

# LEGISLATIVE UPDATE

Select Child Welfare and Youth Justice Legislation  
2021-2022 Legislative Session

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# LEGISLATION – ENACTED

## **2021 WI ACT 41 – IMMUNITY FROM LIABILITY RESULTING FROM GOOD FAITH ACTIONS UNDER THE CHILD ABUSE AND NEGLECT REPORTING LAW**

- Extends immunity from any liability, civil or criminal, that results from reporting alleged abuse or neglect to the appropriate county or state agency or a law enforcement agency, to persons who assist in medical examinations of a child or expectant mothers and to persons who otherwise, in good faith, provide information, assistance, or consultation in connection with a report, investigation, or legal intervention.
- Act 41 was effective May 23, 2021.

## **2021 WI ACT 42 – QUALIFIED RESIDENTIAL TREATMENT PROGRAMS (QRTP)**

- Incorporates the QRTP requirements of the Federal Family First Prevention Services Act (FFPSA) into state law
  - Agency and court requirements for supporting and approving certain congregate care placements
- Went into full effect as of September 29, 2021
  - Includes DCF emergency rules (sets forth certification process, among other administrative issues)
    - Final rule to be established in early 2023
- Federal Children’s Bureau provided guidance allowing for QRTP findings to be made retroactive to date of certification, if not certified at time of placement
  - Must be done within 60 days of certification to receive reimbursement
  - Is not being mandated by DCF; optional to the counties

**2021 WI ACT 72 –  
PROHIBITING THE OUT-OF-HOME PLACEMENT OF A CHILD  
WITH A PERSON WITH A RECORD OF A CRIME AGAINST A  
CHILD “ETHAN’S LAW”**

- Prohibits the out-of-home placement of a child/juvenile at disposition or post-disposition with a relative or other unlicensed person with a record of a crime against a child.
  - Conviction, no-contest plea, or dismissed/amended as part of plea bargain.
  - Specific crimes are enumerated in the Act.
  - Exception for court finding, by clear and convincing evidence, that the placement is in the best interests of the child/juvenile.
- Effective date: July 17, 2021.

**2021 WISCONSIN ACT 141 –  
CONDUCTING JUVENILE PROCEEDINGS BY TELEPHONE OR  
AUDIOVISUAL MEANS AND APPEARANCE AT ANY CRIMINAL  
PROCEEDING BY TELEPHONE OR AUDIOVISUAL MEANS**

- For juvenile proceedings under Chapter 938, the court may conduct any hearing by telephone or live audiovisual means upon its own motion, or the motion of the juvenile or the prosecutor.
  - However, if the juvenile or prosecutor objects to the use of telephone or live audiovisual means for a critical stage of the proceedings, the court must sustain the objection.
  - For all other objections to the use of telephone or live audiovisual means, the court must consider current law factors related to the use of videoconferencing Page 2 of 2 technology, outlined in Wis. Stat. 885.56, when determining whether to sustain or overrule the objection.
- Also permits a juvenile to enter an admission in a delinquency case via telephone or live audiovisual means.
- Act 141 was signed March 4, 2022, and effective March 6, 2022.

**2021 WI ACT 182 –  
ALLOWING A PARENT TO CHANGE A MINOR CHILD'S NAME  
WHEN THE OTHER PARENT IS CONVICTED OF CERTAIN  
HOMICIDE OR SEX OFFENSES.**

- Allows a parent to change the last name of a child under 14 years old without notice to the other parent if that other parent has been convicted of certain homicide or sex offenses.
- A parent of a child under 14 who has two living parents must file proof that the petitioning parent served a copy of the notice and petition on the nonpetitioning parent.
  - If a nonpetitioning parent has been convicted of certain homicide or sex offenses, the petitioning parent may proceed with a petition for the name change of a child under 14 years old without providing or attempting to provide notice to the nonpetitioning parent.
- Act 182 took effect March 19, 2022.

**2021 WI ACT 252 –  
A NEW JUVENILE CORRECTIONAL FACILITY IN MILWAUKEE  
COUNTY AND GRANTING BONDING AUTHORITY**

- Authorizes the state to contract additional public debt in an amount up to \$41,791,000 for the purpose of constructing a new Type 1 juvenile correctional facility in Milwaukee County.
- The Department of Administration (DOA) may not approve plans for constructing a new Type 1 juvenile correctional facility in Milwaukee County unless the site selected for the facility has the support of the governing body of the municipality in which the site is located.
- DOC must repurpose the Lincoln Hills and Copper Lake facilities as an adult correctional institution.
- Act 252 took effect April 10, 2022.

## 2021 WI ACT 256 – PERMANENT RESTRAINING ORDERS FOR VICTIMS OF SEXUAL ASSAULT

- The court may, upon the petitioner's request, order that a restraining order be in effect permanently if the court finds that the respondent has been convicted of first-, second-, or third-degree sexual assault.
  - Includes child abuse injunctions, convicted of sexual assault of a child, or repeated acts of sexual assault of the same child.
  - Petitioner (or child victim) was the crime victim.
- Creates a procedure for a respondent to request review of a permanent restraining order if the criminal conviction is vacated.
  - Requires a judge to vacate or modify the duration of the order.
  - The court shall hold the review hearing within 30 days after the motion requesting the hearing is filed unless there is good cause for extension.
  - If modified, the order may not be in effect for a longer period of time than the maximum period under the first ordered injunction, had it not been permanent.
  - The judge must vacate the order if the maximum possible period from the first order has elapsed.

LEGISLATION – FAILED TO PASS

## **SB 29 & AB 138 – ADOPTION REFORM**

- Provides method for mother, father, or alleged/presumed father to consent to TPR in writing (vs. appearing in court).
  - Child under 1 year old only
  - Cannot be an Indian child
- Father, alleged father, or presumed father may consent to TPR prior to the birth of the child.
- Allows payments to be made to a licensed out-of-state private child placing agency for services provided in connection with an adoption.
- Passed the Senate; passed the Assembly Committee on Children and Families.

## **SB 245 & AB 185 – CHARGING A MINOR WITH AN ACT OF PROSTITUTION**

- Eliminates the ability to charge an individual under the age of 18 with prostitution (a/k/a Safe Harbor).
  - Based upon the fact that in WI a person under 18 cannot legally consent to sexual contact.
- Passed the Senate Committee on Judiciary and Public Safety; introduced in the Assembly Committee on Criminal Justice and Public Safety.

## SB 256 & AB 289 – PERMANENCY PLANNING

- Allows agency to provide copy of a child's/juvenile's permanency plan and comments on the plan to the out-of-home care provider in the context of a permanency review and a permanency hearing.
  - Not required that the agency provide.
- Information required to remain confidential under federal or state law must be redacted .
- Passed the Senate; Assembly Committee on Children and Families recommended passage.

## SB 264 & AB 249 – TPC HEARING TIMELINE

- Excludes from the 24-hour time calculation for holding of Temporary Physical Custody (TPC) Hearing under Ch. 938 any days that the clerk of court's office is closed, if the closure is due to inclement weather or another unforeseen emergency.
- Passed the Senate; not recommended for passage by the Assembly Committee on Judiciary (4-4 vote).

## **SB 402 & AB 412 – FOSTER PARENT BILL OF RIGHTS**

- Sets forth a list of 17 rights that must be provided to foster parents when licensed.
- Primarily dictates communication and information exchange between the foster parents and the child welfare agency.
  - Notification of certain events or decisions, opportunity for input, preferred placement for re-entry, etc.
- Does not create any private right to action or claim for non-compliance with rights.
- Amendment introduced to not apply in WICWA cases.
- Public hearings held in the Senate Committee on Human Services, Children, and Families and the Assembly Committee on Children and Families.

## **AB 626 – TPR GROUND: DRUG-AFFECTED CHILD**

- Establishes new TPR ground where:
  - The child suffered prenatal exposure to alcohol or a controlled substance and the CHIPS petition was filed within 18 months of the child's birth; OR
  - The child's basic needs and safety have been adversely affected by a parent's chronic and severe use of alcohol or a controlled substance.
- TPR may not be ordered if the parent is participating in a drug court program.
  - May also consider substantial compliance with treatment.
- Public hearing held in the Assembly Committee on Family Law.



## SB 595 & AB 627 – TPR GROUND: INCARCERATED PARENT

- Establishes new TPR ground where:
  - A child is adjudged in need of protection or services;
  - The subject parent is incarcerated at time of TPR fact-finding; and
  - The parent is “likely to be incarcerated for a substantial period of the child’s minority” (can look to history of incarceration).
    - Amendment to further define/narrow applicability
      - Child under 14 and parent incarcerated for more than 50% of remaining minority; violent offenses only.
- Introduced in the Senate Committee on Human Services, Children, and Families; public hearing held in the Assembly Committee on Family Law

## SB 599 & AB 628 – ELIMINATION OF JURY TRIAL RIGHT

- As introduced, seeks to eliminate the right to a jury trial in TPR proceedings.
  - Began as elimination of TPR jury trial right; however, amendment introduced to change to CHIPS jury trial right only.
  - Amendment to:
    - Exclude WICWA cases – right to jury in CHIPS cases retained.
    - Clarify right to substitution in TPR cases.
- Introduced in Senate Committee on Judiciary and Public Safety; public hearing held in Assembly Committee on Family Law.

## **SB 686 & AB 629 – POST-ADOPTION CONTACT AGREEMENTS**

- Allows for proposed adoptive parents and birth parents (or other relatives) to enter into agreements for post-adoption contact.
  - Type and frequency of contact.
  - Procedures for modification, termination, and enforcement.
- Public hearings held in the Senate Committee on Human Services, Children and Families and the Assembly Committee on Family Law.

## **AB 630 – TPR BY MOTION IN CHIPS CASE**

- Allows for filing of a motion for TPR to be brought under the existing CHIPS proceeding, rather than in a separate TPR action.
- Extends right to appointed TPR parent representation to CHIPS case once motion is filed.
- Public hearing held in the Assembly Committee on Family Law.

## **SB 594 & AB 631 – SAFE HAVEN UPDATES**

- Expands the time limit for relinquishment from 72 hours to 30 days from birth.
- Directs the filing of TPR no sooner than 30 days after relinquishment, but no later than 60 days court finds probable cause of relinquishment.
- Establishes procedures for relinquishment of Indian children.
- Introduced in the Senate Committee on Judiciary and Public Safety; public hearing held in the Assembly Committee Family Law.

## **SB 601 & AB 632 – DUTY TO PARTICIPATE IN TPR APPEAL**

- Creates a duty to participate in appeal for any parent appealing an order terminating parental rights.
- Failure to fulfill duty to participate would result in a finding of abandonment of appeal.
- Amendment introduced to clarify prosecutor may request a finding of abandonment when appellant fails to file Notice of Appeal within 30 days after the service of the transcript and case record.
- Amendment to clarify that circuit court would hear motion.
- Public hearing held in the Senate Committee on Human Services, Children, and Families; introduced in the Assembly Committee on Family Law.

## SB 884 – EXPANDING CASA PROGRAM

- Requires the governor to allocate \$6.8 million of the American Rescue Plan Act of 2021 funds to CASA.
- Expand currently existing program.
- Two new county programs in 2022.
- Two new county programs in 2023.
- Passed the Senate.

## LEGISLATIVE STUDY COMMITTEES

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- Legislative Council Study Committee on Increasing Offender Employment Opportunities
- Legislative Council Study Committee on Occupational Licenses
- Legislative Council Study Committee on Shared School District Services
- Legislative Council Study Committee on the Commercial Building Permitting Process
- Legislative Council Study Committee on Uniform Death Reporting Standards
- Legislative Council Study Committee on Wisconsin National Guard Sexual Misconduct Procedures
- Special Committee on State-Tribal Relations

2023-2024 SESSION