individual case determine to be relevant

GUARDIAN AD LITEM

- Court must appoint a GAL if custody and/or placement is contested. See Wis. Stat. § 767.407.
- Ensure GAL appointed with sufficient time to complete investigation necessary to make recommendation addressing factors

MODIFICATION OF CUSTODY & PLACEMENT

Substantial Modifications within 2 years of initial final order:

- Burden: Must show by substantial evidence modification is necessary because current legal custody or physical placement arrangement is physically or emotionally harmful to the child. Wis. Stat. § 767.451(1)(a).

Substantial Modifications after 2 years has passed since initial order:

- Burden: Must show there has been a substantial change in circumstances since the last order affecting custody/placement AND modification is in the BIOC
 - Rebuttable presumption that continuing current legal custody and physical placement arrangement is in BIOC. Wis. Stat. § 767.451(1)(b).

MODIFICATION OF CUSTODY & PLACEMENT

Non-Substantial Modification:

- If modification will not substantially alter the amount of time parent may spend with child, Court may modify if in BIOC. Wis. Stat. § 767.451(3).

Modification Due to Impracticality:

- If the parties have substantially equal periods of placement, the Court may change that arrangement if it finds that circumstances make it impractical for the parties to continue to have substantially equal placement and the change is BIOC. Wis. Stat. § 767.451(2).

Modification Due to Failure to Exercise Placement:

- The Court may change placement at any time if it finds a parent has unreasonably and repeatedly failed to exercise periods of physical placement granted under an order allocating specific times for placement. Wis. Stat. § 767.451(2m).

DENIAL OF PLACEMENT

- Child entitled to periods of physical placement with both parents,
 - UNLESS, after a hearing, Court finds physical placement with a parent would endanger child's physical, mental, or emotional health. Wis. Stat. §767.41(4)(b).
- If placement is denied, Court must give TPR warnings
- Parent denied physical placement may be denied access to child's school and healthcare records. Wis. Stat. §767.41(7)

THIRD PARTY VISITATION

- If parent contests third-party visitation, carefully review statute and applicable case law. Wis. Stat. §767.43.
 - Complex issue due to constitutional implications
- A third-party seeking visitation must overcome the presumption in favor of a fit parent's visitation decision with clear and convincing evidence that the decision is not in the child's best interest. A circuit court should not substitute its judgment for the judgment of a fit parent even if the court disagrees with the parent's decision. See *Michels v. Lyons*, 2019 WI 57, 387 Wis. 2d. 1.

CHILD SUPPORT INITIAL ORDER

- DCF 150 percentage standard based on # of children and placement schedule applied to gross income (or earning capacity)
- Court may deviate from the percentage standard if it finds the percentage standard is unfair to the child or to any of the parties based on certain statutory factors
 - Must calculate based on guidelines and outline basis for deviation in order
- Wis. Stat. § 767.511

CHILD SUPPORT MODIFICATION

- Must show a substantial change in circumstances since the entry of the last order to modify (i.e., change in payer's earning capacity, change in needs of child, etc)
- Except in limited circumstances, support cannot be changed prior to the date on which the other party is served with a request to modify
- Wis. Stat. § 767.59



CASE CLOSURE ORDERS ARE FINAL ORDERS

Avoid treating these orders as stopgaps or temporary solutions.

Chapter 767 statutory burdens will apply to any future requests for modification of the Court's order.

Consider the future implications of your order.

CRAFTING MEANINGFUL ORDERS

GOALS

An effective Case Closure Order should reduce conflict between the parties by promoting an understanding of the order's requirements and reducing the need for further litigation.

- 1) Draft with clarity and specificity
- 2) Tie up loose ends- "One Stop Shop"
- 3) Ensure enforceability of the terms of the order

LEGAL CUSTODY ORDERS

- Sole legal custody
- Joint legal custody
 - Court may give one party sole power to make specified decisions despite JLC (Wis. Stat. § 767.41(6)(b))
 - Ex: JLC except that Father has sole decision-making authority as to choice of school
- May specify decisions that constitute "major decisions" for the child (Wis. Stat. § 767.41(6)(am))
 - Participation in extracurricular activities, change in child's health care providers, educational curriculum, etc.

COMMUNICATION

- Consider addressing barriers to communication between parents by using co-parenting tool (Our Family Wizard, Talking Parents, 2houses)

- Sample Language:

"The parties shall exclusively communicate regarding their child via the "Our Family Wizard" program unless there are emergent circumstances. In these limited circumstances, phone calls or texting is permissible. Each party shall be responsible for the cost of their own subscription.

The parties shall utilize the following features of the Parent Account to document communication of information and requests and responses necessary to cooperation between the parties in carrying out the terms of the court orders addressing legal custody and physical placement: the **Parenting Calendar, Event Details, Trade Request, Expense Log, and the Message Board.**

The communications shall be limited to information needed to comply with and carry out the orders concerning legal custody and physical placement, including discussion regarding the health, welfare, well-being, and care providers of the child. All communications shall be kept brief, informative, and civil, without disparagement or blame of the other party, or members of either party's family or household.

The parties shall log on and view any entries made on Our Family Wizard at least every twenty-four (24) hours. A party shall substantively respond to a message or request for information within twenty-four (24) hours of the message being posted.

The parties shall use the calendaring feature of OFW for any appointments involving the child. Each party shall notify the other on OFW of all appointments within twenty-four (24) hours of the appointment being made. The notification shall include who, when, and why the appointment.

A party who takes the minor child to a healthcare appointment or an education appointment where there is a recommended course of treatment or action required shall provide the other party with any specific information obtained from the appointment via Our Family Wizard within twenty-four (24) hours of the appointment, except that in the event of an emergency a parent shall notify the other parent immediately via text message."

PHYSICAL PLACEMENT ORDERS

- Outline the regular schedule
 - Practical considerations- parents' availability, child's activities, distance
 - Set days/times rather than "reasonable times upon reasonable notice"
 - **ENFORCEABLE PARAMETERS!** (See Wis. Stat. § 767.41(6)(e))
- Contingent Orders (2021 WI Act 20)
 - Effective March 2021, Court may approve a stipulation for modifications to legal custody and physical placement upon the occurrence of a specified future event that is reasonably certain to occur within 2 years of date of the stipulation.
 - "Future event" defined as life event of party or child or change in developmental or educational needs of child
 - Cannot be based on anticipated behavior modification of party (i.e. AODA, batterer's treatment, etc.)

THE DEVIL IS IN THE DETAILS

- **Holidays**
- **Vacations**
 - Amount of time, method for notification, restrictions, etc.
- **Placement exchanges**
 - Time, location, manner
- **Non-placement parent's communication with child**
- **Conditions for safety and well-being of child**
 - Sobriety, mental health treatment, supervision (by who?), etc.

SUPPORT ORDERS

- If CSA is a party to the family case, notice them of your case closure hearing
- Child Support Calculators:
<https://dcf.wisconsin.gov/index.php/cs/order/tools>
- Actual Income v. Earning Capacity
 - Court may order either or both parents to seek employment or participate in an employment or training program. Wis. Stat. § 767.55(1)
- Must allocate the dependency exemption if the parents have not decided between themselves which parent should take the exemption
 - Must take into account whether medical insurance plan of either parent requires the parent with medical coverage be awarded the exemption
 - Options: Alternate years, split the kids, require compliance with child support as condition

VARIABLE COSTS

- In addition to basic support, in a *shared* placement case, the Court must address responsibility for variable costs
- Typically, each parent pays the percentage of variable costs that correspond to their percentage of placement time
- A variable expense order should:
 - Specify what qualifies as a variable expense
 - Set parameters for preapproval where necessary
 - Outline a method for reconciliation of expenses

- Sample Language:

- “The parties shall share responsibility for and will pay variable expenses for the minor child such that Mother will pay 50% of those expenses, and Father will pay for 50% of those expenses.

“Variable costs” means the reasonable costs above basic support costs incurred by or on behalf of a child, including but not limited to, the cost of child care, tuition, a child’s special needs, and other activities that involve a substantial cost. See DCF 150.02(29). Basic support costs are food, shelter, clothing, transportation, personal care, and incidental recreational costs. See DCF 150.02(3).

The parties further agree the following are also included as variable expenses:

- All school-related expenses including fees, school lunches, school supplies (per the school issued list), school backpack, field trips, school activity fees
- Extracurricular activity fees, equipment, uniforms, instruments, etc. required for participation in activities
- Graduation-related expenses, yearbook, class ring, prom/school dances, pictures, cap and gown, etc.
- Seasonal outerwear (coat, snowpants, boots, etc)

No variable cost shall be reimbursed if such cost exceeds \$150.00 per single item, unless both parties agree to the expenditure in advance.

Reimbursement of Variable Expenses. On a monthly basis, each party shall provide an accounting of variable expenses (as defined above) incurred during the prior month including receipts and proof of payment by the first day of following month via the Expense Log on OFW. By the 15th of the month, the party owing reimbursement shall respond to any pending Expense Requests via OFW by paying amounts that are not disputed and stating, in a written, itemized response, specific reasons any claim or portion of the claim is disputed. FAILURE TO SUBMIT A CLAIM TIMELY WAIVES THE CLAIM AND FAILURE TO OBJECT TIMELY WAIVES THE OBJECTION.”

HEALTH CARE EXPENSES

- Court must specifically assign responsibility for and manner of payment for child’s health care expenses. Wis. Stat. §767.513, DCF 150.05
- Court may order either or both parents to enroll the child in a private healthcare plan that is accessible to the child and available at a “reasonable cost,” unless parent’s income is below 150% of federal poverty level
 - “Reasonable cost” = costs less than 10% of insuring parent’s GMI and covers hospitalization and other medical costs without large deductible or copayments
- Court may order non-insuring parent to contribute to the cost of the child’s insurance premium unless parent’s income is below 150% FPL; usually seen as a deviation in child support
- Court must establish an order for responsibility for medical expenses not covered by insurance; typically 50/50

PRACTICE TIP

- Consider implementing a Pretrial or Settlement Conference procedure for these requests when appropriate
- Have parents complete parenting plan (Form FA-4147) to facilitate discussion and highlight important issues

RESOURCES

- Case Closure E-Learning Activity
 - www.wiccciptraining.com
- Circuit Court Forms
 - JD-1814, JD-1815 & FA-614
 - www.wicourts.gov/forms1/circuit/index.htm
- Divorce & Family Law Self-Help Resources
 - www.wicourts.gov/services/public/selfhelp/divorce.htm
- DCF Child Support Tools
 - <https://dcf.wisconsin.gov/cs/order/tools>
- GAL Handbook (State Bar of Wisconsin)
 - Useful for non-lawyers