

CHILD WELFARE LEGISLATIVE & CASE LAW HIGHLIGHT

Juvenile Law Conference
August 25, 2016
Anton Jamieson and Justin Wolff

PRESENTERS

❖ **Anton Jamieson**
Court Commissioner, Dane County
608-266-9146
anton.jamieson@wicourts.gov

❖ **Justin Wolff**
Policy Analyst, Children's Court Improvement
Program
608-264-6905
justin.wolff@wicourts.gov

LEARNING OBJECTIVES

As a result of this presentation, you will be able to:

1. Conduct Permanency hearings that comport with Federal and State guidelines
2. Expedite CHIPS cases through the use of the new Change of Placement Statute
3. Provide timely permanence in TPR cases by providing legally sufficient TPR warnings

**LEGISLATIVE UPDATE
2015-2016 SESSION**

**FEDERAL PREVENTING SEX TRAFFICKING
& STRENGTHENING FAMILIES ACT**

- Signed into law September 2014.
- Most provisions need to be implemented over the next 2 years
- Major Provisions
- Most provisions were codified in 2015 Act 128.

**2015 ACT 128
REASONABLE & PRUDENT PARENT STANDARD**

- Promotes normalcy for children
- OHC providers must use the reasonable and prudent parent standard to make decisions about the child's participation in age or developmentally appropriate activities
 - Decisions based on age, maturity, cognitive, emotional, physical, and behavioral capacities of the child
- See ss. 48.02(1)(dm) & 938.02(1g).

**REASONABLE & PRUDENT PARENT STANDARD
ACTIVITIES**

- The standard applies to OHC provider decisions about child's participation in extracurricular, enrichment, cultural, and social activities.
- See ss. 48.383 and 938.383.
- Examples:
 - Employment
 - Transportation/driving
 - Travel
 - Sports - football, hunting, snowboarding
 - Sleepovers
 - Riding ATV/lawn mower
 - Body/ear piercing

**2015 ACT 128
PERMANENCY GOALS**

- Eliminates independent living/transition to successful adulthood as permanency goal.
- Removes long-term foster care from OPPLA (removed in 2015 Act 55).
- Removes sustaining care as permanency option and TPR disposition.
- Limits use of Other Planned Permanent Living Arrangement (OPPLA) to children 16 and older.
- See ss. 48.38(4)(fg) & 938.38(4)(fg).

**2015 ACT 128
PERMANENCY PLAN**

- Child 14 years and older:
 - Consultation
 - Child can select two people
 - Child rights document.
 - See ss. 48.38(4)(h) & 938.38(4)(h).
- If OPPLA is one of the goals, must include plan to ensure child has regular, ongoing opportunities for age or developmentally appropriate activities.

**2015 ACT 128
OPPLA PERMANENCY REVIEW/HEARING**

Court/panel must find:

- OPPLA is the best permanency goal
- Continues to not be in best interest for
 - Return home
 - Placed for adoption
 - Placed with guardian
 - Placed with fit or willing relative
- Agency verifies whether
 - Age or developmentally appropriate activities
 - Reasonable and prudent parent standard

**2015 ACT 55
EXTENDED OUT-OF-HOME CARE
BACKGROUND**

- **Dispositional Order or Voluntary Transition to Independent Living Agreement until age 21:**
 - Full-time student in high school or vocational equivalent,
 - IEP in effect, and
 - Young adult agrees.
- See ss. 48.366 & 938.366.

**2015 ACT 55
PERMANENCY PLANNING FOR
EXTENDED OHC**

- Clarifies permanency planning/hearings required for young adult with a Voluntary Transition to Independent Living Agreement.
- Court must find Voluntary Transition to Independent Living Agreement in young adult's "best interest".

**2015 ACT 55
COMMUNITY BASED JUVENILE
DELINQUENCY SERVICES**

- Transferred responsibility for community based juvenile delinquency services from DOC to DCF:
 - Standards of Practice.
 - Training, including juvenile court intake worker training
 - Program monitoring.
 - Technical assistance to counties.
 - Fiscal administration.
- DOC maintains juvenile justice direct service responsibilities for:
 - Operation and oversight of secure correctional facilities for juveniles.
 - Oversight of the Serious Juvenile Offender program, including supervision of SJO offender after release to the community.
 - Providing aftercare supervision (for non-SJOs) under contract with contracting counties.
- See s. 49.11.

**2015 ACT 373
CHANGE IN PLACEMENT PROCEDURES**

- Provides procedures related to changes in placement in CHIPS, JIPS, delinquency, and TPR cases.
- Wisconsin Judicial Committee on Child Welfare (WJCCW) took lead drafting.
 - Intended to increase placement stability and reduce time to permanency.
- Delayed effective date of 6 months after publication.

**2015 ACT 373
CHANGE IN PLACEMENT PROCEDURES**

Temporary Physical Custody (TPC) Orders

- Creates procedure for changes in placement that occur while child/juvenile under TPC Order. See ss. 48.217 & 938.217.
- Mirrors procedures and timeframes already contained in ss. 48.357 & 938.357.
- Clarifies TPC Order remains in effect until petition withdrawn/dismissed, dispositional order/consent decree, or court terminates.

2015 ACT 373
CHANGE IN PLACEMENT PROCEDURES

Post-Dispositional Changes in Placement

- Establishes procedure for emergency in-home to out-of-home changes.
 - Hold hearing within 48 hours.
- Requires order to be issued when Notice of Change in Placement used without hearing.
- Clarifies 10-day timeframe for Notice of Change in Placement starts when notice sent to participants and filed with court.
- See ss. 48.357(2)(b) & 938.357(2)(b).

2015 ACT 373
CHANGE IN PLACEMENT PROCEDURES

Consent Decrees

- Allows consent decree to be amended to change placement or revise other terms of the consent decree.
- Does NOT extend expiration date.
- Uses same procedures for entering the original consent decree.
- Hearing required when in-home to out-of-home change in placement.
- See ss. 48.32(1)(am) & 938.32(1)(bm).

2015 ACT 373
CHANGE IN PLACEMENT PROCEDURES

Post-Termination of Parental Rights

- Changes in placement that occur after TPR if child under guardianship of agency/DCF.
- Agency, DA, or corporation counsel must provide notice to court and participants:
 - 10 days before proposed change
 - 48 hours after emergency change
- Within 10 days, judge must either approve or schedule hearing on the matter.
- See s. 48.437.

2015 ACT 373
CHANGE IN PLACEMENT PROCEDURES

Case Closure Orders

- Allows juvenile court to modify family court order and terminate juvenile court order.
 - Legal custody, physical placement, visitation, child support, paternity, and health care expenses.
 - Uses standards provided in Chapter 767.
 - Subsequent modifications occur in family court.
- Available after dispo order entered and only when child is to be placed with a parent.
- See ss. 48.355(4g) & 938.355(4g).

2015 ACT 373
CHANGE IN PLACEMENT PROCEDURES

Authority of Court Commissioners

- Changes in placement when subject to TPC order
- Emergency change in placement hearings post-disposition
 - In-home to out-of-home
- Approve amended consent decrees

2015 ACT 101
DEFINITION OF RELATIVE

- Adds parent of a sibling who has legal custody of that sibling to definition of "relative".
 - For purposes of placement.
 - Included in list of individuals county agency notifies when child placed out-of-home.
- See ss. 48.02(15) & 938.02(15).

ADDITIONAL LEGISLATION

SUBSIDIZED GUARDIANSHIPS

- 2015 Act 145 Like-Kin Subsidized Guardianship
 - Expands eligibility for SG
- 2015 Act 129 Successor Guardianship subsidized
 - Authorizes SG to successor if conditions met

PREVENTING SEX TRAFFICKING/STRENGTHENING FAMILIES ACT

- 2015 Act 367 Definition of Sex Trafficking
 - Mirrors federal definition
 - Requires CPS to contact LE if caregiver involved
 - If parent involved, RE might not be required
 - OHC must be informed if juvenile is trafficked
- 2015 Act 368 Reporting of Missing Children

ADD'L LEGISLATION (cont.)

ADOPTION RELATED

- 2015 Act 378* Adoption Venue & Home Studies
 - Adds additional sites for venue
- 2015 Act 379* Pre-adoptive Requirements
 - Revises training requirements for 1st time adoptive parents
- 2015 Act 380* Recognizing Foreign Adoptions
 - Eliminates requirement of re-adoption
- 2015 Act 381* Adoption Tracking
 - Petitioner to disclose whether child has previously been adopted
- 2015 Act 134 Access to Information Post TPR
 - Expands access to identifying medical information

ADD'L LEGISLATION (cont.)

- 2015 Act 365, CPS Investigations for kids with Disabilities
 - Implement procedures for investigating kids with disabilities; identify and categorize disabilities; collaboration with LE
- 2015 Act 366, Criminal Physical Abuse
 - Creates crime of repeated physical abuse
- 2015 Act 161, Disclosure of Pupil Records
 - Authorize release of public records in certain circumstances

ON THE HORIZON

- Bureau of Indian Affairs Regulations, based on new BIA Guidelines
 - Effective December 2016
- Cross-reference new definition of abuse based on sex trafficking in s. 48.13.

FAILED TO PASS

- AG Justice for Children Legislative Package
 - 2015 AB 431 Criminal Neglect
 - Removes requirement to prove intent to neglect
 - Defines necessary care to include food, clothing, medical and dental care, shelter, supervision, education, exposure to distribution or manufacture of controlled substances.
 - 2015 AB 429
 - Expands requirement to refer CPS reports to law enforcement to include all reports of suspected or threatened child abuse or neglect to law enforcement.
- 2015 AB 528 Parental Disclaimer/Consent to TPR
 - Child's parent may execute affidavit containing a disclaimer of parental rights after child's birth without coming to court. Father may execute disclaimer before birth- irrevocable 72 hours after birth unless there was fraud or duress.

LATE INTRODUCTIONS

- 2015 AB 375 Juvenile Right to Jury Trial
 - Grants right to jury trial in juvenile justice cases where the DA has reserved the right to request SJO or placement in corrections beyond 18 years old.
- 2015 AB 378/SB 280 Adult Jurisdiction
 - Raises age from 17 to 18 for charging as an adult, except for certain violent offenses or if previously convicted of a crime or adjudicated delinquent.
- 2015 AB 267 Child Abuse Investigation and Sex Trafficking
 - "Safe Harbor"-Prohibits prosecuting a person under the age of 18 with committing an act of prostitution.

CASE LAW UPDATE	
------------------------	--

ST. CROIX COUNTY DHHS v. MICHAEL D.	
<ul style="list-style-type: none"> ■ 2016 WI 35 ■ Holding: The requirement under 48.415 (2)(a)1 which requires written notice in “. . . one of more orders . . . containing the notice required by 48.356 (2) “ is met when the parent receives at least one written TPR warning. The holding in <u>Steven H.</u> 2000 WI 28 is clarified. 	

ST. CROIX COUNTY DHHS (cont.)	
<ul style="list-style-type: none"> ■ Facts: <ul style="list-style-type: none"> ▪ DHHS involved with child since 2009. ▪ Removed in July 2011, Written TPR warnings provided at dispo hearing August 2011 ▪ Circuit court gave oral TPR warnings at subsequent extension hearings ▪ Continuing need TPR, filed January 2013 ▪ Fact finding to court, denies motion to dismiss for failure to comply with rule in <u>Steven H.</u> TPR May 2014. ▪ Court of appeals reversed, last notice did not have written warnings 	

ST. CROIX COUNTY DHHS (cont.)

- Majority: The relevant TPR statute requires that the county prove that the child was placed outside the home pursuant to one or more court orders containing TPR warnings.
- The majority harmonizes Steven H. with the current case, in that both cases meet the dual requirements of adequate notice of the conditions of return and forewarning the parents that their rights are in jeopardy.
- Dissent: Steven H. was unanimous and unequivocal and should be followed.

PRACTICE TIPS

- Note the timeline: Placed outside the home in July 2011, TPR filed in January 2013, concluded in May 2014. Supreme Court decision May 2016
- Consider original dispositional order to age 18.
- Permanency plans occurred during this time, in addition to extension hearings
- Consider written TPR warnings at every post-dispo hearing.

UNPUBLISHED CASES

- Dane County DHS v. Hershula B, 14AP2076
 - Partial directed verdict; indirect communication; SW requirement to meet prior to visit
- Ozaukee County DHS v. J.R., 14AP2804-2809
 - Sec. 48.21(7) applies only to children in custody
- Caroline P. v. Shawn H., 14AP2004 & 14AP2005
 - Assessment of TPR factors; failure to take testimony at dispo; if relying on conduct in family case, must take judicial notice
- Dane Co. DHS v. Connie H., 15AP552
 - Failed to show met conditions for reinstatement
- State v. J.S., 15AP707
 - Constitutionality of Failure to Assume Parental Responsibility

RESOURCES

- Judicial Benchbook - Juvenile
- Juvenile Circuit Court Forms and Summaries
- State Bar Annual Survey of Juvenile Law
- CCIP E-Learning Activities
 - www.wicciptraining.com
- DCF juvenile justice transfer and call for input
 - <http://dcf.wi.gov/juvenilejustice/juvenilejustice.htm/pdf/communitybased-jj.pdf>
